

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

**AGENDA  
BOARD MEETING  
February 11, 2021  
9:00 a.m.**

**Meeting location: Central Florida Expressway Authority  
4974 ORL Tower Road  
Orlando, FL 32807  
Boardroom**

**A. CALL TO ORDER / PLEDGE OF ALLEGIANCE**

**B. PUBLIC COMMENT**

Pursuant to Section 286.0114, Florida Statutes and CFX Rule 1-1.011, the governing Board for CFX provides for an opportunity for public comment at the beginning of each regular meeting. The Public may address the Board on any matter of public interest under the Board's authority and jurisdiction, regardless of whether the matter is on the Board's agenda but excluding pending procurement issues. Each speaker shall be limited to 3 minutes. The Public may also submit written comments in advance of the meeting to be read into the record except that if the comments exceed 3 minutes in length, when read, they will only be attached as part of the minutes.

**C. APPROVAL OF DECEMBER 10, 2020 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. **ANNUAL MID-YEAR BUDGET REVIEW FY 2021 WITH COVID UPDATE** – *Lisa Lumbar, Chief Financial Officer* (action item)
2. **UPDATE ON CUSTOMER SERVICE INITIATIVES** – *Jim Greer, Chief of Technology/Operations* (info item)
3. **BOARD MEMBER JAY MADARA AUDIT COMMITTEE MEMBER APPOINTMENT** - *Chairman Buddy Dyer* (action item)
4. **APPOINTMENT OF CFX BOARD REPRESENTATIVE TO TEAMFL BOARD** – *Chairman Buddy Dyer* (action item)

(CONTINUED ON PAGE 2)

5. **APPOINTMENT OF CFX BOARD REPRESENTATIVE AND ALTERNATE TO METROPLAN BOARD**  
*Chairman Buddy Dyer (action item)*
6. **APPROVAL OF CONTRACT AWARD TO PRINCE CONTRACTING, LLC FOR SR 417 WIDENING FROM JOHN YOUNG PARKWAY TO LANDSTAR BOULEVARD – Will Hawthorne, Director of Engineering (action item)**
7. **SR 408 SPEED LIMIT ADJUSTMENT - 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, they will need a record of the proceedings, and that, for such purpose, they 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.*

*Persons who require translation services, which are provided at no cost, should contact CFX at (407) 690-5000 x5316 or by email at [Iranetta.Dennis@cfxway.com](mailto:Iranetta.Dennis@cfxway.com) at least three (3) business days prior to the event.*

*In accordance with the Americans with Disabilities Act (ADA), if any person with a disability as defined by the ADA needs special accommodations to participate in this proceeding, then they should contact the Central Florida Expressway Authority at (407) 690-5000 no later than two (2) business days prior to the proceeding.*

*Please note that participants attending meetings held at the CFX Headquarters Building are subject to certain limitations and restrictions in order to adhere to the CDC guidelines and to ensure the safety and welfare of the public.*



C.

APPROVAL OF  
BOARD MEETING MINUTES

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES  
BOARD MEETING  
December 10, 2020

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

## A. CALL TO ORDER

The meeting was called to order at approximately 9:00 a.m. by Vice Chairman Dyer.

Vice Chairman Dyer welcomed Orange County District 6 Commissioner, Victoria Siplin and Seminole County Chairman, Lee Constantine to the CFX Board.

### Board Members Present:

Mayor Buddy Dyer, City of Orlando (Vice Chairman)  
Commissioner Brandon Arrington, Osceola County  
Commissioner Lee Constantine, Seminole County  
Mayor Jerry Demings, Orange County  
Jay Madara, Gubernatorial Appointment  
Commissioner Sean Parks, Lake County  
Commissioner Victoria Siplin, Orange County  
Commissioner Curt Smith, Brevard County

### Staff Present at Dais:

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

### Non-Voting Advisor Present:

Nicola Liquori, Executive Director, Florida's Turnpike Enterprise

## B. PUBLIC COMMENT

There was no public comment.

**C. APPROVAL OF NOVEMBER 12, 2020 BOARD MEETING MINUTES**

A motion was made by Mayor Demings and seconded by Mr. Madara to approve the November 12, 2020 Board Meeting Minutes as presented. The motion carried unanimously with all eight (8) board members in attendance voting AYE by voice vote.

**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 599-537	United Signs & Signals	\$	65,432.02
b. Project 429-316A	Jr. Davis Construction Co., Inc.	(\$	429,102.48)
c. Project 429-758	Hubbard Construction Co.	\$	142,464.90
d. Project 528-143	SEMA Construction, Inc.	(\$	790,899.05)
e. Project 528-747	Hubbard Construction Co.	(\$	746,263.75)
f. Project 528-749	Preferred Materials, Inc.	(\$	618,788.05)
g. Project 528-750	Preferred Materials, Inc.	(\$	370,117.06)
  
2. Approval of Supplemental Agreement No. 1 with Rummel, Klepper & Kahl, LLP for Systemwide Construction Engineering and Inspection Services, Contract No. 001487 (Agreement Value: not-to-exceed \$3,600,000.00)
  
3. Approval of Contract Award to Kinard-Stone, Inc. for Construction Engineering and Inspection Services for SR 538 Widening from Ronald Reagan Parkway to Cypress Parkway, Project No. 538-165, Contract No. 001722 (Agreement Value: not-to-exceed \$7,000,000.00)
  
4. Approval of Contract Award to Metric Engineering, Inc. for Construction Engineering and Inspection Services for Intelligent Transportation Systems, Lighting and Tolling Projects, Contract No. 001726 (Agreement Value: \$6,000,000.00)
  
5. Approval of Final Ranking and Authorization for Fee Negotiations for Construction Engineering and Inspection Services for SR 429 Widening from Florida's Turnpike to West Road, Project No. 429-152, Contract No. 001739

**ENGINEERING**

6. Approval of Supplemental Agreement No. 2 with Horizon Engineering Group, Inc. for Post Design Services for SR 417 Widening from Landstar Boulevard to Boggy Creek Road, Project No. 417-149, Contract No. 001387 (Agreement Value: not-to-exceed \$731,893.41)

7. Approval of Supplemental Agreement No. 3 with Inwood Consulting Engineers, Inc. for Design Consultant Services for SR 417 Widening from Boggy Creek Road to Narcoossee Road, Project No. 417-151, Contract No. 001394 (Agreement Value: not-to-exceed \$388,792.04)
8. Approval of Supplemental Agreement No. 4 with Moffatt & Nichol, Inc. for Design Consultant Services for SR 429 Widening from West Road to SR 414, Project No. 429-153, Contract No. 001396 (Agreement Value: not-to-exceed \$649,201.74)

#### LEGAL

9. Approval of First Contract Renewal with Shutts and Bowen, LLP for Right-of-Way Counsel Services, Contract No. 001431 (Agreement Value: \$600,000.00)
10. Approval of First Contract Renewal with Nelson Mullins Riley and Scarborough LLP for Right-of-Way Counsel Services, Contract No. 001477 (Agreement Value: \$600,000.00)

#### MAINTENANCE

11. Approval of Supplemental Agreement No. 1 with Aero Groundtek, LLC for Landscape Maintenance Services for SR 408, SR 417 and CFX's Headquarters, Contract No. 001680 (Agreement Value: not-to-exceed \$234,505.00)

#### RISK MANAGEMENT

12. Approval of Contract Award to HUB Public Risk, Inc. for Insurance Broker Services, Contract No. 001703 (Agreement Value: \$150,000.00)

#### TECHNOLOGY/TOLL OPERATIONS

13. Authorization for Executive Director to Execute a Memorandum of Understanding with Lee County (Agreement Value: \$0)

#### TRAFFIC OPERATIONS

14. Approval of First Contract Renewal with Johnson's Wrecker Service, Inc. for Rapid Incident Scene Clearance Services, Contract No. 001383 (Agreement Value: \$13,000.00)

**A motion was made by Commissioner Arrington and seconded by Commissioner Constantine to approve the Consent Agenda as presented. The motion carried unanimously with all eight (8) board members in attendance voting AYE by voice vote.**

## E. REPORTS

### 1. CHAIRMAN'S REPORT

Vice Chairman Dyer reported on the following:

- 2020 Transportation challenges and opportunities;
- As a champion for Future Ready cities, he hopes to continue to look for partnership opportunities with research institutions like ASPIRE, OEMs and the private sector to bring new innovative transportation tech to the region;
- The 2021 CFX Board Meeting schedule is available on the CFX website; and
- There will not be a January Board meeting. The next meeting is scheduled for February 11, 2021.

### 2. TREASURER'S REPORT

Chief Financial Officer, Lisa Lumbard reported that as of October toll revenues were \$147,358,304, which is 48.5% over projections and 9.2% under prior year.

Total Operations, Maintenance and Administration expenses were \$21,825,989 year-to-date, which is 9.5% under budget.

After debt service the total net revenue available for projects year-to-date through October was \$60.1 million. CFX's projected year-end senior lien debt service ratio is 1.92 which is above CFX's budgeted ratio of 1.68.

### 3. EXECUTIVE DIRECTOR'S REPORT

Commissioner Smith shared a message from Brevard County.

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

In addition, Ms. Kelley expanded on the following:

- Ms. Kelley welcomed Commissioner Siplin and Commissioner Constantine to the CFX Board.
- CFX currently works with 6 counties to automate registration hold releases. CFX is coordinating efforts with the Florida Tax Collectors Association to automate the hold release in eight (8) other counties.
- The Florida Autonomous Vehicle Virtual Speaker Series continues with events scheduled on February 18<sup>th</sup> and March 25<sup>th</sup>.
- Ms. Kelley provided details on TEAMFL's upcoming January 28<sup>th</sup> and 29<sup>th</sup> annual meeting being held at the Orlando International Airport.

## F. REGULAR AGENDA ITEMS

### 1. BOARD OFFICER ELECTIONS

Diego "Woody" Rodriguez, General Counsel explained the nomination/election of officers in accordance with Florida Statutes and CFX policy. The positions of Vice Chairman and Treasurer are currently vacant.

#### Election of Chairman

A motion was made by Commissioner Smith and seconded by Mr. Madara for Mayor Dyer to move from Vice Chairman to Chairman. The motion carried unanimously with all eight (8) board members in attendance voting AYE by voice vote.

#### Election of Vice Chairman

Mayor Dyer nominated Commissioner Parks as Vice Chairman and the nomination was seconded by Commissioner Constantine. No other nominations were made. Commissioner Parks accepted the nomination. By a unanimous vote with all eight (8) members present voting AYE by voice vote. Commissioner Parks was elected Vice Chairman.

#### Election of Treasurer

Mayor Dyer nominated Mayor Demings as Treasurer and the nomination was seconded by Commissioner Arrington. No other nominations were made. Mayor Demings accepted the nomination. By a unanimous vote with all eight (8) members present voting AYE by voice vote. Mayor Demings was elected Treasurer.

### 2. MONTHLY COVID-19 FINANCIAL ASSESSMENT

Lisa Lumbard, Chief Financial Officer, explained how CFX's revenue and expenses are tracking as a result of COVID-19, because of the real time information provided some of the amounts are estimates and not the final numbers. She detailed the following: revenue variance over prior year; adjusted COVID impact by month; and CFX strengths. Ms. Lumbard noted that there were no additional construction projects approved since the November board meeting. She detailed the estimated budget vs actual as of the end of November 2020.

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

3. **RESOLUTION FOR REPRESENTATION ON THE LAKE-SUMTER METROPOLITAN PLANNING ORGANIZATION AND SPACE COAST TRANSPORTATION PLANNING ORGANIZATION**

Diego "Woody" Rodriguez, General Counsel requested the approval of a resolution for automatic appointment of CFX Board members to the Lake-Sumter Metropolitan Planning Organization and the Space Coast Transportation Planning Organization. He explained the requirements for the appointments.

A motion was made by Commissioner Parks and seconded by Commissioner Siplin for approval of the Resolution for Representation on the Lake-Sumter Metropolitan Planning Organization and Space Coast Transportation Planning Organization. The motion carried unanimously with all eight (8) board members in attendance voting AYE by voice vote.

4. **ASPIRE NATIONAL SCIENCE FOUNDATION ENGINEERING RESEARCH CENTER PROGRAM INTRODUCTION**

David Christensen, Innovation Director for ASPIRE provided an overview on the Aspire National Science Foundation Engineering Research Center Program.

The Board asked questions which were answered by Mr. Christensen.

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

G. **BOARD MEMBER COMMENT**

The following Board Members commented:

- Commissioner Smith;
- Commissioner Parks; and
- Commissioner Arrington.

H. **ADJOURNMENT**

Chairman Dyer adjourned the meeting at 10:10 a.m.

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Mayor Buddy Dyer  
Chairman  
Central Florida Expressway Authority

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Mimi Lamaute  
Recording Secretary  
Central Florida Expressway Authority

Minutes approved on \_\_\_\_\_, 2021.

*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).*

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# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## CONSENT AGENDA February 11, 2021

### CONSTRUCTION

1. Approval of Construction Contract Modifications on the following projects:
  - a. Project 538-559 SICE, Inc. (\$ 273,240.71)
  - b. Project 599-643A United Signs & Signals \$ 14,115.92
  - c. Project 599-643B United Signs & Signals (\$ 31,574.52)
  - d. Project 599-643C Traffic Control Devices (\$ 29,184.40)
2. Approval of Assignment and Assumption of Contractual Obligations Between KCCS, Inc. and Kisinger Campo & Associates, Corp., Contract No. 001637

### ENGINEERING

3. Approval of Supplemental Agreement No. 7 with Atkins North America, Inc. for Design Consultant Services for SR 417 Widening from Narcoossee Road to SR 528 – Post Design Services, Project No. 417-150, Contract No. 001393 (Agreement Value: not-to-exceed \$742,408.32)
4. Approval of Supplemental Agreement No. 4 with Parsons Transportation Group, Inc. for Design Engineering Services for SR 429 Widening from Florida's Turnpike to West Road, Project No. 429-152, Contract No. 001395 (Agreement Value: not-to-exceed \$479,691.04)
5. Approval of Supplemental Agreement No. 2 with Kisinger, Campo & Associates, Corp. for Design Professional Services for SR 429 Widening from Stoneybrook West Parkway (South) to Florida's Turnpike, Project No. 429-154, Contract No. 001397 (Agreement Value: not-to-exceed \$656,750.94)

### LEGAL

6. Approval of Amendment and Restatement of Easement and Partial Release of Easement between Duke Energy Florida, LLC and CFX, Project: 528-1240; SR 528 Portions of Parcel 41-804
7. Approval of Easement and Maintenance Agreement between City of Orlando and CFX, Project: SR 408, Parcels: 3-886, 3-890 and 253A-801
8. Approval of First Amendment to Interlocal Agreement between Florida Department of Transportation and CFX for the Construction and Operation of the Wekiva Parkway, Project: Wekiva Parkway, Parcels: Section 4A
9. Approval of Property Exchange Agreement and Resolution Declaring Surplus Property between Avatar Properties Inc. and CFX, Project: 538-232; SR 538, Parcels: 538-100A, 538-100B and 538-100C
10. Approval of Mixing Zone Property Access License Agreement Between the Greater Orlando Aviation Authority and CFX, Project: 528-143
11. Approval of Amendment No. 2 to Agreement between University of Central Florida Research Foundation, Inc. and CFX

## MAINTENANCE

12. Approval of Midlantic Marking, Inc. as a Subcontractor for Jorgensen Contract Services, LLC for Roadway and Bridge Maintenance Services, Contract No. 001151
13. Approval of Supplemental Agreement No. 1 with Converjint Technologies for Systemwide Electronic Security System Services, Contract No. 001611 (Agreement Value: \$202,176.18)

## TECHNOLOGY/TOLL OPERATIONS

14. Approval of TargetCW as a Subcontractor for TransCore, LP for System Software Maintenance, Contract No. 000179
15. Approval of First Contract Renewal with Kyra Solutions, Inc. for Image Processing Solution, Contract No. 001660 (Agreement Value: \$0)
16. Approval of Purchase Order to Microsoft Corporation for Support Services (Agreement Value: \$78,023.44)
17. Approval of Purchase Order to SHI International Corp. for Microsoft Azure Cloud Solutions and Services (Agreement Value: \$360,000.00)

## TRAFFIC OPERATIONS

18. Approval of Purchase Order to Optimus Energy Solutions, LLC for ChargePoint Stations (Agreement Value: \$57,621.00)

The following items are for information only:

- A. The following is a list of advertisement(s) from December 7, 2020 through January 31, 2021:
  1. 417-751: SR 417 Bridge Over SR 528 Preservation
  2. 599-560: Systemwide UPS Battery Replacement
  3. 528-760A: SR 528 Pavement Repairs and Resurfacing from Goldenrod Road to Narcoossee Road
  4. 429-169: SR 429 Pond E By-Pass Ditch
  5. Treasury Custody Services

The following items are for information only and are subject to change:

- B. The following is a list of anticipated advertisements (3-4 month look ahead)
  1. 408-628B: SR 408 Guide Sign Replacements – Construction
  2. 417-149: SR 417 Widening from Landstar Boulevard to Boggy Creek Road – Construction
  3. 417-150: SR 417 Widening from Narcoossee Road to SR 528 – Construction
  4. 417-760: SR 417 Milling and Resurfacing between SR 417 and Curry Ford Road – Construction
  5. 417-761: SR 417 Milling and Resurfacing between SR 408 and E-4 Canal - Construction

6. 429-153: SR 429 Widening between West Road to SR 414 – Construction
7. 599-419: SR 408, SR 429, and SR 414 Air Conditioner Replacements – Construction
8. 528-160: SR 528 Widening from Narcoossee Road to SR 417 – Construction
9. 599-759: South Access Road Slope Repair – Construction
10. 414-640: SR 414 Guide Sign Replacement – Construction
11. 599-416B: McCoy Road Facility Sewer Line Installation
12. 408-831: SR 408/417 Interchange Landscape
13. 408-830: SR 408 from SR 417 to Alafaya Trail Landscape
14. 599-416A: McCoy Road Facility Water Line Installation
15. Advocacy Services
16. Disclosure Counsel
17. Financial Management System Software and Implementation Services
18. General Systems Consultant Services – IT Consulting Services


**CONSENT AGENDA ITEM**

**#1**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

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

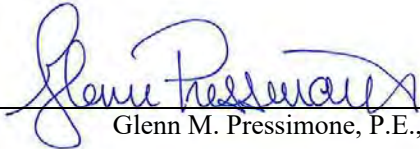
DATE: January 21, 2021

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 2021	Total Amount (\$) to Date*	Time Increase or Decrease
538-559	SICE, Inc.	SR 538 ITS Improvements	\$ 1,767,890.93	\$ -	\$ (273,240.71)	\$ 1,494,650.22	0
599-643A	United Signs & Signals	Pay-by-Plate Signage, SR 408	\$ 1,069,274.79	\$ -	\$ 14,115.92	\$ 1,083,390.71	0
599-643B	United Signs & Signals	Pay-by-Plate Signage, SR 417	\$ 1,117,711.00	\$ -	\$ (31,574.52)	\$ 1,086,136.48	0
599-643C	Traffic Control Devices	Pay-by-Plate Signage, Misc.	\$ 1,148,326.33	\$ -	\$ (29,184.40)	\$ 1,119,141.93	0
<b>TOTAL</b>					<b>\$ (319,883.71)</b>		

\* Includes Requested Amount for this current month.

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

**Project 538-559: SR 538 ITS Improvements**  
**SICE, Inc.**  
**SA 538-559-0221-01**

Add Pull Boxes

Two (2) pull boxes were added to accommodate the relocation of a CCTV traffic camera.

ADD THE FOLLOWING ITEM:

Add Pull Boxes	\$	2,285.84
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Relocate Existing Conduit at CCTV Locations

Relocate existing conduit that was in conflict with two (2) new drilled shafts for CCTV camera poles.

ADD THE FOLLOWING ITEM:

Relocate Existing Conduit at CCTV Locations	\$	1,595.00
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Off-Duty Law Enforcement

In order to provide safe operations during elements of construction impacting traffic, off-duty law enforcement was requested.

ADD THE FOLLOWING ITEM:

Off-Duty Law Enforcement	\$	10,510.50
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Delete 9-Way Fiber Optic Duct Bank

Due to the upcoming widening work on Poinciana Parkway, the installation of a 9-way fiber optic duct bank was no longer needed on this project and is hereby deleted. CFX took possession of the materials that were procured by the contractor for this work prior to deletion. The compensation for these materials is provided below.

DECREASE THE FOLLOWING ITEMS:

Fiber Optic Cable, 72 SM Fiber	\$	(21,560.00)
Fiber Optic Splice Enclosure, 72 Splice	\$	(9,835.92)
Fiber Optic Fusion Splice	\$	(8,326.52)
Large Fiber Optic Pull Box 36"	\$	(18,193.04)
Concrete Manhole 4x6.5 x 6.5	\$	(69,940.50)
Fiber Optic Conduit, 9-1" HDPE/SDR 11, Trench or Plow	\$	(55,660.40)
Fiber Optic Conduit, 4" HDPE SDR 11, Outer Duct w/ 3-1" HDPE SDR 11	\$	(155,979.60)
Tabular Route Marker, Fiber	\$	(148.80)
	\$	(339,644.78)

ADD THE FOLLOWING ITEM:

Fiber Optic Material Purchase	\$	29,806.92
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\$ (309,837.86)

Quantity Adjustments for Final Quantities of Work

The following are adjustments to pay item quantities to reflect final quantities for completed work. Adjustments are consistent with contract provisions.

INCREASE THE FOLLOWING ITEMS:

Sediment Barrier	\$	737.80
Embankment	\$	140.84
Pipe Culvert, RCP 18" SD	\$	649.04
Mitered End Section, Optional Other 18" SD	\$	1,516.66
Performance Turf, Sod	\$	376.04
Fiber Optic Cable, 12 SM Fiber	\$	723.75

Existing Fiber Optic Splice Enclosure Re-Entry	\$ 297.62
Pull Box	\$ 11,870.87
Pull Box, Remove All Types	\$ 178.57
Concrete Manhole, 4x6.5 x 6.5, Doghouse	\$ 14,285.71
Fiber Optic, 3-1" HDPE SDR 11, Trench or Plow	\$ 1,133.99
Electrical Conduit, 2-2" HDPE/SDR 11, Trench or Plow	\$ 1,988.16
Electrical Conduit, 3-2", Directional Bore	\$ 8,868.71
Tabular Route Marker, Power	\$ 29.76
Electrical Conductors, Insulated, #1/0	\$ 4,807.84
Concrete Pole 12', Type P-ii, Service Pole	\$ 3,610.48
Fiber Optic Patch Panel, 12 Port	\$ 476.12
Cut-To-Length Fiber Optic Jumpers	\$ 3,153.07
	\$ 54,845.03

DECREASE THE FOLLOWING ITEMS:

Electrical Conduit, 2-2", Directional Bore	\$ (35.36)
Electrical Conductors, Insulated, #2	\$ (1,598.31)
Electrical Conductors, Insulated, #4	\$ (3,682.20)
Electrical Conductors, Insulated, #6	\$ (656.88)
	\$ (5,972.75)

DELETE THE FOLLOWING ITEMS:

Training for Dynamic Message Sign	\$ (7,142.86)
Inspector Training for Fiber Optic Network	\$ (2,464.29)
Inspector Training for System Auxiliaries	\$ (2,464.29)
Electrical Conduit, 3-2", Directional Bore	\$ (7,461.70)
Full Color ADMS, LED, 2 Line, Front Access, Spare Parts Kit	\$ (7,133.33)
	\$ (26,666.47)

Subtotal: Quantity Adjustments for Final Quantities of Work \$ 22,205.81

**TOTAL AMOUNT FOR PROJECT 538-559** \$ **(273,240.71)**

**Project 599-643A: Pay-by-Plate Signage, SR 408**  
**United Signs & Signals**  
**SA 599-643A-0221-01**

Adjustments to Final Quantities for Completed Contract Items

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

INCREASE THE FOLLOWING ITEMS:

Multi-Post Sign, F&I, Ground Mount, 101-200 SF	\$	9,818.93
Sign Panel, Remove, CMS, 51-100 SF	\$	3,292.76
	\$	<u>13,111.69</u>

DECREASE THE FOLLOWING ITEMS:

Sign Panel Overlay, F&I, Ground Mount, Up To 12 SF	\$	(486.00)
Allowance for Disputes Review Board	\$	(10,000.00)
Work Order Allowance	\$	<u>(43,931.80)</u>
	\$	<u>(54,417.80)</u>

Subtotal: Adjustments to Final Quantities for Completed Contract Items \$ (41,306.11)

Overlay Adjustments

There were dimensional discrepancies with 12 existing signs which required adjustment.

ADD THE FOLLOWING ITEM:

Overlay Adjustments	\$	55,422.03
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**TOTAL AMOUNT FOR PROJECT 599-643A**

**\$ 14,115.92**



**Project 599-643B: Pay-by-Plate Signage, SR 417**  
**United Signs & Signals**  
**SA 599-643B-0221-01**

Adjustments to Final Quantities for Completed Contract Items

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

INCREASE THE FOLLOWING ITEM:

Sign Panel Overlay, F&I, Ground Mount, 31-50 SF	\$	4,245.00
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DECREASE THE FOLLOWING ITEMS:

Sign Panel Overlay, F&I, Ground Mount, Up To 12 SF	\$	(3,736.00)
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Allowance for Disputes Review Board	\$	(10,000.00)
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Work Order Allowance	\$	<u>(22,083.52)</u>
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	\$	(35,819.52)
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Subtotal: Adjustments to Final Quantities for Completed Contract Items	\$	(31,574.52)
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<b><u>TOTAL AMOUNT FOR PROJECT 599-643B</u></b>	<b>\$</b>	<b><u>(31,574.52)</u></b>
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**Project 599-643C: Pay-by-Plate Signage, Miscellaneous  
Traffic Control Devices  
SA 599-643C-0221-01**

Adjustments to Final Quantities for Completed Contract Items

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

INCREASE THE FOLLOWING ITEMS:

Sign Panel Overlay, F&I, Ground Mount, 31-50 SF	\$	10,119.48
Sign Panel Overlay, F&I, Overhead Mount, 101-200 SF	\$	<u>3,640.33</u>
	\$	13,759.81

DECREASE THE FOLLOWING ITEMS:

Allowance for Disputes Review Board	\$	(10,000.00)
Work Order Allowance	\$	<u>(32,944.21)</u>
	\$	(42,944.21)

Subtotal: Adjustments to Final Quantities for Completed Contract Items \$ (29,184.40)

**TOTAL AMOUNT FOR PROJECT 599-643C** \$ **(29,184.40)**

**CONSENT AGENDA ITEM**

**#2**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams *Aneth Williams*  
Director of Procurement

DATE: January 19, 2021

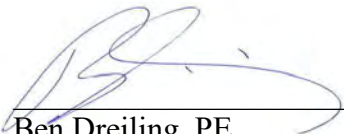
SUBJECT: Approval of Assignment and Assumption of Contractual Obligations Between  
KCCS, Inc. and Kisinger Campo & Associates, Corp. (KCA)  
Contract No. 001637


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Board approval is requested to enter into an Assignment and Assumption of contractual obligations between KCCS, Inc. and KCA and CFX.

KCA has acquired KCCS, Inc. and desires to assign the Construction Engineering and Inspection Services for SR 417 widening from Narcoosee Road to SR 528 contract between KCCS, Inc. and CFX to KCA.

Reviewed by:

  
Ben Dreiling, PE  
Director of Construction

  
Glenn Pressimone, PE

## ASSIGNMENT AND ASSUMPTION OF CONTRACT

**THIS ASSIGNMENT AND ASSUMPTION OF CONTRACT** (“Assignment”) is made and entered into as of the Effective Date (hereinafter defined), by and between **KCCS, INC.**, a Florida Corporation, whose mailing address is 111 N. Magnolia Avenue, Suite 1050, Orlando, FL 32801 (“Consultant”), **KISINGER CAMPO & ASSOCIATES, CORP.**, a Florida Corporation, whose mailing address is 201 N. Franklin St., Suite 400, Tampa, FL 33602 (“Assignee”), and **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a body corporate and agency of the State of Florida, whose mailing address is 4974 ORL Tower Road, Orlando, Florida 32807 (“CFX”). Consultant, Assignee and CFX shall be individually referred to herein as “Party” or collectively referred to herein as the “Parties”.

**WHEREAS**, on October 8, 2020, Consultant and CFX entered into that certain Contract No. 001637 and the Contract Documents as defined therein, as may be amended from time to time (collectively, the “Contract”), whereby Consultant agreed to furnish Construction Engineering and Inspection (CEI) services required by CFX for SR 417 widening from Narcoosee Road to SR 528, as more particularly delineated in the Contract; and

**WHEREAS**, on or about December 10, 2020 (“Assignment Date”), Assignee acquired the ownership interest in and to the Consultant; and

**WHEREAS**, as part of the sale of the ownership interest of the Consultant to the Assignor, the Consultant agreed to transfer and assign, and Assignee agreed to accept and assume, any and all rights, duties, privileges, responsibilities, liabilities, and obligations of Consultant under the Contract; and

**WHEREAS**, as part of the sale, Assignee entered into employment agreements with Antonio Rodriguez, PE, and Dewey Martin, PE, the key management personnel of the Consultant (collectively, “Key Personnel”), for a term of no less than (5) years, to ensure the continuity and consistency in the level of services provided to CFX under the Contract; and

**WHEREAS**, CFX hereby consents to the assignment and assumption of the Contract, and amendment thereto, in accordance with the terms and conditions hereof.

**NOW, THEREFORE**, for and in consideration of the premises and mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals; Definitions.** The above recitals are true and correct and are incorporated herein by reference and made a part hereof. Capitalized terms used herein not otherwise defined herein shall have the meanings ascribed to those terms in the Contract.

2. **Assignment.** Effective as of the Assignment Date, Consultant does hereby convey, transfer, assign and set over to Assignee all of the rights, duties, privileges, responsibilities, liabilities, and obligations of Consultant under the Contract.

3. **Acceptance and Assumption.** Effective as of the Assignment Date, Assignee does hereby accept this Assignment and agrees to assume any and all of Consultant’s duties, responsibilities, liabilities and obligations under the Contract, which arise or accrue on or after the Assignment Date and agrees to perform all obligations of Consultant with respect to the Contract which are to be performed or which become due on or after the Assignment Date.

4. **Consent to Assignment and Assumption.** CFX hereby consents to the assignment of the Contract from Consultant to Assignee based on the representations of Consultant and Assignee that the Key Personnel will remain employees of the Assignee for no less than five (5) years, unless otherwise agreed upon in writing by CFX. In the event CFX determines the representations of Consultant or Assignee are incorrect or untrue with regard to the Key Personnel, CFX reserves the right to immediately terminate the Contract and shall have no further obligations thereunder. Consultant and Assignee agree to indemnify and hold CFX harmless from and against all liability, loss, and costs (including reasonable attorneys' fees) arising, directly or indirectly, out of the failure or refusal by Assignee to perform and discharge the obligations and liabilities assumed by Assignee as specified in this Assignment.

5. **Assignment Date and Effective Date.** The Parties hereby agree and acknowledge that this Assignment is being executed after the Assignment Date and as such, this Assignment shall be effective retroactively as of the Assignment Date. The Parties agree and acknowledge that Assignee shall be responsible for, and assume, any and all duties, responsibilities, liabilities and obligations under the Contract, which arise or accrue between the Assignment Date and Effective Date. Consultant and Assignee agree to indemnify and hold CFX harmless from and against all liability, loss, and costs (including reasonable attorneys' fees) arising, directly or indirectly, out of the failure or refusal by Assignee to perform and discharge the obligations and liabilities assumed by Assignee as specified in this Assignment between the Assignment Date and Effective Date.

6. **Contract Terms.** As of the Assignment Date, any and all references to the Consultant in the Contract shall refer to the Assignee.

7. **Authority.** Consultant hereby covenants that Consultant has good and lawful authority to assign and convey Consultant's rights, duties and obligations in, to and under the Contract. Assignee hereby covenants that Assignee has good and lawful authority to accept the assignment and assume all of Consultant's rights, duties and obligations in, to and under the Contract.

8. **Further Assurances.** Assignor agrees that it will execute and deliver, upon request, any and all such additional documentation as may be required by CFX to effectuate the terms of this Assignment.

9. **Governing Law.** This Assignment shall be interpreted and construed in accordance with the laws of the State of Florida.

10. **Specific Performance.** CFX, the Consultant and Assignee shall all have the right to enforce the terms and conditions of this Assignment by an action for specific performance.

11. **Modification, Amendment or Termination.** This Assignment may be not changed, modified, amended or terminated except as expressly set forth in a separate writing signed by the Parties.

12. **Severability.** If any of the terms, provisions, covenants or conditions set forth in this Assignment or the application thereof to any particular circumstance shall be held by any court having jurisdiction to be illegal, invalid or unenforceable under applicable law, the remainder of this Assignment shall not be affected thereby and each provision of this Assignment shall be valid and enforceable to the fullest extent otherwise permitted by law.

13. **Counterparts.** This Assignment may be executed in any number of counterparts, including by electronic, digital or facsimile signature in accordance with Chapter 668, Florida Statutes, all of which taken together shall constitute one and the same agreement.

14. **Effective Date.** The effective date of this Assignment shall be the date the last of the Parties hereto signs this Assignment (“Effective Date”).

**IN WITNESS WHEREEOF**, the Parties caused these presents to be executed by their duly authorized officer as of the dates set forth below.

(Seal)

**CONSULTANT:**

**KCCS, INC.**  
a Florida Corporation

ATTEST:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_

(Seal)

**ASSIGNEE:**

**KISINGER CAMPO & ASSOCIATES,  
CORP.,** a Florida Corporation

ATTEST:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_

[ADDITIONAL SIGNATURE PAGE TO FOLLOW]

**“CFX”**

**CENTRAL FLORIDA EXPRESSWAY  
AUTHORITY**

By: \_\_\_\_\_  
Aneth Williams, Director of Procurement

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

Approved as to form and legality by legal counsel  
to the Central Florida Expressway Authority on  
this \_\_\_ day of \_\_\_\_\_, 2021 for its  
exclusive use and reliance.

By: \_\_\_\_\_  
Diego “Woody” Rodriguez  
General Counsel





## Statement of Ownership and Management

Date: 01/05/2021  
Corporation Name: Kisinger Campo & Assoc, Corp.  
FEID Number: 59-1677145

This statement is to confirm that there are no changes in ownership or management as a result of the merger of KCCS, Inc. and Kisinger Campo & Associates, Corp.

A handwritten signature in blue ink, appearing to read 'Ronald E. Gott', written over a horizontal line.

Ronald E. Gott  
Corporate Secretary / Sr Vice-President / Chief Financial Officer

## **1) KCA-KCCS Purchase Agreement and Assignment**

## **AGREEMENT AND ASSIGNMENT**

This Agreement and Assignment ("Agreement") is made this 10<sup>th</sup> day of December, 2020, by and between **KCCS, INC**, hereinafter known as "Seller," and **KISINGER CAMPO & ASSOCIATES, CORP**, hereinafter known as "Buyer," for the purchase of all assets of Seller, the assignment of all contracts of Seller and the assumption of all liabilities of Seller (collectively the "Business").

Buyer and Seller both agree to the following provisions:

### **1. Background**

In June 1998, the Seller was formed as a wholly owned subsidiary of the Buyer to take over the Buyer's Florida Construction Engineering Inspection (CEI) business operations. The Buyer now wishes the Seller to transfer the Business to the Buyer.

### **2. Method**

After the transfer of the Business to Buyer, the Seller will be dissolved.

### **3. Transfer of Assets**

On the Closing Date, as hereinafter defined, all assets of Seller (the "Assets") will be transferred and assigned to Buyer. The Assets include but are not limited to the following:

- (i) All contracts (executed or pending) of Seller (the "Contracts") including but not limited to the contracts listed on Exhibit A hereto.
- (ii) All accounts receivable of Seller which are estimated to be \$1,389,800.
- (iii) Costs and estimated earnings in excess of billings on uncompleted contracts which are estimated to be \$10,000.
- (iv) All furniture and equipment in the amount of \$199,300.
- (v) All of the assets of Seller including any in excess of those set forth above.

### **4. Assumption of Liabilities**

On the Closing Date, all liabilities of Seller (the "Liabilities") will be assigned to Buyer and assumed by Buyer. Such Liabilities include:

- (i) The obligation to perform all duties under the Contracts on and after the Closing Date.
- (ii) All accrued salaries and taxes of Seller which are estimated to be \$1,017,300.
- (iii) All accounts payable of Seller which are estimated to be \$465,600.
- (iv) All other unpaid operating expenses of Seller which are estimated to be \$116,200.
- (v) All unpaid operating expenses of Seller incurred on or before the Closing Date.

**5. Closing Date**

The date that the Assets and Liabilities will be transferred to Buyer shall be the later of: (i) the date all consents required for the transfers of the Contracts have been obtained or (ii) December 31, 2020. Notwithstanding the above, the Buyer and Seller may elect to close on December 31, 2020 even if all consents have not been obtained. Buyer and Seller shall execute and deliver the Bill of Sale and Assignment on the Closing Date in the form of Exhibit B hereto.

**6. Purchase Price**

Except as provided herein, there will be no additional purchase price due to Seller as the value of the Assets and Liabilities equal each other.

**7. Indemnity**

If either party is found to be in breach of this Agreement, the offending party will indemnify the offended party for any legal fees accrued as a result of the breach.

**8. Severability**

Should any provision in this Agreement be deemed in some way invalid, the remaining provisions shall remain intact and enforceable by law.

**9. Jurisdiction**

This Agreement shall be governed by the laws and regulations of the state of Florida.


Both parties agree to the provisions listed above.

Signed this 10th day of December, 2020.

**KCCS, INC.**

**KISINGER CAMPO & ASSOCIATES, CORP.**

By:   
George D. Martin  
As its: President

By:   
Paul G. Foley  
As its: Chief Executive Officer

  
Witness

  
Witness

EXHIBIT B

Bill of Sale and Assignment

Effective as of December 31, 2020 all Assets of Seller (as defined in an Agreement and Assignment dated December 10, 2020, (the "Agreement") and all Liabilities of Seller (as defined in the Agreement) are hereby transferred and assigned to and assumed by Buyer.

KISSINGER CAMPO & ASSOCIATES, CORP

By:   
Paul G. Foley  
As Its: Chief Executive Officer

KCCS, INC.

By:   
George D. Martin  
As Its: President

**CONSENT AGENDA ITEM  
#3**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: January 22, 2021

SUBJECT: Approval of Supplemental Agreement No. 7 with Atkins North America, Inc. for Design Consultant Services for SR 417 Widening from Narcoossee Road to SR 528 – Post Design Services  
Project No. 417-150, Contract No. 001393

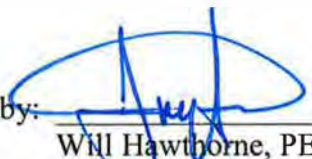
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Board approval of Supplemental Agreement No. 7 with Atkins North America, Inc. in a not-to-exceed amount of \$742,408.32 is requested. The original contract was for five years with five one-year renewals.

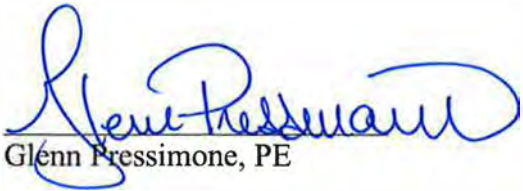
The services to be provided include post design services during the construction phase.

Original Contract	\$6,400,000.00
Amendment No. 1	\$ 0.00
Supplemental Agreement No. 1	\$ 0.00
Supplemental Agreement No. 2	\$ 0.00
Supplemental Agreement No. 3	0.00
Supplemental Agreement No. 4	\$ 977,700.66
Supplemental Agreement No. 5	\$ 137,251.74
Supplemental Agreement No. 6	\$ 0.00
Supplemental Agreement No. 7	<u>\$ 742,408.32</u>
Total	\$8,257,360.72

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

Reviewed by: 

Will Hawthorne, PE  
Director of Engineering

  
Glenn Pressimone, PE

**SUPPLEMENTAL AGREEMENT NO. 7**  
**TO**  
**AGREEMENT FOR PROFESSIONAL SERVICES**  
**POST DESIGN SERVICES (FOR 417-150)**  
**SR 417 Widening from Narcoossee Road to SR 528**

THIS SUPPLEMENTAL AGREEMENT NO. 7 TO AGREEMENT FOR PROFESSIONAL SERVICES POST DESIGN SERVICES (“Supplemental Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, an agency of the State of Florida, hereinafter called “CFX” and the consulting firm of ATKINS NORTH AMERICA, INC., a Florida corporation, hereinafter called the “CONSULTANT.”

WHEREAS, CFX and CONSULTANT entered into that certain Agreement for Professional Services dated December 13, 2018, as amended or supplemental by that certain Supplemental Agreement No. 1 between CFX and Consultant dated May 20, 2019, as amended or supplemental by that certain Supplemental Agreement No. 2 between CFX and Consultant dated December 30, 2019, as amended or supplemental by that certain Supplemental Agreement No. 3 between CFX and Consultant dated April 28, 2020, as amended or supplemental by that certain Supplemental Agreement No. 4 between CFX and Consultant dated June 2, 2020, as amended or supplemental by that certain Supplemental Agreement No. 5 between CFX and Consultant dated November 12, 2020, as amended or supplemental by that certain Supplemental Agreement No. 6



between CFX and Consultant dated January 7, 2021 (collectively, “Agreement”); and

WHEREAS, Section 4.24 of the Scope of Services, as defined in the Agreement, and attached to the Agreement as Exhibit “A” provides that after completion of the services outlined therein for Project Number 417-150, CFX may negotiate with the CONSULTANT to enter into a supplemental agreement to provide post design services; and

WHEREAS, Articles 2.00 and 12.00 of the Agreement provide that in the event that CFX elects to add, delete or change the services outlined in the Scope of Services, the compensation to be paid to the CONSULTANT shall be subject to adjustment as shall be mutually agreed upon by CFX and CONSULTANT pursuant to this Supplemental Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Supplemental Agreement, CFX and the CONSULTANT agree as follows:

1. CFX hereby authorizes the CONSULTANT to proceed with the post design services required as outlined in the correspondence to CFX dated November 17, 2020, which is attached hereto as Exhibit “A” and incorporated herein by reference (“Post Design Services”). Section 4.24 of Exhibit “A” of the Agreement and the Scope of Services shall be amended and supplemented to include the Post Design Services.

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 Post Design 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 attached hereto as Exhibit "A" and incorporated herein by reference. Direct expenses will be reimbursed for local travel only (per mile). The maximum fee for Post Design Services shall be \$742,408.32.

3. All provisions of said Agreement, or any amendments or supplements thereto, not specifically modified herein, 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 the Agreement, or any amendments or 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 this Supplemental Agreement to be executed the day and year first above written.

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY

By: \_\_\_\_\_  
Aneth Williams, Director of Procurement

ATKINS NORTH AMERICA, INC.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form and execution for Central Florida  
Expressway Authority's exclusive use and reliance.

By: \_\_\_\_\_  
Diego "Woody" Rodriguez  
General Counsel for CFX



**MEMORANDUM**

**Date:** November 18, 2020  
**To:** Will Hawthorne, PE CFX Director of Engineering  
**From:** Carnot W. Evans, PE *CWE*  
**Subject:** Design Consultant Services - Contract 001393 CFX  
Project No. 417-150  
SR 417 Widening from Narcoossee Road to SR 528  
Supplemental Agreement No. 7, Post Design Services

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**Comments:**

I have reviewed the fee proposal submitted by Atkins North America, Inc. provided via email on November 17, 2020, for the SR 417 Widening from Narcoossee Road to SR 528. This requested contract amendment is to provide post-design services during the construction phase that have been added to the scope of the project.

The work authorization request is attached and additional costs are detailed below:

\$ 610,523.81	Atkins as Prime
\$ 131,884.51	<u>Total Subconsultant fees</u>
\$ 742,408.32	Total Requested Contract Amendment Amount

The total fee proposal reasonable and acceptable, and the man hour rates are consistent with their contract; therefore, I recommend approval of this agreement in the amount of \$742,408.32.

Should you have questions or need additional information, please call me at 321.354.9757.

**CC:**

Keith Jackson, PE Dewberry  
File



Atkins North America, Inc.  
482 South Keller Road  
Orlando, Florida 32810  
☎ +1.407.647.7275 📠 +1.407.806.4500

November 17, 2020

Carnot Evans, PE  
Dewberry & Associates  
800 North Magnolia Ave  
Orlando, FL 32801

**RE: Project 417 – 150  
SR 417 from Narcoossee Rd. to SR 528  
Post Design Services, Supplemental Agreement #7**

Dear Carnot:

Attached are the following reflecting our Post Design Services for the referenced project:

- Scope of work
- Fee proposal (overall fee and back up from each sub: Tierra, BASE, and WBQ)

Please advise if you require any additional information.

Sincerely,

A handwritten signature in blue ink that reads "Susan A. Gratch".

Susan A. Gratch, PE  
Vice President/Senior Project Director

# **Exhibit "A"**

## **Project 417-150, S.A. # 7 S.R. 417 Widening from Narcoossee Rd to SR 528 Post-Design Scope of Services**

### **4.24 Post Design Services**

#### **A. Compensation**

The Consultant's compensation for post-design services is hereby 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 described in more detail herein. General support may include, project management/team oversight, monthly progress reports, subconsultant coordination, filing, document control, and all coordination with CFX and the CEI.

The Consultant shall make every reasonable effort to process any material presented for review in a prompt manner recognizing a construction contract is underway.

This scope is based upon an 850-day construction duration, ie approximately 30 months. 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.

#### **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 respond to questions related to the bid package (plans and specifications), and 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, special conditions as identified in the permit documents, special conditions as identified through the OUC agreement finalization, or conditions discovered by bidders during the bid period.

## **E. Field Visits – Construction Meetings**

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. For budget purposes, one field visit every three months (PM plus one technical lead) is estimated.

## **F. Plan revisions**

If requested by CFX the Consultant will make requested design and plan revisions. These may be related to unforeseen conditions, changes in approach desired by CFX, changes due to coordination with adjacent project schedules, or other reasons not listed herein.

## **G. 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.

## **H. Request for Information (RFI)**

The Consultant shall provide responses to requests for information. Review and responses will be conducted as quickly as possible, within three days if practical, however no later than one week from receipt of RFI.

## **I. Meetings**

The Consultant shall attend partnering meetings as requested by CFX (up to 5). The Consultant will also attend progress / coordination meetings as requested by CFX up to 12 (PM or technical lead to attend). The Consultant shall also attend the contractor Notice to Proceed meeting (PM and one technical lead).

## **J. Bridge Load Rating Memos**

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. If there are no changes in construction, verified by the CEI and/or CFX, 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 coordination services as needed by CFX, relative to proposed utility adjustments within the project limits. There are minimal utility adjustments on the project, so this is not expected to be a substantial effort.

#### **M. Record Drawings**

Based on information (redlined plans) 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 which will serve as the basis of the record drawings. This activity will also include required DEP/WMD permit modification (letter) and stormwater certifications based upon the as-built information as provided by the Contractor.



**SUPPLEMENTAL AGREEMENT NO. 6**  
**TO**  
**AGREEMENT FOR PROFESSIONAL SERVICES**  
**FINAL DESIGN**  
**SR 417 Widening from Narcoossee Road to SR 528**

THIS SUPPLEMENTAL AGREEMENT NO. 6 TO AGREEMENT FOR PROFESSIONAL SERVICES FINAL DESIGN (“Supplemental Agreement”) is made and entered into this 7<sup>th</sup> day of January, 2021, 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 ATKINS NORTH AMERICA, INC., a Florida corporation, hereinafter called the “CONSULTANT”.

WHEREAS, CFX and CONSULTANT entered into that certain Agreement for Professional Services between CFX and the CONSULTANT, dated December 13, 2018, as amended or supplemental by that certain Supplemental Agreement No. 1 between CFX and Consultant dated May 20, 2019, as amended or supplemental by that certain Supplemental Agreement No. 2 between CFX and Consultant dated December 30, 2019, as amended or supplemental by that certain Supplemental Agreement No. 3 between CFX and Consultant dated April 28, 2020, as amended or supplemental by that certain Supplemental Agreement No. 4 between CFX and Consultant dated June 2, 2020, as amended or supplemental by that certain

Supplemental Agreement No. 5 between CFX and Consultant dated November 12, 2020, (collectively, “Agreement”); and

WHEREAS, Articles 2.0 and 11.0 of the Agreement provide that in the event that CFX elects to add, delete or change services outlined in the Scope of Services, as defined in the Agreement, and attached to the Agreement as Exhibit “A”, the compensation to be paid to the CONSULTANT shall be subject to adjustment as shall be mutually agreed upon by CFX and the CONSULTANT in this Supplemental Agreement:

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Supplemental Agreement, CFX and the Consultant agree as follows:

1. CFX hereby authorizes the CONSULTANT to proceed with additional services as outlined in the Consultant’s November 12, 2020 letter to CFX, which is attached hereto as Exhibit “A” and incorporated herein by reference (“Additional Services”). Exhibit “A” of the Agreement and the Scope of Services, as defined in the Agreement, shall be amended to include the Additional Services.
2. Exhibit "B" of the Agreement is hereby amended as follows:
  - a. The Salary Related Costs are adjusted upward by \$93,616.19 to \$5,233,646.33.
  - b. The Design Survey – Field (Prime) is adjusted downward by \$20,193.99 to \$135,918.97.
  - c. The Direct Expenses - Lump Sum (Prime) remains unchanged at \$23,812.39.
  - d. The Direct Expenses Travel - Limiting Amount (Prime) remains unchanged at \$1,178.34.

e. The Subcontract Items are adjusted downward by \$73,422.20 to \$2,120,396.37 as follows:

- Geodata \$48,080.77
- G.F. Young \$25,341.43

f. The Allowance remains unchanged at \$0.00.

g. The Total Maximum Limiting Amount remains unchanged at \$7,514,952.40.


3. All provisions of said Agreement, or any amendments or supplements thereto, not specifically modified, 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 the Agreement, or any existing supplements or amendments 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 this Supplemental Agreement to be executed, the day and year first above written.

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY

By: Aneth Williams Digitally signed by Aneth Williams  
Date: 2021.01.07 16:22:59 -05'00'  
Aneth Williams, Director of Procurement

ATKINS NORTH AMERICA, INC.

By:   
Print Name: Susan A Gratch  
Title: VP; Sr Project Director

Approved as to form and execution for CFX's exclusive use and reliance.

Laura N. Kelly, Associate Digitally signed by Laura N.  
Kelly, Associate General Counsel  
Date: 2021.01.07 15:52:09 -05'00'  
By: General Counsel  
Diego "Woody" Rodriguez  
General Counsel

**SUPPLEMENTAL AGREEMENT NO. 5**  
**TO**  
**AGREEMENT FOR PROFESSIONAL SERVICES**  
**FINAL DESIGN**  
**SR 417 Widening from Narcoossee Road to SR 528**

THIS SUPPLEMENTAL AGREEMENT NO. 5 TO AGREEMENT FOR PROFESSIONAL SERVICES FINAL DESIGN (“Supplemental Agreement”) is made and entered into this 12th day of November, 2020, 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 ATKINS NORTH AMERICA, INC., a Florida corporation, hereinafter called the “CONSULTANT”.

WHEREAS, CFX and CONSULTANT entered into that certain Agreement for Professional Services between CFX and the CONSULTANT, dated December 13, 2018, as amended or supplemental by that certain Supplemental Agreement No. 1 between CFX and Consultant dated May 20, 2019, as amended or supplemental by that certain Supplemental Agreement No. 2 between CFX and Consultant dated December 30, 2019, as amended or supplemental by that certain Supplemental Agreement No. 3 between CFX and Consultant dated April 28, 2020, as amended or supplemental by that certain Supplemental Agreement No. 4 between CFX and Consultant dated June 2, 2020, (collectively, “Agreement”); and

WHEREAS, Articles 2.0 and 11.0 of the Agreement provide that in the event that CFX elects to add, delete or change services outlined in the Scope of Services, as defined in the Agreement, and attached to the Agreement as Exhibit "A", the compensation to be paid to the CONSULTANT shall be subject to adjustment as shall be mutually agreed upon by CFX and the CONSULTANT in this Supplemental Agreement:

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Supplemental Agreement, CFX and the Consultant agree as follows:

1. CFX hereby authorizes the CONSULTANT to proceed with additional services as outlined in the Consultant's October 20, 2020 letter to CFX, which is attached hereto as Exhibit "A" and incorporated herein by reference ("Additional Services"). Exhibit "A" of the Agreement and the Scope of Services, as defined in the Agreement, shall be amended to include the Additional Services.
2. Exhibit "B" of the Agreement is hereby amended as follows:
  - a. The Salary Related Costs are adjusted upward by \$93,778.42 to \$5,140,030.14.
  - b. The Design Survey – Field (Prime) remains unchanged at \$156,112.96.
  - c. The Direct Expenses - Lump Sum (Prime) remains unchanged at \$23,812.39.
  - d. The Direct Expenses Travel - Limiting Amount (Prime) remains unchanged at \$1,178.34.
  - e. The Subcontract Items are adjusted upward by \$43,473.32 to \$2,193,818.57 as follows:

•WBQ	\$23,497.33
•Tierra	\$19,975.99

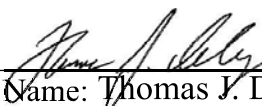
- f. The Allowance remains unchanged at \$0.00.
  - g. The Total Maximum Limiting Amount is adjusted upward by \$137,251.74 to \$7,514,952.40.
3. All provisions of said Agreement, or any amendments or supplements thereto, not specifically modified, shall remain in full force and effect, the same as if they had been set forth herein. In the event of a conflict between the provisions of this Supplemental Agreement and the Agreement, or any existing supplements or amendments 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 this Supplemental Agreement to be executed, the day and year first above written.

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY

By: **Aneth Williams** Digitally signed by Aneth Williams  
Date: 2020.11.20 12:24:45 -05'00'  
Aneth Williams, Director of Procurement

ATKINS NORTH AMERICA, INC.

By:  11/18/20  
Print Name: Thomas J. Delaney  
Title: VP, Sr. Division Manager

Approved as to form and execution for CFX's exclusive use and reliance.

By: **Woody Rodriguez** Digitally signed by Woody Rodriguez, General Counsel  
Date: 2020.11.20 11:13:05 -05'00'  
General Counsel

Diego "Woody" Rodriguez  
General Counsel



## Exhibit "A"

### MEMORANDUM

**Date:** October 20, 2020  
**To:** Will Hawthorne, PE CFX Director of Engineering  
**From:** Carnot W. Evans, PE *CWE*  
**Subject:** Design Consultant Services - Contract 001393  
CFX Project No. 417-150  
SR 417 Widening from Narcoossee Road to SR 528  
Supplemental Agreement No. 5

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#### Comments:

I have reviewed the fee sheet and scope of services submitted by Atkins North America, Inc. provided on October 20, 2020, for the SR 417 Widening from Narcoossee Road to SR 528. This requested contract amendment is to provide additional design services to cover additional work that was recommended for the additional Variable Speed Limit signs, ITS components, drainage modifications, and walls that have been added to the scope of the project.

The work authorization request is attached and additional costs are detailed below:

\$ 93,778.42	Atkins as Prime
\$ 43,473.32	<u>Total Subconsultant Fees</u>
\$ 137,251.74	Total Requested Contract Amendment Amount

The total staff hours for each task are reasonable and acceptable, and the man hour rates are consistent with their contract; therefore, I recommend approval of this agreement in the amount of \$137,251.74.

Should you have questions or need additional information, please call me at 321.354.9757.

#### CC:

Keith Jackson, PE Dewberry  
File

## Exhibit "A"



Atkins North America, Inc.  
482 South Keller Road  
Orlando, Florida 32810

☎ +1.407.647.7275 📠 +1.407.806.4500

October 20, 2020

Carnot Evans, PE  
Dewberry & Associates  
800 North Magnolia Ave  
Orlando, FL 32801

**RE: Project 417 – 150**  
**SR 417 from Narcoossee Rd. to SR 528**  
**SA #5: Integration of Variable Speed Limit Signs**

Dear Carnot:

Attached are the following reflecting the additional services necessary for Supplemental #5 (Variable Speed Limit Signs) as negotiated.

- Scope of work
- Fee proposal

As discussed last month, we are authorized to progress, specifically as in total, we are not out of funds, however, Atkins is very close to our contractual limits. Thus, we are seeking approval at the November board meeting to enable us to continue to progress.

Please advise if you need additional information.

Sincerely,

A handwritten signature in blue ink that reads "Susan A. Gratch".

Susan A. Gratch, PE  
Vice President/Senior Project Director



# Exhibit "A"



Atkins North America, Inc.  
482 South Keller Road  
Orlando, Florida 32810

+1.407.647.7275 +1.407.806.4500

## **Project 417 – 150 SR 417 widening from Narcoossee Rd. to SR 528 Scope of Services for Supplemental Agreement #5 Addition of Variable Speed Limit Signs October 19, 2020**

Based upon recent direction from CFX, there is a desire to incorporate Variable Speed Limit signs into the subject project. In addition, this SA is to address two other changes requested concurrent with or after 90% project development: modification of ITS facilities within the OUC RR corridor facilitating long term maintenance; modification of a NB SR 417 structure approaching Lee Vista Blvd not in the original nor updated Conceptual Signing Plan; and adjustments to drainage design for CFX preferences not identified until post 90% development

Below describes in more detail the changes associated with this SA.

1. Variable Speed Limit (VSL) scope includes corridor wide replacement of static speed limit signs with VSL signs. In most cases the VSLs will be mounted to the PTSU gantries, however in certain locations, they will be stand alone. Conceptual placement of the VSLs was agreed to on 9/3/2020 and additional direction was received on 9/29 increasing the scope of the change. To necessitate visibility to the VSLs, three PTSU OH signs require modification, two PTSU structural changes are needed to incorporate IMDMS versus status panels already designed, and additional ground mounted VSLs, and ground mounted static sign on one ramp.
  - SAPM plan changes
    - o Modify design, plans, and quantities to reflect the overall changes
      - Summary of quantities, summary of pay items
      - Plan sheets (replace static showing VSL, new locations of OH signs, adjust for IMDMS, add new GM etc.)
      - Cross-sections (three new, plus addition of the VSLs to all the PTSUs)
      - Cross-sections for two revised OH structures for IMDMS
      - Multi-post ground mount sign calcs
      - Reference to ITS plans for VSLs and IMDMS
    - o Structural revisions
      - design, analysis and plan revisions for the three new locations and for two structures for the change from static to IMDMS panels
      - Incorporate mounting detail into structural plans for VMS on PTSU gantries
      - Coordination with Signing and Geotech for changes

## Exhibit "A"



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482 South Keller Road  
Orlando, Florida 32810

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- ITS changes
    - o Modify design, plans, and quantities to reflect the overall changes
      - Summary of quantities, summary of pay items
      - Design analysis – communications and power
      - Plan sheets (addition of new VSLs to plans, the new IMDMS, inclusive of power and communication changes)
  - Conflict checks with other disciplines and minor plan adjustments to incorporate on plan views, pay items, etc. (lighting, drainage, roadway).
  - Geotech
    - o Addition of 6 new borings based upon updated locations (one sign is within 25' of prior investigations so close enough to use data)
      - Field work
      - Testing and analysis
      - Report update
  - Assumption: Dewberry provides the following items:
    - o Mounting/attachment detail for VSLs on PTSU devices
    - o Specifications, model, make of VSL desired
    - o Desired pay item numbering
2. ITS Duct Bank at SR 417 NB within OUC ROW - Existing FOMH 417-22.7 NB and FOMH 417-22.8-NB are located within OUC ROW. CFX has requested that these locations to be removed and the conduits be coupled together to provide a continuous run from FOPB 417-22.7-NB to FOPB 417-22.8-NB. It is also requested that the FOPBs (22.7 NB & 22.8 NB) be replaced with Doghouse Manholes to facilitate an access point for this crossing. A sketch was provided by CFX mid-July identifying the existing condition. Items affected:
- a. ITS design, plans and quantities
3. SR 417 NB sign at the Lee Vista exit – CFX has requested this structure be redesigned to accommodate a future APL in the NB direction. Items affected include:
- a. SAPM – new panel design, cross-section update, pay item update
  - b. Structural – redesign of the OH structure considering the future APL panel
4. Drainage revisions post 90%: There are three areas where at the 60% and 90% a drainage design was presented which met criteria. There were no comments at 60%, thus design progressed and was finalized with same design to 90%. At the 90% review, and resolution of comments, it was decided CFX desired to revise the design to reflect a design preference. Had this occurred at 60%, it would have been less extensive to make the changes, however, at the 90%, the requested changes took substantial effort and coordination including not only drainage, but roadway as well. Redesign efforts included: revised ditch designs, revised storm drain calculations (5 structures impacted); plan revisions: summary of quantities, drainage maps, plan/profile adjustments, drainage structure sheets, cross-sections and earthwork, and

## Exhibit "A"



Atkins North America, Inc.  
482 South Keller Road  
Orlando, Florida 32810

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coordination with structures and other disciplines to ensure no impacts to other project elements.

5. Noise wall change - After 90%, we were advised of a modification to the noise wall report, which resulted in changing wall NW-NBP4N from 20' to 22' tall. Modifying at 100% affects, plans, wall layout, cross-sections, and quantities.

**SUPPLEMENTAL AGREEMENT NO. 4**  
**TO**  
**AGREEMENT FOR PROFESSIONAL SERVICES**  
**FINAL DESIGN**  
**SR 417 Widening from Narcoossee Road to SR 528**

THIS SUPPLEMENTAL AGREEMENT is made and entered into this 2<sup>nd</sup> day of June, 2020, 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 ATKINS NORTH AMERICA, INC. of Orlando, Florida, hereinafter called the "CONSULTANT".

WHEREAS, Articles 2.0 and 11.0 of the Agreement for Professional Services between CFX and the CONSULTANT, dated the 13<sup>th</sup> day of December 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 24, 2020 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 \$894,667.24 to \$5,046,251.72.
  - b. The Design Survey – Field (Prime) is adjusted upward by 8,484.40 to \$156,112.96.
  - c. The Direct Expenses - Lump Sum (Prime) is adjusted upward by \$178.32 to \$23,812.39.
  - d. The Direct Expenses Travel - Limiting Amount (Prime) remains unchanged at \$1,178.34.
  - e. The Subcontract Items are adjusted upward by \$133,110.90 to \$2,150,345.25.

• BASE	\$18,346.05
• WBQ	\$34,776.20
• Tierra	\$79,988.65
  - f. The Allowance is adjusted downward by \$58,740.20 to \$0.00.

The Total Maximum Limiting Amount is adjusted upward by \$977,700.66 to \$7,377,700.66.


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: Aneth Williams Digitally signed by Aneth Williams  
Date: 2020.06.02 16:15:37 -04'00'  
Director of Procurement

ATKINS NORTH AMERICA, INC.

By:  5/26/20  
Print Name: Thomas Delaney  
Title: VP, Sr. Division Manager

Approved as to form and execution, only.

Diego "Woody" Rodriguez Digitally signed by Diego  
"Woody" Rodriguez  
Date: 2020.06.02 15:16:40 -04'00'

General Counsel for CFX

<https://cfxgov.sharepoint.com/operations/engineering/Shared Documents/General/417-150 SR 417 Widening Narcoossee to SR 528/2 Contract/2.A Supplementals Agreements/SA 4/Atkins-417-150 -SA 4.docx>



**MEMORANDUM**

**Date:** April 27, 2020  
**To:** Will Hawthorne, PE CFX Director of Engineering  
**From:** Carnot W. Evans, PE *CWE*  
**Subject:** Design Consultant Services - Contract 001393  
CFX Project No. 417-150  
SR 417 Widening from Narcoossee Road to SR 528  
Supplemental Agreement No. 4

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**Comments:**

I have reviewed the fee sheet and scope of services submitted by Atkins North America, Inc. provided via email on March 11, 2020, and revised after additional discussions on April 24, 2020 for the SR 417 Widening from Narcoossee Road to SR 528. This requested contract amendment is to provide additional design services to cover additional work that was recommended for the additional sign structures, ITS components, pier protection barrier, drainage, toll plaza, and walls that have been added to the project.

The work authorization request is attached and additional costs are detailed below:

\$ 903,329.96	Atkins as Prime
\$ 133,110.90	<u>Total Subconsultant Fees</u>
\$ 1,036,440.86	Total Requested Contract Amendment Amount

The total staff hours for each task are reasonable and acceptable, and the man hour rates are consistent with their contract; therefore, I recommend approval of this agreement in the amount of \$1,036,440.86.

Should you have questions or need additional information, please call me at 321.354.9757.

**CC:**

Keith Jackson, PE Dewberry  
File



Atkins North America, Inc.  
482 South Keller Road  
Orlando, Florida 32810  
☎ +1.407.647.7275 📠 +1.407.806.4500

April 24, 2020

Carnot Evans, PE  
Dewberry & Associates  
800 North Magnolia Ave  
Orlando, FL 32801

**RE: Project 417 – 150**  
**SR 417 from Narcoossee Rd. to SR 528**  
**SA #4: Miscellaneous items including: SR 528 Pier protection, PTSU accommodations, Arc Hazard Analysis, Noise wall adjustments, Ramp lighting, SB Narcoossee Ramp Toll plaza**

Dear Carnot:

Attached are the following reflecting the additional services for Supplemental #4 as requested by CFX:

- Scope of work
  - o SR 528 Pier Protection
  - o PTSU Accommodations
  - o Arc Hazard Flash Analysis
  - o Noise Wall adjustments
  - o Ramp lighting adjustments
  - o SB Narcoossee off-ramp adjustments – Toll plaza
- Fee proposal sheets (as negotiated for the above items)

We are seeking approval at your earliest convenience.

Thank you for your continued support.

Sincerely,

A handwritten signature in blue ink that reads "Susan A. Gratch".

Susan A. Gratch, PE  
Vice President/Senior Project Director



**Project 417 – 150**  
**SR 417 widening from Narcoossee Rd. to SR 528**  
**Scope of Services for Supplemental Agreement #4**  
**SR 528 Pier Protection, PTSR Accommodations, Noise Wall Adjustments, Ramp**  
**lighting adjustments, and SB Narcoossee off-ramp adjustments**  
**April 24, 2020**

Based upon recent direction from CFX, there are several areas of scope changes/additions included in this supplemental agreement. Plans have been developed thru 60%, some items are new scope some items are related to revisions based upon progress to date. These are identified below:

1. SR 528 Pier Protection
2. PTSU Accommodations
3. Arc Hazard Flash Analysis
4. Noise Wall adjustments
5. Ramp lighting adjustments
6. SB Narcoossee off-ramp adjustments (Ramp Toll Plaza)

**1. SR 528 Pier Protection**

Implement pier protection barriers (TL-5 or other) along SR 528 to protect existing columns. It is noted that the SR 417 widened bridge columns will be designed to meet current impact criteria (slightly larger columns with additional sheer reinforcing steel).

Summary of changes: It is the understanding that the CFX will be undergoing a system-wide guardrail update, thus, this improvement will be limited to the following:

- a. Survey:
  - i. Atkins:
    - additional field survey along SR 528 overall length of 900 LF and width inclusive from outside edge of WB pavement to outside edge EB pavement, inclusive of: Pavements, guardrail, columns, topo, etc.
    - Ground and footing at elevations at each pier (shovel excavation to establish the top of the footing at each location)
    - Additional utility designations as may be necessary
    - Additional mapping to allow preparation of plan views (
    - Compilation of all new data into integrated survey model

- b. Roadway/MOT (Atkins):
  - i. Additional typical section to address barrier addition
  - ii. Plan views showing improvements (800 +/- LF). Intent is not to re-profile the areas, only to add the barrier with sufficient advancement/connection length to existing guardrail to protect piers.
  - iii. Utility relocation sheets
  - iv. Cross-sections
  - v. SR 528 MOT: phasing for inside shoulder work and foundations for the barrier, both directions. Assumption is that there would be a mainline shift 2' - 4' to the outside to accommodate the construction, maintaining all lanes throughout construction duration.
- c. Drainage (Atkins): spread calculations, addition of drainage structures on inside edges of EB and WB shoulders to address spread to the degree practical. Intent is to NOT adjust profile thru this area. Inlets, trench drain or other may be needed to address.
- d. Structures (BASE): depending upon the depth/location of existing footings at the piers, the standard pier protection barrier may not work. If that is the case, supplemental details including crash walls and concrete collars may be needed to address the needed pier protection.

**2. PTSU Accommodations (Atkins, WBQ, Tierra)**

- a. Guide signing - Revised/new efforts include:
  - i. Additional sign structures, per an updated CSP, needing geotech and foundation designs include:

	<b>Cantilever Trusses</b>	<b>Full trusses (dual support)</b>	<b>Full Trusses (with median support)</b>
<b>New Signs</b>	+6 (5 static; one shared)	+2 (PTSU)	+5 (PTSU) +1 (static)

The table above also includes additional signs as requested by CFX which had previously been identified by CFX as being done by others. Based upon above table, there are additions and/or revisions to: SAPM plans (WBQ), Structural (Atkins), guardrail locations/site design (Atkins). Additional efforts and coordination with Drainage, ITS, Lighting team members (Atkins).

(Note – geotech for the added signs was included in stand alone SA #3)

PTSU sign structures with median supports and/or the monotube across the structure accommodating DMS lane arrows and static panels, are all special design, there is no FDOT or other standard program which can be used.

Assumptions:

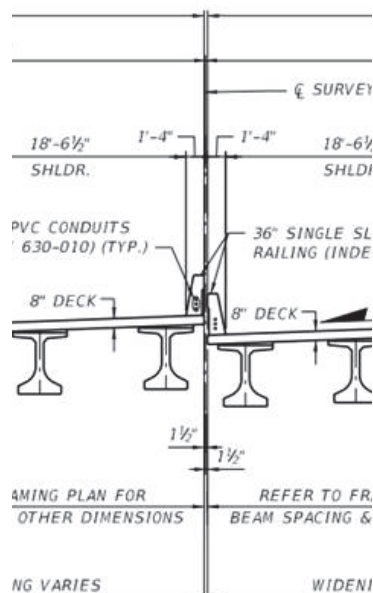
- CFX provides the details (weight/size) for the lane use signs. We understand there will be two types of signs acceptable. Atkins will need to design the

structures to accommodate the worst case as the contractor will be permitted to select the signs.

- CFX/GEC providing details for flat trusses needed for PTSU lane use signs.
- b. SR 417 median drainage, where needed, was agreed to be generally placed along the SR 417 centerline (certain areas of superelevation were excepted). At the 60% review, CFX has directed that longitudinal median drainage will be off-set to better accommodate PTSU devices (signs, lights) to be placed in the median. From the project beginning to just south of SR 528.
- c. Median drainage structures
  - i. 1421 +/-, approximately 40 drainage structures and longitudinal pipe connecting these inlets are impacted and will require revision (calcs and plans).
  - ii. At the 60% submittal, multiple pipes were designed as offset from the centerline, through superelevated sections to eliminate conflicts with the median barrier footer. Initially it was thought these would not require relocation, however in development of details for the drilled shafts and/or median cap over the drilled shafts for median supported OH PTSU sign structures, these pipes will now need to be redesigned (4-5 locations anticipated)
  - iii. Disciplines impacted: drainage and roadway/MOT
- d. ITS – based upon the discussions with CFX, the changes to the ITS as a result of the PTSU include the following:
  - i. PTSU Fiber and Power drops at the new signs (dynamic lane use)
  - ii. 100% camera coverage of all the dynamic lane use signs
    - 1. An Additional 4 devices needing geotech and structural design are estimated.
    - 2. Multiple new cameras to accommodate
  - iii. Inclusion of PTSU sign details – sign details, communications and electrical service for all
  - iv. PTSU Fiber
    - 1. CFX to provide location information for junction boxes along Hwy 528/417 interchange for existing green conduit (no survey required).
    - 2. Additional plan sheets outside of current project limits will be added at 100 scale to show new fiber install in existing green conduit.
- e. Lighting: Median mounted light poles shall replace currently designed outside shoulder mounts. Assumption: new light poles will match existing light poles. Efforts will include the following:
  - i. Two analyses:
    - 1. 417-150 improvement condition: current 8-lane widening (3 GP lanes + PTSU in each direction)
    - 2. 417-150 future/ultimate condition: 10-lane [4 GP lanes + SUL in each direction, i.e., one added GP lane in each direction.Both above analyses may necessitate poles at outside shoulder mounts. The intent is to accomplish both analyses, to develop a design for median mounted

poles that works for initial and future conditions without having to modify median pole mounts when the 10-laning is implemented.

- ii. One set of plans depicting the recommended design for 417-150 installation, median mounted supplemented by outside shoulder mounts as needed for condition 1.a. above.
- iii. This also has an impact on structures, i.e. detailing for median pole mounts specifically in the superelevated OUC bridge widening section (below, not covered by standards).



3. **Arc Flash Hazard Analysis** (Atkins) – This is a new scope item affecting **lighting and ITS** cabinets (existing and proposed). New scope items include the following:
  - a. 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.
  - b. Data Collection –
    - i. Obtain the feeder conductor sizes and lengths starting the utility transformer and continuing to all devices included in the arc flash analysis.
    - ii. Obtain all circuit breaker and fuse amperage, manufacturer, model, and trip unit settings.
  - c. Utility Information - – Coordinate with the local power company to gather technical information on their transformer including impedance, KVA rating, operating voltage, service voltage configuration and available fault current.

- d. 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.
- e. 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.
- f. Calculate arc current for every required equipment or bus.
- g. Estimate arcing time by plotting Time-Current Curve and obtaining the trip time of branch and main circuit breakers.
- h. 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.
- i. Determine the arc flash boundary.
- j. The arc flash hazard analysis shall be documented in a detailed report. The report should include the following:
  - i. The name of person performing the assessment
  - ii. The date of assessment.
  - iii. All data collected and used in the assessment, including protective device settings.
  - iv. Assumptions used in the absence of data.
  - v. The name of the software and the revision.
  - vi. Provide documentation for all results related to incident energy and arc flash boundary for each equipment.
- k. Arc Flash Labeling – Provide sufficient details in the plans including direction that it will be the Contractor’s responsibility to place Arc flash labels on the exterior cover of equipment at the power service-entrance locations. Equipment like, (a) Non-fused disconnect switch on the line side of meter, (b) service-entrance rated overcurrent protection device, (c) electrical distribution cabinet. Identify in the plans that Arc flash labels should be located in a place that is easily visible and readable from some distance. Provide the following information for the label: 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. Label information shall also be included in the design documentation report.
- l. 12 lighting cabinets will require this analysis, and 6 ITS cabinets will require this analysis

4. **Noise Walls (Atkins, WBQ, Tierra)-**  
Summary of changes: Updated noise wall locations have been provided, summarized below:

Community Name	Barrier ID	Barrier Height (feet)	Est, Barrier Length <sup>1</sup> (feet)	Barrier Location
Stratford Pointe	150-NBP2	22	2,208	Right of Way
Savannah Landings	150-SBP4	10	1,453	Shoulder
Oasis at Moss Park	150-NBP4	20/14	1,035/665	Hybrid
Villas at East Park	150-SBP5	22	1,700	Right of Way

The above represents additional walls above what was included in the original scope as follows:

- Additional overall length of noise wall - 3561 LF
- Additional length of toe/MSE slope walls – 2700 LF
- Two new locations, and two of these will be shoulder mounted versus at the ROW to be laterally offset considering future 10-laning

- The following disciplines are impacted.
  - a. Roadway (Atkins): Grading and slopes shall be positioned to accommodate future 10-laning (i.e. additional outside widening). CFX has provided a conceptual typical section to support this. Additional analysis required due to extent of development of noise walls to stay within ROW constraints and design model was essentially complete. (47 sections affected, and 7 plan profiles impacted)
  - b. Signing (WBQ): adjustment of one full OH and one cantilever sign structure (revised cross-sections are the only changes)
  - c. Drainage (Atkins): adjustments to address the future 10-laning as follows:
    - i. Add field inlets and pipes to current trunk line to address flow in the slope
    - ii. Pipe to be sized appropriately for the flow of the future 10-lane section in this area.
    - iii. Primarily this will be in the area on the low side of super. No drainage impacts to high side of super are anticipated

Assumption: ponds shall not be remodeled to accommodate the future 10-laning

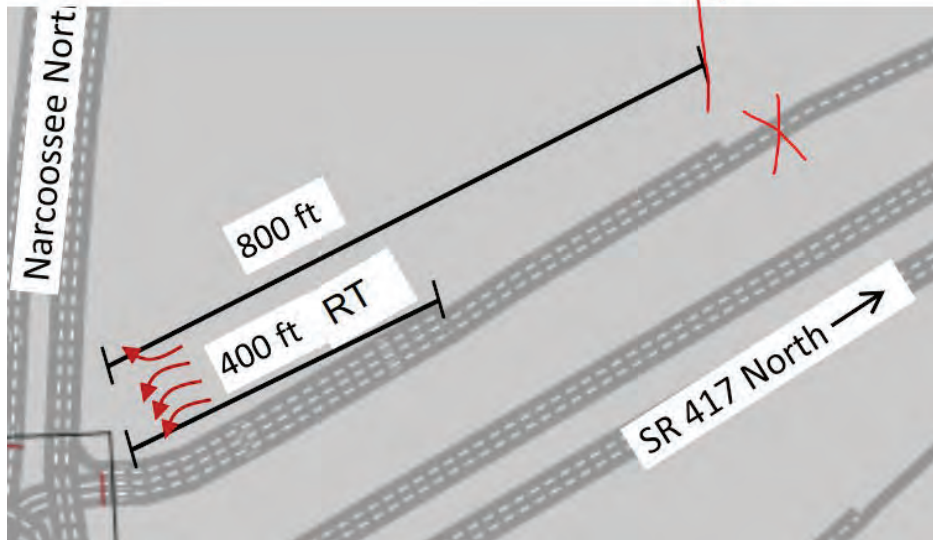
- d. New toe walls (Atkins, Tierra): along both new areas given current slopes extend to existing ROW.
  - i. Structures and geotech will be required once new cross-sections are established. Desire is to have 4:1 slopes (3:1 max) behind the future 10-lane break line where toe walls are present.
  - ii. Toe wall lengths expanded beyond existing scope due to the addition of noise walls. Additional total length of 2700 LF for two new wall areas.  
Roadway analysis in addition to structural and geotech required.
- e. ITS fiber is mid-slope from about station 1295 to 1300 (Area 2) - this will require relocation (between nearest manholes) as likely in conflict with new noise wall and/or toe wall.
- f. Structural – desire to combine one OH sign support on noise wall rather than separate structure to minimize height of slope MSE wall (single location)
- g. Geotech – borings for the new noise and toe wall limits

**5. Ramp Lighting replacement (Atkins)**

- Ramp Lighting:
  - a. Site visit/field review of the ramp lighting at Moss Park Rd and Dowden Rd interchanges (SR 528 has recently been replaced so no need). Light poles within these interchanges are still within service life, so likely they are in reasonable condition, however:
    - i. Perform a field review to confirm no issues
    - ii. If certain poles appear to be in poor condition, replace in kind
    - iii. No new lighting analysis is required

Narcoossee Rd – as the original light poles are 30 yrs. old +/-, replace for the ramps to and from the north within the 417-150 project limits. This will require new analysis to confirm placement and to address any adjustments contemplated with the new SB off-ramp alignment outlined in Scope change item 6 below.

- 6. SR 417 SB off Ramp at Narcoossee (Atkins, WBQ, Tierra)**: CFX will be revising the concept at the SB Narcoossee Rd off ramp to a triple left with exclusive right. Inwood will be responsible for development of the concept. The rough ramp layout is below. Atkins new project limit on this ramp are from the south/west limit of the existing ramp plaza northward to SR 417.



Scope changes to Atkins work involved:

- Toll Facility Plan - Addition of an all-electronic toll gantry at the X location (approximate) above based upon CFX standard ramp gantry configuration (dual mounted support). The design will be based upon the reference design provided at the Stoneybrook AET site recently constructed by the CFX.
  - Civil/site plan
    - Grading
    - Drainage
    - Concrete pavement details
    - Temporary Traffic Control plan
      - Construction of new conc pavement (maintain one lane minimum of existing ramp traffic, and maintain ability to run thru existing plaza)
      - Demolition of existing plaza – likely requiring slight diversion of ramp traffic once new ramp toll plaza is operational.
  - Gantry structure
    - Structural notes
    - Foundation plan (geotech) (covered in SA #3)
    - Truss plan and elevation
    - Truss details
  - Electrical and Generator LP gas tank and piping
    - Electrical plan
    - LP tank plan and piping diagram
    - Plaza demolition electrical plan



- Plaza generator LP tank demolition plan
  - Lightning protection plan
  - Toll equipment power riser
  - Panel schedules
  - LP piping and tank installation details
  - Misc. electrical details
  - Power Design Analysis Report (minimum inclusion: generator sizing, fuel tank sizing with other required design calcs).
  - Cabinet details
- Assumptions:
- Will be similar to the SR 419-316A plans (Stoneybrook West off ramp) however 2 lanes versus one lane.
  - No exit ramp alignment changes are anticipated at the ramp exit from SR 417.
  - WWD devices are within the limits of the Inwood project (will be removed from 417-150 plans)
  - The actual equipment for the toll gantry is assumed to be specified and supplied by the CFX or other Consultants
  - Technical specifications will be required for the generator, the automatic transfer switch (ATS), LP gas fuel tank, LP gas fuel piping
  - Site visit needed to verify existing plaza electrical and mechanical equipment

## Schedule

As these changes have occurred post 60% design development, there are schedule impacts. Noise walls were provided in early April, the expectation is that there is a 3-4 month overall schedule delay. Updated schedule to be provided to address.

**SUPPLEMENTAL AGREEMENT NO. 3**  
**TO**  
**AGREEMENT FOR PROFESSIONAL SERVICES**  
**FINAL DESIGN**  
**SR 417 Widening from Narcoossee Road to SR 528**

THIS SUPPLEMENTAL AGREEMENT is made and entered into this 28th day of April, 2020, 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 ATKINS NORTH AMERICA, INC. of Orlando, Florida, hereinafter called the "CONSULTANT".

WHEREAS, Articles 2.0 and 11.0 of the Agreement for Professional Services between CFX and the CONSULTANT, dated the 13<sup>th</sup> day of December 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 March 23, 2020 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 remain unchanged at \$4,151,584.48.
  - b. The Design Survey – Field (Prime) remains unchanged at \$147,628.56.
  - c. The Direct Expenses - Lump Sum (Prime) remains unchanged at \$23,634.07.
  - d. The Direct Expenses Travel - Limiting Amount (Prime) remains unchanged at \$1,178.34.
  - e. The Subcontract Items are adjusted upward by \$69,890.62 to \$2,017,234.35.
    - Tierra \$69,890.62
  - f. The Allowance is adjusted downward by \$69,890.62 to \$58,740.20.

The Total Maximum Limiting Amount remains unchanged at \$6,400,000.00.


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: Aneth Williams Digitally signed by Aneth Williams  
Date: 2020.04.28 14:33:00 -04'00'  
Director of Procurement

ATKINS NORTH AMERICA, INC.

Witness:   
Print Name: Susan Hegrate

By:   
Title: VP Senior Division Manager

Approved as to form and execution, only.


**Diego "Woody"  
Rodriguez** Digitally signed by Diego  
"Woody" Rodriguez  
Date: 2020.04.28 13:30:56 -04'00'  
General Counsel for CFX

\\dfsprd1.oceca.internal\Store\Departments\Engineering\General\417-150 SR 417 Widening Narcoossee to SR 528\2  
Contract\2.A Supplementals Agreements\SA 3\Atkins-417-150 -SA 3.docx





**MEMORANDUM**

**Date:** March 24, 2020  
**To:** Will Hawthorne, PE CFX Director of Engineering  
**From:** Carnot W. Evans, PE   
**Subject:** Design Consultant Services - Contract 001393  
CFX Project No. 417-150  
SR 417 Widening from Narcoossee Road to SR 528  
Supplemental Agreement No. 3

**Comments:**

I have reviewed the fee sheet and scope of services submitted by Atkins North America, Inc. provided via email on March 11, 2020 for the SR 417 Widening from Narcoossee Road to SR 528. This requested contract amendment is to provide additional geotechnical services to cover additional work that was recommended for the additional sign structures and walls that have been added to the project.

The work authorization request is attached and additional costs are detailed below:

\$	0.00	Atkins as Prime
\$	<u>69,890.62</u>	<u>Total Subconsultant Fees</u>
\$	69,890.62	Total Requested Contract Amendment Amount

The total staff hours for each task are reasonable and acceptable, and the man hour rates are consistent with their contract; therefore, I recommend approval of this agreement in the amount of \$69,890.62.

Should you have questions or need additional information, please call me at 321.354.9757.

**cc:**

Keith Jackson, PE Dewberry  
File

**Project 417 - 150  
SR 417 widening from Narcoossee Rd. to SR 528  
Scope of Services for Supplemental Agreement #3  
Geotechnical services only  
March 23, 2020**

Based upon recent direction from CFX, there are several areas of scope changes/additions included in this supplemental agreement. Plans have been developed thru 60%, some items are new scope some items are related to revisions based upon progress to date. These are identified below:

1. SR 528 Pier Protection
2. PTSU Accommodations
3. Arc Hazard Flash Analysis
4. Noise Wall adjustments
5. Ramp lighting adjustments
6. SB Narcoossee off-ramp adjustments

**This scope of work addresses ONLY the geotech needs associated with the supplemental.**

1. **SR 528 Pier Protection** - no changes/additions to geotech

2. **PTSU Accommodations**

a. Guide signing - Revised/new efforts include:

- i. Additional sign structures, per an updated CSP, needing geotech and foundation designs include:

	<b>Cantilever Trusses</b>	<b>Full trusses (dual support)</b>	<b>Full Trusses (with median support)</b>
<b>New Signs</b>	+6 (5 static; one shared)	+2 (PTSU)	+5 (PTSU) +1 (static)

b. ITS – based upon the discussions with CFX, the changes to the ITS as a result of the PTSU include the following:

- i. 100% camera coverage of all the dynamic lane use signs - An Additional 4 devices needing geotech and structural design are estimated.

3. **Arc Flash Hazard Analysis** – no changes/additions to geotech

4. **Noise Walls** – length assumptions are in current scope. Assuming no overall length increases, no changes/additions to geotech



Atkins North America, Inc.  
482 South Keller Road  
Orlando, Florida 32810  
☎ +1.407.647.7275 📠 +1.407.806.4500

5. **Ramp Lighting replacement** - no changes/additions to geotech
6. **SR 417 SB off Ramp at Narcoossee:** 417-150 will include the revision at the SB Narcoossee Rd off ramp to a triple left with exclusive right. Inwood will be responsible for development of the concept. At this time, the geotechnical scope is limited to borings and foundations support needed for the new gantry structure (all electronic gantry).

#### **Schedule**

As these changes have occurred post 60% design development, there are schedule impacts. The expectation is that there is a 3-month overall schedule delay, pending receipt of noise wall locations.

13 DEC 2019 2:38

**SUPPLEMENTAL AGREEMENT NO. 2**  
**TO**  
**AGREEMENT FOR PROFESSIONAL SERVICES**  
**FINAL DESIGN**  
**SR 417 Widening from Narcoossee Road to SR 528**

THIS SUPPLEMENTAL AGREEMENT is made and entered into this 30<sup>th</sup> day of December, 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 ATKINS NORTH AMERICA, INC. of Orlando, Florida, hereinafter called the "CONSULTANT".

WHEREAS, Articles 2.0 and 11.0 of the Agreement for Professional Services between CFX and the CONSULTANT, dated the 13<sup>th</sup> day of December 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 November 26, 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 \$66,184.41 to \$4,151,584.48.
  - b. The Design Survey – Field (Prime) is adjusted upward by \$8,484.40 to \$147,628.56.
  - c. The Direct Expenses - Lump Sum (Prime) remains unchanged at \$23,634.07
  - d. The Direct Expenses Travel - Limiting Amount (Prime) remains unchanged at \$1,178.34.
  - e. The Subcontract Items are adjusted downward by \$74,668.81 to \$1,947,343.73.

• Geodata	-\$74,668.81
-----------	--------------
  - f. The Allowance remains unchanged at \$128,630.82.

The Total Maximum Limiting Amount remains unchanged at \$6,400,000.00.

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

19 DEC 26 PM 2:28

ATKINS NORTH AMERICA, INC.

Witness:   
Print Name: CHAD A. SHOCKLEY

By:   
Title: Project Manager, VP

Approved as to form and execution, only.

  
General Counsel for CFX



**MEMORANDUM**

**Date:** November 27, 2019  
**To:** Glenn Pressimone, PE CFX Director of Engineering  
**From:** Carnot W. Evans, PE  
**Subject:** Design Consultant Services - Contract 001393  
CFX Project No. 417-150  
SR 417 Widening from Narcoossee Road to SR 528  
Supplemental Agreement No. 2

---

**Comments:**

I have reviewed the fee sheet and scope of services submitted by Atkins North America, Inc. provided via email on November 26, 2019 for the SR 417 Widening from Narcoossee Road to SR 528. This requested contract amendment is to shift survey fee from the subconsultant to Atkins to cover additional work that was done by the prime and results in no additional amount to the overall contract.

The work authorization request is attached and additional costs are detailed below:

\$ 74,668.81	Atkins as Prime
<u>\$ (74,668.81)</u>	<u>Total Removal of Subconsultant Fees</u>
\$ 0.00	Total Requested Contract Amendment Amount

The total staff hours for each task are reasonable and acceptable, and the man hour rates are consistent with their contract; therefore, I recommend approval of this agreement in the amount of \$0.00.

Should you have questions or need additional information, please call me at 321.354.9757.

**CC:**

Keith Jackson, PE Dewberry  
File



Atkins North America, Inc.  
482 South Keller Road  
Orlando, Florida 32810-6101  
Telephone: +1.407.647.7275  
[www.atkinsglobal.com/northamerica](http://www.atkinsglobal.com/northamerica)

December 5, 2019

Glenn M. Pressimone, PE  
Chief of Infrastructure  
Central Florida Expressway Authority  
4974 ORL Tower Rd.  
Orlando, FL 32807

Subject: **Atkins CFX Contract # 001393**  
**CFX Project 417-150**  
**417 Widening from Narcoossee Rd to SR 528**  
**Transfer of funds within contract limits**

Dear Glenn,

We are requesting an adjustment of fees, within the total current contracted amount, between Geodata and Atkins as follows:

- Shifting of \$74,668.81 from Geodata to Atkins

The original concept was for Atkins and Geodata to linearly split most of the work, however, the following items exceed what was expected from the Atkins survey team, including the following:

- Survey of corridor wide ITS and lighting as flagged by CFX
- Lidar survey and extrapolation for all the bridge structures (piers and underneath) for widening and vertical clearance determinations
- Lidar survey and extrapolation for OH utilities to support constructability evaluations
- Topo for vegetated areas encompassed more area than expected
- In-office processing and QCR efforts for above

Currently Geodata has expended approximately \$146,000 of their total fees of \$295,624.49 (about 50%). Moving the requested amount will still retain more than adequate funds for Geodata if additional surveys within their linear segment are needed after 60% and for hand-over when construction starts. I have discussed this with Paul deVivero and will issue a subcontract amendment for Geodata reflecting the change once CFX approves. The email from Geodata noting this acceptance is attached. See below for requested adjustments:

Firm	Current contract amount	Change	Adjusted contract amount
Atkins	\$4,249,356.64	\$74,668.81	\$4,324,025.45
Geodata	\$ 295,624.49	(\$74,668.81)	\$ 220,955.68

There is no request for an overall fee change to our contracted amount as a result of this action, nor an impact to the current remaining allowance.

Our original contracted minority participation was: **26.12%**. With this request and including Amendment #1, we still exceed the original contracted minority participation, see below:

<b>Firm</b>	<b>Fees</b>	<b>% of Total Fees</b>
WBQ	\$ 412,826.55	6.58%
BASE	\$ 490,990.86	7.83%
Tierra	\$ 548,802.48	8.75%
Geodata	\$ 220,995.68	3.52%
<b>Total participation</b>	<b>\$1,673,615.57</b>	<b>26.68%</b>

Please advise if you need any further information to process this request.

Sincerely,



Susan A Gratch, PE  
Project Manager

CC: Will Hawthorne, PE; Director of Engineering, CFX  
Carnot Evans, PE, Dewberry  
Carmen Rivera, Atkins

Attachments: Fee support sheet, email from Geodata



**SUPPLEMENTAL AGREEMENT NO. 1**  
**TO**  
**AGREEMENT FOR PROFESSIONAL SERVICES**  
**FINAL DESIGN**  
**SR 417 Widening from Narcoossee Road to SR 528**

THIS SUPPLEMENTAL AGREEMENT is made and entered into this 20<sup>th</sup> 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 ATKINS NORTH AMERICA, INC. of Orlando, Florida, hereinafter called the "CONSULTANT".

WHEREAS, Articles 2.0 and 11.0 of the Agreement for Professional Services between CFX and the CONSULTANT, dated the 13<sup>th</sup> day of December 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 May 17, 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 \$130,258.23 to \$4,085,400.07.
  - b. The Design Survey – Field (Prime) is adjusted upward by \$13,575.04 to \$139,144.16.
  - c. The Direct Expenses - Lump Sum (Prime) remains unchanged at \$23,634.07
  - d. The Direct Expenses Travel - Limiting Amount (Prime) remains unchanged at \$1,178.34.
  - e. The Subcontract Items are adjusted upward by \$199,936.97 to \$2,022,012.54.

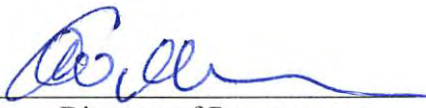
• BASE	\$110,354.31
• WBQ (Design)	\$4,402.67
• Tierra	\$85,179.99
  - f. The Allowance is adjusted downward by \$343,770.24 to \$128,630.82.

The Total Maximum Limiting Amount remains unchanged at \$6,400,000.00.


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.

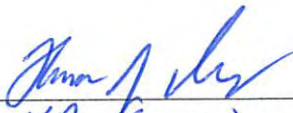
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, in quadruplicate, the day and year first above written.

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY

By:   
Director of Procurement

ATKINS NORTH AMERICA, INC.

Witness:   
Print Name: Kit Hopkins

By:   
Title: VP - Senior Division Manager

Approved as to form and execution, only.

  
General Counsel for CFX





Atkins North America, Inc.  
482 South Keller Road  
Orlando, Florida 32810  
☎ +1.407.647.7275 📠 +1.407.806.4500

## **Exhibit A**

### **Project 417 – 150**

#### **SR 417 widening from Narcoossee Rd. to SR 528**

#### **Scope of Services for Supplemental Agreement #1**

#### **Geometry revision and median widening within SR 528 interchange**

**May 17, 2019**

#### **Background**

The contracted scope and fee for 417-150 included median widening only through the limits of the SR 528 interchange, allowing for the addition of the 5<sup>th</sup> and 6<sup>th</sup> lanes with fully paved median to allow for full shoulders to facilitate future part time shoulder running (PTSR) through a portion of the interchange (PTSRs are not currently in the scope of work other than pavement infrastructure). As conceptual efforts progressed, and more details from CFX became available, CFX has noted a preference to extend the PTSR north of SR 528 so that when CFX expands the PTSRs northward to a logical point, the median is sufficiently set up. Further review of Atkins based upon preliminary survey and review of 417-410 and 417-457 plans along with review of Brightline Plans, have indicated a limitation considering available lateral space in the median to accommodate the PTSR in addition to the 5<sup>th</sup> and 6<sup>th</sup> lanes. In summary, due to the limitations of existing hammerhead piers (ramp fly-overs) and the planned Brightline overpass, the existing median cannot accommodate the newly requested PTSRs. As such, this scope of services outlines the additional project-wide efforts needed to make the requisite adjustments to accommodate PTSRs as desired by CFX.

#### **Summary of Changes**

Preliminary length of the mainline realignment (meeting 70 mph) and new typical with outside widening is approximately one mile, with intent of not impacting ramp gores to and from SR 528. The preliminary adjustments will require outside widening from approximate station 1413 +/- to Station 121+50 +/- (about 5200 LF).

These changes have supplemental design efforts in the following disciplines, which are described in more detail below.

Survey  
Geotech  
MOT  
Drainage

Structural  
Lighting  
Signing  
ITS

**Changes by discipline:**

1. **Survey:**
  - Atkins: additional survey for existing piers; LiDAR for existing overpasses (to cover outside widening); additional hard shots/ground survey of areas not covered with the LAMP (was already targeted and flown prior to this change). We have worked with Rooks to minimize the areas and use as much data from the LAMP as possible, but there are areas not appropriately covered as not deemed necessary at time of flight.
2. **Geotech:**
  - Additional augers for the outside widening areas (normal FDOT spacing); 91 in total are estimated
  - One added bridge boring (SPT) (note plan is to utilize to max degree practical the existing data available)
  - Added evaluations for outside MSE wall extensions
  - One additional SPT for OH sign, two additional SPTs for ITS devices
3. **Roadway/MOT:**
  - Additional typicals to cover the new sections (generally the overall roadway design effort is not increased as alignment (p/p) and cross-sections are already covered). It is noted that the efforts will include appropriate evaluations for clear zone protection (piers)
  - Assumption herein is that the adjacent SR 528 ramps will not require any adjustments (i.e. guardrail or other)
  - MOT: additional phase of work for mainline SR 417; and given proximity of adjacent ramps, protection may need to be detailed along ramps
4. **Drainage:** Storm drainage adjustments: new inlets, additional culvert extensions and/or end walls, and addition of shoulder gutter and inlets on the outside widened areas. Inside shoulder, generally will have barrier wall and requisite inlets.
5. **Structural:**
  - BASE: Bridges over SR 528 and over the SB to EB ramp: addition of outside widening; bridge and wall plans as needed. Further for the bridge over SR 528, we need to consider the ultimate SR 528 widening plan (i.e. the 8-laning concept plan) with our bridge widenings (may indicate how widen on the outside to ensure appropriate clearances can be met). Outside MSE wall extensions.
  - Atkins: Additional structural for 1 OH sign and 2 DMS devices



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Orlando, Florida 32810  
☎ +1.407.647.7275 📠 +1.407.806.4500

6. Lighting: within the 1-mile length, most of the recently installed light poles will need to be removed and replaced given shift of alignment and wider travel width. Intent will be to reuse if possible, so essentially lighting for this one mile needs to be added to the project.
7. Signing: one OH cantilever will require removal and replacement.
8. ITS: within the 1-mile length due to outside widening, fiber and conduit replacement and 2 additional ITS devices impacted with outside widening.

### **Schedule**

As this change has occurred relatively early in the project, changes to initial deliverables are possible, but not to overall project completion. A detailed schedule update will be provided after execution of the SA.

**AMENDMENT NO. 01 TO  
CONTRACT NO. 001393**

This Amendment is made and entered this 16 day of January 2019, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, hereinafter called "CFX", and Atkins North America, Inc, hereinafter "CONSULTANT", registered and authorized to conduct business in the State of Florida, whose principal place of business is 482 S. Keller Road, Orlando, FL. 32810.

'19 MAR 14 AM 9:12

WITNESSETH:

WHEREAS, CFX and CONSULTANT entered into an agreement on December 13, 2018 referred to as Contract No. 001393;

WHEREAS, the Agreement is being amended to incorporated changes requested by the CONSULTANT;

WHEREAS, for the ease of reference, the additions and deletions are highlighted by underlines and strikeouts, respectively;

WHEREAS, it is in the mutual best interests of CFX and CONSULTANT to amend this Agreement to reflect these changes; and

NOW, THEREFORE, the parties agree as follows:

1. The first paragraph of Section 7.0, DOCUMENT OWNERSHIP AND RECORDS is hereby ~~deleted~~ in its entirety and replaced with the following:

**"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. ~~Provided, however, that none of the documents or materials is intended or represented by CONSULTANT to be suitable for reuse by CFX, or others, for any continuation of the project or for any other project. Any reuse without written verification or adaptation by CONSULTANT for the specific purpose intended will be at CFX's sole risk and without liability or legal exposure to CONSULTANT.~~ 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 482 S. Keller Road, Orlando, FL. 32810."**

2. Section 13.0, INFRINGEMENT OF PATENTS AND COPYRIGHTS is hereby deleted in its entirety and replaced with the following:

**“Section 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. This obligation is limited to the deliverables and services as provided by CONSULTANT without any alteration or modification. 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.”

3. Section 17.0, DOCUMENTED ALIENS is hereby deleted in its entirety and replaced with the following:

**“17.0. DOCUMENTED ALIENS**

The CONSULTANT warrants represents 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 applicable 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.”

4. Except as expressly amended hereby, all the remaining provisions of the Agreement, as supplemented and amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties evidence their agreement through the execution of this Amendment by their duly authorized signatures.

**CONSULTANT:**

By: Francis O'Connor

Print Name: Francis O'Connor

Title: Vice President/Sr. Sector Manager

Date: March 4, 2019

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


**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

By:   
Director of Procurement

Print Name: Robert Johnson

Date: 3/21/2019

Approved as to form and execution, only.

  
General Counsel for the CFX

'19 MAR 14 AM 9:12

**SECRETARY'S CERTIFICATE  
OF  
Atkins North America, Inc.**

I HEREBY CERTIFY that I am the duly elected Secretary of Atkins North America, Inc., a Florida corporation (the "Corporation"), and consistent with the Corporation's Authorization Matrix the officers and employees named in Exhibit "A" are authorized to execute documents on behalf of the Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand this 1<sup>ST</sup> day of January, 2019.

**Atkins North America, Inc.**

(Corporate Seal)

By: *C. Ernest Edgar IV*  
C. Ernest Edgar IV, Secretary



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**Secretary's Certificate of  
Atkins North America, Inc.**

**Exhibit "A"**

**RESOLVED**, consistent with the Corporation's Authorization Matrix, the below named officers are authorized to execute documents on behalf of Atkins North America, Inc. ("Atkins"):

C. Ernest Edgar, IV., Senior Vice President/General Counsel/Secretary  
David D. Quinn, Sr., Senior Vice President/Chief Financial Officer/Treasurer  
Kenneth J. Burns, Jr., Senior Vice President  
Donna M. Huey, Senior Vice President  
Justin P. Jones, Senior Vice President  
Steven C. Malecki, Senior Vice President  
Maureen M. Nayowith, Senior Vice President  
Michael M. Newton, Senior Vice President  
Brad W. Dennard, Vice President, Senior Sector Manager  
Thomas (Tom) J. Delaney, Vice President, Senior Division Manager  
Mark Micikas, Vice President, Sector Manager  
Francis (Fran) O'Connor, Vice President, Sector Manager  
Rosemary Woods, Vice President, Senior Division Manager  
Steve McWilliams, Vice President, Senior Division Manager  
Jeremy J. Bourdon, Vice President, Senior Division Manager

And the following named officers are authorized to attest to the signatures of officers and employees executing documents on behalf of Atkins:

C. Ernest Edgar, IV., Senior Vice President/General Counsel/Secretary  
Rene de los Rios, Vice President/Assistant Secretary  
Jayanth Jayaram, Vice President/Assistant Secretary  
Donya Becton, Vice President/Assistant Secretary

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# **AGREEMENT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
ATKINS NORTH AMERICA, INC.**

**DESIGN CONSULTANT SERVICES FOR SR 417 WIDENING  
FROM NARCOOSEE ROAD TO SR 528**

**CONTRACT NO. 001393, PROJECT NO. 417-150**

**CONTRACT DATE: DECEMBER 13, 2018  
CONTRACT AMOUNT: \$6,400,000.00**

**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**

**DESIGN CONSULTANT SERVICES FOR  
SR 417 WIDENING FROM NARCOOSEE ROAD TO SR 528**

**CONTRACT NO. 001393  
PROJECT NO. 417-150**

**DECEMBER 2018**

**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 December 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 Atkins North America, 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 482 S. Keller Road, Orlando, FL. 32810.

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 417 Widening from Narcoosee Road to SR 528 identified as Project No. 417-150 and Contract No. 001393.

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:

Base Consultants, Inc. (Class I)	George F. Young, Inc. (Class I)
I.F. Rooks & Associates, LLC (Class I)	Geodata Consultants, Inc. (Survey) (Class II)
WBQ Design & Engineering, Inc. (Class I)	George F. Young, Inc. (Survey) (Class II)
Geodata Consultants, Inc. (Class I)	Tierra, Inc. (Class II)

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 \$6,400,000.00 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 482 S. Keller Road, Orlando, FL. 32810.

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 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.

## 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 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.

#### 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, 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.

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) 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.

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 23.0, 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: Atkins North America, Inc.  
482 S. Keller Road  
Orlando, FL 32810  
Attn: Sue Gratch, P.E.

Atkins North America, Inc.  
482 S. Keller Road  
Orlando, FL. 32810  
Attn: Chad Shockley, 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
- Exhibit "F", Project Schedule
- Exhibit "G", Potential Conflict Disclosure Form

[ SIGNATURES TO FOLLOW ]

Project No. 417-150  
Contract No. 001393

IN WITNESS WHEREOF, the CONSULTANT and CFX have caused this instrument to be signed by their respective duly authorized officials, as of the day and year first above written. This Contract was awarded by CFX's Board of Directors at its meeting on December 13, 2018.

**ATKINS NORTH AMERICA, INC.**

**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY**

BY:   
Authorized Signature

BY:   
Director of Procurement

Print Name: Ken Burns, Jr PE

Print Name: Anoth William

Title: SVP, DOT Business Director

Effective Date: 12/20/18

ATTEST:   
Secretary or Notary



*Approved as to form and execution, only.*

  
General Counsel for CFX

18 DEC 19 PM 4:39

# **EXHIBIT A**

## **SCOPE OF SERVICES**



**Exhibit A**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

**SCOPE OF SERVICES**

**FOR**

**S.R. 417 WIDENING FROM NARCOOSSEE ROAD  
TO SR 528**

**PROJECT NO. 417-150**

**IN ORANGE COUNTY, FLORIDA**

**November 26, 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 S.R. 417 inside widening from approximately 1000 feet north/east of Narcoossee Road to approximately 4500 feet north of SR 528. The length of the project is approximately 4.7 miles. Specifically, the project consists of widening to the inside (median) to accommodate an additional general use travel lane in each direction with full depth shoulders for a portion of the remainder of median areas to facilitate hard shoulder running in the future. For the area north of SR 528, a fully paved median is not expected. All mainline bridges within the project limits including: OUC Railroad, Moss Park Road, Innovation Way, over the SR 417 SB to SR 528 EB ramp and over SR 528 will be widened to the inside for the full width of the median. OUC RR SB RR bridge will be widened to the outside. Outside bridge widening is not anticipated, however outside barrier rails may need adjustments to conform to latest standards. Other improvements include: southbound auxiliary lane between Moss Park Rd and Narcoossee Rd with a two-lane exit ramp to Narcoossee Rd; and an auxiliary lane northbound between Dowden Rd and SR 528, including a two-lane exit ramp to SR 528. Additional elements include surveying, drainage evaluation and design, permitting, lighting, signing and pavement markings, ITS device upgrade and fiber relocation if conflicts, maintenance of traffic, utility investigations and coordination, geotechnical investigations and analysis, retaining walls, noise walls, 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. 417 widening of SR 417 from Narcoossee Road to SR 528.
- 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 ITS plans, final signing and pavement marking plans and preparation of a complete environmental resource application (ERP) (or permit modification) including 100% storm water management. CFX’s Project Manager will perform all environmental investigations and analyses to support the Consultant’s storm water management portion of the RRP.
- 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. (For scheduling purposes, design reviews for submittals deemed complete shall be completed in two weeks by the CFX Project Manager.)

## **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, 2018 edition and current updates.
  2. The FDOT Standard Plans, and subsequent interim indexes and current updates.
  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), 2004 edition.
  6. The FHWA Manual on Uniform Traffic Control Devices (MUTCD), 2009 edition, as currently amended.

### 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:

DESIGN ELEMENT	EXPRESSWAY		CROSSROADS/ COLLECTORS
	MAINLINE	RAMPS	
Design Speed, MPH	70 mph	30 mph (Loop) 50 mph (Diamond) 50 mph (Directional)	30 Local 45 Urban 50 Rural
Horizontal Alignment Max. Curve, Degrees	3° 30'	24° 45' Loop 8° 15' Diamond 8° 15' Directional	20°
Max. Superelevation, ft/ft.	0.10	0.10	0.05 Urban 0.10 Rural
Lane Drop Tapers			
Transitions	70:1	50:1	
	Use spirals for curves > 1° 30'	Use spirals for curves > 1° 30'	Use spirals for curves > 1° 30'
Vertical Alignment Max. Grade	3%	5% to 7% (30 mph) 3% to 5% (50 mph)	5% Arterial Rural 7% Collector



DESIGN ELEMENT	EXPRESSWAY		CROSSROADS/ COLLECTORS
	MAINLINE	RAMPS	
Vertical Curvature (K) (K=Len./%grade change)			Rural
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
Cross Sections			
Lane Widths, ft.	12	12 dual lanes 15 min. single lane	12 inner lanes 12-16 outer lanes
Shoulder width, ft.			
Right	4-Lane 12 (10 paved)	Single Lane 6 (4 paved)	8 (4*paved)
Left	8 (4 paved)	6 (2 paved)	(2 paved)
			* min. 5' paved FDOT
Right	6-Lane 12 (10 paved)	Dual Lane 10* (8* paved)	
Left	12 (10 paved)	8 (4 paved) (* add 2' for interstate)	
Bridges, ft.			
Right	4-Lane 10	Single-Lane 6	
Left	6	6	
Right	6-Lane 12 (note – outside paved shoulder to remain for existing travel lanes and bridges)	Dual Lane 10	
Left	12	6	
Cross Slopes Traffic Lanes		2%	2%
Bridge Lanes	2% (4-lane)		

DESIGN ELEMENT	EXPRESSWAY		CROSSROADS/ COLLECTORS
	MAINLINE	RAMPS	
Left Shoulder Right Shoulder	3% or tbd (6-lane)  2% typ. (no break)	5% 6%	5% 6%
d. Median Width (4-lane), ft. (E.O.P./E.O.P.)	Match Mainline Match Mainline  64' (typical) 26' (with barrier)	N/A	22' or 40'
Horizontal Clearance	PPM 1-2.11	PPM 1-2.11	PPM 1-2.11
Vertical Clearance, ft.			
Over Roadway*	16.5	16.5	16.5
Overhead Signs	17.5	17.5	17.5
Over Railroad	23.5 (OUC – match existing)	23.5	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) Note: exit ramps on curves may use parallel type exit ramps.

#### 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 Manual, FDOT Design Manual, FDOT Standard Plans, 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 S.R. 417 inside widening from approximately 1000 feet north/east of Narcoossee Road to approximately 4500 feet north of SR 528. The length of the project is approximately 4.7 miles. Specifically, the project consists of widening to the inside (median) to accommodate an additional general use travel lane in each direction with full depth shoulders for remainder of median areas (fully paved median is expected). For the area north of SR 528, a fully paved median is not expected. All mainline areas are to be milled and resurfaced, with guardrail replacement to conform to current height requirements. All mainline bridges within the project limits including: OUC Railroad, Moss Park Road, Innovation Way, over the SR 417 SB to SR 528 EB ramp and over SR 528 will be widened to the inside for the full width of the median. The OUC RR SB bridge will be widened to the outside. Other outside bridge widening is not anticipated. Outside barrier rails will require adjustments to conform to latest standards limited to these five locations. Other improvements include:

- Southbound auxiliary lane between Moss Park Rd and Narcoossee Rd with a two-lane exit ramp to Narcoossee Rd;
- Auxiliary lane northbound between Dowden Rd and SR 528, including a two-lane NB exit ramp to SR 528.
- Ramp work including milling and resurfacing, guardrail adjustments, signing and marking, lighting conversion to LED, as follows:
  - o Narcoossee Rd interchange: ramps to and from the north
  - o Moss Park Rd and Dowden Rd interchanges: all interchange ramps
- At the SR 528 interchange, ramps with the exception of the above two lane NB exit ramp to SR 528 are NOT included in the project limits (currently under design for milling and resurfacing).
- Side Street improvements other than utility adjustment coordination are not included at: Narcoossee Rd, Moss Park Rd, Dowden Rd, and SR 528.

Additional elements include surveying, drainage evaluation and design, permitting, lighting, signing and pavement markings, ITS (impacted fiber optic network and devices), maintenance of traffic, utility investigations and coordination, geotechnical investigations and analysis, retaining walls, noise walls, 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 affected agencies. These agencies may include, but are not necessarily limited to the City of Orlando, Orange County, GOAA, FDEP 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.

#### 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

Not anticipated. No improvements proposed for side streets, including: Narcoossee Rd, Moss Park Rd, Dowden Rd, and SR 528.

I. Bridge Survey

Provide complete bridge survey data as needed for engineering design.

J. Environmental Surveys

Based upon environmental field work performed by the CFX Project Manager, the following surveys shall be performed by the Consultant:

1. Wetland Jurisdictional Line Surveys for engineering design and permitting
2. Species location surveys (gopher tortoise burrows)

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 General Systems Consultant (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.

O. AERIAL MAPPING

1. Aerial mapping shall be provided by the Consultant suitable for the following uses:
  - a. Drainage Maps and permitting support (1"=400')
  - b. Roll plots for Public Meeting and property owner coordination (1"-100')

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, 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. The work will also include verification of existing median bridge foundation capacities previously constructed for future widening.
- 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, 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.

#### 4.07 Pavement Design

- A. The Consultant shall prepare the pavement design as appropriate in accordance with the requirements of the FDOT for SR 417 mainline, and all ramps as necessary.
- 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 storage as required by FDEP or St. Johns Water Management District.
12. The Consultant has determined that the existing FEMA maps are not up-to-date in many areas based on a review of the floodplain maps and FIS report. The Consultant does not anticipate the need to coordinate with the Orange County or City of Orlando Floodplain Managers, thus floodplain map revisions or floodway analysis are not included in this scope of work. Should this be required, it may be added as a supplemental service.

#### 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 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 417 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, super elevations, 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), including mainline SR 417, and ramps as needed. No work on SR 528 is expected.
8. Interchange plans, profiles, alignment and plan index sheets
9. Interchange layout plans
10. Intersection plan/profiles – Not required.
11. Interchange curve and coordinate data sheets
12. Ramp Terminal Details
13. Crossroad plans (1" = 50' scale), cross-road improvements are not anticipated, however, plans may be required to depict elements such as utility coordination elements.
14. Cross-sections (with pattern plan) (1" = 20' horiz.) (1" = 5' vert.): Cross section will be provided for mainline SR 417 and for widened ramps only. Ramps to be milled/resurfaced only will not have cross-sections. It is assumed for milling and resurfacing efforts that cross-slope corrections are minimal to none.
15. Earthwork quantities
16. Traffic Control Sheets including Erosion Control/Temp. Drainage

17. Utility Adjustment Sheets
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 Memorandum 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. Each of the 5 bridge locations will require inside widening only. Intent is to extend bridges through the full extent of the existing median width. Outside widening is not anticipated, however outside barriers may require retrofit to conform to current standards. At the OUC Railroad overpass, evaluation of crash protection will be completed and inclusion of requisite details to address current standards.
- 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, including Critical Temporary walls
  3. Box Culverts – no new box culverts are expected, however headwalls on existing box culverts may require adjustment to conform to new slopes. In addition, the CFX has provided an inspection (11/9/17) for the box culvert north of Narcoossee Rd. The Consultant shall address the recommended remediations noted in the inspection report provided
  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 and ITS foundations and structural designs estimated as follows: 5 new OH sign structures (3 truss, 2 full OH), 1 new DMS structure, structural evaluation of 13 existing OH sign structures to confirm new/updated panels are sufficient, and one additional ITS device (new DMS)
11. Sound walls, estimated locations/lengths as follows:
  - a. NB SR 417: North of Narcoossee Rd (1000 LF)
  - b. SB SR 417: S. of Moss Park Rd (1500 LF)
  - c. NB SR 417: North of Moss Park Rd (1000 LF)
12. Retaining/toe of slope walls, estimated as follows:
  - a. SB SR 417 north of Narcoossee SB exit ramp to the OUC RR (approximately 1500 LF)
  - b. SB SR 417, between the OUC RR overpass to the Moss Park Rd overpass (approximately 1000 LF)
13. 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
14. The Consultant shall perform an evaluation of the existing median bridge foundations and MSE wall straps, previously constructed for future widening, to determine acceptability for HL93 loading. The design and plans shall address respective needs to accommodate the needed project improvements.

#### 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 3.01C.
  2. Finalize the pond design at the 30% submittal. Due to the increase of impervious area width, treatment and attenuation calculations will be prepared for fifteen (15) existing ponds.
  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. Perform floodplain analysis for one (1) location including proposed impacts and compensation calculations.
  7. Perform cross drain analysis for six (6) crossings due to extensions. Two crossing will be CBC's and the remainder are pipes.
  8. Prepare a technical memorandum identifying existing drainage concerns along the corridor and potential fixes or modifications if requested by maintenance.
  9. 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. These plans shall include replacement of all CFX lighting on the corridor to LED, including mainline roadway and ramp fixtures, overhead sign lighting and underdeck lighting, to and including all ramps and CFX bridges within the project limits. The work shall include coordination with the local utility to provide electrical service. Plan sheet scale shall be at 1"=50' scale.

Roadway lighting has been recently replaced at the SR 528 interchange. The Consultant shall review the photometrics for this recent work to confirm if illumination levels are sufficient for the SR 417 widening project and will address any deficiencies in the mainline lighting design and plans. Ramps are assumed sufficient.

- B. If required, CFX will provide a cut sheet for the type of lighting fixtures to be used for this project.
- C. The following is excluded: upgrade of cross road lighting to LED fixtures, upgrades to pedestrian lighting at cross-road intersections with ramps, and conversion of underdeck lighting to LED for bridges not being widened.
- D. 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 no smaller than 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, ITS fiber and devices, 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 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 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. For the purposes of this proposal, the following are assumptions relative to guide signs:
  1. All guide sign panels will be replaced (including those on ramps within the project limits).
  2. Two replacement large ground mounted signs.
  3. Four new OH structures (2 trusses, 2 full overhead).
  4. Structural analysis to confirm that new panels can be accommodated on the existing OH structures to remain (12 structures in total).
- E. Propose to relocate and reuse existing structures if they meet current wind load criteria. Due to the inside widening, existing bridge mounted signs along cross-roads will not be impacted, thus not replaced (mounting or

panels do not require adjustments) with this project.

4.18 Signalization Plans

- A. Signalization design and plans are not anticipated necessary for this project.

4.19 Right-of-Way Surveys

- A. No additional right-of-way is anticipated for this project. ROW maps, legals, and descriptions are not required

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.

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 of all existing fiber optic duct banks, 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. In general intent is to replace all existing devices with new; requiring older items be turned over to the CFX (plan note).
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) in areas of conflict.

- 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, and tables for new or relocated fiber optic cabling.
- n. Controller cabinet, structure, and foundation details for proposed CFX device 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. 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 within roadway cross sections and drainage cross sections
- v. Relocation 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. 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. Relocation of existing traffic monitoring sites (TMS) 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.

- x. Inclusion of one dynamic message sign (DMS) anticipated to be needed within the corridor.
- 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.
- z. Install new WWDS at the off-ramps that currently do not have WWDS (SB exit ramp at Narcoossee Rd).

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 surge protection devices (SPD) 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.
- 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.

4.23 Toll Plazas

- A. Not applicable.

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:
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. Addenda will not be issued for Contractor initiated design changes or value engineering proposed work.
- 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 (monthly) 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's key staff shall attend a maximum of three (3) 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. Improved 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.
  - 7. Drainage Design reports for 417 projects 401, 455, 457, 457A, 302, 107, and 126; including storm sewer tabulations.
  - 8. CADD files including GEOPAK, if available, for projects within the limits of construction.

### **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. CFX to provide 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.
- B. CFX's CEI representative will be responsible for collection and documentation of all As-Built information for the constructed improvements.

### **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 to provide proposed sound wall locations.
- C. 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 develop a project specific quality control plan which shall be maintained 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. QC documents (plans, calcs, reports) associated with phase submittals shall be provided to the CFX with each phase submittal.
- 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. 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. 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)
  6. 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)
  7. 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)
  8. 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)
  9. 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. Signalization Plans
12. Intelligent Transportation System (ITS) Plans
13. Highway Lighting Plans
14. 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 super elevation 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)
- 7.19 100% 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  
#4**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams *Aneth Williams*  
Director of Procurement

DATE: January 22, 2021

SUBJECT: Approval of Supplemental Agreement No. 4 with Parsons Transportation Group, Inc. for Design Engineering Services for SR 429 Widening from Florida's Turnpike to West Road Project No. 429-152, Contract No. 001395

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Board approval of Supplemental Agreement No. 4 with Parsons Transportation Group, Inc. for a not-to-exceed amount of \$479,691.04 is requested. The original contract was for five years with five one-year renewals.

The services to be provided include additional design services for construction plans, bid documents, maintenance of traffic due to modifying the milling and resurfacing and the addition of an additional sound wall.

Original Contract	\$6,750,000.00
Supplemental Agreement No. 1	\$ 0.00
Supplemental Agreement No. 2	\$2,061,383.23
Supplemental Agreement No. 3	\$ 376,076.98
Supplemental Agreement No. 4	<u>\$ 479,691.04</u>
Total	\$9,667,151.25

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

Reviewed by:

  
\_\_\_\_\_  
Will Hawthorne, PE  
Director of Engineering

  
\_\_\_\_\_  
Glenn Pressimone, PE



**SUPPLEMENTAL AGREEMENT NO. 4**  
**TO**  
**AGREEMENT FOR PROFESSIONAL SERVICES**  
**FINAL DESIGN**  
**SR 429 Widening from Florida’s Turnpike to West Road**

THIS SUPPLEMENTAL AGREEMENT NO. 4 TO AGREEMENT FOR PROFESSIONAL SERVICES FINAL DESIGN (“Supplemental Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, 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 PARSONS TRANSPORTATION GROUP, INC., a Florida corporation, hereinafter called the “CONSULTANT”.

WHEREAS, CFX and CONSULTANT entered into that certain Agreement for Professional Services between CFX and the CONSULTANT, dated November 8, 2018, as amended or supplemental by that certain Supplemental Agreement No. 1 between CFX and CONSULTANT dated March 17, 2020, and as amended or supplemental by that certain Supplemental Agreement No. 2 between CFX and CONSULTANT dated June 15, 2020, and as amended or supplemental by that certain Supplemental Agreement No. 3 between CFX and CONSULTANT dated September 21, 2020 (collectively, “Agreement”); and

WHEREAS, Articles 2.0 and 11.0 of the Agreement provide that in the event that CFX elects to add, delete or change the services outlined in the Scope of Services, as defined in the Agreement, and attached to the Agreement as Exhibit “A”, the compensation to be paid to the CONSULTANT shall be subject to adjustment as shall be mutually agreed upon by CFX and the CONSULTANT in this Supplemental Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Supplemental Agreement, CFX and the CONSULTANT agree as follows:

1. CFX hereby authorizes the CONSULTANT to proceed with additional services as outlined in the Consultant’s January 21, 2021 letter to CFX, which is attached hereto as Exhibit “A” and incorporated herein by reference (“Additional Services”). Exhibit “A” of the Agreement and the Scope of Services, as defined in the Agreement, shall be amended to include the Additional Services.
2. Exhibit "B" Method of Compensation of the Agreement is hereby amended as follows:
  - a. The Salary Related Costs are adjusted upward by \$370,602.05 to \$4,627,452.66.
  - b. The Direct Expenses - Lump Sum (Prime) remains unchanged at \$19,540.63.
  - c. The Subcontract Items are adjusted upward by \$109,088.99 to \$5,020,157.96 as follows:

• BASE	\$36,350.57
•Moffatt & Nichol	\$69,570.89
•Scalar	\$3,167.53
  - d. The Allowance remains unchanged at \$0.00.

e. The Total Maximum Limiting Amount is adjusted upward by \$479,691.04 to \$9,667,151.25.

3. All provisions of said Agreement, or any amendments or supplements thereto, not specifically modified herein, 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 the Agreement, or any existing supplements or amendments 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 this Supplemental Agreement to be executed the day and year first above written.

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY

By: \_\_\_\_\_  
Aneth Williams, Director of Procurement

PARSONS TRANSPORTATION GROUP, INC.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form and execution for CFX's  
exclusive use and reliance.

By: \_\_\_\_\_  
Diego "Woody" Rodriguez  
General Counsel



## Exhibit "A"

### MEMORANDUM

**Date:** January 22, 2021  
**To:** Will Hawthorne, PE CFX Director of Engineering  
**From:** Scott Kamien, PE *SMK*  
**Subject:** Design Consultant Services - Contract 001395  
CFX Project No. 429-152  
SR 429 Widening from FTE to West Road – Supplemental Agreement #4

---

#### Comments:

I have reviewed the fee sheet and scope of services submitted by Parson Transportation Group provided via email on January 21, 2021 for the SR 429 Widening from FTE to West Road. SA #4 is for additional professional services to prepare construction plans and bid documents including changes on the MOT due to modifying the Milling and Resurfacing and the addition of Noisewall 10.

Supplemental Agreement #4 request is attached and costs are detailed below:

\$ 370,602.05	Parsons as Prime
<u>\$ 109,088.99</u>	<u>Subconsultant Fees</u>
\$ 479,691.04	Total Requested Contract Amount

The total staff hours for each task are reasonable and acceptable, and the man hour rates are consistent with their contract; therefore, I recommend approval of this Supplemental Agreement in the amount of \$479,691.04.

Should you have questions or need additional information, please call me at 321.354.9798.

#### CC:

Keith Jackson, PE Dewberry  
File

January 21, 2021

Mr. Scott Kamien, P.E.  
Sr. Project Manager  
Dewberry Engineers, Inc.  
800 N. Magnolia Ave., Suite 1000  
Orlando, FL 32803

**Re: SR 429**  
**From South of Florida's Turnpike to West Road**  
**Contract 001395; Project 429-152**  
**Supplemental Agreement #4**

Dear Scott:

For your review and approval for the Authority's execution, please find attached one (1) copy of Supplemental Agreement (SA) No. 4 for the revisions to the scope of work for the subject project. This SA No. 4 package includes the following:

1. Scope of Work Revisions
2. Additional Staff Hours
3. Revised Fee Details

The SA includes Traffic Control and Milling & Resurfacing modifications based on directives, adding Noise Barrier with an ultimate typical section, and additional widening related items. Should you have any questions or need any additional information, please feel free to contact me at 407-415-4648 or [Thomas.e.Davidson@Parsons.com](mailto:Thomas.e.Davidson@Parsons.com). I look forward to continuing our work together on this important CFX project.

Sincerely,



Ted Davidson, P.E.  
Project Manager

Cc: file 649388



# Exhibit "A"

## PARSONS

201 E. Pine Street, Suite 900 • Orlando, FL 32801 • (407) 702-6800 • Fax: (407) 702-6950 • www.parsons.com

**SR 429**  
**From Florida's Turnpike to West Road**  
**CONTRACT 001395**  
**PROJECT NO. 429-152**

**SUPPLEMENTAL AGREEMENT #4**  
**OCTOBER 27, 2020 (REVISED JANUARY 21, 2021)**

### SCOPE OF WORK

This Supplemental Agreement (SA) is prepared due to changes in the Traffic Control and Milling and Resurfacing approach for the project. Other added scope includes additional typical sections, drainage structures, and retaining wall control drawings to address roadway widening changes as well as potential retrofitting of existing retaining walls due to possible sub-standard existing panel straps in the median.

Additionally, it includes added noise barrier limits and the associated additional mainline widening to accommodate the ultimate typical section within the limits of proposed noise barriers. Other added scope includes permitting, infield retention pond protection, and signing & pavement marking directives.

The Scope of Work items affected by these changes are listed below along with a description of the additional primary and ancillary work required. The staff hours and fee estimates are included as an attachment to this Scope of Work. In addition, these changes to the scope of work will impact the design schedule. The current schedule is proposed to be amended with an additional 2 months to incorporate the changes.

- 1) **Scope of Work Items**
  1. **Project Control**
    - A. Additional time for public meeting support.
    - B. Contract maintenance and progress meetings for an additional 2 months.
  2. **4.5 Geotechnical Investigations**
    - A. Antillian will acquire borings and prepare a report for additional noise barrier wall limits, including retaining wall (under previous remaining budget).
  3. **4.10 Environmental Permits**
    - A. Parsons and Scalar will provide additional permitting support for any potential impacts generated by the additional widening for noise barriers.
  4. **4.12 Roadway Design**
    - A. Parsons will evaluate the proposed Traffic Control changes to accommodate the revised pavement milling approach and conform the roadway plans to match.
    - B. Parsons will update the typical sections and milling details to reflect the revised milling and resurfacing approach. Parsons will also provide additional typical sections to fully represent the widening changes.
    - C. Parsons will revise cross sections and cross slopes to incorporate revised milling approach.
    - D. Parsons will update roadway geometry to incorporate retaining wall geometry for wall required to incorporate all widening changes.
    - E. Parsons is providing plans that incorporate changes to the Plant Street typical section to use sidewalk rather than a trail on the Winter Garden side of SR 429.
    - F. Parsons will design and update typical sections, roadway plans, cross sections, quantities, access, details and other pertinent items or documents for additional

# Exhibit "A"

outside widening from approximately Sta. 241 to Sta. 276 on the NB side, plus transitions from the full widening back to the standard section, to accommodate the ultimate noise barrier placement.

- G. Parsons will update Utility Adjustment Plans for any potential impacts from revised roadway widening.
- H. Parsons will modify the roadway to design to provide 8' high CIP noise barriers at the approach and departure ends of the Northwest Ditch Bridge.
- I. Parsons will modify Ramp D to ensure access to Ponds B2 and C1 based on ultimate sections.
- J. Parsons will provide plans for protection of existing infield ponds within the Plant Street interchange based on direction and a pending change to the CFX Design Guidelines.
- K. Parsons will provide permit services for FDOT driveway connection permits for Franklin Street.

## 5. 4.13 Structures Design

- A. Parsons will prepare retaining wall control drawings to capture widening changes for roadway retaining wall that prevents pond encroachment or prevents ROW encroachment.
- B. Parsons will prepare retrofit plans or mitigation methods for existing MSE wall panels that do not meet the redundancy criteria required by code for the number of straps.
- C. Parsons will update the bridge plans to re-label or re-phase bridge construction based on the revised Traffic Control scheme
- D. Parsons will design new roadway retaining wall within the modified roadway limits to accommodate the ultimate noise barrier placement and pond access to prevent ROW encroachment.
- E. Parsons will design 8' high CIP noise barrier along the Northwest Ditch NB bridge.
- F. Parsons will design critical temporary retaining wall, as necessary, to accommodate construction of the new retaining wall.
- G. BASE will prepare additional noise barrier control drawings and details within the roadway limits mentioned above.

## 6. 4.14 Drainage Design

- A. Parsons will prepare designs and plans for additional drainage structures necessary to accommodate collection and conveyance systems for widening changes.
- B. Parsons will design additional collection and conveyance systems and update analyses and plans for the widened roadway limits to accommodate ultimate placement of noise barriers.

## 7. 4.16 Traffic Engineering

- A. Maintenance of Traffic Plans: Moffatt and Nichol will prepare additional traffic control documentation and plans for additional effort for revising the traffic control phasing for full depth milling of the existing mainline pavement (utilizing newly added inside lanes to help phase milling & resurfacing). Also included is revision of the traffic control for the full reconstruction of Plant Street rather than milling and resurfacing.
- B. Moffatt and Nichol tasks also include:
  - Traffic Control Analysis: Revise the traffic control to show construction of the ultimate SR 429 typical section from Sta 241+00 to Sta 276+00, which will include phasing, plan, and cross section revisions.
  - Traffic Control Design Files - Revise traffic control phasing for ultimate SR 429 typical section from Sta 241+00 to Sta 276+00.

## 8. 4.17 Signing & Pavement Marking Plans

## Exhibit "A"

- A. Parsons will adjust striping and overhead sign structures impacted by the roadway modifications for noise barrier ultimate placement.
  - B. Parsons will modify guide sign worksheets as directed.
9. **4.22 Fiber optic Network (FON) & Intelligent Transportation Systems (ITS)**
- A. Parsons will revise FON & ITS design plans to accommodate the roadway modifications for ultimate noise barrier placement.
  - B. Parsons will update ITS and electrical design to accommodate October 2020 ITS standards/directives.



**SUPPLEMENTAL AGREEMENT NO. 3**  
**TO**  
**AGREEMENT FOR PROFESSIONAL SERVICES**  
**FINAL DESIGN**  
**SR 429 Widening from Florida's Turnpike to West Road**

THIS SUPPLEMENTAL AGREEMENT NO. 3 TO AGREEMENT FOR PROFESSIONAL SERVICES FINAL DESIGN ("Supplemental Agreement") is made and entered into this 21st day of September, 2020, 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 PARSONS TRANSPORTATION GROUP, INC., a Florida corporation, hereinafter called the "CONSULTANT".

WHEREAS, CFX and CONSULTANT entered into that certain Agreement for Professional Services between CFX and the CONSULTANT, dated November 8, 2018, as amended or supplemental by that certain Supplemental Agreement No. 1 between CFX and CONSULTANT dated March 17, 2020, and as amended or supplemental by that certain Supplemental Agreement No. 2 between CFX and CONSULTANT dated June 15, 2020 (collectively, "Agreement"); and

WHEREAS, Articles 2.0 and 11.0 of the Agreement provide that in the event that CFX elects to add, delete or change the services outlined in the Scope of Services, as defined in the

Agreement, and attached to the Agreement as Exhibit "A", the compensation to be paid to the CONSULTANT shall be subject to adjustment as shall be mutually agreed upon by CFX and the CONSULTANT in this Supplemental Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Supplemental Agreement, CFX and the CONSULTANT agree as follows:

1. CFX hereby authorizes the CONSULTANT to proceed with additional services as outlined in the Consultant's August 11, 2020 letter to CFX, which is attached hereto as Exhibit "A" and incorporated herein by reference ("Additional Services"). Exhibit "A" of the Agreement and the Scope of Services, as defined in the Agreement, shall be amended to include the Additional Services.
2. Exhibit "B" Method of Compensation of the Agreement is hereby amended as follows:
  - a. The Salary Related Costs are adjusted upward by \$317,818.84 to \$4,256,850.61.
  - b. The Direct Expenses - Lump Sum (Prime) remains unchanged at \$19,540.63.
  - c. The Subcontract Items are adjusted upward by \$58,258.14 to \$4,911,068.97 as follows:

• BASE	\$42,831.76
•Moffatt & Nichol	\$15,426.38
  - d. The Allowance remains unchanged at \$0.00.
  - e. The Total Maximum Limiting Amount is adjusted upward by \$376,076.98 to \$9,187,460.21.
3. All provisions of said Agreement, or any amendments or supplements thereto, not specifically modified herein, 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 the Agreement, or any existing supplements or amendments 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 this Supplemental Agreement to be executed the day and year first above written.

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY

By: Aneth Williams Digitally signed by Aneth Williams  
Date: 2020.09.21 11:57:35 -04'00'  
Aneth Williams, Director of Procurement

PARSONS TRANSPORTATION GROUP, INC.

By:   
Print Name: Rhet L. Schmidt, PE  
Title: Vice President

Approved as to form and execution for CFX's exclusive use and reliance.

By: Laura N. Kelly Digitally signed by Laura N. Kelly  
Date: 2020.09.18 13:42:08 -04'00'  
Diego "Woody" Rodriguez  
General Counsel

[https://cfxgov.sharepoint.com/operations/engineering/Shared Documents/General/429-152 SR 429 Widening FTE to West Road/1\\_Administration/1.2\\_Contract/1.2.A Supplemental Agreements/SA 3/429-152 SA 3 Parsons.docx](https://cfxgov.sharepoint.com/operations/engineering/Shared Documents/General/429-152 SR 429 Widening FTE to West Road/1_Administration/1.2_Contract/1.2.A Supplemental Agreements/SA 3/429-152 SA 3 Parsons.docx)

**SUPPLEMENTAL AGREEMENT NO. 2**  
**TO**  
**AGREEMENT FOR PROFESSIONAL SERVICES**  
**FINAL DESIGN**  
**SR 429 Widening from Florida's Turnpike to West Road**

THIS SUPPLEMENTAL AGREEMENT is made and entered into this 15th day of June, 2020, 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 PARSONS TRANSPORTATION GROUP, INC. of Orlando, Florida, hereinafter called the "CONSULTANT".

WHEREAS, Articles 2.0 and 11.0 of the Agreement for Professional Services between CFX and the CONSULTANT, dated the 8<sup>th</sup> day of November 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 May 15, 2020 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 upwards by \$788,858.29 to \$3,939,031.77.

b. The Direct Expenses - Lump Sum (Prime) are adjusted upwards by \$600.00 to \$19,540.63.

c. The Subcontract Items are adjusted upward by \$1,697,442.70 to \$4,852,810.83.

• Moffatt & Nichol	\$176,457.72
• TEDS	\$179,045.62
• FBT	\$207,825.52
• GEC	\$339,268.98
• MGV	\$150,758.34
• BASE	\$275,405.23
• Antillian	\$349,386.22
• WBQ	\$17,256.60
• IF Rooks	\$2,038.47

d. The Allowance is adjusted downward by \$425,517.76 to \$0.00.

The Total Maximum Limiting Amount is adjusted upwards by \$2,061,383.23 to \$8,811,383.23.


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, electronically, the day and year first above written.

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY

By: Aneth Williams Digitally signed by Aneth Williams  
Date: 2020.06.15 14:43:58 -04'00'  
Director of Procurement

PARSONS TRANSPORTATION GROUP, INC.

By:   
Print Name: Rhet L. Schmidt, P.E.  
Title: Vice President

Approved as to form and execution, only.

**Diego "Woody"  
Rodriguez** Digitally signed by Diego  
"Woody" Rodriguez  
Date: 2020.06.15 13:51:29 -04'00'

General Counsel for CFX

C:\Users\hawthornew\Central Florida Expressway Authority\Engineering - Engineering Documents\General\429-152 SR 429 Widening FTE to West Road\1\_Administration\1.2\_Contract\1.2.A Supplemental Agreements\SA 2\Parsons-429-152 -SA2.docx

**SUPPLEMENTAL AGREEMENT NO. 1**  
**TO**  
**AGREEMENT FOR PROFESSIONAL SERVICES**  
**FINAL DESIGN**

**SR 429 Widening from Florida's Turnpike to West Road**

THIS SUPPLEMENTAL AGREEMENT is made and entered into this 17<sup>th</sup> day of March, 2020, 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 PARSONS TRANSPORTATION GROUP, INC. of Orlando, Florida, hereinafter called the "CONSULTANT".

WHEREAS, Articles 2.0 and 11.0 of the Agreement for Professional Services between CFX and the CONSULTANT, dated the 8<sup>th</sup> day of November 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 February 20, 2020 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 remain unchanged at \$3,150,173.48.
  - b. The Direct Expenses - Lump Sum (Prime) remains unchanged at \$18,940.63.
  - c. The Subcontract Items are adjusted upward by \$90,239.23 to \$3,155,368.13.
    - RS&H \$90,239.23
  - d. The Allowance is adjusted downward by \$90,239.23 to \$425,517.76.

The Total Maximum Limiting Amount remains unchanged at \$6,750,000.00.

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

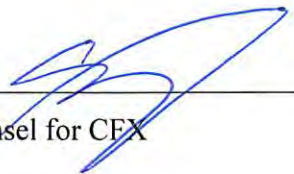
By:   
Director of Procurement

PARSONS TRANSPORTATION GROUP, INC.

Witness:   
Print Name: Thomas E. Davidson

By:   
Title: VICE PRESIDENT

Approved as to form and execution, only.

  
General Counsel for CFX

\\dfsprd1.ocea.internal\Store\Departments\Engineering\General\429-152 SR 429 Widening FTE to West Road\1\_Administration\1.2\_Contract\1.2.A Supplemental Agreements\SA 1\Parsons-429-152 -SA1.docx

# **AGREEMENT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
PARSONS TRANSPORTATION GROUP, INC.**

**SR 429 WIDENING FROM FLORIDA'S TURNPIKE TO  
WEST ROAD**

**CONTRACT NO. 001395, PROJECT NO. 429-152**

**CONTRACT DATE: NOVEMBER 8, 2018  
CONTRACT AMOUNT: \$6,750,000.00**

**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 AND PROJECT ORGANIZATIONAL CHART**

**FOR**

**SR 429 WIDENING FROM FLORIDA'S TURNPIKE TO WEST ROAD**

**PROJECT NO. 429-152**

**DESIGN ENGINEERING SERVICES**

**CONTRACT NO. 001395**

**NOVEMBER 2018**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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Agreement for Design Professional Services

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**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT, made and entered into this 8<sup>th</sup> day of November, 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 Parsons Transportation 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 201 East Pine Street, 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 design of SR 429 Widening from Florida's Turnpike to West Road identified as Project No. 429-152 and Contract No. 001395.

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:

- Class II - Antillian Engineering Associates, Inc.
- Class I - BASE Consultants, Inc.
- Class I - Florida Bridge and Transportation, Inc.
- Class II - Geotechnical and Environmental Consultants, Inc.
- Class I - I.F. Rooks & Associates, LLC
- Class I - Manuel G Vera & Associates, Inc.
- Class II - Manuel G Vera & Associates, Inc. (survey)
- Class I - Moffatt & Nichol, Inc.
- Class I - Scalar Consulting Group, Inc.
- Class I - Traffic Engineering Data Solutions, Inc.
- Class I - WBQ Design & Engineering, Inc.
- Class II - WBQ Design & Engineering, Inc. (survey)

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 \$6,750,000.00 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 201 East Pine Street, 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, 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.

#### 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 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.

#### 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, Combined Single Limits (CSL) or its equivalent. In the event the CONSULTANT does not own automobiles the CONSULTANT shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

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

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

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

The CONSULTANT shall provide CFX with Certificate(s) of Insurance with required endorsements on all the policies of insurance and renewals thereof in a form(s) acceptable to CFX. CFX



shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action.

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

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. 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, Chapter 112, Part III, Section 348.753, and Section 104.31 and the CFX Code of Ethics as it relates to work performed under this Agreement, which standards will 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. If the Disclosure Form is not submitted, or is submitted, but is incomplete, CFX has the right to withhold payments pending receipt of an explanation of such omissions or to terminate the contract for cause. 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.

#### 18.0. DOCUMENTED ALIENS

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

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

#### 19.0. E-VERIFY CLAUSE

CONSULTANT shall utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the CONSULTANT during the term of the contract. CONSULTANT shall require all of its subconsultants to verify the employment eligibility of all new employees hired by the subconsultants during the term of the Agreement.

## 20.0. CONFLICT OF INTEREST

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

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

## 21.0. INSPECTOR GENERAL

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

## 22.0. PUBLIC ENTITY CRIME INFORMATION AND ANTI-DISCRIMINATION STATEMENT

Pursuant to Section 287.133(2)(a), Florida Statutes,

“a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted vendor list.”

Pursuant to Section 287.134(2)(a), Florida Statutes, “an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction

or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.”

23.0. COMPANIES PURSUANT TO SECTION 287.135 AND 215.473

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

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

24.0. AVAILABILITY OF FUNDS

CFX’s performance and obligation to pay under this 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.

25.0. AUDIT AND EXAMINATION OF RECORDS

25.1 Definition of Records:

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

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

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

25.3 If CFX requests access to or review of any Contract Documents or Proposal Records and CONSULTANT refuses such access or review or delays such access or review for over ten (10) 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.

25.4 Final Audit for Project Closeout: The CONSULTANT shall permit CFX, at CFX's option, to perform or have performed, an audit of the records of the CONSULTANT and any or all subconsultants to support the compensation paid the CONSULTANT. The audit will be performed as soon as practical after completion and acceptance of the contracted services. In the event funds paid to the CONSULTANT under the Contract are subsequently determined to have been inadvertently paid by CFX because of accounting errors or charges not in conformity with the Contract, the CONSULTANT agrees that such amounts are due to CFX upon demand. Final payment to the CONSULTANT shall be adjusted for audit results.

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

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

## 26.0. GOVERNING LAW AND VENUE

This Agreement shall be governed by and constructed in accordance with the laws of the State of Florida. The parties consent to the exclusive jurisdiction of the courts located in Orange County, Florida.

The obligations in Section 26.0, Governing Law and Venue, shall survive the expiration or termination of this Agreement and continue in full force and effect.

## 27.0. NOTICE

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

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

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

To CONSULTANT: Parsons Transportation Group, Inc.  
201 East Pine Street, Suite 900  
Orlando, FL 32801  
Attn: Rhet Schmidt

Parsons Transportation Group, Inc.  
201 East Pine Street, Suite 900  
Orlando, FL 32801  
Attn: Ted Davidson

## 28.0. HEADINGS

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

## 29.0. CONTRACT LANGUAGE AND INTERPRETATION

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

References to statutes or regulations shall include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to. Words not otherwise defined

that have well known technical or industry meanings, are used in accordance with such recognized meanings. References to persons include their respective functions and capacities.

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

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

### 30.0. ASSIGNMENT

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

### 31.0. SEVERABILITY

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

### 32.0. INTEGRATION

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

### 33.0. ATTACHMENTS


- Exhibit "A", Scope of Services
- Exhibit "B", Method of Compensation
- Exhibit "C", Details of Cost and Fees
- Exhibit "D", Project Organization Chart
- Exhibit "E", Project Location Map
- Exhibit "F", Project Schedule

[ 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 November 8, 2018.

**PARSONS TRANSPORTATION GROUP, INC.**

**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY**

BY:   
Authorized Signature

BY:   
Director of Procurement

Print Name: RHETL SCHMIDT

Print Name: Aneth Williams

Title: VICE PRESIDENT

Effective Date: 12/20/18

ATTEST:  (Seal)  
Secretary of Notary



*Approved as to form and execution, only.*

  
General Counsel for CFX

'18 NOV 27 AM 8:59



# **EXHIBIT A**

## **SCOPE OF SERVICES**

**Exhibit A**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

**SCOPE OF SERVICES**

**FOR**

**S.R. 429 WIDENING FROM FLORIDA'S  
TURNPIKE TO WEST ROAD**

**PROJECT NO. 429-152**

**IN ORANGE COUNTY, FLORIDA**

**October 22, 2018**

Exhibit A  
SCOPE OF SERVICES  
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## 1.0 GENERAL

### 1.1 Location

- A. See EXHIBIT “E”, Project Location Map.

### 1.2 Description

The services will include final design and preparation of construction drawings / specifications for the proposed S.R. 429 inside widening from Florida’s Turnpike to West Road. Specifically, the project consists of widening to the inside for the additional general use lane and widening to the median to accommodate appropriate inside shoulder width (closed 40’ median with median barrier). All mainline bridges within the project limits, Trail, Warrior Road, Turnpike, SR 50, Story Road, Florida Central Railroad, Plant Street (SR 438), Palm Drive, Northwest Ditch, East Crown Point Road (Fuller’s Cross) and Ocoee Apopka Road (CR 437), will also be widened to accommodate the appropriate shoulder widths, additional general use lane or ramp modifications as per the concept. Ramp improvements will also be made at the following locations; SR 429 NB to Turnpike, Turnpike to NB SR 429, West Road to SR 429 SB, SR 429 SB to SR 50, SR 429 SB to Turnpike and Turnpike to SR 429 SB. Additional elements include milling & resurfacing, surveying, drainage evaluation and design, permitting, lighting, signing and pavement markings, signalization, 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.

### 1.3 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. 429 inside widening from Florida’s Turnpike to West 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 ITS (fiber optic network) plans, final signalization plans (if required), 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.

#### 1.4 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.

#### 1.5 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, 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 Handbook, 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

#### 3.1 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.

#### 3.2 Geometry

The following criteria are to be incorporated into the design:

DESIGN ELEMENT	EXPRESSWAY		CROSSROADS/ COLLECTORS
	MAINLINE	RAMPS	
Design Speed, MPH	70 mph	30 mph (Loop) 50 mph (Diamond) 50 mph (Directional)	30 Local 45 Urban 50 Rural
Horizontal Alignment Max. Curve, Degrees	3° 30'	24° 45' Loop 8° 15' Diamond 8° 15' Directional	20°
Max. Superelevation, ft/ft.	0.10	0.10	0.05 Urban 0.10 Rural
Lane Drop Tapers			
Transitions	70:1	50:1	
	Use spirals for curves > 1° 30'	Use spirals for curves > 1° 30'	Use spirals for curves > 1° 30'
Vertical Alignment Max. Grade	3%	5% to 7% (30 mph) 3% to 5% (50 mph)	5% Arterial Rural 7% Collector

DESIGN ELEMENT	EXPRESSWAY		CROSSROADS/ COLLECTORS
	MAINLINE	RAMPS	
Vertical Curvature (K) (K=Len./%grade change)			Rural
Crest	506 290 to 540 AASHTO	31 (30 mph) 136 (50 mph) 110 to 160 Other (AASHTO)	31 to 136
Sag	206 150 to 200 AASHTO	31 (30 mph) 136 (50 mph) 90 to 110 Other (AASHTO)	37 to 96
Decision Sight Dist., ft.	Refer to AASHTO	N/A	N/A
Cross Sections			
Lane Widths, ft.	12	12 dual lanes 15 min. single lane	12 inner lanes 12-16 outer lanes
Shoulder width, ft.			
Right	4-Lane 12 (10 paved)	Single Lane 6 (4 paved)	8 (4* paved)
Left	8 (4 paved)	6 (2 paved)	2 (2 paved)
			* min. 5' paved
Right	6-Lane 12 (10 paved)	Dual Lane 10* (8* paved)	
Left	12 (10 paved)	8 (4 paved) (* add 2' for interstate)	
Bridges, ft.			
Right	4-Lane 10	Single-Lane 6	
Left	6	6	
Right	6(or more)-Lanes 12	Dual Lane 10	
Left	12	6	
Cross Slopes			
Traffic Lanes	2% (4-lane) 3% or tbd (6-lane)	2%	2%
Bridge Lanes	2% typ. (no break)		
Left Shoulder	Match Mainline	5%	5%
Right Shoulder	Match Mainline	6%	6%

DESIGN ELEMENT	EXPRESSWAY		CROSSROADS/ COLLECTORS
	MAINLINE	RAMPS	
Median Width (4-lane), ft. (E.O.P./E.O.P.)	64' (typical) 26' (with barrier)	N/A	22' or 40'
Lateral Offset	FDM 215.2.4	FDM 215.2.4	FDM 215.2.4
Vertical Clearance, ft.			
Over Roadway*	16.5	16.5	16.5
Overhead Signs	17.5	17.5	17.5
Over Railroad	23.5	23.5	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.

### 3.3 Bridge and Other Structures

- A. All plans and designs shall be prepared in accordance with the latest standard specifications adopted by AASHTO, FDOT Structures Manual, FDOT Design Manual, FDOT Standard Plans, 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.

### 4.1 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 S.R. 429 inside widening from Florida's Turnpike (Station 1172.00 +/-) to north of the West Road bridge (Station 325+00). Specifically, the project consists of widening to the inside for the additional

general use lane and widening to the median to accommodate appropriate inside shoulder width. All mainline bridges within the project limits; Trail, Warrior Road, Turnpike, SR 50, Story Road, Florida Central Railroad, SR 438, Palm Drive, Northwest Ditch, East Crown Point Road and CR 437 will also be widened to accommodate the appropriate shoulder widths and additional general use lane or ramp modifications as per the concept. Ramp improvements will also be made at the following locations; SR 429 NB to Turnpike, Turnpike to NB SR 429, West Road to SR 429 SB, SR 429 SB to SR 50, SR 429 SB to Turnpike and Turnpike to SR 429 SB. Additional elements include milling & resurfacing, surveying, drainage evaluation and design, permitting, lighting, signing and pavement markings, signalization (if needed), ITS, maintenance of traffic, utility design and coordination, geotechnical analysis, scheduling and project control, progress reporting and other tasks and associated activities.

#### **4.2 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, FDEP and applicable Water Management District(s).

#### **4.3 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. Alternatives for a braided ramp and trumpet interchange shall be studied for the Plant Street exit from NB SR 429. Once one of these alternatives is considered to be carried to final design. In addition, an auxiliary lane from West Road on-ramp to Palm Drive off-ramp on SB SR 429 shall be reviewed.

#### **4.4 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

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 Task 27.1 Horizontal Project Control (HPC) and Task 27.2 Vertical PC/Bench Line and included in CTL/PNC sheets prepared in Task 27.5 Reference Points.

C. Reference Points

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

1. Bench marks are included on control 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 from LAMP data sufficient to create a pavement DTM.
3. Natural Ground/soft shots will be collected by conventional survey means and merged with pavement LAMP data to create an overall DTM for the project.
4. Additional topographic and DTM surveys, as needed for the project design, are the responsibility of the Consultant. These may include 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

1. Quality Level B Designating: Provide Utility Designates at each street crossing within the LA R/W (Warrior Rd, SR50, E Story Rd, E. Plant St., Palm Drive, N Fullers Cross Rd., Ocoee Apopka Rd, Clarcona Ocoee Rd) = Total Linear footage of Utilities: 10.92 miles
  - a. SR 429 Mainline
    - CFX will designate the FON on both sides of SR 429 throughout project limits
    - Street lighting along the mainline is not included in this scope of services
  - b. Warrior Road – 0.13 mile x 6 utilities = 0.78 miles of DES
  - c. SR50 Road - 0.17 mile x 15 utilities = 2.55 miles of DES
  - d. E. Story Road – 0.12 mile x 10 utilities = 1.20 miles of DES
  - e. E. Plant Street – 0.28 mile x 10 utilities = 2.80 miles of DES
  - f. Palm Drive – 0.08 mile x 10 utilities = 0.80 miles of DES
  - g. N. Fullers Cross Road – 0.09 mile x 10 utilities = 0.95 miles of DES
  - h. Ocoee Apopka Road – 0.08 mile x 10 utilities = 0.80 miles of DES
  - i. Clarcona Ocoee Road - 0.13 mile x 8 utilities = 1.04 miles of DES
2. Locates for verification of QLB and non-tonables : Total Test Hole Bank: 70
  - a. - Cross Streets/Interchange - 8 sides streets with 5 test holes per side street = 40 test holes
  - b. - Laterals crossing mainline and misc. locations as needed to confirm utility alignment = 30 test holes
3. Quality Level A Locating - Total Test Hole Bank: 230
  - a. SR 429 Mainline: 3-Overhead Truss Signs (30THs), 3-Overhead Cantilever Signs (15 THs), 10 - Multi-post Signs (100 THs), 1 - Box Culvert Ext. (3 THs), 1 pipe culvert extension (2 THs), 4 - CCTV Poles (20 THs), 6 cantilever DMS if HSR chosen (30 THs), 1 cantilever DMS (5 THs), 1 Full Span DMS ( 10 THs), 3 MVDS poles (15 THs), Test Holes for drainage are not anticipated.
  - b. Miscellaneous locating (50THs)
4. Survey
  - a. Stake all proposed sign, signal, and structure locations prior to QLA locating
  - b. Map all utility designates and locates (including FON marked by CFX)

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 project horizontal and vertical control points and meet with the construction contractor to review these points.

N. Low Altitude Mapping Photography

1. Furnish all aerial photography, photogrammetry, and related products for the total project in accordance with the Florida Department of Transportation Surveying & Mapping Procedures, Topic No. 550-030-101.

The following procedures shall be utilized for this project: 3D topographic hard-surface survey along the SR-429 corridor from Toe-of-Slope to Toe-of-Slope.

- a. Flight: Perform the flight utilizing helicopter at 350 feet above grade using a high precision aerial mapping camera with (FMC) forward motion compensation and with an average weighted resolution of 105 and above. Photography shall be at a negative scale of approximately  $1'' = 50'$ .
- b. Limits: Mapping from Toe-of-Slope to Toe-of-Slope along the SR-429 from  $\pm 1.5$  miles south of Florida's Turnpike to north of West Road (Station 335).

- c. Limits at the Florida Turnpike include the on/off ramps to and from SR 429. The flyovers are not included in the LAMP mapping.
- d. Field Survey: Aerial targets are placed right and left of the alignment and spaced along the project as directed by the photogrammetrist. Target size is specified by the photogrammetrist and should have a contrasting black and white pattern. Horizontal values and vertical elevations are required on all targets.
- e. Analytical Triangulation: Normal A.T. procedures shall be used similar to that which is performed for other flight scales.
- f. DTM Collection: Data shall be collected at spots and break lines similar to what is done with all photogrammetric projects. Scales of 1"=20' shall have data points collected at approximately 33 feet and 1"=50' at 65 feet intervals. All data shall be delivered as MicroStation files on CD ROM conforming to DEPARTMENT mapping procedures.
- g. Raster imagery to be provided in HMR & TIFF format from the fixed-wing flight at 1" = 40'.

O. 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.

**4.5 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, 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. The work will also include verification of existing median bridge foundation capacities previously constructed for future widening.
- 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.

#### 4.6 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.

#### 4.7 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.
- C. Milling and resurfacing limits extend from approximately Station 1106+20 to north of West Road, approximately Station 335+00. Portions of ramps at gore areas impacted by widening are included.
- D. Full depth pavement shall be provided in the median shoulders, except for 3' adjacent to the median barrier.

#### 4.8 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.

#### 4.9 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.

#### 4.10 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.
  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 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.

#### 4.12 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 15% 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. 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. Crossroad plans and profiles (1"= 50' scale)
12. Cross-sections (with pattern plan) (1" = 20' horiz.) (1" = 5' vert.)
  - a. Earthwork quantities
13. Traffic Control Sheets including Temporary Drainage
14. Utility Adjustment Sheets - as deemed necessary
15. Details
16. Special provisions
17. Special specifications

#### 4.13 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 beam type, wall type / configuration, foundation pile type, and preliminary load rating analysis of existing exterior beams at widened sections.
- B. The Consultant shall prepare designs and contract documents for structural design including, but not necessarily limited to the following items.
  1. Two new single span bridge structures for a braided ramp flyover of the Plant Street Exit Ramp.
  2. Complete Bridge Widening designs will be provided for widening of the following bridges:
    - a. Trail SB – outside widening
    - b. Trail NB – outside widening
    - c. Warrior Road SB – outside widening
    - d. Turnpike SB – inside widening
    - e. Turnpike NB – inside widening
    - f. Colonial Drive (SR 50) SB – inside widening
    - g. Colonial Drive (SR 50) NB – inside widening
    - h. Story Road SB – inside widening
    - i. Story Road NB – inside widening
    - j. Florida Central Railroad SB – inside & outside widening

- k. Florida Central Railroad NB – inside widening
- l. Plant Street (SR 438) SB – inside widening
- m. Plant Street (SR 438) NB – inside widening
- n. Palm Drive SB – inside widening
- o. Palm Drive NB – inside widening
- p. Northwest Ditch SB – inside widening
- q. Northwest Ditch NB – inside widening
- r. East Crown Point Road (Fuller’s Cross) SB – inside widening
- s. East Crown Point Road (Fuller’s Cross) SB – inside widening
- t. Ocoee Apopka Road (CR 437) SB - inside widening
- u. Ocoee Apopka Road (CR 437) SB – inside widening

3. Retaining walls (may vary based on final design limits)

a. Permanent MSE walls:

- Wall extension at Trail Bridge SB, south abutment – approximately 100 LF
- Wall extension at Trail Bridge SB, north abutment – approximately 100 LF
- Wall extension at Trail Bridge NB, south abutment – approximately 100 LF
- Wall extension at Trail Bridge NB, north abutment – approximately 100 LF
- Wall between Trail and Warrior Road, west side - approximately 1000 LF
- Wall extension at Warrior Road Bridge SB, south abutment – approximately 30 LF
- Wall extension at Warrior Road Bridge SB, north abutment – approximately 100 LF
- Wall extension at Florida Central RR Bridge SB, south abutment – approximately 100 LF
- Wall extension at Florida Central RR Bridge SB, south abutment – approximately 100 LF
- Wall adjacent to Pond CP-5 north of Story Road, west side – approximately 500 LF

b. Critical Temporary Walls (may vary based on final design limits)

- Soldier pile wall for construction of Trail Bridge permanent walls (4 total) – 60 LF (40 LF anchored, 20 LF cantilever)
- Soldier pile wall for construction of Warrior Road Bridge SB permanent walls (2 total) - 60 LF (40 LF anchored, 20 LF cantilever)
- Soldier pile wall for construction of permanent MSE wall between Trail and Warrior Road - 1000 LF (anchored)
- Soldier pile wall for construction of permanent MSE wall adjacent to Pond CP-5 north of Story Road - 50 LF (anchored)

4. Box Culverts – Extension of one side of double 9' x 5' Box Culvert at approximately Station 157.
  5. Slope protection as required for the spill through abutments at Northwest Ditch
  6. Approach slabs for bridge widenings
  7. Summary quantity tables
  8. Special provisions and specifications are not anticipated to be required for the structures work, however, if required will be included.
  9. Stage construction-sequencing details will consist of bridge cross sections showing demolition and construction phases with corresponding traffic positions and will be coordinated with the maintenance of traffic plans.
  10. Sign\Signal structures: To replace existing structures impacted by the widening and provide additional anticipated sign structures.
    - a. 9 Overhead Cantilever Sign Structures (Including 6 DMS Structures for active traffic control for Hard Shoulder Running)
    - b. 4 Overhead Span Sign Structures (Including 1 structure(s) with walk-in or single line DMS)
    - c. No signal structures are anticipated.
  11. Structural design of sound walls. CFX to provide limits and locations. Assumed 1400 LF along Westfield Community per CFX preliminary cost estimate.
  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 for their review and approval.
- C. The Consultant shall perform an evaluation of the existing median bridge foundations, previously constructed for future widening, to determine acceptability for HL93 loading and the potential for additional future transit loading.

#### 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 3.1D.
  2. Finalize the pond design at the 30% submittal. Modify ten (10)



existing ponds for additional treatment for the ramp modification areas and slight increase of mainline impervious area. Treatment and attenuation calculations will be prepared for ten (10) existing ponds. Modify outfall control structures for 6-lane configuration for ten (10) existing pond structures.

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 one (1) Bridge Hydraulics Report(s) that includes Northwest Ditch. The BHR is anticipated to be reviewed and approved by CFX, Orange County, and FEMA. No CLOMR is anticipated.
  8. Modification of existing floodplain analysis and compensation ponds is included to obtain required permits.
  9. Perform cross drain analysis for seven crossings due to widening. One crossing will be a CBC and the remainder are pipes.
  10. Prepare a technical memorandum identifying existing drainage concerns along the corridor and potential fixes or modifications. Known existing drainage concerns include:
    - A. Seepage along the northbound front slope approaching West Road
    - B. Closure of an existing well at Plant Street
  11. 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. 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. 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"=50' 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 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 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 following existing structures will be impacted by the widening and need to be replaced; three (3) cantilevers, three (3) span trusses (one full and two half span), and ten (10) multi-post sign structures.

#### **4.18 Signalization Plans**

- A. Signal plans are not anticipated for this improvement. If requested, the Consultant shall prepare designs and contract documents for final signalization plans including layouts showing the locations of mast arms and pedestrian features, special signal 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. Plan sheets will be developed at a scale of 1"=50' (11"x17" format).

#### **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.

#### **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 of all existing fiber optic ductbanks, 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.
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 for new or relocated fiber optic cabling.
  - n. Fiber cable routing summaries, fiber cable allocation charts, and splice details and tables for new or relocated fiber optic cabling.
  - o. Controller cabinet, structure, and foundation details for proposed CFX device sites.
  - 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. 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.

- 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 the existing FON to inside of the new paved shoulder, including attachment of the FON to SR 429 bridges over intersecting arterials and installation of fiber optic manholes in the paved shoulder.
- w. Relocation 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. All existing analog CCTV within the project limits shall be upgraded to HD cameras.
- x. 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. Support the FCC application process for any relocated DCS sites.
- y. Relocation of existing traffic monitoring sites (TMS) 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. All TMS to be re-configured and calibrated during construction to account for any lane shifts and the added lanes.
- z. Relocation of existing one-line and three-line 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. All existing Skyline DMS shall be replaced with new generation color DMS.
- aa. Conversion of all 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.
- bb. Design of active traffic management system for hard shoulder running, which includes 6 DMS locations.

cc. Install new WWDS at the following off-ramps:

- West Road northbound.
- Plant Street southbound and northbound.

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.
- 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 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. 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.

#### **4.23 Toll Plazas**

- A. This proposal 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:
  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. Addenda will not be issued for Contractor initiated design changes or value engineering proposed work.

- 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 (monthly) 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's key staff shall attend a maximum of three (3) 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 CFX 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**

### **5.1 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.

### **5.2 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

### **5.3 Other**

- 1. Utility designates for the FON and roadway lighting within CFX right-of-way.

## **6.0 WORK PERFORMED BY CFX OR ITS DESIGNEE**

### **6.1 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.

## **6.2 Utility Agreements**

- A. CFX will support, as necessary, the Consultant's acquisition of information required for utility agreements.

## **6.3 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.

## **6.4 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.

## **6.5 Post-Design Services**

- A. CFX will be the principal initial contact for post-design questions and answer questions on a limited scope.
- B. CFX's CEI representative will be responsible for collection and documentation of all As-Built information for the constructed improvements.

## **6.6 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.
- C. CFX will be responsible for all permitting application fees.

## **6.7 Conceptual Specialty Design**

- A. CFX will provide a conceptual major guide signing plan.
- B. CFX to provide proposed sound wall locations.
- C. CFX will provide conceptual aesthetics design and treatments for structures.

## **7.0 ADMINISTRATION**

### **7.1 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.

## 7.2 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.

## 7.3 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.

#### 7.4 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.

#### 7.5 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.

#### 7.6 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.

#### **7.7 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.

#### **7.8 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.

#### **7.9 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 twenty (20) 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. 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. Drainage calculations
  - 6. Structural design calculations.
  - 7. Geotechnical report.
  - 8. Hydraulics Report for each bridged stream crossing.
  - 9. Earthwork calculations not included in the quantity computation booklet.
  - 10. Calculations showing cost comparisons of various alternatives considered, if applicable

11. Computations of quantities.
12. Documentation of decisions reached resulting from meetings, telephone conversations, or site visits.
13. Lighting and voltage drop calculations.
14. 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. 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 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.

**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. Intelligent Transportation System (ITS) Plans
- 12. Highway Lighting Plans
- 13. 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. Signalization Plans
12. Intelligent Transportation System (ITS) Plans
13. Highway Lighting Plans
14. 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  
#5**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams *Aneth Williams*  
Director of Procurement

DATE: January 22, 2021

SUBJECT: Approval of Supplemental Agreement No. 2 with Kisinger, Campo & Associates, Corp. for Design Professional Services for SR 429 Widening from Stoneybrook West Parkway (South) to Florida's Turnpike Project No. 429-154, Contract No. 001397

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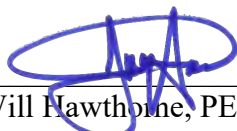
Board approval of Supplemental Agreement No. 2 with Kisinger, Campo & Associates, Corp. in a not-to-exceed amount of \$656,750.94 is requested. The original contract was for five years with five one-year renewals.


The services to be provided include design services for complete removal and replacement of the existing roadway asphalt, additional sound and retaining walls, drainage and maintenance of traffic.

Original Contract	\$4,175,000.00
Supplemental Agreement No. 1	\$ 946,786.90
Supplemental Agreement No. 2	<u>\$ 656,750.94</u>
Total	\$5,778,537.84

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

Reviewed by:

  
\_\_\_\_\_  
Will Hawthorne, PE  
Director of Engineering

  
Glenn Pressimone, PE



**SUPPLEMENTAL AGREEMENT NO. 2**  
**TO**  
**AGREEMENT FOR PROFESSIONAL SERVICES**  
**FINAL DESIGN**

**SR 429 Widening from Stoneybrook West Parkway (South) to Florida's Turnpike**

THIS SUPPLEMENTAL AGREEMENT NO. 2 TO AGREEMENT FOR PROFESSIONAL SERVICES FINAL DESIGN ("Supplemental Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, 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 KISINGER CAMPO & ASSOCIATES, CORP., a Florida corporation, hereinafter called the "CONSULTANT".

WHEREAS, CFX and CONSULTANT entered into that certain Agreement for Professional Services between CFX and the CONSULTANT, dated June 13, 2019, as amended or supplemental by that certain Supplemental Agreement No. 1 between CFX and CONSULTANT dated September 1, 2020 (collectively, "Agreement"); and

WHEREAS, Articles 2.0 and 11.0 of the Agreement provide that in the event that CFX elects to add, delete or change the services outlined in the Scope of Services, as defined in the Agreement, and attached to the Agreement as Exhibit "A", the compensation to be paid to the

CONSULTANT shall be subject to adjustment as shall be mutually agreed upon by CFX and the CONSULTANT in this Supplemental Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Supplemental Agreement, CFX and the CONSULTANT agree as follows:

1. CFX hereby authorizes the CONSULTANT to proceed with additional services as outlined in the Consultant's October 29, 2020 letter to CFX, which is attached hereto as Exhibit "A" and incorporated herein by reference ("Additional Services"). Exhibit "A" of the Agreement and the Scope of Services, as defined in the Agreement, shall be amended to include the Additional Services.
2. Exhibit "B" Method of Compensation of the Agreement is hereby amended as follows:
  - a. The Salary Related Costs are adjusted upward by \$528,764.64 to \$3,169,159.34.
  - b. The Subcontract Items are adjusted upward by \$237,604.44 to \$2,609,378.50 as follows:

• The Balmoral Group, LLC	\$94,648.97
• ECHO UES, Inc.	\$27,187.84
• Traffic Engineering Data Solutions, Inc.	\$16,412.00
• Tierra, Inc.	\$99,355.63
  - c. The Allowance is adjustment downward by \$109,618.14 to \$0.00.
  - d. The Total Maximum Limiting Amount is adjusted upward by \$656,750.94 to \$5,778,537.84.
3. All provisions of said Agreement, or any amendments or supplements thereto, not specifically modified herein, 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 the Agreement, or any existing supplements or amendments 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 this Supplemental Agreement to be executed the day and year first above written.

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY

By: \_\_\_\_\_  
Aneth Williams, Director of Procurement

KISINGER CAMPO & ASSOCIATES, CORP.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form and execution for CFX's exclusive use and reliance.

By: \_\_\_\_\_  
Diego "Woody" Rodriguez  
General Counsel



**MEMORANDUM**

**Date:** December 9, 2020  
**To:** Will Hawthorne, PE CFX Director of Engineering  
**From:** Craig Noon, PE *GCN*  
**Subject:** Design Consultant Services - Contract 001397  
CFX Project No. 429-154  
SR 429 Widening from Tilden Road to Florida's Turnpike  
Supplemental Agreement No. 2

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**Comments:**

I have reviewed Supplemental Agreement #2 submitted by Kisenger Campo and Associates (KCA) on October 29, 2020 and resubmitted after Dewberry's review on December 3, 2020, for the SR 429 Widening from Tilden Road to Florida's Turnpike. This requested contract amendment is to provide additional design services to cover additional work that was recommended for the project, including complete removal and replacement of the existing roadway asphalt, additional Noise Walls and Retaining Walls, and other associated Drainage, MOT and other changes that have been added to the scope of the project.

The work authorization request is attached and additional costs are detailed below:

\$ 528,764.64	KCA as Prime
<u>\$ 237,604.44</u>	Sub-consultants
\$ 766,369.08	Total Requested Contract Amendment Amount

The total fee transfers are reasonable and acceptable, and the man hour rates are consistent with their contract; therefore, I recommend approval of this agreement in the amount of \$766,369.08.

Should you have questions or need additional information, please call me at 407-590-9293

**CC:**

Keith Jackson, PE Dewberry  
File

October 29, 2020

Mr. Will Hawthorne, PE  
Director of Engineering  
Central Florida Expressway Authority  
4974 ORL Tower Road  
Orlando, FL 32807

RE: SR 429 Widening from Stoneybrook W. Pkwy. (South) to FTE  
**Supplemental Agreement No. 2 – Addition of Noise Walls and Reconstruct Existing Travel Lanes**  
Orange County, Florida  
CFX Project No. 429-154

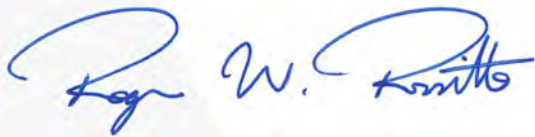
Dear Mr. Hawthorne,

Enclosed please find Kisinger Campo & Associates' supplemental fee proposal. This proposal is to add 21,533 LF of Noise and Retentions Walls, and to reconstruct the existing travel lanes to accommodate the removal and replacement of all existing asphalt under the north and southbound travel lanes.

If you have any questions or require additional information, please feel free to contact me.

Sincerely,

**Kisinger Campo & Associates Corp.**



Roger W. Rossitto, PE  
Project Manager

**429-154 SCOPE OF SERVICES**  
**SUPPLEMENTAL AGREEMENT NO. 2**

**REQUESTED SCOPE CHANGES:**

1) **NOISE WALLS** Add Noise Walls recommended by the SR 429 Noise Study (by others). In total, 14,652 LF of noise wall is proposed along the north and southbound directions within the limits of the 429-154 project. To keep construction and tie-down slopes within the existing right-of-way (R/W) an additional 6,881 LF of new retaining wall is needed in various locations between the proposed noise walls and R/W fencing.

**What this affects:**

The proposed noise and retaining walls will need to be added to the construction plans including the roadway sheets, cross sections, typical sections, and details. In order to ensure compatibility with the future ultimate 8-lane widening the cross sections will need to be created once to set the proper locations of the noise walls for the future and then again to create the interim cross section for this construction project.

The placement of the walls impacts the existing and proposed drainage systems in many areas including drainage structures and ditches; these will need to be redesigned and the drainage plans will need to be updated.

The placement of the walls impacts the locations of many of the proposed overhead truss and cantilever sign foundations. These will need to shift, and the truss/cantilever lengths may need to be adjusted.

The placement of the walls impacts the locations of some of the ITS poles and these will need to be moved.

The noise walls and cast-in-place retaining walls will require structural engineering design and plans, details and notes will be required in the plans. Control drawings are required for all noise and MSE walls.

Additional geotechnical borings will be needed for the wall foundations.

As described above, many of the overhead truss and cantilever sign foundations and ITS poles will need to be moved and will need new Geotech borings at their new locations.

The new walls and the shifting of drainage structures, ITS poles, and sign foundations will require additional subsurface utility engineering in the form of additional test holes at suspected conflict locations.

2) **RECONSTRUCT EXISTING TRAVEL LANES** Remove all existing asphalt pavement from the travel lanes and reconstruct with new structural asphalt pavement and friction course.

**What this affects:**

This requires a new Pavement Design Package, typical section details, and analysis of the mainline tangent sections for overbuild in lieu of milling for cross slope correction.

This requires a new approach to laying out and providing proper vertical control for the proposed median construction.

This requires a new approach to Temporary Traffic Control and a significant amount of previous work must be redone.

**SUPPLEMENTAL AGREEMENT NO. 1**  
**TO**  
**AGREEMENT FOR PROFESSIONAL SERVICES**  
**FINAL DESIGN**

**SR 429 Widening from Stoneybrook West Parkway (South) to Florida's Turnpike**

THIS SUPPLEMENTAL AGREEMENT NO. 1 TO AGREEMENT FOR PROFESSIONAL SERVICES FINAL DESIGN ("Supplemental Agreement") is made and entered into this 1st day of September, 2020, 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 KISINGER, CAMPO & ASSOCIATES, CORP., a Florida corporation, hereinafter called the "CONSULTANT".

WHEREAS, CFX and CONSULTANT entered into that certain Agreement for Professional Services between CFX and the CONSULTANT, dated June 13, 2019 and

WHEREAS, Articles 2.0 and 11.0 of the Agreement provide that in the event that CFX elects to add, delete or change the services outlined in the Scope of Services, as defined in the Agreement, and attached to the Agreement as Exhibit "A", the compensation to be paid to the CONSULTANT shall be subject to adjustment as shall be mutually agreed upon by CFX and the CONSULTANT in this Supplemental Agreement.



NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Supplemental Agreement, CFX and the CONSULTANT agree as follows:

1. CFX hereby authorizes the CONSULTANT to proceed with additional services as outlined in the Consultant's May 13, 2020 letter to CFX, which is attached hereto as Exhibit "A" and incorporated herein by reference ("Additional Services"). Exhibit "A" of the Agreement and the Scope of Services, as defined in the Agreement, shall be amended to include the Additional Services.
2. Exhibit "B" Method of Compensation of the Agreement is hereby amended as follows:
  - a. The Salary Related Costs are adjusted upward by \$554,065.52 to \$2,640,394.70.
  - b. The Subcontract Items are adjusted upward by \$592,721.38 to \$2,371,774.06 as follows:

• The Balmoral Group, LLC	\$28,490.37
• ECHO UES, Inc.	\$29,467.83
• Traffic Engineering Data Solutions, Inc.	\$195,632.49
• Tierra, Inc.	\$339,130.70
  - c. The Allowance is adjustment downward by \$200,000 to \$109,618.14.
  - d. The Total Maximum Limiting Amount is adjusted upward by \$946,786.90 to \$5,121,786.90.
3. All provisions of said Agreement, or any amendments or supplements thereto, not specifically modified herein, 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 the Agreement, or any existing supplements or

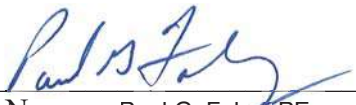
amendments thereto, the provisions of this Supplemental Agreement, to the extent such provision is reasonable, shall take precedence.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement to be executed the day and year first above written.

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY

By: Aneth Williams Digitally signed by Aneth Williams  
Date: 2020.09.01 14:52:21 -04'00'  
Aneth Williams, Director of Procurement

KISINGER, CAMPO & ASSOCIATES, CORP.

By:   
Print Name: Paul G. Foley, PE  
Title: President

Approved as to form and execution for CFX's exclusive use and reliance.

By: Laura Kelly, Associate General Counsel Digitally signed by Laura Kelly,  
Associate General Counsel  
Date: 2020.09.01 12:23:21 -04'00'  
Diego "Woody" Rodriguez  
General Counsel

<https://cfxgov.sharepoint.com/operations/engineering/Shared Documents/General/429-154 SR 429 Widening Stoneybrook West to FTE/2 Contract/2.A Supplemental Agreements/SA 1/KCA 429-154 SA 1.docx>

# Exhibit "A"



## MEMORANDUM

**Date:** May 20, 2020  
**To:** Will Hawthorne, PE CFX Director of Engineering  
**From:** Craig Noon, PE GCN  
**Subject:** Design Consultant Services - Contract 001397  
CFX Project No. 429-154  
SR 429 Widening from Tilden Road to Florida's Turnpike  
Supplemental Agreement No. 1

---

### Comments:

I have reviewed the fee sheet and scope of services submitted by Kisinger Campo and Associates. This requested contract amendment is to provide professional design services related to the addition of auxiliary lanes between CR 535 and FL's Turnpike, and PTSU Infrastructure which was not included in their original contract. These services include structural design services for outside widenings at both bridges crossing Stoneybrook West Parkway (North), structural design of PTSU gantries and other miscellaneous structures, geotechnical investigation, survey, ITS design, signing & pavement marking design, and lighting design due to the changes related to the PTSU.

The work authorization request is attached and additional costs are detailed below:

\$ 554,065.52	KCA as Prime
\$ 592,721.38	<u>Total Additional Subconsultant Fees</u>
\$ 1,146,786.90	Total Requested Contract Amendment Amount

The total staff hours for each task are reasonable and acceptable, and the man hour rates are consistent with their contract; therefore, I recommend approval of this agreement in the amount of \$1,146,786.90.

Should you have questions or need additional information, please call me at 407-590-9293.

### CC:

Keith Jackson, PE Dewberry  
File



May 13, 2020

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

RE: SR 429 Widening from Stoneybrook W. Pkwy. (South) to FTE  
**Supplemental Agreement No. 1 – Addition of Auxiliary Lanes and Incident  
Management/PTSU Infrastructure**  
Orange County, Florida  
CFX Project No. 429-154

Dear Mr. Pressimone,

Enclosed please find Kisinger Campo & Associates' supplemental fee proposal to add auxiliary lanes between CR 535 and FTE, and to add the infrastructure needed to operate an Incident Management/PTSU system on the SR 429-154 project.

If you have any questions or require additional information, please feel free to contact me.

Sincerely,

**Kisinger Campo & Associates Corp.**

A handwritten signature in blue ink that reads "Roger W. Rossitto". The signature is fluid and cursive.

Roger W. Rossitto, PE  
Project Manager

# Exhibit "A"

## 429-154 SCOPE OF SERVICES

### SUPPLEMENTAL AGREEMENT NO. 1

#### **REQUESTED SCOPE CHANGES:**

1) Complete the design of all infrastructure needed for Incident Management on opening day and Part-time Shoulder Use (PTSU) in the future. This includes plans, quantities and specs for construction.

#### **WHAT THIS AFFECTS:**

CFX wants to go forward with the construction of all OH sign gantries identified in the latest SR 429 Conceptual Signing Plan (CSP). The Incident Management capabilities of the system will be operational on opening day. The PTSU lanes themselves will not be used on opening day; they will be used in a future year when traffic volumes/delays warrant their use.

The overall gantry layout and structural design is to accommodate all future static signs and dynamic message signs related to both PTSU and Incident Management.

Additional geotech borings and structural design is needed for the ultimate gantry and foundation designs.

ITS design is to include all fiber, power supply, conduit, pull boxes, control cabinets, etc. needed for Incident Management and future PTSU operations

To avoid bulb-outs in the median barrier at gantry foundation locations, the median barrier shall utilize the "Barrier-Mounted Dual Support Shielding – Minimum Width" design option shown in FDOT Standard Plans, Index 521-001, Sheet 8 of 26.

2) Add Auxiliary Lanes to the SR 429 mainline, in both NB and SB directions, between CR 535 and FTE.

#### **WHAT THIS AFFECTS:**

Parsons (429-152) and KCA (429-154) will design full width Auxiliary Lanes to their respective Begin/End Project Limit at Sta. 1126+00.

+/- 1 mile of outside mainline widening in the SB direction. Starts at KCA's End Project Limits (Parsons's Begin Project Limit) and connects to the existing SB CR 535 Exit ramp deceleration lane.

+/- 1.4 miles of outside mainline widening in the NB direction. Starts where the existing CR 535 NB entrance ramp acceleration lane ends and connects to Parsons project at KCA's End Project Limit.

## Exhibit "A"

Outside widening of both bridges over Stoneybrook W. Pkwy. (North) including new MSE walls

Impacts the mainline embankment slopes and any ditches at the foot of the slopes.

Note: CFX criteria is to provide 10' minimum (15' preferred) maintenance access between the R/W fence and toe of slope or wall.

Impacts existing ITS infrastructure (FON, cabinets, pull boxes, poles, etc.) located in the outside shoulder in both directions. Any new ITS poles will require geotech borings and structural design.

Additional pavement marking for aux. lane. area

Impact existing lighting needs to be replaced

Existing OH sign structures in the Aux. Lane area, that were to remain, will need to be evaluated for CZ violation and replaced as needed.

Drainage design including additional ditch and pond analysis, cross drain extensions, additional hydroplaning analysis, additional impervious may require weir modifications.

Need additional roadway augers, embankment borings for Aux. Lane area.

Two SPT borings for outside bridge widening

Need additional surveying of Stoneybrook W. Pkwy (North) including topo and utilities and the two additional SPT borings.

# **AGREEMENT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
KISINGER, CAMPO & ASSOCIATES, CORP.**

**DESIGN PROFESSIONAL SERVICES FOR  
S.R. 429 WIDENING FROM STONEYBROOK WEST  
PARKWAY (SOUTH) TO FLORIDA'S TURNPIKE**

**CONTRACT NO. 001397, PROJECT 429-154**

**CONTRACT DATE: JUNE 13, 2019  
CONTRACT AMOUNT: \$4,175,000.00**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AGREEMENT, SCOPE OF SERVICES, METHOD OF  
COMPENSATION, DETAILS OF COSTS AND FEES,  
PROJECT ORGANIZATIONAL CHART, PROJECT  
LOCATION MAP, SCHEDULE, AND POTENTIAL  
CONFLICT DISCLOSURE FORM**

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

**FOR**

**S.R. 429 WIDENING FROM STONEYBROOK WEST PARKWAY (SOUTH) TO  
FLORIDA'S TURNPIKE**

**DESIGN PROFESSIONAL SERVICES**

**CONTRACT NO. 001397  
PROJECT 429-154**

**JUNE 2019**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**



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(Agreement for Design Professional Services for SR 429 Widening  
from Stoneybrook West Parkway (South) to Florida’s Turnpike)

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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 June 2019, by and between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a corporate body and agency of the State of Florida, created by Chapter 2014-171, Laws of Florida, which is codified in Chapter 348, Part III of the Florida Statutes, hereinafter "CFX," and Kisinger, Campo & Associates, Corp., hereinafter called "CONSULTANT," registered and authorized to conduct business in the State of Florida, carrying on professional practice in engineering, with offices located at 135 W. Central Blvd., Suite 300, 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 design of SR 429 Widening from Stoneybrook West Parkway (South) to Florida's Turnpike identified as Project 429-154 and Contract No. 001397.

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:

The Balmoral Group, LLC (Class I)	I.F. Rooks & Associates, LLC (Class I)
Brindley Pieters and Associates, Inc. (Class I)	Kittelson & Associates, Inc. (Class I)
ECHO UES, Inc. (Class I and class II (survey))	KCCS, Inc. (Class I)
Geodata Consultants, Inc. (Class I and class II (survey))	Tierra, Inc. (Class II)
Traffic Engineering Data Solutions, 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 \$4,175,000.00 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 135 W. Central Blvd., Suite 300, 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, 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.

#### 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 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.

#### 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 CFX 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) 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.

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

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: Kisinger, Campo & Associates, Corp.  
111 N. Magnolia Avenue, Suite 1050  
Orlando, FL. 32801  
Attn: Roger Rossitto, P.E.

Kisinger, Campo & Associates, Corp.  
111 N. Magnolia Avenue, Suite 1050  
Orlando, FL. 32801  
Attn: Thomas J. Shaw, 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  
Exhibit "F", Project Schedule  
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 June 13, 2019.

**KISINGER, CAMPO & ASSOCIATES, CORP.**

**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY**

BY:   
Authorized Signature

BY:   
Director of Procurement

Print Name: Paul G. Foley, P.E.

Print Name: Anoth Williams

Title: President

Effective Date: 6/17/19

ATTEST:  (Seal)  
(Ronald E. Gott) Secretary or Notary

'19 JUN 5 AM 11:02

*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. 429 WIDENING FROM STONEYBROOK  
WEST PARKWAY (SOUTH) TO FLORIDA'S  
TURNPIKE**

**PROJECT NO. 429-154**

**IN ORANGE COUNTY, FLORIDA**

**April 19, 2019**

Exhibit A  
SCOPE OF SERVICES

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## **1.0 GENERAL**

### **1.1 Location**

- A. See EXHIBIT "E", Project Location Map.

### **1.2 Description**

The services will include final design and preparation of construction drawings / specifications for the proposed S.R. 429 inside widening from Stoneybrook West Parkway (South) to Florida's Turnpike. Specifically, the project consists of widening to the inside for the additional general use lane and closing in the median to accommodate future Part-time shoulder use. All mainline bridges within the project limits; Stoneybrook West Parkway (South), CR 535 and Stoneybrook West Parkway (North) will also be widened to accommodate the appropriate shoulder widths, additional general use lane or ramp modifications as per the concept. Exact limits will be set after coordination with the adjoining 429-152 project. Additional elements include milling & resurfacing, surveying, drainage evaluation and design, permitting, lighting, signing and pavement markings, signalization, ITS (fiber optic network), maintenance of traffic, utility design and coordination, geotechnical analysis, tasks associated with analysis and development of the Part-time Shoulder Use Concept of Operations, scheduling and project control, progress reporting and other tasks and associated activities.

### **1.3 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. 429 inside widening from Stoneybrook West Parkway (South) to Florida's Turnpike.
- 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 ITS (fiber optic network) plans, final signalization plans (if required), 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.

#### **1.4 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.

#### **1.5 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, 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 Handbook, 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

#### 3.1 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.

#### 3.2 Geometry

The following criteria are to be incorporated into the design:

DESIGN ELEMENT	EXPRESSWAY		CROSSROADS/ COLLECTORS
	MAINLINE	RAMPS	
Design Speed, MPH	70 mph	30 mph (Loop) 50 mph (Diamond) 50 mph (Directional)	30 Local 45 Urban 50 Rural
Horizontal Alignment Max. Curve, Degrees	3° 30'	24° 45' Loop 8° 15' Diamond 8° 15' Directional	20°
Max. Superelevation, ft/ft.	0.10	0.10	0.05 Urban 0.10 Rural
Lane Drop Tapers			
Transitions	70:1	50:1	
	Use spirals for curves > 1° 30'	Use spirals for curves > 1° 30'	Use spirals for curves > 1° 30'
Vertical Alignment Max. Grade	3%	5% to 7% (30 mph) 3% to 5% (50 mph)	5% Arterial Rural 7% Collector

DESIGN ELEMENT	EXPRESSWAY		CROSSROADS/ COLLECTORS
	MAINLINE	RAMPS	
Vertical Curvature (K) (K=Len./%grade change)			Rural
Crest	506 290 to 540 AASHTO	31 (30 mph) 136 (50 mph) 110 to 160 Other (AASHTO)	31 to 136
Sag	206 150 to 200 AASHTO	31 (30 mph) 136 (50 mph) 90 to 110 Other (AASHTO)	37 to 96
Decision Sight Dist., ft.	Refer to AASHTO	N/A	N/A
Cross Sections			
Lane Widths, ft.	12	12 dual lanes 15 min. single lane	12 inner lanes 12-16 outer lanes
Shoulder width, ft.			
Right	4-Lane 12 (10 paved)	Single Lane 6 (4 paved)	8 (4* paved)
Left	8 (4 paved)	6 (2 paved)	2 (2 paved)
			* min. 5' paved
Right	6-Lane 12 (10 paved)	Dual Lane 10* (8* paved)	
Left	12 (10 paved)	8 (4 paved) (* add 2' for interstate)	
Bridges, ft.			
Right	4-Lane 10	Single-Lane 6	
Left	6	6	
Right	6(or more)-Lanes 12	Dual Lane 10	
Left	12	6	
Cross Slopes			
Traffic Lanes	2% (4-lane) 3% or tbd (6-lane)	2%	2%
Bridge Lanes	2% typ. (no break)		
Left Shoulder	Match Mainline	5%	5%
Right Shoulder	Match Mainline	6%	6%

DESIGN ELEMENT	EXPRESSWAY		CROSSROADS/ COLLECTORS
	MAINLINE	RAMPS	
Median Width (4-lane), ft. (E.O.P./E.O.P.)	64' (typical) 26' (with barrier)	N/A	22' or 40'
Lateral Offset	FDM 215.2.4	FDM 215.2.4	FDM 215.2.4
Vertical Clearance, ft.			
Over Roadway*	16.5	16.5	16.5
Overhead Signs	17.5	17.5	17.5
Over Railroad	23.5	23.5	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.

### **3.3 Bridge and Other Structures**

- A. All plans and designs shall be prepared in accordance with the latest standard specifications adopted by AASHTO, FDOT Structures Manual, FDOT Design Manual, FDOT Standard Plans, 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.

##### **4.1 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 S.R. 429 inside widening from Stoneybrook West Parkway (South) (Station 938.00 +/-) to Florida's Turnpike (Station 1126.00 +/-). Specifically, the project consists of widening to the inside for the additional general use lane and closing in the median to accommodate future Part-time shoulder use. All mainline bridges within the project limits; Stoneybrook West Parkway (South), CR 535 and Stoneybrook West Parkway (North), will also be widened to accommodate the appropriate shoulder widths, additional general use lane or ramp modifications as per the concept. Additional elements include milling & resurfacing, surveying, drainage evaluation and design, permitting, lighting, signing and pavement markings, signalization (if needed), ITS, maintenance of traffic, utility design and coordination, geotechnical analysis, scheduling and project control, progress reporting and other tasks and associated activities.

##### **4.2 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, City of Winter Garden, FDOT, FDEP and applicable Water Management District(s).

##### **4.3 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.

#### 4.4 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' from LAMP data.
3. Cross-sections will be performed at intervals along the mainline to support and validate LAMP DTM.
4. Additional topographic and DTM surveys, as needed for the project design, are the responsibility of the Consultant. These may include 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 project horizontal

and vertical control points 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.

**4.5 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, 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. The work will also include verification of existing median bridge foundation capacities previously constructed for future widening.

- 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.

#### **4.6 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.

#### **4.7 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.

#### **4.8 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.

#### **4.9 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.

#### **4.10 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.
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 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.

#### **4.12 PTSU**

##### **A. HCM Operational Analysis.**

The FREEVAL software package will be used to conduct the operational analysis. FREEVAL is a powerful macroscopic freeway facility analysis tool based on Highway Capacity Manual (HCM) 6<sup>th</sup> Edition freeway facility methodologies. FREEVAL allows for the analysis of multiple HCM freeway segments (i.e. ramp junction, weaving sections, and basic freeway sections) using one 'run', as opposed to the traditional Highway Capacity Software (HCS) that requires individual assessments of each ramp, weaving section, and basic freeway section. The freeway facility methodology offers enhanced computational efficiency compared to individual segment analyses. The facilities methodology models queue propagation and dissipation and offers a more realistic assessment of congestion patterns when individual freeway segments reach LOS F with demands exceeding capacity. Use of FREEVAL will 1) save time vs traditional HCS analysis and vs microsimulation (i.e. VISSIM), 2) increases the accuracy of the freeway analysis as compared to traditional HCM analysis, and 3) provide the ability to efficiently do scenario



testing. FREEVAL also has capabilities of evaluating the operations of managed lanes, PTSU, work zones, and travel time reliability.

It is expected that KAI will work closely with CFX in an iterative and collaborative process throughout this task. This will involve interim deliverables, discussions, and feedback to review completed work. It is anticipated that KAI will discuss calibration results with CFX to verify the operations are consistent with existing conditions. Once the models are calibrated and agreed upon by CFX, it is anticipated another discussion with CFX will occur to present the results of the various future build scenarios. The following summarizes the individual tasks anticipated in the FREEVAL operational analysis.

1. Data Collection.

KAI will obtain or collect the necessary data to complete the traffic operations analysis. The data collection efforts are summarized as follows:

a. Transportation System Data

KAI will collect transportation systems data including the road name, area type, roadway type, number of lanes, and posted speed limit. It is anticipated that this data will come from existing sources such as the RCI database, the 2017 Florida Traffic Online database, and aerial/street view imagery.

KAI will request 2019 HERE data from CFX within the limits of the study corridors to be used for FREEVAL model calibration purposes.

It is not expected that specific traffic counts will need to be collected as part of this study. If specific traffic counts are needed as part of this study, they will be furnished by CFX.

KAI will request historical incident data or monthly crash frequency data (most recent five years of data) along each study facility to aid in the travel time reliability analysis to be completed as part of Task 1.6.

b. Project Design Files

KAI will request the most current design files for SR 417 and SR 429 to be utilized in the operational assessment of the future conditions and future alternatives. It is expected that the design files will include the roadway line work as well as the pavement markings (to be used to identify lane configurations). It is expected that a .kmz file and a .pdf of the design plans will be provided to KAI by CFX.

2. Existing Volume Development.

It is anticipated KAI will be provided with a balanced set of existing year (2019) AM and PM peak hour volumes to be used in calibration of the existing conditions FREEVAL models along SR 417 and SR 429. CFX will also provide the existing truck percentages along the two facilities to be used in the operational analysis. This will include a breakdown of single-unit trucks and tractor trailer truck percentages. KAI will also request 48-hr volume and/or classification count data along SR 417 and SR 429 from CFX. The mainline data will be used to develop daily volume profiles to be used in estimating “shoulder” hours on either side of the AM and PM peak hours (two separate, three-hour analyses). KAI will coordinate with CFX on additional analysis periods (weekday off-peak, weekend peak period, etc.) if needed.

3. Existing Geometric Network Development and Calibration.

It is expected that the limits of the FREEVAL model for SR 417 will be from International Drive to SR 528. It is expected that the limits of the FREEVAL model for SR 429 will be from just south of Stoneybrook Parkway to SR 414. Intersections will not be included in the model development.

FREEVAL geometric models will be developed for the following existing scenarios and analysis periods:

- a. SR 417 northbound – 2019 AM and PM peak periods
- b. SR 417 southbound – 2019 AM and PM peak periods
- c. SR 429 northbound – 2019 AM and PM peak periods
- d. SR 429 southbound – 2019 AM and PM peak periods

Florida-specific “default” Capacity Adjustment Factors (CAFs) will be used to adjust capacities within the merge, diverge, and weave influence areas. These factors are based on research conducted by the University of Florida and FDOT. The HERE data collected as part of Task 1.1 will be used as speed and travel time calibration targets.

4. Design Year Geometric Network Development.

Data from straight line diagrams, Google Earth, design plans, and the .kmz of the build scenario will be utilized to identify key distances and geometric features of the model network. Intersections will not be included in the model development. FREEVAL geometric models will be developed for the following scenarios:

- a. No-Build: northbound and southbound directions:  
It is assumed that this will include the existing roadway configurations along SR 417 and SR 429 and can include planned interchange improvements along the facilities. It will not include PTSU.
- b. Two Build Alternatives: northbound and southbound directions:  
It is assumed that KAI will coordinate with CFX on two build scenarios to evaluate (two for each facility).

5. Future Year Volume Development.

It is anticipated KAI will be provided with a balanced set of design year (2045) AM and PM peak hour volumes to be used in calibration of the existing conditions FREEVAL models along SR 417 and SR 429. Unless instructed otherwise by CFX, KAI will use the existing daily volume profiles to estimate “shoulder” hours on either side of the 2045 AM and PM peak hours. KAI will also utilize the existing truck percentages (single unit and tractor trailer) in the 2045 AM and PM peak period analyses.

6. Operational Analysis.

FREEVAL will be utilized to conduct the HCM based operational analysis for both the northbound and southbound directions along SR 417 and SR 429. It is anticipated that CFX will provide a year of failure (interim year) and the associated volumes to KAI to evaluate the need for the PTSU system. KAI will evaluate how the facilities will operate in interim year and during the design year (2045 peak period).

The following analysis scenarios along SR 417 and SR 429 will be analyzed:

- a. Existing
  - i. 2019 AM and PM peak periods
- b. No-Build
  - i. Interim Year AM and PM peak periods
  - ii. 2045 AM and PM peak periods
- c. Build Option 1
  - i. Interim Year AM and PM peak periods
  - ii. 2045 AM and PM peak period
- d. Build Option 2

- i. Interim Year AM and PM peak periods
- ii. 2045 AM and PM peak period

In addition to the recurring congestion analysis, a non-recurring travel time reliability (TTR) analysis will be conducted for the Build scenarios to understand the impacts of incidents, weather, and demand on operations along each study facility. The data collected in Task 1.1 will be utilized as inputs into the TTR analysis. This will aid in understanding the operations of the various Operational Scenarios of the PTSU system (to be discussed in Task 2).

7. Technical Memorandum.

KAI will prepare a technical memorandum summarizing the operational analysis results, including figures, tables, and supporting documentation for each of the SR 417 and SR 429 study facilities and will be submitted for review. One round of comments will be addressed, and a final memorandum will be submitted for each facility.

B. Concept of Operations (ConOps) Document.

KAI will lead the development of a ConOps document for the PTSU strategy along both the SR 417 and SR 429 facilities (two separate documents). KAI will lead items 1, 2, and 7 of the ConOps and coordinate with CFX and CFX's consultants to address items 3-6. Coordination with FDOT's Traffic Management Center staff will also be crucial in the development of the ConOps document. The ConOps document will answer the following questions:

- Who are the stakeholders involved with the system?
- What are the known elements and high-level capabilities of the system?
- When is the time sequence of activities that will be performed?
- What are the geographical and physical extents of the system?
- Why are the improvements needed?
- How will this be designed, built, or retrofitted to the system?

The ConOps will include the following elements as noted in the *Planning for TSM&O Guidebook*. The guidebook was prepared by FDOT District Five (with two KAI co-authors) as part of the Strategic Highway Research Program 2 (SHRP 2).

1. Introduction

Should include the document outline, the purpose & need of the project, goals & objectives, and boundaries of the system.

2. Reference Documentation

Any supporting documentation such as: business planning documents, related system ConOps & requirements, studies identifying operational needs, meeting minutes.

3. Operational Description

An overview of how the improvements will be implemented; user activities, operational process, and organizational/personnel structures required.

4. Operational Needs

An outline of what is necessary for the agency/region to implement the system and/or complement/improve the existing system.

5. System Overview

High-level description of the key system components and the interrelationships among the elements (e.g. system capabilities, goals and objectives of the system).

6. Operational Support

Description of the overall system needs; this does not include the design details such as vendor hardware.

7. Operational Scenarios

The system's impact under general conditions such as, normal, peak hour or stress, maintenance mode, failure events, and how it handles anomalies.

8. Identification of Key Stakeholders and Project Vision/Goals Development.

KAI will work directly with CFX to determine a list of key stakeholders in the development of the SR 417 and SR 429 ConOps. The following stakeholders could be considered, and it is anticipated that additional stakeholders will be engaged:

- a. Central Florida Expressway Authority
- b. Florida Department of Transportation District Five
- c. Florida's Turnpike Enterprise
- d. City of Orlando
- e. MetroPlan Orlando

- f. Disney
- g. Orange County
- h. Lynx
- i. Local Law Enforcement and County Sheriff
- j. Fire and Rescue Departments
- k. Emergency Medical Services
- l. Florida Highway Patrol
- m. Media/Information Service Providers
- n. Design Teams

KAI will work directly with CFX and the identified key stakeholders to develop a project visions, mission, and set of goals for the PTSU ConOps documents along both study facilities.

9. References.

KAI will identify a list of supporting references and resources in developing the ConOps. Some resources that will be considered are:

- a. Developing and Using a Concept of Operations in Transportation Management Systems (FHWA 2005)
- b. Use of Freeway Shoulders for Travel – Guide for Planning, Evaluating, and Designing Part-Time Shoulder Use as a Traffic Management Strategy (FHWA 2016)
- c. Planning for TSM&O Guidebook (FHWA 2017)
- d. Active Traffic Management (ATM) Implementation and Operations Guide (FHWA 2017)
- e. Implementing Bus on Shoulder in Florida – Statewide Guidance (FDOT 2017)

10. Description of Existing System.

This task will focus on the collection and analysis of existing conditions information. This will include the following:

- a. Interchange/Toll Plaza Inventory
  - i. SR 417 (12 Interchanges and 2 Toll Plazas)
    - 1) Osceola Parkway
    - 2) SR 536
    - 3) Toll Plaza west of Hunter’s Vista Boulevard
    - 4) John Young Parkway
    - 5) Orange Blossom Trail
    - 6) Florida Turnpike (SR 91)
    - 7) Landstar Boulevard

- 8) Toll Plaza west of Wyndham Lake Boulevard
- 9) Boggy Creek Road/Jeff Fuqua Boulevard
- 10) Lake Nona Boulevard
- 11) Narcoossee Road
- 12) Moss Park Road
- 13) Dowden Road
- 14) SR 528
- ii. SR 429 (7 Interchanges and 1 Toll Plaza)
  - 1) Winter Garden Vineland Road (CR 535)
  - 2) Florida's Turnpike (SR 91)
  - 3) SR 50
  - 4) SR 438
  - 5) West Road/Clarcona-Ocoee Road
  - 6) Toll Plaza south of McCormick Road
  - 7) CR 437A (Ocoee-Apopka Road)
  - 8) SR 414

- b. Existing Traffic Operations
  - i. Existing traffic patterns (peak hours, directional factors, truck factors, etc.)
  - ii. Locations of existing bottlenecks
- c. Existing TSM&O and ITS Technologies
  - i. Traffic detectors
  - ii. Traveler information
  - iii. Incident management
  - iv. Support environment
- d. User Profiles
- e. Traffic Management Center (TMC) Integration
- f. ATMS Software
- g. Transit Modes
  - i. Lynx
  - ii. Disney's Magical Express

11. Justification and Nature of Changes.

KAI will coordinate with CFX and CFX's consultants to identify the reasons for developing the proposed system including:

- a. New or modified user needs, missions, or objectives
- b. Dependencies or limitations of the current system

The desired changes of the system will be described and will include:

- a. Capability changes
- b. System processing changes
- c. Interface changes
- d. Personnel changes
- e. Environmental changes
- f. Support changes
- g. Other changes

In addition, the changes considered but not included in the proposed system will be included so that it clear what other options were considered and why they will not be included.

12. Concepts for the Proposed PTSU System.

KAI will coordinate with CFX and CFX's consultants to provide a high-level description of the PTSU system that indicates the operational features to be provided in the proposed system including:

- a. Proposed PTSU system's background, objectives, and scope
- b. Operational polices or constraints imposed on the proposed PTSU system
  - i. Hours of operations
  - ii. Staffing, space, or hardware constraints
- c. Description of the proposed PTSU system
  - i. Operational environments and its characteristics
  - ii. Major system components and the interconnections among these components
  - iii. Interfaces to external systems or procedures
  - iv. Capabilities or functions of the proposed system
  - v. Relationship to other systems
  - vi. Conformity and compatibility to the statewide ITS architecture and regional ITS architectures
  - vii. Deployment and operational risk factors
  - viii. Performance characteristics
  - ix. Quality attributes, such as reliability, accuracy, availability, expandability, flexibility, interoperability, maintainability, portability, reusability, supportability, survivability, and usability



- x. Provisions for safety, security, privacy, integrity, and continuity of operations in emergencies
- d. Modes of operation
- e. User involvement and interaction
  - i. Advanced warning signs types
  - ii. Advanced warning sign placement spacing
- f. Support environment

13. Operational Scenarios.

The operational scenarios will describe how the PTSU strategy will operate under different scenarios. The scenarios presented will not represent every possible condition of the roadway but will reflect typical events the PTSU system will encounter. The following are six possible scenarios that PTSU system may encounter:

- a. Free Flow
- b. Recurrent Congestion
- c. Lane Restriction
- d. Weather Conditions
- e. Complete Closure
- f. Non-recurrent Congestion

KAI will prepare ConOps diagrams for each of the operational scenarios. These will include the messages that will be displayed on the dynamic message signs (DMS).

14. ConOps Documentation.

KAI will lead the development of a ConOps report that documents the subtasks included under Task 2 for the SR 417 and SR 429 facilities and will be submitted for review (one ConOps document for each facility. Two rounds of comments will be addressed, and a final report will be submitted for each facility.

C. Meetings.

The following meetings are anticipated for each of the SR 417 and SR 429 projects:

- 1. One (1) in-person project visioning team (PVT) meeting (assumes three KAI staff)
- 2. Two (2) in-person operational results meetings (assumed two KAI staff)

3. Fifteen (15) monthly coordination/progress meetings via phone with CFX to coordinate activities, review progress, and present results (assumed one KAI staff)

Meeting notes will be prepared to summarize the meetings listed above.

D. QA/QC and Project Management

1. QA/QC.

KAI will designate appropriate staff to conduct Quality Assurance/Quality Control (QA/QC) reviews of all work products. Work effort for QA/QC reviews will be limited to five (5) percent of the work effort for each task.

2. Project Administration

- a. Project Management: KAI will keep CFX informed on the status of project-related milestones and schedule. Work effort for Project Management will be limited to ten (10) percent of the work effort for each task.
- b. Project Schedule: KAI will prepare and submit a detailed project schedule identifying major tasks, their durations and tasks relationships. KAI is responsible for keeping the schedule up to date and keeping CFX informed about the current schedule status.

E. Miscellaneous Support.

In addition to the services included in Task A through E, KAI may provide additional professional consulting, technical, and engineering support services to CFX's Project Manager under the current contract including:

1. Coordination and support the development of a Systems Engineering Management Plan (SEMP)
2. PTSU signing diagrams
3. Work zone/MOT plan analysis using FREEVAL
4. Various PTSU needs
5. Miscellaneous coordination
6. Additional meeting attendance as requested
7. Miscellaneous support to CFX project manager as requested

#### 4.13 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 15% 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. 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. Crossroad plans and profiles (1"= 50' scale)
  12. Cross-sections (with pattern plan) (1" = 20' horiz.) (1" = 5' vert.)
    - a. Earthwork quantities
  13. Traffic Control Sheets including Temporary Drainage
  14. Utility Adjustment Sheets - as deemed necessary
  15. Details

16. Special provisions
17. Special specifications

#### **4.14 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 beam type, wall type / configuration, foundation pile type, and preliminary load rating analysis of existing exterior beams at widened sections.
- 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
    - a. Stoneybrook West Parkway (South)
    - b. CR 535
    - c. Stoneybrook West Parkway (North)
  2. Retaining walls
  3. Box Culverts
  4. Slope protection
  5. Approach slabs for bridge widenings
  6. Summary quantity tables
  7. Special provisions and specifications are not anticipated to be required for the structures work, however, if required will be included.
  8. Stage construction-sequencing details will consist of bridge cross sections showing demolition and construction phases with corresponding traffic positions and will be coordinated with the maintenance of traffic plans.
  9. Sign\Signal structures: To replace existing structures impacted by the widening and provide additional anticipated sign structures.
  10. Sound walls. CFX to provide limits and locations

11. 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 for their review and approval.
- C. The Consultant shall perform an evaluation of the existing median bridge foundations, previously constructed for future widening, to determine acceptability for HL93 loading and the potential for additional future transit loading.

#### **4.15 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 3.1D.
  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.
  7. Modification of existing floodplain analysis and compensation ponds is included to obtain required permits.
  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

#### **4.16 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. 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

#### **4.17 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"=50' 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 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.

#### **4.18 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).

#### **4.19 Signalization Plans**

- A. Signal plans are not anticipated for this improvement. If requested, the Consultant shall prepare designs and contract documents for final signalization plans including layouts showing the locations of mast arms and pedestrian features, special signal 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. Plan sheets will be developed at a scale of 1"=50' (11"x17" format).

#### **4.20 Right-of-Way Surveys**

- A. No additional right-of-way is anticipated for this project.

#### **4.21 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.

#### **4.22 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.

#### **4.23 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 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.
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 splice details and tables for new or relocated fiber optic cabling.
- n. Controller cabinet, structure, and foundation details for proposed CFX device 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, or upgrade 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. All existing analog CCTV within the project limits shall be upgraded to HD cameras.
- v. Relocation, replacement, or upgrade 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. Support the FCC application process for any relocated DCS sites.
- w. Relocation, replacement, or upgrade of existing traffic monitoring sites (TMS) 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. All TMS to be re-configured and calibrated during construction to account for any lane shifts and the added lanes.
- x. Relocation of existing one-line and three-line 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. All existing Skyline DMS shall be replaced with new

- generation color DMS. All three-line and two-line DMS shall be centered over the new travel lane configuration.
- y. Conversion of all 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.
  - z. Accommodate conduit and access pull boxes for future Part Time Shoulder Running (PTSR) ITS where reasonable.
  - aa. Replace existing pole mounted 336s and older ground mounted local hub cabinets with new 334 cabinets meeting CFX ITS equipment standards.
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 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.
  - j. Location of proposed sound walls

<b>Summary of Assumed FON Impacts</b>	
<b>FON Drops / Laterals</b>	<b>Notes</b>
One SR 429 crossing N. of Daniels Rd	Due to inside widening and drainage modifications

<b>Summary of Assumed Device Impacts</b>	
<b>3-Line Walk-in DMS</b>	<b>Notes</b>

DMS-429-20.5-SB	Replace panel on existing structure and center over final lane configuration
DMS-429-20.5-NB	Replace panel on existing structure and center over final lane configuration. Includes adjusting DCS attached to DMS panel.
<b>Local Hubs</b>	<b>Notes</b>
LHUB-429-17.7-SB	Replace 336S with 334
LHUB-429-18.4-SB	Replace 336S with 334
LHUB-429-18.8-NB	Replace 336S with 334
LHUB-429-19.2-NB	Replace 336S with 334
LHUB-429-19.9-SB	Replace existing cabinet with 334
LHUB-429-20.3-SB	Replace 336S with 334
LHUB-429-20.3-NB	Replace 336S with 334
LHUB-429-20.5-SB	Replace 336S with 334
<b>CCTV Devices</b>	<b>Notes</b>
CCTV-429-17.7-SB	To remain as-is
CCTV-429-18.4-SB	To remain as-is
CCTV-429-19.2-NB	To remain as-is
CCTV-429-19.9-SB	To remain as-is
CCTV-429-20.3-NB	To remain as-is
<b>TMS Devices</b>	<b>Notes</b>
TMS-429-18.4-SB	To be adjusted/modified due to additional lanes created by widening
TMS-429-18.4-NB	To be adjusted/modified due to additional lanes created by widening
TMS-429-18.8-NB	To be adjusted/modified due to additional lanes created by widening
TMS-429-19.8-SB	To be adjusted/modified due to additional lanes created by widening
TMS-429-19.8-NB	To be adjusted/modified due to additional lanes created by widening
TMS-429-19.9-SB	To be adjusted/modified due to additional lanes created by widening
TMS-429-20.3-SB	To be adjusted/modified due to additional lanes created by widening
TMS-429-20.3-NB	To be adjusted/modified due to additional lanes created by widening
<b>DCS Devices</b>	<b>Notes</b>
DCS-429-18.8-NB	To be adjusted/modified due to additional lanes created by widening

DCS-429-19.8-NB	To be adjusted/modified due to additional lanes created by widening
<b>Load Centers</b>	<b>Notes</b>
ESM-429-17.6-SB	Assess given changes in load from device and local hub modifications
ESM-429-18.3-NB	Assess given changes in load from device and local hub modifications
ELC-429-19.2-NB	Assess given changes in load from device and local hub modifications
ELC-429-19.9-NB	Assess given changes in load from device and local hub modifications
ESM-429-20.4-SB	Assess given changes in load from device and local hub modifications

**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.

#### **4.24 Toll Plazas**

- A. This proposal does not include modifications and/or improvements to any of the existing toll plazas, including any associated equipment and gantry systems.

#### **4.25 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. Addenda will not be issued for Contractor initiated design changes or value engineering proposed work.
- 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 (monthly) 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's key staff shall attend a maximum of three (3) 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 CFX 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**

### **5.1 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.

### **5.2 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

### **5.3 Other**

- A. Utility designates for the FON and roadway lighting within CFX right-of-way.



## **6.0 WORK PERFORMED BY CFX OR ITS DESIGNEE**

### **6.1 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.

### **6.2 Utility Agreements**

- A. CFX will support, as necessary, the Consultant's acquisition of information required for utility agreements.

### **6.3 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.

### **6.4 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.

### **6.5 Post-Design Services**

- A. CFX will be the principal initial contact for post-design questions and answer questions on a limited scope.
- B. CFX's CEI representative will be responsible for collection and documentation of all As-Built information for the constructed improvements.

### **6.6 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.
- C. CFX will be responsible for all permitting application fees.

**6.7 Conceptual Specialty Design**

- A. CFX will provide a conceptual major guide signing plan.
- B. CFX to provide proposed sound wall locations.
- C. CFX will provide conceptual aesthetics design and treatments for structures.

## **7.0 ADMINISTRATION**

### **7.1 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.

### **7.2 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.

### **7.3 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.

#### **7.4 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.

#### **7.5 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.

#### **7.6 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.

#### **7.7 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.

#### **7.8 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.

#### **7.9 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 twenty (20) 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. 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. Drainage calculations
6. Structural design calculations.
7. Geotechnical report.
8. Hydraulics Report for each bridged stream crossing.
9. Earthwork calculations not included in the quantity computation booklet.
10. Calculations showing cost comparisons of various alternatives considered, if applicable
11. Computations of quantities.
12. Documentation of decisions reached resulting from meetings, telephone conversations, or site visits.
13. Lighting and voltage drop calculations.
14. 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. 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 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.

#### **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. Intelligent Transportation System (ITS) Plans
- 12. Highway Lighting Plans
- 13. 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. Signalization Plans
- 12. Intelligent Transportation System (ITS) Plans
- 13. Highway Lighting Plans
- 14. 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  
#6**



# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Laura Newlin Kelly, Associate General Counsel  
*Laura Newlin Kelly*

DATE: January 21, 2021

RE: Amendment and Restatement of Easement and Partial Release of Easement between Duke Energy Florida, LLC (“Duke”) and the Central Florida Expressway Authority (“CFX”) Project: 528-1240; State Road 528 Portions of Parcel 41-804

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## BACKGROUND

On November 3, 1969, CFX’s predecessor in interest, George W. Johnson, Trustee, and Duke’s predecessor in interest, Florida Power Corporation (“FPC”), entered into that certain right-of-way easement recorded on November 21, 1969 in Official Records Book 1893, Pages 946-947, Public Records of Orange County, Florida (“Original Easement”) granting a right-of-way easement to FPC for the construction, operation and maintenance of a single pole line for the transmission and distribution of electricity and other necessary communication facilities and equipment in connection therewith.

As a part of the development of the inter-city commercial passenger rail connection between Miami and Orlando with the Orlando terminus located at the Orlando International Airport by Brightline Trains Florida LLC, the existing location of certain utilities and telecommunications lines, including the Original Easement, will need to be relocated to allow for the construction of the proposed rail. The proposed Amendment and Restatement of Easement will relocate the easement area of the Original Easement to a more suitable area outside of the impacts of the proposed rail line, as more particularly depicted on Exhibit “A” attached to the Amendment and Restatement of Easement. A copy of the proposed Amendment and Restatement of Easement is attached hereto as **Attachment “A”** (“Amended Easement”). Pursuant to the terms of the Amended Easement, Duke and CFX, as the successors in interest to the Original Easement, also agree to amend the access to the easement area to limit the access to two specific locations as identified in Exhibits “B” and “C” to the Amended Easement. A map of the existing and relocated easement area is attached hereto as **Attachment “B”**.

In order to ensure continuity of services for the impacted utility customers, the Original Easement will remain in place until the new utility facilities are completed and the existing utility facilities are removed. Upon the grant of the Amended Easement and the completion of the construction of the new utility facilities, but no later than December 31, 2021, Duke shall be required to execute and record the Partial Release of Easement releasing the location of the existing

facilities and access interests. A copy of the Partial Release of Easement is attached hereto as **Attachment “C”** (“Partial Release”).

Pursuant to CFX’s Property Acquisition, Disposition & Permitting Procedures Manual (“Policy”), CFX staff and CFX’s General Engineering Consultant have examined the Amended Easement and Partial Release and determined that the granting of the Amended Easement will not (1) impede or restrict the operation of the Expressway System; (2) materially affect or interfere with the present or future construction, use, operation, repair or maintenance of any portion of the Expressway System; or (3) otherwise impair traffic operations or public safety. A copy of the certification is attached hereto as **Attachment “D”**.

The Right-of-Way Committee met and reviewed this item on January 20, 2021 and recommended the approval of the (1) Amendment and Restatement of Easement and (2) Partial Release of Easement, both between CFX and Duke in a form substantially similar to the attached Amended Easement and Partial Release, subject to any minor or clerical revisions approved by the General Counsel or designee, or any revisions to the legal descriptions or exhibits as approved by CFX’s General Engineering Consultant.

### **REQUEST**

Board’s approval of the following is requested:

(1) Amendment and Restatement of Easement and (2) Partial Release of Easement, both between CFX and Duke in a form substantially similar to the attached Amended Easement and Partial Release, subject to any minor or clerical revisions approved by the General Counsel or designee, or any revisions to the legal descriptions or exhibits as approved by CFX’s General Engineering Consultant.

### **ATTACHMENTS**

- A. Amendment and Restatement of Easement
- B. Map of the Existing and Relocated Easement Area
- C. Partial Release of Easement
- D. Certificate from CFX’s General Engineering Consultant

Reviewed by: Woody Rodriguez

Central Florida Expressway Authority  
Rio Pinar Pl – Florida Gas Transmission East, RW-89 to RW-91  
Thor#: 331T2 Oracle#: 30000749  
Site #: 108582 Land Unit#: 1217103 Project#: 108582-452392

## ATTACHMENT A



Prepared By:  
Manny R. Vilaret, Esq.  
Vilaret Law, PLLC  
10901 Danka Circle, Suite C  
Saint Petersburg, Florida 33716

### AMENDMENT AND RESTATEMENT OF EASEMENT

WHEREAS, by instrument dated November 3, 1969 did grant and convey unto **Florida Power Corporation**, a Florida corporation, n/k/a Duke Energy Florida, LLC, a Florida limited liability company d/b/a Duke Energy (“Duke Energy”), that certain right-of-way easement (the “Original Easement”) subsequently recorded on November 21, 1969 in **Official Record Book 1893 at Pages 946-947**, as Clerk's Instrument Number 302725, of the **Public Records of Orange County, Florida**, covering the lands in **Orange County, Florida**, specifically described within the Original Easement; and

WHEREAS, **Central Florida Expressway Authority** is the current fee simple owner of a portion of the lands described under the **Original Easement in Orange County, Florida**, which property is hereinafter called the “Encumbered Property;” is willing to amend and restate the Original Easement solely as it relates to amending the Original Easement Area to provide an additional easement area to allow for Duke Energy’s relocation of the existing electric transmission facilities outside of the Original Easement Area, which shall be subject to the same rights, restrictions and conditions under the Original Easement (the “Relocation Easement Area”).

NOW, THEREFORE, for and in consideration of the mutual covenants and benefits herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein and by reference.
2. This additional Relocation Easement Area is more specifically identified in the **attached Exhibit “A”** as Parcel 41-804, as the approximately 0.73 acres portion of **Tax Parcel ID: 32-23-31-0000-00-003**. Provided, **always, nevertheless**, that nothing herein contained shall in anyway or manner impair, alter or diminish the rights, purpose, effect, encumbrance or provisions of the aforesaid Original Easement beyond amending the Original Easement Area to also include the Relocation Easement Area.
3. **Duke Energy and Central Florida Expressway Authority** hereby amend and restate the Original Easement, but only as it relates to amending the Original Easement Area to also include the Relocation Easement Area, it being understood and agreed that the parties’ rights with respect to the Encumbered Property shall be governed by the terms of the Original Easement, including the Relocated Easement Area under this Amended and Restated Easement. Additionally the Original Easement shall be amended to convey additional rights for Duke Energy to access the Original Easement Area from the East Access Road directly from State Road 417 (SR-417), as depicted in the attached **Exhibit “B”**, incorporated herein by reference. The Original Easement shall also be amended to convey additional access rights for Duke Energy to access the Relocation Easement Area from the Virgin Train/Duke Energy Joint Access Road directly from State Road 528 (SR-528), as depicted in the attached **Exhibit “C”**, incorporated herein by reference. These two (2) approved access locations contained in **Exhibits “B” and “C”** shall be the only approved access locations for Duke Energy. All other access rights across adjoining lands under the Original Easement shall hereby released and terminated, except as necessary to access, trim or clear danger trees which are located outside of and adjacent to either the Original Easement Area or Relocation Easement Area.
4. Upon completion of all of its relocation and removal work, and by no later than December 31, 2021, Duke Energy shall be obligated and hereby covenants to execute and record in the public records of Orange County, Florida, a Partial Release of Easement, in the form of the attached **Exhibit “D”**, formally releasing the approximately 0.70 acres portion of the Original Easement Area from which its existing facilities shall be removed.

[Signatures on Following Pages]

Return to: Duke Energy Florida, LLC  
Attn: Land & Facilities Support Services  
3300 Exchange Place, NP4A  
Lake Mary, FL 32746

IN WITNESS WHEREOF, the parties have executed this Amendment and Restatement of Easement this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**DUKE ENERGY FLORIDA, LLC, a Florida limited liability company d/b/a DUKE ENERGY**

**SIGNED AND DELIVERED IN THE PRESENCE OF:**

\_\_\_\_\_  
Signature of First Witness

\_\_\_\_\_  
Print Name of First Witness

\_\_\_\_\_  
Signature of Second Witness

\_\_\_\_\_  
Print Name of Second Witness

\_\_\_\_\_  
Karen Adams  
Manager, Land Services II

**Duke Energy's mailing address:**

\_\_\_\_\_  
Attn: Land and Facilities Support Services  
\_\_\_\_\_  
3300 Exchange Place, NP4A  
\_\_\_\_\_  
Lake Mary, FL 32746

State of Florida )  
County of Seminole ) ss

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this day of \_\_\_\_\_, 2021, by **Karen Adams as Manager, Land Services II of DUKE ENERGY FLORIDA, LLC, a Florida limited liability company d/b/a Duke Energy**, on behalf of the company. She personally appeared before me at the time of notarization, and is personally known to me.

NOTARY SEAL

\_\_\_\_\_  
Print Name:  
Notary Public

**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

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

**SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:**

\_\_\_\_\_  
Signature of First Witness

\_\_\_\_\_  
Print or Type Name of First Witness

\_\_\_\_\_  
Signature of Second Witness

\_\_\_\_\_  
Print or Type Name of Second Witness

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss

**CFX's mailing address:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

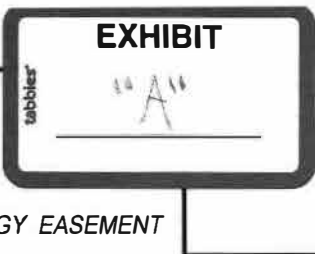
(SEAL)

The foregoing Easement was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_ of the **Central Florida Expressway Authority, a body politic and corporate, and an agency of the State of Florida**, who is personally known to me or who has produced \_\_\_\_\_ as identification.

NOTARY SEAL

\_\_\_\_\_  
Print Name:  
Notary Public

**EXHIBIT**



**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**STATE ROAD 528**  
**PROJECT No. 528-1240**  
**PARCEL No. 41-804**  
**PURPOSE: FLORIDA POWER CORPORATION / DUKE ENERGY EASEMENT**  
**ESTATE: PERMANENT EASEMENT**

A parcel of land lying in Section 32 Township 23 South, Range 31 East, Orange County, Florida, being more particularly described as follows:

Commence at a 4"x4" concrete monument (no identification) marking the Northwest Corner of Section 32, Township 23 South, Range 31 East, Orange County, Florida; thence run South 00°13'49" West, along the west line of the Northwest 1/4 of said Section 32, a distance of 312.61 feet to the south Right of Way line of State Road 528 as described in Official Records Book 1516 at Page 915 of the Public Records of Orange County, Florida; thence run North 89°45'06" East, along said south Right of Way line, a distance of 629.95 feet to a point on the southerly line of Parcel #41-104 Mitigation Area Taking, as recorded in Official Records Book 4068 at Page 3668 of said Public Records, also being a point on the northerly line of a 60.00 foot wide Florida Power Corporation Right-of-Way recorded in Official Records Book 1893 at Page 946 of said Public Records for the POINT OF BEGINNING; thence run North 63°45'43" West, along said southerly line and northerly Right-of-Way line, a distance of 108.30 feet; thence run South 78°23'32" East, a distance of 41.22 feet; thence South 64°45'46" East, a distance of 108.83 feet; thence run South 75°46'07" East, a distance of 449.00 feet; thence run South 34°24'44" East, a distance of 215.69 feet to said southerly line and northerly Right of Way line; thence run North 63°45'43" West, along said southerly line and northerly Right of Way line, a distance of 122.41 feet; thence departing said southerly line and northerly Right of Way line, run North 34°24'44" West, a distance of 86.34 feet; thence run North 75°46'07" West, a distance of 203.43 feet to said southerly line and northerly Right of Way line; thence run North 63°45'43" West along said southerly line and northerly Right of Way line, a distance of 270.93 feet to the POINT OF BEGINNING.

Containing 0.72 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 west line of the northwest 1/4 of Section 32, 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. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539-7-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 = Identification
- ↖ = Line Not To Scale
- PID = Parcel Identification Number
- S.R. = State Road
- CFX = Central Florida Expressway Authority
- R/W = Right-of-Way
- ⊖ = 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
- AAF = All Aboard Florida
- OCEA = Orlando Orange County Express Way Authority
- No. = Number

I hereby certify that the 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. Jodles  
 Florida Surveyor and Mapper  
 License No. LS-0004201

- 01/06/2021 - Revised parcel number
- 12/21/2020 - Revised parcel number
- 10/30/2020 - Revised to align with conservation easement release parcel

<b>DUKE ENERGY</b>	
SITE NO. 108582	LAND UNIT: 1681714
MAP NO.: 108582-452129	
PARCEL 1	

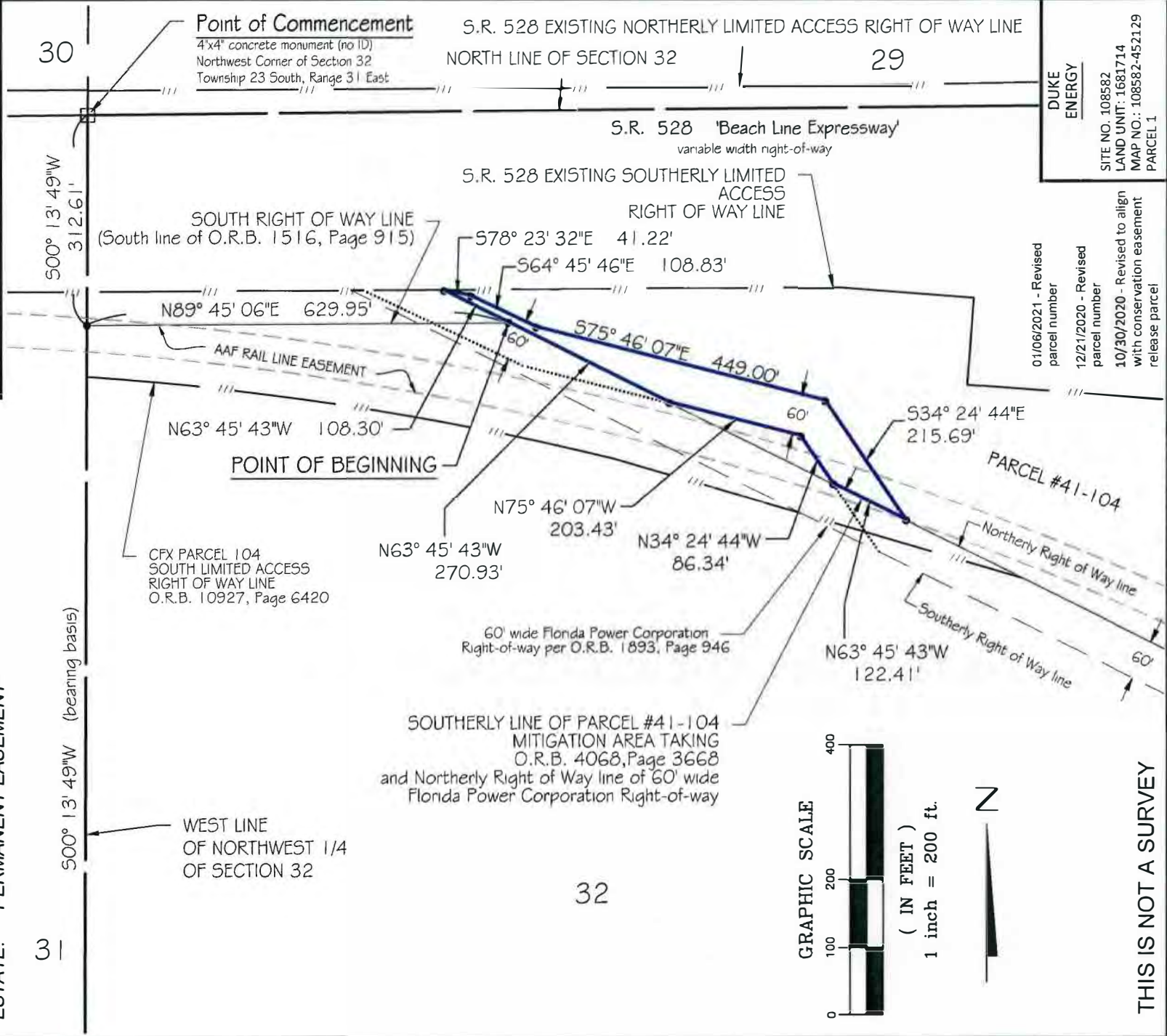
**THIS IS NOT A SURVEY**

<b>FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY</b>		<b>LEGAL DESCRIPTION and SKETCH</b>		SHEET 1 OF 2	
DESIGNED BY: HNTB	DATE: 02/11/2016	<p>550 Northlake Blvd., Suite 1000                  Altamonte Springs, FL 32701 USA                  Phone: (407) 522-7570                  Certificate of Authorization Number LP-0007932</p>		<b>REVISIONS</b>	
DRAWN BY: PEW	AMEC JOB No.: 6374150865			DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240			08/28/2020	TW

P:\EST\2019\081714191\003-AAF-Ar-needed-Zone-1-3-survey\Task-48-Revision-addition-to-Duke-Energy-Easement-at-SP-417-1R-528-Mitig-Civil-30-2016\1\003-Duke-Easement-Parcel-5872-Revision.dwg



CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
 STATE ROAD 528  
 PROJECT No. 528-1240  
 PARCEL No. 41-804  
 PURPOSE: FLORIDA POWER CORPORATION / DUKE ENERGY EASEMENT PERMANENT EASEMENT



**DUKE ENERGY**

SITE NO. 108582  
 LAND UNIT: 1681714  
 MAP NO.: 108582-452129  
 PARCEL 1

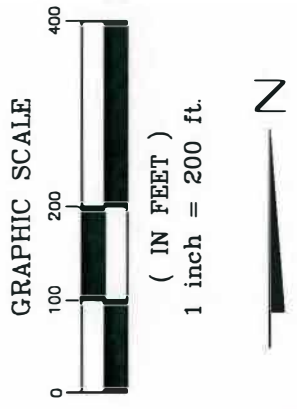
01/06/2021 - Revised parcel number  
 12/21/2020 - Revised parcel number  
 10/30/2020 - Revised to align with conservation easement release parcel

SHEET 2 OF 2

REVISONS	
DATE	BY
08/28/2020	TW

PROJECT: 528-1240  
 DRAWING: 101 - Duke Energy Parcel 804 - Parcel 1

**Wood Environment & Infrastructure Solutions, Inc.**  
 550 Northlake Blvd., Suite 1000  
 Altamonte Springs, FL 32701 USA  
 Phone: (407) 522-2670  
 Certificate of Authorization Number LB-0007832



**THIS IS NOT A SURVEY**

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY LEGAL DESCRIPTION AND SKETCH

DESIGNED BY: HNTB DATE: 02/11/2016  
 DRAWN BY: PEW AMEC JOB No.: 6374150865  
 APPROVED BY: RMJ CFX PROJECT No.: 528-1240

**EXHIBIT**

tabbles

"B"

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**STATE ROAD 528**  
**PROJECT No. 528-1240**  
**PARCEL No. 41-804**  
**PURPOSE: ACCESS TO DUKE ENERGY EASEMENT AREA**

An access strip of land lying in Section 32 Township 23 South, Range 31 East, Orange County, Florida, bordering those lands described in Official Records Book 1893 at Page 946 of the Public Records of Orange County, Florida and being more particularly described as follows:

Commence at a 4"x4" concrete monument (no identification) marking the Northwest Corner of Section 32, Township 23 South, Range 31 East, Orange County, Florida; thence run South 00°13'49" West, along the west line of the Northwest 1/4 of said Section 32, a distance of 262.60 feet to the Existing Southerly Limited Access Right of Way Line of State Road 528; thence run North 89°45'06" East, along said Southerly Limited Access Right of Way line, a distance of 404.17 feet to the POINT OF BEGINNING of said access strip; thence run North 89°45'06" East, along said Southerly Limited Access Right of Way line, a distance of 16.00 feet to the POINT OF TERMINUS.

Containing 0.00 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 west line of the northwest 1/4 of Section 32, 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.

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- 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
- ⊖ = 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
- AAF = All Aboard Florida
- OOCEA = Orlando Orange County Express Way Authority
- No. = Number
- P.O.B. = Point of Beginning
- P.O.T. = Point of Terminus

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.



**DUKE ENERGY**  
 SITE NO. 108582  
 LAND UNIT: 1681714  
 MAP NO.: 108582-452129  
 PARCEL 2

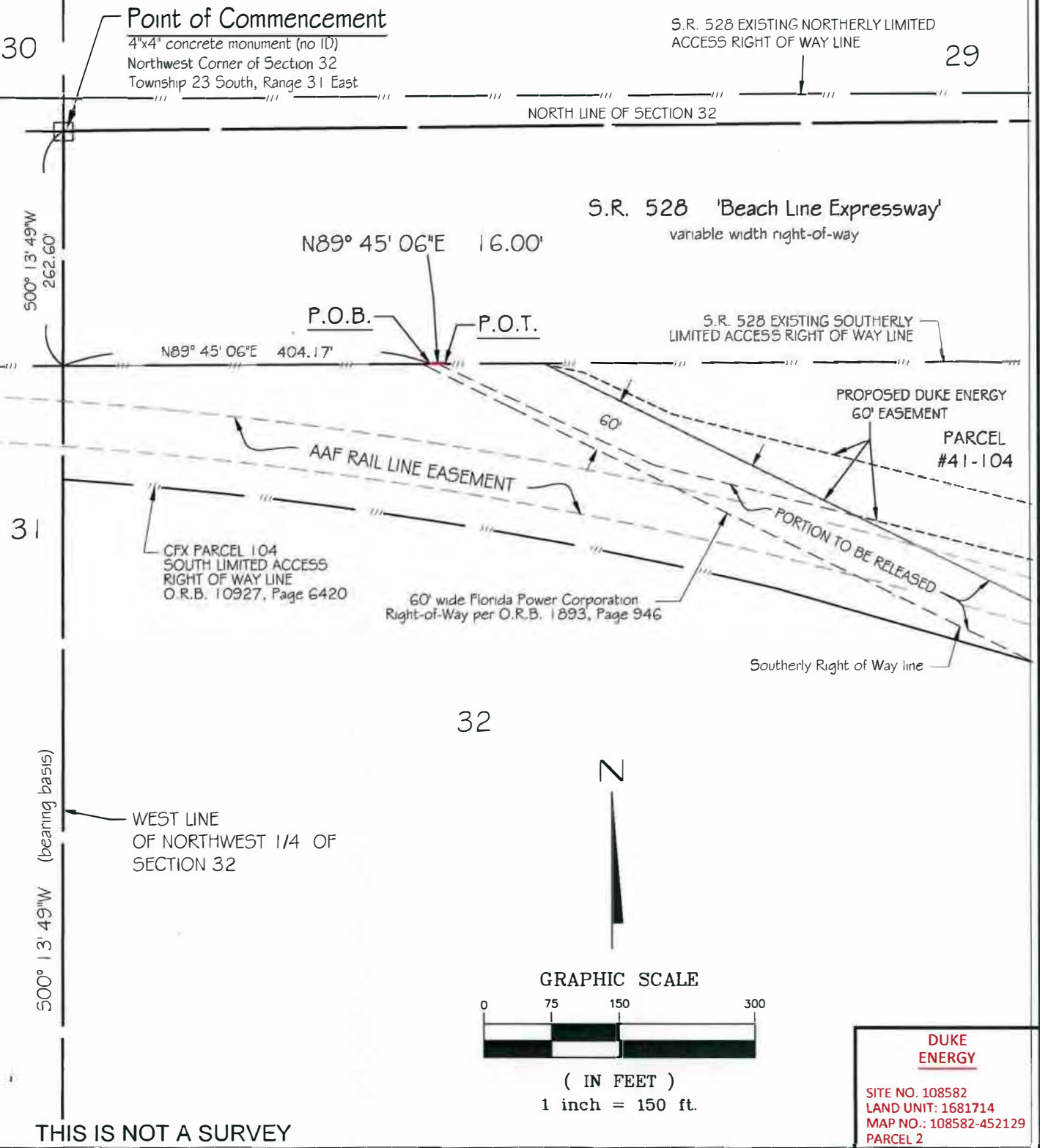
**THIS IS NOT A SURVEY**

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 1 OF 2		
DESIGNED BY: HNTB	DATE: 10/30/2020	<p>550 Northlake Blvd., Suite 1000                  Altamonte Springs, FL 32701 USA                  Phone: (407) 522-7570                  Certificate of Authorization Number LB0007932</p>		REVISIONS		
DRAWN BY: TW	AMEC JOB No.: 6374191203			DATE	BY	
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240					

P:\82794\01\2020\1030 - AAF - In remitted Zone - 1:3 Survey\Task 53 - Duke Energy Access Easements at SR 528 and SR 417 (pin task 48)\AutoCAD\_Civil 3D\2018\1030 - Task 53 Duke Government Access Gate.dwg



CENTRAL FLORIDA  
 EXPRESSWAY AUTHORITY  
 STATE ROAD 528  
 PROJECT No. 528-1240  
 PARCEL No. 41-804  
 PURPOSE: ACCESS TO DUKE ENERGY EASEMENT AREA



P:\03\1001\03\1001\03\1001.dwg AAF Du-needles Zone 1 - 3 surveys\Task 53: Duke Energy Access Easements at SR 528 and SR 417 (see task 48)\AutoCAD Civil 3D 2019\2019 - Task 53 Duke Easement Access (see task)

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY	
DESIGNED BY: HN TB	DATE: 10/30/2020
DRAWN BY: TW	AMEC JOB No.: 6374191203
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240

LEGAL DESCRIPTION and SKETCH

**Wood Environment & Infrastructure Solutions, Inc.**

**wood.**

550 Northlake Blvd., Suite 1000  
 Altamonte Springs, FL 32701 USA  
 Phone: (407) 522-7570  
 Certificate of Authorization Number LB-0007932

**DUKE ENERGY**

SITE NO. 108582  
 LAND UNIT: 1681714  
 MAP NO.: 108582-452129  
 PARCEL 2

SHEET 2 OF 2	
REVISIONS	
DATE	BY

DRAWING NAME: 1201 - Task 53 Duke Easement Access (see task)

**EXHIBIT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**STATE ROAD 528**  
**PROJECT No. 528-1240**  
**PARCEL No. 41-804**  
**PURPOSE: ACCESS TO DUKE ENERGY EASEMENT AREA**

A parcel of land lying within the Limited Access Right of Way of State Road 417 in Section 32 Township 23 South, Range 31 East, Orange County, Florida, being more particularly described as follows:

Commencing at a 4"x4" concrete monument (no identification) marking the Southeast Corner of the Northeast 1/4 of Section 32, Township 23 South, Range 31 East, Orange County, Florida; thence N63°45'43"W along the Northerly Line of a 60' wide Florida Power Corporation Right-of-way Easement per Official Records Book 1893, Pages 946 - 947 of the Public Records of Orange County, Florida, a distance of 1301.46 feet to the POINT OF BEGINNING of the herein described parcel; thence departing said Northerly Line run S08°38'20"E, a distance of 35.98 feet to the point of curvature of a curve with a radius of 116.07 feet, concave to the east; thence southerly along said curve to the left through a central angle of 17°32'11", a distance of 35.53 feet to the point of curvature of a compound curve with a radius of 30.00 feet, concave to the north; thence southeasterly along said curve to the left through a central angle of 140°12'32", a distance of 73.41 feet to the point of intersection with a non-tangent line; thence S09°25'47"E, a distance of 27.17 feet; thence S08°32'43"E, a distance of 31.29 feet to a point on a non-tangent curve with a radius of 30.00 feet, concave to the southwest; thence northwesterly along said curve to the left through a central angle of 51°52'28", a distance of 27.16 feet where the chord bears N54°24'48"W a distance of 26.24 feet to a point of tangency; thence N80°21'02"W, a distance of 24.98 feet to the point of curvature of a curve with a radius of 46.00 feet, concave to the northeast; thence westerly along said curve to the right through a central angle of 71°42'42", a distance of 57.57 feet to a point of tangency; thence N08°38'20"W, a distance of 69.40 feet to the point of curvature of a curve with a radius of 30.00 feet, concave to the southwest; thence northerly along said curve to the left through a central angle of 55°07'23", a distance of 28.86 feet to a point of tangency; thence N63°45'43"W, a distance of 29.48 feet to the point of curvature of a curve with a radius of 22.00 feet, concave to the south; thence westerly along said curve to the left through a central angle of 54°05'11", a distance of 20.77 feet to a point of tangency; thence S62°09'06"W, a distance of 3.59 feet to aforementioned Northerly Line and the westerly Limited Access Right of Way Line of said State Road 417; thence N63°45'43"W along said Northerly Line and westerly Limited Access Right of Way Line, a distance of 18.52 feet; thence departing said Northerly Line and the westerly Limited Access Right of Way Line, run N62°09'06"E, a distance of 14.45 feet to the point of curvature of a curve with a radius of 37.00 feet, concave to the south; thence northeasterly along said curve to the right through a central angle of 54°05'11", a distance of 34.93 feet to a point of tangency; thence S63°45'43"E, a distance of 30.00 feet to the point of curvature of a curve with a radius of 37.00 feet, concave to the southwest; thence southeasterly along said curve to the right through a central angle of 55°07'23", a distance of 35.60 feet to a point of tangency; thence S08°38'20"E, a distance of 13.76 feet to the aforementioned Northerly Line and the POINT OF BEGINNING.

Containing 4166 square feet or 0.10 acres, more or less.

**Surveyors Notes**

**LEGEND:**

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- (M) = Measured
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- Pg. = Page
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- ID = Identification
- ∩ = Line Not To Scale
- PID = Parcel Identification Number
- S.R. = State Road
- CFX = Central Florida Expressway Authority
- R/W = Right-of-Way
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- ||— = Limited Access Right-of-way line
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- PT = Point of Tangency
- PCC = Point of Compound Curvature
- PRC = Point of Reverse Curvature
- NT = Non Tangent
- AAF = All Aboard Florida
- OOCEA = Orlando Orange County Express Way Authority
- No. = Number
- P.O.B = Point of Beginning
- L/A = Limited Access

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 32, Township 23 South, Range 31 East as being South 00° 16' 08" West.
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.

**ROBERT MICHAEL JOHNSON**  
 STATE OF FLORIDA  
 REGISTERED LAND SURVEYOR  
 License No. LS-0004201

**DUKE ENERGY**

SITE NO. 108582  
 LAND UNIT: 1681714  
 MAP NO.: 108582-452129  
 PARCEL 3

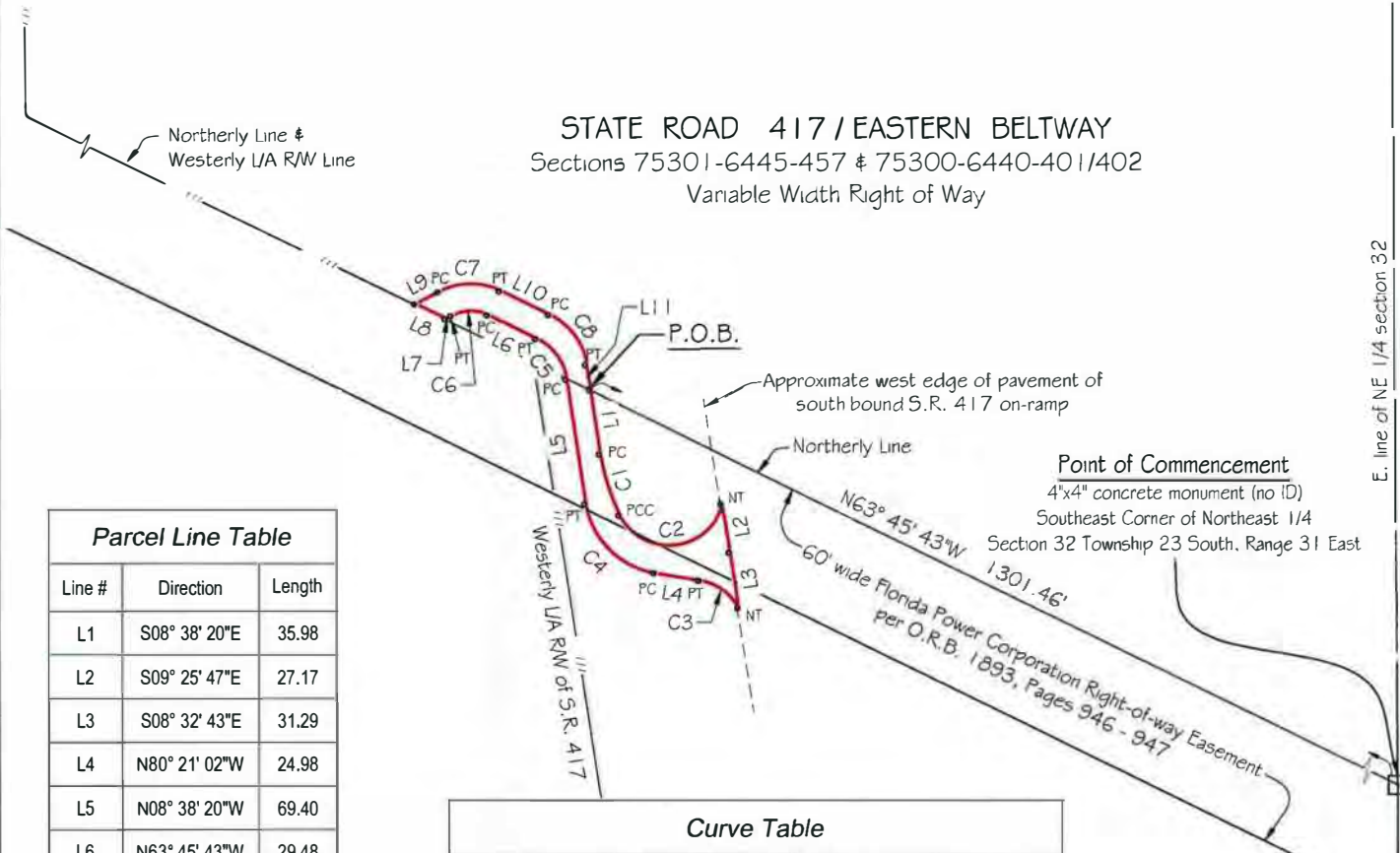
**THIS IS NOT A SURVEY**

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 1 OF 2	
DESIGNED BY: HNTB	DATE: 10/30/2020	Wood Environment & Infrastructure Solutions, Inc. 550 Northlake Blvd., Suite 1000 Altamonte Springs, FL 32701 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932		REVISIONS	
DRAWN BY: TW	AMEC JOB No.: 6374191203			DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240			DRAWING NAME: (203) - Task 53 East Access Road.dwg	

P:\0374\0191203-AMF as-needed\Zone 1-3\surveys\Task 53 - Duke Energy Access Easements at SR 528 and SR 417 (use task 48)\amec\JOB No. 6374191203 - Task 53 East Access Road.dwg

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**STATE ROAD 528**  
**PROJECT No. 528-1240**  
**PARCEL No. 41-804**  
**PURPOSE: ACCESS TO DUKE ENERGY EASEMENT AREA**

**STATE ROAD 417 / EASTERN BELTWAY**  
 Sections 75301-6445-457 & 75300-6440-401/402  
 Variable Width Right of Way



E. line of NE 1/4 section 32

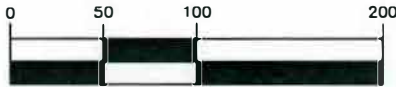
**Parcel Line Table**

Line #	Direction	Length
L1	S08° 38' 20"E	35.98
L2	S09° 25' 47"E	27.17
L3	S08° 32' 43"E	31.29
L4	N80° 21' 02"W	24.98
L5	N08° 38' 20"W	69.40
L6	N63° 45' 43"W	29.48
L7	S62° 09' 06"W	3.59
L8	N63° 45' 43"W	18.52
L9	N62° 09' 06"E	14.45
L10	S63° 45' 43"E	30.00
L11	S08° 38' 20"E	13.76

**Curve Table**

Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	35.53	116.07	017°32'11"	S17° 24' 26"E	35.39
C2	73.41	30.00	140°12'32"	N83° 43' 13"E	56.42
C3	27.16	30.00	051°52'28"	N54° 24' 48"W	26.24
C4	57.57	46.00	071°42'42"	N44° 29' 41"W	53.89
C5	28.86	30.00	055°07'23"	N36° 12' 02"W	27.76
C6	20.77	22.00	054°05'11"	S89° 11' 41"W	20.01
C7	34.93	37.00	054°05'11"	N89° 11' 41"E	33.65
C8	35.60	37.00	055°07'23"	S36° 12' 02"E	34.24

**GRAPHIC SCALE**



( IN FEET )  
 1 inch = 100 ft.

**THIS IS NOT A SURVEY**



**DUKE ENERGY**

SITE NO. 108582  
 LAND UNIT: 1681714  
 MAP NO.: 108582-452129  
 PARCEL 3

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY	
DESIGNED BY: HNTB	DATE: 10/30/2020
DRAWN BY: TW	AMEC JOB No.: 6374191203
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240

**LEGAL DESCRIPTION and SKETCH**

**Wood Environment & Infrastructure Solutions, Inc.**



550 Northlake Blvd., Suite 1000  
 Altamonte Springs, FL 32701 USA  
 Phone: (407) 522-7570  
 Certificate of Authorization Number LB-0007832

SHEET 2 OF 2

REVISIONS

DATE	BY
------	----

DRAWING NAME: L2015 - Task S3 East Access Road.dwg

P:\314019\6374191203-AAF - noded\Zone 1 - 3 surveys\Task S3 - Duke Energy Access Easements at SR 528 and SR 417 (per task 48)\AutoCAD Civil 3D (2018)\001 - Task S3 East Access Road.dwg





Central Florida Expressway Authority  
Rio Pinar Pl – Florida Gas Transmission East, RW-89 to RW-91  
Thor#: 331T2 Oracle#: 30000749  
Site #: 108582 Land Unit#: 1217103 Project#: 108582-452392



Prepared By:  
Manny R. Vilaret, Esq.  
Vilaret Law, PLLC  
10901 Danka Circle, Suite C  
Saint Petersburg, Florida 33716

### PARTIAL RELEASE OF EASEMENT

WHEREAS, by instrument dated November 3, 1969, George W. Johnson, Trustee, as grantor, and the predecessor in interest to Central Florida Expressway Authority, a body corporate and politic existing pursuant to Chapter 348, Florida Statutes (“CFX”), did grant and convey unto **FLORIDA POWER CORPORATION**, a Florida corporation, n/k/a Duke Energy Florida, LLC d/b/a Duke Energy, a Florida limited liability company hereinafter known as “Duke Energy”, an easement for the transmission and distribution of electricity which expressly authorized the construction, reconstruction, maintenance and operation one or more transmission lines, subsequently recorded on November 21, 1969 in Official Records Book 1893 at Pages 946-947, of the Public Records of Orange County, Florida, (the “Original Easement”), covering certain lands in Orange County, Florida as more particularly described in the Original Easement;

WHEREAS, CFX, as grantor, and Duke Energy, as Grantee, amended and restated the Original Easement by that certain Amendment and Restatement of Easement dated \_\_\_\_\_ and recorded on \_\_\_\_\_ in Official Records Book \_\_\_\_\_ at Pages \_\_\_\_\_ of the Public Records of Orange County, Florida, (the “Amended Easement”), which together with the Original Easement, is collectively referred to herein as the “Easement”.

WHEREAS, Duke Energy has been requested to release a certain portion of the lands encumbered by the Easement from the above described Easement, and Duke Energy is willing to release said portion;

NOW, THEREFORE, WITNESSETH, that Duke Energy, for and in consideration of One Dollar and of other good and valuable considerations, receipt of which is hereby acknowledged, has released and discharged and by these presents does release and discharge all of the right, title, interest, claim and demand which said Duke Energy has under and by virtue of the above-described Easement in and to, but only in and to, the following-described land in Orange County, Florida, to wit:

The portion of the Easement located within Tax Parcel ID: 32-23-31-0000-00-003 in Orange County, Florida, as depicted and described within the attached Exhibit "A," incorporated herein by reference.

Provided, always, nevertheless, that nothing herein contained shall in anyway or manner impair, alter or diminish the rights, purpose, effect, encumbrance or provisions of the aforesaid Easement on that portion of the remaining lands described in the Easement and not hereby being released therefrom.

Return to: Duke Energy Florida, LLC,  
Attn: Real Estate Document Center  
3300 Exchange Place, NP3A  
Lake Mary, FL 32746

IN WITNESS WHEREOF, said Duke Energy has caused this Partial Release of Easement to be signed in its name by its proper representative thereunto duly authorized this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**DUKE ENERGY FLORIDA, LLC, a Florida limited liability company d/b/a DUKE ENERGY,**

**SIGNED AND DELIVERED IN THE PRESENCE OF:**

\_\_\_\_\_  
Karen Adams  
Manager, Land Services II

\_\_\_\_\_  
Signature of First Witness

\_\_\_\_\_  
Print Name of First Witness

**Duke Energy's mailing address:**

\_\_\_\_\_  
Attn: Land and Facilities Support Services  
\_\_\_\_\_  
3300 Exchange Place, NP4A  
\_\_\_\_\_  
Lake Mary, FL 32746  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Second Witness

\_\_\_\_\_  
Print Name of Second Witness

State of Florida )  
                                  ) ss  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by **Karen Adams as Manager, Land Services II, of DUKE ENERGY FLORIDA, LLC, a Florida limited liability company d/b/a Duke Energy**, on behalf of the company. She personally appeared before me at the time of notarization, and is personally known to me.

NOTARY SEAL

\_\_\_\_\_  
Print Name:  
Notary Public

tabbies

"A"

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
STATE ROAD 528

PROJECT No. 528-1240

PARCEL No. 41-804

PURPOSE: RELEASE OF A PORTION OF FLORIDA POWER CORPORATION / DUKE ENERGY EASEMENT

A parcel of land lying in Section 32 Township 23 South, Range 31 East, Orange County, Florida, being a portion of those lands described in Official Records Book 1893 at Page 946 of the Public Records of Orange County, Florida and being more particularly described as follows:

Commence at a 4"x4" concrete monument (no identification) marking the Northwest Corner of Section 32, Township 23 South, Range 31 East, Orange County, Florida; thence run South 00°13'49" West, along the west line of the Northwest 1/4 of said Section 32, a distance of 312.61 feet to the south Right of Way line of State Road 528 as described in Official Records Book 1516 at Page 915 of said Public Records; thence run North 89°45'06" East, along said south Right of Way line, a distance of 495.42 feet to a point on the southerly line of a 60.00 foot wide Florida Power Corporation Right-of-Way recorded in said Official Records Book 1893 at Page 946 of said Public Records and the POINT OF BEGINNING; thence run North 63°45'43" West, along said southerly Right of Way line, a distance of 112.11 feet to the existing southerly limited access Right of Way line of State Road 528; thence North 89°45'06" East, along said southerly limited access Right of Way line, a distance of 17.51 feet; thence departing said southerly limited access Right of Way line run South 64°45'46" East, a distance of 264.12; thence run South 75°46'07" East, a distance of 228.71 feet to the southerly line of Parcel #41-104 Mitigation Area Taking as recorded in Official Records Book 4068, Page 3668 of said Public Records, also being the northerly Right of Way line of said 60.00 foot wide Florida Power Corporation Right of Way; thence along said southerly line and northerly Right of Way line, run South 63°45'43" East, a distance of 274.23 feet; thence departing said southerly line and northerly Right of Way line, run South 34°24'44" East, a distance of 122.41 to the aforementioned southerly Right of Way line; thence North 63°45'43" West along said southerly Right of Way line a distance of 772.28 feet to the POINT OF BEGINNING.

Containing 0.70 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 west line of the northwest 1/4 of Section 32, 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. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539-6-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown

**LEGEND:**

- (C) = Calculated
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- ID = Identification
- ↖ = Line Not To Scale
- PID = Parcel Identification Number
- S.R. = State Road
- CFX = Central Florida Expressway Authority
- RAW = 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
- AAF = All Aboard Florida
- OOCEA = Orlando Orange County Express Way Authority
- No. = Number

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief, and 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.

STATE OF FLORIDA  
REGISTERED PROFESSIONAL SURVEYOR  
MICHAEL J. JONES  
4201  
Robert M. Jones, PLS  
Florida Surveyor and Mapper  
License No. LS-0004201


01/06/2021 - Revised parcel number

12/21/2020 - Revised parcel number

DUKE ENERGY

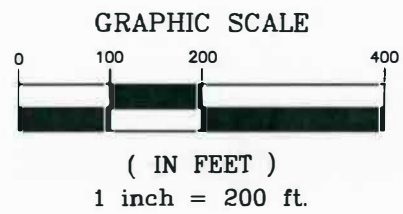
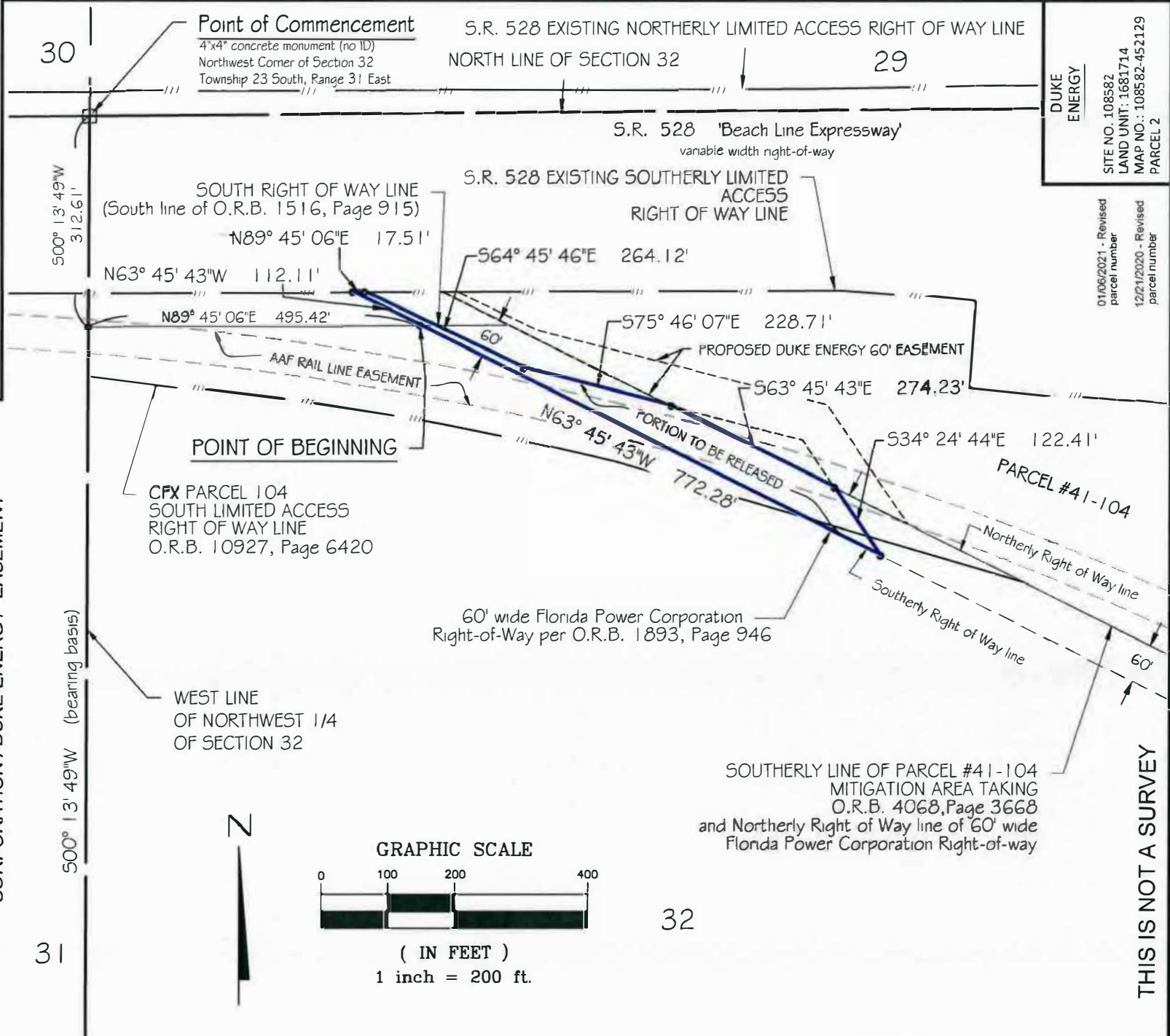
SITE NO. 108582  
LAND UNIT: 1681714  
MAP NO.: 108582-452129  
PARCEL 2

THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 1 OF 2	
DESIGNED BY: HNTB	DATE: 02/11/2016	<b>Wood Environment &amp; Infrastructure Solutions, Inc.</b>  550 Northlake Blvd., Suite 1000 Altamonte Springs, FL 32701 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-007832		REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374150865			DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240			08 / 28 / 2020	TW
				DRAWING NAME: 1203 - Duke Easement Parcel 986A Parcel 04	

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No. 41-804  
PURPOSE: RELEASE OF A PORTION OF FLORIDA POWER  
CORPORATION / DUKE ENERGY EASEMENT

RELEASE OF A PORTION OF FLORIDA POWER  
CORPORATION / DUKE ENERGY EASEMENT



DUKE ENERGY  
SITE NO. 108582  
LAND UNIT: 1681714  
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PARCEL 2

01/06/2021 - Revised parcel number  
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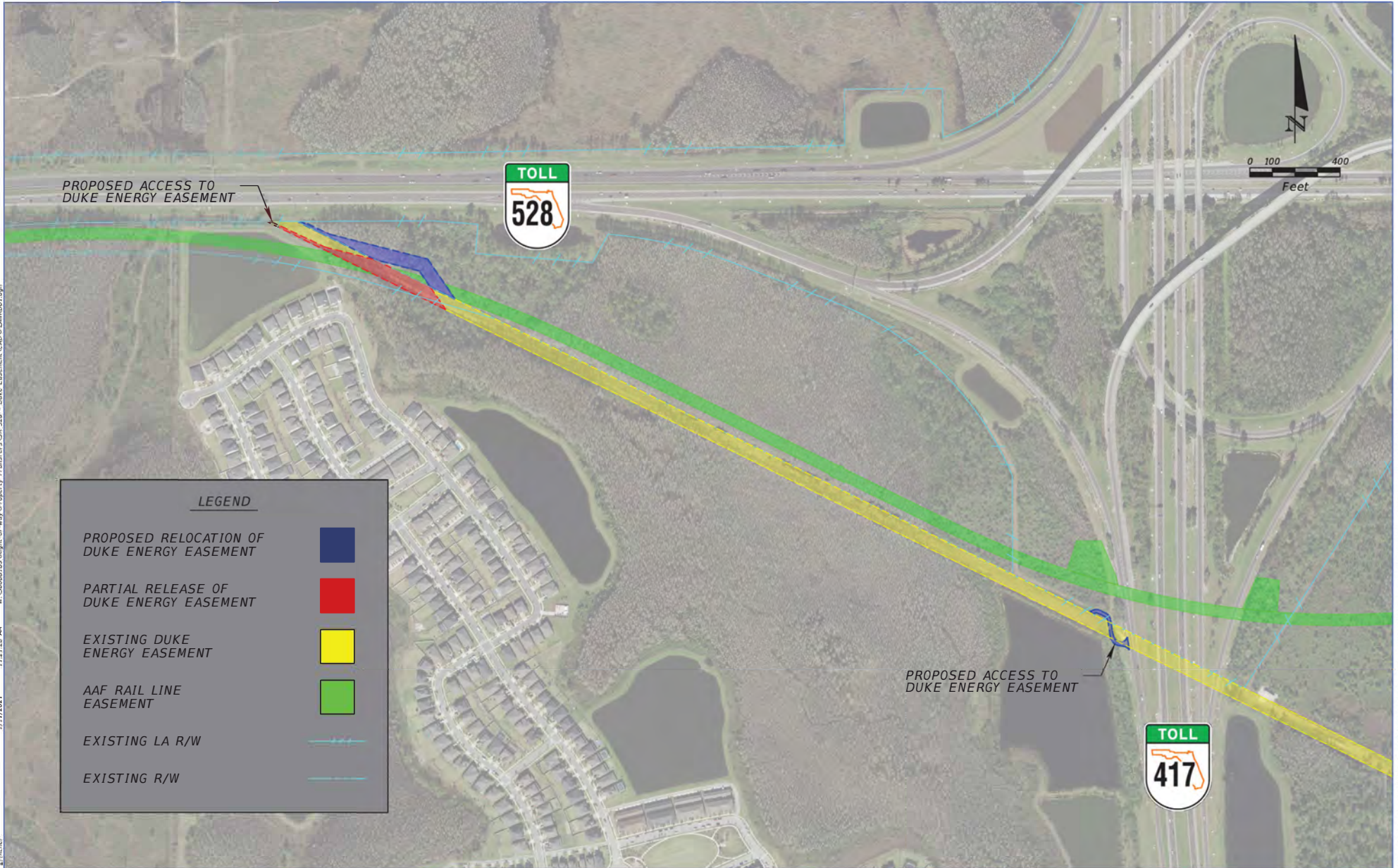
SHEET 2 OF 2	
DESIGNED BY: HNTB	DATE: 02/11/2016
DRAWN BY: PEW	AMEC JOB No.: 6374150865
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LEGAL DESCRIPTION and SKETCH	
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REVISIONS	BY
DATE	TW
08/28/2020	TW



THIS IS NOT A SURVEY

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REVISIONS		REVISIONS		SR 417 / SR 528 Right-of-Way		<b>RELOCATION OF DUKE ENERGY EASEMENT</b>	SHEET NO.  1
DATE	DESCRIPTION	DATE	DESCRIPTION				
				SR 528	528-1240		



Central Florida Expressway Authority  
Rio Pinar Pl – Florida Gas Transmission East, RW 89 to RW-91  
Thor#: 331T2 Oracle#: 30000749  
Site #: 108582 Land Unit#: 1217103 Project#: 108582-452392



Prepared By:  
Manny R. Vilaret, Esq.  
Vilaret Law, PLLC  
10901 Danka Circle, Suite C  
Saint Petersburg, Florida 33716

**PARTIAL RELEASE OF EASEMENT**

WHEREAS, by instrument dated November 3, 1969, George W. Johnson, Trustee, as grantor, and the predecessor in interest to Central Florida Expressway Authority, a body corporate and politic existing pursuant to Chapter 348, Florida Statutes (“CFX”), did grant and convey unto **FLORIDA POWER CORPORATION**, a Florida corporation, n/k/a Duke Energy Florida, LLC d/b/a Duke Energy, a Florida limited liability company hereinafter known as “Duke Energy”, an easement for the transmission and distribution of electricity which expressly authorized the construction, reconstruction, maintenance and operation one or more transmission lines, subsequently recorded on November 21, 1969 in Official Records Book 1893 at Pages 946-947, of the Public Records of Orange County, Florida, (the “Original Easement”), covering certain lands in Orange County, Florida as more particularly described in the Original Easement;

WHEREAS, CFX, as grantor, and Duke Energy, as Grantee, amended and restated the Original Easement by that certain Amendment and Restatement of Easement dated \_\_\_\_\_ and recorded on \_\_\_\_\_ in Official Records Book \_\_\_\_\_ at Pages \_\_\_\_\_ of the Public Records of Orange County, Florida, (the “Amended Easement”), which together with the Original Easement, is collectively referred to herein as the “Easement”.

WHEREAS, Duke Energy has been requested to release a certain portion of the lands encumbered by the Easement from the above described Easement, and Duke Energy is willing to release said portion;

NOW, THEREFORE, WITNESSETH, that Duke Energy, for and in consideration of One Dollar and of other good and valuable considerations, receipt of which is hereby acknowledged, has released and discharged and by these presents does release and discharge all of the right, title, interest, claim and demand which said Duke Energy has under and by virtue of the above-described Easement in and to, but only in and to, the following-described land in Orange County, Florida, to wit:

The portion of the Easement located within Tax Parcel ID: 32-23-31-0000-00-003 in Orange County, Florida, as depicted and described within the attached Exhibit "A," incorporated herein by reference.

Provided, always, nevertheless, that nothing herein contained shall in any way or manner impair, alter or diminish the rights, purpose, effect, encumbrance or provisions of the aforesaid Easement on that portion of the remaining lands described in the Easement and not hereby being released therefrom.

Return to: Duke Energy Florida, LLC,  
Attn: Real Estate Document Center  
3300 Exchange Place, NP3A  
Lake Mary, FL 32746



tabbies

"A"

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
STATE ROAD 528

PROJECT No. 528-1240

PARCEL No. 41-804

PURPOSE: RELEASE OF A PORTION OF FLORIDA POWER CORPORATION / DUKE ENERGY EASEMENT

A parcel of land lying in Section 32 Township 23 South, Range 31 East, Orange County, Florida, being a portion of those lands described in Official Records Book 1893 at Page 946 of the Public Records of Orange County, Florida and being more particularly described as follows:

Commence at a 4"x4" concrete monument (no identification) marking the Northwest Corner of Section 32, Township 23 South, Range 31 East, Orange County, Florida; thence run South 00°13'49" West, along the west line of the Northwest 1/4 of said Section 32, a distance of 312.61 feet to the south Right of Way line of State Road 528 as described in Official Records Book 1516 at Page 915 of said Public Records; thence run North 89°45'06" East, along said south Right of Way line, a distance of 495.42 feet to a point on the southerly line of a 60.00 foot wide Florida Power Corporation Right-of-Way recorded in said Official Records Book 1893 at Page 946 of said Public Records and the POINT OF BEGINNING; thence run North 63°45'43" West, along said southerly Right of Way line, a distance of 112.11 feet to the existing southerly limited access Right of Way line of State Road 528; thence North 89°45'06" East, along said southerly limited access Right of Way line, a distance of 17.51 feet; thence departing said southerly limited access Right of Way line run South 64°45'46" East, a distance of 264.12; thence run South 75°46'07" East, a distance of 228.71 feet to the southerly line of Parcel #41-104 Mitigation Area Taking as recorded in Official Records Book 4068, Page 3668 of said Public Records, also being the northerly Right of Way line of said 60.00 foot wide Florida Power Corporation Right of Way; thence along said southerly line and northerly Right of Way line, run South 63°45'43" East, a distance of 274.23 feet; thence departing said southerly line and northerly Right of Way line, run South 34°24'44" East, a distance of 122.41 to the aforementioned southerly Right of Way line; thence North 63°45'43" West along said southerly Right of Way line a distance of 772.28 feet to the POINT OF BEGINNING.

Containing 0.70 acres, more or less

**Surveyors Notes**

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- (NT) = Non Tangent
- AAF = All Aboard Florida
- OOCEA = Orlando Orange County Express Way Authority
- No. = Number

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief, and 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.

STATE OF FLORIDA  
REGISTERED PROFESSIONAL SURVEYOR  
MICHAEL J. JONES  
4201  
Robert M. Jones, PLS  
Florida Surveyor and Mapper  
License No. LS-0004201


01/06/2021 - Revised parcel number

12/21/2020 - Revised parcel number

**DUKE ENERGY**

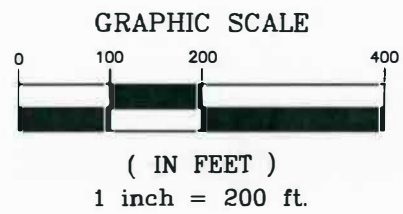
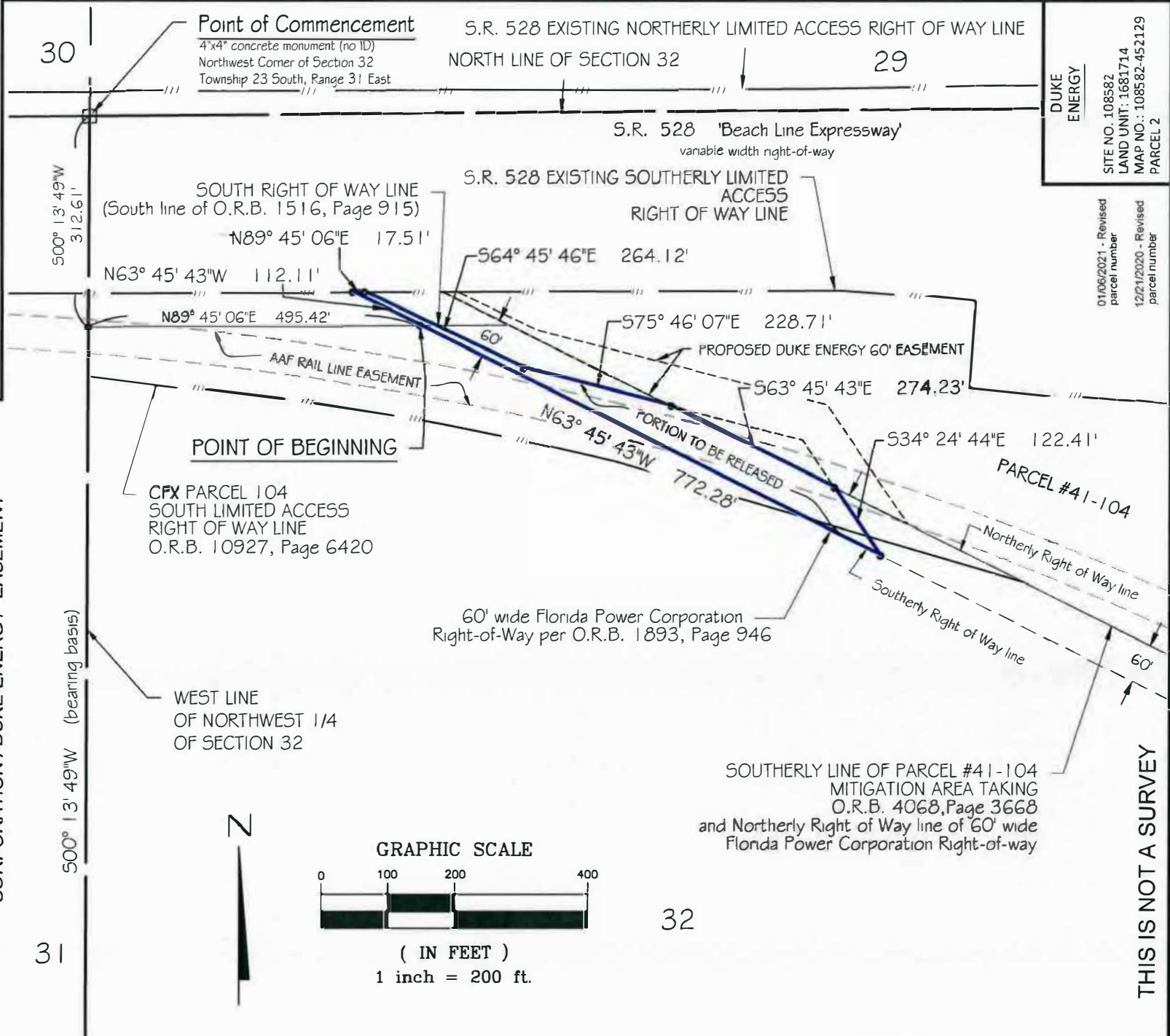
SITE NO. 108582  
LAND UNIT: 1681714  
MAP NO.: 108582-452129  
PARCEL 2

**THIS IS NOT A SURVEY**

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 1 OF 2	
DESIGNED BY: HNTB	DATE: 02/11/2016	<b>Wood Environment &amp; Infrastructure Solutions, Inc.</b>  550 Northlake Blvd., Suite 1000 Altamonte Springs, FL 32701 USA Phone: (407) 522-7570 Certificate of Authorization Number LB-007832		REVISIONS	
DRAWN BY: PEW	AMEC JOB No.: 6374150865			DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240			08 / 28 / 2020	TW
				DRAWING NAME: 1203 - Duke Easement Parcel 986A Parcel 04	

CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
STATE ROAD 528  
PROJECT No. 528-1240  
PARCEL No. 41-804  
PURPOSE: RELEASE OF A PORTION OF FLORIDA POWER  
CORPORATION / DUKE ENERGY EASEMENT

RELEASE OF A PORTION OF FLORIDA POWER  
CORPORATION / DUKE ENERGY EASEMENT



**DUKE ENERGY**

SITE NO. 108582  
LAND UNIT: 1681714  
MAP NO.: 108582-452129  
PARCEL 2

01/06/2021 - Revised  
parcel number  
12/21/2020 - Revised  
parcel number

SHEET 2 OF 2	
LEGAL DESCRIPTION and SKETCH	
FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY	
DESIGNED BY: HNTB	DATE: 02/11/2016
DRAWN BY: PEW	AMEC JOB No.: 6374150865
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240
Wood Environment & Infrastructure Solutions, Inc.	
550 Northlake Blvd., Suite 1000 Altamonte Springs, FL 32701 USA Phone: (407) 522-7870 Certificate of Authorization Number: LC-007932	
<b>WOOD.</b>	
REVISIONS	
DATE	BY
08/28/2020	TW

THIS IS NOT A SURVEY

32



Dewberry Engineers Inc. | 407.843.5120  
800 N. Magnolia Ave, Suite 1000 | 407.649.8664 fax  
Orlando, FL 32803 | www.dewberry.com

February 11, 2021

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

**RE: DUKE EASEMENT REVISION**  
Projects 528-1240 and 417-401  
CFX Parcel 41-804

Dear Mr. Pressimone:

On behalf of Dewberry Engineers, Inc., as Consulting **Engineer (the “Consulting Engineer”)** to the **Central Florida Expressway Authority (“CFX”)** does here by certify as follows:

1. We have reviewed the limits of the revised easement within the right-of-way for the SR 528/SR 417 interchange described in Exhibit A, attached (**“Revised Easement”**). The easement revision for the electric transmission lines and access thereto, is needed to accommodate All Aboard Florida’s (Brightline Trains Florida) use of the rail corridor and impact on the existing location of the electric transmission lines. Duke will relocate the transmission lines into the location of the Revised Easement and a portion of the existing easement would be released. In our opinion, based upon the foregoing, we certify that this Revised Easement would not (1) impede or restrict the operation of the Expressway System; (2) materially affect or interfere with the present or future construction, use, operation, repair or maintenance of any portion of the Expressway System; or (3) otherwise impair traffic operations or public safety.
2. Furthermore, this certificate is being provided by the Consulting Engineer to CFX **solely for the purposes of complying with Section 5.4 of CFX’s Amended and Restated Master Bond Resolution and the requirements set forth in CFX’s Manual** and may not be relied on by any other person or party for any other purpose.

Sincerely,

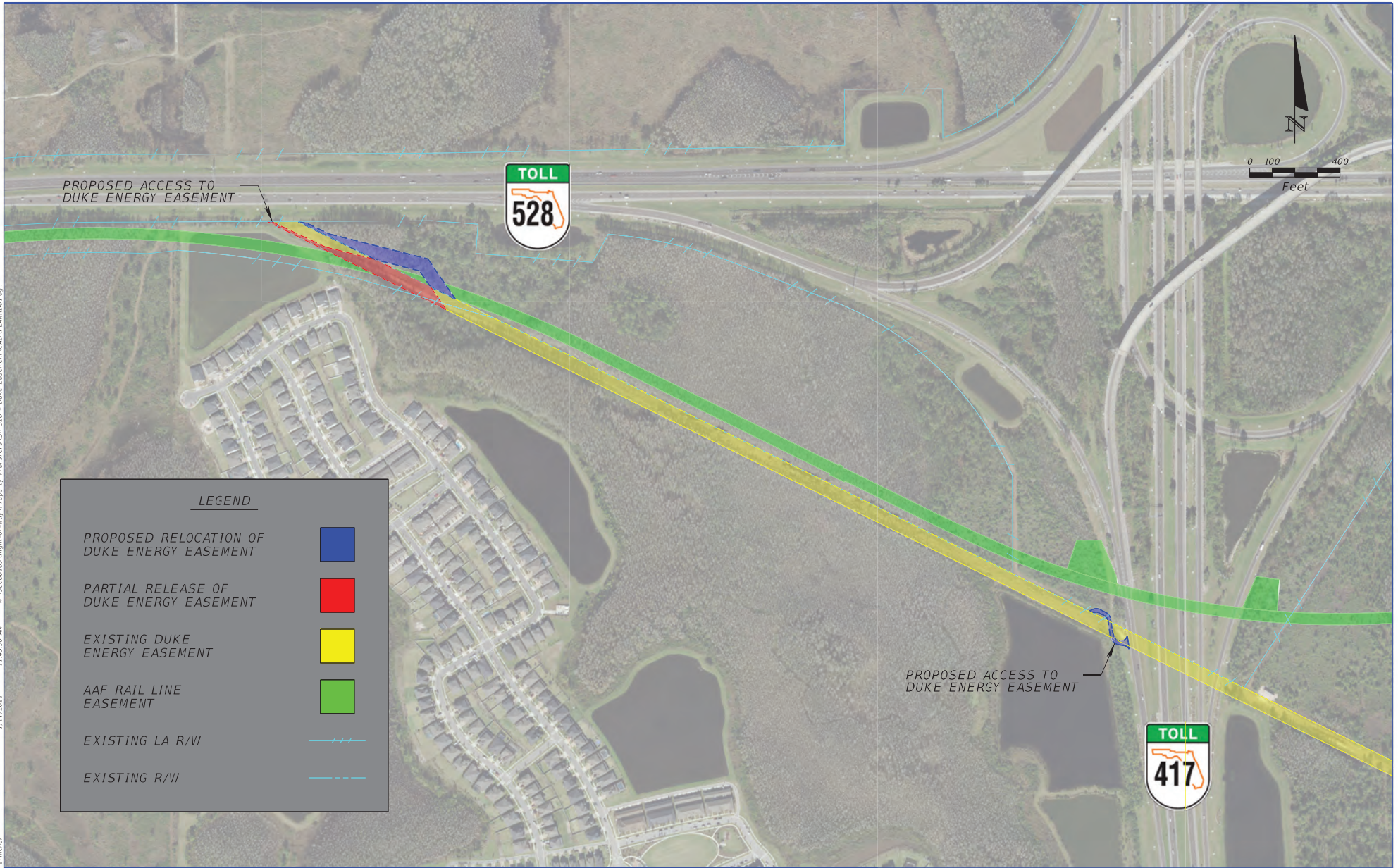
A handwritten signature in blue ink that reads "R. Keith Jackson".







R. Keith Jackson, P.E.  
Program Manager

Attachments

cc: Laura N Kelly, Esq. CFX (w/ enc.)





LEGEND	
PROPOSED RELOCATION OF DUKE ENERGY EASEMENT	
PARTIAL RELEASE OF DUKE ENERGY EASEMENT	
EXISTING DUKE ENERGY EASEMENT	
AAF RAIL LINE EASEMENT	
EXISTING LA R/W	
EXISTING R/W	

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REVISIONS				SR 417 / SR 528 Right-of-Way		<b>RELOCATION OF DUKE ENERGY EASEMENT</b>	SHEET NO.  1
DATE	DESCRIPTION	DATE	DESCRIPTION				
				ROAD NO. SR 528	PROJECT NO. 528-1240		

**CONSENT AGENDA ITEM  
#7**



# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Laura Newlin Kelly, Associate General Counsel  
*Laura Newlin Kelly*

DATE: January 21, 2021

RE: Easement and Maintenance Agreement between City of Orlando (“City”) and the Central Florida Expressway Authority (“CFX”)  
Project: State Road 408  
Parcels: 3-886, 3-890 and 253A-801

---

## BACKGROUND

CFX’s predecessor in interest (now CFX), acquired those certain real properties known as Parcels 3-286, 3-290 and 253A-700 as more particularly depicted on **Attachment “A”** (“CFX Parcels”) hereto for the design, construction and operation, and subsequent widening, of State Road 408. In June 1974, Parcels 3-286 and 3-290 were declared surplus property available for disposition; however, no bids were received for the acquisition of these parcels.

City has requested an easement over a portion of the CFX Parcels (collectively, the “Easement Area”) for the purpose of designing, constructing, operating, repairing and replacing a multi-purpose recreational trail that will serve the general public in accordance with the terms and conditions of the proposed Easement and Maintenance Agreement. A copy of the Easement and Maintenance Agreement is attached hereto as **Attachment “B”** (“Agreement”). Pursuant to the terms of the Agreement, CFX agrees to grant to the City a perpetual, non-exclusive, multipurpose, recreational access easement over, across and upon portions of the CFX Parcels. In exchange and as consideration for granting the easement, City will, at no cost or expense to CFX, design, permit, and construct a public art display, sculpture, exhibit, installation, or site-integrated aesthetic work recognizing and commemorating the partnership between CFX and the City (“Public Art”) in accordance with the requirements of the City’s Public Art Advisory Board on one (1) or more of the CFX Parcels. The City is required to complete the construction or installation of the Public Art within six (6) months after substantial completion of the multi-purpose recreational path (“Path”) on the CFX Parcels. The City will be responsible for the maintenance, repair and replacement of any and all improvements constructed by the City on the CFX Parcels, including, without limitation, the Path and Public Art.

Pursuant to CFX’s Property Acquisition, Disposition & Permitting Procedures Manual (“Policy”), CFX staff and CFX’s General Engineering Consultant (“GEC”) have examined the proposed Easement Area and determined that the grant of the easement would not (1) impede or restrict the operation of the Expressway System; (2) materially affect or interfere with the present or future construction, use, operation, repair or maintenance of any portion of the Expressway System; or (3) otherwise impair traffic operations or public safety. A copy of the draft certification



is attached hereto as **Attachment “C”**. The certification will be finalized when the final location of the Easement Area is determined.

Based on City’s proposed use, operation and maintenance of the Easement Area for the Path and Public Art, the proposed Agreement was prepared and provided to City for review and consideration. City has reviewed the Agreement and agrees with its form, subject to confirmation of the exact legal descriptions and the technical portions of the Agreement. GEC has reviewed the proposed location, maintenance functions, and maintenance responsibilities.

The Right-of-Way Committee met and reviewed this item on January 20, 2021 and recommended the approval of the Agreement Between CFX and City in a form substantially similar to the attached Agreement, subject to receipt and approval by the Executive Director, General Counsel and GEC of the final legal description and sketch for the Easement Area, updated certificate from the GEC when the final location of the Easement Area is determined, and any minor or clerical modifications or revisions approved by the GEC, General Counsel or designee.

### **REQUEST**

Board’s approval of the following is requested:

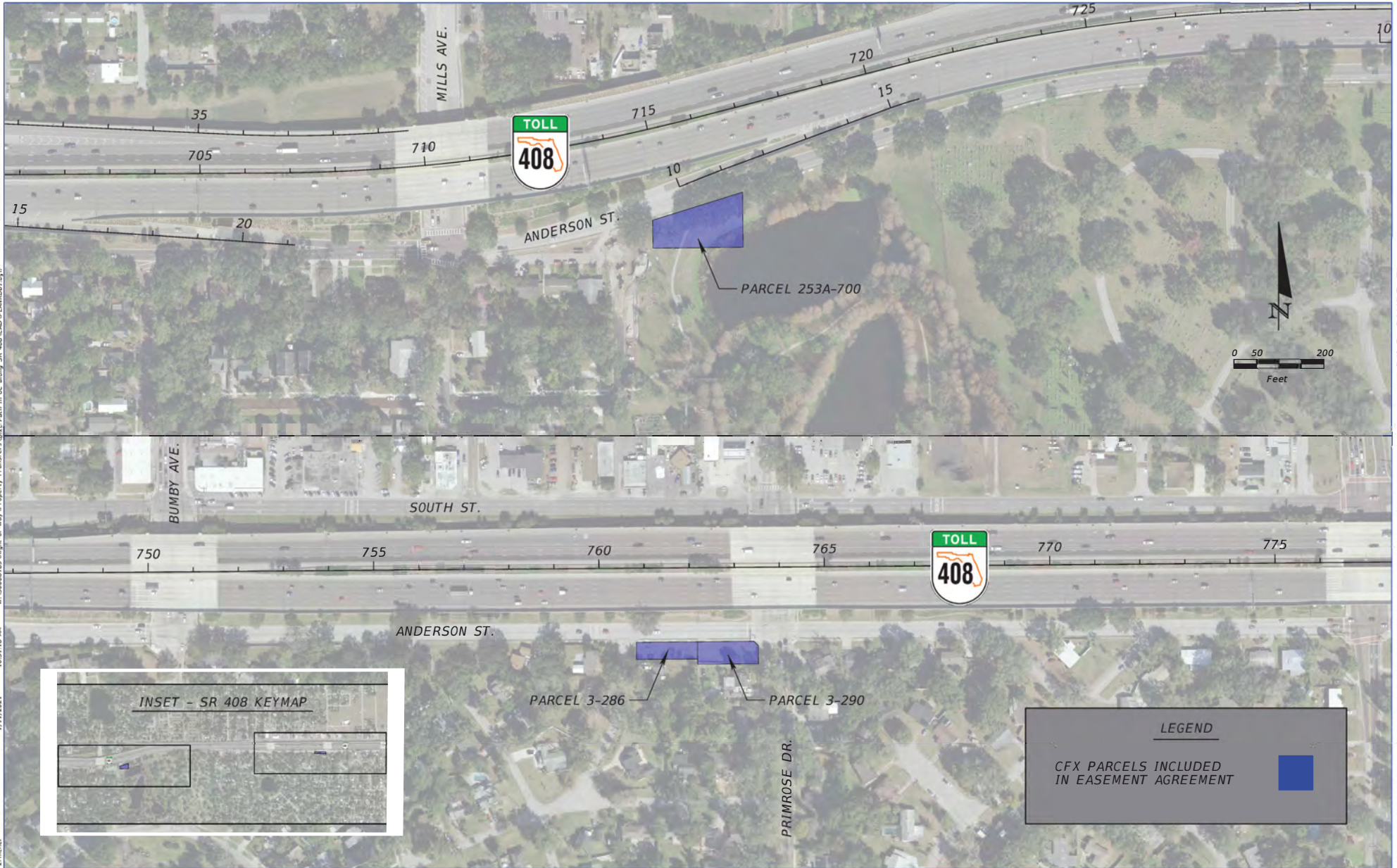
Agreement Between CFX and City in a form substantially similar to the attached Agreement, subject to receipt of an updated certificate from the GEC when the final location of the Easement Area is determined and the exhibits are finalized, and any minor or clerical modifications or revisions approved by the GEC, General Counsel or designee.

### **ATTACHMENTS**

- A. Map of CFX Parcels
- B. Easement and Maintenance Agreement
- C. Certificate from CFX’s General Engineering Consultant

Reviewed by: Woody Rodriguez

# ATTACHMENT A



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DATE		REVISIONS		SR 408 Right-of-Way		<b>CITY OF ORLANDO</b> <b>TRAIL EASEMENT EXHIBIT</b>	SHEET NO.
		DATE	DESCRIPTION				
				SR 408	253A		1

This document was prepared by:  
Laura N. Kelly  
Central Florida Expressway Authority  
4974 ORL Tower Road  
Orlando, FL 32807

Project: SR 408, Project Section 3 and 253A  
Parcels 3-886, 3-890 and 253A-801

**EASEMENT AND MAINTENANCE AGREEMENT**

**THIS EASEMENT AND MAINTENANCE AGREEMENT** (hereinafter, the “**Agreement**”) is made and entered as of the Effective Date (hereinafter defined), by and between the **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a body corporate and an agency of the State of Florida, created by Part III of Chapter 348, Florida Statutes, whose address is 4974 ORL Tower Road, Orlando, Florida 32807 (“**CFX**”) and the **CITY OF ORLANDO**, a municipal corporation existing under the laws of the State of Florida, whose address is 400 South Orange Avenue, Orlando, Florida 32801 (“**City**”). CFX and the City are sometimes collectively referred to herein as the “**Parties.**”

**WITNESSETH:**

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

**WHEREAS**, CFX is the fee simple owner of that certain real property more particularly described in **Exhibit “A”** attached hereto and incorporated herein by reference (collectively, the “**Property**”); and

**WHEREAS**, the City is responsible for providing pedestrian connectivity and recreational uses for the benefit of the general public;

**WHEREAS**, the City has requested from CFX, and CFX has agreed to grant to CITY, a multipurpose recreational access easement over, across and upon portions of the Property more particularly described in **Exhibit “B”** attached hereto and incorporated herein by reference (“**Easement Area**”); and

**WHEREAS**, CFX and CITY have agreed to the establishment of the easement as set forth herein and the establishment of the maintenance obligations relating thereto and have further agreed to other matters contained herein.

**NOW THEREFORE**, in consideration of mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree to and with each other as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.
2. **Easement.** CFX agrees to grant, bargain, sell, convey, and confirm unto City, and City agrees to accept from CFX, a non-exclusive, perpetual easement (collectively, “**Easement**”) on, upon, under, over, across and through the Easement Area, for the purpose of providing multipurpose recreational ingress and egress across the Property to the general public, and construction, operation, maintenance,

repair and replacement of a multipurpose recreational path, Public Art (hereinafter defined), and related amenities in the Easement Area (collectively, the “**Improvements**”), subject to any and all applicable permits and other governmental requirements. City shall have all incidental rights reasonably necessary for the use and enjoyment of the Easement for its intended purposes, including, specifically, the right of entry onto the Easement Area for purposes of construction, maintenance, operation, repair, and replacement of the Improvements now or hereafter located within the Easement Area, provided; however, except as specifically set forth herein, this Easement shall not include the right of City to install additional improvements, structures, or facilities in the Easement Area without the express written consent of CFX.

3. **Construction of the Improvements.**

a. **Design of the Improvements.** The City shall, at its sole cost and expense, prepare any such plans, specifications, drawings, design support and any amendments thereto, and any other documentation reasonably required to specify the size, character and design of the equipment and system architecture required for the construction of the Improvements (collectively, the “Design Plans”). Prior to the commencement of construction on the Improvements, the City shall deliver to CFX all Design Plans for the Improvements for review and approval, which approval shall not be unreasonably withheld, conditioned, or delayed.

b. **Public Art.** As consideration for the grant of the Easement, City shall, at no cost or expense to CFX, design, permit, and construct a public art display, sculpture, exhibit, installation, or site-integrated aesthetic work recognizing and commemorating the partnership between CFX and the City in accordance with the requirements of the City’s Public Art Advisory Board on one (1) or more of the parcels comprising the Easement Area (“Public Art”). Within thirty (30) days after the Effective Date of this Agreement, CFX may, at its option, notify the City, in writing, of its designation of a representative to work with the City’s design consultant in developing a site plan for Public Art within the Easement Area. The site plan will then be presented to the City’s Public Art Advisory Board as part of the City’s Public Art approval process. Except as provided herein, the City makes no representation as to the final design of the Public Art that is approved by the Public Art Advisory Board or the City Council under Section 2.172, City Code. The Public Art shall prominently display the name of the “Central Florida Expressway Authority” as a partner in the Improvements. City shall complete the construction or installation of the Public Art within six (6) months after substantial completion of the Improvements.

c. **Permitting of the Improvements.** Prior to the commencement of construction on the Improvements, the City shall obtain any and all permits reasonably required by CFX or any other local governmental entity for the Improvements.

d. **Construction by the City.** The City, at the City’s sole cost and expense, shall be responsible for the design, permitting, and construction of the Improvements over, across and within the Easement Area for purpose of providing multipurpose recreational access and use of the Improvements and Easement. Once construction has commenced on the Improvements, the City shall diligently and in good faith proceed with the construction of the Improvements in general accordance with the approved Design Plans. City shall take any and all action reasonably necessary to secure the Improvements during and after construction to ensure safety, welfare and wellbeing of the general public.

e. **Failure to Construct the Improvements.** In the event the City fails to construct the Improvements on or before two years from the Effective Date of this Agreement, this Agreement shall automatically terminate and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect.

4. **Maintenance of the Easement Area.** The City, at its sole cost and expense and without reimbursement from CFX, shall maintain and replace, to the extent necessary, the Easement Area and the Improvements in (i) a good state of repair and condition; and (ii) accordance with all applicable



governmental regulations. In the event the City disturbs or damages any areas within the Easement Area, the City shall, at its sole cost and expense, repair and replace any disturbed areas in the Easement Area to the reasonable satisfaction of CFX; provided, however, any such repair, replacement or maintenance shall be conducted by the City with first class materials, in a good and workmanlike manner, and in accordance with all rules, regulations and permitting requirements governing the repair, replacement, installation or construction of similar facilities on real property owned by CFX. Notwithstanding the terms of this Paragraph, the City is not responsible for the maintenance of improvements or utilities located within the Easement Area that are owned and/or operated by CFX or any entity other than the City.

5. **Right of Relocation of Easement.** CFX, at its expense, shall have the right from time to time to relocate or reconfigure all or any portion of the Easement Area and the Improvements located within the Easement Area as it deems necessary so long as such relocation or reconfiguration does not interfere with the operation and maintenance of the Improvements. During the term of this Agreement, the City hereby consents to any relocation or reconfiguration of the Easement Area and/or Improvements (either in whole or in part) proposed by CFX; provided that (i) the Easement Area and/or Improvements (or portions thereof), as so relocated or reconfigured, shall provide the City with substantially the same size, quality and capacity rights as existed prior to such relocation or reconfiguration; (ii) CFX shall pay for any expenses incurred in the relocation or reconfiguration of the Easement Area and/or Improvements (either in whole or in part) in compliance with all governmental permits, approvals, and (iii) CFX shall deliver to the City an amendment to this Agreement together with a legal description for the relocated Easement Area and/or Improvements (either in whole or in part), as applicable.

6. **Non-Disturbance of Easement Rights.** Except as otherwise provided in this Agreement, the Parties hereto agree not to build, construct, or place any buildings, structures, barriers, and fill or other hindrances in the Easement Area other than the Improvements, and not to in any way use the Easement Area or materially modify or change the lands encumbered by the Easement in a manner that would disturb or interfere with the proper construction, operation, or maintenance of such Easement or the Improvements.

7. **Termination of Easement.** The City may, at its option, remove the materials comprising the Improvements installed and maintained by the City with one hundred eighty (180) days prior written notice to CFX, in which event, the City shall return the Easement Area to its original state as it existed prior to the construction of the Improvements and shall execute and record a written termination of easement in the Public Records of Orange County, Florida. In the event of damage to or destruction of all or a portion of the Easement Area due to such removal, City, at its sole cost and expense, shall return the Easement Area and replace any improvements located on the Easement Area to the condition as they existed immediately prior to such damage or destruction by CFX and to the reasonable satisfaction of CFX. If the Improvements are replaced, the provisions of this Agreement shall remain in full force and effect, including the City's obligation to maintain said Improvements.

8. **Compliance with all Legal Rules.** The City shall, at its sole expense, comply with all present and future valid and applicable laws, ordinances, and regulations of the federal government and its agencies, the State of Florida, and Orange County, unless otherwise agreed between City and CFX.

9. **As-Is Conveyance.** The City hereby agrees, acknowledges and understands that the Easement is being conveyed to the City "AS IS, WHERE IS, WITH ALL FAULTS," in such condition as the same may be on the Effective Date, without any representations or warranties by CFX as to any condition of the Easement Area, 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 the Easement Area, or any part thereof, or to the fitness of the Easement Area, 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 Easement Area, or the failure of the Easement Area 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 discovered on, at, or under the Easement Area, 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 termination or expiration of this Agreement. City has read and understands the provisions of this Section and acknowledges and agrees that except as expressly set forth in this Agreement, it is acquiring the Easement Area “**AS-IS, WHERE IS AND WITH ALL FAULTS**” and that CFX has disclaimed herein any and all warranties, express or implied.

10. **Notices.** Any formal notice, consent, approval or rejection required or allowed in accordance with the terms of this Agreement shall be in writing and be deemed to be delivered (a) when hand delivered to the official hereinafter designated, (b) one (1) days after deposited with an overnight carrier; or (c) three (3) days from when such notice is deposited in the United States mail, postage prepaid, certified mail return receipt requested, addressed to a Party at the address set forth opposite the Party's name below, or at such other address as the Party shall have specified in written notice to the other Party in accordance herewith.

CFX: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
4974 ORL Tower Road  
Orlando, Florida 32807  
Attn: Executive Director

Copy to: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
4974 ORL Tower Road  
Orlando, Florida 32807  
Attn: General Counsel

CITY: CITY OF ORLANDO  
400 South Orange Avenue  
Orlando, Florida 32801  
Attention: Director of Transportation

Copy to: CITY OF ORLANDO  
400 South Orange Avenue  
Orlando, Florida 32801  
Attention: Real Estate Manager

Other notices may be delivered by email to the CFX General Counsel or his designee and City's Real Estate Manager or designated representative or designee.

11. **Defaults and Remedies.** Each of the Parties hereto shall give the other Party notice of any alleged default hereunder and shall allow the defaulting Party thirty (30) days from the date of receipt to cure such default, provided; however, that if the default is not reasonably capable of being cured with commercially reasonable efforts within thirty (30) days, the Party shall have such longer time to cure such default as may be reasonably necessary, not to exceed one hundred twenty (120) days (“Cure Period”). In the event either of the Parties fails to cure such non-performance or breach within the Cure Period, the other Party, in its sole discretion, shall be entitled to (a) exercise the right of specific performance with respect to such non-performance or breach; (b) pursue all other rights and remedies available to said Party; or (c) terminate this Agreement and upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect.

12. **General Provisions.** No failure of either Party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of either Party's right to demand exact compliance with the

terms hereof. This Agreement contains the entire agreement of the Parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. Any amendment to this Agreement shall not be binding upon either Party unless such amendment is in writing and executed by the City and CFX. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for herein. Whenever 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, including by electronic or digital signatures in compliance with Chapter 668, Florida Statutes, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. The headings inserted at the beginning of each paragraph of this Agreement are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph. The City and CFX do hereby 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 or prior to Closing. This Agreement shall be interpreted under the laws of the State of Florida. The City and CFX acknowledge that this Agreement was prepared after substantial negotiations between the Parties and this Agreement shall not be interpreted against either Party solely because such Party or its counsel drafted the Agreement. The Parties agree that venue for any legal action authorized hereunder shall be exclusively in the courts of Ninth Judicial Circuit of Florida. Unless otherwise specified herein, any references to “days” shall refer to calendar days.

13. **Effective Date.** The effective date of this Agreement shall be effective upon which the last of the Parties hereto executes this Agreement (“**Effective Date**”).

14. **Recording.** City shall cause this Agreement to be recorded in the Public Records of Orange County, Florida.

15. **Waiver of Jury Trial.** CITY AND CFX VOLUNTARILY WAIVE A TRIAL BY JURY IN ANY LITIGATION OR ACTION ARISING FROM THIS AGREEMENT.

16. **No Third-Party Benefits.** This Agreement is solely for the benefit of the Parties herein, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party that is not a party hereto.

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

18. **Severability.** If any court finds part of this Agreement invalid or unenforceable, such invalidity or unenforceability shall not affect the other parts of the Agreement (a) if the rights and obligations of the Parties contained therein are not materially prejudiced and (b) if the intentions of the Parties can continue to be effective. To that end, this Agreement is declared severable.

19. **Sovereign Immunity.** Nothing herein is intended as a waiver of any Party's sovereign immunity under Section 768.28, Florida Statutes. 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.

[SIGNATURE PAGES TO FOLLOW]

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

**“CITY”**

**CITY OF ORLANDO**, a municipality duly enacted under the laws of the State of Florida

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST:

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

Approved as to form and legality by legal counsel to the City of Orlando for its exclusive use and reliance.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF FLORIDA            )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, as \_\_\_\_\_ of the City of Orlando, on behalf of the organization. She/he is personally known to me OR produced \_\_\_\_\_ as identification.

NOTARY PUBLIC

\_\_\_\_\_  
Signature of Notary Public - State of Florida  
Print Name: \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

[ADDITIONAL SIGNATURE PAGE TO FOLLOW]



Signed, sealed, and delivered  
in the presence of:

“CFX”

**CENTRAL FLORIDA EXPRESSWAY  
AUTHORITY**

\_\_\_\_\_  
Signature

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

By: \_\_\_\_\_  
Buddy Dyer, as Chairman

\_\_\_\_\_  
Signature

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

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

ATTEST: \_\_\_\_\_  
Regla (“Mimi”) Lamaute  
Recording Clerk

Approved as to form and legality by legal counsel  
to the Central Florida Expressway Authority on  
this \_\_\_ day of \_\_\_\_\_, 2021 for its  
exclusive use and reliance.

By: \_\_\_\_\_  
Diego “Woody” Rodriguez  
General Counsel

STATE OF FLORIDA            )  
COUNTY OF ORANGE        )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2021, by  
Buddy Dyer, as Chairman of the Central Florida Expressway Authority, on behalf of the organization. He  
is personally known to me OR produced \_\_\_\_\_ as identification.

NOTARY PUBLIC

\_\_\_\_\_  
Signature of Notary Public - State of Florida  
Print Name: \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**LIST OF EXHIBITS**

**Exhibit “A” - Property**

**Exhibit “B” - Legal Description of the Easement Area**

**EXHIBIT "A"**  
**Property**

**PARCEL 3-286 REMAINDER**

THAT PART OF LOT 12, BLOCK "A", WELLBORN C. PHILLIPS REPLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK R, PAGE 12, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF LOT 15 OF SAID BLOCK "A"; THENCE SOUTH 00°34'50" EAST ALONG THE EAST RIGHT OF WAY LINE OF WILTSHIRE ROAD, A DISTANCE OF 279.37 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°32'20" EAST, A DISTANCE OF 134.59 FEET TO THE EAST LINE OF LOT 12 OF SAID BLOCK "A"; THENCE SOUTH 00°31'56" EAST ALONG SAID EAST LINE, A DISTANCE OF 38.31 FEET TO THE SOUTHEAST CORNER OF SAID LOT 12; THENCE SOUTH 89°38'51" WEST ALONG THE SOUTH LINE OF SAID LOT 12, A DISTANCE OF 134.56 FEET TO THE SOUTHWEST CORNER OF SAID LOT 12; THENCE NORTH 00°34'50" WEST ALONG THE WEST LINE OF SAID LOT 12, A DISTANCE OF 38.05 FEET THE POINT OF BEGINNING. CONTAINING 5138 SQUARE FEET, MORE OR LESS.

**AND**

**PARCEL 3-290 REMAINDER**

THAT PART OF LOT 4, BLOCK "A", WELLBORN C. PHILLIPS REPLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK R, PAGE 12, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHEAST CORNER OF LOT 1 OF SAID BLOCK "A"; THENCE SOUTH 00°29'11" EAST ALONG THE WEST RIGHT OF WAY LINE OF PRIMROSE DRIVE, A DISTANCE OF 288.73 FEET TO THE POINT OF BEGINNING; SAID POINT BEING 42.04 FEET SOUTHERLY FROM THE NORTHEAST CORNER OF SAID LOT 4; THENCE CONTINUE SOUTH 00°29'11" EAST FOR 40.18 FEET TO THE SOUTHEAST CORNER OF SAID LOT 4; THENCE SOUTH 89°54'35" WEST ALONG THE SOUTH LINE OF SAID LOT 4, A DISTANCE OF 134.55 FEET TO THE SOUTHWEST CORNER OF SAID LOT 4; THENCE NORTH 00°31'56" WEST ALONG THE WEST LINE OF SAID LOT 4, A DISTANCE OF 49.31 FEET; THENCE NORTH 89°32'20" EAST, A DISTANCE OF 124.59 FEET; THENCE SOUTH 45°28'21" EAST, A DISTANCE OF 14.14 FEET TO THE POINT OF BEGINNING. CONTAINING 6644 SQUARE FEET, MORE OR LESS.

**AND**

THAT PORTION OF THE FOLLOWING DESCRIBED PROPERTY LYING SOUTH AND EAST OF STATE ROAD #15, THE EXTENSION OF ANDERSON STREET: BEGINNING 6 FEET NORTH AND 320 FEET EAST OF THE SOUTHWEST CORNER OF THE N 1/2 OF THE NE 1/4 OF THE NE 1/4 OF SECTION 36, TOWNSHIP 22 SOUTH, RANGE 29 EAST, RUN THENCE NORTH 116 FEET, WEST 120 FEET, NORTH 10 FEET, EAST 460 FEET, SOUTH 126 FEET, WEST 340 FEET TO THE POINT OF BEGINNING, ORANGE COUNTY, FLORIDA, LESS THE RIGHT-OF-WAY FOR ANDERSON STREET, AND LESS THE RIGHT-OF-WAY FOR S.R. 408.

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**STATE ROAD 408**  
**PROJECT NOs: 408 SECTION 3 and 408-453A**  
**PARCELS: 3-886 PARTIAL & 3-890 PARTIAL**  
**PURPOSE: EASEMENT FOR MULTI-PURPOSE TRAIL**  
**ESTATE: PERMANENT EASEMENT**

**Exhibit "B"**

**SURVEYOR'S REPORT:**


1. This SKETCH OF DESCRIPTION has been prepared to show Existing parent tract remainder of certain Parcels related to Orlando East - West Expressway Right of Way Map Plans for Section 3, Dated 1973.
2. Bearings, shown hereon refer to the West line of Block "A" Wellborn C. Phillips Replat, Plat Book R, Page 12, Public Records of Orange County, Florida, South 00°34'50" East, assumed.
3. Distances shown hereon are GRID distances.
4. Dimensions are shown in United States standard survey feet and decimals thereof.
5. This Sketch does not determine ownership of the lands shown hereon.
6. This Sketch was performed without benefit of an abstract, title search, title opinion or title commitment. A title search may reveal additional information affecting the parcel as shown.
7. Additions or deletions to survey maps or reports by other than the signing party or parties is prohibited without written consent of the signing party or parties.
8. Right of Way information shown hereon was determined from recorded plats, Right of Way Maps, and information obtained from the Orange County Property Appraisers web site.
9. Attention is directed to the fact that these Maps may have been altered in sizes by reproduction. This must be considered when obtaining scaled data.
10. This Sketch of Description or the copies thereof, are not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper.
11. I hereby Certify that the "SKETCH OF DESCRIPTION" of the above described property is true and correct to the best of my knowledge and belief as recently drawn under my direction and that it meets the Standards of Practice for Land Surveying Chapter 5J-17 Requirements of Florida Administration Code. NOT VALID without sheets 1-5.

**ABBREVIATIONS**

AVE. = AVENUE	RD. = ROAD
CL = CENTERLINE	RNG = RANGE
L.A. = LIMITED ACCESS	S.R. = STATE ROAD
(M) = MAP	R/W = RIGHT OF WAY
NT = NON-TANGENT	STA. = STATION
(P) = PLAT	TB = TANGENT BEARING
PC = POINT OF CURVATURE	TWP = TOWNSHIP
PCC = POINT OF COMPOUND CURVATURE	OOCEA = ORLANDO - ORANGE COUNTY EXPRESSWAY
PRC = POINT OF REVERSE CURVATURE	AUTHORITY SECTION 3 R/W MAP, DATED 1973
PT = POINT OF TANGENCY	"NOW KNOWN AS CENTRAL FLORIDA EXPRESSWAY AUTHORITY"

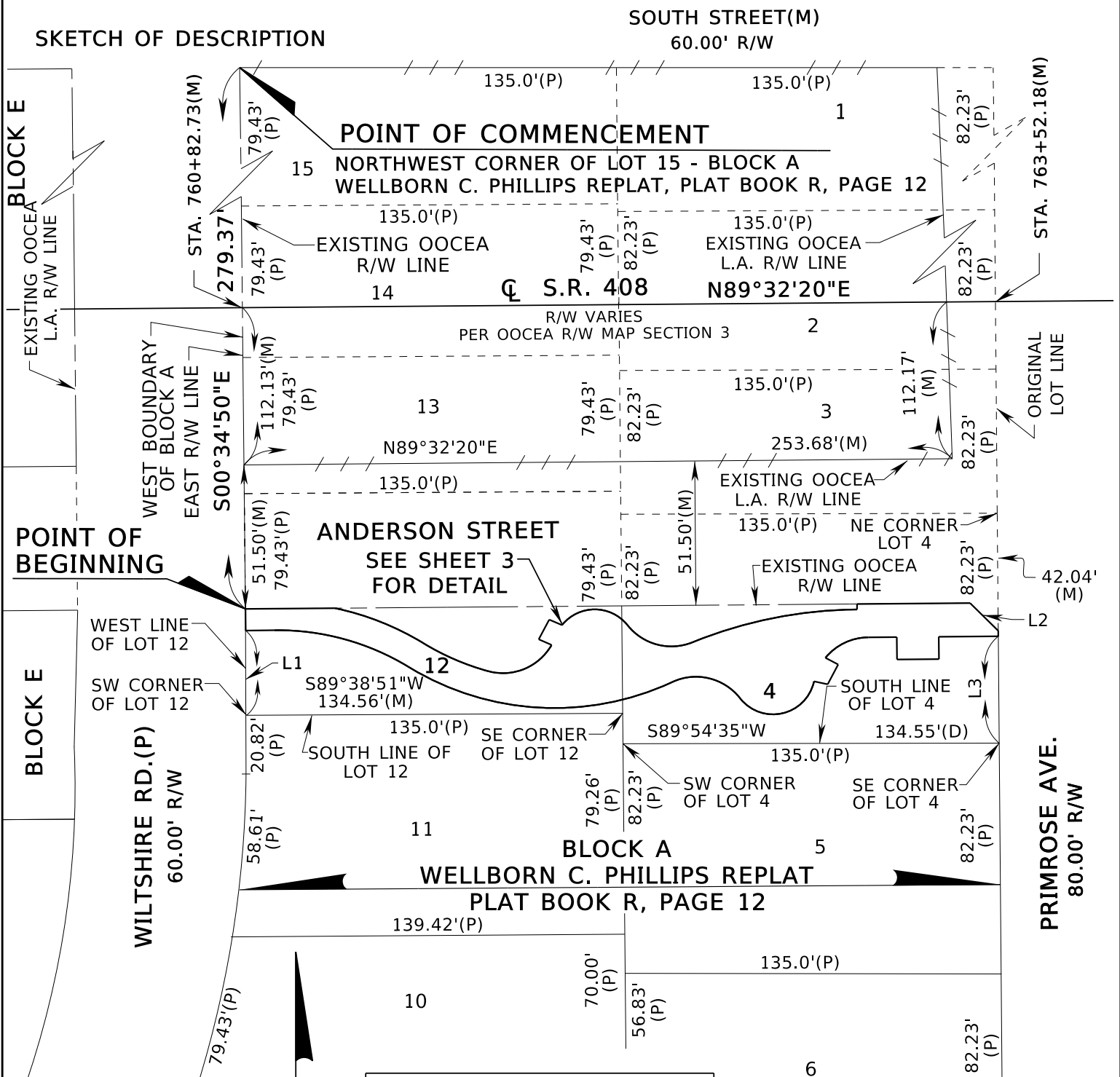
**NOTICE OF LIABILITY:**

This survey is certified to those individuals shown on the face thereof. Any other use, benefit or reliance by any other party is strictly prohibited and restricted. Surveyor is responsible only to those certified and hereby disclaims any other liability and hereby restricts the rights of any other individual or firm to use this survey, without express written consent of the surveyor.

<b>DESCRIPTION</b>  <b>FOR</b>  <b>City of Orlando, Florida,</b> <b>HDR Inc.,</b> <b>Central Florida</b> <b>Expressway Authority</b>	Date: <b>February 02, 2021</b> MJS		Certification Number LB2108   <b>SOUTHEASTERN SURVEYING</b> <b>AND MAPPING CORPORATION</b> 6500 All American Boulevard Orlando, Florida 32810-4350 (407) 292-8580 e-mail: info@southeasternsurveying.com
	Job Number: <b>62779004</b>	Scale: <b>N/A</b>	
	Chapter 5J-17, Florida Administrative Code requires that a legal description drawing bear the notation that <b>THIS IS NOT A SURVEY.</b>		
<b>SHEET 1 OF 5</b> <b>SEE SHEETS 2 &amp; 3 FOR SKETCH</b>			<b>MICHAEL L. DOUGHERTY</b> <b>REGISTERED LAND SURVEYOR</b> Number 4841

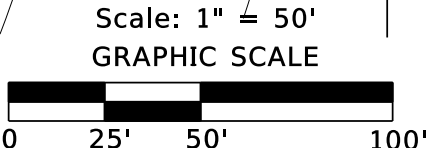
**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
 STATE ROAD 408  
 PROJECT NOS: 408 Section 3 and 408-453A  
 PARCELS: 3-886 PARTIAL & 3-890 PARTIAL  
 PURPOSE: EASEMENT FOR MULTI-PURPOSE TRAIL  
 ESTATE: PERMANENT EASEMENT

**SKETCH OF DESCRIPTION**



**LINE TABLE**

LINE	BEARING	DISTANCE
L1	N00°34'50"W	30.31'
L2	N45°28'21"W	14.15'
L3	S00°29'11"E	38.22'



**Southeastern Surveying**

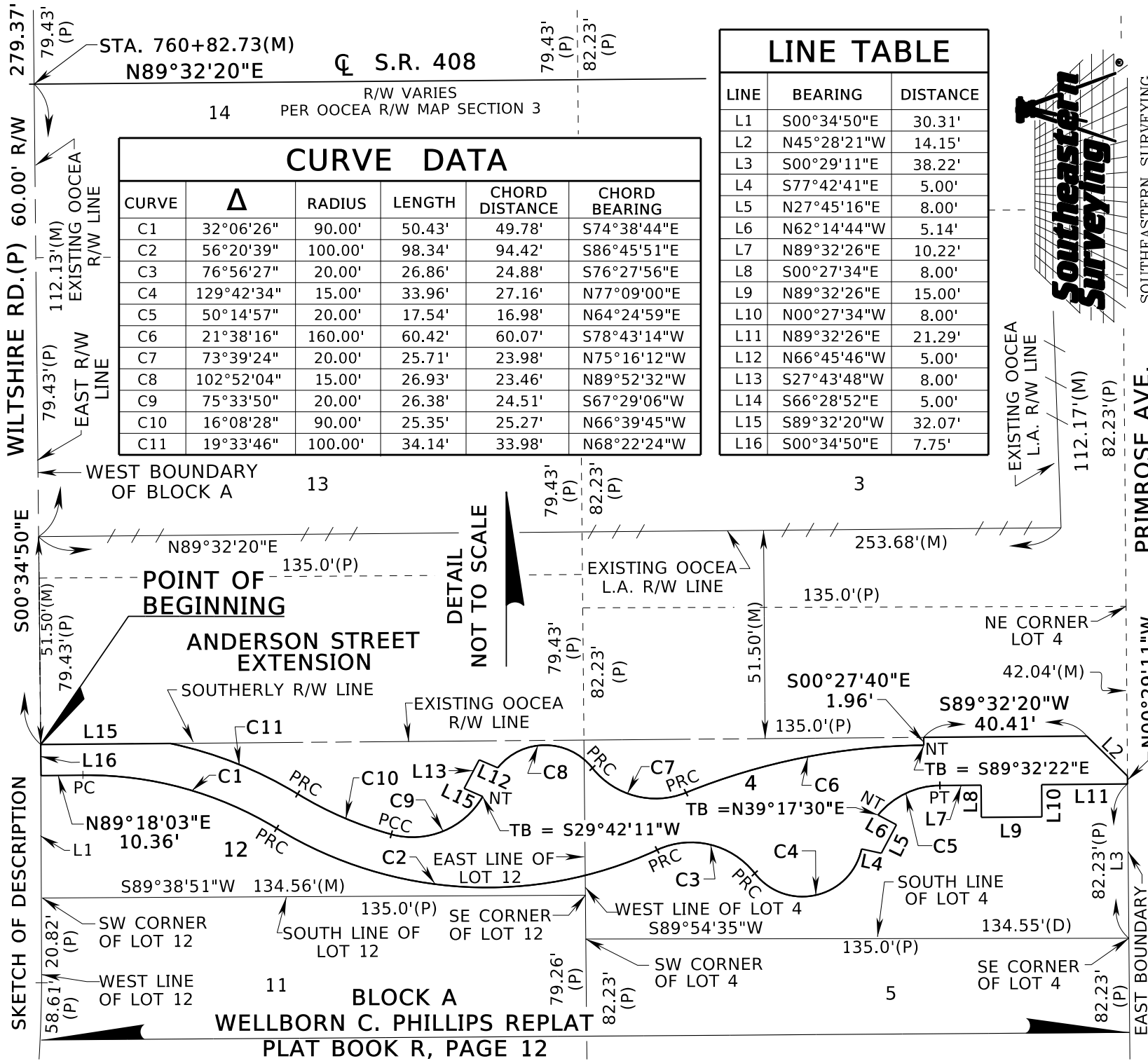
SOUTHEASTERN SURVEYING AND MAPPING CORPORATION  
 6500 All American Boulevard  
 Orlando, Florida 32810-4350  
 (407) 292-8580  
 Certification Number LB2108  
 e-mail: info@southeasternsurveying.com

Drawing No. 62779004  
 Job No. 62779  
 Date: February 02, 2021  
 Sheet 2 OF 5

**SECTION 31, TWP 22 S, RNG 30 E**  
**THIS IS NOT A SURVEY**

See Sheet 4 and 5 for Description NOT VALID WITHOUT SHEETS 1 THROUGH 5

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**STATE ROAD 408**  
**PROJECT NOS: 408 Section 3 and 408-453A**  
**PARCELS: 3-886 PARTIAL & 3-890 PARTIAL**  
**PURPOSE: EASEMENT FOR MULTI-PURPOSE TRAIL**  
**ESTATE: PERMANENT EASEMENT**

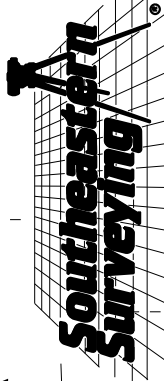


### CURVE DATA

CURVE	Δ	RADIUS	LENGTH	CHORD DISTANCE	CHORD BEARING
C1	32°06'26"	90.00'	50.43'	49.78'	S74°38'44"E
C2	56°20'39"	100.00'	98.34'	94.42'	S86°45'51"E
C3	76°56'27"	20.00'	26.86'	24.88'	S76°27'56"E
C4	129°42'34"	15.00'	33.96'	27.16'	N77°09'00"E
C5	50°14'57"	20.00'	17.54'	16.98'	N64°24'59"E
C6	21°38'16"	160.00'	60.42'	60.07'	S78°43'14"W
C7	73°39'24"	20.00'	25.71'	23.98'	N75°16'12"W
C8	102°52'04"	15.00'	26.93'	23.46'	N89°52'32"W
C9	75°33'50"	20.00'	26.38'	24.51'	S67°29'06"W
C10	16°08'28"	90.00'	25.35'	25.27'	N66°39'45"W
C11	19°33'46"	100.00'	34.14'	33.98'	N68°22'24"W

### LINE TABLE

LINE	BEARING	DISTANCE
L1	S00°34'50"E	30.31'
L2	N45°28'21"W	14.15'
L3	S00°29'11"E	38.22'
L4	S77°42'41"E	5.00'
L5	N27°45'16"E	8.00'
L6	N62°14'44"W	5.14'
L7	N89°32'26"E	10.22'
L8	S00°27'34"E	8.00'
L9	N89°32'26"E	15.00'
L10	N00°27'34"W	8.00'
L11	N89°32'26"E	21.29'
L12	N66°45'46"W	5.00'
L13	S27°43'48"W	8.00'
L14	S66°28'52"E	5.00'
L15	S89°32'20"W	32.07'
L16	S00°34'50"E	7.75'



**SOUTHEASTERN SURVEYING**  
**AND MAPPING CORPORATION**  
 6500 All American Boulevard  
 Orlando, Florida 32810-4350  
 (407) 292-8580  
 Certification Number LB2108  
 e-mail: info@southeasternsurveying.com

**SECTION 31, TWP 22 S, RNG 30 E**  
**THIS IS NOT A SURVEY**

Drawing No. 62779004  
 Job No. 62779  
 Date: February 02, 2021  
 Sheet 3 OF 5  
 See Sheet 4 & 5 for Description

NOT VALID WITHOUT SHEETS 1 THROUGH 5

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**STATE ROAD 408**  
**PROJECT NOS: 408 Section 3 and 408-453A**  
**PARCELS: 3-886 PARTIAL & 3-890 PARTIAL**  
**PURPOSE: EASEMENT FOR MULTI-PURPOSE TRAIL**  
**ESTATE: PERMANENT EASEMENT**


**DESCRIPTION:**

THAT PART OF:

LOTS 4 AND 12, BLOCK "A", WELLBORN C. PHILLIPS REPLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK R, PAGE 12, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commence at the Northwest corner of Lot 15, Block "A", WELLBORN C. PHILLIPS REPLAT, as described and recorded in Plat Book R, Page 12, Public Records of Orange County, Florida; thence run South 00 degrees 34 minutes 50 second East 279.37 feet along the West boundary of said Block "A" for the **POINT OF BEGINNING**, said Point of Beginning being a point on the existing Southerly Right of Way line for the Anderson Street Extension as shown on that certain Orlando - Orange County Expressway Authority (now known as the Central Florida Expressway Authority) Right - of - Way Plans for Section 3 City of Orlando & County of Orange, Dated February 1973; thence continue South 00 degrees 34 minutes 50 seconds East 7.75 feet along said West Boundary; thence North 89 degrees 18 minutes 03 seconds East 10.36 feet to the point of curvature of a curve concave Southwesterly, having a radius of 90.00 feet and a central angle of 32 degrees 06 minutes 26 seconds; run Southeasterly 50.43 feet along the arc of said curve having a chord bearing of South 74 degrees 38 minutes 44 seconds East to the point of reverse curvature of a curve concave Northerly, having a radius of 100.00 feet and a central angle of 56 degrees 20 minutes 39 seconds; run Easterly 98.34 feet along the arc of said curve having a chord bearing of South 86 degrees 45 minutes 51 seconds East to the point of reverse curvature of a curve concave Southwesterly, having a radius of 20.00 feet and a central angle of 76 degrees 56 minutes 27 seconds, run Southeasterly 26.86 feet along the arc of said curve having a chord bearing of South 76 degrees 27 minutes 56 seconds East to the point of reverse curvature of a curve concave Northwesterly, having a radius of 15.00 feet and a central angle of 129 degrees 42 minutes 34 seconds; run Northeasterly 33.96 feet along the arc of said curve having a chord bearing of North 77 degrees 09 minutes 00 seconds East to the end of said curve; thence South 77 degrees 42 minutes 41 seconds East 5.00 feet; thence North 27 degrees 45 minutes 16 seconds East 8.00 feet; thence North 62 degrees 14 minutes 44 seconds West 5.14 feet to a point on a non-tangent curve concave Southeasterly, having a radius of 20.00 feet and a central angle of 50 degrees 14 minutes 57 seconds; thence from a tangent bearing of North 39 degrees 17 minutes 30 seconds East, run Easterly 17.54 feet along the arc of said curve having a chord bearing of North 64 degrees 24 minutes 59 seconds East to the end of said curve; thence North 89 degrees 32 minutes 26 seconds East 10.22 feet; thence South 00 degrees 27 minutes 34 seconds East 8.00 feet; thence North 89 degrees 32 minutes 26 seconds East 15.00 feet; thence North 00 degrees 27 minutes 34 seconds West 8.00 feet; North 89 degrees 32 minutes 26 seconds East 21.29 feet to a point on the East boundary of Lot 4, Block "A" as shown on the aforesaid WELLBORN C. PHILLIPS REPLAT; said point being North 00 degrees 29 minutes 11 seconds East 38.22 feet from the Southeast corner of said Lot 4, thence North 00 degrees 29 minutes 11 seconds West 1.96 feet along said East boundary to a point on the aforesaid existing

DESCRIPTION CONTINUED ON SHEET 5 OF 5


DESCRIPTION	Date: <b>February 02, 2021</b> MJS	Certification Number LB2108
FOR  City of Orlando, Florida, HDR Inc., Central Florida Expressway Authority	Job Number: <b>62779004</b>	Scale: <b>N/A</b>
	Chapter 5J-17, Florida Administrative Code requires that a legal description drawing bear the notation that <b>THIS IS NOT A SURVEY.</b>	
	<b>SHEET 4 OF 5</b> <b>SEE SHEETS 2 &amp; 3 FOR SKETCH</b>	
		 <p><b>SOUTHEASTERN SURVEYING AND MAPPING CORPORATION</b>          6500 All American Boulevard          Orlando, Florida 32810-4350          (407) 292-8580          e-mail: info@southeasternsurveying.com</p>

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**STATE ROAD 408**  
**PROJECT NOs: 408 Section 3 and 408-453A**  
**PARCELS: 3-886 PARTIAL & 3-890 PARTIAL**  
**PURPOSE: EASEMENT FOR MULTI-PURPOSE TRAIL**  
**ESTATE: PERMANENT EASEMENT**

**DESCRIPTION:**

Southerly Right of Way line for the Anderson Street Extension; thence North 45 degrees 28 minutes 21 seconds West 14.15 feet along said existing Southerly Right of Way line; thence South 89 degrees 32 minutes 20 seconds West 40.41 feet along said existing Southerly Right of Way line; thence South 00 degrees 27 minutes 40 seconds East 1.96 feet to a point on a non-tangent curve concave Southeasterly, having a radius of 160.00 feet and a central angle of 21 degrees 38 minutes 16 seconds; thence from a tangent bearing of South 89 degrees 32 minutes 22 seconds East, run Southwesterly 60.42 feet along the arc of said curve, having a chord bearing of South 78 degrees 43 minutes 14 seconds West to a point of reverse curvature of a curve concave Northeasterly, having a radius of 20.00 feet and a central angle of 73 degrees 39 minutes 24 seconds; thence run Northwesterly 25.71 feet along the arc of said curve having a chord bearing of North 75 degrees 16 minutes 12 seconds West to a point of reverse curvature of a curve concave Southwesterly, having a radius of 15.00 feet and a central angle of 102 degrees 52 minutes 04 seconds; thence Northwesterly 26.93 feet along the arc of said curve having a chord bearing of North 89 degrees 52 minutes 32 seconds West; thence North 66 degrees 45 minutes 46 seconds West 5.00 feet; thence South 27 degrees 43 minutes 48 seconds West 8.00 feet; thence South 66 degrees 28 minutes 52 seconds East 5.00 feet to a point on a non-tangent curve concave Northwesterly, having a radius of 20.00 feet and a central angle of 75 degrees 33 minutes 50 seconds; thence from a tangent bearing of South 29 degrees 42 minutes 11 seconds West, run Southwesterly 26.38 feet along the arc of said curve having a chord bearing of South 67 degrees 29 minutes 06 seconds West to the beginning of a compound curve concave Northeasterly, having a radius of 90.00 feet and a central angle of 16 degrees 08 minutes 28 seconds; thence Northwesterly 25.35 feet along the arc of said curve having a chord bearing of North 66 degrees 39 minutes 45 seconds West to the point of reverse curvature of a curve concave Southwesterly, having a radius of 100.00 feet and a central angle of 19 degrees 33 minutes 46 seconds; thence Northwesterly 34.14 feet along the arc of said curve having a chord bearing of North 68 degrees 22 minutes 24 seconds West to a point on the aforesaid existing Southerly Right of Way line for the Anderson Street Extension; thence South 89 degrees 32 minutes 20 seconds West 32.07 feet along said existing Southerly Right of Way line to the Point of Beginning.

4537 Square feet more or less.

DESCRIPTION	Date: <b>February 02, 2021</b> MJS		Certification Number LB2108
FOR  City of Orlando, Florida, HDR Inc., Central Florida Expressway Authority	Job Number: <b>62779004</b>	Scale: <b>N/A</b>	 <p><b>SOUTHEASTERN SURVEYING AND MAPPING CORPORATION</b>          6500 All American Boulevard          Orlando, Florida 32810-4350          (407) 292-8580          e-mail: info@southeasternsurveying.com</p>
	Chapter 5J-17, Florida Administrative Code requires that a legal description drawing bear the notation that <b>THIS IS NOT A SURVEY.</b>		
	<b>SHEET 5 OF 5</b> <b>SEE SHEETS 2 &amp; 3 FOR SKETCH</b>		

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**STATE ROAD 408**  
**PROJECT NOS: 408 SECTION 3 and 408-453A**  
**PARCELS: 453A-801 PARTIAL**  
**PURPOSE: EASEMENT FOR MULTI-PURPOSE TRAIL**  
**ESTATE: PERMANENT EASEMENT**

SURVEYOR'S REPORT:


1. This SKETCH OF DESCRIPTION has been prepared to show Existing parent tract remainder of certain Parcels related to Orlando East - West Expressway Right of Way Map Plans for Section 3, Dated 1973.
2. Bearings shown hereon refer to the West Boundary of BENTLEY'S SUBDIVISION, Plat Book S, Page 56, Public Records of Orange County, Florida, as being North 00°43'57" West, assumed.
3. Distances shown hereon are GRID distances.
4. Dimensions are shown in United States standard survey feet and decimals thereof.
5. This Sketch does not determine ownership of the lands shown hereon.
6. This Sketch was performed without benefit of an abstract, title search, title opinion or title commitment. A title search may reveal additional information affecting the parcel as shown.
7. Additions or deletions to survey maps or reports by other than the signing party or parties is prohibited without written consent of the signing party or parties.
8. Right of Way information shown hereon was determined from recorded plats, Right of Way Maps, and information obtained from the Orange County Property Appraisers web site.
9. Attention is directed to the fact that these Maps may have been altered in sizes by reproduction. This must be considered when obtaining scaled data.
10. This Sketch of Description or the copies thereof, are not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper.
11. I hereby Certify that the "SKETCH OF DESCRIPTION" of the above described property is true and correct to the best of my knowledge and belief as recently drawn under my direction and that it meets the Standards of Practice for Land Surveying Chapter 5J-17 Requirements of Florida Administration Code. NOT VALID without sheets 1-5.

ABBREVIATIONS

CL = CENTERLINE	SEC = SECTION
ID = IDENTIFICATION	RNG = RANGE
L.A. = LIMITED ACCESS	R/W = RIGHT OF WAY
(M) = MAP	STA. = STATION
(P) = PLAT	TWP = TOWNSHIP
P.B. = PLAT BOOK	O.R.B. = OFFICIAL RECORDS BOOK
PG. = PAGE	OOCEA = ORLANDO - ORANGE COUNTY EXPRESSWAY
REC. = RECOVERED	AUTHORITY SECTION 3 R/W MAP, DATED 1973
S.R. = STATE ROAD	"NOW KNOWN AS CENTRAL FLORIDA EXPRESSWAY AUTHORITY"

NOTICE OF LIABILITY:

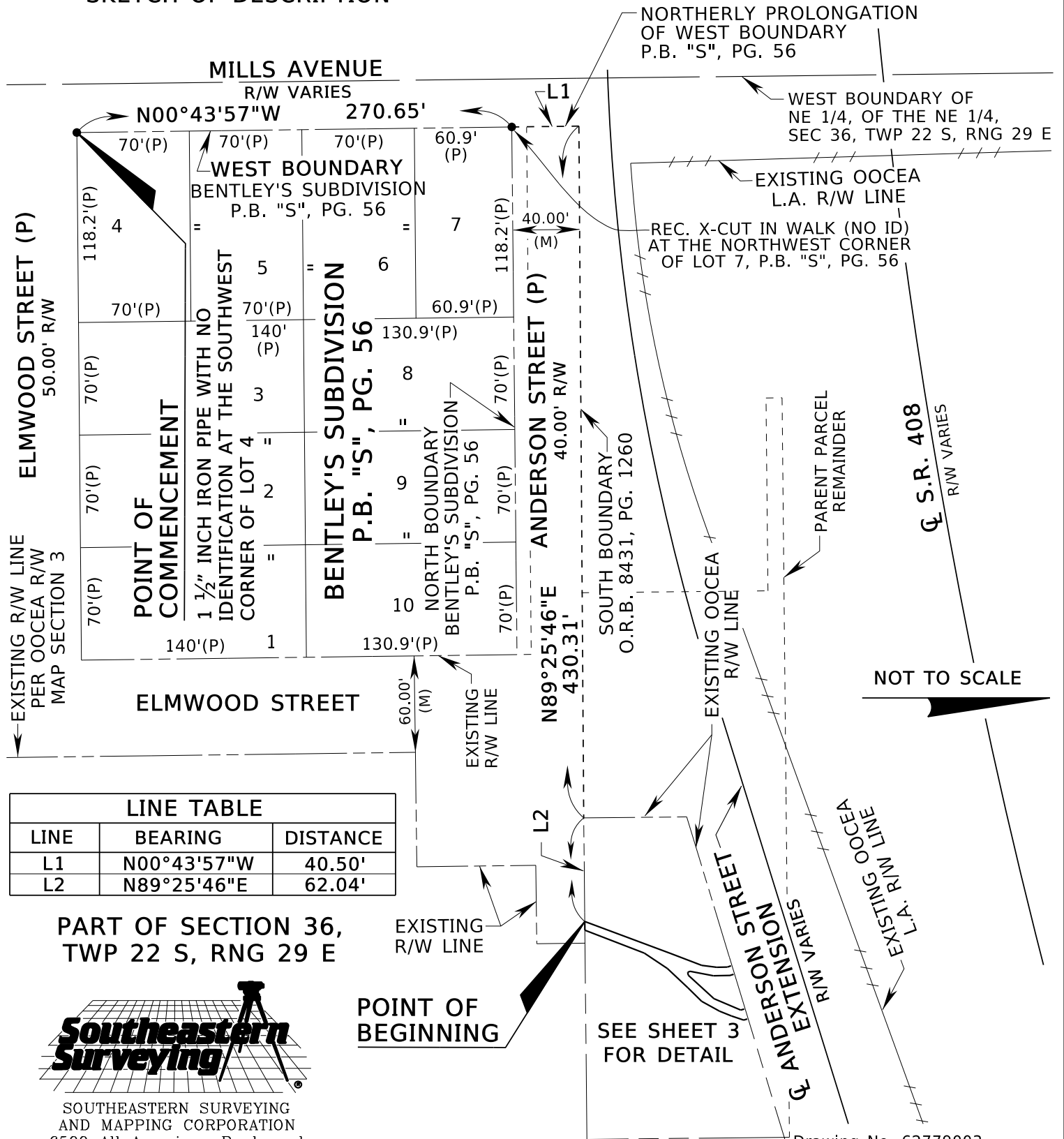
This survey is certified to those individuals shown on the face thereof. Any other use, benefit or reliance by any other party is strictly prohibited and restricted. Surveyor is responsible only to those certified and hereby disclaims any other liability and hereby restricts the rights of any other individual or firm to use this survey, without express written consent of the surveyor.

<p>DESCRIPTION</p> <p>FOR</p> <p>City of Orlando, Florida, HDR Inc., Central Florida Expressway Authority</p>	Date: February 02, 2021 MJS		<p>Certification Number LB2108</p>  <p><b>SOUTHEASTERN SURVEYING AND MAPPING CORPORATION</b>          6500 All American Boulevard          Orlando, Florida 32810-4350          (407) 292-8580          e-mail: info@southeasternsurveying.com</p>
	Job Number: 62779003	Scale: N/A	
	<p>Chapter 5J-17, Florida Administrative Code requires that a legal description drawing bear the notation that</p> <p><b>THIS IS NOT A SURVEY.</b></p>		
<p>SHEET 1 OF 5 SEE SHEETS 2 &amp; 3 FOR SKETCH</p>			<p>MICHAEL L. DOUGHERTY REGISTERED LAND SURVEYOR Number 4841</p>



CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
 STATE ROAD 408  
 PROJECT NOs: 408 SECTION 3 and 408-453A  
 PARCELS: 453A-801 PARTIAL  
 PURPOSE: EASEMENT FOR MULTI-PURPOSE TRAIL  
 ESTATE: PERMANENT EASEMENT

SKETCH OF DESCRIPTION



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N00°43'57\"W	40.50'
L2	N89°25'46\"E	62.04'

PART OF SECTION 36,  
 TWP 22 S, RNG 29 E



SOUTHEASTERN SURVEYING  
 AND MAPPING CORPORATION  
 6500 All American Boulevard  
 Orlando, Florida 32810-4350  
 (407) 292-8580  
 Certification Number LB2108

e-mail: info@southeasternsurveying.com

POINT OF  
 BEGINNING

SEE SHEET 3  
 FOR DETAIL

NOT TO SCALE

**THIS IS NOT A SURVEY**  
 NOT VALID WITHOUT SHEETS 1 THROUGH 5

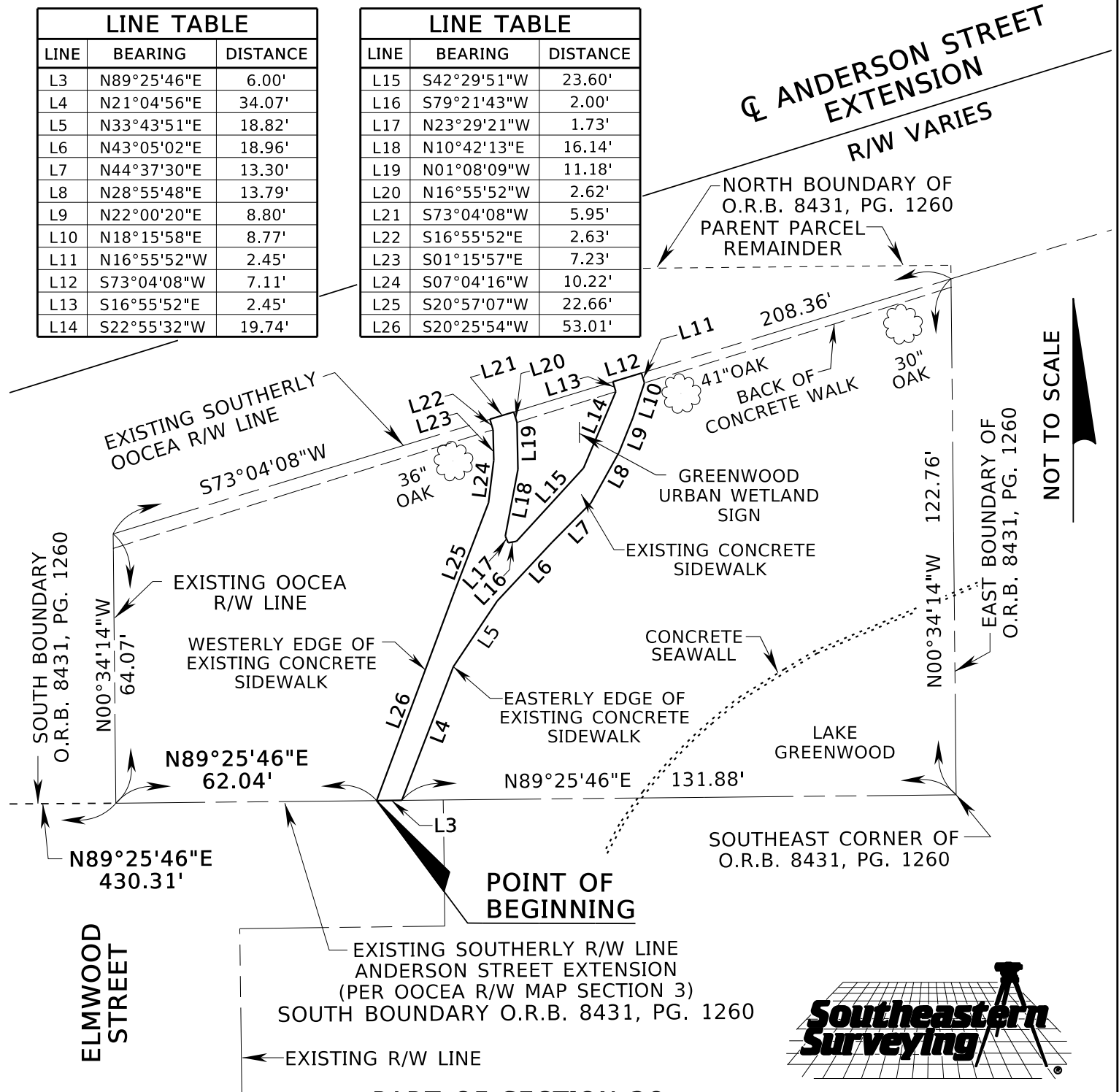
Drawing No. 62779003  
 Job No. 62779  
 Date: February 02, 2021  
 Sheet 2 OF 5  
 See Sheet 4 & 5 for Description

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
 STATE ROAD 408  
 PROJECT NOS: 408 SECTION 3 and 408-453A  
 PARCELS: 453A-801 PARTIAL  
 PURPOSE: EASEMENT FOR MULTI-PURPOSE TRAIL  
 ESTATE: PERMANENT EASEMENT

SKETCH OF DESCRIPTION

LINE	BEARING	DISTANCE
L3	N89°25'46"E	6.00'
L4	N21°04'56"E	34.07'
L5	N33°43'51"E	18.82'
L6	N43°05'02"E	18.96'
L7	N44°37'30"E	13.30'
L8	N28°55'48"E	13.79'
L9	N22°00'20"E	8.80'
L10	N18°15'58"E	8.77'
L11	N16°55'52"W	2.45'
L12	S73°04'08"W	7.11'
L13	S16°55'52"E	2.45'
L14	S22°55'32"W	19.74'

LINE	BEARING	DISTANCE
L15	S42°29'51"W	23.60'
L16	S79°21'43"W	2.00'
L17	N23°29'21"W	1.73'
L18	N10°42'13"E	16.14'
L19	N01°08'09"W	11.18'
L20	N16°55'52"W	2.62'
L21	S73°04'08"W	5.95'
L22	S16°55'52"E	2.63'
L23	S01°15'57"E	7.23'
L24	S07°04'16"W	10.22'
L25	S20°57'07"W	22.66'
L26	S20°25'54"W	53.01'



ANDERSON STREET  
 EXTENSION  
 R/W VARIES

NORTH BOUNDARY OF  
 O.R.B. 8431, PG. 1260  
 PARENT PARCEL  
 REMAINDER

NOT TO SCALE

Drawing No. 62779003  
 Job No. 62779  
 Date: February 02, 2021  
 Sheet 3 OF 5  
 See Sheet 4 & 5 for Description

PART OF SECTION 36,  
 TWP 22 S, RNG 29 E

THIS IS NOT A SURVEY

NOT VALID WITHOUT SHEETS 1 THROUGH 5



SOUTHEASTERN SURVEYING  
 AND MAPPING CORPORATION  
 6500 All American Boulevard  
 Orlando, Florida 32810-4350  
 (407) 292-8580  
 Certification Number LB2108  
 e-mail: info@southeasternsurveying.com

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
 STATE ROAD 408  
 PROJECT NOs: 408 SECTION 3 and 408-453A  
 PARCELS: 453A-801 PARTIAL  
 PURPOSE: EASEMENT FOR MULTI-PURPOSE TRAIL  
 ESTATE: PERMANENT EASEMENT**

**DESCRIPTION:**

THAT PART OF:


THE FOLLOWING DESCRIBED PROPERTY LYING SOUTH AND EAST OF STATE ROAD #15, THE EXTENSION OF ANDERSON STREET: BEGINNING 6 FEET NORTH AND 320 FEET EAST OF THE SOUTHWEST CORNER OF THE N. 1/2 OF THE NE 1/4 OF THE NE 1/4 OF SECTION 36, TOWNSHIP 22 SOUTH, RANGE 29 EAST, RUN THENCE NORTH 116 FEET, WEST 120 FEET, NORTH 10 FEET, EAST 460 FEET, SOUTH 126 FEET, WEST 340 FEET TO THE POINT OF BEGINNING, ORANGE COUNTY, FLORIDA. LESS THE RIGHT-OF-WAY FOR ANDERSON STREET, AND LESS THE RIGHT-OF-WAY FOR STATE ROAD 408.

(The above described parcel of land being part of the lands described and recorded in Official Records Book 8431, Page 1260, Public Records of Orange County, Florida.)

DESCRIBED AS FOLLOWS:

Commence at a 1 1/2" inch iron pipe with no identification at the Southwest corner of Lot 4, BENTLEY'S SUBDIVISION as described and recorded in Plat Book S, Page 56, Public Records of Orange County, Florida, thence run North 00 degrees 43 minutes 57 seconds West 270.65 feet along the West boundary of said BENTLEY'S SUBDIVISION to the Northwest corner thereof; thence continue North 00 degrees 43 minutes 57 seconds West 40.50 feet along the Northerly prolongation of said West boundary to a point on the South boundary of that certain parcel of land as described and recorded in Official Records Book 8431, Page 1260, Public Records of Orange County, Florida; thence North 89 degrees 25 minutes 46 seconds East 430.31 feet along said South boundary to a point on the existing Southerly Right of Way line for the Anderson Street Extension as shown on that certain Orlando - Orange County Expressway Authority (now known as the Central Florida Expressway Authority) Right - of - Way Plans for Section 3 City of Orlando & County of Orange, Dated February 1973, thence 89 degrees 25 minutes 46 seconds East 62.04 feet along said existing Southerly Right of Way Line and said South boundary for the **POINT OF BEGINNING**; said Point of Beginning being the Westerly edge of that certain existing concrete sidewalk being located in the Greenwood Urban Wetlands Park, City of Orlando, Florida; thence continue North 89 degrees 25 minutes 46 seconds East 6.00 feet along said existing Southerly Right of Way Line and said South boundary to the Easterly edge of said certain existing concrete sidewalk; thence run Northerly along said Easterly edge with the following seven courses and distances: thence North 21 degrees 04 minutes 56 seconds East 34.07 feet; thence North 33 degrees 43 minutes 51 seconds East 18.82 feet; thence North 43 degrees 05 minutes 02 seconds East 18.96 feet; thence North 44 degrees 37 minutes 30 seconds East 13.30 feet; thence North 28 degrees 55 minutes 48 seconds East 13.79 feet; thence North 22 degrees 00 minutes 20 seconds East

DESCRIPTION CONTINUED ON SHEET 5 OF 5


DESCRIPTION	Date: <b>February 02, 2021</b> MJS		Certification Number LB2108
FOR  City of Orlando, Florida, HDR Inc., Central Florida Expressway Authority	Job Number: <b>62779003</b>	Scale: <b>N/A</b>	 <p><b>SOUTHEASTERN SURVEYING        AND MAPPING CORPORATION</b>        6500 All American Boulevard        Orlando, Florida 32810-4350        (407) 292-8580        e-mail: info@southeasternsurveying.com</p>
	Chapter 5J-17, Florida Administrative Code requires that a legal description drawing bear the notation that <b>THIS IS NOT A SURVEY.</b>		
	<b>SHEET 4 OF 5        SEE SHEETS 2 &amp; 3 FOR SKETCH</b>		

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**STATE ROAD 408**  
**PROJECT NOs: 408 SECTION 3 and 408-453A**  
**PARCELS: 453A-801 PARTIAL**  
**PURPOSE: EASEMENT FOR MULTI-PURPOSE TRAIL**  
**ESTATE: PERMANENT EASEMENT**

**DESCRIPTION:**

8.80 feet; thence North 18 degrees 15 minutes 58 seconds East 8.77 feet; thence leaving said Easterly edge, run North 16 degrees 55 minutes 52 seconds West 2.45 feet to a point on the aforesaid existing Southerly Right of Way line; thence South 73 degrees 04 minutes 08 seconds West 7.11 feet along said existing southerly Right of Way line; thence South 16 degrees 55 minutes 52 seconds East 2.45 feet to a point on the edge of the aforesaid existing concrete sidewalk; thence run Southerly and Northerly along said edge of sidewalk with the following five courses and distances: South 22 degrees 55 minutes 32 seconds West 19.74 feet; thence South 42 degrees 29 minutes 51 seconds West 23.60 feet; thence South 79 degrees 21 minutes 43 seconds West 2.00 feet; thence North 23 degrees 29 minutes 21 seconds West 1.73 feet; thence North 10 degrees 42 minutes 13 seconds East 16.14 feet; thence North 01 degrees 08 minutes 09 seconds West 11.18 feet; thence leaving said edge of concrete sidewalk run thence North 16 degrees 55 minutes 52 seconds West 2.62 feet to a point on the aforesaid existing Southerly Right of Way line; thence South 73 degrees 04 minutes 08 seconds West 5.95 feet along said existing Southerly Right of Way line; thence South 16 degrees 55 minutes 52 seconds East 2.63 feet to a point on the aforesaid Westerly edge of the existing concrete sidewalk; thence run Southerly along said Westerly edge with the following four courses and distances: thence South 01 degrees 15 minutes 57 seconds East 7.23 feet; thence South 07 degrees 04 minutes 16 seconds West 10.22 feet; thence South 20 degrees 57 minutes 07 seconds West 22.66 feet; thence South 20 degrees 25 minutes 54 seconds West 53.01 feet to the Point of Beginning.

CONTAINING: 1017 Square feet, more or less.

DESCRIPTION	Date: <b>February 02, 2021</b> MJS		Certification Number LB2108
FOR  City of Orlando, Florida, HDR Inc., Central Florida Expressway Authority	Job Number: <b>62779003</b>	Scale: <b>N/A</b>	 <p><b>SOUTHEASTERN SURVEYING AND MAPPING CORPORATION</b>          6500 All American Boulevard          Orlando, Florida 32810-4350          (407) 292-8580          e-mail: info@southeasternsurveying.com</p>
	Chapter 5J-17, Florida Administrative Code requires that a legal description drawing bear the notation that <b>THIS IS NOT A SURVEY.</b>		
	<b>SHEET 5 OF 5</b> <b>SEE SHEETS 2 &amp; 3 FOR SKETCH</b>		



Dewberry Engineers Inc. | 407.843.5120  
800 N. Magnolia Ave, Suite 1000 | 407.649.8664 fax  
Orlando, FL 32803 | www.dewberry.com

February 11, 2021

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

**RE: MULTI-PURPOSE TRAIL EASEMENT**  
SR 408, Project Section 3 and 253A  
CFX to City of Orlando - Parcels 3-886, 3-890 and 253A-801

Dear Mr. Pressimone:

On behalf of **Dewberry Engineers, Inc., as Consulting Engineer (the “Consulting Engineer”)** to the **Central Florida Expressway Authority (“CFX”)** does here by certify as follows:

1. We have reviewed the limits of the parcels along local right-of-way in the SR 408 area shown in Exhibit A, attached (**“Parcels”**). The SR 408 Projects Section 3 and 253A were completed. City of Orlando has requested an easement over a portion of three Parcels identified above for a multi-purpose trail to serve the general public. In our opinion, and based upon the foregoing, we certify that granting an easement across the Parcels listed above would not (1) impede or restrict the operation of the Expressway System; (2) materially affect or interfere with the present or future construction, use, operation, repair or maintenance of any portion of the Expressway System; or (3) otherwise impair traffic operations or public safety. An updated certificate will be provided upon the receipt and approval of the final sketch and legal description for the Parcels.
2. Furthermore, this certificate is being provided by the Consulting Engineer to CFX solely for the purposes of **complying with Section 5.4 of CFX’s Amended and Restated Master Bond Resolution and the requirements set forth in CFX’s Manual and may not be relied on by any other person or party for any other purpose.**

Sincerely,

A handwritten signature in blue ink that reads "R. Keith Jackson".

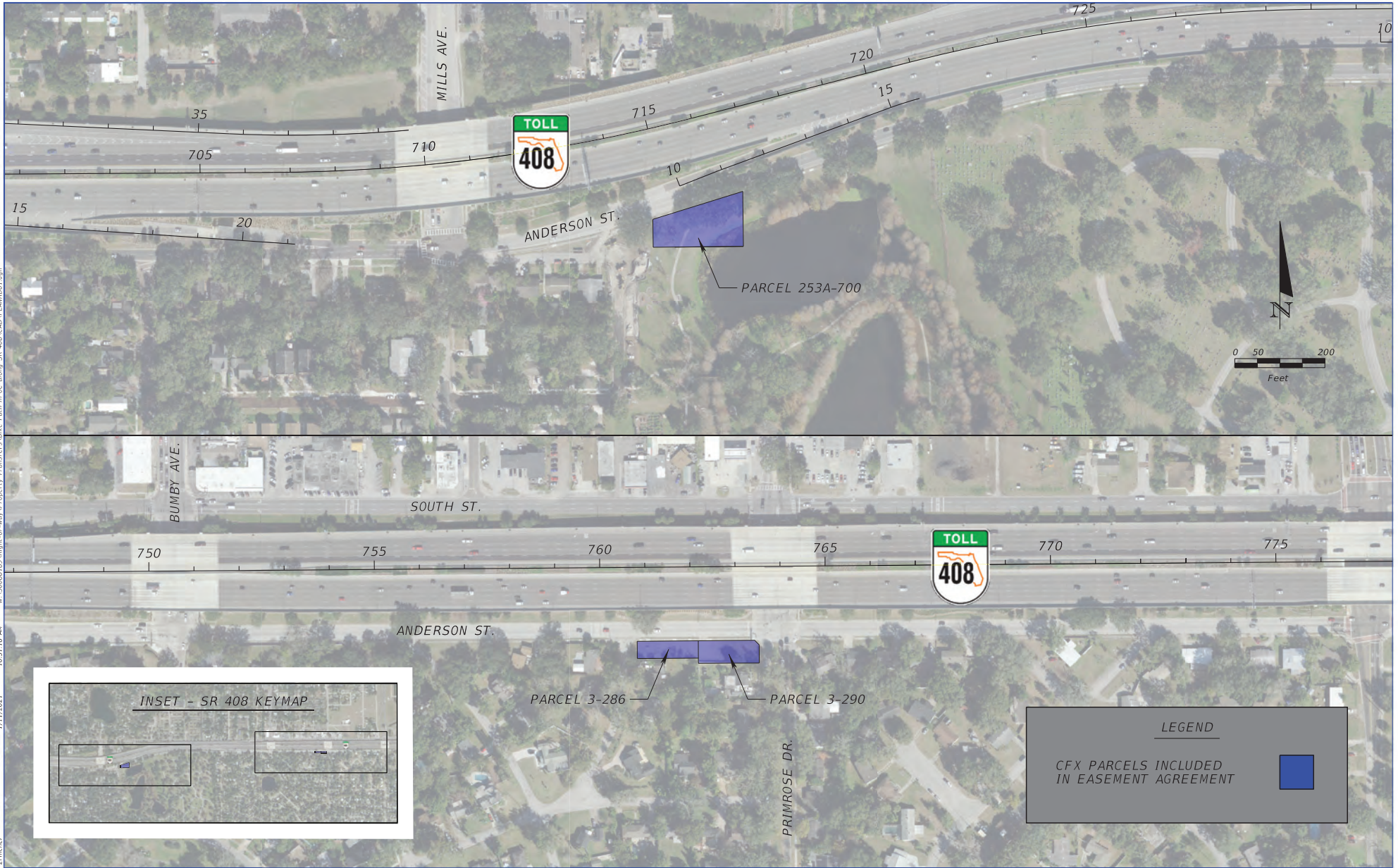
R. Keith Jackson, P.E.  
Program Manager

Attachments

cc: Laura N Kelly, Esq. CFX (w/ enc.)



**EXHIBIT A**



1/11/2021 10:31:18 AM W:\50008188\Right-of-Way\Property\Transfers\Bike Paths in OC Along SR 408\CDD\PLANNING\Map

THE OFFICIAL RECORD OF THIS SHEET IS THE ELECTRONIC FILE DIGITALLY SIGNED AND SEALED UNDER RULE 61G15-23.004, F.A.C.

REVISIONS		REVISIONS		SR 408 Right-of-Way		<b>CITY OF ORLANDO</b> <b>TRAIL EASEMENT EXHIBIT</b>	SHEET NO.
DATE	DESCRIPTION	DATE	DESCRIPTION				
				SR 408	253A		1

**CONSENT AGENDA ITEM  
#8**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Laura Newlin Kelly, Associate General Counsel *Laura Newlin Kelly*

DATE: January 21, 2021

RE: First Amendment to Interlocal Agreement between Florida Department of Transportation (“FDOT”) and the Central Florida Expressway Authority (“CFX”) For the Construction and Operation of the Wekiva Parkway  
Project: Wekiva Parkway  
Parcels: Section 4A

---

## BACKGROUND

On June 11, 2014, FDOT and CFX’s predecessor in interest entered into that certain Interlocal Agreement Between the Florida Department of Transportation and the Orlando-Orange County Expressway Authority for the Construction and Operation of the Wekiva Parkway recorded on June 13, 2014 as Document Number 20140293969 in Official Records Book 10758, Page 8386, Public Records of Orange County, Florida (“Interlocal Agreement”) outlining certain rights and obligations of FDOT and CFX, as the successor in interest, to construct and operate the Wekiva Parkway.

FDOT intends to construct the Neighborhood Lakes collaborative trail more particularly identified in the Wekiva Basin State Park Multi-Unit Management Plan Amendment dated August 16, 2012 and approved by the Florida Department of Environment Protection on January 24, 2013 (“Trail”). The Trail will utilize the master stormwater drainage system for the Wekiva Parkway located in the joint pond in Section 4A of CFX’s limited access right-of-way as more particularly depicted on the map attached hereto as **Attachment “A”** (“4A Joint Pond”). The First Amendment to Interlocal Agreement between Florida Department of Transportation and the Central Florida Expressway Authority For the Construction and Operation of the Wekiva Parkway (“First Amendment”) will amend the terms of the Interlocal Agreement to clarify that 4A Joint Pond shall provide for the stormwater drainage from the Trail as well as the Wekiva Parkway. The First Amendment will also clarify that CFX will be the fee simple owner of the 4A Joint Pond. A copy of the First Amendment is attached hereto as **Attachment “B”**.

Pursuant to CFX’s Property Acquisition, Disposition & Permitting Procedures Manual (“Policy”), CFX staff and CFX’s General Engineering Consultant have examined the First Amendment and determined that clarifying the intent of the Interlocal Agreement to permit the stormwater drainage from the Trail into the 4A Joint Pond will not (1) impede or restrict the operation of the Expressway System; (2) materially affect or interfere with the present or future construction, use, operation, repair or maintenance of any portion of the Expressway System; or



(3) otherwise impair traffic operations or public safety. A copy of the certification is attached hereto as **Attachment “C”**.

The Right-of-Way Committee met and reviewed this item on January 20, 2021 and recommended the approval of the First Amendment between CFX and FDOT in a form substantially similar to the attached First Amendment, subject to any minor or clerical revisions approved by the General Counsel or designee, or any revisions to the legal descriptions or exhibits as approved by CFX’s General Engineering Consultant.

### **REQUEST**

Board’s approval of the following is requested:

First Amendment between CFX and FDOT in a form substantially similar to the attached First Amendment, subject to any minor or clerical revisions approved by the General Counsel or designee, or any revisions to the legal descriptions or exhibits as approved by CFX’s General Engineering Consultant.

### **ATTACHMENTS**



- A. Map of Joint Pond 4A
- B. First Amendment to Interlocal Agreement
- C. Certificate from CFX’s General Engineering Consultant

Reviewed by: Woody Rodriguez



1/11/2021 9:38:57 AM W:\5008189\Right-of-Way\Property Transfers\SR 429 - Weiva Trail\CAD\PLAN\MOI.dwg  
 efischer

THE OFFICIAL RECORD OF THIS SHEET IS THE ELECTRONIC FILE DIGITALLY SIGNED AND SEALED UNDER RULE 61G15-23.004, F.A.C.

LEGEND	
JOINT POND 4A	
EXISTING LA R/W	

REVISIONS				SR 429 Right-of-Way			<b>JOINT POND 4A EXHIBIT</b>	SHEET NO.
DATE	DESCRIPTION	DATE	DESCRIPTION	ROAD NO.	PROJECT NO.			1
				SR 429	429-205			

Prepared By:  
Laura L. Kelly, Esquire  
Central Florida Expressway Authority  
4974 ORL Tower Road  
Orlando, FL 32807

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

---

**FIRST AMENDMENT TO  
INTERLOCAL AGREEMENT BETWEEN THE FLORIDA DEPARTMENT OF  
TRANSPORTATION AND CENTRAL FLORIDA EXPRESSWAY AUTHORITY FOR  
THE CONSTRUCTION AND OPERATION OF THE WEKIVA PARKWAY**

**THIS FIRST AMENDMENT TO INTERLOCAL AGREEMENT** (this “Amendment”) is made and entered into as of the Effective Date (hereinafter defined) by and between **FLORIDA DEPARTMENT OF TRANSPORTATION**, a state agency of the State of Florida, whose address is 605 Suwannee Street, Tallahassee, Florida 32399 (“**FDOT**”), and **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a body corporate and an agency of the State of Florida, created by Part III of Chapter 348, Florida Statutes, whose address is 4974 ORL Tower Road, Orlando, Florida 32807-4414 (“**CFX**”). **FDOT** and **CFX** are referred to herein sometimes as a “Party” or the “Parties”.

**RECITALS**

**WHEREAS**, **CFX** was created pursuant to Part III, Chapter 348, Florida Statutes (“**CFX Act**”) to, among other things, construct, improve, maintain and operate a limited access toll road known as the Central Florida Expressway System, as defined in the **CFX Act**, and was granted all powers necessary and convenient to conduct its business, including the power to contract with other public agencies; and

**WHEREAS**, **FDOT** was created pursuant to 20.23, Florida Statutes (“**FDOT Act**”) to, among other things, construct, improve, maintain and operate the turnpike system and high-speed and passenger rail systems, and was granted all powers necessary and convenient to conduct its business, including the power to contract with other public agencies; and

**WHEREAS**, Section 163.01, Florida Statutes, authorizes the Parties to enter into an interlocal agreement; and

**WHEREAS**, **FDOT** and the Orlando-Orange County Expressway Authority, the predecessor in interest to **CFX**, entered into that certain Interlocal Agreement Between the Florida Department of Transportation and the Orlando-Orange County Expressway Authority for the Construction and Operation of the Wekiva Parkway dated June 11, 2014 and recorded on June 13, 2014 as Document Number 20140293969 in Official Records Book 10758, Page 8386, Public Records of Orange County, Florida (“**Interlocal Agreement**”); and

**WHEREAS**, the Parties are desirous of amending the Interlocal Agreement to clarify the ownership and maintenance responsibilities and set forth the roles and responsibilities of the

Parties in accordance with the terms and conditions more specifically provided herein.

**NOW THEREFORE**, for and in consideration of the premises hereof, the sums of money to be paid hereunder, the mutual covenants herein contained and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals and Definitions.** The foregoing recitals are true and correct and are incorporated herein by this reference. Any capitalized term not otherwise defined herein shall have the meaning ascribed to it under the Interlocal Agreement.

2. **CFX as Successor In Interest.** Any and all references to OOCEA shall be amended to refer to CFX and any and all references to the Orlando-Orange County Expressway System shall be amended to refer to the Central Florida Expressway System.

3. **Amendments to Interlocal Agreement**

(a) Section 1(b) of the Interlocal Agreement is hereby amended and restated as follows:

Except as set forth in subparagraph (d) below, CFX shall fund, design, acquire right of way for, construct own, toll (or receive toll revenues attributed to), operate and maintain Sections 1A, 1B, 2A, 2B, 2C, and the 4A Joint Pond (hereinafter defined), as shown on the Line and Grade Plans, all of which shall constitute part of the Central Florida Expressway System, but shall not be included in the lease of the System to FDOT under the lease-purchase agreement between OOCEA, as predecessor in interest to CFX, and FDOT.

(b) Section 1(c) of the Interlocal Agreement is hereby amended and restated in its entirety as follows:

Except as set forth in subparagraph (d) below and the 4A Joint Pond, FDOT shall fund, design, acquire right of way for, construct own, toll (or receive toll revenues attributed to), operate and maintain Sections 3A, 3B, 4A, 4B, 5, 6, 7A, 7B and 8 as shown on the Line and Grade Plans.

(c) Section 1(d)a. of the Interlocal Agreement is hereby amended and restated in its entirety as follows:

a. FDOT constructed and CFX shall ultimately operate, maintain and own a joint pond for both Parties in Section 4A located within CFX's limited access line (the "4A Joint Pond"). FDOT and CFX agree and acknowledge that the 4A Joint Pond shall provide for the stormwater drainage from the Wekiva Parkway and the Neighborhood Lakes collaborative trail more particularly identified in the Wekiva Basin State Park Multi-Unit Management Plan Amendment dated August 16, 2012, and approved by the Florida Department of Environment Protection on January 24, 2013. CFX, as the owner of the 4A Joint Pond, shall own, operate and maintain the 4A Joint Pond.

4. **Electronic Signatures and Counterparts.** To facilitate execution, CFX and FDOT agree that this Amendment may be executed and transmitted by electronic (including digital) signature in compliance with Chapter 668, Florida Statutes, to the other Party and that the executed electronic or digital shall be binding and enforceable as an original. This Amendment may also be executed in as many counterparts as may be required and it shall not be necessary that the signature of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of such counterparts. All counterparts shall collectively constitute a single amendment.

5. **Effect on Interlocal Agreement.** Except as modified herein, the Interlocal Agreement remains in full force and effect and is hereby incorporated by reference into the body of this Amendment as if set forth herein. In the event of any conflict or ambiguity between the Interlocal Agreement and this Amendment, this Amendment shall control.

6. **Effective Date.** The effective date of this Amendment shall be the date upon which the CFX governing board has approved this Amendment and the last of the Parties executes this Amendment (“Effective Date”).

*[SIGNATURE PAGES TO FOLLOW]*



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

Signed, sealed, and delivered  
in the presence of:

**“CFX”**

**CENTRAL FLORIDA EXPRESSWAY  
AUTHORITY**

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

By: \_\_\_\_\_  
Buddy Dyer, Chairman

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

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

ATTEST: \_\_\_\_\_  
Regla (“Mimi”) Lamaute  
Recording Clerk

Approved as to form and legality by legal  
counsel to the Central Florida Expressway  
Authority on this \_\_\_ day of \_\_\_\_\_,  
2021 for its exclusive use and reliance.

By: \_\_\_\_\_  
Diego “Woody” Rodriguez  
General Counsel

STATE OF FLORIDA                    )  
COUNTY OF \_\_\_\_\_            )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2021, by Buddy Dyer, as Chairman of the Central Florida Expressway Authority, on behalf of the  
organization. He is personally known to me OR produced \_\_\_\_\_ as  
identification.

NOTARY PUBLIC

\_\_\_\_\_  
Signature of Notary Public - State of Florida  
Print Name: \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Signed, sealed, and delivered  
in the presence of:

“FDOT”

**FLORIDA DEPARTMENT OF  
TRANSPORTATION**

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

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

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

Name: Jared W. Perdue, P.E.

Title: District 5 Secretary

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

Legal Review:

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

Fred Loose

Attorney for FDOT District 5

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

STATE OF FLORIDA                    )  
COUNTY OF \_\_\_\_\_            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by Kevin J. Thibault, as Secretary of the Florida Department of Transportation, on behalf of the organization. He is personally known to me OR produced \_\_\_\_\_ as identification.

NOTARY PUBLIC

\_\_\_\_\_  
Signature of Notary Public - State of Florida

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

Commission No.: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



Dewberry Engineers Inc. | 407.843.5120  
800 N. Magnolia Ave, Suite 1000 | 407.649.8664 fax  
Orlando, FL 32803 | www.dewberry.com

February 11, 2021

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

RE: Joint Use Pond 4A

SR 429, Wekiva Parkway Project 429-205  
CFX 4A Joint Pond  
Interlocal Agreement for Property Exchange and Pond Configuration regarding  
Wekiva Parkway Trail Extension

Dear Mr. Pressimone:

On behalf of Dewberry Engineers, Inc., as Consulting Engineer (the "Consulting Engineer") to the Central Florida Expressway Authority ("CFX") does here by certify as follows:

1. We have examined the First Amendment and determined that clarifying the intent of the Interlocal Agreement to permit the stormwater drainage from the Trail into the 4A Joint Pond will not (1) impede or restrict the operation of the Expressway System; (2) materially affect or interfere with the present or future construction, use, operation, repair or maintenance of any portion of the Expressway System; or (3) otherwise impair traffic operations or public safety.
2. Furthermore, this certificate is being provided by the Consulting Engineer to CFX **solely for the purposes of complying with Section 5.4 of CFX's Amended and Restated Master Bond Resolution and the requirements set forth in CFX's Manual** and may not be relied on by any other person or party for any other purpose.

Sincerely,

A handwritten signature in blue ink that reads "R. Keith Jackson".

R. Keith Jackson, P.E.  
Program Manager

Attachments

cc: Laura Newlin Kelly, Esq. CFX (w/ enc.)





1/11/2021 9:38:57 AM W:\50068189\Right-of-Way\Property Transfers\SR 429 - Wetiva Trail\CAD\PLAN\RD01.dwg z:\mchior

LEGEND

JOINT POND 4A	
EXISTING LA R/W	

REVISIONS				SR 429 Right-of-Way			<b>JOINT POND 4A</b> <b>EXHIBIT</b>		SHEET NO.
DATE	DESCRIPTION	DATE	DESCRIPTION	ROAD NO.	PROJECT NO.				1
				SR 429	429-205				

THE OFFICIAL RECORD OF THIS SHEET IS THE ELECTRONIC FILE DIGITALLY SIGNED AND SEALED UNDER RULE 61G15-23.004, F.A.C.

**CONSENT AGENDA ITEM  
#9**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Laura Newlin Kelly, Associate General Counsel *Laura Newlin Kelly*

DATE: January 21, 2021

RE: Property Exchange Agreement and Resolution Declaring Surplus Property between Avatar Properties Inc. and the Central Florida Expressway Authority  
Project: 538-232; State Road 538  
Parcels: 538-100 A, 538-100 B and 538-100 C

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## BACKGROUND

Avatar Properties Inc. (“Avatar”), Osceola County, Florida (“Osceola”), Polk County, Florida (“Polk”), and Central Florida Expressway Authority’s predecessor in interest, the Osceola County Expressway Authority (now “CFX”) entered into that certain Agreement for Development of Poinciana Parkway recorded October 15, 2012 in Official Records Book 4335, Page 291, Public Records of Osceola County, Florida, setting forth certain rights and obligations of the parties thereto for the right-of-way acquisition necessary for the construction of the Poinciana Parkway (“Development Agreement”). A copy of the Development Agreement is attached hereto as **Attachment “A”**. Pursuant to the terms of the Development Agreement, Avatar was required to transfer, convey and dedicate certain real property and easements to Osceola and CFX to enable CFX to construct the Poinciana Parkway and all required infrastructure. In accordance with the terms of the Development Agreement, Avatar transferred to Osceola, and Osceola transferred to CFX, certain real property interests in the Poinciana Parkway pursuant to that certain County Deed recorded December 5, 2019 in Official Records Book 5635, Page 1513 (“County Deed”). A copy of the County Deed is attached hereto as **Attachment “B”**.

Avatar and CFX desire to enter into the proposed Property Exchange Agreement to clarify certain terms of the Development Agreement related to Avatar and CFX’s obligations and to otherwise effectuate the transfers anticipated to occur in accordance with the terms of the Development Agreement. A copy of the proposed Property Exchange Agreement is attached hereto as **Attachment “C”** (“Property Exchange Agreement”).

Originally, the Development Agreement contemplated granting an easement interest in the stormwater drainage ponds more specifically identified as **Attachment “D”** attached hereto (“Drainage Ponds”). Pursuant to the terms of the Property Exchange Agreement, in lieu of granting an easement, Avatar will convey fee simple ownership of the Drainage Ponds to CFX. Prior to conveying the Drainage Ponds to CFX, Avatar and CFX will work in good faith to reshape, reconfigure or relocate the Drainage Ponds to better accommodate the needs of both CFX and Avatar for the development of the Poinciana Parkway and any extensions or expansion thereto, and any adjacent real property owned by Avatar. Once the final design of the Drainage Ponds is



mutually agreed upon between CFX and Avatar and legal descriptions are prepared identifying the final location and configuration of the Drainage Ponds, Avatar will convey the fee simple ownership of the Drainage Ponds to CFX, subject to a drainage easement for joint use and expansion of the Drainage Ponds by a future governmental entity. CFX, at its sole cost and expense, will undertake the permitting and construction related to the reshaping, reconfiguration or relocation. Avatar agrees to grant to CFX a temporary construction and access easement over the real property owned by Avatar adjacent to the Drainage Ponds for any construction activities reasonably required to reshape, reconfigure and relocate the Drainage Ponds.

In order to ensure all real property interests in the Poinciana Parkway are owned by CFX, Avatar will also deliver to Osceola a special warranty deed for the right-of-way parcel referred to as RW-1 in that certain Poinciana Plat recorded among the public records of Osceola County, Florida as Plat Book 22, Page 163-177 (“RW-1 Property”). CFX is working with Osceola to convey the RW-1 Property from Osceola to CFX as originally contemplated under the Amended and Restated Lease-Purchase Agreement dated December 12, 2018 (“Lease Purchase Agreement”).

As part of the construction of Poinciana Parkway, CFX redesigned, reconfigured, or realigned a portion of the Poinciana Parkway. As a result of the redesign, when the design and construction of the Poinciana Parkway was completed, CFX retained fee simple ownership of portions of real property that were unnecessary for the Poinciana Parkway or any expansions or extensions thereto. A portion of this property is more particularly depicted in **Attachment “E”** hereto (“Surplus Property”). In exchange for the conveyance of the Drainage Ponds and RW-1 Property (hereinafter defined), and in consideration therefor, CFX will convey the Surplus Property to Avatar once the legal description and sketch have been finalized in accordance with the terms of the Property Exchange Agreement.

Pursuant to CFX’s Property Acquisition, Disposition & Permitting Procedures Manual, CFX staff and CFX’s General Engineering Consultant examined the Surplus Property and determined that the proposed area of the Surplus Property is not needed to support existing Expressway Facilities. Accordingly, CFX’s General Engineering Consultant has certified that the Surplus Property is not essential for present or future construction, operation or maintenance of an Expressway Facility or for CFX purposes and that the disposition of the Surplus Property would not impede or restrict the Expressway System. A copy of the draft certification is attached hereto as **Attachment “F”** (“GEC Certification”). The GEC Certification will be finalized when the final location of the Surplus Property is determined.

Avatar is requesting CFX’s approval of the longitudinal utility lines more particularly depicted in **Attachment “G”** attached hereto (“Longitudinal Lines”) to the extent such Longitudinal Lines are located on real property owned by CFX. Avatar represents and warrants that the Longitudinal Lines would create an unreasonable hardship for Avatar, Avatar’s design alternative would not unreasonably interfere with the safety, operation, maintenance, future improvement or expansion of the Poinciana Parkway, and all other alternatives have been explored and are not viable. Pursuant to CFX’s Property Acquisition, Disposition & Permitting Procedures

Manual (“Policy”), CFX staff and CFX’s General Engineering Consultant have examined the Longitudinal Lines and the RW-1 Property and determined in the GEC Certification that the conveyance will create an unreasonable hardship on Avatar in accordance with Section 5-8.04 and 5-8.06 of CFX’s Policy; provided, however, the acknowledgement of an unreasonable hardship is expressly contingent upon the conveyance of the RW-1 Property to Osceola and from Osceola to CFX in accordance with the terms and conditions of the Property Exchange Agreement and Lease Purchase Agreement.

The Right-of-Way Committee met and reviewed this item on January 20, 2021 and recommended the approval of the Resolution Declaring Property as Surplus Property Available for Sale, Authorizing the Transfer of Surplus Property with Avatar and Waiver of Section 5-8.04(3) for Longitudinal Lines, see **Attachment “H”** as attached hereto, and the Approval of the Property Exchange Agreement with CFX and Avatar in a form substantially similar to the attached Property Exchange Agreement, subject to the following: (1) separate notice to the local government in which the Surplus Property is located is not required; (2) waiver of the requirement for an appraisal pursuant to Section 5-4.03 and 5-6.05 and disposition procedures pursuant to 5-6.04; (3) receipt of an updated GEC Certificate from the General Engineering Consultant when the final location of the Surplus Property is determined; (4) approval of the legal descriptions by CFX’s General Engineering Consultant; (5) approval of the exhibits to the Property Exchange Agreement by CFX’s Chief of Infrastructure, and (6) any minor or clerical revisions approved by the General Counsel or designee.

### **REQUEST**

Board’s approval of the following is requested:

Resolution Declaring Property as Surplus Property Available for Sale, Authorizing the Transfer of Surplus Property with Avatar and Waiver of Section 5-8.04(3) for Longitudinal Lines, and the Approval of the Property Exchange Agreement with CFX and Avatar in a form substantially similar to the attached Property Exchange Agreement, subject to the following: (1) separate notice to the local government in which the Surplus Property is located is not required; (2) waiver of the requirement for an appraisal pursuant to Section 5-4.03 and 5-6.05 and disposition procedures pursuant to 5-6.04; (3) receipt of an updated GEC Certificate from the General Engineering Consultant when the final location of the Surplus Property is determined; (4) approval of the legal descriptions by CFX’s General Engineering Consultant; (5) approval of the exhibits to the Property Exchange Agreement by CFX’s Chief of Infrastructure, and (6) any minor or clerical revisions approved by the General Counsel or designee.

## ATTACHMENTS

- A. Agreement for Development of Poinciana Parkway
- B. County Deed
- C. Property Exchange Agreement
- D. Map of Ponds
- E. Map of Surplus Property
- F. Certificate from CFX's General Engineering Consultant
- G. Map of Longitudinal Lines
- H. Resolution Declaring Property as Surplus Property Available for Sale, Authorizing the Transfer of Surplus Property with Avatar Properties Inc. and Waiver of Section 5-8.04(3) for Longitudinal Lines

Reviewed by: Woody Rodriguez

CFN 2012148525  
Bk 4335 Pgs 291-402 (112 Pgs)  
DATE: 10/15/2012 12:02:56 PM  
MALCOM THOMPSON, CLERK OF COURT  
OSCEOLA COUNTY  
RECORDING FEES \$0.00

**AGREEMENT FOR DEVELOPMENT OF POINCIANA PARKWAY**

**By and Between**

**OSCEOLA COUNTY, FLORIDA**

**POLK COUNTY, FLORIDA**

**AVATAR PROPERTIES INC.**

**AND**

**OSCEOLA COUNTY EXPRESSWAY AUTHORITY**

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**AGREEMENT FOR DEVELOPMENT OF POINCIANA PARKWAY**

**THIS AGREEMENT FOR DEVELOPMENT OF POINCIANA PARKWAY** (this "Development Agreement") is made and entered into as of October 15, 2012 by and between Osceola County, a charter county and political subdivision of the State of Florida ("Osceola County"), Polk County, a charter county and political subdivision of the State of Florida ("Polk County"), Avatar Properties Inc., a Florida corporation ("Avatar") and the Osceola County Expressway Authority, a body politic and corporate created by Part V, chapter 348, Florida Statutes (the "Expressway Authority").

**WITNESSETH:**

**WHEREAS**, the parties to this Development Agreement acknowledge and agree that Poinciana Parkway, a controlled access arterial roadway extending from the current intersection of U.S. 17-92 and County Road 54 in Polk County to Cypress Parkway (CR 580), would be an important element in the traffic circulation systems of Osceola County and Polk County; and

**WHEREAS**, Poinciana Parkway has been adopted as part of the Osceola County Comprehensive Plan, Polk County Comprehensive Plan, Orlando Metropolitan Planning Organization Long Range Transportation Plan, and the Lakeland/Winter Haven Urbanized Area Metropolitan Planning Organization 2010 Long Range Transportation Study Cost Feasible Element; and

**WHEREAS**, Poinciana Parkway, formerly named the "Parker Highway Project," was identified by the Polk County Transportation Planning Organization (TPO) in its 2025 Long Range Transportation Plan as a proposed new two-lane arterial public road project which would be built by means of a public/private partnership and with private funding; and

**WHEREAS**, in reliance on this proposed collector public road project connecting Polk County and Osceola County, Polk County has included traffic projections for this road in its long range transportation planning for the northeast section of Polk County and has undertaken and completed construction of capacity improvements to CR54 (Ronald Reagan Parkway) to accommodate traffic from Poinciana Parkway; and

**WHEREAS**, Poinciana Parkway will create an additional hurricane evacuation route and increase access for public safety and emergency vehicles and enhance the overall development potential of property located not only along the Poinciana Parkway corridor, but throughout Osceola County and Polk County, thus increasing the ad valorem tax base and benefiting the citizens of Osceola County and Polk County; and

**WHEREAS**, Poinciana Parkway will ease the flow of vehicular traffic within Osceola County and Polk County and provide more direct access from Poinciana to U.S. 17-92 than is currently available and will provide a more convenient and quicker access to Interstate 4 and the Western Beltway, thereby providing the citizens of Osceola County and Polk County (particularly the residents of Poinciana), tourists and other temporary visitors to Osceola County and Polk County a direct connection to the Orlando-area beltway; and

**WHEREAS**, construction of Poinciana Parkway as a collector road connecting Polk County and Osceola County will provide employment opportunities, promote development and have a significant positive effect on the general economy of Osceola County and Polk County and will serve a valid public purpose of Osceola County and Polk County; and

**WHEREAS**, Avatar and Osceola County have previously entered into a Transportation Concurrency Agreement, dated December 15, 2006, which has been amended by an Amendment to Transportation Concurrency Agreement dated as of July 25, 2008, a Second Amendment to Transportation Concurrency Agreement dated as of December 20, 2010, and an Extension Agreement, dated as of February 6, 2012 (collectively, the "Concurrency Agreement"); and

**WHEREAS**, the Concurrency Agreement, among other things, requires Avatar to finance the acquisition, development and construction of Poinciana Parkway and begin actual construction not later than February 14, 2013 and requires that Poinciana Parkway be substantially complete and open to traffic not later than May 7, 2015; and

**WHEREAS**, the Concurrency Agreement further provides that if Avatar fails to comply with the terms and conditions set forth therein (including the timely construction of Poinciana Parkway), the Concurrency Agreement becomes null and void and all aspects of the Vested Property (as defined in the Concurrency Agreement) shall be subject to all transportation concurrency requirements then in effect; and

**WHEREAS**, simultaneously with the Concurrency Agreement, Avatar and Osceola County entered into a Property Acquisition Agreement, dated December 15, 2006 (the "Acquisition Agreement"), pursuant to which Osceola County agreed to exercise its power of eminent domain for the acquisition of certain property required for the construction of Poinciana Parkway; and

**WHEREAS**, simultaneously with the Concurrency Agreement and Acquisition Agreement, Avatar and Osceola County entered into a Poinciana Parkway Regulatory Agreement, which has been amended and restated in its entirety by the First Amended and Restated Poinciana Parkway Regulatory Agreement dated as of July 25, 2008, the First Amendment to First Amended and Restated Poinciana Parkway Regulatory Agreement dated as of December 20, 2010, and an Extension Agreement, dated as of February 6, 2012 (collectively, the "Osceola Regulatory Agreement"); and

**WHEREAS**, the Osceola Regulatory Agreement, among other things, requires Avatar and its permitted assignees to design, construct and operate Poinciana Parkway as a private toll road, grants Avatar the right to establish tolls within certain specified limits; and

**WHEREAS**, Avatar and Polk County have previously entered into a Poinciana Parkway Regulatory Agreement (Polk County), dated December 20, 2006, which has been amended and restated in its entirety by the First Amended and Restated Poinciana Parkway Regulatory Agreement (Polk County), dated as of August 6, 2008, the First Amendment to First Amended and Restated Poinciana Parkway Regulatory Agreement (Polk County), dated as of October 20, 2010 (collectively, the "Polk Regulatory Agreement") for the purpose of providing for a public/private partnership for the ultimate construction of a continuous collector road beginning

at the existing intersection of CR54 and US 17/92 in Polk County and terminating in Osceola County at the intersection of Marigold Avenue and Cypress Parkway; and

**WHEREAS**, Avatar has made an extensive, but to date unsuccessful, effort to finance the construction of Poinciana Parkway as a private toll road; and

**WHEREAS**, on July 1, 2010, the Florida Legislature created the Osceola County Expressway Authority by enactment of CS/CS/CS/HB-1271, codified as Part V, Chapter 348, Florida Statutes; and

**WHEREAS**, Osceola County, Polk County and Avatar desire to restructure their contractual relationships to accommodate construction and operation of Poinciana Parkway as a continuous collector road beginning in Polk County and terminating in Osceola County in accordance with the terms of this Development Agreement; and

**WHEREAS**, the funding, construction, operation and maintenance of Poinciana Parkway by Osceola County, Polk County and the Expressway Authority in accordance with the terms of this Development Agreement will enhance the development potential of nearby property owned by Avatar and, together with other considerations set forth in this Development Agreement, is adequate consideration for the Avatar's agreement to transfer and convey the plans, permits and right-of-way necessary for the construction of Poinciana Parkway, as required by Article III hereof;

**NOW THEREFORE**, in consideration of the mutual promises, covenants and agreements contained herein and other valuable consideration, receipt of which is hereby acknowledged, the parties mutually undertake, promise and agree for themselves, their successors and assigns as follows:

**ARTICLE I**  
**DEFINITIONS AND INTERPRETATION**

**SECTION 1.01. RECITALS.** The parties agree that the recitals are true and correct and by this reference incorporated and made a part of this Development Agreement.

**SECTION 1.02. DEFINITIONS.** As used in this Development Agreement, the following terms shall have the following meanings unless the context hereof otherwise requires:

**"Acquisition Agreement"** means the Property Acquisition Agreement, dated December 15, 2006, between Avatar and Osceola County.

**"Additional Bonds"** means any series of bonds, notes or other obligations issued by Osceola County or the Expressway Authority on a parity with the Series 2013 Bonds.

**"Avatar"** means Avatar Properties Inc., a Florida corporation.

**"Avatar Construction Plans"** means the Poinciana Parkway plans, specifications and other engineering documents prepared by the Avatar Engineers to plan or design portions of Poinciana Parkway, all of which are listed in Appendix C attached hereto and made a part hereof.

**"Avatar Engineers"** means those engineers, firms and consultants listed in Appendix A, attached hereto and made a part hereof, engaged by Avatar to prepare the Avatar Construction Plans.

**"Avatar Investment"** means \$48,000,000, which represents the approximate amount represented by Avatar as heretofore expended by Avatar to design and finance the construction of Poinciana Parkway.

**"Avatar Reserved Rights"** means the rights and privileges set forth in subsections (D) and (E) of Section 3.04 hereof.

**"Bridge Segment"** means the approximately 4.15 mile controlled access segment of Poinciana Parkway between from East Bourne Road and the Osceola/Polk County line, as more particularly depicted on Appendix B attached hereto and made a part hereof.

**"Concurrency Agreement"** means the Transportation Concurrency Agreement dated December 15, 2006 between Osceola County and Avatar, as amended by that certain Amendment to Transportation Concurrency Agreement dated July 25, 2008, that certain Second Amendment to Transportation Concurrency Agreement dated December 20, 2010, an Extension Agreement, dated as of February 6, 2012, and the Judge Farms Acquisition Agreement.

**"Concurrency Right-of-Way"** means additional right-of-way for (A) Marigold Avenue from Cypress Parkway to Eastbourne Road – 2 lanes to 4 lanes, (B) Koa Street from Marigold Avenue to Doverplum Avenue – 2 lanes to 4 lanes, (C) Doverplum Avenue from Old Pleasant Hill Extension to Koa Street – 2 lanes to 4 lanes, (D) Poinciana Boulevard from Pleasant Hill Road to Reaves Road – 2 lanes to 4 lanes, (E) Bayberry Avenue from Walnut Street to Old

Pleasant Hill Extension – 4 lanes, (F) Old Pleasant Hill Extension from Bayberry Avenue to Cypress Parkway – 4 lanes, and Southport Connector – 4 lanes, as depicted in Appendix K attached hereto and made a part hereof.

**"Construction Manager"** means the "construction management entity" (as defined in Section 255.32(4), Florida Statutes) as may be selected by the Expressway Authority in accordance with its adopted policies and procedures.

**"Construction Management Agreement"** means any agreement entered into pursuant to Section 4.02(C) hereof between the Expressway Authority and the Construction Manager.

**"Construction Plans"** means the Avatar Construction Plans, as modified pursuant to Section 4.02 hereof.

**"Design-Build Agreement"** means any agreement entered into pursuant to Section 4.02(C) hereof between the Expressway Authority and the Design-Builder.

**"Design-Builder"** means the "design-build firm" (as defined in section 287.055(2)(h), Florida Statutes) as may be selected by the Expressway Authority in accordance with its adopted policies and procedures.

**"Design Criteria"** means the criteria for Poinciana Parkway design and engineering, as set forth in Appendix F attached hereto and made a part hereof.

**"Design Plan Stage"** means the thirty percent, sixty percent, ninety percent and one hundred percent design completion stage.

**"Development Agreement"** means this Agreement for Development of Poinciana Parkway, including any amendments and supplements hereto executed and delivered in accordance with the terms hereof.

**"Effective Date"** means the date shown in the first paragraph of this Development Agreement.

**"Expressway Authority"** means the Osceola County Expressway Authority, a body politic and corporate created by Part V, Chapter 348, Florida Statutes.

**"Expressway Representative"** means the chair of the Expressway Authority's governing board and such person's designees, as designated in writing to Osceola County and Polk County, and when used in reference to any act or document, also means any other person authorized by resolution of the Expressway Authority's governing body to perform such act or sign such document.

**"Expressway Revenue Bonds"** means the Series 2013 Bonds and any Additional Bonds issued by Osceola County.

**"Expressway System"** means the Bridge Segment, the Southwest Segment, the Rhododendron Extension, the "Southport Connector Expressway," the "Northeast Connector



Expressway," and the "Poinciana Parkway Connector," either as depicted in the Expressway Authority's 2040 Master Plan or as more particularly depicted on Appendix B attached hereto and made a part hereof.

**"FDOT"** means the Florida Department of Transportation.

**"Fiscal Year"** means that period commencing October 1 of each year and continuing through the next succeeding September 30, or such other period as may be prescribed by law as the fiscal year for Osceola County, Polk County and the Expressway Authority.

**"Force Majeure"** means acts or events which reasonably relate to the performance of a term or condition hereof, including, without limitation, any major event of nature, floods, unintended fires, hurricanes, accidents, strikes, labor shortages, major breakdowns of essential equipment, acts of war or terrorism, actions of government other than the actions of the parties hereto, foreseen or unforeseen, or similar events or causes, which are beyond the reasonable control of a party hereto and without the fault or negligence of a party hereto and adversely affect the practicability of constructing Poinciana Parkway. The term "Force Majeure" shall include delays resulting from third-party intervention and/or appeals in the issuance of Permit modifications.

**"General Reserve Fund"** means the "Osceola County, Florida Expressway General Reserve Fund" created pursuant to the Trust Agreement.

**"Initial Project Account"** means "Initial Project Account" of the "Osceola County, Florida Expressway Project Fund" created pursuant to the Trust Agreement.

**"Judge Farms Acquisition Agreement"** means the Real Property Purchase Agreement between Osceola County and Avatar, executed by Avatar on June 29, 2012 and approved by Osceola County's Board of Commissioners on July 16, 2012.

**"Lease-Purchase Agreement"** means the Lease-Purchase Agreement between Osceola County and the Expressway Authority described in Section 4.01 hereof.

**"Letters of Credit"** means Letters of Credit No. 63660367, dated April 11, 2012, and No. 63660368, dated March 29, 2012, issued by Citibank, N.A. in favor of Osceola County and Polk County, respectively.

**"Non-Ad Valorem Funds"** means all revenues of Osceola County or Polk County derived from any source whatsoever other than ad valorem taxation on real or personal property, which are legally available to make the payments required herein, but only after provision has been made by the Osceola County or Polk County for the payment of all essential or legally mandated services.

**"Northwest Segment"** means the approximately 1.34 mile segment of Poinciana Parkway following the existing alignment of Kinney Harmon Road between the Osceola/Polk County line on the east and the CR 54/U.S. 17-92 intersection on the west in Polk County, designed to provide a continuous and perpetual collector road connecting Polk County and Osceola, as more particularly depicted on Appendix B attached hereto and made a part hereof.



**"Northwest Segment Project Cost"** means the cost incurred by the Expressway Authority to expand the Northwest Segment.

**"Osceola County"** means Osceola County, Florida, a charter county and political subdivision of the State of Florida.

**"Osceola County Expressway Authority Law"** means Chapter 348, Part V, Florida Statutes, as amended from time to time.

**"Osceola County's Representative"** means Osceola County's chief executive officer and such person's designees, as designated in writing to the Expressway Authority, and when used in reference to any act or document, also means any other person authorized by resolution of Osceola County's Board of Commissioners to perform such act or sign such document.

**"Osceola Regulatory Agreement"** means the Poinciana Parkway Regulatory Agreement between Osceola County and Avatar dated December 15, 2006, as amended and restated in its entirety by that certain First Amended and Restated Poinciana Parkway Regulatory Agreement dated July 25, 2008, the First Amendment to First Amended and Restated Poinciana Parkway Regulatory Agreement dated December 20, 2010, an Extension Agreement, dated as of February 6, 2012, and the Judge Farms Acquisition Agreement.

**"Parkway Completion Bonds"** means the Additional Bonds, if any, issued by Osceola County pursuant to Section 5.06 hereof to complete the initial construction of Poinciana Parkway.

**"Permit-Ready Design-Build Construction Documents"** means construction documents delivered to the Expressway Authority by the Design-Builder to begin construction of any component of Poinciana Parkway or for submission to a regulatory agency for modification of a Permit.

**"Permits"** means those permits and approvals listed on Appendix E attached hereto and made a part hereof.

**"Poinciana Parkway"** means an approximately 9.66 mile controlled access collector road which will perpetually connect Polk County with Osceola County, beginning at the existing intersection of County Road 54 and US 17-92 in Polk County, Florida and terminating in Osceola County, Florida at Cypress Parkway (CR 580), including the Northwest Segment, the Bridge Segment, the Rhododendron Extension and the Southeast Segment or Southwest Segment, all of which are graphically shown and depicted on Appendix B.

**"Poinciana Parkway Escrow Agreement"** means the agreement to be entered into among Osceola County, the Expressway Authority, Avatar and a mutually acceptable escrow holder, to hold and deliver the instruments listed in Section 3.05 hereof.

**"Poinciana Parkway Escrow Holder"** means the person or entity designated in the Poinciana Parkway Escrow Agreement to hold and deliver the documents described in Sections 3.04 hereof.

**"Poinciana Parkway Funding Agreement"** means the agreement pursuant to which Osceola County agrees to deliver the Series 2013 Bonds against payment therefore by the purchaser or underwriter thereof, and on which the proceeds of the Series 2013 Bonds become available for use by the Expressway Authority for the initial design and construction of Poinciana Parkway.

**"Poinciana Parkway Funding Date"** means the date on which the Series 2013 Bonds are delivered pursuant to the Poinciana Parkway Funding Agreement and the proceeds of the Series 2013 Bonds become available for use by the Expressway Authority for the initial design and construction of Poinciana Parkway.

**"Poinciana Parkway Project Cost"** means the cost incurred by the Expressway Authority to acquire, design and construct Poinciana Parkway.

**"Polk County"** means Polk County, a charter county and political subdivision of the State of Florida.

**"Polk County Funding Date"** means the date established in Section 5.02(A) hereof.

**"Polk Regulatory Agreement"** means the Poinciana Parkway Regulatory Agreement (Polk County), dated December 20, 2006, which has been amended and restated in its entirety by the First Amended and Restated Poinciana Parkway Regulatory Agreement (Polk County), dated as of August 6, 2008, the First Amendment to First Amended and Restated Poinciana Parkway Regulatory Agreement (Polk County), dated as of October 20, 2010.

**"Preliminary Design-Build Submittal"** means the conceptual design submitted by the Design-Builder during the Expressway Authority's selection process.

**"Public Safety Site"** means the approximately 9.827 acre parcel of land which is more particularly described as follows: Lots E and F, Poinciana Office and Industrial Park VII, according to the Plat thereof, as recorded in Plat Book 61, at Pages 4 and 5, Public Records of Polk County, Florida.

**"Reedy Creek Agreement"** means the Settlement Agreement between and among Avatar and American Properties Inc. and Reedy Creek Mitigation Land Bank, Ltd., American Equities Ltd. No. 7 originally dated April \_\_\_, 2007 and signed by the last of the parties thereto on May 8, 2007, as amended by the First Amendment to Reedy Creek Settlement Agreement between the parties, dated as of December 8, 2010.

**"Revenues"** means all receipts, revenues, income, proceeds and money received in any period by or for Osceola County or the Expressway Authority in respect of the Expressway System, as more particularly described in the Trust Agreement.

**"Rhododendron Extension"** means a new limited access roadway extending the Southwest Segment Corridor northward, as depicted in Appendix B attached hereto and made a part hereof.

**"Rhododendron Extension Corridor"** means the 300 foot right-of-way extending the Southwest Segment Corridor northward, as depicted in Appendix G attached hereto and made a part hereof, and described in Appendix I attached hereto and made a part hereof.

**"Series 2013 Bond Yield"** means a discount rate equal to the arbitrage true interest cost which will be computed in compliance with Federal Regulations as defined under sections 1.103-13(c), 1.148(b)(5), and 1.148-9T(a), i.e., the discount rate, assuming semi-annual compounding, at which aggregate payments of principal and interest on the Series 2013 Bonds have a present value equal to the issue price paid for the Series 2013 Bonds by the holders thereof; issue price being defined as the principal amount of Series 2013 Bonds, plus any accrued interest, less (A) any original issue discount or plus the original issue premium and (B) the cost of any bond insurance premium or liquidity or credit enhancement fee paid from the proceeds thereof.

**"Series 2013 Bonds"** means the bonds issued by Osceola County pursuant to Section 5.03 hereof.

**"Southeast Segment"** means the approximately 4.17 mile segment of Poinciana Parkway following the existing alignment of Marigold Avenue from Cypress Parkway to East Bourne Road in Osceola County, as more particularly depicted on Appendix B attached hereto and made a part hereof.

**"Southwest Segment"** means a new limited access roadway to be constructed generally along the alignment of Rhododendron Avenue in Osceola County, the approximate location of which is more particularly depicted in Appendix B attached hereto and made a part hereof.

**"Southwest Segment Corridor"** means the planned right-of-way of approximately 150 feet, adjacent and to the west of the platted corridor, owned and to be contributed by Avatar pursuant to Section 3.04 hereof, as depicted in Appendix G attached hereto and made a part hereof and described in Appendix H attached hereto and made a part hereof.

**"Southwest Segment Escrow Agreement"** means the agreement to hold and deliver documents conveying the portion of the Southwest Segment Reservation Area that will be utilized for construction of the Southwest Segment, as shown on the Permit-Ready Design-Build Construction Documents, as described in Section 4.02(D)(1)(b) hereof, or construction plans at the final Design Plan Stage, as described in Section 4.02(D)(2)(d) hereof. If the Southwest Segment is to be constructed from proceeds of the Series 2013 Bonds, the "Southwest Segment Escrow Agreement" shall mean the "Poinciana Parkway Escrow Agreement."

**"Southwest Segment Escrow Holder"** means the person or entity designated in the Southwest Segment Escrow Agreement to hold and deliver the documents described in Section 3.08 hereof. If the Southwest Segment is to be constructed from proceeds of the Series 2013 Bonds, the "Southwest Segment Escrow Holder" shall mean the "Poinciana Parkway Escrow Holder."

**"Southwest Segment Funding Agreement"** means the agreement pursuant to which Osceola County agrees to deliver Additional Bonds against payment therefore by the purchaser or underwriter thereof, and on which the proceeds of such Additional Bonds become available for use by the Expressway Authority for design and construction of Southwest Segment. If the

Southwest Segment is to be constructed from proceeds of the Series 2013 Bonds, the "Southwest Segment Funding Agreement" shall mean the "Poinciana Parkway Funding Agreement."

**"Southwest Segment Funding Date"** means the date on which Additional Bonds are delivered pursuant to the Poinciana Parkway Funding Agreement. If the Southwest Segment is to be constructed from proceeds of the Series 2013 Bonds, the "Southwest Segment Funding Date" shall mean the "Poinciana Parkway Funding Date."

**"Southwest Segment Project Cost"** means the cost incurred by the Expressway Authority to acquire, design and construct the Southwest Segment.

**"Southwest Segment Release Date"** means the date that is ten years from the Poinciana Parkway Funding Date.

**"Southwest Segment Reservation Area"** means the property depicted in Appendix G attached hereto and made a part hereof and described in Appendix J attached hereto and made a part hereof.

**"Southwest Segment Reservation Area Restrictions"** means the restrictions set forth in subsections (A) and (B) of Section 3.06 hereof.

**"State"** means the State of Florida.

**"Trust Agreement"** means the Trust Agreement securing the Expressway Revenue Bonds, and any supplements and amendments hereto permitted thereby.

**"Unfulfilled Obligations"** means unfulfilled agreements, conditions, requirements or actions agreed to by Avatar concerning the initial design and construction of Poinciana Parkway listed in Appendix L.

**"Vested Property"** means the property depicted in Appendix S.

**SECTION 1.03. INTERPRETATION.** Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations. The terms "herein", "hereunder", "hereby", "hereof", and any similar terms, shall refer to this Development Agreement; the term "heretofore" shall mean before the date this Development Agreement is executed; and the term "hereafter" shall mean after the date this Development Agreement is executed. Whenever the word "including" is used herein, it shall be deemed to mean "without limitation." Each recital, covenant, agreement, representation and warranty made by a party herein shall be deemed to have been material and to have been relied on by the other parties to this Development Agreement. All parties have participated in the drafting and preparation of this Development Agreement, and the provisions hereof shall not be construed for or against any party by reason of authorship.

**SECTION 1.04. SECTION HEADINGS.** Any headings preceding the texts of the several Sections of this Development Agreement and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Development Agreement nor affect its meaning, construction or effect.

**ARTICLE II**  
**REPRESENTATIONS**

**SECTION 2.01. REPRESENTATIONS OF OSCEOLA COUNTY.** Osceola County makes the following representations as the basis for the undertakings on the part of Polk County, Avatar and the Expressway Authority herein contained:

(A) Osceola County is a charter county and political subdivision of the State of Florida, and has all requisite power and authority to enter into the transactions contemplated by this Development Agreement and to carry out its obligations hereunder.

(B) Osceola County is not in default under any provisions of applicable law material to the performance of its obligations under this Development Agreement.

(C) Osceola County has duly authorized the execution and delivery of this Development Agreement, and assuming the due authorization, execution and delivery by the other parties hereto, this Development Agreement constitutes a valid and legally binding obligation of Osceola County, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(D) The authorization, execution and delivery of this Development Agreement, and the compliance by Osceola County with the provisions hereof will not conflict with or constitute a material breach of, or default under, any existing law, court or administrative regulation, decree, order or any provision of the Constitution or laws of the State of Florida relating to Osceola County or its affairs, or any ordinance, resolution, agreement, mortgage, lease or other instrument to which Osceola County is subject or by which it is bound.

(E) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of Osceola County, threatened against or affecting Osceola County, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated hereby or which, in any way, would materially adversely affect the validity of this Development Agreement, or any agreement or instrument to which Osceola County is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby.

**SECTION 2.02. REPRESENTATIONS OF POLK COUNTY.** Polk County makes the following representations as the basis for the undertakings on the part of Osceola County, Avatar and the Expressway Authority herein contained:

(A) Polk County is duly organized and validly existing as a charter county and political subdivision of the State.

(B) Polk County has full power and authority to enter into the transactions contemplated by this Development Agreement and to carry out its obligations hereunder.

(C) Polk County is not in default under any provisions of the laws of the State material to the performance of its obligations under this Development Agreement.

(D) Polk County has duly authorized the execution and delivery of this Development Agreement, and assuming the due authorization, execution and delivery by the other parties hereto, this Development Agreement constitutes a valid and legally binding obligation of Polk County, enforceable in accordance with their respective terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity or public policy.

(E) The authorization, execution and delivery of this Development Agreement and the compliance by Polk County with the provisions hereof will not conflict with or constitute a material breach of, or default under, any existing law, court or administrative regulation, decree, order or any provision of the Constitution or laws of the State relating to Polk County or its affairs, or any ordinance, resolution, agreement, mortgage, lease or other instrument to which Polk County is subject or by which it is bound.

(F) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of Polk County, threatened against or affecting Polk County, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Development Agreement or which, in any way, would materially adversely affect the validity of this Development Agreement or any agreement or instrument to which Polk County is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby.

**SECTION 2.03. REPRESENTATIONS OF AVATAR.** Avatar makes the following representations as the basis for the undertakings on the part of Osceola County, Polk County and the Expressway Authority herein contained:

(A) Avatar is a Florida corporation, and has all requisite power and authority to enter into the transactions contemplated by this Development Agreement and to carry out its obligations hereunder.

(B) Avatar is not in default under any provisions of applicable law material to the performance of its obligations under this Development Agreement.

(C) Avatar has duly authorized the execution and delivery of this Development Agreement, and assuming the due authorization, execution and delivery by the other parties hereto, this Development Agreement constitutes a valid and legally binding obligation of Avatar, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(D) The authorization, execution and delivery of this Development Agreement, and the compliance by Avatar with the provisions hereof will not conflict with or constitute a material breach of, or default under, any existing law, court or administrative regulation, decree,

order or any provision of the Constitution or laws of the State of Florida relating to Avatar or its affairs, or any ordinance, resolution, agreement, mortgage, lease or other instrument to which Avatar is subject or by which it is bound.

(E) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of Avatar, threatened against or affecting Avatar, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated hereby or which, in any way, would materially adversely affect the validity of this Development Agreement, or any agreement or instrument to which Avatar is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby.

**SECTION 2.04. REPRESENTATIONS OF EXPRESSWAY AUTHORITY.**

The Expressway Authority makes the following representations as the basis for the undertakings on the part of Osceola County, Polk County and Avatar herein contained:

(A) The Expressway Authority is duly organized and validly existing as a a body politic and corporate created by Part V, Chapter 348, Florida Statutes.

(B) The Expressway Authority has full power and authority to enter into the transactions contemplated by this Development Agreement and to carry out its obligations hereunder.

(C) The Expressway Authority is not in default under any provisions of the laws of the State material to the performance of its obligations under this Development Agreement.

(D) The Expressway Authority has duly authorized the execution and delivery of this Development Agreement, and assuming the due authorization, execution and delivery by the other parties hereto, this Development Agreement constitutes a valid and legally binding obligation of the Expressway Authority, enforceable in accordance with their respective terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity or public policy.

(E) The authorization, execution and delivery of this Development Agreement and the compliance by the Expressway Authority with the provisions hereof will not conflict with or constitute a material breach of, or default under, any existing law, court or administrative regulation, decree, order or any provision of the Constitution or laws of the State relating to the Expressway Authority or its affairs, or any ordinance, resolution, agreement, mortgage, lease or other instrument to which the Expressway Authority is subject or by which it is bound.

(F) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of the Expressway Authority, threatened against or affecting the Expressway Authority, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Development Agreement or which, in any way, would materially adversely affect the validity of this Development Agreement or any agreement or instrument to which the

Expressway Authority is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby.

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**ARTICLE III  
PLANS, PERMITS AND RIGHT-OF-WAY**

**SECTION 3.01. ASSIGNMENT OF AVATAR CONSTRUCTION PLANS.**

Within five days of the Effective Date, Avatar shall execute and deliver an Assignment and Assumption of Construction Plans to the Expressway Authority, in the form attached hereto as Appendix O, assigning all of its contractual, common law, statutory and other rights to and interests in the Avatar Construction Plans, including rights to supporting electronic design files, including ownership, licenses, and copyright, if any, in those documents and other property interests thereto, whether owned directly or by assignment from the Avatar Engineers, without representation or warranty of any kind, except that on a non-exclusive basis and except as otherwise provided and reserved herein. Between the Effective Date of this Development Agreement and the Poinciana Parkway Funding Date, Avatar agrees not to share, provide, sell or assign its contractual, common law, statutory or other rights to and interests on the Avatar Construction Plans as described in this Section 3.01 without the prior written consent of the other parties to this Development Agreement. By its express terms, the assignment shall become exclusive, complete and shall include all rights reserved by Avatar, without further action of the parties, on the Poinciana Parkway Funding Date. In the event that the Development Agreement is terminated because Osceola County fails to issue the Series 2013 Bonds prior to the first anniversary of the Effective Date (which may be extended for an additional period of six months at Osceola County's option) or for any other reason, the Expressway Authority shall promptly upon request of Avatar, reassign all right, title and interest to the Avatar Construction Plans to Avatar. No monetary payment shall be made to Avatar in connection with such assignments and transfers. The Expressway Authority acknowledges and agrees that without the consent of the Avatar Engineers to the foregoing assignment and transfer, the Expressway Authority is not guaranteed to be in privity with or to have the right to hold the Avatar Engineers responsible for any errors or omissions contained in the Avatar Construction Plans.

**SECTION 3.02. PERMIT TRANSFERS.**

(A) Avatar represents to Osceola County and the Expressway Authority that, to the best of its knowledge and belief, and except as otherwise set forth or qualified in this Development Agreement, the Permits are those necessary for the initial design and construction of the Bridge Segment, the Northwest Segment and the Southeast Segment in accordance with the Avatar Construction Plans and that it is unaware of any of any other permits or government approvals necessary for the initial design and construction of the Bridge Segment, the Northwest Segment and the Southeast Segment in accordance with the Avatar Construction Plans. It is understood and agreed that the knowledge, belief and awareness of Avatar is restricted to that of Anthony Iorio, PK Fletcher and Reginald Tisdale and that the knowledge, belief or awareness of any other person or entity shall not be imputed to Avatar.

(B) Avatar, Osceola County and the Expressway Authority shall timely cooperate with each other to initiate the appropriate regulatory process to transfer the Permits to the Expressway Authority immediately after the Poinciana Parkway Funding Date. Avatar and the Expressway Authority shall execute an Assignment and Assumption of Permits, in the form attached hereto as Appendix P. No monetary payment shall be made to Avatar in connection

with such transfers. On the Poinciana Parkway Funding Date, the Expressway Authority shall assume and agree to pay and perform all obligations under the Permits and related government approvals. Prior to the Poinciana Parkway Funding Date, no application for modification of the Army Corps of Engineers permit described in Appendix E shall be submitted to, or discussed with, the Army Corps of Engineers, by or on behalf of the Expressway Authority, Polk County or Osceola County without the prior written consent of Avatar. Notwithstanding the foregoing, the Expressway Authority may submit modifications to those South Florida Water Management District permits described on Appendix E hereto prior to the Poinciana Parkway Funding Date and may pursue such modifications up to but not including issuance of the South Florida Water Management District Technical Staff Report or any other action which creates a point of entry under Chapter 120, Florida Statutes. The Expressway Authority shall submit independent permit applications to the Army Corps of Engineers and the South Florida Water Management District in accordance with the provisions of this paragraph for the Southwest Segment and the Rhododendron Extension.

**SECTION 3.03. UNFULFILLED OBLIGATIONS.** Appendix L hereto contains a schedule of Unfulfilled Obligations. To the best of Avatar's knowledge and belief, and except as otherwise set forth or qualified in this Development Agreement or as disclosed in the Avatar Construction Plans or the Permits, the schedule of Unfulfilled Obligations is a complete list. It is understood and agreed that the knowledge, belief and awareness of Avatar is restricted to that of Anthony Iorio, PK Fletcher and Reginald Tisdale and that the knowledge, belief or awareness of any other person or entity shall not be imputed to them. Further, Avatar will provide the written documents and agreements, if any, that may describe the Unfulfilled Obligations. On the Poinciana Parkway Funding Date, the Expressway Authority shall assume and perform all Unfulfilled Obligations, and related government approvals. The Expressway Authority and Avatar shall execute and deliver an Assignment and Assumption of Unfulfilled Obligations, in the form attached hereto as Appendix Q, relating to the Unfulfilled Obligations. Notwithstanding any implication to the contrary, except in the event of an intentional and negligent misrepresentation or omission in connection therewith, Avatar shall not have any obligation or liability for any error, omission or inaccuracy contained in the schedule of Unfulfilled Obligations.

**SECTION 3.04. RIGHT-OF-WAY CONVEYANCE.**

(A) Avatar represents to Osceola County, Polk County and the Expressway Authority that, to the best of its knowledge and belief, and except as otherwise set forth or qualified in this Development Agreement, the Avatar Construction Plans or the Permits, Appendix D includes the property and property interests necessary for the initial design and construction of the Northwest Segment, the Bridge Segment and the Southeast Segment as a collector road connecting Polk County and Osceola County in accordance with the Avatar Construction Plans and the Permits. It is understood and agreed that the knowledge, belief and awareness of Avatar is restricted to that of Anthony Iorio, PK Fletcher and Reginald Tisdale and that the knowledge, belief or awareness of any other person or entity shall not be imputed to Avatar. At its option, the Expressway Authority may obtain a title insurance commitment (ALTA Form B) from a Florida licensed title insurance issuer covering the property and property interests listed in Appendix D, the Southwest Segment Corridor and the Rhododendron Extension. The cost of the commitment and any ensuing title insurance policy shall be paid by the Expressway Authority. Avatar,

Osceola County and the Expressway Authority shall timely cooperate with each other to discharge all liens, encumbrances, exceptions and qualifications listed in the commitment. It is understood that Avatar shall have no obligation to expend any funds in connection therewith (other than staff time and, at Avatar's election, outside counsel fees) and that Avatar is conveying only such interest as it may have in connection with any of such property and interests, in each case in their "As Is, Where Is" condition as of the Effective Date with respect to title and physical condition.

(B) Avatar shall donate right of way for the Northwest Segment, the Bridge Segment and the Southeast Segment, as shown in Appendix D, the Southwest Segment Corridor, as depicted in Appendix G and described in Appendix H and the Rhododendron Extension Corridor, as depicted in Appendix G and described in Appendix I, to Osceola County or Polk County, as appropriate, but only to the extent of the interest therein owned by it as of the Effective Date and subject to the timing requirements of Sections 3.05 and 3.07 hereof. Conveyance shall be by special warranty deed, subject only to those matters as to which title is subject to as of the Effective Date, zoning and taxes and assessments for the year of closing. Avatar shall convey the portion of the right-of-way at the intersection of U.S. 17-92 that is intended for the FDOT to Osceola County rather than to FDOT and Osceola County shall transfer such right-of-way to FDOT when necessary.

(C) No monetary payment shall be made to Avatar in connection with the conveyance of the right of way conveyed pursuant to the foregoing subsections (A) and (B), the Southwest Segment Corridor, the Rhododendron Extension Corridor or property to be conveyed from the Southwest Segment Reservation Area. Except as described in the foregoing sentence, Avatar is not waiving or relinquishing and shall not be construed to waive or otherwise relinquish any claim to or rights to compensation for the taking of additional right of way, property or other interests beyond those required to be conveyed by Avatar pursuant to the foregoing subsection (A), the Southwest Segment Corridor, the Rhododendron Extension Corridor or property to be conveyed from the Southwest Segment Reservation Area. In the event that any right-of-way or interest in land is conveyed by Avatar to Osceola County pursuant to the requirements hereof and thereafter becomes permanently unnecessary for the construction of Poinciana Parkway or related avenues of access, appurtenant facilities or future expansions of the Poinciana Parkway in accordance with the Expressway Authority's 2040 Master Plan (as determined by the Expressway Authority in its reasonable judgment), either because of redesign or construction of Poinciana Parkway separately from the Rhododendron Extension and the Southwest Segment, or because construction of the Rhododendron Extension, then any such excess right-of-way or interest in land, to the extent permitted by law, shall promptly be reconveyed to Avatar upon request.

(D) Avatar shall have the right to reserve, declare, create or impose in the easements or deeds conveying the rights-of-way lying in Osceola County required in this Development Agreement, or to make such conveyances subject thereto, as the case may be, the rights, easements, restrictions and privileges set forth in this subsection, as follows:

(1) Avatar and its affiliates shall be granted the right to construct, operate and maintain underground and overhead crossings for golf carts, vehicles, pedestrians and utilities in connection with the development of Avatar's adjacent lands. Such facilities

shall be subject to the approval of the entities owning and operating such portion of the Bridge Segment, the Southwest Segment and the Rhododendron Extension, as the case may be, provided such approval shall not be unreasonably withheld and provided that they do not prevent or materially and adversely affect the operation and maintenance of the Bridge Segment, the Southwest Segment or the Rhododendron Extension contemplated by this Development Agreement, including expansion to six lanes, as contemplated by the Design Criteria. Neither Osceola County nor the Expressway Authority shall be responsible for any damage done to said underground or overhead crossings when expanding any portion of the Bridge Section, Southwest Section or Rhododendron Extension. Avatar shall be responsible for paying all costs associated with any tunnels and crossings, including the modification or obtaining of any new or additional permits required from any governmental authority in connection therewith and any financing related to such tunnels and crossings. Any permits required from Osceola County or the Expressway Authority for such tunnels or crossings shall not be conditioned or delayed unreasonably. Further, Avatar shall defend, indemnify and hold harmless Osceola County and the Expressway Authority from and against any and all obligations, liabilities, claims or demands, whatsoever arising out of or in connection with the construction, operations, maintenance or use of said tunnels or crossings, except any caused directly and solely by Osceola County or the Expressway Authority. Avatar shall keep the following types of insurance, with the respective limits, in effect with an insurance company licensed to do business in the State of Florida rated in the highest category available at commercially reasonable rates:

(a) Automobile:

Combined Single Limit: \$1,000,000.00 per accident,

OR

Bodily Injury: \$1,000,000.00 per person,

AND

Property Damage: \$1,000,000.00 per accident;

(b) General Liability: \$1,000,000.00 each occurrence;

(c) General Aggregate: \$2,000,000.00; and

(d) Excess Coverage: \$10,000,000.00.

(2) At all times prior to the original stated maturity date of the Series 2013 Bonds, the Bridge Segment, the Southwest Segment and the Rhododendron Extension, including all rights of way and permits related thereto, shall be owned and operated by a public entity; provided however, that this paragraph shall not be construed to prohibit "fee for service" agreements for toll collection, facility maintenance and other similar services, but such agreements shall not permit operation of the Bridge Segment, the

Southeast Segment, the Northwest Segment, the Southwest Segment or the Rhododendron Extension for the ultimate benefit or account of any private party.

(3) The restrictions and covenants set out in subsections 3.05(D)(1) and (2) above shall not apply to rights-of-way lying in Polk County which is to be conveyed to Polk County and/or to FDOT.

(E) The following additional restrictions shall be applicable to the rights-of-way lying in Osceola County conveyed by Avatar pursuant to this Development Agreement:

(1) Avatar shall impose a perpetual restriction on the use of the west side of the Bridge Segment, the Southwest Segment and the Rhododendron Extension prohibiting construction or installation of overhead electric transmission facilities. Such restriction shall not restrict the right to utilize the west side of such rights-of-way for essential facilities relating to the operation of Poinciana Parkway, including but not limited to the collection of tolls, including necessary overhead electric or lighting facilities. Osceola County and the Expressway Authority shall not permit the construction or installation of overhead electric transmission facilities on the west side of the Bridge Segment, the Southwest Segment and the Rhododendron Extension.

(2) Drainage facilities required for the Bridge Segment, the Rhododendron Extension and the Southwest Segment shall be designed and configured to be joint use facilities and shared wherever feasible so as to promote efficiency in operation, construction and the use of land. When possible, such facilities shall be located and configured so as to create a buffer and amenity to adjacent residential areas. A description of those drainage facilities that are currently anticipated to be shared facilities is attached hereto as Appendix M and made a part hereof. In connection with any such shared facility, the parties will enter into a Stormwater Drainage, Construction and Maintenance Easement Agreement in the form attached hereto as Appendix N and made a part hereof. Appendix D indicates whether the conveyance by Avatar shall be a conveyance of the fee title or of an easement with respect to each particular drainage facility. Avatar shall have the right to relocate or reconfigure (including dredging to remove additional fill material therefrom) any such drainage facility from time to time in order to accommodate development of its property, provided that such relocation or reconfiguration does not impair the operation of Poinciana Parkway; provided however, that (a) it shall pay all costs associated with such relocation or modification, including the modification or obtaining of any new or additional permits required from any governmental authority in connection therewith, (b) no relocation or modification shall diminish the capacity or function (including any opportunity for further expansion that may have otherwise existed) provided by such facility to any other party, and (c) the relocation or modification shall be accomplished in a manner that does not impair the functions or capacity of the applicable facility during the relocation or modification.

(3) In the event there is a necessity to avoid materially impacting environmentally sensitive areas, Avatar may construct parallel access roads within the Southwest Segment at its own expense; provided that (a) Osceola County issues a permit for such construction in accordance with its usual practices, which permits shall not be



conditioned or delayed unreasonably; (b) the parallel access roads are consistent with the Design Criteria and do not adversely affect the operation and maintenance of the Southwest Segment; and (c) Avatar removes or relocates the parallel access roads, if necessary to complete expansion of the Southwest Segment to four or six lanes, as contemplated by the Design Criteria.

(4) Signage meeting FDOT standards that directs traffic to Poinciana will be placed at the north and south ends of the Bridge Segment; provided however, that if the Southwest Segment is included in the initial construction the southernmost directional sign will be placed at the south end of the Southwest Segment instead of the south end of the Bridge Segment.

(F) Avatar shall have no obligation to pay Documentary Stamps Taxes, recording costs, or other costs, if any, due with respect to any of the conveyances from Avatar required by this Development Agreement. Further, ad valorem real estate taxes and assessments due with respect to the land and interests in land conveyed or reserved hereunder shall be prorated as of the Effective Date and, thereafter, if any shall be due, shall be borne by the party to whom such conveyance was made. In the case of the Southwest Segment Reservation Area, such taxes and assessments, if any, shall be paid prior to their due date on an annual basis, from and after the Effective Date, by the Expressway Authority.

(G) The County shall notify Avatar upon completion of thirty percent design plans for any road expansion or road construction project requiring Concurrency Right-of-Way and provide a legal description of the Concurrency Right-of-Way then owned by Avatar. The Concurrency Right-of-Way specified in such notice shall be conveyed by Avatar to Osceola County not later than 60 days following Avatar's receipt of the thirty percent design plans and legal description, subject to encumbrances then of record; provided that the Concurrency Right-of-Way shall not be encumbered by any mortgage on the date of conveyance.

### **SECTION 3.05. POINCIANA PARKWAY ESCROW AGREEMENT.**

(A) Osceola County shall notify Avatar not less than fifteen days in advance of the date it intends to enter into the Poinciana Parkway Funding Agreement. Not more than ten days following the date of such notice, the parties shall enter into the Poinciana Parkway Escrow Agreement, execute, and deposit the following instruments with the Poinciana Parkway Escrow Holder:

(1) a special warranty deed or deeds or other appropriate instruments, in recordable form, required to convey all of its interests in the property and interests in property, as described in Appendix D (with only those liens, encumbrances, exceptions and qualifications existing on the Effective Date), required for the property described in Section 3.04(A), the Southwest Segment Corridor and the Rhododendron Extension Corridor to Osceola County or Polk County, as appropriate, subject, however, to such reservations, restrictions, rights and easements in favor of Avatar as are specified and allowed in this Development Agreement on properties lying in Osceola County, as set forth in Section 3.04 hereof;

(2) the Assignment and Assumption of Permits, as required by Section 3.02(B) hereof;

(3) the Assignment and Assumption of Unfulfilled Obligations, as required by Section 3.03 hereof;

(4) the Assignment and Assumption of Reedy Creek Agreement, the "UMAM Letter of Credit" and the "WRAP Letter of Credit," as such terms are defined in the Reedy Creek Agreement, if required by Section 3.08 hereof;

(5) a certificate or agreement, in recordable form, confirming termination of the Concurrency Agreement and Osceola Regulatory Agreement; and

(6) a certificate or agreement, in recordable form, confirming termination of the Polk Regulatory Agreement.

(B) The Poinciana Parkway Escrow Holder shall deliver the instruments executed by Avatar to Osceola County, Polk County or the Expressway Authority, as appropriate, and shall deliver the instruments executed by Osceola County, Polk County or the Expressway Authority to Avatar; on the Poinciana Parkway Funding Date; provided however, that if Osceola County does not issue the Series 2013 Bonds within sixty days following the date such instruments are placed with the Poinciana Parkway Escrow Holder, unless otherwise agreed in writing by Avatar, the Poinciana Parkway Escrow Holder shall return each of the instruments to Avatar and the other applicable parties, as appropriate.

**SECTION 3.06. SOUTHWEST SEGMENT RESERVATION AREA.** The parties acknowledge and agree that additional property will be required for construction of the Southwest Segment to properly connect the Southwest Segment Corridor to the Bridge Segment, the Rhododendron Extension, Cypress Parkway and other lands of Avatar, as provided herein. The exact description of the additional property that will be required will be determined through the process described in Section 4.02 hereof. Pending such determination, the parties have agreed to reserve the Southwest Segment Reservation Area, as depicted in Appendix G and described in Appendix J hereto, subject to the conditions, restrictions and requirements set forth in the following subsections (A) and (B):

(A) Following the Effective Date, without prior written consent from Osceola County and the Expressway Authority, which consent may not be unreasonably withheld, conditioned or delayed, provided any request by Avatar does not materially and adversely affect the design or construction of the Southwest Segment or the approaches or interchanges therewith: (1) no buildings, structures or impediments of any nature may be constructed, placed or permitted on, over or across the Southwest Segment Reservation Area; and (2) no applications shall be made for development orders, subdivision or platting, except for vacation of existing plats.

(B) Avatar, on behalf of itself and its successors and assigns, hereby grants an irrevocable, nonexclusive license over the Southwest Segment Reservation Area to Osceola County and the Expressway Authority, and licensed surveyors, engineers, contractors and other consultants engaged by Osceola County and the Expressway Authority, for the purpose of inspection, testing, surveying and other activities associated with planning, designing and

constructing the Southwest Segment. Osceola County or the Expressway Authority shall obtain a policy of commercial and automobile liability insurance covering any and all loss, damage, claim or liability arising out of or in connection with the exercise of rights under the foregoing license with an insurance company licensed to do business in the State of Florida rated in the highest category available at commercially reasonable rates, with the following limits:

(1) Automobile:

Combined Single Limit: \$1,000,000.00 per accident,

OR

Bodily Injury: \$1,000,000.00 per person,

AND

Property Damage: \$1,000,000.00 per accident;

(2) General Liability: \$1,000,000.00 each occurrence;

(3) General Aggregate: \$2,000,000.00; and

(4) Excess Coverage: \$5,000,000.00.

(C) In consideration of the reservation of the Southwest Segment Reservation Area by Avatar and of the Avatar Investment, Osceola County and the Expressway Authority shall obtain a policy of commercial and automobile liability insurance covering any and all obligations, liabilities, claims or demands, whatsoever arising out of or in connection with the Southwest Segment Reservation Area at any time following the Effective Date, except any caused directly and solely by Avatar, its agents and employees with an insurance company licensed to do business in the State of Florida rated in the highest category available at commercially reasonable rates, with the following limits:

(1) Automobile:

Combined Single Limit: \$1,000,000.00 per accident,

OR

Bodily Injury: \$1,000,000.00 per person,

AND

Property Damage: \$1,000,000.00 per accident;

(2) General Liability: \$1,000,000.00 each occurrence;

(3) General Aggregate: \$2,000,000.00; and



(4) Excess Coverage: \$5,000,000.00.

(D) In the event that the Permit-Ready Design-Build Construction Documents, as described in Section 4.02(D)(1)(b) hereof, or construction plans at the final Design Plan Stage, as described in Section 4.02(D)(2)(d) hereof have not been completed and the conveyance of the applicable portions of the Southwest Corridor Reservation Area has not taken place on or before the Southwest Segment Release Date: (1) the obligation of Avatar to continue to reserve the Southwest Segment Reservation Area and all rights of Osceola County and the Expressway Authority created by the Development Agreement, including, without limitation the Southwest Segment Reservation Area Restrictions, with respect thereto shall expire and be null and void; and (2) to the extent permitted by law, the Expressway Authority shall reconvey the Southwest Segment Corridor and the Rhododendron Extension to Avatar free and clear of all liens and encumbrances whatsoever, except those to which it was subject at the time of its conveyance to the Expressway Authority by Avatar and taxes and assessments for the year of conveyance and thereafter, which shall be prorated as of the date of conveyance. Neither the Expressway Authority nor Osceola County shall initiate a downzoning of any of the land comprising the Southwest Segment Reservation Area, the Southwest Segment Corridor or the Rhododendron Extension unless the Southwest Segment Funding Date has passed and the property which is the subject of the downzoning is in the ownership of Osceola County or the Expressway Authority.

### **SECTION 3.07. CONVEYANCE OF ADDITIONAL RIGHT-OF-WAY.**

(A) After the Poinciana Parkway Funding Date and upon completion of Permit-Ready Design-Build Construction Documents, as described in Section 4.02(D)(1)(b) hereof, or Construction Plans at the final Design Plan Stage, as described in Section 4.02(D)(2)(d) hereof, for the Southwest Segment, Avatar shall donate that portion of the Southwest Segment Reservation Area necessary for construction of the Southwest Segment to Osceola County, but only to the extent of the interest therein owned by it as of the Effective Date. Conveyance shall be by special warranty deed, subject only to those matters as to which title is subject to as of the Effective Date, zoning and taxes and assessments for the year of closing. No monetary payment shall be made to Avatar in connection with the conveyance of such property.

(B) At its option, Osceola County or the Expressway Authority may obtain a title insurance commitment (ALTA Form B) from a Florida licensed title insurance issuer covering all or any portion of the Southwest Segment Reservation Area, as it may determine. The cost of the commitment and any ensuing title insurance policy shall be paid by the Expressway Authority. Avatar shall use commercially reasonable efforts to assist the Expressway Authority and Osceola County in discharging all liens, encumbrances, exceptions and qualifications listed in the commitment, except that Avatar shall have no obligation to expend any funds in connection therewith, it being understood that Avatar's obligation is to convey only such title as it may own as of the Effective Date with respect to any of such lands.

(C) Osceola County shall notify Avatar not less than fifteen days in advance of the date it intends to enter into the Southwest Segment Funding Agreement. Not more than ten days following the date of such notice, the parties shall enter into the Southwest Segment Escrow Agreement on substantially the same terms as the Poinciana Parkway Escrow Agreement and Avatar shall deposit with the Southwest Segment Escrow Holder, in recordable form, a special

warranty deed and limited access easement consistent with the approved Permit-Ready Design-Build Construction Documents, as described in Section 4.02(D)(1)(b) hereof, or Construction Plans at the final Design Plan Stage, as described in Section 4.02(D)(2)(d) hereof, conveying the portions of the Southwest Segment Reservation Area that will be utilized for the construction of the Southwest Segment as shown on the Permit-Ready Design-Build Construction Documents, as described in Section 4.02(D)(1)(b) hereof, or Construction Plans at the final Design Plan Stage, as described in Section 4.02(D)(2)(d) hereof to Osceola County or the Expressway Authority, whichever entity then owns Poinciana Parkway, subject, however, to the Avatar Reserved Rights and to the other matters permitted in this Development Agreement. The Southwest Segment Escrow Holder shall deliver the instruments deposited by Avatar to Osceola County on the Southwest Segment Funding Date; provided however, that if Osceola County does not issue the Series 2013 Bonds or Additional Bonds to finance acquisition and construction of the Southwest Segment within sixty days following the date of such notice, the Southwest Segment Escrow Holder shall return the instruments to Avatar.

**SECTION 3.08. REEDY CREEK SETTLEMENT AGREEMENT.** If Avatar's obligations under the Reedy Creek Agreement have not been assigned to Osceola County by Reedy Creek Mitigation Land Bank, Ltd. and American Equities Ltd. No. 7, or each of their respective successors or assigns, and Avatar has not been released from such obligations prior to the Poinciana Parkway Funding Date, (A) Avatar, Osceola County and the Expressway Authority shall, on the Poinciana Parkway Funding Date, execute and deliver an Assignment and Assumption of Reedy Creek Agreement, in the form attached hereto as Appendix R, relating to the Reedy Creek Settlement Agreement, and (B) Osceola County shall post the "UMAM Letter of Credit" and the "WRAP Letter of Credit," as such terms are defined in the Reedy Creek Agreement on the Poinciana Parkway Funding Date. Avatar shall assign to the Expressway Authority any and all mitigation credits available to it under the Reedy Creek Agreement which are required for use as mitigation for the construction of the Northwest Segment, the Bridge Segment and the Southeast Segment under the Avatar Construction Plans.

**ARTICLE IV**  
**POINCIANA PARKWAY**

**SECTION 4.01. LEASE-PURCHASE AGREEMENT.** On or prior to the Poinciana Parkway Funding Date, the Expressway Authority and Osceola County agree to enter into the Lease-Purchase Agreement, the terms of which shall not be inconsistent with the rights, responsibilities and obligations of the parties hereto as set forth herein and pursuant to which the Expressway Authority will (A) assume Osceola County's obligations under the Stormwater Drainage, Construction and Maintenance Easement Agreement required by Section 3.04(E)(2) hereof on the Poinciana Parkway Funding Date, and (B) assume Osceola County's obligations under the Assignment and Assumption of Reedy Creek Agreement required by Section 3.08 hereof, other than the obligation to post the "UMAM Letter of Credit" and the "WRAP Letter of Credit," as such terms are defined in the Reedy Creek Agreement, on the date the Expressway Authority begins toll collection operations on the Poinciana Parkway.

**SECTION 4.02. DESIGN AND CONSTRUCTION.**

(A) Pursuant to the Lease-Purchase Agreement, the Expressway Authority shall be responsible for designing and constructing Poinciana Parkway on existing public right-of-way and the right-of-way transferred by Avatar to Osceola County and Polk County pursuant to Article III hereof, as well as any other right-of-way that may be required, in accordance with standard public construction practices. Promptly following the Funding Date, the Expressway Authority agrees to begin and diligently pursue the initial design and construction, which may include any combination of the alternatives described in the following subsection (C), in compliance with all State and local laws, ordinances and regulations applicable thereto without unreasonable delay and in accordance with sound engineering practices and the Construction Plans. Any solicitation for Design-Builders or Construction Managers issued prior to the Poinciana Parkway Funding Date shall prohibit proposers from contacting the U.S. Army Corp of Engineers to discuss permit modifications. In addition, any solicitation for Design-Builders shall require an alternative Preliminary Design-Build Submittal that does not require modification of the Permits and approvals listed in Appendix E.

(B) The Expressway Authority shall use due diligence and its best reasonable effort to obtain all necessary approvals from any and all governmental agencies requisite to the acquisition, construction, installation and equipping of Poinciana Parkway that are not transferred to the Expressway Authority by Avatar pursuant to Section 3.02 hereof. Osceola County and Polk County shall reasonably assist the Expressway Authority, upon request, in its efforts to obtain all permits and approvals required from other governmental agencies or authorities. Promptly upon compliance with all applicable conditions of approval, Osceola County and Polk County shall grant to the Expressway Authority all rights-of-way utilization permits necessary or required for construction activity.

(C) The pre-construction design and engineering requirements for the initial construction may include (1) redesigning the Southeast Segment and Northwest Segment from 4-lane sections to 2-lane sections, (2) either (a) redesigning the Bridge Segment as a 2-lane facility or (b) if sufficient proceeds are available from the Parkway Construction Bonds, value

engineering the 4-lane Bridge Segment, (3) designing and constructing the Southwest Segment as a 2-lane section or a 4-lane section, and (4) designing and constructing the Rhododendron Extension as a 2-lane section or a 4-lane section. The initial construction may include any combination of the foregoing alternatives, but shall include at least two lanes from the existing intersection of County Road 54 and US 17-92 to Cypress Parkway (CR 580). The Design-Build Agreement or Construction Management Agreement, as applicable, shall include a guaranteed maximum price and shall require the Design-Builder or Construction Manager to indemnify Osceola County for any amounts drawn against the "UMAM Letter of Credit" and the "WRAP Letter of Credit," as such terms are defined in the Reedy Creek Agreement, or any other damages incurred by Osceola County under the Reedy Creek Agreement that result from construction activities under the Design-Build Agreement or Construction Management Agreement. The Expressway Authority, Design-Builder or Construction Manager, as appropriate, shall enter into all contracts in its own name and not in the name of Osceola County or Polk County.

(D) The design and construction of Poinciana Parkway, whether constructed initially or at a later date, shall be consistent with the Design Criteria included as Appendix F. The Avatar Construction Plans may be modified by the Expressway Authority, as set forth in this subsection.

(1) If the Expressway Authority elects to utilize a design-build delivery method:

(a) The Expressway Authority shall provide copies of each Preliminary Design-Build Submittal to Avatar for review, which review will be limited to ensuring consistency with the Design Criteria. If Avatar considers the Preliminary Design-Build Submittals to be inconsistent with the Design Criteria, it shall notify the Expressway Authority in writing and shall include the specific reasons it considers the Preliminary Design-Build Submittals to be inconsistent with the Design Criteria. If Avatar fails to provide the foregoing notice within twenty days of the date the Preliminary Design-Build Submittals are provided by the Expressway Authority for review, the Preliminary Design-Build Submittals shall be conclusively deemed consistent with the Design Criteria.

(b) The Expressway Authority shall provide copies of each Preliminary Design-Build Submittal for the Northwest Segment to Polk County for review, which review will be limited to ensuring consistency with the Design Criteria. If Polk County considers the Preliminary Design-Build Submittals for the Northwest Segment to be inconsistent with the Design Criteria, it shall notify the Expressway Authority in writing and shall include the specific reasons it considers the Preliminary Design-Build Submittals for the Northwest Segment to be inconsistent with the Design Criteria. If Polk County fails to provide the foregoing notice within twenty days of the date the Preliminary Design-Build Submittals for the Northwest Segment are provided by the Expressway Authority for review, the Preliminary Design-Build Submittals for the Northwest Segment shall be conclusively deemed consistent with the Design Criteria.



(c) The Expressway Authority shall provide copies of the Permit-Ready Design-Build Construction Documents for each construction component or permit application to Avatar for review, which review will be limited to ensuring consistency with the Preliminary Design-Build Submittal selected by the Expressway Authority and the Design Criteria (but only to the extent any such inconsistency with the Design Criteria could not reasonably be ascertained by reference to and review of such Preliminary Design-Build Submittal). If Avatar considers the Permit-Ready Design-Build Construction Documents to be inconsistent with the Preliminary Design-Build Submittal (or, if applicable, the Design Criteria), it shall notify the Expressway Authority in writing and shall include the specific reasons it considers the Permit-Ready Design-Build Construction Documents to be inconsistent with the Preliminary Design-Build Submittal (or, if applicable, the Design Criteria). If Avatar fails to provide the foregoing notice within fifteen days of the date they are provided by the Expressway Authority for review, the Permit-Ready Design-Build Construction Documents shall be conclusively deemed consistent with the Preliminary Design-Build Submittal (and, if applicable, the Design Criteria).

(d) The Expressway Authority shall provide copies of the Permit-Ready Design-Build Construction Documents for each construction component or permit application for the Northwest Segment to Polk County for review, which review will be limited to ensuring consistency with the Preliminary Design-Build Submittal for the Northwest Segment selected by the Expressway Authority and the Design Criteria (but only to the extent any such inconsistency with the Design Criteria could not reasonably be ascertained by reference to and review of such Preliminary Design-Build Submittal for the Northwest Segment). If Polk County considers the Permit-Ready Design-Build Construction Documents for the Northwest Segment to be inconsistent with the Preliminary Design-Build Submittal for the Northwest Segment (or, if applicable, the Design Criteria), it shall notify the Expressway Authority in writing and shall include the specific reasons it considers the Permit-Ready Design-Build Construction Documents for the Northwest Segment to be inconsistent with the Preliminary Design-Build Submittal for the Northwest Segment (or, if applicable, the Design Criteria). If Polk County fails to provide the foregoing notice within fifteen days of the date they are provided by the Expressway Authority for review, the Permit-Ready Design-Build Construction Documents for the Northwest Segment shall be conclusively deemed consistent with the Preliminary Design-Build Submittal for the Northwest Segment (and, if applicable, the Design Criteria).

(2) If the Expressway Authority elects to utilize a design-bid-build delivery method (with or without a Construction Management Agreement), the Expressway Authority shall provide copies of the design plans to Avatar and copies of the design plans for the Northwest Segment to Polk County at each Design Plan Stage.

(a) Avatar's review at the thirty percent Design Plan Stage shall be limited to ensuring consistency with the Design Criteria. If Avatar considers the thirty percent design plans to be inconsistent with the Design Criteria, it shall

notify the Expressway Authority in writing and shall include the specific reasons it considers the thirty percent design plans to be inconsistent with the Design Criteria. If Avatar fails to provide the foregoing notice within thirty days of the date the thirty percent design plans are provided by the Expressway Authority for review, the thirty percent design plans shall be conclusively deemed consistent with the Design Criteria.

(b) Polk County's review at the thirty percent Design Plan Stage shall be limited to ensuring consistency with the Design Criteria. If Polk County considers the thirty percent design plans for the Northwest Segment to be inconsistent with the Design Criteria, it shall notify the Expressway Authority in writing and shall include the specific reasons it considers the thirty percent design plans for the Northwest Segment to be inconsistent with the Design Criteria. If Polk County fails to provide the foregoing notice within thirty days of the date the thirty percent design plans for the Northwest Segment are provided by the Expressway Authority for review, the thirty percent design plans for the Northwest Segment shall be conclusively deemed consistent with the Design Criteria.

(c) Avatar's review at the sixty percent Design Plan Stage shall be limited to ensuring consistency with the thirty percent design plans and the Design Criteria (but only to the extent any such inconsistency with the Design Criteria could not reasonably be ascertained by reference to and review of the thirty percent plans). If Avatar considers the sixty percent design plans to be inconsistent with the thirty percent design plans (or, if applicable, the Design Criteria), it shall notify the Expressway Authority in writing and shall include the specific reasons it considers the sixty percent design plans to be inconsistent with the thirty percent design plans (or, if applicable, the Design Criteria). If Avatar fails to provide the foregoing notice within fifteen days of the date the sixty percent design plans are provided by the Expressway Authority for review, the sixty percent design plans shall be conclusively deemed consistent with the thirty percent design plans (and, if applicable, the Design Criteria).

(d) Polk County's review at the sixty percent Design Plan Stage shall be limited to ensuring consistency with the thirty percent design plans for the Northwest Segment and the Design Criteria (but only to the extent any such inconsistency with the Design Criteria could not reasonably be ascertained by reference to and review of the thirty percent plans for the Northwest Segment). If Avatar considers the sixty percent design plans for the Northwest Segment to be inconsistent with the thirty percent design plans for the Northwest Segment (or, if applicable, the Design Criteria), it shall notify the Expressway Authority in writing and shall include the specific reasons it considers the sixty percent design plans for the Northwest Segment to be inconsistent with the thirty percent design plans for the Northwest Segment (or, if applicable, the Design Criteria). If Polk County fails to provide the foregoing notice within fifteen days of the date the sixty percent design plans for the Northwest Segment are provided by the Expressway Authority for review, the sixty percent design plans for the Northwest

Segment shall be conclusively deemed consistent with the thirty percent design plans for the Northwest Segment (and, if applicable, the Design Criteria).

(e) Avatar's review at the ninety percent Design Plan Stage shall be limited to ensuring consistency with the sixty percent design plans and the Design Criteria (but only to the extent any such inconsistency with the Design Criteria could not reasonably be ascertained by reference to and review of the sixty percent plans). If Avatar considers the ninety percent design plans to be inconsistent with the sixty percent design plans (or, if applicable, the Design Criteria), it shall notify the Expressway Authority in writing and shall include the specific reasons it considers the ninety percent design plans to be inconsistent with the sixty percent design plans (or, if applicable, the Design Criteria). If Avatar fails to provide the foregoing notice within fifteen days of the date the ninety percent design plans are provided by the Expressway Authority for review, the ninety percent design plans shall be conclusively deemed consistent with the sixty percent design plans (and, if applicable, the Design Criteria).

(f) Polk County's review at the ninety percent Design Plan Stage shall be limited to ensuring consistency with the sixty percent design plans for the Northwest Segment and the Design Criteria (but only to the extent any such inconsistency with the Design Criteria could not reasonably be ascertained by reference to and review of the sixty percent plans for the Northwest Segment). If Polk County considers the ninety percent design plans to be inconsistent with the sixty percent design plans for the Northwest Segment (or, if applicable, the Design Criteria), it shall notify the Expressway Authority in writing and shall include the specific reasons it considers the ninety percent design plans for the Northwest Segment to be inconsistent with the sixty percent design plans for the Northwest Segment (or, if applicable, the Design Criteria). If Polk County fails to provide the foregoing notice within fifteen days of the date the ninety percent design plans for the Northwest Segment are provided by the Expressway Authority for review, the ninety percent design plans for the Northwest Segment shall be conclusively deemed consistent with the sixty percent design plans for the Northwest Segment (and, if applicable, the Design Criteria).

(g) Avatar's review at the final Design Plan Stage shall be limited to ensuring consistency with the ninety percent design plans and the Design Criteria (but only to the extent any such inconsistency with the Design Criteria could not reasonably be ascertained by reference to and review of the ninety percent plans). If Avatar considers the final design plans to be inconsistent with the ninety percent design plans (or, if applicable, the Design Criteria), it shall notify the Expressway Authority in writing and shall include the specific reasons it considers the final design plans to be inconsistent with the ninety percent design plans (or, if applicable, the Design Criteria). If Avatar fails to provide the foregoing notice within fifteen days of the date the final design plans are provided by the Expressway Authority for review, the final design plans shall be conclusively deemed consistent with the ninety percent design plans (and, if applicable, the Design Criteria).

(h) Polk County's review at the final Design Plan Stage shall be limited to ensuring consistency with the ninety percent design plans for the Northwest Segment and the Design Criteria (but only to the extent any such inconsistency with the Design Criteria could not reasonably be ascertained by reference to and review of the ninety percent plans for the Northwest Segment). If Polk County considers the final design plans for the Northwest Segment to be inconsistent with the ninety percent design plans for the Northwest Segment (or, if applicable, the Design Criteria), it shall notify the Expressway Authority in writing and shall include the specific reasons it considers the final design plans for the Northwest Segment to be inconsistent with the ninety percent design plans for the Northwest Segment (or, if applicable, the Design Criteria). If Polk County fails to provide the foregoing notice within fifteen days of the date the final design plans for the Northwest Segment are provided by the Expressway Authority for review, the final design plans for the Northwest Segment shall be conclusively deemed consistent with the ninety percent design plans for the Northwest Segment (and, if applicable, the Design Criteria).

(E) The Expressway Authority shall provide monthly design and construction progress reports to Avatar, Osceola County and Polk County, commencing not later than 60 days following the Effective Date and continuing through the date on which Poinciana Parkway initially opens for traffic. The parties shall meet periodically (but not more frequently than monthly) at the request of any party to review and discuss the progress reports.

(F) In no event shall the Avatar Construction Plans be modified, initially or in the future, so as to eliminate direct access from Polk County from the CR54/US17/92 Intersection to Osceola County via the Poinciana Parkway. Any future plans for a connection of Poinciana Parkway to I-4, as depicted in the Osceola County Expressway Authority Master Plan 2040 as the "I-4 Segment", shall provide for an interchange with the Poinciana Parkway sufficient to insure that both east and westbound traffic on the Northwest Segment of the Poinciana Parkway will continue to have direct access to the Bridge Segment, as well as to the I-4 Segment, the intent being that the Poinciana Parkway will continue to be a collector roadway connecting both Polk County and Osceola County.

**SECTION 4.03. COUNTY STAFF SUPPORT.** The parties acknowledge that the Expressway Authority does not employ a staff and intends to outsource most of its services. If requested by the Expressway Authority, Osceola County agrees to provide planning, engineering, procurement and other staff support to facilitate the initial design and construction of Poinciana Parkway.

**SECTION 4.04. OPERATION AND MAINTENANCE.**

(A) Subject to the provisions and requirements of the Osceola County Land Development Code, and upon inspection and approval by the Osceola County Engineer, Osceola County covenants and agrees that it will, at all times after acceptance of the Southeast Segment for maintenance purposes, operate and maintain the Southeast Segment in accordance with Osceola County, and any applicable State, policies and procedures for the maintenance and repair of the public road system of Osceola County and the requirements of this Development



Agreement. The Southeast Segment shall remain open to traffic, without a toll or charge, unless the Expressway Authority constructs the Southwest Segment.

(B) The Bridge Segment, Southwest Segment and Rhododendron Extension shall be operated and maintained by the Expressway Authority in accordance with the Lease-Purchase Agreement and the requirements of this Development Agreement.

(C) Polk County shall be entitled to inspect work on the Northwest Segment during construction and meet with the Expressway Authority's inspectors to discuss any issues resulting from such inspections. Subject to the provisions and requirements of the Polk County Land Development Code, and upon inspection and approval by Polk County that the Northwest Segment meets all of Polk County's standards for acceptance of county roads, Polk County covenants and agrees that it will accept the Northwest Segment for maintenance and, following such acceptance, operate and maintain the Northwest Segment in accordance with Polk County, and any applicable State, policies and procedures for the maintenance and repair of the public road system of Polk County and the requirements of this Development Agreement. In connection with its responsibilities regarding the operation, maintenance, inspection and permitting for the Northwest Segment, the Expressway Authority and Polk County agree to cooperate and coordinate with each other to ensure continued movement of traffic from the Northwest Segment to the Bridge Segment. Polk County further agrees that it will not initiate any fee or charge for the use of the Northwest Segment. In the event that the Expressway Authority constructs an alternative northern extension from the Bridge Segment such alternative northern extension shall include an interchange with the Poinciana Parkway sufficient to insure that both east and westbound traffic on the Northwest Segment of the Poinciana Parkway will continue to have direct access to the Bridge Segment of Poinciana Parkway as well as to the I-4 segment, the intent being that the Poinciana Parkway will continue to be an arterial roadway connecting both Polk County and Osceola County.

**SECTION 4.05. FUTURE CONSTRUCTION OF SOUTHWEST SEGMENT.**

If the Southwest Segment is not constructed simultaneously with the Bridge Segment, Osceola County will make its best reasonable effort to issue Additional Bonds to fund the Southwest Segment Project Cost when the Expressway Authority determines that construction of the Southwest Segment is financially feasible. The Expressway Authority shall be responsible for construction of the Southwest Segment.

**SECTION 4.06. EXPANSION OF NORTHWEST SEGMENT.**

If the Northwest Segment is not initially constructed as a 4-lane facility, Osceola County will make its best reasonable effort to issue Additional Bonds to fund the Northwest Segment Project Cost when the Expressway Authority determines that expansion of the Northwest Segment from two lanes to four lanes is financially feasible. The Expressway Authority shall be responsible for construction of the Northwest Segment. Polk County will not be responsible for any costs associated with design, permitting, utility relocation, acquisition or construction of a future expansion of the Northwest Segment. In the event that the Expressway Authority undertakes expansion of the Northwest Segment, and upon inspection and approval by Polk County, Polk County covenants and agrees that it will, at all times after acceptance of the expanded Northwest Segment for maintenance purposes, operate and maintain the Northwest Segment in accordance with Polk County, and any applicable State, policies and procedures for the maintenance and

repair of the public road system of Polk County and the requirements of this Development Agreement. Any expansion of the Northwest Segment, and any alternative northern extension from the Bridge Segment, shall include an interchange with the Poinciana Parkway sufficient to insure that both east and westbound traffic on the Northwest Segment of Poinciana Parkway will continue to have direct access to the Bridge Segment, as well as to the I-4 segment, the intent being that the Poinciana Parkway will continue to be a collector roadway connecting both Polk County and Osceola County.

**SECTION 4.07. FUTURE CONSTRUCTION 4-LANE BRIDGE SEGMENT.**

If the Bridge Segment is not initially constructed as a 4-lane facility, Osceola County will make its best reasonable effort to issue Additional Bonds to fund the cost of expanding the Bridge Segment from two lanes to four lanes when the Expressway Authority determines that construction of the Bridge Segment expansion is financially feasible. The Expressway Authority shall be responsible for construction of the Bridge Segment expansion.

**SECTION 4.08. ACCESS MANAGEMENT.**

(A) The parties acknowledge and agree that access to Poinciana Parkway shall be as specified in the Design Criteria. The parties further acknowledge and agree that access to the Northwest Segment, for purposes of spacing of median openings, signalization, and connections, shall be as specified in the Design Criteria for 45 MPH or less posted speed pursuant to Rules of FDOT, Ch. 17-97. With the exception of access points and driveway connections previously agreed to during condemnation or pre-condemnation negotiations by Osceola County and/or Avatar, Polk County reserves the right to establish access for properties subject to and during future Level 2 Review processes.

(B) If the access to the existing school and water treatment plant is impaired by construction of the Southwest Segment, alternative access shall also be designed, configured and mutually agreed upon by Avatar, Osceola County and the Expressway Authority. Osceola County or the Expressway Authority shall reimburse Avatar promptly upon request for the reasonable cost of redesigning the Solivita Grand entrance. The reimbursable cost shall be limited to professional services associated with redesign or plan modifications, but shall not include any cost related to construction, acquisition, equipping, signage, landscaping or a reduction in developable property resulting from such redesign or modification. The Solivita Grand entrance shall be constructed by Avatar at its own cost.

**SECTION 4.09. TRANSFER OF TITLE TO EXPRESSWAY AUTHORITY.**

(A) With respect to that portion of Poinciana Parkway located in Osceola County, Osceola County agrees that upon written request of the Expressway Authority it will promptly transfer to the Expressway Authority, without monetary payment, all portions of the right-of-way and related improvements that the Expressway Authority intends to operate as a limited access toll facility in accordance with its 2040 Master Plan, as specifically described in such written notice, upon the last to occur of the following: (1) payment in full, defeasance or assumption of Osceola County's obligations under the Trust Agreement, in accordance with the terms thereof, of the Series 2013 Bonds and any Additional Bonds issued by Osceola County with respect to the Poinciana Parkway; and (2) written assumption by the Expressway Authority of sole

responsibility for the operations and maintenance of such right-of-way and related improvements and any termination of any and all responsibilities of Osceola County with respect to such right-of-way. Any and all costs related to such transfer shall be paid by the Expressway Authority.

(B) With respect to that portion of Poinciana Parkway located in Polk County, Polk County agrees that upon written request of the Expressway Authority it will consider the request of the Expressway Authority to transfer, without monetary payment, all portions of the right-of-way and related improvements that the Expressway Authority intends to operate as a limited access toll facility in accordance with its 2040 Master Plan, and as specifically described in such written notice. Any such transfer shall be specifically conditioned upon (1) written assumption by the Expressway Authority of sole responsibility for the operations and maintenance of such right-of-way and related improvements and any termination of any and all responsibilities of Polk County with respect to such right-of-way, (2) any and all costs related to such transfer shall be paid by the Expressway Authority, and (3) the receipt, review, and input by Polk County Transportation Engineering, of construction plans showing an interchange between the Poinciana Parkway and any proposed limited access facility sufficient to insure that both east and westbound traffic on the Northwest Segment of the Poinciana Parkway will continue to have direct access to the Bridge Segment, as well as to the I-4 segment, the intent being that the Poinciana Parkway will continue to be a collector roadway connecting both Polk County and Osceola County.

**ARTICLE V  
PLAN OF FINANCE**

**SECTION 5.01. OSCEOLA COUNTY CONTRIBUTION.**

(A) On or prior to the Poinciana Parkway Funding Date, Osceola County agrees to deposit \$6 million to the Initial Project Account to pay a portion of the Poinciana Parkway Project Cost.

(B) If proceeds of the Series 2013 Bonds, together with the contributions required by the foregoing subsection (A) and Section 5.02 hereof, are insufficient to fund the Poinciana Parkway Project Cost, with the initial construction including at least two lanes from the existing intersection of County Road 54 and US 17-92 to Cypress Parkway (CR 580), Osceola County agrees to deposit additional funds to the Initial Project Account in the amount required to cover the shortfall. In its sole and absolute discretion, Osceola County may make a further contribution to fund construction of the Bridge Segment as a 4-lane facility.

**SECTION 5.02. POLK COUNTY CONTRIBUTION.**

(A) On or prior to the Poinciana Parkway Funding Date, Polk County agrees to deposit \$6 million to the Initial Project Account to pay a portion of the Poinciana Parkway Project Cost.

(B) On the Poinciana Parkway Funding Date, assuming Polk County shall have satisfied the requirements set forth in the foregoing subsection (A), Avatar shall convey fee simple title to Polk County to the Public Safety Site. The Public Safety Site shall be conveyed by special warranty deed and shall be subject to easements, restrictions and reservations of record, if any, and to taxes for the year of closing and thereafter, which shall be prorated as of the date of conveyance. Polk County agrees that the use of the Public Safety Site shall be restricted in the deed of conveyance to use by Polk County as a location for the construction and maintenance of a Fire Station and a Communications Tower which tower shall provide expanded public safety communications coverage for the Poinciana area, and for no other use without the prior written consent of Avatar, which shall not be unreasonably withheld. Polk County will assist Avatar in applying for and obtaining any required modification to Binding Letter of Interpretation of Vested Rights for Poinciana (BLIVR 783-002) necessary to allow development of the Public Service Site for the above-described public service purposes, provided such modification does not adversely affect any rights of Avatar under BLIVR 783-002 after such modification. Polk County shall be responsible for all costs and expenses relating to the development of the Public Safety Site, including the costs of any environmental survey, wildlife survey, water management district permits, or other permits, approvals, reports, surveys or similar matters in connection therewith and including, but not limited to, any applicable Comprehensive Plan Amendments and Land Use Changes required by Polk County's Land Development Code. If existing covenants and restrictions applying to the platted Poinciana Office and Industrial Park VII restrict access from Lots E and F to Poinciana Parkway, the County will initiate and process, with the assistance of Avatar, a partial plat vacation to eliminate access restrictions and insure direct access to the County Road. In the event that the proposed Public Safety Site is found to be unsuitable for the intended uses, Avatar shall assist Polk County

in identifying another site, acceptable to Polk County, for both a fire station and a communications tower which site shall be donated by Avatar under the terms set out above.

(C) Each party expressly agrees that, save and except for Polk County's express obligations under the foregoing subsections (A) and (B) and Sections 4.04(C) and 4.06 hereof, Polk County will not, under any circumstances, be liable in connection with this Development Agreement, whether based in contract, tort (including negligence and strict liability), warranty, or otherwise, for any present or future: indirect, special, incidental or consequential loss or damage, or punitive damages; damage to or loss of property or equipment; loss of profits or revenue; loss of use of material, or equipment; cost or increased costs of any kind, including, without limitation, the cost of any relocation of Polk County utilities, or other Polk County facilities, future expansion of the Poinciana Parkway or the Northwest Segment. Each party expressly agrees that the remedies provided herein are exclusive, and each party expressly agrees that, save and except for Polk County's express obligations under Section 4.04(C) and the foregoing subsection (E), under no circumstances shall the total aggregate liability of Polk County exceed the \$6 million contribution required by the foregoing subsection (A). The provisions of this subsection shall prevail over any conflicting or inconsistent provisions set forth elsewhere in this Development Agreement. This limitation of liability will apply to any costs or damages, however incurred, and on any theory of liability, regardless of whether the limited remedies available to a party fail for their essential purpose.

#### **SECTION 5.03. ISSUANCE OF SERIES 2013 BONDS.**

(A) Osceola County will make commercially reasonable efforts to issue Series 2013 Bonds prior to the first anniversary of the Effective Date (which may be extended for an additional period of six months at Osceola County's option), with at least an "investment grade" rating by Moody's Investors Service, Standard and Poor's Ratings Services or Fitch Ratings, payable from the Revenues, in a principal amount that will yield net proceeds sufficient, together with the investment income thereon, to pay accrued interest, capitalized interest, the Poinciana Parkway Project Cost after deduction of amounts payable to the Expressway Authority pursuant to Sections 5.01 and 5.02 hereof and a reasonable contingency. The parties acknowledge and agree that Osceola County shall not be obligated to secure the Series 2013 Bonds from any funds of Osceola County other than the Revenues; provided however, that if required for issuance of the Series 2013 Bonds, Osceola County shall enter into an agreement with the Expressway Authority to guaranty the payment of operating and maintenance expenses for the Bridge Segment from other lawfully available revenue. Osceola County shall not enter into a Lease-Purchase Agreement, Trust Agreement or Funding Agreement that is inconsistent with the rights, responsibilities and obligations of the parties hereto as set forth herein.

(B) On the Poinciana Parkway Funding Date, the parties shall make, or cause the following deliveries to be made and shall perform as follows:

(1) The Poinciana Parkway Escrow Agent shall deliver the instruments held under the Poinciana Parkway Escrow Agreement, pursuant to the terms thereof.

(2) Avatar shall deliver (a) the deed to the Public Safety Site in recordable form, assuming Polk County has satisfied its obligation under Section 5.02(A) hereof, and (b) any other documents or things required by this Development Agreement.

(3) Osceola County shall deliver (a) the funds to be contributed pursuant Sections 5.01 (A) and (B), (b) any documents or agreements required by the Trust Agreement, the Funding Agreement, the Lease-Purchase Agreement or otherwise in connection with the issuance of the Series 2013 Bonds, (c) a release in favor of Avatar and the issuer thereof of Letter of Credit No. 63660367 originally dated April 11, 2012; and (4) any other documents or things required by this Development Agreement.

(4) The Expressway Authority shall deliver (a) an assumption agreement in recordable form agreeing to assume, pay and discharge the Unfulfilled Obligations listed in Appendix L, (b) all documents and things required pursuant to the terms of the Trust Agreement, the Lease-Purchase Agreement and the Funding Agreement; and (c) any other documents or things required by this Development Agreement.

(5) Polk County shall deliver (a) the amount required by Section 5.02(A) hereof; (b) a release in favor of Avatar and the issuer thereof of Letter of Credit No. 63660368 originally dated March 28, 2012; (c) a certificate in recordable form confirming the termination of the Polk Regulatory Agreement, and (d) any other documents or things required by this Development Agreement.

**SECTION 5.04. REPAYMENT OF COUNTY FUNDS.** The contribution made by Osceola County pursuant to Section 5.01(B) hereof (but not the contribution made pursuant to Section 5.01(A) hereof) and any amounts drawn against the "UMAM Letter of Credit" and the "WRAP Letter of Credit," as such terms are defined in the Reedy Creek Agreement, or any other damages incurred by Osceola County under the Reedy Creek Agreement that result from the construction of Poinciana Parkway, will be repaid, together with interest from the Poinciana Parkway Funding Date to the date of repayment computed at a rate per annum equal to the Series 2013 Bond Yield, from funds on deposit in the General Reserve Fund.

**SECTION 5.05. EXPRESSWAY AUTHORITY REQUISITIONS.**

(A) The Expressway Authority will review and approve, reduce, or reject each of the Design-Builder's or Construction Manager's applications for payment to confirm that each obligation, item of cost or expense shown therein has been properly incurred and is in payment of a part of the Poinciana Parkway Project Cost.

(B) Osceola County shall make payments to the Expressway Authority or its designees from funds on deposit in the Initial Project Account to pay the Poinciana Parkway Project Cost, upon the filing with Osceola County's Representative of certificates signed by an Expressway Authority's Representative and certified by the inspecting engineers, stating with respect to each disbursement or payment to be made: (1) the item number of the payment, (2) the name and address of the person to whom payment is due, (3) the amount to be paid, (4) the purpose, by general classification, for which payment is to be made, and (5) that (a) each obligation, item of cost or expense mentioned therein has been properly incurred, is in payment



of a part of the Poinciana Parkway Project Cost and has not been the basis of any previous payment, or (b) each obligation, item of cost or expense mentioned therein has been paid by the Expressway Authority, is a reimbursement of a part of the Poinciana Parkway Project Cost Center and has not been theretofore reimbursed to the Expressway Authority or otherwise been the basis of any previous disbursement or payment, and the Expressway Authority is entitled to reimbursement thereof.

(C) Requisitions shall be paid in accordance with Part VII, Chapter 218, Florida Statutes, the Florida Prompt Payment Act.

(D) No payments made by Osceola County as hereinabove provided shall be deemed to signify or imply acceptance of the materials or workmanship covered by such application, and none of them shall operate as an admission on the part of Osceola County as to the propriety or accuracy of any of the amounts entered in the requisitions. Furthermore, when computing subsequent payments, Osceola County shall not be bound by any entries in previous requisitions and shall be permitted to make corrections for errors therein.

(E) The parties acknowledge and agree that Osceola County's obligation to pay the Poinciana Parkway Project Cost shall be limited to funds on deposit in the Initial Project Account.

**SECTION 5.06. COMPLETION BONDS.** If Osceola County issues Series 2013 Bonds and, after application of the amounts paid to the Expressway Authority pursuant to Sections 5.01 and 5.02 hereof, the Poinciana Parkway Project Cost exceeds the net proceeds of the Series 2013 Bonds (together with the investment income thereon) Osceola County agrees to issue Additional Bonds, to the extent permitted by the Trust Agreement, to complete the initial design and construction of Poinciana Parkway.

**SECTION 5.07. APPLICATION OF EXCESS SYSTEM REVENUE.** Following the repayment of amounts due to Osceola County pursuant to Section 5.04 hereof, funds on deposit in the General Reserve Fund shall be used to fund transportation facilities improving access to the Poinciana area, as described in the Expressway Authority's 2040 Master Plan.

**ARTICLE VI**  
**GENERAL PROVISIONS**

**SECTION 6.01. INTERLOCAL AGREEMENT PROVISIONS.** To the extent any provision of this Development Agreement constitutes a joint exercise of power, privilege or authority by and between Osceola County, Polk County or the Expressway Authority, such provision shall be deemed to be an "interlocal agreement" within the meaning of the Florida Interlocal Cooperation Act of 1969. This Agreement shall be filed with the Clerk of the Circuit Court of Osceola County and the Clerk of the Circuit Court of Polk County.

**SECTION 6.02. TERM OF AGREEMENT.** The term of this Development Agreement shall begin on (A) the Effective Date, or (B) the date on which Osceola County enacts an ordinance repealing Ordinance No. 06-53 that may have a deferred effective date not later than the Poinciana Parkway Funding Date, whichever occurs last, and terminate on the final maturity date of the Parkway Construction Bonds or the 30<sup>th</sup> anniversary of the Effective Date, whichever occurs latest; provided however, that if the Poinciana Parkway Funding Date does not occur prior to the first anniversary of the Effective Date (which may be extended for an additional period of six months at Osceola County's option), Avatar shall have the continuing right, exercisable in writing at any time thereafter, to terminate this Development Agreement on not less than ninety days' notice to the other parties hereto.

**SECTION 6.03. PRIOR AGREEMENTS.**

(A) Osceola County and Avatar acknowledge that both parties have fully performed their respective obligations under the Acquisition Agreement, which is expressly terminated hereby.

(B) On the Poinciana Parkway Funding Date, Osceola County and Avatar shall execute and deliver a certificate in recordable form confirming termination of the Concurrency Agreement and Osceola Regulatory Agreement. On the Poinciana Parkway Funding Date or the Polk County Funding Date, whichever occurs last, Polk County and Avatar shall execute and deliver a certificate in recordable form confirming termination of the Polk Regulatory Agreement.

(C) If the Poinciana Parkway Funding Date does not occur prior to the first anniversary of the Effective Date (which may be extended for an additional period of six months at Osceola County's option), which Osceola County and Avatar acknowledge as the date described in Section 4.2.2(ii)(y)(b) of the Judge Farms Acquisition Agreement, the deadlines for Avatar to fund and complete construction of Poinciana Parkway, as set forth in the Concurrency Agreement and Osceola Regulatory Agreement shall be extended for an additional period of one year following termination of this Development Agreement. The extension of such deadlines for Avatar to fund and complete construction of Poinciana Parkway shall survive the termination of this Development Agreement.



**SECTION 6.04. VESTED RIGHTS STATUS.**

(A) Osceola County and Avatar acknowledge that this Development Agreement has been entered into in accordance with the provisions of Chapter 20 of the Osceola County Land Development Code and constitutes a determination that the Vested Property shall be vested from the transportation concurrency requirements set forth in Chapter 5 of the Osceola County Land Development Code and the Osceola County Comprehensive Land Use Plan, or their respective successors in function, through December 31, 2030.

(B) Osceola County and Avatar further acknowledge that the terms of this Development Agreement and vested rights status do not preclude Osceola County from imposing requirements on projects located within and intended to serve primarily the Vested Property to provide on-site transportation improvements necessary for safety, access, ingress/egress and intersections. The parties acknowledge and agree that the vesting status granted herein is limited to the application of transportation concurrency requirements (or any successor or similar concept until December 30, 2030) to the Vested Property and does not constitute a waiver of Osceola County's or Avatar's rights or defenses with respect to any other vested rights claim which may exist.

(C) Other than the transportation concurrency requirements set forth in Chapter 5 of the Osceola County Land Development Code and the Osceola County Comprehensive Land Use Plan, as addressed in this Section, nothing in this Development Agreement shall be construed as a waiver by Avatar of any vested rights other than those relating to transportation concurrency which may exist for the Vested Property, whether such rights are derived from common law, statutory provisions (local, state, or federal), or prior administrative decisions.

(D) Avatar acknowledges and agrees that the execution of this Development Agreement or any activity resulting therefrom does not affect any existing rights to develop the Vested Property in a specific manner, nor does this Development Agreement confer any new or additional development rights upon Avatar.

**SECTION 6.05. EXPRESSWAY AUTHORITY'S FAILURE TO PERFORM.**

In addition to any other rights and remedies of the parties provided for in this Development Agreement, if the Expressway Authority fails to perform or observe any covenant or condition to be performed or complied with by the Expressway Authority under this Development Agreement, and the failure continues for thirty days after written notice by Osceola County or any other party to this Development Agreement to the Expressway Authority, or, if the default complained of is not a monetary default and is of such a nature that it cannot reasonably be completely cured or remedied within such 30-day period, the Expressway Authority fails to commence to cure the default during the 30-day period, or does not thereafter diligently prosecute such remedy or cure to completion, Osceola County shall perform such covenant or condition and terminate the Expressway Authority's rights under this Development Agreement and the Lease-Purchase Agreement. The foregoing obligation shall be specifically enforceable by Avatar following the Poinciana Parkway Funding Date.

**SECTION 6.06. FURTHER ASSURANCES.** The parties hereto agree to cooperate with each other and shall promptly cure any errors or defects in the Development

Agreement and further agree to approve, execute and deliver such other and further amendments, documents and instruments consistent with this Development Agreement as may be reasonably required to correct any errors or defects or satisfy or comply with the terms and provisions of this Development Agreement, provided, however, no such amendments, documents or instruments shall change the economic terms of the transaction as contemplated by the Development Agreement or expand the obligations or liability of the parties hereunder.

**SECTION 6.07. DISPUTE RESOLUTION.**

(A) The parties agree to resolve any dispute related to the interpretation or performance of this Development Agreement in the manner described in this Section. Any party may initiate the dispute resolution process by providing written notice to the other party.

(B) After transmittal and receipt of a notice specifying the area or areas of disagreement, the parties agree to meet at reasonable times and places, as mutually agreed upon, to discuss the issues.

(C) If discussions between the parties fail to resolve the dispute within sixty days of the notice described in the foregoing subsection (A), the parties shall appoint a mutually acceptable neutral third party to act as a mediator. If the parties are unable to agree upon a mediator, either party may request appointment of a mediator by the Chief Judge of the Circuit Court of the Ninth Judicial Circuit in and for Osceola County, Florida. The mediation contemplated by this subsection is intended to be an informal and non-adversarial process with the object of helping the parties reach a mutually acceptable and voluntary agreement. The decision making shall rest solely with the parties. The mediator shall assist the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives. It is understood that any settlement may require approval of Osceola County's and/or Polk County's Board of Commissioners.

(D) If the parties are unable to reach a mediated settlement within 120 days of the mediator's appointment, either party may terminate the settlement discussions by written notice to the other party. In such event, either party may initiate litigation within 120 days of the notice terminating the settlement discussions. Failure by the party initiating the dispute resolution procedure to commence litigation within the 120 day period shall be deemed to constitute an acceptance of the interpretation or performance of the other party.

**SECTION 6.08. ASSIGNMENT.** None of the parties to this Development Agreement shall be permitted to assign, nor transfer any of its rights and obligations under this Development Agreement without the prior written consent of the other parties, which shall not be withheld unreasonably.

**SECTION 6.09. PROFESSIONAL FEES.** Each party shall be responsible for securing its own counsel for representation relative to all matters associated with performance, cancellation or closing hereunder, including any mediation, unless otherwise specified herein, and, subject to the provisions of Section 6.21(A) hereof, each party shall be responsible for the payment of the fees of its own attorneys and other professional advisors or consultants in connection therewith.

**SECTION 6.10. TIME OF THE ESSENCE.** Time is of the essence with respect to all provisions of this Development Agreement.

**SECTION 6.11. EXTENSION OF TIME PERIODS.** In the event that the last day of any period of time on any date specified in this Development Agreement shall fall on a weekend or legal holiday, or any day when Osceola County's offices are closed, such period of time shall be extended through the end of the next work day following, or the next date during which such offices are open.

**SECTION 6.12. NO JOINT VENTURE.** Nothing in this Development Agreement shall be deemed to constitute the creation of a joint venture or partnership relationship between or among the parties hereto.

**SECTION 6.13. NON-WAIVER.** The failure of any party to insist upon another party's compliance with its obligations under this Development Agreement in any one or more instances shall not operate to release such other party from its duties to comply with such obligations in all other instances.

**SECTION 6.14. COUNTERPARTS.** This Development Agreement may be executed in multiple counterparts. Each such counterpart shall be deemed an original of this Development Agreement, so that in making proof of this Development Agreement, it shall only be necessary to produce or account for one such counterpart.

**SECTION 6.15. ENTIRE AGREEMENT.** This Development Agreement, including the Appendices and Exhibits, which are incorporated herein by reference, 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 warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein.

**SECTION 6.16. LIMITATION OF AVATAR LIABILITY.** In consideration of the Avatar Investment and of the donation of the right-of-way for Poinciana Parkway, the Southwest Segment and other donations called for herein or in related agreements, the parties agree that, except in connection with: (A) a wrongful refusal by Avatar to convey the right-of-way for Poinciana Parkway, the Southwest Segment, the Public Safety Site, the Avatar Construction Plans or the Permits; or (B) willful and intentional misrepresentation or warranty hereunder, all liability of Avatar shall first be applied in reduction of the value of the Avatar Investment and that only after the value of the Avatar Investment has been reduced to zero shall Avatar be required to pay any sums hereunder on account of any other default or alleged default.

**SECTION 6.17. BINDING EFFECT.** This Development Agreement shall be binding upon and inure to the benefit of the respective successors and assigns and, as applicable, to heirs and legal representatives of the parties hereto.

**SECTION 6.18. AMENDMENTS AND WAIVERS.** No amendment, supplement, modification or waiver of this Development Agreement shall be binding unless executed in writing by both parties hereto. No waiver of any of the provisions of this

Development Agreement shall be deemed or shall constitute a waiver of any other provision of this Development Agreement, whether or not similar, unless otherwise expressly provided.

**SECTION 6.19. NOTICES TO PARTIES.** Whenever this Development Agreement requires or permits any consent, approval, notice, request, proposal, or demand from one party to another, the content, approval, notice, request, proposal, or demand must be in writing to be effective and shall be delivered to and received by the party intended to receive it (A) by hand delivery to the person(s) hereinafter designated, or (B) by overnight hand delivery addressed as follows, or (C) through the United States Mail, postage prepaid, certified mail, return-receipt requested, or (D) delivered and received by facsimile telephone transmission or other electronic transmission (provided that an original of the electronically transmitted document is delivered within 5 days after the document was electronically transmitted) upon the date so delivered to and received by the person to whom it is at the address set forth opposite the party's name below:

Avatar: Avatar Properties Inc.  
395 Village Drive  
Kissimmee, FL 34759  
Phone: (863) 427-7098  
Attention: PK Fletcher, Esquire  
E-mail: [PK.Fletcher@avhomesinc.com](mailto:PK.Fletcher@avhomesinc.com)

With a copy to: Avatar Properties Inc.  
395 Village Drive  
Kissimmee, FL 34759  
Phone: (863) 427-7214  
Attention: Tony Iorio  
E-mail: [t.iorio@avhomesinc.com](mailto:t.iorio@avhomesinc.com)

Osceola County: Osceola County Manager  
1 Courthouse Square  
Suite 4700  
Kissimmee, FL 34741  
Phone: (407) 742-2385  
Fax: (407) 742-3291

With a copy to: Osceola County Attorney  
1 Courthouse Square  
Suite 4700  
Kissimmee, FL 34741  
Phone: (407) 742-2200  
Fax: (407) 742-2217

Polk County: County Manager  
330 West Church Street  
Drawer PW 02  
Bartow, Florida 33830  
Phone: (863) 534-6444  
Fax: (863) 534-7069

With a copy to: Michael Craig, County Attorney  
Office of the County Attorney  
Drawer AT01, P.O. Box 9005  
Bartow, FL 33831-9005  
Phone: (863) 534-6730  
Fax: (863) 534-7654

Expressway Authority: Osceola County Expressway Authority  
1 Courthouse Square, Suite 1108  
Kissimmee, FL 34741  
Attention: Chairman

With a copy to: Broad and Cassel  
390 North Orange Avenue, Suite 1400  
Orlando, FL 32801  
Phone: (407) 839-4200  
Fax: (407) 839-4210  
Attention: *[to come]*

Any of the foregoing parties may, by notice in writing given to the other, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand or facsimile transmission or 3 days after the date mailed.

**SECTION 6.20. SEVERABILITY.** In the event any one or more of the provisions contained in this Development Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Development Agreement shall be revised so as to cure such invalid, illegal or unenforceable provision to carry out as nearly as possible the original intent of the parties.

**SECTION 6.21. GOVERNING LAW AND VENUE.** The laws of Florida shall govern the validity, construction, enforcement and interpretation of this Development Agreement. In the event of litigation among the parties hereto, their successors or assigns, with regard to this Development Agreement and any subsequent supplementary agreements or amendments, venue shall lie exclusively in Osceola County; provided however, that with respect to litigation between Osceola County and Polk County, venue may lie either in Osceola County or Polk County.

**SECTION 6.22. LITIGATION.**

(A) In the event of a default hereunder, all parties shall have all rights and remedies allowed by law in connection therewith, including, without limitation, the right to specific performance, subject, however, to notice and right to cure as set forth herein and any other limitation expressly set forth herein. No party shall be in default hereunder unless the other party or parties alleging a default shall have given the party against whom a default is alleged not less than thirty days prior written notice thereof, unless a longer or shorter time for particular matters is set forth herein, in which case such longer or shorter time shall apply, and opportunity to cure, without cure having been effected.

(B) In any action at law or in equity between the parties hereto occasioned by a default hereunder, the prevailing party shall be entitled to collect its reasonable attorneys' fees actually incurred in the action from the non-prevailing party. As used herein, the term "prevailing party" shall mean the party who receives substantially the relief sought. If the prevailing party utilizes "in-house" counsel, such party's reasonable costs, expenses and overhead for the time expended by the prevailing party for such in-house counsel in the aforementioned action shall be recoverable by the prevailing party in the same manner as other attorneys' fees.

(C) Each party hereby knowingly, voluntarily and intentionally waives the right to a trial by jury with respect to any litigation (including but not limited to any counterclaims, cross claims or third party claims), whether now existing or hereafter arising, and whether sounding in contract, tort, equity or otherwise, regardless of the cause or causes of action, defenses or counterclaims alleged or the relief sought by any party, and regardless of whether such causes of action, defenses or counterclaims are based on, or arise out of, under or in connection with this Development Agreement or its subject matter, out of any alleged conduct or course of conduct, dealing or course of dealing, statement (whether verbal or written), or otherwise. Any party hereto may file a copy of this Development Agreement with any court as conclusive evidence of the consent of the parties hereto to the waiver of any right they may have to trial by jury.

IN WITNESS WHEREOF, the Board of County Commissioners of Osceola County,  
Florida, has caused this Development Agreement to be executed and delivered this 27 day of  
September 2002.


OSCEOLA COUNTY, FLORIDA

(SEAL)

ATTEST:

*Paula J. Carpenter*

Clerk/Deputy Clerk

By:   
~~Chairman/Vice Chairman~~  
Board of County Commissioners

COPY



IN WITNESS WHEREOF, the Board of County Commissioners of Polk County, Florida, has caused this Development Agreement to be executed and delivered this And day of October, 2012.

POLK COUNTY, FLORIDA



(SEAL)

ATTEST:

By: Sam Johnson  
Chairman/Vice Chairman  
Board of County Commissioners  
10/2/12 6:14



Erin Valle  
Clerk/Deputy Clerk

COPY

Reviewed as to form and legal sufficiency  
Linda Williams  
County Attorney's Office Date 9/17/12



IN WITNESS WHEREOF, Avatar has caused this Development Agreement to be executed and delivered this 17 day September, 2012.

WITNESSES:

AVATAR PROPERTIES INC.

Julie Keady  
Name: Julie Keady

By: Patricia K. Fletcher  
Name: PK Fletcher  
Title: Executive Vice President

Robert Stevens  
Name: Robert Stevens

STATE OF FLORIDA  
COUNTY OF OSCEOLA

The foregoing instrument was acknowledged before me by PK Fletcher, as Executive Vice Pres of Avatar Properties Inc. on behalf of said corporation. He (she) is personally known to me or has produced Drivers License, as identification, and did (did not) take an oath.

WITNESS my hand and official seal, this 17 day of September, 2012.



KELLI WEHR  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# EE009014  
Expires 8/24/2014

Kelli Wehr  
Notary Public  
State of Florida

My commission expires: 8/24/2014

IN WITNESS WHEREOF, the Osceola County Expressway Authority has caused this Development Agreement to be executed and delivered this 20th day of September, 2012.

**OSCEOLA COUNTY EXPRESSWAY  
AUTHORITY**

By:   
Chairman/Vice Chairman

(SEAL)

ATTEST:

  
Vice Chairman/Secretary

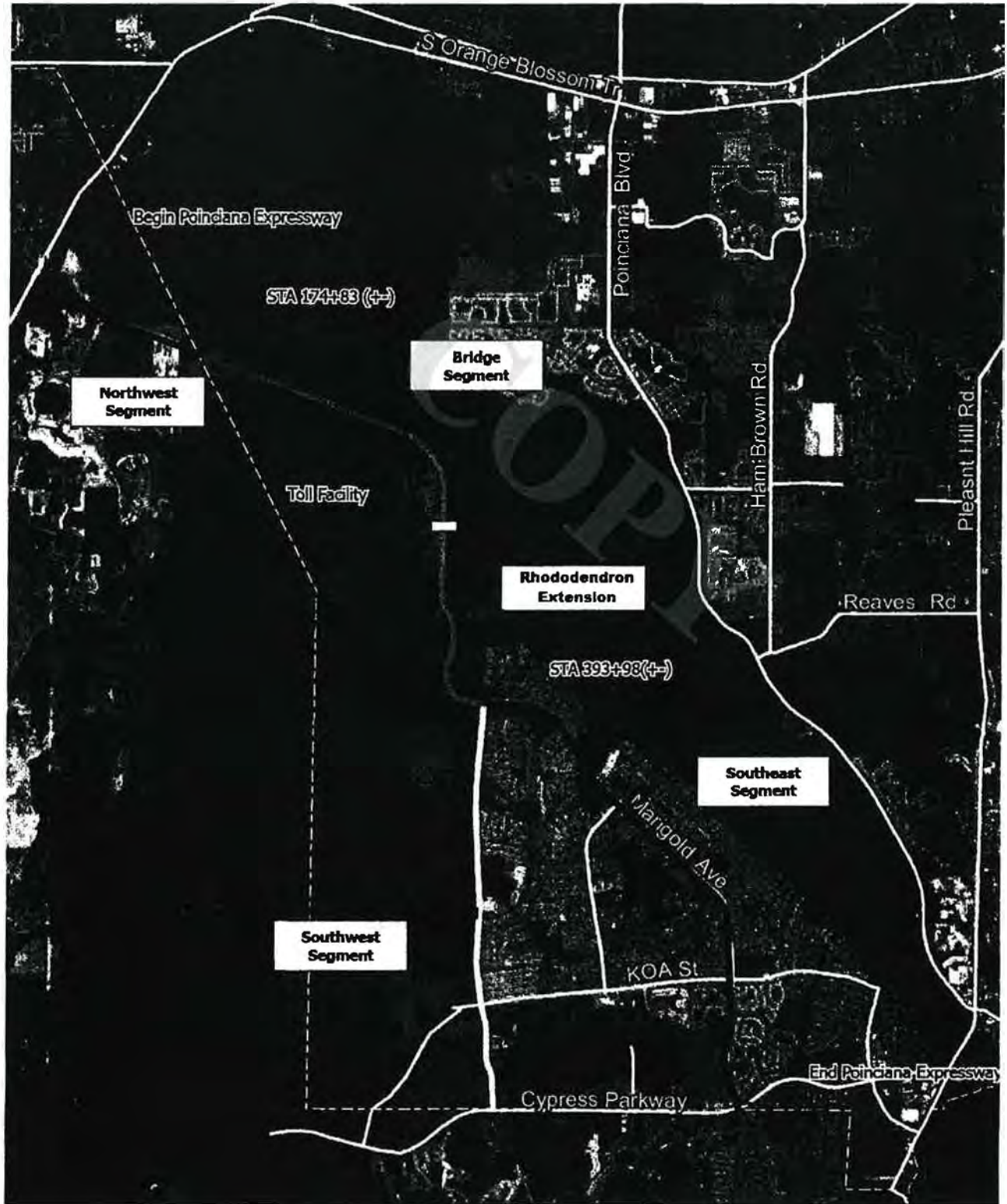
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**APPENDIX A  
AVATAR ENGINEERS**

<b><u>Name</u></b>	<b><u>Function</u></b>
Vanasse Hangen Brustlin, Inc	Civil Engineering
Universal Engineering Sciences	Geotechnical Investigations & Engineering
Universal Engineering Sciences	Environmental Assessments & Engineering
Leftwich Consulting Engineers, Inc.	Transportation and Traffic Engineering
Breedlove Dennis & Associates, Inc.	Threatened and Endangered Species
Reginald L. Tisdale, P.E.	Project Management and Permits

COPY

APPENDIX B  
DEPICTION OF POINCIANA PARKWAY



**APPENDIX C  
AVATAR CONSTRUCTION PLANS**

<u>Document</u>	<u>Prepared By</u>	<u>Type</u>	<u>Dated</u>	<u>Approved</u>	<u>Approval Agency</u>	<u>Expiration Date</u>
PP & SR 600 (US 17-92)	VHB	Construction Plans	2/18/09	NO	FDOT	NA
PP Contract 1	VHB	Construction Plans	6/19/09	10/15/09	Polk County	10/15/16
PP Contract 2	VHB	Construction Plans	3/12/08	4/30/08	Osceola County	See Note 4
PP Contract 3	VHB	Construction Plans	10/14/07	10/26/07	Osceola County	See Note 4
Geotechnical Evaluation	UES	8 Reports (See Note 5)	Various	NA	NA	NA
Environmental Assessments	UES	5 Reports (See Note 6)	Various	NA	NA	NA
Traffic Studies	LCE	2 Reports (See Note 7)	Various	NA	NA	NA
PP-Kinney Harmon Rd	VHB	R/W Sketch of Description	1/15/08	NA	NA	NA
Poinciana Parkway	VHB	R/W Sketch of Description	1/25/08	NA	NA	NA
PP-Marigold Ave	VHB	R/W Sketch of Description	1/15/08	NA	NA	NA

Notes:

1. VHB-Vanasse Hangen Brustlin, Inc.
2. UES- Universal Engineering Sciences.
3. LCE-Leftwich Consulting Engineers, Inc.
4. Approvals of Contract 2 and Contract 3 Construction Plans run with the Poinciana Parkway Regulatory Agreement (PPRA) and expire upon expiration of the PPRA.
5. UES Report No.s 409239, 410700, 437336, 490496, 573220, 595455, 573220V2 and 667981.
6. UES Report No.s 371362, 409238, 619623, 620001 and 646002.
7. LCE Design Traffic Report (update) dated January 2005 and LCE Design Traffic Report (Supplement) dated September 2005.

**APPENDIX D  
RIGHT-OF-WAY PARCELS**

<u>Parcel No.</u>	<u>Present Owner</u>	<u>Transfer To</u>	<u>Ownership Interest</u>
P-1	Osceola County	FDOT & Polk County	Fee Title
P-1.2	Osceola County	FDOT & Polk County	Fee Title
P-1.3E	Osceola County	FDOT	Perm. Easement
P-2	Avatar Properties	Osceola County	Fee Title
P-2A	Avatar Properties	Osceola County	Temp. Easement
P-2B	Avatar Properties	Osceola County	Temp. Easement
P-2E	Avatar Properties	Osceola County	Perm. Easement
P-2.2	Avatar Properties	Osceola County	Fee Title
P-3	Avatar Properties	Osceola County	Fee Title
P-4	Avatar Properties	Osceola County	Fee Title
P-5	Avatar Properties	Osceola County	Fee Title
P-6	Avatar Properties	Osceola County	Fee Title
P-7	Not Used	NA	NA
P-8	Avatar Properties	Osceola County	Fee Title
P-9	Avatar Properties	Osceola County	Fee Title
P-10	Avatar Properties	Osceola County	Fee Title
P-11	Avatar Properties	Osceola County	Fee Title
P-12	Avatar Properties	Osceola County	Fee Title
P-13	Osceola County	FDOT & Polk County	Fee Title
P-13E	Osceola County	FDOT	Perm. Easement
P-13.1	Osceola County	FDOT	Fee Title
P-13.2	Osceola County	FDOT	Fee Title
P-13.2E-A	Osceola County	FDOT	Perm. Easement
P-13.3	Osceola County	FDOT	Fee Title
P-13.3E-A	Osceola County	FDOT	Perm. Easement
P-14	Osceola County	FDOT	Fee Title
P-15	Osceola County	FDOT	Fee Title
P-15E	Osceola County	FDOT	Perm. Easement
P-16	Osceola County	FDOT	Fee Title
P-17	Osceola County	FDOT	Fee Title
P-18 (Bay Street)	Polk County	NA	NA
P-19 (KH R/W)	Polk County	NA	NA
P-20 (Not used)	NA	NA	NA
P-21	Avatar Properties	Osceola County	Fee Title
0-1	Avatar Properties	Osceola County/OCX	Fee Title
0-2 (Not used)	NA	NA	NA
0-3 (Not Used)	NA	NA	NA
0-4	Avatar Properties	Osceola County/OCX	Fee Title
0-5	Avatar Properties	Osceola County/OCX	Drainage Easement
0-6	Avatar Properties	Osceola County/OCX	Drainage Easement
0-7	Avatar Properties	Osceola County/OCX	Fee Title

<u>Parcel No.</u>	<u>Present Owner</u>	<u>Transfer To</u>	<u>Ownership Interest</u>
0-8	Avatar Properties	Osceola County/OCX	Fee Title
0-9	Avatar Properties	Osceola County/OCX	Drainage Easement
0-10	Avatar Properties	Osceola County/OCX	Drainage Easement
Marigold Ave R/W	Osceola County	NA	NA
0-11 (Tract A)	Assoc. of Poinciana Villages	NA	NA
0-12	Avatar Properties	NA	NA
0-13	Avatar Properties	Osceola County/OCX	Fee Title
0-14	Avatar Properties	Osceola County/OCX	Fee Title

**Notes:**

1. P2E – Permanent easement obtained by Avatar in Polyak transaction.
2. P2A & 2B – Temporary construction easements obtained by Avatar in Polyak transaction.
3. See R/W Sketches of Description referenced in Appendix C for location of parcels.
4. OCX designates Osceola County Expressway Authority.



**APPENDIX E  
PERMIT TRANSFERS**

<u>Type</u>	<u>Description</u>	<u>Agency</u>	<u>Permit Number</u>	<u>Dated Issued</u>	<u>Expiration Date</u>
Federal	Construction	USACOE	SAJ-2008-2694 (IP-TSB)	Nov. 20, 2008	June 29, 2019
Regional	Construction	SFWMD	ERP No. 53-00216-P	Feb. 14, 2008	Feb. 14, 2018
Regional	Construction	SFWMD	SGP No. 49-00094-S-6	Feb. 14, 2008	Feb. 14, 2018

**Notes:**

1. USACOE – United States Army Corps of Engineers.
2. SFWMD – South Florida Water Management District.
3. SFWMD Dewatering permit to be obtained by contracting entity.
4. Mitigation credits required related to SFWMD ERP No. 53-00216-P, SGP No. 49-00094-S-6, and the deletion of 56.16 acres from the RCMB totaled 49.78 UMAMS.
5. Mitigation credits required related to SAJ-2008-2694 (IP-TSB) and the deletion of 56.16 acres from RCMB totaled 78.8 Modified Wraps.



## **APPENDIX F DESIGN CRITERIA**

**General Design.** Poinciana Parkway shall be designed and engineered in accordance with this Appendix F.

(A) Design plans for the Northwest Segment shall be in compliance with Chapter 2 of the Plans Preparation Manual ("PPM") of the Florida Department of Transportation ("FDOT") for urban arterial roadways based upon a design speed of 45 miles per hour ("mph") and a 45 MPH or less posted speed. The Northwest Segment shall initially be designed as a two-lane road with the ability to be expanded to up to four (4) lanes at a future date as determined by the Expressway Authority.

(B) Design plans for the remainder of the Poinciana Parkway from Cypress Parkway up to and including the transition into the Northwest Segment in Polk County shall be in compliance the Chapter 2 of the PPM for a limited access toll road based upon a design speed of 70 mph. Such portion of the Poinciana Parkway shall initially be designed as a two-lane road at a proposed mainline posted speed of 55mph with points of ingress and egress at Cypress Parkway, Koa Road and Marigold Avenue and will include the ability to be expanded to up to six (6) lanes at a future date as determined by the Expressway Authority.

**Noise Abatement.** Inclusion in the design of noise abatement, if and to the extent required, shall be strictly in accordance with the requirements of the FDOT PD&E Manual in effect as of the effective date of this Development Agreement.

**Landscaping and Buffering.** The design of landscaping and buffering shall be based on the following:

(A) The total cost of landscaping and buffering of Poinciana Parkway (from U.S. 17-92 to Cypress Parkway) to be paid by the Expressway Authority from funds made available by Osceola County, Polk County or FDOT shall be subject to a maximum of one and one half percent (1.5%) of the total Poinciana Parkway construction cost.

(B) The design of the landscaping and buffering of Poinciana Parkway shall be in accordance with the FDOT Landscape Guide (1995) and shall be based upon the General Design criteria described above. In addition, the design of landscaping and buffering of the Northwest Segment shall be in accordance with the Polk County Land Development Code (LDC).

(C) All landscaping and buffering improvements for Poinciana Parkway that are to be paid for by the Expressway Authority shall be located within the 300 foot right of way of the Poinciana Parkway.

**DESIGN CRITERIA  
POINCIANA PARKWAY / NORTHWEST SEGMENT  
FROM US 17/92 TO  
OSCEOLA & POLK COUNTY LINE**

	<b>Design Element</b>	<b>Criteria Urban</b>	<b>Source</b>	<b>Notes</b>
<b>General Criteria</b>	Functional Classification	Principal Arterial	FDOT Green Book Ch. 1	
	Access Class	Controlled Access-Class 5	Rules of FDOT, Ch 14-97	Posted speed 45 mph or less.
	Number of Through Lanes	2016-2 min; 2036-4 max.	-	Determined by traffic study.
	Level of Service	D	-	
	Design Speed	45 MPH	FDOT PPM Ch. 2	See the approved Plans for the design speeds for the individual segments.

**Notes:**

1. FDOT Green Book-FDOT Manual of Uniform Minimum Standards for Design, Construction, and Maintenance for Streets and Highways, May 2011.
2. FDOT PPM-Plans Preparation Manual, Volume 1, Revised January 1, 2012.
3. Refer to FDOT Green Book and FDOT PPM for detailed and additional design criteria.
4. If a 2 lane roadway is selected for opening year, the 2 lane roadway shall be constructed on the Northern one half of the Right-of-Way.

**DESIGN CRITERIA**  
**POINCIANA PARKWAY / BRIDGE SEGMENT TO RHODODENDRON EXTENSION,**  
**RHODODENDRON EXTENSION AND SOUTHWEST SEGMENT**

Design Element	Criteria	Source	Notes
Access Class	Limited Access	FDOT PPM Ch. 1	Use Interchange spacing of 2 miles measured center to center of crossroads.
Access Control-2 Lane	Interchanges & Grade Separations	Project Design Requirement	Interchanges shall be located at Marigold Ave. & KOA St. Grade separation shall be located at CR580. See Note 5 and 6.
Access Control-4 Lane	Interchanges & Grade Separations with Frontage Roads	Project Design Requirement	Interchanges @ Marigold Ave. & KOA; Grade Separation at CR 580. See Note 5 and 6.
Number of Through Lanes	2016-2 min; 2036-4 min.	Project Design Requirement	
Level of Service	D	-	
Design Speed	70 MPH	-	Posted Speed 65 MPH.
Noise Abatement	Chapter 32	FDOT PPM Volume 1	Procedures of FDOT PDE & PPM Manuals shall apply.
Lighting	Chapter 7, Section 7.3	FDOT PPM Volume 1	Roadway lighting prohibited in and adjacent to RCMB.
Landscaping	FDOT "Florida Highway Landscape Guide April 1, 1995"	FDOT PDE Manual & Work Program Instructions	1.5% of total construction cost.

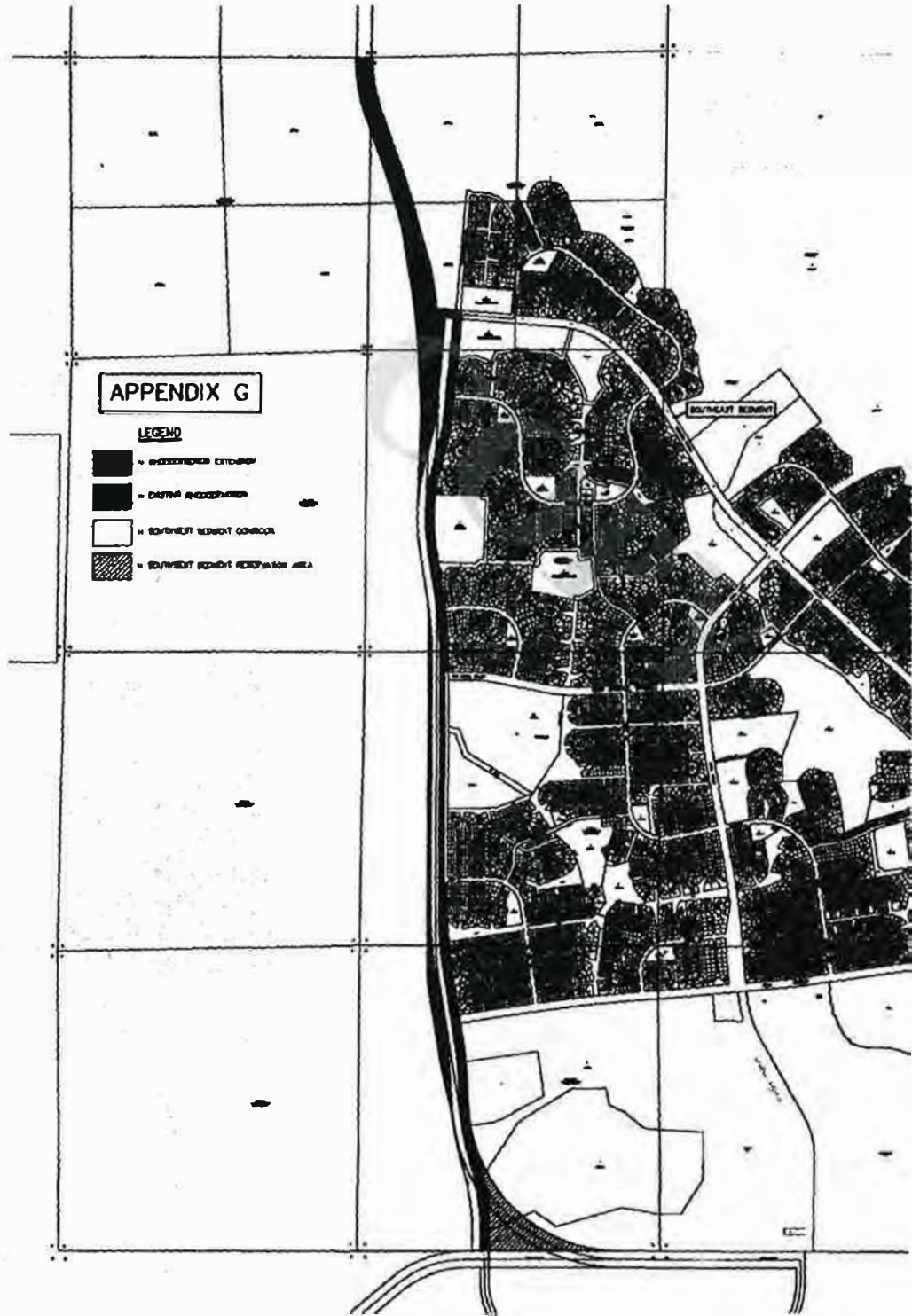
Notes:

1. FDOT Green Book-FDOT Manual of Uniform Minimum Standards for Design, Construction, and Maintenance for Streets and Highways, May 2011.

2. FDOT PPM-Plans Preparation Manual, Volume 1, Revised January 1, 2012.
3. Refer to FDOT Green Book and FDOT PPM for detailed and additional design criteria.
4. If a 2-Lane Roadway is selected for opening year, the 2-Lane roadway shall be constructed on the Eastern and Northern one-half of the Right of Way.
5. Poinciana Parkway shall be elevated over all crossroads, i.e. Marigold Ave. KOA St. and CR580.
6. The interchanges and grade separation shall be constructed by Osceola County/OCX in both the 2 lane and 4 lane phases of PP. The design and construction costs shall be funded by Osceola County/OCX.

COPY

# APPENDIX G RIGHT-OF-WAY DEPICTION





**APPENDIX H**  
**DESCRIPTION OF THE SOUTHWEST SEGMENT CORRIDOR**

A parcel of land being a portion of Sections 27 and 34, Township 26 South, Range 28 East and Sections 3 and 10, Township 27 South, Range 28 East, Osceola County, Florida and being more particularly described as follows:

Commence at the Northeast corner of Rhododendron Avenue as shown on the plat of POINCIANA NEIGHBORHOOD 2 SOUTH, VILLAGE 2, as recorded in Plat Book 3, Pages 99 – 108 of the Public Records of Osceola County, Florida;

thence run N85°05'34"W along the North line of Rhododendron Avenue, a distance of 150.00 feet, thence run S04°54'26"W along the West Right of Way of said Rhododendron Avenue, a distance of 150.00 feet to the Point of Beginning; thence along the West Right of Way line of Rhododendron Avenue as shown on the plats of POINCIANA NEIGHBORHOOD 2 SOUTH, VILLAGE 2, as recorded in Plat Book 3, Pages 99 – 108 and POINCIANA NEIGHBORHOOD 3, VILLAGE 2, as recorded in Plat Book 3, Pages 109 – 119 and POINCIANA NEIGHBORHOOD 1, VILLAGE 2, as recorded in Plat Book 3, Pages 69 – 87 and POINCIANA NEIGHBORHOOD 5 WEST, VILLAGE 2, as recorded in Plat Book 3, Pages 133 – 143, all of the Public Records of Osceola County, Florida, the following courses and distances; thence run S04°54'26"W, a distance of 1,711.99 feet to the Point of Curvature of a curve, concave to the West, having a Radius of 2,325.00 feet and a Central Angle of 09°32'22"; thence run Southerly along the Arc of said curve, a distance of 387.10 feet (Chord Bearing = S09°40'37"W, Chord = 386.65 feet ) to the Point of Tangency thereof; thence run S14°26'48"W, a distance of 630.28 feet to the Point of Curvature of a curve, concave to the East, having a Radius of 3,375.00 feet and a Central Angle of 23°42'30"; thence run Southerly along the Arc of said curve, a distance of 1,396.54 feet ( Chord Bearing = S02°35'33"W, Chord = 1,386.60 feet ) to the Point of Tangency thereof; thence run S09°15'42"E, a distance of 955.79 feet to the Point of Curvature of a curve, concave to the West, having a Radius of 5,654.58 feet and a Central Angle of 09°15'42"; thence run Southerly along the Arc of said curve, a distance of 914.04 feet ( Chord Bearing = S04°37'51"E, Chord = 913.05 feet ) to the Point of Tangency thereof; thence run S00°00'00"W, a distance of 310.90 feet; thence run S00°00'06"E, a distance of 2,465.27 feet; thence run S00°00'24"W, a distance of 1,893.03 feet to the Point of Curvature of a curve, concave to the East, having a Radius of 5,804.58 feet and a Central Angle of 09°17'45"; thence run Southerly along the Arc of said curve, a distance of 941.76 feet ( Chord Bearing = S04°38'29"E, Chord = 940.73 feet ) to the Point of Tangency thereof; thence run S09°17'21"E, a distance of 1,325.57 feet to the Point of Curvature of a curve, concave to the West, having a Radius of 4,925.00 feet and a Central Angle of 05°52'48"; thence run Southerly along the Arc of said curve, a distance of 505.43 feet ( Chord Bearing = S06°20'57"E, Chord = 505.21 feet ) to the Point of Tangency thereof; thence run S03°24'33"E, a distance of 612.26 feet to the Point of Curvature of a curve, concave to the East, having a Radius of 4,575.00 feet and a Central Angle of 11°47'02"; thence run Southerly along the Arc of said curve, a distance of 940.93 feet ( Chord Bearing = S09°18'04"E, Chord = 939.27 feet ) to the Point of Tangency thereof; thence run S15°11'34"E, a distance of 438.73 feet to the Point of Curvature of a curve, concave to the West, having a Radius of 3,425.00 feet and a Central Angle of 15°17'30"; thence run Southerly along the Arc of said curve, a distance of 914.10 feet ( Chord Bearing = S07°32'49"E, Chord = 911.39 feet ) to the

Point of Tangency thereof; thence run S00°05'57"W, a distance of 337.63 feet to the Point of Curvature of a curve, concave to the Northwest, having a Radius of 25.00 feet and a Central Angle of 90°00'02"; thence run Southwesterly along the Arc of said curve, a distance of 39.27 feet ( Chord Bearing = S45°05'55"W, Chord = 35.35 feet ) to a point on the North Right of Way line of Cypress Parkway and the South line of Osceola County; thence run N89°54'01"W along said North Right of Way line, a distance of 125.00 feet; thence departing said North Right of Way line, run Northerly along a line lying 150.00 feet West of, and parallel with, the aforesaid West Right of Way line of Rhododendron Avenue, the following courses and distances; run N00°05'57"E, a distance of 362.61 feet to a point on a non-tangent curve, concave to the West, having a Radius of 3,275.00 feet and a Central Angle of 15°17'32"; thence run Northerly along the Arc of said curve, a distance of 874.09 feet ( Chord Bearing = N07°32'49"W, Chord = 871.50 feet ) to the Point of Tangency thereof; thence run N15°11'34"W, a distance of 438.78 feet to a point on a non-tangent curve, concave to the East, having a Radius of 4,725.00 feet and a Central Angle of 11°47'00"; thence run Northerly along the Arc of said curve, a distance of 971.73 feet ( Chord Bearing = N09°18'03"W, Chord = 970.02 feet ) to the Point of Tangency thereof; thence run N03°24'33"W, a distance of 612.26 feet to the Point of Curvature of a curve, concave to the West, having a Radius of 4,775.00 feet and a Central Angle of 05°52'48"; thence run Northerly along the Arc of said curve, a distance of 490.04 feet ( Chord Bearing = N06°20'57"W, Chord = 489.82 feet ) to the Point of Tangency thereof; thence run N09°17'21"W, a distance of 1,325.57 feet to the Point of Curvature of a curve, concave to the East, having a Radius of 5,954.58 feet and a Central Angle of 09°17'45"; thence run Northerly along the Arc of said curve, a distance of 966.10 feet ( Chord Bearing = N04°38'29"W, Chord = 965.04 feet ); thence run N00°00'24"E, a distance of 1,893.01 feet to the Point of Tangency thereof; thence run N00°00'06"W, a distance of 2,465.27 feet; thence run N00°00'00"E, a distance of 310.90 feet to the Point of Curvature of a curve, concave to the West, having a Radius of 5,504.58 feet and a Central Angle of 09°15'42"; thence run Northerly along the Arc of said curve, a distance of 889.80 feet ( Chord Bearing = N04°37'51"W, Chord = 888.83 feet ) to the Point of Tangency thereof; thence run N09°15'42"W, a distance of 955.79 feet to the Point of Curvature of a curve, concave to the East, having a Radius of 3,525.00 feet and a Central Angle of 23°42'30"; thence run Northerly along the Arc of said curve, a distance of 1,458.60 feet ( Chord Bearing = N02°35'33"E, Chord = 1,448.22 feet ) to the Point of Tangency thereof; thence run N14°26'48"E, a distance of 630.28 feet to the Point of Curvature of a curve, concave to the West, having a Radius of 2,175.00 feet and a Central Angle of 09°32'22"; thence run Northerly along the Arc of said curve, a distance of 362.13 feet ( Chord Bearing = N09°40'37"E, Chord = 361.71 feet ) to the Point of Tangency thereof; thence run N04°54'26"E, a distance of 1,711.99 feet to a point on the Westerly extension of the South Right of Way line of Marigold Avenue; thence run S85°05'34"E along said line, a distance of 150.00 feet to the Point of Beginning.

Containing 57.548 acres, more or less.

**APPENDIX I**  
**DESCRIPTION OF THE RHODODENDRON EXTENSION CORRIDOR**

A parcel of land being a portion of Sections 27 and 28, Township 26 South, Range 28 East, Osceola County, Florida and being more particularly described as follows:

Commence at the Northeast corner of Rhododendron Avenue as shown on the plat of POINCIANA NEIGHBORHOOD 2 SOUTH, VILLAGE 2, as recorded in Plat Book 3, Pages 99 – 108 of the Public Records of Osceola County, Florida; thence run N85°05'34"W along the North line of Rhododendron Avenue, a distance of 150.00 feet, to the Point of Beginning; thence run S04°54'26"W along the West Right of Way of said Rhododendron Avenue, a distance of 150.00 feet; thence departing said West Right of Way line, run N85°05'34"W, a distance of 278.39 feet; thence run S83°41'57"W, a distance of 400.00 feet to a point on a non-tangent curve, concave to the West, having a Radius of 11,259.00 feet and a Central Angle of 04°32'03"; thence run Northerly along the Arc of said curve, a distance of 890.97 feet ( Chord Bearing = N08°34'04"W, Chord = 890.73 feet ) to a point; thence run N09°06'42"W, a distance of 776.34 feet to a point on a non-tangent curve, concave to the West, having a Radius of 11,309.00 feet and a Central Angle of 04°43'09"; thence run Northerly along the Arc of said curve, a distance of 931.45 feet ( Chord Bearing = N17°07'44"W, Chord = 931.18 feet ) to a point; thence run N19°29'18"W, a distance of 1,140.86 feet to the Point of Curvature of a curve, concave to the East, having a Radius of 3,015.00 feet and a Central Angle of 20°02'32"; thence run Northerly along the Arc of said curve, a distance of 1,054.65 feet ( Chord Bearing = N09°28'03"W, Chord = 1,049.28 feet ) to a point on the North line of said Section 28; thence run S89°50'06"E along said North line, a distance of 270.00 feet to the Northeast corner of said Section 28 and the Northwest corner of said Section 27; thence run N88°46'49"E along the North line of said Section 27, a distance of 30.02 feet to a point on a non-tangent curve, concave to the East, having a Radius of 2,715.00 feet and a Central Angle of 20°06'01"; thence run Southerly along the Arc of said curve, a distance of 952.47 feet ( Chord Bearing = S09°26'18"E, Chord = 947.60 feet ) to the Point of Tangency thereof; thence run S19°29'18"E, a distance of 1,140.86 feet to a point on a non-tangent curve, concave to the West, having a Radius of 11,609.00 feet and a Central Angle of 04°43'09"; thence run Southerly along the Arc of said curve, a distance of 956.15 feet ( Chord Bearing = S17°07'44"E, Chord = 955.88 feet ) to a point; thence run S16°22'55"E, a distance of 800.32 feet to a point on a non-tangent curve, concave to the West, having a Radius of 11,659.00 feet and a Central Angle of 03°46'54"; thence run Southerly along the Arc of said curve, a distance of 769.50 feet ( Chord Bearing = S08°56'39"E, Chord = 769.36 feet ) to a point; thence run S85°05'34"E, a distance of 309.14 feet to the Point of Beginning.

Containing 36.922 acres, more or less.



**APPENDIX J**  
**DESCRIPTION OF THE SOUTHWEST SEGMENT RESERVATION AREA**

A parcel of land being a portion of Sections 27 and 34, Township 26 South, Range 28 East and Sections 3 and 10, Township 27 South, Range 28 East, Osceola County, Florida and being more particularly described as follows:

Commence at the Northeast corner of Rhododendron Avenue as shown on the plat of POINCIANA NEIGHBORHOOD 2 SOUTH, VILLAGE 2, as recorded in Plat Book 3, Pages 99 – 108 of the Public Records of Osceola County, Florida;  
thence run N85°05'34"W along the North line of Rhododendron Avenue, a distance of 150.00 feet to a point on the West Right of Way line of said Rhododendron Avenue, thence run S04°54'26"W along said West Right of Way, a distance of 150.00 feet to point on the Westerly extension of the South Right of Way line of Marigold Avenue; thence run N85°05'34"W along said line, a distance of 150.00 feet to the Point of Beginning; thence run Southerly along a line lying 150.00 feet West of and parallel with the West Right of Way line of said Rhododendron Avenue the following courses and distances; thence run S04°54'26"W, a distance of 1,711.99 feet to the Point of Curvature of a curve, concave to the West, having a Radius of 2,175.00 feet and a Central Angle of 09°32'22"; thence run Southerly along the Arc of said curve, a distance of 362.13 feet ( Chord Bearing = S09°40'37"W, Chord = 361.71 feet ) to the Point of Tangency thereof; thence run S14°26'48"W, a distance of 630.28 feet to the Point of Curvature of a curve, concave to the East, having a Radius of 3,525.00 feet and a Central Angle of 12°31'08"; thence run Southerly along the Arc of said curve, a distance of 770.20 feet ( Chord Bearing = S08°11'14"W, Chord = 768.67 feet ) to a point; thence departing said line, run N01°55'40"E, a distance of 1,785.47 feet; thence run N03°29'12"W, a distance of 965.52 feet to a point on a non-tangent curve, concave to the West, having a Radius of 11,259.00 feet and a Central Angle of 03°19'52"; thence run Northerly along the Arc of said curve, a distance of 654.59 feet ( Chord Bearing = N04°38'07"W, Chord = 654.49 feet ) to a point; thence run N83°41'57"E, a distance of 400.00 feet; thence run S85°05'34"E, a distance of 128.39 feet to the Point of Beginning.

Containing 19.883 acres, more or less.

Together with

A parcel of land being a portion of Sections 27 and 34, Township 26 South, Range 28 East and Sections 3 and 10, Township 27 South, Range 28 East, Osceola County, Florida and being more particularly described as follows:

Commence at the Northeast corner of Rhododendron Avenue as shown on the plat of POINCIANA NEIGHBORHOOD 2 SOUTH, VILLAGE 2, as recorded in Plat Book 3, Pages 99 – 108 of the Public Records of Osceola County, Florida;  
thence along the East Right of Way line of Rhododendron Avenue, the following courses and distances; thence run S04°54'26"W, a distance of 1,861.99 feet to the Point of Curvature of a curve, concave to the West, having a Radius of 2,475.00 feet and a Central Angle of 09°32'22"; thence run Southerly along the Arc of said curve, a distance of 412.08 feet ( Chord Bearing =

S09°40'37"W, Chord = 411.60 feet ) to the Point of Tangency thereof; thence run S14°26'48"W, a distance of 630.28 feet to the Point of Curvature of a curve, concave to the East, having a Radius of 3,225.00 feet and a Central Angle of 23°42'30"; thence run Southerly along the Arc of said curve, a distance of 1,334.47 feet ( Chord Bearing = S02°35'33"W, Chord = 1,324.97 feet ) to the Point of Tangency thereof; thence run S09°15'42"E, a distance of 808.76 feet to a point; thence departing said East Right of Way line, run S80°44'18"W, a distance of 300.00 feet to the Point of Beginning; thence run Southerly along a line lying 150.00 feet West of and parallel with the West Right of Way line of said Rhododendron Avenue the following courses and distances; thence run S09°15'42"E, a distance of 147.03 feet to the Point of Curvature of a curve, concave to the West, having a Radius of 5,504.58 feet and a Central Angle of 09°15'42"; thence run Southerly along the Arc of said curve, a distance of 889.80 feet ( Chord Bearing = S04°37'51"E, Chord = 888.83 feet ) to the Point of Tangency thereof; thence run S00°00'00"W, a distance of 310.90 feet; thence run S00°00'06"E, a distance of 2,465.27 feet; thence run S00°00'24"W, a distance of 1,893.01 feet to the Point of Curvature of a curve, concave to the East, having a Radius of 5,954.58 feet and a Central Angle of 09°17'45"; thence run Southerly along the Arc of said curve, a distance of 966.10 feet ( Chord Bearing = S04°38'29"E, Chord = 965.04 feet ) to the Point of Tangency thereof; thence run S09°17'21"E, a distance of 1,325.57 feet to the Point of Curvature of a curve, concave to the West, having a Radius of 4,775.00 feet and a Central Angle of 05°52'48"; thence run Southerly along the Arc of said curve, a distance of 490.04 feet ( Chord Bearing = S06°20'57"E, Chord = 489.82 feet ) to the Point of Tangency thereof; thence run S03°24'33"E, a distance of 612.26 feet to the Point of Curvature of a curve, concave to the East, having a Radius of 4,725.00 feet and a Central Angle of 05°13'11"; thence run Southerly along the Arc of said curve, a distance of 430.46 feet ( Chord Bearing = S06°01'09"E, Chord = 430.31 feet ) to a point on a non-tangent curve, concave to the East, having a Radius of 3,015.00 feet and a Central Angle of 00°51'25"; thence departing said line, run Northerly along the Arc of said curve, a distance of 45.09 feet ( Chord Bearing = N09°43'04"W, Chord = 45.09 feet ) to a point; thence run N09°17'21"W, a distance of 247.47 feet; thence run N12°52'38"W, a distance of 802.37 feet; thence run N09°18'04"W, a distance of 1,618.07 feet; thence run N00°00'24"E, a distance of 3,021.34 feet; thence run N00°00'06"W, a distance of 3,370.33 feet to the Point of Curvature of a curve, concave to the West, having a Radius of 2,715.00 feet and a Central Angle of 09°15'36"; thence run Northerly along the Arc of said curve, a distance of 438.80 feet ( Chord Bearing = N04°37'54"W, Chord = 438.32 feet ) to the Point of Beginning.

Containing 17.083 acres, more or less.

Together with

A parcel of land being a portion of Tract A and Tract B, POINCIANA NEIGHBORHOOD 5 WEST, VILLAGE 2, as recorded in Plat Book 3, Pages 133 – 143, all of the Public Records of Osceola County, Florida and being more particularly described as follows:

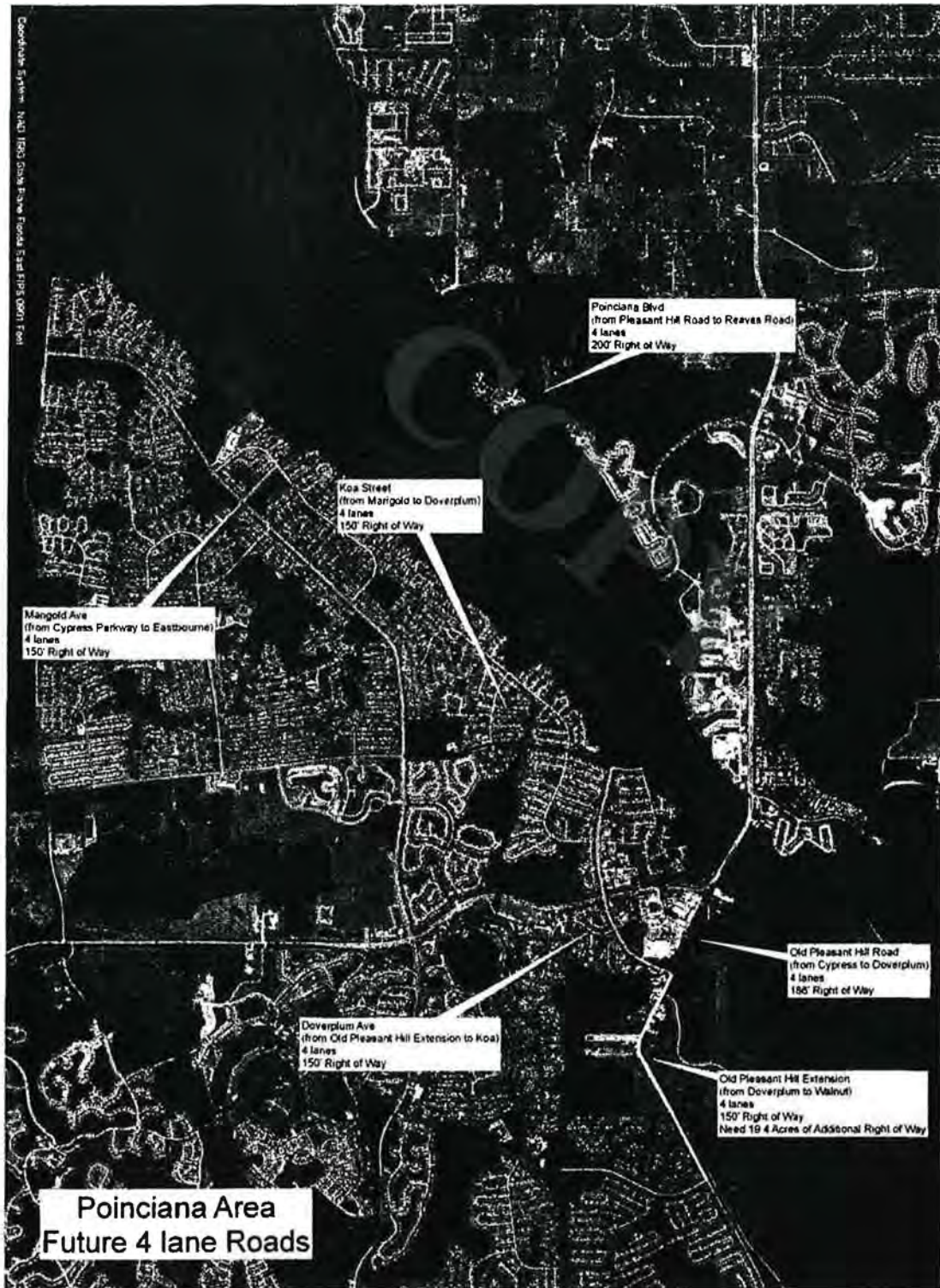
Begin at the Southwest corner of Tract B as shown on said plat of POINCIANA NEIGHBORHOOD 5 WEST, VILLAGE 2, said point being the intersection of the North Right of Way line of Cypress Parkway and the East Right of Way line of Rhododendron Avenue as shown on the said plat of POINCIANA NEIGHBORHOOD 5 WEST, VILLAGE 2, said point

being a point on a curve, concave to the Northeast, having a Radius of 25.00 feet and a Central Angle of  $89^{\circ}59'58''$ "; thence along the East Right of Way line of Rhododendron Avenue the following four (4) courses and distances; thence run Northwesterly along the Arc of said curve a distance of 39.27 feet ( Chord Bearing =  $N44^{\circ}54'02''W$ , Chord = 36.36 feet ) to the Point of Tangency thereof; thence run  $N00^{\circ}05'57''E$ , a distance of 337.58 feet to the Point of Curvature of a curve, concave to the West, having a Radius of 3,575.00 feet and a Central Angle of  $15^{\circ}17'32''$ "; thence run Northerly along the Arc of said curve, a distance of 954.16 feet ( Chord Bearing =  $N07^{\circ}32'49''W$ , Chord = 951.33 feet ) to the Point of Tangency thereof; thence run  $N15^{\circ}11'34''W$ , a distance of 438.78 feet to the Point of Curvature of a curve, concave to the East, having a Radius of 4,425.00 feet and a Central Angle of  $06^{\circ}36'56''$ "; thence run Northerly along the Arc of said curve, a distance of 510.92 feet ( Chord Bearing =  $N11^{\circ}53'05''W$ , Chord = 510.64 feet ) to a point on a non-tangent curve, concave to the Northeast, having a Radius of 2,715.00 feet and a Central Angle of  $79^{\circ}40'16''$ "; thence departing said East Right of Way line, run Southeasterly along the Arc of said curve, a distance of 3,775.27 feet ( Chord Bearing =  $S50^{\circ}03'53''E$ , Chord = 3,478.38 feet ) to a point on the South line of said Tract B and also a point on the aforesaid North Right of Way line of Cypress Parkway; thence run  $N89^{\circ}54'01''W$  along said North Right of Way line, a distance of 2,297.66 feet to the Point of Beginning.

Containing 22.222 acres, more or less.

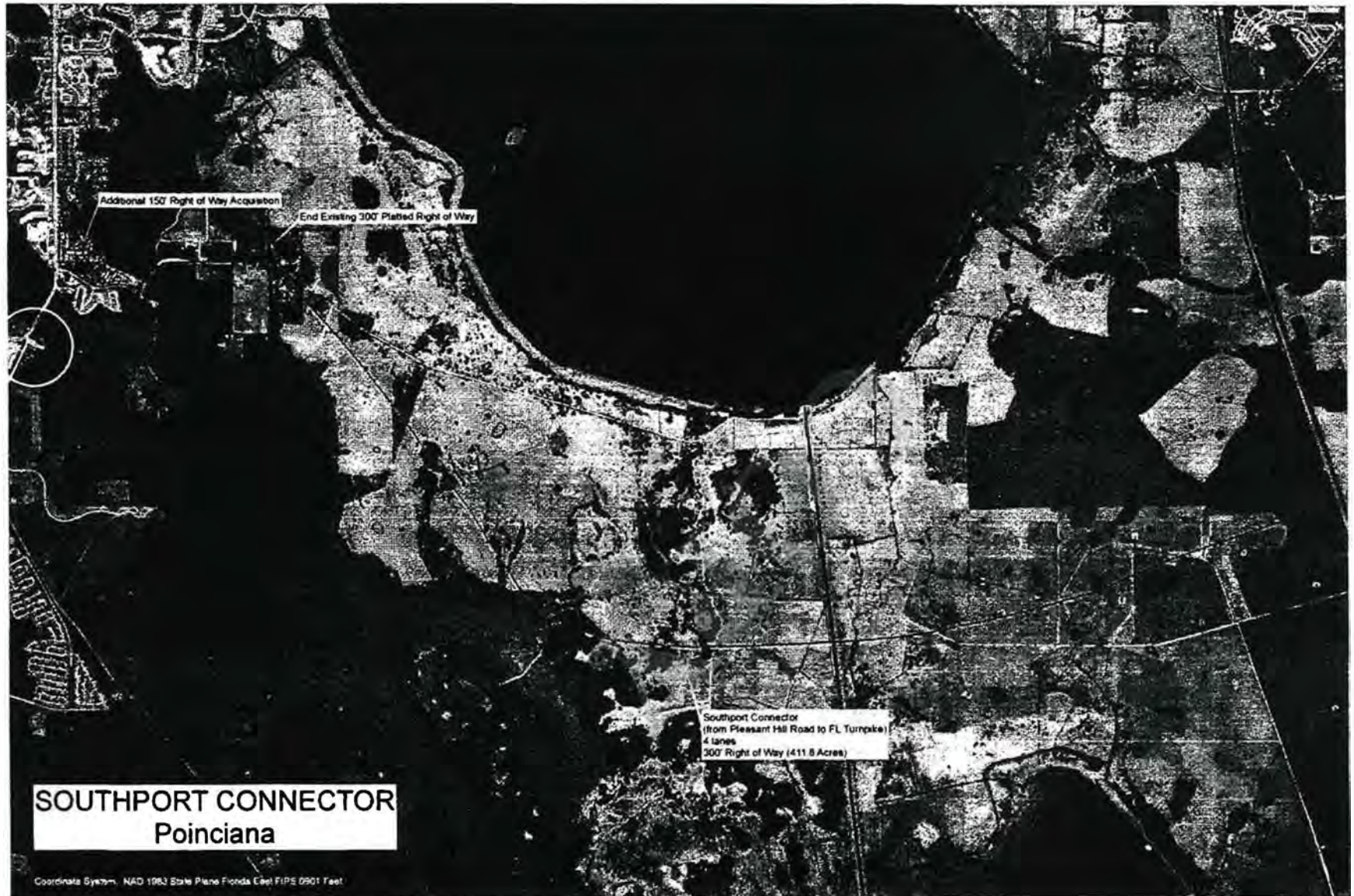


APPENDIX K  
DEPICTION OF CONCURRENCY RIGHT-OF-WAY





K-2



**APPENDIX L  
UNFULFILLED OBLIGATIONS**

<u>Agreement/ Permit</u>	<u>Permit No. /Date</u>	<u>Pre Construction</u>	<u>Construction</u>	<u>Post Construction</u>
Gamlex Agreement	Dec. 15, 2006	None	See Agreement	None
Polyak Agreement	Dec. 16, 2006	None	See Agreement	None
AE7/RCMB Agreement	May 8, 2007	See Agreement & Closing Documents	See Agreement & Closing Documents	See Agreement & Closing Documents
AE7/RCMB 1 <sup>st</sup> Amend.	Dec. 8, 2010	See Agreement	See Agreement	See Agreement
ABD	OT&FJ	None	See OT	None
BYRD	FJ	None	See FJ	None
Telestat	FJ	None	See FJ	None
Bercini	FJ	None	See FJ	None

Notes:

1. ABD, Byrd, Telestat and Bercini are eminent domain acquisitions by Osceola County.
2. Gamlex, Polyak and AE7/RCMB are acquisition agreements with Avatar Properties Inc.
3. OT designates Order of Taking.
4. FJ designates Final Judgment.
5. The unfilled obligations listed herein specifically exclude all public and private Utility Adjustments and Relocations since neither final verbal nor written agreements have been made or entered into by Avatar Properties Inc. with the applicable utility providers.

**APPENDIX M  
DRAINAGE FACILITIES AND PONDS**

<u>Location</u>	<u>Description</u>	<u>R/W Parcel</u>	<u>Conveyance</u>	<u>Recipient</u>
PP Contract 2	Pond 3	0-5	Drainage Easement	Osceola County/OCX
PP Contract 2	Pond 4	0-6	Drainage Easement	Osceola County/OCX
PP Contract 2	Pond 5	0-9	Drainage Easement	Osceola County/OCX
PP Contract 2	Pond 6	0-10	Drainage Easement	Osceola County/OCX
PP Contract 3	Pond 7	0-11	None	N/A
PP Contract 3	Pond 8	0-12	None	N/A
SW Segment	TBD	TBD	Drainage Easement	Osceola County/OCX

**Notes:**

1. PP Contract 2 & 3 – Poinciana Parkway Contract 2 & 3, see Appendix C.
2. R/W Parcel – Refer to R/W sketches of description references in Appendix C.
3. SW Segment – See Article 1, Definitions and Interpretation.
4. OCX designates Osceola County Expressway Authority.
5. TBD-To be determined.
6. N/A – Not applicable.
7. R/W Parcels 0-5, 0-6, 0-9 and 0-10 identified above are shared drainage facilities as designed and permitted for the Bridge Segment of the 9.66 mile Poinciana Parkway project.
8. R/W Parcels 0-11 & 0-12 identified above are shared drainage facilities as designed and permitted for the Southeast Segment of the 9.66 mile Poinciana Parkway Project.



**APPENDIX N**

**FORM OF STORMWATER DRAINAGE, CONSTRUCTION  
AND MAINTENANCE EASEMENT AGREEMENT**

RECORD AND RETURN TO:

Robert W. Bowser, Esq.  
**Greenberg Traurig, P.A.**  
450 South Orange Avenue, Suite 650  
Orlando, Florida 32801

**STORMWATER DRAINAGE, CONSTRUCTION AND MAINTENANCE EASEMENT  
AGREEMENT**

**THIS STORMWATER DRAINAGE, CONSTRUCTION AND MAINTENANCE EASEMENT AGREEMENT (“Easement Agreement”)** is made and entered into this \_\_\_\_\_ date of \_\_\_\_\_, 2012 (“Effective Date”), by and between **AVATAR PROPERTIES INC.**, a Florida corporation (“Grantor”) and **OSCEOLA COUNTY**, a political subdivision of the State of Florida (“Grantee”) (Grantor and Grantee are sometimes together referred to herein as the “Parties”, and separately as a “Party”).

**WITNESSETH:**

**WHEREAS**, Grantor is the owner in fee simple of that certain real property located in Osceola County, Florida, more particularly described on Exhibit “A” attached hereto and by this reference incorporated herein (the “Easement Area”); and

**WHEREAS**, Grantee intends to construct Poinciana Parkway, an approximately 9.66 mile controlled access road beginning at the existing intersection of County Road 54 and US 17-92 in Polk County, Florida, and terminating in Osceola County, Florida, at Cypress Parkway (CR 580) (the “Project”), pursuant to and further described in that certain Agreement for Development of Poinciana Parkway entered into by and between the Grantor, Grantee, Osceola County Expressway Authority and Polk County dated the \_\_\_\_\_ day of \_\_\_\_\_, 2012 (the “Development Agreement”); and

**WHEREAS**, all construction of improvements upon the Easement Area shall be in accordance with and pursuant to the construction plans and permits described in the Development Agreement (which construction plans and permits, as may be from time to time amended, are hereinafter the “Construction Plans” and “Permits”); and

**WHEREAS**, in order to complete the Project pursuant to and in accordance with the terms of the Construction Plans and Permits, Grantee requires a perpetual non-exclusive



easement upon, over, across, through, and into the Easement Area for stormwater management purposes; and

**WHEREAS**, Grantor desires to grant to Grantee a perpetual non-exclusive easement upon, under, across, through and into the Easement Area for stormwater detention and retention and outfall purposes for the Project and for the construction and maintenance of those improvements required by the Construction Plans and Permits for stormwater management purposes within the Easement Area ("**Grantee Improvements**"), but only as more specifically set forth herein and subject to the terms and conditions set forth herein.

**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, the Parties do hereby agree as follows:

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

**2. Power and Authority of Grantor.** The Grantor hereby represents and warrants that it has the full right, power and authority to enter into, deliver and perform this Easement Agreement.

**3. Grant of Perpetual Stormwater Drainage, Construction and Maintenance Easement.** Grantor hereby grants to Grantee a perpetual, nonexclusive easement upon, over, across, through and into the Easement Area for stormwater detention and retention and outfall purposes for stormwater drainage resulting from the Project, and for the construction and maintenance of the Grantee Improvements in a manner pursuant to, in accordance with and consistent with the Construction Plans and Permits ("**Easement**"). The Easement shall run with the title to the Easement Area and be binding upon the Grantor and its successors in title to the Easement Area and assigns and is hereby granted to Grantee subject to all matters of record in the Public Records of Osceola County, Florida. The Grantee hereby acknowledges that use of the Easement Area shall be shared by the Grantee with Grantor, Grantor's successors and assigns and hereby agrees the volume of stormwater detention and retention from the Project shall not exceed the amount sufficient to accommodate the Project, as specified in the Permits.

**4. Construction of Grantee Improvements.** Grantee shall be responsible, at Grantee's sole cost and expense, for the engineering, design, permitting, excavation, construction and installation of any and all Grantee Improvements, as well as any proposed modification by Grantee thereto. Notwithstanding the foregoing, the Parties acknowledge that the Construction Plans and Permits related to the Easement Area are deemed approved by the Parties hereto and any and all other governmental agencies having jurisdiction thereto and final as of the Effective Date hereof and require no further review or approval by Grantor. Grantor shall have the right to review and approve and Grantor shall be provided with copies of final Construction Plans and Permits related to the Easement Area for any proposed modification to the Grantee Improvements. Grantee shall not modify the Permits related to the Easement Area without the consent of Grantor. In no event shall construction of any such modification commence until the applicable final construction plans are approved by Grantor or such approval has been waived in

writing. Upon receipt of any construction plans relating to any modification of the Grantee Improvements, Grantor shall have a period of fifteen (15) days to review said plans and notify Grantee of any deficiencies therein which must be corrected prior to Grantor's approval thereof. In the event such plans are not approved and the Grantee is notified of deficiencies within the time required, then Grantor shall have an additional fifteen (15) day period to review any revised plans submitted and to notify Grantee of any further deficiencies. Notwithstanding anything to the contrary hereinabove, in the event Grantor fails to deliver to the Grantee a notice of such deficiencies within such fifteen (15) day period, the plans will be deemed approved. Grantor hereby covenants and agrees that Grantee is entitled to the use of the fill dirt excavated from the Easement Area in connection with the preparation, excavation, construction or installation of the Grantee Improvements ("Fill") in the amount required for the construction of the Project in a manner pursuant to, in accordance with and consistent with the Construction Plans and Permits ("Required Fill"). In the event that the amount of Fill removed from the Easement Area is in excess of the Required Fill, such Fill shall be deemed "Excess Fill" and shall be the sole and exclusive property of Grantor. All Excess Fill shall be deposited at Grantee's sole cost and expense and at Grantor's direction on property owned by Grantor adjacent to or in the vicinity of the Project.

**5. Maintenance of Easement Area.** Grantee shall maintain the Easement Area and the Grantee Improvements thereupon in good order and repair in accordance with the Construction Plans and Permits and the land development code of the Osceola County, Florida. In the event any required maintenance hereunder is not performed by Grantee in accordance with the foregoing standards, Grantor may deliver a notice to Grantee setting forth the maintenance deficiencies, whereupon Grantee, shall have a period of fifteen (15) days to remedy the deficiencies, or forty-eight (48) hours, in case of emergency. In the event the deficiencies are not remedied in a commercially reasonable fashion within such fifteen (15) day period, or within such forty-eight (48) hour period in case of emergency, Grantor shall have the right to undertake all reasonably necessary maintenance and repair itself and recover from Grantee the fees, costs and expenses incurred in connection therewith.

Notwithstanding anything herein to the contrary and without limitation of any other rights reserved herein, Grantor, for itself and its successors and assigns, hereby reserves the right to erect and install aesthetic development features such as but not limited to landscaping, berms, lighting, screening, fountains, and other features ("Grantor Improvements") deemed desirable by Grantor over and upon the Easement Area without any requirement for permission or approval by the Grantee, provided, however, that any such Grantor Improvements shall not impair Grantee's use and maintenance of the Easement Area as contemplated in this Easement Agreement for the purposes set forth herein in the management of stormwater from the Project. All maintenance, repair and replacement of such Grantor Improvements shall be at the sole cost and expense of Grantor; provided, however, in the event that Grantee undertakes any maintenance, repair or replacement within the Easement Area as otherwise required under this Easement Agreement then Grantee shall undertake such maintenance, repair or replacement in such fashion and with such due care as may be necessary to minimize any disturbance of any Grantor Improvements and Grantee shall be responsible for any damage or disturbance caused to the Grantor Improvements in connection therewith.

**6. Obligations of the Parties.** The Parties acknowledge and agree that any rights granted hereunder shall be exercised by the Parties only in accordance and compliance with any and all applicable laws, ordinances, rules, regulations, permits and approvals, including but not limited to the Construction Plans and Permits and any future modifications or amendments thereto. The Parties covenant and agree that neither party shall discharge into or within the Easement Area any hazardous or toxic materials or substances, any pollutants, or any other substances or materials prohibited or regulated under any federal, state or local law, ordinance, rule, regulations or permit, except in accordance with such laws, ordinances, rules, regulations and permits.

**7. Remedies and Insurance.**

(i) In the event of a default hereunder, all parties shall have all rights and remedies allowed by law in connection therewith, including, without limitation, the right to specific performance, subject, however, to notice and right to cure as set forth in the Development Agreement and any other limitation expressly set forth therein. No party shall be in default hereunder unless the other party alleging a default shall have given the party against whom a default is alleged not less than thirty days prior written notice thereof, unless a longer or shorter time for particular matters is set forth in the Development Agreement, in which case such longer or shorter time shall apply, and opportunity to cure, without cure having been effected. In any action at law or in equity between the parties hereto occasioned by a default hereunder, the prevailing party shall be entitled to collect its reasonable attorneys' fees actually incurred in the action from the non-prevailing party. As used herein, the term "prevailing party" shall mean the party who receives substantially the relief sought. If the prevailing party utilizes "in-house" counsel, such party's reasonable costs, expenses and overhead for the time expended by the prevailing party for such in-house counsel in the aforementioned action shall be recoverable by the prevailing party in the same manner as other attorneys' fees. Each party hereby knowingly, voluntarily and intentionally waives the right to a trial by jury with respect to any litigation (including but not limited to any counterclaims, cross claims or third party claims), whether now existing or hereafter arising, and whether sounding in contract, tort, equity or otherwise, regardless of the cause or causes of action, defenses or counterclaims alleged or the relief sought by any party, and regardless of whether such causes of action, defenses or counterclaims are based on, or arise out of, under or in connection with this Easement Agreement or its subject matter, out of any alleged conduct or course of conduct, dealing or course of dealing, statement (whether verbal or written), or otherwise.

(ii) Grantor and Grantee hereby covenant and agree that each said Party shall maintain, at its own expense, or cause its contractor to maintain, during the period of any of its construction and maintenance activities contemplated hereunder comprehensive liability insurance underwritten by an insurance carrier with a Best rating equal to or better than A in an amount no less than \$1,000,000.00 per occurrence for personal injury (including death) and \$1,000,000.00 per occurrence for property damage, which policy or policies shall name the other Party hereto as additional insured parties.

**8. Limited Public Dedication.** Nothing contained in this Easement Agreement shall create or shall be deemed to create any easements or use rights in the general public or constitute a public dedication beyond the rights of the public set forth herein. Dedication of

rights granted herein shall be strictly limited to stormwater detention and retention and outfall purposes from the Project.

**9. Beneficiaries of Easement Rights.** The Easement set forth in this Easement Agreement shall be for the benefit and use of Grantee, Grantor and their successors in title and assigns, and their agents, employees, consultants, representatives, contractors (and their subcontractors, employees and materialmen), licensees, guests, invitees and providers of emergency services.

**10. Amendments and Waivers.** This Easement Agreement may not be terminated or amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by the Parties, or successor(s) in title, and recorded in the Public Records of Osceola County, Florida. No delay or omission of any Party in the exercise of any right accruing upon any default of any Party shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any Party of a breach of, or a default in, any of the terms and conditions of this Easement Agreement by any other Party shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Easement Agreement. No breach of the provisions of this Easement Agreement shall entitle any Party to cancel, rescind or otherwise terminate this Easement Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which any Party may have by reason of any breach of the provisions of this Easement Agreement.

**11. Notices.** Notices hereunder shall be given to the Parties set forth below and shall be made by hand delivery, facsimile, or overnight delivery. For the purpose of calculating time limits which run from the giving of a particular notice the time shall be calculated from actual receipt of the notice. Time limits shall expire only on business days which, for purposes of this Easement Agreement shall be any day other than a Saturday, Sunday or legal Osceola County public holiday. Notices shall be addressed as follows:

If to Grantor: Avatar Properties Inc.  
395 Village Drive  
Kissimmee, Florida 34759  
Phone: (863) 427-7098  
Attention: PK Fletcher, Esquire  
E-mail: PK.Fletcher@avhomesinc.com

With copies to: Avatar Properties Inc.  
395 Village Drive  
Kissimmee, Florida 34759  
Phone: (863) 427-7214  
Attention: Tony Iorio  
E-mail: T.Iorio@avhomesinc.com

And: Greenberg Traurig, P.A.  
450 South Orange Avenue, Suite 650  
Orlando, Florida 32801  
Phone: (407) 418-2417  
Fax: (407) 420-5909  
Attention: Julie P. Kendig-Schrader, Esq.  
Email: Kendig@gtlaw.com

If to Grantee: Attention: Atlee Mercer

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copy to: Broad & Cassel  
390 North Orange Avenue  
Suite 1400  
Orlando, Florida 32801-4961  
Phone: (407) 839-4200  
Fax: (407) 839-4210  
Attention: Joseph Stanton, Partner  
E-mail: jstanton@broadandcassel.com

If to County: Osceola County  
Attn: Don Fisher, County Manager  
1 Courthouse Square  
Kissimmee, Florida 34741  
Fax: (407) 742-2391  
E-mail: dfis@osceola.org

With copy to: Osceola County  
Attn: Andrew Mai, County Attorney  
1 Courthouse Square  
Kissimmee, Florida 34741  
Fax: (407) 742-2217  
E-mail: andrew.mai@osceola.org

**12. Reservation of Rights.** It is acknowledged and agreed that the Easement granted under this Easement Agreement is not an exclusive easement and that Grantor, its successors and assigns, shall have the right to use and enjoy the Easement Area in any manner not inconsistent with the easement rights created herein, including but not limited to (i) the right to drain stormwater from other property owned by Grantor, its successors and assigns, into the Grantee Improvements and Easement Area; (ii) and the right to relocate, expand or modify the Easement Area, at Grantor's expense, in connection with the development, use and enjoyment of the property adjacent to or in the vicinity of the Easement Area. Grantor acknowledges that any increase in the cost of maintaining the Easement Area and/or the Grantee Improvements located therein incurred as a result of Grantor's aforesaid use, relocation, expansion or modification shall



be borne by Grantor, including the costs of modification or obtaining of any new or additional permits required from any governmental authority in connection therewith. Grantor further acknowledges and agrees that (a) no relocation, expansion or modification shall diminish the capacity or function provided by the Easement Area to the Grantee; (b) the relocation or modification shall be accomplished in a manner that does not impair the functions or capacity of the Easement Area during the relocation or modification; and (c) Grantor shall provide Grantee written notice prior to exercising Grantor's rights under subsection (ii) above.

**13. Miscellaneous.** Except for the terms and conditions set forth in Development Agreement, Construction Plans and Permits this Easement Agreement contains the entire understanding of the Parties with respect to the matters set forth herein and no other agreement, oral or written, not set forth herein, nor any course of dealings of the Parties, shall be deemed to alter or affect the terms and conditions set forth herein. If any provision of this Easement Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to the extent be held invalid, inoperative or unenforceable, the remainder of this Easement Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Easement Agreement; and each provision of this Easement Agreement shall be valid and enforceable to the fullest extent permitted by law. This Easement Agreement shall be construed in accordance with the laws of the State of Florida. Venue for any proceeding brought hereunder shall be Osceola County, Florida. In the event of any dispute hereunder or of any action to interpret or enforce this Easement Agreement, any provision hereof or any matter arising herefrom, the prevailing party shall be entitled to recover its reasonable attorneys' fees, paralegals' fees or experts' fees costs and expenses, whether suit be brought or not, and whether in settlement, in any declaratory action, at trial or on appeal. The section headings in this Easement Agreement are for convenience only, shall in no way define or limit the scope or content of this Easement Agreement, and shall not be considered in any construction or interpretation of this Easement Agreement or any part hereof. Where the sense of this Easement Agreement requires, any reference to a term in the singular shall be deemed to include the plural of said term, and any reference to a term in the plural shall be deemed to include the singular of said term. Nothing in this Easement Agreement shall be construed to make the Parties hereto partners or joint venturers or render either of said parties liable for the debts or obligations of the other. This Easement Agreement may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute one and the same Easement Agreement. Time is of the essence of this Easement Agreement. This Easement Agreement shall be binding upon and inure to the benefit of Grantor and Grantee and their respective successors and assigns.

**[SIGNATURES CONTAINED ON FOLLOWING PAGES]**

**IN WITNESS WHEREOF**, the Parties have caused this Easement Agreement to be executed as of the day and year first written above.

**WITNESSES:**

**“Grantor”**

Signed, sealed and delivered  
In the presence of:

**AVATAR PROPERTIES INC.**, a Florida corporation

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, as \_\_\_\_\_ of **AVATAR PROPERTIES INC.**, a Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_ as identification and did (did not) take an oath.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**(signatures continue on next page)**

**ATTEST:**

**"Grantee"**

**OSCEOLA COUNTY, FLORIDA**

\_\_\_\_\_  
Clerk/Deputy

By: \_\_\_\_\_  
Chairman/Vice Chairman  
Board of County Commissioners

(SEAL)

COPY



## Exhibit A Easement Area

### PARCEL O-5

A parcel of land located in Sections 16 and 21, Township 26 South, Range 28 East, Osceola County, Florida. Said parcel being more particularly described as follows:

Commence at the Southeast corner of said Section 16; thence South 89° 47' 53" West along the South line of said section 16 a distance of 576.35 feet to the Point of Beginning, said point also being a point on a non-tangent curve concave Southwesterly, having a radius of 2755.00 feet, a central angle of 1° 29' 36", and a chord of 71.83 feet that bears South 27° 33' 45" East; thence leaving said South line, run Southeasterly along the arc of said curve a distance of 71.83 feet; thence leaving said curve, run South 21° 00' 29" West, 626.91 feet; thence North 86° 39' 41" West, 740.96 feet; thence North 27° 03' 22" West, 529.43 feet; thence North 22° 22' 29" East, 526.09 feet; thence North 54° 47' 25" West, 955.36 feet; thence North 45° 56' 46" East, 486.85 feet to a point on a non-tangent curve concave Southeasterly, having a radius of 2755.00 feet, a central angle of 39° 43' 45", and a chord of 1672.29 feet that bears South 48° 10' 26" East; thence Southeasterly along the arc of said curve a distance of 1910.33 feet to the Point of Beginning.

Said parcel contains 37.31 acres, more or less.

### PARCEL O-6

A parcel of land located in Section 21, Township 26 South, Range 28 East, Osceola County, Florida. Said parcel being more particularly described as follows:

Commence at the Northeast corner of said Section 21; thence South 89° 43' 57" West along the North line of said Section 21 a distance of 576.35 feet to a point on a non-tangent curve concave Southwesterly, having a radius of 2755.00 feet, a central angle of 28° 17' 03", and a chord of 1348.24 feet that bears South 14° 10' 02" East; thence leaving said North line, run Southeasterly along the arc of said curve a distance of 1360.01 feet to the Point of Beginning; thence continue along said curve, having a radius of 2755.00 feet and a central angle of 0° 45' 06"; thence along the arc of said curve a distance of 36.17 feet; thence North 89° 16' 23" West, 10.00 feet; thence South 00° 43' 37" West, 604.08 feet; thence South 30° 33' 44" West, 408.72 feet; thence South 82° 55' 49" West, 524.62 feet; thence North 00° 13' 08" West, 1052.67 feet; thence North 89° 42' 04" East, 750.37 feet to the Point of Beginning.

Said parcel contains 16.22 acres, more or less.

### PARCEL O-9

A parcel of land lying within Palmdale Neighborhood 2 North, Village 2 according to the Plat thereof recorded in Plat Book 3, Pages 88 through 96 of the Public Records of Osceola County, Florida. Located in Section 26, Township 26 South, Range 28 East, Osceola County, Florida. Said parcel being more particularly described as follows:

Commence at the Northeast corner of said Section 26, as shown on said Palmdale Neighborhood 2 North, Village 2; thence South 03° 25' 03" East, 2549.54 feet to the Point of Beginning, being a point on a non-tangent curve concave Northwesterly, having a radius of 2000.00 feet, a central angle of 07° 17' 22", and a chord of 254.28 feet that bears South 21° 06' 36" West; thence along the arc of said curve a distance of 254.45 feet to the point of reverse curvature of a curve to the left, having a radius of 1300.00 feet and a central angle of 02° 05' 35"; thence along the arc of said curve a distance of 47.49 feet; thence leaving said curve, run South 67° 20' 18" East, 10.00 feet to a point on a non-tangent curve concave Southeasterly, having a radius of 1290.00 feet, a central angle of 20° 23' 19", and a chord of 458.63 feet that bears thence South 12° 28' 03" West; thence along the arc of said curve a distance of 459.04 feet; thence leaving said curve, run North 86° 03' 40" West, 395.49 feet; thence North 01° 11' 53" West, 100.78 feet; thence North 15° 31' 05" East, 275.56 feet; thence North 29° 12' 23" East, 76.34 feet; thence North 09° 12' 45" East, 164.48 feet; thence North 15° 31' 05" East, 156.56 feet; thence North 88° 15' 59" East, 38.32 feet; thence North 11° 48' 17" West, 45.00 feet; thence North 78° 11' 43" East, 48.81 feet; thence South 11° 48' 17" East, 53.32 feet; thence North 88° 15' 59" East, 174.39 feet; thence South 72° 07' 14" East, 165.34 feet to the Point of Beginning.

Said parcel contains 7.07 acres, more or less.

PARCEL O-10

A parcel of land lying within Palinciano Neighborhood 2 North, Village 2 according to the Plat thereof recorded in Plat Book 3, Pages 88 through 98 of the Public Records of Osceola County, Florida and Palinciano Neighborhood 2 South, Village 2 according to the Plat thereof recorded in Plat Book 3, Pages 99 through 108 of the Public Records of Osceola County, Florida. Located in Sections 27 and 34, Township 28 South, Range 28 East, Osceola County, Florida. Said parcel being more particularly described as follows:

Commence at the intersection of the Easterly right of way line of Rhododendron Avenue and the projected Southerly right of way line of Matgold Street per the plat of Palinciano Neighborhood 1, Village 2, as recorded in Plat Book 3, Pages 89 through 87 of the Public Records of Osceola County, Florida; thence South 04° 54' 39" West along said Easterly right of way line 1041.11 feet; thence leaving said Easterly right of way line, run North 85° 05' 21" West, 150.00 feet to the Point of Beginning, being a point on the Westerly right of way line of said Rhododendron Avenue; thence leaving said Westerly right of way line, run North 81° 51' 32" West, 513.50 feet; thence North 48° 29' 24" West, 679.92 feet; thence North 04° 17' 01" East, 805.28 feet to a point on a non-tangent curve concave Northerly, having a radius of 1290.00 feet, a central angle of 33° 25' 37", and a chord of 741.97 feet that bears South 68° 22' 33" East; thence along the arc of said curve a distance of 752.60 feet to the point of tangency; thence South 85° 05' 21" East, 356.74 feet to a point on said Westerly right of way line of Rhododendron Avenue thence South 04° 54' 39" West, along said Westerly right of way line 1026.12 feet to the Point of Beginning.

Said parcel contains 23.02 acres, more or less.

## APPENDIX O

### FORM OF ASSIGNMENT AND ASSUMPTION OF CONSTRUCTION PLANS

#### ASSIGNMENT OF CONSTRUCTION PLANS

This **ASSIGNMENT OF CONSTRUCTION PLANS** (this "**Assignment**") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2012 (the "**Effective Date**"), by and between **AVATAR PROPERTIES INC.**, a Florida corporation (the "**Assignor**"), and **OSCEOLA COUNTY EXPRESSWAY AUTHORITY**, a body politic and corporate created by Part V Chapter 348, Florida Statutes (the "**Assignee**").

**WHEREAS**, Assignor and Assignee are parties to that certain Agreement for Development of Poinciana Parkway by and between Osceola County, Florida, Polk County, Florida, Avatar Properties Inc., and the Osceola County Expressway Authority dated as of \_\_\_\_\_, 2012 (the "**Development Agreement**") pursuant to which Assignee is to construct the Poinciana Parkway roadway facility as further described in the Development Agreement; and

**WHEREAS**, in connection with the construction of the Poinciana Parkway, Assignor desires to assign to Assignee all of Assignor's right, title and interest of Assignor arising from and after the date hereof in, to and under the Construction Plans (as such term is defined in the Development Agreement) and Assignee agrees to assume the right, title and interest and all obligations and liabilities of Assignor arising from and after the date hereof with respect to the Construction Plans; and

**WHEREAS**, all capitalized terms in this Assignment not otherwise defined herein have the same meaning ascribed thereto in the Development Agreement.

**NOW, THEREFORE**, in consideration of the covenants and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. All the foregoing recitals are true and correct and incorporated herein by reference.
2. Assignor hereby sells, assigns, conveys, transfers and grants to Assignee all of Assignor's right, title and interest of Assignor arising from and after the date hereof in, to and under, the Construction Plans identified on the attached **Exhibit "A"**, (collectively, the "**Assigned Property**").
3. Assignee hereby accepts all of Assignor's right, title and interest in, to and under the Assigned Property. Assignee assumes and agrees to pay and perform all obligations under the Assigned Property and related governmental approvals.
4. This Assignment is also made subject to all covenants and conditions applicable to the Assigned Property as set forth in Section 3.01 and other applicable provisions of the Development Agreement. As further set forth in said Section 3.01, this Assignment is hereby

made on a non-exclusive basis from Assignor to Assignee as of the date hereof. The Assignment shall become exclusive, complete and shall include all rights reserved by Assignor, without further action of Assignor or Assignee, on the Poinciana Parkway Funding Date, as such term is defined in the Development Agreement. In the event that the Development Agreement is terminated for any reason, upon request of Assignor, the Assignee shall, promptly upon request by Assignor, reassign all right, title and interest to the Assigned Property to the Assignor.

5. This Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, personal representatives, successors and assigns.

6. This instrument shall be governed by the laws of the State of Florida, without regard to its conflict of laws provisions.

7. This Assignment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement.

8. Assignor and Assignee agree to execute and deliver, upon request, any additional documents required by any governmental or quasi-governmental authority or reasonably requested by either party for the purpose of transferring to Assignee ownership of, and responsibility for, the Assigned Property or for the purposes of implementing this Assignment.

9. In the event of a default hereunder, all parties shall have all rights and remedies allowed by law in connection therewith, including, without limitation, the right to specific performance, subject, however, to notice and right to cure as set forth in the Development Agreement and any other limitation expressly set forth therein. No party shall be in default hereunder unless the other party alleging a default shall have given the party against whom a default is alleged not less than thirty days prior written notice thereof, unless a longer or shorter time for particular matters is set forth in the Development Agreement, in which case such longer or shorter time shall apply, and opportunity to cure, without cure having been effected. In any action at law or in equity between the parties hereto occasioned by a default hereunder, the prevailing party shall be entitled to collect its reasonable attorneys' fees actually incurred in the action from the non-prevailing party. As used herein, the term "prevailing party" shall mean the party who receives substantially the relief sought. If the prevailing party utilizes "in-house" counsel, such party's reasonable costs, expenses and overhead for the time expended by the prevailing party for such in-house counsel in the aforementioned action shall be recoverable by the prevailing party in the same manner as other attorneys' fees. Each party hereby knowingly, voluntarily and intentionally waives the right to a trial by jury with respect to any litigation (including but not limited to any counterclaims, cross claims or third party claims), whether now existing or hereafter arising, and whether sounding in contract, tort, equity or otherwise, regardless of the cause or causes of action, defenses or counterclaims alleged or the relief sought by any party, and regardless of whether such causes of action, defenses or counterclaims are based on, or arise out of, under or in connection with this Assignment or its subject matter, out of any alleged conduct or course of conduct, dealing or course of dealing, statement (whether verbal or written), or otherwise.

10. This Assignment shall be effective as of the Poinciana Parkway Funding Date as such term is defined in the Development Agreement.

IN WITNESS WHEREOF, Assignor and Assignees have executed this Assignment effective as of the date first above written.

WITNESSES:

“Assignor”

AVATAR PROPERTIES INC., a Florida corporation

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, as \_\_\_\_\_ of AVATAR PROPERTIES INC., a Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_ as identification and did (did not) take an oath.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2012.

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

Notary Public, State of Florida

Commission No.: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

(signatures continue on next page)

**"Assignee"**

WITNESSES:

**OSCEOLA COUNTY EXPRESSWAY  
AUTHORITY**, a body politic and corporate  
created by Part V, Chapter 348, Florida Statutes

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Chairman/Vice Chairman

Printed Name: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by \_\_\_\_\_,  
as \_\_\_\_\_ of Osceola County Expressway Authority, a body politic and  
corporate created by Part V, Chapter 348, Florida Statutes, on behalf of the Authority. He/She is  
personally known to me or has produced \_\_\_\_\_, as identification and did  
(did not) take an oath.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



**Exhibit A**

**Avatar Construction Plans**

<u>Document</u>	<u>Prepared By</u>	<u>Type</u>	<u>Dated</u>	<u>Approved</u>	<u>Approval Agency</u>	<u>Expiration Date</u>
PP & SR 600 (US 17-92)	VHB	Construction Plans	2/18/09	NO	FDOT	NA
PP Contract 1	VHB	Construction Plans	6/19/09	10/15/09	Polk County	10/15/16
PP Contract 2	VHB	Construction Plans	3/12/08	4/30/08	Osceola County	See Note 4
PP Contract 3	VHB	Construction Plans	10/14/07	10/26/07	Osceola County	See Note 4
Geotechnical Evaluation	UES	8 Reports (See Note 5)	Various	NA	NA	NA
Environmental Assessments	UES	5 Reports (See Note 6)	Various	NA	NA	NA
Traffic Studies	LCE	2 Reports (See Note 7)	Various	NA	NA	NA
PP-Kinney Harmon Rd	VHB	R/W Sketch of Description	1/15/08	NA	NA	NA
Poinciana Parkway	VHB	R/W Sketch of Description	1/25/08	NA	NA	NA
PP-Marigold Ave	VHB	R/W Sketch of Description	1/15/08	NA	NA	NA

Notes:

1. VHB-Vanasse Hangen Brustlin, Inc.
2. UES- Universal Engineering Sciences.
3. LCE-Leftwich Consulting Engineers, Inc.
4. Approvals of Contract 2 and Contract 3 Construction Plans run with the Poinciana Parkway Regulatory Agreement (PPRA) and expire upon expiration of the PPRA.
5. UES Report No.s 409239, 410700, 437336, 490496, 573220, 595455, 573220V2 and 667981.
6. UES Report No.s 371362, 409238, 619623, 620001 and 646002.
7. LCE Design Traffic Report (update) dated January 2005 and LCE Design Traffic Report (Supplement) dated September 2005.

**APPENDIX P**

**FORM OF ASSIGNMENT AND ASSUMPTION OF PERMITS**

**ASSIGNMENT AND ASSUMPTION OF PERMITS**

This **ASSIGNMENT AND ASSUMPTION OF PERMITS AGREEMENT** (this "**Assignment and Assumption**") is made and entered into as of the \_\_\_ day of \_\_\_\_, 2012 by and between **AVATAR PROPERTIES INC.**, a Florida corporation (the "**Assignor**"), and **OSCEOLA COUNTY EXPRESSWAY AUTHORITY**, a body politic and corporate created by Part V, Chapter 348, Florida Statutes (the "**Assignee**").

**WHEREAS**, Assignor and Assignee are parties to that certain Agreement for Development of the Poinciana Parkway by and between Osceola County, Florida, Polk County, Florida, Avatar Properties Inc., and the Osceola County Expressway Authority dated as of \_\_\_\_\_, 2012 (the "**Development Agreement**") pursuant to which Assignee is to construct the Poinciana Parkway roadway facility as further described in the Development Agreement; and

**WHEREAS**, in connection with the construction of the Poinciana Parkway, Assignor desires to assign to Assignee all of Assignor's right, title and interest and all obligations and liabilities of Assignor arising from and after the date hereof in, to and under the Permits (as such term is defined in the Development Agreement) and Assignee desires to assume the rights and obligations of Assignor arising from and after the date hereof with respect to the Permits; and

**WHEREAS**, all capitalized terms in this Assignment and Assumption not otherwise defined herein have the same meaning ascribed thereto in the Development Agreement.

**NOW, THEREFORE**, in consideration of the covenants and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

All the foregoing recitals are true and correct and incorporated herein by reference.

Assignor hereby sells, assigns, conveys, transfers and grants to Assignee all of Assignor's right, title and interest, and all obligations and liabilities of Assignor arising from and after the date hereof in, to and under, the Permits identified on the attached **Exhibit "A"**, (collectively, the "**Assigned Property**") and Assignee is hereby released of all obligations of Assignor thereunder.

Assignee hereby accepts all of Assignor's right, title and interest in, to and under the Assigned Property, and agrees to be bound by and assumes all of the duties, obligations and liabilities of Assignor accruing from and after the Poinciana Parkway Funding Date, as such term is defined in the Development Agreement, with respect to the Assigned Property. Assignee assumes and agrees to pay and perform all obligations under the Assigned Property and related governmental approvals. In the event of a failure by Assignee to pay and perform any such obligations, Assignor shall have all rights and remedies allowed by law in connection therewith as further provided in Section 6.21 of the Development Agreement.



This Assignment and Assumption is also made subject to all covenants and conditions applicable to the Assigned Property as set forth in Section 3.02 and other applicable provisions of the Development Agreement, including but not limited to the definition of the Effective Date hereof as the Poinciana Parkway Funding Date, as such term is defined in the Development Agreement.

This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, personal representatives, successors and assigns.

This instrument shall be governed by the laws of the State of Florida, without regard to its conflict of laws provisions. Venue for any conflict arising hereunder shall be Osceola County, Florida.

This Assignment and Assumption may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement.

8. Assignor and Assignee agree to execute and deliver, upon request, any additional documents required by any governmental or quasi-governmental authority or reasonably requested by either party hereto for the purpose of transferring the Assigned Property.

9. In the event of a default hereunder, all parties shall have all rights and remedies allowed by law in connection therewith, including, without limitation, the right to specific performance, subject, however, to notice and right to cure as set forth in the Development Agreement and any other limitation expressly set forth therein. No party shall be in default hereunder unless the other party alleging a default shall have given the party against whom a default is alleged not less than thirty days prior written notice thereof, unless a longer or shorter time for particular matters is set forth in the Development Agreement, in which case such longer or shorter time shall apply, and opportunity to cure, without cure having been effected. In any action at law or in equity between the parties hereto occasioned by a default hereunder, the prevailing party shall be entitled to collect its reasonable attorneys' fees actually incurred in the action from the non-prevailing party. As used herein, the term "prevailing party" shall mean the party who receives substantially the relief sought. If the prevailing party utilizes "in-house" counsel, such party's reasonable costs, expenses and overhead for the time expended by the prevailing party for such in-house counsel in the aforementioned action shall be recoverable by the prevailing party in the same manner as other attorneys' fees. Each party hereby knowingly, voluntarily and intentionally waives the right to a trial by jury with respect to any litigation (including but not limited to any counterclaims, cross claims or third party claims), whether now existing or hereafter arising, and whether sounding in contract, tort, equity or otherwise, regardless of the cause or causes of action, defenses or counterclaims alleged or the relief sought by any party, and regardless of whether such causes of action, defenses or counterclaims are based on, or arise out of, under or in connection with this Assignment or its subject matter, out of any alleged conduct or course of conduct, dealing or course of dealing, statement (whether verbal or written), or otherwise.

10. This Assignment and Assumption shall be effective as of the Poinciana Parkway Funding Date as such term is defined in the Development Agreement.

**IN WITNESS WHEREOF**, Assignor and Assignees have executed this Assignment and Assumption effective as of the date first above written.

**WITNESSES:**

**“Assignor”**

**AVATAR PROPERTIES INC.**, a Florida corporation

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, as \_\_\_\_\_ of **AVATAR PROPERTIES INC.**, a Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_ as identification and did (did not) take an oath.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2012.

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

Notary Public, State of Florida

Commission No.: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**(signatures continue on next page)**

**"Assignee"**

WITNESSES:

**OSCEOLA COUNTY EXPRESSWAY  
AUTHORITY**, a body politic and corporate  
created by Part V, Chapter 348, Florida Statutes

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Chairman/Vice Chairman

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by \_\_\_\_\_,  
as \_\_\_\_\_ of Osceola County Expressway Authority, a body politic and  
corporate created by Part V, Chapter 348, Florida Statutes, on behalf of the Authority. He/She is  
personally known to me or has produced \_\_\_\_\_, as identification and did  
(did not) take an oath.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**Exhibit A**

**Permit Transfers**

<b><u>Type</u></b>	<b><u>Description</u></b>	<b><u>Agency</u></b>	<b><u>Permit Number</u></b>	<b><u>Dated Issued</u></b>	<b><u>Expiration Date</u></b>
Federal	Construction	USACOE	SAJ-2008-2694 (IP-TSB)	Nov. 20, 2008	June 29, 2019
Regional	Construction	SFWMD	ERP No. 53-00216-P	Feb. 14, 2008	Feb. 14, 2018
Regional	Construction	SFWMD	SGP No. 49-00094-S-6	Feb. 14, 2008	Feb. 14, 2018

**Notes:**

1. USACOE – United States Army Corps of Engineers.
2. SFWMD – South Florida Water Management District.
3. SFWMD Dewatering permit to be obtained by contracting entity.
4. Mitigation credits required related to SFWMD ERP No. 53-00216-P, SGP No. 49-00094-S-6, and the deletion of 56.16 acres from the RCMB totaled 49.78 UMAMS.
5. Mitigation credits required related to SAJ-2008-2694 (IP-TSB) and the deletion of 56.16 acres from RCMB totaled 78.8 Modified Wraps.

## APPENDIX Q

### FORM OF ASSIGNMENT AND ASSUMPTION OF UNFULFILLED OBLIGATIONS

#### ASSIGNMENT AND ASSUMPTION OF UNFULFILLED OBLIGATIONS

**THIS ASSIGNMENT AND ASSUMPTION OF UNFULFILLED OBLIGATIONS** (this "**Assignment and Assumption**") is made and entered into as of the \_\_\_ day of \_\_\_, 2012 (the "**Effective Date**"), by and between **AVATAR PROPERTIES INC.**, a Florida corporation (the "**Assignor**"), and **OSCEOLA COUNTY EXPRESSWAY AUTHORITY**, a body politic and corporate created by Part V, Chapter 348, Florida Statutes (the "**Assignee**").

**WHEREAS**, Assignor and Assignee are parties to that certain Agreement for Development of Poinciana Parkway by and between Osceola County, Florida, Polk County, Florida, Avatar Properties Inc., and the Osceola County Expressway Authority dated as of \_\_\_\_\_, 2012 (the "**Development Agreement**") pursuant to which Assignee is to construct the Poinciana Parkway roadway facility as further described in the Development Agreement; and

**WHEREAS**, in connection with the construction of Poinciana Parkway, Assignor desires to assign to Assignee all of Assignor's obligations and liabilities arising in, to and under certain "**Unfulfilled Obligations**" (as such term is defined in the Development Agreement and specifically described on Appendix L to the Development Agreement as amended on **Exhibit "A"** attached hereto and made a part hereof by this reference), and Assignee agrees to assume the Unfulfilled Obligations; and

**WHEREAS**, several of the Unfulfilled Obligations in the Development Agreement, specifically the Reedy Creek Agreement and the Permits, are already subject to individual assignments and assumptions and as such are excluded from the terms of this general Assignment and Assumption as shown in strikeout on **Exhibit "A"**; and

**WHEREAS**, all capitalized terms in this Assignment and Assumption not otherwise defined herein shall have the same meaning ascribed thereto in the Development Agreement.

**NOW, THEREFORE**, in consideration of the covenants and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

All the foregoing recitals are true and correct and incorporated herein by reference.

Assignor hereby sells, assigns, conveys, transfers and grants to Assignee all of Assignor's right, title and interest, and all obligations and liabilities of Assignor in, to and under, the Unfulfilled Obligations described on Appendix L to the Development Agreement and on **Exhibit "A"** attached hereto and made a part hereof.

Assignee hereby accepts all of Assignor's right, title and interest in, to and under the Unfulfilled Obligations as defined herein, and agrees to be bound by and assumes all of the duties, obligations and liabilities of Assignor with respect to the Unfulfilled Obligations.

This Assignment and Assumption is also made subject to all covenants and conditions applicable to the Unfulfilled Obligations as set forth in Section 3.03 and other applicable provisions of the Development Agreement.

This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, personal representatives, successors and assigns.

This Assignment and Assumption shall be governed by the laws of the State of Florida, without regard to its conflict of laws provisions.

This Assignment and Assumption may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement.

Assignor and Assignee agree to execute and deliver, upon request, any additional documents required by any governmental or quasi-governmental authority or reasonably requested by either party for the purposes of implementing this Assignment and Assumption.

In the event of a default hereunder, all parties shall have all rights and remedies allowed by law in connection therewith, including, without limitation, the right to specific performance, subject, however, to notice and right to cure as set forth in the Development Agreement and any other limitation expressly set forth therein. No party shall be in default hereunder unless the other party alleging a default shall have given the party against whom a default is alleged not less than thirty days prior written notice thereof, unless a longer or shorter time for particular matters is set forth in the Development Agreement, in which case such longer or shorter time shall apply, and opportunity to cure, without cure having been effected. In any action at law or in equity between the parties hereto occasioned by a default hereunder, the prevailing party shall be entitled to collect its reasonable attorneys' fees actually incurred in the action from the non-prevailing party. As used herein, the term "prevailing party" shall mean the party who receives substantially the relief sought. If the prevailing party utilizes "in-house" counsel, such party's reasonable costs, expenses and overhead for the time expended by the prevailing party for such in-house counsel in the aforementioned action shall be recoverable by the prevailing party in the same manner as other attorneys' fees. Each party hereby knowingly, voluntarily and intentionally waives the right to a trial by jury with respect to any litigation (including but not limited to any counterclaims, cross claims or third party claims), whether now existing or hereafter arising, and whether sounding in contract, tort, equity or otherwise, regardless of the cause or causes of action, defenses or counterclaims alleged or the relief sought by any party, and regardless of whether such causes of action, defenses or counterclaims are based on, or arise out of, under or in connection with this Assignment and Assumption or its subject matter, out of any alleged conduct or course of conduct, dealing or course of dealing, statement (whether verbal or written), or otherwise.

**This Assignment and Assumption shall be effective as of the Poinciana Parkway Funding Date as such term is defined in the Development Agreement.**

**[SIGNATURES CONTAINED ON FOLLOWING PAGES]**

COPY



**IN WITNESS WHEREOF**, Assignor and Assignees have executed this Assignment and Assumption effective as of the date first above written.

**WITNESSES:**

**“Assignor”**

**AVATAR PROPERTIES INC.**, a Florida corporation

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, as \_\_\_\_\_ of **AVATAR PROPERTIES INC.**, a Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_ as identification and did (did not) take an oath.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**(signatures continue on next page)**



**“Assignee”**

WITNESSES:

**OSCEOLA COUNTY EXPRESSWAY  
AUTHORITY**, a body politic and corporate  
created by Part V, Chapter 348, Florida Statutes

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Chairman/Vice Chairman

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by \_\_\_\_\_,  
as \_\_\_\_\_ of **Osceola County Expressway Authority**, a body politic and  
corporate created by Part V, Chapter 348, Florida Statutes, on behalf of the Authority. He/She is  
personally known to me or has produced \_\_\_\_\_, as identification and did  
(did not) take an oath.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**Exhibit A  
Unfulfilled Obligations**

<u>Agreement/ Permit</u>	<u>Permit No. /Date</u>	<u>Pre Construction</u>	<u>Construction</u>	<u>Post Construction</u>
Gamlex Agreement	Dec. 15, 2006	None	See Agreement	None
Polyak Agreement	Dec. 16, 2006	None	See Agreement	None
AE7/RCMB Agreement	May 8, 2007	See Agreement & Closing Documents	See Agreement & Closing Documents	See Agreement & Closing Documents
AE7/RCMB 1 <sup>st</sup> Amend.	Dec. 8, 2010	See Agreement	See Agreement	See Agreement
ABD	OT&FJ	None	See OT	None
BYRD	FJ	None	See FJ	None
Telestat	FJ	None	See FJ	None
Bercini	FJ	None	See FJ	None

Notes:

1. ABD, Byrd, Telestat and Bercini are eminent domain acquisitions by Osceola County.
2. Gamlex, Polyak and AE7/RCMB are acquisition agreements with Avatar Properties Inc.
3. OT designates Order of Taking.
4. FJ designates Final Judgment.
5. The unfilled obligations listed herein specifically exclude all public and private Utility Adjustments and Relocations since neither final verbal nor written agreements have been made or entered into by Avatar Properties Inc. with the applicable utility providers.

## APPENDIX R

### FORM OF ASSIGNMENT AND ASSUMPTION OF REEDY CREEK AGREEMENT

RECORD AND RETURN TO:

Julie Kendig-Schrader, Esq.  
Greenberg Traurig, P.A.  
450 South Orange Avenue, Suite 600  
Orlando, Florida 32801

#### ASSIGNMENT AND ASSUMPTION OF REEDY CREEK AGREEMENT

**THIS ASSIGNMENT AND ASSUMPTION OF REEDY CREEK AGREEMENT** (this "**Assignment and Assumption**") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2012, by and between **AVATAR PROPERTIES INC.**, a Florida corporation (the "**Assignor**"), and **OSCEOLA COUNTY EXPRESSWAY AUTHORITY**, a body politic and corporate created by Part V, Chapter 348, Florida Statutes, (the "**Expressway Authority**") and Osceola County, a charter county and political subdivision of the State of Florida ("**Osceola County**") (the Expressway Authority and Osceola County are collectively referred to herein as the "**Assignees**").

**WHEREAS**, Assignor and Assignees are parties to that certain Agreement for Development of Poinciana Parkway by and between Osceola County, Florida, Polk County, Florida, Avatar Properties Inc., and the Osceola County Expressway Authority dated as of \_\_\_\_\_, 2012 (the "**Development Agreement**") pursuant to which the Expressway Authority is to construct Poinciana Parkway as further described in the Development Agreement; and

**WHEREAS**, in connection with the construction of Poinciana Parkway, Assignor desires to assign to Assignees, as stated herein, Assignor's right, title and interest and all obligations and liabilities of Assignor arising in, to and under that certain Settlement Agreement between and among Assignor and American Properties Inc. and Reedy Creek Mitigation Land Bank, Ltd., American Equities Ltd. No. 7, signed by the last of the parties thereto on May 8, 2007 (the "**Settlement Agreement**"), as amended by the First Amendment to Reedy Creek Settlement Agreement between the parties, dated as of December 8, 2010, and recorded in the public records of Polk County at O.R. Book 08312, Pages 2209-2218 and the public records of Osceola County at O.R. Book 4098, Pages 2249-2258 (the "**First Amendment**") (the First Amendment and the Settlement Agreement are collectively referred to herein as the "**Reedy Creek Agreement**"), and Assignees desire to assume the rights and obligations of Assignor under the Reedy Creek Agreement; and

**WHEREAS**, Assignees, as potential purchasers under the Reedy Creek Agreement, have reviewed the terms of the Reedy Creek Agreement; and

**WHEREAS**, the Mitigation Bank Right-of-Way, as described in **Exhibit "1"** hereto, is subject to the terms of the First Amendment; and

**WHEREAS**, all capitalized terms in this Assignment and Assumption not otherwise defined herein have the same meaning ascribed thereto in the Development Agreement.

**NOW, THEREFORE**, in consideration of the covenants and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

All the foregoing recitals are true and correct and incorporated herein by reference.

Except as otherwise specifically stated herein, Assignor hereby assigns, transfers, and delegates to Assignees, without warranty or recourse, all right, title and interest of Assignor in, to and under, and all obligations of Assignor under and in connection with, the Reedy Creek Agreement, and Assignor is hereby released of all obligations of Assignor thereunder.

1. Except as otherwise specifically stated herein, Assignees hereby accept all of Assignor's right, title and interest in, to and under the Reedy Creek Agreement, and agree to be bound by and assume all of the duties, obligations and liabilities of Assignor with respect to the Reedy Creek Agreement.

2. This Assignment and Assumption is made subject to all covenants and conditions applicable to the Reedy Creek Agreement as set forth in Section 3.08 and other applicable provisions of the Development Agreement.

3. Assignor hereby specifically assigns any and all mitigation credits available to it under the Reedy Creek Agreement to the Expressway Authority which are required for use as mitigation for the construction of Poinciana Parkway under the Permits as issued in 2008, with such Permits being specifically known as SFWMD ERP No. 53-00216-P, SGP No. 49-00094-S-6, USACOE SAJ-1993-302 (IP-TSB) Mod. One, SAJ-2008-264 (IP-TSB).

4. Osceola County shall post the "UMAM Letter of Credit" and the "WRAP Letter of Credit," as such terms are defined in the Reedy Creek Agreement.

5. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, personal representatives, successors and assigns.

6. This instrument shall be governed by the laws of the State of Florida, without regard to its conflict of laws provisions. Venue for any conflict arising hereunder shall be Osceola County, Florida.

7. This Assignment and Assumption may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement.

8. Assignor and Assignees agree to execute and deliver, upon request, any additional documents required by any governmental or quasi-governmental authority or reasonably requested by any party or the parties to the Reedy Creek Agreement for the purpose of transferring to Assignees ownership of, and responsibility for, the Reedy Creek Agreement.

9. In the event of a default hereunder, all parties shall have all rights and remedies allowed by law in connection therewith, including, without limitation, the right to specific performance, subject, however, to notice and right to cure as set forth in the Development Agreement and any other limitation expressly set forth therein. No party shall be in default hereunder unless the other party alleging a default shall have given the party against whom a default is alleged not less than thirty days prior written notice thereof, unless a longer or shorter time for particular matters is set forth in the Development Agreement, in which case such longer or shorter time shall apply, and opportunity to cure, without cure having been effected. In any action at law or in equity between the parties hereto occasioned by a default hereunder, the prevailing party shall be entitled to collect its reasonable attorneys' fees actually incurred in the action from the non-prevailing party. As used herein, the term "prevailing party" shall mean the party who receives substantially the relief sought. If the prevailing party utilizes "in-house" counsel, such party's reasonable costs, expenses and overhead for the time expended by the prevailing party for such in-house counsel in the aforementioned action shall be recoverable by the prevailing party in the same manner as other attorneys' fees. Each party hereby knowingly, voluntarily and intentionally waives the right to a trial by jury with respect to any litigation (including but not limited to any counterclaims, cross claims or third party claims), whether now existing or hereafter arising, and whether sounding in contract, tort, equity or otherwise, regardless of the cause or causes of action, defenses or counterclaims alleged or the relief sought by any party, and regardless of whether such causes of action, defenses or counterclaims are based on, or arise out of, under or in connection with this Assignment and Assumption or its subject matter, out of any alleged conduct or course of conduct, dealing or course of dealing, statement (whether verbal or written), or otherwise.

10. This Assignment and Assumption shall be effective as of the Poinciana Parkway Funding Date as such term is defined in the Development Agreement.

**[SIGNATURES CONTAINED ON FOLLOWING PAGES]**

IN WITNESS WHEREOF, Assignor and Assignees have executed this Assignment and Assumption effective as of the date first above written.

WITNESSES:

“Assignor”

AVATAR PROPERTIES INC., a Florida corporation

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, as \_\_\_\_\_ of AVATAR PROPERTIES INC., a Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_ as identification and did (did not) take an oath.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2012.

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

Notary Public, State of Florida

Commission No.: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



**“Assignee”**

WITNESSES:

**OSCEOLA COUNTY EXPRESSWAY  
AUTHORITY**, a body politic and corporate  
created by Part V, Chapter 348, Florida Statutes

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Chairman/Vice Chairman

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by \_\_\_\_\_,  
as \_\_\_\_\_ of Osceola County Expressway Authority, a body politic and  
corporate created by Part V, Chapter 348, Florida Statutes, on behalf of the Authority. He/She is  
personally known to me or has produced \_\_\_\_\_, as identification and did  
(did not) take an oath.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**(signatures continue on next page)**

**"Assignee"**

**WITNESSES:**

**BOARD OF COUNTY COMMISSIONERS  
OSCEOLA COUNTY, FLORIDA**

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Chairman/Vice Chairman

Printed Name: \_\_\_\_\_

(SEAL)

ATTEST:

\_\_\_\_\_

Clerk/Deputy Clerk

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by \_\_\_\_\_,  
as \_\_\_\_\_ of Osceola County. He/She is personally known to me or has  
produced \_\_\_\_\_, as identification and did (did not) take an oath.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2012.

Print Name: \_\_\_\_\_  
Notary Public, State of Florida  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



**EXHIBIT 1**

**Mitigation Bank Right-of-Way**

COPY

O:\Pointe au Parkway\Agreements\Amendments\Ready Creek Settlement Agreement - First Amendment\First Amendment to Ready Creek Settlement Agreement (12-7-10).doc

EXHIBIT 1

**PARCEL 1**

A parcel of land located in the Southwest quarter of Section 7, Township 26 South, Range 28 East, Polk County, Florida. Said parcel being more particularly described as follows:

Commence at the Southeast corner of the Southwest 1/4 of said Section 7; thence North 00° 14' 01" East, 254.30 feet along the East line of said Southwest 1/4 to the North right of way line of Kinny Harmon Road, as recorded in Official Record Book 2232, Page 431 of the Public Records of Polk County, Florida; thence North 69° 19' 05" West, 992.94 feet along said North right of way line to the Point of Beginning; thence continue the following courses and distances along said North right of way line, North 69° 19' 05" West, 17.73 feet to the point of curvature of a curve to the right, having a radius of 606.62 feet and a central angle of 19° 13' 30"; thence along the arc of said curve a distance of 203.55 feet to the point of tangency; thence North 50° 05' 35" West, 282.31 feet to a point on the West line of the Southeast 1/4 of the Southwest 1/4 of said Section 7; thence leaving said North right of way line of Kinny Harmon Road, run North 00° 05' 59" East, 148.36 feet along said West line to a point on a non-tangent curve concave Northeasterly, having a radius of 5646.58 feet, a central angle of 05° 31' 59" and a chord of 345.08 feet that bears South 58° 33' 31" East; thence leaving said West line, run along the arc of said curve a distance of 545.29 feet to a point on the Westerly boundary line as described in Official Record Book 2846, Pages 300 through 303 of the Public Records of Polk County, Florida; thence South 20° 40' 55" West, along said Westerly boundary line 162.05 feet along said Westerly boundary line to the Point of Beginning.

**PARCEL 2**

A parcel of land located in Section 7, Township 26 South, Range 28 East, Polk County, Florida. Said parcel being more particularly described as follows:

Commence at the Southeast corner of the Southwest 1/4 of said Section 7; thence North 00° 14' 01" East, 254.30 feet along the East line of said Southwest 1/4 to a point on the Northerly right of way line of Kinny Harmon Road, as recorded in Official Record Book 2232, Page 431 of the Public Records of Polk County, Florida; thence North 69° 19' 05" West, along said Northerly right of way line 992.94 feet to the Westerly boundary line as described in Official Record Book 2846, Pages 300 through 303 of the Public Records of Polk County, Florida; thence leaving said Northerly right of way line, run North 20° 40' 55" East, along said Westerly boundary line 410.84 feet to the Point of Beginning; thence leaving said Westerly boundary line, run North 48° 30' 22" West, 82.22 feet; thence North 48° 05' 15" East, 38.90 feet; thence South 43° 56' 27" East, 64.07 feet to a point on the said Westerly boundary line; thence South 20° 40' 55" West, along said Westerly boundary line 38.95 feet to the Point of Beginning.

PARCEL 3

A parcel of land located in Sections 7 and 18, Township 26 South, Range 28 East, Polk County, Florida. Said parcel being more particularly described as follows:

Commence at the Southeast corner of the Southwest 1/4 of said Section 7; thence North  $00^{\circ} 14' 01''$  East, 254.30 feet along the East line of said Southwest 1/4 to the Point of Beginning also being a point on the North right of way line of Kinny Harmon Road, as recorded in Official Record Book 2232, Page 431 of the Public Records of Polk County, Florida; thence North  $69^{\circ} 19' 05''$  West, 526.24 feet along said North right of way line to the Easterly boundary line as described in Official Record Book 2846, Pages 300 through 303 of the Public Records of Polk County, Florida; thence leaving said right of way line, run North  $20^{\circ} 40' 55''$  East, 116.18 feet along said Easterly line to a point on a non-tangent curve concave Northeasterly, having a radius of 5646.58 feet, a central angle of  $05^{\circ} 18' 20''$  and a chord of 522.67 feet that bears South  $68^{\circ} 44' 15''$  East thence leaving said Easterly line, run along the arc of said curve a distance of 522.85 feet to the point of tangency; thence South  $71^{\circ} 23' 25''$  East, 392.95 feet to the point of curvature of a curve to the right having a radius of 16302.02 feet and a central angle of  $01^{\circ} 56' 04''$ ; thence along the arc of said curve a distance of 550.40 feet to the point of tangency; thence South  $69^{\circ} 27' 20''$  East, 439.91 feet to a point on the East line of the Northwest 1/4 of the Northeast 1/4 of said Section 18; thence South  $00^{\circ} 27' 47''$  West, 145.75 feet along said East line to a point on the said North right of way line of Kinny Harmon Road; thence leaving said East line, run North  $69^{\circ} 19' 05''$  West, along said North right of way line 1429.64 feet to the Point of Beginning.

Parcel 4

A parcel of land located in the Northwest 1/4 of the Northwest 1/4 of Section 17, Township 26 South, Range 28 East, Polk County, Florida. Said parcel being more particularly described as follows:

Commence at the Northwest corner of said Section 17; thence South  $00^{\circ} 21' 42''$  West, 609.86 feet along the West line of said Northwest 1/4 of the Northwest 1/4 of Section 17 to the Point of Beginning, also being a point on a non-tangent curve concave Southwesterly, having a radius of 11542.00 feet, a central angle of  $01^{\circ} 13' 27''$  and a chord of 246.58 feet that bears South  $67^{\circ} 49' 44''$  East; thence along the arc of said curve a distance of 246.58 feet; thence leaving said curve, run North  $21^{\circ} 13' 44''$  East, 17.01 feet to a point on a non-tangent curve concave Southwesterly, having a radius of 11559.00 feet, a central angle of  $00^{\circ} 23' 21''$  and a chord of 78.52 feet that bears South  $67^{\circ} 01' 28''$  East; thence along the arc of said curve a distance of 78.52 feet to the point of reverse curvature of a curve to the left, having a radius of 11359.00 feet and a central angle of  $00^{\circ} 21' 06''$ ; thence along the arc of said curve a distance of 69.70 feet to a point on the County line of Polk County and Osceola County Florida; thence South  $26^{\circ} 23' 20''$  East, 215.87 feet along said County line to the North right of way line of Kinny Harmon Road as shown on Polk County Maintained right of way map, recorded in Map Book 5, Pages 244-248 of the Public Records of Polk County, Florida; thence leaving said County line, run the following courses and distances along said North right of way line, North  $69^{\circ} 22' 20''$  West, 86.06 feet; thence North  $70^{\circ} 31' 07''$  West, 100.27 feet; thence North  $65^{\circ} 20' 16''$  West, 99.51 feet; thence North  $67^{\circ} 01' 50''$  West, 99.09 feet; thence North  $69^{\circ} 10' 18''$  West, 72.58 feet; thence North  $69^{\circ} 30' 26''$  West, 46.12 feet to a point on the said West line of the Northwest 1/4 of the Northwest 1/4 of Section 17; thence North  $00^{\circ} 21' 42''$  East, 142.54 feet along said West line to the Point of Beginning.

Together with:

A parcel of land located in the Northwest 1/4 of the Northwest 1/4 of Section 17, Township 26 South, Range 28 East, Polk County, Florida. Said parcel being more particularly described as follows:

Commence at the Northwest corner of said Section 17; thence South  $00^{\circ} 21' 42''$  West, 788.11 feet along the West line of said Northwest 1/4 of the Northwest 1/4 to a point on the South right of way line of Kinny Harmon Road as shown on Polk County Maintained right of way map, recorded in Map Book 5, Pages 244-248 of the Public Records of Polk County, Florida; thence the following courses and distances along said South right of way line, South  $68^{\circ} 50' 45''$  East, 103.25 feet; thence South  $69^{\circ} 20' 30''$  East, 78.04 feet to the Point of Beginning; thence continue the following courses and distances along said South right of way line, South  $69^{\circ} 20' 30''$  East, 20.72 feet; thence South  $71^{\circ} 02' 49''$  East, 101.31 feet; thence South  $69^{\circ} 56' 50''$  East, 99.77 feet; thence South  $68^{\circ} 48' 22''$  East, 99.43 feet; thence South  $68^{\circ} 54' 19''$  East, 15.85 feet to a point on the County line of Polk County and Osceola County, Florida; thence South  $26^{\circ} 23' 20''$  East, 47.02 feet along said County line to a point on a non-tangent curve concave Northeasterly, having a radius of 11359.00 feet, a central angle of  $01^{\circ} 29' 15''$  and a chord of 300.06 that bears North  $67^{\circ} 34' 25''$  West; thence leaving said County line, run along the arc of said curve a distance of 300.07 feet to the point of reverse curvature of a curve to the right, having a radius of 11359.00 feet and a central angle of  $00^{\circ} 21' 43''$ ; thence along the arc of said curve a distance of 71.75 feet; thence leaving said curve, run North  $21^{\circ} 13' 44''$  East, 16.85 feet to the Point of Beginning.

#### Parcel 5

A parcel of land located in the North 1/2 of the Northwest 1/4 of Section 17, Township 26 South, Range 28 East, Polk County, Florida and Osceola County, Florida Said parcel being more particularly described as follows:

Commence at the Northwest corner of said Section 17; thence South  $00^{\circ} 21' 42''$  West, 788.11 feet along the West line of said North 1/2 of the Northwest 1/4 to the Point of Beginning; also being on the Southerly right of way of Kinny Harmon Road as shown on Polk County Maintained right of way map, recorded in Map Book 5, Pages 244 through 248 of the Public Records of Polk County, Florida; thence leaving said West line, run the following courses and distances along said Southerly right of way line, South  $68^{\circ} 50' 45''$  East, 103.25 feet; thence South  $69^{\circ} 20' 30''$  East, 78.04 feet; thence leaving said Southerly right of way line, run South  $21^{\circ} 13' 44''$  West, 16.85 feet to a point on a non-tangent curve concave Southerly, having a radius of 11359.00 feet, a central angle of  $00^{\circ} 21' 43''$  and a chord of 71.75 feet that bears South  $67^{\circ} 00' 39''$  East; thence along the arc of said curve a distance of 71.75 feet to the point of reverse curvature of a curve to the left, having a radius of 11359.00 feet and a central angle of  $02^{\circ} 39' 11''$ ; thence along the arc of said curve a distance of 535.23 feet to a point of tangency; thence South  $69^{\circ} 28' 59''$  East, 681.64 feet to a point on the Southerly line of said North 1/2 of the Northwest 1/4 of Section 17; thence North  $89^{\circ} 29' 42''$  West, along said Southerly line 1367.84 feet to a point on said West line of North 1/2 of the Northwest 1/4; thence North  $00^{\circ} 21' 42''$  East, along said West line 534.90 feet to the Point of Beginning.

#### PARCEL 6

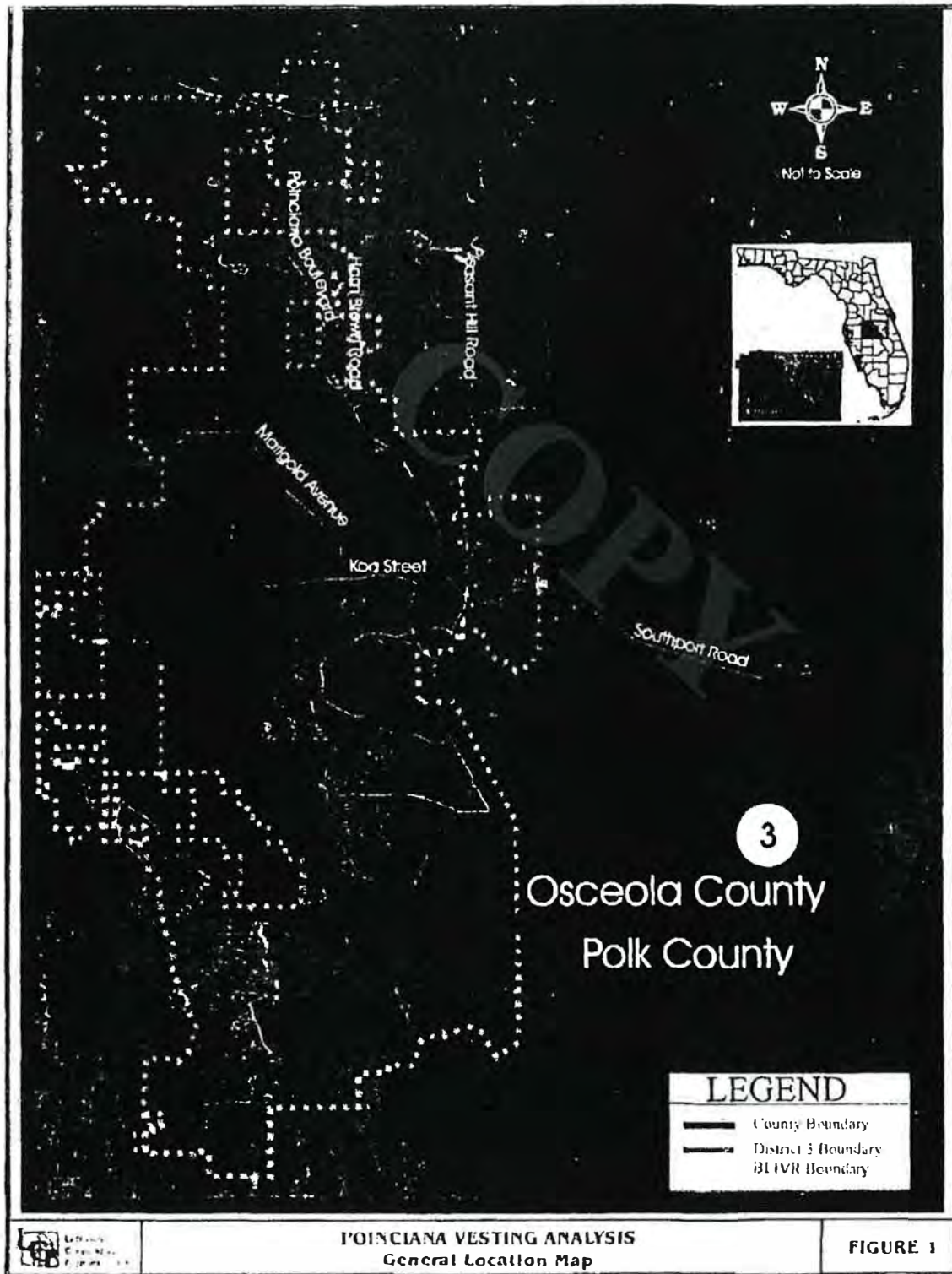
A parcel of land located in Sections 16 and 17, Township 26 South, Range 28 East, Osceola County, Florida. Said parcel being more particularly described as follows:

Commence at the Northwest corner of said Section 17; thence South  $26^{\circ} 23' 20''$  East, 826.00 feet along

the County line of Polk County and Osceola County Florida to the Point of Beginning, also being a point on a non-tangent curve concave Northeasterly, having a radius of 11559.00 feet, a central angle of 02° 18' 05" and a chord of 456.24 feet that bears South 68° 19' 56" East; thence leaving said County line, run along the arc of said curve a distance of 456.27 feet to the point of tangency; thence South 69° 28' 59" East, 2244.43 feet; thence South 20° 31' 01" West, 12.00 feet; thence South 69° 28' 59" East, 2662.44 feet to a point on the East line of said Section 17; thence continue South 69° 28' 59" East, 2626.59 feet to a point on the East line of the Southwest 1/4 of said Section 16; thence South 00° 46' 10" West, 187.00 feet along said East line of the Southwest 1/4; thence leaving said East line of the Southwest 1/4, run North 69° 28' 59" West, 2628.30 feet to a point on the West line of said Section 16; thence continue North 69° 28' 59" West, 2723.91 feet; thence South 20° 31' 01" West, 12.00 feet; thence North 69° 28' 59" West, 70.48 feet; thence South 20° 31' 03" West, 102.91 feet; thence South 51° 24' 23" West, 48.27 feet; thence South 55° 27' 47" West, 76.38 feet; thence South 11° 30' 23" West, 90.40 feet; thence South 47° 30' 29" East, 65.26 feet; thence South 33° 07' 49" East, 67.87 feet; thence South 04° 12' 53" West, 66.73 feet; thence South 55° 05' 46" West, 107.27 feet; thence North 67° 36' 35" West, 82.33 feet; thence North 59° 17' 11" West, 96.18 feet; thence North 71° 02' 09" West, 157.23 feet; thence North 66° 34' 52" West, 117.09 feet; thence North 21° 19' 23" East, 491.91 feet; thence North 69° 28' 59" West, 1748.47 feet to the point of curvature of a curve to the right, having a radius of 11559.00 feet and a central angle of 01° 09' 56"; thence along the arc of said curve a distance of 235.26 feet to a point on the aforesaid County line; thence leaving said curve, run North 26° 23' 20" West, 302.65 feet along said County line to the Point of Beginning.



APPENDIX S  
DEPICTION OF VESTED PROPERTY



ATTACHMENT B

This instrument was prepared by or under the supervision of (and after recording should be returned to):

Andrew W. Mai  
Osceola County Attorney  
1 Courthouse Square, Suite 4200  
Kissimmee, Florida 34741

(Space reserved for Clerk of Court)

**COUNTY DEED**

THIS DEED, made by Osceola County, a charter county and political subdivision of the State of Florida, whose mailing address is 1 Courthouse Square, Suite 4200, Kissimmee, Florida, 34741, hereinafter referred to as Grantor, and the Central Florida Expressway Authority, a body politic and corporate created by Part III, chapter 348, Florida Statutes, whose mailing address is 4974 ORL Tower Road, Orlando, Florida 32807, hereinafter referred to as Grantee,

WITNESSETH, that the said Grantor, for and in consideration of the sum of \$10.00, to it in hand paid by Grantee, receipt whereof is hereby acknowledged, has granted, bargained and sold to the Grantee, his heirs and assigns forever, the following described land, lying and being in Osceola County, Florida, to wit:

(see Exhibit 'A')

Subject to easements and restrictions of record.

IN WITNESS WHEREOF, the said Grantor has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chair or Vice-Chair of said Board, on the 5th day of December, 2019.

**BOARD OF COUNTY COMMISSIONERS  
OF OSCEOLA COUNTY, FLORIDA**

By: \_\_\_\_\_  
Chair/Vice-Chair

**ATTEST:**  
OSCEOLA COUNTY CLERK OF THE BOARD

By: \_\_\_\_\_  
Clerk/Deputy Clerk of the Board

As authorized for execution at the  
Board of County Commissioners meeting of:  
December 3, 2018



**EXHIBIT 'A'**

The land referred to herein below is situated in the County of Osceola, State of Florida, and described as follows:

Tract 1, Tract 2 and Tract P-1, POINCIANA PARKWAY - OSCEOLA COUNTY PORTION, according to the plat thereof, as recorded in Plat Book 22, Pages 163 through 177, inclusive, Public Records of Osceola County, Florida.

TOGETHER WITH a parcel of land being a portion of Sections 27 and 28, Township 26 South, Range 28 East, Osceola County, Florida and being more particularly described as follows:

Commence at the West  $\frac{1}{4}$  corner of Section 27, Township 26 South, Range 28 East; thence run N89°22'07"E along the South line of the Northwest  $\frac{1}{4}$  of said Section 27, a distance of 159.12 feet to the Point of Beginning, said point being a point on a circular curve, concave to the Northwest, having a Radius of 2,000.00 feet and a Central Angle of 17°23'52"; thence run Northeasterly along the Arc of said curve, a distance of 607.29 feet (Chord Bearing = N10°14'39"E, Chord = 604.96 feet) to a point on the West line of Tract 1, POINCIANA PARKWAY - OSCEOLA COUNTY PORTION, according to the Plat thereof, as recorded in Plat Book 22, Pages 163-177 of the Public Records of Osceola County, Florida; thence along said West line of Tract 1 the following two (2) courses and distances; thence run S19°29'18"E, a distance of 117.14 feet to the Point of Curvature of a curve, concave to the Southwest, having a Radius of 11,309.00 feet and a Central Angle of 01°42'31"; thence run Southeasterly along the Arc of said curve, a distance of 337.24 feet (Chord Bearing = S18°38'03"E, Chord = 337.24 feet) to a point on a non-tangent curve, concave to the Northwest, having a Radius of 2,200.00 feet and a Central Angle of 12°01'41"; thence departing said West line of Tract 1, run Southwesterly along the Arc of said curve, a distance of 461.84 feet (Chord Bearing = S18°43'18"W, Chord = 460.99 feet) to the Point of Reverse Curvature of a curve, concave to the Southeast, having a Radius of 1,100.00 feet and a Central Angle of 02°05'35"; thence run Southwesterly along the Arc of said curve, a distance of 40.18 feet (Chord Bearing = S23°41'21"W, Chord = 40.18 feet) to a point; thence run N67°21'27"W, a distance of 10.00 feet to a point on a non-tangent curve, concave to the Northeast, having a Radius of 1,110.00 feet and a Central Angle of 87°41'47"; thence run Southeasterly along the Arc of said curve, a distance of 1,698.95 feet (Chord Bearing = S21°12'20"E, Chord = 1,537.90 feet) to a point on the aforesaid West line of Tract 1, said point being a point on a circular curve, concave to the West, having a Radius of 11,259.00 feet and a Central Angle of 01°03'19"; thence run Southerly along the Arc of said curve and along said West line of Tract 1, a distance of 207.38 feet (Chord Bearing = S07°23'07"E, Chord = 207.37 feet) to a point on a non-tangent curve, concave to the Northeast, having a Radius of 1,290.00 feet and a Central Angle of 92°37'42"; thence departing said West line of Tract 1, run Northwesterly along the Arc of said curve, a distance of 2,085.50 feet (Chord Bearing = N23°40'18"W, Chord = 1,865.70 feet) to a point; thence run N67°21'27"W, a distance of 10.00 feet to a point on a non-tangent curve, concave to the Southeast, having a Radius



of 1,300.00 feet and a Central Angle of  $02^{\circ}05'35''$ ; thence run Northeasterly along the Arc of said curve and distance of 47.49 feet (Chord Bearing =  $N23^{\circ}41'21''E$ , Chord = 47.48 feet) to the Point of Reverse Curvature of a curve, concave to the Northwest, having a Radius of 2,000.00 feet and a Central Angle of  $05^{\circ}47'33''$ ; thence run Northeasterly along the Arc of said curve, a distance of 202.19 feet (Chord Bearing =  $N21^{\circ}50'22''E$ , Chord = 202.11 feet) to the Point of Beginning.

AND

A parcel of land being a portion of Section 27, Township 26 South, Range 28 East, Osceola County, Florida and being more particularly described as follows:

Commence at the Northwest corner of Section 27, Township 26 South, Range 28 East; thence run  $S00^{\circ}29'54''W$  along the West line of said Section 27, a distance of 841.16 feet to a point; thence departing said West line, run  $S89^{\circ}30'06''E$ , a distance of 162.13 feet to a point on the East line of Tract 1, POINCIANA PARKWAY – OSCEOLA COUNTY PORTION, according to the Plat thereof, as recorded in Plat Book 22, Pages 163-177 of the Public Records of Osceola County, Florida, said point being the Point of Beginning and also a point on a circular curve, concave to the Northeast, having a Radius of 2,715.00 feet and a Central Angle of  $02^{\circ}02'17''$ ; thence along said East line of Tract 1, the following two (2) courses and distances; thence run Southeasterly along the Arc of said curve, a distance of 96.57 feet (Chord Bearing =  $S18^{\circ}28'10''E$ , Chord = 96.57 feet) to the Point of Tangency thereof; thence run  $S19^{\circ}29'18''E$ , a distance of 687.00 feet to the point on a non tangent curve, concave to the Southwest, having a Radius of 2,200.00 feet and a Central Angle of  $17^{\circ}42'14''$ ; thence departing said East line of Tract 1, run Northerly along the Arc of said curve, a distance of 679.78 feet (Chord Bearing =  $N18^{\circ}21'52''W$ , Chord = 677.08 feet) to the Point of Reverse Curvature of a curve, concave to the Northeast, having a Radius of 2,000.00 feet and a Central Angle of  $03^{\circ}04'19''$ ; thence Northwesterly along the arc of said curve, a distance of 107.23 feet (Chord Bearing =  $N25^{\circ}40'50''W$ , Chord = 107.22 feet) to the POINT OF BEGINNING.

## ATTACHMENT C

Project 538-232  
Parcels 538-100A, 538-100B, 538-100C

### PROPERTY EXCHANGE AGREEMENT

**THIS PROPERTY EXCHANGE AGREEMENT** (“Agreement”) is made and entered into as of the Effective Date (hereinafter defined) by and between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body corporate and an agency of the State of Florida, created by Part III of Chapter 348, Florida Statutes, whose address is 4974 ORL Tower Road, Orlando, Florida 32801-4414 (“CFX”), and AVATAR PROPERTIES INC., a Florida corporation, whose address is 2600 Lake Lucien Drive, Suite 350, Maitland, Florida 32751 (“Avatar”). CFX and Avatar are referred to herein sometimes as a “Party” or the “Parties”.

### RECITALS

**WHEREAS**, Avatar, Osceola County, Florida (“Osceola”), Polk County, Florida (“Polk”), and the Osceola County Expressway Authority (“OCX”) entered into that certain Agreement for Development of Poinciana Parkway recorded October 15, 2012 in Official Records Book 4335, Page 291, Public Records of Osceola County, Florida, setting forth certain rights and obligations of the parties thereto for the right-of-way acquisition necessary for the construction of the Poinciana Parkway (“Development Agreement”); and

**WHEREAS**, CFX, the successor in interest to OCX, was created pursuant to Part III, Chapter 348, Florida Statutes (“CFX Act”) to, among other things, construct, improve, maintain and operate a limited access toll road known as the Central Florida Expressway System, as defined in the CFX Act, and was granted all powers necessary and convenient to conduct its business, including the power to contract with other public agencies; and

**WHEREAS**, pursuant to the terms of the Development Agreement, Avatar was required to transfer, convey and dedicate certain real property and easements to Osceola and OCX to enable OCX to construct the Poinciana Parkway and all required infrastructure thereto (collectively, the “Expressway Facilities”); and

**WHEREAS**, Avatar transferred fee simple interest of some of the real property identified in the Development Agreement to Osceola pursuant to that certain Special Warranty Deed recorded in Official Records Book 4595, Page 1098, Public Records of Osceola County, Florida, and Special Warranty Deed recorded in Official Records Book 4595, Page 1104, Public Records of Osceola County, Florida (collectively, the “Avatar Deeds”); and

**WHEREAS**, Osceola and CFX entered into that certain Amended and Restated Lease-Purchase Agreement dated December 12, 2018 (“Acquisition Agreement”) outlining the transfer of fee simple interest in the real property from Osceola to CFX for the Poinciana Parkway, and

**WHEREAS**, the real property Osceola acquired from Avatar pursuant to the Avatar Deed was transferred and assigned to CFX pursuant to that certain County Deed recorded December 5, 2019 as in Official Records Book 5635, Page 1513 (“County Deed”), and Osceola further assigned to CFX all of the duties, obligations and liabilities of Osceola with respect to the Development Agreement; and

**WHEREAS**, Avatar remains the owner of certain real property more particularly depicted on

**Exhibit “A”** attached hereto and incorporated herein by reference that was intended to have been transferred to Osceola, and subsequently CFX, in accordance with the Development Agreement and the CFX Acquisition Agreement; and

**WHEREAS**, during the construction of the Poinciana Parkway, OCX designed, permitted and constructed certain stormwater drainage facilities, including stormwater conveyance facilities, retention and detention ponds, appurtenant to and supporting the needs of the Poinciana Parkway, and any expansion thereto up to six (6) lanes, located on real property owned by Avatar as more particularly depicted in **Exhibit “A”** attached hereto and incorporated herein by reference (individually referred to herein as the “Drainage Pond” or collectively, “Drainage Ponds”) in accordance with the South Florida Water Management District permit numbers 53-00216-P and 49-0094-S-66 (collectively, the “Permits”); and

**WHEREAS**, Avatar was a party to, and consented to, the application for the Permits and the construction and excavation of the Drainage Ponds on the real property owned by Avatar; and

**WHEREAS**, CFX is currently designing an expansion and extension to Poinciana Parkway, which design may include the potential reshaping, relocation or reconfiguration of the Drainage Ponds; and

**WHEREAS**, certain real property more particularly described in **Exhibit “B”** attached hereto and incorporated herein by reference (“Surplus Property”) was transferred to Osceola, and subsequently CFX, pursuant to the Avatar Deed and County Deed; and

**WHEREAS**, the Parties desire to transfer fee simple interest of the real property from Avatar to CFX for the Drainage Ponds owned by Avatar required for the construction of the Poinciana Parkway, and any expansions or extensions thereto, in order to effectuate the intent of the Development Agreement and CFX Acquisition Agreement; and

**WHEREAS**, the Parties desire to transfer fee simple interest of the Surplus Property from CFX to Avatar; and

**WHEREAS**, the Parties desire to enter into this Agreement to finalize the transfer of real estate outlined in the Development Agreement, and further clarify the rights and obligations of the Parties hereto under the Development Agreement in accordance with the terms and conditions more specifically provided herein.

**NOW THEREFORE**, for and in consideration of the premises hereof, the sums of money to be paid hereunder, the mutual covenants herein contained and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

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

2. **Drainage Ponds.**

a. **Design of Drainage Site Plan.** CFX and Avatar agree to cooperate and work in good faith to identify any potential relocation, reconfiguration, or reshaping of the Drainage Ponds no later than one hundred eighty (180) days from the Effective Date hereof (“Design Period”). CFX shall prepare and provide to Avatar for review a site plan (“Drainage Site Plan”) evidencing the size, location, and configuration of the Drainage Ponds that CFX intends to relocate, reconfigure, or reshape no later than ninety (90) days from the Effective Date (“Initial Design Deadline”), unless mutually extended by the Parties in writing. CFX shall use good faith efforts to design and engineer the Drainage Site Plan during

the Design Period in a location, shape, configuration, and manner substantially consistent with and as depicted on **Exhibit “D”** attached hereto and incorporated herein by reference (“Proposed Drainage Site Plan”). Notwithstanding the foregoing, the Parties understand and acknowledge that the Proposed Drainage Site Plan and the final relocation, reconfiguration, or reshaping of the Drainage Ponds is subject to the development of final engineering plans by CFX confirming the ability of the Drainage Ponds, as modified, to accommodate the drainage needs of the existing and any future extensions or expansions of the Poinciana Parkway, and any and all approvals or permits reasonably required by the applicable Water Management District or any other governmental entities. Within thirty (30) days of receipt of the Drainage Site Plan from CFX, Avatar shall review the Drainage Site Plan and provide any written comments to CFX for review and consideration. Avatar understands that any comments provided to CFX by Avatar will be accommodated as long as the request does not materially or adversely impact CFX’s facilities or materially reduce the Drainage Pond’s ability to treat and attenuate stormwater as defined by the applicable Water Management District rules or otherwise negatively impact CFX’s ability to construct, or accommodate the drainage needs of the existing, and any future expansions or extensions of the, Poinciana Parkway in accordance with the Permits. Once CFX and Avatar have mutually agreed upon the size, location, and configuration of the Drainage Ponds but no later than the expiration of the Design Period, CFX shall prepare, or cause to be prepared, and provide to Avatar for review certified legal descriptions and sketches identifying the metes and bounds of all of the Drainage Ponds, as may be relocated, reshaped, or reconfigured, for review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. To the extent the Drainage Ponds are reshaped, reconfigured or relocated, Avatar shall grant CFX a perpetual drainage easement over any stormwater drainage conveyance facilities, swales, or infrastructure otherwise required to maintain the outfall of the Drainage Ponds (“Drainage Rights”). CFX acknowledges and agrees that such modifications by Avatar will include certain modifications to the spreader swale connecting Pond 4-2 to a wetland which will be impacted by a road connection to the proposed K-8 school site. As such, the future modifications of the Drainage Rights by Avatar may be done consistent with that objective provided that the permitted flow rates and velocities discharging from the pond into the wetland are preserved and adhere to SFWMD criteria.

b. Drainage Pond 4-1. CFX and Avatar agree to cooperate and work in good faith for CFX to abandon the Drainage Pond more particularly identified as Drainage Pond 4-1 on **Exhibit “A”** attached hereto and incorporated herein by reference (“Pond 4-1”). Avatar understands and acknowledges that the CFX’s abandonment of Pond 4-1 will require the construction of an alternate drainage pond identified as Pond 5 on **Exhibit “A”** (“Replacement Pond”) by CFX to accommodate the CFX drainage needs previously accommodated by Pond 4-1. Notwithstanding anything to the contrary in this Agreement, CFX has submitted an Environmental Resource Permit (ERP) application to the Water Management District for Pond 5 prior to the Effective Date. Within thirty (30) days of the Water Management District’s issuance of a permit for Pond 5 (“Pond 5 Permit”), but no later than June 15, 2021, CFX shall submit an application to the Water Management District to modify the Pond 5 Permit with such application providing clear direction to the Water Management District that Pond 4-1 drainage from CFX is being relocated to the Replacement Pond. Additionally, and as a material inducement for Avatar to enter this Agreement, CFX agrees to complete the construction of the Replacement Pond by no later than eighteen (18) months from the Effective Date with such completion of construction including, but not limited to, the Replacement Pond functioning such that it accepts all drainage from the Poinciana Parkway. In the interim, no later than thirty (30) days from the Effective Date (“TCE Period”) hereof unless otherwise extended by the mutual consent of the Parties, in lieu of conveying fee simple ownership in Pond 4-1 to CFX at Closing, Avatar agrees to grant to CFX a temporary drainage and construction easement over Pond 4-1 and the adjacent area for the purpose of treating, attenuating and accommodating the stormwater drainage needs of the existing two lanes for Poinciana Parkway, which shall consist of a minimum volume of 3.29 acres/feet of stormwater drainage capacity in Pond 4-1, and for the purpose of removing or relocating any conveyance facilities conveying stormwater from the Poinciana Parkway to Pond 4-1 (“Pond 4-1 TCE”). The boundaries and location of the Pond 4-1 TCE shall be mutually agreed upon by the Parties during the TCE Period.

Avatar reserves the right, at its sole cost and expense, to design, modify, or otherwise reduce or fill any portion of the Pond 4-1 not otherwise covered by the Pond 4-1 TCE, subject to the requirement of the Water Management District to modify the Permits. CFX shall, at its sole cost and expense, be responsible for modifying, removing or relocating any conveyance facilities or pipes conveying water from the Poinciana Parkway to Pond 4-1 and redirecting the stormwater drainage to the Replacement Pond, and for otherwise maintaining the area within the Pond 4-1 TCE. The Pond 4-1 TCE shall terminate upon the earlier to occur of eighteen (18) months from the Effective Date or written notice from CFX that the Replacement Pond is completed and available to accept the Poinciana Parkway stormwater drainage. Upon the termination of the Pond 4-1 TCE, CFX agrees to execute any and all documentation reasonably necessary to terminate and release any and all rights CFX has in and to Pond 4-1 pursuant to the Development Agreement and this Agreement.

c. Conveyance of the Drainage Ponds. At the Closing (hereinafter defined), Avatar agrees to transfer, assign, and convey to CFX, and CFX agrees to accept by special warranty deed, all of Avatar's right, title, and interest in and to the Drainage Ponds, as revised in accordance with the Drainage Site Plan and excluding Pond 4-1, and reserve an easement in favor of CFX for the Drainage Rights consistent with Section 2a of this Agreement, subject to the covenants, reservations, conditions, restrictions, and easements of record, including, without limitation, the Drainage Easement set forth herein. No monetary payment shall be made to Avatar for the Drainage Ponds.

d. Drainage Pond 4-2. CFX and Avatar agree to cooperate and work in good faith to agree upon the size and shape of Drainage Pond 4-2 by no later than March 18, 2021. CFX acknowledges that Avatar is processing a Preliminary Subdivision Plan and related approvals with Osceola County and that any delays caused by failure to agree upon the size and shape of Drainage Pond 4-2 will cause damages to Avatar which are difficult to estimate by the Effective Date.

e. Reservation of Drainage Easement. At the Closing, Avatar shall have the right to reserve in favor of a governmental entity, quasi-governmental, or public agency, including, without limitation, any community development district and/or other similar unit(s) (e.g., the School District of Osceola County) of special purpose government (collectively, "Special Purpose Entity") a perpetual non-exclusive drainage easement ("Drainage Easement") over the Drainage Ponds mutually agreed upon between Avatar and CFX but, including, without limitation, Drainage Ponds 4-3 and 4-5 (collectively, the "Joint Use Ponds") for the purpose of providing joint use stormwater retention and detention facilities for the neighboring real property currently owned by Avatar. The drainage easement may be reserved at Closing but shall not be effective until such time as a Special Purpose Entity assumes the ownership of the real property benefitted by the drainage easement. For clarity and avoidance of doubt, the term Special Purpose Entity may include more than one such entity and, in such regard, notwithstanding anything to the contrary, any references in this Agreement to the singular also includes the plural.

(i) Maintenance of Joint Use Ponds. Subject to subsection (ii) below, to the extent the Drainage Ponds are solely used for the drainage needs of CFX and not otherwise modified or expanded to provide for additional capacity for the remaining real property owned by Avatar, CFX agrees to be responsible for the design, engineering, permitting, construction, excavation, operation, and maintenance of the Drainage Ponds, at no cost or expense to Avatar or the Special Purpose Entity. The Parties agree that, unless otherwise modified in the Permits, the final volume of the Drainage Ponds, including, without limitation, the Joint Use Ponds, shall not exceed the volume currently approved for the Drainage Ponds pursuant to the Permits. The final location of the Joint Use Ponds and the terms and conditions of the Drainage Easement shall be mutually agreed upon between Avatar and CFX during the Design Period. Upon completion of the Joint Use Ponds for the joint use by CFX and a Special Purpose Entity in accordance with the terms of the Drainage Easement, CFX shall operate and maintain the Joint Use Ponds, subject to reimbursement from Avatar's assignee, based on a pro-rata share of the volume in



the Joint Use Ponds based on the Permits, as modified. Upon written request, CFX will provide the Special Purpose Entity which is utilizing the Joint Use Ponds with an annual accounting of the cost to maintain any Joint Use Ponds. Avatar understands and acknowledges on behalf of its successors and assigns that any such annual accounting will be calculated based on a pro-rata basis using recurring maintenance costs associated with the Joint Use Ponds based on the permitted drainage volume, unless such cost occurs on an “as-needed” basis, such as any repairs or improvements, specific to the Joint Use Ponds. CFX shall provide a preliminary written estimate of such as-needed cost within thirty (30) days from such cost being incurred.

(ii) Expansion of the Joint Use Ponds. In the event any construction, modification, or addition to the Joint Use Ponds is necessary to accommodate the additional volume for the joint use and CFX and Avatar mutually agree to expand or increase the volume of the Joint Use Ponds, Avatar, or its assignee, shall be responsible, at its sole cost and expense, for any and all costs associated with the design, permitting, engineering, construction, and excavation associated with the expansion of the Joint Use Ponds unless otherwise agreed to in writing by Avatar and CFX; provided, however, in no event shall the volume attributed to CFX in the Joint Use Ponds in accordance with the Permits be reduced or otherwise impacted. Avatar shall perform all construction and excavation in good order and repair in accordance with all applicable permits and other governmental requirements and at no cost to CFX. Prior to commencing any alternations or modifications to the Joint Use Ponds, Avatar shall be responsible, at its sole cost and expense, for modifying the Permits to allow for the expansion of the Joint Use Ponds and shall take any and all action reasonably necessary to ensure the drainage rights of CFX are not adversely impacted. Upon completion of the Joint Use Ponds, CFX shall operate and maintain the Joint Use Ponds, subject to reimbursement from Avatar, or its assignee, based on a pro-rata share of the volume in the Joint Use Ponds based on the Permits, as modified. Avatar understands and acknowledges that in the event CFX elects to fence the Joint Use Ponds, Avatar shall be responsible, at its sole cost and expense, for removing, relocating, and installing the Fence (hereinafter defined) to ensure the Joint Use Ponds, as expanded, are completely and wholly fenced along the perimeter of the Joint Use Ponds.

f. Permits. Except as otherwise provided herein, CFX shall, at its sole cost and expense, promptly take any and all action reasonably necessary to promptly modify the Permits to provide for the relocation, reconfiguration or reshaping of any of the Drainage Ponds in accordance with the terms and conditions hereof. To the extent required by the water management district, Avatar shall cooperate with CFX (and CFX shall similarly cooperate with Avatar) and execute any and all permit modification applications required to effectuate the intent hereof.

g. Construction of the Drainage Ponds. Except for CFX’s abandonment and Avatar’s potential filling of Pond 4-1 as set forth herein, CFX shall, at its sole cost and expense, be responsible for the design, engineering, permitting, excavation and construction of the Drainage Ponds, as same may be relocated, reconfigured or reshaped to the extent such reshaping, reconfiguration or relocation is of the same or similar permitted volume as the existing Drainage Ponds. CFX shall perform all construction and excavation in good order and repair in accordance with all applicable permits and other governmental requirements. The Parties agree that CFX shall have the right, in its sole and absolute discretion, to install, construct and maintain fencing along the perimeter of the Drainage Ponds or Joint Use Ponds (“Fence”).

h. Temporary Construction Easement for Drainage Ponds Expansion. At the Closing, and subject to CFX providing, or causing any contractor of CFX to provide, evidence of appropriate insurance, Avatar agrees to grant to CFX a temporary construction and access easement (“Temporary Construction Easement”) over, upon, across, and onto the real property owned by Avatar adjacent to the Drainage Ponds in a mutually agreed upon location, for the purpose of reshaping, reconfiguring or relocating the Drainage Ponds. CFX agrees to be responsible for the design, permitting, construction of any access road or path, if necessary, to access the Temporary Construction Easement and the operation and maintenance of the areas within the Temporary Construction Easement, at no cost or expense to the Avatar.

The final location of the Temporary Construction Easement and terms and conditions of the Temporary Construction Easement shall be mutually agreed upon by Avatar and CFX during the Design Period, and such Temporary Construction Easement shall be executed on or before the Closing. The Temporary Construction Easement shall terminate upon the completion of the construction and excavation required to reshape, reconfigure or relocate the Drainage Ponds.

i. Temporary Construction Easement over Surplus Property. At the Closing, and subject to CFX providing, or causing any contractor of CFX to provide, evidence of appropriate insurance, Avatar agrees to grant to CFX a temporary construction and access easement over, upon, across, and onto a portion of the Surplus Property more particularly depicted in Exhibit "C" attached hereto and incorporated herein by reference for the purpose of locating a construction trailer, parking, staging and storing materials, and additional facilities, materials and uses reasonably required for the construction of the expansion of the Poinciana Parkway ("Surplus Property TCE"). CFX agrees to be responsible for the operation and maintenance of the areas within the Surplus Property TCE, at no cost or expense to the Avatar. Within the limits of Section 768.28, Florida Statutes, CFX, and any assignee of the Surplus Property TCE, shall at all times indemnify, save harmless and defend Avatar from and against any and all claims, liabilities, losses, costs, lawsuits, disputes, damages and expenses (including reasonable attorneys' fees whether incurred at or before the trial level or in any appellate proceedings) which Avatar may suffer, sustain or incur by reason of the exercise of CFX's right under the Surplus Property TCE, including, without limitation, any damage to the Surplus Property or to any person or other real or personal property, and including the filing of any mechanics' or other statutory or common law lien or claims against the Surplus Property or any part thereof, unless otherwise caused by the intentional misconduct, recklessness or gross negligence of Avatar or its agents, assignees, employees, guests, or contractors. This provision shall survive Closing or earlier termination of this Agreement. The final location of the Surplus Property TCE and terms and conditions of the Surplus Property TCE shall be mutually agreed upon by Avatar and CFX during the Design Period, and such Temporary Construction Easement shall be executed on or before the Closing. CFX shall prepare, or cause to be prepared, and provide to Avatar for review certified legal descriptions and sketches identifying the area of the Surplus Property TCE for review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. The Surplus Property TCE shall terminate upon the earlier of the completion of the construction of the expansion of the Poinciana Parkway or three (3) years from the date of the Surplus Property TCE, unless otherwise extended as provided therein. Notwithstanding the foregoing, Avatar reserves the right, in its sole discretion, to terminate and relocate the Surplus Property TCE by providing ninety (90) days prior written notice of such termination and relocation to CFX.

j. Fill Materials. In the event CFX elects to reconfigure, reshape or relocate any of the Drainage Ponds, CFX shall provide Avatar all fill materials removed or excavated from the area of the Drainage Ponds to the extent such fill is not otherwise necessary for the reshaping of the Drainage Ponds and shall stockpile such fill at a location mutually agreed upon by the Parties located immediately adjacent to the Drainage Ponds on real property owned by Avatar and within the Temporary Construction Easement. The fill shall be stockpiled at a location and in a manner consistent with and as depicted on Exhibit "D" attached hereto and incorporated herein by reference. Notwithstanding the foregoing, except for the Drainage Ponds, Avatar shall not have any rights in any fill excavated from any other drainage ponds or facilities excavated by CFX for the expansion or extension of the Poinciana Parkway. In the event Avatar and CFX mutually agree to expand or increase the volume of the Joint Use Ponds or any of the other Drainage Ponds, Avatar shall have the right to retain any additional fill materials removed or excavated during the construction and excavation of the expansion of the Drainage Ponds, and to the extent necessary to exercise Avatar's rights hereunder, CFX shall grant to Avatar a temporary construction and access easement to remove the additional fill materials. Nothing in this Agreement shall be construed to require Avatar to provide fill for any existing ponds or future ponds. This provision shall survive the Closing.

k. Fill of Existing Ponds. In the event CFX and Avatar agree during the Design Period that any of the Drainage Ponds will be relocated and as such, any existing Drainage Pond, or portion thereof, will be required to be filled, Avatar shall, at its sole cost and expense, be responsible for any such fill activities associated with the existing Drainage Pond locations; provided, however, in the event a reconfigured Drainage Pond is adjacent to, or a part of, the existing Drainage Pond, CFX shall, at its sole cost and expense, design, permit and construct a berm to separate the reconfigured Drainage Pond from the existing abandoned Drainage Pond on the real property owned by CFX. Notwithstanding the foregoing, in the event any of the existing Drainage Ponds are relocated, Avatar may elect to use the existing excavated area for the stormwater retention and detention for Avatar's proposed development; provided, however, such use shall not impact or impair CFX's ability to modify the Permits for the reshaping, relocation or reconfiguration of any of the Drainage Ponds required for the Poinciana Parkway project, or any expansion thereto.

3. Utility Facilities.

a. Design of Utilities. No later than the Initial Design Deadline, Avatar shall prepare and provide to CFX for review a site plan ("Utility Site Plan") evidencing the location of any proposed crossing or longitudinal utility lines or facilities, including, without limitation, reclaimed water or sanitary sewer lines ("Utilities"), located within the real property owned by CFX. Within thirty (30) days of receipt of the Utility Site Plan from Avatar, CFX shall review the Utility Site Plan and provide any written comments to Avatar for review and consideration. Once CFX and Avatar have mutually agreed upon the size, location, and configuration of the Utilities but no later than the expiration of the Design Period, Avatar shall prepare, or cause to be prepared, and provide to CFX for review certified legal descriptions and sketches identifying the metes and bounds of all of the Utilities, as may be relocated, reshaped, or reconfigured, for review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. In the event that Avatar requires any subsequent non-material changes to the Utility Site Plan, Avatar shall provide an updated plan including updated legal descriptions and sketches, and CFX agrees to promptly review and provide comments on any such changes.

b. Permits and Approvals. Avatar understands and acknowledges that the approval of any utility crossings or longitudinal utility lines is governed by CFX's Property Acquisition & Disposition Procedures Manual adopted by CFX on September 7, 2017, as may be amended from time to time ("CFX's Policy"). In connection with this Agreement, Avatar is requesting approval of the longitudinal utility lines more particularly depicted in Exhibit "E" attached hereto and incorporated herein by reference ("Longitudinal Lines"), which Longitudinal Lines will be conveyed to a Special Purpose Entity upon completion of the construction and installation of the Longitudinal Lines to the extent such Longitudinal Lines are located on real property owned by CFX. Avatar represents and warrants that the Longitudinal Lines would create an unreasonable hardship for the utility agency/owner ("UAO"), the UAO's design alternative would not unreasonably interfere with the safety, operation, maintenance, future improvement or expansion of the Poinciana Parkway, and all other alternatives have been explored and are not viable. If the conditions in the prior sentence are present, as hereby determined by of CFX, Avatar's request for approval of the Longitudinal Lines is hereby approved by CFX's Right of Way Committee and CFX's Board based upon the recognition of an unreasonable hardship in accordance with Section 5-8.04 and 5-8.06 of CFX's Policy, provided; however, this approval is expressly contingent upon the conveyance of the RW-1 Property (hereinafter defined) to Osceola County and from Osceola County to CFX in accordance with Section 5.c. hereof. Notwithstanding the foregoing determination of an unreasonable hardship for the Longitudinal Lines, Avatar understands and acknowledges that Avatar will need to submit an application for a utility permit with CFX in accordance with Part 8 of CFX's Policy and will otherwise need to submit an application for a determination of a hardship in accordance with Section 5-8.04 and 5-8.06 of CFX's Policy for any Longitudinal Lines not otherwise included within the request set forth herein. Notwithstanding the foregoing determination of an unreasonable hardship for the Longitudinal Lines,



Avatar understands and acknowledges that Avatar will need to submit an application for a right-of-way utilization permit or other applicable utility permit with Osceola County for any portion of the utilities that are not located within real property owned by CFX. CFX agrees that the submittal and processing of such application shall not alter the aforementioned hardship determination.

c. **Construction of the Utilities.** In the event CFX's Right of Way Committee and Board approves the Utilities, Avatar shall, at its sole cost and expense, be responsible for the design, engineering, permitting, excavation and construction of the Utilities. Avatar shall perform all construction and excavation in good order and repair in accordance with all applicable permits and other governmental requirements and at no cost to CFX.

4. **Poinciana Parkway Buffer.** Avatar will provide a 25 foot buffer on real property owned by Avatar and adjacent to the Poinciana Parkway right of way excluding any ponds used for drainage of Poinciana Parkway.

5. **Transfer of Surplus Property by CFX; Conveyance of RW-1 to CFX by Avatar.**

a. **Legal Description of the Surplus Property.** The sketch and legal description for the Surplus Property is attached hereto as **Exhibit "B"** attached hereto and incorporated herein by this reference.

b. **Conveyance of Surplus Property.** Concurrent with the transfer of the Drainage Ponds from Avatar to CFX (other than Drainage Pond 4-1), CFX agrees to transfer, assign, and convey to Avatar, and Avatar agrees to accept by special warranty deed, all of CFX's right, title, and interest in and to the Surplus Property, subject to the covenants, reservations, conditions, restrictions, and easements of record. No monetary payment shall be made to CFX for the Surplus Property. Avatar hereby agrees, acknowledges and understands that the Poinciana Parkway, and any expansion or extension thereto, was and is anticipated to be a limited access right-of-way, and as such, CFX has the right, at any time, to record and establish the limited access lines on and along the real property owned by CFX for any portion of the Poinciana Parkway, or otherwise establish the limited access lines in the deed to the Surplus Property by reserving all rights of ingress, egress, light, air, and view to, from, or across any Poinciana Parkway right-of-way property.

c. **RW-1.** Concurrently with the execution of this Agreement, Avatar will deliver to Osceola County, Florida the special warranty deed for the right of way parcel referred to as RW-1 in that certain Poinciana Plat recorded among the public records of Osceola County, Florida as Plat Book 22, Page 163-177 ("RW-1 Property"). CFX shall take any and all action reasonably required to request, and accept, a corrective deed from Osceola County, Florida for the RW-1 Property.

6. **Title and Survey.**

a. **Evidence of Title.** At any time before Closing, either Party may, at its sole cost and expense, order a commitment from an agent for a policy of owner's title insurance ("Title Commitment") which shall be written on a title insurance company reasonably satisfactory and acceptable to that party.

b. **Survey.** Either Party shall have the right, at any time before Closing, to have the Surplus Property or Drainage Ponds, surveyed at its sole cost and expense ("Survey"). Any survey shall be performed and certified to CFX, Avatar, and any applicable title company. The surveyor shall provide certified legal descriptions and sketches of said descriptions and the legal descriptions will be included in the applicable deed subject to the approval of the Parties.

c. Title and Survey Objections. In the event either CFX or Avatar elect to obtain a Survey or Title Commitment on the Drainage Ponds or Surplus Property, respectively, within thirty (30) days after the receipt of the later to be received of the Survey or the Title Commitment, said Party shall provide the other Party with notice of any matters set forth in the Title Commitment or Survey which are unacceptable to that Party, which matters shall be referred to herein as "Title Defects". Any matters set forth in the Title Commitment or Survey to which a Party does not timely object shall be referred to collectively herein as the "Permitted Exceptions". The other Party, at its election, shall have thirty (30) days after receipt of the aforesaid notice ("Cure Period") within which to use commercially reasonable efforts to cure such Title Defects to the reasonable satisfaction of the Party and the Title Company. In the event the other Party fails or refuses to cure any Title Defect(s) within the Cure Period, then said Party may at its option by delivering written notice thereof to the other Party within seven (7) days after expiration of the Cure Period (i) terminate this Agreement, whereupon the Agreement shall be deemed null and void and of no further force and effect, and no party hereto shall have any further rights, obligations or liability hereunder; or (ii) accept title to the Surplus Property or Drainage Ponds, as applicable, subject to such Title Defect(s).

7. Right of Entry and Inspections.

a. Access to the Drainage Ponds. Upon CFX providing, or causing any contractor of CFX to provide, evidence of sufficient insurance, CFX shall at all times before Closing have the right to enter upon the Drainage Ponds with its agents and engineers as needed to inspect, examine, survey, appraise and otherwise undertake those actions which CFX, in its sole discretion, deems necessary or desirable to determine the suitability of the Drainage Ponds for CFX's intended use. Said privilege shall include, without limitation, the right to perform appraisals, make surveys, soils tests, borings, percolation tests, compaction tests, environmental tests and tests to obtain any other information relating to the surface, subsurface and topographic conditions of the Drainage Ponds (hereinafter collectively referred to as the "Inspections") to be performed at CFX's expense. CFX covenants and agrees that such activities shall not cause any harm to Avatar or the Drainage Ponds and that the Drainage Ponds shall be restored to substantially the same condition as existed immediately prior to CFX's inspection activities pursuant to this Section, in the event CFX does not acquire same. Within the limits of Section 768.28, Florida Statutes, CFX shall at all times indemnify, save harmless and defend Avatar from and against any and all claims, liabilities, losses, costs, lawsuits, disputes, damages and expenses (including reasonable attorneys' fees whether incurred at or before the trial level or in any appellate proceedings) which Avatar may suffer, sustain or incur by reason of the exercise of CFX's right under this Section, including, without limitation, any damage to the Drainage Ponds or to any person or other real or personal property, and including the filing of any mechanics' or other statutory or common law lien or claims against the Drainage Ponds or any part thereof, unless otherwise caused by the intentional misconduct, recklessness or gross negligence of Avatar or its agents, assignees, employees, guests, or contractors. This provision shall survive Closing or earlier termination of this Agreement.

b. Access to the Surplus Property. Avatar shall at all times before Closing have the right to enter upon the Surplus Property with its agents and engineers as needed to inspect, examine, survey, appraise and otherwise undertake those actions which Avatar, in its sole discretion, deems necessary or desirable to determine the suitability of the Surplus Property for Avatar's Intended Use. Said privilege shall include, without limitation, the right to perform or conduct the Inspections to be performed at Avatar's expense. Avatar covenants and agrees that such activities shall not cause any harm to CFX or the Surplus Property and that the Surplus Property shall be restored to substantially the same condition as existed immediately prior to Avatar's inspection activities pursuant to this Section, in the event Avatar does not acquire same. Avatar shall at all times indemnify, save harmless and defend CFX from and against any and all claims, liabilities, losses, costs, lawsuits, disputes, damages and expenses (including reasonable attorneys' fees whether incurred at or before the trial level or in any appellate proceedings) which CFX

may suffer, sustain or incur by reason of the exercise of Avatar's right under this Section, including, without limitation, any damage to the Surplus Property or to any person or other real or personal property, and including the filing of any mechanics' or other statutory or common law lien or claims against the Surplus Property or any part thereof, unless otherwise caused by the intentional misconduct, recklessness or gross negligence of CFX or its agents, assignees, employees, guests, or contractors. This provision shall survive Closing or earlier termination of this Agreement.

8. **Closing.**

a. **Closing Date and Location.** The closing of the conveyances contemplated under this Agreement ("Closing") shall be held on or before thirty (30) days from the Parties' approval of the legal descriptions for the Drainage Ponds and Surplus Property or such earlier date mutually agreed upon by CFX and Avatar in writing ("Closing Date"), at the offices of CFX, or CFX's designated attorney ("Closing Agent"), or any other place which is mutually acceptable to the Parties. The Closing Date is subject to an option to extend that may be exercised with written approval from the Executive Director of CFX, as applicable.

b. **Closing Documents.** The Parties shall execute and deliver to the other the required special warranty deeds, easements, closing statement, an affidavit that the applicable Party is not a foreign person for purposes of the Foreign Investment in Real Property Tax Act (FIRPTA), and if applicable, an owners' affidavit, and any and all other documentation reasonably required to consummate the transaction contemplated herein.

c. **Conveyance of Title.** At the Closing, Avatar and CFX shall execute and deliver to the other Party a Special Warranty Deed conveying fee simple marketable record title to the Drainage Ponds and Surplus Property, respectively, to the other Party, free and clear of all liens, but subject to special assessments, easements, reservations, restrictions and encumbrances of record. The Parties agree that such documents, resolutions, certificates of good standing and certificates of authority as may be necessary to carry out the terms of this Agreement shall be executed and/or delivered by such Parties at the time of Closing, including, without limitation, a closing statement, easements, an owner's affidavit in form sufficient to enable the applicable title company to delete all standard title exceptions other than survey exceptions from the title policy and a certificate duly executed by Avatar certifying that Avatar is not a foreign person for purposes of the Foreign Investment in Real Property Tax Act (FIRPTA), as revised by the Deficit Reduction Act of 1984 and as may be amended from time to time.

d. **Prorating of Taxes and Assessments.** All real property ad valorem taxes, general and special assessments and charges applicable to the Property shall be prorated as of the Closing Date between the Parties. If the real property ad valorem taxes, general assessments and charges applicable to the Drainage Ponds or Surplus Property are not available at Closing, then they shall be estimated based upon the most recent information available.

e. **Closing Costs.** Avatar shall pay the following Closing costs: (i) the title insurance premium for any Title Commitment and title policy to be issued for the Surplus Property, (ii) the cost of any Survey or Inspections of the Surplus Property; and (iii) Avatar's attorneys' fees. The Closing Agent shall prepare, at Avatar's sole expense, all Closing Documents. CFX shall also pay the following Closing costs: (i) all real property transfer and transaction taxes and levies relating to the purchase or sale of the Drainage Ponds and Surplus Property, including, without limitation, the documentary stamps which shall be affixed to the deeds, (ii) the title insurance premium for any Title Commitment and title policy to be issued for the Drainage Ponds, (iii) the cost of preparation and recording of the deeds, easements and any other documents required to close the transaction contemplated herein; (iv) preparation and recordation of

any instruments necessary to correct title for the Drainage Ponds and Surplus Property, (v) the cost of any Survey or Inspections of the Drainage Ponds, and (vi) CFX's attorneys' fees.

f. Recording. CFX agrees, at CFX's sole cost and expense, to record the deeds and easements ("Closing Documents") no later than thirty (30) days after delivery of the original Closing Documents to Avatar. CFX agrees to deliver to Avatar a copy of the recorded Closing Documents.

g. Agreement to Cooperate. The Parties hereto agree, at and subsequent to the Closing, to cooperate and execute, acknowledge and deliver any such additional documentation as may be reasonably required to consummate the transactions contemplated herein. This covenant shall survive the Closing.

9. **AS-IS, WHERE-IS.**

a. Conveyance by CFX to Avatar. Avatar hereby agrees, acknowledges and understands that the Surplus Property is being conveyed to Avatar "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 Surplus 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 the Surplus Property, or any part thereof, or to the fitness of the Surplus 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 Surplus Property or the failure of the Surplus 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 discovered on, at, or under the Surplus 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) Avatar has read and understands the provisions of this Section and acknowledges and agrees that except as expressly set forth in this Agreement, it is acquiring the Surplus Property "**AS-IS, WHERE IS AND WITH ALL FAULTS**" and that CFX has disclaimed herein any and all warranties, express or implied.

b. Conveyance by Avatar to CFX. CFX hereby agrees, understands and acknowledges that the Drainage Ponds are 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 Avatar as to any condition of the Drainage Ponds, including, without limitation, surface and subsurface environmental conditions, whether latent or patent. Avatar makes no guarantee, warranty, or representation, express or implied, as to the quality, character, or condition of the Drainage Ponds, or any part thereof, or to the fitness of the Drainage Ponds, 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 Drainage Ponds, or the failure of the Drainage Ponds to meet any standards. In no event shall Avatar be liable for any incidental, special, exemplary, or consequential damage. In the event that any hazardous substances are discovered on, at, or under the 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 acknowledges and agrees that except as expressly set forth in this Agreement, it is acquiring the Drainage Ponds "**AS-IS, WHERE IS AND WITH ALL FAULTS**" and that Avatar has disclaimed herein any and all warranties, express or implied.

c. Limited Access. Avatar hereby agrees, acknowledges and understands that the Poinciana Parkway, and any expansion or extension thereto, was or is anticipated to be a limited access right-of-way, and as such, CFX has the right, at any time, to record and establish the limited access lines on and along real property owned by CFX for the Poinciana Parkway adjacent to the Surplus Property or any other real property owned by Avatar located on the east or west side of the Poinciana Parkway. Each of the Parties waives and disclaims any claim against the other, in law or in equity, based upon the establishment of limited access lines for Poinciana Parkway. In no event shall CFX be liable for any claims or damages based on the establishment of the limited access lines, including, without limitation, any monetary, incidental, special, exemplary, or consequential damages. The provisions of this Section shall survive the Closing. Avatar has read and understands the provisions of this Section.

10. Representations of Avatar. To induce CFX to enter into the transaction contemplated herein, in addition to the other representations and warranties expressly set forth herein, makes the following representations and warranties, each of which is being made as of the Effective Date and the date of Closing, is material and is being relied upon by CFX, and shall survive Closing hereunder for a period of twelve (12) months:

a. That Avatar, to the best of its knowledge, owns fee simple marketable record title to the Drainage Ponds, free and clear of all liens, special assessments, easements, reservations, restrictions and encumbrances other than the exceptions set forth in any Title Commitment, and there are no tenancy, rental or other occupancy agreements affecting the Drainage Ponds.

b. There are no actions, suits or proceedings of any kind or nature whatsoever, legal or equitable, affecting the Drainage Ponds, or any portion or portions thereof or relating to or arising out of the ownership of the Drainage Ponds, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, or agency or other governmental instrumentality.

c. Avatar is a corporation duly organized and validly existing under the laws of the State of Florida; Avatar has taken all the necessary action under its organizational documents and the individual(s) executing this Agreement has the full right, power and authority to enter into and deliver this Agreement and to consummate the transaction in accordance herewith and to perform all covenants and agreements of Avatar hereunder

d. Avatar has no knowledge or notice that any present default or breach exists under any mortgage or other encumbrance affecting the Drainage Ponds or any covenants, conditions, restrictions, rights-of-way or easements which may affect the Drainage Ponds or any portion or portions thereof and that no condition or circumstance exists which, with the passage of time and/or the giving of notice, or otherwise, would constitute or result in a default or breach under any such covenants, conditions, restrictions, rights-of-way or easements.

e. Except as otherwise addressed herein, no commitments have been made to any governmental authority (other than CFX), utility company, church or other religious body, or any homeowners association, property owners association or to any other organization, group, or individual, relating to the Drainage Ponds which would impose an obligation upon CFX or its successors or assigns to make any contribution or dedications of money or land or to construct, install, or maintain any improvements of a public or private nature on or off the Drainage Ponds, and no governmental authority has imposed any requirement that any developer of the Drainage Ponds pay directly or indirectly any special fees or contributions or incur any expenses or obligations in connection with any development of the Drainage Ponds or any part thereof. The provisions of this Section shall not apply to any general real estate taxes.



f. 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 Avatar of any provision of any agreement or other instrument to which Avatar is a party or to which Avatar may be subject although not a party, nor result in or constitute a violation or breach of any judgment, order, writ, injunction or decree issued against Avatar.

g. Avatar is a United States resident, not a foreign person (as such terms are defined in the Internal Revenue Code and Income Tax Regulations), for purposes of U.S. income taxation and under Section 1445(a) of the Internal Revenue Code.

h. That each and every one of the foregoing representations and warranties is true and correct as of the Effective Date, 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 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 Avatar has knowledge, Avatar will immediately disclose same to CFX when first available to Avatar. For purposes of this Agreement, whenever the phrase “to Avatar’s knowledge,” or the “knowledge” of Avatar or words of similar import are used, they shall be deemed to refer to facts within the actual knowledge of Brian Brunhofer and no others without duty of inquiry or investigation whatsoever.

11. **Representations of CFX.** To induce Avatar to enter into this Agreement, CFX in addition to the other representations and warranties set forth herein, makes the following representations and warranties, each of which is being made as of the Effective Date and the date of Closing, is material and is being relied upon by Avatar and shall survive Closing hereunder for a period of twelve (12) months:

a. That CFX owns fee simple marketable record title to the Surplus Property, free and clear of all liens, special assessments, easements, reservations, restrictions and encumbrances other than the exceptions set forth in any Title Commitment, and there are no tenancy, rental or other occupancy agreements affecting the Surplus Property.

b. There are no actions, suits or proceedings of any kind or nature whatsoever, legal or equitable, affecting the Surplus Property, or any portion or portions thereof or relating to or arising out of the ownership of the Surplus Ponds, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, or agency or other governmental instrumentality.

c. CFX has no knowledge or notice that any present default or breach exists under any mortgage or other encumbrance affecting the Surplus Property or any covenants, conditions, restrictions, rights-of-way or easements which may affect the Surplus Property or any portion or portions thereof and that no condition or circumstance exists which, with the passage of time and/or the giving of notice, or otherwise, would constitute or result in a default or breach under any such covenants, conditions, restrictions, rights-of-way or easements.

d. CFX is a duly organized and validly existing as a body politic and corporate created by the CFX Act and has the full right, power, and authority to enter into and deliver this Agreement and to consummate the transfer of the Surplus Property in accordance herewith and to perform all covenants and agreements of CFX hereunder.

e. That to the best of CFX’s actual knowledge without investigation or inquiry, the execution and delivery of this Agreement and the consummation of the transactions 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, nor result in or constitute a violation or breach of any judgment, order, writ, injunction or decree issued against CFX.

f. That each and every one of the foregoing representations and warranties is true and correct as of the Effective Date, will remain true and correct throughout the term of this Agreement, and will be true and correct as of the Closing Date.

g. That in the event that changes occur as to any of the foregoing representations and warranties of CFX contained in this Section, or in any other part of this Agreement, of which CFX has knowledge, CFX will immediately disclose same to Avatar when first available to CFX. For purposes of this Agreement, whenever the phrase “to CFX’s knowledge,” or the “knowledge” of CFX or words of similar import are used, they shall be deemed to refer to facts within the actual knowledge of Glenn Pressimone, and no others without duty of inquiry or investigation whatsoever.

12. **Compliance with all Legal Rules.** The Parties shall, at its sole expense, comply with all present and future valid and applicable laws, ordinances, and regulations of the federal government and its agencies, the State of Florida, and Orange County, unless otherwise agreed between the Parties.

13. **Notices.** Any formal notice, consent, approval or rejection required or allowed in accordance with the terms of this Agreement shall be in writing and be deemed to be delivered (a) when hand delivered to the official hereinafter designated, (b) one (1) days after deposited with an overnight carrier; or (c) three (3) days from when such notice is deposited in the United States mail, postage prepaid, certified mail return receipt requested, addressed to a Party at the address set forth opposite the Party's name below, or at such other address as the Party shall have specified in written notice to the other Party in accordance herewith.

CFX: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
4974 ORL Tower Road  
Orlando, Florida 32807  
Attn: Executive Director

Copy to: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
4974 ORL Tower Road Orlando,  
Florida 32807  
Attn: Chief of Infrastructure

Copy to: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
4974 ORL Tower Road  
Orlando, Florida 32807  
Attn: General Counsel

AVATAR: AVATAR PROPERTIES INC.  
1211 N. Westshore Boulevard, Suite 512  
Tampa, FL 33607

Copies to: Taylor Morrison of Florida, Inc.  
Attn: Brian Brunhofer  
2600 Lake Lucien Drive, Suite 350  
Maitland, FL 32751  
Email: bbrunhofer@taylormorrison.com

Taylor Morrison of Florida, Inc.  
Attn: Kristy Boss, Esq.  
Deputy General Counsel  
1211 N. Westshore Boulevard, Suite 512  
Tampa, FL 33607  
Email: [kboss@taylormorrison.com](mailto:kboss@taylormorrison.com)

Gray Robinson, P.A.  
Attn: Stephen L. Kussner, Esq.  
401 E. Jackson Street, Suite 2700  
Tampa, FL 33602  
Email: [stephen.kussner@gray-robinson.com](mailto:stephen.kussner@gray-robinson.com)

Other notices may be delivered by email to the CFX Director of Construction or his designee.

14. **Defaults and Remedies.** Each of the Parties hereto shall give the other Party notice of any alleged default hereunder and shall allow the defaulting Party thirty (30) days from the date of receipt to cure such default, provided; however, that if the default is not reasonably capable of being cured with commercially reasonable efforts within thirty (30) days, the Party shall have such longer time to cure such default as may be reasonably necessary, not to exceed one hundred twenty (120) days (“ Default Cure Period”). In the event either of the Parties fails to cure such non-performance or breach within the Default Cure Period, the other Party, in its sole discretion, shall be entitled to (a) exercise the right of specific performance with respect to such non-performance or breach; (b) pursue all other rights and remedies available to said Party under Florida law; or (c) terminate this Agreement and upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect.

15. **Non-Waiver.** No failure of either Party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof.

16. **Entire Agreement.** This Agreement contains the entire agreement of the Parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect.

17. **Amendments.** Any amendment to this Agreement shall not be binding upon either Party unless such amendment is in writing and executed by the Parties. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors.

18. **Assignment.** This Agreement shall not be assigned by either of the Parties without the express written consent of the other party.

19. **Third Party Beneficiaries.** Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for herein.

20. **Time.** Whenever 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. Unless otherwise specified herein, any references to “days” shall refer to calendar days.

21. **Counterparts and Electronic Signatures.** This Agreement may be executed in multiple counterparts, including by electronic or digital signatures in compliance with Chapter 668, Florida Statutes, 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.

22. **Governing Law and Venue.** This Agreement shall be interpreted under the laws of the State of Florida. The Parties agree that venue for any legal action authorized hereunder shall be exclusively in the courts of Ninth Judicial Circuit of Florida.

23. **Negotiations.** The Parties acknowledge that this Agreement was prepared after substantial negotiations between the Parties and this Agreement shall not be interpreted against either Party solely because such Party or its counsel drafted the Agreement.

24. **Waiver of Jury Trial.** THE PARTIES VOLUNTARILY WAIVE A TRIAL BY JURY IN ANY LITIGATION OR ACTION ARISING FROM THIS AGREEMENT.

25. **Severability.** If any court finds part of this Agreement invalid or unenforceable, such invalidity or unenforceability shall not affect the other parts of the Agreement (a) if the rights and obligations of the Parties contained therein are not materially prejudiced and (b) if the intentions of the Parties can continue to be effective. To that end, this Agreement is declared severable.

26. **Sovereign Immunity.** Nothing herein is intended as a waiver of CFX’S sovereign immunity under Section 768.28, Florida Statutes. 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.

27. **Effective Date.** The effective date of this Agreement shall be the date upon which the last of the Parties executes this Agreement (“Effective Date”).

*[SIGNATURE PAGES TO FOLLOW]*

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

Signed, sealed, and delivered  
in the presence of:

**“CFX”**

**CENTRAL FLORIDA EXPRESSWAY  
AUTHORITY**

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

By: \_\_\_\_\_  
Buddy Dyer, Chairman

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

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

ATTEST: \_\_\_\_\_  
Regla (“Mimi”) Lamaute  
Recording Clerk

Approved as to form and legality by legal counsel  
to the Central Florida Expressway Authority on  
this \_\_\_ day of \_\_\_\_\_, 2021 for its  
exclusive use and reliance.

By: \_\_\_\_\_  
Diego “Woody” Rodriguez  
General Counsel

STATE OF FLORIDA            )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2021, by  
Buddy Dyer, as Chairman of the Central Florida Expressway Authority, on behalf of the organization. He  
is personally known to me OR produced \_\_\_\_\_ as identification.

NOTARY PUBLIC

\_\_\_\_\_  
Signature of Notary Public - State of Florida  
Print Name: \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Signed, sealed and delivered  
in the presence of:

**AVATAR PROPERTIES INC., a Florida  
corporation**

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

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

Its: Vice President

STATE OF FLORIDA            )

  )

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before by means of physical presence ( ) or  
online notarization ( ) this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, as Vice  
President of Avatar Properties Inc., a Florida corporation, on behalf of the corporation. He/She is personally  
known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Typed name of Notary Public)

Notary Public, State of \_\_\_\_\_

Commission No.: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_











Existing  
Pond 3-4



POINCIANA PARKWAY



**Poinciana Parkway (SR 538) Widening**  
*Exhibit A - Drainage Ponds*

*Existing Pond*  
**3-4**

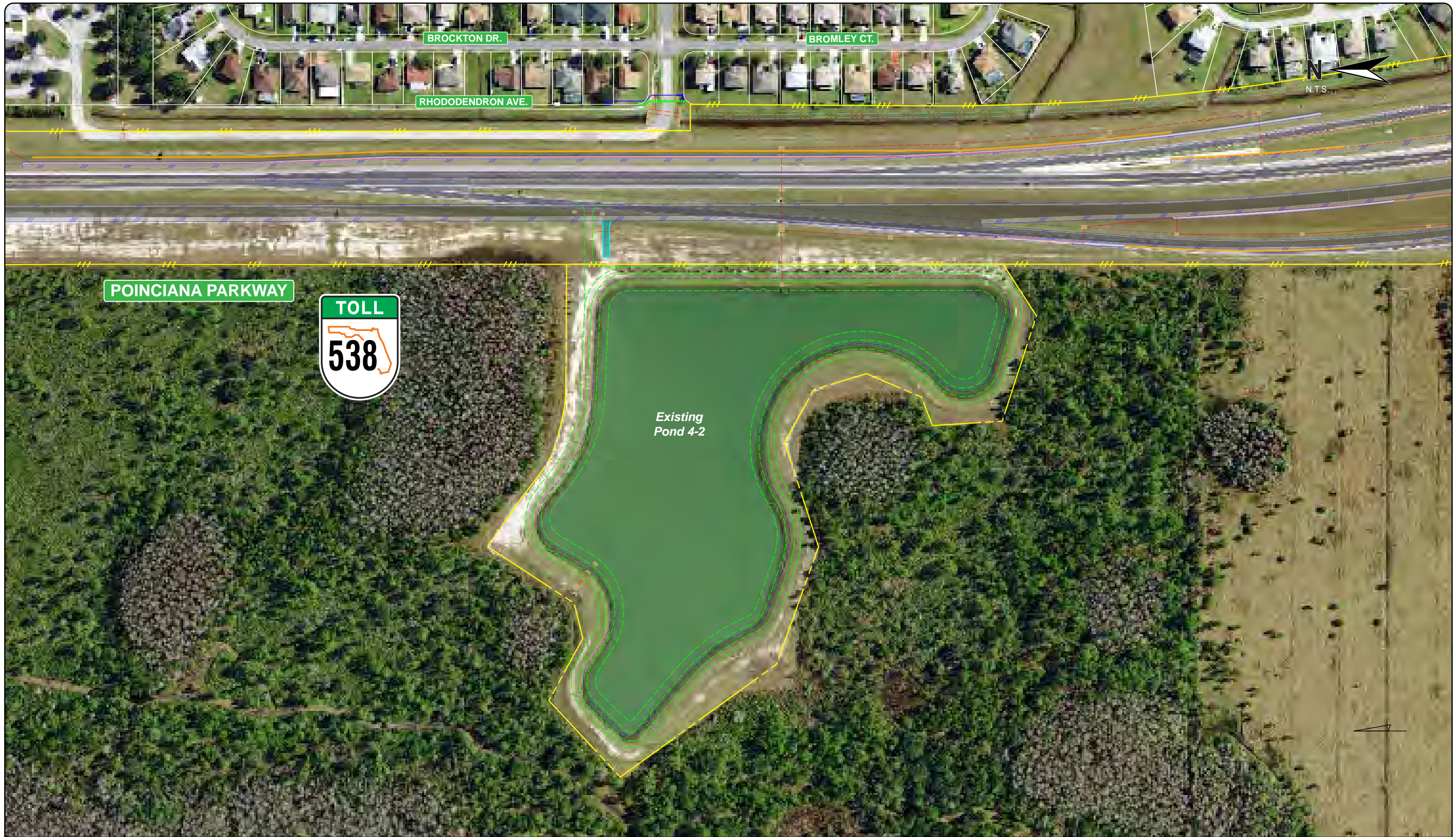














**Poinciana Parkway (SR 538) Widening**  
**Exhibit A - Drainage Ponds**

**Existing  
Pond 4-1 &  
Proposed  
Pond 5**





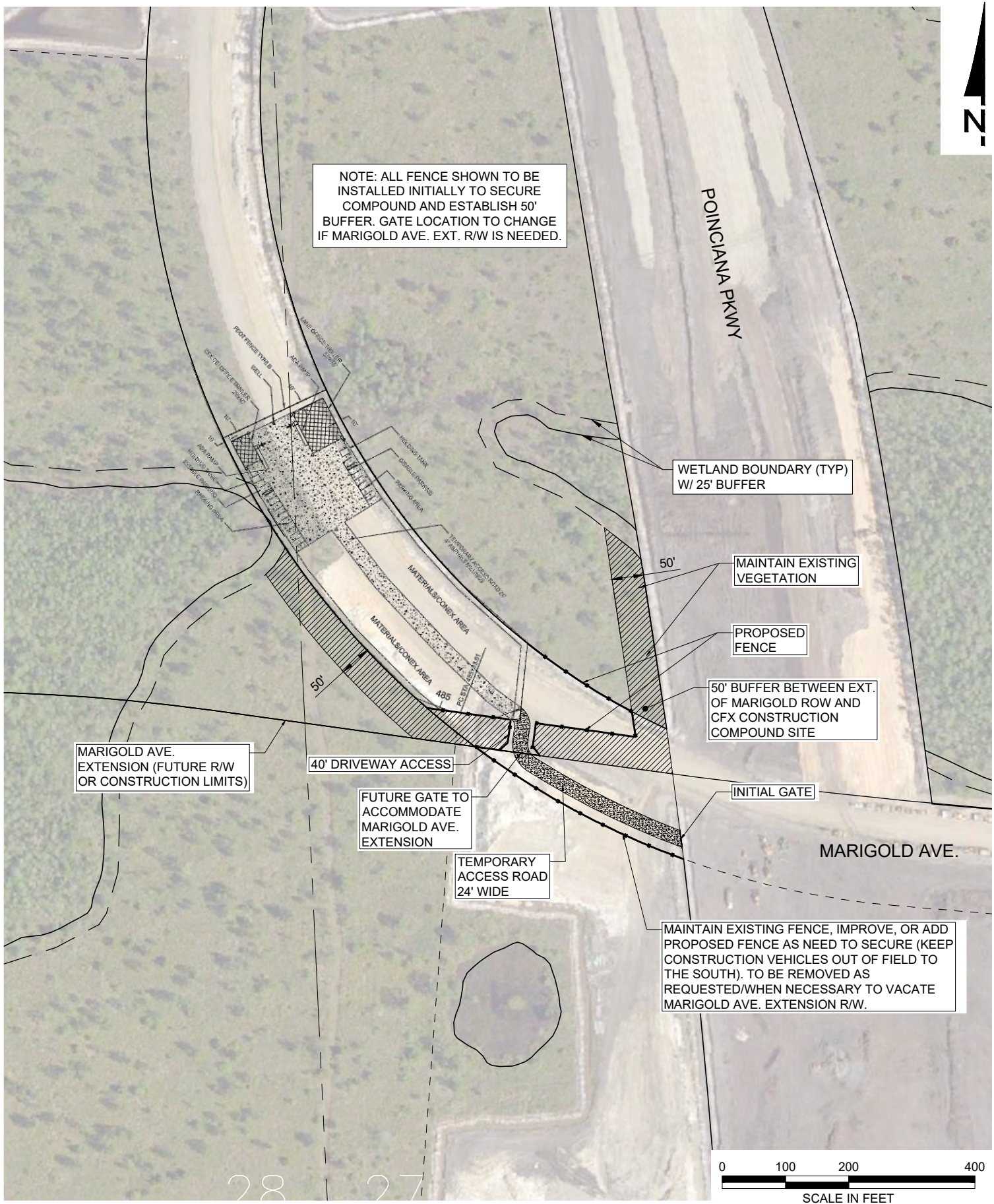
**Poinciana Parkway (SR 538) Widening**  
**Exhibit B - Surplus Property**

**Existing Pond**  
**4-5**





NOTE: ALL FENCE SHOWN TO BE INSTALLED INITIALLY TO SECURE COMPOUND AND ESTABLISH 50' BUFFER. GATE LOCATION TO CHANGE IF MARIGOLD AVE. EXT. R/W IS NEEDED.



MARIGOLD AVE. EXTENSION (FUTURE R/W OR CONSTRUCTION LIMITS)

40' DRIVEWAY ACCESS

FUTURE GATE TO ACCOMMODATE MARIGOLD AVE. EXTENSION

TEMPORARY ACCESS ROAD 24' WIDE

WETLAND BOUNDARY (TYP) W/ 25' BUFFER

50' MAINTAIN EXISTING VEGETATION

PROPOSED FENCE

50' BUFFER BETWEEN EXT. OF MARIGOLD ROW AND CFX CONSTRUCTION COMPOUND SITE

INITIAL GATE

MARIGOLD AVE.

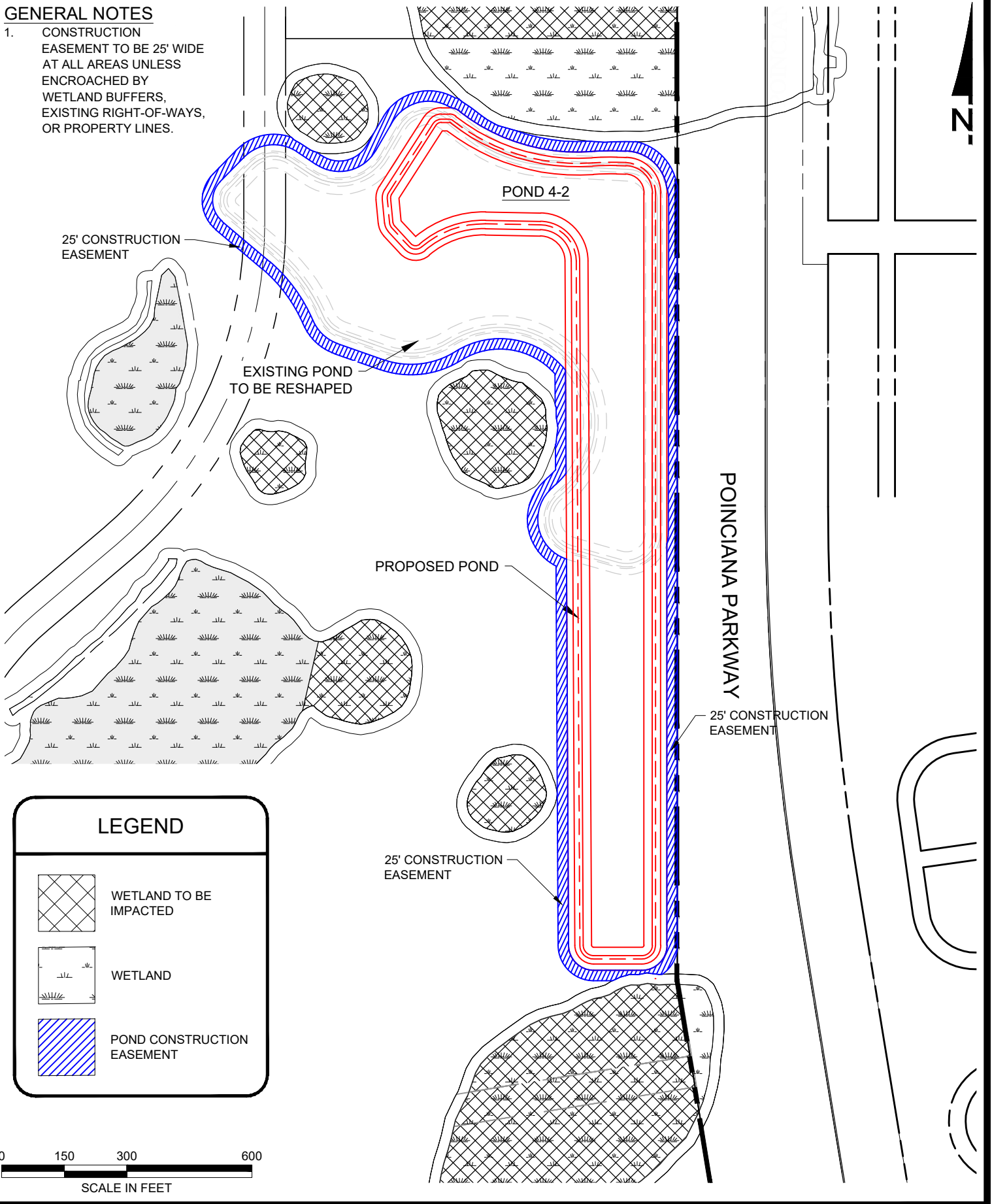
MAINTAIN EXISTING FENCE, IMPROVE, OR ADD PROPOSED FENCE AS NEED TO SECURE (KEEP CONSTRUCTION VEHICLES OUT OF FIELD TO THE SOUTH). TO BE REMOVED AS REQUESTED/WHEN NECESSARY TO VACATE MARIGOLD AVE. EXTENSION R/W.



O:\Projects\1025-202 (Salvia Grand) \Pub\B\_Spine\_Rd\_6\_Infrastructure\Drawings-Exhibit\1025-202-E115 Marigold ROW Exhibit\Current Plans\1025-202-E115 CFX compound relocation.dwg

**GENERAL NOTES**

- CONSTRUCTION EASEMENT TO BE 25' WIDE AT ALL AREAS UNLESS ENCROACHED BY WETLAND BUFFERS, EXISTING RIGHT-OF-WAYS, OR PROPERTY LINES.



**LEGEND**

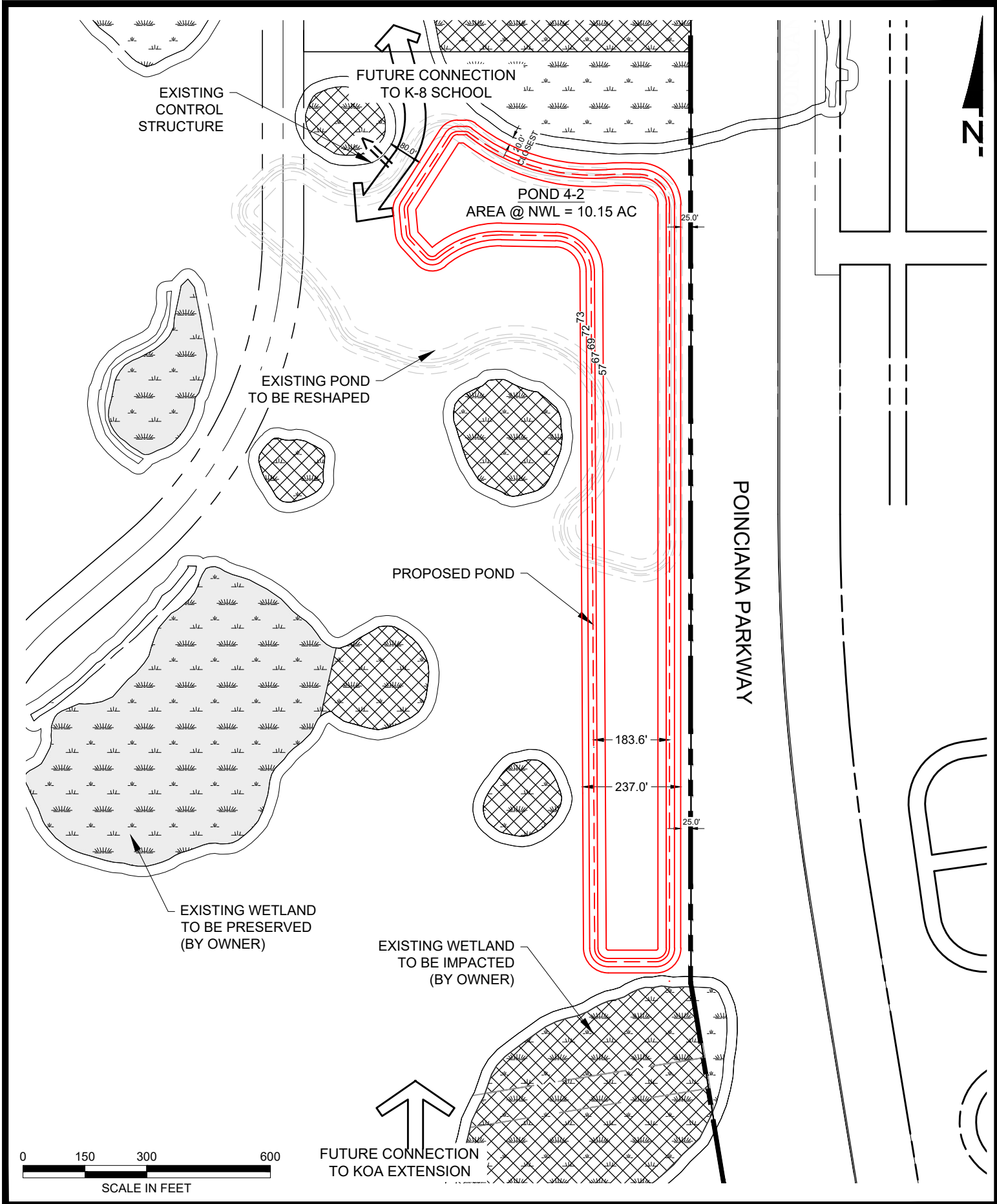
 WETLAND TO BE IMPACTED

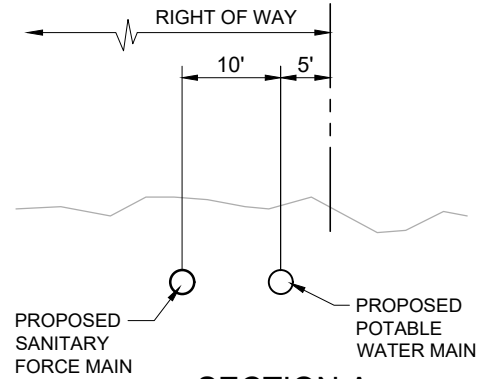
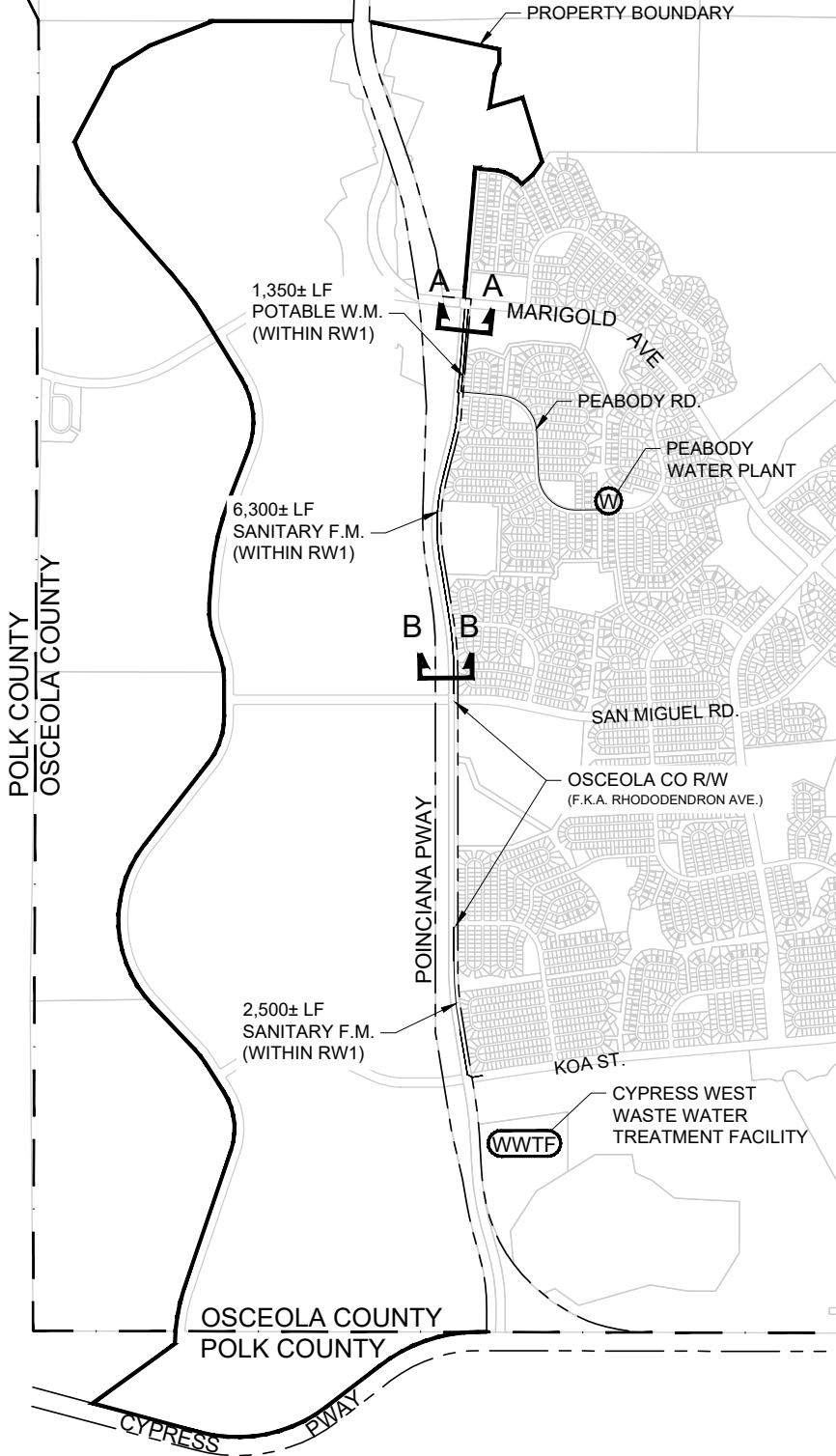
 WETLAND

 POND CONSTRUCTION EASEMENT

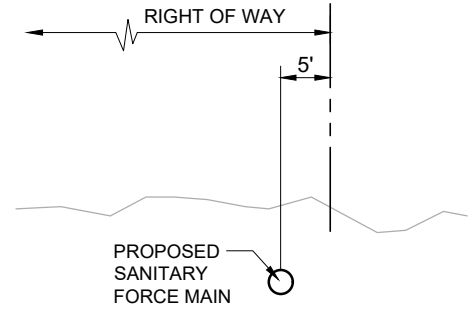


Exhibit "D"

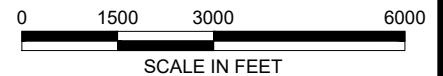




SECTION A



SECTION B













Existing  
Pond 3-4



POINCIANA PARKWAY



**Poinciana Parkway (SR 538) Widening**  
**Attachment D - Drainage Ponds**

**Existing Pond**  
**3-4**









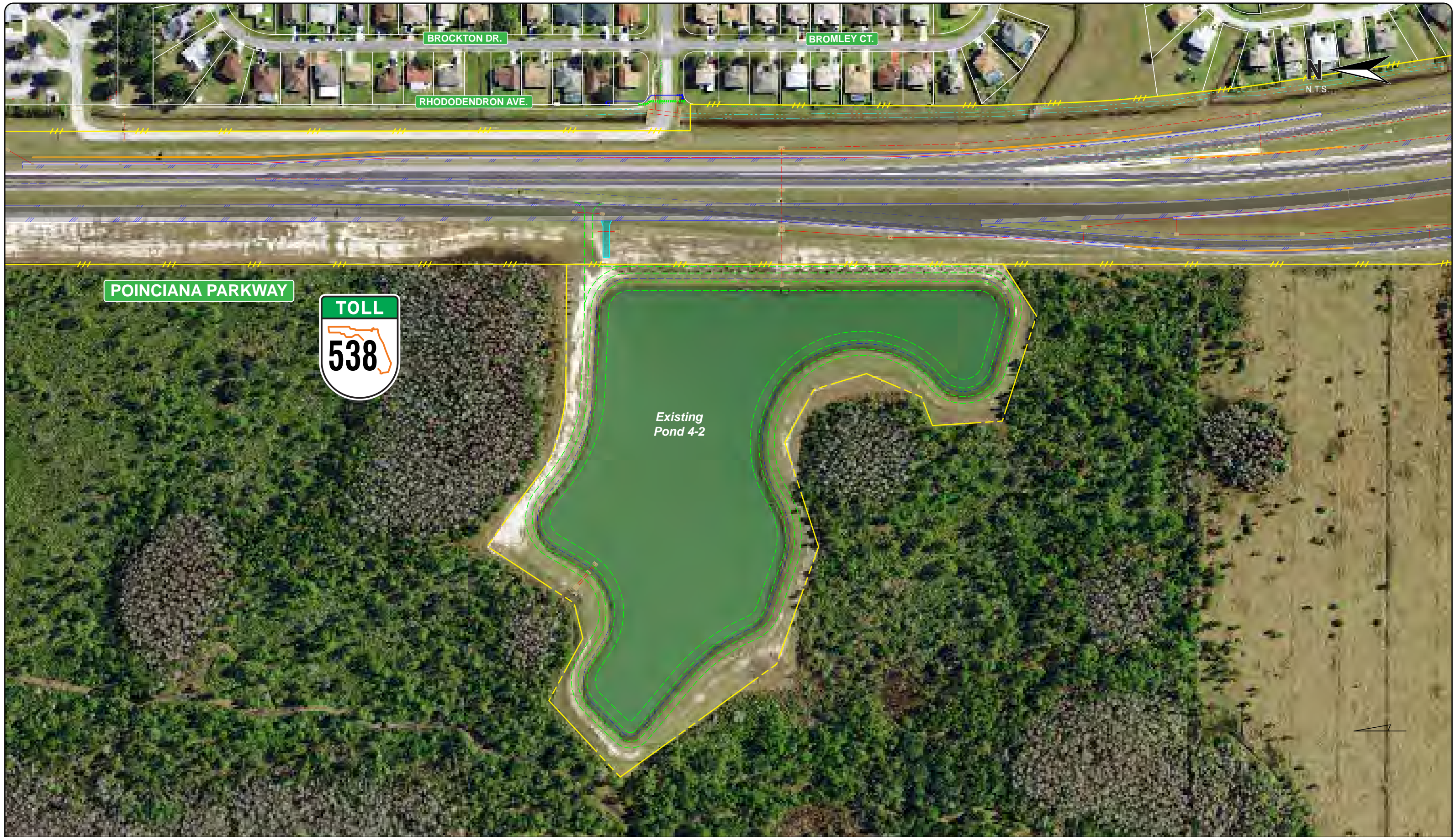
POINCIANA PARKWAY

CHELMSFORD CT.

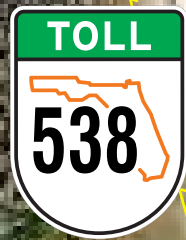
GLOUCESTER CT.

GRANTHAM DR.

Existing Pond 4-3







OSCEOLA COUNTY

POLK COUNTY

CYPRESS PKWY.

SOUTHPORT CONNECTOR

TWA ACCESS

Existing Pond 4-1

Proposed Pond 5



### Poinciana Parkway (SR 538) Widening Attachment D - Drainage Ponds

Existing Pond 4-1 & Proposed Pond 5





ATTACHMENT F



Dewberry Engineers Inc. | 407.843.5120  
800 N. Magnolia Ave, Suite 1000 | 407.649.8664 fax  
Orlando, FL 32803 | www.dewberry.com

February 11, 2021

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

**RE: POINCIANA PARKWAY (SR 538) - DISPOSITION OF PROPERTY**  
Project 538-232  
CFX Parcel(s): Parcels 538-100A, 538-100B, 538-100C

Dear Mr. Pressimone:

On behalf of Dewberry **Engineers, Inc., as Consulting Engineer (the “Consulting Engineer”)** to the Central Florida Expressway Authority (“CFX”) does here by certify as follows:

1. We have reviewed the limits of the parcels located outside the mainline right-of-way of the Poinciana Parkway (SR 538) shown in Exhibit A, attached (**“Parcels”**). These Parcels have been reviewed and determined that they are no longer essential for the present or future construction, operation or maintenance of an SR 538 or for CFX purposes and disposition of these CFX Parcels would not impede or restrict the current or future construction, operation or maintenance of the CFX System. An updated certificate will be provided upon the receipt and approval of the final sketch and legal description for the Parcels.
2. Furthermore, this certificate is being provided by the Consulting Engineer to CFX **solely for the purposes of complying with Section 5.4 of CFX’s Amended and Restated Master Bond Resolution** and the requirements set forth in CFX’s Manual and may not be relied on by any other person or party for any other purpose.

Sincerely,

A handwritten signature in blue ink that reads "R. Keith Jackson".

R. Keith Jackson, P.E.  
Program Manager

Attachments

cc: Laura Newlin Kelly, Esq. CFX (w/ enc.)





**Poinciana Parkway (SR 538) Widening**  
*Exhibit A - Surplus Property*

*Existing Pond 4-5*



February 11, 2021

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

**RE: POINCIANA PARKWAY (SR 538) – LONGITUDINAL UTILITY LINES**  
Project 538-232  
Waiver of Longitudinal Lines

Dear Mr. Pressimone:

On behalf of Dewberry Engineers, Inc., as **Consulting Engineer (the “Consulting Engineer”)** to the **Central Florida Expressway Authority (“CFX”)** does here by certify as follows:

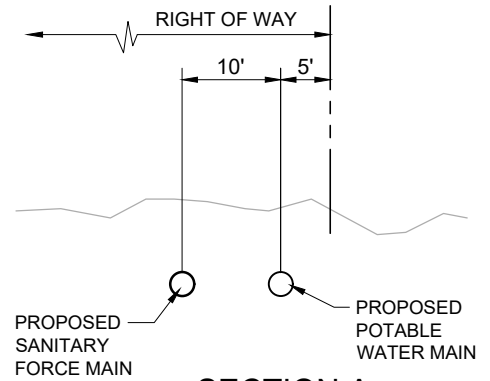
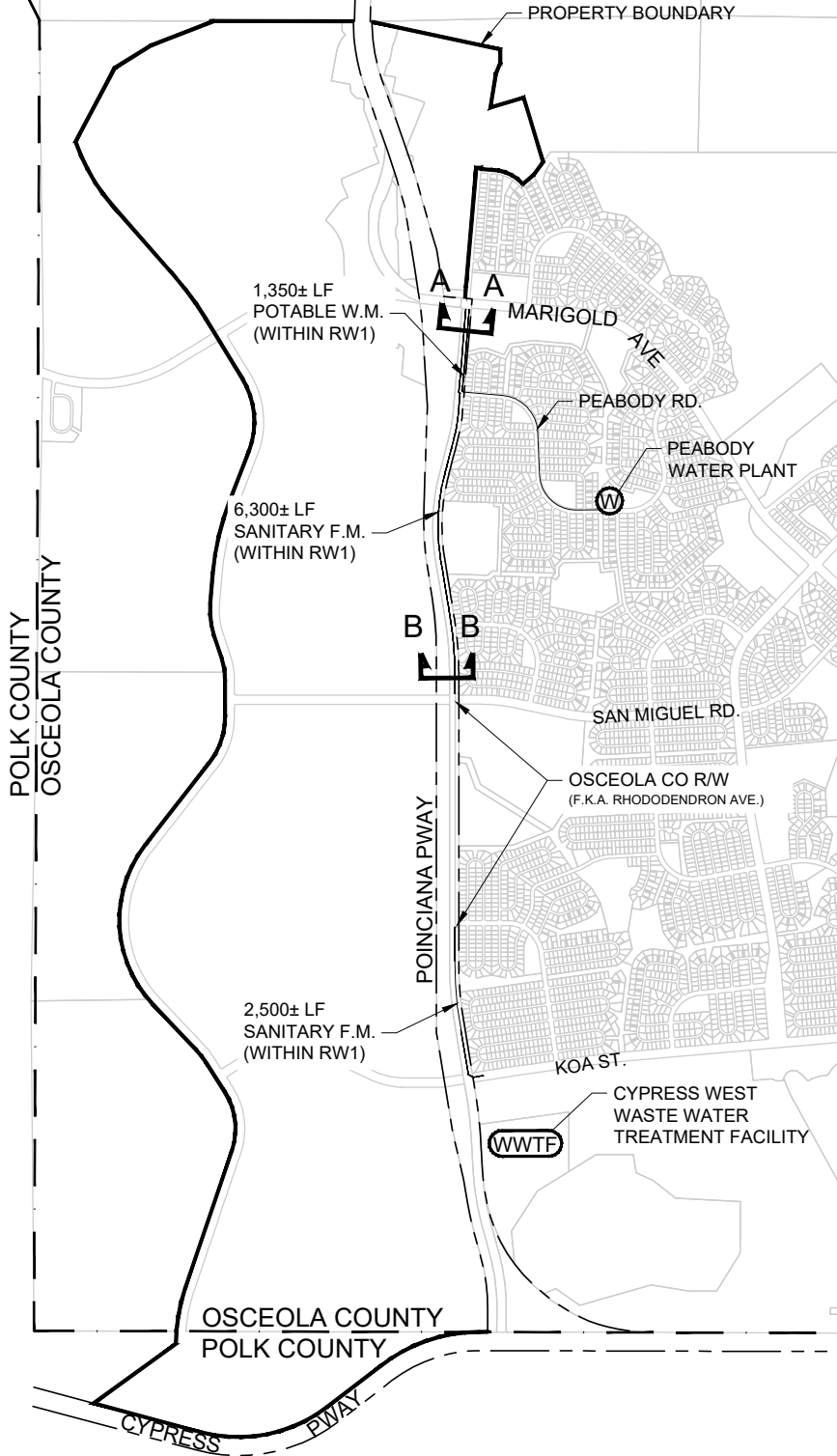
1. Pursuant to CFX’s Property Acquisition, Disposition & Permitting Procedures Manual (“Policy”), the Consulting Engineer has examined the request for approval of longitudinal lines as more particularly depicted on Exhibit “A” attached hereto (“Longitudinal Lines”) submitted by Avatar Properties Inc. (“Avatar”) and the conveyance of the real property known as RW-1 for Poinciana Parkway (“RW-1 Property”) and have determined that the conveyance of the RW-1 Property from Avatar to CFX will create an unreasonable hardship on Avatar in accordance with Section 5-8.04 and 5-8.06 of CFX’s Policy; provided, however, the acknowledgement of an unreasonable hardship is expressly contingent upon the conveyance of the RW-1 Property to Osceola and from Osceola to CFX in accordance with the terms and conditions of the proposed Property Exchange Agreement between CFX and Avatar.
2. Therefore, the Consulting Engineer certifies that the proposed Longitudinal Lines: (1) would create an unreasonable hardship for Avatar; (2) Avatar’s design alternative and the approval of the Longitudinal Lines would not unreasonably interfere with the safety, operation, maintenance, future improvement or expansion of the Poinciana Parkway; and (3) all other alternative routes for the Longitudinal Lines have been explored and are not viable.

Sincerely,

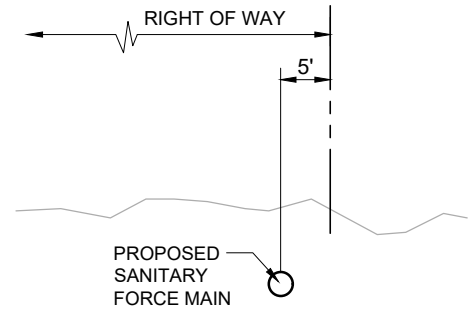
R. Keith Jackson, P.E.  
Program Manager

Attachments

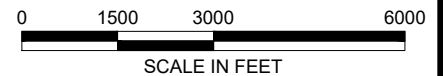
cc: Laura Newlin Kelly, Esq. CFX (w/ enc.)



SECTION A

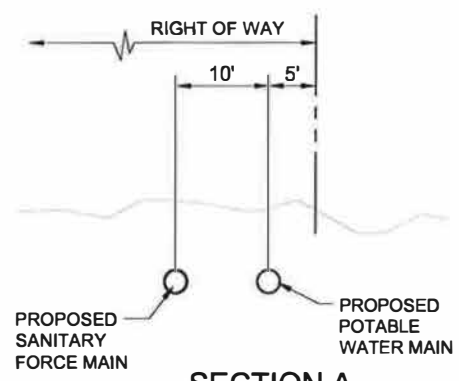
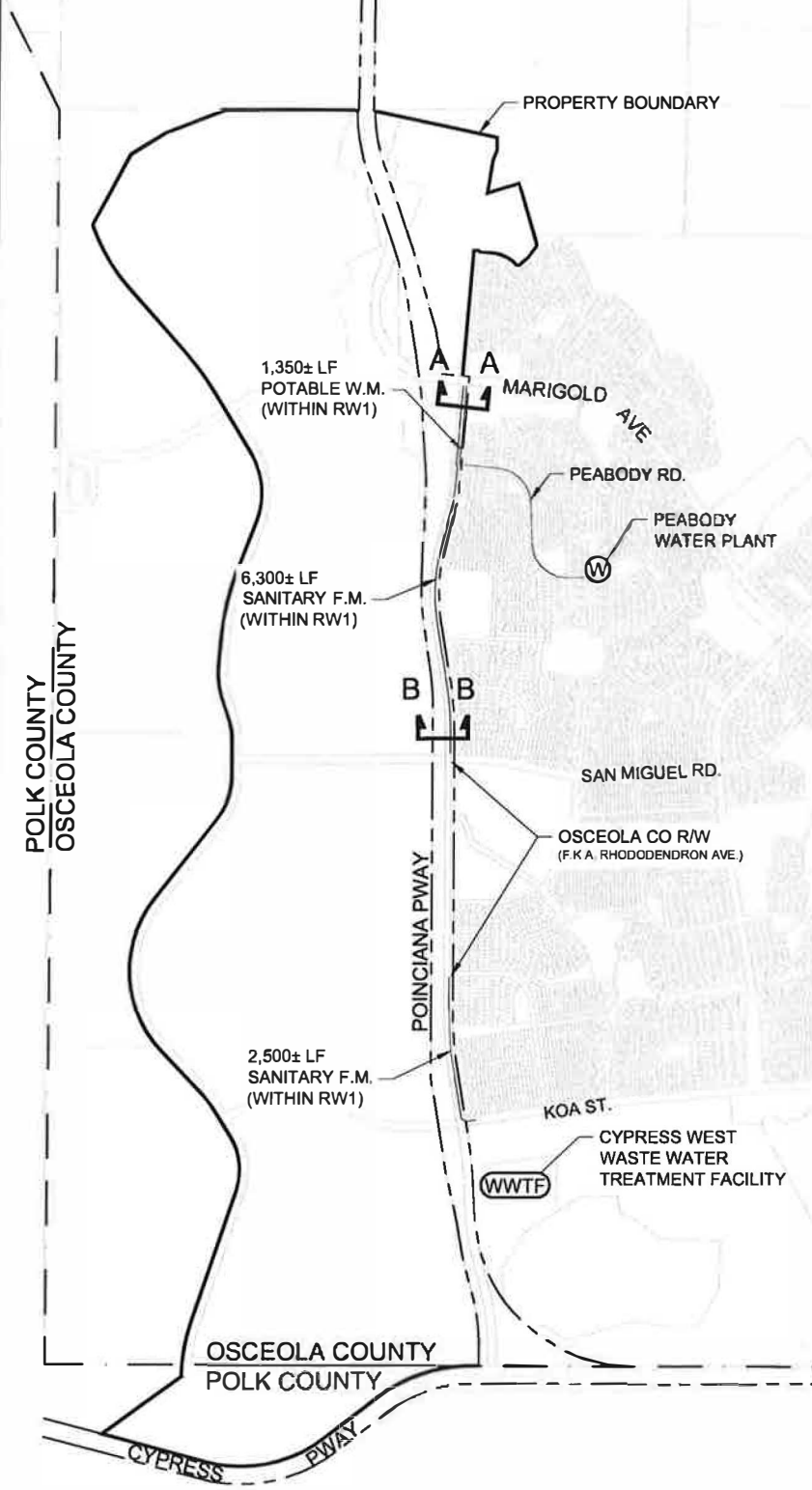


SECTION B

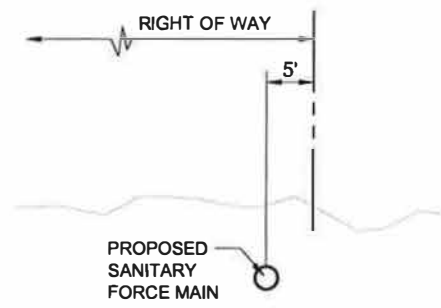




ATTACHMENT G



SECTION A



SECTION B



ATTACHMENT H

Resolution No. 2021-\_\_\_\_\_

Poinciana Parkway, Project 538-232

Portion of Parcels 538-100 A, 538-100 B and 538-100 C

**A RESOLUTION OF THE  
CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DECLARING PROPERTY AS SURPLUS PROPERTY  
AVAILABLE FOR SALE, AUTHORIZING THE  
TRANSFER OF SURPLUS PROPERTY WITH AVATAR  
PROPERTIES INC., AND WAIVER OF SECTION 5-8.04(3)  
FOR LONGITUDINAL LINES**

**WHEREAS**, the Central Florida Expressway (“CFX”), is empowered by Chapter 348, Part V, Florida Statutes, to acquire, hold, construct, improve, maintain, and operate the Central Florida Expressway System (the “Expressway Facilities”), and is further authorized to sell, lease, transfer or otherwise dispose of any property or interest therein at any time acquired by CFX; and

**WHEREAS**, CFX has adopted that certain Policy Regarding the Disposition of Excess Lands, section 5-6.01, *et. seq.*, of CFX’s Property Acquisition, Disposition & Permitting Procedures Manual (referred to herein as the “Policy”), which Policy provides for the disposal of real property unnecessary or unsuitable for CFX’s use; and

**WHEREAS**, pursuant to the Policy, “Excess Property” is “[r]eal property, of any monetary value, located outside of the current operating Right of Way limits of CFX not currently needed to support existing Expressway Facilities as determined by staff;” and

**WHEREAS**, pursuant to the Policy, where Excess Property is not essential for present or future construction, operation or maintenance of the Expressway Facilities or for CFX purposes, the CFX Board may declare such Excess Property to be “Surplus Property” through the adoption of a resolution and direct that the Surplus Property be sold; and

**WHEREAS**, section 5-1.01 of the Policy allows CFX to waive the procedures in a particular circumstance where deemed to be in the best interest of CFX and the public, provided that such waiver is not in conflict with state or federal law; and

**WHEREAS**, CFX staff and its General Engineering Consultant has examined the Expressway Facilities for Poinciana Parkway and determined that the real property referred to as a portion of Parcels 538-100 A, 538-100 B and 538-100 C as more generally depicted in **Exhibit “A”** attached hereto and incorporated herein by reference (“Parcel”) is not needed to support existing Expressway Facilities; and

**WHEREAS**, the exact location and area of the Parcel will be determined when the reconfiguration, reshaping and relocation of the Drainage Ponds, as defined in the Agreement, is completed and a legal description and sketch is prepared for the Parcel; and

**WHEREAS**, CFX's General Engineering Consultant has certified that the Parcel is not essential for present or future construction, operation or maintenance of the Expressway Facilities or for CFX purposes and that the disposition of the Parcel would not impede or restrict the Expressway System; and

**WHEREAS**, CFX's Right of Way Committee has determined that it is in the best interest of CFX and the public to designate the Parcel as Excess Property; and

**WHEREAS**, in light of the foregoing circumstances, CFX's Right of Way Committee has recommended that that the Parcel be designated as Excess Property and that the CFX Board adopt a resolution declaring the Parcel to be Surplus Property; and

**WHEREAS**, Avatar Properties Inc., a Florida corporation ("Avatar"), is the fee simple owner of certain real property as more particularly described in **Exhibit "B"** attached hereto and incorporated herein by reference ("Pond Parcels"); and

**WHEREAS**, Avatar is requesting the transfer of fee simple interest in and to the Parcel from CFX to Avatar in exchange for certain the conveyance of fee simple interest in and to the Pond Parcels from Avatar to CFX for use as drainage facilities for the Poinciana Parkway; and

**WHEREAS**, the General Engineering Consultant has determined the Pond Parcels are needed to support the existing Expressway Facilities; and

**WHEREAS**, CFX's Right of Way Committee has determined that the transfer of the Parcel to Avatar, in exchange for the transfer of the Pond Parcels to CFX for drainage facilities for the Poinciana Parkway, in accordance with the terms of the Property Exchange Agreement ("Agreement") would be in the best interest of CFX, Avatar and the public; and

**WHEREAS**, CFX has adopted that certain Policy 5-8.06 of the Policy, which provides for the review and determination of an unreasonable hardship if longitudinal utility lines are not permitted in accordance with Section 5-8.04(3) of the Policy; and

**WHEREAS**, Avatar is requesting the determination, recognition and approval of an unreasonable hardship for certain reclaimed water and sanitary sewer utility lines running north and south along the eastern boundaries of the Poinciana Parkway, as more particularly identified in **Exhibit "C"** attached hereto and incorporated herein by reference ("Longitudinal Lines"); and

**WHEREAS**, CFX's staff and General Engineering Consultant have reviewed the Longitudinal Lines and certified that (1) the Longitudinal Lines would create an unreasonable hardship for Avatar; (2) Avatar's design alternative for the Longitudinal Lines would not unreasonably interfere with the safety, operation, maintenance, future improvement or expansion of the Poinciana Parkway, (3) all other alternatives have been explored and are not viable; and (4) the Longitudinal Lines would not (a) materially affect or interfere with the present or future construction, use, operation, repair or maintenance of the Expressway Facilities, (b) otherwise impair traffic operations or maintenance of any portion of the Expressway Facilities; or (c) otherwise be prohibited or in conflict with any laws, regulations, requirements, covenants, or agreements binding upon CFX; and

**WHEREAS**, after reviewing the Agreement, CFX's Right of Way Committee has recommended that the Parcel be conveyed to Avatar in exchange for the conveyance of the Pond Parcels, in accordance with CFX's Policy and the Agreement except for the following conditions or modifications: (1) separate notice to the local government in which the Surplus Property is located is not required; (2) waiver of the requirement for an appraisal pursuant to Section 5-4.03 and 5-6.05 and disposition procedures pursuant to 5-6.04; (3) receipt of an updated GEC Certificate from the General Engineering Consultant when the final location of the Surplus Property is determined; (4) approval of the legal descriptions by CFX's General Engineering Consultant; (5) approval of the exhibits to the Agreement by CFX's Chief of Infrastructure; and (6) any minor or clerical revisions approved by the General Counsel or designee..

**NOW, THEREFORE, BE IT RESOLVED BY THE CENTRAL FLORIDA EXPRESSWAY AUTHORITY AS FOLLOWS:**

1. CFX hereby declares that the real property identified in **Exhibit "A"** attached hereto is not essential for present or future construction, operation or maintenance of the Expressway Facilities or essential for CFX purposes and is Excess Property.

2. CFX hereby finds that it is in the best interest of CFX and the public to declare the Parcel as Surplus Property, subject to finalization of the legal description, as set forth in the Agreement, and CFX hereby declares the Parcel as Surplus Property available for sale.

3. CFX hereby finds that it is in the interest of both CFX and the public to transfer the Parcel to Avatar in exchange for the conveyance of the Pond Parcels to CFX, in accordance with the terms of the Agreement.

4. Accordingly, CFX hereby declares that the Parcel may be transferred to Avatar, in exchange for the conveyance of the Pond Parcels, in accordance with CFX's Policy and the Agreement except for the following conditions or modifications: (1) separate notice to the local government in which the Surplus Property is located is not required; (2) waiver of the requirement for an appraisal pursuant to Section 5-4.03 and 5-6.05 and disposition procedures pursuant to 5-

Resolution No. 2021-\_\_\_\_\_  
Poinciana Parkway, Project 538-232  
Portion of Parcels 538-100 A, 538-100 B and 538-100 C

6.04; (3) receipt of an updated GEC Certificate from the General Engineering Consultant when the final location of the Surplus Property is determined in accordance with the terms of the Agreement; (4) approval of the legal descriptions by CFX's General Engineering Consultant; (5) approval of the exhibits to the Agreement by CFX's Chief of Infrastructure; and (6) any minor or clerical revisions approved by the General Counsel or designee.

5. CFX hereby declares that, subject to conveyance of the RW-1 Property (as defined in the Agreement) to Osceola County and subsequently CFX in accordance with the Agreement (1) the Longitudinal Lines would create an unreasonable hardship for Avatar; (2) Avatar's design alternative for the Longitudinal Lines would not unreasonably interfere with the safety, operation, maintenance, future improvement or expansion of the Poinciana; (3) all other alternatives have been explored and are not viable; and (4) the Longitudinal Lines would not (a) materially affect or interfere with the present or future construction, use, operation, repair or maintenance of the Expressway Facilities, (b) otherwise impair traffic operations or maintenance of any portion of the Expressway Facilities; or (c) otherwise be prohibited or in conflict with any laws, regulations, requirements, covenants, or agreements binding upon CFX

6. This Resolution shall take effect immediately upon adoption by the CFX governing Board.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

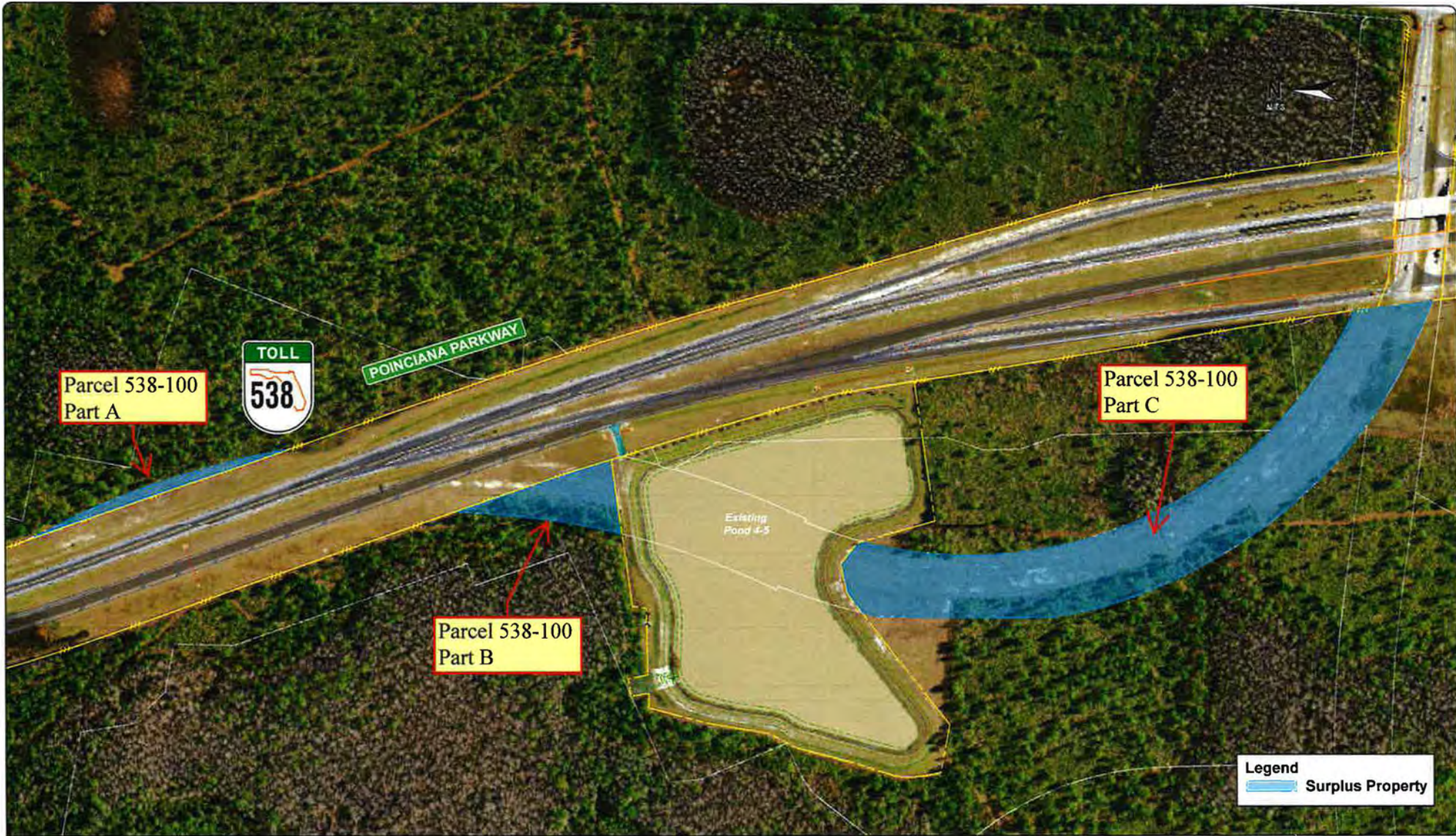
\_\_\_\_\_  
Buddy Dyer, Chairman

ATTEST: \_\_\_\_\_  
Regla ("Mimi") Lamaute  
Board Services Coordinator

Approved as to form and legality for the  
exclusive use and reliance of CFX.

\_\_\_\_\_  
Diego "Woody" Rodriguez  
General Counsel



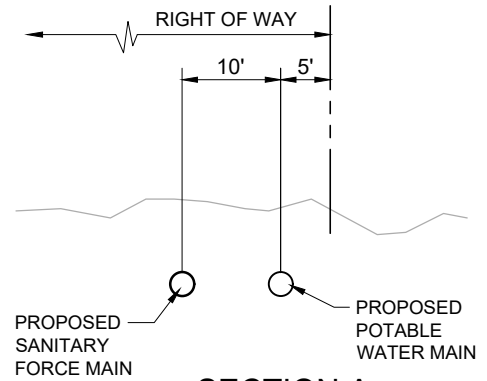
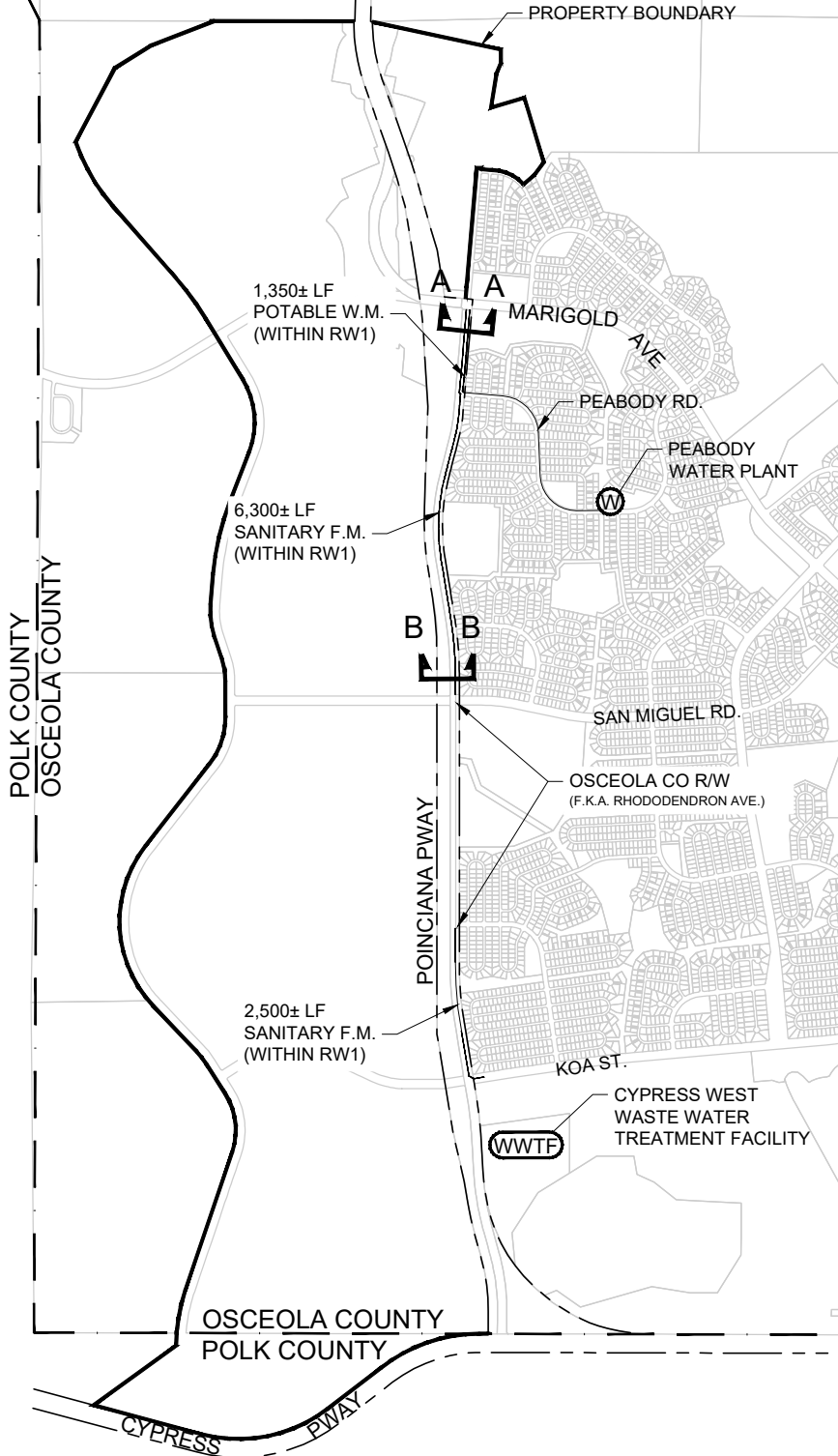




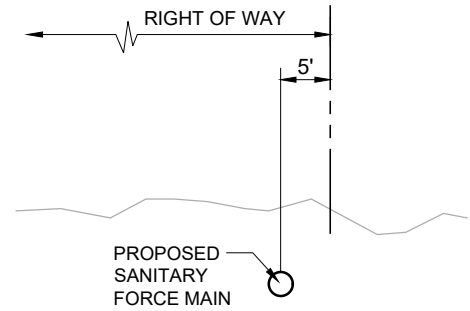


**Poinciana Parkway (SR 538) Widening**  
**Exhibit B - Drainage Ponds**

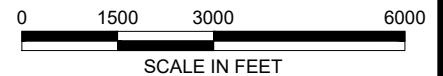




SECTION A



SECTION B





**CONSENT AGENDA ITEM  
#10**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Diego “Woody” Rodriguez, General Counsel *Woody Rodriguez*

DATE: January 28, 2021

RE: Mixing Zone Property Access License Agreement Between the Greater Orlando Aviation Authority and Central Florida Expressway Authority  
Project: 528-143

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## BACKGROUND

On February 13, 2020, the Central Florida Expressway Authority (“CFX”) Board entered into Contract No. 001614 (“Contract”) with SEMA Construction, Inc. (“SEMA”) for Project 528-143 regarding the State Road 528/436 Interchange Improvements (“Project”). The construction of the Project is governed by South Florida Water Management District Individual Environmental Resource Permit Nos. 48-102612-P issued on December 20, 2019 and 48-00082-S issued on May 3, 2016 (collectively referred to as “the Permits”). The Greater Orlando Aviation Authority (“GOAA”) operates and controls certain real property adjacent to the Project (“GOAA Property”), including a canal in accordance with that certain Amended and Restated Operation and Use Agreement, dated August 31, 2015 and the Interlocal Agreement dated November 1, 1977, between GOAA and Orange County, Florida, as amended.

In order to manage the drainage outfalls of the Project in accordance with the Permits, SEMA, performing work on behalf of CFX, will need to, on occasion, discharge turbid waters onto or through the GOAA Property. In consultation with the various environmental consultants employed by both GOAA and CFX and, as a result of conversations with the South Florida Water Management District, a recommendation for this project was to create a “mixing zone” to allow for the discharge of turbid waters within a limited defined area. The mixing zone is permissible accordance with Rule 62-4.244, Florida Administrative Code, as promulgated by the Florida Department of Environmental Protection.

CFX has requested, and GOAA has agreed, to grant CFX and SEMA a license to discharge turbid waters onto and through the GOAA Property in accordance with the terms and conditions of the proposed Mixing Zone Property Access License Agreement attached hereto as **Attachment A** (“Agreement”). Pursuant to the terms of the proposed Agreement, GOAA agrees to grant the license to CFX and SEMA and to establish the parameters of mixing zones on the GOAA Property for the discharge of turbid waters.

In exchange for the grant of the license, CFX agrees to remove, by means of maintenance dredging, six (6) inches of sediment from the bottom of the GOAA Property for a distance equal to two (2) times the length of the mixing zone downstream of each outfall where a mixing zone is established. The mixing zone and restoration zones are more particularly described in the Agreement as well as the attached Exhibits A and B.

### **REQUEST**

Board's approval of the following is requested:

Mixing Zone Property Access License Agreement Between GOAA and CFX, subject to any minor or clerical revisions approved by the General Counsel or designee.

### **ATTACHMENT**

A. Mixing Zone Property Access License Agreement Between GOAA and CFX

**MIXING ZONE**  
**PROPERTY ACCESS LICENSE AGREEMENT**

This **MIXING ZONE PROPERTY ACCESS LICENSE AGREEMENT** (“License”) is made and entered into as of the Effective Date (as defined below) by and between **GREATER ORLANDO AVIATION AUTHORITY**, a public body existing under the laws of the State of Florida (“GOAA”), and **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a body politic and corporate and agency of the State of Florida, (“CFX”), referred to herein jointly as the “Parties” and each as “Party.”

**RECITALS:**

WHEREAS, pursuant to that certain Amended and Restated Operation and Use Agreement, dated August 31, 2015 (“Use Agreement”), GOAA controls and operates certain property situated in Orange County, Florida, as more particularly known as the Orlando International Airport (the “Airport”); and

WHEREAS, CFX operates and maintains the Central Florida Expressway System located within the geographical boundaries of Brevard, Lake, Orange, Osceola and Seminole, Counties;

WHEREAS, GOAA and CFX have mutual interests as GOAA manages the Airport, which is one of the largest airports in the world and provides air service access to the Central Florida region, while CFX maintains the Central Florida Expressway System that provides the most efficient and high capacity access to and from Airport via State Road 528 (“S.R. 528”) at the State Road 436 (“S.R. 436”) Interchange and at the Goldenrod Road Interchange and via State Road 417 at the Boggy Creek Road Interchange and the South Jeff Fuqua Boulevard Interchange; and

WHEREAS, CFX, through its contractor, SEMA Construction, Inc. (“SEMA”), is improving the interchange of S.R. 528 and S.R. 436 (“Interchange Improvements Project”), which Interchange Improvements Project has resulted in and will continue to discharge turbid water onto or through GOAA’s property (hereinafter referred to as “GOAA Property”); and

WHEREAS, to insure that the turbidity discharged is held within the mixing zone and minimize possible downstream environmental impacts, CFX desires to establish mixing zones on GOAA Property in the specific areas shown on Exhibit “A” (the “Mixing Zone Property”) in accordance with Rule 62-4.244, F.A.C. and a Permit Modification to be issued to CFX’s South Florida Water Management District (“SFWMD”) Permit #48-102612-P and Permit #48-0082-S or a separate permit issued by SFWMD to CFX (collectively, the “CFX Permits”) which sets forth the particular requirements of said mixing zone; and

WHEREAS, as a result of the Interchange Improvement Project to date and its future use of the mixing zone, sediments have been and will be deposited into the GOAA Mixing Zone Property and for a distance downstream of said mixing zones; and

WHEREAS, in return for GOAA agreeing to reissue its Recognition of Intent to Dewater for Interchange Improvements Project for CFX/SEMA, Permit #48-02727-W, Application #200422-3 (“Recognition of Intent to Dewater”) and the use of the Mixing Zone Property to establish mixing zones, CFX agrees to remove by means of maintenance dredging six (6) inches of sediment from the bottom of the GOAA B-8 Bypass Canal a distance equal to two (2) times the

length of the mixing zone downstream of each outfall where a mixing zone is established as shown on the attached Exhibit “B” (hereinafter referred to as the “Restoration Zone”) and (collectively the “Mixing Zone Property” and the “Restoration Zone” shall be known as the “Impacted Property”); and

WHEREAS, the Impacted Property is a portion of a larger parcel of land owned by the City of Orlando and operated and controlled by GOAA pursuant to the Use Agreement, subject to a maintenance obligation to Orange County, Florida set forth in the Second Amendment to the Interlocal Agreement by and between Orange County, Florida and GOAA dated July 16, 1991; and

WHEREAS, the Parties hereby acknowledge and agree that this License shall be effective as of the last date on which GOAA or CFX executes this License (“Effective Date”).

**W I T N E S S E T H :**

NOW THEREFORE, in consideration of the mutual covenants and agreements herein set forth, GOAA and CFX agree and covenant as follows:

1. Recitals. The above recitals are true and correct and incorporated herein by this reference.

2. Grant of License. GOAA, subject to the terms and conditions set forth herein, hereby grants the right and license to CFX and its employees, contractors, subcontractors and agents to enter upon the Property specifically for the purpose of establishing mixing zones pursuant to Rule 62-4.244 F.A.C., the CFX Permits and all conditions set forth in the permit modification or permit to be issued by SFWMD in connection with the Interchange Improvements Project and the Restoration, as defined below, at the completion of the Interchange Improvements Project, all in accordance with all laws, codes, ordinances and all rules and regulations and requirements of authorities having jurisdiction over the Property (the “Mixing Zone License”).

a. Mixing Zone.

i. Permit Application. CFX has submitted a permit application package which details the plan and requirements for the set-up and operation of the mixing zones within the Mixing Zone Property and which application along with exhibits, shall be provided to GOAA for its review and approval GOAA shall have fourteen (14) days from its receipt to review and approve or deny the initial permit application, in its sole and absolute discretion. If GOAA denies the permit application, it shall provide the reasons for its denial in writing to CFX and CFX may resubmit an application package for GOAA’s review. For follow up reviews, GOAA shall approve or deny with comments, in its sole and absolute discretion, within seven (7) days from its receipt. The parties agree that the following shall be conditions of the permit, so long as SFWMD is agreeable to same, and conditions of this License:

1. This License shall act as GOAA’s authorization for CFX to dewater onto GOAA Property and GOAA’s notice of termination of this License shall act as a withdrawal of said authorization.



2. The State water quality standard, set forth in Rule 62-302.500 F.A.C., shall apply at the end of the mixing zone. The parties have established that background is 10 NTU, therefore, the water quality standard is 39 NTU at the monitor at the downstream end of each mixing zone to remain in compliance.

3. In the event the water quality standard is exceeded at any monitor associated with a mixing zone, CFX shall take immediate action to cease all construction activities causing or contributing to the water quality standard being exceeded until the water quality standard can be met.

4. GOAA shall be granted access to the CFX automated turbidity monitors. CFX shall self-report to SFWMD anytime there is an exceedance at an automated turbidity monitor or from a hand sample and advise of the action being taken to bring the water quality back into compliance with the water quality standard.

5. CFX is required to remove by means of maintenance dredging six (6) inches of sediment from the bottom of the Impacted Property to insure all sediments deposited as part of the Interchange Improvements Project and the associated mixing zones are removed (the "Restoration"). There are not any wetland areas within the Impacted Property, however there are wetlands on either side of the Impacted Property as depicted in more detail on Exhibit "C" and CFX shall not disturb the existing wetlands. In the event CFX must disturb the wetlands, GOAA has confirmed that the wetlands have been permitted for removal and CFX would need to obtain a construction permit through SFWMD. In pursuit of such permitting, GOAA will assist with permitting and prior mitigation of said impacts.

6. CFX shall insure that the normal flow of the B-8 Bypass Canal is not impacted. In the event GOAA determines the flow is impacted or notice is given by Orange County, Florida, the City of Orlando, Florida Department of Environmental Protection, St. Johns River Water Management District or SFWMD that the mixing zone is impacting the flow of the B-8 Bypass Canal, CFX shall cease all construction activities causing or contributing to the impact, remove any sedimentation causing the reduced flow and remove the mixing zones as soon as practicable or immediately in the case of an emergency. In the event that the mixing zones are removed, CFX shall then complete the Restoration.

7. In the event the mixing zone turbidity, exclusively resulting from the Interchange Improvement Project, causes a water quality violation at GOAA's downstream outfall, as measured by GOAA's automated turbidity monitors, one (1) time or in the event Orange County, Florida, the City of Orlando, Florida Department of Environmental Protection or SFWMD provides written notice of downstream impacts resulting from turbidity caused by the Interchange Improvements Project, CFX shall take immediate action to cease all construction activities causing or contributing to the

violation or notice of downstream impacts, the mixing zones shall be removed and CFX shall complete the Restoration.

ii. Operation. CFX shall insure that the mixing zones fully comply with the CFX Permits, permit conditions and the terms and conditions of this License at all times. CFX shall advise GOAA in writing of all construction plans and activities that may have an impact to water quality or quantity being discharged into the GOAA Property.

b. Restoration. Upon the substantial completion, as established by CFX's resident engineer, of the portions of the Interchange Improvements Project which impact water quality and water quantity on the Impacted Property, CFX shall provide its plan for the Restoration to GOAA for GOAA's review, and GOAA shall have fourteen (14) days from receipt of the plan to approve or deny said plan, in GOAA's sole and absolute discretion. If GOAA denies the plan it shall provide the reasons for its denial in writing to CFX. CFX may resubmit the Restoration plan for GOAA's review and GOAA shall have seven (7) days to review any resubmittals and either approve or deny with comments. To the extent a Restoration Zone is within the easement or license area granted to Brightline Trains Florida LLC ("Brightline"), the Restoration plan for that area must be coordinated with Brightline. Once approved, CFX shall initiate and complete the Restoration in compliance with the approved plan. It is the intent of the Parties that the Restoration be accomplished in the months of January 2022 through March 2022 or January 2023 through March 2023, during Central Florida's traditional dry season. Once complete, CFX shall provide GOAA with a post-Restoration survey of Impacted Property. The post-Restoration survey shall be completed on or before April 30, 2023.

3. Liens. CFX shall not unreasonably disturb any GOAA operations on the Impacted Property or property adjoining the Impacted Property or damage any improvements which may be located on the Impacted Property or property adjoining the Impacted Property. CFX shall not permit the filing of any liens against the Impacted Property in connection with its activities contemplated herein. In the event a claim of lien is filed against the Impacted Property as a result of the work by or on behalf of CFX, or as a result of other actions or omissions of CFX, then CFX shall cause such lien to be satisfied or transferred to bond so that there is no longer a lien against the Impacted Property within ten (10) days after CFX receives written notice from GOAA that the claim of lien has been filed.

4. Insurance. CFX or its contractors shall maintain worker's compensation coverage with Florida's statutory limit, commercial general liability (CGL) insurance with a minimum coverage of \$1,000,000, and commercial auto liability (CAL) insurance with a minimum of \$100,000 per incident/\$300,000 aggregate, which shall be maintained in accordance with GOAA's Risk Management/Safety policies and procedures contained in GOAA's Policy and Procedure Manual, and shall be maintained with insurance companies that are insurers of internationally recognized reputation in the aviation market. CFX's liability insurance shall name GOAA as an additional insured by endorsement to the CGL and CAL policies. CFX shall cause its contractors, subcontractors, agents, licensees and permittees accessing the Property to maintain insurance coverage in accordance with same requirements as set forth above. Deductibles and/or self-insured retentions shall not exceed \$10,000. If the deductible is of "First Dollar Coverage Type" (paid by the insurer first) then a higher deductible may be used. CFX shall furnish evidence of such insurance coverage prior to any contractor, subcontractor, agent, CFX or permittee of CFX

entering upon the Property. GOAA understands and acknowledges that CFX may be self-insured and may provide evidence of such self-insurance to satisfy the requirements of this provision.

5. Indemnity. GOAA makes no warranty or representation whatsoever as to the condition of the Impacted Property or any improvements which may be located thereon. CFX's entry upon the GOAA Property shall be at CFX's sole risk and expense, and GOAA shall assume no liability for such entry. CFX hereby agrees that GOAA assumes no responsibility whatsoever for injury to persons entering the GOAA Property, or damage to property brought in, or upon, the GOAA Property. To the extent permitted by law, CFX specifically indemnifies and holds harmless GOAA, the City of Orlando, and their respective members, directors, officers, employees and representatives from and against any and all claims, damages, actions, judgments, losses, liabilities, liens, costs, administrative fines, or expenses of any nature (including without limitations costs, expenses, attorneys' and paralegals' fees) arising out of or in any way connected with CFX's entry upon the GOAA Property and performance of any work on the GOAA Property by or on behalf of CFX, including but not limited to, upstream impacts such as flooding and downstream impacts associated with water quality violations such as administrative actions or fines levied by any governmental agency with regulatory authority over the GOAA Property or third party claims by downstream users resulting from impacts to water quality.

6. Term. The License granted hereby shall expire April 30, 2023. For purposes of completing the post Restoration survey, this License may be extended for one additional ninety (90) day period. CFX shall send written notice of its desire to extend the License to the Chief Executive Officer for GOAA thirty (30) days prior to its expiration of this License and the Chief Executive Officer shall review and approve or deny said request at his or her sole discretion. Except as otherwise set forth herein, this License agreement and the attendant privileges granted hereby may be revoked at any time by GOAA upon thirty (30) days prior written notice to CFX; provided, however, that CFX's obligations to indemnify GOAA and to complete the Restoration, as set forth herein, shall survive such revocation. Upon termination or expiration this License agreement, CFX, at its sole cost and expense, shall vacate the Property and promptly remove any and all property placed thereon by or on behalf of CFX and restore any damage or disturbance to the Property caused by CFX, including the Restoration.

7. General. This License may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute one and the same agreement. This License contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No amendment to this License shall be binding upon any of the parties hereto unless such amendment is in writing and executed by GOAA and CFX. The provisions of this License shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, personal representatives, successors and assigns. Time is of the essence of this License. Wherever under the terms and provisions of this License the time for performance falls upon a Saturday, Sunday, or legal holiday, such time for performance shall be extended to the next business day. Unless otherwise stated the term "day" or "days" shall be calendar days. This License shall be interpreted under the laws of the State of Florida. This License is subject to and subordinate to all previously recorded agreements as to the Property in the public records of Orange County, Florida.

In acknowledgement and acceptance of the terms and conditions herein, the parties hereto have caused this License agreement to be executed as of the date set forth hereinbelow.

**[Intentionally Blank – Signature Pages to Follow]**

**“GOAA”**

**THE GREATER ORLANDO  
AVIATION AUTHORITY**

ATTEST:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_,  
Title: \_\_\_\_\_

*[Official Seal]*

By: \_\_\_\_\_  
Phillip N. Brown, A.A.E.,  
Chief Executive Officer

Date: \_\_\_\_\_, 202\_\_

APPROVED AS TO FORM AND LEGALITY on this  
\_\_\_\_ day of \_\_\_\_\_, 202\_\_ for the use and reliance of  
the Greater Orlando Aviation Authority, only.  
Marchena and Graham, P.A., Counsel

By: \_\_\_\_\_  
Marchena and Graham, P.A.

**WITNESS:**

**“CFX”**

**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY**, a public  
Corporation of the State of Florida

\_\_\_\_\_  
Printed Name:\_\_\_\_\_

By: \_\_\_\_\_  
Laura Kelley  
Executive Director

\_\_\_\_\_  
Printed Name:\_\_\_\_\_

Date: \_\_\_\_\_, 202\_\_

**ATTEST:**

\_\_\_\_\_  
Regla Lamaute, Recording Clerk

APPROVED AS TO FORM AND LEGALITY  
FOR USE AND RELIANCE BY THE  
CENTRAL FLORIDA EXPRESSWAY  
AUTHORITY ONLY.

\_\_\_\_\_  
Diego “Woody Rodriguez, Esquire  
CFX General Counsel  
Date: \_\_\_\_\_, 202\_\_

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_  
2021 by Laura Kelley, Executive Director, of the Central Florida Expressway Authority, on behalf of  
the organization. She personally appeared before me and is personally known to me.

(SEAL)

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**



**[Mixing Zone Property]**

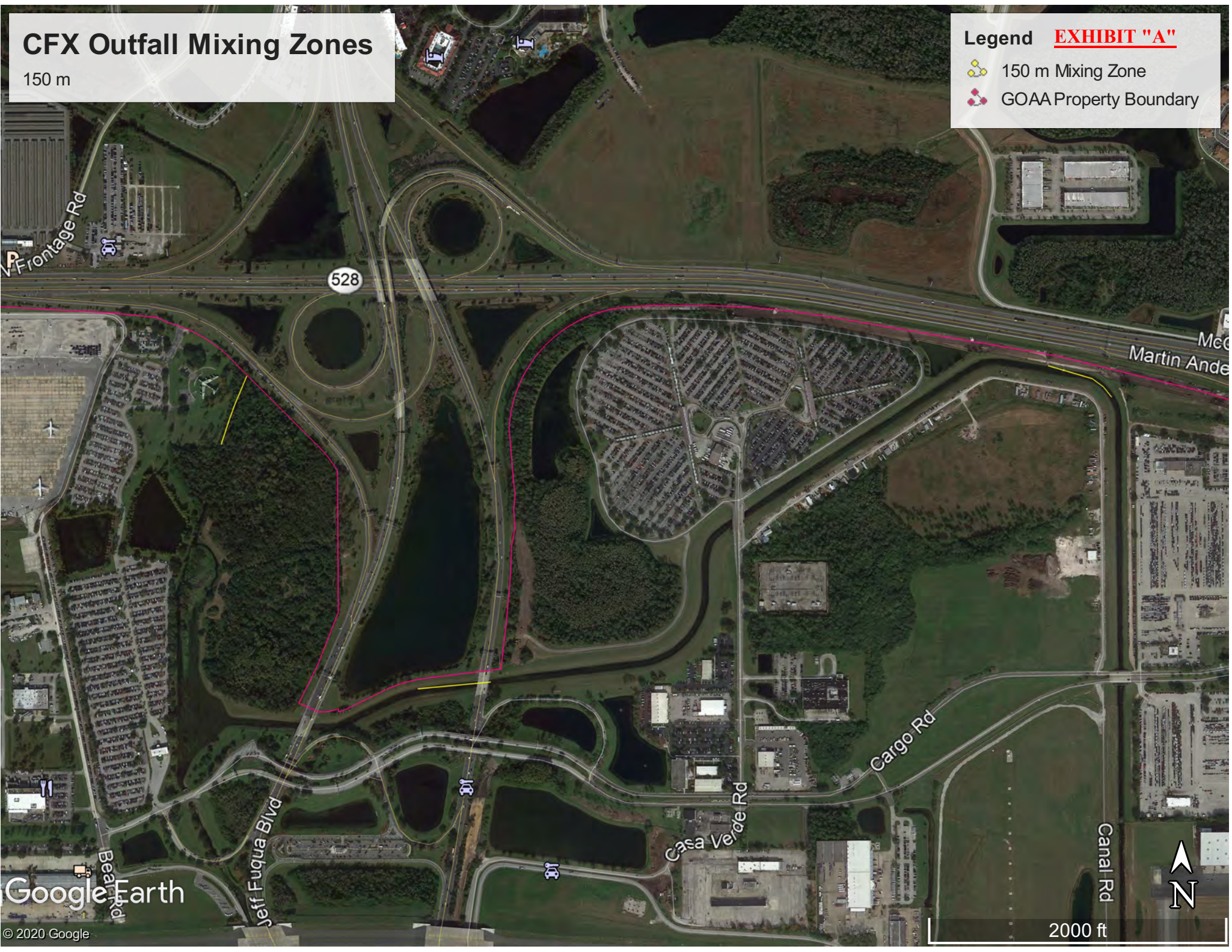


# CFX Outfall Mixing Zones

150 m

## Legend **EXHIBIT "A"**

-  150 m Mixing Zone
-  GOAA Property Boundary



Google Earth

© 2020 Google

2000 ft







**EXHIBIT “B”**  
**[Restoration Zone]**



# CFX Outfall Dredge Area

300 m

## Legend **EXHIBIT "B"**

-  300 m Dredge Area
-  GOAA Property Boundary

Martin Andersen Beachline Expy (Toll road)

528

Martin Andersen Beachline Expy

Jett Fuqua Blvd

Casa Verde Rd

Cargo Rd

Canal Rd

Google Earth

© 2020 Google

2000 ft







**EXHIBIT “C”**


**[SFWMD Wetlands]**


# SFWMD Wetlands

Located near the BC-2 Restoration Zone

**Legend** **EXHIBIT "C"**

-  Bypass Canal
-  Wetlands, permitted not yet taken

 BC-2 Outfall

End of 300 m Restoration Zone 

Google Earth

© 2020 Google



600 ft

**CONSENT AGENDA ITEM  
#11**



# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Diego “Woody” Rodriguez, General Counsel *Woody Rodriguez*

DATE: January 28, 2021

RE: Amendment No. 2 to Agreement Between University of Central Florida Research Foundation, Inc. and Central Florida Expressway Authority

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## BACKGROUND

University of Central Florida Research Foundation, Inc. (“UCFRF”) and Central Florida Expressway Authority (“CFX”) entered into an Agreement between UCFRF and CFX dated March 10, 2016, as amended by Amendment No. 1 to UCFRF-CFX Agreement dated December 14, 2016 (collectively, the “Agreement”) setting forth the rights of each of the parties as to certain Patent Rights and License Agreements, as defined in the Agreement. A copy of the Agreement is attached hereto as **Attachment “A”**. The Agreement was a result of a collaborative effort between UCFRF and CFX to develop and market the technology used to counter wrong-way driving on our system.

The Agreement is set to expire on March 10, 2021. The parties have been diligently negotiating License Agreements with several prospective third parties and continue to promote the Patent Rights that have been recorded in accordance with the Agreement. The parties anticipate that the marketing and licensing efforts will result in potential revenues for both parties and as such seek to extend the Agreement for an additional period of time in accordance with the terms and conditions of the proposed Amendment No. 2 to Agreement Between UCFRF and CFX (“Amendment No. 2”) to allow those License Agreements to be effectuated. A copy of Amendment No. 2 is attached hereto as **Attachment “B”**.

## REQUEST

Board’s approval of the following is requested:

Amendment No. 2 to Agreement Between UCFRF and CFX, subject to any minor or clerical revisions approved by the General Counsel or designee.

## ATTACHMENTS

- A. Agreement between UCFRF and CFX and Amendment No. 1
- B. Amendment No. 2 to Agreement Between UCFRF and CFX



**AGREEMENT**  
between  
**UNIVERSITY OF CENTRAL FLORIDA RESEARCH FOUNDATION, INC.**  
And  
**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

This Agreement (“**Agreement**”) is effective this 12<sup>th</sup> day of MARCH 2016 (“**Effective Date**”), between the University of Central Florida Research Foundation, Inc. (“**UCFRF**”), a Florida nonprofit corporation, having an address at 12201 Research Parkway, Suite 501, Orlando, FL 32826, and Central Florida Expressway Authority (“**CFX**”) (previously, Orlando-Orange County Expressway Authority), a body and corporate politic and agency of the State of Florida, having an address at 4974 ORL Tower Road, Orlando, FL 32807. (**UCFRF** and **CFX** shall be referred to individually as “**Party**” or collectively as “**Parties**”)

1. BACKGROUND

- 1.1 In the course of performance under and disclosing information relating to an Interlocal Agreement effective March 1, 2014, between the University of Central Florida (“**UCF**”) and Orlando-Orange County Expressway Authority (now known as **CFX**), Dr. Haitham Al-Deek and Mr. John Rogers of UCF and Mr. Corey Quinn of **CFX** (collectively the “**Inventors**”) made or reduced to practice certain invention(s) described in an invention disclosure titled, “*Design Concept and Implementation of Rectangular Rapid Flashing Beacon (RRFB) Technology as Countermeasure for Wrong Way Driving*” and further described and subsequently filed as a provisional patent application on July 31, 2015, U.S. serial number 62/199,579 (“**Invention**”), which is included within the **Patent Rights**, as defined in Paragraph 2.1. This is disclosed as UCFRF Case No.10996/33317.
- 1.2 Dr. Al-Deek and Mr. Rogers are each required to assign to **UCF** their respective interest in any patent rights covering inventions made during the course of employment with **UCF**, and have assigned such rights in the Invention to **UCFRF**. **UCFRF** has been assigned the rights by **UCF** to certain inventions and discoveries emanating from research and educational activities at **UCF**, a public university of the state of Florida.
- 1.3 Mr. Corey Quinn is an employee of **CFX** and is either required by employment contract or at will to assign to **CFX** his respective interest in any patent rights covering inventions made during the course of his employment with **CFX** and has assigned or will assign such rights in the Invention to **CFX**.
- 1.4 **UCFRF** and **CFX** are co-owners of the **Patent Rights** through the assignments as described herein.
- 1.5 **UCFRF** is willing to take the lead in identifying licensee(s) and negotiating a license(s) or option agreement(s) for the **Patent Rights** for commercial purposes on behalf of **UCFRF** and **CFX**.
- 1.6 **UCFRF** is willing to administer all subsequent patent filings, prosecution, and maintenance of the **Invention**.
- 1.7 It is the mutual desire of **UCFRF** and **CFX** that their respective undivided interests in the **Patent Rights** be administered in a manner to ensure the rapid commercialization of the **Patent Rights** and to make their benefits widely available to the public.
- 1.8 **UCFRF** and **CFX** wish to enter into this **Agreement** to establish a means for filing and prosecuting the **Patent Rights**, for administering and licensing the **Patent Rights**, and for sharing income derived from licensing of the **Patent Rights**.

2. DEFINITIONS

- 2.1 “**License Agreement**” shall mean any agreement(s) entered into by **UCFRF** on behalf of **UCF** and **CFX** that grants a third party (or licensee) the right to make, use, and/or sell products or processes covered by **Patent Rights** in the territory.
- 2.2 “**Patent Rights**” means patent applications or patents as follows: U.S. Patent Application Serial Number - 62/199,579, filed on July 31, 2015 titled, “Wrong Way Indication Beacon and Related Methods,” and any future patent applications claiming the benefit of priority thereof including all divisions, continuations, reexaminations, reissues of this application only.
- 2.3 “**Expenses**” means all actual out-of-pocket costs incurred by **UCFRF** for the preparation, filing, and prosecution of United States and foreign patent applications, extraordinary expenses as provided in Paragraph 3.4, and the maintenance of resulting patents, exclusive of any salaries, administrative, or other indirect costs.

3. PATENT PROSECUTION AND PROTECTION

- 3.1 (a) **CFX** agrees that **UCFRF** shall coordinate with its outside patent counsel to file, prosecute, and maintain patent application(s) relating to the **Patent Rights** and shall promptly provide or direct patent counsel to provide to **CFX** all serial numbers and filing dates, together with copies of all the applications, including copies of correspondence, all patent office actions, responses, and all other patent office communications, including copies of issued patent(s). Such correspondence shall be sent electronically to the following **CFX** email address: [Joe.Passiatore@CFXWay.com](mailto:Joe.Passiatore@CFXWay.com).
- (b) **UCFRF** shall consult with **CFX** at least ninety (90) days prior to any relevant bar date and shall make an election, in countries where statutory protection is available, as to whether, when, and in what countries to file foreign patent applications. If **UCFRF** decides not to file applications under the **Patent Rights** in any country that **CFX** desires to seek protection, then **CFX** shall have the right, at its sole expense, to file and prosecute such applications in such countries. If **UCFRF** decides to file applications under the **Patent Rights** in any country that **CFX** does not desire to seek prosecution, then **UCFRF** shall have the right to file and prosecute such applications at its sole expense.
- 3.2 Subject to the exclusions set forth in 3.1(b), **UCFRF** and **CFX** agree to equally (50/50) share **Expenses** associated with **Patent Rights**. Requests for reimbursement of fifty percent (50%) of the **Expenses** incurred by **UCFRF** shall be submitted periodically throughout the term of this **Agreement** to **CFX** via invoice with supporting documentation. In the event that **CFX** directly incurs any **Expenses**, requests for reimbursement of fifty percent (50%) of the **Expenses** incurred by **CFX** shall be submitted to **UCFRF** via invoice with supporting documentation. Reimbursement of its share of **Expenses** by **CFX** shall be capped at \$49,999.00 for purposes of this **Agreement**. Any additional reimbursement by **CFX** shall require a supplemental amendment to this **Agreement**.
- 3.3 Notwithstanding any other provision of this **Agreement**, **UCFRF** shall not abandon the prosecution of any patent application or the maintenance of any patent contemplated by this **Agreement**, without prior written notice to **CFX**. Upon receiving the written notice, **CFX** may, at its sole option and expense, assume responsibility for the prosecution of any patent application, or the maintenance of any patent.
- 3.4 In the event that **UCFRF** or **CFX** anticipates the possibility of any extraordinary expenditures arising from the preparation, filing, prosecution, licensing, or defense of any patent application or patent contemplated by this **Agreement**, including, without limitation, interferences, reexaminations, reissues and oppositions, the Party anticipating such expenditures shall notify the other Party with all relevant information and these extraordinary expenditures shall be included as **Expenses** only upon written agreement of both Parties. **UCFRF** and **CFX** shall agree on a mutually acceptable course of action prior to incurring these expenditures.

#### 4. LICENSING

- 4.1 CFX hereby grants to UCFRF the exclusive right to negotiate, execute, administer and manage **License Agreement(s)** for the commercial development and sale of the **Invention**.
- 4.2 UCFRF and CFX will use all reasonable efforts to cooperate with each other with respect to the licensing of **Patent Rights**, including exchanging information on licensing inquiries received, exchanging marketing materials, and providing other reasonable assistance to the other Party when requested.
- 4.3 UCFRF will provide CFX their respective drafts of term sheets, option agreements, and **License Agreement(s)** during negotiations with third parties and provide a reasonable period of at least 15 days for review and comments. UCFRF agrees to seek reimbursement for all past, present and future patent costs from any third party seeking an exclusive license. In addition, UCFRF shall use reasonable efforts to include, without limitation, the following business terms within any **License Agreement**: an upfront fee of cash or equity, milestone payments, an earned royalty, minimum annual royalties, payment of patent costs and diligence terms. Any **License Agreement** will include the following terms: full indemnification of UCFRF, UCF, and CFX by licensee(s), a prohibition against the use of the logos, names, trade names, service marks, or trademarks of UCFRF, UCF, and CFX and the names of the **Inventors**, confidentiality, and a reservation of rights to use as set forth in Section 4.7. To the extent permitted by applicable state law, the parties agree to keep such documents and related documentation confidential in accordance with Article 6 of this **Agreement**.
- 4.4 Except for revenue arising from patent(s) solely pursued by one Party pursuant to 3.1(b), UCFRF and CFX agree that revenue from licensing of the **Patent Rights** will be shared equally (50/50) between UCFRF and CFX. Revenue from licensing of the **Patent Rights** shall be distributed on at least a semi-annual basis. UCFRF shall keep books and records sufficient to verify UCFRF's accounting, including without limitation, invoice records relating to revenue and **Expenses**. Such books and records shall be preserved for a period not less than three (3) years.
- 4.5 Each **Party** shall be responsible for distributing shares of license revenue according to the Party's internal agreements, practices and policies.
- 4.6 It is understood that if the United States Government (through any of its agencies or otherwise) funded research during the course of or under which any invention of the **Patent Rights** were conceived or made, the United States Government is entitled, as a right, to a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced any invention of such **Patent Rights** for governmental purposes. Any license granted to a licensee shall be subject to such government right.
- 4.7 It is further understood that any **License Agreement** entered into between UCFRF and a third party for **Patent Rights** shall reserve to both **Parties** and their respective organizations, UCF and CFX, the royalty-free, non-exclusive right to practice any **Patent Rights** licensed hereunder for their own purposes, including research and education, or experimental use purposes for the State of Florida.

#### 5. TERM AND TERMINATION

- 5.1 This **Agreement** is effective from the **Effective Date** and will remain in effect until the sooner of (i) the expiration of the last-to-expire patent under **Patent Rights**, or (ii) at least five (5) years after the **Effective Date** of this Agreement that no **License Agreement** respecting **Patent Rights** remains in effect. Termination of this **Agreement** will not relieve either **Party** of any obligation or liability accrued under this **Agreement** before termination, nor will it rescind any payments made or due before termination.

- 5.2 Unless a **License Agreement** is in effect or has been agreed upon as to all financial terms, either **Party** hereto may terminate this Agreement for any reason upon at least sixty (60) days written notice (“Notice of Termination”) to the other Party, but in any event not less than sixty (60) days prior to the date on which responses to any pending patent office actions need to be taken to preserve **Patent Rights**. Upon termination of this **Agreement** all monies due to **UCFRF** or **CFX** as applicable shall become immediately due and payable. Apart from the obligations to share patent costs, Article 4, and apart from specific obligations accrued prior to termination, Article 6 - Confidentiality, the **Parties** will have no further rights or obligations under this Agreement after effective termination.
- 5.3 In the event that this **Agreement** is terminated, **UCFRF** may continue patent prosecution or maintenance of the **Patent Rights** at its sole expense. If **UCFRF** chooses not to continue prosecution or maintenance of the **Patent Rights**, **CFX** may proceed with the prosecution or maintenance at its sole expense.

## 6. CONFIDENTIALITY

- 6.1 Each **Party** agrees that during the term of this **Agreement**, and for a period of three (3) years from the expiration or effective date of termination of this **Agreement**, it will treat confidential information with reasonable care to avoid disclosure of the confidential information to any third party, person, firm or corporation, and each **Party** shall be liable for unauthorized disclosure or failure to exercise such reasonable care. Neither **Party** shall have any obligation, with respect to the confidential information, or any part thereof, which:
- (a) is already known to the receiving **Party** at the time of the disclosure;
  - (b) becomes publicly known without the wrongful act or breach of this **Agreement** by the receiving **Party**;
  - (c) is rightfully received by the receiving **Party** from a third **Party** on a non-confidential basis;
  - (d) is approved for release by written authorization of the other **Party**;
  - (e) is subsequently and independently developed by employees of the receiving **Party** who had no knowledge of the confidential information;
  - (f) is disclosed pursuant to any judicial or government request, requirement or order, provided that the **Party** so disclosing takes reasonable steps to provide the other **Party** prior notice in order to contest such request, requirement or order; and
  - (g) is disclosed as may be required by court order or applicable provisions of state or federal law.
- 6.2 Each **Party** shall be entitled, at its option, to disclose confidential information by a written non-disclosure agreement containing these same terms and provisions to its consultants or non-employees retained because of their standing and expertise in the area concerned.
- 6.3 To the extent permitted by law, the Parties agree that all non-published patent prosecution documentation and attorney communications shall be confidential information.

## 7. NO WARRANTIES

- 7.1 Each **Party** represents and warrants to the other **Party** that it is a duly organized, validly existing organization, and is in good standing under the laws of the jurisdiction of its state.
- 7.2 Each **Party** represents and warrants to the other **Party** that it has full power and authority (including full corporate power and authority) to execute and deliver this **Agreement** and to perform its obligations

hereunder. All necessary proceedings (including any necessary approval by a **Party's** board of directors) have been taken by such **Party** to duly authorize the execution, delivery, and performance of this **Agreement** by such **Party**. This **Agreement** constitutes the valid and legally binding obligation of such **Party**, enforceable against such **Party** in accordance with its terms and conditions.

- 7.3 THE **PARTIES** MUTUALLY AGREE AND ACKNOWLEDGE THAT NEITHER **PARTY**, BY THIS AGREEMENT, MAKES ANY REPRESENTATIONS AS TO THE OPERABILITY OR FITNESS FOR ANY USE, SAFETY, EFFICACY, ABILITY TO OBTAIN REGULATORY APPROVAL, PATENTABILITY, AND/OR BREADTH OF **PATENT RIGHTS**. THE **PARTIES**, MAKE NO REPRESENTATION AS TO WHETHER THERE ARE ANY PATENTS NOW HELD, OR WHICH WILL BE HELD, BY OTHERS OR BY EITHER **PARTY** IN THE **PATENT RIGHTS**, NOR DOES EITHER **PARTY** MAKE ANY REPRESENTATION THAT THE **PATENT RIGHTS** DO NOT OR WILL NOT INFRINGE ANY OTHER PATENTS NOW HELD OR THAT WILL BE HELD BY OTHERS OR BY EITHER **PARTY**.
- 7.4 IN NO EVENT WILL EITHER **PARTY'S** LIABILITY OF ANY KIND INCLUDE ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE LOSSES OR DAMAGES, EVEN IF THE **PARTY** HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO CASE WILL EITHER **PARTY'S** LIABILITY OF ANY KIND EXCEED THE TOTAL ROYALTIES WHICH HAVE ACTUALLY BEEN PAID TO THE **PARTY** BY ANY LICENSEE AS OF THE DATE OF THE FILING OF THE ACTION AGAINST THE **PARTY** WHICH RESULTS IN THE SETTLEMENT OR AWARD OF DAMAGES.
8. GENERAL
- 8.1 All notices or payment required or permitted to the provisions of this **Agreement** shall be given by email, or prepaid, first class, registered or certified mail or by an express/overnight delivery service provided by a commercial carrier, properly addressed to the other **Party** at the address designated on the following signature page, or to another address as may be designated in writing by the other **Party** during the term of this **Agreement**.
- 8.2 It is understood that both **Parties** are subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes, and other commodities (including the Arms Control Act, as amended and the Export Administration Act of 1979), and their obligations hereunder are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances that any licensee will not re-export data or commodities to certain foreign countries without prior approval of the cognizant government agency. The **Parties** agree to cooperate in securing any license which the cognizant agency deems necessary in connection with this **Agreement**. However, neither **Party** guarantees that such licenses will be granted.
- 8.3 During the term of this **Agreement**, neither **Party** will assign its undivided interest in the **Patent Rights**.
- 8.4 It is agreed that no waiver by either **Party** hereto of any breach or default of any of the covenants or agreements set forth herein shall be deemed a waiver as to any subsequent or similar breach or default.
- 8.5 This **Agreement** is binding upon and shall inure to the benefit of the **Parties** hereto, their successors or assigns, but this **Agreement** may not be assigned by either **Party** without the prior written consent of the other **Party**, which consent will not be unreasonably withheld.
- 8.6 The captions and headings used in this **Agreement** are for convenience and in no way define, limit the scope or intent of this **Agreement** or any of its provisions.

- 8.7 This **Agreement** constitutes the entire and only agreement between the **Parties** for **Patent Rights** described herein and all other prior negotiations, representations, agreements and understanding are superseded by the terms of this **Agreement**. Any modification to this **Agreement** must be in writing and agreed to by both parties.
- 8.8 Neither **Party** shall use publicly for publicity, promotion, or otherwise, any logo, name, trade name, service mark, or trademark of the other **Party**, or any simulation, abbreviation, or adaptation of the same, or the name of any employee or agent of the other Party, without that **Party's** prior written express consent. A **Party** may withhold such consent in its absolute discretion.
- 8.9 In the performance of their respective duties under this contract, the **Parties** are independent contractors of each other. Neither is the agent, employee, or servant of the other. Each is responsible only for its own conduct.
- 8.10 This **Agreement** in no way restricts either **Party** from cooperating with or receiving cooperation from other public and private agencies, organizations, and individuals with respect to any of the normal activities of either of the **Parties**.
- 8.11 Both **Parties** agree to all of the terms of this **Agreement**. Both **Parties** execute this **Agreement** only after reviewing it thoroughly. That one **Party**, or the other, may have drafted all or part of this **Agreement** will not cause this **Agreement** to be read more strictly against the drafting **Party**. This **Agreement** and any changes to it will be interpreted on the basis that both **Parties** contributed equally to the drafting of each of its parts.

SIGNATURES BEGIN ON NEXT PAGE

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this **Agreement** in duplicate originals by their respective duly authorized officers hereunto, on the day and year hereinafter written. Any communication or notice under this **Agreement** shall be provided to the respective Mailing Addresses listed below.

For Central Florida Expressway Authority



Name: Welton G. Cadwell  
Title: Chairman

Date: 3/10/16

ATTEST: 

Darlene Mazzillo  
Executive Assistant

APPROVED AS TO FORM AND LEGALITY:

  
CFX General Counsel

Mailing Address for notices and communications:

Central Florida Expressway Authority  
Attn: Joseph L. Passiatore, General Counsel  
4974 ORL Tower Road  
Orlando, FL 32807  
Telephone: (407) 690-5000  
Fax: (407) 690-5011  
Email address: [Joe.Passiatore@CFXWay.com](mailto:Joe.Passiatore@CFXWay.com)

For University of Central Florida Research Foundation, Inc.



Dr. Thomas P. O'Neal  
Vice President  
University of Central Florida Research Foundation, Inc.

2/26/2016  
Date

Approved as to Form and Legality

On behalf of SMS - N  
2-25-16

Mailing Address for notices and communications:

Andrea Adkins, Assistant Director  
University of Central Florida  
Office of Technology Transfer  
12201 Research Parkway, Suite 501  
Orlando, Florida 32826-3246  
Email address: [Andrea.Adkins@ucf.edu](mailto:Andrea.Adkins@ucf.edu)  
Telephone: (407) 823-0138  
Facsimile: (407) 882-9010

Reviewed by OTT:  2-26-16



**AMENDMENT NO. 1  
TO  
UCFRF-CFX AGREEMENT**

This Amendment (“Amendment”) to the UCFRF-CFX Agreement entered into on March 10, 2016 (“Agreement”) by the University of Central Florida Research Foundation, Inc. (“UCFRF”) and the Central Florida Expressway Authority (“CFX”) (previously, Orlando-Orange County Expressway Authority), is effective as of December 14, 2016 (hereinafter, the “Amendment Effective Date”), and is intended to be part of the Agreement by mutual agreement of the Parties, pursuant to Paragraph 8.7.

The purpose of this Amendment is to update the Agreement to (i) incorporate a new patent application filed subsequent to a new invention disclosure by one of the Inventors to the University of Central Florida (“UCF”) Office of Technology Transfer in the course and performance of the UCF-CFX Interlocal Agreement, effective March 1, 2014, and (ii) modify definitions and their use accordingly. Only the articles, paragraphs, and sections referenced are hereby modified, and all other provisions of the Agreement remain unchanged.

**Revise Article 1 – BACKGROUND**

Article 1, Paragraph 1.1 is deleted in its entirety and replaced with the following:

- 1.1. In the course of performance under and disclosing information relating to an Interlocal Agreement effective March 1, 2014, between the University of Central Florida (“UCF”) and Orlando-Orange County Expressway Authority (now known as CFX), Dr. Haitham Al-Deek and Mr. John Rogers of UCF and Mr. Corey Quinn of CFX (collectively the “Inventors”) made or reduced to practice certain inventions(s) described in an invention disclosure titled,
- 1.1.1. “*Design Concept and Implementation of Rectangular Rapid Flashing Beacon (RRFB) Technology as Countermeasure for Wrong Way Driving*” and further described and subsequently filed as a provisional patent application on July 31, 2015, U.S. serial number 62/199,579 (“Invention A”), which is included within the Patent Rights, as defined in Paragraph 2.1. This is disclosed as UCFRF Case No. 10996/33317.
- 1.1.2. “*Wrong Way Vehicle Detection and Control System*” and further described and subsequently filed as a provisional patent application on August 16, 2016, U.S. serial number 62/375,571 (“Invention B”), which is included within the Patent Rights, as defined in Paragraph 2.1. This is disclosed as UCFRF Case No. 11079/33516.
- (Invention A and Invention B, collectively the “Invention(s)”)

**Revise Article 2 – DEFINITIONS**

Article 2, Paragraphs 2.2 and 2.3 are deleted in their entirety and replaced with the following:

- 2.2 “Patent Rights” means patent applications or patents as follows: (1) U.S. Patent Application Serial Number 62/199,579, filed on July 31, 2015 titled, “Wrong Way Indication Beacon and Related Methods,” and (2) U.S. Patent Application Serial Number 62/375,571, filed on August 16, 2016 titled, “Wrong Way Vehicle Detection and Control System,” and any future patent applications claiming the benefit of priority thereof including all divisions, continuations, reexaminations, and reissues of these applications only.
- 2.3 “Expenses” means all actual out-of-pocket costs incurred by UCFRF or CFX as applicable for the preparation, filing, and prosecution of United States and foreign patent applications comprising Patent Rights, and extraordinary expenses as provided in Paragraph 3.4, and the maintenance of resulting patents, exclusive of any salaries, administrative, or other indirect costs.

**Revise Article 4 – LICENSING**

**Article 4, Paragraph 4.1 is deleted in its entirety and replaced with the following:**

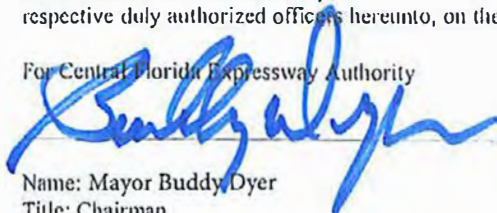
- 4.1 CFX hereby grants to UCFRF the exclusive right to negotiate, execute, administer and manage License Agreement(s) for the commercial development, licensing and sale of the Patent Rights.**

**SIGNATURES BEGIN ON NEXT PAGE**

SIGNATURE PAGE


IN WITNESS WHEREOF, the parties hereto have executed this Amendment in duplicate originals by their respective duly authorized officers hereunto, on the day and year hereinafter written.

For Central Florida Expressway Authority



Name: Mayor Buddy Dyer  
Title: Chairman

Date: 2/9/17

ATTEST 

Darlene Mazzillo  
Executive Assistant

APPROVED AS TO FORM AND LEGALITY:

  
CFX General Counsel

Mailing Address for notices and communications:

Central Florida Expressway Authority  
Attn: Joseph L. Passiatore, General Counsel  
4974 ORL Tower Road  
Orlando, FL 32807  
Telephone: (407) 690-5000  
Fax: (407) 690-5011  
Email address: [Joe.Passiatore@CFXWay.com](mailto:Joe.Passiatore@CFXWay.com)

For University of Central Florida Research Foundation, Inc.



Dr. Thomas P. O'Neal  
Vice President  
University of Central Florida Research Foundation, Inc.

1/11/2017  
Date

Mailing Address for notices and communications:

Andrea Adkins, Assistant Director  
University of Central Florida  
Office of Technology Transfer  
12201 Research Parkway, Suite 501  
Orlando, Florida 32826-3246  
Email address: [Andrea.Adkins@ucf.edu](mailto:Andrea.Adkins@ucf.edu)  
Telephone: (407) 823-0138  
Facsimile: (407) 882-9010

Approved as to Form and Legality  
2/8, 1/10/2017

Reviewed by OTT: AS, 1/10/2017

**AMENDMENT NO. 2  
TO  
AGREEMENT BETWEEN UNIVERSITY OF CENTRAL FLORIDA RESEARCH  
FOUNDATION, INC. AND CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

**THIS AMENDMENT NO. 2 TO AGREEMENT BETWEEN UNIVERSITY OF CENTRAL FLORIDA RESEARCH FOUNDATION, INC. AND CENTRAL FLORIDA EXPRESSWAY AUTHORITY** (this “Amendment”) is made and entered into as of the Effective Date (hereinafter defined) by and between UNIVERSITY OF CENTRAL FLORIDA RESEARCH FOUNDATION, INC., a Florida nonprofit corporation, whose address is 12201 Research Parkway, Suite 501, Orlando, Florida 32826 (“UCFRF”), and CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body corporate and an agency of the State of Florida, created by Part III of Chapter 348, Florida Statutes, whose address is 4974 ORL Tower Road, Orlando, Florida 32801-4414 (“CFX”). UCFRF and CFX are referred to herein sometimes as a “Party” or the “Parties”.

**RECITALS**

**WHEREAS**, CFX was created pursuant to Part III, Chapter 348, Florida Statutes (“CFX Act”) to, among other things, construct, improve, maintain and operate a limited access toll road known as the Central Florida Expressway System, as defined in the CFX Act, and was granted all powers necessary and convenient to conduct its business, including the power to contract with other entities; and

**WHEREAS**, UCFRF and CFX entered into that certain Agreement between UCFRF and CFX dated March 10, 2016, as amended by that certain Amendment No. 1 to UCFRF-CFX Agreement dated December 14, 2016 (collectively, the “Agreement”) setting forth the rights of each of the Parties as to certain Patent Rights and License Agreements, as defined in the Agreement; and

**WHEREAS**, the Parties desire to amend the Agreement to extend the term of the Agreement in accordance with the terms and conditions more specifically provided herein.

**NOW THEREFORE**, for and in consideration of the premises hereof, the mutual covenants herein contained and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals and Definitions.** The foregoing recitals are true and correct and are incorporated herein by this reference. Any capitalized term not otherwise defined herein shall have the meaning ascribed to it under the Agreement.

2. **Term and Termination of the Agreement.** Section 5.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

This Agreement is effective from the Effective Date and will remain in effect until the later of (i) the expiration of the last-to-expire patents under the Patent Rights; (ii) in the event the parties enter into a License Agreement, the expiration of the last-to-expire License Agreements; or (iii) June 30, 2026. Termination of this

Agreement will not relieve either Party of any obligation or liability accrued under this Agreement before termination, nor will it rescind any payments made or due before termination.

3. **Correspondence for Patent Applications.** The last sentence of Section 3.1(a) shall be amended and revised to change CFX's email address from [Joe.Passiatore@cfxway.com](mailto:Joe.Passiatore@cfxway.com) to [Woody.Rodriguez@cfxway.com](mailto:Woody.Rodriguez@cfxway.com).

4. **Mailing Address for CFX.** CFX's mailing address for notices and communications is hereby deleted in its entirety and replaced with the following:

Central Florida Expressway Authority  
Attn: Woody Rodriguez, General Counsel  
4974 ORL Tower Road  
Orlando, Florida 32807  
Telephone: (407) 690-5000  
Fax: (407) 690-5011  
Email address: [Woody.Rodriguez@cfxway.com](mailto:Woody.Rodriguez@cfxway.com)

5. **Electronic Signatures and Counterparts.** To facilitate execution, CFX and UCFRF agree that this Amendment and any future amendments may be executed and transmitted by electronic (including digital) signature in compliance with Chapter 668, Florida Statutes, to the other Party and that the executed electronic or digital shall be binding and enforceable as an original. This Amendment may also be executed in as many counterparts as may be required and it shall not be necessary that the signature of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of such counterparts. All counterparts shall collectively constitute a single amendment.

6. **Effect on Agreement.** Except as modified herein, the Agreement remains in full force and effect and is hereby incorporated by reference into the body of this Amendment as if set forth herein. In the event of any conflict or ambiguity between the Agreement and this Amendment, this Amendment shall control.

7. **Effective Date.** The effective date of this Amendment shall be the date upon which the CFX governing board has approved this Amendment and the last of the Parties executes this Amendment ("Effective Date").

*[SIGNATURE PAGES TO FOLLOW]*

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

**“CFX”**

**CENTRAL FLORIDA EXPRESSWAY  
AUTHORITY**

By: \_\_\_\_\_  
Buddy Dyer, Chairman

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

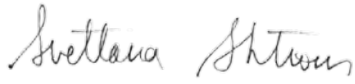
ATTEST: \_\_\_\_\_  
Regla (“Mimi”) Lamaute  
Recording Clerk

Approved as to form and legality by legal  
counsel to the Central Florida Expressway  
Authority on this \_\_\_ day of \_\_\_\_\_,  
2021 for its exclusive use and reliance.

By: \_\_\_\_\_  
Diego “Woody” Rodriguez  
General Counsel

**“UCFRF”**

**UNIVERSITY OF CENTRAL FLORIDA  
RESEARCH FOUNDATION, INC.**

By:   
Print Name: Svetlana Shtrom, Ph.D., MBA  
Title: Vice President of Technology Transfer

Date: January 28, 2021

**CONSENT AGENDA ITEM  
#12**



# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams *Aneth Williams*  
Director of Procurement

DATE: January 22, 2021

SUBJECT: Approval of Midlantic Marking, Inc. as a Subcontractor for Jorgensen Contract Services, LLC for Roadway and Bridge Maintenance Services  
Contract No. 001151

---

Board approval of Midlantic Marking, Inc. as a subcontractor to Jorgensen Contract Services, LLC to perform thermoplastic striping is requested. The cost is expected to exceed the \$25,000.00 threshold established by the Procurement Policy for subcontractors not disclosed when the contract was originally awarded.

Reviewed by: *Don Budnovich*  
Don Budnovich, P.E.  
Director of Maintenance

*Glenn Pressimone*  
Glenn Pressimone (Jan 25, 2021 15:00 EST)  
Glenn Pressimone, P.E.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

REQUEST FOR AUTHORIZATION TO SUBLET SERVICES

Consultant/Contractor: Jorgensen Contract Services, LLC Date: 01/22/2021

CFX Contract Name: Roadway and Bridge Maintenance Services CFX Contract No.: 001151

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

Subconsultant/Subcontractor Name: Midlantic Marking LLC Inc.

Address: PO Box 7997, Gaithersburg, MD 20898

Phone No.: 301-865-8844

Federal Employee ID No.: 52-1732286

D/M/WBE Subconsultant/Subcontractor? Yes  No  (If Yes, D/M/WBE Utilization Form and Certification also required)

Description of Services to Be Sublet: Thermoplastic Striping

Estimated Beginning Date of Sublet Services: 01/24/2021

Estimated Completion Date of Sublet Services: 02/07/2021

Estimated Value of Sublet Services\*: \$ 188,390.40

\*(Not to exceed \$24,999.99 without prior Board Approval)

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

Requested By:  Kim Jones  
(Signature of Consultant/Contractor Representative)

Vendor Coordinator  
Title

Recommended by:   
(Signature of CFX Director of Maintenance)

Date: Jan 22, 2021

Approved by: Glenn Pressimone  
(Signature of Chief of Infrastructure)

Date: Jan 22, 2021

Attach Subconsultant's/Subcontractor's Certificate of Insurance to this Request.

**CONSENT AGENDA ITEM  
#13**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams *Aneth Williams*  
Director of Procurement

DATE: January 22, 2021

SUBJECT: Approval of Supplemental Agreement No. 1 with Convergent Technologies for Systemwide Electronic Security System Services  
Contract No. 001611

---

Board approval is requested for Supplemental Agreement No. 1 with Convergent Technologies, in the amount of \$202,176.18 for installation of a security system at the new E-PASS Service Center located at 525 South Magnolia Avenue, Orlando, FL 32801. The original contract is for three years.

Original Contract Amount	\$ 600,000.00
Supplemental Agreement No. 1	<u>\$ 202,176.18</u>
Total Revised Contract Amount	\$ 802,176.18

Services to be provided by the Contractor include installation and monitoring of a new security system.

This contract is included in the OM&A Budget and the Five-Year Work Plan.

Reviewed by: *Donald Budnovich*  
Donald Budnovich, PE  
Director of Maintenance

*Glenn Pressimone*  
Glenn Pressimone (Jan 25, 2021 15:01 EST)  
Glenn Pressimone, PE

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 1

Contract Name: Systemwide Electronic Security System Services  
Contract No. 001611  
Supplemental Agreement No. 1

This Supplemental Agreement entered into this 11th day of February 2021, by and between CENTRAL FLORIDA EXPRESSWAY AUTHORITY herein referred to as "CFX", and Convergent Technologies, herein referred to as the "Contractor", the same being supplementary to the Contract by and between the aforesaid, dated December 12, 2019, to provide systemwide electronic security system services.

1. CFX has determined it necessary to add a security system to the new E-PASS Service Center located at 525 South Magnolia Avenue, Orlando, FL 32801 with an increase in the Contract amount of \$202,176.18 based on the Contractor's quote # AS00324241P (attached). This Supplemental Agreement is for the installation of 23 IP cameras and 23 Genetec camera licenses, 13 access control doors and intrusion with 3-year monitoring agreement.
2. The Contractor hereby agrees to the installation and monitoring of a new security system and Contract amount, and
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 original 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 of claim for additional compensation which is not already defined herein.

This Supplemental Agreement No. 1 is necessary to increase the compensation and add installation and monitoring of a new security system at the new E-PASS Service Center.

**SUPPLEMENTAL AGREEMENT NO. 1**

Contract Name: Systemwide Electronic Security System Services

Contract No.: 001611

Amount of Changes to this document: \$202,176.18

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

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

By: \_\_\_\_\_  
Aneth Williams, Director of Procurement

**CONVERGINT TECHNOLOGIES**

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

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

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

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Approved as to form and legality by legal counsel to the Central Florida Expressway Authority on this \_\_\_ day of \_\_\_\_\_, 2021 for its exclusive use and reliance.

By: \_\_\_\_\_  
Diego "Woody" Rodriguez, General Counsel

# **CONTRACT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
CONVERGINT TECHNOLOGIES, LLC**

**SUPPLEMENTAL AGREEMENT TO THE REGION 4  
EDUCATION SERVICE CENTER (THE COOPERATIVE  
PURCHASING NETWORK LEAD AGENCY) COOPERATIVE  
PURCHASE AGREEMENT R170502**

**CONTRACT NO. 001611**

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



**SUPPLEMENTAL AGREEMENT TO THE REGION 4 EDUCATION SERVICE  
CENTER (THE COOPERATIVE PURCHASING NETWORK LEAD AGENCY)  
COOPERATIVE PURCHASE AGREEMENT R170502**

**CONTRACT NO. 001611**

**DECEMBER 2019**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

**SUPPLEMENTAL AGREEMENT TO THE REGION 4 EDUCATION SERVICE  
CENTER (THE COOPERATIVE PURCHASING NETWORK LEAD AGENCY)  
COOPERATIVE PURCHASE AGREEMENT R170502**

**CFX CONTRACT NO. 001611**

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**CFX CONTRACT NO. 001611**

This Agreement is made this 12<sup>th</sup> day of December 2019, between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, hereinafter called CFX and Convergint Technologies, LLC, whose address is 6200 Lee Vista Blvd, Suite 700, Orlando, FL. 32822, and who is registered and authorized to conduct business in the State of Florida hereinafter the CONTRACTOR:

WITNESSETH:

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

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

**WHEREAS**, CFX has determined that it is necessary and convenient in the conduct of its business to retain the services of a CONTRACTOR to provide systemwide electronic security system services; and

**WHEREAS**, on or about July 1, 2017, the CONTRACTOR entered into an agreement with Region 4 Education Service Center, hereinafter "ESC," to provide the same services as required by CFX; and

**WHEREAS**, the contract between the CONTRACTOR and ESC, as part of The Cooperative Purchasing Network, was procured through a competitive bidding process, which process is substantially similar to those required by CFX, and included a Request for Proposal 17-05 and sealed bids from other contractors; and

**WHEREAS**, competitive bids seeking qualified contractors to perform such services for CFX was not required because the CONTRACTOR has an existing contract with ESC, attached hereto as **Exhibit "2"**, which was awarded through a competitive bidding process, hereinafter "ESC Contract," for the same services to be provided hereunder; and

**WHEREAS**, CFX has decided to contract with CONTRACTOR in accordance with Section 4.8 of **Exhibit "2"** through the use of a separate supplement agreement to further define the level of service requirements over and above the minimum defined in **Exhibit "2"** for the performance of the services described herein under the same conditions, calculations, and unit prices previously negotiated by ESC; and

**WHEREAS**, the CONTRACTOR agrees to provide the services under substantially the same terms and conditions as included in its contract with ESC subject to the additional terms and conditions detailed below and the CONTRACTOR proposal dated September 27, 2019 attached hereto as **Exhibit "1"**.

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

**1. RECITALS**

The recitals are true and incorporated as terms.

**2. ADDITIONAL TERMS REQUIRED BY CFX**

**2.1 SERVICES TO BE PROVIDED**

The CONTRACTOR shall, for the consideration herein stated and at its cost and expense, do all the work and furnish all equipment, supplies, labor and incidentals necessary to perform this Agreement in the manner and to the full extent as set forth in the Scope of Services attached as **Exhibit "1"** which is hereby adopted and made part of this Contract as completely as if incorporated herein. The Contract shall be performed, and services provided to the satisfaction of the duly authorized representatives of CFX, who shall have at all times full opportunity to evaluate the services provided under this Contract.

CFX does not guarantee that all of the services described in **Exhibit "1"** will be assigned during the term of the Contract. Further, the CONTRACTOR is providing these services on a non-exclusive basis. CFX, at its option, may elect to have any of the services set forth herein performed by other contractors or CFX staff.

2.1.1 Authorization for performance of services by CONTRACTOR under this Agreement will be in the form of written work order issued by CFX. Each work order will describe the services required, state the dates for commencement and completion of work, establish the amount and method of payment. CFX reserves the right to contract with other parties for the services contemplated by this Agreement when it is determined by CFX to be in the best interest of CFX to do so.

**2.2 TERM AND NOTICE**

2.2.1 Unless otherwise provided herein or by Supplemental Agreement, the provisions of this Agreement will remain in full force and effect for a three (3) year term from the date of the Notice to Proceed for the first task assignment.

2.2.2 CFX shall have the right to immediately terminate or suspend the Agreement, in whole or in part, at any time upon notice for convenience for any reason or for cause for CONTRACTOR's material failure to perform the provisions of the Agreement or for Default. A Default includes: a) Failure to respond to a work order; b) Failure to perform a work order; or c) any other deficiency in performance. Under no circumstances shall a properly noticed termination by CFX (with or without cause) constitute a default by CFX. In the event of a termination for convenience or without cause, CFX shall notify CONTRACTOR (in writing) of such action with instructions as to the effective date of termination or suspension, in accordance with the time frames set forth in said written notification.

2.2.3 CFX reserves the right to immediately cancel or immediately terminate this Agreement in the event the CONTRACTOR or any employee, servant, or agent of the CONTRACTOR is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the CONTRACTOR for on behalf of CFX, without penalty. Such termination shall be deemed a termination for default.

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

## 2.3 CONTRACT AMOUNT

2.3.1 The Contract Amount for the Contract Term is no to exceed Six Hundred Thousand Dollars (\$600,000.00). The Contractor shall be responsible for keeping track of the amount remaining in the Contract. CFX is under no obligation to pay the Contractor any sum that exceeds the Contract Amount.

## 2.4 COMPENSATION FOR SERVICES

2.4.1 For the satisfactory completion of the services detailed in the **Exhibit "1"**, the Contractor will be paid at the prices shown in **Exhibit "1"** for all work completed and accepted by CFX.

2.4.2 Payment will be made to the Contractor not more than once monthly. The Contractor shall prepare and forward a digital copy (via e-mail) of each monthly invoice to [Billing@CFXway.com](mailto:Billing@CFXway.com). The invoice shall include the CFX contract number, and a breakdown of the work performed by the Contractor to verify the amount being requested for payment.

2.4.3 Contractor shall receive and accept the compensation and payment provided in its Proposal, **Exhibit "1"** and the Contract as full payment for all labor, materials, expenses, supplies and incidentals required to be provided by the Contractor in **Exhibit "1"**.

2.4.4 CFX reserves the right to withhold payment or payments in whole or in part, and to continue to withhold any such payments for work not completed, completed unsatisfactorily, work that is behind schedule or work that is otherwise performed in an inadequate or untimely fashion as determined by CFX or its designated representative. Any and all such payments previously withheld shall be released and paid to Contractor promptly when the work is subsequently satisfactorily performed. If any defined action, duty or service or part required by the Contract is not performed by the Contractor, the value of such action, duty or service or part thereof will be determined by CFX and deducted from any invoice or monthly billing period claiming such items for payment. In order to expedite the review, processing, and delivery of each month's invoice to [Billing@CFXwav.com](mailto:Billing@CFXwav.com).

2.4.5 If the action, duty or service, part or product thereof has been completed and is determined to be unsatisfactory by CFX, the Contractor will be notified and given the opportunity to correct any deficiencies within a time certain. Payment (for the unsatisfactory Work) will be withheld by CFX from any invoice or monthly billing period until such time as the Work is determined to be acceptable.

## **2.5 CONTRACTOR INSURANCE.**

2.5.1 Anything contained herein to the contrary notwithstanding, during the term of the Agreement and for such additional time as may be further required, the CONTRACTOR shall provide, pay for and maintain in full force and effect insurance outlined below for coverage at not less than the prescribed minimum limits of liability, covering the CONTRACTOR's activities and those of any and all subcontractors (including officers, directors, employees or agents of each and their successors). All insurance shall be provided through companies authorized to do business in the State of Florida and considered acceptable by CFX.

2.5.2 Upon execution of the Agreement, the CONTRACTOR shall furnish to CFX, Certificates of Insurance bearing an original manual signature of the authorized representative of the insurance company. No Work shall commence under the Agreement unless and until the required Certificates of Insurance described herein are in effect and have been approved by CFX. The Certificate of Insurance shall be issued to CFX and shall reference the complete and correct Contract number, as well as the full and complete name of each insurance company, including city and state of domicile, as listed by A.M. Best Company.

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



2.5.4 All insurance coverage required of the Contractor shall be primary and noncontributory over any insurance or self-insurance program carried by CFX.

2.5.5 No liability insurance required herein shall be written under a "claims made" form.

2.5.6 Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

2.5.7 Failure of CFX to demand such certificate or evidence of full compliance with these insurance requirements or failure of CFX to identify a deficiency from evidence provided will not be construed as a waiver of the CONTRACTOR's obligation to maintain such insurance.

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

2.5.9 Neither approval by CFX of insurance supplied by the Contractor nor disapproval of that insurance, shall release the Contractor of full responsibility for liability, damages and accidents as otherwise provided by the Contract. The requirement of insurance will not be deemed a waiver of sovereign immunity by CFX.

2.5.10 If CONTRACTOR fails to obtain the proper insurance policies or coverages, or fails to provide CFX with certificates of same, CFX may obtain such policies and coverages at CONTRACTOR's expense and deduct such costs from CONTRACTOR payments. Alternately, CFX may declare CONTRACTOR in default for cause.

2.5.11 Comprehensive General Liability Insurance:

2.5.11.1 Coverage shall be maintained by the Contractor providing Comprehensive General Liability Insurance as provided on Insurance Services Office form GC 00 01 or an equivalent thereof. Insurance Limits of Liability for Bodily Injury Liability and/or Property Damage Liability shall not be less than having a minimum coverage of Two Million Dollars (\$2,000,000.00) per occurrence of bodily injury or property damage and a minimum of Four Million Dollars (\$4,000,000.00) annual aggregate for both General and Products and Completed Operations. The contractual liability insurance coverage shall include coverage for responsibilities and liabilities assumed by CONTRACTOR under this Agreement.

2.5.11.2 Products and Completed Operations coverage, evidenced by a Certificate of Insurance, shall be maintained for a period of not less than two (2) years following completion of the final Work Order to which the Contract applies.

**2.5.12 Comprehensive Automobile Liability Insurance:**

2.5.12.1 The Contractor shall maintain coverage applicable to the ownership, maintenance, use, loading and unloading of any owned, non-owned, leased or hired vehicle issued on Insurance Services Office form CA 00 01 or its equivalent. The amount of coverage for bodily injury, death and property damage shall not be less than the Two Million Dollars (\$2,000,000.00) for each accident.

2.5.12.2 This policy shall include coverage for liability assumed under contract (if not provided for under the Comprehensive General Liability policy). In the event the Contractor does not own automobiles, the Contractor shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or through a separate Business Auto Liability policy.

2.5.12.3 CFX, its employees, members, officers, agents, consultants, and successors shall be named as Additional Insured under this policy.

**2.5.13 Umbrella/Excess Liability Insurance:**

2.5.13.1 If an Umbrella or Excess Liability Insurance policy is used to attain the required limits of liability, the sum of the limits provided by the Primary insurance and the Umbrella or Excess Liability insurance must at least equal the Limits of Liability as required by this Agreement.

2.5.13.2 The Umbrella/Excess Liability Insurance policy or Excess policy shall afford coverage equivalent to the required coverage as set forth in this Agreement. Policy inception date must also be concurrent with the inception dates of the underlying General Liability and Automobile Liability policies.

2.5.13.3 Umbrella or Excess policy Certificate of Insurance shall stipulate the underlying limits of liability applicable. A photocopy of the endorsement so evidencing shall be attached to the Certificate.

2.5.13.4 CFX, its employees, members, officers, agents, consultants, and successors shall be named as Additional Insured under this policy.

**2.5.14 Worker's Compensation and Employer's Liability Insurance:**

2.5.14.1 The Contractor shall maintain coverage for its employees in accordance with the laws of the State of Florida. The amount of coverage shall not be less than the statutory / \$1,000,000;

**2.5.15 Unemployment Insurance:**

2.5.15.1 Coverage in amounts and forms required by Florida law, as it may be amended from time to time hereafter;

2.5.16 Such insurance policies shall be without co-insurance, and shall (a) include CFX, and such other applicable parties CFX shall designate, as additional insureds for commercial general liability and business automobile liability, (b) be primary and noncontributory insurance, (c) include contractual liability for commercial general liability, (d) provide that the policy may not be canceled or materially changed without at least thirty (30) days prior written notice to CFX from the company providing such insurance, and (e) provide that the insurer waives any right of subrogation against CFX, to the extent allowed by law and to the extent the same would not void primary coverage for applicable insurance policies. CONTRACTOR shall be responsible for any deductible it may carry. Renewal Certificates of Insurance for all policies shall be submitted by the CONTRACTOR so that they are received by CFX no later than thirty (30) calendar days prior to the expiration of existing insurance coverage. Failure by the CONTRACTOR to meet this required timeframe shall result in suspension of partial payments on monthly estimates until the certificates are received and accepted by CFX. Procurement of insurance shall not be construed to limit CONTRACTOR's obligations or liabilities under the Agreement. The requirement of insurance shall not be deemed a waiver of sovereign immunity by CFX.

**2.6 INDEMNITY**

CONTRACTOR shall indemnify and hold harmless CFX, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of CONTRACTOR and other persons employed or utilized by CONTRACTOR in the performance of the contract.

2.6.1 Further, CONTRACTOR shall indemnify, defend and hold harmless CFX, and its respective officers and employees, from actual suits, actions, claims, demands, costs as defined elsewhere herein, expenses (including reasonable attorneys' fees as defined elsewhere herein), judgments, liabilities of any nature whatsoever (collectively, "Claims") arising out of, because of, or due to breach of the Contract by the CONTRACTOR, its subcontractors, officers, agents or employees, or due to any negligent or intentional act or occurrence of omission or commission of the CONTRACTOR, its subcontractors, officers, agents or employees, including without limitation any misappropriation or violation of third party copyright, trademark, patent, trade secret, publicity, or other intellectual property rights or other third party rights of any kind, by or arising out of any one or more of the following:

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

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

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

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

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

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

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

2.6.9 CONTRACTOR will not be liable for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of CFX or any of its officers, agents or employees. The parties agree that 1% of the total compensation to the CONTRACTOR for performance of each task authorized under the Contract is the specific consideration from CFX to CONTRACTOR for CONTRACTOR's indemnity and the parties further agree that the 1% is included in the amount negotiated for each authorized task.

2.6.10 The obligations in Section 2.6, Idemnity, shall survive the expiration or termination of this Agreement and continue in full force and effect.

## **2.7 OWNERSHIP OF MATERIALS AND INTELLECTUAL PROPERTY RIGHTS**

CFX is and shall be and remain the sole owner of all rights, title, and interest in, to, and associated with all plans, documents, software in all forms, hardware, programs, procedures, specifications, drawings, brochures pamphlets, manuals, flyers, models, photographic or design images, negatives, videos and film, tapes, work product, information, data and other items (all whether in preliminary, draft, master, final, paper, electronic, or other form), along with the media on which they reside and with which they interface for function or aesthetics, that are generated or developed with respect to and in connection with this Contract and the performance thereof (collectively, the "CFX Property"). CFX's ownership of CFX Property includes without limitation all common law, statutory and other rights, title, and interest in, to, and associated with trademark, service mark, copyright, patent, trade secret, and publicity (collectively, the "CFX Intellectual Property"). CONTRACTOR, its employees, agents, officers, and subcontractors acknowledge that E-PASS® is CFX's registered trademark name for CFX's electronic toll collection system and comprises a portion of CFX Intellectual Property.

CONTRACTOR, its employees, agents, officers, and subcontractors may not use CFX Property or CFX Intellectual Property in any way, other than in performance of its services under the terms of this Contract, without the prior written consent of CFX, which may be granted or denied in CFX's sole discretion. CONTRACTOR, its employees, agents, officers, and subcontractors' access to and/or use of CFX Property and CFX Intellectual Property is without any warranty or representation by CFX regarding same.

For all materials listed hereinabove that are not generated or developed under this Contract or performance hereof, but rather are brought in, provided, or installed by CONTRACTOR (collectively, the "CONTRACTOR Property"), and the intellectual property rights associated therewith (collectively, the "CONTRACTOR Intellectual Property"), CONTRACTOR (its employees, officers, agents, and subcontractors, which for purposes of this section shall collectively be referred to as "CONTRACTOR") warrants and represents the following:

2.7.1 CONTRACTOR was and is the sole owner of all right, title and interest in and to all CONTRACTOR Property and CONTRACTOR Intellectual Property; OR

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

2.7.3 CONTRACTOR has not conveyed, and will not convey, any assignment, security interest, exclusive license, or other right, title, or interest that would interfere in any way with the CFX's use of the CONTRACTOR Property or any license granted to CFX for use of the CONTRACTOR Intellectual Property rights; AND

2.7.4 Subject to Chapter 119, Florida Statutes (Florida Public Records Act), CONTRACTOR shall maintain CFX Property and CFX Intellectual Property in strictest confidence and may not transfer, disclose, duplicate, or otherwise use CFX Property or CFX Intellectual Property in any way, other than in performance of its services under the terms of this Contract, without the prior written consent of CFX, which may be granted or denied in CFX's sole discretion. CONTRACTOR shall not publish, copyright, trademark, service mark, patent, or claim trade secret, publicity, or other rights of any kind in any of the Property. In ensuring the confidentiality and security of CFX Property and CFX Intellectual Property, CONTRACTOR shall utilize the same standards of protection and confidentiality that CONTRACTOR uses to protect its own property and confidential information, but in no instance less than reasonable care plus the standards set forth anywhere in this Contract.

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

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

2.7.5 The statute of limitations on any action arising out of either party's conduct relating to this section, whether such action may be brought by CFX, CONTRACTOR, or a third party; or

2.7.6 CFX's continued use (notwithstanding any temporary suspension of use) of any CONTRACTOR Property or CONTRACTOR Intellectual Property; and

2.7.7 Notwithstanding sections 2.7.5 and 2.7.6, the confidentiality and security provisions contained herein shall survive the term of this Contract for ten (10) years beyond 2.7.5 and 2.7.6.

## **2.8 DOCUMENTED ALIENS**

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

## **2.9 E-VERIFY CLAUSE**

2.9.1 CONTRACTOR shall utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the CONTRACTOR during the term of the contract. CONTRACTOR shall require all of its subcontractors to verify the employment eligibility of all new employees hired by the subcontractors during the term of the Agreement.

## **2.10 CONTRACTOR'S RECORDS.**

2.10.1 The CONTRACTOR shall maintain records in accordance with generally accepted accounting practices to document its costs and expenditures under this Agreement. The CONTRACTOR hereby grants CFX and its duly authorized representative's permission to audit and review any and all of the CONTRACTOR's records pertaining to the Agreement. The CONTRACTOR shall furnish CFX all invoices and statements for which it requests reimbursement.

## **2.11 AUDIT AND EXAMINATION OF RECORDS**

### **2.11.1 Definition of Records:**

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

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

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

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

2.11.4 Final Audit for Project Closeout: The CONTRACTOR shall permit CFX, at CFX's option, to perform or have performed, an audit of the records of the CONTRACTOR and any or all subcontractors to support the compensation paid the CONTRACTOR. The audit



will be performed as soon as practical after completion and acceptance of the contracted services. In the event funds paid to the CONTRACTOR under the Contract are subsequently determined to have been inadvertently paid by CFX because of accounting errors or charges not in conformity with the Contract, the CONTRACTOR agrees that such amounts are due to CFX upon demand. Final payment to the CONTRACTOR shall be adjusted for audit results.

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

## **2.12 SUBLETTING AND ASSIGNMENT**

2.12.1 CFX has selected CONTRACTOR to perform the Services based upon characteristics and qualifications of CONTRACTOR and its employees. Therefore, CONTRACTOR shall not sublet, sell, transfer, assign, delegate, subcontract, or otherwise dispose of this Contract or any portion thereof, or of the CONTRACTOR's right, title, or interest therein without the written consent of CFX, which may be withheld in CFX's sole and absolute discretion. Any attempt by CONTRACTOR to dispose of this Contract as described above, in part or in whole, without CFX's written consent shall be null and void and shall, at CFX's option, constitute a default under the Contract.

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

## **2.13 PRESS RELEASES.**

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

**2.14 PERMITS, LICENSES, ETC.**

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

**2.15 INSPECTOR GENERAL.**

2.15.1 CONTRACTOR agrees to comply with Section 20.055(5), Florida Statutes, and agrees to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section. CONTRACTOR agree to incorporate in all subcontracts the obligation to comply with Section 20.055(5).

**2.16 ANTI-DISCRIMINATION STATEMENT.**

2.16.1 Pursuant to Section 287.134(2)(a), Florida Statutes, "an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity."

**2.17 CONFLICT OF INTEREST AND STANDARDS OF CONDUCT**

2.17.1 CONTRACTOR warrants that it has not employed or retained any entity or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Contract, and that CONTRACTOR has not paid or agreed to pay any person, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Contract. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

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

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

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

## **2.18 RELATIONSHIPS**

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

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

## **2.19 NOTIFICATION of CONVICTION of CRIMES**

2.19.1 CONTRACTOR shall notify CFX if any of CONTRACTOR's dedicated management team or other individuals assigned to CFX shall be convicted of any crime, whether state or federal, or felony or misdemeanor of any degree. Such notification shall be made no later than thirty (30) days after the conviction, regardless of whether such conviction is appealed. CFX reserves the right to require replacement of any individual for any reason with or without cause.

## **2.20 PUBLIC ENTITY CRIME INFORMATION**

2.20.1 Pursuant to Section 287.133(2)(a), Florida Statutes, "a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact

business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted vendor list.”

## **2.21 PUBLIC RECORDS RETENTION**

2.21.1 Pursuant to Section 119.0701(2), Florida Statutes, Contractor acknowledges that CFX is a body politic and corporate, an agency of the State of Florida, and is subject to the Public Records Act codified in Chapter 119, Florida Statutes. To the extent that the Contractor is in the possession of documents fall within the definition of public records subject to the Public Records Act, which public records have not yet been delivered to CFX, Contractor agrees to comply with Section 119.0701, Florida Statutes, an excerpt of which is below.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (407) 690-5000, Email: [PublicRecords@CFXWay.com](mailto:PublicRecords@CFXWay.com), Central Florida Expressway Authority, 4974 ORL Tower Road, Orlando, Florida 32807.**

119.0701(2) Contract requirements.

(b) . . . [t]he Contractor shall comply with public records laws, specifically to:

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

2. Upon request from the public agency’s custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.

4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency’s

custodian of public records, in a format that is compatible with the information technology systems of the public agency.

119.0701(3) Request for records; noncompliance.

(a) A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request, and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

(b) If a contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

(c) A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under s. 119.10.

3.18.2 The obligations in Section 3.18.1 shall survive the expiration or termination of this Agreement and continue in full force and effect until all public records are transferred to CFX or the end of the longest applicable retention periods.

## **2.22 GOVERNING LAW AND VENUE**

2.22.1 This Agreement, and all claims, controversies, and causes of action arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, shall be governed by, and enforced in accordance with, the internal laws of the State of Florida, including its statutes of limitations, without giving effect to any conflict-of-laws or other rule that would result in the application of the laws of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The parties consent to the exclusive jurisdiction of the courts located in Orange County, Florida. The obligations in Section 2.22, Governing Law and Venue, shall survive the expiration or termination of this Agreement and continue in full force and effect.

## **2.23 NOTICES**

CFX

Central Florida Expressway, Authority  
4974 ORL Tower Rd., Orlando, FL 32807  
Phone: 407-690-5000  
Attention: CFX General Counsel

**CONTRACTOR**

Convergent Technologies, LLC  
6200 Lee Vista Blvd., Suite 700  
Orlando, FL. 32822  
Phone: 407-734-0347  
Attention: Richard Kuhn

With a copy to:

**CFX**

Central Florida Expressway, Authority  
4974 ORL Tower Rd., Orlando, FL 32807  
Phone: 407-690-5000  
Attention: Director of Maintenance

**CONTRACTOR**

Convergent Technologies, LLC  
6200 Lee Vista Blvd., Suite 700  
Orlando, FL. 32822  
Phone: 407-734-0347  
Attention: Eric Balaban

**2.24 SEVERABILITY**

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

**2.25 AVAILABILITY OF FUNDS**

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

**2.26 ENTIRE AGREEMENT**

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

**2.27 EXHIBITS**

1. CONTRACTOR proposal dated September 27, 2019
2. ESC Contract



IN WITNESS WHEREOF, the authorized signatures named below have executed this Contract on behalf of the parties on the date below. This Contract was awarded by CFX's Board of Directors at its meeting on December 12, 2019.

APPROVED BY: **CONVERGINT TECHNOLOGIES, LLC**

By: *Tim Beasley*

Print Name and Title: TIM BEASLEY, Vice President

Attest: *Migdalia Cruz* (Seal)



Date: November 13, 2019

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

By: *[Signature]* 12-13-19  
Director of Procurement

Approved as to form and execution, only.

*[Signature]*

General Counsel for CFX

**EXHIBIT 2**

**REGION 4 EDUCATION SERVICE CENTER (THE  
COOPERATIVE PURCHASING NETWORK LEAD AGENCY)  
COOPERATIVE PURCHASE AGREEMENT R170502**

**1.2 Appendix A**

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**Appendix A**  
**VENDOR CONTRACT AND SIGNATURE FORM**

This Vendor Contract and Signature Form ("Contract") is made as of 21 February 2017, by and between Convergent Technologies LLC and Region 4 Education Service Center ("Region 4 ESC") for the purchase of **Security System Services**

**RECITALS**

WHEREAS, both parties agree and understand that the following pages will constitute the contract between the successful vendor(s) and Region 4 ESC, having its principal place of business at 7145 West Tidwell Road, Houston, TX 77092.

WHEREAS, Vendor agrees to include, in writing, any required exceptions or deviations from these terms, conditions, and specifications; and it is further understood that, if agreed to by Region 4 ESC, said exceptions or deviations will be incorporated into the final contract "Vendor Contract."

WHEREAS, this contract consists of the provisions set forth below, including provisions of all attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any attachment, the provisions set forth below shall control.

WHEREAS, the Vendor Contract will provide that any state, county, special district, local government, school district, private K-12 school, technical or vocational school, higher education institution (including community colleges, colleges and universities, both public and private), other government agencies or non-profit organization may purchase products and services at prices indicated in the Vendor Contract upon registering and becoming a member with TCPN; and it being further understood that Region 4 ESC shall act as the Lead Public Agency with respect to all such purchase agreements.

WHEREAS, TCPN has the administrative and legal capacity to administer purchases on behalf of Region 4 ESC under the Vendor Contract with participating public agencies and entities, as permitted by applicable law.

**ARTICLE 1- GENERAL TERMS AND CONDITIONS**

1.1 TCPN shall be afforded all of the rights, privileges and indemnifications afforded to Region 4 ESC under the Vendor Contract, and such rights, privileges and indemnifications shall accrue and apply with equal effect to TCPN, including, without limitation, Vendors obligation to provide insurance and other indemnifications to Lead Public Agency.

1.2 Awarded vendor shall perform all duties, responsibilities, and obligations, set forth in this agreement, and required under the Vendor Contract.

1.3 TCPN shall perform its duties, responsibilities, and obligations as administrator of purchases, set forth in this agreement, and required under the Vendor Contract.

1.4 **Purchasing procedure:**

- Purchase orders are issued by participating governmental agencies to the awarded vendor indicating on the PO "Per TCPN Contract # R \_\_\_\_\_."
- Vendor delivers goods/services directly to the participating agency.
- Awarded vendor invoices the participating agency directly.
- Awarded vendor receives payment directly from the participating agency.
- Awarded vendor reports sales monthly to TCPN.

1.5 **Customer Support:** The vendor shall provide timely and accurate technical advice and sales support to Region 4 ESC staff, TCPN staff and participating agencies. The vendor shall respond to such requests within one (1) working day after receipt of the request.

## **ARTICLE 2- ANTICIPATED TERM OF AGREEMENT**

2.1 Unless otherwise stated, all contracts are for a period of three (3) years with an option to renew annually for an additional two (2) years if agreed to by Region 4 ESC. Region 4 ESC will notify the vendor in writing if the contract is extended. Awarded vendor shall honor all administrative fees for any sales made based on the contract whether renewed or not.

2.2 Region 4 ESC shall review the contract prior to the renewal date and notify the current awarded vendor, no less than ninety (90) days of Region 4 ESC's intent renew the contract. Upon receipt of notice, awarded vendor must notify Region 4 ESC if it elects not to renew. Awarded vendor shall honor the administrative fee for any sales incurred throughout the life of the contract on any sales made based on a Region 4 ESC contract whether awarded a renewal or not. Region 4 ESC reserves the right to exercise each two-year extension annually.

## **ARTICLE 3- REPRESENTATIONS AND COVENANTS**

3.1. **Scope:** This contract is based on the need to provide the economic benefits of volume purchasing and reduction in administrative costs through cooperative purchasing to schools and other members. Although contractors may restrict sales to certain public units (for example, state agencies or local government units), any contract that prohibits sales from being made to public school districts may not be considered. Sales without restriction to any Members are preferred. These types of contracts are commonly referred to as being "piggybackable".

3.2. **Compliance:** Cooperative Purchasing Agreements between TCPN and its Members have been established under state procurement law.

3.3. **Offeror's Promise:** Offeror agrees all prices, terms, warranties, and benefits granted by Offeror to Members through this contract are comparable to or better than the equivalent terms offered by Offeror to any present customer meeting the same qualifications or requirements.

## **ARTICLE 4- FORMATION OF CONTRACT**

4.1. **Offeror Contract Documents:** Region 4 ESC will review proposed offeror contract documents. Vendor's contract document shall not become part of Region 4 ESC's contract with vendor unless and until an authorized representative of Region 4 ESC reviews and approves it.

4.2. **Form of Contract:** The form of contract for this solicitation shall be the Request for Proposal, the awarded proposal(s) and best and final offer(s), and properly issued and reviewed purchase orders referencing the requirements of the Request for Proposals. If a firm submitting an offer requires Region 4 ESC and/or Member to sign an additional agreement, a copy of the proposed agreement must be included with the proposal.

4.3. **Entire Agreement (Parol evidence):** The contract, as specified above, represents the final written expression of agreement. All agreements are contained herein and no other agreements or representations that materially alter it are acceptable.

4.4. **Assignment of Contract:** No assignment of contract may be made without the prior written approval of Region 4 ESC. Purchase orders and payment can only be made to awarded vendor unless otherwise approved by Region 4 ESC. Awarded vendor is required to notify Region 4 ESC when any material change in operations is made that may adversely affect members (i.e. bankruptcy, change of ownership, merger, etc.).

4.5. **Novation:** If contractor sells or transfers all assets or the entire portion of the assets used to perform this contract, a successor in interest must guarantee to perform all obligations under this contract. Region 4 ESC reserves the right to accept or reject any new party. A simple change of name agreement will not change the contractual obligations of contractor.

4.6. **Contract Alterations:** No alterations to the terms of this contract shall be valid or binding unless authorized and signed by a Region 4 ESC staff member.

4.7. **Order of Precedence:** In the event of a conflict in the provisions of the contract as accepted by Region 4 ESC, the following order of precedence shall prevail:

- Special terms and conditions
- General terms and conditions
- Specifications and scope of work
- Attachments and exhibits
- Documents referenced or included in the solicitation

4.8. **Supplemental Agreements:** The entity participating in the Region 4 ESC contract and awarded vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the participating entity and awarded vendor. Neither Region 4 ESC, TCPN, its agents, members and employees shall be made party to any claim for breach of such agreement.

**4.9 Adding authorized distributors/dealers:** Awarded vendors are prohibited from authorizing additional distributors or dealers, other than those identified at the time of submitting their proposal, to sell under their contract award without notification and prior written approval from TCPN. Awarded vendors must notify TCPN each time it wishes to add an authorized distributor or dealer. Purchase orders and payment can only be made to awarded vendor unless otherwise approved by TCPN. Pricing provided to members by added distributors or dealers must also be less than or equal to the pricing offered by the awarded contract holder, unless otherwise approved by TCPN.

## **ARTICLE 5- TERMINATION OF CONTRACT**

**5.1. Cancellation for Non-Performance or Contractor Deficiency:** Region 4 ESC may terminate any contract if Members have not used the contract, or if purchase volume is determined to be low volume in any 12-month period. Region 4 ESC reserves the right to cancel the whole or any part of this contract due to failure by contractor to carry out any obligation, term, or condition of the contract. Region 4 ESC may issue a written deficiency notice to contractor for acting or failing to act in any of the following:

- i. Providing material that does not meet the specifications of the contract;
- ii. Providing work and/or material that was not awarded under the contract;
- iii. Failing to adequately perform the services set forth in the scope of work and specifications;
- iv. Failing to complete required work or furnish required materials within a reasonable amount of time;
- v. Failing to make progress in performance of the contract and/or giving Region 4 ESC reason to believe that contractor will not or cannot perform the requirements of the contract; and/or
- vi. Performing work or providing services under the contract prior to receiving an authorized purchase order from Region 4 ESC or participating member prior to such work

Upon receipt of a written deficiency notice, contractor shall have ten (10) days to provide a satisfactory response to Region 4 ESC. Failure to adequately address all issues of concern may result in contract cancellation. Upon cancellation under this paragraph, all goods, materials, work, documents, data and reports prepared by contractor under the contract shall become the property of the Member on demand.

**5.2 Termination for Cause:** If, for any reason, the Vendor fails to fulfill its obligation in a timely manner, or if the vendor violates any of the covenants, agreements, or stipulations of this contract Region 4 ESC reserves the right to terminate the contract immediately and pursue all other applicable remedies afforded by law. Such termination shall be effective by delivery of notice, to the vendor, specifying the effective date of termination. In such event, all documents, data, studies, surveys, drawings, maps, models and reports prepared by vendor for this solicitation may become the property of the participating agency or entity. If such event does occur, then vendor will be entitled to receive just and equitable compensation for the satisfactory work completed on such documents.

5.3 **Delivery/Service Failures:** Failure to deliver goods or services within the time specified, or within a reasonable time period as interpreted by the purchasing agent or failure to make replacements or corrections of rejected articles/services when so requested shall constitute grounds for the contract to be terminated. In the event that the participating agency or entity must purchase in an open market, contractor agrees to reimburse the participating agency or entity, within a reasonable time period, for all expenses incurred.

5.4 **Force Majeure:** If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority; insurrections; riots; epidemics; landslides; lighting; earthquake; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

5.5 **Standard Cancellation:** Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 business days after the other party receives the notice of cancellation. After the 30th business day all work will cease following completion of final purchase order. Vendor may be requested to provide additional items not already on contract at any time.

## **ARTICLE 6- LICENSES**

6.1 **Duty to keep current license:** Vendor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by vendor. Vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of services under the contract. Region 4 ESC reserves the right to stop work and/or cancel the contract of any vendor whose license(s) expire, lapse, are suspended or terminated.

6.2 **Survival Clause:** All applicable software license agreements, warranties or service agreements that were entered into between Vendor and Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Order Fulfiler shall survive expiration or termination of the Contract.



## **ARTICLE 7- DELIVERY PROVISIONS**

7.1 **Delivery:** Vendor shall deliver said materials purchased on this contract to the Member issuing a Purchase Order. Conforming product shall be shipped within 7 days of receipt of Purchase Order. If delivery is not or cannot be made within this time period the vendor must receive authorization from the purchasing agency for the delayed delivery. At this point the participating entity may cancel the order if estimated shipping time is not acceptable.

7.2 **Inspection & Acceptance:** If defective or incorrect material is delivered, purchasing agency may make the determination to return the material to the vendor at no cost to the purchasing agency. The vendor agrees to pay all shipping costs for the return shipment. Vendor shall be responsible for arranging the return of the defective or incorrect material.

## **ARTICLE 8- BILLING AND REPORTING**

8.1 **Payments:** The entity using the contract will make payments directly to the awarded vendor. Payment shall be made after satisfactory performance, in accordance with all provisions thereof, and upon receipt of a properly completed invoice.

8.2 **Invoices:** The awarded vendor shall submit invoices to the participating entity clearly stating "Per TCPN Contract". The shipment tracking number or pertinent information for verification shall be made available upon request.

8.3 **Tax Exempt Status:** Since this is a national contract, knowing the tax laws in each state is the sole responsibility of the vendor.

8.4 **Reporting:** The awarded vendor shall provide TCPN with an electronic accounting report, in a format prescribed by TCPN, on a monthly basis summarizing all contract Sales for the applicable month.

Reports of Contract Sales for Region 4 ESC and member agencies in each calendar month shall be provided by awarded vendor to TCPN by the 10th day of the following month. If there are no sales to report, Vendor is still required to communicate that information via email.

Failure to provide a monthly report of the administrative fees within the time and manner specified herein shall constitute a material breach of this contract and if not cured within thirty (30) days of written to Supplier shall be deemed a cause for termination of the contract at Region4 ESC's sole discretion.

## **ARTICLE 9- PRICING**

9.1 **Best price guarantee:** The awarded vendor agrees to provide pricing to Region 4 ESC and its participating entities that are the lowest pricing available and the pricing shall remain so throughout the duration of the contract. Pricing offered to Federal government buying consortiums for goods and services is exempt from this requirement. The awarded vendor,

however, agrees to lower the cost of any product purchased through TCPN following a reduction in the manufacturer or publisher's direct cost.

**9.2 Price increase:** Should it become necessary or proper during the term of this contract to make any change in design or any alterations that will increase expense Region 4 ESC must be notified immediately. Price increases must be approved by Region 4 ESC and no payment for additional materials or services, beyond the amount stipulated in the contract, shall be paid without prior approval. All price increases must be supported by manufacture documentation, or a formal cost justification letter.

Awarded vendor must honor previous prices for thirty (30) days after approval and written notification from Region 4 ESC if requested.

It is the awarded vendor's responsibility to keep all pricing up to date and on file with Region 4 ESC. All price changes must be provided to Region 4 ESC, using the same format as was accepted in the original contract.

**9.3 Additional Charges:** All deliveries shall be freight prepaid, F.O.B. destination and shall be included in all pricing offered unless otherwise clearly stated in writing.

**9.4 Price reduction and adjustment:** Price reduction may be offered at any time during contract and shall become effective upon notice of acceptance from Region 4 ESC. Special, time-limited reductions are permissible under the following conditions: 1) reduction is available to all Members equally; 2) reduction is for a specific time period, normally not less than thirty (30) days; 3) original price is not exceeded after the time-limit; and 4) Region 4 ESC has approved the new prices prior to any offer of the prices to a Member. Vendor shall offer Region 4 ESC any published price reduction during the contract period.

**9.5 Prevailing Wage:** It shall be the responsibility of the Vendor to comply, when applicable, with the prevailing wage legislation in effect in the jurisdiction of the purchaser (Region 4 ESC or its Members). It shall further be the responsibility of the Vendor to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of this contract and adjust wage rates accordingly.

**9.6 Administrative Fees:** All pricing submitted to Region 4 ESC shall include the administrative fee to be remitted to TCPN by the awarded vendor.

The awarded vendor agrees to pay 4% administrative fees monthly to TCPN. Administrative fees must be paid net 30 days after TCPN acceptance of the vendor's monthly report.

## **ARTICLE 10- PRICING AUDIT**

**10.1 Audit rights:** Vendor shall, at Vendor's sole expense, maintain appropriate due diligence of all purchases made by Region 4 ESC and any entity that utilizes this Agreement. TCPN and Region 4 ESC each reserve the right to audit the accounting for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement

for a period of one (1) year from the effective date of termination. In the State of New Jersey, this audit right shall survive termination of this Agreement for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request. Region 4 ESC shall have the authority to conduct random audits of Vendor's pricing that is offered to eligible entities at Region 4 ESC's sole cost and expense. Notwithstanding the foregoing, in the event that Region 4 ESC is made aware of any pricing being offered to eligible agencies that is materially inconsistent with the pricing under this agreement, Region 4 ESC shall have the ability to conduct an extensive audit of Vendor's pricing at Vendor's sole cost and expense. Region 4 ESC may conduct the audit internally or may engage a third-party auditing firm. In the event of an audit, the requested materials shall be provided in the format and at the location designated by Region 4 ESC or TCPN.

#### **ARTICLE 11- OFFEROR PRODUCT LINE REQUIREMENTS**

11.1 **Current products:** Proposals shall be for materials and equipment in current production and marketed to the general public and education/government agencies at the time the proposal is submitted.

11.2 **Discontinued products:** If a product or model is discontinued by the manufacturer, vendor may substitute a new product or model if the replacement product meets or exceeds the specifications and performance of the discontinued model and if the discount is the same or greater than the discontinued model.

11.3 **New products/Services:** New products and/or services that meet the scope of work may be added to the contract. Pricing shall be equivalent to the percentage discount for other products. Vendor may replace or add product lines to an existing contract if the line is replacing or supplementing products on contract, is equal or superior to the original products offered, is discounted in a similar or to a greater degree, and if the products meet the requirements of the solicitation. No products and/or services may be added to avoid competitive procurement requirements. Region 4 ESC may require additions to be submitted with documentation from Members demonstrating an interest in, or a potential requirement for, the new product or service. Region 4 ESC may reject any additions without cause.

11.4 **Options:** Optional equipment for products under contract may be added to the contract at the time they become available under the following conditions: 1) the option is priced at a discount similar to other options; 2) the option is an enhancement to the unit that improves performance or reliability.

11.5 **Product line:** Offerors with a published catalog may submit the entire catalog. Region 4 ESC reserves the right to select products within the catalog for award without having to award all contents. Region 4 ESC may reject any addition of equipment options without cause.

11.6 **Warranty conditions:** All supplies, equipment and services shall include manufacturer's minimum standard warranty and one (1) year labor warranty unless otherwise agreed to in writing.

11.7 **Buy American requirement:** (for New Jersey and all other applicable States) Vendors may only use unmanufactured construction material mined or produced in the United States, as required by the Buy American Act. Where trade agreements apply, to the extent permitted by applicable law, then unmanufactured construction material mined or produced in a designated country may also be used. Vendors are required to check state specific requirements to ensure compliance with this requirement.

## **ARTICLE 12- SITE REQUIREMENTS**

12.1 **Cleanup:** Vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by Member. Upon completion of the work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.

12.2 **Preparation:** Vendor shall not begin a project for which Member has not prepared the site, unless vendor does the preparation work at no cost, or until Member includes the cost of site preparation in a purchase order. Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

12.3 **Registered sex offender restrictions:** For work to be performed at schools, vendor agrees that no employee or employee of a subcontractor who has been adjudicated to be a registered sex offender will perform work at any time when students are or are reasonably expected to be present. Vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the Member's discretion. Vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge.

12.4 **Safety measures:** Vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Vendor shall post warning signs against all hazards created by its operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

12.5 **Smoking:** Persons working under the contract shall adhere to local smoking policies. Smoking will only be permitted in posted areas or off premises.

12.6 **Stored materials:** Upon prior written agreement between the vendor and Member, payment may be made for materials not incorporated in the work but delivered and suitably stored at the site or some other location, for installation at a later date. An inventory of the stored materials must be provided to Member prior to payment. Such materials must be stored and protected in a secure location, and be insured for their full value by the vendor against loss and damage. Vendor agrees to provide proof of coverage and/or addition of Member as an additional insured upon Member's request. Additionally, if stored offsite, the materials must also be clearly identified as property of buying Member and be separated from other materials. Member must be allowed reasonable opportunity to inspect and take inventory of stored materials, on or offsite, as necessary.

Until final acceptance by the Member, it shall be the Vendor's responsibility to protect all materials and equipment. The Vendor warrants and guarantees that title for all work, materials and equipment shall pass to the Member upon final acceptance.

### **ARTICLE 13- MISCELLANEOUS**

13.1 **Funding Out Clause:** Any/all contracts exceeding one (1) year shall include a standard “funding out” clause. A contract for the acquisition, including lease, of real or personal property is a commitment of the entity’s current revenue only, provided the contract contains either or both of the following provisions: **NOTE: Please clarify, appears to be an incomplete statement.**

“Retains to the entity the continuing right to terminate the contract at the expiration of each budget period during the term of the contract and is conditioned on a best efforts attempt by the entity to obtain appropriate funds for payment of the contract.”

13.2 **Disclosures:** Offeror affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this contract.

Include a complete description of any and all relationships that might be considered a conflict of interest in doing business with participants in TCPN.

The Offeror affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this contract.

13.3 **Indemnity:** The awarded vendor shall protect, indemnify, and hold harmless both Region 4 ESC and TCPN and its participants, administrators, employees and agents against all claims, damages, losses and expenses arising out of or resulting from the actions of the vendor, vendor employees or vendor subcontractors in the preparation of the solicitation and the later execution of the contract, including any supplemental agreements with members. Any litigation involving either Region 4 ESC or TCPN, its administrators and employees and agents will be in Harris County, Texas. Any litigation involving TCPN members shall be in the jurisdiction of the participating agency.

13.4 **Franchise Tax:** The Offeror hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes.

13.5 **Marketing:** Awarded vendor agrees to allow Region 4 ESC/TCPN to use their name and logo within website, marketing materials and advertisement. Any use of TCPN name and logo or any form of publicity, inclusive of press releases, regarding this contract by awarded vendor must have prior approval from TCPN.

**13.6 Certificates of Insurance:** Certificates of insurance shall be delivered to the Region 4 ESC participant prior to commencement of work. The insurance company shall be licensed in the applicable state in which work is being conducted. The awarded vendor shall give the participating entity a minimum of ten (10) days' notice prior to any modifications or cancellation of policies. The awarded vendor shall require all subcontractors performing any work to maintain coverage as specified.

**13.7 Legal Obligations:** It is the Offeror's responsibility to be aware of and comply with all local, state, and federal laws governing the sale of products/services identified in this RFP and any awarded contract and shall comply with all while fulfilling the RFP. Applicable laws and regulation must be followed even if not specifically identified herein.

**13.8 Open Records Policy:** Because Region 4 ESC contracts are awarded by a governmental entity, responses submitted are subject to release as public information after contracts are executed. If a vendor believes that its response, or parts of its response, may be exempted from disclosure, the vendor must specify page-by-page and line-by-line the parts of the response which it believes are exempt. In addition, the Offeror must specify which exception(s) are applicable and provide detailed reasons to substantiate the exception(s). Offeror must provide this information on the "Acknowledgement and Acceptance to Region 4 ESC's Open Record Policy" form found at the beginning of this solicitation. Any information that is unmarked will be considered public information and released, if requested under the Public Information Act.

The determination of whether information is confidential and not subject to disclosure is the duty of the Office of Attorney General (OAG). Region 4 ESC must provide the OAG sufficient information to render an opinion and therefore, vague and general claims to confidentiality by the Offeror are not acceptable. Region 4 ESC must comply with the opinions of the OAG. Region 4 ESC assumes no responsibility for asserting legal arguments on behalf of any vendor. Offerors are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

After completion of award, these documents will be available for public inspection.

**VENDOR CONTRACT SIGNATURE FORM**

The undersigned hereby proposes and agrees to furnish goods and/or services in strict compliance with the terms, specifications and conditions at the prices proposed within response unless noted in writing. The undersigned further certifies that he/she is an officer of the company and has authority to negotiate and bind the company named below and has not prepared this proposal in collusion with any other Offeror and that the contents of this proposal as to prices, terms, or conditions of said proposal have not been communicated by the undersigned nor by any employee or agent to any person engaged in this type of business prior to the official opening of this proposal.

Prices are guaranteed: **120 days**

Company Name: **Convergint Technologies LLC**

Address: **4395 Nicole Drive**

City/State/Zip **Lanham, Maryland, 20706**

Telephone No. **301.459.8730**

Fax No. **301.459.8731**

Email Address: **Vincent.piau@convergint.com and IPA@convergint.com**

Printed Name: **Vincent Piau**

Position with company: **General Manager**

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


**Accepted by The Cooperative Purchasing Network:**

Term of contract \_\_\_\_\_ to \_\_\_\_\_

Unless otherwise stated, all contracts are for a period of three (3) years with an option to renew annually for an additional two (2) years if agreed to by Region 4 ESC and the awarded vendor. Awarded vendor shall honor all administrative fees for any sales made based on a contract whether renewed or not.

\_\_\_\_\_  
Region 4 ESC Authorized Board Member

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Region 4 ESC Authorized Board Member

\_\_\_\_\_  
Date

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

**TCPN Contract Number** \_\_\_\_\_



**1.3 General Terms and Conditions Acceptance Form - Appendix D**

**APPENDIX D:**

**GENERAL TERMS & CONDITIONS ACCEPTANCE FORM**

Signature on Vendor Contract Signature form certifies complete acceptance of the General Terms and Conditions in this solicitation, except as noted below (additional pages may be attached, if necessary).

**Check one of the following responses to the General Terms and Conditions:**

We take no exceptions/deviations to the general terms and conditions

(Note: If none are listed below, it is understood that no exceptions/deviations are taken.)

We take the following exceptions/deviations to the general terms and conditions. All exceptions/deviations must be clearly explained. Reference the corresponding general terms and conditions that you are taking exceptions/deviations to. Clearly state if you are adding additional terms and conditions to the general terms and conditions. Provide details on your exceptions/deviations below:

(Note: Unacceptable exceptions shall remove your proposal from consideration for award. Region 4 ESC shall be the sole judge on the acceptance of exceptions/deviations and the decision shall be final.)

Section/Page	Term, Condition, or Specification	Exception/Deviation	Region 4 Accepts
8.1 Payments Page 19	The entity using the contract will make payments directly to the awarded vendor. Payment shall be made after satisfactory performance, in accordance with all provisions thereof, and upon receipt of a properly completed invoice.	The entity using the contract will make payments directly to the awarded vendor. Payment shall be made after satisfactory performance, in accordance with all provisions thereof, and within 30 days of receipt of a properly completed invoice.	
11.6 Warranty conditions: Page 21	All supplies, equipment and services shall include manufacturer's minimum standard warranty and one (1) year labor warranty unless otherwise agreed to in	All supplies, equipment and services shall include manufacturer's minimum standard warranty and one (1) year labor warranty unless otherwise agreed to in writing. NO FURTHER WARRANTIES OR GUARANTIES, EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO ANY GOODS OR	

	writing.	<b>SERVICES PROVIDED UNDER THIS AGREEMENT, AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.</b>	
13.3 Indemnity  Page 22	The awarded vendor shall protect, indemnify, and hold harmless both Region 4 ESC and TCPN and its participants, administrators, employees and agents against all claims, damages, losses and expenses arising out of or resulting from the actions of the vendor, vendor employees or vendor subcontractors in the preparation of the solicitation and the later execution of the contract, including any supplemental agreements with members. Any litigation involving either Region 4 ESC or TCPN, its administrators and employees and agents will be in Harris County, Texas. Any litigation involving TCPN members shall be in the jurisdiction of the participating agency.	The awarded vendor shall protect, indemnify, and hold harmless both Region 4 ESC and TCPN and its participants, administrators, employees and agents against all claims, damages, losses and expenses <b>to the extent they are</b> arising out of or resulting from the actions of the vendor, vendor employees or vendor subcontractors in the preparation of the solicitation and the later execution of the contract, including any supplemental agreements with members. Any litigation involving either Region 4 ESC or TCPN, its administrators and employees and agents will be in Harris County, Texas. Any litigation involving TCPN members shall be in the jurisdiction of the participating agency.  <b>IN NO EVENT SHALL EITHER VENDOR OR TCPN BE LIABLE TO THE OTHER PARTY HERETO, OR TO ANY INDEMNITEE, FOR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING COMMERCIAL LOSS, LOSS OF USE, OR LOST PROFITS, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.</b>	

**CONSENT AGENDA ITEM  
#14**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams *Aneth Williams*  
Director of Procurement

DATE: January 20, 2021

SUBJECT: Approval of TargetCW as a Subcontractor for TransCore, LP for System Software Maintenance (SSM-01)  
Contract No. 000179

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Board approval of TargetCW as a subcontractor to TransCore, LP to perform computer consulting and system maintenance services is requested. The cost is expected to exceed the \$25,000.00 threshold established by the Procurement Policy for subconsultants not disclosed when the contract was originally awarded.

Reviewed by: *Rafael Millan*  
Rafael Millan  
Director of IT

*Jim Greer*  
Jim Greer

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

REQUEST FOR AUTHORIZATION TO SUBLET SERVICES

Consultant: TransCore Date: 1/15/2021 CFX

CFX Contract Name: SSM-01 Contract No.: 179

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: TargetCW (A.K.A. Target Contingent Workforce) (A.K.A. WMBE Payrolling)

Address: 9475 Chesapeake Drive San Diego, CA 92123

Phone No.: 858.810.3097

Federal Employee ID No.: TAX ID 80-0424690

Description of Services to Be Sublet: Computer consulting and system maintenance services

Estimated Beginning Date of Sublet Services: 1/1/2021

Estimated Completion Date of Sublet Services: 12/31/2022

Estimated Value of Sublet Services\*: \$ 130,000.00

\*(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: Edgardo Torres 1/18/2021  
(Signature of Consultant Representative)

Associate Vice President  
Title

Recommended by: Rafael Millan  
(Signature of Appropriate CFX Director/Manager)

Date: Jan 19, 2021

Approved by: James P. ...  
(Signature of Appropriate Chief)

Date: Jan 19, 2021

Attach Subconsultant's Certificate of Insurance to this Request.

**CONSENT AGENDA ITEM  
#15**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams *Aneth Williams*  
Director of Procurement

DATE: January 19, 2021

SUBJECT: Approval of First Contract Renewal with Kyra Solutions, Inc.  
for Image Processing Solution  
Contract No. 001660

---

Board approval is requested for the first renewal of the referenced contract with Kyra Solutions, Inc. in the amount of \$0.00 for one year beginning on March 1, 2021 and ending February 28, 2022. The original contract was for one year with renewal options.

The service to be performed under this renewal includes processing image reviews.

Original Contract	\$1,500,000.00
Supplemental Agreement No. 1	\$ 0.00
First Renewal	\$ 0.00
Total	\$1,500,000.00

This contract is included in the OM&A Budget.

Reviewed by: D. Wynne  
David Wynne  
Director of Toll Operations

Jim Greer  
Jim Greer



**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
CONTRACT RENEWAL NO. 1 AGREEMENT  
CONTRACT NO. 001660**

**THIS CONTRACT RENEWAL NO. 1 AGREEMENT** (“Renewal Agreement”), is made and entered into this 11th day of February 2021, by and between Central Florida Expressway Authority, a corporate body and agency of the State of Florida, hereinafter called “CFX”, and Kyra Solutions, Inc., hereinafter called the (“Contractor”). CFX and Contractor are referred to herein sometimes as a “Party” or the “Parties”.

**WITNESSETH**

**WHEREAS**, on February 13, 2020, CFX and the Contractor entered into a Contract Agreement (the “Original Agreement”) whereby CFX retained the Contractor to provide image review services.

**WHEREAS**, the Parties seek to renew the Initial CFX Contract for a period of one (1) year in accordance with the terms and conditions hereof.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and promises set forth in this Renewal Contract, the Parties agree as follows:

1. **Recitals**. The above recitals are true and correct and are hereby incorporated by reference as if fully set forth herein.
2. **Renewal Term**. CFX and Contractor agree to exercise the first renewal of said Initial CFX Contract, which renewal shall begin on March 1, 2021 and end on February 28, 2022 (“Renewal Term”), unless otherwise extended as provided in the Original Contract.
3. **Compensation for Renewal Term**. The Contractor shall be compensated for any and all services performed during the Renewal Term under this Renewal Agreement in accordance with the compensation schedule of the Original Agreement in an amount up to \$0.00 (“Renewal Compensation”). The Renewal Compensation shall be in addition to the original compensation paid by CFX to the Contractor pursuant to the terms of the Original Agreement, and any supplements or amendments thereto.
4. **Effect on Original Agreement**. All terms and conditions of said Original Agreement and any supplements and amendments thereto, not specifically modified herein, 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 Renewal Agreement and the Original Agreement, or any existing supplements or amendments thereto, the provisions of this Renewal Agreement, shall take precedence.
5. **Counterpart and Electronic Signatures**. This Renewal Agreement may be executed in multiple counterparts, including by electronic or digital signatures in compliance with Chapter 668, Florida Statutes, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement.

**IN WITNESS WHEREOF**, the Parties have caused this Renewal Agreement to be executed by their duly authorized officers effective on the day and year set forth above.

**KYRA SOLUTIONS, INC.**

**CENTRAL FLORIDA EXPRESSWAY  
AUTHORITY**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Aneth Williams, Director of Procurement

ATTEST: \_\_\_\_\_ (SEAL)

Secretary or Notary  
If Individual, furnish two witnesses:

Approved as to form and legality by legal counsel  
to the Central Florida Expressway Authority on  
this \_\_\_ day of \_\_\_\_\_, 2021 for its exclusive  
use and reliance.

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

By: \_\_\_\_\_  
Diego "Woody" Rodriguez, General Counsel

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

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 1

Contract Name: Image Processing Solution

Contract No.001660

Supplemental Agreement No.1

This Supplemental Agreement No.1 entered into this 15<sup>th</sup> day of December 2020, by and between CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX"), and KYRA SOLUTIONS, INC (the "Contractor"), the same being supplementary to the Contact between the aforesaid, dated February 13, 2020, with a Notice to Proceed date of March 1, 2020, for image processing solution.

1. CFX desires to amend the Scope of Services to add additional image review services of images originating from the new Infinity tolling system. This complimentary image review service will provide additional layer of risk management and operation redundancy through geo diversity for CFX. The proposed scope of services includes:

- Contractor and its subcontractor Global Agility Solutions will provide manual image review operators to work on the following queues, using CFX's Manual Image Review (MIR) system.
- This service will be provided from offshore location(s) using the Contractor's desktop or laptop.
- Initially, 6 operators are slated to staff this service to complement CFX's existing image review staff. The staffing level can be revised upwards or downwards per situation.
- Contractor will charge CFX 1.9 cents, flat fees per single review (per touch).
- Contractor will use the existing report from CFX's MIR to invoice CFX monthly.
- Queues will be - Simple jurisdiction, Advanced jurisdiction, Simple registration and Advanced registration.

Additional queues not mentioned in the scope will be priced separately upon request.

- CFX will be responsible for providing access to MIR using a secure and timely method.
2. The Contractor hereby agrees to provide the additional services with no increase in the Contact amount.
  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.

Contract Name: Image Processing Solution

Contract No. 001660

Amount of Changes to this document: \$0.00

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

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: Aneth Williams Digitally signed by Aneth Williams  
Date: 2020.12.18 16:04:22 -05'00'  
Director of Procurement

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

KYRA SOLUTIONS, INC.

By: Devany D. Pooler

Title: V.P. Projects & Consulting

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

Date: 12/18/2020



Approved as to form and legality by legal counsel to the Central Florida Expressway Authority on this 18th day of December, 2020 for its exclusive use and reliance.

By: Woody Rodriguez  
Diego "Woody" Rodriguez, General Counsel

# **CONTRACT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
KYRA SOLUTIONS, INC.**

**IMAGE PROCESSING SOLUTION**

**CONTRACT NO. 001660**

**CONTRACT DATE: February 13, 2020  
CONTRACT AMOUNT: \$1,500,000.00**

**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.  
4454 Florida National Drive  
Lakeland, FL 33803  
Attn: Devang Patel

**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: Anesh Williams

'20 FEB 19 AM 10:01

CONTRACTOR

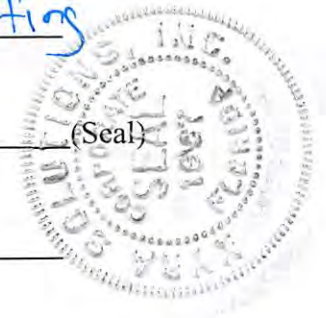
By:   
Signature

Devang A. Patel  
Print Name


VP, Projects & Consulting  
Title

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

DATE: 02/18/2020



Approved as to form and execution, only.

  
General Counsel for CFX

Dear Jim, and Dave,

Thank you for giving Kyra Solutions, Inc. the opportunity to submit to you our task order for the Image Processing Solution at the Central Florida Expressway Authority (CFX). The document that follows will discuss the scope and our approach to help CFX improve its timely processing for image-based transactions from legacy toll plazas.

Thank you,

*Devang A. Patel*

Devang Patel, PMP

### **Kyra's Scope of Services:**

Kyra will provide end to end image review application, infrastructure and labor to provide image review as a service.

Kyra will process images through OCR and / or Manual Image review (double-blind review) and provide results to CFX in a predetermined format.

All manual image reviews will be performed through Kyra's Manual Image Review Application (MIRA), and OCR that has been in production at THEA for 2+ years and providing very high accuracy results.

Kyra has formed the partnership (Kyra's subcontractor) with Manual Image Review Operator to provide help with labor portion of image review. 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.

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.

## Pricing and Assumptions

Scope of services	Price / Transaction	Comments
Image Review Services	5 cents per transaction	Kyra will charge flat fees of 5 cents per transaction.
Total contract value is expected to be \$1,500,000 and the duration of the contract term is one year, beginning 02/14/2020 with 4(four) one-year extension option at CFX's discretion.		

- In the event images can't be read via manual review due to a variety of reasons, unreadable images will be charged on a per transaction basis.
- CFX will pay based on the results received by CFX's back office.
- Adequate network bandwidth is available to support the operations.
- Kyra will use an existing interface with CFX, for receiving and sending images, transactions and results.
- Kyra's subcontractor (Global Agility Solution, Austin, TX) portion will be approximately up to \$450,000 of total value.
- If CFX chooses, Kyra will compare the results with POSI, or Trusted list provided by CFX.
- Contract can be terminated by either party with 30 days written notice.
- Kyra will provide monthly billing to CFX, Payment terms: Net - 30

**CONSENT AGENDA ITEM**

**#16**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams *Aneth Williams*  
Director of Procurement

DATE: January 19, 2021

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 \$78,023.44 to continue product support for a one-year period from February 28, 2021 to February 27, 2022. 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*  
Rafael Millan  
Director of IT

*Jim Greer*  
Jim Greer

**CONSENT AGENDA ITEM  
#17**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams *Aneth Williams*  
Director of Procurement

DATE: January 19, 2021

SUBJECT: Approval of Purchase Order to SHI International Corp. for Microsoft Azure Cloud Solutions and Services

---

Board authorization is requested to issue a purchase order to SHI International Corp. in the amount of \$360,000.00 to continue product support for a one-year period from March 1, 2021 to February 28, 2022. This will be a cooperative (piggyback) procurement based on the State of Florida Alternate Contract Source No. 43230000-NASPO-16-ACS, for Cloud Solution Providers.

This amount is budgeted in the OM&A Budget.

Reviewed by: *Rafael Millan*  
Rafael Millan  
Director of IT

*Jim Greer*  
Jim Greer



**CONSENT AGENDA ITEM**

**#18**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams *Aneth Williams*  
Director of Procurement

DATE: January 19, 2021

SUBJECT: Approval of Purchase Order to Optimus Energy Solutions, LLC  
for ChargePoint Stations


---


Board authorization is requested to issue a purchase order to Optimus Energy Solutions, LLC in the amount of \$57,621.00 for the procurement and installation of three (3) Electric Vehicle (EV) Charging stations at the CFX's Headquarter Building. This will be a cooperative (piggyback) procurement based on Sourcewell Contract #051017-CPI.

This purchase includes all required permitting, engineering, utility coordination, materials and labor for a complete installation of two (2) Dual-Port Charging Stations and one (1) Single-Port Charging Station. These three stations will provide EV charging to a total of five parking spaces. The project also includes five years support for ongoing operations and maintenance and five years network connectivity to support billing and power management.

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

Reviewed by:

  
Bryan Homayouni, PE  
Manager of Traffic Operations

  
Glenn Pressimone, PE

**E.**

**Chain Reports**

# **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 22, 2021 

RE: December 2020 Financial Reports

Attached please find the December 2020 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, 2020 AND YEAR-TO-DATE**

	FY 21 MONTH ACTUAL	FY 21 MONTH BUDGET	FY 21 YEAR-TO-DATE ACTUAL	FY 21 YEAR-TO-DATE BUDGET	FY 21 YEAR-TO-DATE VARIANCE	FY 21 YEAR-TO-DATE % VARIANCE	FY 20 - 21 YEAR-TO-DATE COMPARISON
<b>REVENUES</b>							
TOLLS	\$ 40,729,119	\$ 40,200,000	\$ 226,211,855	\$ 172,600,000	\$ 53,611,855	31.1%	-8.0%
FEES COLLECTED VIA UTN/UTC'S AND PBP'S	691,650	650,000	3,421,932	3,820,733	(398,801)	-10.4%	-37.3%
TRANSPONDER SALES	99,993	76,200	456,533	443,650	12,883	2.9%	3.9%
OTHER OPERATING	96,841	158,314	510,182	684,181	(173,999)	-25.4%	-42.1%
INTEREST	1,095,825	506,132	6,605,209	3,030,660	3,574,549	117.9%	38.1%
MISCELLANEOUS	61,949	61,929	372,985	371,576	1,409	0.4%	-0.2%
<b>TOTAL REVENUES</b>	<b>\$ 42,775,378</b>	<b>\$ 41,652,575</b>	<b>\$ 237,578,696</b>	<b>\$ 180,950,800</b>	<b>\$ 56,627,896</b>	<b>31.3%</b>	<b>-7.8%</b>
<b>O M &amp; A EXPENSES</b>							
OPERATIONS	\$ 5,686,175	\$ 5,026,265	\$ 25,050,522	\$ 27,272,237	\$ 2,221,715	8.1%	-7.5%
MAINTENANCE	1,159,727	1,265,632	6,132,436	6,634,172	501,736	7.6%	-0.9%
ADMINISTRATION	742,178	728,814	3,889,285	4,102,841	213,556	5.2%	5.9%
OTHER OPERATING	349,073	456,967	852,344	971,054	118,711	12.2%	26.4%
<b>TOTAL O M &amp; A EXPENSES</b>	<b>\$ 7,937,153</b>	<b>\$ 7,477,678</b>	<b>\$ 35,924,587</b>	<b>\$ 38,980,304</b>	<b>\$ 3,055,717</b>	<b>7.8%</b>	<b>-4.5%</b>
<b>NET REVENUES BEFORE DEBT SERVICE</b>	<b>\$ 34,838,225</b>	<b>\$ 34,174,897</b>	<b>\$ 201,654,110</b>	<b>\$ 141,970,496</b>	<b>\$ 59,683,614</b>	<b>42.0%</b>	<b>-8.4%</b>
<b>COMBINED NET DEBT SERVICE</b>	<b>\$ 18,251,023</b>	<b>\$ 18,240,816</b>	<b>\$ 109,602,702</b>	<b>\$ 109,646,550</b>	<b>\$ 43,848</b>	<b>0.0%</b>	<b>21.1%</b>
<b>NET REVENUES AFTER DEBT SERVICE</b>	<b>\$ 16,587,202</b>	<b>\$ 15,934,082</b>	<b>\$ 92,051,408</b>	<b>\$ 32,323,946</b>	<b>\$ 59,727,462</b>	<b>184.8%</b>	<b>-29.0%</b>

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**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUMMARY OF OPERATIONS, MAINTENANCE AND ADMINISTRATION  
COMPARISON OF ACTUAL TO BUDGET FOR FISCAL YEAR 2021  
FOR THE MONTH ENDING DECEMBER 31, 2020 AND YEAR-TO-DATE**

	<u>FY 2021 ACTUAL</u>	<u>FY 2021 BUDGET</u>	<u>VARIANCE</u>	<u>FY 21 YEAR-TO-DATE % VARIANCE</u>
Operations	\$ 25,050,522	\$ 27,272,237	\$ 2,221,715	8.1%
Maintenance	6,132,436	6,634,172	501,736	7.6%
Administration	3,889,285	4,102,841	213,556	5.2%
Other Operating	<u>852,344</u>	<u>971,054</u>	<u>118,711</u>	<u>12.2%</u>
Total O M & A	\$ 35,924,587	\$ 38,980,304	\$ 3,055,717	7.8%
 Capital Expenditures				
Operations	\$ -	\$ 50,000	\$ 50,000	100.0%
Maintenance	5,512	7,600	2,088	27.5%
Administration	<u>-</u>	<u>5,417</u>	<u>5,417</u>	<u>100.0%</u>
Total Capital Expenditures	\$ 5,512	\$ 63,017	\$ 57,505	91.3%

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**Central Florida Expressway Authority  
Operations - Comparison of Actual to Budget  
For the Six Months Ending December 31, 2020**

	<u>YTD Actual</u>	<u>YTD Budget</u>	<u>Budget Variance</u>	<u>Variance Percentage</u>
Toll Operations	292,911	306,267	13,356	4.36%
Image Review	3,478,797	3,603,994	125,197	3.47%
Special Projects	40,086	73,666	33,580	45.58%
Information Technology	2,682,538	2,702,762	20,223	0.75%
E-PASS Service Center	8,400,951	9,209,697	808,746	8.78%
E-PASS Business Services	72,421	79,293	6,872	8.67%
Public Outreach/Education	944,895	996,732	51,837	5.20%
<b>Subtotal CFX</b>	<b><u>\$15,912,599</u></b>	<b><u>\$16,972,410</u></b>	<b><u>\$1,059,810</u></b>	<b><u>6.24%</u></b>
Plazas	9,137,923	10,349,827	1,211,904	11.71%
<b>Subtotal Toll Facilities</b>	<b><u>\$9,137,923</u></b>	<b><u>\$10,349,827</u></b>	<b><u>\$1,211,904</u></b>	<b><u>11.71%</u></b>
<b>Total Operations Expenses</b>	<b><u><u>\$25,050,522</u></u></b>	<b><u><u>\$27,322,237</u></u></b>	<b><u><u>\$2,271,714</u></u></b>	<b><u><u>8.31%</u></u></b>



**Central Florida Expressway Authority  
Maintenance - Comparison of Actual to Budget  
For the Six Months Ending December 31, 2020**

	<u>YTD Actual</u>	<u>YTD Budget</u>	<u>Budget Variance</u>	<u>Variance Percentage</u>
Maintenance Administration	1,257,141	1,326,509	69,369	5.23%
Traffic Operations	1,398,383	1,509,317	110,934	7.35%
Routine Maintenance	3,482,425	3,805,945	323,520	8.50%
<b>Total Maintenance Expenses</b>	<b><u><u>\$6,137,948</u></u></b>	<b><u><u>\$6,641,772</u></u></b>	<b><u><u>\$503,824</u></u></b>	<b><u><u>7.59%</u></u></b>



**Central Florida Expressway Authority  
Administration - Actual to Budget by Cost Center  
For the Six Months Ending December 31, 2020**

	<u>YTD Actual</u>	<u>YTD Budget</u>	<u>Budget Variance</u>	<u>Variance Percentage</u>
General	415,799	441,591	25,792	5.84%
Administrative Services	1,070,305	1,078,729	8,424	0.78%
Communications	275,695	300,489	24,794	8.25%
Human Resources	141,154	145,975	4,821	3.30%
Supplier Diversity	94,041	98,534	4,493	4.56%
Accounting	756,472	810,793	54,322	6.70%
Construction Administration	30,168	32,894	2,725	8.28%
Risk Management	66,434	79,998	13,564	16.96%
Procurement	298,727	307,453	8,727	2.84%
Legal	307,805	348,865	41,060	11.77%
Internal Audit	214,968	219,180	4,212	1.92%
525 Magnolia	20,427	15,846	(4,581)	-28.91%
Engineering	36,545	49,685	13,140	26.45%
Records Management	160,745	178,225	17,480	9.81%
<b>Grand Total Expenses</b>	<u><u>\$3,889,285</u></u>	<u><u>\$4,108,258</u></u>	<u><u>\$218,973</u></u>	<u><u>5.33%</u></u>

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
CALCULATION OF NET REVENUES AS DEFINED BY THE BOND RESOLUTIONS  
PREVIOUS YEAR BUDGET TO ACTUAL COMPARISON  
FOR THE MONTH ENDING DECEMBER 31, 2020 AND YEAR-TO-DATE**

	FY 21 YEAR-TO-DATE ACTUAL	FY 21 YEAR-TO-DATE BUDGET	FY 21 YEAR-TO-DATE VARIANCE	FY 20 YEAR-TO-DATE ACTUAL	FY 20 YEAR-TO-DATE BUDGET	FY 20 YEAR-TO-DATE VARIANCE	YEAR-TO-DATE VARIANCE COMPARISON
<b>REVENUES</b>							
TOLLS	\$ 226,211,855	\$ 172,600,000	\$ 53,611,855	\$ 245,834,396	\$ 235,549,007	\$ 10,285,389	\$ 43,326,466
FEES COLLECTED VIA UTN/UTC'S AND PBP'S	3,421,932	3,820,733	(398,801)	5,461,485	4,358,225	1,103,260	(1,502,061)
TRANSPONDER SALES	456,533	443,650	12,883	439,444	367,807	71,637	(58,754)
OTHER OPERATING	510,182	684,181	(173,999)	880,671	355,166	525,505	(699,504)
INTEREST	6,605,209	3,030,660	3,574,549	4,783,822	3,443,966	1,339,856	2,234,693
MISCELLANEOUS	372,985	371,576	1,409	373,663	365,070	8,593	(7,184)
<b>TOTAL REVENUES</b>	<b>\$ 237,578,696</b>	<b>\$ 180,950,800</b>	<b>\$ 56,627,896</b>	<b>\$ 257,773,481</b>	<b>\$ 244,439,241</b>	<b>\$ 13,334,240</b>	<b>\$ 43,293,656</b>
<b>O M &amp; A EXPENSES</b>							
OPERATIONS	\$ 25,050,522	\$ 27,272,237	\$ 2,221,715	\$ 27,082,540	\$ 29,273,410	\$ 2,190,870	\$ 30,845
MAINTENANCE	6,132,436	6,634,172	501,736	6,188,726	6,603,347	414,621	87,115
ADMINISTRATION	3,889,285	4,102,841	213,556	3,674,045	4,087,246	413,201	(199,645)
OTHER OPERATING	852,344	971,054	118,711	674,279	1,085,296	411,017	(292,306)
<b>TOTAL O M &amp; A EXPENSES</b>	<b>\$ 35,924,587</b>	<b>\$ 38,980,304</b>	<b>\$ 3,055,717</b>	<b>\$ 37,619,590</b>	<b>\$ 41,049,299</b>	<b>\$ 3,429,709</b>	<b>\$ (373,992)</b>
<b>NET REVENUES BEFORE DEBT SERVICE</b>	<b>\$ 201,654,110</b>	<b>\$ 141,970,496</b>	<b>\$ 59,683,614</b>	<b>\$ 220,153,891</b>	<b>\$ 203,389,942</b>	<b>\$ 16,763,949</b>	<b>\$ 42,919,665</b>
<b>COMBINED NET DEBT SERVICE</b>	<b>\$ 109,602,702</b>	<b>\$ 109,646,550</b>	<b>\$ 43,848</b>	<b>\$ 90,472,217</b>	<b>\$ 91,490,181</b>	<b>\$ (1,017,964)</b>	<b>\$ 1,061,812</b>
<b>NET REVENUES AFTER DEBT SERVICE</b>	<b><u>\$ 92,051,408</u></b>	<b><u>\$ 32,323,946</u></b>	<b><u>\$ 59,727,462</u></b>	<b><u>\$ 129,681,674</u></b>	<b><u>\$ 111,899,761</u></b>	<b><u>\$ 17,781,913</u></b>	<b><u>\$ 41,945,549</u></b>

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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, 2020 AND YEAR-TO-DATE**

	FY 21 MONTH ACTUAL	FY 20 MONTH ACTUAL	FY 20 - 21 SAME MONTH COMPARISON	FY 21 YEAR-TO-DATE ACTUAL	FY 20 YEAR-TO-DATE ACTUAL	FY 20 - 21 YEAR-TO-DATE COMPARISON
<b>REVENUES</b>						
TOLLS	\$ 40,729,119	\$ 42,787,093	\$ (2,057,974)	\$ 226,211,855	\$ 245,834,396	\$ (19,622,541)
FEEES COLLECTED VIA UTN/UTC'S AND PBP'S	691,650	1,114,401	(422,751)	3,421,932	5,461,485	(2,039,553)
TRANSPONDER SALES	99,993	78,036	21,957	456,533	439,444	17,089
OTHER OPERATING	96,841	193,776	(96,935)	510,182	880,671	(370,489)
INTEREST	1,095,825	746,003	349,822	6,605,209	4,783,822	1,821,387
MISCELLANEOUS	61,949	62,336	(387)	372,985	373,663	(678)
<b>TOTAL REVENUES</b>	<b>\$ 42,775,378</b>	<b>\$ 44,981,645</b>	<b>\$ (2,206,267)</b>	<b>\$ 237,578,696</b>	<b>\$ 257,773,481</b>	<b>\$ (20,194,785)</b>
<b>O M &amp; A EXPENSES</b>						
OPERATIONS	\$ 5,686,175	\$ 4,921,012	\$ 765,163	\$ 25,050,522	\$ 27,082,540	\$ (2,032,018)
MAINTENANCE	1,159,727	1,388,411	(228,684)	6,132,436	6,188,726	(56,290)
ADMINISTRATION	742,178	585,668	156,510	3,889,285	3,674,045	215,240
OTHER OPERATING	349,073	105,538	243,535	852,344	674,279	178,065
<b>TOTAL O M &amp; A EXPENSES</b>	<b>\$ 7,937,153</b>	<b>\$ 7,000,629</b>	<b>\$ 936,524</b>	<b>\$ 35,924,587</b>	<b>\$ 37,619,590</b>	<b>\$ (1,695,003)</b>
<b>NET REVENUES BEFORE DEBT SERVICE</b>	<b>\$ 34,838,225</b>	<b>\$ 37,981,016</b>	<b>\$ (3,142,791)</b>	<b>\$ 201,654,110</b>	<b>\$ 220,153,891</b>	<b>\$ (18,499,781)</b>
<b>COMBINED NET DEBT SERVICE</b>	<b>\$ 18,251,023</b>	<b>\$ 14,724,276</b>	<b>\$ 3,526,747</b>	<b>\$ 109,602,702</b>	<b>\$ 90,472,217</b>	<b>\$ 19,130,485</b>
<b>NET REVENUES AFTER DEBT SERVICE</b>	<b><u>\$ 16,587,202</u></b>	<b><u>\$ 23,256,740</u></b>	<b><u>\$ (6,669,538)</u></b>	<b><u>\$ 92,051,408</u></b>	<b><u>\$ 129,681,674</u></b>	<b><u>\$ (37,630,266)</u></b>

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# E.3.

## Executive Director's Report

## Executive Director Report February 2021

### INDUSTRY PARTNERS

#### Florida Automated Vehicle Summit Speaker Series

CFX is partnering with the Florida Automated Vehicle Summit for a series of webinars discussing transportation technology in Florida. On February 25th at 11:00 am, panelists Ali Vahabzadeh, Founder & CEO, of CurbFlow, and Jason Shaffer, Vice-President of Customer Product at Walmart will discuss “Delivering the Efficiency Revolution with New Technology.” Go to [favsummit.com](http://favsummit.com) to register for this no-cost event.

CFX is also hosting the Florida Automated Vehicle Summit in Orlando in November 2021. Stay tuned for more details.

#### CFX Industry Forum

On January 14th, we held our annual industry forum to discuss all of CFX’s potential 2021 infrastructure design, intelligent transportation system, and construction projects. Also included were updates on how our procurement and minority business programs operate. Over 300 people in the engineering and construction industries attended the virtual event.

### FINANCIAL UPDATE

#### Mid-Year Budget Assessment

By December 31, 2020, midway through the fiscal year, CFX collected 31% more revenue than budgeted. At the same time, operations, maintenance and administration expenses were 8% under budget. CFX continues to operate in a fiscally sound manner and expects to end the fiscal year in a strong financial position. Staff will present the recommended OM&A and Five-Year Work Plan budget for Fiscal Year 2021/2022 in April.

### DASHBOARD

#### Wrong Way Driving Program

In December, there were 12 detections system-wide with 11 of the 12 detections resulting in documented turn arounds. Details of the remaining event is listed below:

#### **SR 408 EB Exit 19 at Dean Rd; Tuesday 12/1/2020 9:51 PM**

A red SUV was observed traveling up the ramp in the wrong direction. The vehicle appeared to be assisting a disabled vehicle near the plaza building. The Regional Traffic Management Center notified the Florida Highway Patrol. There were no citations or crashes associated with this event.

### Customer Service Call Center

Due to COVID-19, meeting our service level goals within the Customer Service Call Center has been very challenging. To ensure a safe environment, CFX has implemented many changes based on CDC recommendations. All work and common areas are thoroughly cleaned nightly. All Customer Service Call Center staff wear masks throughout their shift, and procedures have been changed to minimize employee to employee interactions. For example, coaching and quality assurance sessions, normally face-to-face, are now conducted over the telephone. We have also installed plexiglass panels throughout the call center floor very similar to what we have in our Board room.

The most impactful change to service levels has been a staggered seating plan to ensure that each employee has their own space. This means that vacant cubicles surround each employee to insure we maintain more than 6 feet of separation. Unfortunately, seating in this manner causes a 50% reduction of Customer Service Call Center staff during our busiest hours. While we have been able to partly offset this by converting conference rooms to Customer Service Representative seating, there is not enough space to allow staffing to match peak call volumes.

Jim Greer will provide additional detail at the February Board meeting and share the changes being made to return to normal staffing and service levels while keeping Customer Service Representatives and our customer information safe.

### PROJECT PRESENTATIONS

January 11, 2021: Southport PD&E Presentation to Osceola BOCC  
January 15, 2021: Southport PD&E Presentation to Polk BOCC

### PROJECT MEETINGS

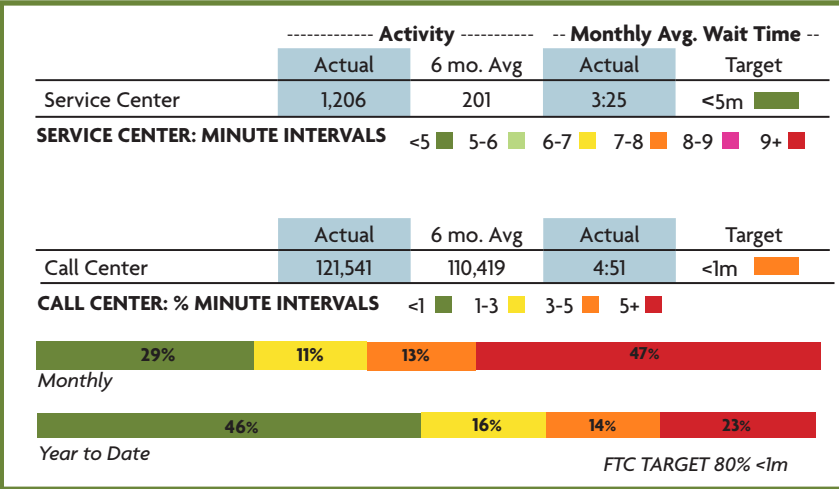
January 20, 2021: SR 429 Corridor Widening Project Virtual Public Meeting  
January 27, 2021: SR 429 Corridor Widening Project Virtual Public Meeting  
February 10, 2021: SR 414 Expressway Extension PD&E Virtual Public Meeting  
March 10, 2021: Northeast Connector PD&E Phase 1 Virtual Public Meeting

**PERFORMANCE DASHBOARD**

**NOVEMBER 2020**

*Fiscal year runs from July 1-June 30*

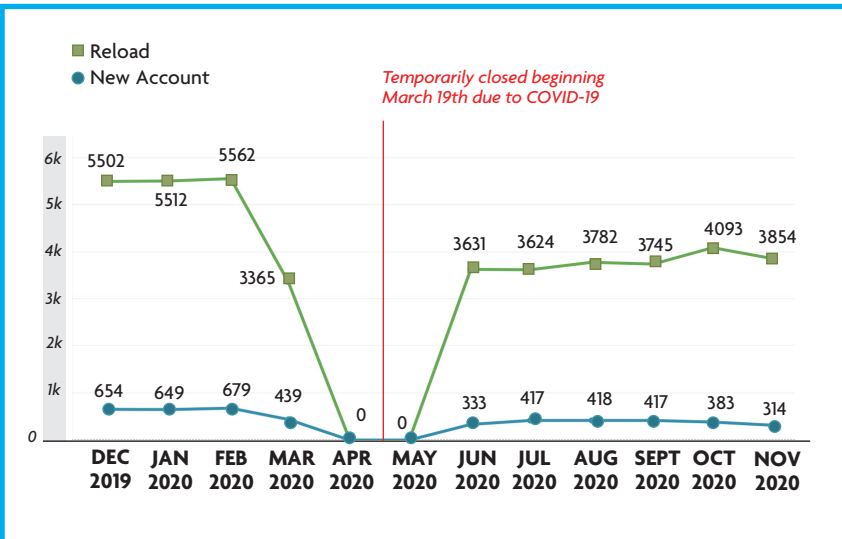
**CUSTOMER SERVICE**



**WRONG WAY DRIVING (WWD)**

Month	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV
Total Vehicles Detected	8	2	10	19	12	14	5	13
Documented Turn Arouds	7	2	9	18	11	13	4	12

**RELOAD CUSTOMER SERVICE LANE ACTIVITY**



**PROGRESS OF MAJOR CONSTRUCTION PROJECTS**

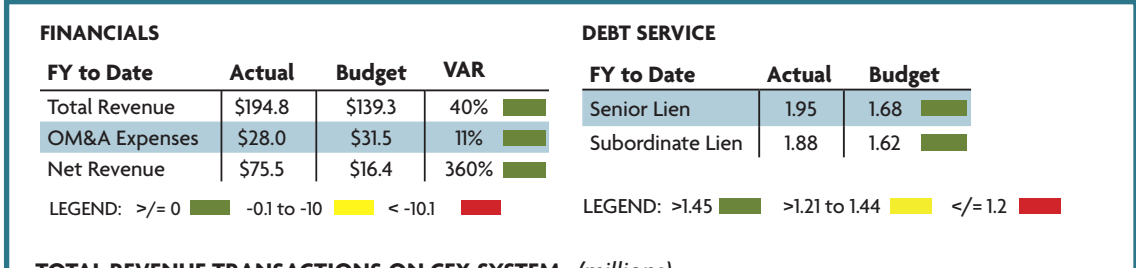
	Contract (millions)	Spent (millions)	% Time	% Spent	VAR	Contract Completion Date
SR 429 Stoneybrook West Interchange	\$10.2	\$10.2	100%	100%	Green	Nov. 2020
SR 528 / SR 436 Interchange Improvements	\$105.7	\$28.4	11%	27%	Green	Feb. 2023
SR 538 Widening, Ronald Reagan Pkwy to Cypress Pkwy	\$92.6	\$0.0	0%	0%	Green	Nov. 2023
SR 417 Widening, International Dr. to John Young Pwky	\$81.6	\$0.0	0%	0%	Green	Oct. 2023

LEGEND: % Time - % Spent ≤ 10 Green 11-20 Yellow ≥ 21 Red

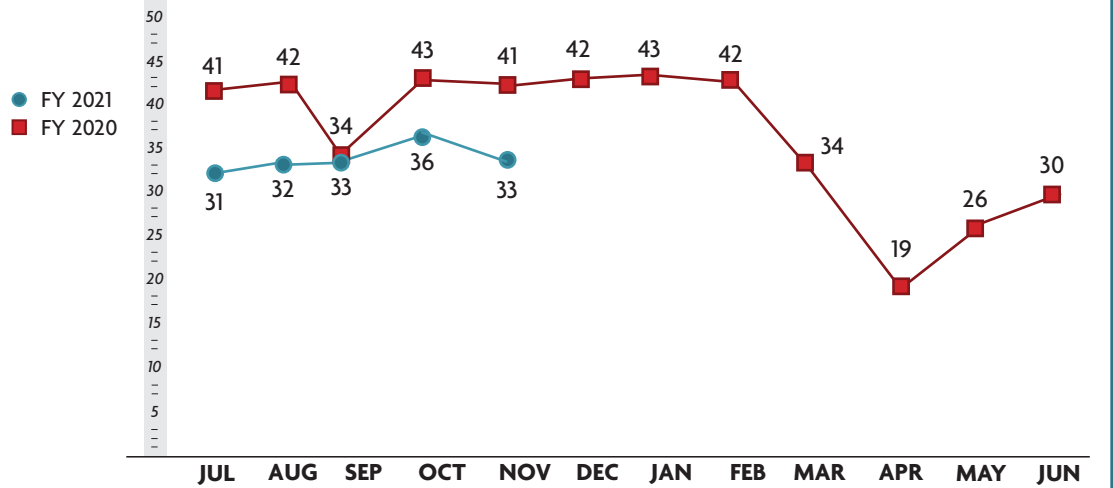
	Contract (millions)	Spent (millions)	Lanes Complete 300/415	Lanes Goal	VAR	Lanes Completion Date
Toll System Replacement	\$54.4	\$36.4	72%	79%	Yellow	March 2021

LEGEND: % Lanes Complete - % Lanes Goal >/= 0 Green -0.1 to -10 Yellow < -10.1 Red

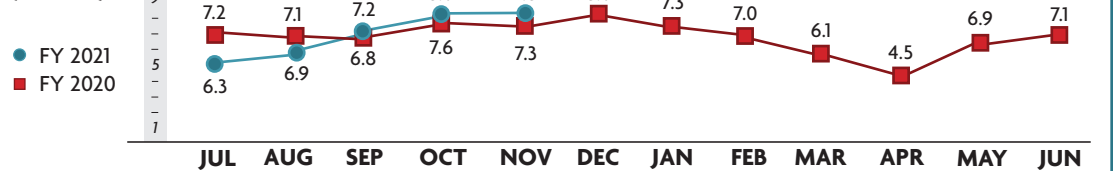
**FINANCIALS**



**TOTAL REVENUE TRANSACTIONS ON CFX SYSTEM (millions)**



**UNPAID IN LANE TRANSACTIONS (millions)**



**PERFORMANCE DASHBOARD**

**DECEMBER 2020**

*Fiscal year runs from July 1-June 30*

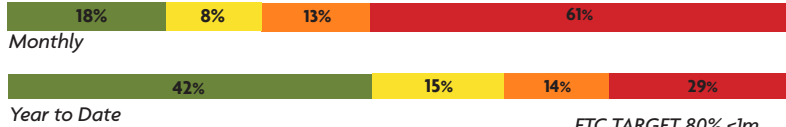
**CUSTOMER SERVICE**

	Activity		Monthly Avg. Wait Time	
	Actual	6 mo. Avg	Actual	Target
Service Center	3,360	761	7:47	<5m

**SERVICE CENTER: MINUTE INTERVALS** <5 ■ 5-6 ■ 6-7 ■ 7-8 ■ 8-9 ■ 9+ ■

	Activity		Monthly Avg. Wait Time	
	Actual	6 mo. Avg	Actual	Target
Call Center	172,444	125,426	6:24	<1m

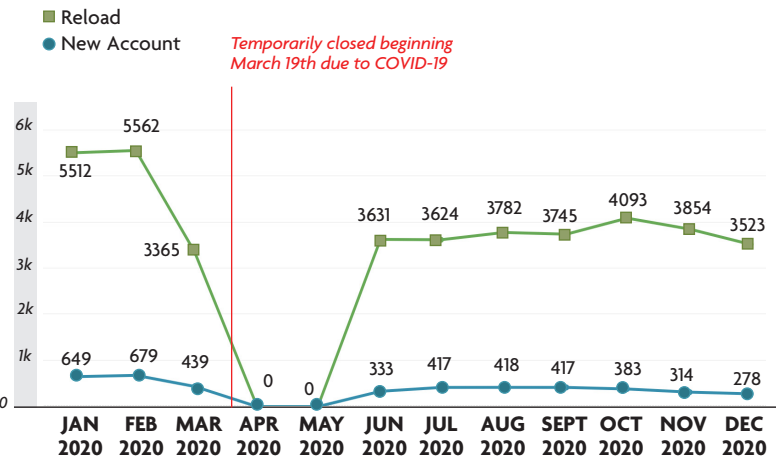
**CALL CENTER: % MINUTE INTERVALS** <1 ■ 1-3 ■ 3-5 ■ 5+ ■



**WRONG WAY DRIVING (WWD)**

Month	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
Total Vehicles Detected	2	10	19	12	14	5	13	12
Documented Turn Arouds	2	9	18	11	13	4	12	11

**RELOAD CUSTOMER SERVICE LANE ACTIVITY**



**PROGRESS OF MAJOR CONSTRUCTION PROJECTS**

	Contract (millions)	Spent (millions)	% Time	% Spent	VAR	Contract Completion Date
SR 528 / SR 436 Interchange Improvements	\$105.7	\$35.6	14%	34%	█	Feb. 2023
SR 538 Widening, Ronald Reagan Pkwy to Cypress Pkwy	\$92.6	\$707.0	0%	1%	█	Nov. 2023
SR 417 Widening, International Dr. to John Young Pwky	\$81.6	\$0.0	0%	0%	█	Oct. 2023

LEGEND: % Time - % Spent ≤ 10 █ 11-20 █ ≥ 21 █

	Contract (millions)	Spent (millions)	Lanes Complete 313/415	Lanes Goal	VAR	Lanes Completion Date
Toll System Replacement	\$54.4	\$37.5	75%	83%	█	March 2021

LEGEND: % Lanes Complete - % Lanes Goal >/= 0 █ -0.1 to -10 █ < -10.1 █

**FINANCIALS**

**FINANCIALS**

FY to Date	Actual	Budget	VAR
Total Revenue	\$237.6	\$181.0	31% █
OM&A Expenses	\$36.0	\$39.0	8% █
Net Revenue	\$92.1	\$32.3	185% █

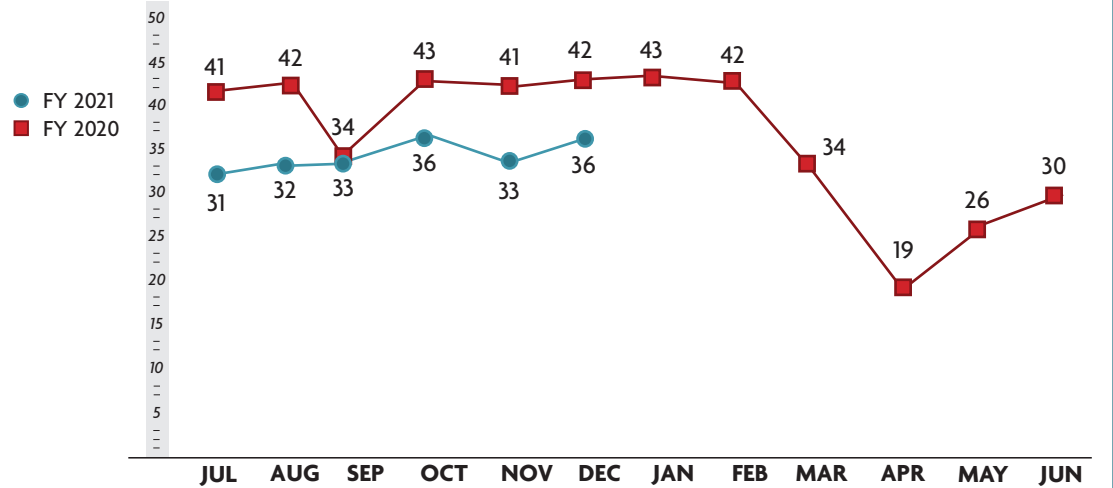
LEGEND: >/= 0 █ -0.1 to -10 █ < -10.1 █

**DEBT SERVICE**

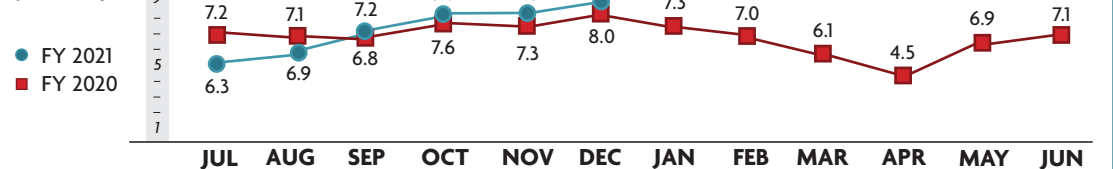
FY to Date	Actual	Budget
Senior Lien	1.95	1.68
Subordinate Lien	1.88	1.62

LEGEND: >1.45 █ >1.21 to 1.44 █ </= 1.2 █

**TOTAL REVENUE TRANSACTIONS ON CFX SYSTEM (millions)**



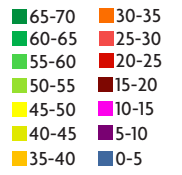
**UNPAID IN LANE TRANSACTIONS (millions)**



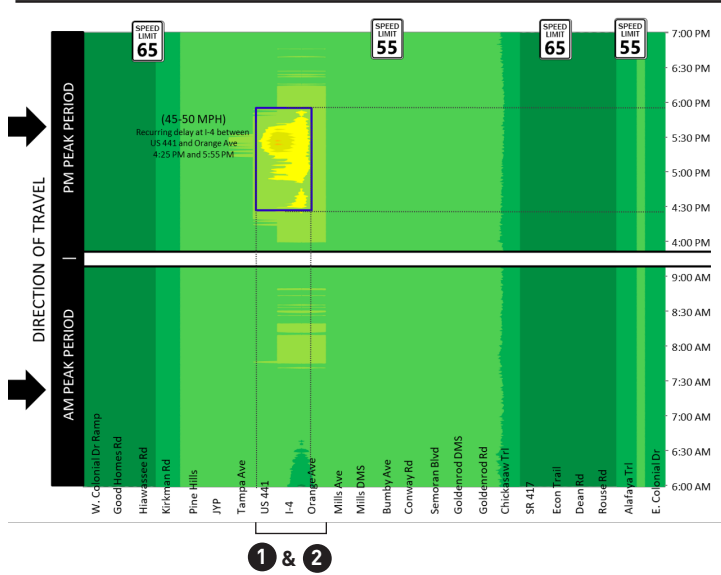
# TRAFFIC CONGESTION HEAT MAPS

A Quarterly Update  
October - December 2020

Map Scale in Miles Per Hour



## SR 408 Eastbound

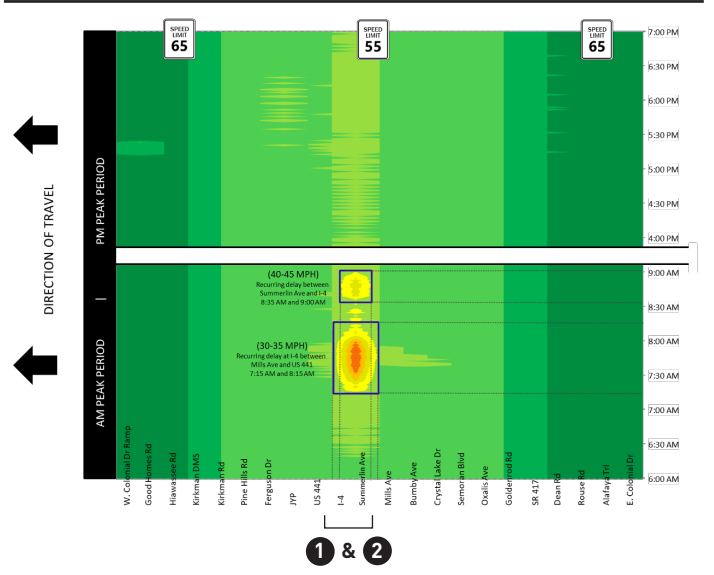


1 & 2

### Projects:

- (AM) Construction underway – widen the SR 408 mainline through the I-4 interchange part of I-4 Ultimate. Completion late 2021.
- (PM) Construction underway – widen the SR 408 mainline through the I-4 interchange part of I-4 Ultimate. Completion late 2021.

## SR 408 Westbound

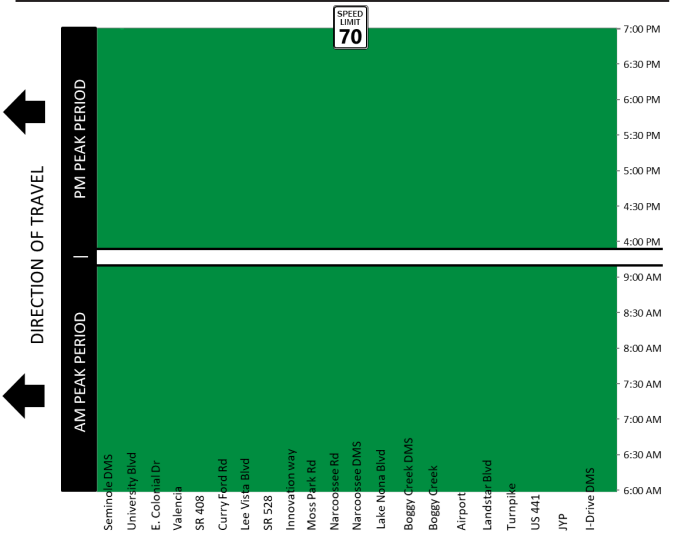


1 & 2

### Projects:

- (AM) Construction underway – widen the SR 408 mainline through the I-4 interchange part of I-4 Ultimate. Completion late 2021.
- (PM) Construction underway – widen the SR 408 mainline through the I-4 interchange part of I-4 Ultimate. Completion late 2021.

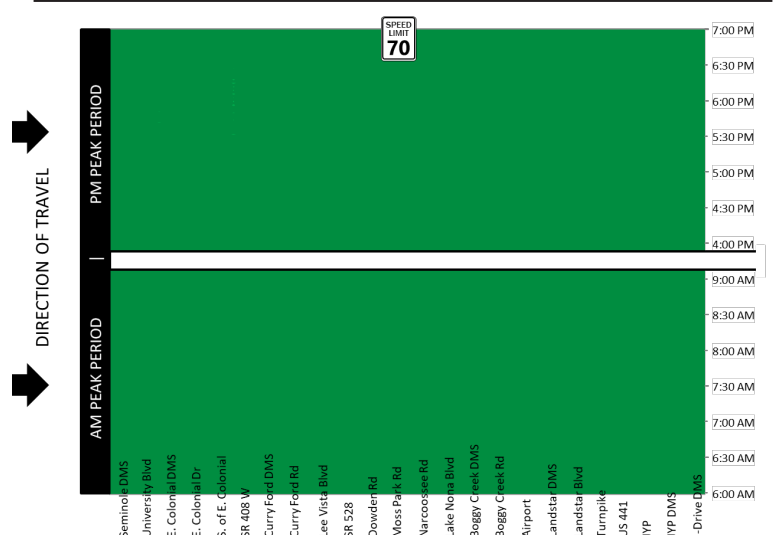
## SR 417 Northbound



### Projects:

No peak hour congestion reported.

## SR 417 Southbound



### Projects:

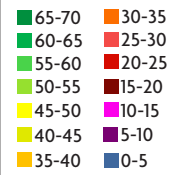
No peak hour congestion reported.

# TRAFFIC CONGESTION HEAT MAPS

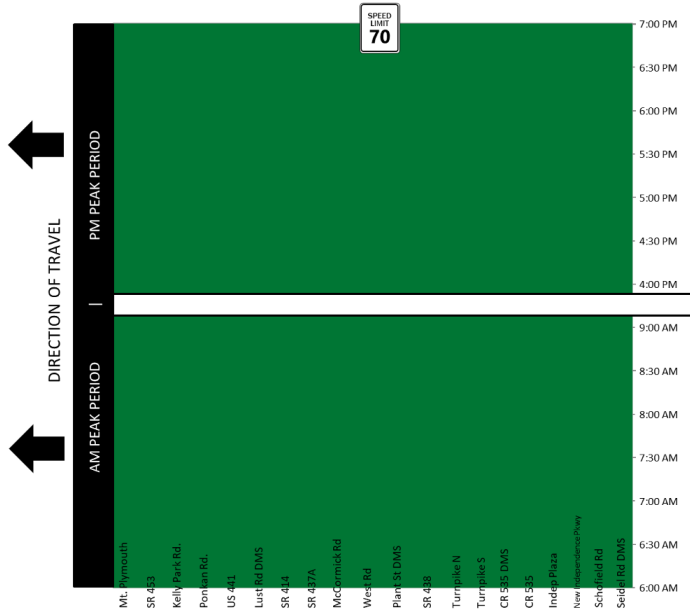
A Quarterly Update

October - December 2020

**Map Scale in Miles Per Hour**



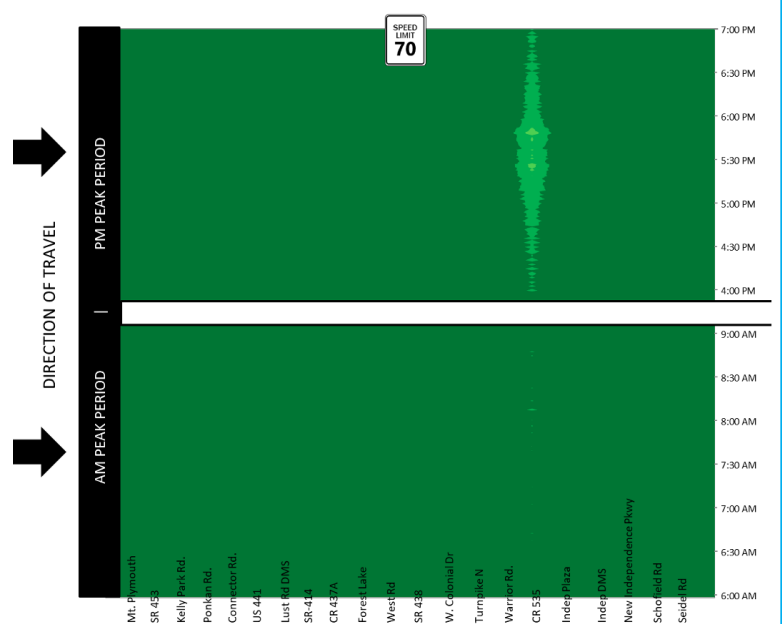
**TOLL SR 429 Northbound**



**Projects:**

No peak hour congestion reported.

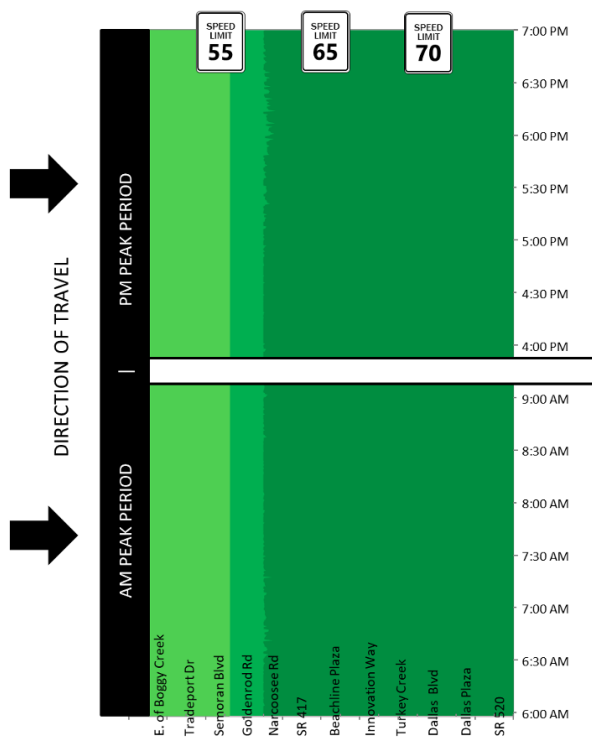
**TOLL SR 429 Southbound**



**Projects:**

1. (PM) Design underway - widen SR 429 from CR 535 to Florida's Turnpike. Construction completion 2024.

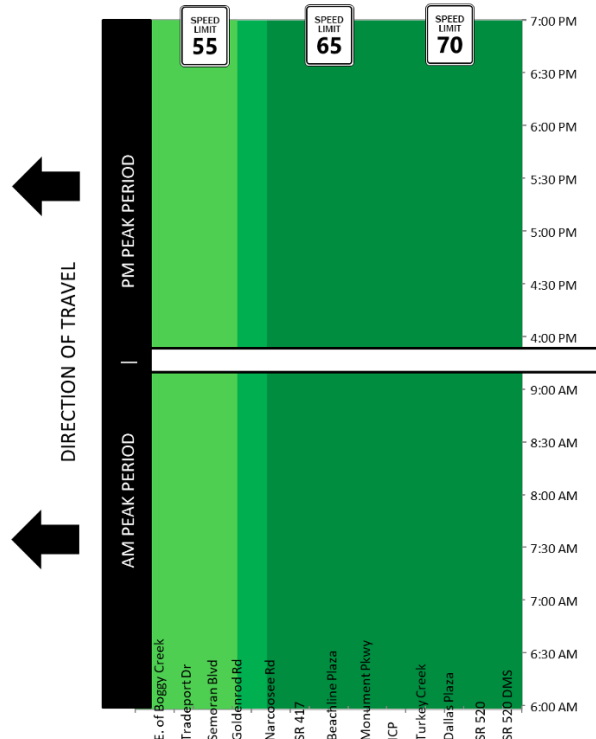
**TOLL SR 528 Eastbound**



**Projects:**

No peak hour congestion reported.

**TOLL SR 528 Westbound**



**Projects:**

No peak hour congestion reported.



**F.**

Regular Agenda Items

**F. 1.**



**CENTRAL  
FLORIDA  
EXPRESSWAY  
AUTHORITY**



**MID-YEAR BUDGET REVIEW FY 2021**

**Lisa Lumbard, Chief Financial Officer**

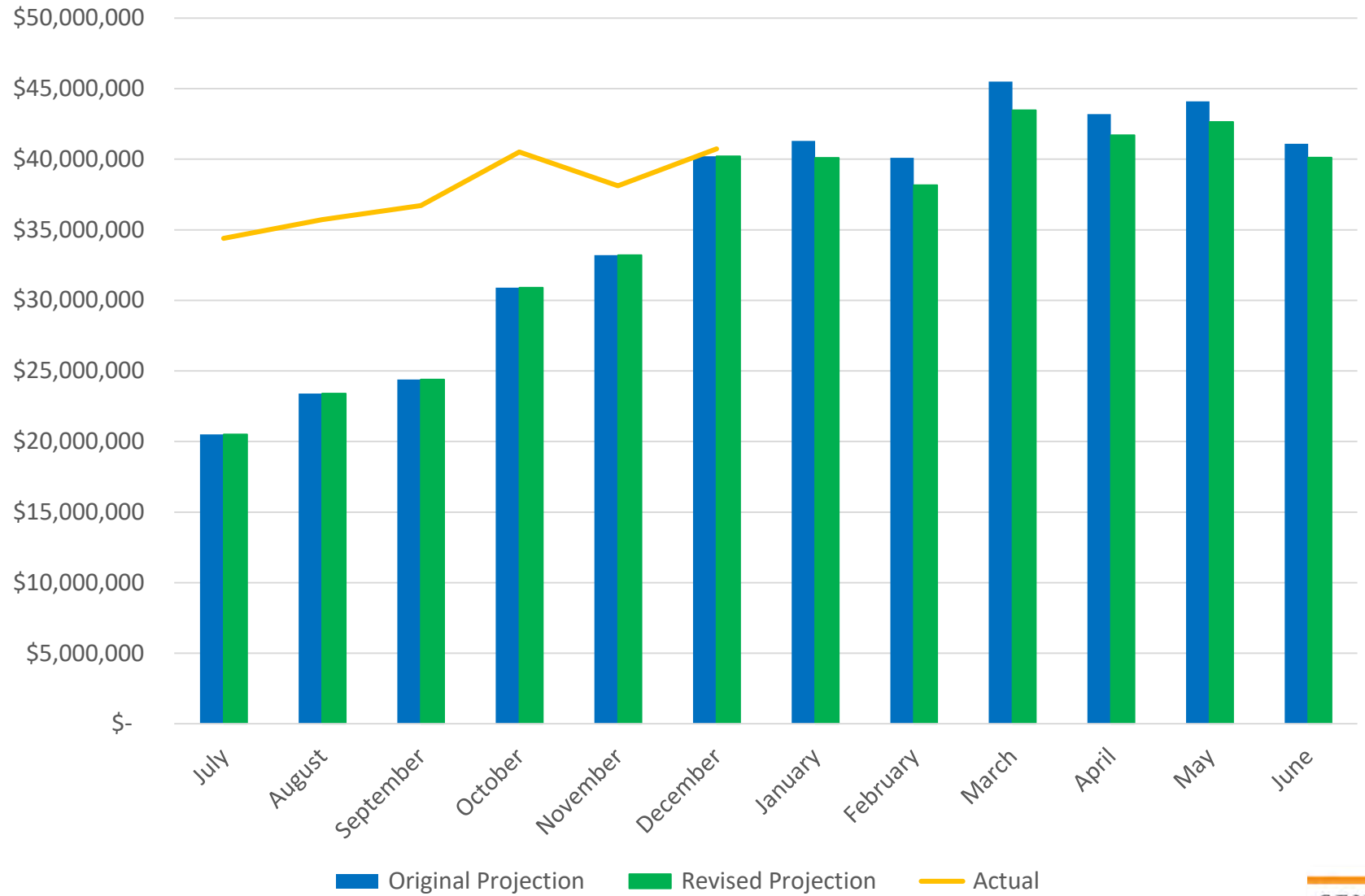
**— February 11, 2021 —**

**Estimated  
Budget vs  
Actual**

	<u>FY 2021 Year-to- Date Budget</u>	<u>FY 2021 Year- to-Date Actual</u>	<u>FY 2021 Year-to- Date % Variance</u>
Total Revenues	\$180,950,800	\$237,578,696	31%
Total OM&A Expenses	38,980,304	35,924,587	8%
Net Revenues After Debt Service	32,323,946	92,051,408	185%
Work Plan Expenses	262,658,000	58,401,204	22%

\*As of 12.31.2020

# Actual Revenue vs. Revised Projection





# Strengths

864 days cash on hand

\*as of 01.29.2021

Reserve balance of  
\$164,472,027

\*as of 01.29.2021

Construction fund cash  
balance is \$368,914,880

\*as of 01.29.2021

# Recommended Motion

Board approval to move forward with the FY 2021-2025 Five-Year Work Plan as presented and approved on June 11, 2020.



CENTRAL  
FLORIDA  
EXPRESSWAY  
AUTHORITY



**F. 2.**



The logo for the Central Florida Expressway Authority is centered in the upper portion of the image. It consists of a white rectangular box with two horizontal orange bars, one above and one below the text. The text is arranged in four lines: 'CENTRAL' and 'FLORIDA' in black serif font, 'EXPRESSWAY' in orange sans-serif font, and 'AUTHORITY' in black serif font.

**CENTRAL  
FLORIDA  
EXPRESSWAY  
AUTHORITY**

# **Customer Service Initiatives**

**Jim Greer, Chief Technology & Operating Officer**

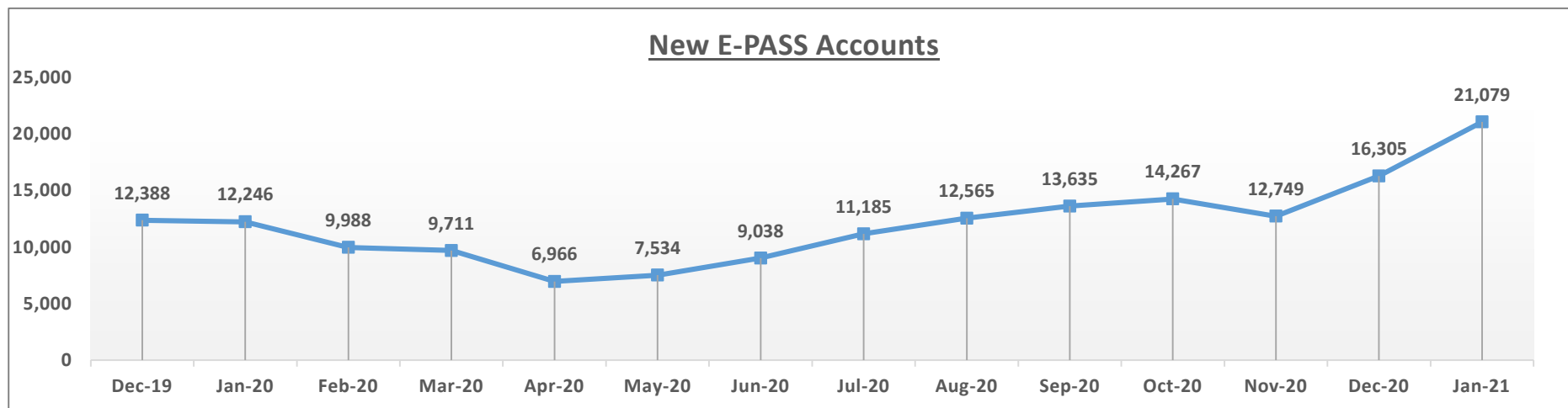
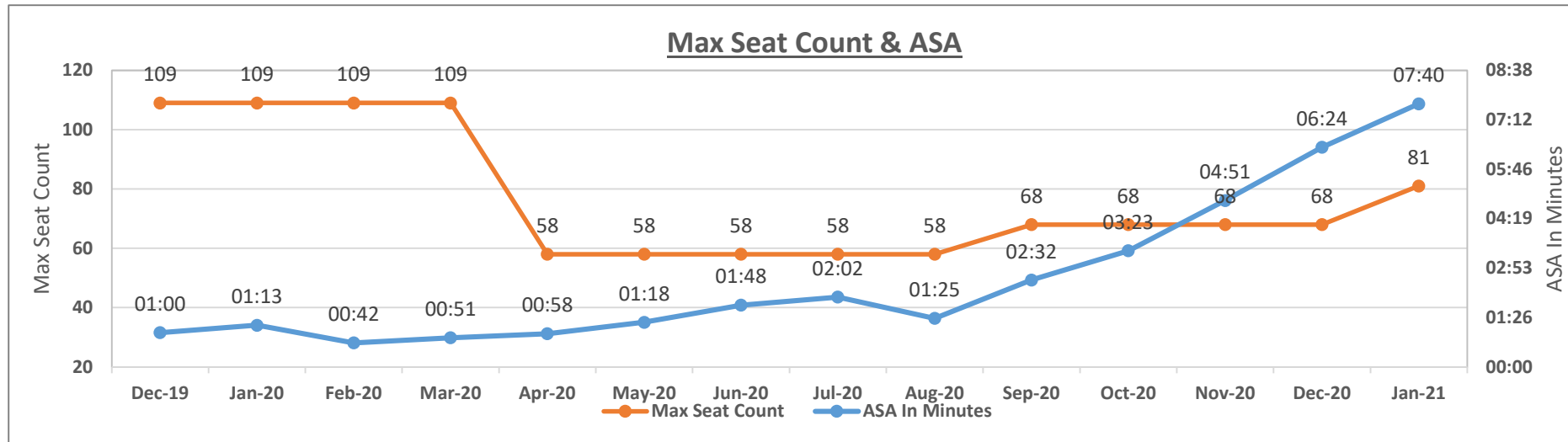
**— February 11, 2021 —**

# Contact Center Status

- ASA (Average Speed of Answer)  
Challenges due to COVID
  - Florida Transportation Commission  
Goal: 80% answered < 1 minute
  - COVID CDC Guidance: Contact  
Center 50% Capacity
  - Exceptional New Account Growth



# Contact Center Service Metrics



# Contact Center Improvements

- New Vendor: **Alliance One**

- Remote Agent Experience

**AllianceOne**



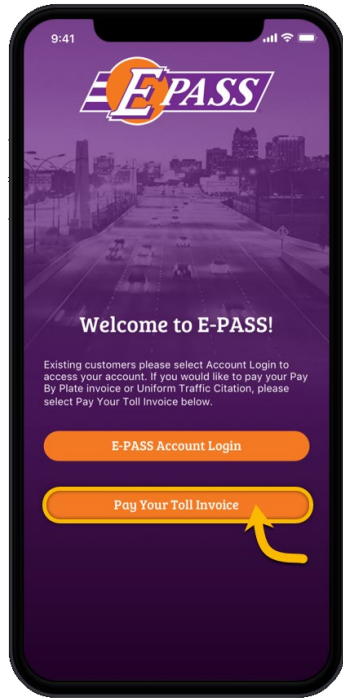
- New Cloud-based Telephony Platform: **Nice In-Contact**

- Remote Agent Enabled
- Increased Self-Service & Customer Channel Features
- Customer Satisfaction Metrics

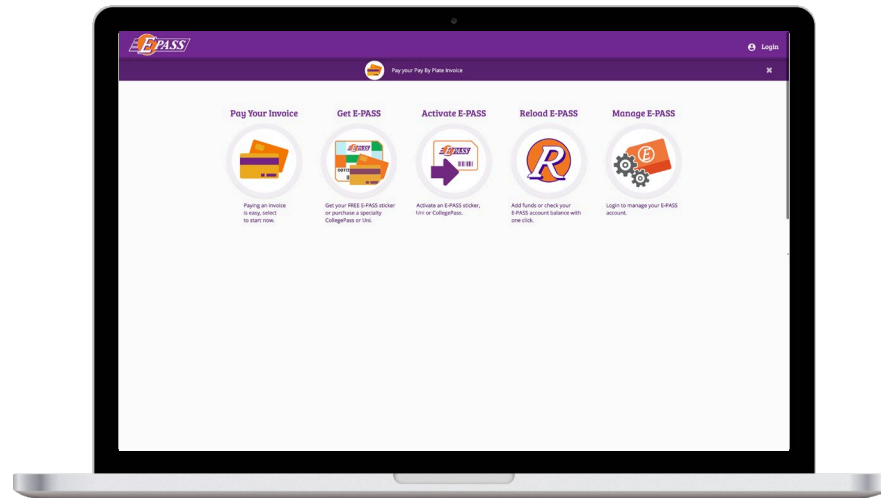
**NICE** • inContact



# Automated Self-Help Options



Download the **E-PASS Toll App** and select **Pay Your Toll Invoice**



Online at  
[epass.cfxway.com/paytolls](https://epass.cfxway.com/paytolls)



Automated  
phone support at  
**800-353-7277**



# VTP 2.0 Concept

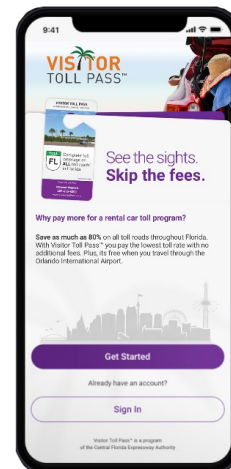


## Goals:

- Fully Automate
- Allow Scalability
- Increase User Convenience

## Method:

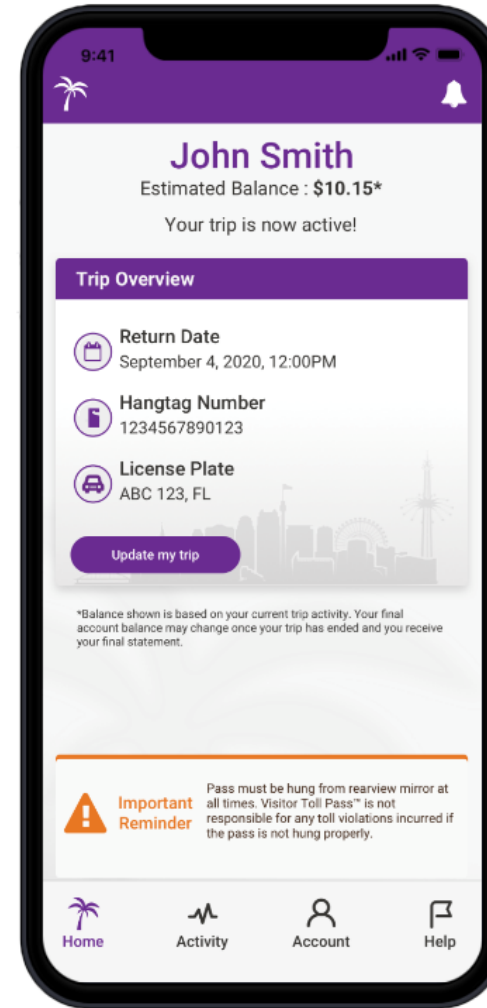
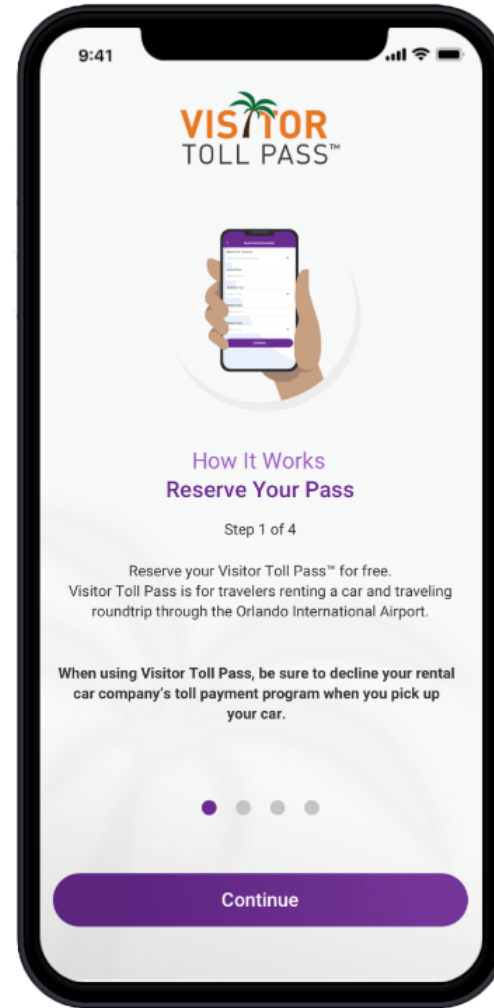
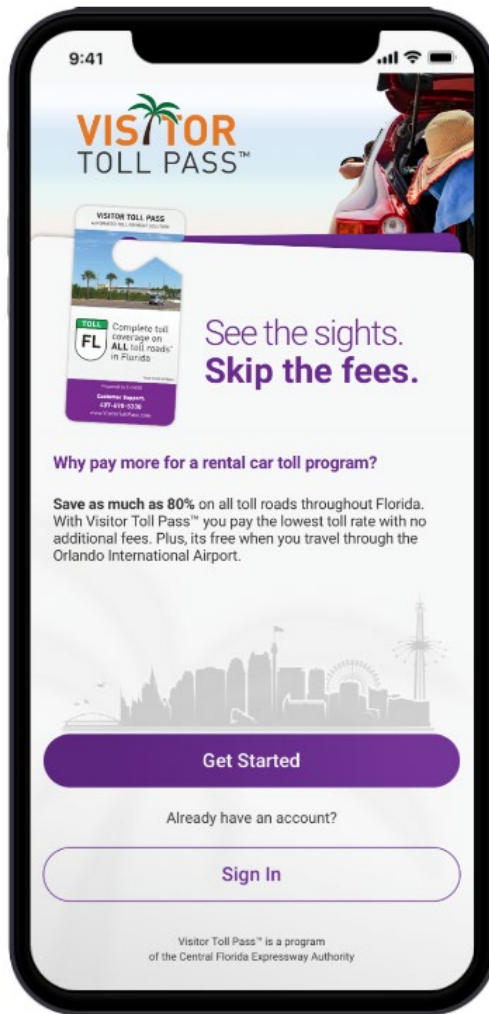
- Vending Machines
- Mobile App



# How it Works



- **STEP 1:** Reserve Visitor Toll Pass™ via iPhone or Android phone application
- **STEP 2:** Pick-Up Visitor Toll Pass™ at Orlando International Airport by visiting the VTP vending machine and scanning a unique QR code
- **STEP 3:** Hang the Visitor Toll Pass™ from rearview mirror
- **STEP 4:** Explore & Enjoy!
- **STEP 5:** Return Visitor Toll Pass™ at an Orlando International Airport drop box or by mail
- **STEP 6:** Tolls will be charged to reserved credit card



# Mobile App

# Reload Lanes



- Launched May 12, 2016
- Operating Hours Seven Days a Week  
6:00 am – 8:00 pm
- 6 Lanes – Conway, Forest Lake,  
John Young Parkway Mainline
- Services
  - Pay Tolls with Cash
  - Open a New E-PASS Account
  - Add Funds to an E-PASS Account



# Key Metrics



**Accounts  
Opened**  
**38,598**

**Tolls Paid  
to Date**  
**\$10,089,226**

**Reload  
Events**  
**241,957**

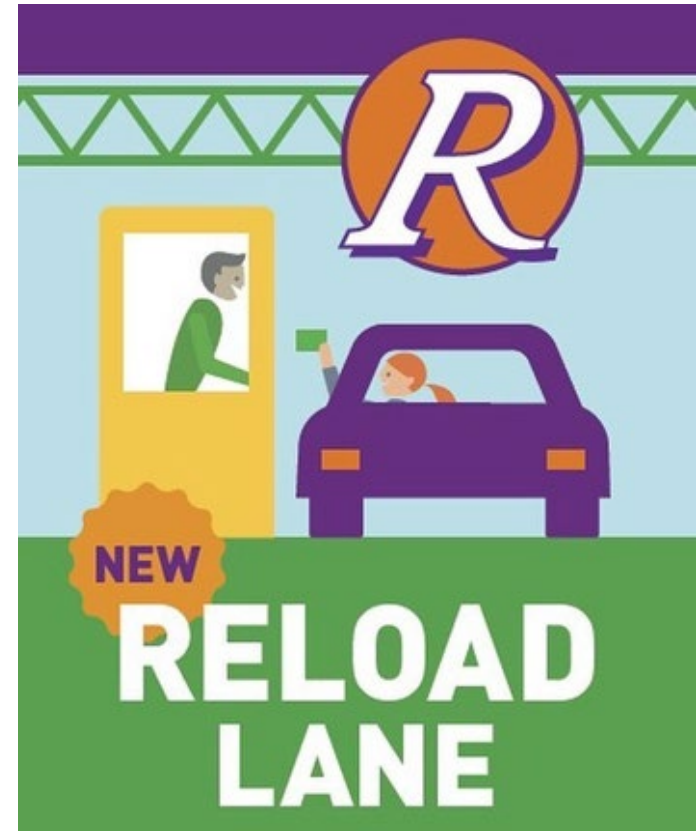
**Payment  
Method**  
**49% Cash**  
**51% Credit**

# Reload 2.0



Every staffed lane is a **full service “Reload Lane”**

- Quick Account Sign-up
- MS Dynamics & Azure
- 46 Total Attended Lanes
- Operating Hours: 24/7
- > 20 Million Transactions Annually





The logo for the Central Florida Expressway Authority is centered in the upper half of the image. It consists of a white rectangular box with two horizontal orange bars, one above and one below the text. The text is arranged in four lines: 'CENTRAL' and 'FLORIDA' in black serif font, 'EXPRESSWAY' in orange sans-serif font, and 'AUTHORITY' in black serif font.

**CENTRAL  
FLORIDA  
EXPRESSWAY  
AUTHORITY**

The background of the image is a photograph of a multi-level highway interchange. A black SUV is driving on the lower level of the road, moving from left to right. The highway is supported by concrete pillars and has green-painted concrete overpasses. To the right, there is a grassy embankment. The sky is clear and blue. A dark horizontal bar is overlaid at the bottom of the image, containing the word 'QUESTIONS' in white.

**QUESTIONS**



**F. 3.**

## **Megan Zee**

### **Audit Committee Appointment Request by Jay Madara**



Megan Zee is Sr. Director, Finance for Golf Channel, an NBC Sports Group network, and its related portfolio of businesses. Megan is responsible for the overall monthly and quarterly accounting function, including leading the monthly and quarterly close and corporate reporting process, the annual third party audit of Golf Channel, integration of acquired businesses (domestically and internationally), and the internal controls, compliance and accounting policy processes. She is also responsible for the financial management of a number of departments within Golf Channel, including long-range planning, annual budgeting and forecasting.

A certified public accountant by trade, Megan began her professional career with PricewaterhouseCoopers in the audit practice within the Orlando market where she gained experience auditing many businesses within Orlando, nationally and internationally. Megan is a member of the American Institute of Certified Public Accountants, as well as sits on the Young Professionals Advisory Council for the Central Florida Partnership.

Megan earned two bachelor's degrees (Finance and Accounting) from the University of Central Florida. She is an avid runner participating in the Track Shack Runners series, completing eight half marathons and competing in a Sprint Triathlon in the past 4 years.

**F. 4.**

**THERE ARE NO  
BACKUP MATERIALS  
FOR THIS ITEM**

**F. 5.**


**THERE ARE NO  
BACKUP MATERIALS  
FOR THIS ITEM**

**F. 6.**





CENTRAL  
FLORIDA  
EXPRESSWAY  
AUTHORITY



SR 417 Widening from John Young Parkway to Landstar Boulevard  
Will Hawthorne, PE, Director of Engineering  
— February 11, 2021 —



# SR 417 Widening: John Young Parkway to Landstar Boulevard

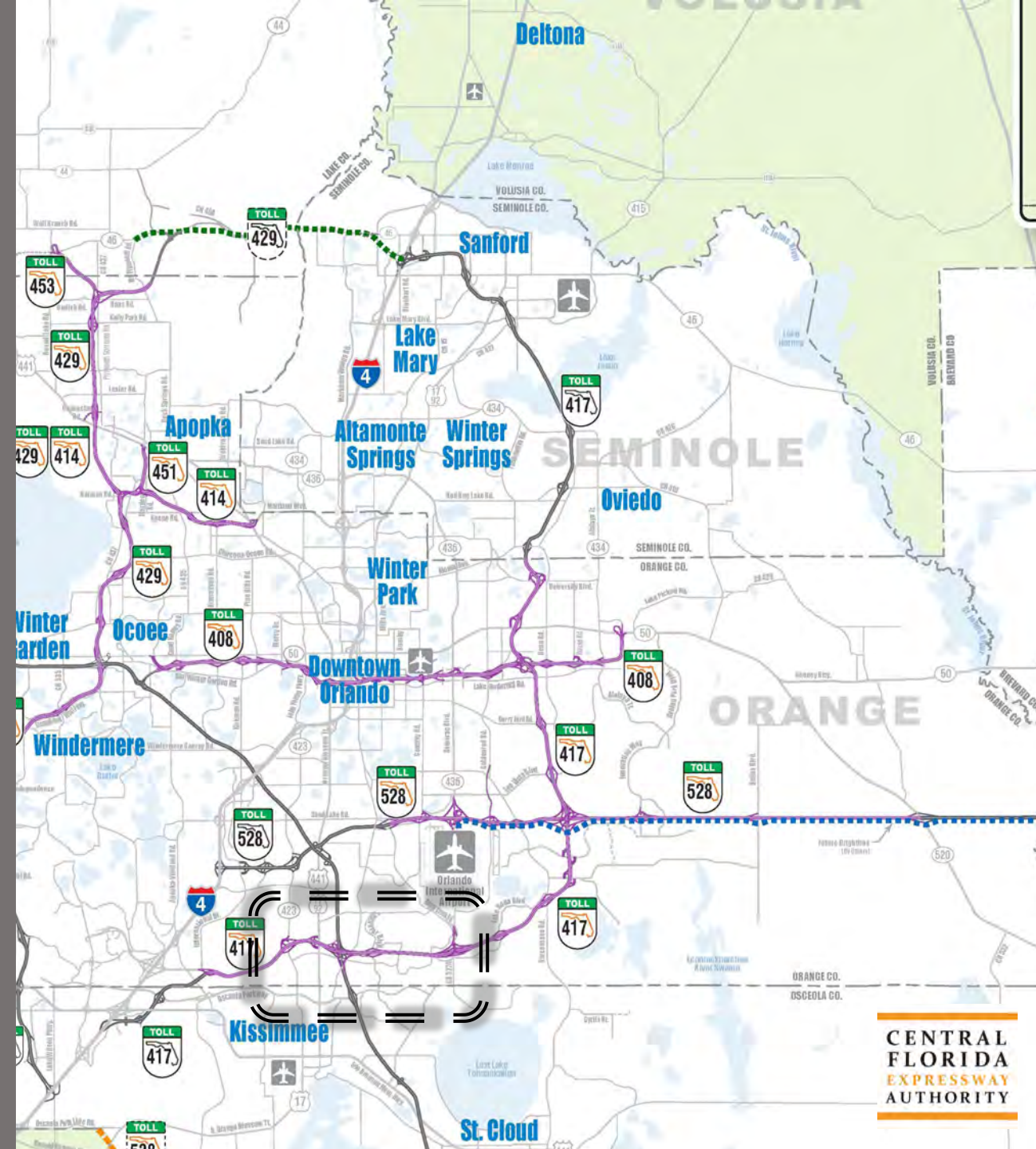
Opened in 1994

1<sup>st</sup> Electronic Toll Lanes

5 Year Traffic Growth → 136% Increase

Design Began → July 2018

Second of Five Projects



# Corridor Features

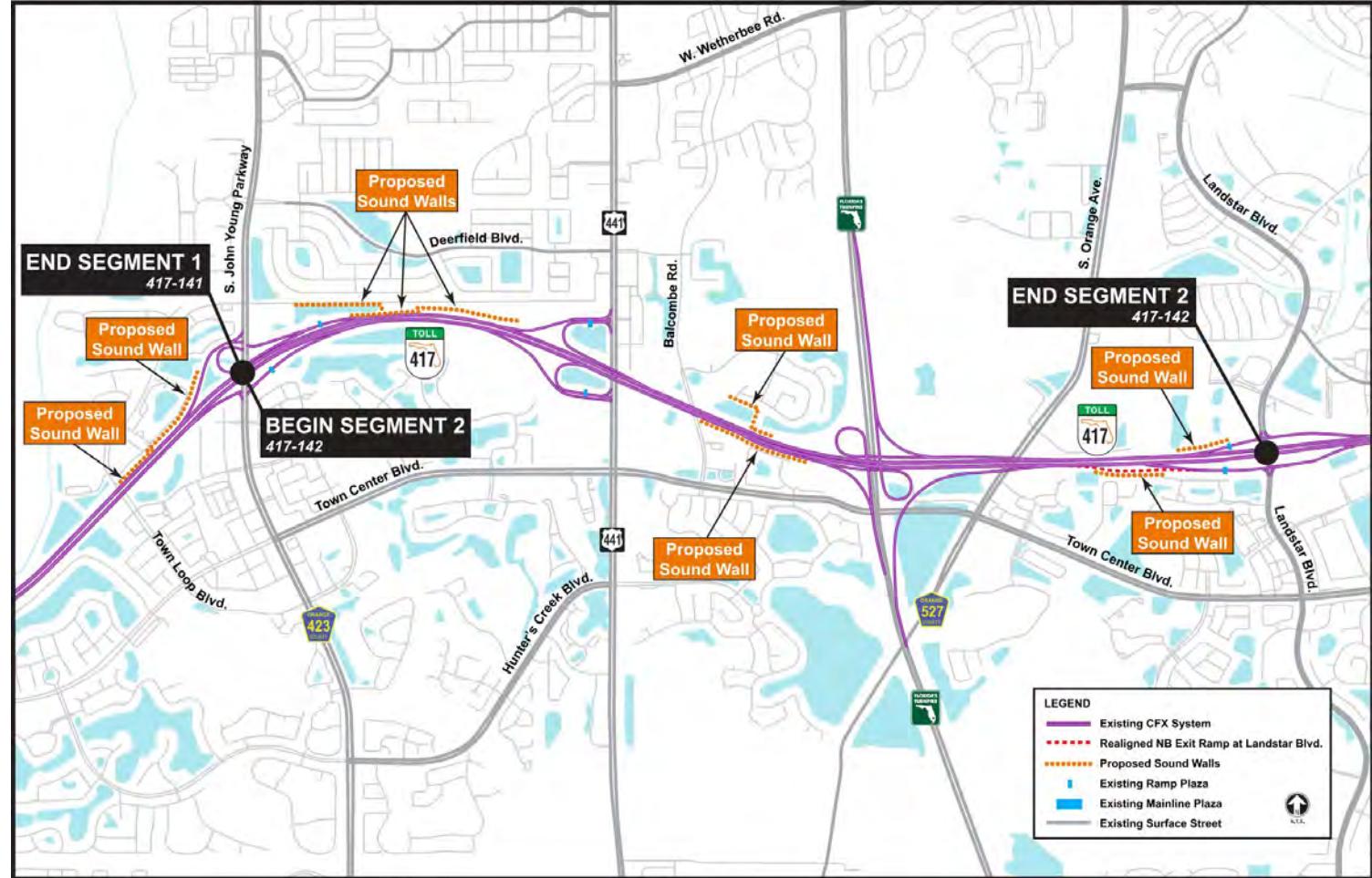
3.6 Miles

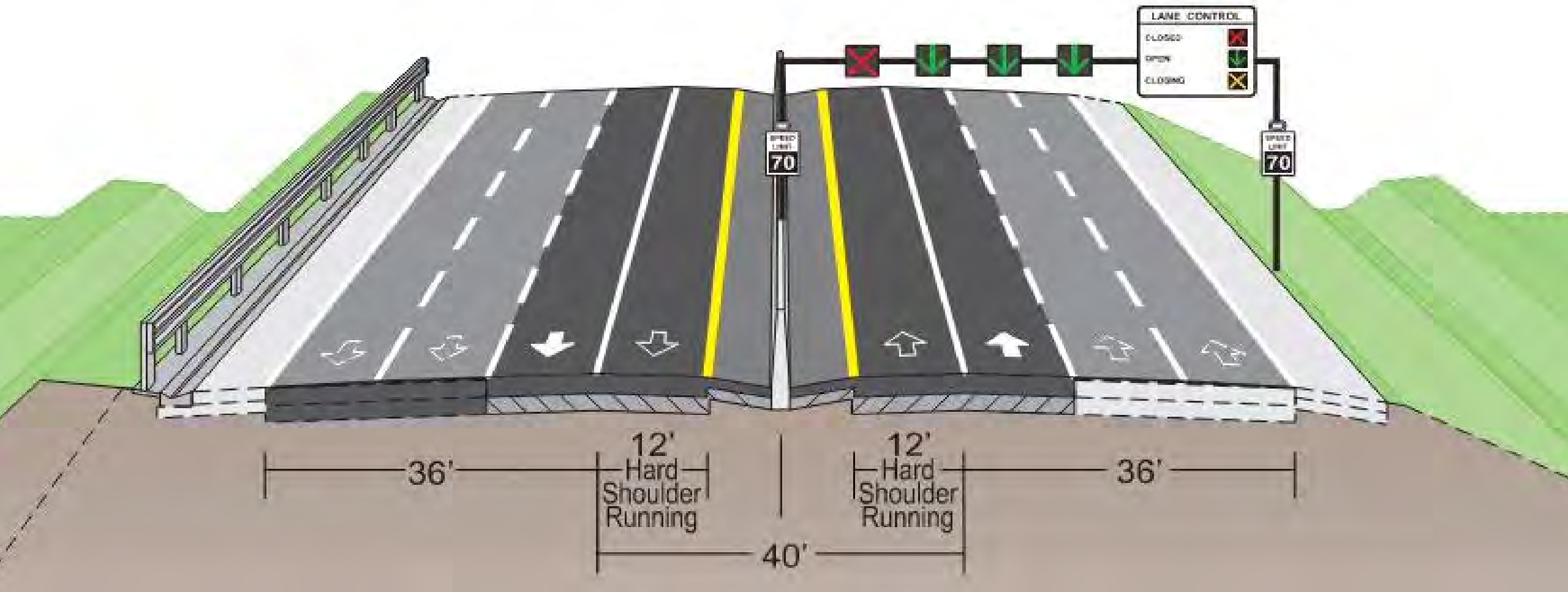
Median Widening 4 to 6 Lanes

4 Bridge Widenings

7 Sound Walls

Part Time Shoulder Usage  
(PTSU) Ready





## Project Timeline

- Anticipated Notice to Proceed – March 2021
- Projected Completion – 4<sup>th</sup> Quarter 2023





# Bids Received

---

<b>Prince Contracting, LLC</b>	<b>\$116,845,417.00</b>
Sacyr	\$122,114,710.00
The Lane Construction Company	\$124,530,670.55
Jr. Davis Construction Company, Inc.	\$129,251,491.59
SEMA Construction, Inc.	\$129,900,000.00
Hubbard Construction Company	\$130,316,110.29
The Middlesex Corporation	\$130,838,171.45

*Engineers Estimate:*                      \$130,046,833.31

*Work Plan Estimate:*                      \$114,030,000.00

# Recommended Motion

Award of the contract to Prince Contracting, LLC for the SR 417 Widening from John Young Parkway to Landstar Boulevard in the amount of \$116,845,417.00.

# CONTRACT



AND

**PRINCE CONTRACTING, LLC**

**SR 417 WIDENING FROM JOHN YOUNG PARKWAY  
TO LANDSTAR BOULEVARD**

**PROJECT NO. 417-142  
CONTRACT NO. 001741**

**CONTRACT DATE: FEBRUARY 11, 2021  
CONTRACT AMOUNT: \$116,845,417.00**

**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 417 WIDENING FROM JOHN YOUNG PARKWAY  
TO LANDSTAR BOULEVARD**

**PROJECT NO. 417-142  
CONTRACT NO. 001741**

**FEBRUARY 2021**

## TABLE OF CONTENTS

<u>Section</u>	<u>Title</u>	<u>Page</u>
C	CONTRACT	C-1 to C-2
	Memorandum of Agreement	1 to X
GS	GENERAL SPECIFICATIONS	1 – 156
	Attachment A	ATT-1 to ATT-9
	(See General Specifications Table of Contents for listing of individual specifications sections.)	
TS	TECHNICAL SPECIFICATIONS	TS-1 to TS-17
	(See Technical Specifications Table of Contents for listing of individual specifications sections.)	
SP	SPECIAL PROVISIONS	SP-1 to SP-43
	(See Special Provisions Table of Contents for listing of each special provision.)	
	Addendum No. 1	Addendum No. 1A
	Addendum No. 2	Addendum No. 3
	Addendum No. 4	Addendum No. 5
	Addendum No. 6	
P	PROPOSAL	P-1 to P-25
VR	VEHICLE REGISTRATION FORM	VR-1 to VR-2
PCB	PUBLIC CONSTRUCTION BOND	PCB-1 to PCB-4

Plans

## CONTRACT

This Contract No. 001741 (the "Contract"), made this 11<sup>th</sup> day of February 2021, between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, hereinafter called CFX and Prince Contracting, LLC, of 10210 Highland Manor Dr., Suite 110, Tampa, FL 33610, 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 No. 417-142, SR 417 Widening from John Young Parkway to Landstar Boulevard, as detailed in the Contract Documents and any addenda or modifications thereto. Contract time for this project shall be 960 calendar days. The Contract Amount is \$116,845,417.00. This Contract was awarded by the Governing Board of CFX at its meeting on February 11, 2021.

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,
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: \_\_\_\_\_

PRINCE CONTRACTING, LLC

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.
AGMA	American Gear Manufacturers Association
AIA	American Institute of Architects
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWG	American Wire Gauge
AWPA	American Wood Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association
CRSI	Concrete Reinforcing Steel Institute
EASA	Electrical Apparatus Service Association
EPA	Environmental Protection Agency of the United States Government
FDOT	Florida Department of Transportation
FHWA	Federal Highway Administration
FNGLA	Florida Nursery, Growers and Landscape Association
FSS	Federal Specifications and Standards
IEEE	Institute of Electrical and Electronics Engineers
IES	Illuminating Engineering Society

IPCEA	Insulated Power Cable Engineers Association
ISO	International Organization for Standards
MASH	AASHTO Manual for Assessing Safety Hardware
MUTCD	Manual on Uniform Traffic Control Devices
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
NIST	National Institute for Standards and Technology
NOAA	National Oceanic and Atmospheric Administration
OSHA	Occupational Safety and Health Administration
SAE	Society of Automotive Engineers
SI	International System of Units
SSPC	The Society for Protective Coatings
UL	Underwriters' Laboratories

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 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 **Advertisement** - The public announcement, as required by law, inviting bids for work to be performed or materials to be furnished, usually issued as “Notice to Contractors,” or “Notice to Bidders.”
- 1.3.2 **Addendum** - A written or graphic instrument issued prior to the bid opening which modifies or interprets the proposed Contract Documents by additions, deletions, clarifications, or corrections
- 1.3.3 **Article** - The prime subdivision of a Section of the General and/or Technical Specifications.
- 1.3.4 **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.
- 1.3.5 **Bidder** - An individual, firm, or corporation submitting a proposal for the proposed work.



- 1.3.6 **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.
- 1.3.7 **Calendar Day** - Every day shown on the calendar, ending and beginning at midnight.
- 1.3.8 **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.
- 1.3.9 **Construction Engineering & Inspection (CEI) Consultant** - The firm employed by CFX to observe the progress and quality of the Work being performed by the Contractor.
- 1.3.10 **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.
- 1.3.11 **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.
- 1.3.12 **Contract Bond** - The security furnished by the Contractor and the surety as a guaranty that the Contractor shall fulfill the terms of the Contract and pay all legal debts pertaining to the construction of the project.
- 1.3.13 **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.
- 1.3.14 **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 Standard Plans (edition per plans).

- 1.3.15 **Contract Price** - The money payable by CFX to the Contractor for completion of the Work in accordance with the Contract Documents.
- 1.3.16 **Contract Time** - The number of calendar days allowed for completion of the Work including authorized time extensions.
- 1.3.17 **Contractor** - The person, firm, or corporation with whom CFX has entered into the Contract.
- 1.3.18 **Contractor's Engineer of Record** - A Professional Engineer registered in the State of Florida, other than the Engineer of Record or his subcontracted consultant, who undertakes the design and drawing of components of the permanent structure as part of a redesign or Cost Savings Initiative Proposal, or for repair designs and details of the permanent work. The Contractor's Engineer of Record may also serve as the Specialty Engineer.
- The Contractor's Engineer of Record must be an employee of a prequalified firm. The firm shall be pre-qualified in accordance with the Rules of the Department of Transportation, Chapter 14-75. Any Corporation or Partnership offering engineering services must hold a Certificate of Authorization from the Florida Department of Business and Professional Regulation.
- As an alternate to being an employee of a pre-qualified firm, the Contractor's Engineer of Record may be a Department-approved Specialty Engineer. For items of the permanent work declared by to be "major" or "structural", the work performed by a Department-approved Specialty Engineer must be checked by another Department-approved Specialty Engineer. An individual Engineer may become a Department-approved Specialty Engineer if the individual meets the Professional Engineer experience requirements set forth within the individual work groups in Chapter 14-75, Rules of the Department of Transportation, Florida Administrative Code. Department-approved Specialty Engineers are listed on the State Construction Website. Department-approved Specialty Engineers will not be authorized to perform redesigns or Cost Savings Initiative Proposal designs of items fully detailed in the Plans.
- 1.3.19 **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.
- 1.3.20 **Culverts** - Any structure not classified as a bridge, which provides an opening under the roadway.

- 1.3.21 **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.
- 1.3.22 **Director of Construction** - Director of Construction, Central Florida Expressway Authority, acting directly or through an authorized representative.
- 1.3.23 **Engineer** - The term as may be used in various documents is understood to mean CFX or designated representative.
- 1.3.24 **Engineer of Record** - The professional engineer or engineering firm, contracted 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.
- 1.3.25 **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.
- 1.3.26 **Executive Director** - Executive Director, Central Florida Expressway Authority, acting directly or through an assistant or other representative authorized by him; the chief officer of the Central Florida Expressway Authority
- 1.3.27 **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."
- 1.3.28 **Federal, State, and Local Rules and Regulations** - The term "Federal, State and Local Rules and Regulations" includes: any and all Federal, State, and Local laws, bylaws, ordinances, rules, regulations, orders, permits, or decrees including environmental laws, rules, regulations, and permits.
- 1.3.29 **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.

- 1.3.30 **Highway, Street, or Road** - A general term denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way.
- 1.3.31 **Holidays** - Martin Luther King, Jr. Day; Memorial Day; the Saturday and Sunday immediately preceding Memorial Day; Independence Day; Independence Day (Observed); Labor Day; the Friday, Saturday, and Sunday immediately preceding Labor Day; Veterans Day; Veterans Day (Observed); the Wednesday immediately preceding Thanksgiving Day; Thanksgiving Day; the Friday, Saturday and Sunday immediately following Thanksgiving Day; and December 24 through January 2, inclusive.
- 1.3.32 **Inspector** - An authorized representative of the Engineer, assigned to make official inspections of the materials furnished and of the work performed by the Contractor and to monitor compliance with the Plans and Specifications of the Contract.
- 1.3.33 **Invitation to Bid** - The invitation by which the Contractor submitted its Bid for the Work.
- 1.3.34 **Laboratory** - A Testing facility certified with the Florida Department of Transportation.
- 1.3.35 **Major Item of Work** - Any item of Work having an original Contract value in excess of 5% of the original Contract amount.
- 1.3.36 **Materials** - Any substances to be incorporated in the Work.
- 1.3.37 **Median** - The portion of a divided highway or street separating the traveled ways for traffic moving in opposite directions.
- 1.3.38 **Memorandum of Agreement** - A formal summarization of the Project Pre-Award meeting, signed by CFX and a representative of the Contractor and made part of the contract documents.
- 1.3.39 **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.
- 1.3.40 **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.

- 1.3.41 **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.
- 1.3.42 **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.
- 1.3.43 **Resident Engineer** - The authorized representative of the CEI who may be assigned to the site or any part thereof.
- 1.3.44 **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.
- 1.3.45 **Roadbed** - That portion of the roadway occupied by the subgrade and shoulders.
- 1.3.46 **Roadway** - The portion of a highway within the limits of construction.
- 1.3.47 **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.
- 1.3.48 **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.
- 1.3.51 **Special Event** - Any event, including but not limited to, a festival, fair, run or race, motorcade, parade, civic activity, cultural activity, charity or fund drive, sporting event, rocket/shuttle launch or similar activity.
- 1.3.49 **Special Provisions** - Specific requirements for the Project not otherwise addressed in the General Specifications, Technical Specifications, or Standard Specifications.
- 1.3.50 **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 have their business registered with the Florida State Board of Professional Engineers and be qualified as a Professional Engineer licensed in Florida. 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.

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

1.3.53 **Standard Plans** - “Standard Plans for Road and Bridge Construction”, an electronic book describing and detailing aspects of the Work. Where the term Design Standards appears in the Contract Documents, it will be synonymous with Standard Plans.

1.3.54 **Standard Specifications** - The FDOT Standard Specifications for Road and Bridge Construction, July 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.

1.3.55 **State** - State of Florida

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

1.3.57 **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.

1.3.58 **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.

1.3.59 **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 striping 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, striping, 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.

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

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

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



- 1.3.63 **Supplemental Agreement** - A written agreement between CFX and the Contractor, signed by the surety, modifying the Contract within the limitations set forth in these specifications.
- 1.3.64 **Surety** - The corporate body that is bound by the Contract Bond with and for the Contractor and responsible for the performance of the Contract and for payment of all legal debts pertaining thereto.
- 1.3.65 **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.
- 1.3.66 **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.
- 1.3.67 **Travel Way** - The portion of the roadway for the movement of vehicles, exclusive of shoulders and bicycle lanes.
- 1.3.68 **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.
- 1.3.69 **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.
- 1.3.70 **Working Day** - Any calendar day on which the Contractor works or is expected to work in accordance with the approved work progress schedule.
- 1.3.71 **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 Plans 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.

Upon execution of the Contract, written communication associated with the Contract may be conducted using a paperless electronic means. When the Specifications require a submission of documentation, such documents may be submitted and exchanged electronically.

Documents requiring a signature may be executed electronically by both parties in accordance with Chapter 668, Florida Statutes, and have the same force and effect as a written signature. All persons requiring access to any collaboration sites shall be identified during the preconstruction conference and instructions for access to this site will be discussed and documented in the minutes. Persons may be added or removed during the life of the Contract on an as needed basis. All signatories executing documents electronically must acquire digital signature certificates.

### 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, Technical Special Provisions 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.

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 at the original contract bond rate paid by the Contractor. Should the Contractor have previously elected to provide subguard coverage in lieu of requiring a bond from a sub on the original work, 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.

(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 a time extension due to delay of a controlling work item caused solely by CFX, 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.

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.

2.3.3 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.

- 2.3.4 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.

- 2.3.5 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.

- 2.3.6 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.

2.3.7 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.

2.3.8 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 Standard Plans identified in the Contract Documents.

2.3.9 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.

- 2.3.10 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.

- 2.3.11 Cost Savings Initiative Proposal

2.3.11.1 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.

2.3.11.2 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, Standard Plans, 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 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.

2.3.11.3 Processing Procedures: The Contractor shall submit 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.

2.3.11.4 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.

2.3.11.5 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.

2.3.11.6 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.

2.3.11.7 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 Standard Plans, Standard Plans 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 shall 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 Standard Plans 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 150 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 prestressed 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. Each page shall be numbered consecutively for the series and the page 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 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 page size shall be no larger than 11 by 17 inches. Such information shall be clearly labeled and numbered and the page numbers shall indicate the total number of pages in the series (e.g., 1 of 12, 2 of 12, .... 12 of 12).

All documents shall be 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 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.

3.1.4.5 Submittal Paths and Copies: All submittals will be transmitted from the Contractor to the CEI. Should additional distribution be desired in order to expedite processing, contact information for additional reviewers will be provided to the Contractor. These contacts may include the Engineer of Record (EOR), General Engineering Consultant (GEC), Specialty Engineers, and/or CFX. At the preconstruction conference, CFX may notify the Contractor of any additional entities to be included in the submittal distribution.

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.

3.1.4.5.2 Signing, Lighting, Drainage Structures, Attenuators and other nonstructural items.

3.1.4.5.3 Building Structures: Each series of working, shop and erection drawings.

3.1.4.5.4 Contractor Originated Design or Redesign: The Contractor shall submit to the CEI each series of shop drawings and applicable calculations. The cover sheet of each copy of applicable calculations shall be signed and sealed by the Contractor's Specialty Engineer. The submittal and copies 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, each series of shop drawings and applicable calculations. Each cover sheet of each copy of applicable calculations shall be signed and sealed by the Contractor's Specialty Engineer.

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 of each series of shop drawings and applicable calculations. Each cover sheet of applicable calculations shall be signed and sealed by the Contractor's Specialty Engineer.

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 each series of shop drawings and applicable calculations. Each cover sheet of each copy of applicable calculations shall be signed and sealed by the Contractor's Specialty Engineer.

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, 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 day 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 Standard Plans, 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 As-Built Drawings: During the entire construction operation, both the CEI and the Contractor shall maintain independent, separate records of all deviations from the plans and specifications including Requests for Information (RFI), field directives, sketches, etc. The Contractor shall submit a draft of the as-built drawings, including all deviations, to the CEI no less than once every two months for review. A minimum submittal would be a pdf with all changes in red, accurately plotted. The Contractor's as-built drawings shall be reviewed regularly throughout the course of the project by the CEI. The Contractor's final as-built drawing submittal shall also include cross-sections, prepared by a registered surveyor, of all retention ponds in the Project limits. The Contractor's final as-built drawings shall be submitted within 15 days of the Project acceptance or termination of Work. Retainage will not be released by CFX until the marked-up pdf and records have been submitted and accepted by the CEI.

#### 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 Global Navigation Satellite Systems (GNSS) Work Plan

If used, submit a comprehensive written GNSS Work Plan to the Engineer for review and acceptance at the preconstruction conference or at least 30 days before starting work using GNSS. Update the plan as necessary during construction and notify CFX of all changes. The GNSS Work Plan shall describe how GNSS enabled Automated Machine Guidance technology will be integrated into other technologies employed on the project. At a minimum, the GNSS Work Plan will include the following:

1. Designate which portions of the Contract will be done using GNSS enabled Automated Machine Guidance and which portions will be constructed using conventional survey methodology.
2. Describe the manufacturer, model, and software version of the GNSS equipment.
3. Provide information on the qualifications of Contractor staff. Include formal training and field experience. Designate a single staff person as the primary contact for GNSS technology issues.
4. Describe how project control will be established. Include a list and map showing control points enveloping the site.
5. Describe site calibration procedures. Include a map of the control points used for site calibration and control points used to validate the site calibration. Describe the frequency of site calibration and how site calibration will be documented. At a minimum, verify the site calibration twice daily.
6. Describe the Contractor's quality control procedures for verifying mechanical calibration and maintenance of construction and guidance equipment. Include the frequency and type of verification performed to ensure the constructed grades conform to the Contract Documents.

Keep on site and provide upon request, a copy of the project's most up-to-date GNSS Work Plan at the project site.

### 3.6.7 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 the phone numbers and names of personnel designated to be contacted in cases of emergency, along with a description of the project location, to CFX's Troop Master Sergeant of the Florida Highway Patrol and other local law

enforcement agencies. 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.motadmin.com/find-a-training-provider.aspx>

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 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, Seminole, Osceola, Lake or Brevard 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 degrees by the Contractor or its subcontractors and suppliers.

5.1.2 Plant Quarantine Regulations: The Contractor shall contact the local or other available representatives of the U.S. Department of Agriculture Animal and Plant Health Inspection Service and the Florida Department of Agriculture and Consumer Services to ascertain any current restrictions regarding plant pests which may be imposed by those agencies. Contractor shall remain current with regard to the latest quarantine boundary lines during the construction period. Any restrictions imposed by authorized agencies may affect Contractor's operations involving items such as clearing and grubbing, earthwork, grassing and mulching, sodding, landscaping and other items that may involve the movement of Materials containing plant pests across quarantine lines. Any infringement, damages, remedial activities and/or costs thereof associated with imposed agency restrictions will be borne by the Contractor.

5.1.3 Introduction or Release of Prohibited Aquatic Plants, Plant Pests or Noxious Weeds: The Contractor shall not introduce or release prohibited aquatic plants, plant pests or noxious weeds into the Project limits for any reason. The Contractor shall immediately notify the CEI upon discovery of any prohibited aquatic plants, plant pests or noxious weeds within the Project limits. The Contractor shall not move prohibited aquatic plants, plant pests or noxious weeds and their reproductive parts without a permit from the respective State and/or Federal agency. Prohibited aquatic plants, plant pests and noxious weeds are defined in Rule 16C-52 and Rule 5B-57, Florida Administrative Code. Furnish the CEI, prior to incorporation into the project, with a certification from the Florida Department of Agriculture and Consumer Services, Division of Plant Industry, stating that the sod, hay, straw, and mulch materials are free of noxious weeds, including Tropical Soda Apple.

- 5.1.4 Compliance with Federal Endangered Species Act: Prior to establishing any off-project activity in conjunction with the Project (e.g., borrow pits, concrete or asphalt plant sites, material or Equipment storage sites), the Contractor shall certify to CFX that the Contractor has made, through the use of a qualified environmental scientist, such investigations as may be necessary to comply with the Federal Endangered Species Act. The Contractor shall immediately notify CFX if the Contractor's investigation reveals the need for a biological assessment to determine what measures, if any, are necessary to mitigate the impact on endangered species. The cost for any required biological assessment or subsequent measures required to mitigate the impact on endangered species shall be solely at the Contractor's expense.

No Work shall be performed on site preparation for any off-project activity until CFX receives the Contractor's certification.

- 5.1.5 Occupational Safety and Health Requirements: The Contractor shall take precautions necessary for the protection of life, health and general occupational welfare of all persons (including employees of both the Contractor, CFX and all of its officers, agents and consultants) until the Work has been completed and accepted by CFX.

The Contractor and all Subcontractors shall not allow any person employed in performance of the Work to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to health or safety, as determined under the safety and health standards, set forth in Title 29, Code of Federal Regulations, Part 1518 published in the Federal Register on April 17, 1971, as promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act, (83 Stat. 96) including any subsequent revisions and updates.

- 5.1.6 Discovery of Unmarked Human Burial Site: The Contractor shall notify the CEI within two hours of the Contractor's or subcontractor's discovery of an unmarked human burial site. All Contractor or subcontractor activity that may disturb the site shall cease immediately upon discovery of the site. The Contractor shall not resume activity at the burial site until written authorization is received from the CEI.

- 5.1.7 Insecticides and Herbicides: Contractor shall contact the Local County Extension Office for a list of approved Insecticides or Herbicides. Contractor shall: adhere to all labeling instructions; exercise extreme caution to prevent damage to vegetation adjacent to the treated area; and replace any damage as the result of these Materials being applied outside the designated treatment area at no expense to CFX.

## 5.2 Permits and Licenses

- 5.2.1 General: Except as specifically provided for elsewhere in the Specifications, the Contractor shall secure all permits and licenses and give all notices necessary and incidental to the due and lawful prosecution of the Work. The Contractor shall pay all charges and fees for any required licenses and permits.
- 5.2.2 Whenever the Work under or incidental to the Project requires structures and/or dredge/fill/construction activities within the Project limits in waters of the State, CFX will obtain the necessary permits. Any modifications or revisions to an original permit will also be obtained by CFX provided that it is shown that such modifications or revisions are required to complete the construction operations specifically called for in the Plans or Specifications and within the right-of-way limits.

The Contractor shall be responsible to obtain any permits that may be required for Work performed by the Contractor outside the right-of-way or easements for the Project.

In performing the Work, when under the jurisdiction of any environmental regulatory agency, the Contractor shall comply with all regulations issued by such agencies and with all general, special and particular conditions relating to construction activities of any kind and all permits issued to CFX as though such conditions were issued to the Contractor. The Contractor will be responsible for posting any permit placards in a protected location at the worksite.

In case of any discrepancy between any permit condition and a requirement of the Plans or Specifications, the permit condition shall prevail.

If the permit conditions require Work or the furnishing of Materials not specifically provided for in the basis of payment clause for a pay item, such Work or furnishing of Materials will be considered unforeseeable Work by CFX and the Contractor will be compensated in accordance with Article 2.5 of these General Specifications. Special sequencing or scheduling of operations that may be required by permit conditions will not be considered unforeseeable Work by CFX and no additional compensation will be made to the Contractor.

## 5.3 Patented Devices, Materials and Processes

Payments to the Contractor are understood to include all royalties and costs arising from patents, trademarks and copyrights in any way involved with the Work. Whenever the Contractor is required or desires to use any design, device, material or process covered by letters of patent, trademark, trade secret or copyright, CFX's and the Contractor's right for

such use shall be provided by suitable legal agreement with the patentee or owner of the copyright. A copy of such agreement shall be submitted to CFX; however, whether or not such agreement is made or filed, the Contractor and its surety, in all cases, shall indemnify and hold harmless CFX and all of its officers, agents, consultants and employees, from any and all claims for infringement by reason of the use of any such patented design, device, material or process, on the Work and shall indemnify CFX and all of its officers, agents, consultants and employees for any costs, expenses and damages which CFX may be obligated to pay by reason of any such infringement, at any time during the Work and for a period of three years after completion and acceptance of the Project by CFX.

#### 5.4 Right-of-Way Furnished by CFX

Except as may be otherwise stipulated in the Specifications or as may be shown on the Plans, all right-of-way necessary for completion of the Project will be furnished by CFX without cost to the Contractor. If borrow material areas furnished by CFX contain limerock, such material shall not be removed from the pit without specific written approval from CFX.

#### 5.5 Sanitary Provisions

The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of Contractor's employees as are necessary to comply with the requirements and regulations of the State and local boards of health. The Contractor shall not create any public nuisance.

#### 5.6 Control of the Contractor's Equipment

5.6.1 Traffic Interference: Contractor shall not permit Equipment to unreasonably interfere with traffic while the Equipment is on or traversing a road or street.

5.6.2 Overloaded Equipment: Any hauling unit or Equipment loaded in excess of the maximum weights set out in the Florida Uniform Traffic Control Law (or lower weights that may be legally established for any section of road or bridge by the FDOT or local authorities) shall not be operated on any road or street except as provided in subarticle 5.6.3 below for crossings or as provided by a special permit issued by the governmental unit having jurisdiction over a particular road or bridge. This restriction applies to all roads and bridges inside and outside the Project limits as long as these roads and bridges are open for public use. Roads and bridges, which are to be demolished, may be overloaded after they are permanently closed to the public. All liability for loss or damages resulting from Equipment operated on a structure permanently closed to the public shall be the responsibility of the Contractor.

- 5.6.3 Crossings: Where it is necessary to cross an existing road, including specifically the existing travel lanes of a divided highway within the limits of the Project, the Contractor shall obtain the necessary permits from the governmental unit having jurisdiction. The Contractor shall comply with all permit conditions at no additional cost to CFX. The Contractor will be required to provide flagging and watchman service or approved signal devices, for the protection of traffic at all such crossings, in accordance with an approved written plan for that activity.
- 5.6.4 Protection from Damage by Tractor-Type Equipment: Positive measures shall be taken by the Contractor to assure that tractor-type Equipment does not cause damage to roads. If any such damage occurs, the Contractor shall immediately repair the damage to the satisfaction of the governmental unit having jurisdiction over the road and at no cost to CFX.
- 5.6.5 Contractor's Equipment on Bridge Structures: The Contractor, through its Specialty Engineer, shall analyze the effect of imposed loads on bridge structures, within the limits of the Project, resulting from the following operations:
- 1) Overloaded Equipment as defined in subarticle 5.6.2 above:
    - a) Operating on or crossing over completed bridge structures.
    - b) Operating on or crossing over partially completed bridge structures.
  - 2) Equipment within legal load limits:
    - a) Operating on or crossing over partially completed bridge structures.
  - 3) Construction cranes:
    - a) Operating on completed bridge structures.
    - b) Operating on partially completed bridge structures.

Any pipe culvert or box culvert qualifying as a bridge, as defined under subarticle 1.3.3 of these General Specifications is excluded from the above requirements.

A completed bridge structure is a structure in which all elemental components comprising the load carrying assembly have been completed, assembled and connected in their final position. The components to be considered shall also include any related mediums transferring load to any bridge structure.

The Contractor shall determine the effect the Equipment loads have on the bridge structure and the procedures by which the loaded Equipment can be used without exceeding the load capacity for which the structure was designed.

The Contractor shall submit to the CEI for approval eight (8) copies of design calculations, layout drawings and erection drawings showing how the Contractor's Equipment will be used so that the bridge structure will not be overstressed. One (1) of the eight (8) copies of the drawings and the cover sheet of one (1) of the eight (8) copies of the calculations shall be signed and sealed by the Contractor's Specialty Engineer as the CFX record set.

- 5.6.6 Posting of the Legal Gross Vehicular Weight: The maximum legal gross weight, as set out in the Florida Uniform Traffic Code, shall be displayed in a permanent manner on each side of any dump truck or any dump type tractor-trailer unit hauling embankment material, construction aggregates, road base material or hot bituminous mixture to the Project over any public road. The weight shall be displayed in a location clearly visible to the scale operator, in numbers that contrast in color with the background and are readily visible and readable from a distance of 50 feet.

## 5.7 Structures Over Navigable Waters

- 5.7.1 Compliance with Jurisdictional Regulations: Where structures are erected in, adjacent to or over navigable waters, the Contractor shall observe all regulations and instructions of jurisdictions having control over such waters. The Contractor shall not obstruct navigation channels without permission from the proper authority and shall provide and maintain navigation lights and signals in accordance with jurisdictional requirements.

## 5.8 Use of Explosives

The use of explosives will not be allowed.

## 5.9 Preservation of Property

- 5.9.1 General: The Contractor shall preserve from damage all property along the line of Work or which is in the vicinity of or is any way affected by the Work, the removal or destruction of which is not called for by the Plans. This requirement shall apply to public and private property, public and private utilities (except as modified by subarticle 5.9.6 below), trees, shrubs, crops, signs, monuments, fences, guardrail, pipe, underground structures, public highways (except natural wear and tear of highway resulting from legitimate use thereof by the Contractor) and the like. Property damaged due to the activities of the Contractor shall be immediately restored, at Contractor's expense, to a condition similar or equal to that existing before such damage or injury was done by the Contractor.

The Contractor shall protect existing bridges from damage caused by Contractor's operations during the entire construction period. The Contractor will not be required to provide routine repairs or maintenance for such structures but will be required, at Contractor's expense, to make immediate repairs of any damage caused by the Contractor's operations.

The Contractor shall protect all geodetic monuments, horizontal or vertical, located within the limits of construction.

5.9.2 Failure to Restore Damaged Property: If the Contractor fails to restore such property, bridge or road CFX may, at its sole option and with 48 hours notice to the Contractor, proceed to repair, rebuild or otherwise restore the damaged property, bridge or road at Contractor's cost or expense. The cost of such repairs will be deducted by CFX from any monies due or which may become due the Contractor.

### 5.9.3 Contractor's Use of Streets and Roads

5.9.3.1 On Systems Other than the CFX System: Where the Contractor hauls material or Equipment to the Project over roads and bridges on the state park road system, state highway system, county road system or city street system and such hauling causes damage, the Contractor, at Contractor's cost and expense, shall immediately repair such roads or bridges to as good a condition as existed before the hauling began.

5.9.3.2 On the CFX System: The Contractor shall also be responsible for repairing damage caused by hauling Materials to the Project along roads and bridges outside the limits of the Project which are on the CFX system (roads under the jurisdiction of CFX) or are specifically designated in the Plans as haul roads from CFX furnished Materials pits.

5.9.3.3 Within the Limits of the Project: The Contractor shall not operate Equipment or hauling units of such weight as to cause damage to previously constructed elements of the Project including but not necessarily limited to, bridges, drainage structures, base course and pavement. Equipment or hauling units loaded in excess of the maximum weights set out in subarticle 5.6.2 above shall not be operated on existing pavements that are to remain in place (including pavement being resurfaced), cement-treated subgrades and bases, concrete pavement, any course of asphalt pavement and bridges. Exceptions to these weight restrictions may be allowed for movement of necessary Equipment to and from its work site, for hauling of offsite fabricated components to be incorporated into the Project and for crossings as detailed in subarticle 5.6.3 above.



5.9.3.4 Cleaning and Maintenance of Streets and Roads: Whenever the Contractor utilizes any streets or roads, whether on the CFX system or otherwise, for cyclical material hauling operations, for example embankment, excavation, etc., the condition of all affected streets or roads will be assessed by the Contractor through an initial video survey with the CEI prior to hauling operations. Throughout the hauling operations or when changes to haul routes occur, the Contractor shall provide updated video surveys performed every two weeks to monitor the current street, road and/or facility conditions. The video survey will be submitted in duplicate to the CEI and narrated to identify the respective street, road or facility, with detail of specific features, condition, etc. Any deterioration, whatsoever, to the condition of the streets or roads from this initial video survey and subsequent two-week updates will be viewed as being a result of the Contractor's operations and shall be repaired to equal or better condition, at the Contractor's expense, within two weeks after notification by the CEI. The Contractor will be responsible to prevent, clean and replace areas of the travel ways and appurtenances (including but not limited to bridge decks, drainage, roadway surface, striping) utilized by the Contractor where tracking and/or spillage of materials have occurred. Cleaning and preventive measures that will not deteriorate the existing facility conditions will be utilized and may include pressure washing, sanding etc.

- 5.9.4 Traffic Signs, Signal Equipment, Highway Lighting, and Guardrail: Contractor shall protect all existing roadside signs, signal equipment, highway lighting and guardrail, for which permanent removal is not indicated, against damage or displacement. Whenever such signs, signal equipment, highway lighting or guardrail lie within the limits of construction, or wherever so directed by the CEI due to urgency of construction operations, take up and properly store the existing roadside signs, signal equipment, highway lighting and guardrail and subsequently reset them at their original locations or, in the case of widened pavement or roadbed, at locations designated by the CEI.

If CFX determines that damage to such existing or permanent installations of traffic signs, signal equipment, highway lighting or guardrail is caused by a third party(ies), and is not otherwise due to any fault or activities of the Contractor, CFX will, except for any damage resulting from vandalism, compensate the Contractor for the costs associated with the repairs. Contractor shall repair damage caused by vandalism at no expense to CFX.

- 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.

Total D-B Contract Price	Minimum Coverage Limits
Up to \$30 Million	\$1 Million coverage
\$30 to \$75 Million	\$2 Million coverage
More than \$75 Million	\$5 Million coverage

This requirement maybe satisfied by the Design-Build Firm's professional team member qualified under Rule 14-75, FAC.

<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 is advised that the project is located within a hurricane region. The Contractor shall submit to CFX at the project Preconstruction Conference, a hurricane preparedness plan detailing the procedures to be followed by the Contractor to ensure the safety of personnel, equipment, stored materials, and the Work when a hurricane watch notice for the project area is issued by the United States Weather Service.

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 consent of CFX. 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 Certification of Sublet Work request will be deemed acceptable by CFX, for purposes of CFX's consent, unless the Engineer notifies the Contractor within 5 business days of receipt of the Certification of Sublet Work that CFX is not consenting to the requested subletting. If, at any time, a subcontractor is determined to be discriminatory, debarred or suspended by the FHWA, CFX or FDOT, the determination will be considered grounds for removal from the project.

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.

**Critical Path:** Defined as the Longest Path.

**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 P6 Professional, produced by Oracle, 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 changing 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 through the data date each month until the Baseline Schedule is accepted by 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 (P6 Professional) by Oracle, 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 P6 Professional for all schedule submittals. This includes using the "Retained Logic" setting for all calculations, unless CFX chooses to allow the use of the "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 CDs with exported copies of the above schedules in ".xer" format. Other methods of electronic submittal may be approved by the CEI.

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, road closures and openings, and any contractually dictated interim milestones 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.  
Photovoltaic systems.  
Integration of Photovoltaic and ITS systems.  
Burn-In periods.  
Tolls.

**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 Contract Completion Date as defined in section 6.3.2.1 shall be entered into the Primavera Project Details 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 Contractor shall define and assign as appropriate, project-specific activity codes to allow for filtering, grouping, and sorting of activities by category to facilitate review and use of the Progress Schedule. The Contractor shall define the activity codes using the project-level option. 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

Responsibility: Entity responsible for performing the work (i.e. CFX, Contractor, sub-Contractors, suppliers, utility companies, etc.).

Crew: Crew assigned to the work (i.e. Grading Crew #1, Drainage Crew #2, Pile Driving Crew, Concrete Crew, Paving Crew, Striping Crew, Signing Crew, etc.).

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:
  - FS -Finish to start
  - 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 Schedule Constraints: All Contract milestone activities shall be constrained, as applicable, with a “Start On or After” (Early Start) date or “Finish On or Before” (Late Finish) date equal to the “Start No Earlier Than” or “Must Finish By” date specified in the Contract, except as specified below. The Contractor’s use of schedule constraints not associated with Contract milestones is not allowed, unless approved by the CFX. The use of schedule constraints such as “Start On” or “Finish On” for the purpose of manipulating float or the use of schedule constraints that violate network logic such “Mandatory Start” or “Mandatory Finish” will not be allowed. When a schedule constraint is used, other than the schedule constraints specified herein, the Contractor shall provide explanation for the use of such constraint in the Progress Schedule or Progress Schedule Narrative.

Project Calendars: The Contractor shall define and assign as appropriate, project-specific calendar to each activity to indicate when the activity can be performed. The Contractor shall define the project calendars using the project-level option. The project calendars shall all use the same standard working hours per day, such as 8:00AM to 4:00PM. 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.

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. Revenue shall be loaded using resources with the “Material” type. 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 must submit evidence to CFX that any revision to schedule logic, resources, or calendar assignment is a logical, reasonable, and necessary change. If CFX decides that the revision is not sufficiently supported and does not serve a useful purpose, CFX shall request that the Contractor remove the revision from the schedule update, and the Contractor shall comply. The Contractor shall not change an activity original duration for any reason.

#### 6.3.3.4.7 Revisions to the Baseline Schedule

1. Revisions to the accepted Baseline Schedule are only to be made at the request of CFX. 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 exported in “.xer” format. The files shall be submitted on compact disk (cd) or via the electronic submittal process approved by the CEI. Each submission 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. Any float available as a result of a schedule showing early completion shall be considered project float for joint use by CFX and the Contractor.
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, which shall be submitted in addition to a Progress-Only schedule update of the same data date:

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, pandemics, 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. Consistent with this, any corrugations, rustications, or deviations in texture will not be quantified for surface area measurement and payment.

#### 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: <https://www.fdot.gov/construction/fuel-bit/fuel-bit.shtm>.

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.

$P_i$  = 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 50 .....	None
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.

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 As-built 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 120 days 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.

**F. 7.**





CENTRAL  
FLORIDA  
EXPRESSWAY  
AUTHORITY



SR 408 Speed Limit Adjustment: Kirkman Road to Chickasaw Trail  
Will Hawthorne, PE, Director of Engineering  
— February 11, 2021 —





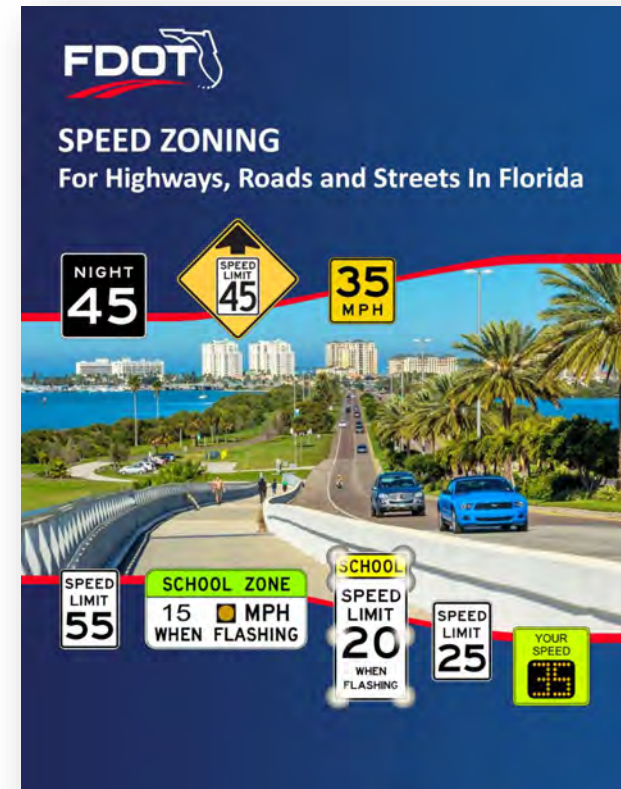
# Speed Limit Study

Improve Safety by Reducing the Probability and Severity of Crashes

SR 408 (Kirkman Rd. to Chickasaw Trail)  
Travel Speeds in Excess of the Posted Speed

Established per Florida Statute 316.187

FDOT Speed Zoning Manual for Highways, Roads and Streets in Florida



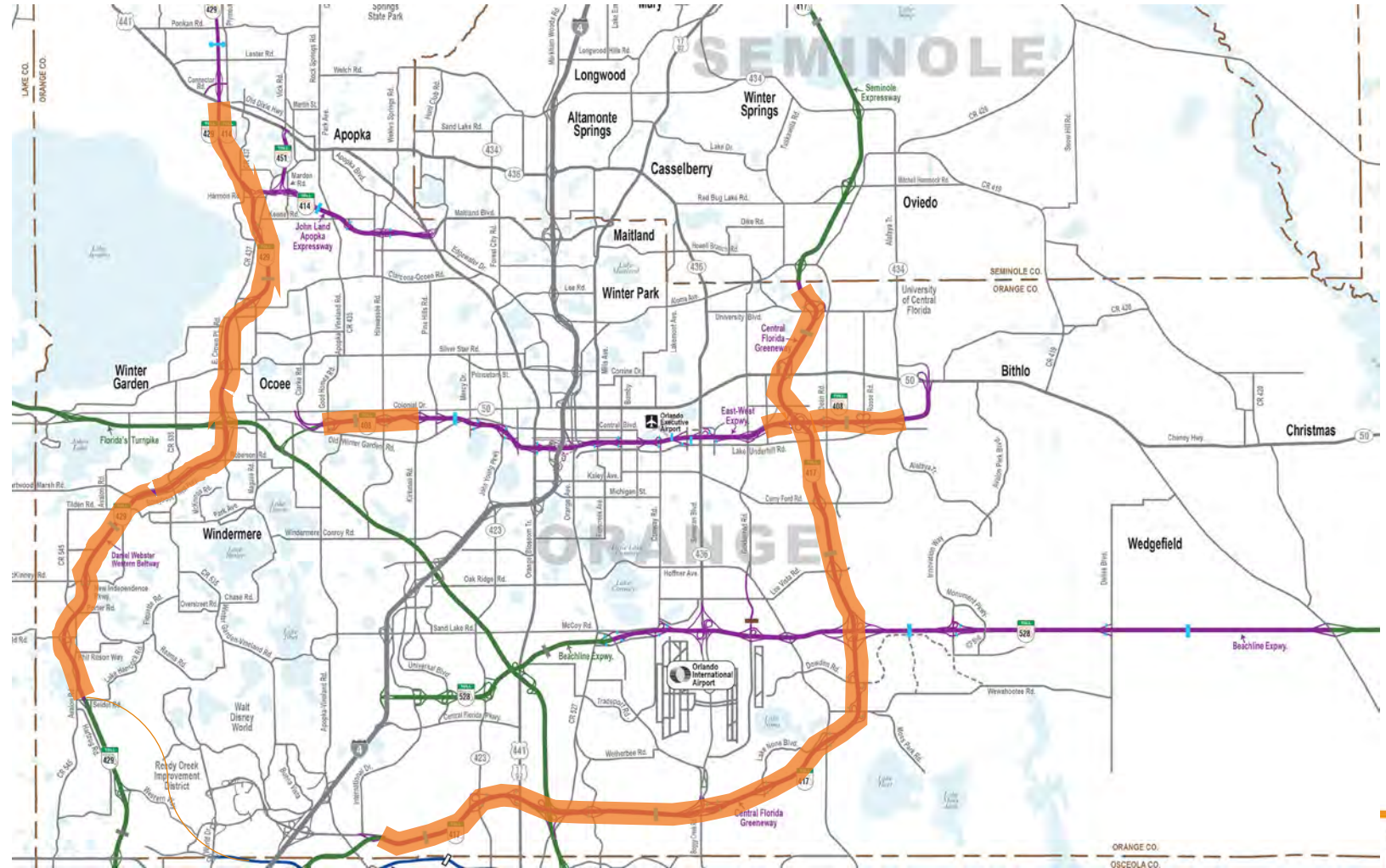
# CFX Speed Adjustment History

**1997**

SR 408 (Portions)  
adjusted from 55 to  
65 MPH

**2015**

SR 417 & SR 429  
(Portions) adjusted  
from 65 to 70 MPH



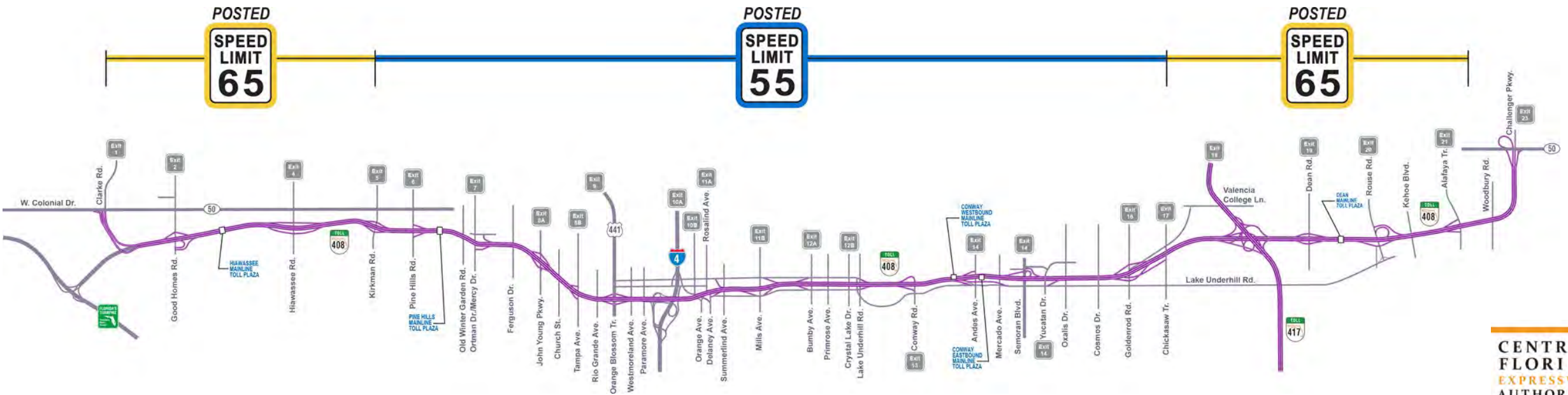




# Study Considerations

## Collect and Evaluate:

- Existing Traffic Volumes & Speeds
- Accident History
- Roadway Design Criteria





# Study Considerations

## Collect and Evaluate:

- Existing Traffic Volumes & Speeds – 85<sup>th</sup> Percentile Speeds 66 – 78 MPH
- Accident History – Increased Crash Rates within the 55 MPH Zone
- Roadway Design Criteria – 60 MPH (Kirkman Road to Chickasaw Trail)



# Speed Limit Study Results

## December 2, 2020 - FDOT Approved Traffic Study

- SR 408 - Kirkman Road to Chickasaw Trail Increase from 55 MPH to 60 MPH
- Exempt I-4 Ultimate Project Limits Until Completion
- Follow-up Study 6-12 Months After Implementation



# Speed Limit Adjustment Implementation

Approximately 55 Signs

Engineers Cost Estimate \$125,000

60-90 Days to Complete

Public Outreach

- Customer Emails
- Traditional Media
- Social Media
- Online Newsletters



# Recommended Motion

Approval to adjust the speed limit on SR 408 from 55 mph to 60 mph from Kirkman Road to Chickasaw Trail.