

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

**AGENDA**  
**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**BOARD MEETING**  
**February 13, 2020**  
**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 DECEMBER 12, 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. **VIRGIN TRAINS USA UPDATE** – *Michael Cegelis, Virgin Trains USA* (info. item)
2. **CENTER FOR URBAN TRANSPORTATION RESEARCH (CUTR) STUDY, THE ECONOMIC IMPACT AND BENEFITS OF THE CFX FIVE-YEAR WORK PLAN** – *Sisinnio Concas, USF Center for Urban Transportation Research* (info. item)
3. **LEGISLATIVE UPDATE** – *Michelle Maikisch, Chief of Staff/Public Affairs Officer* (info. item)
4. **FISCAL YEAR 2020 MID-YEAR BUDGET REVIEW/AMENDMENT** – *Michael Carlisle, Director of Accounting and Finance* (action item)

**(CONTINUED ON PAGE 2)**

5. **SR 528/SR 436 INTERCHANGE IMPROVEMENTS PROJECT** – *Will Hawthorne, Director of Engineering* (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 [lrannetta.dennis@CFXway.com](mailto:lrannetta.dennis@CFXway.com) at least three business days prior to the event.



## CONSENT AGENDA February 13, 2020

### **ADMINISTRATIVE SERVICES**

1. Approval of First Contract Renewal with Thorn Run Partners, LLC for Federal Advocacy Services, Contract No. 001533 (Agreement Value: \$49,200.00)

### **CONSTRUCTION**

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

a. Project 417-134 Hubbard Construction Co.	\$ 25,160.20
b. Project 528-750 Preferred Materials, Inc.	\$ 694,573.60
c. Project 253G SEMA Construction, Inc.	\$ 99,484.26
d. Project 408-128 The Lane Construction Corp.	\$ 929,016.89
e. Project 599-541 Traffic Control Devices, Inc.	(\$ 119,861.01)
3. Approval of Contract Award to Central Florida Underground, Inc. for SR 528/SR 436 Orlando Utilities Commission East Jack & Bore Joint Participation Agreement, Project 528-143-01, Contract No. 001631 (Agreement Value: \$294,132.00)
4. Approval of Contract Award to Jr. Davis Construction Company, Inc. for SR 429 Stoneybrook West Interchange, Project 429-316A, Contract No. 001635 (Agreement Value: \$10,823,189.37)
5. Approval of Contract Award to United Signs & Signals, Inc. for Systemwide Pay By Plate Signs - SR 408, Project 599-643A, Contract No. 001642 (Agreement Value: \$1,069,274.79)
6. Approval of Contract Award to Traffic Control Devices, Inc. for Systemwide Pay By Plate Signs - SR 417, Project 599-643B, Contract No. 001643 (Agreement Value: \$1,117,711.00)
7. Approval of Contract Award to United Signs & Signals, Inc. for Systemwide Pay By Plate Signs – Miscellaneous, Project 599-643C, Contract No. 001644 (Agreement Value: \$1,148,326.33)

### **ENGINEERING**

8. Approval of First Contract Renewal with Protean Design Group, Inc. for Miscellaneous Design Consultant Services, Contract No. 001208 (Agreement Value: \$830,000.00)
9. Approval of Supplemental Agreement No. 4 for Post Design Services and Classen Graphics Infrastructure Development, LLC as a Subconsultant with DRMP, Inc. for the SR 528/SR 436 Interchange Improvements and SR 528 Widening from SR 436 to Goldenrod Road, Project 528-143, Contract No. 001314 (Agreement Value: \$1,104,457.44)

10. Approval of Contract Award to The Balmoral Group, LLC for Design Consultant Services for the SR 528 Widening from Narcoossee Road to SR 417, Project 528-160, Contract No. 001589 (Agreement Value: not-to-exceed \$1,290,000.00)
11. Approval of Contract Award to Jacobs Engineering Group, Inc. for Professional Engineering Consultant Services for the Project Development and Environmental Study of the SR 414 Expressway Extension Project, Project 414-227, Contract No. 001590 (Agreement Value: not-to-exceed \$1,600,000.00)
12. Approval of Contract Award to Kimley Horn & Associates, Inc. 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 (Agreement Value: not-to-exceed \$1,650,000.00)
13. Approval of Final Ranking and Authorization for Fee Negotiations for Design Consultant Services for SR 408 Tampa Avenue Interchange, Project 408-315, Contract No. 001617

## **FINANCE**

14. Approval of First Contract Renewal with PFM Asset Management, LLC for Investment Advisor Services, Contract No. 001244 (Agreement Value: \$255,000.00)

## **LEGAL**

15. Approval of Partial Release and Amendment of Indenture (AT&T), Project VTUSA, 528 Corridor
16. Approval of Agreement to Amend the Indenture (Sprint), Project VTUSA, 528 Corridor
17. Approval of AAF-Cargo Road/Narcoossee Drainage: Reinstatement and Third Amendment to Purchase and Sale Agreement, Project 528-143, Parcels 802-B, 805 and 806
18. Approval of Proposed Order on Expert Fees and Costs as to Juris, Cynthia J. and Robert S. Henderson, as Trustees, et. al., Project 429-202, Parcels 112 (Parts A & B) and 712, (Agreement Value: \$56,000.00)

## **MAINTENANCE**

19. Approval of Supplemental Agreement No. 7 with Infrastructure Corporation of America for Facilities Maintenance Services, Contract No. 001150 (Agreement Value: \$100,000.00)
20. Approval of Supplemental Agreement No. 2 with Jorgensen Contract Services, LLC for Roadway Maintenance Services – SR 408, SR 417 and SR 528, Contract No. 001151 (Agreement Value: \$247,467.00)
21. Approval of Amendment No. 1 to Supplemental Agreement No. 3 to Infrastructure Corporation of America for Roadway Maintenance Services, Contract No. 001152 (Agreement Value: \$290,000.00)

22. Approval of First Contract Renewal with Chapco Fence, LLC for Fencing Repairs along the Poinciana Parkway, Contract No. 001536 (Agreement Value: \$30,000.00)
23. Approval of Contract Award to Arazoza Brothers Corp. for SR 408 Landscape Improvements from Good Homes Road to Hiawasse Road, Project 408-828, Contract No. 001641 (Agreement Value: \$843,850.25)

## **TECHNOLOGY/TOLL OPERATIONS**

24. Approval of Cintas Corporate Services, Inc. and EmployBridge Holding Company (RemX) as Subcontractors for the E-PASS and Violation Enforcement Operations Contract with Egis Projects, Inc., Contract No. 001105
25. Authorization to Execute A Single Source Contract with Kyra Solutions, Inc. for Image Processing Solution, Contract No. 001660 (Agreement Value: \$1,500,000.00)
26. Authorization to Execute Cooperative Purchase Agreement with Tews Consulting, Inc. for Information Technology Staff Augmentation Services, Contact No. 001656 (Agreement Value: not-to-exceed \$2,000,000.00)
27. Approval of Purchase Order to Dasher Technologies for Additional Storage for the Infinity Toll Collection System (Agreement Value: not-to-exceed \$75,000.00)
28. Approval of Purchase Order to Hewlett Packard Enterprise Company for Hewlett Packard Enterprise Server and Equipment Support Services (Agreement Value: not-to-exceed \$71,186.12)
29. Approval of Purchase Order to Microsoft Corporation for Support Services (Agreement Value: \$71,647.00)

## **TRAFFIC OPERATIONS**

30. Approval of Final Ranking and Authorization for Fee Negotiations for Professional Engineering Consultant Services for Development of the Intelligent Transportation Systems Master Plan, Project 599-558, Contract No. 001616

The following items are for information only:

- A. The following is a list of advertisement(s) from December 2, 2019 through February 3, 2020:
  1. Systemwide Pay By Plate Signs – SR 408
  2. Systemwide Pay By Plate Signs – SR 417
  3. Systemwide Pay By Plate Signs – Misc.
  4. Design Consultant Services for Poinciana Parkway Extension – Segment 1 & 2
  5. Design Consultant Services for CR 532 Widening from Old Lake Wilson Road to US 17/92
  6. SR 408 Landscape Improvements from Good Homes Road to Hiawasse Road

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. 599-526C – Wrong Way Driving Deployment (Construction)
2. 599-545 – DMS Replacement Project (Construction)
3. Solar Deployment (RFP Design Build)
4. ITS Maintenance Contract – (OM&A Support Contract)
5. SR 516 (Lake-Orange Connector) US 27 to Cook Road (Design)
6. SR 516 (Lake-Orange Connector) Lake-Orange County Line to SR 429 (Design)
7. SR 516 (Lake-Orange Connector) Cook Road to Lake-Orange County Line (Design)
8. SR 528 Widening from SR 417 to Innovation Way (Design)
9. SR 408 and Mills Exit Improvements (Construction)
10. SR 414 M&R from SR 414 to Keene Road Bridge (Construction)
11. SR 414 M&R from Keene Road Bridge to US 441 (Construction)
12. SR 429 Pavement Repairs and Resurfacing (Construction)
13. SR 538 Poinciana Parkway Design Build (CEI)
14. SR 417 Barry Dease Pond Modifications (Construction)
15. SR 408 I-4 to 417 Coatings Renewal (Construction)
16. Supplier Diversity Support Consultant
17. Disclosure Counsel
18. Advocacy Services

C.

APPROVAL OF  
BOARD MEETING MINUTES

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES  
CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
BOARD MEETING  
December 12, 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 Brandon Arrington, Osceola County  
Commissioner Leslie Campione, Lake County  
Andria Herr, Gubernatorial Appointment  
Commissioner Betsy VanderLey, Orange County  
Commissioner Curt Smith, Brevard County

Board Member Not Present:

Mayor Jerry Demings, Orange 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.

Chairman Madara welcomed Commissioner Brandon Arrington to his first CFX board meeting. He announced that Mayor Demings was not able to attend today's meeting due to a conflict. Chairman Madara read a statement from Mayor Demings attached as **Exhibit "A."**

**B. PUBLIC COMMENT**

The following individuals commented on the Osceola Parkway Extension Project:

- Kim Buchheit, Orange County Resident, material(s) distributed at meeting attached as **Exhibit "B"**
- Raymer Maguire – Maguire Lassman, P.A., material(s) distributed at meeting attached as **Exhibit "C"**
- William White – The Futura Company, material(s) distributed at meeting attached as **Exhibit "D"**
- Stacy Ford, Lake Ajay Village Resident
- Valerie Anderson, Friends of Split Oak Forest
- David Bottomlee, Orange County Resident
- Bob Turner, Lake Ajay Village Resident
- Sally Baptist, Orange County Resident – material(s) distributed at meeting attached as **Exhibit "E"**
- Gloria Pickar, Orange & Seminole League of Women Voters, material(s) distributed at meeting attached as **Exhibit "F"**
- Darrell Campbell, Osceola County Resident
- Jim Erwin, Orange County Resident materials attached as **Exhibit "G"**
- Charles Lee – Audubon of Florida, material(s) distributed at meeting attached as **Exhibit "H"**
- Harry Boggs, Orange County Resident
- Andrew Cole, East Orlando Chamber of Commerce, material(s) distributed at meeting attached as **Exhibit "I"**
- Dino Derrico, Lake Ajay Resident
- Don Fisher, Osceola County Manager
- Suzanne Arnold, Lake Mary Jane Alliance, material(s) distributed at meeting **Exhibit "J"**
- Megan Sorbo, Orange County Resident
- Michael Lella, Osceola County Resident
- Rachel Deming, Orange County Resident
- Harry Gregg, Osceola County Resident
- Gary Huttman, Metro Plan Orlando
- Angela Phillips, Lake Ajay Resident
- Margorie Holt, Sierra Club Central Florida Group, material(s) distributed at meeting **Exhibit "K"**
- Chuck O'Neal, Speak Up Wekiva, Inc.

The board meeting was recessed at 10:50 a.m.

The board meeting was reconvened at 11:06 a.m. with the continuation of the Public Comment portion of the meeting.

**B. PUBLIC COMMENT (con't)**

- Brian Denham, Denham Engineering
- Kathleen F. Fitzgerald, Orange County Resident
- Nicole Wilson, Orange County Resident, material(s) distributed at meeting **Exhibit "L"**
- Gretchen Robinson, Friends of Split Oak Forest
- Sharon McBreen, Orange County Resident
- Vince Marcucci, Orange County Resident

- Robert Stein, Osceola County Resident
- Pam Dirschka, Brevard County Resident
- Eleanor Foerste, Eleanor Foerste Adventures, LLC
- Linda Chapin, Orange County Resident
- Sandy Webb, Kissimmee Valley Audubon Society
- Nina W. Yoakum, Orange County, Resident

Commissioner Smith left at this time.

- Katrina Shadix, Bear Warriors United
- Frank Kujawa, League of Women Voters
- Brady Nepple, TEAMFL
- Sandra Mattos, Orange County Resident
- Tina Sorbo, Orange County Resident
- John Newstreet, Kissimmee Chamber of Commerce, material(s) distributed at meeting **Exhibit "M"**
- Chief of Staff/Public Affairs Officer Michelle Maikisch read into the record public comment letters, attached as follows:
  - Representative Mike La Rosa, **Exhibit "N"**
  - Lake Nona Regional Chamber, **Exhibit "O"**
  - Orlando Economic Partnership, **Exhibit "P"**

#### **C. APPROVAL OF NOVEMBER 14, 2019 BOARD MEETING MINUTES**

A motion was made by Commissioner Carey and seconded by Mayor Dyer to approve the November 14, 2019 Board Meeting Minutes as presented. The motion carried unanimously with seven (7) members present voting AYE by voice vote. Two (2) members, Mayor Demings and Commissioner Smith were not present.

#### **D. APPROVAL OF CONSENT AGENDA**

The Consent Agenda was presented for approval.

#### **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)

A motion was made by Commissioner Campione and seconded by Commissioner Arrington to approve the Consent Agenda as presented. The motion carried unanimously with seven (7) members present voting AYE by voice vote. Two (2) members, Mayor Demings and Commissioner Smith were not present.

### E. REPORTS

#### 1. CHAIRMAN'S REPORT

- Chairman Madara reported on his November 15<sup>th</sup> meeting with CFX Executive Director, Laura Kelley, Florida Turnpike Enterprise Secretary of Transportation, Kevin Thibault and Florida Turnpike Enterprise Executive Director, Nicola Liquori;
- He recapped the past year's accomplishments;
- As a reminder the 2020 Board meeting schedule is available on the CFX website. There will not be a January board meeting. The next board meeting is scheduled for February 13, 2020.

#### 2. TREASURER'S REPORT

Mayor Dyer reported that as of October toll revenue year-to-date was \$162,238,406, which is 1.8% over projection and 6.5% over prior year.

Total Operations, Maintenance and Administration expenses were \$23.0 million year-to-date, which is 9.7% 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:

- Virgin Trains Update – Ms. Kelley introduced Mike Cegelis and Bob O'Malley with Virgin Trains who provided an update on the Virgin Trains' Orlando to Tampa route.

## F. REGULAR AGENDA ITEMS

### 1. OSCEOLA PARKWAY EXTENSION PROJECT DEVELOPMENT AND ENVIRONMENT (PD&E) STUDY RE-EVALUATION

Chief of Infrastructure Glenn Pressimone introduced Dan Kristoff with RS&H. Mr. Pressimone provided an overview of the study team's finding for the Osceola Parkway Extension Project Development and Environment Study Re-evaluation. He also provided a summary of the public comments received at the public workshop and identified the preferred alignment.

Board Members asked questions which were answered by Mr. Pressimone.

A motion was made by Commissioner Arrington and seconded by Mayor Dyer to approve the Osceola Parkway Extension PD&E Re-Evaluation and the Preferred Alternative. The motion carried unanimously with seven (7) members present voting AYE by voice vote. Two (2) members, Mayor Demings and Commissioner Smith were not present.

### 2. RIGHT OF WAY & CONSERVATION LAND AGREEMENTS

Chief of Infrastructure Glenn Pressimone described highlights in the Right-of-Way Acquisition Agreement and the Agreement to Convey Conservation Lands.

Board Members asked questions which were answered by Mr. Pressimone.

A motion was made by Mayor Dyer and seconded by Commissioner Arrington to approve 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 motion carried unanimously with seven (7) members present voting AYE by voice vote. Two (2) members, Mayor Demings and Commissioner Smith were not present.

### 3. CFX METROPLAN ORLANDO REPRESENTATIVE APPOINTMENT

A motion was made by Mayor Dyer and seconded by Commissioner Campione to appoint Commissioner Arrington as the CFX Metroplan Orlando Representative. The motion carried unanimously with seven (7) members present voting AYE by voice vote. Two (2) members, Mayor Demings and Commissioner Smith were not present.

#### 4. BOARD OFFICER ELECTIONS

A motion was made by Chairman Madara and seconded by Commissioner Arrington for Commissioner Carey to serve as Chairman and Mayor Dyer to serve as Vice Chairman. The motion carried unanimously with seven (7) members present voting AYE by voice vote. Two (2) members, Mayor Demings and Commissioner Smith were not present.

A motion was made by Chairman Madara and seconded by Commissioner Campione for Commissioner VanderLey to serve as Treasurer. The motion carried unanimously with seven (7) members present voting AYE by voice vote. Two (2) members, Mayor Demings and Commissioner Smith were not present.

#### G. BOARD MEMBER COMMENT

The following board members commented:

- Mayor Dyer
- Commissioner Carey
- Chairman Madara

#### H. ADJOURNMENT

Chairman Madara adjourned the meeting at 1:16 p.m.

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Jay Madara  
Chairman  
Central Florida Expressway Authority

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Mimi Lamaute  
Recording Secretary  
Central Florida Expressway Authority

Minutes approved on \_\_\_\_\_, 2020.

*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](mailto: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](http://www.CFXway.com).*

# **Exhibit**

## **“A”**

## Exhibit "A"

**From:** Laura Kelley <[Laura.Kelley@cfxway.com](mailto:Laura.Kelley@cfxway.com)>  
**Sent:** Wednesday, December 11, 2019 3:43 PM  
**To:** Michelle Maikisch <[Michelle.Maikisch@cfxway.com](mailto:Michelle.Maikisch@cfxway.com)>  
**Subject:** Fwd: CFX December Board Meeting

Begin forwarded message:

**From:** "Nadine.Erickson@ocfl.net" <[Nadine.Erickson@ocfl.net](mailto:Nadine.Erickson@ocfl.net)>  
**Date:** December 11, 2019 at 3:03:41 PM EST  
**To:** Laura Kelley <[Laura.Kelley@cfxway.com](mailto:Laura.Kelley@cfxway.com)>  
**Cc:** "Roseann.Harrington@ocfl.net" <[Roseann.Harrington@ocfl.net](mailto:Roseann.Harrington@ocfl.net)>, "Carla.Johnson@ocfl.net" <[Carla.Johnson@ocfl.net](mailto:Carla.Johnson@ocfl.net)>  
**Subject:** CFX December Board Meeting

As previously mentioned, I am unable to attend the Central Florida Expressway Authority (CFX) Board Meeting this month due to my previously planned out of state travel to the National Association of Counties Harvard Project on County Innovation Forum.

I am aware of, and recognize the importance of the Osceola Parkway Extension and the planned discussion surrounding the PD&E Study Re-evaluation, which is scheduled on the agenda. I have been fully briefed on this topic by your staff and members of my staff that have participated on the Project Advisory Group and the Environmental Advisory Group. Upon my return, I look forward to an update on the outcome of the CFX Board Meeting as well as a full discussion of this project at the Board of County Commissioners' Meeting on Tuesday, December 17, 2019.

Jerry L. Demings  
Orange County Mayor

**Sent on Behalf of Orange County Mayor Jerry L. Demings**

*Nadine Erickson  
Executive Assistant to  
Mayor Jerry L. Demings  
201 S. Rosalind Avenue  
Orlando, Florida 32801  
Office: (407) 836-7370*

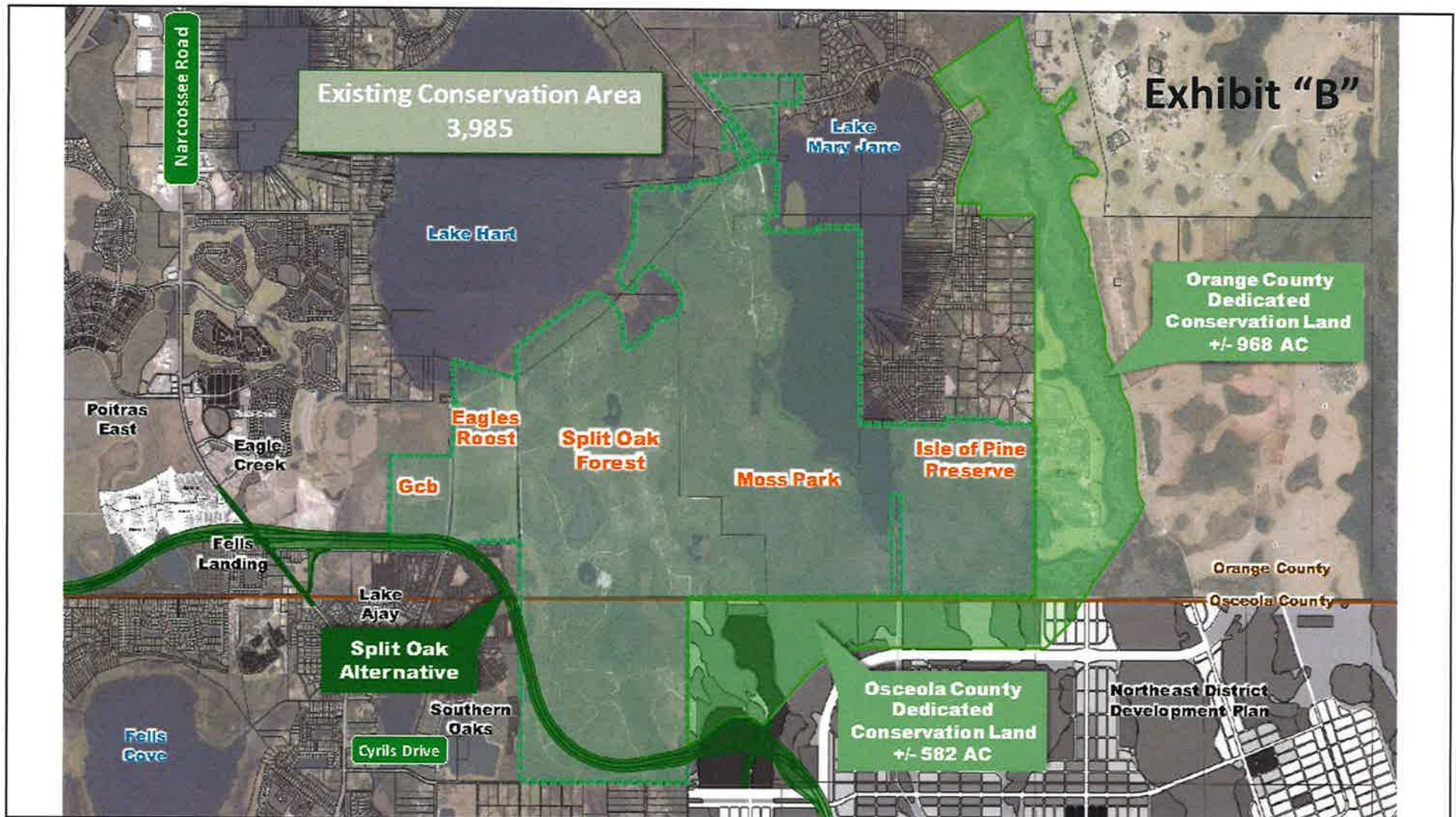


PLEASE NOTE: Florida has a very broad public records law (F. S. 119). All e-mails to and from County Officials are kept as a public record. Your e-mail communications, including your e-mail address may be disclosed to the public and media at any time.

# **Exhibit**

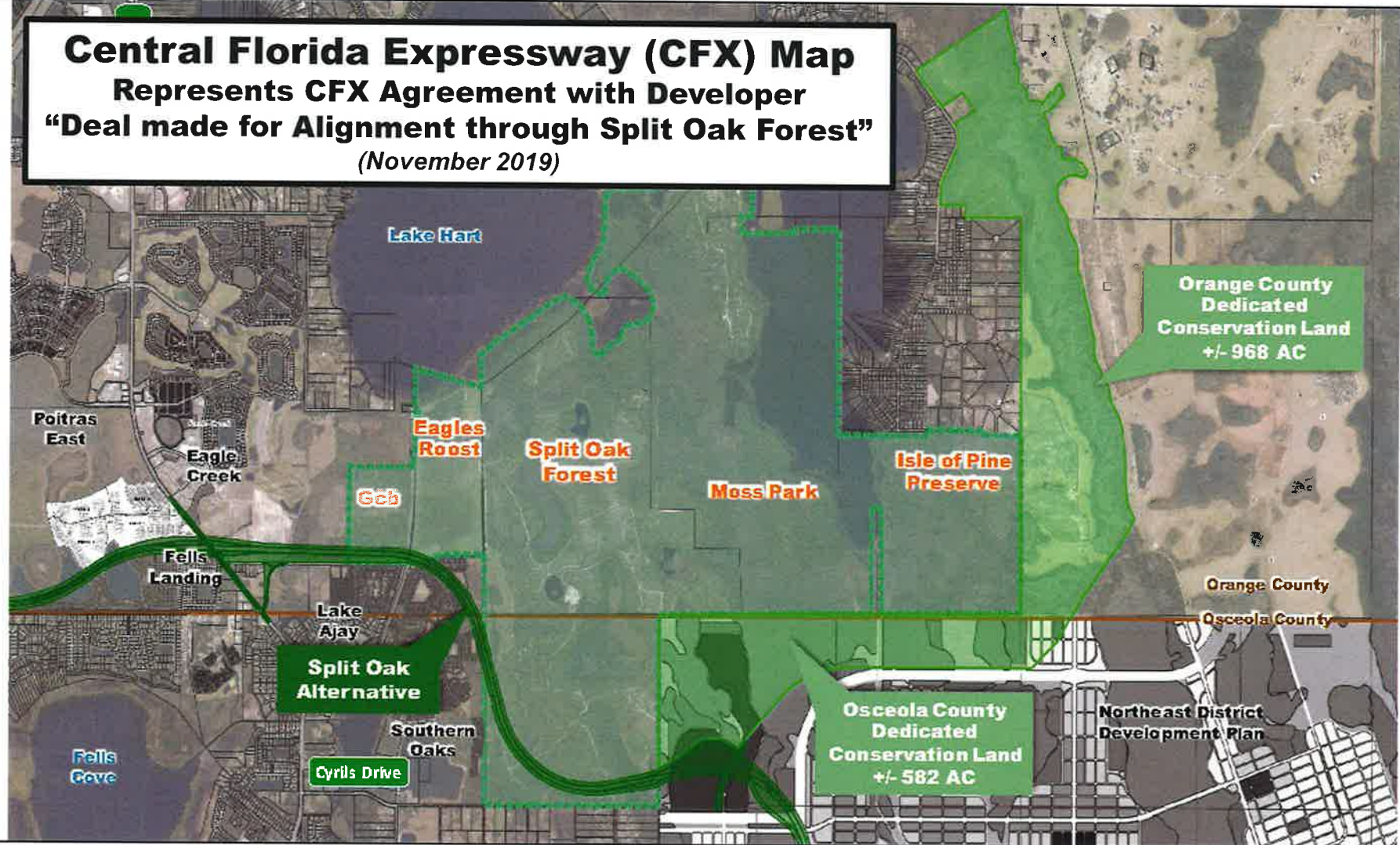
## **“B”**

## Exhibit "B"





**Central Florida Expressway (CFX) Map**  
**Represents CFX Agreement with Developer**  
**"Deal made for Alignment through Split Oak Forest"**  
(November 2019)

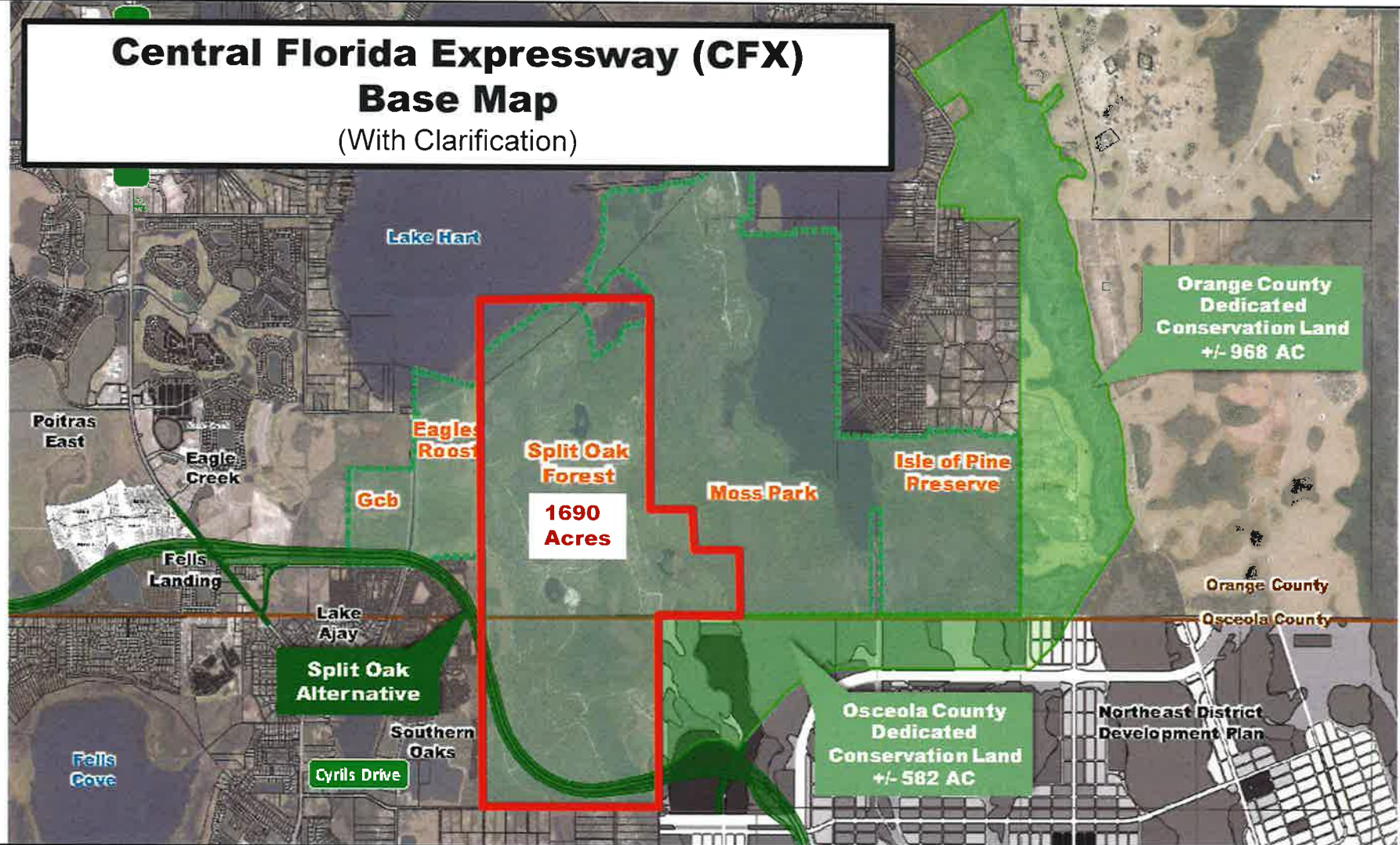




# Central Florida Expressway (CFX)

## Base Map

(With Clarification)



## 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



NOT TO SCALE  
Scale is Distorted



# Central Florida Expressway (CFX) Base Map

(With Clarification)

## Not Contiguous with Split Oak Forest

Orange County  
Buffer Benefits  
Lake Mary Jane  
Alliance  
Sunbridge Pkwy.  
And  
Isle of Pine  
(in SJRWMD)

Split Oak  
Forest

1690  
Acres

Isle of Pine  
Preserve

Moss Park

Eagles  
Roost

Gcb

Split Oak  
Alternative

Osceola County  
Dedicated  
Conservation Land  
+/- 582 AC

Northeast District  
Development Plan

Orange County

Osceola County

Southern  
Oaks

Cyrils Drive

Lake Hart

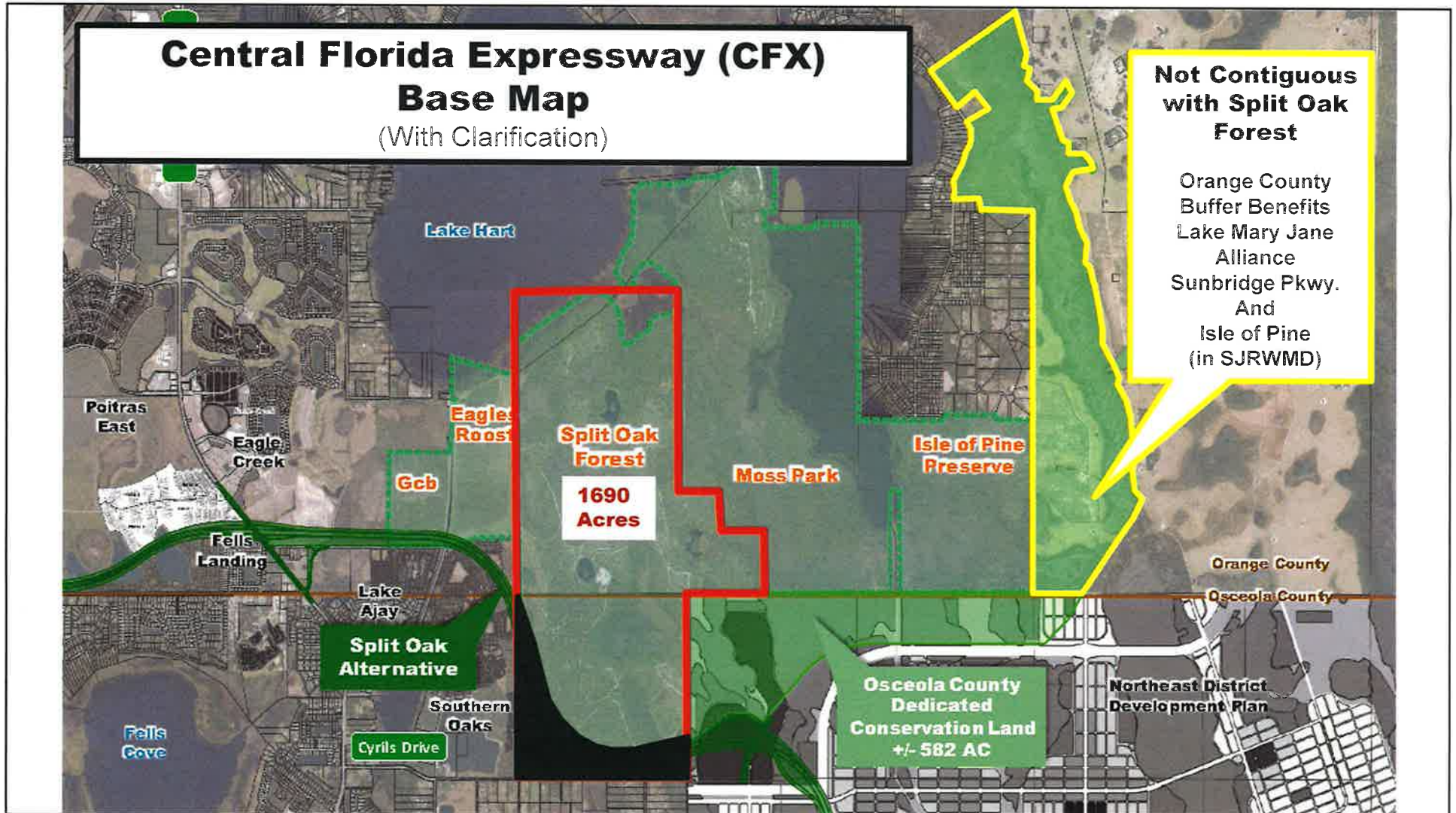
Lake  
Ajay

Fells  
Landing

Eagle  
Creek

Poitras  
East

Fells  
Cove





# Central Florida Expressway (CFX) Base Map

(With Clarification)

**Not Contiguous  
with Split Oak  
Forest**

Orange County  
Buffer Benefits  
Lake Mary Jane  
Alliance  
Sunbridge Pkwy.  
And  
Isle of Pine  
(in SJRWMD)

**Split  
Oak  
Forest  
1690  
Acres**

**350' wide  
SFWMD Canal**

**160 Acres  
Direct Impacts**

**Split Oak  
Alternative**

**Eagles  
Roost  
Gcb**

**Moss Park**

**Isle of Pine  
Preserve**

Orange County  
Osceola County

Northeast District  
Development Plan

South

Fells  
Cove

Fells  
Landing

Lake  
Ajay

Gcb

Eagle  
Creek

Poitras  
East

Lake Hart



# Central Florida Expressway (CFX) Base Map

(With Clarification)

## Not Contiguous with Split Oak Forest

Orange County  
Buffer Benefits  
Lake Mary Jane  
Alliance  
Sunbridge Pkwy.  
And  
Isle of Pine  
(in SJRWMD)

See  
Visualization of  
Contiguous Uplands

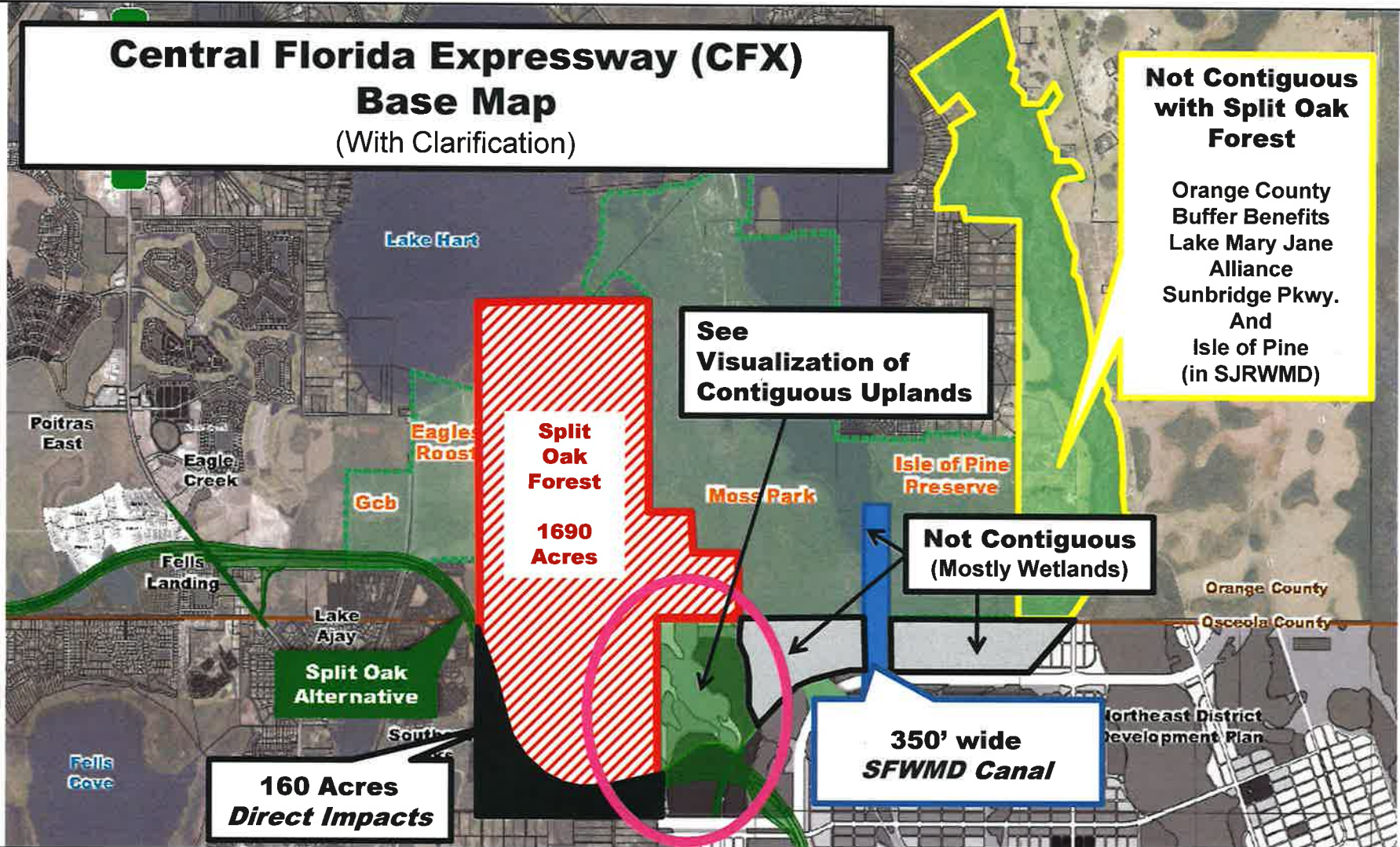
Split  
Oak  
Forest  
  
1690  
Acres

Not Contiguous  
(Mostly Wetlands)

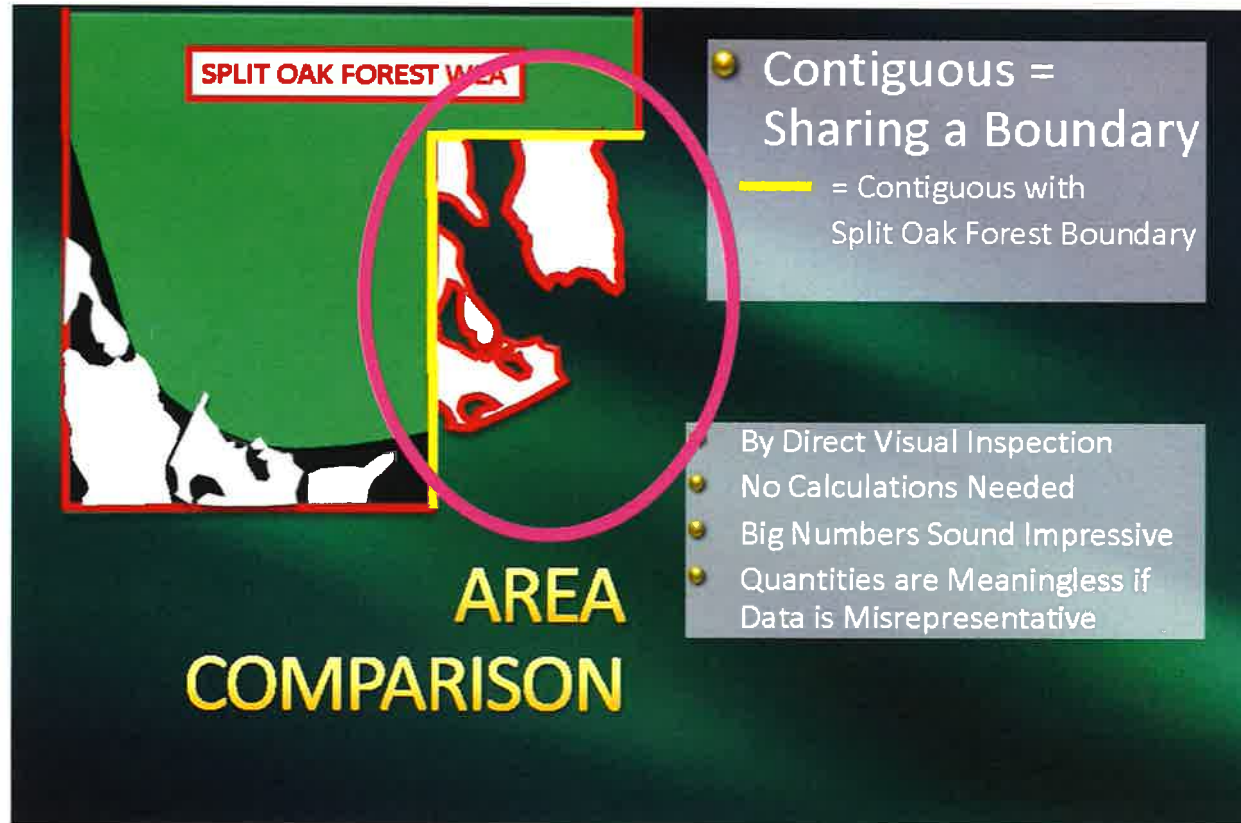
350' wide  
*SFWMD Canal*

Split Oak  
Alternative

160 Acres  
*Direct Impacts*



# VISUALIZATION OF CONTIGUOUS UPLANDS





# Evaluation Matrix

Evaluation Criteria	Unit of Measure	West Segment		East Segment	
		Lake Nona	Boggy Creek	Split Oak Minimization	Split Oak Avoidance
Design					
Alternative Length (approximate)	Miles	4.3	5.3	4.8	4.9
Proposed Right-of-Way Width (general and varies at interchanges)	Feet	330	330	330	330
Proposed Bridges	Structures	18	15	17	20
	Feet	16,331	12,668	3,349	10,010
Proposed Interchanges	Number	2.5	3	2	3
Projected 2045 Annual Average Daily Traffic (AADT)	Vehicles	47,300	35,867	65,100	65,700
Physical					
Major Utility Conflicts - Existing	No. of Conflicts	9	9	5	7
Major Utility Conflicts - Planned	No. of Conflicts	0	0	0	0
Contamination Sites & Facilities	No. of Conflicts	13	19	5	7
Railroad Involvement	No. of Conflicts	0	0	0	0
Cultural Environment Effects					
Potential Historic Resources	No. of Conflicts	6	18	0	0
Potential Historic Linear Resources (Canals)	No. of Resources	0	1	0	0
Potential Archaeological Resources (Some parcels not tested due to access issues)	No. of Resources	0	0	0	0
Natural Environment					
Water Features					
Ponds / Lakes	Acres	16	17	1	13
Canals / Regulated Floodways	No. of Conflicts	0	0	0	0
Flood Hazard Areas - 100 Year Floodplain	Acres	60	67	107	116
Wetlands (non-forested and forested)	Acres	35	39	36	51
Potential Habitat - Federal Listed Species (Scrub Jay)	Acres	0	0	0	0
Potential Habitat - Federal Listed Species (Caracara)	Acres	0	0	20	29
Potential Habitat - State Listed Species (Gopher Tortoise)	Acres	123	58	77	31
Potential Bald Eagle Nest	No. Conflicts	0	1	0	0
Potential Species Impacts (composite rating)	Rating	Moderate	Moderate	High	Moderate
Mitigation Properties					
Split Oak Forest (direct impact)	Acres	0	0	60	0
World DRI / GCB Associates LLC	Acres	0	0	17	8
Conservation Easement					
Eagles Roost	Acres	0	0	3	0
Social					
Right-of-Way Area (including proposed ponds)	Acres	305	336	295	334
Potential Residential Impacts (includes partially impacted parcels)	Total Parcels	9	25	1	19
Potential Non-Residential Impacts (includes partially impacted parcels)	Total Parcels	21	39	9	14
Potential Displacements	Total Parcels	6	25	1	16
Community Facilities	No. of Conflicts	1	2	0	0
Parks and Recreational Facilities (public and private)	No. of Conflicts	0	0	2	0
Trails	No. of Conflicts	0	0	1	0
Community Cohesion Effects	Ranking	Low	High	Low	Moderate
Socioeconomic Impacts to Special Populations	Ranking	Low	Moderate	Low	Low
Development of Regional Impact (DRI)	Acres	47	36	48	48
Residential Planned Developments	Acres	0	0	88	175
Estimated Costs					
Roadway Construction	\$	\$84,925,649	\$113,469,828	\$95,544,853	\$103,087,947
Bridges Construction	\$	\$167,855,675	\$101,521,806	\$34,518,243	\$80,955,881
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Toll Collection Equipment	\$	\$1,260,000	\$1,260,000	\$0	\$0
Right-of-Way Cost (including proposed ponds)	\$	\$212,000,000	\$130,000,000	\$77,000,000	\$104,000,000
Mitigation, Wetlands, & Wildlife	\$	\$5,400,000	\$5,900,000	\$9,500,000	\$9,200,000
Engineering / Administration / Legal	\$	\$81,248,840	\$62,489,263	\$34,506,091	\$49,259,833
Total Estimated Alternative Costs		\$638,445,674	\$460,021,192	\$264,781,468	\$367,709,137



**CFX Board Meeting 12/12/19**  
**Public Comments, Agenda Items F1 and F2**

+++++

*As a reminder, the CFX Mission statement is:*

*"To build, operate and maintain a mobility network through accountability, fiscally sound practices and a community focus."*

+++++

By: Kimberly A. Buchheit, I am a resident of City of Apopka in Orange County.  
6500 Swain Road, Apopka, FL.

To: The CFX Board, By email  
Jay Madara <Jay.Madara@CFXway.com>  
Brenda Carey <stucker@seminolecountyfl.gov>  
Buddy Dyer <Buddy.Dyer@cityoforlando.net>  
Brandon Arrington <Brandon.Arrington@osceola.org>  
Leslie Campione  
Jerry Demings <mayor@ocfl.net>  
Andria Herr <Andria.Herr@CFXway.com>  
Curt Smith <D4.Commissioner@BrevardFL.gov>  
Betsy VanderLey <district1@ocfl.net>

Dear CFX Board Members-

Regarding Agenda Items F1 and F2, I ask that you Vote **NO** on both of the Recommended Motions as published in Agenda packet on Tuesday 12/10/19, as restated below.

F1 Proposed Recommended Motion: Approval of the Osceola Parkway Extension PD&E Study Re-evaluation and the Preferred Alternative.

F2 Proposed 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.

## STATEMENT:

I am opposed to designing and building Transportation facilities through publicly owned Conservation Lands unless there is no reasonable alternative. Clearly, it has not been satisfactorily demonstrated that there are no reasonable alternatives to the "Preferred Alternative."

With respect to the three (3) prongs of the CFX Mission Statement, "Accountability, Fiscally Sound Practices and A Community Focus", I offer some remarks to consider while making your decisions on F1 and F2.

## ACCOUNTABILITY

**The public will hold you accountable for your decision.**

For this PD&E re-evaluation of the Osceola Parkway Extension, it appears that consideration of reasonable alternatives has been disregarded based on the influence exerted by a powerful land-owner/developer duo and their surrogates. The public is aware that Split Oak Forest WEA was promised to be placed in conservation forever. The public does not believe that elected officials can possibly keep a future promise while breaking a past promise in plain sight.

Please ask yourself the question: Are you prepared to participate in breaching the public trust by committing Orange County and Osceola County to violate the Agreements that were placed on Split Oak Forest WEA in 1994 when the property was purchased with public funds?

**If so, your legacy will be one of broken promises.**

See Official Record Book 4271, Page 2133 Orange County, Florida. Signed by Tom Staley, Vice Chair on 3/29/1994.

See Official Record Book 1180, Page 0078, Osceola County, Florida. Signed by Chuck Dunnick, Vice Chair on 3/28/1994.



## FISCALLY SOUND PRACTICES

**Important decisions require detailed financial analysis.**

**Have you been provided with complete, accurate and reliable figures?**

**Have you checked the math and considered cost components for missing or uncertain elements?**

The data in Table 1 below was presented to the Project Advisory Group and the Environmental Advisory Group on Nov. 18, 2019 in a document entitled "Evaluation Matrix" (November 2019). It was also presented to the public on Nov. 19, 2019 to indicate the Total Estimated Alternative Costs for the "Preferred Alternative" as proposed.

Table 1.

<b>From Evaluation Matrix Provided 11/18-19/2019 Displayed at PAG, EAG and Public Meeting</b>	
West-Lake Nona Segment	\$638,445,674
Split Oak Minimization	\$264,781,468
<b>Total</b>	<b>\$903,227,142</b>

Surely there should be concern over a significant change in the figures that are being presented today for a final decision, see Table 2, below. I can only assume that the Board has been provided with the appropriate financial details necessary to conduct a thorough review and cost analysis of the various combinations of options. It would seem that the public and the Advisory Boards should have been provided with accounting figures that are consistent with the summary provided in the Agenda packet dated 12/10/19 (see Table 2).

Table 2.

**Difference = \$113,602,142**

<b>Estimated Project Cost From Agenda Packet Page 506, 12/10/2019</b>	
Construction/Engineering/Administration	\$614,225,000
Right-of-Way	\$175,400,000
<b>Total Estimated Project Cost</b>	<b>\$789,625,000</b>

Discrepancies of this type may indicate that there has been an error. When Apples are not equal to Apples, something is wrong. If there has not been an error, then something has changed since the Estimated Cost data was provided to the public for consideration. If so, it is troubling that the numbers being

presented to the public and the numbers that the Board is considering are not the same set of figures.

That does not look good.

I have only performed a cursory review of the materials and with only simple computations have determined that there is a lack of detail required to determine the actual costs for several items.

For example, there appears to be a significant missing element with respect to the Right-of-Way Cost as specified in the "Proposed Right-of-Way Acquisition Agreement" that the Board is being asked to approve. It does not appear that there has been any accounting for "Damages" or any mention of them in the Agreement. The material provided indicates that the Right-of-Way being purchased from Tavistock, et al. has been calculated as shown in Table 3, below.

Table 3.

<b>R/W Cost</b>	<b>Number of Acres</b>	<b>Avg. Cost per Acre For Tavistock, et al.</b>
\$93,000,000	480	\$193,750

The total allotted for Right-of-Way for 600 Acres can be broken down as indicated in Table 4, below.

Table 4.

<b>Item</b>	<b>Cost</b>	<b>Number of Acres</b>	<b>Avg. Cost per Acre</b>
<b>Total</b>	<b>\$175,400,000 *</b>	<b>600</b>	<b>\$292,333 *</b>
Tavistock, et al.	\$93,000,000	480	\$193,750 ***
Other R/W	\$82,400,000	120	\$686,667 **

\* = Assume this includes damages and legal fees since they are not identified anywhere else

\*\* = The average cost per acre must include other costs above land cost, since this number is grossly inflated when compared with other figures

\*\*\* = This number does not appear to include all anticipated cost components as indicated by comparison

Without additional details, it is not possible to know how much Tavistock, et al. will actually be paid. When the payment made to Tavistock, et al. is much higher than \$93,000,000 as proposed in the R/W Agreement, the math will need to reflect the change. It will not look good for the decision makers to have missed this element.

As it stands, the R/W Agreement between CFX and Tavistock, et al. is a blank check unless the Board insists on some basic accounting for all associated and anticipated Right-of-Way cost elements.

The public can do simple math and the public is watching. The true cost of the Tavistock deal should be disclosed to the Board prior to the decision on Items F1 and F2. Agreeing to and signing a deal that does not have a finite cap will make the Board appear to be financially inept. Certainly, that is not the case.

Perhaps one or more of the CFX Board Members will take an interest in getting to the bottom of this basic question regarding the true and actual cost of making the deal with Tavistock, et al.

Therefore, as the Right-of-Way Agreement is currently structured, it should simply not be Approved. In fact, it probably should not have been approved by the Right-of-Way Committee without more complete cost estimates. This indicates that something does not appear to be going "according to Hoyle."

## **COMMUNITY FOCUS**

### **CFX is agreeing to assist with preventing public from entering donated Conservation Lands.**

There is some troubling language contained in the "Agreement to Convey Conservation Lands", 9. Cooperation in Securing Approvals. In particular, Item b., paragraph iii raises some questions.

I am deeply concerned that CFX is agreeing to support Tavistock, et al. in their pursuit to limit the public's ability to use and enjoy the Conservation Lands that they are offering to "donate" in exchange for assurance of the route through Split Oak Forest WEA. That is unacceptable.

Currently, the public has full access to the land in Split Oak Forest WEA.

Unless the Conservation Lands being conveyed by Tavistock, et al. to offset the impacts to Split Oak Forest WEA are fully open to the public on terms similar to the current public access to Split Oak Forest WEA, the Agreement to Convey Conservation Lands should not be approved, plain and simple.

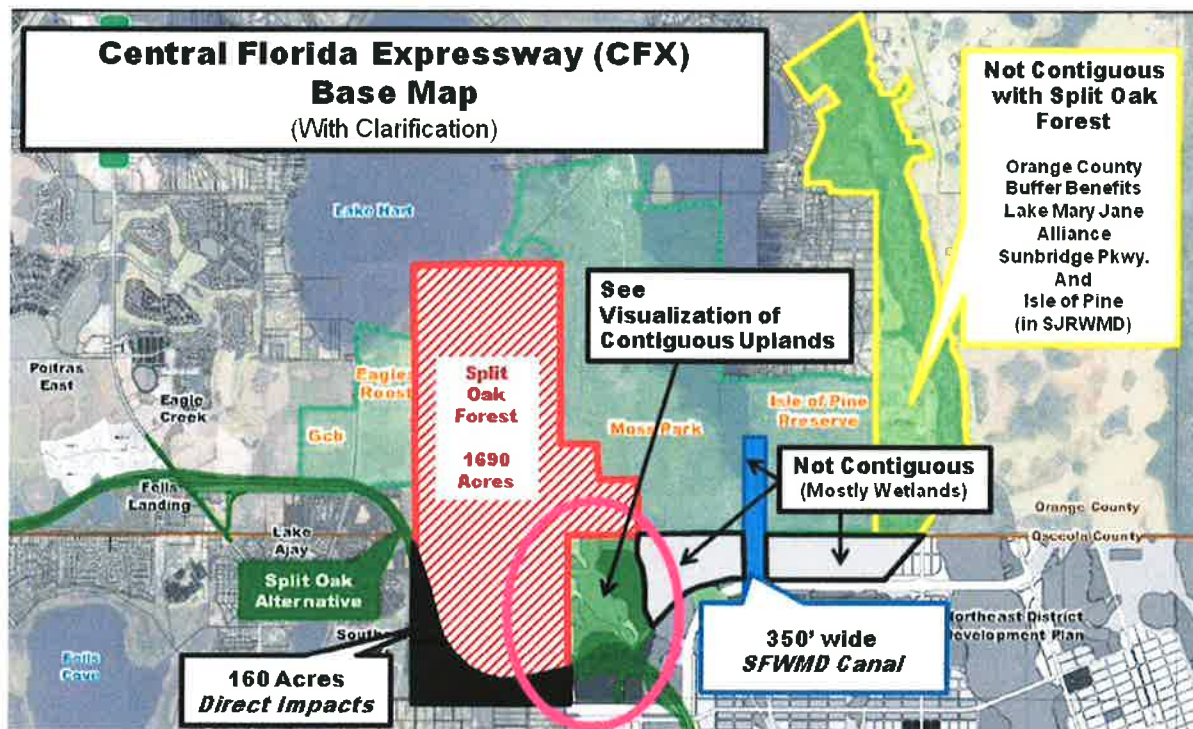
## CONCLUSION

**Not all land is of equal value. Big numbers in a vacuum may sound impressive, but quantities are meaningless if data is misrepresentative.**

The proposed area offered as Conservation Land is of little benefit to Split Oak Forest WEA. In general, only contiguous lands of similar character are of value to the existing terrestrial wildlife populations in Split Oak Forest WEA.

Split Oak Forest WEA was specifically set aside for Gopher Tortoise mitigation and protected habitat. Gopher Tortoises require sandy soils and upland habitat. Wetlands do not provide suitable Gopher Tortoise habitat.

Figure A.



See Figure B, below for Visualization of Contiguous Uplands.

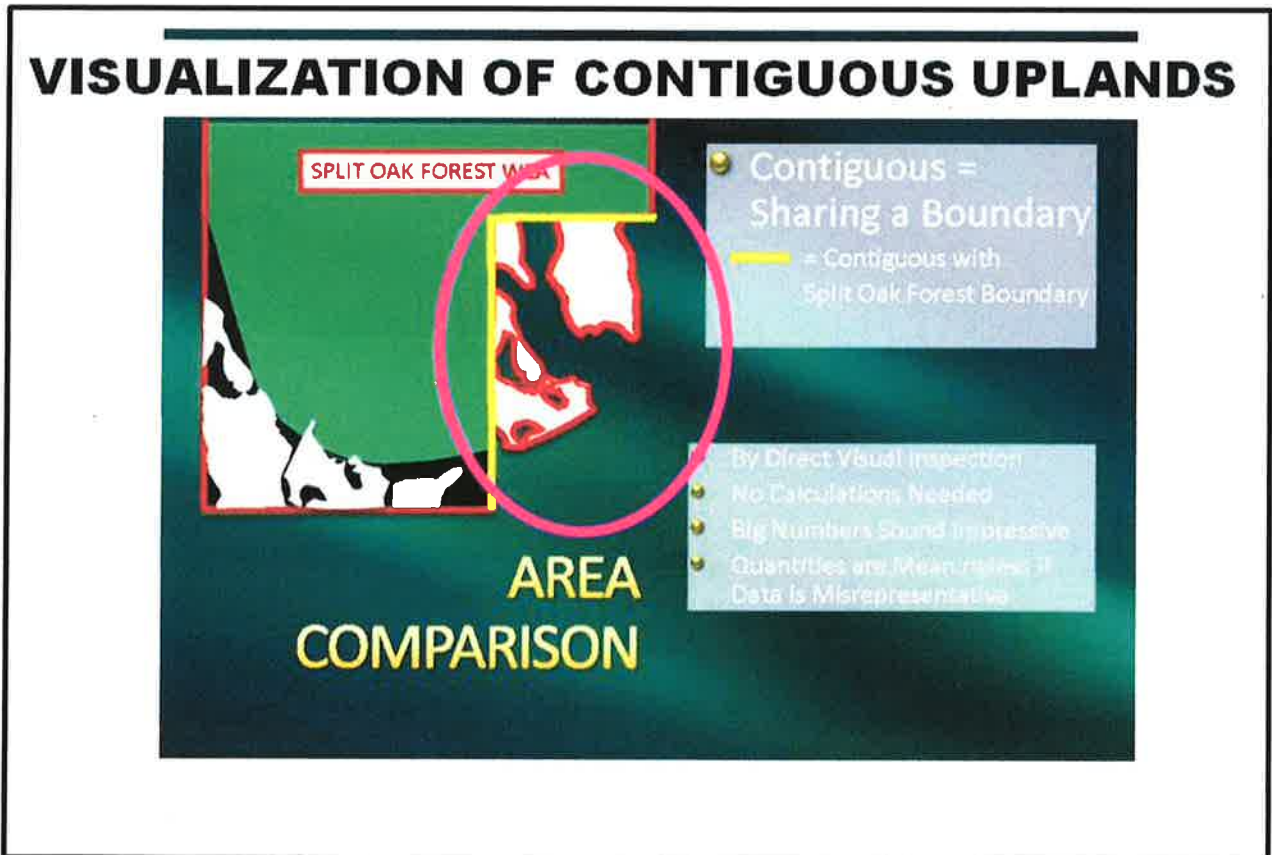
The direct comparison of area indicates that the adjoining Uplands contained in the Conservation Lands offered barely account for the proposed 160 Acres of Impacts to Split Oak Forest WEA. That does not include any factor for remitigating the credits that were obtained at Split Oak Forest WEA initially.

The Conservation Lands offered should be "peer reviewed" by reputable experts in the appropriate fields in order to assess the true value of the land.



At this point, without knowing the land value, the ecological value of the land in its present or future condition and the cost of restoration, developing a management plan and managing the property, it would be fiscally irresponsible to approve acceptance of the proposed Agreement to Convey Conservation Lands. In addition the configuration of the land being offered and the large proportion of wetlands will make it very difficult to access and manage the lands.

Figure B.



+++++

Inspirational Quote:

*"For what shall it profit a man, if he shall gain the whole world, and lose his own soul?"*  
-Mark 8:36

+++++

# **Exhibit**

## **“C”**



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Osceola Parkway Extension  
True Split Oak Minimalization  
Alternative

---

## **SUMMARY OF PRESENTATION BY RAYMER MAGUIRE ADVOCATING THE SPLIT OAK *TRUE* MINIMIZATION ALTERNATIVE**

### **SIMILAR COSTS**

CFX's Evaluation Matrix provides that the total estimated alternative cost of the Split Oak Avoidance is \$367,309,137. This cost goes down by \$46,437,638 when the bridge construction costs for crossing a lake within Southern Oaks is avoided with the Split Oak *True* Minimization Alternative proposed here.

Per page 506 of today's agenda, the TOTAL ESTIMATED PROJECT COST of the CFX preferred route is \$789,625,000. The TOTAL ESTIMATED PROJECT COST of the Split Oak *True* Minimization Alternative is \$781,292,691 ( $\$460,021,192 + \$367,309,137 - \$46,437,638 = \$781,292,691$ )

### **A REASONABLE ALTERNATIVE EXISTS TO CFX'S PREFERRED ROUTE**

Page 513 of today's agenda recognizes that the proposed \$93,000,000 ROW Acquisition Agreement is contingent upon closing of that Agreement to convey 60 acres within Split Oak Forest owned by Osceola County. That conveyance is subject to the Trust Governing Board determining that there is no reasonable alternative to CFX's preferred route taking 60 acres through Split Oak Forest and cutting off the southerly 100 acres from the rest of the forest.

The Split Oak *True* Minimization Alternative proposed here only involves the taking of 10 to 15 acres from the SE and SW corners Split Oak Forest and only cuts off about 5 acres from the rest of the forest.

### **RESIDENTS ON CYRILS DRIVE WANT THEIR PROPERTY TAKEN**

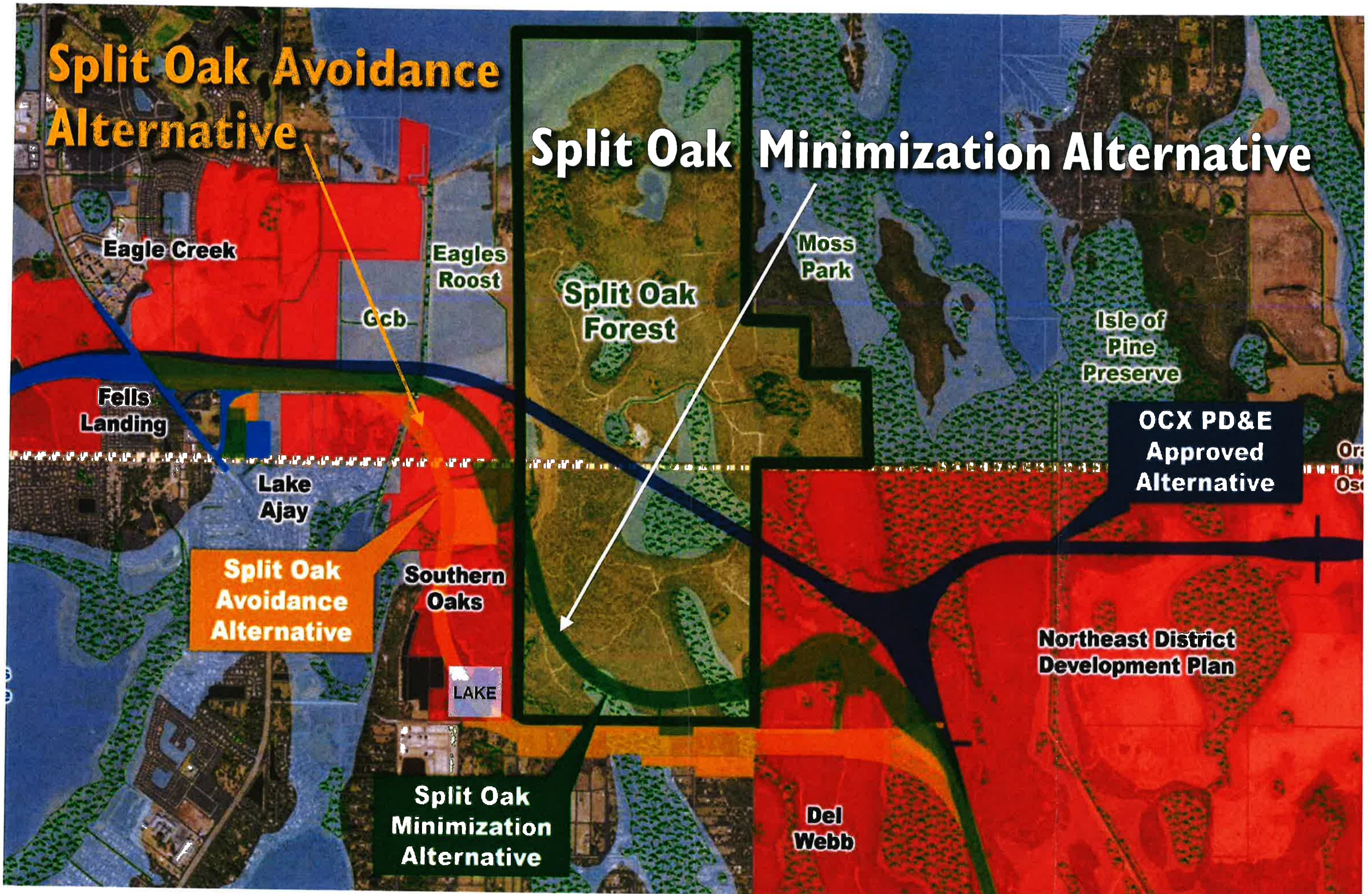
Virtually all of the residents on Cyrils Drive chose their property for the rural characteristics of the area. They don't want the negative effects of either alternative for the extension of the Osceola Parkway.

The 7 petitions submitted to you indicate a strong preference by Cyrils Drive folks for their real property to be condemned, to receive their eminent domain compensation and to be able to move to another rural area.



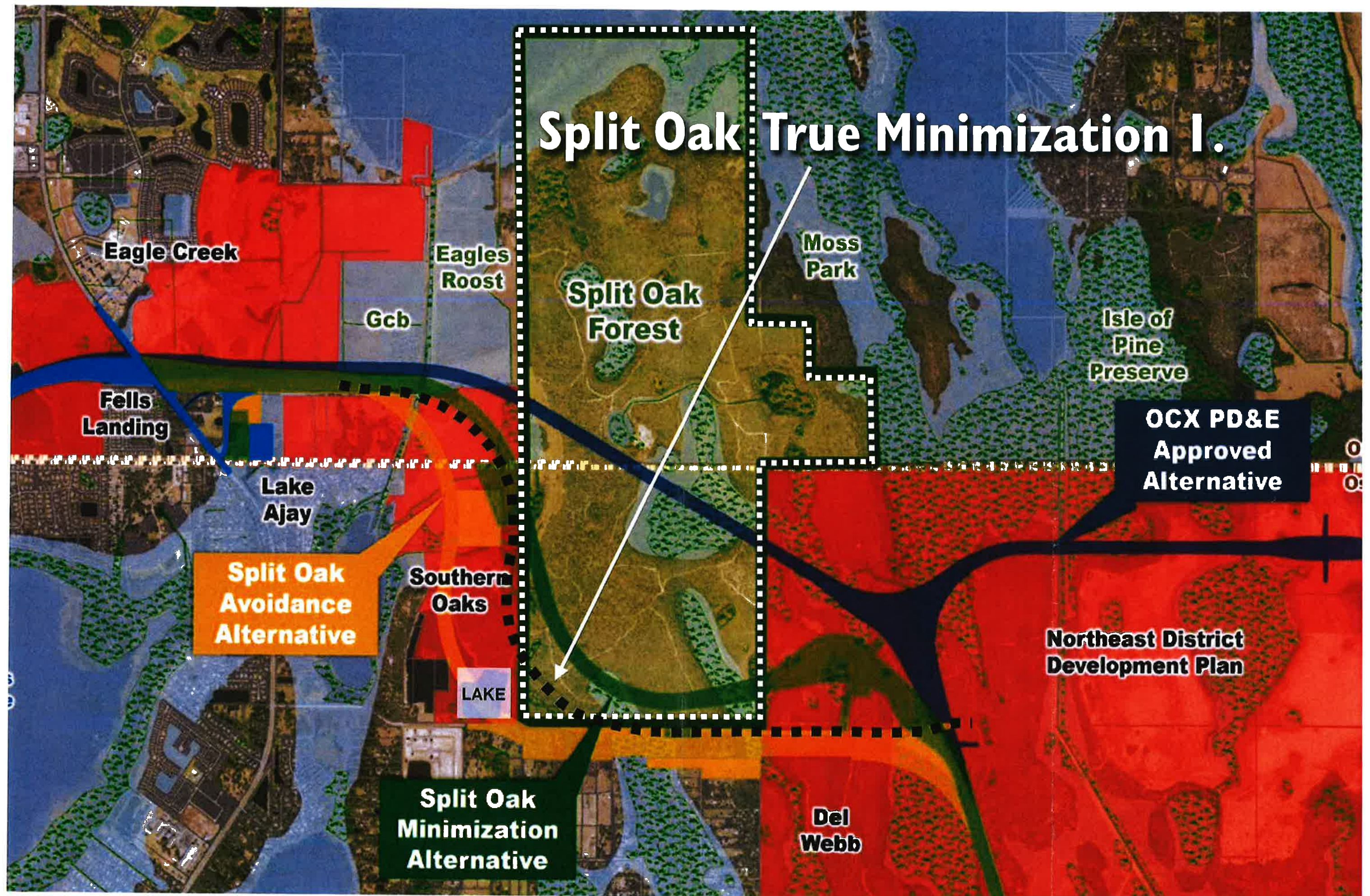
# Split Oak Avoidance Alternative

# Split Oak Minimization Alternative



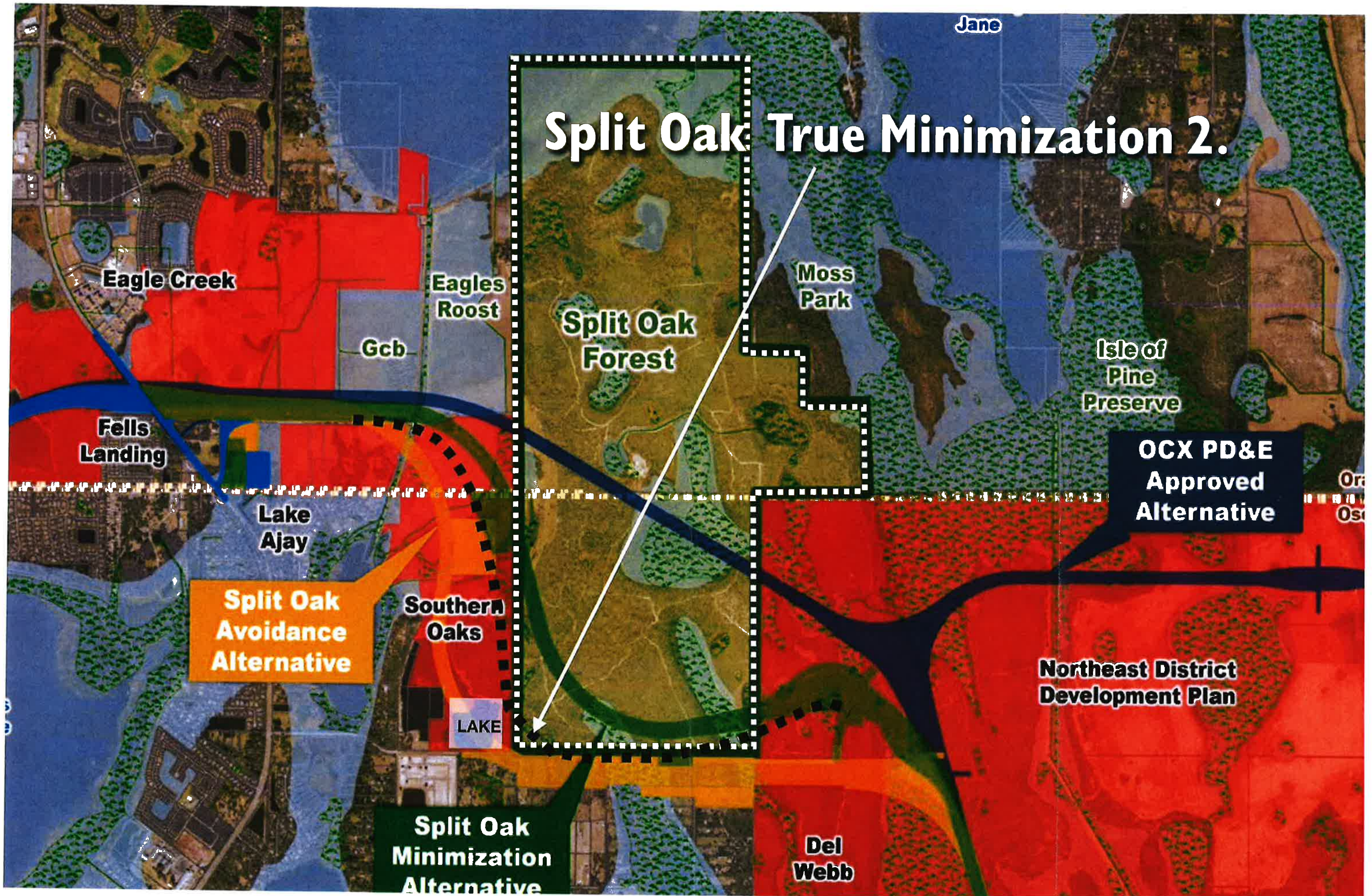


# Split Oak True Minimization I.





# Split Oak True Minimization 2.

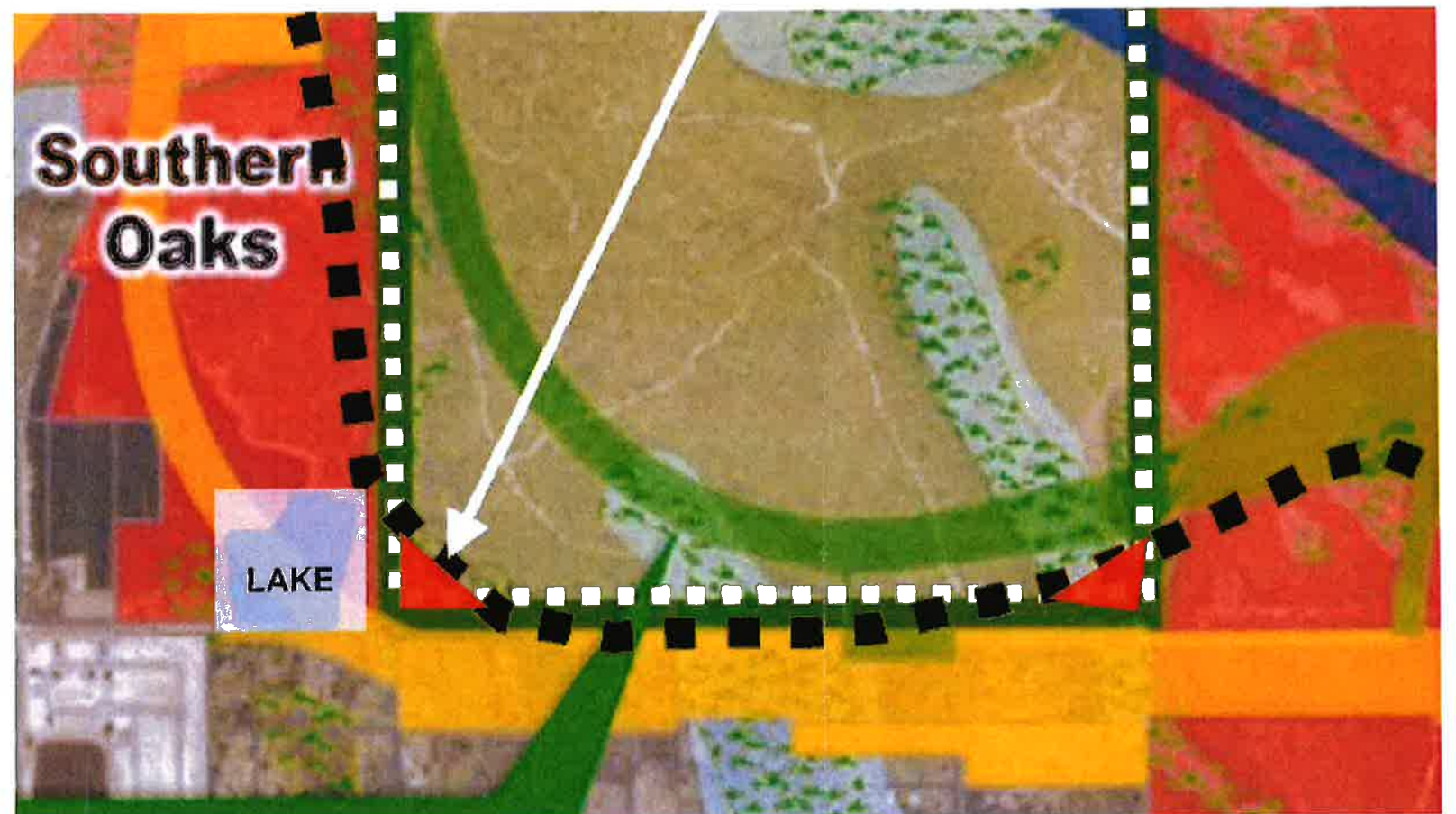






**Split Oak True  
Minimization No.1  
encrouches on Split Oak  
on the Southeast corner.**

**Split Oak True  
Minimization No.2  
encrouches on Split Oak  
on the Southeast and  
Southwest corners.**







6,500 ft. Bridge at a cost of \$46,437,638.00 is avoided with the "Split Oak True Minimalization Alternative"

**62-818.015 Consideration of Recipient's Request for Linear Facilities.**

The Declaration of Restrictive Covenants for Trust Project Sites limits the use of the property to conservation, outdoor recreation, and other related activities. However, the Trust periodically receives requests for Management Plan modifications to allow linear facilities and related appurtenances on the Trust Project Site. When evaluating these requests, the following process must be followed.

(1) First, there has to be a determination:

- (a) That there is no reasonable alternative to the proposed modification land use on the Trust Project Site; and,
- (b) That the land use is designed to have a minimal impact to the site; and,
- (c) A copy of an alternative analysis assessment of other off-site alternatives or options considered by the Recipient.

(2) If the Trust determines that no practical off-site alternatives exist, then the following information is required:

- (a) A written statement that the Local Government has reviewed and approved the proposed use;
- (b) A description and dimensions of the linear facility, and of the area that will be affected during construction;
- (c) Information on the natural communities and cultural features found on, and immediately surrounding the site of the proposed facility;

(d) A statement explaining how the proposed facility will be compatible with planned recreational uses of the Trust Project Site, as committed to in the approved Management Plan;

(e) Discussion of the proposed mitigation for impacts to the Trust Project Site; and,

(f) A modified master site plan drawing identifying the locations of existing vegetation and all proposed structures, facilities and restoration areas that will be affected by the facility.

After receiving all of the above information, staff will evaluate and review the request for consistency according to the above listed requirements. If the proposal meets the above requirements and has minimum impact to the Project Site, staff may approve the request. If public objections are received, if it is a large project, or if the project could be viewed as controversial the proposal will be presented to the Trust Governing Board for consideration.

(3) If the request is approved, the Recipient must:

- (a) Provide an appraisal of the land use area or other valuation method as approved by Trust staff;
- (b) Provide a legal description from a licensed surveyor;
- (c) Sign an amendment to the Declaration of Restrictive Covenants that provides for the changed use of the Project Site; and,
- (d) Record the amended Declaration of Restrictive Covenants in the Public Records of the County where the property is located.

The Recipient will be required to pay for the land use area. The payment shall be allocated to the Recipient and the Trust based on the percentage of the original grant (i.e., 50% Recipient participation and 50% Trust participation).

*Rulemaking Authority 380.507(11) FS. Law Implemented 259.105, 380.510 FS. History--New 2-8-10, Formerly 9K-7.015.*



# HIGHLIGHTS: Right-of-Way Acquisition Agreement

(Edited)

- 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.
    - The Trust Governing Board, pursuant to F.A.C. 62-818.015, determining that there is no reasonable alternative to CFX's preferred route taking 60 acres through Split Oak Forest and cutting off the southerly 100 acres from the rest of the forest





# Evaluation Matrix (Edited)

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Total Estimated Alternative Costs		\$638,445,674	\$460,021,192	\$264,781,468	\$367,709,137	\$321,271,499 without Excess Bridge	

December 7, 2019

CFX Governing Board  
4974 ORL Tower Road  
Orlando, FL 32807

**RE: Petition to Choose Split Oak Avoidance Alternative**

Dear CFX Governing Board:

My name is Anita Johnson Larsen and I own the real property located at 2886 Absher Rd., St. Cloud, FL 34711. I understand that the CFX Governing Board is contemplating two separate alternatives for the East Segment of the Osceola Parkway Extension ("Extension").

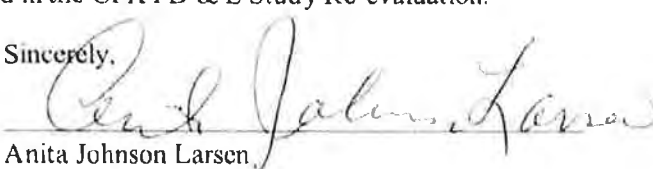
As I understand it, the Split Oak Minimization Alternative would go through the Split Oak Forest and Wildlife Environmental Area ("Split Oak") just north of Cyrils Drive. As an owner of real property in the vicinity of the two Alternatives under consideration, I petition the CFX Governing Board to choose the Split Oak Avoidance Alternative which would include lands south of Split Oak, along Cyrils Drive and Absher Road.

There are multiple reasons for my preference for the Split Oak Avoidance Alternative. First, Split Oak was purchased with public funds and Orange and Osceola Counties committed to protecting this property forever for Conservation and Recreation purposes for the perpetual use of the public. It is a betrayal of the Public Trust for CFX and local elected officials to make a deal with our public lands to meet the demands of Tavistock and Suburban Land Reserve. Second, Split Oak has been meticulously managed to provide protected habitat for numerous plant and animal species. To lose any part of Split Oak to the Extension would be an irreplaceable loss to our community and to the future that was promised to us.

Third and perhaps most importantly, I chose my property in this location for the rural characteristics of the area. With the Extension inevitably coming in my direction, I would prefer for my real property be condemned, receive my eminent domain compensation and be able to move on rather than being forced to live with the negative impacts of increased traffic, noise, air and light pollution that will accompany the Split Oak Minimization Alternative being developed just north of my real property.

For the reasons contained herein, I again petition the CFX Governing Board to select the Split Oak Avoidance Alternative as identified in the CFX PD & E Study Re-evaluation.

Sincerely,

  
Anita Johnson Larsen

Date: 12-7-2019

December 7, 2019

CFX Governing Board  
4974 ORL Tower Road  
Orlando, FL 32807

**RE: Petition to Choose Split Oak Avoidance Alternative**

Dear CFX Governing Board:

My name is Darlene Wright and I own the real property located at 2825 Absher Rd, St. Cloud, FL 34711. I understand that the CFX Governing Board is contemplating two separate alternatives for the East Segment of the Osceola Parkway Extension ("Extension").

As I understand it, the Split Oak Minimization Alternative would go through the Split Oak Forest and Wildlife Environmental Area ("Split Oak") just north of Cyrils Drive. As an owner of real property in the vicinity of the two Alternatives under consideration, I petition the CFX Governing Board to choose the Split Oak Avoidance Alternative which would include lands south of Split Oak, along Cyrils Drive and Absher Road.

There are multiple reasons for my preference for the Split Oak Avoidance Alternative. First, Split Oak was purchased with public funds and Orange and Osceola Counties committed to protecting this property forever for Conservation and Recreation purposes for the perpetual use of the public. It is a betrayal of the Public Trust for CFX and local elected officials to make a deal with our public lands to meet the demands of Tavistock and Suburban Land Reserve. Second, Split Oak has been meticulously managed to provide protected habitat for numerous plant and animal species. To lose any part of Split Oak to the Extension would be an irreplaceable loss to our community and to the future that was promised to us.

Third and perhaps most importantly, I chose my property in this location for the rural characteristics of the area. With the Extension inevitably coming in my direction, I would prefer for my real property be condemned, receive my eminent domain compensation and be able to move on rather than being forced to live with the negative impacts of increased traffic, noise, air and light pollution that will accompany the Split Oak Minimization Alternative being developed just north of my real property.

For the reasons contained herein, I again petition the CFX Governing Board to select the Split Oak Avoidance Alternative as identified in the CFX PD & E Study Re-evaluation.

Sincerely,

Darlene Wright

Printed Name: Darlene Wright

Date: 12-7-19

December 2, 2019

CFX Governing Board  
4974 ORL Tower Road  
Orlando, FL 32807

**RE: Petition to Choose Split Oak Avoidance Alternative**

Dear CFX Governing Board:

My name is Susan L. Gallatin and Otto R. Labonte and I own the real property located at 5900 Cyrils Dr., St. Cloud, FL 34711. I understand that the CFX Governing Board is contemplating two separate alternatives for the East Segment of the Osceola Parkway Extension ("Extension").

As I understand it, the Split Oak Minimization Alternative would go through the Split Oak Forest and Wildlife Environmental Area ("Split Oak") just north of Cyrils Drive. As an owner of real property in the vicinity of the two Alternatives under consideration, I petition the CFX Governing Board to choose the Split Oak Avoidance Alternative which would include lands south of Split Oak, along Cyrils Drive and Absher Road.

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For the reasons contained herein, I again petition the CFX Governing Board to select the Split Oak Avoidance Alternative as identified in the CFX PD & E Study Re-evaluation.

Sincerely,



Susan L. Gallatin and Otto R. Labonte

Date: 4 Dec 2019

December 6, 2019

CFX Governing Board  
4974 ORL Tower Road  
Orlando, FL 32807

RE: Petition to Choose Split Oak Avoidance Alternative

Dear CFX Governing Board:

My name is James C. Gallatin and I <sup>reside on</sup> own the real property located at 5948 Cyrils Dr, St. Cloud, FL 34711. I understand that the CFX Governing Board is contemplating two separate alternatives for the East Segment of the Osceola Parkway Extension ("Extension").

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For the reasons contained herein, I again petition the CFX Governing Board to select the Split Oak Avoidance Alternative as identified in the CFX PD & E Study Re-evaluation.

Sincerely,

James C. Gallatin  
Printed Name:

Date: 6 Dec '19



December 6, 2019

CFX Governing Board  
4974 ORL Tower Road  
Orlando, FL 32807

RE: Petition to Choose Split Oak Avoidance Alternative

Dear CFX Governing Board:

My name is Daryl Campbell and I own the real property located at 5751 Leon Tyson Rd, St. Cloud, FL 34711. I understand that the CFX Governing Board is contemplating two separate alternatives for the East Segment of the Osceola Parkway Extension ("Extension").

As I understand it, the Split Oak Minimization Alternative would go through the Split Oak Forest and Wildlife Environmental Area ("Split Oak") just north of Cyrils Drive. As an owner of real property in the vicinity of the two Alternatives under consideration, I petition the CFX Governing Board to choose the Split Oak Avoidance Alternative which would include lands south of Split Oak, along Cyrils Drive and Absher Road.

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For the reasons contained herein, I again petition the CFX Governing Board to select the Split Oak Avoidance Alternative as identified in the CFX PD & E Study Re-evaluation.

Sincerely,

Daryl F. Campbell  
Printed Name: Daryl F. Campbell

Date: 12-6-2019

December 6, 2019

CFX Governing Board  
4974 ORL Tower Road  
Orlando, FL 32807

RE: Petition to Choose Split Oak Avoidance Alternative

Dear CFX Governing Board:

My name is Susan Campbell and I own the real property located at 5751 Leon Tyson Rd, St. Cloud, FL 34711. I understand that the CFX Governing Board is contemplating two separate alternatives for the East Segment of the Osceola Parkway Extension ("Extension").

As I understand it, the Split Oak Minimization Alternative would go through the Split Oak Forest and Wildlife Environmental Area ("Split Oak") just north of Cyrils Drive. As an owner of real property in the vicinity of the two Alternatives under consideration, I petition the CFX Governing Board to choose the Split Oak Avoidance Alternative which would include lands south of Split Oak, along Cyrils Drive and Absher Road.

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For the reasons contained herein, I again petition the CFX Governing Board to select the Split Oak Avoidance Alternative as identified in the CFX PD & E Study Re-evaluation.

Sincerely,

Susan Campbell

Printed Name: Susan Campbell

Date: 12-6-2019 sc  
2019 sc



December \_\_, 2019

CFX Governing Board  
4974 ORL Tower Road  
Orlando, FL 32807

**RE: Petition to Choose Split Oak Avoidance Alternative**

Dear CFX Governing Board:

My name is Kelley Smith and I own the real property located at 2885 Absher Rd, St. Cloud, FL 34711. I understand that the CFX Governing Board is contemplating two separate alternatives for the East Segment of the Osceola Parkway Extension ("Extension").

As I understand it, the Split Oak Minimization Alternative would go through the Split Oak Forest and Wildlife Environmental Area ("Split Oak") just north of Cyrils Drive. As an owner of real property in the vicinity of the two Alternatives under consideration, I petition the CFX Governing Board to choose the Split Oak Avoidance Alternative which would include lands south of Split Oak, along Cyrils Drive and Absher Road.

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For the reasons contained herein, I again petition the CFX Governing Board to select the Split Oak Avoidance Alternative as identified in the CFX PD & E Study Re-evaluation.

Sincerely,

Kelley Smith  
Printed Name: Kelley Smith

Date: 12/9/19

# **Exhibit**

# **“D”**

**FUTURA**

December 11, 2019

Mr. Glenn Pressimone, P.E.  
Chief of Infrastructure  
Central Florida Expressway Authority  
4974 ORL Tower Road  
Orlando, FL 32807

RE: Proposed Osceola Parkway Extension

Mr. Pressimone:

Please allow this personal letter to officially acknowledge my full and complete support, as owner of multiple properties owned under Futura Companies, to the finally planned pathway of the proposed Osceola Parkway Extension project, proposed to run just north of my properties, as under consideration by your board at the upcoming December 12, 2019 CRX Board Meeting.

The Futura Company is the long-term property owner of approximately eleven contiguous acres of land located at the northeast intersection of Narcoossee and Boggy Creek Roads. Over the next two years Futura will be constructing Nona Cove neighborhood center, an integrated life-style wellness community, consisting of 260 luxury apartments, a four-story 122,000 square foot self-storage facility and approximately 30,000 square feet of commercial and retail space.

The nearly 9-mile extension of the Osceola Parkway, running from State Road 417 at the south end of Orlando International Airport into southern areas of Orange and Osceola counties, is a vital and critical transportation project that will untangle existing traffic challenges by providing direct connectivity to regional thoroughfares; thus, substantially improving current traffic and mobility issues experienced within our community, and while also allowing our community to improve its future transportation options within our rapidly expanding region. The final planned pathway of the proposed extension, through Split Oak, reflects years of study, hearings, discussion and planning among state, regional, and local constituents. As proposed, it represents the most reasonable plan, balancing the various competing interests, to create the additional infrastructure required to enhance transportation, while also increasing the acreage available for conservation land with the ability to minimize any potential impact to existing homeowners.

Thank you once again for the honest effort and feedback to date on this essential regional infrastructure project. We strongly encourage your adoption and approval of this important and critical extension project that's so desperately needed by our local community.



Reinerio P. Faife  
President

# **Exhibit**

## **“E”**



**CONSTITUTIONAL AMENDMENT PETITION**

**BALLOT TITLE:** All tolls shall be approved by voters

**BALLOT SUMMARY:** This amendment requires that all tolling authorities, obtain the approval of voters for all tolls and toll increases.

**ARTICLE AND SECTION BEING CREATED OR AMENDED:** Article VII,  
Section 19

**FULL TEXT OF THE PROPOSED CONSTITUTIONAL AMENDMENT:**

**Article VII, Section 19** - Tolls (a) Prior to the collection of any toll or toll increase by any governmental entity on toll roads, high-occupancy toll lanes, or express toll lanes, the toll or toll increase shall be approved by a plurality of votes cast by eligible voters in the next election scheduled by the county or municipality within which the toll is to be collected.

*Sally B. Hardwick* / 12/12/19

# **Exhibit**

## **“F”**



December 12, 2019

Central Florida Expressway Authority

Subject: Split Oak Forest Wildlife and Environmental Area (Split Oak)

Most Floridians live in cities and suburbs, both large and small. Yet they know that protecting part of the state to remain as natural Florida is vital to their wellbeing and the ecosystems that sustain us. That's why when these issues have been presented to the voters, they have overwhelmingly said "yes" to conservation lands. That awareness has led to protecting these spaces for the public good.

Florida has been a leader in protecting its natural resources through its *Florida Forever* program. The Florida Department of Environmental Protection's website states that the Florida Forever program is "the largest public land acquisition program of its kind in the United States," as the state purchased more than 2.5 million acres of land under the program and manages another 7.5 million acres for conservation.

This year marks the 21st year in which Floridians voted to approve the constitutional provision protecting these conservation lands believing government officials would uphold the collective vote of the people to use protected lands such as Split Oak for conservation purposes.

On behalf of the League of Women Voters of Orange and Seminole Counties, we continue to strongly oppose routing the proposed Osceola Parkway Extension through Split Oak. The current proposal for a road through Split Oak violates the clear language of our Constitution and ignores the mandate of our citizens who voted to amend our Constitution to protect our Florida Forever conservation lands.

Our constitution explicitly protects conservation lands in Article X, Section 18. The voters overwhelmingly approved this provision in 1998. This constitutional provision prohibits getting rid of Florida conservation lands unless they no longer have conservation value – that is the only basis for changing the use of land that has been acquired for conservation purposes in Florida. This provision was approved by the voters because everyone at the time recognized that pressures for development threatened our unique Florida Forever lands, because short-term, often economic, objectives overlook long term impacts. Protection of our Florida Forever lands requires a long-term perspective.

This current attempt to circumvent the will of the voters and violate our Constitution is not the first attack on conservation lands. The State tried to sell off many of these lands in 2013 by

declaring them “surplus.” These lands are also a target for infrastructure development because they are already owned by governmental entities, and therefore are seen by some as a less expensive way to build something now in spite of the fact that the governmental entities involved promised to protect this land when they asked for public funds to create conservation lands. The League has consistently opposed these efforts and opposes any proposal through Split Oak for the same reasons.

Split Oak was created in 1992 with the intent and understanding that it would be used for conservation purposes indefinitely, with both Orange and Osceola counties declaring that designating this land was consistent with their growth management plans. All of Split Oak is currently being used for conservation. The Fish and Wildlife Conservation Commission has confirmed this in its most recent 5-year study. In addition, much of Split Oak is being used as mitigation credits for environmental impacts created elsewhere.

Some have said that a state statute allows roads through conservation lands and permits eminent domain. Constitutional provisions prevail over statutes. In addition, the statute was enacted prior to the 1998 amendment. Therefore, the statutory provision does not pre-empt the constitutional protection for Split Oak.

Similarly, proposals for exchanges of conservation land – giving away some current conservation land in exchange for other land to be designated for conservation – are not permitted by our Constitution. Our Constitution says the only way to dispose of conservation land is when it no longer serves a conservation purpose. While some people may think there should be some exceptions to the prohibition against getting rid of some conservation land, that is not what is currently the law of Florida. In fact, the constitutional amendment was specifically proposed *because* of the pressure to change the use of these lands – to protect past achievements from unraveling and to assure the public that these lands will not be sacrificed in the future. Exchanges only create uncertainty for all conservation lands. It is important for protection of sensitive ecosystems and threatened and endangered species to have them remain the same place.

The current proposals for the Osceola Parkway Extension include appropriation of part of Split Oak for a major highway in exchange for some other land which would be designated as conservation land. The conservation value provided by Split Oak cannot be measured by acres. Conservation includes stability. Orange and Osceola Counties promised to preserve Split Oak, and the Constitution of Florida requires them to honor that promise.

The current proposals for putting a major highway through Split Oak endangers our Florida natural resources heritage – something the voters of Florida have consistently demonstrated is of utmost importance.

The League of Women Voters will do everything we can to protect the Constitution, not just for the people of Florida, but also for developers. We understand people are moving to our state in large numbers and we must keep up with the state’s transportation needs. However, we must



do this according to the highest law in the state and we must protect those who took seriously their civic right to vote to approve this constitutional provision over twenty years ago and we believe would do so again today.

The People of Florida own the conservation lands across this state. The League of Women Voters is asking you to stand with the people that are here now and for generations to come. We urge you to vote to keep Split Oak undisturbed. Vote to go around it.

Sincerely yours,

*Gloria Pickar & Sandi Vidal*

Dr. Gloria Pickar and Sandi Vidal, Co-Presidents

**League of Women Voters of Orange and Seminole Counties**  
**Natural Resources Committee**  
**Public Comment to CFX 12-12-19 Regarding Split Oak**

Most Floridians live in cities and suburbs, both large and small. Yet they know that protecting part of the state to remain as natural Florida is vital to their wellbeing and the ecosystems that sustain us. That's why when these issues have been presented to the voters, they have overwhelming said "yes" to conservation lands. This year marks the 21st year in which Floridians voted to approve the constitutional provision protecting these conservation lands entrusting government officials to uphold the collective vote of the people to use protected lands such as Split Oak for conservation purposes.

Florida has been a leader in protecting its natural resources through its *Florida Forever* program. Florida Forever is the largest public land acquisition program of its kind in the U.S. Florida purchased 2.5+ million acres of land under the program and manages another 7.5 million acres for conservation. We are proud of this accomplishment.

The League of Women Voters of Orange and Seminole Counties, strongly opposes routing the proposed Osceola Parkway Extension through Split Oak and instead urges you to adopt the option to go around it. In addition to the obvious conservation value of this land, a roadway through it violates the clear language of our Constitution to protect our Florida Forever conservation lands as recorded in Article X, Section 18. Six facts:

1. **Constitutional Protection.** This constitutional provision prohibits getting rid of Florida conservation lands unless they no longer have conservation value. This provision was approved by the voters because everyone at the time recognized that pressures for development threatened our unique Florida Forever lands, because short-term, often economic, objectives overlook long term impacts.
2. **Joint County Protection.** Both Orange and Osceola Counties committed to perpetual conservation protections when they acquired this land in 1994. They must not breach these promises.
3. **Florida Forever Means Forever; Not Available as Surplus.** These lands are also a target for infrastructure development because they are already owned by governmental entities, and therefore are seen by some as a less expensive way to build something now. No, Split Oak is not surplus land.
4. **Constitutional Provisions Prevail.** Any statutory provision that some say allows roads through conservation lands is superseded by the Constitutional amendment of 1998.
5. **Exchanges are not exceptions.** In fact, the constitutional amendment was specifically proposed *because* of the pressure to change the use of these lands – to protect past achievements from unraveling and to assure the public that these lands will not be sacrificed in the future. Exchanges only create uncertainty for all conservation lands.

6. **Dangerous Precedent.** The road through Split Oak would set a precedent endangering conservation lands throughout the state, making them targets for more roadway expansions that would destroy the conservation value of these lands.

The current proposals for putting a major highway through Split Oak endangers our Florida natural resources heritage – something the voters of Florida have consistently demonstrated is of utmost importance.

The League of Women Voters will do everything we can to protect the Constitution, not just for the people of Florida, but also for developers. Let me be clear, we understand people are moving to our state in large numbers and we must keep up with the state's transportation needs. However, we must do this according to the highest law in the state and we must protect those who took seriously their civic right to vote to approve this constitutional provision over twenty years ago and we believe would do so again today.

The People of Florida own the conservation lands across this state. Today, the League of Women Voters is urging you to stand with the people that are here now and for generations to come. We urge you to vote to keep Split Oak undisturbed. Vote to go around it.

# **Exhibit**

# **“G”**

**Executive Summary**  
**North Ranch Sector Plan, Long-term Master Plan**  
**Environmental Plan Peer Review**

**Peer Review Team: Jay Exum, PhD ~ Richard Hilsenbeck, PhD ~ Reed Noss, PhD**

**Purpose:**

In the process of considering adoption of the North Ranch Master Sector Plan, Osceola County requested that the Environmental Plan portion be subject to an independent peer review to assure that the natural systems and associated species of conservation concern are adequately identified and addressed in the plan. A three member team of experts in the field of conservation and ecology was selected in January of this year and worked as an independent Peer Review Team to identify the environmental values of the North Ranch and assess how regionally significant resources could be protected and managed as part of the desired vision for this area.

**Findings and Conclusions:**

The Peer Review Team's (PRT) main findings can be summarized as follows:

- The North Ranch is located in the center of an area recognized and mapped as having **state-wide significance** for its ecological and wildlife values. Much of the central part of the ranch has been maintained as improved and semi-improved pastures for cattle production, but even that land has significant conservation values in itself and in providing connectivity for hydrology and wildlife movements to the even higher value intact habitats around it, most of which are existing conservation areas. Though the proposed Environmental Plan sets aside considerable acreage for conservation and agriculture on the east and west edges of the property, without these inter-regional connections between them the value of the surrounding conservation areas is greatly diminished. Such a linkage was proposed along two tributaries to the Taylor Creek reservoir, **but the value of the area requires more substantial**



*Figure 1, Old growth longleaf pine and palmetto mesic flatwoods, classified as "rangelands" in the original Environmental Plan*

**linkages.** Therefore connectivity of habitats within the North Ranch, and with conservation areas in the surrounding landscape, is a critical issue.

- The PRT found that the **conservation value of the improved and semi-improved pasture is understated in the plan.** In just the limited site visits that the PRT made, several species considered to be imperiled due to habitat loss were seen within pasture lands. Some native habitats such as flatwoods, scrubby flatwoods and scrub were classified simply as "rangeland," a correct identification for



agricultural purposes perhaps, but not for understanding the value of the habitat for native species of plants and animals.

- The lands identified for conservation in the plan place an emphasis on wetlands, which is good, but largely overlooks the important uplands that the North Ranch also displays. To adequately protect the many plant and animal species dependent on uplands, and to promote the long term viability of species that are imperiled due to upland habitat loss throughout Florida, those areas of flatwoods, scrub and other priority **upland habitats that exist on the North Ranch should be recognized as regionally significant natural resources**. The PRT recommends protecting and including these resources as part of other blocks and linkages of conservation lands. Where the opportunity is present, the PRT especially recommends restoration of pine flatwoods within suitable areas of the North Ranch, concentrating on restoring longleaf pines and native groundcover on pasture (former flatwoods) sites that surround remnant flatwoods patches on the North Ranch.

- The North Ranch also displays areas where wetlands are embedded within a matrix of improved and semi-improved pasture.



Figure 2, Wetland/upland mosaic north of US192

These “mosaics” of uplands and wetlands are hydrologically and functionally connected with wet season flows that link them into an integrated resource system, and to off-site conservation lands, creating a distinctly rich mix of habitats.

**Three key principles** of conservation planning, adopted from myregion.org and included in the original North Ranch planning process, are substantially augmented in the Modified Plan designed by the PRT:

**Landscape Linkages/Wildlife Corridors:** Ensure that natural linkages among large habitat patches are maintained in the landscape to provide for species movements on and off the Property;

**Representation of all Natural Communities:** Ensure that examples

of all natural community types expected to occur on a site under natural conditions are protected or restored; and

**Redundancy:** Ensure that multiple examples of each community type are protected or restored, if possible, to provide for the long-term persistence of all species and natural communities.

While the original Environmental Plan addressed these principles in some measure, the PRT concluded that given the North Ranch’s strategic location in the natural setting of east-central Florida, some additional conservation lands are needed. The locations of these additional lands are presented in the PRT’s Modified Environmental Plan and are intended to include representation of all natural communities found on site, be redundant in the conservation of these areas, and join them and other conservation areas into a

sustainable and viable network of nodes of important habitat and intervening linkages, which will ensure the continuation of plant and animal species of concern, both on and off of the North Ranch site.

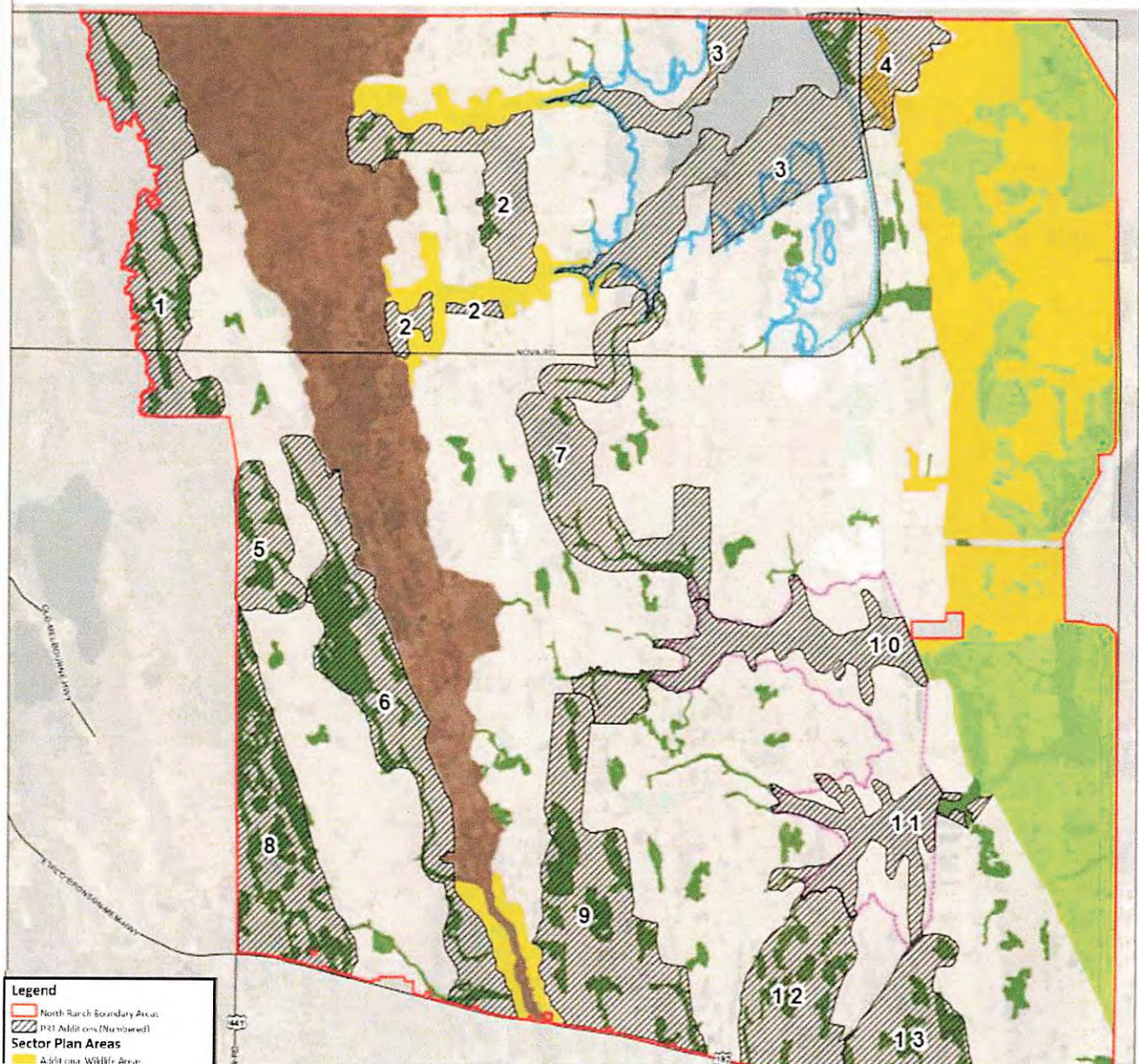
Long term use of these conservation areas could range from strict preservation and restoration, to passive recreation, to continued agricultural pasturage and still meet the North Ranch planning goals. Such uses would be determined at the time of the preparation of management plans that are called for by recommended plan Goals, Policies and Objectives.

In very brief summary of one aspect of the PRT's recommendations, the following changes in reserved conservation/agricultural lands in the North Ranch Environmental Plan would occur:

Original Plan Conservation/Agricultural Lands	Proposed Conservation/Agricultural Land Additions	Modified Environmental Plan Total	Change in in % of Total 132,989 Acres - North Ranch
56,181 Acres	19,107 Acres	75,288 Acres	From 46% to 56.6%



# Osceola County North Ranch Planning Area



Peer Review Team's Modified Environmental Plan - Recommended Addition Areas marked with hatching

# **Exhibit**

## **“H”**



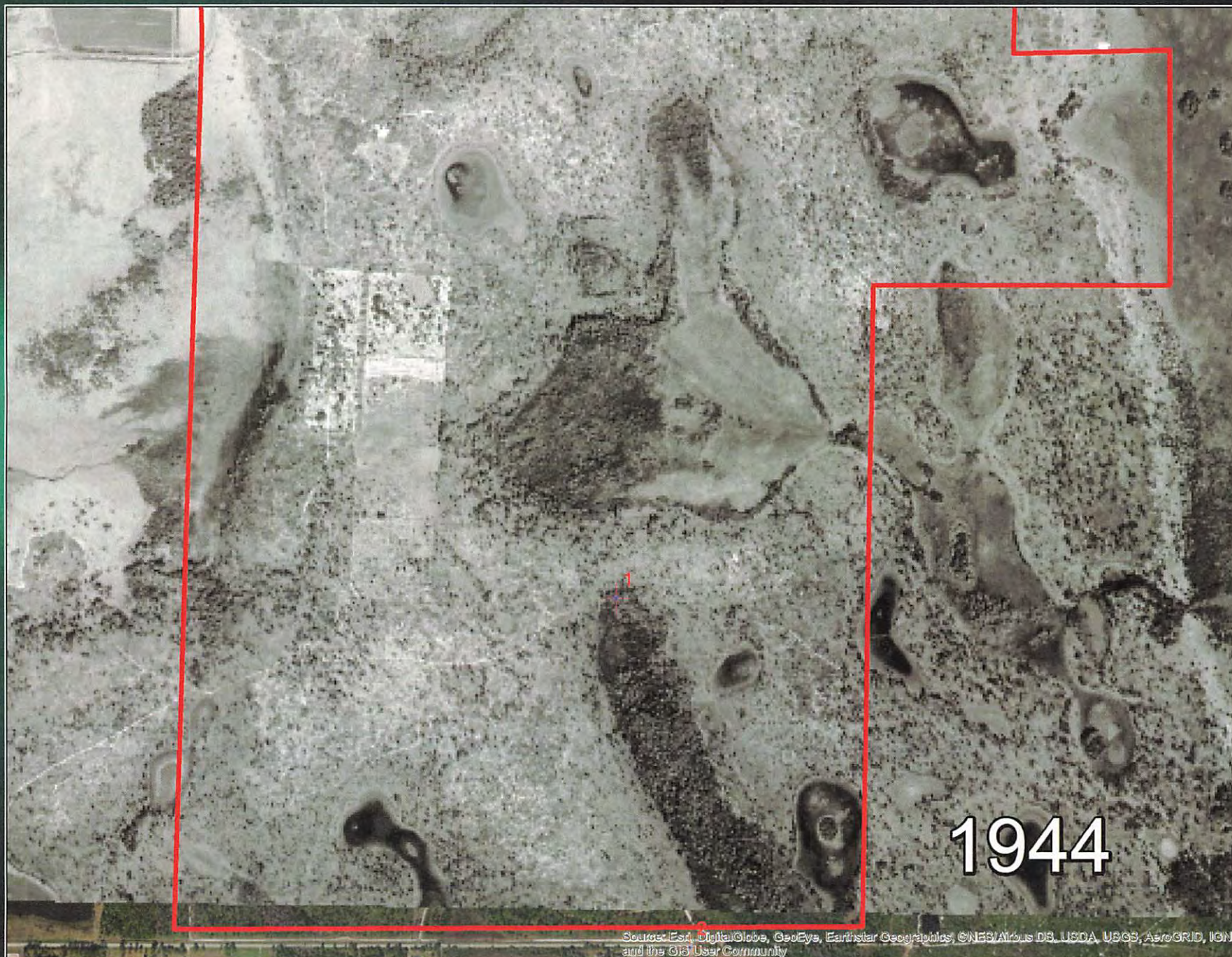
# Split Oak Preserve Exhibit "H"

## Long Term Perspective





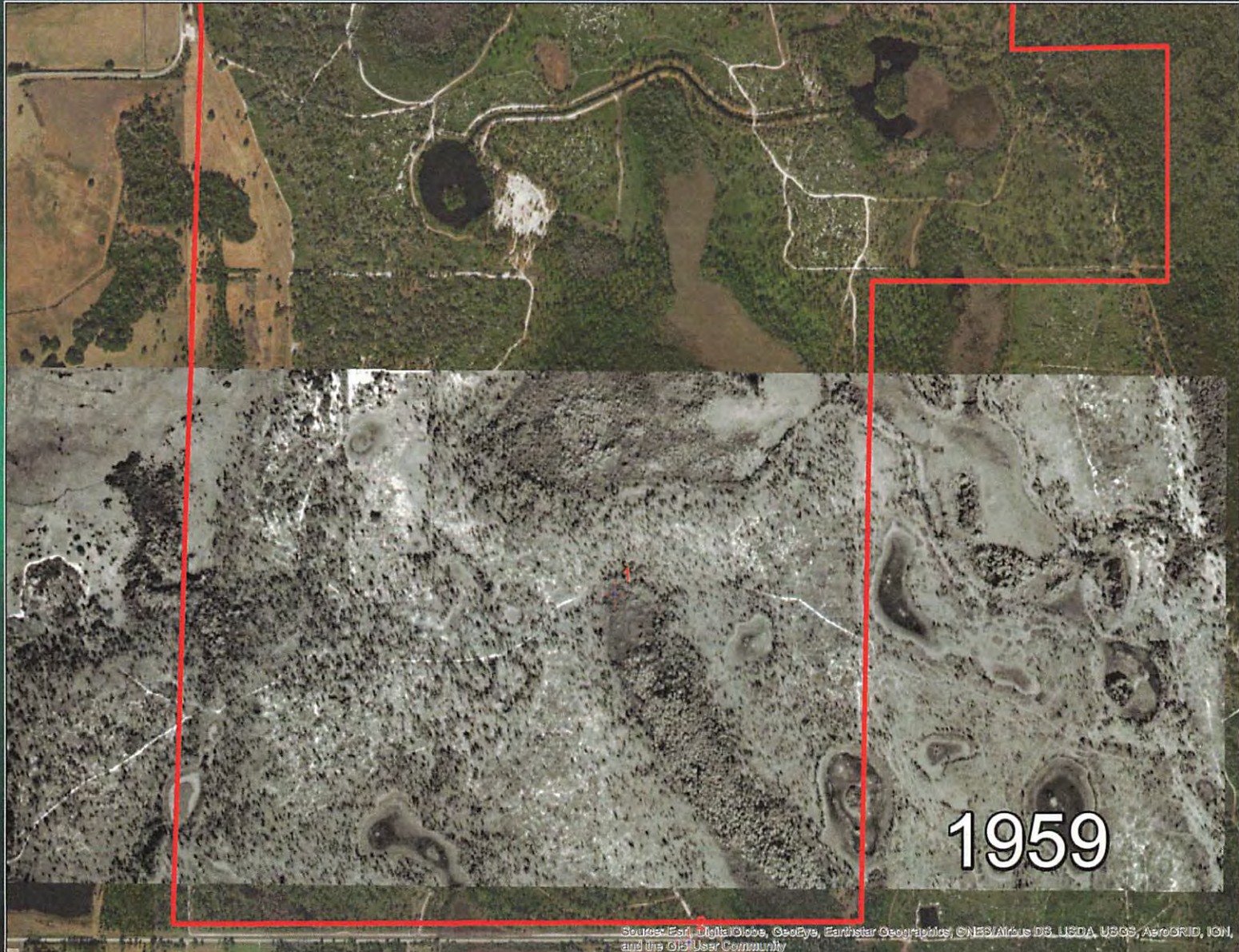
# Split Oak Preserve in 1944



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

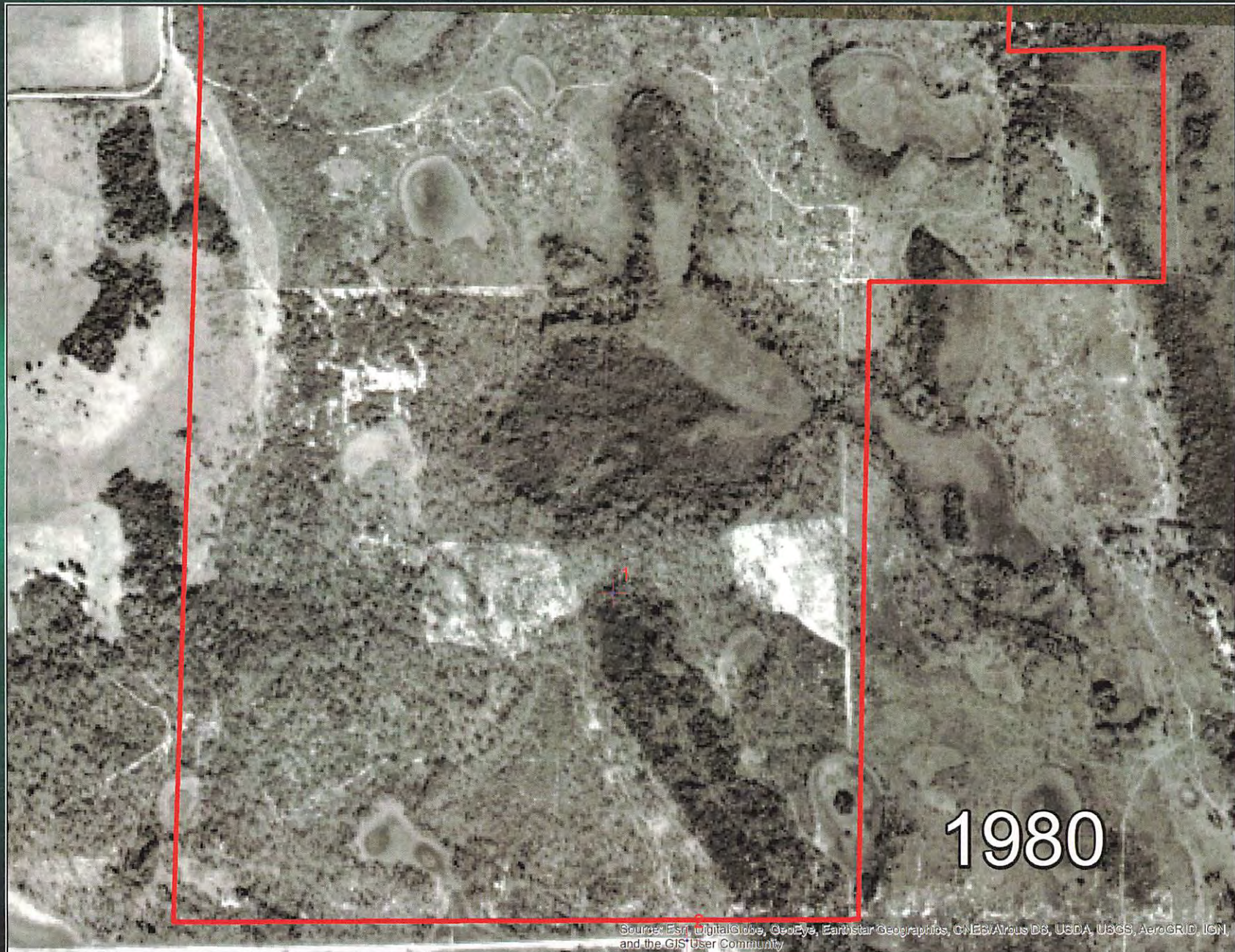


# Split Oak Preserve in 1959





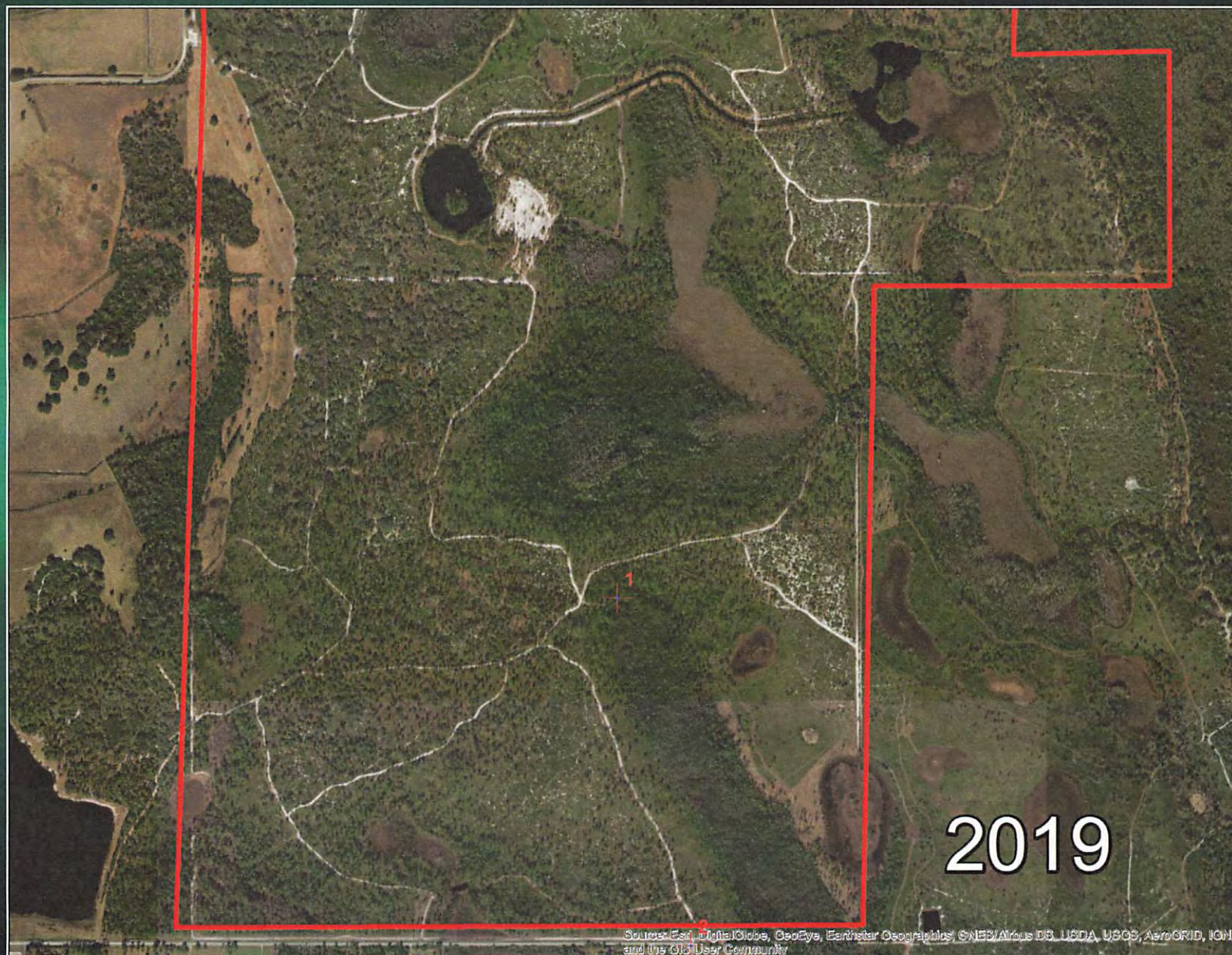
# Split Oak Preserve in 1980



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



# Split Oak Preserve in 2019



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

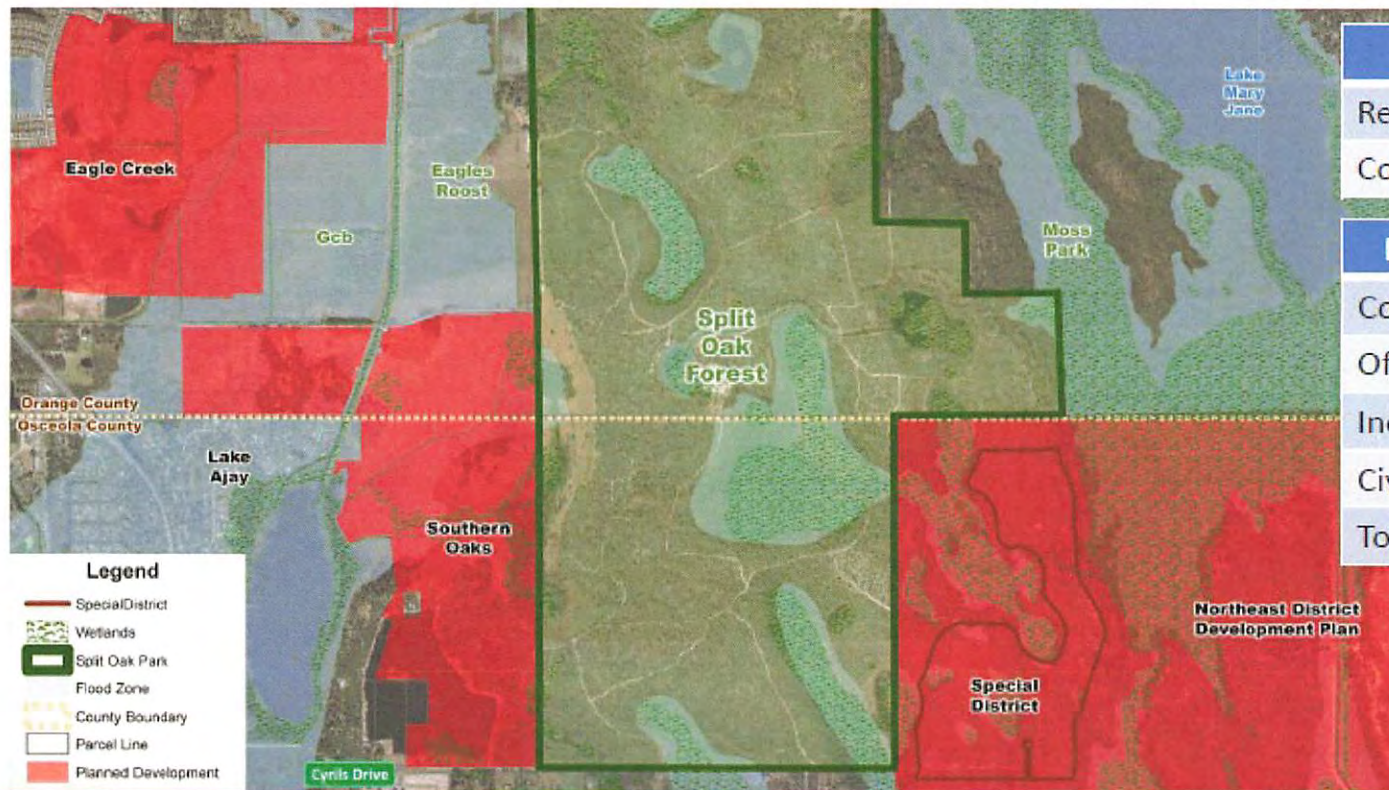


# Split Oak walled in by future development...

## Osceola Parkway Extension

### Planned Development Surrounding Split Oak Forest

4

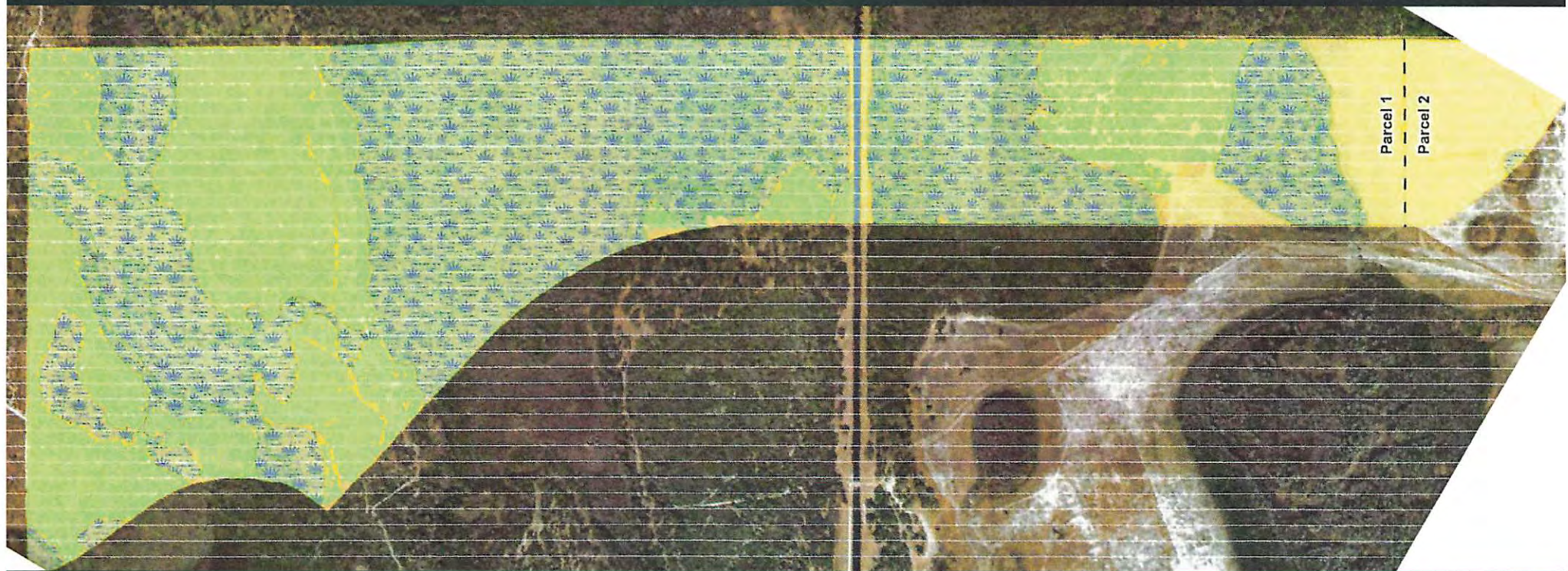


Southern Oaks	
Residential Units	882
Commercial (sf)	200,800
Northwest Special District	
Commercial (sf)	80,000
Office (sf)	1,700,000
Industrial (sf)	1,000,000
Civic (sf)	120,000
Total (sf)	2,900,000

CENTRAL  
FLORIDA  
EXPRESSWAY  
AUTHORITY



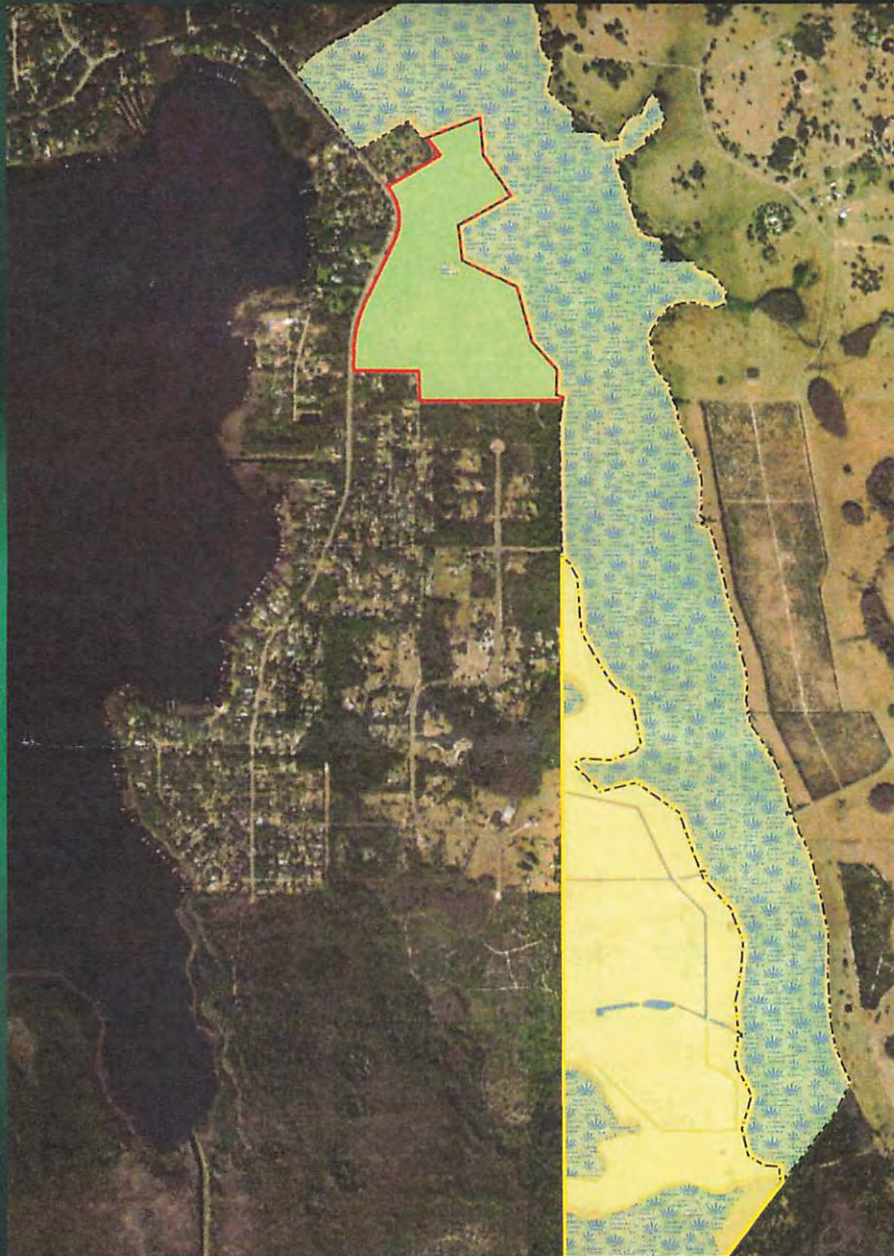
# Osceola Co. good quality pine/scrub within 1,550 acres



Good quality uplands/pine/scrub in light green  
Lands in need of active restoration.



# Orange County longleaf pine needing management



Pineland  
area in light  
green needs  
immediate  
management  
Lands in  
yellow need  
active  
restoration.



# Scrub within 1,550 acres to be dedicated



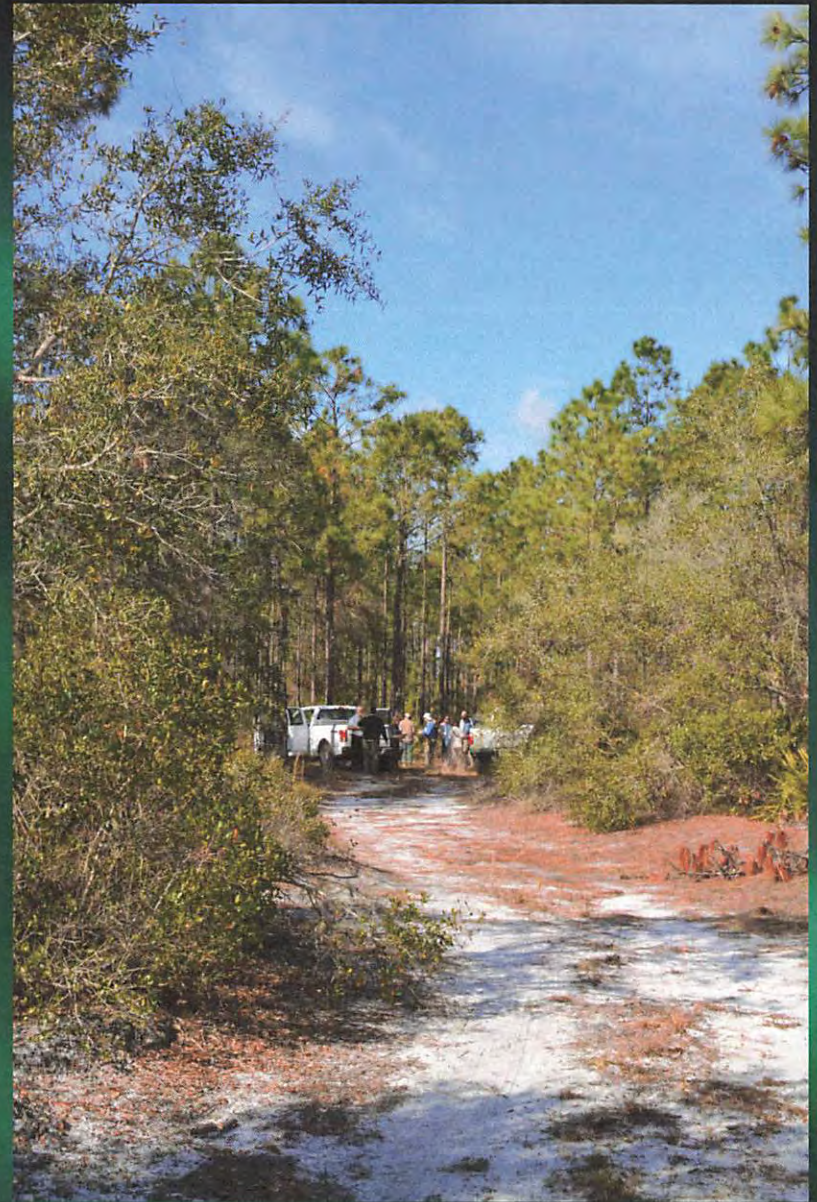


# Pineland Habitat in 1,550 acre dedication





# Pine and scrubby pine on 1,550 acs.





# Scrub and pine interface on 1,550 ac





# Typical good habitat on 1,550 acres





# Typical relatively undisturbed habitat on 1,550 acres





**Foreground disturbed area, background  
undisturbed cypress wetland in 1,550 ac.**





1,550 acres of new conservation land AND the existing conservation tracts MUST have influx of funding for RESTORATION and MANAGEMENT.

- Exact amount determined by FWC, FCT, DSL and Osceola County
- Likely in range of \$2 – 3 million for restoration
- Management funding 10-15 years at least \$200,000 per year

# **Exhibit**

# **“1”**





# Exhibit "I"

12301 Lake Underhill Rd., Ste. 245 • Orlando, FL 32828 • (P) 407- 277-5951 • (F) 407-381-1720 • [www.EOCC.org](http://www.EOCC.org)

November 20, 2019

Mr. Jay Madera, Chairman  
Central Florida Expressway Authority  
4974 ORL Tower Rd  
Orlando, FL 32807

Dear Mr. Madera:

On behalf of the Board of Directors for the East Orlando Chamber of Commerce and our 353 business members, I am writing to encourage you and the Central Florida Expressway's (CFX) Board to support the new preferred route for an eastward extension of the Osceola Parkway, known as the Split Oak Minimization Alternate Route, as presented in the Osceola Parkway Extension PD & E Study to the CFX Project Advisory Group. Recently, our Advocacy Advisory Council and Board voted overwhelmingly to support this route with the hope that it will be extended to I-95 or appropriate thoroughfare in the future. This expansion would impact the growth of commerce and new residences in Central Florida positively affecting our region which encompasses over 440 square miles of Orange County.

The Osceola Parkway Extension has been identified as a need in several local, long-range and master plans to help connect residents and visitors in the region and to reduce congestion. This future connection is included in the long-range transportation plan of The Central Florida Expressway Authority (CFX) and was part of the Osceola County Expressway (OCX) Master Plan prior to the merger of the organization into CFX. Additionally, this extension is included in the implementation of the Governor's Task force recommendation for East Central Florida.

With the region's continued growth, the ability to extend improved mobility is a necessity. . Developing this east-west route prior to development avoids obstacles for a successful multi-modal corridor. This route also offers a once-in-a-lifetime opportunity to designate significant and additional lands for conservation in perpetuity. It will create an expansion of conservation areas 25 times greater than the acreage of the recommended Osceola Parkway Extension's impact of Split Oak. This means significantly more land will be conserved and protected for future generations, wildlife and native plants.

It is for these reasons; we respectfully ask the CFX Board to support the preferred Split Oak Minimization Alternate Route for the Osceola Parkway Extension and act to ultimately help carry this project forward to the state of Florida through Florida's Communities Trust.

Thank you for your service and commitment to Central Florida.

Sincerely,

Andrew Cole  
President/CEO  
East Orlando Chamber of Commerce

Cc:

Commissioner Brenda Carey  
Mayor Buddy Dyer  
Mayor Jerry Demings  
Commissioner Leslie Campione  
Commissioner Brandon Arrington  
Commissioner Betsy VanderLey

Commissioner Curt Smith  
Mrs. Andria Herr  
Mr. Michael Scheeringa

## Trustee Members



# **Exhibit**

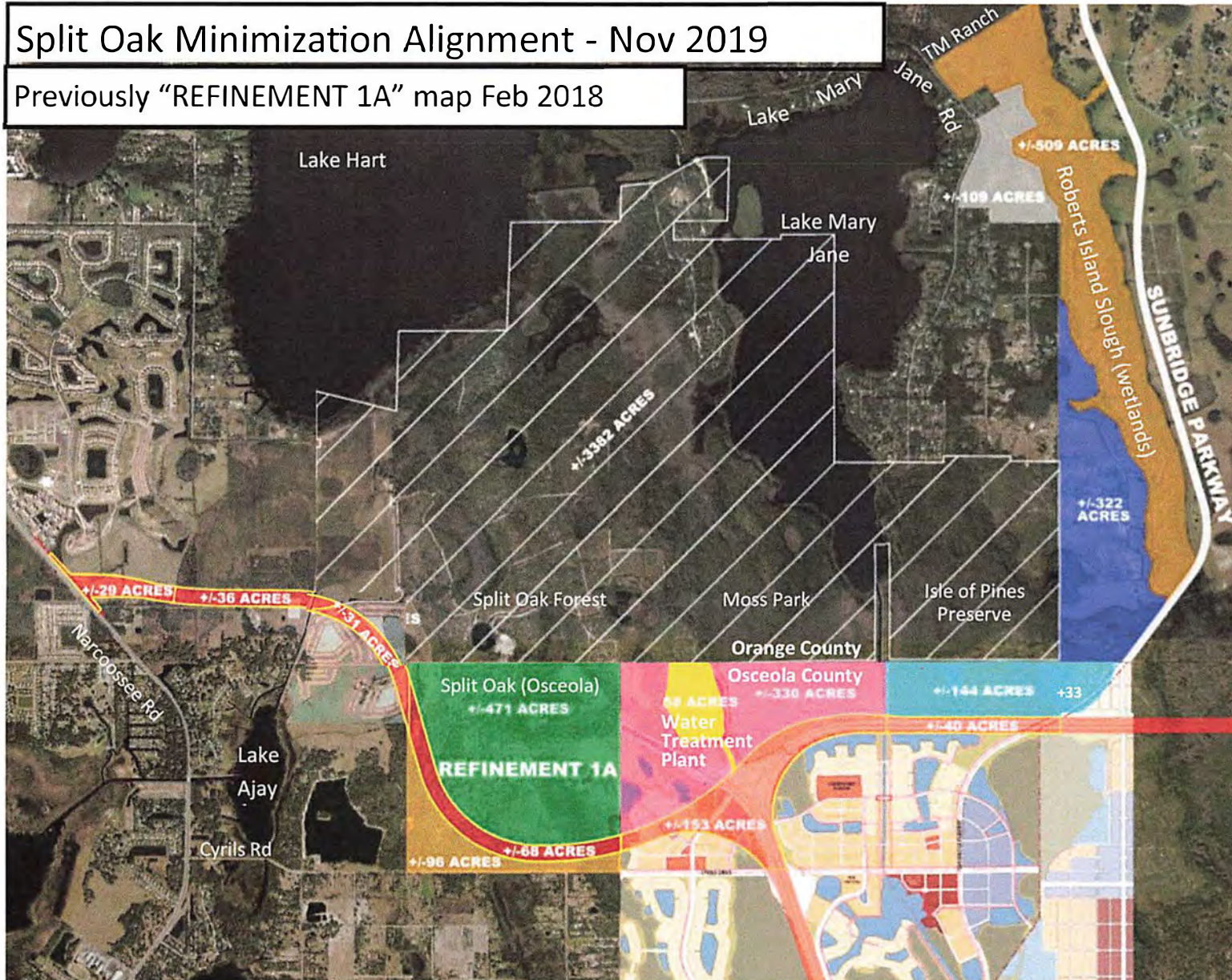
## **“J”**



# Exhibit "J"

## Split Oak Minimization Alignment - Nov 2019

Previously "REFINEMENT 1A" map Feb 2018



## Osceola Pkwy Extension

### Split Oak Minimization

#### Improvements since Feb 2018

- 1) Total Compensation lands up to 1550 acres
- 2) All compensation lands in Osceola and Orange County will be donated or purchased (No Mitigation Credits)
- 3) MOVED Water Treatment Plant and Wells out of conservation compensation land and away from Split Oak! Previously planned on prime Scrub Jay uplands adjacent to Split Oak. (the only confirmed Scrub Jay community in all of Orange and Osceola County.)
- 4) No Eastern extension - only connection to Sunbridge Pkwy
- 5) After route is approved: Fully fund Restoration and Maintenance of additional conservation lands.
- 6) Still working towards: Significant Wildlife Corridors with uplands to connect these additional lands to other preserves & mitigation banks in Orange and Osceola.

The Lake Mary Jane Alliance has been working on this project for the past 3 years and tries to look at the bigger picture. Although we would prefer NO Road, we feel that is unrealistic. **So if it is determined that the Osceola Parkway Extension will proceed, then the Split Oak Minimization route is best.** This route offers the minimum impact of about 160 acres of Split Oak (60 for the actual road) while avoiding surrounding homes & development. This also adds 1550 acres of land that buffers Split Oak, Moss Park, Isle of Pines Preserve, Roberts Island Slough and multiple communities.

**The Alternative route was more expensive, directly impacted several communities, and had no additional buffer/conservation lands.** Osceola could go forward with development on the potential buffer lands that were already approved for 337,000 SF of industrial, 27,000 SF of commercial, 573,000 SF of office, and 40,000 SF of civic up against the conservation lands.

# **Exhibit**

## **“K”**



WARRIORS FOR ENVIRONMENTAL ACTIVISM

Student Club

West Orange High School

1625 Beulah Rd. Winter Garden, FL 34787

SUBMITS THEIR OPPOSITION TO THE SPLIT OAK ALIGNMENT. AVOIDANCE  
OPTIONS SHOULD BE THE ONLY ONES CONSIDERED.

CONSERVATION LANDS BELONG TO THE PUBLIC AND ARE OFF LIMITS.

Dear members of the Central Florida Expressway Authority,

As a member of the Central Florida community and strong advocate for environmental conservation, I am deeply concerned about the plans for a highway to be built through the Split Oaks Nature Preserve. I believe this decision has been severely underestimated in terms of environmental damage. Additionally, the CFX has no authority to negotiate away this public piece of land. This plan will unravel the current protections put in place to preserve the wildlife in Florida.

Many important species depend on the land you are planning to bulldoze, and the area around the road will also be affected due to the inability to have controlled burns that are vital to a healthy environment in Florida. Hundreds of animals will be displaced and killed, including gopher tortoises and sandhill cranes by not only the building of the roads but the pollution it creates. There is currently another viable option for this road that will completely avoid this preserve. I highly recommend that this should be considered and the current plan should not be passed.

Respectfully,

Chelsea collison

President, Warriors for Environmental Activism



Dear members of the central Florida Expressway Authority,

My name is Hara Bastida and I am currently a junior at West Orange High School. I am writing this letter in strong opposition to building a highway through the Split Oak Nature Preserve. I have lived in Central Florida my whole life and have always admired the beauty that nature has held in this location. Building this highway through the Split Oak Nature Preserve will not only destroy that beauty but will also destroy the homes to many species that rely on this land. We are currently undergoing the sixth mass extinction in history caused by humans. Putting this into perspective, the recent extinction rates have surpassed the rates from past mass extinctions throughout history. Please put into consideration the negative impact this will have on the environment.

Thank you,  
Hara Bastida

To the members of the Central Florida  
Expressway Authority,

My name is Ashton Wilson, and  
I am currently a junior at West Orange  
High School. I've been a resident of Florida  
my entire life.

I'm writing about the plans to put  
a highway through Split Oak Nature Preserve.  
In doing this, you would be taking away  
important lands from our wild life, putting  
nature in danger, purely for the gain of  
private entities. Please consider the potential  
risk here; this land was set aside for  
public use, and not only does the CFX  
have no authority to negotiate away public  
lands, but in doing so it sets a  
precedent that can unravel important protections  
for wild life in the future.

Split Oak Nature Preserve is extremely  
important for Florida's Wildlife. It is the  
home to countless species, including several  
endangered species native to Florida. If the  
Committee approves of the road, it will  
prevent the practice of controlled burning (which  
is needed to maintain balance and growth in  
the forest) because the smoke produced would  
affect cars driving on the road. In addition,  
implementing this road would pollute the  
air with car fumes, pollute the land  
with trash from the highway, and put



precious wildlife in danger of  
oncoming traffic.

I truly hope that these hearings  
are not a farce, And that you will listen  
to the public who are speaking on behalf  
of the land and the trees and all the  
beautiful creatures living on it. The Citizens  
have spoken, and we all agree that the  
Split Oak Avoidance Route should be taken.  
To ignore the public's opinion for your  
own gain is shameful. Furthermore, ignoring the  
advice from many environmentalists who have  
all stated that the Split Oak Minimization  
alternative would be detrimental to our  
natural environment is a dereliction of your duty.

Protected land means it is meant to  
remain undisturbed, and attempting to go  
behind the Citizens' backs to exploit it  
would be an undeniable neglect of your  
position as a government official.

I strongly oppose the Split Oak Minimization  
Alternative, as well as any plans to put toll  
roads through Split Oak Forest in the future or  
otherwise. I approve of the Split Oak Avoidance  
Alternative, which would avoid the protected lands  
all together.

Thank you for your time,

Ashton Wilson

Secretary, Warriors for Environmental Activism

Dylan Dyaljee  
Warriors for Environmental Activism  
2422 Cliffdale St.  
Ocoee FL 34961  
December 10, 2019

To the executives in charge of the  
Florida Expressway Authority,

My name is Dylan Dyaljee and I am the Historian at the West Orange Warriors for Environmental Activism Club. It has come to my attention that you plan to put a highway through the Split Oak forest. I am utterly disappointed in the people that have developed this plan, as they have done so without regard to our sacred ecosystems that call the Split Oak forest home.

There are numerous logical explanations for why this road should not be built through our precious environment. For one, controlled burning of lands provide the soil with nutrients for plants to grow and animals to prosper with food available. If we were to put a road through the forest, then we would be unable to have controlled burns as the smoke would interfere with roads. Another problem with your plans would be the damage they would cause to the Gopher Tortoise, who have been relocated many times and have finally ended up in Split Oak forest.

Do not let your economic ventures have negative effects on our beautiful forest. Put the money forth and pay to relocate the road around the forest.



In America today, especially, we disregard the environment when it comes to economic success. I am asking you personally, as a member of the community who wants to raise a family that can appreciate the gorgeous outdoors we have here in Central Florida, to take action to prevent the destruction of our home.

Thank you for your time and please look into the Split Oak Avoidance option.

Sincerely, *Dylan Dwyer*

December 11, 2019

To whom it may concern,

My name is Brooke Wilson and I am a 19 year-old resident of Orange County and voter. I oppose the toll road plans to go through Split Oak Forest for several reasons. To begin, Split Oak is home to several endangered or threatened species, including but not limited to the Gopher Tortoise, Sandhill Crane, and Sherman's Fox Squirrel, all of which are protected by the state. Another reason I oppose the toll road going through Split Oak is such a road will destroy the beauty that I have grown up loving. I have been a resident of Central Florida my whole life and have always loved the wildlife that resides here. All my friends have asked me why I want to stay and the beautiful nature that the area has to offer is one of my biggest reasons.

Finally, I want the next generation of kids to have the same opportunity to live alongside the natural world that I grew up with. The building of a toll road threatens that wish and sets a dangerous precedent that could cause Florida to lose more promised protected land.

Please take this letter into consideration and vote no to put a toll road through Split Oak Forest.

- Brooke Wilson



## Central Florida Expressway Authority,

My name is Renee Vannice and I am a junior at West Orange High School, and have lived in Winter Garden all of my life. The plans to put an expressway through the Split Oak Nature Preserve is wrong and you know it. It was created for a reason; to preserve Florida's natural wildlife. Hundreds of species live in that preserve and more likely than not, endangered species. Build the express way somewhere else. Please. If the regulations and the protection of even just a sliver of the preserve is lost or undone, the rest will follow and the preserve will be no more. If it is happening here in Florida, it will happen somewhere else in Florida, the U.S., and even the world. It was purchased with public funds which means the citizens have a right to hold it for future generations undisturbed. Actually think about what you're doing and now it will negatively affect the environment and every single species and animal within it. Do not be selfish and greedy and only think about the money. Please. I strongly oppose the development of the expressway, it puts hundreds of species, especially endangered species at risk, all for the sake of money. Think about what you're doing and stop it. Please.

— a concerned student

To the people of the Central Florida  
Expressway Authority,

My name is Michael Hausman  
and I am a student of West Orange  
High school and I would like to address  
the issue of the installment of the  
highway through Split Oak Nature Preserve.  
As a Member of the Community of  
Orange County I cannot bear to see  
such an atrocious act to be placed  
upon the ecosystem that affects us  
all. With the barbaric idea of building  
a highway through a nature preserve,  
it affects hundreds of wildlife, the  
environment, and is taking away  
publically owned land. Building this  
highway is just inconceivable and  
it is obvious why I say this. So  
PLEASE, be somewhat competent and  
choose the split oak avoidance option.

Michael Hausman



## Alex Allen

14614 Black Cherry Trail, Winter Garden, Florida 34787

December 9, 2019

Central Florida Expressway Authority  
Government Office  
4974 Orl Tower Rd  
Orlando, FL 32807

To the members of the Central Florida Expressway Authority,

My name is Alex Allen and I am a Junior at West Orange High School. I have been a Florida resident for over five years.

We can all agree that this road needs to be made. However, one cannot act unilaterally and without any due consideration to wildlife and ecology.

As you thoroughly understand, Split Oak Forest is home to numerous threatened species. These species include the gopher tortoise, which provides homes for over 300 other species with the burrows they dig. It is merely impossible to relocate over 300 threatened species for a road that can be made outside the forest's acreage. There is an alternate option to avoid such an invasive action.

The option to go around the forest does impact subdivisions; however, subdivisions are geared up to have bustling roads and heavy traffic. They already have the infrastructure in place. Any person knows that there is constant migration to Florida. Due to this, greenery turns to houses for families.

As a member of the public, I have the right to speak out as this piece of land was purchased with public funds.

I am asking you to please consider the future effects this road will have on our ecosystem. As a nation, we are struggling with the issue of climate change. Plowing down over 100 acres of land from this preserve will only break our planet down even further. With this road, we will not only be hurting wildlife, but we would also be hurting ourselves in the future.

We are already at a loss of trees and other plants to keep our planet alive for us. With this road, we are limiting the extent of our time on this planet.

Serious thought needs to be put into this decision as this not simply about one road. This decision will be precedent for every future decision on whether to impact preserved land protected by the Florida Government.

When purchasing this land, it was meant to be preserved. The full definition of the word "preserve" is to maintain something in its original or existing state. No one can simply whiteout the word "preserve" when talking about the Split Oak Forest.

I am pleading with you, along with thousands of conscientious Floridians, to not build this road and plow down over 100 acres of land to suit private investors.

When did private corporations become more valuable than the public opinion?

I oppose the Split Oak Minimization Alternative, as well as any plan that puts hundreds of endangered species at risk.

Respectfully,  
Alex Allen



Dear Members of the Central Florida Expressway Authority,

My name is Sydney Sedloff and I am a senior at West Orange High School. I believe that putting a highway through Split Oak Nature Preserve is not a favorable idea. I understand that by placing a highway through this preserve would be cheaper, but many species, including endangered ones, would be negatively impacted. Additionally, controlled seasonal burns would not be permitted if the highway is put in, leaving both residents surrounding the preserve and species native to Florida at risk.

Even if the plans are revised to minimize invasion to the preserve, the principle of the situation would still be concerning. Others would follow in your footsteps, and soon, we will not have forest or nature preserves.

I ask that you please consider avoiding the Split Oak Nature Preserve area in hopes that we can have a healthy future.

Thank you for your consideration,

Sydney Sedloff

Member of Warriors for Environmental Activism

To the members of the Central  
Florida Expressway Authority

My name is Regan Washington and I am a student at West Orange High School. I strongly oppose building a highway through Split Oaks Nature Preserve. I believe passing this would set a poor example of how nature preserves are to be used. If this is passed this can cause a chain reaction with developers thinking they are allowed to build on protected preserves. The public has chosen and funded accordingly to protect Split Oaks, these efforts will not be ignored.

Building a road through the Forest will upset the balance of the ecosystem. Having the road in the Forest will prevent controlled burns that are essential to restore health, recycle nutrients and prep land for vegetation. Adding the highway will also litter the Forest with air pollution and trash.

This trail is not just going to decide whether or not a highway can be built but it is also going to set a precedent of if it is acceptable for developers to take advantage of public protected property. The people have spoken to defend Split Oaks from hungry developers. Choose to Protect



the want of the people and oppose  
building a road through Split Oaks.

- Regan Washington

To the central Florida Expressway Authority,

I am Reagan Tobyanson, a student of West Orange High School and a member of Warriors for Environmental Activism.

I strongly disagree with the plan to create a highway in the Split Oak Minimization Alternative.

By putting a road within the Split Oak Nature Preserve, animals such as the Gopher Tortuses and panthers will be displaced.

The land is used to relocate the tortuises, and so to then displace them is unjust.

Seeing as the residents of the surrounding areas have agreed to relocate in order to not impact on the forest, there is no valid reason as to not use the Split Oak Avoidance Alternative. Though it is more expensive, the knowledge that the deaths of thousands of defenseless creatures could be avoided should be enough.

The highway would impede on the people's ability to perform contained burns, which is essential on maintaining the forest's balance and providing nutrients to the soil. If cars would pass through on the highway they'd be blinded by the smoke; the burns would cease and the forest would suffer.

Please consider my plight as a fellow resident of central Florida and good samantan,

Reagan Tobyanson



Dear CFX,

12/10/19

I strongly oppose the Split Oak Minimization, as well as any plans to put toll roads through Split Oak Forest in the future or otherwise.

My name is Audrey Kelley, and I'm a junior at West Orange High School, and have lived in Florida for the majority of my life. Throughout my years, my favorite thing about this state has always been its natural beauty, whether it's the gorgeous sunsets and sunrises, or its breathtaking lakes and wildlife. Unfortunately, in recent years, there's been an ongoing trend of disrupting these ecosystems in order to build houses, schools, or shopping malls. While this may not be a big issue in other areas, the fact that this road would go straight through a publicly owned wildlife reserve makes this proposal an issue for the entire community. As a member of this said community, I ask you to please reconsider voting for this Minimization Act, and instead consider the Split Oak Avoidance Alternative, even if it may cost more.

With regards,

Audrey Kelley  
(a highly concerned  
member of this  
community)

To the members of the Central  
Florida Expressway Authority,

My name is Tavis Goldwire and  
I am in West Orange High School.

The avoidance alternative is equally  
as doable and appeases both sides.

Tavis Goldwire



Dear CFX executives,

My name is Joseph Byram and I am a citizen of the Central Florida area.

I am a junior at West Orange High School. I am writing this letter to oppose the building of a highway through the Split Oak Forest. I am in the Warriors for Environmental Activities and was saddened to hear about this highway plan. If this plan goes through, hundreds of thousands of animals would be displaced. Please consider the alternative routes that were provided. These alternative routes would make the same location accessible. Please consider the animals and ecosystem before doing anything.

Sincerely,

Joseph Byram  
Student at West Orange High School  
*Joseph Byram*

December 11, 2019

Re: Split Oak Preservation

To Whom it May Concern;

My name is James Wilson Jr. DO and I have been a resident of Orange county for the past 23 years.

Split Oak Preservation is a vital piece of protected land. No option to condemn protected land with a "swap" is appropriate for the people of Orange County. There is no way to equate these lands as equal habitats and this action will only further endanger the inhabitants of the land.

Furthermore, taking this land will pave the way to additional land grabs all over our state. If you let this happen, you will be responsible for initiating a process that will cause there to be no more protected lands in our great state.

Sincerely,



James Wilson Jr. DO  
Board Certified Family Medicine



# **Exhibit**

# **“L”**



CHAMPIONS FOR BUSINESS AND COMMUNITY

#### 2019 Officers

**Rob Rosen**, Edward Jones \*  
Chairman of the Board  
**Adrianna Sekula**, Walt Disney World \*  
V.C. Membership  
**Kevin Crain**, Osceola Press - Printing & Signs \*  
V.C. Finance  
**Timothy Finkenbinder**, Overstreet, Miles, Cumbie & Finkenbinder, P.A.  
Past Chairman  
**Jennifer Bondy**, Overstreet, Miles, Cumbie & Finkenbinder, P.A.  
V.C. of Legal Affairs  
**Larry Walter**, Hanson, Walter and Associates \*  
V.C. of Growth  
**Tom Franklin**, KPM Franklin \*  
V.C. of Government Advisory

#### 2019 Area Council Chairmen

**Alex De Jorge**, Brightway Insurance  
V.C. of Parkway's Business Council  
**Jose Figueroa**, Poinciana Printing & Signage  
V.C. of Poinciana Area Council  
**Joel Ferguson**, Edward Jones  
V.C. of Young Professionals of Osceola County Area Council  
**Kevin Crain**, Osceola Press - Printing & Signs \*  
V.C. of Small Business Council/Leads  
**Kathy Frazier-Kenney**, Clarion Suites Maingate  
V.C. of Osceola Resort Area Council  
**Brianne Stetok**, Osceola Arts  
V.C. of Downtown Kissimmee Area Council  
**Monica Chavero**, Resource Management, Inc. \*  
V.C. of Hispanic Business Council  
**Amy Buehler**  
V.C. of Celebration Area Council  
**Allison Beeman**, Connex  
V.C. of Four Corners Area Council

#### Directors

**Rajia Ackley**, Coldwell Banker Ackley Realty \*  
**Ken Baker**, Ken Baker Real Estate, Inc.  
**Alan Byrd**, Alan Byrd & Associates  
**Renee Clark**, Clark Investment Properties, Inc.  
**Debbie Clements**, Duke Energy \*  
**Mary Cooper**, Realtor - Goodwin Realty & Associates, Inc. \*  
**Colia Thacker Dorn**, City of Kissimmee  
**Chris Gent**, Kissimmee Utility Authority  
**Linda Goodwin-Nichols**, Goodwin Realty & Associates, Inc.  
**Andrew Harrell**, Harrell Agency Services  
**Sam Hought**, Wild Florida  
**Mike Horner**, Macy Island Consulting, LLC  
**Hector Lizasoain**, Magic Development  
**Steve Mazza**, Insurance Office of America \*  
**Mark McHugh**, GATORLAND  
**Ailee Mercer**, Visions by Ailee  
**Dr. Debra Pace**, Osceola County District Schools \*  
**Marc Reicher**, ChampionsGate Golf Resort \*  
**Jim Shanks**, Park Place Behavioral Health Care  
**Stella Sirocuzo**, Tomato Express Market  
**Mike Steigerwald**, City of Kissimmee  
**Jo Thacker**, Nelson Mullins Broad and Cassel \*  
**Kelly Trace**, REACH  
**Tom White**, Centennial Bank \*  
\*denotes Chamber Trustee

#### Board of Trustees

**Jose Alvarez**, City of Kissimmee  
**Brandon Arrington**, Osceola County  
**Brett Barnhardt**, CenterState Bank  
**Patti Brock**, CenturyLink  
**Brent Burish**, St. Cloud Regional Medical Center  
**Davide Carbone**, Osceola Regional Medical Center  
**Chris Carmody**, GrayRobinson, P.A.  
**Michelle Chandler**, SchenkelShultz Architecture  
**Chris Cosby**, Poinciana Medical Center  
**Junior Davis**, Jr. Davis Construction Co.  
**Suzanne Fernandez**, Plaza del Sol  
**Guillermo Hansen**, El Osceola Star Newspaper  
**Tony Iorio**, HANOVER Land Company, LLC  
**Julie Kendig-Schroder**, Greenberg Traurig, LLP  
**Mary Ellen Kerber**, Formosa Developers, Inc.  
**Jody Ketchum-Kager**, Tupperware Corporation  
**John Lambert**, Toho Water Authority  
**Dan Munoz**, PepsiCo Gatorade  
**Brock Nicholas**, Lennar Homes  
**Stephen Nappinger**, AECOM  
**Glenda Orellana**, Onboard 1 Mortgage, LLC  
**Tom Overton**, Osceola News-Gazette  
**Sheila Rankin**, AdventHealth - Kissimmee  
**Reunion Resort & Club**  
**Elizabeth Ross**, GUNSTER  
**Domingo Sanchez**, Titan Management  
**Shawn Savage**, ABC Paving and Sealcoating  
**Ed Schans**, University of Central Florida  
**Cheryl Schoolfield**, Schoolfield Properties, Inc.  
**Donna Sines**, Community Vision  
**Susan Snyder**, Merrill Gardens at Salivita Marketplace  
**Harry Swart**, Swart Baumruk & Company, LLP  
**Taylor Morrison**  
**Gene Terrico**, Street Outdoor - Osceola County, LLC  
**Tom Tompkins**, State Housing and Development, Inc.  
**Terry Torrens**, OUC - The Reliable One  
**Dimitri Toumazos**, Xentury - The Global Resort City  
**Thibaut van Marcke**, Orlando Health  
**Carlos Velez**, Orlando Magic  
**Tim Weisheyer**, Osceola County District Schools  
**Don Whyte**, Desert Cattle & Citrus

November 25, 2019

## Exhibit "L"

Mr. Jay Madera  
Chairman

Central Florida Expressway Authority  
4974 Orl Tower Road  
Orlando, Florida 32807

RE: Osceola Parkway Extension

Dear Mr. Madera,

This letter informs of a recent action taken by the Board of Directors of the Kissimmee/Osceola County Chamber of Commerce relating to the Osceola Parkway Extension. Voting in support of the planned roadway at the November 8 board meeting, the Board encourages you and the Central Florida Expressway Authority Board to support the new preferred route for an eastward extension of the Osceola Parkway, known as the Split Oak Minimization Alternate Route, and a connector road from Osceola Parkway through Lake Nona, known as the Lake Nona Alternate Route, as presented in the Osceola Parkway Extension PD & E Study to the CFX Project Advisory Group. In short, the Board believes these routes will benefit our members with improved mobility and access to a larger talent pool as well as increased purchasing power resulting from smart growth management.

Prior to the Board of Directors discussion on November 8, the Government Advisory Committee of the Kissimmee/Osceola County Chamber of Commerce received presentations from key stakeholders to better understand the impacts and benefits associated with the proposal. The Committee engaged a representative from Friends of Split Oak in September and Tavistock Corporation in October to learn more about their concerns and viewpoints. The Committee then forwarded that information along with a recommendation to the Board of Directors.

With continued growth, the ability to extend improved mobility within the region is a rare opportunity to develop the east-west route prior to development creating obstacles for a successful multi-modal corridor. This route also offers a once-in-a-lifetime opportunity to designate significant and additional lands for conservation in perpetuity. It will create an expansion of conservation areas 25 times greater than the acreage impacting Split Oak by the recommended Osceola Parkway Extension. Also, the proposed route will allow mitigation on the increased conservation acreage to raise funds for maintenance and upkeep. This means significantly more land will be conserved and protected for future generations.

Values: Creating Opportunity • Embracing Heritage • Building Unity

1425 East Vine Street • Kissimmee, FL 34744 • [kissimmeechamber.com](http://kissimmeechamber.com) • (407) 847-3174 • Fax: (407) 870-8607



# **Exhibit**

## **“M”**



# Florida House of Representatives

## *Representative Mike La Rosa*

### District 42

**District Office:**  
1224 10<sup>th</sup> Street  
St. Cloud, FL 34769  
(407) 891-2555  
(407) 891-2557 (fax)

**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

Mr. Jay Madera, Chairman  
Central Florida Expressway Authority  
4974 ORL Tower Rd  
Orlando FL 32807

December 4, 2019

Dear Mr. Madera:

In 2014, my amendments to legislation, eventually signed by the Governor, allowed the Osceola County Expressway Authority (OCX) to keep any revenue from completed projects using that money to fund future projects on the Osceola Authority's 2012 master plan, including the Osceola Parkway Extension, and pay back any bonds or loans used for funding those projects before they merged with Central Florida Expressway Authority (CFX). This legislation laid the ground work for vital transportation projects that will benefit our region today.

The role your Authorities plays is vital for a higher quality life, economic prosperity and future opportunities that will come to our next generation of leaders in Central Florida. I am writing to encourage you and the CFX Board to support the new preferred route for an eastward extension of the Osceola Parkway, known as the Split Oak Minimization Alternate Route, and a connector road from Osceola Parkway through Lake Nona, known as the Lake Nona Alternate Route, as presented in the Osceola Parkway Extension PD & E Study to the CFX Project Advisory Group.

With continued growth, the ability to extend improved mobility within the region is a rare opportunity to develop the east-west route prior to development creating obstacles for a successful multi-modal corridor. This route also offers a once-in-a-lifetime opportunity to designate significant and additional lands for conservation in perpetuity. It will create an expansion of conservation areas 25 times greater than the acreage the Osceola Parkway Extension would impact Split Oak. This means significantly more land will be conserved and protected for future generations.

It is for these reasons that I respectfully ask the CFX Board to support the preferred Split Oak Minimization Alternate Route and the Lake Nona Alternate Route for the Osceola Parkway Extension and act to ultimately help carry this project forward for to the state of Florida through Florida's Communities Trust.





# Florida House of Representatives

## *Representative Mike La Rosa*

### District 42

**District Office:**  
1224 10<sup>th</sup> Street  
St. Cloud, FL 34769  
(407) 891-2555  
(407) 891-2557 (fax)

**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

Thank you for your service and commitment to Central Florida.

Warm Regards,

A stylized blue ink signature of Mike La Rosa, consisting of the letters "MLR" followed by a long horizontal flourish.

Rep. Mike La Rosa  
Florida House of Representatives  
District 42

Cc:  
Commissioner Brenda Carey  
Mayor Buddy Dyer  
Mayor Jerry Demings  
Commissioner Leslie Campione  
Commissioner Brandon Arrington  
Commissioner Betsy VanderLey  
Commissioner Curt Smith  
Mrs. Andria Herr  
Mr. Michael Scheeringa

# **Exhibit**

## **“N”**





# Exhibit "N"

November 21, 2019

Mr. Jay Madera, Chairman  
Central Florida Expressway Authority  
4974 Orl Tower Rd  
Orlando FL 32807

Dear Mr. Madera:

On behalf of the Board of Directors for the Lake Nona Regional Chamber of Commerce (the "Chamber") and our 375 business members, I am writing to encourage you and the CFX Board to support the new preferred route for an eastward extension of the Osceola Parkway, known as the Split Oak Minimization Alternate Route, and a connector road from Osceola Parkway through Lake Nona, known as the Lake Nona Alternate Route, as presented in the Osceola Parkway Extension PD & E Study to the CFX Project Advisory Group.

The Chamber's primary purpose under its bylaws is to advance, promote, advertise and publicize the commercial, business, industrial, economic and civic interests of the Lake Nona Region and the Chamber's Members as a whole. With this purpose in mind, the Chamber's Board recently voted overwhelmingly to support these routes.

With continued growth, the ability to extend improved mobility within the region is a rare opportunity to develop the east-west route prior to development creating obstacles for a successful multi-modal corridor. This route also offers a once-in-a-lifetime opportunity to designate significant and additional lands for conservation in perpetuity. It will create an expansion of conservation areas 25 times greater than the acreage the Osceola Parkway Extension would impact Split Oak. This means significantly more land will be conserved and protected for future generations.

It is for these reasons that we respectfully ask the CFX Board to support the preferred Split Oak Minimization Alternate Route and the Lake Nona Alternate Route for the Osceola Parkway Extension and act to ultimately help carry this project forward for to the state of Florida through Florida's Communities Trust.

Thank you for your service and commitment to Central Florida.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Long", written over a horizontal line.

Don Long  
President/CEO  
Lake Nona Regional Chamber

Cc:  
Commissioner Brenda Carey  
Mayor Buddy Dyer  
Mayor Jerry Demings  
Commissioner Leslie Campione  
Commissioner Brandon Arrington  
Commissioner Betsy VanderLey  
Commissioner Curt Smith  
Mrs. Andria Herr  
Mr. Michael Scheeringa



It is for these reasons that we respectfully ask the Central Florida Expressway Authority Board to support the preferred Split Oak Minimization Alternate Route and the Lake Nona Alternate Route for the Osceola Parkway Extension and act to ultimately help carry this project forward to the state of Florida through Florida's Communities Trust.

Understanding the complexity of this issue and the importance it plays to the future of central Florida, the Kissimmee/Osceola County Chamber of Commerce appreciates your consideration of our perspective. Please contact John Newstreet at any time should you desire additional information or clarification. Thank you for your service and commitment to central Florida.

Sincerely,



Rob Rosen  
Chairman of the Board  
Kissimmee/Osceola County Chamber of Commerce



John Newstreet  
President & CEO  
Kissimmee/Osceola County Chamber of  
Commerce

CC: The Honorable Brandon Arrington  
The Honorable Leslie Campione  
The Honorable Brenda Carey  
The Honorable Jerry Demings  
The Honorable Buddy Dyer  
Mrs. Andria Herr  
Mr. Michael Scheeringa  
The Honorable Curt Smith  
The Honorable Betsy Vanderley  
Tom Franklin, Chair, Government Advisory Committee



# **Exhibit**

# **“O”**

# Exhibit "O"

December 4, 2019

Mr. Jay Madera, Chairman  
Central Florida Expressway Authority  
4974 Orl Tower Rd  
Orlando FL 32807

Dear Mr. Madera:


I am writing to encourage you and the Expressway Authority Board to support the Central Florida Expressway's pursuit to expand Osceola Parkway with the Split Oak Minimization Alternate Route. As you are aware, the Partnership has worked on a regional transportation vision for the last two years through its Alliance for Regional Transportation (ART), which aims to announce recommendations in the first quarter of 2020. In this report, you will see that a connection from the airport to Brevard County is one of several priorities listed. This connection will benefit the regional economy through improved access to jobs for our citizens and access to talent for our employers.

This is a rare opportunity for the region. The ability to extend and improve mobility along an east-west route prior to development-related obstacles is critical to the creation of a successful multi-modal corridor. This route also offers a once-in-a-lifetime opportunity to designate significant and additional lands for preservation in perpetuity, expanding conservation areas 25-times greater than the Osceola Parkway Extension's impact on Split Oak.

It is for these reasons that we respectfully ask the CFX Board to support the preferred Split Oak Minimization Alternate Route and the Lake Nona Alternate Route for the Osceola Parkway Extension and act to ultimately help carry this project forward for to the state of Florida through Florida's Communities Trust.

Thank you for your service and commitment to the Central Florida region.

Sincerely,



President  
Orlando Economic Partnership

Cc:  
Commissioner Brenda Carey  
Mayor Buddy Dyer  
Mayor Jerry Demings  
Commissioner Leslie Campione  
Commissioner Brandon Arrington  
Commissioner Betsy VanderLey  
Commissioner Curt Smith  
Mrs. Andria Herr  
Mr. Michael Scheering





# **Exhibit**

## **“p”**

# Exhibit "P"

December 12, 2019

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

Subject: EAST SEGMENT/OSCEOLA PARKWAY EXTENSION PROJECT DEVELOPMENT AND ENVIRONMENT  
(PD&E) STUDY RE-EVALUATION

On behalf of the Sierra Club Central Florida Group, I am taking the opportunity to express the Group's strong opposition to the Split Oak Minimization Alternative. This 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. Should the CFX Board vote to approve this alternative, the Sierra Club believes this decision is potentially unconstitutional.

Article X, Section 18 of the Florida Constitution provides for the disposition of conservation lands. This Section specifically states " The fee interest in real property held by an entity of the state and designated for natural resources conservation purposes as provided by general law shall be managed for the benefit of the citizens of this state and may be disposed of only if the members of the governing board of the entity holding title determine the property is no longer needed for conservation purposes and only upon a vote of two-thirds of the governing board."

Split Oak is comprised of high-quality habitats, a public benefit for the long-term survival of state and federally listed upland species. The Sierra Club urges the CFX Board vote for the No-Build<sup>option</sup> or the Split Oak Avoidance Alternative. Protect Split Oak. Thank you for your consideration.

Sincerely,

*Marjorie Holt*

Marjorie Holt  
Vice Chair  
Sierra Club Central Florida Group  
P.O. Box 941682  
Maitland, FL 32792





D.

Consent Agenda

## CONSENT AGENDA February 13, 2020

### **ADMINISTRATIVE SERVICES**

1. Approval of First Contract Renewal with Thorn Run Partners, LLC for Federal Advocacy Services, Contract No. 001533 (Agreement Value: \$49,200.00)

### **CONSTRUCTION**

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

a. Project 417-134 Hubbard Construction Co.	\$ 25,160.20
b. Project 528-750 Preferred Materials, Inc.	\$ 694,573.60
c. Project 253G SEMA Construction, Inc.	\$ 99,484.26
d. Project 408-128 The Lane Construction Corp.	\$ 929,016.89
e. Project 599-541 Traffic Control Devices, Inc.	(\$ 119,861.01)
3. Approval of Contract Award to Central Florida Underground, Inc. for SR 528/SR 436 Orlando Utilities Commission East Jack & Bore Joint Participation Agreement, Project 528-143-01, Contract No. 001631 (Agreement Value: \$294,132.00)
4. Approval of Contract Award to Jr. Davis Construction Company, Inc. for SR 429 Stoneybrook West Interchange, Project 429-316A, Contract No. 001635 (Agreement Value: \$10,823,189.37)
5. Approval of Contract Award to United Signs & Signals, Inc. for Systemwide Pay By Plate Signs - SR 408, Project 599-643A, Contract No. 001642 (Agreement Value: \$1,069,274.79)
6. Approval of Contract Award to Traffic Control Devices, Inc. for Systemwide Pay By Plate Signs - SR 417, Project 599-643B, Contract No. 001643 (Agreement Value: \$1,117,711.00)
7. Approval of Contract Award to United Signs & Signals, Inc. for Systemwide Pay By Plate Signs – Miscellaneous, Project 599-643C, Contract No. 001644 (Agreement Value: \$1,148,326.33)

### **ENGINEERING**

8. Approval of First Contract Renewal with Protean Design Group, Inc. for Miscellaneous Design Consultant Services, Contract No. 001208 (Agreement Value: \$830,000.00)
9. Approval of Supplemental Agreement No. 4 for Post Design Services and Classen Graphics Infrastructure Development, LLC as a Subconsultant with DRMP, Inc. for the SR 528/SR 436 Interchange Improvements and SR 528 Widening from SR 436 to Goldenrod Road, Project 528-143, Contract No. 001314 (Agreement Value: \$1,104,457.44)



10. Approval of Contract Award to The Balmoral Group, LLC for Design Consultant Services for the SR 528 Widening from Narcoossee Road to SR 417, Project 528-160, Contract No. 001589 (Agreement Value: not-to-exceed \$1,290,000.00)
11. Approval of Contract Award to Jacobs Engineering Group, Inc. for Professional Engineering Consultant Services for the Project Development and Environmental Study of the SR 414 Expressway Extension Project, Project 414-227, Contract No. 001590 (Agreement Value: not-to-exceed \$1,600,000.00)
12. Approval of Contract Award to Kimley Horn & Associates, Inc. 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 (Agreement Value: not-to-exceed \$1,650,000.00)
13. Approval of Final Ranking and Authorization for Fee Negotiations for Design Consultant Services for SR 408 Tampa Avenue Interchange, Project 408-315, Contract No. 001617

## **FINANCE**

14. Approval of First Contract Renewal with PFM Asset Management, LLC for Investment Advisor Services, Contract No. 001244 (Agreement Value: \$255,000.00)

## **LEGAL**

15. Approval of Partial Release and Amendment of Indenture (AT&T), Project VTUSA, 528 Corridor
16. Approval of Agreement to Amend the Indenture (Sprint), Project VTUSA, 528 Corridor
17. Approval of AAF-Cargo Road/Narcoossee Drainage: Reinstatement and Third Amendment to Purchase and Sale Agreement, Project 528-143, Parcels 802-B, 805 and 806
18. Approval of Proposed Order on Expert Fees and Costs as to Juris, Cynthia J. and Robert S. Henderson, as Trustees, et. al., Project 429-202, Parcels 112 (Parts A & B) and 712, (Agreement Value: \$56,000.00)

## **MAINTENANCE**

19. Approval of Supplemental Agreement No. 7 with Infrastructure Corporation of America for Facilities Maintenance Services, Contract No. 001150 (Agreement Value: \$100,000.00)
20. Approval of Supplemental Agreement No. 2 with Jorgensen Contract Services, LLC for Roadway Maintenance Services – SR 408, SR 417 and SR 528, Contract No. 001151 (Agreement Value: \$247,467.00)
21. Approval of Amendment No. 1 to Supplemental Agreement No. 3 to Infrastructure Corporation of America for Roadway Maintenance Services, Contract No. 001152 (Agreement Value: \$290,000.00)

22. Approval of First Contract Renewal with Chapco Fence, LLC for Fencing Repairs along the Poinciana Parkway, Contract No. 001536 (Agreement Value: \$30,000.00)
23. Approval of Contract Award to Arazoza Brothers Corp. for SR 408 Landscape Improvements from Good Homes Road to Hiawassee Road, Project 408-828, Contract No. 001641 (Agreement Value: \$843,850.25)

## **TECHNOLOGY/TOLL OPERATIONS**

24. Approval of Cintas Corporate Services, Inc. and EmployBridge Holding Company (RemX) as Subcontractors for the E-PASS and Violation Enforcement Operations Contract with Egis Projects, Inc., Contract No. 001105
25. Authorization to Execute A Single Source Contract with Kyra Solutions, Inc. for Image Processing Solution, Contract No. 001660 (Agreement Value: \$1,500,000.00)
26. Authorization to Execute Cooperative Purchase Agreement with Tews Consulting, Inc. for Information Technology Staff Augmentation Services, Contact No. 001656 (Agreement Value: not-to-exceed \$2,000,000.00)
27. Approval of Purchase Order to Dasher Technologies for Additional Storage for the Infinity Toll Collection System (Agreement Value: not-to-exceed \$75,000.00)
28. Approval of Purchase Order to Hewlett Packard Enterprise Company for Hewlett Packard Enterprise Server and Equipment Support Services (Agreement Value: not-to-exceed \$71,186.12)
29. Approval of Purchase Order to Microsoft Corporation for Support Services (Agreement Value: \$71,647.00)

## **TRAFFIC OPERATIONS**

30. Approval of Final Ranking and Authorization for Fee Negotiations for Professional Engineering Consultant Services for Development of the Intelligent Transportation Systems Master Plan, Project 599-558, Contract No. 001616

The following items are for information only:

- A. The following is a list of advertisement(s) from December 2, 2019 through February 3, 2020:
  1. Systemwide Pay By Plate Signs – SR 408
  2. Systemwide Pay By Plate Signs – SR 417
  3. Systemwide Pay By Plate Signs – Misc.
  4. Design Consultant Services for Poinciana Parkway Extension – Segment 1 & 2
  5. Design Consultant Services for CR 532 Widening from Old Lake Wilson Road to US 17/92
  6. SR 408 Landscape Improvements from Good Homes Road to Hiawassee Road



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. 599-526C – Wrong Way Driving Deployment (Construction)
2. 599-545 – DMS Replacement Project (Construction)
3. Solar Deployment (RFP Design Build)
4. ITS Maintenance Contract – (OM&A Support Contract)
5. SR 516 (Lake-Orange Connector) US 27 to Cook Road (Design)
6. SR 516 (Lake-Orange Connector) Lake-Orange County Line to SR 429 (Design)
7. SR 516 (Lake-Orange Connector) Cook Road to Lake-Orange County Line (Design)
8. SR 528 Widening from SR 417 to Innovation Way (Design)
9. SR 408 and Mills Exit Improvements (Construction)
10. SR 414 M&R from SR 414 to Keene Road Bridge (Construction)
11. SR 414 M&R from Keene Road Bridge to US 441 (Construction)
12. SR 429 Pavement Repairs and Resurfacing (Construction)
13. SR 538 Poinciana Parkway Design Build (CEI)
14. SR 417 Barry Dease Pond Modifications (Construction)
15. SR 408 I-4 to 417 Coatings Renewal (Construction)
16. Supplier Diversity Support Consultant
17. Disclosure Counsel
18. Advocacy Services

# **CONSENT AGENDA ITEM #1**

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# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 24, 2020

SUBJECT: Approval of First Contract Renewal with Thorn Run Partners, LLC  
for Federal Advocacy Services  
Contract No. 001533


---

Board approval is requested for the first renewal of the referenced task-order based contract with Thorn Run Partners, LLC in the amount of \$49,200.00 for a one-year period beginning April 1, 2020 and ending March 31, 2021. The original contract was one year with two one-year renewals.

The services to be provided under this contract are federal coordination and funding opportunities for CFX's regional expressway expansion projects such as the Poinciana Parkway Extension.

Original Contract	\$ 49,200.00
First Renewal	<u>\$ 49,200.00</u>
Total	\$ 98,400.00

This amount is budgeted in the OM&A Budget.

Reviewed by:   
Michelle Maikisch  
Chief of Staff/Public Affairs Officer

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
CONTRACT RENEWAL AGREEMENT NO. 1  
CONTRACT NO. 001533**

THIS CONTRACT RENEWAL AGREEMENT (the "Renewal Agreement"), made and entered into this 13<sup>th</sup> day of February 2020, by and between the Central Florida Expressway Authority, hereinafter called "CFX" and Thorn Run Partners, LLC., herein after called the "Consultant."

WITNESSETH

WHEREAS, CFX and the Consultant entered into a Contract Agreement (the "Original Agreement") dated April 9, 2019, with a Notice to Proceed date of April 1, 2019, whereby CFX retained the Consultant to provide federal advocacy services as required by CFX.

WHEREAS, pursuant to Article 2.0 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 1st day of April 2020 and ending the 31st day of March 2021 at the cost of \$49,200.00, which increases the amount of the Original Agreement.

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.

THORN RUN PARTNERS, LLC

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



# **CONTRACT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
THORN RUN PARTNERS, LLC**

**FEDERAL LOBBYIST SERVICES**

**CONTRACT NO. 001533**

**CONTRACT DATE: APRIL 9, 2019  
CONTRACT AMOUNT: \$49,200.00**

**CONTRACT, SCOPE OF SERVICES, METHOD OF  
COMPENSATION**

**CONTRACT  
FEDERAL LOBBYIST SERVICES  
CONTRACT NO. 001533**

This Contract No. 001533 (the "Contract" as defined herein below), is made this 9<sup>th</sup> day of April, 2019, between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, hereinafter called "CFX" and THORN RUN PARTNERS LLC, hereinafter the "CONSULTANT":

**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 Authority 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 consultant to provide legislative advocacy and other services as may be assigned to the consultant by CFX; and,

**WHEREAS**, having verified the CONSULTANT's unique qualifications, CFX has determined that it is in its best interest to "single source" the services to CONSULTANT;

**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 CONSULTANT 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 providing legislative advocacy and other services 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 CONSULTANT 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 consultants or CFX staff.

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

- 1.1 The Contract, including insurance policies,
- 1.2 The Scope of Services,
- 1.3 The Method of Compensation,

(collectively, the "Contract").

## **2. TERM AND NOTICE**

The initial term of the Contract will be one (1) year beginning April 1, 2019. There shall be two 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 CONSULTANT are satisfactory and adequate for CFX's needs. If a renewal option is exercised, CFX will provide the CONSULTANT with written notice of its intent at least 60 days prior to the expiration of the initial Contract Term and each renewal, if any.

CFX shall have the right to terminate or suspend the Contract, in whole or in part, at any time with 15 days notice for convenience or 30 days with cure notice for cause for CONSULTANT'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 CONSULTANT (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. CONSULTANT will be paid for all work performed prior to termination and any reasonable, documented, direct, normal, and ordinary termination expenses. CONSULTANT 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 CONSULTANT: (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, CFX will give notice in writing to the CONSULTANT of such delay, neglect or default. If the Contract is declared in default, CFX may take over the work covered by the Contract.

If CONSULTANT (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 CONSULTANT 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 CONSULTANT's default (including the costs of completing Contract performance) shall be charged against the CONSULTANT. If the expense of Contract completion exceeds the sum which would have been payable under the Contract, the CONSULTANT 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, CONSULTANT demonstrates an intent and ability to cure the default in accordance with CFX's requirements, CFX may, but is not obligated to, permit CONSULTANT 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 CONSULTANT under the Contract. Any such costs incurred by CFX which exceed the remaining amount due on the Contract shall be reimbursed to CFX by CONSULTANT. 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 CONSULTANT for expenses or profits related to unfinished work on a Contract terminated for default.

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

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

3.1 The Contract Amount for the Contract term is \$49,200.00.

3.2 CONSULTANT's compensation for the services provided hereunder shall be task-order 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 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 subconsultants, or material suppliers, profit contingencies and any manuals standard in the industry that may be used by CONSULTANT 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 CONSULTANT or any subconsultants. By submitting a response to the Request for Proposal, CONSULTANT or any subconsultant 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 CONSULTANT refuses such access or review, 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 subconsultant of another CONSULTANT 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.

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.

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.

## **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 program, CONSULTANT is encouraged to grant small businesses the maximum opportunity to participate in the provision of the Services.

## **6. CONSULTANT INSURANCE**

CONSULTANT shall carry and keep in force during the period of this Contract, the required amount of coverage as stated below. All insurance must be underwritten by insurers that are qualified to transact business in the State of Florida and that have been in business and have a record of successful and continuous operations for at least five (5) years. Each shall carry a rating of "A-" (excellent) and a financial rating of Class XII, as defined by A.M. Best and Company's Key Rating Guide and must be approved by CFX. CONSULTANT 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 or equivalent including products and completed operations coverage. The contractual liability insurance coverage shall include coverage for bodily injury and property damage claims by CONSULTANT under this agreement.

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

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

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

Such insurance policies shall be without co-insurance, and shall (a) include 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, or authorized representative 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. CONSULTANT 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 CONSULTANT hereunder, CONSULTANT 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 CONSULTANT'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 CONSULTANT's policies shall be excess insurance, not contributory.

If CONSULTANT 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 CONSULTANT's expense and deduct such costs from CONSULTANT payments.

### **CONSULTANT RESPONSIBILITY**

7.1 CONSULTANT shall take all reasonable precautions in the performance of the Services and shall cause its employees, agents and subcontractors to do the same. CONSULTANT shall be solely responsible for the safety of, and shall provide protection to prevent damage, injury or loss to:

- (i) all employees of CONSULTANT and its subcontractors and other persons who would reasonably be expected to be affected by the performance of the Services;

- (ii) other property of CONSULTANT and its employees, agents, officers and subcontractors and all other persons for whom CONSULTANT may be legally or contractually responsible on or adjacent to areas upon which services are performed;

7.2 CONSULTANT shall comply, and shall cause its employees, agents, officers and subcontractors and all other persons for whom CONSULTANT may be legally or contractually responsible, with the Standard Operating Procedures, 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 CONSULTANT 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 CONSULTANT, whether such property is owned by CONSULTANT, 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 CONSULTANT or its employees, agents, officers or subcontractors or any other persons for whom CONSULTANT may be legally or contractually responsible.

7.4 CONSULTANT shall ensure that all of its activities and the activities of its employees, agents, officers and subcontractors and all other persons for whom CONSULTANT may be legally or contractually responsible are undertaken in a manner that will minimize the effect on surrounding property and the public. CONSULTANT shall be responsible for any theft or conversion of collected funds by employees of CONSULTANT, or arising out of the negligence or willful misconduct of CONSULTANT;

7.5 CONSULTANT shall immediately notify CFX of any material adverse change in CONSULTANT'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 CONSULTANT, or of the existence of any material impairment of rights or ability of CONSULTANT to carry on as its business and operations are currently conducted.

7.6 CONSULTANT 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 CONSULTANT's employees from leaving CONSULTANT's employ and taking employment with any successor of CONSULTANT for CFX's toll operations and management services.

## **8. INDEMNITY**

To the extent caused by the CONSULTANT, the CONSULTANT shall indemnify, defend and hold harmless CFX and all of its respective officers, CONSULTANT'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 CONSULTANT (its subcontractors, officers, agents or employees) or due to any negligent or intentional act or occurrence of omission or commission or misconduct of the CONSULTANT (its subcontractors, officers, agents or employees), including without limitation any intentional misappropriation or violation of third party copyright, trademark, patent, trade secret, publicity, or other intellectual property rights or other third party rights of any kind by or arising out of any one or more of the following:

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

8.2 CFX's use or possession of the CONSULTANT Property or CONSULTANT Intellectual Property (as defined herein below),



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

8.4 CONSULTANT's violation of the confidentiality and security requirements associated with CFX Property and CFX Intellectual Property (as defined herein below),

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

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

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

CONSULTANT 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. Notwithstanding the foregoing, CONSULTANT's total liability for a breach of contract or warranty shall not exceed the value of this Contract. The parties agree that 1% of the total compensation to the CONSULTANT for performance of each task authorized under the Contract is the specific consideration from CFX to CONSULTANT for CONSULTANT's indemnity and the parties further agree that the 1% is included in the amount negotiated for each authorized task.

## **9. PUBLIC RECORDS**

**IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'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," 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, and to:

9.1 Keep and maintain public records required by the public agency to perform the service.

9.2 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.

9.3 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 CONSULTANT does not transfer the records to the public agency.

9.4 Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of CONSULTANT or keep and maintain public records required by the public agency to perform the service. If CONSULTANT transfers all public records to the public agency upon completion of the contract, CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONSULTANT keeps and maintains public records upon completion of the contract, CONSULTANT 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 CONSULTANT in conjunction with this Contract (including without limitation Contract Records and Proposal Records, if and as applicable), CONSULTANT shall immediately notify CFX. In the event CONSULTANT has public records in its possession, CONSULTANT shall comply with the Public Records Act and CONSULTANT must provide the records to CFX or allow the records to be inspected or copied within a reasonable time. Failure by CONSULTANT 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 CONSULTANT 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.

## **10. PRESS RELEASES**

CONSULTANT 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.

## **11. 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"). CONSULTANT, its employees, agents, officers, and subconsultants 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.

CONSULTANT, its employees, agents, officers, and subconsultants 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. CONSULTANT, its employees, agents, officers, and subconsultants' 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 CONSULTANT (collectively, the "CONSULTANT Property"), and the intellectual property rights associated therewith (collectively, the "CONSULTANT Intellectual Property"), CONSULTANT (its employees, officers, agents, and subconsultants, which for purposes of this section shall collectively be referred to as "CONSULTANT") warrants and represents the following:

11.1 CONSULTANT was and is the sole owner of all right, title and interest in and to all CONSULTANT Property and CONSULTANT Intellectual Property; **OR**

11.2 CONSULTANT has obtained, and was and is the sole holder of one or more freely assignable, transferable, non-exclusive licenses in and to the CONSULTANT Property and CONSULTANT Intellectual Property, as necessary to provide and install the CONSULTANT Property and/or to assign or grant corresponding to CFX all licenses necessary for the full performance of this Contract; and that the CONSULTANT is current and will remain current on all royalty payments due and payable under any license where CONSULTANT is licensee; **AND**

11.3 CONSULTANT 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 CONSULTANT Property or any license granted to CFX for use of the CONSULTANT Intellectual Property rights; **AND**

11.4 Subject to Chapter 119, Florida Statutes (Florida Public Records Act), CONSULTANT 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. CONSULTANT 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, CONSULTANT shall utilize the same standards of protection and confidentiality that CONSULTANT 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.

CONSULTANT further warrants and represents that there are no pending, threatened, or anticipated Claims against CONSULTANT, its employees, officers, agents, or subconsultants with respect to the CONSULTANT Property or CONSULTANT Intellectual Property.

The provisions of this Section shall survive the term of this Contract for the longer of:

11.5 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, CONSULTANT, or a third party; **or**

11.6 CFX's continued use (notwithstanding any temporary suspension of use) of any CONSULTANT Property or CONSULTANT Intellectual Property; **and**

11.7 Notwithstanding sections 11.5 and 11.6, the confidentiality and security provisions contained herein shall survive the term of this Contract for ten (10) years beyond 11.5 and 11.6.

## **12. PERMITS, LICENSES, ETC.**

Throughout the Term of the Contract, the CONSULTANT shall procure and maintain, at its sole expense, all permits and licenses that may be required in connection with the performance of Services by CONSULTANT; 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.

## **13. CONFLICT OF INTEREST AND STANDARDS OF CONDUCT**

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

CONSULTANT 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. CONSULTANT acknowledges that it has read the Ethics Policy and, to the extent applicable, CONSULTANT will comply with the aforesaid Ethics Policy in connection with performance of the Contract.



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

CONSULTANT covenants and agrees that it and its employees, officers, agents, and subconsultants 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.

#### **14. NONDISCRIMINATION**

CONSULTANT, its employees, officers, agents, and subconsultants 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. SUBLETTING AND ASSIGNMENT**

CFX has selected CONSULTANT to perform the Services based upon characteristics and qualifications of CONSULTANT and its employees. Therefore, CONSULTANT shall not 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 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 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 CFX Board at its next regularly scheduled meeting.

## **16. DISPUTES**

All services shall be performed by the CONSULTANT to the reasonable satisfaction of CFX 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.

## **17. PREVAILING PARTY ATTORNEY'S FEES**

If any contested claim arises hereunder or relating to the Contract (or CONSULTANT's work hereunder), and either party engages legal CONSULTANT, 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 CONSULTANT to be the prevailing party, CONSULTANT 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.

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.

## **18. 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.

## **19. GOVERNING LAW**

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

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

## **20. RELATIONSHIPS**

CONSULTANT acknowledges that no employment relationship exists between CFX and CONSULTANT or CONSULTANT's employees. CONSULTANT shall be responsible for all direction and control of its employees and payment of all wages and salaries and other amounts due its employees. CONSULTANT 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.

CONSULTANT shall conduct no act or omission that would lead CONSULTANT's employees or any legal tribunal or regulatory agency to believe or conclude that CONSULTANT'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, subconsultant, or matter.

## **21. 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 CONSULTANT 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, CONSULTANT 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.



## **22. 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 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.

## **23. 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:

23.1 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

23.2 Payment to CONSULTANT for satisfactory work performed or for termination expenses, if applicable; and

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

23.4 Obligations upon expiration or termination of the Contract; and

23.5 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.

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

24.1 Immediately upon expiration or termination of this Contract CONSULTANT shall submit to CFX, upon request, a report containing the last known contact information for each subconsultant or employee of CONSULTANT who performed work under the Contract; and

24.2 CONSULTANT 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.

## **25. INSPECTOR GENERAL**

CONSULTANT 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.

## **26. ASSIGNMENT**

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

## **27. VERIFY**

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 subcontractors to verify the employment eligibility of all new employees hired by the subcontractors during the term of the Agreement.

## **28. 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 CONSULTANT to that effect.

## **29. COMPANIES PURSUANT TO SECTION 287.135 AND 215.473**

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

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

## **30. 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: General Counsel

CENTRAL FLORIDA EXPRESSWAY (CFX)  
4974 ORL Tower Road  
Orlando, Florida 32807  
ATTN: Chief of Staff/Public Affairs Officer

CONSULTANT: Thorn Run Partners, LLC  
100 M Street, SE – Ste. 750  
Washington, DC 20003  
Attn: Jim Davenport, Partner

### **31. EXHIBITS**

This Contract references the exhibits listed below.

Exhibit "A" 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 caused this instrument to be signed by their respective fully authorized officials, as of the day and year first written above.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: William  
Director of Procurement

Print Name: Aneth Williams

THORN RUN PARTNERS LLC

By: James Davenport  
Signature

JAMES DAVENPORT  
Print Name

PARTNER  
Title

ATTEST: MANDANA SEDIGH  
NOTARY PUBLIC 7723173  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES 07-31-2021

DATE: 05/02/2019

Approved as to form and execution, only.

Joseph J. Passiata  
General Counsel for CFX

61:01WZ 2 AMB1.

## **FEDERAL ADVOCACY SERVICES SCOPE OF SERVICES**

The Consultant shall provide Federal Legislative Advocacy and Consulting Services as requested by Central Florida Expressway Authority (CFX) for various projects / issues related to CFX's masterplan and work program. The goal of such representation will be to secure legislation and federal funding for projects that have been identified by CFX as priorities.

### Legislative Representation.

Upon direction from CFX, the Consultant shall:

- A. Advise and assist with respect to matters involving federal governmental or regulatory bodies;
- B. Attend all legislative sessions considering issues affecting CFX and appropriate legislative meetings;
- C. Review and report on all pertinent, pending legislation and appropriations affecting CFX. This review shall also include all appropriate committee meetings, hearing and conferences;
- D. Prepare and coordinate responses to legislative inquiries;
- E. Submit requests for funding for various transportation projects to the United States Department of Transportation, the Federal Highway Administration, the United States Congress and other appropriate governmental agencies;
- F. Provide specialized assistance in expediting and processing applications submitted to the federal regulatory bodies;
- G. Travel to the CFX office, as necessary, to meet with the staff and the CFX Board in the development, review, and follow-up of legislative issues. Travel must be approved in advanced by the Executive Director. Travel will be reimbursed in accordance with Florida Statue 112.
- H. Perform other similar assignments as directed by CFX.
- I. Arrange for meetings with members of Congress, including members of the Florida Delegation, as well as Members in leadership positions such as Chairman and Ranking Members of key committees. Arrange meetings with senior staff of Congressional Committee and key officials at both the White House and key Administrative Agencies.

- J. Availability to CFX, if requested, on a twenty-four hour basis during the session: assisting in writing, interpreting, and monitoring legislation and regulations; drafting legislation, amendments, proviso language, position papers, and testimony; and providing monthly written progress reports detailing services that have been rendered.
- K. Report and meet with CFX on a weekly basis, or on as needed basis, while the Congress is in session on those issues important to CFX and the actions taken on such issues.
- L. Prepare monthly reports (weekly during the Legislative session), in a timely manner, advising CFX of the current status of all projects / issues that they are monitoring or tracking that may affect CFX, the actions being taken on such issues, and recommendations for future actions on such issues.

#### Revisions

CFX may revise this Scope of Services, highlighting or de-emphasizing certain facets or activities, as CFX's priorities emerge and new information becomes available.

**End of Scope of Services**



## **METHOD OF COMPENSATION FEDERAL LOBBYIST SERVICES**

### **1.0 PURPOSE**

This document describes the limits and method of compensation to be made to the Consultant for the services set forth in the Scope of Services. The services shall be provided over the duration of the work specified in the Contract.

### **2.0 COMPENSATION**

CFX agrees to pay the Consultant for the performance of authorized services described in the Scope of Services an amount not exceed \$49,200.00 for a one-year term of the Agreement. All compensation shall be authorized by means of individual task orders.

### **3.0 METHOD OF COMPENSATION**

- 3.1 The Consultant shall have a documented invoice procedure. The Consultant shall prepare and forward invoices to CFX's Accounts Payable Department.
- 3.2 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 Consultant 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 consultants or CFX staff.
- 3.3 Consultant shall receive and accept the compensation and payment provided in the Contract as full payment, unless otherwise stated, for all labor, materials, expenses, supplies and incidentals required to be provided by the Consultant in the Scope of Services.
- 3.4 The Consultant shall promptly pay all subconsultants/subcontractors and suppliers their proportionate share of payments received from CFX.
- 3.5 If the Consultant elects to receive direct deposit of payments from CFX, CFX will provide the Consultant with the necessary Automatic Deposit Authorization Agreement form.
- 3.6 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 it's designated representative. Any and all such payments previously withheld shall be released and paid to Consultant 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 Consultant, 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 CFX, the Chief Financial Officer, with the approval of the Consultant, may elect to apply any deducted amounts to the following month's invoice total.

#### 4.0 ADDITIONAL SERVICES

Additional services, as defined and determined by CFX, and the resulting compensation for such services shall be implemented by a written Supplemental Agreement in accordance with the Contract. Such work shall not be performed until a Supplemental Agreement has been executed by CFX and the Consultant.

#### 5.0 PROJECT CLOSEOUT

Final Audit: 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 subcontractors 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.

END OF SECTION

**CONSENT AGENDA ITEM  
#2**



# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

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

DATE: January 21, 2020

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 (\$) February 2020	Total Amount (\$) to Date*	Time Increase or Decrease
417-134	Hubbard Construction Co.	SR 417 Widening, Econlockhatchee to Seminole County	\$ 44,810,996.19	\$ (19,504.17)	\$ 25,160.20	\$ 44,816,652.22	0
528-750	Preferred Materials, Inc.	SR 528 Milling & Resurfacing, Dallas Blvd. to SR 520	\$ 7,829,000.00	\$ -	\$ 694,573.60	\$ 8,523,573.60	35
253G	SEMA Construction, Inc.	SR 408/SR 417 Interchange Improvements Phase II	\$ 63,700,000.00	\$ 4,270,726.05	\$ 99,484.26	\$ 68,070,210.31	0
408-128	The Lane Construction Corp.	SR 408 from SR 417 to Alafaya Trail	\$ 76,299,999.00	\$ 2,585,350.63	\$ 929,016.89	\$ 79,814,366.52	0
599-541	Traffic Control Devices, Inc.	Dynamic Curve Warning System (DCWS) Pilot Project	\$ 315,315.00	\$ -	\$ (119,861.01)	\$ 195,453.99	0
<b>TOTAL</b>					<b>\$ 1,628,373.94</b>		

\* Includes Requested Amount for this current month.

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

**Project 417-134: SR 417 Widening, Econlockhatchee to Seminole County**  
**Hubbard Construction Co.**  
**SA 417-134-0220-05**

Stucco Replacement at SR 417 NB University Plaza Canopy

A portion of the existing stucco on the NB University Mainline Plaza canopy required removal and replacement.

ADD THE FOLLOWING ITEM:

Stucco Replacement at NB University Plaza Canopy	\$	10,665.95
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Replace Light Pole Bracket Arms at SR 417

Bracket arms for fourteen (14) existing light poles on SR 417 required replacement in order to meet the current FDOT lighting criteria for uniformity.

ADD THE FOLLOWING ITEM:

Replace Light Pole Bracket Arms	\$	17,511.25
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Reinforced Concrete Pipe in Lieu of Jack and Bored Steel Casing

Reinforced concrete pipe was utilized in lieu of a jack and bored steel casing at the SB 417 Aloma Ramp.

INCREASE THE FOLLOWING ITEM:

Pipe Culvert RCP, Round, 30" SS	\$	6,801.74
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DECREASE THE FOLLOWING ITEM:

Pipe Culvert Steel Casing, 30", Jack and Bore	\$	(34,844.62)
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Subtotal: RCP in Lieu of Jack and Bored Steel Casing at Aloma On-Ramp, SB SR 417	\$	(28,042.88)
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University Mainline Toll Plaza Canopy & Islands Painting

The University Mainline Toll Plaza canopy, islands and columns were painted to match the new construction.

ADD THE FOLLOWING ITEM:

University Mainline Toll Plaza Canopy and Islands Painting	\$	33,622.03
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Concrete Barrier Wall at University Mainline Toll Plaza Cash Lanes

The Contractor was authorized to utilize median concrete barrier wall in lieu of rigid shoulder barrier wall at the University Mainline Plaza cash lanes.

INCREASE THE FOLLOWING ITEM:

Median Barrier Wall, Concrete	\$	42,944.32
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DECREASE THE FOLLOWING ITEM:

Shoulder Concrete Barrier Wall, Rigid Shoulder	\$	(51,691.84)
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Subtotal: Concrete Barrier Wall Median vs. Rigid Shoulder at SR 417	\$	(8,747.52)
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University On-Ramp Profile Adjustment, SB SR 417

The profile of the southbound University on-ramp was adjusted to avoid reconstruction.

INCREASE THE FOLLOWING ITEMS:

Milling Existing Pavement, 1-1/2" Avg. Depth	\$	2,138.56
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Superpave Asphaltic Concrete, Traffic C	\$	926.05
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	\$	3,064.61
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DECREASE THE FOLLOWING ITEMS:

Stabilization, Type B	\$ (1,896.25)
Lime Rock, Base Group 4, 6" LBR 100, with Prime	\$ (1,488.24)
Lime Rock, Base Group 9, 10" LBR 100, with Prime	\$ (7,465.15)
	\$ (10,849.64)

Subtotal: University On-Ramp Profile Adjustment, SB SR 417 \$ (7,785.03)

Additional Signing & Pavement Marking at University On-Ramp, NB SR 417

Additional signing and pavement markings were added at the University on-ramp to NB SR 417.

INCREASE THE FOLLOWING ITEMS:

Single Post Sign, F&I, 12-30 SF	\$ 6,315.27
Single Post Sign, Remove	\$ 84.44
Retro-Reflective Pavement Marker	\$ 170.00
Thermoplastic, Std, White, Solid, 18"	\$ 171.00
Thermoplastic, Std, Yellow, Solid, 18"	\$ 532.00
Thermoplastic, Std, Other Surfaces, White, Solid, 8"	\$ 511.20
Thermoplastic, Std, Other Surfaces, Yellow, Solid, 6"	\$ 124.77
	\$ 7,908.68

ADD THE FOLLOWING ITEM:

Thermoplastic, Std, Yellow, Skip 2'-4', 6"	\$ 27.72
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Subtotal: Additional Signing & Pavement Marking at University On-Ramp, NB SR 417 \$ 7,936.40

**TOTAL AMOUNT FOR PROJECT 417-134**

**\$ 25,160.20**



**Project 528-750: SR 528 Milling & Resurfacing, Dallas Blvd. to SR 520**  
**Preferred Materials, Inc.**  
**SA 528-750-0220-02**

Mill and Resurface the Dallas Mainline Toll Plaza Cash Lanes

Mill, resurface and stripe the Dallas Mainline Toll Plaza cash lanes

INCREASE THE FOLLOWING ITEMS:

Milling Existing Asphalt Pavement, 2.25"	\$	98,718.80
Milling Existing Asphalt Pavement, 2.00"	\$	36,788.36
SP Asphalt, TL D, PG 76-22	\$	177,694.12
Asphalt Friction Course, FC-5, PG 76-22, Black Granite	\$	131,752.28
Asphalt Friction Course, FC-12.5, PG 76-22, Black Granite	\$	161,754.73
Retro-Reflective Pavement Markers	\$	1,382.70
Thermoplastic, Standard, White, Message	\$	1,400.00
Thermoplastic, Standard, White, Arrow	\$	1,400.00
Pavement Markings, Preformed Tape, HP, White, Solid, 8"	\$	6,080.69
Pavement Markings, Preformed Tape, HP, White, Solid, 12"	\$	3,850.00
Pavement Markings, Preformed Tape, HP, Yellow, Solid, 6"	\$	17,088.83
Pavement Markings, Preformed Tape, HP, Black/White, Solid, 9"	\$	48,967.36
Pavement Markings, Preformed Tape, HP, Black/White, 10'-30' Skip, 9"	\$	7,695.73
	\$	694,573.60

Subtotal: Milling, Resurfacing and Striping of Dallas Mainline Toll Plaza Cash Lanes \$ 694,573.60

Increase Contract Time 35 Non-Compensable Calendar Days

**TOTAL AMOUNT FOR PROJECT 528-750**

**\$ 694,573.60**

**Project 253G: SR 408/SR 417 Interchange Improvements Phase II**  
**SEMA Construction, Inc.**  
**SA 253G-0220-07**

Repair Crack on Existing Ramp E

Repair crack in the existing pavement of Ramp E.

ADD THE FOLLOWING ITEM:

Repair Crack on Existing Ramp E	\$	14,564.08
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Adjustments to Final Quantities for Completed Contract Items

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

INCREASE THE FOLLOWING ITEMS:

Concrete Class II, Approach Slab	\$	19,360.00
Bridge Deck Grooving and Planning	\$	7,293.00
Reinforcing Steel, Substructure	\$	3,103.60
Reinforcing Steel, Approach Slabs	\$	5,693.40
Prestressed Concrete Piling, 24" Square	\$	37,200.00
Bridge Deck Expansion Joint, New, Poured Joint with Backer Rod	\$	6,600.00
Concrete Traffic Railing, Bridge, 42" F-Shape	\$	7,533.00
Concrete Slope Pavement, Non-Reinforced, 4"	\$	53,697.60
	\$	140,480.60

DECREASE THE FOLLOWING ITEM:

Test Piles, Concrete, 24" Square	\$	(102,400.00)
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Subtotal: Adjustments to Final Quantities for Completed Contract Items	\$	38,080.60
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Bituminous Adjustments

The contract contains provisions for bituminous price index adjustments. Adjustments are made only if the current month bituminous price is greater than or less than 5% of the bid/base bituminous price. In accordance with the contract specifications, the engineer has calculated the adjustments for the period from April 2018 to November 2019.

ADD THE FOLLOWING ITEM:

Fuel Price Adjustments, April 2018 - November 2019	\$	40,854.86
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Temporary Attenuator Repair on the Ramp from NB SR 417 to WB SR 408

The Contractor was directed to install an attenuator and temporary barrier wall on the ramp from SR 417 northbound to SR 408 westbound. The contract provides for reimbursement to the Contractor for the cost of repairs to the impact attenuator damaged through no fault of the Contractor.

ADD THE FOLLOWING ITEM:

Temporary Attenuator Repairs	\$	5,984.72
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**TOTAL AMOUNT FOR PROJECT 253G**

	\$	99,484.26
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**Project 408-128: SR 408 from SR 417 to Alafaya Trail**  
**The Lane Construction Corp.**  
**SA 408-128-0220-10**

Revisions to Light Poles 56, 58 & 69

Revisions to the lighting were required to accommodate construction of retaining and noise walls.

ADD THE FOLLOWING ITEM:

Pedestals for Poles 56 and 58	\$	8,585.73
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INCREASE THE FOLLOWING ITEMS:

Light Pole Complete, Remove	\$	267.00
Pole Cable Distribution, Wall Mount	\$	640.00
Light Pole Complete, Sp Des, F&I, Single Arm, Bridge Mount, Alum. 45'	\$	13,800.00
	\$	14,707.00

DECREASE THE FOLLOWING ITEMS:

Pull Box, F&I	\$	(560.00)
Light Pole Complete, F&I, Wind Speed, 130, Pole Ht. 45'	\$	(5,100.00)
Luminaire, F&I, Roadway, Cobra Head	\$	(774.00)
Pole Cable Distribution, Conventional	\$	(1,610.00)
	\$	(8,044.00)

Subtotal: Light Pole Revisions	\$	15,248.73
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Adjust Paving Limits at Project Interface between 408-128 and 253G

Projects 408-128 and 253G are active adjacent CFX projects. Due to their schedules, it was necessary to adjust the final paving limits of each job to accommodate construction activities. A corresponding quantity adjustment was previously approved for the 253G project.

DECREASE THE FOLLOWING ITEMS:

Milling Existing Asphalt Pavement, 3/4" Avg. Depth	\$	(29,998.20)
Asphaltic Concrete Friction Course, FC-5, PG 76-22, Black Granite	\$	(66,882.00)
Retro-Reflective Pavement Marker	\$	(983.25)
Preformed Tape, Pavement Messages	\$	(990.00)
Preformed Tape, Arrows	\$	(1,950.00)
Preformed Tape, Arrows, Special Emphasis	\$	(1,500.00)
Preformed Tape, HP, White, Solid, 8"	\$	(2,952.90)
Preformed Tape, HP, White, Solid, 12"	\$	(2,085.00)
Preformed Tape, HP, White, Solid, 18"	\$	(638.00)
Preformed Tape, HP, White, Skip, 12", 3/12	\$	(2,973.50)
Preformed Tape, HP, Yellow, Solid, 6"	\$	(8,740.00)
Preformed Tape, HP, White, Solid, 9"	\$	(9,716.00)
Preformed Tape, HP, White/Black, Contrast Skip	\$	(6,765.00)
	\$	(136,173.85)

Fencing at Kehoe, Alafaya and Pond 8

Fencing at Kehoe, Alafaya and Pond 8 was revised to coordinate with the existing project conditions.

ADD THE FOLLOWING ITEMS:

Fence Gate, Type B, Single, 6.1-12.0' Opening	\$	1,694.00
Fence Gate, Type B, Double 18.1-20.0' Opening	\$	5,992.80
	\$	7,686.80



INCREASE THE FOLLOWING ITEM:

Fencing, Type B, 5.1-6.0' with Vinyl Coating	\$ 18,500.20
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DECREASE THE FOLLOWING ITEMS:

Fencing, Special Type, 5.1-6.0'	\$ (1,414.40)
Fencing, Type B, 5.1-6.0'	\$ (2,528.80)
Fence Gate, Type B, Single, 6.1-12.0' Opening	\$ (1,084.00)
Fence Gate, Type B, Double, 18.1-20.0' Opening	\$ (3,888.00)
	<u>\$ (8,915.20)</u>

Subtotal: Fencing at Kehoe, Alafaya and Pond 8	\$ 17,271.80
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Wrong Way Detection System Equipment Upgrade

The equipment associated with the Wrong Way Driving system was upgraded to new technology. This alteration required additional fiber work to accommodate the upgrade.

INCREASE THE FOLLOWING ITEM:

Fiber Optic Cable, 12-Strand Fiber, F&I	\$ 2,627.40
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Load Center G Power

An additional bore was required to install service wire to ITS Load Center G.

INCREASE THE FOLLOWING ITEMS:

Fiber Optic Conduit, 6" HDPE/SDR 11 Outer Duct with 1~2" HDPE/SDR 11 Direct Bore	\$ 8,162.00
Conductors, F&I, Insulated, #1	\$ 1,876.20
	<u>\$ 10,038.20</u>

Light Pole 55 Grade Adjustment

Remove and replace an existing light pole to accommodate proposed plan grades.

INCREASE THE FOLLOWING ITEMS:

Pull and Splice Box, F&I, 13"x24" Cover Size	\$ 356.00
Light Pole Complete, F&I, Wind Speed 130, Pole Ht. 45'	\$ 5,100.00
Light Pole Complete, Remove	<u>\$ 267.00</u>
	\$ 5,723.00

DECREASE THE FOLLOWING ITEM:

Luminaire, F&I, Roadway, Cobra Head	\$ (774.00)
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Subtotal: RFI 277 Light Pole 55 Grade Adjustment	\$ 4,949.00
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ITS Equipment PI Quantity Adjustments

An increase to quantities of ITS equipment was required to match field conditions.

INCREASE THE FOLLOWING ITEMS:

Gigabit Ethernet Field Switch, F&I	\$ 18,600.00
Uninterruptable Power Supply, F&I	\$ 4,260.00
Remote Power Manager/Environmental Monitor, F&I	<u>\$ 2,220.00</u>
	\$ 25,080.00

#### Direct Bore Fiber Optic Conduit

The fiber optic conduit was direct bored in lieu of an open cut method of construction in order to maintain the condition of the existing pavement.

##### INCREASE THE FOLLOWING ITEM:

Fiber Optic Conduit, 6" HDPE/SDR 11 Outer Duct with 9~1" HDPE, Direct Bore	\$ 84,125.50
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##### DECREASE THE FOLLOWING ITEM:

Fiber Optic Conduit, 9~1" HDPE/SDR 11, Trench or Plow	<u>\$ (30,633.50)</u>
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Subtotal: Direct Bore Fiber Optic Conduit	\$ 53,492.00
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#### Fiber Optic Direct Bore Conduit Quantity Revisions

The quantity revisions were required to meet field conditions.

##### INCREASE THE FOLLOWING ITEM:

Fiber Optic Conduit, 2~1" HDPE/SDR 11, Direct Bore	\$ 82,615.20
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##### DECREASE THE FOLLOWING ITEM:

Fiber Optic Conduit, 6" HDPE/SDR 11 Outer Duct with 2~1" HDPE, Direct Bore	<u>\$ (100,928.00)</u>
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Subtotal: Fiber Optic Direct Bore Conduit Quantity Revisions	\$ (18,312.80)
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#### Fiber Optic Conduit Repair

The Contractor was directed to repair existing damaged fiber optic conduit.

##### INCREASE THE FOLLOWING ITEMS:

Fiber Optic Conduit, 9~1" HDPE/SDR 11, Trench or Plow	\$ 25,610.00
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Fiber Optic Conduit, 6" HDPE/SDR 11 Outer Duct with 9~1" HDPE, Direct Bore	<u>\$ 3,246.00</u>
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	\$ 28,856.00
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#### Adjust Grading and Pull Boxes

Adjust the grade and both electrical and fiber optic pull boxes to facilitate positive drainage at the base of an existing overhead truss sign structure.

##### ADD THE FOLLOWING ITEM:

Adjust Grading and Pull Boxes at Existing Truss	\$ 20,208.21
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#### WB SR 408 Striping Interface with 253G

Adjustments to the traffic control striping were directed to coordinate with the adjacent project.

##### ADD THE FOLLOWING ITEM:

WB SR 408 TCP Interface with 253G - Lane Drop	\$ 17,131.48
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#### ITS CCTV Cabinet Access Adjustments

Adjustments were directed to cabinets located on slopes to improve accessibility by technicians.

##### ADD THE FOLLOWING ITEM:

ITS CCTV Technician Access to Cabinets within Slope	\$ 17,952.66
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Adjustments to Final Quantities for Completed Contract Items

Adjusted quantities for completed pay items in the contract. The following will adjust these contract quantities to reflect the actual authorized or field measured quantities installed under the contract.

ADD THE FOLLOWING ITEMS:

Optional Base Group 05, Limerock 7", 105% Thickness Adjustment	\$ 4,350.00
Optional Base Group 08, Limerock 9.5", 103.6% Thickness Adjustment	\$ 38,228.00
Optional Base Group 09, Limerock 10", 103.7% Thickness Adjustment	\$ 53,523.00
	<u>\$ 96,101.00</u>

INCREASE THE FOLLOWING ITEMS:

Regular Excavation	\$ 63.00
Subsoil Excavation	\$ 12,247.60
Embankment	\$ 48,538.00
Flowable Fill	\$ 5,017.20
Superpave Asphaltic Concrete, Traffic C	\$ 12,760.00
Superpave Asphaltic Concrete, Traffic C, PG 76-22	\$ 9,752.40
Superpave Asphaltic Concrete, Traffic D, PG 76-22	\$ 97,965.00
Asphaltic Concrete Friction, FC-5, PG 76-22, Black Granite	\$ 76,055.20
Asphaltic Concrete Friction, Traffic C, FC-12.5, PG 76-22	\$ 2,902.50
Asphaltic Concrete Friction, Traffic D, FC-12.5, PG 76-22	\$ 14,604.00
Miscellaneous Asphalt Pavement	\$ 87,183.00
Reinforcing Steel, Retaining Walls	\$ 24.70
Reinforcing Steel, Superstructure	\$ 10,248.85
Reinforcing Steel, Substructure	\$ 196.20
Pipe Culvert, BCCMP, Round, 18", S/CD	\$ 3,360.00
Pipe Culvert, Steel Casing, Round, Jack and Bore, 18"	\$ 5,580.00
Steel Piling, HP 14x89	\$ 87,360.00
Steel Piling, HP 14x117	\$ 4,560.00
Test Piles Steel, HP 14x89	\$ 27,540.00
Shoulder Concrete Barrier Wall, Rigid Shoulder, 42"	\$ 21,252.00
Concrete Ditch Pavement, NR, 3"	\$ 2,640.00
Sound Barriers/Noise Walls, incl. Fnd Arch Columns	\$ 19,000.00
Guardrail, Double Face	\$ 10,125.00
Guardrail, End Anchorage Assembly, Flared	\$ 9,000.00
Guardrail, End Anchorage Assembly, Parallel	\$ 5,200.00
Existing Sign Structure Upright Painting	\$ 11,200.00
Junction Box, F&I, Mounted	\$ 3,060.00
	<u>\$ 587,434.65</u>

DECREASE THE FOLLOWING ITEMS:

Portable Changeable Message Signs, Temporary	\$ (520.00)
Asphaltic Concrete Friction, Traffic C, FC-9.5, PG 76-22	\$ (244.50)
Inlets, Dt. Bot, Type B, >10'	\$ (16,000.00)
Junction Box Drainage	\$ (1,690.00)
Pipe Culvert, RCP, Round, 18" S/CD	\$ (2,730.00)
Pipe Culvert, RCP, Round, 24" S/CD	\$ (4,380.00)
Pipe Culvert, RCP, Round, 30" S/CD	\$ (640.00)
Retaining Wall System, Temporary, excl. Barrier	\$ (5,920.20)
Small Fiber Optic Pull Box, 24" Diameter, F&I	\$ (3,020.00)
Large Fiber Optic Pull Box, 36" Diameter, F&I	\$ (4,390.00)
	<u>\$ (39,534.70)</u>

Subtotal: PI Quantity Adjustments - Tentative Final Quantities of Work \$ 644,000.95



Fuel Adjustments: October 2017 - December 2019

The contract provides for adjustments to account for fluctuations in the Fuel Price Index. Adjustments are made only if the current month fuel price is greater or less than 5% of the bid/base fuel price. In accordance with the terms of the contract, the Engineer has calculated Fuel Adjustments for the project for the period of October 2017 through May 2019.

ADD THE FOLLOWING ITEM:

Fuel Adjustments: October 2017 - December 2019	\$	58,317.53
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Bituminous Adjustments: October 2017 - December 2019

The contract contains provisions for bituminous price index adjustments. Adjustments are made only if the current month bituminous price is greater than or less than 5% of the bid/base bituminous price. In accordance with the contract specifications, the engineer has calculated the adjustments for the period from October 2017 through December 2019.

ADD THE FOLLOWING ITEM:

Bituminous Adjustments: October 2017 - December 2019	\$	168,329.58
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**TOTAL AMOUNT FOR PROJECT 408-128**

	<b><u>\$</u></b>	<b><u>929,016.89</u></b>
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**Project 599-541: SR 408/SR 417 Interchange Improvements Phase II**  
**Traffic Control Devices, Inc.**  
**SA 599-541-0220-01**

Adjustments to Final Quantities for Completed Contract Items

Adjusted quantities for completed pay items in the contract. The following will adjust these contract quantities to reflect the actual authorized or field measured quantities installed under the contract.

INCREASE THE FOLLOWING ITEM:

Tubular Route Mark, Power	\$ 172.00
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DECREASE THE FOLLOWING ITEMS:

Pull Box, 13"x24", F&I	\$ (1,355.00)
Fiber Conduit, 2-2" HDPE SDR 11, Trench or Plow, F&I	\$ (901.00)
Allowance for Disputes Review Board	\$ (10,000.00)
Work Order Allowance	\$ (110,000.00)
	\$ (122,256.00)

Subtotal: Adjustments to Final Quantities for Completed Contract Items	\$ (122,084.00)
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Relocation of Dynamic Curve Warning System (DCWS) Speed Sensor

Relocate the DCWS speed sensor closer to the beginning of the curve for the SB SR 417 to WB SR 408 ramp to optimize the activation of the DCWS.

ADD THE FOLLOWING ITEM:

Beacon System Assembly, Relocate	\$ 2,222.99
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<b><u>TOTAL AMOUNT FOR PROJECT 599-541</u></b>	<b><u>\$ (119,861.01)</u></b>
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**CONSENT AGENDA ITEM  
#3**



# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 27, 2020

SUBJECT: Approval of Contract Award to Central Florida Underground, Inc.  
for SR 528/SR 436 Orlando Utilities Commission (OUC) East Jack & Bore  
Joint Participation Agreement (JPA)  
Project 528-143-01, Contract No. 001631

An Invitation to Bid for the referenced project was advertised on November 17, 2019. Responses to the invitation were received from two (2) contractors by the December 12, 2019 deadline. This solicitation is a joint coordination with OUC who reviewed the bids and made the determination to move forward with the solicitation process.

Bid results were as follows:

<u>Bidder</u>	<u>Bid Amount</u>
1. Central Florida Underground, Inc.	\$294,132.00
2. Southern Development & Construction, Inc.	\$528,000.00

The Engineer's estimate for this project is \$248,770.00.

The Engineer of Record for Project 528-143-01 has reviewed the low bid submitted by Central Florida Underground, Inc. and determined that the low bid unit prices are not unbalanced.

This project consists of providing all labor, materials, equipment and incidentals necessary to install a 30" steel casing for a future proposed water line via jack and bore. The work includes all necessary maintenance of traffic to facilitate the improvements as well as coordination with utilities in the work area.

The Procurement Department has evaluated the bids and has determined the bid from Central Florida Underground, Inc. to be responsible and responsive to the bidding requirements. Board award of the contract to Central Florida Underground, Inc. in the amount of \$294,132.00 is recommended.

This project is reimbursed by contract with Orlando Utilities Commission (OUC).

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



# **CONTRACT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
CENTRAL FLORIDA UNDERGROUND, INC.**

**SR 528 / 436 OUC EAST JACK & BORE JPA**

**PROJECT 528-143-01  
CONTRACT NO. 001631**

**CONTRACT DATE: FEBRUARY 13, 2020  
CONTRACT AMOUNT: \$294,132.00**

**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, ADDENDA,  
PUBLIC CONSTRUCTION BOND AND FORMS**

**FOR**

**SR 528 / 436 OUC EAST JACK & BORE JPA**

**PROJECT 528-143-01  
CONTRACT NO. 001631**

**DECEMBER 2019**



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TS	TECHNICAL SPECIFICATIONS	TS-1 to TS-5
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SP	SPECIAL PROVISIONS	SP-1 to SP-37
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Addendum No. 1      Addendum No. 2

Plans

## CONTRACT

This Contract No. 001631 (the "Contract"), made this 13<sup>th</sup> day of February 2020, between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, hereinafter called CFX and CENTRAL FLORIDA UNDERGROUND, INC., of 990 Miller Drive, Altamonte Springs, FL 32701, 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 528-143-01, SR 528 / SR 436 OUC East Jack & Bore JPA, as detailed in the Contract Documents and any addenda or modifications thereto. Contract time for this project shall be 45 calendar days. The Contract Amount is \$294,132.00. This Contract was awarded by the Governing Board of CFX at its meeting on February 13, 2020.

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: \_\_\_\_\_

CONTRACTOR

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

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

\_\_\_\_\_  
Title

ATTEST: \_\_\_\_\_ (Seal)

DATE: \_\_\_\_\_

Approved as to form and execution, only.

General Counsel for CFX

\_\_\_\_\_



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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.

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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 decrees 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:

<b>Contract Amount</b>	<b>Workers' Comp/ Employer's Liability</b>	<b>General Liability (per occurrence/ aggregate)</b>	<b>Automobile Liability</b>
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.

<b>Contract Amount</b>	<b>Minimum Limit</b>	<b>Maximum Deductible</b>
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](mailto: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 the Work. 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.

#### 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.

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.
- 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.

## 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.

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.

**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.

## 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 RRBBCOE ownership cost plus 100% of the RRBB and/or RRBBCOE 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 RRBBCOE 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 RRBBCOE 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 - BINDING ARBITRATION

8.1 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.

8.2 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.

8.3 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.

8.4 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.

8.5 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 8

**CONSENT AGENDA ITEM  
#4**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 24, 2020

SUBJECT: Approval of Contract Award to Jr. Davis Construction Company, Inc. for  
SR 429 Stoneybrook West Interchange  
Project 429-316A, Contract No. 001635

An Invitation to Bid was advertised on November 24, 2019. CFX utilized an A+B bid procurement method for this project to expedite the construction schedule in coordination with the City of Winter Garden. This method of awarding a bid takes into consideration project duration and costs. By providing a cost for each working day, the contract combines the cost to perform the work (A component) with the cost of the impact to the public (B component) to provide the lowest cost. Responses to the invitation were received from five (5) contractors by the January 13, 2020 deadline.

Bid results were as follows:

	<u>Bidder</u>	<u>Bid Amount</u>	<u># Contract Days</u>
1.	Jr. Davis Construction Company, Inc.	\$10,823,189.37	260
2.	Ranger Construction Industries	\$10,703,362.81	280
3.	Southland Construction Inc.	\$10,591,332.00	288
4.	Southern Development & Construction	\$11,394,225.00	270
5.	Hubbard Construction Company	\$11,732,087.86	290

The Engineer's estimate for this project is \$9,795,185.89 with 290 contract days.

The Engineer of Record for Project 429-316A has reviewed the composite bid submitted by Jr. Davis Construction Company, Inc. and determined that the unit prices are not unbalanced.

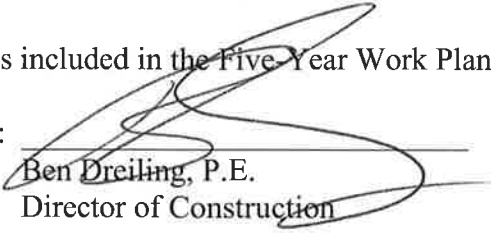
This project consists of providing all labor, materials, equipment, and incidentals necessary to perform improvements on SR 429 Stoneybrook West Interchange including, two new ramps with new toll gantries, the addition of auxiliary lanes on SR 429, pond modification and cantilever retaining wall construction.

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

The Procurement Department has evaluated the bids and has determined the bid from Jr. Davis Construction Company, Inc. to be responsible and responsive to the bidding requirements. Board award of the contract to Jr. Davis Construction Company, Inc. in the amount of \$10,823,189.37 is recommended.

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

Reviewed by:

  
Ben Dreiling, P.E.

Director of Construction



# **CONTRACT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
JR. DAVIS CONSTRUCTION CO., INC.**

**SR 429 STONEYBROOK WEST INTERCHANGE**

**PROJECT 429-316A  
CONTRACT NO. 001635**

**CONTRACT DATE: FEBRUARY 13, 2020  
CONTRACT AMOUNT: \$10,823,189.37**

**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY**

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



# **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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

**FOR**

**SR 429 STONEYBROOK WEST INTERCHANGE**

**PROJECT 429-316A  
CONTRACT NO. 001635**

**FEBRUARY 2020**

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P	PROPOSAL	P-1 to P-14
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-13
	(See Technical Specifications Table of Contents for listing of individual specifications sections.)	
SP	SPECIAL PROVISIONS	SP-1 to SP-38
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FA	FUEL ADJUSTMENT SHEET	1
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Addendum No. 1      Addendum No. 2

Plans

## CONTRACT

This Contract No. 001635 (the "Contract"), made this 13<sup>th</sup> day of February 2020, between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, hereinafter called CFX and JR. DAVIS CONSTRUCTON CO., INC., of 210 Hangar Road, Kissimmee, FL 34741, 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 429-316A, SR 429 Stoneybrook West Interchange, as detailed in the Contract Documents and any addenda or modifications thereto. Contract time for this project shall be 260 calendar days. The Contract Amount is \$10,823,189.37. This Contract was awarded by the Governing Board of CFX at its meeting on February 13, 2020.

The Contract Documents consist of:

1. The Contract,
2. The Memorandum of Agreement,
3. The Addenda, as may modify the General Specifications, Technical Specifications, Special Provisions, Technical Special Provisions, Plans or other Contract Documents,
4. The Plans,
5. The Special Provisions,
6. The Technical Special Provisions,
7. The Technical Specifications,
8. The General Specifications,
9. The Standard Specifications,
10. The Design Standards, and
11. 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: \_\_\_\_\_

JR. DAVIS CONSTRUCTION CO., INC.

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

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

\_\_\_\_\_  
Title

ATTEST: \_\_\_\_\_ (Seal)

DATE: \_\_\_\_\_

Approved as to form and execution, only.

General Counsel for CFX

\_\_\_\_\_

## **MEMORANDUM OF AGREEMENT**

### **PLANS, SPECIFICATIONS AND DOCUMENT REVIEW MEETING January 17th, 2020**

This PLANS, SPECIFICATIONS AND DOCUMENT REVIEW MEETING MEMORANDUM ("Memorandum") for the SR 429 Stoneybrook West Interchange Improvements, Project No. 429-316A is made and entered this day of January 17<sup>th</sup>, 2020, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX") and the apparent successful responsive bidder, Jr. Davis, Construction Company, Inc. ("Contractor"), a Florida corporation with offices at 210 Hangar Road, Kissimmee FL 34741 (Individually, Party and collectively, Parties)

#### **WITNESSETH THAT:**

**WHEREAS**, CFX will enter into an agreement with Jr. Davis, Constructors to construct Project 429-316A SR 429 Stoneybrook West Interchange Improvements, pursuant to the execution of this Memorandum;

**WHEREAS**, CFX has solicited the Services of the Contractor to provide labor, equipment and materials ("Services") to construct Project 429-316A and the Contractor has agreed to provide such Services in accordance with their tender of January 13<sup>th</sup>, 2020;

**WHEREAS**, the Project generally consists of providing all labor, materials, equipment and incidentals necessary to perform improvements on SR 429 Stoneybrook West Interchange including, two new ramps with new toll gantries, the addition of auxiliary lanes on SR 429, pond modification and cantilever retaining wall construction;

**WHEREAS**, the Contractor is qualified, capable, and willing to provide the Services;

**NOW, THEREFORE**, the Parties mutually agree as follows:

#### **1. PLANS, SPECIFICATIONS AND DOCUMENT REVIEW MEETING**

A meeting was held on January 17<sup>th</sup>, 2020 between 1:00 PM and 2:00 PM in accordance with Article 3.4 of the General Specifications. The purpose of this meeting was to address all questions or differences in interpretations of the documents and to provide clarifications. The Contractor's key personnel together with CFX's representatives, as identified in Attachment A, List of Attendees attended this meeting.

#### **2. PROCEDURES**

At this meeting each page of the plans, specifications and other Contract Documents, which were used by the Contractor in preparing their offer, was reviewed. Items that could be the cause of potential claims were identified and CFX will make such corrections and interpretations, as CFX deems necessary, to reflect the intent of the plans and specifications.



### **3. ITEMS DISCUSSED AND AGREED TO**

#### **A. Maintenance of Traffic**

- PCMS boards are included in pay item 102-1 when utilized for lane closures and detours for all contract work and / or as specified in the Traffic Control Plans. Only PCMS boards independently directed by the CEI/CFX will be paid separately under pay item 102-99.
- Extended closures for Stonybrook Parkway will be limited to 7 days Eastbound and 21 days westbound. Sheet 132 note 3.
- Lane rental: Reference SP-8 below.
- Contractor agrees that the Traffic Control Plans provide adequate work zone widths and geometry to complete the work.
- Alternate Traffic Control Plan: Contractor may submit an alternate traffic control plan signed and sealed by a professional engineer. TSP section 102-4. Contractor intends to submit Alternate Traffic Control Plan.

#### **B. Contract Time / Progress of the Work / Hand off Meeting**

- Contract Time is 260 calendar days. Liquidated damages are \$15,000 per day.
- Contract time is charged during holidays and contract time will not be granted for weather other than per GS 6.7.3.1 (hurricanes and temperature restrictions for placement of FC-5).
- GS 6.8 Partial payment may be withheld, in addition to retainage, on progress estimates, if the Contractor fails to maintain satisfactory progress.
- CEI will schedule a site meeting with CFX maintenance to discuss existing conditions, mowing limits, fence maintenance etc.

#### **C. Project Specifics**

- Temporary Shoring
  - Pay item 102-1 includes all cost for materials, installation, design and geotechnical soil borings for non-critical temporary walls and temporary shoring.
- Discuss watermain relocation / changes to the watermain relocation.
  - May be reduced from 753' to approx. 600'.
  - May be relocated away from Stoneybrook Pkwy instead of underneath.
  - Grout fill / abandonment may be an option for the existing pipe.
  - Given approval from the City of Winter Garden the Contractor would like to move forward with this option.
  - Sheet 165, note 22: All work associated with the water main relocations shall be per the City of Winter Garden Manual of Standards and Specifications for Utilities Construction.
    - CEI provided a copy of the latest manual for Jr. Davis today.
- CCTV, TMS poles, DCS poles, DMS structures, WWD equipment, cabinets, pull boxes, FOMH, conduit and power services shall be geolocated and documented as follows.
  - GPS data with accuracy of 2' or better.
  - Position dilution of position mask of 4 or less & data collected from a minimum of 4 satellites.
  - GPS datum approved in advance by CFX.
  - Latitude, longitude & elevation in decimal degrees to the 6<sup>th</sup> place.
- Contractor will provide inspector training for traffic monitoring stations, data collection sensors, CCTV and camera lowering devices, dynamic message signs and locate system and equipment. The trainings shall be held at CFX to accommodate 20 people, 10 of which will be CFX reps, prior to any ITS work.

- Fiber Optic Network training will not be required except upon request as an additional item.

#### **D. Addendum 1**

- Changes to the General Specifications: Disputes Review Board Three Party Agreement.
- Project Execution:
  - Contracts returned to CFX no later than: 2/11/20
  - Board award and CFX execution: 2/13/20.
  - Pre-Construction Conference: 2/14/20 @ 9:00 AM @ CFX HQ
  - Projected NTP 2/17/20.
- Added SP-38 Contractor Locates and Protection of Infrastructure.
  - CFX infrastructure will not be located through "Sunshine 811". This remains unchanged.
  - It shall be the Contractor's responsibility to locate all existing CFX owned ITS and Lighting underground facilities. SP-38 shall not preclude CFX from assisting with initial locates. Pat Collins ITS / DBI highway lighting.
  - It is the intention of this new Special Provision to require that the Contractor be in possession of locate equipment, understand how to use the equipment (CFX may assist in training) and be proactive in the establishment and re-establishment of locates in the absence of CFX personnel.
- Revised section 600, 612 see Project Specifics.
- Revised section 631 Fiber Optic Network System Recovery, 635 ITS Pull Boxes, 638 ITS Communication and Power Conduit Systems, 639A ITS Electrical Systems, 663 Data Collection Sensors, 664 Traffic Monitoring Stations, 668 ITS Device Cabinets, 683 ITS Auxiliaries, 686 CCTV Equipment
- Added pay items and pay item notes for existing lighting assessment 715-99-X sheet L-7.
- Buried rubble removal will be reimbursed on a time and material basis for loading, hauling and dump fees. All other costs are incidental to excavation or wall construction. Sheet B-04. Any dewatering during removal will be incidental to excavation and wall construction unless CFX directs the Contractor to excavate beyond depths required for Contract work.

#### **E. Special Provisions**

- SP-8 Lane closure restrictions. \$1,000 per lane / ramp / minute until open to traffic. This is to include Stonybrook West Parkway.
- SP-9: Roadside and slope mowing. Anticipate 10 mowing cycles.
- SP-14: Direct Material Purchase Option. CFX reserves the right, at its sole option and discretion to purchase certain materials directly from the Contractor's vendors at prices and terms quoted to the Contractor with applicable Florida State Sales Tax and included in the Contractor's bid. It is understood that the Contractor's bid includes sales tax and CFX's exempt status may result in cost reduction to CFX. Items that may be considered.
  - Overhead cantilever sign structures, toll gantries.
- SP-27: Upright painting. Gantry color to be specified by owner.
- SP-29: Existing cross slopes must be provided to CEI at least 7 days in advance of milling operations to determine whether cross slope corrections will be required. It is the Contractor's responsibility to identify and submit a plan to correct deficient areas. If geometry permits, the intention is to correct the cross slope with milling and place a

uniform thickness of asphalt. There shall be no cross-slope alteration in super elevated sections.

- SP-31: Asphalt Compaction- Only static rollers are permitted. No forms of any vibratory or oscillatory compaction.
- SP-35: Discussed temporary Shoring. Design and installation is in Contractor bid. EOR has determined that wall is non-critical.
- SP-37: "The Contractor shall coordinate work schedules with CFX's Toll Equipment Contractor. The plans contain specific phase notes throughout that dictate to the Contractor the days required for the TEC to perform their respective installation of toll collection equipment. The Contractor shall work the required durations into their schedule".
  - It is intended that the installation of Toll Collection Equipment will be done concurrently with other construction items. While it is proposed that the Contractor coordinate with CEI/ TEC and include estimated durations on their schedule, it is not the intention to include the final commissioning of Toll Collection Equipment in reference to Liquidated Damages given that all other Contract items have been completed.

#### **F. Permits**

- FDEP Pond Modification
  - U.S. Army Corps of Engineers – No separate authorization requirements.
  - Wetland mitigation is not required.
  - NPDES required.
  - Dewatering permit if discharging offsite.
- FDEP Watermain Relocation
  - Clearance Form
  - Record Drawings (City of Winter Garden will require CADD and S&S as-built drawings)
  - Bacteriological Results
- Orange County MOT and ROW permits will be required.
- City of Winter Garden permits may be required. (ROW)

#### **G. Contractor concerns / Open discussion**

- The Contractor has not identified any missing or duplicated pay items.
- The Contractor does not have any concerns with temporary drainage or temporary wall / shoring for construction of the project.
- The Contractor has not identified any errors or omissions in the plans or bidding documents with the exception of the following Contractor comments.
  - E6 cabinet called out as 72"H x 96"W x 24"D. Supplier "Hoffman" has stated that a 96" cabinet cannot be fabricated as a 2 door enclosure. Hoffman quoted 74"H x 72"W x 24"D E6 cabinet.
  - Contractor noted that the milling and resurfacing of ramps A&B may not be able to be done under single lane closures and that detours are not provided in the plans.
  - Contractor has identified that the jack and bore location is very close to an existing power pole. EOR has confirmed that the location is close but adequate clearance is provided.
- The Contractor has not identified any literal interpretations of one or more specifications that may not reflect CFX's intentions or desires.
- The Contractor plans to submit an alternate Traffic Control Plan.
- The Contractor plans to submit a Value Engineering Change Proposal.

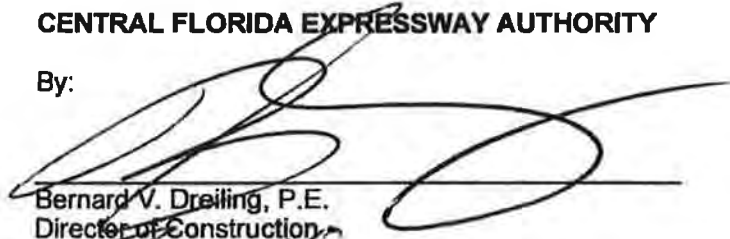
#### 4. EXECUTION

It is agreed and understood by the Parties that the execution of this Memorandum and its effectiveness is contingent upon execution of the Prime Agreement by and between the CFX and Contractor. The Contractor by signing this document certifies as required by Article 3.4 of the General Specifications, that there are no known errors or omissions in the Plans, Specifications or other Contract documents.


**IN WITNESS WHEREOF**, this Agreement has been executed by the CFX and the Contractor, effective from the day and year first written above.

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By:



Bernard V. Dreiling, P.E.  
Director of Construction

  
Witness

#### Jr. Davis Construction Company, Inc.

By:



Don Bernhoft:  
Operations Manager:

  
Witness

This MOA is considered the written minutes for this duly noticed meeting held on January 17<sup>th</sup>, 2020, commencing at 1:00 PM. at the CFX Administrative Bldg., Orlando, Florida. In accordance with FS 286.013(b)1 and FS 286.0113(2)(c)1 this meeting was exempt from the public.

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**SR 429 Stoneybrook West Interchange**  
**CFX Project Number 429-318A**  
**CONTRACT No. 001635**  
**Pre-Award Meeting**  
**SIGN IN SHEET**

[illegible]



## **ATTACHMENT B**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SR 429 / Stoneybrook West Interchange Improvements  
PROJECT NUMBER: 429-316A  
PLANS, SPECIFICATIONS AND DOCUMENT REVIEW MEETING  
January 17<sup>th</sup>, 2020**

### **INTRODUCTION**

### **REVIEW TOPICS**

1. General Conditions and Technical Specifications
2. Plans Project No.: 429-316A  
Addendum Number 1 (December 23rd, 2019)
3. Special Provisions
4. TSPs
5. M/WBE Participation
6. Coordination & Communication

### **OTHER BUSINESS**

### **EXECUTION OF MEMORANDUM**

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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.

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

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

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

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

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

**1.3.28 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.

**1.3.29 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.

**1.3.30 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.

**1.3.31 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.

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

**1.3.33 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.

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

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

**1.3.36 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.

**1.3.37 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.

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

**1.3.39 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.

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

**1.3.41 Standard Specifications** - The FDOT Standard Specifications for Road and Bridge Construction, 2019 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.

**1.3.42 State** - State of Florida

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

**1.3.44 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.

**1.3.45 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.

**1.3.46 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.

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

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

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

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

**1.3.51 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.

**1.3.52 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.

**1.3.53 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.

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

**1.3.55 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.

**1.3.56 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.

**1.3.57 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 2.4.14. 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.

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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.

- 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.

- 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.

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.

(d) Construction Affecting Public Safety applies to construction that may jeopardize public safety such as structures spanning functioning vehicular roadways, pedestrian walkways, railroads, navigation channels, navigable waterways and walls or other structure's foundations located in embankments immediately adjacent to functioning roadways. It does not apply to those areas of the site under the Contractor's control and outside the limits of normal public access.

(e) Major and unusual structures include bridges of complex geometry and/or complex design. Generally, this includes the following types of structures:

- Bridges with an individual span longer than 300 feet.
- Structurally continuous superstructures with spans over 50 feet.
- Steel box and plate girder bridges.
- Steel truss bridges.
- Concrete segmental and longitudinally post-tensioned continuous girder bridges.
- Cable stayed or suspension bridges.
- Curved girder bridges.
- Arch bridges.
- Tunnels.
- Movable bridges (specifically electrical and mechanical components).
- Rehabilitation, widening or lengthening of any of the above.

(f) Special Erection Equipment includes launching gantries, beam and winch Equipment, form travelers, stability towers, strongbacks, erection trusses, launching noses or similar items made purposely for construction of the structure. It does not apply to commonly available proprietary construction Equipment such as cranes.

(g) Falsework includes any temporary construction Work used to support the permanent structure until it becomes self-supporting. Falsework includes steel or timber beams, girders, columns, piles and foundations and any proprietary Equipment including modular shoring frames, post shores and adjustable horizontal shoring.

(h) Formwork includes any temporary structure or mold used to retain plastic or fluid concrete in its designated shape until it hardens. Formwork comprises common materials such as wood or metal sheets, battens, soldiers and walers, ties, proprietary forming systems such as stay-in-place metal forms, and proprietary supporting bolts, hangers and brackets.

(i) Scaffolding is an elevated work platform used to support workmen, Materials and Equipment but not intended to support the structure.

(j) Shoring is a component of falsework such as horizontal, vertical or inclined support members. In this specification, this term is used interchangeably with falsework.

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 following signing and lighting items are defined as structural items:

Lighting: poles, bracket arms, frangible bases and foundations.

Signing: Mounting brackets for bridge mounted signs, overhead cantilever structures, overhead truss structures, overhead sequential sign structures and multiple post sign supports, along with applicable foundations.

In general, shop drawings shall be required for:

(a) Bridge, Bulkhead and Retaining Wall Structures, cofferdams, Lighting and Signing Structural Items along with applicable foundations.

(b) Signing, Lighting, Drainage Structures and Attenuators and other nonstructural items.

(c) Building Structures.

(d) Contractor Originated Re-Design.

(e) Design and/or structural details furnished by the Contractor in compliance with the Contract, according to the sections of the Specifications pertaining to the Work, to the Plans or other Contract Documents.

(f) Special Erection Equipment.

(g) Falsework and Shoring.

Additional clarification for certain types of bridge structures is provided in 3.1.4.9.

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.

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:

3.1.4.5.1 Bridge, Bulkhead and Retaining Wall Structures and Lighting and Signing Structural Items with appropriate foundations: Shop drawings for pre-qualified items, excluding their corresponding foundations, are not required.

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.

3.1.4.5.2 Signing, Lighting, Drainage Structures, Attenuators and other nonstructural items: The Contractor shall submit seven (7) sets of prints of each shop drawing to the CEI with a copy of the transmittal letter sent to the Consultant.

3.1.4.5.3 Building Structures: One (1) set of prints and one (1) set of reproducible copies of each series of working, shop and erection drawings and all correspondence related to building structures shall be submitted to the CEI with a copy of the transmittal sent to the Consultant.

3.1.4.5.4 Contractor Originated Design or Redesign: 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. The submittal and copies of the transmittal letters shall be transmitted in accordance with the requirements of 3.1.4.5.1 through 3.1.4.5.3, as appropriate.

**3.1.4.5.5 Special Erection Equipment:** For (a) Construction Affecting Public Safety and (b) Major or Unusual Structures: 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. The submittal and copies of the transmittal letters shall be transmitted in accordance with the requirements of 3.1.4.5.1 through 3.1.4.5.3, as appropriate.

**3.1.4.5.6 Falsework and Shoring:** For (a) Construction Affecting Public Safety and (b) Major and Unusual Structures: 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. The submittal and copies of the transmittal letters shall be transmitted in accordance with the requirements of 3.1.4.5.1 through 3.1.4.5.3, as appropriate.

**3.1.4.5.7 Formwork:** Formwork shall be in accordance with Section 400-5 of the Standard Specifications.

**3.1.4.5.8 Scaffolding:** The Contractor shall be responsible for the safe installation and use of all scaffolding. No submittals are required.

**3.1.4.5.9 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. The submittal and copies of the transmittal letters shall be transmitted in accordance with the requirements of 3.1.4.5.1 through 3.1.4.5.3, as appropriate.

**3.1.4.5.10 Beam and Girder Temporary Bracing:** The Contractor is solely responsible for ensuring stability of beams and girders during all handling, storage, shipping and erection. Adequately brace beams and girders to resist wind, weight of forms and other temporary loads, especially those eccentric to the vertical axis of the products, considering actual beam geometry and support conditions during all stages of erection and deck construction.

Develop the required designs following the AASHTO Guide Design Specifications for Bridge Temporary Works and Construction Handbook for Bridge Temporary Works and the Contract Documents.

For Construction Affecting Public Safety, submit signed and sealed calculations for stability of all beams and girders.

#### 3.1.4.6 Certifications:

3.1.4.6.1 Special Erection Equipment: Prior to its use, special erection Equipment shall be personally inspected by the Specialty Engineer who shall certify to the CEI in writing that the Equipment has been fabricated in accordance with the submitted drawings and calculations. In addition, after assembly, the Specialty Engineer shall observe the Equipment in use and shall certify to the CEI in writing that it is being utilized as intended and in accordance with the submitted drawings and calculations. In each case, the Specialty Engineer shall also sign and seal the letter of certification.

3.1.4.6.2 Falsework and Shoring requiring shop drawings per 3.1.4.5.6: After its erection or installation but prior to the application of any superimposed load, the falsework shall be personally inspected by the Specialty Engineer who shall certify to the CEI in writing that the falsework has been constructed in accordance with the Materials and details shown on the submitted drawings and calculations. The Specialty Engineer shall also sign and seal the letter of certification.

3.1.4.6.3 Formwork: For Construction Affecting Public Safety, prior to the placement of any concrete, the Contractor shall certify to the CEI in writing that formwork has been constructed to safely withstand the superimposed loads to which it will be subjected.

#### 3.1.4.7 Processing of Shop Drawings:

3.1.4.7.1 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 45 calendar day review period by the CEI. The review period commences upon receipt of the Contractor's submittal by the CEI as stipulated in 3.1.4.5 and terminates upon transmittal of the submittal back to the Contractor by the CEI. The Contractor shall adjust its schedules so that a 30 calendar day period is provided for each re-submittal.

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.

**3.1.4.7.2 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.

**3.1.4.7.3 Special Review by CEI of Shop Drawings for Construction Affecting Public Safety:** For Construction Affecting Public Safety, the CEI will make an independent review of all relevant shop drawings and similar documents in order to verify the safety of the intended construction and construction of the permanent Work shall not proceed until receipt of the

CEI's approval. The requirement herein does not supercede the Contractor's duty and responsibility for all safety provisions, public and/or otherwise, for the Project.

3.1.4.8 Avoidance of Conflict of Interest: Neither the CEI, the Consultant nor any design engineer who participated in the design phase of the Project can be engaged by the Contractor to perform Work as the Contractor's Specialty Engineer unless expressly approved in writing by CFX.

3.1.4.9 Other Requirements for Shop Drawings for Bridges:

3.1.4.9.1 Shop Drawings for Structural Steel and Miscellaneous Metals: Shop drawings shall be furnished by the Contractor for structural steel and miscellaneous metals. Shop drawings shall consist of working, shop and erection drawings, welding procedures and other working plans, showing details, dimensions, sizes of material, and other information necessary for the complete fabrication and erection of the metal work.

3.1.4.9.2 Shop Drawings for Concrete Structures: Shop drawings shall be furnished by the Contractor for such details as may reasonably be required for the effective prosecution of the Work and which are not included in the plans furnished by CFX. These may include details of falsework, shoring, special erection Equipment, bracing, centering, formwork, masonry layout diagrams and diagrams for bending reinforcing steel in addition to any details required for concrete components for the permanent Work.

3.1.4.9.3 Shop Drawings for Major and Unusual Structures: In addition to any other requirements, no less than 60 days from the start of Work as shown in the latest CPM, the Contractor shall submit information to the CEI outlining Contractor's overall approach to the Project. Where applicable to the Project, this information shall include but need not be limited to items such as:

- (1) Overall construction program for the duration of the Contract. milestone dates should be clearly shown. (For example; the need to open a structure by a certain time for traffic operations.)
- (2) Overall construction sequence. The order in which individual structures are to be built, the sequence in which individual spans of girders or cantilevers are erected and the sequence in which spans are to be made continuous.
- (3) The general location of any physical obstacles to construction that might impose restraints or otherwise affect the construction and an

outline of how the Contractor intends to deal with such obstacles as it builds the structure(s). (For example; obstacles might include road, rail and waterway clearances, temporary diversions, transmission lines, utilities, property and the Contractor's own temporary Work such as haul roads, cofferdams, plant clearances and the like.)

(4) The approximate location of any special lifting Equipment in relation to the structure including clearances required for the operation of the Equipment. (For example; crane positions and operating radii and the like.)

(5) The approximate location of any temporary falsework and conceptual outline of any special erection Equipment. (The precise locations and details of attachments, fixing devices, loads etc. will be covered under later detailed submittals.)

(6) An outline of the handling, transportation and storage of fabricated components, such as girders or concrete segments. (Precise details will be covered under later detailed submittals).

(7) Any other information pertinent to the Contractor's proposed scheme or intentions.

The above information shall be clear and concise and shall be presented on as few drawings as possible in order to provide an overall, integrated summary of the Contractor's intentions and approach to the Project. These drawings are for information, review planning and to assess the Contractor's approach in relation to the intent of the original design. Their delivery to and receipt by the CEI shall not constitute any acceptance or approval to the proposals shown thereon. The details of such proposals shall be the subject of subsequent detailed shop drawing submittals. Variations from these overall scheme proposals shall be covered by timely revisions and re-submittals.

3.1.4.10 Corrections for Construction Errors: For Work that is constructed incorrectly or does not conform to the requirements of the Contract drawings or Specifications, the Contractor has the prerogative to submit an acceptance proposal to the CEI for review and disposition. Any such proposal will be judged both for its effect on the integrity and maintainability of the structure or component thereof and also for its effect on Contract administration.

Any proposal judged by the CEI to infringe on the structural integrity or maintainability of the structure will require a technical assessment and submittal by the Contractor's Specialty Engineer as described in 3.1.4.5.4.



The cost of carrying out all approved corrective construction measures shall be entirely at the Contractor's expense.

Notwithstanding any disposition on the compensation aspects of the defective Work, the CEI's decision on the technical merits of a proposal shall be final.

3.1.4.11 Modifications for Construction: Where the Contractor is permitted to make modifications to the permanent Work for the purposes of expediting the Contractor's chosen construction methods, Contractor shall submit its proposals to the CEI for review and approval. Proposals for modifications shall be submitted under the shop drawing process.

Minor modifications shall be limited to those items that in the opinion of the CEI do not significantly affect the quantity of measured Work nor the integrity or maintainability of the structure or its components.

Major modifications are any modifications that in the opinion of the CEI significantly affect the quantity of measured Work or the integrity or maintainability of the structure or its components. (For example, substitutions of alternative beam sizes and spacing, change of material strength or type, and the like.)

The CEI's decision on the delineation between a minor and a major modification and disposition on a proposal shall be final.

3.1.4.12 Cost of Shop Drawings: The Contract Prices shall include the cost of furnishing shop and working drawings and the Contractor will be allowed no extra compensation for such drawings.

### 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.

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.

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### 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.

### 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.

### 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.

#### 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.

#### 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.
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.

#### 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 decrees 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.



## 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.

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.
- 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, or as approved by CFX, as defined by A.M. Best and Company's Key Rating Guide. 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:**

<b>Contract Amount</b>	<b>Workers' Comp/ Employer's Liability</b>	<b>General Liability (per occurrence/ aggregate)</b>	<b>Automobile Liability</b>
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.

- 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.

<b>Contract Amount</b>	<b>Minimum Limit</b>	<b>Maximum Deductible</b>
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.

#### 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](mailto: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.

#### 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.

#### 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.

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 Preliminary, Baseline, Updated Baseline, and Two-Week Look-Ahead Schedules:

### 6.3.3.1 Scheduling Terminology

Accepted Baseline Schedule: The Accepted Baseline Schedule is the Baseline Schedule submitted by the Contractor and accepted by CFX. Review and acceptance of the schedule by CFX will be for the sole purpose of determining if the schedule is in substantial compliance with the General Specifications and does not mean that CFX agrees or disagrees, approves or disapproves of the constructability, means and methods, validity and accuracy of the submitted baseline schedule. The Contractor is solely responsible for the constructability, means and methods, validity and accuracy of the submitted baseline schedule.

Acknowledged Receipt of the Updated Baseline Schedule: The Contractor is solely responsible for the constructability, means and methods, validity and accuracy of the updated baseline schedule. CFX does not accept or reject, agree or disagree, approve or disapprove of the constructability, means and methods, validity or accuracy of the

Updated Baseline Schedule. Instead, CFX will transmit a letter acknowledging receipt of the Contractor's submittal of the Updated Baseline Schedule.

**Baseline Schedule:** The Baseline Schedule does not contain any progressed activities. Therefore, each activity's early and late dates are planned dates, not actual dates. The Baseline Schedule contains the necessary breakdown of activities to adequately track the progress of the project. Activities in the Baseline Schedule shall include, but not be limited to, activities for all work to be performed. In addition, the baseline schedule should include milestone activities, and activities for the procurement of significant equipment and materials, including activities for submittals and approvals, orders, fabrication, request for delivery and delivery. Procurement activities should be logically tied to their respective work activities.

**Contract Completion Date:** Also called the Approved Contract Completion Date or the Authorized Contract Completion Date or the Last Chargeable Contract Date.

The Contract Completion Date is calculated by adding the number of calendar days stated in the contract to complete all work, to the first chargeable day of the Contract, less one day.

For time extensions granted by CFX, the Contract Completion Date is calculated by adding the number of calendar days granted to the Contract Completion Date.

If a critical activity is delayed, the Contract Completion Date(s) may also be delayed if the durations on the remaining activities on the critical path are accurate. The Contractor acknowledges and agrees that actual delays to activities which, according to the CPM schedule, do not directly affect the main project critical path, do not have any effect on the Contract Completion Date(s) and shall not be the basis for a change therein.

**CPM:** Critical Path Method of scheduling.

**Early Dates:** The earliest scheduled start and/or finish date assigned to a CPM scheduled activity.

**Excusable Delay:** As defined in subarticle 6.7.3.1.

**Adjustments to Contract Time.**

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

**Lag:** An undefined delay between two scheduled activities. For instance, a 5 day lag between activity A (the predecessor) and activity B (the successor) with a Finish to Start (FS) relationship would mean that activity B would not start until 5 days after the finish of activity A.

**Late Dates:** The latest scheduled start and/or finish date assigned to a CPM scheduled activity.

**Longest Path:** In a Baseline Schedule, the Longest Path of the CPM schedule is a continuous series of activities starting from the first scheduled activity and ending with the last scheduled activity, that are linked in a logical sequence and where each activity in the sequence has the least value of total float in the schedule. If each of the longest path activities were assigned the same calendar, then each activity on the longest path would have the same value of total float. In an Updated Baseline Schedule (a baseline with actual progress recorded), the Longest Path will begin at the data date (also known as the cut-off date) and extend to the last activity scheduled in the Contract. The Contractor shall sequence work so that only one Longest Path is created in the Baseline or Updated Baseline schedule.

**Negative Total Float:** Also called Negative Float. The greatest number of days, stated as a negative number, that the Contract Completion Date is delayed. When an activity has negative total float, the activities with negative total float have early dates scheduled later than their late dates.

**Planned Dates:** Also called early and late dates.

**P6:** The scheduling software Primavera Project Planner, produced by Primavera Systems, Inc., which shall be used by the Contractor for all CPM scheduling tasks.

**Preliminary Schedule:** The Preliminary Schedule is a bar chart schedule submitted at the Pre-Construction Conference. Refer also to specification section 6.3.3.3.

**Revised Baseline Schedule:** The Baseline Schedule shall only be revised with the approval of CFX.

**Total Float:** Also called Float. The number of days an activity can be delayed without delaying the Contract completion date.

CFX and Contractor agree that float is not for the exclusive use or benefit of either the Contractor or CFX and must be used in the best interest of completing the Project on time. The Contractor agrees that: 1) float time may be used by CFX; and 2) there shall be no basis for a Project time extension as a result of any Project problem, change order or delay which only results in the loss of available positive float, or negative float that is greater than the most negative float in the CPM. The Contractor

will not be permitted to alter float through such applications as extending duration estimates or to change sequence relationships, etc., to consume available positive float.

**Time Impact Analysis:** If the Contractor requests a time extension to any required milestone date for changes in the Work ordered by CFX, the Contractor shall furnish such justification and supporting evidence in the form of a Time Impact Analysis illustrating the influence of the change on the Contract time such that CFX can evaluate the request. This Time Impact Analysis shall include a network analysis demonstrating how the Contractor has incorporated the change in the schedule. Each such Time Impact Analysis shall demonstrate the time impact of the performance of the changed Work as the date upon which the change arose or was otherwise ordered, the status of the Work at that time based upon the CPM schedule update prevailing at that time and the duration or logic computations for all of the affected activities. The Time Impact Analysis shall be submitted within ten (10) calendar days following the commencement of the delay event. Failure to make notification in the time and manner required shall be considered a waiver of the Contractor's entitlement to any time extension resulting from such delay. No time extension will be considered unless it specifically contains at least the following detailed information:

1. Date delay began;
2. Date delay impact was resolved;
3. Detailed chronology of delay including the dates of all applicable notifications and submittals;
4. Specific critical activities affected and the dates of impact;
5. The activity durations used in the Time Impact Analysis shall be those reflected by the latest Project schedule update prevailing at the time of the initiation of the delay event.

**Updated Baseline Schedule:** Also called the Schedule Update, is a copy of the Baseline Schedule with activities updated for actual start and/or finish dates and percent completion.

**Weather Event:** As defined in 6.7.3

#### 6.3.3.2 General Requirements for all Scheduling Tasks and Submittals:

**Schedule Content:** Failure to include any element of required Work in the schedule shall not relieve the Contractor from completing all Work necessary to complete the Project on time.

**Scheduling Costs:** All costs incurred by the Contractor to create and maintain the Preliminary and CPM schedules including, but not limited to, updates, revisions, time impact analyses, and any additional required scheduling data shall be borne by the Contractor and are part of the Contract requirements.

**Utility Coordination, Permits and Licenses:** Sufficient liaison shall be conducted and information obtained at the utility pre-construction conference to coordinate activities with utility owners having facilities within the Project limits. The schedule shall conform to the utility adjustments and Maintenance of Traffic sequencing included in the Contract Documents unless changed by mutual agreement of the utility company, the Contractor, and CFX. The schedule shall show any utility adjustments that start or continue after the Contract time has started. In addition, the Contractor shall show the acquisition of permits or licenses needed for the Project.

**Required Labeling of all Correspondence and Associated Documents:** All Schedule related correspondence, including transmittals and attachments, shall have the Schedule number and cut-off date (data date) entered in the document heading. A sample format to be used is as follows: "0303-25AUG15", where 0303 is the schedule update number and 25AUG15 is the cut-off date (data date).

#### 6.3.3.3 Submission of the Preliminary Schedule:

The Contractor shall submit to CFX with the executed Contract the following documents:

The Preliminary Schedule shall cover the entire scope of the Contractor's responsibilities for the entire Contract time. The Preliminary Schedule is either a CPM or a NON-CPM generated bar chart schedule. The Preliminary Schedule shall present the Contractor's general approach to the Project and show adequate detail for Work, procurement, and submittal and approval activities covering the first 120 days of Work from the First Chargeable Contract day. The remainder of the Contract time shall be represented by summary activities.

**Written Narrative:** The written narrative shall explain the preliminary schedule's scope and approach to the Project in sufficient detail to demonstrate that the Contractor has a reasonable and workable plan to complete the Project within the Contract time allowed.

**Geographical Layout of the Project:** The geographical layout graphic of the project shall be suitable in size and content for presentation purposes. The Contractor shall also submit a copy of the geographical layout of the project in a legal landscape format.



**Contractor's Oral Presentation:** At the pre-construction conference, the Contractor shall show and refer to the geographical layout of the Project in an oral presentation of the Contractor's approach to performing the Work under the Contract. The Contractor's oral presentation shall conform to the format and content of the written narrative.

Within five (5) days after receipt of the Preliminary Schedule, CFX will either accept or reject the schedule. If the Preliminary Schedule is rejected, CFX and Contractor will meet within 3 days after notice of rejection at which time CFX will present the Contractor with a list of required changes to the Preliminary Schedule. The Contractor shall make the changes and submit a revised preliminary schedule acceptable to CFX within 3 days after receipt of the required changes.

**Updating the Preliminary Schedule:** The Contractor shall update each activity in the Preliminary Schedule with an actual start date, actual finish date, percent complete, and remaining duration each month until the accepted Baseline Schedule is updated and submitted to CFX. The cut-off date and submittal date for the Updated Preliminary Schedule shall be established by CFX and the Contractor shall submit the Updated Preliminary Schedule on that date. The Contractor shall include a written narrative with the Updated Preliminary Schedule explaining the progress made, any delays that have occurred, and work planned to be accomplished in the next month.

**Retainage for Non-Submittal:** If the Contractor fails to update the Preliminary Schedule and submit a written narrative, CFX may retain 10% of the Contractor's next Monthly Payment Request and 10% of each subsequent monthly payment request until the Contractor complies.

**6.3.3.4 Submission of the CPM Baseline and Updated Baseline Schedules:** The Contractor's CPM schedule shall be a detailed CPM schedule. The CPM schedule shall be generated by the latest version of Primavera Project Planner (P6) by Primavera Systems, Inc. The Contractor shall pay the scheduling software yearly maintenance fees and maintain scheduling software upgrades throughout the duration of the contract. The Contractor shall use all default settings in Primavera Project Planner for all schedule submittals. This includes using the "Retained Logic" setting for all calculations, unless CFX chooses to allow the use of the P6 "Progress Override" setting.

Each Baseline and Updated Baseline schedule submittal shall include all reports and graphics listed in specification section 6.3.3.4.9. All Baseline Schedule submittals shall also include the Logic Diagram required under Item number 4.

The Contractor shall submit to CFX two copies of each of the above schedules created using the P6 Backup feature.

**Schedule Submittal Deadlines:** The Contractor shall prepare and submit a detailed CPM construction schedule. The schedule shall be prepared according to the specifications and submitted no later than 45 calendar days after the Notice to Proceed date. The CEI shall have 30 calendar days from the Contractor's submittal date to review and notify the Contractor in writing of its findings. The Contractor shall have 15 calendar days from the date of the CEI's written notice to make all requested modifications to the schedule and re-submit the schedule.

**Retainage for Non-Submittal:** If the Contractor fails to submit a schedule that fully complies with the specifications within 90 calendar days from the Notice to Proceed date, CFX will automatically retain 10% of the Contractor's Current Period Monthly Payment Request amount in addition to other retainage.

CFX may retain an additional 10% of the Contractor's Period Monthly Payment Request amount for each successive month that the Contractor fails to submit any schedule on time in addition to other retainage. The Contractor must submit an Updated Baseline Schedule for each month of the Contract starting from the first chargeable day of the contract. The Due Date for the Updated Baseline Schedule shall be the Cut-Off Date established by CFX for submittal of the Contractor's Monthly Payment Request. The Due Date for the Updated Baseline Schedule may be changed from time to time by CFX. The Contractor's submitted schedule shall have a data date matching the cut-off date established by CFX.

**Milestones:** Construction and maintenance of traffic milestones, including completion of construction on roadway sections, building and removing temporary detours, bridges, traffic shifts, and road closures and openings shall be adequately shown in the schedule.

**Measurement of Progress:** As the contract work progresses and the baseline schedule is updated with progress, each subsequent schedule update shall become the schedule upon which all Work progress will be measured.

6.3.3.4.1 CPM Activity Creation: Each schedule activity shall include the following detail in P6:

A.) ID Number - The format followed shall be uniform throughout the schedule. The activity number shall not exceed 6 digits.

B.) Original Duration (Working Days): No activity shall have a duration greater than 20 working days unless approved by CFX. However, activities such as long-term procurement, certain approvals and submittals may have durations greater than 20 working days or have a 7-day calendar assignment.

At the minimum, the schedule shall include, but not be limited to the following activities:

Bridge Activities:

Test Pile installation per bent per structure.  
Production Pile installation per bent per structure.  
Drilled shaft installation per pier per structure.  
Pile caps per bent per structure.  
Footings per pier per structure.  
Columns per pier per structure.  
Caps per pier per structure.  
End bents per structure.  
Beam or girder erection-span by span per structure.  
Diaphragms.  
Deck placement-span by span per structure.  
Parapets-span by span per structure.

Roadway Activities:

Internal access and haul roads (location and duration in-place).  
Utility relocation work by utility and by stationing and roadway.  
Clearing and grubbing by stationing and roadway.  
Excavation by stationing and roadway.  
Embankment for each abutment location.  
Embankment placed for each roadway by stationing and roadway.  
Drainage by run with stationing and roadway.  
Box Culvert or other large Pre-cast structure with stationing and roadway.  
Reinforced Earth Wall leveling pad per bent per structure.  
Reinforced Earth Wall per bent per structure.  
Reinforced Earth Wall Coping per bent per structure.  
Retaining walls by stationing and roadway.  
Stabilization/Subgrade by stationing and roadway.  
Limerock Base by stationing and roadway.  
Asphalt Base by stationing and roadway.  
Curb and Gutter by stationing and roadway.  
Structural Pavement (asphalt and/or concrete) by stationing and roadway.  
Bridge approach slabs per bridge and roadway.  
Guardrail by stationing and roadway.  
Slope pavement or riprap by stationing and roadway.

Roadway lighting by stationing and roadway.  
Signing for each sign structure by stationing and roadway.  
Striping by stationing and roadway.  
Traffic signals by stationing and roadway.  
Topsoil, sodding, seeding and mulching by stationing and roadway.  
Landscaping by stationing and roadway.  
Architectural Treatments.  
Sound Walls.  
Fiber Optic.  
Concrete Removal and Replacement.  
Milling and Resurfacing.  
Ponds.  
Planter Walls.

**Building Activities:**

Sitework, including, but not limited to clearing, excavation, storm and sanitary drainage, utility work, fill, grading, curb & gutter, sidewalks, asphalt and concrete paving, striping, retention pond excavation and grading, sodding.  
Foundation work, including, but not limited to, piling, building pads, column, stem wall, slab work, conduit and piping.  
Concrete work, including, but not limited to, stairwells, stairs, elevator shafts, tunnels.  
Exterior Structures, including, but not limited to structural steel bridges, walkways, railings.  
Exterior Walls, including, but not limited to, block, brick, pre-cast, poured-in-place concrete, wood and metal stud, stucco.  
Roof, including, but not limited to, structural steel framing, wood framing, pre-cast, parapet walls, metal, poured-in-place, sheathing, underlayment, built-up, roof drainage, and soffits.  
Exterior doors, windows, and store-front framing.  
Interior Build-out, including, but not limited to, wood and metal stud, interior doors and windows, cabinetry, specialty work, drywall, insulation, sound proofing, carpet, tile, painting, furnishings, and miscellaneous finishes.  
Electrical, including, but not limited to conduit, power supply, fixtures, wiring, finishes, and testing.  
Plumbing, including, but not limited to, piping, sanitary sewer, water supply, fixtures, finishes, and testing.  
HVAC, including, but not limited to, air handlers, compressors, duct work, finishes, and testing.  
Fire Systems, including, but not limited to piping, sprinkler heads, and testing.

Security Systems, including, but not limited to, control panels, wiring, sensors, alarms, communications, and testing.

Specialty Work, including, but not limited to, elevators, escalators, toll booth facilities, electronic toll equipment, conduit, wiring, voice and data communication systems, and testing.

The Contractor agrees to submit for acceptance a CPM baseline schedule showing Work commencing on the first chargeable Contract day and finishing on the last chargeable Contract day, thereby showing zero total float.

The Contractor shall sequence work so that only one Longest Path is created in the Baseline or Updated Baseline schedule.

The Contractor must submit evidence to CFX that any activity to be added or removed from the schedule is a logical and reasonable change. If CFX decides that the activity is not sufficiently supported and does not serve a useful purpose, CFX shall request that the Contractor remove the activity from the schedule, and the Contractor shall comply.

The schedule shall include a task activity for the first chargeable day of the Contract and a task activity for the last chargeable day of the Contract with a 1-day duration and a 7-day calendar assignment. The Contract Completion Date as defined in section 6.3.2.1 shall be entered into the Primavera Project Overview window under "Project must finish by".

**Mobilization Activities:** Activities representing Contract pay item 1-101-1, Mobilization, shall be divided into 1 work activity with a duration no greater than 20 work days and 4 mobilization payment milestones that are revenue loaded according to the specification payment schedule as follows: 5% of Contract earned = 25% payment, 10% of Contract earned = 50% payment, 25% of Contract earned = 75% payment and 50% of Contract earned = 100% payment. The payment milestones should not be tied to any activities, but constrained by a "start no earlier than" constraint. The dates they are constrained to should be based on the early dates shown in the schedule cash flow tabular report by day generated by P6.

6.3.3.4.2 Activity Codes: The following are the minimum required activity codes and their values that are to be assigned to each activity in P6:

Phase: Shall have a field length of 4 characters. If the Project has more than one maintenance of traffic (M.O.T.) phase, each phase shall be identified. Each activity shall show which M.O.T. Phase it belongs to as shown in the Plans and Specifications.

Area: Shall have a field length of 6 characters. The Contractor shall create Area activity code values for each of the following areas. Each schedule activity shall have an assigned Area activity code value

6.3.3.4.3 Activity Relationships: Relationships between activities shall be identified with the following information:

- A. Activity ID - Shall not exceed 6 characters in length.
- B. Predecessor and successor activity ID.
- C. Relationship types:
  - SS -Start to start
  - FF -Finish to finish
  - SF -Start to finish - This relationship is not allowed, unless authorized by CFX.
- D. Lag -Negative lag is not allowed, unless authorized by CFX.

6.3.3.4.4 Project Calendars: Calendars shall use day as the planning unit for the schedule. One of four calendars shall be used for each activity:

- A. Calendar 1: shall be used for 5-day workweek activities: Monday through Friday. All holidays and non-work days shall be assigned to this calendar. This calendar shall be used for all normal Work activities. Calendar 1 shall be the default calendar.
- B. Calendar 2: shall be used for 7-day workweek activities. No non-work days shall be entered into this calendar. Activities such as friction course curing shall use this calendar.
- C. Calendar 3: shall be used for 7-day workweek activities. All holidays shall be entered into this calendar.
- D. Calendar 4: shall be used for 6-day workweek activities. All holidays and non-work days shall be assigned to this calendar.



Global Calendar: The global P6 calendar shall have all holidays and non-work days assigned.

Additional calendars: May be assigned depending upon need. However, the Contractor shall consult with CFX before other calendars are entered and/or used in the Project schedule.

6.3.3.4.5 Revenue Loading the Schedule: Each Work activity in the schedule shall be revenue loaded using all the Contract pay items amounts related to the Work activity. The Contractor shall verify that each pay item is represented in the schedule. The total of all revenue loading shall equal the Contract amount.

If the monthly payment requests do not reasonably agree with the monthly schedule updates/budgeted revenue of Work performed, CFX may request that the Contractor revise its revenue loading in the accepted baseline schedule and the most current updated baseline schedule. In addition, CFX may request that the Contractor revise its revenue loading in the accepted baseline and updated baseline schedules to incorporate all Supplemental Agreement changes affecting the Contract amount.

6.3.3.4.6 Updating the Baseline Schedule

Monthly Schedule Update Meetings: Monthly Schedule Update meetings shall be set by CFX and shall be transmitted to the Contractor by written notice.

CFX will establish a schedule cut-off date for each month of the Contract.

The updated baseline schedule, project progress, issues, delays, claims, planned Work, Contractor's monthly pay estimate, and baseline schedule revisions shall be among the priority items addressed in detail.

Schedule Update Process: The schedule update process shall include updating the activity actual start and finish dates, percent completion, remaining duration, and adjusting schedule logic to correct for activities being performed out of sequence, adjusting resource allocations for activities, and changing the calendar assignments to activities as needed. The Contractor shall not change an activity original duration for any reason.

#### 6.3.3.4.7 Revisions to the Baseline Schedule

1. CFX will request in writing that the Contractor submit a proposed revision to the Accepted Baseline Schedule to incorporate a Board Approved Supplemental Agreement.
2. The Contractor shall have fifteen calendar days from receipt of CFX's request to submit a proposed revision to the Accepted Baseline Schedule.
3. The Contractor's proposed revision shall include all transmittals, reports, diagrams, and bar charts listed in specification section 6.3.2.4.9, unless CFX requests otherwise in writing.
4. The Contractor shall submit two Schedule Comparison reports. The first report shall be a comparison between the Accepted Baseline Schedule and the Revised Baseline Schedule. The second report shall be a comparison between the current updated baseline schedule and the proposed updated baseline schedule containing the proposed revision to the accepted baseline schedule.
5. In its required narrative report, the Contractor shall state whether or not the proposed changes affect the longest path of the accepted baseline schedule or the proposed updated baseline schedule, which contains progress.
6. CFX shall have 15 calendar days to review and transmit a written notice of acceptance or rejection of the Contractor's proposed revision. If CFX rejects the proposed revision, CFX shall state the reasons for rejection in the written notice. The Contractor shall have 5 calendar days to re-submit the proposed revision to CFX.
7. If the Contractor fails to submit a proposed revision that is accepted by CFX within 45 calendar days from CFX's original request date, CFX reserves the right to retain 10% of each of the Contractor's monthly payment requests until the Contractor submits a proposed revision that is accepted by CFX.
8. Upon acceptance of the proposed revision to the accepted baseline schedule, the proposed revision to the baseline schedule shall become the accepted baseline schedule. The Contractor shall incorporate the revision into the next scheduled updated baseline schedule.

6.3.3.4.8 Schedule Submittals: Each baseline, revised baseline, and updated baseline schedule submittal shall include the following documents, unless CFX sends and the Contractor receives a written request to limit the submittal to certain documents for a specific submittal.

1. Transmittal: Shall be signed by the Contractor's Schedule Engineer or Resident Engineer. Shall contain the following information:

Submittal date.

Contractor Name.

Complete CFX Contract Number.

Project Description.

Contract Resident Engineer.

Four character P6 Project Number - Data Date

2. Schedule Update Narrative Report: The Contractor shall prepare a written narrative to accompany the required reports and graphics for the schedule update submittal. The narrative shall have the following sections:

Schedule Status: The Schedule Status shall be a written narrative explaining the progress during the month in sufficient detail and referencing specific activities including longest path activities, milestones, design issues, means and methods issues, out of sequence activities, and actual production rates for various types of Work performed by the crews loaded as resources in the schedule.

Delays: If the Contractor has experienced any delay, the Contractor shall explain what activities in the current period were affected by the delay and what caused the delay and how the Contractor intends to address the delay.

Milestone Comparisons: Current period projected milestone dates versus previous period projected milestone dates, and current period projected contract completion date versus previous period projected contract completion date.

3. Schedule Comparison Report: The Contractor shall submit to CFX a detailed report showing all changes to the Project schedule since the previous monthly update, including, but not limited to the following information:

- Activities worked out of sequence.
- Changes in Total Float.
- Changes in Early and Late Dates.
- Changes in Original and Remaining Duration.
- Changes in Activity Constraints.
- Changes in Activity Predecessors, Successors, Relationship Type, and Lags.
- Changes in Activity Resource Assignments.
- Changes in Activity Cost Loading.
- Changes in Activity percent completion.
- Changes in Longest Path Activities.

Longest Path Bar chart: Bar chart shall be time scaled and filtered on the Longest Path activities and sorted by early start.

Area Code Bar chart: Bar chart shall be time scaled and sorted by area code. The bar chart shall include:

- A. Each activity on a single line containing ID number, activity description, and a bar representing activity original duration, early start dates, early finish dates, late start dates, late finish dates and total float.
- B. Key to identify all components in the bar chart and CPM.
- C. Key to identify all the abbreviations used.

4. Revenue Loading Report: The Contractor shall submit to CFX a report entitled "Revenue Loading Report". The report shall include the following information:

- A. Activity ID number
- B. Description of activity
- C. List of pay items included in activity including:
  - 1. Pay item number
  - 2. Pay item description
  - 3. Quantity of pay item to be applied
  - 4. Unit measure of pay item
  - 5. Unit-price of pay item
  - 6. Total price for pay item to be applied
- D. Total revenue loading of activity (Sum of "C")

5. Revenue Flow Diagram: For any baseline Schedule, the Contractor shall submit to CFX a Revenue Flow Diagram by month. The Revenue Flow Diagram shall show the early and late curves representing the accumulated projected dollars to be earned for each month of the Contract.
6. Tabular Revenue Report: For any Baseline Schedule, the Contractor shall submit a Tabular Revenue Report by day. The tabular report shall show columns for the accumulated and incremental projected dollar amounts to be earned on the early and late curve for each Contract day.
7. P6 Schedule Backup: The Contractor shall submit to CFX two copies of each baseline, revised baseline, and updated baseline schedule using the P6 backup option. The backed up copies shall be compressed and without an access list. The backups shall be submitted on compact disk (cd). Each cd shall have a typed label showing the following information:

Contractor name  
The complete CFX Project number  
The four character P6 project number  
Data Date in format -> "01JAN15"  
Volume number \_of\_ total volume numbers (e.g., 1 of 5, 2 of 5)

8. Paper Sizes and Orientation: All printed reports shall be submitted on 8" x 11" portrait-bond paper. All printed bar charts and revenue flow diagrams shall be submitted on 8" x 11" landscape bond paper. All presentation layouts and logic diagrams shall be plotted in color with a color design jet plotter and submitted on ANSI E (34-inch x 44-inch) size coated paper.

6.3.3.4.9 Two Week Look Ahead Schedule: The Contractor shall submit a two-week look-ahead bar chart schedule produced in Microsoft Excel at the weekly project progress meeting. The bar chart shall show all major Work in progress.

The bar chart shall show at least one week behind for actual Work performed and two weeks ahead for planned Work.

The bar chart shall be date synchronized to the CEI's Weekly Summaries.

Changes and revisions that require the approval of CFX shall be brought forward for discussion.

6.3.3.4.10 Adjustments to Contract Time:

1. The Contract Completion Date shall not be changed in any schedule unless CFX approves a Supplemental Agreement granting an extension to the Contract Time.
2. The Contractor has the right to finish the Contract early; however, the Contractor agrees that any impact to the projected early completion date does not justify a request for a time extension because it would constitute changing the Contract completion date to match the Contractor's projected early completion date.
3. The Contractor acknowledges and agrees that for purposes of considering a time extension request, a schedule activity shall not be considered to have been subject to a claimed delay unless all originally and presently scheduled predecessor activities have been completed so that no other restraints to the performance of that activity exist in the CPM schedule at the time claimed for the delay impact. The Contractor agrees that a Contract time extension request shall only be considered for one of the following reasons:
  - A. The Contractor performed Extra Work that met all of the following conditions:
    1. CFX stated that the Extra Work was not to be performed concurrently with other Contract Work.
    2. The Extra Work delayed the Contract Completion Date.
    3. The Extra Work impacted one or more activities on the current CPM schedule longest path.
  - B. The Contractor experienced an Excusable Delay, as defined in subarticle 6.7.3.1, that met all of the following conditions:
    1. The Contract Completion Date was delayed due to circumstances beyond the control of the Contractor.



2. The Contractor took every reasonable action to prevent the delay.
3. The delay impacted one or more activities on the current CPM schedule longest path.
4. The Contractor agrees that there shall be no basis for a Contract Time extension as a result of any Contract problem, Supplemental Agreement, or delay, which only results in the loss of available positive float, or an increase of negative float belonging to activities that do not reside on the CPM schedule's Longest Path.

6.3.3.4.11 Supplemental Agreements: Supplemental Agreements shall include a time impact analysis from the Contractor as to the effect of the requested change on the detailed schedule. In cases where the requested change has no impact on the Project duration, the time impact analysis shall still be included. The time impact analysis shall include a listing of the activities that are affected by the requested changes and an analysis of the change on the longest path of the detailed schedule. The Contractor and the CEI shall agree upon the impact to the schedule before a Supplemental Agreement is approved.

The approved Supplemental Agreements shall be incorporated into the next monthly schedule update.

6.3.3.4.12 Adjustment to the Contract Time: Adjustments to the Contract time are detailed in subarticle 6.7.3.

6.3.3.4.13 CPM Recovery Schedule: Should any of the following conditions exist, the Contractor shall, at no extra cost to CFX, prepare a CPM Recovery Schedule:

1. Should the Contractor's monthly progress review indicate that a CPM Recovery Schedule is required;
2. Should the CPM schedule show the Contractor to be thirty (30) or more days behind schedule at any time during the construction period;
3. Should the Contractor request to make changes in the logic of the CPM schedule which, in the opinion of CFX, are of a major nature.

The same requirements and submittals for the CPM Recovery Schedule shall apply as the original baseline schedule.

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.

#### 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.

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.
- 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.

## 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.
- 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.

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 subarticle.

## 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.

7.2.1.1 Fuels: CFX will, in the Contract Documents, provide an estimated quantity for fuel requirements for gasoline and diesel to cover the work specified in the Contract. Price adjustments will be made only for the amount of gasoline and diesel fuel estimated by CFX as required to complete the Contract. The requirement of each type of fuel for each pay item is estimated by multiplying the CFX standard fuel factor for that pay item by the quantity of that pay item. Price adjustments made for fuel used after expiration of the last allowable Contract Day (including any time extensions) will be limited to the increases or decreases dictated by the index in effect on the last allowable Contract Day. On Contracts with an original Contract Time in excess of 120 calendar days, CFX will make price adjustments on each applicable progress estimate to reflect increases or decreases in the price of gasoline and diesel from those in effect during the month in which bids were received. The Contractor will not be given the option of accepting or rejecting these adjustments. Price adjustments for these fuels will be made only when the current fuel price (CFP) varies by more than 5% from the price published when bids were received (BFP), and then only on the portion that exceeds 5%. For definition purposes, should a project bid prior to the 15<sup>th</sup> of any month, the bid index will be the index for the month prior to the bid. Should a project bid after the 14<sup>th</sup> of the month, the bid index will be the index for the month of the bid.

Price adjustments will be based on the monthly bulk average price for gas and diesel as derived by the FDOT. These average indexes shall be determined by averaging bulk fuel prices on the first day of each month as quoted by major oil companies that are reasonably expected to furnish fuel for projects in the State of Florida. Average price indices for gasoline and diesel will be available on the FDOT Construction Office website before the 15<sup>th</sup> of each month, at the following URL: [www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.htm](http://www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.htm).

Payment will be based on the quantities shown on the progress estimate on all items for which established standard fuel factors which are included in the bid documents or, if omitted, are on a file maintained by the FDOT at the time of bid.

Payment on progress estimates will be adjusted to reflect adjustments in the prices for gasoline and diesel in accordance with the following:

When fuel prices have decreased between month of bid and month of this progress estimate:

$A_i = F_i (P_i - .95 P_b)$  during a period of decreasing prices.

$A_i$  = Total dollar amount - positive or negative - of the cost adjustment for each kind of fuel used by the Contractor during the month "i."

$F_i$  = Total gallons calculated as being used during the month (units produced/month x gallons/unit).

$P_i$  = Average price for fuel prevailing during month "i."

$P_b$  = Average price for fuel prevailing during the month "b" when bids were received on this Contract, as defined above

When fuel prices have increased between month of bid and month of this progress estimate:

$A_i = F_i (P_i - 1.05 P_b)$  during a period of increasing prices.

$A_i$  = Total dollar amount - positive or negative - of the cost adjustment for each kind of fuel used by the Contractor during the month "i."

$F_i$  = Total gallons calculated as being used during the month.

Pi = Average price for fuel prevailing during month “i.”

Pb = Average price for fuel prevailing during the month “b” when bids were received on this Contract, as defined above

Payment will be made on the current progress estimate to reflect the index difference at the time work was performed.

Adjustments will be paid or charged to the Contractor only. Contractors receiving an adjustment under this provision shall distribute the proper proportional part of such adjustment to subcontractors who perform applicable work.

7.2.1.2 Bituminous Material: On Contracts having an original Contract Time of more than 365 calendar days, or more than 5,000 tons of asphalt concrete, CFX will adjust the bid unit price for bituminous material, excluding cutback and emulsified asphalt to reflect increases or decreases in the Asphalt Price Index (API) of bituminous material from that in effect on the day on which bids were received. The Contractor will not be given the option of accepting or rejecting this adjustment. Bituminous adjustments will be made only when the current API (CAPI) varies by more than 5% of the API prevailing on the day on which bids were received (BAPI), and then only on the portion that exceeds 5%. For definition purposes, should a project bid prior to the 15<sup>th</sup> of any month, the bid index will be the index for the month prior to the bid. Should a project bid after the 14<sup>th</sup> of the month, the bid index will be the index for the month of the bid.

CFX will determine the API for each month by checking the FDOT Contracts Office web site which averages quotations in effect on the first day of the month at all terminals that could reasonably be expected to furnish bituminous material to projects in the State of Florida.

Payment on progress estimates will be adjusted to reflect adjustments in the prices for bituminous materials in accordance with the following:

\$ Adjustment = (ID)(Gallons)

Where ID = Index Difference = [CAPI - 0.95(BAPI)] when the API has decreased between the month of bid, as defined above, and month of this progress estimate.

Where ID = Index Difference = [CAPI - 1.05(BAPI)] when the API has increased between the month of bid, as defined above, and month of this progress estimate.



Payment will be made on the current progress estimate to reflect the index difference at the time work was performed.

For asphalt concrete items payable by the ton, and not containing Reclaimed Asphalt Pavement (RAP), the number of gallons will be determined assuming a mix design with 6.25% liquid asphalt weighing 8.58 lb/gal. For asphalt concrete items payable by the ton, that do contain Reclaimed Asphalt Pavement (RAP), the number of gallons will be determined assuming a mix design with 5% liquid asphalt weighing 8.58 lb/gal.

Asphalt concrete items payable by the square yard will be converted to equivalent tons assuming a weight of 100 lb/yd<sup>2</sup> per inch.

7.2.1.2 For FC-5 with granite, the number of gallons will be determined assuming a mix design with 5.5% liquid asphalt weighing 8.58 lb/gal.

- 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.

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 RRBBOCE ownership cost plus 100% of the RRBB and/or RRBBOCE 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 RRBBOCE 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 RRBBOCE monthly rates by 176. The columns, itemizing rates, labeled "Weekly", "Daily" and "Hourly" shall not be used.
- 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.

(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.

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 5.1.1 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 of 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- PARTNERING AND DISPUTES RESOLUTION

### 10.1 Partnering

The objective of Partnering is to establish a partnership charter and action plan for the Contractor, CFX and other parties impacted by the activities covered under the Contract to identify and achieve reciprocal goals. These objectives may be met through participation in workshops held periodically throughout the duration of the Contract.

Prior to the pre-construction conference, CFX, the CEI, and the Contractor shall meet and plan an initial partnering/team building workshop. At this planning session, arrangements will be made to select a workshop facilitator, determine attendees, agenda, duration and location. Attendees should include representatives of CFX, the CEI, and other key Project personnel, the Contractor's superintendent and other key personnel as well as others mutually agreed upon by CFX and the Contractor. Additional workshops may be held periodically throughout the duration of the Contract if authorized by CFX.

CFX will arrange for and pay the cost of providing a facilitator and meeting room and for all other direct costs associated with the Partnering workshops. No separate compensation will be paid to the Contractor to attend partnering meetings

### 10.2 Disputes Resolution

#### 10.2.1 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.

#### 10.2.2 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.

#### 10.2.3 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.

#### 10.2.4 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.

#### 10.2.5 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.

#### 10.2.6 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.

#### 10.2.7 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.



#### **10.2.8 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  
#5**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 27, 2020

SUBJECT: Approval of Contract Award to United Signs & Signals, Inc.  
for Systemwide Pay By Plate Signs – SR 408  
Project 599-643A, Contract No. 001642

An Invitation to Bid for the referenced project was advertised on December 22, 2019. Responses to the invitation were received from two (2) contractors by the January 27, 2020 deadline. As required by the Procurement Procedures Manual, a discussion was held with the Manager of Engineering to review CFX's options when less than three bids are received. It was decided that a re-bid would not result in additional responses, the bids were within the established tolerances, and there were no irregularities that would result in the bids being rejected.

Bid results were as follows:

<u>Bidder</u>	<u>Bid Amount</u>
1. United Signs & Signals, Inc.	\$1,069,274.79
2. Traffic Control Devices, Inc.	\$1,256,975.00

The Engineer's estimate for this project is \$1,559,517.50.

The Engineer of Record for Project 599-643A has reviewed the low bid submitted by United Signs & Signals, Inc. and determined that the low bid unit prices are not unbalanced.


This project consists of providing all labor, materials, equipment and incidentals necessary for the removal of existing signs, the installation of new signs and the installation of sign overlays along SR 408. The work includes both ground mounted and overhead sign assemblies.

The Procurement Department has evaluated the bids and has determined the bid from United Signs & Signals, Inc. to be responsible and responsive to the bidding requirements. Board award of the contract to United Signs & Signals, Inc. in the amount of \$1,069,274.79 is recommended.

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

Reviewed by:

  
Ben Dreiling, P.E.  
Director of Construction



# **CONTRACT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
UNITED SIGNS & SIGNALS, INC.**

**SYSTEMWIDE PAY BY PLATE (PBP) SIGNS – SR 408**

**PROJECT 599-643A  
CONTRACT NO. 001642**

**CONTRACT DATE: FEBRUARY 13, 2020  
CONTRACT AMOUNT: \$1,069,274.79**

**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, ADDENDA,  
PUBLIC CONSTRUCTION BOND AND FORMS**

**FOR**

**SYSTEMWIDE PAY BY PLATE (PBP) SIGNS – SR 408**

**PROJECT 599-643A  
CONTRACT NO. 001642**

**FEBRUARY 2020**

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VR	VEHICLE REGISTRATION FORM	VR-1 to VR-2
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**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-25
	(See Special Provisions Table of Contents for listing of each special provision.)	

Addendum No. 1

Plans

## CONTRACT

This Contract No. 001642 (the "Contract"), made this 13<sup>th</sup> day of February 13, 2020, between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, hereinafter called CFX and United Signs & Signals, Inc., of 28248 CR 561, Tavares, FL. 32778, 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 599-643A, Systemwide Pay By Plate (PBP) Signs – SR 408, as detailed in the Contract Documents and any addenda or modifications thereto. Contract time for this project shall be 155 calendar days. The Contract Amount is \$1,069,274.79. This Contract was awarded by the Governing Board of CFX at its meeting on February 13, 2020.

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: \_\_\_\_\_

UNITED SIGNS & SIGNALS, INC.

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

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

\_\_\_\_\_  
Title

ATTEST: \_\_\_\_\_ (Seal)

DATE: \_\_\_\_\_

Approved as to form and execution, only.

General Counsel for CFX

\_\_\_\_\_

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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.

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

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

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

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

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

**1.3.28 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.

**1.3.29 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.

**1.3.30 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.

**1.3.31 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.

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

**1.3.33 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.

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

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

**1.3.36 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.

**1.3.37 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.

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

**1.3.39 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.

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

**1.3.41 Standard Specifications** - The FDOT Standard Specifications for Road and Bridge Construction, 2019 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.

**1.3.42 State** - State of Florida

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

**1.3.44 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.

**1.3.45 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.

**1.3.46 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.

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

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

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

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

**1.3.51 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.

**1.3.52 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.

**1.3.53 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.

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

**1.3.55 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.

**1.3.56 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.



**1.3.57 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 2.4.14. 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.

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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.

- 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.

- 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.

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.

(d) Construction Affecting Public Safety applies to construction that may jeopardize public safety such as structures spanning functioning vehicular roadways, pedestrian walkways, railroads, navigation channels, navigable waterways and walls or other structure's foundations located in embankments immediately adjacent to functioning roadways. It does not apply to those areas of the site under the Contractor's control and outside the limits of normal public access.

(e) Major and unusual structures include bridges of complex geometry and/or complex design. Generally, this includes the following types of structures:

- Bridges with an individual span longer than 300 feet.
- Structurally continuous superstructures with spans over 50 feet.
- Steel box and plate girder bridges.
- Steel truss bridges.
- Concrete segmental and longitudinally post-tensioned continuous girder bridges.
- Cable stayed or suspension bridges.
- Curved girder bridges.
- Arch bridges.
- Tunnels.
- Movable bridges (specifically electrical and mechanical components).
- Rehabilitation, widening or lengthening of any of the above.

(f) Special Erection Equipment includes launching gantries, beam and winch Equipment, form travelers, stability towers, strongbacks, erection trusses, launching noses or similar items made purposely for construction of the structure. It does not apply to commonly available proprietary construction Equipment such as cranes.

(g) Falsework includes any temporary construction Work used to support the permanent structure until it becomes self-supporting. Falsework includes steel or timber beams, girders, columns, piles and foundations and any proprietary Equipment including modular shoring frames, post shores and adjustable horizontal shoring.

(h) Formwork includes any temporary structure or mold used to retain plastic or fluid concrete in its designated shape until it hardens. Formwork comprises common materials such as wood or metal sheets, battens, soldiers and walers, ties, proprietary forming systems such as stay-in-place metal forms, and proprietary supporting bolts, hangers and brackets.

(i) Scaffolding is an elevated work platform used to support workmen, Materials and Equipment but not intended to support the structure.

(j) Shoring is a component of falsework such as horizontal, vertical or inclined support members. In this specification, this term is used interchangeably with falsework.

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 following signing and lighting items are defined as structural items:

Lighting: poles, bracket arms, frangible bases and foundations.

Signing: Mounting brackets for bridge mounted signs, overhead cantilever structures, overhead truss structures, overhead sequential sign structures and multiple post sign supports, along with applicable foundations.

In general, shop drawings shall be required for:

(a) Bridge, Bulkhead and Retaining Wall Structures, cofferdams, Lighting and Signing Structural Items along with applicable foundations.

(b) Signing, Lighting, Drainage Structures and Attenuators and other nonstructural items.

(c) Building Structures.

(d) Contractor Originated Re-Design.

(e) Design and/or structural details furnished by the Contractor in compliance with the Contract, according to the sections of the Specifications pertaining to the Work, to the Plans or other Contract Documents.

(f) Special Erection Equipment.

(g) Falsework and Shoring.

Additional clarification for certain types of bridge structures is provided in 3.1.4.9.

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.

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:

3.1.4.5.1 Bridge, Bulkhead and Retaining Wall Structures and Lighting and Signing Structural Items with appropriate foundations: Shop drawings for pre-qualified items, excluding their corresponding foundations, are not required.

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.

3.1.4.5.2 Signing, Lighting, Drainage Structures, Attenuators and other nonstructural items: The Contractor shall submit seven (7) sets of prints of each shop drawing to the CEI with a copy of the transmittal letter sent to the Consultant.

3.1.4.5.3 Building Structures: One (1) set of prints and one (1) set of reproducible copies of each series of working, shop and erection drawings and all correspondence related to building structures shall be submitted to the CEI with a copy of the transmittal sent to the Consultant.

3.1.4.5.4 Contractor Originated Design or Redesign: 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. The submittal and copies of the transmittal letters shall be transmitted in accordance with the requirements of 3.1.4.5.1 through 3.1.4.5.3, as appropriate.

**3.1.4.5.5 Special Erection Equipment:** For (a) Construction Affecting Public Safety and (b) Major or Unusual Structures: 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. The submittal and copies of the transmittal letters shall be transmitted in accordance with the requirements of 3.1.4.5.1 through 3.1.4.5.3, as appropriate.

**3.1.4.5.6 Falsework and Shoring:** For (a) Construction Affecting Public Safety and (b) Major and Unusual Structures: 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. The submittal and copies of the transmittal letters shall be transmitted in accordance with the requirements of 3.1.4.5.1 through 3.1.4.5.3, as appropriate.

**3.1.4.5.7 Formwork:** Formwork shall be in accordance with Section 400-5 of the Standard Specifications.

**3.1.4.5.8 Scaffolding:** The Contractor shall be responsible for the safe installation and use of all scaffolding. No submittals are required.

**3.1.4.5.9 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. The submittal and copies of the transmittal letters shall be transmitted in accordance with the requirements of 3.1.4.5.1 through 3.1.4.5.3, as appropriate.

**3.1.4.5.10 Beam and Girder Temporary Bracing:** The Contractor is solely responsible for ensuring stability of beams and girders during all handling, storage, shipping and erection. Adequately brace beams and girders to resist wind, weight of forms and other temporary loads, especially those eccentric to the vertical axis of the products, considering actual beam geometry and support conditions during all stages of erection and deck construction.

Develop the required designs following the AASHTO Guide Design Specifications for Bridge Temporary Works and Construction Handbook for Bridge Temporary Works and the Contract Documents.

For Construction Affecting Public Safety, submit signed and sealed calculations for stability of all beams and girders.

#### 3.1.4.6 Certifications:

3.1.4.6.1 Special Erection Equipment: Prior to its use, special erection Equipment shall be personally inspected by the Specialty Engineer who shall certify to the CEI in writing that the Equipment has been fabricated in accordance with the submitted drawings and calculations. In addition, after assembly, the Specialty Engineer shall observe the Equipment in use and shall certify to the CEI in writing that it is being utilized as intended and in accordance with the submitted drawings and calculations. In each case, the Specialty Engineer shall also sign and seal the letter of certification.

3.1.4.6.2 Falsework and Shoring requiring shop drawings per 3.1.4.5.6: After its erection or installation but prior to the application of any superimposed load, the falsework shall be personally inspected by the Specialty Engineer who shall certify to the CEI in writing that the falsework has been constructed in accordance with the Materials and details shown on the submitted drawings and calculations. The Specialty Engineer shall also sign and seal the letter of certification.

3.1.4.6.3 Formwork: For Construction Affecting Public Safety, prior to the placement of any concrete, the Contractor shall certify to the CEI in writing that formwork has been constructed to safely withstand the superimposed loads to which it will be subjected.

#### 3.1.4.7 Processing of Shop Drawings:

3.1.4.7.1 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 45 calendar day review period by the CEI. The review period commences upon receipt of the Contractor's submittal by the CEI as stipulated in 3.1.4.5 and terminates upon transmittal of the submittal back to the Contractor by the CEI. The Contractor shall adjust its schedules so that a 30 calendar day period is provided for each re-submittal.

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.

**3.1.4.7.2 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.

**3.1.4.7.3 Special Review by CEI of Shop Drawings for Construction Affecting Public Safety:** For Construction Affecting Public Safety, the CEI will make an independent review of all relevant shop drawings and similar documents in order to verify the safety of the intended construction and construction of the permanent Work shall not proceed until receipt of the

CEI's approval. The requirement herein does not supercede the Contractor's duty and responsibility for all safety provisions, public and/or otherwise, for the Project.

3.1.4.8 Avoidance of Conflict of Interest: Neither the CEI, the Consultant nor any design engineer who participated in the design phase of the Project can be engaged by the Contractor to perform Work as the Contractor's Specialty Engineer unless expressly approved in writing by CFX.

3.1.4.9 Other Requirements for Shop Drawings for Bridges:

3.1.4.9.1 Shop Drawings for Structural Steel and Miscellaneous Metals: Shop drawings shall be furnished by the Contractor for structural steel and miscellaneous metals. Shop drawings shall consist of working, shop and erection drawings, welding procedures and other working plans, showing details, dimensions, sizes of material, and other information necessary for the complete fabrication and erection of the metal work.

3.1.4.9.2 Shop Drawings for Concrete Structures: Shop drawings shall be furnished by the Contractor for such details as may reasonably be required for the effective prosecution of the Work and which are not included in the plans furnished by CFX. These may include details of falsework, shoring, special erection Equipment, bracing, centering, formwork, masonry layout diagrams and diagrams for bending reinforcing steel in addition to any details required for concrete components for the permanent Work.

3.1.4.9.3 Shop Drawings for Major and Unusual Structures: In addition to any other requirements, no less than 60 days from the start of Work as shown in the latest CPM, the Contractor shall submit information to the CEI outlining Contractor's overall approach to the Project. Where applicable to the Project, this information shall include but need not be limited to items such as:

(1) Overall construction program for the duration of the Contract. milestone dates should be clearly shown. (For example; the need to open a structure by a certain time for traffic operations.)

(2) Overall construction sequence. The order in which individual structures are to be built, the sequence in which individual spans of girders or cantilevers are erected and the sequence in which spans are to be made continuous.

(3) The general location of any physical obstacles to construction that might impose restraints or otherwise affect the construction and an

outline of how the Contractor intends to deal with such obstacles as it builds the structure(s). (For example; obstacles might include road, rail and waterway clearances, temporary diversions, transmission lines, utilities, property and the Contractor's own temporary Work such as haul roads, cofferdams, plant clearances and the like.)

(4) The approximate location of any special lifting Equipment in relation to the structure including clearances required for the operation of the Equipment. (For example; crane positions and operating radii and the like.)

(5) The approximate location of any temporary falsework and conceptual outline of any special erection Equipment. (The precise locations and details of attachments, fixing devices, loads etc. will be covered under later detailed submittals.)

(6) An outline of the handling, transportation and storage of fabricated components, such as girders or concrete segments. (Precise details will be covered under later detailed submittals).

(7) Any other information pertinent to the Contractor's proposed scheme or intentions.

The above information shall be clear and concise and shall be presented on as few drawings as possible in order to provide an overall, integrated summary of the Contractor's intentions and approach to the Project. These drawings are for information, review planning and to assess the Contractor's approach in relation to the intent of the original design. Their delivery to and receipt by the CEI shall not constitute any acceptance or approval to the proposals shown thereon. The details of such proposals shall be the subject of subsequent detailed shop drawing submittals. Variations from these overall scheme proposals shall be covered by timely revisions and re-submittals.

3.1.4.10 Corrections for Construction Errors: For Work that is constructed incorrectly or does not conform to the requirements of the Contract drawings or Specifications, the Contractor has the prerogative to submit an acceptance proposal to the CEI for review and disposition. Any such proposal will be judged both for its effect on the integrity and maintainability of the structure or component thereof and also for its effect on Contract administration.

Any proposal judged by the CEI to infringe on the structural integrity or maintainability of the structure will require a technical assessment and submittal by the Contractor's Specialty Engineer as described in 3.1.4.5.4.

The cost of carrying out all approved corrective construction measures shall be entirely at the Contractor's expense.

Notwithstanding any disposition on the compensation aspects of the defective Work, the CEI's decision on the technical merits of a proposal shall be final.

3.1.4.11 Modifications for Construction: Where the Contractor is permitted to make modifications to the permanent Work for the purposes of expediting the Contractor's chosen construction methods, Contractor shall submit its proposals to the CEI for review and approval. Proposals for modifications shall be submitted under the shop drawing process.

Minor modifications shall be limited to those items that in the opinion of the CEI do not significantly affect the quantity of measured Work nor the integrity or maintainability of the structure or its components.

Major modifications are any modifications that in the opinion of the CEI significantly affect the quantity of measured Work or the integrity or maintainability of the structure or its components. (For example, substitutions of alternative beam sizes and spacing, change of material strength or type, and the like.)

The CEI's decision on the delineation between a minor and a major modification and disposition on a proposal shall be final.

3.1.4.12 Cost of Shop Drawings: The Contract Prices shall include the cost of furnishing shop and working drawings and the Contractor will be allowed no extra compensation for such drawings.

## 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.

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.

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### 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.

### 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.

### 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.

#### 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.

#### 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.
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.

#### 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 decrees 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.

## 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.

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.
- 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 IIV, or as approved by CFX, as defined by A.M. Best and Company's Key Rating Guide. 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:**

<b>Contract Amount</b>	<b>Workers' Comp/ Employer's Liability</b>	<b>General Liability (per occurrence/ aggregate)</b>	<b>Automobile Liability</b>
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.

- 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.

<b>Contract Amount</b>	<b>Minimum Limit</b>	<b>Maximum Deductible</b>
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.

#### 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](mailto: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.

#### 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.

#### 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.

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 Preliminary, Baseline, Updated Baseline, and Two-Week Look-Ahead Schedules:

### 6.3.3.1 Scheduling Terminology

Accepted Baseline Schedule: The Accepted Baseline Schedule is the Baseline Schedule submitted by the Contractor and accepted by CFX. Review and acceptance of the schedule by CFX will be for the sole purpose of determining if the schedule is in substantial compliance with the General Specifications and does not mean that CFX agrees or disagrees, approves or disapproves of the constructability, means and methods, validity and accuracy of the submitted baseline schedule. The Contractor is solely responsible for the constructability, means and methods, validity and accuracy of the submitted baseline schedule.

Acknowledged Receipt of the Updated Baseline Schedule: The Contractor is solely responsible for the constructability, means and methods, validity and accuracy of the updated baseline schedule. CFX does not accept or reject, agree or disagree, approve or disapprove of the constructability, means and methods, validity or accuracy of the



Updated Baseline Schedule. Instead, CFX will transmit a letter acknowledging receipt of the Contractor's submittal of the Updated Baseline Schedule.

**Baseline Schedule:** The Baseline Schedule does not contain any progressed activities.

Therefore, each activity's early and late dates are planned dates, not actual dates. The Baseline Schedule contains the necessary breakdown of activities to adequately track the progress of the project. Activities in the Baseline Schedule shall include, but not be limited to, activities for all work to be performed. In addition, the baseline schedule should include milestone activities, and activities for the procurement of significant equipment and materials, including activities for submittals and approvals, orders, fabrication, request for delivery and delivery. Procurement activities should be logically tied to their respective work activities.

**Contract Completion Date:** Also called the Approved Contract Completion Date or the Authorized Contract Completion Date or the Last Chargeable Contract Date.

The Contract Completion Date is calculated by adding the number of calendar days stated in the contract to complete all work, to the first chargeable day of the Contract, less one day.

For time extensions granted by CFX, the Contract Completion Date is calculated by adding the number of calendar days granted to the Contract Completion Date.

If a critical activity is delayed, the Contract Completion Date(s) may also be delayed if the durations on the remaining activities on the critical path are accurate. The Contractor acknowledges and agrees that actual delays to activities which, according to the CPM schedule, do not directly affect the main project critical path, do not have any effect on the Contract Completion Date(s) and shall not be the basis for a change therein.

**CPM:** Critical Path Method of scheduling.

**Early Dates:** The earliest scheduled start and/or finish date assigned to a CPM scheduled activity.

**Excusable Delay:** As defined in subarticle 6.7.3.1.

**Adjustments to Contract Time.**

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

**Lag:** An undefined delay between two scheduled activities. For instance, a 5 day lag between activity A (the predecessor) and activity B (the successor) with a Finish to Start (FS) relationship would mean that activity B would not start until 5 days after the finish of activity A.

**Late Dates:** The latest scheduled start and/or finish date assigned to a CPM scheduled activity.

**Longest Path:** In a Baseline Schedule, the Longest Path of the CPM schedule is a continuous series of activities starting from the first scheduled activity and ending with the last scheduled activity, that are linked in a logical sequence and where each activity in the sequence has the least value of total float in the schedule. If each of the longest path activities were assigned the same calendar, then each activity on the longest path would have the same value of total float. In an Updated Baseline Schedule (a baseline with actual progress recorded), the Longest Path will begin at the data date (also known as the cut-off date) and extend to the last activity scheduled in the Contract. The Contractor shall sequence work so that only one Longest Path is created in the Baseline or Updated Baseline schedule.

**Negative Total Float:** Also called Negative Float. The greatest number of days, stated as a negative number, that the Contract Completion Date is delayed. When an activity has negative total float, the activities with negative total float have early dates scheduled later than their late dates.

**Planned Dates:** Also called early and late dates.

**P6:** The scheduling software Primavera Project Planner, produced by Primavera Systems, Inc., which shall be used by the Contractor for all CPM scheduling tasks.

**Preliminary Schedule:** The Preliminary Schedule is a bar chart schedule submitted at the Pre-Construction Conference. Refer also to specification section 6.3.3.3.

**Revised Baseline Schedule:** The Baseline Schedule shall only be revised with the approval of CFX.

**Total Float:** Also called Float. The number of days an activity can be delayed without delaying the Contract completion date.

CFX and Contractor agree that float is not for the exclusive use or benefit of either the Contractor or CFX and must be used in the best interest of completing the Project on time. The Contractor agrees that: 1) float time may be used by CFX; and 2) there shall be no basis for a Project time extension as a result of any Project problem, change order or delay which only results in the loss of available positive float, or negative float that is greater than the most negative float in the CPM. The Contractor

will not be permitted to alter float through such applications as extending duration estimates or to change sequence relationships, etc., to consume available positive float.

**Time Impact Analysis:** If the Contractor requests a time extension to any required milestone date for changes in the Work ordered by CFX, the Contractor shall furnish such justification and supporting evidence in the form of a Time Impact Analysis illustrating the influence of the change on the Contract time such that CFX can evaluate the request. This Time Impact Analysis shall include a network analysis demonstrating how the Contractor has incorporated the change in the schedule. Each such Time Impact Analysis shall demonstrate the time impact of the performance of the changed Work as the date upon which the change arose or was otherwise ordered, the status of the Work at that time based upon the CPM schedule update prevailing at that time and the duration or logic computations for all of the affected activities. The Time Impact Analysis shall be submitted within ten (10) calendar days following the commencement of the delay event. Failure to make notification in the time and manner required shall be considered a waiver of the Contractor's entitlement to any time extension resulting from such delay. No time extension will be considered unless it specifically contains at least the following detailed information:

1. Date delay began;
2. Date delay impact was resolved;
3. Detailed chronology of delay including the dates of all applicable notifications and submittals;
4. Specific critical activities affected and the dates of impact;
5. The activity durations used in the Time Impact Analysis shall be those reflected by the latest Project schedule update prevailing at the time of the initiation of the delay event.

**Updated Baseline Schedule:** Also called the Schedule Update, is a copy of the Baseline Schedule with activities updated for actual start and/or finish dates and percent completion.

**Weather Event:** As defined in 6.7.3

#### 6.3.3.2 General Requirements for all Scheduling Tasks and Submittals:

**Schedule Content:** Failure to include any element of required Work in the schedule shall not relieve the Contractor from completing all Work necessary to complete the Project on time.

**Scheduling Costs:** All costs incurred by the Contractor to create and maintain the Preliminary and CPM schedules including, but not limited to, updates, revisions, time impact analyses, and any additional required scheduling data shall be borne by the Contractor and are part of the Contract requirements.

**Utility Coordination, Permits and Licenses:** Sufficient liaison shall be conducted and information obtained at the utility pre-construction conference to coordinate activities with utility owners having facilities within the Project limits. The schedule shall conform to the utility adjustments and Maintenance of Traffic sequencing included in the Contract Documents unless changed by mutual agreement of the utility company, the Contractor, and CFX. The schedule shall show any utility adjustments that start or continue after the Contract time has started. In addition, the Contractor shall show the acquisition of permits or licenses needed for the Project.

**Required Labeling of all Correspondence and Associated Documents:** All Schedule related correspondence, including transmittals and attachments, shall have the Schedule number and cut-off date (data date) entered in the document heading. A sample format to be used is as follows: "0303-25AUG15", where 0303 is the schedule update number and 25AUG15 is the cut-off date (data date).

#### 6.3.3.3 Submission of the Preliminary Schedule:

The Contractor shall submit to CFX with the executed Contract the following documents:

The Preliminary Schedule shall cover the entire scope of the Contractor's responsibilities for the entire Contract time. The Preliminary Schedule is either a CPM or a NON-CPM generated bar chart schedule. The Preliminary Schedule shall present the Contractor's general approach to the Project and show adequate detail for Work, procurement, and submittal and approval activities covering the first 120 days of Work from the First Chargeable Contract day. The remainder of the Contract time shall be represented by summary activities.

**Written Narrative:** The written narrative shall explain the preliminary schedule's scope and approach to the Project in sufficient detail to demonstrate that the Contractor has a reasonable and workable plan to complete the Project within the Contract time allowed.

**Geographical Layout of the Project:** The geographical layout graphic of the project shall be suitable in size and content for presentation purposes. The Contractor shall also submit a copy of the geographical layout of the project in a legal landscape format.

**Contractor's Oral Presentation:** At the pre-construction conference, the Contractor shall show and refer to the geographical layout of the Project in an oral presentation of the Contractor's approach to performing the Work under the Contract. The Contractor's oral presentation shall conform to the format and content of the written narrative.

Within five (5) days after receipt of the Preliminary Schedule, CFX will either accept or reject the schedule. If the Preliminary Schedule is rejected, CFX and Contractor will meet within 3 days after notice of rejection at which time CFX will present the Contractor with a list of required changes to the Preliminary Schedule. The Contractor shall make the changes and submit a revised preliminary schedule acceptable to CFX within 3 days after receipt of the required changes.

**Updating the Preliminary Schedule:** The Contractor shall update each activity in the Preliminary Schedule with an actual start date, actual finish date, percent complete, and remaining duration each month until the accepted Baseline Schedule is updated and submitted to CFX. The cut-off date and submittal date for the Updated Preliminary Schedule shall be established by CFX and the Contractor shall submit the Updated Preliminary Schedule on that date. The Contractor shall include a written narrative with the Updated Preliminary Schedule explaining the progress made, any delays that have occurred, and work planned to be accomplished in the next month.

**Retainage for Non-Submittal:** If the Contractor fails to update the Preliminary Schedule and submit a written narrative, CFX may retain 10% of the Contractor's next Monthly Payment Request and 10% of each subsequent monthly payment request until the Contractor complies.

**6.3.3.4 Submission of the CPM Baseline and Updated Baseline Schedules:** The Contractor's CPM schedule shall be a detailed CPM schedule. The CPM schedule shall be generated by the latest version of Primavera Project Planner (P6) by Primavera Systems, Inc. The Contractor shall pay the scheduling software yearly maintenance fees and maintain scheduling software upgrades throughout the duration of the contract. The Contractor shall use all default settings in Primavera Project Planner for all schedule submittals. This includes using the "Retained Logic" setting for all calculations, unless CFX chooses to allow the use of the P6 "Progress Override" setting.

Each Baseline and Updated Baseline schedule submittal shall include all reports and graphics listed in specification section 6.3.3.4.9. All Baseline Schedule submittals shall also include the Logic Diagram required under Item number 4.

The Contractor shall submit to CFX two copies of each of the above schedules created using the P6 Backup feature.

**Schedule Submittal Deadlines:** The Contractor shall prepare and submit a detailed CPM construction schedule. The schedule shall be prepared according to the specifications and submitted no later than 45 calendar days after the Notice to Proceed date. The CEI shall have 30 calendar days from the Contractor's submittal date to review and notify the Contractor in writing of its findings. The Contractor shall have 15 calendar days from the date of the CEI's written notice to make all requested modifications to the schedule and re-submit the schedule.

**Retainage for Non-Submittal:** If the Contractor fails to submit a schedule that fully complies with the specifications within 90 calendar days from the Notice to Proceed date, CFX will automatically retain 10% of the Contractor's Current Period Monthly Payment Request amount in addition to other retainage.

CFX may retain an additional 10% of the Contractor's Period Monthly Payment Request amount for each successive month that the Contractor fails to submit any schedule on time in addition to other retainage. The Contractor must submit an Updated Baseline Schedule for each month of the Contract starting from the first chargeable day of the contract. The Due Date for the Updated Baseline Schedule shall be the Cut-Off Date established by CFX for submittal of the Contractor's Monthly Payment Request. The Due Date for the Updated Baseline Schedule may be changed from time to time by CFX. The Contractor's submitted schedule shall have a data date matching the cut-off date established by CFX.

**Milestones:** Construction and maintenance of traffic milestones, including completion of construction on roadway sections, building and removing temporary detours, bridges, traffic shifts, and road closures and openings shall be adequately shown in the schedule.

**Measurement of Progress:** As the contract work progresses and the baseline schedule is updated with progress, each subsequent schedule update shall become the schedule upon which all Work progress will be measured.

6.3.3.4.1 CPM Activity Creation: Each schedule activity shall include the following detail in P6:

A.) ID Number - The format followed shall be uniform throughout the schedule. The activity number shall not exceed 6 digits.

B.) Original Duration (Working Days): No activity shall have a duration greater than 20 working days unless approved by CFX. However, activities such as long-term procurement, certain approvals and submittals may have durations greater than 20 working days or have a 7-day calendar assignment.

At the minimum, the schedule shall include, but not be limited to the following activities:

Bridge Activities:

Test Pile installation per bent per structure.  
Production Pile installation per bent per structure.  
Drilled shaft installation per pier per structure.  
Pile caps per bent per structure.  
Footings per pier per structure.  
Columns per pier per structure.  
Caps per pier per structure.  
End bents per structure.  
Beam or girder erection-span by span per structure.  
Diaphragms.  
Deck placement-span by span per structure.  
Parapets-span by span per structure.

Roadway Activities:

Internal access and haul roads (location and duration in-place).  
Utility relocation work by utility and by stationing and roadway.  
Clearing and grubbing by stationing and roadway.  
Excavation by stationing and roadway.  
Embankment for each abutment location.  
Embankment placed for each roadway by stationing and roadway.  
Drainage by run with stationing and roadway.  
Box Culvert or other large Pre-cast structure with stationing and roadway.  
Reinforced Earth Wall leveling pad per bent per structure.  
Reinforced Earth Wall per bent per structure.  
Reinforced Earth Wall Coping per bent per structure.  
Retaining walls by stationing and roadway.  
Stabilization/Subgrade by stationing and roadway.  
Limerock Base by stationing and roadway.  
Asphalt Base by stationing and roadway.  
Curb and Gutter by stationing and roadway.  
Structural Pavement (asphalt and/or concrete) by stationing and roadway.  
Bridge approach slabs per bridge and roadway.  
Guardrail by stationing and roadway.  
Slope pavement or riprap by stationing and roadway.



Roadway lighting by stationing and roadway.  
Signing for each sign structure by stationing and roadway.  
Striping by stationing and roadway.  
Traffic signals by stationing and roadway.  
Topsoil, sodding, seeding and mulching by stationing and roadway.  
Landscaping by stationing and roadway.  
Architectural Treatments.  
Sound Walls.  
Fiber Optic.  
Concrete Removal and Replacement.  
Milling and Resurfacing.  
Ponds.  
Planter Walls.

**Building Activities:**

Sitework, including, but not limited to clearing, excavation, storm and sanitary drainage, utility work, fill, grading, curb & gutter, sidewalks, asphalt and concrete paving, striping, retention pond excavation and grading, sodding.  
Foundation work, including, but not limited to, piling, building pads, column, stem wall, slab work, conduit and piping.  
Concrete work, including, but not limited to, stairwells, stairs, elevator shafts, tunnels.  
Exterior Structures, including, but not limited to structural steel bridges, walkways, railings.  
Exterior Walls, including, but not limited to, block, brick, pre-cast, poured-in-place concrete, wood and metal stud, stucco.  
Roof, including, but not limited to, structural steel framing, wood framing, pre-cast, parapet walls, metal, poured-in-place, sheathing, underlayment, built-up, roof drainage, and soffits.  
Exterior doors, windows, and store-front framing.  
Interior Build-out, including, but not limited to, wood and metal stud, interior doors and windows, cabinetry, specialty work, drywall, insulation, sound proofing, carpet, tile, painting, furnishings, and miscellaneous finishes.  
Electrical, including, but not limited to conduit, power supply, fixtures, wiring, finishes, and testing.  
Plumbing, including, but not limited to, piping, sanitary sewer, water supply, fixtures, finishes, and testing.  
HVAC, including, but not limited to, air handlers, compressors, duct work, finishes, and testing.  
Fire Systems, including, but not limited to piping, sprinkler heads, and testing.

Security Systems, including, but not limited to, control panels, wiring, sensors, alarms, communications, and testing.

Specialty Work, including, but not limited to, elevators, escalators, toll booth facilities, electronic toll equipment, conduit, wiring, voice and data communication systems, and testing.

The Contractor agrees to submit for acceptance a CPM baseline schedule showing Work commencing on the first chargeable Contract day and finishing on the last chargeable Contract day, thereby showing zero total float.

The Contractor shall sequence work so that only one Longest Path is created in the Baseline or Updated Baseline schedule.

The Contractor must submit evidence to CFX that any activity to be added or removed from the schedule is a logical and reasonable change. If CFX decides that the activity is not sufficiently supported and does not serve a useful purpose, CFX shall request that the Contractor remove the activity from the schedule, and the Contractor shall comply.

The schedule shall include a task activity for the first chargeable day of the Contract and a task activity for the last chargeable day of the Contract with a 1-day duration and a 7-day calendar assignment. The Contract Completion Date as defined in section 6.3.2.1 shall be entered into the Primavera Project Overview window under "Project must finish by".

**Mobilization Activities:** Activities representing Contract pay item 1-101-1, Mobilization, shall be divided into 1 work activity with a duration no greater than 20 work days and 4 mobilization payment milestones that are revenue loaded according to the specification payment schedule as follows: 5% of Contract earned = 25% payment, 10% of Contract earned = 50% payment, 25% of Contract earned = 75% payment and 50% of Contract earned = 100% payment. The payment milestones should not be tied to any activities, but constrained by a "start no earlier than" constraint. The dates they are constrained to should be based on the early dates shown in the schedule cash flow tabular report by day generated by P6.

6.3.3.4.2 Activity Codes: The following are the minimum required activity codes and their values that are to be assigned to each activity in P6:

Phase: Shall have a field length of 4 characters. If the Project has more than one maintenance of traffic (M.O.T.) phase, each phase shall be identified. Each activity shall show which M.O.T. Phase it belongs to as shown in the Plans and Specifications.

Area: Shall have a field length of 6 characters. The Contractor shall create Area activity code values for each of the following areas. Each schedule activity shall have an assigned Area activity code value

6.3.3.4.3 Activity Relationships: Relationships between activities shall be identified with the following information:

- A. Activity ID - Shall not exceed 6 characters in length.
- B. Predecessor and successor activity ID.
- C. Relationship types:
  - SS -Start to start
  - FF -Finish to finish
  - SF -Start to finish - This relationship is not allowed, unless authorized by CFX.
- D. Lag -Negative lag is not allowed, unless authorized by CFX.

6.3.3.4.4 Project Calendars: Calendars shall use day as the planning unit for the schedule. One of four calendars shall be used for each activity:

- A. Calendar 1: shall be used for 5-day workweek activities: Monday through Friday. All holidays and non-work days shall be assigned to this calendar. This calendar shall be used for all normal Work activities. Calendar 1 shall be the default calendar.
- B. Calendar 2: shall be used for 7-day workweek activities. No non-work days shall be entered into this calendar. Activities such as friction course curing shall use this calendar.
- C. Calendar 3: shall be used for 7-day workweek activities. All holidays shall be entered into this calendar.
- D. Calendar 4: shall be used for 6-day workweek activities. All holidays and non-work days shall be assigned to this calendar.

Global Calendar: The global P6 calendar shall have all holidays and non-work days assigned.

Additional calendars: May be assigned depending upon need. However, the Contractor shall consult with CFX before other calendars are entered and/or used in the Project schedule.

6.3.3.4.5 Revenue Loading the Schedule: Each Work activity in the schedule shall be revenue loaded using all the Contract pay items amounts related to the Work activity. The Contractor shall verify that each pay item is represented in the schedule. The total of all revenue loading shall equal the Contract amount.

If the monthly payment requests do not reasonably agree with the monthly schedule updates/budgeted revenue of Work performed, CFX may request that the Contractor revise its revenue loading in the accepted baseline schedule and the most current updated baseline schedule. In addition, CFX may request that the Contractor revise its revenue loading in the accepted baseline and updated baseline schedules to incorporate all Supplemental Agreement changes affecting the Contract amount.

#### 6.3.3.4.6 Updating the Baseline Schedule

Monthly Schedule Update Meetings: Monthly Schedule Update meetings shall be set by CFX and shall be transmitted to the Contractor by written notice.

CFX will establish a schedule cut-off date for each month of the Contract.

The updated baseline schedule, project progress, issues, delays, claims, planned Work, Contractor's monthly pay estimate, and baseline schedule revisions shall be among the priority items addressed in detail.

Schedule Update Process: The schedule update process shall include updating the activity actual start and finish dates, percent completion, remaining duration, and adjusting schedule logic to correct for activities being performed out of sequence, adjusting resource allocations for activities, and changing the calendar assignments to activities as needed. The Contractor shall not change an activity original duration for any reason.

#### 6.3.3.4.7 Revisions to the Baseline Schedule

1. CFX will request in writing that the Contractor submit a proposed revision to the Accepted Baseline Schedule to incorporate a Board Approved Supplemental Agreement.
2. The Contractor shall have fifteen calendar days from receipt of CFX's request to submit a proposed revision to the Accepted Baseline Schedule.
3. The Contractor's proposed revision shall include all transmittals, reports, diagrams, and bar charts listed in specification section 6.3.2.4.9, unless CFX requests otherwise in writing.
4. The Contractor shall submit two Schedule Comparison reports. The first report shall be a comparison between the Accepted Baseline Schedule and the Revised Baseline Schedule. The second report shall be a comparison between the current updated baseline schedule and the proposed updated baseline schedule containing the proposed revision to the accepted baseline schedule.
5. In its required narrative report, the Contractor shall state whether or not the proposed changes affect the longest path of the accepted baseline schedule or the proposed updated baseline schedule, which contains progress.
6. CFX shall have 15 calendar days to review and transmit a written notice of acceptance or rejection of the Contractor's proposed revision. If CFX rejects the proposed revision, CFX shall state the reasons for rejection in the written notice. The Contractor shall have 5 calendar days to re-submit the proposed revision to CFX.
7. If the Contractor fails to submit a proposed revision that is accepted by CFX within 45 calendar days from CFX's original request date, CFX reserves the right to retain 10% of each of the Contractor's monthly payment requests until the Contractor submits a proposed revision that is accepted by CFX.
8. Upon acceptance of the proposed revision to the accepted baseline schedule, the proposed revision to the baseline schedule shall become the accepted baseline schedule. The Contractor shall incorporate the revision into the next scheduled updated baseline schedule.

**6.3.3.4.8 Schedule Submittals:** Each baseline, revised baseline, and updated baseline schedule submittal shall include the following documents, unless CFX sends and the Contractor receives a written request to limit the submittal to certain documents for a specific submittal.

1. Transmittal: Shall be signed by the Contractor's Schedule Engineer or Resident Engineer. Shall contain the following information:

Submittal date.

Contractor Name.

Complete CFX Contract Number.

Project Description.

Contract Resident Engineer.

Four character P6 Project Number - Data Date

2. Schedule Update Narrative Report: The Contractor shall prepare a written narrative to accompany the required reports and graphics for the schedule update submittal. The narrative shall have the following sections:

**Schedule Status:** The Schedule Status shall be a written narrative explaining the progress during the month in sufficient detail and referencing specific activities including longest path activities, milestones, design issues, means and methods issues, out of sequence activities, and actual production rates for various types of Work performed by the crews loaded as resources in the schedule.

**Delays:** If the Contractor has experienced any delay, the Contractor shall explain what activities in the current period were affected by the delay and what caused the delay and how the Contractor intends to address the delay.

**Milestone Comparisons:** Current period projected milestone dates versus previous period projected milestone dates, and current period projected contract completion date versus previous period projected contract completion date.

3. Schedule Comparison Report: The Contractor shall submit to CFX a detailed report showing all changes to the Project schedule since the previous monthly update, including, but not limited to the following information:

Activities worked out of sequence.  
Changes in Total Float.  
Changes in Early and Late Dates.  
Changes in Original and Remaining Duration.  
Changes in Activity Constraints.  
Changes in Activity Predecessors, Successors, Relationship Type, and Lags.  
Changes in Activity Resource Assignments.  
Changes in Activity Cost Loading.  
Changes in Activity percent completion.  
Changes in Longest Path Activities.

Longest Path Bar chart: Bar chart shall be time scaled and filtered on the Longest Path activities and sorted by early start.

Area Code Bar chart: Bar chart shall be time scaled and sorted by area code. The bar chart shall include:

- A. Each activity on a single line containing ID number, activity description, and a bar representing activity original duration, early start dates, early finish dates, late start dates, late finish dates and total float.
- B. Key to identify all components in the bar chart and CPM.
- C. Key to identify all the abbreviations used.

4. Revenue Loading Report: The Contractor shall submit to CFX a report entitled "Revenue Loading Report". The report shall include the following information:

- A. Activity ID number
- B. Description of activity
- C. List of pay items included in activity including:
  - 1. Pay item number
  - 2. Pay item description
  - 3. Quantity of pay item to be applied
  - 4. Unit measure of pay item
  - 5. Unit-price of pay item
  - 6. Total price for pay item to be applied
- D. Total revenue loading of activity (Sum of "C")



5. Revenue Flow Diagram: For any baseline Schedule, the Contractor shall submit to CFX a Revenue Flow Diagram by month. The Revenue Flow Diagram shall show the early and late curves representing the accumulated projected dollars to be earned for each month of the Contract.
6. Tabular Revenue Report: For any Baseline Schedule, the Contractor shall submit a Tabular Revenue Report by day. The tabular report shall show columns for the accumulated and incremental projected dollar amounts to be earned on the early and late curve for each Contract day.
7. P6 Schedule Backup: The Contractor shall submit to CFX two copies of each baseline, revised baseline, and updated baseline schedule using the P6 backup option. The backed up copies shall be compressed and without an access list. The backups shall be submitted on compact disk (cd). Each cd shall have a typed label showing the following information:

Contractor name

The complete CFX Project number

The four character P6 project number

Data Date in format -> "01JAN15"

Volume number \_of\_ total volume numbers (e.g., 1 of 5, 2 of 5)

8. Paper Sizes and Orientation: All printed reports shall be submitted on 8" x 11" portrait-bond paper. All printed bar charts and revenue flow diagrams shall be submitted on 8" x 11" landscape bond paper. All presentation layouts and logic diagrams shall be plotted in color with a color design jet plotter and submitted on ANSI E (34-inch x 44-inch) size coated paper.

6.3.3.4.9 Two Week Look Ahead Schedule: The Contractor shall submit a two-week look-ahead bar chart schedule produced in Microsoft Excel at the weekly project progress meeting. The bar chart shall show all major Work in progress.

The bar chart shall show at least one week behind for actual Work performed and two weeks ahead for planned Work.

The bar chart shall be date synchronized to the CEI's Weekly Summaries.

Changes and revisions that require the approval of CFX shall be brought forward for discussion.

6.3.3.4.10 Adjustments to Contract Time:

1. The Contract Completion Date shall not be changed in any schedule unless CFX approves a Supplemental Agreement granting an extension to the Contract Time.
2. The Contractor has the right to finish the Contract early; however, the Contractor agrees that any impact to the projected early completion date does not justify a request for a time extension because it would constitute changing the Contract completion date to match the Contractor's projected early completion date.
3. The Contractor acknowledges and agrees that for purposes of considering a time extension request, a schedule activity shall not be considered to have been subject to a claimed delay unless all originally and presently scheduled predecessor activities have been completed so that no other restraints to the performance of that activity exist in the CPM schedule at the time claimed for the delay impact. The Contractor agrees that a Contract time extension request shall only be considered for one of the following reasons:
  - A. The Contractor performed Extra Work that met all of the following conditions:
    1. CFX stated that the Extra Work was not to be performed concurrently with other Contract Work.
    2. The Extra Work delayed the Contract Completion Date.
    3. The Extra Work impacted one or more activities on the current CPM schedule longest path.
  - B. The Contractor experienced an Excusable Delay, as defined in subarticle 6.7.3.1, that met all of the following conditions:
    1. The Contract Completion Date was delayed due to circumstances beyond the control of the Contractor.

2. The Contractor took every reasonable action to prevent the delay.
3. The delay impacted one or more activities on the current CPM schedule longest path.
4. The Contractor agrees that there shall be no basis for a Contract Time extension as a result of any Contract problem, Supplemental Agreement, or delay, which only results in the loss of available positive float, or an increase of negative float belonging to activities that do not reside on the CPM schedule's Longest Path.

6.3.3.4.11 Supplemental Agreements: Supplemental Agreements shall include a time impact analysis from the Contractor as to the effect of the requested change on the detailed schedule. In cases where the requested change has no impact on the Project duration, the time impact analysis shall still be included. The time impact analysis shall include a listing of the activities that are affected by the requested changes and an analysis of the change on the longest path of the detailed schedule. The Contractor and the CEI shall agree upon the impact to the schedule before a Supplemental Agreement is approved.

The approved Supplemental Agreements shall be incorporated into the next monthly schedule update.

6.3.3.4.12 Adjustment to the Contract Time: Adjustments to the Contract time are detailed in subarticle 6.7.3.

6.3.3.4.13 CPM Recovery Schedule: Should any of the following conditions exist, the Contractor shall, at no extra cost to CFX, prepare a CPM Recovery Schedule:

1. Should the Contractor's monthly progress review indicate that a CPM Recovery Schedule is required;
2. Should the CPM schedule show the Contractor to be thirty (30) or more days behind schedule at any time during the construction period;
3. Should the Contractor request to make changes in the logic of the CPM schedule which, in the opinion of CFX, are of a major nature.

The same requirements and submittals for the CPM Recovery Schedule shall apply as the original baseline schedule.

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.

#### 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.

- 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.
- 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.

#### 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.
- 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.

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 subarticle.

## 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.

7.2.1.1 Fuels: CFX will, in the Contract Documents, provide an estimated quantity for fuel requirements for gasoline and diesel to cover the work specified in the Contract. Price adjustments will be made only for the amount of gasoline and diesel fuel estimated by CFX as required to complete the Contract. The requirement of each type of fuel for each pay item is estimated by multiplying the CFX standard fuel factor for that pay item by the quantity of that pay item. Price adjustments made for fuel used after expiration of the last allowable Contract Day (including any time extensions) will be limited to the increases or decreases dictated by the index in effect on the last allowable Contract Day. On Contracts with an original Contract Time in excess of 120 calendar days, CFX will make price adjustments on each applicable progress estimate to reflect increases or decreases in the price of gasoline and diesel from those in effect during the month in which bids were received. The Contractor will not be given the option of accepting or rejecting these adjustments. Price adjustments for these fuels will be made only when the current fuel price (CFP) varies by more than 5% from the price published when bids were received (BFP), and then only on the portion that exceeds 5%. For definition purposes, should a project bid prior to the 15<sup>th</sup> of any month, the bid index will be the index for the month prior to the bid. Should a project bid after the 14<sup>th</sup> of the month, the bid index will be the index for the month of the bid.

Price adjustments will be based on the monthly bulk average price for gas and diesel as derived by the FDOT. These average indexes shall be determined by averaging bulk fuel prices on the first day of each month as quoted by major oil companies that are reasonably expected to furnish fuel for projects in the State of Florida. Average price indices for gasoline and diesel will be available on the FDOT Construction Office website before the 15<sup>th</sup> of each month, at the following URL: [www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.htm](http://www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.htm).

Payment will be based on the quantities shown on the progress estimate on all items for which established standard fuel factors which are included in the bid documents or, if omitted, are on a file maintained by the FDOT at the time of bid.

Payment on progress estimates will be adjusted to reflect adjustments in the prices for gasoline and diesel in accordance with the following:

When fuel prices have decreased between month of bid and month of this progress estimate:

$A_i = F_i (P_i - .95 P_b)$  during a period of decreasing prices.

$A_i$  = Total dollar amount - positive or negative - of the cost adjustment for each kind of fuel used by the Contractor during the month "i."

$F_i$  = Total gallons calculated as being used during the month (units produced/month x gallons/unit).

$P_i$  = Average price for fuel prevailing during month "i."

$P_b$  = Average price for fuel prevailing during the month "b" when bids were received on this Contract, as defined above

When fuel prices have increased between month of bid and month of this progress estimate:

$A_i = F_i (P_i - 1.05 P_b)$  during a period of increasing prices.

$A_i$  = Total dollar amount - positive or negative - of the cost adjustment for each kind of fuel used by the Contractor during the month "i."

$F_i$  = Total gallons calculated as being used during the month.

Pi = Average price for fuel prevailing during month “i.”

Pb = Average price for fuel prevailing during the month “b” when bids were received on this Contract, as defined above

Payment will be made on the current progress estimate to reflect the index difference at the time work was performed.

Adjustments will be paid or charged to the Contractor only. Contractors receiving an adjustment under this provision shall distribute the proper proportional part of such adjustment to subcontractors who perform applicable work.

7.2.1.2 Bituminous Material: On Contracts having an original Contract Time of more than 365 calendar days, or more than 5,000 tons of asphalt concrete, CFX will adjust the bid unit price for bituminous material, excluding cutback and emulsified asphalt to reflect increases or decreases in the Asphalt Price Index (API) of bituminous material from that in effect on the day on which bids were received. The Contractor will not be given the option of accepting or rejecting this adjustment. Bituminous adjustments will be made only when the current API (CAPI) varies by more than 5% of the API prevailing on the day on which bids were received (BAPI), and then only on the portion that exceeds 5%. For definition purposes, should a project bid prior to the 15<sup>th</sup> of any month, the bid index will be the index for the month prior to the bid. Should a project bid after the 14<sup>th</sup> of the month, the bid index will be the index for the month of the bid.

CFX will determine the API for each month by checking the FDOT Contracts Office web site which averages quotations in effect on the first day of the month at all terminals that could reasonably be expected to furnish bituminous material to projects in the State of Florida.

Payment on progress estimates will be adjusted to reflect adjustments in the prices for bituminous materials in accordance with the following:

$$\text{\$ Adjustment} = (\text{ID})(\text{Gallons})$$

Where ID = Index Difference = [CAPI - 0.95(BAPI)] when the API has decreased between the month of bid, as defined above, and month of this progress estimate.

Where ID = Index Difference = [CAPI - 1.05(BAPI)] when the API has increased between the month of bid, as defined above, and month of this progress estimate.

Payment will be made on the current progress estimate to reflect the index difference at the time work was performed.

For asphalt concrete items payable by the ton, and not containing Reclaimed Asphalt Pavement (RAP), the number of gallons will be determined assuming a mix design with 6.25% liquid asphalt weighing 8.58 lb/gal. For asphalt concrete items payable by the ton, that do contain Reclaimed Asphalt Pavement (RAP), the number of gallons will be determined assuming a mix design with 5% liquid asphalt weighing 8.58 lb/gal.

Asphalt concrete items payable by the square yard will be converted to equivalent tons assuming a weight of 100 lb/yd<sup>2</sup> per inch.

7.2.1.2 For FC-5 with granite, the number of gallons will be determined assuming a mix design with 5.5% liquid asphalt weighing 8.58 lb/gal.

- 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.

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 RRBBOCE ownership cost plus 100% of the RRBB and/or RRBBOCE 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 RRBBOCE 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 RRBBOCE monthly rates by 176. The columns, itemizing rates, labeled "Weekly", "Daily" and "Hourly" shall not be used.
- 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.

(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.

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 of 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, CEL, 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- PARTNERING AND DISPUTES RESOLUTION

### 10.1 Partnering

The objective of Partnering is to establish a partnership charter and action plan for the Contractor, CFX and other parties impacted by the activities covered under the Contract to identify and achieve reciprocal goals. These objectives may be met through participation in workshops held periodically throughout the duration of the Contract.

Prior to the pre-construction conference, CFX, the CEI, and the Contractor shall meet and plan an initial partnering/team building workshop. At this planning session, arrangements will be made to select a workshop facilitator, determine attendees, agenda, duration and location. Attendees should include representatives of CFX, the CEI, and other key Project personnel, the Contractor's superintendent and other key personnel as well as others mutually agreed upon by CFX and the Contractor. Additional workshops may be held periodically throughout the duration of the Contract if authorized by CFX.

CFX will arrange for and pay the cost of providing a facilitator and meeting room and for all other direct costs associated with the Partnering workshops. No separate compensation will be paid to the Contractor to attend partnering meetings

### 10.2 Disputes Resolution

#### 10.2.1 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.

#### 10.2.2 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.

#### 10.2.3 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.

#### 10.2.4 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.

#### 10.2.5 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.

#### 10.2.6 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.

#### 10.2.7 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.

#### **10.2.8 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 Three Hundred Dollars (\$1,300.00) 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  
#6**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 27, 2020

SUBJECT: Approval of Contract Award to Traffic Control Devices, Inc.  
for Systemwide Pay By Plate Signs – SR 417  
Project 599-643B, Contract No. 001643

An Invitation to Bid for the referenced project was advertised on December 22, 2019. Responses to the invitation were received from two (2) contractors by the January 28, 2020 deadline. As required by the Procurement Procedures Manual, a discussion was held with the Manager of Engineering to review CFX's options when less than three bids are received. . It was decided that a re-bid would not result in additional responses, the bids were within the established tolerances, and there were no irregularities that would result in the bids being rejected.

Bid results were as follows:

<u>Bidder</u>	<u>Bid Amount</u>
1. Traffic Control Devices, Inc.	\$1,117,711.00
2. United Signs & Signals	\$1,169,372.86

The Engineer's estimate for this project is \$1,199,453.94.

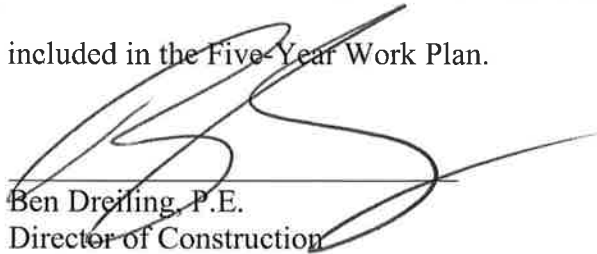
The Engineer of Record for Project 599-643B has reviewed the low bid submitted by Traffic Control Devices, Inc. and determined that the low bid unit prices are not unbalanced.


This project consists of providing all labor, materials, equipment and incidentals necessary for the removal of existing signs, the installation of new signs and the installation of sign overlays along SR 417. The work includes both ground mounted and overhead sign assemblies.

The Procurement Department has evaluated the bids and has determined the bid from Traffic Control Devices, Inc. to be responsible and responsive to the bidding requirements. Board award of the contract to Traffic Control Devices, Inc. in the amount of \$1,117,711.00 is recommended.

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

Reviewed by:

  
Ben Dreiling, P.E.  
Director of Construction



# **CONTRACT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
TRAFFIC CONTROL DEVICES, INC.**

**SYSTEMWIDE PAY BY PLATE (PBP) SIGNS – SR 417**

**PROJECT 599-643B  
CONTRACT NO. 001643**

**CONTRACT DATE: FEBRUARY 13, 2020  
CONTRACT AMOUNT: \$1,117,711.00**

**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, ADDENDA,  
PUBLIC CONSTRUCTION BOND AND FORMS**

**FOR**

**SYSTEMWIDE PAY BY PLATE (PBP) SIGNS – SR 417**

**PROJECT 599-643B  
CONTRACT NO. 001643**

**FEBRUARY 2020**

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**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-25
	(See Special Provisions Table of Contents for listing of each special provision.)	

Addendum No. 1

Plans

## CONTRACT

This Contract No. 001643 (the "Contract"), made this 13<sup>th</sup> day of February 2020, between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, hereinafter called CFX and Traffic Control Devices, Inc., of 242 N. Westmonte Drive, Altamonte Springs, FL. 32714-2404, 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 599-643B, Systemwide Pay By Plate (PBP) Signs – SR 417, as detailed in the Contract Documents and any addenda or modifications thereto. Contract time for this project shall be 155 calendar days. The Contract Amount is \$1,117,711.00. This Contract was awarded by the Governing Board of CFX at its meeting on February 13, 2020.

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: \_\_\_\_\_

TRAFFIC CONTROL DEVICES, INC.

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**

## **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.

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

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

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

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

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

**1.3.28 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.

**1.3.29 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.

**1.3.30 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.

**1.3.31 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.

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

**1.3.33 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.

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

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

**1.3.36 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.

**1.3.37 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.

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

**1.3.39 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.

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

**1.3.41 Standard Specifications** - The FDOT Standard Specifications for Road and Bridge Construction, 2019 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.

**1.3.42 State** - State of Florida

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

**1.3.44 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.

**1.3.45 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.

**1.3.46 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.

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

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

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

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

**1.3.51 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.

**1.3.52 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.

**1.3.53 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.

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

**1.3.55 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.

**1.3.56 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.

**1.3.57 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 2.4.14. 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.

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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.



- 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.

- 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.

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.

(d) Construction Affecting Public Safety applies to construction that may jeopardize public safety such as structures spanning functioning vehicular roadways, pedestrian walkways, railroads, navigation channels, navigable waterways and walls or other structure's foundations located in embankments immediately adjacent to functioning roadways. It does not apply to those areas of the site under the Contractor's control and outside the limits of normal public access.

(e) Major and unusual structures include bridges of complex geometry and/or complex design. Generally, this includes the following types of structures:

- Bridges with an individual span longer than 300 feet.
- Structurally continuous superstructures with spans over 50 feet.
- Steel box and plate girder bridges.
- Steel truss bridges.
- Concrete segmental and longitudinally post-tensioned continuous girder bridges.
- Cable stayed or suspension bridges.
- Curved girder bridges.
- Arch bridges.
- Tunnels.
- Movable bridges (specifically electrical and mechanical components).
- Rehabilitation, widening or lengthening of any of the above.

(f) Special Erection Equipment includes launching gantries, beam and winch Equipment, form travelers, stability towers, strongbacks, erection trusses, launching noses or similar items made purposely for construction of the structure. It does not apply to commonly available proprietary construction Equipment such as cranes.

(g) Falsework includes any temporary construction Work used to support the permanent structure until it becomes self-supporting. Falsework includes steel or timber beams, girders, columns, piles and foundations and any proprietary Equipment including modular shoring frames, post shores and adjustable horizontal shoring.

(h) Formwork includes any temporary structure or mold used to retain plastic or fluid concrete in its designated shape until it hardens. Formwork comprises common materials such as wood or metal sheets, battens, soldiers and walers, ties, proprietary forming systems such as stay-in-place metal forms, and proprietary supporting bolts, hangers and brackets.

(i) Scaffolding is an elevated work platform used to support workmen, Materials and Equipment but not intended to support the structure.



(j) Shoring is a component of falsework such as horizontal, vertical or inclined support members. In this specification, this term is used interchangeably with falsework.

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 following signing and lighting items are defined as structural items:

Lighting: poles, bracket arms, frangible bases and foundations.

Signing: Mounting brackets for bridge mounted signs, overhead cantilever structures, overhead truss structures, overhead sequential sign structures and multiple post sign supports, along with applicable foundations.

In general, shop drawings shall be required for:

(a) Bridge, Bulkhead and Retaining Wall Structures, cofferdams, Lighting and Signing Structural Items along with applicable foundations.

(b) Signing, Lighting, Drainage Structures and Attenuators and other nonstructural items.

(c) Building Structures.

(d) Contractor Originated Re-Design.

(e) Design and/or structural details furnished by the Contractor in compliance with the Contract, according to the sections of the Specifications pertaining to the Work, to the Plans or other Contract Documents.

(f) Special Erection Equipment.

(g) Falsework and Shoring.

Additional clarification for certain types of bridge structures is provided in 3.1.4.9.

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.

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:

3.1.4.5.1 Bridge, Bulkhead and Retaining Wall Structures and Lighting and Signing Structural Items with appropriate foundations: Shop drawings for pre-qualified items, excluding their corresponding foundations, are not required.

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.

3.1.4.5.2 Signing, Lighting, Drainage Structures, Attenuators and other nonstructural items: The Contractor shall submit seven (7) sets of prints of each shop drawing to the CEI with a copy of the transmittal letter sent to the Consultant.

3.1.4.5.3 Building Structures: One (1) set of prints and one (1) set of reproducible copies of each series of working, shop and erection drawings and all correspondence related to building structures shall be submitted to the CEI with a copy of the transmittal sent to the Consultant.

3.1.4.5.4 Contractor Originated Design or Redesign: 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. The submittal and copies of the transmittal letters shall be transmitted in accordance with the requirements of 3.1.4.5.1 through 3.1.4.5.3, as appropriate.

**3.1.4.5.5 Special Erection Equipment:** For (a) Construction Affecting Public Safety and (b) Major or Unusual Structures: 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. The submittal and copies of the transmittal letters shall be transmitted in accordance with the requirements of 3.1.4.5.1 through 3.1.4.5.3, as appropriate.

**3.1.4.5.6 Falsework and Shoring:** For (a) Construction Affecting Public Safety and (b) Major and Unusual Structures: 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. The submittal and copies of the transmittal letters shall be transmitted in accordance with the requirements of 3.1.4.5.1 through 3.1.4.5.3, as appropriate.

**3.1.4.5.7 Formwork:** Formwork shall be in accordance with Section 400-5 of the Standard Specifications.

**3.1.4.5.8 Scaffolding:** The Contractor shall be responsible for the safe installation and use of all scaffolding. No submittals are required.

**3.1.4.5.9 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. The submittal and copies of the transmittal letters shall be transmitted in accordance with the requirements of 3.1.4.5.1 through 3.1.4.5.3, as appropriate.

**3.1.4.5.10 Beam and Girder Temporary Bracing:** The Contractor is solely responsible for ensuring stability of beams and girders during all handling, storage, shipping and erection. Adequately brace beams and girders to resist wind, weight of forms and other temporary loads, especially those eccentric to the vertical axis of the products, considering actual beam geometry and support conditions during all stages of erection and deck construction.

Develop the required designs following the AASHTO Guide Design Specifications for Bridge Temporary Works and Construction Handbook for Bridge Temporary Works and the Contract Documents.

For Construction Affecting Public Safety, submit signed and sealed calculations for stability of all beams and girders.

#### 3.1.4.6 Certifications:

3.1.4.6.1 Special Erection Equipment: Prior to its use, special erection Equipment shall be personally inspected by the Specialty Engineer who shall certify to the CEI in writing that the Equipment has been fabricated in accordance with the submitted drawings and calculations. In addition, after assembly, the Specialty Engineer shall observe the Equipment in use and shall certify to the CEI in writing that it is being utilized as intended and in accordance with the submitted drawings and calculations. In each case, the Specialty Engineer shall also sign and seal the letter of certification.

3.1.4.6.2 Falsework and Shoring requiring shop drawings per 3.1.4.5.6: After its erection or installation but prior to the application of any superimposed load, the falsework shall be personally inspected by the Specialty Engineer who shall certify to the CEI in writing that the falsework has been constructed in accordance with the Materials and details shown on the submitted drawings and calculations. The Specialty Engineer shall also sign and seal the letter of certification.

3.1.4.6.3 Formwork: For Construction Affecting Public Safety, prior to the placement of any concrete, the Contractor shall certify to the CEI in writing that formwork has been constructed to safely withstand the superimposed loads to which it will be subjected.

#### 3.1.4.7 Processing of Shop Drawings:

3.1.4.7.1 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 45 calendar day review period by the CEI. The review period commences upon receipt of the Contractor's submittal by the CEI as stipulated in 3.1.4.5 and terminates upon transmittal of the submittal back to the Contractor by the CEI. The Contractor shall adjust its schedules so that a 30 calendar day period is provided for each re-submittal.

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.

**3.1.4.7.2 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.

**3.1.4.7.3 Special Review by CEI of Shop Drawings for Construction Affecting Public Safety:** For Construction Affecting Public Safety, the CEI will make an independent review of all relevant shop drawings and similar documents in order to verify the safety of the intended construction and construction of the permanent Work shall not proceed until receipt of the

CEI's approval. The requirement herein does not supercede the Contractor's duty and responsibility for all safety provisions, public and/or otherwise, for the Project.

3.1.4.8 Avoidance of Conflict of Interest: Neither the CEI, the Consultant nor any design engineer who participated in the design phase of the Project can be engaged by the Contractor to perform Work as the Contractor's Specialty Engineer unless expressly approved in writing by CFX.

3.1.4.9 Other Requirements for Shop Drawings for Bridges:

3.1.4.9.1 Shop Drawings for Structural Steel and Miscellaneous Metals: Shop drawings shall be furnished by the Contractor for structural steel and miscellaneous metals. Shop drawings shall consist of working, shop and erection drawings, welding procedures and other working plans, showing details, dimensions, sizes of material, and other information necessary for the complete fabrication and erection of the metal work.

3.1.4.9.2 Shop Drawings for Concrete Structures: Shop drawings shall be furnished by the Contractor for such details as may reasonably be required for the effective prosecution of the Work and which are not included in the plans furnished by CFX. These may include details of falsework, shoring, special erection Equipment, bracing, centering, formwork, masonry layout diagrams and diagrams for bending reinforcing steel in addition to any details required for concrete components for the permanent Work.

3.1.4.9.3 Shop Drawings for Major and Unusual Structures: In addition to any other requirements, no less than 60 days from the start of Work as shown in the latest CPM, the Contractor shall submit information to the CEI outlining Contractor's overall approach to the Project. Where applicable to the Project, this information shall include but need not be limited to items such as:

- (1) Overall construction program for the duration of the Contract. milestone dates should be clearly shown. (For example; the need to open a structure by a certain time for traffic operations.)
- (2) Overall construction sequence. The order in which individual structures are to be built, the sequence in which individual spans of girders or cantilevers are erected and the sequence in which spans are to be made continuous.
- (3) The general location of any physical obstacles to construction that might impose restraints or otherwise affect the construction and an

outline of how the Contractor intends to deal with such obstacles as it builds the structure(s). (For example; obstacles might include road, rail and waterway clearances, temporary diversions, transmission lines, utilities, property and the Contractor's own temporary Work such as haul roads, cofferdams, plant clearances and the like.)

(4) The approximate location of any special lifting Equipment in relation to the structure including clearances required for the operation of the Equipment. (For example; crane positions and operating radii and the like.)

(5) The approximate location of any temporary falsework and conceptual outline of any special erection Equipment. (The precise locations and details of attachments, fixing devices, loads etc. will be covered under later detailed submittals.)

(6) An outline of the handling, transportation and storage of fabricated components, such as girders or concrete segments. (Precise details will be covered under later detailed submittals).

(7) Any other information pertinent to the Contractor's proposed scheme or intentions.

The above information shall be clear and concise and shall be presented on as few drawings as possible in order to provide an overall, integrated summary of the Contractor's intentions and approach to the Project. These drawings are for information, review planning and to assess the Contractor's approach in relation to the intent of the original design. Their delivery to and receipt by the CEI shall not constitute any acceptance or approval to the proposals shown thereon. The details of such proposals shall be the subject of subsequent detailed shop drawing submittals. Variations from these overall scheme proposals shall be covered by timely revisions and re-submittals.

3.1.4.10 Corrections for Construction Errors: For Work that is constructed incorrectly or does not conform to the requirements of the Contract drawings or Specifications, the Contractor has the prerogative to submit an acceptance proposal to the CEI for review and disposition. Any such proposal will be judged both for its effect on the integrity and maintainability of the structure or component thereof and also for its effect on Contract administration.

Any proposal judged by the CEI to infringe on the structural integrity or maintainability of the structure will require a technical assessment and submittal by the Contractor's Specialty Engineer as described in 3.1.4.5.4.



The cost of carrying out all approved corrective construction measures shall be entirely at the Contractor's expense.

Notwithstanding any disposition on the compensation aspects of the defective Work, the CEI's decision on the technical merits of a proposal shall be final.

3.1.4.11 Modifications for Construction: Where the Contractor is permitted to make modifications to the permanent Work for the purposes of expediting the Contractor's chosen construction methods, Contractor shall submit its proposals to the CEI for review and approval. Proposals for modifications shall be submitted under the shop drawing process.

Minor modifications shall be limited to those items that in the opinion of the CEI do not significantly affect the quantity of measured Work nor the integrity or maintainability of the structure or its components.

Major modifications are any modifications that in the opinion of the CEI significantly affect the quantity of measured Work or the integrity or maintainability of the structure or its components. (For example, substitutions of alternative beam sizes and spacing, change of material strength or type, and the like.)

The CEI's decision on the delineation between a minor and a major modification and disposition on a proposal shall be final.

3.1.4.12 Cost of Shop Drawings: The Contract Prices shall include the cost of furnishing shop and working drawings and the Contractor will be allowed no extra compensation for such drawings.

### 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.

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.

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### 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.

### 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.

### 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.

#### 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.

#### 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 an 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.
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.

#### 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 decrees 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.

#### 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.

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.
- 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 IIV, or as approved by CFX, as defined by A.M. Best and Company's Key Rating Guide. 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:**

<b>Contract Amount</b>	<b>Workers’ Comp/ Employer’s Liability</b>	<b>General Liability (per occurrence/ aggregate)</b>	<b>Automobile Liability</b>
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.

- 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.

<b>Contract Amount</b>	<b>Minimum Limit</b>	<b>Maximum Deductible</b>
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.

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](mailto: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.

#### 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.

#### 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.

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 Preliminary, Baseline, Updated Baseline, and Two-Week Look-Ahead Schedules:

### 6.3.3.1 Scheduling Terminology

**Accepted Baseline Schedule:** The Accepted Baseline Schedule is the Baseline Schedule submitted by the Contractor and accepted by CFX. Review and acceptance of the schedule by CFX will be for the sole purpose of determining if the schedule is in substantial compliance with the General Specifications and does not mean that CFX agrees or disagrees, approves or disapproves of the constructability, means and methods, validity and accuracy of the submitted baseline schedule. The Contractor is solely responsible for the constructability, means and methods, validity and accuracy of the submitted baseline schedule.

**Acknowledged Receipt of the Updated Baseline Schedule:** The Contractor is solely responsible for the constructability, means and methods, validity and accuracy of the updated baseline schedule. CFX does not accept or reject, agree or disagree, approve or disapprove of the constructability, means and methods, validity or accuracy of the

Updated Baseline Schedule. Instead, CFX will transmit a letter acknowledging receipt of the Contractor's submittal of the Updated Baseline Schedule.

**Baseline Schedule:** The Baseline Schedule does not contain any progressed activities.

Therefore, each activity's early and late dates are planned dates, not actual dates. The Baseline Schedule contains the necessary breakdown of activities to adequately track the progress of the project. Activities in the Baseline Schedule shall include, but not be limited to, activities for all work to be performed. In addition, the baseline schedule should include milestone activities, and activities for the procurement of significant equipment and materials, including activities for submittals and approvals, orders, fabrication, request for delivery and delivery. Procurement activities should be logically tied to their respective work activities.

**Contract Completion Date:** Also called the Approved Contract Completion Date or the Authorized Contract Completion Date or the Last Chargeable Contract Date.

The Contract Completion Date is calculated by adding the number of calendar days stated in the contract to complete all work, to the first chargeable day of the Contract, less one day.

For time extensions granted by CFX, the Contract Completion Date is calculated by adding the number of calendar days granted to the Contract Completion Date.

If a critical activity is delayed, the Contract Completion Date(s) may also be delayed if the durations on the remaining activities on the critical path are accurate. The Contractor acknowledges and agrees that actual delays to activities which, according to the CPM schedule, do not directly affect the main project critical path, do not have any effect on the Contract Completion Date(s) and shall not be the basis for a change therein.

**CPM:** Critical Path Method of scheduling.

**Early Dates:** The earliest scheduled start and/or finish date assigned to a CPM scheduled activity.

**Excusable Delay:** As defined in subarticle 6.7.3.1.

**Adjustments to Contract Time.**

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

**Lag:** An undefined delay between two scheduled activities. For instance, a 5 day lag between activity A (the predecessor) and activity B (the successor) with a Finish to Start (FS) relationship would mean that activity B would not start until 5 days after the finish of activity A.

**Late Dates:** The latest scheduled start and/or finish date assigned to a CPM scheduled activity.

**Longest Path:** In a Baseline Schedule, the Longest Path of the CPM schedule is a continuous series of activities starting from the first scheduled activity and ending with the last scheduled activity, that are linked in a logical sequence and where each activity in the sequence has the least value of total float in the schedule. If each of the longest path activities were assigned the same calendar, then each activity on the longest path would have the same value of total float. In an Updated Baseline Schedule (a baseline with actual progress recorded), the Longest Path will begin at the data date (also known as the cut-off date) and extend to the last activity scheduled in the Contract. The Contractor shall sequence work so that only one Longest Path is created in the Baseline or Updated Baseline schedule.

**Negative Total Float:** Also called Negative Float. The greatest number of days, stated as a negative number, that the Contract Completion Date is delayed. When an activity has negative total float, the activities with negative total float have early dates scheduled later than their late dates.

**Planned Dates:** Also called early and late dates.

**P6:** The scheduling software Primavera Project Planner, produced by Primavera Systems, Inc., which shall be used by the Contractor for all CPM scheduling tasks.

**Preliminary Schedule:** The Preliminary Schedule is a bar chart schedule submitted at the Pre-Construction Conference. Refer also to specification section 6.3.3.3.

**Revised Baseline Schedule:** The Baseline Schedule shall only be revised with the approval of CFX.

**Total Float:** Also called Float. The number of days an activity can be delayed without delaying the Contract completion date.

CFX and Contractor agree that float is not for the exclusive use or benefit of either the Contractor or CFX and must be used in the best interest of completing the Project on time. The Contractor agrees that: 1) float time may be used by CFX; and 2) there shall be no basis for a Project time extension as a result of any Project problem, change order or delay which only results in the loss of available positive float, or negative float that is greater than the most negative float in the CPM. The Contractor

will not be permitted to alter float through such applications as extending duration estimates or to change sequence relationships, etc., to consume available positive float.

**Time Impact Analysis:** If the Contractor requests a time extension to any required milestone date for changes in the Work ordered by CFX, the Contractor shall furnish such justification and supporting evidence in the form of a Time Impact Analysis illustrating the influence of the change on the Contract time such that CFX can evaluate the request. This Time Impact Analysis shall include a network analysis demonstrating how the Contractor has incorporated the change in the schedule. Each such Time Impact Analysis shall demonstrate the time impact of the performance of the changed Work as the date upon which the change arose or was otherwise ordered, the status of the Work at that time based upon the CPM schedule update prevailing at that time and the duration or logic computations for all of the affected activities. The Time Impact Analysis shall be submitted within ten (10) calendar days following the commencement of the delay event. Failure to make notification in the time and manner required shall be considered a waiver of the Contractor's entitlement to any time extension resulting from such delay. No time extension will be considered unless it specifically contains at least the following detailed information:

1. Date delay began;
2. Date delay impact was resolved;
3. Detailed chronology of delay including the dates of all applicable notifications and submittals;
4. Specific critical activities affected and the dates of impact;
5. The activity durations used in the Time Impact Analysis shall be those reflected by the latest Project schedule update prevailing at the time of the initiation of the delay event.

**Updated Baseline Schedule:** Also called the Schedule Update, is a copy of the Baseline Schedule with activities updated for actual start and/or finish dates and percent completion.

**Weather Event:** As defined in 6.7.3

#### 6.3.3.2 General Requirements for all Scheduling Tasks and Submittals:

**Schedule Content:** Failure to include any element of required Work in the schedule shall not relieve the Contractor from completing all Work necessary to complete the Project on time.

**Scheduling Costs:** All costs incurred by the Contractor to create and maintain the Preliminary and CPM schedules including, but not limited to, updates, revisions, time impact analyses, and any additional required scheduling data shall be borne by the Contractor and are part of the Contract requirements.

**Utility Coordination, Permits and Licenses:** Sufficient liaison shall be conducted and information obtained at the utility pre-construction conference to coordinate activities with utility owners having facilities within the Project limits. The schedule shall conform to the utility adjustments and Maintenance of Traffic sequencing included in the Contract Documents unless changed by mutual agreement of the utility company, the Contractor, and CFX. The schedule shall show any utility adjustments that start or continue after the Contract time has started. In addition, the Contractor shall show the acquisition of permits or licenses needed for the Project.

**Required Labeling of all Correspondence and Associated Documents:** All Schedule related correspondence, including transmittals and attachments, shall have the Schedule number and cut-off date (data date) entered in the document heading. A sample format to be used is as follows: "0303-25AUG15", where 0303 is the schedule update number and 25AUG15 is the cut-off date (data date).

#### 6.3.3.3 Submission of the Preliminary Schedule:

The Contractor shall submit to CFX with the executed Contract the following documents:

The Preliminary Schedule shall cover the entire scope of the Contractor's responsibilities for the entire Contract time. The Preliminary Schedule is either a CPM or a NON-CPM generated bar chart schedule. The Preliminary Schedule shall present the Contractor's general approach to the Project and show adequate detail for Work, procurement, and submittal and approval activities covering the first 120 days of Work from the First Chargeable Contract day. The remainder of the Contract time shall be represented by summary activities.

**Written Narrative:** The written narrative shall explain the preliminary schedule's scope and approach to the Project in sufficient detail to demonstrate that the Contractor has a reasonable and workable plan to complete the Project within the Contract time allowed.

**Geographical Layout of the Project:** The geographical layout graphic of the project shall be suitable in size and content for presentation purposes. The Contractor shall also submit a copy of the geographical layout of the project in a legal landscape format.

**Contractor's Oral Presentation:** At the pre-construction conference, the Contractor shall show and refer to the geographical layout of the Project in an oral presentation of the Contractor's approach to performing the Work under the Contract. The Contractor's oral presentation shall conform to the format and content of the written narrative.

Within five (5) days after receipt of the Preliminary Schedule, CFX will either accept or reject the schedule. If the Preliminary Schedule is rejected, CFX and Contractor will meet within 3 days after notice of rejection at which time CFX will present the Contractor with a list of required changes to the Preliminary Schedule. The Contractor shall make the changes and submit a revised preliminary schedule acceptable to CFX within 3 days after receipt of the required changes.

**Updating the Preliminary Schedule:** The Contractor shall update each activity in the Preliminary Schedule with an actual start date, actual finish date, percent complete, and remaining duration each month until the accepted Baseline Schedule is updated and submitted to CFX. The cut-off date and submittal date for the Updated Preliminary Schedule shall be established by CFX and the Contractor shall submit the Updated Preliminary Schedule on that date. The Contractor shall include a written narrative with the Updated Preliminary Schedule explaining the progress made, any delays that have occurred, and work planned to be accomplished in the next month.

**Retainage for Non-Submittal:** If the Contractor fails to update the Preliminary Schedule and submit a written narrative, CFX may retain 10% of the Contractor's next Monthly Payment Request and 10% of each subsequent monthly payment request until the Contractor complies.

**6.3.3.4 Submission of the CPM Baseline and Updated Baseline Schedules:** The Contractor's CPM schedule shall be a detailed CPM schedule. The CPM schedule shall be generated by the latest version of Primavera Project Planner (P6) by Primavera Systems, Inc. The Contractor shall pay the scheduling software yearly maintenance fees and maintain scheduling software upgrades throughout the duration of the contract. The Contractor shall use all default settings in Primavera Project Planner for all schedule submittals. This includes using the "Retained Logic" setting for all calculations, unless CFX chooses to allow the use of the P6 "Progress Override" setting.

Each Baseline and Updated Baseline schedule submittal shall include all reports and graphics listed in specification section 6.3.3.4.9. All Baseline Schedule submittals shall also include the Logic Diagram required under Item number 4.

The Contractor shall submit to CFX two copies of each of the above schedules created using the P6 Backup feature.

**Schedule Submittal Deadlines:** The Contractor shall prepare and submit a detailed CPM construction schedule. The schedule shall be prepared according to the specifications and submitted no later than 45 calendar days after the Notice to Proceed date. The CEI shall have 30 calendar days from the Contractor's submittal date to review and notify the Contractor in writing of its findings. The Contractor shall have 15 calendar days from the date of the CEI's written notice to make all requested modifications to the schedule and re-submit the schedule.

**Retainage for Non-Submittal:** If the Contractor fails to submit a schedule that fully complies with the specifications within 90 calendar days from the Notice to Proceed date, CFX will automatically retain 10% of the Contractor's Current Period Monthly Payment Request amount in addition to other retainage.

CFX may retain an additional 10% of the Contractor's Period Monthly Payment Request amount for each successive month that the Contractor fails to submit any schedule on time in addition to other retainage. The Contractor must submit an Updated Baseline Schedule for each month of the Contract starting from the first chargeable day of the contract. The Due Date for the Updated Baseline Schedule shall be the Cut-Off Date established by CFX for submittal of the Contractor's Monthly Payment Request. The Due Date for the Updated Baseline Schedule may be changed from time to time by CFX. The Contractor's submitted schedule shall have a data date matching the cut-off date established by CFX.

**Milestones:** Construction and maintenance of traffic milestones, including completion of construction on roadway sections, building and removing temporary detours, bridges, traffic shifts, and road closures and openings shall be adequately shown in the schedule.

**Measurement of Progress:** As the contract work progresses and the baseline schedule is updated with progress, each subsequent schedule update shall become the schedule upon which all Work progress will be measured.

6.3.3.4.1 CPM Activity Creation: Each schedule activity shall include the following detail in P6:

A.) ID Number - The format followed shall be uniform throughout the schedule. The activity number shall not exceed 6 digits.



B.) Original Duration (Working Days): No activity shall have a duration greater than 20 working days unless approved by CFX. However, activities such as long-term procurement, certain approvals and submittals may have durations greater than 20 working days or have a 7-day calendar assignment.

At the minimum, the schedule shall include, but not be limited to the following activities:

Bridge Activities:

Test Pile installation per bent per structure.  
Production Pile installation per bent per structure.  
Drilled shaft installation per pier per structure.  
Pile caps per bent per structure.  
Footings per pier per structure.  
Columns per pier per structure.  
Caps per pier per structure.  
End bents per structure.  
Beam or girder erection-span by span per structure.  
Diaphragms.  
Deck placement-span by span per structure.  
Parapets-span by span per structure.

Roadway Activities:

Internal access and haul roads (location and duration in-place).  
Utility relocation work by utility and by stationing and roadway.  
Clearing and grubbing by stationing and roadway.  
Excavation by stationing and roadway.  
Embankment for each abutment location.  
Embankment placed for each roadway by stationing and roadway.  
Drainage by run with stationing and roadway.  
Box Culvert or other large Pre-cast structure with stationing and roadway.  
Reinforced Earth Wall leveling pad per bent per structure.  
Reinforced Earth Wall per bent per structure.  
Reinforced Earth Wall Coping per bent per structure.  
Retaining walls by stationing and roadway.  
Stabilization/Subgrade by stationing and roadway.  
Limerock Base by stationing and roadway.  
Asphalt Base by stationing and roadway.  
Curb and Gutter by stationing and roadway.  
Structural Pavement (asphalt and/or concrete) by stationing and roadway.  
Bridge approach slabs per bridge and roadway.  
Guardrail by stationing and roadway.  
Slope pavement or riprap by stationing and roadway.

Roadway lighting by stationing and roadway.  
Signing for each sign structure by stationing and roadway.  
Striping by stationing and roadway.  
Traffic signals by stationing and roadway.  
Topsoil, sodding, seeding and mulching by stationing and roadway.  
Landscaping by stationing and roadway.  
Architectural Treatments.  
Sound Walls.  
Fiber Optic.  
Concrete Removal and Replacement.  
Milling and Resurfacing.  
Ponds.  
Planter Walls.

**Building Activities:**

Sitework, including, but not limited to clearing, excavation, storm and sanitary drainage, utility work, fill, grading, curb & gutter, sidewalks, asphalt and concrete paving, striping, retention pond excavation and grading, sodding.  
Foundation work, including, but not limited to, piling, building pads, column, stem wall, slab work, conduit and piping.  
Concrete work, including, but not limited to, stairwells, stairs, elevator shafts, tunnels.  
Exterior Structures, including, but not limited to structural steel bridges, walkways, railings.  
Exterior Walls, including, but not limited to, block, brick, pre-cast, poured-in-place concrete, wood and metal stud, stucco.  
Roof, including, but not limited to, structural steel framing, wood framing, pre-cast, parapet walls, metal, poured-in-place, sheathing, underlayment, built-up, roof drainage, and soffits.  
Exterior doors, windows, and store-front framing.  
Interior Build-out, including, but not limited to, wood and metal stud, interior doors and windows, cabinetry, specialty work, drywall, insulation, sound proofing, carpet, tile, painting, furnishings, and miscellaneous finishes.  
Electrical, including, but not limited to conduit, power supply, fixtures, wiring, finishes, and testing.  
Plumbing, including, but not limited to, piping, sanitary sewer, water supply, fixtures, finishes, and testing.  
HVAC, including, but not limited to, air handlers, compressors, duct work, finishes, and testing.  
Fire Systems, including, but not limited to piping, sprinkler heads, and testing.

Security Systems, including, but not limited to, control panels, wiring, sensors, alarms, communications, and testing.

Specialty Work, including, but not limited to, elevators, escalators, toll booth facilities, electronic toll equipment, conduit, wiring, voice and data communication systems, and testing.

The Contractor agrees to submit for acceptance a CPM baseline schedule showing Work commencing on the first chargeable Contract day and finishing on the last chargeable Contract day, thereby showing zero total float.

The Contractor shall sequence work so that only one Longest Path is created in the Baseline or Updated Baseline schedule.

The Contractor must submit evidence to CFX that any activity to be added or removed from the schedule is a logical and reasonable change. If CFX decides that the activity is not sufficiently supported and does not serve a useful purpose, CFX shall request that the Contractor remove the activity from the schedule, and the Contractor shall comply.

The schedule shall include a task activity for the first chargeable day of the Contract and a task activity for the last chargeable day of the Contract with a 1-day duration and a 7-day calendar assignment. The Contract Completion Date as defined in section 6.3.2.1 shall be entered into the Primavera Project Overview window under "Project must finish by".

**Mobilization Activities:** Activities representing Contract pay item 1-101-1, Mobilization, shall be divided into 1 work activity with a duration no greater than 20 work days and 4 mobilization payment milestones that are revenue loaded according to the specification payment schedule as follows: 5% of Contract earned = 25% payment, 10% of Contract earned = 50% payment, 25% of Contract earned = 75% payment and 50% of Contract earned = 100% payment. The payment milestones should not be tied to any activities, but constrained by a "start no earlier than" constraint. The dates they are constrained to should be based on the early dates shown in the schedule cash flow tabular report by day generated by P6.

6.3.3.4.2 Activity Codes: The following are the minimum required activity codes and their values that are to be assigned to each activity in P6:

Phase: Shall have a field length of 4 characters. If the Project has more than one maintenance of traffic (M.O.T.) phase, each phase shall be identified. Each activity shall show which M.O.T. Phase it belongs to as shown in the Plans and Specifications.

Area: Shall have a field length of 6 characters. The Contractor shall create Area activity code values for each of the following areas. Each schedule activity shall have an assigned Area activity code value

6.3.3.4.3 Activity Relationships: Relationships between activities shall be identified with the following information:

- A. Activity ID - Shall not exceed 6 characters in length.
- B. Predecessor and successor activity ID.
- C. Relationship types:
  - SS -Start to start
  - FF -Finish to finish
  - SF -Start to finish - This relationship is not allowed, unless authorized by CFX.
- D. Lag -Negative lag is not allowed, unless authorized by CFX.

6.3.3.4.4 Project Calendars: Calendars shall use day as the planning unit for the schedule. One of four calendars shall be used for each activity:

- A. Calendar 1: shall be used for 5-day workweek activities: Monday through Friday. All holidays and non-work days shall be assigned to this calendar. This calendar shall be used for all normal Work activities. Calendar 1 shall be the default calendar.
- B. Calendar 2: shall be used for 7-day workweek activities. No non-work days shall be entered into this calendar. Activities such as friction course curing shall use this calendar.
- C. Calendar 3: shall be used for 7-day workweek activities. All holidays shall be entered into this calendar.
- D. Calendar 4: shall be used for 6-day workweek activities. All holidays and non-work days shall be assigned to this calendar.

Global Calendar: The global P6 calendar shall have all holidays and non-work days assigned.

Additional calendars: May be assigned depending upon need. However, the Contractor shall consult with CFX before other calendars are entered and/or used in the Project schedule.

6.3.3.4.5 Revenue Loading the Schedule: Each Work activity in the schedule shall be revenue loaded using all the Contract pay items amounts related to the Work activity. The Contractor shall verify that each pay item is represented in the schedule. The total of all revenue loading shall equal the Contract amount.

If the monthly payment requests do not reasonably agree with the monthly schedule updates/budgeted revenue of Work performed, CFX may request that the Contractor revise its revenue loading in the accepted baseline schedule and the most current updated baseline schedule. In addition, CFX may request that the Contractor revise its revenue loading in the accepted baseline and updated baseline schedules to incorporate all Supplemental Agreement changes affecting the Contract amount.

6.3.3.4.6 Updating the Baseline Schedule

Monthly Schedule Update Meetings: Monthly Schedule Update meetings shall be set by CFX and shall be transmitted to the Contractor by written notice.

CFX will establish a schedule cut-off date for each month of the Contract.

The updated baseline schedule, project progress, issues, delays, claims, planned Work, Contractor's monthly pay estimate, and baseline schedule revisions shall be among the priority items addressed in detail.

Schedule Update Process: The schedule update process shall include updating the activity actual start and finish dates, percent completion, remaining duration, and adjusting schedule logic to correct for activities being performed out of sequence, adjusting resource allocations for activities, and changing the calendar assignments to activities as needed. The Contractor shall not change an activity original duration for any reason.

#### 6.3.3.4.7 Revisions to the Baseline Schedule

1. CFX will request in writing that the Contractor submit a proposed revision to the Accepted Baseline Schedule to incorporate a Board Approved Supplemental Agreement.
2. The Contractor shall have fifteen calendar days from receipt of CFX's request to submit a proposed revision to the Accepted Baseline Schedule.
3. The Contractor's proposed revision shall include all transmittals, reports, diagrams, and bar charts listed in specification section 6.3.2.4.9, unless CFX requests otherwise in writing.
4. The Contractor shall submit two Schedule Comparison reports. The first report shall be a comparison between the Accepted Baseline Schedule and the Revised Baseline Schedule. The second report shall be a comparison between the current updated baseline schedule and the proposed updated baseline schedule containing the proposed revision to the accepted baseline schedule.
5. In its required narrative report, the Contractor shall state whether or not the proposed changes affect the longest path of the accepted baseline schedule or the proposed updated baseline schedule, which contains progress.
6. CFX shall have 15 calendar days to review and transmit a written notice of acceptance or rejection of the Contractor's proposed revision. If CFX rejects the proposed revision, CFX shall state the reasons for rejection in the written notice. The Contractor shall have 5 calendar days to re-submit the proposed revision to CFX.
7. If the Contractor fails to submit a proposed revision that is accepted by CFX within 45 calendar days from CFX's original request date, CFX reserves the right to retain 10% of each of the Contractor's monthly payment requests until the Contractor submits a proposed revision that is accepted by CFX.
8. Upon acceptance of the proposed revision to the accepted baseline schedule, the proposed revision to the baseline schedule shall become the accepted baseline schedule. The Contractor shall incorporate the revision into the next scheduled updated baseline schedule.

6.3.3.4.8 Schedule Submittals: Each baseline, revised baseline, and updated baseline schedule submittal shall include the following documents, unless CFX sends and the Contractor receives a written request to limit the submittal to certain documents for a specific submittal.

1. Transmittal: Shall be signed by the Contractor's Schedule Engineer or Resident Engineer. Shall contain the following information:

Submittal date.

Contractor Name.

Complete CFX Contract Number.

Project Description.

Contract Resident Engineer.

Four character P6 Project Number - Data Date

2. Schedule Update Narrative Report: The Contractor shall prepare a written narrative to accompany the required reports and graphics for the schedule update submittal. The narrative shall have the following sections:

Schedule Status: The Schedule Status shall be a written narrative explaining the progress during the month in sufficient detail and referencing specific activities including longest path activities, milestones, design issues, means and methods issues, out of sequence activities, and actual production rates for various types of Work performed by the crews loaded as resources in the schedule.

Delays: If the Contractor has experienced any delay, the Contractor shall explain what activities in the current period were affected by the delay and what caused the delay and how the Contractor intends to address the delay.

Milestone Comparisons: Current period projected milestone dates versus previous period projected milestone dates, and current period projected contract completion date versus previous period projected contract completion date.

3. Schedule Comparison Report: The Contractor shall submit to CFX a detailed report showing all changes to the Project schedule since the previous monthly update, including, but not limited to the following information:

- Activities worked out of sequence.
- Changes in Total Float.
- Changes in Early and Late Dates.
- Changes in Original and Remaining Duration.
- Changes in Activity Constraints.
- Changes in Activity Predecessors, Successors, Relationship Type, and Lags.
- Changes in Activity Resource Assignments.
- Changes in Activity Cost Loading.
- Changes in Activity percent completion.
- Changes in Longest Path Activities.

Longest Path Bar chart: Bar chart shall be time scaled and filtered on the Longest Path activities and sorted by early start.

Area Code Bar chart: Bar chart shall be time scaled and sorted by area code. The bar chart shall include:

- A. Each activity on a single line containing ID number, activity description, and a bar representing activity original duration, early start dates, early finish dates, late start dates, late finish dates and total float.
- B. Key to identify all components in the bar chart and CPM.
- C. Key to identify all the abbreviations used.

4. Revenue Loading Report: The Contractor shall submit to CFX a report entitled "Revenue Loading Report". The report shall include the following information:

- A. Activity ID number
- B. Description of activity
- C. List of pay items included in activity including:
  - 1. Pay item number
  - 2. Pay item description
  - 3. Quantity of pay item to be applied
  - 4. Unit measure of pay item
  - 5. Unit-price of pay item
  - 6. Total price for pay item to be applied
- D. Total revenue loading of activity (Sum of "C")



5. Revenue Flow Diagram: For any baseline Schedule, the Contractor shall submit to CFX a Revenue Flow Diagram by month. The Revenue Flow Diagram shall show the early and late curves representing the accumulated projected dollars to be earned for each month of the Contract.
6. Tabular Revenue Report: For any Baseline Schedule, the Contractor shall submit a Tabular Revenue Report by day. The tabular report shall show columns for the accumulated and incremental projected dollar amounts to be earned on the early and late curve for each Contract day.
7. P6 Schedule Backup: The Contractor shall submit to CFX two copies of each baseline, revised baseline, and updated baseline schedule using the P6 backup option. The backed up copies shall be compressed and without an access list. The backups shall be submitted on compact disk (cd). Each cd shall have a typed label showing the following information:

Contractor name  
The complete CFX Project number  
The four character P6 project number  
Data Date in format -> "01JAN15"  
Volume number \_of\_ total volume numbers (e.g., 1 of 5, 2 of 5)

8. Paper Sizes and Orientation: All printed reports shall be submitted on 8" x 11" portrait-bond paper. All printed bar charts and revenue flow diagrams shall be submitted on 8" x 11" landscape bond paper. All presentation layouts and logic diagrams shall be plotted in color with a color design jet plotter and submitted on ANSI E (34-inch x 44-inch) size coated paper.

6.3.3.4.9 Two Week Look Ahead Schedule: The Contractor shall submit a two-week look-ahead bar chart schedule produced in Microsoft Excel at the weekly project progress meeting. The bar chart shall show all major Work in progress.

The bar chart shall show at least one week behind for actual Work performed and two weeks ahead for planned Work.

The bar chart shall be date synchronized to the CEI's Weekly Summaries.

Changes and revisions that require the approval of CFX shall be brought forward for discussion.

**6.3.3.4.10 Adjustments to Contract Time:**

1. The Contract Completion Date shall not be changed in any schedule unless CFX approves a Supplemental Agreement granting an extension to the Contract Time.
2. The Contractor has the right to finish the Contract early; however, the Contractor agrees that any impact to the projected early completion date does not justify a request for a time extension because it would constitute changing the Contract completion date to match the Contractor's projected early completion date.
3. The Contractor acknowledges and agrees that for purposes of considering a time extension request, a schedule activity shall not be considered to have been subject to a claimed delay unless all originally and presently scheduled predecessor activities have been completed so that no other restraints to the performance of that activity exist in the CPM schedule at the time claimed for the delay impact. The Contractor agrees that a Contract time extension request shall only be considered for one of the following reasons:
  - A. The Contractor performed Extra Work that met all of the following conditions:
    1. CFX stated that the Extra Work was not to be performed concurrently with other Contract Work.
    2. The Extra Work delayed the Contract Completion Date.
    3. The Extra Work impacted one or more activities on the current CPM schedule longest path.
  - B. The Contractor experienced an Excusable Delay, as defined in subarticle 6.7.3.1, that met all of the following conditions:
    1. The Contract Completion Date was delayed due to circumstances beyond the control of the Contractor.

2. The Contractor took every reasonable action to prevent the delay.
3. The delay impacted one or more activities on the current CPM schedule longest path.
4. The Contractor agrees that there shall be no basis for a Contract Time extension as a result of any Contract problem, Supplemental Agreement, or delay, which only results in the loss of available positive float, or an increase of negative float belonging to activities that do not reside on the CPM schedule's Longest Path.

6.3.3.4.11 Supplemental Agreements: Supplemental Agreements shall include a time impact analysis from the Contractor as to the effect of the requested change on the detailed schedule. In cases where the requested change has no impact on the Project duration, the time impact analysis shall still be included. The time impact analysis shall include a listing of the activities that are affected by the requested changes and an analysis of the change on the longest path of the detailed schedule. The Contractor and the CEI shall agree upon the impact to the schedule before a Supplemental Agreement is approved.

The approved Supplemental Agreements shall be incorporated into the next monthly schedule update.

6.3.3.4.12 Adjustment to the Contract Time: Adjustments to the Contract time are detailed in subarticle 6.7.3.

6.3.3.4.13 CPM Recovery Schedule: Should any of the following conditions exist, the Contractor shall, at no extra cost to CFX, prepare a CPM Recovery Schedule:

1. Should the Contractor's monthly progress review indicate that a CPM Recovery Schedule is required;
2. Should the CPM schedule show the Contractor to be thirty (30) or more days behind schedule at any time during the construction period;
3. Should the Contractor request to make changes in the logic of the CPM schedule which, in the opinion of CFX, are of a major nature.

The same requirements and submittals for the CPM Recovery Schedule shall apply as the original baseline schedule.

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.

#### 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.

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.
- 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.

#### 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.
- 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.

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 subarticle.

## 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.

7.2.1.1 Fuels: CFX will, in the Contract Documents, provide an estimated quantity for fuel requirements for gasoline and diesel to cover the work specified in the Contract. Price adjustments will be made only for the amount of gasoline and diesel fuel estimated by CFX as required to complete the Contract. The requirement of each type of fuel for each pay item is estimated by multiplying the CFX standard fuel factor for that pay item by the quantity of that pay item. Price adjustments made for fuel used after expiration of the last allowable Contract Day (including any time extensions) will be limited to the increases or decreases dictated by the index in effect on the last allowable Contract Day. On Contracts with an original Contract Time in excess of 120 calendar days, CFX will make price adjustments on each applicable progress estimate to reflect increases or decreases in the price of gasoline and diesel from those in effect during the month in which bids were received. The Contractor will not be given the option of accepting or rejecting these adjustments. Price adjustments for these fuels will be made only when the current fuel price (CFP) varies by more than 5% from the price published when bids were received (BFP), and then only on the portion that exceeds 5%. For definition purposes, should a project bid prior to the 15<sup>th</sup> of any month, the bid index will be the index for the month prior to the bid. Should a project bid after the 14<sup>th</sup> of the month, the bid index will be the index for the month of the bid.

Price adjustments will be based on the monthly bulk average price for gas and diesel as derived by the FDOT. These average indexes shall be determined by averaging bulk fuel prices on the first day of each month as quoted by major oil companies that are reasonably expected to furnish fuel for projects in the State of Florida. Average price indices for gasoline and diesel will be available on the FDOT Construction Office website before the 15<sup>th</sup> of each month, at the following URL: [www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.htm](http://www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.htm).

Payment will be based on the quantities shown on the progress estimate on all items for which established standard fuel factors which are included in the bid documents or, if omitted, are on a file maintained by the FDOT at the time of bid.

Payment on progress estimates will be adjusted to reflect adjustments in the prices for gasoline and diesel in accordance with the following:

When fuel prices have decreased between month of bid and month of this progress estimate:

$A_i = F_i (P_i - .95 P_b)$  during a period of decreasing prices.

$A_i$  = Total dollar amount - positive or negative - of the cost adjustment for each kind of fuel used by the Contractor during the month "i."

$F_i$  = Total gallons calculated as being used during the month (units produced/month x gallons/unit).

$P_i$  = Average price for fuel prevailing during month "i."

$P_b$  = Average price for fuel prevailing during the month "b" when bids were received on this Contract, as defined above

When fuel prices have increased between month of bid and month of this progress estimate:

$A_i = F_i (P_i - 1.05 P_b)$  during a period of increasing prices.

$A_i$  = Total dollar amount - positive or negative - of the cost adjustment for each kind of fuel used by the Contractor during the month "i."

$F_i$  = Total gallons calculated as being used during the month.

Pi = Average price for fuel prevailing during month “i.”

Pb = Average price for fuel prevailing during the month “b” when bids were received on this Contract, as defined above

Payment will be made on the current progress estimate to reflect the index difference at the time work was performed.

Adjustments will be paid or charged to the Contractor only. Contractors receiving an adjustment under this provision shall distribute the proper proportional part of such adjustment to subcontractors who perform applicable work.

7.2.1.2 Bituminous Material: On Contracts having an original Contract Time of more than 365 calendar days, or more than 5,000 tons of asphalt concrete, CFX will adjust the bid unit price for bituminous material, excluding cutback and emulsified asphalt to reflect increases or decreases in the Asphalt Price Index (API) of bituminous material from that in effect on the day on which bids were received. The Contractor will not be given the option of accepting or rejecting this adjustment. Bituminous adjustments will be made only when the current API (CAPI) varies by more than 5% of the API prevailing on the day on which bids were received (BAPI), and then only on the portion that exceeds 5%. For definition purposes, should a project bid prior to the 15<sup>th</sup> of any month, the bid index will be the index for the month prior to the bid. Should a project bid after the 14<sup>th</sup> of the month, the bid index will be the index for the month of the bid.

CFX will determine the API for each month by checking the FDOT Contracts Office web site which averages quotations in effect on the first day of the month at all terminals that could reasonably be expected to furnish bituminous material to projects in the State of Florida.

Payment on progress estimates will be adjusted to reflect adjustments in the prices for bituminous materials in accordance with the following:

$$\text{\$ Adjustment} = (\text{ID})(\text{Gallons})$$

Where ID = Index Difference =  $[\text{CAPI} - 0.95(\text{BAPI})]$  when the API has decreased between the month of bid, as defined above, and month of this progress estimate.

Where ID = Index Difference =  $[\text{CAPI} - 1.05(\text{BAPI})]$  when the API has increased between the month of bid, as defined above, and month of this progress estimate.

Payment will be made on the current progress estimate to reflect the index difference at the time work was performed.

For asphalt concrete items payable by the ton, and not containing Reclaimed Asphalt Pavement (RAP), the number of gallons will be determined assuming a mix design with 6.25% liquid asphalt weighing 8.58 lb/gal. For asphalt concrete items payable by the ton, that do contain Reclaimed Asphalt Pavement (RAP), the number of gallons will be determined assuming a mix design with 5% liquid asphalt weighing 8.58 lb/gal.

Asphalt concrete items payable by the square yard will be converted to equivalent tons assuming a weight of 100 lb/yd<sup>2</sup> per inch.

7.2.1.2 For FC-5 with granite, the number of gallons will be determined assuming a mix design with 5.5% liquid asphalt weighing 8.58 lb/gal.

- 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.

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 RRBBOCE ownership cost plus 100% of the RRBB and/or RRBBOCE 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 RRBBOCE 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 RRBBOCE monthly rates by 176. The columns, itemizing rates, labeled "Weekly", "Daily" and "Hourly" shall not be used.
- 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.

(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.

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 of 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- PARTNERING AND DISPUTES RESOLUTION

### 10.1 Partnering

The objective of Partnering is to establish a partnership charter and action plan for the Contractor, CFX and other parties impacted by the activities covered under the Contract to identify and achieve reciprocal goals. These objectives may be met through participation in workshops held periodically throughout the duration of the Contract.

Prior to the pre-construction conference, CFX, the CEI, and the Contractor shall meet and plan an initial partnering/team building workshop. At this planning session, arrangements will be made to select a workshop facilitator, determine attendees, agenda, duration and location. Attendees should include representatives of CFX, the CEI, and other key Project personnel, the Contractor's superintendent and other key personnel as well as others mutually agreed upon by CFX and the Contractor. Additional workshops may be held periodically throughout the duration of the Contract if authorized by CFX.

CFX will arrange for and pay the cost of providing a facilitator and meeting room and for all other direct costs associated with the Partnering workshops. No separate compensation will be paid to the Contractor to attend partnering meetings

### 10.2 Disputes Resolution

#### 10.2.1 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.

#### 10.2.2 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.

#### 10.2.3 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.

#### 10.2.4 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.

#### 10.2.5 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.

#### 10.2.6 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.

#### 10.2.7 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.

#### **10.2.8 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 Three Hundred Dollars (\$1,300.00) 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  
#7**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 27, 2020

SUBJECT: Approval of Contract Award to United Signs & Signals, Inc.  
for Systemwide Pay By Plate Signs – Miscellaneous  
Project 599-643C, Contract No. 001644

An Invitation to Bid for the referenced project was advertised on December 22, 2019. Responses to the invitation were received from two (2) contractors by the January 29, 2020 deadline. As required by the Procurement Procedures Manual, a discussion was held with the Manager of Engineering to review CFX's options when less than three bids are received. It was decided that a re-bid would not result in additional responses, the bids were within the established tolerances, and there were no irregularities that would result in the bids being rejected.

Bid results were as follows:

<u>Bidder</u>	<u>Bid Amount</u>
1. United Signs & Signals, Inc.	\$1,148,326.33
2. Traffic Control Devices, Inc.	\$1,236,236.00

The Engineer's estimate for this project is \$1,181,650.75.

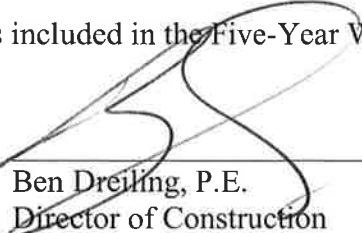
The Engineer of Record for Project 599-643C has reviewed the low bid submitted by United Signs & Signals, Inc. and determined that the low bid unit prices are not unbalanced.

This project consists of providing all labor, materials, equipment and incidentals necessary for the removal of existing signs, the installation of new signs and the installation of sign overlays along SR 414, SR 429 and SR 528. The work includes both ground mounted and overhead sign assemblies.

The Procurement Department has evaluated the bids and has determined the bid from United Signs & Signals, Inc. to be responsible and responsive to the bidding requirements. Board award of the contract to United Signs & Signals, Inc. in the amount of \$1,148,326.33 is recommended.

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

Reviewed by:

  
Ben Dreiling, P.E.  
Director of Construction



# **CONTRACT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
UNITED SIGNS & SIGNALS, INC.**

**SYSTEMWIDE PAY BY PLATE (PBP) SIGNS – MISC**

**PROJECT 599-643C  
CONTRACT NO. 001644**

**CONTRACT DATE: FEBRUARY 13, 2020  
CONTRACT AMOUNT: \$1,148,326.33**

**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, ADDENDA,  
PUBLIC CONSTRUCTION BOND AND FORMS**

**FOR**

**SYSTEMWIDE PAY BY PLATE (PBP) SIGNS – MISC**

**PROJECT 599-643C  
CONTRACT NO. 001644**

**FEBRUARY 2020**

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**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-25
	(See Special Provisions Table of Contents for listing of each special provision.)	

Addendum No. 1

Plans



## CONTRACT

This Contract No. 001644 (the "Contract"), made this 13<sup>th</sup> day of February 13, 2020, between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, hereinafter called CFX and United Signs & Signals, Inc., of 28248 CR 561, Tavares, FL. 32778, 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 599-643C, Systemwide Pay By Plate (PBP) Signs – Misc., as detailed in the Contract Documents and any addenda or modifications thereto. Contract time for this project shall be 155 calendar days. The Contract Amount is \$1,148,326.33. This Contract was awarded by the Governing Board of CFX at its meeting on February 13, 2020.

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: \_\_\_\_\_

UNITED SIGNS & SIGNALS, INC.

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

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

\_\_\_\_\_  
Title

ATTEST: \_\_\_\_\_ (Seal)

DATE: \_\_\_\_\_

Approved as to form and execution, only.

General Counsel for CFX

\_\_\_\_\_

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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 "CEP", 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.

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

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

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

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

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

**1.3.28 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.

**1.3.29 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.

**1.3.30 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.

**1.3.31 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.

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

**1.3.33 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.

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

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

**1.3.36 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.

**1.3.37 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.

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

**1.3.39 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.

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

**1.3.41 Standard Specifications** - The FDOT Standard Specifications for Road and Bridge Construction, 2019 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.

**1.3.42 State** - State of Florida

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

**1.3.44 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.

**1.3.45 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.

**1.3.46 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.

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

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

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

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

**1.3.51 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.

**1.3.52 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.

**1.3.53 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.

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

**1.3.55 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.

**1.3.56 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.

**1.3.57 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 2.4.14. 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.

- 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.

- 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.

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.

(d) Construction Affecting Public Safety applies to construction that may jeopardize public safety such as structures spanning functioning vehicular roadways, pedestrian walkways, railroads, navigation channels, navigable waterways and walls or other structure's foundations located in embankments immediately adjacent to functioning roadways. It does not apply to those areas of the site under the Contractor's control and outside the limits of normal public access.

(e) Major and unusual structures include bridges of complex geometry and/or complex design. Generally, this includes the following types of structures:

- Bridges with an individual span longer than 300 feet.
- Structurally continuous superstructures with spans over 50 feet.
- Steel box and plate girder bridges.
- Steel truss bridges.
- Concrete segmental and longitudinally post-tensioned continuous girder bridges.
- Cable stayed or suspension bridges.
- Curved girder bridges.
- Arch bridges.
- Tunnels.
- Movable bridges (specifically electrical and mechanical components).
- Rehabilitation, widening or lengthening of any of the above.

(f) Special Erection Equipment includes launching gantries, beam and winch Equipment, form travelers, stability towers, strongbacks, erection trusses, launching noses or similar items made purposely for construction of the structure. It does not apply to commonly available proprietary construction Equipment such as cranes.

(g) Falsework includes any temporary construction Work used to support the permanent structure until it becomes self-supporting. Falsework includes steel or timber beams, girders, columns, piles and foundations and any proprietary Equipment including modular shoring frames, post shores and adjustable horizontal shoring.

(h) Formwork includes any temporary structure or mold used to retain plastic or fluid concrete in its designated shape until it hardens. Formwork comprises common materials such as wood or metal sheets, battens, soldiers and walers, ties, proprietary forming systems such as stay-in-place metal forms, and proprietary supporting bolts, hangers and brackets.

(i) Scaffolding is an elevated work platform used to support workmen, Materials and Equipment but not intended to support the structure.

(j) Shoring is a component of falsework such as horizontal, vertical or inclined support members. In this specification, this term is used interchangeably with falsework.

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 following signing and lighting items are defined as structural items:

Lighting: poles, bracket arms, frangible bases and foundations.

Signing: Mounting brackets for bridge mounted signs, overhead cantilever structures, overhead truss structures, overhead sequential sign structures and multiple post sign supports, along with applicable foundations.

In general, shop drawings shall be required for:

(a) Bridge, Bulkhead and Retaining Wall Structures, cofferdams, Lighting and Signing Structural Items along with applicable foundations.

(b) Signing, Lighting, Drainage Structures and Attenuators and other nonstructural items.

(c) Building Structures.

(d) Contractor Originated Re-Design.

(e) Design and/or structural details furnished by the Contractor in compliance with the Contract, according to the sections of the Specifications pertaining to the Work, to the Plans or other Contract Documents.

(f) Special Erection Equipment.

(g) Falsework and Shoring.

Additional clarification for certain types of bridge structures is provided in 3.1.4.9.

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.

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:

3.1.4.5.1 Bridge, Bulkhead and Retaining Wall Structures and Lighting and Signing Structural Items with appropriate foundations: Shop drawings for pre-qualified items, excluding their corresponding foundations, are not required.

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.

3.1.4.5.2 Signing, Lighting, Drainage Structures, Attenuators and other nonstructural items: The Contractor shall submit seven (7) sets of prints of each shop drawing to the CEI with a copy of the transmittal letter sent to the Consultant.

3.1.4.5.3 Building Structures: One (1) set of prints and one (1) set of reproducible copies of each series of working, shop and erection drawings and all correspondence related to building structures shall be submitted to the CEI with a copy of the transmittal sent to the Consultant.

3.1.4.5.4 Contractor Originated Design or Redesign: 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. The submittal and copies of the transmittal letters shall be transmitted in accordance with the requirements of 3.1.4.5.1 through 3.1.4.5.3, as appropriate.

**3.1.4.5.5 Special Erection Equipment:** For (a) Construction Affecting Public Safety and (b) Major or Unusual Structures: 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. The submittal and copies of the transmittal letters shall be transmitted in accordance with the requirements of 3.1.4.5.1 through 3.1.4.5.3, as appropriate.

**3.1.4.5.6 Falsework and Shoring:** For (a) Construction Affecting Public Safety and (b) Major and Unusual Structures: 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. The submittal and copies of the transmittal letters shall be transmitted in accordance with the requirements of 3.1.4.5.1 through 3.1.4.5.3, as appropriate.

**3.1.4.5.7 Formwork:** Formwork shall be in accordance with Section 400-5 of the Standard Specifications.

**3.1.4.5.8 Scaffolding:** The Contractor shall be responsible for the safe installation and use of all scaffolding. No submittals are required.

**3.1.4.5.9 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. The submittal and copies of the transmittal letters shall be transmitted in accordance with the requirements of 3.1.4.5.1 through 3.1.4.5.3, as appropriate.

**3.1.4.5.10 Beam and Girder Temporary Bracing:** The Contractor is solely responsible for ensuring stability of beams and girders during all handling, storage, shipping and erection. Adequately brace beams and girders to resist wind, weight of forms and other temporary loads, especially those eccentric to the vertical axis of the products, considering actual beam geometry and support conditions during all stages of erection and deck construction.

Develop the required designs following the AASHTO Guide Design Specifications for Bridge Temporary Works and Construction Handbook for Bridge Temporary Works and the Contract Documents.

For Construction Affecting Public Safety, submit signed and sealed calculations for stability of all beams and girders.

#### 3.1.4.6 Certifications:

3.1.4.6.1 Special Erection Equipment: Prior to its use, special erection Equipment shall be personally inspected by the Specialty Engineer who shall certify to the CEI in writing that the Equipment has been fabricated in accordance with the submitted drawings and calculations. In addition, after assembly, the Specialty Engineer shall observe the Equipment in use and shall certify to the CEI in writing that it is being utilized as intended and in accordance with the submitted drawings and calculations. In each case, the Specialty Engineer shall also sign and seal the letter of certification.

3.1.4.6.2 Falsework and Shoring requiring shop drawings per 3.1.4.5.6: After its erection or installation but prior to the application of any superimposed load, the falsework shall be personally inspected by the Specialty Engineer who shall certify to the CEI in writing that the falsework has been constructed in accordance with the Materials and details shown on the submitted drawings and calculations. The Specialty Engineer shall also sign and seal the letter of certification.

3.1.4.6.3 Formwork: For Construction Affecting Public Safety, prior to the placement of any concrete, the Contractor shall certify to the CEI in writing that formwork has been constructed to safely withstand the superimposed loads to which it will be subjected.

#### 3.1.4.7 Processing of Shop Drawings:

3.1.4.7.1 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 45 calendar day review period by the CEI. The review period commences upon receipt of the Contractor's submittal by the CEI as stipulated in 3.1.4.5 and terminates upon transmittal of the submittal back to the Contractor by the CEI. The Contractor shall adjust its schedules so that a 30 calendar day period is provided for each re-submittal.

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.

**3.1.4.7.2 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.

**3.1.4.7.3 Special Review by CEI of Shop Drawings for Construction Affecting Public Safety:** For Construction Affecting Public Safety, the CEI will make an independent review of all relevant shop drawings and similar documents in order to verify the safety of the intended construction and construction of the permanent Work shall not proceed until receipt of the

CEI's approval. The requirement herein does not supercede the Contractor's duty and responsibility for all safety provisions, public and/or otherwise, for the Project.

3.1.4.8 Avoidance of Conflict of Interest: Neither the CEI, the Consultant nor any design engineer who participated in the design phase of the Project can be engaged by the Contractor to perform Work as the Contractor's Specialty Engineer unless expressly approved in writing by CFX.

3.1.4.9 Other Requirements for Shop Drawings for Bridges:

3.1.4.9.1 Shop Drawings for Structural Steel and Miscellaneous Metals: Shop drawings shall be furnished by the Contractor for structural steel and miscellaneous metals. Shop drawings shall consist of working, shop and erection drawings, welding procedures and other working plans, showing details, dimensions, sizes of material, and other information necessary for the complete fabrication and erection of the metal work.

3.1.4.9.2 Shop Drawings for Concrete Structures: Shop drawings shall be furnished by the Contractor for such details as may reasonably be required for the effective prosecution of the Work and which are not included in the plans furnished by CFX. These may include details of falsework, shoring, special erection Equipment, bracing, centering, formwork, masonry layout diagrams and diagrams for bending reinforcing steel in addition to any details required for concrete components for the permanent Work.

3.1.4.9.3 Shop Drawings for Major and Unusual Structures: In addition to any other requirements, no less than 60 days from the start of Work as shown in the latest CPM, the Contractor shall submit information to the CEI outlining Contractor's overall approach to the Project. Where applicable to the Project, this information shall include but need not be limited to items such as:

- (1) Overall construction program for the duration of the Contract. milestone dates should be clearly shown. (For example; the need to open a structure by a certain time for traffic operations.)
- (2) Overall construction sequence. The order in which individual structures are to be built, the sequence in which individual spans of girders or cantilevers are erected and the sequence in which spans are to be made continuous.
- (3) The general location of any physical obstacles to construction that might impose restraints or otherwise affect the construction and an

outline of how the Contractor intends to deal with such obstacles as it builds the structure(s). (For example; obstacles might include road, rail and waterway clearances, temporary diversions, transmission lines, utilities, property and the Contractor's own temporary Work such as haul roads, cofferdams, plant clearances and the like.)

(4) The approximate location of any special lifting Equipment in relation to the structure including clearances required for the operation of the Equipment. (For example; crane positions and operating radii and the like.)

(5) The approximate location of any temporary falsework and conceptual outline of any special erection Equipment. (The precise locations and details of attachments, fixing devices, loads etc. will be covered under later detailed submittals.)

(6) An outline of the handling, transportation and storage of fabricated components, such as girders or concrete segments. (Precise details will be covered under later detailed submittals).

(7) Any other information pertinent to the Contractor's proposed scheme or intentions.

The above information shall be clear and concise and shall be presented on as few drawings as possible in order to provide an overall, integrated summary of the Contractor's intentions and approach to the Project. These drawings are for information, review planning and to assess the Contractor's approach in relation to the intent of the original design. Their delivery to and receipt by the CEI shall not constitute any acceptance or approval to the proposals shown thereon. The details of such proposals shall be the subject of subsequent detailed shop drawing submittals. Variations from these overall scheme proposals shall be covered by timely revisions and re-submittals.

3.1.4.10 Corrections for Construction Errors: For Work that is constructed incorrectly or does not conform to the requirements of the Contract drawings or Specifications, the Contractor has the prerogative to submit an acceptance proposal to the CEI for review and disposition. Any such proposal will be judged both for its effect on the integrity and maintainability of the structure or component thereof and also for its effect on Contract administration.

Any proposal judged by the CEI to infringe on the structural integrity or maintainability of the structure will require a technical assessment and submittal by the Contractor's Specialty Engineer as described in 3.1.4.5.4.

The cost of carrying out all approved corrective construction measures shall be entirely at the Contractor's expense.

Notwithstanding any disposition on the compensation aspects of the defective Work, the CEI's decision on the technical merits of a proposal shall be final.

3.1.4.11 Modifications for Construction: Where the Contractor is permitted to make modifications to the permanent Work for the purposes of expediting the Contractor's chosen construction methods, Contractor shall submit its proposals to the CEI for review and approval. Proposals for modifications shall be submitted under the shop drawing process.

Minor modifications shall be limited to those items that in the opinion of the CEI do not significantly affect the quantity of measured Work nor the integrity or maintainability of the structure or its components.

Major modifications are any modifications that in the opinion of the CEI significantly affect the quantity of measured Work or the integrity or maintainability of the structure or its components. (For example, substitutions of alternative beam sizes and spacing, change of material strength or type, and the like.)

The CEI's decision on the delineation between a minor and a major modification and disposition on a proposal shall be final.

3.1.4.12 Cost of Shop Drawings: The Contract Prices shall include the cost of furnishing shop and working drawings and the Contractor will be allowed no extra compensation for such drawings.

### 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.

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.

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### 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.

### 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.

### 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.

#### 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.

#### 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 an 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.
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.

#### 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 decrees 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.

## 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.

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.
- 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 IIV, or as approved by CFX, as defined by A.M. Best and Company's Key Rating Guide. 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:

<b>Contract Amount</b>	<b>Workers’ Comp/ Employer’s Liability</b>	<b>General Liability (per occurrence/ aggregate)</b>	<b>Automobile Liability</b>
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.

- 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.

#### 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](mailto: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.

#### 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.

## 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.

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 Preliminary, Baseline, Updated Baseline, and Two-Week Look-Ahead Schedules:

### 6.3.3.1 Scheduling Terminology

Accepted Baseline Schedule: The Accepted Baseline Schedule is the Baseline Schedule submitted by the Contractor and accepted by CFX. Review and acceptance of the schedule by CFX will be for the sole purpose of determining if the schedule is in substantial compliance with the General Specifications and does not mean that CFX agrees or disagrees, approves or disapproves of the constructability, means and methods, validity and accuracy of the submitted baseline schedule. The Contractor is solely responsible for the constructability, means and methods, validity and accuracy of the submitted baseline schedule.

Acknowledged Receipt of the Updated Baseline Schedule: The Contractor is solely responsible for the constructability, means and methods, validity and accuracy of the updated baseline schedule. CFX does not accept or reject, agree or disagree, approve or disapprove of the constructability, means and methods, validity or accuracy of the

Updated Baseline Schedule. Instead, CFX will transmit a letter acknowledging receipt of the Contractor's submittal of the Updated Baseline Schedule.

**Baseline Schedule:** The Baseline Schedule does not contain any progressed activities. Therefore, each activity's early and late dates are planned dates, not actual dates. The Baseline Schedule contains the necessary breakdown of activities to adequately track the progress of the project. Activities in the Baseline Schedule shall include, but not be limited to, activities for all work to be performed. In addition, the baseline schedule should include milestone activities, and activities for the procurement of significant equipment and materials, including activities for submittals and approvals, orders, fabrication, request for delivery and delivery. Procurement activities should be logically tied to their respective work activities.

**Contract Completion Date:** Also called the Approved Contract Completion Date or the Authorized Contract Completion Date or the Last Chargeable Contract Date.

The Contract Completion Date is calculated by adding the number of calendar days stated in the contract to complete all work, to the first chargeable day of the Contract, less one day.

For time extensions granted by CFX, the Contract Completion Date is calculated by adding the number of calendar days granted to the Contract Completion Date.

If a critical activity is delayed, the Contract Completion Date(s) may also be delayed if the durations on the remaining activities on the critical path are accurate. The Contractor acknowledges and agrees that actual delays to activities which, according to the CPM schedule, do not directly affect the main project critical path, do not have any effect on the Contract Completion Date(s) and shall not be the basis for a change therein.

**CPM:** Critical Path Method of scheduling.

**Early Dates:** The earliest scheduled start and/or finish date assigned to a CPM scheduled activity.

**Excusable Delay:** As defined in subarticle 6.7.3.1.

**Adjustments to Contract Time.**

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

**Lag:** An undefined delay between two scheduled activities. For instance, a 5 day lag between activity A (the predecessor) and activity B (the successor) with a Finish to Start (FS) relationship would mean that activity B would not start until 5 days after the finish of activity A.

**Late Dates:** The latest scheduled start and/or finish date assigned to a CPM scheduled activity.

**Longest Path:** In a Baseline Schedule, the Longest Path of the CPM schedule is a continuous series of activities starting from the first scheduled activity and ending with the last scheduled activity, that are linked in a logical sequence and where each activity in the sequence has the least value of total float in the schedule. If each of the longest path activities were assigned the same calendar, then each activity on the longest path would have the same value of total float. In an Updated Baseline Schedule (a baseline with actual progress recorded), the Longest Path will begin at the data date (also known as the cut-off date) and extend to the last activity scheduled in the Contract. The Contractor shall sequence work so that only one Longest Path is created in the Baseline or Updated Baseline schedule.

**Negative Total Float:** Also called Negative Float. The greatest number of days, stated as a negative number, that the Contract Completion Date is delayed. When an activity has negative total float, the activities with negative total float have early dates scheduled later than their late dates.

**Planned Dates:** Also called early and late dates.

**P6:** The scheduling software Primavera Project Planner, produced by Primavera Systems, Inc., which shall be used by the Contractor for all CPM scheduling tasks.

**Preliminary Schedule:** The Preliminary Schedule is a bar chart schedule submitted at the Pre-Construction Conference. Refer also to specification section 6.3.3.3.

**Revised Baseline Schedule:** The Baseline Schedule shall only be revised with the approval of CFX.

**Total Float:** Also called Float. The number of days an activity can be delayed without delaying the Contract completion date.

CFX and Contractor agree that float is not for the exclusive use or benefit of either the Contractor or CFX and must be used in the best interest of completing the Project on time. The Contractor agrees that: 1) float time may be used by CFX; and 2) there shall be no basis for a Project time extension as a result of any Project problem, change order or delay which only results in the loss of available positive float, or negative float that is greater than the most negative float in the CPM. The Contractor

will not be permitted to alter float through such applications as extending duration estimates or to change sequence relationships, etc., to consume available positive float.

**Time Impact Analysis:** If the Contractor requests a time extension to any required milestone date for changes in the Work ordered by CFX, the Contractor shall furnish such justification and supporting evidence in the form of a Time Impact Analysis illustrating the influence of the change on the Contract time such that CFX can evaluate the request. This Time Impact Analysis shall include a network analysis demonstrating how the Contractor has incorporated the change in the schedule. Each such Time Impact Analysis shall demonstrate the time impact of the performance of the changed Work as the date upon which the change arose or was otherwise ordered, the status of the Work at that time based upon the CPM schedule update prevailing at that time and the duration or logic computations for all of the affected activities. The Time Impact Analysis shall be submitted within ten (10) calendar days following the commencement of the delay event. Failure to make notification in the time and manner required shall be considered a waiver of the Contractor's entitlement to any time extension resulting from such delay. No time extension will be considered unless it specifically contains at least the following detailed information:

1. Date delay began;
2. Date delay impact was resolved;
3. Detailed chronology of delay including the dates of all applicable notifications and submittals;
4. Specific critical activities affected and the dates of impact;
5. The activity durations used in the Time Impact Analysis shall be those reflected by the latest Project schedule update prevailing at the time of the initiation of the delay event.

**Updated Baseline Schedule:** Also called the Schedule Update, is a copy of the Baseline Schedule with activities updated for actual start and/or finish dates and percent completion.

**Weather Event:** As defined in 6.7.3

#### 6.3.3.2 General Requirements for all Scheduling Tasks and Submittals:

**Schedule Content:** Failure to include any element of required Work in the schedule shall not relieve the Contractor from completing all Work necessary to complete the Project on time.



**Scheduling Costs:** All costs incurred by the Contractor to create and maintain the Preliminary and CPM schedules including, but not limited to, updates, revisions, time impact analyses, and any additional required scheduling data shall be borne by the Contractor and are part of the Contract requirements.

**Utility Coordination, Permits and Licenses:** Sufficient liaison shall be conducted and information obtained at the utility pre-construction conference to coordinate activities with utility owners having facilities within the Project limits. The schedule shall conform to the utility adjustments and Maintenance of Traffic sequencing included in the Contract Documents unless changed by mutual agreement of the utility company, the Contractor, and CFX. The schedule shall show any utility adjustments that start or continue after the Contract time has started. In addition, the Contractor shall show the acquisition of permits or licenses needed for the Project.

**Required Labeling of all Correspondence and Associated Documents:** All Schedule related correspondence, including transmittals and attachments, shall have the Schedule number and cut-off date (data date) entered in the document heading. A sample format to be used is as follows: "0303-25AUG15", where 0303 is the schedule update number and 25AUG15 is the cut-off date (data date).

#### 6.3.3.3 Submission of the Preliminary Schedule:

The Contractor shall submit to CFX with the executed Contract the following documents:

The Preliminary Schedule shall cover the entire scope of the Contractor's responsibilities for the entire Contract time. The Preliminary Schedule is either a CPM or a NON-CPM generated bar chart schedule. The Preliminary Schedule shall present the Contractor's general approach to the Project and show adequate detail for Work, procurement, and submittal and approval activities covering the first 120 days of Work from the First Chargeable Contract day. The remainder of the Contract time shall be represented by summary activities.

**Written Narrative:** The written narrative shall explain the preliminary schedule's scope and approach to the Project in sufficient detail to demonstrate that the Contractor has a reasonable and workable plan to complete the Project within the Contract time allowed.

**Geographical Layout of the Project:** The geographical layout graphic of the project shall be suitable in size and content for presentation purposes. The Contractor shall also submit a copy of the geographical layout of the project in a legal landscape format.

**Contractor's Oral Presentation:** At the pre-construction conference, the Contractor shall show and refer to the geographical layout of the Project in an oral presentation of the Contractor's approach to performing the Work under the Contract. The Contractor's oral presentation shall conform to the format and content of the written narrative.

Within five (5) days after receipt of the Preliminary Schedule, CFX will either accept or reject the schedule. If the Preliminary Schedule is rejected, CFX and Contractor will meet within 3 days after notice of rejection at which time CFX will present the Contractor with a list of required changes to the Preliminary Schedule. The Contractor shall make the changes and submit a revised preliminary schedule acceptable to CFX within 3 days after receipt of the required changes.

**Updating the Preliminary Schedule:** The Contractor shall update each activity in the Preliminary Schedule with an actual start date, actual finish date, percent complete, and remaining duration each month until the accepted Baseline Schedule is updated and submitted to CFX. The cut-off date and submittal date for the Updated Preliminary Schedule shall be established by CFX and the Contractor shall submit the Updated Preliminary Schedule on that date. The Contractor shall include a written narrative with the Updated Preliminary Schedule explaining the progress made, any delays that have occurred, and work planned to be accomplished in the next month.

**Retainage for Non-Submittal:** If the Contractor fails to update the Preliminary Schedule and submit a written narrative, CFX may retain 10% of the Contractor's next Monthly Payment Request and 10% of each subsequent monthly payment request until the Contractor complies.

**6.3.3.4 Submission of the CPM Baseline and Updated Baseline Schedules:** The Contractor's CPM schedule shall be a detailed CPM schedule. The CPM schedule shall be generated by the latest version of Primavera Project Planner (P6) by Primavera Systems, Inc. The Contractor shall pay the scheduling software yearly maintenance fees and maintain scheduling software upgrades throughout the duration of the contract. The Contractor shall use all default settings in Primavera Project Planner for all schedule submittals. This includes using the "Retained Logic" setting for all calculations, unless CFX chooses to allow the use of the P6 "Progress Override" setting.

Each Baseline and Updated Baseline schedule submittal shall include all reports and graphics listed in specification section 6.3.3.4.9. All Baseline Schedule submittals shall also include the Logic Diagram required under Item number 4.

The Contractor shall submit to CFX two copies of each of the above schedules created using the P6 Backup feature.

**Schedule Submittal Deadlines:** The Contractor shall prepare and submit a detailed CPM construction schedule. The schedule shall be prepared according to the specifications and submitted no later than 45 calendar days after the Notice to Proceed date. The CEI shall have 30 calendar days from the Contractor's submittal date to review and notify the Contractor in writing of its findings. The Contractor shall have 15 calendar days from the date of the CEI's written notice to make all requested modifications to the schedule and re-submit the schedule.

**Retainage for Non-Submittal:** If the Contractor fails to submit a schedule that fully complies with the specifications within 90 calendar days from the Notice to Proceed date, CFX will automatically retain 10% of the Contractor's Current Period Monthly Payment Request amount in addition to other retainage.

CFX may retain an additional 10% of the Contractor's Period Monthly Payment Request amount for each successive month that the Contractor fails to submit any schedule on time in addition to other retainage. The Contractor must submit an Updated Baseline Schedule for each month of the Contract starting from the first chargeable day of the contract. The Due Date for the Updated Baseline Schedule shall be the Cut-Off Date established by CFX for submittal of the Contractor's Monthly Payment Request. The Due Date for the Updated Baseline Schedule may be changed from time to time by CFX. The Contractor's submitted schedule shall have a data date matching the cut-off date established by CFX.

**Milestones:** Construction and maintenance of traffic milestones, including completion of construction on roadway sections, building and removing temporary detours, bridges, traffic shifts, and road closures and openings shall be adequately shown in the schedule.

**Measurement of Progress:** As the contract work progresses and the baseline schedule is updated with progress, each subsequent schedule update shall become the schedule upon which all Work progress will be measured.

6.3.3.4.1 CPM Activity Creation: Each schedule activity shall include the following detail in P6:

A.) ID Number - The format followed shall be uniform throughout the schedule. The activity number shall not exceed 6 digits.

B.) Original Duration (Working Days): No activity shall have a duration greater than 20 working days unless approved by CFX. However, activities such as long-term procurement, certain approvals and submittals may have durations greater than 20 working days or have a 7-day calendar assignment.

At the minimum, the schedule shall include, but not be limited to the following activities:

Bridge Activities:

Test Pile installation per bent per structure.  
Production Pile installation per bent per structure.  
Drilled shaft installation per pier per structure.  
Pile caps per bent per structure.  
Footings per pier per structure.  
Columns per pier per structure.  
Caps per pier per structure.  
End bents per structure.  
Beam or girder erection-span by span per structure.  
Diaphragms.  
Deck placement-span by span per structure.  
Parapets-span by span per structure.

Roadway Activities:

Internal access and haul roads (location and duration in-place).  
Utility relocation work by utility and by stationing and roadway.  
Clearing and grubbing by stationing and roadway.  
Excavation by stationing and roadway.  
Embankment for each abutment location.  
Embankment placed for each roadway by stationing and roadway.  
Drainage by run with stationing and roadway.  
Box Culvert or other large Pre-cast structure with stationing and roadway.  
Reinforced Earth Wall leveling pad per bent per structure.  
Reinforced Earth Wall per bent per structure.  
Reinforced Earth Wall Coping per bent per structure.  
Retaining walls by stationing and roadway.  
Stabilization/Subgrade by stationing and roadway.  
Limerock Base by stationing and roadway.  
Asphalt Base by stationing and roadway.  
Curb and Gutter by stationing and roadway.  
Structural Pavement (asphalt and/or concrete) by stationing and roadway.  
Bridge approach slabs per bridge and roadway.  
Guardrail by stationing and roadway.  
Slope pavement or riprap by stationing and roadway.

Roadway lighting by stationing and roadway.  
Signing for each sign structure by stationing and roadway.  
Striping by stationing and roadway.  
Traffic signals by stationing and roadway.  
Topsoil, sodding, seeding and mulching by stationing and roadway.  
Landscaping by stationing and roadway.  
Architectural Treatments.  
Sound Walls.  
Fiber Optic.  
Concrete Removal and Replacement.  
Milling and Resurfacing.  
Ponds.  
Planter Walls.

**Building Activities:**

Sitework, including, but not limited to clearing, excavation, storm and sanitary drainage, utility work, fill, grading, curb & gutter, sidewalks, asphalt and concrete paving, striping, retention pond excavation and grading, sodding.  
Foundation work, including, but not limited to, piling, building pads, column, stem wall, slab work, conduit and piping.  
Concrete work, including, but not limited to, stairwells, stairs, elevator shafts, tunnels.  
Exterior Structures, including, but not limited to structural steel bridges, walkways, railings.  
Exterior Walls, including, but not limited to, block, brick, pre-cast, poured-in-place concrete, wood and metal stud, stucco.  
Roof, including, but not limited to, structural steel framing, wood framing, pre-cast, parapet walls, metal, poured-in-place, sheathing, underlayment, built-up, roof drainage, and soffits.  
Exterior doors, windows, and store-front framing.  
Interior Build-out, including, but not limited to, wood and metal stud, interior doors and windows, cabinetry, specialty work, drywall, insulation, sound proofing, carpet, tile, painting, furnishings, and miscellaneous finishes.  
Electrical, including, but not limited to conduit, power supply, fixtures, wiring, finishes, and testing.  
Plumbing, including, but not limited to, piping, sanitary sewer, water supply, fixtures, finishes, and testing.  
HVAC, including, but not limited to, air handlers, compressors, duct work, finishes, and testing.  
Fire Systems, including, but not limited to piping, sprinkler heads, and testing.

Security Systems, including, but not limited to, control panels, wiring, sensors, alarms, communications, and testing.

Specialty Work, including, but not limited to, elevators, escalators, toll booth facilities, electronic toll equipment, conduit, wiring, voice and data communication systems, and testing.

The Contractor agrees to submit for acceptance a CPM baseline schedule showing Work commencing on the first chargeable Contract day and finishing on the last chargeable Contract day, thereby showing zero total float.

The Contractor shall sequence work so that only one Longest Path is created in the Baseline or Updated Baseline schedule.

The Contractor must submit evidence to CFX that any activity to be added or removed from the schedule is a logical and reasonable change. If CFX decides that the activity is not sufficiently supported and does not serve a useful purpose, CFX shall request that the Contractor remove the activity from the schedule, and the Contractor shall comply.

The schedule shall include a task activity for the first chargeable day of the Contract and a task activity for the last chargeable day of the Contract with a 1-day duration and a 7-day calendar assignment. The Contract Completion Date as defined in section 6.3.2.1 shall be entered into the Primavera Project Overview window under "Project must finish by".

Mobilization Activities: Activities representing Contract pay item 1-101-1, Mobilization, shall be divided into 1 work activity with a duration no greater than 20 work days and 4 mobilization payment milestones that are revenue loaded according to the specification payment schedule as follows: 5% of Contract earned = 25% payment, 10% of Contract earned = 50% payment, 25% of Contract earned = 75% payment and 50% of Contract earned = 100% payment. The payment milestones should not be tied to any activities, but constrained by a "start no earlier than" constraint. The dates they are constrained to should be based on the early dates shown in the schedule cash flow tabular report by day generated by P6.

6.3.3.4.2 Activity Codes: The following are the minimum required activity codes and their values that are to be assigned to each activity in P6:

Phase: Shall have a field length of 4 characters. If the Project has more than one maintenance of traffic (M.O.T.) phase, each phase shall be identified. Each activity shall show which M.O.T. Phase it belongs to as shown in the Plans and Specifications.

Area: Shall have a field length of 6 characters. The Contractor shall create Area activity code values for each of the following areas. Each schedule activity shall have an assigned Area activity code value

6.3.3.4.3 Activity Relationships: Relationships between activities shall be identified with the following information:

- A. Activity ID - Shall not exceed 6 characters in length.
- B. Predecessor and successor activity ID.
- C. Relationship types:
  - SS -Start to start
  - FF -Finish to finish
  - SF -Start to finish - This relationship is not allowed, unless authorized by CFX.
- D. Lag -Negative lag is not allowed, unless authorized by CFX.

6.3.3.4.4 Project Calendars: Calendars shall use day as the planning unit for the schedule. One of four calendars shall be used for each activity:

- A. Calendar 1: shall be used for 5-day workweek activities: Monday through Friday. All holidays and non-work days shall be assigned to this calendar. This calendar shall be used for all normal Work activities. Calendar 1 shall be the default calendar.
- B. Calendar 2: shall be used for 7-day workweek activities. No non-work days shall be entered into this calendar. Activities such as friction course curing shall use this calendar.
- C. Calendar 3: shall be used for 7-day workweek activities. All holidays shall be entered into this calendar.
- D. Calendar 4: shall be used for 6-day workweek activities. All holidays and non-work days shall be assigned to this calendar.

Global Calendar: The global P6 calendar shall have all holidays and non-work days assigned.

Additional calendars: May be assigned depending upon need. However, the Contractor shall consult with CFX before other calendars are entered and/or used in the Project schedule.

6.3.3.4.5 Revenue Loading the Schedule: Each Work activity in the schedule shall be revenue loaded using all the Contract pay items amounts related to the Work activity. The Contractor shall verify that each pay item is represented in the schedule. The total of all revenue loading shall equal the Contract amount.

If the monthly payment requests do not reasonably agree with the monthly schedule updates/budgeted revenue of Work performed, CFX may request that the Contractor revise its revenue loading in the accepted baseline schedule and the most current updated baseline schedule. In addition, CFX may request that the Contractor revise its revenue loading in the accepted baseline and updated baseline schedules to incorporate all Supplemental Agreement changes affecting the Contract amount.

6.3.3.4.6 Updating the Baseline Schedule

Monthly Schedule Update Meetings: Monthly Schedule Update meetings shall be set by CFX and shall be transmitted to the Contractor by written notice.

CFX will establish a schedule cut-off date for each month of the Contract.

The updated baseline schedule, project progress, issues, delays, claims, planned Work, Contractor's monthly pay estimate, and baseline schedule revisions shall be among the priority items addressed in detail.

Schedule Update Process: The schedule update process shall include updating the activity actual start and finish dates, percent completion, remaining duration, and adjusting schedule logic to correct for activities being performed out of sequence, adjusting resource allocations for activities, and changing the calendar assignments to activities as needed. The Contractor shall not change an activity original duration for any reason.



#### 6.3.3.4.7 Revisions to the Baseline Schedule

1. CFX will request in writing that the Contractor submit a proposed revision to the Accepted Baseline Schedule to incorporate a Board Approved Supplemental Agreement.
2. The Contractor shall have fifteen calendar days from receipt of CFX's request to submit a proposed revision to the Accepted Baseline Schedule.
3. The Contractor's proposed revision shall include all transmittals, reports, diagrams, and bar charts listed in specification section 6.3.2.4.9, unless CFX requests otherwise in writing.
4. The Contractor shall submit two Schedule Comparison reports. The first report shall be a comparison between the Accepted Baseline Schedule and the Revised Baseline Schedule. The second report shall be a comparison between the current updated baseline schedule and the proposed updated baseline schedule containing the proposed revision to the accepted baseline schedule.
5. In its required narrative report, the Contractor shall state whether or not the proposed changes affect the longest path of the accepted baseline schedule or the proposed updated baseline schedule, which contains progress.
6. CFX shall have 15 calendar days to review and transmit a written notice of acceptance or rejection of the Contractor's proposed revision. If CFX rejects the proposed revision, CFX shall state the reasons for rejection in the written notice. The Contractor shall have 5 calendar days to re-submit the proposed revision to CFX.
7. If the Contractor fails to submit a proposed revision that is accepted by CFX within 45 calendar days from CFX's original request date, CFX reserves the right to retain 10% of each of the Contractor's monthly payment requests until the Contractor submits a proposed revision that is accepted by CFX.
8. Upon acceptance of the proposed revision to the accepted baseline schedule, the proposed revision to the baseline schedule shall become the accepted baseline schedule. The Contractor shall incorporate the revision into the next scheduled updated baseline schedule.

**6.3.3.4.8 Schedule Submittals:** Each baseline, revised baseline, and updated baseline schedule submittal shall include the following documents, unless CFX sends and the Contractor receives a written request to limit the submittal to certain documents for a specific submittal.

1. Transmittal: Shall be signed by the Contractor's Schedule Engineer or Resident Engineer. Shall contain the following information:

Submittal date.

Contractor Name.

Complete CFX Contract Number.

Project Description.

Contract Resident Engineer.

Four character P6 Project Number - Data Date

2. Schedule Update Narrative Report: The Contractor shall prepare a written narrative to accompany the required reports and graphics for the schedule update submittal. The narrative shall have the following sections:

**Schedule Status:** The Schedule Status shall be a written narrative explaining the progress during the month in sufficient detail and referencing specific activities including longest path activities, milestones, design issues, means and methods issues, out of sequence activities, and actual production rates for various types of Work performed by the crews loaded as resources in the schedule.

**Delays:** If the Contractor has experienced any delay, the Contractor shall explain what activities in the current period were affected by the delay and what caused the delay and how the Contractor intends to address the delay.

**Milestone Comparisons:** Current period projected milestone dates versus previous period projected milestone dates, and current period projected contract completion date versus previous period projected contract completion date.

3. Schedule Comparison Report: The Contractor shall submit to CFX a detailed report showing all changes to the Project schedule since the previous monthly update, including, but not limited to the following information:

Activities worked out of sequence.  
Changes in Total Float.  
Changes in Early and Late Dates.  
Changes in Original and Remaining Duration.  
Changes in Activity Constraints.  
Changes in Activity Predecessors, Successors, Relationship Type, and Lags.  
Changes in Activity Resource Assignments.  
Changes in Activity Cost Loading.  
Changes in Activity percent completion.  
Changes in Longest Path Activities.

Longest Path Bar chart: Bar chart shall be time scaled and filtered on the Longest Path activities and sorted by early start.

Area Code Bar chart: Bar chart shall be time scaled and sorted by area code. The bar chart shall include:

- A. Each activity on a single line containing ID number, activity description, and a bar representing activity original duration, early start dates, early finish dates, late start dates, late finish dates and total float.
  - B. Key to identify all components in the bar chart and CPM.
  - C. Key to identify all the abbreviations used.
4. Revenue Loading Report: The Contractor shall submit to CFX a report entitled "Revenue Loading Report". The report shall include the following information:
- A. Activity ID number
  - B. Description of activity
  - C. List of pay items included in activity including:
    - 1. Pay item number
    - 2. Pay item description
    - 3. Quantity of pay item to be applied
    - 4. Unit measure of pay item
    - 5. Unit-price of pay item
    - 6. Total price for pay item to be applied
  - D. Total revenue loading of activity (Sum of "C")

5. Revenue Flow Diagram: For any baseline Schedule, the Contractor shall submit to CFX a Revenue Flow Diagram by month. The Revenue Flow Diagram shall show the early and late curves representing the accumulated projected dollars to be earned for each month of the Contract.
6. Tabular Revenue Report: For any Baseline Schedule, the Contractor shall submit a Tabular Revenue Report by day. The tabular report shall show columns for the accumulated and incremental projected dollar amounts to be earned on the early and late curve for each Contract day.
7. P6 Schedule Backup: The Contractor shall submit to CFX two copies of each baseline, revised baseline, and updated baseline schedule using the P6 backup option. The backed up copies shall be compressed and without an access list. The backups shall be submitted on compact disk (cd). Each cd shall have a typed label showing the following information:

Contractor name  
The complete CFX Project number  
The four character P6 project number  
Data Date in format -> "01JAN15"  
Volume number \_of\_ total volume numbers (e.g., 1 of 5, 2 of 5)

8. Paper Sizes and Orientation: All printed reports shall be submitted on 8" x 11" portrait-bond paper. All printed bar charts and revenue flow diagrams shall be submitted on 8" x 11" landscape bond paper. All presentation layouts and logic diagrams shall be plotted in color with a color design jet plotter and submitted on ANSI E (34-inch x 44-inch) size coated paper.

6.3.3.4.9 Two Week Look Ahead Schedule: The Contractor shall submit a two-week look-ahead bar chart schedule produced in Microsoft Excel at the weekly project progress meeting. The bar chart shall show all major Work in progress.

The bar chart shall show at least one week behind for actual Work performed and two weeks ahead for planned Work.

The bar chart shall be date synchronized to the CEI's Weekly Summaries.

Changes and revisions that require the approval of CFX shall be brought forward for discussion.

6.3.3.4.10 Adjustments to Contract Time:

1. The Contract Completion Date shall not be changed in any schedule unless CFX approves a Supplemental Agreement granting an extension to the Contract Time.
2. The Contractor has the right to finish the Contract early; however, the Contractor agrees that any impact to the projected early completion date does not justify a request for a time extension because it would constitute changing the Contract completion date to match the Contractor's projected early completion date.
3. The Contractor acknowledges and agrees that for purposes of considering a time extension request, a schedule activity shall not be considered to have been subject to a claimed delay unless all originally and presently scheduled predecessor activities have been completed so that no other restraints to the performance of that activity exist in the CPM schedule at the time claimed for the delay impact. The Contractor agrees that a Contract time extension request shall only be considered for one of the following reasons:
  - A. The Contractor performed Extra Work that met all of the following conditions:
    1. CFX stated that the Extra Work was not to be performed concurrently with other Contract Work.
    2. The Extra Work delayed the Contract Completion Date.
    3. The Extra Work impacted one or more activities on the current CPM schedule longest path.
  - B. The Contractor experienced an Excusable Delay, as defined in subarticle 6.7.3.1, that met all of the following conditions:
    1. The Contract Completion Date was delayed due to circumstances beyond the control of the Contractor.

2. The Contractor took every reasonable action to prevent the delay.
3. The delay impacted one or more activities on the current CPM schedule longest path.
4. The Contractor agrees that there shall be no basis for a Contract Time extension as a result of any Contract problem, Supplemental Agreement, or delay, which only results in the loss of available positive float, or an increase of negative float belonging to activities that do not reside on the CPM schedule's Longest Path.

6.3.3.4.11 Supplemental Agreements: Supplemental Agreements shall include a time impact analysis from the Contractor as to the effect of the requested change on the detailed schedule. In cases where the requested change has no impact on the Project duration, the time impact analysis shall still be included. The time impact analysis shall include a listing of the activities that are affected by the requested changes and an analysis of the change on the longest path of the detailed schedule. The Contractor and the CEI shall agree upon the impact to the schedule before a Supplemental Agreement is approved.

The approved Supplemental Agreements shall be incorporated into the next monthly schedule update.

6.3.3.4.12 Adjustment to the Contract Time: Adjustments to the Contract time are detailed in subarticle 6.7.3.

6.3.3.4.13 CPM Recovery Schedule: Should any of the following conditions exist, the Contractor shall, at no extra cost to CFX, prepare a CPM Recovery Schedule:

1. Should the Contractor's monthly progress review indicate that a CPM Recovery Schedule is required;
2. Should the CPM schedule show the Contractor to be thirty (30) or more days behind schedule at any time during the construction period;
3. Should the Contractor request to make changes in the logic of the CPM schedule which, in the opinion of CFX, are of a major nature.

The same requirements and submittals for the CPM Recovery Schedule shall apply as the original baseline schedule.

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.

#### 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.

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.
- 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.

## 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.
- 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.

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 subarticle.

## 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.

7.2.1.1 Fuels: CFX will, in the Contract Documents, provide an estimated quantity for fuel requirements for gasoline and diesel to cover the work specified in the Contract. Price adjustments will be made only for the amount of gasoline and diesel fuel estimated by CFX as required to complete the Contract. The requirement of each type of fuel for each pay item is estimated by multiplying the CFX standard fuel factor for that pay item by the quantity of that pay item. Price adjustments made for fuel used after expiration of the last allowable Contract Day (including any time extensions) will be limited to the increases or decreases dictated by the index in effect on the last allowable Contract Day. On Contracts with an original Contract Time in excess of 120 calendar days, CFX will make price adjustments on each applicable progress estimate to reflect increases or decreases in the price of gasoline and diesel from those in effect during the month in which bids were received. The Contractor will not be given the option of accepting or rejecting these adjustments. Price adjustments for these fuels will be made only when the current fuel price (CFP) varies by more than 5% from the price published when bids were received (BFP), and then only on the portion that exceeds 5%. For definition purposes, should a project bid prior to the 15<sup>th</sup> of any month, the bid index will be the index for the month prior to the bid. Should a project bid after the 14<sup>th</sup> of the month, the bid index will be the index for the month of the bid.

Price adjustments will be based on the monthly bulk average price for gas and diesel as derived by the FDOT. These average indexes shall be determined by averaging bulk fuel prices on the first day of each month as quoted by major oil companies that are reasonably expected to furnish fuel for projects in the State of Florida. Average price indices for gasoline and diesel will be available on the FDOT Construction Office website before the 15<sup>th</sup> of each month, at the following URL: [www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.htm](http://www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.htm).

Payment will be based on the quantities shown on the progress estimate on all items for which established standard fuel factors which are included in the bid documents or, if omitted, are on a file maintained by the FDOT at the time of bid.

Payment on progress estimates will be adjusted to reflect adjustments in the prices for gasoline and diesel in accordance with the following:

When fuel prices have decreased between month of bid and month of this progress estimate:

$A_i = F_i (P_i - .95 P_b)$  during a period of decreasing prices.

$A_i$  = Total dollar amount - positive or negative - of the cost adjustment for each kind of fuel used by the Contractor during the month "i."

$F_i$  = Total gallons calculated as being used during the month (units produced/month x gallons/unit).

$P_i$  = Average price for fuel prevailing during month "i."

$P_b$  = Average price for fuel prevailing during the month "b" when bids were received on this Contract, as defined above

When fuel prices have increased between month of bid and month of this progress estimate:

$A_i = F_i (P_i - 1.05 P_b)$  during a period of increasing prices.

$A_i$  = Total dollar amount - positive or negative - of the cost adjustment for each kind of fuel used by the Contractor during the month "i."

$F_i$  = Total gallons calculated as being used during the month.

Pi = Average price for fuel prevailing during month “i.”

Pb = Average price for fuel prevailing during the month “b” when bids were received on this Contract, as defined above

Payment will be made on the current progress estimate to reflect the index difference at the time work was performed.

Adjustments will be paid or charged to the Contractor only. Contractors receiving an adjustment under this provision shall distribute the proper proportional part of such adjustment to subcontractors who perform applicable work.

7.2.1.2 Bituminous Material: On Contracts having an original Contract Time of more than 365 calendar days, or more than 5,000 tons of asphalt concrete, CFX will adjust the bid unit price for bituminous material, excluding cutback and emulsified asphalt to reflect increases or decreases in the Asphalt Price Index (API) of bituminous material from that in effect on the day on which bids were received. The Contractor will not be given the option of accepting or rejecting this adjustment. Bituminous adjustments will be made only when the current API (CAPI) varies by more than 5% of the API prevailing on the day on which bids were received (BAPI), and then only on the portion that exceeds 5%. For definition purposes, should a project bid prior to the 15<sup>th</sup> of any month, the bid index will be the index for the month prior to the bid. Should a project bid after the 14<sup>th</sup> of the month, the bid index will be the index for the month of the bid.

CFX will determine the API for each month by checking the FDOT Contracts Office web site which averages quotations in effect on the first day of the month at all terminals that could reasonably be expected to furnish bituminous material to projects in the State of Florida.

Payment on progress estimates will be adjusted to reflect adjustments in the prices for bituminous materials in accordance with the following:

$$\text{\$ Adjustment} = (\text{ID})(\text{Gallons})$$

Where ID = Index Difference = [CAPI - 0.95(BAPI)] when the API has decreased between the month of bid, as defined above, and month of this progress estimate.

Where ID = Index Difference = [CAPI - 1.05(BAPI)] when the API has increased between the month of bid, as defined above, and month of this progress estimate.

Payment will be made on the current progress estimate to reflect the index difference at the time work was performed.

For asphalt concrete items payable by the ton, and not containing Reclaimed Asphalt Pavement (RAP), the number of gallons will be determined assuming a mix design with 6.25% liquid asphalt weighing 8.58 lb/gal. For asphalt concrete items payable by the ton, that do contain Reclaimed Asphalt Pavement (RAP), the number of gallons will be determined assuming a mix design with 5% liquid asphalt weighing 8.58 lb/gal.

Asphalt concrete items payable by the square yard will be converted to equivalent tons assuming a weight of 100 lb/yd<sup>2</sup> per inch.

7.2.1.2 For FC-5 with granite, the number of gallons will be determined assuming a mix design with 5.5% liquid asphalt weighing 8.58 lb/gal.

- 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.

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 RRBBCOE ownership cost plus 100% of the RRBB and/or RRBBCOE 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 RRBBCOE 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 RRBBCOE monthly rates by 176. The columns, itemizing rates, labeled "Weekly", "Daily" and "Hourly" shall not be used.
- 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.

(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.

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 of 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- PARTNERING AND DISPUTES RESOLUTION

### 10.1 Partnering

The objective of Partnering is to establish a partnership charter and action plan for the Contractor, CFX and other parties impacted by the activities covered under the Contract to identify and achieve reciprocal goals. These objectives may be met through participation in workshops held periodically throughout the duration of the Contract.

Prior to the pre-construction conference, CFX, the CEI, and the Contractor shall meet and plan an initial partnering/team building workshop. At this planning session, arrangements will be made to select a workshop facilitator, determine attendees, agenda, duration and location. Attendees should include representatives of CFX, the CEI, and other key Project personnel, the Contractor's superintendent and other key personnel as well as others mutually agreed upon by CFX and the Contractor. Additional workshops may be held periodically throughout the duration of the Contract if authorized by CFX.

CFX will arrange for and pay the cost of providing a facilitator and meeting room and for all other direct costs associated with the Partnering workshops. No separate compensation will be paid to the Contractor to attend partnering meetings

### 10.2 Disputes Resolution

#### 10.2.1 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.

#### 10.2.2 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.

#### 10.2.3 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.

#### 10.2.4 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.

#### 10.2.5 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.

#### 10.2.6 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.

#### 10.2.7 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.

#### **10.2.8 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 Three Hundred Dollars (\$1,300.00) 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: \_\_\_\_\_

## **APPENDIX**

### **PROCEDURE GUIDELINES**

#### **1. GENERAL MEETINGS**

General Meetings are defined as those meetings required for the Board to develop a familiarity of the work in progress and keep abreast of construction activities such as progress, status and nature of items in the earlier stages of escalation, changes to personnel, etc. General Meetings shall occur 60days after Notice to Proceed for the Project and every 120days thereafter, or as determined by the parties to be in the best interest of the project. Site visits as described in Subarticle II D above shall be considered General Meetings. Site visits may be coordinated to coincide with, or be replaced by, Board meetings to review disputes brought to the Board by CFX or Contractor.

#### **2. MONTHLY PROJECT DOCUMENT REVIEW**

In an effort to keep the Board closely and concurrently apprised of the progress of the Project, each member of the Board will be provided with copies of Project related documents. These documents may include minutes from progress meetings, schedule updates, CEI's weekly summaries, monthly progress summaries, selected correspondence, Supplemental Agreements to the Contract, Project photos, and any other information that may be requested by the Board or required to answer questions by the Board.

#### **3. REVIEW OF DISPUTES OR CLAIMS BY THE BOARD**

Disputes review meetings shall be at the time and frequency mutually agreed to by CFX and Contractor.

# **CONSENT AGENDA ITEM #8**



# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 24, 2020

SUBJECT: Approval of First Contract Renewal with Protean Design Group, Inc.  
for Miscellaneous Design Consultant Services  
Contract No. 001208

Board approval is requested for the first renewal of the referenced contract with Protean Design Group, Inc. in the amount of \$830,000.00 for a one year period beginning April 7, 2020 and ending April 6, 2021. The original contract was three years with two one-year renewals.

The services to be provided under this renewal are miscellaneous design consultant services.

Original Contract	\$ 2,500,000.00
Supplemental Agreement No. 1	\$ 200,000.00
First Renewal	<u>\$ 830,000.00</u>
Total	\$ 3,530,000.00

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

Reviewed by:   
Will Hawthorne, PE  
Director of Engineering



**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
CONTRACT RENEWAL AGREEMENT NO. 1  
CONTRACT NO. 001208**

THIS CONTRACT RENEWAL AGREEMENT (the "Renewal Agreement"), made and entered into this 13<sup>th</sup> day of February 2020, by and between the Central Florida Expressway Authority, hereinafter called "CFX" and Protean Design Group, Inc., herein after called the "Consultant."

WITNESSETH

WHEREAS, CFX and the Consultant entered into a Contract Agreement (the "Original Agreement") dated October 13, 2016, with a Notice to Proceed date of April 7, 2017, whereby CFX retained the Consultant to provide miscellaneous design consultant services as required by CFX.

WHEREAS, pursuant to Article 2.0 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 7th day of April, 2020 and ending the 6th day of April, 2021 at the cost of \$830,000.00, which increases the amount of the Original Agreement.

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.

PROTEAN DESIGN GROUP, 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

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 1  
TO  
AGREEMENT FOR MISCELLANEOUS DESIGN CONSULTANT SERVICES  
CONTRACT NO. 001208**

This Supplemental Agreement No. 1 ("Supplemental Agreement") is entered into this 14<sup>th</sup> day of November 2019, by and between the Central Florida Expressway Authority ("CFX") and Protean Design Group, Inc., ("Consultant").

WITNESSETH:

WHEREAS, CFX and the Consultant on October 13, 2016, entered into an Agreement whereby CFX retained the Consultant to provide miscellaneous design consultant services; and

WHEREAS, CFX has determined it necessary to increase the Contract amount by \$200,000.00 in order to continue the required services through the term of the Contract; and,

WHEREAS, the Consultant hereby agrees to the increase in the Contract amount and will continue provide the required services with no change in the fees and rates included in the original Contract dated October 13, 2016;

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties agree that the Consultant shall provide the required services as detailed in the Scope of Services included in the original Contract and CFX shall increase the amount of the Contract by \$200,000.00 which shall make the total not-to-exceed amount of the Contract \$2,700,000.00.

CFX and Consultant agree that this Supplemental Agreement No.1 shall not alter or change in any manner the force and effect of the original Contract except insofar as the same is altered and amended by this Supplemental Agreement No.1; that acceptance of this Supplemental Agreement No.1 signifies the Consultant's waiver of all future rights for additional compensation which is not already defined herein.

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IN WITNESS THEREOF, the parties hereto have caused these presents to be executed on the day and year first written above. This Supplemental Agreement No. 1 was approved by CFX Board of Directors on November 14, 2019.

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

By: \_\_\_\_\_

Director of Procurement

**PROTEAN DESIGN GROUP, INC.**

19 NOV 20 PM 1:40

By: \_\_\_\_\_

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

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

(Seal)

Approved as to form and execution, only.

General Counsel for CFX

\_\_\_\_\_

# **AGREEMENT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
PROTEAN DESIGN GROUP, INC.**

**MISCELLANEOUS DESIGN CONSULTANT SERVICES**

**CONTRACT NO. 001208**

**CONTRACT DATE: OCTOBER 13, 2016  
CONTRACT AMOUNT: \$2,500,000.00**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

**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**

**MISCELLANEOUS DESIGN CONSULTANT SERVICES**

**CONTRACT NO. 001208**

**OCTOBER 2016**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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<u>Section</u>	<u>Title</u>
AG	Agreement
A	Exhibit "A", Scope of Services
B	Exhibit "B", Method of Compensation
C	Exhibit "C", Details of Cost and Fees
D	Exhibit "D", Project Organization Chart

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT, made and entered into this 13<sup>th</sup> day of October, 2016, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a corporate body 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 Protean Design Group Inc., hereinafter called "CONSULTANT," registered and authorized to conduct business in the State of Florida, carrying on professional practice in engineering, with offices located at 100 E. Pine Street, Suite 600, Orlando, FL 32801.

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. DEFINITIONS.

Reference herein to the Project Manager shall mean CFX's Director of Engineering or his authorized designee. The Project Manager 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 Project Manager and the CONSULTANT shall comply with all of the directives of the Project Manager 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 Project Manager.

2.0. SCOPE OF SERVICES.

CFX does hereby retain the CONSULTANT to furnish certain miscellaneous design consultant services as identified in this Contract, Contract No. 001208.

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 rendering any of the services, 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.



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 required project services as detailed in **Exhibit "A,"** with two one-year renewals at CFX's option. 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 CONSULTANT are satisfactory and adequate for CFX's needs. If a renewal option is exercised, CFX will provide CONSULTANT with written notice of its intent at least thirty (30) days prior to the expiration of the original term and subsequent renewal, if any.

The CONSULTANT agrees to commence the scheduled project services to be rendered within ten (10) calendar days from the date specified in the written Notice to Proceed from the Project Manager, which Notice to Proceed will become part of this Agreement. The CONSULTANT shall complete scheduled project services within the timeframe(s) specified in **Exhibit "A"**, or as may be modified by subsequent Supplemental Agreement.

### 4.0 PROJECT SCHEDULE

The CONSULTANT agrees to provide Project Schedule progress reports for each project in a format acceptable to CFX and at intervals established by CFX. CFX will be entitled at all times to be advised, at its request, as to the status of work being done by the CONSULTANT and of the details thereof. Coordination shall be maintained by the CONSULTANT with representatives of CFX, or of other agencies interested in the project on behalf of CFX. Either party to the Agreement may request and be granted a conference.

In the event there are delays on the part of CFX as to the approval of any of the materials submitted by the CONSULTANT or if there are delays occasioned by circumstances beyond the control of the CONSULTANT, which delay the scheduled project completion date, CFX may grant to the CONSULTANT by "Letter of Time Extension" an extension of the scheduled project completion date equal to the aforementioned delays. The letter will be for time only and will not include any additional compensation.

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 in a design capacity and shall have due regard for acceptable standards of design 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.

Johnson, Mirmiran & Thompson, Inc. (Class 1)  
Bentley Architects and Engineers, Inc. (Class 1)  
Luke Transportation Engineering Consultants, Inc. (Class 1)  
JCR Consulting (Class 1)  
Sims Wilkerson Cartier Engineering, Inc. (Class 1)  
Lochrane Engineering Incorporated (Class 1) / Survey (Class 2)  
Omni Communications, LLC (Class 1) / Survey & SUE Crew (Class 2)  
Geotechnical and Environmental Consultants, Inc. (Class 2)

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.

## 6.0 SERVICES TO BE PROVIDED

The work covered by this Agreement includes the professional services related to planning and engineering as described in **Exhibit "A."**

All construction plans, documents, reports, studies and other data prepared by the CONSULTANT shall bear the endorsement of a person in the full employ of the CONSULTANT and duly registered by the State of Florida in the appropriate professional category.

After CFX's acceptance of construction plans and documents for the project, the original set of CONSULTANT's drawings, tracings, plans, maps and CADD files shall be provided to CFX, along with one record set of the final plans. The CONSULTANT shall signify, by affixing an endorsement (seal/signature, as appropriate) on every sheet of the record set, that the work shown on the endorsed sheets was produced by the CONSULTANT. With the tracings and the record set of prints, the CONSULTANT shall submit a final set of design computations. The computations shall be bound in an 8-1/2 x 11" format and shall be endorsed (seal/signature, as appropriate) by the CONSULTANT. Refer to **Exhibit "A"** for the computation data required for this Agreement.

The CONSULTANT shall submit a final set of reports and studies which shall be endorsed (seal/signature) by the CONSULTANT.

The CONSULTANT shall not be liable for use by CFX of said plans, documents, reports, studies or other data for any purpose other than intended by the terms of this Agreement.

## 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 \$2,500,000.00 for the initial three-year term of this Agreement. 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 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) 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. The obligations in this paragraph survive the termination of the Agreement and continue in full force and effect.

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 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 based on and in accordance with the specific task order assigned to the CONSULTANT.

Notwithstanding Section 17, 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 8.0, Document Ownership and Records, shall survive the expiration or termination of this Agreement and continue in full force and effect.

The CONSULTANT shall allow public access to all documents, papers, letters, or other material as approved and authorized by CFX and subject to the provisions of Chapter 119, Florida

Statutes, and made or received by the CONSULTANT in conjunction with this Agreement. Failure by the CONSULTANT to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by CFX.

#### 9.0 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.

#### 10.0 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 Section 7.0 are accurate, complete and current as of the date of this Agreement. It is further agreed that said price provided in Section 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.

#### 11.0 TERMINATION

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 in accordance with **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 and 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 Section 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.

## 12.0 ADJUSTMENTS

All services shall be performed by the CONSULTANT to the reasonable satisfaction of the Project Manager 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. 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 Executive Director and Supplemental Agreement(s) of such a nature as required may be entered into by the parties in accordance herewith. Disputes between the Project Manager and the CONSULTANT that cannot be resolved shall be referred to the 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 for consideration by the Executive Director; 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.

### 13.0 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.

### 14.0 HOLD HARMLESS AND INDEMNIFICATION

The CONSULTANT shall 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, caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of the Agreement. The CONSULTANT shall indemnify and hold harmless CFX and all of its officers and employees from any liabilities, losses, damages, costs, including, but not limited to reasonable attorneys' fee, arising out of any negligent act, error, 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 solely 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 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 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 14.0, Hold Harmless and Indemnification, shall survive the expiration or termination of this Agreement and continue in full force and effect.

#### 15.0 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 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.

## 16.0 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.

16.1 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.

16.2 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.

16.3 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.

16.4 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.

#### 17.0 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 Section 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 or 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 mark, including trademarks, service marks, or any 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 Mark is utilized, the Mark shall be properly screened to insure all layers of the Mark 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.

## 18.0 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 and the CFX Code of Ethics 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 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 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 CFX's Code of Ethics and the referenced statutes and to the extent applicable to the CONSULTANT, agrees to abide with such policy.

## 19.0 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.

## 20.0 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.

## 21.0 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.

## 22.0 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 this paragraph shall survive the expiration or termination of this Agreement and continue in full force and effect.

## 23.0 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."

## 24.0 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.

## 25.0 ASSIGNMENT

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

## 26.0 AVAILABILITY 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 CONSULTANT to that effect.

## 27.0 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.

## 28.0 AUDIT AND EXAMINATION OF RECORDS

### 28.1 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.

28.2 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.

28.3 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) calendar 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.

28.4 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.

28.5 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.

28.6 The obligations in Section 28.0, Audit and Examination of Records, shall survive the expiration or termination of this Agreement and continue in full force and effect.



## 29.0 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: Protean Design Group, Inc.  
100 E. Pine Street, Suite 600  
Orlando, FL 32801  
Attn: Mr. David Reed

Protean Design Group, Inc.  
100 E. Pine Street, Suite 600  
Orlando, FL 32801  
Attn: Ms. Sonya Howard

## 30.0 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 30.0, Governing Law and Venue, shall survive the expiration or termination of this Agreement and continue in full force and effect.

## 31.00 ATTACHMENTS

Exhibit "A", Scope of Services  
Exhibit "B", Method of Compensation  
Exhibit "C", Details of Cost and Fees  
Exhibit "D", Project Organization Chart


[ SIGNATURES TO FOLLOW ]

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 October 13, 2016.

**PROTEAN DESIGN GROUP, INC.**

**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY**

BY:   
Authorized Signature

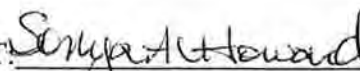
BY:   
Director of Procurement

Print Name: Kimberly C. Horlander, PE

Print Name: Aneth Williams

Title: President

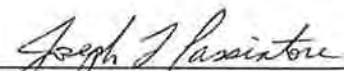
Effective Date: \_\_\_\_\_

ATTEST:  (Seal)  
Secretary or Notary



Sonya A. Howard  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# FF223460  
Expires 7/9/2019

*Approved as to form and execution, only.*

  
General Counsel for CFX

**EXHIBIT A**

**SCOPE OF SERVICES**

**Exhibit A**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

**SCOPE OF SERVICES**

**FOR**

**MISCELLANEOUS DESIGN CONSULTANT SERVICES**

**CONTRACT 001208 (SSBE)**

**IN ORANGE COUNTY, FLORIDA**

**February, 2017**

Exhibit A

SCOPE OF SERVICES

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## 1.0 GENERAL

### 1.01 Location

- A. Projects (and project locations) to be identified on an individual basis per each Work Authorizations

### 1.02 Description

The work to be performed under this contract includes the final design and preparation of construction drawings and specifications for miscellaneous design projects on CFX's system. Potential scope elements may include, but are not limited to the following: minor highway design, major highway design, miscellaneous structures, minor bridge design, traffic engineering studies, traffic signal timing, intelligent transportation systems analysis and design, signing, pavement marking and channelization, lighting, signalization, control surveying, soil exploration, geotechnical classification lab testing, standard foundation studies, architecture and landscape architecture. All work on this contract will be requested and approved by means of individual Work Authorizations

### 1.03 Purpose

- ~~A.~~ The purpose of this Exhibit is to describe the scope of work and responsibilities required in connection with final engineering and final construction drawings and documents for the miscellaneous design services contract. It should be noted that this Exhibit covers a full range of possible scope elements that may arise as part of this contract. This Exhibit is provided as a guide to be used by the CONSULTANT in preparation of individual Work Authorizations as requested by CFX. It is further understood that elements of this Exhibit may not be applicable to all Work Authorizations Work Authorizations approved under this contract
- B. As necessary, the Consultant shall perform those engineering services required for final roadway plans, final bridge plans, and the preparation of a complete environmental resource application including 100% storm water management, final lighting plans, final traffic control plans, final utility, final fiber optic network relocation plans and final signing and pavement marking plans
- C. CFX's Project Manager will provide contract administration, management services and technical reviews of all work associated with the preliminary and final designs



- D. It is understood that references throughout this document to items of work and services to be performed are the responsibility of the Consultant unless otherwise expressly stated as the responsibility of others

#### 1.04 Organization

- A. CFX's Project Manager will administer the Consultant services detailed in this scope. The following sections define the duties and obligations of CFX and the Consultant

#### 1.05 Term of Agreement for Miscellaneous Design Services

- A. The term of the Agreement shall be for three (3) years from the notice to proceed. The Agreement is further eligible for two (2), one (1) year renewals following the initial three (3) year period
- B. The Consultant may continue the design efforts while design submittals are being reviewed. Doing so, however, in no way relieves the Consultant of the responsibility to incorporate review comments into the design, nor does it entitle the Consultant to any additional design fees as a result of making changes due to review comments

## 2.0 STANDARDS

A. The applicable design and construction standards and policies of the Florida Department of Transportation, Federal Highway Administration (FHWA), American Association of State Highway and Transportation Officials (AASHTO), Transportation Research Board (TRB), Standard Building Code, CFX's Design Practices and Standard Notes and CFX's Guidelines for Preparation of Signing and Pavement Marking Plans shall be followed throughout the design and construction of the project unless specifically stated otherwise. The editions of the applicable standards and policies in effect at the time of Contract execution shall be used except as follows:

1. Division II, Construction Details, and Division III, Materials, of the FDOT Standard Specifications for Road and Bridge Construction, 2010 edition, and updates, shall be used for this project
2. The FDOT Design Standards (Index Drawings), latest edition and subsequent interim indexes and updates, shall be used for this project
3. The FDOT Plans Preparation Manual, latest edition, shall be used for this project
4. The FDOT Basis of Estimates Handbook, latest edition, shall be used for this project
5. The AASHTO Policy on Geometric Design of Highway and Streets (Green Book), 2001 edition, shall be used for this project
6. The FHWA Manual on Uniform Traffic Control Devices (MUTCD), 2009 edition, as amended, shall be used for this project

### 3.0 DESIGN CRITERIA

#### 3.01 General

Design of the projects will be guided by the basic design criteria listed below.

- A. The design criteria listed in this section and Project Design Directives, provided by CFX during the course of the project, may supplement the Project Design Guidelines
- B. As necessary, along with the 30% design review submittal, the Consultant shall provide a tabulation of all applicable drainage and stormwater management criteria from Federal, State and local agencies and indicated which will be used for all segments and portions of the project. Unless otherwise directed by CFX, the Consultant shall use the most restrictive or conservative criteria applicable

#### 3.02 Geometry

The following criteria are to be incorporated into the design:

DESIGN ELEMENT	EXPRESSWAY		CROSSROADS/ COLLECTORS
	MAIN LANES	RAMPS	
<u>Design Speed, MPH</u>	70 mph	30 mph (Loop) 50 mph (Diamond) 50 mph (Direct Connection)	30 Local 45 Urban 50 Rural
<u>Horizontal Alignment</u>			
a. Max. Curve, Degrees	3° 30'	24° 45' Loop 8° 15' Diamond 8° 15' Direct Connection	20°
b. Max. Superelevation, ft/ft.	0.10	0.10	0.05 Urban 0.10 Rural
c. Lane Drop Tapers	70:1	50:1 25:1 Toll Plazas	
d. Transitions	Use spirals for curves > 1° 30'	Use spirals for curves > 1° 30'	Use spirals for curves > 1° 30'
<u>Vertical Alignment</u>			
a. Max. Grade	3%	5% to 7% (30 mph) 4% to 6% (40 mph) 3% to 5% (50 mph)	5% Arterial Rural 7% Collector Rural
b. Vertical Curvature (K) (K=Len./%grade change)			
Crest	506 FDOT 290 to 540 AASHTO	31 (30 mph) 136 (50 mph) 110 to 160 Other (AASHTO)	31 to 136
Sag	206 FDOT 150 to 200 AASHTO	31 (30 mph) 136 (50 mph) 90 to 110 Other (AASHTO)	37 to 96
c. Decision Sight Dist., ft.	Refer to AASHTO	N/A	N/A
<u>Cross Sections</u>			
a. Lane Widths, ft.	12	12 dual lanes 15 min. single lane	12 inner lanes 12-16 outer lanes
b. Shoulder width, ft. Right Left	<u>4-Lane</u> 12 (10 paved) 8 (4 paved)	<u>Single Lane</u> 6 (4 paved) 6 (2 paved)	8 (4*paved) 8 (2 paved)  • min. 5' paved

DESIGN ELEMENT	EXPRESSWAY		CROSSROADS/ COLLECTORS
	MAIN LANES	RAMPS	
			FDOT
Right	<u>6-Lane</u> 12 (10 paved)	<u>Dual Lane</u> 10* (8* paved)	
Left	12 (10 paved)	8 (4 paved) (* add 2' for interstate)	
<u>Bridges, ft.</u>	<u>4-Lane</u>	<u>Single-Lane</u>	
Right	10	6	
Left	6	6	
	<u>6-Lane</u>	<u>Dual Lane</u>	
Right	10	10	
Left	10	6	
c. Cross Slopes			
1. Traffic Lanes	2% (4-lane) 3% or tbd (6-lane)	2%	2%
2. Left Shoulder	5%	5%	5%
3. Right Shoulder	6%	6%	6%
d. Median Width (4-lane), ft. (E.O.P./E.O.P.)	64 (typical) 26 w/concrete barrier (min)	N/A	22,40
<u>Horizontal Clearance</u>	PPM 1-2.11	PPM 1-2.11	PPM 1-2.11
<u>Vertical Clearance, ft.</u>			
a. Over Roadway*	16.5	16.5	16.5
b. Overhead Signs	17.5	17.5	17.5
c. Over Railroad	23.5	23.5	N/A

#### Ramp Operations

- Two thousand (2,000) ft. between entrance and exit terminals – full freeways
- Six hundred (600) ft. between exit and entrance terminals
- Single Lane Entrance Ramp Parallel
- Exit Ramp Taper of 550 ft. (3° – divergence)

#### Right of Way

- Ten (10) ft. from back of walls or limit of construction
- Two (2) ft. from back of sidewalk on frontage roads
- Drainage and construction easements as required
- Limited access right-of-way limits per Index 450
- Right of way limits for ramps is based upon limit of construction plus 10 feet

### 3.03 Bridge and Other Structures

- A. All plans and designs shall be prepared in accordance with the latest standard specifications adopted by AASHTO, FDOT Structures Design Guidelines (Manual), FDOT Structures Detailing Manual, FDOT Plans Preparation Manual, FDOT Standard Drawings, FDOT Indices, etc., except as otherwise directed by CFX

#### 4.0 WORK PERFORMED BY CONSULTANT

The Consultant shall be responsible for the work outlined in this Section. The work shall conform to the standards, criteria, and requirements of this Scope of Services. As this is a miscellaneous design services contract, it is understood that not all of the work outlined in this Section is applicable to every project task authorization.

##### 4.01 Design Features

- A. The work required for this project includes preparation of final construction drawings and specifications as well as the preparation of a complete environmental resource application (as necessary)

- B. Major elements of the work include the following:

The work to be performed under this contract includes the final design and preparation of construction drawings and specifications for miscellaneous design projects on CFX's system. Potential scope elements may include, but are not limited to the following: minor highway design, major highway design, miscellaneous structures, minor bridge design, traffic engineering studies, traffic signal timing, intelligent transportation systems analysis and design, signing, pavement marking and channelization, lighting, signalization, control surveying, soil exploration, geotechnical classification lab testing, standard foundation studies, architecture and landscape architecture. All work on this contract will be requested and approved by means of individual Work Authorizations

##### 4.02 Governmental Agencies

- A. The Consultant shall coordinate with and assist in securing the approval of all interested agencies involved. These agencies include, but are not necessarily limited to City of Orlando, Orange County, FDOT, Florida's Turnpike Enterprise, City of Apopka etc.

#### 4.03 Surveys and Mapping

- A. All Surveying and Mapping shall be performed under the direction of a Surveyor and Mapper properly licensed with the Florida Board of Professional Surveyors and Mappers, under Chapter 472, Florida Statutes. The Consultant shall review data provided by CFX and provide complete field surveys suitable for contract document preparation

Survey activities shall be coordinated with the Consultant's design team including roadway, drainage, structures, geotechnical, and other disciplines as required

Field surveys shall be performed with minimal disruption of the normal traffic flow for the project. Field personnel shall use safety devices such as warning signs, traffic cones, warning lights, and safety vests at all times, according to the Florida Department of Transportation requirements. Advanced warning signs required when survey crews are working on CFX's system shall be made with 3M Scotchlite Diamond Grade Fluorescent orange roll up sign sheeting

B. Alignment

1. Establish Survey Centerline by establishing the tangent lines of existing Right of Way maps if such maps exist, or in the center of dedicated Right of Way as per subdivision plats, or in the center of the pavement when no Right of Way map or dedication exists. Set alignment points Begin, End, PC's, PT's, PT's and at maximum 1400-foot intervals along alignment
2. Establish and set alignment in the same manner on cross roads and major adjacent alignments
3. Station all alignments at 100' intervals
4. Meet with CFX's Project Manager to discuss methods for determining alignments prior to staking



C. Reference Points

1. Set at all alignment points, left and right at 90-degrees to alignment where possible, outside the proposed construction limits
2. Show obstructions where alternate references are set

D. Bench Levels

1. The Consultant shall establish new benchmarks at 1000' intervals, along all alignments, using stable points

E. Topography

1. Planimetric mapping and a digital terrain model (DTM), suitable for 1"=50' display scale shall be conducted by the Consultant
2. The Consultant will obtain existing pavement elevations and cross-slopes along the inside travel lane and outside travel lane every 100'
3. Additional topographic and DTM surveys, as needed for the project design, are the responsibility of the Consultant. These may include existing water bodies and pavement elevations

F. Drainage Survey

Perform a drainage survey including pipe type, location, size and flow line elevations as needed for design

G. Underground Utilities

Locate all underground utilities, horizontally and vertically as flagged by respective utility companies or a qualified utility marking consultant. Provide soft excavation verifications as needed to verify location and at utility conflict areas

H. Side Street Surveys

Perform topographic and utility surveys of side streets as needed for engineering design

I. Bridge Survey

Provide bridge survey data as needed for engineering design

**J. Jurisdictional Line Surveys**

Perform Jurisdictional Line Surveys as needed for engineering design and permitting

**K. Geotechnical Surveys**

Locate and/or stake boring locations as needed for geotechnical investigations

**L. Right-of-Way Ties**

Locate right-of-way limits for construction purposes. No new right-of-way is anticipated

**M. Prior to construction, the Consultant shall re-flag and reset alignment control points, references and benchmarks and meet with the construction contractor to review these points**

#### 4.04 Geotechnical Investigation

- A. The Consultant shall perform a geotechnical investigation of the project in accordance with the requirements of CFX
- B. Investigations shall be performed with minimal disruption of the normal traffic flow for the project. Field personnel shall use safety devices such as warning signs, traffic cones, warning lights, and safety vests at all times, according to Authority requirements. The Consultant shall adhere to all traffic control requirements when taking samples on existing roadways. A traffic control plan and permit may be required. Any advanced warning signs required when crews are working on CFX system shall be made with 3M Scotchlite Diamond Grade Fluorescent orange roll up sign sheeting
- C. The work includes, but is not limited to, identifying roadway structural section requirements, LBR testing, design methods for the selected foundation, external stability evaluation at proprietary retaining walls, groundwater and estimated seasonal high groundwater level, estimate of the maximum rate of pumping that will be required at sites that dewatering is anticipated, certification of all under drain and pond draw down times, pH and resistivity conditions requiring design considerations, soil shrinkage/swell characteristics, slope stability and benching in embankment/excavation locations, recommendation for methods of rock excavation, potential imported borrow sites and availability of structural section materials, location and depths of unsuitable material (muck), and design alternatives based on geotechnical findings; design values for active, at rest, and passive soil pressures; allowable design loads or pressures for each foundation type, corrosion testing for structures and design of foundations for sign structures
- D. The results of the geotechnical investigation shall be contained in a Geotechnical Report which shall be submitted to CFX's Project Manager for approval. The geotechnical investigation shall include all necessary laboratory testing of materials
- E. Upon approval of the Geotechnical Report, the Consultant shall proceed with preparation of the pavement and foundation designs
- F. Boring profiles shall be included on cross-section sheets in the contract plans and include the boring number, station, offset, soil legend, observed water table, design high water elevation and geotechnical consultant's address. A boring number and target symbol shall be shown at the appropriate location on the roadway and bridge plans

- G. Roadway core samples shall be taken to determine the existing pavement section. The Consultant shall submit a plan to CFX for location approval

#### 4.05 Contamination Impact Analysis

- A. The Consultant shall perform a contamination impact analysis of the project in accordance with the applicable rules and regulations of the FDOT Project Development and Environment Guidelines, Chapter 22, the Florida Department of Environmental Protection (FDEP), and all other pertinent State or Federal agencies having jurisdiction, and the requirements of CFX
- B. At a minimum, the Consultant shall conduct a windshield survey along the project corridor to identify any new sources of environmental contamination not reported in the referenced document(s)
- C. The testing of any sites including the use of ground penetrating radar, if required to complete the design and/or construction of the project, will be added to the Scope of Services by Supplemental Agreement

#### 4.06 Pavement Design

- A. The Consultant shall prepare the pavement design as appropriate in accordance with the requirements of the FDOT for mainline and ramps
- B. The proposed pavement design recommendation, resulting from the Consultant's analysis of the various alternatives, shall be contained in a Pavement Design Summary

#### 4.07 Governmental Agency and Public Meetings

- A. Except as may be provided elsewhere in this Scope of Services, the Consultant shall have appropriate representatives present at such meetings, conferences or hearings as CFX may direct to secure necessary approvals and/or support of the project by county, municipal, or other governmental agencies. If so directed, the Consultant shall also have appropriate representatives present at meetings or conferences of CFX, its Chairman or staff
- B. The Consultant shall assist CFX in presentations to various parties. The Consultant shall prepare exhibits pertaining to basic roadway and noise wall elements. CFX will prepare exhibits pertaining to aesthetic treatments and other design issues if applicable

#### 4.08 Environmental Permits

- A. CFX's Project Manager will review, coordinate and submit the applications for all environmental permits, including EPA's NPDES General Permits for Stormwater Discharges from Construction Sites. The Consultant shall provide all information, permit applications and data relating to Stormwater Management and Floodplain Impacts required for the permits to CFX. (CFX will be responsible for preparing all of the Wetlands and Protected Species analysis and documentation required for the permits). The Consultant shall:
1. Attend the pre-application meetings and site visits with CFX and regulatory agencies
  2. Provide additional information requested at the pre-application by regulatory agencies for permits
  3. Provide aerial maps at a 1"=400' scale which include SCS soils data, 100-year floodplain limits and proposed project
  4. Provide all plans, calculations, sketches and reports required for permits except as described above
  5. Provide copies of all drainage calculation, including pond routing nodal diagrams, for the project
  6. Assist CFX in responding to any requests for additional information made by regulatory agencies after the permit application is submitted
  7. Incorporate any changes required by changes in regulatory agency requirements during the course of the project. If this requires additional work by the Consultant a Supplemental Agreement will be prepared
  8. Prepare a list of adjacent landowners along with address and nine-digit zip code at all wetland encroachment sites
  9. Provide all permit application material in .PDF format and 7 hard copies
  10. The Consultant will provide dredge and fill sketched as required by the permitting agencies if applicable. Mitigation plans, if required, may be added as a supplemental service

11. Determine extent of floodplain impacts, if any, and provide compensatory flood stages as required

#### 4.09 Utilities

##### A. Location

The Consultant shall obtain available utility mapping and information and identify all utilities within the general project limits to determine potential conflicts and relocations. Where a potential conflict exists, the Consultant may need to arrange to probe or expose ("pothole") the utility and survey the horizontal and vertical location of the utility line. The Consultant shall coordinate this effort with involved utility companies. All existing utilities shall be shown on appropriate preliminary construction plans. The Consultant's notes shall include the name and telephone number of contact persons for the construction contractor's use

##### B. Utility Coordination

1. The Consultant shall prepare reproducible utility adjustments plans based on information provided by respective utility companies
2. Private utilities will prepare design plans for the relocation of their facilities. If a utility cannot or will not prepare these design plans, the work shall be added to the scope by Supplemental Agreement and the Consultant shall prepare design plans for utility relocation for approval of the utility and review by CFX
3. Where utility conflicts occur which require utility relocation agreements between the affected utility and CFX, the Consultant shall prepare the necessary data/plans required for the agreements. The Consultant shall advise CFX seven days in advance of meetings with utility companies/agencies scheduled to discuss utility relocations
4. The preparation and negotiation of the agreement will be performed by CFX's Project Manager. After approval of the agreement by the utility and CFX, the Consultant shall prepare reproducible utility adjustment sheets identifying proposed relocations with respect to the construction plans
5. The Consultant shall prepare a utility conflict matrix to assist in identifying and resolving conflicts between utilities and proposed construction prior to completion of the plans

6. The Consultant shall obtain utility work schedules from the utility companies
7. The Consultant shall prepare the Utility Certification Letter certifying that all utility negotiations (full execution of each agreement, approved utility work schedule, technical special provisions written, etc.) have been completed with arrangements made for utility work to be undertaken and completed as required

#### 4.10 Roadway Design

- A. Generally, a Typical Section Package will not be prepared. Rather, typical sections will be prepared as part of the 30% submittal and submitted to CFX for review and approval
- B. The Consultant shall design the geometrics for this project using the design standards included in the scope. The design elements shall include, but not be limited to, the horizontal and vertical alignments, cross section template development, lane width, shoulder widths, cross slopes, borders, sight distance, side slopes, lane transitions, superelevations, features of intersections, ramp terminal details, interchanges, and limited access points
- C. As necessary, the Consultant shall prepare designs and contract documents for the roadway improvements, including, but not necessarily limited to:
  1. Cover sheet (key sheet)
  2. Summary of Pay Items
  3. General notes
  4. Summary Quantities sheets
  5. Project Layout
  6. Typical roadway sections
  7. Plans and profiles (plans at 1"=50' scale)
  8. Interchange plans, profiles, alignment and plan index sheets
  9. Interchange layout plans
  10. Intersection plans and profiles or spot elevations

11. Interchange curve and coordinate data sheets
12. Ramp Terminal Details
13. Crossroad plans and profiles (1"= 50' scale)
14. Cross-sections (with pattern plan) (1" = 20' horiz.) (1" = 5' vert.)
15. Earthwork quantities
16. Traffic Control Sheets
17. Utility Adjustment Sheets
18. Details
19. Special provisions
20. Special specifications



#### 4.11 Structures Design

- A. Prior to commencement of final design, the consultant shall prepare a Bridge Concept Memorandum which documents a limited range of structural alternatives and identifies preferred alternatives. Specifically, the alternatives to be examined include Type III vs Type IV beams, slope walls vs vertical retaining walls, and concrete vs steel H-piles
- B. The Consultant shall prepare designs and contract documents for structural design including, but not necessarily limited to the following items
  - 1. Complete Bridge designs will be provided for all bridges
  - 2. Retaining walls
  - 3. Box Culverts
  - 4. Slope protection
  - 5. Approach slabs
  - 6. Details
  - 7. Summary quantity tables
  - 8. Special provisions and specifications
  - 9. Stage construction-sequencing details (if applicable)
  - 10. Sign\Signal structures
  - 11. Sound walls
  - 12. The Consultant shall perform Load Rating Analysis per FDOT criteria for any box culverts and bridges at the 90% design phase. The Load Rating Analysis packages shall be submitted to FDOT for their review and approval

#### 4.12 Drainage Design

- A. As part of the drainage design requirements, the Consultant shall:
1. Perform all drainage design in accordance with the approved criteria from Section 3.01C
  2. Finalize the pond design at the 30% submittal
  3. Have its chief drainage engineer available at the scheduled (bi-weekly/monthly) team meetings to review progress and discuss problems
  4. Notify CFX's Project Manager immediately if any deviation from approved design criteria is anticipated
  5. Provide drainage/contour maps used in the development of the drainage design to CFX for use in scheduled reviews. These maps will be returned to the Consultant along with review comments at the end of the review process
  6. Provide copies of its internal quality control comments and calculations at the scheduled reviews

Critical duration analysis is not included in this effort and, if required, shall be added to the scope by Supplemental Agreement. A pond siting report is not required

- B. The Consultant shall prepare designs and contract documents for drainage features including, but not necessarily limited to:
1. Connector pipes
  2. Drainage structure details
  3. Storm drain and culvert profiles and/or drainage cross-sections
  4. Lateral ditches/channels
  5. Outfall ditches/channels
  6. Retention/detention ponds/exfiltration system

#### 4.13 Roadway Lighting

- A. The Consultant shall provide a complete set of final roadway lighting documents in accordance with FDOT and CFX design criteria. The work shall include coordination with the local utility to provide electrical service. Plan sheet scale shall be at 1"=50' scale
- B. CFX will provide a cut sheet for the type of lighting fixtures to be used for this project

#### 4.14 Traffic Engineering

- A. Traffic Data will be furnished by CFX
- B. Maintenance of Traffic Plans
  - 1. The Consultant shall prepare maintenance of traffic plans at scale of 1"=100' to safely and effectively move vehicular and pedestrian traffic during all phases of construction. The designs shall include construction phasing of roadways ingress and egress to existing property owners and businesses, routing, signing and pavement markings, and detour quantity tabulations. Special consideration shall be given to the construction of the drainage system when developing the construction phases. Positive drainage must be maintained at all times
  - 2. The Consultant shall investigate the need for temporary traffic signals, signs, alternative detour roads, arrow boards, flagging operations, and the use of materials such as sheet pilings in the analysis. A certified designer who has completed the FDOT training course shall prepare the maintenance of traffic plan
  - 3. Traffic shall be maintained during all phases of project construction at all locations determined by CFX and other governmental agencies. This includes meeting with the governmental agencies which may be impacted by the maintenance of traffic plans

#### 4.15 Signing Plans

- A. The Consultant shall prepare designs and contract documents for final signing plans including layouts showing the locations of ground mounted and overhead signs, special sign details, lighting, and any structural or foundation requirements in accordance with applicable design standards. Any requirements for electric service shall be coordinated with the local electric utility
- B. CFX will provide conceptual signing plans for the project
- C. CFX will provide preliminary aesthetic input for the architectural modification of standard FDOT details for sign structures
- D. Plan sheets will be developed at a scale of 1"=50' (11"x17" format)

#### 4.16 Pavement Marking Plans

- A. The Consultant shall prepare designs and contract documents for final pavement marking plans, including striping, crosswalks, intersection details, reflective pavement markers and traffic delineators
- B. The pavement marking design will be shown on the same plan sheets as the signing design

#### 4.17 Right-of-Way Surveys

- A. No additional right-of-way is anticipated as part of this contract. Should right-of-way surveys become necessary, a Supplemental Agreement will be made to address the scope required for the services

#### 4.18 Cost Estimates

- A. The Consultant shall prepare and submit to CFX construction cost estimates at the 60%, 90%, 100%, Pre-Bid and Bid Set submittals outlined herein. The estimate shall be based on the current unit prices as applied to the latest concept of the proposed construction

#### 4.19 Special Provisions and Specifications

- A. The Consultant shall prepare and submit at the 90% level special provisions, special specifications, and technical special provisions for items, details and procedures not adequately covered by CFX's Technical Specifications

#### 4.20 Fiber Optic Network (FON)

##### A. Fiber Optic Infrastructure Plans

1. The site construction plans shall be developed at a scale of 1" equals 50 feet. These plans shall include the relocation of all existing fiber optic ductbanks, cables, manholes, and pull boxes in areas where the existing locations conflict with construction. The Consultant shall identify existing physical features and utilities that will impact the construction and installation of the equipment. The Consultant shall review and modify standard FON details as necessary
2. Fiber optic network (FON) plans shall include the following:
  - a. Roadway geometry
  - b. Rights-of-Way
  - c. Existing utilities within the right-of-way including CFX's FON
  - d. Physical features affecting construction/installation (sign structures, light poles, fences, etc.)
  - e. Manhole/Pull box locations and stub-out details (standard details provided)
  - f. Device layout
  - g. Device installation details
  - h. Conduit installation details (standard details provided)
  - i. Fiber optic cable route marker detail (standard details provided)
  - j. Fiber count per conduit
  - k. Communications interconnect
  - l. Connectivity with the FON backbone conduits
  - m. Fiber cable design to include link loss budget calculations, per Corning standard recommended procedure
  - n. Fiber cable routing summaries, fiber cable allocation charts, and splice details and tables
  - o. Controller cabinet, CCTV pole, and foundation details
  - p. Power interconnect, calculations to support conductor size, and details. Power conductors to each device location shall be sized to the capacity of the main breaker in the cabinet
  - q. Grounding
  - r. Table of quantities
  - s. Special notes

- t. Maintenance of fiber operations (protection of existing FON through all phases of construction and cutover phasing to ensure continuous operation of existing ITS devices)
  - u. All existing and proposed FON to be included and shown with roadway cross sections and drainage cross sections
  - v. No relocation of existing CCTV sites are anticipated under this contract nor or any new CCTV sites anticipated as part of the proposed improvements
  - w. Relocation of existing data collection sensor (DCS) sites and any necessary structures, foundations, attachment details, power service, fiber optic connections, and cabinets (standard details provided), in the event existing DCS would not survive project construction
  - x. No relocation of existing DMS sites are anticipated under this contract nor or any new DMS sites anticipated as part of the proposed improvements
  - y. Conversion of any existing ITS devices within the project limits from point-to-point fiber optic modems to gigabit Ethernet field switches, relocation of video encoders from the mainline toll plazas to the CCTV cabinets, and upgrading other cabinet equipment as needed to meet current CFX ITS equipment standards
3. The Consultant shall take the following information into consideration when developing the site construction plans:
- a. Minimize utility conflicts and adjustments
  - b. Minimize traffic impact
  - c. Accessibility and ease of equipment maintenance
  - d. Safety of equipment maintenance personnel and the traveling public
  - e. Maintain the existing FON system through all phases of construction
  - f. Environmental conditions
  - g. Concurrent/future CFX projects
  - h. Compatibility with existing and proposed ITS infrastructure (e.g. CFX enhanced grounding standards for ITS devices, CFX transient voltage surge suppression (TVSS) standards for ITS devices, etc.)
  - i. Leased conduits in CFX FON duct bank that are occupied by the fiber optic cable of other agencies or entities

#### B. Splice and Cable Routing Details

1. The Consultant shall provide splicing detail diagrams to document fiber optic splices within and between manholes, ITS devices, tollbooths, and other junction points
2. Splicing tables shall include ITS device connectivity, fiber use, drop cable fiber identification, drop cable identification, backbone cable identification, translateral cable identification, backbone into mainline cable identification, and toll plaza patch panel jack
3. The Consultant shall provide cable routing diagrams and fiber allocation charts in CFX's standard format to document the functional connectivity between fiber optic conduit and all splices

#### C. Maintenance Of Fiber Operations

1. The Consultant shall provide a plan of action to ensure existing fiber optic network is not disrupted during construction operations
2. The Consultant shall determine the sequence of fiber optic cable splices to minimize disruption to communications
- 3.

#### D. Inside Plant Plans

1. The Consultant shall be responsible for any data collection necessary to complete its design
2. All equipment shown on the inside-plant construction plans shall be clearly delineated as existing, proposed, or by-others. The Consultant shall be responsible for identifying and detailing on the inside-plant construction plans with notes and drawings any make-ready work required. The Consultant shall also provide a table of quantities for all materials and equipment specified in the inside-plant construction plans
3. The Consultant shall sign and seal final inside-plant construction plans by a licensed professional Electrical Engineer registered in the state of Florida. The inside-plant construction plans shall be subject to the review and approval of CFX

#### Quantities and General Notes

4. Standard notes shall be included to provide direction to the contractor and provide pay item descriptions as necessary

- E. Standard CFX specifications will be provided to the Consultant. The Consultant shall review the specifications and modify them as necessary

#### 4.21 Toll Plazas

- A. This contract may include modifications and/or improvements to any of the existing toll plazas, including any associated equipment and gantry systems

#### 4.22 Post-Design Services (as necessary)

- A. Services shall begin after authorization by CFX. The Consultant compensation for post-design services may be added by Supplemental Agreement and shall be at an hourly rate, inclusive of overhead, profit and expenses, and exclusive of travel. No compensation will be made for correction of errors and omissions
- B. The Consultant shall support the post design process as follows:
  - a. Answer questions relative to the plans, typical sections, quantities and special provisions
  - b. Make any necessary corrections to the plans, typical sections, quantities, notes, etc., as may be required
  - c. Attend pre-award meeting with construction contractor, CFX, and CFX's CEI
- C. The Consultant shall, prior to the pre-bid conference, be prepared to walk the project with CFX's CEI to discuss the plans and details. The Consultant shall be prepared to attend the pre-bid conference and respond to questions related to the plans, details, and special provisions
- D. The Consultant shall prepare any addenda required to clarify the work included in the construction contract documents. Addenda may be required based on the project inspection with the CEI, or questions developed in the pre-bid conference, or conditions discovered by bidders during the bid period
- E. The Consultant shall be available to respond to questions in the field that may arise relative to the plans, details or special provisions during construction. The Consultant shall periodically visit the project site to observe the progress of construction on the project. This visit will not replace the formal construction inspection by CFX. It is intended to provide the opportunity of the design team to observe whether the work is being performed in general conformance with the project plans. Written memos of all such field trips shall be submitted to CFX within five working days of the trip



- F. The Consultant shall review and approve shop drawings for structural, lighting, signing, traffic signal elements, and toll plaza shop drawings. This work will include the erection procedure plans, review proposals for substitutions, develop supplemental agreements, and provide other engineering services required to facilitate construction of the project. Reviews will be conducted and returned within two weeks from receipt of information
- G. The Consultant shall appoint a responsible member of the firm to be the contact person for all post-design services. The person should be continually available during the course of construction for review of design plans
- H. The Consultant shall make every reasonable effort to process any material presented for review in a prompt manner recognizing a construction contract is underway
- I. The Consultant shall attend partnering meetings as requested by CFX's Project Manager. The Consultant shall also attend progress/coordination meetings as requested by CFX's Project Manager including, but not limited to, the Notice to Proceed meeting
- J. The Consultant shall prepare Record Drawings in electronic format following completion of the construction phase. CFX shall provide all As-Built drawings from the Contractor / CEI to the Consultant for their use in preparation of the Record Drawings

## 5.0 MATERIALS FURNISHED BY CFX OR ITS DESIGNEE

### 5.01 Record Documents

- A. CFX will provide the Consultant, within ten working days of a written request, the following items:
  - 1. Available record drawings of existing conditions
  - 2. Available right-of-way plans of existing conditions
  - 3. Current list available to CFX of owners of all affected properties within the section
  - 4. Sample plans to be used as guidelines for format, organization and content
  - 5. Title searches of all affected properties for use by the Consultant in the preparation of the right-of-way maps
  - 6. Contract unit prices from latest CFX construction projects

### 5.02 Traffic Data

- A. CFX will provide the following design traffic data:
  - 1. Current and design year ADT
  - 2. Current and design year peak hour volumes
  - 3. Turning movements at each intersection/interchange
  - 4. K, D and T factors
  - 5. Design speed - See Section 3.02, Geometry
  - 6. AVI Percentages

### 5.03 Other

- A. Utility designates for the FON and roadway lighting within CFX right-of-way

6.0 WORK PERFORMED BY CFX OR ITS DESIGNEE

6.01 Right-of-Way Acquisition

- A. If necessary, CFX, or its designee, will review all right-of-way plans, parcel sketches and legal descriptions prepared by the Consultant. CFX will handle all appraisals, negotiations, relocations, condemnation, and property settlements

6.02 Utility Agreements

- A. CFX will help coordinate and support the Consultant's acquisition of information required for utility agreements

6.03 Public Involvement

- A. CFX will provide a moderator for all required public meetings and provide guidelines for the Public Involvement aspects of the project. The need for public meetings or public hearings will be determined by CFX. CFX will be responsible for mailings and advertisements for the public meetings

6.04 Contracts and Specifications Services

- A. CFX will prepare the necessary bid documents for the construction contract using plans, technical special provisions, and special specifications prepared by the Consultant

6.05 Post-Design Services

- A. CFX will be the principal initial contact for post-design questions and answer questions on a limited scope

6.06 Environmental Permits

- A. CFX will review and submit the environmental permit applications and coordinate with the Consultant on requests for additional information from the regulatory agencies
- B. CFX will stake wetland lines and coordinate agency site visits. CFX will also prepare the wetland and wildlife analysis and documentation for the permits

**6.07 Conceptual Specialty Design**

- A. CFX will provide a conceptual major guide signing plan as necessary
- B. CFX will provide conceptual aesthetics design and treatments for structures

## 7.0 ADMINISTRATION

As this is a miscellaneous design services contract, it is understood that not all of the work outlined in this Section is applicable to every project task authorization.

### 7.01 Central Florida Expressway Authority

- A. CFX's Project Manager will administer the Consultant services detailed in this scope
- B. All contractual payments and changes shall be reviewed and approved by CFX's Project Manager

### 7.02 CFX's Project Manager

CFX's Project Manager will:

- A. Conduct ongoing reviews of the Consultant's progress in performing the work and furnish technical comments in a timely manner
- B. Review the Consultant's billings
- C. Review and evaluate the Consultant's requests for extension of time and supplemental agreements and recommend appropriate action
- D. Review all correspondence with public agencies prior to the Consultant's mailing of any correspondence except for requests for information
- E. Coordinate the distribution of public information
- F. Coordinate the data (including documentation of prior rights, cost estimates and plans) necessary for CFX to prepare and execute all utility and railroad agreements
- G. Conduct an introductory meeting to deliver relevant information and explain the administration process
- H. Review the Consultant's Quality Control program and the Consultant's conformance to the Quality Control Program
- I. Provide a focal point contact for all questions, requests, and submittals

- J. Provide a system to monitor the Consultant's schedule, progress and key milestone submittal dates

7.03 Consultant

- A. The Consultant has total responsibility for the accuracy and completeness of the construction contract documents and related design prepared under this project and shall check all such material accordingly. The plans will be reviewed by CFX for conformity with CFX procedures and the terms of the Contract, as well as coordination with adjacent design contracts. Review by CFX does not include detailed review or checking of design of major components and related details or the accuracy with which such designs are depicted on the plans. The responsibility for accuracy and completeness of such items remains solely that of the Consultant. The Consultant shall:
  - 1. Establish, furnish and maintain suitable office facilities to serve as the project office for the duration of the project at a location acceptable to CFX
  - 2. Maintain an adequate staff of qualified support personnel to perform the work necessary to complete the project
  - 3. Establish internal accounting methods and procedures for documenting and monitoring project costs
  - 4. Establish and maintain contract administration procedures, which will include supplemental agreements, time extensions and subcontracts

#### 7.04 Project Control

- A. The Consultant shall provide data for CFX's Management Information System to monitor costs and manpower, and report progress. This project control system may include features to:
  - 1. Determine and highlight critical path work from initial plans as work progresses
  - 2. Identify progress against schedule for each identified work item
  - 3. Forecast completion dates from current progress
  - 4. Highlight rescheduled work in any area which is out of required sequence
  - 5. Highlight rescheduling that has overloaded any physical area that requires more resources than originally allocated
  - 6. Forecast future conflicts in any area

#### 7.05 Work Progress

- A. The Consultant shall meet with CFX's Project Manager on a bi-weekly basis (or more often if necessary) and provide written progress reports which describe the work performed on each task. The dates and times of these meetings will be established by CFX. Two working days prior to each progress meeting, the Consultant shall provide CFX's Project Manager with a draft copy of the Progress Report and a typewritten agenda for the meeting. The Consultant shall prepare typewritten meeting minutes and submit them to CFX's Project Manager within five working days after the meeting. The minutes shall indicate issues discussed and the resolution or action required to resolve any issues

#### 7.06 Schedule

- A. Within twenty (20) calendar days after receipt of the Notice to Proceed, the Consultant shall provide a schedule of calendar deadlines in a format prescribed by CFX

7.07 Project Related Correspondence

- A. The Consultant shall furnish copies of all written correspondence between the Consultant and any party pertaining specifically to this project to CFX for its records within one (1) week of the receipt or mailing of said correspondence. The Consultant shall record and distribute the minutes of all meetings pertaining to this project

7.08 Quality Control

- A. The Consultant has total responsibility for the accuracy and completeness of the plans and related designs prepared under this project and shall check all such material accordingly. Consultant shall have a quality control plan in effect during the entire time work is being performed under the Contract. The plan shall establish a process whereby calculations are independently checked, plans checked, corrected and back checked. All plans, calculations, and documents submitted for review shall be clearly marked as being fully checked by a qualified individual other than the originator. The FDOT plan review checklist shall be attached and appropriate items checked

7.09 Consultant Personnel

- A. The Consultant's work shall be performed and/or directed by the key personnel identified in Exhibit "D". Any changes in the indicated key personnel or the Consultant's office in charge of the work shall be subject to review and approval by CFX

7.10 Site Visit

- A. The Consultant shall arrange a site visit within ten (10) calendar days of receipt of written Notice to Proceed. Consultant personnel assigned to perform the work on the project shall attend. CFX representatives will be present. Within seven calendar days of the site visit, the Consultant shall issue to CFX a brief written report including observations, discussions, and any questions pertaining to the scope or level of effort of the project. The purpose of this visit is to acquaint key personnel with the details and features of the project to facilitate the design process



#### 7.11 Acceptability of the Work

- A. The plans, design, calculations, reports and other documents furnished under this Scope of Services shall conform to the "standards-of-the industry" quality as acceptable to CFX. The criteria for acceptance shall be a product of neat appearance, well organized, accurate and complete, technically and grammatically correct, checked in accordance with the approved Quality Control program, and have the maker and checker identified. The minimum standard of appearance, organization and content of drawings shall be similar to the type produced by the Florida Department of Transportation and CFX

#### 7.12 Design Documentation

- A. The Consultant shall submit any design notes, sketches, worksheets, and computations to document the design conclusions reached during the development of the construction contract documents to CFX for review
- B. The design notes and computations shall be recorded on 8-1/2" x 11" computation sheets, appropriately titled, numbered, dated, indexed and signed by the designer and checker. Computer output forms and other oversized sheets shall be folded or legibly reduced to 8-1/2" x 11" size. The data shall be bound in a hard-back folder for submittal to CFX
- C. Three copies of the design notes and computations shall be submitted to CFX with each review submittal. When the plans are submitted for 90% review, the design notes and computations corrected for any CFX comments shall be resubmitted. At the project completion (bid set), a final set of the design notes and computations, sealed by a Professional Engineer, registered in the State of Florida, shall be submitted with the record set of plans and tracings

D. Design notes and calculations shall include, but are not necessarily limited to, the following data:

1. Field survey notes and computations
2. Design criteria used for the project
3. Geometric design calculations for horizontal alignment
4. Vertical geometry calculations
5. Right-of-way calculations
6. Drainage computations
7. Structural design calculations
8. Geotechnical report
9. Hydraulics Report for each bridged stream crossing
10. Earthwork calculations not included in the quantity computation booklet
11. Calculations showing cost comparisons of various alternatives considered
12. Calculations of quantities
13. Documentation of decisions reached resulting from meetings, telephone conversations or site visits
14. Lighting and voltage drop calculations
15. Lighting service letter from the power company stating the following: service voltage, type of service (overhead or underground), location of power company service point, and any other power company requirements

### 7.13 Reviews and Submittals

- A. Review and coordination of the Consultant's work by CFX shall continue through the project development process
- B. Formal submittals for review shall be made to CFX when the plans have been developed to the following levels of completion:
  - 1. Preliminary Engineering (Memorandum) (8 sets required)
  - 2. 30% Roadway Plans (20 sets and 1 .PDF CD/DVD required)
  - 3. 30% Bridge and Structural Plans (20 sets and 1 .PDF CD/DVD required)
  - 4. 60% Roadway and specifications, Geotechnical Report (20, 20, and 8 sets and 1 .PDF CD/DVD required)
  - 5. 60% Bridge Plans required only on Category 2 bridges
  - 6. 90% Bridge and Structural Plans (20 sets and 1 .PDF CD/DVD required)
  - 7. 90% Roadway and specifications (20 and 20 sets and 1 .PDF CD/DVD required)
  - 8. 100% Roadway, Bridge and specifications, Geotechnical Report (20, 20, 20 and 8 sets and 1 .PDF CD/DVD required)
  - 9. Pre-Bid Plans (8 sets and 1 .PDF CD/DVD required) (1 set signed and sealed reports)
  - 10. Bid Set (1 set signed and sealed plans) (1 .PDF of all plans, CADD files of all plans)
- C. Formal review submittals shall include copies as listed above. 8-1/2" x 11" and 11" x 17" documents do not require reproducible copies
- D. Preparation and distribution of roadway and ROW plans to other than CFX will not be made until approved by CFX
- E. The format of review submittal plans shall conform to the FDOT Plans Preparation Manual, except as amended by CFX

- F. Due to the compact schedule of the design, review and construction process, any modification to the agreed submittal dates will require a letter from the Consultant to CFX giving:
1. The reason for the delay
  2. The design components impacted
  3. Proposed methods to maintain submittal dates
- G. The Consultant shall submit all CADD files, including GEOPAK files, use in the preparation of the plans and right of way mapping on compact disk with the final submittal

#### 7.14 30% Roadway Plan Submittal

- A. At the completion of this phase, design and plan development should be approximately 30 percent complete except stormwater pond designs. The designs of the stormwater ponds shall be at 90% complete. The following material shall be developed and submitted for review:
1. Key Map Prepared
    - a. Location map shown complete with destinations, ranges and townships
    - b. Beginning and ending stations shown
    - c. Any equations on project shown
    - d. Project numbers and title shown
    - e. Index shown
  2. Drainage Map Prepared
    - a. Existing culvert sizes and elevations
    - b. Horizontal alignment shown
    - c. Drainage areas and flow arrows shown
    - d. High water information shown
    - e. Beginning and end stations shown along with any equations on project
    - f. Interchange supplemental maps prepared

3. Typical Section Sheets
  - a. Ramp typical sections developed
  - b. Pavement structure shown
  - c. Special details developed
  - d. General notes shown
4. Plan and Profile Sheets
  - a. Centerline plotted
  - b. Reference points and bench marks shown
  - c. Existing topography
  - d. Base line of surveys, curve data, bearings, etc. shown
  - e. Beginning and end stations (project and construction)
  - f. Geometric dimensions
  - g. Proposed and existing limited access right-of-way lines
  - h. Existing ground line
  - i. Proposed profile grade
  - j. Type, size and horizontal location of existing utilities
  - k. Drainage structures and numbers are shown
  - l. Drainage ponds are shown
5. Cross Sections
  - a. Existing ground line
  - b. Preliminary templates at critical locations (not to exceed 500 feet)
  - c. Existing utilities shown
6. Interchange Layout and Ramp Profiles
  - a. Geometric dimensions
  - b. Proposed profile grades
7. Right-of-Way Control Survey
8. Signing and Pavement Markings
  - a. Striping layout
  - b. Sign structure locations

#### 7.15 30% Bridge and Structural Plan Submittal

- A. At completion of this phase, design and plan development should be approximately 30 percent complete. The Consultant shall refer to FDOT Structural Design Guidelines for plan contents and submittal requirements. Preliminary geotechnical results and recommendations should also be included with this submittal

#### 7.16 60% Roadway Plan Submittal

- A. At completion of this phase, design and plan development should be approximately 60 percent complete except stormwater pond designs. The designs of the stormwater ponds shall be at 100% complete. The following material shall be developed and submitted for review:

- 1. Key Map

- a. Project description and number shown
- b. Equations, exceptions and bridge stations shown
- c. North arrow and scale included
- d. Consultant and CFX sign-off included
- e. Contract set index complete
- f. Index of sheets updated

- 2. Drainage Maps

- a. Flood data shown
- b. Cross drains and storm sewer shown
- c. Bridges shown with beginning and ending stations
- d. Interchange supplemental sheets updated

- 3. Typical Section Sheets

- a. All required typical sections are included
- b. Limited access right-of-way lines are shown
- c. Design speed and traffic are shown
- d. Special details have been completed
- e. Station limits of each typical section are shown

4. Plan and Profile Sheets
  - a. Match lines shown
  - b. Limited access right-of-way lines shown
  - c. Stations and offset shown for all fence corners and angles
  - d. All work shown should be within right-of-way or proposed easement
  - e. Drainage structures and numbers are shown
  - f. Drainage ponds shown
  - g. Curve data and superelevation included
  - h. Pavement edges, shoulders and dimensions shown
  - i. Project and construction limits shown
  - j. Bridges shown with beginning and ending stations
  - k. General Notes
5. Drainage Structures
  - a. Drainage structures plotted and numbered
  - b. Station location and offsets identified
6. Cross Sections
  - a. Templates are shown at all stations
  - b. Limited access right-of-way lines are shown
  - c. Cross section pattern sheet included
  - d. Miscellaneous notes included
  - e. Boring profiles
7. Interchange Layouts, Ramp Profiles and Intersection Details
  - a. Geometric data shown
  - b. Profiles finalized
  - c. Coordinate data shown
  - d. Limited access right-of-way lines shown
  - e. Curve data shown
  - f. Bearings and bridges shown
  - g) Cross roads, frontage roads, and access roads shown
  - h) Intersection details shown
8. Traffic Control Plans
9. Utility Adjustments

10. Signing and Pavement Marking Plans
11. Highway Lighting Plans
12. Selective Clearing and Grubbing (if required)

7.17 90 % Bridge and Structure Plan Submittal

- A. At completion of this phase, design and plan development should be approximately 90 percent complete. The Consultant shall refer to FDOT Structural Design Guidelines for plan contents and submittal requirements

7.18 90% Roadway Plan Submittal

- A. At completion of this phase, design and plan development should be approximately 90 percent complete. The following material shall be developed and submitted for review:

1. Key Map
  - a. Length of Project with exceptions shown
  - b. Index of sheets updated
2. Drainage Maps
  - a. Drainage divides, areas and flow arrows shown
  - b. Elevation datum and design high water information shown
  - c. Disclaimer and other appropriate notes added
3. Typical Section Sheets
4. Plan and Profile Sheets
  - a. Curve Control Points (P.C., P.I., P.T.) flagged and labeled
  - b. Limits of side road construction
  - c. Angle and stationing for intersections
  - d. Treatment for non-standard superelevation transitions diagramed
  - e. General notes shown
  - f. Special ditches profiled



5. Drainage Structures

- a. Existing structures requiring modifications are shown
- b. Existing and proposed utilities are shown

6. Soil Borings

- a. Soils data and estimated high seasonal groundwater table shown

7. Cross Section Sheets

- a. Scale and special ditch grades shown
- b. Utilities plotted
- c. Sub-excavation shown
- d. Volumes computed and shown

8. Utility Relocation Plans

- a. Utility relocation plans prepared

9. Traffic Control Plans

10. Signing and Pavement Marking Plans

11. Highway Lighting Plans

12. Selective Clearing and Grubbing (if required)

7.19 100% Roadway, Bridge, Structural and Right-of-Way Plans

- A. At the completion of this phase, the design, plans and special provisions shall be 100 percent complete

## 7.20 Schematic Toll Plaza Plans

- A. At the completion of this phase, the toll plaza layout should be complete with lane and island configurations shown. The following material shall be developed and submitted for review:
1. Plan view of toll plaza with dimensions showing lane and island widths with column configuration and express lane layout
  2. East and west elevation views of the canopy including concept for overhead structure for express lane ETC equipment
  3. Construction phasing plan
  4. Description of improvements required for the administration building to accommodate installation of toll equipment

## 7.21 60% Toll Plaza Plans

- A. At the completion of this phase, the toll plaza plans should be developed to 60% completion. The following material, as a minimum, shall be developed and submitted for review:
1. Key sheet with sheet index
  2. Architectural, structural, mechanical, plumbing and electrical general notes, abbreviations and symbols
  3. Plan view
  4. Exterior elevations
  5. Canopy sections and details
  6. Canopy reflected ceiling plan
  7. Roof plan and details
  8. Canopy framing and foundation plan
  9. Concrete pavement plan
  10. Express lane overhead structure plan and details
  11. Tunnel sections and details
  12. Structural sections and details
  13. Plumbing plan and diagrams
  14. Lighting plan
  15. Power plan and diagram
  16. Lightning protection plan and details
  17. Demolition and construction phasing plan
  18. Plans and details for improvements to the administration building (as needed by discipline) to accommodate installation of toll equipment

19. All calculations and design data to support the design for each discipline

20. Technical specifications

7.22 90% and 100% Toll plaza plans

- A. At the completion of this phase, the toll plaza plans should be developed to 90% and 100% completion respectively. The material listed with the 60% submittal shall be developed along with additional details required for construction and submitted for review.
- B. The 90% and 100% submittals shall also include the technical specifications and special provisions required for construction
- C. A detailed estimate of construction costs shall be included with the 100% submittal.

7.23 Pre-Bid Plans

7.24 Bid Set

**EXHIBIT B**

**METHOD OF COMPENSATION**

## **Exhibit "B"**

### **METHOD OF COMPENSATION MISCELLANEOUS DESIGN CONSULTANT SERVICES**

#### **1.0 PURPOSE**

This Exhibit describes the limits and method of compensation to be made to the Miscellaneous Design Consultant (CONSULTANT) for the services set forth in Exhibit "A", Scope of Services. The services shall be provided over the duration of the work specified in Section 3.00 of the Agreement.

#### **2.0 AMOUNT OF COMPENSATION**

- 2.1 CFX agrees to pay the CONSULTANT for the performance of authorized services described in Exhibit "A" an amount not to exceed \$2,500,000.00 for the initial three (3) year term of the Agreement, such amount hereinafter referred to as the Maximum Limiting Amount. All compensation shall be authorized by means of individual Work Authorizations.
- 2.2 Compensation for services provided under this Agreement will be made on a unit price basis per manhour (hourly rate times the Contract Multiplier), plus reimbursable expenses and will not exceed the Maximum Limiting Amount unless increased by CFX. This method of payment is intended to compensate the CONSULTANT for all costs (salaries, overhead costs, fringe benefits, equipment costs, operational costs, reimbursable expenses and profit) related to the services provided.
- 2.3 It shall be the responsibility of the CONSULTANT to ensure at all times that sufficient funding remains within the Maximum Limiting Amount, stated above in Section 2.1, prior to requesting approval of new Work Authorizations. Changes to the Maximum Limiting Amount shall require execution of a Supplemental Agreement.

#### **3.0 ALLOWABLE COSTS**

CFX will reimburse the CONSULTANT for all reasonable allocable and allowable costs. The reasonableness, allocability and allowability of reimbursements sought under the Agreement are expressly made subject to the terms of (1) the Agreement, (2) Federal Acquisition Regulations sub-part 31-2, (3) Office of management and Budget (OMB) Circular A-87 (46FR9548, January 28, 1981) and A-102 (45FR55086, August 18, 1980), and (4) other pertinent federal and state regulations. By reference hereto, said sub-part of Federal Acquisition Regulations and OMB circulars are hereby incorporated in and made a part of the Agreement. Allowable Costs and Fees are defined as follows:

- 3.1 Direct Salaries and Wages: All direct salaries and wages of the CONSULTANT for time expended by personnel in the performance of the work; however, this shall specifically exclude salaries and payroll burden of Corporate Officers and Principals when expended in the performance of indirect functions. The amount for salary related cost is based on unit rates for the CONSULTANT's staff expected to be used to perform the required services. The CONSULTANT, for the term of the Agreement, will not be compensated for salary related costs in excess of those originally accepted by CFX unless CFX authorizes additional staff or costs by Supplemental Agreement.

Direct Salaries and Wages (salary costs) include both straight time payments and all overtime payments made for an employee's services on a project. Straight time costs shall be the hourly rate paid for an employee based on a forty (40) hour workweek. Overtime costs shall be the salary costs paid for an employee for work exceeding a forty (40) hour workweek. Overtime costs shall be paid as either Straight Overtime costs or Premium Overtime costs as detailed below:

- 3.1.1 Straight Overtime: The portion of overtime compensation paid for employees at the straight time hourly rate burdened with overhead costs and operating margin.
  - 3.1.2 Premium Overtime: The portion of overtime compensation paid in excess of the straight time hourly rate not burdened with overhead costs and operating margin. Premium overtime is not authorized unless approved in writing by CFX's Project Manager.
  - 3.1.3 Payment of Overtime: Straight Overtime or Premium Overtime shall be paid in accordance with the CONSULTANT's overtime policies and practices, provided that such compensation plan or practice is so consistently followed, in effect, to imply an equitable treatment of overtime to all of the CONSULTANT's clients.
- 3.2 A multiplier of 3.573 shall be applied to all CONSULTANT direct salaries and wages as total compensation for the CONSULTANT's administration overhead and burden costs (indirect charges) and the CONSULTANT's operating margin (profit and risk).
- 3.3 Expenses: A lump sum amount will be negotiated and paid for miscellaneous and out-of-pocket expenses as part of each approved Work Authorization. All non-local travel must be pre-approved by CFX and will be reimbursed in accordance with Florida State Statute 112.061. At the discretion of CFX, certain miscellaneous and out-of-pocket expenses may be negotiated and paid on a unit price basis as a direct reimbursement to the CONSULTANT and subconsultants.

- 3.4 Class 1 Subconsultant Costs: Compensation, as authorized by CFX through Work Authorizations, will be based on actual costs of Class 1 subconsultant labor (burdened with overhead costs and operating margin) directly chargeable to the project and supported by invoices or other documentation acceptable to CFX. Class 1 subconsultant expenses shall be paid in accordance with Section 3.3 above and Section 4.2 below. Class 1 subconsultant fees will be passed through the CONSULTANT at cost. In lieu of administrative mark-up, the CONSULTANT will charge time and reimbursable costs associated with the management administrative charges to oversee and administer Class 1 subconsultants.
- 3.5 Class 2 Subconsultant Costs: Compensation, as authorized by CFX through Work Authorizations, will be based on a unit price basis directly chargeable to the project and supported by invoices or other documentation acceptable to CFX. The unit prices acceptable for this Agreement shall be at the unit prices established in Exhibit "C". Class 2 subconsultant expenses shall be paid in accordance with Section 3.3 above and Section 4.2 below. Class 2 subconsultant fees will be passed through the CONSULTANT at cost. In lieu of administrative mark-up, the CONSULTANT will charge time and reimbursable costs associated with the management administrative charges to oversee and administer Class 2 subconsultants.
- 3.6 Field Survey by CONSULTANT Costs: Compensation, as authorized by CFX through Work Authorizations, will be based on a unit price basis directly chargeable to the project and supported by invoices or other documentation acceptable to CFX. The unit prices acceptable for this Agreement shall be at the unit prices established in Exhibit "C". Field survey by CONSULTANT expenses shall be paid in accordance with Section 3.3 above and Section 4.2 below.

#### 4.0 METHOD OF COMPENSATION

Unless increased, no more than the Maximum Limiting Amount provided for in Section 2.0 above will be paid by CFX to the CONSULTANT as follows, subject to the provisions of Section 3.0 above:

- 4.1 The CONSULTANT will be reimbursed monthly for services performed for each approved Work Authorization. Payment to the CONSULTANT will be in an amount to cover costs incurred during the preceding month for actual direct salary and wages times a multiplier of 3.573, a portion of lump sum (or reimbursement of unit price) expenses and subconsultant costs for actual work performed. The CONSULTANT shall promptly pay all subconsultants their proportionate share of payment received from CFX.
- 4.2 The CONSULTANT shall earn a portion of its established lump sum expense cost in the amount equal to such lump sum equally distributed over the Work Authorization's anticipated duration. Any balance due the CONSULTANT upon completion of a Work Authorization shall be paid in the final invoice.



At the discretion of CFX, certain miscellaneous and out-of-pocket expenses may be negotiated and paid on a unit price basis as a direct reimbursement to the CONSULTANT and subconsultants.

- 4.3 The CONSULTANT shall be responsible for the consolidation and submittal of one (1) original monthly invoice for each Work Authorization in the form and detail established or approved by CFX. All payments on such invoices are conditional and subject to adjustment as a result of a final audit as to the allowability of costs in accordance with the Agreement. Invoices shall include an itemization and substantiation of costs incurred. The itemization must include the amount budgeted, current amount billed, total billed to date and amount to complete.
- 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. Any and all such payment previously withheld shall be released and paid to CONSULTANT promptly when the work is subsequently satisfactorily performed.
- 4.5 The basis for all CONSULTANT and Class I subconsultant (as defined in Section 5.0 of the Agreement) invoices shall be based on the actual employee salary and wages at the time work was performed on the project by such employee. Staff classification maximum rates have been established in Exhibit "C" for the CONSULTANT and all Class 1 subconsultants. It is understood that the staff classification maximum rates shall not be exceeded without prior written approval from CFX. It is further understood that the staff classification average rates detailed in Exhibit "C" will not be revised throughout the term of the Agreement. All Work Authorizations and future Supplemental Agreements executed as part of this Agreement shall be based on the negotiated staff classification average rates detailed in Exhibit "C".
- 4.6 The basis for all Class 2 subconsultant (as defined in Section 5.0 of the Agreement) and field survey by CONSULTANT invoices shall be in accordance with the provisions of Section 3.5 and Section 3.6 above, respectively. Unit price annual rates have been established in Exhibit "C" for all Class 2 subconsultants and field survey services by CONSULTANT. It is understood that unit price annual rates shall not be exceeded without prior written approval from CFX. It is further understood that the unit price annual rates detailed in Exhibit "C" will not be revised throughout the term of the Agreement. All Work Authorizations and future Supplemental Agreements executed as part of this Agreement shall be based on the unit price annual rates detailed in Exhibit "C".

5.0 PROJECT CLOSEOUT:

- 5.1 Final Audit: The CONSULTANT shall permit CFX 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 this Agreement are subsequently properly disallowed by CFX because of accounting errors or charges not in conformity with this Agreement, the CONSULTANT agrees that such disallowed amounts are due to CFX upon demand. Further, CFX shall have the right to deduct from any payment due the CONSULTANT under any other contract between CFX and the CONSULTANT an amount sufficient to satisfy any amount due and owing CFX by the CONSULTANT under this Agreement. Final payment to the CONSULTANT shall be adjusted for audit results.
- 5.2 Certificate of Completion: Subsequent to the completion of the final audit, a Certificate of Completion will be prepared for execution by both parties stating the total compensation due the CONSULTANT, the amount previously paid, and the difference. Upon execution of the Certificate of Completion, the CONSULTANT shall either submit a termination invoice for an amount due or refund to CFX for the overpayment, provided the net difference is not zero.


END OF SECTION

**CONSENT AGENDA ITEM  
#9**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 28, 2020

SUBJECT: Approval of Supplemental Agreement No. 4 for Post Design Services and Classen Graphics Infrastructure Development, LLC as a subconsultant with DRMP, Inc. for the SR 528/SR 436 Interchange Improvements and SR 528 Widening from SR 436 to Goldenrod Road  
Project 528-143, Contract No. 001314

Board approval is requested for Supplemental Agreement No. 4 with DRMP, Inc. for a not-to-exceed amount of \$1,104,457.44 and for Classen Graphics Infrastructure Development, LLC to be used as a subconsultant to perform graphical renderings.

The cost to the subconsultant is expected to exceed the \$25,000.00 threshold established by the Procurement Policy for subconsultants not disclosed by DRMP, Inc. when its contract with CFX was originally awarded.

The services in Supplemental Agreement No. 4 include shop drawings reviews, attendance at construction meetings, site visits, and responding to the construction contractor's requests for information. The original contract was five years with five (5) one-year renewals.

Original Contract	\$6,050,000.00
Supplemental Agreement No. 1	\$ 526,668.10
Supplemental Agreement No. 2	\$ 21,414.48
Supplemental Agreement No. 2	\$ 291,040.30
Supplemental Agreement No. 4	<u>\$1,104,457.44</u>
Total	\$6,889,122.88

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

Reviewed by:   
Will Hawthorne, P.E.  
Director of Engineering



CENTRAL FLORIDA EXPRESSWAY AUTHORITY

REQUEST FOR AUTHORIZATION TO SUBLET SERVICES

Consultant: DRMP, Inc. Date: 01/29/2020

CFX Contract Name: SR 528/SR 436 Interchange Improvements CFX Contract No.: 001314

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: Classen Graphics Infrastructure Development, LLC

Address: 8020 NW 83rd Avenue Tamarac, FL 33321

Phone No.: 954-531-4527

Federal Employee ID No.: 82-2223936

Description of Services to Be Sublet: Graphical renderings

Estimated Beginning Date of Sublet Services: 08/08/2019

Estimated Completion Date of Sublet Services: 5/1/2020

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

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

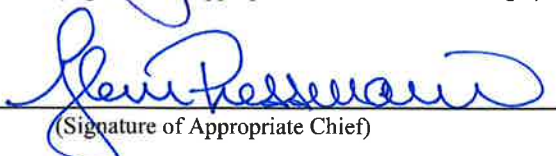
Consultant hereby certifies that the proposed subconsultant has been advised of, and agrees to, the terms and conditions in the Consultant's Contract with the Authority that are applicable to the subconsultant and the services to be sublet:

Requested By:   
(Signature of Consultant Representative)

Vice President  
Title

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

Date: 1/30/2020

Approved by:   
(Signature of Appropriate Chief)

Date: 1/30/2020

Attach Subconsultant's Certificate of Insurance to this Request.

**SUPPLEMENTAL AGREEMENT NO. 4**  
**TO**  
**AGREEMENT FOR PROFESSIONAL SERVICES**  
**POST DESIGN SERVICES (FOR 528-143)**

**S.R. 528 / S.R. 436 Interchange Improvements and S.R. 528 Widening from S.R. 436 to  
Goldenrod Road**

THIS SUPPLEMENTAL AGREEMENT is made and entered into this \_\_\_\_\_ day  
of \_\_\_\_\_, 2020, by and between the CENTRAL FLORIDA EXPRESSWAY  
AUTHORITY, an agency of the State of Florida, hereinafter called "CFX" and the consulting  
firm of DRMP, INC. of Orlando, Florida, hereinafter called the "CONSULTANT."

WHEREAS, Section 4.24 of Exhibit "A" of the Agreement for Professional Services  
between CFX and the CONSULTANT, dated the 8<sup>th</sup> Day of March 2018 provides that after  
completion of the services outlined in Exhibit "A" for Project Number 528-143 of the said  
Agreement for Professional Services, CFX may negotiate with the CONSULTANT a  
Supplemental Agreement for Post Design Services and whereas, Articles 2.00 and 12.00 of the  
Agreement for Professional Services provide that in the event that CFX shall change the amount  
of work of the said Agreement for Professional Services, the fees to be paid to the  
CONSULTANT shall be subject to adjustment as shall be mutually agreed upon:

NOW, THEREFORE, BE IT RESOLVED THAT:

1. CFX hereby authorizes the CONSULTANT to proceed with Post Design Services required as outlined in the correspondence to CFX dated January 30, 2020 which is attached hereto and made a part of this Supplemental Agreement.

2. All invoices from the CONSULTANT for Post Design Services shall be submitted to CFX with complete documentation. Invoices for Post Design Services shall not be a continuation of the original CONSULTANT'S contract amount for final design services and shall only be for those services as outlined in this Supplemental Agreement. Compensation for Post Design Services shall be invoiced to CFX at an hourly rate, inclusive of overhead, profit and expenses (exclusive of travel). The hourly rate shall be calculated using the employee's actual direct salary and the negotiated Post Design Services multiplier, as outlined in the correspondence to CFX dated January 30, 2020. Direct expenses will be reimbursed for local travel only (per mile). The maximum fee for Post Design Services shall be \$1,104,457.44.

3. Section 4.24 of the original Agreement for Professional Services is revised as outlined in Exhibit "A," which is attached hereto and made a part of this Supplemental Agreement.

4. Any supplemental agreements for Post Design Services shall be in accordance with the appropriate Articles within the original CONSULTANT Agreement for Professional Services.

All provisions of said Agreement for Professional Services, or any Supplements thereto, not modified by the above, shall remain in full force and effect, the same as if they had been set forth

herein. In the event of a conflict between the provisions of this Supplemental Agreement and of the said Agreement for Professional Services, or any Supplements thereto, the provisions of this Supplemental Agreement, to the extent such provision is reasonable, shall take precedence.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, in quadruplicate, the day and year first above written.

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY

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

DRMP, INC.

Witness: \_\_\_\_\_  
Print Name:  
Title:

By: \_\_\_\_\_  
Print Name:  
Title:

Approved as to form and execution, only.

\_\_\_\_\_  
General Counsel for the AUTHORITY



## **Exhibit "A"**

### **Project 528-143**

## **S.R. 528 / S.R. 436 INTERCHANGE IMPROVEMENTS AND S.R. 528 WIDENING FROM S.R. 436 TO GOLDENROD ROAD**

### **Post-Design Scope of Services (Section 4.24)**

#### **4.24 Post Design Services**

##### **A. Compensation**

The Consultant's compensation for post-design services may be added by supplemental agreement and shall be at an hourly rate, inclusive of overhead, profit and expenses, and exclusive of travel. No compensation will be made for correction of errors and omissions or clarifications.

##### **B. General Support**

The Consultant shall support the post-design process as follows:

- a) Answer questions relative to the plans, typical sections, quantities and special provisions.
- b) Make any necessary corrections to the plans, typical sections, quantities, notes, etc. as may be required.
- c) Attend pre-award meeting with Contractor, CFX, and CFX's CEI.

##### **C. Pre-bid Conference**

The Consultant shall, prior to the pre-bid conference, be prepared to walk the project with the assigned Authority Resident Construction Engineer to discuss the plans and details. The Consultant shall be prepared to attend the pre-bid conference and respond to questions related to the plans, details, and special provisions.

##### **D. Addenda**

The Consultant shall prepare any addenda required to clarify the work included in the contract documents. Addenda may be required based on the project inspection with the assigned Authority Resident Construction Engineer, or questions developed in the pre-bid conference, or conditions discovered by bidders during the bid period.

##### **E. Field Visits**

The Consultant shall be available to respond to questions in the field that may arise relative to the plans, details or special provisions during construction. The Consultant will periodically visit the project site to observe the progress of construction. This visit will not make the place of formal construction inspection by CFX's Construction Manager and their inspection team. Rather, it is intended to provide the opportunity for members of the design team to observe whether work by the Contractor is being performed in general conformance with the project plans. Written memos of all such field visits shall be submitted to CFX and their Construction Manager within five business days of the trip.

## **F. Shop Drawing Reviews**

The Consultant shall review and approve shop drawings from the Contractor for roadway, utilities, structural, lighting, FON, signing and drainage elements. This work will include the erection procedure plans, review proposals for substitutions, development of supplemental agreements, and assistance with other engineering services required to facilitate construction of the project. Reviews will be conducted and returned within two weeks from receipt of information.

## **G. Post-Design Contact**

The Consultant shall appoint a responsible member of the firm to be the contact person for all post-design services. This person shall be continually available during the course of construction for review of design plans.

## **H. Timeliness**

The Consultant shall make every reasonable effort to process any material presented for review in a prompt manner recognizing a construction contract is underway.

## **I. Meetings**

The Consultant shall attend partnering meetings as requested by CFX. The Consultant will also attend progress / coordination meetings as requested by CFX including, but not limited to, the Notice to Proceed meeting.

## **J. Bridge Load Ratings**

Approved design bridge load ratings were obtained by the Consultant under the final design phase of this contract. The Contractor shall be responsible for revising and resubmitting the load ratings if changes to the bridge design occur during construction. Otherwise, the Consultant shall provide written correspondence to FDOT when construction is complete that the bridges were constructed in accordance with the plans and the design load ratings still apply.

## **K. Geotechnical Engineering**

The Consultant shall provide geotechnical engineering services as needed by CFX, relative to pile driving, earthwork, embankment and MSE wall construction.

## **L. Utilities**

The Consultant shall provide utility consulting services as needed by CFX, relative to proposed utility adjustments within the project limits.

## **M. Record Drawings**

Based on information provided by the Contractor, the Contractor's surveyor and CFX's Construction Manager, the Consultant will prepare record drawings reflecting improvements built for this project. This scope assumes surveys will be undertaken by a registered surveyor by the Contractor.

**SUPPLEMENTAL AGREEMENT NO. 3**

**TO**

**AGREEMENT FOR PROFESSIONAL SERVICES**

**FINAL DESIGN**

**S.R. 528 / S.R. 436 Interchange Improvements and S.R. 528 Widening from S.R. 436 to  
Goldenrod Road**

THIS SUPPLEMENTAL AGREEMENT is made and entered into this 22<sup>nd</sup> day  
of OCTOBER, 2019, by and between the CENTRAL FLORIDA EXPRESSWAY  
AUTHORITY, a corporate body and agency of the State of Florida, hereinafter called "CFX"  
and the consulting firm of DRMP, INC. of Orlando, Florida, hereinafter called the  
"CONSULTANT".

WHEREAS, Articles 2.00 and 12.0 of the Agreement for Professional Services between  
CFX and the CONSULTANT, dated the 8<sup>th</sup> day of March 2018, provides that in the event that  
CFX shall change the amount of work in Exhibit "A" of the said Agreement for Professional  
Services, the fees to be paid to the CONSULTANT shall be subject to adjustment as shall be  
mutually agreed upon:

NOW, THEREFORE, BE IT RESOLVED THAT:

1. CFX hereby authorizes the CONSULTANT to proceed with additional services as outlined in the Consultant's September 5, 2019 letter to CFX, which is attached hereto and made a part of this Supplemental Agreement.
2. Exhibit "B", Article 2.00 of the Agreement for Professional Services is amended as follows:
  - a. The Salary Related Costs are adjusted upward by \$161,076.50 to \$4,774,220.83.
  - b. The Design Survey – Office (Prime) remains unchanged at \$65,525.48.
  - c. The Design Survey – Field (Prime) remains unchanged at \$266,197.83.
  - d. The Direct Expenses (Lump Sum) remains unchanged at \$49,962.89.
  - e. The Direct Expenses (Limiting Amount) is adjusted upward by \$1,000.00 to \$1,000.00.
  - f. The Subcontract Items are adjusted upward by \$128,963.80 to \$1,732,215.85.
  - g. The Allowance remains unchanged at \$0.00.

The Total Maximum Limiting Amount is adjusted upward by \$291,040.30 to \$6,889,122.88.

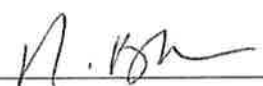

3. All provisions of said Agreement for Professional Services, or any Supplements thereto, not modified by the above, shall remain in full force and effect, the same as if they had been set forth herein. In the event of a conflict between the provisions of this Supplemental Agreement and of the said Consultant Agreement, or any Supplements thereto, the provisions of this Supplemental Agreement, to the extent such provision is reasonable, shall take precedence.

IN WITNESS WHEREOF, the parties hereto have caused these  
presents to be executed, in quadruplicate, the day and year first above written.


CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY

By:   
Director of Procurement

DRMP, INC.

Witness:  By:   
Print Name: Nicole Baker Title: Vice President

Approved as to form and execution, only.

  
General Counsel for CFX

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Goldenrod\2 Contract\2.A Supplemental Agreements\SA 3\DRMP-528-143 -SA3.docx

**SUPPLEMENTAL AGREEMENT NO. 2**

**TO**

**AGREEMENT FOR PROFESSIONAL SERVICES**

**FINAL DESIGN**

**S.R. 528 / S.R. 436 Interchange Improvements and S.R. 528 Widening from S.R. 436 to  
Goldenrod Road**

THIS SUPPLEMENTAL AGREEMENT is made and entered into this 24<sup>th</sup> day  
of July, 2019, by and between the CENTRAL FLORIDA EXPRESSWAY  
AUTHORITY, a corporate body and agency of the State of Florida, hereinafter called "CFX"  
and the consulting firm of DRMP, INC. of Orlando, Florida, hereinafter called the  
"CONSULTANT".

WHEREAS, Articles 2.00 and 12.0 of the Agreement for Professional Services between  
CFX and the CONSULTANT, dated the 8<sup>th</sup> day of March 2018, provides that in the event that  
CFX shall change the amount of work in Exhibit "A" of the said Agreement for Professional  
Services, the fees to be paid to the CONSULTANT shall be subject to adjustment as shall be  
mutually agreed upon:

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. CFX hereby authorizes the CONSULTANT to proceed with additional services as outlined in the Consultant's July 24, 2019 letter to CFX, which is attached hereto and made a part of this Supplemental Agreement.
2. Exhibit "B", Article 2.00 of the Agreement for Professional Services is amended as follows:
  - a. The Salary Related Costs are adjusted upward by \$21,414.48 to \$4,613,144.33.
  - b. The Design Survey – Office (Prime) remains unchanged at \$65,525.48.
  - c. The Design Survey – Field (Prime) remains unchanged at \$266,197.83.
  - d. The Direct Expenses (Lump Sum) remains unchanged at \$49,962.89.
  - e. The Subcontract Items remains unchanged at \$1,603,252.05.
  - f. The Allowance remains unchanged at \$0.00.

The Total Maximum Limiting Amount is adjusted upward by \$21,414.48 to \$6,598,082.58.


3. All provisions of said Agreement for Professional Services, or any Supplements thereto, not modified by the above, shall remain in full force and effect, the same as if they had been set forth herein. In the event of a conflict between the provisions of this Supplemental Agreement and of the said Consultant Agreement, or any Supplements thereto, the provisions of this Supplemental Agreement, to the extent such provision is reasonable, shall take precedence.

IN WITNESS WHEREOF, the parties hereto have caused these  
presents to be executed, in quadruplicate, the day and year first above written.

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY


By:   
Director of Procurement

DRMP, INC.

Witness:   
Print Name: Mary E. Dent

By:   
Title: Vice President

Approved as to form and execution, only.

  
General Counsel for CFX

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Widening to Goldenrod\2 Contract\2.A Supplemental Agreements\SA 2\DRMP-528-143 -SA2.docx



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**SUPPLEMENTAL AGREEMENT NO. 1**

**TO**

**AGREEMENT FOR PROFESSIONAL SERVICES**

**FINAL DESIGN**

**S.R. 528 / S.R. 436 Interchange Improvements and S.R. 528 Widening from S.R. 436 to  
Goldenrod Road**

THIS SUPPLEMENTAL AGREEMENT is made and entered into this 20 day  
of May, 2019, by and between the CENTRAL FLORIDA EXPRESSWAY  
AUTHORITY, a corporate body and agency of the State of Florida, hereinafter called "CFX"  
and the consulting firm of DRMP, INC. of Orlando, Florida, hereinafter called the  
"CONSULTANT".

WHEREAS, Articles 2.00 and 12.0 of the Agreement for Professional Services between  
CFX and the CONSULTANT, dated the 8<sup>th</sup> day of March 2018, provides that in the event that  
CFX shall change the amount of work in Exhibit "A" of the said Agreement for Professional  
Services, the fees to be paid to the CONSULTANT shall be subject to adjustment as shall be  
mutually agreed upon:

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. CFX hereby authorizes the CONSULTANT to proceed with additional services as outlined in the Consultant's April 1, 2019 letter to CFX, which is attached hereto and made a part of this Supplemental Agreement.
2. Exhibit "B", Article 2.00 of the Agreement for Professional Services is amended as follows:

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- a. The Salary Related Costs are adjusted upward by \$903,744.70 to \$4,591,729.85.
- b. The Design Survey – Office (Prime) is adjusted upward by \$6,150.40 to \$65,525.48.
- c. The Design Survey – Field (Prime) is adjusted upward by \$49,007.35 to \$266,197.83.
- d. The Direct Expenses (Lump Sum) remains unchanged at \$49,962.89.
- e. The Subcontract Items are adjusted upward by \$117,872.33 to \$1,603,252.05.
  - Ardaman \$66,758.07
  - WBQ (Design) \$51,114.26
- f. The Allowance is adjusted downward by \$550,106.68 to \$0.00.

The Total Maximum Limiting Amount is adjusted upward by \$526,668.10 to \$6,576,668.10.

3. All provisions of said Agreement for Professional Services, or any Supplements thereto, not modified by the above, shall remain in full force and effect, the same as if they had been set forth herein. In the event of a conflict between the provisions of this Supplemental Agreement and of the said Consultant Agreement, or any

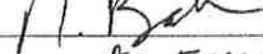
Supplements thereto, the provisions of this Supplemental Agreement, to the extent such provision is reasonable, shall take precedence.

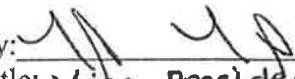
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, in quadruplicate, the day and year first above written.

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY

By:   
Director of Procurement

DRMP, INC.

Attest:   
Title: Corporate Executive  
Assistant

By:   
Title: Vice President

Approved as to form and execution, only.

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General Counsel for CFX

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# **AGREEMENT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
DRMP, INC.**

**S.R. 528 / S.R. 436 INTERCHANGE IMPROVEMENTS  
AND S.R. 528 WIDENING FROM S.R. 436 TO GOLDENROD**

**PROJECT NO. 528-143, CONTRACT NO. 001314**

**CONTRACT DATE: MARCH 08, 2018  
CONTRACT AMOUNT: \$6,050,000.00**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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

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

**FOR**

**S.R. 528 / S.R. 436 INTERCHANGE IMPROVEMENTS  
AND S.R. 528 WIDENING FROM S.R. 436 TO GOLDENROD**

**PROJECT NO. 528-143, CONTRACT NO. 001314**

**MARCH 2018**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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<u>Section</u>	<u>Title</u>	
AG	Agreement	1-19
A	Exhibit "A", Scope of Services	
B	Exhibit "B", Method of Compensation	
C	Exhibit "C", Details of Cost and Fees	
D	Exhibit "D", Project Organization Chart	
E	Exhibit "E", Project Location Map	
F	Exhibit "F", Schedule	

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT, made and entered into this 8<sup>th</sup> day of March, 2018, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a corporate body 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 DRMP, Inc., hereinafter called "CONSULTANT," registered and authorized to conduct business in the State of Florida, carrying on professional practice in engineering, with offices located at 941 Lake Baldwin Lane, Orlando, FL. 32814.

**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. DEFINITIONS.**

Reference herein to the Project Manager shall mean CFX's Director of Engineering or his authorized designee. The Project Manager 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 Project Manager and the CONSULTANT shall comply with all of the directives of the Project Manager 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 Project Manager.

**2.0. SCOPE OF SERVICES.**

CFX does hereby retain the CONSULTANT to furnish certain professional services in connection with the design of S.R. 528 / S.R. 436 Interchange Improvements and S.R. 528 Widening from S.R. 436 to Goldenrod Road in Orange County, Florida identified as Project No. 528-143 and Contract No. 001314.

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 rendering any of the services, 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.

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 five (5) year term from the date of the Notice to Proceed for the required project services as detailed in **Exhibit "A,"** with five one-year renewals at CFX's option. 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 CONSULTANT are satisfactory and adequate for CFX's needs. If a renewal option is exercised, CFX will provide CONSULTANT with written notice of its intent at least thirty (30) days prior to the expiration of the original term and subsequent renewal, if any.

The CONSULTANT agrees to commence the scheduled project services to be rendered within ten (10) calendar days from the date specified in the written Notice to Proceed from the Project Manager, which Notice to Proceed will become part of this Agreement. The CONSULTANT shall complete scheduled project services within the timeframe(s) specified in **Exhibit "A,"** or as may be modified by subsequent Supplemental Agreement.

### 4.0 PROJECT SCHEDULE

The CONSULTANT agrees to provide Project Schedule progress reports for each project in a format acceptable to CFX and at intervals established by CFX. CFX will be entitled at all times to be advised, at its request, as to the status of work being done by the CONSULTANT and of the details thereof. Coordination shall be maintained by the CONSULTANT with representatives of CFX, or of other agencies interested in the project on behalf of CFX. Either party to the Agreement may request and be granted a conference.

In the event there are delays on the part of CFX as to the approval of any of the materials submitted by the CONSULTANT or if there are delays occasioned by circumstances beyond the control of the CONSULTANT, which delay the scheduled project completion date, CFX may grant to the CONSULTANT by "Letter of Time Extension" an extension of the scheduled project completion date equal to the aforementioned delays. The letter will be for time only and will not include any additional compensation.

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 in a design capacity and shall have due regard for acceptable standards of design 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.

Antillian Engineering Associates, Inc. (Class II) 00035 ✓  
Base Consultants, Inc. 11004  
Moffat & Nichol, Inc. 3225  
Ardaman & Associates, Inc. (Class II)  
EPG Engineering (Class II) 12000  
WBQ Design & Engineering, Inc. (Class I & II) 00448

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.

## 6.0 SERVICES TO BE PROVIDED

The work covered by this Agreement as described in **Exhibit "A,"** includes the preparation of construction plans for one construction project. If the work is divided into more than one construction project by CFX's Project Manager, then the CONSULTANT shall supply construction plans for each project. A Supplemental Agreement will be required for the additional work.

All construction plans, documents, reports, studies and other data prepared by the CONSULTANT shall bear the endorsement of a person in the full employ of the CONSULTANT and duly registered by the State of Florida in the appropriate professional category.

After CFX's acceptance of construction plans and documents for the project, the original set of CONSULTANT's drawings, tracings, plans, maps and CADD files shall be provided to CFX, along with one record set of the final plans. The CONSULTANT shall signify, by affixing an endorsement (seal/signature, as appropriate) on every sheet of the record set, that the work shown on the endorsed sheets was produced by the CONSULTANT. With the tracings and the record set of prints, the CONSULTANT shall submit a final set of design computations. The computations shall be bound in an 8-1/2 x 11" format and shall be endorsed (seal/signature, as appropriate) by the CONSULTANT. Refer to **Exhibit "A"** for the computation data required for this Agreement.

The CONSULTANT shall submit a final set of reports and studies which shall be endorsed (seal/signature) by the CONSULTANT.

The CONSULTANT shall not be liable for use by CFX of said plans, documents, reports, studies or other data for any purpose other than intended by the terms of this Agreement.

## 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 \$6,050,000 for the initial five-year term of this Agreement. 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 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) 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. The obligations in this paragraph survive the termination of the Agreement and continue in full force and effect.

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 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 at 941 Lake Baldwin Lane, Orlando, FL. 32814.

Notwithstanding Section 17, 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 8.0, Document Ownership and Records, shall survive the expiration or termination of this Agreement and continue in full force and effect.

The CONSULTANT shall allow public access to all documents, papers, letters, or other material as approved and authorized by CFX and subject to the provisions of Chapter 119, Florida Statutes, and

made or received by the CONSULTANT in conjunction with this Agreement. Failure by the CONSULTANT to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by CFX.

#### 9.0 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.

#### 10.0 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 Section 7.0 are accurate, complete and current as of the date of this Agreement. It is further agreed that said price provided in Section 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.

#### 11.0 TERMINATION

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 in accordance with **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 and 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 Section 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.

## 12.0 ADJUSTMENTS

All services shall be performed by the CONSULTANT to the reasonable satisfaction of the Project Manager 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. 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 Executive Director and Supplemental Agreement(s) of such a nature as required may be entered into by the parties in accordance herewith. Disputes between the Project Manager and the CONSULTANT that cannot be resolved shall be referred to the 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 for consideration by the Executive Director; 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.

### 13.0 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.

### 14.0 HOLD HARMLESS AND INDEMNIFICATION

The CONSULTANT shall 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, caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of the Agreement. The CONSULTANT shall indemnify and hold harmless CFX and all of its officers and employees from any liabilities, losses, damages, costs, including, but not limited to reasonable attorneys' fee, arising out of any negligent act, error, 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 solely 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 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 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 14.0, Hold Harmless and Indemnification, shall survive the expiration or termination of this Agreement and continue in full force and effect.

#### 15.0 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 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.

## 16.0 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.

16.1 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.

16.2 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.

16.3 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.

16.4 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.

#### 17.0 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 Section 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 or 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 mark, including trademarks, service marks, or any 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 Mark is utilized, the Mark shall be properly screened to insure all layers of the Mark 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.

#### 18.0 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 and the CFX Code of Ethics 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 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 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 CFX's Code of Ethics and the referenced statutes and to the extent applicable to the CONSULTANT, agrees to abide with such policy.

#### 19.0 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.

#### 20.0 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.

#### 21.0 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.

## 22.0 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 this paragraph shall survive the expiration or termination of this Agreement and continue in full force and effect.

## 23.0 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.”

## 24.0 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.

## 25.0 ASSIGNMENT

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

## 26.0 AVAILABILITY 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 CONSULTANT to that effect.

## 27.0 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.

## 28.0 AUDIT AND EXAMINATION OF RECORDS

### 28.1 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.

28.2 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.

28.3 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) calendar 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.

28.4 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.

28.5 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.

28.6 The obligations in Section 28.0, Audit and Examination of Records, shall survive the expiration or termination of this Agreement and continue in full force and effect.

## 29.0 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

Project No. 528-143  
Contract No. 001314

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

To CONSULTANT: DRMP, Inc.  
941 Lake Baldwin Lane  
Orlando, FL 32814  
Attn: Timothy "TJ" Lallathin, Jr., P.E.

DRMP, Inc.  
941 Lake Baldwin Lane  
Orlando, FL 32814  
Attn: Jon S. Meadows, P.E.

### 30.0 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 30.0, Governing Law and Venue, shall survive the expiration or termination of this Agreement and continue in full force and effect.

### 31.00 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", Project Location Map  
Exhibit "F", Project Schedule

[ SIGNATURES TO FOLLOW ]



Project No. 528-143  
Contract No. 001314


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 March 08, 2017.

**DRMP, INC.**

BY:   
Authorized Signature

Print Name: JON S MEADOR

Title: Vice President

ATTEST:  (Seal)  
Secretary or Notary

**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY**

BY:   
Director of Procurement

Print Name: Aneth Williams

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

*Approved as to form and execution, only.*

  
General Counsel for CFX

## **EXHIBIT A**

### **SCOPE OF SERVICES**

**Exhibit A**

**CENTRAL FLORIDA EXPRESSWAY  
AUTHORITY**

**SCOPE OF SERVICES**

**FOR**

**S.R. 528 / S.R. 436 INTERCHANGE  
IMPROVEMENTS AND S.R. 528 WIDENING  
FROM S.R. 436 TO GOLDENROD ROAD**

**PROJECT NO. 528-143**

**IN ORANGE COUNTY, FLORIDA**

**MARCH 2018**

Exhibit A

SCOPE OF SERVICES

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## **1.0 GENERAL**

### **1.01 Location**

- A. See EXHIBIT "E", Project Location Map.

### **1.02 Description**

The services will include final design and preparation of construction drawings / specifications for the proposed SR 528 / SR 436 Interchange Improvements and SR 528 Widening. Specifically, the project will provide for demolition of the existing bridges at the following locations: the southbound S.R. 436 Bridge over S.R. 528, the southbound S.R. 436 Bridge over Ramp M and the northbound S.R. 436 Bridge over S.R. 528. In addition, five (5) new bridges will be provided at the following locations: southbound S.R. 436 over S.R. 528, Ramp B-1A over southbound S.R. 436, Ramp B-1A over northbound S.R. 436, Ramp B-1A over S.R. 528, northbound S.R. 436 over SR 528, and Ramp C-2 over S.R. 528. Widening of S.R. 528 to provide six (6) general use lanes through the interchange area as well as an auxiliary lane eastbound to Goldenrod Road and westbound to Conway Road. Additional elements include surveying, drainage evaluation and design, permitting, lighting, signing and pavement markings, maintenance of traffic, utility design and coordination, geotechnical analysis, scheduling and project control, progress reporting and other tasks and associated activities.

### **1.03 Purpose**

- A. The purpose of this Exhibit is to describe the scope of work and responsibilities required in connection with Final Engineering and Final Construction Drawings and Documents for the proposed S.R. 528 / S.R. 436 Interchange Improvements and S.R. 528 Widening from Conway Road to Goldenrod Road.
- B. The Consultant shall perform those engineering services as required for final roadway/drainage plans, final bridge plans, final lighting plans, final traffic control plans, final utility plans, final fiber optic network plans, final signing and pavement marking plans and preparation of a complete environmental resource application (or permit modification) including storm water management calculations.
- C. CFX's Project Manager will provide contract administration, management services and technical reviews of all work associated with the preliminary and final designs.
- D. It is understood that references throughout this document to items of work and services to be performed are the responsibility of the Consultant unless otherwise expressly stated as the responsibility of others.

#### 1.04 Organization

- A. CFX's Project Manager will administer the Consultant services detailed in this scope. The following sections define the duties and obligations of CFX and the Consultant.

#### 1.05 Term of Agreement for Design Services

- A. The term of the Agreement to perform the required design services shall be within fifteen (15) months from notice to proceed, including all reviews. Any fast track of services will be at the direction of CFX's Project Manager.
- B. The Consultant may continue the design efforts while design submittals are being reviewed. Doing so, however, in no way relieves the Consultant of the responsibility to incorporate review comments into the design, nor does it entitle the Consultant to any additional design fees as a result of making changes due to review comments.

##### 1. Project Milestones:

The Consultant will prepare a tabulation of major project milestones.

##### 2. Project Schedule:

The Consultant shall include a schedule of major design tasks.



## **2.0 STANDARDS**

- A. The applicable design and construction standards and policies of the Florida Department of Transportation, Federal Highway Administration (FHWA), American Association of State Highway and Transportation Officials (AASHTO), Transportation Research Board (TRB), Standard Building Code, CFX's Design Practices and Standard Notes and CFX's Guidelines for Preparation of Signing and Pavement Marking Plans shall be followed throughout the design and construction of the project unless specifically stated otherwise. The editions of the applicable standards and policies in effect at the time of Contract execution shall be used except as follows:
1. Division II, Construction Details, and Division III, Materials, of the FDOT Standard Specifications for Road and Bridge Construction, 2018 edition, and updates thereafter, shall be used for this project.
  2. The FDOT Standard Plans for Road and Bridge Construction (Index Drawings), latest edition and subsequent interim indexes and updates, shall be used for this project.
  3. The FDOT Design Manual, latest edition, shall be used for this project.
  4. The FDOT Basis of Estimates Manual, latest edition, shall be used for this project.
  5. The AASHTO Policy on Geometric Design of Highway and Streets (Green Book), 2004 edition, shall be used for this project.
  6. The FHWA Manual on Uniform Traffic Control Devices (MUTCD), 2009 edition, as amended, shall be used for this project.

### **3.0 DESIGN CRITERIA**

#### **3.01 General**

Design of this project will be guided by the basic design criteria listed below.

- A. The design criteria listed in this section and Project Design Directives, provided by CFX during the course of the project, may supplement the Project Design Guidelines.
- B. Design year – 2045
- C. Design vehicle – WB-62FL
- D. Along with the 30% design submittal, the Consultant shall provide a tabulation of all applicable drainage and stormwater management criteria from Federal, State and local agencies and indicated which will be used for all segments and portions of the project. Unless otherwise directed by CFX, the Consultant shall use the most restrictive or conservative criteria applicable.

#### **3.02 Geometry**

The following criteria are to be incorporated into the design:

<b><u>DESIGN ELEMENT</u></b>	<b><u>EXPRESSWAY</u></b>		<b><u>CROSSROADS/ COLLECTORS</u></b>
	<b>MAINLINE</b>	<b>RAMPS</b>	
<b><u>Design Speed, MPH</u></b>	70 mph	30 mph (Loop) 50 mph (Diamond) 50 mph (Directional)	30 Local 45 Urban 50 Rural
<b><u>Horizontal Alignment</u></b>			
a. Max. Curve, Degrees	3° 30'	24° 45' Loop 8° 15' Diamond 8° 15' Directional	20°
b. Max. Superelevation, ft. /ft.	0.10	0.10	0.05 Urban 0.10 Rural
c. Lane Drop Tapers	70:1	50:1	
d. Transitions	Use spirals for curves > 1° 30'	Use spirals for curves > 1° 30'	Use spirals for curves > 1° 30'
<b><u>Vertical Alignment</u></b>			
a. Max. Grade	3%	5% to 7% (30 mph) 3% to 5% (50 mph)	5% Arterial Rural 7% Collector

<u>DESIGN ELEMENT</u>	<u>EXPRESSWAY</u>		<u>CROSSROADS/ COLLECTORS</u>
	MAINLINE	RAMPS	
b. Vertical Curvature (K) (K=Len./%grade change) Crest	506 FDOT 290 to 540 AASHTO	31 (30 mph) 136 (50 mph) 110 to 160 Other (AASHTO)	Rural  31 to 136
Sag	206 FDOT 150 to 200 AASHTO	31 (30 mph) 136 (50 mph) 90 to 110 Other (AASHTO)	37 to 96
c. Decision Sight Dist., ft.	Refer to AASHTO	N/A	N/A
<u>Cross Sections</u>			
a. Lane Widths, ft.	12	12 dual lanes 15 min. single lane	12 inner lanes 12-16 outer lanes
b. Shoulder width, ft.	<u>4-Lane</u> 12 (10 paved) 8 (4 paved)	<u>Single Lane</u> 6 (4 paved) 6 (2 paved)	8 (4*paved) 8 (2 paved)
Right	<u>6-Lane</u> 12 (10 paved)	<u>Dual Lane</u> 10* (8* paved)	* min. 5' paved FDOT
Left	12 (10 paved)	8 (4 paved) (* add 2' for interstate)	
<u>Bridges, ft.</u>	<u>4-Lane</u>	<u>Single-Lane</u>	
Right	10	6	
Left	6	6	
Right	<u>6-Lane</u> 10	<u>Dual Lane</u> 10	
Left	10	6	
c. Cross Slopes			
1. Traffic Lanes	2% (4-lane) 3% or tbd (6-lane)	2%	2%
2. Bridge Lanes	2% typ. (no break)		

<u>DESIGN ELEMENT</u>	<u>EXPRESSWAY</u>		<u>CROSSROADS/ COLLECTORS</u>
	MAINLINE	RAMPS	
3. Left Shoulder 4. Right Shoulder	5% 6%	5% 6%	5% 6%
d. Median Width (4-lane), ft. (E.O.P./E.O.P.)	64' (typical) 26' (with barrier)	N/A	22' or 40'
<u>Horizontal Clearance</u>	FDM Table 215.2.1	FDM Table 215.2.1	FDM Table 215.2.1
<u>Vertical Clearance, ft.</u>			
a. Over Roadway*	16.5	16.5	
b. Overhead Signs	17.5	17.5	16.5
c. Over Railroad	23.5	23.5	17.5
			N/A

#### Ramp Operations

- a. Two thousand (2,000) ft. between entrance and exit terminals – full freeways
- b. Six hundred (600) ft. between exit and entrance terminals
- c. Single Lane Entrance Ramp Parallel
- d. Exit Ramp Taper of 550 ft. (3° – divergence)

#### Right of Way

- a. Ten (10) ft. from back of walls or limit of construction.
- b. Two (2) ft. from back of sidewalk on frontage roads.
- c. Drainage and construction easements as required
- d. Limited access right-of-way limits per Index 450
- e. Right of way limits for ramps is based upon limit of construction plus 10 feet.

#### 3.03 Bridge and Other Structures

- A. All plans and designs shall be prepared in accordance with the latest standard specifications adopted by AASHTO, FDOT Structures Design Guidelines (Manual), FDOT Structures Manual, FDOT Design Manual, FDOT Standard Plans for Road and Bridge Construction, etc., except as otherwise directed by CFX.

#### **4.0 WORK PERFORMED BY CONSULTANT**

The Consultant shall be responsible for the work outlined in this Section. The work shall conform to the standards, criteria, and requirements of this Scope of Services.

##### **4.01 Design Features**

A. The work required for this project includes preparation of final construction drawings and specifications as well as the preparation of a complete environmental resource application.

B. Major elements of the work include the following:

The services will include final design and preparation of construction drawings / specifications for the proposed SR 528 / SR 436 Interchange Improvements and SR 528 Widening. Specifically, the project will provide for demolition of the existing bridges at the following locations: the southbound S.R. 436 Bridge over S.R. 528, the southbound S.R. 436 Bridge over Ramp M and the northbound S.R. 436 Bridge over S.R. 528. In addition, five (5) new bridges will be provided at the following locations: southbound S.R. 436 over S.R. 528, Ramp B-1A over southbound S.R. 436, Ramp B-1A over northbound S.R. 436, Ramp B-1A over S.R. 528, northbound S.R. 436 over SR 528, and Ramp C-2 over S.R. 528. Widening of S.R. 528 to provide six (6) general use lanes through the interchange area as well as an auxiliary lane eastbound to Goldenrod Road and westbound to Conway Road. Additional elements include surveying, drainage evaluation and design, permitting, lighting, signing and pavement markings, maintenance of traffic, utility design and coordination, geotechnical analysis, scheduling and project control, progress reporting and other tasks and associated activities.

##### **4.02 Governmental Agencies**

A. The Consultant shall coordinate with and assist in securing the approval of all interested agencies involved. These agencies may include, but are not necessarily limited to GOAA, FDEP and applicable Water Management District(s), Orange County, FDOT District 5, and the City of Orlando.

##### **4.03 Preliminary Design Report - Review**

A. The Consultant shall review the project concept for proposed alternatives with regard to proposed design criteria, maintenance of traffic and construction feasibility.

At the completion of this review, the Consultant shall submit to CFX a written list of recommendations and proposed revisions, if any, to the basic layout. A conference will be scheduled by CFX's Project Manager with the Consultant to resolve any outstanding differences and agree upon a final layout for the project.

#### 4.04 Surveys and Mapping

- A. All Surveying and Mapping shall be performed under the direction of a Surveyor and Mapper properly licensed with the Florida Board of Professional Surveyors and Mappers, under Chapter 472, Florida Statutes. The Consultant shall review data provided by CFX and provide complete field surveys suitable for contract document preparation.

Survey activities shall be coordinated with the Consultant's design team including roadway, drainage, structures, geotechnical, and other disciplines as required.

Field surveys shall be performed with minimal disruption of the normal traffic flow for the project. Field personnel shall use safety devices such as warning signs, traffic cones, warning lights, and safety vests at all times, according to the Florida Department of Transportation requirements. Advanced warning signs required when survey crews are working on CFX's system shall be made with 3M Scotchlite Diamond Grade Fluorescent orange roll up sign sheeting.

B. Alignment

1. Establish Survey Centerline by establishing the tangent lines of existing Right of Way maps if such maps exist, or in the center of dedicated Right of Way as per subdivision plats, or in the center of the pavement when no Right of Way map or dedication exists. Set alignment points Begin, End, PC's, PT's, PI's and at maximum 1400-foot intervals along alignment.
2. Establish and set alignment in the same manner on cross roads and major adjacent alignments.
3. Station all alignments at 100' intervals.
4. Meet with CFX's Project Manager to discuss methods for determining alignments prior to staking.

C. Reference Points

1. Set at all alignment points, left and right at 90-degrees to alignment where possible, outside the proposed construction limits.
2. Show obstructions where alternate references are set.

D. Bench Levels

1. The Consultant shall establish new benchmarks at 1000' intervals, along all alignments, using stable points.

E. Topography

1. Planimetric mapping and a digital terrain model (DTM), suitable for

- 1"=50' display scale shall be conducted by the Consultant.
2. The Consultant will obtain existing pavement elevations and cross-slopes along the inside travel lane and outside travel lane every 100'.
  3. Additional topographic and DTM surveys, as needed for the project design, are the responsibility of the Consultant. These may include existing water bodies and pavement elevations.

**F. Drainage Survey**

Perform a drainage survey including pipe type, location, size and flow line elevations as needed for design.

**G. Underground Utilities**

Locate all underground utilities, horizontally and vertically as flagged by respective utility companies or a qualified utility marking consultant. Provide soft excavation verifications as needed to verify location and at utility conflict areas.

**H. Side Street Surveys**

Perform topographic and utility surveys of side streets as may be needed for engineering design.

**I. Bridge Survey**

Provide bridge survey data as needed for engineering design.

**J. Jurisdictional Line Surveys**

Perform Jurisdictional Line Surveys as needed for engineering design and permitting.

**K. Geotechnical Surveys**

Locate and/or stake boring locations as needed for geotechnical investigations.

**L. Right-of-Way Ties**

Locate right-of-way limits for construction purposes. No new right-of-way is anticipated.

**M. Prior to construction, the Consultant shall re-flag and reset alignment control points, references and benchmarks and meet with the construction contractor to review these points.**

**N. CFX ITS/FON**

CFX will locate the FON one time at the beginning of design during the survey phase. Once the FON/ITS lines are flagged, the Consultant shall survey the located FON/ITS locations in the field. The survey data collected will be included in the 30% plans submittal package.

The CFX GSC will review the plan submittals to ensure that the FON is shown correctly as actually located in the field. The CFX GSC will also determine if there are any overlapping projects that need to be represented in the design plans as a part of the ITS Component review of the 30% plans.

SUE will be done as required based on the Design Project Manager's recommendations and provided to CFX for their information.

#### 4.05 Geotechnical Investigation

- A. The Consultant shall perform a geotechnical investigation of the project in accordance with the requirements of CFX.
- B. Investigations shall be performed with minimal disruption of the normal traffic flow for the project. Field personnel shall use safety devices such as warning signs, traffic cones, warning lights, and safety vests at all times, according to CFX requirements. The Consultant shall adhere to all traffic control requirements when taking samples on existing roadways. A traffic control plan and permit may be required. Any advanced warning signs required when crews are working on CFX system shall be made with 3M Scotchlite Diamond Grade Fluorescent orange roll up sign sheeting.
- C. The work includes, but is not limited to, LBR testing, design methods for the selected foundation, external stability evaluation at proprietary retaining walls, groundwater and estimated seasonal high groundwater level, pH and resistivity conditions requiring design considerations, soil shrinkage/swell characteristics, slope stability and benching in embankment/excavation locations, location and depths of unsuitable material (muck), and design alternatives based on geotechnical findings; design values for active, at rest, and passive soil pressures; allowable design loads or pressures for each foundation type, corrosion testing for structures and provision of recommended design soil parameters for design of foundations for sign structures.
- D. The results of the geotechnical investigation shall be contained in a Geotechnical Report which shall be submitted to CFX's Project Manager for approval. The geotechnical investigation shall include all necessary laboratory testing of materials.
- E. Upon approval of the Geotechnical Report, the Consultant shall proceed with preparation of the pavement and foundation designs.



- F. Boring profiles shall be included on cross-section sheets in the contract plans and include the boring number, station, offset, soil legend, observed water table, design high water elevation and geotechnical consultant's address. A boring number and target symbol shall be shown at the appropriate location on the roadway and bridge plans.
- G. Roadway core samples shall be taken to determine the existing pavement section. The Consultant shall submit a plan to CFX for location approval.

#### 4.06 Contamination Impact Analysis

- A. The Consultant may perform a contamination impact analysis of the project in accordance with the applicable rules and regulations of the FDOT Project Development and Environment Guidelines, Chapter 22, the Florida Department of Environmental Protection (FDEP), and all other pertinent State or Federal agencies having jurisdiction, and the requirements of CFX.
- B. If required, the Consultant shall conduct a windshield survey along the project corridor to identify any new sources of environmental contamination not reported in the referenced document(s).
- C. The testing of any sites including the use of ground penetrating radar, if required to complete the design and/or construction of the project, will be added to the Scope of Services by Supplemental Agreement.

#### 4.07 Pavement Design

- A. The Consultant shall prepare the pavement design as appropriate in accordance with the requirements of the FDOT for SR 436 and SR 528 mainline and interchange ramps impacted. Milling and resurfacing for traffic control purposes only will remove friction course only.
- B. The proposed pavement design recommendation, resulting from the Consultant's analysis of the various alternatives, shall be contained in a Pavement Design Summary.

#### 4.08 Borrow Pits

- A. The Consultant's geotechnical investigation may include the investigation of current borrow pits. The location and testing of any new borrow pits if required to complete the construction of the project shall be added to the Scope of Services by Supplemental Agreement. The analysis and test results shall be contained in a separate report submitted not later than the preliminary submittal.

#### 4.09 Governmental Agency and Public Meetings

- A. Except as may be provided elsewhere in this Scope of Services, the

Consultant shall have appropriate representatives present at such meetings, conferences or hearings as CFX may direct to secure necessary approvals and/or support of the project by county, municipal, or other governmental agencies. If so directed, the Consultant shall also have appropriate representatives present at meetings or conferences of CFX, its Chairman or staff.

- B. The Consultant shall assist CFX in presentations to various parties. The Consultant shall prepare exhibits pertaining to basic roadway and noise wall elements. CFX will prepare exhibits pertaining to aesthetic treatments and other design issues if applicable. This scope assumes presentations at one meeting with adjacent property owners.

#### 4.10 Environmental Permits

- A. CFX's Project Manager will review, coordinate and submit the applications for all environmental permits, including EPA's NPDES General Permits for Stormwater Discharges from Construction Sites. The Consultant shall provide all information, permit applications and data relating to Stormwater Management and Floodplain Impacts required for the permits to CFX. (CFX will be responsible for preparing all of the Wetlands and Protected Species analysis and documentation required for the permits.) The Consultant shall:
  - 1. Attend the pre-application meetings and site visits with CFX and regulatory agencies.
  - 2. Provide additional information requested at the pre-application by regulatory agencies for permits.
  - 3. Provide aerial maps at a 1"=400' scale which include SCS soils data, 100-year floodplain limits and proposed project.
  - 4. Provide all plans, calculations, sketches and reports required for permits except as described above.
  - 5. Provide copies of all drainage calculation, including pond routing nodal diagrams, for the project.
  - 6. Assist CFX in responding to any requests for additional information made by regulatory agencies after the permit application is submitted.
  - 7. Incorporate any changes required by changes in regulatory agency requirements during the course of the project. If this requires additional work by the Consultant a Supplemental Agreement will be prepared.

8. Prepare a list of adjacent landowners along with address and nine-digit zip code at all wetland encroachment sites.
9. Provide all permit application material in .pdf format and 7 hard copies.
10. The Consultant will provide dredge and fill sketched as required by the permitting agencies if applicable. Mitigation plans, if required, may be added as a supplemental service.
11. Determine extent of floodplain impacts, if any, and provide compensatory flood stages as required.

#### 4.11 Utilities

##### A. Location

The Consultant shall obtain available utility mapping and information and identify all utilities within the general project limits to determine potential conflicts and relocations. Where a potential conflict exists, the Consultant may need to arrange to probe or expose ("pothole") the utility and survey the horizontal and vertical location of the utility line. The Consultant shall coordinate this effort with involved utility companies. All existing utilities shall be shown on appropriate preliminary construction plans. The Consultant's notes shall include the name and telephone number of contact persons for the construction contractor's use.

##### B. Utility Coordination

1. The Consultant shall prepare reproducible utility adjustments plans based on information provided by respective utility companies.
2. Private utilities will prepare design plans for the relocation of their facilities. If a utility cannot or will not prepare these design plans, the work shall be added to the scope by Supplemental Agreement and the Consultant shall prepare design plans for utility relocation for approval of the utility and review by CFX.
3. Where utility conflicts occur which require utility relocation agreements between the affected utility and CFX, the Consultant shall prepare the necessary data/plans required for the agreements. The Consultant shall advise CFX seven days in advance of meetings with utility companies/agencies scheduled to discuss utility relocations.
4. The preparation and negotiation of the agreement will be performed by CFX's Project Manager. After approval of the agreement by the utility and CFX, the Consultant shall prepare reproducible utility

adjustment sheets identifying proposed relocations with respect to the construction plans.

5. The Consultant shall prepare a utility conflict matrix to assist in identifying and resolving conflicts between utilities and proposed construction prior to completion of the plans.
6. The Consultant shall obtain utility work schedules from the utility companies.
7. The Consultant shall prepare the Utility Certification Letter certifying that all utility negotiations (full execution of each agreement, approved utility work schedule, technical special provisions written, etc.) have been completed with arrangements made for utility work to be undertaken and completed as required.

#### 4.12 Roadway Design

- A. A Typical Section Package will not be prepared for this project. Rather, typical sections for SR 436 and SR 528 mainlines and impacted interchange ramps will be prepared as part of the Preliminary Design Report and submitted to CFX for review and approval.
- B. The Consultant shall design the geometrics for this project using the design standards included in the scope. The design elements shall include, but not be limited to, the horizontal and vertical alignments, cross section template development, lane width, shoulder widths, cross slopes, borders, sight distance, side slopes, lane transitions, superelevations, features of intersections, ramp terminal details, interchanges, and limited access points.
- C. The Consultant shall prepare designs and contract documents for the roadway improvements, including, but not necessarily limited to:
  1. Cover sheet (key sheet)
  2. Summary of Pay Items
  3. General notes
  4. Summary Quantities sheets
  5. Project Layout
  6. Typical roadway sections
  7. Plans and profiles (plans at 1"=50' scale)
  8. Interchange plans, profiles, alignment and plan index sheets

9. Interchange layout plans
10. Intersection plans and profiles or spot elevations
11. Interchange curve and coordinate data sheets
12. Ramp Terminal Details
13. Crossroad plans and profiles (1"= 50' scale)
14. Cross-sections (with pattern plan) (1" = 20' horiz.) (1" = 5' vert.)
15. Earthwork quantities
16. Traffic Control Sheets including Erosion Control/Temp. Drainage
17. Utility Adjustment Sheets as deemed necessary
18. Details
19. Special provisions
20. Special specifications

#### 4.13 Structures Design

- A. Prior to commencement of final design, the consultant shall prepare a Bridge Concept Report which documents a limited range of structural alternatives and identifies preferred alternatives. Specifically, the alternatives to be examined include beam type, wall type / configuration and foundation pile type.
- B. The Consultant shall prepare designs and contract documents for structural design including, but not necessarily limited to the following items.
  1. Complete Bridge designs will be provided for all bridges
  2. Retaining walls
  3. Box Culverts
  4. Slope protection
  5. Approach slabs
  6. Details

7. Summary quantity tables
8. Special provisions and specifications
9. Stage construction-sequencing details (if applicable).
10. Sign\Signal structures.
11. Noise walls (N/A)
12. The Consultant shall perform Load Rating Analysis per FDOT criteria for bridges at the 90% design phase. The Load Rating Analysis packages shall be submitted to FDOT for their review and approval.

#### 4.14 Drainage Design

##### A. As part of the drainage design requirements, the Consultant shall:

1. Perform all drainage design in accordance with the approved criteria from Section 3.01.
2. Finalize the pond design at the 30% submittal.
3. Have its chief drainage engineer available at the scheduled (bi-weekly/monthly) team meetings to review progress and discuss problems.
4. Notify CFX's Project Manager immediately if any deviation from approved design criteria is anticipated.
5. Provide drainage/contour maps as needed used in the development of the drainage design to CFX for use in scheduled reviews. These maps will be returned to the Consultant along with review comments at the end of the review process.
6. Provide copies of its internal quality control comments and calculations at the scheduled reviews.

Critical duration analysis is not included in this effort and, if required, shall be added to the scope by Supplemental Agreement. A pond siting report is not required.

##### B. The Consultant shall prepare designs and contract documents for drainage features including, but not necessarily limited to:

1. Connector pipes
2. Drainage structure details

3. Storm drain and culvert profiles and/or drainage cross-sections
4. Lateral ditches/channels
5. Outfall ditches/channels
6. Retention/detention ponds/exfiltration system

#### 4.15 Roadway Lighting

- A. The Consultant shall provide a complete set of final roadway lighting documents in accordance with FDOT and CFX design criteria. The work shall include coordination with the local utility to provide electrical service. Plan sheet scale shall be at 1"=50' scale.
- B. If required, CFX will provide a cut sheet for the type of lighting fixtures to be used for this project.
- C. The Consultant will prepare designs and contract documents for lighting design including, but not necessarily limited to the following items.
  1. Cover sheet (key sheet)
  2. Tabulation of Quantities
  3. General notes
  4. Pole data and Legend sheet
  5. Project Layout sheet
  6. Plans sheets (plans at 1"=50' scale)
  7. Service point detail
  8. Special Details

#### 4.16 Traffic Engineering

- A. Traffic Data will be furnished by CFX.
- B. Maintenance of Traffic Plans
  1. The Consultant shall prepare maintenance of traffic plans at scale of 1"=100' to safely and effectively move vehicular and pedestrian traffic during all phases of construction. The designs shall include construction phasing of roadways ingress and egress to existing property owners and businesses, routing, signing and pavement markings, and detour quantity tabulations. Special consideration shall be given to the construction of the drainage system when developing the construction phases. Positive drainage must be maintained at all times.
  2. The Consultant shall investigate the need for temporary traffic signals,

signs, alternative detour roads, arrow boards, flagging operations, and the use of materials such as sheet pilings in the analysis. A certified designer who has completed the FDOT training course shall prepare the maintenance of traffic plan.

3. Traffic shall be maintained during all phases of project construction at all locations, including existing posted speed, lane widths and number of lanes entering and leaving Orlando International Airport unless determined by CFX and other governmental agencies. This includes meeting with the governmental agencies which may be impacted by the maintenance of traffic plans.

#### 4.17 Signing Plans

- A. The Consultant shall prepare designs and contract documents for final signing plans including layouts showing the locations of ground mounted and overhead signs, special sign details, lighting, and any structural or foundation requirements in accordance with applicable design standards. Any requirements for electric service shall be coordinated with the local electric utility.
- B. CFX will provide conceptual signing plans for the project as deemed necessary.
- C. CFX in coordination with Orlando International Airport will provide preliminary aesthetic input for the architectural modification of any details necessary for sign structures possibly impacted representing Orlando International Airport signage.
- D. Plan sheets will be developed at a scale of 1"=50' (11"x17" format).
- F. For the purposes of this proposal, two (2) overhead truss signs are assumed to be required for the traffic control improvements. Also, two (2) existing overhead trusses along the project will be affected by the improvements and are assumed to require reconstruction since they do not meet current wind load criteria. Propose to relocate and reuse existing structures if they meet current wind load criteria.

#### 4.18 Pavement Marking Plans

- A. The Consultant shall prepare designs and contract documents for final pavement marking plans, including striping, crosswalks, intersection details, reflective pavement markers and traffic delineators.
- B. The pavement marking design will be shown on the same plan sheets as the signing design.



#### 4.19 Right-of-Way Surveys

- A. No additional right-of-way is anticipated for this project.

#### 4.20 Cost Estimates

- A. The Consultant shall prepare and submit to CFX construction cost estimates at the 60%, 90%, 100%, Pre-Bid and Bid Set submittals outlined herein. The estimate shall be based on the current unit prices as applied to the latest concept of the proposed construction.

#### 4.21 Special Provisions and Specifications

- A. The Consultant shall prepare and submit at the 90% level special provisions, special specifications, and technical special provisions for items, details and procedures not adequately covered by CFX's Technical Specifications. Technical Special Provisions for all Fiber Optic/ ITS infrastructure shall be developed by the CFX GSC and provided for review by the Consultant for inclusion in the Bidding Documents Package.

#### 4.22 Fiber Optic Network (FON)

##### A. Fiber Optic Infrastructure Plans

1. The site construction plans shall be developed at a scale of 1" equals 50 feet. These plans shall include the relocation/replacement of all existing fiber optic ductbanks, cables, manholes, and pull boxes in areas where the existing locations conflict with construction. The Consultant shall identify existing physical features and utilities that will impact the construction and installation of the equipment. The Consultant shall review and modify standard FON details as necessary.
2. Fiber optic network (FON) plans shall include the following:
  - a. Roadway geometry
  - b. Rights-of-Way
  - c. Existing utilities within the right-of-way including CFX's FON
  - d. Physical features affecting construction/installation (sign structures, light poles, fences, etc.)
  - e. Manhole/Pull box locations and stub-out details (standard details provided)
  - f. Device layout
  - g. Device installation details
  - h. Conduit installation details (standard details provided)
  - i. Fiber optic cable route marker detail (standard details provided)
  - j. Fiber count per conduit

- k. Communications interconnect
- l. Connectivity with the FON backbone conduits
- m. Fiber cable routing summaries, fiber cable allocation charts, and splice details and tables for new or relocated fiber optic cabling.
- n. Controller cabinet, CCTV/ TMS pole, and foundation details for proposed CCTV/ TMS sites.
- o. Power interconnect, calculations to support conductor size, and details. Power conductors to each device location shall be sized to the capacity of the main breaker in the cabinet. Determination on conductor sizing and voltage drop limits are only required for proposed sites and existing sites where the total site load is being significantly modified.
- p. Grounding
- q. Table of quantities
- r. Special notes
- s. Maintenance of fiber operations (protection of existing FON through all phases of construction and cutover phasing to ensure continuous operation of existing ITS devices)
- t. All existing and proposed FON to be included and shown with roadway cross sections and drainage cross sections
- u. Relocation/replacement of existing CCTV sites and any necessary structures, foundations, attachment details, power service, fiber optic connections, and cabinets (standard details provided), in the event existing CCTV is not compatible with proposed construction.
- v. Relocation/replacement of existing data collection sensor (DCS) sites and any necessary structures, foundations, attachment details, power service, fiber optic connections, and cabinets (standard details provided), in the event existing DCS would not survive project construction.
- w. Relocation/ replacement of existing GOAA dynamic message sign (DMS) sites and any necessary structures, foundations, attachment details, power service, fiber optic connections, and cabinets (standard details provided), in the event existing DMS would not survive project construction.
- x. Relocation/ replacement of existing traffic monitoring sites (TMS) sites and any necessary structures, foundations, attachment details, power service, fiber optic connections, and cabinets (standard details provided), in the event existing TMS would not survive project construction.
- y. Upgrading other cabinet equipment as needed to meet current CFX ITS equipment standards within the project limits.
- z. Wrong-Way Detection RRFBs for SR 408 off-ramps to Goldenrod road.

3. The Consultant shall take the following information into consideration when developing the site construction plans:
  - a. Minimize utility conflicts and adjustments.
  - b. Minimize traffic impact.
  - c. Accessibility and ease of equipment maintenance.
  - d. Safety of equipment maintenance personnel and the traveling public.
  - e. Maintain the existing FON system through all phases of construction.
  - f. Environmental conditions.
  - g. Concurrent/future CFX projects.
  - h. Compatibility with existing and proposed ITS infrastructure (e.g. CFX enhanced grounding standards for ITS devices, CFX transient voltage surge suppression (TVSS) standards for ITS devices, etc.)
  - i. Leased conduits in CFX FON duct bank that are occupied by the fiber optic cable of other agencies or entities.

#### B. Splice and Cable Routing Details

1. The Consultant shall provide splicing detail diagrams to document proposed fiber optic splices within and between manholes, ITS devices, tollbooths, and other junction points.
2. Proposed splicing tables shall include ITS device connectivity, fiber use, drop cable fiber identification, drop cable identification, backbone cable identification, translateral cable identification, backbone into mainline cable identification, and toll plaza patch panel jack.
3. The Consultant shall provide cable routing diagrams and fiber allocation charts in CFX's standard format to document the functional connectivity between proposed fiber optic conduit and splices.

#### C. Maintenance Of Fiber Operations

1. The Consultant shall provide a plan of action to ensure existing fiber optic network is not disrupted during construction operations.
2. The Consultant shall determine the sequence of fiber optic cable splices to minimize disruption to communications.

#### D. Inside Plant Plans

1. Not Applicable. This proposal does not include modifications and/or improvements to any of the existing toll plazas, including any associated communications, equipment and gantry systems.

- E. Standard CFX specifications/special provisions will be provided to the Consultant. The Consultant shall review the specifications/ special provisions and provide recommended modifications as necessary. CFX shall provide the final approved specifications/ special provisions to be included in the Bidding Documents Package.

#### 4.23 Toll Plazas

- A. This project does not include modifications and/or improvements to any of the existing toll plazas, including any associated equipment and gantry systems.

#### 4.24 Post-Design Services

- A. Services shall begin after authorization by CFX. The Consultant compensation for post-design services may be added by Supplemental Agreement and shall be at an hourly rate, inclusive of overhead, profit and expenses, and exclusive of travel. No compensation will be made for correction of errors and omissions.
- B. The Consultant shall support the post design process as follows:
  - a. Answer questions relative to the plans, typical sections, quantities and special provisions.
  - b. Make any necessary corrections to the plans, typical sections, quantities, notes, etc., as may be required.
  - c. Attend pre-award meeting with construction contractor, CFX, and CFX's CEI.
- C. The Consultant shall, prior to the pre-bid conference, be prepared to walk the project with CFX's CEI to discuss the plans and details. The Consultant shall be prepared to attend the pre-bid conference and respond to questions related to the plans, details, and special provisions.
- D. The Consultant shall prepare any addenda required to clarify the work included in the construction contract documents. Addenda may be required based on the project inspection with the CEI, or questions developed in the pre-bid conference, or conditions discovered by bidders during the bid period.
- E. The Consultant shall be available to respond to questions in the field that may arise relative to the plans, details or special provisions during construction. The Consultant shall periodically visit the project site to observe the progress of construction on the project. This visit will not replace the formal construction inspection by CFX. It is intended to provide the opportunity of the design team to observe whether the work is being performed in general conformance with the project plans. Written memos of all such field trips shall be submitted to CFX within five working days of the trip.

- F. The Consultant shall review and approve shop drawings for structural, lighting, signing, traffic signal elements, and toll plaza shop drawings. This work will include the erection procedure plans, review proposals for substitutions, develop supplemental agreements, and provide other engineering services required to facilitate construction of the project. Reviews will be conducted and returned within two weeks from receipt of information.
- G. The Consultant shall appoint a responsible member of the firm to be the contact person for all post-design services. The person should be continually available during the course of construction for review of design plans.
- H. The Consultant shall make every reasonable effort to process any material presented for review in a prompt manner recognizing a construction contract is underway.
- I. The Consultant shall attend partnering meetings as requested by CFX's Project Manager. The Consultant shall also attend progress/coordination meetings as requested by CFX's Project Manager including, but not limited to, the Notice to Proceed meeting.
- J. Approved design bridge load ratings were obtained by the Consultant under the final design phase of this contract. The Contractor shall be responsible for revising and resubmitting the load ratings if changes to the bridge design occur during construction. Otherwise, the Consultant shall provide written correspondence to FDOT when construction is complete that the bridges were constructed in accordance with the plans and the design load ratings still apply.
- K. The Consultant shall provide geotechnical engineering services as needed by CFX, relative to pile driving, earthwork, embankment and MSE wall construction.
- L. The Consultant shall provide utility consulting services as needed by CFX, relative to proposed utility adjustments within the project limits.
- M. The Consultant shall prepare Record Drawings in electronic format following completion of the construction phase. CFX shall provide all As-Built drawings from the Contractor / CEI to the Consultant for their use in preparation of the Record Drawings.

## **5.0 MATERIALS FURNISHED BY CFX OR ITS DESIGNEE**

### **5.01 Record Documents**

- A. CFX will provide the Consultant, within ten working days of a written request, the following items:
  - 1. Available record drawings of existing conditions
  - 2. Available right-of-way plans of existing conditions
  - 3. Current list available to CFX of owners of all affected properties within the section.
  - 4. Sample plans to be used as guidelines for format, organization and content.
  - 5. Title searches of all affected properties for use by the Consultant in the preparation of the right-of-way maps.
  - 6. Contract unit prices from latest CFX construction projects.

### **5.02 Traffic Data**

- A. CFX will provide the following design traffic data:
  - 1. Current and design year ADT
  - 2. Current and design year peak hour volumes
  - 3. Turning movements at each intersection/interchange
  - 4. K, D and T factors
  - 5. Design speed - See Section 3.02, Geometry.
  - 6. AVI Percentages

### **5.03 Other**

- 1. Utility designates for the FON and roadway lighting within CFX right-of-way.

## **6.0 WORK PERFORMED BY CFX OR ITS DESIGNEE**

### **6.01 Right-of-Way Acquisition**

- A. If necessary, CFX, or its designee, will review all right-of-way plans, parcel sketches and legal descriptions prepared by the Consultant. CFX will handle all appraisals, negotiations, relocations, condemnation, and property settlements.

### **6.02 Utility Agreements**

- A. CFX will support, as necessary, the Consultant's acquisition of information required for utility agreements.

### **6.03 Public Involvement**

- A. CFX will provide a moderator for all required public meetings and provide guidelines for the Public Involvement aspects of the project. The need for public meetings or public hearings will be determined by CFX. CFX will be responsible for mailings and advertisements for the public meetings.

### **6.04 Contracts and Specifications Services**

- A. CFX will prepare the necessary bid documents for the construction contract using plans, technical special provisions, and special specifications prepared by the Consultant.

### **6.05 Post-Design Services**

- A. CFX will be the principal initial contact for post-design questions and answer questions on a limited scope.

### **6.06 Environmental Permits**

- A. CFX will review and submit the environmental permit applications and coordinate with the Consultant on requests for additional information from the regulatory agencies.
- B. CFX will stake wetland lines and coordinate agency site visits. CFX will also prepare the wetland and wildlife analysis and documentation for the permits.

### **6.07 Conceptual Specialty Design**

- A. CFX will provide a conceptual major guide signing plan.
- B. CFX will provide conceptual aesthetics design and treatments for structures.

## **7.0 ADMINISTRATION**

### **7.01 Central Florida Expressway Authority**

- A. CFX's Project Manager will administer the Consultant services detailed in this scope.
- B. All contractual payments and changes shall be reviewed and approved by CFX's Project Manager.

### **7.02 CFX's Project Manager**

CFX's Project Manager will:

- A. Conduct ongoing reviews of the Consultant's progress in performing the work and furnish technical comments in a timely manner.
- B. Review the Consultant's billings.
- C. Review and evaluate the Consultant's requests for extension of time and supplemental agreements and recommend appropriate action.
- D. Review all correspondence with public agencies prior to the Consultant's mailing of any correspondence except for requests for information.
- E. Coordinate the distribution of public information.
- F. Coordinate the data (including documentation of prior rights, cost estimates and plans) necessary for CFX to prepare and execute all utility and railroad agreements.
- G. Conduct an introductory meeting to deliver relevant information and explain the administration process.
- H. Review the Consultant's Quality Control program and the Consultant's conformance to the Quality Control Program.
- I. Provide a focal point contact for all questions, requests, and submittals.
- J. Provide a system to monitor the Consultant's schedule, progress and key milestone submittal dates.

### **7.03 Consultant**

- A. The Consultant has total responsibility for the accuracy and completeness of the construction contract documents and related design prepared under



this project and shall check all such material accordingly. The plans will be reviewed by CFX for conformity with CFX procedures and the terms of the Contract, as well as coordination with adjacent design contracts. Review by CFX does not include detailed review or checking of design of major components and related details or the accuracy with which such designs are depicted on the plans. The responsibility for accuracy and completeness of such items remains solely that of the Consultant. The Consultant shall:

1. Establish, furnish and maintain suitable office facilities to serve as the project office for the duration of the project at a location acceptable to CFX.
2. Maintain an adequate staff of qualified support personnel to perform the work necessary to complete the project.
3. Establish internal accounting methods and procedures for documenting and monitoring project costs.
4. Establish and maintain contract administration procedures, which will include supplemental agreements, time extensions and subcontracts.

#### 7.04 Project Control

A. The Consultant shall provide data for CFX's Management Information System to monitor costs and manpower, and report progress. This project control system may include features to:

1. Determine and highlight critical path work from initial plans as work progresses.
2. Identify progress against schedule for each identified work item.
3. Forecast completion dates from current progress.
4. Highlight rescheduled work in any area which is out of required sequence.
5. Highlight rescheduling that has overloaded any physical area that requires more resources than originally allocated.
6. Forecast future conflicts in any area.

#### 7.05 Work Progress

A. The Consultant shall meet with CFX's Project Manager on a bi-weekly

basis (or more often if necessary) and provide written progress reports which describe the work performed on each task. The dates and times of these meetings will be established by CFX. Two working days prior to each progress meeting, the Consultant shall provide CFX's Project Manager with a draft copy of the Progress Report and a typewritten agenda for the meeting. The Consultant shall prepare typewritten meeting minutes and submit them to CFX's Project Manager within five working days after the meeting. The minutes shall indicate issues discussed and the resolution or action required to resolve any issues.

#### 7.06 Schedule

- A. Within twenty (20) calendar days after receipt of the Notice to Proceed, the Consultant shall provide a schedule of calendar deadlines in a format prescribed by CFX.

#### 7.07 Project Related Correspondence

- A. The Consultant shall furnish copies of all written correspondence between the Consultant and any party pertaining specifically to this project to CFX for its records within one (1) week of the receipt or mailing of said correspondence. The Consultant shall record and distribute the minutes of all meetings pertaining to this project.

#### 7.08 Quality Control

- A. The Consultant has total responsibility for the accuracy and completeness of the plans and related designs prepared under this project and shall check all such material accordingly. Consultant shall have a quality control plan in effect during the entire time work is being performed under the Contract. The plan shall establish a process whereby calculations are independently checked, plans checked, corrected and back checked. All plans, calculations, and documents submitted for review shall be clearly marked as being fully checked by a qualified individual other than the originator. The FDOT plan review checklist shall be attached and appropriate items checked.
- B. The Consultant's quality control plan shall be submitted to CFX within fifteen (15) working days of receipt of written notice to proceed.

#### 7.09 Consultant Personnel

- A. The Consultant's work shall be performed and/or directed by the key personnel identified in Exhibit "D". Any changes in the indicated key personnel or the Consultant's office in charge of the work shall be subject to review and approval by CFX.

#### 7.10 Site Visit

- A. The Consultant shall arrange a site visit within ten (10) calendar days of receipt of written Notice to Proceed, if necessary. Consultant personnel assigned to perform the work on the project shall attend. CFX representatives will be present. Within seven calendar days of the site visit, the Consultant shall issue to CFX a brief written report including observations, discussions, and any questions pertaining to the scope or level of effort of the project. The purpose of this visit is to acquaint key personnel with the details and features of the project to facilitate the design process.

#### 7.11 Acceptability of the Work

- A. The plans, design, calculations, reports and other documents furnished under this Scope of Services shall conform to the "standards-of-the industry" quality as acceptable to CFX. The criteria for acceptance shall be a product of neat appearance, well organized, accurate and complete, technically and grammatically correct, checked in accordance with the approved Quality Control program, and have the maker and checker identified. The minimum standard of appearance, organization and content of drawings shall be similar to the type produced by the Florida Department of Transportation and CFX.

#### 7.12 Design Documentation

- A. The Consultant shall submit any design notes, sketches, worksheets, and computations to document the design conclusions reached during the development of the construction contract documents to CFX for review.
- B. The design notes and computations shall be recorded on 8-1/2" x 11" computation sheets, appropriately titled, numbered, dated, indexed and signed by the designer and checker. Computer output forms and other oversized sheets shall be folded or legibly reduced to 8-1/2" x 11" size. The data shall be bound in a hard-back folder for submittal to CFX.
- C. A CD/DVD with electronic (PDF Format) copies of the design notes and computations shall be submitted to CFX with each review submittal. When the plans are submitted for 90% review, the design notes and computations corrected for any CFX comments shall be resubmitted. At the project completion (bid set), one (1) hard copy of the final set of the design notes and computations, sealed by a Professional Engineer, registered in the State of Florida, shall be submitted with the record set of plans and tracings.
- D. Design notes and calculations shall include, but are not necessarily limited to, the following data:

1. Field survey notes and computations.
2. Design criteria used for the project.
3. Geometric design calculations for horizontal alignment.
4. Vertical geometry calculations.
5. Right-of-way calculations.
6. Drainage computations.
7. Structural design calculations.
8. Geotechnical report.
9. Hydraulics Report for each bridged stream crossing.
10. Earthwork calculations not included in the quantity computation booklet.
11. Calculations showing cost comparisons of various alternatives considered.
12. Calculations of quantities.
13. Documentation of decisions reached resulting from meetings, telephone conversations or site visits.
14. Lighting and voltage drop calculations.
15. Lighting service letter from the power company stating the following: service voltage, type of service (overhead or underground), location of power company service point, and any other power company requirements.

#### 7.13 Reviews and Submittals

- A. Review and coordination of the Consultant's work by CFX shall continue through the project development process
- B. Formal submittals for review shall be made to CFX when the plans have been developed to the following levels of completion:
  1. Preliminary Engineering (Memorandum) (1 CD/DVD with all files,

3 sets and 1 .PDF required)

2. 30% Roadway Plans (1 CD/DVD with PDF's of submittal package, one (1) hard copy of plans to CFX GEC and two (2) hard copies of plans to the CFX project manager)
  3. 30% Bridge and Structural Plans (1 CD/DVD with PDF's of submittal package, one (1) hard copy of plans to CFX GEC and two (2) hard copies of plans to the CFX project manager)
  4. 60% Roadway and specifications, Geotechnical Report (1 CD/DVD with PDF's of submittal package, one (1) hard copy of plans to CFX GEC and two (2) hard copies of plans to the CFX project manager)
  5. 60% Bridge Plans required only on Category 2 bridges.
  6. 90% Bridge and Structural Plans (1 CD/DVD with PDF's of submittal package, one (1) hard copy of plans to CFX GEC and two (2) hard copies of plans to the CFX project manager)
  7. 90% Roadway and specifications (1 CD/DVD with PDF's of submittal package, one (1) hard copy of plans to CFX GEC and two (2) hard copies of plans to the CFX project manager)
  8. 100% Roadway, Bridge and specifications, Geotechnical Report (1 CD/DVD with PDF's of submittal package, one (1) hard copy of plans to CFX GEC and two (2) hard copies of plans to the CFX project manager)
  9. Pre-Bid Plans (1 CD/DVD with PDF's of submittal package, one (1) hard copy of plans to CFX GEC and two (2) hard copies of plans to the CFX project manager)
  10. Bid Set (1 set signed and sealed plans, 1 set "clean" plans, 1 set signed and sealed reports and one (1) CD/DVD with .PDF of all plans and reports)
- C. Formal review submittals shall include copies as listed above. 8-1/2" x 11" and 11" x 17" documents do not require reproducible copies.
- D. Preparation and distribution of roadway and ROW plans to other than CFX or CFX GEC will not be made until approved by CFX.
- E. The format of review submittal plans shall conform to the FDOT Plans Preparation Manual, except as amended by CFX.

- F. Due to the compact schedule of the design, review and construction process, any modification to the agreed submittal dates will require a letter from the Consultant to CFX giving:
  - 1. The reason for the delay.
  - 2. The design components impacted.
  - 3. Proposed methods to maintain submittal dates.
- G. The Consultant shall submit all CADD files, including GEOPAK files, use in the preparation of the plans and right of way mapping on compact disk with the final submittal.

#### 7.14 30% Roadway Plan Submittal

- A. At the completion of this phase, design and plan development should be approximately 30 percent complete except stormwater pond designs. The designs of the stormwater ponds shall be at 90% complete. The following material shall be developed and submitted for review:
  - 1. Key Map Prepared
    - a) Location map shown complete with destinations, ranges and townships.
    - b) Beginning and ending stations shown.
    - c) Any equations on project shown.
    - d) Project numbers and title shown.
    - e) Index shown.
  - 2. Drainage Map Prepared
    - a) Existing culvert sizes and elevations.
    - b) Horizontal alignment shown.
    - c) Drainage areas and flow arrows shown.
    - d) High water information shown.
    - e) Beginning and end stations shown along with any equations on project.

- f) Interchange supplemental maps prepared.
- 3. Typical Section Sheets
  - a) Ramp typical sections developed.
  - b) Pavement structure shown.
  - c) Special details developed.
  - d) General notes shown.
- 4. Plan and Profile Sheets
  - a) Centerline plotted.
  - b) Reference points and bench marks shown.
  - c) Existing topography.
  - d) Base line of surveys, curve data, bearings, etc. shown.
  - e) Beginning and end stations (project and construction).
  - f) Geometric dimensions.
  - g) Proposed and existing limited access right-of-way lines.
  - h) Existing ground line.
  - i) Proposed profile grade.
  - j) Type, size and horizontal location of existing utilities.
  - k) Drainage structures and numbers are shown
  - l) Drainage ponds are shown.
- 5. Cross Sections
  - a) Existing ground line.
  - b) Preliminary templates at critical locations (not to exceed 500 feet).
  - c) Existing utilities shown.

6. Interchange Layout and Ramp Profiles

- a) Geometric dimensions.
- b) Proposed profile grades.

7. Right-of-Way Control Survey

8. Signing and Pavement Markings

- a) Striping layout.
- b) Sign structure locations.

7.15 30% Bridge and Structural Plan Submittal

- A. At completion of this phase, design and plan development should be approximately 30 percent complete. The Consultant shall refer to FDOT Structural Design Guidelines for plan contents and submittal requirements. Preliminary geotechnical results and recommendations should also be included with this submittal.

7.16 60% Roadway Plan Submittal

- A. At completion of this phase, design and plan development should be approximately 60 percent complete except stormwater pond designs. The designs of the stormwater ponds shall be at 100% complete. The following material shall be developed and submitted for review:

1. Key Map

- a) Project description and number shown.
- b) Equations, exceptions and bridge stations shown.
- c) North arrow and scale included.
- d) Consultant and CFX sign-off included.
- e) Contract set index complete.
- f) Index of sheets updated.

2. Drainage Maps



- a) Flood data shown.
  - b) Cross drains and storm sewer shown.
  - c) Bridges shown with beginning and ending stations.
  - d) Interchange supplemental sheets updated.
3. Typical Section Sheets
- a) All required typical sections are included.
  - b) Limited access right-of-way lines are shown.
  - c) Design speed and traffic are shown.
  - d) Special details have been completed.
  - e) Station limits of each typical section are shown.
4. Plan and Profile Sheets
- a) Match lines shown.
  - b) Limited access right-of-way lines shown.
  - c) Stations and offset shown for all fence corners and angles.
  - d) All work shown should be within right-of-way or proposed easement.
  - e) Drainage structures and numbers are shown.
  - f) Drainage ponds shown.
  - g) Curve data and superelevation included.
  - h) Pavement edges, shoulders and dimensions shown.
  - i) Project and construction limits shown.
  - j) Bridges shown with beginning and ending stations.
  - k) General Notes.
5. Drainage Structures

- a) Drainage structures plotted and numbered.
- b) Station location and offsets identified.
- 6. Cross Sections
  - a) Templates are shown at all stations.
  - b) Limited access right-of-way lines are shown.
  - c) Cross section pattern sheet included.
  - d) Miscellaneous notes included.
  - e) Boring profiles.
- 7. Interchange Layouts, Ramp Profiles and Intersection Details
  - a) Geometric data shown.
  - b) Profiles finalized.
  - c) Coordinate data shown.
  - d) Limited access right-of-way lines shown.
  - e) Curve data shown.
  - f) Bearings and bridges shown.
  - g) Cross roads, frontage roads, and access roads shown.
  - h) Intersection details shown.
- 8. Traffic Control Plans
- 9. Utility Adjustments
- 10. Signing and Pavement Marking Plans
- 11. Highway Lighting Plans
- 12. Selective Clearing and Grubbing (if required)

**7.17 90 % Bridge and Structure Plan Submittal**

- A. At completion of this phase, design and plan development should be approximately 90 percent complete. The Consultant shall refer to FDOT Structural Design Guidelines for plan contents and submittal requirements.

**7.18 90% Roadway Plan Submittal**

- A. At completion of this phase, design and plan development should be approximately 90 percent complete. The following material shall be developed and submitted for review:

- 1. Key Map

- a) Length of Project with exceptions shown.
- b) Index of sheets updated.

- 2. Drainage Maps

- a) Drainage divides, areas and flow arrows shown.
- b) Elevation datum and design high water information shown.
- c) Disclaimer and other appropriate notes added.

- 3. Typical Section Sheets

- 4. Plan and Profile Sheets

- a) Curve Control Points (P.C., P.I., P.T.) flagged and labeled.
- b) Limits of side road construction.
- c) Angle and stationing for intersections.
- d) Treatment for non-standard superelevation transitions diagramed.
- e) General notes shown.
- f) Special ditches profiled.

- 5. Drainage Structures

- a) Existing structures requiring modifications are shown.


- b) Existing and proposed utilities are shown.
- 6 Soil Borings
  - a) Soils data and estimated high seasonal groundwater table shown.
- 7. Cross Section Sheets
  - a) Scale and special ditch grades shown.
  - b) Utilities plotted.
  - c) Sub-excavation shown.
  - d) Volumes computed and shown.
- 8. Utility Relocation Plans
  - a) Utility relocation plans prepared.
- 9. Traffic Control Plans
- 10. Signing and Pavement Marking Plans
- 11. Highway Lighting Plans
- 12. Selective Clearing and Grubbing (if required)
- 7.19 100% Roadway, Bridge, Structural and Right-of-Way Plans
  - A. At the completion of this phase, the design plans and special provisions shall be 100 percent complete.
- 7.20 Pre-Bid Plans
- 7.21 Bid Set

**CONSENT AGENDA ITEM  
#10**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 27, 2020

SUBJECT: Approval of Contract Award to The Balmoral Group, LLC for Design Consultant Services for the SR 528 Widening from Narcoossee Road to SR 417  
Project 528-160, Contract No. 001589

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The Board approved on November 14, 2019, the final ranking and authorization to negotiate with firms for the SR 528 Widening from Narcoossee Road to SR 417. Board award of the contract to The Balmoral Group, LLC is requested in the not-to-exceed amount of \$1,290,000.00.

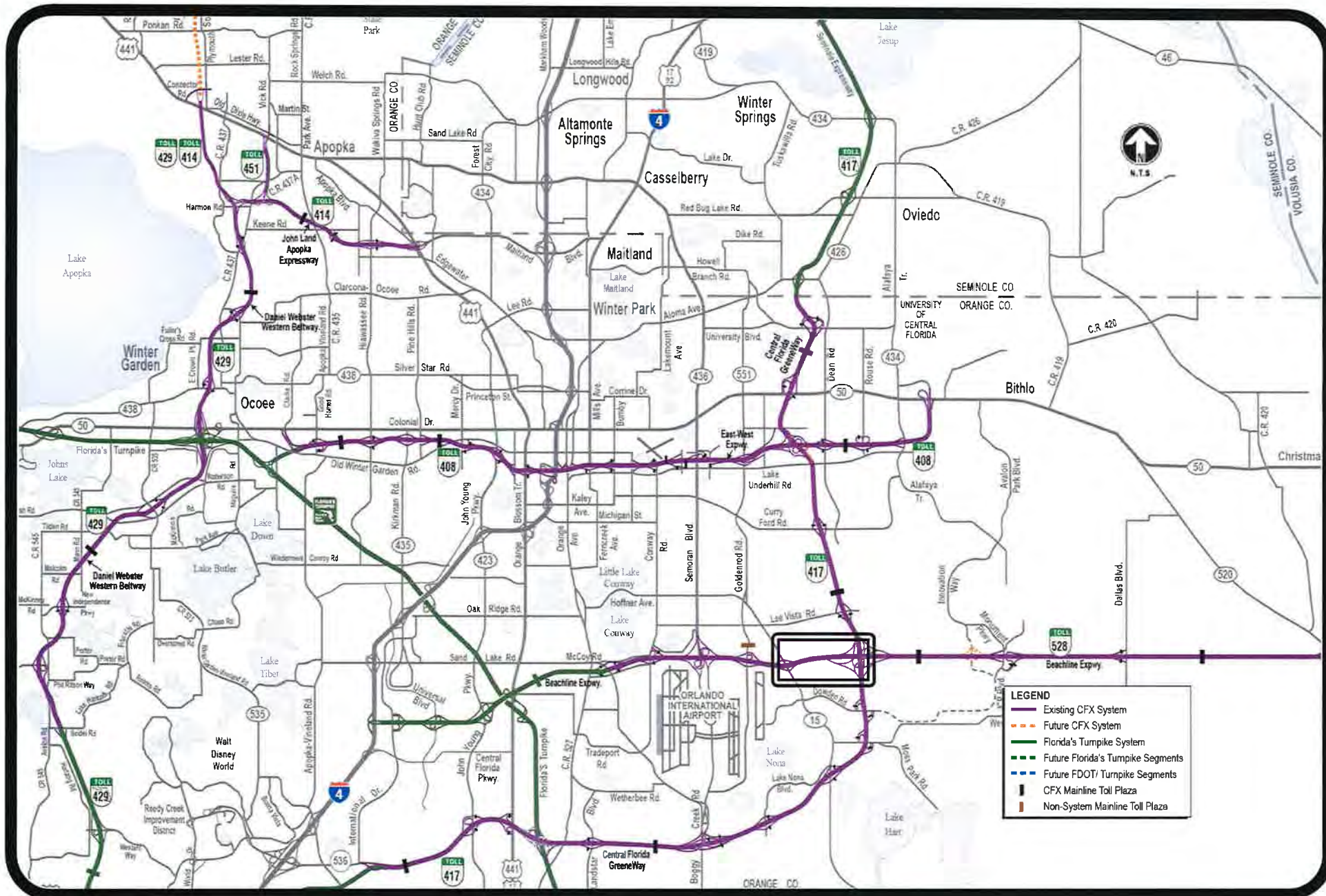
This project is included in the Five-Year Work Plan.

Reviewed by:



Will Hawthorne, P.E.  
Director of Engineering





Project Location Map for  
SR 528 Widening From Narcoossee Road to SR 417 (528-160)

# **AGREEMENT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
THE BALMORAL GROUP, LLC**

**SR 528 WIDENING FROM NARCOOSSEE ROAD TO SR 417**

**CONTRACT NO. 001589, PROJECT 528-160**

**CONTRACT DATE: FEBRUARY 13, 2020  
CONTRACT AMOUNT: \$1,290,000.00**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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



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

**FOR**

**SR 528 WIDENING FROM NARCOOSSEE ROAD TO SR 417**

**CONTRACT NO. 001589, PROJECT 528-160**

**DESIGN SERVICES**

**FEBRUARY 2020**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT, made and entered into this 13<sup>th</sup> day of February 2020, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a corporate body 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 The Balmoral Group, LLC, hereinafter called "CONSULTANT," registered and authorized to conduct business in the State of Florida, carrying on professional practice in engineering, with offices located at 165 Lincoln Ave., Winter Park, FL. 32789.

**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. DEFINITIONS.**

Reference herein to the Project Manager shall mean CFX's Director of Engineering or his authorized designee. The Project Manager 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 Project Manager and the CONSULTANT shall comply with all of the directives of the Project Manager 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 Project Manager.

**2.0. SERVICES TO BE PROVIDED**

CFX does hereby retain the CONSULTANT to furnish certain professional services in connection with the design of SR 528 Widening from Narcoossee Road to SR 417 identified as Project 528-160 and Contract No. 001589.

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 rendering any of the services, 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.

The work covered by this Agreement as described in **Exhibit "A,"** includes the preparation of construction plans for one construction project. If the work is divided into more than one construction project by CFX's Project Manager, then the CONSULTANT shall supply construction plans for each project. A Supplemental Agreement will be required for the additional work.

All construction plans, documents, reports, studies and other data prepared by the CONSULTANT shall bear the endorsement of a person in the full employ of the CONSULTANT and duly registered by the State of Florida in the appropriate professional category.

After CFX's acceptance of construction plans and documents for the project, the original set of CONSULTANT's drawings, tracings, plans, maps and CADD files shall be provided to CFX, along with one record set of the final plans. The CONSULTANT shall signify, by affixing an endorsement (seal/signature, as appropriate) on every sheet of the record set, that the work shown on the endorsed sheets was produced by the CONSULTANT. With the tracings and the record set of prints, the CONSULTANT shall submit a final set of design computations. The computations shall be bound in an 8-1/2 x 11" format and shall be endorsed (seal/signature, as appropriate) by the CONSULTANT. Refer to **Exhibit "A"** for the computation data required for this Agreement.

The CONSULTANT shall submit a final set of reports and studies which shall be endorsed (seal/signature) by the CONSULTANT.

The CONSULTANT shall not be liable for use by CFX of said plans, documents, reports, studies or other data for any purpose other than intended by the terms of this Agreement.

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 five (5) year term from the date of the Notice to Proceed for the required project services as detailed in **Exhibit "A,"** with five one-year renewals at CFX's option. 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 CONSULTANT are satisfactory and adequate for CFX's needs. If a renewal option is exercised, CFX will provide CONSULTANT with written notice of its intent at least thirty (30) days prior to the expiration of the original term and subsequent renewal, if any.

The CONSULTANT agrees to commence the scheduled project services to be rendered within ten (10) calendar days from the date specified in the written Notice to Proceed from the Project Manager, which Notice to Proceed will become part of this Agreement. The CONSULTANT shall complete scheduled project services within the timeframe(s) specified in **Exhibit "A,"** or as may be modified by subsequent Supplemental Agreement.

### 4.0. PROJECT SCHEDULE

The CONSULTANT agrees to provide Project Schedule progress reports for each project in a format acceptable to CFX and at intervals established by CFX. CFX will be entitled at all times to be advised, at its request, as to the status of work being done by the CONSULTANT and of the details

thereof. Coordination shall be maintained by the CONSULTANT with representatives of CFX, or of other agencies interested in the project on behalf of CFX. Either party to the Agreement may request and be granted a conference.

In the event there are delays on the part of CFX as to the approval of any of the materials submitted by the CONSULTANT or if there are delays occasioned by circumstances beyond the control of the CONSULTANT, which delay the scheduled project completion date, CFX may grant to the CONSULTANT by "Letter of Time Extension" an extension of the scheduled project completion date equal to the aforementioned delays. The letter will be for time only and will not include any additional compensation.

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 in a design capacity and shall have due regard for acceptable standards of design 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.

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:

Comprehensive Engineering Services, Inc.	Class I
DRMP, Inc.	Class I
DRMP, Inc. (Survey)	Class II
Geotechnical and Environmental Consultants, Inc.	Class II
WBQ Design & Engineering, Inc.	Class I
WBQ Design & Engineering, Inc. (Survey)	Class II
Base Consultants, Inc.	Class I

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.

#### 6.0. 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 \$1,290,000.00 for the initial five-year term of this Agreement. 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 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) 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 obligations in this paragraph shall 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.

#### 7.0. 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 165 Lincoln Ave., Winter Park, FL. 32789.

Notwithstanding Section 17, 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](mailto: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 CONSULTANT shall allow public access to all documents, papers, letters, or other material as approved and authorized by CFX and subject to the provisions of Chapter 119, Florida Statutes, and made or received by the CONSULTANT in conjunction with this Agreement. Failure by the CONSULTANT to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by CFX.

The obligations in Section 7.0, Document Ownership and Records, shall survive the expiration or termination of this Agreement and continue in full force and effect.

## 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.

8.1 Limitation of Liability: Pursuant to SECTION 558.0035(1)(d), Florida Statutes, CONSULTANT maintains any professional liability insurance required under this contract. Therefore, pursuant to Section 558.0035(1)(c), Florida Statutes, an individual employee or agent of the CONSULTANT may not be held individually liable for damages resulting from negligence occurring within the course and scope of professional services rendered under this professional services contract

## 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 Section 6.0 are accurate, complete and current as of the date of this Agreement. It is further agreed that said price provided in Section 6.0 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, 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 in writing the Agreement or (b) notifying the CONSULTANT in writing 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 in accordance with **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 and 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 Section 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.

#### 11.0. ADJUSTMENTS

All services shall be performed by the CONSULTANT to the reasonable satisfaction of the Project Manager 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. 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 Executive Director and Supplemental Agreement(s) of such a nature as required may be entered into by the parties in accordance herewith. Disputes between the Project Manager and the CONSULTANT that cannot be resolved shall be referred to the 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 for consideration by the Executive Director; 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. 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 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 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/annual aggregate. 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) per claim / annual aggregate, 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.

In the event any of the aforementioned insurance policies provide greater coverage or greater limits than the minimum requirements set forth herein, then CFX shall be entitled to the full coverage and limits of such policies, and these insurance requirements will be deemed to require such greater coverage and greater limits.

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, 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 Section 7.0 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 or 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 mark, including trademarks, service marks, or any 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 Mark is utilized, the Mark shall be properly screened to insure all layers of the Mark 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. CONFLICT OF INTEREST AND STANDARD OF CONDUCT

No Contingent Fees. CONSULTANT warrants that it has not employed or retained any entity or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Contract, and that 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 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, and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission percentage, gift or consideration.

CONSULTANT 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. CONSULTANT acknowledges that it has read the CFX's Code of Ethics and, to the extent applicable, CONSULTANT 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, CONSULTANT 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.

CONSULTANT covenants and agrees that it and its employees, officers, agents, and subconsultants 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. The CONSULTANT agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

CONSULTANT 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 CONSULTANT, and that no such person shall have any such interest at any time during the term of this Agreement.

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.



#### 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. 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 this paragraph shall survive the expiration or termination of this Agreement and continue in full force and effect.

#### 21.0. 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.”

## 22.0. COMPANIES PURSUANT TO SECTION 287.135 AND 215.473

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

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

## 23.0. AVAILABILITY 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 CONSULTANT to that effect.

## 24.0. AUDIT AND EXAMINATION OF RECORDS

### 24.1 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.

24.2 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.

24.3 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) calendar 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.

24.4 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.

24.5 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.

24.6 The obligations in Section 24.0, Audit and Examination of Records, shall survive the expiration or termination of this Agreement and continue in full force and effect.

## 25.0. 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 25.0, Governing Law and Venue, shall survive the expiration or termination of this Agreement and continue in full force and effect.

## 26.0. 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: The Balmoral Group, LLC  
165 Lincoln Ave.  
Winter Park, FL. 32789  
Attn: Greg Seidel, P.E

The Balmoral Group, LLC  
165 Lincoln Ave.  
Winter Park, FL. 32789  
Attn: Byron Sprague, P.E

## 27.0. 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.

## 28.0. 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.

#### 29.0. ASSIGNMENT

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

#### 30.0. 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.

#### 31.0. 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.

#### 32.0. 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", Project Location Map [Note: Attach if applicable]  
Exhibit "F", Project Schedule [Note: Attach if applicable]  
Exhibit "G", Potential Conflict Disclosure Form

[ SIGNATURES TO FOLLOW ]

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 February 13, 2020.

**THE BALMORAL GROUP, LLC**

**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY**

BY: \_\_\_\_\_  
Authorized Signature

BY: \_\_\_\_\_  
Director of Procurement

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

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

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

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

ATTEST: \_\_\_\_\_ (Seal)  
Secretary or Notary

*Approved as to form and execution, only.*

\_\_\_\_\_  
*General Counsel for CFX*

## **EXHIBIT A**

### **SCOPE OF SERVICES**

**Exhibit A**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

**SCOPE OF SERVICES**

**FOR**

**S.R. 528 WIDENING  
Narcoossee Road to S.R. 417**

**PROJECT NO. 528-160**

**IN ORANGE COUNTY, FLORIDA**

**January 27, 2020**



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## **1.0 GENERAL**

### **1.01 Location**

- A. See EXHIBIT "E", Project Location Map.

### **1.02 Description**

The services will include final design and preparation of construction drawings / specifications for the proposed S.R. 528 outside widening from Narcoossee Road to SR 417. Specifically, the project consists of widening to the outside to accommodate an additional general use travel lane in the eastbound direction, widening to the inside to accommodate the appropriate inside shoulder width, and widening to provide a two-lane exit at SR 417. Additional elements include milling & resurfacing, surveying, drainage evaluation and design, permitting, lighting, signing and pavement markings, ITS (fiber optic network), maintenance of traffic, utility design and coordination, geotechnical analysis, scheduling and project control, progress reporting and other tasks and associated activities.

### **1.03 Purpose**

- A. The purpose of this Exhibit is to describe the scope of work and responsibilities required in connection with Final Engineering and Final Construction Drawings and Documents for the proposed eastbound S.R. 528 outside widening from Narcoossee Road to SR 417.
- B. The Consultant shall perform those engineering services as required for final roadway/drainage plans, final lighting plans, final traffic control plans, utility coordination and final utility adjustment plans, final ITS (fiber optic network) plans, final signing and pavement marking plans and preparation of a complete environmental resource application (or permit modification) including 100% storm water management.
- C. CFX's Project Manager will provide contract administration, management services, and technical reviews of all work associated with the preliminary and final designs.
- D. It is understood that references throughout this document to items of work and services to be performed are the responsibility of the Consultant unless otherwise expressly stated as the responsibility of others.

### **1.04 Organization**

- A. CFX's Project Manager will administer the Consultant services detailed

in this scope. The following sections define the duties and obligations of CFX and the Consultant.

1.05 Term of Agreement for Design Services

- A. The term of the Agreement to perform the required design services shall be within twelve (12) months from notice to proceed, including all reviews. Any fast track of services will be at the direction of CFX's Project Manager.
- B. The Consultant may continue the design efforts while design submittals are being reviewed. Doing so, however, in no way relieves the Consultant of the responsibility to incorporate review comments into the design, nor does it entitle the Consultant to any additional design fees as a result of making changes due to review comments.

1. Project Milestones:

The Consultant will prepare a tabulation of major project milestones.

2. Project Schedule:

The Consultant shall include a schedule of major design tasks.

## **2.0 STANDARDS**

- A. The applicable design and construction standards and policies of the Florida Department of Transportation, Federal Highway Administration (FHWA), American Association of State Highway and Transportation Officials (AASHTO), Transportation Research Board (TRB), Standard Building Code, CFX's Design Practices and Standard Notes and CFX's Guidelines for Preparation of Signing and Pavement Marking Plans shall be followed throughout the design and construction of the project unless specifically stated otherwise. The editions and updates of the applicable standards and policies in effect at the time of Contract execution shall be used as follows for this project:
1. Division II, Construction Details, and Division III, Materials, of the FDOT Standard Specifications for Road and Bridge Construction, 2019 edition, and updates thereafter, shall be used for this project.
  2. The FDOT Standard Plans
  3. The FDOT Design Manual
  4. The FDOT Basis of Estimates Handbook
  5. The AASHTO Policy on Geometric Design of Highway and Streets (Green Book)
  6. The FHWA Manual on Uniform Traffic Control Devices (MUTCD)

### **3.0 DESIGN CRITERIA**

#### **3.01 General**

Design of this project will be guided by the basic design criteria listed below.

- A. The design criteria listed in this section and Project Design Directives, provided by CFX during the course of the project, may supplement the Project Design Guidelines.
- B. Design year – 2045
- C. Design vehicle – WB-62FL
- D. Along with the 30% design submittal, the Consultant shall provide a tabulation of all applicable drainage and stormwater management criteria from Federal, State and local agencies and indicated which will be used for all segments and portions of the project. Unless otherwise directed by CFX, the Consultant shall use the most restrictive or conservative criteria applicable.

#### **3.02 Geometry**

- A. The following criteria are to be incorporated into the design:

<u>DESIGN ELEMENT</u>	<u>EXPRESSWAY</u>		<u>CROSSROADS/ COLLECTORS</u>
	<u>MAINLINE</u>	<u>RAMPS</u>	
<u>Design Speed, MPH</u>	70 mph	30 mph (Loop) 50 mph (Diamond) 50 mph (Directional)	30 Local 45 Urban 50 Rural
<u>Horizontal Alignment</u>			
a. Max. Curve, Degrees	3° 30'	24° 45' Loop 8° 15' Diamond 8° 15' Directional	20°
b. Max. Superelevation, ft. /ft.	0.10	0.10	0.05 Urban 0.10 Rural
c. Lane Drop Tapers	70:1	50:1	
d. Transitions	Use spirals for curves > 1° 30'	Use spirals for curves > 1° 30'	Use spirals for curves > 1° 30'
<u>Vertical Alignment</u>			
a. Max. Grade	3%	5% to 7% (30 mph) 3% to 5% (50 mph)	5% Arterial Rural 7% Collector Rural
b. Vertical Curvature (K) (K=Len./%grade change)			
Crest	506 FDOT 290 to 540 AASHTO	31 (30 mph) 136 (50 mph) 110 to 160 Other (AASHTO)	31 to 136
Sag	206 FDOT 150 to 200 AASHTO	31 (30 mph) 136 (50 mph) 90 to 110 Other (AASHTO)	37 to 96
c. Decision Sight Dist., ft.	Refer to AASHTO	N/A	N/A
<u>Cross Sections</u>			
a. Lane Widths, ft.	12	12 dual lanes 15 min. single lane	12 inner lanes 12-16 outer lanes
b. Shoulder width, ft.			
Right	<u>4-Lane</u> 12 (10 paved)	<u>Single Lane</u> 6 (4 paved)	8 (4*paved)
Left	8 (4 paved)	6 (2 paved)	8 (2 paved)
			* min. 5' paved FDOT



<u>DESIGN ELEMENT</u>	<u>EXPRESSWAY</u>		<u>CROSSROADS/ COLLECTORS</u>
	<u>MAINLINE</u>	<u>RAMPS</u>	
Right	<u>6-Lane</u> 12 (10 paved)	<u>Dual Lane</u> 10* (8* paved)	
Left	12 (10 paved)	8 (4 paved) (* add 2' for interstate)	
<u>Bridges, ft.</u>	<u>4-Lane</u>	<u>Single-Lane</u>	
Right	10	6	
Left	6	6	
	<u>6-Lane</u>	<u>Dual Lane</u>	
Right	10	10	
Left	10	6	
c. Cross Slopes			
1. Traffic Lanes	2% (4-lane) 3% or tbd (6-lane)	2%	2%
2. Bridge Lanes	2% typ. (no break)		
3. Left Shoulder	Match Mainline	5%	5%
4. Right Shoulder	Match Mainline	6%	6%
d. Median Width (4-lane), ft. (E.O.P./E.O.P.)	64' (typical) 26' (with barrier)	N/A	22' or 40'
Lateral Offset	FDM Table 215.2.4	FDM Table 215.2.4	FDM Table 215.4
Vertical Clearance, ft.			
a. Over Roadway*	16.5	16.5	16.5
b. Overhead Signs	17.5	17.5	17.5
c. Over Railroad	23.5	23.5	N/A

#### Ramp Operations

- Two thousand (2,000) ft. between entrance and exit terminals – full freeways
- Six hundred (600) ft. between exit and entrance terminals
- Single Lane Entrance Ramp Parallel
- Exit Ramp Taper of 550 ft. (3° – divergence)

#### Right of Way

- Ten (10) ft. from back of walls or limit of construction.
- Two (2) ft. from back of sidewalk on frontage roads.
- Drainage and construction easements as required
- Limited access right-of-way limits per Index 450
- Right of way limits for ramps is based upon limit of construction plus 10 feet.

### **3.03 Bridge and Other Structures**

- A. All plans and designs shall be prepared in accordance with the following standards and specifications in effect at the time of contract execution: AASHTO LRFD Bridge Design Specifications, FDOT Structures Manual, FDOT Design Manual, FDOT Standard Plans, FDOT Load Rating Manual, except as otherwise directed by CFX.**

#### **4.0 WORK PERFORMED BY CONSULTANT**

The Consultant shall be responsible for the work outlined in this Section. The work shall conform to the standards, criteria, and requirements of this Scope of Services.

##### **4.01 Design Features**

- A. The work required for this project includes preparation of final construction drawings and specifications as well as the preparation of a complete environmental resource application.
- B. Major elements of the work include the following:

The services will include final design and preparation of construction drawings / specifications for the proposed SR 528 outside widening from east of Narcoossee Road (Station 905+00 +/-) to east of the exit to SR 417 (Station 1015+00 +/-). Specifically, the project consists of milling and resurfacing the existing pavement from west of Narcoossee Road to Station 947+00 +/- to remove the existing outside lane drop, widening to the outside for the additional general use lane, widening to the median to accommodate appropriate inside shoulder width, and to the outside to provide a two-lane exit to SR 417. Additional elements include milling & resurfacing, surveying, drainage evaluation and design, permitting, lighting, signing and pavement markings, ITS, maintenance of traffic, utility design and coordination, geotechnical analysis, scheduling and project control, progress reporting and other tasks and associated activities.

##### **4.02 Governmental Agencies**

- A. The Consultant shall coordinate with and assist in securing the approval of all interested agencies involved. These agencies may include, but are not necessarily limited to Orange County, FDOT, SFWMD, FAA, and applicable Water Management District(s).

##### **4.03 Preliminary Design Report - Review**

- A. The Consultant shall review the project concept for proposed alternatives with regard to proposed design criteria, maintenance of traffic and construction feasibility.

At the completion of this review, the Consultant shall submit to CFX a written list of recommendations and proposed revisions, if any, to the basic layout. A conference will be scheduled by CFX's Project Manager with the Consultant to resolve any outstanding differences and agree upon a final layout for the project.

- B. Preliminary Design Report (PDR) - Review: Brief report addressing the following items:
1. Add parallel deceleration lane to create the two-lane exit to SR 417 including necessary widening along the existing ramp.
  2. Pavement analysis
  3. Drainage and permitting approach
  4. Hydroplaning Analysis
  5. Adjacent project coordination including LED lighting conversion by 528-143 and rail construction by Brightline Trains

#### 4.04 Surveys and Mapping (**DRMP & WBQ**)

- A. All Surveying and Mapping shall be performed under the direction of a Surveyor and Mapper properly licensed with the Florida Board of Professional Surveyors and Mappers, under Chapter 472, Florida Statutes. The Consultant shall review data provided by CFX and provide complete field surveys suitable for contract document preparation.

Survey activities shall be coordinated with the Consultant's design team including roadway, drainage, structures, geotechnical, and other disciplines as required.

Field surveys shall be performed with minimal disruption of the normal traffic flow for the project. Field personnel shall use safety devices such as warning signs, traffic cones, warning lights, and safety vests at all times, according to the Florida Department of Transportation requirements. Advanced warning signs required when survey crews are working on CFX's system shall be made with 3M Scotchlite Diamond Grade Fluorescent orange roll up sign sheeting.

- B. Alignment (WBQ)

Right of Way dgn/geopak files and alignment dgn/geopak files (as available) to be provided to design team by CFX. Calculate/Locate Alignment and R/W for construction purposes. Alignment and R/W will not be set/staked in field. Alignment will be referenced by station and offset of control established in 27.1 and 27.2 and included in CTL/PNC sheets prepared in 27.5.

Research Recon Recover existing CL Survey and R/W monumentation per SR 528 Project 907 Right of Way Map, Eastern Beltway 775300-6440-401/402 Right of Way Map, Virgin Train Easement Surveys.

Prepare ALIGNRD01 & RW528-160\_RW Lines dgn files.

C. Reference Points (WBQ)

1. Utilize Right of Way dgn/geopak files and alignment dgn/geopak files (as available) provided to design team by CFX, control established in Task 27.1 and Task 27.2 and alignment/RW from Task 27.3. Prepare CTL/PNC sheets for Design Plans (mainline and side streets)

D. Bench Levels (WBQ)

1. The Consultant shall establish new benchmarks on points established in 27.1.

E. Topography (DRMP & WBQ)

1. Planimetric mapping and a digital terrain model (DTM), suitable for 1"=50' display scale shall be conducted by the Consultant.
2. Topographic survey of S.R. 528 (Eastbound only) from Narcoossee Rd to S.R. 417 will extend from the grass median of S.R. 528 to toe of slope and/or right of way fence. Survey data will be collected using a combination of Terrestrial Mobile LiDAR (TML), GPS and conventional methods.
3. The Consultant will obtain existing pavement elevations and cross slopes along the inside travel lane and outside travel lane every 100' from TML data.
4. Cross-sections will be performed at 1000' intervals along the mainline to verify DTM. (WBQ)
5. Additional topographic and DTM surveys, as needed for the project design, are the responsibility of the Consultant. These may include existing water bodies and pavement elevations.

F. Drainage Survey (WBQ)

Perform a 3D DTM Survey of off pavement area; from EB south edge of pavement to 25' past R/W and the grassed median within the project limits. Provide to DRMP for Data merge.

Perform a drainage survey including pipe type, location, size and flow line elevations.

G. Underground Utilities (DRMP)

Locate all underground utilities, horizontally and vertically as flagged by

respective utility companies or a qualified utility marking consultant. Provide soft excavation verifications as needed to verify location and at utility conflict areas. DRMP will provide survey support of a total of 240 geotechnical borings as described below:

QL-B (Designates): Designate of an estimate of 4 underground utilities lying within area of interest. According to Sunshine 811 (OneCall) Design Ticket # 347900623, there are 17 utility companies with infrastructure within the area to be investigated, but only 4 will be considered per current site conditions. ITS will be designated by CFX, DRMP will survey the ITS line only.

Utilities x 14,678 ft = 58,712 ft = 11.12 mi (Approx)

QL-A (Test Holes) - Verification Test Holes & Conflict Test Holes  
Estimate of 3 Verification test hole per utility to support designate effort  
4 utilities x 3 Test Holes = 12 Verification Test Holes. An estimate of 30 Test Holes for conflict resolution, 20 test holes to clear new light poles, single pole traffic signs. Clearance Holes consisting of a cross of five (5) test holes per clearance area for 3- Multi Pole Traffic Signs, 2-Overhead Sign Structures and 1-Cantilever Sign Structure.  $(6+4+1) * 5 = 55$  Test Holes.

Total Locates =  $12+45+20+55 = 117$  test Holes

H. Right-of-Way Ties (WBQ)

Locate right-of-way limits for construction purposes. No new right-of-way is anticipated.

I. Bridge Survey (N/A)

J. Jurisdictional Line Surveys (WBQ)

Perform Jurisdictional Line Surveys as needed for engineering design and permitting. Locate wetland flags delineated by CFX's GEC: anticipate 4 miles of wetland delineation (includes surveying flagging for surface waters or roadside ditches).

K. Geotechnical Surveys (DRMP)

Locate and/or stake boring locations as needed for geotechnical investigations. DRMP will provide survey support of a total of 240 geotechnical borings as described below:

- Roadway- 212 borings • Ponds/Swales- 16 borings • Piezometers- 4
- Signs- 5 borings • CCTV Poles- 3 borings.

Total Amount = 240

- L. Prior to construction, the Consultant shall re-flag and reset project horizontal and vertical control points and meet with the construction contractor to review these points.

- M. CFX ITS/FON (DRMP)

CFX will locate the FON one time at the beginning of design during the survey phase. Once the FON/ITS lines are flagged, the Consultant shall survey the located FON/ITS locations in the field. The ITS Consultant shall review the collected data before submitting it to the CFX GSC for review. The survey data collected will be included in the 30% plans submittal package.

The CFX GSC will review the plan submittals to ensure that the FON is shown correctly as actually located in the field. The CFX GSC will also determine if there are any overlapping projects that need to be represented in the design plans as a part of the ITS Component review of the 30% plans.

SUE will be done as required based on the Design Project Manager's recommendations and provided to CFX for their information.

#### 4.05 Geotechnical Investigation

- A. The Consultant shall perform a geotechnical investigation of the project in accordance with the requirements of CFX.
- B. Investigations shall be performed with minimal disruption of the normal traffic flow for the project. Field personnel shall use safety devices such as warning signs, traffic cones, warning lights, and safety vests at all times, according to CFX requirements. The Consultant shall adhere to all traffic control requirements when taking samples on existing roadways. A traffic control plan and permit may be required. Any advanced warning signs required when crews are working on CFX system shall be made with 3M Scotchlite Diamond Grade Fluorescent orange roll up sign sheeting.
- C. The work includes, but is not limited to, identifying roadway structural section requirements, LBR testing, design methods for the selected foundation, external stability evaluation at proprietary retaining walls, groundwater and estimated seasonal high groundwater level, pH and resistivity conditions requiring design considerations, soil shrinkage/swell characteristics, slope stability and benching in embankment/excavation locations, potential imported borrow sites and availability of structural section materials, location and depths of unsuitable material (muck), and design alternatives based on geotechnical findings; design values for active, at rest, and passive soil pressures;

allowable design loads or pressures for each foundation type, corrosion testing for structures and design of foundations for sign structures.

- D. The results of the geotechnical investigation shall be contained in a Geotechnical Report which shall be submitted to CFX's Project Manager for approval. The geotechnical investigation shall include all necessary laboratory testing of materials.
- E. Upon approval of the Geotechnical Report, the Consultant shall proceed with preparation of the pavement and foundation designs.
- F. Boring profiles shall be included on cross-section sheets in the contract plans and include the boring number, station, offset, soil legend, observed water table, design high water elevation and geotechnical consultant's address. A boring number and target symbol shall be shown at the appropriate location on the roadway and bridge plans.
- G. Roadway core samples shall be taken to determine the existing pavement section. The Consultant shall submit a plan to CFX for location approval.

#### 4.06 Contamination Impact Analysis

- A. The Consultant shall perform a contamination impact analysis of the project in accordance with the applicable rules and regulations of the FDOT Project Development and Environment Guidelines, Part 2, Chapter 20, the Florida Department of Environmental Protection (FDEP), and all other pertinent State or Federal agencies having jurisdiction, and the requirements of CFX.
- B. At a minimum, the Consultant shall conduct a windshield survey along the project corridor to identify any new sources of environmental contamination not reported in the referenced document(s).
- C. The testing of any sites including the use of ground penetrating radar, if required to complete the design and/or construction of the project, will be added to the Scope of Services by Supplemental Agreement.

#### 4.07 Pavement Design

- A. The Consultant shall prepare the pavement design as appropriate in accordance with the requirements of the FDOT Pavement Design Manual.
- B. The proposed pavement design recommendation, resulting from the



Consultant's analysis of the various alternatives, shall be contained in a Pavement Design Summary.

#### 4.08 Governmental Agency and Public Meetings

- A. Except as may be provided elsewhere in this Scope of Services, the Consultant shall have appropriate representatives present at such meetings, conferences or hearings as CFX may direct to secure necessary approvals and/or support of the project by county, municipal, or other governmental agencies. If so directed, the Consultant shall also have appropriate representatives present at meetings or conferences of CFX, its Chairman or staff.
- B. The Consultant shall assist CFX in presentations to various parties. The Consultant shall prepare exhibits pertaining to basic roadway improvements. CFX will prepare exhibits pertaining to aesthetic treatments and other design issues if applicable. This scope assumes presentations at one meeting with adjacent property owners.

#### 4.09 Environmental Permits

- A. CFX's Project Manager will review, coordinate and submit the applications for all environmental permits, including EPA's NPDES General Permits for Stormwater Discharges from Construction Sites. The Consultant shall provide all information, permit applications and data relating to Stormwater Management and Floodplain Impacts required for the permits to CFX. (CFX will be responsible for preparing all of the Wetlands and Protected Species analysis and documentation required for the permits.) The Consultant shall:
  - 1. Attend the pre-application meetings and site visits with CFX and regulatory agencies.
  - 2. Provide additional information requested at the pre-application by regulatory agencies for permits.
  - 3. Provide aerial maps at a 1"=400' scale which include SCS soils data, 100-year floodplain limits and proposed project.
  - 4. Provide all plans, calculations, sketches and reports required for permits except as described above.
  - 5. Provide copies of all drainage calculation, including pond routing nodal diagrams, for the project.

6. Assist CFX in responding to any requests for additional information made by regulatory agencies after the permit application is submitted.
7. Incorporate any changes required by changes in regulatory agency requirements during the course of the project. If this requires additional work by the Consultant a Supplemental Agreement will be prepared.
8. Prepare a list of adjacent landowners along with address and nine-digit zip code at all wetland encroachment sites.
9. Provide all permit application material in .pdf format.
10. The Consultant will provide dredge and fill sketched as required by the permitting agencies if applicable. Mitigation plans, if required, may be added as a supplemental service.
11. Determine extent of floodplain impacts, if any, and provide compensatory flood stages as required
12. Preliminary field evaluation of general land use and wildlife habitat within existing ROW, pond sites, and bridges
13. Pre-application meeting with SFWMD

#### 4.10 Utilities

##### A. Location

The Consultant shall obtain available utility mapping and information and identify all utilities within the general project limits to determine potential conflicts and relocations. Where a potential conflict exists, the Consultant may need to arrange to probe or expose ("pothole") the utility and survey the horizontal and vertical location of the utility line. The Consultant shall coordinate this effort with involved utility companies. All existing utilities shall be shown on appropriate preliminary construction plans. The Consultant's notes shall include the name and telephone number of contact persons for the construction contractor's use.

##### B. Utility Coordination

1. The Consultant shall identify utility owners within the project

limits and contact each to obtain utility system maps, plan mark-ups or equivalent utility sketches and/or as-built drawings depicting the location of their facilities. The Consultant shall prepare reproducible utility adjustments plans based on information provided by respective utility companies.

2. Private utilities will prepare design plans for the relocation of their facilities. If a utility cannot or will not prepare these design plans, the work shall be added to the scope by Supplemental Agreement and the Consultant shall prepare design plans for utility relocation for approval of the utility and review by CFX.
3. Where utility conflicts occur, which require utility relocation agreements between the affected utility and CFX, the Consultant shall prepare the necessary data/plans required for the agreements. The Consultant shall advise CFX seven days in advance of meetings with utility companies/agencies scheduled to discuss utility relocations.
4. The preparation and negotiation of the agreement will be performed by CFX's Project Manager. After approval of the agreement by the utility and CFX, the Consultant shall prepare reproducible utility adjustment sheets identifying proposed relocations with respect to the construction plans.
5. The Consultant shall prepare a utility conflict matrix to assist in identifying and resolving conflicts between utilities and proposed construction prior to completion of the plans.
6. The Consultant shall obtain utility work schedules from the utility companies for all utility relocation or adjustments required to accommodate construction.
7. The Consultant shall prepare the Utility Certification Letter certifying that all utility negotiations (full execution of each agreement, approved utility work schedule, technical special provisions written, etc.) have been completed with arrangements made for utility work to be undertaken and completed as required.
8. The Consultant shall make two utility contacts with the utility agencies (Phase II and Phase III) and hold a utility conference at each contact.

#### 4.11 Roadway Design

- A. A Typical Section Package will not be prepared for this project. Rather, typical sections for mainline and impacted interchange ramps will be prepared as part of the Preliminary Engineering Memorandum and submitted to CFX for review and approval.
- B. The Consultant shall design the geometrics for this project using the design standards included in the scope. The design elements shall include, but not be limited to, the horizontal and vertical alignments, cross section template development, lane width, shoulder widths, cross slopes, borders, sight distance, side slopes, lane transitions, superelevations, features of intersections, ramp terminal details, interchanges, and limited access points.
- C. The Consultant shall prepare designs and contract documents for the roadway improvements, including, but not necessarily limited to:
  - 1. Cover sheet (key sheet)
  - 2. Summary of Pay Items
  - 3. General notes
  - 4. Summary Quantities sheets
  - 5. Project Layout
  - 6. Typical roadway sections
  - 7. Typical roadway details
  - 8. Plans and profiles (plans at 1" = 50' scale)
  - 9. Interchange layout plans
  - 10. Ramp Terminal Details
  - 11. Cross-sections (with pattern plan) (1" = 20' horiz.) (1" = 10' vert.)
    - a. 1/2 section from WB EOT to southern LA R/W line (minimum)
    - b. Earthwork quantities
  - 12. Traffic Control Sheets including Temporary Drainage
  - 13. Utility Adjustment Sheets

14. Details
15. Special provisions
16. Special specifications

#### 4.12 Structures Design

- A. The Consultant shall prepare designs and contract documents for structural design including, but not necessarily limited to the following items.
  1. Sign structures:
    - a. Structural evaluation of the following existing structures:
      - i. Overhead truss with 1 DMS, 1 static sign panel)
    - b. Design of sign structures:
      - i. 2 Overhead Cantilever
      - ii. 3 Overhead Truss
      - iii. 3 Multi-Post ground mount signs

#### 4.13 Drainage Design

- A. As part of the drainage design requirements, the Consultant shall:
  1. Perform all drainage design in accordance with the approved criteria from Section 3.01D.
  2. Finalize the pond design at the 30% submittal. Modify existing ponds for additional treatment for the ramp modification areas and slight increase of mainline impervious area.
  3. Have its chief drainage engineer available at the scheduled (bi-weekly/monthly) team meetings to review progress and discuss problems.
  4. Notify CFX's Project Manager immediately if any deviation from approved design criteria is anticipated.
  5. Provide drainage/contour maps as needed used in the development of the drainage design to CFX for use in scheduled reviews. These maps will be returned to the Consultant along with review comments at the end of the review process.
  6. Provide copies of its internal quality control comments and calculations at the scheduled reviews.

7. Prepare a technical memorandum identifying existing drainage concerns along the corridor and potential fixes or modifications. Known existing drainage concerns include: None at this time.
  8. Critical duration analysis is not included in this effort and, if required, shall be added to the scope by Supplemental Agreement. A pond siting report is not required.
- B. The Consultant shall prepare designs and contract documents for drainage features including, but not necessarily limited to:
1. Connector pipes
  2. Drainage structure details
  3. Storm drain and culvert profiles and/or drainage cross-sections
  4. Lateral ditches/channels
  5. Outfall ditches/channels
  6. Retention/detention ponds/exfiltration system

#### 4.14 Roadway Lighting

- A. The Consultant shall provide a complete set of final roadway lighting documents in accordance with FDOT and CFX design criteria. These plans shall include replacement of all CFX lighting on the corridor to LED, including roadway and ramp fixtures, overhead sign lighting and underdeck lighting. The work shall include coordination with the local utility to provide electrical service. Plan sheet scale shall be at 1"=50' scale.
- B. The Consultant shall provide arc flash and short circuit analysis for Roadway Lighting.
- C. If required, CFX will provide a cut sheet for the type of lighting fixtures to be used for this project.
- D. The Consultant will prepare designs and contract documents for lighting design including, but not necessarily limited to the following items.
- Cover sheet (key sheet)
  - Tabulation of Quantities
  - General notes

- Pole data and Legend sheet
- Project Layout sheet
- Plans sheets (plans at 1"=50' scale)
- Service point detail
- Special Details

#### 4.15 Traffic Engineering

A. Traffic Data will be furnished by CFX.

B. Maintenance of Traffic Plans

1. The Consultant shall prepare maintenance of traffic plans at scale of 1"=100' to safely and effectively move vehicular and pedestrian traffic during all phases of construction. The designs shall include construction phasing of roadways ingress and egress to existing property owners and businesses, routing, signing and pavement markings, and detour quantity tabulations. Special consideration shall be given to the construction of the drainage system when developing the construction phases. Positive drainage must be maintained at all times.
2. The Consultant shall investigate the need for temporary traffic signals, signs, alternative detour roads, arrow boards, flagging operations, and the use of materials such as sheet pilings in the analysis. A certified designer who has completed the FDOT training course shall prepare the maintenance of traffic plan.
3. Traffic shall be maintained during all phases of project construction at all locations, including existing posted speed, lane widths and number of lanes entering and leaving Orlando International Airport unless determined by CFX and other governmental agencies. This includes meeting with the governmental agencies which may be impacted by the maintenance of traffic plans.

#### 4.16 Signing and Pavement Marking Plans

- A. The Consultant shall prepare designs and contract documents for final signing and pavement marking plans including layouts showing the locations of ground mounted and overhead signs, special sign details, lighting, and any structural or foundation requirements in accordance with applicable design standards. Any requirements for electric service shall be coordinated with the local electric utility.
- B. CFX will provide conceptual signing plans for the project as deemed necessary.

- C. Plan sheets will be developed at a scale of 1" = 50' (11"x17" format).
- D. The Consultant shall determine the existing structures that will be impacted by the widening and need to be replaced.
- E. Replace DMS 528-14.0 WB and place new DMS approaching the SR 417 interchange (2 DMS signs).

#### 4.17 Right-of-Way Surveys

- A. No additional right-of-way is anticipated for this project.

#### 4.18 Cost Estimates

- A. The Consultant shall prepare and submit to CFX construction cost estimates at the 60%, 90%, 100%, Pre-Bid and Bid Set submittals outlined herein. The estimate shall be based on the current unit prices as applied to the latest concept of the proposed construction.

#### 4.19 Special Provisions and Specifications

- A. The Consultant shall prepare and submit at the 90% level special provisions, special specifications, and technical special provisions for items, details and procedures not adequately covered by CFX's Technical Specifications.

#### 4.20 Fiber Optic Network (FON)

##### A. Fiber Optic Infrastructure Plans

1. The site construction plans shall be developed at a scale of 1" equals 50 feet. These plans shall include the relocation of all existing fiber optic duct banks, cables, manholes, and pull boxes in areas where the existing locations conflict with construction and as necessary to relocate the FON into the new paved shoulder. The Consultant shall identify existing physical features and utilities that will impact the construction and installation of the equipment. The Consultant shall review and modify standard FON details as necessary. Any devices that are damaged or impacted by the project shall be replaced. The Consultant shall provide arc flash and short circuit analysis for the FON components.
2. Fiber optic network (FON) plans shall include the following:
  - a. Roadway geometry
  - b. Rights-of-Way
  - c. Existing utilities within the right-of-way including CFX's FON



- d. Physical features affecting construction/installation (sign structures, light poles, fences, etc.)
- e. Manhole/Pull box locations and stub-out details (standard details provided)
- f. Device layout
- g. Device installation details
- h. Conduit installation details (standard details provided)
- i. Fiber optic cable route marker detail (standard details provided)
- j. Fiber count per conduit
- k. Communications interconnect
- l. Connectivity with the FON backbone conduits
- m. Fiber cable splice details for new or relocated fiber optic cabling.
- n. Controller cabinet, CCTV/ TMS pole, and foundation details for proposed CCTV/ TMS sites.
- o. Power interconnect, calculations to support conductor size, and details. Power conductors to each device location shall be sized to the maximum connected load in the cabinet plus 10A to accommodate other loads such as UPS battery charging or Maintenance equipment (lowering device drill, shop vac, etc.). Determination on conductor sizing and voltage drop limits are only required for proposed sites and existing sites where the total site load is being significantly modified.
- p. Design Methodology Report shall include voltage drop calculation, typical cabinet load summary table and CCTV sighting for proposed camera locations. Power conductors to each device location shall be sized to the capacity of the main breaker in the cabinet and shall also include a 10 Amp maintenance load that is carried to the end of each circuit.
- q. Grounding
- r. Table of quantities
- s. Special notes
- t. Maintenance of fiber operations (protection of existing FON through all phases of construction and cutover phasing to ensure continuous operation of existing ITS devices)
- u. All existing and proposed FON to be included and shown with roadway cross sections and drainage cross sections
- v. Replacement of existing CCTV sites and any necessary structures, foundations, attachment details, power service, fiber optic connections, and cabinets (standard details provided), in the event existing CCTV is not compatible with proposed construction.
- w. Replacement of existing data collection sensor (DCS) sites and any necessary structures, foundations, attachment details, power service, fiber optic connections, and cabinets (standard details

provided), in the event existing DCS would not survive project construction.

- x. Relocation of existing dynamic message sign (DMS) to be centered over the proposed roadway. If site is to be impacted by widening activities then the Designer is to replace the existing site and any necessary structures, foundations, attachment details, power service, fiber optic connections, and cabinets (standard details provided).
  - y. Replacement of existing traffic monitoring sites (TMS) sites and any necessary structures, foundations, attachment details, power service, fiber optic connections, and cabinets (standard details provided), in the event existing TMS would not survive project construction.
  - z. Conversion of any existing ITS devices within the project limits from point-to-point fiber optic modems to gigabit Ethernet field switches, relocation of video encoders from the mainline toll plazas to the CCTV cabinets and upgrading other cabinet equipment as needed to meet current CFX ITS equipment standards.
    - aa. Install new EB DMS approaching the SR 417 Interchange.
    - bb. Replace existing EB backbone/feeder conduit and place within proposed outside shoulder widening.
    - cc. Replace any existing Skyline DMS within the project limits to the new CFX standard. Coordinate with CFX staff to obtain manufacturer for new proposed sign.
3. Upgrading other cabinet equipment as needed to meet current CFX ITS equipment standards within the project limits The Consultant shall take the following information into consideration when developing the site construction plans:
- a. Minimize utility conflicts and adjustments.
  - b. Minimize traffic impact.
  - c. Accessibility and ease of equipment maintenance.
  - d. Safety of equipment maintenance personnel and the traveling public.
  - e. Maintain the existing FON system through all phases of construction.
  - f. Environmental conditions.
  - g. Concurrent/future CFX projects.
  - h. Compatibility with existing and proposed ITS infrastructure (e.g. CFX enhanced grounding standards for ITS devices, CFX surge suppression (TVSS) standards for ITS devices, etc.)
  - i. Leased conduits in CFX FON duct bank that are occupied by the fiber optic cable of other agencies or entities.
  - j. Location of proposed sound walls

**B. Splice and Cable Routing Details**

1. The Consultant shall provide splicing detail diagrams to document proposed fiber optic splices within and between manholes, ITS devices, tollbooths, and other junction points. This includes splice diagrams for re-termination of drop or end to end (butt) splices.
2. Proposed splicing tables shall include ITS device connectivity, fiber use, drop cable fiber identification, drop cable identification, backbone cable identification, translateral cable identification, backbone into mainline cable identification, and toll plaza patch panel jack.
3. The Consultant shall provide cable routing diagrams in CFX's standard format to document the functional connectivity between proposed fiber optic conduit and splices.

**C. Maintenance of Fiber Operations**

1. The Consultant shall provide a plan of action to ensure existing fiber optic network is not disrupted during construction operations.
2. The Consultant shall determine the sequence of fiber optic cable splices to minimize disruption to communications.

**D. Inside Plant Plans**

1. The Consultant shall be responsible for any data collection necessary to complete its design.
2. All equipment shown on the inside-plant construction plans shall be clearly delineated as existing, proposed, or by-others. The Consultant shall be responsible for identifying and detailing on the inside-plant construction plans with notes and drawings any make-ready work required. The Consultant shall also provide a table of quantities for all materials and equipment specified in the inside-plant construction plans.
3. The Consultant shall sign and seal final inside-plant construction plans by a licensed professional Electrical Engineer registered in the state of Florida. The inside-plant construction plans shall be subject to the review and approval of CFX.

- E. Standard CFX specifications will be provided to the Consultant. The Consultant shall review the specifications and modify them as necessary.

#### 4.21 Toll Plazas

- A. This project does not include modifications and/or improvements to any of the existing toll plazas, including any associated equipment and gantry systems.

#### 4.22 Arc Flash Hazard Analysis

- A. This project includes an Arc Flash Hazard Analysis for the roadway lighting and ITS load centers as detailed below:
  - 1. Identify the locations of lighting load centers at the power service-entrance locations. Conduct a field visit to obtain any necessary data required for the arc flash hazard analysis.
  - 2. Data Collection – Coordination is required with the local power company to gather technical information on their transformer and impedance, operating voltage, power service delivery type, and any other necessary information.
  - 3. Prepare a One-Line Diagram of the system for each individual power service-entrance location. The results of analysis such as short circuit studies and arc flash hazard assessment shall be placed on the diagram.
  - 4. Perform a short Circuit Study – Calculate the short circuit current in symmetrical RMS amperes for all buses or equipment, and for each possible operation mode.
  - 5. Calculate arc current for every required equipment or bus.
  - 6. Estimate arcing time by plotting Time-Current Curve and obtaining the trip time of branch and main circuit breakers.
  - 7. Estimate arc flash incident energy for the equipment at the given distances. Evaluate incident energy for each type of possible connection and arc current changing through the series of breaker operations.
  - 8. Determine the arc flash boundary.
  - 9. The arc flash hazard analysis shall be documented in a detailed report. The report should include the following items.
    - 10. The name of person performing the assessment
    - 11. The date of assessment.
    - 12. All data collected and used in the assessment, including protective device settings.
    - 13. Assumptions used in the absence of data.
    - 14. The name of the software and the revision.
  - 15. Provide documentation for all results related to incident energy and arc flash boundary for each equipment.
  - 16. Arc Flash Labeling – Include provisions in the plans or specifications to furnish and install labels. Arc flash labels are to

be placed on exterior cover of equipment at the power service-entrance locations. Arc flash labels should be located in a place that is easily visible and readable from some distance. The label shall include nominal voltage, arc flash boundary, and site-specific level of personal protection equipment, minimum arc rating of clothing, available incident energy and the corresponding working distance.

#### 4.23 Post-Design Services

- A. Services shall begin after authorization by CFX. The Consultant compensation for post-design services may be added by Supplemental Agreement and shall be at an hourly rate, inclusive of overhead, profit and expenses, and exclusive of travel. No compensation will be made for correction of errors and omissions.
- B. The Consultant shall support the post design process as follows:
  - 1. Answer questions relative to the plans, typical sections, quantities and special provisions.
  - 2. Make any necessary corrections to the plans, typical sections, quantities, notes, etc., as may be required.
  - 3. Attend pre-award meeting with construction contractor, CFX, and CFX's CEI.
- C. The Consultant shall, prior to the pre-bid conference, be prepared to walk the project with CFX's CEI to discuss the plans and details. The Consultant shall be prepared to attend the pre-bid conference and respond to questions related to the plans, details, and special provisions.
- D. The Consultant shall prepare any addenda required to clarify the work included in the construction contract documents. Addenda may be required based on the project inspection with the CEI, or questions developed in the pre-bid conference, or conditions discovered by bidders during the bid period.
- E. The Consultant shall be available to respond to questions in the field that may arise relative to the plans, details or special provisions during construction. The Consultant shall periodically visit the project site to observe the progress of construction on the project. This visit will not replace the formal construction inspection by CFX. It is intended to provide the opportunity of the design team to observe whether the work is being performed in general conformance with the project plans. Written memos of all such field trips shall be submitted to CFX within five working days of the trip.
- F. The Consultant shall review and approve shop drawings for structural, lighting, signing, traffic signal elements, and toll plaza shop drawings. This work will include the erection procedure plans, review proposals for substitutions, develop supplemental agreements, and provide other engineering services required to facilitate construction of the project.

Reviews will be conducted and returned within two weeks from receipt of information.

- G. The Consultant shall appoint a responsible member of the firm to be the contact person for all post-design services. The person should be continually available during the course of construction for review of design plans.
- H. The Consultant shall make every reasonable effort to process any material presented for review in a prompt manner recognizing a construction contract is underway.
- I. The Consultant shall attend partnering meetings as requested by CFX's Project Manager. The Consultant shall also attend progress/coordination meetings as requested by CFX's Project Manager including, but not limited to, the Notice to Proceed meeting.
- J. Approved design bridge load ratings were obtained by the Consultant under the final design phase of this contract. The Contractor shall be responsible for revising and resubmitting the load ratings if changes to the bridge design occur during construction. Otherwise, the Consultant shall provide written correspondence to FDOT when construction is complete that the bridges were constructed in accordance with the plans and the design load ratings still apply.
- K. The Consultant shall provide geotechnical engineering services as needed by CFX, relative to pile driving, earthwork, embankment and MSE wall construction.
- L. The Consultant shall provide utility consulting services as needed by CFX, relative to proposed utility adjustments within the project limits.
- M. The Consultant shall prepare Record Drawings in electronic format following completion of the construction phase. CFX shall provide all As-Built drawings from the Contractor / CEI to the Consultant for their use in preparation of the Record Drawings.

## **5.0 MATERIALS FURNISHED BY CFX OR ITS DESIGNEE**

### **5.01 Record Documents**

- A. CFX will provide the Consultant, within ten working days of a written request, the following items:
  - 1. Available record drawings of existing conditions
  - 2. Available right-of-way plans of existing conditions
  - 3. Current list available to CFX of owners of all affected properties within the section.
  - 4. Sample plans to be used as guidelines for format, organization and content.
  - 5. Title searches of all affected properties for use by the Consultant in the preparation of the right-of-way maps.
  - 6. Contract unit prices from latest CFX construction projects.

### **5.02 Traffic Data**

- A. CFX will provide the following design traffic data:
  - 1. Current and design year ADT
  - 2. Current and design year peak hour volumes
  - 3. Turning movements at each intersection/interchange
  - 4. K, D and T factors
  - 5. Design speed - See Section 3.02, Geometry.
  - 6. AVI Percentages

### **5.03 Other**

- A. Utility designates for the FON and roadway lighting within CFX right-of-way.

## **6.0 WORK PERFORMED BY CFX OR ITS DESIGNEE**

### **6.01 Right-of-Way Acquisition**

- A. If necessary, CFX, or its designee, will review all right-of-way plans, parcel sketches and legal descriptions prepared by the Consultant. CFX will handle all appraisals, negotiations, relocations, condemnation, and property settlements.

### **6.02 Utility Agreements**

- A. CFX will support, as necessary, the Consultant's acquisition of information required for utility agreements.

### **6.03 Public Involvement**

- A. CFX will provide a moderator for all required public meetings and provide guidelines for the Public Involvement aspects of the project. The need for public meetings or public hearings will be determined by CFX. CFX will be responsible for mailings and advertisements for the public meetings.

### **6.04 Contracts and Specifications Services**

- A. CFX will prepare the necessary bid documents for the construction contract using plans, technical special provisions, and special specifications prepared by the Consultant.

### **6.05 Post-Design Services**

- A. CFX will be the principal initial contact for post-design questions and answer questions on a limited scope.

### **6.06 Environmental Permits**

- A. CFX will review and submit the environmental permit applications and coordinate with the Consultant on requests for additional information from the regulatory agencies.
- B. CFX will stake wetland lines and coordinate agency site visits. CFX will also prepare the wetland and wildlife analysis and documentation for the permits.

### **6.07 Conceptual Specialty Design**

- A. CFX will provide a conceptual major guide signing plan.
- B. CFX will provide conceptual aesthetics design and treatments for structures.



## **7.0 ADMINISTRATION**

### **7.01 Central Florida Expressway Authority**

- A. CFX's Project Manager will administer the Consultant services detailed in this scope.
- B. All contractual payments and changes shall be reviewed and approved by CFX's Project Manager.

### **7.02 CFX's Project Manager**

CFX's Project Manager will:

- A. Conduct ongoing reviews of the Consultant's progress in performing the work and furnish technical comments in a timely manner.
- B. Review the Consultant's billings.
- C. Review and evaluate the Consultant's requests for extension of time and supplemental agreements and recommend appropriate action.
- D. Review all correspondence with public agencies prior to the Consultant's mailing of any correspondence except for requests for information.
- E. Coordinate the distribution of public information.
- F. Coordinate the data (including documentation of prior rights, cost estimates and plans) necessary for CFX to prepare and execute all utility and railroad agreements.
- G. Conduct an introductory meeting to deliver relevant information and explain the administration process.
- H. Review the Consultant's Quality Control program and the Consultant's conformance to the Quality Control Program.
- I. Provide a focal point contact for all questions, requests, and submittals.
- J. Provide a system to monitor the Consultant's schedule, progress and key milestone submittal dates.

### **7.03 Consultant**

- A. The Consultant has total responsibility for the accuracy and completeness of the construction contract documents and related design prepared under

this project and shall check all such material accordingly. The plans will be reviewed by CFX for conformity with CFX procedures and the terms of the Contract, as well as coordination with adjacent design contracts. Review by CFX does not include detailed review or checking of design of major components and related details or the accuracy with which such designs are depicted on the plans. The responsibility for accuracy and completeness of such items remains solely that of the Consultant. The Consultant shall:

1. Establish, furnish and maintain suitable office facilities to serve as the project office for the duration of the project at a location acceptable to CFX.
2. Maintain an adequate staff of qualified support personnel to perform the work necessary to complete the project.
3. Establish internal accounting methods and procedures for documenting and monitoring project costs.
4. Establish and maintain contract administration procedures, which will include supplemental agreements, time extensions and subcontracts.

#### 7.04 Project Control

- A. The Consultant shall provide data for CFX's Management Information System to monitor costs and manpower, and report progress. This project control system may include features to:
  1. Determine and highlight critical path work from initial plans as work progresses.
  2. Identify progress against schedule for each identified work item.
  3. Forecast completion dates from current progress.
  4. Highlight rescheduled work in any area which is out of required sequence.
  5. Highlight rescheduling that has overloaded any physical area that requires more resources than originally allocated.
  6. Forecast future conflicts in any area.

#### 7.05 Work Progress

- A. The Consultant shall meet with CFX's Project Manager on a bi-weekly

basis (or more often if necessary) and provide written progress reports which describe the work performed on each task. The dates and times of these meetings will be established by CFX. Two working days prior to each progress meeting, the Consultant shall provide CFX's Project Manager with a draft copy of the Progress Report and a typewritten agenda for the meeting. The Consultant shall prepare typewritten meeting minutes and submit them to CFX's Project Manager within five working days after the meeting. The minutes shall indicate issues discussed and the resolution or action required to resolve any issues.

#### 7.06 Schedule

- A. Within twenty (20) calendar days after receipt of the Notice to Proceed, the Consultant shall provide a schedule of calendar deadlines in a format prescribed by CFX.

#### 7.07 Project Related Correspondence

- A. The Consultant shall furnish copies of all written correspondence between the Consultant and any party pertaining specifically to this project to CFX for its records within one (1) week of the receipt or mailing of said correspondence. The Consultant shall record and distribute the minutes of all meetings pertaining to this project.

#### 7.08 Quality Control

- A. The Consultant has total responsibility for the accuracy and completeness of the plans and related designs prepared under this project and shall check all such material accordingly. Consultant shall have a quality control plan in effect during the entire time work is being performed under the Contract. The plan shall establish a process whereby calculations are independently checked, plans checked, corrected and back checked. All plans, calculations, and documents submitted for review shall be clearly marked as being fully checked by a qualified individual other than the originator.
- B. The Consultant's quality control plan shall be submitted to CFX within fifteen (15) working days of receipt of written notice to proceed.

#### 7.09 Consultant Personnel

- A. The Consultant's work shall be performed and/or directed by the key personnel identified in Exhibit "D". Any changes in the indicated key personnel or the Consultant's office in charge of the work shall be subject to review and approval by CFX.

#### 7.10 Site Visit

- A. The Consultant shall arrange a site visit within ten (10) calendar days of receipt of written Notice to Proceed, if necessary. Consultant personnel assigned to perform the work on the project shall attend. CFX representatives will be present. Within seven calendar days of the site visit, the Consultant shall issue to CFX a brief written report including observations, discussions, and any questions pertaining to the scope or level of effort of the project. The purpose of this visit is to acquaint key personnel with the details and features of the project to facilitate the design process.

#### 7.11 Acceptability of the Work

- A. The plans, design, calculations, reports and other documents furnished under this Scope of Services shall conform to the "standards-of-the industry" quality as acceptable to CFX. The criteria for acceptance shall be a product of neat appearance, well organized, accurate and complete, technically and grammatically correct, checked in accordance with the approved Quality Control program, and have the maker and checker identified. The minimum standard of appearance, organization and content of drawings shall be similar to the type produced by the Florida Department of Transportation and CFX.

#### 7.12 Design Documentation

- A. The Consultant shall submit any design notes, sketches, worksheets, and computations to document the design conclusions reached during the development of the construction contract documents to CFX for review.
- B. The design notes and computations shall be recorded on 8-1/2" x 11" computation sheets, appropriately titled, numbered, dated, indexed and signed by the designer and checker. Computer output forms and other oversized sheets shall be folded or legibly reduced to 8-1/2" x 11" size. The data shall be bound in a hard-back folder for submittal to CFX.
- C. A CD/DVD with electronic (PDF Format) copies of the design notes and computations shall be submitted to CFX with each review submittal. When the plans are submitted for 90% review, the design notes and computations corrected for any CFX comments shall be resubmitted. At the project completion (bid set), one (1) hard copy of the final set of the design notes and computations, sealed by a Professional Engineer, registered in the State of Florida, shall be submitted with the record set of plans and tracings.
- D. Design notes and calculations shall include, but are not necessarily limited to, the following data:

1. Field survey notes and computations.
2. Design criteria used for the project.
3. Geometric design calculations for horizontal alignment.
4. Vertical geometry calculations.
5. Right-of-way calculations.
6. Drainage computations.
7. Structural design calculations.
8. Geotechnical report.
9. Hydraulics Report for each bridged stream crossing.
10. Earthwork calculations not included in the quantity computation booklet.
11. Calculations showing cost comparisons of various alternatives considered.
12. Calculations of quantities.
13. Documentation of decisions reached resulting from meetings, telephone conversations or site visits.
14. Lighting and voltage drop calculations.
15. Lighting service letter from the power company stating the following: service voltage, type of service (overhead or underground), location of power company service point, and any other power company requirements.

#### 7.13 Reviews and Submittals

- A. Review and coordination of the Consultant's work by CFX shall continue through the project development process
- B. Formal submittals for review shall be made to CFX when the plans have been developed to the following levels of completion:
  1. Preliminary Engineering (Memorandum) (1 CD/DVD with all files in pdf format, and three (3) hard copy sets)

2. 30% Roadway Plans (1 CD/DVD with PDF's of submittal package, one (1) hard copy of plans to CFX GEC and two (2) hard copies of plans to the CFX project manager)
  3. 60% Roadway and specifications, Geotechnical Report (1 CD/DVD with PDF's of submittal package, one (1) hard copy of plans to CFX GEC and two (2) hard copies of plans to the CFX project manager)
  4. 90% Roadway and specifications (1 CD/DVD with PDF's of submittal package, one (1) hard copy of plans to CFX GEC and two (2) hard copies of plans to the CFX project manager)
  5. 100% Roadway, Bridge and specifications, Geotechnical Report (1 CD/DVD with PDF's of submittal package, one (1) hard copy of plans to CFX GEC and two (2) hard copies of plans to the CFX project manager)
  6. Pre-Bid Plans (1 CD/DVD with PDF's of submittal package, one (1) hard copy of plans to CFX GEC and two (2) hard copies of plans to the CFX project manager)
  7. Bid Set (1 set signed and sealed plans, 1 set "clean" plans, 1 set signed and sealed reports and one (1) CD/DVD with .PDF of all plans and reports)
- C. Formal review submittals shall include copies as listed above. 8-1/2" x 11" and 11" x 17" documents do not require reproducible copies.
  - D. Preparation and distribution of roadway and ROW plans to other than CFX or CFX GEC will not be made until approved by CFX.
  - E. The format of review submittal plans shall conform to the FDOT Design Manual, except as amended by CFX.
  - F. Due to the compact schedule of the design, review, and construction process, any modification to the agreed submittal dates will require a letter from the Consultant to CFX giving:

1. The reason for the delay.
  2. The design components impacted.
  3. Proposed methods to maintain submittal dates.
- G. The Consultant shall submit all CADD files, including GEOPAK files, use in the preparation of the plans and right of way mapping on compact disk with the final submittal.

#### 7.14 30% Roadway Plan Submittal

- A. At the completion of this phase, design and plan development should be approximately 30 percent complete except stormwater pond designs. The designs of the stormwater ponds shall be at 90% complete. The following material shall be developed and submitted for review:
1. Key Map Prepared
    - a. Location map shown complete with destinations, ranges and townships.
    - b. Beginning and ending stations shown.
    - c. Any equations on project shown.
    - d. Project numbers and title shown.
    - e. Index shown.
  2. Drainage Map Prepared
    - a. Existing culvert sizes and elevations.
    - b. Horizontal alignment shown.
    - c. Drainage areas and flow arrows shown.
    - d. High water information shown.
    - e. Beginning and end stations shown along with any equations on project.
    - f. Interchange supplemental maps prepared.
  3. Typical Section Sheets
    - a. Ramp typical sections developed.
    - b. Pavement structure shown.
    - c. Special details developed.
    - d. General notes shown.

4. Plan and Profile Sheets

- a. Centerline plotted.
- b. Reference points and bench marks shown.
- c. Existing topography.
- d. Base line of surveys, curve data, bearings, etc. shown.
- e. Beginning and end stations (project and construction).
- f. Geometric dimensions.
- g. Proposed and existing limited access right-of-way lines.
- h. Existing ground line.
- i. Proposed profile grade.
- j. Type, size and horizontal location of existing utilities.
- k. Drainage structures and numbers are shown
- l. Drainage ponds are shown.

5. Cross Sections

- a. Existing ground line.
- b. Preliminary templates at critical locations (not to exceed 500 feet).
- c. Existing utilities shown.

6. Interchange Layout and Ramp Profiles

- a. Geometric dimensions.
- b. Proposed profile grades.

7. Right-of-Way Control Survey

8. Signing and Pavement Markings

- a. Striping layout.
- b. Sign structure locations.
- c. Roll plot with guide sign panels shown

7.15 60% Roadway Plan Submittal

- A. At completion of this phase, design and plan development should be approximately 60 percent complete except stormwater pond designs. The designs of the stormwater ponds shall be at 100% complete. The following material shall be developed and submitted for review:



1. Key Map

- a. Project description and number shown.
- b. Equations, exceptions and bridge stations shown.
- c. North arrow and scale included.
- d. Consultant and CFX sign-off included.
- e. Contract set index complete.
- f. Index of sheets updated.

2. Drainage Maps

- a. Flood data shown.
- b. Cross drains and storm sewer shown.
- c. Bridges shown with beginning and ending stations.
- d. Interchange supplemental sheets updated.

3. Typical Section Sheets

- a. All required typical sections are included.
- b. Limited access right-of-way lines are shown.
- c. Design speed and traffic are shown.
- d. Special details have been completed.
- e. Station limits of each typical section are shown.

4. Plan and Profile Sheets

- a. Match lines shown.
- b. Limited access right-of-way lines shown.
- c. Stations and offset shown for all fence corners and angles.
- d. All work shown should be within right-of-way or proposed easement.
- e. Drainage structures and numbers are shown.
- f. Drainage ponds shown.
- g. Curve data and superelevation included.
- h. Pavement edges, shoulders and dimensions shown.
- i. Project and construction limits shown.
- j. Bridges shown with beginning and ending stations.
- k. General Notes.

5. Drainage Structures

- a. Drainage structures plotted and numbered.
- b. Station location and offsets identified.

6. Cross Sections

- a. Templates are shown at all stations.
- b. Limited access right-of-way lines are shown.
- c. Cross section pattern sheet included.
- d. Miscellaneous notes included.
- e. Boring profiles.

7. Interchange Layouts, Ramp Profiles and Intersection Details

- a. Geometric data shown.
- b. Profiles finalized.
- c. Coordinate data shown.
- d. Limited access right-of-way lines shown.
- e. Curve data shown.
- f. Bearings and bridges shown.
- g. Cross roads, frontage roads, and access roads shown.
- h. Intersection details shown.

8. Traffic Control Plans

9. Utility Adjustments

10. Signing and Pavement Marking Plans

11. Intelligent Transportation System (ITS) Plans

12. Highway Lighting Plans

13. Selective Clearing and Grubbing (if required)

7.16 90% Roadway Plan Submittal

- A. At completion of this phase, design and plan development should be approximately 90 percent complete. The following material shall be developed and submitted for review:

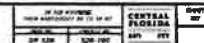
1. Key Map

- a. Length of Project with exceptions shown.
- b. Index of sheets updated.

2. Drainage Maps
  - a. Drainage divides, areas and flow arrows shown.
  - b. Elevation datum and design high water information shown.
  - c. Disclaimer and other appropriate notes added.
3. Typical Section Sheets
4. Plan and Profile Sheets
  - a. Curve Control Points (P.C., P.I., P.T.) flagged and labeled.
  - b. Limits of side road construction.
  - c. Angle and stationing for intersections.
  - d. Treatment for non-standard superelevation transitions diagramed.
  - e. General notes shown.
  - f. Special ditches profiled.
5. Drainage Structures
  - a. Existing structures requiring modifications are shown.
  - b. Existing and proposed utilities are shown.
6. Soil Borings
  - a. Soils data and estimated high seasonal groundwater table shown.
7. Cross Section Sheets
  - a. Scale and special ditch grades shown.
  - b. Utilities plotted.
  - c. Sub-excavation shown.
  - d. Volumes computed and shown.
8. Utility Relocation Plans
  - a. Utility relocation plans prepared.
9. Traffic Control Plans
10. Signing and Pavement Marking Plans
11. Signalization Plans

- 12. Intelligent Transportation System (ITS) Plans
  - 13. Highway Lighting Plans
  - 14. Selective Clearing and Grubbing (if required)
- 7.17 100% Roadway, Bridge, Structural and Right-of-Way Plans
  - A. At the completion of this phase, the design plans and special provisions shall be 100 percent complete.
- 7.18 Pre-Bid Plans
- 7.19 Bid Set

## Project Location Map



**CONSENT AGENDA ITEM  
#11**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 27, 2020

SUBJECT: Approval of Contract Award to Jacobs Engineering Group, Inc. for Professional Engineering Consultant Services for the Project Development and Environmental (PD&E) Study of the SR 414 Expressway Extension  
Project 414-227, Contract No. 001590

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The Board approved on November 14, 2019, the final ranking and authorization to negotiate with firms for the PD&E Study of the SR 414 Expressway Extension. Board award of the contract to Jacobs Engineering Group, Inc. is requested in the not-to-exceed amount of \$1,600,000.00

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

Reviewed by:   
Will Hawthorne, P.E.  
Director of Engineering



# **AGREEMENT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
JACOBS ENGINEERING GROUP INC.**

**PROJECT DEVELOPMENT AND ENVIRONMENTAL  
(PD&E) STUDY OF THE SR 414 EXPRESSWAY EXTENSION**

**CONTRACT NO. 001590, PROJECT 414-227**

**CONTRACT DATE: FEBRUARY 13, 2020  
CONTRACT AMOUNT: \$1,600,000.00**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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



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

**FOR**

**PROJECT DEVELOPMENT AND ENVIRONMENTAL (PD&E) STUDY OF THE  
SR 414 EXPRESSWAY EXTENSION**

**CONTRACT NO. 001590, PROJECT 414-227**

**FEBRUARY 2020**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT, made and entered into this 13<sup>th</sup> day of February 2020, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a corporate body 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 Jacobs Engineering Group, Inc., hereinafter called "CONSULTANT," registered and authorized to conduct business in the State of Florida, carrying on professional practice in engineering, with offices located at 200 S. Orange Ave., Suite 900 Orlando, FL. 32801.

**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. DEFINITIONS.**

Reference herein to the Project Manager shall mean CFX's Director of Engineering or his authorized designee. The Project Manager 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 Project Manager and the CONSULTANT shall comply with all of the directives of the Project Manager 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 Project Manager.

**2.0. SERVICES TO BE PROVIDED**

CFX does hereby retain the CONSULTANT to furnish certain professional services in connection with the Project Development and Environmental (PD&E) Study for the SR 414 Expressway Extension identified as Project 414-227 and Contract No. 001590.

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 rendering any of the services, 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.

The work covered by this Agreement as described in **Exhibit "A,"** includes the preparation of a project development and environmental study for the SR 414 Expressway Extension. A Supplemental Agreement will be required for the additional work.

All documents, reports, studies and other data prepared by the CONSULTANT shall bear the endorsement of a person in the full employ of the CONSULTANT and duly registered by the State of Florida in the appropriate professional category.

After the CFX's acceptance of the documents for the project, the original set of CONSULTANT's drawings, tracings, plans, maps and CADD files shall be provided to CFX, along with one record set of the final report. The CONSULTANT shall signify, by affixing an endorsement (seal/signature, as appropriate) on the cover sheet of the record set, that the work shown in the report was produced by the CONSULTANT.

The CONSULTANT shall submit a final set of reports and studies which shall be endorsed (seal/signature) by the CONSULTANT.

The CONSULTANT shall not be liable for use by CFX of said plans, documents, reports, studies or other data for any purpose other than intended by the terms of this Agreement.

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 five (5) year term from the date of the Notice to Proceed for the required project services as detailed in **Exhibit "A,"** with five one-year renewals at CFX's option. 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 CONSULTANT are satisfactory and adequate for CFX's needs. If a renewal option is exercised, CFX will provide CONSULTANT with written notice of its intent at least thirty (30) days prior to the expiration of the original term and subsequent renewal, if any.

The CONSULTANT agrees to commence the scheduled project services to be rendered within ten (10) calendar days from the date specified in the written Notice to Proceed from the Project Manager, which Notice to Proceed will become part of this Agreement. The CONSULTANT shall complete scheduled project services within the timeframe(s) specified in **Exhibit "A,"** or as may be modified by subsequent Supplemental Agreement.

### 4.0. PROJECT SCHEDULE

The CONSULTANT agrees to provide Project Schedule progress reports in a format acceptable to CFX and at intervals established by CFX. CFX will be entitled at all times to be advised, at its request, as to the status of work being done by the CONSULTANT and of the details thereof. Coordination shall be maintained by the CONSULTANT with representatives of CFX, or of other agencies interested in the project on behalf of CFX. Either party to the Agreement may request and be granted a conference.

In the event there are delays on the part of CFX as to the approval of any of the materials submitted by the CONSULTANT or if there are delays occasioned by circumstances beyond the control

of the CONSULTANT, which delay the scheduled project completion date, CFX may grant to the CONSULTANT by "Letter of Time Extension" an extension of the scheduled project completion date equal to the aforementioned delays. The letter will be for time only and will not include any additional compensation.

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 in a design capacity and shall have due regard for acceptable standards of design 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.

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:

Geotechnical and Environmental Consultants, Inc.	Class II
BASE Consultants, Inc.	Class I
Environmental Science Associates	Class I
KB Environmental Sciences, Inc.	Class I
Archaeological Consultants, Inc.	Class I

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.

#### 6.0. 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 \$1,600,000.00 for the initial five-year term of this Agreement. 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 errors or deficiencies in the report 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) 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 obligations in this paragraph shall 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.

## 7.0. 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 200 S. Orange Ave., Suite 900, Orlando, FL. 32801.

Notwithstanding Section 17, 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](mailto: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 CONSULTANT shall allow public access to all documents, papers, letters, or other material as approved and authorized by CFX and subject to the provisions of Chapter 119, Florida Statutes, and made or received by the CONSULTANT in conjunction with this Agreement. Failure by the CONSULTANT to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by CFX.

The obligations in Section 7.0, Document Ownership and Records, shall survive the expiration or termination of this Agreement and continue in full force and effect.

#### 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.



8.1 Limitation of Liability: Pursuant to SECTION 558.0035(1)(d), Florida Statutes, CONSULTANT maintains any professional liability insurance required under this contract. Therefore, pursuant to Section 558.0035(1)(c), Florida Statutes, an individual employee or agent of the CONSULTANT may not be held individually liable for damages resulting from negligence occurring within the course and scope of professional services rendered under this professional services contract

#### 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 Section 6.0 are accurate, complete and current as of the date of this Agreement. It is further agreed that said price provided in Section 6.0 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, 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 in writing the Agreement or (b) notifying the CONSULTANT in writing 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 in accordance with **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 and 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 Section 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.

#### 11.0. ADJUSTMENTS

All services shall be performed by the CONSULTANT to the reasonable satisfaction of the Project Manager 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. 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 Executive Director and Supplemental Agreement(s) of such a nature as required may be entered into by the parties in accordance herewith. Disputes between the Project Manager and the CONSULTANT that cannot be resolved shall be referred to the 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 for consideration by the Executive Director; 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. 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. 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.

14.1 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.

14.2 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/annual aggregate. 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.

14.3 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.

14.4 Professional Liability Coverage shall have limits of not less than One Million Dollars (\$1,000,000) per claim / annual aggregate, 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.

In the event any of the aforementioned insurance policies provide greater coverage or greater limits than the minimum requirements set forth herein, then CFX shall be entitled to the full coverage and limits of such policies, and these insurance requirements will be deemed to require such greater coverage and greater limits.

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.

#### 15.0. 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 Section 7.0 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 or 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 mark, including trademarks, service marks, or any 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 Mark is utilized, the Mark shall be properly screened to insure all layers of the Mark 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.

#### 16.0. CONFLICT OF INTEREST AND STANDARD OF CONDUCT

No Contingent Fees. CONSULTANT warrants that it has not employed or retained any entity or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Contract, and that 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 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, and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission percentage, gift or consideration.

CONSULTANT 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. CONSULTANT acknowledges that it has read the CFX's Code of Ethics and, to the extent applicable, CONSULTANT 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, CONSULTANT 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.

CONSULTANT covenants and agrees that it and its employees, officers, agents, and subconsultants 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. The CONSULTANT agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

CONSULTANT 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 CONSULTANT, and that no such person shall have any such interest at any time during the term of this Agreement.

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.

#### 17.0. 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 17.0, Documented Aliens, shall survive the expiration or termination of this Agreement and continue in full force and effect.

#### 18.0. 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.

## 19.0. 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 this paragraph shall survive the expiration or termination of this Agreement and continue in full force and effect.

## 20.0. 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.”

## 21.0. COMPANIES PURSUANT TO SECTION 287.135 AND 215.473

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

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



## 22.0. AVAILABILITY 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 CONSULTANT to that effect.

## 23.0. AUDIT AND EXAMINATION OF RECORDS

### 23.1 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.

23.2 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.

23.3 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) calendar 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.

23.4 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.

23.5 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.

23.6 The obligations in Section 24.0, Audit and Examination of Records, shall survive the expiration or termination of this Agreement and continue in full force and effect.

#### 24.0. 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 24.0, Governing Law and Venue, shall survive the expiration or termination of this Agreement and continue in full force and effect.

#### 25.0. 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: Jacobs Engineering Group, Inc.  
200 S. Orange Ave., Suite 900  
Orlando, FL. 32801  
Attn: Sunserea Dalton, P.E.

Jacobs Engineering Group, Inc.  
200 S. Orange Ave., Suite 900  
Orlando, FL. 32801  
Attn: Jessica Dean, P.E.

## 26.0. 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.

## 27.0. 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.

## 28.0. ASSIGNMENT

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

## 29.0. 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.

### 30.0. 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.

### 31.0. 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", Project Location Map [Note: Attach if applicable]  
Exhibit "F", Project Schedule [Note: Attach if applicable]  
Exhibit "G", Potential Conflict Disclosure Form

[ SIGNATURES TO FOLLOW ]

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 February 13, 2020.

**JACOBS ENGINEERING GROUP, INC.**

**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY**

BY: \_\_\_\_\_  
Authorized Signature

BY: \_\_\_\_\_  
Director of Procurement

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

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

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

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

ATTEST: \_\_\_\_\_ (Seal)  
Secretary or Notary

*Approved as to form and execution, only.*

\_\_\_\_\_  
*General Counsel for CFX*

## **EXHIBIT A**

### **SCOPE OF SERVICES**

**Central Florida Expressway Authority (CFX)**

**SCOPE OF SERVICES**

**Project Development and Environment (PD&E) Study**

**for the**

**SR 414 EXPRESSWAY EXTENSION  
US 441 to SR 434**

**CFX Project # 414-227**

**Contract # 001590**

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***ATTACHMENT B - DESIGN CRITERIA***

# **SCOPE OF SERVICES FOR CONSULTING ENGINEERING SERVICES**

## **PROJECT DEVELOPMENT AND ENVIRONMENT (PD&E) STUDY**

**for the**

### **SR 414 EXPRESSWAY EXTENSION US 441 to SR 434**

This Exhibit forms an integral part of an agreement between the Central Florida Expressway Authority (hereinafter referred to as the CFX) and the selected planning and engineering firm (hereinafter referred to as the CONSULTANT) relative to the project described as follows:

#### **1.0 SCOPE OF SERVICES PURPOSE**

The purpose of this Exhibit is to describe the scope of work and the responsibilities of the CONSULTANT, CFX, the CFX's general engineering consultant (GEC) Dewberry Engineers, the CFX's traffic and revenue consultant (T&RC) CDM Smith and the CFX public involvement consultant (PIC) Quest.

The Project Development process shall follow the Florida Department of Transportation's (FDOT) publication titled "Project Development and Environment Manual", current edition. The publication will be referred to as the PD&E Manual. All tasks identified in this scope of work will be done in accordance with the PD&E Manual, Project Environmental Impact Report (PEIR) unless otherwise stated. In the event of a contradiction between the provision of the PEIR requirements and this exhibit, the provisions of the PEIR will apply.

Using the information contained in the above-mentioned studies as a foundation, this PD&E study will develop more detailed information to select a preferred alternative. The work will include public involvement and the preparation of environmental reports and documents which evaluate the physical, natural, social, cultural, air and noise quality, economic and human impacts of the alternatives. Preliminary engineering plans and studies which address the economic and engineering feasibility, traffic capacity and levels of service, geometrics, soils, structures, interchange and intersection requirements shall be performed. Public involvement and interagency coordination will be an integral part of the assessment process.

The GEC will provide contract administration, project management services and technical reviews of all work associated with the development and preparation of the engineering / environmental study reports required for this project. The GEC is authorized by the CFX to provide the management and technical direction for this Agreement on behalf of the CFX. The CONSULTANT shall comply with all of the GEC's directions that are within the purview of this Agreement.

#### **2.0 STUDY DESCRIPTION AND OBJECTIVES**

A new grade-separated viaduct connection along State Road (SR) 414 (Maitland Boulevard) between US Highway 441 (Orange Blossom Trail) and SR 434 (Forest City Road) in Orange and Seminole Counties

has been an identified need in several local long-range plans and master plans in order to provide a nonstop limited access facility for SR 414 between SR 429 and Interstate 4 (I-4). CFX recently completed the SR 414 Reversible Express Lanes Schematic that included an assessment of tolled directional express lanes in the median. This PD&E study will consider various configurations of grade-separated express lanes to add capacity to SR 414 in the approximately 2.3-mile corridor between US 441 and SR 434. This study will analyze and evaluate reversible or bi-directional express lanes within this segment. The proposed Study Area for the project is depicted on **Attachment A**.

## **2.1 STUDY OBJECTIVE**

The general objective of this study is to provide documented information necessary for the CFX to reach a decision on the type, design, and location of the proposed grade-separated express lanes between US 441 and SR 434. All factors related to the design and location of the facility must be considered including: transportation needs, financial feasibility, social impacts, economic factors, environmental impacts, engineering analysis, and right-of-way requirements.

The specific objective of the study is to prepare a series of reports documenting the preliminary engineering and design concept, including existing and predicted conditions, typical sections, right-of-way requirements, potential new interchange locations and design concepts, environmental impacts, and costs of the improvement and its alternatives.

The documentation shall be developed to and in compliance with all applicable state regulations and all applicable state issuances governing the content and development of this study type. The resultant engineering and environmental reports prepared during the study shall satisfy the level of documentation required for a non-federally funded transportation improvement when a PEIR is prepared. Formal adoption by the CFX of the study documentation, including the identification of a preferred alignment alternative, will constitute Location and Design Concept Acceptance of the proposed action as a PEIR.

## **2.2 STUDY REQUIREMENTS AND PROVISIONS FOR WORK**

### **2.2.1 Governing Regulations**

The services performed by the CONSULTANT shall be in compliance with all applicable CFX and FDOT Manuals and Guidelines. The FDOT's Manuals and Guidelines incorporate by requirement or reference all applicable State and Federal regulations. The current edition, including updates, of the following FDOT Manuals and Guidelines shall be used in the performance of this work. It is understood that AASHTO criteria shall apply as incipient policy. Some standards may not apply to the project, but are listed for reference.

- Florida Statutes
- Florida Administrative Codes
- Applicable federal regulations, U.S. codes, and technical advisories
- Project Development and Environment (PD&E) Manual

- FDOT Sociocultural Effects Evaluation Handbook
- FDOT Public Involvement Handbook
- FDOT Design Manual (FDM)
- FDOT Standard Plans
- Highway Capacity Manual
- Manual of Uniform Traffic Control Devices (MUTCD)

Manual of Uniform Minimum Standards for Design, Construction, and Maintenance for  
Streets and Highways (Florida Greenbook)  
Bicycle Facilities Planning and Design Manual  
Right-of-Way Mapping Handbook  
Location Survey Manual  
Electronic Field Book (EFB) User Guide  
Drainage Manual  
FDOT Drainage Design Guide  
Outline Specifications - Aerial Surveys/Photogrammetry  
Soils and Foundations Handbook  
Structures Design Guidelines  
CADD Manual (No. 625-050-001)  
CADD Production Criteria Handbook  
Florida's Level of Service Standards and Guidelines Manual for Planning (No. 525-000-005)  
Equivalent Single Axle Load Guidelines (No. 525-030-121)  
Design Traffic Procedure (No. 525-030-120)  
K-Factor Estimation Process  
Project Traffic Forecasting Guidelines  
Florida Highway Landscape Guide  
Basis of Estimates Manual

**2.2.2 Liaison Office (N/A)**

**2.2.3 Key Personnel**

The CONSULTANT'S work shall be performed and directed by the key personnel identified by the CONSULTANT and approved by the CFX. Any changes in the indicated personnel shall be subject to review and approval by the CFX.

**2.2.4 Sub-Consultants (N/A)**

**2.2.5 Lead Agency, Cooperating Agencies and Participating Agencies (N/A)**

**2.2.6 Meetings and Presentations**

The CONSULTANT shall meet with appropriate CFX, GEC, PIC and T&RC personnel immediately following receipt of the Notice to Proceed. At a minimum, the CONSULTANT's Project Manager and senior project personnel shall attend. At the Notice to Proceed Meeting, the CFX will:

- a. Render any relevant information in its possession;
- b. Establish any ground rules upon which the study process will be conducted;
- c. Bring to the attention of the CONSULTANT any special or controversial issues to be considered in the study; and
- d. Explain the financial administration of the contract.

The CONSULTANT shall meet with the CFX as needed throughout the life of the project. The CONSULTANT should be prepared to meet with the CFX and /or GEC on a bi-monthly basis for progress

meetings; therefore, thirty (30) meetings should be anticipated. The actual frequency of the meetings will vary depending on the project stage and pending activities.

#### **2.2.7 Correspondence**

Copies of all written correspondence between the CONSULTANT and any party pertaining specifically to this study shall be provided to the CFX, GEC and PIC for their records within one (1) week of the receipt of said correspondence.

#### **2.2.8 Quality Control**

The CONSULTANT shall be responsible for ensuring that all work products conform to CFX standards and criteria. This shall be accomplished through an internal Quality Control (QC) process performed by the CONSULTANT. This QC process shall ensure that quality is achieved through checking, reviewing, and surveillance of work activities by objective and qualified individuals who were not directly responsible for performing the initial work.

The CONSULTANT shall submit a Quality Assurance/Quality Control (QA/QC) Plan to the GEC for their review and approval within twenty (20) working days following the Notice to Proceed Meeting.

#### **2.2.9 Project Schedule**

The PD&E Study is expected to have a fifteen (15) month duration. Within ten (10) calendar days after receipt of the Notice to Proceed, the CONSULTANT shall provide a schedule of calendar deadlines to the GEC for review. The CONSULTANT shall update the project schedule on a monthly basis and inform the CFX of any substantial potential schedule modifications. For the purpose of scheduling, the CONSULTANT shall allow for a review period of at least two (2) weeks for each draft technical report or memorandum submitted for CFX and GEC reviews.

#### **2.2.10 Submittals**

The CONSULTANT may be required to provide (Draft and Final) hard copies of the required documents as listed below. These are the anticipated submittals for the project. This tabulation will be used for printing estimating purposes, and the GEC Project Manager will determine the number of copies required prior to each submittal. Electronic submittals shall accompany all hard copy submittals.

##### Provisions for Work:

Quality Control Plan  
Project Schedule

##### Copies:

2  
N/A\*

##### Public Involvement Items:

Public Involvement Plan  
Public Involvement Comment Database  
Agency Coordination Meeting Summaries  
Advance Notification Package  
Comments and Coordination Report  
Public Hearing Transcript

##### Copies:

2  
N/A (PIC to provide)  
N/A\*  
N/A\*  
N/A (PIC to provide)  
N/A (PIC to provide)

Meeting Agendas, Handouts, Notes, and Summaries	N/A*
---	------

Engineering Items:

Copies:

Existing Conditions Technical Memorandum	2
Alternative Corridor Evaluation Report	Not required
First Draft Preliminary Engineering Report	2
Final Preliminary Engineering Report (Signed and Sealed)	4
Typical Section Analysis Memorandum	2
Alternatives Analysis Memorandum	2
Location Hydraulics Report	2
Pond Siting Report	2
Conceptual Design Roadway Plan Set	2
Conceptual Right-of-Way Plans	Not required
Geotechnical Report	2
Typical Section Package	2
Utility Assessment Package	2
Bridge Analysis Technical Memorandum	2
Bridge Hydraulic Technical Memorandum	2
Bridge Development Technical Memorandum	2
Roundabout Evaluation Technical Memorandum	2

Environmental Items:

Copies:

Project Environmental Impact Report	4
Sociocultural Effects Evaluation (SCE)	2
Noise Study Report	2
Air Quality Technical Memorandum	2
Level 1 Contamination Screening Evaluation Report	2
Conceptual Stage Relocation Plan	Not required
Natural Resource Evaluation	2
Cultural Resource Assessment Survey	2
Section 4(f) Evaluation	Not required
Project Commitments Record	Not required
Planning Consistency Form	Not required
Water Quality Impact Evaluation Report	2

\* *Electronic submittal only*

Upon completion of the study, the CONSULTANT shall deliver to the CFX and GEC, in an organized manner, all project files, maps, sketches, worksheets, and other materials used or generated during the study process.

### **2.3 COORDINATION WITH OTHER ENTITIES**

The CONSULTANT shall coordinate with all federal, state and local agencies and citizen groups that would have an influence upon the study and preparation of the preliminary engineering and environmental documents.

The CONSULTANT will be required to coordinate with and assist the CFX in securing necessary agency approvals.

The CONSULTANT will be required to coordinate this study with all other studies and projects within the project area – including, but not limited to, FDOT, County, and CFX.



## **2.4 PROJECT MANAGEMENT, MEETINGS AND COORDINATION**

The CONSULTANT shall meet with CFX as needed throughout the life of the project. It is anticipated thirty (30) monthly progress meetings will be needed (Refer to Section 2.6 of scope). These meetings will include progress and miscellaneous review and other coordination activities with CFX. Progress reports shall be delivered to the CFX in a format as prescribed by the GEC and no less than 5 days prior to submission of the corresponding invoice. Judgment on whether work of sufficient quality and quantity has been accomplished will be made by the GEC Project Manager by comparing the reported percent complete against actual work accomplished.

### **2.4.1 Contract and Project Files**

Project Management efforts include complete setup and maintenance, development of monthly progress reports, schedule updates, and effort to develop and execute sub-consultant agreements etc. Progress reports shall be delivered to the GEC in a format as prescribed by CFX and no less than 5 days prior to submission of the corresponding invoice. The Project Manager will make judgment on whether work of sufficient quality and quantity has been accomplished by comparing the reported percent complete against actual work accomplished.

Within ten (10) calendar days after the Notice to Proceed, the CONSULTANT shall provide a schedule of calendar deadlines (Refer to Section 2.9 of scope).

## **2.5 ADDITIONAL SERVICES**

### **2.5.1 Alternative Corridor Evaluation (N/A)**

### **2.5.2 Advance Notification**

At the beginning of the project, the CONSULTANT shall prepare the Advance Notification and transmittal letter in accordance with the PD&E Manual for the CFX's Executive Director or designee to submit to the State Clearing House. The CONSULTANT shall distribute the Advance Notification package to all appropriate agencies within twenty (20) working days of the Notice to Proceed meeting.

### **2.5.3 Scoping (N/A)**

### **2.5.4 Notice of Intent (N/A)**

### **2.5.5 Transit Coordination Plan (N/A)**

### **2.5.6 Miscellaneous Services (N/A)**



### **3.0 PUBLIC INVOLVEMENT**

Public involvement includes communicating to and receiving information from all interested persons, groups, and government organizations on topics related to the PD&E Study. The CFX Public Involvement Consultant (PIC) shall coordinate and perform the appropriate level of public involvement for this project as outlined in the PD&E Manual and the following sections. The CONSULTANT shall provide support to the PIC.

All public involvement tasks and activities will be coordinated with the CFX.

### **3.1 PUBLIC INVOLVEMENT**

#### **3.1.1 Public Involvement Plan**

The CONSULTANT will review the Public Involvement Plan (PIP) provided by the PIC and GEC within twenty (20) working days following the Notice to Proceed meeting.

The purpose of the PIP is to establish and maintain a strategy for early, meaningful, and continuous public and stakeholder involvement throughout the PD&E process. Obtaining stakeholder public consensus throughout the PD&E phase is the desired outcome of the PIP.

The CONSULTANT shall perform activities necessary to support the PIP that includes the identification of stakeholders and interested parties and the preparation of meeting notes.

#### **3.1.2 Public Involvement Data Collection (Mailing List)**

The CONSULTANT shall be responsible for developing, maintaining, and updating a project mailing list which will include:

- a. Affected residents, business tenants and property owners within the project area.
- b. Interested parties, including:
  1. Residents/property owners within 300 feet of the alternative alignments.
  2. Other informed parties who notify the CONSULTANT that they desire to be added to the mailing list.
- c. Special interest groups

The CONSULTANT will maintain the mailing list in a computer file which is acceptable to the CFX. For each mailing, the CONSULTANT will provide the CFX and PIC a computer file of the mailing list certified by the CONSULTANT as true and correct. Additional groups and/or individuals may be included on the mailing list as requested.

### **3.2 SCHEDULED PUBLIC MEETINGS**

The CFX has determined that multiple public meetings will be required to provide adequate opportunities for the public to participate in the PD&E Study. The CONSULTANT shall provide to the PIC all support necessary for the CFX to hold or participate in two (2) public meetings, as listed below:

- a. Public Kick-off Meeting (General study overview, area, schedule, issues, etc.)
- b. Public Hearing (Preferred Alternative)

For each meeting, the CONSULTANT shall prepare and/or provide:

- a. Scripts or agenda for presentation.
- b. Graphics for presentation.
- c. Handouts and Display Boards
- d. Meeting summaries
- e. Input to response to comments as requested by CFX or PIC

For each meeting, the PIC shall prepare and/or provide:

- a. Display advertisements (the CFX or PIC will pay the cost of publishing)
- b. Letters for notification of elected and appointed officials, property owners, and other interested parties (the CFX or PIC will pay the cost of first class postage)
- c. Preparation of response letters for CFX signature on public comments

The CONSULTANT will attend the meetings with an appropriate number of personnel to assist the PIC and CFX staff.

The PIC will investigate potential meeting locations to advise CFX of their suitability. CFX will ultimately approve the meeting location. The CFX or PIC will pay all costs for meeting location rental and insurance (if required). The PIC will be responsible for logistics associated with setting up the meeting. The PIC will distribute all required notifications to all interested parties, public officials, affected property owners, special interest groups, etc. on the mailing list.

### **3.2.1 Project Advisory Committees**

The CONSULTANT shall work with the PIC and GEC to establish a PD&E Project Advisory Group (PAG), and Environmental Advisory Group (EAG), which will include staff from governmental agencies, permitting agencies, environmental organizations, special interest groups and other entities as approved by the CFX. The CONSULTANT will be available to meet with the PAG and EAG up to two (2) times each (a total of four [4] meetings) during the PD&E Study to present information regarding the project, receive input from the PAG and EAG members and respond to questions.

The CONSULTANT will coordinate with the CFX, the PIC and the GEC to provide input into the initial PAG and EAG members list. The PIC will be responsible for contacting the PAG and EAG members and maintaining coordination with them throughout the study. The CONSULTANT will also be responsible for preparing all materials, exhibits, presentations, etc. to be distributed to the PAG/EAG members. The PIC will be responsible for logistics associated with setting up the meeting.

The CONSULTANT shall prepare meeting notes for the scoped meetings as noted in Section 3.1 of this scope.

### **3.2.2 Officials Project Kick-Off**

The CONSULTANT will assist the PIC by providing script and graphics for a project kick-off presentation to, at a minimum, the Orange and Seminole County commissions and MetroPlan Orlando boards (and technical committees as required) at their regularly scheduled meetings.

### **3.2.3      **Unscheduled Public Meetings****

In addition to scheduled public meetings, the CONSULTANT may be required to participate in unscheduled meetings with the public, elected officials, or public agencies (MetroPlan Orlando, Orange County, Seminole County, City of Altamonte Springs, City of Maitland, neighborhood groups, etc.). The CONSULTANT shall be available with no more than a five (5) working days' notice, to attend these meetings or make presentations at the request of the CFX. Such meetings and presentations may be held at any hour between 7:00 a.m. and 12:00 midnight on any day of the week. The CONSULTANT may be called upon to provide maps, draft news releases, audio-visual displays, and similar material for such meetings. The CONSULTANT shall be prepared to attend up to twenty-four (24) such unscheduled meetings.

The CONSULTANT shall prepare meeting notes for the scoped meetings as noted in Section 3.1 of this scope.

Additionally, the CONSULTANT will be prepared to present to the CFX Board, the MetroPlan Orlando Board, and Orange and Seminole County Boards prior to the two milestone meetings.

## **3.3      **PUBLIC HEARING****

The PIC and CONSULTANT shall provide all support necessary for the CFX to hold or participate in one (1) public hearing, as described in Section 3.2 of this document.

## **3.4      **COMMENTS AND COORDINATION REPORT (N/A)****

The PIC will prepare Comments and Coordination Report containing transcript, errata, and signed certification, as well as documentation for all public involvement activities conducted throughout the project in accordance with Part 1, Chapter 11 of the PD&E Manual.

## **3.5      **NOTIFICATION OF APPROVED ENVIRONMENTAL DOCUMENT (N/A)****

## **3.6      **ADDITIONAL PUBLIC INVOLVEMENT REQUIREMENTS****

### **3.6.1      **Project Information Line/General Public Correspondence****

The CONSULTANT shall make available knowledgeable staff which interested parties may call with questions concerning the project. The PIC will maintain this project information line and the CONSULTANT will provide support to the PIC to answer questions and respond to comments.

### **3.6.2      **Project Newsletters****

The PIC shall prepare and distribute three (3) project newsletters which will be designed to inform interested parties as to the status of the project. The CONSULTANT shall support the PIC by providing appropriate information to include in the newsletters. Newsletters shall have the quality of desktop publishing and be comparable to the previous work efforts of the CFX. Distribution of the three (3) newsletters will coincide with key project milestones as follows:

- a. Project Kick-off/Introductory Newsletter
- b. Pre-Public Hearing Newsletter
- c. Post-Public Hearing Newsletter

The PIC will distribute newsletters to all interested parties, public officials, affected property owners, special interest groups, etc. as identified above.

Interested parties include those contained on the CONSULTANT's mailing list and other informed parties who request to be added to the mailing list. Distribution of the Newsletter may involve direct mail as well as distribution through various media such as public schools, churches, civic organizations, public libraries, etc.

The Introductory Newsletter may contain language to alert affected property owners and tenants of the possibility that certain environmental and/or engineering personnel may require access to their property. Prior to any actual property access, the CONSULTANT shall contact the owner or tenant by the use of a CFX standard right-of-entry letter via US Post Office mail delivery.

### **3.6.3 Project Webpage**

The CONSULTANT shall provide information about the study to the PIC for inclusion in the CFX Webpage. After initial posting of the project information, the CONSULTANT shall provide updated information to the PIC four times during the study. These times will coincide with the newsletter mailings.

### **3.6.4 In-House Displays**

The CONSULTANT shall maintain within its office a viewing area where interested parties may inspect displays including, but not limited to, the following:

- a. 1"=100' scale concepts showing all alternatives
- b. Available aerial photography of the study area
- c. A regional map

A representative within the CONSULTANT's office shall be available to assist interested parties and answer questions dealing with the project. Questions which the CONSULTANT is unable to answer shall be referred to the CFX, PIC, and GEC. Upon consultation with the CFX, PIC, and GEC, the CONSULTANT shall draft responses to the questioning parties which shall be endorsed and distributed by the CFX, PIC, or GEC.

The CONSULTANT also agrees to supply duplicates of the 1"=100' scale concepts and 1"=400' scale concepts for display in the CFX's office.

## **4.0 ENGINEERING ANALYSIS AND CONSIDERATIONS**

### **4.1 REVIEW OF PREVIOUS STUDIES**

The CONSULTANT shall collect and summarize at a minimum:

- a. MetroPlan Orlando Long Range Transportation Plan
- b. Orange County Comprehensive Plan

- c. Seminole County Comprehensive Plan
- d. LYNX
- e. Non-motorized modes, including bikeways and pedestrian walkways
- f. Other applicable transportation plans

The CONSULTANT will prepare the purpose and need statement and project description. The CFX and GEC will review and approve the Purpose and Need statement.

## **4.2 EXISTING CONDITIONS ANALYSIS**

The CONSULTANT will analyze the existing facility and conditions for deficiencies.

### **4.2.1 Data Collection**

Immediately following the Notice to Proceed, the CONSULTANT shall begin data collection. The information collected should include all data necessary to adequately identify and evaluate the location and design of the facility. All data collection efforts should be performed in accordance with the PD&E Manual.

The CONSULTANT shall make maximum use of existing information available from state, regional and local agencies such as the Florida Geographic Data Library (FGDL), or other appropriate databases that include existing features. This data base information shall be compatible for use on base maps used for public presentations, corridor maps, and alternative plans.

### **4.2.2 Existing Roadway Characteristics**

The CONSULTANT shall document the existing roadway characteristics within the project limits. The CONSULTANT will review and document available plans, pavement reports, existing rights-of-way, tax and maintenance maps and other readily available data. This effort should include obtaining the design plans for any adjacent project(s) being advanced by CFX, FDOT District 5, Orange County, City of Altamonte Springs, City of Maitland, and Seminole County. The CONSULTANT should have detailed knowledge of the various projects that make up the overall improvement.

The CONSULTANT shall develop a CADD database, supported by computer spreadsheets, that includes all existing highway characteristics noted above, as appropriate. CADD database information shall be compatible for use on aerial photography used for Public Hearing displays, the Corridor Base Map(s), and Conceptual Design Plans.

### **4.2.3 Field Review**

The CONSULTANT shall conduct all anticipated field trips needed to collect engineering data.

## **4.3 SURVEY**

The CONSULTANT shall use aerial photography as a basis for plotting various data necessary for both engineering and environmental analysis, alternative corridor and design studies, and the development of the preliminary plans of conceptual design. Copies of aerial photography are the prime source of information used to convey project considerations to the public at public meetings. The GEC shall be responsible for coordinating with CFX regarding project requirements, review of survey data and

scheduling. Existing available controlled aerial photography will be utilized and the digital aerial photography should be compatible with Microstation and vertical data identified using 2' contour aerials. The GEC will recommend mapping scales for approval by CFX. The most current existing available aerial photography, either provided by CFX or obtained by the CONSULTANT, will be utilized.

No other survey service associated with design activities are included within the scope of services.

#### **4.4 GEOTECHNICAL**

The CONSULTANT will obtain information to describe the soil composition within the project study area using previous geotechnical reports and investigations, county and city soil survey maps, and other information from the Soil Conservation Service and detailed soil surveys as needed to determine the impacts of the project. More specifically, CONSULTANT will gather and review existing bridge and roadway boring data, and pile driving records for the bridge over Lake Bosse. Pile lengths in excess of 400 feet were required at the Lake Bosse Bridge pier locations. CONSULTANT will conduct up to four bridge SPT borings in the Lake Bosse crossing to identify future bridge pier locations with suitable foundation conditions. CONSULTANT will also perform preliminary pond auger borings to aid in pond site selection.

This task requires the CONSULTANT to coordinate with the geotechnical staff regarding project requirements, review of geotechnical data, and scheduling.

#### **4.5 TRAFFIC ANALYSIS**

The CONSULTANT will coordinate with CFX, FDOT, and the T&RC and obtain all project traffic related information including travel demand forecasting, design traffic and all operational analysis required for completion of the study from CFX.

##### **4.5.1 Traffic Analysis Methodology (N/A)**

##### **4.5.2 Traffic Counts**

The CONSULTANT will coordinate with CFX, FDOT, and the T&RC and obtain all project traffic related information including travel demand forecasting, design traffic and all operational analysis required for completion of the study from CFX.

##### **4.5.3 Traffic Data for Noise Study**

The CONSULTANT will obtain required traffic information from CFX, FDOT, and the T&RC.

##### **4.5.4 Traffic Data for Air Analysis**

The CONSULTANT will obtain required traffic information from CFX, FDOT, and the T&RC.



#### **4.5.5 Signalization Analysis**

In coordination with the CFX, the T&RC shall perform signalization analysis and/or signal warrant studies at the intersections in accordance with all applicable manuals, procedures, guidelines, and current design memorandums. The T&RC will propose preliminary signal timing plan and signal operation plan for each intersection that requires signalization on the recommended alternative. The CONSULTANT shall coordinate with the T&RC on the signalization analysis and the associated geometry of the intersections.

#### **4.6 SIGNAGE (N/A)**

#### **4.7 TOLLING CONCEPTS (N/A)**

The tolling locations are proposed on the ramp approaches and will be provided by CFX.

#### **4.8 SAFETY**

The CONSULTANT shall obtain available data from FDOT'S Crash Analysis Reporting System (CARS) (Program numbers AARPJ12 and AARPJ13) and Signal Four for various highway segments within the study area. The CONSULTANT will obtain the most recent data for the previous five years. The data collected shall include the number and type of crashes, crash locations, number of fatalities and injuries, and estimates of property damage and economic loss. Based on the information obtained from the crash data, the CONSULTANT will identify project safety needs associated with the existing and future conditions.

The CONSULTANT will coordinate with CFX, FDOT, and the T&RC and obtain all project traffic related information including safety analysis required for completion of the study from CFX.

#### **4.9 UTILITIES AND RAILROADS**

The CONSULTANT shall collect data on the location of all existing utilities within the study area. The CONSULTANT shall obtain data and information and meet with utility owners concerning proposed utility improvements, some of which may influence location/design considerations. Utility data to be collected will address the following:

- a. Overhead Transmission lines, microwave towers, etc.
- b. Underground water, gas, sanitary sewer, force mains, power and telephone cables, etc.
- c. Bridge attachments.

Based on the coordination with the utility companies along the project, the CONSULTANT shall prepare a Utility Assessment Package as described in the PD&E Manual. The CONSULTANT will also address impacts to existing and proposed railroads, if applicable.

## **4.10 ROADWAY ANALYSIS**

### **4.10.1 Design Controls and Criteria**

The CONSULTANT will prepare design controls and criteria for developing Project alternatives and designing initial geometrics and other roadway elements according to the DEPARTMENT standards.

### **4.10.2 Typical Section Analysis**

The CONSULTANT shall develop appropriate typical sections for the project. These will include CFX's standard typical sections for new location expressways and interchange ramps. Typical sections for connecting roadways will be developed to meet the requirements of the government agency that is responsible for the maintenance of the roadway. The CONSULTANT shall examine typical sections that may result in minimizing right-of-way, and the incorporating of other desirable features, as deemed appropriate.

The Typical Section Analysis will be documented in a brief memorandum for CFX review and concurrence prior to conducting alternatives development.

### **4.10.3 Roadway Design Alternatives**

Using the recommended typical section identified by CFX as a result of the typical section analysis (refer to Section 4.10.2 of scope), the CONSULTANT will conduct a horizontal and vertical alignment alternatives analysis to determine viable alternatives for CFX input. The alternatives analysis will be documented in a brief memorandum for CFX review and concurrence prior to conducting alternatives development.

Based on CFX direction, the CONSULTANT will then prepare the Refined Conceptual Alternative at an increased level of detail on a base map at a comparable scale. Schematic interchanges and working profiles will be developed for the refined alternative.

The Refined Conceptual Alternative will be presented to the PAG and the EAG for review and input. Based on responses received from the PAG and the EAG, the CONSULTANT will recommend refinements that should be carried forward and developed as the preferred alternative.

The CONSULTANT will abstain from identifying the preferred alternative prior to the public hearing unless specifically requested or authorized to do so by the CFX.

The entire Alternatives Development and Evaluation process shall be documented by the CONSULTANT in the Preliminary Engineering Report.

The CONSULTANT will further refine the Conceptual Alternative, thereby creating the Preferred Alternative. The Preferred Alternative will be prepared on the base maps at an appropriate scale for review and evaluation. Working profiles will be developed for the Preferred Alternative along with interchange concepts and other preliminary design features including property access treatments, stormwater facilities and toll plaza envelopes.

The CONSULTANT will make the most efficient use of existing roadways and rights-of-way in developing typical and special sections. The CONSULTANT will develop, evaluate and document alternative sections such as, but not limited to, cantilever overhangs, retained earth walls, slope stabilization, and innovative

drainage systems. Business and residential development, drainage requirements, environmental impacts and maintenance-of-traffic will be considered, evaluated and documented during this project phase.

The Preferred Alternative will be developed to a point at which the following can be determined:

- a. Horizontal and vertical alignment
- b. Typical cross section
- c. Preliminary right-of-way needs and impacts
- d. Preliminary drainage needs (showing required outfalls)
- e. Existing and proposed utility locations
- f. General soils information
- g. Local roadway improvement needs
- h. Structure locations, sizes, spans, etc.
- i. Potential stormwater pond sites, sizes, locations, etc.
- j. Retaining walls
- k. Sound walls
- l. Other features as directed by the CFX and GEC

#### **4.10.4 Intersections and Interchange Evaluation**

The CONSULTANT will propose appropriate intersection control based on the results of project traffic analysis to establish an overall intersection/interchange footprint at the following intersections:

- Bear Lake Road
- Eden Park Road
- Magnolia Homes Road
- Gateway Drive

The CONSULTANT will perform up to a level 2 roundabout evaluation in accordance with the FDM, Florida Intersection Design Guide, and Part 2, Chapter 3 of the PD&E Manual. The roundabout evaluation must include evaluation of operation and geometrics with respect to safety, design year traffic, access management, physical and right of way constraints, design vehicle, posted speed limit and transit operations. Roundabout evaluation will be documented in the Roundabout Evaluation Technical Memorandum.

The CONSULTANT will develop intersection and interchange concepts/layouts based on the results of traffic operational analysis. The layouts will include turn lanes, ramp, auxiliary lanes, storage lengths, ramp terminals, ramp junctions, and other geometric details.

#### **4.10.5 Access Management**

The CONSULTANT will coordinate with necessary FDOT, County, and/or local stakeholders and ensure the appropriate access management standards are reflected within any alternative that effects the local roadway network.

#### **4.10.6 Multi-Modal Accommodations**

The CONSULTANT will coordinate with transit and local government officials in order to determine what multi-modal accommodations will be studied and evaluated as part of the project alternative.

#### **4.10.7 Park and Ride Lots**

The CONSULTANT will identify the feasibility of and, if feasible, potential locations for “Park and Ride” facilities.

#### **4.10.8 Maintenance of Traffic**

The CONSULTANT will analyze the preferred alternative for constructability and the ability to maintain traffic. If the constructability analysis indicates that there will be a substantial cost to maintain traffic, the cost to maintain traffic estimate will be included in the cost estimate for that alternative.

#### **4.10.9 Lighting**

The CONSULTANT will evaluate the need for lighting in accordance with applicable manuals, guidelines, standards and current design memorandums. The CONSULTANT will include the estimated cost for lighting in the construction cost estimate for the Project alternative.

### **4.11 IDENTIFY CONSTRUCTION SEGMENTS**

The CONSULTANT shall make a preliminary review of feasible segments for construction projects within the project in consideration of MPO priorities, budget, priority needs, maintenance of traffic, and the public demand for the improvements.

### **4.12 INTELLIGENT TRANSPORTATION SYSTEMS (ITS)**

The CONSULTANT shall review the existing ITS system in project limits and recommend relocation options. This includes reviewing the existing CFX, FDOT District 5 and Orange County as-built information and including it within the project drawings and developing a high level cost estimate for the changes necessary to the facilities to meet CFX’s most recent standard of deployment. The CONSULTANT shall coordinate closely with any CFX, FDOT District 5 and Orange County on-going projects to develop a concept of how the relocated fiber optic cable will tie in seamlessly to the existing CFX fiber optic cable network. These items will be documented in a Technical Memorandum.

The CONSULTANT will also show the routing of new or relocated fiber optic cable on a Conceptual ITS Plan for the preferred project alternative.

### **4.13 STRUCTURES**

#### **4.13.1 Existing Structure Characteristics**

The CONSULTANT shall inventory and research existing structures to assess their age, rating, and any other factors that could be used to determine condition and future use or need for replacement.

List Existing Structures:

*Existing Bridge(s):*

1. *Bridge No. 770074 – SR 414 over Lake Bosse*
2. *Bridge No. 770075 – SR 414 over Little Wekiva River*
3. *Bridge No. 770083 – SR 414 over SR 434*

*Existing Bridge Culvert(s): N/A*

*Existing Box Culvert(s): N/A (?)*

*Mast Arm Assemblies: N/A*

*Strain Poles: Bear Lake Road, Eden Park Road, Lake Lotus Park Road*

*Existing Overhead Sign Structure(s): N/A*

*High Mast Lighting Structure(s): N/A*

*Noise Barrier Wall(s): present within the study limits*

#### **4.13.2 Structures Typical Section Analysis**

The CONSULTANT shall develop all appropriate structural typical section alternatives for the project. These will include the CFX's standard typical sections, and any typical sections that may result in minimizing right-of-way and environmental impacts and incorporating context sensitive solutions for complex bridges and retaining walls.

#### **4.13.3 Structures Design Alternatives**

The CONSULTANT will show estimated bridge limits on the Viable Alternative concept. Schematic elevations for bridges over cross roads, which will indicate the basic typical section under the bridge and the approximate length will be prepared. Based on the bridge requirements, the CONSULTANT will determine the structure type and unit costs for each viable alternative bridge.

*The following shall be determined for each bridge alternative: location, total superstructure length, width and depth, span arrangement(s), special aesthetic consideration, structure type and cost. The CONSULTANT shall summarize all findings and recommendations in a Bridge Analysis Technical Memorandum, which will include General Plan & Elevation (GP&E) sheets for the preferred alternative for each structure. A table summarizing the types of improvements (including existing and proposed structures) will be included in the Bridge Analysis Technical Memorandum.*

### **4.14 DRAINAGE**

#### **4.14.1 Floodplain and Environmental Permit Data Collection**

The CONSULTANT shall collect hydraulic data as needed to assess constraints for the viable alternative. This effort will be coordinated with CFX, FDOT, Orange County, City of Altamonte Springs, and Seminole County to identify any historic maintenance problems involving drainage or flooding which may affect the viability of the concept design and influence the evaluation results. The history and past hydraulic performance will be noted on all structures.

The CONSULTANT will collect any stormwater management or master drainage plans prepared for the area to determine the hydrologic basin characteristics, both existing and future, of bridges and culverts, such as size, topography, and land use. The CONSULTANT will inventory the immediate upstream and downstream structures and inventory existing storm drain systems; noting their type, size, hydraulic basin they serve, and discharge points. The CONSULTANT shall identify Seasonal High Water elevations using available geotechnical data.

#### **4.14.2 Drainage Analysis**

The CONSULTANT will perform drainage analysis by delineating the basin boundaries by using LiDAR information, existing survey data, and field observations. The CONSULTANT will analyze and determine high water elevations in each basin and use the information to establish the preliminary roadway profile.

The CONSULTANT shall perform preliminary drainage design in order to determine potential outfall locations and preliminary sizes (volume and area) of required detention and/or retention facilities for stormwater treatment or attenuation.

#### **4.14.3 Floodplain Compensation Analysis**

The CONSULTANT will determine and quantify the base floodplain involvement for the viable alternative. Additionally, the CONSULTANT will obtain all data necessary to analyze any encroachments.

#### **4.14.4 Stormwater Management Analysis**

The CONSULTANT will calculate the stormwater quality and attenuation requirements, and estimate the stormwater management facility needs for each roadway alternative.

The location and size of potential detention/retention areas will be determined for the viable alternate. A maximum of two (2) stormwater treatment / attenuation alternates per drainage basin will be identified, including the recommended alternate for each basin. The CONSULTANT shall prepare a PD&E Pond Siting Report and pond shapes will be prepared in CADD format. The CONSULTANT shall perform pond sites analysis and floodplain impact compensation analysis for the proposed ponds. A cost estimate will be prepared for alternative pond sites selected and a summary of recommended pond sites will be provided.

The CONSULTANT will schedule an Environmental Look-Around (ELA) meeting (See Part 2, Chapter 24 of the PD&E Manual) with CFX, FDOT, regulatory agencies, local governments, and other stakeholders to discuss regional stormwater needs and design and permitting approaches that benefit the watershed as a whole. During the meeting, the CONSULTANT will document the meeting notes in the project file.

If the ELA reveals no regional pond sites within the Study Area, the CONSULTANT will identify practical pond sites in each basin for each project alternative, estimate construction cost, compare the sites, and identify (in coordination with the DEPARTMENT) a preferred pond site for each basin. Additionally, the CONSULTANT will identify inflow or outfall easement requirements for each pond site. If additional pond sites are revealed, they will be used as a potential option.

The CONSULTANT will prepare a Pond Siting Report in accordance with the Drainage Manual and the FDOT Drainage Design Guide.

#### **4.14.5 Drainage Design (N/A)**

#### **4.14.6 Location Hydraulics Report**

The CONSULTANT shall prepare a Location Hydraulics Report, which shall include: identify and list all existing cross drains for its size, length, and flow lines information; perform proposed cross drain analysis based on recommended typical sections, using HY8 software; perform preliminary analysis for proposed bridge improvements. The analysis includes 50-year, 100-year and 500-year stages in the river and flood stage increment compared to existing condition for each cross drain; provide recommendation summary table for proposed cross drain size and length based on the analysis.

#### **4.14.7 Bridge Hydraulic Evaluation**

The CONSULTANT will evaluate bridge hydraulics to determine the hydraulic length of the bridge or the length necessary to meet the hydraulic requirement and document in the Location Hydraulics report. The Consultant will coordinate with the District's Structures Design Engineer and District Drainage Engineer.

#### **4.15 LANDSCAPING ANALYSIS (N/A)**

#### **4.16 CONSTRUCTION AND RIGHT OF WAY COST ESTIMATES**

##### **4.16.1 Construction Cost Estimate**

As part of the alternatives evaluation, the CONSULTANT shall prepare a construction cost estimate for the viable alternatives as well as a refined cost estimate of the Preferred Alternative.

##### **4.16.2 Right-of-Way Cost Estimate**

No right-of-way is assumed for the project. If applicable, the CONSULTANT will provide the CFX with pertinent R/W information (existing/proposed & parcel take/remainder) for the alternative shown on aerials and a Google Earth file (.kmz) as well as spreadsheet tables. GEC staff will prepare preliminary R/W costs.

#### **4.17 ALTERNATIVES EVALUATION**

##### **4.17.1 Comparative Analysis and Evaluation**

The CONSULTANT will prepare an evaluation matrix, which will include the significant impacts and costs of the preferred alternative. The No-Build Alternative will be included in the matrix.

The evaluation matrix will, at a minimum, include the following features:

- a. Construction Costs
- b. Right-of-way impacts
- c. Engineering costs
- d. Utility impact costs

- e. Environmental impacts
- f. Socio-Economic impacts
- g. Maintenance of traffic impacts
- h. Potential parcel impacts
- i. Drainage impacts / costs
- j. Hazardous material impacts

The CONSULTANT shall be prepared to present the preferred alternative and the evaluation at the project Public Hearing.

The CONSULTANT will complete an evaluation of the Preferred Alternative. This will include engineering, environmental and public input.

#### **4.17.2 Selection of Preferred Alternative**

Upon completion of the evaluation and comparison, the CONSULTANT will identify the Preferred Alternative to the CFX.

#### **4.17.3 Value Engineering (N/A)**

### **4.18 CONCEPT PLANS**

#### **4.18.1 Prepare Base Map for Conceptual Plans**

The CONSULTANT will review the aerial base maps used for the corridor analysis and update or provide any additional information as required for the development and evaluation of the Conceptual Design Plans. Information to be checked and updated will include:

- a. Existing features: plot existing roadway right-of-way, intersections, bicycle/pedestrian walkways, and drainage easements.
- b. Street names: label street names and highway numbers in immediate project area.
- c. Surface features: label all pertinent cultural and natural features and land use information.
- d. North Arrow: locate north arrow at upper-mid portion of sheet. Show scale and aerial flight date with north arrow.
- e. Plot property lines.
- f. Plot new data as it becomes available to keep base maps up to date.

#### **4.18.2 Alternative Concept Plan**

The CONSULTANT will prepare an alternative concept plan. At a minimum, the concept plan should include defined right-of-way required and horizontal geometry. The CONSULTANT will overlay the concept plan on the base maps. The concept plan will be prepared at a scale of 1"=100'. In addition, the CONSULTANT will draw an overall location plan of the project alternative at a ratio of 1" = 50'. The concept plan will be drawn on standard size 11" x 17" reproducible sheets with standard title boxes. The drawings shall be provided of suitable size and scale for public display at meeting and hearings.



#### **4.18.3 Preferred Alternative Concept Plans**

Upon approval by the CFX of the preferred alternative, the CONSULTANT will develop the preferred alternative on the base maps at a scale of 1" = 50' that includes refinements from the public hearing.

#### **4.18.4 Typical Section Package**

The CONSULTANT will prepare the Typical Section Package in accordance with the FDOT's Design Manual.

#### **4.18.5 Design Exception and Variations (N/A)**

#### **4.19 TRANSPORTATION MANAGEMENT PLAN (N/A)**

#### **4.20 RISK MANAGEMENT (N/A)**

#### **4.21 ENGINEERING ANALYSIS DOCUMENTATION**

The CONSULTANT will prepare the Preliminary Engineering Report (PER) and all required supporting engineering reports in accordance with the PD&E Manual for review and comment by the CFX and GEC. Following review by the CFX, the CONSULTANT will make this report available to the public prior to the Public Hearing. The Final PER will be finalized after the Public Hearing.

#### **4.22 PLANNING CONSISTENCY (N/A)**

*Refer to Sections 4.1 and 6.0 of Scope for Planning Consistency data collection and documentation, respectively.*

#### **4.23 TRANSIT SYSTEMS AND SERVICE (N/A)**

##### **4.23.1 Quality Assurance/Quality Control**

Establish and implement a QA/QC plan. Also includes sub consultant review, response to comments and any resolution meetings if required, and preparation of submittals for review. The CONSULTANT shall be responsible for insuring that all work products conform to CFX standards and criteria. This shall be accomplished through an internal Quality Control (QC) process performed by the CONSULTANT. This QC process shall insure that quality is achieved through checking, reviewing, and supervision of work activities by objective and qualified individuals who were not directly responsible for performing the initial analysis and work. The CFX or GEC may, at any time, request copies of the CONSULTANT'S QA/QC review materials.

## **5.0 ENVIRONMENTAL ANALYSIS AND REPORTS**

The CONSULTANT shall perform the appropriate level of environmental analysis of each community, cultural, natural, or physical feature of the project and prepare the required corresponding documentation as outlined in the PD&E Manual.

The Environmental Documents prepared by the CONSULTANT will comply with the procedures listed in the PD&E Manual, and will also follow the format and include content described in the PD&E Manual. The task of documentation includes the preparation of interim and draft reports prepared by the CONSULTANT for review and comment by the CFX and GEC prior to producing final reports and documents.

### **5.1 SOCIOECONOMIC CHARACTERISTICS**

The CONSULTANT will conduct an overview of the study area to explore the socioeconomic issues, features, and activities that will influence the development of the preferred alternative. Socioeconomic features to be cataloged will include, but not be limited to:

- a. Schools
- b. Places of worship
- c. Community centers and parks
- d. Other public facilities
- e. Neighborhoods
- f. Specialized housing

The CONSULTANT will collect enough meaningful data to perform a comprehensive socioeconomic analysis that can be used in conjunction with the other environmental factors in evaluating the preferred alternative. The CONSULTANT should be prepared to interview knowledgeable people and conduct field reviews to verify as necessary.

The CONSULTANT will describe existing neighborhoods and evaluate the potential impacts of the project upon them.

#### **5.1.1 Economic**

The CONSULTANT shall prepare an Existing Conditions Technical Memorandum that documents key community amenities and features within the study area. The CONSULTANT shall also document how public comments, ideas, and concerns have been addressed as part of the project. The preferred alternative proposing a new roadway alignment with new traffic patterns can greatly alter access/ease of access to local businesses.

#### **5.1.2 Land Use Changes**

The CONSULTANT shall review existing and future land uses and analyze the compatibility of the project with the identified land use in accordance with the PD&E Manual. An analysis will be required that demonstrates to what extent the expressway would likely change the surrounding land use, compared to existing (taking into account current plans and ongoing roadway improvements).

### **5.1.3 Mobility**

The CONSULTANT shall review and analyze current mobility options for local traffic and pedestrians to access area businesses, parks, places of worship, etc. and how mobility options may be altered with a new expressway facility.

### **5.1.4 Aesthetics**

Aesthetic considerations such as impacts on existing neighborhoods and surrounding communities (positive and negative), landscaping opportunities, gateway opportunities, theme opportunities and vistas/focal points shall also be addressed. Structural design opportunities, stormwater facility, preservation of existing vegetation, and vacated right-of-way potential will also be considered. The CONSULTANT shall evaluate the potential visual and aesthetic impacts to the community associated with the project in accordance with the PD&E Manual.

### **5.1.5 Relocation Potential (N/A)**

## **5.2 CULTURAL RESOURCES**

The CONSULTANT will assess the direct and indirect effects and will document the severity of the following items in the Environmental Document and Project file:

### **5.2.1 Archaeological and Historical Resources**

The CONSULTANT will provide a cultural resource assessment for the preferred alternative, which shall include coordination with SHPO. A complete Cultural Resource Assessment Survey will be performed in accordance with the PD&E Manual. The CONSULTANT shall completely analyze the impacts to all cultural and historic resources within the Area of Potential Effect (APE) and prepare a Cultural Resource Assessment Request Package as described in the PD&E Manual.

### **5.2.2 Recreational/ Section 4(f)**

As the proposed project receives no federal monies, Section 4(f) is not applicable. Recreational areas will be identified as part of Section 5.1. The documentation of existing recreational resources and potential impacts will be completed by the CONSULTANT as part of the scope for Section 5.1 and 6.0.

## **5.3 NATURAL RESOURCES**

The CONSULTANT will assess and summarize each of the natural resource issues in the Environmental Document. If no involvement for a particular issue is indicated, then a statement to that effect will be included.

The CONSULTANT will identify the natural resource evaluation area. The CONSULTANT will assess the direct, and indirect effects and will document the severity of the following items in the Environmental Document and project file:

### **5.3.1 Wetlands**

The CONSULTANT will collect available information on wetlands located within the study area. The CONSULTANT will evaluate and document all potential impacts to the study area wetlands in accordance with the PD&E Manual.

### **5.3.2 Essential Fish Habitat**

The CONSULTANT shall collect data necessary to confirm there are no aquatic preserves or essential fish habitats located within the study area.

### **5.3.3 Wildlife and Habitat**

The CONSULTANT will generally describe the project area and, more specifically, describe the area within the proposed right-of-way limits including common names and Latin binomials for dominant and/or representative species. The CONSULTANT will further quantify areas that will be impacted both directly (within the right-of-way limits) and indirectly (ecotone encroachment, etc.) by the preferred alternative.

The CONSULTANT will record all fauna observed and outline what species might be expected to be found based on flora. Any State or Federal "critical habitat" must be identified.

The CONSULTANT will obtain biological information needed to prepare a Natural Resources Evaluation of the project where endangered or threatened species are identified. The CONSULTANT will prepare a Natural Resources Evaluation for the project in accordance with the PD&E Manual.

### **5.3.4 Natural Resource Evaluation Report**

The CONSULTANT will document the results of the Wetlands and EFH, Wildlife and Habitat, evaluations in a Natural Resources Evaluation (NRE) report in accordance with Part 2, Chapter 16 of the PD&E Manual.

### **5.3.5 Water Quality**

The CONSULTANT will obtain information on the existing water quality of potential receiving water bodies and evaluate the project's potential for enhancing or degrading their water quality. A Water Quality Impact Evaluation checklist and supporting documentation will be prepared pursuant to the PD&E Manual.

### **5.3.6 Special Designation**

The CONSULTANT shall collect data necessary to perform an assessment of Outstanding Florida Waters in accordance with the PD&E Manual. The CONSULTANT will confirm there are no Wild and Scenic River designations within the study area. The CONSULTANT will confirm no aquatic preserves or Wild and Scenic Rivers are impacted by the project and provide the appropriate level of documentation in accordance with the PD&E Manual.

### **5.3.7 Identify Permit Conditions**

The CONSULTANT will obtain permit related information about sites that may require dredge and fill permits, water quality permits or stormwater discharge permits. This task includes the identification of all permitting agencies. The CONSULTANT shall identify permit conditions, and type of permits required.

### **5.3.8 Farmlands**

The CONSULTANT will confirm and document that there are no farmland impacts associated with this project in accordance with the PD&E Manual.

## **5.4 PHYSICAL EFFECTS**

The CONSULTANT will summarize each of the physical effect issues in the Environmental Document. If no involvement for a particular issue is indicated, then a statement to that effect will be included. The CONSULTANT will identify the physical effect evaluation area. The CONSULTANT will assess the direct and indirect effects and will document the severity of the following:

### **5.4.1 Noise**

The CONSULTANT shall perform a traffic noise analysis in accordance with the FDOT PD&E Manual. A desktop review will be performed to assess the potential for traffic noise impacts and if a detailed noise analysis is warranted. This task will include collecting all data necessary to perform the noise impact analysis. The CONSULTANT will develop Traffic Noise Model input data and evaluate the existing conditions, the No-Build Alternative and one Build Alternative for the Common Noise Environments (CNEs) and Special Land Uses (SLUs) potentially impacted by traffic noise. The CONSULTANT will conduct traffic noise barrier analyses for CNEs for which a traffic noise impact is predicted with the Build Alternative. The CONSULTANT shall prepare a comprehensive Tech Memo in lieu of a full Noise Study Report.

### **5.4.2 Air Quality**

The CONSULTANT shall collect all data necessary to perform the air quality screening test in accordance with the PD&E Manual. The air quality study will be performed in accordance with the PD&E Manual. It is anticipated that the project will pass the Air Quality Screening model and no detailed air quality analysis will be required. The air quality analysis will be documented in a brief Technical Memorandum.

### **5.4.3 Construction Impact Analysis**

The CONSULTANT will address potential construction impacts associated with this project in accordance with the PD&E Manual.

### **5.4.4 Contamination**

The CONSULTANT shall collect data necessary to perform the Level 1 Contamination Screening Evaluation in accordance with the PD&E Manual.

## **5.5 CUMULATIVE EFFECTS EVALUATION (N/A)**

## **5.6 PROJECT COMMITMENTS RECORD**

The CONSULTANT will document project commitments in the Commitments section of the Environmental Document.

## **6.0 ENVIRONMENTAL DOCUMENT**

### **Class of Action Determination (N/A)**

### **Type II Categorical Exclusion (N/A)**

### **PEIR**

The CONSULTANT will prepare the Project Environmental Impact Report (PEIR) in accordance with the PD&E Manual for review and comment by the CFX and GEC. The CONSULTANT will document Project Planning Consistency consistent with requirements for a State Environmental Impact Report (SEIR) in the PEIR. Following review by the CFX, the CONSULTANT will prepare this report after all other reports have been finalized and will make this report available to the public prior to the Public Hearing. The Final PEIR will be finalized after the Public Hearing.

### **Environmental Assessment (N/A)**

### **FONSI (N/A)**

### **Draft EIS (N/A)**

### **Final EIS (N/A)**

### **Quality Assurance/ Quality Control**

Establish and implement a QA/QC plan. Also includes sub consultant review, response to comments, and any resolution meetings, if required.

## **7.0 MISCELLANEOUS**

## ATTACHMENT A – GENERAL LOCATION MAP



## ATTACHMENT B - DESIGN CRITERIA

The CONSULTANT shall coordinate and perform the appropriate level of engineering analysis for this project as outlined in the PD&E Manual and the following sections.

Development of this project will be guided by the basic design criteria listed below.

Design Element	Design Standard	Source
<u>Design Year</u>	2045	- Scope of Services
<u>Design Vehicle</u>	WB-62FL/WB-67	- AASHTO 2004, Pg. 18 - FDOT PPM Vol. I, p 1-19
<u>Design Speed</u> Rural Freeway Urban Freeway Urban Arterial Rural Arterial Other Frontage Road Service Road Access Road Ramp Directional Loop	70 mph 60 mph 45 mph <sup>1</sup> 55 mph  45 mph 50 mph As appropriate  50 mph 30 mph	- FDOT PPM Vol. I, Tbl. 1.9.1, 1.9.2
<u>Lane Widths</u> Freeway Ramp 1-lane 2-lane Turning Roadway Arterial Collector/Service Road Bicycle Rural/Urban	12-ft  15-ft 24-ft Case dependent 12-ft 12-ft  5-ft/4-ft (designated or undesignated)	- FDOT PPM Vol. I, Tbl. 2.1.1, 2.1.2, 2.1.3 & 2.14.1





<u>Roadside Slopes</u> Front slope     Front slope (curb & gutter)  Back slope	0.0-5 5-10 10-20 □□20  All  All  All	1:6 1:6 to CZ & 1:4 1:6 to CZ & 1:3 1:2 with guardrail (Use 10-ft bench at half the height of fill)  1:2 not flatter than 1:6  1:4 or 1:3 w/ standard width trap ditch & 1:6 front slope  1:2 not flatter than 1:6	- FDOT PPM Vol. I, Tbl. 2.4.1  - (OOCEA Policy), Use 1:3 slopes, avoid 1:2 slopes except where as necessary																		
<u>Max. Grade / Max. Change in Grade</u> Freeway (Rural / Urban) Ramp Directional Loop Arterial Rural Urban Collector Frontage Road/Service Road  Min. Grade Curb & Gutter	<table><tr><th>Max. Grade</th><th>□</th></tr><tr><td>3.0%</td><td>0.20% / 0.40%</td></tr><tr><td>5.0%</td><td>0.60%</td></tr><tr><td>7.0%</td><td>1.00%</td></tr><tr><td>3.5%</td><td>0.50%</td></tr><tr><td>6.0%</td><td>0.70%</td></tr><tr><td>6.5% to 9.0%</td><td>-</td></tr><tr><td>8.0%</td><td>0.70%</td></tr><tr><td>0.3%</td><td>-</td></tr></table>	Max. Grade	□	3.0%	0.20% / 0.40%	5.0%	0.60%	7.0%	1.00%	3.5%	0.50%	6.0%	0.70%	6.5% to 9.0%	-	8.0%	0.70%	0.3%	-		- FDOT PPM Vol. I, Tbl. 2.6.1, 2.6.2          - FDOT PPM Vol. I, Tbl. 2.6.4
Max. Grade	□																				
3.0%	0.20% / 0.40%																				
5.0%	0.60%																				
7.0%	1.00%																				
3.5%	0.50%																				
6.0%	0.70%																				
6.5% to 9.0%	-																				
8.0%	0.70%																				
0.3%	-																				
<u>Minimum Stopping Sight Distance</u> (Grades 2.0%)	<table><tr><th>Dsgn. Speed (mph)</th><th>Distance (ft)</th></tr><tr><td>70</td><td>730</td></tr><tr><td>60</td><td>570</td></tr><tr><td>55</td><td>495</td></tr><tr><td>50</td><td>425</td></tr><tr><td>45</td><td>360</td></tr><tr><td>30</td><td>200</td></tr></table>	Dsgn. Speed (mph)	Distance (ft)	70	730	60	570	55	495	50	425	45	360	30	200		- FDOT PPM Vol. I, Tbl. 2.7.1				
Dsgn. Speed (mph)	Distance (ft)																				
70	730																				
60	570																				
55	495																				
50	425																				
45	360																				
30	200																				
<u>Decision Sight Distance</u> (Per avoidance maneuver)	<table><tr><th>Dsgn. Speed (mph)</th><th>Distance (ft)</th></tr><tr><td>70</td><td>780-1445</td></tr><tr><td>60</td><td>610-1280</td></tr><tr><td>55</td><td>535-1135</td></tr><tr><td>50</td><td>465-1030</td></tr><tr><td>45</td><td>395-930</td></tr><tr><td>30</td><td>220-620</td></tr></table>	Dsgn. Speed (mph)	Distance (ft)	70	780-1445	60	610-1280	55	535-1135	50	465-1030	45	395-930	30	220-620		- AASHTO Exh. 3-3				
Dsgn. Speed (mph)	Distance (ft)																				
70	780-1445																				
60	610-1280																				
55	535-1135																				
50	465-1030																				
45	395-930																				
30	220-620																				
<u>Horizontal Curve Length</u> Freeway Others  <u>Max. Curvature (Degree of Curve)</u> Freeway DS = 70 mph Rural DS = 60 mph Urban Arterial DS = 55 mph Rural DS = 45 mph Urban Collector DS = 45 mph Frontage Road DS = 50 mph Service Road Ramp DS = 50 mph Directional DS = 30 mph Loop	V = Design Speed 30V (15V min.) 15V (400-ft min.)  3 30' 00" 5 15' 00"  6 30' 00" 8 15' 00"  8 15' 00" 8 15' 00"  8 15' 00" 24 45' 00"		- FDOT PPM Vol. I, Tbl. 2.8.2a   - FDOT PPM Vol. I, Tbl. 2.8.3																		
Design Element	Design Standard	Source																			
<u>Superelevation Transition</u> Tangent Curve Spirals	80% (50% min.) 20% (50% min.) (Curves □□1□□30' 00" do not use spirals),	-FDOT PPM Vol. I, Sect. 2.9  - (OOCEA Policy),																			

	$e_{max}$	SE Trans. Rate		
	0.10	1:200 <sub>s</sub>		
	0.10	1:225		
	0.10	1:225		
	0.05	1:150		
	0.05	1:150		
	0.10	1:200		
	0.10	1:150		
<u>Vertical Curves</u> Length , L = KA	Dsgn. Speed (mph)	K-value		- FDOT PPM Vol. I, Tbl. 2.8.5, 2.8.6 - AASHTO Exh. 3-72 (crest), 3-75 (sag)  - OCEA Policy, Note: FDOT K-values for "ALL OTHER FACILITIES" are desirable
		Crest	Sag	
	70	401	181	
	60	245	136	
	55	185	115	
	50	136	96	
	45	98	79	
	30	31	37	
<u>Minimum Lengths</u> Freeway DS = 70 mph Rural DS = 60 mph Urban Arterial DS = 55 mph Rural DS = 45 mph Urban Collector DS = 45 mph Frontage Road DS = 50 mph Service Road Ramp DS = 50 mph Directional DS = 30 mph Loop	Crest	Sag		
	500-ft	400-ft		
	400-ft	300-ft		
	350-ft	250-ft		
	135-ft	135-ft		
	135-ft	135-ft		
	300-ft	200-ft		
<u>Ramps</u> Ramp Terminals Length Taper   Minimum Spacing Entrance to Exit <sup>6</sup> Exit to Entrance Entrance to Entrance Exit to Exit Turning Roadways	<u>Entrance</u> "Parallel-Type" 900 to 1200-ft 300-ft (25:1)		<u>Exit</u> "Taper-Type" 550-ft (2□□ to 5□, 4□□desirable)	- Design Standards Ind. No. 525 - AASHTO Pg. 850-856        - AASHTO Exh. 10-68, Pg. 844

Design Element	Design Standard	Source
<u>Lane Drop Taper</u>	$L = WS$ (DS □□45 mph) $L = WS^2/60$ (DS □□45 mph)  50:1 min, 70:1 desirable (freeways)	- Design Standards Ind. No. 525, 526  - AASHTO Pg. 818

<u>Clear Zone</u> Freeway DS = 70 mph Rural DS = 60 mph Urban Arterial DS = 55 mph Rural DS = 45 mph Urban Collector DS = 45 mph Frontage Road DS = 50 mph Service Road Ramp DS = 50 mph Directional 1 to 2-lane DS = 30 mph Loop 1 to 2-lane	36-ft 36-ft  30-ft 4-ft (Curb & Gutter) As appropriate 4-ft (Curb & Gutter) 24-ft  14-ft to 24-ft  10-ft to 18-ft	- FDOT PPM Vol. I, Tbl. 2.11.11
<u>Vertical Clearance</u> Over Roadway Over Railroad Sign over Roadway Over Water	16'-6" 23'-6" 17'-6" 12'-0" min.	- FDOT PPM Vol. I, Tbl. 2.10.1 to 2.10.4, Sect. 2.10.1
<u>Limited Access Limits</u> Rural Urban Crossroad overpass/no interchange	300-ft min. 100-ft min 200-ft	- FDOT PPM Vol. I, Sect. 2.14.1

## Ramp Operations

- a. Two thousand (2,000) ft. between entrance and exit terminals - full freeways
- b. Six hundred (600) ft. between exit and entrance terminals
- c. Entrance Ramp Taper of 900 ft. (1° - convergence)
- d. Exit Ramp Taper of 550 ft. (3° - divergence)

## Right-of-way


- a. Ten (10) ft. from back of walls or limit of construction.
- b. Two (2) ft. from back of sidewalk on frontage roads.
- c. Drainage and construction easements as required.
- d. Ninety-four (94) ft. from ramp or mainline traveled way desirable for limited access ROW.
- e. Limited access right-of-way limits per Index 450.

**CONSENT AGENDA ITEM  
#12**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 27, 2020

SUBJECT: Approval of Contract Award to Kimley Horn & Associates, Inc. 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

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The Board approved on November 14, 2019, the final ranking and authorization to negotiate with firms for a Concept Feasibility and Mobility Study for the Proposed Osceola-Brevard County Connector Project. Board award of the contract to Kimley Horn & Associates, Inc. is requested in the not-to-exceed amount of \$1,650,000.00.

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

Reviewed by:



Will Hawthorne, P.E.  
Director of Engineering



# **AGREEMENT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
KIMLEY HORN & ASSOCIATES, INC.**

**CONCEPT FEASIBILITY AND MOBILITY STUDY FOR THE  
PROPOSED OSCEOLA-BREVARD COUNTY CONNECTOR  
PROJECT**

**CONTRACT NO. 001595, PROJECT 599-229**

**CONTRACT DATE: FEBRUARY 13, 2020  
CONTRACT AMOUNT: \$1,650,000.00**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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

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

**FOR**

**CONCEPT FEASIBILITY AND MOBILITY STUDY FOR THE PROPOSED OSCEOLA-  
BREVARD COUNTY CONNECTOR PROJECT**

**CONTRACT NO. 001595  
PROJECT 599-229**

**FEBRUARY 2020**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**



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CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AGREEMENT FOR PROFESSIONAL SERVICES

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**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT, made and entered into this 13<sup>th</sup> day of February 2020, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a corporate body 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 Kimley Horn & Associates, Inc., hereinafter called "CONSULTANT," registered and authorized to conduct business in the State of Florida, carrying on professional practice in engineering, with offices located at 189 S. Orange Avenue, Suite 1000, Orlando, FL. 32801.

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. DEFINITIONS.

Reference herein to the Project Manager shall mean CFX's Director of Engineering or his authorized designee. The Project Manager 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 Project Manager and the CONSULTANT shall comply with all of the directives of the Project Manager 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 Project Manager.

2.0. SERVICES TO BE PROVIDED

CFX does hereby retain the CONSULTANT to furnish certain professional services in connection with the Concept Feasibility and Mobility Study for the Proposed Osceola – Brevard Connector Project identified as Project 599-229 and Contract No. 001595.

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 rendering any of the services, 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.

The work covered by this Agreement as described in **Exhibit "A,"** includes the preparation of a concept, feasibility and mobility study for the Proposed Osceola-Brevard Connector Project. A Supplemental Agreement will be required for the additional work.

All documents, reports, studies and other data prepared by the CONSULTANT shall bear the endorsement of a person in the full employ of the CONSULTANT and duly registered by the State of Florida in the appropriate professional category.

After the CFX's acceptance of the documents for the project, the original set of CONSULTANT's drawings, tracings, plans, maps and CADD files shall be provided to CFX, along with one record set of the final report. The CONSULTANT shall signify, by affixing an endorsement (seal/signature, as appropriate) on the cover sheet of the record set, that the work shown in the report was produced by the CONSULTANT.

The CONSULTANT shall submit a final set of reports and studies which shall be endorsed (seal/signature) by the CONSULTANT.

The CONSULTANT shall not be liable for use by CFX of said plans, documents, reports, studies or other data for any purpose other than intended by the terms of this Agreement.

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 five (5) year term from the date of the Notice to Proceed for the required project services as detailed in **Exhibit "A,"** with five one-year renewals at CFX's option. 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 CONSULTANT are satisfactory and adequate for CFX's needs. If a renewal option is exercised, CFX will provide CONSULTANT with written notice of its intent at least thirty (30) days prior to the expiration of the original term and subsequent renewal, if any.

The CONSULTANT agrees to commence the scheduled project services to be rendered within ten (10) calendar days from the date specified in the written Notice to Proceed from the Project Manager, which Notice to Proceed will become part of this Agreement. The CONSULTANT shall complete scheduled project services within the timeframe(s) specified in **Exhibit "A"**, or as may be modified by subsequent Supplemental Agreement.

### 4.0. PROJECT SCHEDULE

The CONSULTANT agrees to provide Project Schedule progress reports in a format acceptable to CFX and at intervals established by CFX. CFX will be entitled at all times to be advised, at its request, as to the status of work being done by the CONSULTANT and of the details thereof. Coordination shall be maintained by the CONSULTANT with representatives of CFX, or of other agencies interested in the project on behalf of CFX. Either party to the Agreement may request and be granted a conference.

In the event there are delays on the part of CFX as to the approval of any of the materials submitted by the CONSULTANT or if there are delays occasioned by circumstances beyond the control

of the CONSULTANT, which delay the scheduled project completion date, CFX may grant to the CONSULTANT by "Letter of Time Extension" an extension of the scheduled project completion date equal to the aforementioned delays. The letter will be for time only and will not include any additional compensation.

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 in a design capacity and shall have due regard for acceptable standards of design 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.

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:

The Balmoral Group Class II      Geotechnical & Environmental Consultants Class I  
Modica & Associates, Inc. Class I      Inwood Consulting Engineers Class I  
Southeastern Archaeological Research, Inc. Class I

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.

#### 6.0. 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 \$1,650,000.00 for the initial five-year term of this Agreement. 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 errors or deficiencies in the report 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) 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 obligations in this paragraph shall 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.

#### 7.0. 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 189 S. Orange Avenue, Suite 1000, Orlando, FL. 32801.

Notwithstanding Section 17, 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](mailto: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 CONSULTANT shall allow public access to all documents, papers, letters, or other material as approved and authorized by CFX and subject to the provisions of Chapter 119, Florida Statutes, and made or received by the CONSULTANT in conjunction with this Agreement. Failure by the CONSULTANT to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by CFX.

The obligations in Section 7.0, Document Ownership and Records, shall survive the expiration or termination of this Agreement and continue in full force and effect.

#### 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.

8.1 Limitation of Liability: Pursuant to SECTION 558.0035(1)(d), Florida Statutes, CONSULTANT maintains any professional liability insurance required under this contract. Therefore, pursuant to Section 558.0035(1)(c), Florida Statutes, an individual employee or agent of



the CONSULTANT may not be held individually liable for damages resulting from negligence occurring within the course and scope of professional services rendered under this professional services contract

#### 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 Section 6.0 are accurate, complete and current as of the date of this Agreement. It is further agreed that said price provided in Section 6.0 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, 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 in writing the Agreement or (b) notifying the CONSULTANT in writing 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 in accordance with **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 and 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 Section 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.

#### 11.0. ADJUSTMENTS

All services shall be performed by the CONSULTANT to the reasonable satisfaction of the Project Manager 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. 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 Executive Director and Supplemental Agreement(s) of such a nature as required may be entered into by the parties in accordance herewith. Disputes between the Project Manager and the CONSULTANT that cannot be resolved shall be referred to the 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 for consideration by the Executive Director; 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. 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. 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.

14.1 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.

14.2 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/annual aggregate. 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.

14.3 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.

14.4 Professional Liability Coverage shall have limits of not less than One Million Dollars (\$1,000,000) per claim / annual aggregate, 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.

In the event any of the aforementioned insurance policies provide greater coverage or greater limits than the minimum requirements set forth herein, then CFX shall be entitled to the full coverage and limits of such policies, and these insurance requirements will be deemed to require such greater coverage and greater limits.

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.

#### 15.0. 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 Section 7.0 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 or 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 mark, including trademarks, service marks, or any 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 Mark is utilized, the Mark shall be properly screened to insure all layers of the Mark 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.

#### 16.0. CONFLICT OF INTEREST AND STANDARD OF CONDUCT

No Contingent Fees. CONSULTANT warrants that it has not employed or retained any entity or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Contract, and that 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 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, and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission percentage, gift or consideration.

CONSULTANT 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. CONSULTANT acknowledges that it has read the CFX's Code of Ethics and, to the extent applicable, CONSULTANT 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, CONSULTANT 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.

CONSULTANT covenants and agrees that it and its employees, officers, agents, and subconsultants 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. The CONSULTANT agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

CONSULTANT 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 CONSULTANT, and that no such person shall have any such interest at any time during the term of this Agreement.

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.

#### 17.0. 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 17.0, Documented Aliens, shall survive the expiration or termination of this Agreement and continue in full force and effect.

#### 18.0. 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.

19.0. 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 this paragraph shall survive the expiration or termination of this Agreement and continue in full force and effect.

20.0. 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.”

21.0. COMPANIES PURSUANT TO SECTION 287.135 AND 215.473

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

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



## 22.0. AVAILABILITY 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 CONSULTANT to that effect.

## 23.0. AUDIT AND EXAMINATION OF RECORDS

### 23.1 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.

23.2 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.

23.3 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) calendar 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.

23.4 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.

23.5 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.

23.6 The obligations in Section 24.0, Audit and Examination of Records, shall survive the expiration or termination of this Agreement and continue in full force and effect.

#### 24.0. 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 24.0, Governing Law and Venue, shall survive the expiration or termination of this Agreement and continue in full force and effect.

#### 25.0. 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: Kimley Horn & Associates, Inc.  
189 S. Orange Avenue, Suite 1000  
Orlando, FL 32801  
Attn: Mr. Clifton Tate, P.E.

Kimley Horn & Associates, Inc.  
189 S. Orange Avenue, Suite 1000  
Orlando, FL. 32801  
Attn: Mr. Jonathan Thigpen, P.E.

## 26.0. 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.

## 27.0. 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.

## 28.0. ASSIGNMENT

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

## 29.0. 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.

## 30.0. 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.

31.0. 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", Project Location Map [Note: Attach if applicable]  
Exhibit "F", Project Schedule [Note: Attach if applicable]  
Exhibit "G", Potential Conflict Disclosure Form

[ SIGNATURES TO FOLLOW ]

Project 599-229  
Contract No. 001595

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 February 13, 2020.

**KIMLEY HORN & ASSOCIATES, INC.**

**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY**

BY: \_\_\_\_\_  
Authorized Signature

BY: \_\_\_\_\_  
Director of Procurement

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

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

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

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

ATTEST: \_\_\_\_\_ (Seal)  
Secretary or Notary

*Approved as to form and execution, only.*

\_\_\_\_\_  
*General Counsel for CFX*

## **EXHIBIT A**

### **SCOPE OF SERVICES**

# **CENTRAL FLORIDA EXPRESSWAY AUTHORITY (CFX)**

## **SCOPE OF SERVICES**

**Concept, Feasibility, & Mobility (CF&M) Study**

**for the**

**OSCEOLA-BREVARD COUNTY CONNECTOR**

**CFX Project # 599-229**

**CFX Contract # 001595**

**August 2019**

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**SCOPE OF SERVICES FOR CONSULTING ENGINEERING SERVICES**  
**CONCEPT, FEASIBILITY, AND MOBILITY (CF&M) STUDY**

**for the**

**OSCEOLA-BREVARD COUNTY CONNECTOR**

This Exhibit forms an integral part of an agreement between the Central Florida Expressway Authority (hereinafter referred to as the CFX) and the selected planning and engineering firm (hereinafter referred to as the CONSULTANT) relative to the project described as follows:

**1.0 OVERVIEW**

A new expressway connection between Osceola and Brevard Counties has been an identified need in several local long-range transportation plans and master plans, including Brevard County, as well as by the East Central Florida Corridor Task Force. Being that Brevard County is a member of the Central Florida Expressway Authority (CFX), the Space Coast Transportation Planning Organization (SCTPO) requested the CFX conduct a study to evaluate the feasibility of an east-west expressway connection between Brevard County and Osceola County. As such, the CFX has engaged the selected CONSULTANT to perform a comprehensive Concept, Feasibility and Mobility (CF&M) Study of the approximately 30-mile long proposed Osceola-Brevard County Connector.

**2.0 LOCATION**

The general limits and description of the Osceola-Brevard County Connector study corridor are provided below. This study must be coordinated with the Osceola Parkway Extension – Cyrils Drive to Nova Road PD&E Study being prepared by CFX to coordinate the termini and study limits. The CONSULTANT will be responsible for refining the study corridor limits and defining the logical termini for the project.

The Osceola-Brevard County Connector study corridor generally extends eastward along Nova Road from the proposed Osceola Parkway Extension interchange at Nova Road on the west to Interstate 95 (I-95) in south Brevard County on the east. The northern study area boundary can generally be described as, starting on the west, an approximately 2.5-mile distance north of existing Nova Road eastward to Deer Park Road. The study area then expands north to I-95 in the vicinity of Tucker Lane. The southern study area boundary can generally be described as, starting on the west, an approximately 2.5-mile distance south of existing Nova Road eastward to Deer Park Road. The study area then expands south to I-95 in the vicinity of SR 518 (W. Eau Gallie Boulevard).

The general study corridor is depicted on **Attachment A – General Location Map**.

**3.0 PURPOSE**

The purpose of this Exhibit is to describe the scope of work for the CF&M study and the responsibilities of the CONSULTANT, CFX, CFX's general engineering consultant (GEC) Dewberry Engineers, CFX's traffic and revenue consultant (T&RC) CDM Smith, and the CFX public involvement consultant (PIC) Quest Corporation of America.

## **4.0 OBJECTIVE**

The study will include the development and evaluation of alternate mobility programs within the project corridor. The work will include the evaluation and documentation of the physical, natural, social, and cultural environment within the corridor and the potential impacts associated with the various mobility alternatives. This analysis will also address: economic and engineering feasibility; mobility capacity and levels of service; conceptual geometry and structures; and potential interchanges and existing intersection improvement. Public involvement and interagency coordination will be an integral part of the assessment process.

The CONSULTANT, in coordination with CFX and its T&RC will forecast the future transportation demands for the corridor (utilizing a design year of 2045). The CONSULTANT will then develop a range of transportation mobility options and programs that could adequately meet the future demand. Corridor mobility elements to be considered will include, but are not necessarily constrained to, limited access tolled expressways, mass transit technologies, and intermodal facilities. The CONSULTANT will be responsible for estimating the overall project costs associated with each mobility alternative, including planning, design, construction, permitting and other project related costs. The GEC will be responsible for estimating the right-of-way acquisition costs based on input from the CONSULTANT.

The general objective of this study is to provide documented information necessary for CFX to reach a decision on the feasibility of each mobility option.

## **5.0 GOVERNING REGULATIONS**

The services performed by the CONSULTANT shall comply with all applicable CFX and FDOT Manuals and Guidelines. The FDOT's Manuals and Guidelines incorporate by requirement or reference all applicable State and Federal regulations. It is understood that AASHTO criteria shall apply as incipient policy. Some standards may not apply to the project, but are listed for reference. The current edition, including any updates, of the following FDOT Manuals and Guidelines shall be used in the performance of this work:

- Florida Statutes
- Florida Administrative Codes
- Applicable federal regulations and technical advisories.
- Project Development and Environment Manual
- FDOT Design Manual
- Roadway Traffic and Design Standards
- Highway Capacity Manual
- Manual of Uniform Traffic Control Devices (MUTCD)
- Manual of Uniform Minimum Standards for Design, Construction, and Maintenance for Streets and Highways
- Bicycle Facilities Planning and Design Manual
- Right-of-Way Mapping Handbook
- Location Survey Manual
- EFB User Guide
- Drainage Manual and Handbooks
- Outline Specifications - Aerial Surveys/Photogrammetry
- Soils and Foundations Manual
- Structures Design Guidelines
- CADD Manual (No. 625-050-001)
- CADD Production Criteria Handbook

- Florida's Level of Service Targets for the State Highway System (No. 000-525-006-c)
- Project Traffic Forecasting (No. 525-030-120)
- K-Factor Estimation Process
- Florida Highway Landscape Guide
- Basis of Estimates Manual

## **6.0 PROJECT MANAGEMENT AND ADMINISTRATION**

CFX's General Engineering Consultant (GEC) will provide contract administration, project management services and technical reviews of all work associated with the development and preparation of the study reports.

### **6.1 Notice to Proceed Meeting**

The CONSULTANT shall meet with appropriate CFX, GEC, PIC, and T&RC personnel immediately following receipt of the Notice to Proceed. At a minimum, the CONSULTANT's Project Manager and senior project personnel shall attend. At the Notice to Proceed Meeting, CFX will:

- Render any relevant information in its possession.
- Establish any ground rules upon which the study process will be conducted.
- Bring to the attention of the CONSULTANT any special or controversial issues to be considered in the study.
- Explain the financial administration of the contract.

### **6.2 Key Personnel**

The CONSULTANT'S work shall be performed and directed by the key personnel identified by the CONSULTANT and approved by CFX. Any proposed changes to key personnel shall be subject to review and approval by CFX.

### **6.3 Project Schedule**

The study is expected to have a fifteen (15) month duration. Within ten (10) working days after receipt of the Notice to Proceed, the CONSULTANT shall provide a schedule of calendar deadlines to the GEC for review. The CONSULTANT shall update the project schedule on a monthly basis and inform CFX of any substantial potential schedule modifications.

### **6.4 Correspondence**

Copies of all written correspondence between the CONSULTANT and any party pertaining specifically to this study shall be provided to CFX, the GEC, and the PIC for their records within one (1) week of the receipt of said correspondence.

### **6.5 Quality Control**

The CONSULTANT shall be responsible for ensuring that all work products conform to CFX standards and criteria. This shall be accomplished through an internal Quality Control (QC) process performed by the CONSULTANT. This QC process shall ensure that quality is achieved through checking, reviewing, and surveillance of work activities by objective and qualified individuals who were not directly responsible for performing the initial work. The CFX or GEC may, at any time, request copies of the CONSULTANT'S QA/QC review materials.

The CONSULTANT shall submit a Quality Assurance/Quality Control (QA/QC) Plan to the GEC for

review and approval within ten (10) working days following the Notice to Proceed Meeting.

## **6.6 Project Management, Meetings and Coordination**

The CONSULTANT shall meet with CFX staff and the GEC as needed throughout the life of the project. The CONSULTANT should be prepared to meet on a bi-monthly basis for progress meetings; therefore, thirty (30) meetings should be anticipated. The actual frequency of the meetings will vary depending on the project stage and pending activities. The CONSULTANT will prepare meeting summaries and submit within one week of each meeting to the GEC for review and approval prior to distribution to attendees and others.

Progress reports shall be delivered to CFX in a format as prescribed by the GEC and no less than 5 business days prior to submission of the corresponding invoice. Judgment on whether work of sufficient quality and quantity has been accomplished will be made by the GEC Project Manager by comparing the reported percent complete against actual work accomplished.

## **7.0 PUBLIC INVOLVEMENT**

Public involvement includes communicating to and receiving information from all interested persons, groups, and government organizations on topics related to the study. The CFX Public Involvement Consultant (PIC) shall coordinate and perform the appropriate level of public involvement for this project as outlined in the following sections. The CONSULTANT shall provide support to the PIC.

All public involvement tasks and activities will be coordinated with CFX.

### **7.1 Public Involvement Plan**

The PIC will prepare a comprehensive Public Involvement Plan (PIP) and submit to the CONSULTANT and GEC within twenty (20) business days following the Notice to Proceed Meeting.

The purpose of the PIP is to establish and maintain a strategy for early, meaningful, and continuous public and stakeholder involvement throughout the study process.

The PIC, with assistance from the CONSULTANT, will perform all data collection activities necessary to prepare and implement the PIP including, but not limited to, the following:

- Identification of stakeholders and interested parties
- Field review of potential meeting sites
- Preparation and distribution of meeting announcements and notices
- Preparation of meeting notes

### **7.2 Mailing List**

The CONSULTANT shall be responsible for developing, maintaining, and updating a project mailing list which will include:

- Public officials and their staffs
- Affected residents, business tenants and property owners within the corridor
- Environmental Advisory Group (EAG)
- Project Advisory Group (PAG)
- Interested parties, including:
  - Residents/property owners within the corridor
  - Other informed parties who notify the CONSULTANT that they desire to be added to the

- mailing list.
- Special interest groups

The CONSULTANT will incorporate the mailing lists received from any other overlapping or adjacent studies. The CONSULTANT will maintain the mailing list in a computer file which is acceptable to CFX. For each mailing, the CONSULTANT will provide the PIC a computer file of the mailing list and, if requested, a hard copy printout, certified by the CONSULTANT as true and correct. Additional groups and/or individuals may be included on the mailing list as requested.

### **7.3 Public Meetings**

The CONSULTANT shall be responsible for conducting two (2) public meetings, one each in both Osceola County and Brevard County. The Public Information Meetings may be scheduled to coincide with submittal of the Draft Concept, Feasibility and Mobility Study Report. It is anticipated the meetings will be conducted in an open house format, with a video loop presentation and the opportunity for attendees to have their questions answered by study staff.

The PIC, with assistance from the CONSULTANT, will prepare and/or provide:

- Handouts
- Display graphics and presentation
- Meeting equipment set-up and tear-down
- Legal and/or display advertisements
- Letters for notification of elected and appointed officials, affected property owners and other interested parties
- News releases

The PIC, with assistance from the CONSULTANT, will investigate potential meeting sites and pay all costs for meeting site rents and insurance. The CONSULTANT will attend the meetings with an appropriate number of personnel to assist CFX staff.

Mailings, legal notices and/or newspaper display advertisements shall be the responsibility of the PIC with assistance from the CONSULTANT. Drafts of all notification advertisements and letters shall be submitted to the CFX for its approval at least one week prior to mailing. Actual copies of the notices shall be retained in the project files.

Within two (2) weeks after the public meeting, the PIC, with assistance from the CONSULTANT, will prepare a complete meeting summary that will contain at a minimum:

- Advertisements and legal notices
- Fact Sheets
- Meeting Notes
- Sign-in sheets
- Comment sheets
- Draft responses to comments and inquiries (if appropriate)

### **7.4 Board Meetings**

At the discretion of CFX, the CONSULTANT shall be responsible for conducting up to two (2) presentations each to the Central Florida Expressway Authority, Osceola County Board of County Commissioners, Brevard County Board of County Commissioners, MetroPlan Orlando, and the SCTPO

Board. This is a total of up to ten (10) presentations. It is anticipated the presentations will be conducted to coincide with a scheduled Board Meeting with a brief scripted presentation and question and answer session.

The PIC, with assistance from the CONSULTANT, will prepare and/or provide:

- Handouts
- Display graphics and PowerPoint presentation
- Meeting equipment set-up and tear-down

### **7.5 Advisory Groups**

The CONSULTANT shall work with the PIC and GEC to establish a Project Advisory Group (PAG), and Environmental Advisory Group (EAG), which will include staff from governmental agencies, permitting agencies, environmental organizations, special interest groups and other entities as approved by the CFX. The CONSULTANT will be available to meet with the PAG and EAG up to three (3) times each during the study to present information regarding the project, receive input, and respond to questions. This is a total of up to six (6) meetings.

Potential meeting milestones will include:

- a) Project Kick-Off
- b) Prior to Public Workshop
- c) Project Completion

The CONSULTANT will coordinate with CFX, the PIC, and the GEC to prepare the initial PAG and EAG members list. The PIC will be responsible for contacting the PAG and EAG members and maintaining coordination with them throughout the study. The CONSULTANT will coordinate with CFX, the PIC, and the GEC and be responsible for preparing all materials, presentations, etc. distributed to the PAG/EAG members.

### **7.6 Project Kick-Off Letter**

Within thirty (30) calendar days after the Notice to Proceed Meeting, the CONSULTANT will assist the PIC in preparing and distributing a Project Kick-Off Letter to the following organizations: FDOT, MetroPlan Orlando, SCTPO, local government agencies, the East Central Florida Regional Planning Council, environmental regulatory agencies, local officials, affected property owners, and any group or individual that has expressed an interest in the project. The purpose of this letter will be to introduce the CONSULTANT and acquaint the recipients with the study, its purpose and objectives. Typical information shall include: study team, project scope, project limits, schedule, and potential issues and concerns.

### **7.7 Unscheduled Project Meetings**

The CONSULTANT may be required to participate in unscheduled meetings with the public, elected officials, or public agencies. The CONSULTANT shall be available with no more than a five (5) working day notice, to attend these meetings or make presentations at the request of CFX. Such meetings and presentations may be held at any hour between 7:00 a.m. and 12:00 midnight on any day of the week. The CONSULTANT may be called upon to provide or assist the PIC with maps, draft news releases, audio-visual displays, and similar material for such meetings. The CONSULTANT shall be prepared to attend up to thirty (30) such unscheduled meetings.

### **7.8 Project Information Line/General Public Correspondence**

The PIC will maintain the project information line and general e-mail address established for the project. The CONSULTANT will provide support to the PIC to answer questions and respond to comments.

### **7.9 Project Newsletters**

The CONSULTANT shall assist the PIC in preparing and distributing up to three (3) project newsletters which will be designed to inform interested parties as to the status of the project. Newsletters shall have the quality of desk-top publishing and be comparable to previous CFX work efforts. Distribution of the newsletters will coincide with key project milestones as follows:

- Project Kick-Off
- Public Meeting / Workshop
- Project Completion

The CONSULTANT will assist the PIC in distributing newsletters to all interested parties, public officials, property owners, special interest groups, etc. as identified above. Interested parties include those contained on the CONSULTANT's mailing list and other informed parties who request to be added to the mailing list. Distribution of the newsletters may involve direct mail as well as distribution through various media such as public schools, churches, civic organizations, public libraries, etc.

The Project Kick-Off Newsletter may contain language to alert affected property owners and tenants of the possibility that certain environmental and/or engineering personnel may require access to their property. Prior to any actual property access, the CONSULTANT shall contact the owner or tenant by the use of a standard right-of-entry letter via US Post Office mail delivery.

### **7.10 Project Webpage**

The CONSULTANT shall provide information about the study to the PIC for inclusion on the CFX Webpage. After initial posting of the project information, the CONSULTANT shall provide updated information to the PIC on an as-needed basis – generally coinciding with Newsletter distribution and EAG, PAG, and public meetings.

## **8.0 DATA COLLECTION**

Immediately following the Notice to Proceed, the CONSULTANT shall begin data collection. The information collected should include all data necessary to adequately identify and evaluate the alternative mobility programs. The created data base of information shall be compatible for use on base maps used for public presentations, corridor maps, and alternative plans.

### **8.1 Aerial Photography**

The CONSULTANT shall use aerial photography as the basis for plotting various data necessary for planning, engineering and environmental analysis, and presentation of the alternative mobility programs. Copies of aerial photography are the prime source of information used to convey project considerations. The most current existing available aerial photography, either provided by CFX or obtained by the CONSULTANT, will be utilized and the digital aerial photography should be compatible with MicroStation.

Generally, controlled aerial mapping at a scale of 1" = 200' to 1" = 2000' will be used as the basis for plotting various data necessary to conduct detailed analyses. The CONSULTANT will recommend mapping scales for approval by CFX.



## **8.2 Traffic Data**

The CONSULTANT will coordinate with CFX and the T&RC and obtain all applicable project traffic related information including travel demand forecasting, design traffic and all operational analysis required for completion of the study. The CONSULTANT shall collect any additional data for the study corridor and surrounding roadway network as needed, but is not expected to conduct machine or other forms of manual field counts.

## **8.3 Transportation Plans**

The CONSULTANT shall collect and summarize at a minimum:

- MetroPlan Orlando Long Range Transportation Plan (LRTP)
- Brevard County Comprehensive Plan
- Osceola County Comprehensive Plan
- Space Coast TPO LRTP
- East Central Florida Regional Planning Council 2060 Plan
- East Central Florida Corridor Task Force Final Report
- LYNX System Plans
- Plans that discuss non-motorized modes, including bikeways and pedestrian walkways
- Other applicable transportation plans

## **8.4 Land Use and Development Plans**

The CONSULTANT shall collect all adopted land use plans within and adjacent to the study corridor. Additionally, the CONSULTANT will, at a minimum, communicate with staff at Osceola and Brevard Counties (and their appropriate city staffs), East Central Florida Regional Planning Council, major land developers, and other corridor stakeholders to collect information on planned developments that may influence the analysis and outcome of this study.

## **8.5 Physical / Natural Environmental Information**

The CONSULTANT will collect information on the existing physical and natural environment from published resources. Information to be collected will include, but not be limited to, the following:

- Roadways
- Socioeconomic Characteristics (schools, places of worship, community centers, etc.)
- Utilities
- Archaeological and Historical Resources
- Recreational areas and facilities
- Wildlife and habitat areas
- Farmlands
- Major wetland features,
- Surface water bodies,
- Outstanding Florida Waters, Wild and Scenic Rivers and Aquatic preserves, if any,
- Floodplains
- Contamination potential sites
- Conservation areas
- Other unique natural features that may influence the analysis and outcome of this study

## **8.6 Interagency and Stakeholder Coordination**

The CONSULTANT will be required to initiate and maintain coordination with the local governments,

FDOT and corridor stakeholders to ensure the study team has a firm understanding of the approved and proposed development plans including transportation facilities, land uses, magnitude and timing.

### **8.7 Study Area Base Maps**

The CONSULTANT will prepare base maps for the study corridor that will be used throughout the study for public involvement presentations, corridor maps, and alternative plans. All major environmental features should be identified and plotted as well as all current and projected land uses and development plans collected throughout the coordination process. The CONSULTANT should clearly identify any study area constraints or fatal flaws. Likewise, the CONSULTANT should identify any opportunities that could have substantive influence on potential alternative mobility programs.

### **8.8 Confirm Corridor Limits**

Upon completion of the data collection efforts and identification of unique corridor characteristics, the CONSULTANT will reaffirm the corridor limits.

### **8.9 Data Collection Summary Technical Memorandum (Deliverable)**

The CONSULTANT will summarize the data collection effort in the Existing Conditions Technical Memorandum (Tech Memo). The Tech Memo will document all of the data collection efforts and will include identification of unique corridor features that will materially influence the development and evaluation of alternative mobility programs. Any “fatal flaws” should be clearly identified in this document. The contents of the Tech Memo will be incorporated in the final study document.

## **9.0 ESTABLISH PURPOSE AND NEED**

The Purpose and Need Statement will provide the basis for evaluating the effectiveness of each mobility alternative in meeting the corridor’s transportation needs and shall be developed to meet the requirements of a potential future PD&E study.

The CONSULTANT, in coordination with CFX and its T&RC, will evaluate current and future year population, population densities, major employment centers and densities, traffic and truck forecasts, weekend and recreational traffic and other characteristics of the study corridor. The evaluation will include a discussion of demographic shifts and emerging population, past and projected employment, and past and projected housing trends. Development and land use patterns will be evaluated to identify major trip generators and/or communities that are currently, or will be in the future, in need of regional mobility improvements.

Under this task the CONSULTANT will identify the corridor mobility needs and document issues sufficiently to guide the development and refinement of mobility alternatives. The CONSULTANT will prepare a formal Purpose and Need statement for review, comment and approval by CFX and the GEC.

## **10.0 MOBILITY PROGRAM ALTERNATIVE**

In this portion of the study, the CONSULTANT will develop and evaluate alternative mobility programs that could satisfy the study’s Purpose and Need. The alternative mobility programs could include one or more of the following transportation elements:

- Limited Access Tolled Expressways
- Buses, fixed guideways, bus rapid transit systems, other mass transit technologies
- Intermodal facilities, including park and ride lots

### **10.1 No-Build Alternative**

The CONSULTANT will develop and evaluate a No-Build scenario. This scenario will be based on the assumption that CFX does not implement a mobility program within the corridor above and beyond what the local governments and private entities have in their plans. The evaluation results should definitively relate to the Purpose and Need statement.

### **10.2 Develop Alternative Mobility Programs**

The CONSULTANT will develop up to three (3) alternative mobility programs, consisting of one or more of the listed mobility elements. The level of detail expected for each mobility element proposed is provided below.

- **Limited Access Tolled Expressway** - The CONSULTANT will develop conceptual alignments in accordance with the design criteria provided in Attachment B. At a minimum, the CONSULTANT will identify logical termini, prepare typical sections, identify potential bridge and interchange locations (including potential feeder road connections), delineate potential right-of-way requirements, and estimate potential impacts to critical corridor features. Enough detail will be required to enable the preparation of a reasonable cost estimate and impact evaluation, which the CONSULTANT will also provide.
- **Mass Transit Technology** – The CONSULTANT will identify a single or a range of potential mass transit technologies that could reasonably serve the projected mobility need. For each identified technology the CONSULTANT will provide a conceptual alignment and logical termini; and an overview of the operating parameters (headways, service times, etc.), station locations, capital costs and annual operation and maintenance costs.
- **Intermodal Facilities** – The CONSULTANT will identify potential locations for any proposed intermodal facilities. Approximate size and property requirements must also be estimated. Additionally, a description of the potential transportation modes and their interaction at the facilities will be required.

The CONSULTANT will plot each mobility program alternative on the base map to clearly reflect the limits and scope of the alternative.

The CONSULTANT will provide a conceptual implementation schedule for each mobility program alternative that is based on the anticipated development schedule and mobility needs of the corridor. Phased implementation of the overall Mobility Program is acceptable; however, the schedule must clearly indicate the phasing and the triggers for each phase.

The CONSULTANT will present the alternative mobility program(s) to CFX and the GEC for review, comment, refinement and approval.

### **10.3 Evaluate and Refine Mobility Programs**

The CONSULTANT will evaluate the unique elements, benefits and impacts of each mobility alternative and summarize in a matrix. The primary evaluation efforts are described below:

- The CONSULTANT will coordinate with the T&RC to develop conceptual traffic forecasts for each mobility program alternative to determine how effective each is at satisfying the Purpose and Need.
- The CONSULTANT will prepare conceptual costs for each alternative. The costs will address initial capital costs such as design, right-of-way acquisition and construction, as well as vehicle / technology procurement for each alternative that includes a multimodal element.
- The CONSULTANT will estimate impacts to the physical and natural environment. This analysis

should address not only potential impacts resulting from the proposed alternatives, but also include a discussion of the steps needed to accomplish the environmental approval and possible mitigation.

Upon completion of the evaluation of the alternative mobility programs, the CONSULTANT will present the evaluation results to CFX, the GEC and the T&RC for review, comment and refinement.

#### **10.4 Financial Viability Analysis – N/A**

#### **10.5 Concept, Feasibility and Mobility Study Report (Deliverable)**

The CONSULTANT will document the alternative mobility program development and evaluation effort in the ***Concept, Feasibility and Mobility Study Report***. In general, the CONSULTANT will provide documentation for all of the major work efforts of the study, including but not limited to the following:

- Data Collection / Existing Conditions (as documented in the Technical Memorandum)
- Corridor Confirmation (as documented in the Technical Memorandum)
- Purpose and Need (as previously approved)
- Alternative Mobility Program Development
- Alternative Mobility Program Evaluation
- Conclusions and Recommendations

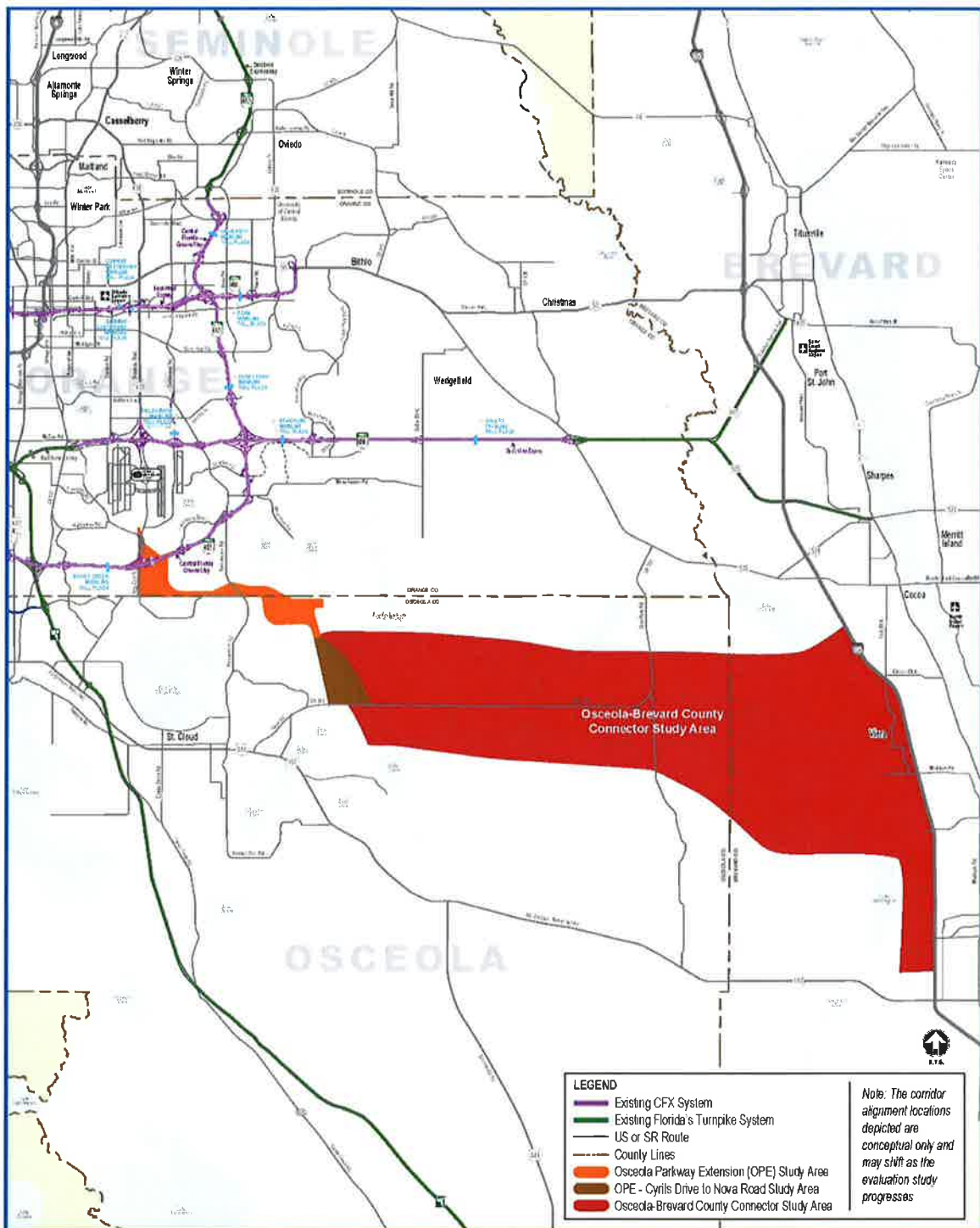
The GEC will provide a DRAFT outline to the CONSULTANT to help ensure the report adequately addresses all pertinent aspects of the study.

### **11.0 DELIVERABLES**

The CONSULTANT will provide the following documents / deliverables:

- Corridor Base Maps
- QA/QC Plan
- Public Involvement Plan - Final
- Existing Conditions Technical Memorandum (Tech Memo) – Draft and Final
- Purpose and Need Statement – Draft and Final
- Typical Section Package – Draft and Final
- Concept, Feasibility and Mobility Study Report – Draft and Final
- Assist the CFX PIC with the Comments & Coordination Summary – Final

A PDF of each draft / final submittal will be required for all deliverables.



**CENTRAL  
FLORIDA  
EXPRESSWAY  
AUTHORITY**

**Osceola-Brevard County Connector Study Area  
Central Florida Expressway Authority  
General Location Map**

## **ATTACHMENT B – DESIGN CRITERIA**

Development of this project will be guided by the basic design criteria listed below.

Design Element	Design Standard	Source
<u>Design Year</u>	2045	- Scope of Services
<u>Design Vehicle</u>	WB-62FL/WB-67	AASHTO 2004, Pg. 18 FDM Part 2, Sect. 201.5
<u>Design Speed</u> <b>Limited Access Facilities</b> Rural & Urban Urbanized <b>Arterials and Collectors</b> C1 Natural C2 Rural C2T Rural Town C3 Suburban C4 Urban General C5 Urban Center C6 Urban Core <b>Ramps</b> Directional Loop	70 mph 50-70 mph  55-70 mph 55-70 mph 25-45 mph 35-55 mph 30-45 mph 25-35 mph 25-30 mph  50 mph 30 mph	FDM Part 2, Tbl. 201.4.1           FDM Part 2, Sect. 201.4.1.1
<u>Lane Widths</u> Freeway Ramp 1-lane 2-lane Turning Roadway Arterial Collector/Service Road Bicycle Rural/Urban	12-ft  15-ft 24-ft Case dependent 10-12-ft 10-12-ft  7-ft	FDM Part 2, Sect. 211.2 FDM Part 2, Sect. 211.2.1   FDM Part 2, Tbl. 211.2.1 FDM Part 2, Tbl. 210.2.1   FDM Part 2, Sect. 223.2.1.1
<u>Cross Slope (lanes 1-way)</u> Roadway 2-lane (2) 3-lane (3) 4-lane (4) 4-lane (4) – DS $\geq$ 65 mph Bridge Section	-0.02 ft/ft (2) -0.02 ft/ft (2), -0.03 ft/ft (1) +0.02 ft/ft (2)(1), -0.02 ft/ft (2), -0.03 (2)(1) -0.02 ft/ft (2), -0.03 (2) -0.02 (typical, uniform, no slope break, straight-line rate)	FDM Part 2, Fig. 210.2.1, 211.2.1     FDM Part 2 Sect. 210.2.4, 211.2.2
<u>Max. Lane “Roll-over”</u>  DS $\geq$ 35 mph DS < 35 mph	4.0%  5.0% (between through lane & aux. lane) 6.0% (between through lane & aux. lane)	FDM Part 2, Fig. 210.2.1, 211.2.1  FDM Part 2, Tbl. 210.2.2, 211.2.2
<u>Median Width</u> Freeway DS $\geq$ 60 mph DS < 60 mph All, with barrier Arterial & Collector DS $\geq$ 45 mph $\geq$ 50 mph DS < 45 mph < 50 mph	60 to (64-ft*) 40-ft 26-ft (with barrier)  22-ft, 30- 40-ft 40-ft, 15.5-22-ft	FDM Part 2, Tbl. 210.3.1, 211.3.1
<u>Shoulder Width (lanes 1-way)</u>	Total (ft)	Paved (ft)
	Outside   Left	Outside   Left
		FDM Part 2, Tbl. 210.4.1, 211.4.1

Design Element	Design Standard				Source
Freeway					Fig 211.4.1, 211.4.2, 210.4.2, 210.4.3
3-lane or more	12	12	10	10	
2-lane	12	8	10	4	
Ramp					
1-lane	6	6	4	2	
2-lane	10	8	8	4	
Aux. Lane	12	N/A 8	10	N/A 4	
Arterial & Collector (Norm. volume)					
2-lane divided	10	8	5	0	
2-lane undivided	10	N/A 8	5	N/A 0	
Service Road, 2-Lane, 2-Way, Undivided	10	10	5	5	
<u>Shoulder Cross Slope</u>	0.06	0.05	-	-	FDM Part 2, Sect. 210.4.1, 211.4.2 Fig 210.4.2, 211.4.1
<u>Max. Shoulder "Roll-over"</u>	7.0%	7.0%	-	-	
<u>Bridge section (lanes 1-way)</u>					FDM Part 2, 260.3, Fig 260.1.1, 260.1.2
2-lane	10	6	-	-	
3-lane or more	10	10	-	-	
1-lane ramp	6	6	-	-	
<u>2-lane ramp</u>	10	6	-	-	
Service Road, 2-Lane, 2-Way, Undivided	10	10	-	-	
<u>Border Width</u>					FDM Part 2, Sect. 211.6 - (CFX Policy) 3  FDM Part 2, Sect 210.7, Tbl 210.7.1
Freeway	94-ft, (94-ft desirable)				
Ramp	94-ft, (L O C plus 10-ft as minimum)				
DS = 60 mph Urban	94-ft, (L O C plus 10-ft as minimum)				
Arterial/Collector	40-ft (if $\geq 50$ )				
DS = 45 mph $\geq 50$	40-ft (if $\geq 50$ )				
DS = 45 mph 40	33-ft				
Arterial/Collector (Curb & Gutter)	33-ft				
C1 Natural	35-ft				
C2 Rural	35-ft				
C2T Rural Town	12-ft				
C3 Suburban	12-ft				
C4 Urban General	12-ft				
C5 Urban Center	12-ft				
C6 Urban Core	14-ft				
<u>Roadside Slopes</u>	Fill Height (ft)	Rat			FDM Part 2, Tbl. 215.2.3  - (CFX Policy) 3 Use 1:3 slopes, avoid 1:2 slopes except where as necessary
Front Slope	0.0-5 5-10 10-20 >20	1:6 1:6 to CZ & 1:4 1:6 to CZ & 1:3 1:2 with guardrail (Use 10-ft bench at half the height of fill)			
Front slope (curb & gutter)	All	1:2 not flatter than 1:6			
Back slope	All	1:4 or 1:3 w/ standard width trap ditch & 1:6 front slope			
Back slope (curb & gutter)	All	1:2 not flatter than 1:6			
Transverse slope	All	1:10 or flatter (freeway/interstate)			
Transverse slope (curb and gutter)	All	1:4			
<u>Max. Grade / Max. Change in Grade</u>	Max. Grade	Max Change in			FDM Part 2, Tbl. 210.10.1, 210.10.2, 211.9.1
Freeway (Rural/Urban)	3.0%	(70 mph/60 mph) 0.20% / 0.40%			



Design Element	Design Standard		Source
Ramp			FDM Part 2, Sect. 210.10.1.1
Directional	5.0%	0.60%	
Loop	7.0%	1.00%	
Arterial			
C1 Natural	4.0%	0.50%	
C2 Rural	4.0%	0.50%	
C2T Rural Town	8.0%	1.00%	
C3 Suburban	7.0%	0.90%	
C4 Urban General	8.0%	1.00%	
C5 Urban Center	8.0%	1.00%	
C6 Urban Core	8.0%	1.00%	
Min. Grade Curb & Gutter	0.3%	-	
<u>Minimum Stopping Sight Distance</u> (Grades 2.0%)	Dsgn. Speed (mph)	Distance (ft)	FDM 210.11.1
	70	730	
	60	570	
	55	495	
	50	425	
	45	360	
	30	200	
<u>Decision Sight Distance</u> (Per avoidance maneuver)	Dsgn. Speed (mph)	Distance (ft)	-AASHTO Exh. 3-3
	70	780-1445	
	60	610-1280	
	55	535-1135	
	50	465-1030	
	45	395-930	
	30	220-620	
<u>Horizontal Curve Length</u> Freeway Others  <u>Max. Curvature (Degree of Curve)</u> Freeway DS = 70 mph Rural DS = 60 mph Urban Arterial DS = 55 mph Rural DS = 45 mph Urban Collector DS = 45 mph Frontage Road DS = 50 mph Service Road Ramp DS = 50 mph Directional DS = 30 mph Loop	V = Design Speed 30V (desirable) 15V (min.)		FDM Part 2, Tbl 211.7.1
			FDM Part 2, Tbl 210.9.1, 210.9.2
	3° 30' 00"		
	5° 15' 00"		
	6° 30' 00"		
	8° 15' 00"		
	8° 15' 00"		
	8° 15' 00"		
	8° 15' 00"		
	24° 45' 00"		
	<u>Superelevation Transition</u> Tangent Curve <i>Spirals</i> <u>Superelevation Transition Rates</u> $e_{\text{max}} = 0.10$ 2-lane  3-lane  4-lane or more  $e_{\text{max}} = 0.05$ (all lanes)	80% (50% min.) 20% (50% min.) (Curves <1°30' 00" do not use spirals) <sub>4</sub>	
		FDM Part 2, Tbl. 210.9.3	
1:200 (45-50 mph)		- Design Standards Ind. No. 510, 511 - AASHTO Exh. 3-28	
1:225 (55-60 mph)			
1:250 (65-70 mph)			
1:150 (45-50 mph)			
1:170 (55-60 mph)			
1:190 (65-70 mph)			
1:100 (25-35 mph)			
1:125 (40 mph)			
1:150 (45 mph)			
<u>Vertical Curves</u> Length, L = KA	Dsgn. Speed (mph)	K-value	FDM Part 2, Tbl 211.9.2 - AASHTO Exh. 3-72 (crest), 3-75 (sag)
		Crest	
	70	401	
		Sag	
		181	



Design Element	Design Standard			Source	
Mainline	60	245	136	- CFX Policy <sub>3</sub>  <i>Note: FDOT K-values for "ALL OTHER FACILITIES" are desirable</i>	
	55	185	115		
	50	136	96		
	45	98 N/A	79 N/A		
	30	31 N/A	37 N/A		
	Ramps	70	401		181
		60	245		136
		50	136		96
		45	98		79
		30	31		37
<u>Minimum Lengths</u>			FDM Part 2, Tbl 211.9.3		
Crest      Sag					
Freeway					
DS = 70 mph Rural	1000-ft	800-ft		*Crest = 1800-ft within interchange	
DS = 60 mph Urban	1000-ft	800-ft			
Arterial					
DS = 55 mph Rural	350-ft	250-ft			
DS = 45 mph Urban	135-ft	135-ft			
Collector					
DS = 45 mph Frontage Road	135-ft	135-ft			
DS = 50 mph Service Road	300-ft	200-ft			
Ramp					
DS = 50 mph Directional	300-ft	200-ft			
DS = 30 mph Loop	90-ft	90-ft			
Lane Drop Taper	L = WS (DS = 45 mph) L = WS <sup>2</sup> /60 (DS ≤ 40 mph)  50:1 min, 70:1 desirable (freeways)			- Design Standards Ind. No. 525, 526  - AASHTO Pg. 818	
<u>Clear Zone</u>	Travel Lanes	Auxiliary Lanes		FDM Part 2, Sect. 210, 211, 215 FDM Tbl 215.2.1	
Freeway					
DS = 70 mph Rural	36-ft	24-ft			
DS = 60 mph Urban					
Arterial					
DS = 55 mph Rural	30-ft	18-ft			
DS = 45 mph Urban	4-ft (Curb & Gutter)	14-ft			
	24-ft				
	4-ft (Curb & Gutter)				
Collector					
DS = 45 mph Frontage Road	24-ft	14-ft			
DS = 50 mph Service Road	24-ft	14-ft			
Ramp					
DS = 50 mph Directional	18-ft	8-ft			
1 to 2-lane					
DS = 30 mph Loop	6-ft	6-ft			
1 to 2-lane					
<u>Vertical Clearance</u>				FDM 260.6 FDM Overhead Sign 210.10.3 FDM Waterway 260.8.1	
Over Roadway	16'-6" FDM 16.5				
Over Railroad	23'-6" FDM 23.5				
Sign over Roadway	17'-6" FDM 17.5				
Over Water	12'-0" min, FDM 12'-0"				
<u>Limited Access Limits</u>				FDM Part 2, Sect. 211.15.	
Rural	300-ft min.				
Urban	100-ft min				
Crossroad overpass/no interchange	200-ft				

**Ramp Operations**

- a. Two thousand (2,000) ft. between entrance and exit terminals - full freeways
- b. Six hundred (600) ft. between exit and entrance terminals
- c. Entrance Ramp Taper of 900 ft. (1□ - convergence)
- d. Exit Ramp Taper of 550 ft. (3□ - divergence)

**Right-of-way**


- e. Ten (10) ft. from back of walls or limit of construction.
- f. Two (2) ft. from back of sidewalk on frontage roads.
- g. Drainage and construction easements as required.
- h. Ninety-four (94) ft. from ramp or mainline traveled way desirable for limited access ROW.
- i. Limited access right-of-way limits per Index 450.

**CONSENT AGENDA ITEM  
#13**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 24, 2020

SUBJECT: Approval of Final Ranking and Authorization for Fee Negotiations for  
Design Consultant Services for SR 408 Tampa Avenue Interchange  
Project 408-315, Contract No. 001617

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Letters of Interest for the referenced project was advertised on October 27, 2019. Responses were received from five (5) firms by the deadline. Those firms were: AECOM Technical Services, Inc., EAC Consulting, Inc., CONSOR Engineering, Inc., HDR Engineering, Inc. and TLP Engineering, Inc.

After reviewing and scoring the letters of interest, the Evaluation Committee met on December 2, 2019 and shortlisted AECOM Technical Services, Inc., HDR Engineering, Inc. and TLP Engineering Consultants, Inc.

Technical Proposals were submitted for review and scoring. As part of the scoring process, the Technical Review Committee heard oral presentations from the firms on January 23, 2020. After the oral presentations were completed, the Technical Review Committee prepared its final ranking. The result of that process was as follows:

<u>Ranking</u>	<u>Firm</u>
1	TLP Engineering Consultants, Inc.
2	AECOM Technical Services, Inc.
3	HDR Engineering, Inc..

Board approval of the final ranking and authorization to enter into fee negotiations with TLP Engineering Consultants, Inc. is requested. Once fee negotiations are completed, Board approval of the negotiated amount and award of contract will be requested. If negotiations with TLP Engineering Consultants, 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:   
Will Hawthorne, PE  
Director of Engineering



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

**LOI-001617 Technical Review Committee Meeting January 23, 2020 Minutes**

Technical Review Committee for **Design Consultant Services for SR 408 Tampa Avenue Interchange; Contract No. 001617**, held a duly noticed meeting on Thursday, January 23, 2020 at 9:00 a.m. in the Pelican Conference Room (Room 107), at the CFX Administrative Bldg., Orlando, Florida.

**Committee Members Present:**

Glenn Pressimone, Chief of Infrastructure  
Will Hawthorne, Director of Engineering  
Dana Chester, Manager of Engineering  
Christopher Cairns, City of Orlando

**Other Attendees:**

Aneth Williams, Director of Procurement  
Brad Osterhaus, Sr. Procurement/QC Administrator

**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.

AECOM Technical Services, Inc.	9:00 – 9:35 a.m.
HDR Engineering, Inc.	9:45 – 10:20 a.m.
TLP Engineering Consultants, 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>
AECOM Technical Services, Inc.	08	02
HDR Engineering, Inc.	09	03
TLP Engineering Consultants, Inc.	07	01


Committee recommends CFX Board approve ranking and authorize negotiations in ranked order. Will Hawthorne 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 11:28 a.m. These minutes are considered to be the official minutes of the Technical Review Committee meeting held Thursday, January 23, 2020 and no other notes, tapes, etc., taken by anyone takes precedence.

Submitted by:

  
Aneth Williams

Approved by:

  
Will Hawthorne

CENTRAL FLORIDA EXPRESSWAY AUTHORITY


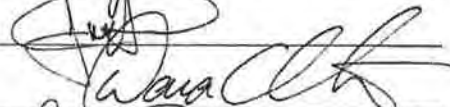
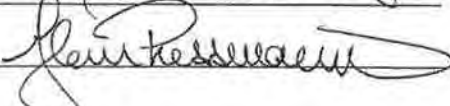
TECHNICAL COMMITTEE MEMBER FINAL SUMMARY RANKING

DESIGN CONSULTANT SERVICES FOR SR 408 TAMPA AVENUE INTERCHANGE

CONTRACT NO. 001617

CONSULTANT	Glenn Pressimone Score	Will Hawthorne Score	Dana Chester Score	Christopher Cairns Score	TOTAL SCORE	RANKING
AECOM Technical Services, Inc.	1	3	3	1	8	2
HDR Engineering, Inc.	3	1	2	3	9	3
TLP Engineering Consultants, Inc.	2	2	1	2	7	1

EVALUATION COMMITTEE MEMBERS:

Thursday, January 23, 2020

Thursday, January 23, 2020

Thursday, January 23, 2020


Thursday, January 23, 2020

**CONSENT AGENDA ITEM  
#14**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 24, 2020

SUBJECT: Approval of First Contract Renewal with PFM Asset Management, LLC  
for Investment Advisor Services  
Contract No. 001244


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Board approval is requested for the first renewal of the referenced contract with PFM Asset Management, LLC. in the amount of \$255,000.00 for a one-year period beginning June 5, 2020 and ending June 4, 2021. The original contract was three years with two one-year renewals.

The services to be provided under this renewal are investment advisor services.

Original Contract	\$ 665,000.00
First Renewal	<u>\$ 255,000.00</u>
Total	\$ 920,000.00

This contract is budgeted in the OM&A Budget.

Reviewed by:   
Michael Carlisle  
Director of Accounting and Finance





**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
CONTRACT RENEWAL AGREEMENT NO. 1  
CONTRACT NO. 001244**

THIS CONTRACT RENEWAL AGREEMENT (the "Renewal Agreement"), made and entered into this 13<sup>th</sup> day of February 2020, by and between the Central Florida Expressway Authority, hereinafter called "CFX" and PFM Asset Management, LLC., herein after called the "Investment Advisor."

**WITNESSETH**

WHEREAS, CFX and the Investment Advisor entered into a Contract Agreement (the "Original Agreement") dated April 13, 2017, with a Notice to Proceed date of June 5, 2017, whereby CFX retained the Investment Advisor to serve as CFX's Investment Advisor.

WHEREAS, pursuant to Article 6.0 of the Original Agreement, CFX and Investment Advisor 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 Investment Advisor agree to a first renewal of said Original Agreement beginning the 5th day of June 2020 and ending the 4th day of June 2021 at the cost of \$255,000.00, which increases the amount of the Original Agreement.

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.

PFM ASSET MANAGEMENT, LLC

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

# **CONTRACT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
PFM ASSET MANAGEMENT LLC**

**INVESTMENT ADVISOR SERVICES**

**CONTRACT NO. 001244**

**CONTRACT DATE: APRIL 13, 2017  
CONTRACT AMOUNT: \$665,000.00**

**CONTRACT, SCOPE OF SERVICES, CFX INVESTMENT POLICY**

**FOR**

**INVESTMENT ADVISOR SERVICES**

**CONTRACT NO. 001244**

**APRIL 2017**

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Exhibit "B" – CFXINVESTMENT POLICY	B-1 to B-28

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
INVESTMENT ADVISOR SERVICES  
CONTRACT NO. 1244**

THIS AGREEMENT (the "Agreement"), is made upon the date of the last party's execution below ("Effective Date") by and between the Central Florida Expressway Authority, a body politic and corporate and agency of the State of Florida hereinafter the "CFX"), and PFM Asset Management LLC, a Delaware limited liability company, registered and authorized to conduct business in the State of Florida, with an office at 300 South Orange Avenue, Suite 1170, Orlando, Florida and who is duly authorized hereinafter the "INVESTMENT ADVISOR."

**W I T N E S S E T H**

**WHEREAS**, CFX has funds available for investment purposes (the "Initial Funds") for which it intends to conduct an investment program; and

**WHEREAS**, CFX desires to avail itself of the experience, sources of information, advice, assistance and facilities available to the INVESTMENT ADVISOR; to have the INVESTMENT ADVISOR undertake certain duties and responsibilities; and to perform certain services as INVESTMENT ADVISOR on behalf of CFX, as provided herein; and

**WHEREAS**, the INVESTMENT ADVISOR is willing to provide such services on the terms and conditions hereinafter set forth and as presented in the proposal dated February 23, 2017.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein contained, it is agreed as follows:

**1. SERVICES OF ADVISOR**

(a) The INVESTMENT ADVISOR will provide investment management of the Initial Funds, earnings on the Initial Funds, and such other funds as CFX may from time to time

be assigned by written notice to the INVESTMENT ADVISOR (collectively the "Managed Funds"). In connection therewith, the INVESTMENT ADVISOR will provide investment research and supervision of CFX's Managed Funds and conduct a continuous program of investment, evaluation and, when appropriate, sale and reinvestment of CFX's Managed Funds. The INVESTMENT ADVISOR shall continuously monitor investment opportunities and evaluate investments of CFX's Managed Funds. The INVESTMENT ADVISOR shall furnish CFX with monthly reports, which include statistical information and the immediately preceding month's results from investments of the Managed Funds. The INVESTMENT ADVISOR shall place all orders for the purchase, sale, loan or exchange of portfolio securities for CFX's account with brokers or dealers recommended by the INVESTMENT ADVISOR or CFX (unless instructed by CFX otherwise), and to that end the INVESTMENT ADVISOR is authorized as agent of CFX to give instructions to the depository designated by CFX as its custodian as to deliveries of securities and payments of cash for the account of CFX. Significant changes to the Managed Funds shall be subject to prior consultation with and approved in writing by CFX before being made by the INVESTMENT ADVISOR. In connection with the selection of such brokers and dealers and the placing of such orders, the INVESTMENT ADVISOR is directed to seek for CFX the most favorable execution and price, the determination of which may take into account, subject to any applicable laws, rules and regulations, whether statistical, research and other information or services have been or will be furnished to the INVESTMENT ADVISOR by such brokers and dealers. The depository designated by CFX shall have custody of cash, assets and securities of CFX. The INVESTMENT ADVISOR shall not take possession of or act as custodian for the cash, securities or other assets in the Managed Funds and shall have no responsibility in connection therewith. Authorized investments shall include only those

investments, which are currently authorized by the State of Florida, CFX's Investment Policy and bond covenants and as supplemented by such other written instructions as may from time to time be provided by CFX to the INVESTMENT ADVISOR. The INVESTMENT ADVISOR shall be entitled to rely upon CFX's written advice with respect to anticipated drawdowns of Managed Funds. The INVESTMENT ADVISOR will observe the instructions of CFX with respect to broker/dealers who are approved to execute transactions involving CFX's Managed Funds and in the absence of such instructions will engage broker/dealers, which the INVESTMENT ADVISOR reasonably believes to be reputable, qualified and financially sound.

(b) The INVESTMENT ADVISOR will evaluate and advise CFX on the economic aspects of structured investments such as guaranteed investment contracts, forward delivery agreements, and refunding escrow portfolios. At the direction of CFX to be evidenced by a written supplement or work order, the INVESTMENT ADVISOR shall advise CFX on the financial terms of any such structured investment product; shall assist CFX in pricing the product and shall provide its fairness opinion related thereto.

(c) Upon request of CFX, the Investment Advisor shall perform arbitrage rebate services as set forth in Exhibit "A" to CFX's Request for Proposal, entitled "Scope of Services," which Exhibit "A" is incorporated herein by reference.

## **2. COMPENSATION**

(a) For services provided by the INVESTMENT ADVISOR pursuant to Paragraph 1(a) of this Agreement, CFX shall pay the INVESTMENT ADVISOR a monthly fee for the Operating and Reserve Funds based on the average daily Managed Funds under management for such month at an annual rate of 10 basis points (0.10%) for the first \$25 million; 8 basis points (0.08%) for the next \$25 million; 7 basis points (0.07%) for the next \$50 million, 6 basis points

(0.06%) for the next \$100 million, 5 basis points (0.05%) for the next \$100 million, and 4 basis points (0.04%) over \$300 million. For services provided by the INVESTMENT ADVISOR pursuant to Paragraph 1(a) of this Agreement, CFX shall pay the INVESTMENT ADVISOR a monthly fee for the Bond Funds based on the average daily Managed Funds under management for such month at the rate of: 5 basis points (0.05%) for the first \$125 million, 2.5 basis points (0.025%); for the next \$125 million, and 2 basis points (0.02%) over \$250 million.

The INVESTMENT ADVISOR will cap total fees as follows:

<u>Contract Year</u>	<u>Annual Cap</u>
Year 1	\$185,000
Year 2	\$225,000
Year 3	\$255,000
Year 4	\$255,000
Year 5	\$255,000

The INVESTMENT ADVISOR shall utilize a Disadvantaged/Minority Business Enterprises ("D/MBEs") firm for services described in Section 1(a) hereof. The D/MBE shall receive 15% of the annual combined fee payable pursuant to Section 2(a) hereof, which will be paid by the INVESTMENT ADVISOR to the D/MBE in monthly installments. For avoidance of doubt, the D/MBE shall not perform the services described in Sections 1(b) and 1(c) hereof, and shall not participate in any fees payable by CFX to the INVESTMENT ADVISOR payable pursuant to any other subsection of Section 2, other than this subsection 2(a).

(b) Fees for any structured investment services provided pursuant to Paragraph 1(b) of this Agreement shall be as agreed to in writing prior to the INVESTMENT ADVISOR undertaking any specific engagement.



(c) Fees for arbitrage rebate services, as requested and provided pursuant to section 1(c) hereof, shall be in accordance with the following fee schedule.

<b>Base Fees</b>	
Engagement Fee (one-time fee, per issue)	\$ 500
Report Fee (per report)	\$2,000
<b>Additional Fees</b> (only applicable if the services are required)	
Final or 5th Year Report	\$ 500
Computation Periods in Excess of 12 Months (per additional year or fraction thereof)	\$ 500
<b>OPTIONAL SERVICES</b>	
Evaluating various elections and applications	To be negotiated separately
Fees for arbitrage rebate services are separate from the investment management fees, and are payable upon invoicing after the computation is completed.	

(d) Except with respect to fees for services described in Section 1(b) and 1(c) hereof, the INVESTMENT ADVISOR will bill CFX monthly for service performed under this Agreement, said bill to include a statement indicating the basis upon which the fee was calculated. For services described in Sections 1(b) and 1(c), the INVESTMENT ADVISOR shall submit an invoice upon the conclusion of the service performed. CFX shall pay to the INVESTMENT ADVISOR the amount payable pursuant to this Agreement in accordance with the Prompt Payment Act. See Section 218.70, Florida Statutes. The INVESTMENT ADVISOR shall have a documented invoice procedure.

(e) Assets invested by the INVESTMENT ADVISOR under the terms of this Agreement may from time to time be invested in a money market mutual fund managed by the INVESTMENT ADVISOR or a local government investment pool managed by the

INVESTMENT ADVISOR (either a "Pool"), or in individual securities. Average daily net assets subject to the fees described in this section shall not take into account any funds invested in the Pool. Expenses of the Pool, including compensation for the INVESTMENT ADVISOR and the Pool custodian, are described in the relevant prospectus or information statement and are paid from the Pool.

(f) If and to the extent that CFX shall request the INVESTMENT ADVISOR to render services other than those to be rendered by the INVESTMENT ADVISOR hereunder, such additional services shall be compensated separately on terms to be agreed upon between the INVESTMENT ADVISOR and CFX.

**3. EXPENSES.**

(a) The INVESTMENT ADVISOR shall furnish at its own expense all necessary administrative services, office space, equipment, clerical personnel, telephone and other communication facilities, investment advisory facilities, and executive and supervisory personnel for managing the investments.

(b) Except as expressly provided otherwise herein, CFX shall pay all of its own expenses including, without limitation, taxes, commissions, fees and expenses of CFX's independent auditors and legal counsel, if any, brokerage and other expenses connected with the execution of portfolio security transactions, insurance premiums, fees and expenses of the custodian of the Managed Funds including safekeeping of funds and securities and the keeping of books and accounts.

(c) The INVESTMENT ADVISOR shall pay all travel or expense charges.

(d) There is no minimum annual fee.

**4. RESPONSIBILITY OF INVESTMENT ADVISOR**

The INVESTMENT ADVISOR hereby represents it is a registered INVESTMENT ADVISOR under the Investment Advisors Act of 1940. The INVESTMENT ADVISOR shall immediately notify CFX if at any time during the term of this Agreement it is not so registered or if its registration is suspended. The INVESTMENT ADVISOR agrees to perform its duties and responsibilities under this Agreement with reasonable care an appropriate level of care and duty generally acceptable to investment advisors performing similar services. The federal securities laws impose liabilities under certain circumstances on persons who are required to act in good faith. Nothing herein shall in any way constitute a waiver or limitation of any rights which CFX may have under any federal securities laws. CFX hereby authorizes the INVESTMENT ADVISOR to sign I.R.S. Form W-9 on behalf of CFX and to deliver such form to broker-dealers or others from time to time as required in connection with securities transactions pursuant to this Agreement.

**5. CONFLICT OF INTEREST**

CFX understands that the INVESTMENT ADVISOR performs investment advisory services for various other clients, which may include investment companies, commingled trust funds and individual portfolios. CFX agrees that the INVESTMENT ADVISOR, in the exercise of its professional judgment, may give advice or take action with respect to any of its other clients which may differ from advice given or the timing or nature of action taken with respect to CFX's Managed Funds accounts, so long as it is the policy of the INVESTMENT ADVISOR, to the extent practical, to allocate investment opportunities to this account over a period of time on a fair and equitable basis relative to other clients. The INVESTMENT ADVISOR shall not have any obligation to purchase, sell or exchange any security for the Managed Funds solely by reason of the fact that the INVESTMENT ADVISOR, its principals, affiliates, or employees may

purchase, sell or exchange such security for the account of any other client or for itself or its own accounts.

**6. TERM AND TERMINATION**

The term of this Agreement shall be for three (3) years from the Effective Date. There shall be two 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 INVESTMENT ADVISOR are satisfactory and adequate for CFX's needs. If a renewal option is exercised, CFX will provide the INVESTMENT ADVISOR with written notice of its intent at least sixty (60) days prior to the expiration of the term of the Agreement and subsequent renewal period, as applicable.

This Agreement may be terminated by CFX in the event of any material breach of its terms immediately upon notice by certified mail, return receipt requested. This Agreement may be terminated by CFX without cause, on not less than thirty (30) days' prior written notice to the INVESTMENT ADVISOR. The INVESTMENT ADVISOR may terminate this Agreement immediately upon any material breach of its terms by CFX, or at any time after one year upon sixty (60) days' prior written notice.

**7. FORCE MAJEURE.**

The INVESTMENT ADVISOR shall have no liability for any losses arising out of the delays in performing or inability to perform the services which it renders under this Agreement which result from events beyond its control, including interruption of the business activities of the INVESTMENT ADVISOR or other financial institutions due to acts of God, acts of governmental authority, acts of war, terrorism, civil insurrection, riots, labor difficulties, or any action or inaction of any carrier or utility/.

**8. SUSPENSIONS, COMPLAINTS**

The INVESTMENT ADVISOR shall promptly notify CFX if the INVESTMENT ADVISER has been charged with or shall have been found to have violated any state or federal securities law or regulation in any criminal action or civil suit in any state or federal court. The INVESTMENT ADVISOR shall promptly notify CFX in writing of (i) any complaints or disciplinary actions filed against any investment professional employed by it, who has performed any service with respect to CFX's account in the twenty-four (24) preceding months, or (ii) if the INVESTMENT ADVISER has been charged with or shall have been found to have violated any state or federal securities law or regulation in any disciplinary proceeding, in either case before or by the Securities and Exchange Commission or any other agency or department of the United States, the New York Stock Exchange, any registered securities exchange, the Financial Industry Regulatory Authority, any Attorney General or any regulatory agency or authority of any State.

**9. INDEPENDENT CONTRACTOR**

The INVESTMENT ADVISOR, its employees, officers and representatives, shall not be deemed to be employees, agents (except as described in Section 1 hereof), partners, servants, or joint ventures of CFX by virtue of this Agreement or any actions or services rendered under this Agreement.

**10. BOOKS; AUDIT**

The INVESTMENT ADVISOR shall maintain appropriate records of all transactions in the Managed Funds and other services performed under this Agreement and made available upon request to CFX at all times during the period of this Agreement and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to CFX upon request. The INVESTMENT ADVISOR shall provide CFX with a monthly statement showing deposits, withdrawals, purchases and sales (or maturities) of investments, earnings received, the

value of Managed Funds held on the last business day of the month and the average daily balance of Managed Funds for such month. The statement shall be in the format and manner that is mutually agreed upon by the INVESTMENT ADVISOR and CFX.

**11. INVESTMENT ADVISOR'S BROCHURE AND BROCHURE SUPPLEMENT**

The INVESTMENT ADVISOR warrants that it has delivered to CFX prior to the execution of this Agreement, the INVESTMENT ADVISOR's current Securities and Exchange Commission Form ADV, Part 2A (brochure) and Part 2B (brochure supplement). CFX acknowledges receipt of such brochure and brochure supplement prior to the execution of this Agreement.

**12. DISADVANTAGED/MINORITY AND WOMEN'S 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, INVESTMENT ADVISOR 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. INVESTMENT ADVISOR shall provide information regarding its employment of such businesses and the percentage of payments made to such businesses and others. INVESTMENT ADVISOR shall provide an annual report to CFX on or before each anniversary of the Effective Date hereof 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 INVESTMENT ADVISOR's invoices, and shall be in a form reasonably acceptable to CFX.

**13. PUBLIC RECORDS**

Notwithstanding the Section entitled "Press Releases," INVESTMENT ADVISOR 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 INVESTMENT ADVISOR 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, INVESTMENT ADVISOR agrees to comply with the Public Records Act.

**IF THE INVESTMENT ADVISOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE INVESTMENT ADVISOR'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.

(1)(a) "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).

(2)(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.

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 the INVESTMENT ADVISOR in conjunction with this Agreement, INVESTMENT ADVISOR shall immediately notify the CFX. In the event the INVESTMENT ADVISOR has public records in its possession that are subject to Chapter 119, INVESTMENT ADVISOR shall comply with the Public Records Act. Failure by the INVESTMENT ADVISOR to grant such public access to public records shall be grounds for immediate unilateral cancellation of this Agreement by CFX or enforcement remedies at CFX's option.

The obligations in this Section 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.



**14. PRESS RELEASES**

The INVESTMENT ADVISOR 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 term of the Agreement, without first notifying CFX and securing its consent in writing, except as required by law or regulatory or judicial process. The INVESTMENT ADVISOR 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 such data or information is the property of CFX.

**15. INSURANCE**

The INVESTMENT ADVISOR 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 XII, as defined by A.M. Best and Company's Key Rating Guide and must be approved by CFX. The INVESTMENT ADVISOR shall carry and keep in force the following insurance coverage, and provide CFX with correct certificates of insurance (ACORD forms) upon Agreement execution:

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 INVESTMENT ADVISOR under this Agreement.

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;

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

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

5. Professional Liability (Errors & Omissions) Insurance Coverage shall have limits of not less than Ten Million Dollars (\$10,000,000) Combined Single Limit (CSL) or its equivalent, protecting the selected firm or individual against claims of CFX for the negligent or intentionally wrongful errors, mistakes or omissions in the performance of services to be performed and furnished by the INVESTMENT ADVISOR.

6. 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.

7. Fiduciary Liability 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, (b) be primary insurance, (c) include contractual liability for commercial general liability, and (d) 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. The INVESTMENT ADVISOR shall be responsible for any deductible it may carry. The INVESTMENT ADVISOR asserts that it will not materially alter any of the insurance policies in force and will not reduce any coverage amount below the limits specified herein. At least fifteen (15) days prior to the expiration of any such policy of insurance required to be carried by the INVESTMENT ADVISOR hereunder, the INVESTMENT ADVISOR shall deliver insurance certificates to CFX evidencing a renewal or new policy to take the place of the one expiring.

If a claims-made policy is utilized for any of the required Insurance, the following additional requirements shall apply: the retroactive date of the claims made policy must be on or before the beginning term date of the Agreement; the claims-made policy's discovery provision is operative during the time period covered by the Extended Reporting Period; an Extended Reporting Period Endorsement shall be included and provided to CFX with the Certificate of Insurance; The Extended Reporting Period Endorsement shall state that an extended reporting period of no less than five (5) years from the completion or termination of the Agreement is granted.

Compliance with these insurance requirements shall not relieve or limit the INVESTMENT ADVISOR'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 INVESTMENT ADVISOR'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 the INVESTMENT ADVISOR 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 the INVESTMENT ADVISOR's expense and deduct such costs from the INVESTMENT ADVISOR payments. The requirement of insurance shall not be deemed a waiver of sovereign immunity by CFX.

Any insurance carried by CFX in addition to the INVESTMENT ADVISOR's policies shall be excess insurance, not contributory.

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

The INVESTMENT ADVISOR warrants that it has not employed or retained any entity or person, other than a bona fide employee working solely for the INVESTMENT ADVISOR, to solicit or secure this Agreement, and that the INVESTMENT ADVISOR 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.

The INVESTMENT ADVISOR 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. The INVESTMENT ADVISOR acknowledges that it has read CFX's Code of Ethics and, to the extent applicable, the INVESTMENT ADVISOR will comply with CFX's Code of Ethics in connection with performance of the Agreement.

In the performance of the Agreement, the INVESTMENT ADVISOR shall comply with all applicable local, state, and federal laws and regulations and obtain all permits necessary to provide the contracted services.

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

**17. NONDISCRIMINATION**

INVESTMENT ADVISOR, 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 Agreement. 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."

**18. NOTIFICATION OF CRIMES; PUBLIC ENTITY CRIME INFORMATION**

INVESTMENT ADVISOR shall notify CFX if any of INVESTMENT ADVISOR's personnel who are directly involved with CFX accounts shall be charged with or 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 charge or conviction, regardless of whether such conviction is appealed.

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."

**19. MODIFICATION**

This Agreement shall not be changed, modified, terminated or discharged in whole or in part, except by an instrument in writing signed by both parties hereto, or their respective successors or assigns.

**20. SUCCESSORS AND ASSIGNS**

The provisions of this Agreement shall be binding on the INVESTMENT ADVISOR and its respective successors and assigns, provided, however, that the rights and obligations of the INVESTMENT ADVISOR may not be assigned without prior written consent of CFX.

**21. APPLICABLE LAW; DISPUTE RESOLUTION**

This Agreement shall be construed, enforced, and administered according to the laws of the State of Florida and any question regarding its validity, construction, enforcement, or performance shall be governed by Florida law. The INVESTMENT ADVISOR and CFX agree

that, should a disagreement arise as to the terms or enforcement of any provision of this Agreement, each party will in good faith attempt to resolve said disagreement prior to filing a lawsuit.

**22. EXECUTION AND SEVERABILITY**

Each party to this Agreement represents and warrants that the person or persons signing this Agreement on behalf of such party is authorized and empowered to sign and deliver this Agreement for such party. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

**23. JURISDICTIONAL MATTERS; WAIVER OF JURY TRIAL**

(a) The parties consent to the *exclusive* jurisdiction of the courts located in Orange County, Florida.

(b) The parties hereto hereby irrevocably waive trial by jury, and irrevocably waive any objection, including, without limitation any objection to the laying of venue or based on the grounds of forum non conveniens, which they may now or hereafter have to the bringing on any such actions or proceeding in Orange County, Florida.

**24. HEADINGS DESCRIPTIVE; ENTIRE AGREEMENT**

The headings of the several sections and subsections of the Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of the Agreement. This Agreement constitutes the entire agreement among the parties hereto regarding the subject matters hereof and thereof and supersedes all prior agreements, representations and understanding related to such subject matters. The Agreement may not be amended except in writing.

**25. DOCUMENTED ALIENS**

The INVESTMENT ADVISOR 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 INVESTMENT ADVISOR 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 INVESTMENT ADVISOR has knowingly employed any unauthorized alien in the performance of this Agreement, CFX may immediately and unilaterally terminate this Agreement for cause.

**26. E-VERIFY CLAUSE**

The INVESTMENT ADVISOR 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 INVESTMENT ADVISOR during the term of the Agreement. INVESTMENT ADVISOR 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.

**27. INSPECTOR GENERAL**

The INVESTMENT ADVISOR 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. The INVESTMENT ADVISOR agrees to incorporate in all subcontracts the obligation to comply with Section 20.055(5). The obligations in this paragraph shall survive the expiration or termination of this Agreement and continue in full force and effect.



**28. 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 Financial Officer

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

To INVESTMENT ADVISOR:

PFM Asset Management LLC  
1735 Market Street, 43rd Floor  
Philadelphia, PA 19103  
Attn: Controller

PFM Asset Management LLC  
300 South Orange Avenue, Suite 1170  
Orlando, FL 32801  
Attn: Steven Alexander, Managing Director/Partner

IN WITNESS WHEREOF, the authorized signatures named below have executed this Agreement on behalf of the parties as of the day and year first above written. This Agreement was awarded by CFX's Board of Directors at its meeting on April 13, 2017.


INVESTMENT ADVISOR

By: 

Print Name: Steven Alexander

Title: Managing Director

Date: 5/30/2017

ATTEST:  (Seal)

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: 

Director of Procurement

Print Name: Aneeth Williams

Date: 6/5/17

Approved as to form and execution, only.

  
General Counsel for CFX

Attachments:

- A. Exhibit "A" to CFX's Request for Proposal, entitled "Scope of Services"
- B. CFX Investment Policy

**EXHIBIT "A"**  
**INVESTMENT ADVISOR SERVICES**  
**SCOPE OF SERVICES**  
**CONTRACT NO. 001244**

This Scope of Services describes the investment advisory services required by CFX for its short-term, medium-term and long-term investment portfolio. The Investment Advisor shall be registered with the Securities and Exchange Commission (SEC) under the Investment Advisor's Act of 1940 who will act in a fiduciary capacity. The Investment Advisor shall manage the funds in accordance with the laws of the State of Florida and the investment policies and procedures established by CFX. The Investment Advisor will not provide custodial services or security safekeeping.

Specific responsibilities of the Investment Advisor include, but are not necessarily limited to, the following:

- A. Manage on a daily basis CFX's separate investment portfolios pursuant to the specific, stated investment objectives. Obtain and place all orders for the purchase and sale of securities, communicate settlement information to CFX's staff and assist in coordinating security settlement, all in accordance with CFX's Investment Policies and Procedures.
- B. Serve as a general resource to CFX's staff for information, providing advice and training regarding fixed income securities, investments, and treasury management and operations.
- C. Work with CFX's staff to review and update as needed CFX's Investment Policies and Procedures.
- D. Work with CFX's staff to develop cash flow projections to ensure that the investment strategy is consistent with CFX's cash requirements.
- E. Make available daily information on investment activity and the value of portfolios.
- F. Provide weekly reports that show the current market value of the investment portfolio, including cash and money market accounts, along with a detailed description of all the investment holdings at a minimum.
- G. Provide monthly statements on investment activity, earnings and valuation of the investment portfolio. The reports shall include mark-to-market valuations as required by GASB 31 and 40. The Investment Advisor shall also provide monthly reports of investments, including the diversity of investments, duration and compliance with applicable investment policies of CFX and State of Florida statutes.
- H. Provide quarterly investment reports including a description of market conditions, investment strategies employed, performance benchmark data and suggested changes to investment strategy.

- I. When requested, conduct all aspects of the investment program in compliance with the arbitrage and rebate requirements of the U.S. treasury, currently described in Section 148 of the Internal Revenue Code of 1986 as amended and of the related Code of Federal Regulations.
- J. When requested, provide annual and "computation date" calculations of arbitrage earnings for each outstanding bond issue and to keep CFX apprised of any change in arbitrage compliance regulations that may occur during the term of the contract.
- K. Perform services related to investment agreements or structured products, including, but not limited to:
  1. Work with CFX to determine appropriate investment opportunities and draw schedules;
  2. Create investment agreement or structured product bid specification sheets incorporating CFX's requirements;
  3. When necessary, obtain bond counsel sign-off for nonconforming bidding terms including in the bid specification sheet;
  4. Conduct the bidding process;
  5. Summarize bid results for the appropriate decision makers among the transaction working group;
  6. Facilitate the selection of the winning provider with appropriate team members;
  7. Review investment agreement or structured product documents to ensure compliance with term sheet and CFX's requirements; and
  8. Facilitate timely delivery of final document for signature while obtaining specific approval from CFX for any exceptions or waivers of standard policies in the final agreement.


End of Scope of Services

**CONSENT AGENDA ITEM  
#15**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM:  Diego "Woody" Rodriguez, General Counsel

DATE: January 23, 2020

RE: Partial Release and Amendment of Indenture (AT & T)  
Project: VTUSA, 528 Corridor  
Location: Adjacent to S.R. 528

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## BACKGROUND

On November 21, 1979, CFX's predecessor (Orlando-Orange County Expressway Authority) and Southern Bell Telephone and Telegraph Company, ("Southern Bell" now "AT&T"), executed an Indenture agreement that was recorded on November 30, 1979 (BK 3073/PG 376). A Partial Assignment of Easement dated September 20, 1982 was entered into between Bellsouth, as assignor, and AT&T, as assignee, and was recorded on November 10, 1982 (BK 3325/PG 347). Collectively, the easements granted to Southern Bell and Bellsouth, and AT&T as the successor entity, provide an easement over certain properties owned by CFX to construct, operate, maintain, modify, enlarge, and replace a telecommunications system.

As a result of CFX's multi-party agreement with the City of Orlando, the Greater Aviation Authority and Virgin Trains USA Florida, LLC ("Virgin Trains") to develop an inter-city commercial passenger rail connection between Miami and Orlando with the Orlando terminus located at the Orlando International Airport, the existing location of certain utilities and telecommunications lines will need to be relocated to allow for the construction of the proposed rail.

With the approval of the latest alignment, certain carriers will need to be relocated while still maintaining continuity of services for their customers throughout the relocation process. To facilitate that need, the proposed Partial Release and Amendment of Indenture ("Partial Release") provides for the parties to release the existing easement further described in Exhibits 2 and 3 to the Partial Release while establishing a new easement for access to the relocated lines as provided for in Exhibit 1 to the Partial Release.

Note that in the event the ultimate location of the system is different than the proposed location the parties agree to use the modified as-built to establish the definitive location of the easement. The agreement will also allow AT&T to continue providing services in the existing locations until such time as the new services are finalized. Throughout the process, AT&T and their contractors, will be working closely with CFX staff and CFX outside consultants to verify the location of the lines.

Costs related to these transactions will eventually be assumed by Virgin Trains but CFX is not receiving any compensation or consideration from AT&T for the relocation. However, the original indenture terms apply including AT&T's obligation to indemnify CFX, as may be necessary.

### **REQUESTED ACTION**

Board approval of the following is requested:

1. Partial Release and Amendment of Indenture

The Right of Way Committee recommended approval on January 22, 2020.

### **ATTACHMENTS**

- A. Partial Release and Amendment of Indenture
- B. Exhibit 1 to Partial Release and Amendment of Indenture
- C. Exhibit 2 to Partial Release and Amendment of Indenture
- D. Exhibit 3 to Partial Release and Amendment of Indenture
- E. Original Indenture with Southern Bell (BK 3073/PG 376)
- F. Partial Assignment between Bellsouth and AT&T (BK 3325/PG 347)

**EXHIBIT “1”**

[see attached]



Prepared by and return to:  
Ambarina A. Perez  
Florida East Coast Industries LLC  
700 NW 1<sup>st</sup> Avenue, Suite 1620  
Miami, Florida 33136

## **PARTIAL RELEASE AND AMENDMENT OF INDENTURE**

THIS PARTIAL RELEASE AND AMENDMENT OF INDENTURE ( "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and corporate, and an agency of the State under the laws of the State of Florida (the "CFX" or "Grantor") and BELLSOUTH TELECOMMUNICATIONS LLC d/b/a AT&T Florida (successor in interest to Southern Bell Telephone and Telegraph Company, a New York Corporation) ("BellSouth") and AT&T CORP., a New York corporation (successor in interest to American Telephone and Telegraph Company, a New York corporation) ("AT&T Corp.", which together with BellSouth are collectively referred to as the "Grantee"). CFX, AT&T Corp. and BellSouth are hereinafter sometimes referred to individually as a "Party" and collectively, as the "Parties".

### **RECITALS**

A. Orlando/Orange County Expressway Authority, a body politic and corporate and agency of the State of Florida ("OOCEA"), as grantor, and Southern Bell Telephone and Telegraph Company, a New York corporation ("Southern Bell"), as grantee, executed that certain Indenture dated November 21, 1979, recorded on November 30, 1979, in Official Records Book 3073, Page 376, of the Public Records of Orange County, Florida, as affected by that certain Partial Assignment of Easement dated September 20, 1982 by and between Bellsouth, as assignor, and American Telephone and Telegraph Company, a New York Corporation ("AT&T "), as assignee, recorded on November 10, 1982, in Official Records Book 3325, Page 347, of the Public Records of Orange County Florida (as same may have been amended, collectively, the "Easement").

B. CFX is the owner of the property burdened by the Easement as such property is more particularly described in the Easement (the "Easement Property") and CFX succeeded to the interest of OOCEA, as grantor of the Easement.

C. BellSouth and AT&T Corp., each succeeded to the interest of Southern Bell and AT&T, respectively, as grantees of the Easement.

D. BellSouth and AT&T Corp. have been requested to release from the Easement a portion of the Easement Property, and BellSouth and AT&T Corp. are willing to release the Release Property (as hereinafter defined) from the Easement in consideration for CFX amending the Easement to substitute an easement in favor of BellSouth and AT&T Corp. in the real property more particularly described on **Exhibit "1"** attached to this Agreement and made a part hereof, to the Easement, in place of the Release Property, all subject to the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, CFX, BellSouth and AT&T Corp. hereby covenant and agree as follows:

1. The recitals set forth above are true and correct and they are incorporated herein by this reference. All capitalized terms used but not otherwise defined in this Agreement shall have the meanings assigned to them in the Easement.

2. BellSouth and AT&T Corp. hereby release and discharge and by these presents do release and discharge all of their right, title, interest, claim and demand which BellSouth and AT&T Corp. have in and to the portion of the Easement Property more particularly described on **Exhibit "2"** attached hereto and made a part hereof (the "Release Property"). Provided, that nothing herein contained shall in anyway or manner impair, alter or diminish the rights, purpose, effect, encumbrance or provisions of the Easement on that portion of the Easement Property not included in the Release Property (the "Remainder Easement Property"), which Remainder Easement Property is not hereby being released from the Easement. For clarity, the Remainder Easement Property is described and depicted on **Exhibit "3"** attached hereto and made a part hereof.

3. AT&T Corp., BellSouth and CFX hereby amend the Easement by adding the following sentence immediately after the first (1<sup>st</sup>) sentence and before the second (2<sup>nd</sup>) sentence of Section 1 of the Easement:

"Further, the Grantor does hereby convey unto Grantee, its successors and assigns, a ten (10) foot, non-exclusive easement for the following purposes: to construct, operate, maintain, modify, enlarge, replace and remove an underground communications system consisting of a maximum of four (4) main cables and such auxiliary and appurtenant cables as shall be required, wires, surface testing terminals, manholes, markers, and other appurtenances, through lands of Grantor situated in the County of Orange, State of Florida, said easement being more particularly described on **Exhibit "1"** attached hereto."

4. Except as to the Release Property, and except as expressly modified by this Agreement, the Easement shall remain unmodified and in full force and effect with respect to the Remainder Easement Property and the property described in **Exhibit "1"** attached to this Agreement, and, the Easement, as modified and amended hereby, is restated and expressly ratified and confirmed by the Parties hereto, it being understood and agreed that the Parties' rights with respect to the Remainder Easement Property and the property described in **Exhibit "1"** attached to this Agreement, but excluding the Release Property, shall be governed by the terms of the Easement, as amended by this Agreement. To the extent any of the provisions of this Agreement are inconsistent with any of the provisions set forth in the Easement, the provisions of this Agreement shall govern and control.

5. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY BLANK;

SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Grantor has executed this Agreement as of the date first above written.

**Central Florida Expressway Authority, a body  
politic and corporate, and an agency of the  
State under the laws of the State of Florida**

**ATTEST:**

\_\_\_\_\_  
Signature

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

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

By: \_\_\_\_\_

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

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

**Signed, sealed and delivered in  
the presence of:**

\_\_\_\_\_  
Witness:

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

\_\_\_\_\_  
Witness:

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

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, \_\_\_\_\_, of the Central Florida Expressway Authority, a body politic and corporate, and an agency of the State of Florida, on behalf of said entity, ☐ who is personally known to me or ☐ who has produced \_\_\_\_\_ as identification.

*(Notary Seal)*

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

Notary Public

My Commission Expires: \_\_\_\_\_

IN WITNESS WHEREOF, the said Grantee has signed and sealed these presents the day and year first above written.

**Signed, sealed and delivered in  
the presence of:**

**AT&T Corp., a New York corporation**

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

By: \_\_\_\_\_

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

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

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, of AT&T Corp., a New York corporation, on behalf of said corporation, ☐ who is personally known to me or ☐ who has produced \_\_\_\_\_ as identification.

*(Notary Seal)*

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

IN WITNESS WHEREOF, the said Grantee has signed and sealed these presents the day and year first above written.

**Signed, sealed and delivered in  
the presence of:**

**Bellsouth Telecommunications LLC  
(d/b/a AT&T Florida)**

\_\_\_\_\_  
Witness:

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

By: \_\_\_\_\_

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

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

\_\_\_\_\_  
Witness:

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

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, \_\_\_\_\_, of Bellsouth Telecommunications LLC (d/b/a AT&T Florida), on behalf of said limited liability company, ☐ who is personally known to me or ☐ who has produced \_\_\_\_\_ as identification.

(Notary Seal)

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

Notary Public

My Commission Expires: \_\_\_\_\_

## **EXHIBIT "2"**

### Description and Sketch of the Release Property

[see attached]

For clarity, the Release Property is meant to include property added to the Easement by virtue of unrecorded amendment(s), modification(s), or informal correspondence, if any, to the Easement (as such term is defined in the foregoing Agreement to which this legal description is attached), provided, however, that the Release Property does not include the Remainder Easement Property described on **Exhibit "3"** attached to the Agreement.

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT

### SHEET INDEX

### Surveyors Notes

Sheet Number	Sheet Description
1	Cover
2	Sheet Index
3 - 7	Legal Description
8 - 70	Sketches

#### LEGEND:

AAF = All Aboard Florida  
(C) = Calculated  
(D) = Deed  
(M) = Measured  
(P) = Plat  
O.R.B. or ORB = Official Records Book  
Pg. = Page  
R = Radius  
L = Length of curve (arc distance)  
C = Chord distance  
Delta = central angle  
CB = Chord Bearing  
ID or id = Identification  
/ = Line Not To Scale  
PID = Parcel Identification Number  
S.R. = State Road  
CFX = Central Florida Expressway Authority  
R/W or r/w = Right-of-Way  
C = Centerline  
// = Limited Access Right-of-way line  
PC = Point of Curvature  
PT = Point of Tangency  
PCC = Point of Compound Curvature  
PRC = Point of Reverse Curvature  
(NT) = Non Tangent  
CM = Concrete Monument  
— = section line  
— = 1/4 section line  
SEC or sec = section  
FDOT = Florida Department of Transportation  
SRD = State Road Department  
OOCEA = Orlando Orange County Expressway Authority  
FPL = Florida Power & Light Company  
I.C.P. = International Corporate Parkway  
O.I.A = Orlando International Airport  
No = Number

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901) , US Survey Foot, based on the east line of Section 31, Township 23 South, Range 31 East as being South 00° 13' 49" West. The average combined scale factor is 0.999943.
2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record.
3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
4. The location and configuration of the lands described and depicted hereon were provided by the client.
5. This legal description and sketch may have been reduced in size by reproduction.
6. Last revision on December 17, 2019.

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 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

**DRAFT**

Robert M. Jones, PLS

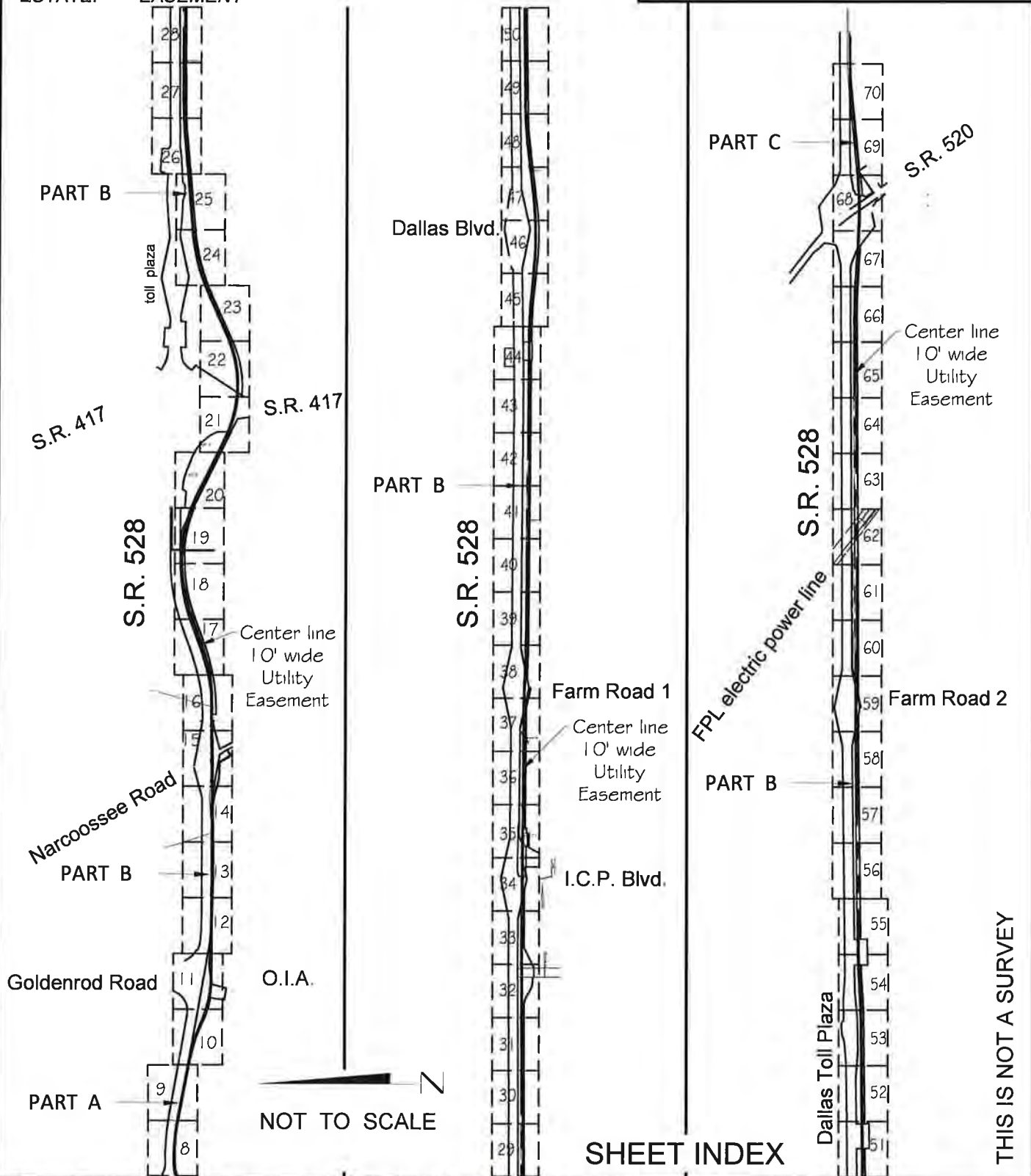
Florida Surveyor and Mapper, License No. LS-0004201

**THIS IS NOT A SURVEY**

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 1 OF 70	
DESIGNED BY: HNTB	DATE: 09/20/2016	 Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	REVISIONS		
DRAWN BY: PEW	AMEC JOB No.: 6374130684		DATE	BY	
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240		05/02/2019	EMO	
DRAWING NAME: 05X-0004 Expressway A11 01-25-2019.dwg					



CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
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PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



## SHEET INDEX

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FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ

DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 2 OF 70

### REVISIONS

DATE	BY
05/02/2019	EMO

GRAPHIC NAME: UTILITY Easement A11-01-02-2019-04c

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT

LEGAL DESCRIPTION:

Three (3) non-contiguous strips of land lying in Sections 27, 34, 35, and 36, Township 23 South, Range 30 East, Sections 31, 32, 33, 34, 35, and 36, Township 23 South, Range 31 East, Sections 31, 32, 33, 34, 35 and 36, Township 23 South, Range 32 East, Sections 31, 32, 33, 34, 35 and 36, Township 23 South, Range 33 East, Orange County, Florida, and lying within the Existing Limited Access Right-of-Way Line of State Road 528, being more particularly described as follows:

Part A

A strip of land 10 feet wide lying 5 feet on each side of the following described centerline;

Commence at a point lying N00°00'00"E, a distance of 98.37 from a 90D nail (no id) marking the Southwest corner Section 27, Township 23 South, Range 30 East, Orange County, Florida; thence run easterly along a line lying 67.00 feet north of and parallel with the centerline of State Road 528 as depicted on Orlando-Orange County Expressway Authority Right-Of-Way Map, Section 1.2 (75002-3503) the following three (3) courses; (1) thence N 89° 50' 48" E a distance of 2341.25 feet to a curve concave to the south; (2) thence easterly along said curve to the right having radius of 5796.58 feet; a central angle of 9° 57' 42" a distance of 1007.81 feet where the chord bears N 85° 10' 36" W a distance of 1006.54 feet; and (3) thence S 80° 11' 07" E a distance of 54.56 feet; thence departing said line run N 09° 56' 04" E a distance of 87.11 feet to the Existing Northerly Limited Access Right-of-Way line of State Road 528 and the POINT OF BEGINNING of the herein described centerline:

thence S09°56'04"W, a distance of 264.47 feet; thence S79°36'47"E, a distance of 124.44 feet; thence S79°11'53"E, a distance of 1731.07 feet; thence S80°10'14"E, a distance of 135.61 feet to a point lying S00°22'19"E, a distance 547.84 feet from a 6"x6" concrete monument (no identification) marking the Northeast Corner of Section 34, Township 23 South, Range 30 East;

thence continue S80°10'14"E, a distance of 3382.43 feet to a point on a non-tangent curve with a radius of 5872.58 feet, concave to the north; thence easterly along said curve to the left through a central angle of 6°38'13", a distance of 680.25 feet where the chord bears S83°30'37"E a distance of 679.87 feet to the point of intersection with a non-tangent line; thence S89°11'33"E, a distance of 293.77 feet; thence S89°50'53"E, a distance of 748.54 feet; thence S89°24'14"E, a distance of 180.41 feet; thence S89°00'06"E, a distance of 58.96 feet to a point lying S00°06'56"E, a distance 1242.87 feet from a 6"x6" concrete monument (no identification) marking the Northeast of Corner Section 35, Township 23 South, Range 30 East;

thence S89°00'06"E, a distance of 142.35 feet; thence S89°53'39"E, a distance of 534.45 feet; thence S89°53'40"E, a distance of 169.10 feet; thence N89°58'08"E, a distance of 93.27 feet; thence N89°44'03"E, a distance of 200.49 feet; thence S89°40'32"E, a distance of 400.06 feet; thence S89°56'02"E, a distance of 191.10 feet; thence S89°51'36"E, a distance of 372.80 feet; thence N80°51'04"E, a distance of 137.36 feet; thence N84°14'17"E, a distance of 72.41 feet; thence N87°16'30"E, a distance of 227.47 feet; thence N87°22'24"E, a distance of 365.02 feet; thence S88°44'06"E, a distance of 267.06 feet; thence S84°15'48"E, a distance of 189.12 feet; thence S89°51'59"E, a distance of 550.72 feet; thence S89°13'22"E, a distance of 52.09 feet; thence N89°43'27"E, a distance of 43.06 feet; thence N89°57'59"E, a distance of 8.35 feet to the Westerly Limited Access Right of Way Line of Narcoossee Road per ORLANDO - ORANGE COUNTY EXPRESSWAY AUTHORITY Right of Way Map for State Road 528 / Narcoossee Road Project No. 907, and the POINT OF TERMINATION of said center line, the sidelines of said strip of land to be extended or shortened to meet at angle points and curves and to terminate at said Westerly Limited Access Right of Way Line of Narcoossee Road.

Containing 2.667 acres, more or less.

THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 3 OF 70	
DESIGNED BY: HNTB	DATE: 09/20/2016		Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374130684			DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240			05/02/2019	EMO

CENTRAL FLORIDA  
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Part B

A strip of land 10 feet wide lying 5 feet on each side of the following described centerline;

Commence at a 5/8" Iron Rod (no identification) marking the Northeast Corner of Section 36, Township 23 South, Range 30 East, Orange County, Florida; thence run S00°15'33"W, along the east line of the Northeast 1/4 of said Section 36, a distance of 1216.19 feet; thence run S89°18'55"W, a distance of 1039.70 feet to the Easterly Limited Access Right of Way Line of Narcoossee Road per Right of Way Map for State Road 528 / Narcoossee Road Project No. 907; thence run N30°08'04"W, along said Easterly Limited Access Right of Way Line, a distance of 22.51 feet for the POINT OF BEGINNING of said centerline; thence N89°57'59"E, a distance of 21.47 feet; thence N89°10'03"E, a distance of 514.39 feet; thence N89°55'20"E, a distance of 225.19 feet; thence N85°26'01"E, a distance of 145.96 feet; thence S09°35'15"E, a distance of 27.68 feet; thence N88°34'25"E, a distance of 139.87 feet to a point lying S00°15'13"W, a distance of 1213.54 feet to centerline from said Northeast corner of Section 36, Township 23 South, Range 30 East;

thence continue N88°34'25"E, a distance of 69.31 feet; thence N89°06'06"E, a distance of 368.16 feet; thence N89°18'56"E, a distance of 123.61 feet to a point on a non-tangent curve with a radius of 8800.89 feet, concave to the north; thence easterly along said curve to the left through a central angle of 2°37'04", a distance of 402.09 feet where the chord bears N88°26'36"E a distance of 402.05 feet to a point on a non-tangent curve with a radius of 4387.54 feet, concave to the north; thence easterly along said curve to the left through a central angle of 13°37'32", a distance of 1043.40 feet where the chord bears N79°52'43"E a distance of 1040.94 feet to a point on a non-tangent curve with a radius of 8826.37 feet, concave to the north; thence easterly along said curve to the left through a central angle of 2°36'36", a distance of 402.08 feet where the chord bears N71°19'23"E a distance of 402.05 feet to the point of intersection with a non-tangent line; thence N70°27'03"E, a distance of 807.75 feet to a point on a non-tangent curve with a radius of 9867.81 feet, concave to the south; thence easterly along said curve to the right through a central angle of 2°09'52", a distance of 372.76 feet where the chord bears N71°10'30"E a distance of 372.73 feet to a point on a non-tangent curve with a radius of 4931.15 feet, concave to the south; thence easterly along said curve to the right through a central angle of 21°34'49", a distance of 1857.29 feet where the chord bears N83°24'39"E a distance of 1846.33 feet to a point lying S00°13'49"W, a distance of 296.61 feet from a 4"x4" concrete monument (no identification) marking the Northwest Corner of Section 32, Township 23 South, Range 31 East; thence easterly along said curve to the right with a radius of 4931.15 feet through a central angle of 19°51'58", a distance of 1709.77 feet to a point on a non-tangent curve with a radius of 9840.57 feet, concave to the southwest; thence southeasterly along said curve to the right through a central angle of 2°10'13", a distance of 372.76 feet where the chord bears S64°29'13"E a distance of 372.73 feet to the point of intersection with a non-tangent line; thence S63°45'46"E, a distance of 1428.22 feet to a point on a non-tangent curve with a radius of 7614.94 feet, concave to the northeast; thence southeasterly along said curve to the left through a central angle of 3°29'22", a distance of 463.78 feet where the chord bears S64°55'34"E a distance of 463.70 feet to a point on a non-tangent curve with a radius of 3792.06 feet, concave to the north; thence southeasterly along said curve to the left through a central angle of 24°59'59", a distance of 1654.58 feet where the chord bears S79°45'26"E a distance of 1641.49 feet to a point lying S00°16'08"E, a distance of 2037.44 feet from the Northwest Corner of Section 33, Township 23, Range 31 East;

thence easterly along said curve to the left with a radius of 3792.06 feet through a central angle of 18°18'18", a distance of 1211.51 feet to a point on a non-tangent curve with a radius of 7614.93 feet, concave to the northwest; thence easterly along said curve to the left through a central angle of 3°29'22", a distance of 463.78 feet where the chord bears N67°06'23"E a distance of 463.70 feet to the point of intersection with a non-tangent line; thence N65°56'36"E, a distance of 987.36 feet to a point on a non-tangent curve with a radius of 12578.49 feet, concave to the southeast; thence northeasterly along said curve to the right through a central angle of 1°16'22", a distance of 279.44 feet where the chord bears N66°22'09"E a distance of 279.43 feet to a point on a non-tangent curve with a radius of 6277.93 feet, concave to the south; thence northeasterly along said curve to the right through a central angle of 2°16'35", a distance of 249.41 feet where the chord bears N68°21'30"E a distance of 249.40 feet to the point of curvature of a compound curve with a radius of 6278.02 feet, concave to the south; thence easterly along said curve to the right through a central angle of 14°25'41", a distance of 1580.92 feet to a point on a non-tangent curve with a radius of 12574.49 feet, concave to the south; thence easterly along said curve to the right through a central angle of 1°16'24", a distance of 279.44 feet where the chord bears N84°46'32"E a distance of 279.44 feet to the point of

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FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 4 OF 70	
DESIGNED BY: HNTB	DATE: 09/20/2016	 Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932		REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374130684			DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240			05/02/2019	EMO



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ESTATE: EASEMENT

intersection with a non-tangent line; thence N85°12'06"E, a distance of 490.55 feet to a point lying S00°00'52"W, a distance of 620.13 feet from the Northwest Corner of Section 34, Township 23 South, Range 31 East;

thence N85°12'06"E, a distance of 2299.38 feet; thence N85°23'19"E, a distance of 217.19 feet to a point on a non-tangent curve with a radius of 11122.54 feet, concave to the south; thence easterly along said curve to the right through a central angle of 3°26'39", a distance of 668.61 feet where the chord bears N87°29'02"E a distance of 668.50 feet to the point of intersection with a non-tangent line; thence N89°34'45"E, a distance of 217.19 feet; thence N89°45'57"E, a distance of 1923.91 feet to a point lying S00°11'15"E, a distance 355.46 feet from a 5/8" Iron Rod (no identification) marking the Northwest Corner of Section 35, Township 23 South, Range 31 East;

thence continue N89°45'57"E, a distance of 5316.56 feet to a point lying S00°11'37"W, a distance 342.40 feet from a 4"x4" concrete monument (no identification) marking the Northwest Corner of Section 36, Township 23 South, Range 31 East;

thence continue N89°45'57"E, a distance of 2660.99 feet to a point on a non-tangent curve with a radius of 68787.94 feet, concave to the south; thence easterly along said curve to the right through a central angle of 0°37'24", a distance of 748.47 feet where the chord bears S89°53'48"E a distance of 748.47 feet to the point of intersection with a non-tangent line; thence S89°34'04"E, a distance of 62.01 feet; thence S89°33'33"E, a distance of 1965.94 feet to a point lying S00°06'50"E, a distance of 354.74 feet from a Nail & Disc (LB 68) marking the Northwest Corner of Section 31, Township 23 South, Range 32 East;

thence continue S89°33'33"E, a distance of 2458.50 feet; thence S89°33'33"E, a distance of 2863.31 feet to a point lying S00°09'37"W, a distance of 409.41 feet from a 1" Iron Rod (old axle - no identification) marking the Northwest Corner of Section 32, Township 23 South, Range 32 East;

thence continue S89°33'33"E, a distance of 256.33 feet; thence S89°25'17"E, a distance of 248.14 feet to a point on a non-tangent curve with a radius of 17208.76 feet, concave to the south; thence easterly along said curve to the right through a central angle of 1°19'46", a distance of 399.28 feet where the chord bears S88°28'52"E a distance of 399.27 feet to the point of intersection with a non-tangent line; thence S87°32'27"E, a distance of 248.14 feet; thence S87°24'11"E, a distance of 380.98 feet; thence S87°32'27"E, a distance of 247.86 feet to a point on a non-tangent curve with a radius of 17168.76 feet, concave to the north; thence easterly along said curve to the left through a central angle of 1°19'46", a distance of 398.35 feet where the chord bears S88°28'52"E a distance of 398.34 feet to the point of intersection with a non-tangent line; thence S89°25'17"E, a distance of 247.86 feet; thence S89°33'33"E, a distance of 2877.75 feet to a point lying S00°20'37"W, a distance 535.95 feet from a 6"x6" concrete monument (with 1/4" iron rod - no identification) marking the Northwest Corner of Section 33, Township 23 South, Range 32 East;

thence continue S89°33'33"E, a distance of 5306.53 feet to a point lying S00°00'00"E, a distance 490.96 feet from a 6"x6" concrete monument (with 1/4" iron rod - no identification) marking the Northwest Corner of Section 34, Township 23 South, Range 32 East;

thence continue S89°33'33"E, a distance of 1805.96 feet to a point on a non-tangent curve with a radius of 23061.85 feet, concave to the south; thence easterly along said curve to the right through a central angle of 0°50'53", a distance of 341.30 feet where the chord bears S89°16'31"E a distance of 341.29 feet to a point on a non-tangent curve with a radius of 11492.19 feet, concave to the south; thence easterly along said curve to the right through a central angle of 3°06'35", a distance of 623.72 feet where the chord bears S87°09'10"E a distance of 623.64 feet to a point on a non-tangent curve with a radius of 23061.82 feet, concave to the south; thence easterly along said curve to the right through a central angle of 0°50'53", a distance of 341.30 feet where the chord bears S85°01'49"E a distance of 341.29 feet to the point of intersection with a non-tangent line; thence S84°44'47"E, a distance of 794.58 feet; thence S84°59'36"E, a distance of 317.40 feet to a point on a non-tangent curve with a radius of 11426.19 feet, concave to the north; thence easterly along said curve to the left through a central angle of 5°26'56", a distance of 1086.62 feet where the chord bears S88°12'27"E a distance of 1086.21 feet to the point of curvature of a compound curve with a radius of 11426.19 feet, concave to the north, and lying S00°11'23"W, a distance 794.43 feet from a Nail & Disc (LB 7932) marking the Northwest Corner of Section 35, Township 23 South, Range 32 East; thence continue easterly along said curve to the left with a radius of 11426.19 feet, through a central angle of 5°00'21", a distance of 998.28 feet to a point on a non-tangent curve with a radius of 20828.58 feet, concave to the north; thence

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FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 5 OF 70
DESIGNED BY: HNTB	DATE: 09/20/2016	 Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374130684		DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240		05/02/2019	EMO

CENTRAL FLORIDA  
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STATE ROAD 528  
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PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT

easterly along said curve to the left through a central angle of 0°50'19", a distance of 304.81 feet where the chord bears N83°31'36"E a distance of 304.81 feet to the point of intersection with a non-tangent line; thence N83°12'32"E, a distance of 1186.74 feet; thence N83°29'34"E, a distance of 341.29 feet to a point on a non-tangent curve with a radius of 11492.19 feet, concave to the south; thence easterly along said curve to the right through a central angle of 4°24'47", a distance of 885.17 feet where the chord bears N86°16'01"E a distance of 884.95 feet to the point of intersection with a non-tangent line; thence N89°02'28"E, a distance of 341.29 feet; thence N89°19'30"E, a distance of 1307.07 feet to a point lying S00°05'14"E, a distance 458.64 feet from a 6"x6" concrete monument (no identification) marking the Northwest Corner of Section 36, Township 23 South, Range 32 East;

thence continue N89°19'30"E, a distance of 5421.55 feet to a point lying S00°15'23"W, a distance 442.75 feet from a 5/8" Iron Rod and Cap (LB7932) marking the Northeast Corner of Section 36, Township 23 South, Range 32 East;

thence continue N89°19'30"E, a distance of 1372.87 feet; thence N89°08'12"E, a distance of 278.80 feet to a point on a non-tangent curve with a radius of 14107.76 feet, concave to the north; thence easterly along said curve to the left through a central angle of 1°31'51", a distance of 376.92 feet where the chord bears N87°59'38"E a distance of 376.91 feet to the point of intersection with a non-tangent line; thence N86°51'05"E, a distance of 278.80 feet; thence N86°39'46"E, a distance of 376.87 feet; thence N86°50'49"E, a distance of 279.19 feet to a point on a non-tangent curve with a radius of 14494.75 feet, concave to the south; thence easterly along said curve to the right through a central angle of 1°29'06", a distance of 375.65 feet where the chord bears N87°57'27"E a distance of 375.64 feet to the point of intersection with a non-tangent line; thence N89°04'05"E, a distance of 279.19 feet; thence N89°15'08"E, a distance of 1692.49 feet to a point lying S00°44'03"E, a distance 363.58 feet from a 4"x4" concrete monument (no identification) marking the Northeast Corner of Section 31, Township 23 South, Range 33 East;

thence continue N89°15'08"E, a distance of 3648.54 feet to a point on a non-tangent curve with a radius of 69179.35 feet, concave to the south; thence easterly along said curve to the right through a central angle of 0°47'18", a distance of 951.81 feet where the chord bears N89°37'22"E a distance of 951.80 feet to the point of intersection with a non-tangent line; thence N89°59'33"E, a distance of 516.60 feet to a point on a non-tangent curve with a radius of 98201.34 feet, concave to the north; thence easterly along said curve to the left through a central angle of 0°14'32", a distance of 415.23 feet where the chord bears N89°51'15"E a distance of 415.23 feet to the point of intersection with a non-tangent line; thence N89°42'53"E, a distance of 5104.75 feet to a point lying S00°38'14"E, a distance 391.34 feet from a 4"x4" concrete monument (no identification) marking the Northwest Corner Section 34, Township 23 South, Range 33 East;

thence continue N89°42'53"E, a distance of 5301.58 feet to a point lying S00°00'00"E, a distance 415.63 feet from a 4"x4" concrete monument (no identification) marking the Northwest of Corner Section 35, Township 23 South, Range 33 East;

thence continue N89°42'53"E, a distance of 1854.44 feet; thence N89°50'08"E, a distance of 217.13 feet to a point on a non-tangent curve with a radius of 17208.76 feet, concave to the south; thence easterly along said curve to the right through a central angle of 2°59'39", a distance of 899.28 feet where the chord bears S88°25'35"E a distance of 899.18 feet to the point of intersection with a non-tangent line; thence S86°41'18"E, a distance of 217.13 feet; thence S86°34'04"E, a distance of 1360.60 feet to a point on a non-tangent curve with a radius of 22979.19 feet, concave to the north; thence easterly along said curve to the left through a central angle of 0°50'58", a distance of 340.70 feet where the chord bears S86°51'08"E a distance of 340.70 feet to a point on a non-tangent curve with a radius of 11426.19 feet, concave to the north; thence easterly along said curve to the left through a central angle of 1°59'23", a distance of 396.77 feet where the chord bears S88°24'58"E a distance of 396.75 feet to the point lying S00°00'00"E, a distance 558.27 feet from a 6"x6" concrete monument (no identification) marking the Northwest Corner of Section 36, Township 23 South, Range 33 East; thence continue easterly along said curve to the left with a radius of 11426.19 feet, through a central angle of 0°25'33", a distance of 84.95 feet to the westerly Right of Way Line of State Road 520 and the POINT OF TERMINATION of said centerline, the sidelines of said strip of land to be extended or shortened to meet at angle points and curves and to terminate at said Easterly Existing Limited Access Right of Way Line of Narcoossee Road and said Westerly Right of Way Line of State Road 520.

Containing 21.217 acres, more or less.

### THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 6 OF 70	
DESIGNED BY: HNTB	DATE: 09/20/2016		Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374130684			DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240			05/02/2019	EMO

Containing 21.217 acres, more or less.

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT

Part C

A strip of land 10 feet wide lying 5 feet on each side of the following described centerline;

Commence at a 6"x6" concrete monument (no identification) marking the Northwest Corner of Section 36, Township 23 South, Range 33 East, Orange County, Florida; thence S00°00'00"E, a distance 558.27 feet; to the point on a curve, said curve having a radius of 11426.19 feet, concave to the north; thence easterly along said curve to the left through a central angle of 1°38'08", a distance of 326.18 feet where the chord bears N89°46'17"E a distance of 326.16 feet a point on the easterly Right of Way Line of State Road 520 for the POINT OF BEGINNING of said centerline; thence continue easterly along said curve to the left having a radius of 11426.19 feet,, concave to the north; thence easterly along said curve to the left through a central angle of 2°48'27", a distance of 559.90 feet to a point on a non-tangent curve with a radius of 22979.25 feet, concave to the north; thence easterly along said curve to the left through a central angle of 0°50'58", a distance of 340.70 feet where the chord bears N85°34'37"E a distance of 340.70 feet to the point of intersection with a non-tangent line; thence N85°17'33"E, a distance of 643.13 feet; thence N85°15'12"E, a distance of 123.96 feet to a point on a non-tangent curve with a radius of 30135.68 feet, concave to the north; thence easterly along said curve to the left through a central angle of 1°01'51", a distance of 542.19 feet where the chord bears N84°39'34"E a distance of 542.19 feet to the point of intersection with a non-tangent line; thence N84°03'56"E, a distance of 123.96 feet; thence N84°01'34"E, a distance of 825.96 feet to a point on a non-tangent curve with a radius of 21653.42 feet, concave to the south; thence easterly along said curve to the right through a central angle of 0°13'26", a distance of 84.58 feet where the chord bears N83°59'16"E a distance of 84.58 feet to point lying on the original Southerly Limited Access Right of Way Line of State Road 528, and the POINT OF TERMINATION of said centerline, the sidelines of said strip of land to be extended or shortened to meet at angle points and curves and to terminate at said Easterly Right of Way Line of State Road 520 and at said original Southerly Limited Access Right of Way Line of State Road 528.

Containing 0.745 acres, more or less.

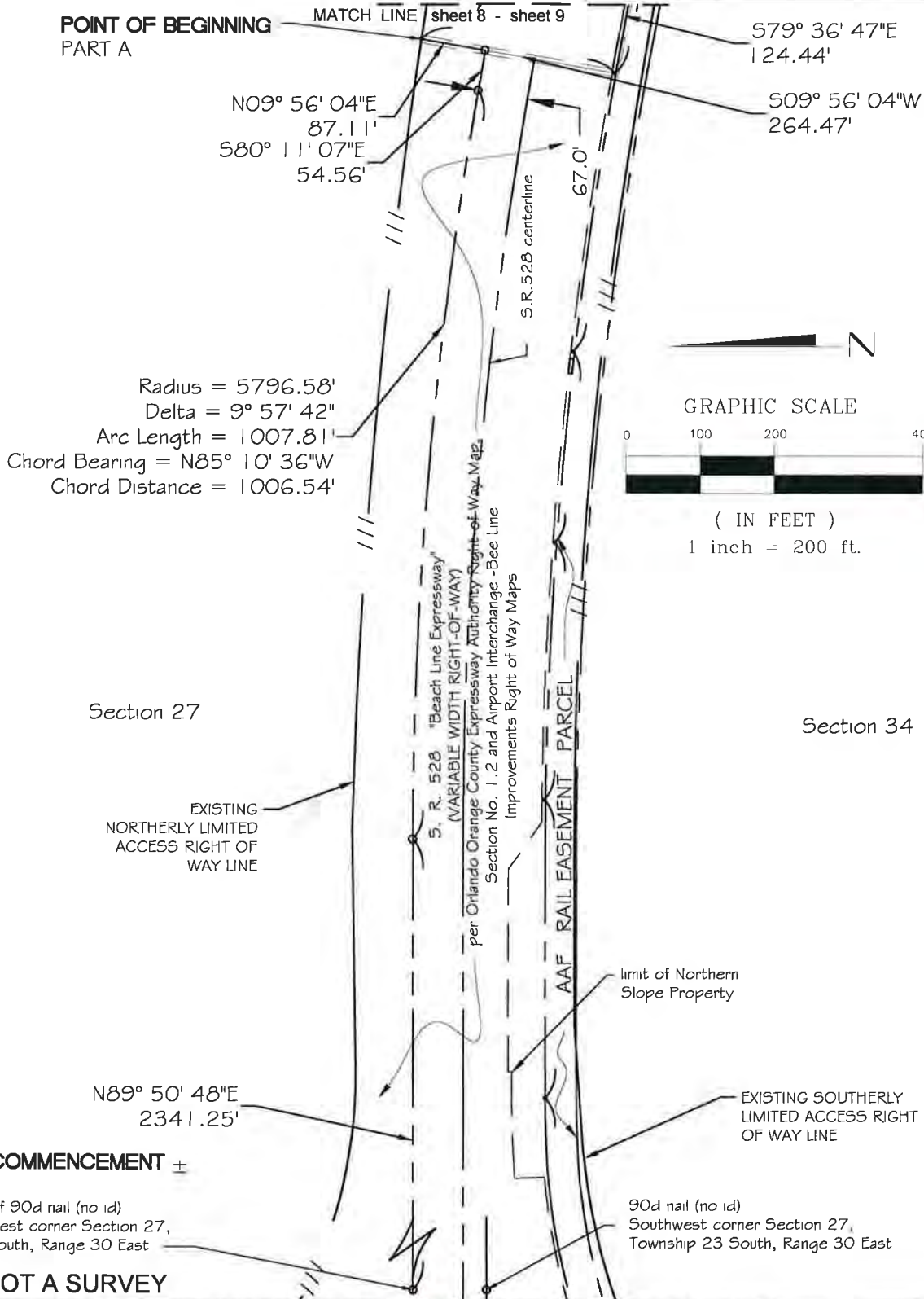
Total area of Parts A, B and C is 24.629 acres, more or less.

THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 7 OF 70	
DESIGNED BY: HNTB	DATE: 09/20/2016	 Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	REVISIONS		
DRAWN BY: PEW	AMEC JOB No.: 6374130684		DATE	BY	
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240		05/02/2019	EMO	
			GRAPHIC NAME: CFX 2019 Layout A11 03-26-2019.dwg		



CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY

LEGAL DESCRIPTION and SKETCH

SHEET 8 OF 70

DESIGNED BY: HNTB

DATE: 09/20/2016

DRAWN BY: PEW

AMEC JOB No.: 6374130684

APPROVED BY: RMJ

CFX PROJECT No.: 528-1240



Amec Foster Wheeler Environment & Infrastructure, Inc.

75 East Amelia Street, Suite 200

Orlando, FL 32801 USA

Phone: (407) 522-7570

Certificate of Authorization Number LB-0007932

REVISIONS

DATE BY

DRAWING NAME: CFX Utility (Access) A11-01-19-2016.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



GRAPHIC SCALE



( IN FEET )  
1 inch = 200 ft

MATCH LINE sheet 9 - sheet 10

limit of Northern  
Slope Property

5.0'

AAF RAIL LINE EASEMENT

Center line 10' wide Utility  
Easement

S. R. 528 "Beach Line Expressway"  
(VARIABLE WIDTH RIGHT-OF-WAY)  
Section No. 1.2 and Airport Interchange - Bee Line  
Improvements Right of Way Map

Section 34

ORLANDO INTERNATIONAL AIRPORT

EXISTING  
NORTHERLY LIMITED  
ACCESS RIGHT OF  
WAY LINE

EXISTING SOUTHERLY  
LIMITED ACCESS RIGHT  
OF WAY LINE

579° 11' 53"E  
1731.07'

5.0'

5.0'

579° 36' 47"E  
124.44'

MATCH LINE sheet 8 - sheet 9

POINT OF BEGINNING  
PART A

THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB DATE: 09/20/2016  
DRAWN BY: PEW AMEC JOB No.: 6374130684  
APPROVED BY: RMJ CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 9 OF 70

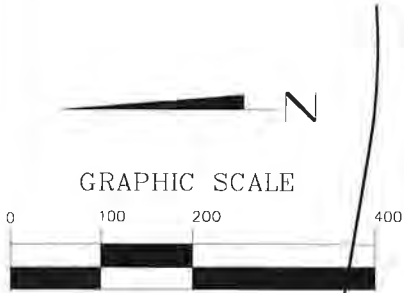
REVISIONS

DATE	BY
05/02/2019	EMO

Source: NAD 83, CFX 2015, Locomot A11 05/05/2019



**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY**  
**STATE ROAD 528**  
**PROJECT No. 528-1240**  
**PARCEL No.**  
**PURPOSE: UTILITY (ATT)**  
**ESTATE: EASEMENT**



EXISTING  
NORTHERLY LIMITED  
ACCESS RIGHT OF  
WAY LINE

S. R. 528 "Beach Line Expressway"  
(VARIABLE WIDTH RIGHT-OF-WAY)  
Section No. 1.2 and Airport Interchange -Bee Line  
Improvements Right of Way Map  
per Orlando Orange County Expressway Authority

EXISTING SOUTHERLY LIMITED ACCESS  
RIGHT OF WAY LINE OF STATE ROAD 528  
per OOCEA Right-of-Way Map Section 1.2

MATCH LINE sheet 10 - sheet 11

SOUTH LIMITED ACCESS RIGHT OF WAY LINE  
OF GOLDENROD ROAD EXTENSION  
per OOCEA Project No. 903  
Right-of-Way Map

Center line 10' wide Utility  
Easement

ORLANDO INTERNATIONAL AIRPORT

Section 35

**POINT OF  
COMMENCEMENT  
PART A**

6"x6" concrete  
monument (no id)  
Northeast corner  
Section 34,  
Township 23 South  
Range 30 East

limit of Northern  
Slope Property

Center line 10' wide Utility  
Easement

580° 10' 14"E  
3382.43'

500° 22' 19"E  
548.26'

580° 10' 14"E  
135.61'

Section 34

**THIS IS NOT A SURVEY**

MATCH LINE sheet 9 - sheet 10

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
 DESIGNED BY: HNTB  
 DRAWN BY: PEW  
 APPROVED BY: RMJ  
 DATE: 09/20/2016  
 AMEC JOB No.: 6374130684  
 CFX PROJECT No.: 528-1240



**LEGAL DESCRIPTION and SKETCH**

Amec Foster Wheeler Environment & Infrastructure, Inc.  
 75 East Amelia Street, Suite 200  
 Orlando, FL 32801 USA  
 Phone: (407) 522-7570  
 Certificate of Authorization Number LB-0007932

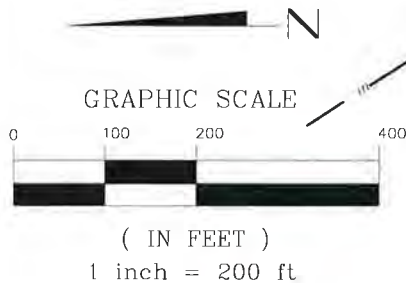
SHEET 10 OF 70

REVISIONS

DATE	BY
05/02/2019	EMO

PRINTING NAME: CFX Utility Easement A11 05-05-2019.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



MATCH LINE sheet 11 - sheet 12

EXISTING SOUTHERLY  
LIMITED ACCESS RIGHT  
OF WAY LINE

limit of Northern  
Slope Property

S. R. 528 "Beach Line Expressway"  
(VARIABLE WIDTH RIGHT-OF-WAY)  
Per Orlando Orange County Expressway Authority Right-of-Way Map,  
Section No. 1.2 and OOCEA Project 903 Right-of-Way Maps

SOUTH LIMITED ACCESS  
RIGHT OF WAY LINE  
OF GOLDENROD ROAD EXTENSION  
per OOCEA Project No. 903  
Right-of-Way Map

GOLDENROD ROAD

58° 10' 14"E  
3382.43'

Center line 10' wide  
Utility Easement

EXISTING SOUTHERLY LIMITED ACCESS  
RIGHT OF WAY LINE OF STATE ROAD 528  
per OOCEA Right-of-Way Map Section 1.2

MAINTENANCE  
AGREEMENT  
O.R.B. 6948  
PAGE 2771

Section 35

5.0' 5.0'

SOUTH LIMITED ACCESS  
RIGHT OF WAY LINE OF  
GOLDENROD ROAD EXTENSION  
per OOCEA Project No. 903  
Right-of-Way Map

MATCH LINE sheet 10 - sheet 11

THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ  
DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



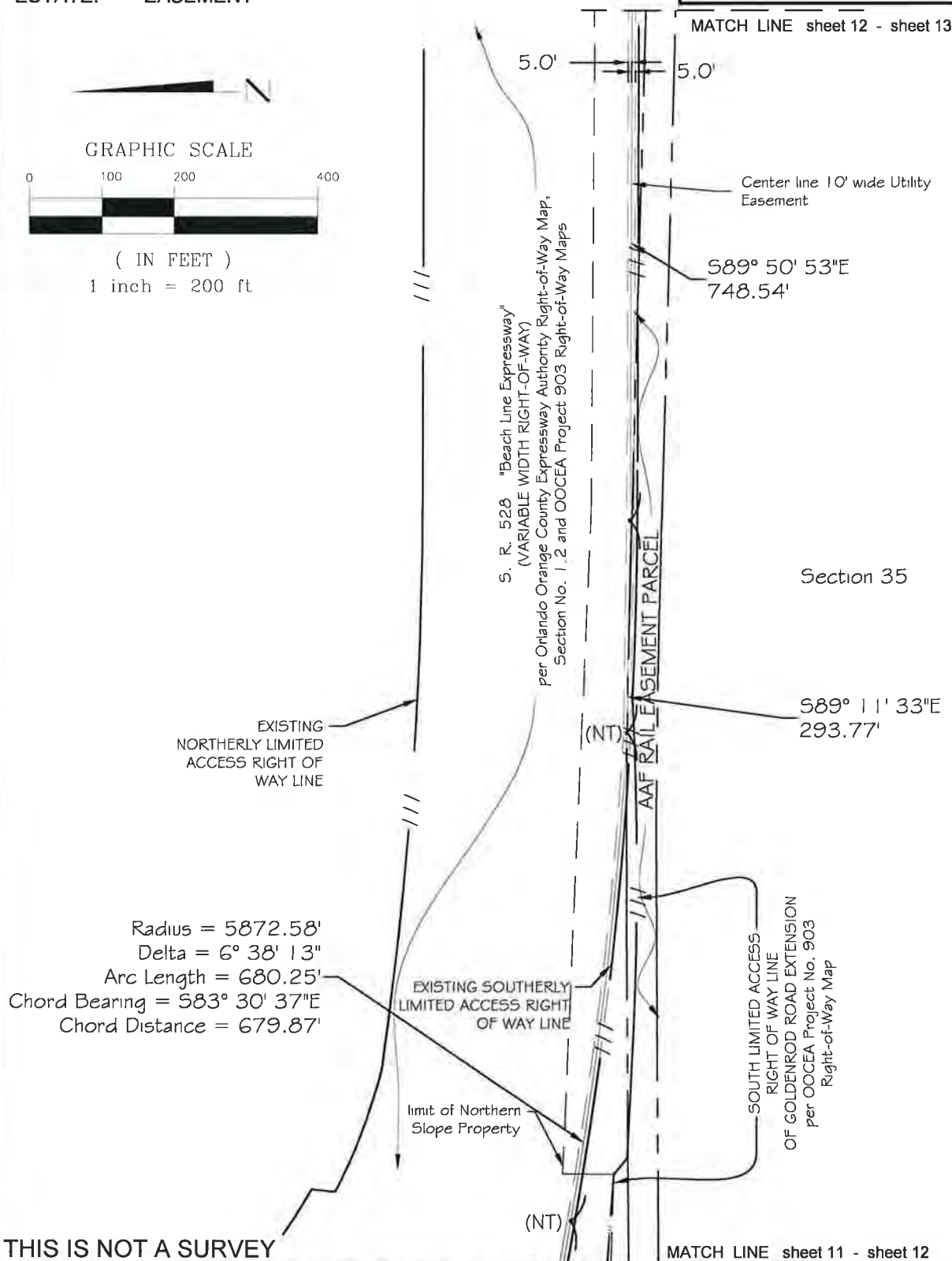
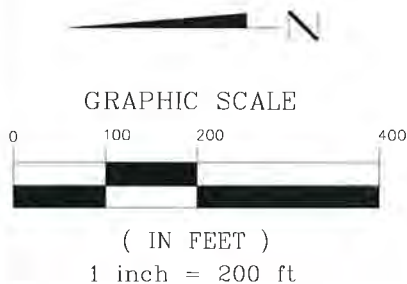
LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 11 OF 70

REVISIONS  
DATE BY  
05/02/2019 EMO

DATE: 05/02/2019 BY: EMO

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ  
DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
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Certificate of Authorization Number LB-0007932

SHEET 12 OF 70

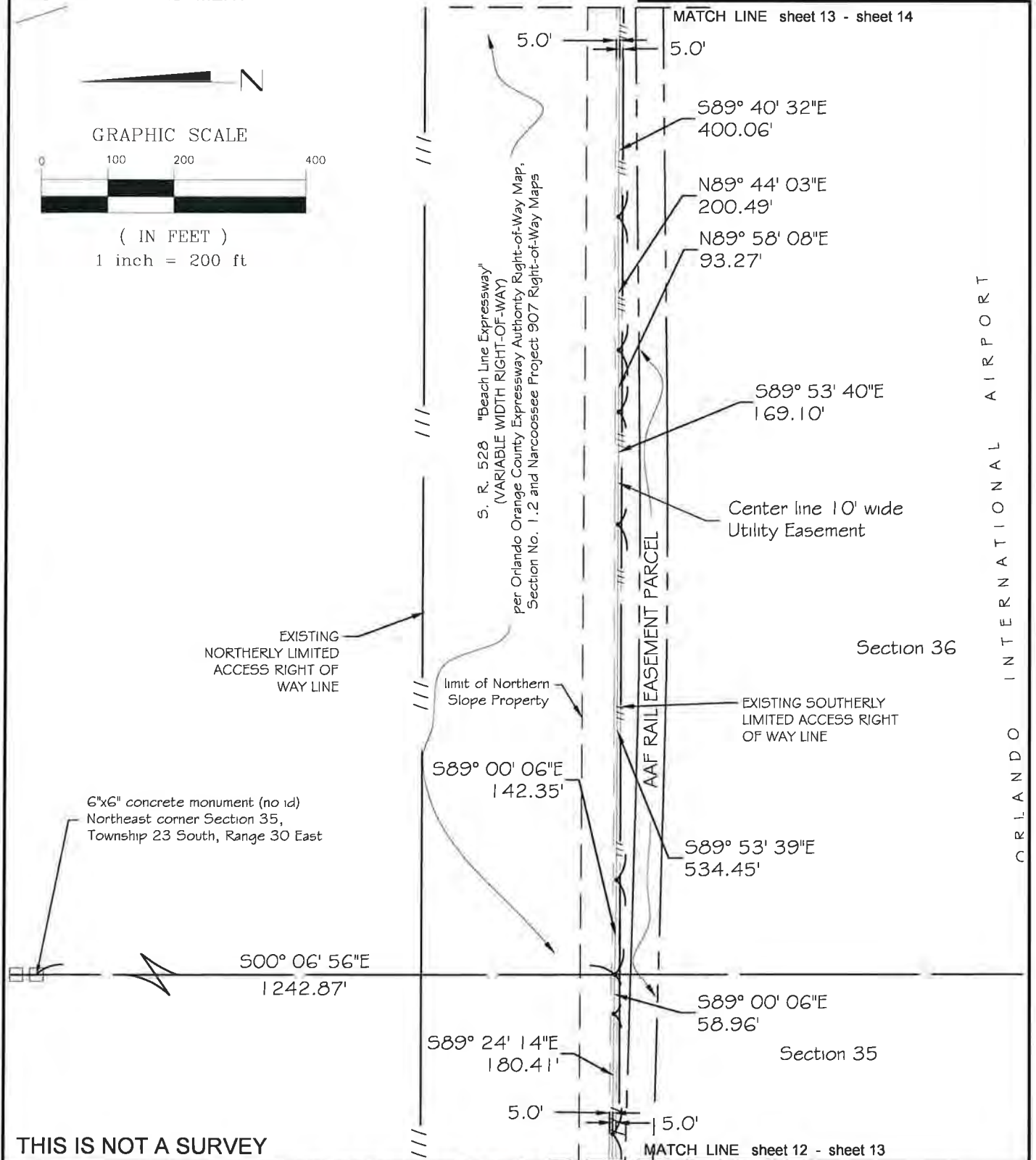
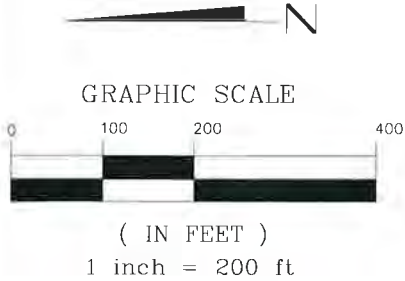
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DATE BY

05/02/2019 EMO

DRAWING NAME: CFX Utility Easement AAF RAILEASEMENT

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



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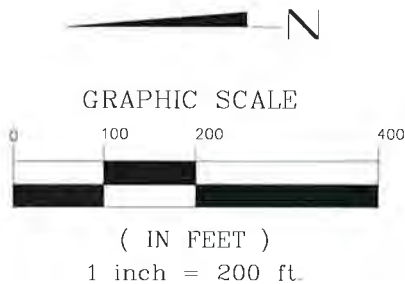
FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY	
DESIGNED BY: HNTB	DATE: 09/20/2016
DRAWN BY: PEW	AMEC JOB No.: 6374130684
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240

**LEGAL DESCRIPTION and SKETCH**  
**Amec Foster Wheeler Environment & Infrastructure, Inc.**  
 75 East Amelia Street, Suite 200  
 Orlando, FL 32801 USA  
 Phone: (407) 522-7570  
 Certificate of Authorization Number LB-0007932

SHEET 13 OF 70	
REVISIONS	
DATE	BY
05/02/2019	EMO
NAME: C:\Users\j\Documents\Easement ATT 03 15 2019.dwg	



CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



MATCH LINE sheet 14 - sheet 15

S88° 44' 06"E  
267.06'

ORIGINAL and  
EXISTING SOUTHERLY  
LIMITED ACCESS  
RIGHT OF WAY LINE

PROPOSED LIMITED ACCESS  
RIGHT OF WAY LINE

5.0'

5.0'

Center line 10' wide  
Utility Easement  
N87° 22' 24"E  
365.02'

S. R. 528 "Beach Line Expressway"  
(VARIABLE WIDTH RIGHT-OF-WAY)  
per Orlando Orange County Expressway Authority Right-of-Way Map,  
Section No. 1.2 and Narcoossee Project 907 Right-of-Way Maps

N87° 16' 30"E  
227.47'

N84° 14' 17"E  
72.41'

N80° 51' 04"E  
137.36'

EXISTING  
NORTHERLY LIMITED  
ACCESS RIGHT OF  
WAY LINE

EXISTING SOUTHERLY  
LIMITED ACCESS RIGHT  
OF WAY LINE

589° 51' 36"E  
372.80'

Section 36

limit of Northern  
Slope Property

589° 56' 02"E  
191.10'  
5.0'

5.0'

MATCH LINE sheet 13 - sheet 14

THIS IS NOT A SURVEY

ORLANDO INTERNATIONAL AIRPORT

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB DATE: 09/20/2016  
DRAWN BY: PEW AMEC JOB No.: 6374130684  
APPROVED BY: RMJ CFX PROJECT No.: 528-1240

LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 14 OF 70	
REVISIONS	
DATE	BY
05/02/2019	EMO
SOURCE NAME: OX Utility Easement A11-63-25-2014.mxd	

**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT**

MATCH LINE sheet 15 - sheet 16

"RESERVE AT BEACHLINE"  
Plat Book 66, Page 137-138



GRAPHIC SCALE



( IN FEET )  
1 inch = 200 ft.

**POINT OF BEGINNING  
PART B**

EASTERLY LIMITED ACCESS RIGHT OF  
WAY LINE per OOCEA Right of Way  
Map for S.R. 528 / NARCOOSSEE  
ROAD Project No. 907

EXISTING  
NORTHERLY LIMITED  
ACCESS RIGHT OF  
WAY LINE

N88° 16' 16"E  
168.26'

N89° 10' 03"E  
514.39'

N89° 57' 59"E  
21.47'

N89° 55' 20"E  
225.19'

Center line 10' wide  
Utility Easement

5.0'

5.0'

EXISTING SOUTHERLY  
LIMITED ACCESS RIGHT  
OF WAY LINE

S89° 18' 55"W 1039.70'

N30° 08' 04"W  
22.51'

WESTERLY LIMITED ACCESS  
RIGHT OF WAY LINE  
per OOCEA Right of Way Map for  
S.R. 528 / NARCOOSSEE  
ROAD Project No. 907

N89° 57' 59"E  
8.35'

N89° 43' 27"E  
43.06'  
S89° 13' 22"E  
52.09'

Section 36

ORIGINAL and  
EXISTING SOUTHERLY  
LIMITED ACCESS  
RIGHT OF WAY LINE

PROPOSED  
LIMITED ACCESS  
RIGHT OF WAY LINE

**POINT OF TERMINATION  
PART A**

Center line 10' wide  
Utility Easement

S89° 51' 59"E  
550.72'

5.0'

5.0'

S84° 15' 48"E  
189.12'

limit of Northern  
Slope Property

EXISTING  
NORTHERLY LIMITED  
ACCESS RIGHT OF  
WAY LINE

**THIS IS NOT A SURVEY**

MATCH LINE sheet 14 - sheet 15

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ  
DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240

**LEGAL DESCRIPTION and SKETCH**

Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 15 OF 70

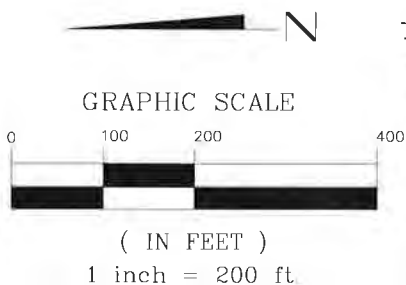
**REVISIONS**

DATE	BY
05/02/2019	EMO

GRAPHIC NAME: CFX Utility Easement A11-01-02-2016

ORLANDO INTERNATIONAL AIRPORT

**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT**



MATCH LINE sheet 16 - sheet 17

Radius = 4387.54'  
Delta = 13° 37' 32"  
Arc Length = 1043.40'  
Chord Bearing = N79° 52' 43"E  
Chord Distance = 1040.94'

ORIGINAL SOUTHERLY  
LIMITED ACCESS RIGHT OF WAY

limit of Southern  
Slope Property

Radius = 8800.89'  
Delta = 2° 37' 04"  
-Arc Length = 402.09'  
Chord Bearing = N88° 26' 36"E  
Chord Distance = 402.05'

— 10' non-exclusive access easement  
ORB 3638, Pg. 1248

N89° 18' 56"E  
123.61'

EXISTING SOUTHERLY  
LIMITED ACCESS RIGHT  
OF WAY LINE PER  
ORB 11002, Pg. 294

Center line 10' wide  
Utility Easement

N89° 06' 06"E  
368.16'

500° 15' 33"W 1216.19'  
East line of northeast 1/4 of Section 36

### POINT OF COMMENCEMENT

PART B                      500° 15' 33"W  
5/8" iron rod (no id)                      1213.54'  
Northeast corner Section 36,  
Township 23 South, Range 30 East

N88° 34' 25"E  
69.31'

Range 31 East

Range 30 East

N88° 34' 25"E  
139.87'  
S09° 35' 15"E  
centerline) 27.68'

N85° 26' 01"E  
145.96'

589° 18' 55"W  
1039.70'

MATCH LINE sheet 15 - sheet 16

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY

DESIGNED BY: HNTB

DATE: 09/20/2016

DRAWN BY: PEW

AMEC JOB No.: 6374130684

APPROVED BY: RMJ

CFX PROJECT No.: 528-1240

### LEGAL DESCRIPTION and SKETCH

Amec Foster Wheeler Environment & Infrastructure, Inc.

75 East Amelia Street, Suite 200

Orlando, FL 32801 USA

Phone: (407) 522-7570

Certificate of Authorization Number LB-0007932

SHEET 16 OF 70

## REVISIONS

DATE	E
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05/02/2019	ED
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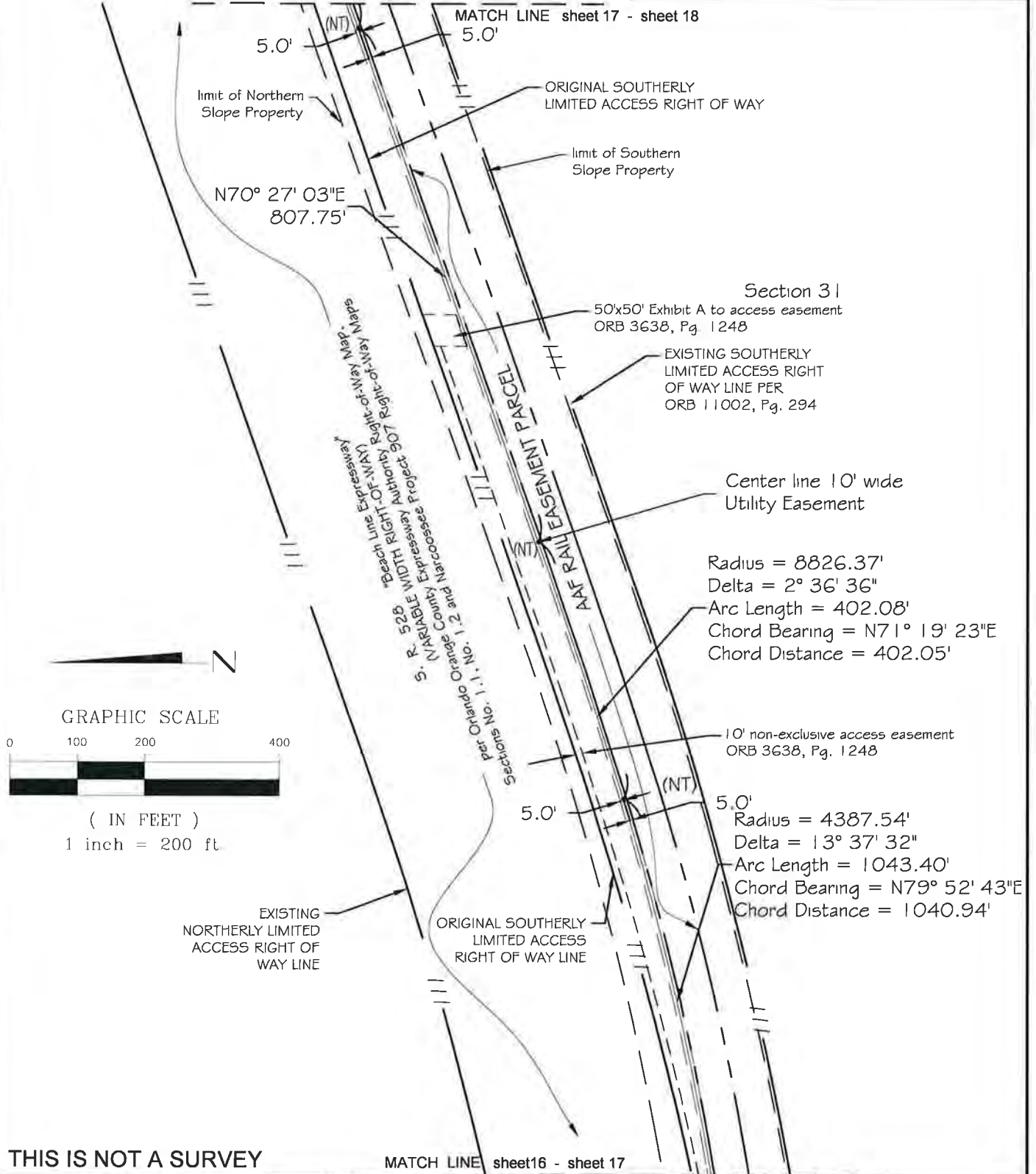
INC NAME: CEX Utility Company All



SLAMING NAME: CEX Utility (removed) All 01-06-2018.doc



CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ

DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240

LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 17 OF 70

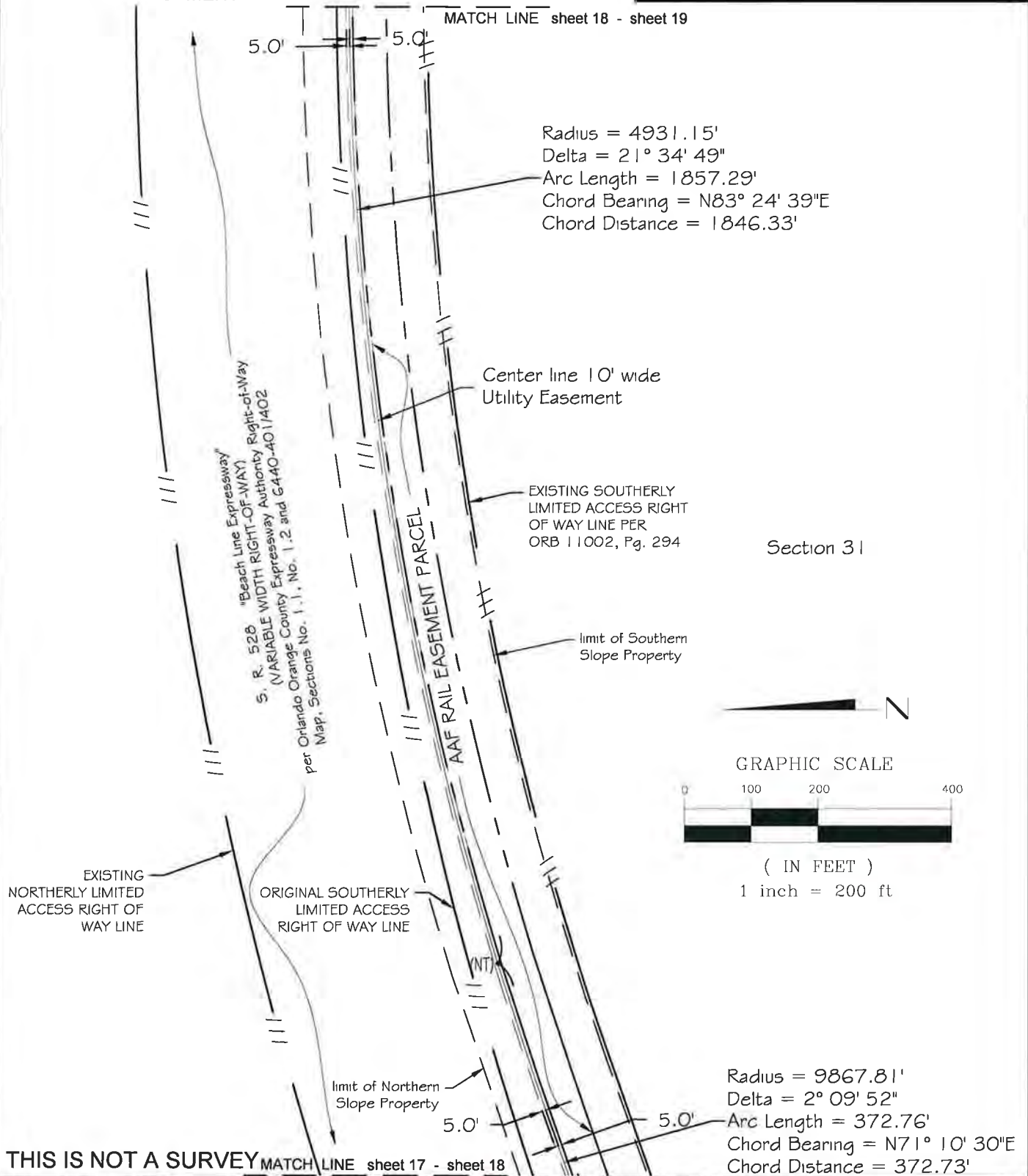
REVISIONS

DATE	BY
05/02/2019	EMO

DRAWING NAME: CFX Utility Easement, A11 01 09 2019.dwg



CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ  
DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240

# LEGAL DESCRIPTION and SKETCH

AmeC Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 18 OF 70

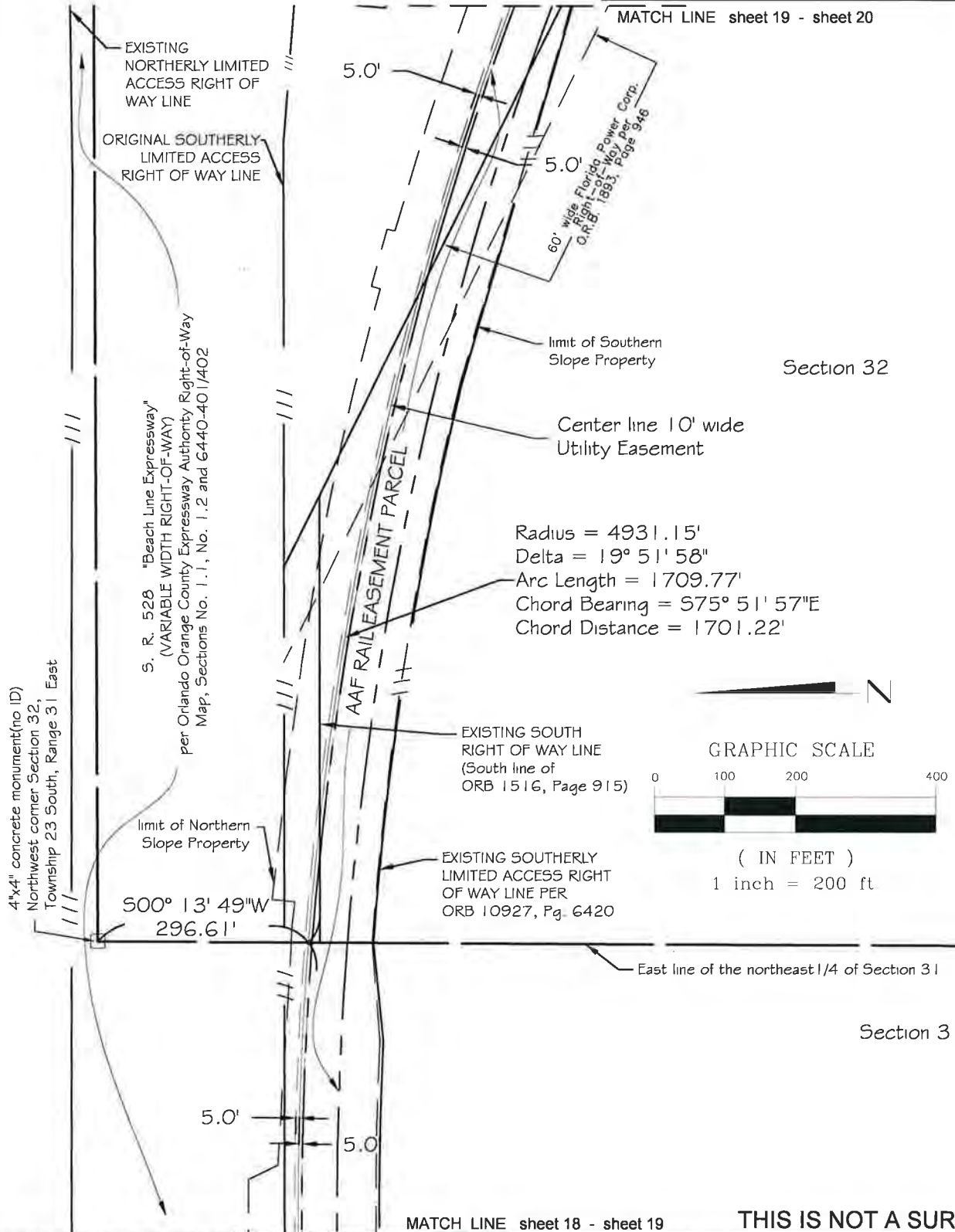
## REVISIONS

DATE BY

1-1-1-1

DRAWING NAME: CFX Utility Easement ATT 09-19-2016.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB DATE: 09/20/2016  
DRAWN BY: PEW AMEC JOB No.: 6374130684  
APPROVED BY: RMJ CFX PROJECT No.: 528-1240

# LEGAL DESCRIPTION and SKETCH



Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

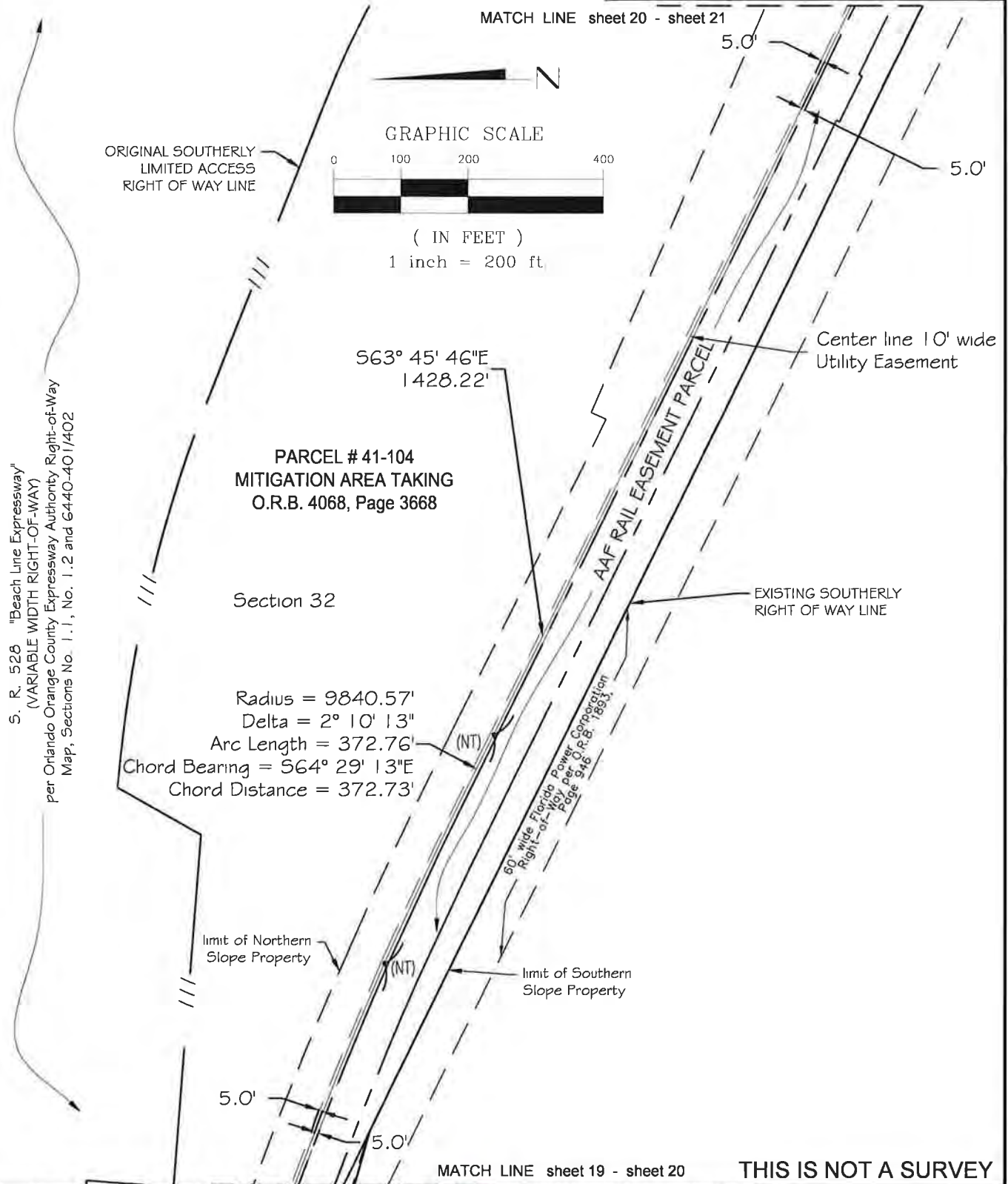
SHEET 19 OF 70

## REVISIONS

DATE BY

DATE: 09/20/2016 Easement A11 09-13-2016.dwg

**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT**



**THIS IS NOT A SURVEY**

**FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**DESIGNED BY: HNTB** **DATE: 09/20/2016**  
**DRAWN BY: PEW** **AMEC JOB No.: 6374130684**  
**APPROVED BY: RMJ** **CFX PROJECT No.: 528-1240**

**LEGAL DESCRIPTION and SKETCH**



**Amec Foster Wheeler Environment & Infrastructure, Inc.**  
 75 East Amelia Street, Suite 200  
 Orlando, FL 32801 USA  
 Phone: (407) 522-7570  
 Certificate of Authorization Number LB-0007932

**SHEET 20 OF 70**

**REVISIONS**

DATE	BY
05/02/2019	EMO

DRAWING NAME: CFX Utility Easement ATT 01-05-2019.dwg



CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT

MATCH LINE sheet 21 - sheet 22

State Road 417  
per OOCEA Right-of-Way Maps  
6440-401/402

Radius = 3792.06'  
Delta = 24° 59' 59"  
Arc Length = 1654.58'  
Chord Bearing = S79° 45' 26"E  
Chord Distance = 1641.49'

5.0'

5.0'

limit of Eastern  
Slope Property

Right-of-Way per O.R.B. 1893, Page 946  
50' wide Florida Power Corporation

Section 32

Center line 10' wide  
Utility Easement

EXISTING SOUTHERLY  
LIMITED ACCESS RIGHT  
OF WAY LINE

AAF RAIL EASEMENT PARCEL

ORIGINAL and  
EXISTING SOUTHERLY  
LIMITED ACCESS  
RIGHT OF WAY LINE

Radius = 7614.94'  
Delta = 3° 29' 22"  
Arc Length = 463.78'  
Chord Bearing = S64° 55' 34"E  
Chord Distance = 463.70'

limit of Northern  
Slope Property

limit of Southern  
Slope Property

PARCEL # 41-104  
MITIGATION AREA TAKING  
O.R.B. 4068, Page 3668

S63° 45' 46"E  
1428.22'

5.0'

5.0'



GRAPHIC SCALE



( IN FEET )  
1 inch = 200 ft

THIS IS NOT A SURVEY

MATCH LINE sheet 20 - sheet 21

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB DATE: 09/20/2016  
DRAWN BY: PEW AMEC JOB No.: 6374130684  
APPROVED BY: RMJ CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 21 OF 70

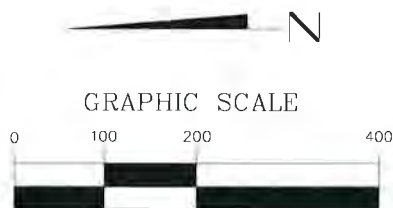
REVISIONS

DATE	BY
05/02/2019	EMO

GRAPHIC NAME: CFX 00177 Easement ATT 01-26-2019.dwg

**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT**

50' Utility Easement Agreement  
O.R.B. 9872, Page 2915  
(under construction at time of survey)



( IN FEET )  
1 inch = 200 ft.

MATCH LINE sheet 22 - sheet 23

5.0'  
(NT)  
5.0'

limit of Southern  
Slope Property

EXISTING SOUTHERLY  
LIMITED ACCESS RIGHT OF  
WAY LINE PER ORB 11002,  
Pg. 368

limit of Northern  
Slope Property

Radius = 3792.06'  
Delta = 18° 18' 18"  
Arc Length = 1211.51'  
Chord Bearing = N78° 35' 25"E  
Chord Distance = 1206.36'

Section 33

Center line 10' wide  
Utility Easement

Northwest corner Section 33,  
Township 23 South, Range 31 East  
corner falls in retaining wall  
calculated position based on  
certified corner record # 078327

500° 16' 08"E  
2037.44'

(NT)

State Road 417  
per OOCEA Right-of-Way Maps  
6440-401/402

EXISTING EASTERLY S.R.  
417 LIMITED ACCESS  
RIGHT OF WAY LINE

Section 32

Radius = 3792.06'  
Delta = 24° 59' 59"  
Arc Length = 1654.58'  
Chord Bearing = S79° 45' 26"E  
Chord Distance = 1641.49'

AAF RAIL EASEMENT PARCEL

5.0'  
(NT)  
5.0'

5.0'

MATCH LINE sheet 21 - sheet 22

**THIS IS NOT A SURVEY**

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ  
DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



**LEGAL DESCRIPTION and SKETCH**  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 22 OF 70

**REVISIONS**

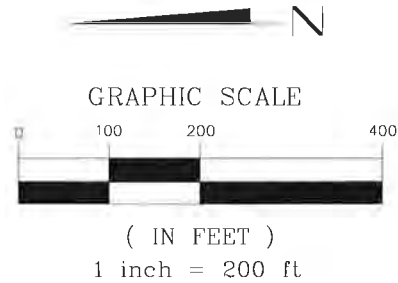
DATE	BY
05/02/2019	EMO

SOURCE: NAD83, CFX Utility Easement A11 01-05 7019.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT

MATCH LINE sheet 23 - sheet 24  
Radius = 6277.93'  
Delta = 2° 16' 35"  
Arc Length = 249.41'  
Chord Bearing = N68° 21' 30"E  
Chord Distance = 249.40'

Radius = 12578.49'  
Delta = 1° 16' 22"  
Arc Length = 279.44'  
Chord Bearing = N66° 22' 09"E  
Chord Distance = 279.43'



Section 33

limit of Southern  
Slope Property

EXISTING SOUTHERLY  
LIMITED ACCESS RIGHT  
OF WAY LINE PER ORB  
11002, Pg. 368

limit of Northern  
Slope Property

Center line 10' wide  
Utility Easement

AAF RAIL EASEMENT PARCEL

N65° 56' 36"E  
987.36'

Radius = 7614.93'  
Delta = 3° 29' 22"  
Arc Length = 463.78'  
Chord Bearing = N67° 06' 23"E  
Chord Distance = 463.70'

THIS IS NOT A SURVEY

MATCH LINE sheet 22 - sheet 23

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ

DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 23 OF 70

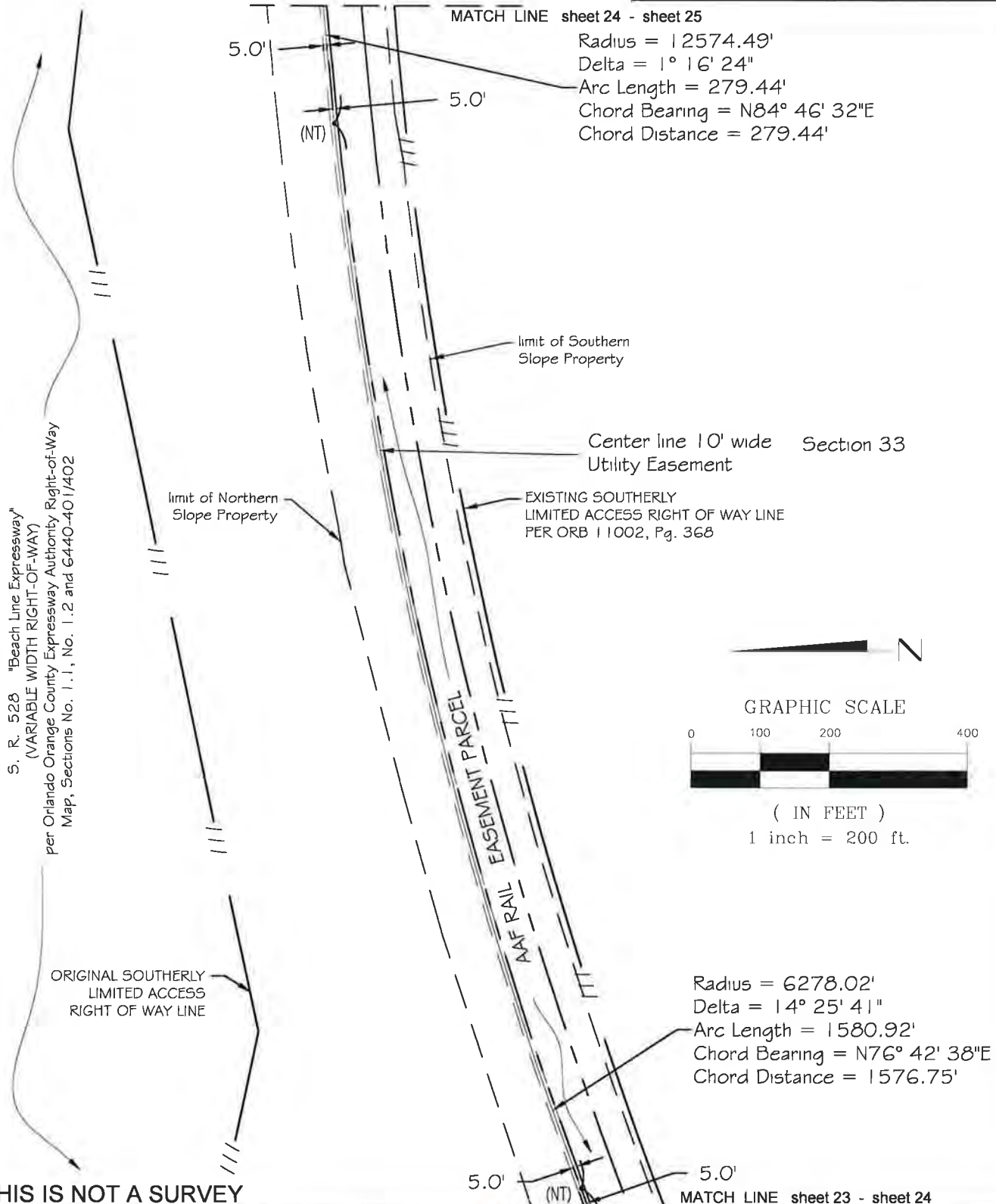
REVISIONS

DATE	BY
05/02/2019	EMO

DRAWING NAME: 01 Utility Easement ATT 05-05-2019.dwg



**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY**  
**STATE ROAD 528**  
**PROJECT No. 528-1240**  
**PARCEL No.**  
**PURPOSE: UTILITY (ATT)**  
**ESTATE: EASEMENT**



**THIS IS NOT A SURVEY**

**FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**DESIGNED BY: HNTB**    **DATE: 09/20/2016**  
**DRAWN BY: PEW**    **AMEC JOB No.: 6374130684**  
**APPROVED BY: RMJ**    **CFX PROJECT No.: 528-1240**

**LEGAL DESCRIPTION and SKETCH**  
 Amec Foster Wheeler Environment & Infrastructure, Inc.  
 75 East Amelia Street, Suite 200  
 Orlando, FL 32801 USA  
 Phone: (407) 522-7570  
 Certificate of Authorization Number LB-0007932

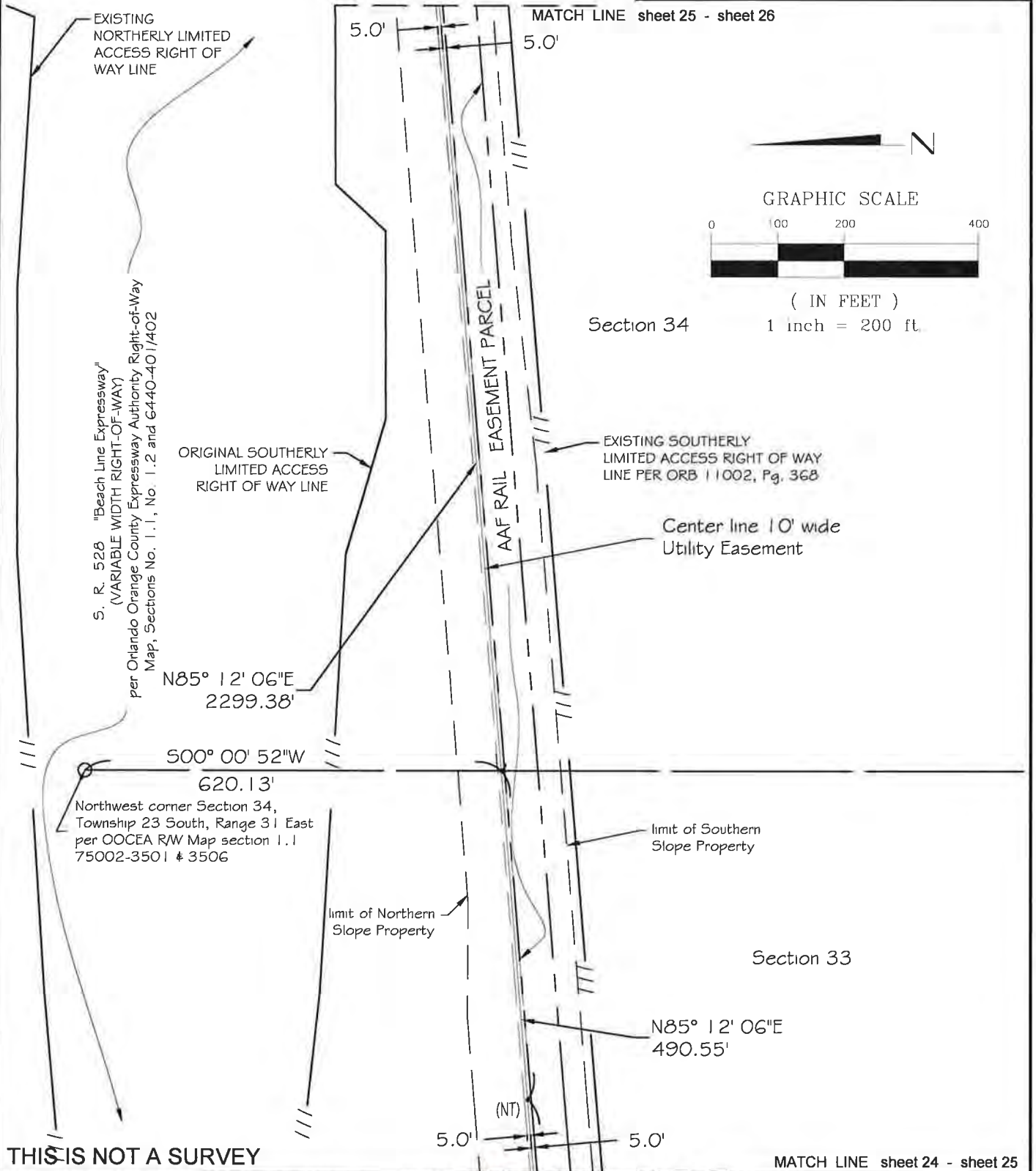
SHEET 24 OF 70

REVISIONS

DATE	BY
05/02/2019	EMO

SKETCH NAME: CFX Utility Easement AAF 05-25-2019.dwg

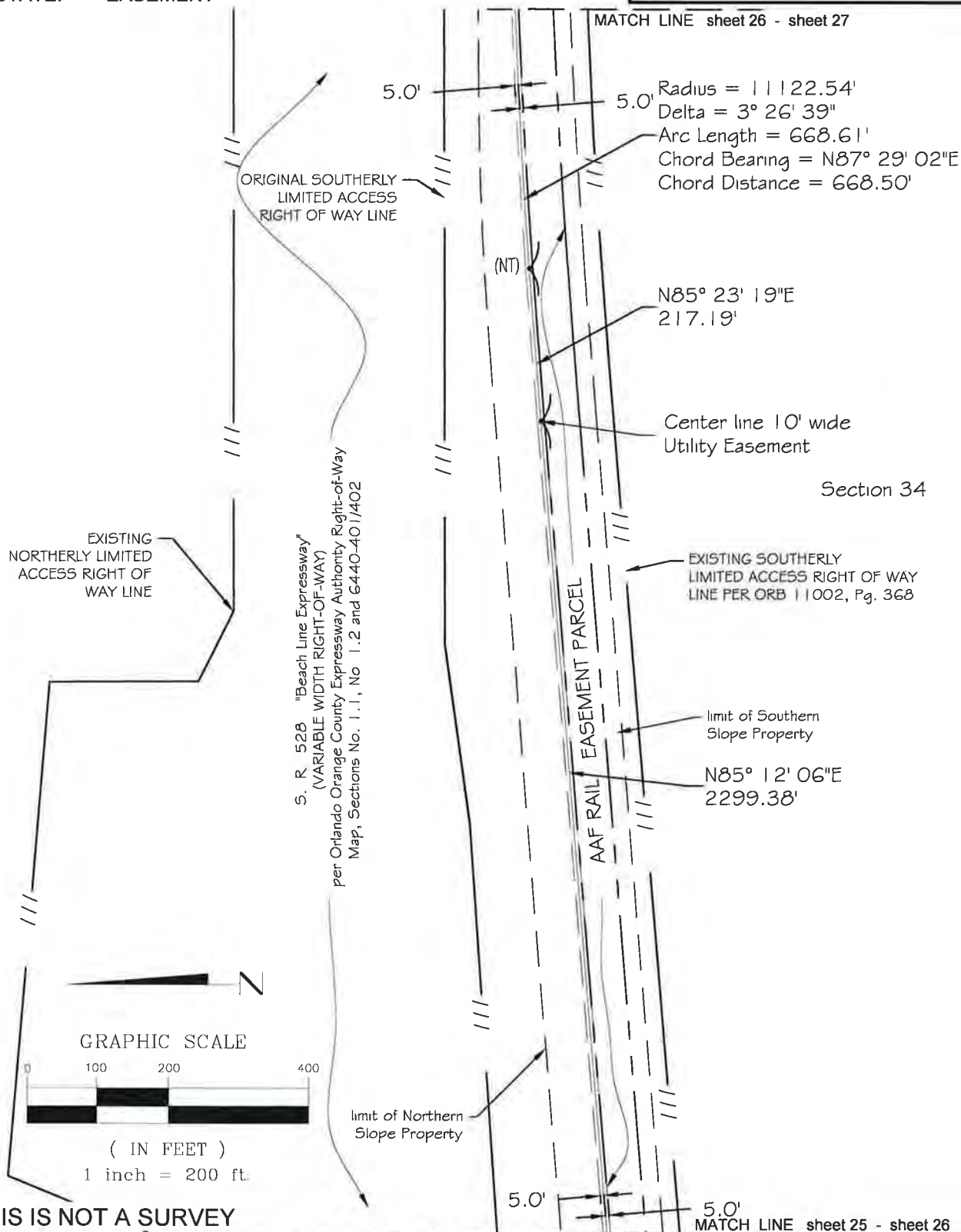
CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 25 OF 70	
DESIGNED BY: HNTB	DATE: 09/20/2016	 <b>Amec Foster Wheeler Environment &amp; Infrastructure, Inc.</b> 75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932		REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374130684			DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240			05/02/2019	EMO
				DRAWING NAME: CFX Utility Easement A11 04-25-2019.doc	



CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



THIS IS NOT A SURVEY

MATCH LINE sheet 25 - sheet 26

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ

DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 26 OF 70

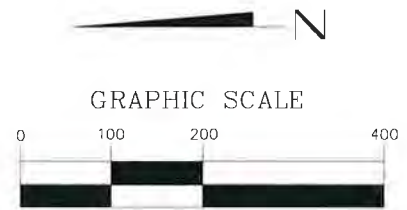
REVISIONS

DATE	BY
05/02/2019	EMO

DRAWING NAME: CFX Utility Easement ATT 63-05-2019.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT

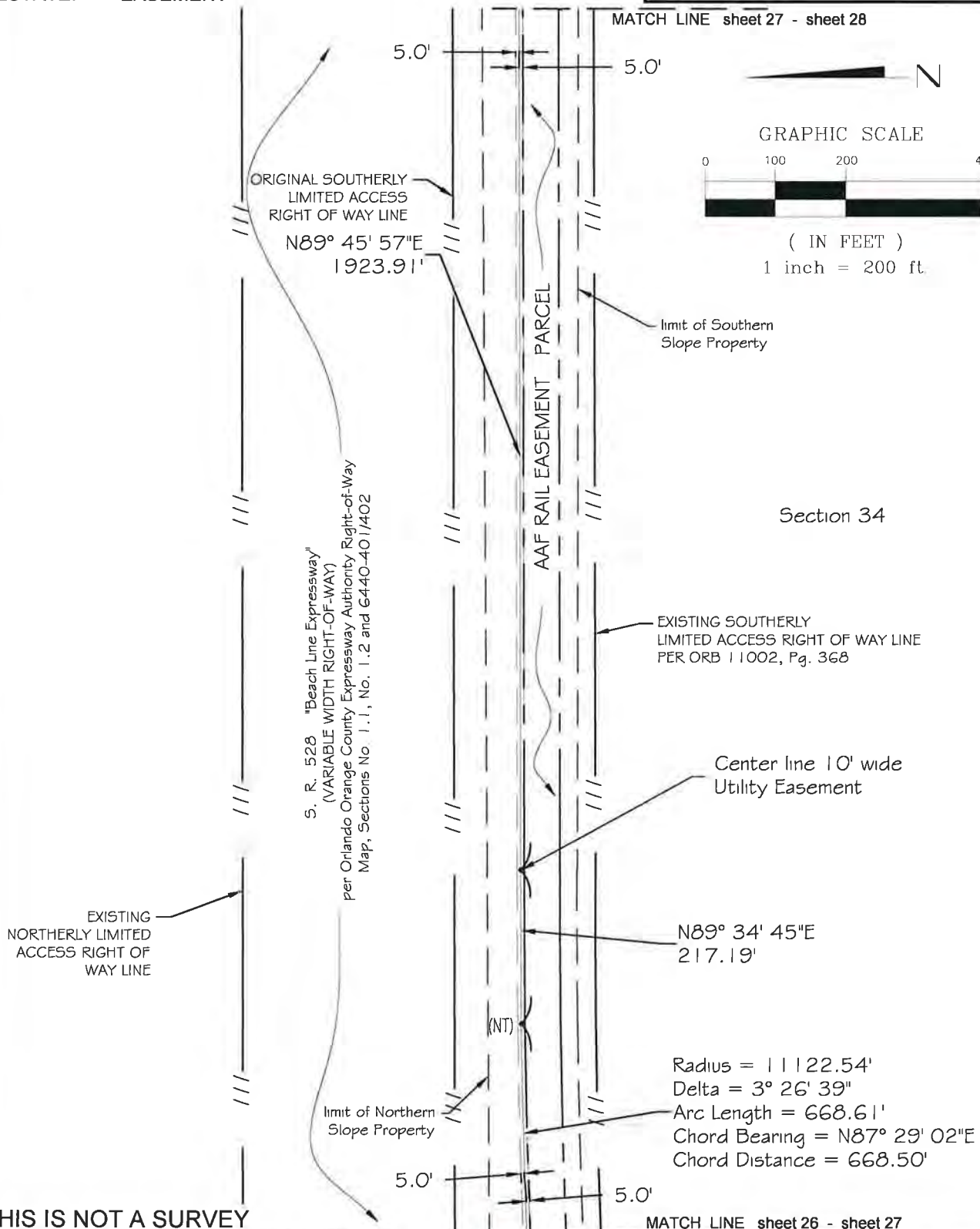
MATCH LINE sheet 27 - sheet 28



GRAPHIC SCALE

( IN FEET )  
1 inch = 200 ft.

Section 34



THIS IS NOT A SURVEY

MATCH LINE sheet 26 - sheet 27

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY

LEGAL DESCRIPTION and SKETCH

SHEET 27 OF 70

DESIGNED BY: HNTB

DATE: 09/20/2016

DRAWN BY: PEW

AMEC JOB No.: 6374130684



Amec Foster Wheeler Environment & Infrastructure, Inc.

75 East Amelia Street, Suite 200

Orlando, FL 32801 USA

Phone: (407) 522-7570

Certificate of Authorization Number LB-0007932

REVISIONS

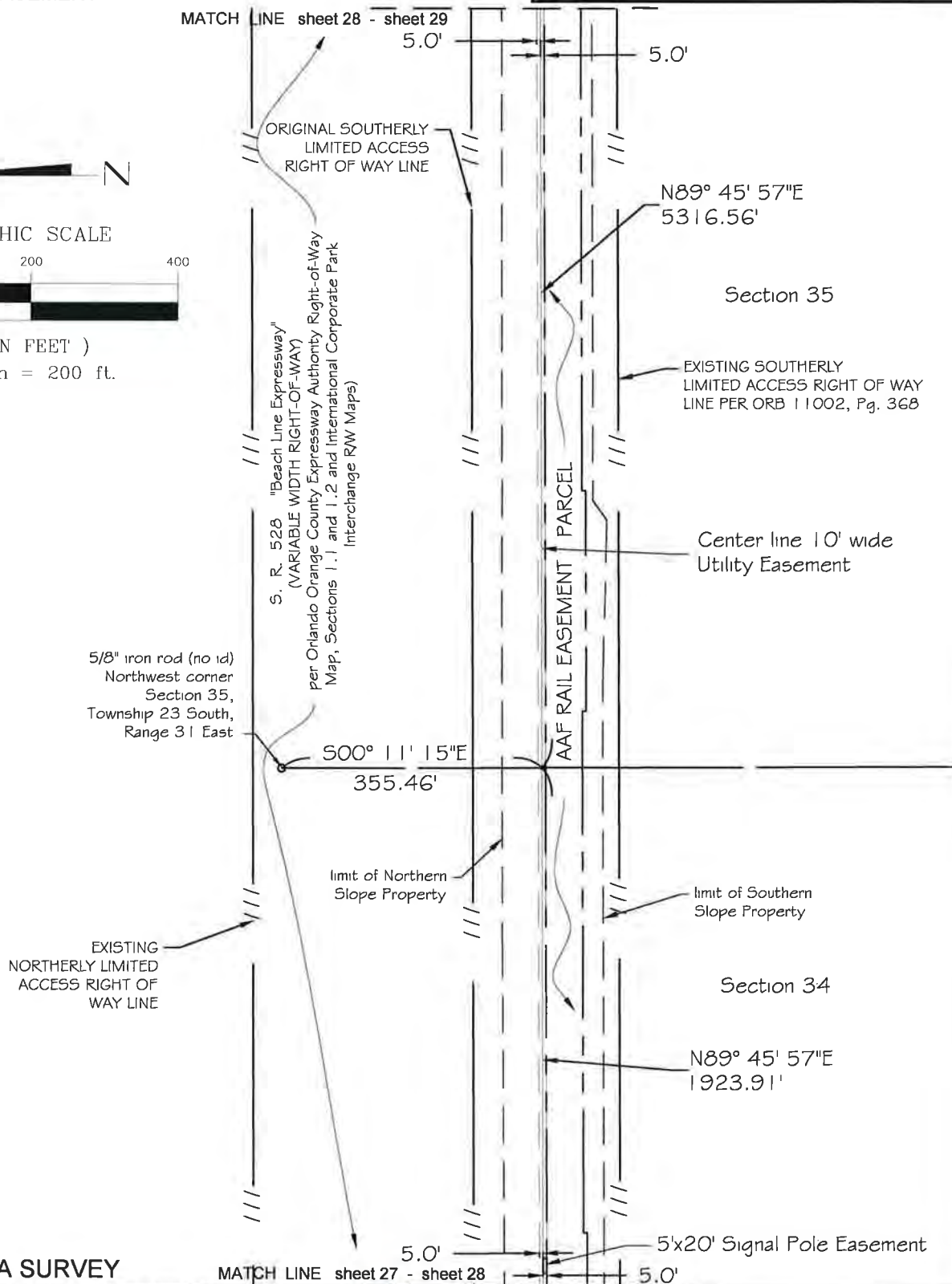
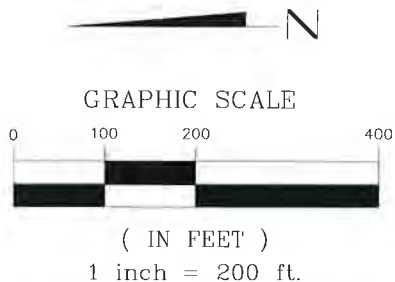
DATE BY

DRAWING NAME: CFX 1001g (License) ATT 09-19-2016.dwg

APPROVED BY: RMJ

CFX PROJECT No.: 528-1240

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ  
DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240

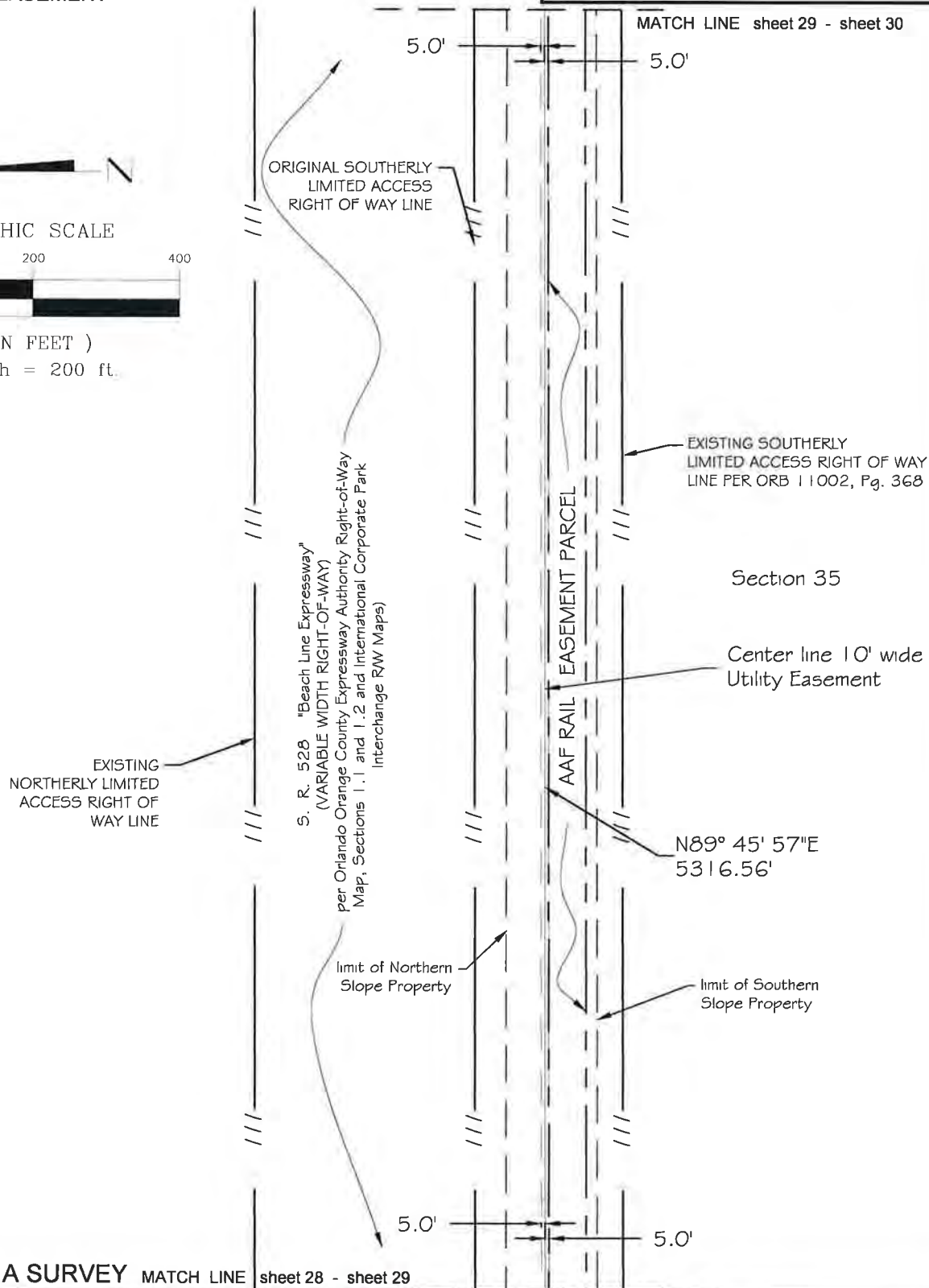
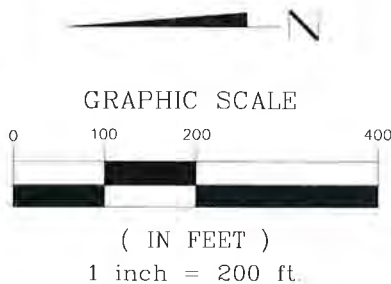
LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 28 OF 70

REVISIONS  
DATE BY

DRAWING NAME: CFX 528 Utility Easement ATT 09-19-2016.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



THIS IS NOT A SURVEY MATCH LINE sheet 28 - sheet 29

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY

DESIGNED BY: HNTB

DATE: 09/20/2016

DRAWN BY: PEW

AMEC JOB No.: 6374130684

APPROVED BY: RMJ

CFX PROJECT No.: 528-1240

LEGAL DESCRIPTION and SKETCH

Amec Foster Wheeler Environment & Infrastructure, Inc.



75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570

Certificate of Authorization Number LB-0007932

SHEET 29 OF 70

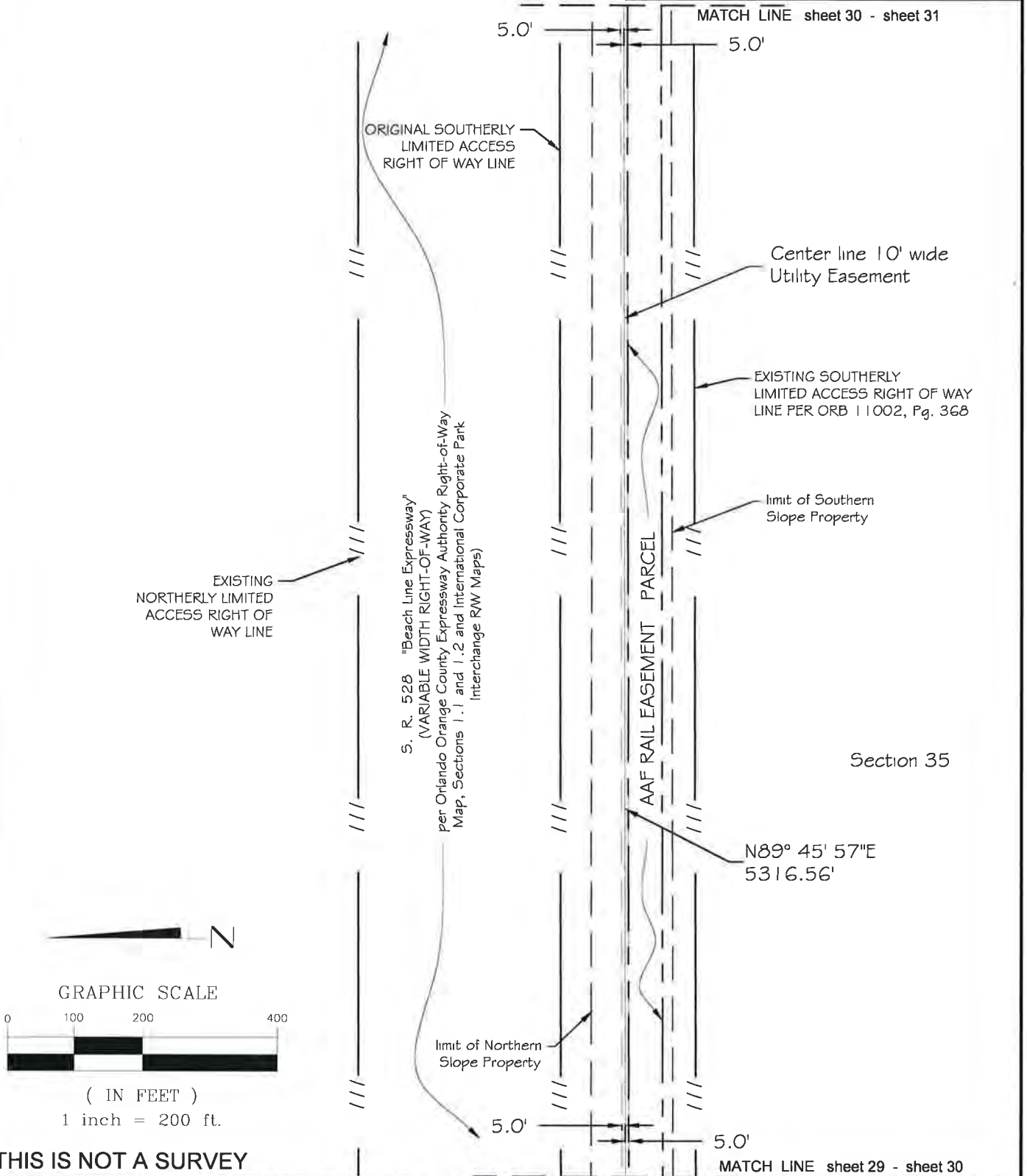
REVISIONS

DATE	BY

DRAWING NAME: CFX UTILITY (easement ATT 09-19-2016.dwg)



CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ  
DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240

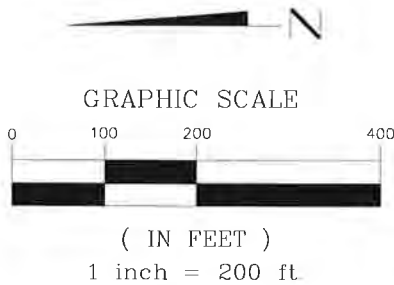
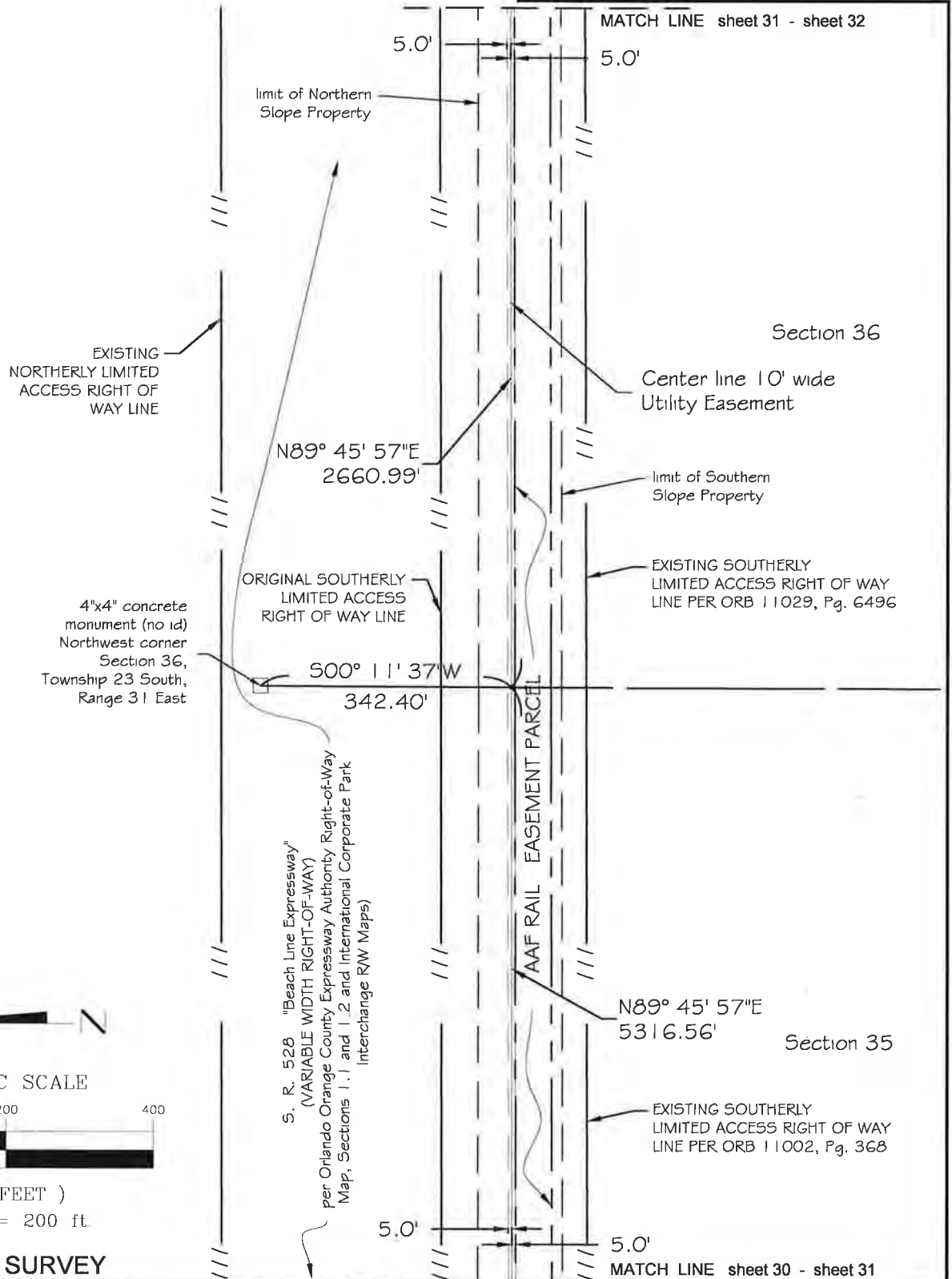
LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 30 OF 70

REVISIONS  
DATE BY

DRAWING NAME: CFX Utility (Access) ATT 02-19-16.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ

DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 31 OF 70

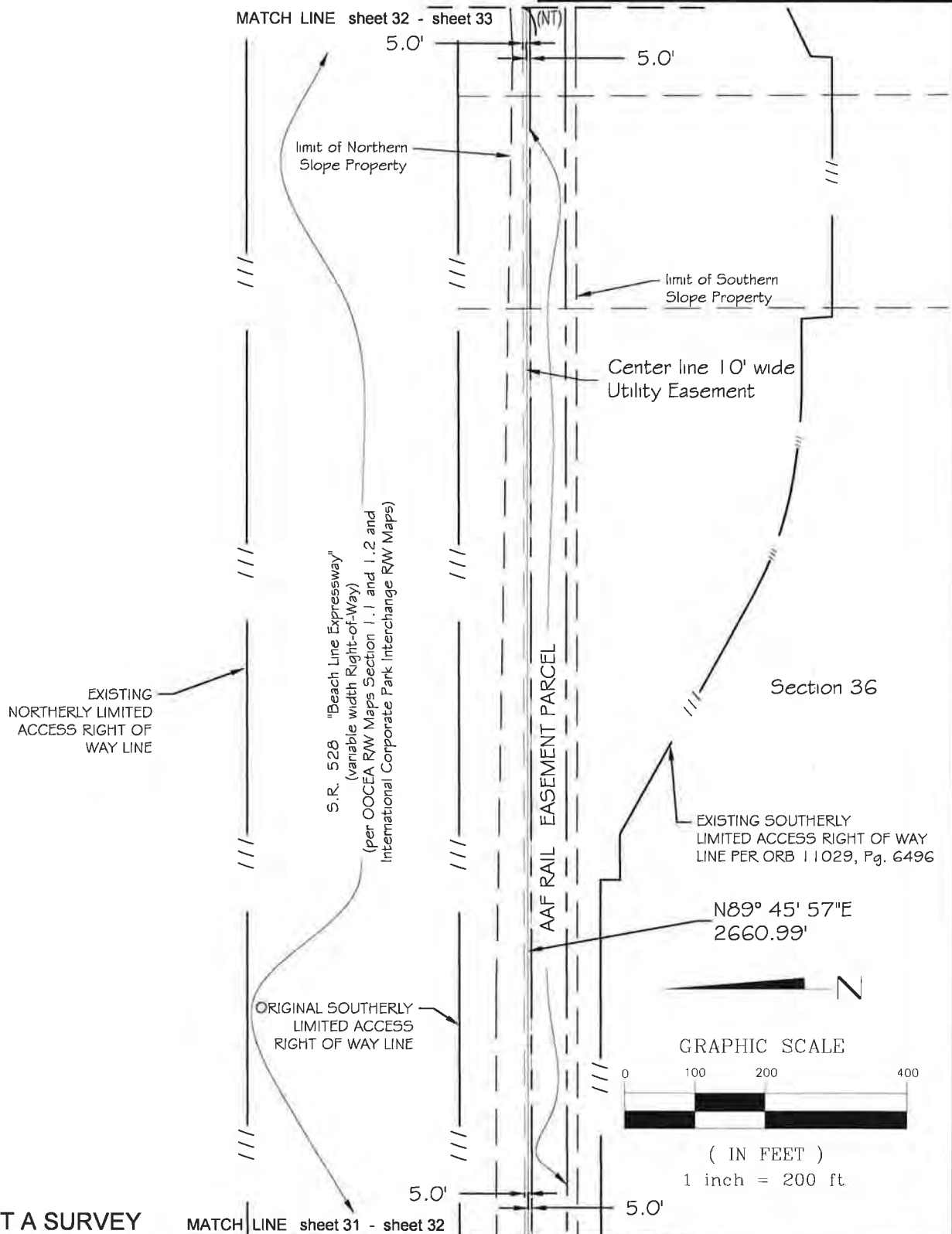
REVISIONS

DATE BY

1 1

DRAWING NAME: CFX Utility Easement A11 05-18-2015.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ  
DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



**LEGAL DESCRIPTION and SKETCH**  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 32 OF 70

REVISIONS

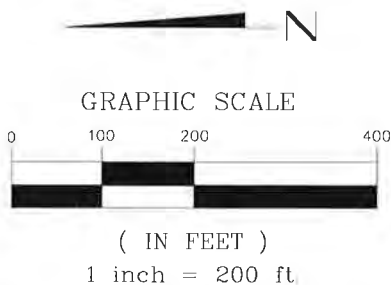
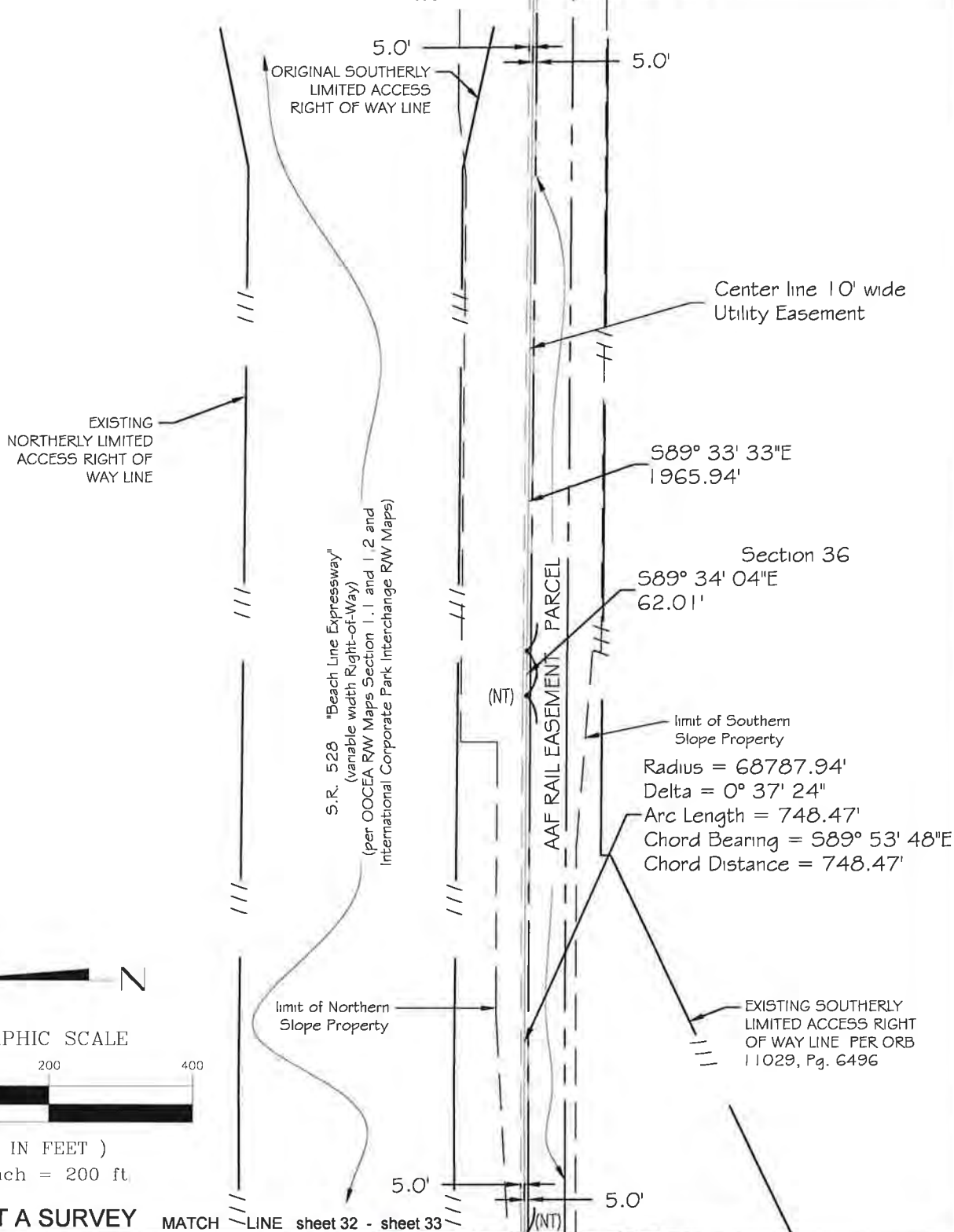
DATE BY

1 -

DRAWING NAME: 03 Utility (sewer) A1103-18-2016.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT

MATCH LINE sheet 33 - sheet 34



THIS IS NOT A SURVEY

MATCH LINE sheet 32 - sheet 33

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ

DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 33 OF 70

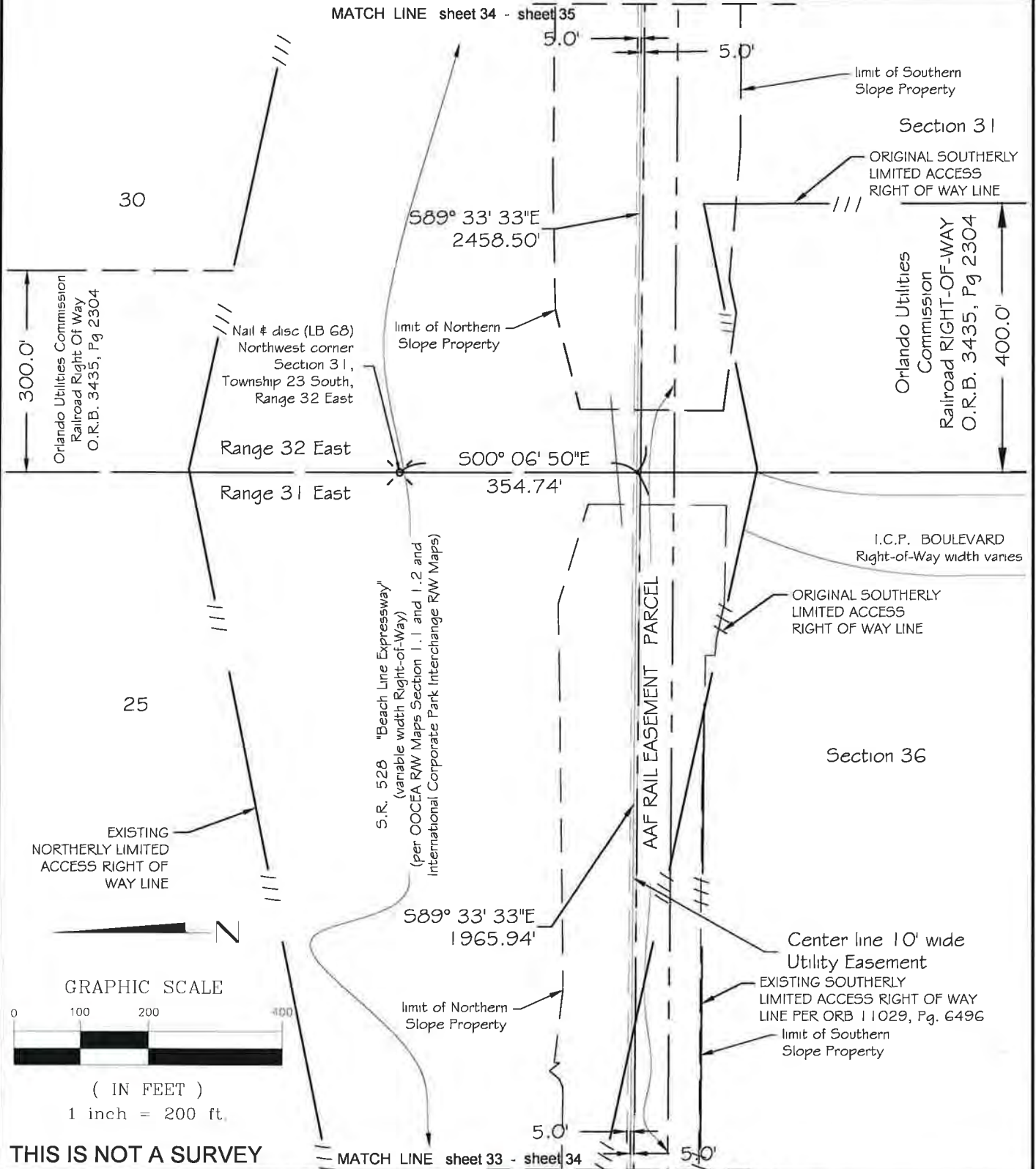
REVISIONS

DATE	BY
05/02/2019	EMO

SHAWING NAME: OX Utility Company ATT 03-05-2019.dwg



**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY**  
**STATE ROAD 528**  
**PROJECT No. 528-1240**  
**PARCEL No.**  
**PURPOSE: UTILITY (ATT)**  
**ESTATE: EASEMENT**



**THIS IS NOT A SURVEY**

**FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**DESIGNED BY: HNTB**  
**DRAWN BY: PEW**  
**APPROVED BY: RMJ**  
**DATE: 09/20/2016**  
**AMEC JOB No.: 6374130684**  
**CFX PROJECT No.: 528-1240**



**LEGAL DESCRIPTION and SKETCH**  
**Amec Foster Wheeler Environment & Infrastructure, Inc.**  
 75 East Amelia Street, Suite 200  
 Orlando, FL 32801 USA  
 Phone: (407) 522-7570  
 Certificate of Authorization Number LB-0007932

SHEET 34 OF 70	
REVISIONS	
DATE	BY
05/02/2019	EMO
WARNING NAME: CFX Utility Easement A11 05-25-2019.dwg	

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT

MATCH LINE sheet 35 - sheet 36

5.0'

5.0'

limit of Southern  
Slope Property

EXISTING SOUTHERLY  
LIMITED ACCESS RIGHT OF WAY  
LINE PER ORB 11029, Pg. 6496

Center line 10' wide  
Utility Easement

Section 31

5x20' Signal Pole Easement

limit of Southern  
Slope Property

EXISTING SOUTHERLY  
LIMITED ACCESS RIGHT  
OF WAY LINE PER ORB  
11029, Pg. 6496

589° 33' 33"E  
2458.50'

5.0'

5.0'

ORIGINAL SOUTHERLY  
LIMITED ACCESS  
RIGHT OF WAY LINE

limit of Northern  
Slope Property

S.R. 528 "Beach Line Expressway"  
(variable width Right-of-Way)  
(per OOOEA RW Maps Section 1.1 and 1.2 and  
International Corporate Park Interchange RW Maps)

EXISTING  
NORTHERLY LIMITED  
ACCESS RIGHT OF  
WAY LINE

limit of Northern  
Slope Property

GRAPHIC SCALE



( IN FEET )

1 inch = 200 ft.

THIS IS NOT A SURVEY

MATCH LINE sheet 34 - sheet 35

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY

DESIGNED BY: HNTB

DATE: 09/20/2016

DRAWN BY: PEW

AMEC JOB No.: 6374130684

APPROVED BY: RMJ

CFX PROJECT No.: 528-1240

LEGAL DESCRIPTION and SKETCH



Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570

Certificate of Authorization Number LB-0007932

SHEET 35 OF 70

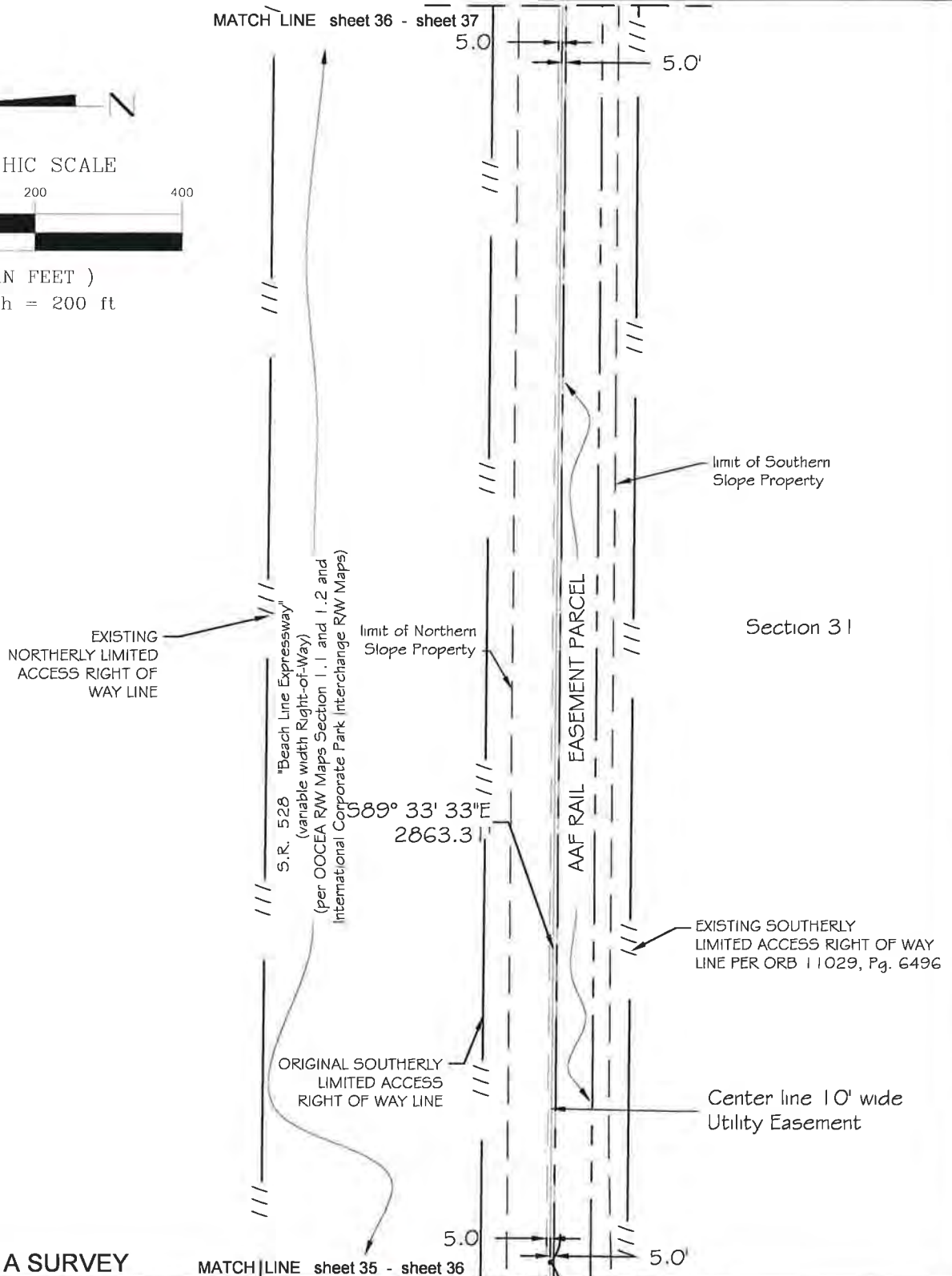
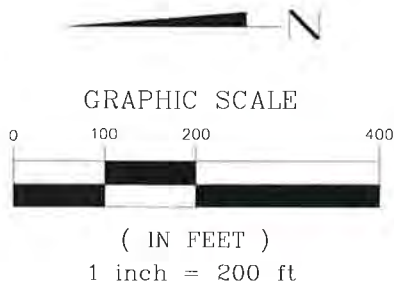
REVISIONS

DATE BY

05/02/2019 EMO

DRAWING NAME: CFX Utility Easement ATT 05-05-2019.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ  
DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240

LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

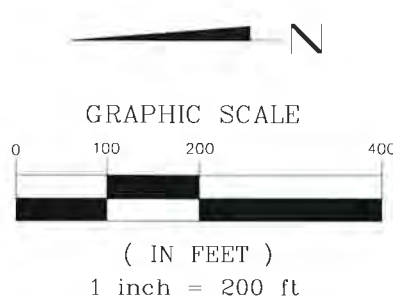
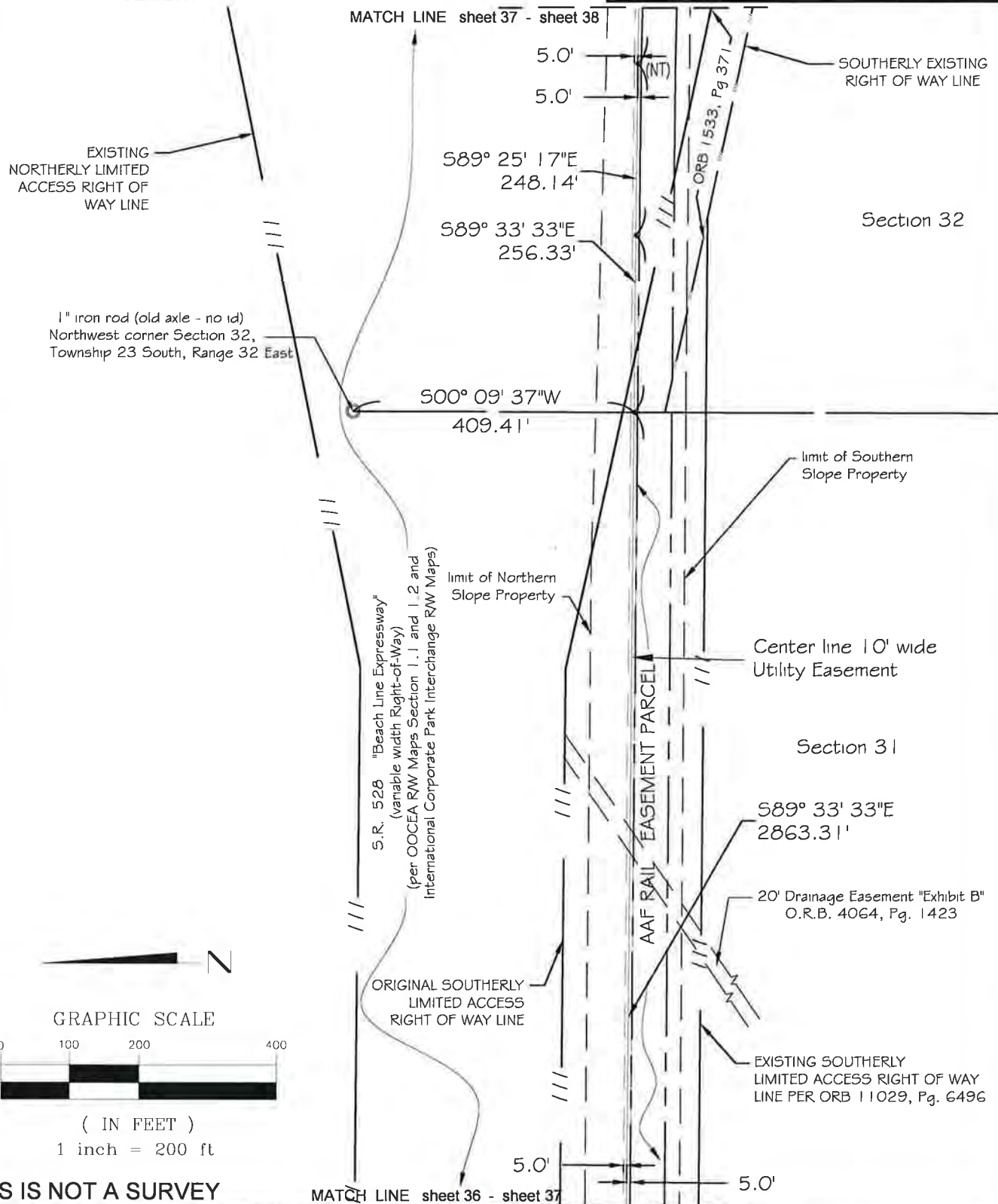
SHEET 36 OF 70

REVISIONS

DATE	BY
05/02/2019	EMO

DRAWING NAME: CFX Utility Easement ATT 05-02-2019.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



THIS IS NOT A SURVEY

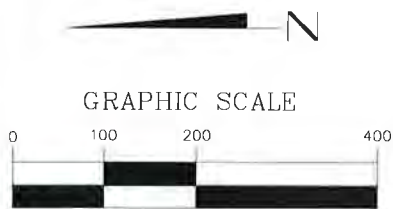
FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ  
DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240

LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

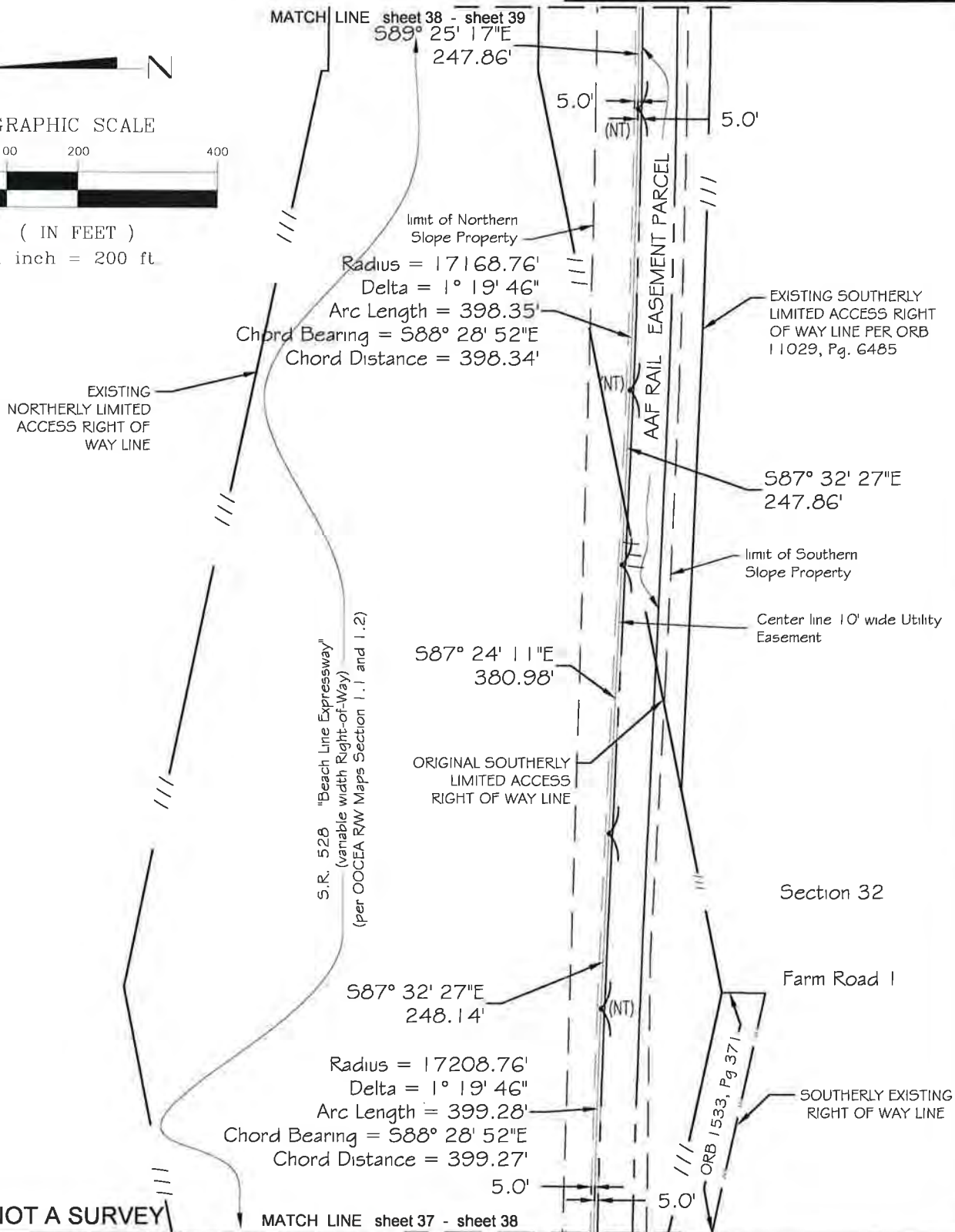
SHEET 37 OF 70	
REVISIONS	
DATE	BY
DRAWING NAME: CFX Utility Easement ATT 09-19-2016.dwg	



**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT**



( IN FEET )  
1 inch = 200 ft



THIS IS NOT A SURVEY\

MATCH LINE sheet 37 - sheet 38

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY

DESIGNED BY: HNTB

DATE: 09/20/2016

DRAWN BY: PEW

AMEC JOB No.: 6374130684

APPROVED BY: RMJ

CFX PROJECT No.: 528-1240

### LEGAL DESCRIPTION and SKETCH

Amec Foster Wheeler Environment & Infrastructure, Inc.

75 East Arnella Street, Suite 200  
Chicago, IL 60604, USA

Orlando, FL 32801 USA

Phone: (407) 522-7570

Certificate of Authorization Number LB-0007932

SHEET 38 OF 70

## REVISIONS

DATE \_\_\_\_\_

BY

05/02/2019

EMC

ORGANIC NAME: OX Utility Equipment A/E 03-05-2019 dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT

MATCH LINE sheet 39 - sheet 40

5.0' 5.0'

limit of Northern  
Slope Property

EXISTING SOUTHERLY  
LIMITED ACCESS RIGHT  
OF WAY LINE PER ORB  
11029, Pg. 6485

EXISTING  
NORTHERLY LIMITED  
ACCESS RIGHT OF  
WAY LINE

S.R. 528 "Beach Line Expressway"  
(variable width Right-of-Way)  
(per OCEA RW Maps Section 1.1 and 1.2)

AAF RAIL EASEMENT PARCEL

Center line 10' wide Utility  
Easement

Section 32

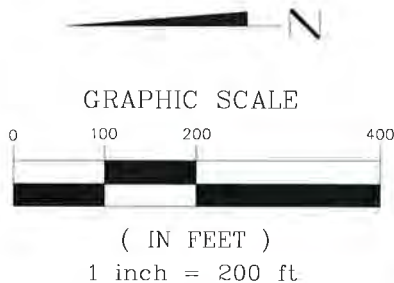
ORIGINAL SOUTHERLY  
LIMITED ACCESS  
RIGHT OF WAY LINE

limit of Southern  
Slope Property

589° 33' 33"E  
2877.75'

5.0' 5.0'

MATCH LINE sheet 38 - sheet 39



THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY

DESIGNED BY: HNTB

DATE: 09/20/2016

DRAWN BY: PEW

AMEC JOB No.: 6374130684

APPROVED BY: RMJ

CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH

Amec Foster Wheeler Environment & Infrastructure, Inc.

75 East Amelia Street, Suite 200

Orlando, FL 32801 USA

Phone: (407) 522-7570

Certificate of Authorization Number LB-0007932

SHEET 39 OF 70

REVISIONS

DATE BY

DRAWING NAME: CFX Utility Easement AT 09-19-2016.dwg

MATCH | LINE sheet 40 - sheet 41

500° 20' 37"W  
535.95'

589° 33' 33"E  
2877.75'

S.R. 528 "Beach Line Expressway"  
(variable width Right-of-Way)  
(per OOECA RW Maps Section 1.1 and 1.2)

AAAF RAIL EASEMENT PARCELS

limit of Northern  
Slope Property

ORIGINAL SOUTHERLY  
LIMITED ACCESS  
RIGHT OF WAY LINE

GRAPHIC SCALE



**THIS IS NOT A SURVEY**

MATCH LINE | sheet 39 - sheet 40

LEGAL DESCRIPTION and SKETCH

Amec Foster Wheeler Environment & Infrastructure, Inc.



amec  
foster  
wheeler

Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

CFX PROJECT No.: 528-1240

## REVISIONS

DATE	BY
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1	1	
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DRAWING NAME: CFX [copy] [closed] A11 03-19-2015 dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT

MATCH LINE sheet 41 - sheet 42

5.0' 5.0'

limit of Northern  
Slope Property

S.R. 528 "Beach Line Expressway"  
(variable width Right-of-Way)  
(per OCEA R/W Maps Section 1.1 and 1.2)

EXISTING  
NORTHERLY LIMITED  
ACCESS RIGHT OF  
WAY LINE

AAF RAIL EASEMENT PARCEL

Center line 10' wide Utility  
Easement

Section 33

limit of Southern  
Slope Property

5'x20' Signal Pole  
Easement

EXISTING SOUTHERLY  
LIMITED ACCESS  
RIGHT OF WAY LINE PER ORB  
11029, Pg. 6485

589° 33' 33"E  
5306.53'

ORIGINAL SOUTHERLY  
LIMITED ACCESS  
RIGHT OF WAY LINE

GRAPHIC SCALE



( IN FEET )

1 inch = 200 ft.

THIS IS NOT A SURVEY

MATCH LINE sheet 40 - sheet 41

5.0' 5.0'

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY

LEGAL DESCRIPTION and SKETCH

SHEET 41 OF 70

DESIGNED BY: HNTB

DATE: 09/20/2016

DRAWN BY: PEW

AMEC JOB No.: 6374130684

APPROVED BY: RMJ

CFX PROJECT No.: 528-1240



Amec Foster Wheeler Environment & Infrastructure, Inc.

75 East Amelia Street, Suite 200

Orlando, FL 32801 USA

Phone: (407) 522-7570

Certificate of Authorization Number LB-0007932

REVISIONS

DATE BY

DRAWING NAME: CFX Utility Easement ATT 00-19-2016.dwg



CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT

MATCH LINE sheet 42 - sheet 43

5.0'

5.0'

limit of Northern  
Slope Property

limit of Southern  
Slope Property

Section 33

EXISTING  
NORTHERLY LIMITED  
ACCESS RIGHT OF  
WAY LINE

S.R. 528 "Beach Line Expressway"  
(variable width Right-of-Way)

(per OCEA RW Maps Section 1.1 and 1.2)

589° 33' 33"E  
5306.53'

AAF RAIL EASEMENT PARCEL

Center line 10' wide Utility  
Easement

ORIGINAL SOUTHERLY  
LIMITED ACCESS  
RIGHT OF WAY LINE

EXISTING SOUTHERLY  
LIMITED ACCESS RIGHT  
OF WAY LINE PER ORB  
11029, Pg. 6485

N

GRAPHIC SCALE



( IN FEET )

1 inch = 200 ft

THIS IS NOT A SURVEY

MATCH LINE sheet 41 - sheet 42

5.0'

5.0'

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY

DESIGNED BY: HNTB

DATE: 09/20/2016

DRAWN BY: PEW

AMEC JOB No.: 6374130684

APPROVED BY: RMJ

CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH

Amec Foster Wheeler Environment & Infrastructure, Inc.

75 East Amelia Street, Suite 200

Orlando, FL 32801 USA

Phone: (407) 522-7570

Certificate of Authorization Number LB-0007932

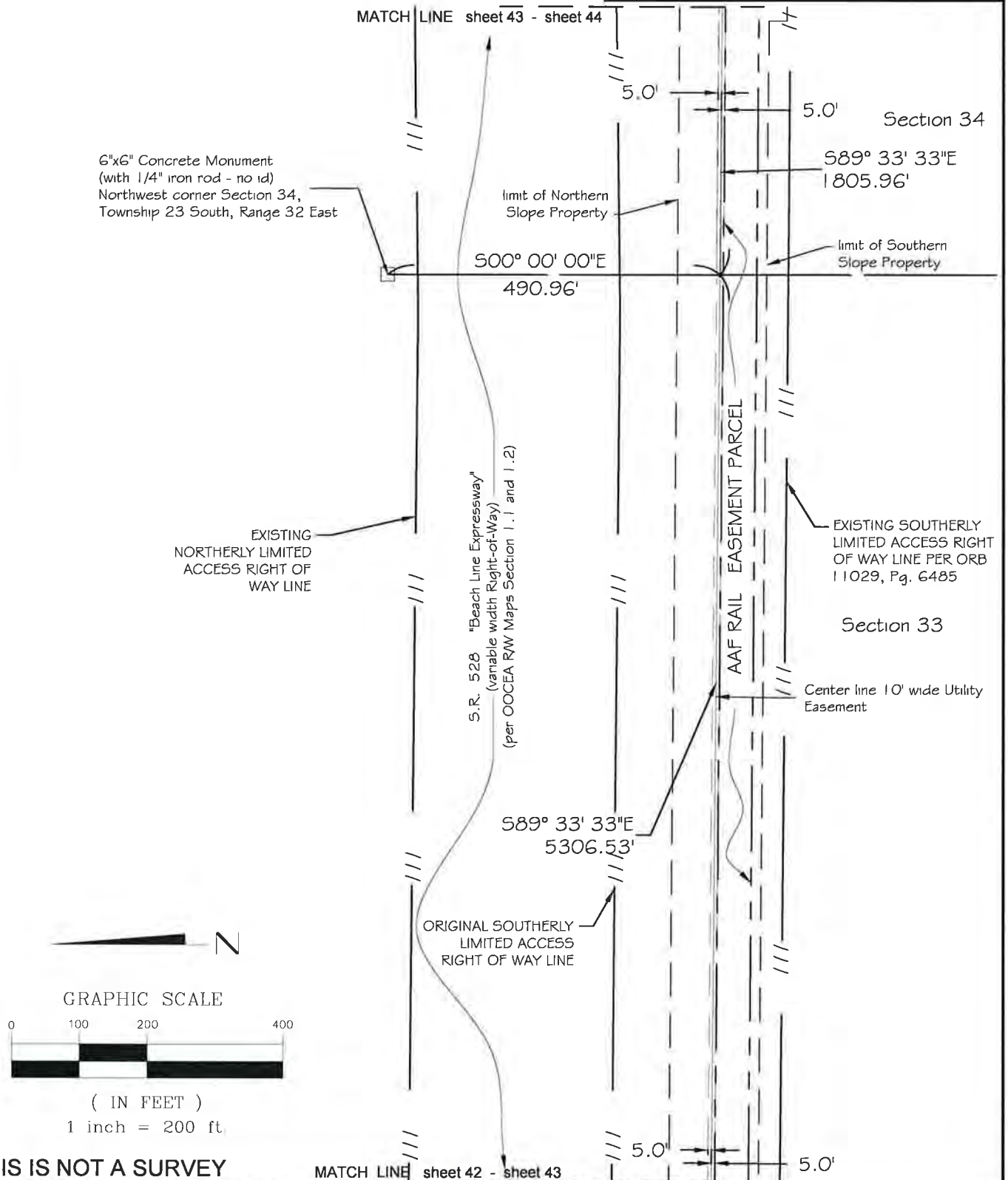
SHEET 42 OF 70

REVISIONS

DATE BY

SHOWN: NWC: CFX Utility (covered) 01/02/19-2015.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ

DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240

LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

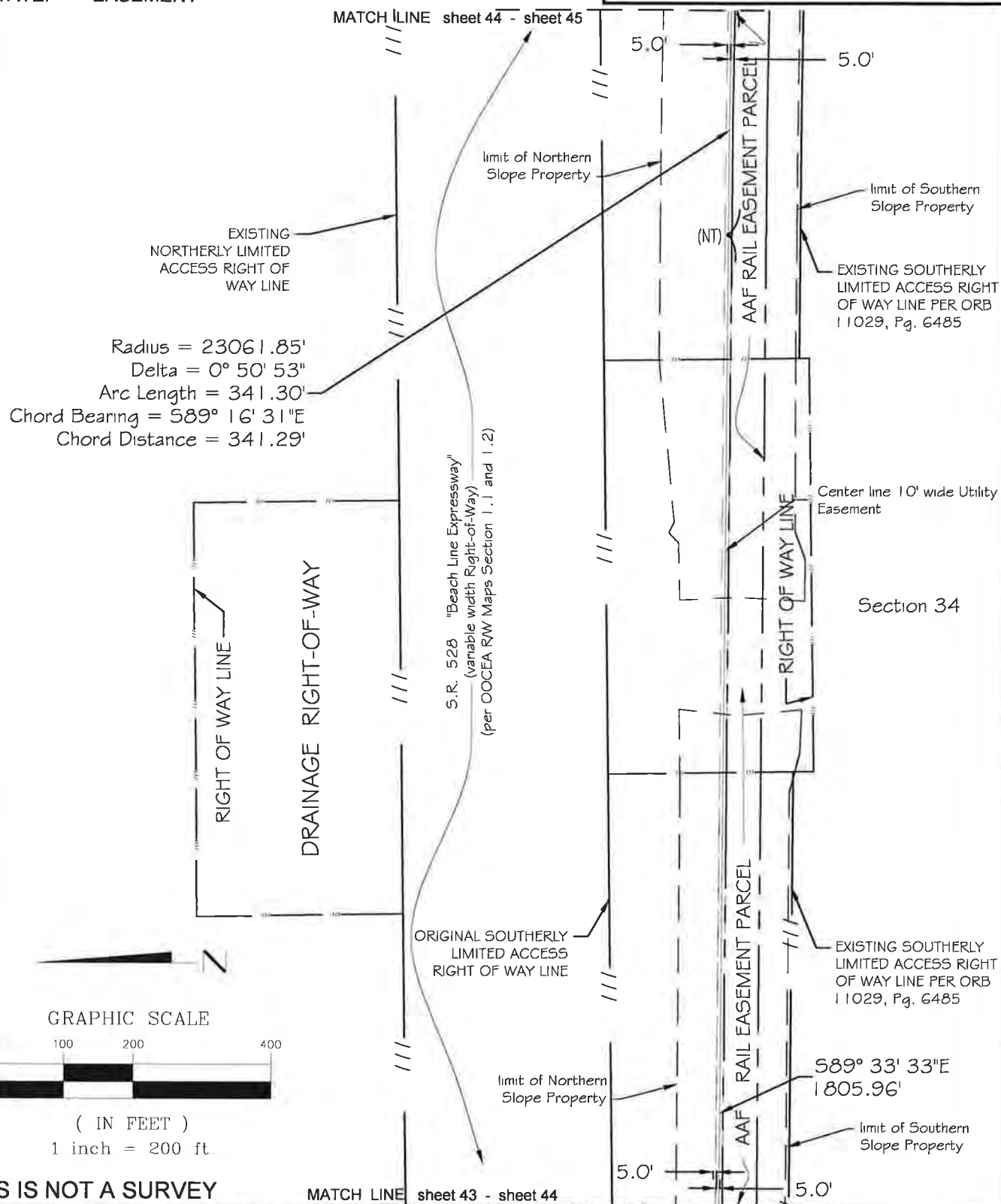
SHEET 43 OF 70

REVISIONS

DATE	BY
05/02/2019	EMO

TRAINING NAME: CFX Utility Easement ATT 01-01-2019

**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT**



THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY	
DESIGNED BY: HNTB	DATE: 09/20/2016
DRAWN BY: PEW	AMEC JOB No.: 6374130684
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240

**LEGAL DESCRIPTION and SKETCH**  
**Amec Foster Wheeler Environment & Infrastructure, Inc.**  
 75 East Amelia Street, Suite 200  
 Orlando, FL 32801 USA  
 Phone: (407) 522-7570  
 Certificate of Authorization Number LB-0007932

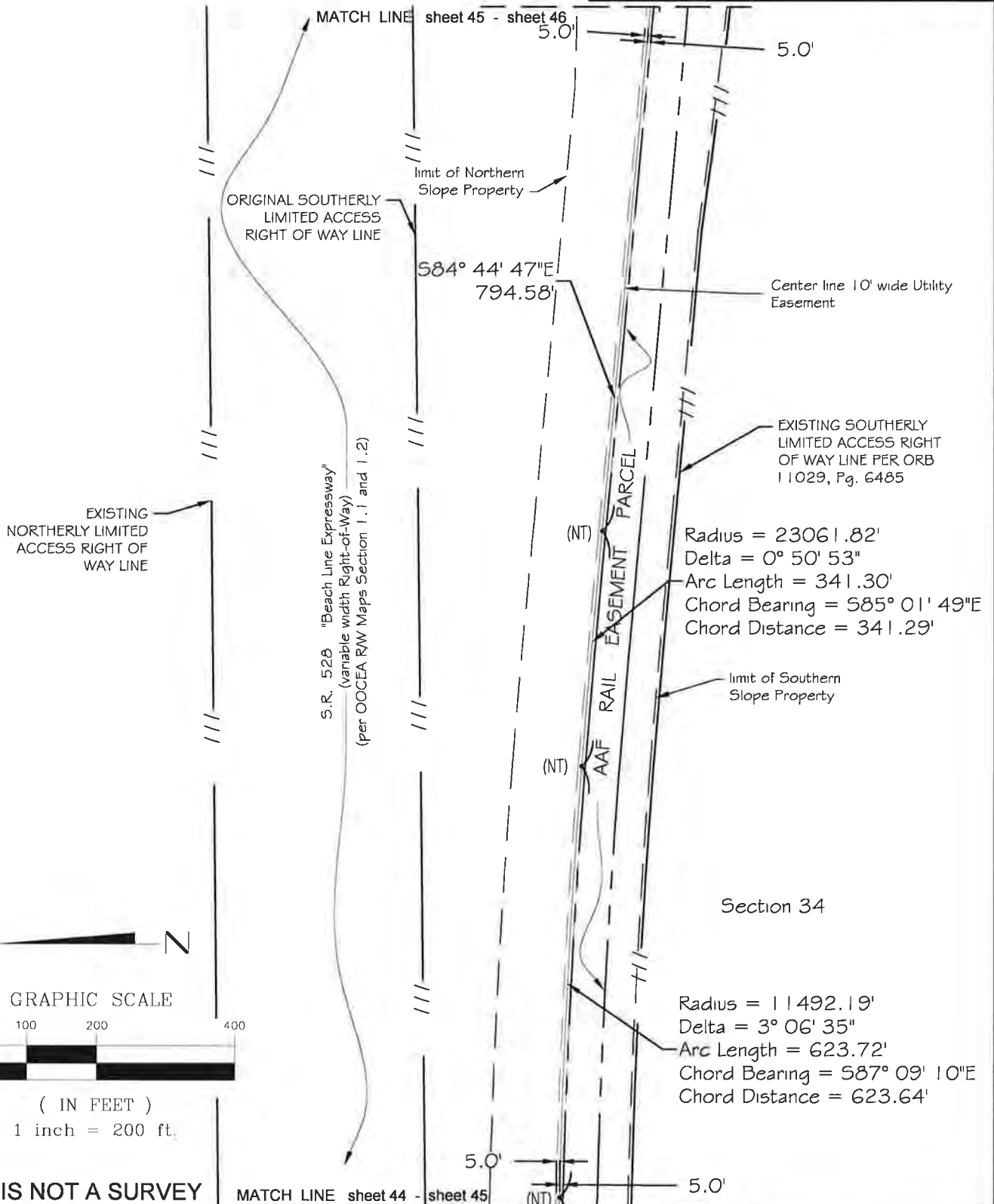
SHEET 44 OF 70

## REVISIONS

DATE	BY
05/02/2019	EMC

OSMAN, NAME: CTX 2014-01-01-2014-01-01

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



N

GRAPHIC SCALE



( IN FEET )

1 inch = 200 ft.

THIS IS NOT A SURVEY

MATCH LINE sheet 44 - sheet 45

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ  
DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 45 OF 70

REVISIONS

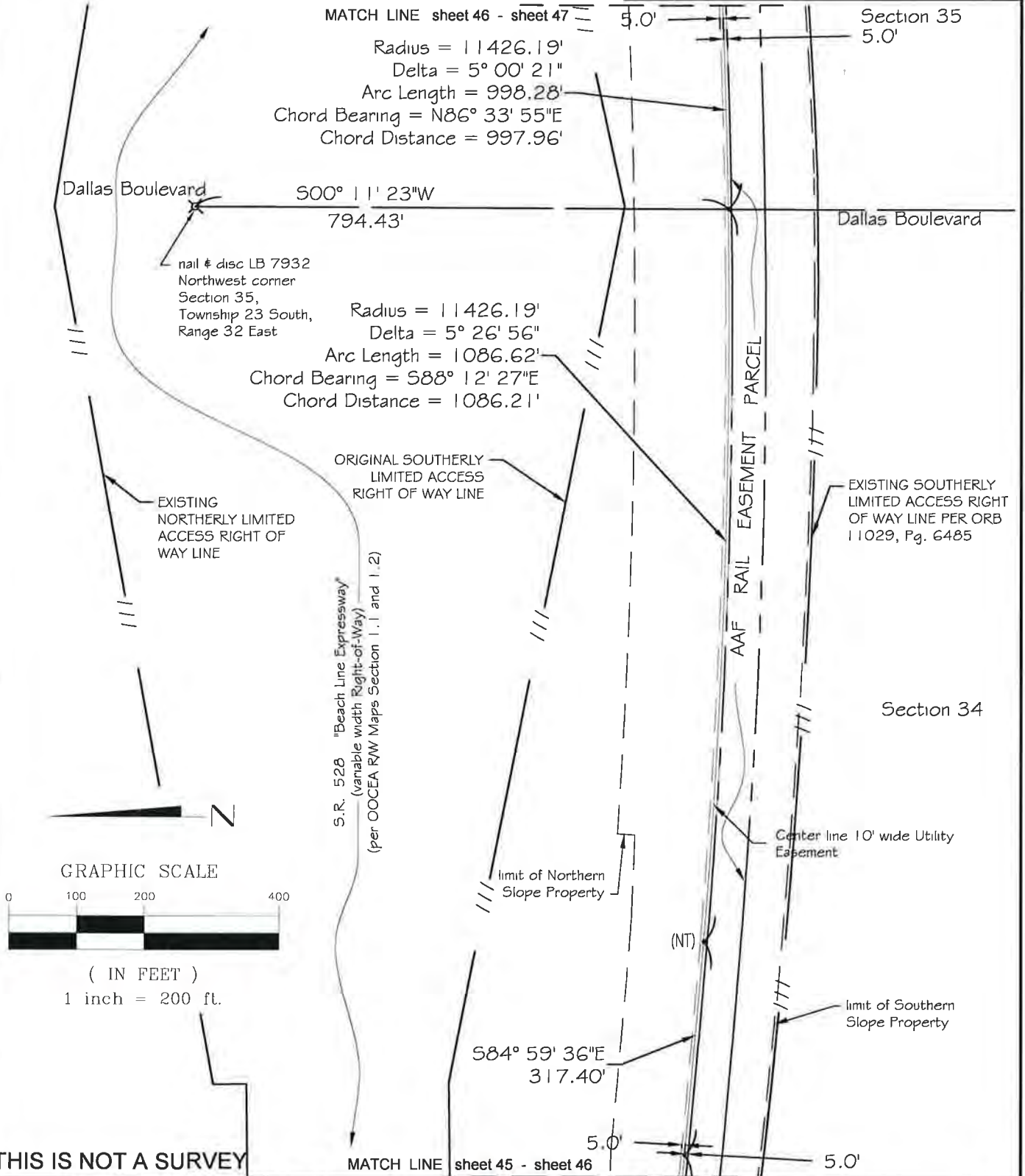
DATE BY

05/02/2019 EMO

DRAWING NAME: CFX Utility Easement ATT 01-05-2019.dwg



**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY**  
**STATE ROAD 528**  
**PROJECT No. 528-1240**  
**PARCEL No.**  
**PURPOSE: UTILITY (ATT)**  
**ESTATE: EASEMENT**



**FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**DESIGNED BY: HNTB**  
**DRAWN BY: PEW**  
**APPROVED BY: RMJ**

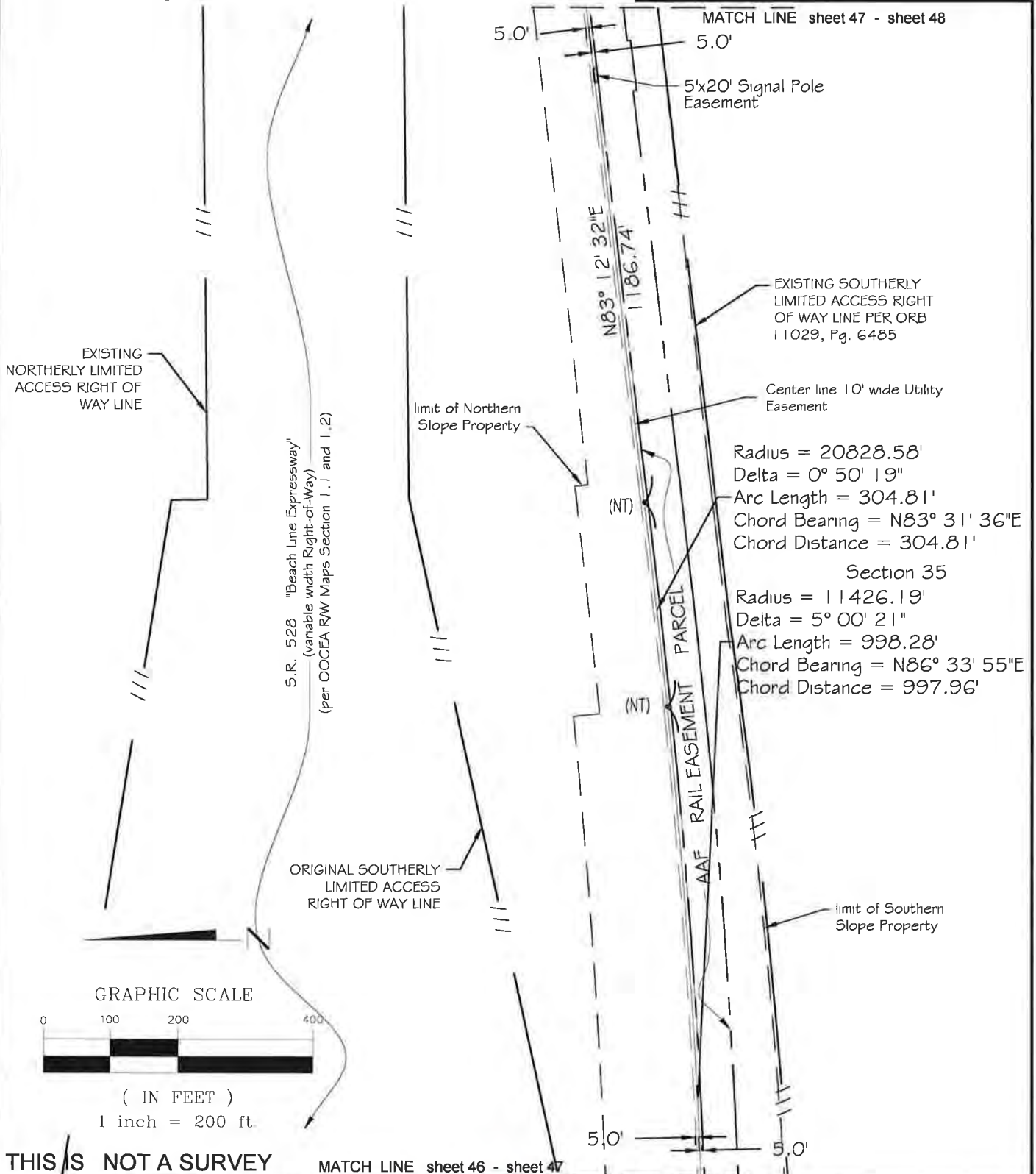
**DATE: 09/20/2016**  
**AMEC JOB No.: 6374130684**  
**CFX PROJECT No.: 528-1240**



**LEGAL DESCRIPTION and SKETCH**  
**Amec Foster Wheeler Environment & Infrastructure, Inc.**  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 46 OF 70	
<b>REVISIONS</b>	
DATE	BY
05/02/2019	EMO
DRAWING NAME: CFX Utility (corner ATT 01-20-2016)	

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ

DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

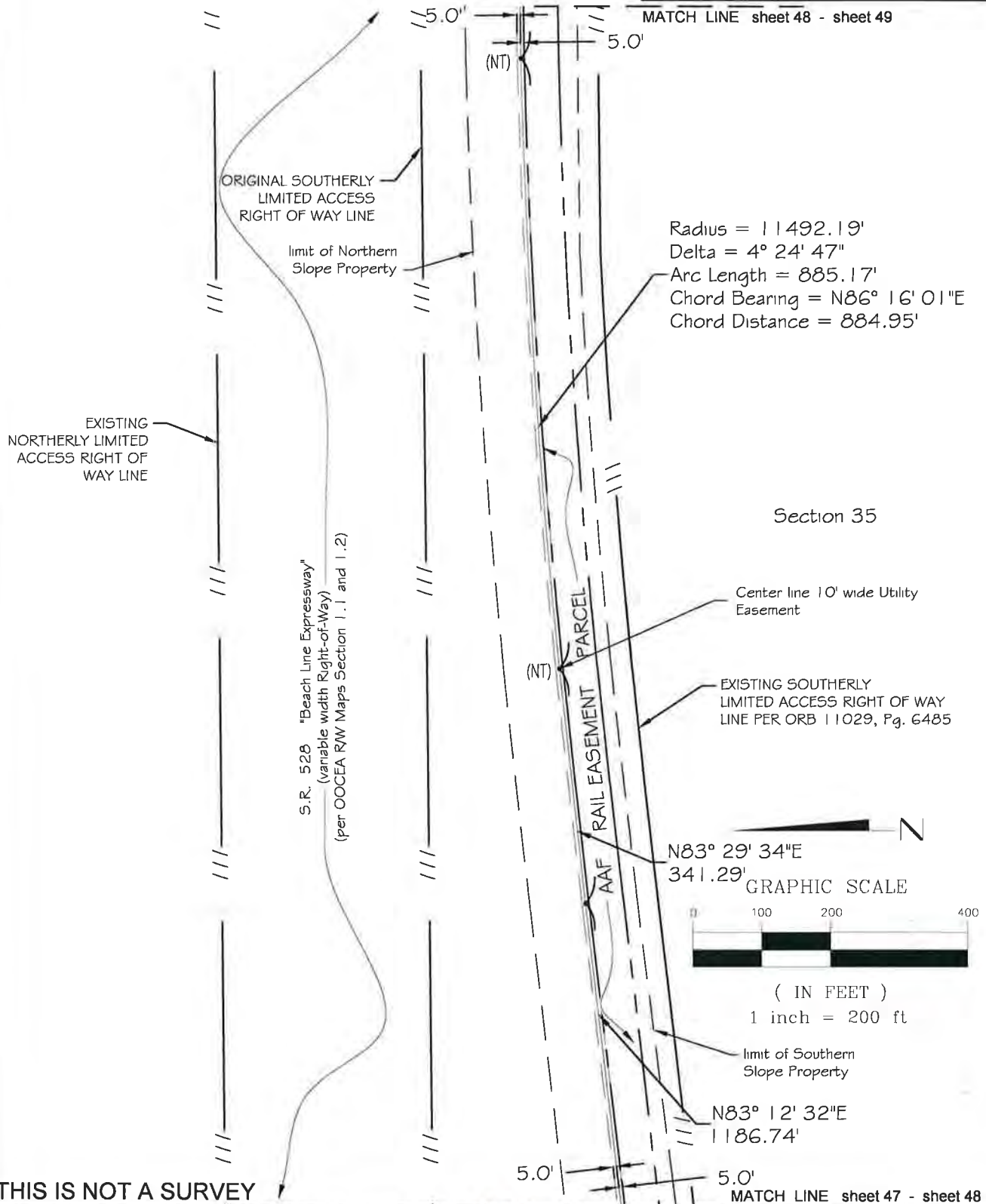
SHEET 47 OF 70

REVISIONS

DATE	BY
05/02/2019	EMO

GRAPHIC NAME: CFX Utility Easement A11 05-09-2019.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ

DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 48 OF 70

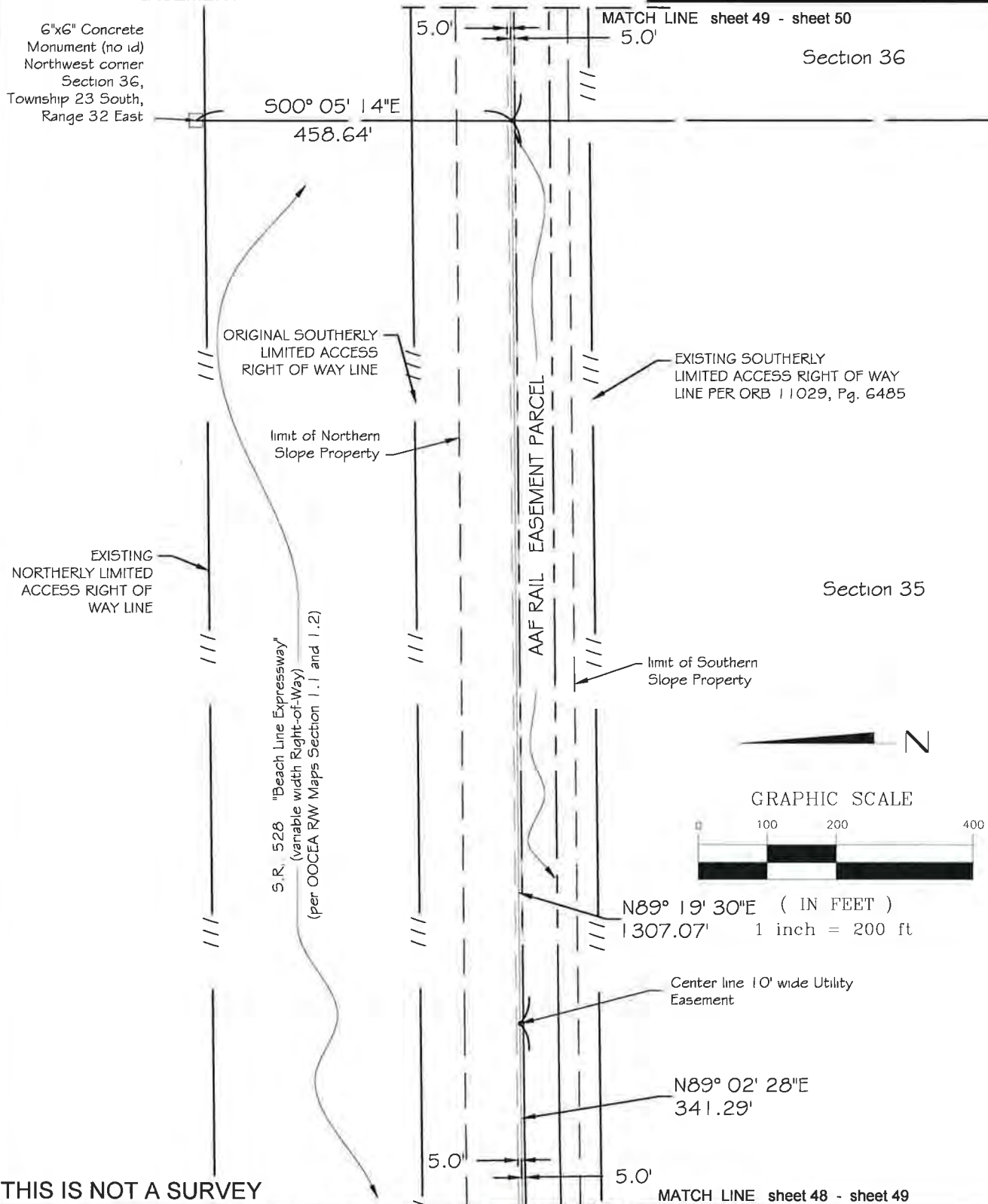
REVISIONS

DATE	BY
05/02/2019	EMO

DRAWING NAME: CFX Utility Easement ATT 01-05-2019.dwg

**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY**  
**STATE ROAD 528**  
**PROJECT No. 528-1240**  
**PARCEL No.**  
**PURPOSE: UTILITY (ATT)**  
**ESTATE: EASEMENT**

6"x6" Concrete  
Monument (no id)  
Northwest corner  
Section 36,  
Township 23 South,  
Range 32 East



**THIS IS NOT A SURVEY**

**MATCH LINE sheet 48 - sheet 49**

**FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**DESIGNED BY: HNTB**  
**DRAWN BY: PEW**  
**APPROVED BY: RMJ**  
**DATE: 09/20/2016**  
**AMEC JOB No.: 6374130684**  
**CFX PROJECT No.: 528-1240**

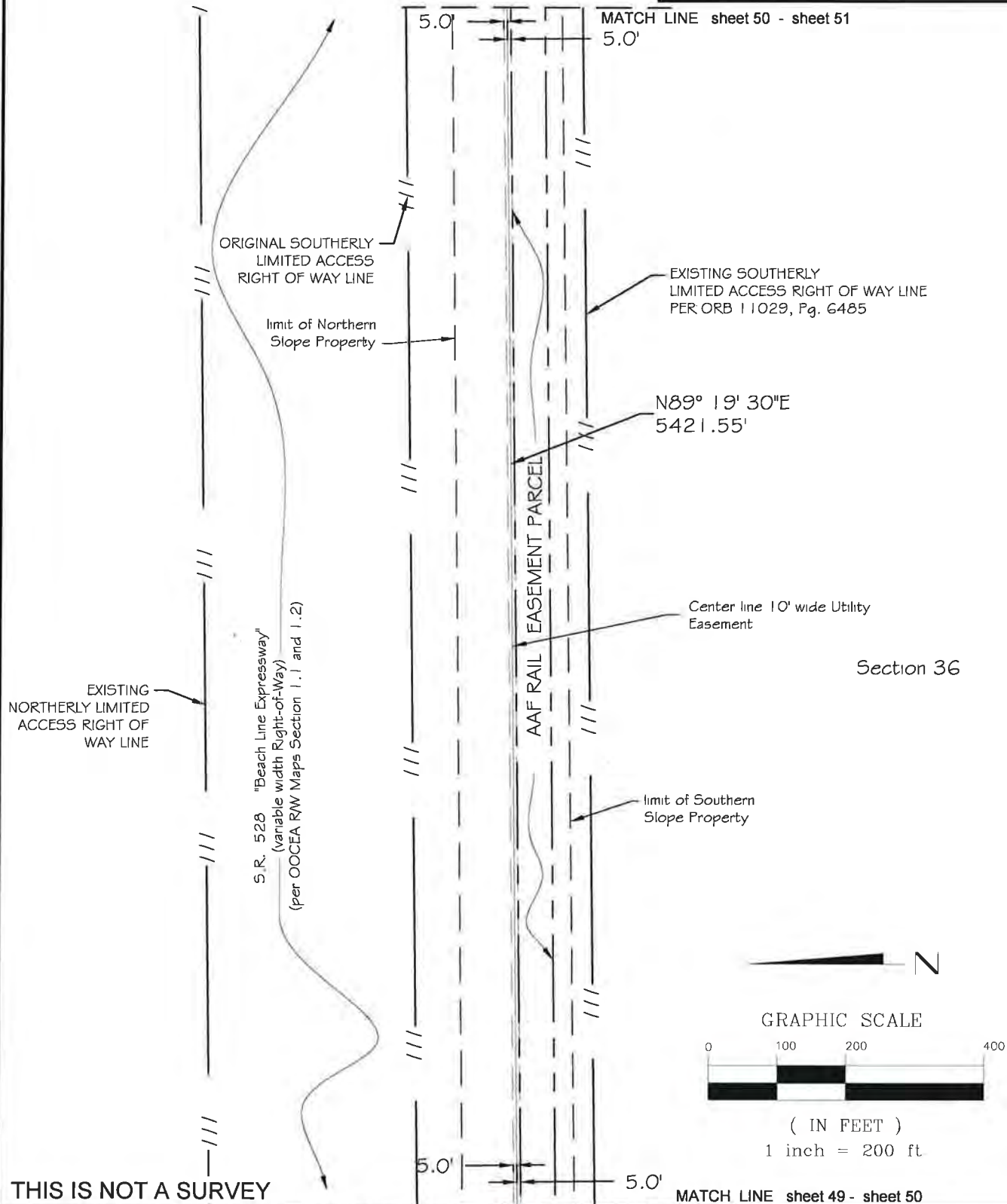


**LEGAL DESCRIPTION and SKETCH**  
**Amec Foster Wheeler Environment & Infrastructure, Inc.**  
 75 East Amelia Street, Suite 200  
 Orlando, FL 32801 USA  
 Phone: (407) 522-7570  
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SHEET 49 OF 70	
REVISIONS	
DATE	BY
DRAWING NAME: CFX Utility Logment A11 09-18-2016.dwg	



CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



THIS IS NOT A SURVEY

MATCH LINE sheet 49 - sheet 50

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ

DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



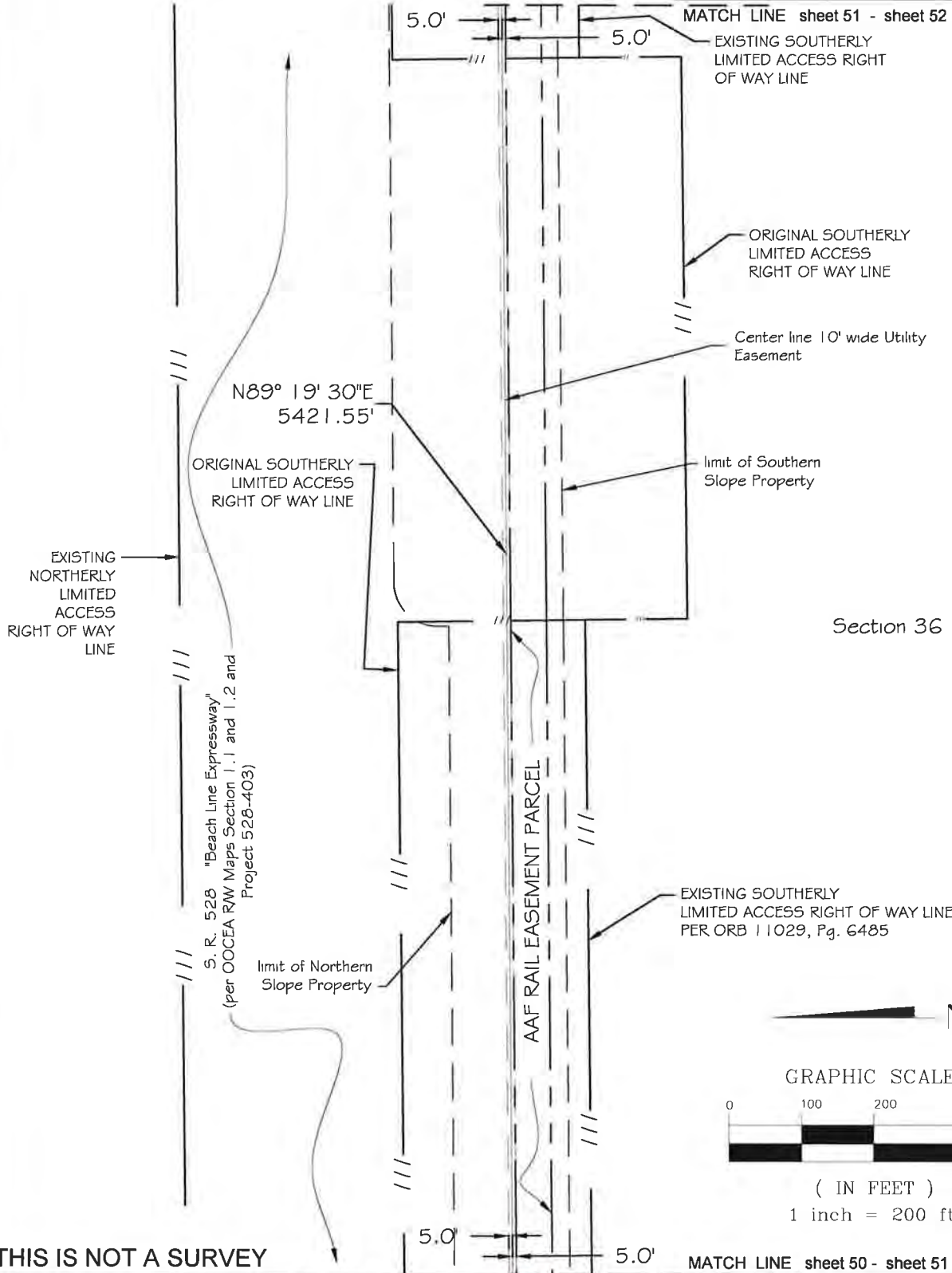
LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 50 OF 70

REVISIONS  
DATE BY

DRAWING NAME: CFX Utility Easement, All 09-19-2015.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



THIS IS NOT A SURVEY

MATCH LINE sheet 50 - sheet 51

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ

DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



**LEGAL DESCRIPTION and SKETCH**  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

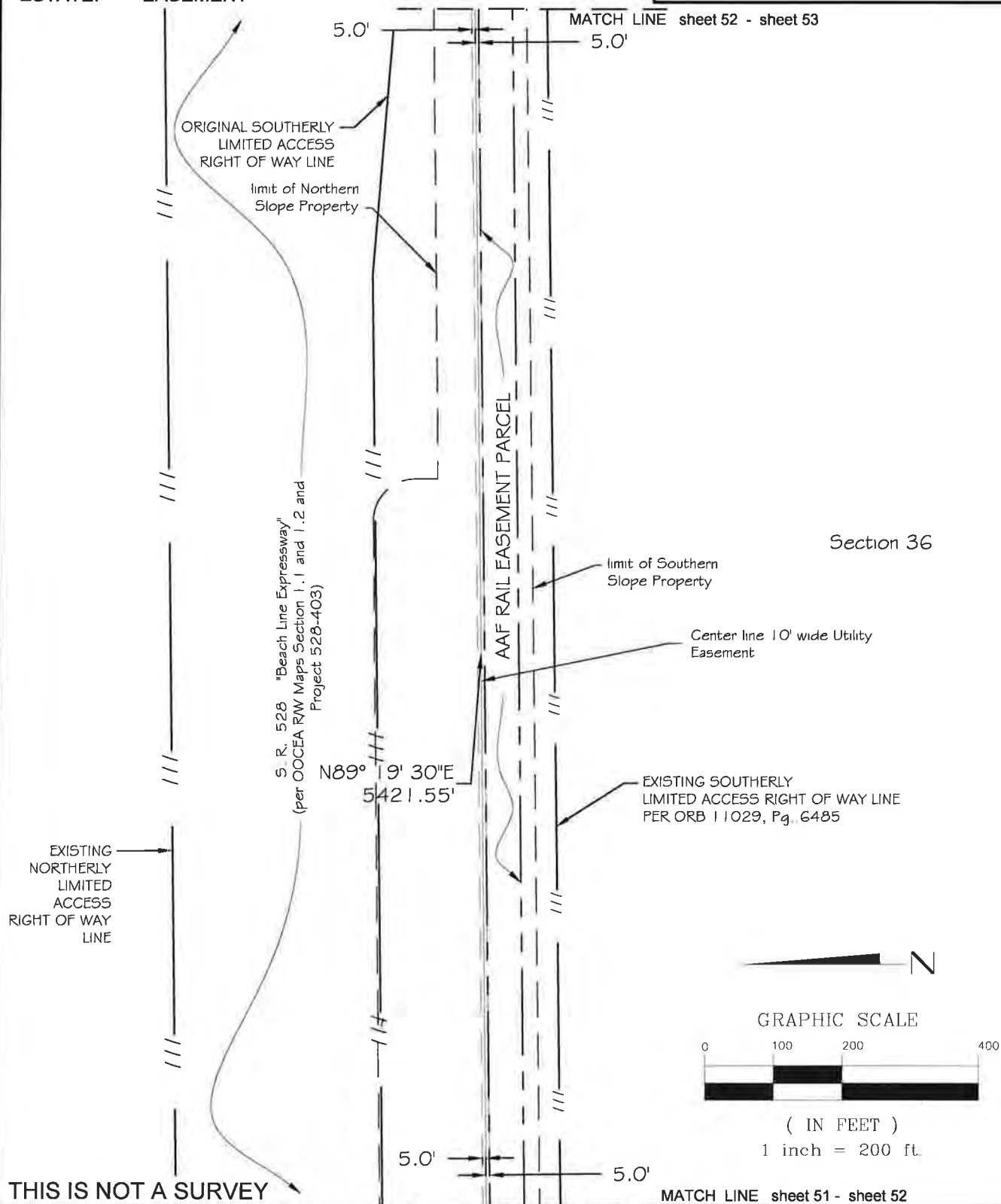
SHEET 51 OF 70

REVISIONS

DATE	BY

DRAWING NAME: CFX Utility Easement ATT 09-18-2016.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ  
DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 52 OF 70

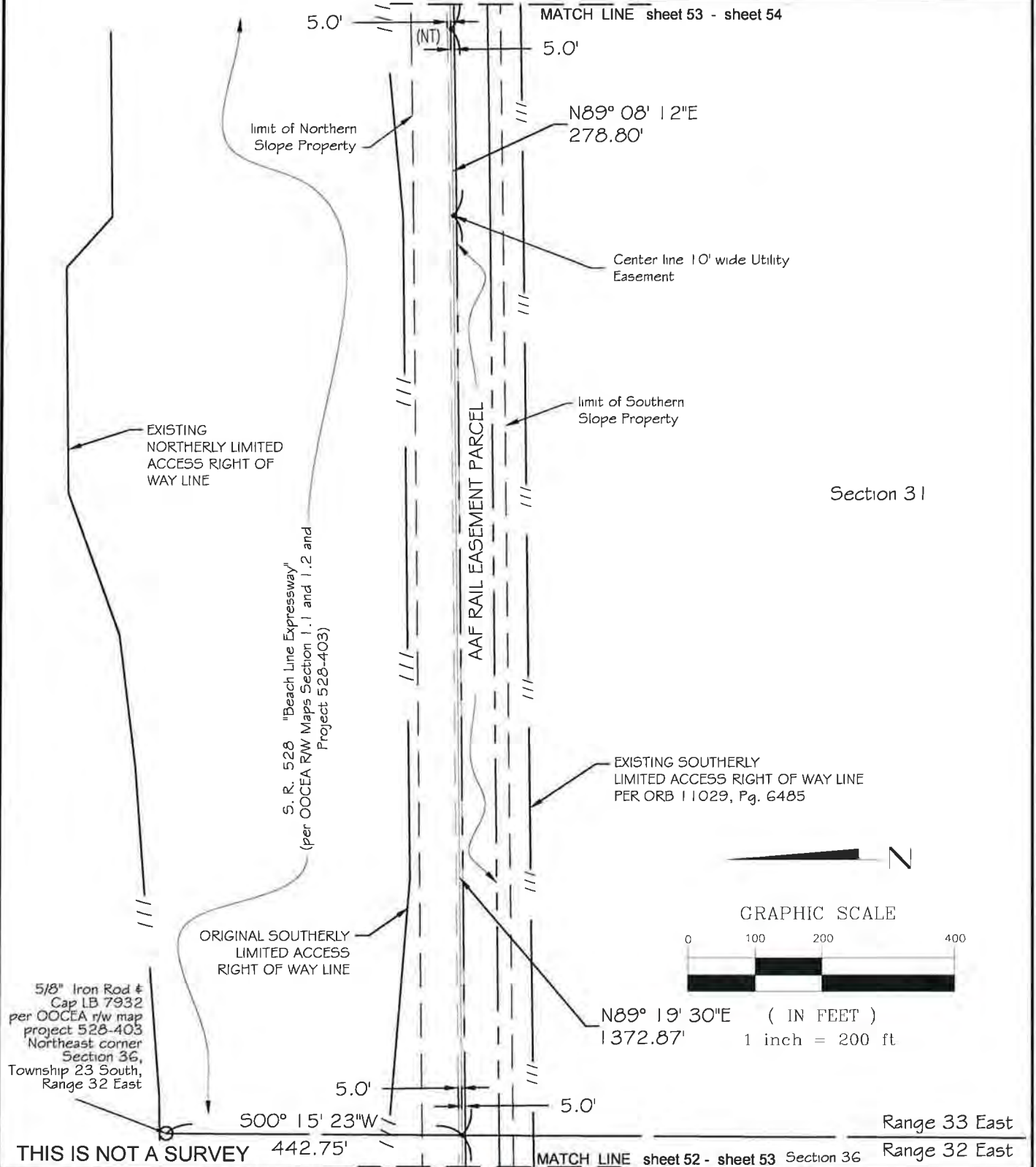
REVISIONS

DATE BY

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DRAWING NAME: CFX Utility Easement A11 09-19-2015.dwg

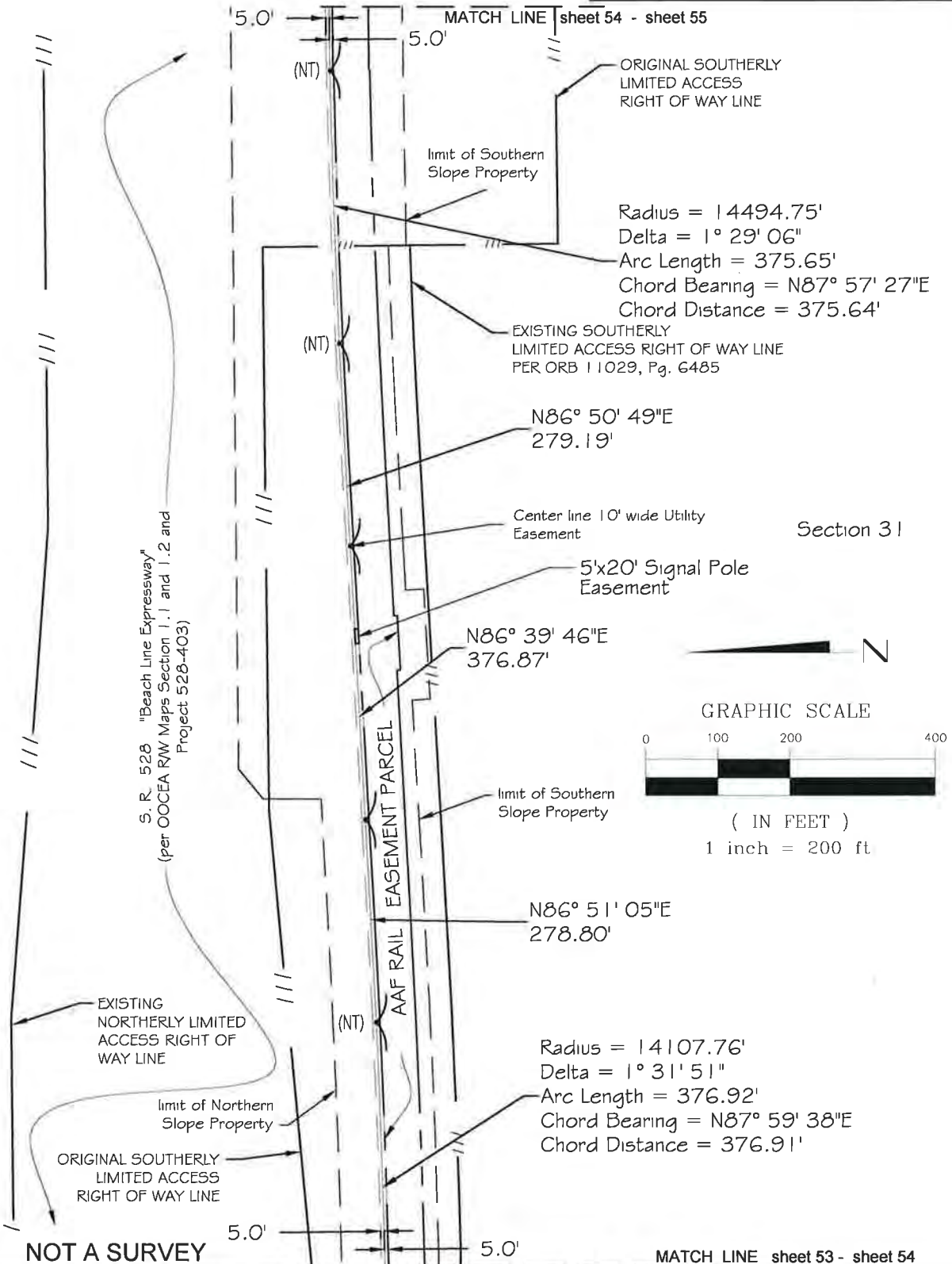
CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 53 OF 70	
DESIGNED BY: HNTB	DATE: 09/20/2016	 <b>Amec Foster Wheeler Environment &amp; Infrastructure, Inc.</b> 75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932		REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374130684			DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240			DRAWING NAME: CFX Utility Easement ATT 05-19-2016.dwg	



CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



THIS IS NOT A SURVEY

MATCH LINE sheet 53 - sheet 54

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ

DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

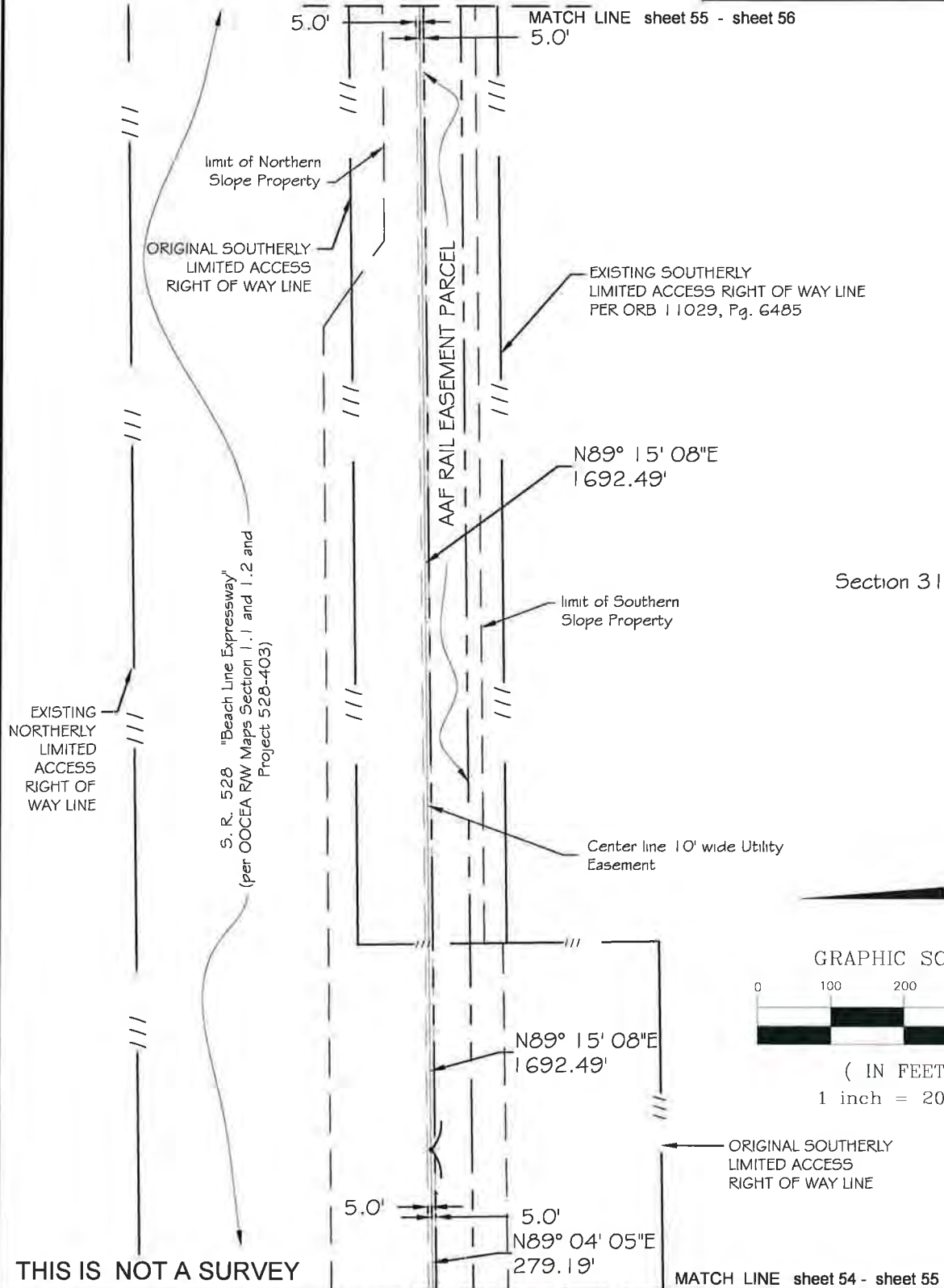
SHEET 54 OF 70

REVISIONS

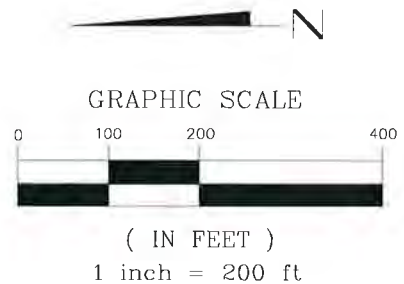
DATE BY

DRAWING NAME: CFX Utility Easement A11 09-13-2016.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



Section 31



THIS IS NOT A SURVEY

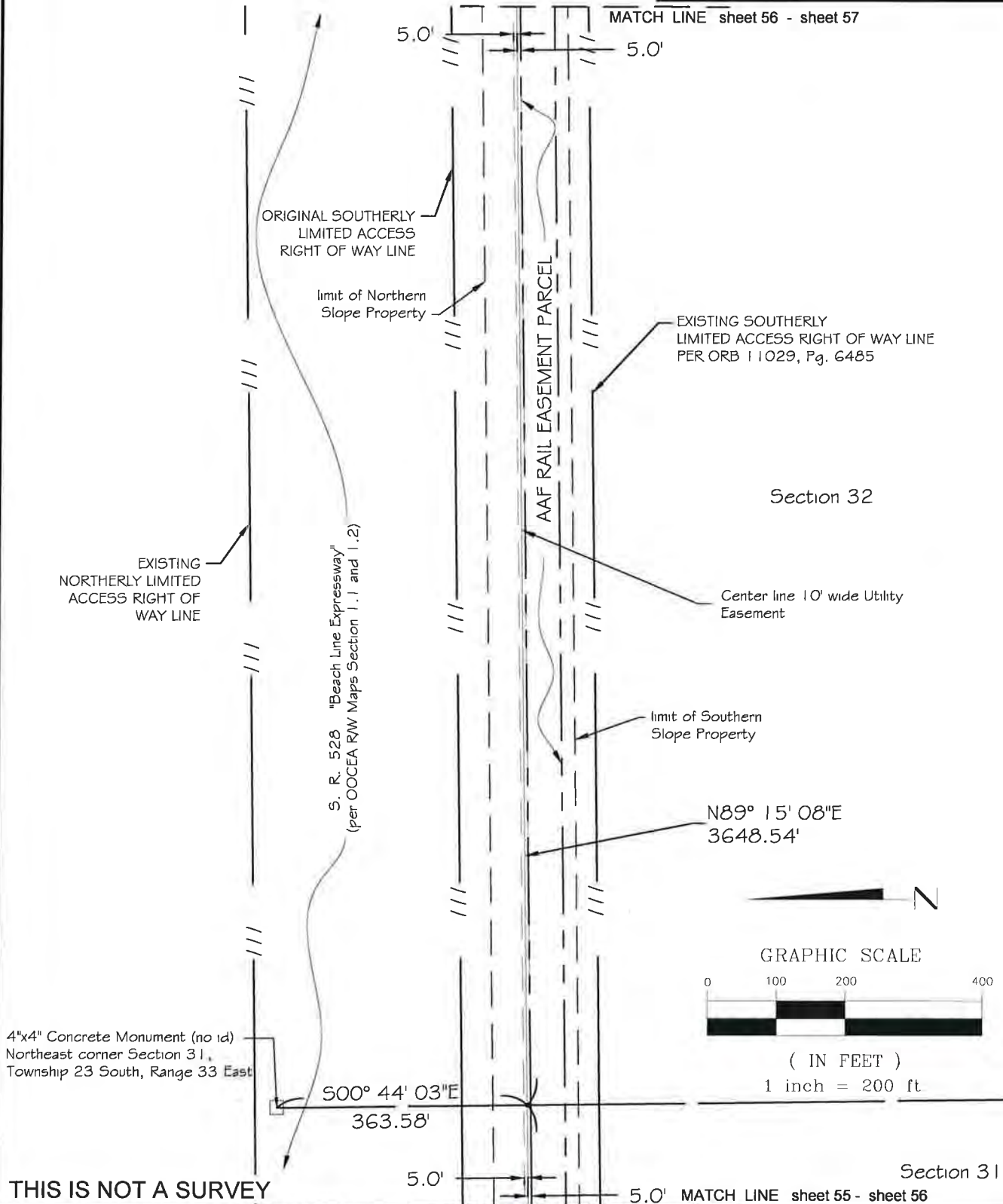
MATCH LINE sheet 54 - sheet 55

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ  
DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240

LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 55 OF 70  
REVISIONS  
DATE BY  
DRAWING NAME: CFX Utility Easement ATT 05-18-2016.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ

DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



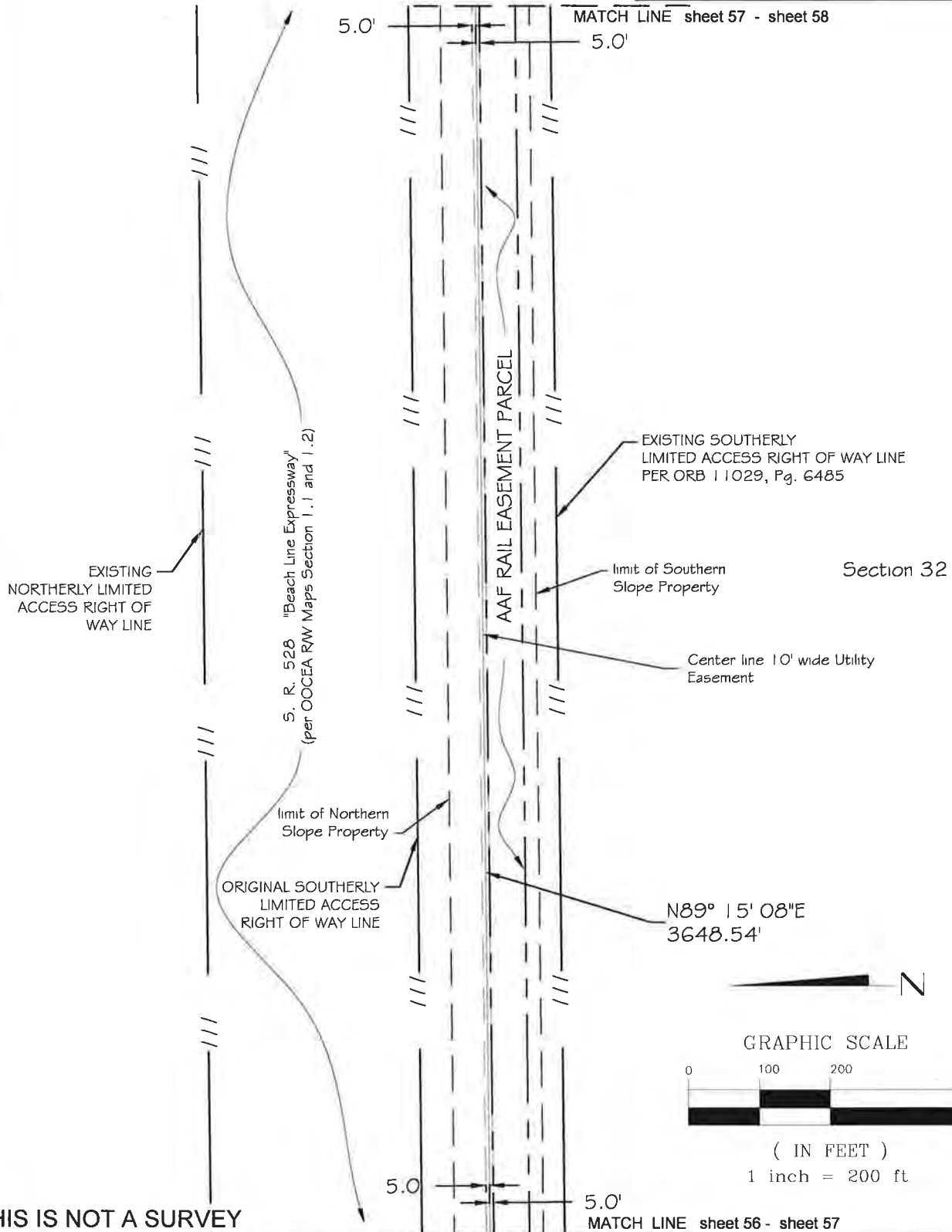
LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 56 OF 70

REVISIONS	
DATE	BY

DRAWING NAME: CFX Utility (Access) ATT 01-19-2015.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



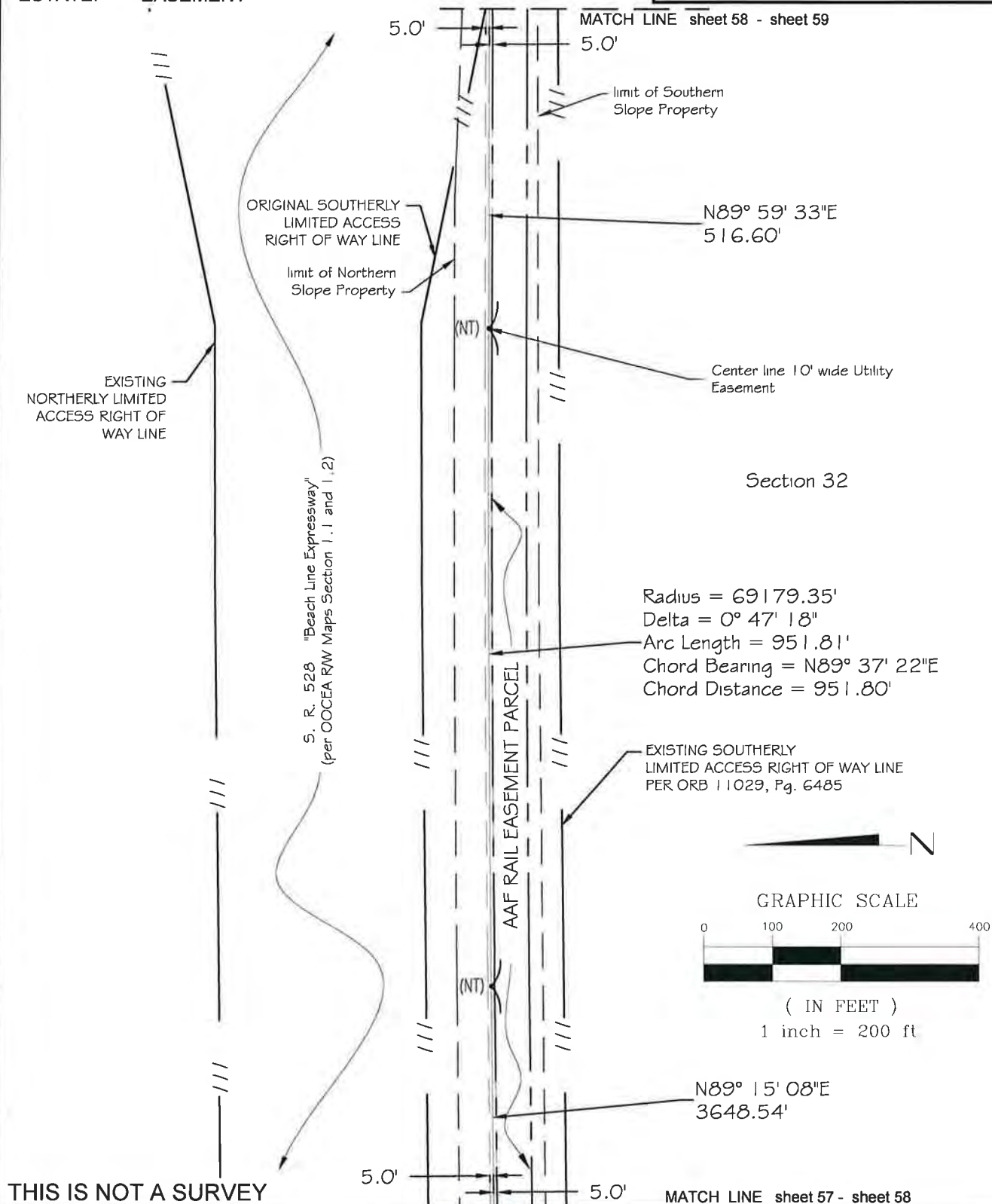
FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ  
DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240

LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 57 OF 70  
REVISIONS  
DATE BY  
DRAWING NAME: CFX Utility Easement ATT 08-18-2015.dwg



CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT

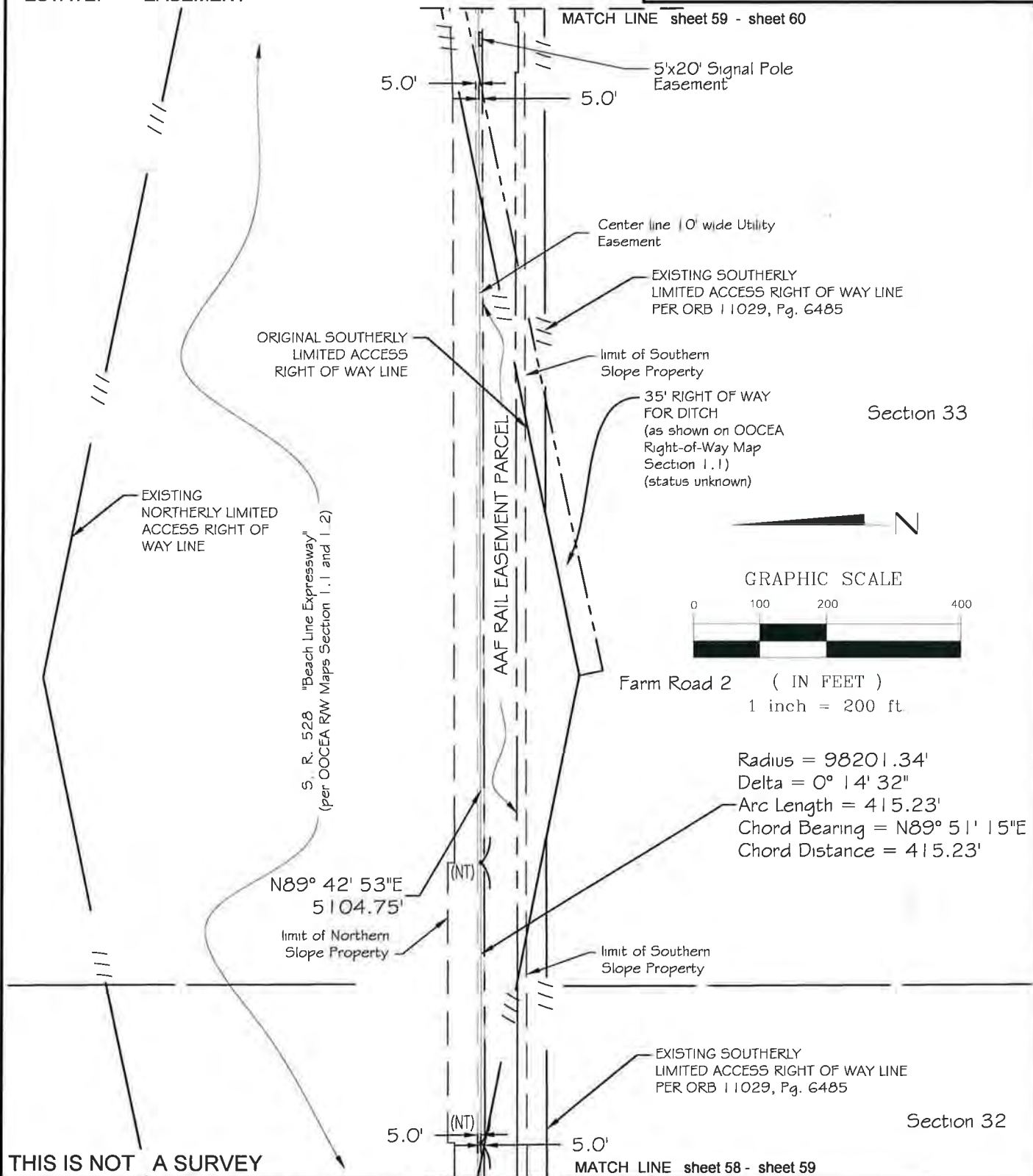


FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ  
DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240

**LEGAL DESCRIPTION and SKETCH**  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 58 OF 70  
REVISIONS  
DATE BY  
DRAWING NAME: CFX Utility Easement ATT 09-19-2016.dwg

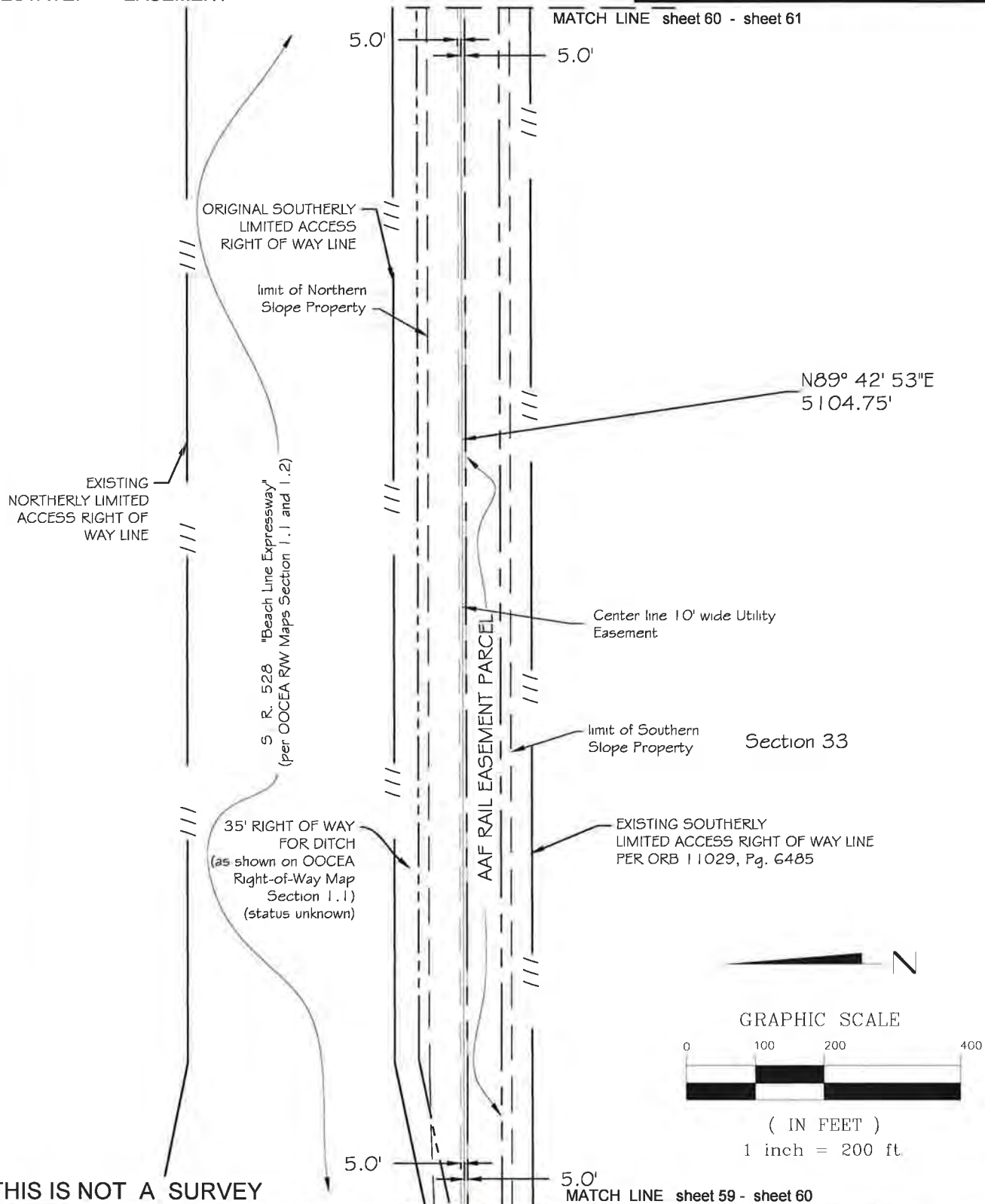
CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 59 OF 70	
DESIGNED BY: HNTB	DATE: 09/20/2016	 Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932		REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374130684			DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240			05/02/2019	EMO
				DRAWING NAME: CFX Utility Easement ATT 05-25-2019.dwg	

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



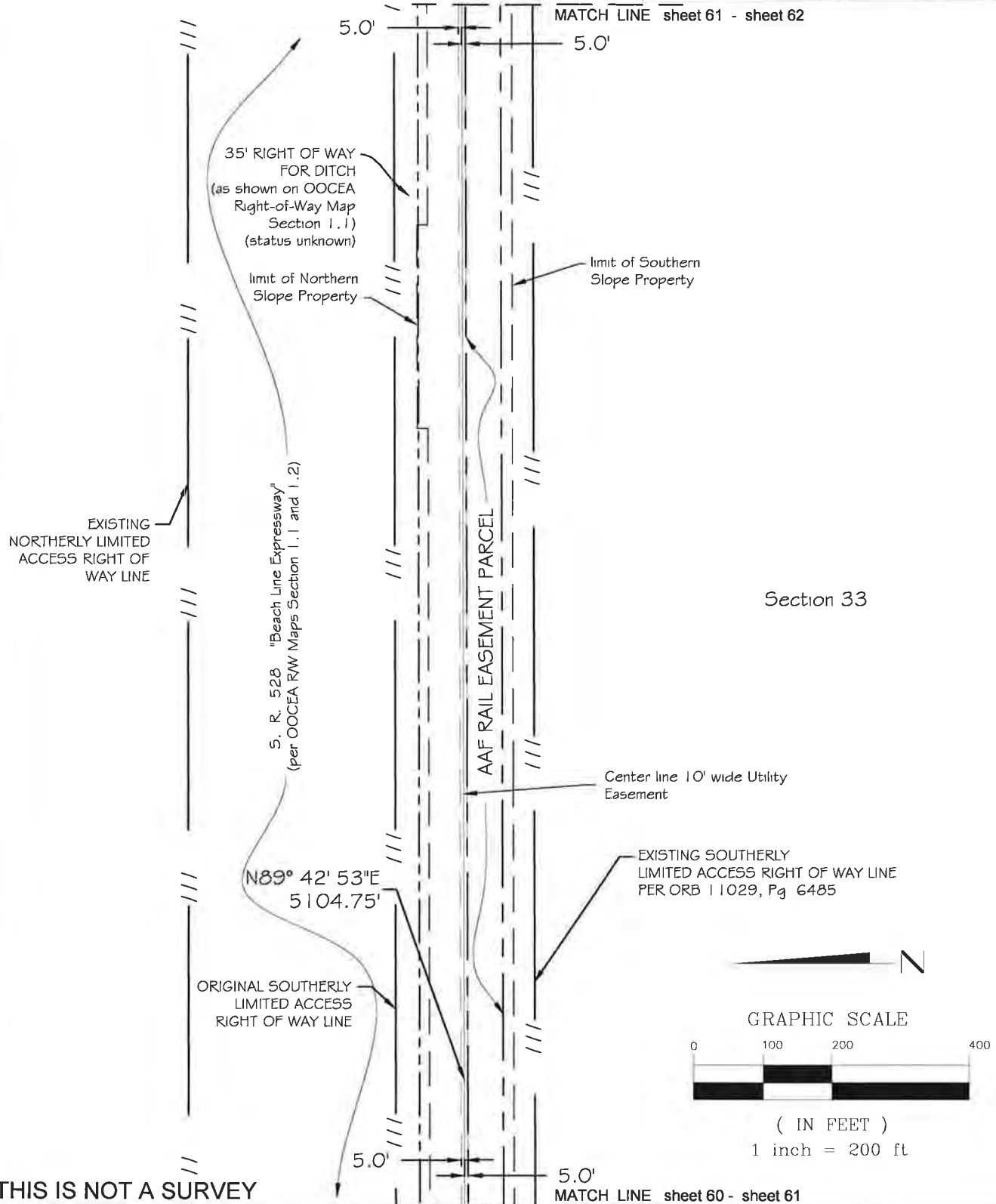
THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ  
DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240

LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 60 OF 70  
REVISIONS  
DATE BY  
DRAWING NAME: CFX Utility Easement ATT 09-19-2016.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ

DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 61 OF 70

REVISIONS

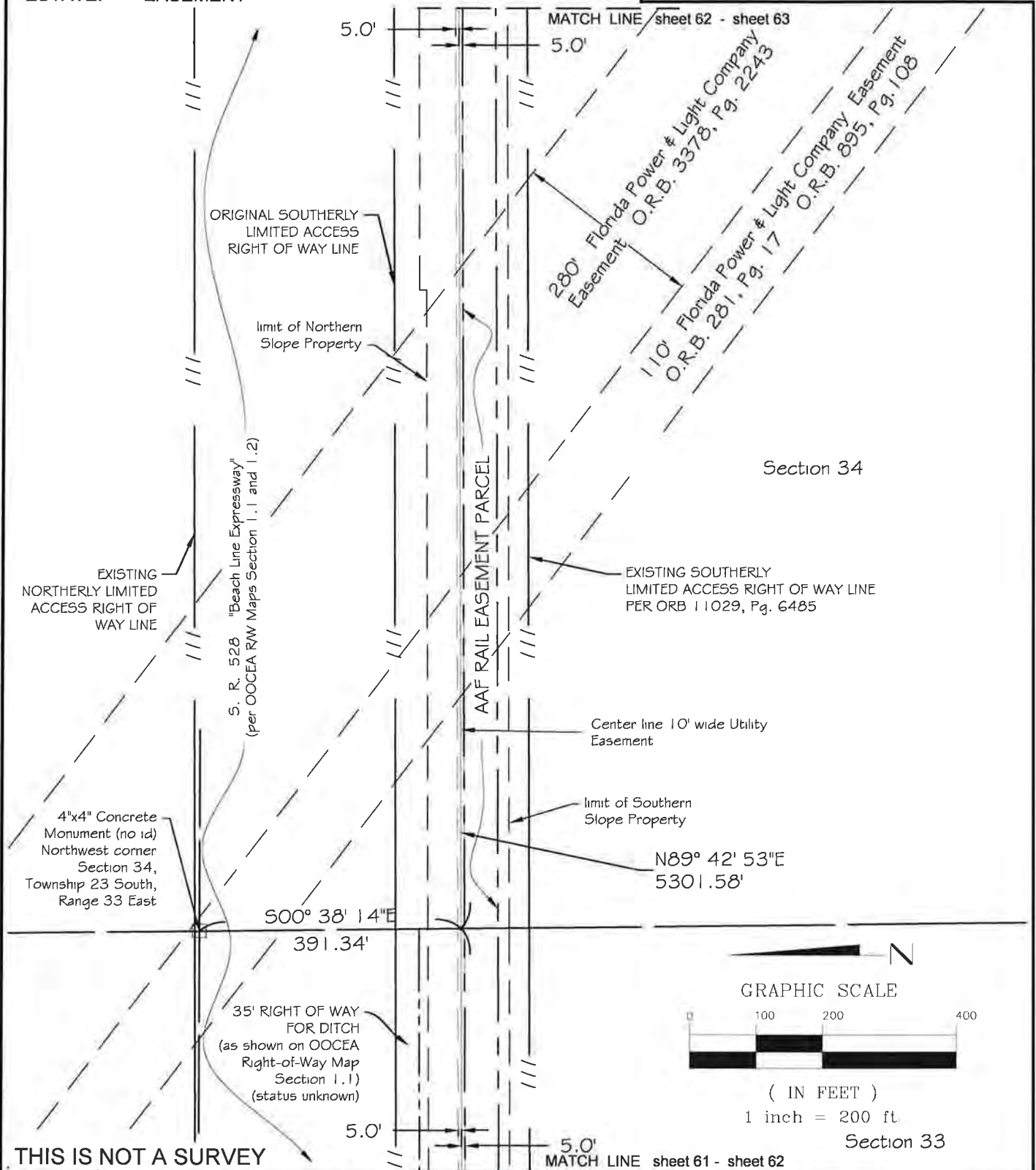
DATE BY

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DRAWING NAME: CFX Utility Easement ATT 09-19-2016.dwg

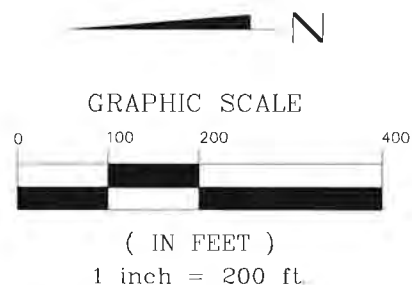
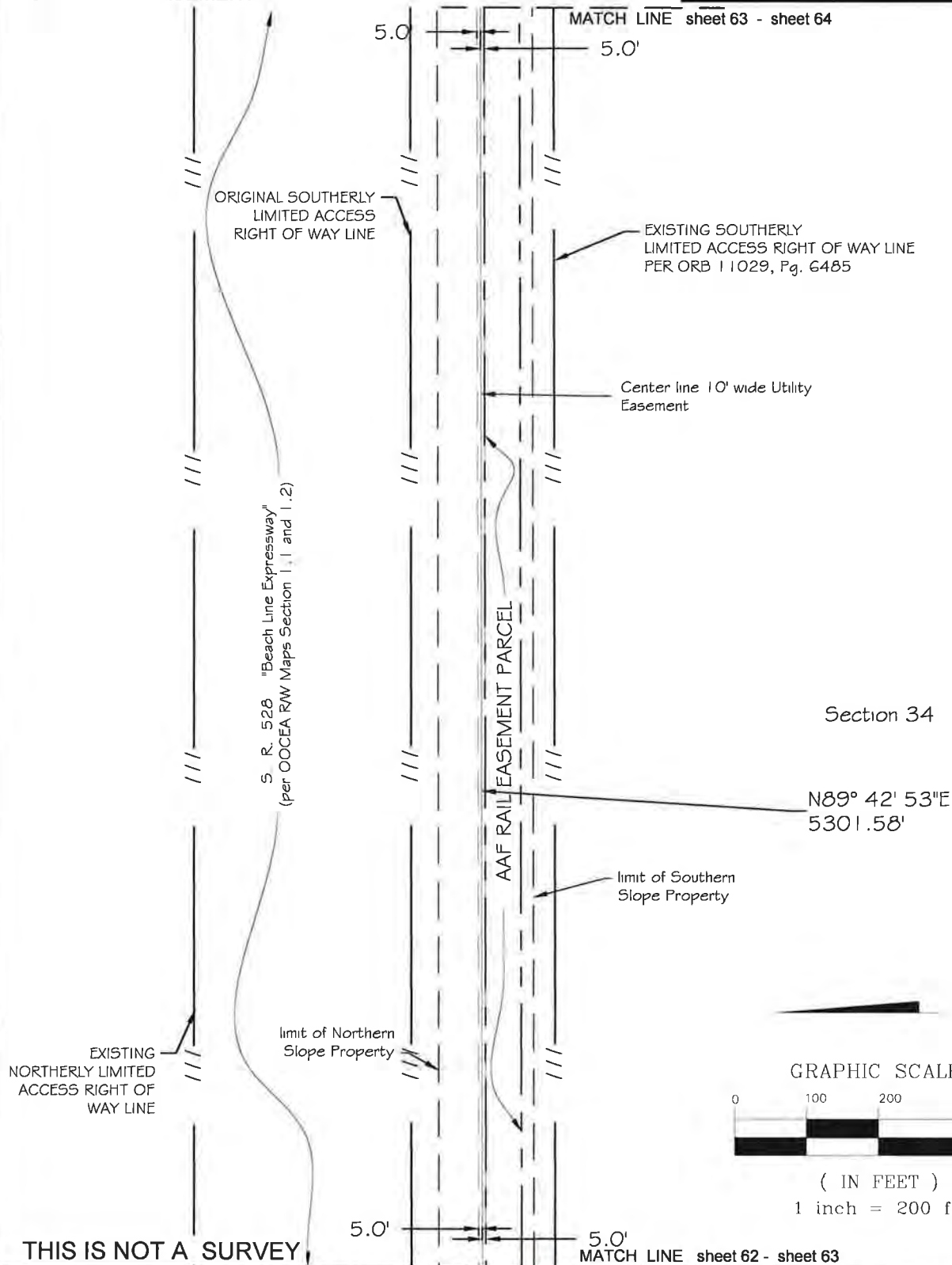


CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 62 OF 70	
DESIGNED BY: HNTB	DATE: 09/20/2016	 <b>Amec Foster Wheeler Environment &amp; Infrastructure, Inc.</b> 75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932		REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374130684			DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240			DRAWING NAME: CFX Utility Location ATT 09-19-2016.dwg	

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ

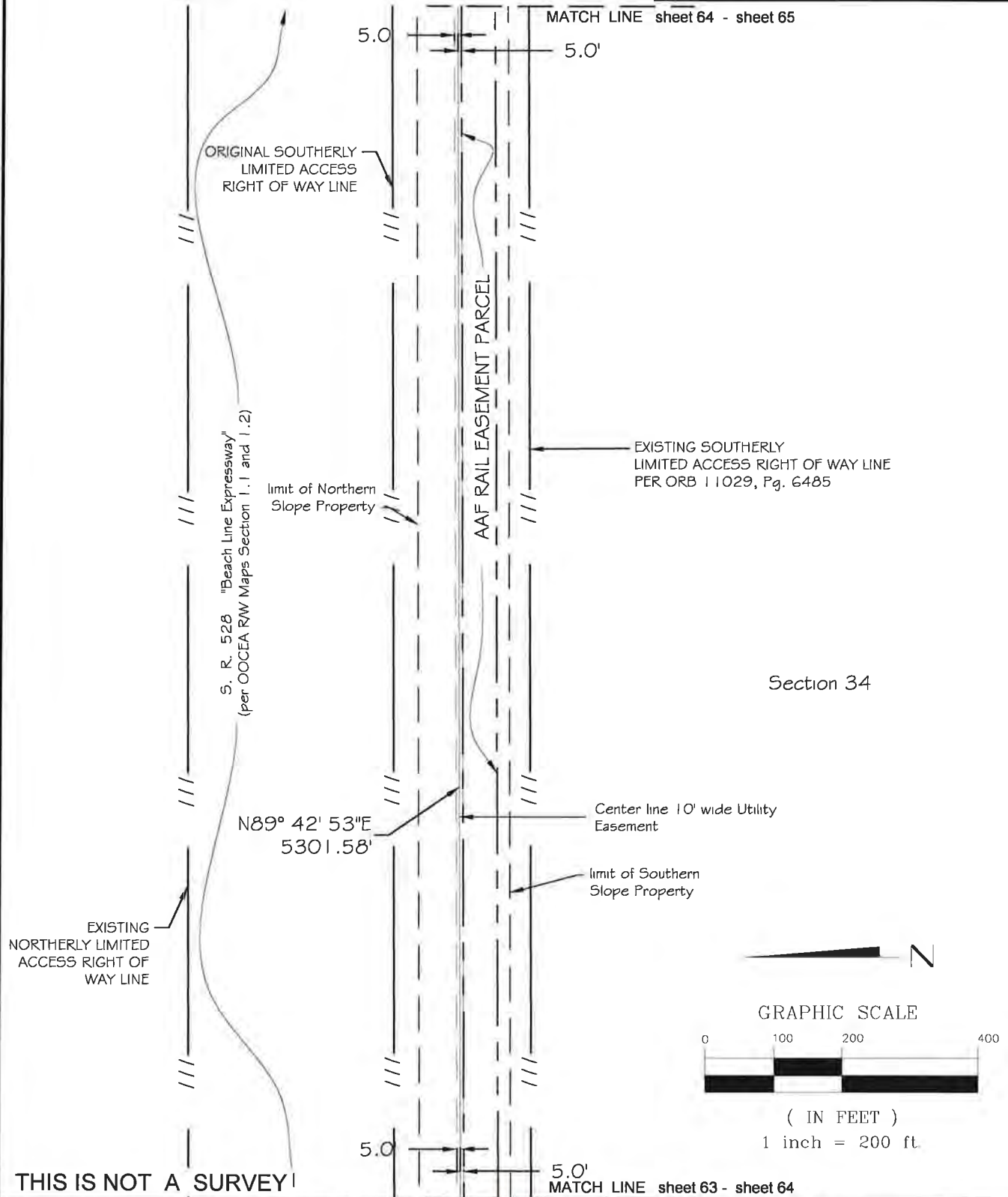
DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 63 OF 70	
REVISIONS	
DATE	BY
DRAWING NAME: CFX-528 Utility ATT 09-19-2016.dwg	

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ

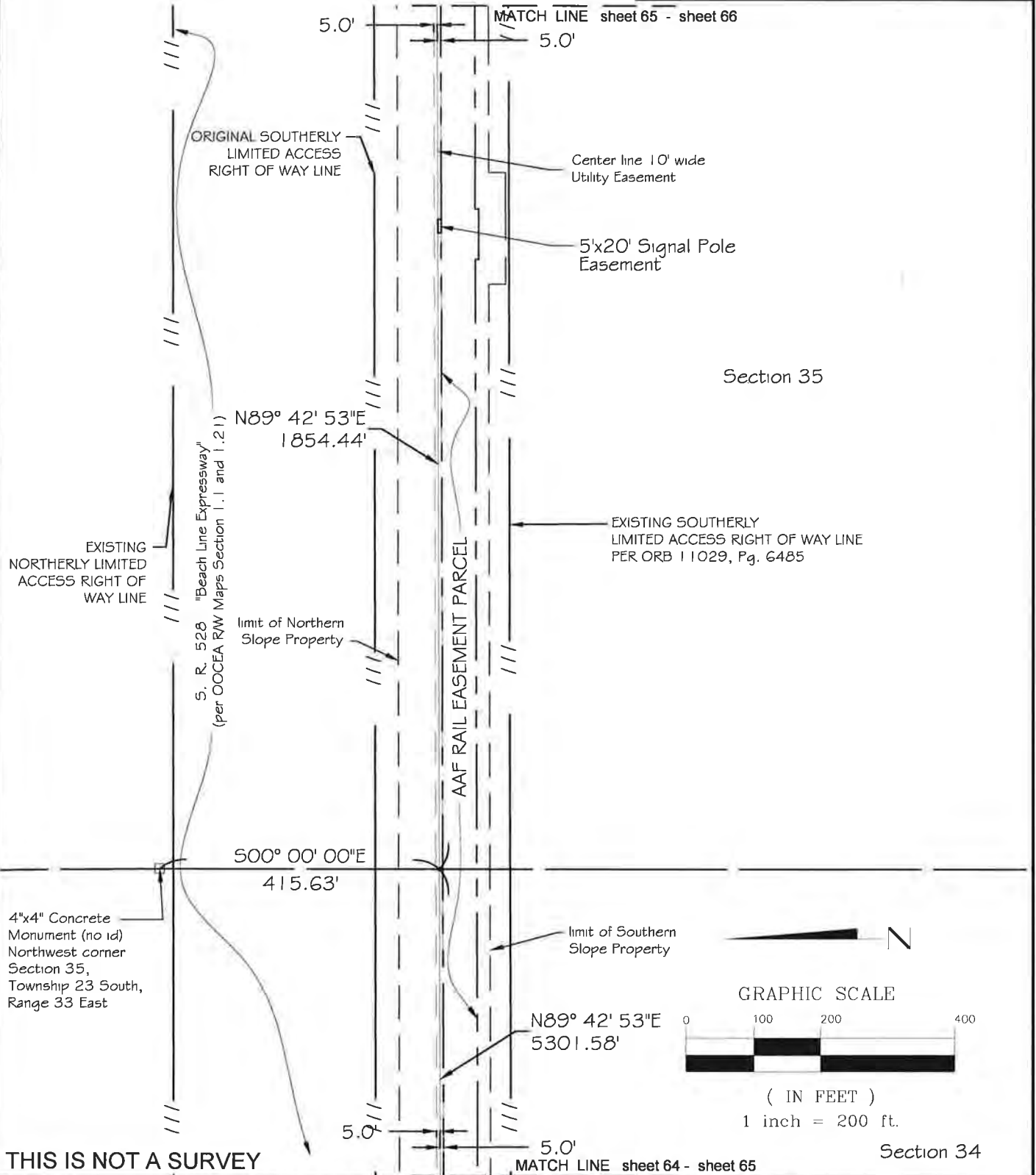
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AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 64 OF 70	
REVISIONS	
DATE	BY
DRAWING NAME: CFX Utility Easement ATT 08-18-2016.dwg	

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ

DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 65 OF 70

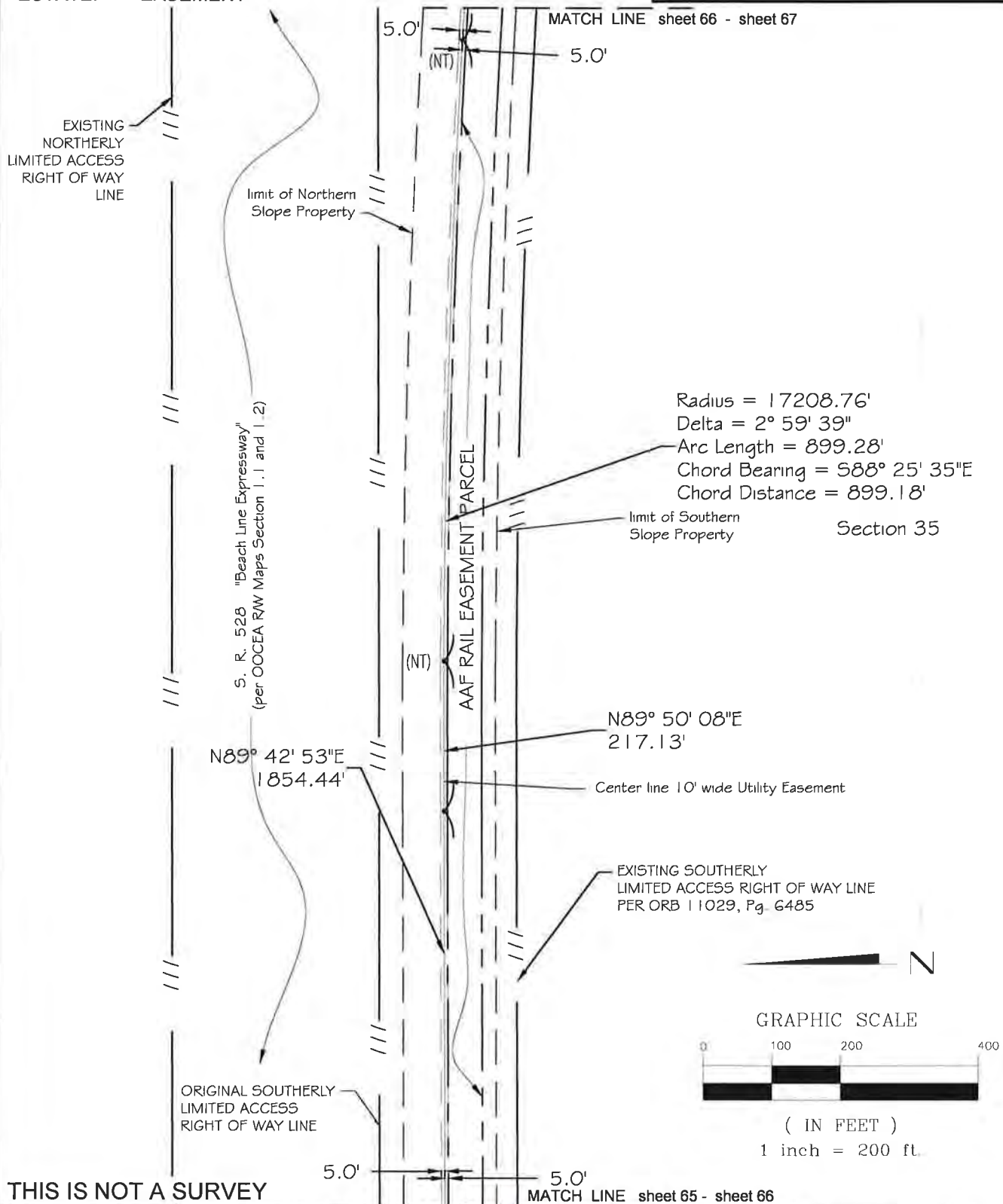
REVISIONS

DATE BY

DRAWING NAME: CFX 528 (Easement) A11 05-19 2016.dwg



CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ

DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

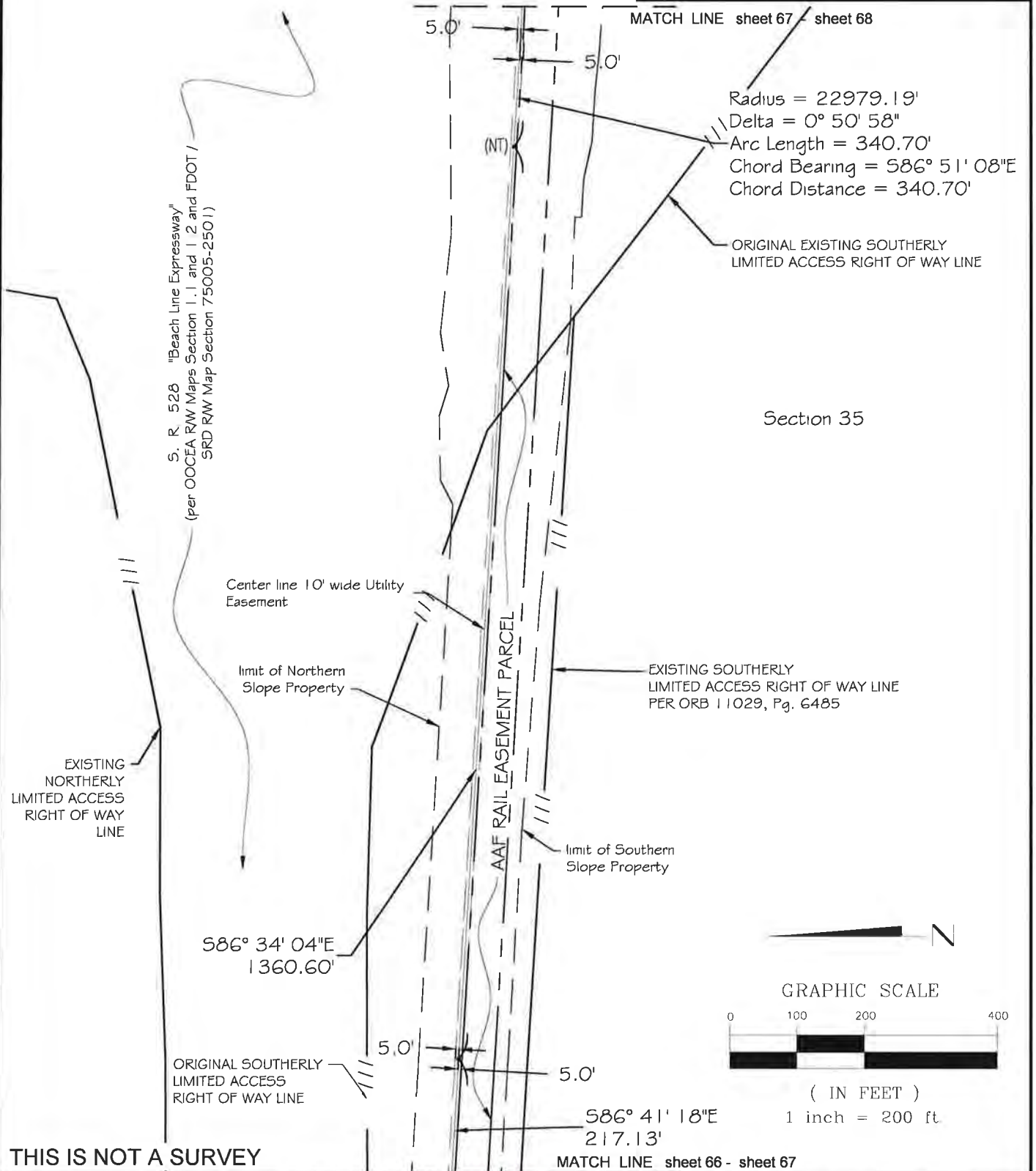
SHEET 66 OF 70

REVISIONS

DATE BY

DATE BY  
DRAWING NAME CFX - 528 - Easement ATT 01-18-2016.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ

DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240



LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 67 OF 70

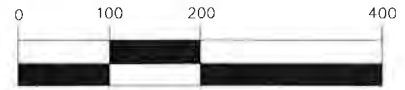
REVISIONS

DATE	BY
05/02/2019	EMO

GRAPHIC SCALE: 1 inch = 200 ft.

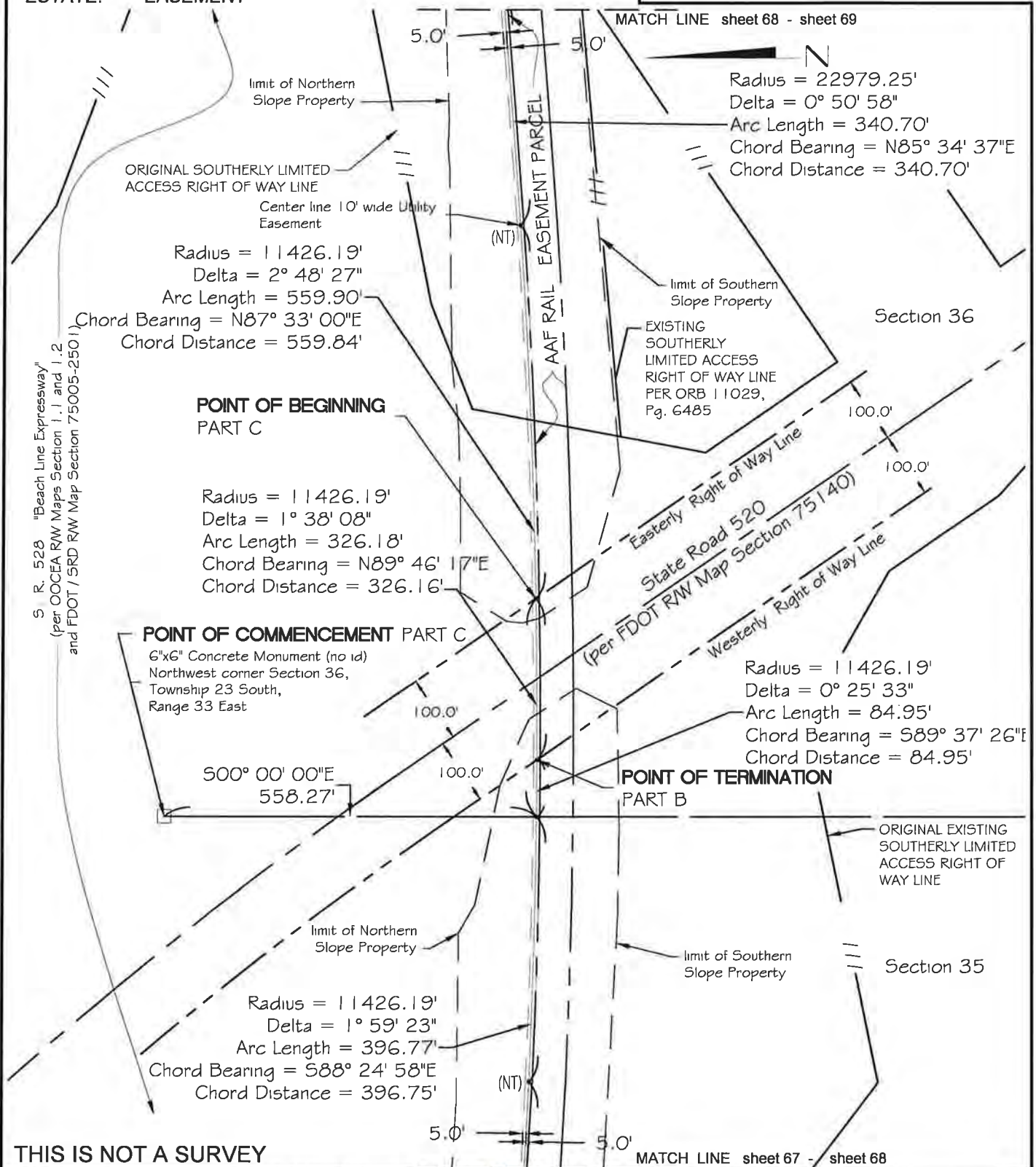
**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY**  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT

GRAPHIC SCALE



( IN FEET )

1 inch = 200 ft.



FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB  
DRAWN BY: PEW  
APPROVED BY: RMJ

DATE: 09/20/2016  
AMEC JOB No.: 6374130684  
CFX PROJECT No.: 528-1240

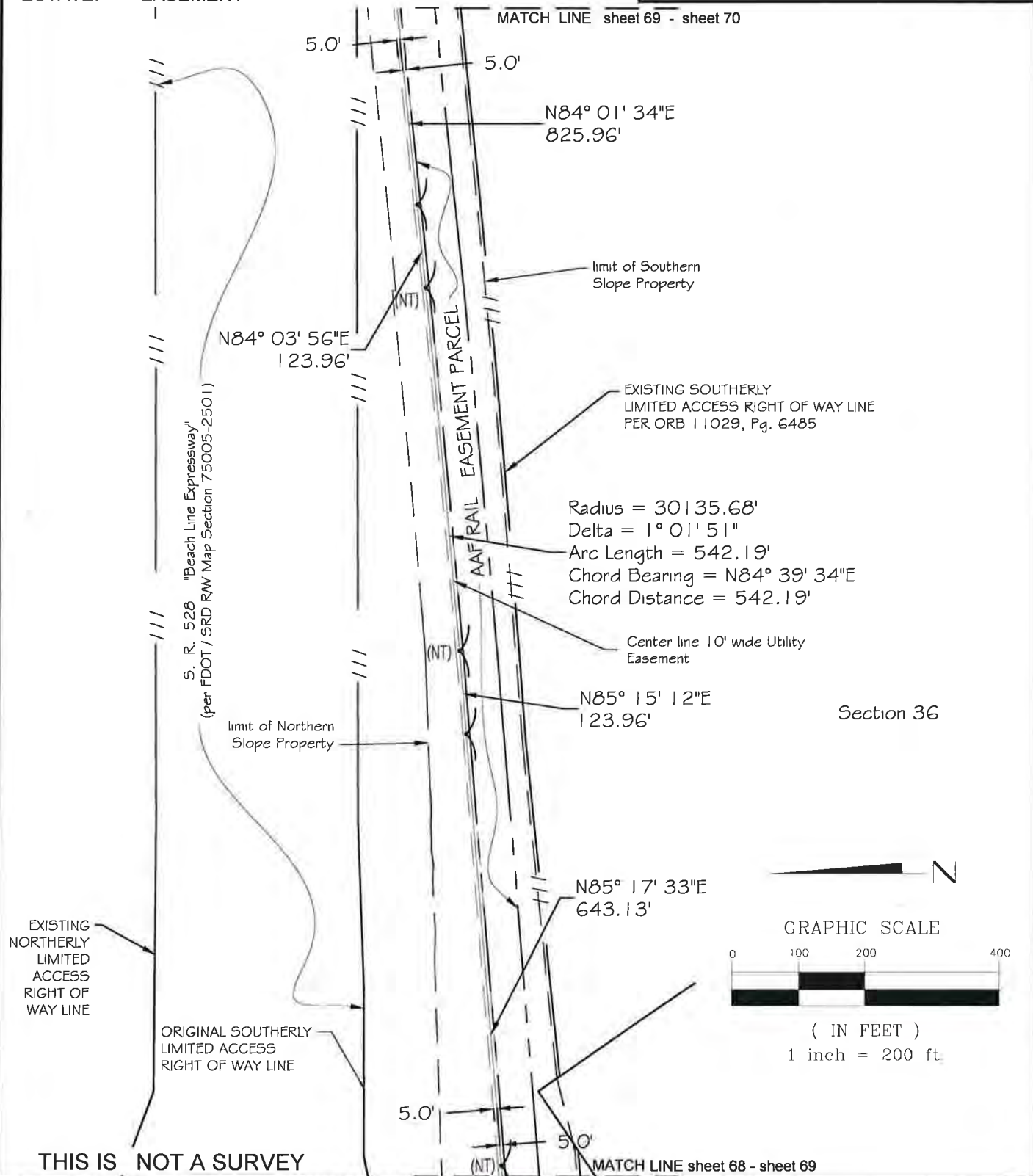


**LEGAL DESCRIPTION and SKETCH**  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 68 OF 70	
REVISIONS	
DATE	BY
05/02/2019	EMO
DRAWN BY: CFX Utility (Consent All 05-05-2019)	



**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT**



FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY

DESIGNED BY: HNTB

DATE: 09/20/2016

DRAWN BY: PEW

AMEC JOB No.: 6374130684

APPROVED BY: RMJ

CFX PROJECT No.: 528-1240

LEGAL DESCRIPTION and SKETCH

 Amec Foster Wheeler Environment & Infrastructure, Inc.

75 East Amelia Street, Suite 200

Orlando, FL 32801 USA  
Phone: (407) 522-7570

Phone: (407) 522-7570

Certificate of Authorization Number LB-0007932

SHEET 69 OF 70

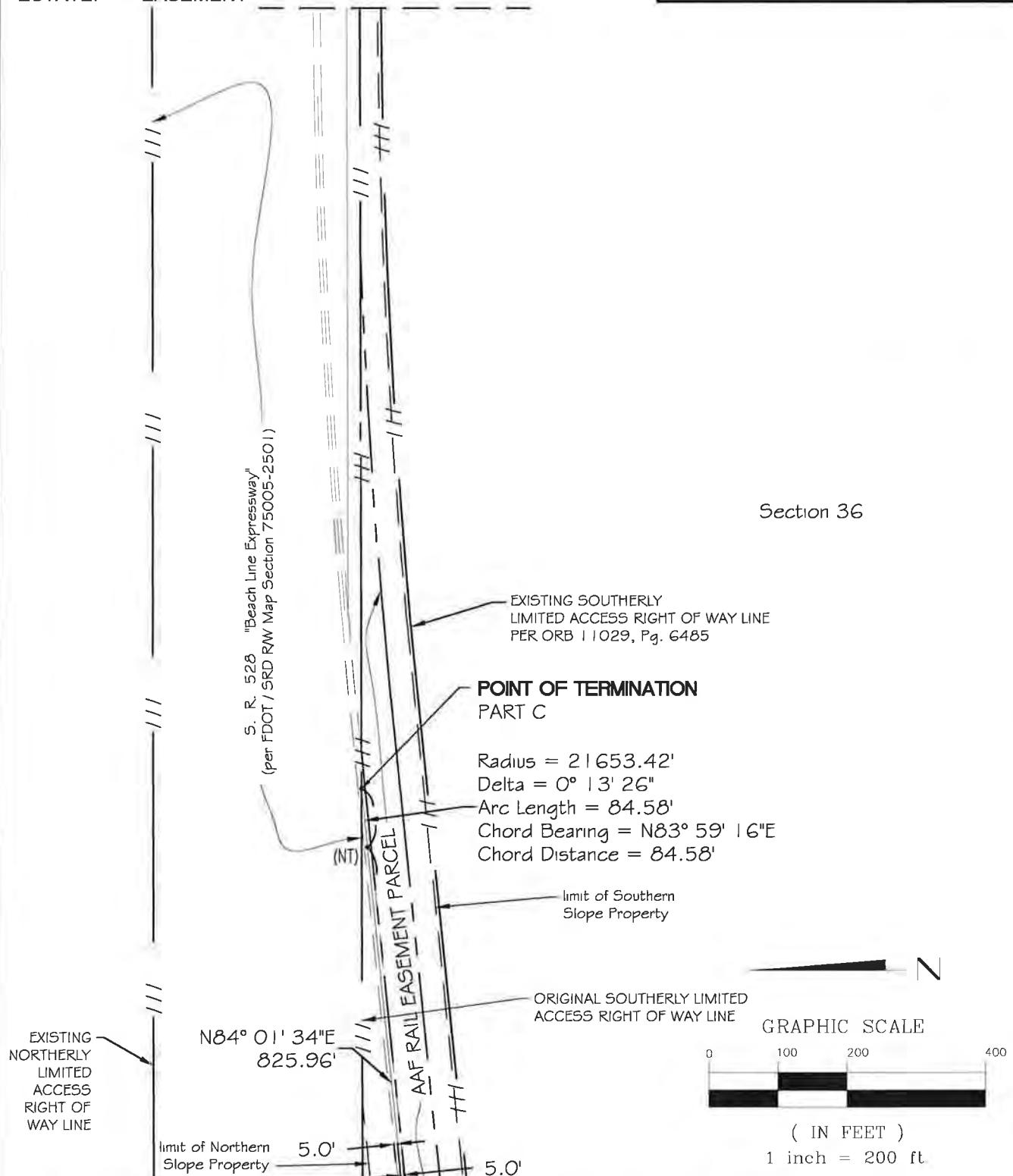
REVISIONS

DATE	BY
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05/02/2019	EMO
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DRAWING NAME: CTR Utility Exposed A11 05-23-2019.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT)  
ESTATE: EASEMENT



FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DESIGNED BY: HNTB DATE: 09/20/2016  
DRAWN BY: PEW AMEC JOB No.: 6374130684  
APPROVED BY: RMJ CFX PROJECT No.: 528-1240

LEGAL DESCRIPTION and SKETCH  
Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 70 OF 70

REVISIONS

DATE BY

05/02/2019 EMO

DRAWING NAME: CFX Utility Easement ATT 01-20-2019.dwg

## **EXHIBIT “3”**

### Description and Sketch of the Remainder Easement Property

[see attached]

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT) To be released  
ESTATE: EASEMENT

### Surveyors Notes

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901) , US Survey Foot, based on the east line of Section 31, Township 23 South, Range 31 East as being South 00° 13' 49" West. The average combined scale factor is 0.999943.
2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record.
3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
4. The location and configuration of the lands described and depicted hereon were provided by the client.
5. This legal description and sketch may have been reduced in size by reproduction.

### LEGEND:

P O B = Point of Beginning  
P O T = Point of Terminus  
ATT = AT & T, inc.  
AAF = All Aboard Florida  
O R B or ORB = Official Records Book  
Pg. = Page  
PID = Parcel Identification Number  
S R = State Road  
CFX = Central Florida Expressway Authority  
R/W or r/w = Right-of-Way  
SEC = section  
OOCEA = Orlando Orange County Expressway Authority  
FPL = Florida Power & Light Company  
I.C.P. = International Corporate Parkway  
O.I.A. = Orlando International Airport  
T23S = Township 23 South  
R30E = Range 30 East  
R33E = Range 33 East

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 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

### SHEET INDEX

Sheet Number	Sheet Description
1	Cover
2	Sketch
3	Legal Description

Robert M. Jones, PLS  
Florida Surveyor and Mapper  
License No. LS-0004201

THIS IS NOT A SURVEY

12/18/2019 BJC  
11/26/2019 BJC

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 1 OF 3
DESIGNED BY: HNTB	DATE: 09/20/2016	 Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932		REVISIONS
DRAWN BY: PEW	AMEC JOB No.: 6374130684			DATE BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240			05/02/2019 EMO





CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT) To be released  
ESTATE: EASEMENT

**EXHIBIT 2 (Release Property)**

Those lands lying in Orange County, Florida conveyed by the ORLANDO/ORANGE COUNTY EXPRESSWAY AUTHORITY contained in INDENTURE recorded in Official Records Book 3073 at Page 376 of the Public Records of Orange County, Florida, being more particularly described as follows:

A 10-foot easement for the installation, maintenance and operation of underground communications systems lying 5 feet left and 5 feet right of the following described center line:

Commencing 67 feet north of the centerline of the Bee Line Expressway and its intersection with State Road 436 at the southwest corner of Section 27, Township 23 South, Range 30 East, in Orange County, Florida; thence in an easterly direction along a line parallel with and 67 feet north of the centerline of said Bee Line Expressway, a distance of 3404 feet, more or less, to the Point of Beginning of said center line; thence continue along said center line, lying parallel with and 67 feet north of the centerline of said Bee Line Expressway, a distance of 103,096 feet, more or less, to a point 67 feet north of the intersection of said Bee Line Expressway and State Road 520 at the northeast corner of Section 35, Township 23 South, Range 33 East, in Orange County, Florida for the Point of Terminus of said center line. At points where obstructions, topography or other considerations may require location of Grantee's underground communications systems elsewhere than on the easement as described herein, it shall be placed in such locations as shall be agreed upon between Grantor and Grantee.

**THIS IS NOT A SURVEY**

12/18/2019 BJC  
11/28/2019 BJC

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 3 OF 3	
DESIGNED BY: HNTB	DATE: 09/20/2016		Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374130684			DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240			05/02/2019	EMO



CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT) To remain  
ESTATE: EASEMENT

### Surveyors Notes

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901) , US Survey Foot, based on the east line of Section 31, Township 23 South, Range 31 East as being South 00° 13' 49" West. The average combined scale factor is 0.999943.
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### LEGEND:

P.O.B = Point of Beginning  
P.O.T = Point of Terminus  
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AAF = All Aboard Florida  
O.R.B. or ORB = Official Records Book  
Pg. = Page  
PID = Parcel Identification Number  
S.R. = State Road  
CFX = Central Florida Expressway Authority  
R/W or r/w = Right-of-Way  
SEC = section  
OOCEA = Orlando Orange County Expressway Authority  
FPL = Florida Power & Light Company  
I.C.P. = International Corporate Parkway  
O.I.A. = Orlando International Airport  
T23S = Township 23 South  
R30E = Range 30 East  
R33E = Range 33 East

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 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

### SHEET INDEX

Sheet Number	Sheet Description
1	Cover
2	Sketch
3	Legal Description

Robert M. Jones, PLS  
Florida Surveyor and Mapper  
License No. LS-0004201

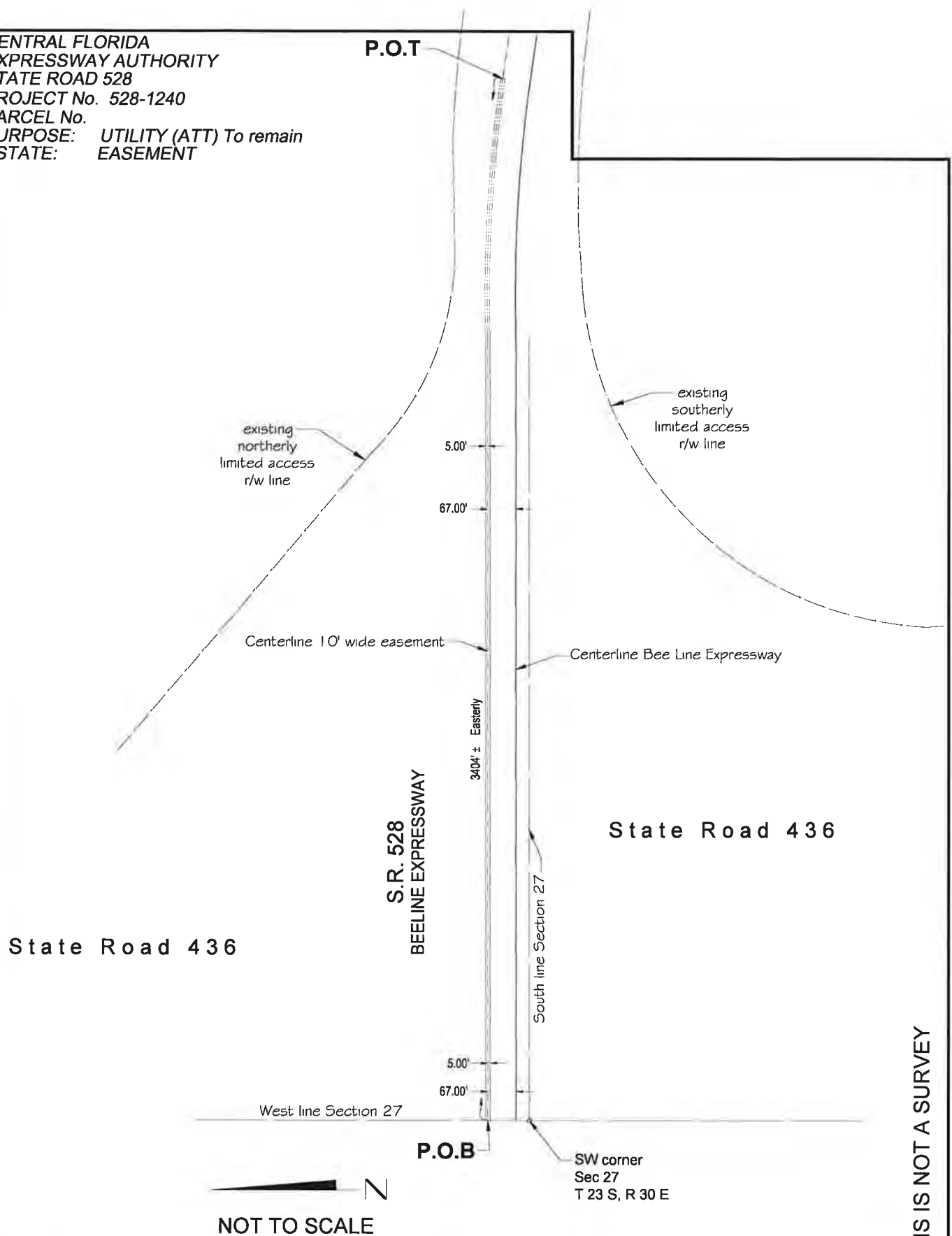
THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 1 OF 3
DESIGNED BY: HNTB	DATE: 09/20/2016	 Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932		REVISIONS
DRAWN BY: PEW	AMEC JOB No.: 6374130684			DATE BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240			05/02/2019 EMO

12/18/2019 BJC

DRAWING NAME: CFX Utility Easement All 05-05-2016.dwg

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT) To remain  
ESTATE: EASEMENT



THIS IS NOT A SURVEY

12/18/2019 BJJ

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 2 OF 3	
DESIGNED BY: HNTB	DATE: 09/20/2016	 amec foster wheeler	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374130684			DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240			05/02/2019	EMO
				GRAPHIC NAME: CFX Utility Easement All 11-15-2015.dwg	

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No.  
PURPOSE: UTILITY (ATT) To remain  
ESTATE: EASEMENT

**EXHIBIT 3 (Remainder Property)**

Those lands lying in Orange County, Florida conveyed by the ORLANDO/ORANGE COUNTY EXPRESSWAY AUTHORITY contained in INDENTURE recorded in Official Records Book 3073 at Page 376 of the Public Records of Orange County, Florida, being more particularly described as follows:

A 10-foot easement for the installation, maintenance and operation of underground communications systems lying 5 feet left and 5 feet right of the following described center line:

Beginning at a point 67 feet north of the centerline of the Bee Line Expressway and its intersection with State Road 436 at the southwest corner of Section 27, Township 23 South, Range 30 East, in Orange County, Florida; thence in an easterly direction parallel with and 67 feet north of the centerline of said Bee Line Expressway, a distance of 3404 feet, more or less, to the Point of Terminus of said Centerline.

At points where obstructions, topography or other considerations may require location of Grantee's underground communications systems elsewhere than on the easement as described herein, it shall be placed in such locations as shall be agreed upon between Grantor and Grantee.

**THIS IS NOT A SURVEY**

12/18/2019 BJC

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 3 OF 3	
DESIGNED BY: HNTB	DATE: 09/20/2016	 amec foster wheeler	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570 Certificate of Authorization Number: B-0007932	REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374130684			DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240			05/02/2019	EMO
				DRAWING NAME: 03 Utility Easement A11-03-06 3/19/09	





1463047 ORANGE  
Nov 30 3 23 PM '79

3700  
pd

ex. 3073 re 376

INDENTURE

THIS INDENTURE made and entered into this 21<sup>st</sup> day  
of NOVEMBER, 1979, by and between the ORLANDO/  
ORANGE COUNTY EXPRESSWAY AUTHORITY, a body politic and corpor-  
ate and agency of the State of Florida, hereinafter called  
"Grantor" and SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY,  
a New York corporation, hereinafter called "Grantee".

WITNESSETH:

WHEREAS, Grantor is owner of certain parcels of real  
estate and premises located in the County of Orange, State of  
Florida, upon which and in connection with which it operates a  
certain highway and appurtenances known as the "Bee Line Express-  
way", and

WHEREAS, Grantor, as owner of the real property in  
connection with said highway, has the full right and power to  
grant easements upon, through, and across said real property; and

WHEREAS, Grantee desires to secure from Grantor an  
easement in connection with the installation, maintenance and  
operation of underground communications systems; and

WHEREAS, Grantor desires to grant and convey unto  
Grantee an easement for such purposes, upon certain terms and  
conditions;

NOW, THEREFORE, in consideration of the premises and  
covenants herein exchanged, and in consideration of the payment  
by Grantee to Grantor of the consideration hereinafter specified,  
the parties do agree as follows:

ORANGE  
COUNTY

219872

STATE OF FLORIDA	
DOCUMENTARY	STAMP TAX
DEPT. OF REVENUE	
F.D. NOV 30 '79	
1952'S	
480.00	

-1-

Ed Scott - will call ✓  
(S. Bell)

48000

1. The Grantor does hereby convey unto the Grantee, its successors and assigns, a ten (10) foot easement for the following purposes, excluding all others, to construct, operate, maintain, modify, enlarge, replace and remove an underground communications system consisting of a maximum of four (4) main cables and such auxiliary and appurtenant cables as shall be required, wires, surface testing terminals, manholes, markers, and other appurtenances, through lands of Grantor on the "Bee Line Expressway", situated in the County of Orange, State of Florida, said easement being more particularly described on Exhibit "A" attached hereto.

It is the intent of the Grantor and the Grantee that a maximum of four (4) cables are to be installed within the conveyed easement and that said cables will be of the type <sup>communications</sup> referred to as ~~12~~ cables <sup>the 12</sup> and that the installation of additional cables would only be authorized if agreed upon by both the Grantee and the Grantor; that auxiliary and appurtenant cables are those short sections of cable between the main cables and repeater stations or other points off the easement; that the right to replace does not include the right to substitute the main cables or any major segment thereof with new and different cables unless agreed upon as stipulated above, but does relate generally to replacement of equipment and facilities for maintenance purposes; further that any major maintenance, replacement, modification or removal of said communications system will be done only in a manner mutually agreed to in advance by the Grantor and the Grantee.

2. Grantee shall pay Grantor for said easement consideration in the amount of \$ 120,000.00 in cash, to the

*all*  
*grag.*



ORLANDO/ORANGE COUNTY EXPRESSWAY AUTHORITY.

3. The rights herein granted include (a) the right of ingress and egress to and from the property of Grantor for the installation, maintenance and operation of said communications systems, at such points as shall be necessary and desirable, provided that the rights as granted shall not apply to vehicles. Vehicles shall enter and leave only at toll plazas, and (b) except under conditions covered by paragraph 8, relating to changes or improvements in the Bee Line Expressway right of way, there shall be no structures or encroachments placed or permitted on Grantee's ten (10) foot easement without the written consent of Grantee. Provided, however, anything contained herein to the contrary notwithstanding, the Grantor shall have the right to ingress and egress and to traverse the easement herein granted and to pave areas of said easement or to permit encroachments or structures thereon which are not inconsistent with the Grantee's use.

4. Special Conditions:

In connection with the construction, operation and maintenance of the said communications system, the Grantee agrees to:

(a) Construct crossings of access roads, fills or areas of embankment, toll plazas and structures to include bridges, box culverts and pavement areas in the manner and at such locations as shall be prescribed by the Grantor.

(b) Secure all necessary permits from the respective state, county, railroad, drainage district or other authority. All construction shall be in strict accordance with such permits.

3073 379

(c) Maintain, including seeding, fertilizing and mulching, all backfill and other area disturbed by construction until they are restored to the condition existing prior to construction and to the satisfaction of the Grantor.

(d) Reimburse Grantor for the costs incurred for maintenance crews doing immediate repair and restoration work on the Bee Line Expressway during construction of the communications system.

(e) Furnish traffic control flagmen, warning signs, flares, blinker lights and other safety devices as required by either Grantor or Grantee during construction or maintenance work. The Manual on Traffic Controls and Safe Practices for Street & Highway Construction, Maintenance and Utility Operations - 1978, is to be used as a guideline.

(f) Abide by all regulations for traffic control as prescribed by the Florida Department of Transportation for similar type work and/or the Florida Highway Patrol.

(g) Release and hold harmless the Grantor from any damage to existing telephone lines or cables, water, electric, sewer, or drainage lines or pipe lines which may be encountered or crossed during construction or maintenance of said communications system. Grantee will be notified in advance of any future system/s that might be placed adjacent to or across the easement.

(h) Reimburse Grantor for all costs incurred for one or more inspectors during construction operations or wherever deemed necessary by the Grantor.

(i) Pay tolls for the entrance and exit of all equipment and vehicles of Grantee and its contractors at the prevailing rates.

(j) Pay all lawful taxes due and owing on said communications system.

5. Grantee assumes full responsibility for all injuries to, or death of, any persons and for damages to property and for all claims, losses or expense which may in any way arise out of construction, maintenance, relocation, change, existence, use or removal of said communications system if caused by negligence of Grantee, its employees, agents or contractors, and Grantee shall indemnify and save Grantor harmless from all liens, losses, expenses or claims of any sort, including loss of revenue, which may arise out of or by reason of the exercise of the rights granted herein and shall defend on behalf of the Grantor any suit brought against said Grantor for any such damage, injury or death.

6. It is understood and agreed that the rights and privileges herein set out are granted only to the extent of the right, title and interest of the Grantor in the land to be entered upon and used by Grantee, which said right, title and interest is the ownership in fee simple of all of the real property used in connection with said Bee Line Expressway. The Grantee will, at all times, assume the risk of and indemnify and save harmless Grantor from and against any and all loss, damage, cost or expense, arising in any manner, or growing out of the exercise or attempted exercise by the Grantee of the herein granted rights and privileges, as to any of the lands not owned in fee simple by the Grantor.

7. Upon the failure, neglect or refusal of Grantee, upon notice in writing from the Grantor, to immediately perform any repair work on said Bee Line Expressway, its access roads, or other improvements, or other property of the Grantor which may be affected by Grantee in the exercise of the rights

granted hereunder, the Grantor may undertake and perform such repair work, and upon receipt of bills for such repair work from the Grantor, Grantee shall forthwith reimburse Grantor for such costs reasonably so incurred.

8. In the event it shall become necessary to rearrange, remove or relocate the communication system to accommodate changes or improvements on or to the Bee Line Expressway and such rearrangements, removals and relocations are reasonably required for such purposes, they will be made by the Grantee at its own expense upon written notice from the Grantor to do so; provided, however, that if the Grantee shall fail to do such work, and within sixty (60) days of receipt of such notice, fails to inform Grantor of its intention to do so and furnish the Grantor with a reasonable schedule for doing such work, the Grantor shall have the right, at its option, to perform said work, at the risk and expense of the Grantee. The provisions of this paragraph are for the exclusive protection of the Grantor, or its successors in title, nearby municipalities and counties in which the Bee Line Expressway is located and shall not apply to any conflict of the Grantee's facilities with improvements contemplated or requested by other parties. Notices to Grantee shall be sent to SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, General Manager, Distribution, 867 Jacobs Building, Jacksonville, FL 32202. In construing this paragraph, it is the intent of the parties that they will each fully cooperate with the other and that the Grantee shall make such changes and relocations as may be necessary to accomplish Grantor's purposes and further, the Grantor will cooperate with the Grantee to the end that such changes and relocations shall be held to the minimum necessary to accomplish the Grantor's purposes, thereby causing a minimum of



disturbance to the Grantee's system.

9. In the event that the said Bee Line Expressway or any portion or part thereof should ever be designated as part of the public highway system, including but not limited to the Federal Interstate System of Highways, and be taken under the control of some authority other than the Grantor, or pursuant to which the Grantor should be under the jurisdiction of others, and under such circumstances as to bring any removal or relocation of the communication system to be constructed hereunder within the coverage of the provisions of any law which provides for or authorizes the payment, repayment or reimbursement of costs of such removal or relocation from public funds, including but not by way of limitation, Section III of the Federal Aid Highway Act of 1956, being Public Law 627 of the 84th Congress, any amendment or re-enactment thereof, then, in all such event, Grantee or its assigns, upon complying with all terms and conditions of the law and rules and regulations adopted pursuant thereto, shall be entitled to receive reimbursement of the cost of such removal or relocation of such communications system to the extent such payment is provided for under such law; provided, however, that nothing contained herein shall require payment or reimbursement to be made by the Grantor.

10. The rights herein granted to Grantee may be assigned or transferred in whole or in part to any company allied or associated with Grantee; provided, however, that such assignment or transfer shall not relieve the new owner or Grantee of any of the duties, obligations or liabilities imposed upon the Grantee by this instrument.

11. Grantee will, if requested by Grantor, file with the Grantor and its Trustee, copies of all contractor's performance bonds affecting any work or service in connection with the construction of the communications system within the easement herein conveyed.

12. The work of constructing and installing the communications system upon and within the easement hereby granted, shall be carried out within a construction period of one (1) year to commence at a date to be agreed upon by the Grantor and the Grantee, unless said construction is modified or extended by mutual agreement of the Grantor and the Grantee.

(a) For the purpose of this Agreement, the construction of said communications system shall be considered complete when the trench has been backfilled and the grading and seeding (restoration) work completed as specified in paragraph 4 (c), and all incidental cleanup work has been completed.

13. All rights of the Grantee herein shall be subordinate to the rights of the bondholders or to holders of bonds which from time to time in the future may be issued for the purposes of providing funds to construct any additional projects under and secured by the 1965 Trust Indenture, the 1970 Supplemental Trust Indenture and subsequent supplemental trust indentures. The easement granted herein shall also be subordinate and inferior to the Lease Purchase Agreement between the Orlando/Orange County Expressway Authority and the State Road Department of Florida, executed in connection with the 1965 Trust Indenture and the Supplemental Lease Purchase Agreement between the Division of Bond Finance of the Department of General Services of the State of Florida and the Orlando/Orange County Expressway Authority and the Department of Transportation of the State of Florida, executed in connection with the 1970 Supplemental Trust Indenture and such future lease purchase agreements as may be executed in connection with the sale of bonds to finance additional projects.

14. The Grantee herein agrees that it will, if called upon, execute such papers or documents as are necessary to effect such subordination in connection with any past or future trust indentures of the Orlando/Orange County Expressway Authority.

15. The term of this easement shall be in perpetuity subject to the conditions hereinbefore set forth.

AGREEMENT BINDING:

The covenants and agreements contained in the foregoing document are binding upon the parties hereto and their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year above written.

Signed, sealed and delivered in the presence of:

*[Signature]*  
C. Norris Pritchard

ORLANDO-ORANGE COUNTY EXPRESSWAY  
AUTHORITY

By: *[Signature]*  
Grantor

ATTEST: *[Signature]*  
Barber

SOUTHERN BELL TELEPHONE AND  
TELEGRAPH COMPANY

By: *[Signature]*  
VICE PRESIDENT Grantee

ATTEST: *[Signature]*  
Assistant Secretary

*[Signature]*  
Nathan H. Skiles  
*[Signature]*  
D. Clyde Johnson

APPROVED BY:

DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF FLORIDA

By: *[Signature]*

APPROVED  
AS TO FORM  
*[Signature]*  
ATTORNEY

STATE OF FLORIDA )  
COUNTY OF DUVAL )

C.I. 3073 PC 385

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared L. EARL CRITTENDEN well known to me to be the Vice President-North Florida of SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, a corporation, and that he acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in him by said corporation.

WITNESS my hand and official seal in the County and State last aforesaid this 15th day of November, 1979.

*James S. Dunsby*  
Notary Public  
My Commission expires:

NOTARY PUBLIC STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES FEB 18 1981  
BONDED THRU GENERAL INS. UNDERWRITERS

STATE OF GEORGIA )  
COUNTY OF FULTON )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared NELL THOMAS well known to me to be the Assistant Secretary of SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, a corporation, and that she acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in her by said corporation and that the seal affixed thereto is the true corporate seal of said corporation.

WITNESS my hand and official seal in the County and State last aforesaid this 20th day of November, 1979.

*Jeanette Cooley*  
Notary Public  
My Commission expires:

Notary Public, Georgia, State at Large  
My Commission Expires July 4, 1983

This instrument prepared by:

J. Fenimore Cooper, Jr.  
P. O. Drawer 1271  
Orlando, Florida 32802



A 10 foot easement lying 5 feet left and 5 feet right of the following described center line:

Beginning at a point 67 feet north of the centerline of the Bee Line Expressway and its intersection with SR 436 at the southwest corner of Section 27, Township 23 South, Range 30 East, in Orange County, Florida; thence in an easterly direction parallel with and 67 feet north of the centerline of the said Bee Line Expressway, a distance of 106,500 feet, more or less, to a point 67 feet north of the intersection of the said Bee Line Expressway and State Road 520 at the northeast corner of Section 35, Township 23 South, Range 83 East, in Orange County, Florida. At points where obstructions, topography or other considerations may require location of Grantee's communications system elsewhere than on the easement as described, it shall be placed in such locations as shall be agreed upon between the Grantor and Grantee.

EXHIBIT "A"

STATE OF FLORIDA )  
COUNTY OF ORANGE )

C.R. 3073 PG 387

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared James B. Greene and George M. Barley, Sr., well known to me to be the Chairman and Secretary of the Orlando-Orange County Expressway Authority, a State Agency, and that they acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in them.

WITNESS my hand and official seal in the County and State last aforesaid this 21st day of November, 1979.



Susan Henderson  
Notary Public  
My Commission Expires:

Notary Public, State of Florida at Large  
My Commission Expires April 27, 1982  
Bonded By American Fire & Casualty Company

STATE OF FLORIDA)  
COUNTY OF LEON )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared Larry K. O'Dell, well known to me to be the Deputy Secretary for Administration for the Florida Department of Transportation, a State Agency, and that he acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in him.

WITNESS my hand and official seal in the County and State last aforesaid this 21st day of November, 1979.



Robin Laurie Johnson  
Notary Public  
My Commission Expires:

Notary Public, State of Florida at Large  
My Commission Expires Feb. 7, 1982  
Bonded By American Fire & Casualty Company

RECORDED & RECORD VERIFIED

James B. Greene  
County Comptroller, Orange Co., Fla.



Return to: A T & T Long Lines, Glen From, Room # AS 355 A  
Box 13970, Orlando, Fla. 32859

1856768 ORANGE  
CO., FL

Nov 10 9 34 AM '82

D.R. 3325 PG 347

PARTIAL ASSIGNMENT OF EASEMENT

This Partial Assignment of Easement, made this 20th day of September, 1982, between SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, a New York corporation, hereinafter called "Grantor" and AMERICAN TELEPHONE AND TELEGRAPH COMPANY, a New York corporation, hereinafter called "Grantee;"

45  
W I T N E S S E T H :

WHEREAS, Grantor is the owner of a certain ten (10) foot easement conveyed to it by Indenture dated November 21, 1979, by ORLANDO/ORANGE COUNTY EXPRESSWAY AUTHORITY and recorded in Official Records Book 3073, page 376, et seq., public records of Orange County, Florida; and

WHEREAS, said Indenture provides that the rights therein granted to Southern Bell Telephone and Telegraph Company may be assigned or transferred in whole or in part to any company allied or associated with Southern Bell; and

WHEREAS, Southern Bell desires to make this partial assignment of such rights to its parent company.

NOW THEREFORE, Grantor, in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations to it paid, the receipt and sufficiency of which is hereby acknowledged, does hereby grant, convey, assign, transfer and set over unto Grantee, its associated and allied companies, its and their respective successors and assigns, the right and privilege to construct, operate, maintain, modify, enlarge, replace

and remove an underground communications cable system consisting of one (1) main cable and such auxiliary and appurtenant cables as shall be required, wires, surface testing terminals, manholes, markers and other appurtenances, within that certain easement on the lands of the ORLANDO/ORANGE COUNTY EXPRESSWAY AUTHORITY known as the "Bee Line Expressway" in Orange County, Florida, together with all the rights and privileges thereunto ensuing pursuant to that certain Indenture dated the 21st day of November, 1979, between the ORLANDO/ORANGE COUNTY EXPRESSWAY AUTHORITY and Grantor, recorded in O.R. 3073, Page 376, et seq., Orange County, Florida;

That the Grantee shall adhere to and abide by all conditions imposed upon Grantor by said easement, both Grantor and Grantee shall remain subject to the duties, obligations and liabilities imposed by said Indenture, and that Grantee shall cooperate fully with the ORLANDO/ORANGE COUNTY EXPRESSWAY AUTHORITY in the exercise of the rights assigned herein.

Grantor expressly reserves all rights in said easement and under said Indenture except those specifically assigned and transferred to Grantee by this partial assignment of easement.

IN WITNESS WHEREOF, the Grantor has caused these presents to be signed as of the day and year first above written.

WITNESSES:

Nathan H. Wilson  
Doraine H. Smith

SOUTHERN BELL TELEPHONE AND  
TELEGRAPH COMPANY

By L. E. Crittenden  
Title Vice President

ATTEST:

By Will E. Thomas  
Title Assistant Secretary

STATE OF FLORIDA

COUNTY OF DUVAL

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared L. E. CRITTENDEN, well-known to me to be the Vice President-Distribution for Florida of Southern Bell Telephone and Telegraph Company, a corporation, and that he acknowledged executing the same in the presence of two (2) subscribing witnesses freely and voluntarily under authority duly vested in him by said corporation.

WITNESS my hand and official seal in the County and State aforesaid this 20th day of September, 1982.

ORANGE  
COUNTY  
2 9 9 7 4 7



*Quinn St. Smith*  
Notary Public, State of Florida  
at Large.

My Commission Expires:  
NOTARY PUBLIC, STATE OF FLORIDA  
My commission expires Sept. 10, 1985

STATE OF GEORGIA

COUNTY OF FULTON

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared NELL A. THOMAS, well-known to me to be the Assistant Secretary of Southern Bell Telephone and Telegraph Company, a corporation, and that (s)he acknowledged affixing and attesting the corporate seal of said corporation freely and voluntarily under the authority duly vested in her/him by said corporation.

WITNESS my hand and official seal in the County and State aforesaid this 25th day of September, 1982.  
October

*Janette Cooley*  
Notary Public

My Commission Expires:  
Notary Public, Georgia, State at Large  
My Commission Expires July 4, 1983

RECORDED & RECORD VERIFIED


*Thomas H. Lister*  
County Comptroller, Orange Co., Fla.

**CONSENT AGENDA ITEM  
#16**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM:  Diego "Woody" Rodriguez, General Counsel

DATE: January 23, 2020

RE: Agreement to Amend the Indenture (Sprint)  
Project: VTUSA, 528 Corridor  
Location: Adjacent to S.R. 528

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## BACKGROUND

On July 23, 1984, CFX's predecessor Orlando-Orange County Expressway Authority and GTE Sprint Communications Corporation ("GTE" now "Sprint"), executed an Indenture Agreement that was recorded on September 18, 1984 (BK 3555/PG 1801). The Indenture Agreement granted to GTE, and Sprint as the successor entity, a 10-foot perpetual easement over certain property owned by CFX to construct, operate, maintain, modify, enlarge, replace, and remove components of a fiber optic cable telecommunications system.

As a result of CFX's multi-party agreement with the City of Orlando, the Greater Aviation Authority and Virgin Trains USA Florida, LLC ("Virgin Trains") to develop an inter-city commercial passenger rail connection between Miami and Orlando with the Orlando terminus located at the Orlando International Airport, the existing location of certain utilities and telecommunications lines will need to be relocated to allow for the construction of the proposed rail.

With the approval of the latest alignment certain carriers will need to be relocated while still maintaining continuity of services for their customers throughout the relocation process. To facilitate that need, the proposed Agreement to Amendment Indenture provides Sprint with a right of entry while relocating some portions of the existing system. The parties will then eventually execute an Amendment to the Original Indenture, so that the location of the new easement premises will be a 10-foot strip of land, the centerline of which is the relocated facilities and will release the non-operational portions of the existing system.

Unlike the AT&T agreement, there are no current legal descriptions for the new locations. However, the as-built locations will be recorded to establish the definitive location of the easement once installation is complete. This Agreement to the Original Indenture will allow Sprint to continue providing services in the existing locations until such time as the new services are finalized. Throughout the process, Sprint, and their contractors, will be working closely with CFX staff and CFX outside consultants to verify the location of the lines.



Costs related to these transactions will be eventually assumed by Virgin Trains but CFX is not receiving any compensation or consideration from AT&T for the relocation. However, the original indenture terms apply including AT&T's obligation to indemnify CFX, as may be necessary.

#### **REQUESTED ACTION**

Board approval of the following is requested:

1. Agreement to Amend the Indenture.

The Right of Way Committee recommended approval on January 22, 2020.

#### **ATTACHMENTS**

- A. Agreement to Amendment Indenture
- B. Original Indenture with Sprint (BK 3555/PG 1801)

## **AGREEMENT TO AMEND INDENTURE**

This Agreement to Amend Indenture (this "Agreement") is entered into as of \_\_\_\_, 20\_\_ by and between Sprint Communications Company L.P., a Delaware Limited Partnership authorized to do business in the State of Florida ("Sprint"), and Central Florida Expressway Authority, a body politic and corporate and agency of the State of Florida ("CFX").

### **RECITALS**

A. On July 23, 1984, the Orlando/Orange County Expressway Authority (the "OOCEA") and GTE Sprint Communications Corporation ("GTE") entered into an Indenture (the "Indenture") under which OOCEA granted to GTE a 10-foot perpetual easement (the "Original Easement") in the right-of-way of the Martin Anderson Bee Line Expressway (the "Right-of-Way") to construct, operate, maintain, modify, enlarge, replace, and remove components of a fiber optic cable telecommunications system (the "Sprint Facilities"). The Indenture was recorded as Doc. No. 2195737, on September 18, 1984, in Official Records Book 3555, Page 1801, of the Public Records of Orange County, Florida.

B. Sprint is the successor in interest to GTE. CFX is the successor in interest to OOCEA.

C. Under the Indenture, GTE installed the Sprint Facilities and two additional PVC conduits (the "CFX Conduits"). The CFX conduits are owned by CFX.

D. Exhibit A to the Indenture fixes the location of the Original Easement by legal description.

E. Virgin Trains USA Florida LLC, f/k/a Brightline Trains LLC, f/k/a All Aboard Florida – Operations, LLC ("Virgin Trains") is in the process of building an inter-city passenger rail line between Orlando and Cocoa in the Right-of-Way (the "Rail Project"). The Rail Project conflicts with the Sprint Facilities and with the CFX Conduit in certain locations within the Right-of-Way. Virgin Trains has requested the relocation of the portions of the Sprint Facilities and the CFX Conduit that are in conflict with the Rail Project.

F. Sprint and CFX have agreed to the relocation of the Sprint Facilities and the CFX Conduit requested by Virgin Trains.

G. CFX has approved the construction plans under which some of the Sprint Facilities will be relocated by installing replacement facilities (the "Relocated Facilities") in a portion of the Right-of-Way outside the Original Easement. Exhibit 1 to this Agreement describes generally the work that Sprint will perform and the locations where that work will occur (the "Relocation Plans").

THEREFORE, the Parties agree as follows:

## AGREEMENTS

1. CFX hereby grants to Sprint a temporary right of entry under which Sprint is permitted to perform the work described in the Relocation Plans and to locate the Relocated Facilities in the Right-of-Way. This temporary right of entry includes the right to have the work performed through Sprint's retained contractors.

2. When all of the Relocated Facilities are operational and all of the Sprint Facilities they replace are no longer operating (the "Effective Events"), the Parties shall execute an Amendment to Indenture, in the form of Exhibit 2 to this Agreement (the "Amendment"), under which (a) Exhibit A to the Indenture is amended so that the easement premises (i) include a 10-foot strip of land, the centerline of which is the Relocated Facilities, and (ii) exclude the portions of the Original Easement on which are located the Sprint Facilities that will no longer be operational on the occurrence of the Effective Events (the "Released Easement Premises"); (b) Sprint releases all of its right, title, and interest in the Released Easement Premises; and (c) CFX grants to Sprint the right to abandon in place the Sprint Facilities that are located in the Released Easement Premises.

3. Promptly following the execution of the Amendment, Sprint shall record the Amendment in Orange County and provide to CFX a copy of the recorded version.

4. Except as expressly provided in this Agreement, the terms of the Indenture shall remain in full force and effect.

5. If any part of this Agreement is adjudicated to be invalid, unenforceable or illegal by a court of competent jurisdiction, such adjudication shall not affect or impair in whole or in part, the validity, enforceability or legality of any remaining portions of this Agreement.

6. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

7. This Agreement may not be modified, amended or supplemented, except in writing duly executed by both parties. No failure or delay in the exercise of any right hereunder, and no course of conduct, shall operate as a waiver of any provision of this Agreement.

8. The persons executing this Agreement represent and warrant that they have proper authority to bind their respective principals.

9. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one agreement.

10. The parties have mutually drafted this Agreement and to the extent there are any ambiguities or uncertainties contained herein, they will not be construed for or against either party hereto as the drafter of this Agreement.

WHEREFORE, the parties have caused this Agreement to be executed by their proper duly authorized officials.

**CENTRAL FLORIDA EXPRESSWAY  
AUTHORITY**

**BY:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

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

**Attest:**

\_\_\_\_\_  
**Approved as to form and legal sufficiency  
for the reliance of CFX only:**

\_\_\_\_\_  
**General Counsel of CFX**

**SPRINT COMMUNICATIONS  
COMPANY, L.P.**

**BY:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

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

**Witnesses for Sprint:**

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

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

## **EXHIBIT 1 TO AGREEMENT TO AMEND INDENTURE**

### **RELOCATION PLANS**

After Virgin Trains has placed conduit and other facilities necessary for the installation of fiber optic cable, Sprint, through its contractors, will install fiber optic cable and perform the activities necessary to connect the fiber optic cable to Sprint's operational network, including, without limitation, hot-cut splicing. In the Temporary Relocation Area described below, the Sprint facilities will be abandoned in place and the area will not become a part of the Relocated Easement Premises. The Permanent Relocation Areas described below will become a part of the Relocated Easement Premises.

#### **TEMPORARY RELOCATION AREA**

Farm Access # 2 (approximately 525 feet – from STA: 6300+50 to STA: 6305+75)

Narcoossee Road (approximately 1100 feet – from STA:5543+50 to STA: 5553+50)

#### **PERMANENT RELOCATION AREAS**

From Narcoossee Road STA 5533+50 to AT&T Hut STA 5573+00 +/-

From Dallas Mainline Toll Plaza STA 6242+00 to east end of the CFX Right-of-Way STA 6475+00+/-

## **EXHIBIT 2 TO AGREEMENT TO AMEND INDENTURE**

### **AMENDMENT TO INDENTURE**

This Amendment to Indenture (this "Amendment") is entered into as of \_\_\_\_\_, 20\_\_ by and between Sprint Communications Company L.P., a Delaware Limited Partnership authorized to do business in the State of Florida ("Sprint"), and Central Florida Expressway Authority, a body politic and corporate and agency of the State of Florida ("CFX").

### **RECITALS**

A. On July 23, 1984, the Orlando/Orange County Expressway Authority (the "OOCEA") and GTE Sprint Communications Corporation ("GTE") entered into an Indenture (the "Indenture") under which OOCEA granted to GTE a 10-foot perpetual easement (the "Original Easement") in the right-of-way of the Martin Anderson Bee Line Expressway to construct, operate, maintain, modify, enlarge, replace, and remove components of a fiber optic cable telecommunications system (the "Sprint Facilities"). The Indenture was recorded as Doc. No. 2195737, on September 18, 1984, in Official Records Book 3555, Page 1801, of the Public Records of Orange County, Florida.

B. Sprint is the successor in interest to GTE. CFX is the successor in interest to OOCEA.

C. Exhibit A to the Indenture fixes the location of the Original Easement by legal description.

D. Portions of the Sprint Facilities have been relocated to accommodate the construction of an inter-city passenger rail line by Virgin Trains USA Florida LLC.

THEREFORE, the Parties agree as follows:

### **AGREEMENTS**

1. The Indenture is hereby amended by deleting Exhibit A to the Indenture and substituting in its place Exhibit A-1 to this Amendment. The real property described in Exhibit A-1 to this Amendment is referred to below as the "Relocated Easement Premises".

2. CFX represents and warrants that it owns fee simple title to the Relocated Easement Premises and that the Relocated Easement Premises are not subject to any declaration, covenant, easement, condition, or agreement that would permit any person to interfere with, impede, supersede, or otherwise adversely affect the Sprint Facilities or Sprint's use and enjoyment of the Relocated Easement Premises as contemplated by the Indenture, as amended by this Amendment.

3. Sprint hereby releases all of Sprint's right, title, and interest in that portion of the Original Easement that is not included within the Relocated Easement Premises (the "Released Easement Premises").

4. CFX hereby grants to Sprint the right to abandon in place the Sprint Facilities that are located in the Released Easement Premises.

5. Except as expressly provided in this Amendment, the terms of the Indenture shall remain in full force and effect.

WHEREFORE, the parties have caused this Amendment to be executed by their proper duly authorized officials.

<b>CENTRAL FLORIDA EXPRESSWAY AUTHORITY</b>	<b>SPRINT COMMUNICATIONS COMPANY, L.P.</b>
<b>BY:</b> _____	<b>BY:</b> _____
<b>TITLE:</b> _____	<b>TITLE:</b> _____
<b>Date:</b> _____	<b>Date:</b> _____
<b>Attest:</b>	<b>Witnesses for Sprint:</b>
_____	_____
<b>Approved as to form and legal sufficiency for the reliance of CFX only:</b>	<b>Print Name:</b> _____
_____	_____
<b>General Counsel of CFX</b>	<b>Print Name:</b> _____

**CFX ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be who executed this Amendment as \_\_\_\_\_ on behalf of the Central Florida Expressway Authority and acknowledged to me that he was fully authorized to do so on its behalf.

WITNESS my hand and official seal:

\_\_\_\_\_  
NOTARY PUBLIC

**SPRINT ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be who executed this Amendment as \_\_\_\_\_ on behalf of Sprint Communications Company L.P. and acknowledged to me that he was fully authorized to do so on its behalf.

WITNESS my hand and official seal:

\_\_\_\_\_  
NOTARY PUBLIC



2195737 ORANGE  
CG.. FL4500  
p2RECORDING REQUESTED BY  
GTE SPRINT COMMUNICATIONS CORPORATION

SEP 18 1 35 PM '84

C.R. 3555 PG 1801

When recorded mail to  
GTE SPRINT COMMUNICATIONS CORPORATION  
6220 South Orange Blossom Trail  
Suite #138  
Orlando, Florida 32809

## INDENTURE

THIS INDENTURE made and entered into this 23rd day of  
JULY, 1984, by and between the ORLANDO/ORANGE COUNTY  
EXPRESSWAY AUTHORITY, a body politic and corporate and agency of  
the State of Florida, hereinafter called "Grantor" and GTE SPRINT  
COMMUNICATIONS CORPORATION, a corporation licensed to do business  
in the State of Florida, hereinafter called "Grantee".

## W I T N E S S E T H:

WHEREAS, Grantor is owner of certain parcels of real  
estate and premises located in the County of Orange, State of  
Florida, upon which and in connection with which it operates a  
certain highway and appurtenances known as the "Martin Anderson  
Bee Line Expressway", and

WHEREAS, Grantor, as owner of the real property in con-  
nection with said highway, has the full right and power to grant  
easements upon, through, and across said real property; and

WHEREAS, Grantee desires to secure from Grantor an ease-  
ment in connection with the installation, maintenance and opera-  
tion of underground fiber optic cable; and

WHEREAS, Grantor desires to grant and convey unto  
Grantee an easement for such purposes, upon certain terms and  
conditons;

NOW, THEREFORE, in consideration of the premises and  
covenants herein exchanged, and in consideration of the payment  
by Grantee to Grantor of the consideration hereinafter specified,  
the parties do agree as follows:

1. The Grantor does hereby convey unto the Grantee, its  
successors and assigns, a 10 foot perpetual non-exclusive ease-  
ment, subject to the reverters hereinafter set forth, for the  
following purposes, excluding all others, to construct, operate,



(casio)

GTE SPRINT  
6220 South Orange Blossom Trail  
Suite #138  
Orlando, Florida 32809  
GRANTEE'S ADDRESS

maintain, modify, enlarge, replace and remove an underground fiber optic cable through lands of the Grantor on a portion of the Martin Anderson Bee Line Expressway situate in the County of Orange, State of Florida, more particularly described on Exhibit "A" and attached hereto. It is the intent of the Grantor and Grantee that the Grantee will install two 2" I.D. PVC conduit for fiber optic cable for the Grantee's use and two additional 2" I.D. PVC conduit, which shall be the property of the Grantor and which shall become the property of the Grantor upon completion and which may be used by the Grantor in any manner in its sole discretion including, but not limited to, leasing to competitors of the Grantee. The conduit to become the property of the Grantor shall be clearly marked so as to be identifiable from those of the Grantee and shall be equally accessible with those of the Grantee. The right of the Grantee to replace does not include the right to substitute the fiber optic system or any major segment thereof with any different systems unless agreed upon by both the Grantor and Grantee but does relate generally to replacement of equipment and facilities for maintenance purposes and any maintenance, replacement, modification or removal of fiber optic system will be done only in the manner mutually agreed to, in advance, by the Grantor and Grantee.

2. Grantee shall pay Grantor for said easement consideration in the amount of SEVENTY THOUSAND and 00/100 DOLLARS (\$70,000.00), said sum to be paid within ten (10) days of the execution of this Agreement, plus cost of materials and installation of the two additional 2" I.D. PVC pipe which are to become the property of the Grantor.

3. The rights herein granted include (a) the right of ingress and egress to and from the property of Grantor for the installation, maintenance and operation of said fiber optic system, at such points as shall be necessary and desirable provided that the rights as granted shall not apply to vehicles.

Vehicles shall enter and leave only at toll plazas, and (b) except under conditions covered by paragraph 8, relating to changes or improvements in the Martin Anderson Bee Line Expressway right of way, there shall be no structures or encroachments placed or permitted on Grantee's 10 foot easement without the written consent of Grantee. Provided, however, anything contained herein to the contrary notwithstanding, the Grantor shall have the right to ingress and egress and to traverse the easement herein granted and to pave areas of said easement or to permit encroachments or structures thereon which are not inconsistent with the Grantee's use.

4. Special Conditions:

In connection with the construction, operation and maintenance of the said communications system, the Grantee agrees to:

(a) Construct crossings of access roads, fills or areas of embankment, toll plazas and structures to include bridges, box culverts and payment areas in the manner and at such locations as shall be prescribed by the Grantor.

(b) Secure all necessary permits from the respective state, county, railroad, drainage district or other authority. All construction shall be in strict accordance with such permits.

(c) Maintain, including seeding, fertilizing and mulching, all backfill and other area disturbed by construction until they are restored to the condition existing prior to construction and to the satisfaction of the Grantor.

(d) Reimburse Grantor for the costs incurred for maintenance crews doing immediate repair and restoration work on

the Martin Anderson Bee Line Expressway during construction of the fiber optic system.

(e) 'Furnish traffic control flagmen, warning signs, flares, blinker lights and other safety devices as required by either Grantor or Grantee during construction or maintenance work. The Manual on Traffic Controls and Safe Practices for Street & Highway Construction, Maintenance and Utility Operations - 1978, is to be used as a guideline.

(f) Abide by all regulations for traffic control as prescribed by the Florida Department of Transportation for similar type work and/or the Florida Highway Patrol.

(g) Release and hold harmless the Grantor from any damage to existing telephone lines or cables, water, electric, sewer or drainage lines or pipe lines which may be encountered or crossed during construction or maintenance of said fiber optic system. Grantee will be notified in advance of any future system/s that might be placed adjacent to or across the easement.

(h) Reimburse Grantor for all costs incurred for one or more inspectors during construction operations or wherever deemed necessary by the Grantor.

(i) Pay tolls for the entrance and exit of all equipment and vehicles of Grantee and its contractors at the prevailing rates.

(j) Pay all lawful taxes due and owing on said fiber optic system.

5. Grantee assumes full responsibility for all injuries to or death of, any persons and for damages to property and for all claims, losses or expense which may in any way arise out of construction, maintenance, relocation, change, existence, use or removal of said communications system if caused by negligence of

Grantee, its employees, agents or contractors, and Grantee shall indemnify and save Grantor harmless from all liens, losses, expenses or claims of any sort, including loss of revenue, which may arise out of or by reason of the exercise of the rights granted herein and shall defend on behalf of the Grantor any suit brought against said Grantor for any such damage, injury or death.

6. It is understood and agreed that the rights and privileges herein set out are granted only to the extent of the right, title and interest of the Grantor in the land to be entered upon and used by Grantee, which said right, title and interest is the ownership in fee simple of all of the real property used in connection with said Martin Anderson Bee Line Expressway. The Grantee will, at all times, assume the risk of and indemnify and save harmless Grantor from and against any and all loss, damage, cost or expense, arising in any manner, or growing out of the exercise or attempted exercise by the Grantee of the herein granted rights and privileges, as to any of the lands not owned in fee simple by the Grantor.

7. Upon the failure, neglect or refusal of Grantee, upon notice in writing from the Grantor, to immediately perform any repair work on said Martin Anderson Bee Line Expressway, its access roads, or other improvements, or other property of the Grantor which may be affected by Grantee in the exercise of the rights granted hereunder, the Grantor may undertake and perform such repair work, and upon receipt of bills for such repair work from the Grantor, Grantee shall forthwith reimburse Grantor for such costs reasonably so incurred.

8. In the event that it shall become necessary to re-arrange, remove or relocate the fiber optic system and the two

2" I.D. PVC conduit which are the property of the Grantor and which have not been leased by Grantor to anyone other than a governmental entity to accommodate changes or improvements on or to the Martin Anderson Bee Line Expressway and such rearrangements, removals and relocations are reasonably required for such purposes, they will be made by the Grantee at its own expense upon written notice from the Grantor to do so; provided, however, that if the Grantee shall fail to do such work, and within sixty (60) days of receipt of such notice, fails to inform Grantor of its intention to do so and furnish the Grantor with a reasonable schedule for doing such work, the Grantor shall have the right, at its option, to perform said work, at the risk and expense of the Grantee. The provisions of this paragraph are for the exclusive protection of the Grantor, or its successors in title, nearby municipalities and counties in which the Martin Anderson Bee Line Expressway is located and shall not apply to any conflict of the Grantee's facilities with improvements contemplated or requested by other parties. Notices to Grantee shall be sent to GTE SPRINT COMMUNICATIONS CORPORATION, P.O. Box 974, 1 Adrian Court, Burlingame, California 94010, Attention: Network Real Estate. In construing this paragraph, it is the intent of the parties that they will each fully cooperate with the other and that the Grantee shall make such changes and relocations as may be necessary to accomplish Grantor's purposes and further, the Grantor will cooperate with the Grantee to the end that such changes and relocations shall be held to the minimum necessary to accomplish the Grantor's purposes, thereby causing a minimum of disturbance to the Grantee's system.

10. The rights herein granted to the Grantee may only be assigned or transferred in whole or in part to wholly-owned subsidiaries of the Grantee and such assignments shall provide

for the termination should the assignee cease to be a wholly-owned subsidiary of the Grantee and provided further that such assignment or transfer shall not relieve the new owner or Grantee of any of the duties, obligations or liabilities imposed upon the Grantee by this instrument.

11. Grantee will, if requested in writing by Grantor, file with the Grantor and its Trustee, copies of all contractor's, performance bonds affecting any work or service in connection with the construction of the fiber optic system within the easement herein conveyed.

12. The work of constructing and installing the fiber optic system upon and within the easement hereby granted, shall be carried out within a construction period of six (6) months to commence at a date to be agreed upon by the Grantor and the Grantee, unless said construction is modified or extended by mutual agreement of the Grantor and the Grantee.

(a) For the purpose of this Agreement, the construction of said communications system shall be considered complete when the trench has been backfilled and the grading and seeding (restoration) work completed as specified in paragraph 4(c), and all incidental cleanup work has been completed.

13. All rights of the Grantee herein shall be subordinate to the rights of the bondholders or to holders of bonds which from time to time in the future may be issued for the purposes of providing funds to construct any additional projects under and secured by the 1965 Trust Indenture, the 1970 Supplemental Trust Indenture and subsequent supplemental trust indentures. The easement granted herein shall also be subordinate and inferior to the Lease Purchase Agreement between the Orlando/Orange County Expressway Authority and the State Road

Department of Florida, executed in connection with the 1965 Trust Indenture and the Supplemental Lease Purchase Agreement between the Division of Bond Finance of the Department of General Services of the State of Florida, and the Orlando/Orange County Expressway Authority and the Department of Transportation of the State of Florida, executed in connection with the 1970 Supplemental Trust Indenture and such future lease purchase agreements as may be executed in connection with the sale of bonds to finance additional projects.

14. The Grantee herein agrees that it will, if called upon, execute such papers or documents as are necessary to effect such subordination in connection with any past or future trust indentures of the Orlando/Orange County Expressway Authority.

15. The term of this easement shall be subject to the conditions hereinbefore set forth.

16. This easement will revert to the Grantor on the occurrence of any of the following occurrences:

(a) Failure of the Grantee or its assigns to comply with any of the terms of this Agreement, after receiving fifteen (15) days written notice by the Grantor of non-compliance.

(b) Abandonment by the Grantee or its assignee.

(c) Attempted involuntary encumbrance, (whether by judgment, attachment or other form attempted by third-party imposition) or, in the event of



filing of bankruptcy, arrangement for creditors, or any other form of insolvency proceeding - state or federal - (voluntary or involuntary).

17. Time shall be of the essence in the Indenture.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year above written.

Signed, sealed and delivered in the presence of:

*August W. Peterson*  
*[Signature]*

ORLANDO/ORANGE COUNTY EXPRESSWAY  
AUTHORITY

By: *James P. [Signature]*  
Chairman

ATTEST: *[Signature]*  
Secretary-Treasurer

GTE SPRINT COMMUNICATIONS  
CORPORATION

*Ronald C. [Signature]*  
*Lawrence L. [Signature]*

By: *[Signature]* VP Engineering  
Grantee

ATTEST:

*[Signature]*  
ASSISTANT SECRETARY

APPROVED BY:

DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF FLORIDA

By: *[Signature]*

PDM 8-13-84

AUG 13 1984

APPROVED AS TO FORM, LEGALITY  
FLORIDA DEPARTMENT OF TRANSPORTATION

APPROVED - FISCAL

DW 8/13/84

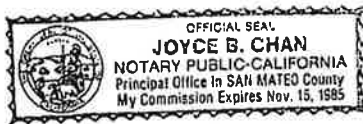
STATE OF California

COUNTY OF San Mateo

C.R. 3555 PG 1810

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared D. SPADOLINO and J.E. GUZMAN JR. well known to me to be the VICE PRESIDENT and ASSISTANT SECRETARY, respectively, of G.T.E. SPRINT COMMUNICATIONS CORPORATION, a Delaware Corporation, and that they acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in them by said corporation and that the seal affixed thereto is the true corporate seal of said corporation.

WITNESS my hand and official seal in the County and State last aforesaid this 11TH day of July 1984.



Joyce B. Chan  
Notary Public

My Commission Expires: 11-15-85

GTE/SPRINT EASEMENTEXHIBIT "A"

A ten foot easement lying 5 feet left and 5 feet right of the following described centerline:

1. Beginning at a point 67 feet south of the centerline of the Bee Line Expressway and its intersection with SR-15 at the northeast corner of Section 36, Township 23 South, Range 30 East, in Orange County, Florida; thence in an easterly direction parallel with and 67 feet south of the centerline of the said Bee Line Expressway, a distance of 91,220 feet, more or less to a point 67 feet south of the intersection of the said Bee Line Expressway and SR-520 at the northeast corner of Section 35, Township 23 South, Range 33 East, in Orange County, Florida. At points where obstructions, topography or other considerations may require location of Grantee's communications system elsewhere than on the easement as described, it shall be placed in such locations as shall be agreed upon between the Grantor and Grantee.
2. At completion of installation, an "As Built" set of drawings (mylar/sepia) showing distance of cables from right-of-way, location of pull boxes and bridge attachments will be submitted to the Orlando-Orange County Expressway Authority for future reference.
3. The 2" PVC conduits will be color coded as to ownership and have metal tape attached for detection.

RECORDED & RECORD VERIFIED

*Thomas H. Miller*


County Comptroller, Orange Co., Fla.

**CONSENT AGENDA ITEM  
#17**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM:  Diego "Woody" Rodriguez, General Counsel

DATE: January 23, 2020

RE: Project: VTUSA, 528 Corridor  
AAF-Cargo Road/Narcoossee Drainage: Reinstatement and Third Amendment to Purchase and Sale Agreement  
Easement Holder: GOAA, Project: 528-143, Parcels: 802-B, 805 and 806

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## BACKGROUND

Virgin Trains USA Florida, LLC ("Virgin Trains") is developing an inter-city commercial passenger rail connection between Miami and Orlando with the Orlando terminus located at the Orlando International Airport.

Virgin Trains along with the City of Orlando ("City"), the Greater Orlando Aviation Authority ("GOAA") and CFX previously entered into a Purchase and Sale Agreement dated November 21, 2018 (referred to as the "Original Agreement"). The Original Agreement was subsequently amended by a "First Amendment" dated January 15, 2019 and a "Second Amendment" dated July 5, 2019.

Together the documents formalize the terms and conditions whereby:

- (1) GOAA and City shall sell and convey title to the 528 Ramp Property to CFX;
- (2) CFX shall sell and convey title to the Cargo Road Ramp Property to GOAA;
- (3) City, GOAA and City shall grant easements to CFX in Easement Parcel 801, Easement Parcel 802, Easement Parcel 803, and Easement Parcel 804 (the "Original Easement Parcels"); and,
- (4) Virgin Trains to fund the various transactions.

The Original Agreement had a closing date of October 1, 2019. Virgin Train proposed an Alternate Technical Concept to GOAA that, if approved, would eliminate need for the Cargo Road Ramp Property and, as a result, CFX's need for a drainage easement in Easement Parcel 801. The parties have now negotiated new terms as part of a Third Amendment and are now proposing the following:

- (1) Two separate closings with the "First Closing" to take place by March 1, 2020 and provide for the sale of the 528 Ramp Property and the granting of easements in Easement Parcel 802, Easement Parcel 803 and Easement Parcel 804 from GOAA and City to CFX;
- (2) A Second Closing in which GOAA and City will grant the easements in the New Easement Parcels to CFX;
- (3) If required, CFX will sell the Cargo Road Ramp Property to GOAA and City, and GOAA and City will grant the easement in Easement Parcel 801 to CFX;
- (4) Appraisals and purchase price as to the Cargo Road Ramp to be obtained and determined, if needed, prior to the Second Closing; and,
- (5) The Second Closing to occur by December 31, 2020 with Virgin Trains again agreeing to fund the various transactions.

The requirement to sell the Cargo Road Ramp Property is tentative and would only be triggered if the FAA rejects the proposed alignment. All parties, including GOAA, are recommending the Alternative Technical Concept as the preferred alignment.

#### **REQUESTED ACTION**

Board approval of the following is requested:

1. Reinstatement and Third Amendment to The Purchase and Sale Agreement.

The Right of Way Committee recommended approval on January 22, 2020.

#### **ATTACHMENTS**

- A. Reinstatement and Third Amendment to The Purchase and Sale Agreement
- B. Exhibit A to the Reinstatement and Third Amendment to The Purchase and Sale Agreement (Parcel 802B)
- C. Exhibit B to the Reinstatement and Third Amendment to The Purchase and Sale Agreement (Parcel 805)
- D. Exhibit C to the Reinstatement and Third Amendment to The Purchase and Sale Agreement (Parcel 806)
- E. Agreement for Purchase and Sale dated November 21, 2018
- F. First Amendment to Purchase Agreement dated January 15, 2019
- G. Second Amendment to Purchase Agreement dated July 5, 2019
- H. Drainage Easement for Parcel 803 (for informational purposes only)
- I. Drainage Easement for Parcel 804 (for informational purposes only)
- J. Drainage Easement for Parcel 802A (for informational purposes only)

**REINSTATEMENT AND THIRD AMENDMENT**  
**TO PURCHASE AND SALE AGREEMENT**

**THIS REINSTATEMENT AND THIRD AMENDMENT TO THE PURCHASE AND SALE AGREEMENT** ("Third Amendment") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the **GREATER ORLANDO AVIATION AUTHORITY**, with a principal address of One Jeff Fuqua Boulevard, Orlando, FL 32827-4399 ("GOAA"), an agency of the City of Orlando, existing as an independent special district under the laws of the State of Florida, the **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a public corporation of the State of Florida with a principal address of 4974 ORL Tower Road, Orlando, FL 32807 ("CFX"), the **CITY OF ORLANDO** (the "City"), a Florida Municipal Corporation existing under the laws of the State of Florida with a principal address of 400 South Orange Avenue, Orlando, FL 32801, and **VIRGIN TRAINS USA FLORIDA LLC**, a Delaware limited liability company (f/k/a Brightline Trains LLC (f/k/a All Aboard Florida - Operations LLC)), authorized to conduct business in Florida, with a principal address 2855 Lejeune Road, 4<sup>th</sup> Floor, Coral Gables, FL 33134 ("Rail Company"). GOAA, CFX, City and Rail Company are sometimes collectively referred to herein as the "Parties".

**RECITALS**

**WHEREAS**, Rail Company is developing an inter-city commercial passenger rail connection between Miami and Orlando with the Orlando terminus located at the Orlando International Airport (the "Rail Project" or "Project");

**WHEREAS**, the Parties previously entered into a Purchase and Sale Agreement dated November 21, 2018, as amended by that certain First Amendment to Purchase and Sale Agreement dated January 15, 2019, as further amended by that certain Second Amendment to Purchase and Sale Agreement (the "Second Amendment") dated July 5, 2019 (as amended, the "Agreement") formalizing the terms and conditions whereby GOAA and City shall sell and convey title to the 528 Ramp Property to CFX, CFX shall sell and convey title to the Cargo Road Ramp Property to GOAA and City, GOAA and City shall grant easements to CFX in Easement Parcel 801, Easement Parcel 802, Easement Parcel 803, and Easement Parcel 804 (the "Original Easement Parcels") and Rail Company shall fund the transactions;

**WHEREAS**, the Agreement states that the Closing at which CFX shall acquire said interest in the 528 Ramp Property and the Easement Parcels and GOAA and City shall acquire said interest in the Cargo Road Ramp Property should occur on or before October 1, 2019, unless extended by written agreement approved by the City, GOAA, and CFX, through the Mayor, Chief Executive Officer, and Executive Director, respectively;

**WHEREAS**, Rail Company has proposed an Alternate Technical Concept to GOAA that, if approved, will eliminate need for the Cargo Road Ramp Property and, as a result, CFX's need for a drainage easement in Easement Parcel 801;

**WHEREAS**, the Parties have determined that GOAA and City shall grant easements to CFX in the easement parcel described on Exhibit A ("Easement Parcel 802B"), in the easement parcel described on Exhibit B ("Easement Parcel 805"), and in the easement parcel described on Exhibit C ("Easement Parcel 806"), (which together are described as the "New Easement Parcels") and Rail Company shall fund the transactions; and

**WHEREAS**, the parties desire to extend the deadline for, and bifurcate the Closing, as defined in the Agreement, to allow for the sale of the 528 Ramp Property and the granting of easements in Easement Parcel 802, Easement Parcel 803 and Easement Parcel 804 from GOAA and City to CFX (the "First Closing") to occur prior to and separate from GOAA and City granting the easement in the New Easement Parcels to CFX and, if required, CFX's sale of the Cargo Road Ramp Property to GOAA and City, and GOAA and City granting the easement in Easement Parcel 801 to CFX (the "Second Closing"), all in accordance with the terms and conditions set forth in the Agreement, as modified by this Third Amendment.

**NOW THEREFORE**, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged by the Parties, CFX, Rail Company, GOAA, and City hereby covenant and agree as follows:

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

2. Appraisal and Purchase Price. Rail Company shall follow the appraisal process set forth in the Agreement to determine the purchase price for the New Easement Parcels. Paragraph 6 with the heading "Appraisal and Purchase Price," shall be modified as follows:

a. Under subparagraph 6(c), entitled "Easement Parcels," the following paragraph shall be added at the end:

"The purchase price (the "New Easement Parcels Purchase Price") to be paid by Rail Company for CFX to GOAA and City for a drainage easement in Easement Parcel 802B, Easement Parcel 805, and Easement Parcel 806 shall be determined by fair-market-value appraisals, certified to all Parties (GOAA, the City, the Rail Company, and CFX), subject to review appraisal certification in accordance with CFX's standard procedures (the "New Easement Appraisals"), which New Easement Appraisals shall be performed by the Appraiser and reviewed by the Review Appraiser at Rail Company's sole cost and expense, and based upon a value within ninety (90) days of the Second Closing. It is specifically acknowledged and agreed that, in preparation of the New Easement Appraisals, the Appraiser and/or Review Appraiser shall consult with GOAA, Rail Company and CFX, their respective legal counsel, staff, and consultants, as the Appraiser and/or Review Appraiser shall deem appropriate. The New Easement Appraisals shall utilize the FAA's definition of Fair Market Value and are subject to FAA approval. GOAA, Rail Company and CFX shall cooperate in good faith with the Appraiser and Review Appraiser in preparation of the Easement Appraisals and their review. The



final New Easement Appraisals shall not be issued until Rail Company has reviewed and approved the New Easement Appraisals. Between thirty (30) to sixty (60) days before the Closing Date, the Rail Company, at its expense, shall obtain and deliver to City, Rail Company and GOAA the New Easement Appraisals and review certification as to Easement Parcel 802B, Easement Parcel 805 and Easement Parcel 806.”

- b. Subparagraph 6(d) entitled “Set-off” will be deleted in its entirety and replaced with the following:

“(d) Purchase Price. At the First Closing, Rail Company shall pay the 528 Ramp Property Purchase Price to GOAA, and the purchase price for Easement Parcel 802, Easement Parcel 803 and Easement Parcel 804 to GOAA. At the Second Closing, Rail Company shall pay the purchase price for the New Easement Parcels (Easement Parcel 802B, Easement Parcel 805 and Easement Parcel 806) to GOAA and, if applicable, Rail Company shall pay the Cargo Road Purchase Price to CFX and the purchase price for Easement Parcel 801 to GOAA.”

3. Closing. Section 10(a) and Paragraph 4 of the Second Amendment are deleted and replaced with the following paragraph:

“The First Closing, as defined above, shall occur on or before March 1, 2020 (the “First Closing Date”), subject to the satisfaction of the conditions precedent as set forth in the Agreement, including obtaining the required Deed of Release from the FAA, unless extended by written agreement approved by the City, GOAA, and CFX, through the Mayor, Chief Executive Officer, and Executive Director, respectively. The Second Closing, as defined above, shall occur on or before December 31, 2020 (the “Second Closing Date”), subject to the satisfaction of the conditions precedent, including obtaining the required Deed of Release from the FAA as to the New Easement Parcels, unless extended by written agreement approved by the City, GOAA, and CFX, through the Mayor, Chief Executive Officer, and Executive Director, respectively. In the event that GOAA rejects the Alternative Technical Concept and the Second Closing does not occur on or before the Second Closing Date, as may be extended, then CFX’s obligation to sell and convey the Cargo Road Ramp Property to GOAA and the City, and GOAA and City’s obligation to grant the easement in Easement Parcel 801 to CFX shall automatically terminate and the Agreement shall be modified as set forth below in subparagraphs 5(a) through 5(l).”

4. Evidence of Title. The following paragraph shall be added to Section 9 of the Agreement:

(e) New Easement Parcels. Prior to March 30, 2020, Rail Company shall, at Rail Company's sole cost and expense, order a commitment from an agent of Rail Company's selection for a policy of Owner's Title Insurance (the “New CFX Commitment”) which shall be written on a title insurance company reasonably

satisfactory and acceptable to CFX. Copies of all documents constituting the exceptions referred to in the New CFX Commitment shall be attached thereto. The New CFX Commitment shall bind the title company to deliver to CFX a policy of Owner's Title Insurance, which shall insure CFX's title to, in CFX's discretion, all of the New Easement Parcels in an amount satisfactory to CFX. In addition, Rail Company shall provide a survey of the New Easement Parcels so that the Title Company will remove the exception from coverage relating to "rights, interests or claims . . . which a correct survey would disclose." CFX shall have thirty (30) days from the date of receipt of the CFX Commitment (or an update thereto) and survey to examine same and notify Rail Company of any defects, a defect being a matter which would render title unmarketable or otherwise unusable by CFX for its intended purposes; provided, however, it is expressly agreed CFX shall take title subject to the CFX Permitted Exceptions, which survey shall be paid for by Rail Company. Any survey exceptions or matters not acceptable to CFX shall be treated as title defects. Rail Company shall have thirty (30) days within which to remove such defect(s), and shall use reasonable efforts to correct any such defect(s) in title within the time period provided therefore; provided, however, (i) Rail Company will not be required to file suit; (ii) Rail Company will not be required to expend more than \$10,000.00, excluding tax liens which will be paid in full, and (iii) GOAA and City shall not be required to expend any funds, in curing any such defect. If Rail Company is unsuccessful in removing same within said time period, CFX shall have the option of: (i) accepting title as it then is; (ii) terminating the Agreement, whereupon each party shall then be released of all further obligations related to the 528 Ramp Property; or (iii) electing to have Rail Company continue to take such reasonable steps as necessary to remove such defects. In the event the time period for cure of any such defects extends beyond the scheduled Closing Date as defined hereinafter, the Closing Date shall extend accordingly, at CFX's option. Those exception items listed in the CFX Commitment and accepted by CFX shall be deemed as CFX Permitted Exceptions. At Closing, since CFX desires title insurance, Rail Company shall pay the premium on behalf of CFX for the Owner's Title Insurance Policy to be issued (with the portion of the title premium for the Owner's Title Insurance Policy, calculated at the "Butler" rate, but in no event shall CFX be required to pay a portion of the premium)."

5. Ratification. Except as expressly amended hereby, all the remaining provisions of the Agreement shall remain in full force and effect.

6. Counterparts; Email Signatures. This Third Amendment may be executed in any number of counterparts, each of which shall be considered an original, and all of such counterparts shall constitute one amendment. To facilitate execution of this Second Amendment, any of the Parties may execute and exchange by e-mail as a portable document format or other electronic imaging, counterparts of the signature page, which shall be deemed original signatures for all purposes.

**[SIGNATURE PAGES TO FOLLOW]**

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names as of the date first above written.

**“CITY”**

**CITY OF ORLANDO, FLORIDA**, a Florida  
municipal corporation

**ATTEST:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

[Official Seal]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

APPROVED AS TO FORM AND LEGALITY FOR  
THE USE AND RELIANCE OF THE CITY OF  
ORLANDO, ONLY, THIS \_\_\_\_ DAY OF  
\_\_\_\_\_, 2020.

By: \_\_\_\_\_

City Attorney  
Roy Payne

**“GOAA”  
GREATER ORLANDO AVIATION AUTHORITY**

**ATTEST:**

\_\_\_\_\_  
Dayci S. Burnette-Snyder,  
Assistant Secretary

By: \_\_\_\_\_  
Phillip N. Brown, A.A.E.,  
Chief Executive Officer

Date: \_\_\_\_\_, 2020

APPROVED AS TO FORM AND LEGALITY this  
\_\_\_ day of \_\_\_\_\_, 2020, for the use and  
reliance by the GREATER ORLANDO AVIATION  
AUTHORITY, only.

Marchena and Graham, P.A., General Counsel.

By: \_\_\_\_\_  
Marchena and Graham, P.A.

**ATTEST:**

\_\_\_\_\_  
Regla ("Mimi") Lamuate  
Board Services Coordinator

**"CFX"**

**CENTRAL FLORIDA**

**EXPRESSWAY AUTHORITY**, a public  
Corporation of the State of Florida

By: \_\_\_\_\_  
Laura Kelley, Executive Director

Date: \_\_\_\_\_, 2020

APPROVED AS TO FORM AND LEGALITY FOR  
USE AND RELIANCE BY THE CENTRAL  
FLORIDA EXPRESSWAY AUTHORITY ONLY.

By: \_\_\_\_\_

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

Date: \_\_\_\_\_, 2020

**"RAIL COMPANY"**  
**VIRGIN TRAINS USA FLORIDA LLC**

**ATTEST:**

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_, 2020

**WITNESSES:**

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

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

**EXHIBIT A**  
**EASEMENT PARCEL 802B**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT NO.: 528-1240  
PARCEL No.: CFX DRAINAGE EASEMENT at OIA #802 Part B  
ESTATE: PERMANENT DRAINAGE EASEMENT

A Parcel of land lying in Section 34, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at a 6"x6" concrete monument (no identification) marking the Northeast Corner of Section 34, Township 23 South, Range 30 East, Orange County, Florida; thence S 00°22'19" E, along the East line of the Northeast 1/4 of said Section 34, a distance of 589.13 feet to the existing southerly Limited Access Right-of-Way Line of State Road 528 per Orlando Orange County Expressway Authority Goldenrod Road Extension Project 903 Right of Way Map; thence run along said southerly Limited Access Right-of-Way Line the following two courses and distances: thence N 76°11'34" W, a distance of 507.78 feet; thence N 80°13'05" W, a distance of 39.30 feet; thence departing said southerly Limited Access Right-of-Way line run S 11°28'31" W, a distance of 66.64 feet to the **POINT OF BEGINNING**; thence S 11°28'31" W, a distance of 20.40 feet; thence run N 78°18'15" W, a distance of 23.07 feet; thence N 11°28'54" E, a distance of 20.40 feet; thence run S 78°18'15" E, a distance of 23.07 feet to the **POINT OF BEGINNING**.

Containing 471 square feet or 0.011 acres, more or less.

### Surveyors Notes

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901) , US Survey Foot, based on the East line of the Northeast 1/4 of Section 34, Township 23 South, Range 30 East as being S00°22'19"E. The average combined scale factor is 0.9999476.
2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record.
3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
4. The location and configuration of the lands described and depicted hereon were provided by the client.
5. This legal description and sketch may have been reduced in size by reproduction.

### LEGEND:

OOCEA = Orlando Orange County Expressway Authority

(C) = Calculated

(D) = Deed

(M) = Measured

(P) = Plat

O R B = Official Records Book

Pg = Page

R = Radius

L = Length of curve (arc distance)

C = Chord distance

Delta = central angle

CB = Chord Bearing

ID = Identification

✓ = Line Not To Scale

PID = Parcel Identification Number

S.R. = State Road

CFX = Central Florida Expressway Authority

R/W = Right-of-Way

C = Centerline

—||— = Limited Access Right-of-way line

PC = Point of Curvature

PT = Point of Tangency

PCC = Point of Compound Curvature

PRC = Point of Reverse Curvature

(NT) = Non Tangent

CM = Concrete Monument

— = section line

— = 1/4 section line

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 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and annotations shown hereon.

Robert M. Jones, IRLS

Florida Surveyor and Mapper, License No. LS-0004201

THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA		LEGAL DESCRIPTION and SKETCH	SHEET 1 OF 2	
DESIGNED BY: HNTB	DATE: 09/21/2015	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374150802		DATE	BY
APPROVED BY: RMJ	DRAWING NAME: Drainage Area No.802 in OIA Part B.dwg		1/13/2020	TW
			addressed CFX comments	



CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
 STATE ROAD 528  
 PROJECT NO.: 528-1240  
 PARCEL No.: CFX DRAINAGE EASEMENT at OIA #802 Part B  
 ESTATE: PERMANENT DRAINAGE EASEMENT

27

POINT OF COMMENCEMENT

6"x6" concrete monument (no ID)  
 northeast corner Section 34,  
 Township 23 South, Range 30 East

26

East line of the Northeast 1/4 of Section 34,  
 Township 23 South, Range 30 East  
 (bearing basis)

NORTHERLY LIMITED ACCESS  
 RIGHT OF WAY LINE

NE 1/4

S. R. 528 'Beach Line Expressway'  
 variable width right-of-way  
 (per OOCEA Section 1.1, 1.2 and Project 903  
 Right of Way Maps)

589.13'  
 500° 22' 19"E

N80° 13' 05"W 39.30'

EXISTING  
 SOUTHERLY LIMITED ACCESS  
 RIGHT OF WAY LINE

ORIGINAL SOUTHERLY  
 LIMITED ACCESS  
 RIGHT OF WAY LINE

S78° 18' 15"E 23.07'

S11° 28' 31"W 66.64'

S80° 13' 05"E

N76° 11' 34"W

507.78'

N11° 28' 54"E 20.40'

POINT OF BEGINNING

N78° 18' 15"W 23.07'

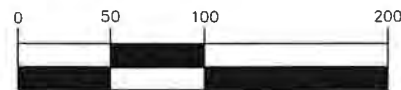
S11° 28' 31"W 20.40'

34

35



GRAPHIC SCALE



( IN FEET )

1 inch = 100 ft.

THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA

DESIGNED BY: HNTB

DATE: 09/21/2015

DRAWN BY: PEW

AMEC JOB No.: 6374150802

APPROVED BY: RMJ

DRAWING NAME: Drainage Area No.802 in OIA Part B.dwg

LEGAL DESCRIPTION and SKETCH



Amec Foster Wheeler Environment & Infrastructure, Inc.  
 75 East Amelia Street, Suite 200  
 Orlando, FL 32801 USA  
 Phone: (407) 522-7570  
 Certificate of Authorization Number LB-0007932

SHEET 2 OF 2

REVISIONS

DATE	BY
1/13/2020	TW
addressed CFX comments	

**EXHIBIT B**  
**EASEMENT PARCEL 805**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**STATE ROAD 528**  
**PROJECT NO.: 528-1240**  
**PARCEL: CFX DRAINAGE EASEMENT AT OIA #805**  
**ESTATE: PERMANENT DRAINAGE EASEMENT**

A parcel of land lying in Section 36, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

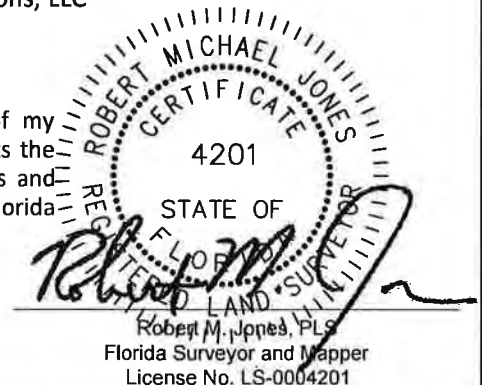
Commence at a 6" x 6" concrete monument marking the Northeast Corner of Section 35, Township 23 South, Range 30 East, Orange County, Florida; thence run S00°06'56"E, along the East line of the Northeast 1/4 of said Section 35, a distance of 1250.09 feet to the existing Southerly Limited Access Right-of-Way Line of State Road 528 per Orlando Orange County Expressway Authority Section 1.2 Right of Way Map; thence Easterly along said Southerly Limited Access Right-of-Way Line S89°53'39"E, a distance of 528.03 feet to the **POINT OF BEGINNING** of the herein described parcel; thence continue along said Southerly Limited Access Right-of-Way Line, S89°53'39"E, a distance of 25.00 feet; thence departing said Southerly Limited Access Right-of-Way Line S00°31'44"W, a distance of 113.48 feet; thence N89°31'40"W, a distance of 25.00 feet; thence N00°31'44"E, a distance of 113.32 feet to the Southerly Limited Access Right-of-Way Line of State Road 528 and the **POINT OF BEGINNING**.

Containing 2835 square feet or 0.065 acres, more or less.

**Surveyors Notes**

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901) , US Survey Foot, based on the East line of the Northeast 1/4 of Section 35, Township 23 South, Range 30 East as being South 00°06'56" East. The average combined scale factor is 0.9999452.
2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record.
3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
4. The location and configuration of the lands described and depicted hereon were provided by the client.
5. This legal description and sketch may have been reduced in size by reproduction.
6. This legal description and sketch is certified to: All Aboard Florida-Operations, LLC

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 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.



**THIS IS NOT A SURVEY**

<b>PROJECT TITLE:</b> <b>Sketch of Description</b> <b>CFX Drainage Parcel 805</b> Section 36, Township 23 South, Range 30 East City of Orlando, Orange County, Florida	1/13/2020 TW Added CFX review comments DATE BY DESCRIPTION REVISION
 <b>Wood Environment &amp; Infrastructure Solutions, Inc.</b> 550 Northlake Boulevard, Suite 1000 Altamonte Springs, FL 32701 USA Phone: (407) 522-7570 www.woodplc.com Certificate of Authorization Number LB-0007932	DRAWN BY: TW CHKD. BY: RMJ DATE: 12/09/2019 DATE: 12/09/2019 JOB No. 6374150802 SCALE: N/A SHT. 1 OF 2 DRAWING NAME: CFX Drainage Easements 805.dwg

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**STATE ROAD 528**  
**PROJECT NO.: 528-1240**  
**PARCEL: CFX DRAINAGE EASEMENT AT OIA #805**  
**ESTATE: PERMANENT DRAINAGE EASEMENT**

**GRAPHIC SCALE**



(IN FEET)  
 1 inch = 100 ft.



35 36

**POINT OF COMMENCEMENT**  
 6"x6" concrete monument  
 northeast corner Section 35,  
 Township 23 South, Range 30 East

S00° 06' 56"E 1250.09'

East line of the Northeast 1/4 of Section 35,  
 Township 23 South, Range 30 East  
 (Bearing Basis)

**LEGEND:**

- AAF = All Aboard Florida
- ORB = Official Records Book
- S.R. = State Road
- C.R. = County Road
- CFX = Central Florida Expressway Authority
- ||--- = Limited Access Right-of-way line
- RLSE = All Aboard Florida Rail line slope easement
- RLE = All Aboard Florida Rail line easement
- OOCEA = Orlando Orange County Expressway Authority
- CS = Point of change from circular curve to spiral curve
- TRK = Track
- ST = Point of change from spiral curve to tangent

S. R. 528 "Beach Line Expressway"  
 300' wide Right of Way (per OOCEA Section 1.2 Right of Way Map)

Existing Southerly Limited Access  
 Right of Way line per OOCEA Map Section 1.2

**S89° 53' 39"E 25.00'**  
**Point of Beginning**

S89° 53' 39"E 528.03'

N00° 31' 44"E 113.32'

TS TRK 2 5494+67.16

RLE 801

SC TRK 2 5495+91.16

RLSE 851

**N89° 31' 40"W 25.00'**

**S00° 31' 44"W 113.48'**

RLSE 852

**THIS IS NOT A SURVEY**

PROJECT TITLE:

**Sketch of Description**  
**CFX Drainage Parcel 805**  
 Section 36, Township 23 South, Range 30 East  
 City of Orlando, Orange County, Florida

**Wood Environment & Infrastructure Solutions, Inc.**

550 Northlake Boulevard, Suite 1000

Altamonte Springs, FL 32701 USA

Phone: (407) 522-7570

www.woodplc.com

Certificate of Authorization Number LB-0007932

**wood.**

1/13/2020	TW	Added CFX review comments
DATE	BY	DESCRIPTION
REVISION		
DRAWN BY: TW	CHKD. BY: RMJ	
DATE: 12/09/2019	DATE: 12/09/2019	
JOB No. 6374150802	SCALE: 1" = 100'	SHT. 2 OF 2
DRAWING NAME: CFX Drainage Easements 805.dwg		

EXHIBIT C  
EASEMENT PARCEL 806

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**STATE ROAD 528**  
**PROJECT NO.: 528-1240**  
**PARCEL: CFX DRAINAGE EASEMENT AT OIA #806**  
**ESTATE: PERMANENT DRAINAGE EASEMENT**

A parcel of land lying in Section 36, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

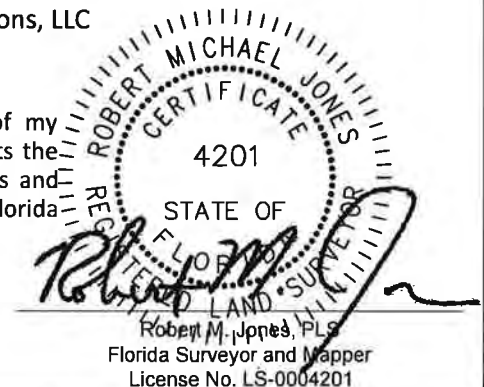
Commence at a 6" x 6" concrete monument marking the Northeast Corner of Section 35, Township 23 South, Range 30 East, Orange County, Florida; thence run S00°06'56"E, along the East line of the Northeast 1/4 of said Section 35, a distance of 1250.09 feet to the existing Southerly Limited Access Right-of-Way Line of State Road 528 per Orlando Orange County Expressway Authority Section 1.2 Right of Way Map; thence Easterly along said Southerly Limited Access Right-of-Way Line S89°53'39"E, a distance of 894.83 feet to the Northwest corner of Parcel 907-801, Part A as described in document 20180748072 of the Public Records of Orange County, Florida; thence departing said Southerly Limited Access Right-of-Way Line S00°06'21"W, along the West line of said parcel, a distance of 37.50 feet to the **POINT OF BEGINNING** of the herein described parcel; thence S89°53'39"E, along the South line of said parcel, a distance of 25.50 feet to the Southeast corner of said parcel; thence departing said parcel line S00°06'21"W, a distance of 77.58 feet; thence N89°53'39"W, a distance of 25.50 feet; thence N00°06'21"E, a distance of 77.58 feet to the **POINT OF BEGINNING**.

Containing 1978 square feet or 0.045 acres, more or less.

**Surveyors Notes**

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the East line of the Northeast 1/4 of Section 35, Township 23 South, Range 30 East as being South 00°06'56" East. The average combined scale factor is 0.9999452.
2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record.
3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
4. The location and configuration of the lands described and depicted hereon were provided by the client.
5. This legal description and sketch may have been reduced in size by reproduction.
6. This legal description and sketch is certified to: All Aboard Florida-Operations, LLC

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 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.



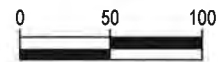
**THIS IS NOT A SURVEY**

<b>PROJECT TITLE:</b> <b>Sketch of Description</b> <b>CFX Drainage Parcel 806</b> Section 36, Township 23 South, Range 30 East City of Orlando, Orange County, Florida	1/13/2020	TW	Added CFX review comments
	DATE	BY	DESCRIPTION
	REVISION		
	DRAWN BY: TW	CHKD. BY: RMJ	
	DATE: 12/09/2019	DATE: 12/09/2019	
 <b>Wood Environment &amp; Infrastructure Solutions, Inc.</b> 550 Northlake Boulevard, Suite 1000 Altamonte Springs, FL 32701 USA Phone: (407) 522-7570 www.woodplc.com Certificate of Authorization Number LB-0007932	JOB No. 6374150802	SCALE: N/A	SHT. 1 OF 2
	DRAWING NAME: CFX Drainage Easement 806.dwg		



**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**STATE ROAD 528**  
**PROJECT NO.: 528-1240**  
**PARCEL: CFX DRAINAGE EASEMENT AT OIA #806**  
**ESTATE: PERMANENT DRAINAGE EASEMENT**

**GRAPHIC SCALE**



(IN FEET)

1 inch = 100 ft

**NORTH**

**35** **36**  
**POINT OF COMMENCEMENT**  
 6"x6" concrete monument  
 northeast corner Section 35,  
 Township 23 South, Range 30 East

**S00° 06' 56"E 1250.09'**

**LEGEND:**

AAF = All Aboard Florida  
 ORB = Official Records Book  
 S.R. = State Road  
 C.R. = County Road  
 CFX = Central Florida Expressway Authority  
 ——— = Limited Access Right-of-way line  
 RLSE = All Aboard Florida Rail line slope easement  
 RLE = All Aboard Florida Rail line easement  
 OOCEA = Orlando Orange County Expressway Authority  
 CS = Point of change from circular curve to spiral curve  
 TRK = Track  
 ST = Point of change from spiral curve to tangent

**S. R. 528 "Beach Line Expressway"**  
 300' wide Right of Way (per OOCEA Section 1.2 Right of Way Map)

East line of the Northeast 1/4 of Section 35,  
 Township 23 South, Range 30 East  
 (Bearing Basis)

Existing Southerly Limited Access  
 Right of Way line per OOCEA Map Section 1.2

**Point of Beginning**

(west line)  
**S00° 06' 21"W 37.50'**

Parcel 907-801 Part A  
 Document No. 20180748072

(south line)  
**S89° 53' 39"E 25.50'**

**S89° 53' 39"E 894.83'**

RLSE 852

CS TRK 1 5500+36.43

ST TRK 1 5501+60.43

(N.W. Corner)

(S.E. Corner)

RLE 801

RLSE 851

CS TRK 2 5500+11.48

**N00° 06' 21"E 77.58'**

**N89° 53' 39"W 25.50'**

**S00° 06' 21"W 77.58'**

**THIS IS NOT A SURVEY**

PROJECT TITLE:

**Sketch of Description**  
**CFX Drainage Parcel 806**  
 Section 36, Township 23 South, Range 30 East  
 City of Orlando, Orange County, Florida

**Wood Environment & Infrastructure Solutions, Inc.**

550 Northlake Boulevard, Suite 1000  
 Altamonte Springs, FL 32701 USA  
 Phone: (407) 522-7570  
 www.woodplc.com  
 Certificate of Authorization Number LB-0007932

1/13/2020	TW	Added CFX review comments	
DATE	BY	REVISION	
DRAWN BY:	TW	CHKD. BY:	RMJ
DATE:	12/09/2019	DATE:	12/09/2019
JOB No.	6374150802	SCALE:	1" = 100'
		SHT.	2
		OF	2
DRAWING NAME: CFX Drainage Easement 806.dwg			

**wood.**



**MARCHENA AND GRAHAM, P.A.**

**MARCOS R. MARCHENA  
KEITH A. GRAHAM  
YOVANNIE RODRIGUEZ  
CHRISTOPHER J. WILSON**

**976 LAKE BALDWIN LANE, SUITE 101  
ORLANDO, FL 32814  
TELEPHONE: (407) 658-8566  
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**MEREDITH WEBER HAMMOCK  
JESSICA A. MAUGERI  
ANNE VAN DEN BERG  
SHANNON M. WIGGINS**

**WRITER'S EMAIL: JMAUGERI@MGFIRM.COM**

November 30, 2018

11/30/18 3:41 PM

**VIA FEDERAL EXPRESS**

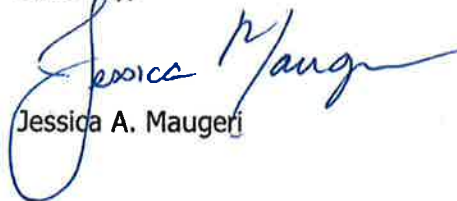
Central Florida Expressway Authority  
4974 ORL Tower Road  
Orlando, FL 32807  
Attn.: Linda Lanosa  
Deputy General Counsel

Re: Purchase and Sale Agreement by and between the Greater Orlando Aviation Authority, Central Florida Expressway Authority, the City of Orlando and All Aboard Florida – Operations, LLC

Dear Ms. Lanosa,

Enclosed please find a fully-executed original of the above-referenced Agreement. If you have any questions, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jessica Maugeri'. The signature is fluid and cursive, with the first name 'Jessica' and last name 'Maugeri' clearly visible.  
Jessica A. Maugeri

JAM/lac  
Enclosure



## Linda Lanosa

---

**From:** Jessica Maugeri <jmaugeri@mgfirm.com>  
**Sent:** Tuesday, December 04, 2018 12:22 PM  
**To:** Linda Lanosa; Christopher Wilson  
**Cc:** dkeeter@dewberry.com  
**Subject:** RE: 528-1240, Purchase and Sale Agreement (PSA)

Linda,

I did see your handwritten changes to Exhibit "H" and are ok with you modifying your fully-executed original to include the same change. Once it comes time to close, we will make sure that the deed executed at closing includes the handwritten revisions to the form of the Deed in Exhibit "H" to the PSA. Is this plan acceptable to you?

Thank you,

**Jessica A. Maugeri, Esq.**

Marchena and Graham, P.A.  
976 Lake Baldwin Lane, Suite 101  
Orlando, FL 32814  
Tel: 407-658-8566  
Fax: 407-281-8564  
E-mail: [jmaugeri@mgfirm.com](mailto:jmaugeri@mgfirm.com)

*Donal* *CB*



**MARCHENA&GRAHAM PA**

The information contained in this E-mail and/or attachments is intended only for the personal and confidential use of the intended recipient. This message may be an attorney-client communication, and as such is privileged and confidential. If the reader of this message is not the intended recipient(s) or an agent responsible for delivering it to the intended recipient(s), you are hereby notified that you have received this document in error. Any review, dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone or e-mail and delete the original message. Thank you.

IRS CIRCULAR 230 DISCLOSURE Under regulations issued by the U.S. Treasury, to the extent that tax advice is contained in this communication (or any attachment or enclosure hereto), you are advised that such tax advice is not intended or written to be used, and cannot be used by you, or any other party to whom this correspondence is shown, for the purpose of: (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending the tax advice addressed herein to any other party.

**From:** Linda Lanosa <[Linda.Lanosa@cfxway.com](mailto:Linda.Lanosa@cfxway.com)>  
**Sent:** Monday, December 3, 2018 4:12 PM  
**To:** Christopher Wilson <[cwilson@mgfirm.com](mailto:cwilson@mgfirm.com)>; Jessica Maugeri <[jmaugeri@mgfirm.com](mailto:jmaugeri@mgfirm.com)>  
**Cc:** dkeeter@Dewberry.com  
**Subject:** RE: 528-1240, Purchase and Sale Agreement (PSA)

Chris and Jessica,

Thank you for sending me a fully-executed original PSA. Unfortunately, Exhibit H did not include the correct form of the Special Warranty Deed showing a reservation of limited access (L/A) rights. Exhibit H should have stated that L/A rights are being reserved, not conveyed. This will allow the L/A lines being reestablished to be reserved. The L/A lines that will be released will be addressed through the filing of a separate notice of release, which notice was not incorporated into the PSA.

**PURCHASE AND SALE AGREEMENT**

**THIS PURCHASE AND SALE AGREEMENT** ("Agreement") is made and entered into as of the 21<sup>st</sup> day of November, 2018, by and between the **GREATER ORLANDO AVIATION AUTHORITY**, with a principal address of One Jeff Fuqua Boulevard, Orlando, FL 32827-4399 ("GOAA"), an agency of the City of Orlando, existing as an independent special district under the laws of the State of Florida, the **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a public corporation of the State of Florida with a principal address of 4974 ORL Tower Road, Orlando, FL 32807 ("CFX"), the **CITY OF ORLANDO** (the "City"), a Florida Municipal Corporation existing under the laws of the State of Florida with a principal address of 400 South Orange Avenue, Orlando, FL 32801, and **ALL ABOARD FLORIDA – OPERATIONS LLC**, a Delaware limited liability company authorized to conduct business in Florida, with a principal address 2855 Lejeune Road, 4<sup>th</sup> Floor, Coral Gables, FL 33134 ("RAIL COMPANY"). GOAA, CFX, CITY and Rail Company are sometimes collectively referred to herein as the "Parties".

**WITNESSETH:**

**WHEREAS**, GOAA is a public body corporate and politic duly organized and validly existing under Chapter 98-492, Special Laws of Florida 1998, as amended (the "GOAA Act"), as an independent special district and agency of the City of Orlando, Florida; and

**WHEREAS**, the City is fee owner of that certain real property located in Orange County, Florida, consisting of approximately 2.28 acres, being more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "528 Ramp Property"); and

**WHEREAS**, GOAA occupies, controls, and operates the 528 Ramp Property, pursuant to that certain Amended and Restated Operation and Use Agreement by and between GOAA and City, dated August 31, 2015, with an effective date of October 1, 2015 (the "Operating Agreement"), and that certain Memorandum of Operation and Use Agreement filed March 23, 2016 in Official Records as Clerk's Document No. 20160146368, Public Records of Orange County, Florida; and

**WHEREAS**, CFX is fee owner of that certain real property located in Orange County, Florida, consisting of approximately 0.229 acres, being more particularly described in **Exhibit "B"** attached hereto and incorporated herein by this reference (the "Cargo Road Ramp Property"); and

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**WHEREAS**, City is fee owner of that certain real property located in Orange County, Florida, consisting of approximately 0.097 acres, being more particularly described on **Exhibit "C"** attached hereto and incorporated herein by this reference ("Easement Parcel 801"); and

**WHEREAS**, City is fee owner of that certain real property located in Orange County, Florida, consisting of approximately 0.035 acres, being more particularly described on **Exhibit "D"** attached hereto and incorporated herein by this reference ("Easement Parcel 802"); and

**WHEREAS**, City is fee owner of that certain real property located in Orange County, Florida, consisting of approximately 0.118 acres, being more particularly described on **Exhibit "E"** attached hereto and incorporated herein by this reference ("Easement Parcel 803"); and

**WHEREAS**, City is fee owner of that certain real property located in Orange County, Florida, consisting of approximately 0.42 acres, being more particularly described on **Exhibit "F"** attached hereto and incorporated herein by this reference ("Easement Parcel 804"); and

**WHEREAS**, GOAA occupies, controls and operates Easement Parcel 801, Easement Parcel 802, Easement Parcel 803 and Easement Parcel 804 (collectively the "Easement Parcels") pursuant to the Operating Agreement (the 528 Ramp Property, the Cargo Road Ramp Property, Easement Parcel 801, Easement Parcel 802, Easement Parcel 803 and Easement Parcel 804 collectively referred to as the "Properties"); and

**WHEREAS**, Rail Company is developing an inter-city commercial passenger rail connection between Miami and Orlando with the Orlando terminus located at the Orlando International Airport (the "Rail Project" or "Project"); and

**WHEREAS**, as a result of the development of the Rail Project, CFX agrees to purchase, and GOAA and City desire to sell, fee simple interest in the 528 Ramp Property, all upon the terms and conditions set forth herein; and

**WHEREAS**, as a result of the development of the Rail Project, GOAA and City desire to purchase, and CFX agrees to sell, fee simple interest in the Cargo Road Ramp Property, all upon the terms and conditions set forth herein; and

**WHEREAS**, as a result of the development of the Rail Project and the sale of the Cargo Road Ramp Property, drainage will have to be redirected and CFX will require drainage easements on the Easement Parcels ("Drainage Easements"); and

**WHEREAS**, the Rail Company wishes to fund the entire transaction because the additional CFX Right-of-Way on CFX property and on GOAA property are required to accommodate an easement for the Rail Company for the Rail Project; and

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**WHEREAS**, pursuant to the terms of the Operating Agreement and the terms of the GOAA Act as set forth in Chapter 16 of the Charter of the City of Orlando, Florida, City and GOAA have the authority to make the determination to sell, convey and accept various interests in and to the 528 Ramp Property, the Cargo Road Ramp Property and the Easement Parcels, including, without limitation, conveyance of fee simple, and the granting of perpetual easements and rights of entry; and

**WHEREAS**, CFX was created by Part III, Chapter 348, Florida Statutes (the "CFX Act") to, among other things, construct, improve, maintain and operate a limited access toll road known as the Central Florida Expressway System; and was granted all powers necessary and convenient to conduct its business, including the power to contract with other public agencies; and

**WHEREAS**, the Parties desire to formalize the terms and conditions whereby GOAA and the City shall sell and convey title to the 528 Ramp Property to CFX, CFX shall sell and convey title to the Cargo Road Ramp Property to GOAA, and GOAA shall grant easements to CFX in the Easement Parcels; Rail Company shall fund the transactions and CFX shall acquire said interest in the 528 Ramp Property and the Easement Parcels and GOAA and City shall acquire said interest in the Cargo Road Ramp Property;

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements herein set forth, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged by the parties hereto, CFX, Rail Company, GOAA, and the City hereby covenant and agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.
2. **Agreement to Convey 528 Ramp Property.** Subject to the terms and conditions of this Agreement, City and GOAA hereby agree to transfer and convey to CFX all of their respective rights, title, and interest in and to the 528 Ramp Property by Special Warranty Deed, substantially in the form of **Exhibit "G."**
3. **Agreement to Convey Cargo Road Ramp Property.** Subject to the terms and conditions of this Agreement, CFX hereby agrees to transfer and convey to GOAA and the City all of its respective rights, title, and interest in and to the Cargo Road Ramp Property by Special Warranty Deed, substantially in the form of **Exhibit "H."**
4. **Agreement to Convey Easements on Easement Parcel 801, Easement Parcel 802, Easement Parcel 803 and Easement Parcel 804.** Subject to the terms and conditions of this Agreement, GOAA hereby agrees to convey a drainage easement to CFX on Easement Parcel 801, Easement Parcel 802, Easement Parcel 803 and Easement Parcel 804 by Drainage Easement substantially in the form of **Exhibit "I."**
5. **Agreement to Fund the Purchase Price.** Subject to the terms and conditions of this Agreement, the Rail Company hereby agrees to fund the Purchase Price,

as defined below (subject to prorations and adjustments shown on the settlement statement), the appraisal costs set forth in Paragraph 6, the cost of a survey of the Properties, and the CFX closing costs as set forth in Paragraph 10(h).

6. **Appraisal and Purchase Price.**

(a) **528 Ramp Property.** The purchase price (the "Ramp Property Purchase Price") to be paid by Rail Company for CFX to GOAA and City for fee simple interest of the 528 Ramp Property shall be determined by a fair-market-value appraisal, certified to all Parties (GOAA, the City, the Rail Company, and CFX), subject to review appraisal certification in accordance with CFX's standard procedures (the "CFX Appraisal"), which CFX Appraisal shall be performed by Walter Carpenter, MAI, of Pinel & Carpenter, Inc. (the "Appraiser") and reviewed by the Consortium Appraisal, Inc. (the "Review Appraiser") at Rail Company's sole cost and expense, **and based upon a value within ninety (90) days of closing.** (CFX's Manual, Sec. 5-6.05) It is specifically acknowledged and agreed that, in preparation of the CFX Appraisal, the Appraiser and/or Review Appraiser shall consult with GOAA, Rail Company and CFX, their respective legal counsel, staff, and consultants, as the Appraiser and/or Review Appraiser shall deem appropriate. The CFX Appraisal shall utilize the FAA's definition of Fair Market Value and **said CFX Appraisal is subject to FAA approval and CFX approval.** GOAA, Rail Company and CFX shall cooperate in good faith with the Appraiser and Review Appraiser in preparation of the CFX Appraisal and its review. The final CFX Appraisal shall not be issued until Rail Company has reviewed and approved the CFX Appraisal. Between sixty (60) to ninety (90) days before the Closing Date, the Rail Company, at its expense, shall obtain and deliver to CFX, City, Rail Company and GOAA the CFX Appraisal and review certification as to the 528 Ramp Property.

(b) **Cargo Road Ramp Property.** The purchase price (the "Cargo Road Ramp Purchase Price") to be paid by Rail Company for GOAA and City to CFX for fee simple interest of the Cargo Road Ramp Property shall be determined by a fair-market-value appraisal, certified to all Parties (GOAA, the City, the Rail Company, and CFX), subject to review appraisal certification in accordance with GOAA and City's standard procedures (the "GOAA and City Appraisal"), which GOAA and City Appraisal shall be performed by the Appraiser and **reviewed by the Review Appraiser at Rail Company's sole cost and expense, and based upon a value within ninety (90) days of closing.** (CFX's Manual, Sec. 5-6.05) It is specifically acknowledged and agreed that, in preparation of the GOAA and City Appraisal, the Appraiser and/or Review Appraiser shall consult with GOAA, Rail Company and CFX, their respective legal counsel, staff, and consultants, as the Appraiser and/or Review Appraiser shall deem appropriate. The GOAA and City Appraisal shall utilize the FAA's definition of Fair Market Value and **said GOAA and City Appraisal is subject to FAA approval and CFX approval.** GOAA, Rail Company and CFX shall cooperate in good faith with the Appraiser and Review Appraiser in preparation of the GOAA and City Appraisal and its review. The final GOAA and City Appraisal shall not be issued until Rail Company has reviewed and approved the GOAA and City Appraisal. Between sixty (60) to ninety (90) days before the Closing Date, GOAA and City, at the

expense of the Rail Company, shall obtain and deliver to CFX and Rail Company the GOAA and City Appraisal and review certification as to the Cargo Road Ramp Property.

(c) Easement Parcels. The purchase price (the "Easement Parcels Purchase Price") to be paid by Rail Company for CFX to GOAA and City for a drainage easement in Easement Parcel 801, Easement Parcel 802, Easement Parcel 803 and Easement Parcel 804 shall be determined by fair-market-value appraisals, certified to all Parties (GOAA, the City, the Rail Company, and CFX), subject to review appraisal certification in accordance with CFX's standard procedures (the "Easement Appraisals"), which Easement Appraisals shall be performed by the Appraiser and reviewed by the Review Appraiser at Rail Company's sole cost and expense, and based upon a value within ninety (90) days of closing. It is specifically acknowledged and agreed that, in preparation of the Easement Appraisals, the Appraiser and/or Review Appraiser shall consult with GOAA, Rail Company and CFX, their respective legal counsel, staff, and consultants, as the Appraiser and/or Review Appraiser shall deem appropriate. The Easement Appraisals shall utilize the FAA's definition of Fair Market Value and said Easement Appraisals are subject to FAA approval and CFX approval. GOAA, Rail Company and CFX shall cooperate in good faith with the Appraiser and Review Appraiser in preparation of the Easement Appraisals and their review. The final Easement Appraisals shall not be issued until Rail Company has reviewed and approved the Easement Appraisals. Between sixty (60) to ninety (90) days before the Closing Date, the Rail Company, at its expense, shall obtain and deliver to City, Rail Company and GOAA the Easement Appraisals and review certification as to Easement Parcel 801, Easement Parcel 802, Easement Parcel 803 and Easement Parcel 804.

(d) Set-off. In the event the 528 Ramp Property Purchase Price together with the prices of the Easement Parcel 801, Easement Parcel 802, Easement Parcel 803, and Easement Parcel 804 (the "Combined Purchase Price"), is higher than the Cargo Road Ramp Purchase Price, the Cargo Road Ramp Purchase Price shall be subtracted from the Combined Purchase Price, resulting in the "GOAA Purchase Price." GOAA will accept the GOAA Purchase Price and the Cargo Road Ramp Property, which price will be paid by the Rail Company. In the event that the Combined Purchase Price is higher than the Cargo Road Ramp Purchase Price, CFX will accept the 528 Ramp Property and the Easement Parcels in consideration of the conveyance of the Cargo Road Ramp Property; otherwise, CFX will accept the 528 Ramp Property, the Easement parcels, and the difference between the Cargo Road Ramp Purchase Price and the Combined Purchase Price, resulting in the "CFX Purchase Price," which price will be paid by the Rail Company.

(e) In connection with the appraisals to be prepared as provided herein, the Parties acknowledge and agree that the valuation of the property interests to be conveyed as it relates to the Properties shall not result in any loss of access or severance damage nor shall any other damage exist with respect to any remaining property owned or occupied by CFX, City or GOAA.

(f) The terms and conditions of Section 6(e) shall survive Closing. It is acknowledged and agreed that the payment of the CFX Purchase Price and the GOAA



Purchase Price, as may be adjusted herein, represents full compensation to CFX, the City and GOAA for the Property.

7. **Conditions Precedent.**

(a) Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and agree that GOAA, CFX and the City shall have no obligations to sell, transfer, convey or accept the Properties; and CFX, GOAA and the City shall have no obligation to accept the conveyances; and Rail Company shall have no obligation to fund the GOAA Purchase Price or the closing costs, unless and until (1) all Escrow Release Conditions contained in Exhibit 11 of that certain Rail Line Easement Agreement, as amended dated **January 22, 2014** between GOAA and Rail Company have been satisfied; (2) the Escrow Documents (as defined in the Rail Line Easement Agreement) shall be released from Escrow; and (3) any and all other conditions precedent to the Rail Project proceeding have been satisfied.

(b) Notwithstanding anything to the contrary contained in this Agreement, if at any time prior to Closing, Rail Company determines that the Properties are no longer needed for the development of the Rail Project, then Rail Company may, at its election, terminate this Agreement.

(c) Notwithstanding anything to the contrary contained in this Agreement, the parties acknowledge and agree that GOAA, CFX, and the City shall have no obligations to sell, transfer, convey or accept the Properties; and CFX, GOAA and the City shall have no obligation to accept the conveyances; and Rail Company shall have no obligation to fund the GOAA Purchase Price or the closing costs, unless and until (1) CFX determines that the Cargo Road Ramp Property is excess property and can be declared as surplus property, including the adoption of the appropriate resolutions by the CFX Board after receipt of the necessary supporting documentation; (2) all the requirements set forth in CFX's Property Acquisition, Disposition & Permitting Procedures Manual ("Manual") have occurred, including those related to the Lease Purchase Agreement with the Florida Department of Transportation; (3) CFX approves the Rail Company's final construction plans; and (4) the Rail Company is not in breach of any of its obligations in any Easement Agreement with CFX or any other agreement with CFX related to the S.R. 528 corridor.

8. **Right of Entry; Insurance.**

(a) **Grant of Right of Entry for the 528 Ramp Property.** It is acknowledged and agreed by the Parties that the Rail Company's Project timing requires the Rail Company to enter onto the 528 Ramp Property and the Cargo Road Ramp Property to begin design, engineering and permitting the Rail Project and associated changes to S.R. 528 prior to the conveyance and grant of the property interests contemplated herein. In partial consideration of Rail Company's payment of the CFX Appraisal and GOAA Appraisal, by execution of this Agreement, GOAA and City agree and hereby grant to CFX, Rail Company, their respective employees, agents, engineers, contractors, assigns (including utility providers) and other representatives, for that period of time beginning upon the date

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hereof and ending upon conveyance of the 528 Ramp Property interest herein and subject to the other terms and conditions herein set forth, a non-exclusive right and license to enter upon, over, under, and through the 528 Ramp Property as may be necessary or desirable for the Rail Project, the 528 ramp, and related infrastructure. This right of entry shall include the right to enter upon, over, under, and through the 528 Ramp Property for the purposes of inspecting the 528 Ramp Property for design, engineering and permitting of the Rail Project as CFX or the Rail Company deem necessary or prudent and associated changes to S.R. 528 and related interchanges as CFX or the Rail Company deem necessary or prudent. Said right and license shall merge and terminate upon the conveyance of the Properties or upon termination of this Agreement.

(b) Insurance and Third Party Beneficiary for 528 Ramp Property. All work performed within the 528 Ramp Property under the rights of entry granted herein to the Rail Company or Rail Company's employees, agents, engineers, contractors, assigns (including utility providers) and other representatives shall be at the sole risk and expense of such parties performing such work and neither GOAA nor City shall have any liability for any injuries or damages sustained. Additionally, Rail Company shall require that its contractors, agents and consultants that carry out inspection work on the Property provide insurance in accordance with GOAA guidelines. Rail Company shall include in its applicable contracts related to the Rail Project that GOAA and City are third party beneficiaries of its contracts as to indemnification and an additional insured as to insurance related to use of the 528 Ramp Property or applicable portions thereof pursuant to the grants of right-of-entry.

Rail Company shall not unreasonably disturb any GOAA operations on the 528 Ramp Property or property adjoining the 528 Ramp Property or damage any improvements which may be located on the 528 Ramp Property or property adjoining the 528 Ramp Property. Rail Company shall not permit the filing of any liens against the 528 Ramp Property in connection with their respective inspection activities contemplated herein. In the event a claim of lien is filed against the 528 Ramp Property as a result of the inspection work by or on behalf of Rail Company, or as a result of other actions or omissions of Rail Company, then Rail Company (whichever party whose inspection work or other act or omission caused such lien to be filed) shall cause such lien to be satisfied or transferred to bond so as no longer to be a lien against the 528 Ramp Property within thirty (30) days after Rail Company received notice from GOAA that the claim lien has been filed. Rail Company shall maintain worker's compensation and liability insurance in accordance with GOAA's Risk Management/Safety policies and procedures contained in the GOAA Policy and Procedure Manual; such required insurance coverage to be maintained with insurance companies that are insurers of internationally recognized reputation in the aviation market. Rail Company shall cause its contractors, subcontractors, agents, and permittees accessing the 528 Ramp Property to maintain insurance coverage in accordance with GOAA's Risk Management/Safety policies and procedures contained in the GOAA Policy and Procedure Manual. Access to the Air Operations Area of the Airport is strictly prohibited.



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Rail Company shall furnish evidence of such insurance coverage prior to any contractor, subcontractor, agent, or permittee of Rail Company entering upon the 528 Ramp Property.

(c) Application for Temporary Right of Entry Permit for the Cargo Road Ramp Property. It is acknowledged and agreed by the Parties that the Rail Company's Project timing requires the Rail Company to enter onto the Cargo Road Ramp Property to begin design, engineering and permitting the Rail Project and associated changes to S.R. 528 prior to the conveyance and grant of the property interests contemplated herein. In order to obtain a Temporary Right of Entry ("TROE") Permit to enter upon the Cargo Road Ramp Property, Rail Company shall submit an Application for a TROE Permit, which shall be processed in accordance with CFX's Property Acquisition, Disposition & Permitting Procedures Manual. Said TROE shall merge and terminate upon the conveyance of the Properties or upon termination of this Agreement.

(d) Insurance and Third Party Beneficiary for Cargo Road Ramp Property. All work performed within the Cargo Road Ramp Property under the rights of entry granted herein to the City, GOAA, the Rail Company or GOAA's or Rail Company's employees, agents, engineers, contractors, assigns (including utility providers) and other representatives shall be at the sole risk and expense of such parties performing such work and CFX shall not have any liability for any injuries or damages sustained. Additionally, GOAA shall require that its contractors, agents and consultants that carry out inspection work on the Cargo Road Ramp Property provide insurance in accordance with GOAA's Risk Management/Safety policies and procedures contained in the GOAA Policy and Procedure Manual. GOAA shall include in its applicable contracts related to Cargo Road Ramp Property that CFX is a third party beneficiary of its contracts as to indemnification and an additional insured as to insurance related use of the Cargo Road Ramp Property or applicable portions thereof pursuant to the grants of right-of-entry.

Rail Company, City and GOAA shall not unreasonably disturb any CFX operations on the Cargo Road Ramp Property or property adjoining the Cargo Road Ramp Property or damage any improvements which may be located on the Cargo Road Ramp Property or property adjoining the Cargo Road Ramp Property. Rail Company, City and GOAA shall not permit the filing of any liens against the Cargo Road Ramp Property in connection with its inspection activities contemplated herein. In the event a claim of lien is filed against the Cargo Road Ramp Property as a result of the inspection work by or on behalf of Rail Company, City or GOAA, or as a result of other actions or omissions of Rail Company, City or GOAA, then Rail Company or GOAA shall cause such lien to be satisfied or transferred to bond so as no longer to be a lien against the Cargo Road Ramp Property within thirty (30) days after Rail Company or GOAA receives notice from CFX that the claim lien has been filed. Rail Company, City and GOAA shall maintain worker's compensation and liability insurance in accordance with CFX's guidelines. Rail Company, City and GOAA shall cause its contractors, subcontractors, agents, and permittees accessing the Cargo Road Ramp Property to maintain insurance coverage in accordance with CFX's guidelines.

Rail Company, City and GOAA shall furnish evidence of such insurance coverage prior to any contractor, subcontractor, agent, or permittee of Rail Company, City or GOAA entering upon the Cargo Road Ramp Property.

9. Evidence of Title.

(a) 528 Ramp Property and Easement Parcels. Within sixty days of the Effective Date, Rail Company shall, at Rail Company's sole cost and expense, order a commitment from an agent of Rail Company's selection for a policy of Owner's Title Insurance (the "CFX Commitment") which shall be written on a title insurance company reasonably satisfactory and acceptable to CFX. Copies of all documents constituting the exceptions referred to in the CFX Commitment shall be attached thereto. The CFX Commitment shall bind the title company to deliver to CFX a policy of Owner's Title Insurance, which shall insure CFX's title to, in CFX's discretion, all of the 528 Ramp Property and the Easement Parcels in an amount satisfactory to CFX. In addition, Rail Company shall provide a survey of the 528 Ramp Property and Easement Parcels so that the Title Company will remove the exception from coverage relating to "rights, interests or claims . . . which a correct survey would disclose." CFX shall have ninety (90) days from the date of receipt of the CFX Commitment (or an update thereto) and survey to examine same and notify Rail Company of any defects, a defect being a matter which would render title unmarketable or otherwise unusable by CFX for its intended purposes; provided, however, it is expressly agreed CFX shall take title subject to those matters, if any, set forth on **Exhibit "J,"** attached hereto and incorporated herein (the "CFX Permitted Exceptions"), which survey shall be paid for by Rail Company. Any survey exceptions or matters not acceptable to CFX shall be treated as title defects. Rail Company shall have sixty (60) days within which to remove such defect(s), and shall use reasonable efforts to correct any such defect(s) in title within the time period provided therefore; provided, however, (i) Rail Company will not be required to file suit; (ii) Rail Company will not be required to expend more than \$10,000.00, excluding tax liens which will be paid in full, and (iii) GOAA and City shall not be required to expend any funds, in curing any such defect. If Rail Company is unsuccessful in removing same within said time period, CFX shall have the option of: (i) accepting title as it then is; (ii) terminating the Agreement, whereupon each party shall then be released of all further obligations related to the 528 Ramp Property; or (iii) electing to have Rail Company continue to take such reasonable steps as necessary to remove such defects. In the event the time period for cure of any such defects extends beyond the scheduled Closing Date as defined hereinafter, the Closing Date shall extend accordingly, at CFX's option. Those exception items listed in the CFX Commitment and accepted by CFX shall be deemed as CFX Permitted Exceptions. At Closing, since CFX desires title insurance, Rail Company shall pay the premium on behalf of CFX for the Owner's Title Insurance Policy to be issued (with the portion of the title premium for the Owner's Title Insurance Policy, calculated at the "Butler" rate, but in no event shall CFX be required to pay a portion of the premium).

(b) Cargo Road Ramp Property. Within sixty (60) days of the Effective Date, Rail Company shall, at Rail Company's sole cost and expense not to exceed \$500.00, order a commitment from an agent of Rail Company's selection for a policy of Owner's Title

Insurance (the "GOAA Commitment") which shall be written on a title insurance company reasonably satisfactory and acceptable to GOAA. Copies of all documents constituting the exceptions referred to in the GOAA Commitment shall be attached thereto. The GOAA Commitment shall bind the title company to deliver to GOAA a policy of Owner's Title Insurance, which shall insure GOAA's title to, in GOAA's discretion, all or a portion of the Cargo Road Ramp Property in an amount satisfactory to GOAA. In addition, Rail Company shall provide a survey of the Cargo Road Ramp Property so that the Title Company will remove the exception from coverage relating to "rights, interests or claims . . . which a correct survey would disclose." GOAA shall have thirty (30) days from the date of receipt of the GOAA Commitment (or an update thereto) and survey to examine same and notify Rail Company of any defects, a defect being a matter which would render title unmarketable or otherwise unusable by GOAA for its intended purposes; provided, however, it is expressly agreed GOAA shall take title subject to those matters, if any, set forth on **Exhibit "K,"** attached hereto and incorporated herein (the "GOAA Permitted Exceptions"), which survey shall be paid for by Rail Company. Any survey exceptions or matters not acceptable to GOAA shall be treated as title defects. Rail Company shall have sixty (60) days within which to remove such defect(s), and shall use reasonable efforts to correct any such defect(s) in title within the time period provided therefore; provided, however, (i) Rail Company will not be required to file suit; and (ii) Rail Company will not be required to **expend more than \$5,000.00** and (iii) CFX shall not be required to expend any funds in curing any such defect. If Rail Company is unsuccessful in removing same within said time period, GOAA shall have the option of: (i) accepting title as it then is; (ii) terminating the Agreement, whereupon each party shall then be released of all further obligations related to the Cargo Road Ramp Property, or (iii) electing to have Rail Company continue to take such reasonable steps as necessary to remove such defects. In the event the time period for cure of any such defects extends beyond the scheduled Closing Date as defined hereinafter, the Closing Date shall extend accordingly, at GOAA's option. Those exception items listed in the GOAA Commitment and accepted by GOAA shall be deemed as GOAA Permitted Exceptions. At Closing, if GOAA elects to obtain title insurance, Rail Company shall pay the premium on behalf of GOAA for the Owner's Title Insurance Policy to be issued (with the portion of the title premium for the Owner's Title Insurance Policy, calculated at the "Butler" rate, but in no event shall CFX be required to pay a portion of the premium).

(c) As-Is Conveyance. The Cargo Road Ramp Property is being conveyed "AS IS, WHERE IS, WITH ALL FAULTS," in such condition as the same may be on the closing date, without any representations or warranties by CFX as to any condition of the Property, including, without limitation, surface and subsurface environmental conditions, whether latent or patent. CFX makes no guarantee, warranty or representation, express or implied, as to the quality, character, or condition of Cargo Road Ramp Property, or any part thereof, or to the fitness of the Cargo Road Ramp Property, or any part thereof, for any use or purpose, or any representation as to the nonexistence of any hazardous substances. Neither party shall have any claim against the other, in law or in equity, based upon the condition of the Cargo Road Ramp Property, or the failure of the Cargo Road Ramp Property to meet any standards. In no event shall CFX be liable for any incidental, special, exemplary, or consequential damage. In the event that any hazardous substances are

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discovered on, at or under the Cargo Road Ramp Property, neither party shall maintain any action or assert any claim against the other; its successors and their respective members, employees and agents arising out of or relating to any such hazardous substances. The provisions of this Section shall survive the Closing. (CFX Manual, Sec. 5-6.09)

GOAA and the City have read and understands the provisions of this Section and acknowledge and agree that except as expressly set forth in this Agreement, it is acquiring the Cargo Road Ramp Property **"AS-IS, WHERE IS AND WITH ALL FAULTS"** and that CFX has disclaimed herein any and all warranties, express or implied.

(d) As-Is Conveyance. The 528 Ramp Property is being conveyed "AS IS, WHERE IS, WITH ALL FAULTS," in such condition as the same may be on the closing date, without any representations or warranties by City and GOAA as to any condition of the Property, including, without limitation, surface and subsurface environmental conditions, whether latent or patent. City and GOAA make no guarantee, warranty or representation, express or implied, as to the quality, character, or condition of 528 Ramp Property, or any part thereof, or to the fitness of the 528 Ramp Property, or any part thereof, for any use or purpose, or any representation as to the nonexistence of any hazardous substances. Neither party shall have any claim against the other, in law or in equity, based upon the condition of the 528 Ramp Property, or the failure of the 528 Ramp Property to meet any standards. In no event shall City and GOAA be liable for any incidental, special, exemplary, or consequential damage. In the event that any hazardous substances are discovered on, at or under the 528 Ramp Property, neither party shall maintain any action or assert any claim against the other, its successors and their respective members, employees and agents arising out of or relating to any such hazardous substances. The provisions of this Section shall survive the Closing.

CFX has read and understands the provisions of this Section and acknowledge and agree that except as expressly set forth in this Agreement, it is acquiring the 528 Ramp Property **"AS-IS, WHERE IS AND WITH ALL FAULTS"** and that City and GOAA have disclaimed herein any and all warranties, express or implied.

10. **Closing Date, Closing Procedures and Requirements.**

(a) Closing Date. The closing of the transaction contemplated under this Agreement (the "Closing") shall be held on a day and time mutually agreeable to the Parties upon not less than fifteen (15) days' written notice to CFX, City and GOAA after Conditions Precedent have been met, unless such date is extended in order to secure the required Deed of Release and other releases from the Federal Aviation Administration ("FAA") or by agreement in writing by the Parties (the "Closing Date"). Closing shall occur at the offices of CFX's attorney or any other place which is mutually acceptable to the Parties. Without limiting anything contained herein, Closing may be accomplished by mail or courier. The Closing shall occur after satisfaction of the conditions precedent set forth in Section 7 above. The parties agree that the Closing shall occur on or before **December 31, 2018**, unless extended by written agreement approved by the City, GOAA, and CFX, through the Mayor, Chief Executive Officer, and Executive Director,



respectively. In the event that the Closing does not occur prior to the deadline, as it may be extended, this Agreement automatically terminates.

(b) Conveyance of Title for 528 Ramp Property. At the Closing, City and GOAA shall execute and deliver to CFX a Special Warranty Deed, substantially in the form of **Exhibit "G"**, conveying fee simple marketable record title to the 528 Ramp Property to CFX, free and clear of all liens, general and special assessments, easements, reservations, restrictions and encumbrances, except the Permitted Exceptions. GOAA shall execute a Consent to said deed, as required by CFX. Additionally, at Closing, GOAA, at GOAA's cost, shall deliver to CFX an executed FAA letter and Deed of Release as to the 528 Ramp Property pursuant to paragraph 26. In the event any mortgage, lien or other encumbrance encumbers 528 Ramp Property at Closing and is not paid and satisfied by GOAA, such mortgage, lien or encumbrance shall, at CFX's election, be satisfied and paid by Rail Company. City, GOAA, and CFX agree that such documents, resolutions and certificates as may be necessary to carry out the terms of this Agreement shall be executed and/or delivered by such parties at Closing, including, without limitation, an affidavit by GOAA and/or City in form sufficient to enable CFX's title company to delete all standard title exceptions from CFX's title policy.

(c) Conveyance of Title for Cargo Road Ramp Property. At the Closing, CFX shall execute and deliver to GOAA, a Special Warranty Deed, substantially in the form of **Exhibit "H"** conveying fee simple marketable record title to the Cargo Road Ramp Property to GOAA, free and clear of all liens, general and special assessments, easements, reservations, restrictions and encumbrances, except the Permitted Exceptions, the preservation or reestablishment of CFX's limited access boundaries and rights as set forth in the legal descriptions, the Special Warranty Deed, or official public records, and easements for existing drainage or other such encumbrances that are necessary or beneficial for CFX to retain pursuant to that certain Drainage Easement Agreement to be dated as of the Closing Date. In the event any mortgage, lien or other encumbrance encumbers Cargo Road Ramp Property at Closing and is not paid and satisfied by CFX, such mortgage, lien or encumbrance shall, at GOAA's election, be satisfied and paid with the proceeds of the GOAA Purchase Price and the GOAA Purchase Price shall be increased by the amount so paid. City, GOAA, and CFX agree that such documents, resolutions and certificates as may be necessary to carry out the terms of this Agreement shall be executed and/or delivered by such parties at Closing, including, without limitation, an affidavit by CFX in form sufficient to enable GOAA's title company to delete all standard title exceptions from GOAA's title policy, should GOAA elect to obtain a title policy, subject to CFX approval of the form of the affidavit.

(d) Conveyance of Possession of 528 Ramp Property. City and GOAA shall deliver exclusive possession of the 528 Ramp Property to CFX at Closing.

(e) Conveyance of Possession of Cargo Road Ramp Property. CFX shall deliver exclusive possession of the Cargo Road Ramp Property to the City and GOAA at Closing, subject to the drainage easement in favor of CFX, preservation or reestablishment of CFX's limited access boundaries where applicable, and such encumbrances that are

necessary or beneficial for CFX to retain pursuant to that certain Drainage Easement Agreement to be dated as of the Closing Date.

(f) Conveyance of Easement in Easement Parcel 801, Easement Parcel 802, Easement Parcel 803 and Easement Parcel 804. At the Closing, City and GOAA shall execute and deliver to CFX, a Drainage Easement, substantially in the form of **Exhibit "I"** conveying a non-exclusive drainage easement in Easement Parcel 801, Easement Parcel 802, Easement Parcel 803 and Easement Parcel 804 to CFX, free and clear of all liens, general and special assessments, easements, reservations, restrictions and encumbrances, except the Permitted Exceptions. Additionally, at Closing, GOAA, at GOAA's cost, shall deliver to CFX an executed FAA letter and Deed of Release as to the Easement Parcel 801, Easement Parcel 802, Easement Parcel 803 and Easement Parcel 804 pursuant to paragraph 26. In the event any mortgage, lien or other encumbrance encumbers Easement Parcel 801 and/or Easement Parcel 802, Easement Parcel 803 and/or Easement Parcel 804, or the underlying fee simple interests, at Closing and is not paid and satisfied by GOAA, such mortgage, lien or encumbrance shall, at CFX's election, be satisfied and paid with the proceeds of the GOAA Purchase Price. City, GOAA, and CFX agree that such documents, resolutions and certificates as may be necessary to carry out the terms of this Agreement shall be executed and/or delivered by such parties at Closing, including, without limitation, an affidavit by GOAA and/or City in form sufficient to enable CFX's title company to delete all standard title exceptions from CFX's title policy.

(g) Prorating of Taxes and Assessments. Rail Company shall pay all taxes, assessments, and charges applicable to the Cargo Road Ramp Property, 528 Ramp Property and the Easement Parcels, if any, for all years through the Closing Date.

(h) Closing Costs. Rail Company shall, at Closing, pay: (i) all real property transfer and transaction taxes and levies, including documentary stamps on the deeds and easements, if any, relating to the purchase and sale of the Properties (provided, that the Parties shall cooperate in good faith to evidence and confirm all applicable exemptions from said taxes); (ii) the cost of recording the deeds and easements for Properties; (iii) all costs pertaining to the Commitments, including, but not limited to, title insurance premiums, title search fees, and the premiums for any endorsements requested by CFX, the City and GOAA including but not limited to the ALTA 9-06 Endorsement (commonly known as the "Florida Form 9"), and all costs related to the issuance of the Commitments and any title insurance policy insuring title to the Properties or any portion thereof; (iv) all of the costs and expenses associated with the surveying of the Properties and preparation of the legal descriptions and sketch of descriptions thereof; and (v) all costs of CFX and the City and GOAA's due diligence inspections of the Property. For the 528 Ramp Property and Easement Parcels, GOAA shall pay: (i) all costs of recording corrective title documents, if any, required in order to deliver title in condition as provided in Paragraph 9(a) above. GOAA shall pay the costs associated with obtaining the Deed of Release from the Federal Aviation Administration ("FAA"). **For the Cargo Road Ramp Property, Rail Company shall pay all costs of recovering corrective title documents, if any, required in order to deliver title in condition as provided in Paragraph 9(b) above.** Each party shall pay its own attorneys' fees and costs in connection with this Agreement and the Closing, with

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the exception that Rail Company shall also pay the fees and costs of attorneys representing CFX in connection with this Agreement and the Closing. All other costs incurred at Closing shall be borne by the Rail Company.

11. **Warranties and Representations of GOAA.** To induce CFX and Rail Company to enter into this Agreement and to purchase the 528 Ramp Property and easements, GOAA, in addition to the other representations and warranties set forth herein, makes the following representations and warranties, each of which is given to the best of GOAA's knowledge:

(a) That, pursuant to the GOAA Act and the Operating Agreement and subject to issuance of the necessary deed and letters of release from the FAA, GOAA has the full right, power, and authority to enter into and deliver this Agreement, to sell, convey and consent to the purchase and sale and conveyance of the 528 Ramp Property and Drainage Easements in accordance herewith and to perform all covenants and agreements of GOAA hereunder.

(b) Pursuant to the GOAA Act and the Operating Agreement, GOAA has the present, exclusive right to occupy, operate, control and use the 528 Ramp Property and the Easement Parcels, and there are no tenancy, rental or other occupancy agreements affecting the 528 Ramp Property and the Easement Parcels other than the Permitted Exceptions.

(c) That there are no actions, suits or proceedings of any kind or nature whatsoever, legal or equitable, affecting the 528 Ramp Property and the Easement Parcels or any portion thereof, or relating to or arising out of the ownership of the 528 Ramp Property and the Easement Parcels, in any court, or before or by any federal, state, county or municipal department, commission, board, bureau, or agency or other governmental instrumentality.

(d) With the exception of the notice provisions associated with surplus federal property, no person, firm or other legal entity other than CFX has any right or option whatsoever to acquire the interest contemplated herein as to the 528 Ramp Property and the Drainage Easements or any portion or thereof or any interest therein.

(e) Subject to obtaining written consent from the FAA, that the execution and delivery of this Agreement and the consummation of the transaction contemplated herein shall not and do not constitute a violation or breach by GOAA of any provision of any agreement or other instrument to which GOAA is a party or to which GOAA may be subject although not a party or which may otherwise affect or encumber the 528 Ramp Property and the Easement Parcels, nor result in or constitute a violation or breach of any judgment, order, writ, injunction or decree issued against GOAA, including, without limitation, the covenants contained in that certain Quit Claim Deed recorded in Official Records Book 933, Page 129, Public Records of Orange County, Florida.

(f) Subject to issuance of a deed and letter of release from the FAA, that the sale of the 528 Ramp Property and Easement Parcels to CFX and the use of the 528 Ramp

Property and Easement Parcels will not interfere with the landing and takeoff of aircraft at the Orlando International Airport, nor interfere with the air navigation and or communication facilities serving the Orlando International Airport nor otherwise constitute an airport hazard.

(g) To the best knowledge of GOAA, as of the date of this Agreement, GOAA has not received written notice from any governmental authority or agency of any material violation with respect to the 528 Ramp Property and the Easement Parcels of laws relating to Hazardous Materials (as hereinafter defined) which violation remains uncured in any material respect. For purposes of this Agreement, the term Hazardous Materials shall mean (a) any toxic substance or hazardous waste, hazardous substance or related hazardous material; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of presently existing federal, state or local safety guidelines, whichever are more stringent; and (c) any substance, material or chemical which is defined as or included in the definition of "hazardous substances", "toxic substances", "hazardous materials", "hazardous wastes" or words of similar import under any federal, state or local statute, law, code, or ordinance or under the regulations adopted or guidelines promulgated pursuant thereto, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9061 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, et seq.; and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251, et seq., provided, however, that the term "Hazardous Material" shall not include (i) motor oil and gasoline contained in or discharged from vehicles not used primarily for the transport of motor oil or gasoline, or (ii) materials which are stored or used in the ordinary course of operating the 528 Ramp Property.

(h) That each and every one of the foregoing representations and warranties is true and correct as of the date hereof, will remain true and correct throughout the term of this Agreement, and will be true and correct as of the Closing Date.

(i) In the event that any changes occur as to any information, documents or exhibits referred to in the subparagraphs of this section, or in any other part of this Agreement, of which GOAA has knowledge, GOAA shall immediately disclose same to CFX and Rail Company when such knowledge is first available; and in the event of any change which may be deemed by CFX to be materially adverse, CFX may, at its election, terminate this Agreement.

12. **Warranties and Representations of City.** To induce CFX and Rail Company to enter into this Agreement and to purchase the 528 Ramp Property, City, in addition to the other representations and warranties set forth herein, makes the following representations and warranties, each of which is given to the best of City's knowledge:

(a) That City, as fee simple owner of the 528 Ramp Property and the Easement Parcels, has taken all steps necessary under its Charter, the GOAA Act, and the Operating



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Agreement to approve and authorize the sale and conveyance of the 528 Ramp Property and the Drainage Easements contemplated herein, including, without limitation, conveyance of the fee simple [and the granting of perpetual easements]. Further, no person, firm or other legal entity other than CFX has any right or option whatsoever to acquire the interest contemplated herein as to the 528 Ramp Property and the Drainage Easements or any portion thereof or any interest therein.

(b) To the best knowledge of the City, there are no actions, suits or proceedings of any kind or nature whatsoever, legal or equitable, affecting the 528 Ramp Property or the Easement Parcels or any portion thereof or relating to or arising out of City's fee ownership of the 528 Ramp Property and the Easement Parcels, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, or agency or other governmental instrumentality.

(c) Subject to obtaining written consent from the FAA, that the execution and delivery of this Agreement and the consummation of the transaction contemplated herein shall not and do not constitute a violation or breach by City of any provision of any agreement or other instrument to which City is a party, or to which City may be subject although not a party or which may otherwise affect or encumber the 528 Ramp Property and the Easement Parcels, nor result in or constitute a violation or breach of any judgment, order, writ, injunction or decree issued against City, including, without limitation, the covenants contained in that certain Quit Claim Deed recorded in Official Records Book 933, Page 129, Public Records of Orange County, Florida.

(d) To the best knowledge of City, as of the date of this Agreement, City has not received written notice from any governmental authority or agency of any material violation with respect to the 528 Ramp Property and the Easement Parcels of laws relating to Hazardous Materials (as hereinafter defined) which violation remains uncured in any material respect. For purposes of this Agreement, the term Hazardous Materials shall mean (a) any toxic substance or hazardous waste, hazardous substance or related hazardous material; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of presently existing federal, state or local safety guidelines, whichever are more stringent; and (c) any substance, material or chemical which is defined as or included in the definition of "hazardous substances", "toxic substances", "hazardous materials", "hazardous wastes" or words of similar import under any federal, state or local statute, law, code, or ordinance or under the regulations adopted or guidelines promulgated pursuant thereto, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9061 *et seq.*; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, *et seq.*; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, *et seq.*; and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251, *et seq.*, provided, however, that the term "Hazardous Material" shall not include (i) motor oil and gasoline contained in or discharged from vehicles not used primarily for the transport of motor oil or gasoline, or (ii) materials which are stored or used in the ordinary course of operating the 528 Ramp Property.

(e) That each and every one of the foregoing representations and warranties is true and correct as of the date hereof, will remain true and correct throughout the term of this Agreement, and will be true and correct as of the Closing Date.

(f) In the event that any changes occur as to any information, documents, or exhibits referred to in the subparagraphs of this section, or in any other part of this Agreement, of which City has knowledge, City shall immediately disclose same to CFX and Rail Company when such knowledge is first available; and in the event of any change which may be deemed by CFX to be materially adverse, CFX may, at its election, terminate this Agreement.

13. **Warranties and Representations of CFX.** To induce the City and GOAA to enter into this Agreement and to purchase the Cargo Road Ramp Property, CFX, in addition to the other representations and warranties set forth herein, makes the following representations and warranties, each of which is given to the best of CFX's knowledge:

(a) That, pursuant to the CFX Act, CFX has the full right, power, and authority to enter into and deliver this Agreement, to sell, convey and consent to the purchase and sale and conveyance of the Cargo Road Ramp Property in accordance herewith, including, without limitation, conveyance of the Cargo Road Ramp Property and to perform all covenants and agreements of CFX hereunder.

(b) Pursuant to the CFX Act, CFX has the present, exclusive right to occupy, operate, control and use the Cargo Road Ramp Property, and there are no tenancy, rental or other occupancy agreements affecting the Cargo Road Ramp Property other than the Permitted Exceptions.

(c) That there are no actions, suits or proceedings of any kind or nature whatsoever, legal or equitable, affecting the Cargo Road Ramp Property or any portion thereof, or relating to, or arising out of the ownership of the Cargo Road Ramp Property, in any court, or before or by any federal, state, county or municipal department, commission, board, bureau, or agency or other governmental instrumentality.

(d) With the exception of the items in the official public records and the reserved drainage easement, no person, firm or other legal entity other than GOAA and City have any right or option whatsoever to acquire the interest contemplated herein as to the Cargo Road Ramp Property or any portion or thereof or any interest therein.

(e) The execution and delivery of this Agreement and the consummation of the transaction contemplated herein shall not and do not constitute a violation or breach by CFX of any provision of any agreement or other instrument to which CFX is a party or to which CFX may be subject although not a party or which may otherwise affect or encumber the Cargo Road Ramp Property, nor result in or constitute a violation or breach of any judgment, order, writ, injunction or decree issued against CFX.

(f) To the best knowledge of CFX, as of the date of this Agreement, CFX has not received written notice from any governmental authority or agency of any material violation with respect to the Property of laws relating to Hazardous Materials (as hereinafter defined) which violation remains uncured in any material respect. For purposes of this Agreement, the term Hazardous Materials shall mean (a) any toxic substance or hazardous waste, hazardous substance or related hazardous material; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of presently existing federal, state or local safety guidelines, whichever are more stringent; and (c) any substance, material or chemical which is defined as or included in the definition of "hazardous substances", "toxic substances", "hazardous materials", "hazardous wastes" or words of similar import under any federal, state or local statute, law, code, or ordinance or under the regulations adopted or guidelines promulgated pursuant thereto, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9061 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, et seq.; and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251, et seq., provided, however, that the term "Hazardous Material" shall not include (i) motor oil and gasoline contained in or discharged from vehicles not used primarily for the transport of motor oil or gasoline, or (ii) materials which are stored or used in the ordinary course of operating the Property.

(g) That each and every one of the foregoing representations and warranties is true and correct as of the date hereof, will remain true and correct throughout the term of this Agreement, and will be true and correct as of the Closing Date.

(h) In the event that any changes occur as to any information, documents or exhibits referred to in the subparagraphs of this section, or in any other part of this Agreement, of which CFX has knowledge, CFX shall immediately disclose same to GOAA when such knowledge is first available; and in the event of any change which may be deemed by GOAA to be materially adverse, GOAA may, at its election, terminate this Agreement.

14. **Defaults.** In the event any party breaches any warranty or representation contained in this Agreement, or 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 under the terms and provisions of this Agreement, a non-defaulting party, in its sole discretion, shall be entitled to: (i) exercise any and all rights and remedies available to it under this Agreement, at law and in equity, including without limitation, the right of specific performance; or (ii) terminate this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the right of specific performance shall automatically terminate one (1) year from the date on which this Agreement has been executed by all parties, unless extended by approval of the GOAA Chief Executive Officer and CFX Executive Director. 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

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effect. Prior to exercising any remedies, the non-defaulting party shall provide the defaulting party with thirty (30) days' written notice and opportunity to cure the default.

15. **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

Copy to: Joseph L. Passiatore, Esq.  
General Counsel  
Central Florida Expressway Authority  
4974 ORL Tower Road  
Orlando, Florida 32807

GOAA: GREATER ORLANDO AVIATION AUTHORITY  
One Jeff Fuqua Boulevard  
Orlando, Florida 32827-4399  
Attn: Chief Executive Officer

Copy to: MARCHENA AND GRAHAM, P.A.  
976 Lake Baldwin Lane, Suite 101  
Orlando, Florida 32814  
Attn: Marcos R. Marchena, Esq.

CITY: CITY OF ORLANDO  
400 South Orange Avenue  
Orlando, Florida 32801  
Attn: Chief Administrative Officer

Copy to: CITY OF ORLANDO  
Office of Legal Affairs  
400 South Orange Avenue  
Orlando, Florida 32801  
Attn: Roy K. Payne, Esq.

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RAIL COMPANY: ALL ABOARD FLORIDA – OPERATIONS LLC  
2855 LeJeune Road, 4<sup>th</sup> Floor  
Coral Gables, FL 33134  
Attention: P. Michael Reininger

Copy to: ALL ABOARD FLORIDA – OPERATIONS LLC  
2855 LeJeune Road, 4<sup>th</sup> Floor  
Coral Gables, FL 33134  
Attention: Kolleen Cobb

Copy to: AKERMAN LLP  
350 East Las Olas Boulevard, Suite 1600  
Fort Lauderdale, FL 33301  
Attention: Eric D. Rapkin

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.

16. **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 any party's right to demand exact compliance with the terms hereof. This Agreement contains the entire agreement of the Parties hereto with respect to the subject matter of this Agreement, 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 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 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, GOAA, 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 venue for any legal action authorized hereunder shall be exclusively in the state courts of Orange County, Florida.

17. **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,

STATE ROAD 528  
CFX PROJECT: 528-1240

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.

18. **Severability.** 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.

19. **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, each party shall bear their own fees, costs and expenses..

20. **Waiver of Jury Trial.** THE PARTIES VOLUNTARILY WAIVE A TRIAL BY JURY IN ANY LITIGATION OR ACTION ARISING FROM THIS AGREEMENT.

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 health department.

22. **Effective Date.** When used herein, the term "Effective Date" or the phrase "the date hereof" or "the date of this Agreement" shall mean the last date that CFX, City, GOAA, or Rail Company executes this Agreement.

23. **Release for 528 Ramp Property, Easement 801, Easement 802, Easement 803, and Easement 804.**

(a) **City and GOAA Release.** By execution of this Agreement, City and GOAA acknowledge and agree that the amounts set forth in this Agreement represent the full compensation to City and GOAA for the 528 Ramp Property and the Drainage Easements, and City and GOAA each hereby waives and releases CFX and Rail Company from any claim for loss of access or severance damages to any remaining property owned or occupied by City or GOAA, that results from the CFX's acquisition of the 528 Ramp Property and the Drainage Easements, or construction of improvements thereon. Nothing contained herein shall release CFX from its liabilities or obligations with respect to (i) warranties, representations and covenants in the Agreement expressly surviving Closing, or (ii) any loss or damages caused by the negligence or willful wrongdoing of CFX, its employees, contractors or agents.

(b) **CFX Release.** By execution of this Agreement, CFX acknowledges and agrees that as of the date of City's execution and delivery of the deed, and GOAA's consent

thereto, CFX shall remise, release, acquit, satisfy, and forever discharge City and GOAA 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 CFX may have against City or GOAA for, upon, or by reason pertaining to the physical condition or suitability for use of the 528 Ramp Property; provided, however, such release shall specifically exclude (i) any warranties, representations and covenants in the Agreement expressly surviving Closing; (ii) any misrepresentation by City or GOAA regarding this Agreement; or (iii) any loss or damages caused by the negligence or willful wrongdoing of City or GOAA, or their respective employees, contractors, or agents.

24. **Release for Cargo Road Ramp Property.**

(a) **CFX Release.** By execution of this Agreement, CFX acknowledges and agrees that the amounts set forth in this Agreement represent the full compensation to CFX for the Cargo Road Ramp Property, and CFX hereby waives and releases GOAA and City from any claim for loss of access or severance damages to any remaining property owned or occupied by CFX that results from the GOAA and City's acquisition of the Cargo Road Ramp Property, or construction of improvements thereon. Nothing contained herein shall release GOAA from its liabilities or obligations with respect to (i) warranties, representations and covenants in the Agreement expressly surviving Closing, or (ii) any loss or damages caused by the negligence or willful wrongdoing of GOAA and City, and their respective employees, contractors or agents.

(b) **GOAA and City Release.** By execution of this Agreement, GOAA and City acknowledge and agree that as of the date of CFX's execution and delivery of the deed, GOAA and City shall 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 GOAA and City may have, against CFX for, upon, or by reason pertaining to the physical condition or suitability for use of the Cargo Road Ramp Property; provided, however, such release shall specifically exclude (i) any warranties, representations and covenants in the Agreement expressly surviving Closing; (ii) any misrepresentation by CFX regarding this Agreement; or (iii) any loss or damages caused by the negligence or willful wrongdoing of CFX, or its employees, contractors, or agents.

(c) **Limited-Access Lines.** In further consideration of CFX's agreement to release or partially release any limited-access line, GOAA and the City hereby release and discharge CFX from all past, present and future claims or actions arising out of, or in any way connected with, the location or relocation of the limited-access lines, including any claim for loss of access to any party's remaining property, business damages, severance damages or any other damages. The release or partial release of any limited-access line shall expressly state that it is not conveying or restoring any other abutter's rights including, without limitation, any claims for air, light and view between any abutting property and CFX's property. (CFX Manual, Sec. 5-7.05)

25. **Brokerage.** City, GOAA, Rail Company and CFX hereby represent and warrant each to the other that said warranting party has not engaged or dealt with any agent, broker, or finder in regard to this Agreement, or to the sale and purchase of the Property contemplated hereby. It is agreed by all parties hereto that any warranting party breaching or having breached this warranty shall indemnify all other non-breaching warranting parties for any damages, fines, penalties or losses incurred by them as a result of or arising from such breach. Nothing contained in the foregoing indemnification shall be construed to be a waiver of any immunity or limitation of liability the City, GOAA, or CFX may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

26. **FAA Requirements.** On or before Closing, GOAA shall request any releases or other documentation required from the FAA as it relates to the 528 Ramp Property and the Easement Parcels. The Parties' obligation to close is subject to the FAA issuing the required deeds and letters of release. The FAA requires certain provisions be made to the Agreement as a condition of the Deeds of Release being issued by the FAA, and in accordance with the requirements of the FAA, CFX, City and GOAA hereby agree to the following provisions as conditions of conveyance for the 528 Ramp Property and the Drainage Easements as follows (i.e., the following or substantially similar language will be included as part of the covenants, conditions and restrictions in the deeds conveying the 528 Ramp Property and the Drainage Easements):

(i) City and GOAA reserve unto themselves, their successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property herein described, together with the right to cause in said airspace such noise as may be inherent in the operations of aircraft, now known or hereafter used, for navigation of, or in the said airspace, for use of said airspace for landing on, or taking off from, or operating on Orlando International Airport.

(ii) CFX, City and GOAA expressly agree for themselves, their successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the herein described real property to such a height so as to comply with the FAA Regulations, Part 77.

(iii) CFX, City and GOAA expressly agree for themselves, their successors and assigns, to prevent any use of the herein described real property which would interfere with the landing or takeoff of aircraft at the Orlando International Airport, or interfere with the air navigation, and or communication facilities serving the Airport, or otherwise constitute an airport hazard.

(iv) CFX, City and GOAA, and their successors and assigns shall not permit/afford access from the subject 528 Ramp Property onto Orlando International Airport Property for aeronautical purposes.

(v) City and GOAA shall insure that if the 528 Ramp Property is used or converted to a municipal use, an amount equal to the fair market value will be deposited into an identifiable interest bearing account prior to conversion of the 528 Ramp Property



STATE ROAD 528  
CFX PROJECT: 528-1240

to the municipal use. The proceeds should remain in this account until utilized in accordance with the FAA Order 5190.6B, paragraph 22.17.e.

27. **Exhibits.** The following Exhibits are attached hereto and incorporated herein by reference:

- Exhibit "A"— 528 Ramp Property
- Exhibit "B"— Cargo Road Ramp Property
- Exhibit "C"— Easement Parcel 801
- Exhibit "D"— Easement Parcel 802
- Exhibit "E"— Easement Parcel 803
- Exhibit "F"— Easement Parcel 804
- Exhibit "G"— Form of Special Warranty Deed (528 Ramp Property)
- Exhibit "H"— Form of Special Warranty Deed (Cargo Road Property)
- Exhibit "I"— Form of Drainage Easement
- Exhibit "J"— CFX Permitted Exceptions
- Exhibit "K"— GOAA Permitted Exceptions

28. Intentionally Deleted.

29. **Warranties and Representations of Rail Company.** To induce CFX to enter into this Agreement and to purchase the 528 Ramp Property and to induce City and GOAA to enter this Agreement and to purchase the Cargo Road Ramp Property, the Rail Company, in addition to the other representations and warranties set forth herein, makes the following representations and warranties, each of which is given to the best of the Rail Company's knowledge:

(a) That the use of the 528 Ramp Property by Rail Company for the Rail Project, or other ancillary uses, including all rail cars and other structures to be placed thereon or therein by the Rail Company, will not violate the height limitations necessary to comply with the FAA Regulations, Part 77.

(b) That the Rail Company acknowledges and agrees to comply with all FAA Requirements set forth in Section 26 herein.

(c) That the Rail Company will not object to whatever condition that CFX accepts title to the 528 Ramp Property and will not object to the condition of the 528 Ramp Property once purchased, and the Rail Company agrees that its final construction plans are subject to CFX's approval.

(d) That the Rail Company will not object to whatever condition that GOAA and the City accept title to the Cargo Road Ramp Property and will not object to the condition of the Cargo Road Ramp Property once purchased.

STATE ROAD 528  
CFX PROJECT: 528-1240

**[SIGNATURE PAGES FOLLOWING]**

STATE ROAD 528  
CFX PROJECT: 528-1240

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names as of the date first above written.

“CITY”

CITY OF ORLANDO, FLORIDA,  
a Florida municipal corporation

ATTEST:

By: Denise Aldridge  
Printed Name: Denise Aldridge  
Title: City Clerk

[Official Seal]

By: Patty Sheehan  
Printed Name: Patty Sheehan  
Title: Mayor Pro Tem  
Date: April 17, 2018

APPROVED AS TO FORM AND  
LEGALITY FOR THE USE AND  
RELIANCE OF THE CITY OF  
ORLANDO, ONLY, THIS 21 DAY OF  
May, 2018.

By: [Signature]  
City Attorney  
Printed Name: Ray Pagn

“GOAA”

GREATER ORLANDO AVIATION  
AUTHORITY

ATTEST:

Dayci S. Burnette-Snyder,  
Assistant Secretary

By: \_\_\_\_\_  
Phillip N. Brown, A.A.E.,  
Chief Executive Officer

Date: \_\_\_\_\_, 2018

APPROVED AS TO FORM AND  
LEGALITY this \_\_\_\_ day of  
\_\_\_\_\_, 2018, for the use and  
reliance by the GREATER ORLANDO  
AVIATION AUTHORITY, only.  
Marchena and Graham, P.A., General  
Counsel.

By: \_\_\_\_\_  
Marchena and Graham, P.A.

STATE ROAD 528  
CFX PROJECT: 528-1240

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names as of the date first above written.

**"CITY"**

**CITY OF ORLANDO, FLORIDA,**  
a Florida municipal corporation

**ATTEST:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

[Official Seal]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

APPROVED AS TO FORM AND  
LEGALITY FOR THE USE AND  
RELIANCE OF THE CITY OF  
ORLANDO, ONLY, THIS \_\_\_\_ DAY OF  
\_\_\_\_\_, 2018.

By: \_\_\_\_\_

City Attorney

Printed Name: \_\_\_\_\_

**"GOAA"**

**GREATER ORLANDO AVIATION  
AUTHORITY**

**ATTEST:**

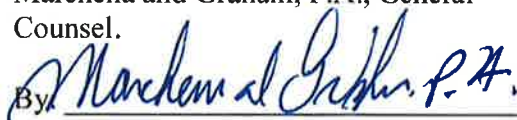
  
\_\_\_\_\_  
Dayci S. Burnette-Snyder,  
Assistant Secretary

By:  \_\_\_\_\_

Phillip N. Brown, A.A.E.,  
Chief Executive Officer

Date: 5-29, 2018

APPROVED AS TO FORM AND  
LEGALITY this 23 day of  
May, 2018, for the use and  
reliance by the GREATER ORLANDO  
AVIATION AUTHORITY, only.  
Marchena and Graham, P.A., General  
Counsel.

By:  \_\_\_\_\_  
Marchena and Graham, P.A.

STATE ROAD 528  
CFX PROJECT: 528-1240

ATTEST:  
  
Regia Lamaute, Executive Assistant

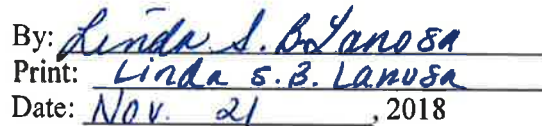
**"CFX"**  
**CENTRAL FLORIDA**  
**EXPRESSWAY AUTHORITY**, a public  
Corporation of the State of Florida

By:   
Laura Kelley, Executive Director

Date: Nov. 21, 2018

APPROVED AS TO FORM AND  
LEGALITY FOR USE AND RELIANCE  
BY THE CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY ONLY.

\_\_\_\_\_  
Counsel.

By:   
Print: Linda S. Bolanos  
Date: Nov. 21, 2018

**ALL ABOARD FLORIDA -**  
**OPERATIONS LLC**

**ATTEST:**

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

**WITNESSES:**

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

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_, 2018

STATE ROAD 528  
CFX PROJECT: 528-1240

**ATTEST:**

\_\_\_\_\_  
Regla Lamaute, Executive Assistant

**"CFX"**

**CENTRAL FLORIDA**

**EXPRESSWAY AUTHORITY**, a public  
Corporation of the State of Florida

By: \_\_\_\_\_  
Laura Kelley, Executive Director

Date: \_\_\_\_\_, 2018

APPROVED AS TO FORM AND  
LEGALITY FOR USE AND RELIANCE  
BY THE CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY ONLY.

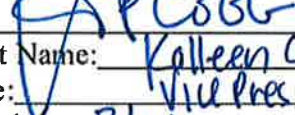
\_\_\_\_\_  
Counsel.

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Date: \_\_\_\_\_, 2018

**ATTEST:**

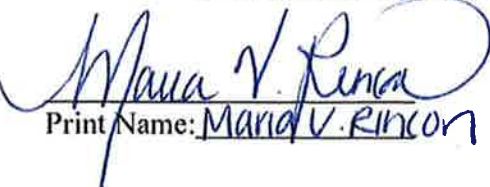
\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ALL ABOARD FLORIDA –  
OPERATIONS LLC**

By:   
Print Name: Kathleen Cobb  
Title: Vice President  
Dated: 2/21, 2018

**WITNESSES:**

  
Print Name: Belcanna Hernandez

  
Print Name: Maria V. Rincon



**EXHIBIT "A"**  
**(528 RAMP PROPERTY)**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No.: 528-1240  
PARCEL No.: 100  
PURPOSE: LIMITED ACCESS RIGHT OF WAY  
ESTATE: FEE SIMPLE

A parcel of land lying in Section 36, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at a 6"x6" concrete monument marking the Northwest Corner of Section 36, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°06'58" East, along the West line of the Northwest 1/4 of said Section 36, a distance of 1249.98 feet to the existing southerly Limited Access Right-of-Way Line of State Road 528 per Orlando Orange County Expressway Authority, Section 1.1 and 1.2 and Project 907 Right-of-Way Maps; thence run along said existing southerly Limited Access Right-of-Way Line the following four courses and distances: run South 89°53'39" East, a distance of 2364.44 feet to the POINT OF BEGINNING; thence continue South 89°53'39" East, a distance of 238.95 feet; thence run South 85°39'53" East, a distance of 392.00 feet; thence run South 79°44'28" East, a distance of 940.93 feet to the Northwest corner of Lot 1 of the plat of "7 - ELEVEN STORE NO. 27590" as recorded in Plat Book 76 at Page 119 of the Public Records of Orange County, Florida; thence departing said existing southerly Limited Access Right-of-Way Line, run South 30°06'18" East, along the west line of said Lot 1, a distance of 47.70 feet; thence departing said west line, run North 88°00'03" West, a distance of 381.24 feet to a point of curvature of a curve concave to the northeast; thence run northwesterly along the arc of said curve having a radius of 1216.00 feet, a central angle of 13°47'50", a chord length of 292.12 feet bearing North 81°06'08" West, an arc distance of 292.82 feet; thence run North 74°12'13" West, a distance of 240.19 feet to a point of curvature of a curve concave to the southwest; thence run northwesterly along the arc of said curve having a radius of 2530.00 feet, a central angle of 08°28'51", a chord length of 374.14 feet bearing North 78°26'38" West, an arc distance of 374.49 feet; thence run North 82°41'04" West, a distance of 314.91 feet to the POINT OF BEGINNING.

Together with all rights of ingress, egress, light, air and view to, from or across any of the above described right-of-way property which may otherwise accrue to any property adjoining said right-of-way

Containing 2.28 acres, more or less

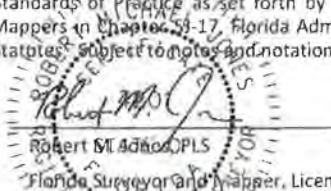
**Surveyors Notes**

**LEGEND:**

(C) = Calculated  
(D) = Deed  
(M) = Measured  
(P) = Plat  
O.R.B. = Official Records Book  
Pg = Page  
R = Radius  
L = Length of curve (arc distance)  
CD = Chord distance  
Delta = central angle  
CB = Chord Bearing  
ID = Identification  
Y = Line Not To Scale  
PID = Parcel Identification Number  
S.R. = State Road  
CFX = Central FL Expressway Authority  
RW = Right-of-Way  
C = Centerline  
// = Limited Access Right-of-way line  
PC = Point of Curvature  
PT = Point of Tangency  
PCC = Point of Compound Curvature  
PRC = Point of Reverse Curvature  
(NT) = Non Tangent  
CM = Concrete Monument  
--- = section line  
--- = 1/4 section line  
OOCEA = Orlando Orange County Expressway Authority  
No. = Number

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the north line of the northwest 1/4 of Section 36, Township 23 South, Range 30 East as being South 89°55'17" East. The average combined scale factor is 0.9999452.
2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record.
3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
4. The location and configuration of the lands described and depicted hereon were provided by the client.
5. This legal description and sketch may have been reduced in size by reproduction.
6. A Commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct 14, 2015, file number NCS-586539A-1-ORI was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

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 29-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes, subject to notes and notations shown hereon.

  
Robert M. Adams, PLS  
Florida Surveyor and Mapper, License No. LS-0004201

THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA

DESIGNED BY: HNTB

DATE: 11/24/2015

DRAWN BY: PEW

AMEC JOB No. 6374150802

APPROVED BY: RMJ

LEGAL DESCRIPTION and SKETCH

AMEC Foster Wheeler Environment & Infrastructure, Inc.

75 East America Street, Suite 200

Orlando, FL 32801 USA

Phone: (407) 522-1570

Certificate of Authorization Number: LB-0081932

SHEET 1 OF 2

REVISIONS

DATE BY

DATE: 12/1/2015

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

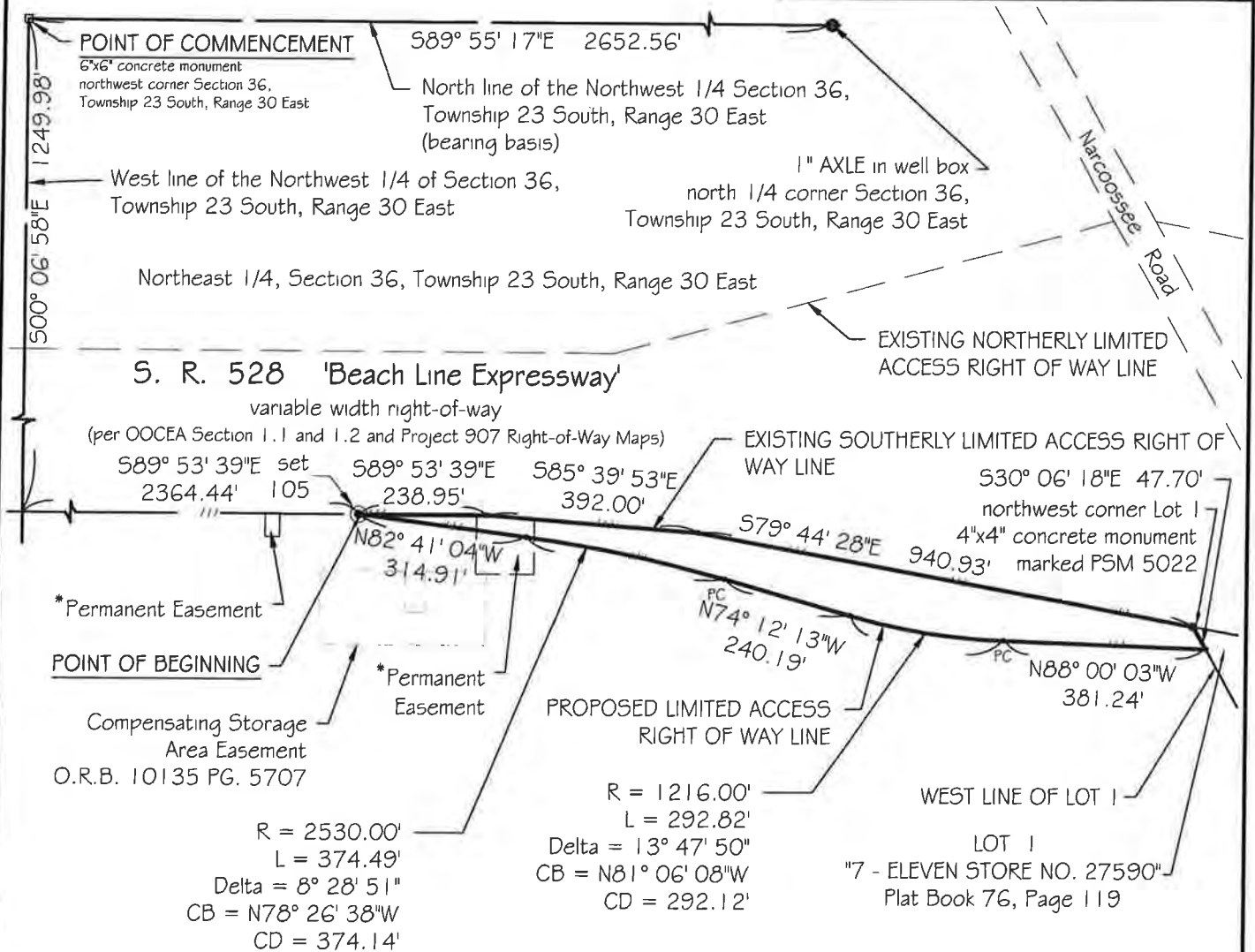
STATE ROAD 528

PROJECT No.: 528-1240

PARCEL No.: 100

PURPOSE: LIMITED ACCESS RIGHT OF WAY

ESTATE: FEE SIMPLE



\* as depicted on Orlando-Orange County Expressway Authority SR 528 Right-of-Way Map Project 907

## GRAPHIC SCALE



( IN FEET )  
1 inch = 300 ft.

ORLANDO INTERNATIONAL AIRPORT

THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA

DESIGNED BY: HNTB

DATE: 11/24/2015

DRAWN BY: PEW

AMEC JOB No.: 6374150802

APPROVED BY: RMJ

## LEGAL DESCRIPTION and SKETCH

Amec Foster Wheeler Environment & Infrastructure, Inc.

75 East Amelia Street, Suite 200

Orlando, FL 32801 USA

Phone: (407) 522-7570

Certificate of Authorization Number LB-0007932

SHEET 2 OF 2

REVISIONS

DATE BY

DRAWING NAME: CFX at GAA-12 3-24.dwg



**EXHIBIT "B"**  
**(CARGO ROAD RAMP PROPERTY)**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**STATE ROAD 528**  
**PROJECT No.: 528-800**  
**PARCEL No.: C-4 (PARTIAL)**  
**ESTATE: FEE SIMPLE**

A parcel of land lying in Section 34, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at a 90d Nail marking the Northwest Corner of Section 34, Township 23 South, Range 30 East, Orange County, Florida, thence run South 00°08'13" East, along the West line of the Northwest 1/4 of said Section 34, a distance of 2817.96 feet to the existing southerly Limited Access Right-of-Way Line of State Road 528 as described in Official Records Book 3313 at Page 1977 of the Public Records of Orange County, Florida and a point on a non-tangent curve concave to the north; thence northeasterly along said existing southerly Limited Access Right-of-Way Line the following four courses and distances: run northeasterly along the arc of said curve having a radius of 420.00 feet, a central angle of 08°49'01", a chord length of 64.57 feet bearing North 68°30'28" East, an arc distance of 64.63 feet; thence run North 63°53'38" East, non-tangent to said curve, a distance of 263.53 feet to point of curvature of a non-tangent curve concave to the southeast; thence run northeasterly along the arc of said curve having a radius of 880.00 feet, a central angle of 19°05'36", a chord length of 291.90 feet bearing North 73°27'27" East, an arc distance of 293.25 feet; thence run North 83°01'47" East, non-tangent to said curve, a distance of 451.28 feet to the POINT OF BEGINNING; thence departing said existing southerly Limited Access Right-of-Way Line, run North 14°23'08" East, a distance of 88.02 feet to the south boundary of a parcel of land identified as pole square "sign number 136 east" as described in Official Records Book 10401 at Page 5069 of said Public Records; thence run South 80°05'11" East, along the said south boundary, a distance of 3.20 feet; thence North 09°54'49" East, along the east boundary of said parcel, a distance of 10.00 feet; thence North 80°05'11" West, along the north boundary of said parcel, a distance of 2.42 feet; thence departing said north boundary, run North 14°23'08" East, a distance of 113.90 feet; thence run North 83°00'42" East, a distance of 36.08 feet to said existing southerly Limited Access Right-of-Way Line; thence run South 06°43'35" West, along said existing southerly Limited Access Right-of-Way Line, a distance of 203.18 feet; thence run South 83°01'47" West, along said existing southerly Limited Access Right-of-Way Line, 65.15 feet to the POINT OF BEGINNING.

Containing 9963 square feet or 0.229 acres, more or less.

Reserving all rights of ingress, egress, light, air and view to, from or across any Central Florida Expressway Authority right-of-way property which may otherwise accrue to any property adjoining said right-of-way. Subject to permanent drainage easement in favor Central Florida Expressway Authority.

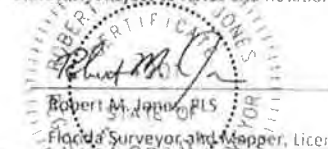
**Surveyors Notes**

**LEGEND:**

(C) = Calculated  
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O.R.B. = Official Records Book  
Pg. = Page  
R = Radius  
L = Length of curve (arc distance)  
CD = Chord distance  
Data = central angle  
CB = Chord Bearing  
ID<sub>1</sub> = Identification  
Line Not To Scale  
PID = Parcel Identification Number  
S.R. = State Road  
CFX = Central Florida Expressway Authority  
R.W. = Right-of-Way  
C = Centerline  
---#--- = Limited Access Right-of-way line  
PC = Point of Curvature  
PT = Point of Tangency  
PCC = Point of Compound Curvature  
PRC = Point of Reverse Curvature  
(NT) = Non Tangent  
CM = Concrete Monument  
--- = section line  
--- = 1/4 section line

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the north line of Section 34, Township 23 South, Range 30 East as being North 89°50'49" East. The average combined scale factor is 0.9999476.
2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record.
3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
4. The location and configuration of the lands described and depicted hereon were provided by the client.
5. This legal description and sketch may have been reduced in size by reproduction.
6. A Commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539A-C4-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

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 51-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes, Subject to Notes and notations shown hereon.

  
Robert M. Jones, PLS  
Florida Surveyor and Mapper, License No. 15-0004201

**THIS IS NOT A SURVEY**

FOR: ALL ABOARD FLORIDA

DESIGNED BY: HNTB

DATE: 11/24/2015

DRAWN BY: PEW

AMEC JOB No. 6374150802

APPROVED BY: RMJ

**LEGAL DESCRIPTION and SKETCH**

AMEC Environment & Infrastructure, Inc.

75 East America Street, Suite 200

Orlando, FL 32811 USA

Phone: (407) 322-1100

Certificate of Authorization No. 15B-0007912

SHEET 1 OF 1

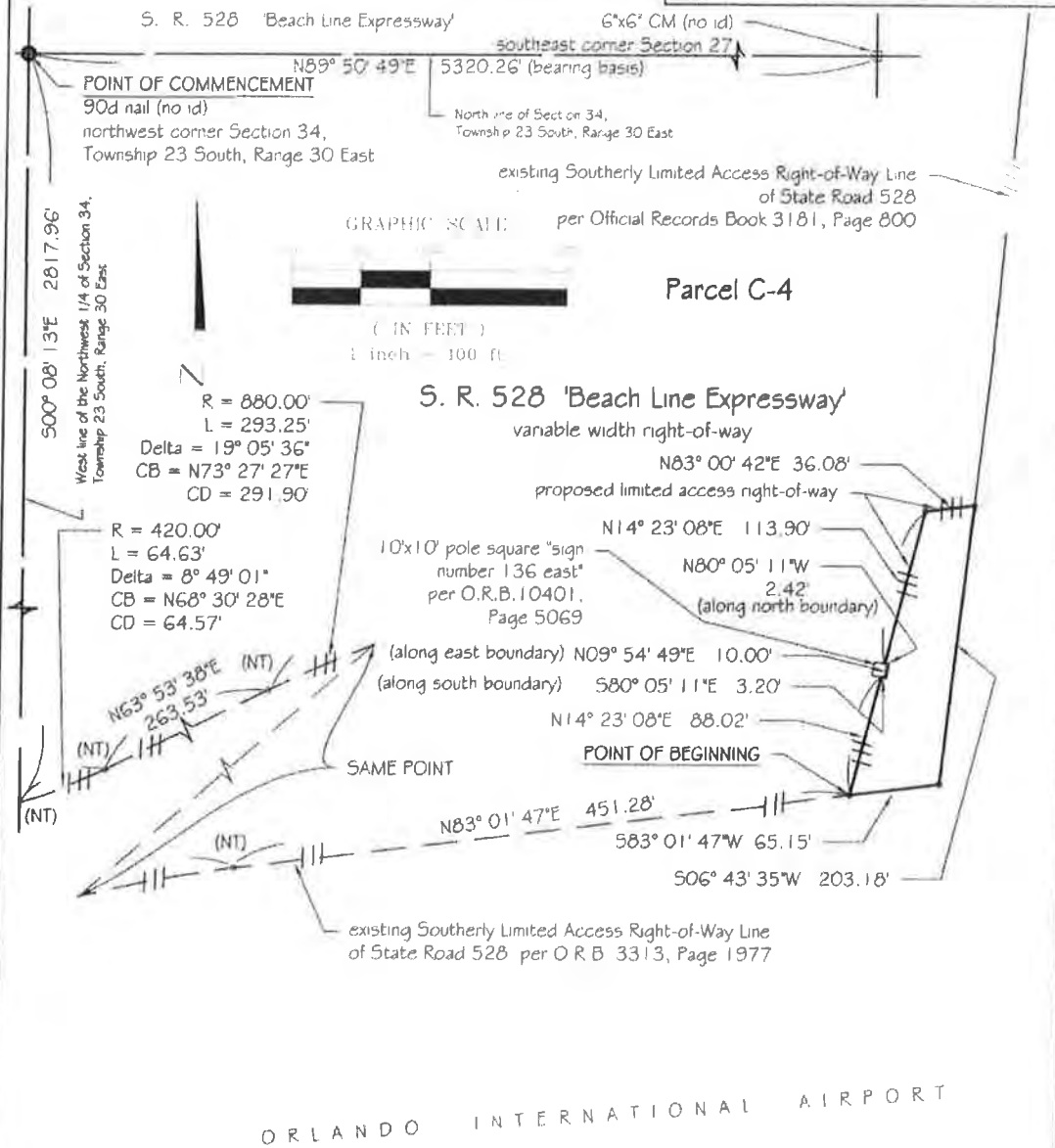
REVISIONS

DATE

BY

REASON

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
 STATE ROAD 528  
 PROJECT No.: 528-800  
 PARCEL No.: C-4 (PARTIAL)  
 ESTATE: FEE SIMPLE



THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA

DESIGNED BY: HNTB

DATE: 11/24/2015

DRAWN BY: PEW

AMEC JOB No.: 6374150802

APPROVED BY: RMJ

LEGAL DESCRIPTION and SKETCH

AMEC Environment & Infrastructure, Inc.

15 East Avenida Central, Suite 200

Orlando, FL 32801 USA

Phone: 407.722.1400

Continued on Attachment Number: B0037502

SHEET 2 OF 2

DATE: 11/24/2015

BY: RMJ

FOR: ALL ABOARD FLORIDA

PROJECT: 528-800

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**STATE ROAD 528**  
**PROJECT No.: 528-800**  
**PARCEL No.: C-4 (PARTIAL)**  
**PURPOSE: LIMITED ACCESS RIGHTS RELEASE**

Release of a portion of the Limited Access Rights along State Road 528 as shown on Orlando-Orange County Expressway Authority (OOCEA) Right-of-Way Map "AIRPORT INTERCHANGE - BEE LINE IMPROVEMENTS" and OOCEA Specific Purpose Survey "STATE ROAD 528 (BEACHLINE EXPRESSWAY)" lying in Section 34, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at a 90d Nail marking the Northwest Corner of Section 34, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°08'13" East along the West line of the Northwest 1/4 of said Section 34, a distance of 2817.96 feet to the existing southerly Limited Access Right-of-Way Line of State Road 528 as described in Official Records Book 3313 at Page 1977 of the Public Records of Orange County, Florida and a point on a non-tangent curve concave to the north; thence northeasterly along said existing southerly Limited Access Right-of-Way Line the following four courses and distances: run northeasterly along the arc of said curve having a radius of 420.00 feet, a central angle of 08°49'01", a chord length of 64.57 feet bearing North 68°30'28" East, an arc distance of 64.63 feet; thence run North 63°53'38" East, non-tangent to said curve, a distance of 263.53 feet to point of curvature of a non-tangent curve concave to the southeast; thence run northeasterly along the arc of said curve having a radius of 880.00 feet, a central angle of 19°05'36", a chord length of 291.90 feet bearing North 73°27'27" East, an arc distance of 293.25 feet; thence run North 83°01'47" East, non-tangent to said curve, a distance of 451.28 feet to the POINT OF BEGINNING; thence continue along said existing southerly Limited Access Right-of-Way Line, run North 83°01'47" East, a distance of 65.15 feet to said southerly Limited Access Right-of-Way Line as described in Official Records Book 3181 at Page 800 of said Public Records; thence run North 06°43'35" East along said existing southerly Limited Access Right-of-Way Line, a distance of 203.18 feet to the POINT OF TERMINATION.

**Surveyors Notes**

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the north line of Section 34, Township 23 South, Range 30 East as being North 89°50'49" East. The average combined scale factor is 0.9999476.
2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record.
3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
4. The location and configuration of the lands described and depicted hereon were provided by the client.
5. This legal description and sketch may have been reduced in size by reproduction.
6. A Commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539A-CA-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

**LEGEND:**

- (C) = Calculated
- (D) = Deed
- (M) = Measured
- (P) = Plat
- OR B = Official Records Book
- Pg = Page
- R = Radius
- L = Length of curve (arc distance)
- CD = Chord distance
- Delta = Central angle
- CB = Chord Bearing
- ID = Identification
- Line Not To Scale
- PID = Parcel Identification Number
- SR = State Road
- CFX = Central Florida Expressway Authority
- R/W = Right-of-Way
- C = Centerline
- ||— = Limited Access Right of way line
- PC = Point of Curvature
- PT = Point of Tangency
- PCC = Point of Compound Curvature
- PRC = Point of Reverse Curvature
- (NT) = Non Tangent
- CM = Concrete Monument
- = section line
- — — = 1/4 section line

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 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon



**THIS IS NOT A SURVEY**

FOR ALL ABOARD FLORIDA

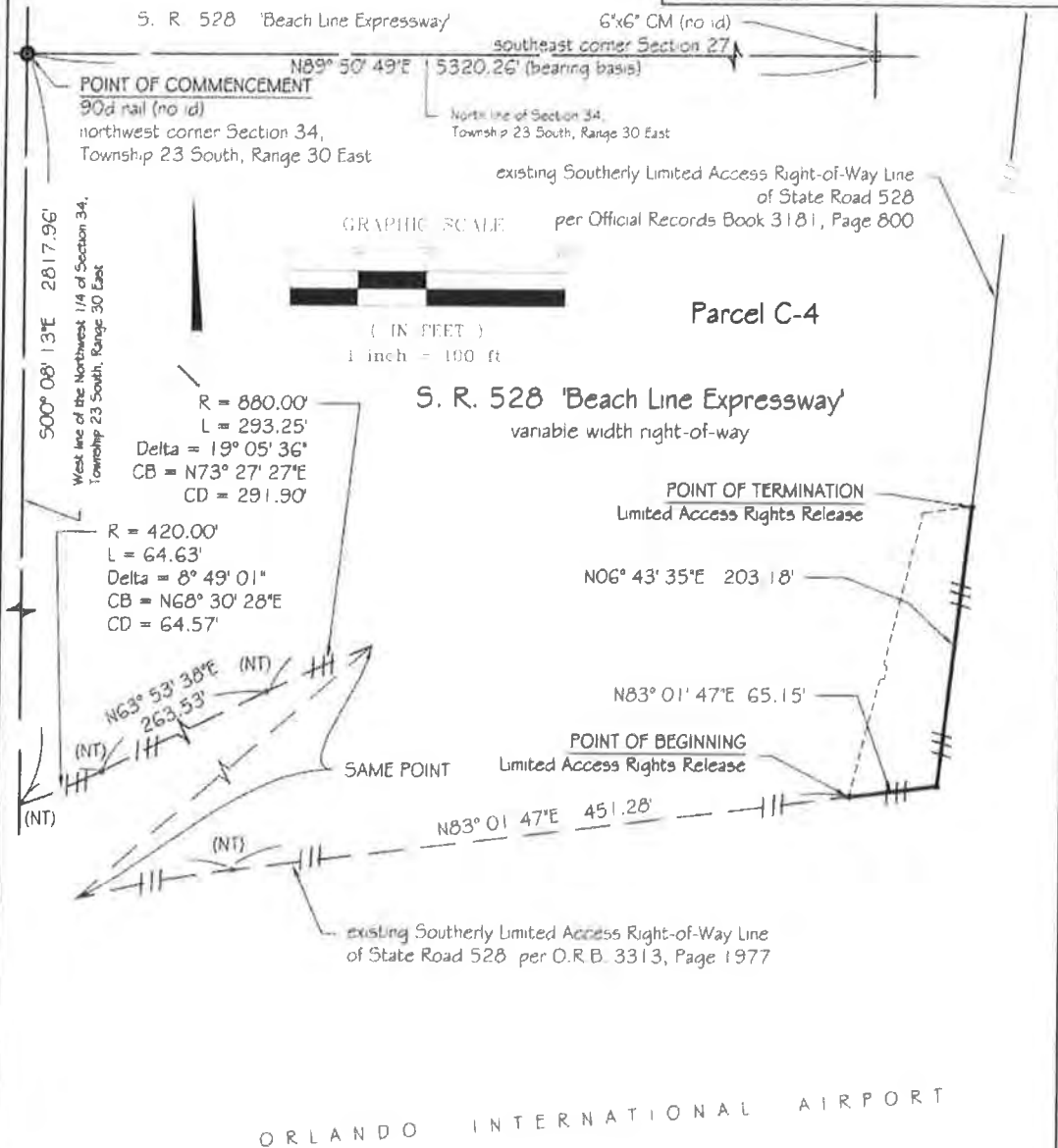
DESIGNED BY: HNTB DATE: 03/01/2018  
 DRAWN BY: PEW AMEC JOB No.: 6374150802  
 APPROVED BY: RMJ

**LEGAL DESCRIPTION and SKETCH**

AMEC Environment & Infrastructure, Inc.  
 75 East America Street, Suite 100  
 Orlando, FL 32801, USA  
 Phone: (407) 422-7671  
 Certificate of Authorization Number: B00000707

SHEET 1 OF 2  
 44 VISIONS  
 DATE: 03/01/2018

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**STATE ROAD 528**  
**PROJECT No.: 528-800**  
**PARCEL No.: C-4 (PARTIAL)**  
**PURPOSE: LIMITED ACCESS RIGHTS RELEASE**



**THIS IS NOT A SURVEY**

**FOR: ALL ABOARD FLORIDA**

**DESIGNED BY: HNTB**

**DATE: 03/01/2018**

**DRAWN BY: PEW**

**AMEC JOB No.: 6374150802**

**APPROVED BY: RMJ**

**LEGAL DESCRIPTION and SKETCH**



**AMEC Environment & Infrastructure, Inc.**

75 East America Street, Suite 200

Orlando, FL 32801-5554

PHONE: (407) 527-1570

1-Certificate of Authorization Number: BE0007932

**SHEET 2 OF 2**

**REVISIONS**

**DATE**

**BY**

**DATE**

**BY**

STATE ROAD 528  
CFX PROJECT: 528-1240

EXHIBIT "C"  
(EASEMENT PARCEL 801)

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No.: 528-1240  
PARCEL No.: CFX DRAINAGE EASEMENT at OIA #801  
ESTATE: PERMANENT DRAINAGE EASEMENT

A parcel of land lying in Section 34, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at a 90d Nail marking the Northwest Corner of Section 34, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°08'13" East, along the West line of the Northwest 1/4 of said Section 34, a distance of 2817.96 feet to the existing southerly Limited Access Right-of-Way Line of State Road 528 as described in Official Records Book 3313 at Page 1917 of the Public Records of Orange County, Florida and a point on a non-tangent curve concave to the north; thence northeasterly along said existing southerly Limited Access Right-of-Way Line the following four courses and distances: run northeasterly along the arc of said curve having a radius of 420.00 feet, a central angle of 08°49'01", a chord length of 64.57 feet bearing North 68°30'28" East, an arc distance of 64.63 feet; thence run North 63°53'38" East, non-tangent to said curve, a distance of 263.53 feet to point of curvature of a non-tangent curve concave to the southeast; thence run northeasterly along the arc of said curve having a radius of 880.00 feet, a central angle of 19°05'36", a chord length of 291.90 feet bearing North 73°27'27" East, an arc distance of 293.25 feet; thence run North 83°01'47" East, non-tangent to said curve, a distance of 451.28 feet; thence run North 14°23'08" East, a distance of 88.02 feet to a parcel of land identified as pole square "sign number 136 east" as described in Official Records Book 10401 at Page 5069 of said Public Records; thence run South 80°05'11" East, a distance of 3.20 feet; thence North 09°54'49" East, a distance of 10.00 feet; thence North 80°05'11" West, a distance of 2.42 feet; thence departing said parcel of land, run North 14°23'08" East, a distance of 48.93 feet to the POINT OF BEGINNING; thence run North 14°23'08" East, a distance of 16.18 feet; thence run South 82°34'56" East, a distance of 41.56 feet; thence run South 59°09'28" East a distance 86.60 feet; thence run South 17°35'33" West, a distance of 166.48 feet; thence run South 82°52'52" West, a distance of 16.56 feet; thence run North 17°55'55" East, a distance of 161.32 feet; thence run North 59°07'59" West, a distance of 68.96 feet; thence run North 82°08'40" West, a distance of 43.72 feet to the POINT OF BEGINNING

Containing 4240 square feet or 0.097 acres, more or less

Surveyors Notes

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901) , US Survey Foot, based on the north line of Section 34, Township 23 South, Range 30 East as being North89°50'49" East. The average combined scale factor is 0.9999476.
2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record.
3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
4. The location and configuration of the lands described and depicted hereon were provided by the client.
5. This legal description and sketch may have been reduced in size by reproduction.
6. A Commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539A-2-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

LEGEND:

(C) = Calculated  
(D) = Deed  
(M) = Measured  
(P) = Plat  
O R B = Official Records Book  
Pg. = Page  
R = Radius  
L = Length of curve (arc distance)  
CD = Chord distance  
Delta = central angle  
CB = Chord Bearing  
ID or id = Identification  
Line Not To Scale  
PID = Parcel Identification Number  
SR = State Road  
CFX = Central Florida Expressway Authority  
R/W = Right-of-Way  
CL = Centerline  
---||--- = Limited Access Right-of-way line  
PC = Point of Curvature  
PT = Point of Tangency  
PCC = Point of Compound Curvature  
PRC = Point of Reverse Curvature  
(NT) = Non Tangent  
CM = Concrete Monument  
--- = section line  
--- 1/4 --- = 1/4 section line  
No = Number

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 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

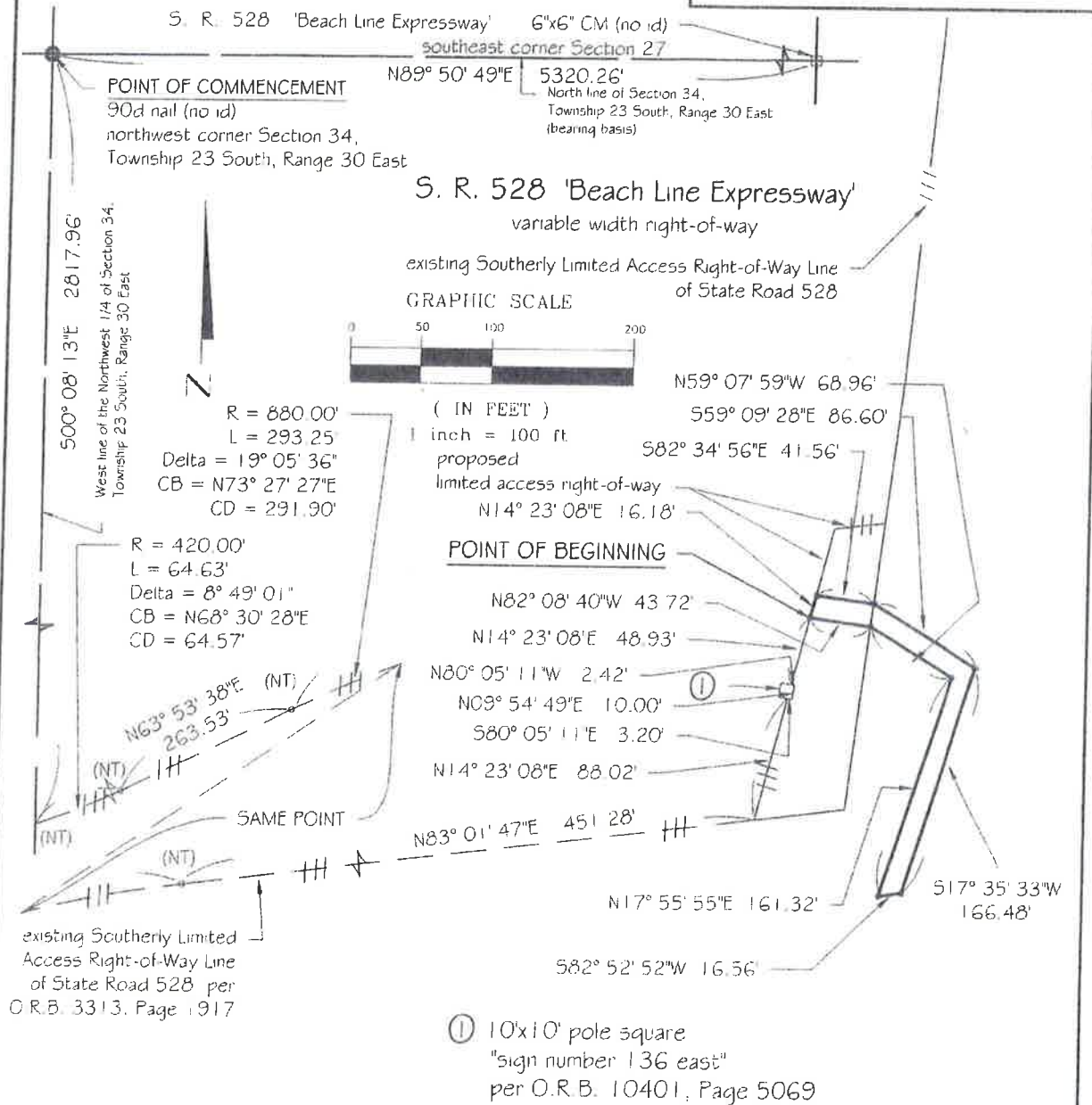


Robert M. Jones, PLS  
Florida Surveyor and Mapper, License No. LS-0004201

THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA		LEGAL DESCRIPTION and SKETCH		SHEET 1 OF 2	
DESIGNED BY: HNTB	DATE: 11/24/2015	Amec Foster Wheeler Environment & Infrastructure, Inc.		REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374150802	75 East Amelia Street, Suite 200 Orlando FL 32801 USA Phone (407) 522-7570		DATE	BY
APPROVED BY: RMJ		Certificate of Authorization Number LS-0007932		10/21/2017	PEW
				DRAWING NAME: Drainage Area No. 1 in 3A.dwg	

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**STATE ROAD 528**  
**PROJECT No.: 528-1240**  
**PARCEL No.: CFX DRAINAGE EASEMENT at OIA #801**  
**ESTATE: PERMANENT DRAINAGE EASEMENT**



ORLANDO INTERNATIONAL AIRPORT

THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA		LEGAL DESCRIPTION and SKETCH		SHEET 2 OF 2	
DESIGNED BY: HNTB	DATE: 11/24/2015	AMEC Foster Wheeler Environment & Infrastructure, Inc.		REVISIONS	
DRAWN BY: PEW	AMEC JOB No. 6374150802	75 East Amelia Street, Suite 200		DATE	BY
APPROVED BY: RMJ		Orlando, FL 32801 USA		11/24/2015	PEW
		Phone (407) 522-7570			
		Certificate of Authorization Number LB-0007932			



STATE ROAD 528  
CFX PROJECT: 528-1240

**EXHIBIT "D"**  
**(EASEMENT PARCEL 802)**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No.: 528-1240  
PARCEL No.: CFX DRAINAGE EASEMENT at OIA #802  
ESTATE: PERMANENT DRAINAGE EASEMENT

A parcel of land lying in the Section 34 Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows

Commence at 6"x6" concrete monument (no identification) marking the Northeast Corner of Section 34, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°22'19" East, along the East line of the Northeast 1/4 of said Section 34, a distance of 552.92 feet to the existing southerly Limited Access Right-of-Way Line of State Road 528 per Orlando Orange County Expressway Authority Section 1.1 and 1.2 Right-of-Way Maps; thence run North 80°13'05" West, along said existing southerly Limited Access Right-of-Way Line, a distance of 539.44 feet to the POINT OF BEGINNING; thence departing said existing southerly Limited Access Right-of-Way line run South 11°28'31" West, a distance of 66.64 feet; thence run North 78°18'15" West, a distance of 23.07 feet; thence run North 11°28'54" East, a distance of 65.87 feet to said existing southerly Limited Access Right-of-Way Line; thence run South 80°13'05" East, along said existing southerly Limited Access Right-of-Way line, a distance of 23.07 feet to the POINT OF BEGINNING

Containing 1528 square feet or 0.035 acres, more or less

**Surveyors Notes**

**LEGEND:**

(C) = Calculated  
(D) = Deed  
(M) = Measured  
(P) = Plat  
O R B = Official Records Book  
Pg = Page  
R = Radius  
L = Length of curve (arc distance)  
C = Chord distance  
Delta = central angle  
CB = Chord Bearing  
ID, or id = Identification  
Line Not To Scale  
PID = Parcel Identification Number  
S.R. = State Road  
CFX = Central Florida Expressway Authority  
R/W = Right-of-Way  
CL = Centerline  
---||--- = Limited Access Right-of-way line  
PC = Point of Curvature  
PT = Point of Tangency  
PCC = Point of Compound Curvature  
PRC = Point of Reverse Curvature  
(NT) = Non Tangent  
CM = Concrete Monument  
--- = section line  
--- = 1/4 section line  
OOCEA = Orlando Orange County Expressway Authority  
No = Number

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the east line of the northeast 1/4 of Section 34, Township 23 South, Range 30 East as being South 00°22'19" East. The average combined scale factor is 0.9999476.

2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record.

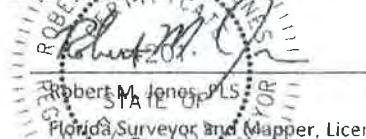
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4. The location and configuration of the lands described and depicted hereon were provided by the client.

5. This legal description and sketch may have been reduced in size by reproduction.

6. A Commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539A-2-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

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 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

  
Robert M. Jones, PLS  
Florida Surveyor and Mapper, License No. LS-0004201

THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA		LEGAL DESCRIPTION and SKETCH		SHEET 1 OF 2	
DESIGNED BY: HNTB	DATE: 11/24/2015	Amec Foster Wheeler Environment & Infrastructure, Inc.		REVISIONS	
DRAWN BY: PEW	AMEC JOB No. 6374150802	75 East Amelia Street Suite 200 Orlando, FL 32801 USA Phone (407) 522-7570		DATE	BY
APPROVED BY: RMJ		Certificate of Authorization Number LH-0007932		DRAWING NAME: Storage Area No. 2 a 5A55	

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
 STATE ROAD 528  
 PROJECT No.: 528-1240  
 PARCEL No.: CFX DRAINAGE EASEMENT at OIA #802  
 ESTATE: PERMANENT DRAINAGE EASEMENT

27

26

POINT OF COMMENCEMENT  
 6"x6" concrete monument (no ID)  
 northeast corner Section 34,  
 Township 23 South, Range 30 East

East line of the Northeast 1/4 of Section 34,  
 Township 23 South, Range 30 East  
 (bearing basis)

EXISTING NORTHERLY LIMITED ACCESS  
 RIGHT OF WAY LINE

S. R. 528 'Beach Line Expressway'  
 variable width right-of-way  
 (per OOCEA Section 1.1 and 1.2 Right-of-Way Maps)

552.92'  
 500° 22' 19"E

S80° 13' 05"E 23.07'

EXISTING SOUTHERLY LIMITED ACCESS  
 RIGHT OF WAY LINE

N80° 13' 05"W 539.44'

POINT OF BEGINNING

S11° 28' 31"W 66.64'

N78° 18' 15"W 23.07'

N11° 28' 54"E 65.87'

34

35

GRAPHIC SCALE



( IN FEET )

1 inch = 100 ft.

THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA

DESIGNED BY HNTB

DATE: 11/24/2015

DRAWN BY PEW

AMEC JOB No.: 6374150802

APPROVED BY RMJ

LEGAL DESCRIPTION and SKETCH



Amec Foster Wheeler Environment & Infrastructure, Inc.  
 75 East Amelia Street, Suite 200  
 Orlando, FL 32801 USA  
 Phone: (407) 522-7570

Certificate of Authorization Number LB-0007932

SHEET 2 OF 2

REVISIONS

DATE BY

DRAWING NAME (Project): Acs No 2 at OIA (mg)



STATE ROAD 528  
CFX PROJECT: 528-1240

**EXHIBIT "E"**  
**(EASEMENT PARCEL 803)**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No.: 528-1240  
PARCEL No.: CFX DRAINAGE EASEMENT at OIA #803  
ESTATE: PERMANENT DRAINAGE EASEMENT

A parcel of land lying in the Section 36, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at 6"x6" concrete monument marking the Northeast Corner of Section 35, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°06'56" East, along the East line of the Northeast 1/4 of said Section 35, a distance of 1250.09 feet to the southerly Limited Access Right-of-Way Line of State Road 528 per Orlando Orange County Expressway Authority Right-of-Way Maps, Section 1 1 and 1 2 and Project 907; thence run South 89°53'39" East, along said southerly Limited Access Right-of-Way Line, a distance of 2583.98 feet to the northwest corner of Permanent Easement Parcel 907-801/ Part C as depicted on said Orlando Orange County Expressway Right-of-Way Map, Project 907; thence run South 00° 06' 21" West, departing said southerly Limited Access Right-of-Way Line, along the west line of said Easement, a distance of 108.00 feet to the southwest corner of said Easement and the POINT OF BEGINNING; thence run South 89° 53' 39" East, along the south line of said Easement, a distance of 108.27 feet to the southeast corner of said Easement; thence departing said south line, run South 00° 17' 29" East, a distance of 47.30 feet; thence run South 89°58'12" West, a distance of 108.53 feet; thence run North 00°01'41" East, a distance of 47.56 feet to the POINT OF BEGINNING

Containing 5141 square feet or 0.118 acres, more or less

**Surveyors Notes**

**LEGEND:**

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(D) = Deed  
(M) = Measured  
(P) = Plat  
O R B = Official Records Book  
Pg = Page  
R = Radius  
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y' = Line Not To Scale  
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CFX = Central Florida Expressway Authority  
R/W = Right-of-Way  
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(NT) = Non Tangent  
CM = Concrete Monument  
--- = section line  
--- = 1/4 section line  
OOCEA = Orlando Orange County Expressway Authority  
No = Number

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the east line of the northeast 1/4 of Section 35, Township 23 South, Range 30 East as being South 00°06'56" East. The average combined scale factor is 0.9999476.

2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record

3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper

4. The location and configuration of the lands described and depicted hereon were provided by the client

5. This legal description and sketch may have been reduced in size by reproduction.

6. A Commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539A-2-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

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 51-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

Robert M. Aldine, PLS  
Florida Surveyor and Mapper, License No. LS-0004201

THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA		LEGAL DESCRIPTION and SKETCH		SHEET 1 OF 2	
DESIGNED BY: HNTB	DATE: 11/24/2015	Amec Foster Wheeler Environment & Infrastructure, Inc.		REVISIONS	
DRAWN BY: PEW	AMEC JOB No. 6374150802	75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone (407) 522-7570		DATE BY	
APPROVED BY: RMJ		Certificate of Authorization Number LB-0007932		DRAWN BY: Andy Ho, J. A. (3/15/16)	

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
 STATE ROAD 528  
 PROJECT No.: 528-1240  
 PARCEL No.: CFX DRAINAGE EASEMENT at OIA #803  
 ESTATE: PERMANENT DRAINAGE EASEMENT

26

POINT OF COMMENCEMENT

6"x6" concrete monument  
 northeast corner Section 35,  
 Township 23 South, Range 30 East

25

GRAPHIC SCALE



( IN FEET )

1 inch = 100 ft.

NORTHERLY LIMITED ACCESS  
 RIGHT OF WAY LINE

East line of the Northeast 1/4  
 of Section 35,  
 Township 23 South, Range 30 East  
 (bearing basis)

S. R. 528 'Beach Line Expressway'

variable width right-of-way

(per OOCEA Right-of-Way Maps Section 1.1 and  
 1.2 and Project 907)

SAME POINT

500° 06' 56"E  
 1250.09'

Permanent Easement \*

northwest corner

SOUTHERLY LIMITED ACCESS  
 RIGHT OF WAY LINE

589° 53' 39"E 2583.98'

500° 06' 21"W 108.00'  
 (west line)

589° 53' 39"E  
 108.27'  
 (south line)

POINT OF BEGINNING

southwest corner

907-80  
 part c

southeast corner

Compensating Area  
 Easement  
 O.R.B. 10135,  
 PG 5707

N00° 01' 41"E  
 47.56'

500° 17' 29"E  
 47.30'

36

589° 58' 12"W 108.53'

35

\* Permanent Easement as depicted on Orlando-Orange County  
 Expressway Authority Right-of-Way Map, Project 907

THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA

DESIGNED BY: HNTB

DATE: 11/24/2015

DRAWN BY: PEW

AMEC JOB No.: 6374150802

APPROVED BY: RMJ

LEGAL DESCRIPTION and SKETCH

Amec Foster Wheeler Environment & Infrastructure, Inc.  
 75 East Amelia Street, Suite 200  
 Orlando, FL 32801 USA  
 Phone (407) 522-7570  
 Certificate of Authorization Number LB-0007932

SHEET 2 OF 2

REVISIONS

DATE BY

DRAWN BY: George Noy 10/1/04

STATE ROAD 528  
CFX PROJECT: 528-1240

**EXHIBIT "F"**  
**(EASEMENT PARCEL 804)**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No.: 528-1240  
PARCEL No.: CFX DRAINAGE EASEMENT at OIA #804  
ESTATE: PERMANENT DRAINAGE EASEMENT

A parcel of land lying in the Section 35, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at a 6"x6" concrete monument (no identification) marking the Northwest Corner of Section 35, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°22'19" East, along the west line of the Northwest 1/4 of said Section 35, a distance of 589.13 feet to the south Limited Access Right-of-Way Line of State Road 528 per Orlando Orange County Expressway Authority Goldenrod Road Extension Project 903 Right-of-Way Maps; thence run along said south Limited Access Right-of-Way Line the following five (5) courses and distances; thence run South 76°11'34" East, a distance of 368.99 feet; thence run South 75°51'57" East, a distance of 98.35 feet to a point on a non-tangent curve with a radius of 2770.79 feet, concave to the south; thence easterly along said curve to the right through a central angle of 7°40'18", a chord distance of 370.72 feet where the chord bears South 71°21'21" East an arc distance of 371.00 feet to the point of intersection with a non-tangent line; thence South 66°51'16" East, a distance of 98.35 feet; thence run South 66°31'16" East, a distance of 233.65 feet to the POINT OF BEGINNING; thence continue along said south Limited Access Right-of-Way Line the following four (4) courses and distances; thence run South 66°31'16" East, a distance of 199.42 feet to a point on a curve with a radius of 2000.00 feet, concave to the north; thence easterly along said curve to the left through a central angle of 10°53'25", a chord distance of 379.57 feet where the chord bears South 71°57'58" East an arc distance of 380.14 feet; thence run South 77°24'41" East, a distance of 246.47 feet; thence run South 08°35'44" West, a distance of 22.89 feet to a point on a non-tangent curve with a radius of 3572.02 feet, concave to the north; thence departing said south Limited Access Right-of-Way Line, run westerly along said curve to the right through a central angle of 8°55'54", a chord distance of 556.26 feet where the chord bears N74°42'26"W an arc distance of 556.83 feet; thence run North 68°44'48" West, a distance of 274.06 feet; thence run North 22°02'13" East, a distance of 29.40 feet to the POINT OF BEGINNING.

Containing 0.42 acres, more or less.

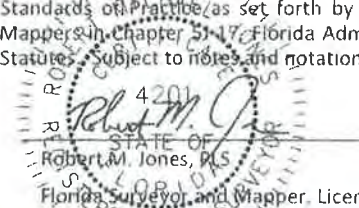
**Surveyors Notes**

**LEGEND:**

(C) = Calculated  
(D) = Deed  
(M) = Measured  
(P) = Plat  
O R B = Official Records Book  
Pg. = Page  
R = Radius  
L = Length of curve (arc distance)  
CD = Chord distance  
Delta = central angle  
CB = Chord Bearing  
ID, or id = Identification  
N/T = Line Not To Scale  
PID = Parcel Identification Number  
S.R. = State Road  
CFX = Central Florida Expressway Authority  
R/W = Right-of-Way  
CL = Centerline  
LA = Limited Access Right-of-way line  
PC = Point of Curvature  
PT = Point of Tangency  
PCC = Point of Compound Curvature  
PRC = Point of Reverse Curvature  
(NT) = Non Tangent  
CM = Concrete Monument  
--- = section line  
--- = 1/4 section line  
OOCEA = Orlando Orange County Expressway Authority  
No = Number

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the west line of the northwest 1/4 of Section 35, Township 23 South, Range 30 East as being South 00°22'19" East. The average combined scale factor is 0.9999476.
2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record.
3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
4. The location and configuration of the lands described and depicted hereon were provided by the client.
5. This legal description and sketch may have been reduced in size by reproduction.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief, and 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 55-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

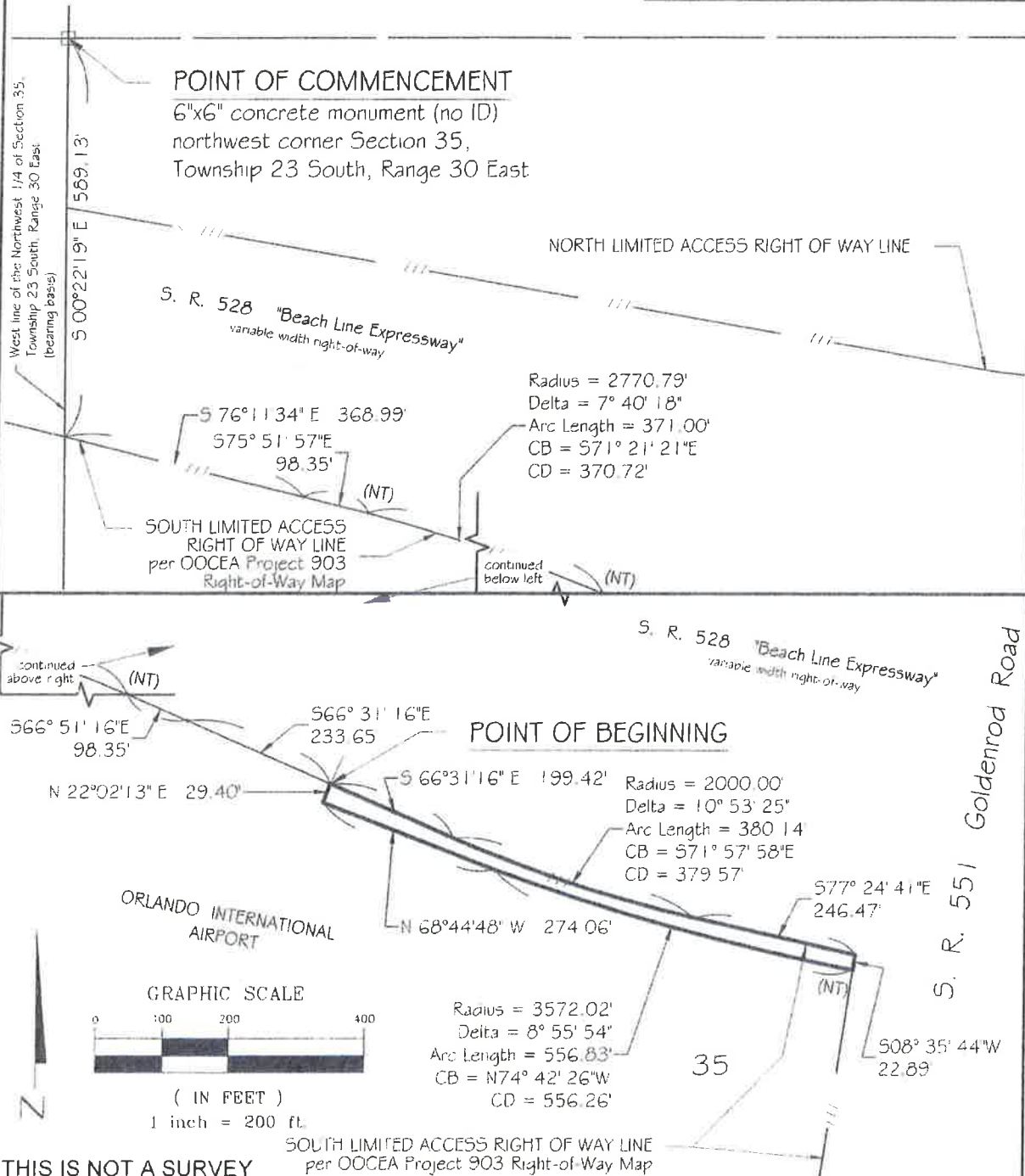


Florida Surveyor and Mapper, License No. LS-0004201

**THIS IS NOT A SURVEY**

FOR: ALL ABOARD FLORIDA		LEGAL DESCRIPTION and SKETCH		SHEET 1 OF 2	
DESIGNED BY: HNTB	DATE: 04/13/2016	Amec Foster Wheeler Environment & Infrastructure, Inc.		REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374150802	75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570		DATE	BY
APPROVED BY: RMJ		Certificate of Authorization Number LB-0007932			
				DRAWING NAME: Springs Area No 1 & 2A.tif	

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
 STATE ROAD 528  
 PROJECT No.: 528-1240  
 PARCEL No.: CFX DRAINAGE EASEMENT at OIA #804  
 ESTATE: PERMANENT DRAINAGE EASEMENT



FOR: ALL ABOARD FLORIDA		 <b>LEGAL DESCRIPTION and SKETCH</b> Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	SHEET 2 OF 2	
DESIGNED BY: HNTB	DATE: 04/13/2016		<b>REVISIONS</b>	
DRAWN BY: PEW	AMEC JOB No.: 6374150802		DATE	BY
APPROVED BY: RMJ				
		DRAWING NAME: Drainage Area No. 4 in OIA.dwg		



**EXHIBIT "G"**  
**(FORM OF SPECIAL WARRANTY DEED [528 RAMP PROPERTY])**

**Prepared By and Return To:**

Christopher J. Wilson, Esq.  
Marchena and Graham, P.A.  
976 Lake Baldwin Lane  
Suite 101  
Orlando, Florida 32812

This deed is exempt from Florida documentary stamp tax under Department of Revenue Rules 12B-4.002(4)(a), 12B-4.014(10) and 12B-4.054(24) F.A.C. and Florida Statute 201.02(6).)

**SPECIAL WARRANTY DEED**

**THIS SPECIAL WARRANTY DEED** is made and executed effective as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by the **GREATER ORLANDO AVIATION AUTHORITY**, a public and governmental body, existing under and by virtue of the laws of the State of Florida, with a principal address of One Jeff Fuqua Boulevard, Orlando, FL 32827-4399 ("GOAA"), and **THE CITY OF ORLANDO**, a Florida Municipal Corporation existing under the laws of the State of Florida, with a principal address of 400 South Orange Avenue, Orlando, FL 32801 ("City") (hereinafter collectively referred to as "**Grantors**") to the **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a body politic and corporate and agency of the State of Florida, ("CFX"), with a principal address of 4974 ORL Tower Road, Orlando, FL 32807 (hereinafter referred to as "**Grantee**").

**WITNESSETH:**

**THAT GRANTORS**, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by these presents does grant, bargain, transfer, alien, remise, release, convey, and confirm unto Grantee all Grantors' interest in those certain parcels of land situated in the City of Orlando, Orange County, Florida, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "**Subject Property**"), together with all rights of ingress, egress, light, air and view to, from and across any State Road 528 road right-of-way which may otherwise accrue to any property adjoining said right-of-way.

**TO HAVE AND TO HOLD** the same together with all and singular the appurtenances thereunto belonging to or anyway appertaining, and all the estate, right, title, interest, claim.

**AND** the Grantors do hereby covenant with said Grantee that Grantors are lawfully seized of said land in fee simple; that Grantors have good right and lawful authority to sell and convey said land; that Grantors hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever claiming by or through Grantors.

**SUBJECT TO** taxes for the current year and subsequent years and the covenants, conditions and restrictions which are set forth below:

- a) Grantors reserve unto themselves, their successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described, together with the right

to cause in said airspace such noise as may be inherent in the operations of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, for use of said airspace for landing on, or taking off from or operating on Orlando International Airport.

b) Grantors and Grantee expressly agree for themselves, their successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the hereinafter described real property to such a height so as to comply with the FAA Regulations, Part 77.

c) Grantors and Grantee expressly agree for themselves, their successors and assigns, to prevent any use of the hereinafter described real property which would interfere with the landing or takeoff of aircraft at Orlando International Airport or interfere with the air navigation and or communication facilities serving Orlando International Airport, or otherwise constitute an airport hazard.

d) Grantors, Grantee, and their successors and assigns shall not permit/afford access from the subject property onto Orlando International Airport property for aeronautical purposes.

e) Grantors shall insure that if the property is used or converted to a municipal use, an amount equal to the fair market value will be deposited into an identifiable interest bearing account prior to conversion of the property to the municipal use. The proceeds should remain in this account until utilized in accordance with the FAA Order 5190.6A, paragraph 7-9.c.

#### **Notice of Grantor's Release**

The following provision is added as a condition of conveyance for the Subject Property:

(a) Grantors acknowledge and agree that the upon conveyance of the Subject Property to the Grantee, that the Subject Property shall be and is released from the provisions, covenants and other matters set forth in that certain Amended and Restated Operation and Use Agreement between the City of Orlando and Greater Aviation Authority dated August 31, 2015, and that certain Memorandum of Amended and Restated Operation and Use Agreement filed March 23, 2016 in Official Records as Clerk's Document No. 20160146368, Public Records of Orange County, Florida.

**[THIS SPACE LEFT BLANK INTENTIONALLY]**

**[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOWING]**

**ATTEST:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

[Official Seal]

**"CITY"**

**CITY OF ORLANDO, FLORIDA,**

a Florida municipal corporation existing under the laws of the State of Florida.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

**WITNESSES:**

\_\_\_\_\_

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

\_\_\_\_\_

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

APPROVED AS TO FORM AND LEGALITY FOR THE  
USE AND RELIANCE OF THE CITY OF ORLANDO,  
ONLY, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2018.

By: \_\_\_\_\_

City Attorney

**STATE OF FLORIDA  
COUNTY OF ORANGE**

**ACKNOWLEDGMENT**

Before me, the undersigned authority, duly authorized under the laws of the State of Florida to take acknowledgments, this day personally appeared \_\_\_\_\_, as \_\_\_\_\_, of the City of Orlando, personally known to me to be the individual and officer described in and who executed the foregoing instrument on behalf of said City of Orlando, and acknowledged the execution thereof to be his/her free act and deed as such officer and that he/she was duly authorized so to do.

In witness whereof, I have hereunto set my hand and official seal at Orlando, in the County of Orange, State of Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

*Notary Seal*

\_\_\_\_\_  
Notary Public

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

My commission expires: \_\_\_\_\_

**"GOAA"  
GREATER ORLANDO AVIATION  
AUTHORITY**

**ATTEST:**

By: \_\_\_\_\_  
Dayci S. Burnette-Snyder, Assistant Secretary

By: \_\_\_\_\_  
Phillip N. Brown, A.A.E.,  
Chief Executive Officer

**WITNESSES:**

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

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

Date: \_\_\_\_\_, 2018

APPROVED AS TO FORM AND LEGALITY  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018,  
for the use and reliance of the Greater  
Orlando Aviation Authority, only.  
Marchena and Graham, P.A., General  
Counsel

By: \_\_\_\_\_  
Marchena and Graham, P.A.

**STATE OF FLORIDA  
COUNTY OF ORANGE**

**ACKNOWLEDGMENT**

Personally Appeared before me this \_\_\_\_ day of \_\_\_\_\_, 2018, the undersigned authority, Phillip N. Brown, A.A.E., well known to me and known by me to be the Chief Executive Officer of the Greater Orlando Aviation Authority, and acknowledged before me that he executed the foregoing instrument on behalf of the Greater Orlando Aviation Authority as its true act and deed, and that he was duly authorized to do so.

*Notary Seal*

\_\_\_\_\_  
Notary Public

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

Commission Expires: \_\_\_\_\_



## COMPOSITE EXHIBIT "A"

### Legal Description of Subject Property (528 Ramp Parcel)

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No.: 528-1240  
PARCEL No.: 100  
PURPOSE: LIMITED ACCESS RIGHT OF WAY  
ESTATE: FEE SIMPLE

A parcel of land lying in Section 36, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at a 6"x6" concrete monument marking the Northwest Corner of Section 36, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°06'58" East, along the West line of the Northwest 1/4 of said Section 36, a distance of 1249.98 feet to the existing southerly Limited Access Right-of-Way Line of State Road 528 per Orlando Orange County Expressway Authority, Section 1.1 and 1.2 and Project 907 Right-of-Way Maps; thence run along said existing southerly Limited Access Right-of-Way Line the following four courses and distances: run South 89°53'39" East, a distance of 2364.44 feet for the POINT OF BEGINNING; thence continue South 89°53'39" East, a distance of 238.95 feet; thence run South 85°39'53" East, a distance of 392.00 feet; thence run South 79°44'28" East, a distance of 940.93 feet to the Northwest corner of Lot 1 of the plat of "7 - ELEVEN STORE NO. 27590" as recorded in Plat Book 76 at Page 119 of the Public Records of Orange County, Florida; thence departing said existing southerly Limited Access Right-of-Way Line, run South 30°06'18" East, along the west line of said Lot 1, a distance of 47.70 feet; thence departing said west line, run North 88°00'03" West, a distance of 381.24 feet to a point of curvature of a curve concave to the northeast; thence run northwesterly along the arc of said curve having a radius of 1216.00 feet, a central angle of 13°47'50", a chord length of 292.12 feet bearing North 81°06'08" West, an arc distance of 292.82 feet; thence run North 74°12'13" West, a distance of 240.19 feet to a point of curvature of a curve concave to the southwest; thence run northwesterly along the arc of said curve having a radius of 2530.00 feet, a central angle of 08°28'51", a chord length of 374.14 feet bearing North 78°26'38" West, an arc distance of 374.49 feet; thence run North 82°41'04" West, a distance of 314.91 feet to the POINT OF BEGINNING.

Together with all rights of ingress, egress, light, air and view to, from or across any of the above described right-of-way property which may otherwise accrue to any property adjoining said right-of-way

Containing 2.28 acres, more or less.

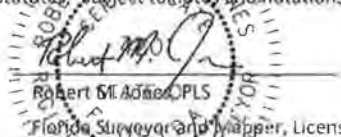
#### LEGEND:

(C) = Calculated  
(D) = Deed  
(M) = Measured  
(P) = Plat  
O.R.B. = Official Records Book  
Pg. = Page  
R = Radius  
L = Length of curve (arc distance)  
CD = Chord distance  
Delta = central angle  
CB = Chord Bearing  
ID = Identification  
1/4 = Line Not To Scale  
PID = Parcel Identification Number  
S.R. = State Road  
CFX = Central FL Expressway Authority  
R/W = Right-of-Way  
C = Centerline  
--- = Limited Access Right-of-way line  
PC = Point of Curvature  
PT = Point of Tangency  
PCC = Point of Compound Curvature  
PRC = Point of Reverse Curvature  
(NT) = Non Tangent  
CM = Concrete Monument  
--- = section line  
--- = 1/4 section line  
OOCEA = Orlando Orange County Expressway Authority  
No. = Number

#### Surveyors Notes

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NA083/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the north line of the northwest 1/4 of Section 36, Township 23 South, Range 30 East as being South 89°55'17" East. The average combined scale factor is 0.9999452.
2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record.
3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
4. The location and configuration of the lands described and depicted hereon were provided by the client.
5. This legal description and sketch may have been reduced in size by reproduction.
6. A Commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539A-1-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

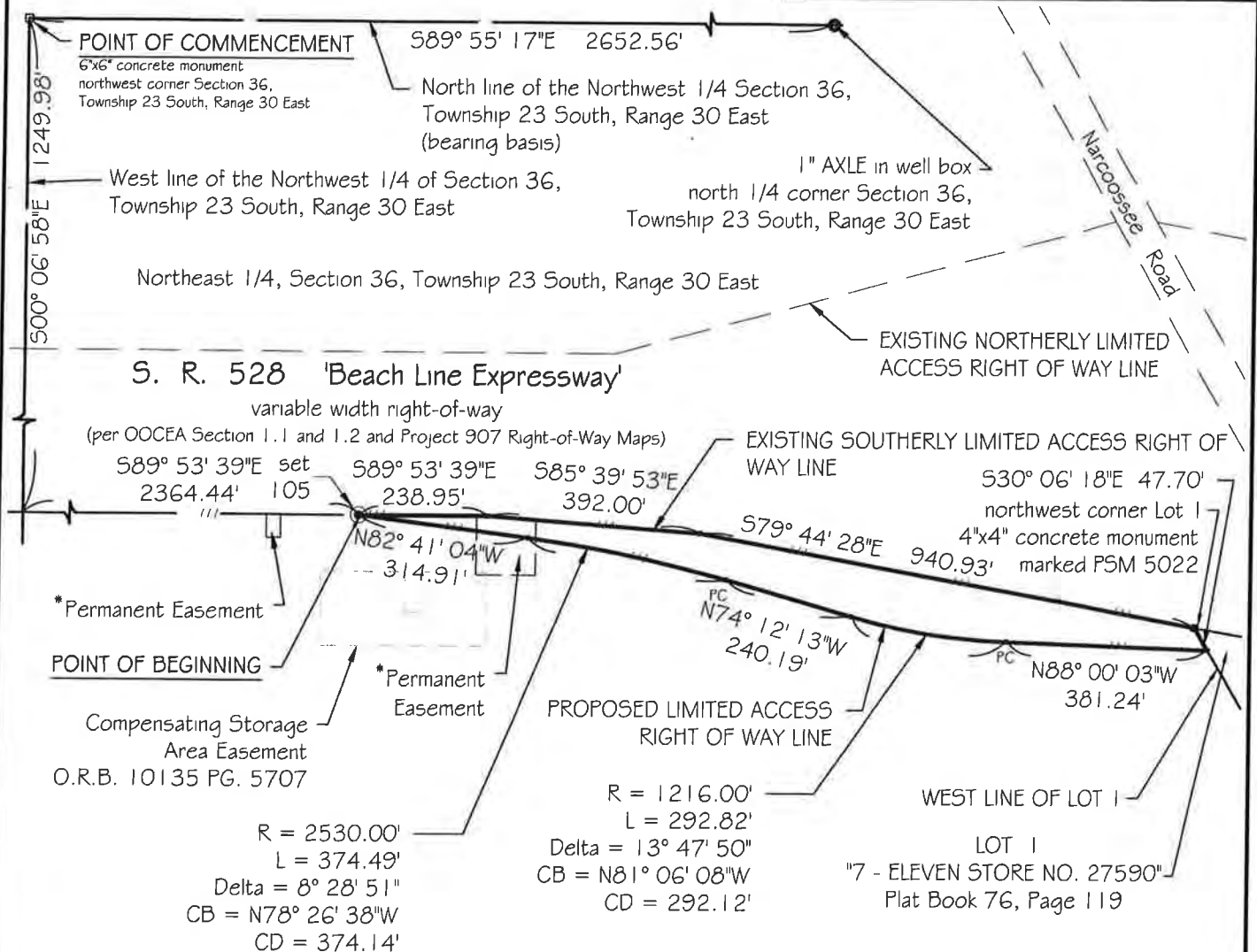
I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapters 28-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes, subject to notes and notations shown hereon.

  
Robert M. Adams, PLS  
Florida Surveyor and Mapper, License No. LS-0004201

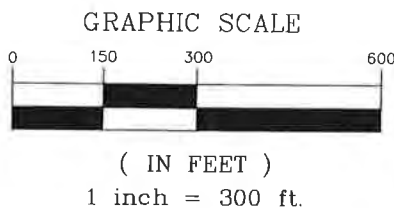
THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA		LEGAL DESCRIPTION and SKETCH		SHEET 1 OF 2	
DESIGNED BY: HNTB	DATE: 11/24/2015	Amec Foster Wheeler Environment & Infrastructure, Inc.		REVISIONS	
DRAWN BY: PEW	AMEC JOB No. 6374150802	75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570		DATE: BY:	
APPROVED BY: RMJ		Civil/Case of Authorization Number L1H-0007912		HONG KONG 01-2-004-21-010	

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**STATE ROAD 528**  
**PROJECT No.: 528-1240**  
**PARCEL No.: 100**  
**PURPOSE: LIMITED ACCESS RIGHT OF WAY**  
**ESTATE: FEE SIMPLE**



\* as depicted on Orlando-Orange County Expressway Authority SR 528 Right-of-Way Map Project 907



ORLANDO INTERNATIONAL AIRPORT

**THIS IS NOT A SURVEY**

FOR: ALL ABOARD FLORIDA		LEGAL DESCRIPTION and SKETCH		SHEET 2 OF 2	
DESIGNED BY: HNTB	DATE: 11/24/2015	Amec Foster Wheeler Environment & Infrastructure, Inc.		REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374150802	75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570		DATE	BY
APPROVED BY: RMJ		Certificate of Authorization Number LB-0007932			
				DRAWING NAME: CFX at GOM-12 3-24.dwg	

**EXHIBIT "H"**  
**(FORM OF SPECIAL WARRANTY DEED [CARGO ROAD PROPERTY])**

**Prepared By and Return To:**

Christopher J. Wilson, Esq.  
Marchena and Graham, P.A.  
976 Lake Baldwin Lane  
Suite 101  
Orlando, Florida 32812

**This deed is exempt from Florida documentary stamp tax under Department of Revenue Rules 12B-4.002(4)(a), 12B-4.014(10) and 12B-4.054(24) F.A.C. and Florida Statute 201.02(6).)**

**SPECIAL WARRANTY DEED**

**THIS SPECIAL WARRANTY DEED** is made and executed effective as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by the **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a body politic and corporate and agency of the State of Florida, ("CFX"), with a principal address of 4974 ORL Tower Road, Orlando, FL 32807 (hereinafter collectively referred to as "**Grantor**") to **GREATER ORLANDO AVIATION AUTHORITY**, a public and governmental body, existing under and by virtue of the laws of the State of Florida, with a principal address of One Jeff Fuqua Boulevard, Orlando, FL 32827-4399 ("GOAA"), and **THE CITY OF ORLANDO**, a Florida Municipal Corporation existing under the laws of the State of Florida, with a principal address of 400 South Orange Avenue, Orlando, FL 32801 ("City") (hereinafter referred to as "**Grantees**").

**W I T N E S S E T H:**

**THAT GRANTOR**, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by these presents does grant, bargain, transfer, alien, remise, release, convey, and confirm unto Grantees all Grantor's interest in those certain parcels of land situated in the City of Orlando, Orange County, Florida, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "**Subject Property**"), together with all rights of ingress, egress, light, air and view to, from and across any State Road 528 road right-of-way which may otherwise accrue to any property adjoining said right-of-way.

**TO HAVE AND TO HOLD** the same together with all and singular the appurtenances thereunto belonging to or in anywise appertaining, and all the estate, right, title, interest, claim.

**AND** the Grantor does hereby covenant with said Grantees that Grantor is lawfully seized of said land in fee simple; that Grantor has good right and lawful authority to sell and convey said land; that Grantor hereby fully warrants the title to said land, and will defend the same against lawful claims of all persons whomsoever claiming by or through Grantor.

**SUBJECT TO** taxes for the current year and subsequent years.

**[SIGNATURE AND ACKNOWLEDGMENT PAGE FOLLOWING]**

**"CFX"**  
**CENTRAL FLORIDA EXPRESSWAY**  
**AUTHORITY**, a public Corporation of the  
State of Florida

**ATTEST:**

By: \_\_\_\_\_  
Regla Lamaute, Executive Assistant

By: \_\_\_\_\_  
Laura Kelley, Executive Director

Date: \_\_\_\_\_, 2018

**WITNESSES:**

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY  
FOR USE AND RELIANCE BY THE CENTRAL  
FLORIDA EXPRESSWAY AUTHORITY ONLY.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Counsel.

**STATE OF FLORIDA**  
**COUNTY OF ORANGE**

**ACKNOWLEDGMENT**

Personally Appeared before me this \_\_\_\_ day of \_\_\_\_\_, 2018, the undersigned authority, \_\_\_\_\_, well known to me and known by me to be the Executive Director of the Central Florida Expressway Authority, and acknowledged before me that he executed the foregoing instrument on behalf of the Central Florida Expressway Authority as its true act and deed, and that he was duly authorized to do so.

*Notary Seal*

\_\_\_\_\_  
Notary Public

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

Commission Expires: \_\_\_\_\_

## COMPOSITE EXHIBIT "A"

### Legal Description of Subject Property (Cargo Road Parcel)

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No.: 528-800  
PARCEL No.: C-4 (PARTIAL)  
ESTATE: FEE SIMPLE

A parcel of land lying in Section 34, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at a 90d Nail marking the Northwest Corner of Section 34, Township 23 South, Range 30 East, Orange County, Florida, thence run South 00°08'13" East, along the West line of the Northwest 1/4 of said Section 34, a distance of 2817.96 feet to the existing southerly Limited Access Right-of-Way Line of State Road 528 as described in Official Records Book 3313 at Page 1977 of the Public Records of Orange County, Florida and a point on a non-tangent curve concave to the north, thence northeasterly along said existing southerly Limited Access Right-of-Way Line the following four courses and distances: run northeasterly along the arc of said curve having a radius of 420.00 feet, a central angle of 08°49'01", a chord length of 64.57 feet bearing North 68°30'28" East, an arc distance of 64.63 feet; thence run North 63°53'38" East, non-tangent to said curve, a distance of 263.53 feet to point of curvature of a non-tangent curve concave to the southeast; thence run northeasterly along the arc of said curve having a radius of 880.00 feet, a central angle of 19°05'36", a chord length of 291.90 feet bearing North 73°27'27" East, an arc distance of 293.25 feet; thence run North 83°01'47" East, non-tangent to said curve, a distance of 451.28 feet to the POINT OF BEGINNING; thence departing said existing southerly Limited Access Right-of-Way Line, run North 14°23'08" East, a distance of 88.02 feet to the south boundary of a parcel of land identified as pole square "sign number 136 east" as described in Official Records Book 10401 at Page 5069 of said Public Records; thence run South 80°05'11" East, along the said south boundary, a distance of 3.20 feet; thence North 09°54'49" East, along the east boundary of said parcel, a distance of 10.00 feet; thence North 80°05'11" West, along the north boundary of said parcel, a distance of 2.42 feet; thence departing said north boundary, run North 14°23'08" East, a distance of 113.90 feet; thence run North 83°00'42" East, a distance of 36.08 feet to said existing southerly Limited Access Right-of-Way Line; thence run South 06°43'35" West, along said existing southerly Limited Access Right-of-Way Line, a distance of 203.18 feet; thence run South 83°01'47" West, along said existing southerly Limited Access Right-of-Way Line, 65.15 feet to the POINT OF BEGINNING.

Containing 9963 square feet or 0.229 acres, more or less

Reserving all rights of ingress, egress, light, air and view to, from or across any Central Florida Expressway Authority right-of-way property which may otherwise accrue to any property adjoining said right-of-way. Subject to permanent drainage easement in favor Central Florida Expressway Authority.

#### Surveyors Notes

#### LEGEND:

(C) = Calculated  
(D) = Deed  
(M) = Measured  
(P) = Plat  
O.R.B. = Official Records Book  
Pg. = Page  
R = Radius  
L = Length of curve (arc distance)  
CD = Chord distance  
Data = central angle  
CB = Chord Bearing  
ID = Identification  
/ = Line Not To Scale  
PID = Parcel Identification Number  
S.R. = State Road  
CFX = Central Florida Expressway Authority  
R/W = Right-of-Way  
C = Centerline  
LAW = Limited Access Right-of-way line  
PC = Point of Curvature  
PT = Point of Tangency  
PCC = Point of Compound Curvature  
PRC = Point of Reverse Curvature  
NT = Non Tangent  
CM = Concrete Monument  
--- = section line  
--- = 1/4 section line

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the north line of Section 34, Township 23 South, Range 30 East as being North89°50'49" East. The average combined scale factor is 0.9999476.

2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record.

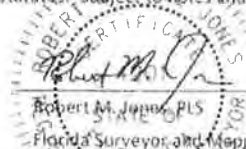
3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.

4. The location and configuration of the lands described and depicted hereon were provided by the client.

5. This legal description and sketch may have been reduced in size by reproduction.

6. A Commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539A-C4-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

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 31-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.



THIS IS NOT A SURVEY

FOR ALL ABOARD FLORIDA

DESIGNED BY: HNTB DATE: 11/24/2015

DRAWN BY: PEW AMEC JOB No. 6374150802

APPROVED BY: RMJ

LEGAL DESCRIPTION and SKETCH

AMEC Environment & Infrastructure, Inc.

75 East Avenue Street, Suite 700  
Tampa, FL 33601, USA  
Phone: 813-242-7575  
Fax: 813-242-7576

SHEET 1 OF 2

REVISIONS

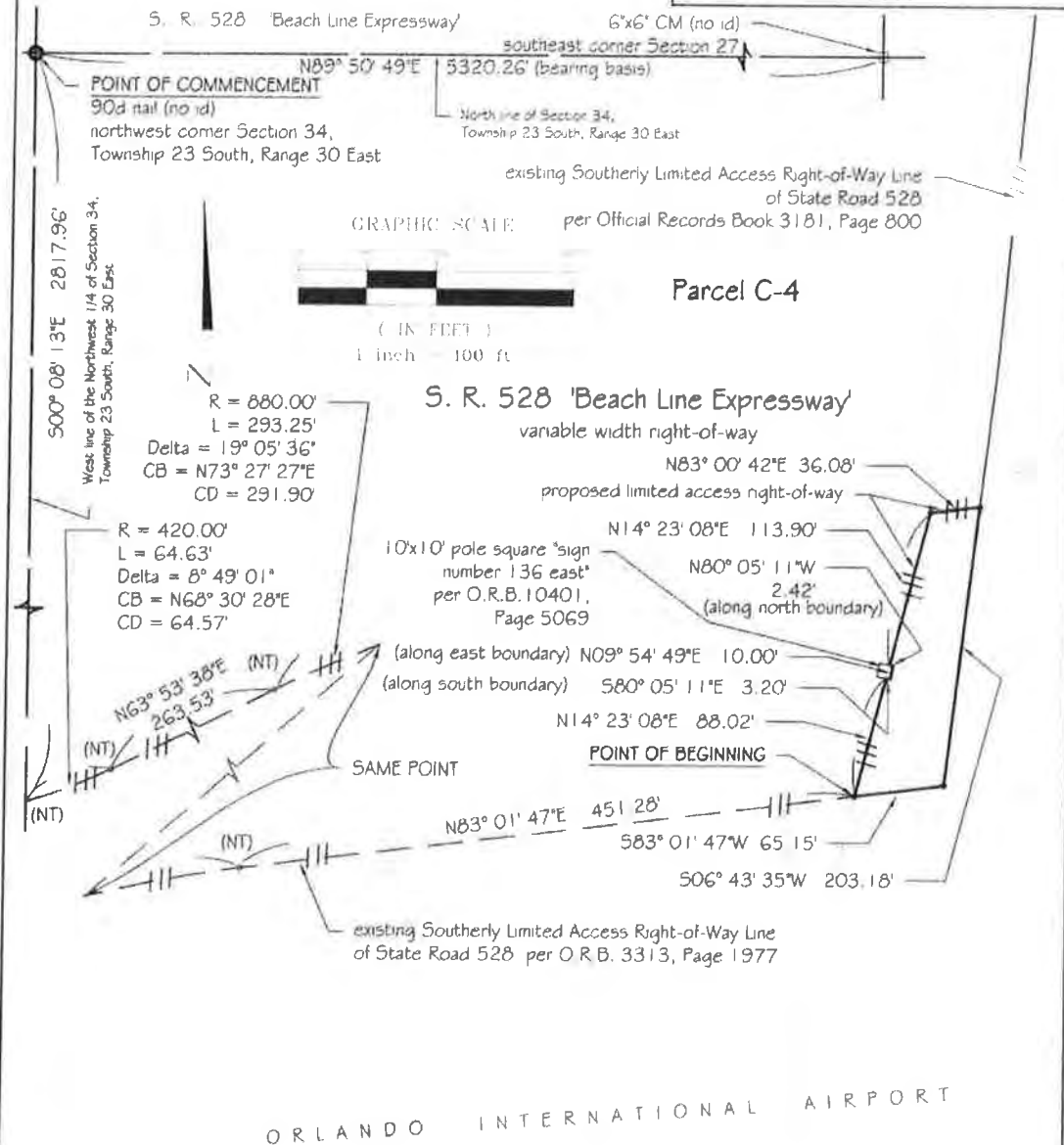
DATE: 11/24/2015

BY: RMJ

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**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**STATE ROAD 528**  
**PROJECT No.: 528-800**  
**PARCEL No.: C-4 (PARTIAL)**  
**ESTATE: FEE SIMPLE**



THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA  
 DESIGNED BY: HNTB DATE: 11/24/2015  
 DRAWN BY: PEW AMEC JOB No.: 6374150802  
 APPROVED BY: RMJ

**LEGAL DESCRIPTION and SKETCH**



**AMEC Environment & Infrastructure, Inc.**  
 75 East America Street, Suite 200  
 Orlando, FL 32801, USA  
 Phone: (407) 521-1400  
 Fax: (407) 521-1401  
 Email: info@amec.com

SHEET 2 OF 2

DESIGNED BY

DRAWN BY

DATE

SCALE

PROJECT NO.

DATE

**EXHIBIT "I"**  
**(FORM OF DRAINAGE EASEMENT)**

Prepared By and Return To:  
Christopher J. Wilson, Esq.  
Marchena and Graham, P.A.  
976 Lake Baldwin Lane, Suite 101  
Orlando, FL 32814-6687

For Recording Purposes Only

**DRAINAGE EASEMENT AGREEMENT**

**THIS DRAINAGE EASEMENT AGREEMENT** (the "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the **CITY OF ORLANDO** (the "City"), a Florida Municipal Corporation existing under the laws of the State of Florida with a principal address of 400 South Orange Avenue, Orlando, FL 32801, the **GREATER ORLANDO AVIATION AUTHORITY**, with a principal address of One Jeff Fuqua Boulevard, Orlando, FL 32827-4399 ("GOAA"), an agency of the City of Orlando, existing as an independent special district under the laws of the State of Florida, to and in favor of the **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a public corporation of the State of Florida with a principal address of 4974 ORL Tower Road, Orlando, FL 32807 ("CFX").

**WHEREAS**, GOAA is a public body corporate and politic duly organized and validly existing under Chapter 98-492, Special Laws of Florida 1998, as amended (the "Act"), as an independent special district and agency of the City; and

**WHEREAS**, City is fee owner of that certain real property located in Orange County, Florida, consisting of approximately 0.097 acres, being more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference ("Easement Parcel 801" or "CFX Drainage Easement at OIA #1"); and

**WHEREAS**, City is fee owner of that certain real property located in Orange County, Florida, consisting of approximately 0.035 acres, being more particularly described on **Exhibit "B"** attached hereto and incorporated herein by this reference ("Easement Parcel 802" or "CFX Drainage Easement at OIA #2"); and

**WHEREAS**, City is fee owner of that certain real property located in Orange County, Florida, consisting of approximately 0.118 acres, being more particularly described on **Exhibit "C"** attached hereto and incorporated herein by this reference ("Easement Parcel 803" or "CFX Drainage Easement at OIA #3"); and

**WHEREAS**, City is fee owner of that certain real property located in Orange County, Florida, consisting of approximately 0.42 acres, being more particularly described on **Exhibit**

**"D"** attached hereto and incorporated herein by this reference ("Easement Parcel 804" or "CFX Drainage Easement at OIA #4"); and

**WHEREAS**, GOAA occupies, controls and operates the Orlando International Airport (the "Airport") where Easement Parcel 801, Easement Parcel 802, Easement Parcel 803 and Easement Parcel 804 (collectively the "Easement Parcels") are located, pursuant to that certain Amended and Restated Operation and Use Agreement, dated August 31, 2015 (the "Operating Agreement"); and

**WHEREAS**, All Aboard Florida (the "Rail Company") is developing an inter-city commercial passenger rail connection between Miami and Orlando with the Orlando terminus located at the Orlando International Airport (the "Rail Project" or "Project"); and

**WHEREAS**, as a result of the development of the Rail Project, CFX will have to redirect drainage and will require drainage easements from City and GOAA on the Easement Parcels ("Drainage Easements"); and

**WHEREAS**, City and GOAA desire to grant such the Drainage Easements to CFX in the Easement Parcels, as defined below, under terms and conditions as hereinafter provided.

**NOW, THEREFORE**, in consideration of the sum of One and no/100 Dollars (\$1.00) and other good and valuable considerations and the covenants and promises of the parties hereto, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, it is thereupon understood and agreed as follows:

1. **Recitals.** That all of the foregoing recitals contained in this Agreement are true and correct and are incorporated herein by this reference.
2. **Grant of Easement.** City and GOAA hereby grant and convey to CFX, for the benefit of CFX, a non-exclusive easement for ingress, egress, access, drainage, use, construction, maintenance, repair and replacement of a drainage ditch, pipe, line and facility (the "Drainage Facilities") on, over, across, under the Easement Parcels free and clear of all liens, general and special assessments, easements, reservations, restrictions and encumbrances, except such conveyance is subject to the permitted exceptions set forth in **Exhibit "E"** attached hereto and incorporated herein by this reference (the "CFX Permitted Exceptions"). City and GOAA or their successors in interest shall be entitled to use the Easement Parcels for any use not inconsistent with CFX's use; provided, such use shall not in any manner adversely affect CFX's use or enjoyment of the Easement Parcels.
3. **CFX's Covenants.** CFX agrees that all materials to be furnished and work to be performed on the Easement Parcels shall be performed in accordance with all applicable laws, ordinances, and regulations and City and GOAA shall not be responsible to pay for any materials or work to be performed on the Easement Parcels in connection with the Drainage Easements.
4. **Maintenance.** CFX agrees to maintain said Drainage Easements within the Easement Parcels, and to pay all costs and expenses associated with its use of the Drainage Easements. CFX shall have the right to clear and keep clear all trees, undergrowth and other non-



vital obstructions that may interfere with the normal operation or maintenance of the Drainage Facilities, out of and away from the herein granted easement. CFX shall bear all costs and expenses for the continuing maintenance associated with its use of the Drainage Easements. Maintenance shall be accomplished in a manner so as to cause no unreasonable interference with the use of the Airport property. CFX shall be responsible for ensuring that all improvements with the Drainage Easement shall at all times be and remain in compliance with the requirements of any and all applicable governmental authorities. City or GOAA shall have no duty to inspect or maintain the Drainage Facilities, Easement Parcels or improvements. In the event that CFX fails to maintain the Drainage Easement or Easement Parcels in accordance with any and all applicable governmental authorities, City and/or GOAA (as applicable) shall provide written notice of CFX's failure to maintain. If proper maintenance has not been performed by CFX and CFX does not cure within thirty (30) days of the date of its receipt of notice from City or GOAA (as applicable), then City or GOAA may perform or have others perform such maintenance and shall charge the reasonable and necessary cost of such maintenance to CFX. Within thirty (30) days of CFX receipt of written notice from City or GOAA of such charges incurred for the performance of maintenance pursuant to this section, CFX shall reimburse City or GOAA (as applicable) for the cost and expense of such maintenance. CFX shall not be required to reimburse City or GOAA (as applicable) for costs and expenses unrelated to CFX's use of the Drainage Easement.

5. **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, transmitted electronically 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
Copy to:	Joseph L. Passiatore, Esq. General Counsel Central Florida Expressway Authority 4974 ORL Tower Road Orlando, Florida 32807
GOAA:	GREATER ORLANDO AVIATION AUTHORITY One Jeff Fuqua Boulevard Orlando, Florida 32827-4399 Attn: Chief Executive Officer
Copy to:	Marchena and Graham, P.A. 976 Lake Baldwin Lane, Suite 101

Orlando, Florida 32814  
Attn: Marcos R. Marchena, Esq.

CITY: CITY OF ORLANDO  
400 South Orange Avenue  
Orlando, Florida 32801  
Attn: Chief Administrative Officer

Copy to: City Attorney  
Office of Legal Affairs  
400 South Orange Avenue  
Orlando, Florida 32801  
Attn: Roy K. Payne, Esq.

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.

6. **Modification.** This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further Agreement in writing duly executed by the parties hereto and recorded in the Public Records of Orange County, Florida.

7. **Successors and Assigns.** All easements contained herein shall be appurtenant to the lands herein described, and, except as hereinafter set forth, shall run with said lands forever and be binding upon and inure to the benefit of and be enforceable by the heirs, legal representatives, successors and assigns of the parties hereto. All obligations of City, GOAA, and CFX hereunder shall be binding upon their respective successors-in-title and assigns; provided the covenants and obligations herein are only personal to and enforceable against the parties or successors-in-title, as the case may be, owning title to the respective properties at the time any liability or claim arising under this Agreement shall have accrued, it being intended that upon the conveyance of title by a party, the party conveying title shall thereupon be released from any liability hereunder as to the property conveyed for any breach of this Agreement or claim arising under this Agreement accruing after the date of such conveyance. The easements set forth in this Agreement shall be perpetual.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated herein, and it supersedes all prior understandings or agreements between the parties.

9. **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, each party shall bear their own fees, costs and expenses.

[SIGNATURE PAGES FOLLOWING]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names as of the date first above written.

**"GOAA"  
GREATER ORLANDO AVIATION  
AUTHORITY**

**ATTEST:**

\_\_\_\_\_  
Dayci S. Burnette-Snyder,  
Assistant Secretary

By: \_\_\_\_\_  
Phillip N. Brown, A.A.E.,  
Chief Executive Officer

Date: \_\_\_\_\_, 2018

**WITNESSES:**

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

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND RELIANCE OF THE CITY  
OF ORLANDO, ONLY, THIS \_\_\_\_ DAY OF  
\_\_\_\_\_, 2018.  
Marchena and Graham, P.A., General Counsel.

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

By: \_\_\_\_\_  
Marchena and Graham, P.A.

**STATE OF FLORIDA  
COUNTY OF ORANGE**

Before me, the undersigned authority, duly authorized under the laws of the State of Florida to take acknowledgments, this day personally appeared Phillip N. Brown, A.A.E., as Chief Executive Officer of the Greater Orlando Aviation Authority, personally known to me to be the individual and officer described in and who executed the foregoing instrument on behalf of said Greater Orlando Aviation Authority, and acknowledged the execution thereof to be his free act and deed as such officer and that he was duly authorized so to do.

In witness whereof, I have hereunto set my hand and official seal at Orlando, in the County of Orange, State of Florida, this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

**"CITY"**

**CITY OF ORLANDO, FLORIDA,**

a Florida municipal corporation existing under the laws of the State of Florida.

**ATTEST:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

[Official Seal]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

**WITNESSES:**

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND RELIANCE OF THE CITY  
OF ORLANDO, ONLY, THIS \_\_\_\_ DAY OF  
\_\_\_\_\_, 2018.

By: \_\_\_\_\_

**STATE OF FLORIDA  
COUNTY OF ORANGE**

Before me, the undersigned authority, duly authorized under the laws of the State of Florida to take acknowledgments, this day personally appeared \_\_\_\_\_, as \_\_\_\_\_, of the City of Orlando, personally known to me to be the individual and officer described in and who executed the foregoing instrument on behalf of said City of Orlando, and acknowledged the execution thereof to be his/her free act and deed as such officer and that he/she was duly authorized so to do.

In witness whereof, I have hereunto set my hand and official seal at Orlando, in the County of Orange, State of Florida, this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**"CFX"**

**CENTRAL FLORIDA**

**EXPRESSWAY AUTHORITY**, a public  
Corporation of the State of Florida

**ATTEST:**

\_\_\_\_\_  
Regla Lamaute, Executive Assistant

By: \_\_\_\_\_  
Laura Kelley, Executive Director

Date: \_\_\_\_\_, 2018

**WITNESSES:**

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

APPROVED AS TO FORM AND LEGALITY  
FOR USE AND RELIANCE BY THE CENTRAL  
FLORIDA EXPRESSWAY AUTHORITY ONLY.  
\_\_\_\_\_, Counsel.

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

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Date: \_\_\_\_\_, 2018

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, as Executive Director of the **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a public corporation and an agency of the State of Florida, on behalf of the agency. He is personally known to me.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed name of Notary Public)

Notary Public, State of Florida

Commission No. & Expiration \_\_\_\_\_

STATE ROAD 528  
CFX PROJECT: 528-1240

**EXHIBIT "A"**  
**("EASEMENT PARCEL 801")**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No.: 528-1240  
PARCEL No.: CFX DRAINAGE EASEMENT at OIA #801  
ESTATE: PERMANENT DRAINAGE EASEMENT

A parcel of land lying in Section 34, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at a 90d Nail marking the Northwest Corner of Section 34, Township 23 South, Range 30 East Orange County, Florida, thence run South 00°08'13" East, along the West line of the Northwest 1/4 of said Section 34, a distance of 2817.96 feet to the existing southerly Limited Access Right-of-Way Line of State Road 528 as described in Official Records Book 3313 at Page 1917 of the Public Records of Orange County, Florida and a point on a non-tangent curve concave to the north; thence northeasterly along said existing southerly Limited Access Right-of-Way Line the following four courses and distances: run northeasterly along the arc of said curve having a radius of 420.00 feet, a central angle of 08°49'01", a chord length of 64.57 feet bearing North 68°30'28" East, an arc distance of 64.63 feet; thence run North 63°53'38" East, non-tangent to said curve, a distance of 263.53 feet to point of curvature of a non-tangent curve concave to the southeast; thence run northeasterly along the arc of said curve having a radius of 880.00 feet, a central angle of 19°05'36", a chord length of 291.90 feet bearing North 73°27'27" East, an arc distance of 293.25 feet; thence run North 83°01'47" East, non-tangent to said curve, a distance of 451.28 feet; thence run North 14°23'08" East a distance of 88.02 feet to a parcel of land identified as pole square "sign number 136 east" as described in Official Records Book 10401 at Page 5069 of said Public Records; thence run South 80°05'11" East, a distance of 3.20 feet; thence North 09°54'49" East, a distance of 10.00 feet; thence North 80°05'11" West, a distance of 2.42 feet; thence departing said parcel of land, run North 14°23'08" East, a distance of 48.93 feet to the POINT OF BEGINNING; thence run North 14°23'08" East, a distance of 16.18 feet; thence run South 82°34'56" East, a distance of 41.56 feet; thence run South 59°09'28" East, a distance of 86.60 feet; thence run South 17°35'33" West, a distance of 166.48 feet; thence run South 82°52'52" West, a distance of 16.56 feet; thence run North 17°55'55" East, a distance of 161.32 feet; thence run North 59°07'59" West, a distance of 68.96 feet; thence run North 82°08'40" West, a distance of 43.72 feet to the POINT OF BEGINNING

Containing 4240 square feet or 0.097 acres, more or less.

**Surveyors Notes**

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the north line of Section 34, Township 23 South, Range 30 East as being North 89°50'49" East. The average combined scale factor is 0.9999476.

2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record.

3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.

4. The location and configuration of the lands described and depicted hereon were provided by the client.

5. This legal description and sketch may have been reduced in size by reproduction

6. A Commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539A-2-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

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 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

**LEGEND:**

(C) = Calculated  
(D) = Deed  
(M) = Measured  
(P) = Plat  
O R B = Official Records Book  
Pg = Page  
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L = Length of curve (arc distance)  
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Delta = central angle  
CB = Chord Bearing  
ID prod = Identification  
Line Not To Scale  
PID = Parcel Identification Number  
S R = State Road  
CFX = Central Florida Expressway Authority  
R/W = Right-of-Way  
CL = Centerline  
---||--- = Limited Access Right-of-way line  
PC = Point of Curvature  
PT = Point of Tangency  
PCC = Point of Compound Curvature  
PRC = Point of Reverse Curvature  
(NT) = Non Tangent  
CM = Concrete Monument  
--- = section line  
--- = 1/4 section line  
No = Number

**THIS IS NOT A SURVEY**

ROBERT M. JONES, PLS.  
Florida Surveyor and Mapper, License No. LS-0004201

FOR: ALL ABOARD FLORIDA

DESIGNED BY: HNTB

DATE: 11/24/2015

DRAWN BY: PEW

AMEC JOB No.: 6374150802

APPROVED BY: RMJ

**LEGAL DESCRIPTION and SKETCH**

Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone (407) 522-7570  
Certificate of Authorization Number LH-0007932

SHEET 1 OF 2

**REVISIONS**

DATE: 11/21/2017 BY: PEW

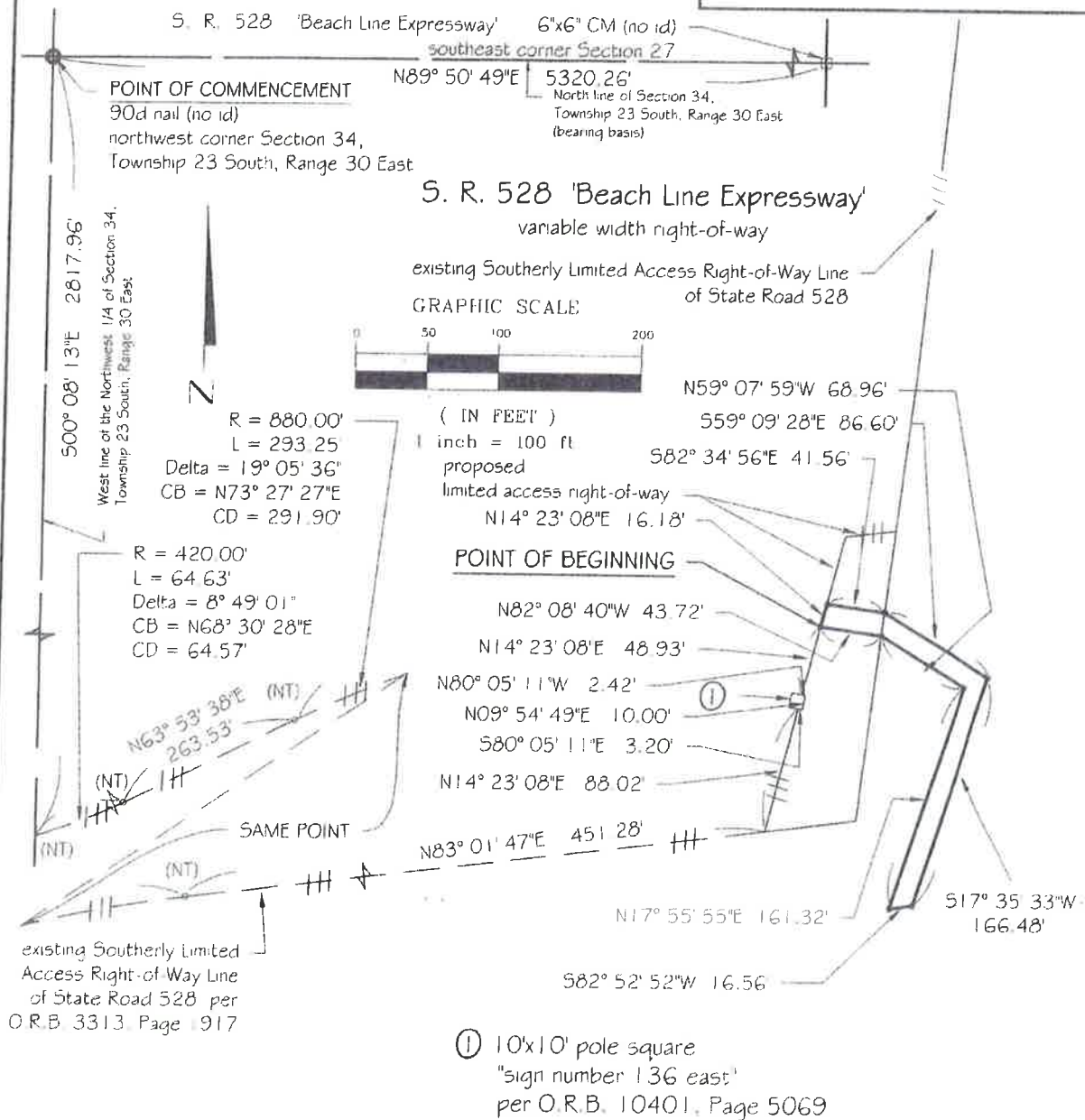
DATE: 11/21/2017 BY: PEW

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
STATE ROAD 528

PROJECT No.: 528-1240

PARCEL No.: CFX DRAINAGE EASEMENT at OIA #801

ESTATE: PERMANENT DRAINAGE EASEMENT



ORLANDO INTERNATIONAL AIRPORT

THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA		LEGAL DESCRIPTION and SKETCH		SHEET 2 OF 2	
DESIGNED BY: HNTB	DATE 11/24/2015	 Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone (407) 522-7570 Certificate of Authorization Number LB-0007937		REVISIONS	
DRAWN BY: PEW	AMEC JOB No 6374150802			DATE	BY
APPROVED BY: RMJ				11/2/2019	PEW



STATE ROAD 528  
CFX PROJECT: 528-1240

**EXHIBIT "B"**  
**("EASEMENT PARCEL 802")**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No.: 528-1240  
PARCEL No.: CFX DRAINAGE EASEMENT at OIA #802  
ESTATE: PERMANENT DRAINAGE EASEMENT

A parcel of land lying in the Section 34, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at 6"x6" concrete monument (no identification) marking the Northeast Corner of Section 34, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°22'19" East, along the East line of the Northeast 1/4 of said Section 34, a distance of 552.92 feet to the existing southerly Limited Access Right-of-Way Line of State Road 528 per Orlando Orange County Expressway Authority Section 1.1 and 1.2 Right-of-Way Maps; thence run North 80°13'05" West, along said existing southerly Limited Access Right-of-Way Line, a distance of 539.44 feet to the POINT OF BEGINNING; thence departing said existing southerly Limited Access Right-of-Way line run South 11°28'31" West, a distance of 66.64 feet; thence run North 78°18'15" West, a distance of 23.07 feet; thence run North 11°28'54" East, a distance of 65.87 feet to said existing southerly Limited Access Right-of-Way Line; thence run South 80°13'05" East, along said existing southerly Limited Access Right-of-Way line, a distance of 23.07 feet to the POINT OF BEGINNING

Containing 1528 square feet or 0.035 acres, more or less

**Surveyors Notes**

**LEGEND:**

(C) = Calculated  
(D) = Deed  
(M) = Measured  
(P) = Plat  
O R B = Official Records Book  
Pg = Page  
R = Radius  
L = Length of curve (arc distance)  
C = Chord distance  
Delta = central angle  
CB = Chord Bearing  
ID, or id = Identification  
= Line Not To Scale  
PID = Parcel Identification Number  
S R = State Road  
CFX = Central Florida Expressway Authority  
R/W = Right-of-Way  
C = Centerline  
---||--- = Limited Access Right-of-way line  
PC = Point of Curvature  
PT = Point of Tangency  
PCC = Point of Compound Curvature  
PRC = Point of Reverse Curvature  
(NT) = Non Tangent  
CM = Concrete Monument  
--- = section line  
--- = 1/4 section line  
OOCEA = Orlando Orange County Expressway Authority  
No = Number

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the east line of the northeast 1/4 of Section 34, Township 23 South, Range 30 East as being South 00°22'19" East. The average combined scale factor is 0.9999476.

2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record.

3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.

4. The location and configuration of the lands described and depicted hereon were provided by the client.

5. This legal description and sketch may have been reduced in size by reproduction.

6. A Commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539A-2-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

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 51-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

Robert M. Jones, PLS  
Florida Surveyor and Mapper, License No. LS-0004201

THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA		LEGAL DESCRIPTION and SKETCH		SHEET 1 OF 2	
DESIGNED BY: HNTB	DATE: 11/24/2015	Amec Foster Wheeler Environment & Infrastructure, Inc.		REVISIONS	
DRAWN BY: PEW	AMEC JOB No: 6374150802	75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570		DATE: BY:	
APPROVED BY: RMJ		Certificate of Authorization Number LB-0007932		DRAWING NAME: Drainage Area No 2 at OIA #802	



CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
 STATE ROAD 528  
 PROJECT No.: 528-1240  
 PARCEL No.: CFX DRAINAGE EASEMENT at OIA #802  
 ESTATE: PERMANENT DRAINAGE EASEMENT

27

26

POINT OF COMMENCEMENT  
 6"x6" concrete monument (no ID)  
 northeast corner Section 34,  
 Township 23 South, Range 30 East

East line of the Northeast 1/4 of Section 34.  
 Township 23 South, Range 30 East  
 (bearing basis)

EXISTING NORTHERLY LIMITED ACCESS  
 RIGHT OF WAY LINE

S. R. 528 'Beach Line Expressway'  
 variable width right-of-way  
 (per OOCEA Section 1.1 and 1.2 Right-of-Way Maps)

500' 22' 19"E 552.92'

580° 13' 05"E 23.07'

EXISTING SOUTHERLY LIMITED ACCESS  
 RIGHT OF WAY LINE

N80° 13' 05"W 539.44'

POINT OF BEGINNING

S11° 28' 31"W 66.64'

-N78° 18' 15"W 23.07'

-N11° 28' 54"E 65.87'

34

35

GRAPHIC SCALE



( IN FEET )

1 inch = 100 ft.

THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA

DESIGNED BY HNTB

DATE: 11/24/2015

DRAWN BY PEW

AMEC JOB No.: 6374150802

APPROVED BY RMJ

LEGAL DESCRIPTION and SKETCH

Amec Foster Wheeler Environment & Infrastructure, Inc.  
 75 East Amelia Street, Suite 200  
 Orlando, FL 32801 USA  
 Phone: (407) 522-7570  
 Certificate of Authorization Number LB-0007932

SHEET 2 OF 2

REVISIONS

DATE BY

DRAWING NAME: Drainage Area No 2 to OIA #802

STATE ROAD 528  
CFX PROJECT: 528-1240

**EXHIBIT "C"**  
**("EASEMENT PARCEL 803")**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No.: 528-1240  
PARCEL No.: CFX DRAINAGE EASEMENT at OIA #803  
ESTATE: PERMANENT DRAINAGE EASEMENT

A parcel of land lying in the Section 36, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at 6"x6" concrete monument marking the Northeast Corner of Section 35, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°06'56" East, along the East line of the Northeast 1/4 of said Section 35, a distance of 1250.09 feet to the southerly Limited Access Right-of-Way Line of State Road 528 per Orlando Orange County Expressway Authority Right-of-Way Maps, Section 1.1 and 1.2 and Project 907; thence run South 89°53'39" East, along said southerly Limited Access Right-of-Way Line, a distance of 2583.98 feet to the northwest corner of Permanent Easement Parcel 907-801/ Part C as depicted on said Orlando Orange County Expressway Right-of-Way Map, Project 907; thence run South 00°06'21" West, departing said southerly Limited Access Right-of-Way Line, along the west line of said Easement, a distance of 108.00 feet to the southwest corner of said Easement and the POINT OF BEGINNING, thence run South 89°53'39" East, along the south line of said Easement, a distance of 108.27 feet to the southeast corner of said Easement; thence departing said south line run South 00°17'29" East a distance of 47.30 feet; thence run South 89°58'12" West, a distance of 108.53 feet; thence run North 00°01'41" East, a distance of 47.56 feet to the POINT OF BEGINNING

Containing 5141 square feet or 0.118 acres, more or less

**Surveyors Notes**

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the east line of the northeast 1/4 of Section 35, Township 23 South, Range 30 East as being South 00°06'56" East. The average combined scale factor is 0.9999476.

2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record

3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.

4. The location and configuration of the lands described and depicted hereon were provided by the client.

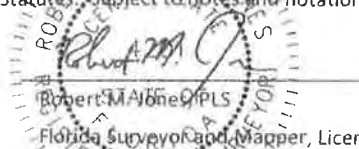
5. This legal description and sketch may have been reduced in size by reproduction

6. A Commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539A-2-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

**LEGEND:**

(C) = Calculated  
(D) = Deed  
(M) = Measured  
(P) = Plat  
O R B = Official Records Book  
Pg = Page  
R = Radius  
L = Length of curve (arc distance)  
C = Chord distance  
Delta = central angle  
CB = Chord Bearing  
ID or id = Identification  
= Line Not To Scale  
PID = Parcel Identification Number  
S.R. = State Road  
CFX = Central Florida Expressway Authority  
R/W = Right-of-Way  
CL = Centerline  
---||--- = Limited Access Right-of-way line  
PC = Point of Curvature  
PT = Point of Tangency  
PCC = Point of Compound Curvature  
PRC = Point of Reverse Curvature  
(NT) = Non Tangent  
CM = Concrete Monument  
--- = section line  
--- = 1/4 section line  
OOCEA = Orlando Orange County Expressway Authority  
No = Number

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 40-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes, subject to notes and notations shown hereon.



THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA		LEGAL DESCRIPTION and SKETCH		SHEET 1 OF 2	
DESIGNED BY: HNTB	DATE: 11/24/2015	Amec Foster Wheeler Environment & Infrastructure, Inc.		REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374150802	75 East America Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570		DATE: _____ BY: _____	
APPROVED BY: RMJ		Certificate of Authorization Number LB-0007632		DRAWING NAME: Swamp Area #3.1 & 3A.2g	

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
 STATE ROAD 528  
 PROJECT No.: 528-1240  
 PARCEL No.: CFX DRAINAGE EASEMENT at OIA #803  
 ESTATE: PERMANENT DRAINAGE EASEMENT

26

# POINT OF COMMENCEMENT

6"x6" concrete monument  
 northeast corner Section 35,  
 Township 23 South, Range 30 East

25

GRAPHIC SCALE



( IN FEET )

1 inch = 100 ft.

NORTHERLY LIMITED ACCESS  
 RIGHT OF WAY LINE

East line of the Northeast 1/4  
 of Section 35,  
 Township 23 South, Range 30 East  
 (bearing basis)

## S. R. 528 'Beach Line Expressway'

variable width right-of-way

(per OOCEA Right-of-Way Maps Section 1.1 and  
 1.2 and Project 907)

SAME POINT

500° 06' 56"E  
 1250.09'

Permanent Easement \*

northwest corner

SOUTHERLY LIMITED ACCESS  
 RIGHT OF WAY LINE

589° 53' 39"E 2583.98'

500° 06' 21"W 108.00'  
 (west line)

589° 53' 39"E  
 108.27'  
 (south line)

## POINT OF BEGINNING

southwest corner

907-801  
 part c

southeast corner

Compensating Area  
 Easement  
 O.R.B. 10135,  
 PG 5707

N00° 01' 41"E  
 47.56'

500° 17' 29"E  
 47.30'

36

589° 58' 12"W 108.53'

35

\* Permanent Easement as depicted on Orlando-Orange County  
 Expressway Authority Right-of-Way Map, Project 907

THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA

DESIGNED BY: HNTB

DATE: 11/24/2015

DRAWN BY: PEW

AMEC JOB No.: 6374150802

APPROVED BY: RMJ

### LEGAL DESCRIPTION and SKETCH

Amec Foster Wheeler Environment & Infrastructure, Inc.

75 East Amelia Street, Suite 200

Orlando, FL 32801 USA

Phone: (407) 522-7570

Certificate of Authorization Number LB-0007932

SHEET 2 OF 2

REVISIONS

DATE BY

DRAWING NAME: Storage Area No. 3 - 0M-02

STATE ROAD 528  
CFX PROJECT: 528-1240

**EXHIBIT "D"**  
**("EASEMENT PARCEL 804")**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No.: 528-1240  
PARCEL No.: CFX DRAINAGE EASEMENT at OIA #804  
ESTATE: PERMANENT DRAINAGE EASEMENT

A parcel of land lying in the Section 35, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at a 6"x6" concrete monument (no identification) marking the Northwest Corner of Section 35, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°22'19" East, along the west line of the Northwest 1/4 of said Section 35, a distance of 589.13 feet to the south Limited Access Right-of-Way Line of State Road 528 per Orlando Orange County Expressway Authority Goldenrod Road Extension Project 903 Right-of-Way Maps; thence run along said south Limited Access Right-of-Way Line the following five (5) courses and distances; thence run South 76°11'34" East, a distance of 368.99 feet; thence run South 75°51'57" East, a distance of 98.35 feet to a point on a non-tangent curve with a radius of 2770.79 feet, concave to the south; thence easterly along said curve to the right through a central angle of 7°40'18", a chord distance of 370.72 feet where the chord bears South 71°21'21" East an arc distance of 371.00 feet to the point of intersection with a non-tangent line; thence South 66°51'16" East, a distance of 98.35 feet; thence run South 66°31'16" East, a distance of 233.65 feet to the POINT OF BEGINNING; thence continue along said south Limited Access Right-of-Way Line the following four (4) courses and distances; thence run South 66°31'16" East, a distance of 199.42 feet to a point on a curve with a radius of 2000.00 feet, concave to the north; thence easterly along said curve to the left through a central angle of 10°53'25", a chord distance of 379.57 feet where the chord bears South 71°57'58" East an arc distance of 380.14 feet; thence run South 77°24'41" East, a distance of 246.47 feet; thence run South 08°35'44" West, a distance of 22.89 feet to a point on a non-tangent curve with a radius of 3572.02 feet, concave to the north; thence departing said south Limited Access Right-of-Way Line, run westerly along said curve to the right through a central angle of 8°55'54", a chord distance of 556.26 feet where the chord bears N74°42'26"W an arc distance of 556.83 feet; thence run North 68°44'48" West, a distance of 274.06 feet; thence run North 22°02'13" East, a distance of 29.40 feet to the POINT OF BEGINNING

Containing 0.42 acres, more or less.

**Surveyors Notes**

**LEGEND:**

(C) = Calculated  
(D) = Deed  
(M) = Measured  
(P) = Plat  
O.R.B. = Official Records Book  
Pg = Page  
R = Radius  
L = Length of curve (arc distance)  
CD = Chord distance  
Delta = central angle  
CB = Chord Bearing  
ID, or id = Identification  
= Line Not To Scale  
P.D. = Parcel Identification Number  
S.R. = State Road  
CFX = Central Florida Expressway Authority  
R/W = Right-of-Way  
C = Centerline  
--- = Limited Access Right-of-way line  
PC = Point of Curvature  
PT = Point of Tangency  
PCC = Point of Compound Curvature  
PRC = Point of Reverse Curvature  
(NT) = Non Tangent  
CM = Concrete Monument  
--- = section line  
--- = 1/4 section line  
OOCEA = Orlando Orange County Expressway Authority  
No = Number

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the west line of the northwest 1/4 of Section 35, Township 23 South, Range 30 East as being South 00°22'19" East. The average combined scale factor is 0.9999476.
2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record.
3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
4. The location and configuration of the lands described and depicted hereon were provided by the client.
5. This legal description and sketch may have been reduced in size by reproduction.

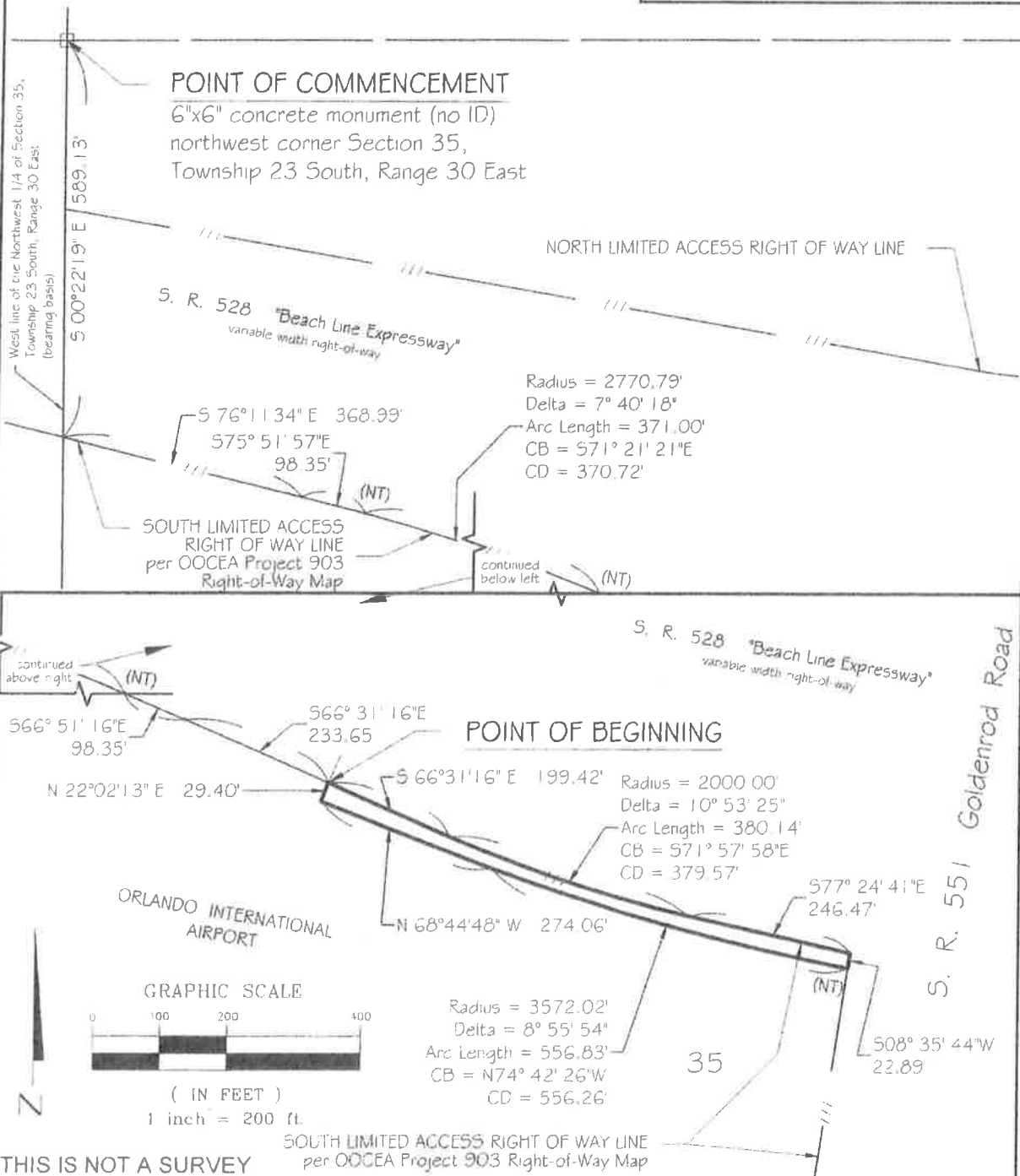
I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief; I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 51-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

4201  
STATE OF  
Robert M. Jones, PLS  
Florida Surveyor and Mapper, License No. LS-0004201

THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA		LEGAL DESCRIPTION and SKETCH		SHEET 1 OF 2	
DESIGNED BY: HNTB	DATE: 04/13/2016	Amec Foster Wheeler Environment & Infrastructure, Inc.		REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374150802	75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570		DATE	BY
APPROVED BY: RMJ		Certificate of Authorization Number LB-0007932		DRAWING NAME, Job/Project Area No. 1 of 1 (Rev. 01/16)	

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
 STATE ROAD 528  
 PROJECT No.: 528-1240  
 PARCEL No.: CFX DRAINAGE EASEMENT at OIA #804  
 ESTATE: PERMANENT DRAINAGE EASEMENT



FOR: ALL ABOARD FLORIDA		LEGAL DESCRIPTION and SKETCH		SHEET 2 OF 2	
DESIGNED BY: HNTB	DATE: 04/13/2016	 Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone (407) 522-7570		REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374150802			DATE	BY
APPROVED BY: RMJ		Certificate of Authorization Number LB-0007932		DRAWING NAME: Drainage Area No. 1 in OIA, Inc.	

**EXHIBIT "E"**  
**("CFX Permitted Exceptions")**

1. City and GOAA reserve unto themselves, their successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property herein described, together with the right to cause in said airspace such noise as may be inherent in the operations of aircraft, now known or hereafter used, for navigation of, or in the said airspace, for use of said airspace for landing on, or taking off from, or operating on Orlando International Airport.
2. CFX, City and GOAA expressly agree for themselves, their successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the herein described real property to such a height so as to comply with the FAA Regulations, Part 77.
3. CFX, City and GOAA expressly agree for themselves, their successors and assigns, to prevent any use of the herein described real property which would interfere with the landing or takeoff of aircraft at the Orlando International Airport, or interfere with the air navigation, and or communication facilities serving the Airport, or otherwise constitute an airport hazard.
4. CFX, City and GOAA, and their successors and assigns shall not permit/afford access from the Easement Parcels onto Orlando International Airport Property for aeronautical purposes.
5. City and GOAA shall insure that if the Easement Parcels are used or converted to a municipal use, an amount equal to the fair market value will be deposited into an identifiable interest bearing account prior to conversion of the Easement Parcels to the municipal use. The proceeds should remain in this account until utilized in accordance with the FAA Order 5190.6B, paragraph 22.17.e.

STATE ROAD 528  
CFX PROJECT: 528-1240

**EXHIBIT "J"**  
**(CFX PERMITTED EXCEPTIONS)**

STATE ROAD 528  
CFX PROJECT: 528-1240

**EXHIBIT "K"**  
**(GOAA PERMITTED EXCEPTIONS)**





**FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT**

**THIS FIRST AMENDMENT TO THE PURCHASE AND SALE AGREEMENT** ("First Amendment") is made and entered into as of the 15<sup>th</sup> day of January, 2018, by and between the **GREATER ORLANDO AVIATION AUTHORITY**, with a principal address of One Jeff Fuqua Boulevard, Orlando, FL 32827-4399 ("GOAA"), an agency of the City of Orlando, existing as an independent special district under the laws of the State of Florida, the **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a public corporation of the State of Florida with a principal address of 4974 ORL Tower Road, Orlando, FL 32807 ("CFX"), the **CITY OF ORLANDO** (the "City"), a Florida Municipal Corporation existing under the laws of the State of Florida with a principal address of 400 South Orange Avenue, Orlando, FL 32801, and **ALL ABOARD FLORIDA – OPERATIONS LLC**, a Delaware limited liability company authorized to conduct business in Florida, with a principal address 2855 Lejeune Road, 4<sup>th</sup> Floor, Coral Gables, FL 33134 ("RAIL COMPANY"). GOAA, CFX, CITY and Rail Company are sometimes collectively referred to herein as the "Parties".

\* Brightline Trains LLC  
fka

**RECITALS**

**WHEREAS**, Rail Company is developing an inter-city commercial passenger rail connection between Miami and Orlando with the Orlando terminus located at the Orlando International Airport (the "Rail Project" or "Project"); and

**WHEREAS**, the Parties previously entered into a Purchase and Sale Agreement ("Agreement") formalizing the terms and conditions whereby GOAA and the City shall sell and convey title to the 528 Ramp Property to CFX, CFX shall sell and convey title to the Cargo Road Ramp Property to GOAA, and GOAA shall grant easements to CFX in the Easement Parcels; Rail Company shall fund the transactions and CFX shall acquire said interest in the 528 Ramp Property and the Easement Parcels and GOAA and City shall acquire said interest in the Cargo Road Ramp Property;

**WHEREAS**, the Agreement states that the Closing should occur on or before December 31, 2018, unless extended by written agreement approved by the City, GOAA, and CFX, through the Mayor, Chief Executive Officer, and Executive Director, respectively;

**WHEREAS**, the parties desire to extend the deadline for a Closing to July 1, 2019;

**NOW THEREFORE**, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged by the Parties, CFX, Rail Company, GOAA, and the City hereby covenant and agree as follows:

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

2. Closing. The Closing should occur on or before July 1, 2019.

3. Ratification. Except as expressly amended hereby, all the remaining provisions of the Agreement shall remain in full force and effect.

4. Counterparts; Email Signatures. This First Amendment may be executed in any number of counterparts, each of which shall be considered an original, and all of such counterparts shall constitute one amendment. To facilitate execution of this First Amendment, any of the Parties may execute and exchange by e-mail as a portable document format or other electronic imaging, counterparts of the signature page, which shall be deemed original signatures for all purposes.

**[SIGNATURE PAGES FOLLOWING]**

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names as of the date first above written.

"CITY"

CITY OF ORLANDO, FLORIDA,  
a Florida municipal corporation

ATTEST:

By: Denise Aldridge

Printed Name: DENISE ALDRIDGE

Title: CITY CLERK

[Official Seal]

By: R. L. Hill

Printed Name: REGINA F. HILL

Title: MAYOR PRO TEM

Date: JANUARY 14, 2019

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND RELIANCE OF THE CITY  
OF ORLANDO, ONLY, THIS 7 DAY OF  
JAN, 2019.

By: [Signature]

City Attorney

Printed Name: Ray Brown

"GOAA"

GREATER ORLANDO AVIATION  
AUTHORITY

ATTEST:

Dayci S. Burnette-Snyder,  
Assistant Secretary

By: \_\_\_\_\_

Phillip N. Brown, A.A.E.,  
Chief Executive Officer

Date: \_\_\_\_\_, 2018

APPROVED AS TO FORM AND LEGALITY this  
30<sup>th</sup> day of November, 2018, for the use and  
reliance by the GREATER ORLANDO  
AVIATION AUTHORITY, only.

Marchena and Graham, P.A., General Counsel.

By: [Signature]

Marchena and Graham, P.A.

City Council Meeting: 1-14-19  
Item: K-9 Documentary: 190114K09

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names as of the date first above written.

**"CITY"**  
**CITY OF ORLANDO, FLORIDA,**  
a Florida municipal corporation

**ATTEST:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

[Official Seal]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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


APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND RELIANCE OF THE CITY  
OF ORLANDO, ONLY, THIS \_\_\_\_ DAY OF  
\_\_\_\_\_, 2018.

By: \_\_\_\_\_

City Attorney

Printed Name: \_\_\_\_\_

**ATTEST:**

  
\_\_\_\_\_  
Dayci S. Burnette-Snyder,  
Assistant Secretary

**"GOAA"**  
**GREATER ORLANDO AVIATION**  
**AUTHORITY**

By:  \_\_\_\_\_

Phillip N. Brown, A.A.E.,  
Chief Executive Officer

Date: 12/4/18, 2018

APPROVED AS TO FORM AND LEGALITY this  
30<sup>th</sup> day of November, 2018, for the use and  
reliance by the GREATER ORLANDO  
AVIATION AUTHORITY, only.

Marchena and Graham, P.A., General Counsel.

By:  \_\_\_\_\_

Marchena and Graham, P.A.

**ATTEST:**  
  
Regla ("Mimi") Lamaute,  
Board Services Coordinator

**"CFX"**

**CENTRAL FLORIDA**

**EXPRESSWAY AUTHORITY**, a public  
Corporation of the State of Florida

By:   
Laura Kelley, Executive Director

Date: Nov. 21, 2018

APPROVED AS TO FORM AND LEGALITY  
FOR USE AND RELIANCE BY THE CENTRAL  
FLORIDA EXPRESSWAY AUTHORITY ONLY.

\_\_\_\_\_  
Counsel.

By: Linda S. B. Lanosa  
Print: Linda S. B. Lanosa  
Date: Nov. 21, 2018

**ALL ABOARD FLORIDA –  
OPERATIONS LLC**

**ATTEST:**

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

**WITNESSES:**

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

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_, 2018

ATTEST:

Regla "Mimi" Lamaute  
Regla ("Mimi") Lamaute,  
Board Services Coordinator

"CFX"

CENTRAL FLORIDA

EXPRESSWAY AUTHORITY, a public

Corporation of the State of Florida

By:

Laura Kelley, Executive Director

Date: Nov. 21, 2018

APPROVED AS TO FORM AND LEGALITY  
FOR USE AND RELIANCE BY THE CENTRAL  
FLORIDA EXPRESSWAY AUTHORITY ONLY.

Counsel.

By: Linda S. Bolson

Print: Linda S. B. Bolson

Date: Nov. 21, 2018

Brightline Trains LLC (fka

ALL ABOARD FLORIDA -  
OPERATIONS LLC)

By:

Print Name: Kolleen Cobb

Title: Vice President

Dated: January 15th, 2018

ATTEST:

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

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

WITNESSES:

Brian O'Hara  
Print Name: Brian O'Hara

Jessica Perez  
Print Name: Jessica Perez





**SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT**

**THIS SECOND AMENDMENT TO THE PURCHASE AND SALE AGREEMENT** ("Second Amendment") is made and entered into as of the 5th day of July, 2019, by and between the **GREATER ORLANDO AVIATION AUTHORITY**, with a principal address of One Jeff Fuqua Boulevard, Orlando, FL 32827-4399 ("GOAA"), an agency of the City of Orlando, existing as an independent special district under the laws of the State of Florida, the **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a public corporation of the State of Florida with a principal address of 4974 ORL Tower Road, Orlando, FL 32807 ("CFX"), the **CITY OF ORLANDO** (the "City"), a Florida Municipal Corporation existing under the laws of the State of Florida with a principal address of 400 South Orange Avenue, Orlando, FL 32801, and **VIRGIN TRAINS USA FLORIDA LLC**, a Delaware limited liability company (f/k/a Brightline Trains LLC (f/k/a All Aboard Florida - Operations LLC)), authorized to conduct business in Florida, with a principal address 2855 Lejeune Road, 4<sup>th</sup> Floor, Coral Gables, FL 33134 ("Rail Company"). GOAA, CFX, City and Rail Company are sometimes collectively referred to herein as the "Parties".

**RECITALS**

19 JUL 15 PM 12:23

**WHEREAS**, Rail Company has changed its name from All Aboard Florida – Operations LLC to Brightline Trains LLC and then to Virgin Trains USA Florida LLC, with no change to its legal status or its U.S. federal tax identification number or need for an assignment of contracts;

**WHEREAS**, Rail Company is developing an inter-city commercial passenger rail connection between Miami and Orlando with the Orlando terminus located at the Orlando International Airport (the "Rail Project" or "Project");

**WHEREAS**, the Parties previously entered into a Purchase and Sale Agreement dated November 21, 2018, as amended by that certain First Amendment to Purchase and Sale Agreement dated January 15, 2019 (as amended, the "Agreement") formalizing the terms and conditions whereby GOAA and City shall sell and convey title to the 528 Ramp Property to CFX, CFX shall sell and convey title to the Cargo Road Ramp Property to GOAA and City, GOAA and City shall grant easements to CFX in Easement Parcel 801, Easement Parcel 802, Easement Parcel 803, and Easement Parcel 804 (the "Easement Parcels") and Rail Company shall fund the transactions;

**WHEREAS**, the Agreement states that the Closing at which CFX shall acquire said interest in the 528 Ramp Property and the Easement Parcels and GOAA and City shall acquire said interest in the Cargo Road Ramp Property should occur on or before July 1, 2019, unless extended by written agreement approved by the City, GOAA, and CFX, through the Mayor, Chief Executive Officer, and Executive Director, respectively;

**WHEREAS**, Rail Company has proposed an Alternate Technical Concept to GOAA that, if approved, will eliminate need for the Cargo Road Ramp Property and, as a result, CFX's

City Council Meeting: 06-17-19  
Item: K-1 Documentary: 190617K01

need for a drainage easement in Easement Parcel 801; and

**WHEREAS**, the parties desire to extend the deadline for, and bifurcate the Closing, as defined in the Agreement, to allow for the sale of the 528 Ramp Property and the granting of easements in Easement Parcel 802, Easement Parcel 803 and Easement Parcel 804 from GOAA and City to CFX (the "First Closing") to occur prior to and separate from CFX's sale of the Cargo Road Ramp Property to GOAA and City, and GOAA and City granting the easement in Easement Parcel 801 to CFX (the "Second Closing"), all in accordance with the terms and conditions set forth in the Agreement, as modified by this Second Amendment.

**NOW THEREFORE**, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged by the Parties, CFX, Rail Company, GOAA, and City hereby covenant and agree as follows:

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

19 JUL 15 4:12:28

2. Name Change. Effective as of May 30, 2018, All Aboard Florida - Operations LLC changed its legal name to Brightline Trains LLC and, effective as of March 21, 2019, Brightline Trains LLC changed its legal name to Virgin Trains USA Florida LLC, a Delaware limited liability company, with no other changes to the Federal Tax Identification Number (FEIN), corporate business address, or legal status; provided however, Virgin Trains USA Florida LLC changed its business address to 161 NW 6<sup>th</sup> Street, Miami, Florida 33136.

3. Appraisal and Purchase Price. Paragraph 6 with the heading "Appraisal and Purchase Price," shall be modified as follows:

- a. Under subparagraph 6(a), entitled "528 Ramp Property," the third sentence shall be modified as shown by the below strike-out:

The CFX Appraisal shall utilize the FAA's definition of Fair Market Value and ~~said CFX Appraisal~~ is subject to FAA approval ~~and CFX approval~~.

- b. Under subparagraph 6(b), entitled "Cargo Road Ramp Property," the third sentence shall be modified as shown by the below strike-out:

The GOAA and City Appraisal shall utilize the FAA's definition of Fair Market Value and ~~said GOAA and City Appraisal~~ is subject to FAA approval ~~and CFX approval~~.

- c. Under subparagraph 6(c), entitled "Easement Parcels," the third sentence shall be modified as shown by the below strike-out:

The Easement Appraisals shall utilize the FAA's definition of Fair Market Value and ~~said Easement Appraisals~~ are subject to FAA approval ~~and CFX approval~~.

- d. Subparagraph 6(d) entitled "Set-off" will be deleted in its entirety and replaced

with the following:

(d) Purchase Price. At the First Closing, Rail Company shall pay the 528 Ramp Property Purchase Price to GOAA, and the purchase price for Easement Parcel 802, Easement Parcel 803 and Easement Parcel 804 to GOAA. At the Second Closing, if applicable, Rail Company shall pay the Cargo Road Purchase Price to CFX and the purchase price for Easement Parcel 801 to GOAA.

4. Closing. The First Closing, as defined above, shall occur on or before October 1, 2019 (the "First Closing Date"), subject to the satisfaction of the conditions precedent as set forth in the Agreement, including obtaining the required Deed of Release from the FAA, unless extended by written agreement approved by the City, GOAA, and CFX, through the Mayor, Chief Executive Officer, and Executive Director, respectively. The Second Closing, as defined above, is subject to GOAA's approval of the Alternative Technical Concept. If GOAA rejects the Alternative Technical Concept, the Second Closing shall occur on or before December 31, 2019 (the "Second Closing Date"), subject to the satisfaction of the conditions precedent, including obtaining the required Deed of Release from the FAA as to Easement Parcel 801, unless extended by written agreement approved by the City, GOAA, and CFX, through the Mayor, Chief Executive Officer, and Executive Director, respectively. In the event that GOAA rejects the Alternative Technical Concept, but the Second Closing does not occur on or before the Second Closing Date, as may be extended, then CFX's obligation to sell and convey the Cargo Road Ramp Property to GOAA and the City, and GOAA and City's obligation to grant the easement in Easement Parcel 801 to CFX shall automatically terminate and the Agreement shall be modified as set forth below in subparagraphs 5(a) through 5(l).

5. Alternative Technical Concept. The Parties agree that if GOAA approves the Alternative Technical Concept proposed by the Rail Company for an alternate Cargo Road Ramp Configuration, then: (i) GOAA shall give CFX and Rail Company notice within ten (10) days of such approval; (ii) CFX shall not sell or convey the Cargo Road Ramp Property to GOAA and City; (iii) GOAA and City shall not grant the easement in Easement Parcel 801 to CFX; and (iv) the provisions of the Agreement related thereto will no longer be operative or will be modified as follows:

- a. The definition of "Easement Parcels" shall be modified to exclude Easement Parcel 801, and the definition of the "Property" shall be modified to exclude Easement Parcel 801 and the Cargo Road Ramp Property.
- b. Paragraph 3 entitled "Agreement to Convey Cargo Road Ramp Property" will be deleted.
- c. Under Paragraph 6 with the heading "Appraisal and Purchase Price," subparagraph 6(b) entitled "Cargo Road Ramp Property" will be deleted, except that Rail Company will remain responsible for the costs and expenses incurred pursuant to this subparagraph.
- d. Under Paragraph 9 with the heading "Evidence of Title," subparagraph 9(b) entitled "Cargo Road Ramp Property" shall be deleted, except that Rail Company

19 JUL 15 PM 12:23

will remain responsible for the costs and expenses incurred pursuant to this subparagraph.

- e. Under Paragraph 9 with the heading "Evidence of Title," subparagraph 9(c) "As-Is Conveyance" shall be deleted.
- f. Under Paragraph 10 with the heading of "Closing Date, Closing Procedures and Requirements," subparagraphs 10(c) entitled "Conveyance of Title for Cargo Road Ramp Property" and 10(e) entitled "Conveyance of Possession of Cargo Road Ramp Property" shall be deleted.
- g. Under Paragraph 10 with the heading of "Closing Date, Closing Procedures and Requirements," subparagraph 10(g) entitled "Prorating of Taxes and Assessments" shall be modified by deleting "Cargo Road Ramp Property" as shown by the strike-out below:

(g) Prorating of Taxes and Assessments. Rail Company shall pay all taxes, assessments, and charges applicable to the ~~Cargo Road Ramp Property~~, 528 Ramp Property and the Easement Parcels, if any, for all years through the Closing Date.

- h. Under Paragraph 10 with the heading of "Closing Date, Closing Procedures and Requirements," subparagraph 10(h) entitled "Closing Costs" shall be modified by deleting the third sentence as shown by the strike-out below:

(h) Closing Costs. Rail Company shall, at Closing, pay: (i) all real property transfer and transaction taxes and levies, including documentary stamps on the deeds and easements, if any, relating to the purchase and sale of the Properties (provided, that the Parties shall cooperate in good faith to evidence and confirm all applicable exemptions from said taxes); (ii) the cost of recording the deeds and easements for Properties; (iii) all costs pertaining to the Commitments, including, but not limited to, title insurance premiums, title search fees, and the premiums for any endorsements requested by CFX, the City and GOAA including but not limited to the ALTA 9-06 Endorsement (commonly known as the "Florida Form 9"), and all costs related to the issuance of the Commitments and any title insurance policy insuring title to the Properties or any portion thereof; (iv) all of the costs and expenses associated with the surveying of the Properties and preparation of the legal descriptions and sketch of descriptions thereof; and (v) all costs of CFX and the City and GOAA's due diligence inspections of the Property. For the 528 Ramp Property and Easement Parcels, GOAA shall pay: (i) all costs of recording corrective title documents, if any, required in order to deliver title in condition as provided in Paragraph 9(a) above. GOAA shall pay the costs associated with obtaining the Deed of Release from the Federal Aviation Administration ("FAA"). ~~For the Cargo Road Ramp Property, Rail Company shall pay all costs of recovering corrective title documents, if any, required in order to deliver title in condition as provided in Paragraph 9(b) above.~~ Each party shall pay its own attorneys' fees and costs in connection with this Agreement and the Closing, with the

exception that Rail Company shall also pay the fees and costs of attorneys representing CFX in connection with this Agreement and the Closing. All other costs incurred at Closing shall be borne by the Rail Company.

- i. Paragraph 13 with the heading "Warranties and Representations by CFX" shall be deleted in its entirety.
- j. Paragraph 24 with the heading "Release for Cargo Road Ramp Property" shall be deleted in its entirety.
- k. Paragraph 29 with the heading "Warranties and Representations of Rail Company" shall be modified as shown by the strike-out below.

29. Warranties and Representations of Rail Company. To induce CFX to enter into this Agreement and to purchase the 528 Ramp Property and to induce City and GOAA to enter this Agreement, ~~and to purchase the Cargo Road Ramp Property~~ the Rail Company, in addition to the other representations and warranties set forth herein, makes the following representations and warranties, each of which is given to the best of the Rail Company's knowledge:

- l. Under Paragraph 29 with the heading "Warranties and Representations of Rail Company," subparagraph 29(d) shall be deleted.

6. Ratification. Except as expressly amended hereby, all the remaining provisions of the Agreement shall remain in full force and effect.

7. Counterparts; Email Signatures. This Second Amendment may be executed in any number of counterparts, each of which shall be considered an original, and all of such counterparts shall constitute one amendment. To facilitate execution of this Second Amendment, any of the Parties may execute and exchange by e-mail as a portable document format or other electronic imaging, counterparts of the signature page, which shall be deemed original signatures for all purposes.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names as of the date first above written.

“CITY”

CITY OF ORLANDO, FLORIDA, a Florida  
municipal corporation

ATTEST:

By: Denise Aldridge

Printed Name: Denise Aldridge

Title: City Clerk

[Official Seal]

By: Robert F. Stuart

Printed Name: ROBERT F. STUART

Title: MAYOR PRO TEM

Date: July 5, 2019

APPROVED AS TO FORM AND LEGALITY FOR  
THE USE AND RELIANCE OF THE CITY OF  
ORLANDO, ONLY, THIS 3 DAY OF  
July, 2019.

By: Roy Payne  
City Attorney  
Roy Payne

chp/lat


19 JUL 15 PM 12:23

City Council Meeting: 06-17-19  
K-1 Documentary: 190617K01


"GOAA"

GREATER ORLANDO AVIATION AUTHORITY

ATTEST:

  
\_\_\_\_\_  
Dayci S. Burnette-Snyder,  
Assistant Secretary

By:

  
\_\_\_\_\_  
Phillip N. Brown, A.A.E.,  
Chief Executive Officer

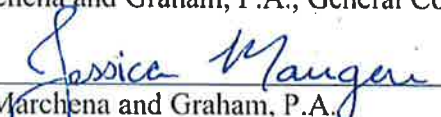
Date:

6/27/19, 2019

APPROVED AS TO FORM AND LEGALITY this  
26 day of June, 2019, for the use and  
reliance by the GREATER ORLANDO AVIATION  
AUTHORITY, only.

Marchena and Graham, P.A., General Counsel.

By:

  
\_\_\_\_\_  
Marchena and Graham, P.A.

'19 JUL 15 PM 12:23

ATTEST:

  
Regla ("Mimi") Lamuante  
Board Services Coordinator

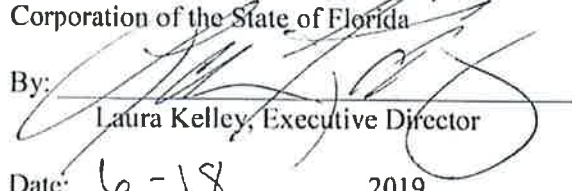
"CFX"

CENTRAL FLORIDA

EXPRESSWAY AUTHORITY, a public

Corporation of the State of Florida

By:

  
Laura Kelley, Executive Director

Date: 6-18, 2019

APPROVED AS TO FORM AND LEGALITY FOR  
USE AND RELIANCE BY THE CENTRAL  
FLORIDA EXPRESSWAY AUTHORITY ONLY.

By: Linda S. B. Lanosa

Print Name: Linda S. B. Lanosa

Date: June 13, 2019

'19 JUL 15 PM 12:23



**"RAIL COMPANY"**  
**VIRGIN TRAINS USA FLORIDA LLC**

**ATTEST:**

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

By: KPCobb  
Print Name: Kolleen Cobb  
Title: Vice President  
Dated: June 4<sup>th</sup>, 2019

**WITNESSES:**

Berriana Hernandez  
Print Name: Berriana Hernandez

Mariela Santos  
Print Name: Mariela Santos

19 JUL 15 PM 12:23

City Attorney's Office  
RECEIVED

JUN 28 2019

City of Orlando



CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No.: 528-1240  
PARCEL No.: CFX DRAINAGE EASEMENT at OIA #803  
ESTATE: PERMANENT DRAINAGE EASEMENT

A parcel of land lying in Section 36, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at a 6"x6" concrete monument marking the Northeast Corner of Section 35, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°06'56" East, along the East line of the Northeast 1/4 of said Section 35, a distance of 1250.09 feet to the existing southerly Limited Access Right-of-Way Line of State Road 528 per Orlando Orange County Expressway Authority Section 1.1 and 1.2 and Project 907 Right-of-Way Maps; thence run South 89°53'39" East, along said southerly Limited Access Right-of-Way Line, a distance of 2583.98 feet to the northwest corner of Permanent Easement Parcel 907-801/ Part C as depicted on said Orlando Orange County Expressway Right-of-Way Map, Project 907; thence departing said southerly Limited Access Right-of-Way Line run South 00°06'21" West, along the west line of said Easement, a distance of 108.00 feet to the southwest corner of said Easement and the POINT OF BEGINNING; thence run South 89°53'39" East, along the south line of said Easement, a distance of 108.27 feet to the southeast corner of said Easement; thence departing said south line, run South 00°17'29" East, a distance of 47.30 feet; thence run South 89°58'12" West, a distance of 108.53 feet; thence run North 00°01'41" East, a distance of 47.56 feet to the POINT OF BEGINNING.

Containing 5141 square feet or 0.118 acres, more or less.

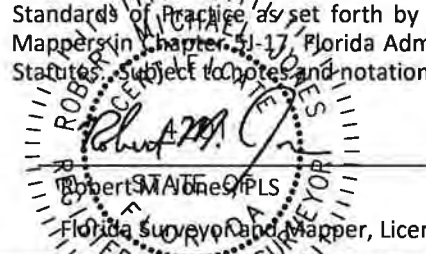
### Surveyors Notes

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901) , US Survey Foot, based on the east line of the northeast 1/4 of Section 35, Township 23 South, Range 30 East as being South 00°06'56" East. The average combined scale factor is 0.9999476.
2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record.
3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
4. The location and configuration of the lands described and depicted hereon were provided by the client.
5. This legal description and sketch may have been reduced in size by reproduction.
6. A Commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539A-2-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

### LEGEND:

(C) = Calculated  
(D) = Deed  
(M) = Measured  
(P) = Plat  
O.R.B. = Official Records Book  
Pg. = Page  
R = Radius  
L = Length of curve (arc distance)  
C = Chord distance  
Delta = central angle  
CB = Chord Bearing  
ID or id = Identification  
N/T = Line Not To Scale  
PID = Parcel Identification Number  
S.R. = State Road  
CFX = Central Florida Expressway Authority  
R/W = Right-of-Way  
CL = Centerline  
---||--- = Limited Access Right-of-way line  
PC = Point of Curvature  
PT = Point of Tangency  
PCC = Point of Compound Curvature  
PRC = Point of Reverse Curvature  
(NT) = Non Tangent  
CM = Concrete Monument  
--- = section line  
--- = 1/4 section line  
OOCEA = Orlando Orange County Expressway Authority  
No. = Number

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 51-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.



THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA

DESIGNED BY: HNTB DATE: 11/24/2015  
DRAWN BY: PEW AMEC JOB No.: 6374150802  
APPROVED BY: RMJ DRAWING NAME: Drainage Area No.3 in OIA.dwg



Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

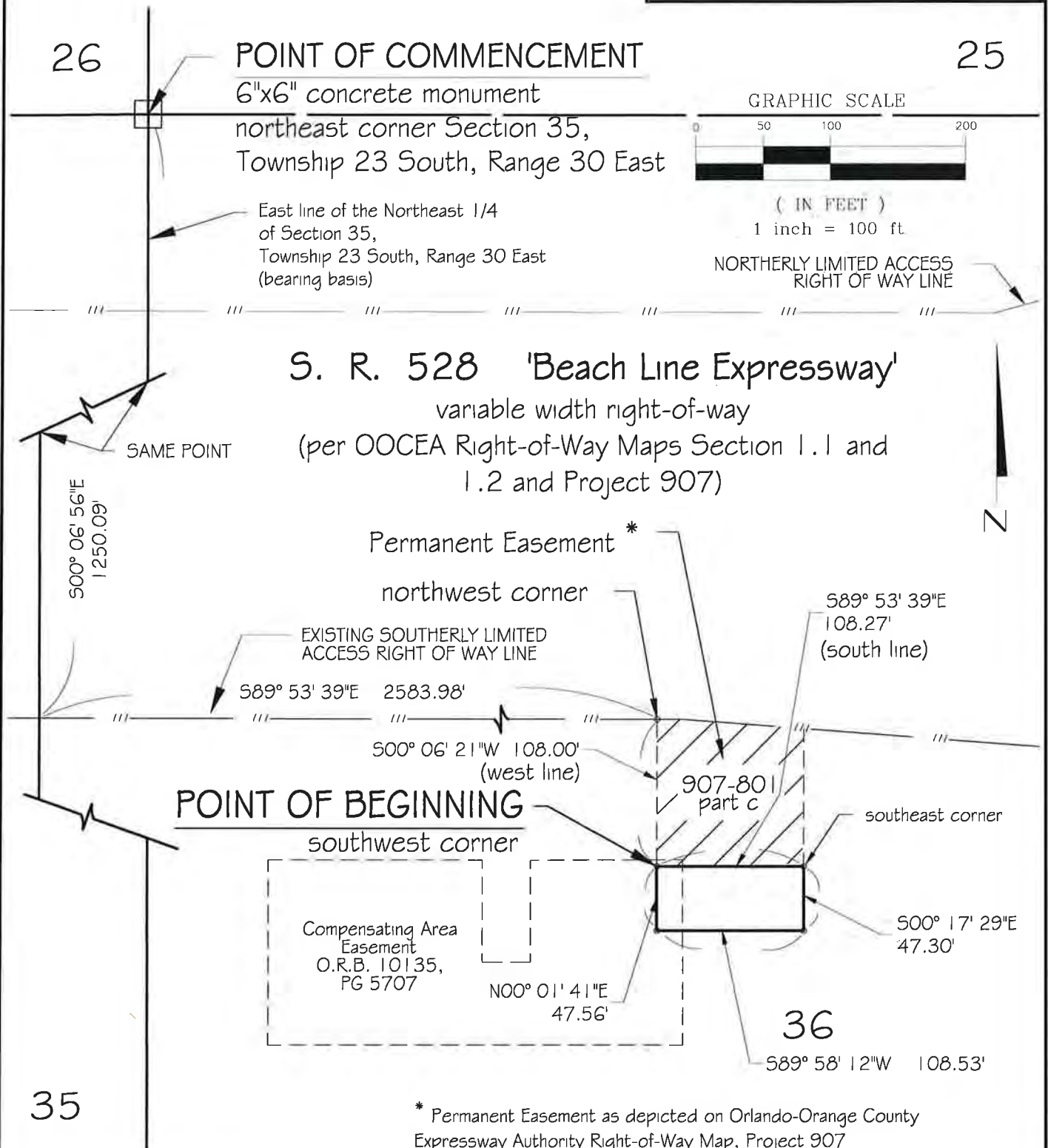
SHEET 1 OF 2

REVISIONS

DATE	BY
1/13/2020	TW

ADDRESSED CFX COMMENTS

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
 STATE ROAD 528  
 PROJECT No.: 528-1240  
 PARCEL No.: CFX DRAINAGE EASEMENT at OIA #803  
 ESTATE: PERMANENT DRAINAGE EASEMENT



\* Permanent Easement as depicted on Orlando-Orange County  
 Expressway Authority Right-of-Way Map, Project 907

THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA		LEGAL DESCRIPTION and SKETCH		SHEET 2 OF 2	
DESIGNED BY: HNTB	DATE: 11/24/2015	 Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	REVISIONS		
DRAWN BY: PEW	AMEC JOB No.: 6374150802		DATE	BY	
APPROVED BY: RMJ	DRAWING NAME: Drainage Area No.3 in OIA.dwg		1/13/2020	TW	
			ADDRESSED CFX COMMENTS		





CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No.: 528-1240  
PARCEL No.: CFX DRAINAGE EASEMENT at OIA #804  
ESTATE: PERMANENT DRAINAGE EASEMENT

A parcel of land lying in Section 35, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at a 6"x6" concrete monument (no identification) marking the Northwest Corner of Section 35, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°22'19" East, along the west line of the Northwest 1/4 of said Section 35, a distance of 589.13 feet to the existing south Limited Access Right-of-Way Line of State Road 528 per Orlando Orange County Expressway Authority Goldenrod Road Extension Project 903 Right-of-Way Maps; thence run along said south Limited Access Right-of-Way Line the following five (5) courses and distances; thence run South 76°11'34" East, a distance of 368.99 feet; thence run South 75°51'57" East, a distance of 98.35 feet to a point on a non-tangent curve with a radius of 2770.79 feet, concave to the south; thence easterly along said curve to the right through a central angle of 7°40'18", a chord distance of 370.72 feet where the chord bears South 71°21'21" East an arc distance of 371.00 feet to the point of intersection with a non-tangent line; thence South 66°51'16" East, a distance of 98.35 feet; thence run South 66°31'16" East, a distance of 233.65 feet to the POINT OF BEGINNING; thence continue along said south Limited Access Right-of-Way Line the following four (4) courses and distances; thence run South 66°31'16" East, a distance of 199.42 feet to a point on a curve with a radius of 2000.00 feet, concave to the north; thence easterly along said curve to the left through a central angle of 10°53'25", a chord distance of 379.57 feet where the chord bears South 71°57'58" East an arc distance of 380.14 feet; thence run South 77°24'41" East, a distance of 246.47 feet; thence run South 08°35'44" West, a distance of 22.89 feet to a point on a non-tangent curve with a radius of 3572.02 feet, concave to the north; thence departing said south Limited Access Right-of-Way Line, run westerly along said curve to the right through a central angle of 8°55'54", a chord distance of 556.26 feet where the chord bears N74°42'26"W an arc distance of 556.83 feet; thence run North 68°44'48" West, a distance of 274.06 feet; thence run North 22°02'13" East, a distance of 29.40 feet to the POINT OF BEGINNING.

Containing 18435 square feet or 0.423 acres, more or less.

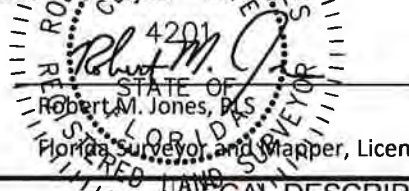
### Surveyors Notes

#### LEGEND:

(C) = Calculated  
(D) = Deed  
(M) = Measured  
(P) = Plat  
O.R.B. = Official Records Book  
Pg. = Page  
R = Radius  
L = Length of curve (arc distance)  
CD = Chord distance  
Delta = central angle  
CB = Chord Bearing  
ID or id = Identification  
✓ L = Line Not To Scale  
PID = Parcel Identification Number  
S.R. = State Road  
CFX = Central Florida Expressway Authority  
R/W = Right-of-Way  
C = Centerline  
—||— = Limited Access Right-of-way line  
PC = Point of Curvature  
PT = Point of Tangency  
PCC = Point of Compound Curvature  
PRC = Point of Reverse Curvature  
(NT) = Non Tangent  
CM = Concrete Monument  
— = section line  
— = 1/4 section line  
OOCEA = Orlando Orange County Expressway Authority  
No. = Number

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901) , US Survey Foot, based on the west line of the northwest 1/4 of Section 35, Township 23 South, Range 30 East as being South 00°22'19" East. The average combined scale factor is 0.9999476.
2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record.
3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
4. The location and configuration of the lands described and depicted hereon were provided by the client.
5. This legal description and sketch may have been reduced in size by reproduction.

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 51-17 of Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.



THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA

DESIGNED BY: HNTB DATE: 04/13/2016  
DRAWN BY: PEW AMEC JOB No.: 6374150802  
APPROVED BY: RMJ DRAWING NAME: Drainage Area No.4 in OIA.dwg

AMEC Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 1 OF 2

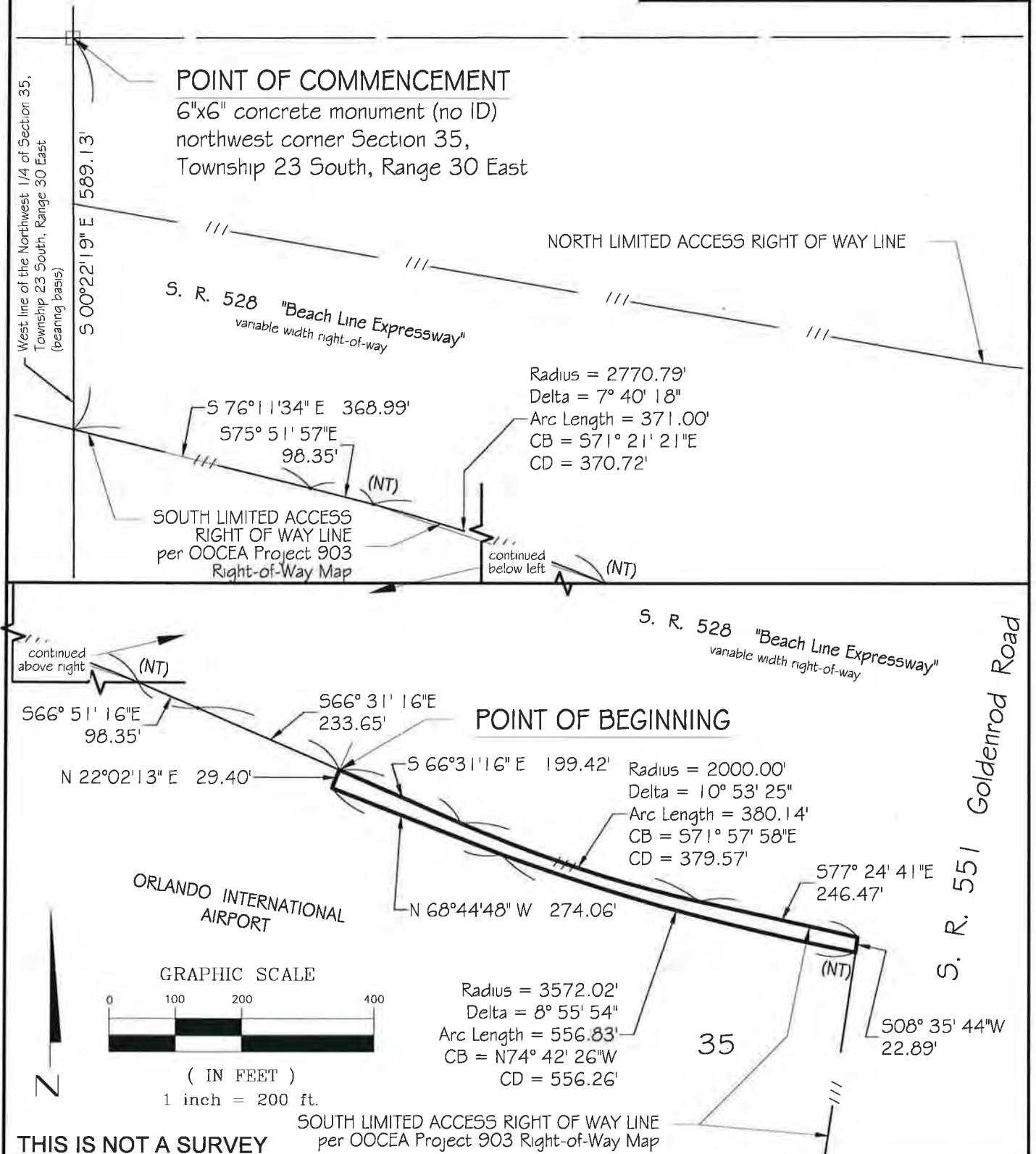
REVISIONS

DATE BY

1/13/2020 TW

ADDRESSED CFX COMMENTS

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
 STATE ROAD 528  
 PROJECT No.: 528-1240  
 PARCEL No.: CFX DRAINAGE EASEMENT at OIA #804  
 ESTATE: PERMANENT DRAINAGE EASEMENT



FOR: ALL ABOARD FLORIDA		<b>LEGAL DESCRIPTION and SKETCH</b>		SHEET 2 OF 2	
DESIGNED BY: HNTB	DATE: 04/13/2016	Amec Foster Wheeler Environment & Infrastructure, Inc.		REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374150802	75 East Amelia Street, Suite 200		DATE	BY
APPROVED BY: RMJ	DRAWING NAME: Drainage Area No.4 in OIA.dwg	Orlando, FL 32801 USA		1/13/2020	TW
		Phone: (407) 522-7570		ADDRESSED CFX COMMENTS	
		Certificate of Authorization Number LB-0007932			





CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No.: 528-1240  
PARCEL No.: CFX DRAINAGE EASEMENT at OIA #802 Part A  
ESTATE: PERMANENT DRAINAGE EASEMENT

A parcel of land lying in Section 34, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at a 6"x6" concrete monument (no identification) marking the Northeast Corner of Section 34, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°22'19" East, along the East line of the Northeast 1/4 of said Section 34, a distance of 589.13 feet to the existing southerly Limited Access Right-of-Way Line of State Road 528 per Orlando Orange County Expressway Authority Goldenrod Road Extension Project 903 Right-of-Way Maps; thence run along said southerly Limited Access Right-of-Way Line the following two courses and distances: thence N 76°11'34" W, a distance of 507.78 feet; thence N 80°13'05" W, a distance of 39.30 feet to the POINT OF BEGINNING; thence departing said existing southerly Limited Access Right-of-Way line run South 11°28' 31" West, a distance of 66.64 feet; thence run North 78°18'15" West, a distance of 23.07 feet; thence run North 11°28'54" East, a distance of 65.87 feet to said existing southerly Limited Access Right-of-Way Line; thence run South 80°13'05" East, along said existing southerly Limited Access Right-of-Way line, a distance of 23.07 feet to the POINT OF BEGINNING.

Containing 1528 square feet or 0.035 acres, more or less.

### Surveyors Notes

1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901) , US Survey Foot, based on the east line of the northeast 1/4 of Section 34, Township 23 South, Range 30 East as being South 00°22'19" East. The average combined scale factor is 0.9999476.

2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record.

3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.

4. The location and configuration of the lands described and depicted hereon were provided by the client.

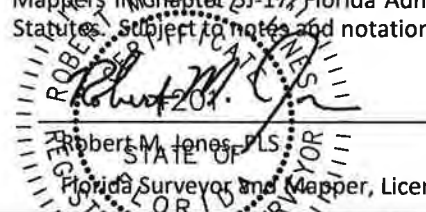
5. This legal description and sketch may have been reduced in size by reproduction.

6. A Commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539A-2-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

### LEGEND:

(C) = Calculated  
(D) = Deed  
(M) = Measured  
(P) = Plat  
O.R.B. = Official Records Book  
Pg. = Page  
R = Radius  
L = Length of curve (arc distance)  
C = Chord distance  
Delta = central angle  
CB = Chord Bearing  
ID or id = Identification  
✓ = Line Not To Scale  
PID = Parcel Identification Number  
S.R. = State Road  
CFX = Central Florida Expressway Authority  
R/W = Right-of-Way  
CL = Centerline  
—||— = Limited Access Right-of-way line  
PC = Point of Curvature  
PT = Point of Tangency  
PCC = Point of Compound Curvature  
PRC = Point of Reverse Curvature  
(NT) = Non Tangent  
CM = Concrete Monument  
— = section line  
— = 1/4 section line  
OOCEA = Orlando Orange County Expressway Authority  
No. = Number

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 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.



THIS IS NOT A SURVEY

FOR: ALL ABOARD FLORIDA

DESIGNED BY: HNTB DATE: 11/24/2015  
DRAWN BY: PEW AMEC JOB No.: 6374150802  
APPROVED BY: RMJ DRAWING NAME: Drainage Area No 802 in OIA\_Part A.dwg



Amec Foster Wheeler Environment & Infrastructure, Inc.  
75 East Amelia Street, Suite 200  
Orlando, FL 32801 USA  
Phone: (407) 522-7570  
Certificate of Authorization Number LB-0007932

SHEET 1 OF 2	
REVISIONS	
DATE	BY
1/13/2020	TW
addressed CFX comments	

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
 STATE ROAD 528  
 PROJECT No.: 528-1240  
 PARCEL No.: CFX DRAINAGE EASEMENT at OIA #802 Part A  
 ESTATE: PERMANENT DRAINAGE EASEMENT

27

26

POINT OF COMMENCEMENT  
 6"x6" concrete monument (no ID)  
 northeast corner Section 34,  
 Township 23 South, Range 30 East

East line of the Northeast 1/4 of Section 34,  
 Township 23 South, Range 30 East  
 (bearing basis)

EXISTING NORTHERLY LIMITED ACCESS  
 RIGHT OF WAY LINE

S. R. 528 'Beach Line Expressway'  
 variable width right-of-way  
 (per OOCEA Section 1.1 and 1.2 and Project 903 Right-of-Way Maps)

500° 22' 19"E 589.13'

S80° 13' 05"E 23.07'

N80° 13' 05"W 39.30'

EXISTING  
 SOUTHERLY LIMITED ACCESS  
 RIGHT OF WAY LINE  
 (per project 903)

ORIGINAL SOUTHERLY  
 LIMITED ACCESS  
 RIGHT OF WAY LINE

POINT OF BEGINNING

N80° 13' 05"W  
 N76° 11' 34"W 507.78'

S11° 28' 31"W 66.64'

N78° 18' 15"W 23.07'

N11° 28' 54"E 65.87'

34

35



( IN FEET )  
 1 inch = 100 ft.

THIS IS NOT A SURVEY


FOR: ALL ABOARD FLORIDA		LEGAL DESCRIPTION and SKETCH		SHEET 2 OF 2	
DESIGNED BY: HNTB	DATE: 11/24/2015	 amec foster wheeler	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 Orlando, FL 32801 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374150802			DATE	BY
APPROVED BY: RMJ	DRAWING NAME: Drainage Area No 802 in OIA Part A.dwg			1/13/2020	TW
				addressed CFX comments	

**CONSENT AGENDA ITEM  
#18**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM:  Diego "Woody" Rodriguez, General Counsel

DATE: January 23, 2020

RE: Central Florida Expressway Authority v. Cynthia J. and Robert S. Henderson, as Trustees, et al. Case No. 2013-CA-014398-O, Project: 429-202, Parcels 112 (Parts A & B), 712  
Location: 1430 Plymouth Sorrento Road, Apopka, Florida  
Date of Taking: February 19, 2014

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## BACKGROUND

Litigation regarding CFX and Cynthia and Robert Henderson was a result of the Wekiva Parkway project and has been ongoing for some time. The only remaining issue was the resolution of the amount of expert fees to be paid for one expert, Juris Corp., used by owner's counsel, Tom Callan. The initial good faith deposit for the acquisition of the property was in the amount of \$385,700. CFX ultimately paid \$854,825, inclusive of attorney's fees for the acquisition. However, that amount did not include any supplemental attorney's fees, expert fees and costs. As to all other experts, a global settlement was reached to pay \$173,243 for the expert fees and costs plus an additional \$24,966.92 for supplemental attorney's fees to owner's counsel.

The initial Juris invoice was disputed because the invoice amount of \$63,142.50 was deemed exorbitant for production of models and photographs of the subject property. Former in-house CFX Deputy Counsel Linda Brehmer Lanosa was negotiating this matter prior to her departure. Initial negotiations to reduce the amount of the invoice were unsuccessful, and on January 24, 2018, the Right of Way Committee voted to proceed to a fee hearing. The fee hearing was held in March 2018 but was continued by then Judge Rene Roche on the basis that the parties would need more than the allotted time to present all evidence on this matter.

The fee hearing was continued to October 2018 but the parties continued negotiations. On or about September 21, 2018, owner's counsel offered to settle the invoice and the supplemental fees for \$105,000. However, in an effort to avoid the October 2018 hearing he subsequently offered to settle the matter for the amount of \$70,000, inclusive of all supplemental attorney's fees. This offer was rejected by CFX counsel. A month later, owner's counsel requested and was granted a continuance to the fee hearing.

In August 2019, Attorney Brehmer Lanosa attempted to negotiate the expert fees and supplemental attorney's fees. The owner's prior offer of \$70,000 was no longer tendered and instead a new offer of \$89,000 was provided by owner's counsel.

Attorney Brehmer Lanosa's notes reflect that she believed a fair amount for the Juris fees would be around \$33,000 plus counsel's supplemental attorney's fees. Owner's counsel wanted \$47,000 plus an undetermined amount in supplemental fees. As no settlement could be reached, the parties continued forward with a new hearing date of December 3, 2019 before Judge Chad Alvaro.

Upon Attorney Brehmer Lanosa's departure, General Counsel reviewed the file and contacted outside counsel for CFX, Shutts & Bowen, to assist with representation at the December 2019 fee hearing. Given travel costs for the lawyer from South Florida assigned the representation and the amount of prior testimony to be reviewed, including depositions and expert affidavits, it was estimated outside counsel would need 30-40 hours to prepare for and attend the fee hearing. This would have resulted in approximately \$7,500 to \$10,000 to defend CFX's interest at a fee hearing.

In addition, as part of due diligence, General Counsel requested additional settlements in which Juris and Shutts & Bowen attorneys had resolved to determine the reasonableness of the fees. Parcel 311 was in Lake County with attorney Raymer Maguire and Parcel 242 was in Orange County with attorney Tom Callan. For Parcel 311, the matter was settled for \$32,500 or about 80% of the initial requested demand of \$40,490. For Parcel 242, the matter was settled for \$36,000 or about 64% of the initial requested demand of \$56,571.

At the time, General Counsel assumed negotiations, the latest offer presented to CFX was for \$89,000, all inclusive which consisted of \$47,000 for Juris' invoices and over \$42,000 in supplemental attorney's fees. After further negotiations, parties reached a tentative agreement of \$56,000 inclusive of all supplemental fees and costs, subject to CFX Board approval. This amount represents 63% of the \$89,000 settlement offer made by owner's counsel in August 2019 and 53% of the \$105,000 initial demand after the 2018 hearing was continued. By foregoing the fee hearing, CFX also avoided the additional expense of \$7,500 or more in defense costs and the risk of uncertainty as to the amount of expert fees and supplemental attorney's fees the court may have awarded.

The amount of the settlement has been reviewed by General Counsel who also consulted with former counsel Brehmer Lanosa and the amount is determined to be a good settlement to resolve this matter in its entirety.

### **REQUESTED ACTION**

Board approval of the following is requested:

1. Proposed Order on Expert Fees and Costs as to Juris.

The Right of Way Committee recommended approval on January 22, 2020.

Project: 429-205, Parcel 112 (Part A & B);712  
Case No:2013-CA-014398-O  
Settlement Agreement for Expert Fees and  
Cost of Juris Corporation and Supplemental  
Attorneys' Fees and Costs  
Page 2 of 2

### **ATTACHMENTS**

A. Motion and Order on Expert Fees and Costs as to Juris

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

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

Petitioner,

CASE NO. 2013-CA-14398-O

v.

Division 39

CYNTHIA J. HENDERSON and ROBERT S.  
HENDERSON, as Trustees under the provisions  
of a certain Trust Agreement, dated October 25,  
2006, and known as the Cynthia J. Henderson  
Revocable Trust; et al.;

Parcel: 112 (Parts A & B), 712

Respondents.

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**JOINT MOTION FOR STIPULATED ORDER**  
**AWARDING EXPERT FEES AND COSTS OF JURIS CORP.**  
**AND SUPPLEMENTAL ATTORNEYS' FEES AND COSTS**  
**AS TO PARCELS 112 (PARTS A & B) AND 712**

Petitioner, CENTRAL FLORIDA EXPRESSWAY AUTHORITY, and Respondents,  
CYNTHIA J. HENDERSON and ROBERT S. HENDERSON, as Trustees under the provisions  
of a certain Trust Agreement, dated October 25, 2006, and known as the Cynthia J. Henderson  
Revocable Trust, by and through their undersigned counsel, respectfully move for entry of the  
attached Stipulated Order Awarding Expert Fees and Costs and Supplemental Attorneys' Fees of  
Juris Corp. and Supplemental Attorney's Fees and Costs as to Parcels 112 (Parts A & B) and 712.  
The undersigned are authorized to enter into this Motion.

---

**DIEGO "WOODY" RODRIGUEZ, ESQ.**

Florida Bar No. 73504  
Central Florida Expressway Authority  
4974 ORL Tower Road  
Orlando, Florida 32807

---

**THOMAS P. CALLAN, ESQ.**

Florida Bar No. 729050  
Callan Law Firm, P.A.  
921 Bradshaw Terrace  
Orlando, Florida 32806-1209



(407) 690-5381

[Woody.Rodriguez@cfxway.com](mailto:Woody.Rodriguez@cfxway.com)

[Mala.Iley@cfxway.com](mailto:Mala.Iley@cfxway.com)

*General Counsel for Petitioner*

[tcallan@callanlaw.com](mailto:tcallan@callanlaw.com)

[adm@callanlaw.com](mailto:adm@callanlaw.com)

[plr@callanlaw.com](mailto:plr@callanlaw.com)

[mrichmond@callanlaw.com](mailto:mrichmond@callanlaw.com)

[efilings.clfpa@gmail.com](mailto:efilings.clfpa@gmail.com)

[efilings@callanlaw.com](mailto:efilings@callanlaw.com)

*Attorney for Respondent,*

### **CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that, pursuant to Florida Rule of Judicial Administration 2.516, the foregoing was filed with the Clerk of the Court this \_\_\_\_ day of February, 2020, by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorneys or interested parties identified on the e-Portal Electronic Service List, via transmission of Notices of Electronic Filing generated by the e-Portal System and listed in **Schedule A** below.

*/s/ Diego "Woody" Rodriguez*

**Diego "WOODY" RODRIGUEZ, ESQ.**

Florida Bar No. 73504

Central Florida Expressway Authority

4974 ORL Tower Road

Orlando, Florida 32807

(407) 690-5381

[Woody.Rodriguez@cfxway.com](mailto:Woody.Rodriguez@cfxway.com);

[Mala.Iley@cfxway.com](mailto:Mala.Iley@cfxway.com);

*General Counsel for Petitioner*

## **SCHEDULE A**

**THOMAS P. CALLAN, ESQ.**

Callan Law Firm, P.A.

921 Bradshaw Terrace

Orlando, Florida 32806-1209

[tcallan@callanlaw.com](mailto:tcallan@callanlaw.com)

[adm@callanlaw.com](mailto:adm@callanlaw.com);

[efilings.clfpa@gmail.com](mailto:efilings.clfpa@gmail.com)

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

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

Petitioner,

CASE NO. 2013-CA-014398-O

v.

Division 39

CYNTHIA J. HENDERSON and ROBERT S.  
HENDERSON, as Trustees under the provisions  
of a certain Trust Agreement, dated October 25,  
2006, and known as the Cynthia J. Henderson  
Revocable Trust; et al.;

Parcel: 112 (Parts A & B), 712

Respondents.

---

**STIPULATED ORDER AWARDING**  
**EXPERT FEES AND COSTS OF JURIS CORP.**  
**AND SUPPLEMENTAL ATTORNEYS' FEES AND COSTS**  
**AS TO PARCELS 112 (PART A & B) AND 712**

THIS CAUSE having come on for consideration upon the Joint Motion for Stipulated Order Awarding Experts' Fees and Costs of Juris Corp. and Supplemental Attorneys' Fees and Costs as to Parcels 112 (Parts A & B) and 712 by Petitioner, **CENTRAL FLORIDA EXPRESSWAY AUTHORITY** ("Petitioner" or "CFX"), and **RESPONDENTS, CYNTHIA J. HENDERSON and ROBERT S. HENDERSON, as Trustees under the provisions of a certain Trust Agreement, dated October 25, 2006, and known as the Cynthia J. Henderson Revocable Trust** ("Respondents" or "Hendersons"). The Court has reviewed the file, heard argument of counsel, and is duly advised in the premises. Accordingly, this Court finds that the parties reached an agreement as to the expert fees and costs and supplemental attorney's fees and costs as set forth below. Therefore, it is

**ORDERED AND ADJUDGED** that the Joint Motion for Stipulated Order Awarding

Experts' Fees and Costs of Juris Corp. and Supplemental Attorneys' Fees and Costs as to Parcels 112 (Parts A & B) and 712 shall be and is hereby **GRANTED** as follows:

1. Respondents shall have and recover from Petitioner, Central Florida Expressway Authority, the sum of FIFTY SIX THOUSAND AND NO/100 DOLLARS (\$56,000.00), in full payment, settlement, and satisfaction of any and all of the expert fees and costs for Parcel 112, including any supplemental attorneys' fees and costs of the Callan Law Firm, P.A. incurred on behalf of Respondents in this matter.

2. That within thirty (30) days of receipt by Petitioner of a certified copy of this Order, Petitioner shall issue a check in the sum of **FIFTY SIX THOUSAND AND NO/100 DOLLARS (\$56,000.00)**, made payable to "Callan Law Firm, P.A., Trust Account," and shall deliver said check by U.S. Mail to Thomas P. Callan, Esq., Callan Law Firm, P.A., 921 Bradshaw Terrace, Orlando, Florida 32806 as payment in full for all experts' fees and costs and supplemental attorneys' fees and costs for Respondents for proper disbursement of the same.

3. Upon Petitioner's payment of the above-referenced sum, Respondents shall not make nor be entitled to any further claims for experts' fees, experts' costs, attorney's fees, or costs pertaining to the taking of Parcels 112 (Parts A & B) and 712 and any supplemental attorneys' fees that may be incurred in connection with any required fee hearing.

4. This Agreement resolves all claims whatsoever, including claims of compensation arising from the taking of Parcel 242, severance damages, business damages, tort damages, interest, statutory attorney's fees, supplemental attorneys' fees, attorney's costs, expert fees, expert costs, and any other claims that may have been raised in connection with this matter.

5. Respondents' counsel shall be responsible for the preparation and transmittal of any I.R.S. 1099 forms as necessary.

**DONE AND ORDERED** in Chambers at Orlando, Orange County, Florida, this \_\_\_\_\_  
day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
CHAD K. ALVARO  
Circuit Judge

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that the foregoing was filed with the Clerk of the Court this \_\_\_\_\_  
day of \_\_\_\_\_, 2020, by using the Florida Courts E-Filing Portal System. Accordingly, a  
copy of the foregoing is being served on this day to all attorneys/ interested parties identified on  
the e-Portal Electronic Service List, via transmission of Notices of Electronic Filing generated by  
the e-Portal System.


\_\_\_\_\_  
Judicial Assistant/Attorney/Paralegal

**CONSENT AGENDA ITEM  
#19**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 27, 2020

SUBJECT: Approval of Supplemental Agreement No. 7 with Infrastructure Corporation of America for Facilities Maintenance Services  
Contract No. 001150

---

Board approval is requested for Supplemental Agreement No. 7 with Infrastructure Corporation of America, to increase the work order allowance for a not-to-exceed amount of \$100,000.00. The original contract was for five years with five (5) one-year renewals.

The services to be provided include incidental repairs at CFX facilities.

Original Contract	\$9,363,000.00
Supplemental Agreement No. 1	\$ 4,250.00
Supplemental Agreement No. 2	\$ 16,628.00
Supplemental Agreement No. 3	\$ 47,499.24
Supplemental Agreement No. 4	\$ 92,237.10
Supplemental Agreement No. 5	\$ 45,000.00
Supplemental Agreement No. 6	\$ 143,848.60
Supplemental Agreement No. 7	\$ 100,000.00
Total	\$9,812,462.94

This contract is budgeted in the OM&A Budget.

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



CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 7

Contract Name: Facilities Maintenance Services  
Contract No. 001150  
Supplemental Agreement No. 7

This Supplemental Agreement No. 7 entered into this 13<sup>th</sup> day of February 2020, by and between CENTRAL FLORIDA EXPRESSWAY AUTHORITY (“CFX”), and INFRASTRUCTURE CORPORATION OF AMERICA, (the “Contractor”), the same being supplementary to the Contract between the aforesaid, dated April 14, 2016, with a Notice to Proceed date of May 25, 2016, for facilities maintenance services pertaining to S.R. 408, S.R. 414, S.R. 417, S.R. 429, S.R. 528, S.R. 551 (Goldenrod Road Extension) the CFX Headquarters Building (4974 ORL Tower Road), the former CFX office (525 S. Magnolia Avenue), and the E-PASS Service Center (Pinar Plaza, 762 South Goldenrod Road).

1. CFX desires to increase the work order allowance for needed repairs at the headquarters building and plaza facilities for FY 20/21. The work allowance is adjusted upward by \$100,000.00.
2. The Contractor hereby agrees to increase work allowance for FY 20/21 with an increase in the Contract amount of \$100,000.00 and no increase in the Contract time.
3. CFX and Contractor agree that this Supplemental Agreement No. 7 shall not alter or change in any manner the force and effect of the Contract including any previous amendments thereto, except insofar as the same is altered and amended by this Supplemental Agreement No. 7; that acceptance of this Supplemental Agreement No. 7 signifies the Contractor’s complete and total claim for the terms and conditions of the same and that the Contractor waives all future right for additional compensation which is not already defined herein.



**SUPPLEMENTAL AGREEMENT NO. 7**

Contract Name: Facilities Maintenance Services

Contract No. 001150

Supplemental Agreement No. 7

Amount of Changes to this document: \$100,000.00

This Supplemental Agreement No. 7 entered into as of the day and year first written above.

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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

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

**INFRASTRUCTURE CORPORATION OF AMERICA**

By: \_\_\_\_\_

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

Attest: \_\_\_\_\_ (Seal)

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

Approved as to form and execution, only.

\_\_\_\_\_  
General Counsel for CFX

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 6**

Contract Name: Facilities Maintenance Services Contract No.001150  
Supplemental Agreement No.6

This Supplemental Agreement No. 6 entered into this 10<sup>th</sup> day of October 2019, by and between CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX"), and INFRASTRUCTURE CORPORATION OF AMERICA, LLC (the "Contractor"), the same being supplementary to the Contact between the aforesaid, dated April 14, 2016, with a Notice to Proceed date of May 25, 2016, for facilities maintenance services pertaining to S.R. 408, S.R. 414, S.R. 417, S.R. 429, S.R. 528, S.R. 551 (Goldenrod Road Extension) the CFX Headquarters Building (4974 ORL Tower Road), the former CFX office (525 S. Magnolia Avenue), and the E-PASS Service Centers at Pinar Plaza, (762 South Goldenrod Road).

1. CFX desires to add maintenance by the Contactor of the CFX Headquarters building including the following services in accordance with the applicable specifications: Additional Janitorial services for second shift. (1) additional staff person and additional supplies will be provided from 7:00 p.m. - 11:00 p.m., Monday through Friday Additional compensation to provide the required services for the seven-month term January 1, 2019 thru July 31, 2019 will be paid to the Contractor at a rate of \$3,639.90 per month.
2. CFX desires to add maintenance by the Contactor of the CFX Headquarters building including the following services in accordance with the applicable specifications: Additional Janitorial services for second shift. (1) additional staff person and additional supplies will be provided from 7:00 p.m. - 11:00 p.m., Monday through Friday. Additional compensation to provide the required services from August 1, 2019 to the remainder of the Contract term, May 24, 2021, will be paid to the Contractor at a rate of \$2,805.04 per month for 22 months.
3. CFX desires to add maintenance by the Contactor of the CFX Headquarters building including the following services in accordance with the applicable specifications: Additional Janitorial services for the New Patio Area during the first shift. (1) additional staff person and additional supplies will be provided from 10:00 a.m. - 3:00 p.m., Monday through Friday Additional compensation to provide the required services from April 1, 2019. to the remainder of the Contract term, May 24, 2021, will be paid to the Contractor at a rate of \$2,179.17 per month for 26 months.
4. The Contractor hereby agrees to provide the additional services with an increase in Contact amount of a not-to-exceed amount of \$143,848.60 and no increase in the Contract time.
5. CFX and Contractor agree that this Supplemental Agreement No. 6 shall not alter or change in any manner the force and effect of the Contract including any previous amendments thereto, except insofar as the same is altered and amended by this Supplemental Agreement No. 6; that acceptance of this Supplemental Agreement No. 6 signifies the Contractor's complete and total claim for the terms and conditions of the same and that the Contractor waives all future right for additional compensation which is not already defined herein.

Contract Name: Facilities Maintenance Services

Contract No. 001150

Amount of Changes to this document: \$143,848.60

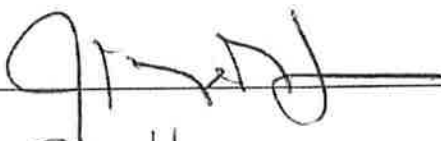
This Supplemental Agreement No. 6 entered into as of the day and year first written above.

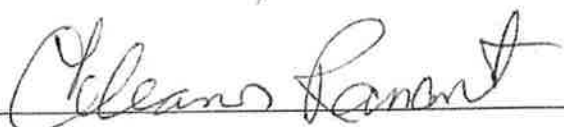
CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By:   
Director of Procurement


Date: 10/22/19

INFRASTRUCTURE CORPORATION OF AMERICA, LLC

By:   
Title: Secretary

Attest:   
Date: 10/15/19

Approved as to form and execution, only.

  
General Counsel for CFX

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 5

Contract Name: Facilities Maintenance Services  
Contract No. 001150  
Supplemental Agreement No. 5

'19 MAR 15 PM 1:18

This Supplemental Agreement No. 5 entered into this 5<sup>th</sup> day of March, 2019, by and between CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX"), and INFRASTRUCTURE CORPORATION OF AMERICA, (the "Contractor"), the same being supplementary to the Contract between the aforesaid, dated April 14, 2016, with a Notice to Proceed date of May 25, 2016, for facilities maintenance services pertaining to S.R. 408, S.R. 414, S.R. 417, S.R. 429, S.R. 528, S.R. 551 (Goldenrod Road Extension) the CFX Headquarters Building (4974 ORL Tower Road), the former CFX office (525 S. Magnolia Avenue), and the E-PASS Service Center (Pinar Plaza, 762 South Goldenrod Road).

1. CFX desires to increase the work order allowance for needed repairs at the headquarters building and plaza facilities for FY 18/19. The work allowance is adjusted upward by \$45,000.00.
2. The Contractor hereby agrees to increase work allowance for FY 18/19 with an increase in the Contract amount of \$45,000.00 and no increase in the Contract time.
3. CFX and Contractor agree that this Supplemental Agreement No. 5 shall not alter or change in any manner the force and effect of the Contract including any previous amendments thereto, except insofar as the same is altered and amended by this Supplemental Agreement No. 5; that acceptance of this Supplemental Agreement No. 5 signifies the Contractor's complete and total claim for the terms and conditions of the same and that the Contractor waives all future right for additional compensation which is not already defined herein.

SUPPLEMENTAL AGREEMENT NO. 5

Contract Name: Facilities Maintenance Services

Contract No. 001150

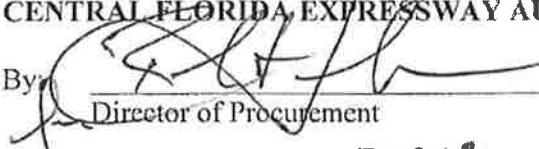
Supplemental Agreement No. 5

Amount of Changes to this document: \$45,000.00

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

'19 MAR 15 PM 1:18

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By:   
Director of Procurement

Date: 3-21-2019

INFRASTRUCTURE CORPORATION OF AMERICA

By:   
Secretary

Title: Secretary

Attest:  (Seal)

Date: 3-11-2019

Approved as to form and execution, only.

  
General Counsel for CFX

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 4

Contract Name: Facilities Maintenance Services  
Contract No. 001150  
Supplemental Agreement No. 4

This Supplemental Agreement No. 4 entered into this 29<sup>th</sup> day of June 2018, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX"), and INFRASTRUCTURE CORPORATION OF AMERICA, LLC (the "Contractor"), the same being supplementary to the Contract between the aforesaid, dated April 14, 2016, with a Notice to Proceed date of May 25, 2016, for facilities maintenance services pertaining to S.R. 408, S.R. 414, S.R. 417, S.R. 429, S.R. 528, S.R. 551 (Goldenrod Road Extension) the CFX Headquarters Building (4974 ORL Tower Road), the former CFX office (525 S. Magnolia Avenue), and the E-PASS Service Centers at Pinar Plaza, (762 South Goldenrod Road).

1. CFX desires to add maintenance by the Contractor of the CFX Headquarters building including the following services in accordance with the applicable specifications: Additional Janitorial services for second shift. (1) additional staff person will be provided from 9:00 p.m. - 2:00 a.m. Additional compensation to provide the required services for the remainder of the Contract term will be paid to the Contractor at a rate of ~~\$2,473.95~~ per month for 38 months.  
\$ 2,249.05
2. The Contractor hereby agrees to provide the additional services with an increase in Contact amount of a not-to-exceed amount of ~~\$121,358.74~~ and no increase in the Contract time.  
\$ 92,237.10
3. CFX and Contractor agree that this Supplemental Agreement No. 4 shall not alter or change in any manner the force and effect of the Contract including any previous amendments thereto, except insofar as the same is altered and amended by this Supplemental Agreement No. 4; that acceptance of this Supplemental Agreement No. 4 signifies the Contractor's complete and total claim for the terms and conditions of the same and that the Contractor waives all future right for additional compensation which is not already defined herein.

SUPPLEMENTAL AGREEMENT NO. 4

Contract Name: Facilities Maintenance Services

Contract No. 001150

Supplemental Agreement No. 4

Amount of Changes to this document:

~~\$121,358.74~~

\$92,237.<sup>10</sup>



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

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By:

  
Director of Procurement

18 NOV 9 PM 3:33

Date:

11/30/18

INFRASTRUCTURE CORPORATION OF AMERICA, LLC

By:

Wendy Jinnelle (Wendy Jinnelle)

Title:

Project Manager 11-5-2018

Attest:

Rita Charles (Rita Charles)

Date:

11/5/2018



Approved as to form and execution,  
only.

  
General Counsel for CFX

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. ~~2~~ <sup>52</sup> 3 gr.

Contract Name: Facilities Maintenance Services  
Contract No. 001150  
Supplemental Agreement No. 3

2018 APR 5 AM 11:44

This Supplemental Agreement No. ~~3~~ <sup>52</sup> entered into this 15<sup>th</sup> day of March, 2018, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX"), and INFRASTRUCTURE CORPORATION OF AMERICA, (the "Contractor"), the same being supplementary to the Contract between the aforesaid, dated April 14, 2016, with a Notice to Proceed date of May 25, 2016, for facilities maintenance services pertaining to S.R. 408, S.R. 414, S.R. 417, S.R. 429, S.R. 528, S.R. 551 (Goldenrod Road Extension) the CFX Headquarters Building (4974 ORL Tower Road), the former CFX office (525 S. Magnolia Avenue), and the E-PASS Service Centers (Pinar Plaza, 762 South Goldenrod Road) and in the Good Homes Shopping Center (8919 West Colonial Drive).

1. CFX desires to add maintenance by the Contractor of the Ponkan, Coronado and Mount Plymouth toll plaza buildings including the following services in accordance with the applicable specifications: locksmith; pest control; plumbing inspection twice per year; annual roof inspection; plumbing maintenance; roof maintenance; annual dry chemical inspection; painting; miscellaneous building repairs. Additional compensation to provide the required services for the remainder of the Contract term will be paid to the Contractor in the lump sum amount of \$47,499.24
2. The Contractor hereby agrees to provide the additional services with an increase in the Contract amount of \$47,499.24 and no increase in the Contract time.
3. CFX and Contractor agree that this Supplemental Agreement No. 3 shall not alter or change in any manner the force and effect of the Contract including any previous amendments thereto, except insofar as the same is altered and amended by this Supplemental Agreement No. 3; that acceptance of this Supplemental Agreement No. 3 signifies the Contractor's complete and total claim for the terms and conditions of the same and that the Contractor waives all future right for additional compensation which is not already defined herein.



SUPPLEMENTAL AGREEMENT NO. 3

Contract Name: Facilities Maintenance Services

2018 APR 5 AM 11:44

Contract No. 001150

Supplemental Agreement No. 3

Amount of Changes to this document: \$47,499.24

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

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: [Signature]  
Director of Procurement

Date: 4/9/18

INFRASTRUCTURE CORPORATION OF AMERICA

By: [Signature]  
Title: President

Attest: [Signature]  
Date: 4/2/18



Approved as to form and execution, only.

[Signature]  
General Counsel for CFX

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 2**

Contract Name: Facilities Maintenance Services  
Contract No. 001150  
Supplemental Agreement No. 2

This Supplemental Agreement No.2 entered into this 17<sup>th</sup> day of May, 2017, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX"), and INFRASTRUCTURE CORPORATION OF AMERICA, (the "Contractor"), the same being supplementary to the Contract between the aforesaid, dated April 14, 2016, with a Notice to Proceed date of May 25, 2016, for facilities maintenance services pertaining to S.R. 408, S.R. 414, S.R. 417, S.R. 429, S.R. 528, S.R. 551 (Goldenrod Road Extension) the CFX Headquarters Building (4974 ORL Tower Road), the former CFX office (525 S. Magnolia Avenue), and the E-PASS Service Centers (Pinar Plaza, 762 South Goldenrod Road) and in the Good Homes Shopping Center (8919 West Colonial Drive).

1. CFX desires to add maintenance by the Contractor of the Hiawassee Backup Data Center including the following services in accordance with the applicable specifications: locksmith; pest control; plumbing inspection twice per year; annual roof inspection; plumbing maintenance; roof maintenance; annual dry chemical inspection; painting; miscellaneous building repairs. Maintenance services will not include air conditioning repair and maintenance or generator repair and maintenance which will be performed by others. Additional compensation to provide the required services for the remainder of the Contract term will be paid to the Contractor in the lump sum amount of \$16,628.00.
2. The Contractor hereby agrees to provide the additional services with an increase in the Contract amount of \$16,628.00 and no increase in the Contract time.
3. CFX and Contractor agree that this Supplemental Agreement No. 2 shall not alter or change in any manner the force and effect of the Contract including any previous amendments thereto, except insofar as the same is altered and amended by this Supplemental Agreement No. 2; that acceptance of this Supplemental Agreement No. 2 signifies the Contractor's complete and total claim for the terms and conditions of the same and that the Contractor waives all future right for additional compensation which is not already defined herein.

SUPPLEMENTAL AGREEMENT NO. 2

Contract Name: Facilities Maintenance Services

Contract No. 001150

Supplemental Agreement No. 2

Amount of Changes to this document: \$16,628.00

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

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: [Signature]  
Director of Procurement

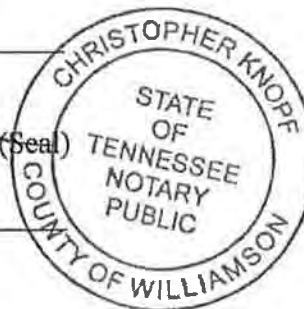
Date: 6/1/17

INFRASTRUCTURE CORPORATION OF AMERICA

By: [Signature]  
Title: COO

Attest: [Signature] (Seal)

Date: 5/25/17



Approved as to form and execution, only.

[Signature]  
General Counsel for CFX

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 1**

Contract Name: Facilities Maintenance Services  
Contract No. 001150  
Supplemental Agreement No. 1

This Supplemental Agreement No. 1 entered into this 10<sup>th</sup> day of August, 2016, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX"), and INFRASTRUCTURE CORPORATION OF AMERICA, (the "Contractor"), the same being supplementary to the Contract between the aforesaid, dated April 14, 2016, with a Notice to Proceed date of May 25, 2016, for facilities maintenance services pertaining to S.R. 408, S.R. 414, S.R. 417, S.R. 429, S.R. 528, S.R. 551 (Goldenrod Road Extension) the CFX Headquarters Building (4974 ORL Tower Road), the former CFX office (525 S. Magnolia Avenue), and the E-PASS Service Centers (Pinar Plaza, 762 South Goldenrod Road) and in the Good Homes Shopping Center (8919 West Colonial Drive).

1. CFX desires to amend the language in the Maintenance Specifications, Attachment 21, Janitorial Services – Headquarters Building, as follows:
  - A. In Article 2.0, General Requirements, delete the language in subarticle 2.2 in its entirety and insert the following new language in its place:

“2.2 The Contractor shall provide one person on site between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, exclusive of CFX holidays, to perform miscellaneous cleaning tasks. The assigned person shall have the ability to speak, understand and take written instructions in the English language.”
  - B. In Article 3.0, Contractor Responsibilities – Detailed Work Schedule, subarticle 3.1, Daily (inside), delete the second paragraph identified as “q” in its entirety and insert the following in its place:

“r. Set up tables and chairs in the board room and conference rooms to accommodate meetings. Restore furniture set up after meeting. Vacuum board room and conference rooms and empty trash receptacles after meetings. One hundred (100) occurrences shall be included in the Contract. Additional occurrences shall be compensated for actual time and costs.”
2. The Contractor hereby agrees to the changes to subarticle 2.2 with no increase in the Contract amount and no increase in the Contract time.

3. The Contractor hereby agrees to the changes to subarticle 3.1 with an increase in the Contract amount of \$4,250.00 and no increase in the Contract time. The increase amount is calculated based on 85 occurrences in addition to the 15 original occurrences during the term of the Contract multiplied by \$50.00 per occurrence.
4. CFX and Contractor agree that this Supplemental Agreement No. 1 shall not alter or change in any manner the force and effect of the Contract including any previous amendments thereto, except insofar as the same is altered and amended by this Supplemental Agreement No. 1; that acceptance of this Supplemental Agreement No. 1 signifies the Contractor's complete and total claim for the terms and conditions of the same and that the Contractor waives all future right for additional compensation which is not already defined herein.

SUPPLEMENTAL AGREEMENT NO. 1

Contract Name: Facilities Maintenance Services

Contract No. 001150

Supplemental Agreement No.1

Amount of Changes to this document: \$4,250.00

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

"CFX":

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By:   
Director of Procurement

Date: 8-17-16

"Contractor":

INFRASTRUCTURE CORPORATION OF AMERICA

By: 

Title: COO

Attest:  (Seal)

Date: 4/15/16

# **CONTRACT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
INFRASTRUCTURE CORPORATION OF AMERICA**

**FACILITIES MAINTENANCE SERVICES**

**CONTRACT NO. 001150  
CONTRACT DATE: APRIL 14, 2016  
CONTRACT AMOUNT: \$9,363,000.00**

**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY**

**CONTRACT, SCOPE OF SERVICES, ADDENDA, METHOD  
OF COMPENSATION, TECHNICAL PROPOSAL, PRICE  
PROPOSAL, AND PERFORMANCE AND PAYMENT BOND**

**CONTRACT, SCOPE OF SERVICES, ADDENDA, METHOD OF  
COMPENSATION, ADDENDA, TECHNICAL PROPOSAL, PRICE PROPOSAL,  
AND PERFORMANCE AND PAYMENT BOND**

**FOR**

**FACILITIES MAINTENANCE SERVICES**

**CONTRACT NO. 001150**

**APRIL 2016**



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**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
CONTRACT**

This Contract No. 001150 (the "Contract" as defined herein below), is made this 14<sup>th</sup> day of April, 2016, between the CENTRAL FLORIDA EXPRESSWAY, a body politic and agency of the State of Florida, hereinafter called CFX and INFRASTRUCTURE CORPORATION OF AMERICA, 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 Authority 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 CFX, in order to comply with the 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 facilities maintenance services for toll facilities on S.R. 408 (East-West Expressway), S.R. 417 (Central Florida GreeneWay), S.R. 528 (Beachline Expressway), S.R. 429 (Daniel Webster Western Expressway), S.R. 414 (John Land Apopka Expressway), S.R. 551 (Goldenrod Road Extension), the CFX Headquarters Building (4974 ORL Tower Road), the former CFX office (525 S. Magnolia Avenue), and the E-PASS Service Centers (Pinar Plaza, 762 South Goldenrod Road) and in the Good Homes Shopping Center (8919 West Colonial Drive), and related tasks as may from time to time be assigned to the CONTRACTOR; and,

**WHEREAS**, on or about January 24, 2016, CFX issued a Request for Proposals seeking qualified contractors to perform such tasks; and,

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

**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 maintenance of, and administration and management services related to, toll facilities on S.R. 408, S.R. 414, S.R. 417, S.R. 528, S.R. 429, and Goldenrod Road Extension, the CFX Headquarters Building (4974 ORL Tower Road), the former CFX office (525 S. Magnolia Avenue), and the E-PASS Service Centers (Pinar Plaza, 762 South Goldenrod Road) and in the Good Homes Shopping Center (8919 West Colonial Drive), in Orange County, Florida 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 (including Maintenance Specifications),
- 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 Documents").

## **2. TERM AND NOTICE**

The initial term of the Contract will be five (5) years from the date 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 120 days prior to the expiration of the initial 5-year Contract Term and renewals, if any.

CFX shall have the right to terminate or suspend the Contract, in whole or in part, at any time with 120 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 will 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 for any crime arising out of or in conjunction with any work being performed by the CONTRACTOR for or 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 \$9,363,000.00.

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. DISADVANTAGED/MINORITY AND WOMEN'S 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 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 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.

## **6. CONTRACTOR INSURANCE AND PERFORMANCE AND PAYMENT 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.

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.

6.5 **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 (Contract Amount/5 years). The initial term of the bond shall be from May 25, 2016 through May 24, 2017. The bond shall be renewed each

year thereafter until the expiration of the Contract term. Each fully executed renewal bond shall be transmitted to CFX at least 15 days prior to the expiration of the bond in effect so 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's resident agent's name, address, and telephone number shall be clearly stated on the face of the 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 which might be returned to the CONTRACTOR from its payment of premium on the defaulting bond, will be borne by CFX.

## **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 areas upon which services are performed;

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 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.

7.5 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.

7.6 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 for CFX's facilities maintenance services.

## **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 Program Manager, Project Manager and Superintendent (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

The CONTRACTOR's managers and superintendents shall speak and understand English, and at least one responsible management person who speaks and understands English shall be at each of the work locations during all working hours.

## **9. INDEMNITY**

The CONTRACTOR shall indemnify 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 (except for an assignment made for the benefit of creditors) 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, 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 elsewhere, 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 Contract 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. 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:

25.1 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

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

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

25.4 Obligations upon expiration or termination of the Contract, as set forth in Section 26; and


25.5 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.

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

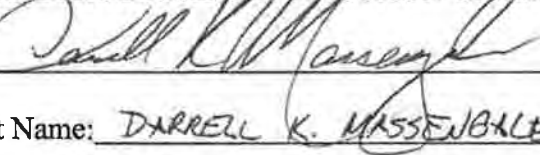
26.1 CONTRACTOR shall initiate settlement of all outstanding liabilities and claims arising out of the Contract and any subcontracts or vending agreements to be canceled. All settlements shall be subject to the approval of CFX.

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 April 14, 2016.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

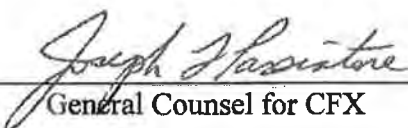
By:   
Director of Procurement  
Print Name: Lisa Lombard

INFRASTRUCTURE CORPORATION OF AMERICA

By:   
Print Name: DARRELL K. MASSENGALE  
Title: COO

ATTEST:  (Seal)

Approved as to form and execution, only.

  
General Counsel for CFX

## **SCOPE OF SERVICES**

**SCOPE OF SERVICES  
FACILITIES MAINTENANCE SERVICES  
CONTRACT NO. 001150**

**1.0 OVERVIEW**

- 1.1 The Contractor shall perform routine maintenance, administration and management services including, but not necessarily limited to, maintenance of electrical, mechanical and HVAC equipment as well as painting, carpentry and general building maintenance activities at: the CFX's toll plaza facilities (14 existing mainline plazas and 75 existing ramp plazas) along S.R. 408 (East-West Expressway), S.R. 417 (Central Florida GreeneWay), S.R. 528 (Beachline Expressway), S.R. 429 (Daniel Webster Western Beltway) and S.R. 414 (John Land Apopka Expressway), and the Goldenrod Road Extension (see listing included in the appendix); the CFX Headquarters Building (4974 ORL Tower Road), the former CFX office (525 S. Magnolia Ave.), and the E-PASS Service Centers (Pinar Plaza, 762 South Goldenrod Road and in the Good Homes Shopping Center, 8919 West Colonial Drive) in Orange County, Florida. **(See Addendum No. 2 for additional language.)**

During the Contract duration it is anticipated three all electronic tolling facilities will be completed on S.R. 429 (Wekiva Parkway) (429-207 in March 2017; 429-207A and 429-207B in December 2017) Two ramp plazas are scheduled be completed on S.R. 528 at the new Innovation Way interchange in December 2017. The Backup Data Center at the Hiawasse Mainline Plaza is scheduled be completed in August 2016. As these facilities are added to the system, CFX and the Contractor will negotiate the additional maintenance cost and execute a supplemental agreement.

The Contractor shall furnish all labor, materials, equipment, tools, transportation and supplies required to supply the services and complete the maintenance work in accordance with the specifications, procedures and terms of the Contract, including the specific tasks and events set forth on the attached specifications.

- 1.2 The Contractor shall employ on Contractor's staff, or as a subcontractor, a registered professional engineer licensed to practice in the State of Florida. The Contractor shall also provide sufficient qualified technical staff to support activities and program areas related to facilities maintenance. CFX, at its option, may elect to expand, reduce, or delete the extent of each work element described in this Scope of Services document, provided such action does not alter the intent of the Contract.

- 1.3 The services to be provided by the Contractor shall be furnished through a combination of Contractor staff/personnel and subcontractors under contract to the Contractor. Through this combination, the Contractor shall provide maintenance and administrative personnel in appropriate numbers and at the proper times to ensure that the responsibilities assigned under the Contract are effectively carried out. Services to be provided by the Contractor include, but are not necessarily limited to maintenance of: drinking water systems, septic and wastewater systems, electrical, mechanical and HVAC systems. The Contractor shall be responsible for painting, caulking, carpentry, general building maintenance activities and all other maintenance services required to maintain the facilities to the standards set forth in this Scope of Services and the maintenance specifications. The Contractor shall also move furniture, files, equipment, etc., between offices and/or buildings as directed by the Director of Maintenance. These services are described in detail in the maintenance specifications attached to this Scope of Services. Maintenance of toll equipment, fiber optic network, telephone system, guardrail, landscaping and irrigation systems are not a part of this scope and will be performed by others.
- 1.4 To avoid unnecessary repetition of expressions, whenever the term "Director of Maintenance" is used, it is understood that "or designated representative" is a part of the term unless specifically indicated otherwise.

## **2.0 MAINTENANCE AND INSPECTION**

- 2.1 The Contractor shall be responsible for all facilities maintenance and inspection as defined in this Scope of Services, maintenance specifications and referenced manuals and procedures.
- 2.2 The Contractor, through the use of its own forces or subcontractors, shall provide qualified maintenance contractors and technical and administrative personnel in appropriate numbers to ensure that required maintenance is accomplished in accordance with the requirements and criteria set forth in this Scope of Services and the maintenance specifications. All activities shall be performed in accordance with the specifications, guides, standards, procedures and directives that are a part of the Contract. Contractor's personnel assigned to service or repair facilities shall have the applicable manufacturer's certification and required training to perform the required service or repair.
- 2.3 The Contractor shall comply with the CFX Emergency Response Manual and Hurricane Response Plan. These manuals provide procedures for situational analysis, mobilizing personnel and equipment, information to the public, taking protective action, assessing

damage, record keeping, planning recovery/restoration, and coordinating emergency response and hurricane response activities.

- 2.4 The Contractor shall be responsible for the control and safety of traffic and the public during the performance of all work under control of the Contractor, its agents, employees and subcontractors. When required by the Contractor's operations, the Contractor shall furnish, erect and maintain such fences, temporary railing, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents, damage or injury to the public.

2.5 Contract Administration - The Contractor shall:

- 2.5.1 Provide maintainability review of facilities design plans and specifications for the purpose of reducing the overall cost of maintenance.
- 2.5.2 Review reports relating to the Contractor's performance and communicate with subcontractors, if necessary, regarding conformance to specifications, workmanship, etc.
- 2.5.3 Prepare and maintain monthly progress schedules and reports applicable to all phases of maintenance operation and such special reports as may be required to keep the Director of Maintenance advised with respect to the progress of work activity. All reports and/or submittals are to be submitted via e-mail to the Director of Maintenance in pdf format, unless otherwise requested by the Director of Maintenance. The Director of Maintenance may, at any time, request hard copies of such reports and/or submittals. All pdf submittals shall, at a minimum include: **(See Addendum No. 2 for new language.)**
- a. cover page as the first page of the pdf (including report name and date)
  - b. indexed bookmarks
  - c. table of contents
  - d. specifics to the report (such as location, times, etc.), as specified in the attached maintenance specifications
- 2.5.4 Assist the CFX in the preparation of annual maintenance budget. Identify and recommend projects to be included in the 5 Year Work Plan. **(See Addendum No. 1 for additional language.)**



- 2.5.5 Prepare accident claim affidavits and initiate the reimbursement process for damages to CFX property. The Contractor shall receive all reimbursements that are collected for damages to CFX property that the Contractor repairs.
  - 2.5.6 Perform field review and analysis of accidents to determine any engineering deficiencies.
  - 2.5.7 Assist the CFX in responding to the public interest regarding maintenance activities.
  - 2.5.8 Attend, as a minimum, the following meetings:
    - a. Monthly meeting with the CFX toll operations contractor
    - b. Other meetings affecting or involving facilities maintenance activities or operations as may be scheduled by the Director of Maintenance
- 2.6 The CFX will provide the Contractor with available information concerning warranties in force for various products (e.g. pavement markings and signs, roofs, air conditioning and heating units, etc.) at CFX facilities. When a product under warranty fails to meet the required performance criteria, the Contractor shall notify the responsible manufacturer to schedule repair work to correct the deficiency. All repairs shall be in accordance with the warranty requirements and shall be monitored by the Contractor. The Contractor shall notify the Director of Maintenance in writing of the location and type of the non-conforming product, quantity of the non-performing product and the schedule for repair work.

### **3.0 CONTROL OF THE WORK**

- 3.1 The Contractor shall develop, prepare, and implement a Facilities Maintenance Operations Work Plan. The Work Plan shall contain a description of activities the Contractor intends to carry out during the 12-month period beginning on the Notice to Proceed date for the Contract and the scheduled date for each such activity. The date may be expressed by week or by any other more specific periods or date the Contractor selects.

A draft of the Work Plan shall be submitted to the Director of Maintenance within 30 days after the date of the Notice to Proceed. After reviewing the plan, a meeting with the Contractor will be conducted to resolve any concerns pertaining to the schedule and the activities and to finalize the plan.

The Contractor shall submit an updated Work Plan to the Director of Maintenance at least 30 days prior to the first day of each quarter to show a rolling 12-month period of detailed coverage.

### 3.2 CFX Director of Maintenance

All work shall be subject to review and acceptance by the CFX Director of Maintenance (or such other person designated by the Executive Director), or designated representative, who shall evaluate the Contractor's work for compliance with the Contract Documents. The CFX has no duty to supervise or direct the performance of the work, nor any responsibility or liability for the acts or omissions of the Contractor or any subcontractor or supplier.

### 3.3 Traffic Control

The Contractor shall adhere to the requirements of FHWA's MUTCD, latest edition, Part 6. For operations requiring closure of travel lane(s), the Contractor shall comply with the FDOT Standard Specifications for Road and Bridge Construction, latest edition, Section 102-3.2, Worksite Traffic Supervisor, and FDOT Index Drawings Series 600, latest edition, which are hereby incorporated by reference as if fully set forth herein.

The Contractor shall assist the CFX toll operations contractor in the handling and maintenance of traffic during special events in the Orlando area such as the Citrus Bowl game(s), other sporting events impacting toll facilities and space vehicle launches from Cape Canaveral. The Contractor shall provide traffic control devices including, but not limited to, message boards at the Beachline Main Toll Plaza and Dallas Mainline. The Contractor shall also provide necessary labor to assist the CFX toll operations contractor in moving the traffic control devices. Maintenance of traffic requirements at the Beachline Main and Dallas Toll Plazas during space vehicle launches may occur day or night and will control the traffic going to and returning from the launches until all traffic has returned to normal flow. Traffic conditions related to launches may be continuous for several days.

The Contractor shall include four (4) events associated with the Citrus Bowl and eight (8) events on S.R. 528 annually. Additional events beyond those anticipated will be considered additional compensation for time and costs to be negotiated and paid from the Work Order Allowance.

### 3.4 Other Work

If activities by the CFX or other parties occur near or within the work locations, the Contractor shall coordinate its operations and cooperate with others and shall not be entitled to extra compensation or adjustments in Contract prices because of deletion of work items or delay because of activities by others.

The Contractor shall coordinate and cooperate to the fullest extent in the scheduling and performance of work by the CFX toll equipment contractor in order to obtain the highest level of service possible.

**(See Addendum No. 1 for new Article 3.5 language.)**

## 4.0 OTHER REQUIREMENTS

### 4.1 Permits, Notifications and Fees

- 4.1.1 Unless otherwise specified, the Contractor shall secure and pay for all permits necessary to conduct the maintenance or other work in accordance with required regulations and to notify all applicable utilities or parties affected by the Contractor's operations.
- 4.1.2 The Contractor shall be responsible for all fees associated with the performance of the Contract. This includes payment of toll charges for all vehicles and equipment at the standard rate applicable to the general public. All toll payments made by the Contractor will be presumed to have been included in the Contract price.
- 4.1.3 No work shall be performed under the provisions of the Contract on any properties outside the limits of the CFX-maintained right-of-way without the express written permission of the affected landowner. Any such permission shall be secured by the Contractor and shall identify the provisions under which such work is to be performed. Permissions obtained shall not constitute assumption of liability by the CFX nor relieve the Contractor of its liabilities.

## 4.2 Hazardous or Toxic Waste, Pollutants

- 4.2.1 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 Director of Maintenance 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.
- 4.2.2 The Contractor shall 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 directed by the Director of Maintenance.
- 4.2.3 The Contractor shall dispose of the hazardous substance, toxic waste or pollutant in accordance with the laws, requirements and regulations of any local, state, or federal agency having jurisdiction.

## 4.3 Responsibility for Damages

The Contractor shall protect from damage all property associated with, or which is in the vicinity of, or is in any way affected by, the Contractor's maintenance or other work performed pursuant to the Contract. Any damages occurring to such properties caused by the acts or omissions of the Contractor (or its employees, agents or subcontractors) shall be immediately repaired at the expense of the Contractor to a condition similar or equal to that existing before such damage occurred.

## 4.4 Safety

- 4.4.1 With respect to the activities contemplated to occur pursuant to the Contract, and to the extent reasonably applicable, the Florida Department of Transportation Loss Prevention Manual (current issue at time of Proposal submittal) is incorporated by reference and made a part of the Contract, and shall be made a condition of each subcontract (if any) entered into pursuant to the Contract. In circumstances of conflict with the Federal Safety and Health Standards, the more restrictive requirements will apply.

4.4.2 The Contractor (and any subcontractor) shall not require any person employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety, as determined under the construction 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).

4.4.3 Contractor and subcontractor personnel shall wear reflectorized high visibility orange or lime safety vests within 15 feet of the roadway. Protective safety helmet caps shall be worn at all work sites containing overhead hazards.

4.4.4 Vehicles used on the roadway shall be equipped with flashing strobe lights approved by the Director of Maintenance.

#### 4.5 Contractor's Responsibility for Work

Until acceptance by the Director of Maintenance, the results of the maintenance or other work shall be under the charge and custody of the Contractor who shall take every necessary precaution against injury or damage to the work results by the action of the elements or from any other cause whatsoever. The Contractor shall rebuild, repair and restore, without additional compensation, all injury or damage to any portion of the work occasioned by any of the above causes before its completion and acceptance; except, in the case of extensive or catastrophic damage the CFX may, at its discretion, reimburse the Contractor for the repair of such damage due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to Acts of God, of the public enemy or of governmental authorities.

#### 4.6 Escrow of Price Proposal Records

With the execution of the Contract, the Contractor shall submit to CFX, in sealed container(s), a legible copy of the Proposal Records used by the Contractor to prepare its Price Proposal for the Contract. The container(s) shall be clearly marked "Price Proposal Records for Contract" and shall show on the face of the container(s) the Contractor's name, address, date of submittal and Contract number. CFX will maintain the container(s) in a sealed condition.

In addition to the Proposal Records, the Contractor shall execute and submit an affidavit, signed under oath by the Contractor, listing each Proposal Record submitted by author, date, nature and subject matter. By executing this affidavit, the Contractor waives the right to use, directly or indirectly, any Proposal Record, other than the Proposal 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.

Following execution of the Contract, CFX will hold the sealed container(s) and the original affidavit until the Contractor seeks an adjustment in time or money and files a claim or initiates arbitration against CFX. Such acts by the Contractor shall be sufficient grounds for CFX to open the sealed container(s). CFX reserves the right to reveal the contents of the sealed container(s) to consultants, experts and legal counsel retained by CFX to assist with claims evaluation and arbitration preparation. Confidentiality of the bid documents included in the sealed container(s) 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.

When the Contractor executes a binding release of all claims and potential causes of action related to the Contract, CFX will release the sealed container(s) to the Contractor. The Contractor shall sign a receipt acknowledging that the sealed container(s) has/have been returned to the Contractor unopened.

#### 4.7 Minority and Women Owned Businesses (M/WBE) (See Addendum No. 1 for changes throughout this Article.)

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 herein. 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. 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.

#### 4.7.1 Disadvantaged, Minority and Women Owned Businesses - Participation Objective

4.7.1.1 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.

4.7.1.2 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.

4.7.2 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.

4.7.3 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 of 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.

**4.7.4 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.

#### **4.7.5 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", which 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".

### **5.0 PROSECUTION AND PROGRESS OF WORK**

#### **5.1 Beginning Work**

The Contractor shall commence work on the date specified in the Notice to Proceed. The term of the Contract will begin on the date established in the Notice to Proceed.

#### **5.2 Status of Work**

The Contractor shall keep the Director of Maintenance advised as to the status of work being done by the Contractor and the details thereof. Coordination shall be maintained by the Contractor with the CFX. The CFX or Contractor may request and be granted a conference with the other party.

#### **5.3 Facilities Maintenance Operations**

**5.3.1** The Contractor shall be available on a 24-hour a day, 7-day a week, 52-week a year basis. The Contractor shall schedule maintenance operations to minimize inconvenience to operations staff, adjacent businesses, residences and the public.

An individual shall be designated as the Contractor's contact in emergencies and in cases where immediate action must be taken 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 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 CFX.

**5.3.2** Unless otherwise specified or approved by the CFX, the Contractor's normal work hours shall be 7:00 a.m. to 5:00 p.m., Monday through Friday. The Contractor is

advised that certain maintenance activities may need to be performed during other than regular hours (e.g. 5:00 p.m. to 7:00 a.m.) to avoid affecting toll collection capacity.

No work shall be done when weather conditions limit good visibility to less than five hundred (500) feet. Work may only be performed during prohibited times with written permission from the CFX, or in circumstances of an emergency. Refer to the individual specifications (attachments) for specific requirements.

- 5.3.3 Prior to beginning maintenance operations, the Contractor shall submit to the CFX, for approval, two (2) copies of the Contractor's proposed plan and methods for performing the required facilities maintenance work including a listing of equipment and personnel anticipated for use. The plan shall show lines of communication with the CFX's toll equipment contractor and toll collection contractor. The plan shall show the proposed methods of ensuring safety and minimum interference with the normal operations of facilities and the normal flow of traffic in the travel lanes and local roadways. The Contractor shall provide all necessary instruments and special apparatus to conduct any testing that may be required. Approval of the plan shall not relieve the Contractor of responsibility or liability for injury to persons or damage to property caused by the operation of equipment and/or personnel.
- 5.3.4 All Contractor and subcontractor vehicles shall have clear identification of the company they represent. All Contractor and subcontractor employees requiring access to any CFX facility shall wear name tags with photo identification. In addition, a list of such employees shall be provided to the Director of Maintenance prior to beginning work under the Contract. Any employee not on the Contractor's list and not having the proper photo identification will not be allowed access to toll facilities.
- 5.3.5 The Contractor shall park equipment left on the right-of-way overnight as close to the right-of-way (fence) line as possible. Do not park equipment overnight in the median regardless of the width of the median. Conduct all service and supply operations as close to the right-of-way (fence) line as possible. No supply vehicles shall enter a roadway median except when necessary to repair or remove inoperable equipment.
- 5.3.6 In circumstances where the work task has assigned to it a specific time increment within which to accomplish the task (if any), the CFX may grant an extension of

the allowable time when a controlling item of work is delayed by factors which are beyond the control of the Contractor. Extensions will not be granted for delays due to the fault or negligence of the Contractor.

- 5.3.7 The Director of Maintenance will advise the Contractor when an emergency response will be required for critical situations. In general, emergency response time (the time taken by the Contractor to arrive at the site after notification) shall not exceed 2 hours regardless of the day or time of the notification unless otherwise specified. Failure to meet the required priority response time may result in reductions to compensation for work performed according to the following reduction schedule:

- a. Up to 1 hour late - \$250.00 reduction.
- b. More than 1 hour late - \$250.00 reduction per hour.

The reduction will not be assessed if the Contractor can demonstrate to the satisfaction of the Director of Maintenance that the delay was the result of events beyond the control of the Contractor.

Individual maintenance specifications may have specific response requirements that supersede the response time in this sub article.

No extension of the emergency response time will be granted by the CFX due to travel distance requirements of the response crew. Completion of routine work orders shall not be affected by the issuance of emergency response work orders.

- 5.3.8 Time extensions for delays (in work performance which has completion dates associated therewith, if any) caused by the effects of inclement weather will be handled differently from those resulting from other types of delay. Such time extensions are justified only when rains or other inclement weather conditions or related adverse soil conditions prevent the Contractor from productively performing controlling items of work, resulting in either: **(See Addendum No. 1 for additional language.)**

The Director of Maintenance will monitor the effects of weather and, when found justified, recommend time extensions. The Contractor will not be required to submit a request for additional time due to the effects of weather unless the Contractor disputes the additional time granted by the CFX.

#### 5.4 Suspension of Work

The CFX will have the right (exercised from time to time) to suspend the maintenance activities and work covered by the Contract, wholly or in part, for such period as may be deemed necessary. The periods of suspension may include extreme adverse weather conditions (such as flooding due to catastrophic occurrences) or heavy traffic congestion due to special events that may cause hazardous conditions for the motorists. Such suspension if ordered will be in writing, giving detailed reasons for the suspension.

#### 5.5 Liquidated Damages

5.5.1 The Contractor shall pay to the CFX liquidated damages not to exceed \$1000 per day for failure of the Contractor to complete the work within the time stipulated in the Work Plan or within such additional time as may have been granted by the CFX. It shall be the responsibility of the Contractor to schedule work in a manner that prevents delays, stoppages and rework.

5.5.2 For all work, regardless of whether the performance time is stipulated in calendar days or working days, default days shall be counted in calendar days.

5.5.3 If the Contractor (or, in circumstance of the Contractor default, the surety) fails to complete the work within the time stipulated in the Work Plan, or within such extra time as may have been granted by the CFX, the Contractor (or the surety) shall pay to the CFX, not as a penalty but as liquidated damages, the amount due.

5.5.4 Permitting the Contractor to continue and to finish the work, or any part of it, after the expiration of the time allowed, including time extensions, shall in no way act as a waiver on the part of the CFX of the liquidated damages due under the Contract.

5.5.5 In the event of default by the Contractor and the completion of the work by the 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 the CFX.



- 5.5.6 The work will be considered completed when all work has been accepted by the Executive Director or authorized designee. The CFX reserves the right to apply as payment on such liquidated damages any money due the Contractor by the CFX.

## 5.6 Evaluation and Acceptance of Work

- 5.6.1 The performance of the Contractor under the terms of the Contract will be subject to review by the Director of Maintenance. Reworking required due to Contractor negligence, omission, or inadequate performance will be the responsibility of the Contractor. No additional payment will be due the Contractor for the reworking of non-acceptable areas or work.
- 5.6.2 Acceptable work quality will be determined by the Director of Maintenance.
- 5.6.3 The Contractor shall certify that work quantities and quality were accomplished in accordance with the maintenance specifications. The certification shall be included in the monthly payment request documentation.
- 5.6.4 Parts and materials provided by the Contractor for repairs and maintenance shall be new. Rebuilt or repaired parts will not be acceptable.
- 5.6.5 All parts and materials shall be of a brand or quality equal to or better than the ones being replaced and shall be 100% compatible with the existing equipment.
- 5.6.6 The CFX reserve the right to make other arrangements for purchasing parts and materials necessary for repairs and maintenance at any time, if the interest of the CFX requires such arrangements.

## 5.7 Binding Arbitration

All claims, disputes and controversies between the CFX and the Contractor arising out of or related to the Contract shall be decided and resolved by binding arbitration. 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.

### 5.7.1 Procedure

Notice of the demand for arbitration will be filed in writing with the other party to the Contract and with the American Arbitration Association.

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 Article. 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:

- i. 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
- ii. 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
- iii. 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 nor 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 or any of its 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 SCOPE OF SERVICES

**CONSENT AGENDA ITEM  
#20**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 27, 2020

SUBJECT: Approval of Supplemental Agreement No. 2 with Jorgensen Contract Services, LLC for Roadway Maintenance Services – SR 408, SR 417 and SR 528 Contract No. 001151

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Board approval is requested for Supplemental Agreement No. 2 with Jorgensen Contract Services, LLC, for a not-to-exceed amount of \$247,467.00. The original contract is for five years with five (5) one-year renewals.

The services to be provided under this Supplemental include additional sweeping cycles of SR 408 from Clarke Road to Econlockhatchee Trail and increasing the work order allowance to extend sweeping cycle coverage to SR 50.

Original Contract Amount	\$ 17,483,700.00
Supplemental Agreement No. 1	\$ 300,000.00
Supplemental Agreement No. 2	\$ 247,467.00
Total Revised Contract Amount	\$ 18,031,167.00

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



CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 2

Contract Name: Roadway and Maintenance Services  
Contract No. 001151

This Supplemental Agreement No. 2 entered into this 13<sup>th</sup> day of February, 2020, by and between CENTRAL FLORIDA EXPRESSWAY AUTHORITY (“CFX”), and JORGENSEN CONTRACT SERVICES, LLC, (the “Contractor”), the same being supplementary to the Contract between the aforesaid, dated March 9, 2017, with a Notice to Proceed date of July 1, 2017, for roadway and maintenance services on SR 408, SR 417, SR 528, and the Goldenrod Road Extension and related tasks as may and related tasks as may from time to time be assigned to the CONTRACTOR by CFX.

1. CFX desires to amend the Scope of Services to add additional sweeping cycles of SR 408 from Clarke Road to Econlockhatchee Trail and increase the work order allowance in a not to exceed amount of \$247,467.00 as shown below and no increase in the Contract time.
  - Additional Mainline Sweep ( Clarke Rd to Econlockhatchee Trail 2020): 24 cycles at \$3,836.25 each = \$92,070.
  - Additional Ramp Sweep ( Clarke Rd to Econlockhatchee Trail 2020): 12 cycles at \$3,324.75 each = \$39,897.
  - Work order allowance: \$115,500.00
2. The Contractor hereby agrees to the changes with an increase in the Contract amount of a not to exceed \$247,467.00 and no increase in the Contract time.
3. CFX and Contractor agree that this Supplemental Agreement No. 2 shall not alter or change in any manner the force and effect of the Contract including any previous amendments thereto, except insofar as the same is altered and amended by this Supplemental Agreement No. 2; that acceptance of this Supplemental Agreement No. 2 signifies the Contractor’s complete and total claim for the terms and conditions of the same and that the Contractor waives all future right for additional compensation which is not already defined herein.

Contract Name: Roadway and Bridge Maintenance Services

Contract No. 001151

Amount of Changes to this document: \$247,467.00

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

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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

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

**JORGENSEN CONTRACT SERVICES, LLC**

By: \_\_\_\_\_

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

Attest: \_\_\_\_\_ (Seal)

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

Approved as to form and execution, only.

\_\_\_\_\_  
General Counsel for CFX

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 1**

2017 DEC 21 AM 11:44

Contract Name: Roadway and Maintenance Services  
Contract No. 001151  
Supplemental Agreement No. 1

This Supplemental Agreement No. 1 entered into this 14<sup>th</sup> day of December, 2017, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX"), and JORGENSEN CONTRACT SERVICES, LLC, (the "Contractor"), the same being supplementary to the Contract between the aforesaid, dated March 9, 2017, with a Notice to Proceed date of July 1, 2017, for roadway and maintenance services on S.R. 408, S.R. 417, S.R. 528, and Goldenrod Road Extension and related tasks as may from time to time be assigned to the CONTRACTOR by CFX.

1. CFX desires to amend the Scope of Services to add removal and disposal of approximately 265 trees downed during Hurricane Irma, and repairs to the CFX Right of Way fence also damaged from the Hurricane.
2. The Contractor hereby agrees to the changes with an increase in the Contract amount of a not to exceed \$300,000.00 and no increase in the Contract time. No work on this item can begin until the specific scope of work is agreed upon and written authorization to proceed is issued by CFX Director of Maintenance or designee.
3. CFX and Contractor agree that this Supplemental Agreement No. 1 shall not alter or change in any manner the force and effect of the Contract including any previous amendments thereto, except insofar as the same is altered and amended by this Supplemental Agreement No. 1; that acceptance of this Supplemental Agreement No. 1 signifies the Contractor's complete and total claim for the terms and conditions of the same and that the Contractor waives all future right for additional compensation which is not already defined herein.

Contract Name: Roadway and Bridge Maintenance Services

Contract No. 001151

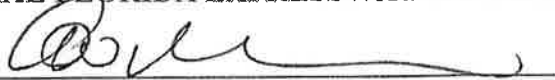
Supplemental Agreement No.1

Amount of Changes to this document: \$300,000.00

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

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

By:



Director of Procurement


Date:

1/3/2018

2017 DEC 21 AM 11:44

**JORGENSEN CONTRACT SERVICES, LLC**

By:



Title:

President

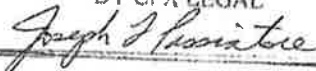
Attest:

 (Seal)

Date:

12/19/17

REVIEWED AND APPROVED  
BY CFX LEGAL





# **CONTRACT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
JORGENSEN CONTRACT SERVICES, LLC**

**ROADWAY AND BRIDGE MAINTENANCE SERVICES  
S.R. 408, S.R. 417, S.R. 528, AND GOLDENROD ROAD  
EXTENSION**

**CONTRACT NO. 001151**

**CONTRACT DATE: MARCH 9, 2017**

**CONTRACT AMOUNT: \$17,483,700.00**

**CONTRACT, SCOPE OF SERVICES, METHOD OF  
COMPENSATION, ADDENDA, SPECIFICATIONS,  
TECHNICAL PROPOSAL, PRICE PROPOSAL,  
PERFORMANCE AND PAYMENT BOND, AND FORMS**

**CONTRACT, SCOPE OF SERVICES, METHOD OF COMPENSATION,  
ADDENDA, SPECIFICATIONS, TECHNICAL PROPOSAL, PRICE PROPOSAL,  
PERFORMANCE AND PAYMENT BOND, AND FORMS**

**ROADWAY AND BRIDGE MAINTENANCE SERVICES  
S.R. 408, S.R. 417, S.R. 528, AND GOLDENROD ROAD EXTENSION**

**CONTRACT NO. 001151**

**MARCH 2017**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
ROADWAY AND BRIDGE MAINTENANCE SERVICES  
S.R. 408, S.R. 417, S.R. 528, AND GOLDENROD ROAD EXTENSION (S.R. 551)  
CONTRACT**

This Contract No. 001151 (the "Contract" as defined herein below), is made this 1<sup>st</sup> day of July, 2017, between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, hereinafter called CFX and Jorgensen Contract Services, LLC, a Florida Limited Liability Company, registered and authorized to conduct business in the State of Florida, whose principal address is 2827 Parkway Street, Unit 4, Lakeland, FL 33811 and who is duly authorized 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 Authority 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 CFX, in order to comply with the 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 roadway and bridge maintenance services on S.R. 408, S.R. 417, S.R. 528, and Goldenrod Road Extension and related tasks as may from time to time be assigned to the CONTRACTOR by CFX; and,

**WHEREAS**, on or about December 5, 2016, CFX issued a Request for Proposals seeking qualified contractors to perform such tasks; and,

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

**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 maintenance of, and administration and management services related to, S.R. 408, S.R. 417, S.R. 528, and Goldenrod Road Extension in Orange County, Florida 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,
- 1.2 The Addenda (if any), with those of later date having precedence over those of earlier date,
- 1.3 The Scope of Services (including Maintenance Specifications),
- 1.4 The Memorandum of Agreement,
- 1.5 The Method of Compensation,
- 1.6 The Technical Proposal submitted by CONTRACTOR, and
- 1.7 The Price Proposal submitted by CONTRACTOR,

(collectively, the "Contract Documents").

## **2. TERM AND NOTICE**

The initial term of the Contract will be five (5) years from the date first written above. 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 120 days prior to the expiration of the initial 5-year Contract Term and renewals, if any.

CFX shall have the right to terminate or suspend the Contract, in whole or in part, at any time with 120 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 will 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 for any crime arising out of or in conjunction with any work being performed by the CONTRACTOR for or 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 \$17,483,700.00.

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. DISADVANTAGED/MINORITY AND WOMEN'S 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 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 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.

## **6. CONTRACTOR INSURANCE AND PERFORMANCE AND PAYMENT 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 Contract.

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.

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.

Compliance with these insurance requirements shall not relieve or limit the CONTRACTOR's liabilities and obligations under this Contract. 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 policies and coverages at CONTRACTOR's expense and deduct such costs from CONTRACTOR payments.

**6.5 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 (Contract Amount/5 years). The initial term of the bond shall be from July 1, 2017 through June 30, 2018. The bond shall be renewed each year thereafter until the expiration of the Contract term. Each fully executed renewal bond shall be transmitted to CFX at least 15 days prior to the expiration of the bond in effect so 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's resident agent's name, address, and telephone number shall be clearly stated on the face of the 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 which might be returned to the CONTRACTOR from its payment of premium on the defaulting bond, will be borne by CFX.

## **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 areas upon which services are performed;

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 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.

7.5 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.

7.6 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 for CFX's roadway and bridge maintenance services.

7.7 CONTRACTOR and its subcontractors shall 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 a contract with CFX understands and will comply with subsection. 20.055(5), Florida Statutes.

## **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 Program Manager, Project Manager and Superintendent (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, whether Key Personnel or not, 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.

The CONTRACTOR's managers and superintendents shall speak and understand English, and at least one responsible management person who speaks and understands English shall be at each of the work locations during all working hours.

## **9. HOLD HARMLESS AND INDEMNIFICATION**

The CONTRACTOR shall indemnify, defend and hold harmless CFX, its 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:

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.

Contractor's liability per occurrence under this Indemnity provision shall not exceed the greater of: (a) one million dollars (\$1,000,000); (b) the total aggregate amount of insurance required; or (c) the total amount of the Contract, inclusive of amendments, extensions, renewals, and supplemental agreements thereto, for the entire term of the Contract.

The obligations in Section 9.0, Hold Harmless and Indemnification, shall survive the expiration or termination of this Contract and continue in full force and effect.

## **10. PUBLIC RECORDS**

Notwithstanding Section 11, entitled "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.

**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 Phone: 407-690-5000, e-mail: [publicrecords@cfxway.com](mailto: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.

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. Failure by the CONTRACTOR to grant such public access shall be grounds for immediate unilateral cancellation of this Contract by CFX.

The obligations in Section 10.0, Public Records, shall survive the expiration or termination of this Contract and continue in full force and effect.

## **11. PRESS RELEASES**

The CONTRACTOR agrees that it shall make no statements, press releases or publicity releases concerning this Contract 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 Contract, or any particulars thereof, during the period of the Contract, without first notifying CFX and securing its consent in writing, except as required by law. The CONTRACTOR 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 Contract, it being understood that, under Section 10.0 hereof, such data or information is the property of CFX.

## **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.

The CONTRACTOR acknowledges that it has read CFX's Code of Ethics and the referenced statutes and to the extent applicable to the CONTRACTOR, agrees to abide with such policy.

#### **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.

A person or affiliate who has been placed on the Florida Department of Management Services 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.

#### **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 Contract (except for an assignment made for the benefit of creditors) 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 Contract 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, 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 9, 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 Contract 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 Contract 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.

## **25.0 DOCUMENTED ALIENS**

The 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. 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 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 this Contract, CFX may immediately and unilaterally terminate this Contract for cause.

## **26.0 E-VERIFY CLAUSE**

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 subconsultants to verify the employment eligibility of all new employees hired by the subconsultants during the term of the Contract.

## **27.0 INSPECTOR GENERAL**

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). The obligations in this paragraph shall survive the expiration or termination of this Contract and continue in full force and effect.

## **28.0 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.”

## **29.0 INTEGRATION**

This Contract 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.

## **30.0 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 Contract may be terminated, which shall be effective upon CFX giving notice to the CONTRACTOR to that effect.

## **31.0 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 CONTRACTOR: Jorgensen Contract Services, LLC  
2827 Parkway Street, Unit 4  
Lakeland, FL 33811  
Attn: John Mc Pherson

Jorgensen Contract Services, LLC  
3735 Buckeystown Pike, POBox 70  
Buckeystown, MD 21717  
Attn: Douglas W. Selby, President

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## **32. 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:

32.1 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

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

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

32.4 Obligations upon expiration or termination of the Contract, as set forth in Section 33; and


32.5 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.

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


33.1 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.

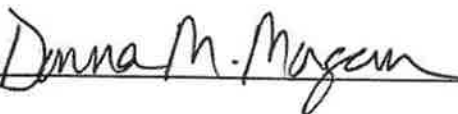
IN WITNESS WHEREOF, the authorized signatures named below have executed this Contract on behalf of the parties as of the day and year first above written. This Contract was awarded by CFX's Board of Directors at its meeting on March 9, 2017.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

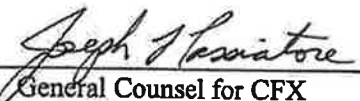
By:   
Director of Procurement  
Print Name: Aneth Williams.

JORGENSEN CONTRACT SERVICES, LLC

By:   
Print Name: Douglas W. Selby  
Title: President

ATTEST:  (Seal)

Approved as to form and execution, only.

  
General Counsel for CFX

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**Exhibit A**  
**SCOPE OF SERVICES**  
**ROADWAY AND BRIDGE MAINTENANCE SERVICES**  
**S.R. 408, S.R. 417, S.R. 528 AND GOLDENROD ROAD EXTENSION (S.R. 551)**  
**CONTRACT NO. 001151**

**1.0 OVERVIEW**

- 1.1 The Contractor shall perform maintenance of and administration and management services related to roadways (including out parcels) and bridges along S.R. 408 (East-West Expressway), S.R. 528 (Beachline Expressway) from Boggy Creek Road to S.R. 520; S.R. 417 (Central Florida GreeneWay) from International Drive to Seminole/Orange County line, and Goldenrod Road Extension (S.R. 551) from Hoffner Road to Cargo Road in Orange County, Florida.

The Contractor shall furnish all labor, materials, equipment, tools, transportation and supplies required to supply the services and complete the maintenance work in accordance with the specifications, procedures and terms of the Contract, including the specific tasks and events set forth on the attached specifications.

- 1.2 The Contractor, or an approved subcontractor, shall employ a full-time registered professional engineer licensed to practice in the State of Florida and sufficient qualified technical and professional staff to support activities and program areas including, but not limited to: roadway and bridge maintenance contract administration; maintenance contract development; maintenance condition survey management; road serviceability analysis; and transportation safety management. CFX, at its option, may elect to expand, reduce, or delete the extent of each work element described in this Scope of Services document, provided such action does not alter the intent of the Contract.
- 1.3 The services to be provided by the Contractor shall be furnished through a combination of Contractor staff/personnel and subcontractors/subconsultants under contract to the Contractor. Through this combination, the Contractor shall provide maintenance and administrative personnel in appropriate numbers and at the proper times to ensure that the responsibilities assigned under the Contract are effectively carried out. Services to be provided by the Contractor include, but are not necessarily limited to maintenance of: roadway features (pavement); roadside features (e.g., soil shoulders, slopes, and fence); traffic services features (e.g., signs, striping, and guardrail); vegetation/aesthetics (e.g., mowing and litter); and drainage (e.g., ditches and inlets). Work shall also include responsibility for traffic operations; reviewing bridge inspection reports and preparing and implementing a plan for repairs of noted deficiencies; performing road serviceability analysis; and responsibility for permit operations. These services are described in detail in the maintenance specifications attached to this Scope of Services. Maintenance of toll

facilities and equipment, the fiber optic network, wrong-way driving signs, landscaping and aquatic weed control are not a part of this scope and will be performed by others.

- 1.4 CFX 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 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 others or, where applicable, by Florida Department of Transportation (FDOT).

## **2.0 ROADWAY MAINTENANCE AND INSPECTION**

- 2.1 The Contractor shall be responsible for all routine bridge maintenance, roadway maintenance (roadway features, roadside features, traffic services features, vegetation/aesthetics and drainage) and inspection and administrative functions as defined in this Scope of Services, maintenance specifications and referenced manuals and procedures.
- 2.2 The Contractor, through the use of subcontractors and subconsultants, shall provide qualified maintenance contractors and technical and administrative personnel in appropriate numbers to ensure that maintenance is accomplished in accordance with the requirements and criteria set forth in this Scope of Services and the maintenance specifications. All activities shall be performed in accordance with the specifications, guides, standards, procedures and directives that are a part of the Contract.
- 2.3 The Contractor shall comply with the CFX Incident Response Plan. This document provides procedures for situational analysis, mobilizing personnel and equipment, information to the public, taking protective action, assessing damage, record keeping, planning recovery/restoration, and coordinating emergency response activities.
  - 2.3.1 The Contractor shall comply with the CFX Open Road Tolling procedures policy letter for scheduled or emergency closing of express toll lanes.
- 2.4 The Contractor shall be responsible for the control and safety of traffic and the public during the performance of all work under control of the Contractor, its agent, employees and subcontractors/subconsultants. When required by the Contractor's operations, the Contractor shall furnish, erect and maintain such fences, temporary railing, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents, damage or injury to the public.
- 2.5 The Contractor shall review Bridge Inspection Reports received by CFX. The Contractor shall have complete responsibility for scheduling and performing bridge maintenance and repairs. The Contractor shall return completed signed and dated FDOT work order forms to the Director of Maintenance to include photographs of the completed repairs. CFX will review the documents and notify FDOT to close the work order within 60 days for Priority 1

work orders, 180 days for Priority 2 and 3 work orders and within 2 years for Priority 4 work orders. Work not completed within this time frame will be subject to a reduction in compensation due the Contractor of \$200 per day per work order for each day the work is not completed.

2.6 Road Serviceability Analysis - The Contractor shall:

2.6.1 Attend MRP inspection with FDOT and Director of Maintenance. Review results of the Maintenance Rating Program (MRP) inspection performed by FDOT and initiate corrective action based on undisputed MRP inspections within 30 days of receipt of the findings from the Director of Maintenance.

2.6.2 Prepare road serviceability analyses and documentation to correct identified deficiencies. Use the current year Annual Inspection Report compiled by CFX's General Engineering Consultant as a baseline of the deficiencies needing repair. Integrate report findings in Contractor's Work Plan.

2.6.3 Perform Road Characteristics Inventory (RCI) field review and document changes. Develop and maintain an up to date inventory of CFX assets of roadway items and bridge features within 180 days of Notice to Proceed. Use FDOT Straight Line Drawings (SLD) to populate initial inventory.

2.7 Contract Administration - The Contractor shall:

2.7.1 Review maintenance contract reports relating to Contractor's performance and communicate with subcontractors, if necessary, regarding negative conformance to specifications, workmanship, etc.

2.7.2 Prepare and maintain monthly progress schedules and reports applicable to all phases of maintenance operation and such special reports as may be required to keep CFX advised with respect to the progress of work activity.

Provide the monthly report in a format that includes all Activity Groups and Activity Codes, quantities and applicable measurement units (i.e. acre, square foot/yard, each, etc.) as described in the FDOT Maintenance Cost Handbook.

2.7.3 Assist CFX in responding to the public interest regarding maintenance activities.

2.8 In all cases and scenarios prepare accident claim in form and content reasonably satisfactory to CFX.

2.8.1 For matters or incidents in an amount less than or equal to \$25,000.00, or the CFX insurance contract deductible, whichever is greater, in estimated repair damages for

any particular occurrence due to the intentional acts or negligence of any third party or parties, the Contractor shall:

- (i) Provide a copy of said accident claim to CFX for its records if requested; and
- (ii) Advance and pay for all expenses incurred in connection with the performance of its repair and/or maintenance duties and obligations under the Contract; and
- (iii) Seek reimbursement of the expenses made in connection with the aforementioned repair and/or maintenance, at Contractor's sole expense, only from the negligent party or parties, tortfeasor or tortfeasors (collectively, the "Third Parties"), and/or their respective insurance carriers (the "Third Party Insurers"), if any. The Contractor shall not seek reimbursement from the CFX. Nor shall the Contractor seek reimbursement from the CFX insurance carrier or carriers without first obtaining written approval from CFX, which approval shall not be unreasonably withheld. Alternatively, the Contractor may pursue, at Contractor's sole cost and expense, any and all claims or actions against the Third Parties, and/or the Third Party Insurers, but not against CFX, its employees, officers, agents, representatives, consultants, or their respective employees, officers and representatives, or the CFX insurance carrier or carriers, whether in law or in equity.

2.8.2 For matters or incidents in an amount greater than \$25,000.00, or CFX's insurance contract deductible, whichever is greater, in estimated repair damages for any particular occurrence due to the intentional acts or negligence of any third party or parties, as an absolute condition of the Contractor being reimbursed by CFX, the Contractor shall:

- (i) Submit said accident claim affidavit to CFX; and
- (ii) Advance and pay for all expenses incurred in connection with the performance of its repair and/or maintenance duties and obligations under the Contract; and
- (iii) Notify CFX in writing, that the Contractor seeks reimbursement of the Contractor's expenses, reasonably related to such repairs and/or maintenance, whereby CFX, shall at its expense, file a reimbursement claim with the CFX insurance carrier or carriers. Should the CFX insurance carrier or carriers fail to pay all of any particular reimbursement claim, the Contractor may, but shall have no

obligation to, seek reimbursement of any particular claim shortfall from the negligent party or parties, tortfeasor or tortfeasors (collectively, the "Third Parties"), and/or their respective insurance carriers (the "Third Party Insurers"), if any. The Contractor shall not seek any reimbursement from the CFX insurance carrier or carriers, whether or not the claim is based on bad faith or otherwise, without first obtaining written approval from CFX, which approval shall not be unreasonably withheld. Alternatively, the Contractor may pursue, at Contractor's sole cost and expense, any and all claims or actions against the Third Parties, and/or the Third Party Insurers, but not against CFX, its employees, officers, agents, representatives, consultants, or their respective employees, officers and representatives, whether in law or in equity.

- 2.8.3 Contractor and its assigns, if any, hereby waive any and all claims, reimbursement requests, and the like, against any self-insurance policy or policies of CFX and of the Florida Department of Transportation.

### **3.0 CONTROL OF THE WORK**

- 3.1 The Contractor shall develop, prepare, and implement a Roadway Maintenance Operations Work Plan.

The Work Plan shall contain a description of activities the Contractor intends to carry out during the 12-month period beginning on the Notice to Proceed date for the Contract and the scheduled date for each such activity. The date may be expressed by week or by any other more specific periods or date the Contractor selects.

A draft of the Work Plan shall be submitted to CFX within 30 days after the date of the Notice to Proceed. CFX will review the plan and meet with the Contractor to resolve any concerns pertaining to the schedule and the activities and to finalize the plan.

The Contractor shall submit an updated Work Plan to CFX at least 30 days prior to the first day of each quarter to show a rolling 12-month period of detailed coverage.

- 3.2 Director of Maintenance

To avoid unnecessary repetition of expressions, whenever in the Scope of Services, Maintenance Specifications or other Contract Documents the term "Director of Maintenance" is used, it is understood that "or designated representative" is a part of the term unless specifically indicated otherwise.

All work shall be subject to review and acceptance by the Director of Maintenance who shall evaluate the Contractor's work for compliance with the Contract Documents. The Director

of Maintenance has no duty to supervise or direct the performance of the work, nor any responsibility or liability for the acts or omissions of the Contractor or any subcontractor or supplier.

### 3.3 Coordination of Contract Documents

The Scope of Services, Maintenance Specifications and all supplementary documents are integral parts of the Contract Documents and a requirement occurring in one document is as binding as though occurring in all documents. Section 102, Maintenance of Traffic, which is included in the Maintenance Specifications as Attachment 19, replaces Section 102 in the FDOT Standard Specifications for Road and Bridge Construction. The remainder of the Standard Specifications, (current edition at the time of Contract execution) and the FDOT Design Standards, January 2016 edition, are incorporated by reference as if fully set forth herein. In a circumstance of inconsistency or discrepancy between documents, the priority order of the documents shall be as follows:

1. Scope of Services
2. Maintenance Specifications
3. FDOT Standard Specifications, current edition at time of Contract execution.
4. FDOT Design Standards, January 2016 edition

Unless specifically allowed by the Director of Maintenance, the Method of Measurement and the Basis of Payment articles in all sections of the Standard Specifications will not apply to this Contract. See Method of Compensation for additional information.

### 3.4 Traffic Control and Lane Closures

The Contractor shall adhere to the requirements of Part 6 of the FHWA's Manual on Uniform Traffic Control Devices (MUTCD). For operations requiring closure of travel lane(s), Contractor shall comply with Maintenance Specifications Attachment 19, Section 102, Maintenance of Traffic, and FDOT Design Standards Drawing No. 600.

No work shall occur on CFX's system between the hours of 6:00 am and 11:00 pm, Monday through Sunday, without the permission of the Director of Maintenance. Ramp closures will only be permitted between the hours of 11:00 pm and 5:00 am any day of the week.

If, in the opinion of the Director of Maintenance, any permitted lane closure(s) causes extended traffic congestion the Contractor shall, at the direction of the Director of Maintenance, open any temporary lane closures until traffic is returned to an acceptable flow as determined by the Director of Maintenance.




**CONSENT AGENDA ITEM  
#21**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 27, 2020

SUBJECT: Approval of Amendment No. 1 to Supplemental Agreement No. 3 to  
Infrastructure Corporation of America for Roadway Maintenance Services  
Contract No. 001152

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Board approval is requested for Amendment No. 1 to Supplemental Agreement No. 3 with Infrastructure Corporation of America, for a not-to-exceed amount of \$290,000.00. The original contract is for five years with five (5) one-year renewals.

Services to be provided include monthly roadside mowing and slope mowing on the Wekiva Parkway. The additional compensation will be paid to the Contractor for services through the end of Contract term which is June 30, 2022.

Original Contract Amount	\$ 9,271,953.00
Supplemental Agreement No. 1	\$ 1,877,324.00
Supplemental Agreement No. 2	\$ 115,000.00
Supplemental Agreement No. 3	\$ 2,948,000.00
Amendment No. 1 to Supplemental Agreement No. 3	\$ 290,000.00
Total	\$14,502,277.00

This contract is budgeted in the OM&A Budget.

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



CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AMENDMENT NO. 1 SUPPLEMENTAL AGREEMENT NO. 3

Contract Name: Roadway and Maintenance Services  
Contract No. 001152

This Amendment No. 1 Supplemental Agreement No. 3 entered into this 13<sup>th</sup> day of February 2020, by and between CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX"), and INFRASTRUCTURE COROPORATION OF AMERICA, (the "Contractor"), the same being supplementary to the Contract between the aforesaid, dated April 13, 2017, with a Notice to Proceed date of July 1, 2017, for roadway and maintenance services on SR 429, SR 414, SR 451 and related tasks as may from time to time be assigned to the CONTRACTOR by CFX.

1. CFX desires to amend the Scope of Services in Supplemental Agreement No. 3 by deleting the "Parkway Mowing" described in item 2b and add "Roadside Mowing" as described in Attachment 1 of Contract 001152.
2. A complete Roadside Mowing cycle of the Wekiva Parkway (as defined in Supplemental Agreement #3) shall be performed on a monthly basis and included in the existing performance requirements described in Attachment 1 of Contract 001152.
3. Payment of \$10,000.00 per month in addition to the amount previously agreed to in Supplemental Agreement #3 will be made upon completion and acceptance of each monthly cycle in accordance with the terms of Contract 001152.
4. Items 2c, 2d, 2e, 2f and 2g of Supplemental Agreement #3 remain in effect and unchanged by this Amendment.
5. The Contractor hereby agrees to the changes with an increase in the Contract amount of a not to exceed \$290,000.00 (\$10,000.00/per month) and no increase in the Contract time.
6. CFX and Contractor agree that this Amendment No. 1 to Supplemental Agreement No. 3 shall not alter or change in any manner the force and effect of the Contract including any previous amendments thereto, except insofar as the same is altered and amended by this Amendment No. 1 to Supplemental Agreement No. 3; that acceptance of this Amendment No. 1 to Supplemental Agreement No. 3 signifies the Contractor's complete and total claim for the terms and conditions of the same and that the Contractor waives all future right for additional compensation which is not already defined herein.

AMENDMENT NO. 1 TO SUPPLEMENTAL AGREEMENT NO. 3

Contract Name: Roadway and Bridge Maintenance Services

Contract No. 001152

Amount of Changes to this document: \$290,000.00

This Amendment No. 1 to Supplemental Agreement No. 3 entered as of the day and year first written above.

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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

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

**INFRASTRUCTURE CORPORATION OF AMERICA**

By: \_\_\_\_\_

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

Attest: \_\_\_\_\_ (Seal)

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

Approved as to form and execution, only

\_\_\_\_\_  
General Counsel for CFX

**Attachment 1**  
**ROADSIDE AND SLOPE MOWING**

1.0     Description

- 1.1     Provide all labor, materials, equipment and incidentals necessary to perform routine mowing of grassed or vegetated roadside / slope area located within the project limits including litter removal and disposal.
- 1.2     The work described herein includes the periodic mowing of grassed or vegetated roadside, median, and slope areas within the project limits with conventional high production style mowing equipment, small machine mowing equipment, and specialized equipment and/ or string trimming as necessary. Vegetation shall consist of all grass, part grass and part succulent weed growth, or all succulent weed growth within the area to be mowed.
- 1.3     Apply Orthene (or equal approved by the Director of Maintenance) insecticide to all fire ant mounds located within turf areas adjacent to paving edge, guardrails, fence lines and all other roadside / drainage structures during each roadside mowing cycle and as directed by the Director of Maintenance to control fire ants when mounds form above normal ground line in mowed turf areas. Applications shall be performed during each mowing cycle. Previously treated, non-active mounds shall be knocked down and the soil either blown off paving or evenly distributed in turf areas during the following mowing cycle. Method of application and dosage shall be as recommended by the manufacturer. Submit product label, MSDS sheet, and proposed application method and rate to Director of Maintenance for approval prior to use. Daily pesticide application reports shall be collected and submitted to the Director of Maintenance on a weekly basis.

2.0     Types of Mowing Areas

- 2.1     “Roadside mowing” is defined as the mowing of all grassed and vegetated areas of shoulders, medians, ramps, all front and back slopes of less than 3:1 including retention areas, roadside ditch bottoms (both wet and dry), around retention ponds to water line (at time of each mowing cycle), dry retention areas, out parcels, raised roadside and median islands, along right of way fence line maintenance strips, various width utility strips (defined as the top of slope behind the guardrail), and similar areas as designated by the Director of Maintenance.
  - 2.1.1     Utility strips shall be mowed in conjunction with roadside mowing cycle. Grasses behind guardrail shall be maintained so as not to exceed the height of the bottom of the guardrail.

- 2.2 “Slope mowing” is defined as the mowing of all grassed and vegetated areas of slopes greater or steeper than 3:1, e.g., steep slopes, canal banks, etc. Perform slope mowing using a boom-type slope mower, hand held equipment or other equipment suitable for mowing steep slopes

3.0

Quantity and Frequency of Mowing

- 3.1 The mowing cycles specified represent the type of mowing to be accomplished (roadside or slope as defined in sections 2.1 and 2.2). The area and limits of each type of mowing will be determined by the Contractor in the field and verified by the Director of Maintenance.
- 3.2 The Contractor shall perform each mowing cycle in accordance with the Contractor’s approved Work Plan unless directed otherwise by the Director of Maintenance. Roadside and slope mowing cycles shall be performed twelve (12) times per year and slope mowing cycles shall be performed eight (8) times per year. The total number of roadside mowing cycles and slope mowing cycles performed per year may be increased or decreased as directed by the Director of Maintenance. Before payment is made for a cycle, the Contractor and Director of Maintenance shall inspect the roadways to verify completion. Any missed areas identified in the inspection shall be completed before payment for a cycle is made.
- 3.2.1 At the direction of the Director of Maintenance, the Contractor shall mow selected parcels not part of the routine roadside mowing areas. These areas are located on surface streets adjacent to CFX roadways where sidewalks and curbing exist. These areas shall be mowed and edged bi-weekly.
- 3.3 Each roadside / slope mowing cycle shall begin on the first day of each month as per the Work Plan unless directed otherwise by the Director of Maintenance. Each roadside / slope mowing cycle shall be completed in its entirety within twenty one (21) calendar days of the beginning of each cycle. The remaining days of each month shall be used for inspection and identification of deficiencies in the performance of the previous cycle by the Director of Maintenance and the performance of directed corrective measures by the Contractor to complete the cycle within the current month.
- 3.4 Roadside/slope mowing cycles not completed within scheduled twenty one (21) calendar days due to weather conditions shall be performed during the remaining days of each month with prior approval from the Director of Maintenance. Incomplete roadside / slope mowing cycles shall not delay the start and successful completion of subsequent scheduled cycles. Liquidated damages in the amount of \$1,000 per day will be assessed for each day that a cycle is not completed and accepted within the allotted timeframe including weather delays.

#### 4.0

##### Equipment

- 4.1 All equipment shall be subject to inspection by the Director of Maintenance at any time. Properly maintain safety devices, as described in the Scope of Services, at all times.
- 4.2 If the Director of Maintenance determines that equipment is deficient in safety devices, the Contractor will be notified immediately. Remove the equipment from service until the deficiency is corrected to the satisfaction of the Director of Maintenance.
- 4.3 Inspection of the Contractor's equipment by the Director of Maintenance shall not relieve the Contractor of responsibility or liability for injury to persons or damage to property caused by the operation of the equipment.
- 4.4 Equipment which damages the pavement or turf in any way will not be allowed. Repair all damage caused by the Contractor's equipment to the satisfaction of the Director of Maintenance and at no cost to CFX. Repairs to pavement or turf shall be completed within 14 days after the damage occurs and/or is identified by the Director of Maintenance. Payment for mowing will be withheld until required repairs/replacements have been completed and accepted.

#### 5.0

##### Mowing Equipment

- 5.1 The roadside and slope mowing equipment shall be in good repair capable of producing a clean, sharp cut (minimum 6" height) with uniform distribution of the cuttings. Slope mowing equipment shall be capable of a clean, sharp cut (minimum 6" height) with uniform distribution of the cuttings without damaging or compromising the integrity of the slope.
- 5.2 The Contractor shall furnish all equipment of the type and quantity necessary to perform the work satisfactorily within the time specified herein. Any additional equipment needed to complete the mowing cycles in accordance with the Work Plan shall be provided by the Contractor at no additional cost to CFX.
- 5.3 Furnish specialized equipment for the use when conventional mowing equipment is unable to reach wet mowing areas. Boom, arm or other specialized equipment with sufficient reach shall be used at no additional cost to CFX.

6.0 Method of Operations

- 6.1 Prior to the beginning of each month, the Contractor shall submit to the Director of Maintenance, via email, a monthly schedule identifying proposed upcoming mowing cycle start, weekly progress, and ending dates and locations. Work progress interruptions due to weather conditions or equipment issues shall be communicated to the Director of Maintenance, via email, in the daily progress reports.
- 6.2 Each roadside and / or slope mowing cycle shall commence at the same starting location on the roadway and proceed continuously to the same completion location on the roadway. On subsequent cycles, follow the pattern adopted for the first cycle unless the Director of Maintenance specifically authorizes a change in the pattern.
- 6.3 Daily mowing cycle progress intent is that all mowing from right-of way to right of way limits shall be completed in its entirety with not more than one mile of either roadside being partially mowed / incomplete.
- 6.4 Prior to the start of each cycle, the Contractor shall inspect and identify any areas where turf conditions, work by other CFX contractors, or any other circumstances could prevent required mowing. The Contractor shall immediately notify the Director of Maintenance of the existing conditions and request directions as to how to proceed. If such conditions are eliminated during the period designated for that mowing cycle, the Director of Maintenance may require the Contractor to cut these areas as part of the cycle or have the areas mowed in the subsequent cycle. When directed by the Director of Maintenance, do not mow grassed areas that are saturated with standing water. Mow these areas at subsequent cycles as directed by the Director of Maintenance
- 6.5 Perform litter pick up immediately prior to the mowing operation to preclude the spread of litter.
- 6.6 During mowing operations, the Director of Maintenance shall inspect work being performed to determine Contract compliance. In the event of deficient work, the Contractor will be directed to re-perform any Contract required task without additional compensation, in the area(s) identified so that the total mowing cycle may be satisfactorily completed within the monthly mowing cycle time period. The Director of Maintenance shall notify the Contractor, via email, of any identified deficiencies within 24 hours of discovery.



- 6.7 Items damaged (e.g. object markers, delineators, guardrail end treatments, fence posts, drainage end sections and grates, FON marker poles, etc.) during mowing operations shall be immediately repaired/replaced to the satisfaction of the Director of Maintenance. Payment for mowing will be withheld until required repairs/replacements have been completed and accepted.

## 7.0 Limitation of Operation

- 7.1 When mowing within ten (10') feet of the travel way operate equipment in the direction of the traffic. This provision does not apply when the specific worksite is protected by flagmen and warning signs in accordance with the MUTCD.
- 7.2 When necessary for mowing machines to cross bridges with full width shoulders on the right, make the crossing on the shoulder. Cross all bridges with care. Keep such crossings to the minimum required to complete the work as specified.
- 7.3 When necessary for mowing machines to cross the travel way, select a location that provides a minimum five hundred (500') feet of unobstructed sight distance. The mower operator shall stop before crossing the travel way and permit closely approaching vehicles to pass before crossing. Plan operations to minimize crossings.

## 8.0 Quality of Work

- 8.1 Mow all grass and vegetation to a height of six inches (6") with a maximum tolerance of one-half (1/2") inch plus or minus.
- 8.2 Connect areas of different widths with smooth flowing curve transitions. The accumulation or the piling of cuttings will not be permitted. Accumulations of cutting shall be evenly distributed throughout adjacent turf areas or removed and disposed of off-site as directed by the Director of Maintenance.
- 8.3 Mow / trim grass and vegetation around landscape beds, installed buffers, and naturalized areas so as not to damage adjacent plant material and trees. Mow around landscaped areas so as not to discharge clippings into the planting areas. Do not mow within four (4) feet of tree trunks and shrubs in installed buffer and naturalized areas.
- 8.4 During each mowing cycle, mow / trim around existing appurtenances to maintain grass and vegetation to height consistent with adjacent mowed turf areas or as directed by the Director of Maintenance. Appurtenances shall include, but are not necessarily limited to, sign post and bases, delineator posts, fences, guardrail or barrier walls, headwalls, end walls, pipes, drainage structures, roadway lighting poles, power poles, guy wires, landscape areas, etc. Mowing around

appurtenances by small machine or by hand shall be coordinated with the large machine mowing to present a clean continuous appearance.

- 8.5 Mow small areas (out parcels) outside of the fenced right of way that CFX owns and as identified in the Contract. In most cases, this mowing shall require small machine or push-type mowers and hand work.
- 8.6 The Contractor will not be required to routinely rake or remove grass or other vegetation cuttings from the right-of-way during each mowing cycle. Contractor may be required to remove vegetation cuttings that, due to their volume, may be damaging to existing turf or are aesthetically unacceptable as determined by the Director of Maintenance such as windrows of mowed grass. Removal shall be as directed by the Director of Maintenance. Grass or clippings spread by the Contractor on paved areas or landscaped areas as a result of mowing operations shall be removed immediately.

END OF SECTION

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 3

Contract Name: Roadway and Maintenance Services  
Contract No. 001152

2018 MAY 21 AM 9:58

This Supplemental Agreement No. 3 entered into this 23<sup>rd</sup> day of April, 2018, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX"), and HDR/ICA, (the "Contractor"), the same being supplementary to the Contract between the aforesaid, dated April 13, 2017, with a Notice to Proceed date of July 1, 2017, for roadway and maintenance services on S.R. 429, S.R. 414, S.R. 451 and related tasks as may from time to time be assigned to the CONTRACTOR by CFX.

1. CFX desires to amend the Scope of Services to add services for the Wekiva Parkway (SR 429) from Kelly Park Road to ~2000 feet North East of Mount Plymouth Road (as measured along the centerline of SR 429) and SR 453 in its entirety.
2. The Scope of Services to be performed for the entire Wekiva Parkway (Including that described in Item #1 above and SR 429 from the Connector Road to Kelly Park Road (ref: SA #1) shall be as follows:
  - a. Perform the "Parkway Mowing" as described below for CFX Projects 429-202 & 429-203 (SA #1) and CFX Projects 429-204, 429-205 & 429-206 (SA #3, This Agreement) for the 51 Months beginning on April 1, 2018 until the current Contract Expires on June 30, 2022.
  - b. "Parkway Mowing" shall be defined as the mowing of all grassed and vegetated areas of the Wekiva Parkway within the Clear Zone in accordance with the current FDOT Design Manual (Currently 36 feet per Section 215 of the 2018 FDOT Design Manual). In addition, this mowing is to also include a section ten (10) feet wide behind guardrails and along Right of Way fences. This mowing is to be completed each cycle as specified in section 3.2 of Attachment 1 of the contract documents. Areas outside the Clear Zone are to be mowed at a reduced frequency of at least 3 times per calendar year. All areas under and within landscape planting shall be mowed around and bypassed. "Parkway Mowing" is an aesthetic treatment to the vegetation of the right of way.
  - c. Slope mowing shall be performed eight (8) times per year. Parkway mowing shall be performed twelve (12) times per year and areas outside the Clear Zone shall be mowed 3 times per year as directed by the Director of Maintenance in order to obtain the aesthetic required parkway mowing. Additional cycles will be handled out of the work order allowance.

- d. Bridge Maintenance is not included in the performance-based scope but if necessary (subject to the approval of CFX), shall be paid from the Contract contingency fund / Work Order Allowance.
  - e. Sign Structure Maintenance is not included in the performance-based scope but if necessary (subject to the approval of CFX), shall be paid from the Contract contingency fund / Work Order Allowance.
  - f. MSE Wall Coating Maintenance is not included in the performance-based scope but if necessary (subject to the approval of CFX), shall be paid from the Contract contingency fund / Work Order Allowance.
  - g. Perform all other services in accordance with CFX Contract #1152.
3. The Contractor hereby agrees to the changes with an increase in the Contract amount of a not to exceed \$2,948,000.00 allocated as shown below and no increase in the Contract time.
- Wekiva Parkway Asset Maintenance Services: \$ \$2,448,000.00
  - Work Order Allowance (Includes Items D, E & F from above): \$ 500,000.00
4. CFX and Contractor agree that this Supplemental Agreement No. 3 shall not alter or change in any manner the force and effect of the Contract including any previous amendments thereto, except insofar as the same is altered and amended by this Supplemental Agreement No. 3; that acceptance of this Supplemental Agreement No. 3 signifies the Contractor's complete and total claim for the terms and conditions of the same and that the Contractor waives all future right for additional compensation which is not already defined herein.

2018 MAY 21 AM 9:58

SUPPLEMENTAL AGREEMENT NO. 3

Contract Name: Roadway and Bridge Maintenance Services

Contract No. 001152

Amount of Changes to this document: \$2,948,000.00

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

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

By: [Signature]  
Director of Procurement

Date: 5/22/18

2018 MAY 21 AM 9:58

**INFRASTRUCTURE CORPORATION OF AMERICA**

By: [Signature]

Title: Secretary

Attest: Clean & Rancit (Seal)

Date: 5/18/18

Approved as to form and execution, only

[Signature]  
General Counsel for CFX

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 2

2017 DEC 20 AM 10:42

Contract Name: Roadway and Maintenance Services  
Contract No. 001152

This Supplemental Agreement No. 2 entered into this 14<sup>th</sup> day of December, 2017, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX"), and HDR/ICA, (the "Contractor"), the same being supplementary to the Contract between the aforesaid, dated April 13, 2017, with a Notice to Proceed date of July 1, 2017, for roadway and maintenance services on S.R. 429, S.R. 414, S.R. 451 and related tasks as may from time to time be assigned to the CONTRACTOR by CFX.

1. CFX desires to amend the Scope of Services to add removal and disposal of approximately 120 trees downed during Hurricane Irma, and repairs to the CFX Right of Way fence also damaged from the Hurricane.
2. The Contractor hereby agrees to the changes with an increase in the Contract amount of a not to exceed \$115,000.00 and no increase in the Contract time. No work on this item can begin until the specific scope of work is agreed upon and written authorization to proceed is issued by CFX Director of Maintenance or designee.
3. CFX and Contractor agree that this Supplemental Agreement No. 2 shall not alter or change in any manner the force and effect of the Contract including any previous amendments thereto, except insofar as the same is altered and amended by this Supplemental Agreement No. 2; that acceptance of this Supplemental Agreement No. 2 signifies the Contractor's complete and total claim for the terms and conditions of the same and that the Contractor waives all future right for additional compensation which is not already defined herein.

SUPPLEMENTAL AGREEMENT NO. 2

Contract Name: Roadway and Bridge Maintenance Services

Contract No. 001152

Amount of Changes to this document: \$115,000.00

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

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: 

Director of Procurement

Date: 12/27/2017

2017 DEC 20 AM 10:42

HDR/ICA

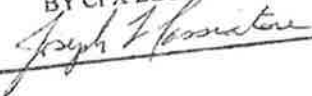
By: 

Title: COO

Attest:  (Seal)

Date: 12/18/17

REVIEWED AND APPROVED  
BY CFX LEGAL



CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 1

Contract Name: Roadway and Bridge Maintenance Services – S.R. 429, S.R. 414, and S.R. 451

Contract No. 001152

Supplemental Agreement No. 1

This Supplemental Agreement No. 1 entered into this 13<sup>th</sup> day of July, 2017, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY (“CFX”), and INFRASTRUCTURE CORPORATION OF AMERICA, (the “Contractor”), the same being supplementary to the Contract between the aforesaid, dated April 13, 2017, with a Notice to Proceed date of July 1, 2017, for roadway and bridge maintenance services pertaining to S.R. 429, S.R. 414, and S.R. 451.

1. CFX desires to extend the limits of the roadway and bridge maintenance services along S.R. 429 (Wekiva Parkway) to include US 441 to Kelly Park Road (4.3 centerline miles). Services to be provided by the Contractor shall include those as described and detailed in Exhibit A, Scope of Services, of the Contract Documents. Additional compensation will be paid to the Contractor in the lump sum amount of \$1,877,324.00 to provide the services to the end of the Contract term (June 30, 2022).
2. The Contractor hereby agrees to provide the required services to the end of the Contract term for the additional lump sum compensation of \$1,877,324.00.
3. CFX and Contractor agree that this Supplemental Agreement No. 1 shall not alter or change in any manner the force and effect of the Contract including any previous amendments thereto, except insofar as the same is altered and amended by this Supplemental Agreement No. 1; that acceptance of this Supplemental Agreement No. 1 signifies the Contractor's complete and total claim for the terms and conditions of the same and that the Contractor waives all future right for additional compensation which is not already defined herein.

17 JUL 27 2017



SUPPLEMENTAL AGREEMENT NO. 1

Contract Name: Roadway and Bridge Maintenance Services – S.R. 429, S.R. 414, and S.R. 451

Contract No. 001152

Supplemental Agreement No.1

Amount of Changes to this document: \$1,877,324.00

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

“CFX”:

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: [Signature]  
Director of Procurement

Date: 8/2/17

12-11-27-303  
REVIEWED AND APPROVED  
BY CFX LEGAL

[Signature]

“Contractor”:

INFRASTRUCTURE CORPORATION OF AMERICA

By: [Signature]

Title: COO

Attest: [Signature] (Seal)

Date: 7/21/17

# **CONTRACT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
INFRASTRUCTURE CORPORATION OF AMERICA  
ROADWAY AND BRIDGE MAINTENANCE SERVICES  
S.R. 429, S.R. 414, AND S.R. 451**

**CONTRACT NO. 001152**

**CONTRACT DATE: APRIL 13, 2017  
CONTRACT AMOUNT: \$9,271,953.00**

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

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

**ROADWAY AND BRIDGE MAINTENANCE SERVICES  
S.R. 429, S.R. 414, AND S.R. 451**

**CONTRACT NO. 001152**

**April 2017**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
ROADWAY AND BRIDGE MAINTENANCE SERVICES  
S.R. 429, S.R. 414, AND S.R. 451  
CONTRACT 001152**

This Contract No. 001152 (the "Contract" as defined herein below), is made this 13th day of April, 2017, between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, hereinafter called CFX and INFRASTRUCTURE CORPORATION OF AMERICA, 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 Authority 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 CFX, in order to comply with the 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 roadway and bridge maintenance services on S.R. 429, S.R. 414, and S.R. 451, and related tasks as may from time to time be assigned to the CONTRACTOR by CFX; and,

**WHEREAS**, on or about January 15, 2017, CFX issued a Request for Proposals seeking qualified contractors to perform such tasks; and,

**WHEREAS**, CONTRACTOR was the successful one of five (5) qualified firms that responded to the Request for Proposals and was ultimately selected;

**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 maintenance of, and administration and management services related to, S.R. 429, S.R. 414, and S.R. 451 in Orange County, Florida 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 (if any),
- 1.3 The Scope of Services (including Maintenance Specifications),
- 1.4 The Memorandum of Agreement,
- 1.5 The Method of Compensation,
- 1.6 The Technical Proposal submitted by CONTRACTOR, and
- 1.7 The Price Proposal submitted by CONTRACTOR,

(collectively, the "Contract Documents").

## **2. TERM AND NOTICE**

The initial term of the Contract will be five (5) years commencing July 1, 2017. 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 120 days prior to the expiration of the initial 5-year Contract Term and renewals, if any.

CFX shall have the right to terminate or suspend the Contract, in whole or in part, at any time with 120 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 will 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 for any crime arising out of or in conjunction with any work being performed by the CONTRACTOR for or 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 \$9,271,953.00.

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. DISADVANTAGED/MINORITY AND WOMEN'S 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 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 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.

## **6. CONTRACTOR INSURANCE AND PERFORMANCE AND PAYMENT 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.

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.

6.5 **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 (Contract Amount/5 years). The initial term of the bond shall be from July 1, 2017 through June 30, 2018. The bond shall be renewed each year thereafter until the expiration of the Contract term. Each fully executed renewal bond shall be transmitted to CFX at least 15 days prior to the expiration of the bond in effect so 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's resident agent's name, address, and telephone number shall be clearly stated on the face of the 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 which might be returned to the CONTRACTOR from its payment of premium on the defaulting bond, will be borne by CFX.

## **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 areas upon which services are performed;

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 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.

7.5 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.

7.6 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 for CFX's roadway and bridge maintenance services.

7.7 CONTRACTOR and its subcontractors shall 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 a contract with CFX understands and will comply with subsection. 20.055(5), Florida Statutes.

## **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 Program Manager, Project Manager and Superintendent (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, whether Key Personnel or not, 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

The CONTRACTOR's managers and superintendents shall speak and understand English, and at least one responsible management person who speaks and understands English shall be at each of the work locations during all working hours.

## **9. INDEMNITY**

The CONTRACTOR shall indemnify 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.

**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 Phone: 407-690-5000, e-mail: publicrecords@cfxway.com, and address: Central Florida Expressway Authority, 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.

## **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.

A person or affiliate who has been placed on the Florida Department of Management Services 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.

#### **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 (except for an assignment made for the benefit of creditors) 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, 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 9, 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 Contract 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. 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:

25.1 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

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

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

25.4 Obligations upon expiration or termination of the Contract, as set forth in Section 26; and


25.5 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.

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

26.1 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 April 13, 2017.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By:   
Director of Procurement

Print Name: Aneeth Williams

CONTRACTOR

By: 

Print Name: DARREN K. MASTROKIDIS

Title: COO

ATTEST:  (Seal)

Approved as to form and execution, only.

  
General Counsel for CFX

18 NOV 17 PM 04:31



**Exhibit A**  
**SCOPE OF SERVICES**  
**ROADWAY AND BRIDGE MAINTENANCE SERVICES**  
**S.R. 429, S.R. 414, AND S.R. 451**  
**CONTRACT NO. 001152**

**1.0 OVERVIEW**

- 1.1 The Contractor shall perform maintenance of and administration and management services related to roadways (including out parcels) and bridges along S.R. 429 (Daniel Webster Western Beltway) between Seidel Road to north of Kelley Park Road, along S.R. 414 (John Land Apopka Expressway) between S.R. 429 and US 441, and S.R. 451 from S.R. 414 to US 441 in Orange County, Florida.

The Contractor shall furnish all labor, materials, equipment, tools, transportation and supplies required to supply the services and complete the maintenance work in accordance with the specifications, procedures and terms of the Contract, including the specific tasks and events set forth on the attached specifications.

- 1.2 The Contractor, or an approved subcontractor, shall employ a full-time registered professional engineer licensed to practice in the State of Florida and sufficient qualified technical and professional staff to support activities and program areas including, but not limited to: roadway and bridge maintenance contract administration; maintenance contract development; maintenance condition survey management; road serviceability analysis; and transportation safety management. CFX, at its option, may elect to expand, reduce, or delete the extent of each work element described in this Scope of Services document, provided such action does not alter the intent of the Contract.

- 1.3 The services to be provided by the Contractor shall be furnished through a combination of Contractor staff/personnel and subcontractors/subconsultants under contract to the Contractor. Through this combination, the Contractor shall provide maintenance and administrative personnel in appropriate numbers and at the proper times to ensure that the responsibilities assigned under the Contract are effectively carried out. Services to be provided by the Contractor include, but are not necessarily limited to maintenance of: roadway features (pavement); roadside features (e.g., soil shoulders, slopes, and fence); traffic services features (e.g., signs, striping, and guardrail); vegetation/aesthetics (e.g., mowing and litter); and drainage (e.g., ditches and inlets). Work shall also include responsibility for traffic operations; reviewing bridge inspection reports and preparing and implementing a plan for repairs of noted deficiencies; performing road serviceability analysis; and responsibility for permit operations. These services are described in detail in the maintenance specifications attached to this Scope of Services. Maintenance of toll facilities and equipment, the fiber optic network, landscaping and aquatic weed control are not a part of this scope and will be performed by others.

1.4 CFX 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 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 others or, where applicable, by Florida Department of Transportation (FDOT).

1.5 During the term of the Contract, the remaining portions of S.R. 429 and the new S.R. 453 (constructed as part of the Wekiva Parkway project) will be accepted and opened to the public in phases. The Contractor shall furnish all labor, materials, equipment, tools, transportation and supplies required to supply the services and complete the maintenance work for each phase through supplemental agreements at costs to be negotiated between CFX and the Contractor.

## **2.0 ROADWAY MAINTENANCE AND INSPECTION**

2.1 The Contractor shall be responsible for all routine bridge maintenance, roadway maintenance (roadway features, roadside features, traffic services features, vegetation/aesthetics and drainage) and inspection and administrative functions as defined in this Scope of Services, maintenance specifications and referenced manuals and procedures.

2.2 The Contractor, through the use of subcontractors and subconsultants, shall provide qualified maintenance contractors and technical and administrative personnel in appropriate numbers to ensure that maintenance is accomplished in accordance with the requirements and criteria set forth in this Scope of Services and the maintenance specifications. All activities shall be performed in accordance with the specifications, guides, standards, procedures and directives that are a part of the Contract.

2.3 The Contractor shall comply with the CFX Incident Response Plan. This document provides procedures for situational analysis, mobilizing personnel and equipment, information to the public, taking protective action, assessing damage, record keeping, planning recovery/restoration, and coordinating emergency response activities.

2.3.1 The Contractor shall comply with the CFX Open Road Tolling procedures policy letter for scheduled or emergency closing of express toll lanes.

2.4 The Contractor shall be responsible for the control and safety of traffic and the public during the performance of all work under control of the Contractor, its agent, employees and subcontractors/subconsultants. When required by the Contractor's operations, the Contractor shall furnish, erect and maintain such fences, temporary railing, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents, damage or injury to the public.

- 2.5 The Contractor shall review Bridge Inspection Reports received by CFX. The Contractor shall have complete responsibility for scheduling and performing bridge maintenance and repairs. The Contractor shall return completed signed and dated FDOT work order forms to the Director of Maintenance to include photographs of the completed repairs. CFX will review the documents and notify FDOT to close the work order within 60 days for Priority 1 work orders, 180 days for Priority 2 and 3 work orders and within 2 years for Priority 4 work orders. Work not completed within this time frame will be subject to a reduction in compensation due the Contractor of \$200 per day per work order for each day the work is not completed.
- 2.6 Road Serviceability Analysis - The Contractor shall:
- 2.6.1 Attend MRP inspection with FDOT and Director of Maintenance. Review results of the Maintenance Rating Program (MRP) inspection performed by FDOT and initiate corrective action based on undisputed MRP inspections within 30 days of receipt of the findings from the Director of Maintenance.
  - 2.6.2 Prepare road serviceability analyses and documentation to correct identified deficiencies. Use the current year Annual Inspection Report compiled by CFX's General Engineering Consultant as a baseline of the deficiencies needing repair. Integrate report findings in Contractor's Work Plan.
  - 2.6.3 Perform Road Characteristics Inventory (RCI) field review and document changes. Develop and maintain an up to date inventory of CFX assets of roadway items and bridge features within 180 days of Notice to Proceed. Use FDOT Straight Line Drawings (SLD) to populate initial inventory.
- 2.7 Contract Administration - The Contractor shall:
- 2.7.1 Review maintenance contract reports relating to Contractor's performance and communicate with subcontractors, if necessary, regarding negative conformance to specifications, workmanship, etc.
  - 2.7.2 Prepare and maintain monthly progress schedules and reports applicable to all phases of maintenance operation and such special reports as may be required to keep CFX advised with respect to the progress of work activity.
    - 2.7.2.1 Provide the monthly report in a format that includes all Activity Groups and Activity Codes, quantities and applicable measurement units (i.e. acre, square foot/yard, each, etc.) as described in the FDOT Maintenance Cost Handbook.
  - 2.7.3 Assist CFX in responding to the public interest regarding maintenance activities.

2.8 In all cases and scenarios prepare accident claim in form and content reasonably satisfactory to CFX.

2.8.1 For matters or incidents in an amount less than or equal to \$25,000.00, or the CFX insurance contract deductible, whichever is greater, in estimated repair damages for any particular occurrence due to the intentional acts or negligence of any third party or parties, the Contractor shall:

- (i) Provide a copy of said accident claim to CFX for its records; and
- (ii) Advance and pay for all expenses incurred in connection with the performance of its repair and/or maintenance duties and obligations under the Contract; and
- (iii) Seek reimbursement of the expenses made in connection with the aforementioned repair and/or maintenance, at Contractor's sole expense, only from the negligent party or parties, tortfeasor or tortfeasors (collectively, the "Third Parties"), and/or their respective insurance carriers (the "Third Party Insurers"), if any. The Contractor shall not seek reimbursement from the CFX. Nor shall the Contractor seek reimbursement from the CFX insurance carrier or carriers without first obtaining written approval from CFX, which approval shall not be unreasonably withheld. Alternatively, the Contractor may pursue, at Contractor's sole cost and expense, any and all claims or actions against the Third Parties, and/or the Third Party Insurers, but not against CFX, its employees, officers, agents, representatives, consultants, or their respective employees, officers and representatives, or the CFX insurance carrier or carriers, whether in law or in equity.

2.8.2 For matters or incidents in an amount greater than \$25,000.00, or CFX's insurance contract deductible, whichever is greater, in estimated repair damages for any particular occurrence due to the intentional acts or negligence of any third party or parties, as an absolute condition of the Contractor being reimbursed by CFX, the Contractor shall:

- (i) Submit said accident claim affidavit to CFX; and
- (ii) Advance and pay for all expenses incurred in connection with the performance of its repair and/or maintenance duties and obligations under the Contract; and

- (iii) Notify CFX in writing, that the Contractor seeks reimbursement of the Contractor's expenses, reasonably related to such repairs and/or maintenance, whereby CFX, shall at its expense, file a reimbursement claim with the CFX insurance carrier or carriers. Should the CFX insurance carrier or carriers fail to pay all of any particular reimbursement claim, the Contractor may, but shall have no obligation to, seek reimbursement of any particular claim shortfall from the negligent party or parties, tortfeasor or tortfeasors (collectively, the "Third Parties"), and/or their respective insurance carriers (the "Third Party Insurers"), if any. The Contractor shall not seek any reimbursement from the CFX insurance carrier or carriers, whether or not the claim is based on bad faith or otherwise, without first obtaining written approval from CFX, which approval shall not be unreasonably withheld. Alternatively, the Contractor may pursue, at Contractor's sole cost and expense, any and all claims or actions against the Third Parties, and/or the Third Party Insurers, but not against CFX, its employees, officers, agents, representatives, consultants, or their respective employees, officers and representatives, whether in law or in equity.

2.8.3 Contractor and its assigns, if any, hereby waive any and all claims, reimbursement requests, and the like, against any self-insurance policy or policies of CFX and of the Florida Department of Transportation.

### **3.0 CONTROL OF THE WORK**

- 3.1 The Contractor shall develop, prepare, and implement a Roadway Maintenance Operations Work Plan.

The Work Plan shall contain a description of activities the Contractor intends to carry out during the 12-month period beginning on the Notice to Proceed date for the Contract and the scheduled date for each such activity. The date may be expressed by week or by any other more specific periods or date the Contractor selects.

A draft of the Work Plan shall be submitted to CFX within 30 days after the date of the Notice to Proceed. CFX will review the plan and meet with the Contractor to resolve any concerns pertaining to the schedule and the activities and to finalize the plan.


The Contractor shall submit an updated Work Plan to CFX at least 30 days prior to the first day of each quarter to show a rolling 12-month period of detailed coverage.

**CONSENT AGENDA ITEM  
#22**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 24, 2020

SUBJECT: Approval of First Contract Renewal with Chapco Fence, LLC  
for Fencing Repairs along the Poinciana Parkway  
Contract No. 001536

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Board approval is requested for the first renewal of the referenced contract with Chapco Fence, LLC in the amount of \$30,000.00 for a one-year period beginning April 1, 2020 and ending March 31, 2021.

The services to be provided under this renewal are fence repairs along the Poinciana Parkway.

Original Contract	\$ 30,000.00
First Renewal	<u>\$ 30,000.00</u>
Total	\$ 60,000.00

This contract is budgeted in the OM&A Budget.

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



**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
CONTRACT RENEWAL AGREEMENT NO. 1  
CONTRACT NO. 001536**

THIS CONTRACT RENEWAL AGREEMENT (the "Renewal Agreement"), made and entered into this 13<sup>th</sup> day of February 2020, by and between the Central Florida Expressway Authority, hereinafter called "CFX" and Chapco Fence, LLC., herein after called the "Contractor."

**WITNESSETH**

WHEREAS, CFX and the Contractor entered into a Contract Agreement (the "Original Agreement") dated April 4, 2019, whereby CFX retained the Contractor to provide fencing repairs along the Poinciana Parkway as required by CFX.

WHEREAS, pursuant to Article 2.0 of the Original Agreement, CFX and Contractor 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 Contractor agree to a first renewal of said Original Agreement beginning the 1st day of April 2020 and ending the 31st day of March 2021 at the cost of \$30,000.00, which increases the amount of the Original Agreement.

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.

CHAPCO FENCE, LLC

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



**CONTRACT RENEWAL AGREEMENT  
FOR FENCING REPAIRS ALONG THE POINCIANA PARKWAY**

**CFX CONTRACT NO. 001536**

This Agreement is made and entered this 4 day of April 2019, by and between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, hereinafter called "CFX", and Chapco Fence, LLC, a Florida corporation, registered and authorized to conduct business in the State of Florida, whose principal address is 4417 13<sup>th</sup> Street, Suite 513, Saint Cloud, Florida 34769, hereinafter "CONTRACTOR."

**RECITALS:**

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 fencing repairs along the Poinciana Parkway; and

WHEREAS, on December 31, 2018, Osceola County Expressway Authority ("OCX") and CFX entered into a Transfer, Assignment and Assumption Agreement wherein OCX assigned all of its right, title and interest to certain agreements to CFX, including the agreement between OCX and Chapco Fence, LLC, entered on or about April 4, 2018 ("Original Agreement");

WHEREAS, the Original Agreement includes two exhibits: **Exhibit "A"** entitled "Scope of Services" and **Exhibit "B"** entitled "Pricing Schedule," attached hereto as **Composite Exhibit "1"**;

WHEREAS, it is in the mutual best interests of CFX and CONTRACTOR to renew the Original Agreement as further described herein.

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, CFX and CONTRACTOR agree to a first renewal of the Original Agreement with a not-to-exceed amount of Thirty Thousand Dollars (\$30,000), which amount restates the amount of the Original Agreement and is based upon the rates set forth in **Exhibit "B"** to the Original Agreement, subject to the following amendments:

1. Recitals. The recitals are true and incorporated as terms.
2. Adoption of Terms in the Original Agreement. The parties adopt the entire Original Agreement by reference as though set forth fully herein, subject to the following substitutions or

revisions. CONTRACTOR will continue to perform all of its duties, responsibilities, and obligations described in the Original Agreement.

2.1 Where the term "Osceola County Expressway Authority" or "Authority" appear in the Original Agreement, the term shall be replaced with "CFX."

2.2 Section 1 entitled "TERM" shall be replaced with the following:

The term of this Agreement shall begin on date of execution by CFX and continue through March 31, 2020 and may be extended when in the best interest of the CFX.

2.3 Section 11 entitled "APPLICABLE LAW, VENUE, JURY TRIAL" shall be amended by adding the text that is underlined and deleting the text that is stricken as follows:

The laws of the State of Florida shall govern all aspects of this Agreement. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall lie exclusively in Orange ~~Osceola~~ County, Florida. The parties hereby waive their right to trial by jury in any action, proceeding or claim, arising out of this Agreement, which may be brought by either of the parties hereto.

2.4 Subsection 12.A under Section 12 entitled "PUBLIC RECORDS" shall be deleted and replaced with the following:

**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:**

**Telephone: (407) 690-5000  
Email: PublicRecords@CFXWay.com,  
Central Florida Expressway Authority  
4974 ORL Tower Road  
Orlando, Florida 32807**

2.5 Section 23 entitled "NOTICE" shall be amended by adding the text that is underlined and deleting the text that is stricken as follows:

AUTHORITY: ~~Osceola County Expressway Authority  
3 Courthouse Square, Second Floor  
Kissimmee, Florida 34741~~  
Central Florida Expressway Authority  
4974 ORL Tower Road

Orlando, FL 32807  
Attention: Director of Maintenance

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

2.6 Subsection 33.A under Section 33 entitled "PROJECT MANAGERS" shall be replaced with the following:

A. CFX's Project Manager's contact information is as follows:

Don Budnovich, Director of Maintenance  
Central Florida Expressway Authority  
4974 ORL Tower Road  
Orlando, FL 32807  
Telephone: 407-690-5334  
Email: Donald.Budnovich@CFXway.com;

3. Inspector General. 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).

4. Anti-Discrimination Statement. 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."

5. Subcontractors. If, during the term of this 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 this 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), CONTRACTOR shall first submit a request to the Director of Procurement for authorization to enter into such subcontract. Except in the case of an emergency, as determined by the Executive Director or his/her designee, no such subcontract shall be executed by the CONTRACTOR until it has been approved by the 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 the CFX Board at its next regularly scheduled meeting.

6. 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.

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

8. Certificate of Completion of Original Agreement. CONTRACTOR states that, upon its receipt and acceptance of Final Payment for Services rendered under the Original Agreement, which ending in March 2019, CONTRACTOR shall execute a "Certificate of Completion of the Original Agreement and Acceptance of Final Payment" that waives all future right or claim for additional compensation for services rendered under the Original Agreement ending March 2019.

IN WITNESS WHEREOF, the parties evidence their agreement through the execution of this Agreement by their duly authorized signatures.

**"CONTRACTOR"**

**CHAPCO FENCE, LLC**

By: Jason Jannila  
Print Name: Jason Jannila  
Title: President  
Date: 5/8/19



(Seal)

ATTEST: Tabitha Mills

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

By: Annex Williams  
Director of Procurement  
Print Name: Annex Williams  
Date: 6/11/19

Approved as to form and execution, only.

Joseph T. Passiatore  
General Counsel for the CFX

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# COMPOSITE EXHIBIT "1"

## AGREEMENT

**THIS AGREEMENT** is made by and between OSCEOLA COUNTY EXPRESSWAY AUTHORITY, a body politic and corporate created by Part V, Chapter 348, Florida Statutes, 3 Courthouse Square, Suite 3119, Kissimmee, Florida 34741, hereinafter referred to as the "AUTHORITY, and Chapco Fence, LLC, 4417 13<sup>th</sup> Street, Suite 513, Saint Cloud, Florida 34769, hereinafter referred to as the "CONTRACTOR."

## **WITNESSETH:**

**WHEREAS**, the AUTHORITY has competitively solicited for fencing repairs along the Poinciana Parkway, pursuant to RFQ-18-10041-TP; and

**WHEREAS**, the CONTRACTOR has exhibited by its response to the solicitation that it is capable of providing the required services; and

**WHEREAS**, the parties hereto have agreed to the terms and conditions cited herein based on said solicitation.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms, and provisions contained herein, the parties agree as follows:

### **SECTION 1. TERM.**

The term of this Agreement shall begin on date of execution by the Osceola County Expressway Authority and continue through March 31, 2019, and may be extended when in the best interest of the Osceola County Expressway Authority.

### **SECTION 2. SCOPE OF SERVICES.**

The CONTRACTOR will furnish and install all necessary labor, materials, and equipment to complete the services set forth in Exhibit "A" which is attached hereto and incorporated herein.

### **SECTION 3. OBLIGATIONS OF THE CONTRACTOR.**

Obligations of the CONTRACTOR shall include, but not be limited to, the following:

- A. It is understood that the CONTRACTOR shall provide and pay for all labor, tools, materials, permits, equipment, transportation, supervision, and any and all other items or services, of any type whatsoever, which are necessary to fully complete and deliver the services requested by the AUTHORITY, and shall not have the authority to create, or cause to be filed, any liens for labor and/or materials on, or against, the AUTHORITY, or any property owned by the AUTHORITY. Such

lien, attachment, or encumbrance, until it is removed, shall preclude any and all claims or demands for any payment expected by virtue of this Agreement.

- B. The CONTRACTOR will ensure that all of its employees, agents, sub-contractors, representatives, volunteers, and the like, fully comply with all of the terms and conditions set herein, when providing services for the AUTHORITY in accordance herewith.
- C. The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, safety programs, and procedures necessary to properly and fully complete the work set forth in the Scope of Services.
- D. The CONTRACTOR will maintain an adequate and competent staff, and remain authorized to do business within the State of Florida. The CONTRACTOR may subcontract the services requested by the AUTHORITY; however, the CONTRACTOR is fully responsible for the satisfactory completion of all subcontracted work.

#### **SECTION 4. STANDARD OF CARE.**

- A. The CONTRACTOR has represented to the AUTHORITY that it possesses a level of knowledge, experience, and expertise that is commensurate with firms in the areas of practice required for the services to be provided. By executing this Agreement, the CONTRACTOR agrees that the CONTRACTOR will exercise that degree of care, knowledge, skill, and ability as any other similarly situated contractor possessing the degree of skill, knowledge, experience, and expertise within the local area, working on similar activities. The CONTRACTOR shall perform the services requested in an efficient manner, consistent with the AUTHORITY's stated scope of services and industry standards.
- B. The CONTRACTOR covenants and agrees that it and its employees, agents, sub-contractors, representatives, volunteers, and the like, shall be bound by the same standards of conduct as stated above.

#### **SECTION 5. COMPENSATION.**

- A. The amount to be paid under this Agreement for services rendered will not exceed Thirty Thousand and 00/100 Dollars (\$30,000.00) for the term of this Agreement, in accordance with the pricing schedule set forth in **Exhibit "B"** which is attached hereto and made a binding part hereof.
- B. Compensation for services completed by the CONTRACTOR will be paid in accordance with section 218.70, Florida Statutes, Florida's Prompt Payment Act.

- C. Services to be performed in accordance with this Agreement are subject to the annual appropriation of funds by the AUTHORITY. In its sole discretion, the AUTHORITY reserves the right to forego use of the CONTRACTOR for any project which may fall within the Scope of Services listed herein. In the event the AUTHORITY is not satisfied with the services provided by the CONTRACTOR, the AUTHORITY will hold any amounts due until such time as the CONTRACTOR has appropriately addressed the problem.

**SECTION 6.           TERMINATION.**

Either party may terminate this Agreement, with or without cause, given thirty (30) days written notice to the other party.

**SECTION 7.           PAYMENT WHEN SERVICES ARE TERMINATED.**

- A. In the event of termination of this Agreement by the AUTHORITY, and not due to the fault of the CONTRACTOR, the AUTHORITY shall compensate the CONTRACTOR for all services performed prior to the effective date of termination.
- B. In the event of termination of this Agreement due to the fault of the CONTRACTOR, or at the written request of the CONTRACTOR, the AUTHORITY shall compensate the CONTRACTOR for all services completed, prior to the effective date of termination, which have resulted in a usable product, or otherwise tangible benefit to the AUTHORITY. All such payments shall be subject to an off-set for any damages incurred by the AUTHORITY resulting from any delay occasioned by early termination. This provision shall in no way be construed as the sole remedy available to the AUTHORITY in the event of breach by the CONTRACTOR.

**SECTION 8.           INSURANCE.**

- A. The CONTRACTOR shall not commence any work in connection with an agreement until it has obtained all of the following types of insurance and has provided proof of same to the AUTHORITY, in the form of a certificate prior to the start of any work, nor shall the CONTRACTOR allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in Florida.
- B. The CONTRACTOR shall maintain the following types of insurance, with the respective minimum limits:
1. AUTOMOBILE PUBLIC LIABILITY: Combined Property Damage and Bodily Injury, One Million Dollars (\$1,000,000.00) – Any Auto;

2. GENERAL LIABILITY: One Million Dollars (\$1,000,000.00) each occurrence;
  3. DAMAGE to RENTED PREMISES – Fifty Thousand Dollars (\$50,000.00), Any single occurrence;
  4. MEDICAL EXPENSES: Five Thousand Dollars (\$5,000.00) – Any one person;
  5. PERSONAL & ADVERTISING INJURY: One Million Dollars (\$1,000,000.00);
  6. GENERAL AGGREGATE: One Million Dollars (\$1,000,000.00);
  7. PRODUCTS – COMPLETED OPERATIONS AGGREGATE: One Million Dollars (\$1,000,000.00)
  8. EXCESS/UMBRELLA COVERAGE: One Million Dollars (\$1,000,000.00); and,
  9. WORKERS' COMPENSATION: Employers' liability insurance which covers the statutory obligation for all persons engaged in the performance of the work required hereunder with limits not less than \$1,000,000.00 per occurrence. Evidence of qualified self-insurance status will suffice for this subsection. The CONTRACTOR understands and acknowledges that it shall be solely responsible for any and all medical and liability costs associated with an injury to itself and/or to its employees, sub-contractors, volunteers, and the like, including the costs to defend the AUTHORITY in the event of litigation against same.
- C. The CONTRACTOR shall name the "Osceola County Expressway Authority" as additional insured, to the extent of the services to be provided hereunder, on all required insurance policies, and provide the AUTHORITY with proof of same.
- D. The CONTRACTOR shall provide the AUTHORITY's Procurement Services with a Certificate of Insurance evidencing such coverage for the duration of this Agreement. Said Certificate of Insurance shall be dated and show:
1. The name of the insured CONTRACTOR,
  2. The specified job by name and job number,
  3. The name of the insurer,
  4. The number of the policy,
  5. The effective date,
  6. The termination date,
  7. A statement that the insurer will mail notice to the AUTHORITY at least thirty (30) days prior to any material changes in the provisions or cancellation of the policy.



8. The Certificate Holders Box must read as follows. Any other wording in the Certificate Holders Box shall not be acceptable:

<b>Osceola County Expressway Authority</b> <b>3 Courthouse Square, Second Floor</b> <b>Kissimmee, Florida 34741</b>
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- E. Receipt of certificates or other documentation of insurance or policies or copies of policies by the AUTHORITY, or by any of its representatives, which indicates less coverage than is required, does not constitute a waiver of the CONTRACTOR's obligation to fulfill the insurance requirements specified herein.
- F. The CONTRACTOR shall ensure that any sub-contractor(s), hired to perform any of the duties contained in the Scope of Services of this Agreement, maintain the same insurance requirements set forth herein. In addition, the CONTRACTOR shall maintain proof of same on file and made readily available upon request by the AUTHORITY.
- G. The AUTHORITY shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the CONTRACTOR and/or subcontractor providing such insurance.
- H. All insurance carriers shall have an AM Best Rating of at least A- and a size of VII or larger. The General Liability and Workers' Compensation policies shall have a waiver of subrogation in favor of Osceola County Expressway Authority. The liability policies shall be Primary/Non-Contributory.

**SECTION 9. AUTHORITY OBLIGATIONS.**

At the CONTRACTOR's request, the AUTHORITY agrees to provide, at no cost, all pertinent information known to be available to the AUTHORITY to assist the CONTRACTOR in providing and performing the required services.

**SECTION 10. ENTIRE AGREEMENT.**

This Agreement, including referenced exhibits and attachments hereto, constitutes the entire agreement between the parties and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect whatsoever on this Agreement.

**SECTION 11. APPLICABLE LAW, VENUE, JURY TRIAL.**

The laws of the State of Florida shall govern all aspects of this Agreement. In the event it

is necessary for either party to initiate legal action regarding this Agreement, venue shall lie in Osceola County, Florida. The parties hereby waive their right to trial by jury in any action, proceeding or claim, arising out of this Agreement, which may be brought by either of the parties hereto.

**SECTION 12. PUBLIC RECORDS.**

- A. **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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE FOLLOWING:**

Public Information Office  
1 Courthouse Square, Suite 3100  
Kissimmee, Florida 34741  
407-742-0100  
[BCCPIO@osceola.org](mailto:BCCPIO@osceola.org)

- B. The CONTRACTOR understands that by virtue of this Agreement all of its documents, records and materials of any kind, relating to the relationship created hereby, shall be open to the public for inspection in accordance with Florida law. If CONTRACTOR will act on behalf of the AUTHORITY, as provided under section 119.011(2), Florida Statutes, the CONTRACTOR, subject to the terms of section 287.058(1)(c), Florida Statutes, and any other applicable legal and equitable remedies, shall:
1. Keep and maintain public records required by the AUTHORITY to perform the service.
  2. Upon request from the AUTHORITY'S custodian of public records, provide the AUTHORITY 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 by Florida 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 AUTHORITY.

4. Upon completion of the contract, transfer, at no cost, to the AUTHORITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the AUTHORITY to perform the service. If the CONTRACTOR transfers all public records to the AUTHORITY upon completion of the contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirement. 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 AUTHORITY, upon request from the AUTHORITY'S custodian of public records, in a format that is compatible with the information technology systems of the county.
5. If the CONTRACTOR does not comply with a public records request, the AUTHORITY shall enforce the contract provisions in accordance with the contract.

#### **SECTION 13. INDEPENDENT CONTRACTOR.**

This Agreement does not create an employee/employer relationship between the parties. It is the parties' intention that the CONTRACTOR, its employees, sub-contractors, representatives, volunteers, and the like, will be an independent contractor and not an employee of the AUTHORITY for all purposes, including, but not limited to, the application of the following, as amended: the Fair Labor Standards Act minimum wage and overtime payments, the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State of Florida revenue and taxation laws, the State of Florida workers' compensation laws, the State of Florida unemployment insurance laws, and the Florida Retirement System benefits. The CONTRACTOR will retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONTRACTOR's activities and responsibilities hereunder.

#### **SECTION 14. APPLICABLE LICENSING.**

The CONTRACTOR, at its sole expense, shall obtain all required federal, state, and local licenses, occupational and otherwise, required to successfully provide the services set forth herein.

#### **SECTION 15. COMPLIANCE WITH ALL LAWS.**

The CONTRACTOR, at its sole expense, shall comply with all laws, ordinances, judicial decisions, orders, and regulations of federal, state, county, and municipal governments, as well as their respective departments, commissions, boards, and officers, which are in effect at the time of execution of this Agreement or are adopted at any time following the execution of this Agreement.

**SECTION 16. INDEMNIFICATION.**

The CONTRACTOR agrees to be liable for any and all damages, losses, and expenses incurred, by the AUTHORITY, caused by the acts and/or omissions of the CONTRACTOR, or any of its employees, agents, sub-contractors, representatives, volunteers, or the like. The CONTRACTOR agrees to indemnify, defend and hold the AUTHORITY harmless for any and all claims, suits, judgments or damages, losses and expenses, including but not limited to, court costs, expert witnesses, consultation services and attorney's fees, arising from any and all acts and/or omissions of the CONTRACTOR, or any of its employees, agents, sub-contractors, representatives, volunteers, or the like. Said indemnification, defense, and hold harmless actions shall not be limited by any insurance amounts required hereunder.

**SECTION 17. SOVEREIGN IMMUNITY**

The AUTHORITY expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section, article or paragraph of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of sovereign immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature, and the cap on the amount and liability of AUTHORITY for damages, attorney fees and costs, regardless of the number or nature of claims in tort, equity or contract, shall not exceed the dollar amount set by the Florida Legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the AUTHORITY which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

**SECTION 18. BANKRUPTCY OR INSOLVENCY.**

If the CONTRACTOR shall file a Petition in Bankruptcy, or if the same shall be adjudged bankrupt or insolvent by any Court, or if a receiver of the property of the CONTRACTOR shall be appointed in any proceeding brought by or against the CONTRACTOR, or if the CONTRACTOR shall make an assignment for the benefit of creditors, or proceedings shall be commenced on or against the CONTRACTOR's operations of the premises, the AUTHORITY may terminate this Agreement immediately notwithstanding the notice requirements of Section 6 hereof.

**SECTION 19. BINDING EFFECT.**

This Agreement shall be binding upon and ensure to the benefit of the parties hereto, their heirs, personal representatives, successors, and/or assigns.

**SECTION 20. ASSIGNMENT.**

This Agreement shall only be assignable by the CONTRACTOR upon the express written consent of the AUTHORITY.

**SECTION 21.**      **SEVERABILITY.**

All clauses found herein shall act independently of each other. If a clause is found to be illegal or unenforceable, it shall have no effect on any other provision of this Agreement. It is understood by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida or the United States, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

**SECTION 22.**      **WAIVER.**

Failure of the parties to insist upon strict performance of any of the covenants, terms, provisions, or conditions of this Agreement, or to exercise any right or option herein contained, shall not be construed as a waiver or a relinquishment for the future of any such covenant, term, provision, condition, or right of election, but same shall remain in full force and effect.

**SECTION 23.**      **NOTICE.**

The parties hereto agree and understand that written notice, mailed or delivered to the last known mailing address, shall constitute sufficient notice to the AUTHORITY and the CONTRACTOR. All notices required and/or made pursuant to this Agreement to be given to the AUTHORITY and the CONTRACTOR shall be in writing and given by way of the United States Postal Service, first class mail, postage prepaid, addressed to the following addresses of record:

AUTHORITY:      Osceola County Expressway Authority  
3 Courthouse Square, Second Floor  
Kissimmee, Florida 34741

CONTRACTOR:      Chapco Fence, LLC.  
4417 13<sup>th</sup> Street, Suite 513  
Saint Cloud, Florida 34769

**SECTION 24.**      **MODIFICATION.**

The covenants, terms, and provisions of this Agreement may be modified by way of a written instrument, mutually accepted by the parties hereto. In the event of a conflict between the covenants, terms, and/or provisions of this Agreement and any written Amendment(s) hereto, the provisions of the latest executed instrument shall take precedence.

**SECTION 25.**      **HEADINGS.**

All headings of the sections, exhibits, and attachments contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such sections, exhibits, and attachments.

**SECTION 26. ADMINISTRATIVE PROVISIONS.**

In the event the AUTHORITY issues a purchase order, memorandum, letter, or any other instrument addressing the services, work, and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that any such purchase order, memorandum, letter, or other instrument is for the AUTHORITY's internal purposes only, and any and all terms, provisions, and conditions contained therein, whether printed or written, shall in no way modify the covenants, terms, and provisions of this Agreement and shall have no force or effect thereon.

**SECTION 27. CONFLICT OF INTEREST.**

The CONTRACTOR warrants that the CONTRACTOR has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Agreement, and that the 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 Agreement. For the breach or violation of this Paragraph, the AUTHORITY shall have the right to terminate this Agreement immediately, without liability and without regard to the notice requirements of Section 6 hereof.

**SECTION 28. PUBLIC ENTITY CRIMES.**

As required by section 287.133, Florida Statutes, the CONTRACTOR warrants that it is not on the convicted contractor list for a public entity crime committed within the past thirty-six (36) months. The CONTRACTOR further warrants that it will neither utilize the services of, nor contract with, any supplier, sub-contractor, or contractor in connection with this Agreement for a period of thirty-six (36) months from the date of being placed on the convicted contractor list.

**SECTION 29. EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY)**

In accordance with State of Florida, Office of the Governor, Executive Order 11-116 (superseding Executive Order 11-02; Verification of Employment Status), in the event performance of this Agreement is or will be funded using state or federal funds, the CONTRACTOR must comply with the Employment Eligibility Verification Program ("E-Verify Program") developed by the federal government to verify the eligibility of individuals to work in the United States and 48 CFR 52.222-54 (as amended) is incorporated herein by reference. If applicable, in accordance with Subpart 22.18 of the Federal Acquisition Register, the CONTRACTOR must (1) enroll in the E-Verify Program, (2) use E-Verify to verify the employment eligibility of all new hires working in the United States, except if the CONTRACTOR is a state or local government, the CONTRACTOR may choose to verify only new hires assigned to the Agreement; (3) use E-Verify to verify the employment eligibility of all employees assigned

to the Agreement; and (4) include these requirement in certain subcontract, such as construction. Information on registration for and use of the E-Verify Program can be obtained via the internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

**SECTION 30. JOINT AUTHORSHIP.**

This Agreement shall be construed as resulting from joint negotiation and authorship. No part of this Agreement shall be construed as the product of any one of the parties hereto.

**SECTION 31. EQUAL OPPORTUNITY EMPLOYER.**

The CONTRACTOR is an Equal Opportunity Employer and will comply with all equal opportunity employment laws. The CONTRACTOR will further ensure that all sub-contractors it utilizes in providing the services required hereunder will comply with all equal opportunity employment laws.

**SECTION 32. AUDITING, RECORDS, AND INSPECTION.**

In the performance of this Agreement, the CONTRACTOR shall keep books, records, and accounts of all activities, related to the Agreement, in compliance with generally accepted accounting procedures. Throughout the term of this Agreement, books, records, and accounts related to the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the AUTHORITY, and shall be retained by the CONTRACTOR for a period of three years after termination or completion of the Agreement, or until the full County audit is complete, whichever comes first. The AUTHORITY shall retain the right to audit the books during the three-year retention period. All books, records, and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, chapter 119, Florida Statutes. The AUTHORITY also has the right to conduct an audit within sixty (60) days from the effective date of this Agreement to determine whether the CONTRACTOR has the ability to fulfill its contractual obligations to the satisfaction of the AUTHORITY. The AUTHORITY has the right to terminate this Agreement based upon its findings in this audit without regard to the termination provision set forth herein.

**SECTION 33. PROJECT MANAGERS.**

The AUTHORITY and the CONTRACTOR have identified individuals as Project Managers, listed below, who shall have the responsibility for managing the work performed under this Agreement. The person or individual identified by the CONTRACTOR to serve as its Project Manager for this Agreement, or any replacement thereof, is subject to prior written approval and acceptance of the AUTHORITY. If the AUTHORITY or CONTRACTOR replace their current Project Manager with another individual, an amendment to this agreement shall not be required. The AUTHORITY will notify the CONTRACTOR, in writing, if the current AUTHORITY Project Manager is replaced by another individual.

**A. The AUTHORITY Project Manager's contact information is as follows:**

Jeff Jones, Strategic Initiatives Director  
Osceola County Expressway Authority  
3 Courthouse Square, Suite 3119  
Kissimmee, Florida 34741  
Phone: (407) 742-2395  
Email: [jeff.jones@osccola.org](mailto:jeff.jones@osccola.org)

**B. The CONTRACTOR Project Manager's contact information is as follows:**

Jason, Junnila, Manager  
Chapco Fence, LLC.  
4417 13<sup>th</sup> Street, Suite 513  
Saint Cloud, Florida 34769  
Phone: 407-892-6447  
Email: [chapcofence@aol.com](mailto:chapcofence@aol.com)

**SECTION 34.**

**PUBLIC EMERGENCIES.**

It is hereby made a part of this Agreement that before, during, and after a public emergency, disaster, hurricane, tornado, flood, or other acts of God, Osceola County Expressway Authority shall require a "First Priority" for goods and services. It is vital and imperative that the health, safety, and welfare of the citizens of Osceola County Expressway Authority are protected from any emergency situation that threatens public health and safety as determined by the AUTHORITY. The CONTRACTOR agrees to rent/sell/lease all goods and services to the AUTHORITY or governmental entities on a "first priority" basis. The AUTHORITY expects to pay contractual prices for all products and/or services under this Agreement in the event of a disaster, emergency, hurricane, tornado, flood, or other acts of God. Should the CONTRACTOR provide the AUTHORITY with products and/or services not under this Agreement, the AUTHORITY expects to pay a fair and reasonable price for all products and/or services rendered or contracted in the event of a disaster, emergency, hurricane, tornado, flood, or other acts of God.

**SIGNATURE PAGE TO FOLLOW**



IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives,  
have executed this Agreement effective the \_\_\_\_ day of \_\_\_\_\_, 2018.

**OSCEOLA COUNTY EXPRESSWAY  
AUTHORITY**

By: \_\_\_\_\_  
Chairman/Designee

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

**CHAPCO FENCE, LLC.**

By: Jason Junnila

Print: Jason Junnila

Title: MBR

**STATE OF FLORIDA  
COUNTY OF OSCEOLA**

The foregoing instrument was executed before me this 4 day of April, 2018, by Jason Junnila as MBR of Chapco Fence, LLC, who personally swore or affirmed that he/she is authorized to execute this Agreement and thereby bind the Corporation, and who is personally known to me OR has produced \_\_\_\_\_ as identification.

Tabitha Mills  
NOTARY PUBLIC

(stamp)



**Exhibit "A"**  
**Scope of Services**

1. **Intent:** It is the intent of Osceola County, on behalf of the Osceola County Expressway Authority (OCX), to select a Contractor to repair, remove, dispose and replace aluminized chain-link mesh fencing and associated posts and other hardware along the Poinciana Parkway road right-of-way damaged during Hurricane Irma. The awarded Contractor will also be asked to provide and perform small dollar value repairs to existing aluminized chain-link mesh fencing, posts and associated hardware along Poinciana Parkway on an as-needed basis.
2. **Background:** Opened in 2016, the Poinciana Parkway is a limited access road that extends from the intersection of US 17-92 and Kinny Harmon Road in Polk County, crosses into Osceola County and ends at Cypress Parkway in Polk County. The road consists of a two lane bridge that crosses the Reedy Creek Mitigation Bank. There are interchanges located at Marigold Avenue, KOA Street and Cypress Parkway. The road also has two toll gantries, one located just north of the Marigold Avenue interchange; the second toll gantry is located north of the KOA Street interchange.
3. **Specifications:** The awarded Contractor shall provide for the removal, disposal and replacement of six (6) areas of damaged fencing along the Poinciana Parkway. The damaged areas will include repair and replacement, where noted, of aluminized chain-link mesh fencing and removal, disposal and replacement of damaged square poles with round 2" schedule 40 galvanized poles; work includes the repair and tightening of fencing as noted below. The aluminized fencing must match what is currently being used along the Poinciana Parkway; substitutions for aluminized chain-link mesh fencing will not be accepted.
  - (a) **Location 1** – North of wetland bridge, near the Polk County Line Sign, north side of Poinciana Parkway Right of Way:
    - 1) Remove, dispose and replace existing one hundred feet (100') of ten-foot (10') high damaged chain-link mesh fencing with aluminized chain-link mesh fencing, tighten as necessary, include all necessary hardware;
    - 2) Remove, dispose and replace, as required, existing damaged square post(s) with a two-inch (2") galvanized schedule 40 round post(s), including all necessary hardware; and,
    - 3) Adjust, and replace, as necessary, tension wire(s).
  - (b) **Location 2** - East of the wetland bridge, north side of Poinciana Parkway right of Way:
    - 1) Remove, dispose and replace existing damaged forty feet (40') of ten-foot (10') high damaged chain-link mesh fencing with aluminized chain-link mesh fencing, tighten as necessary, include all necessary hardware;
    - 2) Remove, dispose and replace, as required, existing damaged square post(s) with a two-inch (2") galvanized schedule 40 round post(s), including all necessary hardware; and,
    - 3) Adjust, and replace, as necessary, tension wire(s).
  - (c) **Location 3** - Approximately one-mile north of the Marigold Avenue on-ramp, east side of the Poinciana Parkway Right of Way:
    - 1) Remove, dispose and replace existing damaged fifty-five feet (55') of six-foot (6') high damaged chain-link mesh fencing with aluminized chain-link mesh fencing, tighten as necessary, include all necessary hardware;

- 2) Please note: there are two areas at Location 3 that are damaged and require removal, disposal and replacement: a forty-five (45') foot run and a ten-foot (10') run next to the "D-D" gate; each run separated by several feet and visible from the roadway.
  - 3) Remove, dispose and replace, as required, existing damaged square post(s) with a two-inch (2") galvanized schedule 40 round post(s), including all necessary hardware; and,
  - 4) Adjust, and replace, as necessary, tension wire(s).
  - (d) **Location 4** - North of the Marigold Avenue Automated Vehicle Identification Station (Electronic Toll Reader), east side of Poinciana Parkway Right of Way – refer to:
    - 1) Remove, dispose and replace existing damaged fifteen feet (15') of six-foot (6') high aluminized chain-link mesh fence;
    - 2) damaged chain-link mesh fencing with aluminized chain-link mesh fencing, tighten as necessary, include all necessary hardware;
    - 3) Remove, dispose and replace, as required, existing damaged square post(s) with a two-inch (2") galvanized schedule 40 round post(s), including all necessary hardware; and,
    - 4) Adjust, and replace, as necessary, tension wire(s).
  - (e) **Location 5** - North of the Marigold Avenue on-ramp, south of the Automated Vehicle Identification Station (Electronic Toll Reader), east side of Poinciana Parkway Right of Way:
    - 1) Remove, dispose and replace existing damaged ten feet (10') of six-foot (6') high damaged chain-link mesh fencing with aluminized chain-link mesh fencing, tighten as necessary, include all necessary hardware;
    - 2) Remove, dispose and replace, as required, existing damaged square post(s) with a two-inch (2") galvanized schedule 40 round post(s), including all necessary hardware; and,
    - 3) Adjust, and replace, as necessary, tension wire(s).
  - (f) **Location 6** - One-mile north of the KOA Street on-ramp, south of the Marigold overpass, east side of Poinciana Parkway Right of Way:
    - 1) Remove, dispose and replace existing damaged twenty-five feet (25') of six-foot (6') high damaged chain-link mesh fencing with aluminized chain-link mesh fencing, tighten as necessary, include all necessary hardware;
    - 2) Remove, dispose and replace, as required, existing damaged square post(s) with a two-inch (2") galvanized schedule 40 round post(s), including all necessary hardware; and,
    - 3) Adjust, and replace, as necessary, tension wire(s).
- 4. 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards:** The awarded Contractor shall comply with the Federal requirements per 2 Code of Federal Regulations (C.F.R) Part 200 Super Circular, titled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", effective December 26, 2014, and any subsequent revisions and updates to 2 C.F.R. Part 200 "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards".
- 5. Equal Opportunity Employer:**
- (a) The awarded Contractor is an Equal Opportunity Employer and will comply with all equal opportunity employment laws. The awarded Contractor will further ensure that all

subcontractors it utilizes in providing the services required hereunder will comply with all equal opportunity employment laws.

(b) During the performance of this contract, the awarded Contractor agrees as follows:

- 1) The awarded Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The awarded Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The awarded Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 2) The awarded Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the successful Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- 3) The awarded Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the successful Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) The awarded Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, amending successive Executive Orders as well as applicable Federal regulations including the rules, regulations, and relevant orders of the Secretary of Labor.
- 5) The awarded Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, successive Executive Orders as well as applicable Federal regulations including the rules, regulations, and relevant orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 6) In the event of the successful Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the awarded Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, successive Executive Orders as well as applicable Federal regulations including the rules, regulations, and relevant orders of the Secretary of Labor, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 7) The awarded Contractor will include the portion of the sentence immediately preceding paragraph 1 and the provisions of paragraphs 1 through 7 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965,

successive Executive Orders as well as applicable Federal regulations including the rules, regulations, and relevant orders of the Secretary of Labor, so that such provisions will be binding upon each subcontractor or vendor. The awarded Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a awarded Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the awarded Contractor may request the United States to enter into such litigation to protect the interests of the United States.

6. **Auditing, Records and Inspections:** In the performance of this Agreement, the awarded Contractor shall keep books, records, and accounts of all activities, related to the Agreement, in compliance with generally accepted accounting procedures. Throughout the term of this Agreement, books, documents, papers, records, and accounts related and directly pertinent to the performance of this Agreement shall be open to inspection by an authorized representative of the COUNTY, the FEMA Administrator, the Federal Grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, for the purposes of making an audit, examination, excerpts and transcriptions, and shall be retained by the awarded Contractor for five (5) years after FEMA has closed out an Emergency Event with the Florida Division of Emergency Management. The awarded Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The awarded Contractor also agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under this contract. All books, records, and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, chapter 119, Florida Statutes. The COUNTY also has the right to conduct an audit within sixty (60) days from the effective date of this Agreement to determine whether the awarded Contractor has the ability to fulfill its contractual obligations to the satisfaction of the COUNTY. The COUNTY has the right to terminate this Agreement based upon its findings in this audit without regard to the termination provision set forth herein.
7. **Compliance of Reporting Requirements:** The awarded Contractor hereby acknowledges that the COUNTY has the responsibility for providing required reporting, including financial information, program progress, and real property status, in accordance with 2 C.F.R. § 200.327, 2 C.F.R. § 200.328, and 2 C.F.R. § 200.329 on frequencies established by the Federal awarding agency.
8. **Retention of Records.**
  - (a) The COUNTY shall retain all records related to this project for three years from the date of final expenditure report for projects funded by the FEMA Public Assistance program.
  - (b) The awarded Contractor shall retain all records related to this agreement for three (3) years after termination of this Contract.
9. **Clean Air Act and The Federal Water Pollution Control Act.**
  - (a) The awarded Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal

Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

- (b) The awarded Contractor agrees to report each violation to the COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to the COUNTY, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (c) The awarded Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

**10. Suspension and Debarment.**

- (a) This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such the awarded Contractor is required to verify that none of the successful Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (b) The awarded Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (c) This certification is a material representation of fact relied upon by (insert name of sub-recipient). If it is later determined that the awarded Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of sub-recipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (d) The Contractor agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**11. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (As Amended):** Successful Contractor s who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

**12. Procurement of Recovered Materials:**

- (a) In the performance of this contract, the awarded Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired:
  - 1) Competitively within a timeframe providing for compliance with the contract performance schedule;
  - 2) Meeting contract performance requirements; or

- 3) At a reasonable price.
- (b) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.
- 13. Department of Homeland Security (DHS) Seal, Logo and Flags:** The awarded Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific pre-approval from the appropriate Federal agency.
- 14. Compliance with Federal Law, Regulations and Executive Orders:** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The awarded Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- 15. No Obligation by The Federal Government:** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the COUNTY, successful Contractor, or any other party pertaining to any matter resulting from the contract.
- 16. Fraud and False or Fraudulent or Related Acts:** The awarded Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the successful Contractor's actions pertaining to this contract.
- 17. Compliance with the Copeland "ANTI-KICKBACK" Act.**
- (a) The awarded Contractor hereby agrees to comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by the Department of Labor regulations (29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").
  - (b) Each awarded Contractor or subcontractor are hereby prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
  - (c) The awarded Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
  - (d) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a CONTRACTOR and subcontractor as provided in 29 C.F.R. § 5.12.
  - (e) Osceola County shall report all suspected or reported violations to the appropriate Federal agency in accordance with 2 C.F.R. Part 200, Appendix II, ¶ D
- 18. Warranty Work:** Contractor s are asked to provide information regarding the warranty period of the equipment being provided and service being performed.

19. **Notice to Proceed:** work may be authorized without the issuance of a valid purchase order by Osceola County. All projects, structures, amenities may be approved by Osceola County and must meet Federal, State and Local codes.

20. **Shipment/Delivery Costs:** All costs for shipping and delivery are to be included in the Contractor's Unit Price. The County shall not pay for any storage charges, Cash on Delivery (C.O.D.) shipments, or packaging or drayage charges. The awarded Contractor shall be responsible for all risk of loss, any damage and/or stolen materials and equipment while in transit to the County's delivery location.

**21. Inspection / Replacement:**

- (a) The COUNTY shall inspect the shipment to determine the condition of the products delivered and confirm receipt of the required quantity, and shall notify the awarded Contractor of any irregularities, i.e. damaged or missing items. The awarded Contractor shall guarantee replacement of any damaged, missing or improperly manufactured items at no additional cost to the COUNTY.
- (b) The awarded Contractor shall make all arrangements to retrieve damaged or improperly manufactured items at no cost to the COUNTY, within three (3) days of notification by the County's Project Manager.
- (c) The awarded Contractor shall schedule replacement(s) as soon as possible with regard to manufacturer prescribed lead-times/availability, and shall provide estimated delivery date and delivery updates as prescribed in this solicitation.

22. **Obligations of the Successful Contractor :** It is understood that the awarded Contractor shall provide and pay for all labor, tools, materials, permits, equipment, transportation, supervision, and any and all other items or services, of any type whatsoever, which are necessary to fully complete and deliver the services requested by the County, and shall not have the authority to create, or cause to be filed, any liens for labor and/or materials on, or against, the County, or any property owned by the County. Such lien, attachment, or encumbrance, until it is removed, shall preclude any and all claims or demands for any payment expected by virtue of this project. The awarded Contractor will ensure that all of its employees, agents, sub-contractors, representatives, volunteers, and the like, fully comply with all of the terms and conditions set herein, when providing services for the County in accordance herewith. The awarded Contractor shall be solely responsible for the means, methods, techniques, sequences, safety programs, and procedures necessary to properly and fully complete the work set forth in the Scope of Services. The awarded Contractor shall use appropriate tools and/or equipment which are in good repair and proper working order, so as to enable the awarded Contractor to complete the services required hereby.




**CONSENT AGENDA ITEM  
#23**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 24, 2020

SUBJECT: Approval of Contract Award to Arazoza Brothers Corp. for SR 408 Landscape Improvements from Good Homes Road to Hiawassee Road  
Project 408-828, Contract No. 001641

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An Invitation to Bid for the referenced project was advertised on December 8, 2019. Responses to the invitation were received from three (3) contractors by the January 16, 2020 deadline.

Bid results were as follows:

<u>Bidder</u>	<u>Bid Amount</u>
1. Arazoza Brothers Corp.	\$ 843,850.25
2. LaFleur Nurseries & Garden Center, LLC	\$ 890,378.00
3. Groundtek of Central Florida	\$1,125,128.00

The Engineer's estimate for this project is \$955,250.74.

The Engineer of Record for Project 408-828 has reviewed the low bid submitted by Arazoza Brothers Corp. and determined that the low bid unit prices are not unbalanced.

This project consists of providing all labor, materials, equipment, and incidentals necessary for landscape improvements on SR 408 from Good Homes Road to Hiawassee Road.

The Procurement Department has evaluated the bids and has determined the bid from Arazoza Brothers Corp. to be responsible and responsive to the bidding requirements. Board award of the contract to Arazoza Brothers Corp. in the amount of \$843,850.25 is recommended.

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

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



# **CONTRACT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
ARAZOZA BROTHERS CORPORATION**

**SR 408 LANDSCAPE IMPROVEMENTS FROM GOOD  
HOMES ROAD TO HIAWASSEE**

**PROJECT 408-828  
CONTRACT NO. 001641**

**CONTRACT DATE: FEBRUARY 13, 2020  
CONTRACT AMOUNT: \$843,850.25**

**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, ADDENDA,  
PUBLIC CONSTRUCTION BOND AND FORMS**

**FOR**

**SR 408 LANDSCAPE IMPROVEMENTS FROM GOOD HOMES ROAD TO  
HIAWASSEE**

**PROJECT 408-828  
CONTRACT NO. 001641**

**FEBRUARY 2020**

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GS	GENERAL SPECIFICATIONS	GS-1 to GS-133
	Attachment A	ATT-1 to ATT-9
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P	PROPOSAL	P-1 to P-11
VR	VEHICLE REGISTRATION FORM	VR-1 to VR-2
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**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

Plans

## CONTRACT

This Contract No. 001641 (the "Contract"), made this 13<sup>th</sup> day of February 2020, between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, hereinafter called CFX and Arazoza Brothers Corporation, of 15901 SW 242 Street, Homestead, FL. 33031, 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 408-828, SR 408 Landscape Improvements from Good Homes Road to Hiawassee Road, 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 \$843,850.25. This Contract was awarded by the Governing Board of CFX at its meeting on February 13, 2020.

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: \_\_\_\_\_

ARAZOZA BROTHERS CORPORATION

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

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

\_\_\_\_\_  
Title

ATTEST: \_\_\_\_\_ (Seal)

DATE: \_\_\_\_\_

Approved as to form and execution, only.

General Counsel for CFX

\_\_\_\_\_

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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, 2019 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.

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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 =  $\text{Monthly Rate} / 176 \times \text{Adjustment Factors} \times 100\%$ .

(2) Allowable Hourly Operating Cost =  $\text{Hourly Operating Cost} \times 100\%$ .

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

(4) Standby Rate = Allowable Hourly Equipment Rate  $\times 50\%$ .

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 decrees 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 VII, as defined by A.M. Best and Company's Key Rating Guide, subject to CFX approval. 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:

<b>Contract Amount</b>	<b>Workers' Comp/ Employer's Liability</b>	<b>General Liability (per occurrence/ aggregate)</b>	<b>Automobile Liability</b>
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.

<b>Contract Amount</b>	<b>Minimum Limit</b>	<b>Maximum Deductible</b>
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](mailto: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 RRBBCOE ownership cost plus 100% of the RRBB and/or RRBBCOE 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 RRBBCOE 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 RRBBCOE 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 50	10%
50 to 100	5% of value of Work completed exceeding 50% 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 of 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  
#24**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 24, 2020

SUBJECT: Approval of Cintas Corporate Services, Inc. and EmployBridge Holding Company (RemX) as Subcontractors for the E-PASS and Violation Enforcement Operations Contract with Egis Projects, Inc.  
Contract No. 001105

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Egis Projects, Inc., CFX's E-PASS and Violation Enforcement Operations Contractor, has requested approval to use Cintas Corporate Services, Inc. and EmployBridge Holding Company (RemX) to provide staffing services. The cost is expected to exceed the \$25,000.00 threshold established by the Procurement Policy for subconsultants not disclosed by Egis Projects, Inc. when its contract with CFX was originally awarded.

Board approval of Cintas Corporate Services, Inc. and EmployBridge Holding Company (RemX) as subcontractors to Egis Projects, Inc. is requested.

Reviewed by:



David Wynne  
Director of Toll Operations



**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**REQUEST FOR AUTHORIZATION TO SUBLET SERVICES**

Consultant: Egis Projects, Inc. Date: 01/20/2020

CFX Contract Name: E-PASS and Violation Enforcement Operations CFX Contract No.: 001105

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: Cintas Corporation

Address: 4392 SW 34<sup>th</sup> Street, Orlando, FL 32811

Phone No.: 407-423-4222

Federal Employee ID No.: 20-4877572

Description of Services to Be Sublet: Staffing services

Estimated Beginning Date of Sublet Services: 12/01/2019

Estimated Completion Date of Sublet Services: 07/31/2020

Estimated Value of Sublet Services\*: \$ 300,000

\*(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]  
(Signature of Consultant Representative)

Program Director

Title

Recommended by: [Signature]  
(Signature of Appropriate CFX Director/Manager)

Date: 1-10-20

Approved by: [Signature]  
(Signature of Appropriate Chief)

Date: 1/10/20

**Attach Subconsultant's Certificate of Insurance to this Request.**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

REQUEST FOR AUTHORIZATION TO SUBLET SERVICES

Consultant: Egis Projects, Inc. Date: 01/16/2020

CFX Contract Name: E-PASS and Violation Enforcement Operations CFX Contract No.: 001105

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: EmployBridge Holding Company ( RemX)

Address: PO BOX 91010, CHICAGO, IL 60680

Phone No.: 407-423-4222

Federal Employee ID No.: 27-2269356

Description of Services to Be Sublet: Staffing services

Estimated Beginning Date of Sublet Services: 12/01/2019

Estimated Completion Date of Sublet Services: 07/31/2020

Estimated Value of Sublet Services\*: \$ 300,000

\*(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]  
(Signature of Consultant Representative)

Program Director

Title

Recommended by: [Signature]  
(Signature of Appropriate CFX Director/Manager)

Date: 1-16-20

Approved by: [Signature]  
(Signature of Appropriate Chief)

Date: 1/16/20

Attach Subconsultant's Certificate of Insurance to this Request.




**CONSENT AGENDA ITEM  
#25**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: February 4, 2020

SUBJECT: Authorization to Execute a Single Source Contract with Kyra Solutions, Inc. for  
Image Processing Solution  
Contract No. 001660

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Board authorization is requested to execute an agreement with Kyra Solutions, Inc. in the amount of \$1,500,000.00 for image review services. This will be a single source procurement.

Kyra Solutions, Inc. will provide additional services necessary for image processing due to the increase in the number of Pay By Plate images needing to be reviewed,


This amount is budgeted in the OM&A Budget.

Reviewed by:   
Jim Greer  
Chief of Technology & Operations

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: Aneth Williams  
Director of Procurement

FROM: Jim Greer  
Chief of Technology & Operations 

DATE: October 2, 2019

SUBJECT: Single Source Justification for Kyra Solutions for Image Processing Solution

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Approval is requested to designate Kyra Solutions a single source vendor to provide image review services.

CFX requires immediate assistance clearing the number of outstanding Pay by Plate images pending in our Violation Enforcement System. Delay in clearing these images can cause the transactions to be rejected by interoperable partners resulting in reduced revenue to CFX.

For this reason and based on Kyra's experience we believe that Kyra is uniquely and particularly qualified to provide this service in the most expeditious timeframe.

Approved: \_\_\_\_\_

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



10/2/19

**CONTRACT**  
**CONTRACT NO. 001660**

This Contract No. 001660 (the "Contract" as defined herein below), is made this 13th day of February 2020, between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, hereinafter called "CFX" and KYRA SOLUTIONS, INC., whose principal place of business is 4454 Florida National Drive, Lakeland, FL 33813, 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 Authority 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 Image Processing Solution and other services as may be assigned to the CONTRACTOR by CFX; and,

**WHEREAS**, having verified the CONTRACTOR's unique qualifications, CFX has determined that it is in its best interest to "single source" the services to CONTRACTOR;

**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 image review services and other services 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,
- 1.2 The Scope of Services,

(collectively, the "Contract").

## **2. TERM AND NOTICE**

The initial term of the Contract will be one year with renewal options. 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 30 days prior to the expiration of the initial Contract Term and each renewal, if any.

CFX shall have the right to terminate or suspend the Contract, in whole or in part, at any time with 15 days notice for convenience or 30 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, 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 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. Upon declaration of default and termination of the Contract, CFX may cease making payments to CONTRACTOR and CFX will not be obligated to make any further payments except for the completed work or portion of the completed work. 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. If such circumstances, CONTRACTOR will provide revised project schedule and corrective action plan acceptable to CFX. 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 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 rate will be \$0.05 per transaction up to Contract amount of \$1,500,000.00. Kyra will utilize Global Agility Solution as a subcontractor on this project.

### **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 subcontractors. 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 program, CONTRACTOR is encouraged to grant small businesses the maximum opportunity to participate in the provision of the Services.

## **6. CONTRACTOR RESPONSIBILITY**

6.1 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 areas upon which services are performed;

6.2 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 Standard Operating Procedures, 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.

6.3 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.

6.4 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 theft or conversion of collected funds by employees of CONTRACTOR, or arising out of the negligence or willful misconduct of CONTRACTOR;



6.5 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.

6.6 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 for CFX's toll operations and management services.

## **7. INDEMNITY**

To the extent caused by the CONTRACTOR, 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 or misconduct of the CONTRACTOR (its subcontractors, officers, agents or employees), including without limitation any intentional 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:

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

7.2 CFX's use or possession of the CONTRACTOR Property or CONTRACTOR Intellectual Property (as defined herein below),

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

7.4 CONTRACTOR's violation of the confidentiality and security requirements associated with CFX Property and CFX Intellectual Property (as defined herein below),

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

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

7.7 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. Notwithstanding the foregoing, CONTRACTOR's total liability for a breach of contract or warranty shall not exceed the value of this Contract. 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.

## **8. 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:

8.1 Keep and maintain public records required by the public agency to perform the service.

8.2 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.

8.3 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.

8.4 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 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.

## **9. 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.

## **10. OWNERSHIP OF MATERIALS AND INTELLECTUAL PROPERTY RIGHTS**

The term "CFX Software/Hardware" refers to all software, hardware, programs, procedures, that are owned by CFX.

CFX is and shall be and remain the sole owner of all rights, title, and interest in, to, and associated with all plans, documents, CFX Software/Hardware, 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 CFX 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.

CONTRACTOR, its employees, agents, officers, and subcontractors may not use CFX Property or CFX Intellectual Property (defined broadly to include CFX's trademarks,

service marks, copyrights, patents, trade secrets, and publicity) 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.

CFX, its employees, agents, officers, and subcontractors may not use CONTRACTOR Property or CONTRACTOR Intellectual Property in any way, other than under the terms of this Contract, without the prior written consent of CONTRACTOR, which may be granted or denied in CONTRACTOR's sole discretion.

All images, data, results and materials generated under the terms of this Contract, and by way of CONTRACTOR Property and CONTRACTOR Intellectual Property, is the sole Property of CFX (collectively, the "CFX Property and CFX Intellectual Property").

For CONTRACTOR Property and 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:

10.1 CONTRACTOR was and is the sole owner of all right, title and interest in and to all CONTRACTOR Property and CONTRACTOR Intellectual Property; OR

10.2 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 utilize the CONTRACTOR Property and CONTRACTOR Intellectual Property 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 for the term(s) of this Contract; AND

10.3 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 use of the CONTRACTOR Property and CONTRACTOR Intellectual Property during the term(s) of this Contract; AND

10.4 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 CFX 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 for ten years after the term of this Contract, unless required by law or court order.

#### **11. PERMITS, LICENSES, ETC.**

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

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

CONTRACTOR warrants that it has not employed or retained any entity or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Contract, and that CONTRACTOR has not paid or agreed to pay any person, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Contract. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

CONTRACTOR acknowledges that 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.

### **13. NONDISCRIMINATION**

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

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

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.

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 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 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.

### **15. DISPUTES**

All services shall be performed by the CONTRACTOR to the reasonable satisfaction of CFX 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.

### **16. 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.

## **17. GOVERNING LAW**

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

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

## **18. 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.

## **19. 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.

## **22. 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.

## **23. 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:

23.1 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

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

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

23.4 Obligations upon expiration or termination of the Contract; and

23.5 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.

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

24.1 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

24.2 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.



## **25. 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 subcontractors 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.

## **26. ASSIGNMENT**

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

## **27. 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.

## **28. 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.

## **29. COMPANIES PURSUANT TO SECTION 287.135 AND 215.473**

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

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

## **30. 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: General Counsel

CENTRAL FLORIDA EXPRESSWAY (CFX)  
4974 ORL Tower Road  
Orlando, Florida 32807  
ATTN: Chief of Technology & Operations

CONTRACTOR: KYRA SOLUTIONS, INC.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**31. FORCE MAJEURE**

Neither party shall be liable for any loss or delay resulting from any force majeure event, including acts of God, fire, natural disaster, terrorism, labor stoppage, war or military hostilities, or in ability of carriers to make scheduled deliveries, and any payment or delivery date shall be extended to the extent of any delay resulting from any force majeure event.

**32. INSPECTOR GENERAL.**

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).

**33. PUBLIC ENTITY CRIME INFORMATION.**

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.”

**34. ANTI-DISCRIMINATION STATEMENT.**

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.”

**35. EXHIBITS**

This Contract references the exhibits listed below.

Exhibit “A” Scope of Services

[ SIGNATURES TO FOLLOW ]

IN WITNESS WHEREOF, the authorized signatures named below have caused this instrument to be signed by their respective fully authorized officials, as of the day and year first written above.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

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

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

CONTRACTOR

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

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

\_\_\_\_\_  
Title

ATTEST: \_\_\_\_\_ (Seal)

DATE: \_\_\_\_\_

Approved as to form and execution, only.

\_\_\_\_\_  
General Counsel for CFX

## EXHIBIT "A"

Dear Jim,

Thank you for giving Kyra Solutions, Inc. the opportunity to submit to you our task order for the Image Processing Solution backlog at the Central Florida Expressway Authority (CFX). The proposal that follows will discuss and describe our approach and commitment to helping CFX improve its timely processing for image-based transactions from legacy toll plazas.

We understand that CFX is looking for additional help for image review processing to reduce backlog from legacy plazas. Current backlog is about 13M transactions.

This approach will help CFX reduce its backlog and minimize potentially lost revenue.

Thank you,

*Devang Patel*

Devang Patel, PMP

### Highlights of the implementation:

Due to urgency of the request, Kyra has formed the partnership with Manual Image Review Operator to ramp up the production. The partner firm has been in the image review business for several years and manages multiple agencies' manual image review tasks. Manual image review will be performed offshore. All manual image reviews will be performed through Kyra's Manual Image Review Application (MIRA), that has been in production at THEA for 2+ years and providing very high accuracy results.

Kyra will help setup interface with CFX, for receiving and sending images, transactions and results.

Kyra will process images through OCR and / or Manual Image review (double-blind review) and provide results to CFX in a predetermined format.

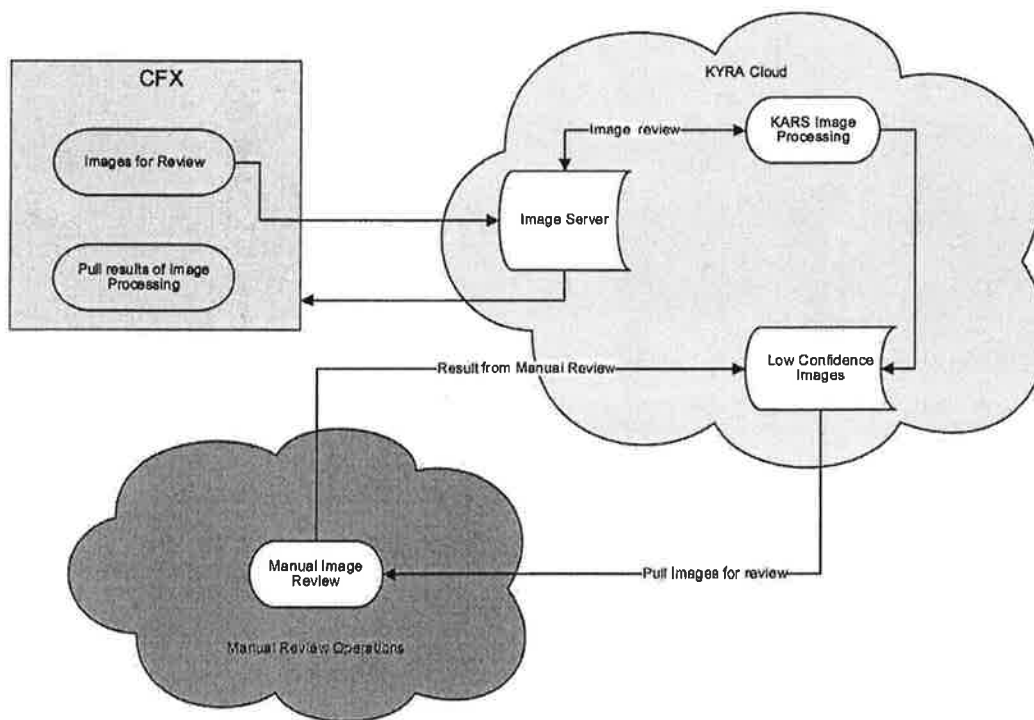
By adding Kyra's OCR (KARS), CFX can increase the automation rate for legacy plaza transactions and reduce workload on manual image review operations. Kyra has successfully increased 20%+ automation rate at THEA while maintaining a high accuracy rate.

### CFX's responsibilities:

CFX will consume the results provided by Kyra in its database.

CFX will flag the transactions that are being sent to Kyra for processing to avoid duplication of work.

## High-level approach




**CONSENT AGENDA ITEM  
#26**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 28, 2020

SUBJECT: Authorization to Execute Cooperative Purchase Agreement with Tews Consulting, Inc. for Information Technology Staff Augmentation Services Contract No. 001656

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Board authorization is requested to execute a three-year agreement with Tews Consulting, Inc. in a not-to-exceed amount of \$2,000,000.00 to provide technical services on an as-needed basis for CFX's Information Technology (IT) department. This contract will provide a pool of personnel from which IT can draw when specialized technical support is required.

This is a cooperative purchase agreement based on a contract between Tews Consulting, Inc. and the State of Florida Department of Management Services (DMS) for the same services which will allow CFX to take advantage of the favorable man-hour rates already negotiated by the State.

This contract is a component of projects budgeted in the Five-Year Work Plan and the OM&A Budget.

Reviewed by: 

Rafael Millan  
Director of IT 



# CONTRACT

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
TEWS CONSULTING, INC.

INFORMATION TECHNOLOGY STAFF  
AUGMENTATION SERVICES

CONTRACT NO.001656

CONTRACT DATE: February 13, 2020  
CONTRACT AMOUNT: \$2,000,000.00

CENTRAL FLORIDA EXPRESSWAY  
AUTHORITY

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
COOPERATIVE PURCHASE AGREEMENT  
INFORMATION TECHNOLOGY STAFF  
AUGMENTATION SERVICES  
CONTRACT NO. 001656**

This Contract is made this 13th day of February 2020, between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, hereinafter called CFX and TEWS CONSULTING, INC., 1000 Legion Place, Suite 730, Orlando, FL 32801, 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 the Central Florida Expressway 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 information technology staff augmentation services; and,

**WHEREAS**, on or about March 1, 2017, the CONTRACTOR entered an agreement with State of Florida Department of Management services (DMS) under its Contract No. 80101507-SA-15-01 to provide substantially the same services as required by CFX; and,

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

**WHEREAS**, the CONTRACTOR agrees to provide the services under the same terms, conditions and rates (and where there is not a rate assigned CFX will negotiate a rate with the CONTRACTOR before assigning personnel) as included in its contract with the State, a copy of which is attached to this Contract, and such additional terms and conditions as detailed below;

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

## **1. SERVICES TO BE PROVIDED**

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

## **2. CONTRACT TERM AND AMOUNT**

The term of the Contract will be three (3) years beginning February 13, 2020. There shall be two (2) renewal options of one 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 60 days prior to the expiration of the initial three-year Contract terms. The Contract amount shall not exceed \$2,000,000.00 during the term.

## **3. COMPENSATION FOR SERVICES**

Compensation shall be in accordance with the pricing sheet included in the CONTRACTOR's contract with DMS.

## **4. CONTRACTOR INSURANCE**

CONTRACTOR shall carry and keep in force during the period of this Contract, the required amount of coverage as stated in the CONTRACTOR's contract with DMS with additional coverage as required below. Compliance with these insurance requirements shall not relieve or limit the CONTRACTOR's liabilities and obligations under this Contract. 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. Additional coverage shall be as follows:

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

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

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

Such policy or policies shall be carried without deductible, without co-insurance, and shall (a) include CFX, and such other parties CFX shall designate, as additional insureds, (b) be primary insurance, (c) include within the terms of the policy, or by contractual liability endorsement, coverage insuring the CONTRACTOR's indemnity obligations, (d) provide that the policy may not be canceled or 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. 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.

## **5. CONTRACTOR RESPONSIBILITY**

CONTRACTOR shall take all reasonable precautions in the performance of the services and shall cause its employees, agents and subcontractors to do the same.

5.1 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 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

5.2 CONTRACTOR shall be responsible for all damage and loss that may occur with respect to any and all property 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.

5.3 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.

## **6. INDEMNITY**

The CONTRACTOR shall indemnify, defend and hold harmless CFX and all of its respective officers, agents, CONTRACTOR's or employees from all suits, actions, claims, demands, costs as defined elsewhere herein, expenses (including reasonable attorneys' fees as defined elsewhere herein), judgments, liabilities of any nature whatsoever (collectively, "Claims") arising out of, because of, or due to breach of the Contract by the CONTRACTOR (its subcontractors, officers, agents or employees) or due to any negligent or intentional act or occurrence of omission or commission of the CONTRACTOR (its subcontractors, officers, agents or employees). CONTRACTOR will not be liable for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of 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.

## **7. 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. 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

Central Florida Expressway Authority  
4974 ORL Tower Road  
Orlando, Florida 32807  
(407) 690-5000  
[PublicRecords@CFXWay.com](mailto:PublicRecords@CFXWay.com)

## **8. MEDIA RELEASES**

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

## **9. 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.

#### **10. CONFLICT OF INTEREST AND STANDARDS OF CONDUCT**

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. 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.

#### **11. 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.

#### **12. SUBLETTING AND ASSIGNMENT**

CONTRACTOR shall not sublet, sell, transfer, assign, delegate, subcontract, or otherwise dispose of this Contract or any portion thereof, or of the CONTRACTOR's right, title, or interest therein without the written consent of 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.

#### **13. DISPUTES AND TERMINATION**

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.

CFX shall have the right to terminate or suspend the Contract, in whole or in part, at any time, for any reason, with 7 days notice for convenience or 10 days notice for cause.

#### **14. 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.

#### **15. GOVERNING LAW**

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

#### **16. 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.

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.

#### **17. 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. 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, 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.

**18. 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:

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

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

**19. OBLIGATIONS UPON EXPIRATION OR TERMINATION OF CONTRACT**

CONTRACTOR shall initiate settlement of all outstanding liabilities and claims arising out of the Contract and any subcontracts or vending agreements to be canceled. All settlements shall be subject to the approval of CFX. This Contract was awarded by the CFX Board of Directors at its meeting on February 13, 2020.

IN WITNESS WHEREOF, the authorized signatures named below have caused this instrument to be signed by their respective duly authorized officials, as of the day and year first above written.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

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

TEWS CONSULTING, INC.

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

Approved as to form and execution, only.

\_\_\_\_\_  
CFX General Counsel



**CENTRAL FLORIDA EXPRESSWAY  
AUTHORITY INFORMATION TECHNOLOGY  
STAFF AUGUMENTATION SERVICES  
CONTRACT NO. 001656**

**ACKNOWLEDGMENT OF STANDARD OF CONDUCT  
AND CODE OF ETHICS**

The undersigned covenants and agrees that it and its employees shall be bound by the standards of conduct provided in Florida Statutes Chapter 112.313 and Sections 348.753, and 104.31 as it relates to work performed under the Contract, which standards will by reference be made a part of the Contract as though set forth in full. The undersigned agrees to incorporate the provisions of this requirement in any subcontract into which it might enter with reference to the work performed or services provided.

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

TEWS CONSULTING, INC.

By: \_\_\_\_\_

Signature

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

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



**Information Technology Staff Augmentation Services**

**State Term Contract No. 80101507-SA-15-1**

**Between Florida Department of Management Services  
and  
Tews Consulting**

This Contract is between the State of Florida, Department of Management Services (Department), Division of State Purchasing (Division), with offices at 4050 Esplanade Way, Tallahassee, FL 32399-0950, and Tews Consulting (Contractor) with offices at 1000 Legion Place Suite 730, Orlando, FL 32801

The Contractor submitted a Responsive Proposal to the Department's Request for Proposal (RFP) 14-80101507-SA-B for Information Technology Staff Augmentation Services. After evaluation of proposals, the Department determined that the Contractor's proposal is among those that are the most advantageous to the State of Florida and has decided to enter into this Contract.

Accordingly, the Department and Contractor agree as follows:

**1. Contract Term**

The term of this Contract for information technology staff augmentation services will be for two (2) years with no renewals. The Contract Term will begin on March 1, 2017, or the date of the last signature on this Contract, whichever is later.

**2. Contract**

As used in this document, the term "Contract" (whether or not capitalized) shall, unless the context requires otherwise, be considered to be references to this Contract.

This Contract together with RFP 14-801201507, incorporated by reference, sets forth the entire understanding of the parties and supersedes all prior agreements, whether written or oral, with respect to such subject matter.

The following exhibits and attachments are incorporated in their entirety into, and form part of, this Contract:

- a) Exhibit A: Contract Conditions, General and Special
- b) Exhibit B: Resume Self-Certification Form
- c) Exhibit C: Contractor Selection Justification Form
- d) Exhibit D: Contractor Performance Survey
- e) Attachment 1: Contractor's submitted Staffing Resource Management Plan from RFP 14-80101507-SA-B
- f) Attachment 2: Contractor's submitted Pricing Sheets from RFP 14-80101507-SA-B

If a conflict exists among any of the Contract documents, the documents shall have priority in the order listed below:

- a) This Contract
- b) Special Contract Conditions, Exhibit A, Section 1
- c) General Contract Conditions, Exhibit A, PUR 1000
- d) RFP 14-80101507-SA-B
- e) Contractor's submitted Staffing Resource Management Plan and Pricing Sheets to RFP 14-80101507-SA-B

### **3. Statement of Work**

The Contractor shall provide information technology staff augmentation services.

The Contractor shall possess the professional and technical staff necessary to perform the information technology staff augmentation services required by this contract and the staff shall have sufficient skill and experience to perform the services assigned to them.

All of the information technology staff augmentation services to be furnished by the Contractor under this Contract shall meet the professional standard and quality that prevail among information technology professionals in the same discipline and of similar knowledge and skill engaged in related work throughout Florida under the same or similar circumstances. The Contractor shall provide, at its own expense, training necessary for keeping Contractor staff abreast of industry advances and for maintaining proficiency in equipment and systems that are available on the commercial market.

Contractor staff shall render services identified by the Customer and shall be paid on an hourly basis.

The Contractor shall maintain during the term of the Contract all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the information technology staff augmentation services.

### **4. Minimally Required Deliverables/Tasks**

Staff augmentation services, identified by the Customer in a Request for Quote, are diverse and routine services that may require any information technology functions and tasks including but not limited to the following:

- Developer
- Project Manager
- Analyst
- Designer
- Data Administration
- DB Technical Support
- Manager/Supervisor
- Webmaster
- Technical Support
- Section DBA/DBAT
- Component Support
- Maintenance of Production Computer Applications
- Enhancement of Production Computer Applications
- Database support
- Data Administration

- Data Analysis
- Data Mapping
- Enterprise Application Development
- Develop Rapid Technology Solutions
- Develop Disaster Recovery processes
- Technical Writing
- Plan, Organize and Implement technology upgrades
- Development and Actively practice Business Systems Support Standards and Methodology
- Software and Hardware Upgrades and Testing
- Determining User Requirements for Functional Business Computer Applications
- Scheduling Resources and Tasks for Development, Enhancement and Maintenance of Computer Applications
- Designing Computer Systems
- Designing and Creating Prototypes
- Design and create Test Plans
- SharePoint
- Documents design specifications, installation instructions, and other system-related information
- Creates, updates, and reviews documentation as required based on the development methodology utilized
- Performs security analyses and risk assessments as needed
- C#.Net
- ASP.Net
- Microsoft Visual Studio 2010 or later
- Team Foundation Server (TFS)
- ANSI SQL (Oracle, or SQL Server)
- Crystal Reports
- Experience with Object-Relational Mapping (ORM) software
- Web services (WSDL, SOAP or WCF)
- FileNet
- Construction - Programming including one or a combination of the following languages
  - Allfusion:Gen Central Encyclopedia
  - Allfusion:Gen workstation toolset for web server, online and batch procedures
  - Allfusion:Gen Com Proxy service
  - Use of TSO
  - Use of ISPF
  - COBOL
  - FrontPage
  - .NET
  - nHibernate
  - MVS/Visual Source Safe
  - ASP
  - C#
  - C
  - C++
  - Microsoft Office
  - CICS
  - JCL
  - MRE
  - FOCUS
  - WebFOCUS
  - Subversion

- Impact Analysis
- Risk Analysis
- Develop test plans and conduct User Acceptance Testing
- Organize, Plan, and Conduct Joint Application Development (JAD) sessions
- Develop and produce product Presentations
- Develop Media
- Create CBT's
- Conduct GoTo Meetings
- Conduct Teleconferences
- Submit DBA requests
- Debug programs
- Perform analysis, design and construction of Data Models
- Create CRUD Diagrams
- Use a Copier
- Make or answer phone calls
- Use Outlook for email and calendaring
- Schedule Meetings
- Schedule conference calls
- Conduct status meetings

Customers shall use a Request for Quote per section 287.056(2), Florida Statutes as a result of this state term contract. Customer shall order services from the Request for Quote via a purchase order.

In accepting a Purchase Order, the Contractor recognizes its responsibility for all tasks and deliverables contained therein, warrants that it has fully informed itself of all relevant factors affecting the accomplishment of the tasks and deliverables and agrees to be fully accountable for the performance thereof.

## 5. Amendments

No oral modifications to this Contract are permitted. All modifications to this Contract must be in writing and signed by both parties.

Notwithstanding the order listed in section 2, amendments executed after the Contract is executed may expressly change the provisions of the Contract. If they do so expressly, then the most recent amendment will take precedence over anything else that is part of the Contract.

This Contract is executed upon signature of authorized officers as of the dates signed below:

**State of Florida,  
Department of Management Services**



By: Debra Forbess  
Title: Director of Finance and Administration

Date: 1/6/17

**Tews Consulting**

**Shawn Stewart** Digitally signed by Shawn Stewart  
Date: 2016.11.15 14:29:08 -05'00'

By: Shawn Stewart  
Title: Practice Director  
Date: 11/15/2016

## **EXHIBIT A**

### **Contract Conditions**

This Exhibit contains the Special Contract Conditions. The General Contract Conditions, Form PUR 1000, are incorporated by reference, and may be downloaded and viewed at:

<http://www.dms.myflorida.com/content/download/2933/11777/1000.pdf>. If a conflict exists between the Special Contract Conditions and the General Contract Conditions, the Special Contract Conditions shall take precedence over the General Contract Conditions unless the conflicting term in the General Contract Conditions is required by Florida law, in which case the General Contract Conditions term will take precedence.

#### **1 Special Contract Conditions**

##### **1.1. Electronic Invoicing (eInvoicing)**

The Contractor may supply electronic invoices in lieu of paper-based invoices for those transactions processed through the MFMP. The contractor may establish electronic invoicing within ninety (90) days of written request to the Department. Electronic invoices shall be submitted to the Customer through the Ariba Network (AN) in one of three mechanisms as listed below. The Contractor will work with the MFMP management team to obtain specific requirements for the eInvoicing.

###### **1.1.1 Commerce eXtensible Markup Language (cXML)**

This standard establishes the data contents required for invoicing via cXML within the context of an electronic environment. This transaction set can be used for invoicing via the AN for catalog and non-catalog goods and services. The cXML format is the Ariba preferred method for electronic invoicing.

###### **1.1.2 Electronic Data Interchange (EDI)**

This standard establishes the data contents of the Invoice Transaction Set (810) for use within the context of an EDI environment. This transaction set can be used for invoicing via the AN for catalog and non-catalog goods and services.

###### **1.1.3 Purchase Order Flip via Ariba Network (AN)**

The online process allows suppliers to submit invoices via the AN for catalog and non-catalog goods and services. Contractors have the ability to create an invoice directly from their Inbox in their AN account by simply "flipping" the purchase order into an invoice. This option does not require any special software or technical capabilities.

For the purposes of this section, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third party provider of MFMP the right and license to use, reproduce, transmit, distribute, and publicly display within the system the information outlined above. In addition, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third party provider the right and license to reproduce and display within the system the Contractor's trademarks, system marks, logos, trade dress, or other branding designation that identifies the products made available by the Contractor under the Contract.

##### **1.2 Purchasing Card (P-card) Program**

The contractor must accept the Universal card format Purchasing Cards (e.g., American Express, MasterCard, and Visa). However, the Purchasing Card is not the exclusive method of payment (e.g., Purchase Order). The method of ordering and payment (e.g., Purchase Order, Purchasing Card) shall be selected by the Customer.

### 1.3 Compliance with Laws

The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and authority. For example, Chapter 287, of Florida Statutes and Rule 60A of the Florida Administrative Code, govern the Contract. The Contractor shall comply with section 274A of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of any such applicable laws, rules, codes, ordinances and licensing requirements, shall be grounds for Contract termination.

### 1.4 Liability and Worker's Compensation Insurance

During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract, which, at a minimum, shall be: workers' compensation and employer's liability insurance per Florida statutory limits (currently \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate) covering all employees engaged in any Contract work; commercial general liability coverage on an occurrence basis in the minimum amount of \$500,000 (defense cost shall be in excess of the limit of liability), naming the State as an additional insured; and automobile liability insurance covering all vehicles, owned or otherwise, used in the Contract work, with minimum combined limits of \$500,000, including hired and non-owned liability, and \$5,000 medical payment. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of the Contract. The Contract shall not limit the types of insurance Contractor may desire to obtain or be required to obtain by law. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized to write policies in Florida.

### 1.5 Detail of Bills

Contractor shall submit bills for fees or other compensation for services or expenses in detail, sufficient enough for a proper pre-audit and post-audit.

### 1.6 Return of Funds

The contractor will return to the Customer any overpayments due to unearned funds or funds disallowed pursuant to the terms of this Contract that were disbursed to the Contractor by the Customer. The Contractor shall return any overpayment to the Customer within forty (40) calendar days after either discovery by the Contractor its independent auditor, or notification by the Customer of the overpayment.

### 1.7 Bills for Travel

Travel expenses are not reimbursable unless specifically authorized by the Customer in writing, and may be reimbursed only in accordance with section 112.061, F.S.

### 1.8 Public Records

The Department may unilaterally cancel this Contract for refusal by the Contractor to comply with this section by not allowing public access to all documents, papers, letters or other material made or received by the Contractor in conjunction with the Contract, unless the records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1), F.S.

Solely for the purposes of this section the contract manager is the agency custodian of public records, unless another is designated per (e), below.

If, under a resulting contract or purchase order, the Contractor is providing services and is acting on behalf of a public agency, as provided by section 119.0701, Florida Statutes. The Contractor shall:

(a) Keep and maintain public records required by the public agency to perform the service;

(b) 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 reasonable time and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the contract term and following the completion of the contract if the contractor does not transfer the records to the public agency;

(d) 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; and

**(e) 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 THE TELEPHONE NUMBER, EMAIL ADDRESS AND MAILING ADDRESS PROVIDED IN THE RESULTING CONTRACT OR PURCHASE ORDER.**

#### 1.9 Intellectual Property

Unless specifically addressed in the Contract, intellectual property rights to all property created or otherwise developed by the Contractor for the Department will be owned by the State of Florida through the Department at the completion of the Contract.

Any inventions or discoveries developed in the course of or as a result of services performed under the Contract which are patentable pursuant to 35 U.S.C. §101 are the sole property of the state of Florida. Contractor must inform the Department of any inventions or discoveries developed or made in connection with the Contract and will be referred to the Florida Department of State for a determination on whether patent protection will be sought for the invention or discovery. The State of Florida will be the sole owner of any and all patents resulting from any invention or discovery made in connection with this contract.

Contractor must notify the Department of State of any publications, artwork, or other copyrightable works developed in connection with the Contract. All copyrights created or developed in connection with the Contract are the sole property of the State of Florida.

#### 1.10 Preferred Price Affidavit Requirement

The Department will provide the Preferred Pricing Affidavit, incorporated by reference, for completion by an authorized representative of the Contractor attesting that the Contractor is in compliance with the best pricing provision in section 4(b) of the PUR 1000 form. The Contractor agrees to submit to the Department, at least annually, the completed Preferred Pricing Affidavit.

#### 1.11 Subcontracts

The Contractor is fully responsible for satisfactory completion of all work on this contract. The Contractor shall ensure, and provide assurances to the Department upon request, that any subcontractor selected for work under this Contract has the necessary qualifications and abilities to perform in accordance with the terms and conditions of this Contract. The Contractor must provide the Customer with the names of any subcontractor considered for work on a purchase order issued under this Contract. The Customer shall retain the right to reject any of Contractor's or



subcontractor's staff whose qualifications or performance, in the Customer's judgment, are insufficient. The Contractor agrees to be responsible for all work performed and all expenses incurred by the subcontractor while performing work under this contract. Any subcontract arrangements must be evidenced by a written document available to the Department upon request.

The Contractor agrees to make payments to the subcontractor within seven (7) working days after receipt of full or partial payments from the Customer in accordance with Section 287.0585, F.S., unless otherwise stated in the contract between Contractor and subcontractor. The Contractor agrees that the Department shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract and Contractor shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract. The Contractor, at its expense, will defend the Customer and the Department against such claims. The following provisions apply, in addition to any terms and conditions included in the Customer's purchase order.

The Department supports diversity in its procurements and contracts, and requests that Contractors offer subcontracting opportunities to certified woman-, veteran-, and minority-owned small businesses. The Contractor may contact the OSD at [osdinfo@dms.myflorida.com](mailto:osdinfo@dms.myflorida.com) for information on certified business enterprises available for subcontracting opportunities.

#### 1.12 Employment Verification (E-Verify)

Pursuant to State of Florida Executive Order Number 11-116, Contractor is required to utilize the U.S. Department of Homeland Security's E-Verify system to verify eligibility of all new employees hired by the Contractor to work in the U.S. during the Contract term. Also, Contractor shall include in related subcontracts a requirement that subcontractors performing work or providing services pursuant to the Contract utilize the E-Verify system to verify the eligibility of all new employees hired by the subcontractor to work in the U.S. during the Contract term.

#### 1.13 Contractor Certification

If the Contract exceeds \$1,000,000.00 in total, not including renewal years, Contractor certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List created pursuant to sections 215.473, F.S. and 215.4725 F.S, respectively. Pursuant to section 287.135(5), F.S., and 287.135(3), F.S., Contractor agrees the Department may immediately terminate the Contract for cause if the Contractor is found to have submitted a false certification or if Contractor is placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel during the term of the Contract.

#### 1.14 Diversity Reporting

The State of Florida supports its diverse business community by creating opportunities for woman-, veteran-, and minority-owned small businesses to participate in procurements and contracts. The Department encourages supplier diversity through certification of woman-, veteran-, and minority-owned small business enterprises, and provides advocacy, outreach, and networking through regional business events. For additional information, please contact the Office of Supplier Diversity (OSD) at [osdinfo@dms.myflorida.com](mailto:osdinfo@dms.myflorida.com).

Upon request, the Contractor shall report to the Department its spend with business enterprises certified by the OSD. These reports must include the time period covered, the name and Federal Employer Identification Number of each business enterprise utilized during the period, commodities and contractual services provided by the business enterprise, and the amount paid to the business enterprise on behalf of each Customer purchasing under the Contract.

#### 1.15 Business Review Meetings

The Department reserves the right to schedule business review meetings as frequently as necessary. The Department will provide the format for the Contractor's agenda. Prior to the meeting, the Contractor shall submit the completed agenda to the Department for review and acceptance. The Contractor shall address the agenda items and any of the Department's additional concerns at the meeting. Failure to comply with this section may result in the Contractor being found in default and contract termination.

#### 1.16 Ethical Business Practices

The Contractor shall work in partnership with the State to ensure a successful and valuable contract, and ethical practices are required of State employees, Contractors, and all parties representing the Contractor. All work performed under this contract will be subject to review by the Inspector General of the State of Florida, and any findings suggesting unethical business practices may be cause for termination or cancellation.

#### 1.17 Delays and Complaints

Delivery delays and service complaints will be monitored on a continual basis. Documented inability to perform under the conditions of the contract, via the established Complaint to Vendor process (PUR 7017 form), may result in default proceedings and cancellation.

#### 1.18 Sales and Use Tax

The State of Florida is not required to pay any taxes, including customs and tariffs, on commodities or contractual services purchased under the Contract.

It is the responsibility of the Contractor to determine how work accomplished under this contract would be subject to a Use Tax as written in the "Sales and Use Tax" Rule 12A-1, Florida Administrative Code. Any questions concerning the Use Tax as it relates to this contract shall be directed to the Taxpayer Assistance Section at the Department of Revenue (DOR) (800) 352-3671, Monday through Friday, 8 a.m. to 7 p.m. (ET). For more information visit the DOR website at <http://dor.myflorida.com/dor/businesses>.

#### 1.19 Insurance, Loss Deductible

The Customer shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the contractor providing such insurance. Upon request, the Contractor shall furnish the Customer an insurance certificate proving appropriate coverage is in full force and effect.

#### 1.20 Insurance, Subcontractor's Public Liability and Property Damage

The Contractor shall require each of its subcontractors to secure and maintain during the life of the subcontract, insurance of the type specified in this Contract, or, the Contractor may insure the activities of its subcontractors in the Contractor's policy as specified in this Contract.

#### 1.21 Performance and Payment Bonds

The authority and responsibility for requesting performance and payment bonds shall rest with the Customer. Under this Contract, the Customer issuing the purchase order may request a performance and payment bond as deemed necessary by the size of the job. Inability to provide a bond may result in the Contractor being found in default of the purchase order.

#### 1.22 Contract Revisions

Notwithstanding General Contract Conditions section 42 of the PUR 1000 Form, the following types of revisions can be made to the Contract upon written authorization by the Department:

- 1) Contractor's Information and Contacts
- 2) Contract Manager
- 3) Contract Report Forms

Only the above-listed provisions can be made without a formal Contract amendment. General Contract Conditions, section 42 of the PUR 1000, applies to all other modifications to the Contract.

#### 1.23 Financial Consequences

##### 1.23.1 Financial Consequences for Non-performance

Financial consequences shall apply for non-performance of the contract by a Contractor. The State shall apply financial consequences identified below to Purchase Orders or Contracts issued by Customers. In addition:

In the event that a deliverable is deemed unsatisfactory by the Customer, the Contractor shall re-perform the deliverable as needed for submittal of a satisfactory deliverable, at no additional cost to the Customer, within the timeframe established by the Customer.

Continued Contractor inability to perform under the conditions of the contract, via the established Complaint to Vendor process, per Rule 60A-1.006 Florida Administrative Code (PUR 7017 form), may result in default proceedings.

Failure to respond to a Customer request to correct a deficiency in the performance of the Contract may result in termination of the Contract.

##### 1.23.2 Financial Consequences for Failure to Comply with Purchase Order Requirements

In addition to 1.23.1 and any other remedies provided by law, if Contractor fails to comply with the requirements of the Customer's purchase order, Contractor shall pay to the Customer financial consequences for such failures, unless the Customer waives such failure in writing based upon its determination that the failure was due to factors beyond the control of Contractor. A financial consequence in the amount of one (1) times the hourly rate(s) of each Contractor employee assigned to the purchase order will be assessed against Contractor for each submittal of an invoice during the period that the Contractor is out of compliance with the purchase order. This amount shall be reflected as a credit on the invoice submitted to the Customer. The Customer at its sole discretion shall determine when the Contractor is failing to comply and the Customer at its sole discretion shall determine when the Contractor has remedied the failure.

These consequences for non-performance are not to be considered penalties and are solely intended to compensate for damages.

#### 1.24 Invoicing

The Contractor shall be paid upon submission of monthly or quarterly invoices to the Customer after delivery and acceptance of services. Invoices shall contain detail sufficient for a proper pre-audit and post-audit thereof and shall contain the purchase order number, state contract number, and the Contractor's Federal Employer Identification Number. The Customer reserves the right to request additional documentation.

The State's performance and obligation to pay under this contract are contingent upon an annual appropriation by the Legislature.

#### 1.25 Cooperation with the Inspector General

Pursuant to subsection 20.055(5), F.S., Contractor, and any subcontractor to the Contractor, understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor must provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but will not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor will retain such records for five years after the expiration of the Contract, or the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>), whichever is longer. The Contractor agrees to reimburse the State of Florida for the reasonable costs of investigation incurred by the Inspector General or other authorized State of Florida official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State of Florida which results in the suspension or debarment of the Contractor. Such costs will include, but will not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees.

#### 1.26 Contractor Employee Conduct

The Contractor's employees shall adhere to the standards of conduct prescribed in Chapter 33-208, Florida Administrative Code, and as prescribed in the Customer's personnel policy and procedure guidelines, particularly rules of conduct, security procedures, and any other applicable rules, regulations, policies and procedures of the Customer.

The Contractor shall ensure that the Contractor's employees wear attire suitable for the position, either a standard uniform or business casual dress.

The Contractor's employees may be subject to searches of their person or searches of equipment and/or products at any time.

#### 1.27 Contractor Security Clearance

Customers may designate certain duties and/or positions as positions of "special trust" because they involve special trust responsibilities, are located in sensitive locations, or have key capabilities with access to sensitive or confidential information. The designation of a special trust position or duties is at the sole discretion of the Customer. Contractor or Contractor's employees who, in the performance of this Contract, will be assigned to work in positions determined by the Customer to be positions of special trust, may be required to submit to background screening and be approved by the Customer to work on this Contract.

#### 1.28 Confidentiality and Safeguarding Information

The Contractor or Contractor's employees may have access to confidential information. The provisions of the Florida Public Records Act, Chapter 119, F.S., and other applicable state and federal laws will govern disclosure of any confidential information received by the State of Florida.

The Contractor must implement procedures to ensure the protection and confidentiality of all data, files, and records involved with this Contract.

Except as necessary to fulfill the terms of this Contract and with the permission of the Customer, Contractor and Contractor's employees shall not divulge to third parties any confidential information obtained by Contractor or its agents, distributors, resellers, subcontractors, officers, or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or the Customer.

Contractor and Contractor's employees agree not to use or disclose any information concerning a recipient of services under the State or the Customer for any purpose not in conformity with state and federal law or regulations except upon written consent of the recipient, or his responsible parent or guardian when authorized by law, if applicable.

If Contractor or Contractor's employees have access to confidential information in order to fulfill Contractor's obligations under this Contract, Contractor agrees to abide by all applicable Customer Information Technology Security procedures and policies. Contractor (including its employees, subcontractors, agents, or any other individuals to whom Contractor exposes confidential information obtained under this Contract), shall not store, or allow to be stored, any confidential information on any portable storage media (e.g., laptops, thumb drives, hard drives, etc.) or peripheral device with the capacity to hold information. Failure to strictly comply with this provision shall constitute a breach of contract.

Contractor shall notify the Department and the Customer in writing of any disclosure of unsecured confidential information by Contractor, its employees, agents or representatives which are not in compliance with the terms of the Contract (of which it becomes aware). The Contractor also shall report to the Department and the Customer any Security Incidents of which it becomes aware, including those incidents reported to the Contractor by its subcontractors or agents. For purposes of this Contract, "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of Customer information in Contractor's possession or electronic interference with Customer operations; however, random attempts at access shall not be considered a security incident. Contractor shall make a report to the Department and the Customer not more than seven (7) business days after Contractor learns of such use or disclosure. Contractor's report shall identify, to the extent known: (i) the nature of the unauthorized use or disclosure, (ii) the confidential information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.

In the event of a breach of security concerning confidential personal information involved with this Contract, Contractor shall comply with section 501.171, F.S. When notification to affected persons is required under this section of the statute, Contractor shall provide that notification, but only after receipt of the Department's approval of the contents of the notice. Defined statutorily, and for purposes of this Contract, "breach of security" or "breach" means the unauthorized access of data in electronic form containing personal data. Good faith acquisition of personal information by an employee or agent of Contractor is not a breach, provided the information is not used for a purpose unrelated to Contractor's obligations under this Contract or is not subject to further unauthorized use.

#### 1.29 Request for Quotes

1.29.1 Customers needing staff augmentation services will create a Request for Quote (RFQ) eQuote event in MyFloridaMarketPlace Sourcing, each time they desire to solicit staff augmentation services. The Customer shall issue a detailed RFQ that includes a term, service levels, educational qualifications and experience needed.

1.29.2 The Customer shall select at least three (3) awarded Contractors for the RFQ event. MyFloridaMarketPlace Sourcing will automatically add an additional five (5) randomly selected awarded Contractors to the RFQ event. All eight (8) awarded Contractors sent the RFQ will receive an alert of the RFQ and may respond. Customers may view the RFQ Contractor List on the event's "Overview" tab.

1.29.3 The specific format of the RFQ is left to the discretion of the Customer's Contracting Officer. Pursuant to s. 287.056(3), F.S., RFQs performed within the scope of this Contract are not independent competitive solicitations and are not subject to the notice or challenge provisions of s. 120.57(3), F.S.

1.29.4 All Customers who utilize MyFloridaMarketPlace system must use the Sourcing application for creating RFQ's on this contract. Customers who do not utilize MyFloridaMarketPlace will create an RFQ document each time they desire to solicit staff augmentation services and shall send the RFQ document electronically via email to at least (8) awarded Contractors.

#### 1.30 Resume Self-Certification Form

When submitting a response to an RFQ the Contractor shall submit with its response a signed Resume Self-Certification Form (Exhibit B) to the Customer for each candidate included in the RFQ response.

#### 1.31 Purchase Orders

A Customer shall order services via a purchase order. Purchase orders shall establish direct labor hours at specified fixed hourly rate not to exceed those in the awarded Contract.

When creating purchase orders for this Contract the Customer shall attach to the purchase order a completed signed Contractor Selection Justification Form (Exhibit C) for each candidate included in the purchase order.

Customers are permitted to negotiate terms and conditions which supplement those contained in this Contract. Such additional terms shall not conflict with the terms and conditions established by this Contract (and any such conflicting terms shall be resolved in favor of terms most favorable to the Customer, as determined by the Department). Purchase order-specific terms and conditions are only applicable to that specific purchase order and shall not be construed as an amendment to this Contract.

#### 1.32 Quarterly Contractor Performance Reporting

Customers shall complete a Contractor Performance Survey (Exhibit D) for each Contractor on a Quarterly basis. Customers will submit the completed Contractor Performance Survey(s) by email to the Department Contract Manager no later than the due date indicated in Section 1.35.

The completed Contractor Performance Survey(s) will be used by the Department as a performance-reporting tool to measure the performance of Contractors. The Department reserves the right to modify the Contractor Performance Survey and introduce additional performance-reporting tools as they are developed, including online tools (e.g. tools within MyFloridaMarketPlace or on the Department's website).

#### 1.33 Transaction Fee/Monthly Transaction Fee Report

All payments issued by Agencies or Eligible Users to registered Vendors for purchases of commodities or contractual services shall be assessed Transaction Fees per 287.057(22), Florida Statutes.

The Contractor is required to submit monthly Transaction Fee Reports electronically through MFMP VIP. All such reports and payments shall be subject to audit. Failure to comply with the payment of the Transaction Fees or reporting of transactions shall constitute grounds for declaring the Contractor in default and subject the Contractor to exclusion from business with the State of Florida.

For information on how to submit Transaction Fee Reports online, please reference the detailed fee reporting instructions and Vendor training presentations available online through MFMP U on the MyFloridaMarketPlace website (located at <http://dms.myflorida.com/mfmp>). Assistance is also available from the MyFloridaMarketPlace Customer Service Desk at [feeprocessing@myfloridamarketplace.com](mailto:feeprocessing@myfloridamarketplace.com) or 866-FLA-EPRO (866-352-3776) between the hours of 8:00 AM to 6:00 PM, Eastern Time.

#### 1.34 Quarterly Sales Reports

Each Contractor shall submit a sales report by job title and scope variants to the Department on a Quarterly basis.

Contract Sales Reports must include the Contractor's name, the dates of Quarter covered, each Customer's name, services provided, and the amount paid by the Customer.

Initiation and submission of the Contract Sales Reports are to be the responsibility of the Contractor. The Contractor will submit the completed Sales Report forms by email to the Department Contract Manager no later than the due date indicated in Section 1.35. Submission of these reports is considered a material requirement of this Contract and the Contractor.

Failure to provide quarterly sales reports, including those indicating no sales, within thirty (30) calendar days following the end of each quarter (January, April, July and October) is considered as Non-Performance by the Contractor.

Exceptions may be made if a delay in submitting reports is attributable to circumstances that are clearly beyond the control of the Contractor. The burden of proof of unavoidable delay shall rest with the Contractor and shall be supplied in a written form and submitted to the Department.

The Department reserves the right to request additional sales information as needed.

#### 1.35 Quarterly Reporting Timeframes

Quarterly reporting timeframes coincide with the State Fiscal Year as follows:

Quarter 1 - (July-September) – Due by October 31

Quarter 2 - (October-December) – Due by January 31

Quarter 3 - (January-March) – Due by April 30

Quarter 4 - (April-June) – Due by July 31

#### 1.36 Indemnity

To the extent permitted by Florida law, the Contractor agrees to indemnify, defend, and hold the Department, Customer, the State of Florida, its officers, employees and agents harmless from all fines, claims, assessments, suits, judgments, or damages, including consequential, special, indirect, and punitive damages, including court costs and attorney's fees, arising out of any acts, actions, breaches, neglect or omissions of the Contractor, its employees, agents, subcontractors, assignees or delegates related to the Contract, as well as for any determination arising out of or related to the Contract that the Contractor or Contractor's employees, agents, subcontractors, assignees or delegates are not independent contractors in relation to the Department. The Contract does not constitute a waiver of sovereign immunity or consent by the Department or the State of Florida or its subdivisions to suit by third parties.

Further, the Contractor shall fully indemnify, defend, and hold harmless the Department from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

**Information Technology Staff Augmentation Services  
Contract No. 80101507-SA-15-1**

**Exhibit B  
Resume Self-Certification Form**

Contractor candidates shall complete this Resume Self-Certification Form. Completed Resume Self-Certification Forms shall be submitted within the Contractor's response to Customer's RFQ's, see Section 1.29 of the Contract.

"I the undersigned do hereby certify, under the penalty of perjury, that information in my resume submitted for consideration of the State of Florida contract position is true, correct, complete, and made in good faith to the best of my knowledge and belief. If an omission, falsification, misstatement, or misrepresentation has been made regarding my education, work ability, experience, employment history, and/or fitness for employment as a contractor, I may be disqualified as a contractor, and the matter will be reported to appropriate agency or law enforcement personnel. I understand that there are civil and/or criminal penalties for misrepresenting pertinent information in connection with contract positions, including, but not limited to, penalties available under Florida Statutes 287.133 or 817.566. I further understand that if I am not a United States citizen, violation cases may be reported to the US Department of Homeland Security for potential deportation."

"In addition, I the undersigned do hereby consent to the release of my information by employers, educational institutions, law enforcement agencies, and other individuals and organizations to investigators and other authorized agents of Florida for verification and investigation purposes. I understand that any documents submitted to procure a contract(s) with the State of Florida, including resumes, are public records."

\_\_\_\_\_  
Print Full Legal Name of Candidate

\_\_\_\_\_  
Candidate's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Candidate's Form of Identification Presented

\_\_\_\_\_  
Identification number

\_\_\_\_\_  
Contractor's Witness Signature One

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor's Witness Signature Two

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name Contractor's Witness One

\_\_\_\_\_  
Print Name Contractor's Witness Two



**Information Technology Staff Augmentation Services  
Contract No. 80101507-SA-15-1**

**Exhibit C  
Contractor Selection Justification Form**

Customers shall complete this Contractor Selection Justification Form for each candidate and attach all completed forms to the purchase order.

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

Contractor's Name: \_\_\_\_\_

Contractor's Contact  
Information: Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Candidate's Name: \_\_\_\_\_

Date Candidate will be available: \_\_\_\_\_

Hourly rate of candidate: \$ \_\_\_\_\_

Position candidate recommended for: \_\_\_\_\_

Justification for selection of candidate:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Agency: \_\_\_\_\_ Division/Section/Unit: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

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

**Information Technology Staff Augmentation Services  
Contract No. 80101507-SA-15-1**

**Exhibit D  
Contractor Performance Survey**

Customers shall complete this Contractor Performance Survey for each Contractor on a Quarterly basis. Customers will submit the completed Contractor Performance Survey(s) by email to the Department Contract Manager no later than the due date indicated in Section 1.35 of Contract Number 80101507-SA-15-1.

Contractor's Name: \_\_\_\_\_ Quarter: \_\_\_\_\_

Purchase Order (PO) Number: \_\_\_\_\_ PO Total \$ Amount: \_\_\_\_\_

PO Starting Date \_\_\_\_\_ Ending Date \_\_\_\_\_

Please review the attached Rating Definitions and provide your opinion by rating the following:

**Quality of Service**

- |                                   |                            |                            |                            |
|-----------------------------------|----------------------------|----------------------------|----------------------------|
| 1. Effectiveness performing tasks | 3 <input type="checkbox"/> | 2 <input type="checkbox"/> | 1 <input type="checkbox"/> |
| 2. Quality & completeness of work | 3 <input type="checkbox"/> | 2 <input type="checkbox"/> | 1 <input type="checkbox"/> |

**Cost Control**

- |   |                            |                            |                            |
|---|----------------------------|----------------------------|----------------------------|
| 3. Accurately estimated and controlled costs to complete work | 3 <input type="checkbox"/> | 2 <input type="checkbox"/> | 1 <input type="checkbox"/> |
| 4. Submitted, timely, accurate & complete invoices            | 3 <input type="checkbox"/> | 2 <input type="checkbox"/> | 1 <input type="checkbox"/> |

**Timeliness of Performance**

- |   |                            |                            |                            |
|---|----------------------------|----------------------------|----------------------------|
| 5. Adherence to delivery schedule (major tasks, milestones)       | 3 <input type="checkbox"/> | 2 <input type="checkbox"/> | 1 <input type="checkbox"/> |
| 6. Timely, current & complete reporting, tracking & documentation | 3 <input type="checkbox"/> | 2 <input type="checkbox"/> | 1 <input type="checkbox"/> |

**Business Relations**

- |  |                            |                            |                            |
|--|----------------------------|----------------------------|----------------------------|
| 7. Effectively communicated with Agency management & staff   | 3 <input type="checkbox"/> | 2 <input type="checkbox"/> | 1 <input type="checkbox"/> |
| 8. Contractor staff was professional, cooperative & flexible | 3 <input type="checkbox"/> | 2 <input type="checkbox"/> | 1 <input type="checkbox"/> |

**Customer Satisfaction**

- |   |                            |                            |                            |
|---|----------------------------|----------------------------|----------------------------|
| 9. Overall Satisfaction with Contractor | 3 <input type="checkbox"/> | 2 <input type="checkbox"/> | 1 <input type="checkbox"/> |
|---|----------------------------|----------------------------|----------------------------|

Comments: (Please use additional page if necessary.)

\_\_\_\_\_  
\_\_\_\_\_

Agency: \_\_\_\_\_ Division/Section/Unit: \_\_\_\_\_

Rater's Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Rater's Signature \_\_\_\_\_ Date: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

**Information Technology Staff Augmentation Services  
Contract No. 80101507-SA-15-1**

**Exhibit F**

**Contractor Performance Survey  
Rating Definitions**

**Excellent (3)**

- There are no quality problems.
- There are no cost issues.
- There are no delays.
- Responses to inquiries, technical, service, and administrative issues are effective and responsive.

**Acceptable (2)**

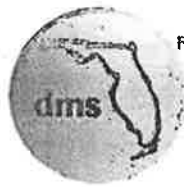
- Non-conformances do not impact achievement of contract requirements.
- Cost issues do not impact achievement of contract requirements.
- Delays do not impact achievement of contract requirements.
- Response to inquiries, technical, service, and administrative issues is usually effective and responsive.

**Poor (1)**

- Non-conformances are compromising the achievement of contract requirements.
- Cost issues are compromising the performance of contract requirements.
- Delays are compromising the achievement of contract requirements.
- Response to inquiries, technical, service, and administrative issues is not effective and responsive.

---

**Scoring:** Ratings will be averaged together and then rounded to achieve the Overall Contractor Performance Rating.



FLORIDA DEPARTMENT OF MANAGEMENT SERVICES

**state purchasing**

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**AMENDMENT NO.: 1**

**Contract Extension**

**Contract No.: 80101507-SA-15-01**

**Contract Name: Information Technology Staff Augmentation Services**

**This Amendment** ("Amendment"), effective on the last date signed by both parties, to the Information Technology Staff Augmentation Services Contract No. 80101507-SA-15-01 ("Contract"), between the State of Florida, Department of Management Services ("Department") and Tews Consulting, Inc. ("Contractor") are collectively referred to herein as the "Parties." All capitalized terms used herein shall have the meaning assigned to them in the Contract unless otherwise defined herein.

**WHEREAS** the Department awarded the above referenced Contract to Tews Consulting, Inc. for the provisions of Information Technology Staff Augmentation Services; and

**WHEREAS** the Parties agreed that the Contract may be amended by mutual agreement as provided in section 5 "Amendments" of the Contract; and

**WHEREAS**, in accordance with Section 287.057(12), Florida Statutes, upon mutual agreement, the Department and the Contractor wish to extend the Contract for a period that may not exceed six (6) months.

**THEREFORE**, in consideration of the mutual promises contained below, and other good and valuable consideration, receipt, and sufficiency of which are hereby acknowledged, the Parties agree to the following:

- I. Contract Extension.** The Contract shall be extended for an additional six (6) months, through August 31, 2019, unless cancelled or terminated as provided in the terms of the Contract.
- II. Conflict.** To the extent any of the terms of this Amendment conflict with the terms of the Contract, the terms of this Amendment shall control.
- III. Warrant of Authority.** Each person signing this Amendment warrants that he or she is duly authorized to do so and to bind the respective party.
- IV. Effect.** This Amendment is hereby made a part of the Contract. Unless otherwise modified by this Amendment, all terms and conditions contained in the Contract shall continue in full force and effect. This Amendment sets forth the entire understanding between the parties with regard to this subject matter hereof.

Information Technology Staff Augmentation Services Contract No.: 80101507-SA-15-0



FLORIDA DEPARTMENT OF MANAGEMENT SERVICES

**state purchasing**

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**AMENDMENT NO.: 1**

Contract Extension

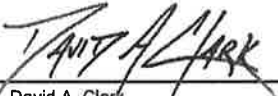
Contract No.: 80101507-SA-15-01

Contract Name: Information Technology Staff Augmentation Services

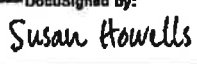
**IN WITNESS WHEREOF**, the Parties have executed this Amendment by their duly authorized representatives.

**State of Florida:**  
**Department of Management Services:**

**Contractor:** Tews Consulting, Inc.

By:   
Name: David A. Clark  
Title: Chief of Staff

Date: 2/19/2019

DocuSigned by:  
  
By: Susan Howells  
Name: Susan Howells  
Title: Director of Business Development

Date: 1/24/2019

Information Technology Staff Augmentation Services Contract No.: 80101507-SA-15-0

Department of  
**MANAGEMENT  
SERVICES**

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**AMENDMENT 2**

To State Term Contract 80101507-SA-15-01  
Information Technology Staff Augmentation Services

This Amendment 2 ("Amendment"), effective as of September 1, 2019, to the Information Technology Staff Augmentation Services 80101507-SA-15-01 ("Contract") between the State of Florida, Department of Management Services ("Department"), and Tews Consulting ("Contractor"). Department and Contractor are collectively referred to herein as the "Parties."

**WHEREAS** the Contract was entered into by the Parties on March 01, 2017 to continue through February 28, 2019, for the provision of Information Technology Staff Augmentation Services, pursuant to Solicitation No; RFP 14-80101507-SA-B, and

**WHEREAS** the Contract was subsequently extended through August 31, 2019; and


**WHEREAS** In accordance with Section 287.057(12), Florida Statutes, upon mutual agreement, the Department and the Contractor may extend the Contract; and

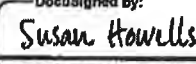
**NOW THEREFORE**, for the mutual covenants contained herein, the Parties agree as follows:

- 1.0 **Contract Extension.** The Department hereby executes its Extension option for a period of six (6) months, effective September 1, 2019 through February 29, 2020.
- 2.0 **Warrant of Authority.** Each person signing this Amendment warrants that he or she is duly authorized to do so and to bind the respective party.
- 3.0 **Effect.** Unless otherwise modified by this Amendment, all terms and conditions contained in the Contract shall continue in full force and effect.

**State of Florida:**  
**Department of Management Services**

**Contractor:**  
**Tews Consulting**

By:   
Name: David Clark  
Title: Chief of Staff  
Date:


DocuSigned by:  
By:   
Name: SUSAN HOWELLS  
Title: TEWS  
Date: 8/13/2019

**CONSENT AGENDA ITEM  
#27**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 31, 2020

SUBJECT: Approval of Purchase Order to Dasher Technologies for  
Additional Storage for the Infinity Toll Collection System

---

Board approval is requested to issue a purchase order to Dasher Technologies in a not-to-exceed amount of \$75,000 for additional hard drive storage on the Infinity toll collection plaza systems. This will be a cooperative (piggyback) procurement based on HP NASPO ValuePoint Master Agreement number MNNVP-134 and the State of Florida Participating Addendum number 43211500-WSCA-15-ACS.

The hardware is for additional data and license plate image storage.

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

Reviewed By:

  
\_\_\_\_\_  
Joann Chizlett  
Director of Special Projects 




**CONSENT AGENDA ITEM  
#28**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 24, 2020

SUBJECT: Approval of Purchase Order to Hewlett Packard Enterprise Company for  
Hewlett Packard Enterprise (HPE) Server and Equipment Support Services


---

Board authorization is requested to issue a purchase order to Hewlett Packard Enterprise Company in a not-to-exceed amount of \$71,186.12 for HPE server and equipment support services. This will be a cooperative (piggyback) procurement based on the State of Florida Participating Addendum number 4321500-WDCA-15-ACS.

This amount is budgeted in the OM&A Budget.

Reviewed by: 

Rafael Millan  
Director of IT




**CONSENT AGENDA ITEM  
#29**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams  
Director of Procurement 

DATE: January 27, 2020

SUBJECT: Approval of Purchase Order to Microsoft Corporation for Support Services


---

Board authorization is requested to issue a purchase order to Microsoft Corporation in the amount of \$71,647.00 to continue product support for a one-year period from February 28, 2020 to February 27, 2021. This will be a cooperative (piggyback) procurement based on the State of Florida Participating Addendum number 4321500-15-A01.

This amount is budgeted in the OM&A Budget.

Reviewed by: 

Rafael Millan  
Director of IT




**CONSENT AGENDA ITEM  
#30**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 24, 2020

SUBJECT: Approval of Final Ranking and Authorization for Fee Negotiations for Professional Engineering Consultant Services for Development of the Intelligent Transportation Systems Master Plan  
Project 599-558, Contract No. 001616

Letters of Interest for the referenced project was advertised on October 27, 2019. Responses were received from four (4) firms by the deadline. Those firms were: Atkins North America, Inc., Metric Engineering, Inc., H.W. Lochner, Inc. and Vanasse Hangen Brustlin, Inc. (VHB).

After reviewing and scoring the letters of interest, the Evaluation Committee met on December 3, 2019 and shortlisted Metric Engineering, Inc., H.W. Lochner, Inc. and VHB.

Technical Proposals were submitted for review and scoring. The Technical Review Committee met on January 22, 2020 to prepare its final ranking. The result of that process was as follows:

<u>Ranking</u>	<u>Firm</u>
1	Metric Engineering, Inc.
2	VHB
3	H.W. Lochner, 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:   
Bryan Homayouni, P.E.  
Manager of Traffic Operations



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

**LOI-001616 Technical Committee Meeting – January 22, 2020 Minutes**

Technical Review Committee for **Professional Engineering Consultant Services for Development of the Intelligent Transportation Systems Master Plan; Contract No. 001616**, held a duly noticed meeting on Wednesday, January 22, 2020 at 10:00 a.m. in the Ibis Conference Room (Room 150), at the CFX Administrative Bldg., Orlando, Florida.

**Committee Members Present:**

Bryan Homayouni, Manager of Traffic Operations  
Glenn Pressimone, P.E., Chief of Infrastructure  
David Boston, Mgr. of Toll Technical Systems

**Other Attendees:**

Aneth Williams, Director of Procurement  
Brad Osterhaus, Sr. Procurement/QC Administrator  
Sydney Cruz, Metric Engineering, Inc.

**Evaluation Portion:**

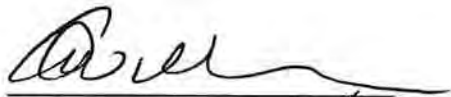
Aneth commenced the meeting collecting the Committee Member Disclosure forms and explained that today's meeting was to evaluate, rank the firms in order to make a recommendation to the CFX Board for award. The evaluation portion of the meeting is open to the public in accordance with Florida Statute. General discussion ensued about the project and the Technical Proposal submittals. Committee members then tallied up their evaluation sheets and passed them to Aneth for incorporation into the final ranking summary sheet. 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>
Metric Engineering, Inc.	4	1
Vanasse Hangen Brustlin, Inc.	5	2
H. W. Lochner, Inc.	9	3

Committee recommends CFX Board approve ranking and authorize negotiations in ranked order.  
Bryan Homayouni 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 10:21 a.m. These minutes are considered to be the official minutes of the Technical Review Committee meeting held Wednesday, January 22, 2020, and no other notes, tapes, etc., taken by anyone takes precedence.

Submitted by:



Aneth Williams

Approved by:



Bryan Homayouni, P.E.

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

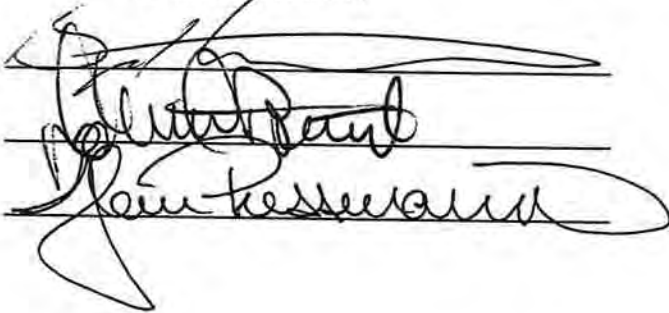
**TECHNICAL COMMITTEE MEMBER FINAL SUMMARY RANKING**

**PROFESSIONAL ENGINEERING CONSULTANT SERVICES FOR  
DEVELOPMENT OF THE INTELLIGENT TRANSPORTATION SYSTEMS MASTER PLAN**

**CONTRACT NO. 001616**

CONSULTANT	Bryan Homayouni Score	Glenn Pressimone Score	David Boston Score	TOTAL SCORE	RANKING
H.W. LOCHNER, INC.	3	3	3	9	3
METRIC ENGINEERING, INC.	1	1	2	4	1
VHB, INC.	2	2	1	5	2

EVALUATION COMMITTEE MEMBERS:



Wednesday, January 22, 2020

Wednesday, January 22, 2020

Wednesday, January 22, 2020



# 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: January 24, 2020 

RE: December 2019 Financial Reports

Attached please find the December 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 DECEMBER 31, 2019 AND YEAR-TO-DATE**

	<b>FY 20 MONTH ACTUAL</b>	<b>FY 20 MONTH BUDGET</b>	<b>FY 20 YEAR-TO-DATE ACTUAL</b>	<b>FY 20 YEAR-TO-DATE BUDGET</b>	<b>FY 20 YEAR-TO-DATE VARIANCE</b>	<b>FY 20 YEAR-TO-DATE % VARIANCE</b>	<b>FY 19 - 20 YEAR-TO-DATE COMPARISON</b>
<b>REVENUES</b>							
TOLLS*	\$ 42,787,093	\$ 38,256,635	\$ 245,834,396	\$ 235,549,007	\$ 10,285,389	4.4%	7.8%
FEES COLLECTED VIA UTM/UTC'S AND PBP'S	\$ 1,114,401	772,277	5,461,485	4,358,225	1,103,260	25.3%	39.9%
TRANSPONDER SALES	\$ 78,036	56,776	439,444	367,807	71,637	19.5%	158.0%
OTHER OPERATING	\$ 193,776	51,270	880,671	355,166	525,504	148.0%	62.3%
INTEREST	\$ 746,003	745,128	4,783,822	3,443,966	1,339,856	38.9%	157.5%
MISCELLANEOUS	\$ 62,336	60,845	373,663	365,070	8,593	2.4%	-32.0%
<b>TOTAL REVENUES</b>	<b>\$ 44,981,644</b>	<b>39,942,932</b>	<b>257,773,480</b>	<b>244,439,241</b>	<b>13,334,238</b>	<b>5.5%</b>	<b>9.7%</b>
<b>O M &amp; A EXPENSES</b>							
OPERATIONS	\$ 4,921,012	5,236,694	27,082,540	29,273,410	2,190,870	7.5%	10.1%
MAINTENANCE	\$ 1,388,411	1,388,899	6,188,726	6,603,347	414,621	6.3%	1.8%
ADMINISTRATION	\$ 585,668	691,949	3,674,045	4,087,246	413,201	10.1%	5.6%
OTHER OPERATING	\$ 105,538	228,483	674,279	1,085,296	411,016	37.9%	-2.9%
<b>TOTAL O M &amp; A EXPENSES</b>	<b>\$ 7,000,629</b>	<b>7,546,025</b>	<b>37,619,590</b>	<b>41,049,299</b>	<b>3,429,709</b>	<b>8.4%</b>	<b>7.9%</b>
<b>NET REVENUES BEFORE DEBT SERVICE</b>	<b>\$ 37,981,015</b>	<b>32,396,906</b>	<b>220,153,890</b>	<b>203,389,943</b>	<b>16,763,947</b>	<b>8.2%</b>	<b>10.0%</b>
<b>COMBINED NET DEBT SERVICE</b>	<b>\$ 14,724,273</b>	<b>15,250,757</b>	<b>90,472,217</b>	<b>91,490,181</b>	<b>1,017,964</b>	<b>1.1%</b>	<b>7.2%</b>
<b>NET REVENUES AFTER DEBT SERVICE</b>	<b>\$ 23,256,742</b>	<b>\$ 17,146,149</b>	<b>\$ 129,681,673</b>	<b>\$ 111,899,762</b>	<b>\$ 17,781,911</b>	<b>15.9%</b>	<b>12.0%</b>

\* 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 DECEMBER 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	\$ 27,082,540	\$ 29,273,410	\$ 2,190,870	7.5%
Maintenance	6,188,726	6,603,347	414,621	6.3%
Administration	3,674,045	4,087,246	413,201	10.1%
Other Operating	<u>674,279</u>	<u>1,085,296</u>	<u>411,016</u>	<u>37.9%</u>
Total O M & A	\$ 37,619,590	\$ 41,049,299	\$ 3,429,709	8.4%
Capital Expenditures				
Operations	\$ -	\$ -	-	0.0%
Maintenance	30,086	42,000	11,914	28.4%
Administration	<u>-</u>	<u>15,000</u>	<u>15,000</u>	<u>100.0%</u>
Total Capital Expenditures	\$ 30,086	\$ 57,000	\$ 26,914	47.2%

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**Central Florida Expressway Authority  
Operations - Comparison of Actual to Budget  
For the Six Months Ending December 31, 2019**

	<b>YTD Actual</b>	<b>YTD Budget</b>	<b>Budget Variance</b>	<b>Variance Percentage</b>
Toll Operations	290,782	291,986	1,204	0.41%
Image Review	4,516,814	4,584,712	67,898	1.48%
Special Projects	43,102	90,272	47,170	52.25%
Information Technology	2,382,576	2,647,241	264,665	10.00%
E-PASS Service Center	9,604,806	10,349,564	744,758	7.20%
E-PASS Business Services	68,516	79,479	10,963	13.79%
Public Outreach/Education	747,045	881,708	134,664	15.27%
<b>Subtotal CFX</b>	<b>17,653,641</b>	<b>18,924,963</b>	<b>1,271,322</b>	<b>6.72%</b>
Plazas	9,428,900	10,348,447	919,547	8.89%
<b>Subtotal Toll Facilities</b>	<b>9,428,900</b>	<b>10,348,447</b>	<b>919,547</b>	<b>8.89%</b>
<b>Total Operations Expenses</b>	<b>27,082,540</b>	<b>29,273,410</b>	<b>2,190,869</b>	<b>7.48%</b>

**Central Florida Expressway Authority  
Maintenance - Comparison of Actual to Budget  
For the Six Months Ending December 31, 2019**

	<b>YTD Actual</b>	<b>YTD Budget</b>	<b>Budget Variance</b>	<b>Variance Percentage</b>
Maintenance Administration	1,214,522	1,372,176	157,653	11.49%
Traffic Operations	1,080,422	1,264,679	184,257	14.57%
Routine Maintenance	3,923,868	4,008,493	84,625	2.11%
<b>Total Maintenance Expenses</b>	<b>6,218,812</b>	<b>6,645,347</b>	<b>426,536</b>	<b>6.42%</b>



**Central Florida Expressway Authority  
Administration - Actual to Budget by Cost Center  
For the Six Months Ending December 31, 2019**

	<b>YTD Actual</b>	<b>YTD Budget</b>	<b>Budget Variance</b>	<b>Variance Percentage</b>
General	419,916	422,478	2,562	0.61%
Administrative Services	1,032,604	1,114,904	82,300	7.38%
Communications	286,703	353,472	66,769	18.89%
Human Resources	95,763	152,784	57,021	37.32%
Supplier Diversity	99,577	109,778	10,201	9.29%
Accounting	751,046	822,750	71,703	8.72%
Construction Administration	29,187	31,653	2,466	7.79%
Risk Management	0	0	0	0.00%
Procurement	242,692	297,036	54,344	18.30%
Legal	399,392	444,910	45,518	10.23%
Internal Audit	116,353	121,000	4,648	3.84%
525 Magnolia	15,773	13,656	(2,117)	-15.50%
Engineering	30,170	35,199	5,029	14.29%
Records Management	154,869	182,625	27,756	15.20%
<b>Grand Total Expenses</b>	<b>3,674,045</b>	<b>4,102,246</b>	<b>428,201</b>	<b>10.44%</b>

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
CALCULATION OF NET REVENUES AS DEFINED BY THE BOND RESOLUTIONS  
PREVIOUS YEAR BUDGET TO ACTUAL COMPARISON  
FOR THE MONTH ENDING DECEMBER 31, 2019 AND YEAR-TO-DATE**

	<b>FY 20 YEAR-TO-DATE ACTUAL</b>	<b>FY 20 YEAR-TO-DATE BUDGET</b>	<b>FY 20 YEAR-TO-DATE VARIANCE</b>	<b>FY 19 YEAR-TO-DATE ACTUAL</b>	<b>FY 19 YEAR-TO-DATE BUDGET</b>	<b>FY 19 YEAR-TO-DATE VARIANCE</b>	<b>YEAR-TO-DATE VARIANCE COMPARISON</b>
<b>REVENUES</b>							
TOLLS*	\$ 245,834,396	\$ 235,549,007	\$ 10,285,389	\$ 228,033,130	\$ 226,484,069	\$ 1,549,061	\$ 8,736,328
FEES COLLECTED VIA UTN/UTC'S AND PBP'S	5,461,485	4,358,225	1,103,260	3,904,540	3,240,796	663,744	439,516
TRANSPONDER SALES	439,444	367,807	71,637	170,308	132,139	38,169	33,468
OTHER OPERATING	880,671	355,166	525,504	542,677	571,924	(29,247)	554,751
INTEREST	4,783,822	3,443,966	1,339,856	1,857,907	1,350,000	507,907	831,949
MISCELLANEOUS	373,663	365,070	8,593	549,451	531,103	18,348	(9,755)
<b>TOTAL REVENUES</b>	<b>257,773,480</b>	<b>244,439,241</b>	<b>13,334,238</b>	<b>235,058,013</b>	<b>232,310,031</b>	<b>2,747,982</b>	<b>10,586,256</b>
<b>O M &amp; A EXPENSES</b>							
OPERATIONS	27,082,540	29,273,410	2,190,870	24,605,313	26,903,508	2,298,195	(107,325)
MAINTENANCE	6,188,726	6,603,347	414,621	6,081,378	6,843,837	762,459	(347,838)
ADMINISTRATION	3,674,045	4,087,246	413,201	3,480,453	4,157,113	676,660	(263,459)
OTHER OPERATING	674,279	1,085,296	411,016	694,517	869,036	174,519	236,497
<b>TOTAL O M &amp; A EXPENSES</b>	<b>37,619,590</b>	<b>41,049,299</b>	<b>3,429,709</b>	<b>34,861,661</b>	<b>38,773,494</b>	<b>3,911,833</b>	<b>(482,124)</b>
<b>NET REVENUES BEFORE DEBT SERVICE</b>	<b>220,153,890</b>	<b>203,389,943</b>	<b>16,763,947</b>	<b>200,196,352</b>	<b>193,536,537</b>	<b>6,659,815</b>	<b>10,104,132</b>
<b>COMBINED NET DEBT SERVICE</b>	<b>90,472,217</b>	<b>91,490,181</b>	<b>1,017,964</b>	<b>84,377,596</b>	<b>85,370,785</b>	<b>(993,189)</b>	<b>2,011,153</b>
<b>NET REVENUES AFTER DEBT SERVICE</b>	<b><u>\$ 129,681,673</u></b>	<b><u>\$ 111,899,762</u></b>	<b><u>\$ 17,781,911</u></b>	<b><u>\$ 115,818,756</u></b>	<b><u>\$ 108,165,752</u></b>	<b><u>\$ 7,653,004</u></b>	<b><u>\$ 10,128,907</u></b>

\* 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 DECEMBER 31, 2019 AND YEAR-TO-DATE**

	<b>FY 20 MONTH ACTUAL</b>	<b>FY 19 MONTH ACTUAL</b>	<b>FY 19 - 20 SAME MONTH COMPARISON</b>	<b>FY 20 YEAR-TO-DATE ACTUAL</b>	<b>FY 19 YEAR-TO-DATE ACTUAL</b>	<b>FY 19 - 20 YEAR-TO-DATE COMPARISON</b>
<b>REVENUES</b>						
TOLLS*	\$ 42,787,093	\$ 39,356,704	\$ 3,430,389	\$ 245,834,396	\$ 228,033,130	\$ 17,801,266
FEES COLLECTED VIA UTN/UTC'S AND PBP'S	1,114,401	686,237	428,164	5,461,485	3,904,540	1,556,945
TRANSPONDER SALES	78,036	24,161	53,875	439,444	170,308	269,136
OTHER OPERATING	193,776	96,072	97,704	880,671	542,677	337,994
INTEREST	746,003	101,586	644,417	4,783,822	1,857,907	2,925,915
MISCELLANEOUS	62,336	85,987	(23,651)	373,663	549,451	(175,788)
<b>TOTAL REVENUES</b>	<b>44,981,644</b>	<b>40,350,747</b>	<b>4,630,897</b>	<b>257,773,480</b>	<b>235,058,013</b>	<b>22,715,467</b>
<b>O M &amp; A EXPENSES</b>						
OPERATIONS	4,921,012	5,020,887	(99,875)	27,082,540	24,605,313	2,477,227
MAINTENANCE	1,388,411	1,491,252	(102,841)	6,188,726	6,081,378	107,348
ADMINISTRATION	585,668	803,672	(218,004)	3,674,045	3,480,453	193,592
OTHER OPERATING	105,538	279,525	(173,987)	674,279	694,517	(20,238)
<b>TOTAL O M &amp; A EXPENSES</b>	<b>7,000,629</b>	<b>7,595,336</b>	<b>(594,707)</b>	<b>37,619,590</b>	<b>34,861,661</b>	<b>2,757,929</b>
<b>NET REVENUES BEFORE DEBT SERVICE</b>	<b>37,981,015</b>	<b>32,755,411</b>	<b>5,225,604</b>	<b>220,153,890</b>	<b>200,196,352</b>	<b>19,957,538</b>
<b>COMBINED NET DEBT SERVICE</b>	<b>14,724,273</b>	<b>14,328,353</b>	<b>395,920</b>	<b>90,472,217</b>	<b>84,377,596</b>	<b>6,094,621</b>
<b>NET REVENUES AFTER DEBT SERVICE</b>	<b>\$ 23,256,742</b>	<b>\$ 18,427,058</b>	<b>\$ 4,829,684</b>	<b>\$ 129,681,673</b>	<b>\$ 115,818,756</b>	<b>\$ 13,862,917</b>

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# E.3.

## Executive Director's Report

## Executive Director Report February 2020

### DASHBOARD

#### Wrong Way Driving Program

In December, there were 9 wrong way driving detections system-wide, with 7 of the 9 detections resulting in documented turn arounds. Details of the remaining events are listed below:

#### **SR 408 EB Exit 4 at Hiawasse Rd, Saturday 12/14/2019 2:34 PM**

A black sedan was observed traveling down the ramp in the wrong direction. FHP was unable to find the vehicle. There were no citations or crashes associated with this event.

#### **SR 417 NB Exit 24 at Dowden Rd/Innovation Way, Monday 12/16/2019 1:33 AM**

A white SUV was observed traveling down the ramp in the wrong direction. The Regional Traffic Management Center notified FHP. There were no citations or crashes associated with this event.

### SAFETY

#### Safety Award

On March 18th, Raquel Asa and WFTV-TV will receive the United Safety Council Media Award for Safety for their special report on the importance of driver education for new drivers. This report was a partnership with CFX to improve safety through our "Drive Smart Florida - Smart Driver, Safe Commute" campaign. CFX is grateful that WFTV recognizes the importance of safe driving to our community.

### ENVIRONMENTAL PARTNERSHIPS

#### Florida Greenways and Trails Foundation

A representative of the Florida Greenways and Trails Foundation is exploring the possibility of a wildlife and pedestrian bridge over the Beachline to improve and connect the Florida trails network. Dale Allen met with CFX staff on January 16, 2020, to ask for assistance in estimating bridge costs so that the Foundation could begin seeking federal and state funds for the project.

#### Osceola Parkway Extension

On December 16, 2019, the Osceola County Board of Commissioners voted to support an application to Florida's Communities Trust for a 60-acre easement through the southwestern corner of Split Oak Forest in Osceola County for the Osceola Parkway Extension. On December 17, 2019, Orange County voted to join Osceola County in support of the application for the easement. Both counties expect to complete and submit the application in the next few weeks. Suburban Land Reserve and Tavistock have agreed to donate approximately 1,550 acres previously slated for development near Split Oak Forest to Osceola and Orange Counties for conservation purposes.

## TRANSPORTATION PARTNERSHIPS

### Virgin Trains Update

On January 24, 2020, Virgin Trains held a meeting with Florida Department of Transportation representatives and CFX staff to discuss their plans for train service from the Orlando International Airport to Disney Springs with an eventual route to Tampa. Construction to extend Virgin Trains service from West Palm Beach to the Orlando International Airport continues to progress.

### Transportation & Expressway Authority Membership of Florida (TEAMFL)

TEAMFL's January 30-31, 2020 meeting on Resiliency through Innovation was held at the Orlando International Airport. A presentation about the benefits of the Visitor Toll Pass Pilot Program was presented during the general session. Florida's toll agencies met the afternoon of January 30 to discuss opportunities to improve customer service statewide.

### International Bridge Tunnel and Turnpike Association (IBTTA)

The IBTTA Board of Directors met January 7 – 10, 2020 to review budgets, hear reports on emerging technologies and work to strengthen the IBTTA strategic plan, which includes the following three to five-year goals:

- 1) Strengthen association programs and services;
- 2) Improve industry data available to members;
- 3) Facilitate knowledge transfer among members; and
- 4) Consider expanding membership to other modes of transportation.

IBTTA President Samuel Johnson, from Orange County, California, toured CFX facilities on January 28, 2020.

### Orlando Business Journal Business of Transportation

I had the privilege of serving on the OBJ Business of Transportation Panel with Orange County Mayor Jerry Demings and other distinguished guests last week. Emerging energy and transportation technologies, transportation funding and improving transportation services for Central Floridians were themes of the day.

## PRESENTATIONS

December 16: Osceola Board of County Commissioners  
December 17: Orange Board of County Commissioners  
January 10: Central Florida MPO Alliance  
January 31: Visitor Toll Pass Presentation at TEAMFL  
February 7: OBJ Business of Transportation Panel

## MEETINGS

December 12: Central Florida Autonomous Vehicle Partners  
December 17: TEAMFL/Florida Autonomous Vehicle Summit Planning  
December 17: International Drive Traffic Management Work Group  
December 18: I-4 Ultimate Public Involvement Coordination  
January 1: I-4 Ultimate Public Involvement Coordination  
January 8: I-4 Ultimate Public Involvement Coordination  
January 9: ACEC Industry Forum  
January 14: Leadership Osceola 2020 Selection Committee

January 14: District 5 Regional Working Group  
 January 15: Greater Orlando Aviation Authority  
 January 15: I-4 Ultimate Public Involvement Coordination  
 January 21: American Society of Highway Engineers Board  
 January 23: Lake Kehoe HOA  
 January 24: MetroPlan Transportation Systems Management & Operations  
 January 24: MetroPlan Technical Advisory Committee  
 January 28: IBTTA President Tour  
 January 29: New Independence Parkway HOA Board  
 January 30-31: TEAMFL Annual Meeting  
 January 30: TEAMFL/FAV Leadership Group Meeting  
 January 31: FDOT District 5 Incident Management Interoperability Workshop  
 February 6: MetroPlan Municipal Advisory Committee

### EVENTS

December 13: OBJ Doing Business in Downtown Panel Luncheon  
 January 9: Apopka Chamber Legislative Preview  
 January 15: East Lake County Chamber of Commerce with Lake County  
 Supervisor of Elections Alan Hayes  
 January 23: Junior Achievement Inspire  
 February 1- 2: Mt. Dora Spring Arts Festival  
 February 1: U.S. Tennis Association CollegePass Promo  
 February 4: 2020 State of Education – Osceola County  
 February 5: Leadership Osceola 2020 Class Kick Off Event  
 February 9: UCF KnightPass Promo

## PERFORMANCE DASHBOARD

**NOVEMBER 2019**

Fiscal year runs from July 1-June 30

### CUSTOMER SERVICE

	Activity		Monthly Avg. Wait Time	
	Actual	6 mo. Avg	Actual	Target
Service Center	9,696	8,047	4:08	<5m

**SERVICE CENTER: MINUTE INTERVALS** <5 5-6 6-7 7-8 8-9 9+

Call Center	91,574	104,385	0:52	<1m
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**CALL CENTER: % MINUTE INTERVALS** <1 1-3 3-5 5+



Monthly



Year to Date

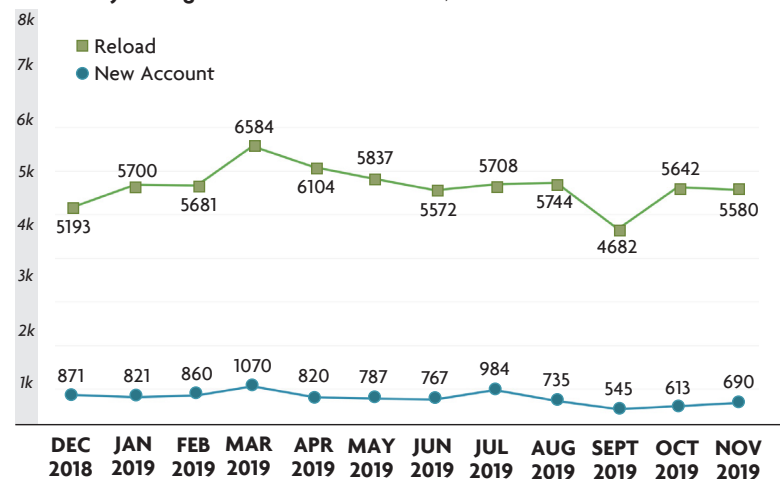
FTC TARGET: 80% <1m

### WRONG WAY DRIVING (WWD)

Month	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
Total Vehicles Detected	10	16	14	14	20	14	18	19
Documented Turn Arouds	10	15	13	14	18	13	16	15

### RELOAD CUSTOMER SERVICE LANE ACTIVITY

Monthly averages: 780 E-PASS sales and 5,554 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	\$64.5	89%	95%		March 2020
SR 408 Widening from SR 417 to Alafaya Trail	\$78.8	\$77.4	100%	98%		December 2019
SR 417 Widening from Econlockhatchee to Seminole Co.	\$44.8	\$32.4	69%	72%		June 2020
Toll System Replacement	\$54.4	\$31.5	73%	58%		July 2021

LEGEND: % Time - % Spent ≤ 10 11-20 ≥ 21

## FINANCIALS

### FINANCIALS

FY to Date	Actual	Budget	VAR
Total Revenue	\$212.8	\$204.5	4%
OM&A Expenses	\$30.6	\$33.5	9%
Net Revenue	\$106.4	\$94.8	12%

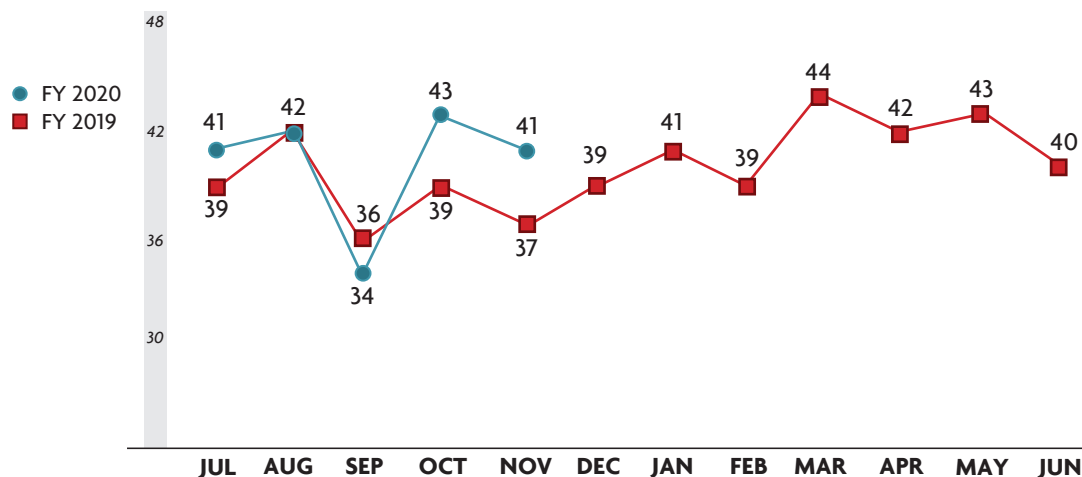
LEGEND: >= 0 -0.1 to -10 <= -10

### DEBT SERVICE

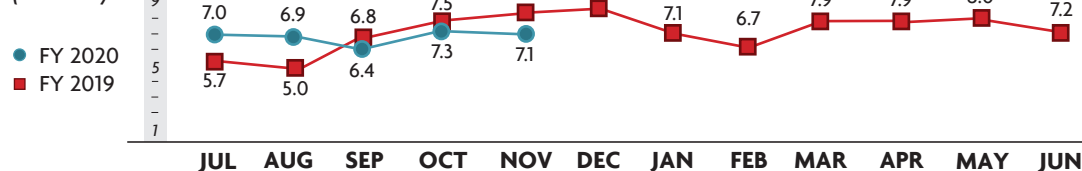
FY to Date	Actual	Budget
Senior Lien	2.36	2.31
Subordinate Lien	2.26	2.21

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 FY20 due to Hurricane Dorian from the afternoon of 9/1/19 through 9/5/19.



## PERFORMANCE DASHBOARD

**DECEMBER 2019**

Fiscal year runs from July 1-June 30

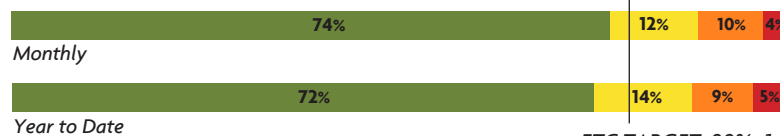
### CUSTOMER SERVICE

	Activity		Monthly Avg. Wait Time	
	Actual	6 mo. Avg	Actual	Target
Service Center	10,818	8,772	4:04	<5m

**SERVICE CENTER: MINUTE INTERVALS** <5 5-6 6-7 7-8 8-9 9+

	Actual	6 mo. Avg	Actual	Target
Call Center	118,346	108,655	1:00	<1m

**CALL CENTER: % MINUTE INTERVALS** <1 1-3 3-5 5+



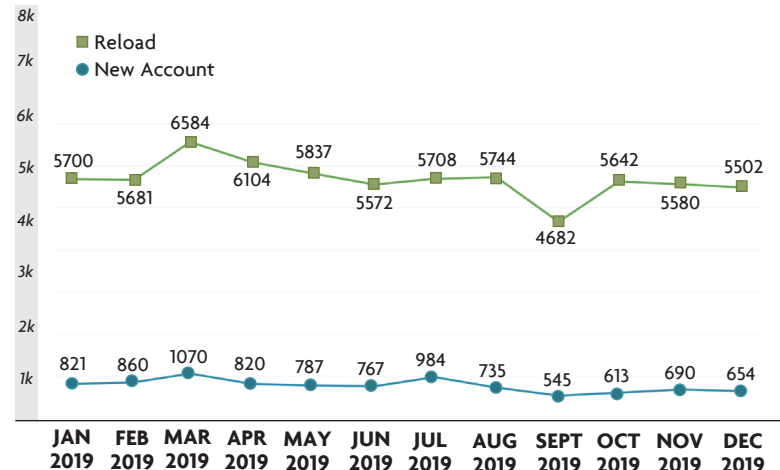
FTC TARGET: 80% <1m

### WRONG WAY DRIVING (WWD)

Month	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Total Vehicles Detected	16	14	14	20	14	18	19	9
Documented Turn Arouds	15	13	14	18	13	16	15	7

### RELOAD CUSTOMER SERVICE LANE ACTIVITY

Monthly averages: 779 E-PASS sales and 5,695 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	\$65.5	93%	96%		March 2020
SR 408 Widening from SR 417 to Alafaya Trail	\$78.8	\$77.8	100%	99%		December 2019
SR 417 Widening from Econlockhatchee to Seminole Co.	\$44.8	\$32.9	74%	74%		June 2020
Toll System Replacement	\$54.4	\$31.8	74%	58%		July 2021

LEGEND: % Time - % Spent ≤ 10 11-20 ≥ 21

## FINANCIALS

### FINANCIALS

FY to Date	Actual	Budget	VAR
Total Revenue	\$257.8	\$244.4	5%
OM&A Expenses	\$37.6	\$41.0	8%
Net Revenue	\$129.7	\$111.9	16%

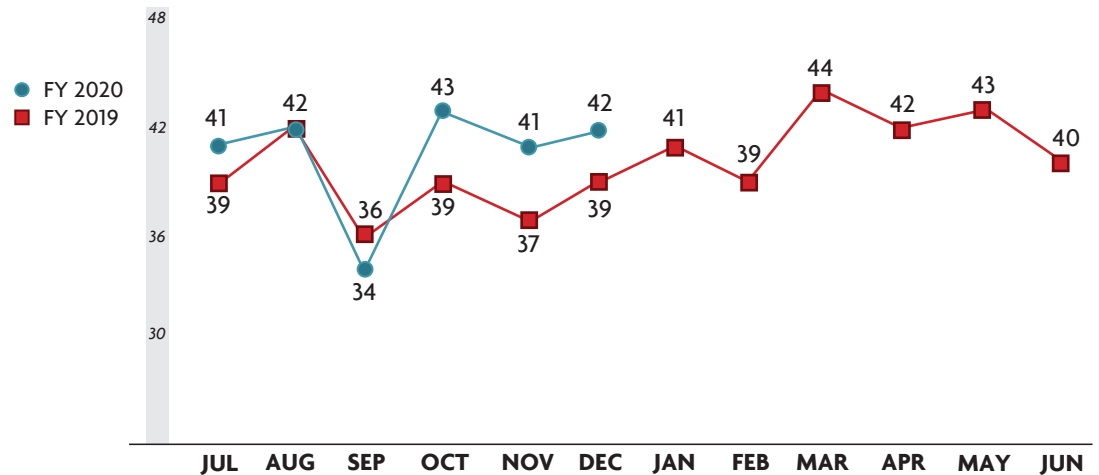
LEGEND: >0 -0.1 to -10 </-10

### DEBT SERVICE

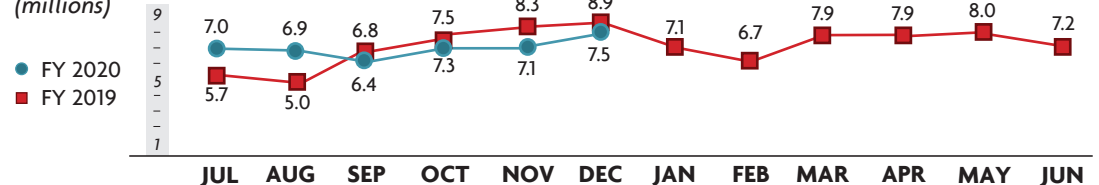
FY to Date	Actual	Budget
Senior Lien	2.15	2.06
Subordinate Lien	2.07	1.99

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 FY20 due to Hurricane Dorian from the afternoon of 9/1/19 through 9/5/19.

TRAFFIC CONGESTION HEAT MAPS

A Quarterly Update

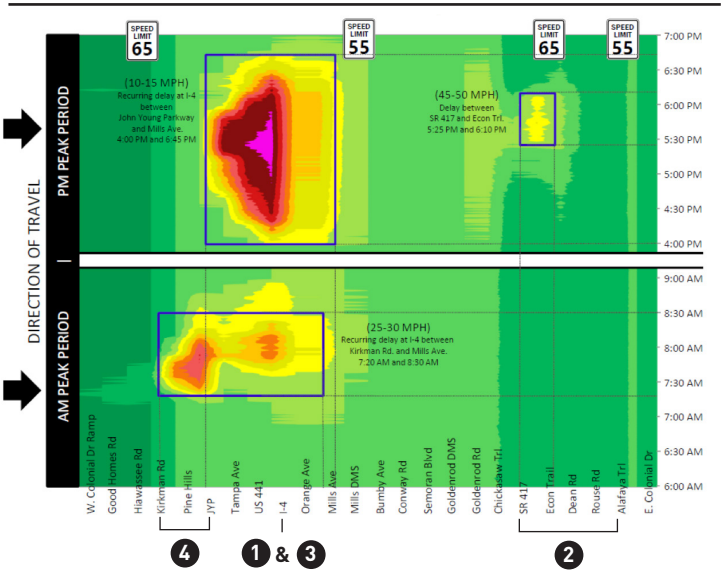
October - December 2019

Map Scale in Miles Per Hour			
65-70	30-35		
60-65	25-30		
55-60	20-25		
50-55	15-20		
45-50	10-15		
40-45	5-10		
35-40	0-5		



SR 408

Eastbound



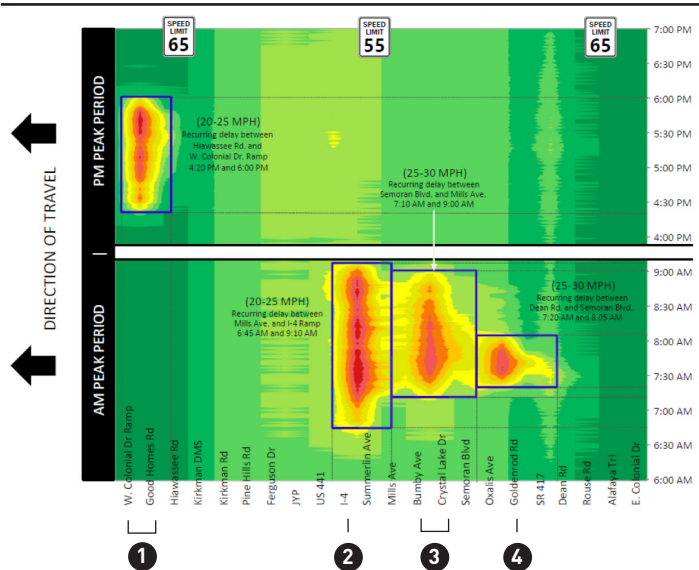
Projects:

- (AM) Construction underway – widen the SR 408 mainline through the *I-4 interchange* part of I-4 Ultimate. Completion late 2021.
- Construction underway – widen the SR 408 mainline between *SR 417 and Alafaya Trail*. Completion January 2020.
- (PM) Construction underway – widen the SR 408 mainline through the *I-4 interchange* part of I-4 Ultimate. Completion late 2021.
- Monitoring monthly - Friction due to eastbound SR 408 transitioning from 4 lanes to 3 lanes between Pine Hills Mainline Plaza and John Young Parkway.



SR 408

Westbound



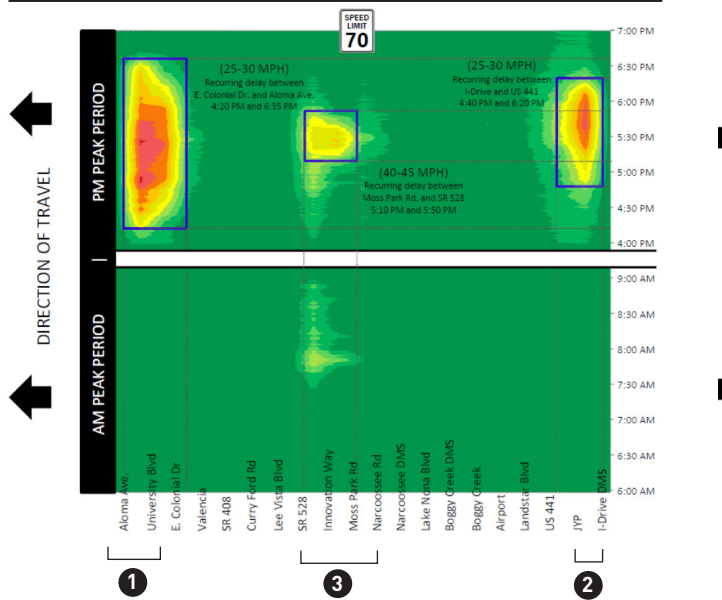
Projects:

- SR 408 Westbound transitions from 3 lanes to 2 lanes at the jurisdictional limit with Florida's Turnpike Enterprise west of Colonial Drive ramps.
- Construction underway – widen the SR 408 mainline through the *I-4 interchange* part of I-4 Ultimate. Completion late 2021.
- Monitoring monthly – Friction due to westbound SR 408 transitioning from 5 lanes to 4 lanes between *Crystal Lake Drive and Bumby Avenue*.
- Monitoring monthly – Friction due to westbound SR 408 transitioning back to 4 lanes following lane drops of westbound entrance ramps from *Chickasaw Trail and Goldenrod Road*.



SR 417

Northbound



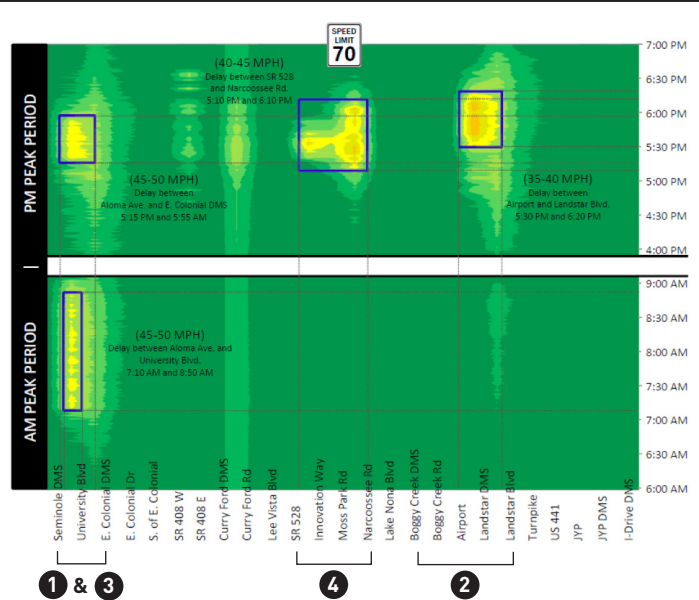
Projects:

- Construction underway – widen SR 417 from *Econlockhatchee Trail to Aloma Avenue*. Completion Summer 2020.
- Design underway – widen SR 417 from *International Drive to John Young Parkway*. Construction completion 2023.
- Design underway – widen SR 417 from *Narcoossee to SR 528*. Construction completion 2023.



SR 417

Southbound



Projects:

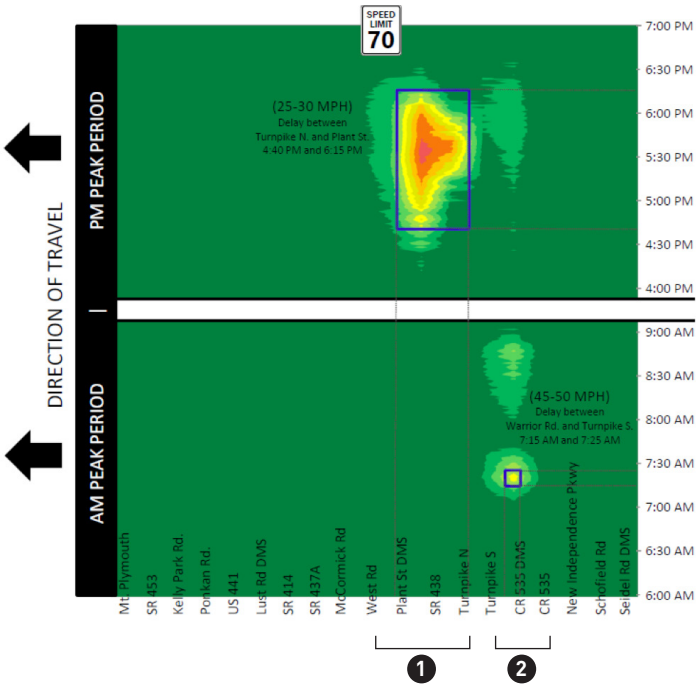
- (AM) Construction underway – widen SR 417 from *Econlockhatchee Trail to Aloma Avenue*. Completion Summer 2020.
- Design underway – widen SR 417 from *Landstar Boulevard to Boggy Creek Road*. Construction completion 2023.
- (PM) Construction underway – widen SR 417 from *Econlockhatchee Trail to Aloma Avenue*. Completion Summer 2020.
- Design underway – widen SR 417 from *Narcoossee to SR 528*. Construction completion 2023.

# TRAFFIC CONGESTION HEAT MAPS

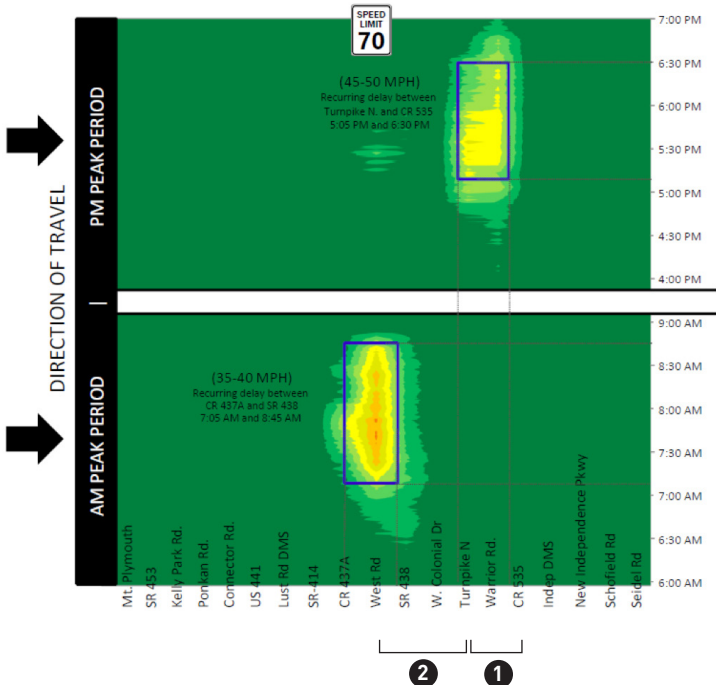
A Quarterly Update  
October - December 2019

Map Scale in Miles Per Hour	
65-70	30-35
60-65	25-30
55-60	20-25
50-55	15-20
45-50	10-15
40-45	5-10
35-40	0-5

**SR 429 Northbound**



**SR 429 Southbound**



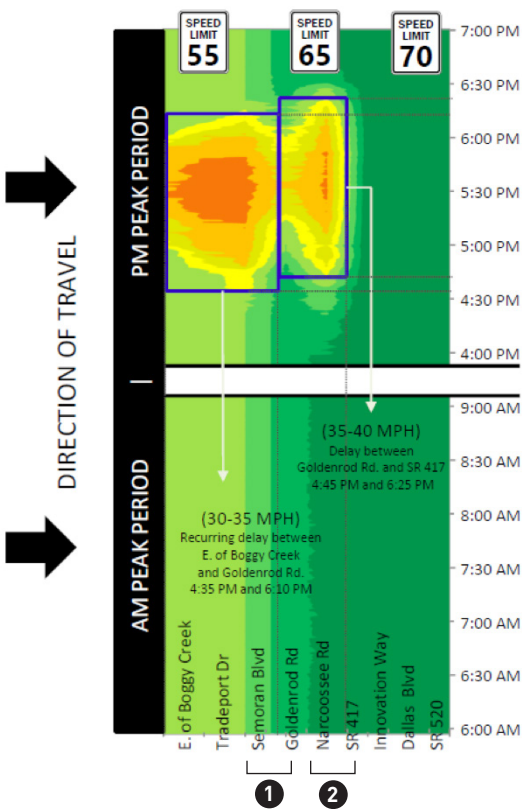
**Projects:**

1. Design underway – widen SR 429 from *Florida's Turnpike to West Road*. Construction completion 2023.
2. Design underway – widen SR 429 from *CR 535 to Florida's Turnpike*. Construction completion 2022.

**Projects:**

1. Design underway – widen SR 429 from *CR 535 to Florida's Turnpike*. Construction completion 2022.
2. Design underway – widen SR 429 from *Florida's Turnpike to West Road*. Construction completion 2023.

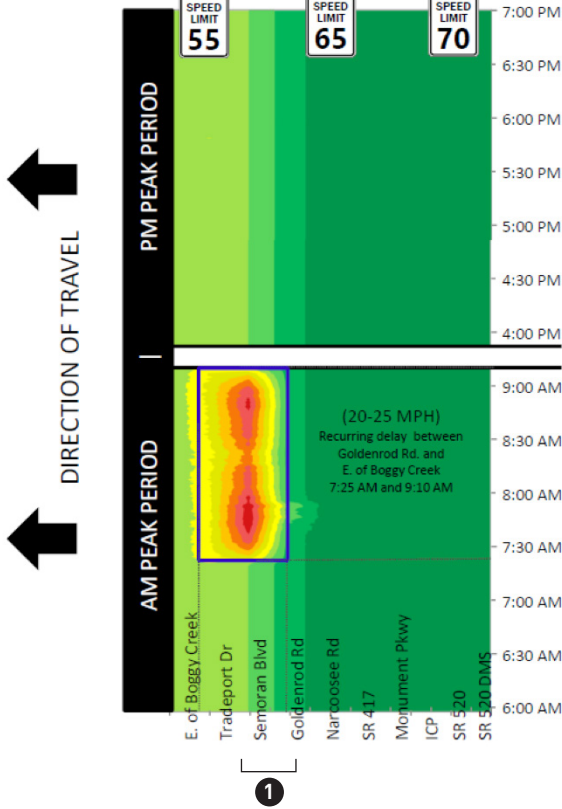
**SR 528 Eastbound**



**Projects:**

1. Design underway – widen SR 528 from *Semoran Boulevard to Goldenrod Road*. Construction completion 2022.
2. Design start 2020 – widen SR 528 from *Narcoossee Road to SR 417*. Construction completion 2022.

**SR 528 Westbound**



**Projects:**

1. Design underway – widen SR 528 from *Semoran Boulevard to Goldenrod Road*. Construction completion 2022.

**F. 1.**



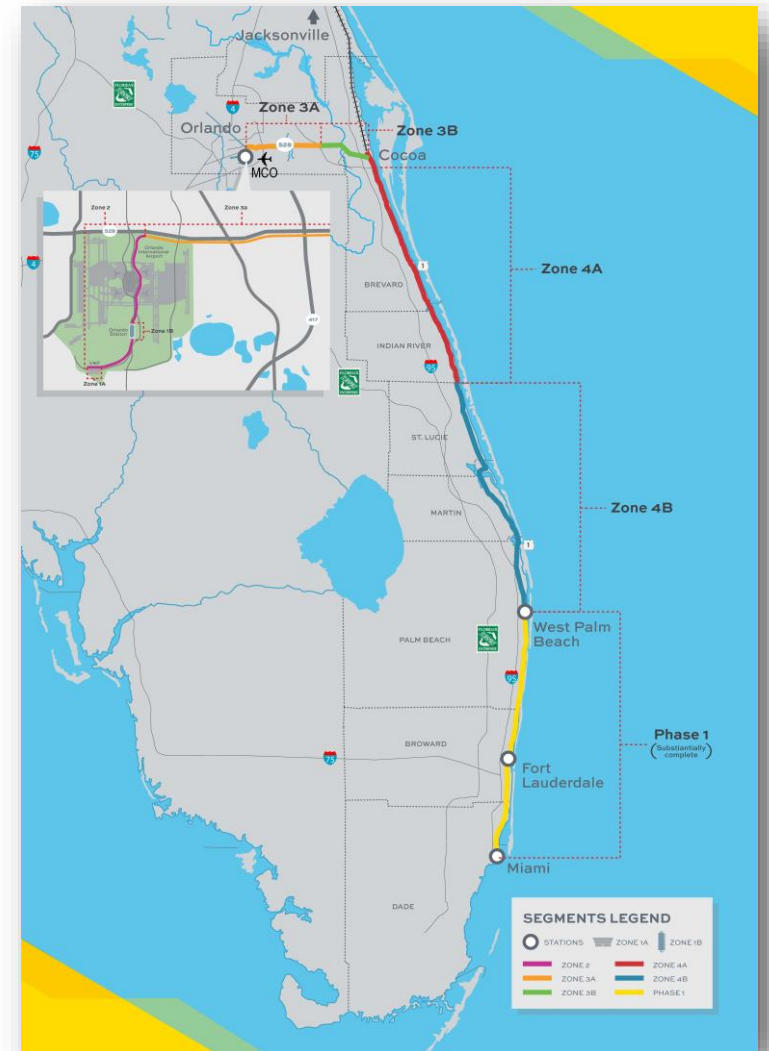


**Michael Cegelis, EVP, Rail Infrastructure**

West Palm Beach-Orlando  
STATUS UPDATE  
February 13, 2020

# Phase 2 Project – West Palm Beach to Orlando

- \$2.5B investment
- VMF and Orlando Station Tenant Improvements (Zone 1)
- 4 miles through GOAA main corridor (Zone 2)
- 35 miles from Cocoa Curve to Orlando Airport (Zone 3)
- 129 miles in existing rail corridor (Zone 4)



# Safety – our highest priority

---

- 600,000 manhours worked to date
- 2 recordable injuries
- NO LOST TIME INJURIES

# Major Construction Contracts

---

- Zone 1 VMF site: Hubbard Construction Co. (\$8M)
- Zone 1 VMF Building: Wharton-Smith Inc. (\$55M)
- Zone 2 GOAA alignment: The Middlesex Co. (\$85M)
- Zone 3 GOAA curve-Cocoa curve: Granite Construction Co. (\$500M)
- Zone 4 rail alignment Cocoa-WPB: HSR Constructors (Herzog, Stacy & Witbeck, Railworks) (\$700M)
- Zone 4 Loxahatchee Bascule Bridge reconstruction: Scott Bridge Co. (\$33M)



# Zone 1 Vehicle Maintenance Facility Site Development

---



- Sitework nearing completion
- Building construction to begin April 2020





# Zone 2 Orlando International Airport Corridor

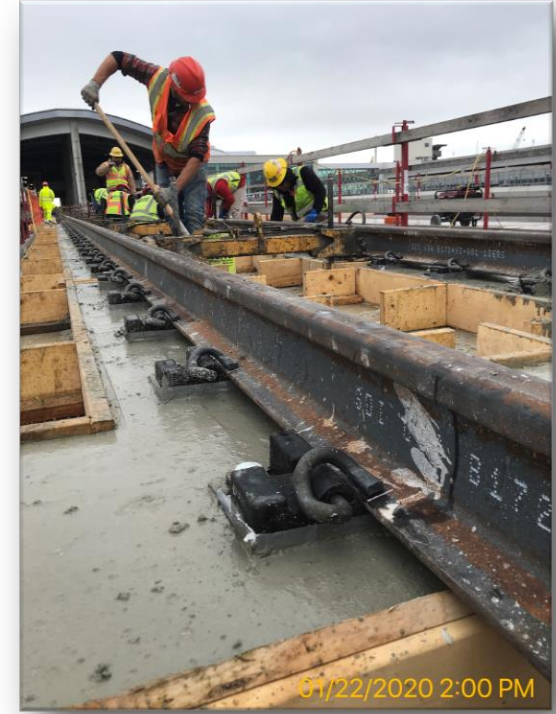
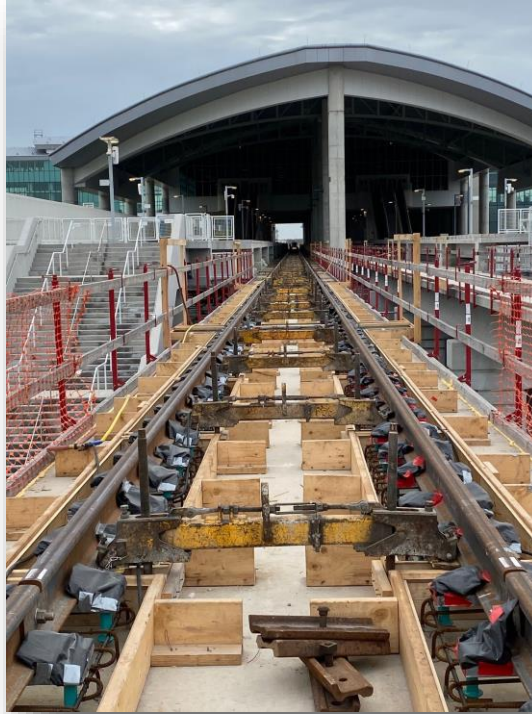


- Clearing complete
- Embankment complete South of tunnels
- Cargo Road underpass underway
- DF Trackwork underway
- Bridge construction beginning



# Zone 2 Platform Work at ITF

---





# Zone 3 Orlando International Airport to Cocoa



- 90% of corridor alignment cleared/grubbed
- 10% of rail embankment complete
- Major drainage works underway
- 10 of the 18 bridges are underway
- Goldenrod Road Box Jack prep underway
- 528 shoefly underway
- MSE walls underway at Taylor Creek





# Zone 3 Orlando International Airport to Cocoa

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# Zone 4 Cocoa to West Palm Beach

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- Clearing & grubbing underway over 65 miles
- Fiber relocation underway
- Direct purchase rail materials delivered
- Bridges underway at Sebastian, Crane
- Rail grading underway
- Grade crossing mast & warning gantries relocations





# Zone 4 Cocoa to West Palm Beach

---









# Future Projects

---

- Stations in South Florida - Aventura, Boca Raton, PortMiami
- Tampa
- Las Vegas – southern California



**Thank You**



**F. 2.**



# **The Economic Impact and Benefits of the Central Florida Expressway Authority Five-Year Work Plan FY 2020 – FY 2024**

**Sisinnio Concas, Ph.D., Program Director**  
*Autonomous and Connected Mobility Evaluation*

**Board Meeting**  
**February 13, 2020**

University of South Florida  
Center for Urban Transportation Research

The Central Florida Expressway Authority logo is a white square with the text "CENTRAL FLORIDA EXPRESSWAY AUTHORITY" in a bold, sans-serif font. "EXPRESSWAY" is in orange, while the other words are in black.

# Results at Glance

- 5-year Work Plan is substantial in terms of its contribution to economic growth measured by
  - \$4.6 billion in total output (gross business sales)
  - \$2.4 billion in GDP
  - 5,224 jobs in the Orlando area
  - 719 jobs throughout the State
- Improvements projected to save each household 62 hours per year in reduced delays
- \$1.5 billion in wages and income to the region due to work program projects
- \$133 million in local tax and state revenue from increased business activities
- Additional \$33 million in GDP and 380 jobs from induced impact of households out-of-pocket cost savings (annual)
- \$308 million in reduced accident costs (safety)

# Study Approach

## Objectives

- Assess the contribution of the Work Plan to the economy of the Orlando-Kissimmee-Sanford Metropolitan Statistical Area (MSA)
- Determine the economic benefits that the Work Plan will produce for Expressway Authority users
- Personal travel time savings
- Reduced accidents
- Reduced out-of-pocket costs
- Reduced pollution emissions



# Study Approach

## Methodology

### Project Expenditures

- Employment
- Business output



### Travel Improvements

- Travel time savings
- Accident reductions
- Out-of-pocket cost savings
- Emission reductions

### Economic Benefits (\$)

- Employment
- Business output
- Household savings
- Local tax revenue

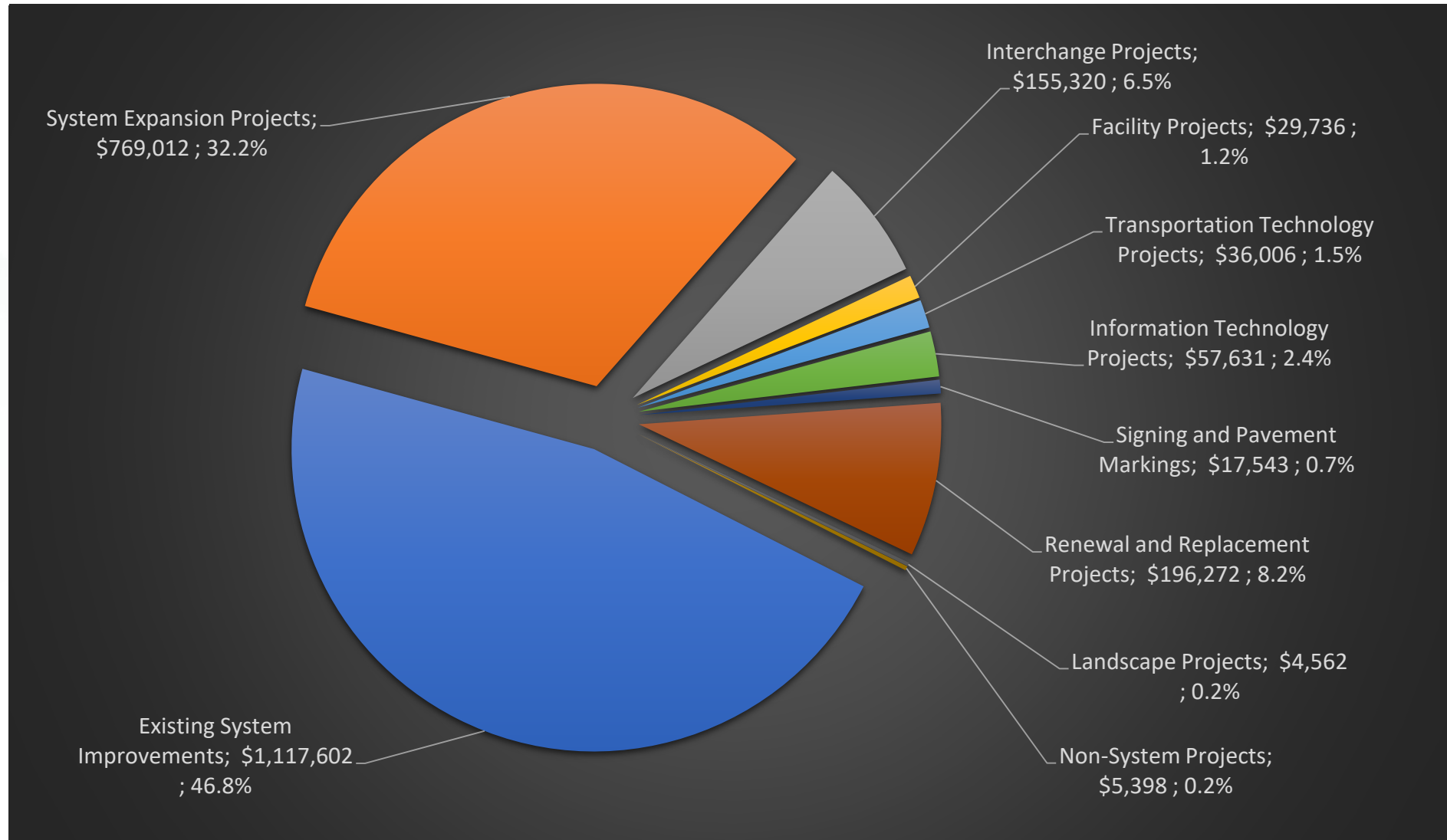
### Work Plan Expenditures Evaluated

- Current dollars
- Direct impact to Orlando-Kissimmee - Sanford MSA
- Impacts estimated using an Input-Output model

### Travel Improvement Impacts Estimated

- 2025-2045 CFX traffic engineers forecasts
- Changes in travel mobility and safety
- Change in out-of-pocket costs - indirect

# Five-Year Work Plan – Breakdown by Category





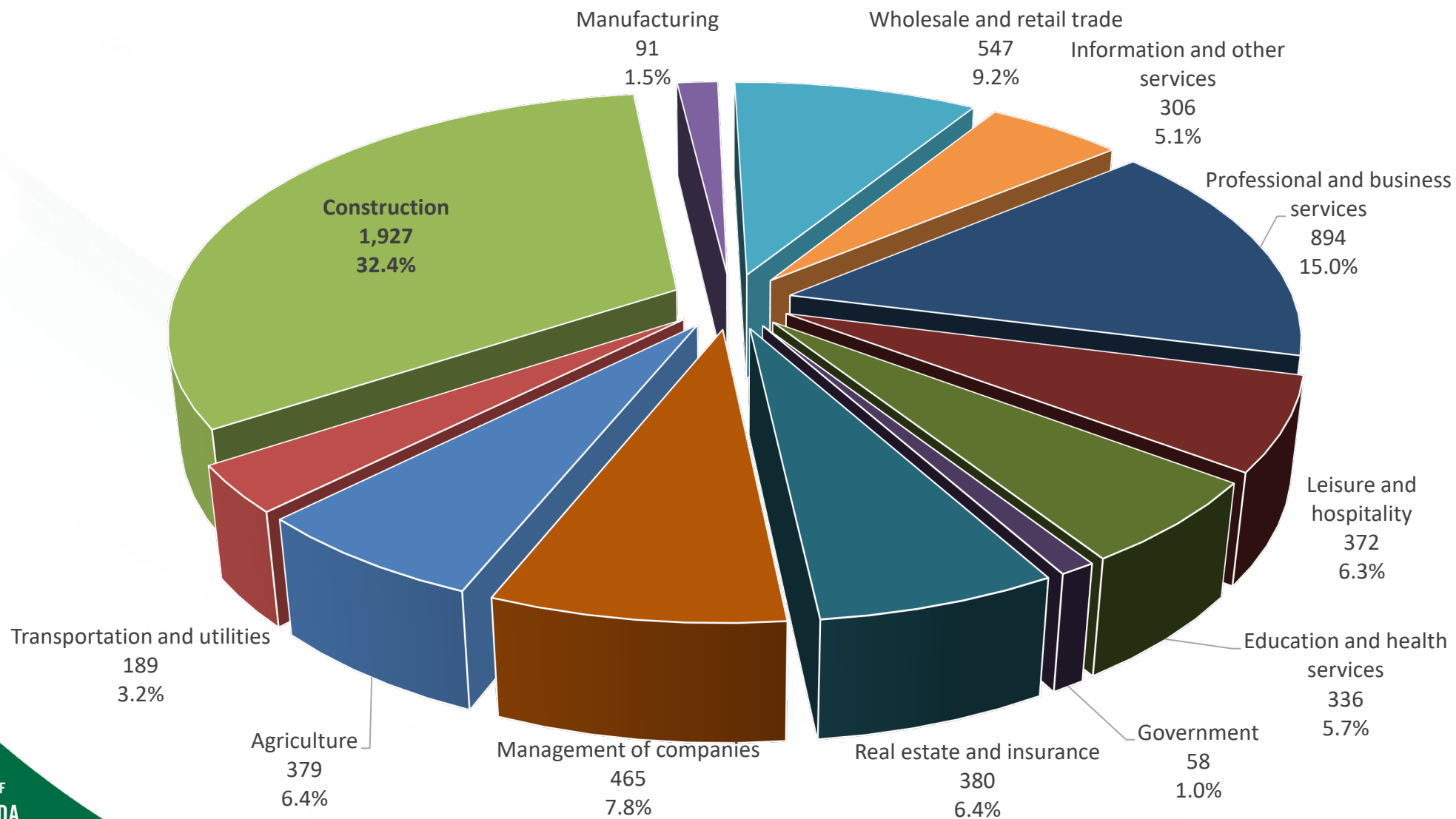
# Expenditure Impacts

<i>Impact Type</i>	<i>Output (\$,000)</i>	<i>Labor Income (\$,000)</i>	<i>Value Added (\$,000)</i>	<i>Employment</i>
<i>Direct</i>	2,222,925	789,108	1,046,125	2,570
<i>Indirect</i>	1,187,314	389,495	641,111	1,542
<i>Induced</i>	1,191,641	376,002	697,789	1,830
<b><i>Total</i></b>	<b>4,601,879</b>	<b>1,554,605</b>	<b>2,385,025</b>	<b>5,942</b>

## Work Plan expenditures will generate

- \$1.5 billion in wages and other income
- A total of 5,942 jobs

# Employment Impacts



# Fiscal Impact

Revenue Source	Total Impact (\$, million)
Sales tax	67.6
Property tax	35.8
Motor vehicle tax	0.7
Corporation taxes	5.2
Other*	23.5
<b>Total</b>	<b>132.8</b>

*\*Fines and fees (non-tax)*

# Work Plan Direct User Benefits

Benefit	(\$ million/year)
<b>Travel time savings</b>	
To Households	623.5
To Businesses	101.8
<b>Accident cost reductions</b>	<b>308.0</b>
<b>Fuel consumption savings</b>	
To Households	25.7
To Businesses	11.0
Emission pollution reductions	20.8
<b><i>Total</i></b>	<b><i>1,090.8</i></b>

# Household Savings

## Travel Time Savings

- 62 hours in wasted travel

## Out-of-Pocket Cost Savings

- \$25.7 million in gasoline
- \$22.7 million savings in medical expenses from avoided accidents
- \$27 per household (reduced fuel costs)

## Indirect and Induced Effect of Household Costs Savings

- \$33.6 million in Gross Domestic Product (GDP)
- Additional support of 380 jobs

# Conclusions

- 5-year Work Plan is substantial in terms of its contribution to **economic growth measured by \$4.6 billion in total output (gross business sales) and \$2.4 billion in GDP**
- **5,942 jobs for the 5-counties** (Brevard, Lake, Orange, Osceola, Seminole) and the rest of the State of Florida

## **Significant Contribution Towards Supporting Jobs in the Most Relevant Industries of the Region**

- Construction
- Professional and business services sector
- Wholesale and retail trade

## **Each Household on Average Saves**

- 62 hours in travel annually
- \$729 per year in travel time savings
- \$57 per year on out-of-pocket costs due to reduced fuel costs and reduced medical expenses associated with accidents

## **Other benefits**

- Substantial accident cost reduction of \$308 million/year
- Emissions costs reduced \$20.8 million annually

# Questions? Thank you!



[concas@cutr.usf.edu](mailto:concas@cutr.usf.edu)

813-974-7760

**F. 3.**



**THERE ARE NO  
BACKUP MATERIALS  
FOR THIS ITEM**

**F. 4.**





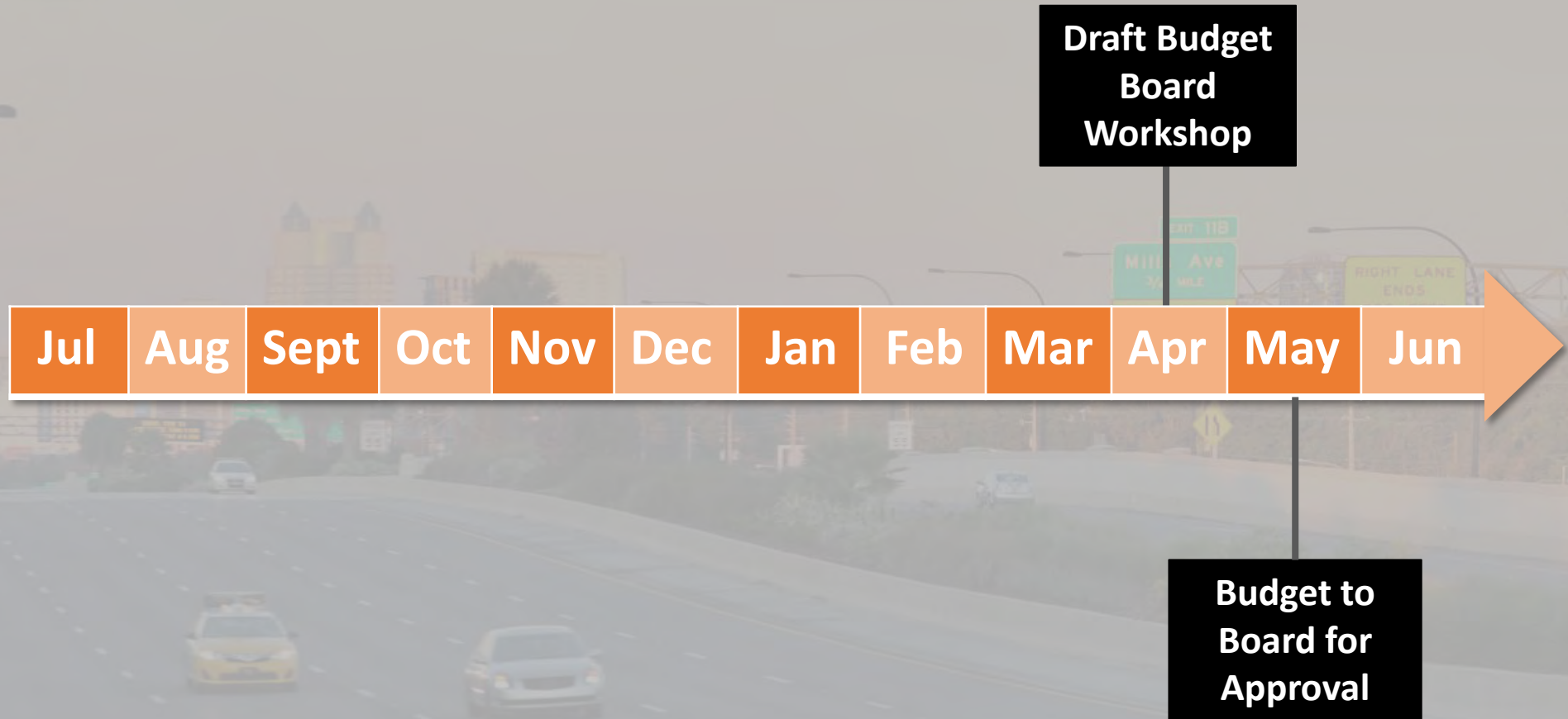
# FY 2020 MID-YEAR BUDGET REVIEW/AMENDMENT

**Michael Carlisle, Director of Accounting and Finance**

- February 13, 2020 -



# CFX Fiscal Year Budget Cycle (July – June)



# Budgeted vs Actual Revenues as of December 2019

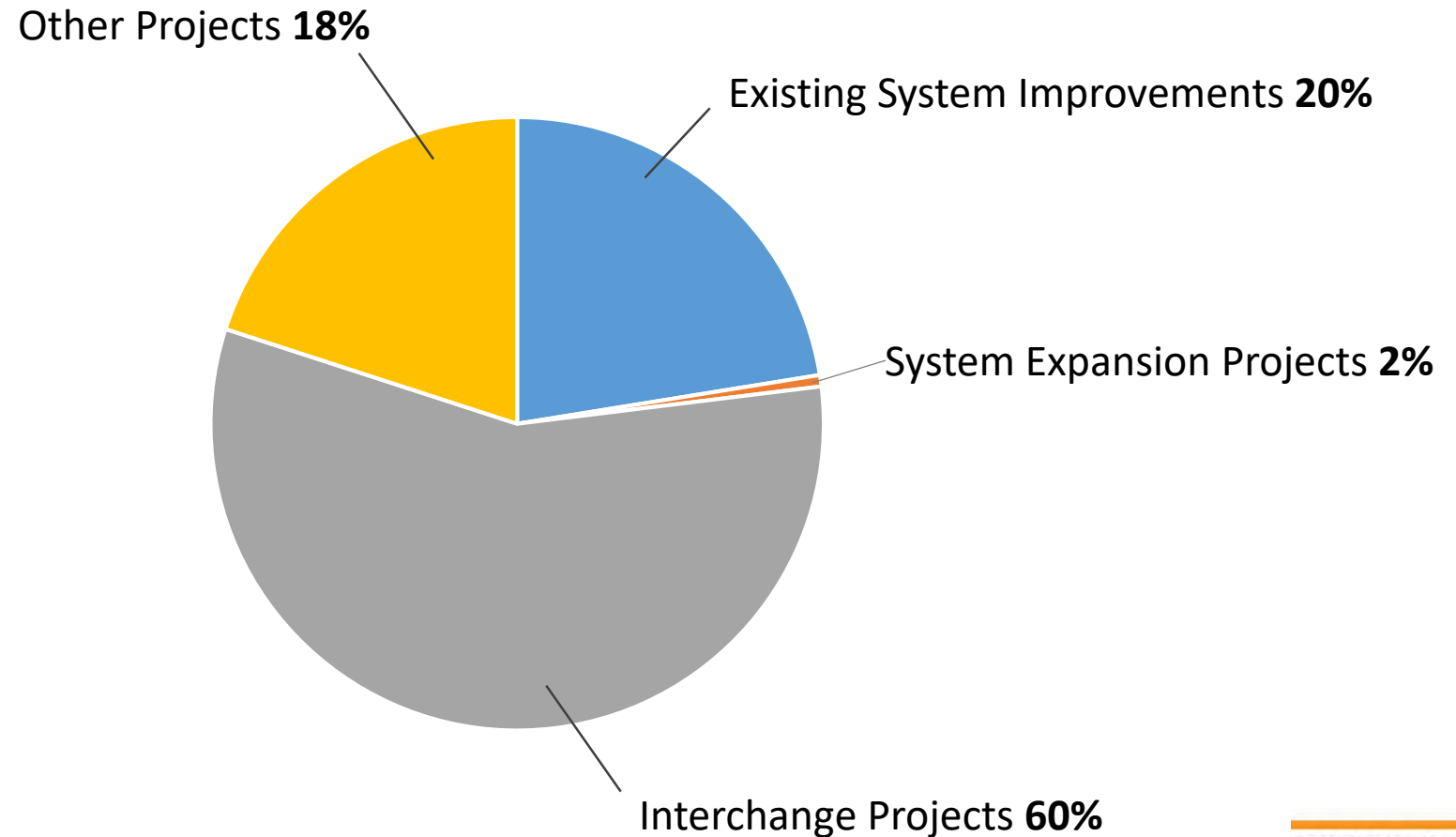
	FY 2020 <b>Actual Revenue</b>	FY 2020 <b>Projected Revenue</b>	%
Tolls	\$245,834,396	\$235,549,007	4%
Fees	5,461,485	4,358,225	25%
Transponder sales	439,444	367,807	19%
Other Operating	880,671	355,166	148%
Interest	4,783,822	3,443,966	39%
Miscellaneous	373,663	365,070	2%
<b>Total revenues</b>	<b>\$257,773,481</b>	<b>\$244,439,241</b>	<b>5%</b>

# Budgeted vs Actual Expenses as of December 2019 (with accruals)

	FY 2020 Actual Expenses	FY 2020 Budgeted Expenses	%
Operations	\$28,331,105	\$29,273,410	3%
Maintenance	6,238,726	6,603,347	6%
Administration	3,739,045	4,087,246	9%
Other Operating	1,034,279	1,085,296	5%
Total Expenses	<b>\$39,343,155</b>	<b>\$41,049,299</b>	<b>4%</b>

# Five-Year Work Plan | Amount Spent as of December 2019 (with accruals)

	Fiscal Year 20-24 Work Plan
Total Work Plan Budget	\$2,523,963,000
FY 2020 Work Plan Budget	\$307,128,000
Total YTD Expenses	\$155,190,868
Percent Spent	50.5%



# Projected Debt Service Ratio

- Projected Fiscal Year 2020 End – 2.15
- Planning Target – 1.60
- Board Policy – 1.45
- Bond Covenants – 1.20





# Poinciana Parkway Amendment

	<u>FY 2020 Original Adopted Budget</u>	<u>FY 2020 Poinciana Budget Amendment</u>	<u>FY 2020 Proposed Amended Budget</u>
Total Revenues	\$498,628,607	\$3,350,000	\$501,978,607
Total Operations Expense	(71,292,872)	(239,114)	(71,531,986)
Total Maintenance Expense	(20,138,191)	(453,646)	(20,591,837)
Total Administrative Expense	(8,982,398)	(0)	(8,982,398)
OM&A Reserve Deposits	(756,244)	(0)	(756,244)
FDOT Advances	7,519,332	(0)	7,519,332
Net Revenues	\$404,978,234	\$2,657,240	\$407,635,474
Senior Debt Service Payments	\$196,473,591	0	\$196,473,591
Senior Debt Service Ratio	2.06	N/A	2.07

# Recommended Motion

Approval of amended Operations, Maintenance and Administration Budget.

**F. 5.**

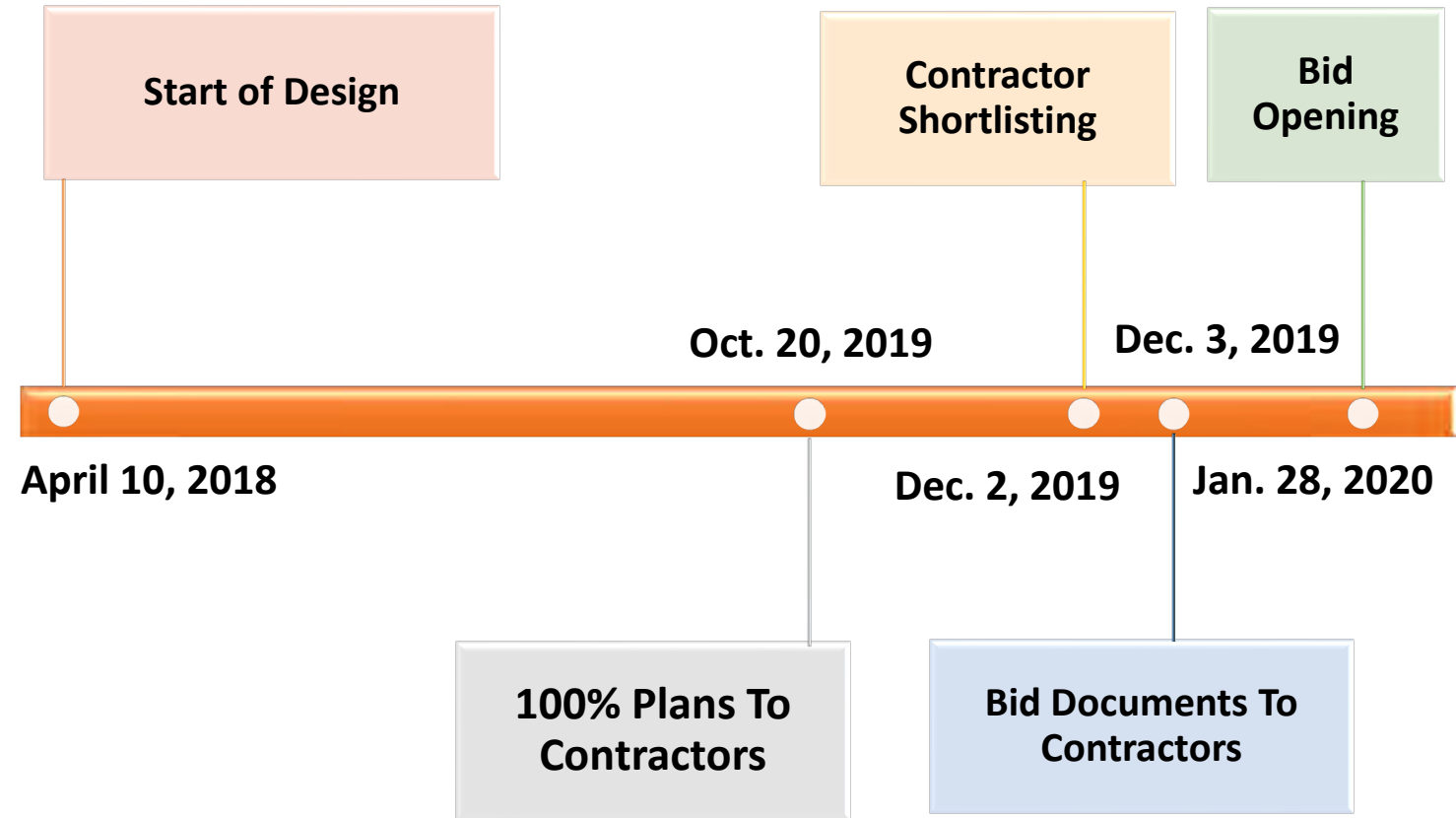


# SR 528/SR 436 Interchange Improvements

Will Hawthorne, PE, Director of Engineering

— February 13, 2020 —

# SR 528/SR 436 Interchange Improvements







# SR 528/SR 436 Interchange Improvements



Loop Ramps Replaced with Semi-Directional

Leaving Airport

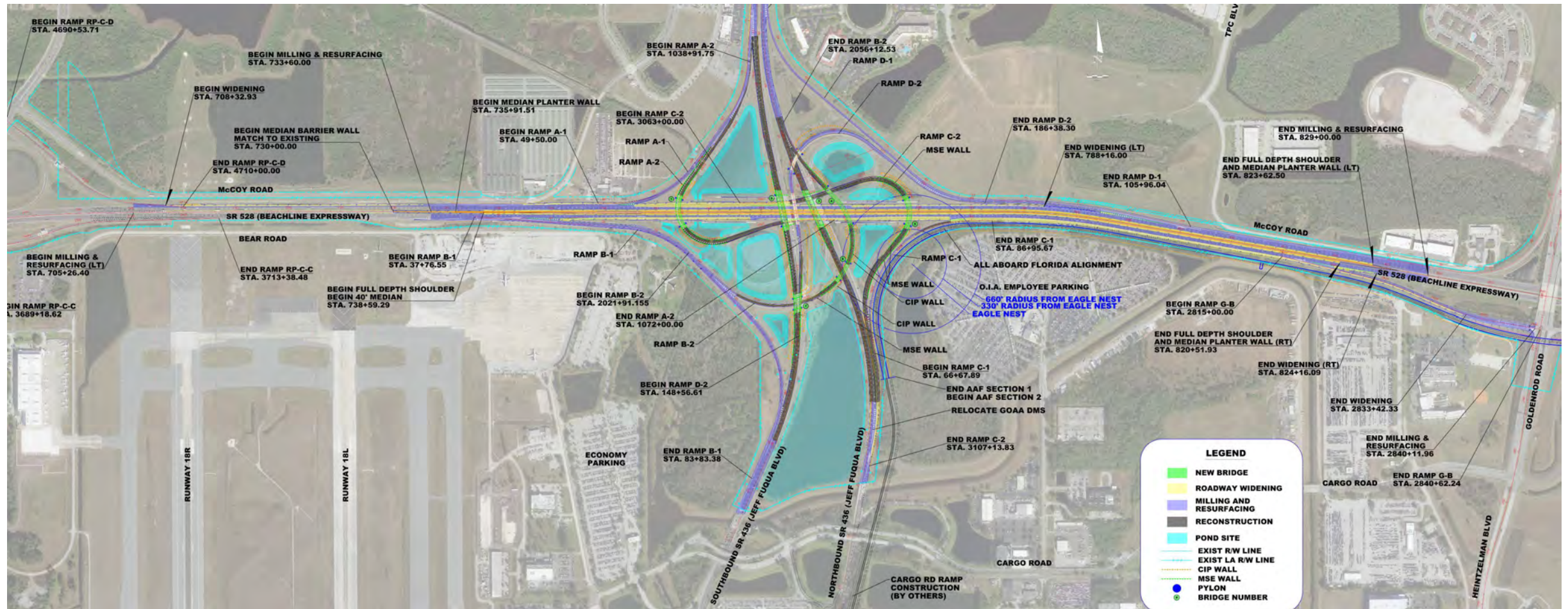
- Single Exit
- 2 Lane Ramp

7 New Bridges

Auxiliary Lanes Added on SR 528

Add General Use Lane Capacity on SR 528 (4 to 6 Lanes)





# SR 528/SR 436 Interchange Improvements





# SR 528/SR 436 Interchange Improvements

Low Bid: \$106,520,000.00  
(SEMA Const.)

Other Bids Received:

- \$109,861,540.17
- \$122,865,183.24
- \$141,629,592.41

---

Anticipated Construction Start

➤ March 16, 2020

Duration

➤ 2.5 Years

Completion

➤ Early 2023

CENTRAL  
FLORIDA  
EXPRESSWAY  
AUTHORITY



# Recommended Motion

Approval for the award of a contract to SEMA  
Construction for the SR 528 / SR 436 Interchange  
Improvements and SR 528 Widening in the amount of  
\$106,520,000.00

# **CONTRACT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
SEMA CONSTRUCTION, INC.**

**PROJECT OF CRITICAL CONCERN**

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

**PROJECT NO. 528-143  
CONTRACT NO. 001614**

**CONTRACT DATE: FEBRUARY 13, 2020  
CONTRACT AMOUNT: \$106,520,000.00**

**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, ADDENDA,  
PUBLIC CONSTRUCTION BOND AND FORMS**

**FOR**

**PROJECT OF CRITICAL CONCERN**

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

**PROJECT NO. 528-143  
CONTRACT NO. 001614**

**FEBRUARY 2020**

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GS	GENERAL SPECIFICATIONS	GS-1 to GS-156
	Attachment A	ATT-1 to ATT-9
	(See General Specifications Table of Contents for listing of individual specifications sections.)	
P	PROPOSAL	P-1 to P-12
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-14
	(See Technical Specifications Table of Contents for listing of individual specifications sections.)	
SP	SPECIAL PROVISIONS	SP-1 to SP-71
	(See Special Provisions Table of Contents for listing of each special provision.)	

Addendum No. 1  
 Addendum No. 2  
 Addendum No. 3

Plans

## CONTRACT

This Contract No. 001614 (the "Contract"), made this 13<sup>th</sup> day of February 2020, between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, hereinafter called CFX and SEMA Construction, Inc., of 6200 Hazeltine National Dr., Suite 100, Orlando, FL. 32822, 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 528-143, SR 528 / SR 436 Interchange Improvements and SR 528 Widening from SR 436 to Goldenrod Road, as detailed in the Contract Documents and any addenda or modifications thereto. Contract time for this project shall be 882 calendar days. The Contract Amount is \$106,520,000.00. This Contract was awarded by the Governing Board of CFX at its meeting on February 13, 2020.

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: \_\_\_\_\_

SEMA CONSTRUCTION, INC.

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**

## **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.

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

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

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

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

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

**1.3.28 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.

**1.3.29 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.

**1.3.30 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.

**1.3.31 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.

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

**1.3.33 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.

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

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

**1.3.36 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.

**1.3.37 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.

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

**1.3.39 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.

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

**1.3.41 Standard Specifications** - The FDOT Standard Specifications for Road and Bridge Construction, 2019 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.

**1.3.42 State** - State of Florida

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

**1.3.44 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.

**1.3.45 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.

**1.3.46 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.

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

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

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

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

**1.3.51 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.

**1.3.52 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.

**1.3.53 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.

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

**1.3.55 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.

**1.3.56 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.

**1.3.57 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 2.4.14. 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.

- 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.

- 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.

**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.

(d) Construction Affecting Public Safety applies to construction that may jeopardize public safety such as structures spanning functioning vehicular roadways, pedestrian walkways, railroads, navigation channels, navigable waterways and walls or other structure's foundations located in embankments immediately adjacent to functioning roadways. It does not apply to those areas of the site under the Contractor's control and outside the limits of normal public access.

(e) Major and unusual structures include bridges of complex geometry and/or complex design. Generally, this includes the following types of structures:

- Bridges with an individual span longer than 300 feet.
- Structurally continuous superstructures with spans over 50 feet.
- Steel box and plate girder bridges.
- Steel truss bridges.
- Concrete segmental and longitudinally post-tensioned continuous girder bridges.
- Cable stayed or suspension bridges.
- Curved girder bridges.
- Arch bridges.
- Tunnels.
- Movable bridges (specifically electrical and mechanical components).
- Rehabilitation, widening or lengthening of any of the above.

(f) Special Erection Equipment includes launching gantries, beam and winch Equipment, form travelers, stability towers, strongbacks, erection trusses, launching noses or similar items made purposely for construction of the structure. It does not apply to commonly available proprietary construction Equipment such as cranes.

(g) Falsework includes any temporary construction Work used to support the permanent structure until it becomes self-supporting. Falsework includes steel or timber beams, girders, columns, piles and foundations and any proprietary Equipment including modular shoring frames, post shores and adjustable horizontal shoring.

(h) Formwork includes any temporary structure or mold used to retain plastic or fluid concrete in its designated shape until it hardens. Formwork comprises common materials such as wood or metal sheets, battens, soldiers and walers, ties, proprietary forming systems such as stay-in-place metal forms, and proprietary supporting bolts, hangers and brackets.

(i) Scaffolding is an elevated work platform used to support workmen, Materials and Equipment but not intended to support the structure.

(j) Shoring is a component of falsework such as horizontal, vertical or inclined support members. In this specification, this term is used interchangeably with falsework.

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 following signing and lighting items are defined as structural items:

Lighting: poles, bracket arms, frangible bases and foundations.

Signing: Mounting brackets for bridge mounted signs, overhead cantilever structures, overhead truss structures, overhead sequential sign structures and multiple post sign supports, along with applicable foundations.

In general, shop drawings shall be required for:

(a) Bridge, Bulkhead and Retaining Wall Structures, cofferdams, Lighting and Signing Structural Items along with applicable foundations.

(b) Signing, Lighting, Drainage Structures and Attenuators and other nonstructural items.

(c) Building Structures.

(d) Contractor Originated Re-Design.

(e) Design and/or structural details furnished by the Contractor in compliance with the Contract, according to the sections of the Specifications pertaining to the Work, to the Plans or other Contract Documents.

(f) Special Erection Equipment.

(g) Falsework and Shoring.

Additional clarification for certain types of bridge structures is provided in 3.1.4.9.

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.

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:**

**3.1.4.5.1 Bridge, Bulkhead and Retaining Wall Structures and Lighting and Signing Structural Items with appropriate foundations:** Shop drawings for pre-qualified items, excluding their corresponding foundations, are not required.

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.

**3.1.4.5.2 Signing, Lighting, Drainage Structures, Attenuators and other nonstructural items:** The Contractor shall submit seven (7) sets of prints of each shop drawing to the CEI with a copy of the transmittal letter sent to the Consultant.

**3.1.4.5.3 Building Structures:** One (1) set of prints and one (1) set of reproducible copies of each series of working, shop and erection drawings and all correspondence related to building structures shall be submitted to the CEI with a copy of the transmittal sent to the Consultant.

**3.1.4.5.4 Contractor Originated Design or Redesign:** 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. The submittal and copies of the transmittal letters shall be transmitted in accordance with the requirements of 3.1.4.5.1 through 3.1.4.5.3, as appropriate.

**3.1.4.5.5 Special Erection Equipment:** For (a) Construction Affecting Public Safety and (b) Major or Unusual Structures: 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. The submittal and copies of the transmittal letters shall be transmitted in accordance with the requirements of 3.1.4.5.1 through 3.1.4.5.3, as appropriate.

**3.1.4.5.6 Falsework and Shoring:** For (a) Construction Affecting Public Safety and (b) Major and Unusual Structures: 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. The submittal and copies of the transmittal letters shall be transmitted in accordance with the requirements of 3.1.4.5.1 through 3.1.4.5.3, as appropriate.

**3.1.4.5.7 Formwork:** Formwork shall be in accordance with Section 400-5 of the Standard Specifications.

**3.1.4.5.8 Scaffolding:** The Contractor shall be responsible for the safe installation and use of all scaffolding. No submittals are required.

**3.1.4.5.9 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. The submittal and copies of the transmittal letters shall be transmitted in accordance with the requirements of 3.1.4.5.1 through 3.1.4.5.3, as appropriate.

**3.1.4.5.10 Beam and Girder Temporary Bracing:** The Contractor is solely responsible for ensuring stability of beams and girders during all handling, storage, shipping and erection. Adequately brace beams and girders to resist wind, weight of forms and other temporary loads, especially those eccentric to the vertical axis of the products, considering actual beam geometry and support conditions during all stages of erection and deck construction.

Develop the required designs following the AASHTO Guide Design Specifications for Bridge Temporary Works and Construction Handbook for Bridge Temporary Works and the Contract Documents.

For Construction Affecting Public Safety, submit signed and sealed calculations for stability of all beams and girders.

#### 3.1.4.6 Certifications:

3.1.4.6.1 Special Erection Equipment: Prior to its use, special erection Equipment shall be personally inspected by the Specialty Engineer who shall certify to the CEI in writing that the Equipment has been fabricated in accordance with the submitted drawings and calculations. In addition, after assembly, the Specialty Engineer shall observe the Equipment in use and shall certify to the CEI in writing that it is being utilized as intended and in accordance with the submitted drawings and calculations. In each case, the Specialty Engineer shall also sign and seal the letter of certification.

3.1.4.6.2 Falsework and Shoring requiring shop drawings per 3.1.4.5.6: After its erection or installation but prior to the application of any superimposed load, the falsework shall be personally inspected by the Specialty Engineer who shall certify to the CEI in writing that the falsework has been constructed in accordance with the Materials and details shown on the submitted drawings and calculations. The Specialty Engineer shall also sign and seal the letter of certification.

3.1.4.6.3 Formwork: For Construction Affecting Public Safety, prior to the placement of any concrete, the Contractor shall certify to the CEI in writing that formwork has been constructed to safely withstand the superimposed loads to which it will be subjected.

#### 3.1.4.7 Processing of Shop Drawings:

3.1.4.7.1 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 45 calendar day review period by the CEI. The review period commences upon receipt of the Contractor's submittal by the CEI as stipulated in 3.1.4.5 and terminates upon transmittal of the submittal back to the Contractor by the CEI. The Contractor shall adjust its schedules so that a 30 calendar day period is provided for each re-submittal.

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.

**3.1.4.7.2 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.

**3.1.4.7.3 Special Review by CEI of Shop Drawings for Construction Affecting Public Safety:** For Construction Affecting Public Safety, the CEI will make an independent review of all relevant shop drawings and similar documents in order to verify the safety of the intended construction and construction of the permanent Work shall not proceed until receipt of the

CEI's approval. The requirement herein does not supercede the Contractor's duty and responsibility for all safety provisions, public and/or otherwise, for the Project.

**3.1.4.8 Avoidance of Conflict of Interest:** Neither the CEI, the Consultant nor any design engineer who participated in the design phase of the Project can be engaged by the Contractor to perform Work as the Contractor's Specialty Engineer unless expressly approved in writing by CFX.

**3.1.4.9 Other Requirements for Shop Drawings for Bridges:**

**3.1.4.9.1 Shop Drawings for Structural Steel and Miscellaneous Metals:** Shop drawings shall be furnished by the Contractor for structural steel and miscellaneous metals. Shop drawings shall consist of working, shop and erection drawings, welding procedures and other working plans, showing details, dimensions, sizes of material, and other information necessary for the complete fabrication and erection of the metal work.

**3.1.4.9.2 Shop Drawings for Concrete Structures:** Shop drawings shall be furnished by the Contractor for such details as may reasonably be required for the effective prosecution of the Work and which are not included in the plans furnished by CFX. These may include details of falsework, shoring, special erection Equipment, bracing, centering, formwork, masonry layout diagrams and diagrams for bending reinforcing steel in addition to any details required for concrete components for the permanent Work.

**3.1.4.9.3 Shop Drawings for Major and Unusual Structures:** In addition to any other requirements, no less than 60 days from the start of Work as shown in the latest CPM, the Contractor shall submit information to the CEI outlining Contractor's overall approach to the Project. Where applicable to the Project, this information shall include but need not be limited to items such as:

- (1) Overall construction program for the duration of the Contract. milestone dates should be clearly shown. (For example; the need to open a structure by a certain time for traffic operations.)
- (2) Overall construction sequence. The order in which individual structures are to be built, the sequence in which individual spans of girders or cantilevers are erected and the sequence in which spans are to be made continuous.
- (3) The general location of any physical obstacles to construction that might impose restraints or otherwise affect the construction and an

outline of how the Contractor intends to deal with such obstacles as it builds the structure(s). (For example; obstacles might include road, rail and waterway clearances, temporary diversions, transmission lines, utilities, property and the Contractor's own temporary Work such as haul roads, cofferdams, plant clearances and the like.)

(4) The approximate location of any special lifting Equipment in relation to the structure including clearances required for the operation of the Equipment. (For example; crane positions and operating radii and the like.)

(5) The approximate location of any temporary falsework and conceptual outline of any special erection Equipment. (The precise locations and details of attachments, fixing devices, loads etc. will be covered under later detailed submittals.)

(6) An outline of the handling, transportation and storage of fabricated components, such as girders or concrete segments. (Precise details will be covered under later detailed submittals).

(7) Any other information pertinent to the Contractor's proposed scheme or intentions.

The above information shall be clear and concise and shall be presented on as few drawings as possible in order to provide an overall, integrated summary of the Contractor's intentions and approach to the Project. These drawings are for information, review planning and to assess the Contractor's approach in relation to the intent of the original design. Their delivery to and receipt by the CEI shall not constitute any acceptance or approval to the proposals shown thereon. The details of such proposals shall be the subject of subsequent detailed shop drawing submittals. Variations from these overall scheme proposals shall be covered by timely revisions and re-submittals.

3.1.4.10 Corrections for Construction Errors: For Work that is constructed incorrectly or does not conform to the requirements of the Contract drawings or Specifications, the Contractor has the prerogative to submit an acceptance proposal to the CEI for review and disposition. Any such proposal will be judged both for its effect on the integrity and maintainability of the structure or component thereof and also for its effect on Contract administration.

Any proposal judged by the CEI to infringe on the structural integrity or maintainability of the structure will require a technical assessment and submittal by the Contractor's Specialty Engineer as described in 3.1.4.5.4.

The cost of carrying out all approved corrective construction measures shall be entirely at the Contractor's expense.

Notwithstanding any disposition on the compensation aspects of the defective Work, the CEI's decision on the technical merits of a proposal shall be final.

**3.1.4.11 Modifications for Construction:** Where the Contractor is permitted to make modifications to the permanent Work for the purposes of expediting the Contractor's chosen construction methods, Contractor shall submit its proposals to the CEI for review and approval. Proposals for modifications shall be submitted under the shop drawing process.

Minor modifications shall be limited to those items that in the opinion of the CEI do not significantly affect the quantity of measured Work nor the integrity or maintainability of the structure or its components.

Major modifications are any modifications that in the opinion of the CEI significantly affect the quantity of measured Work or the integrity or maintainability of the structure or its components. (For example, substitutions of alternative beam sizes and spacing, change of material strength or type, and the like.)

The CEI's decision on the delineation between a minor and a major modification and disposition on a proposal shall be final.

**3.1.4.12 Cost of Shop Drawings:** The Contract Prices shall include the cost of furnishing shop and working drawings and the Contractor will be allowed no extra compensation for such drawings.

### **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.

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.

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### 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.

### **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.

### 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.

#### 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.

#### 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 an 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.
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.

#### 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 decrees 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.

## 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.

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.
- 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, or as approved by CFX, as defined by A.M. Best and Company's Key Rating Guide. 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 polices 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:**

<b>Contract Amount</b>	<b>Workers’ Comp/ Employer’s Liability</b>	<b>General Liability (per occurrence/ aggregate)</b>	<b>Automobile Liability</b>
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.

- 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.

<b>Contract Amount</b>	<b>Minimum Limit</b>	<b>Maximum Deductible</b>
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.

#### 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](mailto: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.

#### 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.

#### 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.

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 Preliminary, Baseline, Updated Baseline, and Two-Week Look-Ahead Schedules:

### 6.3.3.1 Scheduling Terminology

**Accepted Baseline Schedule:** The Accepted Baseline Schedule is the Baseline Schedule submitted by the Contractor and accepted by CFX. Review and acceptance of the schedule by CFX will be for the sole purpose of determining if the schedule is in substantial compliance with the General Specifications and does not mean that CFX agrees or disagrees, approves or disapproves of the constructability, means and methods, validity and accuracy of the submitted baseline schedule. The Contractor is solely responsible for the constructability, means and methods, validity and accuracy of the submitted baseline schedule.

**Acknowledged Receipt of the Updated Baseline Schedule:** The Contractor is solely responsible for the constructability, means and methods, validity and accuracy of the updated baseline schedule. CFX does not accept or reject, agree or disagree, approve or disapprove of the constructability, means and methods, validity or accuracy of the

**Updated Baseline Schedule.** Instead, CFX will transmit a letter acknowledging receipt of the Contractor's submittal of the Updated Baseline Schedule.

**Baseline Schedule:** The Baseline Schedule does not contain any progressed activities. Therefore, each activity's early and late dates are planned dates, not actual dates. The Baseline Schedule contains the necessary breakdown of activities to adequately track the progress of the project. Activities in the Baseline Schedule shall include, but not be limited to, activities for all work to be performed. In addition, the baseline schedule should include milestone activities, and activities for the procurement of significant equipment and materials, including activities for submittals and approvals, orders, fabrication, request for delivery and delivery. Procurement activities should be logically tied to their respective work activities.

**Contract Completion Date:** Also called the Approved Contract Completion Date or the Authorized Contract Completion Date or the Last Chargeable Contract Date.

The Contract Completion Date is calculated by adding the number of calendar days stated in the contract to complete all work, to the first chargeable day of the Contract, less one day.

For time extensions granted by CFX, the Contract Completion Date is calculated by adding the number of calendar days granted to the Contract Completion Date.

If a critical activity is delayed, the Contract Completion Date(s) may also be delayed if the durations on the remaining activities on the critical path are accurate. The Contractor acknowledges and agrees that actual delays to activities which, according to the CPM schedule, do not directly affect the main project critical path, do not have any effect on the Contract Completion Date(s) and shall not be the basis for a change therein.

**CPM:** Critical Path Method of scheduling.

**Early Dates:** The earliest scheduled start and/or finish date assigned to a CPM scheduled activity.

**Excusable Delay:** As defined in subarticle 6.7.3.1.

**Adjustments to Contract Time.**

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

**Lag:** An undefined delay between two scheduled activities. For instance, a 5 day lag between activity A (the predecessor) and activity B (the successor) with a Finish to Start (FS) relationship would mean that activity B would not start until 5 days after the finish of activity A.

**Late Dates:** The latest scheduled start and/or finish date assigned to a CPM scheduled activity.

**Longest Path:** In a Baseline Schedule, the Longest Path of the CPM schedule is a continuous series of activities starting from the first scheduled activity and ending with the last scheduled activity, that are linked in a logical sequence and where each activity in the sequence has the least value of total float in the schedule. If each of the longest path activities were assigned the same calendar, then each activity on the longest path would have the same value of total float. In an Updated Baseline Schedule (a baseline with actual progress recorded), the Longest Path will begin at the data date (also known as the cut-off date) and extend to the last activity scheduled in the Contract. The Contractor shall sequence work so that only one Longest Path is created in the Baseline or Updated Baseline schedule.

**Negative Total Float:** Also called Negative Float. The greatest number of days, stated as a negative number, that the Contract Completion Date is delayed. When an activity has negative total float, the activities with negative total float have early dates scheduled later than their late dates.

**Planned Dates:** Also called early and late dates.

**P6:** The scheduling software Primavera Project Planner, produced by Primavera Systems, Inc., which shall be used by the Contractor for all CPM scheduling tasks.

**Preliminary Schedule:** The Preliminary Schedule is a bar chart schedule submitted at the Pre-Construction Conference. Refer also to specification section 6.3.3.3.

**Revised Baseline Schedule:** The Baseline Schedule shall only be revised with the approval of CFX.

**Total Float:** Also called Float. The number of days an activity can be delayed without delaying the Contract completion date.

CFX and Contractor agree that float is not for the exclusive use or benefit of either the Contractor or CFX and must be used in the best interest of completing the Project on time. The Contractor agrees that: 1) float time may be used by CFX; and 2) there shall be no basis for a Project time extension as a result of any Project problem, change order or delay which only results in the loss of available positive float, or negative float that is greater than the most negative float in the CPM. The Contractor

will not be permitted to alter float through such applications as extending duration estimates or to change sequence relationships, etc., to consume available positive float.

**Time Impact Analysis:** If the Contractor requests a time extension to any required milestone date for changes in the Work ordered by CFX, the Contractor shall furnish such justification and supporting evidence in the form of a Time Impact Analysis illustrating the influence of the change on the Contract time such that CFX can evaluate the request. This Time Impact Analysis shall include a network analysis demonstrating how the Contractor has incorporated the change in the schedule. Each such Time Impact Analysis shall demonstrate the time impact of the performance of the changed Work as the date upon which the change arose or was otherwise ordered, the status of the Work at that time based upon the CPM schedule update prevailing at that time and the duration or logic computations for all of the affected activities. The Time Impact Analysis shall be submitted within ten (10) calendar days following the commencement of the delay event. Failure to make notification in the time and manner required shall be considered a waiver of the Contractor's entitlement to any time extension resulting from such delay. No time extension will be considered unless it specifically contains at least the following detailed information:

1. Date delay began;
2. Date delay impact was resolved;
3. Detailed chronology of delay including the dates of all applicable notifications and submittals;
4. Specific critical activities affected and the dates of impact;
5. The activity durations used in the Time Impact Analysis shall be those reflected by the latest Project schedule update prevailing at the time of the initiation of the delay event.

**Updated Baseline Schedule:** Also called the Schedule Update, is a copy of the Baseline Schedule with activities updated for actual start and/or finish dates and percent completion.

**Weather Event:** As defined in 6.7.3

#### **6.3.3.2 General Requirements for all Scheduling Tasks and Submittals:**

**Schedule Content:** Failure to include any element of required Work in the schedule shall not relieve the Contractor from completing all Work necessary to complete the Project on time.

**Scheduling Costs:** All costs incurred by the Contractor to create and maintain the Preliminary and CPM schedules including, but not limited to, updates, revisions, time impact analyses, and any additional required scheduling data shall be borne by the Contractor and are part of the Contract requirements.

**Utility Coordination, Permits and Licenses:** Sufficient liaison shall be conducted and information obtained at the utility pre-construction conference to coordinate activities with utility owners having facilities within the Project limits. The schedule shall conform to the utility adjustments and Maintenance of Traffic sequencing included in the Contract Documents unless changed by mutual agreement of the utility company, the Contractor, and CFX. The schedule shall show any utility adjustments that start or continue after the Contract time has started. In addition, the Contractor shall show the acquisition of permits or licenses needed for the Project.

**Required Labeling of all Correspondence and Associated Documents:** All Schedule related correspondence, including transmittals and attachments, shall have the Schedule number and cut-off date (data date) entered in the document heading. A sample format to be used is as follows: "0303-25AUG15", where 0303 is the schedule update number and 25AUG15 is the cut-off date (data date).

#### 6.3.3.3 Submission of the Preliminary Schedule:

The Contractor shall submit to CFX with the executed Contract the following documents:

The Preliminary Schedule shall cover the entire scope of the Contractor's responsibilities for the entire Contract time. The Preliminary Schedule is either a CPM or a NON-CPM generated bar chart schedule. The Preliminary Schedule shall present the Contractor's general approach to the Project and show adequate detail for Work, procurement, and submittal and approval activities covering the first 120 days of Work from the First Chargeable Contract day. The remainder of the Contract time shall be represented by summary activities.

**Written Narrative:** The written narrative shall explain the preliminary schedule's scope and approach to the Project in sufficient detail to demonstrate that the Contractor has a reasonable and workable plan to complete the Project within the Contract time allowed.

**Geographical Layout of the Project:** The geographical layout graphic of the project shall be suitable in size and content for presentation purposes. The Contractor shall also submit a copy of the geographical layout of the project in a legal landscape format.

**Contractor's Oral Presentation:** At the pre-construction conference, the Contractor shall show and refer to the geographical layout of the Project in an oral presentation of the Contractor's approach to performing the Work under the Contract. The Contractor's oral presentation shall conform to the format and content of the written narrative.

Within five (5) days after receipt of the Preliminary Schedule, CFX will either accept or reject the schedule. If the Preliminary Schedule is rejected, CFX and Contractor will meet within 3 days after notice of rejection at which time CFX will present the Contractor with a list of required changes to the Preliminary Schedule. The Contractor shall make the changes and submit a revised preliminary schedule acceptable to CFX within 3 days after receipt of the required changes.

**Updating the Preliminary Schedule:** The Contractor shall update each activity in the Preliminary Schedule with an actual start date, actual finish date, percent complete, and remaining duration each month until the accepted Baseline Schedule is updated and submitted to CFX. The cut-off date and submittal date for the Updated Preliminary Schedule shall be established by CFX and the Contractor shall submit the Updated Preliminary Schedule on that date. The Contractor shall include a written narrative with the Updated Preliminary Schedule explaining the progress made, any delays that have occurred, and work planned to be accomplished in the next month.

**Retainage for Non-Submittal:** If the Contractor fails to update the Preliminary Schedule and submit a written narrative, CFX may retain 10% of the Contractor's next Monthly Payment Request and 10% of each subsequent monthly payment request until the Contractor complies.

**6.3.3.4 Submission of the CPM Baseline and Updated Baseline Schedules:** The Contractor's CPM schedule shall be a detailed CPM schedule. The CPM schedule shall be generated by the latest version of Primavera Project Planner (P6) by Primavera Systems, Inc. The Contractor shall pay the scheduling software yearly maintenance fees and maintain scheduling software upgrades throughout the duration of the contract. The Contractor shall use all default settings in Primavera Project Planner for all schedule submittals. This includes using the "Retained Logic" setting for all calculations, unless CFX chooses to allow the use of the P6 "Progress Override" setting.

Each Baseline and Updated Baseline schedule submittal shall include all reports and graphics listed in specification section 6.3.3.4.9. All Baseline Schedule submittals shall also include the Logic Diagram required under Item number 4.

The Contractor shall submit to CFX two copies of each of the above schedules created using the P6 Backup feature.

**Schedule Submittal Deadlines:** The Contractor shall prepare and submit a detailed CPM construction schedule. The schedule shall be prepared according to the specifications and submitted no later than 45 calendar days after the Notice to Proceed date. The CEI shall have 30 calendar days from the Contractor's submittal date to review and notify the Contractor in writing of its findings. The Contractor shall have 15 calendar days from the date of the CEI's written notice to make all requested modifications to the schedule and re-submit the schedule.

**Retainage for Non-Submittal:** If the Contractor fails to submit a schedule that fully complies with the specifications within 90 calendar days from the Notice to Proceed date, CFX will automatically retain 10% of the Contractor's Current Period Monthly Payment Request amount in addition to other retainage.

CFX may retain an additional 10% of the Contractor's Period Monthly Payment Request amount for each successive month that the Contractor fails to submit any schedule on time in addition to other retainage. The Contractor must submit an Updated Baseline Schedule for each month of the Contract starting from the first chargeable day of the contract. The Due Date for the Updated Baseline Schedule shall be the Cut-Off Date established by CFX for submittal of the Contractor's Monthly Payment Request. The Due Date for the Updated Baseline Schedule may be changed from time to time by CFX. The Contractor's submitted schedule shall have a data date matching the cut-off date established by CFX.

**Milestones:** Construction and maintenance of traffic milestones, including completion of construction on roadway sections, building and removing temporary detours, bridges, traffic shifts, and road closures and openings shall be adequately shown in the schedule.

**Measurement of Progress:** As the contract work progresses and the baseline schedule is updated with progress, each subsequent schedule update shall become the schedule upon which all Work progress will be measured.

6.3.3.4.1 CPM Activity Creation: Each schedule activity shall include the following detail in P6:

A.) ID Number - The format followed shall be uniform throughout the schedule. The activity number shall not exceed 6 digits.

B.) Original Duration (Working Days): No activity shall have a duration greater than 20 working days unless approved by CFX. However, activities such as long-term procurement, certain approvals and submittals may have durations greater than 20 working days or have a 7-day calendar assignment.

At the minimum, the schedule shall include, but not be limited to the following activities:

**Bridge Activities:**

Test Pile installation per bent per structure.  
Production Pile installation per bent per structure.  
Drilled shaft installation per pier per structure.  
Pile caps per bent per structure.  
Footings per pier per structure.  
Columns per pier per structure.  
Caps per pier per structure.  
End bents per structure.  
Beam or girder erection-span by span per structure.  
Diaphragms.  
Deck placement-span by span per structure.  
Parapets-span by span per structure.

**Roadway Activities:**

Internal access and haul roads (location and duration in-place).  
Utility relocation work by utility and by stationing and roadway.  
Clearing and grubbing by stationing and roadway.  
Excavation by stationing and roadway.  
Embankment for each abutment location.  
Embankment placed for each roadway by stationing and roadway.  
Drainage by run with stationing and roadway.  
Box Culvert or other large Pre-cast structure with stationing and roadway.  
Reinforced Earth Wall leveling pad per bent per structure.  
Reinforced Earth Wall per bent per structure.  
Reinforced Earth Wall Coping per bent per structure.  
Retaining walls by stationing and roadway.  
Stabilization/Subgrade by stationing and roadway.  
Limerock Base by stationing and roadway.  
Asphalt Base by stationing and roadway.  
Curb and Gutter by stationing and roadway.  
Structural Pavement (asphalt and/or concrete) by stationing and roadway.  
Bridge approach slabs per bridge and roadway.  
Guardrail by stationing and roadway.  
Slope pavement or riprap by stationing and roadway.



Roadway lighting by stationing and roadway.  
Signing for each sign structure by stationing and roadway.  
Striping by stationing and roadway.  
Traffic signals by stationing and roadway.  
Topsoil, sodding, seeding and mulching by stationing and roadway.  
Landscaping by stationing and roadway.  
Architectural Treatments.  
Sound Walls.  
Fiber Optic.  
Concrete Removal and Replacement.  
Milling and Resurfacing.  
Ponds.  
Planter Walls.

**Building Activities:**

Sitework, including, but not limited to clearing, excavation, storm and sanitary drainage, utility work, fill, grading, curb & gutter, sidewalks, asphalt and concrete paving, striping, retention pond excavation and grading, sodding.  
Foundation work, including, but not limited to, piling, building pads, column, stem wall, slab work, conduit and piping.  
Concrete work, including, but not limited to, stairwells, stairs, elevator shafts, tunnels.  
Exterior Structures, including, but not limited to structural steel bridges, walkways, railings.  
Exterior Walls, including, but not limited to, block, brick, pre-cast, poured-in-place concrete, wood and metal stud, stucco.  
Roof, including, but not limited to, structural steel framing, wood framing, pre-cast, parapet walls, metal, poured-in-place, sheathing, underlayment, built-up, roof drainage, and soffits.  
Exterior doors, windows, and store-front framing.  
Interior Build-out, including, but not limited to, wood and metal stud, interior doors and windows, cabinetry, specialty work, drywall, insulation, sound proofing, carpet, tile, painting, furnishings, and miscellaneous finishes.  
Electrical, including, but not limited to conduit, power supply, fixtures, wiring, finishes, and testing.  
Plumbing, including, but not limited to, piping, sanitary sewer, water supply, fixtures, finishes, and testing.  
HVAC, including, but not limited to, air handlers, compressors, duct work, finishes, and testing.  
Fire Systems, including, but not limited to piping, sprinkler heads, and testing.

Security Systems, including, but not limited to, control panels, wiring, sensors, alarms, communications, and testing.

Specialty Work, including, but not limited to, elevators, escalators, toll booth facilities, electronic toll equipment, conduit, wiring, voice and data communication systems, and testing.

The Contractor agrees to submit for acceptance a CPM baseline schedule showing Work commencing on the first chargeable Contract day and finishing on the last chargeable Contract day, thereby showing zero total float.

The Contractor shall sequence work so that only one Longest Path is created in the Baseline or Updated Baseline schedule.

The Contractor must submit evidence to CFX that any activity to be added or removed from the schedule is a logical and reasonable change. If CFX decides that the activity is not sufficiently supported and does not serve a useful purpose, CFX shall request that the Contractor remove the activity from the schedule, and the Contractor shall comply.

The schedule shall include a task activity for the first chargeable day of the Contract and a task activity for the last chargeable day of the Contract with a 1-day duration and a 7-day calendar assignment. The Contract Completion Date as defined in section 6.3.2.1 shall be entered into the Primavera Project Overview window under "Project must finish by".

**Mobilization Activities:** Activities representing Contract pay item 1-101-1, Mobilization, shall be divided into 1 work activity with a duration no greater than 20 work days and 4 mobilization payment milestones that are revenue loaded according to the specification payment schedule as follows: 5% of Contract earned = 25% payment, 10% of Contract earned = 50% payment, 25% of Contract earned = 75% payment and 50% of Contract earned = 100% payment. The payment milestones should not be tied to any activities, but constrained by a "start no earlier than" constraint. The dates they are constrained to should be based on the early dates shown in the schedule cash flow tabular report by day generated by P6.

**6.3.3.4.2 Activity Codes:** The following are the minimum required activity codes and their values that are to be assigned to each activity in P6:

**Phase:** Shall have a field length of 4 characters. If the Project has more than one maintenance of traffic (M.O.T.) phase, each phase shall be identified. Each activity shall show which M.O.T. Phase it belongs to as shown in the Plans and Specifications.

**Area:** Shall have a field length of 6 characters. The Contractor shall create Area activity code values for each of the following areas. Each schedule activity shall have an assigned Area activity code value

**6.3.3.4.3 Activity Relationships:** Relationships between activities shall be identified with the following information:

- A. Activity ID - Shall not exceed 6 characters in length.
- B. Predecessor and successor activity ID.
- C. Relationship types:
  - SS -Start to start
  - FF -Finish to finish
  - SF -Start to finish - This relationship is not allowed, unless authorized by CFX.
- D. Lag -Negative lag is not allowed, unless authorized by CFX.

**6.3.3.4.4 Project Calendars:** Calendars shall use day as the planning unit for the schedule. One of four calendars shall be used for each activity:

- A. Calendar 1: shall be used for 5-day workweek activities: Monday through Friday. All holidays and non-work days shall be assigned to this calendar. This calendar shall be used for all normal Work activities. Calendar 1 shall be the default calendar.
- B. Calendar 2: shall be used for 7-day workweek activities. No non-work days shall be entered into this calendar. Activities such as friction course curing shall use this calendar.
- C. Calendar 3: shall be used for 7-day workweek activities. All holidays shall be entered into this calendar.
- D. Calendar 4: shall be used for 6-day workweek activities. All holidays and non-work days shall be assigned to this calendar.

**Global Calendar:** The global P6 calendar shall have all holidays and non-work days assigned.

**Additional calendars:** May be assigned depending upon need. However, the Contractor shall consult with CFX before other calendars are entered and/or used in the Project schedule.

**6.3.3.4.5 Revenue Loading the Schedule:** Each Work activity in the schedule shall be revenue loaded using all the Contract pay items amounts related to the Work activity. The Contractor shall verify that each pay item is represented in the schedule. The total of all revenue loading shall equal the Contract amount.

If the monthly payment requests do not reasonably agree with the monthly schedule updates/budgeted revenue of Work performed, CFX may request that the Contractor revise its revenue loading in the accepted baseline schedule and the most current updated baseline schedule. In addition, CFX may request that the Contractor revise its revenue loading in the accepted baseline and updated baseline schedules to incorporate all Supplemental Agreement changes affecting the Contract amount.

**6.3.3.4.6 Updating the Baseline Schedule**

**Monthly Schedule Update Meetings:** Monthly Schedule Update meetings shall be set by CFX and shall be transmitted to the Contractor by written notice.

CFX will establish a schedule cut-off date for each month of the Contract.

The updated baseline schedule, project progress, issues, delays, claims, planned Work, Contractor's monthly pay estimate, and baseline schedule revisions shall be among the priority items addressed in detail.

**Schedule Update Process:** The schedule update process shall include updating the activity actual start and finish dates, percent completion, remaining duration, and adjusting schedule logic to correct for activities being performed out of sequence, adjusting resource allocations for activities, and changing the calendar assignments to activities as needed. The Contractor shall not change an activity original duration for any reason.

#### 6.3.3.4.7 Revisions to the Baseline Schedule

1. CFX will request in writing that the Contractor submit a proposed revision to the Accepted Baseline Schedule to incorporate a Board Approved Supplemental Agreement.
2. The Contractor shall have fifteen calendar days from receipt of CFX's request to submit a proposed revision to the Accepted Baseline Schedule.
3. The Contractor's proposed revision shall include all transmittals, reports, diagrams, and bar charts listed in specification section 6.3.2.4.9, unless CFX requests otherwise in writing.
4. The Contractor shall submit two Schedule Comparison reports. The first report shall be a comparison between the Accepted Baseline Schedule and the Revised Baseline Schedule. The second report shall be a comparison between the current updated baseline schedule and the proposed updated baseline schedule containing the proposed revision to the accepted baseline schedule.
5. In its required narrative report, the Contractor shall state whether or not the proposed changes affect the longest path of the accepted baseline schedule or the proposed updated baseline schedule, which contains progress.
6. CFX shall have 15 calendar days to review and transmit a written notice of acceptance or rejection of the Contractor's proposed revision. If CFX rejects the proposed revision, CFX shall state the reasons for rejection in the written notice. The Contractor shall have 5 calendar days to re-submit the proposed revision to CFX.
7. If the Contractor fails to submit a proposed revision that is accepted by CFX within 45 calendar days from CFX's original request date, CFX reserves the right to retain 10% of each of the Contractor's monthly payment requests until the Contractor submits a proposed revision that is accepted by CFX.
8. Upon acceptance of the proposed revision to the accepted baseline schedule, the proposed revision to the baseline schedule shall become the accepted baseline schedule. The Contractor shall incorporate the revision into the next scheduled updated baseline schedule.

**6.3.3.4.8 Schedule Submittals:** Each baseline, revised baseline, and updated baseline schedule submittal shall include the following documents, unless CFX sends and the Contractor receives a written request to limit the submittal to certain documents for a specific submittal.

1. **Transmittal:** Shall be signed by the Contractor's Schedule Engineer or Resident Engineer. Shall contain the following information:

Submittal date.

Contractor Name.

Complete CFX Contract Number.

Project Description.

Contract Resident Engineer.

Four character P6 Project Number - Data Date

2. **Schedule Update Narrative Report:** The Contractor shall prepare a written narrative to accompany the required reports and graphics for the schedule update submittal. The narrative shall have the following sections:

**Schedule Status:** The Schedule Status shall be a written narrative explaining the progress during the month in sufficient detail and referencing specific activities including longest path activities, milestones, design issues, means and methods issues, out of sequence activities, and actual production rates for various types of Work performed by the crews loaded as resources in the schedule.

**Delays:** If the Contractor has experienced any delay, the Contractor shall explain what activities in the current period were affected by the delay and what caused the delay and how the Contractor intends to address the delay.

**Milestone Comparisons:** Current period projected milestone dates versus previous period projected milestone dates, and current period projected contract completion date versus previous period projected contract completion date.

3. **Schedule Comparison Report:** The Contractor shall submit to CFX a detailed report showing all changes to the Project schedule since the previous monthly update, including, but not limited to the following information:

Activities worked out of sequence.  
Changes in Total Float.  
Changes in Early and Late Dates.  
Changes in Original and Remaining Duration.  
Changes in Activity Constraints.  
Changes in Activity Predecessors, Successors, Relationship Type, and Lags.  
Changes in Activity Resource Assignments.  
Changes in Activity Cost Loading.  
Changes in Activity percent completion.  
Changes in Longest Path Activities.

Longest Path Bar chart: Bar chart shall be time scaled and filtered on the Longest Path activities and sorted by early start.

Area Code Bar chart: Bar chart shall be time scaled and sorted by area code. The bar chart shall include:

- A. Each activity on a single line containing ID number, activity description, and a bar representing activity original duration, early start dates, early finish dates, late start dates, late finish dates and total float.
- B. Key to identify all components in the bar chart and CPM.
- C. Key to identify all the abbreviations used.

- 4. Revenue Loading Report: The Contractor shall submit to CFX a report entitled "Revenue Loading Report". The report shall include the following information:

- A. Activity ID number
- B. Description of activity
- C. List of pay items included in activity including:
  - 1. Pay item number
  - 2. Pay item description
  - 3. Quantity of pay item to be applied
  - 4. Unit measure of pay item
  - 5. Unit-price of pay item
  - 6. Total price for pay item to be applied
- D. Total revenue loading of activity (Sum of "C")

5. **Revenue Flow Diagram:** For any baseline Schedule, the Contractor shall submit to CFX a Revenue Flow Diagram by month. The Revenue Flow Diagram shall show the early and late curves representing the accumulated projected dollars to be earned for each month of the Contract.
6. **Tabular Revenue Report:** For any Baseline Schedule, the Contractor shall submit a Tabular Revenue Report by day. The tabular report shall show columns for the accumulated and incremental projected dollar amounts to be earned on the early and late curve for each Contract day.
7. **P6 Schedule Backup:** The Contractor shall submit to CFX two copies of each baseline, revised baseline, and updated baseline schedule using the P6 backup option. The backed up copies shall be compressed and without an access list. The backups shall be submitted on compact disk (cd). Each cd shall have a typed label showing the following information:

Contractor name  
The complete CFX Project number  
The four character P6 project number  
Data Date in format -> "01JAN15"  
Volume number \_of\_ total volume numbers (e.g., 1 of 5, 2 of 5)

8. **Paper Sizes and Orientation:** All printed reports shall be submitted on 8" x 11" portrait-bond paper. All printed bar charts and revenue flow diagrams shall be submitted on 8" x 11" landscape bond paper. All presentation layouts and logic diagrams shall be plotted in color with a color design jet plotter and submitted on ANSI E (34-inch x 44-inch) size coated paper.

**6.3.3.4.9 Two Week Look Ahead Schedule:** The Contractor shall submit a two-week look-ahead bar chart schedule produced in Microsoft Excel at the weekly project progress meeting. The bar chart shall show all major Work in progress.

The bar chart shall show at least one week behind for actual Work performed and two weeks ahead for planned Work.

The bar chart shall be date synchronized to the CEF's Weekly Summaries.



Changes and revisions that require the approval of CFX shall be brought forward for discussion.

6.3.3.4.10 Adjustments to Contract Time:

1. The Contract Completion Date shall not be changed in any schedule unless CFX approves a Supplemental Agreement granting an extension to the Contract Time.
2. The Contractor has the right to finish the Contract early; however, the Contractor agrees that any impact to the projected early completion date does not justify a request for a time extension because it would constitute changing the Contract completion date to match the Contractor's projected early completion date.
3. The Contractor acknowledges and agrees that for purposes of considering a time extension request, a schedule activity shall not be considered to have been subject to a claimed delay unless all originally and presently scheduled predecessor activities have been completed so that no other restraints to the performance of that activity exist in the CPM schedule at the time claimed for the delay impact. The Contractor agrees that a Contract time extension request shall only be considered for one of the following reasons:
  - A. The Contractor performed Extra Work that met all of the following conditions:
    1. CFX stated that the Extra Work was not to be performed concurrently with other Contract Work.
    2. The Extra Work delayed the Contract Completion Date.
    3. The Extra Work impacted one or more activities on the current CPM schedule longest path.
  - B. The Contractor experienced an Excusable Delay, as defined in subarticle 6.7.3.1, that met all of the following conditions:
    1. The Contract Completion Date was delayed due to circumstances beyond the control of the Contractor.

2. The Contractor took every reasonable action to prevent the delay.
3. The delay impacted one or more activities on the current CPM schedule longest path.
4. The Contractor agrees that there shall be no basis for a Contract Time extension as a result of any Contract problem, Supplemental Agreement, or delay, which only results in the loss of available positive float, or an increase of negative float belonging to activities that do not reside on the CPM schedule's Longest Path.

6.3.3.4.11 Supplemental Agreements: Supplemental Agreements shall include a time impact analysis from the Contractor as to the effect of the requested change on the detailed schedule. In cases where the requested change has no impact on the Project duration, the time impact analysis shall still be included. The time impact analysis shall include a listing of the activities that are affected by the requested changes and an analysis of the change on the longest path of the detailed schedule. The Contractor and the CEI shall agree upon the impact to the schedule before a Supplemental Agreement is approved.

The approved Supplemental Agreements shall be incorporated into the next monthly schedule update.

6.3.3.4.12 Adjustment to the Contract Time: Adjustments to the Contract time are detailed in subarticle 6.7.3.

6.3.3.4.13 CPM Recovery Schedule: Should any of the following conditions exist, the Contractor shall, at no extra cost to CFX, prepare a CPM Recovery Schedule:

1. Should the Contractor's monthly progress review indicate that a CPM Recovery Schedule is required;
2. Should the CPM schedule show the Contractor to be thirty (30) or more days behind schedule at any time during the construction period;
3. Should the Contractor request to make changes in the logic of the CPM schedule which, in the opinion of CFX, are of a major nature.

The same requirements and submittals for the CPM Recovery Schedule shall apply as the original baseline schedule.

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 CEJ 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.

#### 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.

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.
- 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.

## **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.
- 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.

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 subarticle.

## 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.

7.2.1.1 Fuels: CFX will, in the Contract Documents, provide an estimated quantity for fuel requirements for gasoline and diesel to cover the work specified in the Contract. Price adjustments will be made only for the amount of gasoline and diesel fuel estimated by CFX as required to complete the Contract. The requirement of each type of fuel for each pay item is estimated by multiplying the CFX standard fuel factor for that pay item by the quantity of that pay item. Price adjustments made for fuel used after expiration of the last allowable Contract Day (including any time extensions) will be limited to the increases or decreases dictated by the index in effect on the last allowable Contract Day. On Contracts with an original Contract Time in excess of 120 calendar days, CFX will make price adjustments on each applicable progress estimate to reflect increases or decreases in the price of gasoline and diesel from those in effect during the month in which bids were received. The Contractor will not be given the option of accepting or rejecting these adjustments. Price adjustments for these fuels will be made only when the current fuel price (CFP) varies by more than 5% from the price published when bids were received (BFP), and then only on the portion that exceeds 5%. For definition purposes, should a project bid prior to the 15<sup>th</sup> of any month, the bid index will be the index for the month prior to the bid. Should a project bid after the 14<sup>th</sup> of the month, the bid index will be the index for the month of the bid.

Price adjustments will be based on the monthly bulk average price for gas and diesel as derived by the FDOT. These average indexes shall be determined by averaging bulk fuel prices on the first day of each month as quoted by major oil companies that are reasonably expected to furnish fuel for projects in the State of Florida. Average price indices for gasoline and diesel will be available on the FDOT Construction Office website before the 15<sup>th</sup> of each month, at the following URL: [www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.htm](http://www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.htm).

Payment will be based on the quantities shown on the progress estimate on all items for which established standard fuel factors which are included in the bid documents or, if omitted, are on a file maintained by the FDOT at the time of bid.

Payment on progress estimates will be adjusted to reflect adjustments in the prices for gasoline and diesel in accordance with the following:

When fuel prices have decreased between month of bid and month of this progress estimate:

$A_i = F_i (P_i - .95 P_b)$  during a period of decreasing prices.

$A_i$  = Total dollar amount - positive or negative - of the cost adjustment for each kind of fuel used by the Contractor during the month "i."

$F_i$  = Total gallons calculated as being used during the month (units produced/month x gallons/unit).

$P_i$  = Average price for fuel prevailing during month "i."

$P_b$  = Average price for fuel prevailing during the month "b" when bids were received on this Contract, as defined above

When fuel prices have increased between month of bid and month of this progress estimate:

$A_i = F_i (P_i - 1.05 P_b)$  during a period of increasing prices.

$A_i$  = Total dollar amount - positive or negative - of the cost adjustment for each kind of fuel used by the Contractor during the month "i."

$F_i$  = Total gallons calculated as being used during the month.

Pi = Average price for fuel prevailing during month “i.”

Pb = Average price for fuel prevailing during the month “b” when bids were received on this Contract, as defined above

Payment will be made on the current progress estimate to reflect the index difference at the time work was performed.

Adjustments will be paid or charged to the Contractor only. Contractors receiving an adjustment under this provision shall distribute the proper proportional part of such adjustment to subcontractors who perform applicable work.

7.2.1.2 Bituminous Material: On Contracts having an original Contract Time of more than 365 calendar days, or more than 5,000 tons of asphalt concrete, CFX will adjust the bid unit price for bituminous material, excluding cutback and emulsified asphalt to reflect increases or decreases in the Asphalt Price Index (API) of bituminous material from that in effect on the day on which bids were received. The Contractor will not be given the option of accepting or rejecting this adjustment. Bituminous adjustments will be made only when the current API (CAPI) varies by more than 5% of the API prevailing on the day on which bids were received (BAPI), and then only on the portion that exceeds 5%. For definition purposes, should a project bid prior to the 15<sup>th</sup> of any month, the bid index will be the index for the month prior to the bid. Should a project bid after the 14<sup>th</sup> of the month, the bid index will be the index for the month of the bid.

CFX will determine the API for each month by checking the FDOT Contracts Office web site which averages quotations in effect on the first day of the month at all terminals that could reasonably be expected to furnish bituminous material to projects in the State of Florida.

Payment on progress estimates will be adjusted to reflect adjustments in the prices for bituminous materials in accordance with the following:

$$\text{\$ Adjustment} = (\text{ID})(\text{Gallons})$$

Where ID = Index Difference =  $[\text{CAPI} - 0.95(\text{BAPI})]$  when the API has decreased between the month of bid, as defined above, and month of this progress estimate.

Where ID = Index Difference =  $[\text{CAPI} - 1.05(\text{BAPI})]$  when the API has increased between the month of bid, as defined above, and month of this progress estimate.

Payment will be made on the current progress estimate to reflect the index difference at the time work was performed.

For asphalt concrete items payable by the ton, and not containing Reclaimed Asphalt Pavement (RAP), the number of gallons will be determined assuming a mix design with 6.25% liquid asphalt weighing 8.58 lb/gal. For asphalt concrete items payable by the ton, that do contain Reclaimed Asphalt Pavement (RAP), the number of gallons will be determined assuming a mix design with 5% liquid asphalt weighing 8.58 lb/gal.

Asphalt concrete items payable by the square yard will be converted to equivalent tons assuming a weight of 100 lb/yd<sup>3</sup> per inch.

7.2.1.2 For FC-5 with granite, the number of gallons will be determined assuming a mix design with 5.5% liquid asphalt weighing 8.58 lb/gal.

- 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.

**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 RRBBOCE ownership cost plus 100% of the RRBB and/or RRBBOCE 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 RRBBOCE 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 RRBBOCE monthly rates by 176. The columns, itemizing rates, labeled "Weekly", "Daily" and "Hourly" shall not be used.
- 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.

**(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.

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, CEL, 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- PARTNERING AND DISPUTES RESOLUTION

### 10.1 Partnering

The objective of Partnering is to establish a partnership charter and action plan for the Contractor, CFX and other parties impacted by the activities covered under the Contract to identify and achieve reciprocal goals. These objectives may be met through participation in workshops held periodically throughout the duration of the Contract.

Prior to the pre-construction conference, CFX, the CEI, and the Contractor shall meet and plan an initial partnering/team building workshop. At this planning session, arrangements will be made to select a workshop facilitator, determine attendees, agenda, duration and location. Attendees should include representatives of CFX, the CEI, and other key Project personnel, the Contractor's superintendent and other key personnel as well as others mutually agreed upon by CFX and the Contractor. Additional workshops may be held periodically throughout the duration of the Contract if authorized by CFX.

CFX will arrange for and pay the cost of providing a facilitator and meeting room and for all other direct costs associated with the Partnering workshops. No separate compensation will be paid to the Contractor to attend partnering meetings

### 10.2 Disputes Resolution

#### 10.2.1 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.

#### 10.2.2 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.

#### 10.2.3 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.

#### 10.2.4 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.

#### 10.2.5 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.

#### 10.2.6 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.

#### 10.2.7 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.

#### **10.2.8 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: \_\_\_\_\_