AGENDA BOARD MEETING March 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 FEBRUARY 11, 2021 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. BRIGHTLINE UPDATE Michael Cegelis, Brightline, Executive Vice President (info. item)
- 2. MONTHLY COVID-19 FINANCIAL ASSESSMENT Lisa Lumbard, Chief Financial Officer (info. item)
- 3. **2021 SENIOR LIEN REFUNDING BONDS** *Lisa Lumbard, Chief Financial Officer* (action item)
- 4. **INFRASTRUCTURE PROJECTS OVERVIEW** *Glenn Pressimone, Chief of Infrastructure* (info. item)

(CONTINUED ON PAGE 2)

## 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 <a href="mailto:lranetta.Dennis@cfxway.com">lranetta.Dennis@cfxway.com</a> 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

MINUTES BOARD MEETING February 11, 2021

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 Chairman Dyer.

## **Board Members Present:**

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

## Staff Present at Dais:

Laura Kelley, Executive Director
Mimi Lamaute, Recording Secretary
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 DECEMBER 10, 2020 BOARD MEETING MINUTES

A motion was made by Commissioner Siplin and seconded by Commissioner Constantine to approve the December 10, 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 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**

- 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)
- 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 Convergint 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)

A motion was made by Commissioner Arrington and seconded by Mayor Demings 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

Chairman Dyer provided a synopsis on the agreements on today's Consent Agenda for approval and the items on today's regular agenda.

## 2. TREASURER'S REPORT

Mayor Demings reported that as of the end of December CFX's toll revenues year-to-date were \$226,211,855, which is 31% over projections and 8% under prior year.

Total Operations, Maintenance and Administration expenses were \$35,924,587 year-to-date, which is 8% under budget.

After debt service the total net revenue available for projects year-to-date through December was \$92.1 million. CFX's projected year-end senior lien debt service ratio is 1.95 which is above the budgeted ratio of 1.68.

## 3. EXECUTIVE DIRECTOR'S REPORT

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

In addition, Ms. Kelley expanded on the following:

- Due to COVID-19, CFX service levels have been challenging at the Customer Call Center for the past few
  months. Later this morning, Mr. Jim Greer will explain the steps that his team is taking to restore service
  levels.
- Thanked participants of the January 14th CFX Annual Industry Forum.
- Provided details on the February 25<sup>th</sup>, 11:00 a.m. Florida Autonomous Vehicle Summit webinar, Delivering the Efficiency Revolution with New Technology. To register for this event, go to favsummit.com.

## F. REGULAR AGENDA ITEMS

## ANNUAL MID-YEAR BUDGET REVIEW FY 2021 WITH COVID UPDATE

Lisa Lumbard, Chief Financial Officer, provided the mid-year budget review and the COVID-19 update. As of the end of December CFX collected over \$237,000,000 million in revenue, which is 31% over projections and 8% under budget for Operations, Maintenance and Administration expenses. She explained actual revenue versus CDM Smith's revised projections and CFX's strengths. Recognizing the strengths and how CFX funds projects,

she is confident that CFX can continue to fund all the projects in the Five-Year Work Plan. Staff will be bringing the recommended Operations, Maintenance and Administration and the Five-Year Work Plan budget for fiscal year 2022 to the April board meeting for board member review and comments.

The Board Members asked questions, which were answered by Ms. Lumbard, Mr. Hugh Miller with CDM Smith and Ms. Kelley.

A motion was made by Commissioner Constantine and seconded by Commissioner Parks for Board approval to move forward with the FY 2021-2025 Five-Year Work Plan as presented and approved on June 11, 2020. The motion carried unanimously with all eight (8) board members in attendance voting AYE by voice vote.

## 2. UPDATE ON CUSTOMER SERVICE INITIATIVES

Mr. Jim Greer, Chief Technology and Operating Officer, provided an update on the contact center including metrics and initiatives for improvement, such as automated self-help options. He also provided an update on future plans for Visitor Toll Pass 2.0 and Reload 2.0.

The Board Members asked questions, which were answered by Mr. Greer, Ms. Kelley and Ms. Maikisch, Chief of Staff/Public Affairs Officer.

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

## 3. BOARD MEMBER JAY MADARA AUDIT COMMITTEE MEMBER APPOINTMENT

Mr. Jay Madara submitted his nomination of Megan Zee to the Audit Committee.

A motion was made by Mr. Madara and seconded by Commissioner Siplin to appoint Megan Zee to the CFX Audit Committee. The motion carried unanimously with all eight (8) board members in attendance voting AYE by voice vote.

## 4. APPOINTMENT OF CFX BOARD REPRESENTATIVE TO TEAMFL BOARD

A motion was made by Mayor Dyer and seconded by Commissioner Parks to appoint Commissioner Arrington as the CFX Board Representative to the TEAMFL Board. The motion carried unanimously with all eight (8) board members in attendance voting AYE by voice vote.

## 5. <u>APPOINTMENT OF CFX BOARD REPRESENTATIVE AND ALTERNATE TO METROPLAN BOARD</u>

A motion was made by Commissioner Parks and seconded by Mayor Demings to appoint Commissioner Constantine as the CFX Board Representative to the MetroPlan Board. The motion carried unanimously with all eight (8) board members in attendance voting AYE by voice vote.

A motion was made by Mayor Demings and seconded by Commissioner Parks to appoint Commissioner Arrington as the CFX Board Representative Alternate to the MetroPlan Board. The motion carried unanimously with all eight (8) board members in attendance voting AYE by voice vote.

## 6. <u>APPROVAL OF CONTRACT AWARD TO PRINCE CONTRACTING, LLC FOR SR 417 WIDENING</u> FROM JOHN YOUNG PARKWAY TO LANDSTAR BOULEVARD

Will Hawthorne, Director of Engineering detailed the history, corridor features, project timeline and bids received for the SR 417 Widening from John Young Parkway to Landstar Boulevard project.

The Board Members asked guestions, which were answered by Mr. Hawthorne.

A motion was made by Mayor Demings and seconded by Commissioner Siplin for 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. The motion carried unanimously with all eight (8) board members in attendance voting AYE by voice vote.

## 7. SR 408 SPEED LIMIT ADJUSTMENT

A proposal for SR 408 Speed Limit Adjustment from Kirkman Road to Chickasaw Trail was presented to the Board for approval. Will Hawthorne, Director of Engineering explained CFX speed adjustment history, the study considerations and speed limit study results for the speed adjustment. Mr. Hawthorne also described the process for the speed adjustment implementation.

Discussion ensued regarding the speed limit adjustment study conducted, messaging and the process. The board members asked questions, which were answered by Mr. Hawthorne.

The board members directed staff to bring back this item in about 10 months to 1 year after the speed limit increase has been implemented and the follow-up study has been conducted.

A motion was made by Commissioner Arrington and seconded by Commissioner Siplin for approval to adjust the speed limit on SR 408 from 55 mph to 60 mph from Kirkman Road to Chickasaw Trail. The motion carried unanimously with all eight (8) board members in attendance voting AYE by voice vote.

## G. BOARD MEMBER COMMENT

The following Board Members commented:

Commissioner Siplin

Chairman Dyer stated that the next Board meeting is scheduled for March 11th.

H.	AD.	JOU	IRN	MENT	Γ

Chairman Dyer adjourned the meeting at 10:20 a.m.

Mayor Buddy Dyer Chairman Central Florida Expressway Authority

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, <a href="mailto:PublicRecords@CFXway.com">Public Records@CFXway.com</a>, or 4974 ORL Tower Road, Orlando, FL 32807. Additionally, videotapes of Board meetings are available at the CFX website, <a href="mailto:www.CFXway.com">www.CFXway.com</a>.

# **D.**Consent Agenda

## CONSENT AGENDA March 11, 2021

## **ADMINISTRATIVE SERVICES**

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

## CONSTRUCTION

- Approval of Construction Contract Modifications on the following projects:
   a. Project 408-159 Atlantic Civil Constructors Corp. (\$332,807.78)
- 3. Approval of Final Ranking and Authorization for Fee Negotiations for Construction Engineering and Inspection Services for SR 417 Widening From Boggy Creek Road to Narcoossee Road, Project No. 417-151, Contract No. 001750
- 4. Approval of Terracon, Inc. as a Subconsultant for Ardaman & Associates, Inc. for Systemwide Materials Testing and Geotechnical Services, Contract No. 001434

## **ENGINEERING**

- 5. Approval of Tindale-Oliver & Associates, Inc. as a Subconsultant for Dewberry Engineers, Inc. for General Engineering Consultant Services, Contract No. 001145
- 6. Approval of Second Contract Renewal with Protean Design Group, Inc. for Miscellaneous Design Consultant Services, Contract No. 001208 (Agreement Value: \$830,000.00)
- 7. Approval of Contract Award to Kiewit Infrastructure South Company for SR 417 Bridge Over SR 528, Project No. 417-751, Contract No. 001759 (Agreement Value: \$1,369,850.00)
- 8. Approval of Purchase Order to The Reinforced Earth Company for Engineering Services for Mechanically Stabilized Earth Walls, Project No. 429-152 (Agreement Value: \$58,375.00)
- 9. Approval of Final Ranking and Authorization for Fee Negotiations for Design Consultant Services for SR 528 Widening from Goldenrod Road to Narcoossee Road, Project No. 528-168, Contract No. 001742
- 10. Approval of Contract Award to Hubbard Construction Company for SR 528 Pavement Repairs and Resurfacing from Goldenrod Road to Narcoossee Road Project No. 528-760A, Contract No. 001761 (Agreement Value: \$412,897.03)
- 11. Approval of Contract Award to Cathcart Construction Company Florida, LLC for SR 429 Pond E By-Pass Ditch, Project No. 429-169, Contract No. 001762 (Agreement Value: \$569,173.50)

## **HUMAN RESOURCES**

12. Approval of Second Contract Renewal with Tews Consulting, Inc. for Staffing Services, Contract No. 001678 (Agreement Value: \$45,000.00)

## INTERNAL AUDIT

- 13. Acceptance of Internal Audit Reports:
  - a. DHSMV Data Security Assessment
  - b. DAVID Data Security Assessment
  - c. Payment Card Industry (PCI) Assessment
  - d. Ethics Policy Compliance Review

## **LEGAL**

- 14. Approval of License Agreement (Helipad Obstruction Lighting) Between Orlando Health, Inc. and the Central Florida Expressway Authority, Project: 417-302; State Road 417, Portions of Parcel 102
- 15. Amendment to Central Florida Expressway Authority Rail Easement of Existing Authority Property Between Brightline Trains Florida LLC and the Central Florida Expressway Authority, Project: 528-1240; State Road 528, Portions of Parcel 100
- 16. Approval of Supplemental Agreement No. 1 with Nabors, Giblin & Nickerson, P.A. for Disclosure Counsel Services, Contract No. 001690 (Agreement Value: not-to-exceed \$260,000.00)

## **MAINTENANCE**

17. Approval of BluRock, LLC as a Subcontractor for Jorgensen Contract Services, LLC for Roadway and Bridge Maintenance Services, Contract No. 001151

## **TECHNOLOGY/TOLL OPERATIONS**

- 18. Approval of Purchase Order to Convergint Technologies LLC for Main Plaza Camera Replacement Project (Agreement Value: \$276,629.15)
- 19. Approval of Purchase Order to Dasher Technologies for Hewlett Packard Enterprise Server and Equipment Maintenance and Support Services for the Infinity Toll Collection System (Agreement Value: not-to-exceed \$365,331.37)
- 20. Approval of Purchase Order to Dasher Technologies for Hewlett Packard Enterprise Nimble Storage Hardware (Agreement Value: \$92,052.02)
- 21. Approval of Amendment No. 4 with TransCore, LP for Toll System Upgrade, Contract No. 001021 (Agreement Value: \$14,254,132.19)

## TRAFFIC OPERATIONS

22. Approval of Purchase Orders to Transportation Control Systems for Systemwide UPS Battery Replacement, Project No. 599-560 (Agreement Value: \$178,800.00)

The following items are for information only:

- A. The following is a list of advertisement(s) from February 1, 2021 through March 7, 2021:
  - 1. 417-149: SR 417 Widening from Landstar Blvd. to Boggy Creek Road

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. 417-151: SR 417 Widening Boggy Creek Rd. to Narcoossee Rd. Construction
  - 2. 408-763: SR 408 Milling and Resurfacing from Yucatan Drive to SR 417 Construction
  - 3. 408-764: SR 408 Milling and Resurfacing from Woodbury Rd. to SR 50 Construction
  - 4. 528-163: SR 528 and SR 520 Interchange Lighting Construction
  - 5. 408-628B: SR 408 Guide Sign Replacements Construction
  - 6. 417-149: SR 417 Widening From Landstar Boulevard to Boggy Creek Road Construction
  - 7. 417-150: SR 417 Widening From Narcoossee Road to SR 528 Construction
  - 8. 417-760: SR 417 Milling and Resurfacing between SR 417 and Curry Ford Rd Construction
  - 9. 417-761: SR 417 Milling and Resurfacing between SR 408 and E-4 Canal Construction
  - 10. 429-153: SR 429 Widening between West Road to SR 414 Construction
  - 11. 599-419: SR 408, SR 429, and SR 414 Air Conditioner Replacements Construction
  - 12. 528-160: SR 528 Widening From Narcoossee Road to SR 417 Construction
  - 13. 599-759: South Access Road Slope Repair Construction
  - 14. 414-640: SR 414 Guide Sign Replacement Construction
  - 15. 599-416B: McCoy Road Facility Sewer Line Installation
  - 16. 408-831: SR 408/417 Interchange Landscape
  - 17. 408-830: SR 408 From SR 417 to Alafaya Trail Landscape
  - 18. 599-416A: McCoy Road Facility Water Line Installation
  - 19. Advocacy Services
  - 20. Appraiser Services
  - 21. Disclosure Counsel
  - 22. Financial Management System Software and Implementation Services
  - 23. General Systems Consultant Services IT Consulting Services

## CONSENT AGENDA ITEM #1

## **MEMORANDUM**

TO: CFX Board Members

FROM: Aneth Williams Aneth Williams

Director of Procurement

DATE: February 18, 2021

SUBJECT: Approval of Second Contract Renewal with Thorn Run Partners, LLC

for Federal Advocacy Services

Contract No. 001533

Board approval is requested for the second renewal of the referenced task-order based contract with Thorn Run Partners, LLC in the amount of \$49,200.00 for a one-year period beginning April 1, 2021 and ending March 31, 2022. The original contract was one year with two one-year renewals.

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

 Original Contract
 \$ 49,200.00

 First Renewal
 \$ 49,200.00

 Second Renewal
 \$ 49,200.00

 Total
 \$147,600.00

This contract is included in the OM&A Budget.

Reviewed by: Michelle Maikisch

Michelle Maikisch

Chief of Staff/Public Affairs Officer

## CENTRAL FLORIDA EXPRESSWAY AUTHORITY CONTRACT RENEWAL NO. 2 AGREEMENT CONTRACT NO. 001533

**THIS CONTRACT RENEWAL NO. 2 AGREEMENT** ("Renewal Agreement"), is made and entered into this 11th day of March 2021, by and between Central Florida Expressway Authority, a corporate body and agency of the State of Florida, hereinafter called "CFX", and Thorn Run Partners, LLC hereinafter called the ("Consultant"). CFX and Consultant are referred to herein sometimes as a "Party" or the "Parties".

### WITNESSETH

**WHEREAS**, on April 9, 2019, CFX and the Consultant entered into a Contract Agreement (the "Original Agreement"), with a Notice to Proceed date of April 1, 2019, whereby CFX retained the Consultant to provide federal advocacy 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. <u>Renewal Term</u>. CFX and Consultant agree to exercise the second renewal of said Initial CFX Contract, which renewal shall begin on April 1, 2021 and end on March 31, 2022 ("Renewal Term"), unless otherwise extended as provided in the Original Contract.
- 3. <u>Compensation for Renewal Term</u>. The Consultant 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 \$49,200.00 ("Renewal Compensation"). The Renewal Compensation shall be in addition to the original compensation paid by CFX to the Consultant pursuant to the terms of the Original Agreement, and any supplements or amendments thereto.
- 4. <u>Effect on Original Agreement</u>. 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. <u>Counterpart and Electronic Signatures</u>. 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.

## THORN RUN PARTNERS, LLC

## CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: Print Name: Title:	By:Aneth Williams, Director of Procurement
Tiue	
ATTEST: (SEA	L)
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 CONTRACT RENEWAL AGREEMENT NO. 1 CONTRACT NO. 001533

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

### WITNESSETH

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

WHEREAS, pursuant to Article 2.0 of the Original Agreement, CFX and Consultant wish to renew the Original Agreement for a period of one (1) year;

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, CFX and Consultant agree to a first renewal of said Original Agreement beginning the 1st day of April 2020 and ending the 31st day of March 2021 at the cost of \$49,200.00, which increases the amount of the Original Agreement.

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

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

THORN RUN PARTNERS, LLC

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

BY:

Authorized Signature

Title:

ATTEST:

Secretary or Notary

If Individual, furnish two witness:

Witness (1)

Witness (2)

Legal Approval as to Form

General Counsel for CFX

## CONTRACT

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY AND THORN RUN PARTNERS, LLC

FEDERAL LOBBYIST SERVICES

CONTRACT NO. 001533

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

CONTRACT, SCOPE OF SERVICES, METHOD OF COMPENSATION

## CONTRACT FEDERAL LOBBYIST SERVICES CONTRACT NO. 001533

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

### WITNESSETH:

WHEREAS, CFX was created by statute and is charged with acquiring, constructing, operating and maintaining a system of limited access roadways known as the Central Florida Expressway Authority System; and,

WHEREAS, CFX has been granted the power under Section 348.754(2)(m) of Florida Statutes, "to do all acts and things necessary or convenient for the conduct of its business and the general welfare of CFX, in order to carry out the powers granted to it (by state law);" and,

WHEREAS, CFX has determined that it is necessary and convenient in the conduct of its business to retain the services of a consultant to provide legislative advocacy and other services as may be assigned to the consultant by CFX; and,

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

NOW THEREFORE, in consideration of the mutual covenants and benefits set forth herein and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged by each party to the other, the parties hereto agree as follows:

## 1. SERVICES TO BE PROVIDED

The CONSULTANT shall, for the consideration herein stated and at its cost and expense, do all the work and furnish all the materials, equipment, supplies and labor necessary to perform this Contract in the manner and to the full extent as set forth in the Contract Documents all of which are hereby adopted and made part of this Contract as completely as if incorporated herein. The Contract shall be performed and services provided to the satisfaction of the duly authorized representatives of CFX, who shall have at all times full opportunity to evaluate the services provided under this Contract.

The services to be provided under this Contract include providing legislative advocacy and other services as detailed in the Contract Documents and any amendments, supplements, or modifications thereto.

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

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

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

(collectively, the "Contract").

## 2. TERM AND NOTICE

The initial term of the Contract will be one (1) year beginning April 1, 2019. There shall be two renewal options of one (1) year each. The options to renew are at the sole discretion and election of CFX. Renewals will be based, in part, on a determination by CFX that the value and level of service provided by the CONSULTANT are satisfactory and adequate for CFX's needs. If a renewal option is exercised, CFX will provide the CONSULTANT with written notice of its intent at least 60 days prior to the expiration of the initial Contract Term and each renewal, if any.

CFX shall have the right to terminate or suspend the Contract, in whole or in part, at any time with 15 days notice for convenience or 30 days with cure notice for cause for CONSULTANT's material failure to perform the provisions of the Contract. Under no circumstances shall a properly noticed termination by CFX (with or without cause) constitute a default by CFX. In the event of a termination for convenience or without cause, CFX shall notify CONSULTANT (in writing) of such action with instructions as to the effective date of termination or suspension, in accordance with the time frames set forth hereinabove. CONSULTANT will be paid for all work performed prior to termination and any reasonable, documented, direct, normal, and ordinary termination expenses. CONSULTANT will not be paid for special, indirect, consequential, or undocumented termination expenses. Payment for work performed will be based on Contract prices, which prices are deemed to include profit and overhead. No profit or overhead will be allowed for work not performed, regardless of whether the termination is for cause.

If CONSULTANT: (i) fails to perform the Contract terms and conditions; (ii) fails to begin the work under the Contract within the time specified in the "Notice to Proceed"; (iii) fails to perform the work with sufficient personnel or with sufficient materials to assure the prompt performance of the work items covered by the Contract; (iv) fails to comply with the Contract, or (v) performs unsuitably or unsatisfactorily in the opinion of CFX reasonably exercised, or for

any other cause whatsoever, fails to carry on the work in an acceptable manner, CFX will give notice in writing to the CONSULTANT of such delay, neglect or default. If the Contract is declared in default, CFX may take over the work covered by the Contract.

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

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

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

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

## 3. CONTRACT AMOUNT AND COMPENSATION FOR SERVICES

- 3.1 The Contract Amount for the Contract term is \$49,200.00.
- 3.2 CONSULTANT's compensation for the services provided hereunder shall be task-order for services performed in accordance with the Method of Compensation.

## 4. AUDIT AND EXAMINATION OF RECORDS

4.1 Definition of Records:

- (i) "Contract Records" shall include, but not be limited to, all information, communications and data, whether in writing or stored on a computer, computer disks, microfilm, writings, working papers, drafts, computer printouts, field notes, charts or any other data compilations, books of account, photographs, videotapes and audiotapes supporting documents, any other papers or preserved data in whatever form, related to the Contract or the CONSULTANT's performance of the Contract determined necessary or desirable by CFX for any purpose. Proposal Records shall include, but not be limited to, all information and data, whether in writing or stored on a computer, writings, working papers, computer printouts, charts or other data compilations that contain or reflect information, data or calculations used by CONSULTANT in determining labor, unit price, or any other component of a bid submitted to CFX.
- (ii) "Proposal Records" shall include, but not be limited to, any material relating to the determination or application of equipment rates, home and field overhead rates, related time schedules, labor rates, efficiency or productivity factors, arithmetic extensions, quotations from subconsultants, or material suppliers, profit contingencies and any manuals standard in the industry that may be used by CONSULTANT in determining a price.

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

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

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

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

## 5. MINORITY AND WOMEN'S BUSINESS ENTERPRISES

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

## 6. CONSULTANT INSURANCE

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

- 6.1 Commercial General Liability Insurance having a minimum coverage of One Million Dollars (\$1,000,000.00) per occurrence of bodily injury or property damage and a minimum of Two Million Dollars (\$2,000,000.00) annual aggregate for both General and Products and Completed Operations. Liability insurance shall be current ISO simplified form or equivalent including products and completed operations coverage. The contractual liability insurance coverage shall include coverage for bodily injury and property damage claims by CONSULTANT under this agreement.
- 6.2 **Business Automobile Liability** (for bodily injury, death and property damage) having a minimum coverage of One Million Dollars (\$1,000,000.00) for each accident;
- 6.3 Workers' Compensation Insurance Coverage, including all coverage required under the laws of the state of Florida (as amended from time to time hereafter);
- 6.4 **Unemployment Insurance** Coverage in amounts and forms required by Florida law, as it may be amended from time to time hereafter.

Such insurance policies shall be without co-insurance, and shall (a) include CFX, and such other applicable parties CFX shall designate, as additional insureds for commercial general liability and business automobile liability, (b) be primary insurance, (c) include contractual liability for commercial general liability, (d) provide that the policy may not be canceled or materially changed without at least thirty (30) days prior written notice to CFX from the company providing such insurance, or authorized representative and (e) provide that the insurer waives any right of subrogation against CFX, to the extent allowed by law and to the extent the same would not void primary coverage for applicable insurance policies. CONSULTANT shall be

responsible for any deductible it may carry. At least fifteen (15) days prior to the expiration of any such policy of insurance required to be carried by CONSULTANT hereunder, CONSULTANT shall deliver insurance certificates to CFX evidencing a renewal or new policy to take the place of the one expiring. Procurement of insurance shall not be construed to limit CONSULTANT's obligations or liabilities under the Contract. The requirement of insurance shall not be deemed a waiver of sovereign immunity by CFX.

Any insurance carried by CFX in addition to CONSULTANT's policies shall be excess insurance, not contributory.

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

## CONSULTANT RESPONSIBILITY

- 7.1 CONSULTANT shall take all reasonable precautions in the performance of the Services and shall cause its employees, agents and subcontractors to do the same. CONSULTANT shall be solely responsible for the safety of, and shall provide protection to prevent damage, injury or loss to:
  - (i) all employees of CONSULTANT and its subcontractors and other persons who would reasonably be expected to be affected by the performance of the Services;
  - (ii) other property of CONSULTANT and its employees, agents, officers and subcontractors and all other persons for whom CONSULTANT may be legally or contractually responsible on or adjacent to areas upon which services are performed;
- 7.2 CONSULTANT shall comply, and shall cause its employees, agents, officers and subcontractors and all other persons for whom CONSULTANT may be legally or contractually responsible, with the Standard Operating Procedures, applicable laws, ordinances, rules, regulations, orders of public authorities, sound business practices, including without limitation:
  - those relating to the safety of persons and property and their protection from damage, injury or loss, and
  - (ii) all workplace laws, regulations, and posting requirements, and
  - (iii) implementation of a drug-free workplace policy at least of a standard comparable to, and in compliance with, CFX'S Drug-Free

Workplace Policy; And

(iv) compliance with the public records laws of Chapter 119, Florida Statutes.

- 7.3 CONSULTANT shall be responsible for actual damage and loss that may occur with respect to any and all property located on or about any structures in any way involved in the provision of services by CONSULTANT, whether such property is owned by CONSULTANT, CFX, or any other person, to the extent such damage or loss shall have been caused or brought about by the negligent acts or omissions of CONSULTANT or its employees, agents, officers or subcontractors or any other persons for whom CONSULTANT may be legally or contractually responsible.
- 7.4 CONSULTANT shall ensure that all of its activities and the activities of its employees, agents, officers and subcontractors and all other persons for whom CONSULTANT may be legally or contractually responsible are undertaken in a manner that will minimize the effect on surrounding property and the public. CONSULTANT shall be responsible for any theft or conversion of collected funds by employees of CONSULTANT, or arising out of the negligence or willful misconduct of CONSULTANT;
- 7.5 CONSULTANT shall immediately notify CFX of any material adverse change in CONSULTANT's financial condition, business, prospects, affairs, or operations, or of such change of any partner, or of such change of any shareholder holding greater than a 10% interest in CONSULTANT, or of the existence of any material impairment of rights or ability of CONSULTANT to carry on as its business and operations are currently conducted.
- 7.6 CONSULTANT shall not make any requirement of any employee, or enter into a non-competition agreement with any employee, whether oral or written, of any kind or nature, that would prohibit CONSULTANT's employees from leaving CONSULTANT's employ and taking employment with any successor of CONSULTANT for CFX's toll operations and management services.

## 8. INDEMNITY

To the extent caused by the CONSULTANT, the CONSULTANT shall indemnify, defend and hold harmless CFX and all of its respective officers, CONSULTANT's or employees from actual suits, actions, claims, demands, costs as defined elsewhere herein, expenses (including reasonable attorneys' fees as defined elsewhere herein), judgments, liabilities of any nature whatsoever (collectively, "Claims") arising out of, because of, or due to breach of the Contract by the CONSULTANT (its subcontractors, officers, agents or employees) or due to any negligent or intentional act or occurrence of omission or commission or misconduct of the CONSULTANT (its subcontractors, officers, agents or employees), including without limitation any intentional misappropriation or violation of third party copyright, trademark, patent, trade secret, publicity, or other intellectual property rights or other third party rights of any kind by or arising out of any one or more of the following:

- 8.1 violation of same by CONSULTANT, its subcontractors, officers, agents or employees,
- 8.2 CFX's use or possession of the CONSULTANT Property or CONSULTANT Intellectual Property (as defined herein below),

- 8.3 CFX's full exercise of its rights under any license conveyed to it by CONSULTANT,
- 8.4 CONSULTANT's violation of the confidentiality and security requirements associated with CFX Property and CFX Intellectual Property (as defined herein below),
- 8.5 CONSULTANT's failure to include terms in its subcontracts as required by this Contract,
- 8.6 CONSULTANT's failure to ensure compliance with the requirements of the Contract by its employees, agents, officers, or subcontractors, or
- 8.7 CONSULTANT's breach of any of the warranties or representations contained in this Contract.

CONSULTANT will not be liable for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of CFX or any of its officers, agents or employees. Notwithstanding the foregoing, CONSULTANT's total liability for a breach of contract or warranty shall not exceed the value of this Contract. The parties agree that 1% of the total compensation to the CONSULTANT for performance of each task authorized under the Contract is the specific consideration from CFX to CONSULTANT for CONSULTANT's indemnity and the parties further agree that the 1% is included in the amount negotiated for each authorized task.

## 9. PUBLIC RECORDS

IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 407-690-5000, publicrecords@CFXWay.com, and 4974 ORL Tower Road, Orlando, FL. 32807.

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

- 9.1 Keep and maintain public records required by the public agency to perform the service.
- 9.2 Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied

within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

- 9.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if CONSULTANT does not transfer the records to the public agency.
- 9.4 Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of CONSULTANT or keep and maintain public records required by the public agency to perform the service. If CONSULTANT transfers all public records to the public agency upon completion of the contract, CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONSULTANT keeps and maintains public records upon completion of the contract, CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

Upon receipt of any request by a member of the public for any documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by CONSULTANT in conjunction with this Contract (including without limitation Contract Records and Proposal Records, if and as applicable), CONSULTANT shall immediately notify CFX. In the event CONSULTANT has public records in its possession, CONSULTANT shall comply with the Public Records Act and CONSULTANT must provide the records to CFX or allow the records to be inspected or copied within a reasonable time. Failure by CONSULTANT to grant such public access shall be grounds for immediate unilateral termination of this Contract by CFX for cause. Failure to provide the public records to CFX within a reasonable time may subject the CONSULTANT to penalties under Section 119.10, Florida Statutes.

The obligations in this Section shall survive the expiration or termination of this Contract and continue in full force and effect as set forth above.

## 10. PRESS RELEASES

CONSULTANT shall make no statements, press releases or publicity releases concerning the Contract or its subject matter, or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished under the Contract, or any particulars thereof, including without limitation CFX Property and CFX Intellectual Property, without first notifying CFX and securing its consent in writing.

## 11. OWNERSHIP OF MATERIALS AND INTELLECTUAL PROPERTY RIGHTS

CFX is and shall be and remain the sole owner of all rights, title, and interest in, to, and associated with all plans, documents, software in all forms, hardware, programs, procedures, specifications, drawings, brochures pamphlets, manuals, flyers, models, photographic or design images, negatives, videos and film, tapes, work product, information, data and other items (all whether in preliminary, draft, master, final, paper, electronic, or other form), along with the

media on which they reside and with which they interface for function or aesthetics, that are generated or developed with respect to and in connection with this Contract and the performance thereof (collectively, the "CFX Property"). CFX's ownership of CFX Property includes without limitation all common law, statutory and other rights, title, and interest in, to, and associated with trademark, service mark, copyright, patent, trade secret, and publicity (collectively, the "CFX Intellectual Property"). CONSULTANT, its employees, agents, officers, and subconsultants acknowledge that E-PASS® is CFX's registered trademark name for CFX's electronic toll collection system, and comprises a portion of CFX Intellectual Property.

CONSULTANT, its employees, agents, officers, and subconsultants may not use CFX Property or CFX Intellectual Property in any way, other than in performance of its services under the terms of this Contract, without the prior written consent of CFX, which may be granted or denied in CFX's sole discretion. CONSULTANT, its employees, agents, officers, and subconsultants' access to and/or use of CFX Property and CFX Intellectual Property is without any warranty or representation by CFX regarding same.

For all materials listed hereinabove that are not generated or developed under this Contract or performance hereof, but rather are brought in, provided, or installed by CONSULTANT (collectively, the "CONSULTANT Property"), and the intellectual property rights associated therewith (collectively, the "CONSULTANT Intellectual Property"), CONSULTANT (its employees, officers, agents, and subconsultants, which for purposes of this section shall collectively be referred to as "CONSULTANT") warrants and represents the following:

- 11.1 CONSULTANT was and is the sole owner of all right, title and interest in and to all CONSULTANT Property and CONSULTANT Intellectual Property; **OR**
- 11.2 CONSULTANT has obtained, and was and is the sole holder of one or more freely assignable, transferable, non-exclusive licenses in and to the CONSULTANT Property and CONSULTANT Intellectual Property, as necessary to provide and install the CONSULTANT Property and/or to assign or grant corresponding to CFX all licenses necessary for the full performance of this Contract; and that the CONSULTANT is current and will remain current on all royalty payments due and payable under any license where CONSULTANT is licensee; AND
- 11.3 CONSULTANT has not conveyed, and will not convey, any assignment, security interest, exclusive license, or other right, title, or interest that would interfere in any way with CFX's use of the CONSULTANT Property or any license granted to CFX for use of the CONSULTANT Intellectual Property rights; AND
- 11.4 Subject to Chapter 119, Florida Statutes (Florida Public Records Act), CONSULTANT shall maintain CFX Property and CFX Intellectual Property in strictest confidence and may not transfer, disclose, duplicate, or otherwise use CFX Property or CFX Intellectual Property in any way, other than in performance of its services under the terms of this Contract, without the prior written consent of CFX, which may be granted or denied in CFX's sole discretion. CONSULTANT shall not publish, copyright, trademark, service mark, patent, or

claim trade secret, publicity, or other rights of any kind in any of the Property. In ensuring the confidentiality and security of CFX Property and CFX Intellectual Property, CONSULTANT shall utilize the same standards of protection and confidentiality that CONSULTANT uses to protect its own property and confidential information, but in no instance less than reasonable care plus the standards set forth anywhere in this Contract.

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

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

- 11.5 The statute of limitations on any action arising out of either party's conduct relating to this section, whether such action may be brought by CFX, CONSULTANT, or a third party; or
- 11.6 CFX's continued use (notwithstanding any temporary suspension of use) of any CONSULTANT Property or CONSULTANT Intellectual Property; and
- 11.7 Notwithstanding sections 11.5 and 11.6, the confidentiality and security provisions contained herein shall survive the term of this Contract for ten (10) years beyond 11.5 and 11.6.

## 12. PERMITS, LICENSES, ETC.

Throughout the Term of the Contract, the CONSULTANT shall procure and maintain, at its sole expense, all permits and licenses that may be required in connection with the performance of Services by CONSULTANT; shall pay all charges, fees, royalties, and taxes; and shall give all notices necessary and incidental to the due and lawful prosecution of the Services. Copies of required permits and licenses shall be furnished to CFX upon request.

## 13. CONFLICT OF INTEREST AND STANDARDS OF CONDUCT

CONSULTANT warrants that it has not employed or retained any entity or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Contract, and that CONSULTANT has not paid or agreed to pay any person, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Contract. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

CONSULTANT acknowledges that CFX officials and employees are prohibited from soliciting and accepting funds or gifts from any person who has, maintains, or seeks business relations with CFX in accordance with CFX's Ethics Policy. CONSULTANT acknowledges that it has read the Ethics Policy and, to the extent applicable, CONSULTANT will comply with the aforesaid Ethics Policy in connection with performance of the Contract.

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

CONSULTANT covenants and agrees that it and its employees, officers, agents, and subconsultants shall be bound by the standards of conduct provided in Florida Statutes 112.313 as it relates to work performed under this Contract, which standards will be reference be made a part of this Contract as though set forth in full.

## 14. NONDISCRIMINATION

CONSULTANT, its employees, officers, agents, and subconsultants shall not discriminate on the grounds of race, color, religion, sex, national origin, or other protected class, in the performance of work or selection of personnel under this Contract.

## 15. SUBLETTING AND ASSIGNMENT

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

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

## 16. DISPUTES

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

## 17. PREVAILING PARTY ATTORNEY'S FEES

If any contested claim arises hereunder or relating to the Contract (or CONSULTANT's work hereunder), and either party engages legal CONSULTANT, the prevailing party in such dispute, as "prevailing party" is hereinafter defined, shall be entitled to recover reasonable attorneys' fees and costs as defined herein, from the non-prevailing party.

In order for CONSULTANT to be the prevailing party, CONSULTANT must receive an adjusted judgment or adjusted award equal to at least eighty percent (80%) of its contested claims filed with CFX, failing which CFX will be deemed the prevailing party for purposes of this Contract.

Should this section be judged void, unenforceable or illegal, in whole or in substantial part, by a court of competent jurisdiction, this section shall be void in its entirety and each party shall bear its own attorneys' fees and costs.

## 18. OTHER SEVERABILITY

If any section of this Contract, other than the immediately preceding Prevailing Party Attorneys' Fees section, be judged void, unenforceable or illegal, then the illegal provision shall be, if at all possible, interpreted or re-drafted into a valid, enforceable, legal provision as close to the parties' original intention, and the remaining portions of the Contract shall remain in full force and effect and shall be enforced and interpreted as closely as possible to the parties' intention for the whole of the Contract.

## 19. GOVERNING LAW

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

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

## 20. RELATIONSHIPS

CONSULTANT acknowledges that no employment relationship exists between CFX and CONSULTANT or CONSULTANT's employees. CONSULTANT shall be responsible for all direction and control of its employees and payment of all wages and salaries and other amounts due its employees. CONSULTANT shall be responsible for all reports and obligations respecting such employees, including without limitation social security tax and income tax withholding, unemployment compensation, workers compensation, and employment benefits.

CONSULTANT's employees or any legal tribunal or regulatory agency to believe or conclude that CONSULTANT's employees would be employees of CFX.

Any approval by CFX of a subcontract or other matter herein requiring CFX approval for its occurrence shall not be deemed a warranty or endorsement of any kind by CFX of such subcontract, subconsultant, or matter.

### 21. INTERPRETATION

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

## 22. WAGE RATES AND TRUTH-IN-NEGOTIATIONS CERTIFICATE

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

## 23. SURVIVAL OF EXPIRATION OR TERMINATION

Any clause, sentence, paragraph, or section providing for, discussing or relating to any of the following shall survive the expiration or earlier termination of the Contract:

- 23.1 Trademarks, service marks, patents, trade secrets, copyrights, publicity, or other intellectual property rights, and terms relating to the ownership, security, protection, or confidentiality thereof; and
- 23.2 Payment to CONSULTANT for satisfactory work performed or for termination expenses, if applicable; and
- 23.3 Prohibition on non-competition agreements of CONSULTANT's employees with respect to any successor of CONSULTANT; and
  - 23.4 Obligations upon expiration or termination of the Contract; and
- 23.5 Any other term or terms of this Contract which by their nature or context necessarily survive the expiration or earlier termination of the Contract for their fulfillment.

## 24. OBLIGATIONS UPON EXPIRATION OR TERMINATION OF CONTRACT

- 24.1 Immediately upon expiration or termination of this Contract CONSULTANT shall submit to CFX, upon request, a report containing the last known contact information for each subconsultant or employee of CONSULTANT who performed work under the Contract; and
- 24.2 CONSULTANT shall initiate settlement of all outstanding liabilities and claims, if any, arising out of the Contract and any subcontracts or vending agreements to be canceled. All settlements shall be subject to the approval of CFX.

## 25. INSPECTOR GENERAL

CONSULTANT understands and shall comply with subsection 20.055(5), Florida Statutes, and to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing pursuant to this section. The undersigned further agrees that any subconsultants and

subcontractors to the undersigned participating in the performance of this Contract shall also be bound contractually to this and all applicable Florida statutory requirements.

## 26. ASSIGNMENT

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

## 27. VERIFY

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

## 28. PPROPRIATION OF FUNDS

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

## 29. COMPANIES PURSUANT TO SECTION 287.135 AND 215.473

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

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

## 30. NOTICE TO THE PARTIES

Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered or certified United States mail, with return receipt requested, addressed to the party to whom it is intended, at the place last specified, and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to wit:

CFX: CENTRAL FLORIDA EXPRESSWAY (CFX)

4974 ORL Tower Road Orlando, Florida 32807 ATTN: General Counsel

CENTRAL FLORIDA EXPRESSWAY (CFX)

4974 ORL Tower Road Orlando, Florida 32807

ATTN: Chief of Staff/Public Affairs Officer

CONSULTANT: Thorn Run Partners, LLC

100 M Street, SE – Ste. 750 Washington, DC 20003 Attn: Jim Davenport, Partner

# 31. EXHIBITS

This Contract references the exhibits listed below.

Exhibit "A" Scope of Services

Exhibit "B" Method of Compensation

Exhibit "C" Potential Conflict Disclosure Form

[ SIGNATURES TO FOLLOW ]

IN WITNESS WHEREOF, the authorized signatures named below have caused this instrument to be signed by their respective fully authorized officials, as of the day and year first written above.

# By: Director of Procurement Print Name: Delh Williams THORN RUN PARTNERS LLC By: Signature Print Name Partner Title MANDANA SEDIGH NOTARY PUBLIC 7723173 MY COMMISSION EXPIRES 07-31-2021

Approved as to form and execution, only.

General Counsel for CFX

BT:OTHE L AND BT.

DATE:

# FEDERAL ADVOCACY SERVICES SCOPE OF SERVICES

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

# Legislative Representation.

Upon direction from CFX, the Consultant shall:

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

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

# Revisions

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

End of Scope of Services

# METHOD OF COMPENSATION FEDERAL LOBBYIST SERVICES

# 1.0 PURPOSE

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

# 2.0 COMPENSATION

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

# 3.0 METHOD OF COMPENSATION

- 3.1 The Consultant shall have a documented invoice procedure. The Consultant shall prepare and forward invoices to CFX's Accounts Payable Department.
- 3.2 CFX does not guarantee that all of the services described in the Scope of Services will be assigned during the term of the Contract. Further, the Consultant is providing these services on a non-exclusive basis. CFX, at its option, may elect to have any of the services set forth herein performed by other consultants or CFX staff.
- 3.3 Consultant shall receive and accept the compensation and payment provided in the Contract as full payment, unless otherwise stated, for all labor, materials, expenses, supplies and incidentals required to be provided by the Consultant in the Scope of Services.
- 3.4 The Consultant shall promptly pay all subconsultants/subcontractors and suppliers their proportionate share of payments received from CFX.
- 3.5 If the Consultant elects to receive direct deposit of payments from CFX, CFX will provide the Consultant with the necessary Automatic Deposit Authorization Agreement form.
- 3.6 CFX reserves the right to withhold payment or payments in whole or in part, and to continue to withhold any such payments for work not completed, completed unsatisfactorily, work that is behind schedule or work that is otherwise performed in an inadequate or untimely fashion as determined by CFX or it's designated representative. Any and all such payments previously withheld shall be released and paid to Consultant promptly when the work is subsequently satisfactorily performed. If any defined action, duty or service or part required by the Contract is not performed by the Consultant, the value of such action, duty or service or part thereof will be determined by CFX and deducted from any invoice or monthly

billing period claiming such items for payment. In order to expedite the review, processing, and delivery of each month's invoice to CFX, the Chief Financial Officer, with the approval of the Consultant, may elect to apply any deducted amounts to the following month's invoice total.

# 4.0 ADDITIONAL SERVICES

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

# 5.0 PROJECT CLOSEOUT

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

END OF SECTION

# CONSENT AGENDA ITEM #2

# **MEMORANDUM**

TO: CFX Board Members

FROM: Ben Dreiling, P.E.

Director of Construction

DATE: February 15, 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 (\$) March 2021	Total Amount (\$) to Date*	Time Increase or Decrease
408-159	Atlantic Civil Constructors Corp.	SR 408 EB Mills Ave. Exit Ramp Improvement	\$ 1,470,159.29	\$ -	\$ (332,807.78)	\$ 1,137,351.51	0

TOTAL \$ (332,807.78)

Reviewed By:

Glenn M. Pressimone, P.E., Chief of Infrastructure

<sup>\*</sup> Includes Requested Amount for this current month.

# Project 408-159: SR 408 EB Mills Ave. Exit Ramp Improvement Atlantic Civil Constructors Corp. SA 408-159-0321-01

# Adjustments to Final Quantities for Completed Contract Items

**TOTAL AMOUNT FOR PROJECT 408-159** 

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

INCREASE THE FOLLOWING ITEMS:		
Optional Base, Base Group 15	\$	1,514.40
Superpave Asphaltic Concrete, Traffic Level C	\$	824.50
Asphaltic Concrete Friction Course, Traffic Level C, FC-12.5, PG 76-22	\$	2,952.00
Concrete Sidewalk & Driveways, 6" Thick	\$	2,237.64
Guardrail, Roadway, General, TL-3	\$	162.00
Pull & Splice Box, F&I, 24"x36" Cover Size	\$	4,842.72
Conduit, 6" HDPE Outer Duct w/ 4-1" HDPE & 1-2" PVC, Directional Bore, F&I	\$	991.20
Retro-Reflective Pavement Marker	\$	69.30
Thermoplastic, Standard, White, Solid, 24" for Stop Line	\$ \$	222.30
Pavement Markings, Preformed Tape, Contrast, Solid, 9"	\$	1,015.00
	\$	14,831.06
DECREASE THE FOLLOWING ITEMS:		
Maintenance of Traffic for Roadway Base Repair Contingency	\$	(8,177.90)
Portable Changeable Message Sign, Temp, Contingency	\$	(1,500.00)
Mowing	\$	(2,133.32)
Optional Base, Base Group 01	\$	(1,216.08)
Roadway Repair, Emergency Base Repair Contingency	\$	(17,500.00)
Miscellaneous Asphalt Pavement	\$	(2,237.71)
Detectable Warnings	\$	(24.96)
Rip Rap, Rubble, F&I, Ditch Lining	\$	(222.42)
Bedding Stone	\$	(161.98)
Special Guardrail Post, Encased Post for Shallow Mount	\$	(2.00)
Conduit, F&I, Directional Bore	\$	(991.00)
Conduit, F&I, Above Ground	\$	(3,228.48)
Fiber Optic Cable, 32 SM Fiber, F&I	\$	(213.28)
Pull & Splice Box, F&I, 13"x24" Cover Size	\$	(2,272.68)
Conduit, 4-1" HDPE & 1-2" PVC, Trench or Plow, F&I	\$	(602.00)
Electrical Conductors, Insulated, #4, F&I	\$	(117.45)
Thermoplastic, Standard, White, Solid, 18" for Diagonals & Chevrons	\$	(30.80)
Thermoplastic, Standard, White, 2-4 Dotted Guideline, 6"	\$	(42.90)
Thermoplastic, Standard, White, Solid, 24" for Crosswalk	\$	(174.00)
Thermoplastic, Standard, White, Solid, 24 Tol Crosswalk  Thermoplastic, Standard, Other Surfaces, White, Solid, 6"	\$	(174.00)
Thermoplastic, Standard, Other Surfaces, White, Solid, 8"	\$	(29.78)
Thermoplastic, Standard, Other Surfaces, Willie, Solid, 6"	\$	(25.61)
Pavement Markings, Preformed Tape, Yellow, Solid, 6"	\$	(56.00)
Pavement Markings, Preformed Tape, Contrast, Dotted Guideline, 9"	\$	(105.00)
Dispute Review Board Allowance	\$	(30,000.00)
Work Order Allowance		
work Order Anowance	\$	(276,430.04) (347,638.84)
Subtotal: Adjustments to Final Quantities for Completed Contract Items	\$	(332,807.78)

(332,807.78)

# CONSENT AGENDA ITEM #3

# **MEMORANDUM**

TO: CFX Board Members

FROM: Aneth Williams Anoth Williams

**Director of Procurement** 

DATE: February 19, 2021

SUBJECT: Approval of Final Ranking and Authorization for Fee Negotiations for

Construction Engineering and Inspection Services for

SR 417 Widening From Boggy Creek Road to Narcoossee Road

Project No. 417-151, Contract No. 001750

Letters of Interest for the above referenced project was advertised on November 8, 2020. Twelve (12) responses were received by the November 30, 2020 deadline. Those firms were A2 Group, Inc., Carnahan, Proctor & Cross, Inc., Eisman & Russo, Inc., Elipsis Engineering & Consulting, LLC, HNTB Corporation, Johnson, Mirmiran & Thompson, Inc., K-Factor, Inc., New Millennium Engineering, Inc., RS&H, Inc. and Scalar Consulting Group, Inc.

The Evaluation Committee met on December 11, 2020, and after reviewing the technical proposals shortlisted A2 Group, Inc., Eisman & Russo, Inc. and Elipsis Engineering & Consulting, LLC.

The Technical Committee heard and scored oral presentations on February 19, 2021. After the oral presentations were completed, the Committee prepared its final ranking and the result is shown below:

Ranking	Firm
1	A2 Group, Inc.
2	Elipsis Engineering & Consulting, LLC
3	Eisman & Russo, Inc.

Board approval of the final ranking and authorization to enter into negotiations in ranked order is requested. Once negotiations are completed, approval of the contract will be requested.

Reviewed by:

Ben Dreiling, PE

**Director of Construction** 

Glenn Pressimone, PE

### LOI-001750 Technical Review Committee Meeting – February 19, 2021 Minutes

Technical Review Committee for CEI Services for SR 417 Widening from Boggy Creek Road to Narcoossee Road, Project 417-151, Contract No. 001750 held a duly noticed meeting on Friday, February 19, 2021, commencing at 9:00 a.m. in the Sandpiper Conference Room at the CFX Administration Bldg., Orlando, Florida. Firms presented virtually via MS Teams.

# **Committee Members Present:**

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

# Other Attendees:

Aneth Williams, Director of Procurement Brad Osterhaus, Senior Procurement/QC Administrator

### Presentations / Q and A:

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

A <sup>2</sup> Group, Inc.	09:00 – 09:40 a.m.
Eisman & Russo, Inc.	09:50 – 10:30 a.m.
Elipsis Engineering & Consulting, LLC	10:40 - 11:20  a.m.

### **Evaluation Portion:**

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

FIRM	<u>Points</u>	Ranking
A <sup>2</sup> Group, Inc.	7	1
Elipsis Engineering & Consulting, LLC	8	2
Eisman & Russo, Inc.	15	3

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

There being no further business to come before the Committee, the meeting was adjourned at 11:50 a.m. These minutes are considered to be the official minutes of the Evaluation Committee meeting held Friday, February 19, 2021, and no other notes, tapes, etc., taken by anyone takes precedence.

Submitted by:

Aneth Williams, Director of Procurement

On behalf of the Evaluation Committee these minutes have been review and approved by:

Jack Burch (Feb 19, 2021 12:06 EST)

Jack Burch, Resident Engineer/Project Manager

### TECHNICAL COMMITTEE MEMBER FINAL SUMMARY RANKING

### CONSTRUCTION ENGINEERING AND INSPECTION (CEI) SERVICES FOR SR 417 WIDENING BOGGY CREEK ROAD TO NARCOOSSEE ROAD PROJECT NO. 417-151 CONTRACT NO. 001750

CONSULTANT	GLENN PRESSIMONE (RANK)	BEN DREILING (RANK)	WILL HAWTHORNE (RANK)	JACK BURCH (RANK)	KIM MURPHY (RANK)	TOTAL SCORE	RANKING
A <sup>2</sup> GROUP, INC.	1	2	2	1	1	7	1
EISMAN & RUSSO, INC.	3	3	3	3	3	15	3
ELIPSIS ENGINEERING & CONSULTING, LLC.	2	1	1	2	2	8	2

EVALUATION COMMITTEE MEMBERS

ENN DECOMMAN

BENDT ANG

WILL HAWTHORNE

JACK, BURCH

KIM MURPHY

Friday, February 19, 2021

# CONSENT AGENDA ITEM #4

# **MEMORANDUM**

TO: CFX Board Members

FROM: Aneth Williams Anoth Williams

**Director of Procurement** 

DATE: February 22, 2021

SUBJECT: Approval of Terracon, Inc. as a Subconsultant for Ardaman & Associates, Inc.

for Systemwide Materials Testing and Geotechnical Services

Contract No. 001434

Board approval of Terracon, Inc. as a subconsultant to Ardaman & Associates, Inc. to perform construction materials testing and inspection 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:

Ben Dreiling, PE

Director of Construction

Glenn Pressimone PE

# REQUEST FOR AUTHORIZATION TO SUBLET SERVICES

Consultant: Ardama	an & Associates, Inc.	Date	e: <u>02/22/2019</u>	
CFX Contract Name: Syst	emwide Materials Testing and Geo	otechnical Services (	CFX Contract No.:	001434
Authorization is requested to approval to sublet services to	sublet the services identified below wl	nich are included in the	above referenced Contra	ct. Consultant requests
Subconsultant Name: <u>Ter</u>	racon, Inc. Consultants			
Address: 16	75 Lee Road, Winter Park, Florida 327	89		
Phone No.: 40°	7-618-8350			
Federal Employee ID No.: _	42-1249917			
Description of Services to Be	Sublet: Construction Materials Test	ing and Inspection Serv	ices	
Estimated Beginning Date of	Sublet Services: July	1, 2019	_	
Estimated Completion Date of	of Sublet Services: May	1, 2022	_	
Estimated Value of Sublet Se *(Not to exceed \$25,000 with	ervices*: \$\frac{100,0}{\text{prior}} \text{Board Approval}	000.00	_	
Contract with CFX that are a	nat the proposed subconsultant has been pplicable to the subconsultant and the subconsultant are the subconsul	services to be sublet:	to, the terms and condition	ions in the Consultant's
Requested By:	son Parker Digitally signs	ed by Jason Parker 2.22 16:36:49 -05'00'		
Requested By:	(Signature of Consultant Represe	entative)		
	Senior Engineer / Contrac Title	ct Manager		
Recommended by:(Signat	ure of Appropriate CFX Director/Mana	ager)	Date:	02/22/2021
Approved by:(Signat	Varu Tulluau  ure of CFX Division Chief)		Date:	02/23/2021

# CONSENT AGENDA ITEM #5

# **MEMORANDUM**

TO: CFX Board Members

FROM: Aneth Williams Anoth Williams

**Director of Procurement** 

DATE: March 3, 2021

SUBJECT: Approval of Tindale-Oliver & Associates, Inc. as a Subconsultant for Dewberry

Engineers, Inc. for General Engineering Consultant Services

Contract No. 001145

Board approval of Tindale-Oliver & Associates, Inc. as a subconsultant to Dewberry Engineers, Inc. to provide multi-modal planning 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:

Will Hawthorne P.E. Director of Engineering

Glenn Pressimone, P.E.

# REQUEST FOR AUTHORIZATION TO SUBLET SERVICES

Consultant: Dewberry Engineers, Inc. Date: March 2, 2021
CFX Contract Name: General Engineering Consultant Services CFX Contract No.: 001145
Authorization is requested to sublet the services identified below which are included in the above referenced Contract. Consultant requests approval to sublet services to:
Subconsultant Name: <u>Tindale-Oliver &amp; Associates, Inc.</u>
Address: 1000 North Ashley Drive, Suite 400, Tampa, Florida 33602
Phone No.: (813) 224-8862
Federal Employee ID No.: 59-2929811
Description of Services to Be Sublet: Multi-modal planning services
Estimated Beginning Date of Sublet Services: 3/8/21
Estimated Completion Date of Sublet Services: 12/8/21
Estimated Value of Sublet Services*: \$greater than \$25,000 *(Not to exceed \$25,000 without prior Board Approval)
Consultant hereby certifies that the proposed subconsultant has been advised of, and agrees to, the terms and conditions in the Consultant's Contract with the Authority that are applicable to the subconsultant and the services to be sublet:  Requested By:
Recommended by:    Signature of Appropriate CFX Director/Manager)   Date: 03/03/2021    Approved by:   Signature of Appropriate Chief)   Date: 03/03/2021

Attach Subconsultant's Certificate of Insurance to this Request.

# CONSENT AGENDA ITEM #6

# **MEMORANDUM**

TO: CFX Board Members

FROM: Aneth Williams Aneth Williams

**Director of Procurement** 

DATE: February 18, 2021

SUBJECT: Approval of Second Contract Renewal with Protean Design Group, Inc.

for Miscellaneous Design Consultant Services

Contract No. 001208

Board approval is requested for the second renewal of the referenced contract with Protean Design Group, Inc. in the amount of \$830,000.00 for one year beginning on April 7, 2021 and ending April 6, 2022. The original contract was for three years with two one-year renewals.

The services to be performed under this renewal include providing miscellaneous design consultant services.

 Original Contract
 \$2,500,000.00

 Supplemental Agreement No. 1
 \$ 200,000.00

 First Renewal
 \$ 830,000.00

 Second Renewal
 \$ 830,000.00

 Total
 \$4,360,000.00

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

Reviewed by:

Will Hawthorne, P.E. Director of Engineering

Glenn Pressimone, P.E.

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY CONTRACT RENEWAL NO. 2 AGREEMENT CONTRACT NO. 001208

**THIS CONTRACT RENEWAL NO. 2 AGREEMENT** ("Renewal Agreement"), is made and entered into this 11th day of March 2021, by and between Central Florida Expressway Authority, a corporate body and agency of the State of Florida, hereinafter called "CFX", and Protean Design Group, Inc. hereinafter called the ("Consultant"). CFX and Consultant are referred to herein sometimes as a "Party" or the "Parties".

### WITNESSETH

**WHEREAS**, on October 13, 2016, CFX and the Consultant entered into a Contract Agreement (the "Original Agreement"), with a Notice to Proceed date of April 7, 2017, whereby CFX retained the Consultant to provide miscellaneous consultant design 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. <u>Recitals</u>. The above recitals are true and correct and are hereby incorporated by reference as if fully set forth herein.
- 2. <u>Renewal Term</u>. CFX and Consultant agree to exercise the second renewal of said Initial CFX Contract, which renewal shall begin on April 7, 2021 and end on April 6, 2022 ("Renewal Term"), unless otherwise extended as provided in the Original Contract.
- 3. <u>Compensation for Renewal Term</u>. The Consultant 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 \$830,000.00 ("Renewal Compensation"). The Renewal Compensation shall be in addition to the original compensation paid by CFX to the Consultant 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. <u>Counterpart and Electronic Signatures</u>. 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.

# PROTEAN DESIGN GROUP, 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:	Ву:
	Diego "Woody" Rodriguez, General Counsel
By:	
Print Name:	



# CENTRAL FLORIDA EXPRESSWAY AUTHORITY CONTRACT RENEWAL AGREEMENT NO. 1 CONTRACT NO. 001208

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

### WITNESSETH

WHEREAS, CFX and the Consultant entered into a Contract Agreement (the "Original Agreement") dated October 13, 2016, with a Notice to Proceed date of April 7, 2017, whereby CFX retained the Consultant to provide miscellaneous design consultant services as required by CFX.

WHEREAS, pursuant to Article 2.0 of the Original Agreement, CFX and Consultant wish to renew the Original Agreement for a period of one (1) year;

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, CFX and Consultant agree to a first renewal of said Original Agreement beginning the 7th day of April, 2020 and ending the 6th day of April, 2021 at the cost of \$830,000.00, which increases the amount of the Original Agreement.

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

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

PROTEAN DESIGN GROUP, INC.	CENTRAL FLORIDA EXPRESSWAY AUTHORITY
BY: Winker Olylla Authorized Signature	BY: Director of Procurement
Title: President	
ATTEST: Leboch Albedge (STATE) Secretary or Notary	DEBORAH S. WEDGE MY COMMISSION # GG 149402 EXPIRES: October 24, 2021
If Individual, furnish two witness:	Bonded Thru Notary Public Underwriters
Witness (1) Witness (2)	
Withess (2)	Legal Approval as to Form
	General Coupsel for CFX
	General Couplet for CFA

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY SUPPLEMENTAL AGREEMENT NO. 1

### TO

# AGREEMENT FOR MISCELLANEOUS DESIGN CONSULTANT SERVICES CONTRACT NO. 001208

This Supplemental Agreement No. 1 ("Supplemental Agreement") is entered into this 14<sup>th</sup> day of November 2019, by and between the Central Florida Expressway Authority ("CFX") and Protean Design Group, Inc., ("Consultant").

### WITNESSETH:

WHEREAS, CFX and the Consultant on October 13, 2016, entered into an Agreement whereby CFX retained the Consultant to provide miscellaneous design consultant services; and

WHEREAS, CFX has determined it necessary to increase the Contract amount by \$200,000.00 in order to continue the required services through the term of the Contract; and,

WHEREAS, the Consultant hereby agrees to the increase in the Contract amount and will continue provide the required services with no change in the fees and rates included in the original Contract dated October 13, 2016;

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties agree that the Consultant shall provide the required services as detailed in the Scope of Services included in the original Contract and CFX shall increase the amount of the Contract by \$200,000.00 which shall make the total not-to-exceed amount of the Contract \$2,700,000.00.

CFX and Consultant agree that this Supplemental Agreement No.1 shall not alter or change in any manner the force and effect of the original Contract except insofar as the same is altered and amended by this Supplemental Agreement No.1; that acceptance of this Supplemental Agreement No.1 signifies the Consultant's waiver of all future rights for additional compensation which is not already defined herein.

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IN WITNESS THEREOF, the parties hereto have caused these presents to be executed on the day and year first written above. This Supplemental Agreement No. 1 was approved by CFX Board of Directors on November 14, 2019.

CENTRAL	EL ODIDA	<b>EXPRESSWAY</b>	AUTHODITY
CENTRAL	FLORIDA	EXPRESSWAY	AUTHURITY

By:

Director of Procurement

PROTEAN DESIGN GROUP, INC.

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Title:

Attest:

(Seal)

Approved as to form and execution, only.

General Counsel for CFX

# **AGREEMENT**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY AND PROTEAN DESIGN GROUP, INC.

# MISCELLANEOUS DESIGN CONSULTANT SERVICES CONTRACT NO. 001208

CONTRACT DATE: OCTOBER 13, 2016 CONTRACT AMOUNT: \$2,500,000.00

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

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

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

# FOR

# MISCELLANEOUS DESIGN CONSULTANT SERVICES

CONTRACT NO. 001208

OCTOBER 2016

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

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# CENTRAL FLORIDA EXPRESSWAY AUTHORITY AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into this 13<sup>th</sup> day of October, 2016, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a corporate body and agency of the State of Florida, created by Chapter 2014-171, Laws of Florida, which is codified in Chapter 348, Part III of the Florida Statutes, hereinafter "CFX," and Protean Design Group Inc., hereinafter called "CONSULTANT," registered and authorized to conduct business in the State of Florida, carrying on professional practice in engineering, with offices located at 100 E. Pine Street, Suite 600, Orlando, FL 32801.

### WITNESSETH:

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

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

# 1.0. DEFINITIONS.

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

# 2.0. SCOPE OF SERVICES.

CFX does hereby retain the CONSULTANT to furnish certain miscellaneous design consultant services as identified in this Contract, Contract No. 001208.

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

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

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

# 3.0 TERM OF AGREEMENT AND RENEWALS

Unless otherwise provided herein or by Supplemental Agreement, the provisions of this Agreement will remain in full force and effect for a three (3) year term from the date of the Notice to Proceed for the required project services as detailed in **Exhibit "A,"** with two one-year renewals at CFX's option. The options to renew are at the sole discretion and election of CFX. Renewals will be based, in part, on a determination by CFX that the value and level of service provided by the CONSULTANT are satisfactory and adequate for CFX's needs. If a renewal option is exercised, CFX will provide CONSULTANT with written notice of its intent at least thirty (30) days prior to the expiration of the original term and subsequent renewal, if any.

The CONSULTANT agrees to commence the scheduled project services to be rendered within ten (10) calendar days from the date specified in the written Notice to Proceed from the Project Manager, which Notice to Proceed will become part of this Agreement. The CONSULTANT shall complete scheduled project services within the timeframe(s) specified in Exhibit "A", or as may be modified by subsequent Supplemental Agreement.

# 4.0 PROJECT SCHEDULE

The CONSULTANT agrees to provide Project Schedule progress reports for each project in a format acceptable to CFX and at intervals established by CFX. CFX will be entitled at all times to be advised, at its request, as to the status of work being done by the CONSULTANT and of the details thereof. Coordination shall be maintained by the CONSULTANT with representatives of CFX, or of other agencies interested in the project on behalf of CFX. Either party to the Agreement may request and be granted a conference.

In the event there are delays on the part of CFX as to the approval of any of the materials submitted by the CONSULTANT or if there are delays occasioned by circumstances beyond the control of the CONSULTANT, which delay the scheduled project completion date, CFX may grant to the CONSULTANT by "Letter of Time Extension" an extension of the scheduled project completion date equal to the aforementioned delays. The letter will be for time only and will not include any additional compensation.

It shall be the responsibility of the CONSULTANT to ensure at all times that sufficient time remains within the project schedule within which to complete the services on the project. In the event there have been delays which would affect the scheduled project completion date, the CONSULTANT shall submit a written request to CFX which identifies the reason(s) for the delay, the amount of time related to each reason and specific indication as to whether or not the delays were concurrent with one another. CFX will review the request and make a determination as to granting all or part of the requested extension.

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

# 5.0 PROFESSIONAL STAFF

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

```
Johnson, Mirmiran & Thompson, Inc. (Class 1)
Bentley Architects and Engineers, Inc. (Class 1)
Luke Transportation Engineering Consultants, Inc. (Class 1)
JCR Consulting (Class 1)
Sims Wilkerson Cartier Engineering, Inc. (Class 1)
Lochrane Engineering Incorporated (Class 1) / Survey (Class 2)
Omni Communications, LLC (Class 1) / Survey & SUE Crew (Class 2)
Geotechnical and Environmental Consultants, Inc. (Class 2)
```

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

If, during the term of the Contract, CONSULTANT desires to subcontract any portion(s) of the work to a subconsultant that was not disclosed by the CONSULTANT to CFX at the time that the Contract was originally awarded, and such subcontract would, standing alone or aggregated with prior subcontracts awarded to the proposed subconsultant, equal or exceed twenty five thousand dollars (\$25,000.00), the CONSULTANT shall first submit a request to CFX's Director of Procurement for

authorization to enter into such subcontract. Except in the case of an emergency, as determined by the Executive Director or his/her designee, no such subcontract shall be executed by the CONSULTANT until it has been approved by CFX Board. In the event of a designated emergency, the CONSULTANT may enter into such a subcontract with the prior written approval of the Executive Director or his/her designee, but such subcontract shall contain a provision that provides that it shall be automatically terminated if not approved by CFX Board at its next regularly scheduled meeting.

# 6.0 SERVICES TO BE PROVIDED

The work covered by this Agreement includes the professional services related to planning and engineering as described in **Exhibit "A."** 

All construction plans, documents, reports, studies and other data prepared by the CONSULTANT shall bear the endorsement of a person in the full employ of the CONSULTANT and duly registered by the State of Florida in the appropriate professional category.

After CFX's acceptance of construction plans and documents for the project, the original set of CONSULTANT's drawings, tracings, plans, maps and CADD files shall be provided to CFX, along with one record set of the final plans. The CONSULTANT shall signify, by affixing an endorsement (seal/signature, as appropriate) on every sheet of the record set, that the work shown on the endorsed sheets was produced by the CONSULTANT. With the tracings and the record set of prints, the CONSULTANT shall submit a final set of design computations. The computations shall be bound in an 8-1/2 x 11" format and shall be endorsed (seal/signature, as appropriate) by the CONSULTANT. Refer to Exhibit "A" for the computation data required for this Agreement.

The CONSULTANT shall submit a final set of reports and studies which shall be endorsed (seal/signature) by the CONSULTANT.

The CONSULTANT shall not be liable for use by CFX of said plans, documents, reports, studies or other data for any purpose other than intended by the terms of this Agreement.

# 7.0 COMPENSATION

CFX agrees to pay the CONSULTANT compensation as detailed in **Exhibit "B"**, Method of Compensation, attached hereto and made a part hereof, in the not-to-exceed amount of \$2,500,000.00 for the initial three-year term of this Agreement. Bills for fees or other compensation for services or expenses shall be submitted to CFX in detail sufficient for a proper pre-audit and post audit thereof.

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

Records of costs incurred by the CONSULTANT under terms of this Agreement shall be maintained and made available upon request to CFX at all times during the period of this Agreement and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to CFX upon request. The CONSULTANT agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed. The obligations in this paragraph survive the termination of the Agreement and continue in full force and effect.

Records of costs incurred includes the CONSULTANT's general accounting records and the project records, together with supporting documents and records, of the CONSULTANT and all subconsultants performing work on the project, and all other records of the CONSULTANT and subconsultants considered necessary by CFX for a proper audit of project costs.

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

# 8.0 DOCUMENT OWNERSHIP AND RECORDS

All plans, documents, reports, studies, and/or other data prepared or obtained under this Agreement shall be considered instruments made for services and shall become the property of CFX without restriction or limitation on their use on this project; and shall be made available, upon request, to CFX at any time. CFX will have the right to visit the site for inspection of the work and the drawings of the CONSULTANT at any time. Unless changed by written agreement of the parties, said site shall be based on and in accordance with the specific task order assigned to the CONSULTANT.

Notwithstanding Section 17, entitled "Communications, Public Relations, and Use of Logos," CONSULTANT acknowledges that CFX is a body politic and corporate, an agency of the State of Florida, and is subject to the Public Records Act codified in Chapter 119, Florida Statutes. To the extent that the CONSULTANT is in the possession of documents that fall within the definition of public records subject to the Public Records Act, which public records have not yet been delivered to CFX, CONSULTANT agrees to comply with Section 119.0701, Florida Statutes.

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

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

An excerpt of Section 119.0701, Florida Statutes is below.

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

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

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

The obligations in Section 8.0, Document Ownership and Records, shall survive the expiration or termination of this Agreement and continue in full force and effect.

The CONSULTANT shall allow public access to all documents, papers, letters, or other material as approved and authorized by CFX and subject to the provisions of Chapter 119, Florida

Statutes, and made or received by the CONSULTANT in conjunction with this Agreement. Failure by the CONSULTANT to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by CFX.

### 9.0 COMPLIANCE WITH LAWS

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

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

#### 10.0 WAGE RATES AND TRUTH-IN-NEGOTIATIONS CERTIFICATE

The CONSULTANT hereby certifies, covenants and warrants that wage rates and other factual unit costs as shown in attached **Exhibit "C"**, Details of Costs and Fees, supporting the compensation provided in Section 7.0 are accurate, complete and current as of the date of this Agreement. It is further agreed that said price provided in Section 7.0 hereof shall be adjusted to exclude any significant sums where CFX shall determine the price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. All such adjustments shall be made within one year following the date of final billing or acceptance of the work by CFX, whichever is later.

#### 11.0 TERMINATION

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

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

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

If CFX abandons the work or subtracts from the work, suspends, or terminates the Agreement as presently outlined, the CONSULTANT shall be compensated in accordance with **Exhibit "B"** for work properly performed by the CONSULTANT prior to abandonment or termination of the

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

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

#### 12.0 ADJUSTMENTS

All services shall be performed by the CONSULTANT to the reasonable satisfaction of the Project Manager who shall decide all questions, difficulties and dispute of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount and value thereof. Adjustments of compensation and term of the Agreement, because of any major changes in the work that may become necessary or desirable as the work progresses, shall be left to the absolute discretion of the Executive Director and Supplemental Agreement(s) of such a nature as required may be entered into by the parties in accordance herewith. Disputes between the Project Manager and the CONSULTANT that cannot be resolved shall be referred to the Executive Director whose decision shall be final.

In the event that the CONSULTANT and CFX are not able to reach an agreement as to the amount of compensation to be paid to the CONSULTANT for supplemental work desired by CFX, the CONSULTANT shall be obligated to proceed with the supplemental work in a timely manner for the amount determined by CFX to be reasonable. In such event, the CONSULTANT will have the right to file a claim with CFX for such additional amounts as the CONSULTANT deems reasonable for consideration by the Executive Director; however, in no event will the filing of the claim or the resolution or litigation thereof, through administrative procedures or the courts, relieve the CONSULTANT from the obligation to timely perform the supplemental work.

#### 13.0 CONTRACT LANGUAGE AND INTERPRETATION

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

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

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

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

#### 14.0 HOLD HARMLESS AND INDEMNIFICATION

The CONSULTANT shall indemnify, defend, and hold harmless CFX, and its officers, and employees from any claim, liabilities, losses, damages, and costs, including, but not limited to, reasonable attorneys' fees, caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of the Agreement, The CONSULTANT shall indemnify and hold harmless CFX and all of its officers and employees from any liabilities, losses, damages, costs, including, but not limited to reasonable attorneys' fee, arising out of any negligent act, error, omission by the CONSULTANT, its agents, employees, or subcontractors during the performance of the Agreement, except that neither the CONSULTANT, its agents, employees nor any of its subconsultants will be liable under this paragraph for any claim, loss, damage, cost, charge or expense arising solely out of any act, error, omission or negligent act by CFX or any of its officers, agents or employees during the performance of the Agreement.

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

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

CFX is an agency of the State of Florida whose limits of liability are set forth in Section 768.28, Florida Statutes, and nothing herein shall be construed to extend the limits of liability of CFX beyond that provided in Section 768.28, Florida Statutes. Nothing herein is intended as a waiver of CFX's sovereign immunity under Section 768.28, Florida Statutes, or law. Nothing hereby shall inure to the benefit of any third party for any purpose, which might allow claims otherwise barred by sovereign immunity or operation of law. Furthermore, all of CFX's obligations are limited to the payment of no more than the amount limitation per person and in the aggregate contained in Section 768.28, Florida Statutes, except for payments for work properly performed, even if the sovereign immunity limitations of that statute are not otherwise applicable to the matters as set forth herein.

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

The obligations in Section 14.0, Hold Harmless and Indemnification, shall survive the expiration or termination of this Agreement and continue in full force and effect.

#### 15.0 THIRD PARTY BENEFICIARY

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement, and that the CONSULTANT has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage, gift or any other consideration, contingent upon or

resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted. For the breach or violation of this paragraph, CFX shall have the right to terminate this Agreement without liability, and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission percentage, gift or consideration.

#### 16.0 INSURANCE

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

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

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

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

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

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

- 16.3 Workers' Compensation and Employer's Liability Insurance shall be provided as required by law or regulation (statutory requirements). Employer's Liability insurance shall be provided in amounts not less than \$100,000 per accident for bodily injury by accident, \$100,000 per employee for bodily injury by disease, and \$500,000 policy limit by disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of CFX for all work performed by the CONSULTANT, its employees, agents and subconsultants.
- 16.4 Professional Liability Coverage shall have limits of not less than One Million Dollars (\$1,000,000) Combined Single Limit (CSL) or its equivalent, protecting the selected firm or individual against claims of CFX for negligence, errors, mistakes or omissions in the performance of services to be performed and furnished by the CONSULTANT.

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

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

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

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

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

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

# 17.0 COMMUNICATIONS, PUBLIC RELATIONS, AND USE OF LOGOS

The CONSULTANT agrees that it shall make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying CFX and securing its consent in writing, except as required by law. The CONSULTANT also agrees that it shall not publish, copyright or patent any of the data, documents, reports, or other written or electronic materials furnished in compliance with this Agreement, it being understood that, under Section 8.0 hereof, such data or information is the property of CFX.

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

#### 18.0 STANDARD OF CONDUCT

The CONSULTANT covenants and agrees that it and its employees shall be bound by the standards of conduct provided in Florida Statutes 112.313 and the CFX Code of Ethics as it relates to work performed under this Agreement, which standards will by reference be made a part of this Agreement as though set forth in full. The CONSULTANT agrees to complete the Potential Conflict Disclosure Form with contract execution, annually by July 1, and in the event of changed circumstances. The CONSULTANT agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

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

#### 19.0 DOCUMENTED ALIENS

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

#### 20.0 E-VERIFY CLAUSE

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

#### 21.0 CONFLICT OF INTEREST

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

# During the term of this Agreement:

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

#### 22,0 INSPECTOR GENERAL

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

#### 23.0 PUBLIC ENTITY CRIME INFORMATION AND ANTI-DISCRIMINATION STATEMENT

Pursuant to Section 287.133(2)(a), Florida Statutes, "a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted vendor list."

Pursuant to Section 287.134(2)(a), Florida Statutes, "an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity."

#### 24.0 INTEGRATION

This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations

and discussions of the parties, whether oral or written, and there are no other agreements between the parties in connection with the subject matter hereof. No waiver, amendment, or modification of these terms hereof will be valid unless in writing, signed by all parties and only to the extent therein set forth.

#### 25.0 ASSIGNMENT

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

#### 26.0 AVAILABILITY OF FUNDS

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

#### 27.0 SEVERABILITY

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

#### 28.0 AUDIT AND EXAMINATION OF RECORDS

#### 28.1 Definition of Records:

- (i) "Contract Records" shall include, but not be limited to, all information, communications and data, whether in writing or stored on a computer, computer disks, microfilm, writings, working papers, drafts, computer printouts, field notes, charts or any other data compilations, books of account, photographs, videotapes and audiotapes supporting documents, any other papers or preserved data in whatever form, related to the Contract or the CONSULTANT's performance of the Contract determined necessary or desirable by CFX for any purpose. Proposal Records shall include, but not be limited to, all information and data, whether in writing or stored on a computer, writings, working papers, computer printouts, charts or other data compilations that contain or reflect information, data or calculations used by CONSULTANT in determining labor, unit price, or any other component of a bid submitted to CFX.
- (ii) "Proposal Records" shall include, but not be limited to, any material relating to the determination or application of equipment rates, home and field overhead rates, related time schedules, labor rates, efficiency or productivity factors, arithmetic extensions, quotations from

subcontractors, or material suppliers, profit contingencies and any manuals standard in the industry that may be used by CONSULTANT in determining a price.

- 28.2 CFX reserves and is granted the right (at any time and from time to time, for any reason whatsoever) to review, audit, copy, examine and investigate in any manner, any Contract Records (as herein defined) or Proposal Records (as hereinafter defined) of the CONSULTANT or any subcontractor. By submitting a response to the Request for Proposal, CONSULTANT or any subcontractor submits to and agree to comply with the provisions of this section.
- 28.3 If CFX requests access to or review of any Contract Documents or Proposal Records and CONSULTANT refuses such access or review, or delays such access or review for over ten (10) calendar days, CONSULTANT shall be in default under its Contract with CFX, and such refusal shall, without any other or additional actions or omissions, constitute grounds for suspension or disqualification of CONSULTANT. These provisions shall not be limited in any manner by the existence of any CONSULTANT claims or pending litigation relating to the Contract. Disqualification or suspension of the CONSULTANT for failure to comply with this section shall also preclude the CONSULTANT from acting in the future as a subcontractor of another contractor doing work for CFX during the period of disqualification or suspension. Disqualification shall mean the CONSULTANT is not eligible for and shall be precluded from doing future work for CFX until reinstated by CFX.
- 28.4 Final Audit for Project Closeout: The CONSULTANT shall permit CFX, at CFX's option, to perform or have performed, an audit of the records of the CONSULTANT and any or all subconsultants to support the compensation paid the CONSULTANT. The audit will be performed as soon as practical after completion and acceptance of the contracted services. In the event funds paid to the CONSULTANT under the Contract are subsequently determined to have been inadvertently paid by CFX because of accounting errors or charges not in conformity with the Contract, the CONSULTANT agrees that such amounts are due to CFX upon demand. Final payment to the CONSULTANT shall be adjusted for audit results.
- 28.5 CONSULTANT shall preserve all Proposal Records and Contract Records for the entire term of the Contract and for a period of five (5) years after the later of: (i) final acceptance of the project by CFX, (ii) until all claims (if any) regarding the Contract are resolved, or (iii) expiration of the Proposal Records and Contract Records' status as public records, as and if applicable, under Chapter 119, Florida Statutes.
- 28.6 The obligations in Section 28.0, Audit and Examination of Records, shall survive the expiration or termination of this Agreement and continue in full force and effect.

#### 29.0 NOTICE

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

To CFX:

Central Florida Expressway Authority

4974 ORL Tower Road Orlando, FL 32807

Attn: Chief of Infrastructure

Central Florida Expressway Authority

4974 ORL Tower Road Orlando, FL 32807 Attn: General Counsel

To CONSULTANT: Protean Design Group, Inc.

100 E. Pine Street, Suite 600

Orlando, FL 32801

Attn: Mr. David Reed

Protean Design Group, Inc. 100 E. Pine Street, Suite 600

Orlando, FL 32801

Attn: Ms. Sonya Howard

#### 30.0 GOVERNING LAW AND VENUE

This Agreement shall be governed by and constructed in accordance with the laws of the State of Florida. The parties consent to the exclusive jurisdiction of the courts located in Orange County, Florida. The obligations in Section 30.0, Governing Law and Venue, shall survive the expiration or termination of this Agreement and continue in full force and effect.

#### 31.00 ATTACHMENTS

Exhibit "A", Scope of Services Exhibit "B", Method of Compensation Exhibit "C", Details of Cost and Fees Exhibit "D", Project Organization Chart IN WITNESS WHEREOF, the CONSULTANT and CFX have caused this instrument to be signed by their respective duly authorized officials, as of the day and year first above written. This Contract was awarded by CFX's Board of Directors at its meeting on October 13, 2016.

PROTEAN DESIGN GROUP, INC.	CENTRAL FLORIDA EXPRESSWAY AUTHORITY	
BY: Authorized Signature	BY: Director of Procurement	
Print Name: Kimberly C. Horlander, PE	Print Name: ANeth Williams	
Title: President	Effective Date:	
ATTEST: Secretary or Notary (Seal)	Sonya A. Howard NOTARY PUBLIC STATE OF FLORIDA Comm# FF223460 Expires 7/9/2019	
Approved as to form and execution, only.		
General Counsel for CFX		

# EXHIBIT A SCOPE OF SERVICES

# Exhibit A

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY SCOPE OF SERVICES

FOR

# MISCELLANEOUS DESIGN CONSULTANT SERVICES

CONTRACT 001208 (SSBE)

IN ORANGE COUNTY, FLORIDA

February, 2017

# Exhibit A

# SCOPE OF SERVICES

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### 1.0 GENERAL

#### 1.01 Location

 Projects (and project locations) to be identified on an individual basis per each Work Authorizations

# 1.02 Description

The work to be performed under this contract includes the final design and preparation of construction drawings and specifications for miscellaneous design projects on CFX's system. Potential scope elements may include, but are not limited to the following: minor highway design, major highway design, miscellaneous structures, minor bridge design, traffic engineering studies, traffic signal timing, intelligent transportation systems analysis and design, signing, pavement marking and channelization, lighting, signalization, control surveying, soil exploration, geotechnical classification lab testing, standard foundation studies, architecture and landscape architecture. All work on this contract will be requested and approved by means of individual Work Authorizations

# 1.03 Purpose

- A. The purpose of this Exhibit is to describe the scope of work and responsibilities required in connection with final engineering and final construction drawings and documents for the miscellaneous design services contract. It should be noted that this Exhibit covers a full range of possible scope elements that may arise as part of this contract. This Exhibit is provided as a guide to be used by the CONSULTANT in preparation of individual Work Authorizations as requested by CFX. It is further understood that elements of this Exhibit may not be applicable to all Work Authorizations Work Authorizations approved under this contract
- B. As necessary, the Consultant shall perform those engineering services required for final roadway plans, final bridge plans, and the preparation of a complete environmental resource application including 100% storm water management, final lighting plans, final traffic control plans, final utility, final fiber optic network relocation plans and final signing and pavement marking plans
- C. CFX's Project Manager will provide contract administration, management services and technical reviews of all work associated with the preliminary and final designs

D. It is understood that references throughout this document to items of work and services to be performed are the responsibility of the Consultant unless otherwise expressly stated as the responsibility of others

# 1.04 Organization

A. CFX's Project Manager will administer the Consultant services detailed in this scope. The following sections define the duties and obligations of CFX and the Consultant

# 1.05 Term of Agreement for Miscellaneous Design Services

- A. The term of the Agreement shall be for three (3) years from the notice to proceed. The Agreement is further eligible for two (2), one (1) year renewals following the initial three (3) year period
- B. The Consultant may continue the design efforts while design submittals are being reviewed. Doing so, however, in no way relieves the Consultant of the responsibility to incorporate review comments into the design, nor does it entitle the Consultant to any additional design fees as a result of making changes due to review comments

### 2.0 STANDARDS

- A. The applicable design and construction standards and policies of the Florida Department of Transportation, Federal Highway Administration (FHWA), American Association of State Highway and Transportation Officials (AASHTO), Transportation Research Board (TRB), Standard Building Code, CFX's Design Practices and Standard Notes and CFX's Guidelines for Preparation of Signing and Pavement Marking Plans shall be followed throughout the design and construction of the project unless specifically stated otherwise. The editions of the applicable standards and policies in effect at the time of Contract execution shall be used except as follows:
  - Division II, Construction Details, and Division III, Materials, of the FDOT Standard Specifications for Road and Bridge Construction, 2010 edition, and updates, shall be used for this project
  - The FDOT Design Standards (Index Drawings), latest edition and subsequent interim indexes and updates, shall be used for this project
  - The FDOT Plans Preparation Manual, latest edition, shall be used for this
    project
  - The FDOT Basis of Estimates Handbook, latest edition, shall be used for this
    project
  - The AASHTO Policy on Geometric Design of Highway and Streets (Green Book), 2001 edition, shall be used for this project
  - The FHWA Manual on Uniform Traffic Control Devices (MUTCD), 2009 edition, as amended, shall be used for this project

# 3.0 DESIGN CRITERIA

#### 3.01 General

Design of the projects will be guided by the basic design criteria listed below.

- A. The design criteria listed in this section and Project Design Directives, provided by CFX during the course of the project, may supplement the Project Design Guidelines
- B. As necessary, along with the 30% design review submittal, the Consultant shall provide a tabulation of all applicable drainage and stormwater management criteria from Federal, State and local agencies and indicated which will be used for all segments and portions of the project. Unless otherwise directed by CFX, the Consultant shall use the most restrictive or conservative criteria applicable

# 3.02 Geometry

The following criteria are to be incorporated into the design:

DESIGN ELEMENT	EXPRESSWAY MAIN LANES RAMPS		CROSSROADS/ COLLECTORS	
Design Speed, MPH	70 mph	30 mph (Loop) 50 mph (Diamond) 50 mph (Direct Connection)	30 Local 45 Urban 50 Rural	
Horizontal Alignment a. Max. Curve, Degrees	3°° 30°	24° 45' Loop 8° 15' Diamond 8° 15' Direct Connection	20°	
<ul><li>b. Max.</li><li>Superelevation, ft/ft.</li><li>c. Lane Drop Tapers</li></ul>	0.10 70:1	0.10 50:1 25:1 Toll Plazas	0.05 Urban 0.10 Rural	
d. Transitions	Use spirals for curves>1° 30'	Use spirals for curves>1° 30'	Use spirals for curves>1°30'	
Vertical Alignment a. Max. Grade b. Vertical Curvature	3%	5% to 7% (30 mph) 4% to 6% (40 mph) 3% to 5% (50 mph)	5% Arterial Rural 7% Collector Rural	
(K) (K=Len./%grade change) Crest	506 FDOT 290 to 540 AASHTO	31 (30 mph) 136 (50 mph) 110 to 160 Other (AASHTO)	31 to 136	
Sag	206 FDOT 150 to 200 AASHTO	31 (30 mph) 136 (50 mph) 90 to 110 Other (AASHTO)	37 to 96	
c. Decision Sight Dist., ft.	Refer to AASHTO	N/A	N/A	
Cross Sections a. Lane Widths, ft.	12	12 dual lanes 15 min. single lane	12 inner lanes 12-16 outer lanes	
<ul><li>b. Shoulder width, ft.</li><li>Right</li><li>Left</li></ul>	4-Lane 12 (10 paved) 8 (4 paved)	Single Lane 6 (4 paved) 6 (2 paved)	8 (4*paved) 8 (2 paved)	
			• min. 5' paved	

		ES RAMPS	CROSSROADS/ COLLECTORS
Right Left  Bridges, ft. Right Left	6-Lane 12 (10 paved) 12 (10 paved) 4-Lane 10	Dual Lane 10* (8* paved) 8 (4 paved) (* add 2' for interstate) Single-Lane 6 6	FDOT
Right Left c. Cross Slopes 1. Traffic Lanes	6-Lane 10 10 2% (4-lane) 3% or tbd (6-	Dual Lane 10 6	2%
<ol> <li>Left Shoulder</li> <li>Right Shoulder</li> <li>Median Width (4-lane), ft. (E.O.P./E.O.P.)</li> </ol>	lane) 5% 6% 64 (typical) 26 w/concrete barrier (min)	5% 6% N/A	5% 6% 22,40
Horizontal Clearance  Vertical Clearance, ft. a. Over Roadway* b. Overhead Signs c. Over Railroad	PPM 1-2.11 16.5 17.5 23.5	PPM 1-2.11 16.5 17.5 23.5	PPM 1-2.11 16.5 17.5

# Ramp Operations

- a. Two thousand (2,000) ft. between entrance and exit terminals full freeways
- b. Six hundred (600) ft. between exit and entrance terminals
- c. Single Lane Entrance Ramp Parallel
- d. Exit Ramp Taper of 550 ft. (3° divergence)

# Right of Way

- a. Ten (10) ft. from back of walls or limit of construction
- b. Two (2) ft. from back of sidewalk on frontage roads
- c. Drainage and construction easements as required
- d. Limited access right-of-way limits per Index 450
- e. Right of way limits for ramps is based upon limit of construction plus 10 feet

# 3.03 Bridge and Other Structures

A. All plans and designs shall be prepared in accordance with the latest standard specifications adopted by AASHTO, FDOT Structures Design Guidelines (Manual), FDOT Structures Detailing Manual, FDOT Plans Preparation Manual, FDOT Standard Drawings, FDOT Indices, etc., except as otherwise directed by CFX

# 4.0 WORK PERFORMED BY CONSULTANT

The Consultant shall be responsible for the work outlined in this Section. The work shall conform to the standards, criteria, and requirements of this Scope of Services. As this is a miscellaneous design services contract, it is understood that not all of the work outlined in this Section is applicable to every project task authorization.

# 4.01 Design Features

- A. The work required for this project includes preparation of final construction drawings and specifications as well as the preparation of a complete environmental resource application (as necessary)
- B. Major elements of the work include the following:

The work to be performed under this contract includes the final design and preparation of construction drawings and specifications for miscellaneous design projects on CFX's system. Potential scope elements may include, but are not limited to the following: minor highway design, major highway design, miscellaneous structures, minor bridge design, traffic engineering studies, traffic signal timing, intelligent transportation systems analysis and design, signing, pavement marking and channelization, lighting, signalization, control surveying, soil exploration, geotechnical classification lab testing, standard foundation studies, architecture and landscape architecture. All work on this contract will be requested and approved by means of individual Work Authorizations

# 4.02 Governmental Agencies

A. The Consultant shall coordinate with and assist in securing the approval of all interested agencies involved. These agencies include, but are not necessarily limited to City of Orlando, Orange County, FDOT, Florida's Turnpike Enterprise, City of Apopka etc.

# 4.03 Surveys and Mapping

A. All Surveying and Mapping shall be performed under the direction of a Surveyor and Mapper properly licensed with the Florida Board of Professional Surveyors and Mappers, under Chapter 472, Florida Statutes. The Consultant shall review data provided by CFX and provide complete field surveys suitable for contract document preparation

Survey activities shall be coordinated with the Consultant's design team including roadway, drainage, structures, geotechnical, and other disciplines as required

Field surveys shall be performed with minimal disruption of the normal traffic flow for the project. Field personnel shall use safety devices such as warning signs, traffic cones, warning lights, and safety vests at all times, according to the Florida Department of Transportation requirements. Advanced warning signs required when survey crews are working on CFX's system shall be made with 3M Scotchlite Diamond Grade Fluorescent orange roll up sign sheeting

# B. Alignment

- 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 1400foot intervals along alignment
- 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

- Set at all alignment points, left and right at 90-degrees to alignment where possible, outside the proposed construction limits
- Show obstructions where alternate references are set

#### D. Bench Levels

 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
- The Consultant will obtain existing pavement elevations and crossslopes along the inside travel lane and outside travel lane every 100'
- Additional topographic and DTM surveys, as needed for the project design, are the responsibility of the Consultant. These may include existing water bodies and pavement elevations

# F. Drainage Survey

Perform a drainage survey including pipe type, location, size and flow line elevations as needed for design

# G. Underground Utilities

Locate all underground utilities, horizontally and vertically as flagged by respective utility companies or a qualified utility marking consultant. Provide soft excavation verifications as needed to verify location and at utility conflict areas

# H. Side Street Surveys

Perform topographic and utility surveys of side streets as needed for engineering design

# Bridge Survey

Provide bridge survey data as needed for engineering design

J. Jurisdictional Line Surveys

Perform Jurisdictional Line Surveys as needed for engineering design and permitting

K. Geotechnical Surveys

Locate and/or stake boring locations as needed for geotechnical investigations

L. Right-of-Way Ties

Locate right-of-way limits for construction purposes. No new right-of-way is anticipated

M. Prior to construction, the Consultant shall re-flag and reset alignment control points, references and benchmarks and meet with the construction contractor to review these points

# 4.04 Geotechnical Investigation

- A. The Consultant shall perform a geotechnical investigation of the project in accordance with the requirements of CFX
- B. Investigations shall be performed with minimal disruption of the normal traffic flow for the project. Field personnel shall use safety devices such as warning signs, traffic cones, warning lights, and safety vests at all times, according to Authority requirements. The Consultant shall adhere to all traffic control requirements when taking samples on existing roadways. A traffic control plan and permit may be required. Any advanced warning signs required when crews are working on CFX system shall be made with 3M Scotchlite Diamond Grade Fluorescent orange roll up sign sheeting
- C. The work includes, but is not limited to, identifying roadway structural section requirements, LBR testing, design methods for the selected foundation, external stability evaluation at proprietary retaining walls, groundwater and estimated seasonal high groundwater level, estimate of the maximum rate of pumping that will be required at sites that dewatering is anticipated, certification of all under drain and pond draw down times, pH and resistivity conditions requiring design considerations, shrinkage/swell characteristics, slope stability and benching in embankment/excavation locations, recommendation for methods of rock excavation, potential imported borrow sites and availability of structural section materials, location and depths of unsuitable material (muck), and design alternatives based on geotechnical findings; design values for active, at rest, and passive soil pressures; allowable design loads or pressures for each foundation type, corrosion testing for structures and design of foundations for sign structures
- D. The results of the geotechnical investigation shall be contained in a Geotechnical Report which shall be submitted to CFX's Project Manager for approval. The geotechnical investigation shall include all necessary laboratory testing of materials
- Upon approval of the Geotechnical Report, the Consultant shall proceed with preparation of the pavement and foundation designs
- F. Boring profiles shall be included on cross-section sheets in the contract plans and include the boring number, station, offset, soil legend, observed water table, design high water elevation and geotechnical consultant's address. A boring number and target symbol shall be shown at the appropriate location on the roadway and bridge plans

G. Roadway core samples shall be taken to determine the existing pavement section. The Consultant shall submit a plan to CFX for location approval

# 4.05 Contamination Impact Analysis

- A. The Consultant shall perform a contamination impact analysis of the project in accordance with the applicable rules and regulations of the FDOT Project Development and Environment Guidelines, Chapter 22, the Florida Department of Environmental Protection (FDEP), and all other pertinent State or Federal agencies having jurisdiction, and the requirements of CFX
- B. At a minimum, the Consultant shall conduct a windshield survey along the project corridor to identify any new sources of environmental contamination not reported in the referenced document(s)
- C. The testing of any sites including the use of ground penetrating radar, if required to complete the design and/or construction of the project, will be added to the Scope of Services by Supplemental Agreement

# 4.06 Pavement Design

- A. The Consultant shall prepare the pavement design as appropriate in accordance with the requirements of the FDOT for mainline and ramps
- B. The proposed pavement design recommendation, resulting from the Consultant's analysis of the various alternatives, shall be contained in a Pavement Design Summary

# 4.07 Governmental Agency and Public Meetings

- A. Except as may be provided elsewhere in this Scope of Services, the Consultant shall have appropriate representatives present at such meetings, conferences or hearings as CFX may direct to secure necessary approvals and/or support of the project by county, municipal, or other governmental agencies. If so directed, the Consultant shall also have appropriate representatives present at meetings or conferences of CFX, its Chairman or staff
- B. The Consultant shall assist CFX in presentations to various parties. The Consultant shall prepare exhibits pertaining to basic roadway and noise wall elements. CFX will prepare exhibits pertaining to aesthetic treatments and other design issues if applicable

### 4.08 Environmental Permits

- A. CFX's Project Manager will review, coordinate and submit the applications for all environmental permits, including EPA's NPDES General Permits for Stormwater Discharges from Construction Sites. The Consultant shall provide all information, permit applications and data relating to Stormwater Management and Floodplain Impacts required for the permits to CFX. (CFX will be responsible for preparing all of the Wetlands and Protected Species analysis and documentation required for the permits). The Consultant shall:
  - Attend the pre-application meetings and site visits with CFX and regulatory agencies
  - Provide additional information requested at the pre-application by regulatory agencies for permits
  - Provide aerial maps at a 1"=400' scale which include SCS soils data, 100-year floodplain limits and proposed project
  - Provide all plans, calculations, sketches and reports required for permits except as described above
  - Provide copies of all drainage calculation, including pond routing nodal diagrams, for the project
  - Assist CFX in responding to any requests for additional information made by regulatory agencies after the permit application is submitted
  - 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
  - Prepare a list of adjacent landowners along with address and ninedigit zip code at all wetland encroachment sites
  - 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

 Determine extent of floodplain impacts, if any, and provide compensatory flood stages as required

#### 4.09 Utilities

#### A. Location

The Consultant shall obtain available utility mapping and information and identify all utilities within the general project limits to determine potential conflicts and relocations. Where a potential conflict exists, the Consultant may need to arrange to probe or expose ("pothole") the utility and survey the horizontal and vertical location of the utility line. The Consultant shall coordinate this effort with involved utility companies. All existing utilities shall be shown on appropriate preliminary construction plans. The Consultant's notes shall include the name and telephone number of contact persons for the construction contractor's use

# B. Utility Coordination

- The Consultant shall prepare reproducible utility adjustments plans based on information provided by respective utility companies
- 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
- 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
- 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

- The Consultant shall obtain utility work schedules from the utility companies
- 7. The Consultant shall prepare the Utility Certification Letter certifying that all utility negotiations (full execution of each agreement, approved utility work schedule, technical special provisions written, etc.) have been completed with arrangements made for utility work to be undertaken and completed as required

# 4.10 Roadway Design

- A. Generally, a Typical Section Package will not be prepared. Rather, typical sections will be prepared as part of the 30% submittal and submitted to CFX for review and approval
- B. The Consultant shall design the geometrics for this project using the design standards included in the scope. The design elements shall include, but not be limited to, the horizontal and vertical alignments, cross section template development, lane width, should widths, cross slopes, borders, sight distance, side slopes, lane transitions, superelevations, features of intersections, ramp terminal details, interchanges, and limited access points
- C. As necessary, the Consultant shall prepare designs and contract documents for the roadway improvements, including, but not necessarily limited to:
  - 1. Cover sheet (key sheet)
  - 2. Summary of Pay Items
  - General notes
  - 4. Summary Quantities sheets
  - Project Layout
  - 6. Typical roadway sections
  - 7. Plans and profiles (plans at 1"=50' scale)
  - 8. Interchange plans, profiles, alignment and plan index sheets
  - 9. Interchange layout plans
  - 10. Intersection plans and profiles or spot elevations

- 11. Interchange curve and coordinate data sheets
- 12. Ramp Terminal Details
- 13. Crossroad plans and profiles (1"= 50' scale)
- 14. Cross-sections (with pattern plan) (1" = 20' horiz.) (1" = 5' vert.)
- 15. Earthwork quantities
- 16. Traffic Control Sheets
- 17. Utility Adjustment Sheets
- 18. Details
  - 19. Special provisions
  - 20. Special specifications

# 4.11 Structures Design

- A. Prior to commencement of final design, the consultant shall prepare a Bridge Concept Memorandum which documents a limited range of structural alternatives and identifies preferred alternatives. Specifically, the alternatives to be examined include Type III vs Type IV beams, slope walls vs vertical retaining walls, and concrete vs steel H-piles
- B. The Consultant shall prepare designs and contract documents for structural design including, but not necessarily limited to the following items
  - 1. Complete Bridge designs will be provided for all bridges
  - 2. Retaining walls
  - 3. Box Culverts
  - 4. Slope protection
  - 5. Approach slabs
  - 6. Details
  - 7. Summary quantity tables
  - 8. Special provisions and specifications
  - 9. Stage construction-sequencing details (if applicable)
  - 10. Sign\Signal structures
  - Sound walls
  - 12. The Consultant shall perform Load Rating Analysis per FDOT criteria for any box culverts and bridges at the 90% design phase. The Load Rating Analysis packages shall be submitted to FDOT for their review and approval

# 4.12 Drainage Design

- A. As part of the drainage design requirements, the Consultant shall:
  - Perform all drainage design in accordance with the approved criteria from Section 3.01C
  - 2. Finalize the pond design at the 30% submittal
  - Have its chief drainage engineer available at the scheduled (biweekly/monthly) team meetings to review progress and discuss problems
  - Notify CFX's Project Manager immediately if any deviation from approved design criteria is anticipated
  - Provide drainage/contour maps used in the development of the drainage design to CFX for use in scheduled reviews. These maps will be returned to the Consultant along with review comments at the end of the review process
  - Provide copies of its internal quality control comments and calculations at the scheduled reviews

Critical duration analysis is not included in this effort and, if required, shall be added to the scope by Supplemental Agreement. A pond siting report is not required

- B. The Consultant shall prepare designs and contract documents for drainage features including, but not necessarily limited to:
  - Connector pipes
    - 2. Drainage structure details
    - 3. Storm drain and culvert profiles and/or drainage cross-sections
    - 4. Lateral ditches/channels
    - Outfall ditches/channels
  - 6. Retention/detention ponds/exfiltration system

#### 4.13 Roadway Lighting

- A. The Consultant shall provide a complete set of final roadway lighting documents in accordance with FDOT and CFX design criteria. The work shall include coordination with the local utility to provide electrical service. Plan sheet scale shall be at 1"=50' scale
- CFX will provide a cut sheet for the type of lighting fixtures to be used for this project

# 4.14 Traffic Engineering

- A. Traffic Data will be furnished by CFX
- B. Maintenance of Traffic Plans
  - 1. The Consultant shall prepare maintenance of traffic plans at scale of 1"=100' to safely and effectively move vehicular and pedestrian traffic during all phases of construction. The designs shall include construction phasing of roadways ingress and egress to existing property owners and businesses, routing, signing and pavement markings, and detour quantity tabulations. Special consideration shall be given to the construction of the drainage system when developing the construction phases. Positive drainage must be maintained at all times
  - The Consultant shall investigate the need for temporary traffic signals, signs, alternative detour roads, arrow boards, flagging operations, and the use of materials such as sheet pilings in the analysis. A certified designer who has completed the FDOT training course shall prepare the maintenance of traffic plan
  - 3. Traffic shall be maintained during all phases of project construction at all locations determined by CFX and other governmental agencies. This includes meeting with the governmental agencies which may be impacted by the maintenance of traffic plans

# 4.15 Signing Plans

- A. The Consultant shall prepare designs and contract documents for final signing plans including layouts showing the locations of ground mounted and overhead signs, special sign details, lighting, and any structural or foundation requirements in accordance with applicable design standards. Any requirements for electric service shall be coordinated with the local electric utility
- B. CFX will provide conceptual signing plans for the project
- CFX will provide preliminary aesthetic input for the architectural modification of standard FDOT details for sign structures
- D. Plan sheets will be developed at a scale of 1"=50' (11"x17" format)

# 4.16 Pavement Marking Plans

- A. The Consultant shall prepare designs and contract documents for final pavement marking plans, including striping, crosswalks, intersection details, reflective pavement markers and traffic delineators
- B. The pavement marking design will be shown on the same plan sheets as the signing design

# 4.17 Right-of-Way Surveys

A. No additional right-of-way is anticipated as part of this contract. Should right-of-way surveys become necessary, a Supplemental Agreement will be made to address the scope required for the services

#### 4.18 Cost Estimates

A. The Consultant shall prepare and submit to CFX construction cost estimates at the 60%, 90%, 100%, Pre-Bid and Bid Set submittals outlined herein. The estimate shall be based on the current unit prices as applied to the latest concept of the proposed construction

# 4.19 Special Provisions and Specifications

A. The Consultant shall prepare and submit at the 90% level special provisions, special specifications, and technical special provisions for items, details and procedures not adequately covered by CFX's Technical Specifications

# 4.20 Fiber Optic Network (FON)

# A. Fiber Optic Infrastructure Plans

- 1. The site construction plans shall be developed at a scale of 1" equals 50 feet. These plans shall include the relocation of all existing fiber optic ductbanks, cables, manholes, and pull boxes in areas where the existing locations conflict with construction. The Consultant shall identify existing physical features and utilities that will impact the construction and installation of the equipment. The Consultant shall review and modify standard FON details as necessary
- 2. Fiber optic network (FON) plans shall include the following:
  - a. Roadway geometry
  - b. Rights-of-Way
  - Existing utilities within the right-of-way including CFX's FON
  - d. Physical features affecting construction/installation (sign structures, light poles, fences, etc.)
  - 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
  - 1. Connectivity with the FON backbone conduits
  - Fiber cable design to include link loss budget calculations, per Corning standard recommended procedure
  - n. Fiber cable routing summaries, fiber cable allocation charts, and splice details and tables
  - o. Controller cabinet, CCTV pole, and foundation details
  - p. Power interconnect, calculations to support conductor size, and details. Power conductors to each device location shall be sized to the capacity of the main breaker in the cabinet
  - q. Grounding
  - r. Table of quantities
  - s. Special notes

- Maintenance of fiber operations (protection of existing FON through all phases of construction and cutover phasing to ensure continuous operation of existing ITS devices)
- All existing and proposed FON to be included and shown with roadway cross sections and drainage cross sections
  - No relocation of existing CCTV sites are anticipated under this contract nor or any new CCTV sites anticipated as part of the proposed improvements
  - w. Relocation of existing data collection sensor (DCS) sites and any necessary structures, foundations, attachment details, power service, fiber optic connections, and cabinets (standard details provided), in the event existing DCS would not survive project construction
  - x. No relocation of existing DMS sites are anticipated under this contract nor or any new DMS sites anticipated as part of the proposed improvements
  - y. Conversion of any existing ITS devices within the project limits from point-to-point fiber optic modems to gigabit Ethernet field switches, relocation of video encoders from the mainline toll plazas to the CCTV cabinets, and upgrading other cabinet equipment as needed to meet current CFX ITS equipment standards
- The Consultant shall take the following information into consideration when developing the site construction plans:
  - Minimize utility conflicts and adjustments
  - b. Minimize traffic impact
  - c. Accessibility and ease of equipment maintenance
  - 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
  - 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.)
  - Leased conduits in CFX FON duct bank that are occupied by the fiber optic cable of other agencies or entities

# B. Splice and Cable Routing Details

- The Consultant shall provide splicing detail diagrams to document fiber optic splices within and between manholes, ITS devices, tollbooths, and other junction points
- 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
- The Consultant shall provide cable routing diagrams and fiber allocation charts in CFX's standard format to document the functional connectivity between fiber optic conduit and all splices

# C. Maintenance Of Fiber Operations

- The Consultant shall provide a plan of action to ensure existing fiber optic network is not disrupted during construction operations
- The Consultant shall determine the sequence of fiber optic cable splices to minimize disruption to communications

3.

#### D. Inside Plant Plans

- 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
- The Consultant shall sign and seal final inside-plant construction plans by a licensed professional Electrical Engineer registered in the state of Florida. The inside-plant construction plans shall be subject to the review and approval of CFX

#### Quantities and General Notes

 Standard notes shall be included to provide direction to the contractor and provide pay item descriptions as necessary E. Standard CFX specifications will be provided to the Consultant. The Consultant shall review the specifications and modify them as necessary

#### 4.21 Toll Plazas

A. This contract may include modifications and/or improvements to any of the existing toll plazas, including any associated equipment and gantry systems

# 4.22 Post-Design Services (as necessary)

- A. Services shall begin after authorization by CFX. The Consultant compensation for post-design services may be added by Supplemental Agreement and shall be at an hourly rate, inclusive of overhead, profit and expenses, and exclusive of travel. No compensation will be made for correction of errors and omissions
- B. The Consultant shall support the post design process as follows:
  - Answer questions relative to the plans, typical sections, quantities and special provisions
  - Make any necessary corrections to the plans, typical sections, quantities, notes, etc., as may be required
  - Attend pre-award meeting with construction contractor, CFX, and CFX's CEI
- C. The Consultant shall, prior to the pre-bid conference, be prepared to walk the project with CFX's CEI to discuss the plans and details. The Consultant shall be prepared to attend the pre-bid conference and respond to questions related to the plans, details, and special provisions
- D. The Consultant shall prepare any addenda required to clarify the work included in the construction contract documents. Addenda may be required based on the project inspection with the CEI, or questions developed in the pre-bid conference, or conditions discovered by bidders during the bid period
- E. The Consultant shall be available to respond to questions in the field that may arise relative to the plans, details or special provisions during construction. The Consultant shall periodically visit the project site to observe the progress of construction on the project. This visit will not replace the formal construction inspection by CFX. It is intended to provide the opportunity of the design team to observe whether the work is being performed in general conformance with the project plans. Written memos of all such field trips shall be submitted to CFX within five working days of the trip

- F. The Consultant shall review and approve shop drawings for structural, lighting, signing, traffic signal elements, and toll plaza shop drawings. This work will include the erection procedure plans, review proposals for substitutions, develop supplemental agreements, and provide other engineering services required to facilitate construction of the project. Reviews will be conducted and returned within two weeks from receipt of information
- G. The Consultant shall appoint a responsible member of the firm to be the contact person for all post-design services. The person should be continually available during the course of construction for review of design plans
- H. The Consultant shall make every reasonable effort to process any material presented for review in a prompt manner recognizing a construction contract is underway
- I. The Consultant shall attend partnering meetings as requested by CFX's Project Manager. The Consultant shall also attend progress/coordination meetings as requested by CFX's Project Manager including, but not limited to, the Notice to Proceed meeting
- J. The Consultant shall prepare Record Drawings in electronic format following completion of the construction phase. CFX shall provide all As-Built drawings from the Contractor / CEI to the Consultant for their use in preparation of the Record Drawings

#### 5.0 MATERIALS FURNISHED BY CFX OR ITS DESIGNEE

#### 5.01 Record Documents

- A. CFX will provide the Consultant, within ten working days of a written request, the following items:
  - 1. Available record drawings of existing conditions
  - 2. Available right-of-way plans of existing conditions
  - Current list available to CFX of owners of all affected properties within the section
  - Sample plans to be used as guidelines for format, organization and content
  - Title searches of all affected properties for use by the Consultant in the preparation of the right-of-way maps
  - 6. Contract unit prices from latest CFX construction projects

#### 5.02 Traffic Data

- A. CFX will provide the following design traffic data:
  - 1. Current and design year ADT
  - 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
  - AVI Percentages

#### 5.03 Other

 Utility designates for the FON and roadway lighting within CFX right ofway

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

# 6.01 Right-of-Way Acquisition

A. If necessary, CFX, or its designee, will review all right-of-way plans, parcel sketches and legal descriptions prepared by the Consultant. CFX will handle all appraisals, negotiations, relocations, condemnation, and property settlements

# 6.02 Utility Agreements

A. CFX will help coordinate and support the Consultant's acquisition of information required for utility agreements

#### 6.03 Public Involvement

A. CFX will provide a moderator for all required public meetings and provide guidelines for the Public Involvement aspects of the project. The need for public meetings or public hearings will be determined by CFX. CFX will be responsible for mailings and advertisements for the public meetings

# 6.04 Contracts and Specifications Services

A. CFX will prepare the necessary bid documents for the construction contract using plans, technical special provisions, and special specifications prepared by the Consultant

# 6.05 Post-Design Services

 CFX will be the principal initial contact for post-design questions and answer questions on a limited scope

#### 6.06 Environmental Permits

- A. CFX will review and submit the environmental permit applications and coordinate with the Consultant on requests for additional information from the regulatory agencies
- CFX will stake wetland lines and coordinate agency site visits. CFX will also prepare the wetland and wildlife analysis and documentation for the permits

# 6.07 Conceptual Specialty Design

- A. CFX will provide a conceptual major guide signing plan as necessary
- B. CFX will provide conceptual aesthetics design and treatments for structures

#### 7.0 ADMINISTRATION

As this is a miscellaneous design services contract, it is understood that not all of the work outlined in this Section is applicable to every project task authorization.

# 7.01 Central Florida Expressway Authority

- CFX's Project Manager will administer the Consultant services detailed in this scope
- 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
- Review and evaluate the Consultant's requests for extension of time and supplemental agreements and recommend appropriate action
- 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:
  - 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
  - Maintain an adequate staff of qualified support personnel to perform the work necessary to complete the project
  - Establish internal accounting methods and procedures for documenting and monitoring project costs
  - 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:
  - Determine and highlight critical path work from initial plans as work progresses
  - 2. Identify progress against schedule for each identified work item
  - Forecast completion dates from current progress
  - Highlight rescheduled work in any area which is out of required sequence
  - Highlight rescheduling that has overloaded any physical area that requires more resources than originally allocated
  - 6. Forecast future conflicts in any area

# 7.05 Work Progress

A. The Consultant shall meet with CFX's Project Manager on a bi-weekly basis (or more often if necessary) and provide written progress reports which describe the work performed on each task. The dates and times of these meetings will be established by CFX. Two working days prior to each progress meeting, the Consultant shall provide CFX's Project Manager with a draft copy of the Progress Report and a typewritten agenda for the meeting. The Consultant shall prepare typewritten meeting minutes and submit them to CFX's Project Manager within five working days after the meeting. The minutes shall indicate issues discussed and the resolution or action required to resolve any issues

#### 7.06 Schedule

A. Within twenty (20) calendar days after receipt of the Notice to Proceed, the Consultant shall provide a schedule of calendar deadlines in a format prescribed by CFX

# 7.07 Project Related Correspondence

A. The Consultant shall furnish copies of all written correspondence between the Consultant and any party pertaining specifically to this project to CFX for its records within one (1) week of the receipt or mailing of said correspondence. The Consultant shall record and distribute the minutes of all meetings pertaining to this project

# 7.08 Quality Control

A. The Consultant has total responsibility for the accuracy and completeness of the plans and related designs prepared under this project and shall check all such material accordingly. Consultant shall have a quality control plan in effect during the entire time work is being performed under the Contract. The plan shall establish a process whereby calculations are independently checked, plans checked, corrected and back checked. All plans, calculations, and documents submitted for review shall be clearly marked as being fully checked by a qualified individual other than the originator. The FDOT plan review checklist shall be attached and appropriate items checked

#### 7.09 Consultant Personnel

A. The Consultant's work shall be performed and/or directed by the key personnel identified in Exhibit "D". Any changes in the indicated key personnel or the Consultant's office in charge of the work shall be subject to review and approval by CFX

#### 7.10 Site Visit

A. The Consultant shall arrange a site visit within ten (10) calendar days of receipt of written Notice to Proceed. Consultant personnel assigned to perform the work on the project shall attend. CFX representatives will be present. Within seven calendar days of the site visit, the Consultant shall issue to CFX a brief written report including observations, discussions, and any questions pertaining to the scope or level of effort of the project. The purpose of this visit is to acquaint key personnel with the details and features of the project to facilitate the design process

# 7.11 Acceptability of the Work

A. The plans, design, calculations, reports and other documents furnished under this Scope of Services shall conform to the "standards-of-the industry" quality as acceptable to CFX. The criteria for acceptance shall be a product of neat appearance, well organized, accurate and complete, technically and grammatically correct, checked in accordance with the approved Quality Control program, and have the maker and checker identified. The minimum standard of appearance, organization and content of drawings shall be similar to the type produced by the Florida Department of Transportation and CFX

# 7.12 Design Documentation

- A. The Consultant shall submit any design notes, sketches, worksheets, and computations to document the design conclusions reached during the development of the construction contract documents to CFX for review
- B. The design notes and computations shall be recorded on 8-1/2" x 11" computation sheets, appropriately titled, numbered, dated, indexed and signed by the designer and checker. Computer output forms and other oversized sheets shall be folded or legibly reduced to 8-1/2" x 11" size. The data shall be bound in a hard-back folder for submittal to CFX
- C. Three copies of the design notes and computations shall be submitted to CFX with each review submittal. When the plans are submitted for 90% review, the design notes and computations corrected for any CFX comments shall be resubmitted. At the project completion (bid set), a final set of the design notes and computations, sealed by a Professional Engineer, registered in the State of Florida, shall be submitted with the record set of plans and tracings

- D. Design notes and calculations shall include, but are not necessarily limited to, the following data:
  - 1. Field survey notes and computations
  - 2. Design criteria used for the project
  - 3. Geometric design calculations for horizontal alignment
  - Vertical geometry calculations
  - Right-of-way calculations
  - Drainage computations
  - 7. Structural design calculations
  - 8. Geotechnical report
  - 9. Hydraulics Report for each bridged stream crossing
  - Earthwork calculations not included in the quantity computation booklet
  - 11. Calculations showing cost comparisons of various alternatives considered
  - 12. Calculations of quantities
  - 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

- Review and coordination of the Consultant's work by CFX shall continue through the project development process
- B. Formal submittals for review shall be made to CFX when the plans have been developed to the following levels of completion:
  - 1. Preliminary Engineering (Memorandum) (8 sets required)
  - 30% Roadway Plans (20 sets and 1 .PDF CD/DVD required)
  - 30% Bridge and Structural Plans (20 sets and 1 .PDF CD/DVD required)
  - 60% Roadway and specifications, Geotechnical Report (20, 20, and 8 sets and 1 .PDF CD/DVD required)
  - 5. 60% Bridge Plans required only on Category 2 bridges
  - 90% Bridge and Structural Plans (20 sets and 1 .PDF CD/DVD required)
  - 90% Roadway and specifications (20 and 20 sets and 1 .PDF CD/DVD required)
  - 100% Roadway, Bridge and specifications, Geotechnical Report (20, 20, 20 and 8 sets and 1 .PDF CD/DVD required)
  - Pre-Bid Plans (8 sets and 1 .PDF CD/DVD required) (1 set signed and sealed reports)
  - Bid Set (1 set signed and sealed plans) (1 .PDF of all plans, CADD files of all plans)
- C. Formal review submittals shall include copies as listed above. 8-1/2" x 11" and 11" x 17" documents do not require reproducible copies
- Preparation and distribution of roadway and ROW plans to other than CFX will not be made until approved by CFX
- E. The format of review submittal plans shall conform to the FDOT Plans Preparation Manual, except as amended by CFX

- F. Due to the compact schedule of the design, review and construction process, any modification to the agreed submittal dates will require a letter from the Consultant to CFX giving:
  - The reason for the delay
  - The design components impacted
  - 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
    - Location map shown complete with destinations, ranges and townships
    - Beginning and ending stations shown
    - Any equations on project shown
    - d. Project numbers and title shown
    - e. Index shown
  - 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
    - 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
- 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
- Proposed and existing limited access right-of-way lines
- h. Existing ground line
- i. Proposed profile grade
- Type, size and horizontal location of existing utilities
- k. Drainage structures and numbers are shown
- Drainage ponds are shown

#### Cross Sections

- a. Existing ground line
- Preliminary templates at critical locations (not to exceed 500 feet)
- c. Existing utilities shown

# 6. Interchange Layout and Ramp Profiles

- a. Geometric dimensions
- Proposed profile grades

# 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:

# Key Map

- Project description and number shown
- b. Equations, exceptions and bridge stations shown
- c. North arrow and scale included
- Consultant and CFX sign-off included
- e. Contract set index complete
- f. Index of sheets updated

# 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

# 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
- All work shown should be within right-of-way or proposed easement
- e. Drainage structures and numbers are shown
- Drainage ponds shown
- g. Curve data and superelevation included
- Pavement edges, shoulders and dimensions shown
- Project and construction limits shown
- j. Bridges shown with beginning and ending stations
- k. General Notes

# Drainage Structures

- a. Drainage structures plotted and numbered
- Station location and offsets identified

## Cross Sections

- a. Templates are shown at all stations
- 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
- Profiles finalized
- Coordinate data shown
- Limited access right-of-way lines shown
- e. Curve data shown
- Bearings and bridges shown
- g) Cross roads, frontage roads, and access roads shown
- h) Intersection details shown

#### 8. Traffic Control Plans

## Utility Adjustments

- Signing and Pavement Marking Plans
- 11. Highway Lighting Plans
- 12. Selective Clearing and Grubbing (if required)

# 7.17 90 % Bridge and Structure Plan Submittal

A. At completion of this phase, design and plan development should be approximately 90 percent complete. The Consultant shall refer to FDOT Structural Design Guidelines for plan contents and submittal requirements

# 7.18 90% Roadway Plan Submittal

- A. At completion of this phase, design and plan development should be approximately 90 percent complete. The following material shall be developed and submitted for review:
  - Key Map
    - a. Length of Project with exceptions shown
    - b. Index of sheets updated
  - Drainage Maps
    - a. Drainage divides, areas and flow arrows shown
    - b. Elevation datum and design high water information shown
    - Disclaimer and other appropriate notes added
  - 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
    - Angle and stationing for intersections
    - 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
  - Existing and proposed utilities are shown
- 6. Soil Borings
  - 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
  - Volumes computed and shown
- Utility Relocation Plans
  - a. Utility relocation plans prepared
- Traffic Control Plans
- 10. Signing and Pavement Marking Plans
- 11. Highway Lighting Plans
- 12. Selective Clearing and Grubbing (if required)
- 7.19 100% Roadway, Bridge, Structural and Right-of-Way Plans
  - At the completion of this phase, the design, plans and special provisions shall be 100 percent complete

## 7.20 Schematic Toll Plaza Plans

- A. At the completion of this phase, the toll plaza layout should be complete with lane and island configurations shown. The following material shall be developed and submitted for review:
  - Plan view of toll plaza with dimensions showing lane and island widths with column configuration and express lane layout
  - East and west elevation views of the canopy including concept for overhead structure for express lane ETC equipment
  - 3. Construction phasing plan
  - 4. Description of improvements required for the administration building to accommodate installation of toll equipment

#### 7.21 60% Toll Plaza Plans

- A. At the completion of this phase, the toll plaza plans should be developed to 60% completion. The following material, as a minimum, shall be developed and submitted for review:
  - 1. Key sheet with sheet index
  - Architectural, structural, mechanical, plumbing and electrical general notes, abbreviations and symbols
  - Plan view
  - Exterior elevations
  - Canopy sections and details
  - Canopy reflected ceiling plan
  - 7. Roof plan and details
  - 8. Canopy framing and foundation plan
  - 9. Concrete pavement plan
  - Express lane overhead structure plan and details
  - 11. Tunnel sections and details
  - Structural sections and details
  - 13. Plumbing plan and diagrams
  - 14. Lighting plan
  - 15. Power plan and diagram
  - 16. Lightning protection plan and details
  - 17. Demolition and construction phasing plan
  - Plans and details for improvements to the administration building (as needed by discipline) to accommodate installation of toll equipment

- All calculations and design data to support the design for each discipline
- 20. Technical specifications

# 7.22 90% and 100% Toll plaza plans

- A. At the completion of this phase, the toll plaza plans should be developed to 90% and 100% completion respectively. The material listed with the 60% submittal shall be developed along with additional details required for construction and submitted for review.
- The 90% and 100% submittals shall also include the technical specifications and special provisions required for construction
- A detailed estimate of construction costs shall be included with the 100% submittal.
- 7.23 Pre-Bid Plans
- 7.24 Bid Set

# CONSENT AGENDA ITEM #7

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

# **MEMORANDUM**

TO: CFX Board Members

FROM: Aneth Williams Aneth Williams

Director of Procurement

DATE: February 19, 2021

SUBJECT: Approval of Contract Award to Kiewit Infrastructure South Company for

SR 417 Bridge over SR 528

Project No. 417-751, Contract No. 001759

An Invitation to Bid for the above referenced project was advertised on January 17, 2021. Five (5) responses were received by the February 17, 2021 deadline.

Bid results were as follows:

	<u>Bidder</u>	<b>Bid Amount</b>
1.	Kiewit Infrastructure South Company	\$1,369,850.00
2.	Sema Construction, Inc.	\$1,375,250.00
3.	M & J Construction, Inc.	\$1,475,011.80
4.	Superior Construction Company Southeast LLC	\$2,988,250.00
5.	Southern Road & Bridge LLC	\$3,029,000.00

The engineer's estimate for this project is \$707,516.00. Included in the Five-Year Work Plan is \$4,824,000.00.

The work consists of providing all labor, materials, equipment and incidentals necessary to replace the SR 417 Ramp bridge bearings over SR 528 in Orange County Florida.

The Engineer of Record has reviewed the low bid submitted by Kiewit Infrastructure South Company and has determined that two bid items were unbalanced. It has been determined that the engineer's estimate was low on some of the unit prices and that the low bid from Kiewit Infrastructure South Company is not an outlier. Specifically, if the average of the four (4) bidder's prices for the mobilization and maintenance of traffic lump sum items and a revised unit price for the bearing assemblies are used in the engineer's estimate, the total would be \$1,329,158.60. Therefore, the low bid would be approximately 3.1 % below the engineer's estimate and within the acceptable tolerance of 15%.

The Procurement Department has evaluated the bids and has determined that the bid from Kiewit Infrastructure South Company to be responsible and responsive to the bidding requirements. Board award of the contract to Kiewit Infrastructure South Company in the amount of \$1,369,850.00 is requested.

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

Reviewed by:

Will Hawthorne, PE Director of Engineering Glenn Pressimone, PE

# **CONTRACT**



KIEWIT INFRASTRUCTURE SOUTH CO.

SR 417 BRIDGE OVER SR 528 PRESERVATION

PROJECT NO. 417-751 CONTRACT NO. 001759

CONTRACT DATE: MARCH 11, 2021 CONTRACT AMOUNT: \$1,369,850.00

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 BRIDGE OVER SR 528 PRESERVATION

**PROJECT NO. 417-751 CONTRACT NO. 001759** 

**MARCH 2021** 

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Plans

#### **CONTRACT**

This Contract No. 001759 (the "Contract"), made this 11<sup>th</sup> day of March 2021, between <u>CENTRAL FLORIDA EXPRESSWAY AUTHORITY</u>, hereinafter called CFX and <u>Kiewit Infrastructure South Co.</u>, of <u>8403 South Park Circle</u>, <u>Suite 655</u>, <u>Orlando</u>, <u>FL. 32819</u>, 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 Performance and Payment 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. 417-751, SR 417 Bridge over SR 528 Preservation, as detailed in the Contract Documents and any addenda or modifications thereto. Contract time for this project shall be 105 calendar days. The Contract Amount is \$1,369,850.00. This Contract was awarded by the Governing Board of CFX at its meeting on March 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

Director of Procurement	
KIEWIT INFRASTRUCTURE SOUTH CO.	
0.	
Signature	
Print Name	
Title	
A TYPE OTE	(0, 1)
ATTEST:	(Seal)
DATE:	
ved as to form and execution, only.	
, ,	
General Counsel for CFX	
	KIEWIT INFRASTRUCTURE SOUTH CO.  Signature  Print Name  Title  ATTEST:  DATE:  ved as to form and execution, only.

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Attachment A - Disputes Review Board Three Party Agreement

#### 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 multispan 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

<sup>\*</sup>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 Older 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 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.

- 3.1.4.2. Work Items Requiring Shop Drawings: The requirement for submittals for certain items may be waived by other provisions of these specifications; i.e. items constructed from standard drawings or those complying with alternate details for pre-stressed members under Section 450. Precast components that are not detailed in the Plans or Standard Drawings will require approved shop drawings. The Contractor shall review the Plans and Specifications to determine the submittals required. The CEI may request a submittal for any item the CEI considers necessary.
- 3.1.4.3 Schedule of Submittals: The Contractor shall prepare and submit to the CEI a schedule of submittals identifying the Work for which Contractor intends to submit shop drawings, the type, approximate number of drawings or other documents and approximate dates of anticipated submittals with due regard to processing requirements herein. The schedule of submittals shall be submitted to the CEI within 15 days of the start of the date of the Notice to Proceed, and prior to the submission of any shop drawings.

Subsequent submittals shall be coordinated with construction schedules to allow sufficient time for review, approval and re-submittal as necessary.

- 3.1.4.4 Style, Numbering and Material of Submittals:
- 3.1.4.4.1 Drawings: The Contractor shall furnish such shop drawings as may be required to complete the structure in compliance with the design shown on the Plans. Drawings shall be prepared or reproduced on permanent material made for the purpose, such as tracing cloth, plastic, mylar or xerographic bond paper, hereafter referred to as masters. The size of the sheets shall be no larger than 24 by 36 inches. Each sheet shall be numbered consecutively for the series and the sheet number shall indicate the total number in the series (e.g., 1 of 12, 2 of 12, ...12 of 12). Each shop drawing shall contain the following items as a minimum requirement: the CFX Project Number, drawing title and number, a title block showing the names of the fabricator or producer and the Contractor for which the Work is being done, the initials of the person(s) responsible for the drawing, the date on which the Work was performed, the location of the item(s) within the Project, the Contractor's approval stamp and initials and when applicable, the signature and embossed seal of the Contractor's Florida registered Specialty Engineer. The absence of any of this minimum information may be cause for a request for a re-submittal.
- 3.1.4.4.2 Other Documents: Documents other than drawings, such as trade literature, catalogue information, calculations and manuals shall be original copies or clearly legible photographic or xerographic copies. The size shall be no larger than 11 by 17 inches. Such information shall be clearly labeled and numbered and the sheet numbers shall indicate the total number of sheets in the series (e.g., 1 of 12, 2 of 12, .... 12 of 12).

All documents shall be bound and submitted with a Table of Contents cover sheet. The cover sheet shall list the total number of pages and appendices and shall also include the CFX Project Number, a title to reference the item(s) for which it is submitted, the name of the firm

and person(s) responsible for the preparation of the document, the Contractor's approval stamp and initials and, when applicable, the signature and embossed seal of the Contractor's Florida registered Specialty Engineer.

The calculations or manuals shall clearly outline the design criteria and shall be appropriately prepared and checked. The internal sheets shall include the complete CFX Project Number and initials of the persons responsible for preparing and checking the document.

Trade literature and catalogue information shall be clearly labeled with the title, CFX Project Number, date and name of the firm and person responsible for that document displayed on the front cover.

Documents other than drawings may be on xerographic paper or glossy paper material as appropriate. For the purpose of this specification, the term "shop drawings" shall be deemed to include these other documents.

### 3.1.4.5 Submittal Paths and Copies:

The Contractor shall submit one (1) set of prints along with one (1) set of reproducible copies of each series of shop drawings to the CEI with a copy of the letter of transmittal sent to the Consultant. For Work requiring other documentation (e.g. catalog data, material certifications, material tests, procedure manuals, fabrication / welding procedures, and maintenance and operating manuals) a minimum of eight (8) copies of each document shall be submitted with the prints. The mailing address of the Consultant will be furnished by CFX.

For other miscellaneous design and/or structural details furnished by the Contractor in compliance with the contract: The Contractor shall submit to the CEI one (1) set of prints along with one (1) reproducible copy of each series of shop drawings and four (4) copies of applicable calculations. Each print and the cover sheet of each copy of applicable calculations shall be signed and sealed by the Contractor's Specialty Engineer.

### 3.1.4.6 Processing of Shop Drawings:

3.1.4.6.1 Contractor Responsibility for Accuracy and Coordination of Shop Drawings: The Contractor shall coordinate, schedule and control all submittals including those of its various subcontractors, suppliers and engineers to provide for an orderly and balanced distribution of the Work.

All shop drawings prepared by the Contractor or its agents (subcontractor, fabricator, supplier and etc.) shall be coordinated, reviewed, dated, stamped, approved and signed by the Contractor prior to submission to the CEI for review. The Contractor's signed approval of drawings submitted shall confirm the Contractor has verified the Work requirements, field

measurements, construction criteria, sequence of assembly and erection, access and clearances, catalog numbers and other similar data. Each series of drawings shall indicate the specification section and page or drawing number of the Contract plans to which the submission applies. The Contractor shall indicate on the shop drawings all deviations from the Contract drawings and shall itemize all deviations in the letter of transmittal. Likewise, whenever a submittal does not deviate from the Contract plans, the Contractor shall also clearly state so in the transmittal letter.

The Contractor shall schedule the submission of shop drawings to allow for a 15-calendar day review period by the CEI. The review period commences upon receipt of the Contractor's submittal by the CEI and terminates upon transmittal of the submittal back to the Contractor by the CEI. The Contractor shall adjust its schedules so that a 10-calendar day period is provided for each re-submittal.

It is incumbent upon the Contractor to submit shop drawings to facilitate expeditious review. Voluminous submittals of shop drawings at one time are discouraged and may result in increased review time. The submittal/re-submittal clock will start upon receipt of a valid submittal. A valid submittal shall include all the minimum requirements outlined in 3.1.4.4. CFX will not be liable to the Contractor for resulting delays, added costs and/or related damages when the actual time required for approval extends beyond the 45- and 30-day review periods shown above.

Only CEI approvals of miscellaneous submittals and red ink stamps on shop drawings are valid and any Work performed in advance of approval will be at the Contractor's risk.

3.1.4.6.2 Scope of Review by CEI: The review of the shop drawings by the CEI shall be for conformity to the Contract requirements and intent of design and not for the adequacy of the means, methods, techniques, sequences and procedures proposed for construction. Review by the CEI does not relieve the Contractor of responsibility for dimensional accuracy to assure field fit and for conformity of the various components and details.

## 3.2 Coordination of Plans and Specifications

The Plans, Specifications and all supplementary documents are integral parts of the Contract and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete Work. In addition to the Work and Materials specifically identified as being included in any specific pay item, additional incidental Work not specifically mentioned will be included in such pay item when shown in the Plans or if indicated or obvious and apparent as being necessary for proper completion of the Work.

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: <a href="http://www.motadmin.com/find-a-training-provider.aspx">http://www.motadmin.com/find-a-training-provider.aspx</a>

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.
- Where utilities cross pipe trenches transversely within the excavation area but not within positions from which relocation or removal is necessary, the utility owner will be responsible for providing and effecting all reasonable measures for their support and protection during construction operations. The Contractor shall cooperate with the utility owner in the owner's effecting such support and protective measures. The Contractor shall be responsible for any damage to the utility that is caused by neglect or failure on the Contractor's part to cooperate and to use proper precaution in performing the Work.

In the event that a temporary relocation of a utility or a particular sequence of timing in the relocation of a utility is necessary, such relocation shall be done only as directed by CFX. CFX will not be responsible for utility adjustments or temporary relocation work or for the conditions resulting therefrom, where such adjustments are: not necessitated by the construction of the Project; or done solely for the benefit or convenience of the utility owner or its contractor (or the Contractor where Contractor's construction procedures are considered by CFX to be other than normal); or not shown on the approved Plans for the utilities relocation or the construction.

5.9.6.2 Cooperation with Utility Owners: The Contractor shall cooperate with the utility owners in the removal and/or rearrangement of utilities. If utility service is interrupted due to construction operations, the Contractor shall immediately notify the owner of the utility and the CEI and cooperate in the prompt restoration of

service. If water service is interrupted, the Contractor's repair work shall be continuous until the service is restored. No Work shall be undertaken around fire hydrants until the local fire authority has approved provisions for continued service.

5.9.6.3 Utility Adjustments: Utility adjustments and reconstruction Work may be underway during the Work. The Contractor shall effectively cooperate, coordinate, and schedule utility adjustments with utility construction crews in maintaining utility service. The Contractor shall use caution when working adjacent to utilities that have been relocated. The Contractor shall repair, at Contractor's expense, damages to relocated utilities resulting from Contractor's operations.

5.9.6.4 Weekly Meetings: Contractor shall conduct weekly meetings on the job site with all the affected utility companies and the CEI in attendance to coordinate Project construction and utility relocation, and shall submit a list of all attendees one week in advance to the CEI for approval.

Provide the approved Work Progress Schedule and Work Plan for the project to document the schedule and plan for road construction and utility adjustments. When utility relocations no longer affect construction activities, the Contractor may discontinue the meetings with the CEI's approval.

- 5.10 Responsibility for Damages, Claims, etc.
  - 5.10.1 Contractor to Provide Defense Against Claims and Suits: To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless CFX (its officers, agents and employees) from and against claims, damages, losses and expenses (including but not limited to attorneys' fees), arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom. However, the indemnification herein provided is only to the extent caused in whole or in part by any act, omission or default of the Contractor, subcontractor, sub-subcontractor, materialman, agents of any tier, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described herein. The monetary limit on the indemnification provided herein to CFX or its officers, agents and employees shall be the total amount of the Agreement in aggregate or the insurance policy amount as required in article 5.11 herein, whichever is greater. The total amount of the Agreement in aggregate will be determined by the date the notice of claim was received by CFX.

In claims against any person or entity indemnified under this subarticle by an

employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this subarticle shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

The obligations of the Contractor under this subarticle shall not extend to the liability of the Engineer of Record, the Engineer of Record's consultants and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, designs or specification, or (2) the giving of or the failure to give direction or instructions by the Engineer of Record, the Engineer of Record's consultants and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

The Contractor's obligation to indemnify and pay for the defense or, at CFX's option, to participate and associate with CFX in the defense and trial of any damage claim or suit and any related settlement negotiations, shall arise within seven (7) days of receipt by the Contractor of the CFX notice of claim for indemnification to the Contractor. The notice of claim for indemnification will be served by certified mail. The Contractor's obligation to indemnify within seven (7) days of receipt of such notice will not be excused because of the Contractor's inability to evaluate liability or because the Contractor evaluates liability and determines the Contractor is not liable or determines CFX is solely negligent. The Contractor will pay all costs and fees related to this obligation and its enforcement by CFX.

This Contract shall not create in the public or any member thereof, a third party beneficiary hereunder or to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

5.10.2 Guaranty of Payment for Claims: The Contractor guarantees the payment of all just claims for Materials, Equipment, supplies, tools or labor and other just claims against the Contractor or any subcontractor in connection with the Contract. Final acceptance and payment by CFX will not release the Contractor's bond until all such claims are paid or released.

### 5.11 Insurance

Anything contained herein to the contrary notwithstanding, during the term of the Contract and for such additional time as may be further required, the Contractor shall provide, pay for and maintain in full force and effect insurance outlined in subarticles 5.11.1 through 5.11.9

below for coverage at not less than the prescribed minimum limits of liability, covering the Contractor's activities and those of any and all subcontractors (including officers, directors, employees or agents of each and their successors). All insurance shall be provided through companies authorized to do business in the State of Florida and considered acceptable by CFX.

Upon execution of the Contract, the Contractor shall furnish to CFX, Certificates of Insurance bearing an original manual signature of the authorized representative of the insurance company. No Work shall commence under the Contract unless and until the required Certificates of Insurance described herein are in effect and have been approved by CFX. The Certificate of Insurance shall be issued to CFX and shall reference the complete and correct Project number, as well as the full and complete name of each insurance company, including city and state of domicile, as listed by A.M. Best Company. All insurance must be underwritten by insurers that are qualified to transact business in the State of Florida and that have been in business and have a record of successful and continuous operations for at least five (5) years. Each shall carry a rating of "A-" (excellent) and a financial rating of Class XII, or as approved by CFX, as defined by A.M. Best and Company's Key Rating Guide. Such Certificates shall provide that in the event of cancellation, non-renewal or material reduction in coverage (including any material reduction of limits of Liability), the insurer will provide thirty (30) days prior notice of such cancellation, non-renewal or material reduction by certified mail to CFX. In addition, certified true copies of all policies shall be provided to CFX upon specific written request. Renewal Certificates of Insurance for all policies shall be submitted by the Contractor so that they are received by CFX no later than thirty (30) calendar days prior to the expiration of existing insurance coverage. Failure by the Contractor to meet this required timeframe will result in suspension of partial payments on monthly estimates until the certificates are received and accepted by CFX.

All insurance coverage required of the Contractor shall be primary and noncontributory over any insurance or self-insurance program carried by CFX.

Excluding Professional and Pollution liability insurance, no liability insurance required herein shall be written under a "claims made" form.

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

Failure of CFX to demand such certificate or evidence of full compliance with these insurance requirements or failure of CFX to identify a deficiency from evidence provided will not be construed as a waiver of the CONTRACTOR's obligation to maintain such insurance.

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

Neither approval by CFX of insurance supplied by the Contractor nor disapproval of that insurance, shall release the Contractor of full responsibility for liability, damages and accidents as otherwise provided by the Contract. The requirement of insurance will not be deemed a waiver of sovereign immunity by CFX.

If CONTRACTOR fails to obtain the proper insurance policies or coverages, or fails to provide CFX with certificates of same, CFX may obtain such polices and coverages at CONTRACTOR's expense and deduct such costs from CONTRACTOR payments. Alternately, CFX may declare CONTRACTOR in default for cause.

5.11.1 Schedule of Required Limits for Workers' Compensation, General Liability and Automobile Liability:

<b>Contract Amount</b>	Workers' Comp/ Employer's Liability	General Liability (per occurrence/ aggregate)	Automobile Liability
Up to \$3 million	Statutory / \$500,000	\$1,000,000 / \$2,000,000	\$1,000,000
\$3 million and Up	Statutory / \$1,000,000	\$5,000,000 / \$10,000,000	\$5,000,000

5.11.2 Worker's Compensation and Employer's Liability Insurance: The Contractor shall maintain coverage for its employees in accordance with the laws of the State of Florida. The amount of coverage shall not be less than the limits of insurance as required in subarticle 5.11.1.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of CFX for all work performed by the Contractor, its employees, agents and subcontractors.

5.11.3 Comprehensive General Liability Insurance: Coverage shall be maintained by the Contractor providing Comprehensive General Liability Insurance as provided on Insurance Services Office form GC 00 01 or an equivalent thereof. Limits of Liability for Bodily Injury Liability and/or Property Damage Liability shall not be less than the limits of insurance as required in Section 5.11.1.

The policy shall contain an endorsement providing for Aggregate Limits of Liability to be on a per Project basis. This endorsement shall state that Aggregate Limits as specified herein apply separately and specifically to this Project.

Products and Completed Operations coverage, evidenced by a Certificate of

Insurance, shall be maintained for a period of not less than two (2) years following completion of the Work to which the Contract applies.

If watercrafts are to be used in the performance of any Work under the Contract, watercraft operations shall be covered under the Comprehensive General Liability policy providing limits in accordance with the General Liability requirements.

If the Project involves Work or operations by the Contractor within the limits of the railroad right-of-way, including any encroachments thereon from Work or operations in the vicinity of the railroad right-of-way, the railroad shall be named as an Additional Insured under this policy.

CFX, its employees, members, officers, agents, consultants, and successors shall be named as Additional Insured under this policy. Insurance Services Office endorsement CG 20 10 (11 85 edition date) or both CG 20 10 and CG 20 37(10 01 edition dates) forms (if later edition dates are used), shall be used to meet these requirements and a photocopy of same shall be provided with the Certificate.

5.11.4 Comprehensive Automobile Liability Insurance: The Contractor shall maintain coverage applicable to the ownership, maintenance, use, loading and unloading of any owned, non-owned, leased or hired vehicle issued on Insurance Services Office form CA 00 01 or its equivalent. The amount of coverage shall not be less than the limits of insurance as required in subarticle 5.11.1.

This policy shall include coverage for liability assumed under contract (if not provided for under the Comprehensive General Liability policy). In the event the Contractor does not own automobiles, the Contractor shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or through a separate Business Auto Liability policy.

CFX, its employees, members, officers, agents, consultants, and successors shall be named as Additional Insured under this policy.

5.11.5 Umbrella/Excess Liability Insurance: If an Umbrella or Excess Liability Insurance policy is used to attain the required limits of liability, the sum of the limits provided by the Primary insurance and the Umbrella or Excess Liability insurance must at least equal the Limits of Liability as required by subarticle 5.11.1.

The Umbrella/Excess Liability Insurance policy or Excess policy shall afford coverage equivalent to the required coverage as set forth in this Article 5.11. Policy inception date must also be concurrent with the inception dates of the underlying General Liability and Automobile Liability policies.

Umbrella or Excess policy Certificate of Insurance shall stipulate the underlying limits of liability applicable. A photocopy of the endorsement so evidencing shall be attached to the Certificate.

CFX, its employees, members, officers, agents, consultants, and successors shall be named as Additional Insured under this policy.

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>	Minimum Limit	<b>Maximum Deductible</b>
Up to \$1 million	50% of project cost, minimum of \$100,000 per occurrence	
\$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, 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.
- Submission of Working Schedule: Within 21 calendar days after award of the 6.3.3 Contract, or at the preconstruction conference, whichever is earlier, the Contractor shall submit a work progress schedule to CFX. The schedule shall show the various activities of work in sufficient detail to demonstrate that the Contractor has a reasonable and workable plan to complete the project within the Contract time allowed. The schedule shall show the order and interdependence of activities and the sequence in which the work will be accomplished as planned by the Contractor. All activities shall be described so that the work is readily identifiable and the progress on each activity can be readily measured. Each activity shall show a beginning work date, a duration, and a monetary value. Activities shall include procurement time for materials, plant and equipment, and review time for shop drawings where they are appropriate and essential to the timely completion of the project. The list of activities shall include milestones when required by the plans or specifications. If the project has more than 1 phase, each phase and its completion date shall be adequately identified and no activity shall span more than one phase.

A working plan shall be submitted with the schedule. The working plan shall be a concise written description of the Contractor's construction plan.

If, in the opinion of CFX, the schedule submitted by the Contractor is inadequate, it will be returned to the Contractor for revision. The Contractor shall resubmit a revised schedule within 15 calendar days from the date of the transmittal returning the original schedule. The approved schedule will be used as the baseline against which Contractor's progress is measured.

The Contractor shall submit an updated work progress schedule when requested by CFX. If revisions are required to the working schedule, the Contractor shall submit revised charts and analyses within 21 calendar days after being notified by CFX.

Failure to finalize either the initial or a revised schedule in the time specified may result in CFX withholding payments to the Contractor until the schedule is approved.

- 6.3.4 Beginning Work: See Article 6.7 below.
- 6.3.5 Provisions for Convenience of the Public: The Contractor shall schedule operations to minimize any inconvenience to adjacent businesses, vehicular or pedestrian traffic or residences. CFX reserves the right to direct the Contractor as to the performance and scheduling of Work in any areas along the Project where restrictions caused by construction operations present significant hazards to the health and safety of the general public.

When working adjacent to or over travel lanes, the Contractor shall ensure that dust, mud and other debris from Contractor's operation does not interfere with normal traffic operations or adjacent properties. All debris shall be removed from the Work area and clear zone of the Project before Work ends for the day. Trash shall be picked up and removed daily from the job by the Contractor.

6.3.6 Pre-Construction Conference: Prior to Contractor's commencement of Work on the Project, the CEI will schedule a pre-construction conference with the Contractor, utility companies and other affected parties to review the proposed Work activities and schedule of events.

### 6.4 Limitations of Operations

6.4.1 Night Work: In all areas where Work is being performed during the hours of dusk or darkness, the Contractor shall furnish, place and maintain lighting facilities capable of providing light of sufficient intensity (5 foot-candles minimum) to permit good workmanship and proper inspection at all times. The lighting shall be arranged so as not to interfere with or impede traffic approaching the Work site(s) from either direction or produce undue glare to property owners and traveling public.

Lighting of Work site(s) may be accomplished using any combination of portable floodlights, standard Equipment lights, existing street lights, temporary street lights, etc., that will provide the proper illumination. The Contractor shall provide a light meter to demonstrate that the minimum light intensity is being maintained. The

Contractor shall provide sufficient fuel, spare lamps, generator, etc., to maintain lighting of the Work site.

The Contractor's lighting plan shall provide for and show the location of all lights necessary for every aspect of Work to be done at night. The plan shall be presented on standard size roadway plan sheets (no larger than 24" x 36") and on a scale of either 100' or 50' to the inch. The Contractor's lighting plan shall be submitted to the CEI for review and approval at least 10 days prior to beginning any night Work. The CEI may require that modifications be made to the lighting setup to fit field conditions.

The Contractor shall furnish and place variable message signs to alert approaching motorists of lighted construction area(s) ahead.

The Contractor's pickups and automobiles used on the Project shall be provided with amber flashing lights or flashing white strobe lights. These lights shall be in operation at all times while in the Project limits and/or Work area.

The Contractor's Equipment shall be provided with a minimum of four square feet of reflective sheeting or flashing lights that will be visible to approaching motorists.

The Contractor shall provide its personnel with reflective safety vests. The Contractor shall ensure that all Subcontractors are also provided with reflective safety vests. Vests shall be worn at all times while workers are within the Work area.

The Contractor shall use padding, shielding or locate mechanical and electrical Equipment to minimize noise as directed by the CEI. Noise generated by portable generators shall comply with all applicable Federal, State and local environmental regulations.

The Contractor shall have a superintendent present to control all operations involved during night Work. The superintendent shall maintain contact with the CEI and ensure that all required actions are taken to correct any problem noted.

All required traffic control devices such as signs, stripes, etc., shall be in place before the Contractor commences Work for the night and before the Contractor leaves the Work site the next morning.

Work operations that result in traffic delays more than five minutes may be temporarily suspended by the CEI to minimize the impact on the traveling public.

No private vehicles shall be parked within the limited access right of way. The Contractor's Worksite Traffic Supervisor shall continually and adequately review traffic control devices to ensure proper installation and working order, including monitoring of lights.

Compensation for lighting for night Work shall be included in the Contract prices for the various items of the Contract. All lighting Equipment for night work shall remain the property of the Contractor.

- 6.4.2 Sequence of Operations: The Contractor shall not start new Work that will adversely impact Work in progress. Under such circumstances, CFX reserves the right to require the Contractor to finish a section on which Work is in progress before Work is started on any new section.
- 6.4.3 Interference with Traffic: The Contractor shall at all times conduct the Work in such a manner and such sequence as to ensure the least practicable interference with traffic. The Contractor's vehicles and other Equipment shall be operated in such a manner that they will not be a hazard or hindrance to the traveling public. Materials stored along the roadway shall be placed to minimize obstruction to the traveling public.

Where existing pavement is to be widened and stabilizing is not required, the Contractor shall schedule operations such that at the end of each workday the full thickness of the base for widening will be in place. Construction of the widening strips will not be permitted simultaneously on both sides of the road except where separated by a distance of at least one-fourth of a mile along the road, where either the Work of excavation has not been started or the base has been completed.

6.4.4 Coordination with Other Contractors: The right is reserved by CFX to have other work performed by other contractors and to permit public utility companies and others to do work during the construction of and within the limits of or adjacent to the Project. The Contractor shall arrange the Work and dispose of Materials so as not to interfere with the operations of other contractors engaged upon adjacent work and shall perform the Work in the proper sequence in relation to that of other contractors and shall join with and connect to the work of others as required by the Plans and Specifications all as may be directed by the CEI.

Contractor shall be responsible for any damage done by Contractor's operations to the work performed by other contractors. Similarly, other contractors will be held responsible for damage caused their operations to the Contractor's Work. The Contractor agrees to make no claims against CFX for additional compensation due to delays or other conditions created by the operations of such other parties. Should a difference of opinion arise as to the rights of the Contractor and others working within the limits of, or adjacent to, the Project, CFX will decide as to the relative priority of all concerned.

6.4.5 Drainage: The Contractor shall conduct operations and maintain the Work in such condition that adequate drainage will be in effect at all times. Existing functioning storm sewers, gutters, ditches and other runoff facilities shall not be obstructed.

- 6.4.6 Fire Hydrants: Fire hydrants on or adjacent to the roadway shall be kept accessible to fire apparatus at all times and no material or obstruction shall be placed within 15 feet of any such hydrant.
- 6.4.7 Protection of Structures: Heavy Equipment shall not be operated close enough to pipe headwalls or other structures to cause their displacement.
- 6.4.8 Fencing: The Contractor shall expedite the installation of fencing at those locations where, in the opinion of the CEI, such installation is necessary for the protection, health, and safety of the public. All fencing shall be maintained by the Contractor at all times. Fence cuts shall be immediately replaced. All fence removed during any one working day shall be replaced during that same day. While the fence is down, continuous security shall be provided by the Contractor to ensure that no pedestrians or vehicles enter or exit the roadway from the temporarily unfenced area. Specific attention shall be given to prevent any persons, animals, or vehicles moving from adjacent private property onto the roadway right-of-way.
- 6.4.9 Hazardous or Toxic Waste: When the Contractor's operations encounter or expose any abnormal condition which may indicate the presence of a hazardous substance, toxic waste or pollutants such operations shall be discontinued in the vicinity of the abnormal condition and the CEI shall be notified immediately. The presence of tanks or barrels; discolored earth, metal, wood, groundwater, etc.; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions which appear abnormal may be indicators of hazardous or toxic wastes or pollutants and shall be treated with extraordinary caution.

Every effort shall be made by the Contractor to minimize the spread of any hazardous substance, toxic waste or pollutant into uncontaminated areas.

The Contractor's operations in the affected area shall not resume until so directed by the CEI.

Disposition of the hazardous substance, toxic waste or pollutant shall be made in accordance with the laws, requirements and regulations of any local, state, or federal agency having jurisdiction. Where the Contractor performs Work necessary to dispose of hazardous substance, toxic waste or pollutant and the Contract does not include pay items for disposal, payment will be made, when approved in writing by a Supplemental Agreement, prior to the Work being performed.

6.4.10 Milling: The Contractor shall provide positive drainage of the remaining pavement after milling. This operation shall be done prior to opening to traffic.

The Contractor shall provide suitable transitions between milled areas of varying thickness in order to create a reasonably smooth longitudinal riding surface. In addition, the Contractor shall provide suitable transitions approaching all bridge ends at all times.

Wedges for Longitudinal and Transverse Joints: Asphalt Wedges for longitudinal and traverse joints shall be one foot wide or long, respectively, for each 1/4 inch of depth. The wedge must be installed prior to opening the lane to traffic.

The Contractor shall plan milling operations so that any lane milled will be repaved prior to opening to traffic.

# 6.5 Qualifications of Contractor's Personnel

The Contractor shall ensure that all of its employees are competent, careful, and reliable. All workers shall have the skills and experience necessary to properly perform the Work assigned and as required by the Plans and Specifications.

If, in the opinion of CFX, any person employed by the Contractor, or any Subcontractor, is not qualified to perform the Work or is insubordinate, disorderly, disrupts or is detrimental to the progress of the Work, such person shall be immediately removed from the Project by the Contractor upon written direction from CFX. Such person shall not be employed again on the Project without the written permission of CFX. If the Contractor fails to immediately remove such person, CFX may, at its sole discretion, withhold payments due or which may become due, or may suspend the Work until the person is removed. The Contractor shall indemnify and hold harmless CFX, its agents, consultants, officials and employees from any and all claims, actions or suits arising from such removal, discharge or suspension of a Contractor employee based on the direction of CFX.

## 6.6 Temporary Suspension of Contractor's Operations

- 6.6.1 Authority to Suspend Contractor's Operations: CFX, at its sole discretion, may suspend the Contractor's operations, wholly or in part, for such period(s) as CFX deems necessary. These periods of suspension may include adverse weather conditions, catastrophic occurrences and heavy traffic congestion caused by special events. Written notice, giving the particulars of the suspension, will be transmitted to the Contractor by CFX.
- 6.6.2 Prolonged Suspensions: If the suspension of operations is for an indefinite period of time, the Contractor shall store all Materials in such a manner that they will not become damaged or obstruct or impede the traveling public unnecessarily. The Contractor shall take reasonable precautions to prevent damage to or deterioration of

the Work performed, shall provide suitable drainage of the roadway by opening ditches, shoulder drains, etc., and shall provide all temporary structures necessary for public travel and convenience.

- 6.6.3 Permission to Suspend Operations: The Contractor shall not suspend operations or remove Equipment or Materials necessary for the completion of the Work without the permission of CFX. All requests for suspension of the Contract time shall be in writing to CFX and shall identify specific dates to begin and end.
- 6.6.4 Suspension of Contractor's Operations Holidays: Unless the Contractor submits a written request to work on a holiday at least ten days in advance of the requested date and receives written approval from the CEI, the Contractor shall not work on the following days: Martin Luther King, Jr. Day; Memorial Day; the Saturday and Sunday immediately preceding Memorial Day; Independence Day; Labor Day; the Friday, Saturday, and Sunday immediately preceding Labor Day; Veterans Day; Thanksgiving Day; the Friday, Saturday and Sunday immediately following Thanksgiving Day; and December 24 through January 2, inclusive. Contract Time will be charged during these holiday periods regardless of whether or not the Contractor's operations have been suspended. The Contractor is not entitled to any additional compensation for suspension of operations during such holiday periods.

During such suspensions, the Contractor shall remove all Equipment and Materials from the clear zone, except those required for the safety of the traveling public and retain sufficient personnel at the job site to properly meet the requirements of Sections 102 and 104 of the Technical Specifications. The Contractor is not entitled to any additional compensation for removal of Equipment from clear zones or for compliance with Section 102 and Section 104 during such holiday periods.

Any special events known to CFX that may impact Contractor operations are shown on the Plans.

## 6.7 Contract Time

6.7.1 General: The Contractor shall complete the Work in accordance with the Plans and Specifications and within the Contract Time specified in the Special Provisions including approved extensions.

For scheduling purposes, the Contractor shall take into consideration holidays and all weather conditions (except those listed in subarticle 6.7.3) that may be encountered during the performance of the Work.

The effect on job progress of utility relocations and adjustments and scheduling of construction operations to maintain traffic shall also be considered by the Contractor in the scheduling of Contract time.

6.7.2 Date of Beginning of Contract Time: The date on which Contract time will begin GS-92

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;
  - 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;
  - 1. 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

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.

7.2.2 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:

% Contract Amount Completed	Amount Retained
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, < <a href="supplier">supplier</a>> will be liable to the Contractor and the Central Florida Expressway Authority should < <a href="supplier">supplier</a>> 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 GS-117

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:
  - The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials of supplies required for performance of the Contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - 2. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for

similar services.

- 3. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- 4. Those sums that, subsequent to the receipt of bids, CFX elects, under the provisions of the Direct Materials Purchase Option, to purchase materials originally proposed by the Contractor to CFX to have been an element of the Work of a certified D/M/WBE contractor/subcontractor/vendor.
- 8.2.5 Records and Reports: The Contractor shall develop a record keeping system to monitor its D/M/WBE participation and shall maintain the following records:
  - 1. the procedures adopted to comply with these special provisions;
  - 2. The number of subordinated contracts on CFX projects awarded to D/M/WBEs:
  - 3. the dollar value of the contracts awarded to D/M/WBEs;
  - 4. the percentage of the dollar value of all subordinate contracts awarded to D/M/WBEs as a percentage of the total contract amount;
  - 5. a description of the general categories of contracts awarded to D/M/WBEs;
  - 6. the specific efforts employed to identify and award contracts to D/M/WBEs;
  - 7. maintenance of records of payments and monthly reports to CFX;
  - 8. Subcontract Agreement between Contractor and D/M/WBE subcontractors; and
  - 9. any other records required by CFX's Project Manager or Executive Director.

The records maintained by the Contractor in accordance with this Section shall be provided to CFX for review within 48 hours of the CFX request. The Contractor shall submit a properly executed D/M/WBE Payment Certification monthly during the life of the D/M/WBE subcontract whether payment is made or not.

8.3 Subletting of Contracts - Participation Objective

No request to sublet Work will be approved unless it is in compliance with the Contractor's approved D/M/WBE Utilization Form "Certification of Subcontract Amount to D/M/WBE Contractor", shall be completed and submitted with the Request for Authorization to Sublet Work. One copy of the certification will be attached to each copy of the Request for Authorization to Sublet Work.

**END OF SECTION 8** 

# **SECTION 9 - BINDING ARBITRATION**

- 9.1 CFX and the Contractor shall submit any and all unsettled claims, counterclaims, and disputes to the Disputes Review Board (DRB) prior to initiating a demand for arbitration pursuant to this Section.
- 9.2 No demand for arbitration of any claim, dispute or other matter referred to the DRB initially for decision will be made until after final acceptance, per Article 3.9, of all Contract Work by CFX. The filing party shall pay all applicable fees associated with requested arbitration proceedings.

The failure to demand arbitration within thirty (30) days after final acceptance will result in the DRB's decision being final and binding upon CFX and Contractor.

- 9.3 Notice of the demand for arbitration is satisfied when it is filed in writing with the other party to the Contract and with the American Arbitration Association (including required fees). A copy will be sent to the Board for information.
- 9.4 The arbitration shall occur in Orlando, Florida and shall be conducted by a three (3) member panel pursuant to and under the auspices of the Construction Industry Arbitration Rules of the American Arbitration Association.
- 9.5 Procedure for Binding Arbitration

Arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations of this Section. The agreement to arbitrate (and any other agreement or consent to arbitrate entered into in accordance herewith) will be specifically enforceable under the laws of Florida.

Arbitration shall include by consolidation, joinder or in any other manner any person or entity who is not a party to the Contract in circumstances where:

- the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration, and
- such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings, and
- the written consent of the other person or entity sought to be included and of CFX and Contractor has been obtained for such inclusion, which consent shall make specific reference to this paragraph.

In order to assure complete resolution of any claim or controversy, the Contractor shall provide and require (in the agreements with subcontractors and material suppliers) for joinder in such arbitration proceedings. Therefore, if a claim, dispute or other matter in question between CFX and Contractor involves the work of a Subcontractor, either CFX or Contractor may join such subcontractor as a party to the arbitration. Nothing in this paragraph or in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of subcontractor or supplier, and against CFX, CEI, or any of their consultants that does not otherwise exist.

In connection with the arbitration proceedings all participants shall be afforded pre-hearing discovery in accordance with the rules of the American Arbitration Association.

END OF SECTION 9

#### **SECTION 10 - DISPUTES RESOLUTION**

#### 10.1 Disputes Resolution

## 10.1.1 Disputes Review Board

A Disputes Review Board ("Board") will be established to assist in the resolution of disputes arising out of the Work on the Project. This document describes the purpose, procedure, function and features of the Board.

The Board will provide special expertise to assist and facilitate the timely and equitable resolution of disputes and controversies between CFX and the Contractor in an effort to avoid construction delays and future claims.

It is not intended for CFX or the Contractor to avoid the normal responsibility to cooperatively and fairly settle differences by indiscriminately requesting dispute resolution by the Board. It is intended the Board encourage CFX and the Contractor to first try resolving potential disputes without resorting to the procedure set forth herein.

The Board will be used only when the claims procedure detailed in the Contract has been followed and has been unsuccessful. It is a condition of the Contract that the parties use the Board. Adherence to the Contract claims procedure is a condition precedent to the submission of a dispute to the Board, and the submission of an unresolved dispute to the Board is, in turn, a condition precedent to arbitration of such issue.

The Board will fairly and impartially consider disputes referred to it. The Board will receive testimony and other relevant evidence regarding such disputes, will analyze the facts within the parameters of the Contract, and will then provide written recommendations (to CFX and Contractor) to assist in the resolution of the disputes. The recommendations of the Board will not be binding on either CFX or the Contractor; however, the Board's recommendations and findings shall be admissible for all purposes in any subsequent arbitration proceedings or the judicial enforcement thereof.

#### 10.1.2 Continuance of Work During Dispute

During the dispute resolution process the Contractor shall conform to the CEI's decision or order and continue with the Work as directed by the CEI in a diligent manner and without delay. Such Work will be governed by all applicable provisions of the Contract. With respect to any protested Work, the Contractor will keep complete records of extra costs and time incurred. Except for sealed Bid Records, the Contractor will permit CEI and the Board access to any records needed for evaluating the dispute, without any claim of privilege or confidentiality.

#### 10.1.3 Disputes Review Board Membership

The Board will consist of three Members, one Member selected by CFX and approved by the Contractor, and one Member selected by the Contractor and approved by CFX. The first two Members will mutually select and agree on the third Member, which third Member shall not be subject to approval by either the Contractor or CFX. Normally, the third Member will act as Chairman for all Board activities. If the third Member declines to act as Chairman, the Members shall select an alternative Chairman. Neither the Contractor nor CFX shall seek to influence the Chairman selection decision.

The Contractor and CFX shall each submit the name and credentials of their proposed Member to the other within ten (10) days of the Contract award. The two Members, upon acceptance, shall meet promptly and mutually agree on the third Member. A Notice to Proceed shall not be issued until the Board Members have been selected and have signed the Three-Party Agreement. All three Members shall attend the Pre-Construction Meeting.

All Board Members shall be experienced with major road and bridge construction and the associated construction methods involved in the Project, in the interpretation of contract documents and in contract dispute resolution. The goal in selecting the third Member is to complement the construction experience of the first two Members and to provide leadership of the Board's activities.

It is imperative that Board Members show no partiality to either the Contractor or CFX, or have any conflict of interest.

The criteria and limitations for membership will be as follows:

- a. The person selected will not have any direct or indirect ownership or financial interest in (i) the Contractor, (ii) CEI or the CFX General Engineering Consultant ("GEC"), (iii) any subcontractor or supplier of the Project, or (iv) the employer of other Board Members.
- b. Except for services as a Board Member on CFX projects, no Member shall have been an employee, contractor or consultant to the Contractor or CFX, CEI, the GEC or any subcontractor or supplier for the Project within a period of ten (10) years prior to the Contract award.
- c. No Member will have had a close personal, professional or business relationship with CFX or the Contractor (or an employee or officer of CFX or the Contractor).
- d. No Member will have had any prior involvement in the Project (other than as a dispute board member) of a nature which could be construed to compromise an ability to impartially resolve disputes.

- e. No Member will be employed by the Contractor, the CEI, the GEC or any subcontractor or supplier of the Project during the term of the Contract, except as a Board Member pursuant to the Three Party Agreement.
- f. During the term of the Contract no discussion or agreement will be made between a Board Member and CFX or Contractor regarding employment after the Contract is completed.
- g. During the term of the Contract, ex-parte communications between a Board Member and a party to the Three Party Agreement is prohibited.

Before appointments are final, the first two prospective Members will submit complete disclosure statements for the approval of both CFX and the Contractor. Each statement (in the form prepared by CFX) will include a statement of experience and a declaration describing all past, present and anticipated or planned future relationships to the Project and with the parties to the Contract. Disclosure of professional or personal relationships with parties to the Contract will be included. The third Board Member will supply a similar statement to the first two Board Members (and to CFX and the Contractor) before the third Member appointment is finalized.

CFX and the Contractor will each select a Member, execute the Three Party Agreement (described below) and assure the Members execute the Three-Party Agreement within the first three (3) weeks after Contract award. CFX and the Contractor will immediately notify the selected Members to begin selection of the third Member. The first two Members will ensure the third Member meets all of the criteria listed above. The third Member will be selected within two (2) weeks after the first two Members are notified to proceed with the selection of the third Member. If there is an impasse in the selection of the third Member, the third Member will be selected by CFX and the Contractor, with the first consideration to the nominees reviewed by the first two Members.

In the event of death, disability or resignation of a Member, such Member shall be replaced in the same manner as the Member being replaced was selected. If for whatever other reason a Member fails or is unable to serve, the Chairman (or failing the action of the Chairman, then either of the other Members) shall inform the parties and such non-serving Member shall be replaced in the same manner as the Member being replaced was selected. Any replacement made by the parties shall be completed within fifteen (15) days after the event giving rise to the vacancy on the Board, failing which the replacement shall be made by the two remaining Members of the Board. Replacement shall be considered completed when the new Member executes the Dispute Review Board Three Party Agreement.

## 10.1.4 Board Operations

The Board will formulate procedures of operation that shall be flexible with respect to the functioning of the Board. The Board may formulate new or revised procedures respecting its operation from time to time to accommodate the needs of the Board and the circumstances.

Each Board Member shall be provided a complete set of the Contract Documents. CFX and the Contractor shall keep the Board informed of construction activity and progress by submitting written progress reports and other relevant data at least monthly. The Board will visit the Project at regular intervals and/or at times of critical construction events and meet with CEI and the Contractor. In circumstances of unresolved disputes, the Board will meet at least monthly until the unresolved disputes are concluded. The frequency of visits will be agreed upon by CFX, the Contractor and the Board, depending upon the progress of the Work.

Regular meetings will be held at the job site. Each meeting will consist of an informal discussion and a field inspection of the Work. The informal discussion will be attended by selected personnel from CFX, the CEI and the Contractor. Agenda for regular meetings of the Board will generally include the following:

- a. Meeting opened by the Chairman of the Board.
- b. Remarks by the CEI.
- c. A description by the CEI and the Contractor of Work accomplished since the last meeting, current status of the Work schedule, schedule for the future, potential problems and proposed solutions to anticipated problems.
- d. Discussion by the CEI of Work schedule, potential new disputes or claims, status of past disputes and claims and other issues.
- e. Set a date for next meeting.

The CEI will prepare minutes of all Board meetings and circulate them for comments, revisions and/or approval by all concerned.

The field inspection will cover all active segments of the Work. The Board will be accompanied by representatives of both the CEI and the Contractor. Soliciting any Board Member's advice or consultation regarding the Work or the Contract is expressly prohibited.

#### 10.1.5 Procedure for Disputes Resolution

Disputes will be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Steps may be omitted as agreed by both parties and the time periods stated below may be shortened in order to hasten resolution.

- a. If either CFX or Contractor object to any decision of the CEI with respect to claims, change order requests, or other actions or orders of the CEI, the objecting party may file a written protest with the CEI within fifteen (15) days after the CEI's disputed decision, action or order. The written protest must clearly state in detail the basis for the objection.
- b. The CEI will consider the written protest to its decision or directive, and make a final decision on the basis of the pertinent Contract provisions, together with the facts and circumstances involved in the protest. The decision will be furnished to CFX and Contractor in writing within fifteen (15) days after receipt of the written protest.
- c. The CEI's decision with respect to the protest will be final, unless a written exception is filed by CFX or Contractor with the CEI within fifteen (15) days after receiving the protest decision. If either rejects the CEI's final decision, the disputed matter may be referred to the Board by either CFX or the Contractor.
- d. Upon receipt by the Board of a written dispute, the Board will first decide when to conduct the hearing. If the matter is not urgent, it may be heard at the next regularly scheduled Board meeting. For an urgent matter, the Board will meet at its earliest convenience.
- e. Either party furnishing written evidence or documentation to the Board will furnish copies of such information to the other party a minimum of fifteen (15) days prior to the date the Board sets to hear the dispute. If the Board requests additional documentation or evidence prior to, during or after the hearing, CFX and/or the Contractor will provide the requested information to the Board and to the other party. Because each side needs a reasonable opportunity to understand and rebut the opposing side's point of view, failure of either party to timely provide written documentation in accordance with this provision shall result in such written documentation being excluded from the hearing before the Board unless the other party consents to its admission or consents to a delay in the hearing.

- f. The Contractor and CFX will each be afforded an opportunity to be heard by the Board and to offer evidence. The Board will consider all relevant evidence presented and analyze the same solely within the parameters of the Contract. Hearsay evidence shall be admissible but shall not be the sole basis for any recommendation of the Board.
- g. The Board's recommendations for resolution of the dispute will be given in writing within fifteen (15) days of completion of the hearing(s). In cases of extreme complexity, both parties may agree to allow additional time for the Board to formulate its recommendations. Generally, the Board will initially focus its attention (in the written report) only to matters of entitlement, and allow the parties to thereafter determine the monetary relief. If both parties request, and sufficient documentation is available, the Board may also make a recommendation of monetary relief, but only after formulation of the entitlement recommendation and only after the parties have attempted to agree upon the monetary relief amount.
- h. If the Board's recommendation for resolution is not unanimous, the dissenting member shall prepare a separate written opinion.
- i. Within fifteen (15) days of receiving the Board's recommendations, both CFX and the Contractor will respond to the other and to the Board in writing, signifying either acceptance or rejection of the Board's recommendations. The failure of a party to respond within the fifteen (15) day period will be deemed an acceptance by such party of the Board's recommendations. If CFX and the Contractor are able to resolve the dispute (with or without the aid of the Board's recommendations), CFX will promptly process any required Contract changes.
- j. If the dispute remains unresolved because of a bona fide lack of clear understanding of the recommendation, either party may request the Board clarify specific portions of its recommendations. Further, if new evidence becomes available, either party may request the Board reconsider its prior recommendation Only evidence which did not exist at the time of the hearing, or which existed but which could not be discovered with reasonable and normal diligence shall be considered new evidence.
- k. If the Board's recommendation is rejected, either party may thereafter initiate resolution of the dispute by binding arbitration conducted pursuant to the Contract.

Both CFX and the Contractor should carefully consider the Board's recommendations, as the recommendations are binding unless written notice is provided to the other party within 30 days of the recommendations stating the party's intent to bring the disputed issue to arbitration. However, if the Board's recommendations do not resolve the dispute, all records and written recommendations, including any minority reports, will be admissible for informational purposes in any subsequent dispute resolution procedures. Such informational purposes shall include but not be limited to establishing that the Board considered the dispute, the qualifications of the Board Members, and the Board's recommendation that resulted from the dispute resolution process.

## 10.1.6 Conduct of Disputes Hearings

Each party shall file three copies of its written arguments with the Board no less than seven days prior to the scheduled hearing and shall simultaneously deliver a copy of such written arguments to the opposing party. Each party shall also submit to the Board along with its written arguments copies of its written evidence and documentation which has been previously provided to the opposing party as provided above.

Normally, the hearing will be conducted at the job site. However, any location more convenient and which provides all required facilities and access to necessary documentation is satisfactory.

While the Board will keep a record of its sessions during consideration of a dispute, the Board will not be required to keep its record in any particular form. The nature and completeness of the record will depend upon the nature and magnitude of the dispute and the desires of the parties. If possible, the hearings shall be kept informal. Formal records of the Board meetings may be taken and transcribed by a court reporter if requested by a party (at the requesting party's cost). Audio and/or video recording of the meeting is discouraged and shall only be made with the prior agreement of all parties and a majority of the Board.

CFX and the Contractor will have representatives at all dispute resolution hearings. The party requesting Board review will first discuss the dispute, followed by the other party. Each party will then be allowed successive rebuttals until all aspects are fully covered to the Board's satisfaction. The Members and the parties may ask questions, request clarification or ask for additional data. In large or complex cases, additional hearings may be necessary in order to consider and fully understand all evidence presented by both parties.

During the hearings, no Member will express any opinion concerning the merit of any facet of the dispute.

After the hearings are concluded, the Board will meet in private to formulate recommendations supported by two or more Members. All Board deliberations will be conducted in private, with individual views kept strictly confidential. No minutes shall be

prepared of the Board's private meetings. The Board's recommendations and discussions of its reasoning will be submitted as a written report to both parties. The recommendations will be based on the pertinent Contract provisions and the facts and circumstances involved in the dispute.

The Board will make every effort to reach a unanimous decision. If a unanimous decision is not possible, the dissenting Member may (but is not required to) prepare a minority report.

#### 10.1.7 Compensation

The Contractor shall pay the fees of all three Board Members for services rendered under the Three Party Agreement. An allowance pay item has been established in the Contract for the reimbursing the Contractor. Funds remaining in the pay item, if any, at the completion of the Project will belong to CFX. CFX and the Contractor shall agree on the procedures and method of processing payments made against the allowance. CFX or the CEI will mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services. If the Board desires special services, such as legal consultation, accounting, data research, etc., both parties must agree and the costs will be paid from the allowance.

#### 10.1.8 Three Party Agreement

The Contractor, CFX and the Members of the Board will execute the Dispute Review Board Three Party Agreement within four (4) weeks of the final selection of the third Member.

**END OF SECTION 10** 

#### **ATTACHMENT A**

# DISPUTES REVIEW BOARD THREE PARTY AGREEMENT

THIS THREE PARTY AGREEMENT ("Agreement") made and entered into this	
day of, 20, between	n the CENTRAL FLORIDA EXPRESSWAY
	("Contractor") and the DISPUTES
REVIEW BOARD ("Board"), consisting	ng of three members:,
and	("Members").
WHEREAS, CFX is now engaged in	the construction of the, and
WHEREAS, the and operation of the Board to assist in resolv.	contract ("Contract") provides for the establishment ing disputes and claims.
	n of the terms, conditions, covenants and performance and made a part hereof), the parties agree as set forth

### 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. <u>Furnishing Documents</u>. 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. <u>Site Visits</u>. 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. <u>Board Consideration of Disputes or Claims</u>. 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. <u>Miscellaneous Board Responsibilities</u>. 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. <u>Board Member Replacement</u>. 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. <u>Contract Related Documents</u>. 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. <u>Coordination and Services</u>. 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. <u>Payment</u>.

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. <u>Inspection of Costs Records</u>. 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:
Dru
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.

# **CONTRACT**



KIEWIT INFRASTRUCTURE SOUTH CO.

SR 417 BRIDGE OVER SR 528 PRESERVATION

PROJECT NO. 417-751 CONTRACT NO. 001759

CONTRACT DATE: MARCH 11, 2021 CONTRACT AMOUNT: \$1,369,850.00

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 BRIDGE OVER SR 528 PRESERVATION

**PROJECT NO. 417-751 CONTRACT NO. 001759** 

**MARCH 2021** 

### **CONTRACT**

This Contract No. 001759 (the "Contract"), made this 11<sup>th</sup> day of March 2021, between <u>CENTRAL FLORIDA EXPRESSWAY AUTHORITY</u>, hereinafter called CFX and <u>Kiewit Infrastructure South Co.</u>, of <u>8403 South Park Circle</u>, <u>Suite 655</u>, <u>Orlando</u>, <u>FL. 32819</u>, 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 Performance and Payment 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. 417-751, SR 417 Bridge over SR 528 Preservation, as detailed in the Contract Documents and any addenda or modifications thereto. Contract time for this project shall be 105 calendar days. The Contract Amount is \$1,369,850.00. This Contract was awarded by the Governing Board of CFX at its meeting on March 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

Director of Procurement	
KIEWIT INFRASTRUCTURE SOUTH CO.	
0.	
Signature	
Print Name	
Title	
A TYPE OTE	(0, 1)
ATTEST:	(Seal)
DATE:	
ved as to form and execution, only.	
, ,	
General Counsel for CFX	
	KIEWIT INFRASTRUCTURE SOUTH CO.  Signature  Print Name  Title  ATTEST:  DATE:  ved as to form and execution, only.

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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 multispan 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

<sup>\*</sup>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 Older 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 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.

- 3.1.4.2. Work Items Requiring Shop Drawings: The requirement for submittals for certain items may be waived by other provisions of these specifications; i.e. items constructed from standard drawings or those complying with alternate details for pre-stressed members under Section 450. Precast components that are not detailed in the Plans or Standard Drawings will require approved shop drawings. The Contractor shall review the Plans and Specifications to determine the submittals required. The CEI may request a submittal for any item the CEI considers necessary.
- 3.1.4.3 Schedule of Submittals: The Contractor shall prepare and submit to the CEI a schedule of submittals identifying the Work for which Contractor intends to submit shop drawings, the type, approximate number of drawings or other documents and approximate dates of anticipated submittals with due regard to processing requirements herein. The schedule of submittals shall be submitted to the CEI within 15 days of the start of the date of the Notice to Proceed, and prior to the submission of any shop drawings.

Subsequent submittals shall be coordinated with construction schedules to allow sufficient time for review, approval and re-submittal as necessary.

- 3.1.4.4 Style, Numbering and Material of Submittals:
- 3.1.4.4.1 Drawings: The Contractor shall furnish such shop drawings as may be required to complete the structure in compliance with the design shown on the Plans. Drawings shall be prepared or reproduced on permanent material made for the purpose, such as tracing cloth, plastic, mylar or xerographic bond paper, hereafter referred to as masters. The size of the sheets shall be no larger than 24 by 36 inches. Each sheet shall be numbered consecutively for the series and the sheet number shall indicate the total number in the series (e.g., 1 of 12, 2 of 12, ...12 of 12). Each shop drawing shall contain the following items as a minimum requirement: the CFX Project Number, drawing title and number, a title block showing the names of the fabricator or producer and the Contractor for which the Work is being done, the initials of the person(s) responsible for the drawing, the date on which the Work was performed, the location of the item(s) within the Project, the Contractor's approval stamp and initials and when applicable, the signature and embossed seal of the Contractor's Florida registered Specialty Engineer. The absence of any of this minimum information may be cause for a request for a re-submittal.
- 3.1.4.4.2 Other Documents: Documents other than drawings, such as trade literature, catalogue information, calculations and manuals shall be original copies or clearly legible photographic or xerographic copies. The size shall be no larger than 11 by 17 inches. Such information shall be clearly labeled and numbered and the sheet numbers shall indicate the total number of sheets in the series (e.g., 1 of 12, 2 of 12, .... 12 of 12).

All documents shall be bound and submitted with a Table of Contents cover sheet. The cover sheet shall list the total number of pages and appendices and shall also include the CFX Project Number, a title to reference the item(s) for which it is submitted, the name of the firm

and person(s) responsible for the preparation of the document, the Contractor's approval stamp and initials and, when applicable, the signature and embossed seal of the Contractor's Florida registered Specialty Engineer.

The calculations or manuals shall clearly outline the design criteria and shall be appropriately prepared and checked. The internal sheets shall include the complete CFX Project Number and initials of the persons responsible for preparing and checking the document.

Trade literature and catalogue information shall be clearly labeled with the title, CFX Project Number, date and name of the firm and person responsible for that document displayed on the front cover.

Documents other than drawings may be on xerographic paper or glossy paper material as appropriate. For the purpose of this specification, the term "shop drawings" shall be deemed to include these other documents.

## 3.1.4.5 Submittal Paths and Copies:

The Contractor shall submit one (1) set of prints along with one (1) set of reproducible copies of each series of shop drawings to the CEI with a copy of the letter of transmittal sent to the Consultant. For Work requiring other documentation (e.g. catalog data, material certifications, material tests, procedure manuals, fabrication / welding procedures, and maintenance and operating manuals) a minimum of eight (8) copies of each document shall be submitted with the prints. The mailing address of the Consultant will be furnished by CFX.

For other miscellaneous design and/or structural details furnished by the Contractor in compliance with the contract: The Contractor shall submit to the CEI one (1) set of prints along with one (1) reproducible copy of each series of shop drawings and four (4) copies of applicable calculations. Each print and the cover sheet of each copy of applicable calculations shall be signed and sealed by the Contractor's Specialty Engineer.

## 3.1.4.6 Processing of Shop Drawings:

3.1.4.6.1 Contractor Responsibility for Accuracy and Coordination of Shop Drawings: The Contractor shall coordinate, schedule and control all submittals including those of its various subcontractors, suppliers and engineers to provide for an orderly and balanced distribution of the Work.

All shop drawings prepared by the Contractor or its agents (subcontractor, fabricator, supplier and etc.) shall be coordinated, reviewed, dated, stamped, approved and signed by the Contractor prior to submission to the CEI for review. The Contractor's signed approval of drawings submitted shall confirm the Contractor has verified the Work requirements, field

measurements, construction criteria, sequence of assembly and erection, access and clearances, catalog numbers and other similar data. Each series of drawings shall indicate the specification section and page or drawing number of the Contract plans to which the submission applies. The Contractor shall indicate on the shop drawings all deviations from the Contract drawings and shall itemize all deviations in the letter of transmittal. Likewise, whenever a submittal does not deviate from the Contract plans, the Contractor shall also clearly state so in the transmittal letter.

The Contractor shall schedule the submission of shop drawings to allow for a 15-calendar day review period by the CEI. The review period commences upon receipt of the Contractor's submittal by the CEI and terminates upon transmittal of the submittal back to the Contractor by the CEI. The Contractor shall adjust its schedules so that a 10-calendar day period is provided for each re-submittal.

It is incumbent upon the Contractor to submit shop drawings to facilitate expeditious review. Voluminous submittals of shop drawings at one time are discouraged and may result in increased review time. The submittal/re-submittal clock will start upon receipt of a valid submittal. A valid submittal shall include all the minimum requirements outlined in 3.1.4.4. CFX will not be liable to the Contractor for resulting delays, added costs and/or related damages when the actual time required for approval extends beyond the 45- and 30-day review periods shown above.

Only CEI approvals of miscellaneous submittals and red ink stamps on shop drawings are valid and any Work performed in advance of approval will be at the Contractor's risk.

3.1.4.6.2 Scope of Review by CEI: The review of the shop drawings by the CEI shall be for conformity to the Contract requirements and intent of design and not for the adequacy of the means, methods, techniques, sequences and procedures proposed for construction. Review by the CEI does not relieve the Contractor of responsibility for dimensional accuracy to assure field fit and for conformity of the various components and details.

# 3.2 Coordination of Plans and Specifications

The Plans, Specifications and all supplementary documents are integral parts of the Contract and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete Work. In addition to the Work and Materials specifically identified as being included in any specific pay item, additional incidental Work not specifically mentioned will be included in such pay item when shown in the Plans or if indicated or obvious and apparent as being necessary for proper completion of the Work.

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: <a href="http://www.motadmin.com/find-a-training-provider.aspx">http://www.motadmin.com/find-a-training-provider.aspx</a>

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.
- Where utilities cross pipe trenches transversely within the excavation area but not within positions from which relocation or removal is necessary, the utility owner will be responsible for providing and effecting all reasonable measures for their support and protection during construction operations. The Contractor shall cooperate with the utility owner in the owner's effecting such support and protective measures. The Contractor shall be responsible for any damage to the utility that is caused by neglect or failure on the Contractor's part to cooperate and to use proper precaution in performing the Work.

In the event that a temporary relocation of a utility or a particular sequence of timing in the relocation of a utility is necessary, such relocation shall be done only as directed by CFX. CFX will not be responsible for utility adjustments or temporary relocation work or for the conditions resulting therefrom, where such adjustments are: not necessitated by the construction of the Project; or done solely for the benefit or convenience of the utility owner or its contractor (or the Contractor where Contractor's construction procedures are considered by CFX to be other than normal); or not shown on the approved Plans for the utilities relocation or the construction.

5.9.6.2 Cooperation with Utility Owners: The Contractor shall cooperate with the utility owners in the removal and/or rearrangement of utilities. If utility service is interrupted due to construction operations, the Contractor shall immediately notify the owner of the utility and the CEI and cooperate in the prompt restoration of

service. If water service is interrupted, the Contractor's repair work shall be continuous until the service is restored. No Work shall be undertaken around fire hydrants until the local fire authority has approved provisions for continued service.

5.9.6.3 Utility Adjustments: Utility adjustments and reconstruction Work may be underway during the Work. The Contractor shall effectively cooperate, coordinate, and schedule utility adjustments with utility construction crews in maintaining utility service. The Contractor shall use caution when working adjacent to utilities that have been relocated. The Contractor shall repair, at Contractor's expense, damages to relocated utilities resulting from Contractor's operations.

5.9.6.4 Weekly Meetings: Contractor shall conduct weekly meetings on the job site with all the affected utility companies and the CEI in attendance to coordinate Project construction and utility relocation, and shall submit a list of all attendees one week in advance to the CEI for approval.

Provide the approved Work Progress Schedule and Work Plan for the project to document the schedule and plan for road construction and utility adjustments. When utility relocations no longer affect construction activities, the Contractor may discontinue the meetings with the CEI's approval.

- 5.10 Responsibility for Damages, Claims, etc.
  - 5.10.1 Contractor to Provide Defense Against Claims and Suits: To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless CFX (its officers, agents and employees) from and against claims, damages, losses and expenses (including but not limited to attorneys' fees), arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom. However, the indemnification herein provided is only to the extent caused in whole or in part by any act, omission or default of the Contractor, subcontractor, sub-subcontractor, materialman, agents of any tier, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described herein. The monetary limit on the indemnification provided herein to CFX or its officers, agents and employees shall be the total amount of the Agreement in aggregate or the insurance policy amount as required in article 5.11 herein, whichever is greater. The total amount of the Agreement in aggregate will be determined by the date the notice of claim was received by CFX.

In claims against any person or entity indemnified under this subarticle by an

employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this subarticle shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

The obligations of the Contractor under this subarticle shall not extend to the liability of the Engineer of Record, the Engineer of Record's consultants and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, designs or specification, or (2) the giving of or the failure to give direction or instructions by the Engineer of Record, the Engineer of Record's consultants and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

The Contractor's obligation to indemnify and pay for the defense or, at CFX's option, to participate and associate with CFX in the defense and trial of any damage claim or suit and any related settlement negotiations, shall arise within seven (7) days of receipt by the Contractor of the CFX notice of claim for indemnification to the Contractor. The notice of claim for indemnification will be served by certified mail. The Contractor's obligation to indemnify within seven (7) days of receipt of such notice will not be excused because of the Contractor's inability to evaluate liability or because the Contractor evaluates liability and determines the Contractor is not liable or determines CFX is solely negligent. The Contractor will pay all costs and fees related to this obligation and its enforcement by CFX.

This Contract shall not create in the public or any member thereof, a third party beneficiary hereunder or to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

5.10.2 Guaranty of Payment for Claims: The Contractor guarantees the payment of all just claims for Materials, Equipment, supplies, tools or labor and other just claims against the Contractor or any subcontractor in connection with the Contract. Final acceptance and payment by CFX will not release the Contractor's bond until all such claims are paid or released.

#### 5.11 Insurance

Anything contained herein to the contrary notwithstanding, during the term of the Contract and for such additional time as may be further required, the Contractor shall provide, pay for and maintain in full force and effect insurance outlined in subarticles 5.11.1 through 5.11.9

below for coverage at not less than the prescribed minimum limits of liability, covering the Contractor's activities and those of any and all subcontractors (including officers, directors, employees or agents of each and their successors). All insurance shall be provided through companies authorized to do business in the State of Florida and considered acceptable by CFX.

Upon execution of the Contract, the Contractor shall furnish to CFX, Certificates of Insurance bearing an original manual signature of the authorized representative of the insurance company. No Work shall commence under the Contract unless and until the required Certificates of Insurance described herein are in effect and have been approved by CFX. The Certificate of Insurance shall be issued to CFX and shall reference the complete and correct Project number, as well as the full and complete name of each insurance company, including city and state of domicile, as listed by A.M. Best Company. All insurance must be underwritten by insurers that are qualified to transact business in the State of Florida and that have been in business and have a record of successful and continuous operations for at least five (5) years. Each shall carry a rating of "A-" (excellent) and a financial rating of Class XII, or as approved by CFX, as defined by A.M. Best and Company's Key Rating Guide. Such Certificates shall provide that in the event of cancellation, non-renewal or material reduction in coverage (including any material reduction of limits of Liability), the insurer will provide thirty (30) days prior notice of such cancellation, non-renewal or material reduction by certified mail to CFX. In addition, certified true copies of all policies shall be provided to CFX upon specific written request. Renewal Certificates of Insurance for all policies shall be submitted by the Contractor so that they are received by CFX no later than thirty (30) calendar days prior to the expiration of existing insurance coverage. Failure by the Contractor to meet this required timeframe will result in suspension of partial payments on monthly estimates until the certificates are received and accepted by CFX.

All insurance coverage required of the Contractor shall be primary and noncontributory over any insurance or self-insurance program carried by CFX.

Excluding Professional and Pollution liability insurance, no liability insurance required herein shall be written under a "claims made" form.

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

Failure of CFX to demand such certificate or evidence of full compliance with these insurance requirements or failure of CFX to identify a deficiency from evidence provided will not be construed as a waiver of the CONTRACTOR's obligation to maintain such insurance.

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

Neither approval by CFX of insurance supplied by the Contractor nor disapproval of that insurance, shall release the Contractor of full responsibility for liability, damages and accidents as otherwise provided by the Contract. The requirement of insurance will not be deemed a waiver of sovereign immunity by CFX.

If CONTRACTOR fails to obtain the proper insurance policies or coverages, or fails to provide CFX with certificates of same, CFX may obtain such polices and coverages at CONTRACTOR's expense and deduct such costs from CONTRACTOR payments. Alternately, CFX may declare CONTRACTOR in default for cause.

5.11.1 Schedule of Required Limits for Workers' Compensation, General Liability and Automobile Liability:

<b>Contract Amount</b>	Workers' Comp/ Employer's Liability	General Liability (per occurrence/ aggregate)	Automobile Liability
Up to \$3 million	Statutory / \$500,000	\$1,000,000 / \$2,000,000	\$1,000,000
\$3 million and Up	Statutory / \$1,000,000	\$5,000,000 / \$10,000,000	\$5,000,000

5.11.2 Worker's Compensation and Employer's Liability Insurance: The Contractor shall maintain coverage for its employees in accordance with the laws of the State of Florida. The amount of coverage shall not be less than the limits of insurance as required in subarticle 5.11.1.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of CFX for all work performed by the Contractor, its employees, agents and subcontractors.

5.11.3 Comprehensive General Liability Insurance: Coverage shall be maintained by the Contractor providing Comprehensive General Liability Insurance as provided on Insurance Services Office form GC 00 01 or an equivalent thereof. Limits of Liability for Bodily Injury Liability and/or Property Damage Liability shall not be less than the limits of insurance as required in Section 5.11.1.

The policy shall contain an endorsement providing for Aggregate Limits of Liability to be on a per Project basis. This endorsement shall state that Aggregate Limits as specified herein apply separately and specifically to this Project.

Products and Completed Operations coverage, evidenced by a Certificate of

Insurance, shall be maintained for a period of not less than two (2) years following completion of the Work to which the Contract applies.

If watercrafts are to be used in the performance of any Work under the Contract, watercraft operations shall be covered under the Comprehensive General Liability policy providing limits in accordance with the General Liability requirements.

If the Project involves Work or operations by the Contractor within the limits of the railroad right-of-way, including any encroachments thereon from Work or operations in the vicinity of the railroad right-of-way, the railroad shall be named as an Additional Insured under this policy.

CFX, its employees, members, officers, agents, consultants, and successors shall be named as Additional Insured under this policy. Insurance Services Office endorsement CG 20 10 (11 85 edition date) or both CG 20 10 and CG 20 37(10 01 edition dates) forms (if later edition dates are used), shall be used to meet these requirements and a photocopy of same shall be provided with the Certificate.

5.11.4 Comprehensive Automobile Liability Insurance: The Contractor shall maintain coverage applicable to the ownership, maintenance, use, loading and unloading of any owned, non-owned, leased or hired vehicle issued on Insurance Services Office form CA 00 01 or its equivalent. The amount of coverage shall not be less than the limits of insurance as required in subarticle 5.11.1.

This policy shall include coverage for liability assumed under contract (if not provided for under the Comprehensive General Liability policy). In the event the Contractor does not own automobiles, the Contractor shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or through a separate Business Auto Liability policy.

CFX, its employees, members, officers, agents, consultants, and successors shall be named as Additional Insured under this policy.

5.11.5 Umbrella/Excess Liability Insurance: If an Umbrella or Excess Liability Insurance policy is used to attain the required limits of liability, the sum of the limits provided by the Primary insurance and the Umbrella or Excess Liability insurance must at least equal the Limits of Liability as required by subarticle 5.11.1.

The Umbrella/Excess Liability Insurance policy or Excess policy shall afford coverage equivalent to the required coverage as set forth in this Article 5.11. Policy inception date must also be concurrent with the inception dates of the underlying General Liability and Automobile Liability policies.

Umbrella or Excess policy Certificate of Insurance shall stipulate the underlying limits of liability applicable. A photocopy of the endorsement so evidencing shall be attached to the Certificate.

CFX, its employees, members, officers, agents, consultants, and successors shall be named as Additional Insured under this policy.

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>	Minimum Limit	<b>Maximum Deductible</b>
Up to \$1 million	50% of project cost, minimum of \$100,000 per occurrence	
\$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, 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.
- Submission of Working Schedule: Within 21 calendar days after award of the 6.3.3 Contract, or at the preconstruction conference, whichever is earlier, the Contractor shall submit a work progress schedule to CFX. The schedule shall show the various activities of work in sufficient detail to demonstrate that the Contractor has a reasonable and workable plan to complete the project within the Contract time allowed. The schedule shall show the order and interdependence of activities and the sequence in which the work will be accomplished as planned by the Contractor. All activities shall be described so that the work is readily identifiable and the progress on each activity can be readily measured. Each activity shall show a beginning work date, a duration, and a monetary value. Activities shall include procurement time for materials, plant and equipment, and review time for shop drawings where they are appropriate and essential to the timely completion of the project. The list of activities shall include milestones when required by the plans or specifications. If the project has more than 1 phase, each phase and its completion date shall be adequately identified and no activity shall span more than one phase.

A working plan shall be submitted with the schedule. The working plan shall be a concise written description of the Contractor's construction plan.

If, in the opinion of CFX, the schedule submitted by the Contractor is inadequate, it will be returned to the Contractor for revision. The Contractor shall resubmit a revised schedule within 15 calendar days from the date of the transmittal returning the original schedule. The approved schedule will be used as the baseline against which Contractor's progress is measured.

The Contractor shall submit an updated work progress schedule when requested by CFX. If revisions are required to the working schedule, the Contractor shall submit revised charts and analyses within 21 calendar days after being notified by CFX.

Failure to finalize either the initial or a revised schedule in the time specified may result in CFX withholding payments to the Contractor until the schedule is approved.

- 6.3.4 Beginning Work: See Article 6.7 below.
- 6.3.5 Provisions for Convenience of the Public: The Contractor shall schedule operations to minimize any inconvenience to adjacent businesses, vehicular or pedestrian traffic or residences. CFX reserves the right to direct the Contractor as to the performance and scheduling of Work in any areas along the Project where restrictions caused by construction operations present significant hazards to the health and safety of the general public.

When working adjacent to or over travel lanes, the Contractor shall ensure that dust, mud and other debris from Contractor's operation does not interfere with normal traffic operations or adjacent properties. All debris shall be removed from the Work area and clear zone of the Project before Work ends for the day. Trash shall be picked up and removed daily from the job by the Contractor.

6.3.6 Pre-Construction Conference: Prior to Contractor's commencement of Work on the Project, the CEI will schedule a pre-construction conference with the Contractor, utility companies and other affected parties to review the proposed Work activities and schedule of events.

#### 6.4 Limitations of Operations

6.4.1 Night Work: In all areas where Work is being performed during the hours of dusk or darkness, the Contractor shall furnish, place and maintain lighting facilities capable of providing light of sufficient intensity (5 foot-candles minimum) to permit good workmanship and proper inspection at all times. The lighting shall be arranged so as not to interfere with or impede traffic approaching the Work site(s) from either direction or produce undue glare to property owners and traveling public.

Lighting of Work site(s) may be accomplished using any combination of portable floodlights, standard Equipment lights, existing street lights, temporary street lights, etc., that will provide the proper illumination. The Contractor shall provide a light meter to demonstrate that the minimum light intensity is being maintained. The

Contractor shall provide sufficient fuel, spare lamps, generator, etc., to maintain lighting of the Work site.

The Contractor's lighting plan shall provide for and show the location of all lights necessary for every aspect of Work to be done at night. The plan shall be presented on standard size roadway plan sheets (no larger than 24" x 36") and on a scale of either 100' or 50' to the inch. The Contractor's lighting plan shall be submitted to the CEI for review and approval at least 10 days prior to beginning any night Work. The CEI may require that modifications be made to the lighting setup to fit field conditions.

The Contractor shall furnish and place variable message signs to alert approaching motorists of lighted construction area(s) ahead.

The Contractor's pickups and automobiles used on the Project shall be provided with amber flashing lights or flashing white strobe lights. These lights shall be in operation at all times while in the Project limits and/or Work area.

The Contractor's Equipment shall be provided with a minimum of four square feet of reflective sheeting or flashing lights that will be visible to approaching motorists.

The Contractor shall provide its personnel with reflective safety vests. The Contractor shall ensure that all Subcontractors are also provided with reflective safety vests. Vests shall be worn at all times while workers are within the Work area.

The Contractor shall use padding, shielding or locate mechanical and electrical Equipment to minimize noise as directed by the CEI. Noise generated by portable generators shall comply with all applicable Federal, State and local environmental regulations.

The Contractor shall have a superintendent present to control all operations involved during night Work. The superintendent shall maintain contact with the CEI and ensure that all required actions are taken to correct any problem noted.

All required traffic control devices such as signs, stripes, etc., shall be in place before the Contractor commences Work for the night and before the Contractor leaves the Work site the next morning.

Work operations that result in traffic delays more than five minutes may be temporarily suspended by the CEI to minimize the impact on the traveling public.

No private vehicles shall be parked within the limited access right of way. The Contractor's Worksite Traffic Supervisor shall continually and adequately review traffic control devices to ensure proper installation and working order, including monitoring of lights.

Compensation for lighting for night Work shall be included in the Contract prices for the various items of the Contract. All lighting Equipment for night work shall remain the property of the Contractor.

- 6.4.2 Sequence of Operations: The Contractor shall not start new Work that will adversely impact Work in progress. Under such circumstances, CFX reserves the right to require the Contractor to finish a section on which Work is in progress before Work is started on any new section.
- 6.4.3 Interference with Traffic: The Contractor shall at all times conduct the Work in such a manner and such sequence as to ensure the least practicable interference with traffic. The Contractor's vehicles and other Equipment shall be operated in such a manner that they will not be a hazard or hindrance to the traveling public. Materials stored along the roadway shall be placed to minimize obstruction to the traveling public.

Where existing pavement is to be widened and stabilizing is not required, the Contractor shall schedule operations such that at the end of each workday the full thickness of the base for widening will be in place. Construction of the widening strips will not be permitted simultaneously on both sides of the road except where separated by a distance of at least one-fourth of a mile along the road, where either the Work of excavation has not been started or the base has been completed.

6.4.4 Coordination with Other Contractors: The right is reserved by CFX to have other work performed by other contractors and to permit public utility companies and others to do work during the construction of and within the limits of or adjacent to the Project. The Contractor shall arrange the Work and dispose of Materials so as not to interfere with the operations of other contractors engaged upon adjacent work and shall perform the Work in the proper sequence in relation to that of other contractors and shall join with and connect to the work of others as required by the Plans and Specifications all as may be directed by the CEI.

Contractor shall be responsible for any damage done by Contractor's operations to the work performed by other contractors. Similarly, other contractors will be held responsible for damage caused their operations to the Contractor's Work. The Contractor agrees to make no claims against CFX for additional compensation due to delays or other conditions created by the operations of such other parties. Should a difference of opinion arise as to the rights of the Contractor and others working within the limits of, or adjacent to, the Project, CFX will decide as to the relative priority of all concerned.

6.4.5 Drainage: The Contractor shall conduct operations and maintain the Work in such condition that adequate drainage will be in effect at all times. Existing functioning storm sewers, gutters, ditches and other runoff facilities shall not be obstructed.

- 6.4.6 Fire Hydrants: Fire hydrants on or adjacent to the roadway shall be kept accessible to fire apparatus at all times and no material or obstruction shall be placed within 15 feet of any such hydrant.
- 6.4.7 Protection of Structures: Heavy Equipment shall not be operated close enough to pipe headwalls or other structures to cause their displacement.
- 6.4.8 Fencing: The Contractor shall expedite the installation of fencing at those locations where, in the opinion of the CEI, such installation is necessary for the protection, health, and safety of the public. All fencing shall be maintained by the Contractor at all times. Fence cuts shall be immediately replaced. All fence removed during any one working day shall be replaced during that same day. While the fence is down, continuous security shall be provided by the Contractor to ensure that no pedestrians or vehicles enter or exit the roadway from the temporarily unfenced area. Specific attention shall be given to prevent any persons, animals, or vehicles moving from adjacent private property onto the roadway right-of-way.
- 6.4.9 Hazardous or Toxic Waste: When the Contractor's operations encounter or expose any abnormal condition which may indicate the presence of a hazardous substance, toxic waste or pollutants such operations shall be discontinued in the vicinity of the abnormal condition and the CEI shall be notified immediately. The presence of tanks or barrels; discolored earth, metal, wood, groundwater, etc.; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions which appear abnormal may be indicators of hazardous or toxic wastes or pollutants and shall be treated with extraordinary caution.

Every effort shall be made by the Contractor to minimize the spread of any hazardous substance, toxic waste or pollutant into uncontaminated areas.

The Contractor's operations in the affected area shall not resume until so directed by the CEI.

Disposition of the hazardous substance, toxic waste or pollutant shall be made in accordance with the laws, requirements and regulations of any local, state, or federal agency having jurisdiction. Where the Contractor performs Work necessary to dispose of hazardous substance, toxic waste or pollutant and the Contract does not include pay items for disposal, payment will be made, when approved in writing by a Supplemental Agreement, prior to the Work being performed.

6.4.10 Milling: The Contractor shall provide positive drainage of the remaining pavement after milling. This operation shall be done prior to opening to traffic.

The Contractor shall provide suitable transitions between milled areas of varying thickness in order to create a reasonably smooth longitudinal riding surface. In addition, the Contractor shall provide suitable transitions approaching all bridge ends at all times.

Wedges for Longitudinal and Transverse Joints: Asphalt Wedges for longitudinal and traverse joints shall be one foot wide or long, respectively, for each 1/4 inch of depth. The wedge must be installed prior to opening the lane to traffic.

The Contractor shall plan milling operations so that any lane milled will be repaved prior to opening to traffic.

# 6.5 Qualifications of Contractor's Personnel

The Contractor shall ensure that all of its employees are competent, careful, and reliable. All workers shall have the skills and experience necessary to properly perform the Work assigned and as required by the Plans and Specifications.

If, in the opinion of CFX, any person employed by the Contractor, or any Subcontractor, is not qualified to perform the Work or is insubordinate, disorderly, disrupts or is detrimental to the progress of the Work, such person shall be immediately removed from the Project by the Contractor upon written direction from CFX. Such person shall not be employed again on the Project without the written permission of CFX. If the Contractor fails to immediately remove such person, CFX may, at its sole discretion, withhold payments due or which may become due, or may suspend the Work until the person is removed. The Contractor shall indemnify and hold harmless CFX, its agents, consultants, officials and employees from any and all claims, actions or suits arising from such removal, discharge or suspension of a Contractor employee based on the direction of CFX.

## 6.6 Temporary Suspension of Contractor's Operations

- 6.6.1 Authority to Suspend Contractor's Operations: CFX, at its sole discretion, may suspend the Contractor's operations, wholly or in part, for such period(s) as CFX deems necessary. These periods of suspension may include adverse weather conditions, catastrophic occurrences and heavy traffic congestion caused by special events. Written notice, giving the particulars of the suspension, will be transmitted to the Contractor by CFX.
- 6.6.2 Prolonged Suspensions: If the suspension of operations is for an indefinite period of time, the Contractor shall store all Materials in such a manner that they will not become damaged or obstruct or impede the traveling public unnecessarily. The Contractor shall take reasonable precautions to prevent damage to or deterioration of

the Work performed, shall provide suitable drainage of the roadway by opening ditches, shoulder drains, etc., and shall provide all temporary structures necessary for public travel and convenience.

- 6.6.3 Permission to Suspend Operations: The Contractor shall not suspend operations or remove Equipment or Materials necessary for the completion of the Work without the permission of CFX. All requests for suspension of the Contract time shall be in writing to CFX and shall identify specific dates to begin and end.
- 6.6.4 Suspension of Contractor's Operations Holidays: Unless the Contractor submits a written request to work on a holiday at least ten days in advance of the requested date and receives written approval from the CEI, the Contractor shall not work on the following days: Martin Luther King, Jr. Day; Memorial Day; the Saturday and Sunday immediately preceding Memorial Day; Independence Day; Labor Day; the Friday, Saturday, and Sunday immediately preceding Labor Day; Veterans Day; Thanksgiving Day; the Friday, Saturday and Sunday immediately following Thanksgiving Day; and December 24 through January 2, inclusive. Contract Time will be charged during these holiday periods regardless of whether or not the Contractor's operations have been suspended. The Contractor is not entitled to any additional compensation for suspension of operations during such holiday periods.

During such suspensions, the Contractor shall remove all Equipment and Materials from the clear zone, except those required for the safety of the traveling public and retain sufficient personnel at the job site to properly meet the requirements of Sections 102 and 104 of the Technical Specifications. The Contractor is not entitled to any additional compensation for removal of Equipment from clear zones or for compliance with Section 102 and Section 104 during such holiday periods.

Any special events known to CFX that may impact Contractor operations are shown on the Plans.

## 6.7 Contract Time

6.7.1 General: The Contractor shall complete the Work in accordance with the Plans and Specifications and within the Contract Time specified in the Special Provisions including approved extensions.

For scheduling purposes, the Contractor shall take into consideration holidays and all weather conditions (except those listed in subarticle 6.7.3) that may be encountered during the performance of the Work.

The effect on job progress of utility relocations and adjustments and scheduling of construction operations to maintain traffic shall also be considered by the Contractor in the scheduling of Contract time.

6.7.2 Date of Beginning of Contract Time: The date on which Contract time will begin GS-92

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;
  - 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;
  - 1. 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

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.

7.2.2 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:

% Contract Amount Completed	Amount Retained
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 paying or base construction operations begin except when a construction sequence designated by the CEI requires suspension of paying and base construction after the initial paying operations, partial payments will be reinstated until the paying 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, < <a href="supplier">supplier</a>> will be liable to the Contractor and the Central Florida Expressway Authority should < <a href="supplier">supplier</a>> 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 GS-117

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:
  - The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials of supplies required for performance of the Contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - 2. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for

similar services.

- 3. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- 4. Those sums that, subsequent to the receipt of bids, CFX elects, under the provisions of the Direct Materials Purchase Option, to purchase materials originally proposed by the Contractor to CFX to have been an element of the Work of a certified D/M/WBE contractor/subcontractor/vendor.
- 8.2.5 Records and Reports: The Contractor shall develop a record keeping system to monitor its D/M/WBE participation and shall maintain the following records:
  - 1. the procedures adopted to comply with these special provisions;
  - 2. The number of subordinated contracts on CFX projects awarded to D/M/WBEs:
  - 3. the dollar value of the contracts awarded to D/M/WBEs;
  - 4. the percentage of the dollar value of all subordinate contracts awarded to D/M/WBEs as a percentage of the total contract amount;
  - 5. a description of the general categories of contracts awarded to D/M/WBEs;
  - 6. the specific efforts employed to identify and award contracts to D/M/WBEs;
  - 7. maintenance of records of payments and monthly reports to CFX;
  - 8. Subcontract Agreement between Contractor and D/M/WBE subcontractors; and
  - 9. any other records required by CFX's Project Manager or Executive Director.

The records maintained by the Contractor in accordance with this Section shall be provided to CFX for review within 48 hours of the CFX request. The Contractor shall submit a properly executed D/M/WBE Payment Certification monthly during the life of the D/M/WBE subcontract whether payment is made or not.

8.3 Subletting of Contracts - Participation Objective

No request to sublet Work will be approved unless it is in compliance with the Contractor's approved D/M/WBE Utilization Form "Certification of Subcontract Amount to D/M/WBE Contractor", shall be completed and submitted with the Request for Authorization to Sublet Work. One copy of the certification will be attached to each copy of the Request for Authorization to Sublet Work.

**END OF SECTION 8** 

# **SECTION 9 - BINDING ARBITRATION**

- 9.1 CFX and the Contractor shall submit any and all unsettled claims, counterclaims, and disputes to the Disputes Review Board (DRB) prior to initiating a demand for arbitration pursuant to this Section.
- 9.2 No demand for arbitration of any claim, dispute or other matter referred to the DRB initially for decision will be made until after final acceptance, per Article 3.9, of all Contract Work by CFX. The filing party shall pay all applicable fees associated with requested arbitration proceedings.

The failure to demand arbitration within thirty (30) days after final acceptance will result in the DRB's decision being final and binding upon CFX and Contractor.

- 9.3 Notice of the demand for arbitration is satisfied when it is filed in writing with the other party to the Contract and with the American Arbitration Association (including required fees). A copy will be sent to the Board for information.
- 9.4 The arbitration shall occur in Orlando, Florida and shall be conducted by a three (3) member panel pursuant to and under the auspices of the Construction Industry Arbitration Rules of the American Arbitration Association.
- 9.5 Procedure for Binding Arbitration

Arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations of this Section. The agreement to arbitrate (and any other agreement or consent to arbitrate entered into in accordance herewith) will be specifically enforceable under the laws of Florida.

Arbitration shall include by consolidation, joinder or in any other manner any person or entity who is not a party to the Contract in circumstances where:

- the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration, and
- such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings, and
- the written consent of the other person or entity sought to be included and of CFX and Contractor has been obtained for such inclusion, which consent shall make specific reference to this paragraph.

In order to assure complete resolution of any claim or controversy, the Contractor shall provide and require (in the agreements with subcontractors and material suppliers) for joinder in such arbitration proceedings. Therefore, if a claim, dispute or other matter in question between CFX and Contractor involves the work of a Subcontractor, either CFX or Contractor may join such subcontractor as a party to the arbitration. Nothing in this paragraph or in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of subcontractor or supplier, and against CFX, CEI, or any of their consultants that does not otherwise exist.

In connection with the arbitration proceedings all participants shall be afforded pre-hearing discovery in accordance with the rules of the American Arbitration Association.

END OF SECTION 9

#### **SECTION 10 - DISPUTES RESOLUTION**

#### 10.1 Disputes Resolution

# 10.1.1 Disputes Review Board

A Disputes Review Board ("Board") will be established to assist in the resolution of disputes arising out of the Work on the Project. This document describes the purpose, procedure, function and features of the Board.

The Board will provide special expertise to assist and facilitate the timely and equitable resolution of disputes and controversies between CFX and the Contractor in an effort to avoid construction delays and future claims.

It is not intended for CFX or the Contractor to avoid the normal responsibility to cooperatively and fairly settle differences by indiscriminately requesting dispute resolution by the Board. It is intended the Board encourage CFX and the Contractor to first try resolving potential disputes without resorting to the procedure set forth herein.

The Board will be used only when the claims procedure detailed in the Contract has been followed and has been unsuccessful. It is a condition of the Contract that the parties use the Board. Adherence to the Contract claims procedure is a condition precedent to the submission of a dispute to the Board, and the submission of an unresolved dispute to the Board is, in turn, a condition precedent to arbitration of such issue.

The Board will fairly and impartially consider disputes referred to it. The Board will receive testimony and other relevant evidence regarding such disputes, will analyze the facts within the parameters of the Contract, and will then provide written recommendations (to CFX and Contractor) to assist in the resolution of the disputes. The recommendations of the Board will not be binding on either CFX or the Contractor; however, the Board's recommendations and findings shall be admissible for all purposes in any subsequent arbitration proceedings or the judicial enforcement thereof.

## 10.1.2 Continuance of Work During Dispute

During the dispute resolution process the Contractor shall conform to the CEI's decision or order and continue with the Work as directed by the CEI in a diligent manner and without delay. Such Work will be governed by all applicable provisions of the Contract. With respect to any protested Work, the Contractor will keep complete records of extra costs and time incurred. Except for sealed Bid Records, the Contractor will permit CEI and the Board access to any records needed for evaluating the dispute, without any claim of privilege or confidentiality.

## 10.1.3 Disputes Review Board Membership

The Board will consist of three Members, one Member selected by CFX and approved by the Contractor, and one Member selected by the Contractor and approved by CFX. The first two Members will mutually select and agree on the third Member, which third Member shall not be subject to approval by either the Contractor or CFX. Normally, the third Member will act as Chairman for all Board activities. If the third Member declines to act as Chairman, the Members shall select an alternative Chairman. Neither the Contractor nor CFX shall seek to influence the Chairman selection decision.

The Contractor and CFX shall each submit the name and credentials of their proposed Member to the other within ten (10) days of the Contract award. The two Members, upon acceptance, shall meet promptly and mutually agree on the third Member. A Notice to Proceed shall not be issued until the Board Members have been selected and have signed the Three-Party Agreement. All three Members shall attend the Pre-Construction Meeting.

All Board Members shall be experienced with major road and bridge construction and the associated construction methods involved in the Project, in the interpretation of contract documents and in contract dispute resolution. The goal in selecting the third Member is to complement the construction experience of the first two Members and to provide leadership of the Board's activities.

It is imperative that Board Members show no partiality to either the Contractor or CFX, or have any conflict of interest.

The criteria and limitations for membership will be as follows:

- a. The person selected will not have any direct or indirect ownership or financial interest in (i) the Contractor, (ii) CEI or the CFX General Engineering Consultant ("GEC"), (iii) any subcontractor or supplier of the Project, or (iv) the employer of other Board Members.
- b. Except for services as a Board Member on CFX projects, no Member shall have been an employee, contractor or consultant to the Contractor or CFX, CEI, the GEC or any subcontractor or supplier for the Project within a period of ten (10) years prior to the Contract award.
- c. No Member will have had a close personal, professional or business relationship with CFX or the Contractor (or an employee or officer of CFX or the Contractor).
- d. No Member will have had any prior involvement in the Project (other than as a dispute board member) of a nature which could be construed to compromise an ability to impartially resolve disputes.

- e. No Member will be employed by the Contractor, the CEI, the GEC or any subcontractor or supplier of the Project during the term of the Contract, except as a Board Member pursuant to the Three Party Agreement.
- f. During the term of the Contract no discussion or agreement will be made between a Board Member and CFX or Contractor regarding employment after the Contract is completed.
- g. During the term of the Contract, ex-parte communications between a Board Member and a party to the Three Party Agreement is prohibited.

Before appointments are final, the first two prospective Members will submit complete disclosure statements for the approval of both CFX and the Contractor. Each statement (in the form prepared by CFX) will include a statement of experience and a declaration describing all past, present and anticipated or planned future relationships to the Project and with the parties to the Contract. Disclosure of professional or personal relationships with parties to the Contract will be included. The third Board Member will supply a similar statement to the first two Board Members (and to CFX and the Contractor) before the third Member appointment is finalized.

CFX and the Contractor will each select a Member, execute the Three Party Agreement (described below) and assure the Members execute the Three-Party Agreement within the first three (3) weeks after Contract award. CFX and the Contractor will immediately notify the selected Members to begin selection of the third Member. The first two Members will ensure the third Member meets all of the criteria listed above. The third Member will be selected within two (2) weeks after the first two Members are notified to proceed with the selection of the third Member. If there is an impasse in the selection of the third Member, the third Member will be selected by CFX and the Contractor, with the first consideration to the nominees reviewed by the first two Members.

In the event of death, disability or resignation of a Member, such Member shall be replaced in the same manner as the Member being replaced was selected. If for whatever other reason a Member fails or is unable to serve, the Chairman (or failing the action of the Chairman, then either of the other Members) shall inform the parties and such non-serving Member shall be replaced in the same manner as the Member being replaced was selected. Any replacement made by the parties shall be completed within fifteen (15) days after the event giving rise to the vacancy on the Board, failing which the replacement shall be made by the two remaining Members of the Board. Replacement shall be considered completed when the new Member executes the Dispute Review Board Three Party Agreement.

# 10.1.4 Board Operations

The Board will formulate procedures of operation that shall be flexible with respect to the functioning of the Board. The Board may formulate new or revised procedures respecting its operation from time to time to accommodate the needs of the Board and the circumstances.

Each Board Member shall be provided a complete set of the Contract Documents. CFX and the Contractor shall keep the Board informed of construction activity and progress by submitting written progress reports and other relevant data at least monthly. The Board will visit the Project at regular intervals and/or at times of critical construction events and meet with CEI and the Contractor. In circumstances of unresolved disputes, the Board will meet at least monthly until the unresolved disputes are concluded. The frequency of visits will be agreed upon by CFX, the Contractor and the Board, depending upon the progress of the Work.

Regular meetings will be held at the job site. Each meeting will consist of an informal discussion and a field inspection of the Work. The informal discussion will be attended by selected personnel from CFX, the CEI and the Contractor. Agenda for regular meetings of the Board will generally include the following:

- a. Meeting opened by the Chairman of the Board.
- b. Remarks by the CEI.
- c. A description by the CEI and the Contractor of Work accomplished since the last meeting, current status of the Work schedule, schedule for the future, potential problems and proposed solutions to anticipated problems.
- d. Discussion by the CEI of Work schedule, potential new disputes or claims, status of past disputes and claims and other issues.
- e. Set a date for next meeting.

The CEI will prepare minutes of all Board meetings and circulate them for comments, revisions and/or approval by all concerned.

The field inspection will cover all active segments of the Work. The Board will be accompanied by representatives of both the CEI and the Contractor. Soliciting any Board Member's advice or consultation regarding the Work or the Contract is expressly prohibited.

## 10.1.5 Procedure for Disputes Resolution

Disputes will be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Steps may be omitted as agreed by both parties and the time periods stated below may be shortened in order to hasten resolution.

- a. If either CFX or Contractor object to any decision of the CEI with respect to claims, change order requests, or other actions or orders of the CEI, the objecting party may file a written protest with the CEI within fifteen (15) days after the CEI's disputed decision, action or order. The written protest must clearly state in detail the basis for the objection.
- b. The CEI will consider the written protest to its decision or directive, and make a final decision on the basis of the pertinent Contract provisions, together with the facts and circumstances involved in the protest. The decision will be furnished to CFX and Contractor in writing within fifteen (15) days after receipt of the written protest.
- c. The CEI's decision with respect to the protest will be final, unless a written exception is filed by CFX or Contractor with the CEI within fifteen (15) days after receiving the protest decision. If either rejects the CEI's final decision, the disputed matter may be referred to the Board by either CFX or the Contractor.
- d. Upon receipt by the Board of a written dispute, the Board will first decide when to conduct the hearing. If the matter is not urgent, it may be heard at the next regularly scheduled Board meeting. For an urgent matter, the Board will meet at its earliest convenience.
- e. Either party furnishing written evidence or documentation to the Board will furnish copies of such information to the other party a minimum of fifteen (15) days prior to the date the Board sets to hear the dispute. If the Board requests additional documentation or evidence prior to, during or after the hearing, CFX and/or the Contractor will provide the requested information to the Board and to the other party. Because each side needs a reasonable opportunity to understand and rebut the opposing side's point of view, failure of either party to timely provide written documentation in accordance with this provision shall result in such written documentation being excluded from the hearing before the Board unless the other party consents to its admission or consents to a delay in the hearing.

- f. The Contractor and CFX will each be afforded an opportunity to be heard by the Board and to offer evidence. The Board will consider all relevant evidence presented and analyze the same solely within the parameters of the Contract. Hearsay evidence shall be admissible but shall not be the sole basis for any recommendation of the Board.
- g. The Board's recommendations for resolution of the dispute will be given in writing within fifteen (15) days of completion of the hearing(s). In cases of extreme complexity, both parties may agree to allow additional time for the Board to formulate its recommendations. Generally, the Board will initially focus its attention (in the written report) only to matters of entitlement, and allow the parties to thereafter determine the monetary relief. If both parties request, and sufficient documentation is available, the Board may also make a recommendation of monetary relief, but only after formulation of the entitlement recommendation and only after the parties have attempted to agree upon the monetary relief amount.
- h. If the Board's recommendation for resolution is not unanimous, the dissenting member shall prepare a separate written opinion.
- i. Within fifteen (15) days of receiving the Board's recommendations, both CFX and the Contractor will respond to the other and to the Board in writing, signifying either acceptance or rejection of the Board's recommendations. The failure of a party to respond within the fifteen (15) day period will be deemed an acceptance by such party of the Board's recommendations. If CFX and the Contractor are able to resolve the dispute (with or without the aid of the Board's recommendations), CFX will promptly process any required Contract changes.
- j. If the dispute remains unresolved because of a bona fide lack of clear understanding of the recommendation, either party may request the Board clarify specific portions of its recommendations. Further, if new evidence becomes available, either party may request the Board reconsider its prior recommendation Only evidence which did not exist at the time of the hearing, or which existed but which could not be discovered with reasonable and normal diligence shall be considered new evidence.
- k. If the Board's recommendation is rejected, either party may thereafter initiate resolution of the dispute by binding arbitration conducted pursuant to the Contract.

Both CFX and the Contractor should carefully consider the Board's recommendations, as the recommendations are binding unless written notice is provided to the other party within 30 days of the recommendations stating the party's intent to bring the disputed issue to arbitration. However, if the Board's recommendations do not resolve the dispute, all records and written recommendations, including any minority reports, will be admissible for informational purposes in any subsequent dispute resolution procedures. Such informational purposes shall include but not be limited to establishing that the Board considered the dispute, the qualifications of the Board Members, and the Board's recommendation that resulted from the dispute resolution process.

# 10.1.6 Conduct of Disputes Hearings

Each party shall file three copies of its written arguments with the Board no less than seven days prior to the scheduled hearing and shall simultaneously deliver a copy of such written arguments to the opposing party. Each party shall also submit to the Board along with its written arguments copies of its written evidence and documentation which has been previously provided to the opposing party as provided above.

Normally, the hearing will be conducted at the job site. However, any location more convenient and which provides all required facilities and access to necessary documentation is satisfactory.

While the Board will keep a record of its sessions during consideration of a dispute, the Board will not be required to keep its record in any particular form. The nature and completeness of the record will depend upon the nature and magnitude of the dispute and the desires of the parties. If possible, the hearings shall be kept informal. Formal records of the Board meetings may be taken and transcribed by a court reporter if requested by a party (at the requesting party's cost). Audio and/or video recording of the meeting is discouraged and shall only be made with the prior agreement of all parties and a majority of the Board.

CFX and the Contractor will have representatives at all dispute resolution hearings. The party requesting Board review will first discuss the dispute, followed by the other party. Each party will then be allowed successive rebuttals until all aspects are fully covered to the Board's satisfaction. The Members and the parties may ask questions, request clarification or ask for additional data. In large or complex cases, additional hearings may be necessary in order to consider and fully understand all evidence presented by both parties.

During the hearings, no Member will express any opinion concerning the merit of any facet of the dispute.

After the hearings are concluded, the Board will meet in private to formulate recommendations supported by two or more Members. All Board deliberations will be conducted in private, with individual views kept strictly confidential. No minutes shall be

prepared of the Board's private meetings. The Board's recommendations and discussions of its reasoning will be submitted as a written report to both parties. The recommendations will be based on the pertinent Contract provisions and the facts and circumstances involved in the dispute.

The Board will make every effort to reach a unanimous decision. If a unanimous decision is not possible, the dissenting Member may (but is not required to) prepare a minority report.

## 10.1.7 Compensation

The Contractor shall pay the fees of all three Board Members for services rendered under the Three Party Agreement. An allowance pay item has been established in the Contract for the reimbursing the Contractor. Funds remaining in the pay item, if any, at the completion of the Project will belong to CFX. CFX and the Contractor shall agree on the procedures and method of processing payments made against the allowance. CFX or the CEI will mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services. If the Board desires special services, such as legal consultation, accounting, data research, etc., both parties must agree and the costs will be paid from the allowance.

#### 10.1.8 Three Party Agreement

The Contractor, CFX and the Members of the Board will execute the Dispute Review Board Three Party Agreement within four (4) weeks of the final selection of the third Member.

**END OF SECTION 10** 

#### ATTACHMENT A

## DISPUTES REVIEW BOARD THREE PARTY AGREEMENT

THIS THREE PARTY AGREEME	ENT ("Agreement") made and entered into this
day of, 20, between	n the CENTRAL FLORIDA EXPRESSWAY
	("Contractor") and the DISPUTES
REVIEW BOARD ("Board"), consisting	ng of three members:,
and	("Members").
WHEREAS, CFX is now engaged in	the construction of the, and
WHEREAS, the and operation of the Board to assist in resolv.	contract ("Contract") provides for the establishment ing disputes and claims.
	n of the terms, conditions, covenants and performance and made a part hereof), the parties agree as set forth

#### 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. <u>Furnishing Documents</u>. 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. <u>Site Visits</u>. 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. <u>Board Consideration of Disputes or Claims</u>. 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. <u>Miscellaneous Board Responsibilities</u>. 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. <u>Board Member Replacement</u>. 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. <u>Contract Related Documents</u>. 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. <u>Coordination and Services</u>. 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. <u>Payment</u>.

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. <u>Inspection of Costs Records</u>. 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:
D <sub>10</sub> .
By: Print Name:
Tillt 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.

# CONSENT AGENDA ITEM #8

### **MEMORANDUM**

TO: CFX Board Members

FROM: Aneth Williams Ansth Williams

Director of Procurement

DATE: February 25, 2021

SUBJECT: Approval of Purchase Order to The Reinforced Earth Company (RECo) for

Engineering Services for Mechanically Stabilized Earth (MSE) Walls

Project No. 429-152

Board authorization is requested to issue a purchase order to RECo in the amount of \$58,375.00 for engineering services.

The services to be provided include analysis of the existing MSE structures including recommendations and procedures to preserve the internal stability of the MSE structures to the originally designed service life.

RECo has been designated as a single source vendor for these services.

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

Reviewed by:

Will Hawthorne, PE Director of Engineering Glenn Pressimone, PE

## **MEMORANDUM**

DATE: Februa	ry 26, 2021
VENDOR NAME:	The Reinforced Earth Company (RECo)
VENDOR ADDRESS:	45610 Woodland Road, Suite 200 Sterling, VA 20166
SUBJECT:	Justification for RECo Single-Source
The following is the resingle-source.	eason to use standardization as a basis for designating this vendor as a
originally designed by associated with projec	polized earth walls (MSE walls) within the project limits of 429-152 were RECo and require additional analysis in order to facilitate the widening t 429-152. Their services, as the original engineer, are required to ensuraintained due to the additional loading associated with the project.
Will Hawthorne, PE Director of Engineerin	ng
Signature of Procurem	nent Director: Ansth Williams

Date:

# CONSENT AGENDA ITEM #9

### **MEMORANDUM**

TO: CFX Board Members

FROM: Aneth Williams Will

Director of Procurement

DATE: February 19, 2021

SUBJECT: Approval of Final Ranking and Authorization for Fee Negotiations for

Design Consultant Services for SR 528 Widening From Goldenrod Road to

Narcoossee Road

Project No. 528-168, Contract No. 001742

Letters of Interest for the above referenced project was advertised on October 11, 2020. Ten (10) responses were received by the November 3, 2020 deadline. Those firms were Burgess & Niple, Inc., EAC Consulting, Inc., Horizon Engineering Group, Inc., Johnson, Mirmiran & Thompson, Inc., Kisinger Campo & Associates, Corp., OM Engineering Services, Inc., Patel, Green & Associates LLC, Protean Design Group, Inc., Scalar Consulting Group, Inc. and Vanassee Hangen Brustlin, Inc.

The Evaluation Committee met on November 30, 2020, and after reviewing the technical proposals shortlisted Scalar Consulting Group, Inc., Horizon Engineering Group and EAC Consulting, Inc.

The Technical Committee heard and scored oral presentations on February 1, 2021. After the oral presentations were completed, the Committee prepared its final ranking and the result is shown below:

Ranking	Firm
1	Scalar Consulting Group, Inc.
2	Horizon Engineering Group, Inc.
3	EAC Consulting, Inc.

Board approval of the final ranking and authorization to enter into negotiations in ranked order is requested. Once negotiations are completed, approval of the contract will be requested.

Reviewed by:

Will Haw horne, PE Director of Engineering Glenn Pressimone, PE

#### LOI-001742 Technical Review Committee Meeting - February 1, 2021 Minutes

Technical Review Committee for **Design Consultant Services for SR 528 Widening from Goldenrod Road to Narcoossee Road, Project 528-168, Contract No. 001742,** held a duly noticed meeting on Monday, February 1, 2021 at 9:00 a.m. in the Sandpiper Conference Room at CFX Administration Bldg., Orlando, FL. Firms presented virtually via MS Teams.

#### **Committee Members Present:**

Glenn Pressimone, Chief of Infrastructure Will Hawthorne, Director of Engineering Ben Dreiling, Director of Engineering Dana Chester, Manager of Engineering Jamison Edwards, Engineering Project Manager

#### Other Attendees:

Aneth Williams, Director of Procurement Brad Osterhaus, Senior Procurement/Q/C Administrator

#### Presentations / Q and A:

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

EAC Consulting, Inc.	09:00 - 09:40  a.m.
Horizon Engineering Group, Inc.	09:50 - 10:30  a.m.
Scalar Consulting Group Inc.	10:40 - 11:20 a.m.

#### **Evaluation Portion:**

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

<u>FIRM</u>	<u>Points</u>	Ranking
EAC Consulting, Inc.	15	3
Horizon Engineering Group, Inc.	8	2
Scalar Consulting Group Inc	7	1

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

There being no other business to come before the Committee; the meeting was adjourned at 11:41 a.m. These minutes are considered to be the official minutes of the Technical Review Committee meeting held Monday, February 1, 2021 and no other notes, tapes, etc., taken by anyone takes precedence.

Submitted by:

Aneth Williams

Approved by

Jamison Edwards

#### TECHNICAL COMMITTEE MEMBER FINAL SUMMARY RANKING

#### DESIGN SERVICES FOR SR 528 WIDENING FROM GOLDENROD ROAD TO NARCOOSSEE ROAD PROJECT NO. 528-168 CONTRACT NO. 001742

CONSULTANT	Glenn Pressimone (RANK)	Will Hawthorne (RANK)	Ben Dreiling (RANK)	Dana Chester (RANK)	Jamison Edwards (RANK)	TOTAL SCORE	RANKING
Horizon Engineering Group, Inc.	2	T	T)	2	2	8	2
Scalar Consulting Group, Inc.	1	2	2	1	1	7	1

EVALUATION COMMITTEE MEMBERS:

- Virgina

ou Proling P.E.

Dana Chester

Monday, February 1, 2021

# CONSENT AGENDA ITEM #10

### **MEMORANDUM**

TO: CFX Board Members

FROM: Aneth Williams Anoth Williams

Director of Procurement

DATE: February 22, 2021

SUBJECT: Approval of Contract Award to Hubbard Construction Company for SR 528

Pavement Repairs and Resurfacing from Goldenrod Road to Narcoossee Road

Project No. 528-760A, Contract No. 001761

An Invitation to Bid for the above referenced project was advertised on January 31, 2021. Four (4) responses were received by the February 22, 2021 deadline.

Bid results were as follows:

	<u>Bidder</u>	Bid Amount
1.	Hubbard Construction Company	\$412,897.03
2.	Ranger Construction Industries, Inc.	\$593,856.21
3.	Middlesex Paving, LLC	\$654,022.00
4.	Masci General Contractor, Inc.	\$763,041.20

The engineer's estimate for this project is \$427,783.92. Included in the Five-Year Work Plan is \$263,000.00.

The work consists of providing all labor, materials, equipment and incidentals necessary to mill, resurface and repair SR 528 from Goldenrod Road to Narcoossee Road.

The Engineer of Record has reviewed the low bid submitted by Hubbard Construction Company and has determined that there was one unit price that was considered unbalanced because it exceeds the 50% threshold when compared to the unit prices used in the engineering estimate. However, although the low bid price is considered unbalanced, it is deemed reasonable based on the low bid unit price.

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



The Procurement Department has evaluated the bids and has determined that the bid from Hubbard Construction Company to be responsible and responsive to the bidding requirements. Board award of the contract to Hubbard Construction Company in the amount of \$412,897.03 is requested.

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

Reviewed by:

Will Hawhorne, PE Director of Engineering Glenn Pressimone, PE

# **CONTRACT**



## **HUBBARD CONSTRUCTION COMPANY**

SR 528 PAVEMENT REPAIRS AND RESURFACING FROM GOLDENROD ROAD TO NARCOOSSEE ROAD

PROJECT NO. 528-760A CONTRACT NO. 001761

CONTRACT DATE: MARCH 11, 2021 CONTRACT AMOUNT: \$412,897.03

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

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

**FOR** 

SR 528 PAVEMENT REPAIRS AND RESURFACING FROM GOLDENROD ROAD TO NARCOOSSEE ROAD

PROJECT NO. 528-760A CONTRACT NO. 001761

**MARCH 2021** 

#### **CONTRACT**

This Contract No. 001761 (the "Contract"), made this 11<sup>th</sup> day of March 2021, between <u>CENTRAL FLORIDA EXPRESSWAY AUTHORITY</u>, hereinafter called CFX and <u>Hubbard Construction</u> Company, of 1936 Lee Road, Suite 300, Winter Park, FL. 32789, 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 Performance and Payment 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. 528-760A, SR 528 Pavement Repairs and Resurfacing from Goldenrod Road to Narcoossee Road, as detailed in the Contract Documents and any addenda or modifications thereto. Contract time for this project shall be 45 calendar days. The Contract Amount is \$412,897.03. This Contract was awarded by the Governing Board of CFX at its meeting on March 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:	
HUBBARD CONSTRUCTION COMPANY	
By:	
Signature	
Print Name	
Title	
A (TYPE) COT	(0 1)
ATTEST:	(Seal)
DATE:	
Approved as to form and execution, only.	
General Counsel for CFX	

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Attachment A - Disputes Review Board Three Party Agreement

#### **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 multispan 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

<sup>\*</sup>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 Older 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 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.

- 3.1.4.2. Work Items Requiring Shop Drawings: The requirement for submittals for certain items may be waived by other provisions of these specifications; i.e. items constructed from standard drawings or those complying with alternate details for pre-stressed members under Section 450. Precast components that are not detailed in the Plans or Standard Drawings will require approved shop drawings. The Contractor shall review the Plans and Specifications to determine the submittals required. The CEI may request a submittal for any item the CEI considers necessary.
- 3.1.4.3 Schedule of Submittals: The Contractor shall prepare and submit to the CEI a schedule of submittals identifying the Work for which Contractor intends to submit shop drawings, the type, approximate number of drawings or other documents and approximate dates of anticipated submittals with due regard to processing requirements herein. The schedule of submittals shall be submitted to the CEI within 15 days of the start of the date of the Notice to Proceed, and prior to the submission of any shop drawings.

Subsequent submittals shall be coordinated with construction schedules to allow sufficient time for review, approval and re-submittal as necessary.

- 3.1.4.4 Style, Numbering and Material of Submittals:
- 3.1.4.4.1 Drawings: The Contractor shall furnish such shop drawings as may be required to complete the structure in compliance with the design shown on the Plans. Drawings shall be prepared or reproduced on permanent material made for the purpose, such as tracing cloth, plastic, mylar or xerographic bond paper, hereafter referred to as masters. The size of the sheets shall be no larger than 24 by 36 inches. Each sheet shall be numbered consecutively for the series and the sheet number shall indicate the total number in the series (e.g., 1 of 12, 2 of 12, ...12 of 12). Each shop drawing shall contain the following items as a minimum requirement: the CFX Project Number, drawing title and number, a title block showing the names of the fabricator or producer and the Contractor for which the Work is being done, the initials of the person(s) responsible for the drawing, the date on which the Work was performed, the location of the item(s) within the Project, the Contractor's approval stamp and initials and when applicable, the signature and embossed seal of the Contractor's Florida registered Specialty Engineer. The absence of any of this minimum information may be cause for a request for a re-submittal.
- 3.1.4.4.2 Other Documents: Documents other than drawings, such as trade literature, catalogue information, calculations and manuals shall be original copies or clearly legible photographic or xerographic copies. The size shall be no larger than 11 by 17 inches. Such information shall be clearly labeled and numbered and the sheet numbers shall indicate the total number of sheets in the series (e.g., 1 of 12, 2 of 12, .... 12 of 12).

All documents shall be bound and submitted with a Table of Contents cover sheet. The cover sheet shall list the total number of pages and appendices and shall also include the CFX Project Number, a title to reference the item(s) for which it is submitted, the name of the firm

and person(s) responsible for the preparation of the document, the Contractor's approval stamp and initials and, when applicable, the signature and embossed seal of the Contractor's Florida registered Specialty Engineer.

The calculations or manuals shall clearly outline the design criteria and shall be appropriately prepared and checked. The internal sheets shall include the complete CFX Project Number and initials of the persons responsible for preparing and checking the document.

Trade literature and catalogue information shall be clearly labeled with the title, CFX Project Number, date and name of the firm and person responsible for that document displayed on the front cover.

Documents other than drawings may be on xerographic paper or glossy paper material as appropriate. For the purpose of this specification, the term "shop drawings" shall be deemed to include these other documents.

### 3.1.4.5 Submittal Paths and Copies:

The Contractor shall submit one (1) set of prints along with one (1) set of reproducible copies of each series of shop drawings to the CEI with a copy of the letter of transmittal sent to the Consultant. For Work requiring other documentation (e.g. catalog data, material certifications, material tests, procedure manuals, fabrication / welding procedures, and maintenance and operating manuals) a minimum of eight (8) copies of each document shall be submitted with the prints. The mailing address of the Consultant will be furnished by CFX.

For other miscellaneous design and/or structural details furnished by the Contractor in compliance with the contract: The Contractor shall submit to the CEI one (1) set of prints along with one (1) reproducible copy of each series of shop drawings and four (4) copies of applicable calculations. Each print and the cover sheet of each copy of applicable calculations shall be signed and sealed by the Contractor's Specialty Engineer.

### 3.1.4.6 Processing of Shop Drawings:

3.1.4.6.1 Contractor Responsibility for Accuracy and Coordination of Shop Drawings: The Contractor shall coordinate, schedule and control all submittals including those of its various subcontractors, suppliers and engineers to provide for an orderly and balanced distribution of the Work.

All shop drawings prepared by the Contractor or its agents (subcontractor, fabricator, supplier and etc.) shall be coordinated, reviewed, dated, stamped, approved and signed by the Contractor prior to submission to the CEI for review. The Contractor's signed approval of drawings submitted shall confirm the Contractor has verified the Work requirements, field

measurements, construction criteria, sequence of assembly and erection, access and clearances, catalog numbers and other similar data. Each series of drawings shall indicate the specification section and page or drawing number of the Contract plans to which the submission applies. The Contractor shall indicate on the shop drawings all deviations from the Contract drawings and shall itemize all deviations in the letter of transmittal. Likewise, whenever a submittal does not deviate from the Contract plans, the Contractor shall also clearly state so in the transmittal letter.

The Contractor shall schedule the submission of shop drawings to allow for a 15-calendar day review period by the CEI. The review period commences upon receipt of the Contractor's submittal by the CEI and terminates upon transmittal of the submittal back to the Contractor by the CEI. The Contractor shall adjust its schedules so that a 10-calendar day period is provided for each re-submittal.

It is incumbent upon the Contractor to submit shop drawings to facilitate expeditious review. Voluminous submittals of shop drawings at one time are discouraged and may result in increased review time. The submittal/re-submittal clock will start upon receipt of a valid submittal. A valid submittal shall include all the minimum requirements outlined in 3.1.4.4. CFX will not be liable to the Contractor for resulting delays, added costs and/or related damages when the actual time required for approval extends beyond the 45- and 30-day review periods shown above.

Only CEI approvals of miscellaneous submittals and red ink stamps on shop drawings are valid and any Work performed in advance of approval will be at the Contractor's risk.

3.1.4.6.2 Scope of Review by CEI: The review of the shop drawings by the CEI shall be for conformity to the Contract requirements and intent of design and not for the adequacy of the means, methods, techniques, sequences and procedures proposed for construction. Review by the CEI does not relieve the Contractor of responsibility for dimensional accuracy to assure field fit and for conformity of the various components and details.

## 3.2 Coordination of Plans and Specifications

The Plans, Specifications and all supplementary documents are integral parts of the Contract and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete Work. In addition to the Work and Materials specifically identified as being included in any specific pay item, additional incidental Work not specifically mentioned will be included in such pay item when shown in the Plans or if indicated or obvious and apparent as being necessary for proper completion of the Work.

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: <a href="http://www.motadmin.com/find-a-training-provider.aspx">http://www.motadmin.com/find-a-training-provider.aspx</a>

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.
- Where utilities cross pipe trenches transversely within the excavation area but not within positions from which relocation or removal is necessary, the utility owner will be responsible for providing and effecting all reasonable measures for their support and protection during construction operations. The Contractor shall cooperate with the utility owner in the owner's effecting such support and protective measures. The Contractor shall be responsible for any damage to the utility that is caused by neglect or failure on the Contractor's part to cooperate and to use proper precaution in performing the Work.

In the event that a temporary relocation of a utility or a particular sequence of timing in the relocation of a utility is necessary, such relocation shall be done only as directed by CFX. CFX will not be responsible for utility adjustments or temporary relocation work or for the conditions resulting therefrom, where such adjustments are: not necessitated by the construction of the Project; or done solely for the benefit or convenience of the utility owner or its contractor (or the Contractor where Contractor's construction procedures are considered by CFX to be other than normal); or not shown on the approved Plans for the utilities relocation or the construction.

5.9.6.2 Cooperation with Utility Owners: The Contractor shall cooperate with the utility owners in the removal and/or rearrangement of utilities. If utility service is interrupted due to construction operations, the Contractor shall immediately notify the owner of the utility and the CEI and cooperate in the prompt restoration of

service. If water service is interrupted, the Contractor's repair work shall be continuous until the service is restored. No Work shall be undertaken around fire hydrants until the local fire authority has approved provisions for continued service.

5.9.6.3 Utility Adjustments: Utility adjustments and reconstruction Work may be underway during the Work. The Contractor shall effectively cooperate, coordinate, and schedule utility adjustments with utility construction crews in maintaining utility service. The Contractor shall use caution when working adjacent to utilities that have been relocated. The Contractor shall repair, at Contractor's expense, damages to relocated utilities resulting from Contractor's operations.

5.9.6.4 Weekly Meetings: Contractor shall conduct weekly meetings on the job site with all the affected utility companies and the CEI in attendance to coordinate Project construction and utility relocation, and shall submit a list of all attendees one week in advance to the CEI for approval.

Provide the approved Work Progress Schedule and Work Plan for the project to document the schedule and plan for road construction and utility adjustments. When utility relocations no longer affect construction activities, the Contractor may discontinue the meetings with the CEI's approval.

- 5.10 Responsibility for Damages, Claims, etc.
  - 5.10.1 Contractor to Provide Defense Against Claims and Suits: To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless CFX (its officers, agents and employees) from and against claims, damages, losses and expenses (including but not limited to attorneys' fees), arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom. However, the indemnification herein provided is only to the extent caused in whole or in part by any act, omission or default of the Contractor, subcontractor, sub-subcontractor, materialman, agents of any tier, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described herein. The monetary limit on the indemnification provided herein to CFX or its officers, agents and employees shall be the total amount of the Agreement in aggregate or the insurance policy amount as required in article 5.11 herein, whichever is greater. The total amount of the Agreement in aggregate will be determined by the date the notice of claim was received by CFX.

In claims against any person or entity indemnified under this subarticle by an

employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this subarticle shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

The obligations of the Contractor under this subarticle shall not extend to the liability of the Engineer of Record, the Engineer of Record's consultants and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, designs or specification, or (2) the giving of or the failure to give direction or instructions by the Engineer of Record, the Engineer of Record's consultants and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

The Contractor's obligation to indemnify and pay for the defense or, at CFX's option, to participate and associate with CFX in the defense and trial of any damage claim or suit and any related settlement negotiations, shall arise within seven (7) days of receipt by the Contractor of the CFX notice of claim for indemnification to the Contractor. The notice of claim for indemnification will be served by certified mail. The Contractor's obligation to indemnify within seven (7) days of receipt of such notice will not be excused because of the Contractor's inability to evaluate liability or because the Contractor evaluates liability and determines the Contractor is not liable or determines CFX is solely negligent. The Contractor will pay all costs and fees related to this obligation and its enforcement by CFX.

This Contract shall not create in the public or any member thereof, a third party beneficiary hereunder or to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

5.10.2 Guaranty of Payment for Claims: The Contractor guarantees the payment of all just claims for Materials, Equipment, supplies, tools or labor and other just claims against the Contractor or any subcontractor in connection with the Contract. Final acceptance and payment by CFX will not release the Contractor's bond until all such claims are paid or released.

#### 5.11 Insurance

Anything contained herein to the contrary notwithstanding, during the term of the Contract and for such additional time as may be further required, the Contractor shall provide, pay for and maintain in full force and effect insurance outlined in subarticles 5.11.1 through 5.11.9

below for coverage at not less than the prescribed minimum limits of liability, covering the Contractor's activities and those of any and all subcontractors (including officers, directors, employees or agents of each and their successors). All insurance shall be provided through companies authorized to do business in the State of Florida and considered acceptable by CFX.

Upon execution of the Contract, the Contractor shall furnish to CFX, Certificates of Insurance bearing an original manual signature of the authorized representative of the insurance company. No Work shall commence under the Contract unless and until the required Certificates of Insurance described herein are in effect and have been approved by CFX. The Certificate of Insurance shall be issued to CFX and shall reference the complete and correct Project number, as well as the full and complete name of each insurance company, including city and state of domicile, as listed by A.M. Best Company. All insurance must be underwritten by insurers that are qualified to transact business in the State of Florida and that have been in business and have a record of successful and continuous operations for at least five (5) years. Each shall carry a rating of "A-" (excellent) and a financial rating of Class XII, or as approved by CFX, as defined by A.M. Best and Company's Key Rating Guide. Such Certificates shall provide that in the event of cancellation, non-renewal or material reduction in coverage (including any material reduction of limits of Liability), the insurer will provide thirty (30) days prior notice of such cancellation, non-renewal or material reduction by certified mail to CFX. In addition, certified true copies of all policies shall be provided to CFX upon specific written request. Renewal Certificates of Insurance for all policies shall be submitted by the Contractor so that they are received by CFX no later than thirty (30) calendar days prior to the expiration of existing insurance coverage. Failure by the Contractor to meet this required timeframe will result in suspension of partial payments on monthly estimates until the certificates are received and accepted by CFX.

All insurance coverage required of the Contractor shall be primary and noncontributory over any insurance or self-insurance program carried by CFX.

Excluding Professional and Pollution liability insurance, no liability insurance required herein shall be written under a "claims made" form.

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

Failure of CFX to demand such certificate or evidence of full compliance with these insurance requirements or failure of CFX to identify a deficiency from evidence provided will not be construed as a waiver of the CONTRACTOR's obligation to maintain such insurance.

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

Neither approval by CFX of insurance supplied by the Contractor nor disapproval of that insurance, shall release the Contractor of full responsibility for liability, damages and accidents as otherwise provided by the Contract. The requirement of insurance will not be deemed a waiver of sovereign immunity by CFX.

If CONTRACTOR fails to obtain the proper insurance policies or coverages, or fails to provide CFX with certificates of same, CFX may obtain such polices and coverages at CONTRACTOR's expense and deduct such costs from CONTRACTOR payments. Alternately, CFX may declare CONTRACTOR in default for cause.

5.11.1 Schedule of Required Limits for Workers' Compensation, General Liability and Automobile Liability:

<b>Contract Amount</b>	Workers' Comp/ Employer's Liability	General Liability (per occurrence/ aggregate)	Automobile Liability
Up to \$3 million	Statutory / \$500,000	\$1,000,000 / \$2,000,000	\$1,000,000
\$3 million and Up	Statutory / \$1,000,000	\$5,000,000 / \$10,000,000	\$5,000,000

5.11.2 Worker's Compensation and Employer's Liability Insurance: The Contractor shall maintain coverage for its employees in accordance with the laws of the State of Florida. The amount of coverage shall not be less than the limits of insurance as required in subarticle 5.11.1.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of CFX for all work performed by the Contractor, its employees, agents and subcontractors.

5.11.3 Comprehensive General Liability Insurance: Coverage shall be maintained by the Contractor providing Comprehensive General Liability Insurance as provided on Insurance Services Office form GC 00 01 or an equivalent thereof. Limits of Liability for Bodily Injury Liability and/or Property Damage Liability shall not be less than the limits of insurance as required in Section 5.11.1.

The policy shall contain an endorsement providing for Aggregate Limits of Liability to be on a per Project basis. This endorsement shall state that Aggregate Limits as specified herein apply separately and specifically to this Project.

Products and Completed Operations coverage, evidenced by a Certificate of

Insurance, shall be maintained for a period of not less than two (2) years following completion of the Work to which the Contract applies.

If watercrafts are to be used in the performance of any Work under the Contract, watercraft operations shall be covered under the Comprehensive General Liability policy providing limits in accordance with the General Liability requirements.

If the Project involves Work or operations by the Contractor within the limits of the railroad right-of-way, including any encroachments thereon from Work or operations in the vicinity of the railroad right-of-way, the railroad shall be named as an Additional Insured under this policy.

CFX, its employees, members, officers, agents, consultants, and successors shall be named as Additional Insured under this policy. Insurance Services Office endorsement CG 20 10 (11 85 edition date) or both CG 20 10 and CG 20 37(10 01 edition dates) forms (if later edition dates are used), shall be used to meet these requirements and a photocopy of same shall be provided with the Certificate.

5.11.4 Comprehensive Automobile Liability Insurance: The Contractor shall maintain coverage applicable to the ownership, maintenance, use, loading and unloading of any owned, non-owned, leased or hired vehicle issued on Insurance Services Office form CA 00 01 or its equivalent. The amount of coverage shall not be less than the limits of insurance as required in subarticle 5.11.1.

This policy shall include coverage for liability assumed under contract (if not provided for under the Comprehensive General Liability policy). In the event the Contractor does not own automobiles, the Contractor shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or through a separate Business Auto Liability policy.

CFX, its employees, members, officers, agents, consultants, and successors shall be named as Additional Insured under this policy.

5.11.5 Umbrella/Excess Liability Insurance: If an Umbrella or Excess Liability Insurance policy is used to attain the required limits of liability, the sum of the limits provided by the Primary insurance and the Umbrella or Excess Liability insurance must at least equal the Limits of Liability as required by subarticle 5.11.1.

The Umbrella/Excess Liability Insurance policy or Excess policy shall afford coverage equivalent to the required coverage as set forth in this Article 5.11. Policy inception date must also be concurrent with the inception dates of the underlying General Liability and Automobile Liability policies.

Umbrella or Excess policy Certificate of Insurance shall stipulate the underlying limits of liability applicable. A photocopy of the endorsement so evidencing shall be attached to the Certificate.

CFX, its employees, members, officers, agents, consultants, and successors shall be named as Additional Insured under this policy.

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>	Minimum Limit	<b>Maximum Deductible</b>
Up to \$1 million	50% of project cost, minimum of \$100,000 per occurrence	
\$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, 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.
- Submission of Working Schedule: Within 21 calendar days after award of the 6.3.3 Contract, or at the preconstruction conference, whichever is earlier, the Contractor shall submit a work progress schedule to CFX. The schedule shall show the various activities of work in sufficient detail to demonstrate that the Contractor has a reasonable and workable plan to complete the project within the Contract time allowed. The schedule shall show the order and interdependence of activities and the sequence in which the work will be accomplished as planned by the Contractor. All activities shall be described so that the work is readily identifiable and the progress on each activity can be readily measured. Each activity shall show a beginning work date, a duration, and a monetary value. Activities shall include procurement time for materials, plant and equipment, and review time for shop drawings where they are appropriate and essential to the timely completion of the project. The list of activities shall include milestones when required by the plans or specifications. If the project has more than 1 phase, each phase and its completion date shall be adequately identified and no activity shall span more than one phase.

A working plan shall be submitted with the schedule. The working plan shall be a concise written description of the Contractor's construction plan.

If, in the opinion of CFX, the schedule submitted by the Contractor is inadequate, it will be returned to the Contractor for revision. The Contractor shall resubmit a revised schedule within 15 calendar days from the date of the transmittal returning the original schedule. The approved schedule will be used as the baseline against which Contractor's progress is measured.

The Contractor shall submit an updated work progress schedule when requested by CFX. If revisions are required to the working schedule, the Contractor shall submit revised charts and analyses within 21 calendar days after being notified by CFX.

Failure to finalize either the initial or a revised schedule in the time specified may result in CFX withholding payments to the Contractor until the schedule is approved.

- 6.3.4 Beginning Work: See Article 6.7 below.
- 6.3.5 Provisions for Convenience of the Public: The Contractor shall schedule operations to minimize any inconvenience to adjacent businesses, vehicular or pedestrian traffic or residences. CFX reserves the right to direct the Contractor as to the performance and scheduling of Work in any areas along the Project where restrictions caused by construction operations present significant hazards to the health and safety of the general public.

When working adjacent to or over travel lanes, the Contractor shall ensure that dust, mud and other debris from Contractor's operation does not interfere with normal traffic operations or adjacent properties. All debris shall be removed from the Work area and clear zone of the Project before Work ends for the day. Trash shall be picked up and removed daily from the job by the Contractor.

6.3.6 Pre-Construction Conference: Prior to Contractor's commencement of Work on the Project, the CEI will schedule a pre-construction conference with the Contractor, utility companies and other affected parties to review the proposed Work activities and schedule of events.

### 6.4 Limitations of Operations

6.4.1 Night Work: In all areas where Work is being performed during the hours of dusk or darkness, the Contractor shall furnish, place and maintain lighting facilities capable of providing light of sufficient intensity (5 foot-candles minimum) to permit good workmanship and proper inspection at all times. The lighting shall be arranged so as not to interfere with or impede traffic approaching the Work site(s) from either direction or produce undue glare to property owners and traveling public.

Lighting of Work site(s) may be accomplished using any combination of portable floodlights, standard Equipment lights, existing street lights, temporary street lights, etc., that will provide the proper illumination. The Contractor shall provide a light meter to demonstrate that the minimum light intensity is being maintained. The

Contractor shall provide sufficient fuel, spare lamps, generator, etc., to maintain lighting of the Work site.

The Contractor's lighting plan shall provide for and show the location of all lights necessary for every aspect of Work to be done at night. The plan shall be presented on standard size roadway plan sheets (no larger than 24" x 36") and on a scale of either 100' or 50' to the inch. The Contractor's lighting plan shall be submitted to the CEI for review and approval at least 10 days prior to beginning any night Work. The CEI may require that modifications be made to the lighting setup to fit field conditions.

The Contractor shall furnish and place variable message signs to alert approaching motorists of lighted construction area(s) ahead.

The Contractor's pickups and automobiles used on the Project shall be provided with amber flashing lights or flashing white strobe lights. These lights shall be in operation at all times while in the Project limits and/or Work area.

The Contractor's Equipment shall be provided with a minimum of four square feet of reflective sheeting or flashing lights that will be visible to approaching motorists.

The Contractor shall provide its personnel with reflective safety vests. The Contractor shall ensure that all Subcontractors are also provided with reflective safety vests. Vests shall be worn at all times while workers are within the Work area.

The Contractor shall use padding, shielding or locate mechanical and electrical Equipment to minimize noise as directed by the CEI. Noise generated by portable generators shall comply with all applicable Federal, State and local environmental regulations.

The Contractor shall have a superintendent present to control all operations involved during night Work. The superintendent shall maintain contact with the CEI and ensure that all required actions are taken to correct any problem noted.

All required traffic control devices such as signs, stripes, etc., shall be in place before the Contractor commences Work for the night and before the Contractor leaves the Work site the next morning.

Work operations that result in traffic delays more than five minutes may be temporarily suspended by the CEI to minimize the impact on the traveling public.

No private vehicles shall be parked within the limited access right of way. The Contractor's Worksite Traffic Supervisor shall continually and adequately review traffic control devices to ensure proper installation and working order, including monitoring of lights.

Compensation for lighting for night Work shall be included in the Contract prices for the various items of the Contract. All lighting Equipment for night work shall remain the property of the Contractor.

- 6.4.2 Sequence of Operations: The Contractor shall not start new Work that will adversely impact Work in progress. Under such circumstances, CFX reserves the right to require the Contractor to finish a section on which Work is in progress before Work is started on any new section.
- 6.4.3 Interference with Traffic: The Contractor shall at all times conduct the Work in such a manner and such sequence as to ensure the least practicable interference with traffic. The Contractor's vehicles and other Equipment shall be operated in such a manner that they will not be a hazard or hindrance to the traveling public. Materials stored along the roadway shall be placed to minimize obstruction to the traveling public.

Where existing pavement is to be widened and stabilizing is not required, the Contractor shall schedule operations such that at the end of each workday the full thickness of the base for widening will be in place. Construction of the widening strips will not be permitted simultaneously on both sides of the road except where separated by a distance of at least one-fourth of a mile along the road, where either the Work of excavation has not been started or the base has been completed.

6.4.4 Coordination with Other Contractors: The right is reserved by CFX to have other work performed by other contractors and to permit public utility companies and others to do work during the construction of and within the limits of or adjacent to the Project. The Contractor shall arrange the Work and dispose of Materials so as not to interfere with the operations of other contractors engaged upon adjacent work and shall perform the Work in the proper sequence in relation to that of other contractors and shall join with and connect to the work of others as required by the Plans and Specifications all as may be directed by the CEI.

Contractor shall be responsible for any damage done by Contractor's operations to the work performed by other contractors. Similarly, other contractors will be held responsible for damage caused their operations to the Contractor's Work. The Contractor agrees to make no claims against CFX for additional compensation due to delays or other conditions created by the operations of such other parties. Should a difference of opinion arise as to the rights of the Contractor and others working within the limits of, or adjacent to, the Project, CFX will decide as to the relative priority of all concerned.

6.4.5 Drainage: The Contractor shall conduct operations and maintain the Work in such condition that adequate drainage will be in effect at all times. Existing functioning storm sewers, gutters, ditches and other runoff facilities shall not be obstructed.

- 6.4.6 Fire Hydrants: Fire hydrants on or adjacent to the roadway shall be kept accessible to fire apparatus at all times and no material or obstruction shall be placed within 15 feet of any such hydrant.
- 6.4.7 Protection of Structures: Heavy Equipment shall not be operated close enough to pipe headwalls or other structures to cause their displacement.
- 6.4.8 Fencing: The Contractor shall expedite the installation of fencing at those locations where, in the opinion of the CEI, such installation is necessary for the protection, health, and safety of the public. All fencing shall be maintained by the Contractor at all times. Fence cuts shall be immediately replaced. All fence removed during any one working day shall be replaced during that same day. While the fence is down, continuous security shall be provided by the Contractor to ensure that no pedestrians or vehicles enter or exit the roadway from the temporarily unfenced area. Specific attention shall be given to prevent any persons, animals, or vehicles moving from adjacent private property onto the roadway right-of-way.
- 6.4.9 Hazardous or Toxic Waste: When the Contractor's operations encounter or expose any abnormal condition which may indicate the presence of a hazardous substance, toxic waste or pollutants such operations shall be discontinued in the vicinity of the abnormal condition and the CEI shall be notified immediately. The presence of tanks or barrels; discolored earth, metal, wood, groundwater, etc.; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions which appear abnormal may be indicators of hazardous or toxic wastes or pollutants and shall be treated with extraordinary caution.

Every effort shall be made by the Contractor to minimize the spread of any hazardous substance, toxic waste or pollutant into uncontaminated areas.

The Contractor's operations in the affected area shall not resume until so directed by the CEI.

Disposition of the hazardous substance, toxic waste or pollutant shall be made in accordance with the laws, requirements and regulations of any local, state, or federal agency having jurisdiction. Where the Contractor performs Work necessary to dispose of hazardous substance, toxic waste or pollutant and the Contract does not include pay items for disposal, payment will be made, when approved in writing by a Supplemental Agreement, prior to the Work being performed.

6.4.10 Milling: The Contractor shall provide positive drainage of the remaining pavement after milling. This operation shall be done prior to opening to traffic.

The Contractor shall provide suitable transitions between milled areas of varying thickness in order to create a reasonably smooth longitudinal riding surface. In addition, the Contractor shall provide suitable transitions approaching all bridge ends at all times.

Wedges for Longitudinal and Transverse Joints: Asphalt Wedges for longitudinal and traverse joints shall be one foot wide or long, respectively, for each 1/4 inch of depth. The wedge must be installed prior to opening the lane to traffic.

The Contractor shall plan milling operations so that any lane milled will be repaved prior to opening to traffic.

# 6.5 Qualifications of Contractor's Personnel

The Contractor shall ensure that all of its employees are competent, careful, and reliable. All workers shall have the skills and experience necessary to properly perform the Work assigned and as required by the Plans and Specifications.

If, in the opinion of CFX, any person employed by the Contractor, or any Subcontractor, is not qualified to perform the Work or is insubordinate, disorderly, disrupts or is detrimental to the progress of the Work, such person shall be immediately removed from the Project by the Contractor upon written direction from CFX. Such person shall not be employed again on the Project without the written permission of CFX. If the Contractor fails to immediately remove such person, CFX may, at its sole discretion, withhold payments due or which may become due, or may suspend the Work until the person is removed. The Contractor shall indemnify and hold harmless CFX, its agents, consultants, officials and employees from any and all claims, actions or suits arising from such removal, discharge or suspension of a Contractor employee based on the direction of CFX.

## 6.6 Temporary Suspension of Contractor's Operations

- 6.6.1 Authority to Suspend Contractor's Operations: CFX, at its sole discretion, may suspend the Contractor's operations, wholly or in part, for such period(s) as CFX deems necessary. These periods of suspension may include adverse weather conditions, catastrophic occurrences and heavy traffic congestion caused by special events. Written notice, giving the particulars of the suspension, will be transmitted to the Contractor by CFX.
- 6.6.2 Prolonged Suspensions: If the suspension of operations is for an indefinite period of time, the Contractor shall store all Materials in such a manner that they will not become damaged or obstruct or impede the traveling public unnecessarily. The Contractor shall take reasonable precautions to prevent damage to or deterioration of

the Work performed, shall provide suitable drainage of the roadway by opening ditches, shoulder drains, etc., and shall provide all temporary structures necessary for public travel and convenience.

- 6.6.3 Permission to Suspend Operations: The Contractor shall not suspend operations or remove Equipment or Materials necessary for the completion of the Work without the permission of CFX. All requests for suspension of the Contract time shall be in writing to CFX and shall identify specific dates to begin and end.
- 6.6.4 Suspension of Contractor's Operations Holidays: Unless the Contractor submits a written request to work on a holiday at least ten days in advance of the requested date and receives written approval from the CEI, the Contractor shall not work on the following days: Martin Luther King, Jr. Day; Memorial Day; the Saturday and Sunday immediately preceding Memorial Day; Independence Day; Labor Day; the Friday, Saturday, and Sunday immediately preceding Labor Day; Veterans Day; Thanksgiving Day; the Friday, Saturday and Sunday immediately following Thanksgiving Day; and December 24 through January 2, inclusive. Contract Time will be charged during these holiday periods regardless of whether or not the Contractor's operations have been suspended. The Contractor is not entitled to any additional compensation for suspension of operations during such holiday periods.

During such suspensions, the Contractor shall remove all Equipment and Materials from the clear zone, except those required for the safety of the traveling public and retain sufficient personnel at the job site to properly meet the requirements of Sections 102 and 104 of the Technical Specifications. The Contractor is not entitled to any additional compensation for removal of Equipment from clear zones or for compliance with Section 102 and Section 104 during such holiday periods.

Any special events known to CFX that may impact Contractor operations are shown on the Plans.

## 6.7 Contract Time

6.7.1 General: The Contractor shall complete the Work in accordance with the Plans and Specifications and within the Contract Time specified in the Special Provisions including approved extensions.

For scheduling purposes, the Contractor shall take into consideration holidays and all weather conditions (except those listed in subarticle 6.7.3) that may be encountered during the performance of the Work.

The effect on job progress of utility relocations and adjustments and scheduling of construction operations to maintain traffic shall also be considered by the Contractor in the scheduling of Contract time.

6.7.2 Date of Beginning of Contract Time: The date on which Contract time will begin GS-92

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;
  - 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;
  - 1. 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

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.

7.2.2 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:

% Contract Amount Completed	Amount Retained
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 paying or base construction operations begin except when a construction sequence designated by the CEI requires suspension of paying and base construction after the initial paying operations, partial payments will be reinstated until the paying 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, < <a href="supplier">supplier</a>> will be liable to the Contractor and the Central Florida Expressway Authority should < <a href="supplier">supplier</a>> 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 GS-117

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:
  - 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.

- The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- 4. Those sums that, subsequent to the receipt of bids, CFX elects, under the provisions of the Direct Materials Purchase Option, to purchase materials originally proposed by the Contractor to CFX to have been an element of the Work of a certified D/M/WBE contractor/subcontractor/vendor.
- 8.2.5 Records and Reports: The Contractor shall develop a record keeping system to monitor its D/M/WBE participation and shall maintain the following records:
  - 1. the procedures adopted to comply with these special provisions;
  - 2. The number of subordinated contracts on CFX projects awarded to D/M/WBEs:
  - 3. the dollar value of the contracts awarded to D/M/WBEs;
  - 4. the percentage of the dollar value of all subordinate contracts awarded to D/M/WBEs as a percentage of the total contract amount;
  - 5. a description of the general categories of contracts awarded to D/M/WBEs;
  - 6. the specific efforts employed to identify and award contracts to D/M/WBEs;
  - 7. maintenance of records of payments and monthly reports to CFX;
  - 8. Subcontract Agreement between Contractor and D/M/WBE subcontractors; and
  - 9. any other records required by CFX's Project Manager or Executive Director.

The records maintained by the Contractor in accordance with this Section shall be provided to CFX for review within 48 hours of the CFX request. The Contractor shall submit a properly executed D/M/WBE Payment Certification monthly during the life of the D/M/WBE subcontract whether payment is made or not.

8.3 Subletting of Contracts - Participation Objective

No request to sublet Work will be approved unless it is in compliance with the Contractor's approved D/M/WBE Utilization Form "Certification of Subcontract Amount to D/M/WBE Contractor", shall be completed and submitted with the Request for Authorization to Sublet Work. One copy of the certification will be attached to each copy of the Request for Authorization to Sublet Work.

**END OF SECTION 8** 

## **SECTION 9 - BINDING ARBITRATION**

- 9.1 CFX and the Contractor shall submit any and all unsettled claims, counterclaims, and disputes to the Disputes Review Board (DRB) prior to initiating a demand for arbitration pursuant to this Section.
- 9.2 No demand for arbitration of any claim, dispute or other matter referred to the DRB initially for decision will be made until after final acceptance, per Article 3.9, of all Contract Work by CFX. The filing party shall pay all applicable fees associated with requested arbitration proceedings.

The failure to demand arbitration within thirty (30) days after final acceptance will result in the DRB's decision being final and binding upon CFX and Contractor.

- 9.3 Notice of the demand for arbitration is satisfied when it is filed in writing with the other party to the Contract and with the American Arbitration Association (including required fees). A copy will be sent to the Board for information.
- 9.4 The arbitration shall occur in Orlando, Florida and shall be conducted by a three (3) member panel pursuant to and under the auspices of the Construction Industry Arbitration Rules of the American Arbitration Association.
- 9.5 Procedure for Binding Arbitration

Arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations of this Section. The agreement to arbitrate (and any other agreement or consent to arbitrate entered into in accordance herewith) will be specifically enforceable under the laws of Florida.

Arbitration shall include by consolidation, joinder or in any other manner any person or entity who is not a party to the Contract in circumstances where:

- the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration, and
- such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings, and
- the written consent of the other person or entity sought to be included and of CFX and Contractor has been obtained for such inclusion, which consent shall make specific reference to this paragraph.

In order to assure complete resolution of any claim or controversy, the Contractor shall provide and require (in the agreements with subcontractors and material suppliers) for joinder in such arbitration proceedings. Therefore, if a claim, dispute or other matter in question between CFX and Contractor involves the work of a Subcontractor, either CFX or Contractor may join such subcontractor as a party to the arbitration. Nothing in this paragraph or in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of subcontractor or supplier, and against CFX, CEI, or any of their consultants that does not otherwise exist.

In connection with the arbitration proceedings all participants shall be afforded pre-hearing discovery in accordance with the rules of the American Arbitration Association.

END OF SECTION 9

#### **SECTION 10 - DISPUTES RESOLUTION**

#### 10.1 Disputes Resolution

### 10.1.1 Disputes Review Board

A Disputes Review Board ("Board") will be established to assist in the resolution of disputes arising out of the Work on the Project. This document describes the purpose, procedure, function and features of the Board.

The Board will provide special expertise to assist and facilitate the timely and equitable resolution of disputes and controversies between CFX and the Contractor in an effort to avoid construction delays and future claims.

It is not intended for CFX or the Contractor to avoid the normal responsibility to cooperatively and fairly settle differences by indiscriminately requesting dispute resolution by the Board. It is intended the Board encourage CFX and the Contractor to first try resolving potential disputes without resorting to the procedure set forth herein.

The Board will be used only when the claims procedure detailed in the Contract has been followed and has been unsuccessful. It is a condition of the Contract that the parties use the Board. Adherence to the Contract claims procedure is a condition precedent to the submission of a dispute to the Board, and the submission of an unresolved dispute to the Board is, in turn, a condition precedent to arbitration of such issue.

The Board will fairly and impartially consider disputes referred to it. The Board will receive testimony and other relevant evidence regarding such disputes, will analyze the facts within the parameters of the Contract, and will then provide written recommendations (to CFX and Contractor) to assist in the resolution of the disputes. The recommendations of the Board will not be binding on either CFX or the Contractor; however, the Board's recommendations and findings shall be admissible for all purposes in any subsequent arbitration proceedings or the judicial enforcement thereof.

### 10.1.2 Continuance of Work During Dispute

During the dispute resolution process the Contractor shall conform to the CEI's decision or order and continue with the Work as directed by the CEI in a diligent manner and without delay. Such Work will be governed by all applicable provisions of the Contract. With respect to any protested Work, the Contractor will keep complete records of extra costs and time incurred. Except for sealed Bid Records, the Contractor will permit CEI and the Board access to any records needed for evaluating the dispute, without any claim of privilege or confidentiality.

#### 10.1.3 Disputes Review Board Membership

The Board will consist of three Members, one Member selected by CFX and approved by the Contractor, and one Member selected by the Contractor and approved by CFX. The first two Members will mutually select and agree on the third Member, which third Member shall not be subject to approval by either the Contractor or CFX. Normally, the third Member will act as Chairman for all Board activities. If the third Member declines to act as Chairman, the Members shall select an alternative Chairman. Neither the Contractor nor CFX shall seek to influence the Chairman selection decision.

The Contractor and CFX shall each submit the name and credentials of their proposed Member to the other within ten (10) days of the Contract award. The two Members, upon acceptance, shall meet promptly and mutually agree on the third Member. A Notice to Proceed shall not be issued until the Board Members have been selected and have signed the Three-Party Agreement. All three Members shall attend the Pre-Construction Meeting.

All Board Members shall be experienced with major road and bridge construction and the associated construction methods involved in the Project, in the interpretation of contract documents and in contract dispute resolution. The goal in selecting the third Member is to complement the construction experience of the first two Members and to provide leadership of the Board's activities.

It is imperative that Board Members show no partiality to either the Contractor or CFX, or have any conflict of interest.

The criteria and limitations for membership will be as follows:

- a. The person selected will not have any direct or indirect ownership or financial interest in (i) the Contractor, (ii) CEI or the CFX General Engineering Consultant ("GEC"), (iii) any subcontractor or supplier of the Project, or (iv) the employer of other Board Members.
- b. Except for services as a Board Member on CFX projects, no Member shall have been an employee, contractor or consultant to the Contractor or CFX, CEI, the GEC or any subcontractor or supplier for the Project within a period of ten (10) years prior to the Contract award.
- c. No Member will have had a close personal, professional or business relationship with CFX or the Contractor (or an employee or officer of CFX or the Contractor).
- d. No Member will have had any prior involvement in the Project (other than as a dispute board member) of a nature which could be construed to compromise an ability to impartially resolve disputes.

- e. No Member will be employed by the Contractor, the CEI, the GEC or any subcontractor or supplier of the Project during the term of the Contract, except as a Board Member pursuant to the Three Party Agreement.
- f. During the term of the Contract no discussion or agreement will be made between a Board Member and CFX or Contractor regarding employment after the Contract is completed.
- g. During the term of the Contract, ex-parte communications between a Board Member and a party to the Three Party Agreement is prohibited.

Before appointments are final, the first two prospective Members will submit complete disclosure statements for the approval of both CFX and the Contractor. Each statement (in the form prepared by CFX) will include a statement of experience and a declaration describing all past, present and anticipated or planned future relationships to the Project and with the parties to the Contract. Disclosure of professional or personal relationships with parties to the Contract will be included. The third Board Member will supply a similar statement to the first two Board Members (and to CFX and the Contractor) before the third Member appointment is finalized.

CFX and the Contractor will each select a Member, execute the Three Party Agreement (described below) and assure the Members execute the Three-Party Agreement within the first three (3) weeks after Contract award. CFX and the Contractor will immediately notify the selected Members to begin selection of the third Member. The first two Members will ensure the third Member meets all of the criteria listed above. The third Member will be selected within two (2) weeks after the first two Members are notified to proceed with the selection of the third Member. If there is an impasse in the selection of the third Member, the third Member will be selected by CFX and the Contractor, with the first consideration to the nominees reviewed by the first two Members.

In the event of death, disability or resignation of a Member, such Member shall be replaced in the same manner as the Member being replaced was selected. If for whatever other reason a Member fails or is unable to serve, the Chairman (or failing the action of the Chairman, then either of the other Members) shall inform the parties and such non-serving Member shall be replaced in the same manner as the Member being replaced was selected. Any replacement made by the parties shall be completed within fifteen (15) days after the event giving rise to the vacancy on the Board, failing which the replacement shall be made by the two remaining Members of the Board. Replacement shall be considered completed when the new Member executes the Dispute Review Board Three Party Agreement.

### 10.1.4 Board Operations

The Board will formulate procedures of operation that shall be flexible with respect to the functioning of the Board. The Board may formulate new or revised procedures respecting its operation from time to time to accommodate the needs of the Board and the circumstances.

Each Board Member shall be provided a complete set of the Contract Documents. CFX and the Contractor shall keep the Board informed of construction activity and progress by submitting written progress reports and other relevant data at least monthly. The Board will visit the Project at regular intervals and/or at times of critical construction events and meet with CEI and the Contractor. In circumstances of unresolved disputes, the Board will meet at least monthly until the unresolved disputes are concluded. The frequency of visits will be agreed upon by CFX, the Contractor and the Board, depending upon the progress of the Work.

Regular meetings will be held at the job site. Each meeting will consist of an informal discussion and a field inspection of the Work. The informal discussion will be attended by selected personnel from CFX, the CEI and the Contractor. Agenda for regular meetings of the Board will generally include the following:

- a. Meeting opened by the Chairman of the Board.
- b. Remarks by the CEI.
- c. A description by the CEI and the Contractor of Work accomplished since the last meeting, current status of the Work schedule, schedule for the future, potential problems and proposed solutions to anticipated problems.
- d. Discussion by the CEI of Work schedule, potential new disputes or claims, status of past disputes and claims and other issues.
- e. Set a date for next meeting.

The CEI will prepare minutes of all Board meetings and circulate them for comments, revisions and/or approval by all concerned.

The field inspection will cover all active segments of the Work. The Board will be accompanied by representatives of both the CEI and the Contractor. Soliciting any Board Member's advice or consultation regarding the Work or the Contract is expressly prohibited.

#### 10.1.5 Procedure for Disputes Resolution

Disputes will be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Steps may be omitted as agreed by both parties and the time periods stated below may be shortened in order to hasten resolution.

- a. If either CFX or Contractor object to any decision of the CEI with respect to claims, change order requests, or other actions or orders of the CEI, the objecting party may file a written protest with the CEI within fifteen (15) days after the CEI's disputed decision, action or order. The written protest must clearly state in detail the basis for the objection.
- b. The CEI will consider the written protest to its decision or directive, and make a final decision on the basis of the pertinent Contract provisions, together with the facts and circumstances involved in the protest. The decision will be furnished to CFX and Contractor in writing within fifteen (15) days after receipt of the written protest.
- c. The CEI's decision with respect to the protest will be final, unless a written exception is filed by CFX or Contractor with the CEI within fifteen (15) days after receiving the protest decision. If either rejects the CEI's final decision, the disputed matter may be referred to the Board by either CFX or the Contractor.
- d. Upon receipt by the Board of a written dispute, the Board will first decide when to conduct the hearing. If the matter is not urgent, it may be heard at the next regularly scheduled Board meeting. For an urgent matter, the Board will meet at its earliest convenience.
- e. Either party furnishing written evidence or documentation to the Board will furnish copies of such information to the other party a minimum of fifteen (15) days prior to the date the Board sets to hear the dispute. If the Board requests additional documentation or evidence prior to, during or after the hearing, CFX and/or the Contractor will provide the requested information to the Board and to the other party. Because each side needs a reasonable opportunity to understand and rebut the opposing side's point of view, failure of either party to timely provide written documentation in accordance with this provision shall result in such written documentation being excluded from the hearing before the Board unless the other party consents to its admission or consents to a delay in the hearing.

- f. The Contractor and CFX will each be afforded an opportunity to be heard by the Board and to offer evidence. The Board will consider all relevant evidence presented and analyze the same solely within the parameters of the Contract. Hearsay evidence shall be admissible but shall not be the sole basis for any recommendation of the Board.
- g. The Board's recommendations for resolution of the dispute will be given in writing within fifteen (15) days of completion of the hearing(s). In cases of extreme complexity, both parties may agree to allow additional time for the Board to formulate its recommendations. Generally, the Board will initially focus its attention (in the written report) only to matters of entitlement, and allow the parties to thereafter determine the monetary relief. If both parties request, and sufficient documentation is available, the Board may also make a recommendation of monetary relief, but only after formulation of the entitlement recommendation and only after the parties have attempted to agree upon the monetary relief amount.
- h. If the Board's recommendation for resolution is not unanimous, the dissenting member shall prepare a separate written opinion.
- i. Within fifteen (15) days of receiving the Board's recommendations, both CFX and the Contractor will respond to the other and to the Board in writing, signifying either acceptance or rejection of the Board's recommendations. The failure of a party to respond within the fifteen (15) day period will be deemed an acceptance by such party of the Board's recommendations. If CFX and the Contractor are able to resolve the dispute (with or without the aid of the Board's recommendations), CFX will promptly process any required Contract changes.
- j. If the dispute remains unresolved because of a bona fide lack of clear understanding of the recommendation, either party may request the Board clarify specific portions of its recommendations. Further, if new evidence becomes available, either party may request the Board reconsider its prior recommendation Only evidence which did not exist at the time of the hearing, or which existed but which could not be discovered with reasonable and normal diligence shall be considered new evidence.
- k. If the Board's recommendation is rejected, either party may thereafter initiate resolution of the dispute by binding arbitration conducted pursuant to the Contract.

Both CFX and the Contractor should carefully consider the Board's recommendations, as the recommendations are binding unless written notice is provided to the other party within 30 days of the recommendations stating the party's intent to bring the disputed issue to arbitration. However, if the Board's recommendations do not resolve the dispute, all records and written recommendations, including any minority reports, will be admissible for informational purposes in any subsequent dispute resolution procedures. Such informational purposes shall include but not be limited to establishing that the Board considered the dispute, the qualifications of the Board Members, and the Board's recommendation that resulted from the dispute resolution process.

### 10.1.6 Conduct of Disputes Hearings

Each party shall file three copies of its written arguments with the Board no less than seven days prior to the scheduled hearing and shall simultaneously deliver a copy of such written arguments to the opposing party. Each party shall also submit to the Board along with its written arguments copies of its written evidence and documentation which has been previously provided to the opposing party as provided above.

Normally, the hearing will be conducted at the job site. However, any location more convenient and which provides all required facilities and access to necessary documentation is satisfactory.

While the Board will keep a record of its sessions during consideration of a dispute, the Board will not be required to keep its record in any particular form. The nature and completeness of the record will depend upon the nature and magnitude of the dispute and the desires of the parties. If possible, the hearings shall be kept informal. Formal records of the Board meetings may be taken and transcribed by a court reporter if requested by a party (at the requesting party's cost). Audio and/or video recording of the meeting is discouraged and shall only be made with the prior agreement of all parties and a majority of the Board.

CFX and the Contractor will have representatives at all dispute resolution hearings. The party requesting Board review will first discuss the dispute, followed by the other party. Each party will then be allowed successive rebuttals until all aspects are fully covered to the Board's satisfaction. The Members and the parties may ask questions, request clarification or ask for additional data. In large or complex cases, additional hearings may be necessary in order to consider and fully understand all evidence presented by both parties.

During the hearings, no Member will express any opinion concerning the merit of any facet of the dispute.

After the hearings are concluded, the Board will meet in private to formulate recommendations supported by two or more Members. All Board deliberations will be conducted in private, with individual views kept strictly confidential. No minutes shall be

prepared of the Board's private meetings. The Board's recommendations and discussions of its reasoning will be submitted as a written report to both parties. The recommendations will be based on the pertinent Contract provisions and the facts and circumstances involved in the dispute.

The Board will make every effort to reach a unanimous decision. If a unanimous decision is not possible, the dissenting Member may (but is not required to) prepare a minority report.

#### 10.1.7 Compensation

The Contractor shall pay the fees of all three Board Members for services rendered under the Three Party Agreement. An allowance pay item has been established in the Contract for the reimbursing the Contractor. Funds remaining in the pay item, if any, at the completion of the Project will belong to CFX. CFX and the Contractor shall agree on the procedures and method of processing payments made against the allowance. CFX or the CEI will mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services. If the Board desires special services, such as legal consultation, accounting, data research, etc., both parties must agree and the costs will be paid from the allowance.

#### 10.1.8 Three Party Agreement

The Contractor, CFX and the Members of the Board will execute the Dispute Review Board Three Party Agreement within four (4) weeks of the final selection of the third Member.

**END OF SECTION 10** 

#### **ATTACHMENT A**

## DISPUTES REVIEW BOARD THREE PARTY AGREEMENT

THIS THREE PARTY AGREEME	ENT ("Agreement") made and entered into this
day of, 20, between	n the CENTRAL FLORIDA EXPRESSWAY
	("Contractor") and the DISPUTES
REVIEW BOARD ("Board"), consisting	ng of three members:,
and	("Members").
WHEREAS, CFX is now engaged in	the construction of the, and
WHEREAS, the and operation of the Board to assist in resolv.	contract ("Contract") provides for the establishment ing disputes and claims.
	n of the terms, conditions, covenants and performance and made a part hereof), the parties agree as set forth

### 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. <u>Furnishing Documents</u>. 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. <u>Site Visits</u>. 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. <u>Board Consideration of Disputes or Claims</u>. 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. <u>Miscellaneous Board Responsibilities</u>. 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. <u>Board Member Replacement</u>. 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. <u>Contract Related Documents</u>. 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. <u>Coordination and Services</u>. 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. <u>Payment</u>.

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. <u>Inspection of Costs Records</u>. 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 EXPRESS	SWAY AUTHORITY
By:	
Print Name:	
Title:	
BOARD:	
DISPUTES REVIEW BOARD	
By:	
Print Name:	
By:	
Print Name:	
	<del></del>
By:	
Print Name:	<del></del>
CONTRACTOR:	
By:	<del></del>
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.

# CONSENT AGENDA ITEM #11

## CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## **MEMORANDUM**

TO: **CFX Board Members** 

Aneth Williams Aneth Williams FROM:

Director of Procurement

DATE: February 22, 2021

SUBJECT: Approval of Contract Award to Cathcart Construction Company – Florida, LLC

for SR 429 Pond E By-Pass Ditch Project No. 429-169, Contract No. 001762

An Invitation to Bid for the above referenced project was advertised on January 31, 2021. Four (4) responses were received by the February 22, 2021 deadline. However, one of the bidders did not meet the pre-qualification to bid on the project.

Bid results were as follows:

	<u>Bidder</u>	Bid Amount
1.	Cathcart Construction Company - Florida, LLC	\$569,173.50
2.	Gibbs & Register, Inc.	\$592,695.00
3.	Southern Development & Construction, Inc.	\$636,000.00

The engineer's estimate for this project is \$377,794.00.

The work consists of providing all labor, materials, equipment and incidentals necessary to construct a concrete open drainage by-pass ditch.

The Engineer of Record has reviewed the low bid submitted by Cathcart Construction Company - Florida, LLC and has determined one bid item was unbalanced. It has been determined that the engineer's estimate was low on some of the unit prices and that the low bid from Cathcart Construction is not an outlier. Specifically, if the average of the three (3) bidder's prices for excavation, clearing and grubbing and maintenance of traffic estimates are used in the engineer's estimate, the total would be \$499,649.32. Therefore, the low bid would be approximately 13.9% above the engineer's estimate and within the acceptable tolerance of 15%.

The Procurement Department has evaluated the bids and has determined that the bid from Cathcart Construction Company – Florida, LLC to be responsible and responsive to the bidding requirements. Board award of the contract Cathcart Construction Company – Florida, LLC in the amount of \$569,173.50 is requested.

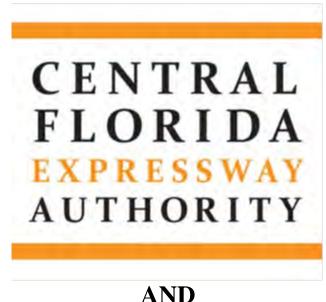
Reviewed by:

in Hawt Jorne, PE Director of Engineering

Glenn Pressimone, PE



# CONTRACT



# **CATHCART CONSTRUCTION** COMPANY – FLORIDA LLC

SR 429 POND E BY-PASS DITCH

**PROJECT NO. 429-169 CONTRACT NO. 001762** 

**CONTRACT DATE: MARCH 11, 2021 CONTRACT AMOUNT: \$569,173.50** 

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 429 POND E BY-PASS DITCH** 

**PROJECT NO. 429-169 CONTRACT NO. 001762** 

**MARCH 2021** 

#### CONTRACT

This Contract No. 001762 (the "Contract"), made this 11<sup>th</sup> day of March 2021, between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, hereinafter called CFX and <u>Cathcart Construction</u> Company – Florida LLC, of <u>2564 Connection Point</u>, <u>Oviedo</u>, <u>FL 32765</u>, 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 Performance and Payment 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. 429-169, SR 429 Pond E By-pass Ditch, as detailed in the Contract Documents and any addenda or modifications thereto. Contract time for this project shall be 45 calendar days. The Contract Amount is \$569,173.50. This Contract was awarded by the Governing Board of CFX at its meeting on March 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:
CATHCART CONSTRUCTION COMPANY - FLORIDA, 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 multispan 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

<sup>\*</sup>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 Older 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 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.

- 3.1.4.2. Work Items Requiring Shop Drawings: The requirement for submittals for certain items may be waived by other provisions of these specifications; i.e. items constructed from standard drawings or those complying with alternate details for pre-stressed members under Section 450. Precast components that are not detailed in the Plans or Standard Drawings will require approved shop drawings. The Contractor shall review the Plans and Specifications to determine the submittals required. The CEI may request a submittal for any item the CEI considers necessary.
- 3.1.4.3 Schedule of Submittals: The Contractor shall prepare and submit to the CEI a schedule of submittals identifying the Work for which Contractor intends to submit shop drawings, the type, approximate number of drawings or other documents and approximate dates of anticipated submittals with due regard to processing requirements herein. The schedule of submittals shall be submitted to the CEI within 15 days of the start of the date of the Notice to Proceed, and prior to the submission of any shop drawings.

Subsequent submittals shall be coordinated with construction schedules to allow sufficient time for review, approval and re-submittal as necessary.

- 3.1.4.4 Style, Numbering and Material of Submittals:
- 3.1.4.4.1 Drawings: The Contractor shall furnish such shop drawings as may be required to complete the structure in compliance with the design shown on the Plans. Drawings shall be prepared or reproduced on permanent material made for the purpose, such as tracing cloth, plastic, mylar or xerographic bond paper, hereafter referred to as masters. The size of the sheets shall be no larger than 24 by 36 inches. Each sheet shall be numbered consecutively for the series and the sheet number shall indicate the total number in the series (e.g., 1 of 12, 2 of 12, ...12 of 12). Each shop drawing shall contain the following items as a minimum requirement: the CFX Project Number, drawing title and number, a title block showing the names of the fabricator or producer and the Contractor for which the Work is being done, the initials of the person(s) responsible for the drawing, the date on which the Work was performed, the location of the item(s) within the Project, the Contractor's approval stamp and initials and when applicable, the signature and embossed seal of the Contractor's Florida registered Specialty Engineer. The absence of any of this minimum information may be cause for a request for a re-submittal.
- 3.1.4.4.2 Other Documents: Documents other than drawings, such as trade literature, catalogue information, calculations and manuals shall be original copies or clearly legible photographic or xerographic copies. The size shall be no larger than 11 by 17 inches. Such information shall be clearly labeled and numbered and the sheet numbers shall indicate the total number of sheets in the series (e.g., 1 of 12, 2 of 12, .... 12 of 12).

All documents shall be bound and submitted with a Table of Contents cover sheet. The cover sheet shall list the total number of pages and appendices and shall also include the CFX Project Number, a title to reference the item(s) for which it is submitted, the name of the firm

and person(s) responsible for the preparation of the document, the Contractor's approval stamp and initials and, when applicable, the signature and embossed seal of the Contractor's Florida registered Specialty Engineer.

The calculations or manuals shall clearly outline the design criteria and shall be appropriately prepared and checked. The internal sheets shall include the complete CFX Project Number and initials of the persons responsible for preparing and checking the document.

Trade literature and catalogue information shall be clearly labeled with the title, CFX Project Number, date and name of the firm and person responsible for that document displayed on the front cover.

Documents other than drawings may be on xerographic paper or glossy paper material as appropriate. For the purpose of this specification, the term "shop drawings" shall be deemed to include these other documents.

### 3.1.4.5 Submittal Paths and Copies:

The Contractor shall submit one (1) set of prints along with one (1) set of reproducible copies of each series of shop drawings to the CEI with a copy of the letter of transmittal sent to the Consultant. For Work requiring other documentation (e.g. catalog data, material certifications, material tests, procedure manuals, fabrication / welding procedures, and maintenance and operating manuals) a minimum of eight (8) copies of each document shall be submitted with the prints. The mailing address of the Consultant will be furnished by CFX.

For other miscellaneous design and/or structural details furnished by the Contractor in compliance with the contract: The Contractor shall submit to the CEI one (1) set of prints along with one (1) reproducible copy of each series of shop drawings and four (4) copies of applicable calculations. Each print and the cover sheet of each copy of applicable calculations shall be signed and sealed by the Contractor's Specialty Engineer.

### 3.1.4.6 Processing of Shop Drawings:

3.1.4.6.1 Contractor Responsibility for Accuracy and Coordination of Shop Drawings: The Contractor shall coordinate, schedule and control all submittals including those of its various subcontractors, suppliers and engineers to provide for an orderly and balanced distribution of the Work.

All shop drawings prepared by the Contractor or its agents (subcontractor, fabricator, supplier and etc.) shall be coordinated, reviewed, dated, stamped, approved and signed by the Contractor prior to submission to the CEI for review. The Contractor's signed approval of drawings submitted shall confirm the Contractor has verified the Work requirements, field

measurements, construction criteria, sequence of assembly and erection, access and clearances, catalog numbers and other similar data. Each series of drawings shall indicate the specification section and page or drawing number of the Contract plans to which the submission applies. The Contractor shall indicate on the shop drawings all deviations from the Contract drawings and shall itemize all deviations in the letter of transmittal. Likewise, whenever a submittal does not deviate from the Contract plans, the Contractor shall also clearly state so in the transmittal letter.

The Contractor shall schedule the submission of shop drawings to allow for a 15-calendar day review period by the CEI. The review period commences upon receipt of the Contractor's submittal by the CEI and terminates upon transmittal of the submittal back to the Contractor by the CEI. The Contractor shall adjust its schedules so that a 10-calendar day period is provided for each re-submittal.

It is incumbent upon the Contractor to submit shop drawings to facilitate expeditious review. Voluminous submittals of shop drawings at one time are discouraged and may result in increased review time. The submittal/re-submittal clock will start upon receipt of a valid submittal. A valid submittal shall include all the minimum requirements outlined in 3.1.4.4. CFX will not be liable to the Contractor for resulting delays, added costs and/or related damages when the actual time required for approval extends beyond the 45- and 30-day review periods shown above.

Only CEI approvals of miscellaneous submittals and red ink stamps on shop drawings are valid and any Work performed in advance of approval will be at the Contractor's risk.

3.1.4.6.2 Scope of Review by CEI: The review of the shop drawings by the CEI shall be for conformity to the Contract requirements and intent of design and not for the adequacy of the means, methods, techniques, sequences and procedures proposed for construction. Review by the CEI does not relieve the Contractor of responsibility for dimensional accuracy to assure field fit and for conformity of the various components and details.

## 3.2 Coordination of Plans and Specifications

The Plans, Specifications and all supplementary documents are integral parts of the Contract and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete Work. In addition to the Work and Materials specifically identified as being included in any specific pay item, additional incidental Work not specifically mentioned will be included in such pay item when shown in the Plans or if indicated or obvious and apparent as being necessary for proper completion of the Work.

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: <a href="http://www.motadmin.com/find-a-training-provider.aspx">http://www.motadmin.com/find-a-training-provider.aspx</a>

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.
- Where utilities cross pipe trenches transversely within the excavation area but not within positions from which relocation or removal is necessary, the utility owner will be responsible for providing and effecting all reasonable measures for their support and protection during construction operations. The Contractor shall cooperate with the utility owner in the owner's effecting such support and protective measures. The Contractor shall be responsible for any damage to the utility that is caused by neglect or failure on the Contractor's part to cooperate and to use proper precaution in performing the Work.

In the event that a temporary relocation of a utility or a particular sequence of timing in the relocation of a utility is necessary, such relocation shall be done only as directed by CFX. CFX will not be responsible for utility adjustments or temporary relocation work or for the conditions resulting therefrom, where such adjustments are: not necessitated by the construction of the Project; or done solely for the benefit or convenience of the utility owner or its contractor (or the Contractor where Contractor's construction procedures are considered by CFX to be other than normal); or not shown on the approved Plans for the utilities relocation or the construction.

5.9.6.2 Cooperation with Utility Owners: The Contractor shall cooperate with the utility owners in the removal and/or rearrangement of utilities. If utility service is interrupted due to construction operations, the Contractor shall immediately notify the owner of the utility and the CEI and cooperate in the prompt restoration of

service. If water service is interrupted, the Contractor's repair work shall be continuous until the service is restored. No Work shall be undertaken around fire hydrants until the local fire authority has approved provisions for continued service.

5.9.6.3 Utility Adjustments: Utility adjustments and reconstruction Work may be underway during the Work. The Contractor shall effectively cooperate, coordinate, and schedule utility adjustments with utility construction crews in maintaining utility service. The Contractor shall use caution when working adjacent to utilities that have been relocated. The Contractor shall repair, at Contractor's expense, damages to relocated utilities resulting from Contractor's operations.

5.9.6.4 Weekly Meetings: Contractor shall conduct weekly meetings on the job site with all the affected utility companies and the CEI in attendance to coordinate Project construction and utility relocation, and shall submit a list of all attendees one week in advance to the CEI for approval.

Provide the approved Work Progress Schedule and Work Plan for the project to document the schedule and plan for road construction and utility adjustments. When utility relocations no longer affect construction activities, the Contractor may discontinue the meetings with the CEI's approval.

- 5.10 Responsibility for Damages, Claims, etc.
  - 5.10.1 Contractor to Provide Defense Against Claims and Suits: To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless CFX (its officers, agents and employees) from and against claims, damages, losses and expenses (including but not limited to attorneys' fees), arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom. However, the indemnification herein provided is only to the extent caused in whole or in part by any act, omission or default of the Contractor, subcontractor, sub-subcontractor, materialman, agents of any tier, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described herein. The monetary limit on the indemnification provided herein to CFX or its officers, agents and employees shall be the total amount of the Agreement in aggregate or the insurance policy amount as required in article 5.11 herein, whichever is greater. The total amount of the Agreement in aggregate will be determined by the date the notice of claim was received by CFX.

In claims against any person or entity indemnified under this subarticle by an

employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this subarticle shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

The obligations of the Contractor under this subarticle shall not extend to the liability of the Engineer of Record, the Engineer of Record's consultants and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, designs or specification, or (2) the giving of or the failure to give direction or instructions by the Engineer of Record, the Engineer of Record's consultants and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

The Contractor's obligation to indemnify and pay for the defense or, at CFX's option, to participate and associate with CFX in the defense and trial of any damage claim or suit and any related settlement negotiations, shall arise within seven (7) days of receipt by the Contractor of the CFX notice of claim for indemnification to the Contractor. The notice of claim for indemnification will be served by certified mail. The Contractor's obligation to indemnify within seven (7) days of receipt of such notice will not be excused because of the Contractor's inability to evaluate liability or because the Contractor evaluates liability and determines the Contractor is not liable or determines CFX is solely negligent. The Contractor will pay all costs and fees related to this obligation and its enforcement by CFX.

This Contract shall not create in the public or any member thereof, a third party beneficiary hereunder or to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

5.10.2 Guaranty of Payment for Claims: The Contractor guarantees the payment of all just claims for Materials, Equipment, supplies, tools or labor and other just claims against the Contractor or any subcontractor in connection with the Contract. Final acceptance and payment by CFX will not release the Contractor's bond until all such claims are paid or released.

#### 5.11 Insurance

Anything contained herein to the contrary notwithstanding, during the term of the Contract and for such additional time as may be further required, the Contractor shall provide, pay for and maintain in full force and effect insurance outlined in subarticles 5.11.1 through 5.11.9

below for coverage at not less than the prescribed minimum limits of liability, covering the Contractor's activities and those of any and all subcontractors (including officers, directors, employees or agents of each and their successors). All insurance shall be provided through companies authorized to do business in the State of Florida and considered acceptable by CFX.

Upon execution of the Contract, the Contractor shall furnish to CFX, Certificates of Insurance bearing an original manual signature of the authorized representative of the insurance company. No Work shall commence under the Contract unless and until the required Certificates of Insurance described herein are in effect and have been approved by CFX. The Certificate of Insurance shall be issued to CFX and shall reference the complete and correct Project number, as well as the full and complete name of each insurance company, including city and state of domicile, as listed by A.M. Best Company. All insurance must be underwritten by insurers that are qualified to transact business in the State of Florida and that have been in business and have a record of successful and continuous operations for at least five (5) years. Each shall carry a rating of "A-" (excellent) and a financial rating of Class XII, or as approved by CFX, as defined by A.M. Best and Company's Key Rating Guide. Such Certificates shall provide that in the event of cancellation, non-renewal or material reduction in coverage (including any material reduction of limits of Liability), the insurer will provide thirty (30) days prior notice of such cancellation, non-renewal or material reduction by certified mail to CFX. In addition, certified true copies of all policies shall be provided to CFX upon specific written request. Renewal Certificates of Insurance for all policies shall be submitted by the Contractor so that they are received by CFX no later than thirty (30) calendar days prior to the expiration of existing insurance coverage. Failure by the Contractor to meet this required timeframe will result in suspension of partial payments on monthly estimates until the certificates are received and accepted by CFX.

All insurance coverage required of the Contractor shall be primary and noncontributory over any insurance or self-insurance program carried by CFX.

Excluding Professional and Pollution liability insurance, no liability insurance required herein shall be written under a "claims made" form.

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

Failure of CFX to demand such certificate or evidence of full compliance with these insurance requirements or failure of CFX to identify a deficiency from evidence provided will not be construed as a waiver of the CONTRACTOR's obligation to maintain such insurance.

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

Neither approval by CFX of insurance supplied by the Contractor nor disapproval of that insurance, shall release the Contractor of full responsibility for liability, damages and accidents as otherwise provided by the Contract. The requirement of insurance will not be deemed a waiver of sovereign immunity by CFX.

If CONTRACTOR fails to obtain the proper insurance policies or coverages, or fails to provide CFX with certificates of same, CFX may obtain such polices and coverages at CONTRACTOR's expense and deduct such costs from CONTRACTOR payments. Alternately, CFX may declare CONTRACTOR in default for cause.

5.11.1 Schedule of Required Limits for Workers' Compensation, General Liability and Automobile Liability:

<b>Contract Amount</b>	Workers' Comp/ Employer's Liability	General Liability (per occurrence/ aggregate)	Automobile Liability
Up to \$3 million	Statutory / \$500,000	\$1,000,000 / \$2,000,000	\$1,000,000
\$3 million and Up	Statutory / \$1,000,000	\$5,000,000 / \$10,000,000	\$5,000,000

5.11.2 Worker's Compensation and Employer's Liability Insurance: The Contractor shall maintain coverage for its employees in accordance with the laws of the State of Florida. The amount of coverage shall not be less than the limits of insurance as required in subarticle 5.11.1.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of CFX for all work performed by the Contractor, its employees, agents and subcontractors.

5.11.3 Comprehensive General Liability Insurance: Coverage shall be maintained by the Contractor providing Comprehensive General Liability Insurance as provided on Insurance Services Office form GC 00 01 or an equivalent thereof. Limits of Liability for Bodily Injury Liability and/or Property Damage Liability shall not be less than the limits of insurance as required in Section 5.11.1.

The policy shall contain an endorsement providing for Aggregate Limits of Liability to be on a per Project basis. This endorsement shall state that Aggregate Limits as specified herein apply separately and specifically to this Project.

Products and Completed Operations coverage, evidenced by a Certificate of

Insurance, shall be maintained for a period of not less than two (2) years following completion of the Work to which the Contract applies.

If watercrafts are to be used in the performance of any Work under the Contract, watercraft operations shall be covered under the Comprehensive General Liability policy providing limits in accordance with the General Liability requirements.

If the Project involves Work or operations by the Contractor within the limits of the railroad right-of-way, including any encroachments thereon from Work or operations in the vicinity of the railroad right-of-way, the railroad shall be named as an Additional Insured under this policy.

CFX, its employees, members, officers, agents, consultants, and successors shall be named as Additional Insured under this policy. Insurance Services Office endorsement CG 20 10 (11 85 edition date) or both CG 20 10 and CG 20 37(10 01 edition dates) forms (if later edition dates are used), shall be used to meet these requirements and a photocopy of same shall be provided with the Certificate.

5.11.4 Comprehensive Automobile Liability Insurance: The Contractor shall maintain coverage applicable to the ownership, maintenance, use, loading and unloading of any owned, non-owned, leased or hired vehicle issued on Insurance Services Office form CA 00 01 or its equivalent. The amount of coverage shall not be less than the limits of insurance as required in subarticle 5.11.1.

This policy shall include coverage for liability assumed under contract (if not provided for under the Comprehensive General Liability policy). In the event the Contractor does not own automobiles, the Contractor shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or through a separate Business Auto Liability policy.

CFX, its employees, members, officers, agents, consultants, and successors shall be named as Additional Insured under this policy.

5.11.5 Umbrella/Excess Liability Insurance: If an Umbrella or Excess Liability Insurance policy is used to attain the required limits of liability, the sum of the limits provided by the Primary insurance and the Umbrella or Excess Liability insurance must at least equal the Limits of Liability as required by subarticle 5.11.1.

The Umbrella/Excess Liability Insurance policy or Excess policy shall afford coverage equivalent to the required coverage as set forth in this Article 5.11. Policy inception date must also be concurrent with the inception dates of the underlying General Liability and Automobile Liability policies.

Umbrella or Excess policy Certificate of Insurance shall stipulate the underlying limits of liability applicable. A photocopy of the endorsement so evidencing shall be attached to the Certificate.

CFX, its employees, members, officers, agents, consultants, and successors shall be named as Additional Insured under this policy.

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>	Minimum Limit	<b>Maximum Deductible</b>
Up to \$1 million	50% of project cost, minimum of \$100,000 per occurrence	
\$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, 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.
- Submission of Working Schedule: Within 21 calendar days after award of the 6.3.3 Contract, or at the preconstruction conference, whichever is earlier, the Contractor shall submit a work progress schedule to CFX. The schedule shall show the various activities of work in sufficient detail to demonstrate that the Contractor has a reasonable and workable plan to complete the project within the Contract time allowed. The schedule shall show the order and interdependence of activities and the sequence in which the work will be accomplished as planned by the Contractor. All activities shall be described so that the work is readily identifiable and the progress on each activity can be readily measured. Each activity shall show a beginning work date, a duration, and a monetary value. Activities shall include procurement time for materials, plant and equipment, and review time for shop drawings where they are appropriate and essential to the timely completion of the project. The list of activities shall include milestones when required by the plans or specifications. If the project has more than 1 phase, each phase and its completion date shall be adequately identified and no activity shall span more than one phase.

A working plan shall be submitted with the schedule. The working plan shall be a concise written description of the Contractor's construction plan.

If, in the opinion of CFX, the schedule submitted by the Contractor is inadequate, it will be returned to the Contractor for revision. The Contractor shall resubmit a revised schedule within 15 calendar days from the date of the transmittal returning the original schedule. The approved schedule will be used as the baseline against which Contractor's progress is measured.

The Contractor shall submit an updated work progress schedule when requested by CFX. If revisions are required to the working schedule, the Contractor shall submit revised charts and analyses within 21 calendar days after being notified by CFX.

Failure to finalize either the initial or a revised schedule in the time specified may result in CFX withholding payments to the Contractor until the schedule is approved.

- 6.3.4 Beginning Work: See Article 6.7 below.
- 6.3.5 Provisions for Convenience of the Public: The Contractor shall schedule operations to minimize any inconvenience to adjacent businesses, vehicular or pedestrian traffic or residences. CFX reserves the right to direct the Contractor as to the performance and scheduling of Work in any areas along the Project where restrictions caused by construction operations present significant hazards to the health and safety of the general public.

When working adjacent to or over travel lanes, the Contractor shall ensure that dust, mud and other debris from Contractor's operation does not interfere with normal traffic operations or adjacent properties. All debris shall be removed from the Work area and clear zone of the Project before Work ends for the day. Trash shall be picked up and removed daily from the job by the Contractor.

6.3.6 Pre-Construction Conference: Prior to Contractor's commencement of Work on the Project, the CEI will schedule a pre-construction conference with the Contractor, utility companies and other affected parties to review the proposed Work activities and schedule of events.

#### 6.4 Limitations of Operations

6.4.1 Night Work: In all areas where Work is being performed during the hours of dusk or darkness, the Contractor shall furnish, place and maintain lighting facilities capable of providing light of sufficient intensity (5 foot-candles minimum) to permit good workmanship and proper inspection at all times. The lighting shall be arranged so as not to interfere with or impede traffic approaching the Work site(s) from either direction or produce undue glare to property owners and traveling public.

Lighting of Work site(s) may be accomplished using any combination of portable floodlights, standard Equipment lights, existing street lights, temporary street lights, etc., that will provide the proper illumination. The Contractor shall provide a light meter to demonstrate that the minimum light intensity is being maintained. The

Contractor shall provide sufficient fuel, spare lamps, generator, etc., to maintain lighting of the Work site.

The Contractor's lighting plan shall provide for and show the location of all lights necessary for every aspect of Work to be done at night. The plan shall be presented on standard size roadway plan sheets (no larger than 24" x 36") and on a scale of either 100' or 50' to the inch. The Contractor's lighting plan shall be submitted to the CEI for review and approval at least 10 days prior to beginning any night Work. The CEI may require that modifications be made to the lighting setup to fit field conditions.

The Contractor shall furnish and place variable message signs to alert approaching motorists of lighted construction area(s) ahead.

The Contractor's pickups and automobiles used on the Project shall be provided with amber flashing lights or flashing white strobe lights. These lights shall be in operation at all times while in the Project limits and/or Work area.

The Contractor's Equipment shall be provided with a minimum of four square feet of reflective sheeting or flashing lights that will be visible to approaching motorists.

The Contractor shall provide its personnel with reflective safety vests. The Contractor shall ensure that all Subcontractors are also provided with reflective safety vests. Vests shall be worn at all times while workers are within the Work area.

The Contractor shall use padding, shielding or locate mechanical and electrical Equipment to minimize noise as directed by the CEI. Noise generated by portable generators shall comply with all applicable Federal, State and local environmental regulations.

The Contractor shall have a superintendent present to control all operations involved during night Work. The superintendent shall maintain contact with the CEI and ensure that all required actions are taken to correct any problem noted.

All required traffic control devices such as signs, stripes, etc., shall be in place before the Contractor commences Work for the night and before the Contractor leaves the Work site the next morning.

Work operations that result in traffic delays more than five minutes may be temporarily suspended by the CEI to minimize the impact on the traveling public.

No private vehicles shall be parked within the limited access right of way. The Contractor's Worksite Traffic Supervisor shall continually and adequately review traffic control devices to ensure proper installation and working order, including monitoring of lights.

Compensation for lighting for night Work shall be included in the Contract prices for the various items of the Contract. All lighting Equipment for night work shall remain the property of the Contractor.

- 6.4.2 Sequence of Operations: The Contractor shall not start new Work that will adversely impact Work in progress. Under such circumstances, CFX reserves the right to require the Contractor to finish a section on which Work is in progress before Work is started on any new section.
- 6.4.3 Interference with Traffic: The Contractor shall at all times conduct the Work in such a manner and such sequence as to ensure the least practicable interference with traffic. The Contractor's vehicles and other Equipment shall be operated in such a manner that they will not be a hazard or hindrance to the traveling public. Materials stored along the roadway shall be placed to minimize obstruction to the traveling public.

Where existing pavement is to be widened and stabilizing is not required, the Contractor shall schedule operations such that at the end of each workday the full thickness of the base for widening will be in place. Construction of the widening strips will not be permitted simultaneously on both sides of the road except where separated by a distance of at least one-fourth of a mile along the road, where either the Work of excavation has not been started or the base has been completed.

6.4.4 Coordination with Other Contractors: The right is reserved by CFX to have other work performed by other contractors and to permit public utility companies and others to do work during the construction of and within the limits of or adjacent to the Project. The Contractor shall arrange the Work and dispose of Materials so as not to interfere with the operations of other contractors engaged upon adjacent work and shall perform the Work in the proper sequence in relation to that of other contractors and shall join with and connect to the work of others as required by the Plans and Specifications all as may be directed by the CEI.

Contractor shall be responsible for any damage done by Contractor's operations to the work performed by other contractors. Similarly, other contractors will be held responsible for damage caused their operations to the Contractor's Work. The Contractor agrees to make no claims against CFX for additional compensation due to delays or other conditions created by the operations of such other parties. Should a difference of opinion arise as to the rights of the Contractor and others working within the limits of, or adjacent to, the Project, CFX will decide as to the relative priority of all concerned.

6.4.5 Drainage: The Contractor shall conduct operations and maintain the Work in such condition that adequate drainage will be in effect at all times. Existing functioning storm sewers, gutters, ditches and other runoff facilities shall not be obstructed.

- 6.4.6 Fire Hydrants: Fire hydrants on or adjacent to the roadway shall be kept accessible to fire apparatus at all times and no material or obstruction shall be placed within 15 feet of any such hydrant.
- 6.4.7 Protection of Structures: Heavy Equipment shall not be operated close enough to pipe headwalls or other structures to cause their displacement.
- 6.4.8 Fencing: The Contractor shall expedite the installation of fencing at those locations where, in the opinion of the CEI, such installation is necessary for the protection, health, and safety of the public. All fencing shall be maintained by the Contractor at all times. Fence cuts shall be immediately replaced. All fence removed during any one working day shall be replaced during that same day. While the fence is down, continuous security shall be provided by the Contractor to ensure that no pedestrians or vehicles enter or exit the roadway from the temporarily unfenced area. Specific attention shall be given to prevent any persons, animals, or vehicles moving from adjacent private property onto the roadway right-of-way.
- 6.4.9 Hazardous or Toxic Waste: When the Contractor's operations encounter or expose any abnormal condition which may indicate the presence of a hazardous substance, toxic waste or pollutants such operations shall be discontinued in the vicinity of the abnormal condition and the CEI shall be notified immediately. The presence of tanks or barrels; discolored earth, metal, wood, groundwater, etc.; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions which appear abnormal may be indicators of hazardous or toxic wastes or pollutants and shall be treated with extraordinary caution.

Every effort shall be made by the Contractor to minimize the spread of any hazardous substance, toxic waste or pollutant into uncontaminated areas.

The Contractor's operations in the affected area shall not resume until so directed by the CEI.

Disposition of the hazardous substance, toxic waste or pollutant shall be made in accordance with the laws, requirements and regulations of any local, state, or federal agency having jurisdiction. Where the Contractor performs Work necessary to dispose of hazardous substance, toxic waste or pollutant and the Contract does not include pay items for disposal, payment will be made, when approved in writing by a Supplemental Agreement, prior to the Work being performed.

6.4.10 Milling: The Contractor shall provide positive drainage of the remaining pavement after milling. This operation shall be done prior to opening to traffic.

The Contractor shall provide suitable transitions between milled areas of varying thickness in order to create a reasonably smooth longitudinal riding surface. In addition, the Contractor shall provide suitable transitions approaching all bridge ends at all times.

Wedges for Longitudinal and Transverse Joints: Asphalt Wedges for longitudinal and traverse joints shall be one foot wide or long, respectively, for each 1/4 inch of depth. The wedge must be installed prior to opening the lane to traffic.

The Contractor shall plan milling operations so that any lane milled will be repaved prior to opening to traffic.

# 6.5 Qualifications of Contractor's Personnel

The Contractor shall ensure that all of its employees are competent, careful, and reliable. All workers shall have the skills and experience necessary to properly perform the Work assigned and as required by the Plans and Specifications.

If, in the opinion of CFX, any person employed by the Contractor, or any Subcontractor, is not qualified to perform the Work or is insubordinate, disorderly, disrupts or is detrimental to the progress of the Work, such person shall be immediately removed from the Project by the Contractor upon written direction from CFX. Such person shall not be employed again on the Project without the written permission of CFX. If the Contractor fails to immediately remove such person, CFX may, at its sole discretion, withhold payments due or which may become due, or may suspend the Work until the person is removed. The Contractor shall indemnify and hold harmless CFX, its agents, consultants, officials and employees from any and all claims, actions or suits arising from such removal, discharge or suspension of a Contractor employee based on the direction of CFX.

## 6.6 Temporary Suspension of Contractor's Operations

- 6.6.1 Authority to Suspend Contractor's Operations: CFX, at its sole discretion, may suspend the Contractor's operations, wholly or in part, for such period(s) as CFX deems necessary. These periods of suspension may include adverse weather conditions, catastrophic occurrences and heavy traffic congestion caused by special events. Written notice, giving the particulars of the suspension, will be transmitted to the Contractor by CFX.
- 6.6.2 Prolonged Suspensions: If the suspension of operations is for an indefinite period of time, the Contractor shall store all Materials in such a manner that they will not become damaged or obstruct or impede the traveling public unnecessarily. The Contractor shall take reasonable precautions to prevent damage to or deterioration of

the Work performed, shall provide suitable drainage of the roadway by opening ditches, shoulder drains, etc., and shall provide all temporary structures necessary for public travel and convenience.

- 6.6.3 Permission to Suspend Operations: The Contractor shall not suspend operations or remove Equipment or Materials necessary for the completion of the Work without the permission of CFX. All requests for suspension of the Contract time shall be in writing to CFX and shall identify specific dates to begin and end.
- 6.6.4 Suspension of Contractor's Operations Holidays: Unless the Contractor submits a written request to work on a holiday at least ten days in advance of the requested date and receives written approval from the CEI, the Contractor shall not work on the following days: Martin Luther King, Jr. Day; Memorial Day; the Saturday and Sunday immediately preceding Memorial Day; Independence Day; Labor Day; the Friday, Saturday, and Sunday immediately preceding Labor Day; Veterans Day; Thanksgiving Day; the Friday, Saturday and Sunday immediately following Thanksgiving Day; and December 24 through January 2, inclusive. Contract Time will be charged during these holiday periods regardless of whether or not the Contractor's operations have been suspended. The Contractor is not entitled to any additional compensation for suspension of operations during such holiday periods.

During such suspensions, the Contractor shall remove all Equipment and Materials from the clear zone, except those required for the safety of the traveling public and retain sufficient personnel at the job site to properly meet the requirements of Sections 102 and 104 of the Technical Specifications. The Contractor is not entitled to any additional compensation for removal of Equipment from clear zones or for compliance with Section 102 and Section 104 during such holiday periods.

Any special events known to CFX that may impact Contractor operations are shown on the Plans.

## 6.7 Contract Time

6.7.1 General: The Contractor shall complete the Work in accordance with the Plans and Specifications and within the Contract Time specified in the Special Provisions including approved extensions.

For scheduling purposes, the Contractor shall take into consideration holidays and all weather conditions (except those listed in subarticle 6.7.3) that may be encountered during the performance of the Work.

The effect on job progress of utility relocations and adjustments and scheduling of construction operations to maintain traffic shall also be considered by the Contractor in the scheduling of Contract time.

6.7.2 Date of Beginning of Contract Time: The date on which Contract time will begin GS-92

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;
  - 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;
  - 1. 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

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.

7.2.2 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:

% Contract Amount Completed	Amount Retained
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 paying or base construction operations begin except when a construction sequence designated by the CEI requires suspension of paying and base construction after the initial paying operations, partial payments will be reinstated until the paying 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, < <a href="supplier">supplier</a>> will be liable to the Contractor and the Central Florida Expressway Authority should < <a href="supplier">supplier</a>> 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 GS-117

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:
  - The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials of supplies required for performance of the Contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - 2. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for

similar services.

- 3. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- 4. Those sums that, subsequent to the receipt of bids, CFX elects, under the provisions of the Direct Materials Purchase Option, to purchase materials originally proposed by the Contractor to CFX to have been an element of the Work of a certified D/M/WBE contractor/subcontractor/vendor.
- 8.2.5 Records and Reports: The Contractor shall develop a record keeping system to monitor its D/M/WBE participation and shall maintain the following records:
  - 1. the procedures adopted to comply with these special provisions;
  - 2. The number of subordinated contracts on CFX projects awarded to D/M/WBEs:
  - 3. the dollar value of the contracts awarded to D/M/WBEs;
  - 4. the percentage of the dollar value of all subordinate contracts awarded to D/M/WBEs as a percentage of the total contract amount;
  - 5. a description of the general categories of contracts awarded to D/M/WBEs;
  - 6. the specific efforts employed to identify and award contracts to D/M/WBEs;
  - 7. maintenance of records of payments and monthly reports to CFX;
  - 8. Subcontract Agreement between Contractor and D/M/WBE subcontractors; and
  - 9. any other records required by CFX's Project Manager or Executive Director.

The records maintained by the Contractor in accordance with this Section shall be provided to CFX for review within 48 hours of the CFX request. The Contractor shall submit a properly executed D/M/WBE Payment Certification monthly during the life of the D/M/WBE subcontract whether payment is made or not.

8.3 Subletting of Contracts - Participation Objective

No request to sublet Work will be approved unless it is in compliance with the Contractor's approved D/M/WBE Utilization Form "Certification of Subcontract Amount to D/M/WBE Contractor", shall be completed and submitted with the Request for Authorization to Sublet Work. One copy of the certification will be attached to each copy of the Request for Authorization to Sublet Work.

**END OF SECTION 8** 

# **SECTION 9 - BINDING ARBITRATION**

- 9.1 CFX and the Contractor shall submit any and all unsettled claims, counterclaims, and disputes to the Disputes Review Board (DRB) prior to initiating a demand for arbitration pursuant to this Section.
- 9.2 No demand for arbitration of any claim, dispute or other matter referred to the DRB initially for decision will be made until after final acceptance, per Article 3.9, of all Contract Work by CFX. The filing party shall pay all applicable fees associated with requested arbitration proceedings.

The failure to demand arbitration within thirty (30) days after final acceptance will result in the DRB's decision being final and binding upon CFX and Contractor.

- 9.3 Notice of the demand for arbitration is satisfied when it is filed in writing with the other party to the Contract and with the American Arbitration Association (including required fees). A copy will be sent to the Board for information.
- 9.4 The arbitration shall occur in Orlando, Florida and shall be conducted by a three (3) member panel pursuant to and under the auspices of the Construction Industry Arbitration Rules of the American Arbitration Association.
- 9.5 Procedure for Binding Arbitration

Arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations of this Section. The agreement to arbitrate (and any other agreement or consent to arbitrate entered into in accordance herewith) will be specifically enforceable under the laws of Florida.

Arbitration shall include by consolidation, joinder or in any other manner any person or entity who is not a party to the Contract in circumstances where:

- the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration, and
- such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings, and
- the written consent of the other person or entity sought to be included and of CFX and Contractor has been obtained for such inclusion, which consent shall make specific reference to this paragraph.

In order to assure complete resolution of any claim or controversy, the Contractor shall provide and require (in the agreements with subcontractors and material suppliers) for joinder in such arbitration proceedings. Therefore, if a claim, dispute or other matter in question between CFX and Contractor involves the work of a Subcontractor, either CFX or Contractor may join such subcontractor as a party to the arbitration. Nothing in this paragraph or in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of subcontractor or supplier, and against CFX, CEI, or any of their consultants that does not otherwise exist.

In connection with the arbitration proceedings all participants shall be afforded pre-hearing discovery in accordance with the rules of the American Arbitration Association.

END OF SECTION 9

#### **SECTION 10 - DISPUTES RESOLUTION**

### 10.1 Disputes Resolution

# 10.1.1 Disputes Review Board

A Disputes Review Board ("Board") will be established to assist in the resolution of disputes arising out of the Work on the Project. This document describes the purpose, procedure, function and features of the Board.

The Board will provide special expertise to assist and facilitate the timely and equitable resolution of disputes and controversies between CFX and the Contractor in an effort to avoid construction delays and future claims.

It is not intended for CFX or the Contractor to avoid the normal responsibility to cooperatively and fairly settle differences by indiscriminately requesting dispute resolution by the Board. It is intended the Board encourage CFX and the Contractor to first try resolving potential disputes without resorting to the procedure set forth herein.

The Board will be used only when the claims procedure detailed in the Contract has been followed and has been unsuccessful. It is a condition of the Contract that the parties use the Board. Adherence to the Contract claims procedure is a condition precedent to the submission of a dispute to the Board, and the submission of an unresolved dispute to the Board is, in turn, a condition precedent to arbitration of such issue.

The Board will fairly and impartially consider disputes referred to it. The Board will receive testimony and other relevant evidence regarding such disputes, will analyze the facts within the parameters of the Contract, and will then provide written recommendations (to CFX and Contractor) to assist in the resolution of the disputes. The recommendations of the Board will not be binding on either CFX or the Contractor; however, the Board's recommendations and findings shall be admissible for all purposes in any subsequent arbitration proceedings or the judicial enforcement thereof.

### 10.1.2 Continuance of Work During Dispute

During the dispute resolution process the Contractor shall conform to the CEI's decision or order and continue with the Work as directed by the CEI in a diligent manner and without delay. Such Work will be governed by all applicable provisions of the Contract. With respect to any protested Work, the Contractor will keep complete records of extra costs and time incurred. Except for sealed Bid Records, the Contractor will permit CEI and the Board access to any records needed for evaluating the dispute, without any claim of privilege or confidentiality.

### 10.1.3 Disputes Review Board Membership

The Board will consist of three Members, one Member selected by CFX and approved by the Contractor, and one Member selected by the Contractor and approved by CFX. The first two Members will mutually select and agree on the third Member, which third Member shall not be subject to approval by either the Contractor or CFX. Normally, the third Member will act as Chairman for all Board activities. If the third Member declines to act as Chairman, the Members shall select an alternative Chairman. Neither the Contractor nor CFX shall seek to influence the Chairman selection decision.

The Contractor and CFX shall each submit the name and credentials of their proposed Member to the other within ten (10) days of the Contract award. The two Members, upon acceptance, shall meet promptly and mutually agree on the third Member. A Notice to Proceed shall not be issued until the Board Members have been selected and have signed the Three-Party Agreement. All three Members shall attend the Pre-Construction Meeting.

All Board Members shall be experienced with major road and bridge construction and the associated construction methods involved in the Project, in the interpretation of contract documents and in contract dispute resolution. The goal in selecting the third Member is to complement the construction experience of the first two Members and to provide leadership of the Board's activities.

It is imperative that Board Members show no partiality to either the Contractor or CFX, or have any conflict of interest.

The criteria and limitations for membership will be as follows:

- a. The person selected will not have any direct or indirect ownership or financial interest in (i) the Contractor, (ii) CEI or the CFX General Engineering Consultant ("GEC"), (iii) any subcontractor or supplier of the Project, or (iv) the employer of other Board Members.
- b. Except for services as a Board Member on CFX projects, no Member shall have been an employee, contractor or consultant to the Contractor or CFX, CEI, the GEC or any subcontractor or supplier for the Project within a period of ten (10) years prior to the Contract award.
- c. No Member will have had a close personal, professional or business relationship with CFX or the Contractor (or an employee or officer of CFX or the Contractor).
- d. No Member will have had any prior involvement in the Project (other than as a dispute board member) of a nature which could be construed to compromise an ability to impartially resolve disputes.

- e. No Member will be employed by the Contractor, the CEI, the GEC or any subcontractor or supplier of the Project during the term of the Contract, except as a Board Member pursuant to the Three Party Agreement.
- f. During the term of the Contract no discussion or agreement will be made between a Board Member and CFX or Contractor regarding employment after the Contract is completed.
- g. During the term of the Contract, ex-parte communications between a Board Member and a party to the Three Party Agreement is prohibited.

Before appointments are final, the first two prospective Members will submit complete disclosure statements for the approval of both CFX and the Contractor. Each statement (in the form prepared by CFX) will include a statement of experience and a declaration describing all past, present and anticipated or planned future relationships to the Project and with the parties to the Contract. Disclosure of professional or personal relationships with parties to the Contract will be included. The third Board Member will supply a similar statement to the first two Board Members (and to CFX and the Contractor) before the third Member appointment is finalized.

CFX and the Contractor will each select a Member, execute the Three Party Agreement (described below) and assure the Members execute the Three-Party Agreement within the first three (3) weeks after Contract award. CFX and the Contractor will immediately notify the selected Members to begin selection of the third Member. The first two Members will ensure the third Member meets all of the criteria listed above. The third Member will be selected within two (2) weeks after the first two Members are notified to proceed with the selection of the third Member. If there is an impasse in the selection of the third Member, the third Member will be selected by CFX and the Contractor, with the first consideration to the nominees reviewed by the first two Members.

In the event of death, disability or resignation of a Member, such Member shall be replaced in the same manner as the Member being replaced was selected. If for whatever other reason a Member fails or is unable to serve, the Chairman (or failing the action of the Chairman, then either of the other Members) shall inform the parties and such non-serving Member shall be replaced in the same manner as the Member being replaced was selected. Any replacement made by the parties shall be completed within fifteen (15) days after the event giving rise to the vacancy on the Board, failing which the replacement shall be made by the two remaining Members of the Board. Replacement shall be considered completed when the new Member executes the Dispute Review Board Three Party Agreement.

### 10.1.4 Board Operations

The Board will formulate procedures of operation that shall be flexible with respect to the functioning of the Board. The Board may formulate new or revised procedures respecting its operation from time to time to accommodate the needs of the Board and the circumstances.

Each Board Member shall be provided a complete set of the Contract Documents. CFX and the Contractor shall keep the Board informed of construction activity and progress by submitting written progress reports and other relevant data at least monthly. The Board will visit the Project at regular intervals and/or at times of critical construction events and meet with CEI and the Contractor. In circumstances of unresolved disputes, the Board will meet at least monthly until the unresolved disputes are concluded. The frequency of visits will be agreed upon by CFX, the Contractor and the Board, depending upon the progress of the Work.

Regular meetings will be held at the job site. Each meeting will consist of an informal discussion and a field inspection of the Work. The informal discussion will be attended by selected personnel from CFX, the CEI and the Contractor. Agenda for regular meetings of the Board will generally include the following:

- a. Meeting opened by the Chairman of the Board.
- b. Remarks by the CEI.
- c. A description by the CEI and the Contractor of Work accomplished since the last meeting, current status of the Work schedule, schedule for the future, potential problems and proposed solutions to anticipated problems.
- d. Discussion by the CEI of Work schedule, potential new disputes or claims, status of past disputes and claims and other issues.
- e. Set a date for next meeting.

The CEI will prepare minutes of all Board meetings and circulate them for comments, revisions and/or approval by all concerned.

The field inspection will cover all active segments of the Work. The Board will be accompanied by representatives of both the CEI and the Contractor. Soliciting any Board Member's advice or consultation regarding the Work or the Contract is expressly prohibited.

### 10.1.5 Procedure for Disputes Resolution

Disputes will be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Steps may be omitted as agreed by both parties and the time periods stated below may be shortened in order to hasten resolution.

- a. If either CFX or Contractor object to any decision of the CEI with respect to claims, change order requests, or other actions or orders of the CEI, the objecting party may file a written protest with the CEI within fifteen (15) days after the CEI's disputed decision, action or order. The written protest must clearly state in detail the basis for the objection.
- b. The CEI will consider the written protest to its decision or directive, and make a final decision on the basis of the pertinent Contract provisions, together with the facts and circumstances involved in the protest. The decision will be furnished to CFX and Contractor in writing within fifteen (15) days after receipt of the written protest.
- c. The CEI's decision with respect to the protest will be final, unless a written exception is filed by CFX or Contractor with the CEI within fifteen (15) days after receiving the protest decision. If either rejects the CEI's final decision, the disputed matter may be referred to the Board by either CFX or the Contractor.
- d. Upon receipt by the Board of a written dispute, the Board will first decide when to conduct the hearing. If the matter is not urgent, it may be heard at the next regularly scheduled Board meeting. For an urgent matter, the Board will meet at its earliest convenience.
- e. Either party furnishing written evidence or documentation to the Board will furnish copies of such information to the other party a minimum of fifteen (15) days prior to the date the Board sets to hear the dispute. If the Board requests additional documentation or evidence prior to, during or after the hearing, CFX and/or the Contractor will provide the requested information to the Board and to the other party. Because each side needs a reasonable opportunity to understand and rebut the opposing side's point of view, failure of either party to timely provide written documentation in accordance with this provision shall result in such written documentation being excluded from the hearing before the Board unless the other party consents to its admission or consents to a delay in the hearing.

- f. The Contractor and CFX will each be afforded an opportunity to be heard by the Board and to offer evidence. The Board will consider all relevant evidence presented and analyze the same solely within the parameters of the Contract. Hearsay evidence shall be admissible but shall not be the sole basis for any recommendation of the Board.
- g. The Board's recommendations for resolution of the dispute will be given in writing within fifteen (15) days of completion of the hearing(s). In cases of extreme complexity, both parties may agree to allow additional time for the Board to formulate its recommendations. Generally, the Board will initially focus its attention (in the written report) only to matters of entitlement, and allow the parties to thereafter determine the monetary relief. If both parties request, and sufficient documentation is available, the Board may also make a recommendation of monetary relief, but only after formulation of the entitlement recommendation and only after the parties have attempted to agree upon the monetary relief amount.
- h. If the Board's recommendation for resolution is not unanimous, the dissenting member shall prepare a separate written opinion.
- i. Within fifteen (15) days of receiving the Board's recommendations, both CFX and the Contractor will respond to the other and to the Board in writing, signifying either acceptance or rejection of the Board's recommendations. The failure of a party to respond within the fifteen (15) day period will be deemed an acceptance by such party of the Board's recommendations. If CFX and the Contractor are able to resolve the dispute (with or without the aid of the Board's recommendations), CFX will promptly process any required Contract changes.
- j. If the dispute remains unresolved because of a bona fide lack of clear understanding of the recommendation, either party may request the Board clarify specific portions of its recommendations. Further, if new evidence becomes available, either party may request the Board reconsider its prior recommendation Only evidence which did not exist at the time of the hearing, or which existed but which could not be discovered with reasonable and normal diligence shall be considered new evidence.
- k. If the Board's recommendation is rejected, either party may thereafter initiate resolution of the dispute by binding arbitration conducted pursuant to the Contract.

Both CFX and the Contractor should carefully consider the Board's recommendations, as the recommendations are binding unless written notice is provided to the other party within 30 days of the recommendations stating the party's intent to bring the disputed issue to arbitration. However, if the Board's recommendations do not resolve the dispute, all records and written recommendations, including any minority reports, will be admissible for informational purposes in any subsequent dispute resolution procedures. Such informational purposes shall include but not be limited to establishing that the Board considered the dispute, the qualifications of the Board Members, and the Board's recommendation that resulted from the dispute resolution process.

# 10.1.6 Conduct of Disputes Hearings

Each party shall file three copies of its written arguments with the Board no less than seven days prior to the scheduled hearing and shall simultaneously deliver a copy of such written arguments to the opposing party. Each party shall also submit to the Board along with its written arguments copies of its written evidence and documentation which has been previously provided to the opposing party as provided above.

Normally, the hearing will be conducted at the job site. However, any location more convenient and which provides all required facilities and access to necessary documentation is satisfactory.

While the Board will keep a record of its sessions during consideration of a dispute, the Board will not be required to keep its record in any particular form. The nature and completeness of the record will depend upon the nature and magnitude of the dispute and the desires of the parties. If possible, the hearings shall be kept informal. Formal records of the Board meetings may be taken and transcribed by a court reporter if requested by a party (at the requesting party's cost). Audio and/or video recording of the meeting is discouraged and shall only be made with the prior agreement of all parties and a majority of the Board.

CFX and the Contractor will have representatives at all dispute resolution hearings. The party requesting Board review will first discuss the dispute, followed by the other party. Each party will then be allowed successive rebuttals until all aspects are fully covered to the Board's satisfaction. The Members and the parties may ask questions, request clarification or ask for additional data. In large or complex cases, additional hearings may be necessary in order to consider and fully understand all evidence presented by both parties.

During the hearings, no Member will express any opinion concerning the merit of any facet of the dispute.

After the hearings are concluded, the Board will meet in private to formulate recommendations supported by two or more Members. All Board deliberations will be conducted in private, with individual views kept strictly confidential. No minutes shall be

prepared of the Board's private meetings. The Board's recommendations and discussions of its reasoning will be submitted as a written report to both parties. The recommendations will be based on the pertinent Contract provisions and the facts and circumstances involved in the dispute.

The Board will make every effort to reach a unanimous decision. If a unanimous decision is not possible, the dissenting Member may (but is not required to) prepare a minority report.

### 10.1.7 Compensation

The Contractor shall pay the fees of all three Board Members for services rendered under the Three Party Agreement. An allowance pay item has been established in the Contract for the reimbursing the Contractor. Funds remaining in the pay item, if any, at the completion of the Project will belong to CFX. CFX and the Contractor shall agree on the procedures and method of processing payments made against the allowance. CFX or the CEI will mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services. If the Board desires special services, such as legal consultation, accounting, data research, etc., both parties must agree and the costs will be paid from the allowance.

### 10.1.8 Three Party Agreement

The Contractor, CFX and the Members of the Board will execute the Dispute Review Board Three Party Agreement within four (4) weeks of the final selection of the third Member.

**END OF SECTION 10** 

#### **ATTACHMENT A**

# DISPUTES REVIEW BOARD THREE PARTY AGREEMENT

THIS THREE PARTY AGREEME	ENT ("Agreement") made and entered into this
day of, 20, between	n the CENTRAL FLORIDA EXPRESSWAY
	("Contractor") and the DISPUTES
REVIEW BOARD ("Board"), consisting	ng of three members:,
and	("Members").
WHEREAS, CFX is now engaged in	the construction of the, and
WHEREAS, the and operation of the Board to assist in resolv.	contract ("Contract") provides for the establishment ing disputes and claims.
	n of the terms, conditions, covenants and performance and made a part hereof), the parties agree as set forth

### 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. <u>Furnishing Documents</u>. 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. <u>Site Visits</u>. 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. <u>Board Consideration of Disputes or Claims</u>. 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. <u>Miscellaneous Board Responsibilities</u>. 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. <u>Board Member Replacement</u>. 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. <u>Contract Related Documents</u>. 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. <u>Coordination and Services</u>. 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. <u>Payment</u>.

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. <u>Inspection of Costs Records</u>. 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 EXPRESS	SWAY AUTHORITY
By:	
Print Name:	
Title:	
BOARD:	
DISPUTES REVIEW BOARD	
By:	
Print Name:	
By:	
Print Name:	
	<del></del>
By:	
Print Name:	<del></del>
CONTRACTOR:	
By:	<del></del>
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.

# CONSENT AGENDA ITEM #12

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

#### **MEMORANDUM**

TO:

**CFX Board Members** 

FROM:

Aneth Williams Ansth Williams

**Director of Procurement** 

DATE:

February 22, 2021

SUBJECT:

Approval of Second Contract Renewal with Tews Consulting, Inc.

for Staffing Services Contract No. 001678

Board approval is requested for the first renewal of the referenced contract with Tews Consulting, Inc. in the amount of \$45,000.00 for a one-year period beginning April 9, 2021 and ending April 8, 2022. The original contract was for one year with four one-year renewals.

The services to be provided under this contract are for staffing support.

**Original Contract** 

\$ 45,000.00

First Renewal

\$ 45,000.00

Total

\$ 90,000.00

This contract is included in the OM&A Budget.

Reviewed by:

Evelyn Wilson

Director of Human Resources

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY CONTRACT RENEWAL NO. 1 AGREEMENT CONTRACT NO. 001678

**THIS CONTRACT RENEWAL NO. 1 AGREEMENT** ("Renewal Agreement"), is made and entered into this 11th day of March 2021, by and between Central Florida Expressway Authority, a corporate body and agency of the State of Florida, hereinafter called "CFX", and TEWS Consulting Services, Inc. hereinafter called the ("Contractor"). CFX and Contractor are referred to herein sometimes as a "Party" or the "Parties".

#### WITNESSETH

**WHEREAS**, on April 9, 2020, CFX and the Contractor entered into a Contract Agreement (the "Original Agreement"), whereby CFX retained the Contractor to provide staffing 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. <u>Recitals</u>. 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 April 9, 2021 and end on April 8, 2022 ("Renewal Term"), unless otherwise extended as provided in the Original Contract.
- 3. <u>Compensation for Renewal Term</u>. 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 \$45,000.00 ("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. <u>Counterpart and Electronic Signatures</u>. 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.

## TEWS CONSULTING, 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:
By:	Diego "Woody" Rodriguez, General Counsel
Print Name:	

## CONTRACT

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
AND
TEWS CONSULTING, INC.

STAFFING SERVICES

**CONTRACT NO.001678** 

CONTRACT DATE: April 9, 2020 CONTRACT AMOUNT: \$45,000.00

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY STAFFING SERVICES CONTRACT NO. 001678

This Contract is made this 9th day of April 2020, between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, hereinafter called "CFX" and TEWS CONSULTING, INC. dba TEWS COMPANY, 1000 Legion Place, Suite 730, Orlando, FL 32801, hereinafter the "CONTRACTOR":

#### WITNESSETH:

WHEREAS, CFX was created by statute and is charged with acquiring, constructing, operating and maintaining a system of limited access roadways known as the Central Florida Expressway System; and,

WHEREAS, CFX has been granted the power under Section 348.754(2)(m) of Florida Statutes, "to do all acts and things necessary or convenient for the conduct of its business and the general welfare of the Central Florida Expressway Authority, in order to carry out the powers granted to it (by state law);" and,

WHEREAS, CFX has determined that it is necessary and convenient in the conduct of its business to retain the services of a CONTRACTOR to provide staffing services which is exempt from the Procurement process; and,

NOW THEREFORE, in consideration of the mutual covenants and benefits set forth herein and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged by each party to the other, the parties hereto agree as follows:

#### 1. SERVICES TO BEPROVIDED

The CONTRACTOR shall, for the consideration herein stated and at its cost and expense, do all the work and furnish all equipment, supplies, labor and incidentals necessary to perform this Contract in the manner and to the full extent as required by CFX

#### 2. CONTRACT TERM AND AMOUNT

The term of the Contract will be one (1) year beginning April 9, 2020. There shall be four (4) renewal options of one year each. The options to renew are at the sole discretion and election of CFX. Renewals will be based, in part, on a determination by CFX that the value and level of service provided by the CONTRACTOR are satisfactory and adequate for CFX's needs. If a renewal option is exercised, CFX will provide the CONTRACTOR with written notice of its intent at least 60 days prior to the expiration of the initial three-year Contract terms. The Contract amount shall not exceed \$45,000.00.00 during the term.

#### 3. COMPENSATION FOR SERVICES

Compensation shall be in accordance with the CONTRACTOR's Master Service Agreement.

#### 4. CONTRACTOR RESPONSIBILITY

CONTRACTOR shall take all reasonable precautions in the performance of the services and shall cause its employees, agents and subcontractors to do the same.

- 4.1 CONTRACTOR shall comply, and shall cause its employees, agents, officers and subcontractors and all other persons for whom CONTRACTOR may be legally or contractually responsible, with applicable laws, ordinances, rules, regulations, orders of public authorities, sound business practices, including without limitation:
  - (i) those relating to the safety of persons and property and their protection from damage, injury or loss, and
  - (ii) all workplace laws, regulations, and posting requirements, and
- 4.2 CONTRACTOR shall be responsible for all damage and loss that may occur with respect to any and all property in any way involved in the provision of services by CONTRACTOR, whether such property is owned by CONTRACTOR, CFX, or any other person, to the extent such damage or loss shall have been caused or brought about by the acts or omissions of CONTRACTOR or its employees, agents, officers or subcontractors or any other persons for whom CONTRACTOR may be legally or contractually responsible.
- 4.3 CONTRACTOR shall ensure that all of its activities and the activities of its employees, agents, officers and subcontractors and all other persons for whom CONTRACTOR may be legally or contractually responsible are undertaken in a manner that will minimize the effect on surrounding property and the public.

#### 5. INDEMNITY

The CONTRACTOR shall indemnify, defend and hold harmless CFX and all of its respective officers, agents, CONTRACTOR's or employees from all suits, actions, claims, demands, costs as defined elsewhere herein, expenses (including reasonable attorneys' fees as defined elsewhere herein), judgments, liabilities of any nature whatsoever (collectively, "Claims") arising out of, because of, or due to breach of the Contract by the CONTRACTOR (its subcontractors, officers, agents or employees) or due to any negligent or intentional act or occurrence of omission or commission of the CONTRACTOR (its subcontractors, officers, agents or employees). CONTRACTOR will not be liable for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of CFX or any of its officers, agents or employees. The parties agree that 1% of the total compensation to the CONTRACTOR for performance of each task authorized under the Contract is the specific consideration from CFX to CONTRACTOR for CONTRACTOR's indemnity and the parties further agree that the 1% is included in the amount negotiated for each authorized task.

#### 6. PUBLIC RECORDS

Upon receipt of any request by a member of the public for any documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by CONTRACTOR in conjunction with this Contract (including without limitation CONTRACTOR Records and Proposal Records, if and as applicable), CONTRACTOR shall immediately notify CFX. Thereafter, CONTRACTOR shall follow CFX's instructions with regard to such request. To the extent that such request seeks non-exempt public records, CFX shall direct CONTRACTOR to provide such records for inspection and copying incompliance with Chapter 119. A subsequent refusal or failure by CONTRACTOR to timely grant such public access will be grounds for immediate, unilateral cancellation of the Contract by CFX.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT

Central Florida Expressway Authority
4974 ORL Tower Road
Orlando, Florida 32807
(407) 690-5000
PublicRecords@CFXWay.com

#### 7. MEDIA RELEASES

CONTRACTOR shall make no statements, press releases or publicity releases concerning the Contract or its subject matter, or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished under the Contract, or any particulars thereof, without first notifying CFX and securing its consent in writing.

#### 8. 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.

#### 9. CONFLICT OF INTEREST AND STANDARDS OF CONDUCT

CONTRACTOR acknowledges that CFX officials and employees are prohibited from soliciting and accepting funds or gifts from any person who has, maintains, or seeks business relations with CFX in accordance with CFX's Ethics Policy. To the extent applicable, CONTRACTOR will comply with the aforesaid Ethics Policy in connection with performance of the Contract.

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

CONTRACTOR covenants and agrees that it and its employees, officers, agents, and subcontractors shall be bound by the standards of conduct provided in Florida Statutes 112.313 as it relates to work performed under this Contract, which standards will be reference be made a part of this Contract as though set forth in full.

#### 10. 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.

#### 11. SUBLETTING AND ASSIGNMENT

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

#### 12. DISPUTES AND TERMINATION

All services shall be performed by the CONTRACTOR to the reasonable satisfaction of CFX's Executive Director (or her/his delegate), who shall decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of this Contract, the prosecution and fulfillment of the services described and the character, quality, amount and value thereof.

CFX shall have the right to terminate or suspend the Contract, in whole or in part, at any time, for any reason, with 7 days' notice for convenience or 10 days' notice for cause.

#### 13. OTHER SEVERABILITY

If any section of this Contract be judged void, unenforceable or illegal, then the illegal provision shall be, if at all possible, interpreted or re-drafted into a valid, enforceable, legal provision as close to the parties' original intention, and the remaining portions of the Contract shall remain in full force and effect and shall be enforced and interpreted as closely as possible to the parties' intention for the whole of the Contract.

#### 14. 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.

#### 15. RELATIONSHIPS

CONTRACTOR acknowledges that no employment relationship exists between CFX and CONTRACTOR or CONTRACTOR's employees. CONTRACTOR shall be responsible for all direction and control of its employees and payment of all wages and salaries and other amounts due its employees. CONTRACTOR shall be responsible for all reports and obligations respecting such employees, including without limitation social security tax and income tax withholding, unemployment compensation, workers compensation, and employment benefits.

Any approval by CFX of a subcontract or other matter herein requiring CFX approval for its occurrence shall not be deemed a warranty or endorsement of any kind by CFX of such subcontract, subcontractor, or matter.

#### 16. INTERPRETATION

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

#### 17. SURVIVAL OF EXPIRATION OR TERMINATION

Any clause, sentence, paragraph, or sect ion providing for, discussing, or relating to any of the following shall survive the expiration or earlier termination of the Contract:

- 17.1 Payment to CONTRACTOR for satisfactory work performed or for termination expenses, if applicable; and
- 17.2 Any other term or terms of this Contract which by their nature or context necessarily survive the expiration or earlier termination of the Contract for their fulfillment.

#### 18. OBLIGATIONS UPON EXPIRATION OR TERMINATION OF CONTRACT

CONTRACTOR shall initiate settlement of all outstanding liabilities and claims arising out of the Contract and any subcontracts or vending agreements to be canceled. All settlements shall be subject to the approval of CFX.

IN WITNESS WHEREOF, the authorized signatures named below have caused this instrument to be signed by their respective duly authorized officials, as of the day and year first above written.

## 

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

Approved as to form and execution, only.

Diego "Woody"

Digitally signed by Diego "Woody" Rodriguez

Rodriguez

Date: 2020.06.22 11:22:29 -04'00'

CFX General Counsel

## CONSENT AGENDA ITEM #13



#### **MEMORANDUM**

TO: Central Florida Expressway Authority Board Members

FROM: Jeffrey Tecau, Managing Director, Protiviti

AR PIZZ

DATE: February 5, 2021

SUBJECT: Internal Audit Reports

Attached, please find the following Internal Audit reports as reviewed and accepted by the Central Florida Expressway Authority Audit Committee on January 27, 2021.

- 1. DHSMV Data Security Assessment
- 2. DAVID Data Security Assessment
- 3. Payment Card Industry (PCI) Assessment
- 4. Ethics Policy Compliance Review

Reviewed by:





## **DHSMV** Data Security Assessment

**Central Florida Expressway Authority** 

December 2020



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### **Executive Summary**

#### **Overview**

During the period of November 17<sup>th</sup>, 2020 to December 17<sup>th</sup>, 2020, Internal Audit performed a Data Security Assessment of the Department of Highway Safety and Motor Vehicles ("DHSMV") data within the Central Florida Expressway Authority ("CFX") environment. The objectives of the assessment were to review internal controls for gaps in design related to the requirements set forth in *Section V – Safeguarding Information*, of the DHSMV Drivers License or Motor Vehicle Record Data Exchange Memorandum of Understanding ("MOU").

The summarized objectives of Section V are:

- Information exchanged will not be used for any purposes not specifically authorized by the MOU. Unauthorized use includes, but is not limited to, queries not related to a legitimate business purposes, personal use, and the dissemination, sharing, copying or passing of this information to unauthorized persons.
- Information exchanged by electronic means will be stored in a place physically secure from access by unauthorized persons.
- Access to the information will be protected in such a way that unauthorized persons cannot review or retrieve the information.
- All personnel with access to the information exchanged under the terms of the MOU will be instructed of, and acknowledge
  their understanding of, the confidential nature of the information. These acknowledgements must be maintained in a current
  status by the Requesting Party (CFX).
- All personnel with access to the information will be instructed of, and acknowledge their understanding of, the criminal sanctions
  specified in state law for unauthorized use of the data. These acknowledgements must be maintained in a current status by the
  Requesting Party (CFX).
- All access to the information must be monitored on an on-going basis by the Requesting Party (CFX). In addition, the Requesting
  Party (CFX) must complete an annual audit to ensure proper and authorized use and dissemination.



#### **Scope and Approach**

Internal Audit conducted an assessment of the process used for safeguarding DHSMV data in the CFX environment. In order to complete this review, the following procedures were performed:

- Reviewed policies and procedures related to the safeguarding of electronic and physical data transfers, data storage, and data access.
- Conducted interviews with key personnel to understand the Drivers License or Motor Vehicle Record Data Exchange process.
- CFX Management approved the scope of work and believed it to be sufficient to meet the requirements of the MOU. Conducted testing of controls related to the following areas:
  - o Policies and Procedures
  - Application Access
  - Segregation of Duties
  - Change Control
  - Data Storage
  - Data Transfer
  - Network Firewall
  - Network Architecture
  - Active Directory
  - Physical Security
- After testing was completed, analysis was performed to compare the results of testing to the control objectives outlined in the MOU.



#### **Summary of Results**

As a result of this review, Internal Audit identified zero (0) observations that should be addressed in order to enhance CFX's Drivers License or Motor Vehicle Data Exchange process.



## **Appendix A – Controls Tested**

	Control Objective	Control Description	Testing Results
1	Information exchanged will not be used for any purposes not specifically authorized by this agreement. Unauthorized use includes, but is not limited to, queries not related to a legitimate business purpose, personal use, and the dissemination, sharing, copying or passing of this information to unauthorized persons.	Policies and Procedures: CFX implements company-wide policies and procedures that enforce the safeguarding of company data and other sensitive customer data whether or not it is currently being used or accessed.	Control Effective
2	All personnel with access to the information exchanged under the terms of the Drivers License or Motor Vehicle Record Data Exchange MOU will be instructed of, and acknowledge their understanding of, the confidential nature of the information. These acknowledgements must be maintained in a current status by the requesting party.	<b>Training:</b> CFX requires in the hiring process that all users sign an acknowledgement after reviewing either the employee or contractor security guidelines handbook which covers the safeguarding of data. These acknowledgments must be maintained for all current/active users.	Control Effective
3	Access to the information exchanged will be protected in such a way that unauthorized persons cannot review or retrieve the information.	TRIMS Access: System access to the TRIMS applications for new users is appropriately administered through the submission of a New User Authorization Form. This form is completed by the new user's Manager and the proper approvals/signatures are obtained. Access to the applications is then administered by IT support.	Control Effective
4	Access to the information exchanged will be protected in such a way that unauthorized persons cannot review or retrieve the information.	TRIMS Access - Terminated Users: System access to the TRIMS application and company network is appropriately revoked in a timely fashion for terminated users. Upon receipt of a termination notification (email, authorization form, phone call, etc.) from HR or a Manager responsible for the terminated user, the user's system account is disabled immediately.	Control Effective



	Control Objective	Control Description	Testing Results
5	Access to the information exchanged will be protected in such a way that unauthorized persons cannot review or retrieve the information.	<b>Database-level Access:</b> Database-level access is restricted to the appropriate individuals through the use of unique accounts.	Control Effective
6	Access to the information exchanged will be protected in such a way that unauthorized persons cannot review or retrieve the information.	Server-level Access: Server-level access is restricted to the appropriate individuals through the use of unique accounts.	Control Effective
7	Access to the information exchanged will be protected in such a way that unauthorized persons cannot review or retrieve the information.	FTP Gateway Access: All individuals / user accounts with access to the FTP Gateway are authorized and appropriate.	Control Effective
8	Access to the information exchanged will be protected in such a way that unauthorized persons cannot review or retrieve the information.	Host (HT250) Access: All individuals / user accounts with access to the Host (HT250) are authorized and appropriate.	Control Effective
9	Access to the information exchanged will be protected in such a way that unauthorized persons cannot review or retrieve the information.	Oracle DB Access: All individuals / user accounts with access to the Oracle DB are authorized and appropriate.	Control Effective
10	Access to the information exchanged will be protected in such a way that unauthorized persons cannot review or retrieve the information.	DOCPRD2 Access: All individuals / user accounts with access to the DOCPRD2 server are authorized and appropriate.	Control Effective
11	Access to the information exchanged will be protected in such a way that unauthorized persons cannot review or retrieve the information.	Infoview Crystal Reports (RPTPRD4) Server Access: All individuals / user accounts with access to the Infoview Crystal Reports (RPTPRD4) server are authorized and appropriate.	Control Effective
12	Information exchanged will not be used for any purposes not specifically authorized by this agreement. Unauthorized use includes, but is not limited to, queries not related to a legitimate business purpose, personal use, and the dissemination, sharing, copying or passing of this information to unauthorized persons.	DHSMV Data Access: Management performs a periodic review of user access across each of the in-scope entities to ensure that the assigned access level is commensurate with his/her job function.	Control Effective



	Control Objective	Control Description	Testing Results
13	Access to the information exchanged will be protected in such a way that unauthorized persons cannot review or retrieve the information.	Change Control / Patch Management: Dedicated test environments exist for the testing of changes and patches, where practical. CFX appropriately documents and tests each change.	Control Effective
14	Access to the information exchanged will be protected in such a way that unauthorized persons cannot review or retrieve the information.	Change Control / Patch Management: All changes and patches are authorized, executed, and documented according to stated procedures.	Control Effective
15	Access to the information exchanged will be protected in such a way that unauthorized persons cannot review or retrieve the information.	<b>Data Encryption:</b> Driver's license number as it is obtained from the DHSMV is encrypted when stored in the Oracle database.	Control Effective
16	Access to the information exchanged will be protected in such a way that unauthorized persons cannot review or retrieve the information.	<b>Network - Firewall:</b> CFX has an operational firewall in place to restrict access to the internal network.	Control Effective
17	Access to the information exchanged will be protected in such a way that unauthorized persons cannot review or retrieve the information.	Network - Active Directory: All individuals with Active Directory credentials are current, active users and all rights granted through Active Directory are commensurate with their current job responsibilities.	Control Effective
18	Information exchanged by electronic means will be stored in a place physically secure from access by unauthorized persons.	Physical Security - Data Center: Access to the data center(s) is restricted to appropriate personnel and is provided through the use of a physical key or key card.	Control Effective
19	Information exchanged by electronic means will be stored in a place physically secure from access by unauthorized persons.	Physical Security - Work Areas: Access to the work areas is restricted to appropriate personnel and is provided through the use of a physical key or key card.	Control Effective



	Control Objective	Control Description	Testing Results
20	All access to the information must be monitored on an on-going basis by the Requesting Party. In addition the Requesting Party must complete an annual audit to ensure proper and authorized use and dissemination.	Logging & Monitoring: Logging and auditing functions are enabled on all in-scope entities. In addition, all system logs are monitored for unauthorized access and irregular activity.	Control Effective
21	All access to the information must be monitored on an on-going basis by the Requesting Party. In addition the Requesting Party must complete an annual audit to ensure proper and authorized use and dissemination.	Vulnerability Scanning / Penetration Testing: CFX performs periodic external vulnerability scans and penetration tests.	Control Effective









## **DAVID Data Security Assessment**

**Central Florida Expressway Authority** 

November 2020



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## **Executive Summary**

#### **Overview**

During the period of November 2<sup>nd</sup>, 2020 to November 20<sup>th</sup>, 2020, Internal Audit performed a Data Security Assessment of the Driver and Vehicle Information Database systems ("DAVID") data within the Central Florida Expressway Authority ("CFX") environment. The objectives of the assessment were to review internal controls for gaps in design related to the requirements set forth in *Section V – Safeguarding Information*, of the DHSMV Driver and Vehicle Information Database Data Exchange Memorandum of Understanding ("MOU").

The summarized objectives of Section V are:

- Information exchanged will not be used for any purposes not specifically authorized by the MOU. Unauthorized use includes, but is not limited to, queries not related to a legitimate business purposes, personal use, and the dissemination, sharing, copying or passing of this information to unauthorized persons.
- The Requesting Party shall not indemnify and shall not be liable to the Providing Agency for any driver license or motor vehicle information lost, damaged, or destroyed as a result of the electronic exchange of data pursuant to the MOU, except as otherwise provided in Section 768.28, Florida Statutes.
- Any and all DAVID-related information provided to the Requesting Party (CFX) as a result of the MOU, particularly data from the DAVID system, will be stored in a place physically secure from access by unauthorized persons.
- The Requesting Party shall comply with Rule 74-2, Florida Administrative Code, and with Providing Agency's security policies, and employ adequate security measures to protect Providing Agency's information, applications, data, resources, and services. The applicable Providing Agency's security policies shall be made available to Requesting Party.
- When printed information from DAVID is no longer needed, it shall be destroyed by cross-cut shredding or incineration.
- The Requesting Party (CFX) shall maintain a list of all persons authorized within the agency to access DAVID information, which must be provided to the providing agency upon request.
- Access to DAVID-related information, particularly data from the DAVID System, will be protected in such a way that unauthorized persons cannot view, retrieve, or print the information.
- Under the MOU agreement, access to DAVID shall be provided to users who are direct employees of the Requesting Party (CFX) and shall not be provided to any non-employee or contractors of the Requesting Party (CFX).



### **Scope and Approach**

Internal Audit conducted an assessment of the process used for safeguarding DAVID data in the CFX environment. In order to complete this review, the following procedures were performed:

- Reviewed policies and procedures related to the safeguarding of electronic and physical data transfers, data storage, and data access.
- Conducted interviews with key personnel to understand the Drivers and Vehicle Information Database System Data Exchange
  process.
- CFX Management approved the scope of work and believed it to be sufficient to meet the requirements of the MOU. Performed testing of controls related to the following areas:
  - Policies and Procedures
  - Application Access
  - o Risk Management
  - Change Control
  - o Data Storage
  - Data Transfer
  - Network Firewall
  - Network Architecture
  - System Authentication
  - o Access Controls
  - Physical Security
- After testing was completed, analysis was performed to compare the results of testing to the control objectives outlined in the MOU.



### **Summary of Results**

As a result of this review, Internal Audit identified zero (0) observations that should be addressed in order to enhance CFX's Driver and Motor Vehicle Database system Data Exchange process.



## **Appendix A – Controls Tested**

	Control Objective	Control Description	Testing Results
1	Document and manage legal and regulatory requirements regarding cybersecurity, including privacy and civil liberties obligations.	Policies and Procedures: CFX has identified cybersecurity legal and regulatory requirements and identified individuals responsible for managing requirements.	Control Effective
2	Ensure governance and risk management processes address cybersecurity risks.	<b>Risk Management:</b> CFX has documented risk management processes in place to address cybersecurity risks.	Control Effective
3	Identify and prioritize risk responses, implement risk mitigation plans, and monitor and document plan implementation.	<b>Risk Management:</b> CFX has implemented risk management processes in place to mitigate risks identified.	Control Effective
4	Determine risk tolerance as necessary, based upon: their analysis of sector specific risks; the agency's industry sector; agency-specific risks (e.g., Health Information Portability Accountability Act of 1996 compliance for agencies that maintain this information); and the agency's role in the state's mission.	Risk Management: CFX has implemented risk management processes in place to identify industry specific risks.	Control Effective
5	Establish parameters for IT Staff participation in procurement activities.	<b>Procurement Activities:</b> CFX has implemented policies and procedures for procurement activities.	Control Effective
6	Identify the IT issues IT staff must address during procurement activities (e.g., system hardening, logging, performance, service availability, incident notification, and recovery expectations).	Procurement Activities: CFX has implemented policies and procedures to ensure proper requirements are addressed during procurement activities.	Control Effective



	Control Objective	Control Description	Testing Results
7	Prior to introducing new IT resources or modifying current IT resources, perform an impact analysis. The purpose of this analysis is to assess the effects of the technology or modifications on the existing environment.	Change Control: Changes are classified prior to implementation to identify the effects of changes within the environment. CFX appropriately documents and tests each change.	Control Effective
8	Ensure that privileged users understand their roles and responsibilities.	<b>Privileged Access:</b> All individuals / users with privileged access are aware of their responsibilities to CFX's data security.	Control Effective
9	Maintain adequate capacity to ensure system availability and data integrity.	System Monitoring: CFX has implemented automated mechanisms to monitor system capacity and data integrity.	Control Effective
10	Integrity checking mechanisms are used to verify hardware integrity.	Hardware Integrity: Access to physical devices is restricted to authorized individuals and additional integrity monitoring is in place to detect changes to critical system files associated with hardware devices.	Control Effective
11	Ensure backups of information are conducted, maintained, and tested periodically.	Backup Procedures: Backups are conducted and tested periodically.	Control Effective
12	Establish a policy and procedure review process that facilitates continuous improvement to protection processes.	Security Improvement: CFX has implemented a risk assessment process to monitor and facilitate improvement of security controls currently in place.	Control Effective
13	Ensure that effectiveness of protection technologies is shared with stakeholders that should or must receive this information.	Technology Effectiveness: CFX communicates the effectiveness of implemented technologies related to cybersecurity when deemed necessary.	Control Effective
14	Each agency shall perform maintenance and repairs of information systems and components consistent with agency-developed policies and procedures.	System Maintenance: Maintenance on inscope systems is documented and performed by appropriate personnel or approved vendors where maintenance agreements are in place.	Control Effective



	Control Objective	Control Description	Testing Results
15	Not engage in new development of custom authenticators. Agencies assess the feasibility of replacing agency-developed authenticators in legacy applications.	Authentication Mechanisms: CFX utilizes Active Directory authentication on in-scope systems. For systems not utilizing Active Directory authentication, CFX utilizes .NET authentication frameworks for one in-scope system with plans to implement Active Directory authentication for future system implementation.	Control Effective
16	Protect and restrict removable media in accordance with agency-developed information security policy.	<b>Removable Media:</b> CFX has implemented controls to prevent removable media where not required for business purposes.	Control Effective
17	Protect communications and control networks by establishing perimeter security measures to prevent unauthorized connections to agency IT resources.	<b>Network Firewall:</b> CFX has an operational firewall in place to restrict access to the internal network.	Control Effective
18	Mechanisms (e.g., failsafe, load balancing, hot swap) are implemented to achieve resilience requirements in normal and adverse situations.	<b>System Availability:</b> CFX has implemented a redundant data center to provide resiliency in the event of system outages.	Control Effective
19	Each agency shall develop policies and procedures that will facilitate detection of anomalous activity in a timely manner and that will allow the agency to understand the potential impact of events. Such policies and procedures shall establish and manage a baseline of network operations and expected data flows for users and systems	Logging & Monitoring: Logging and auditing functions are enabled on all in-scope entities. In addition, all system logs are monitored for unauthorized access and irregular activity.	Control Effective
20	Monitoring for unauthorized personnel, connections, devices, and software.	Access Controls: CFX has implemented badge access and cameras at facilities, and firewalls, file integrity, and antivirus software on systems to restrict access to the internal network, and unauthorized software.	Control Effective







# Central Florida Expressway Authority

Payment Card Industry (PCI) Assessment

**Summary Meeting** 

January 2021



## PCI Data Security Standard

The assessment focused on over 400 controls within the following twelve domains of the PCI Data Security Standard

Build and Maintain a Secure Network	<ol> <li>Install and maintain a firewall configuration to protect cardholder data</li> <li>Do not use vendor-supplied defaults for system passwords and other security parameters</li> </ol>
Protect Cardholder Data	<ol> <li>Protect stored cardholder data</li> <li>Encrypt transmission of cardholder data across open, public networks</li> </ol>
Maintain a Vulnerability Management Program	<ul><li>5. Use and regularly update anti-virus software or programs</li><li>6. Develop and maintain secure systems and applications</li></ul>
Implement Strong Access Control Measures	<ul> <li>7. Restrict access to cardholder data by business need to know</li> <li>8. Assign a unique ID to each person with computer access</li> <li>9. Restrict physical access to cardholder data</li> </ul>
Regularly Monitor and Test Networks	<ul><li>10. Track and monitor all access to network resources and cardholder data</li><li>11. Regularly test security systems and processes</li></ul>
Maintain an Information Security Policy	12. Maintain a policy that addresses information security for all personnel



## Summary of the Assessment

- Protiviti team performed onsite and remote fieldwork between July 11, 2020 through December 15, 2020.
- Fieldwork was conducted through a variety of methods including documentation review, interviews, technical analysis, and physical investigation.
- Issue identified in which vendor responsible for logging practices did not retain logs for the required year, and did not include all appropriate systems.
   Issue has been remediated.
- All CFX individuals involved were extremely helpful and well attuned to the importance of the assessment.



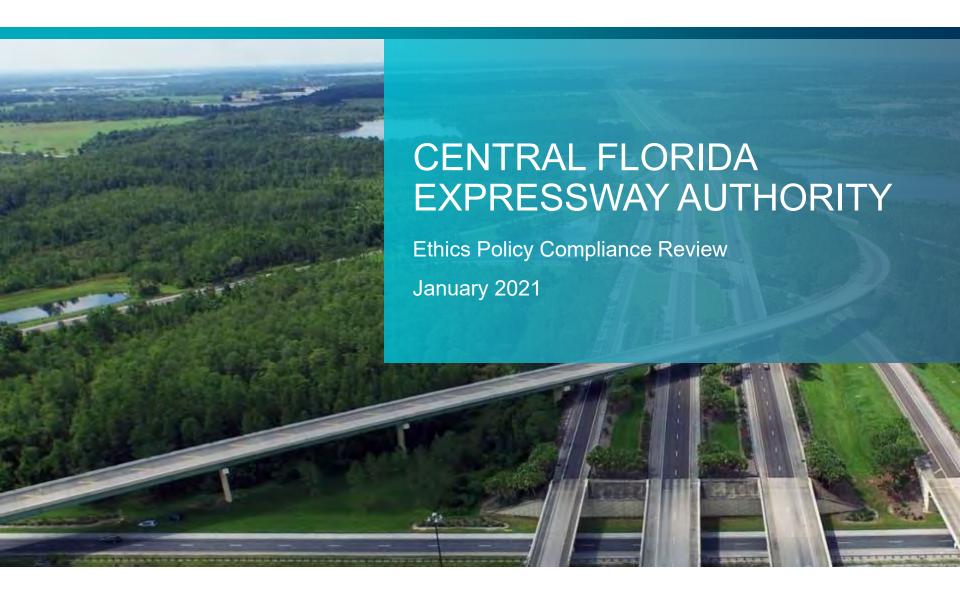


## Face the Future with Confidence

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## **EXECUTIVE SUMMARY**



#### **Overview**

The Central Florida Expressway Authority ("CFX") operates for the benefit of the public. As such, CFX strives to conduct business in accordance with the highest standard of ethics. The CFX Code of Ethics governs board members, committee members, employees, and consultants in the performance of their duties and obligations to CFX and serves as the standard for official conduct.

As part of a three-year audit cycle outlined in the 2021 Internal Audit Plan, Internal Audit has completed a review of CFX's compliance with the Code of Ethics. Internal Audit last reviewed the compliance with the Code of Ethics in January 2018.

After the January 2018 review, the Code of Ethics was modified in April 2018 to prohibit consultants from holding conflicting employment or contractual relationships.



#### Objectives, Scope, and Approach

The objectives of this audit were to (1) review CFX's ethics compliance process and related monitoring controls for design and operating effectiveness, and (2) assess CFX board and committee member, employee, and consultant compliance with the Code of Ethics.

The Ethics Policy Compliance Review was performed using the following approach:

- 1. Conducted interviews with CFX management regarding policy, applicable Florida Statutes, procedures, key personnel, and compliance reporting;
- 2. Reviewed the Code of Ethics and the following Florida Statutes to identify compliance requirements:
  - a. Chapter 112, Part III
  - b. Chapter 348.753
  - c. Section 104.31;

## **EXECUTIVE SUMMARY**



#### Objectives, Scope, and Approach

- 3. Evaluated CFX's processes for monitoring compliance with the Code of Ethics and related internal controls for design effectiveness. Processes evaluated included the following areas:
  - a. Communication and Awareness
  - b. Training and Reinforcement
  - c. Change Management
  - d. Conflicts of Interest and Financial Disclosure Monitoring
  - e. Violation Monitoring
  - f. Penalties and Enforcement;
- 4. Performed operating effectiveness testing for identified key internal controls for the period February 1, 2018 through July 31, 2020;
- 5. Reviewed CFX board and committee member, employee, and consultant compliance with the Code of Ethics for the period February 1, 2018 through July 31, 2020; and
- Identified opportunities and developed recommendations for improving the Authority's ethics compliance management process and internal controls.

## **EXECUTIVE SUMMARY**



#### **Summary of Procedures Performed and Results**

Internal Audit evaluated CFX's ethics compliance management processes, internal controls, and the related design and operating effectiveness of the controls based on the requirements of the Code of Ethics and the applicable Florida Statutes. Based on audit results, one opportunity was identified that, if implemented, will strengthen CFX's overall ethics compliance management and internal control environment. The table below provides an overview of the areas reviewed and the opportunity identified.

Area	Procedures Performed	# of Controls Tested	Observation #
Communication and Awareness	<ul> <li>✓ Reviewed ownership and responsibility for oversight of the CFX Code of Ethics – No Audit Findings</li> <li>✓ Evaluated the effectiveness of communication to internal and external parties regarding ethics requirements – No Audit Findings</li> <li>✓ Evaluated controls to obtain internal and external party acknowledgement of the CFX Code of Ethics – No Audit Findings</li> </ul>	7	-
Training and Reinforcement	<ul> <li>✓ Evaluated Board, Committee, employee and consultant compliance with training – <i>No Audit Findings</i></li> <li>✓ Evaluated controls to encourage employee communication with management regarding ethical matters and ethical compliance – <i>Observation #1</i></li> </ul>	3	1
Change Management	<ul> <li>✓ Evaluated controls to review and update the CFX Code of Ethics – No Audit Findings</li> <li>✓ Evaluated the process to communicate Code updates and changes – No Audit Findings</li> </ul>	2	-
Potential Conflict and Financial Disclosure Monitoring Violation Monitoring	Disclosure forms and requirements – <i>No Audit Findings</i> ✓ Reviewed the process for reporting and monitoring ethics concerns and alleged violations – <i>No Audit Findings</i>		-
Penalties and Enforcement	<ul> <li>✓ Evaluated penalty and enforcement procedures for noncompliance – No Audit Findings</li> </ul>	3	-

# **DETAILED OBSERVATIONS**

## **DETAILED OBSERVATIONS**

### **Observation 1 – Ethics Hotline Number in Employee Handbook**

#### **Risk Rating: Low**



#### Observation

Employees are encouraged to express concerns about their work environment to their supervisor. To further promote a safe, secure and successful professional environment at the Central Florida Expressway Authority, a "Make a Difference" hotline is available to CFX employees and vendors to anonymously report suspected unethical, illegal, or unsafe acts without fear of retaliation. The number for the hotline is listed in the Employee Handbook available to all CFX employees.

Based on review of the Employee Handbook and hotline testing, the first reference to the "Make a Difference" hotline phone number in the Employee Handbook was identified as an invalid number (page 7, "800-226-6043"). Two additional references to the hotline within the Employee Handbook represented the accurate phone number for employees to reach the hotline (pages 11 and 14, "888-226-6043"). An invalid whistleblower hotline listed in Employee Handbook may cause confusion and may result in failure to report suspected unethical, illegal or unsafe acts without fear of retaliation.

#### Recommendation

Annually, CFX should review and update the Employee Handbook to ensure all information is consistent and accurate, including accuracy of the hotline phone number in all locations referenced.

#### **Management Response**

Management concurs.

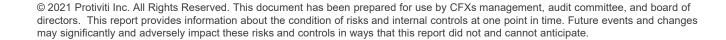
#### **Management Action Plan**

Management will coordinate with Human Resources to make necessary updates to the Employee Handbook to correct the identified reference to the "Make a Difference" hotline phone number. Management will also review other sources of the phone number for accuracy.

#### **Action Plan Owner / Due Date**

Woody Rodriguez, General Counsel / Complete

## Face the Future with Confidence





# CONSENT AGENDA ITEM #14

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

#### **MEMORANDUM**

TO: CFX Board Members

FROM: Laura Newlin Kelly, Associate General Counsel

DATE: February 19, 2021

RE: License Agreement (Helipad Obstruction Lighting) Between Orlando Health, Inc.

and the Central Florida Expressway Authority

Project: 417-302; State Road 417

Portions of Parcel 102

#### **BACKGROUND**

Orlando Health, Inc. ("Orlando Health") is installing a private heliport for emergency room air ambulance use for its hospital located on property adjacent to State Road ("SR") 417. The primary approach and departure path is located directly over SR 417 as depicted on the map attached hereto as **Attachment "A"** ("Map"). As a condition of Orlando Health's permit from the Federal Aviation Authority, Orlando Health is required to install obstruction marking lights on light poles and infrastructure within the limited access right-of-way of SR 417, as depicted on the Map.

Orlando Health has requested a license from CFX for the installation of the obstruction marking lights on light poles and infrastructure within SR 417. CFX staff has reviewed the request and is agreeable to granting Orlando Health a license subject to the terms and conditions of the draft License Agreement (Helipad Obstruction Lighting) attached hereto as **Attachment "B"** ("License Agreement").

Pursuant to CFX's Property Acquisition, Disposition & Permitting Procedures Manual, CFX staff and CFX's General Engineering Consultant have examined the License Agreement and determined that the granting of the License Agreement 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 February 24, 2021 and recommended approval of the License Agreement (Helipad Obstruction Lighting) in a form substantially similar to the attached License Agreement, 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.

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



#### **REQUEST**

Board's approval of the following is requested:

License Agreement (Helipad Obstruction Lighting) in a form substantially similar to the attached License Agreement, 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.

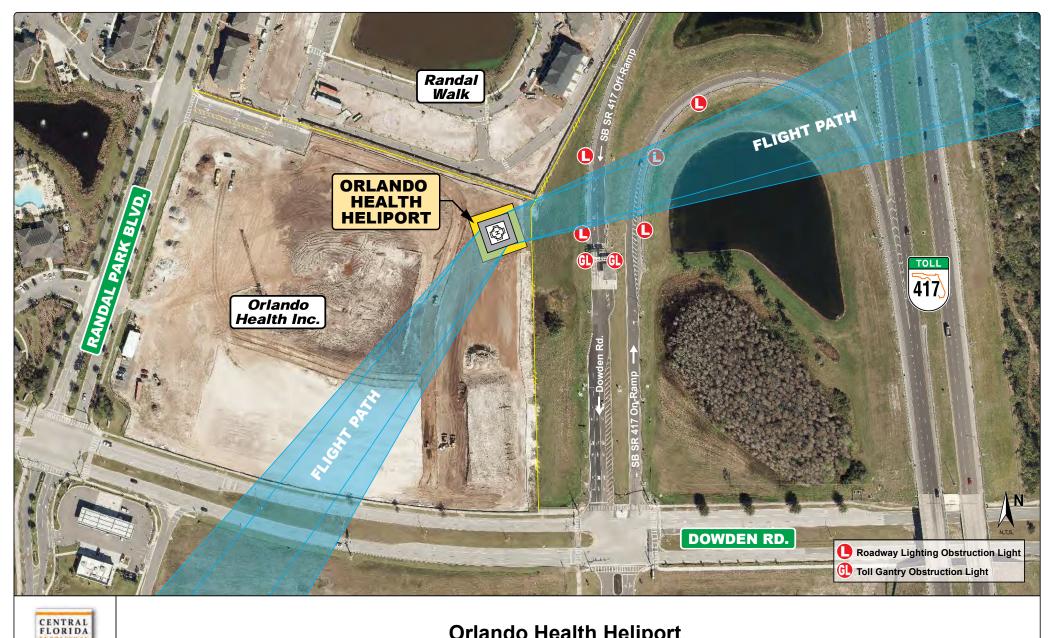
#### **ATTACHMENTS**

- A. Map of Approach Path
- B. License Agreement (Helipad Obstruction Lighting)
- C. Certificate from CFX's General Engineering Consultant

Reviewed by: Woody Rodriguez

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

#### ATTACHMENT "A"



**Orlando Health Heliport** 

AUTHORITY

#### **ATTACHMENT "B"**

This Instrument prepared by: Christopher J. Wilson, Esq. Marchena and Graham, P.A. 976 Lake Baldwin Lane, Suite 101 Orlando, Florida 32814

### **LICENSE AGREEMENT**

(Helipad Obstruction Lighting)

THIS LICENSE AGREEMENT ("License"), made and entered into this day of \_\_\_\_\_\_ 2021, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body public and corporate, an agency of the State of Florida, whose address is 4974 ORL Tower Road, Orlando, Florida 32807 ("CFX" or "LICENSOR"), hereinafter called the LICENSOR, and ORLANDO HEALTH, INC., a Florida not-for-profit corporation, whose address is 1414 Kuhl Avenue, MP 71, Orlando, FL 32806, hereinafter called the LICENSEE. CFX and LICENSEE shall be collectively referred to herein as the "Parties".

#### WITNESSETH:

- A. WHEREAS, CFX controls the following-described property, which is situated in the County of Orange and State of Florida: SEE ATTACHED EXHIBIT "A" ("SR 417"); and
- B. WHEREAS, CFX is obligated to operate the Central Florida Expressway Systems within the geographical boundaries of Orange, Seminole, Lake and Osceola Counties; and
- C. WHEREAS, LICENSEE is developing a hospital located on the property adjacent to SR 417, more particularly described on EXHIBIT "B"; and
- WHEREAS, as part of the LICENSEE'S development, it is installing a private D. heliport for air ambulance use associated with its Emergency Department as shown on the attached

Exhibit "C" (the "Heliport"); and

- E. WHEREAS, LICENSEE'S Heliport license is to be issued from the State of Florida pursuant to §330, <u>Fla. Stat.</u>, et. seq., and has the primary approach/departure path directly over the SR 417; and
- F. WHEREAS, as a condition of LICENSEE'S permit and to comply with Federal Aviation Administration ("FAA") regulations, LICENSEE is to place obstruction marking lights on light poles and infrastructure within the limited access right-of-way of SR 417 in an area more particularly described on Exhibit "D" (the "OML AREA"); and
- G. WHEREAS, the Parties desire to enter into this License to coordinate (1) obstruction lighting on facilities and light poles within the SR 417 limited access right-of-way; (2) near term coordination relating to the All Electronic Tolling ("AET") gantry; and (3) long term coordination between CFX and LICENSEE on the heliport operation's impact on SR 417 future development and operations.

NOW, THEREFORE, for and in consideration of the mutual benefits hereunder, and of the mutual covenants and conditions contained herein, the LICENSOR and LICENSEE agree as follows:

The Parties hereto agree as follows:

#### I. <u>OBSTRUCTION MARKING LIGHTING.</u>

1. LICENSOR does hereby grant to LICENSEE over, under and upon that certain license area shown on said drawing and designated thereon as the "OML AREA", the non-exclusive right, privilege and license to (1) construct, locate, operate, inspect, maintain, repair and remove obstruction marking lights within said OML Area, as designated on the drawing attached hereto, including, without limitation, the installation of any electrical conduit reasonably necessary to

support said obstruction marking lights ("Facilities"), and (2) exercise the right of ingress and egress to, over and/or under said lands described in EXHIBIT "D" hereinabove, as reasonably necessary for the purpose of exercising the rights and privileges herein granted, subject to terms, conditions and limitations contained herein.

2. LICENSEE shall have the right, at its sole cost and expense, to construct, locate, lay, operate, inspect, maintain, repair and remove said Facilities, together with the rights and privileges necessary for the full use and enjoyment thereof. Any portion of the Facilities required to be located underground shall be located at a depth of no less than three feet (3') and no more than ten feet (10') below the existing surface level within the OML AREA and designated on the drawing. There shall be no cameras installed within the OML AREA. Except as otherwise agreed to in writing by LICENSOR, construction and maintenance, other than emergency maintenance, shall occur in the overnight hours, between 11:00 p.m. – 5:00 a.m. in order to limit impacts to traffic on SR 417. LICENSEE shall prepare a Maintenance of Traffic ("MOT") plan for its construction of the Facilities and during any maintenance events. The MOT shall be provided to the LICENSOR for coordination, review approval, and comment at least fourteen (14) days prior to its planned implementation. Within thirty (30) days of completion of initial construction and any maintenance that changes the location of the Facilities, LICENSEE shall provide CFX with as-built plans depicting the Facilities. LICENSEE, at its sole cost and expense, shall restore to the reasonable satisfaction of CFX all damages to CFX's property and improvements that are caused by LICENSEE in the exercise of any of the rights and privileges hereby granted. LICENSEE agrees, understands and acknowledges that CFX makes no representations or warranties as to the suitability of the OML Area, or any of the facilities or structures within the OML Area or SR 417, for LICENSEE's construction, installation, maintenance or operation of the Facilities, and as such,

LICENSEE understands and agrees that LICENSEE shall, at its sole cost and expense, be required to make any improvements or alterations, as approved by CFX in writing, to the OML Area or facilities or structures therein, reasonably necessary for the use of the OML Area for the purpose set forth in this License.

3. LICENSEE hereby agrees that it will indemnify, defend and hold completely harmless CFX and the members (including, without limitation, members of CFX's Board, and members of the citizens advisory committees of each), officers, employees and agents of each from any and all suits, actions, judgments, and reasonable attorneys' fees, cost and expenses (at trial and all appellate levels) arising from any suits, actions, or claims of any character, type, or description brought or made for or on account of any injuries or damages received or sustained by any person or persons or property, arising out of, or occasioned by, the acts or omissions of LICENSEE or its agents, employees, licensees, or invitees in connection with the license granted hereunder.

LICENSEE shall promptly repair any damage to the OML AREA or any other property or infrastructure not owned by LICENSEE, caused by LICENSEE exercising its rights under this License, including, without limitation, landscaping, ground cover, planting, roadways, driveways, sidewalks, parking areas and structures (collectively, "Damaged Property"). In the event that LICENSEE, its employees, agents or contractors cause damage to the OML AREA, or any other property not owned by LICENSEE, in the exercise of the privileges granted herein, LICENSEE agrees to restore said Damaged Property to its original condition and grade to the reasonable satisfaction of LICENSOR.

4. All work performed within the OML AREA under the License granted herein by LICENSEE or LICENSEE's employees, agents, engineers, contractors and other representatives

shall be at the sole risk and expense of the party performing such work and LICENSOR shall not have any liability for any injuries or damages sustained. Except as otherwise waived by CFX in writing, the party performing such work (the "Applicant") 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 activities of the Applicant and those of any and all subcontractors (including officers, 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. Compliance with the insurance requirements below shall not relieve or limit the Applicant's liabilities and obligations under this Permit. 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 obligation to maintain such insurance. The acceptance of delivery by CFX of any certificate of insurance or 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 are in compliance with the requirements.

The Applicant shall require all insurance policies in any way related to work performed within the OML AREA to include clauses stating each underwriter shall waive all rights of recovery, under subrogation or otherwise, against CFX. The Applicant shall require subcontractors, by appropriate written agreements, to include 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 Applicant agrees to notify the insurer and obtain an endorsement for a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement. All insurance coverage required of the Applicant shall be primary over any insurance or self-insurance

#### program carried by CFX.

The Applicant, at Applicant's expense, shall provide evidence of all required coverages by providing CFX a certificate of insurance and any applicable endorsements, setting out the current limits of its Commercial General Liability, Business Automotive Liability, and Worker's Compensation Coverage insurances. Unless otherwise waived in writing by CFX, the Applicant shall provide the following coverages:

Commercial General Liability: 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. CFX shall be listed as an additional insured utilizing an endorsement Form. The policy shall be endorsed with a waiver of subrogation in favor of CFX for all work performed by the Applicant, and its employees, contractors, agents and sub-contractors.

Business Automobile Liability: 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 Applicant does not own automobiles, the Applicant 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. CFX shall be listed as an additional insured utilizing an endorsement Form. The policy shall be endorsed with a waiver of subrogation in favor of CFX for all work performed by the Applicant, and its employees, contractors, agents and sub-contractors.

<u>Workers' Compensation Coverage</u>: 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 minimum policy coverage by disease. The policy shall be endorsed with a waiver of subrogation in favor of CFX for all work performed by the Applicant, and its employees, contractors, agents and sub-contractors.

No later than thirty (30) days prior to the expiration of the Certificate of Insurance, the Applicant shall provide LICENSOR with a renewed Certificate of Insurance.

Notwithstanding the foregoing, CFX acknowledges that LICENSEE is self-insured, however, LICENSEE agrees that it shall be required to provide LICENSOR copies of its current self-insurance program upon execution of this License and within thirty (30) days of any material changes to the self-insurance program during the term of this License.

5. All of the rights and privileges granted hereby shall be and remain in effect in perpetuity unless LICENSOR shall permanently discontinue the use of the Facilities or unless LICENSEE shall abandon the use of said Facilities, in which event, the LICENSEE may continue the use of said license rights and privileges for any reasonable period of time thereafter for the purpose of removal by the LICENSEE of the Facilities. In the event LICENSOR determines in its sole and absolute discretion that the Facilities interfere with, impede or obstruct LICENSOR's ability ensure safe travel on SR 417, including, without limitation, by (a) creating a hazard to the public, (b) affecting the integrity of the LICENSOR's structure, expressway or facilities; (c) unreasonably hinders inspection and maintenance operations of the Licensor's structure, expressway, or facilities placed in aesthetically sensitive environments; (e) damages any LICENSOR's structure's reinforcement or stressing ducts or strands; (f) attaches to LICENSOR's bridge girders; (g) resides inside one of LICENSOR's box girder; (h) lowers the LICENSOR's structure's vertical clearance;

(i) restricts the LICENSOR's structure's ability to expand and contract (collectively, "Obstruction"), and such Obstruction is not remedied by LICENSEE within ten (10) days of receipt of written notice from LICENSOR and approval to enter the OML Area, LICENSOR reserves the right to remove the portion of the Facilities creating the Obstruction, in which case LICENSEE agrees to reimburse LICENSOR for the reasonable cost of such removal plus a ten percent (10%) oversight fee within thirty (30) days of receiving a request for the same with documentation of such costs.

In the event of the abandonment and/or such removal of said Facilities by LICENSEE, the License privileges and rights granted herein shall be extinguished. Upon termination of this License, LICENSEE shall, at its sole cost and expense, immediately remove all of the LICENSEE's Facilities and restore the LICENSOR's property to the condition it existed immediately prior to LICENSEE's entry on the property and if LICENSEE fails to do so, LICENSOR reserves the right to remove the Facilities, in which case LICENSEE agrees to reimburse LICENSOR for the reasonable cost of such removal plus a ten percent (10%) oversight fee within thirty (30) days of receiving a request for the same with documentation of such costs.

- 6. LICENSEE shall submit its plans to LICENSOR for its review and approval to confirm compliance with all terms of this License and to ensure the compatibility of the Facilities within the LICENSOR's infrastructure in the limited right-of-way for SR 417.
- 7. LICENSEE shall not impact any protected areas, including any protected, wetlands, uplands or conservation easements which are located in the OML Area.
- 8. LICENSEE shall be solely responsible for maintaining the Facilities in first-class manner (e.g. replace missing bulbs). In the event LICENSEE fails to maintain the Facilities and such failure to maintain the Facilities causes an imminent hazard to vehicular traffic on S.R. 417,

LICENSOR, ten (10) days following receipt of written notice to LICENSEE and granting of permission pursuant to Paragraph 2 above to enter the OML Area, or in the event of an emergency, may elect to perform such maintenance of the Facilities and receive reimbursement from LICENSEE for any such costs incurred by LICENSOR for the maintenance performed. This maintenance right does not create an obligation to inspect or repair the Facilities and shall not create any liability on the part of LICENSOR resulting from LICENSSEE's failure to inspect and properly maintain the Facilities.

- 9. LICENSOR covenants that it has the right to grant the approvals, privileges and license described or stated herein, and LICENSOR covenants that LICENSEE shall have the non-exclusive, quiet and peaceful use and enjoyment of said license not otherwise in conflict with the use of the OML Area by LICENSOR.
- 10. LICENSEE'S use of the license granted hereunder shall at all times be in compliance with all Federal, State and local laws, rules, regulations, ordinances, codes and statues.
- 11. The provisions hereof shall inure to and be binding upon the legal representatives, successors and assigns of the Parties hereto, respectively.
- 12. Subject to the terms and conditions set forth herein, LICENSOR reserves the right to use the OML AREA for any lawful purposes that do not materially interfere with LICENSEE's rights granted herein. The LICENSOR reserves the right to install and maintain underground utilities perpendicular and parallel to the Facilities provided any installation shall provide a minimum clearance from the Facilities of three feet (3') horizontal, outside of pipe to outside of pipe and three feet (3') vertical, outside of pipe to outside of pipe. The LICENSOR further reserves the right, to request that the Facilities be relocated at LICENSEE's expense, within six (6) months of receipt of written notice from LICENSOR, if required by a project of the LICENSOR.

#### II. ALL ELECTRONIC TOLLING ENTRY.

- 13. In the near term, LICENSOR is considering the installation of an AET gantry at the off-ramp location immediately adjacent to the Heliport. The AET gantry is similar to the one shown on the attached Exhibit "E" in the location shown on the attached Exhibit "F." The Parties have reviewed the AET gantry's height and location and determined that as shown on Exhibit "F" there is likely no impact to the AET gantry as a result of the Heliport or the current FAA approved approaches.
- 14. If LICENSOR installs the AET gantry, it will coordinate with LICENSEE in order for LICENSEE to install additional Facilities on the AET gantry in accordance with the terms and conditions of this License.

#### III. <u>FUTURE IMPROVEMENTS SR 417</u>.

15. The Parties acknowledge that there are no protections for the Heliport approaches currently approved by the FAA and the LICENSOR is free to develop its property as it deems appropriate, in its sole and absolute discretion. LICENSEE, at its sole cost and expense, will be required to obtain any necessary approvals required to adjust the approved approach paths to its Heliport and/or add any new Facilities as a result of any future development by LICENSOR. Notwithstanding the foregoing, LICENSOR agrees to work in good faith with LICENSEE to permit LICENSEE to relocate the Facilities, at LICENSEE'S sole cost and expense, as necessitated by such future development by LICENSOR.

#### IV. GENERAL PROVISIONS.

16. Effective Date shall mean the date that the last party executed this License. Notwithstanding the above, in consideration for this Agreement and LICENSOR's support of LICENSEE's Heliport Permit from the State of Florida, LICENSEE agrees that this License shall

be effective upon LICENSEE's execution and LICENSEE shall not withdraw its acceptance of this License during the time that LICENSOR proceeds through its normal administrative process to approve and execute same.

- 17. This License contains the entire agreement of the Parties hereto, and no representations, inducements, promises or agreements, or otherwise, between the Parties not embodied herein shall be of any force or effect.
- 18. This License may not be amended, modified, altered, or changed in any respect whatsoever, except by an amendment in writing duly executed by the Parties hereto. No failure by the Parties to insist upon the strict performance of any covenant, duty, agreement or condition of this License or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such breach or of a future breach of any other covenant, agreement, term or condition. Any Party hereto, by notice, may waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation, covenant or breach of any other Party hereto. No waiver shall affect or alter this License, but every covenant, agreement, term and condition of this License shall continue in full force and effect with respect to any other then existing or subsequent duty, obligation, covenant or breach thereof.
- 19. Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered or transmitted electronically (i.e. telecopier device), within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

CFX: CENTRAL FLORIDA EXPRESSWAY AUTHORITY

4974 ORL Tower Road Orlando, Florida 32807 Attn: Executive Director

Copy to: CENTRAL FLORIDA EXPRESSWAY AUTHORITY

4974 ORL Tower Road Orlando, Florida 32807 Attn: General Counsel

LICENSEE: ORLANDO HEALTH, INC.

1414 Kuhl Avenue, MP71 Orlando, Florida 32806 Attn: Melissa Battles

Copy to: ORLANDO HEALTH, INC.

1414 Kuhl Avenue, MP71 Orlando, Florida 32806 Attn: Sharon Subryan

Copy to: LOWNDES

215 N. Eola Drive Orlando, FL 32801 Attn: John D. Ruffier

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

- 20. In the event of any dispute hereunder or of any action to interpret or enforce this License, any provision hereof or any matter arising herefrom, each party shall be reasonable for its reasonable costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney (in-house and outside counsel), paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in arbitration, in mediation, in any bankruptcy action, in any declaratory action, at trial or on appeal.
- 21. The provisions of this License shall inure to the benefit of and be binding upon the Parties hereto and their respective successors, assigns and legal representatives.

- 22. This License is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this License or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this License and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.
- 23. To facilitate execution, the Parties hereto agree that this License may be executed in as many counterparts as may be required, including by electronic or digital signatures, and it shall not be necessary that any 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 agreement.
- 24. This License shall be construed in accordance with and interpreted under the laws of the State of Florida.
- 25. This License is solely for the benefit of the Parties hereto. No right, remedy, cause of action or claim shall accrue by reason hereof to or for the benefit of any third party who is not a Party executing this License.
- 26. This License is the result of mutual negotiations between the Parties hereto and all Parties have contributed substantially and materially to the preparation hereof. Accordingly, this License shall not be construed more strictly against any one Party than against the others.
- 27. The Parties agree that this License shall be recorded in the Public Records of Orange County, Florida.

#### [INTENTIONALLY BLANK – SIGNATURE PAGES TO FOLLOW]

**IN WITNESS WHEREOF,** the Parties hereto by their duly authorized officers have caused this License to be executed in their names and their seals to be affixed hereto as of the day and year first above written.

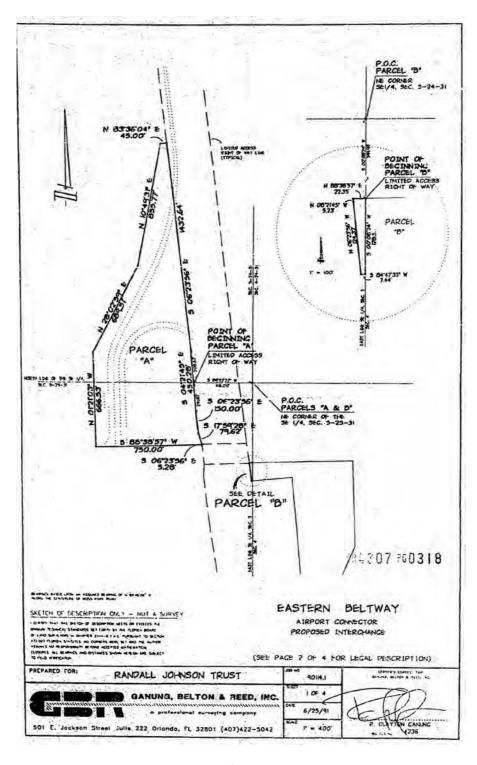
WITNESS:	"LICENSOR"	
	CENTRAL FLORIDA EXPRESSWAY AUTHORITY	
Printed Name:		
Printed Name:	Buddy Dyer, Chairman Date:	
ATTEST:	APPROVED AS TO FORM AND LEGALITY this day of, 2021, for the use and reliance by the CENTRAL FLORIDA	
Assistant Secretary	EXPRESSWAY AUTHORITY only.	
Assistant Secretary	Marchena and Graham, P.A., Counsel.  By: Marchena and Graham, P.A.	
STATE OF FLORIDA		
COUNTY OF ORANGE		
this day of CENTRAL FLORIDA EXPRESSWAY AUTH under and by virtue of the laws of the State of EXPRESSWAY AUTHORITY. Buddy Dye	pefore me in person by remote online notary, 2021, by Buddy Dyer, as Chairman of the HORITY, a public and governmental body, existing of Florida, on behalf of said CENTRAL FLORIDA er is personally known to me or has produced tion and who did (did not) take an oath.	
(SEAL)		
	Notary Public	
	Print Name Commission Expires:	
	Commission Expires.	

WITNE	SS:	"LICENSEE"
Docusigno Melissa Printfed7N3	ed by:  Battles  Maggete Melissa Battles	ORLANDO HEALTH, INC., a Florida not-for-profit Corporation
LaYou Printegrad	Bollumon Bollumon Phegasaron Bottenhorn	By: Matthew S. Taylor Printed Name: Matthew S. Taylor Date: February 12, 2021
	OF FLORIDA Y OF ORANGE	
online not ORLAND	tary this <u>12</u> day of <u>February</u> OO HEALTH INC., a Florida not-fo	edged before me in person X by remote, 2021, by Matthew S. Taylor of or-profit Corporation. He / she personally appeared as produced as identification.
(SEAL)	MICHELLE M ALLEN Notary Public-State of Florida Commission # GG941294 Commission Expires 3/11/2024	Notary Public Michelle M. Allen  SC42E1ADE4C34EC  Notary Public Michelle M. Allen  Print Name  Commission Expires: 3/11/2024

#### Exhibit "A"

#### **Legal Description**

(SR417)



#### LEGAL DESCRIPTION

#### PARCEL "A"

A portion of Section 5, Township 24 South, Range 31 East, Orange. County, Florida, being more fully described as follows:

Commence at the northeast corner of the Southeast 1/4 of said Section 5; thence S. 89° 57' 27" W., along the north line of the Southeast 1/4 of said Section 5, a distance of 416.00 feet for the POINT OF BEGINNING: said point lying on the proposed westerly Limited Access Right of Way line of the Eastern Beltway: thence run southerly along said proposed westerly right of way line the following four (4) courses and distances; S. 04° 21° 45" E., 241.67 feet; thence S. 06° 23° 56" E., 150.00 feet; thence S. 17° 59' 28" E., 79.62 feet; thence S. 06° 23' 56" E., 5.28 feet; thence S. 88° 38' 57" W., 750.00 f at; thence N. 01° 21' 03" W., 656.53 feet; thence N. 28° 02' 59" E., 689.51 feet; thence N. 10° 49' 31" E., 855.77 feet; thence N. 83° 36' 04" E., 45.00 feet to a point on the aforementioned proposed westerly. Limimted Access Right of Way line of the Eastern Beltway; thence S. 06° 23' 56" E., along said proposed westerly right of way line, 1432.64 feet; thence S. 04° 21' 45" E., 208.62 feet to the POINT OF BEGINNING.

Containing 21.01 acres more or less.

#### PARCEL "B"

A cortion of the Southeast 1/4 of Section 5. Township 24 South, Range 31 East, Orange County, Florida, being more fully described as follows:

Commence at the northeast corner of the Southeast 1/4 of said Section 5; thence S. 00° 08' 24" W., along the east line of the Southeast 1/4 of said Section 5, a distance of 599.99 feet for the POINT OF BEGINNING; thence continue S. 00° 08' 24" W., along said east line of the Southeast 1/4 of Section 5, a distance of 128.58 feet; thence 1. 84° 47' 33" W., 7.44 feet; thence N. 06° 23' 56" W., 124.32 feet; thence N. 08° 21' 45" W., 5.23 feet; thence N. 88° 38' 57" E., 22.35 feet to the POINT OF BEGINNING.

Containing 0.04 acres more or less.

(00)

S.T. STA. 1332-01-88

C.S. STA. 1328-01.88

P. J. STA. 67-80-02

LINE TABLE

DIRECTION

SW CON., SIC. 35 NOT FOUND OR SET

51

RANGE 31 EAST

34

3

SW COR. SEC. 24 - 18G 47X4" C.M. 18G 101

SE TOR. SEC. 4
FND 6"26" C.M.
W/BROSEN TOP 8 3/4"
I.H. IN TENTER
ING ID 1
C.C.R. NO. 072822

THIS MAP IS NOT A SURVEY
SEE SHEET I FOR LEGEND AND GENERAL NOTES
STATE ROAD 417 INNOVATION WAY INTERCHANGE

SHEET 2 OF 8

0111145\190767\10616634v6

3

9 10

**BDRMP** 

S89\*54:07 T 2649.09:11

SE2\*10 (9 T 9.76 11) — SE CO\*12 SEC. 4 160 10)

33

N //4 CUR., NIC. 4 --

BEGIN R/W PROJECT 417-302 SPIRAL TO TANGENT 51A. 1332-01.88

PHELIM P.TEETERS 2:05:08

| | HAL D.TUTEN 1:02:08

STATE ROAD NO. 417 INNOVATION WAY INTERCHANGE OCCEA PROJECT NO. 417-302



CURVE DATA

LENGTH

CHORD DISTANCE

TOWNSHIP 23 SOUTH

TOWNSHIP 24 SOUTH

ABBREVIATED

A COH. SEC. 5
NO 6 TK T T.M.
PERCHEN TOP
8" 1.9. IN CENTER
IO (D)

ORLANDO-ORANGE COUNTY

EXPRESSWAY AUTHORITY

END R/W PROJECT 417-302 5TA. 1390-00.00

N 174 COR., SIC. 5 FNO 4-X2- C.M.

© OF SURVEY DOWDEN ROAD
P.1. STA. 53-51.11
A 18\*47.50° LT.
D 02\*43.16°
1 348.51'
L 690.76'
P.1. STA. 50.02.60'
P.1. STA. 56.93.36

CITY OF ORLANDO

DOWDEN ROAD

FND 4 X4" C.M.

RADIUS

CURVE

Δ

32

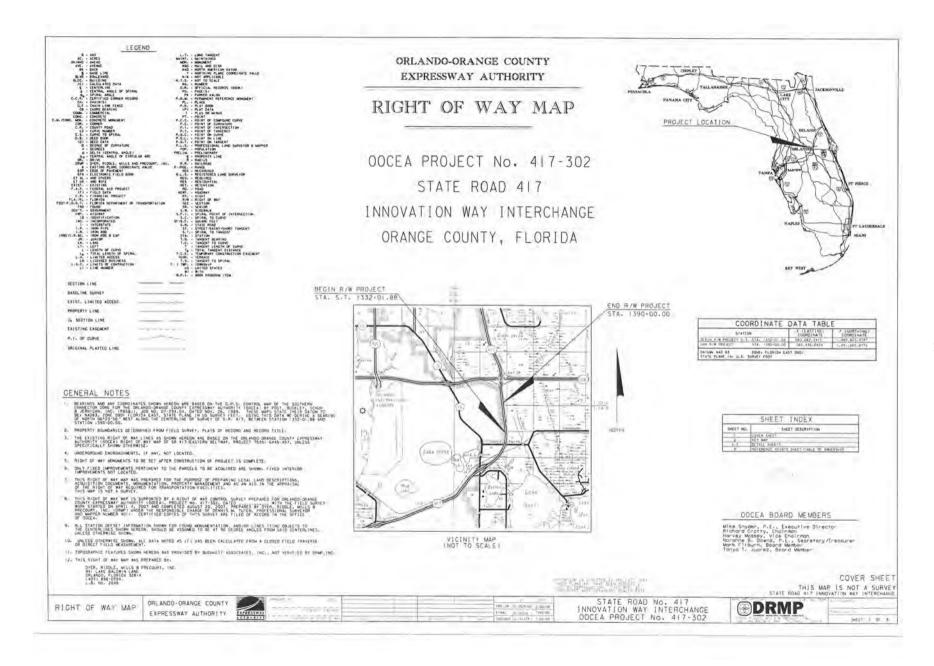
31

6

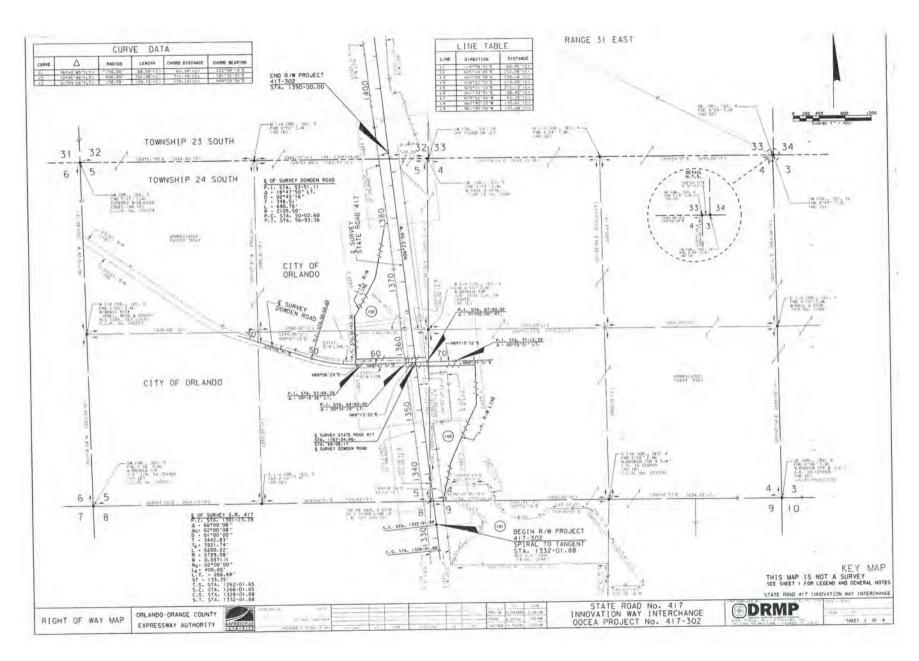
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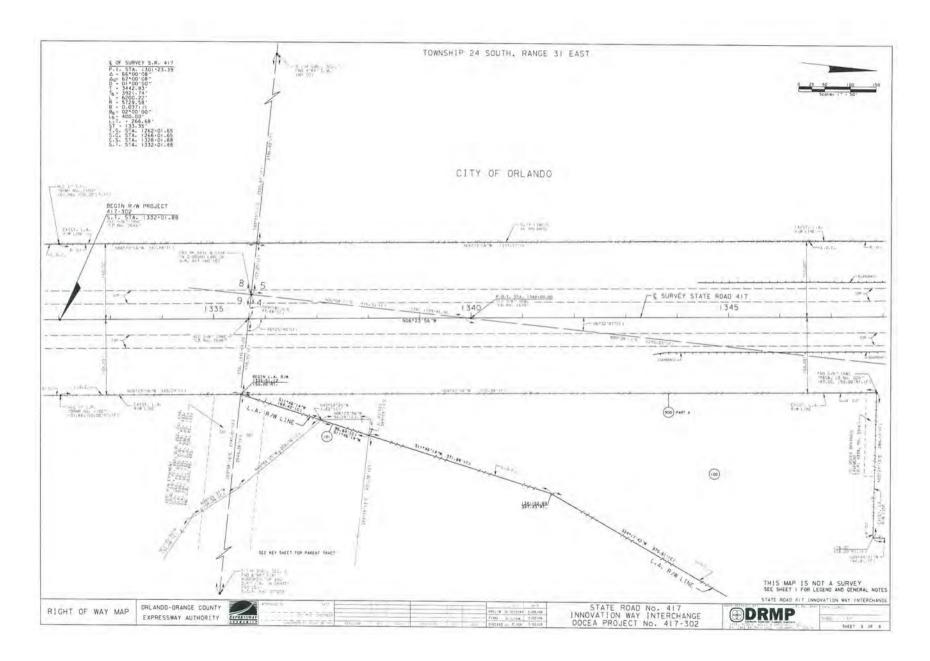
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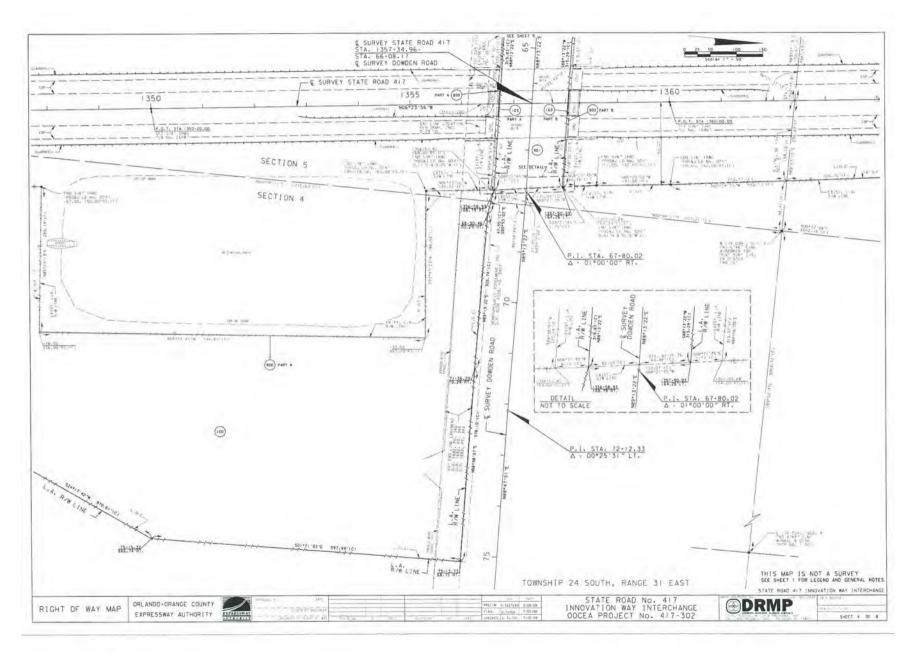
RIGHT OF WAY MAP

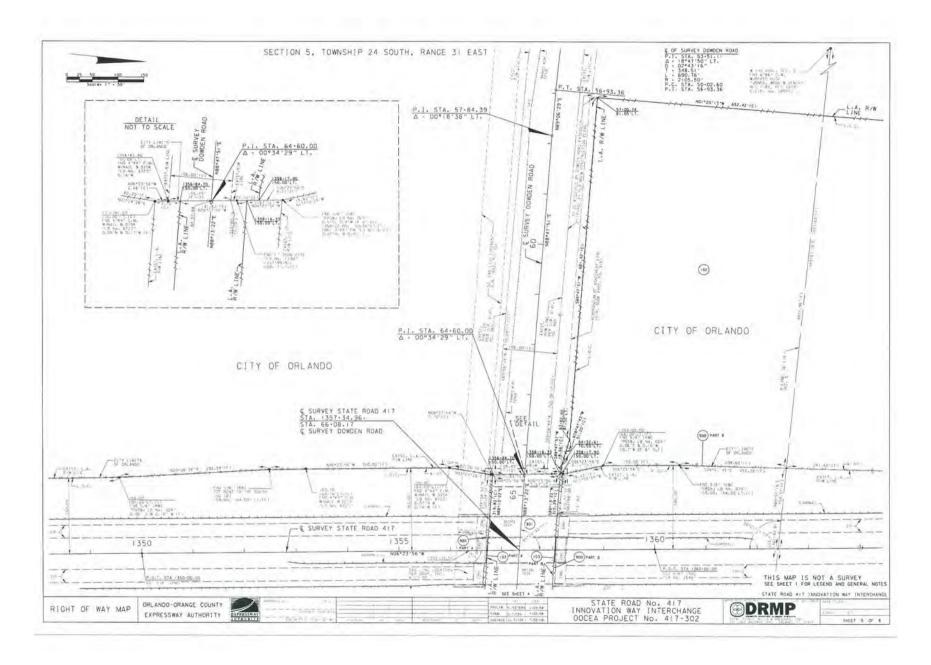


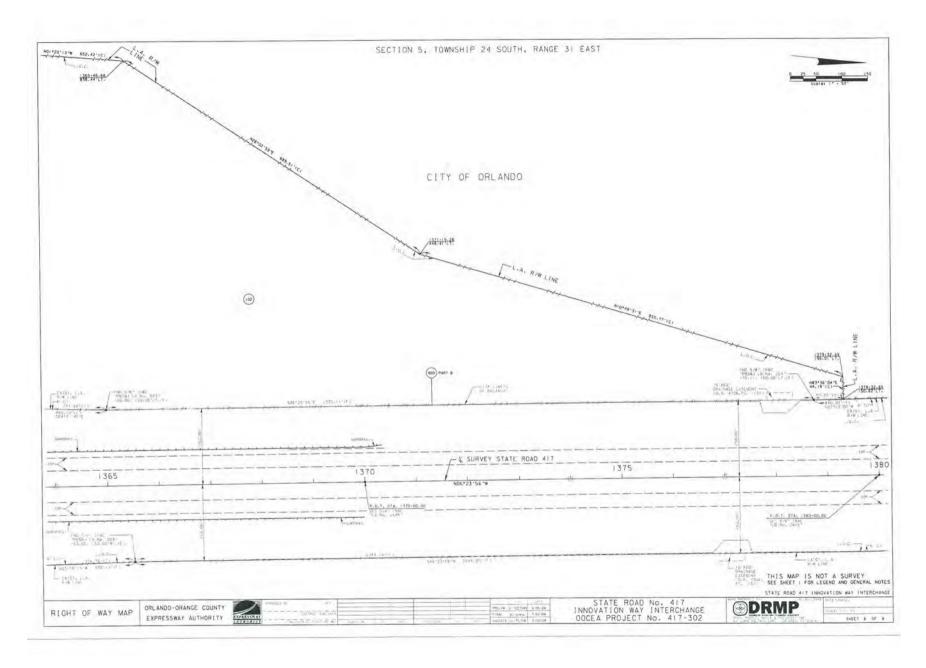
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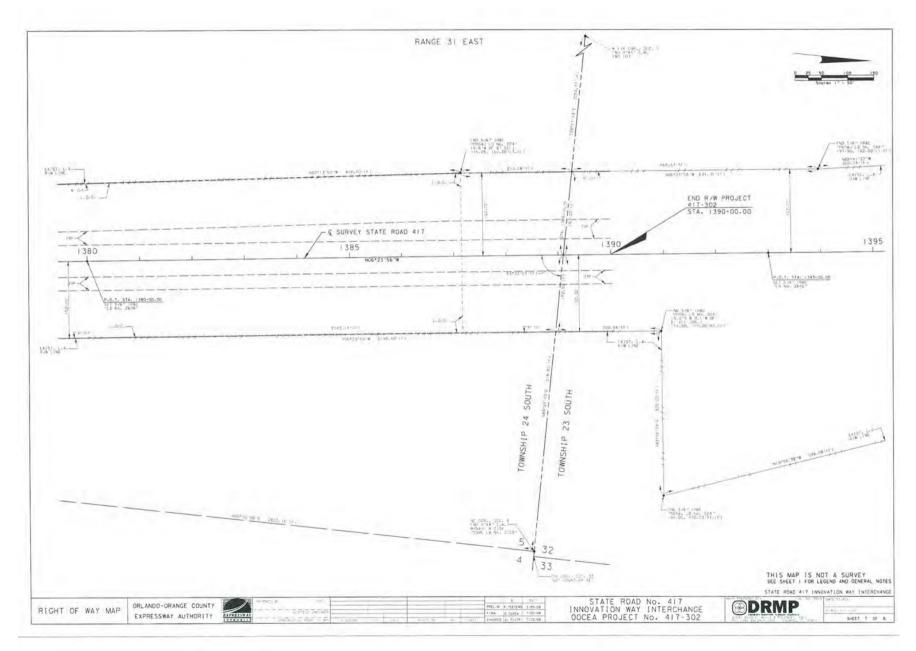


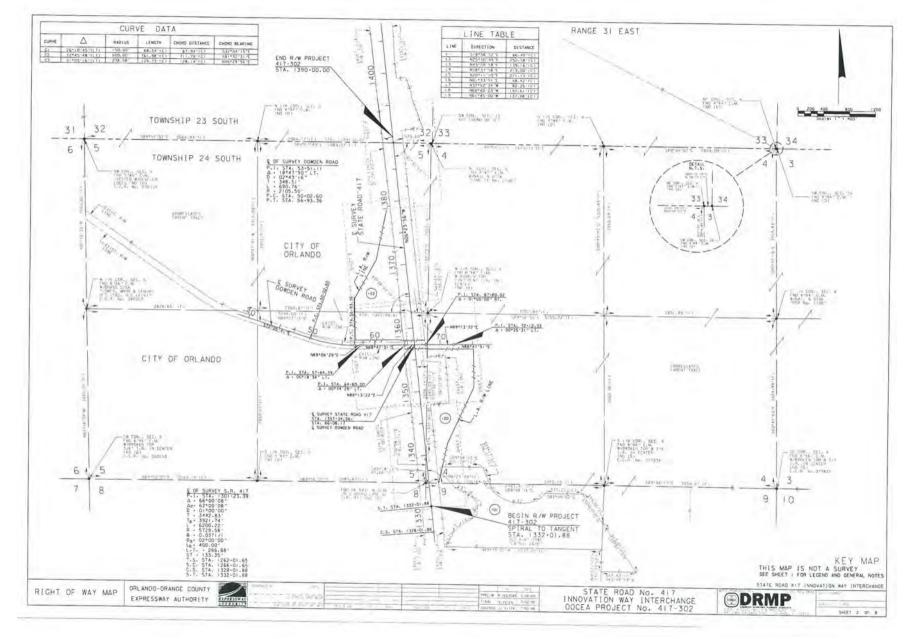


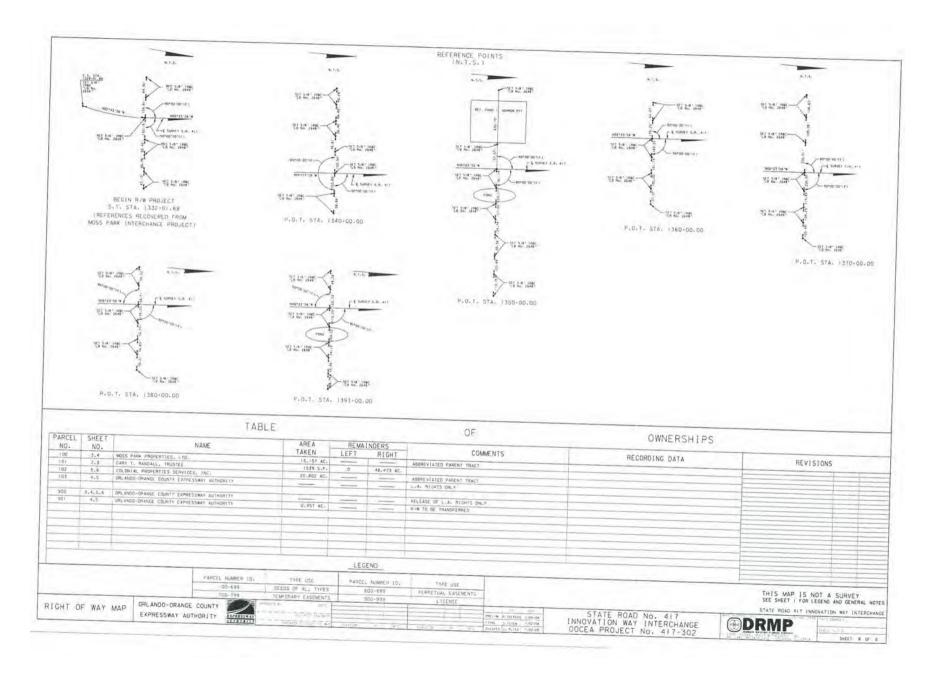












#### Exhibit "B"

A TRACT OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 31 EAST, ORANGE COUNTY, FLORIDA, BEING DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF RANDAL PARK BOULEVARD AS RECORDED IN PLAT BOOK 77, PAGE 64 OF THE PUBLIC RECORDS OF ORANGE COUNTY FLORIDA, SAID POINT BEING ON A NON TANGENT CURVE CONCAVE NORTHEASTERLY: THENCE RUN NORTHWESTERLY ALONG SAID NON TANGENT CURVE AND THE EASTERLY RIGHT OF WAY OF SAID RANDAL PARK BOULEVARD. HAVING A CENTRAL ANGLE OF 90°00'00", A RADIUS OF 45.00 FEET, AN ARC LENGTH OF 70.69 FEET, A CHORD BEARING OF NORTH 27°05'41" WEST AND A CHORD DISTANCE OF 63.64 FEET TO THE POINT OF TANGENCY; THENCE RUN THE FOLLOWING COURSES ALONG SAID EASTERLY RIGHT OF WAY LINE OF RANDAL PARK BOULEVARD: NORTH 17°54'19" EAST, 6.03 FEET; THENCE RUN NORTH 11°21'22" EAST, 61.37 FEET; THENCE RUN NORTH 17°54'19" EAST, 163.30 FEET; THENCE RUN NORTH 17°54'19" EAST, 494.18 FEET; THENCE DEPARTING SAID EASTERLY RIGHT OF WAY LINE, RUN SOUTH 72°05'41" EAST, 776.83 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF STATE ROAD 417, AS DESCRIBED IN OFFICIAL RECORDS BOOK 4307, PAGE 315 OF SAID PUBLIC RECORDS; THENCE RUN ALONG SAID WESTERLY RIGHT OF WAY LINE THE FOLLOWING COURSES; THENCE RUN SOUTH 28°02'59" WEST, 21.98 FEET; THENCE RUN SOUTH 01°21'03" EAST, 663.00 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF DOWDEN ROAD, AS DESCRIBED IN OFFICIAL RECORDS BOOK 9793. PAGE 575 OF SAID PUBLIC RECORDS; THENCE RUN THE FOLLOWING COURSES ALONG SAID NORTHERLY RIGHT OF WAY LINE: SOUTH 89°06'29" WEST, 7.47 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE NORTHERLY; THENCE RUN NORTHWESTERLY ALONG SAID CURVE HAVING A CENTRAL ANGLE OF 13°54'11", A RADIUS OF 2035.00 FEET, AN ARC LENGTH OF 493.80 FEET, A CHORD BEARING OF NORTH 83°56'26" WEST AND A CHORD DISTANCE OF 492.59 FEET: THENCE RUN SOUTH 13°00'40" WEST, 8.61 FEET; THENCE RUN NORTH 76°49'18" WEST, 105.03 FEET TO A NON TANGENT CURVE CONCAVE NORTHERLY: THENCE RUN NORTHWESTERLY ALONG SAID NON TANGENT CURVE HAVING A CENTRAL ANGLE OF 1°57'06", A RADIUS OF 2046.00 FEET, AN ARC LENGTH OF 69.70 FEET, A CHORD BEARING OF NORTH 73°04'14" WEST AND A CHORD DISTANCE OF 69.69 FEET TO A POINT OF TANGENCY THENCE RUN NORTH 72°05'41" WEST, 276.82 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 15.13 ACRES MORE OR LESS.

Exhibit "C" [HELIPORT]

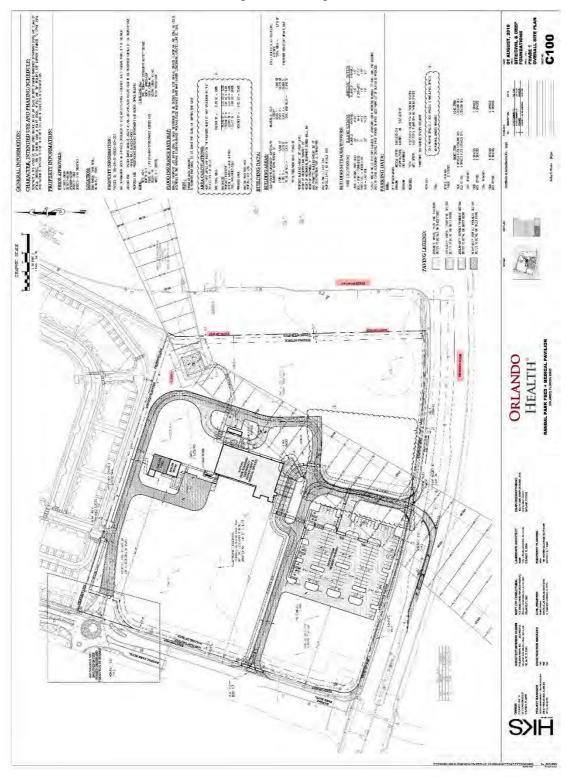
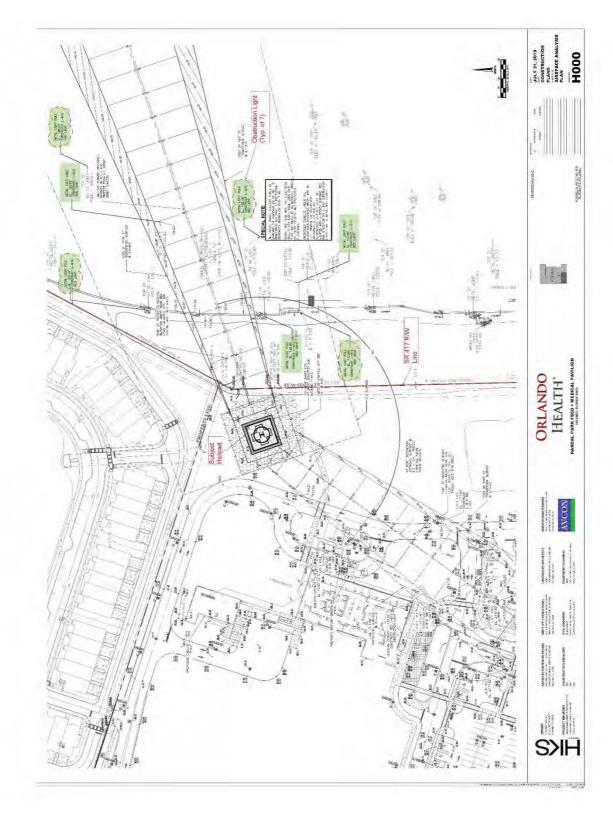


Exhibit "D"

["OML AREA"]



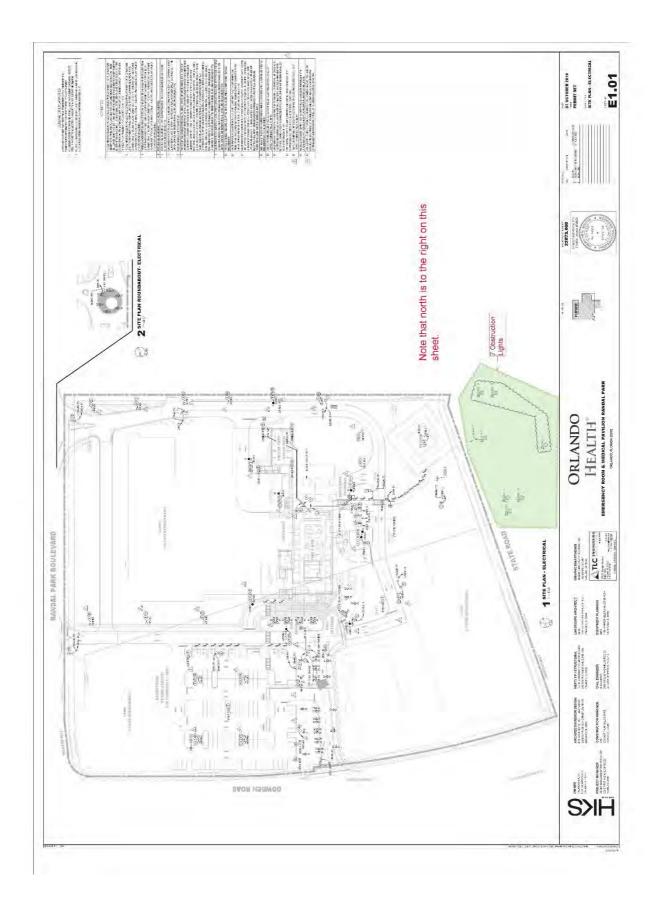
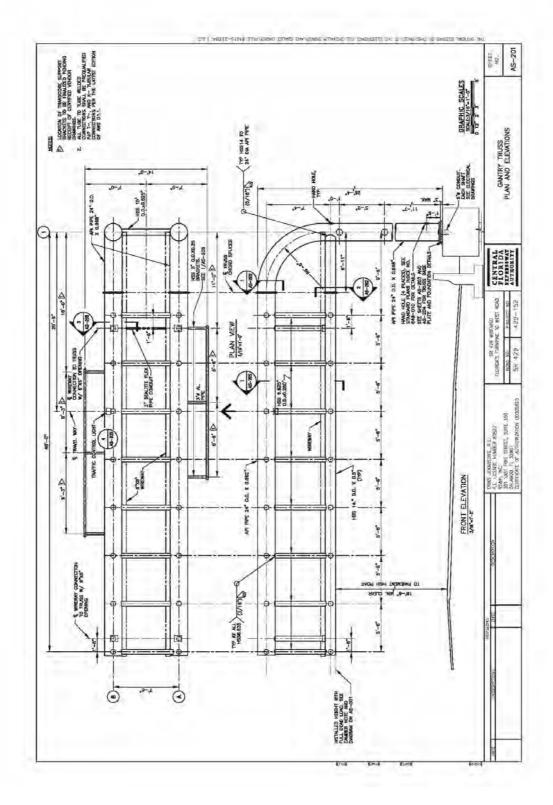
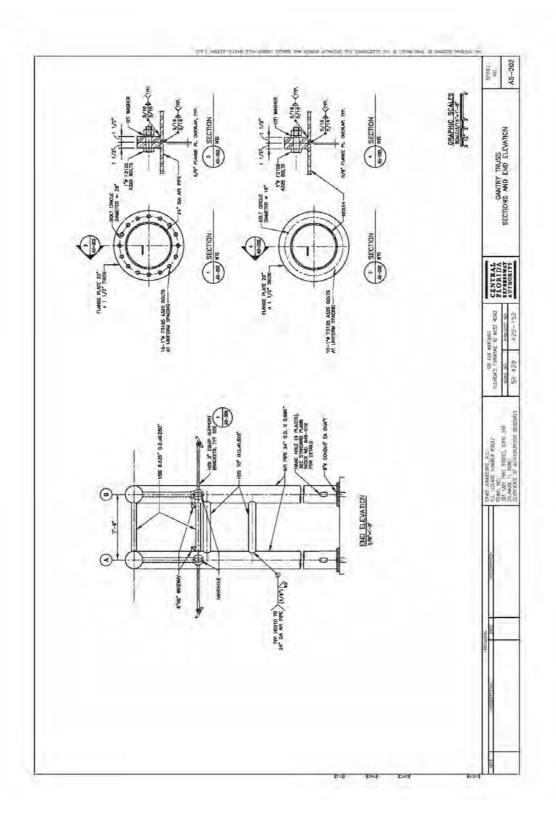
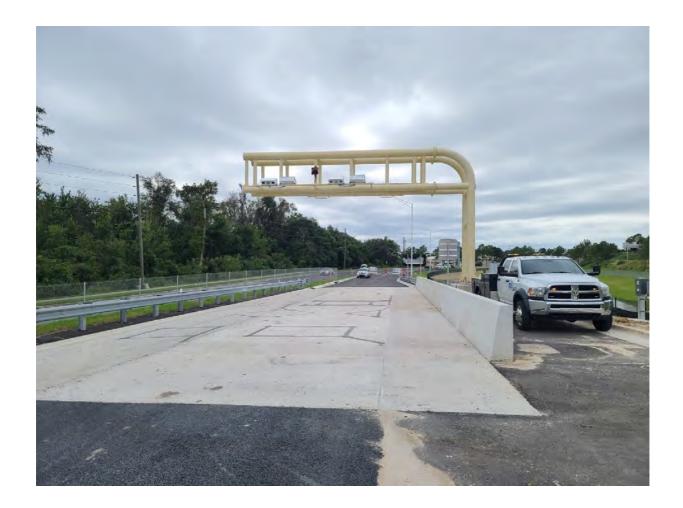


Exhibit "E"

[AET GANTRY]







**Exhibit "F"**[AET GANTRY LOCATION AND HEIGHT GRAPHIC]



#### ATTACHMENT "C"



Dewberry Engineers Inc. | 407.843.5120 800 N. Magnolia Ave, Suite 1000

407.649.8664 fax Orlando, FL 32803 | www.dewberry.com

February 17, 2021

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

RE: ORLANDO HEALTH LICENSE AGREEMENT

Project: 417-302

CFX Parcel: Portions of 102

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 License Agreement for the Helipad Obstruction Lighting within the limited access right-of-way of SR 417 in the Dowden Road area as described in Exhibit A, attached. This license is for the installation of obstruction marking lights on light poles and the required underground electrical conduit within SR 417. In our opinion, based upon the foregoing, we certify that this Agreement 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,

R. Keith Jackson, P.E. Program Manager

Attachments

Laura N Kelly, Esq. CFX (w/enc.) CC:





**Orlando Health Heliport** 

EXHIBIT A

# CONSENT AGENDA ITEM #15

## CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## **MEMORANDUM**

TO: CFX Board Members

FROM: Laura Newlin Kelly, Associate General Counsel

DATE: February 19, 2021

RE: Amendment to Central Florida Expressway Authority Rail Easement of Existing

Authority Property between Brightline Trains Florida LLC and the Central Florida

**Expressway Authority** 

Project: 528-1240; State Road 528

Portions of Parcel 100

## **BACKGROUND**

Brightline Trains Florida LLC f/k/a Virgin Trains USA Florida LLC, f/k/a Brightline Trains LLC, f/k/a All Aboard Florida – Operations LLC ("Brightline") and the Central Florida Expressway Authority ("CFX") entered into that certain Rail Line Easement of Existing Authority Property with an effective date as of December 16, 2015, and recorded on December 18, 2016 as Document # 20150654568, Book 11029, Page 9231, of the Public Records of Orange County, Florida ("Agreement") granting a rail easement to Brightline for the development of the inter-city commercial passenger rail connection between Miami and Orlando with the Orlando terminus located at the Orlando International Airport. A copy of the Agreement is attached hereto as **Attachment "A"**.

Subsequent to entering into the Agreement, CFX acquired certain additional real property identified as Parcel 100 and more particularly depicted on the map attached hereto as **Attachment** "B" and incorporated herein by reference. Brightline and CFX desire to amend the Agreement to include portions of Parcel 100 in the legal descriptions for the Overall Property, Property, and Bridge Piers and Retaining Wall Areas, as more specifically defined in the Agreement. A copy of the proposed Amendment to Central Florida Expressway Authority Rail Easement of Existing Authority Property attached hereto as **Attachment** "C" ("Amendment").

Pursuant to CFX's Property Acquisition, Disposition & Permitting Procedures Manual ("Policy"), CFX staff and CFX's General Engineering Consultant have examined the Amendment and determined that the granting of the Amendment 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"**.

www.cfxway.com

The Right-of-Way Committee met and reviewed this item on February 24, 2021 and recommended approval of the Amendment To Central Florida Expressway Authority Rail Easement of Existing Authority Property in a form substantially similar to the attached 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:

Amendment to Central Florida Expressway Authority Rail Easement of Existing Authority Property in a form substantially similar to the attached 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. Rail Line Easement of Existing Authority Property
- B. Map of Parcel 100
- C. Amendment to Central Florida Expressway Authority Rail Easement of Existing Authority Property
- D. Certificate from CFX's General Engineering Consultant

Reviewed by: Woody Rodriguez

## **ATTCHMENT "A"**

DOC # 20150654568 B: 11029 P: 9231

12/18/2015 10:09 AM Page 1 of 166 Rec Fee: \$1,412.50

Deed Doc Tax: \$1,750.70
Mortgage Doc Tax: \$0.00
Intangible Tax: \$0.00
Martha O. Haynie, Comptroller

Orange County, FL Ret To: SIMPLIFILE LC

#### Prepared by/Return to:

Kolleen Cobb, Esq. Florida East Coast Industries, LLC 2855 S. LeJeune Road, 4<sup>th</sup> Floor Coral Gables Florida 33134

#### Return to:

Karen W. Wankelman Shutts & Bowen LLP 300 South Orange Avenue, Suite 1000 Orlando, Florida 32801

## CENTRAL FLORIDA EXPRESSWAY AUTHORITY RAIL LINE EASEMENT OF EXISTING AUTHORITY PROPERTY

THIS RAIL LINE EASEMENT OF EXISTING AUTHORITY PROPERTY (this "Easement" or "Agreement") is made effective as of December 16, 2015 (the "Effective Date"), by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body corporate and politic existing pursuant to Chapter 348, Florida Statutes (the "Authority") and ALL ABOARD FLORIDA — OPERATIONS LLC, a Delaware limited liability company ("AAF" and collectively with the Authority referred to as the "Parties").

#### RECITALS

WHEREAS, the Authority was created in 1963 by Chapter 348 Florida Statutes for the purpose of construction and operation of expressways and appurtenant facilities known as the Central Florida Expressway System with the Authority having such other purposes and powers as are set forth in Section 348.754, Florida Statutes ("F.S.") subject to bond covenants of the Authority and the provisions of the Lease-Purchase Agreement dated December 23, 1985, as amended (the "LPA") between the Authority and the State of Florida, Department of Transportation (the "Department");

WHEREAS, on October 3, 2012, the Department advertised a Request for Proposals jointly by the Department and the Authority (the "RFP") for the State Road 528 right-of-way owned by the Department and the Authority for the purposes of constructing and operating an intercity passenger rail service between Orlando and Miami and the sole proposal, which was submitted by AAF, was determined to be responsive to the RFP;

**WHEREAS**, since the issuance of the RFP, the Authority has acquired additional land that was not contemplated in the RFP;

WHEREAS, the Authority is the owner of the real property more particularly described on Exhibit "A", attached to this Agreement and incorporated herein by this reference (the "Overall Property");

WHEREAS, the Authority is willing to grant AAF easement rights on, over, under, through and across the specified portion of the Overall Property known as the Property (as defined below) for the purpose of constructing and operating Intercity Passenger Rail Service (as defined below), subject to the Authority's rights reserved in this Agreement and the terms and conditions of this Agreement;

**WHEREAS**, the Intercity Passenger Railroad Service to be operated on the Property by AAF, a railroad company, will be a common carrier service and system, open to the public for transportation-related purposes, shall be part of the public roadway to be used for transportation purposes and shall create a high speed rail system that fulfills an essential public purpose.

**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, the Parties hereto covenant and agree as follows:

1. <u>RECITALS</u>. The foregoing recitals are true and correct and incorporated herein by this reference.

## 2. GRANT OF EASEMENT; DESCRIPTION OF PROPERTY.

a. Upon the terms and conditions of this Agreement, the Authority does hereby grant to AAF the rights, privileges and easements on, over, under, through and across all of the real property more particularly described in Composite Exhibit "B", attached to this Agreement and incorporated herein by this reference (the "Property") for the purpose of constructing and operating Intercity Passenger Rail Service (the "Easement"). The Authority hereby agrees that it has not reserved for itself or for others, and that it shall not grant to any person or entity, any rights to construct or operate Intercity Passenger Rail Service on the Property, which rights shall be exclusive to AAF during the Term (as hereinafter defined). This Easement grants to AAF the rights to access (including, without limitation, for ingress and egress), install, place, construct, use, operate, maintain, alter, repair, renew, replace and/or remove Intercity Passenger Rail Improvements in, through, across, over, under and upon the Property; provided, however, that such rights, privileges and easements shall be subject to the terms and conditions of this Agreement, including, without limitation, the terms of Section 5 below as well as the reservations expressly set forth in Section 6 below and, provided further, that the exercise of any rights reserved by or through the Authority with respect to the Property shall be subject to the terms and conditions of this Agreement, including Section 6 below, such that the exercise thereof shall be conducted in a reasonable manner so as to minimize interference with AAF's use and enjoyment of the Property and the safe and reliable operation of the Project and not affect AAF's use and operation of the Intercity Passenger Rail Service or the Project in any material respect (with it being understood that it is material for AAF to be able to operate and maintain the Project in a safe manner in order to deliver uninterrupted service to Project Passengers).

"Intercity Passenger Rail Service" means passenger rail service whose ridership consists of passengers traveling between two or more metropolitan areas, and includes any and all uses and purposes incidental to passenger railroad operations, including without limitation, installing, placing, constructing, occupying, using, operating, altering, maintaining, repairing, renewing and replacing Intercity Passenger Rail Improvements that are reasonably necessary or legally required in connection with the provision of passenger railroad service, operating trains, cars, locomotives and other rail equipment for the movement of such intercity passengers (including excursion and special passenger train service) and the provision of any and all on-board activities that are incidental and related to the transportation of passengers. Notwithstanding the foregoing or anything to the contrary contained herein, the Parties acknowledge and agree that (a) those certain uses ancillary and incidental in the operation of the Project and/or for the benefit of its crew and Project Passengers included within Intercity Passenger Rail Service shall be those more specifically identified and described in Section 30 herein and in Exhibit "C" attached hereto and incorporated in this Agreement and (b) the right to conduct ancillary and incidental uses shall not be construed as authorizing AAF to (i) install, operate, or maintain any billboards or other signage on the Property (with the exception of signage or advertisements as described in maintain Exhibit "C" hereto) or (ii) install, operate, or telecommunications or other infrastructure for AAF to lease or resell for the provision of services to third parties who are not Project Passengers or AAF's Project crew or contractors/vendors engaged in the construction, operation, or maintenance of the Project (with it being understood and agreed that the right to conduct ancillary and incidental uses shall authorize AAF to install, operate, or maintain utilities, telecommunications or other infrastructure that AAF may lease, resell or make available for the provision of services to Project Passengers and/or AAF's Project crew or contractors/vendors while engaged in the construction, operation, or maintenance of the Project). The Parties acknowledge and agree that Intercity Passenger Rail Service is initially contemplated between Orlando and Miami with stops in Ft. Lauderdale and West Palm Beach, and that such Intercity Passenger Rail Service might eventually include additional stops between the Orlando and Miami destinations and/or might be expanded to other destinations beyond the current destinations, but that the addition of certain stops are subject to and as permitted in Section 5 of this Agreement.

"Intercity Passenger Rail Improvements" means all tracks, rails, railbeds, ties, ballast, access ways, switches, rail crossovers, utilities, signals and communication facilities, drainage facilities and any other improvements necessary to provide Intercity Passenger Rail Service within the Property, as well as incidental equipment related thereto to provide on-board services for the benefit of on-board rail passengers, such as telecommunication equipment to provide continuous Wi-Fi and cellular access for the benefit of on-board rail passengers. Further, the term Intercity Passenger Rail Improvements includes all cables, conduits, wires, antennae, pipes, low-mass poles for positive train control systems, culverts, equipment, fixtures and apparatus which may be or is proposed to be located on, over or under the Property necessary to provide

Intercity Passenger Rail Service. Notwithstanding the foregoing or anything to the contrary contained herein, the Parties acknowledge and agree that the right to install incidental equipment shall not be construed as authorizing AAF to (i) install, operate, or maintain any billboards or other signage on the Property (with the exception of signage or advertisements as described in Exhibit "C" hereto) or (ii) install, operate, or maintain utilities, telecommunications or other infrastructure for AAF to lease or resell for the provision of services to third parties who are not Project Passengers or AAF's Project crew or contractors/vendors engaged in the construction, operation, or maintenance of the Project (with it being understood and agreed that the right to conduct ancillary and incidental uses shall authorize AAF to install, operate, or maintain utilities, telecommunications or other infrastructure that AAF may lease, resell or make available for the provision of services to Project Passengers and/or AAF's Project crew or contractors/vendors while engaged in the construction, operation, or maintenance of the Project).

The description of the Property provided in Composite Exhibit "B" together with the Slope Property and Bridge Piers and Retaining Wall Areas (as such terms are hereinafter defined), and the use of the Maintenance Access Ways and Ponds (as such terms are hereinafter defined) is expected to provide AAF with sufficient property to construct, operate, and maintain those portions of the Project (as defined below) that are located within the Overall Property. The Parties acknowledge that final design and construction of the Project may require adjustment of the description of the Property, the Slope Property, the Signal Pole Area, Bridge Piers and Retaining Wall Areas and/or the Ponds and agree to amend the description to reflect the actual portions of the Property, the Overall Property and the Licensed Property respectively to which easement rights, or a license to use, are granted to AAF under this Agreement. Upon completion of construction of the Project and provision of the survey required under Subsection 8.f.xix of this Agreement, AAF and the Authority shall amend Composite Exhibit "B" to accurately describe the Property. This agreement to adjust the description of the Property is intended to provide a mechanism to allow for shifts in the Project alignment based on conditions on the ground as may be agreed to by the Authority and AAF, but shall not be construed to conflict with the other terms of this Agreement.

b. Upon the terms and conditions of this Agreement, the Authority does hereby grant to AAF the license on, over, under, through and across the portion of the Overall Property more particularly described in Exhibit "E", attached to this Agreement and incorporated herein by this reference (the "Southern Slope Property") for the construction, installation, use, operation, maintenance, repair and improvement of slopes and embankments to support the Easement and the construction and operation of the Intercity Passenger Rail Service and the Southern Maintenance Access Way (as defined in Subsection 8a.) (collectively, the "Southern Slope Improvements"). This license grants to AAF the rights to access the Overall Property (including, without limitation, for ingress and egress), during the initial construction of AAF's Intercity Passenger Rail Improvements, to install, place,

and construct the Southern Slope Improvements, and thereafter, to access the Southern Slope Property to use, maintain, and/or repair the Southern Slope Improvements. AAF agrees that the construction, operation and maintenance of the Southern Slope Improvements shall be performed and arranged in a manner which will not unreasonably interfere with the Authority's ability to modify or alter the Southern Slope Property to allow for the construction of any future Intermodal Rail Improvements or other proposed future uses which do not interfere with AAF's operation of the Intercity Passenger Rail Service. The plans for such alteration or modification shall be subject to the reasonable approval of AAF and may provide for the construction of a retaining wall or other improvements to allow the continuation of AAF's Intercity Passenger Rail Service. If the Authority constructs a retaining wall or other improvements to allow the continuation of AAF's Intercity Passenger Rail Service without the necessity of support from the Southern Slope Property or the Southern Slope Improvements, AAF agrees upon the completion of such improvements to execute a document terminating its license set forth in this subsection 2b. AAF shall maintain the Southern Slope Improvements until such time as the Authority commences construction of future Intermodal Rail Improvements or other future uses.

- c. Upon the terms and conditions of this Agreement, the Authority does hereby grant to AAF the license on, over, under, through and across the Southern Slope Property for the construction, installation, use, operation, maintenance, repair and improvement of the Southern Maintenance Access Way for access to, across and along the Southern Slope Property in order to access the Property and to perform maintenance on AAF's Intercity Passenger Rail Improvements, that may be located on, over, under, the Property. AAF agrees that the construction, operation and maintenance of the Southern Maintenance Access Way shall be performed and arranged in a manner which will not unreasonably interfere with the Authority's ability to modify or alter the Southern Slope Property to allow for the construction of any future Intermodal Rail Improvements or other proposed future uses, which plans for such alteration or modification shall be subject to the reasonable approval of AAF. If the Authority's construction of Intermodal Rail Improvements or other improvements interferes with AAF's use of the Southern Maintenance Access Way, the Authority shall, to the extent feasible, provide AAF alternative access to the Property mutually acceptable to the Authority and AAF taking into account any space restrictions and provided it does not unreasonably interfere with Commuter Rail Service (as defined herein).
- d. Upon the terms and conditions of this Agreement, the Authority does hereby grant to AAF the license on, over, under, through and across the portion of the Overall Property more particularly described in Exhibit "E", attached to this Agreement and incorporated herein by this reference (the "Northern Slope Property") for the construction and installation of slopes and embankments to support the Easement and the construction and operation of the Intercity Passenger Rail Service and the Northern Maintenance Access Way (as defined in Subsection 8a.) (collectively, the "Northern Slope Improvements"). This license grants to AAF the rights to

access the Overall Property (including, without limitation, for ingress and egress), during the initial construction of AAF's Intercity Passenger Rail Improvements (including, without limitation, for ingress and egress), to install, place, and construct the Northern Slope Improvements. AAF agrees that the construction of the Northern Slope Improvements shall be performed and arranged in a manner which will not unreasonably interfere with the Authority's ability to modify or alter the Northern Slope Property to allow for the construction of any future Intermodal Rail Improvements or other proposed future uses which do not interfere with AAF's operation of the Intercity Passenger Rail Service. The plans for such alteration or modification shall be subject to the reasonable approval of AAF and may provide for the construction of a retaining wall or other improvements to allow the continuation of AAF's Intercity Passenger Rail Service. If the Authority constructs a retaining wall or other improvements to allow the continuation of AAF's Intercity Passenger Rail Service without the necessity of support from the Northern Slope Property or the Northern Slope Improvements, AAF agrees upon the completion of such improvements to execute a document terminating its license set forth in this subsection 2d. It is agreed that the Authority will maintain the Northern Slope Improvements, provided however, if the Authority fails to maintain the Northern Slope Improvements, the Authority grants AAF the license to access the Northern Slope Property to maintain and/or repair the Northern Slope Improvements, except that, after the initial construction of the Northern Slope Improvements, AAF shall be required to execute a Right of Entry Agreement with the Authority substantially similar to the form of agreement in Exhibit "F," attached to this Agreement and incorporated herein by this reference, prior to accessing the Northern Slope Property.

- e. Upon the terms and conditions of this Agreement, the Authority does hereby grant to AAF the license on, over, under, through and across the Northern Slope Property for the construction and installation of the Northern Maintenance Access Way and to perform maintenance on AAF's Intercity Passenger Rail Improvements, including any AAF Drainage Facilities referenced in subsection 2f. below, that might be located on, over, under, the Overall Property. If the Authority's construction of Intermodal Rail Improvements interferes with AAF's use of the Northern Maintenance Access Way, the Authority shall, to the extent feasible, provide AAF alternative access to the Property mutually acceptable to the Authority and AAF taking into account any space restrictions and provided it does not unreasonably interfere with Commuter Rail Service. It is agreed that the Authority will maintain the Northern Maintenance Access Way, provided however, if the Authority fails to maintain the Northern Maintenance Access Way, the Authority grants AAF the license to access the referenced portions of the Northern Maintenance Access Way to maintain, and/or repair said portions of the Northern Maintenance Access Way. AAF agrees and acknowledges that AAF has no right to access the Northern Maintenance Access Way within the Overall Property.
- f. Upon the terms and conditions of this Agreement, the Authority does hereby grant

to AAF during the initial construction of AAF's Intercity Passenger Rail Improvements (including, without limitation, for ingress and egress), the license on, over, under, through and across the Overall Property to enable AAF to install, place and construct (i) the storm water treatment ponds (the "Ponds"), (ii) the storm water treatment swales and the related drainage facilities with respect thereto (collectively, the "Swales"), and (iii) the underground storm water drainage pipes, cross drain pipes, culverts and associated equipment to be built by AAF (the "AAF Drainage Facilities"), all in accordance with and as described in the Approved Plans (as defined in Subsection 8.d.), which may be located outside of the Northern Slope Property and Southern Slope Property and to convey storm water from the Property, the Southern Slope Property and the Northern Slope Property through, over and under the Southern Slope Property, the Northern Slope Property, under and across the portions of the Overall Property into the Ponds or existing waterways. It is agreed that the Authority will maintain the Swales; provided however, if the Authority fails to maintain the Swales, the Authority grants AAF the license to access the Overall Property as required to maintain and/or repair the Swales. AAF shall maintain the Ponds and the AAF Drainage Facilities which may be located outside the Property and, except for the initial construction of the Ponds and AAF Drainage Facilities, AAF shall be required to execute a Right of Entry Agreement with the Authority substantially similar to the form of agreement in Exhibit "F," attached to this Agreement and incorporated herein by this reference, prior to performing such maintenance. Further the Authority shall have no right to change or modify the Ponds, Swales or the AAF Drainage Facilities unless the Authority modifies or constructs new drainage facilities or ponds to compensate for any change in the permitted condition.

- g. Upon the terms and conditions of this Agreement, the Authority does hereby grant to AAF the license to construct, install, use, operate, maintain and repair the signal poles described in the Approved Plans (the "Signal Poles") to be located within the area described on Composite Exhibit "G" attached hereto (the "Signal Pole Area"). AAF shall have no other rights with respect to the Signal Pole Area. The Intercity Passenger Rail Improvements shall include the Signal Poles.
- h. Upon the terms and conditions of this Agreement, the Authority does hereby grant to AAF the license to construct, install, use, and operate, the bridge piers inclusive of the foundations (the "Bridge Piers") and retaining walls inclusive of the supporting straps ("Retaining Walls") described in the Approved Plans. Composite Exhibit "H" attached hereto generally describes and depicts where the Bridge Piers and Retaining Walls are expected to be located, but the exact location for purposes of the license granted pursuant to this subparagraph will be based on the Approved Plans (the "Bridge Piers and Retaining Wall Areas") and this Agreement shall be amended to attach a new sketch and legal description of the Bridge Piers and Retaining Wall Areas consistent with such areas as reflected in the Approved Plans. AAF shall have no other rights with respect to the Bridge Piers and Retaining Wall Areas. The Intercity Passenger Rail Improvements shall include the Bridge Piers and Retaining Walls. In order to perform any maintenance or repairs to the Bridge Piers and Retaining Walls, AAF shall be

- required to execute a Right of Entry Agreement with the Authority substantially similar to the form of agreement in Exhibit "F," attached to this Agreement and incorporated herein by this reference.
- i. The Southern Slope Property and the Northern Slope Property are collectively referred to as the "Slope Property." The Ponds, the Slope Property, Bridge Piers and Retaining Wall Areas and the Signal Pole Area are collectively referred to as the "Licensed Property."
- PRESENT CONDITION. AAF acknowledges that it is accepting the Property 3. and Licensed Property in "as-is" condition except as otherwise expressly set forth in this Agreement, without warranty of title. AAF has inspected the Property and the Licensed Property to the extent desired by AAF and is satisfied with the physical condition of the Property and the Licensed Property. The execution and delivery of this Agreement by AAF is conclusive evidence of AAF's acceptance of the condition of the Property and the Licensed Property, subject to the terms and conditions of this Section and this Agreement. Except as otherwise expressly set forth in this Agreement, the Authority has not made and does not make any representations or warranties as to the physical condition or any matter or thing affecting or pertaining to the Property or the Licensed Property or its suitability for the Project, and AAF expressly acknowledges and agrees that the grant of this Easement is to the Property "AS IS" and AAF takes possession of same "AS IS." It is understood and agreed that all understandings and discussions of the Parties concerning the general subject matter of this Agreement are merged into this Agreement and that this Agreement is entered into after full investigation, with neither party relying upon any statements or representations of the other not embodied in this Agreement. AAF acknowledges that the Authority has afforded and has agreed to continue to afford it the opportunity of a full and complete investigation, examination, and inspection of the Property and the Licensed Property and all matters and items related or connected to the Property and the Licensed Property. There are no express or implied warranties given by the Authority to AAF in connection with the Property or the Licensed Property except as otherwise expressly set forth in this Agreement. AAF EXPRESSLY RELEASES THE AUTHORITY FROM ANY LIABILITY, WARRANTY, OR OBLIGATION TO AAF RELATING TO THE CONDITION OF THE PROPERTY AND THE LICENSED PROPERTY, SPECIFICALLY INCLUDING: ZONING; PERMITTING; CONDITIONS; AND **PATENT** LATENT CONDITIONS; STORMWATER DRAINAGE CONDITIONS; THE EXISTENCE OR CONDITION OF ANY UTILITIES; AND ANY AND ALL OTHER MATTERS RELATING TO THE PHYSICAL CONDITION OF THE PROPERTY AND THE LICENSED PROPERTY; PROVIDED, HOWEVER, NOTWITHSTANDING THE FOREGOING, WITH REGARD TO OR TOXIC WASTES, SUBSTANCES, AND MATERIALS, OR HAZARDOUS POLLUTANTS, AAF ONLY RELEASES THE AUTHORITY FROM ANY LIABILITY, WARRANTY, OR OBLIGATION TO AAF RELATING TO THE RELEASE OF OR TOXIC WASTES, SUBSTANCES, AND MATERIALS, HAZARDOUS POLLUTANTS, ON OR FROM THE PROPERTY, THE LICENSED PROPERTY, OR ANY ADJOINING LANDS NOT OWNED OR OCCUPIED BY THE AUTHORITY FIRST OCCURRING AFTER THE EFFECTIVE DATE, EXCEPT TO THE EXTENT CAUSED BY OR THROUGH THE AUTHORITY, ITS AGENTS, OR EMPLOYEES, WITH IT BEING UNDERSTOOD AND AGREED THAT, EXCEPT AS OTHERWISE SPECIFICALLY STATED IN SECTION 22 OF THIS AGREEMENT, AAF IS NOT HEREBY ASSUMING

ANY RESPONSIBILITY OR LIABILITY FOR THE PRESENCE OF ANY SUCH HAZARDOUS OR TOXIC WASTES, SUBSTANCES, AND MATERIALS, OR POLLUTANTS, EXISTING BEFORE THE EFFECTIVE DATE OR THE RELEASE THEREOF THAT IS NOT CAUSED BY AAF, ITS AGENTS, EMPLOYEES OR CONTRACTORS, WHETHER KNOWN OR UNKNOWN TO AAF. THE PROVISIONS OF THIS SECTION 3 SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

4. <u>TERM.</u> The term of this Agreement shall be for fifty (50) years, beginning on December 1, 2015 and ending on November 30, 2065 (the "Initial Term"), unless sooner terminated in accordance with the terms of this Agreement. Provided this Agreement is in full force and effect and provided that at the time of exercise AAF is using the Property for the Project (subject to Force Majeure Events, as hereinafter defined), AAF shall have the right to renew this Agreement for an additional term of forty-nine (49) years (the "Renewal Term"), under the same terms and conditions, by delivering a written notice of its intention to renew this Agreement to the Authority no later than one hundred eighty (180) days before the end of the current term. The "Initial Term" and the "Renewal Term" (if any) are collectively referred to as the "Term" throughout this Agreement.

## 5. USE OF THE PROPERTY; COVENANT OF QUIET POSSESSION.

- AAF shall use the Property and Licensed Property exclusively for the public purpose of the construction, operation, and maintenance of Intercity Passenger Rail Service, and for those certain uses ancillary and incidental in the operation of the Project and/or for the benefit of its crew and Project Passengers, as more specifically identified and described in Section 30 herein and in Exhibit "C" attached hereto and incorporated in this Agreement (the improvements, infrastructure, property utilized for such purposes and such undertaking constitute the "Project"). The term "Project Passengers" shall mean those individual passengers on board or waiting to board the Intercity Passenger Rail Service within the Property. The right to conduct ancillary and incidental uses shall not be construed as authorizing AAF to (i) install, operate, or maintain any billboards or other signage on the Property (with the exception of signage or advertisements as described in Exhibit "C" hereto) or (ii) install, operate, or maintain utilities, telecommunications or other infrastructure for AAF to lease or resell for the provision of services to third parties who are not Project Passengers or AAF's Project crew or contractors/vendors engaged in the construction, operation, or maintenance of the Project (with it being understood and agreed that the right to conduct ancillary and incidental uses shall authorize AAF to install, operate, or maintain utilities, telecommunications or other infrastructure that AAF may lease, resell or make available for the provision of services to Project Passengers and/or AAF's Project crew or contractors/vendors while engaged in the construction, operation, or maintenance of the Project).
- b. It is understood and agreed that the Intercity Passenger Rail Service may be expanded to other destinations beyond the current destinations during the Term of this Agreement and/or additional stops or depots may be added, but, prior to including any additional stops or depots between Orlando International Airport and West Palm Beach, Florida, or between Orlando International Airport and Jacksonville, or any expansion west of Orlando International Airport, AAF shall satisfy the following conditions precedent thereto (with the

addition of other stops or depots being permitted hereunder without regard for the following conditions precedent): (i) AAF shall provide the Authority with a reasonably detailed description of the proposed expansion and/or additional stops or depots together with associated internal and consultant studies and reports pertaining to ridership and diverted trips along State Road 528; (ii) at the expense of AAF, the Authority obtains the opinion of the Authority's Traffic and Earnings Consultant for such matters (certified to the Authority in a report), that such expansion and/or additional stops or depots will not cause a reduction in System Pledged Revenues (as such term is defined in the Authority's Amended and Restated Master Bond Resolution adopted by the Authority's governing Board on February 3, 2003, as supplemented and amended from time to time, hereinafter referred to as the "Master Bond Resolution") taking into account any additional compensation with respect to such expansion and/or additional stops or depots that would constitute a System Pledged Revenue, which opinion shall be in form and substance acceptable to the Authority (similar to the opinion obtained by the Authority with respect to the Project prior to the Effective Date); and (iii) at the expense of AAF, the Authority obtains an opinion of the Authority's Bond Counsel (the expense of which will be borne by AAF with each such request) that the same does not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Authority's then outstanding bonds. Until such conditions precedent are satisfied to the reasonable satisfaction of the Authority, no expansion, additional stops or depots may be added to the Intercity Passenger Rail Service between Orlando International Airport and West Palm Beach, Florida, or between Orlando International Airport and Jacksonville, or any expansion west of Orlando International Airport (with it being understood that the satisfaction of said conditions precedent shall be construed as obligating the Authority to approve such stops, depots or expansion but shall not be construed as obligating the Authority to provide AAF the right to use additional property owned by the Authority that is not included within the Property).

All rights in and to the Property and Licensed Property not specifically granted to AAF by this Agreement are retained by the Authority, provided, however, that the exercise of the rights reserved by or through the Authority with respect to the Property and Licensed Property shall be conducted in a manner that does not affect AAF's use and operation of the Intercity Passenger Rail Service or the Project in any material respect (with it being understood that it is material for AAF to be able to operate and maintain the Project in a safe manner in order to deliver uninterrupted service to Project Passengers). Subject to the foregoing, the Authority may grant to third-parties the air rights beginning 18 feet above the top of AAF's rails within the Property (perpendicularly or diagonally) at any point along the entire length of the rail corridor within the Property, for purposes of maintaining bridges or flyovers constructed by the Authority over the Property and State Road 528 to connect roadways on either side of the Property and State Road 528. Any such bridges or flyovers, even if owned by third-parties, shall be considered for all purposes hereunder to be the Authority's System and Road Improvements to be completed and maintained by the Authority in accordance with the terms and conditions set forth herein, including, without limitation, the terms of Section 6 regarding the exercise of the Authority's reserved rights and access rights and Section 10 regarding maintenance. Further, as an express condition precedent to the Authority granting to third parties such air rights, any such third party must execute a separate written agreement acceptable to AAF (in its sole but reasonable discretion) regarding the terms and conditions governing the maintenance thereof, which terms and conditions shall, among other things, recognize indemnification and insurance obligations as well as recognize the priority access rights of AAF's Intercity Passenger Rail Service to use of the Intercity Passenger Rail Improvements. Notwithstanding the foregoing, such separate written agreement will not be required if and to the extent that (a) Authority wishes to grant air rights to Orange County, Florida for purposes of maintenance of all or a portion of any bridge or flyover with respect to the Innovation Way/Beachline Interchange that crosses over the Property and (b) the Authority and AAF execute a written amendment to this Agreement to document the terms and conditions of such maintenance by Orange County, Florida, which terms and conditions shall, among other things, recognize indemnification and insurance obligations as well as the priority access rights of AAF's Intercity Passenger Rail Service to use of the Intercity Passenger Rail Improvements. The foregoing paragraph shall not amend the Declaration, in any way, including, without limitation, the terms and conditions of the Declaration with respect to crossing rights, such as the provisions of Sections 1.2 and 1.5 of the Declaration, as to the parties covered thereunder.

- Any change in the use of the Property must receive prior written approval from the Authority, which approval may be granted or withheld in its sole and absolute discretion. AAF shall not use the Property to provide Freight Rail Service or Commuter Rail Service (as such terms are defined below). "Commuter Rail Service" means passenger rail service whose ridership consists of passengers traveling within the Orlando-Kissimmee-Sanford Metropolitan Statistical Area, as the same is delineated by the United States Office of Management and Budget as of the Effective Date (the "Orlando-Kissimmee-Sanford MSA") as well as passengers from and within Brevard County, Florida traveling to points within the Orlando-Kissimmee-Sanford MSA and passengers from the Orlando-Kissimmee-Sanford MSA traveling to Brevard County, Florida with the commuter trains making stops at two or more stations between Brevard County and the Orlando Airport. "Freight Rail Service" means rail service for the transport of freight or cargo and not passengers. AAF shall not use the Property in any manner that would obstruct or interfere with any transportation facilities existing as of the Effective Date or as contemplated in the Existing Eight Laning Memorandum or any Approved Supplemental Eight Laning Memorandum (as each term is defined in Section 8 hereof); or with any other rights in and to the Property which are retained by the Authority under this Agreement, in each instance, unless the same is expressly permitted and described elsewhere in this Agreement, provided that (a) the construction of the Project in accordance with the Approved Plans, and (b) operation of the Project, including the operation of an Intercity Passenger Rail Service and its ancillary train noise and emissions, shall not be deemed to be such an obstruction or interference. "Intermodal Rail Improvements" means all tracks, rails, railbeds, ties, ballast, access ways, switches, rail crossovers, utilities, signals and communication facilities, drainage facilities and any other improvements necessary to provide Freight Rail Service or Commuter Rail Service outside the Property and the Signal Pole Area, but which may include the use of the Slope Property and the Bridge Piers and Retaining Wall Areas.
- e. AAF will not cause, will not allow those working through AAF to cause and will take reasonable steps to prevent third parties from causing, any nuisance activity of any nature on the Property, provided that, for purposes of this Agreement (i) the construction of the Project in accordance with the Approved Plans, and (ii) operation of the Project, including the operation of an Intercity Passenger Rail Service and its ancillary train noise and emissions, shall not be considered by the Parties to be a nuisance. The Property shall not be used for the

manufacture or storage of flammable, explosive or hazardous materials, with it being acknowledged that flammable, explosive or hazardous materials as would customarily be found in or on or used in the operation of passenger rail cars are permitted, so long as AAF complies with all state or federal laws or regulations regarding hazardous materials or substances that are applicable to the operation of a commercial enterprise such as the Project. AAF will not use or occupy said Property for any unlawful purpose and will, at AAF's sole cost and expense, conform to and obey any applicable ordinances and/or rules, regulations, requirements, and orders of governmental authorities or agencies with jurisdiction over the use and occupation of the Property.

- AAF shall obtain, at AAF's sole cost and expense, any and all permits or licenses required by applicable law to operate and maintain any facility constructed by or through AAF on the Property as part of the Project. The Authority (at no cost to the Authority) shall reasonably cooperate with AAF in connection with AAF obtaining all such permits and licenses; provided, in no event shall this agreement to cooperate be misconstrued to obligate the Authority to attend any meeting or proceeding or take any action that would, in the Authority's reasonable discretion, be expected to (i) adversely affect any existing rights, entitlements, and/or obligations pertaining to the Property or the Authority's use of the Property (other than to allow for the construction, operation and maintenance of the Project on the Property in accordance with this Agreement), (ii) impose covenants, restrictions or liability upon, or with respect to, the Authority or the Property that are inconsistent with or in contravention of the uses of the Property allowed in this Agreement, or (iii) subject the Authority's funds or property (other than the Property) to the rules, regulations, or jurisdiction of the applicable permitting or licensing agency. Further, for any such permits and licenses to be issued by or through the Authority, the Authority shall process the same in the manner and at such charges, if any, as is customary with others seeking similar permits and licenses.
- The Authority further hereby covenants that, subject to the terms of this Agreement, and the "Excepted Rights, Documents and Matters" defined below, AAF shall have peaceful and quiet enjoyment of the Property for the Project during the full Term (as defined herein), without interruption or interference by the Authority or any person claiming by, through, or under the Authority, except as otherwise expressly provided for herein. AAF acknowledges and agrees that AAF's right to possession of the Property during the Term of this Agreement will be subject to the following with respect to the Property (the "Excepted Rights, Documents and Matters"): (i) the Authority's rights expressly reserved to the Authority or otherwise expressly provided for in this Agreement (with the exercise of any rights reserved by or through the Authority with respect to the Property to be conducted in a manner that does not affect AAF's use and operation of the Intercity Passenger Rail Service or the Project in any material respect (with it being understood that it is material for AAF to be able to operate and maintain the Project in a safe manner in order to deliver uninterrupted service to Project Passengers)); (ii) the rights of third parties under any permits for Current Utilities as of the Effective Date and under any permits for utilities issued after the Effective Date, subject to the terms of Subsection 6.e and Section 15 hereof; (iii) any rights of the Authority's grantors heretofore conveying any portion of the Property expressly set forth in documents recorded in the Public Records of Orange County, Florida as of the Effective Date; (iv) all covenants, easements, restrictions, reservations, oil, gas and mineral rights, encumbrances, agreements and other matters expressly appearing in the Public Records of Orange County, Florida as of the Effective Date; (v) all matters which could

be discovered by an inspection or survey of the Property existing on the Effective Date; (vi) with respect to any portion of the Property in which fee title is held by the State of Florida Board of Trustees of the Internal Improvement Trust Fund ("TIIF") (if any), any rights of TIIF, and any and all prior rights of the United States, and any and all prior rights granted by TIIF in documents recorded in the Public Records of Brevard County or Orange County, Florida, as of the Effective Date; (vii) the Existing Eight Laning Memorandum and any Approved Supplemental Eight Laning Memorandum (as each term is defined in Section 8 hereof); and (viii) the right and authority of any police, fire and emergency services and any other security or emergency personnel, including the armed forces, and any Governmental Authority with jurisdiction over the Property to access the Property as necessary for fire and rescue services, emergency management and homeland security purposes, including the prevention of, or response to, a public safety emergency. AAF shall cooperate with police, fire and emergency services and any other security or emergency personnel, including the armed forces, with respect to their exercise of emergency management and homeland security powers. Any entry by the Authority or the State onto the Property required or permitted under this Agreement shall not constitute a reentry, trespass, or a breach of the covenant for quiet enjoyment contained in this Agreement.

- The construction, operation and maintenance of the Project shall be h. performed and arranged in a manner which (i) will not unreasonably interfere with the Authority's use of the Property or with respect to the convenient, safe, and continuous use, or the operation, maintenance and improvement of the Central Florida Expressway System or any portion of the public right-of-way located on or adjacent to the Property and (ii) will be in accordance with the terms of any special permits issued for construction, operation and maintenance of the Project or other safety related matters. In addition, AAF agrees that the construction, operation and maintenance of the Project shall be performed and arranged in a manner which will not unreasonably interfere with the Authority's ability to modify or alter the Slopes to allow for the construction of any future Intermodal Rail Improvements or other proposed future uses that do not affect AAF's use and operation of the Intercity Passenger Rail Service or the Project in any material respect (with it being understood that it is material for AAF to be able to operate and maintain the Project in a safe manner in order to deliver uninterrupted service to Project Passengers), which plans for such alteration or modification shall be subject to the reasonable approval of AAF. It is understood and agreed that both during and after completion of construction of the Project, any lighting installed for or in relation to the Project shall be in accordance with rules and regulations mandated by the Federal Railroad Administration and shall be maintained in a manner so as to not create any safety issues or unreasonably interfere with the Authority's use of the Property or its other properties for transportation purposes as authorized or permitted by applicable law, including its use or operation of the Central Florida Expressway System.
- 6. <u>RESERVATION OF RIGHTS</u>. In addition to any other rights expressly reserved herein, the Authority reserves for itself, the State, and all grantees, licensees, permittees, and others claiming by, through, or under the Authority or the State, the following rights, including, but not limited to, the right at all times during the Term of this Agreement to enter the Property at all reasonable times and upon reasonable prior notice in the following circumstances, subject to the specified conditions of this Section and this Agreement:

- AAF acknowledges that the Authority shall have the right to utilize the Maintenance Access Ways for access to, across and along the Property in order to perform maintenance on other Authority facilities (including, without limitation, stormwater ponds), that may be located on, over, under, or adjacent to the Property. In addition, Authority shall have the right to use of the Property and the Slope Property with respect to the convenient, safe, and continuous use, or the maintenance and improvement, of the public right-of-way located on or adjacent to the Property, subject to and in accordance with the terms of this Agreement, including this Section and Section 11, and the terms of the Approved Plans and any permits issued for construction and maintenance of the Project, as well as any safety related matters. The foregoing right includes the Authority's reservation of the right to maintain, expand, install, construct, alter, repair, renew, replace and/or otherwise modify the Authority's transportation facilities by either going over or under the Property and/or Slope Property and AAF's Intercity Passenger Rail Improvements thereon, including altering and/or otherwise modifying the Slope Property to allow for Commuter Rail Service, so long as the Authority does not affect AAF's use and operation of the Intercity Passenger Rail Service or the Project in any material respect (with it being understood that it is material for AAF to be able to operate and maintain the Project in a safe manner in order to deliver uninterrupted service to Project Passengers).
- b. If an Event of Default by AAF then exists, the Authority may take any reasonable actions to cure the applicable default in order to protect the interests of the Authority under this Agreement or ensure the continued safety of the traveling public, including entering the Property to perform any work necessary to cure any default and to remediate any release of hazardous substances in violation of this Agreement. If the Authority proceeds pursuant to the foregoing sentence, (i) the Authority's actions shall not be deemed to affect AAF's use and operation of the Intercity Passenger Rail Service or the Project in a material respect and (ii) the amounts reasonably and necessarily incurred by the Authority in doing so shall be reimbursed by AAF to the Authority within thirty (30) days after AAF's receipt of an invoice therefor, accompanied with reasonable documentation of such expenditures, in manner provided for notices under this Agreement as set forth in Subsection 32.0 hereof.
- c. In the event of an actual or reported emergency, danger, or threat that is reasonably believed by the Authority or police, fire, emergency services, armed forces, and any other governmental security or emergency personnel to have caused (or to present the imminent potential to cause) injury to individuals, damage to property, or threat to the environment or to public safety, the Authority or police, fire, emergency services, armed forces, and any other governmental security or emergency personnel may enter the Property to take, at such times as the Authority or other governmental entity determines necessary in its reasonable discretion and with such notice to AAF as is practicable under the circumstances, such actions as the Authority or other governmental entity determines necessary to respond to or to rectify such emergency, danger, or threat.
- d. In the event of any circumstance or event affecting the Project that is not an actual or reported emergency, danger, or threat addressed by Subsection c. above, but is reasonably believed by the Authority to have caused an impairment to the continuous safe operation of State Road 528 or any other Authority-owned transportation facility, and if the Authority in its reasonable discretion determines that, following its written notice to AAF describing the circumstance or event with particularity, AAF is not taking the steps reasonably

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necessary to respond to or to rectify such circumstance or event within a reasonable time as is practicable under the circumstances, the Authority may enter the Property to take, at such times as the Authority determines necessary in its reasonable discretion, and with prior written notice to AAF, such actions as the Authority determines may be necessary to respond to or to rectify such circumstance or event or to restore the safe operation of the affected transportation facility, with it being understood and agreed that the use of the Property for the Project in accordance with applicable law, including the operation of an Intercity Passenger Rail Service and its ancillary train noise and emissions, shall not be deemed to cause an impairment to the continuous safe operation of State Road 528 or any other Authority-owned transportation facility.

- The rights of AAF under this Agreement are subject and subordinate to the rights of the owners of any utilities existing on the Property as of the Effective Date ("Current Utilities") under the documents governing the same and to the extent the same are inconsistent with AAF's rights under this Agreement, AAF shall at its expense, attempt to negotiate any needed changes and if not successful in doing so, will remain subject to the same. AAF acknowledges that the Authority may, under current law, be required to issue permits in accordance with the Authority's rules. With regard to new permits for the installation and maintenance of utilities within the Property from and after the Effective Date, however, the Authority reserves the right to issue such permits in accordance with the Authority's rules for utilities that will cross the Property perpendicularly (i.e., from north to south) or diagonally, or longitudinally (i.e., from east to west), upon reasonable notice and subject to Section 15 hereof. Notwithstanding the foregoing or anything to the contrary contained herein, AAF shall have the right, but not the obligation, at all times during the Term of this Agreement to install, design, manage, maintain, repair, and rehabilitate utilities or other services for its own account (and not for AAF to lease or resell for the provision of services to third parties who are not Project Passengers or AAF's Project crew or contractors/vendors engaged in the construction, operation, or maintenance of the Project) to the extent that the said utilities or services are necessary or desirable for the Project.
- f. The Authority shall have access to the Property as is reasonably necessary for the Authority to take any reasonable actions in connection with any release of hazardous substances that may have occurred prior to the Effective Date or, if caused by the Authority, after the Effective Date, including sampling of soil and groundwater, monitoring well installations, soil excavation, and groundwater remediation.
- g. Upon reasonable prior notice to AAF, the Authority shall have reasonable access to the Property for activities incidental to the Authority's planning efforts, including but not limited to surveying and conducting an environmental assessment.
- h. Upon reasonable prior notice to AAF, the Authority shall have reasonable access to the Property to do any other act or thing the Authority may be obligated to do, or have a right to do, pursuant to statutory authority or under the terms of this Agreement, with it being understood that the Authority has access to the Licensed Property for all such purposes.
- i. The reservation of a right by the Authority to enter upon the Property and the Licensed Property and perform any act shall not be deemed to: impose any obligation on the

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Authority to do so; make the Authority responsible to AAF or any third party for the failure to do so; or relieve AAF from any of its obligations under this Agreement.

Except as otherwise expressly set forth in Subsections 6.b, 6.d and 10.a of this Agreement with regard to the Authority's self-help rights, the Authority shall exercise its reserved rights in and to the Property, including the foregoing access rights, in a manner that does not affect AAF's use and operation of the Intercity Passenger Rail Service or the Project in any material respect (with it being understood that it is material for AAF to be able to operate and maintain the Project in a safe manner in order to deliver uninterrupted service to Project Passengers). With regard thereto, any such access to the Property may be limited to specific times and will need to be coordinated with AAF following reasonable notice and shall be subject to AAF's standards and requirements for entries onto railroad property, which include, without limitation, the positioning of flag persons, and insurance requirements that are uniformly applicable to contractors performing work within the boundaries of the Project (provided, any such insurance requirement or any indemnification requirement shall apply to the Authority's contractors, but shall not require the Authority to purchase insurance or to make any indemnification in connection with any access that it may exercise through its contractors or employees in connection with any activity otherwise authorized by this Agreement). With regard thereto, it is also acknowledged by the Authority that access to the Property following the commencement of operations of the Project will need to be subject to rules and procedures in order to protect the safety of the public and prevent injury or loss to persons and property, including, without limitation, rules and regulations mandated by the Federal Railroad Administration ("FRA") regarding access to rights of way used for railroad purposes. Without limitation of the foregoing, certain rules that shall govern access before, and after, the commencement of operation of the Project are set forth on Exhibit "D" hereto, as same may be modified from time to time (the "Rules"). The Authority shall require that all access to the Property by or through the Authority, its agents and/or employees shall conform to the Rules. The Rules shall include, among other things, a mechanism by which AAF shall provide a three-hour timeframe for access to the Property within any 24-hour period, when such access is requested by the Authority, in writing, with respect to the Authority's exercise of the foregoing access rights, including the right to maintain, expand, install, construct, alter, repair, renew, replace and/or otherwise modify the Authority's transportation facilities by either going over or under the Property and AAF's Intercity Passenger Rail Improvements thereon. Further, the Rules shall establish procedures by which the Authority shall review with AAF any and all proposed improvements to the Property from and after the Effective Date in order to ensure that any such action is taken in a manner consistent with the Authority's commitment to minimize interference with AAF's use and enjoyment of the Property, which includes an agreement by the Authority to refrain from taking or allowing any action with respect to the Property that would adversely affect AAF's ability to construct the Project as contemplated hereunder, whether taken before or after the completion of the Approved Plans or the commencement of construction. Notwithstanding anything to the contrary contained herein, the Authority's access to the Property during such three-hour timeframe within any 24-hour period shall not be deemed to affect AAF's use and operation of the Intercity Passenger Rail Service or the Project in a material respect (with it being understood that it is material for AAF to be able to operate and maintain the Project in a safe manner in order to deliver uninterrupted service to Project Passengers).

## 7. AAF'S PROPERTY.

- During the Term of this Agreement, AAF shall own all facilities, utilities and improvements constructed by or through AAF on the Property, the Slope Property and the Signal Pole Area as part of the Project which are not Road Improvements (as hereinafter defined) (the "Rail Improvements"), with it being understood that such Rail Improvements owned by AAF shall exclude those improvements to Authority transportation facilities provided for in the Road Improvement Plans (as hereinafter defined) (including, but not limited to, the reconstruction of any ramps) constructed by the Authority or by or through AAF that will form a portion of the Central Florida Expressway System (as defined in the Master Bond Resolution and hereinafter referred to as the "Authority's System") (said improvements to the Authority's transportation facilities provided for in the Road Improvement Plans to be constructed by the Authority or by or through AAF are herein referred to as the "Road Improvements"). AAF agrees that all Rail Improvements and Road Improvements constructed by or through AAF on the Property shall be at its risk only and that the Authority shall not be liable for loss or damage to the Rail Improvements or Road Improvements caused by the act of any person, except to the extent caused by an Event of Default (as hereinafter defined) by the Authority or by a tortious act or omission of the Authority, its agents, or its employees, but with respect to tort claims for loss or damage, only to the extent the Legislature has by law waived the Authority's sovereign immunity in tort under the Constitution and laws of the State of Florida. Likewise, the Authority agrees that upon the earlier of (a) its acceptance of the Road Improvements or (b) the authorized use of such Road Improvements by the public, all Road Improvements shall be at its risk only and that AAF shall not be liable for loss or damage to the Road Improvements caused by the act of any person, except to the extent the loss or damage to the Road Improvements is caused by a willful, wanton, or negligent act or omission of AAF, its agents, employees, or contractors, including the negligent design and construction thereof by AAF, its agents, employees, or contractors.
- Subject to the rights of any Mortgagee (as hereinafter defined) under this Agreement, including the rights set forth in Sections 25 through 29, upon the termination or the expiration of this Agreement, AAF may, within 180 days after termination or expiration of this Agreement, with no obligation to do so, remove all Rail Improvements constructed as part of the Project at no cost to the Authority. AAF may also remove any and all moveable trade fixtures and equipment (specifically including, without limitation, the rolling stock, wayside signals and communications equipment used in the operation of the Project) at no cost to the Authority. If AAF removes any Rail Improvements, then it shall remove all the Rail Improvements and shall then restore the Property where such improvements have been removed to the condition that existed as of the Effective Date (by, for example, removing embankments, track structures and associated improvements and restoring existing topography, re-grading and seeding the areas where improvements were removed and where grass had previously existed) within 365 days after the termination or expiration of this Agreement. The Authority shall provide AAF with reasonable access to the Property for AAF to complete actions permitted and/or required by this paragraph. The terms and provisions of this paragraph shall survive the expiration or earlier termination of this Agreement until completion of such removal and restoration. If AAF elects to not remove all the Rail Improvements, as evidenced by its failure to begin removing Rail Improvements within one hundred eighty (180) days after the termination or expiration of this Agreement, all Rail Improvements and any other AAF property then remaining on the Property

shall be deemed to have been abandoned by AAF, and may be retained or disposed of by the Authority, in its sole discretion, in accordance with applicable law, in which event Authority and AAF shall have no further liability to each other on account thereof. If AAF removes all the Rail Improvements as provided in this paragraph, any other AAF property remaining on the Property on the date that is 365 days after the termination or expiration of this Agreement shall be deemed to have been abandoned by AAF, and may be retained or disposed of by the Authority, in its sole discretion, in accordance with applicable law, in which event Authority and AAF shall have no further liability to each other on account thereof.

c. The terms and provisions of this Section 7 shall survive the termination and expiration of this Agreement.

#### 8. IMPROVEMENTS.

It is understood and agreed by the Parties that the Authority's existing State Road 528 right-of-way may be expanded and improved by the Authority, as described in the Technical Memorandum SR 528 (Beachline Expressway), Conceptual Eight Laning Study, dated August 22, 2013 by Atkins North America, Inc. ("Atkins"), inclusive of the Conceptual Level Roadway Design Criteria, Drainage Support Documentation, and Concept Plans attached thereto, all as modified by that certain Supplement to the Technical Memorandum, dated September 26, 2013 by Atkins (collectively, the "Existing Eight Laning Memorandum"). As proposed by AAF, the ultimate design of the Project shall include Rail Improvements and may include Road Improvements and shall take into account and accommodate the planned expansion of and improvements to State Road 528 described in the Existing Eight Laning Memorandum, as may be further supplemented or amended from time to time by the Authority, provided, however, that in designing the Project, AAF shall only be required to take into account and accommodate such further supplements or amendments to the extent that they were requested by AAF (and approved in writing by the Authority, in its sole discretion) or they received prior written approval from AAF, in its sole discretion (such Existing Eight Laning Memorandum as further supplemented or amended from time to time at the request of AAF (and approved by the Authority, in its sole discretion) or with prior written approval from AAF, in its sole discretion, is referred to herein as the "Approved Supplemental Eight Laning Memorandum"). All Road Improvements included as part of the Project shall be constructed in accordance with the Road Improvement Plans, as defined in this Section, as well as the Authority's Construction Project Administration Manual located at the Authority's https://www.oocea.com/DoingBusinessWithUs/ConstructionAdministrationManual/ACPAM/Int roduction.aspx ("ACPAM"), the Authority's General Specifications and Technical Specifications as provided to AAF in connection with each specific Road Improvement to be constructed ("General and Technical Specifications"), the Department's Standard Specifications Bridge Construction located at the Department's http://www.dot.state.fl.us/specificationsoffice/Implemented/SpecBooks/2013/Files/2013eBook.p df ("FDOT Road and Bridge Standards"), and the Department's standard Design-Build the Department's website Guidelines located at http://www.dot.state.fl.us/construction/DesignBuild/DBRules/DesignBuildGuidelines.pdf ("FDOT Design-Build Guidelines") (with the ACPAM, the General and Technical Specifications, the FDOT Road and Bridge Standards and FDOT Design-Build Guidelines that are currently in force at the time the Road Improvements are designed and permitted for

construction collectively referenced herein as the "Authority's Road Improvement Criteria"). The design and construction of any Road Improvements shall only be undertaken by professional consultants and contractors that are prequalified by the Department and acceptable to the Authority (which acceptance shall not be unreasonably withheld or delayed). AAF shall, at its expense, retain a consulting Construction and Inspection Consultant (the "CEI") firm prequalified by the Department and acceptable to the Authority to provide the CEI services to the Authority set forth in the ACPAM for all Road Improvements constructed by AAF or its contractor. All required warranties for Road Improvements shall be assignable by AAF and assigned by AAF to the Authority. No at grade crossings of the Authority's System or other Authority-owned public road will be permitted on the Property. The Authority agrees that all professional consultants and contractors (including without limitation the CEI) that are approved by the Department are deemed to be approved by the Authority.

The Project also includes Rail Improvements. All Rail Improvements b. shall be constructed in accordance with the Approved Plans (as defined below). commencing construction of Rail Improvements on a particular portion of the Property, AAF shall provide the Authority with copies of: (i) (A) the construction plans for the Rail Improvements to be constructed on the particular portion of the Property, taking into account and accommodating the planned expansion of and improvements to State Road 528 as described in the Existing Eight Laning Memorandum or any Approved Supplemental Eight Laning Memorandum, which construction plans shall include plans for intelligent transportation system relocation, lighting, signage, utilities, communications systems, access and any maintenance of traffic on existing transportation facilities that will be required for the construction depicted in such plans and any other document incorporated by reference into such construction plans and (B) the long-term operations and maintenance plans for the Project (collectively, the "Railroad Improvement Plans") and (ii) construction plans for the Road Improvements to be constructed, which plans shall include plans for access and any maintenance of traffic on existing transportation facilities that will be required for the construction depicted in such plans and any other document incorporated by reference into such construction plans, including, where necessary by mutual agreement of the Parties, acting reasonably, space for an access way that is no less than twelve (12) feet wide located south of the proposed rails (the "Southern Maintenance Access Way") and space for an access way that is no less than twelve (12) feet wide located north of the proposed rails (the "Northern Maintenance Access Way," which together with the Southern Maintenance Access Way, the "Maintenance Access Ways") (collectively, the "Road Improvement Plans" and together with the Railroad Improvement Plans, collectively referred to as the "Plans"). The Plans shall not permit lane closures during any holiday period for which the Authority generally suspends work by contractors on the Authority's System. The Authority may, but shall be not obligated to, review the Plans for the purpose of determining compliance with the provisions of this Agreement and may, but shall not be obligated to, approve or disapprove the Plans in its reasonable discretion. If the Authority reasonably determines that any portion of the Rail Improvements depicted in the Plans conflicts with the obligations of AAF under this Agreement or is otherwise objectionable, the Authority will notify AAF of its determination within twenty-one (21) business days (the term "business day(s)" as used in this Agreement, refers to a day other than a Saturday or Sunday upon which national banks are open for business in Orange County, Florida) of its receipt of the Plans. Any such notice by the Authority shall specifically identify the portions of the Rail Improvements that conflict with the obligations of AAF under this Agreement or the reasons they are otherwise objectionable and shall particularly describe the nature of the conflict or objection. Upon receipt of such notice, AAF shall cooperate with the Authority to resolve the identified conflict or objection.

- c. If the Authority requests AAF to include any additional Road Improvements in its Road Improvement Plans that are not currently contemplated in the Existing Eight Laning Memorandum and are to become part of the Authority's System, and AAF agrees in writing to include such additional Road Improvements and construct same (the agreement to do so being in the sole discretion of AAF and may be denied for any reason with or without justification), then the Authority shall pay or reimburse AAF its expenses and the actual cost to engineer, design and construct such additional Road Improvements. The Parties acknowledge that the Intercity Passenger Rail Improvements are to be elevated at the intersection of the Intercity Passenger Rail Improvements at Monument Parkway/OUC rail facilities (a/k/a International Corporate Parkway (the "ICP")), and that the Parties shall work in good faith to accommodate each Party's construction schedule with respect thereto such that the Intercity Passenger Rail Improvements are completed in a cost effective and timely manner.
- AAF is authorized to construct the Rail Improvements in accordance with the Railroad Improvement Plans submitted, reviewed and approved by the Authority as described above (or submitted and not reviewed and approved by the Authority as provided above) (the "Approved Railroad Improvement Plans"). Rail Improvements shall also be constructed in accordance with Federal Railroad Administration ("FRA") regulations, requirements and standards, American Railway Engineering and Maintenance of Way Association ("AREMA") standards, and at a minimum, to FRA Class 6 (110 miles per hour operating speed), and all other applicable law, rules, or regulations (collectively, the "Regulations and Standards"). Further, AAF is authorized to construct the Road Improvements in accordance with the Road Improvement Plans submitted, reviewed, and approved by the Authority (the "Approved Road Improvement Plans") and in accordance with the Authority's Road Improvement Criteria, on account of which a permit or authorization to proceed with the Road Improvements is issued (the "Permit"). The Permit, the Approved Railroad Improvement Plans and the Approved Road Improvement Plans are collectively referred to herein as the "Approved Plans". At its option, AAF may submit interim or progress plans for the Road Improvements and/or Rail Improvements for review by the Authority as provided for herein.
- e. Each party commits that if the other party is not promptly responding to any request under this Section 8, or if a dispute should arise under this Agreement with respect to the Plans, the Permit or any other issue relating to AAF's design, permitting or construction of the Project, the day-to-day lead person for AAF and the Authority shall, at the written request of either party, endeavor to resolve the issue or dispute by good faith negotiations. If the Parties are unable to resolve their dispute within ten (10) days (the "Dispute Negotiation Period"), then AAF and the Authority shall, at the written request of either party, require that the matter be reviewed by a senior-level executive of each party (in the case of AAF, by a Senior Vice President or higher, and in case of the Authority, by the Director of Engineering or the Director of Construction and Maintenance or higher). If these senior-level executives are unable to resolve the matter within ten (10) business days after the Dispute Negotiation Period (the "Senior Level Review Period"), then AAF and the Authority shall, at the written request of either party,

attempt to mediate their dispute for a period of thirty (30) days following the end of the Senior Level Review Period (the "Mediation Period"), using a third party mediator who is neutral and independent of the Parties to this Agreement (the "Mediator"), such Mediator to be jointly selected by AAF and the Authority within seven (7) business days after the end of the Senior Level Review Period. If the Parties cannot agree on the Mediator within such time period, then within five (5) days thereafter, each party shall select an independent mediator, and those two mediators shall (within five (5) days) select the Mediator. Such mediation shall be conducted in Orange County, Florida, and shall be attended by a senior-level executive of each party. No information exchanged in such mediation shall be discoverable or admissible in any litigation involving the Parties. Any written settlement agreement executed by the Parties incident to any mediation pursuant to this paragraph and, in the case of the Authority, approved by its Governing Board, shall be binding upon the Parties; otherwise neither Party is bound by the mediation process. Such mediation process shall be a condition to either of the Parties filing a lawsuit or an administrative proceeding relating to a dispute with respect to the Plans, the Permit or any other issue relating to AAF's design, permitting or construction of the Project, or other issue herein that first requires dispute resolution.

- f. The construction of the Rail Improvements shall be completed in accordance with the Approved Railroad Improvement Plans and the Regulations and Standards and the construction of the Road Improvements shall be completed in accordance with the Approved Road Improvement Plans, the Authority's Road Improvement Criteria and the Permit. Further, the construction of the Project as a whole shall proceed under the following terms and conditions:
  - Construction is expected to commence on or before December 31, i. 2015 ("Commencement Date") and is projected to be substantially complete on or before November 1, 2017 ("Completion Date"). The actual schedule for construction shall be determined solely by AAF. However, and in any event, should construction of the Project on the Overall Property not commence by January 1, 2021 (subject to extension for Force Majeure Events), the Authority as its sole and exclusive remedy may unilaterally terminate this Agreement as provided below. However, and in any event, should Intercity Passenger Rail Service not commence within ten (10) years from the Effective Date of this Agreement (subject to extension for Force Majeure Events), the Authority as its sole and exclusive remedy may unilaterally terminate this Agreement as provided below. Additionally, should AAF abandon the Project for a period longer than three (3) consecutive years (subject to extension for Force Majeure Events), the Authority, as its sole and exclusive remedy, may unilaterally terminate this Agreement as provided below. For purposes of this Agreement, the terms "abandon" and "abandonment" shall include: (i) the failure to provide any Intercity Passenger Rail Service for three (3) consecutive years; provided, however, if a few trains are operated for a short time period solely for the purpose of avoiding the application of the definition of the term of abandonment by extending or recommencing the three (3) consecutive year period, abandonment shall be deemed to have occurred; (2) the inability to operate Intercity Passenger Rail for more than one hundred eighty (180) days solely due AAF's filing of a bankruptcy petition in any action initiated by, or consented to by, AAF; and (3) AAF's express written notice of abandonment delivered by AAF to the Authority pursuant to the terms of this Agreement that makes specific reference to this section of

this Agreement.

- ii. The Authority shall have the authority to temporarily suspend construction work by AAF, wholly or in part, for such period or periods as may be necessary as a result of extreme adverse weather conditions such as flooding, catastrophic occurrences that constitute an unreasonable imposition on the public health, safety or welfare, or upon the issuance of a Governor's Declaration of a State of Emergency. Such suspensions will be in writing and give detailed reasons for the suspension and shall be for the shortest possible time period. Whenever the Authority suspends work, AAF shall be granted additional days equal to the number of days of suspension to extend the tenyear period referenced above. During any period of suspension, AAF shall remove construction equipment and materials from the clear zone, except those required for the safety of the traveling public.
- Prior to commencing physical construction on the Project within the Property, AAF (or its contractor) shall obtain (i) a payment and performance bond in an amount not less than the cost of construction of the Road Improvements, written by a surety authorized to do business in the State of Florida, with the Authority as an obligee thereunder, which shall be conditioned upon the prompt payment of all persons furnishing labor, material, equipment, and supplies for the construction of the improvements and (ii) a performance bond in an amount not less than the amount reasonably required to remove the improvements to date within the Property, written by a surety authorized to do business in the State of Florida, with the Authority as an obligee thereunder, which shall be conditioned upon either (A) the completion of the Rail Improvements or (B) the removal of the Rail Improvements. Said bonds in clauses (i) and (ii) above shall each be in a form reasonably acceptable to the Authority and the sureties under said bonds shall meet the requirements for insurers set forth in Section 13 herein. AAF will also have the option of providing the Authority with a different instrument to provide the security described in clause (ii) hereof, such as a letter of credit and/or a guaranty, subject to the Authority's review and approval thereof.
- iv. AAF and AAF's contractor shall perform the construction of the improvements for the Project using such means and methodology as will not, except as specifically authorized by the Authority in writing, interfere with the safe and efficient operation of State Road 528 and other transportation facilities located on or abutting the Property. It is understood, however, that lane closures will be permitted as specifically authorized by the Authority in writing or as included in the traffic plans approved by the Authority as part of the Plans and/or Permit pursuant to this Section 8.
- v. Prior to commencing construction of the Project, AAF shall provide to the Authority a certification from AAF's contractor, in a form reasonably acceptable to the Authority, verifying that the contractor will not, in any manner in violation of applicable laws and ordinances, use asbestos-containing building materials in the construction of the Project or lead-containing products in pipes or materials in construction of the Project.
- vi. All permits and licenses required for construction of the Project shall be obtained by AAF (or its agents or contractors) at AAF's sole cost and expense

from all entities having jurisdiction, including, but not limited to, the following, if and as applicable: Federal Aviation Administration, Federal Highway Administration, FRA, United States Army Corps of Engineers, and the Florida Department of Environmental Protection. The Authority (at no cost to the Authority) shall reasonably cooperate with AAF in connection with seeking all such permits and licenses; provided in no event shall this agreement to cooperate be misconstrued to obligate the Authority to attend any meeting or proceeding or to take any action that would, in the Authority's reasonable discretion, be expected to: (i) adversely affect any existing rights, entitlements, and/or obligations pertaining to the Property or the Authority's use of the Property (other than to allow for the construction, operation and maintenance of the Project on the Property in accordance with this Agreement), (ii) impose covenants, restrictions or liability upon, or with respect to, the Authority or the Property that are inconsistent or in contravention of the uses of the Property allowed in this Agreement, or (iii) subject the Authority's funds or property (other than the Property) to the rules, regulations, or jurisdiction of the applicable permitting or licensing agency. Further, as to any such permits and licenses to be issued by or through the Authority, the Authority shall process the same in the manner and at such charges, if any, as is customary with others seeking similar permits and licenses. AAF shall require all contractors and subcontractors to have all required licenses and certifications. All work performed on the Property shall conform to all applicable federal, state, and local regulations. AAF shall abide by all applicable local development and building codes and regulations and shall provide the necessary studies or data required thereby and shall comply with any applicable provisions of the National Environmental Policy Act. If requested by the Authority, AAF shall provide copies of all permits and reasonable evidence of compliance with applicable local development and building codes and regulations at the time it provides the Authority with Plans for review.

- vii. The Authority shall have the right to make such inspections of the Road Improvements and Rail Improvements as it reasonably deems necessary to make sure that all construction is proceeding in accordance with all other terms and conditions of this Agreement, provided that (i) any such inspections shall be conducted in a manner so as to not unreasonably interfere with AAF's construction work and (ii) where reasonable under the circumstances, the Authority shall provide AAF with written notice prior to any such requested inspection. In the event that the Authority's inspector determines that the construction is not proceeding as required by the Plans or that the public health, safety, or welfare is being compromised by the construction in a manner in violation of applicable law, the Authority shall notify AAF in writing, setting forth in reasonable detail the issue(s) identified by the inspector. The Parties shall meet within seven (7) business days after AAF's receipt of the notice in order to discuss the issue(s) and determine a mutually satisfactory resolution, failing which the Parties shall proceed pursuant to the dispute resolution procedure set forth above in this Section 8.
- viii. AAF shall provide the Authority no less than thirty (30) days advance written notice before commencing construction of the Project. Within such thirty (30) day period, the Authority shall remove any equipment (including but not limited to road construction and maintenance equipment) located on the Property.
  - ix. Significant revisions in the design or construction of the Rail

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Improvements that deviate from the Approved Railroad Improvement Plans or Regulations and Standards and significant revisions in the design or construction of the Road Improvements that deviate from the Approved Road Improvement Plans, Authority's Road Improvement Criteria or Permit must receive prior written approval from the Authority.

- x. All construction of the Project shall be performed in a good and workmanlike manner at no cost or expense to the Authority.
- xi. The Authority shall not be required to perform any construction work to prepare the Property for the construction, operation, or maintenance of the Project; however, the Authority shall ensure that access to the Property, in accordance with and provided for in the Approved Plans, is granted to AAF as needed for the construction, operation, or maintenance of the Project pursuant to the Approved Plans.
- With respect to the design of the Rail Improvements, prior to the xii. completion of the Plans, the Authority reserves the right to request adjustments to structures or improvements as the Authority reasonably deems necessary for the protection of public health, safety, or welfare, or as may be required by a State or Federal agency with jurisdiction over the Property or the Project, by written notice to AAF setting forth in reasonable detail the adjustments being requested. The Parties shall meet within ten (10) business days after AAF's receipt of the notice in order to discuss the requested adjustments and determine a mutually satisfactory resolution, failing which the Parties shall proceed pursuant to the dispute resolution procedure set forth above in this Section 8. Additionally, the Authority reserves the right to maintain, expand, install, construct, alter, repair, renew, replace and/or otherwise modify the Authority's transportation facilities by either going over or under the Property and AAF's Intercity Passenger Rail Improvements thereon so long as the Authority does not affect AAF's use and operation of the Intercity Passenger Rail Service or the Project in any material respect (with it being understood that it is material for AAF to be able to operate and maintain the Project in a safe manner in order to deliver uninterrupted service to Project Passengers).
- Except in the case of an emergency (and then only to the extent xiii. necessary to avoid injury or death to individuals or damage to property) and except for limited access necessary for AAF's performance of its obligations hereunder or its compliance with applicable laws that does not interfere with the Authority's use or operation of such other properties in any material respect, AAF shall not enter upon any property of the Authority or the State adjacent to, above or under the Property, in connection with the Project without the prior approval of the Authority or the State, other than property that is open to the public. Except as otherwise authorized by the Authority in writing, neither AAF nor AAF's contractor is authorized to engage in any construction activities, temporary or permanent, on the Authority's property other than the Property. The Authority shall grant AAF temporary access to the Authority's property that is not part of the Property when necessary for construction of the Project, but it is intended that AAF will use the Property for access in most instances and that the Authority may subject AAF's temporary use of the Authority's property to reasonable rules, restrictions and limitations, including rules regarding stacking or leaving vehicles thereon or using

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the same for staging areas and such other reasonable restrictions as the Authority may impose to protect the safety thereof. Such access shall be conditioned upon AAF's obligation to protect and restore any such other Authority property and facilities located thereon, AAF's compliance with the Approved Plans, including the maintenance and traffic plans made a part thereof, and such reasonable restrictions as the Authority may impose to protect the safety of the traveling public.

- xiv. AAF shall be liable for all damage to property, real or personal, of third parties to the extent caused by AAF or AAF's contractor in the completion of the Project (and not to the extent caused by others, including, without limitation, the Authority, its agents, or employees).
- AAF's storage of materials on the Property shall be confined to XV. areas authorized by the Authority in writing or as shown in the Approved Plans. Temporary buildings may be constructed by AAF only with prior approval of the Authority in writing or as shown in the Approved Plans, and AAF shall bear all costs associated with constructing and removing such temporary buildings. Where materials are transported to a job site, vehicles shall not be loaded beyond the loading capacity prescribed by any applicable federal, state, or local law or regulation. When it is necessary to cross curbing or sidewalks, protection against damage shall be provided by AAF, at no cost to the Authority. AAF shall repair any damage to roads, curbing and sidewalks caused by AAF or AAF's contractor, at no cost to the Authority. AAF shall not store any materials on the Property other than those materials required to construct and/or operate the Project. AAF shall be responsible for any such materials stored at a job site related exclusively to the Project and the Authority shall not be obligated to replace any such Project-related materials lost, damaged, or destroyed at its expense, except to the extent caused by the Authority, its agents, or employees and permitted by law. AAF shall be responsible for clearing from each job site all unreasonable waste materials and rubbish generated by AAF in constructing the Project. Each job site shall at all times be kept free from an unreasonable accumulation of waste material or rubbish (with it being understood that during the construction of the Project the Property shall be a construction site that will be managed by AAF in accordance with reasonable industry standards).
- xvi. AAF shall arrange its work for the Project and dispose of its materials so as not to unreasonably interfere with the operations of other contractors engaged in work adjacent to the Property being performed by the Authority or its contractors and to cooperate with the Authority and such other contractors in a reasonable manner in order to endeavor to perform its work in the proper sequence in relation to that of such other contractors about which AAF has been provided advance written notice, all as may be reasonably directed by the Authority. AAF will be liable to the extent damage is done by AAF, its contractors, subcontractors, or agents to work adjacent to the Property being performed by the Authority or its contractors. The Authority shall include provisions substantially similar to these in this Subsection 8.0 in any contracts procured by the Authority after the Effective Date for work to be performed in the vicinity of the Project for the benefit and protection of AAF such that each such Authority contractor shall likewise cooperate with AAF and shall likewise be liable to the extent any damage is done by itself, its subcontractors and/or agents to work at or about the Property for the

Project.

- xvii. AAF shall protect all existing structures, improvements, landscaping and drainage systems and facilities on the Authority's right-of-way during construction. AAF shall maintain its work in such condition that adequate drainage will exist at all times. The construction of the Project shall not temporarily or permanently cause a material adverse effect to existing functioning storm sewers, gutters, ditches, and other run-off facilities. Any fire hydrants on or adjacent to the Authority's right-of-way shall be kept accessible at all times and no material or obstruction shall be placed within fifteen (15) feet of any such fire hydrant. Heavy equipment shall not be operated close enough to pipe headwalls or other structures to cause damage or displacement.
- xviii. Any and all telecommunication installations shall be consistent with and coordinated with the Authority's overall plans for placement of telecommunications facilities in the Authority's right-of-way in that area through the plan review process described in Section 8. AAF may not install any independent telecommunication facilities except those specifically used for the operation of the Project or as permitted in Sections 2, 5 and/or 30 herein and in Exhibit "C" hereto. After completion of construction, AAF shall have the obligation to specifically call to the attention of the Authority any plans by AAF for the installation of permissible telecommunications facilities that were not reflected in the Approved Plans. It is AAF's intention to place the installation of any such facilities in the Plans submitted for general review by the Authority pursuant to Section 8.
- Upon completion of construction of the Project, AAF shall file xix. with the Authority a set of the original drawings, tracings, plans, topographic maps, other maps, and as-built boundary surveys including legal descriptions, along with an as-built set of full-size prints for all structural elements of the Project as well as utility installations. The survey work shall meet or exceed the minimum technical standards for Land Surveyors as set forth in Rule Chapter 5J-17, F.A.C. (2012), pursuant to Section 472.027, F.S. In addition, the as-built plans shall include the identification of all equipment, and interconnection of major equipment components, that were installed upon the Property by or through AAF. AAF's Engineer of Record ("EOR") shall signify, by affixing an endorsement (seal/signature, as appropriate) on every sheet of the as-built set, that the work shown on the endorsed sheets was produced by or under the direction of the EOR. With the tracings and the as-built set of prints, the EOR shall submit a final set of design computations. The computations shall be bound in an 8.5" x 11" format and shall be endorsed (seal/signature, as appropriate) by the EOR. The EOR shall also submit the as-built drawings to the Authority in Auto CADD files, using a format and layering system reasonably acceptable to the Authority.
- xx. Notwithstanding any provision in this Agreement or the Authority's Road Improvement Criteria to the contrary, without the consent of the owner of any existing utilities installed in, on, or under the Property as of the Effective Date of this Agreement pursuant to permits or other authorization issued by the Authority, construction of the Project shall not interfere with such utilities and no approval of the Plans by the Authority or failure of the Authority to review the Plans shall relieve AAF of

such responsibility.

9. <u>OPERATION</u>. AAF shall operate the Intercity Passenger Rail Service on the Property in a safe and reliable manner, in compliance with the terms of this Agreement (including, without limitation, the long-term operations and maintenance plans for the Project that are made part of the Approved Railroad Improvement Plans) and all applicable federal, state, and local governmental laws and regulations.

#### 10. MAINTENANCE.

AAF shall perform such activities as are set forth in AAF's maintenance management plan. Rail Improvements shall be maintained by AAF in accordance with the longterm operations and maintenance plans for the Project that are made part of the Approved Railroad Improvement Plans and in a manner consistent with FRA regulations applicable to FRA Class 6 and AREMA standards. AAF shall also otherwise generally keep and maintain the Property, the portions of the Project located on the Property, and any other structure erected on the Property by AAF, in good working order and safe condition and repair at AAF's own expense during the Term of this Agreement, and shall keep the Property free and clear of the overgrowth of grass, weeds, brush, and debris of any kind, so as to prevent the same becoming dangerous, inflammable, or objectionable. Maintenance shall be accomplished in a manner so as to cause no unreasonable interference with the use of the Property. The Authority shall have no duty to inspect or maintain any of the land, buildings, or other structures, if any, during the Term of this Agreement; however, the Authority shall have the right, upon no less than two (2) business days' written notice to AAF, at the Authority's sole expense, to enter the Property for purposes of inspection, including conducting an environmental assessment if the Authority has reason to believe that a legal violation exists on the Property. Such assessment may include but would not be limited to: surveying, sampling of building materials, soil and groundwater, monitoring well installations, soil excavation, groundwater remediation, emergency asbestos abatement, operation and maintenance inspections, and any other action which might be required by applicable law or commercially reasonable industry practice. The Authority's right of entry shall not obligate inspection of the Property by the Authority, nor shall it relieve AAF of its duty to maintain the Property. Any such inspection by the Authority shall not affect AAF's use and operation of the Intercity Passenger Rail Service or the Project in any material respect (with it being understood that it is material for AAF to be able to operate and maintain the Project in a safe manner in order to deliver uninterrupted service to Project Passengers). maintenance has not been performed by AAF and AAF does not cure the failure within thirty (30) days of the date of its receipt of notice from the Authority, then the Authority may perform or have others perform such maintenance and charge the reasonable and necessary cost of such maintenance to AAF, with it being understood and agreed that the use of the Property for rail purposes (including without limitation train emissions) in accordance with applicable laws shall not require remedial action. If the Authority proceeds pursuant to the foregoing sentence, (i) the Authority's actions shall not be deemed to affect AAF's use and operation of the Intercity Passenger Rail Service or the Project in a material respect and (ii) the amounts reasonably and necessarily incurred by the Authority in doing so shall be reimbursed by AAF to the Authority within thirty (30) days after AAF's receipt of an invoice therefor, accompanied with reasonable documentation of such expenditures, in manner provided for notices under this Agreement as set forth in Subsection 32.0 hereof.

- b. Notwithstanding the foregoing, it is understood and agreed that, upon the earlier of (i) its acceptance of the Road Improvements or (ii) the authorized use of such Road Improvements by the public, the Road Improvements will form part of the Central Florida Expressway System and shall be owned and maintained by the Authority in accordance with its standard expressway maintenance program and AAF shall thereupon have no maintenance responsibility with regard thereto (which shall not be construed to relieve AAF of liability for damage to the Road Improvements to the extent caused by a willful, wanton, or negligent act or omission of AAF, its agents, employees, or contractors, including the negligent design and construction thereof by AAF, its agents, employees, or contractors).
- The Authority has an obligation pursuant to Section 5.11 of its Master Bond Resolution to maintain, or cause to be maintained, the Authority's System, with appurtenances and every part and parcel thereof, in good repair, working order and condition, and is further required to make all necessary and proper repairs, replacements and renewals so that at all times the operation of the Authority's System may be properly and advantageously conducted If there has occurred an event or circumstance that AAF reasonably believes to have caused an impairment to the continuous safe operation of State Road 528 or any other part of the Authority's System (an "Impairment Event") and AAF reasonably believes that such Impairment Event will have a materially adverse effect on the safe, uninterrupted service of the Project, then AAF will provide the Authority and its Consulting Engineer with written notice and a detailed description of the Impairment Event. Within sixty (60) days following its receipt of written notice from AAF of an Impairment Event, the Authority shall provide or cause to be provided to AAF its written analysis of the Impairment Event and its plan to address the Impairment Event so that the portion of the State Road 528 or other part of the Authority's System affected by the Impairment Event is restored to good repair, working order and condition within a reasonable time period based upon the circumstance. If (i) the Authority fails to provide its written analysis to AAF, or unreasonably suspends or discontinues its plan to address the Impairment Event without a plan to continue and complete any repair, renewal, replacement or other improvement necessary to restore the portion of the State Road 528 or other part of the Authority's System affected by the Impairment Event to good repair, working order and condition or (ii) in the event that AAF, in its reasonable discretion, determines that an Impairment Event must be addressed on an expedited basis to avoid injury or death to individuals or damage to property and the Authority is not taking the steps reasonably necessary to respond to or to rectify such circumstance or event within a reasonable time as is practicable under the circumstances following its written notice to the Authority describing the circumstance or event with particularity, then AAF, after prior written notice to the Authority, may take such reasonable steps and actions as AAF reasonably believes are necessary to address the Impairment Event but, in doing so, AAF shall follow the Authority's Road Improvement Criteria and the requirements herein regarding Road Improvements (e.g., the design and construction of any Road Improvements shall only be undertaken by professional consultants and contractors that are pregualified by the Department and acceptable to the Authority (which acceptance shall not be unreasonably withheld or delayed) and AAF shall retain a CEI firm prequalified by the Department and acceptable to the Authority to provide the CEI services to the Authority set forth in the ACPAM for all Road Improvements undertaken by AAF or its contractor. The Authority shall be liable for the costs reasonably and necessarily incurred by AAF in taking any such action, and the Authority shall pay or reimburse AAF from monies on deposit in its System

General Reserve Fund (as defined in the Master Bond Resolution) and available for such purpose; provided, however, that (1) any such payment obligation by the Authority shall be expressly inferior and subordinate to the lien on and pledge of the System Pledged Revenues (as defined in the Master Bond Resolution) securing the payment of any Outstanding Bonds (as such terms are defined in the Master Bond Resolution) of the Authority, and any subordinate lien obligations of the Authority, including without limitation, any Subordinate General Reserve Fund Revenue Bonds and any payment obligations of the Authority to the Department described in Florida Statutes, Section 348.7546 and in that certain Memorandum of Understanding between the Authority and the Department effective on May 29, 2012, and (2) the payment by the Authority to AAF will be made within thirty (30) days after the Authority's receipt of an invoice therefor, accompanied with reasonable documentation of such expenditures, in manner provided for notices under this Agreement as set forth in Subsection 32.0 hereof. To the extent that the Impairment Event has been caused by AAF, its agents, employees, contractors or any other person performing services, activities or other actions for, on behalf of, or at the direction of AAF, the Authority shall have no obligations under this Section to pay or reimburse AAF. As used in this Section, AAF's "reasonable belief" or what AAF "reasonably believes" must be based upon the written advice of an engineering consultant who has been prequalified by the Department to provide engineering services on major bridge and roadway projects in the State of Florida.

## 11. <u>RELOCATION RESPONSIBILITIES; CONDITIONS FOR SHARED USE OF</u> RAIL IMPROVEMENTS.

AAF shall design and construct the Project on the Property in a manner that takes into account and accommodates the planned expansion of and improvements to State Road 528 described in the Existing Eight Laning Memorandum or any Approved Supplemental Eight Laning Memorandum. The Authority acknowledges that the Project will represent a substantial capital investment by AAF and that relocation of the Project after construction will, in certain areas, be difficult or impracticable. Subject to AAF's obligations to build the Rail Improvements in accordance with the Approved Railroad Improvement Plans, and AAF's obligations as to Current Utilities and Future Utilities as set forth in Subsection 6.e and Section 15 of this Agreement (collectively, the "AAF Design and Construction Obligations"), the Authority agrees that the Authority and all persons claiming by or through the Authority, including those with agreements, contracts and/or permits with the Authority, will, at no cost to AAF, accomplish future expansion, improvement, or alteration of the Authority's State Road 528 right-of-way or any other Authority owned facility adjoining or crossing the Property in a manner that does not require relocation of the Project as constructed in accordance with the provisions of this Agreement. Except when necessitated by a breach of the AAF Design and Construction Obligations, if the Authority desires to relocate at the Authority's cost and expense some part of the Project, the Authority shall provide AAF with a proposal for the relocation and AAF agrees to consider the proposal in good faith provided that (i) any such proposed relocation must receive prior written approval from AAF, in its sole discretion, for the Parties to proceed therewith, and (ii) the Parties acknowledge and agree that once the Project is constructed, the avoidance of affecting AAF's use and operation of the Intercity Passenger Rail Service and the Project in any material respect is required (with it being understood that it is material for AAF to be able to operate and maintain the Project in a safe manner in order to deliver uninterrupted service to Project Passengers).

b. It is understood and agreed that nothing in this Agreement entitles the Authority or any other party claiming through the Authority to the use of the Rail Improvements during the Term. If the Authority desires to propose the possible shared use of the Rail Improvements for any purpose, including without limitation Commuter Rail Service or Freight Rail Service, the Authority shall provide, or cause to be provided, to AAF a proposal for such shared use and AAF agrees to consider the proposal in good faith provided that (i) any such shared use must receive prior written approval from AAF, in its sole discretion, of the proposed shared use and the written agreements by which such use shall be accomplished, which agreements shall, without limitation, include terms and conditions regarding the ownership and maintenance of improvements, AAF's control of dispatch and AAF's priority access for its service, as well as the financial terms related thereto, and (ii) the Parties acknowledge and agree that any such shared use must not affect AAF's use and operation of the Intercity Passenger Rail Service or Project in any material respect (with it being understood that it is material for AAF to be able to operate and maintain the Project in a safe manner in order to deliver uninterrupted service to Project Passengers).

## 12. INDEMNIFICATION.

Third Party Claims: Subject to the terms and conditions of this Section 12, AAF shall defend, indemnify, save and hold harmless the Authority and all of its officers, agents and employees, from any and all third-party causes of action and claims for losses, damages, costs, claims, demands, suits, judgments, fines and penalties of any kind or nature, and reasonable attorneys' fees (including appellate and regulatory attorney's fees), to the extent arising out of any act, error, omission, negligence or willful misconduct by or through AAF or its employees, agents, contractors, or subcontractors made in connection with AAF's use of the Property, or any part thereof, or AAF's construction, operation or maintenance of the Project (a "Claim" and collectively "Claims"); provided, however, that AAF will not be liable under this subsection (a) for any Claim to the extent arising out of any act, error, omission, negligence or willful misconduct by or through others, including, without limitation, the Authority, or any of the Authority's officers, agents, employees, or contractors. AAF's above obligation shall be triggered by the Authority's written notice and tender of a Claim for defense and indemnification to AAF that is covered by this subsection (a). For Claims covered by this subsection (a), AAF shall provide counsel reasonably acceptable to the Authority and pay all reasonable attorneys' fees and other litigation costs incurred to fulfill AAF's defense and indemnification obligations under this subsection (a). Within thirty (30) days after receiving written notice of a Claim covered by this subsection (a), AAF shall send written notice to the Authority setting forth a statement of known facts pertaining thereto. AAF shall promptly send the Authority a copy of any summons, suit, or subpoena served upon or received by AAF or any of its agents, employees, or representatives, which asserts a claim or cause of action based upon any act, error, omission, negligence or willful misconduct of AAF or its employees, agents, contractors, or subcontractors in connection with AAF's use of the Property, or any part thereof, or AAF's construction, operation or maintenance of the Project. If the Authority receives notice of a Claim for damages that may have arisen as a result of an act, error, omission, negligence or willful misconduct of AAF or its employees, agents, contractors, or subcontractors, the Authority will promptly forward the Claim to AAF. The Authority's failure to promptly notify AAF of a Claim will not act as or constitute a waiver of any rights of the Authority under this Agreement, except to the extent that AAF is prejudiced in a material respect as a result of such failure. As AAF proceeds to defend, indemnify, save and hold harmless the Authority from any Claim hereunder, (i) AAF shall control the defense thereof, (ii) the Authority shall, at AAF's cost and expense, provide such assistance and cooperation in good faith as may reasonably be required to ensure the proper and adequate defense of such Claim and (iii) AAF shall have the right, without the consent of the Authority, to enter into any settlement of any such Claim so long as the settlement imposes no cost or expense on the Authority. Moreover, in no event shall the Authority have the right to enter into any settlement of any such Claim that it seeks to have indemnified hereunder without the prior written consent of AAF, which may be withheld in its sole discretion. Notwithstanding the foregoing or anything to the contrary in this Agreement, in no event shall the requirements of this subsection (a) be construed to provide an independent legal basis to hold AAF or the Authority liable to any other person or entity for any damages, whether direct, indirect, punitive, special or consequential damages (including, but not limited to, loss of profits, interest or earnings). Nothing in this subsection (a) shall be construed as a waiver or attempted waiver by the Authority of its sovereign immunity in tort under the Constitution and the laws of the State of Florida.

- b. <u>Damage to Authority Facilities</u>: AAF shall also indemnify and hold harmless the Authority from any other actual losses, damages or costs of any kind or nature to State Road 528 or any other Authority owned facility or property, to the extent arising out of any act, error, omission, negligence or willful misconduct by or through AAF or its employees, agents, contractors, or subcontractors in connection with AAF's use of the Property, or any part thereof, or AAF's construction, operation, or maintenance of the Project; provided, however, that AAF will not be liable under this subsection (b) for any losses, damages or costs to State Road 528 or other Authority owned facility or property to the extent arising out of any act, error, omission, negligence or willful misconduct by or through others, including, without limitation, the Authority, or any of the Authority's officers, agents, employees, or contractors.
- c. <u>Survival</u>: This Section 12 shall remain in full force and effect in accordance with its terms and shall not be terminated by any breach (fundamental, negligent or otherwise) by any Party of its representations, warranties or covenants hereunder or by the expiration, termination, or rescission of this Agreement by any Party.

## 13. INSURANCE. The following insurance is required under this Agreement:

a. On the Effective Date, AAF shall obtain and maintain, at its sole cost and expense, commercial general liability insurance under one or more policies covering against loss or liability in connection with bodily injury, personal injury, death, or property damage, occurring on or about the Property to the extent arising out of any act, occurrence, or omission, for which AAF can be legally liable therefor in connection with AAF's use of the Property, or any part thereof, or AAF's construction, operation, or maintenance of the Project (provided, no liability coverage is required if not included in the then current commercial general liability coverage forms filed by its insurance carrier, from time to time, with the Florida Office of Insurance Regulation, with all coverage exclusions therein in effect). The commercial general

liability insurance coverage obtained by AAF under one or more policies as described above shall extend coverage to the Authority as an additional insured (by endorsement to such policy(ies)). The commercial general liability insurance policy shall be written on an occurrence basis. The commercial general liability insurance coverage shall be in an initial amount of not less than TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00) combined single limit for bodily injury, personal injury, death and property damage per occurrence, which limit may be provided by a combination of primary and excess/umbrella coverage. Prior to commencing physical construction of the Project within the Property, the commercial general liability insurance coverage amount shall be increased to a limit of not less than TWO HUNDRED MILLION AND NO/100 DOLLARS (\$200,000,000.00) combined single limit for bodily injury, personal injury, death and property damage per occurrence, which limit may be provided by a combination of primary and excess/umbrella coverage. Upon commencement of Intercity Passenger Rail Service to the paying public, AAF shall obtain and maintain, at its sole cost and expense and in lieu of the foregoing commercial general liability insurance policy, railroad liability insurance under one or more policies providing coverage against loss or liability in connection with bodily injury, personal injury, death, or property damage, occurring on or about the Property to the extent arising out of any act, occurrence, or omission, for which AAF can be legally liable therefor in connection with AAF's use of the Property, or any part thereof, or AAF's operation or maintenance of the Intercity Passenger Rail Service or the Project. The railroad liability insurance coverage to be obtained by AAF shall be maintained under one or more policies and, as described above, shall extend coverage to the Authority as an additional insured (by endorsement to such policy(ies)). Each such railroad liability insurance policy shall be written on an occurrence basis, or where such policy cannot not be procured on an occurrence basis at commercially reasonable rates after good faith effort to procure same by AAF, on a "claims made" basis. The insurance coverage shall not be less than TWO HUNDRED MILLION AND NO/100 DOLLARS (\$200,000,000) per occurrence, or on a claims made basis as the case may be depending on the type of policy procured, which limit can be provided by a combination of primary and excess coverage.

- b. The foregoing policy or policies under which such commercial general liability or railroad liability coverage is provided may include a deductible or self-insured retention not in cumulative excess of TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00) on the condition that:
  - i. Each such insurance policy explicitly provides that the obligations of the policy issuer(s) to the Authority as an additional insured shall not be diminished in any way by AAF's failure to pay its deductible or self-insured retention obligation for any reason (or, in the alternative, if such policies do not so provide with regard to self-insured retentions (A) each such insurance policy explicitly provides that the Authority may pay such self-insured retention should AAF fail to do so when due, and (B) AAF provides security in favor of the Authority, which shall insure the prompt payment of such self-insured retention when due, such as a bond, a letter of credit and/or a guaranty, each subject to the Authority's review and approval of the form and content thereof);
  - ii. AAF delivers documentation to the Authority upon request, but no less frequently than annually, that provides assurance to the Authority's reasonable

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satisfaction that the self-insurance arrangements adequately protect the Authority against liability for bodily injury, personal injury, death and property damage. For example purposes only and not as a means of limitation, an adequate, segregated self-insurance retention fund to cover the deductible or self-insured retention amount will be deemed to satisfy the requirements of this subsection (ii); and

iii. AAF promptly pays any and all amounts due under such deductible or self-insured retention in lieu of insurance proceeds which would have been payable if the insurance policies had not included a deductible or self-insured retention amount.

As used in this Agreement, "self insurance" shall mean that AAF is itself acting as though it were the insurance company providing the insurance required under the provisions of this Agreement. AAF shall furnish evidence of insurance reasonably acceptable to the Authority before the Effective Date and of the increased limit before commencing physical construction of the Project within the Property and shall provide the Authority with evidence of renewal or replacement insurance at least thirty (30) days prior to the expiration or termination of such insurance.

- c. Prior to entering the Property to commence any physical work covered thereby, AAF shall provide evidence, in a policy reasonably acceptable to the Authority, of professional liability insurance in a minimum amount of TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) for any engineering, architectural, or land surveying work required in constructing the Project on the Property, procured and maintained by those third parties performing such work for or on behalf of AAF. AAF shall provide evidence of such required professional liability insurance coverage at all times during activities on the Property covered thereby, with tail coverage for at least three (3) years after completion of construction of the Project. AAF shall furnish evidence of such insurance reasonably acceptable to the Authority before commencing any physical work covered thereby within the Property and shall require the third parties performing the foregoing work for or on behalf of AAF to provide AAF and the Authority with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance.
- d. Prior to entering the Property to commence any physical activities therein, AAF shall provide evidence of worker's compensation insurance in the amount required by law and employer's liability coverage of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per occurrence, covering all persons employed by AAF in connection with AAF's activities and operations within the Property. Such insurance shall be endorsed to provide coverage for any and all liabilities resulting from any applicable employee liability regime, including without limitation, the Federal Employers Liability Act.
- e. Prior to commencement of any physical construction of the Project within the Property, AAF shall provide evidence of builders' risk insurance in the amount of the construction cost of the Rail Improvements, with waiver of subrogation provisions.
- f. Upon completion of construction of the Project and prior to commencing operations of the Project within the Property, AAF shall provide evidence of extended or broad

form coverage property insurance with waiver of subrogation provisions covering the Rail Improvements, with coverage sufficient to cover the probable maximum loss of such Rail Improvements and alterations made by AAF pursuant to the terms hereof, which shall include coverage for damage by fire and lightning, theft, vandalism and malicious mischief, or the ISO Causes of Loss - Special Form, as well as flood insurance.

Except with respect to railroad liability insurance as set forth below, all insurance policies required to be carried by AAF as provided in this Section shall be issued by insurance companies authorized by subsisting certificates of authority issued to the companies by the Department of Insurance of the State of Florida or an eligible surplus lines insurer under Section 626.918, F.S., or with respect only to Workers' Compensation Insurance, authorized as a group self-insurer pursuant to Section 440.572 F.S. which has been in continuous operation in the State of Florida for five (5) years or more or authorized as a commercial self-insurance fund pursuant to Section 624.462, F.S. which has been in continuous operation in the State of Florida for five (5) years or more. In addition, such insurers, other than those authorized by Section 440.572, F.S. (individual self-insurers) or Section 624.462, F.S. (commercial self-insurance funds), shall have and maintain throughout the period for which coverage is required, a Best's Rating of "A-" or better and a Financial Size Category of "VII" or better according to the most recent edition of "Best's Key Rating Guide" for insurance companies. It is acknowledged and agreed that insurers providing railroad liability insurance at the applicable coverage limits may not meet the foregoing requirements and such policies may need to be procured from providers outside the United States of America. Nevertheless, such insurers shall have and maintain throughout the period for which coverage is required, a Best's Rating of "A-" or better and a Financial Size Category of "VII" or better according to the most recent edition of "Best's Key Rating Guide" for insurance companies. AAF shall furnish to the Authority, not less than fifteen (15) days before the date the insurance is first required to be carried by AAF, and thereafter before the expiration of each policy, true and correct certificates of insurance, using the appropriate ACORD form of certificate or its equivalent, and necessary endorsements evidencing the coverages required under this Section and the inclusion of the Authority as an additional insured, with a copy of each policy, if requested by the Authority (with the exception of workers' compensation insurance and professional liability insurance on account of which the Authority shall not be an additional insured). Such certificates shall provide that should any policies described therein be cancelled before the expiration date thereof, notice will be delivered to the certificate holder by the insurer in accordance with the policy provisions regarding same. Further, AAF agrees that the insurance coverage required from AAF hereunder shall not be terminated or modified in any material way without thirty (30) days advance written notice from AAF to the Authority and that AAF shall require the third parties performing the foregoing work for or on behalf of AAF to provide AAF and the Authority with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance. Each policy required from AAF hereunder shall be written on an occurrence basis (except for any professional liability insurance policy, which shall be written on a claims-made basis as provided hereinabove, and with the possible exception of the railroad liability insurance policy when the same cannot be procured on an occurrence basis as provided for in Subsection 13.a herein).

h. In the event AAF shall fail to procure insurance required under this

Section or fail to maintain the same in full force and effect continuously during the Term of this Agreement and any renewal thereof or fail to meet its obligations with respect to any deductible or self-insured retention amount under this Agreement, the Authority shall be entitled, after thirty (30) days prior written notice to AAF of AAF's default hereunder and AAF's failure to cure such default within said thirty (30) days, to require AAF to immediately discontinue all construction activities related to the Project and immediately discontinue operation of the Project until AAF has provided the Authority reasonably satisfactory evidence that the required insurance has been obtained and the other obligations of AAF under this section have been met. No cessation of construction or operations required by the Authority under this section shall relieve AAF of any of its other obligations under this Agreement.

- i. To the extent permitted by applicable law, the Authority and AAF hereby waive all rights against each other, and against their consultants, contractors, subcontractors, subcontractors, agents and employees, for damages covered and paid by property insurance obtained by either in connection with the Property. The property insurance policies (including policies for builder's risk insurance) obtained by AAF related to the Property or the Project from and after the Effective Date shall provide waivers of subrogation by endorsement or otherwise.
- EMINENT DOMAIN. AAF acknowledges and agrees that its relationship with the Authority under this Agreement is one of easement holder and no other relationship either expressed or implied shall be deemed to apply to the Parties under this Agreement. Termination of this Agreement by the Authority pursuant to the terms of this Agreement for any cause expressly provided for in this Agreement shall not be deemed a taking under any eminent domain or other law so as to entitle AAF to compensation for any interest suffered or lost as a result of termination of this Agreement, including but not limited to (a) any residual interest in the Agreement, or (b) any other facts or circumstances arising out of or in connection with this Agreement. AAF acknowledges it has no property interest associated with this Agreement under state or federal law other than an easement interest under this Agreement. However, if the Authority commences an actual eminent domain proceeding to condemn any or all of AAF's easement interest in the Property under this Agreement, AAF shall have the right to seek just compensation for damages in accordance with applicable law. The intent of this section is that: (y) AAF shall not be entitled to assert claims in inverse condemnation or for eminent domain damages, fees, or costs (business, severance or otherwise) in any action between the Parties that is fundamentally a dispute over the rights and responsibilities of the Parties under this Agreement (including the rights of the Authority to terminate this Agreement); but (z) AAF will be able to fully defend against a purely eminent domain action brought by the Authority in which the issues are the Authority's right under the Florida Constitution and applicable Florida Statutes to condemn all or a part of AAF's easement interest and the compensation AAF may be entitled to as a result of the condemnation. Notwithstanding the foregoing, or anything to the contrary contained in this Agreement, it is understood and agreed that AAF has not waived, but rather has expressly reserved, any and all rights, remedies and defenses available to AAF, at law and in equity, in the event that any use, occupancy, or title of the Property, or any part thereof, is taken, requisitioned or sold in, by or on account of any actual or threatened eminent domain proceeding or other action by any person or authority not a party to this Agreement having the power to do so through eminent domain or other law, including without limitation, the right to seek just compensation for damages arising out of any such taking and the right to seek adequate

substitute facilities in accordance with law.

## 15. <u>UTILITIES</u>. In addition to the provisions of Section 6.e herein:

- a. AAF shall be responsible, at no cost or expense to the Authority, for locating and identifying potential conflicts between the Project and Current Utilities. In the event that any conflicts exist with Current Utilities as of the Effective Date, AAF shall make such adjustments in the Project, at no cost or expense to the Authority, so as to avoid the conflict and not disturb the utility without the utility's consent, with it being understood and agreed that nothing herein shall prevent AAF from negotiating, and completing, the relocation of any such Current Utilities with the owners thereof at no cost or expense to the Authority.
- For utilities to be installed on the Property pursuant to an Authority permit issued after the Effective Date ("Future Utilities"), the Authority shall deliver advance written notice to AAF describing, with specificity, the use and location thereof. When the Authority receives a completed application for a permit to install Future Utilities, the Authority will provide a copy of the completed application to AAF in the manner provided for notice under this Agreement. AAF shall advise the Authority in writing of any potential conflicts between the identified Future Utility and the Project that would adversely affect AAF's use and operation of the Intercity Passenger Rail Service or the Project in any material respect (with it being understood that it is material for AAF to be able to operate and maintain the Project in a safe manner in order to deliver uninterrupted service to Project Passengers) and any specific written objections to the issuance of the permit within ten (10) days of its receipt of a copy of the completed application from the Authority for the Authority to document appropriate conditions when issuing the permit. AAF shall at the same time provide a copy of its response of any potential conflicts with specific written objections to the Future Utility permit applicant and the Authority's Maintenance Engineer at the local office identified in the Authority's notice. Access by or through the Authority to the Property for any such Future Utilities shall be subject to the terms of Section 6 and Future Utilities shall be installed, permitted, designed, managed, maintained, inspected, repaired and rehabilitated (whether by the Authority, the State or third parties) in compliance with the Authority's rules and in accordance with conditions imposed by the Authority in accordance with this Agreement to avoid an adverse material effect on AAF's use and operation of the Project identified by AAF to the Authority as provided above in this subsection b.
- c. AAF shall be responsible, at no cost to the Authority, for any property damage to (i) any Current Utilities and (ii) Future Utilities about which AAF receives advance written notice from the Authority (describing, with specificity, the use and location thereof), to the extent caused by AAF's construction, operation, or maintenance activities on the Property and AAF shall hold the Authority harmless pursuant to Section 12 to the extent that Claims of property damage to such Current Utilities and Future Utilities are made by the owners of such utilities arising out of any act, error, omission, negligence or willful misconduct of AAF or its employees, agents, contractors, or subcontractors.
  - d. Any utilities providing services to AAF in connection with the operation,

maintenance, improvement or repair of Intercity Passenger Rail Service shall apply to the Authority for a utility permit under its rules applicable thereto if installing facilities in the Property. For purposes hereof, "utility(ies)" shall mean infrastructure such as pipes, wires, pole lines, and appurtenances used to transport or transmit, electricity, steam, gas, water, waste, voice or fiber optic cable, data communications, cellular service, radio signals, or storm water not discharged onto the Property, other facilities and uses treated as utilities by governmental departments of transportation or railroads or any other installation for which a permit is required by the Department in accordance with the Department rules adopted under Section 337.401, Florida Statutes or the rules of the Authority.

Notwithstanding the foregoing, AAF shall have the right, but not the obligation, at all times during the term of this Agreement, to install, design, manage, maintain, repair, and rehabilitate utilities or other services for its own account that are necessary or legally required for the operation, maintenance, improvement or repair of Intercity Passenger Rail Service.

- 16. TAXES AND ASSESSMENTS. AAF shall pay and discharge as they become due, promptly and before any delinquency, all lawfully imposed taxes, assessments, rates, charges, license fees, levies, excises or imposts (collectively, "Taxes"), whether general or special, ordinary or extraordinary, of every name, nature, and kind whatsoever imposed as a result of AAF's use or occupancy of, or conduct of business on or from, the Property or the operation of the Project, including, but not limited to, all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, or charged, including any ad valorem, personal property, or other potentially applicable tax imposed by virtue of the provisions of law, including, but not limited to Chapters 196 or 212, F.S., that may become a lien or charge on or against the Property, AAF's interest in the Property, or any part of the Property. If requested by the Authority, AAF shall obtain and deliver receipts or duplicate receipts for all Taxes required under this Agreement to be paid by AAF. Nothing herein shall prevent AAF from challenging any Taxes.
- 17. <u>EVENTS OF DEFAULT</u>. Each of the following events is hereby declared an event of default ("Event of Default"):

#### a. Event of Default by AAF:

- i. The determination that any warranty, representation or other statement by AAF contained in this Agreement, was known to be false or misleading at the time made in any material respect.
- ii. The entry of an order or decree, with the acquiescence of AAF, appointing a receiver for any part of the Project; or if such order or decree, having been entered without the consent or acquiescence of AAF, shall not be vacated or discharged or stayed on appeal within 120 days after the entry thereof.
- iii. The institution of any proceeding, with the acquiescence of AAF, for the purpose of effecting a composition between AAF and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted; or if such proceeding, having been instituted without the

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consent or acquiescence of AAF, shall not be vacated or discharged or stayed on appeal within 120 days after the institution thereof.

- iv. The institution of any bankruptcy, insolvency or other similar proceeding by AAF under federal or state bankruptcy or insolvency law now or hereafter in effect or the failure by AAF to obtain a dismissal within 120 days after filing of any bankruptcy, insolvency or other similar proceeding against AAF under federal or state bankruptcy or insolvency law now or hereafter in effect.
- v. The failure by AAF to complete construction of the Project and begin providing Intercity Passenger Rail Service from South Florida to Orlando within ten (10) years of the Effective Date of this Agreement (subject to extension for Force Majeure Events).
- vi. The failure to operate Intercity Passenger Rail Service from South Florida to Orlando, following commencement of Intercity Passenger Rail Service for a period longer than three (3) consecutive years (subject to extension for Force Majeure Events).
- vii. Any failure to comply with any other material provisions of this Agreement or failure in the performance or observance of any of the covenants or actions required by this Agreement in any material respects beyond the cure period applicable thereto, if any (a "General Non-compliance Default"), provided, however, that AAF shall have a period of thirty (30) days following receipt of written notice from the Authority within which to cure a General Non-compliance Default; provided, however, that if the General Non-compliance Default reasonably requires more than thirty (30) days to cure, AAF shall have an additional reasonable period to cure the General Non-compliance Default so long as AAF commences to cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.
- b. Events of Default by Authority. Any failure by the Authority to comply with the material provisions of this Agreement or failure in the performance or observance of any of the covenants or actions required by this Agreement in any material respects, provided, however, that the Authority shall have a period of thirty (30) days following receipt of written notice from AAF within which to cure a default; provided, however, that if the default reasonably requires more than thirty (30) days to cure, the Authority shall have an additional reasonable period to cure the default so long as the Authority commences to cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

## 18. REMEDIES.

- a. Upon any Event of Default by AAF, the Authority may pursue any available remedy at law or in equity, including:
  - i. By mandamus or other proceeding at law or in equity, cause AAF to remit to the Authority funds sufficient to enable the Authority to cure the Event of Default.

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- ii. By action or suit in equity, require AAF to account for all moneys owed to the Authority pursuant to this Agreement.
- iii. By action or suit in equity, seek to enjoin any acts or things which may be unlawful or in breach of this Agreement or bring an action for specific performance of AAF's obligations under this Agreement.
- iv. By applying to a court of competent jurisdiction, seek to cause the appointment of a receiver to manage the Project, establish and collect fees and charges, and apply the revenues to the reduction of the obligations under this Agreement.
- v. By suing AAF for payment of amounts due, or becoming due, with interest on overdue payments together with all costs of collection, including attorneys' fees.
- vi. Exercising its self-help right set forth in Subsections 6.b, 6.d and 10.a herein.
- b. Notwithstanding anything to the contrary contained in this Agreement, the Authority shall only have the right to terminate or seek to terminate or rescind this Agreement for an Event of Default under Subsection 17.a.v regarding failure to complete construction or Subsection 17.a.vi regarding failure to operate (each, a "Termination Event of Default"). The Authority's exercise of its right to require the discontinuation of all construction activities and operation of the Project in Section 13 upon a failure of AAF to comply with the insurance requirements thereof, shall not be construed as or deemed to be a Termination Event of Default nor shall it be deemed a taking under any eminent domain or other law. Moreover, for a Termination Event of Default, the termination of this Agreement shall be the Authority's exclusive remedy therefor. If the Authority elects to terminate this Agreement for a Termination Event of Default, the Authority may do so by providing 90 days advance written notice to AAF (subject to the rights of any Mortgagee under this Agreement, including the rights set forth in Sections 25 through 28).
- c. AAF may also elect to terminate this Agreement at any time prior to the commencement of construction of the Project on the Property, for any reason or for no reason, by providing 90 days advance written notice to the Authority (subject to the rights of any Mortgagee under this Agreement, including the rights set forth in Sections 25 through 28). Further, in the event that (i) a lease is executed by and between the Department and AAF for the use of State Road 528 right-of-way owned by the Department for the purposes of constructing and operating an Intercity Passenger Rail Service between Orlando and Miami, and (ii) that lease is terminated, then (iii) AAF may elect to terminate this Agreement by providing 90 days advance written notice to the Authority (subject to the rights of any Mortgagee under this Agreement, including the rights set forth in Sections 25 through 28).
- d. Upon any Event of Default by the Authority, AAF may pursue any available remedy at law or in equity, including the following remedies:

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- i. By mandamus, specific performance action or other proceeding at law or in equity, to require any act not involving the payment of money.
- ii. By action or suit in equity, seek to enjoin any acts or things which may be unlawful or in breach of this Agreement or for the specific performance of the Authority's obligations under this Agreement other than the payment of money or for damages of any kind or nature whatsoever.
- e. Notwithstanding the foregoing, or anything to the contrary in this Agreement, in no event shall AAF or the Authority be liable to each other directly for any indirect, punitive, special or consequential damages whether arising in contract, tort or otherwise; provided, however that this provision shall not nullify or excuse AAF's obligation to defend, indemnify, save and hold harmless the Authority from such damages asserted as third party Claims as set forth in Subsection 12(a) herein. Nothing in this Section 18 shall be construed as a waiver or attempted waiver by the Authority of its sovereign immunity in tort under the Constitution and the laws of the State of Florida. The limitation of remedies provided in this paragraph shall survive the expiration or termination of this Agreement.
- 19. <u>REMEDIES NOT EXCLUSIVE</u>; <u>DELAY AND WAIVER</u>. Except as otherwise expressly set forth in this Agreement, no remedy conferred upon or reserved to the Authority or AAF under this Agreement is exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy. No delay or omission by the Authority or AAF to exercise any right or power accruing as a result of an Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised as often as may be deemed expedient. No waiver of any default under this Agreement shall extend to or affect any subsequent default, whether of the same or different provision of this Agreement, or shall impair consequent rights or remedies.
- 20. <u>TERMINATION</u>. Subject to the rights of any Mortgagee under this Agreement, including the rights set forth in Sections 25 through 28, upon the termination or the expiration of this Agreement, this Agreement shall end and the Authority and AAF shall have no further obligation or commitment under this Agreement, except as to obligations and commitments that are expressly stated to survive the expiration or termination of this Agreement (including the applicable terms of Sections 7, 12, 16, 18, 22, 23 and 28 and subsections d, e, h, and m of Section 32, such as the provisions of Section 7 that apply to AAF's option to remove Rail Improvements and other property or abandonment of same).
- 21. <u>PROHIBITED INTERESTS</u>. Neither AAF nor any of its contractors, subcontractors, or consultants shall enter into any contract with one another, or arrangement in connection with the Project or any property included or planned to be included in the Project, which violates any provision of Chapter 112, Florida Statutes, relating to conflicts of interest and prohibited transactions. AAF shall further diligently abide by all applicable provisions of Florida law regulating AAF with respect to procurement, contracting, and ethics, in all material respects. AAF shall insert in all contracts entered into in connection with the Project subsequent to the date hereof, and shall hereafter require its contractors and consultants to insert in each of their subcontracts the following provision:

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"AAF is governed in its contracts and transactions by provisions of Florida law relating to conflicts of interest, prohibited transactions, and ethics in government. All parties to contracts with AAF relating to this project shall familiarize themselves with Chapter 112, Florida Statutes, and with general Florida law regulating ethical requirements, prohibitions, and limitations with respect to procurement and contracts."

The provisions of this subsection shall not be applicable to any agreement between AAF and its fiscal depositories, or to any agreement for utility services the rates for which are fixed or controlled by a governmental entity.

- 22. <u>ENVIRONMENTAL POLLUTION</u>. Execution of this Agreement constitutes a certification by AAF that the Project will be carried out in conformance with all applicable environmental laws and regulations including those relating to:
- a. the manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of hazardous substances and pollutants;
- b. air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;
  - c. releases of hazardous substances and pollutants;
- d. protection of wildlife, endangered, and threatened species and species of special concern, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;
- e. the operation and closure of underground storage tanks (if any) installed by AAF;
- f. health and safety of employees and other persons with respect to hazardous substances;
- g. notification, documentation, and record keeping requirements relating to the foregoing; and
  - h. the securing of any applicable permits.

AAF will be responsible for any liability in the event of AAF's non-compliance with applicable environmental laws or regulations, including the securing of any applicable permits, and for any liability that results from AAF's (or its contractor's) failure to exercise due care and take reasonable precautions with respect to any hazardous material or substance or pollution existing on the Property, taking into consideration the characteristics of such hazardous material or substance or pollution, in light of all relevant facts and circumstances, and will reimburse the Authority for any loss incurred in connection therewith. If in the course of, and as a result of, construction of the Project remediation of any hazardous material or substance or pollution existing on the Property as of the Effective Date is required by law, AAF shall timely perform, or cause to be performed, such remediation work as is required under applicable law. AAF and the

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Authority shall share equally in the cost of such remediation; provided, however, that if to the Authority's Actual Knowledge by receipt of official written notice from the appropriate state or federal regulatory agency prior to the Effective Date that any such hazardous material or substance or pollution existed on the Property, and the existence thereof was not made known to AAF, in writing, on or before the Effective Date, then the Authority shall be responsible to pay the entire cost of the remediation work.

The provisions of this Section 22 shall survive the expiration or earlier termination of this Agreement.

23. <u>JURY TRIAL WAIVER</u>. AAF AND THE AUTHORITY EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN. The provisions of this Section 23 shall survive the expiration or earlier termination of this Agreement.

# 24. <u>RESTRICTIONS ON TRANSFERS AND PROHIBITION OF ENCUMBRANCES.</u>

- a. AAF shall not assign or transfer any of the rights granted herein without the prior written consent of the Authority, this Easement being executed by the Authority upon the credit and reputation of AAF; provided, however, the foregoing shall not preclude AAF from utilizing its employees or engaging others, such as contractors, operators and agents, in connection with the design, construction, operation and/or maintenance of Intercity Passenger Rail Service within the Property or from granting access to and from the Property in connection therewith. Pursuant to applicable law, including, but not limited to, section 11.066(5), Florida Statutes, the Authority's interest in the Property is not subject to a lien of any kind. Except as provided below, AAF shall not allow any mortgages, liens, or other encumbrances to attach to the Property as a result of the financing or construction of the Project, or use of the Property by AAF and AAF indemnifies and agrees to hold the Authority harmless of and from any such encumbrances.
- b. AAF may, without the Authority's consent, effect an assignment or a transfer of an equity interest in AAF as follows (each a "Permitted Transfer"): (i) in connection with a transaction with (A) a parent, subsidiary, affiliate, division, or entity controlling, controlled by, or under common control with AAF; or (B) a successor entity as a result of merger, consolidation, reorganization, or government action; or (ii) any transfer by the member of AAF of a portion of its ownership interests in AAF to an entity provided the member of AAF retains an interest therein. In addition, any change in ownership of the equity interests of AAF as a result of a public offering of stock, and any transfer of the equity interests of AAF by persons or parties through the "over-the-counter market" or through any recognized stock exchange or through a tender offer, shall not be deemed to be an assignment requiring the Authority's consent.
  - c. If after completion of construction of the Project and the provision of bona

fide Intercity Passenger Rail Service to the paying public on the Property for a period of at least three years, AAF requests the Authority's consent in connection with an assignment of this Agreement that is not a Permitted Transfer, the Authority's consent will not be unreasonably withheld if there is no existing uncured Event of Default by AAF and the Authority reasonably determines, in its sole discretion, that the proposed transferee is capable of performing the obligations and covenants of AAF under this Agreement, which determination shall be based upon and take into account the following factors: (1) the financial strength and integrity of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective affiliates; (2) the experience of the proposed transferee or any operator to be engaged by the proposed transferee in operating rail systems similar to the Project and performing other relevant projects; (3) whether the proposed transferee, its proposed operator, or any of their respective officers, directors, managers, general partners, or senior management personnel, (a) have been convicted of any felony or misdemeanor involving fraudulent behavior, any violation of state or federal antitrust laws with respect to a public contract, or any violation of any state or federal law involving bribery, collusion, conspiracy, or material misrepresentation with respect to a public contract, or (b) have failed to resolve any material regulatory compliance issue for a sustained period of time; and (4) any law which would prohibit the Authority from directly entering into this Agreement with the proposed transferee. Any proposed transferee shall be required to deliver to the Authority a certificate in which the proposed transferee makes the representations and warranties covering the matters set forth in Section 31(i) of this Agreement. A transferee must agree to be bound by all the terms and conditions of this Agreement from and after the effective date of the transfer. No transfer shall relieve AAF of its obligations under this Agreement with respect to any period after the Effective Date through the effective date of the transfer. Before considered effective, documentation of the assignment or transfer of this Easement shall be recorded in the Official Records of Orange County, Florida, and the cost of such recording and any associated documentary stamps shall be at the expense of AAF or the transferee.

- d. The Authority may, without the consent of AAF or the Mortgagee, at anytime during the Term hereof transfer this Agreement and it rights and obligations hereunder to such agency of the State of Florida or department of the State of Florida that by act of the state legislature becomes the owner of the Property by way of merger, consolidation or reorganization.
- 25. MORTGAGES. AAF may, at its sole cost and expense and without the consent of the Authority, execute, deliver and cause or permit to be recorded against AAF's interest in the Property and AAF's improvements and facilities on the Property (excluding the Road Improvements whether on or adjacent to the Property), one or more Mortgages (as hereinafter defined), if at the time any such Mortgage is executed and delivered to the Mortgagee, no Event of Default by AAF exists or if an existing Event of Default by AAF will be cured in connection with the Mortgage, and upon and subject to the following terms and conditions:
- a. a Mortgage may not secure any debt issued by any person other than AAF or for any purpose other than the Project;
- b. no Mortgage or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against any or all of AAF's interest in

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the Property shall extend to or affect the fee simple interest in the Property, the Authority's interest hereunder, or any other interest and estate of the Authority in and to the Property or any part thereof;

- c. the Authority shall have no liability whatsoever for payment of the principal sum secured by any Mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder, and the Mortgagee shall not be entitled to seek any damages or other amounts against the Authority for any or all of the same;
- d. the Authority shall have no obligation to any Mortgagee in the enforcement of the Authority's rights and remedies herein and by law except as expressly set forth in this Agreement and provided further that none of Mortgagee provisions shall (i) be operative unless such Mortgagee has provided the Authority with notice of its Mortgage and a true and complete copy of the of the Mortgage or (ii) remain operative unless such Mortgagee has provided the Authority with true and complete copies of any amendments or modifications to its Mortgage promptly after any such amendments or modifications have been executed by the parties thereto;
- e. each Mortgage shall provide that if an event of default under the Mortgage has occurred and is continuing and the Mortgagee gives notice of such event of default to AAF, then the Mortgagee shall give notice of such default to the Authority;
- f. subject to the terms of this Agreement and except as specified herein, all rights acquired by a Mortgagee under any Mortgage shall be subject and subordinate to all of the provisions of this Agreement and to all of the rights of the Authority under this Agreement;
- g. while any Mortgage is outstanding, the Authority shall not agree to any amendment to or modification of this Agreement or agree to a voluntary surrender or termination of this Agreement by AAF without the consent of the Mortgagee (with it being understood that this does not affect the Authority's right to terminate this Agreement under the provisions of Section 18 herein, subject to the rights of any Mortgagee under Sections 25 through 29);
- h. notwithstanding any enforcement of the security of any Mortgage, AAF shall remain responsible to the Authority for the performance and observance of all of AAF's covenants and obligations under this Agreement;
- i. except as expressly provided in this Agreement, a Mortgagee shall not, by virtue of its Mortgage, acquire any greater rights or interest in the Property than AAF has at any applicable time under this Agreement;
- j. each Mortgagee, the Authority and AAF shall enter into a consent agreement in a form acceptable to all parties whereby all parties consent to the assignment of the Mortgage to an agent in connection with the financing of the Mortgage; provided that such consent agreement shall be in a customary form and shall include the rights and protections provided to the Mortgagee in this Agreement and shall not: (i) obligate the Authority in any manner not contained in this Agreement, (ii) contain any representations, warranties or

indemnifications by the Authority not contained in this Agreement, and (iii) contain any remedy against the Authority not contained in this Agreement. The remedies under said consent agreement shall be also so limited. Nothing in this subsection j shall obligate the Authority to consent to service of process in connection with any legal proceeding brought outside of Orange County, Florida or outside of the State of Florida (or the commencement or prosecution of any legal proceeding brought outside of Orange County, Florida or the State of Florida) or enter into any agreement not governed by Florida law; and

k. whenever a Mortgage exists as to which the Authority has been provided notice in accordance with the requirements of this Agreement, and until the obligations of AAF secured by such Mortgage have been completely paid and performed and the Mortgage has been discharged, the Authority shall send to the Mortgagee, by certified or registered mail, a true, correct and complete copy of any notice to AAF of a default by AAF under the Agreement at the same time as and whenever any such notice of default shall be given by the Authority to AAF, addressed to Mortgagee at the address last furnished to the Authority by such Mortgagee. No notice by the Authority shall be deemed to have been given unless and until a copy thereof shall have been so given to and received by Mortgagee.

AAF or any Mortgagee shall notify the Authority in writing of the execution of such Mortgage and provide the Authority a true and complete copy thereof, and from time to time, true and complete copies of all modifications thereof promptly after any such modifications are executed, and specify the name and place for service of notice upon such Mortgagee. Upon such notification to the Authority that AAF has entered, or is about to enter, into a Mortgage, the Authority hereby agrees for the benefit of such Mortgagee, and within thirty (30) days after written request by AAF, to execute and deliver to AAF and Mortgagee an agreement, in a customary form acceptable to all parties which shall include the rights and protections provided to the Mortgagee in this Agreement and shall not: (i) obligate the Authority in any manner not contained in this Agreement, (ii) contain any representations, warranties or indemnifications by the Authority not contained in this Agreement, or (iii) contain any remedy against the Authority not contained in this Agreement. Nothing herein shall obligate the Authority to consent to service of process in connection with any legal proceeding brought outside of Orange County, Florida or outside the State of Florida (or the commencement or prosecution of any legal proceeding brought outside of Orange County, Florida or outside the State of Florida) or enter into any agreement not governed by Florida law. Notwithstanding anything in this Agreement to the contrary, if there is more than one Mortgagee, only that Mortgagee, to the exclusion of all other Mortgagees, which AAF or the Mortgage first notified the Authority of the execution of a Mortgage, shall have the rights as a Mortgagee under this Agreement, unless such Mortgagee has designated in writing another Mortgagee to exercise such rights; provided, however, that a notice to the Authority of a Mortgage may name more than one Mortgagee and the rights referred to in this Agreement may extend to all Mortgagees named therein if such notice is submitted by a representative of all such Mortgagees (which representative may itself be a Mortgagee). Any references in this Agreement to the "Mortgagee" shall be references to the Mortgagee or representative of more than one Mortgagee, acting on behalf of such Mortgagees, the notice of whose Mortgage was earliest received by the Authority unless the context otherwise requires.

For purposes hereof, a "Mortgage" is a mortgage or other similar security agreements given to any Mortgagee of the easement interest of AAF hereunder, and shall be deemed to

include any mortgage or trust indenture under which this Agreement shall have been encumbered, and including any and all renewals, modifications, advances, additions, and extensions of or to a Mortgage. A "Mortgagee" is a public or private lending source or institution, federal, state, county or municipal governmental agency or bureau, bank, savings and loan, pension fund, insurance company, real estate investment trust, tax credit syndication entity, or other real estate investment or lending entity, savings bank, whether local, national or international, and/or the holder of any purchase money mortgage given back to a transferor, that is or becomes the holder, mortgagee or beneficiary under any Mortgage and the successors or assigns of such holder, mortgagee or beneficiary, and shall be deemed to include, without limitation, the trustee under any such trust indenture and the successors or assigns of such trust. A parent, subsidiary, affiliate, division, or entity controlling, controlled by, or under common control with AAF shall not be a "Mortgagee" for the purposes of this Agreement.

26. MORTGAGEE'S RIGHT TO CURE. AAF irrevocably directs that the Authority accept, and the Authority agrees to accept, performance and compliance by a Mortgagee of and with any term, covenant, agreement, provision, condition or limitation on AAF's part to be kept, observed or performed under the Agreement with the same force and effect as though kept, observed or performed by AAF. Notwithstanding anything provided to the contrary in the Agreement, the Agreement shall not be terminated because of a Termination Event of Default until and unless: (i) notice of any such Termination Event of Default shall have been delivered to Mortgagee in accordance with the provisions of this Agreement; and (ii) the Mortgagee has not cured such default within ninety (90) days following receipt of such notice or, (iii) if such default is curable but cannot be cured within such time period, the Mortgagee has not notified the Authority within such time period that it intends to cure such default, has not diligently commenced to cure such default, or does not prosecute such cure to completion within one hundred eighty (180) days.

Furthermore, notwithstanding anything to the contrary contained herein, if Mortgagee determines to foreclose or cause its designee to foreclose the Mortgage or to acquire or cause its designee to acquire AAF's interest in the Property or to succeed or cause its designee to succeed to AAF's possessory rights with respect to the Property or to appoint a receiver before it effectuates the cure of any AAF default, the cure periods set forth above shall be extended by any period during which foreclosure proceedings, or legal proceedings to succeed to AAF's possessory rights, or proceedings to appoint the receiver are conducted, as the case may be. Any such proceedings shall be commenced promptly after the notice of default is delivered to Mortgagee and shall be diligently prosecuted to conclusion and the Authority is hereby granted the right, but not the obligation, to appear in such proceedings to monitor the diligent prosecution thereof and to urge the Court to require the parties to so proceed with diligence. Promptly after Mortgagee or a designee of Mortgagee acquires the Property pursuant to foreclosure proceedings or otherwise or succeeds to AAF's possessory rights or promptly after a receiver is appointed, as the case may be, Mortgagee or its designee shall cure said default.

27. <u>RIGHTS OF A MORTGAGEE</u>. The Authority hereby consents to the following rights of a Mortgagee, and agrees that a Mortgage may contain provisions for any or all of the following:

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- a. An assignment of AAF's share of the net proceeds from available insurance coverage or from any award or other compensation resulting from a total or partial taking of the Property by condemnation (including a Mortgagee's right to disburse such proceeds in accordance with the terms of the Mortgage);
- b. The entry by Mortgagee upon the Property, upon reasonable notice to the Authority and AAF as necessary to insure the safety of the Project operations and the safety of the travelling public, to view the state of the Property;
- c. A default by AAF under the Agreement being deemed to constitute a default under the Mortgage;
- d. An assignment of AAF's right, if any, to terminate, cancel, modify, change, supplement, alter, renew, or amend the Agreement;
- e. The following rights and remedies (among others) to be available to Mortgagee upon the default under any Mortgage (although the Authority has no responsibility or obligation, to cause these rights and remedies to occur):
  - i. To the extent permitted by applicable law, the foreclosure of the Mortgage pursuant to a power of sale, by judicial proceedings or other lawful means and the sale of AAF's interest in the Property to the purchaser at the foreclosure sale and a subsequent sale or transfer of AAF's interest in the Property by such purchaser if the purchaser is a Mortgagee or its nominee or designee; provided however, that the right of a Mortgagee to sell or transfer AAF's interest in the Property will be subject to:
    - a. the proposed transferee (unless it is the Mortgagee or its designee or nominee) entering into an agreement with the Authority, in form and substance satisfactory to the Authority in its sole discretion, wherein the transferee acquires the rights and assumes the obligations of AAF and agrees to perform and observe all of the obligations and covenants of AAF under this Agreement and provided such transferee has and presents evidence to the satisfaction of the Authority that such transferee has a net worth sufficient to meet the assumed obligations of AAF under this Agreement and, further, that before considered effective, such agreement shall be recorded in the Official Records of Orange County, Florida, and the cost of such recording and any associated documentary stamps shall be at the expense of the Mortgagee or the proposed transferee.;
    - b. the proposed transfer, and subsequent operation of the Project, being permitted by applicable law and being permitted by the applicable rules and regulations of all entities having jurisdiction over the Project, including, but not limited to, the FRA; and

- c. the Authority's reasonable determination that the proposed transferee (unless it is the Mortgagee or its designee or nominee) is capable of performing the obligations and covenants of AAF under this Agreement, which determination shall be based upon and take into account the following factors: (1) the financial strength and integrity of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective affiliates; (2) the experience of the proposed transferee or any operator to be engaged by the proposed transferee in operating rail systems similar to the Project and performing other relevant projects; (3) the background and reputation of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective affiliates (including the absence of criminal, civil or regulatory claims or actions against or initiated by any such person and the quality of any such person's past or present performance on other projects).
- ii. The appointment of a receiver, irrespective of whether a Mortgagee accelerates the maturity of all indebtedness secured by the Mortgage;
- iii. The right of a Mortgagee or the receiver appointed under subparagraph (ii) above to take possession of the easement rights, to manage and operate the Project, to collect the income generated by the Project or the operation thereof and to cure any default under the Mortgage or any default by AAF under the Agreement; or
- iv. An assignment of AAF's easement interest under the Agreement and to any deposit of cash, securities or other property of AAF to secure the performance of all obligations of AAF to the Mortgage, including, without limitation, the covenants, conditions and agreements contained in the Mortgage, in the premiums for or dividends upon any insurance provided for the benefit of any Mortgagee or required by the terms of the Agreement, as well as in all refunds or rebates of taxes or assessments upon or other charges against the Property, whether paid or to be paid;
- f. If the ownership of the fee to the Property and easement interests provided for herein should become vested in the same person or entity, then as long as the Mortgage shall remain outstanding, at Mortgagee's option, such occurrence shall not result in a merger of title. Rather, this Agreement and the Mortgage lien recorded against such easement rights shall remain in full force and effect; and
- g. The Mortgage may be assigned by Mortgagee in accordance with its terms provided the assignment contains the assignee's acknowledgment that it is bound by the provisions herein and promptly after an assignment written notice will be provided to the Authority, and the assignee will provide the Authority with a true and complete copy of such assignment, and such assignee's contact information for notice purposes.

During any period in which the Mortgagee itself or by an agent or a receiver or a receiver and manager is the owner, or is in control or possession of, AAF's interest in the Property, it shall be bound by all liabilities and obligations of AAF accruing under this Agreement during such period. Once the Mortgagee goes out of possession or control of AAF's interest in the Property or transfers AAF's interest in the Property to another person in accordance with the provisions of this Agreement, the Mortgagee shall cease to be responsible for any of AAF's obligations under this Agreement accruing thereafter, and to the extent assumed by any transferee or any other person reasonably acceptable to the Authority, for any of AAF's obligations under this Agreement accrued during the period in which the Mortgagee itself or by an agent or a receiver and manager was the owner, or was in control or possession of, AAF's interest in the Property, and shall cease to be entitled to any of AAF's rights and benefits contained in this Agreement, except, if the Mortgage remains outstanding, by way of security.

- 28. <u>NEW EASEMENT AFTER TERMINATION</u>. If this Agreement is terminated for any reason or is extinguished for any reason (including without limitation a rejection of this Agreement in a bankruptcy or other insolvency proceeding), the Mortgagee may elect to demand a new agreement granting the Easement in and to the Property granted by this Agreement (the "New Agreement") by written notice to the Authority within thirty (30) days after such termination. The Authority agrees, if there are outstanding obligations of AAF to the Mortgagee, to enter into a New Agreement with the Mortgagee (or its designee or nominee; provided that such designee or nominee either is controlled by the Mortgagee or meets the requirements of Section 27(e)(i)(a) (b) and (c)) for the remainder of the Term of this Agreement upon all of the covenants, agreements, terms, provisions and limitations of this Agreement, effective as of the date of such termination. The Authority's obligation to enter into a New Agreement pursuant to the preceding sentence is subject to the following requirements, conditions, and provisions:
- a. The New Agreement shall be for the remainder of the Term of the Agreement, effective on the date of termination, and shall contain the same covenants, agreements, conditions, provisions, restrictions and limitations as are then contained in the Agreement.
- b. The New Agreement shall be executed by the parties and recorded in the in the Official Records of Orange County, Florida within thirty (30) days after receipt by the Authority of notice of Mortgagee's or such other acquiring person's election to enter into a New Agreement.
- c. Any New Agreement and the easement interest created thereby shall, subject to the same conditions contained in the Agreement, continue to maintain the same priority as the Agreement with regard to any Mortgage or any other lien, charge or encumbrance affecting the Property. Concurrently with the execution, delivery and recording of the New Agreement in the Official Records of Orange County, Florida, the Authority shall assign to the Mortgagee or easement holder named therein all of its right, title and interest in and to moneys, if any, then held by or payable by the Authority under the Agreement to which AAF would have been entitled to receive but for the termination of the Agreement.
- d. If AAF refuses to surrender possession of its easement rights to the Property, the Authority shall, at the request of Mortgagee or such other acquiring person, institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or

remove AAF and all other occupants who are not authorized to remain in possession hereunder to the extent the Authority has the right to do so under the Agreement and applicable law. Any such action taken by the Authority at the request of Mortgagee or such other acquiring person shall be at Mortgagee's or such other acquiring person's sole expense which shall be paid in advance on a retainer basis with the retainer to be replenished, in advance, as needed from time to time.

The provisions of this Section 28 shall survive the expiration or earlier termination of this Agreement.

- 29. GRANTOR'S LIENS. In order to facilitate a Mortgage as well as other financing by AAF for trade fixtures and equipment, the Authority hereby waives and releases any statutory, constitutional, and/or contractual liens against the assets or property of AAF. Although such waiver and release is hereby deemed to be automatic and self-executing, the Authority agrees to execute and deliver to AAF within thirty (30) days following request therefor such waivers and confirmations as AAF may request to evidence the foregoing waiver and release, as well as consents to assignment that may be reasonably requested, provided same shall not: (i) obligate the Authority in any manner not contained in this Agreement, (ii) contain any representations, warranties or indemnifications by the Authority not contained in this Agreement, and (iii) contain any remedy against the Authority not contained in this Agreement. Nothing herein shall obligate the Authority to consent to service of process in connection with any legal proceeding brought outside of Orange County, Florida or outside the State of Florida (or the commencement or prosecution of any legal proceeding brought outside of Orange County, Florida or outside the State of Florida law.
- AAF, without the Authority's consent, may enter into concession and similar agreements for food and beverage service, Wi-Fi service, cellular access and any such other various services as set forth in Exhibit "C" hereto exclusively for the benefit of Project Passengers and AAF's Project crew and contractors/vendors engaged in the construction, operation, or maintenance of the Project. AAF, from time to time, may request the Authority's consent to provide other services to Project Passengers that are not set forth in this Section 30 or in Exhibit "C", which consent will not be unreasonably withheld but which shall be subject to the issuance of an opinion of the Authority's Bond Counsel (the expense of which will be borne by AAF with each such request) that the same does not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Authority's then outstanding bonds.

## 31. REPRESENTATIONS.

- a. AAF warrants, represents and covenants that:
- i. AAF is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is duly qualified to conduct business in the State.
- ii. AAF has full power and authority to enter into this Agreement and to comply with the provisions of this Agreement.

- iii. This Agreement has been duly authorized, executed and delivered by AAF and constitutes a valid and legally binding obligation of AAF, enforceable against AAF in accordance with the terms hereof.
- iv. No consent is required to be obtained by AAF from, and no notice or filing is required to be given by AAF to or made by AAF with, any person (including any Governmental Authority) in connection with the execution, delivery and performance by AAF of this Agreement. The foregoing does not apply to the necessary licenses, permits, and other approvals to be applied for by AAF in connection with the Project.
- v. AAF currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in material default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement, in any material respect.
- vi. There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of AAF's knowledge, threatened, which seeks to restrain or enjoin AAF from entering into or complying with this Agreement.
- vii. The execution, delivery, and performance of this Agreement will not conflict with, be inconsistent with, or result in any breach or default of any of the terms, covenants, conditions, or provisions of any indenture, bank loan, credit agreement, or other agreement or contract of any kind or nature to which AAF is a party or by which AAF may be bound.
- viii. AAF, as of the Effective Date, has a net worth and will take all steps and actions to enable it to maintain a net worth throughout the Term of this Agreement sufficient to meet its obligations hereunder (it being understood that this representation is a material consideration for the Authority entering into this Agreement).
- ix. AAF has obtained or reasonably expects that it will obtain all required permits for the construction and operation of the Project on the Property and is not aware of any circumstance presently existing that would materially adversely affect AAF from obtaining any such permits.
  - b. The Authority warrants, represents and covenants that:
- i. The Authority has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof. The Authority has approved the execution and delivery of this Agreement and authorized the performance of its obligations hereunder.
- ii. This Agreement has been duly authorized, executed and delivered by the Authority and constitutes a valid and legally binding obligation of the Authority,

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enforceable against the Authority in accordance with the terms hereof.

- iii. No consent is required to be obtained by the Authority from, and no notice or filing is required to be given by the Authority to or made by the Authority with, any person (including any Governmental Authority) in connection with the execution, delivery and performance by the Authority of this Agreement which has not been obtained.
- iv. To the Authority's Actual Knowledge on the Effective Date, it has no knowledge of any action, suit or proceeding, at law or in equity, or before or by any governmental authority, pending against the Authority as of the Effective Date which would (a) have a material adverse effect on the Property or (b) materially affect the validity or enforceability of this Agreement.
- v. To the Authority's Actual Knowledge on the Effective Date, it has no knowledge of any pending or threatened claims against the Authority as of the Effective Date arising out of hazardous substances the outcome of which could have a material adverse effect on the Property or this Agreement. The Authority has no duty to supplement this representation at any time (but this does not modify the agreement of the Parties regarding hazardous materials existing as of the Effective Date as set forth in Section 22 above).
- vi. As of the Effective Date, the Authority is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in material default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement, in any material respect.

The phrase "Authority's Actual Knowledge," shall be deemed to refer exclusively to matters within the actual knowledge of the persons serving as the Authority's Executive Director as of the Effective Date with respect to Subsection 31.b.iv and, only with respect to Section 22 and Subsection 31.b.v, the Authority's Deputy Executive Director (responsible for engineering, operations, construction and maintenance of the Authority's System) as of the Effective Date (the "Authority's Knowledge Individuals"), who have no obligation to engage in any independent due diligence, investigation or inquiry with respect to any of the representations and warranties contained in this Agreement. Without limiting the foregoing, AAF acknowledges that the Authority's Knowledge Individuals have not performed and are not obligated to perform any investigation or review of any files or other information in the possession of the Authority, or to make any inquiry of any persons, to take any other actions in connection with the representations and warranties of the Authority set forth in this Agreement, or to supplement the applicable representations at any time and that the Authority's Knowledge Individuals shall have no personal liability with regard to the representations and warranties contained in this Agreement.

## 32. <u>MISCELLANEOUS</u>.

- a. AAF acknowledges that it has reviewed this Agreement, is familiar with its terms, and has adequate opportunity to review this Agreement with legal counsel of AAF's choosing. AAF has entered this Agreement freely and voluntarily. The Authority acknowledges that it has reviewed this Agreement, is familiar with its terms, and has adequate opportunity to review this Agreement with legal counsel of the Authority's choosing. The Authority has entered this Agreement freely and voluntarily. This Agreement contains the complete understanding of the Parties with respect to the subject matter of this Agreement. All prior understandings and agreements, oral or written, made between the Parties are merged in this Agreement, which alone, fully and completely expresses the agreement between the Authority and AAF with respect to the terms of this Agreement. No modification, waiver, or amendment of this Agreement or any of its conditions or provisions shall be binding upon the Authority or AAF unless in writing and signed by both Parties.
- b. By execution of the Agreement, AAF represents that it has not paid and, also, agrees not to pay, any bonus or commission for the purpose of the easement contemplated by this Agreement in violation of applicable law.
- c. AAF understands and agrees that except as otherwise expressly set forth in this Agreement, this easement is absolutely net to the Authority so that AAF shall be responsible for all costs and expenses as to operating, maintenance, repair, taxes, insurance, assessments, governmental charges, electricity, lighting, power, gas, water, telephone, or any other utility or service used by AAF on the Property for the Project. The Authority is responsible for any such utility bills for the Road Improvements and for installations of the Authority that may be located on the Property.
- d. Nothing in this Agreement or in any documents executed pursuant to the terms of this Agreement shall be construed as a waiver or attempted waiver by the Authority of its sovereign immunity in tort under the Constitution and laws of the State of Florida.
- e. This Agreement is governed by the laws of the State of Florida, and any applicable laws of the United States of America. Venue for any action arising under this Agreement shall exclusively be in Orange County, Florida.
- f. If any term or provision of this Agreement is found to be invalid, illegal, or unenforceable, the remainder of this Agreement will remain in full force and effect. The Authority and AAF shall endeavor in good-faith negotiations to replace the invalid, illegal, or unenforceable provision with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal, or unenforceable provision.
- g. AAF shall be in full compliance with this Agreement and all applicable federal, state, and local laws, rules, or regulations in effect now or in the future, and applicable judicial or administrative decisions having the effect of law, of any governmental authority having jurisdiction over the Property. If any governmental entity with jurisdiction over AAF, other than the Authority, renders an administrative decision or has rendered in its favor a judicial decision having the effect of law, that AAF's operation on the Property is out of compliance with

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its applicable laws, rules, or regulations, such noncompliance will constitute a default under this Agreement (subject to applicable notice and cure periods, and subject to AAF's right to contest and/or appeal any such decision).

- h. AAF shall allow public access to all documents, papers, letters or other materials, made or received by AAF in connection with this Agreement and the easement rights to the Property, to the extent such access is required because such documents, papers, letters or other materials are subject to the provisions of s. 24(a) of the State Constitution or Chapter 119, F.S.
- i. The headings used herein are for convenience of reference only and shall not constitute a part hereof or affect the construction or interpretation hereof.
- j. All vehicles required by AAF to service, supply, inspect, or otherwise conduct its operations, including vehicles operated by employees or suppliers and distributors, commuting to and from the Property shall pay such tolls on the Authority's System as are of general applicability to the public.
- k. No affixed, third-party advertising signs of any kind are permitted on the Property. Signs affixed to the train, signs advertising the Project and facilities and services provided as part of the Project, as well as construction and similar financing signs, shall not be deemed to violate this paragraph, however no signs may be affixed to the Property except in compliance with the provisions of chapter 479, Florida Statutes as applicable.
- l. AAF agrees and warrants that in the performance of this Agreement, it will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, sex, religion, or national origin in any manner prohibited by the laws of the United States or the State of Florida applicable to AAF. The Authority shall consider AAF's knowing employment of unauthorized aliens in violation of Section 274(e) of the Immigration and Nationalization Act to be a default under this Agreement.
- m. This Agreement shall not create any third party beneficiary under this Agreement, nor shall this Agreement authorize anyone not a party to this Agreement to maintain a suit against the Authority or AAF pursuant to the terms of this Agreement.
- n. All Exhibits attached to this Agreement are incorporated in this Agreement.
- o. All notices, demands, or other writing required to be given, made, or sent, or which may be given, made, or sent, by either party to the other, shall be deemed to have been fully given, made, or sent when made in writing and either personally delivered by hand, overnight courier, or deposited in the United States mail, registered certified and postage prepaid, and sent to the following:

## To Authority:

Central Florida Expressway Authority 4974 ORL Tower Road Orlando, Florida 32807 Attention: Laura Kelley Executive Director

### With a copy to:

Central Florida Expressway Authority 4974 ORL Tower Road Orlando, Florida 32807 Attention: Joe Passiatore, Esq. General Counsel To AAF:

All Aboard Florida – Operations LLC 2855 Le Jeune Road, 4<sup>th</sup> Floor Coral Gables, FL 33134 Attention: P. Michael Reininger

## With copies to:

All Aboard Florida – Operations LLC 2855 Le Jeune Road, 4<sup>th</sup> Floor, Coral Gables, FL 33134 Attention: Kolleen O. P. Cobb

Akerman Senterfitt 350 East Las Olas Boulevard, Suite 1600 Fort Lauderdale, FL 33301 Attention: Eric D. Rapkin

- p. This Agreement may be executed in two or more counterparts and duplicate originals which have been signed and delivered by each of the Parties (a party may execute a copy of this Agreement and deliver it by e-mail transmission; provided, however, that any such party shall promptly deliver an original signed copy of this Agreement).
- q. Each of the Parties shall, from time to time, upon thirty (30) days' written request, provide to the requesting party or any other person identified by the requesting party with an estoppel certificate stating whether the other party is in default hereunder, whether this Agreement is in full force and effect, whether this Agreement has been modified, and containing such other certifications as may be reasonably requested.
- r. AAF shall have access to the Property 24 hours per day, 7 days per week, 365 days per year.
  - s. This Agreement shall be binding upon and inure to the benefit of the

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Parties hereto and their respective successors and permitted assigns. Unless required by law or government rule or regulation, the Authority will not convey fee title to any portion of the Property to any other person not a unit of the executive branch of the government of the State of Florida.

- t. This Agreement may be recorded in any public records.
- u. The provisions of subsections d, e, h, and m of this Section 32 shall survive the expiration or earlier termination of this Agreement.
- 33. <u>FORCE MAJEURE EVENTS</u>. Notwithstanding anything to the contrary contained in this Agreement, should any fire or other casualty, act of nature, earthquake, flood, hurricane, lightning, tornado, epidemic, landslide, war, terrorism, riot, civil commotion, general unavailability of materials, strike, slowdown, labor dispute, governmental laws or regulations, delays caused by the other party to this Agreement, or other occurrence beyond AAF's or the Authority's control ("Force Majeure Event") prevent performance of this Agreement in accordance with its provisions, provided that such event does not arise by reason of the negligence or misconduct of the performing party, performance of this Agreement by either party shall be suspended or excused to the extent commensurate with such occurrence.
- 34. <u>REASONABLENESS</u>. Unless this Agreement specifically provides for the granting of consent or approval at a party's sole discretion, then consents and approvals which may be given or requested by a party under this Agreement shall not (whether or not so indicated elsewhere in this Agreement) be unreasonably withheld or conditioned by such party and shall be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. Upon disapproval of any request for a consent or approval, the disapproving party shall, together with notice of such disapproval, submit to the requesting party a written statement setting forth with specificity its reasons for such disapproval. When this Agreement specifically provides for the granting of consent or approval at a party's sole discretion, the consent or approval may be granted or withheld in the party's sole, absolute and unfettered discretion without regard to any standard, including but not by way of limitation, any standard of reasonableness.
- 35. EXCLUSIVE PASSENGER RAIL USE. Notwithstanding the rights expressly reserved to the Authority in this Agreement in connection with the Authority's use of the Property, in no event shall the Authority enter into any other easement or agreement for (a) all or any part of the Property which would expressly allow or permit any such property to be utilized for purposes of providing Intercity Passenger Rail Service between Orlando and any point(s) in Palm Beach County, Broward County, and/or Miami-Dade County, or (b) except as otherwise required by law or act of the Legislature, any other portion of the right-of-way owned by the Authority, or any other Authority property which would expressly allow or permit any such property to be utilized for purposes of providing Intercity Passenger Rail Service between Orlando and any point(s) in Palm Beach County, Broward County, and/or Miami-Dade County. This restriction shall not be construed to prohibit the Authority from allowing the establishment of any passenger rail service (including commuter service) that does not connect Orlando to any points in Palm Beach County, Broward County, and/or Miami-Dade County. The covenants of

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the Authority expressed in this section shall not be construed to restrict the use by a third party of any property other than the Property that is currently owned by the Authority, but which hereafter is sold, transferred, or otherwise conveyed by the Authority to a third party under applicable provisions of law permitting the sale and transfer of property which the Authority determines is not needed for a transportation facility. A determination by a court or other governmental agency with jurisdiction over the subject matter that the covenants of the Authority expressed in this section are: (i) wholly or partially void or unenforceable; (ii) otherwise in excess of the Authority's statutory authority; or (iii) otherwise not controlling on the State of Florida, the Authority, or its successors, shall not constitute an Event of Default by the Authority and neither the State nor the Authority shall have any liability to AAF, any Mortgagee, or any other person as a result thereof.

[Signatures follow on the next page.]

The Parties have executed this Agreement effective as of the Effective Date.

#### **AUTHORITY:**

Central Florida Expressway Authority, a body corporate and politic and an agency of the State of Florida

Welton Cadwell, Jr., Chairman

Witnesses:

Print Name: CARRIE PAKER

Print Name: Legla Lamante

Legal Review by Shutts & Bowen LLP as Right-of-Way Counsel to the Authority, acting upon direction of the Authority's General Counsel, for the sole use and reliance of the Authority and its Board:

STATE OF FLORIDA ) ss:

**COUNTY OF ORANGE** 

The foregoing instrument was acknowledged before me this day of December, 2015, by Welton Cadwell, as Chairman of the Central Florida Expressway Authority, a body corporate and politic and an agency of the State of Florida, on behalf of the Central Florida Expressway Authority. He is personally known to me.

DARLEEN MAZZILLO

Notary Public - State of Florida

My Comm. Expires Mar 25, 2017

Commission # EE 879488

Bonded Through National Notary Assn.

Notary Public Print name: Daneen Mazillo

My commission expires: 3/25/17

Witnesses:  Witnesses:  Monthson Print Name: Ambarina Perez
Print Name: TLSSICA AWARE
) )ss:
) Lith
ras acknowledged before me this day of December, 2015, to of All Aboard Florida – Operations LLC, a Delaware limited limited liability company. She is personally known to me or identification.
Notary Public Print name:
My commission expires:

My commission expires:

### 20150654568 Page 60 of 166

# EXHIBIT "A" DESCRIPTION OF THE OVERALL PROPERTY (SHOWING THE PROPERTY PLUS THE SOUTHERN SLOPE PROPERTY AND NORTHERN SLOPE PROPERTY, AS APPLICABLE)

PARCEL No. 981 of SR 528 PARCELS (at OIA)

ALL ABOARD FLORIDA RAIL CORRIDOR PURPOSE:

ESTATE: PERMANENT EASEMENT

A parcel of land lying in the Sections 34 and 35, Township 23 South, Range 30 East, Orange County, Florida, lying within and adjacent to the existing limited access right of way of State Road 528 as depicted on Orlando Orange County Expressway Authority Map Section 1.2 and Airport Interchange-Bee Line Improvements Right of Way Maps, being more particularly described as follows:

Commence at 6"x6" concrete monument marking the Northeast Corner of Section 34, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°22'19"East, along the East line of the Northeast 1/4 of said Section 34, a distance of 552.65 feet to the POINT OF BEGINNING; thence South 79°11'53"East, a distance of 15.10 feet to the existing southerly limited access right of way line of said State Road 528; thence along said southerly limited access right of way line, run North 80°13'05"West a distance of 2048.32 feet to a point on a curve with a radius of 5579.58 feet, concave to the south; thence westerly along said existing southerly limited access right of way line and said curve to the left through a central angle of 9°57'40", a distance of 970.03 feet where the chord bears North 85°10'21"West a distance of 968.81 feet; thence South 89°50'49"West, along said existing southerly limited access right of way line, a distance of 260.95 feet; thence South 86°01'30"West, along said existing southerly limited access right of way line, a distance of 34.35 feet; thence South 89°55'38"West, departing said existing southerly limited access right of way line, a distance of 34.51 feet; thence South 89°31'05"West a distance of 58.59 feet; thence South 87°28'14"West a distance of 58.60 feet to a point on a non-tangent curve with a radius of 851.92 feet concave to the southeast; thence southwesterly along said curve to the left through a central angle of 93°13'07", a distance of 1386.05 feet where the chord bears South 39°12'31"West a distance of 1238.16 feet; thence South 09°07'20"East a distance of 61.55 feet; thence South 11°10'07"East a distance of 61.54 feet; thence South 11°30'37"East a distance of 215.27 feet to said existing southerly limited access right of way line; thence along said existing southerly limited access right of way line the following three (3) courses and distances; thence run South 05°26'17"West a distance of 62.41 feet to a point on a curve with a radius of 2980.79 feet concave to the west; thence southerly along said curve to the right through a central angle of 2°24'25", a distance of 125.23 feet where the chord bears South 03°24'20"East a distance of 125.22 feet; thence South 10°55'22"West a distance of 14.82 feet; thence departing said existing southerly limited access right of way line, run North 11°30'37"West a distance of 55.11 feet; thence continue North 11°30'37"West a distance of 357.67 feet; thence North 11°10'09"West a distance of 62.52 feet; thence North 09°08'37"West a distance of 62.53 feet to a point on a curve with a radius of 893.31 feet, concave to the southeast: thence northeasterly along said curve to the right through a central angle of 93°20'55", a distance of 1455.42 feet where the chord bears North 39°12'31"East a distance of 1299.70 feet; thence North 87°33'40"East a distance of 62.53 feet; thence North 89°35'12"East a distance of 62.52 feet; thence North 89°55'39"East a distance of 271.31 feet; thence South 89°58'09"East a distance of 62.08 feet to a point on a curve with a radius of 5752.62 feet, concave to the south; thence easterly along said curve to the right through a central angle of 10°15'19", a distance of 1029.65 feet where the chord bears South 84°38'07"East a distance of 1028.28 feet; thence South 79°18'04"East, a distance of 62.08 feet; thence South 79°11'53"East, a distance of 1908.76 feet to the POINT OF BEGINNING.

Containing 168051.87 square feet or 3.86 acres, more or less.

#### LEGEND:

Calculated Deed (D) (M) = Measured

= Plat Official Records Book O.R.B.=

Pg. Page R Radius

== Length of curve (arc distance)

Chord distance C Delta = central angle Chord Bearing СВ ID V PID Identification Line Not To Scale

Parcel Identification Number

S.R. State Road

CFX Central Florida Expressway Authority

R/W Right-of-Way = Centerline

= Limited Access Right-of-way line

PΚ = Point of Curvature PT = Point of Tangency

= Point of Compound Curvature PCC

= Point of Reverse Curvature PRC

(NT) = Non Tangent AAF = All Aboard Florida

OOCEA = Orlando Orange County Express Way Authority

= Number

Limit of Slope Property

#### Surveyors Notes

- 1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901). US Survey Foot, based on the east line of the northeast 1/4 of Section 34, Township 23 South, Range 30 East as being South 00° 22' 19" East. The average combined scale factor is 0.999952.
- 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-586539-1-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

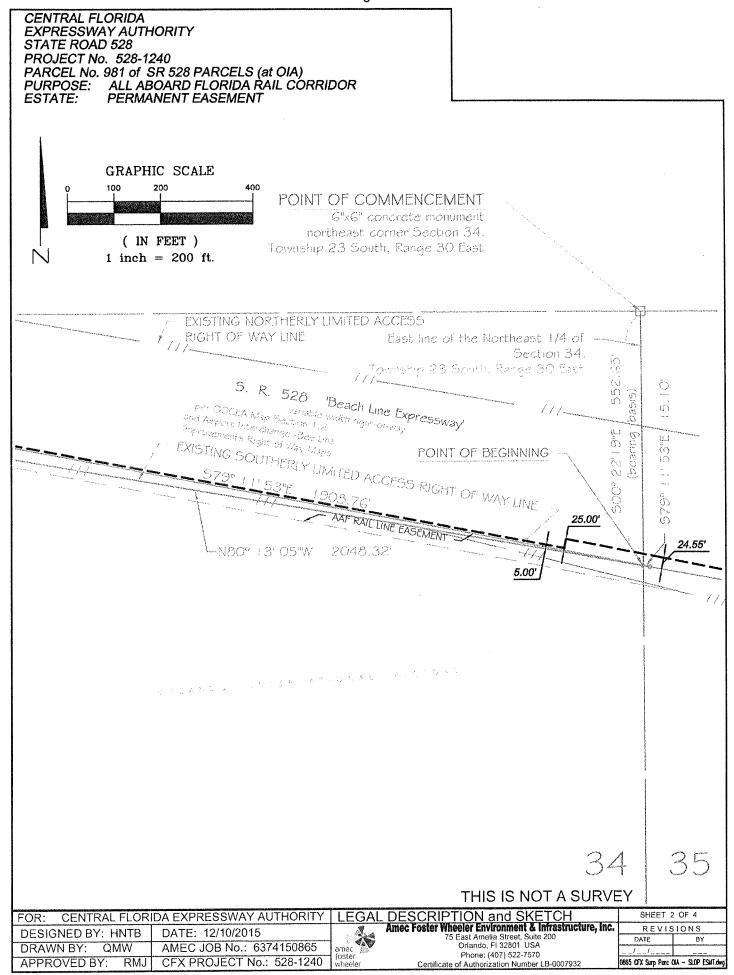
I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

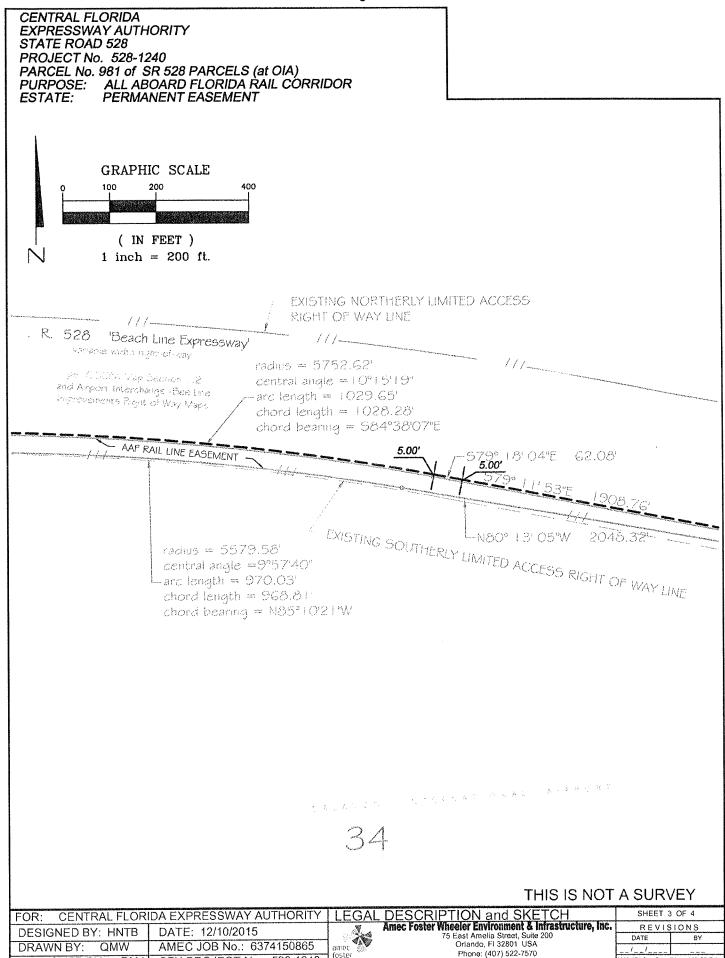
> 12/10/15: AMENDED THIS WORK PRODUCT TO DEPICT LOCATION OF LIMIT OF SLOPE PROPERTY IN RELATION TO PARCEL BOUNDARY

Robert M. Jones, PLS

Florida Surveyor and Mapper, License No. LS-0004201

	1 ( V L., 1				
FOR: CENTRAL FLORI	DA EXPRESSWAY AUTHORITY		DESCRIPTION and SKETCH	SHEET 1	OF 4
DESIGNED BY: HNTB	DATE: 12/10/2015	No.	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200	REVIS	IONS BY
DRAWN BY: QMW	AMEC JOB No.: 6374150865	amec &	Orlando, Fl 32801 USA Phone: (407) 522-7570	//	
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Certificate of Authorization Number LB-0007932	0865 CFX Surp Pare 0	JUA - SLOP ESWIT.dwg



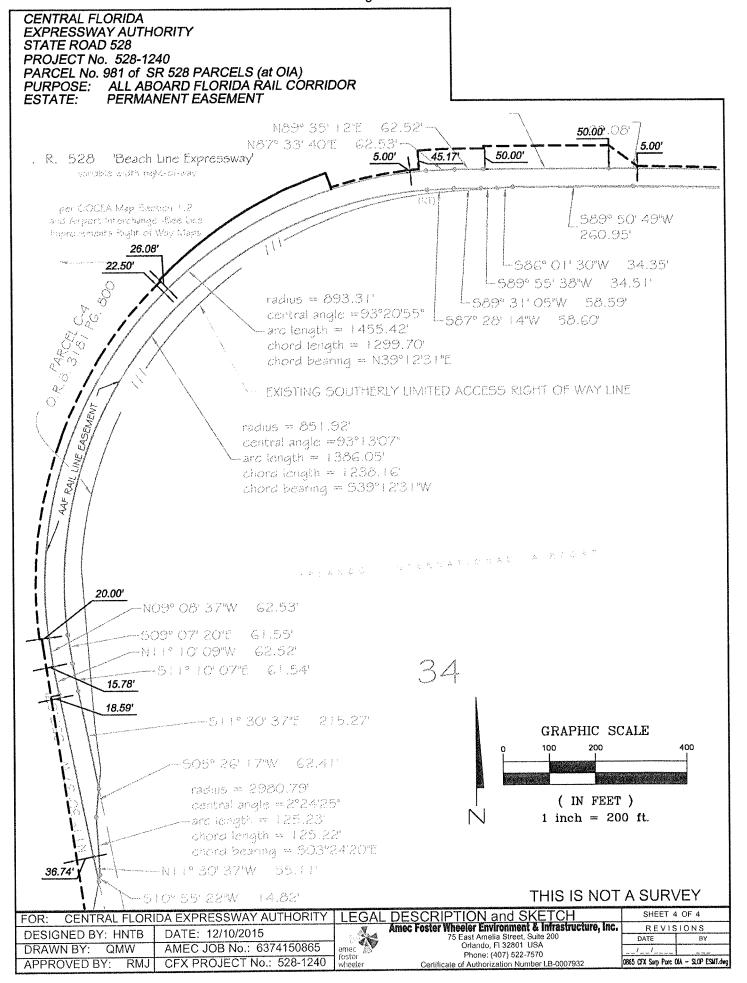


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ate of Authorization Number LB-0007932

CFX PROJECT No.: 528-1240

APPROVED BY: RMJ



PARCEL No. 982 of SR 528 PARCELS (at OIA) (GOLDENROD ROAD EXTENSION)

ALL ABOARD FLORIDA ŔĂIL CORRIDOR PURPOSE:

PERMANENT EASEMENT ESTATE:

A parcel of land lying in the Sections 34 and 35, Township 23 South, Range 30 East, Orange County, Florida, lying within and adjacent to the south limited access right of way for Goldenrod Road Extension as depicted on Orlando Orange County Expressway Authority Project No. 903 Right-of-Way Maps, being more particularly described as follows:

Commence at 6"x6" concrete monument marking the Northeast Corner of Section 34, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°22'19"East, along the East line of the Northeast 1/4 of said Section 34, a distance of 552.65 feet; thence South 79°11'53"East, a distance of 15.10 feet to a point of intersection with the existing southerly limited access right of way line of State Road 528 ("Beachline Expressway") per Orlando Orange County Expressway Authority right of way Map Section 1.2 and the POINT OF BEGINNING; thence, departing said southerly limited access right of way line, run South 79°11'53"East a distance of 24.82 feet; thence South 79°06'03"East a distance of 77.65 feet; thence South 78°31'10"East a distance of 77.65 feet to a point on a curve with a radius of 3834.83 feet, concave to the south; thence easterly along said curve to the right through a central angle of 8°54'36", a distance of 596.35 feet where the chord bears South 73°34'50"East a distance of 595.75 feet; thence South 68°38'30"East a distance of 77.65 feet; thence South 68°03'37"East a distance of 77.65 feet; thence South 67°57'47"East a distance of 231.17 feet; thence South 68°09'12"East a distance of 139.19 feet; thence South 69°17'24"East a distance of 139.20 feet to a point on a curve with a radius of 3493.02 feet concave to the northeast; thence southeasterly along said curve to the left through a central angle of 17°51'51", a distance of 1089.08 feet where the chord bears South 79°10'25"East a distance of 1084.67 feet; thence South 88°33'00"East a distance of 58.66 feet to the south limited access right of way line of said Goldenrod Road Extension; thence, along said south limited access right of way line of Goldenrod Road Extension, South 84°42'52"West a distance of 194.65 feet; thence South 13°30'54"West, continuing along said south limited access right of way line of Goldenrod Road Extension, a distance of 15.44 feet to a point on a curve with a radius of 3520.52 feet concave to the northeast; thence, departing said south limited access right of way line of Goldenrod Road Extension run westerly along said curve to the right through a central angle of 15°39'38", a distance of 962.26 feet where the chord bears North 78°04'18"West a distance of 959.26 feet; thence North 69°17'29"West a distance of 139.87 feet; thence North 68°09'15"West a distance of 139.62 feet; thence North 67°57'47"West a distance of 232.57 feet; thence North 68°07'32"West a distance of 99.85 feet to a point on said south limited access right of way line of Goldenrod Road Extension, said point lying on a curve with a radius of 2770.79 feet concave to the southwest; thence westerly along said south limited access right of way line of Goldenrod Road Extension and said curve to the left through a central angle of 5°00'38", a distance of 242.30 feet where the chord bears North 70°07'58"West a distance of 242.22 feet to a point on a non-tangent curve with a radius of 3807.33 feet, concave to the south; thence, departing said south limited access right of way line of Goldenrod Road Extension, run westerly along said curve to the left through a central angle of 6°05'25", a distance of 404.70 feet where the chord bears North 74°59'25"West a distance of 404.51 feet; thence North 78°30'30"West a distance of 74.73 feet to said south limited access right of way line of Goldenrod Road Extension; thence North 76°11'34"West, along said south limited access right of way line of Goldenrod Road Extension, a distance of 619.43 feet to said existing southerly limited access right of way line of State Road 528; thence, along said existing southerly limited access right of way line, run South 80°13'05"East a distance of 515.20 feet to the POINT OF BEGINNING.

Containing 111124.01 square feet or 2.55 acres, more or less.

#### LEGEND:

Calculated (D) = Deed (M) 27 Measured (P) = Plat

O.R.B.= Official Records Book

= Page Pg. == Radius

= Length of curve (arc distance)

Chord distance Delta = central angle CB Chord Bearing ID/ PID Identification Line Not To Scale

Parcel Identification Number

S.R. State Road ==

CFX Central Florida Expressway Authority ===

R/W Right-of-Way = Centerline

Limited Access Right-of-way line

PĈ = 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

Limit of Slope Property

#### Surveyors Notes

- 1, Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the east line of the northeast 1/4 of Section 34, Township 23 South, Range 30 East as being South 00° 22' 19" East. The average combined scale factor is 0.999952.
- 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-586539-2-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

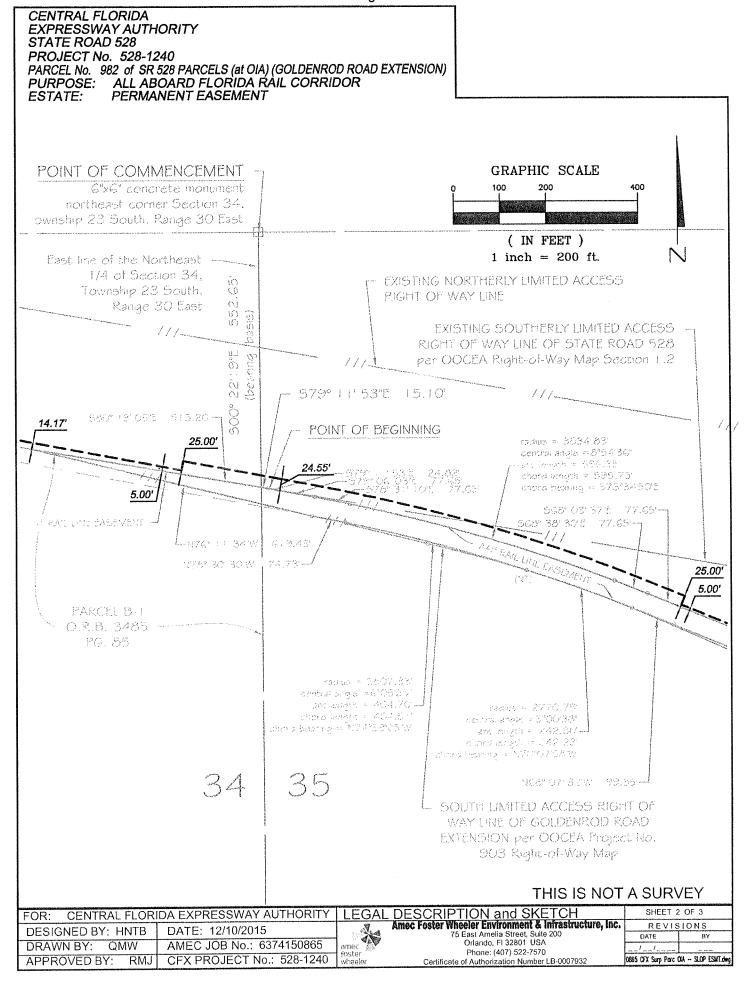
I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

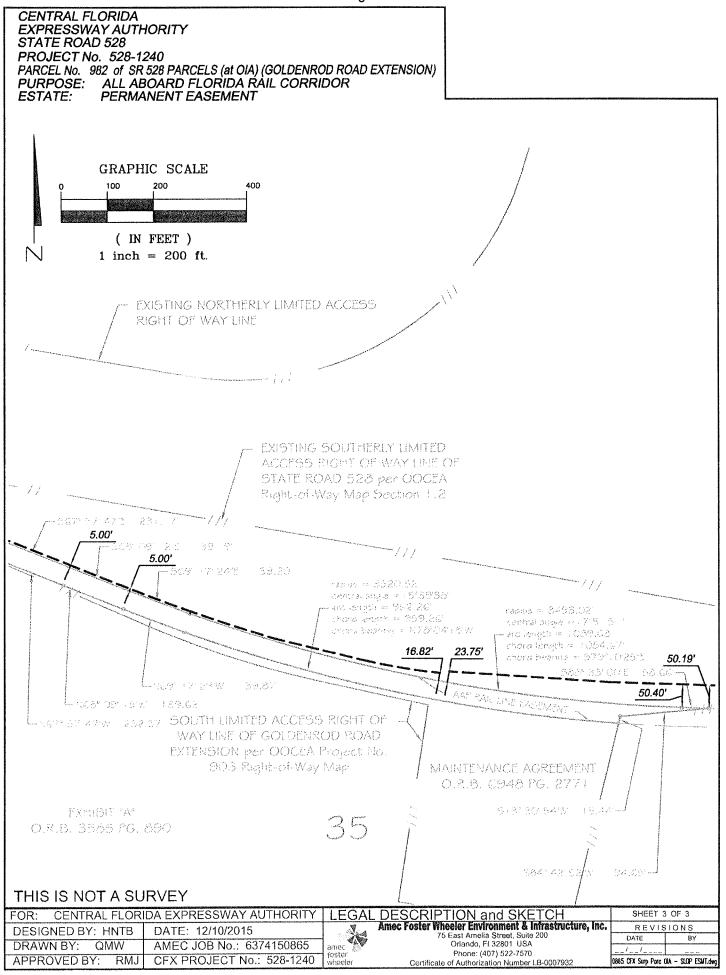
> 12/10/15: AMENDED THIS WORK PRODUCT TO DEPICT LOCATION OF LIMIT OF SLOPE PROPERTY IN RELATION TO PARCEL BOUNDARY

Robert M. Jones, PLS

Florida Surveyor and Mapper, License No. LS-0004201

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FOR: CENTRAL FLOR	IDA EXPRESSWAY AUTHORITY	LEGAL	DESCRIPTION and SKETCH	SHEET 1	OF 3
DESIGNED BY: HNTB	DATE: 12/10/2015	36	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200		IONS
DRAWN BY: QMW	AMEC JOB No.: 6374150865	amec 🚵 🔭	Orlando, Fl 32801 USA	DATE /	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	0865 CFX Surp Parc (	DIA - SLOP ESMT.dwg





PARCEL No. 983 of SR 528 PARCELS (at OIA) (GOLDENROD ROAD EXTENSION)

PURPOSE: ALL ABOARD FLORIDA ŔĂIL CORRIDOR

ESTATE: PERMANENT EASEMENT

A parcel of land lying in the Section 35, Township 23 South, Range 30 East, Orange County, Florida, lying within and adjacent to the limited access right of way for Goldenrod Road Extension as depicted on Orlando Orange County Expressway Authority Project No. 903 Right-of-Way Maps, being more particularly described as follows:

Commence at 6"x6" concrete monument marking the Northeast Corner of Section 35, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°06'56" East, along the East line of the Northeast 1/4 of said Section 35, a distance of 1250.09 feet to a point of intersection with the existing southerly limited access right of way line of State Road 528 ("Beachline Expressway") per Orlando Orange County Expressway Authority Right-of-Way Map Section 1.2; thence North 89°51'21" West, along said existing southerly limited access right of way line, a distance of 976.57 feet to a point on a curve with a radius of 5879.58 feet, concave to the north; thence westerly along said southerly limited access right of way line and curve to the right through a central angle of 2°29'51", a distance of 256.28 feet where the chord bears North 88°30'26"West a distance of 256.26 feet to a point lying on the south limited access right of way line of said Goldenrod Road Extension and the POINT OF BEGINNING; thence run along said south limited access right of way line of said Goldenrod Road Extension, being a non-tangent curve with a radius of 4969.00 feet concave to the north; thence westerly along said curve to the right through a central angle of 5°55'11", a distance of 513.38 feet where the chord bears North 89°57'17"West a distance of 513.15 feet; thence continuing along said south limited access right of way line of Goldenrod Road Extension, run North 86°59'42"West, a distance of 100.09 feet; thence departing said south limited access right of way line of Goldenrod Road Extension, run North 89°36'58"East, a distance of 262.97 feet; thence North 89°38'14"East, a distance of 62.03 feet; thence North 89°45'49"East, a distance of 62.03 feet to a point on a curve with a radius of 14046.65 feet, concave to the south; thence easterly along said curve to the right through a central angle of 0°21'35", a distance of 88.16 feet where the chord bears South 89°57'04"East a distance of 88.16 feet to a point on said existing southerly limited access right of way line of State Road 528, said point lying on a non-tangent curve with a radius of 5879.58 feet, concave to the north; thence easterly along said existing southerly limited access right of way line of State Road 528, and said curve to the left through a central angle of 1°20'47", a distance of 138.15 feet where the chord bears South 86°41'07"East a distance of 138.15 feet to the POINT OF

Containing 5768.72 square feet or 0.132 acres, more or less.

#### LEGEND:

(C) = Calculated (D) = Deed (M) = Measured (P) = Plat

O.R.B.= Official Records Book

Pg. = Page R = Radius

L = Length of curve (arc distance)

C = Chord distance
Delta = central angle
CB = Chord Bearing
ID = Identification
1/1 = Line Not To Scale

PID = Parcel Identification Number

S.R. = State Road

CFX = Central Florida Expressway Authority R/W = Right-of-Way

C = Centerline

= Limited Access Right-of-way line

PC = Point of Curvature PT = Point of Tangency

PCC = Point of Compound Curvature

PRC = Point of Reverse Curvature

(NT) = Non Tangent AAF = All Aboard Florida

OOCEA = Orlando Orange County Express Way Authority

No. = Number

Limit of Slope Property

#### Surveyors Notes

- 1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the east line of the northeast 1/4 of Section 35, Township 23 South, Range 30 East as being South 00° 06′ 56″ East. The average combined scale factor is 0.999952.
- 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-586539-3-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

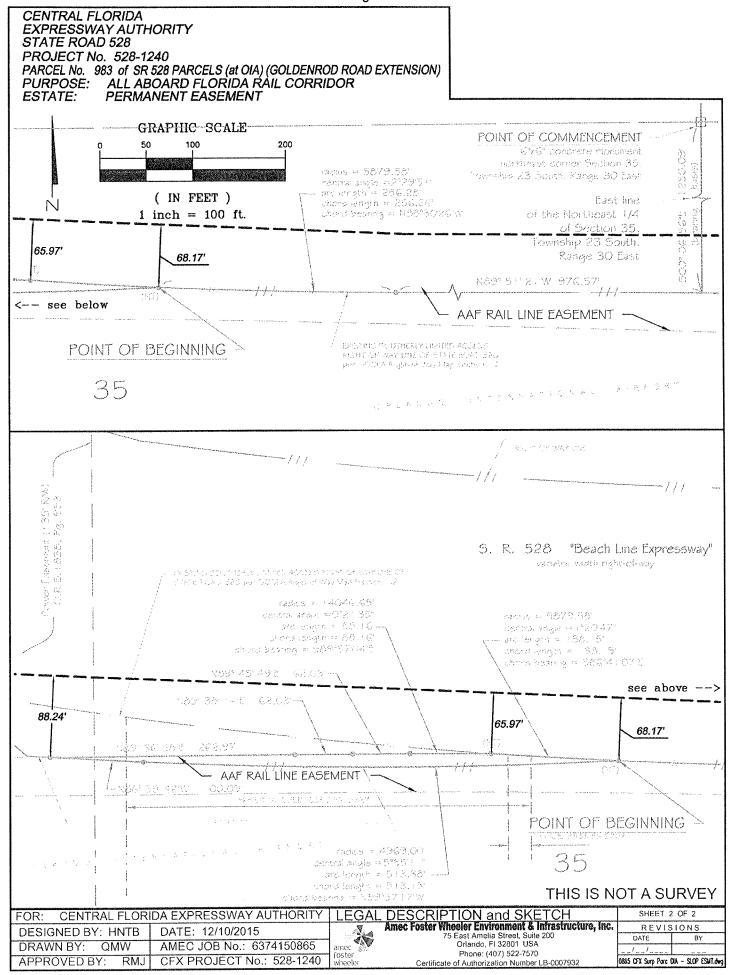
I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

12/10/15: AMENDED THIS WORK PRODUCT TO DEPICT LOCATION OF LIMIT OF SLOPE PROPERTY IN RELATION TO PARCEL BOUNDARY

Robert M. Jones, PLS

Florida Surveyor and Mapper, License No. LS-0004201

				acceptation with the second se
FOR: CENTRAL FLORIDA EXPRESSWAY	AUTHORITY LEGAL	DESCRIPTION and SKETCH	SHEET 1	OF 2
DESIGNED BY: HNTB   DATE: 12/10/201		Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200	R E V I S	IONS
DRAWN BY: QMW AMEC JOB No.:		Orlando, Fl 32801 USA Phone: (407) 522-7570	//	
APPROVED BY: RMJ CFX PROJECT N	Vo.: 528-1240 foster		0865 CFX Surp Pare O	IA - SLOP ESMIT.dwg



PARCEL No. 984 of SR 528 PARCELS (at OIA)

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

A parcel of land lying in the Section 35, Township 23 South, Range 30 East, Orange County, Florida lying within the existing limited access right of way of State Road 528, being more particularly described as follows:

Commence at 6"x6" concrete monument marking the Northeast Corner of Section 35, Township 23 South, Range 30 East, Orange County, Florida; thence run, South 00°06'56" East, along the East line of the Northeast 1/4 of said Section 35, a distance of 1250.09 feet to a point of intersection with the existing southerly limited access right of way line of State Road 528 ("Beachline Expressway"); thence North 89°51'21" West, along said existing southerly limited access right of way line, a distance of 674.55 feet to the POINT OF BEGINNING; thence continue, North 89°51'21"West, along said existing southerly limited access right of way line, a distance of 302.02 feet to a point on a curve with a radius of 5879.58 feet, concave to the north; thence westerly along said existing southerly limited access right of way line and curve to the right through a central angle of 3°50'37", a distance of 394.43 feet where the chord bears North 87°56'02"West a distance of 394.35 feet to a point on a non-tangent curve with a radius of 14046.65 feet, concave to the south; thence departing said existing southerly limited access right of way line, run easterly along said curve to the right through a central angle of 1°03'22", a distance of 258.91 feet where the chord bears South 89°14'35"East a distance of 258.90 feet; thence South 88°32'47"East, a distance of 124.07 feet; thence South 88°27'43"East, a distance of 313.32 feet to the POINT OF BEGINNING.

Containing 3746.49 square feet or 0.086 acres, more or less.

#### LEGEND:

(C) = Calculated (D) = Deed (M) = Measured (P) = Plat

O.R.B.= Official Records Book

Pg. = Page R = Radius

L = Length of curve (arc distance)

C = Chord distance
Delta = central angle
CB = Chord Bearing
ID = Identification
VI = Line Not To Scale

PID = Parcel Identification Number

S.R. = State Road

CFX = Central Florida Expressway Authority

R/W = Right-of-Way

© = Centerline

يا = 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

Limit of Slope Property

#### Surveyors Notes

- 1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the east line of the northeast 1/4 of Section 35, Township 23 South, Range 30 East as being South 00° 06' 56" East. The average combined scale factor is 0.999952.
- 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 NC\$-586539-4-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

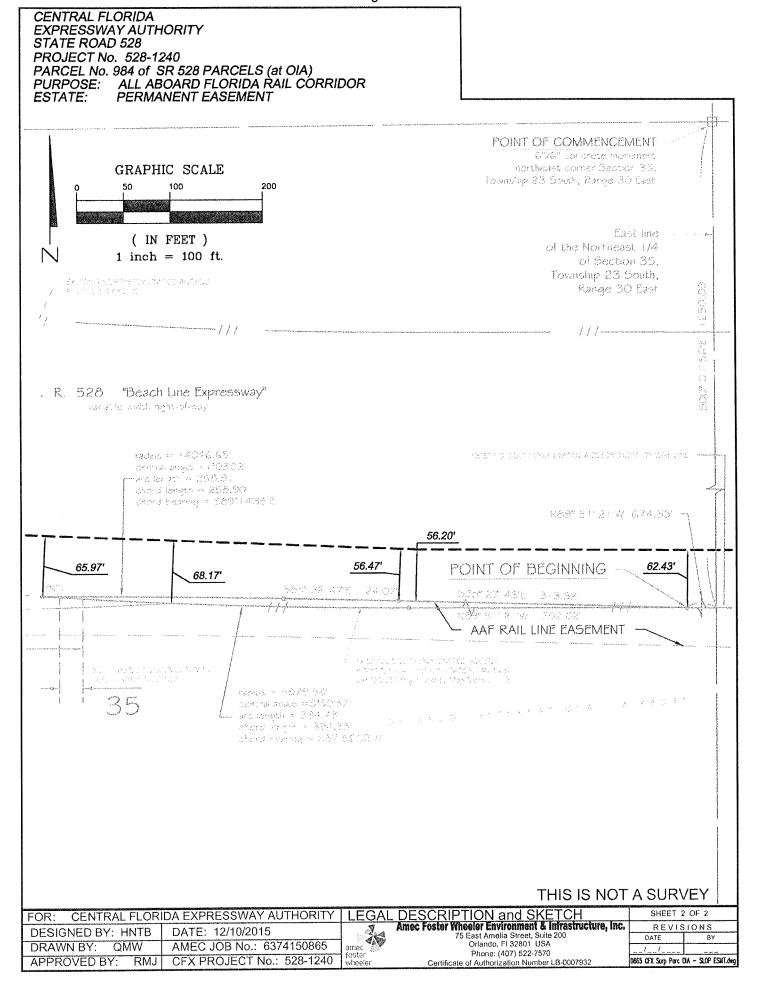
12/10/15: AMENDED THIS WORK PRODUCT TO DEPICT LOCATION OF LIMIT OF SLOPE PROPERTY IN RELATION TO PARCEL BOUNDARY

Robert M. Jones, PLS

Florida Surveyor and Mapper, License No. LS-0004201

1111010111011100	· · · — ·			CONTRACTOR OF THE PERSON NAMED IN COLUMN	
FOR: CENTRAL FLORI	DA EXPRESSWAY AUTHORITY	LEGAL	_ DESCRIPTION and SKETCH	SHEET	1 OF 2
DESIGNED BY: HNTB	DATE: 12/10/2015	36	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200	R E V I S	SIONS BY
DRAWN BY: QMW	AMEC JOB No.: 6374150865	amec 🔊	Orlando, Fl 32801 USA Phone: (407) 522-7570	DATE	
APPROVED BY: RMJ	CEX PROJECT No.: 528-1240	foster wheeler	Certificate of Authorization Number J B-0007932	0865 CFX Surp Port	OIA - SLOP ESMT.dwg

#### 20150654568 Page 71 of 166



PARCEL No. 985 Part A of S.R. 528 Parcels (at Narcoossee Road)

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

A parcel of land lying in Section 36, Township 23 South, Range 30 East, Orange County, Florida, lying within the existing limited access right of way of State Road 528 per Orlando Orange County Expressway Authority State Road 528 / Narcoossee Road Interchange, Project No. 907 Right-of-Way Map, being more particularly described as follows:

Commence at 6"x6" concrete monument (no identification) marking the northeast corner of Section 36, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°15'33" West, along the east line of the northeast 1/4 of said Section 36, a distance of 1216.19 feet; thence South 89°18'55" West, a distance of 1162.57 feet to the westerly right of way line of Narcoossee Road per said Right of Way Map and the POINT OF BEGINNING; thence along said westerly right of way line, run South 30°08'04" East, a distance of 57.42 feet; thence departing said westerly right of way line, run South 89°18'55" West, a distance of 1012.36 feet to the existing southerly limited access right of way line, run North 79°44'28" West, a distance of 95.75 feet; thence run North 85°39'53" West, continuing along said existing southerly limited access right of way line, a distance of 363.68 feet; thence departing said existing southerly limited access right of way line, run North 89°18'55" East, a distance of 1440.42 feet to the POINT OF BEGINNING.

Containing 1.37 acres, more or less.

#### **Surveyors Notes**

- 1. This Legal Description and Sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
- 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. The location and configuration of the lands described and depicted hereon were provided by the client.
- 4. 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 36, Township 23 South, Range 30 East as being South 00° 15′ 33″ West. The average combined scale factor is 0.999945.
- 5. The location of the right-of-way lines of interest is based on the follow right-of-way map:

Orlando Orange County Expressway Authority State Road 528 / Narcoossee Road Interchange, Project No. 907.

- 6. This legal description and sketch may have been reduced in size by reproduction.
- 7. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539-5-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

#### LEGEND:

(C) = Calculated (D) = Deed (M) = Measured

(P) = Plat O.R.B.= Official Records Book

Pg. = Page R = Radius

= Length of curve (arc distance)

C = Chord distance
Delta = central angle

CB = Chord Bearing
ID or id = Identification
= Line Not To Scale

PID = Parcel Identification Number

S.R. = State Road

CFX = Central Florida Expressway Authority

R/W = Right-of-Way Q = 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

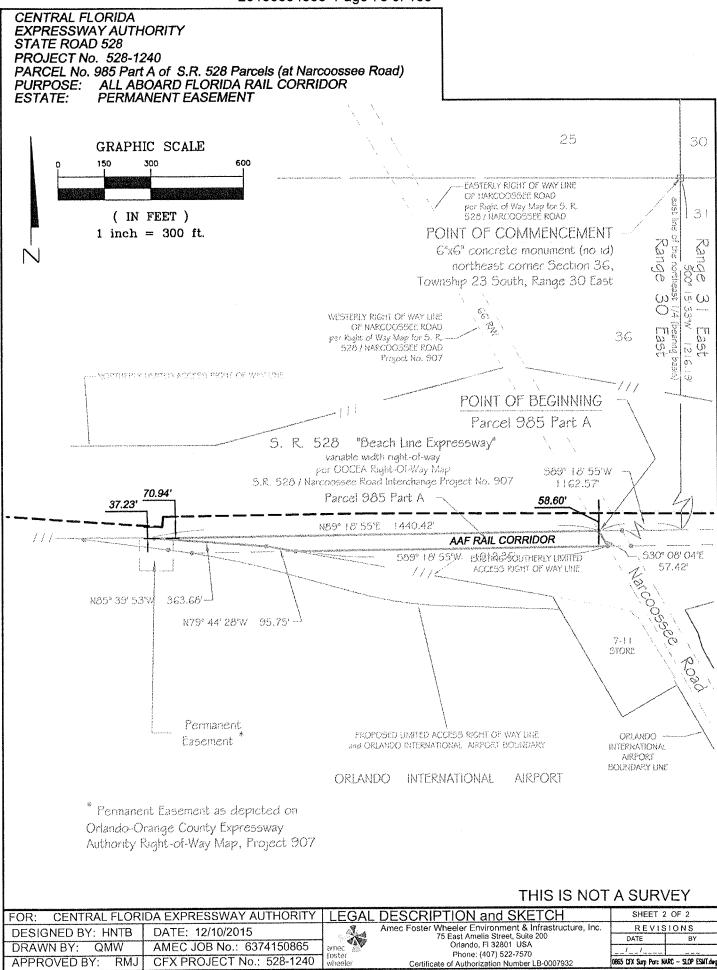
12/10/15: AMENDED THIS WORK PRODUCT TO DEPICT LOCATION OF LIMIT OF SLOPE PROPERTY IN RELATION TO PARCEL BOUNDARY

Limit of Slope Property

Robert M. Jones, PLS

Florida Surveyor and Mapper, License No. LS-0004201

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FOR: CENTRAL FLOR	IDA EXPRESSWAY AUTHORITY	LEGAL	DESCRIPTION and SKETCH	SHEET 1	OF 2
DESIGNED BY: HNTB	DATE: 12/10/2015	30	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200	REVIS	IONS
DRAWN BY: QMW	AMEC JOB No.: 6374150865	amec 🐒	Orlando, Fl 32801 USA Phone: (407) 522-7570	//	
APPROVED BY: RM.I	CEX PROJECT No.: 528-1240	foster	Cortificate of Authorization Number LB-0007932	0865 CFX Suro Porc N	ARC - SLOP ESLETLONO



PARCEL No. 985 Part B of S.R. 528 Parcels (at Narcoossee Road)

ALL ABOARD FLORIDA RAIL CORRIDOR PURPOSE:

PERMANENT EASEMENT ESTATE:

A parcel of land lying in Section 36, Township 23 South, Range 30 East and Section 31, Township 23 South, Range 31 East. Orange County, Florida, lying within the existing limited access right of way of State Road 528 per Orlando Orange County Expressway Authority State Road 528 / Narcoossee Road Interchange, Project 907 Right-of-way Map, being more particularly described as follows:

Commence at 6"x6" concrete monument (no identification) marking the northwest corner of Section 31, Township 23 South, Range 31 East, Orange County, Florida; thence run South 00°15'33" West, along the west line of the northwest 1/4 of said Section 31, a distance of 1216.19 feet to the POINT OF BEGINNING; thence run North 89°18'55" East, a distance of 561.11 feet; thence run North 89°05'51" East, a distance of 201.14 feet; thence run North 87°47'19" East, a distance of 175.65 feet to a point on a non-tangent curve concave to the north, lying on the existing southerly limited access right of way line of State Road 528 per said Right-of-Way Map; thence along said existing southerly limited access right of way line the following three (3) courses; thence westerly along the arc of said curve, having a radius of 5879.58 feet, a central angle of 07°38'01", a chord length of 782.78 feet bearing South 86°17'21" West, an arc distance of 783.36 feet; thence run North 89°53'38" West, a distance of 156.73 feet to said west line of the northwest 1/4; thence, along said west line, run South 00°15'33" West, a distance of 16.29 feet; thence departing said west line and said existing southerly limited access right of way line, run South 89°18'55" West, a distance of 39.87 feet to said existing southerly limited access right of way line; thence, along said existing southerly limited access right of way line, North 40°38'20" West, a distance of 6.54 feet; thence South 75°03'04" West, continuing along said existing southerly limited access right of way line, a distance of 20.34 feet; thence departing said existing southerly limited access right of way line run South 89°18'55" West, a distance of 993.94 feet to the easterly right of way line of Narcoossee Road per said Right of Way Map; thence along said easterly right of way line run North 30°08'04" West, a distance of 57.42 feet; thence departing said easterly right of way line, run North 89°18'55" East, a distance of 1086.78 feet to the POINT OF BEGINNING.

Containing 1.80 acres, more or less.

#### **Surveyors Notes**

- 1. This Legal Description and Sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
- 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. The location and configuration of the lands described and depicted hereon were provided by the client.
- 4. 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 31, Township 23 South, Range 31 East as being South 00° 15' 33" West. The average combined scale factor is 0.999945.
- 5. The location of the right-of-way lines of interest is based on the follow right-of-way map:

Orlando Orange County Expressway Authority State Road 528 Narcoossee Road Interchange, Project No. 907.

- 6. This legal description and sketch may have been reduced in size by reproduction.
- 7. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539-5-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

> 12/10/15: AMENDED THIS WORK PRODUCT TO DEPICT LOCATION OF LIMIT OF SLOPE PROPERTY IN

RELATION TO PARCEL BOUNDARY

Limit of Slope Property

Robert M. Jones, PLS

Florida Surveyor and Mapper, License No. LS-0004201

CENTRAL FLORIDA EXPRESSWAY AUTHORITY | LEGAL DESCRIPTION and SKETCH SHEET 1 OF 2 FOR: Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 Orlando, Fl 32801 USA REVISIONS **DESIGNED BY: HNTB** DATE: 12/10/2015 K DATE BY DRAWN BY: QMW AMEC JOB No.: 6374150865 Phone: (407) 522-7570 foster APPROVED BY: RMJ CFX PROJECT No.: 528-1240 0865 DFX Surp Parc NARC - SLOP ESMT.óm Certificate of Authorization Number LB-0007932

Length of curve (arc distance) == С Chord distance Delta = central angle CB = Chord Bearing N Identification

Official Records Book

Line Not To Scale

Calculated

Measured

Deed

Plat

PID Parcel Identification Number

LEGEND:

(D) =

(M) (P)

Pg.

R == Radius

O.R.B.=

= Page

S,R. State Road

= CFX Central Florida Expressway Authority

R/W = Right-of-Way Œ = Centerline

= Limited Access Right-of-way line ΡĈ = Point of Curvature

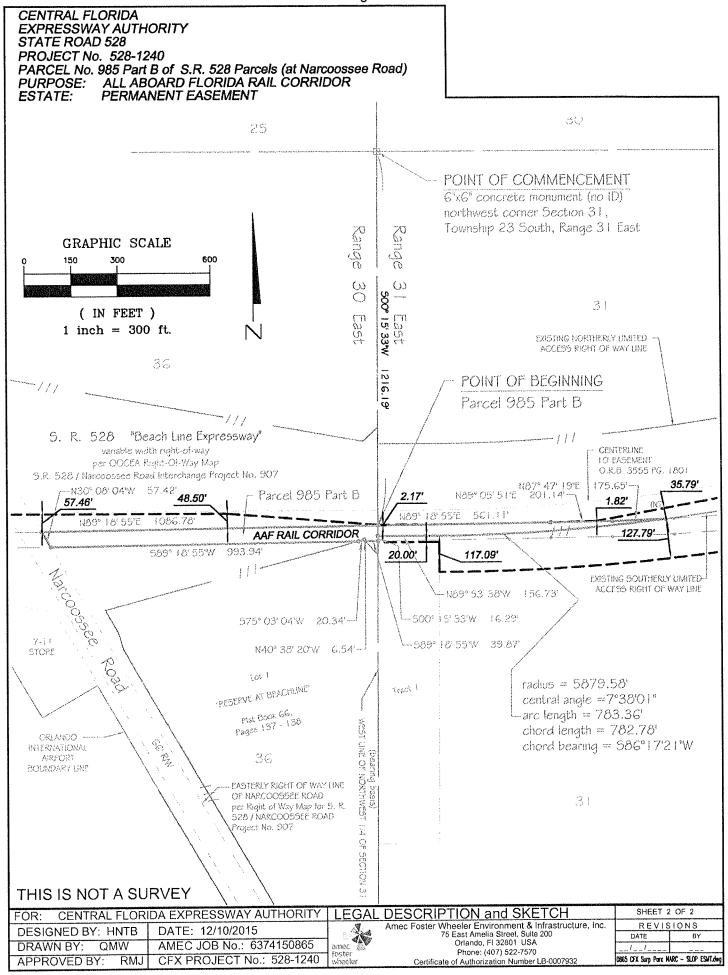
PT = Point of Tangency PCC = Point of Compound Curvature PRC = Point of Reverse Curvature

THIS IS NOT A SURVEY

(NT) = Non Tangent = All Aboard Florida AAF

OOCEA = Orlando Orange County Express Way Authority

= Number No.



PARCEL No. 986 of SR 528 PARCELS

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

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 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 301.63 feet to a point on a non-tangent curve with a radius of 4926.15 feet, concave to the south and the POINT OF BEGINNING; thence easterly along said curve to the right through a central angle of 01°25'11", a distance of 122.06 feet where the chord bears South 85°05'06"East a distance of 122.05 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 South 89°45'06" West, along said south Right of Way line, a distance of 121.65 feet to said west line of the Northwest 1/4; thence along said west line, run North 00°13'49"East, a distance of 10.98 feet to the POINT OF BEGINNING.

Containing 699 square feet or 0.02 acres, more or less

#### LEGEND:

(P)

Calculated (D) Deed = Measured (M)Plat

Official Records Book O.R.B.=

= Page Pg. == Radius

Length of curve (arc distance)

= Chord distance Delta = central angle СB = Chord Bearing Identification N = Line Not To Scale

ΡID = Parcel Identification Number

S.R. = State Road

= Central Florida Expressway Authority CFX R/W

= Right-of-Way = Centerline

= Limited Access Right-of-way line

= Point of Curvature = Point of Tangency

PCC = Point of Compound Curvature PRC = Point of Reverse Curvature

(NT) = Non Tangent = All Aboard Florida AAF

OOCEA = Orlando Orange County Express Way Authority

= Number

Limit of Slope Property

#### 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.

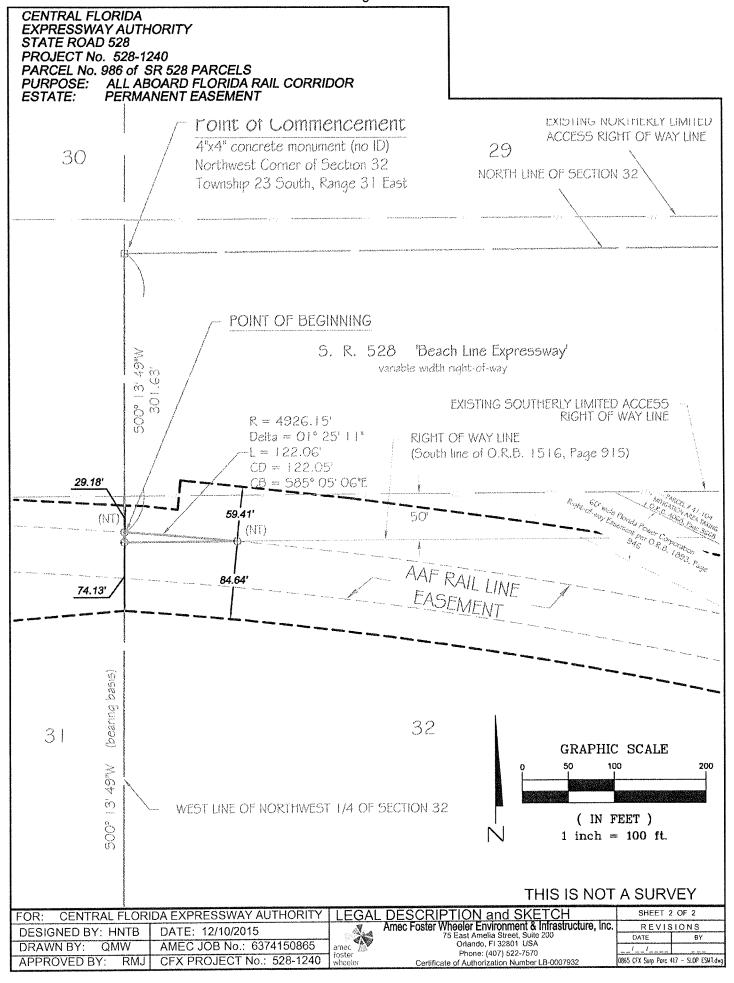
I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

> 12/10/15: AMENDED THIS WORK PRODUCT TO DEPICT LOCATION OF LIMIT OF SLOPE PROPERTY IN RELATION TO PARCEL BOUNDARY

Robert M. Jones, PLS

Florida Surveyor and Mapper, License No. LS-0004201

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FOR: CENTRAL FLORI	DA EXPRESSWAY AUTHORITY		DESCRIPTION and SKETCH	SHEET	1 OF 2
	DATE 40/40/0045	.6	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200		SIONS
DRAWN BY: QMW	AMEC JOB No.: 6374150865	amec s	Orlando, FI 32801 USA	DATE	BY
1 2	CFX PROJECT No.: 528-1240	foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	0865 CFX Surp Parc	417 - SLOP ESWILdwg



PARCEL No. 987 of SR 528 PARCELS

ALL ABOARD FLORIDA RAIL CORRIDOR PURPOSE:

PERMANENT EASEMENT ESTATE:

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 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; thence run South 63°45'43" East, along said southerly line and northerly Right-of-Way line, a distance of 348.80 feet to a point on a non-tangent curve with a radius of 4926.15 feet, concave to the southwest and the POINT OF BEGINNING; thence southeasterly along said curve to the right through a central angle of 08°43'04", a distance of 749.53 feet where the chord bears 570°17'30"E a distance of 748.80 feet; thence South 65°01'46"East, a distance of 186.29 feet; thence South 63°56'38"East, a distance of 186.27 feet; thence South 63°45'46"East, a distance of 1055.67 feet; thence North 26°14'14"East, a distance of 15.00 feet; thence South 63"45'46"East, a distance of 85.00 feet; thence South 26°14'14"West, a distance of 15.00 feet; thence South 63°45'46"East, a distance of 287.54 feet; thence South 64°03'06"East, a distance of 232.01 feet; thence South 65°48'05"East, a distance of 232.05 feet; to a point on a curve with a radius of 3797.06 feet, concave to the northeast; thence southeasterly and easterly along said curve to the left through a central angle of 19°35'13", a distance of 1298.04 feet where the chord bears South 77°03'03"East a distance of 1291.73 feet to the existing southerly limited access right of way line of State Road 528 as depicted on Orlando Orange County Expressway Authority Right of Way Map , Project No. 6440-401/402; thence, along said existing southerly limited access right of way line, run South 33°00'37"West, a distance of 57.53 feet to a point on a non-tangent curve with a radius of 3847.06 feet, concave to the northeast; thence departing said existing southerly limited access right of way line of State Road 528 run westerly and northwesterly along said curve to the right through a central angle of 19°09'37", a distance of 1286.50 feet where the chord bears North 76°50'15"West a distance of 1280.51 feet; thence North 65°48'25"West, a distance of 233.58 feet; thence North 64°03'13"West, a distance of 233.53 feet; thence North 63°45'46"West, a distance of 1428.22 feet; thence North 63°56'34"West, a distance of 185.33 feet; thence North 65°01'37"West, a distance of 185.34 feet to a point on a curve with a radius of 4876.15 feet concave to the southwest; thence northwesterly along said curve to the left through a central angle of 5°03'05", a distance of 429.91 feet where the chord bears North 68°27'31"West a distance of 429.77 feet to a point on said southerly line of Parcel #41-104 Mitigation Area Taking, also being a point on the northerly 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 North 63°45'43"West, a distance of 317.51 feet to the POINT OF BEGINNING.

Containing 4.80 acres, more or less

#### LEGEND:

Calculated (D) Deed (M) = Measured

= Plat O.R.B.= Official Records Book

Pg. = Page ==

Radius = Length of curve (arc distance)

CD Chord distance Delta = central angle Chord Bearing CB PID = Identification Line Not To Scale

= Parcel Identification Number

S.R. State Road

CFX Central Florida Expressway Authority

R/W = Right-of-Way = Centerline Œ

= Limited Access Right-of-way line -///-

= Point of Curvature = 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

= Number

\_\_\_\_\_ Limit of Slope Property

#### 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.

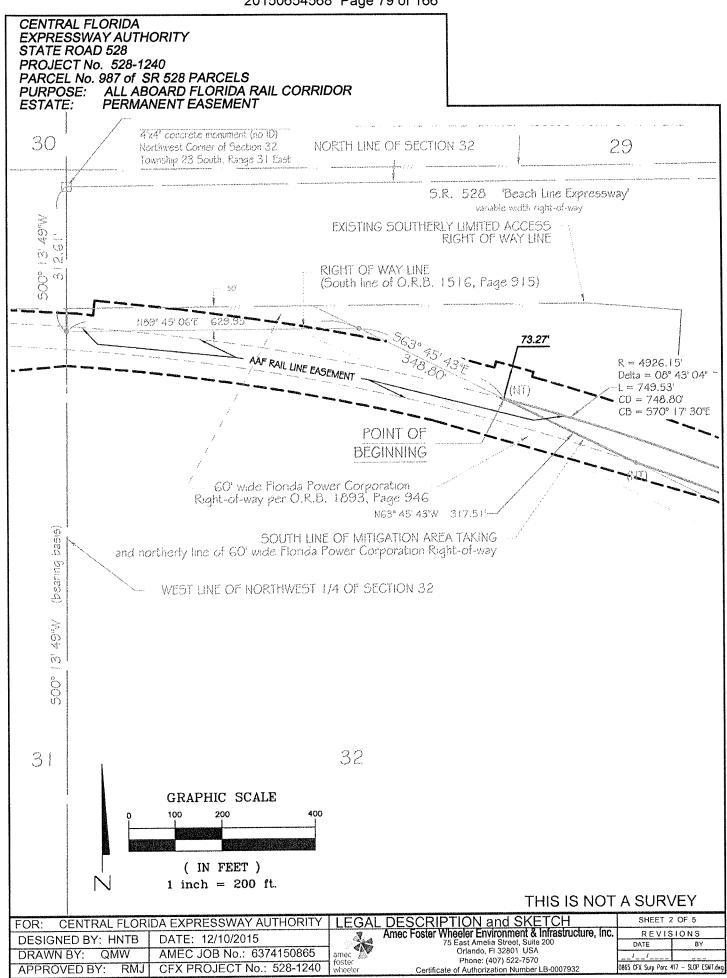
I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

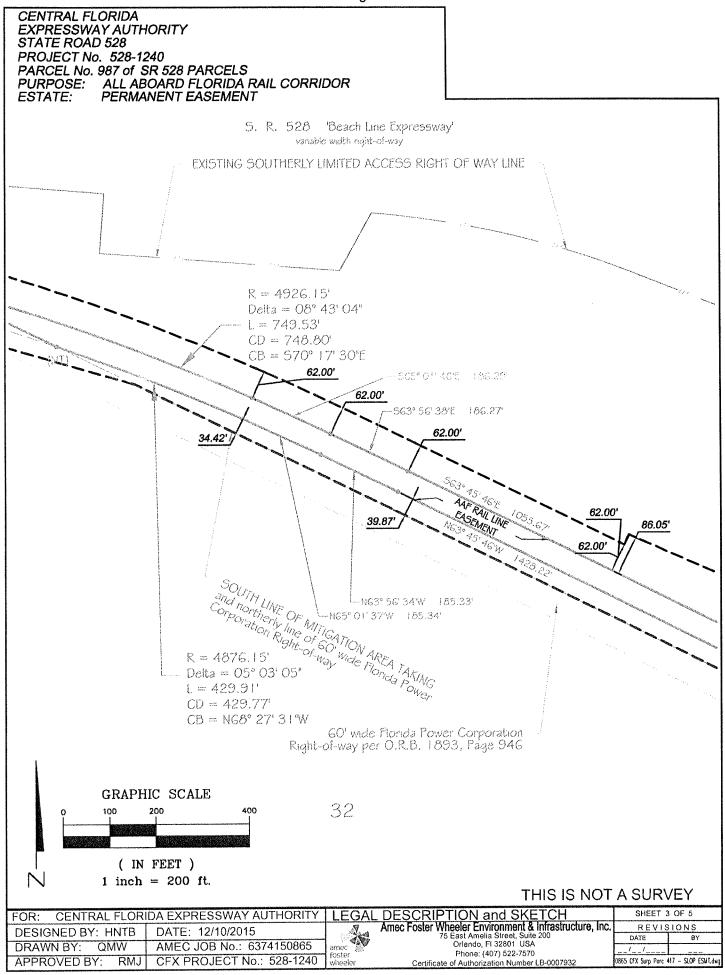
> 12/10/15: AMENDED THIS WORK PRODUCT TO DEPICT LOCATION OF LIMIT OF SLOPE PROPERTY IN RELATION TO PARCEL BOUNDARY

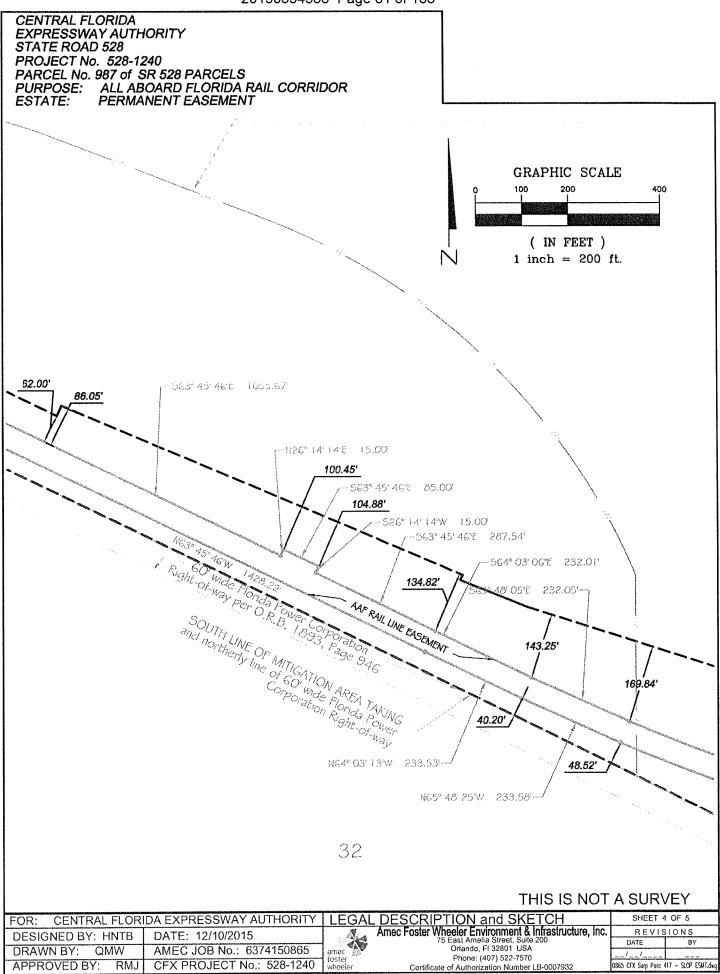
Robert M. Jones, PLS

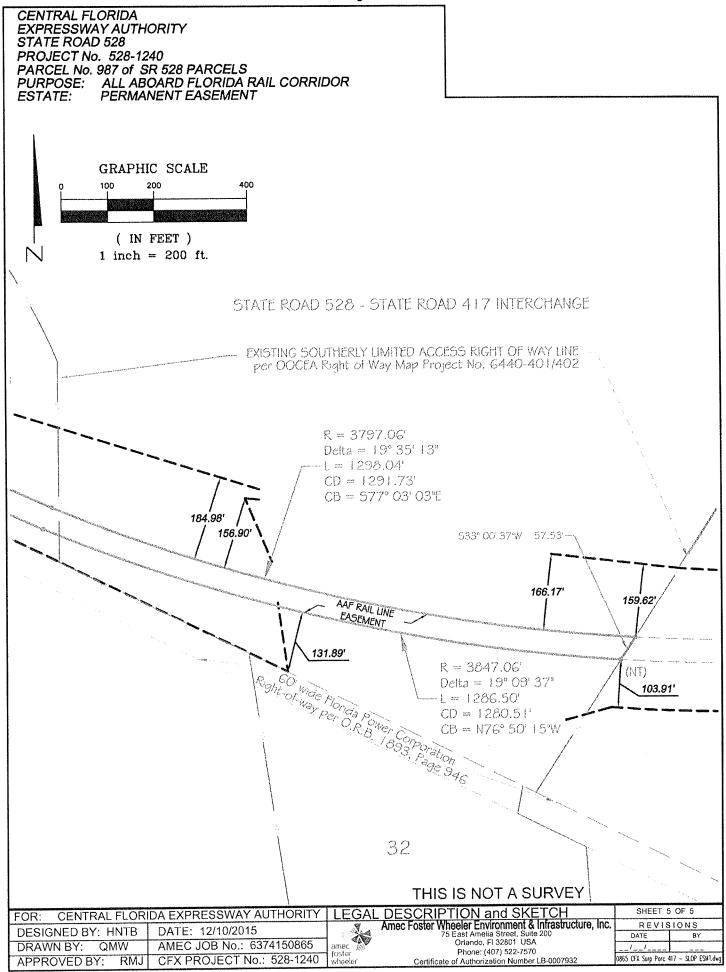
Florida Surveyor and Mapper, License No. LS-0004201

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FOR: CENTRAL FLOR	DA EXPRESSWAY AUTHORITY	LEGAL	DESCRIPTION and SKETCH	SHEET 1	OF 5
DESIGNED BY: HNTB	DATE: 12/10/2015		Amec Foster Wheeler Environment & Infrastructure, Inc.	REVIS	IONS
		156	75 East Amelia Street, Suite 200 Orlando, Fl 32801 USA	DATE	BY
DRAWN BY: QMW	AMEC JOB No.: 6374150865	arnec 🔉	Phone: (407) 522-7570	'	
APPROVED BY: RM.I	CFX PROJECT No.: 528-1240	wheeler	Certificate of Authorization Number LB-0007932	0865 CFX Surp Porc 4	117 - SLOP ESMT.dwg









PARCEL No. 988 of SR 528 PARCELS (at ICP)

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

A parcel of land lying in the Section 36, Township 23 South, Range 31 East and in Section 31, Township 23 South, Range 32 East, Orange County, Florida, lying within the existing limited access right of way of State Road 528 as depicted on Orlando Orange County Expressway Authority International Corporate Parkway Interchange Right of Way Map, being more particularly described as follows:

Commence at a nail and disc (LB 68) marking the Northwest Corner of Section 31, Township 23 South, Range 32 East, Orange County, Florida; thence run South 00°07'19"East, along the West line of the Northwest 1/4 of said Section 31, a distance of 359.74 feet to the POINT OF BEGINNING; thence departing said west line run South 89°33'33"East, a distance of 1199.47 feet to a point lying on the existing southerly limited access right of way line of said State Road 528 and the west line of Lot 3 of INTERNATIONAL CORPORATE PARK - PARCEL 10 according to the plat thereof as recorded in Plat Book 67 at Page 56 of the Public Records of Orange County, Florida, said point lying on a non-tangent curve with a radius of 639.49 feet concave to the southeast; thence along said southerly limited access right of way line and said west line of Lot 3, run southwesterly along said curve to the left through a central angle of 7°16'04", a distance of 81.12 feet where the chord bears South 52°21'29"West a distance of 81.06 feet; thence departing said existing southerly limited access right of way line, run North 77°39'01"West a distance of 242.30 feet; thence, departing said existing southerly limited access right of way line, run North 89°33'33"East a distance of 820.13 feet to the POINT OF BEGINNING.

Containing 2.14 acres, more or less.

#### LEGEND:

(C) = Calculated (D) = Deed (M) = Measured (P) = Plat

O.R.B.= Official Records Book

Pg. = Page R = Radius

L = Length of curve (arc distance)

CD = Chord distance
Delta = central angle
CB = Chord Bearing
ID = Identification
Line Not To Scale
PID = Parcel Identificatio

ID = Parcel Identification Number

S.R. = State Road

S.R. = State Road CFX = Central Florid

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

Limit of Slope Property

#### 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 31, Township 23 South, Range 32 East as being South 00° 07′ 19″ East. The average combined scale factor is 0.999939.
- 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-586539-8-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

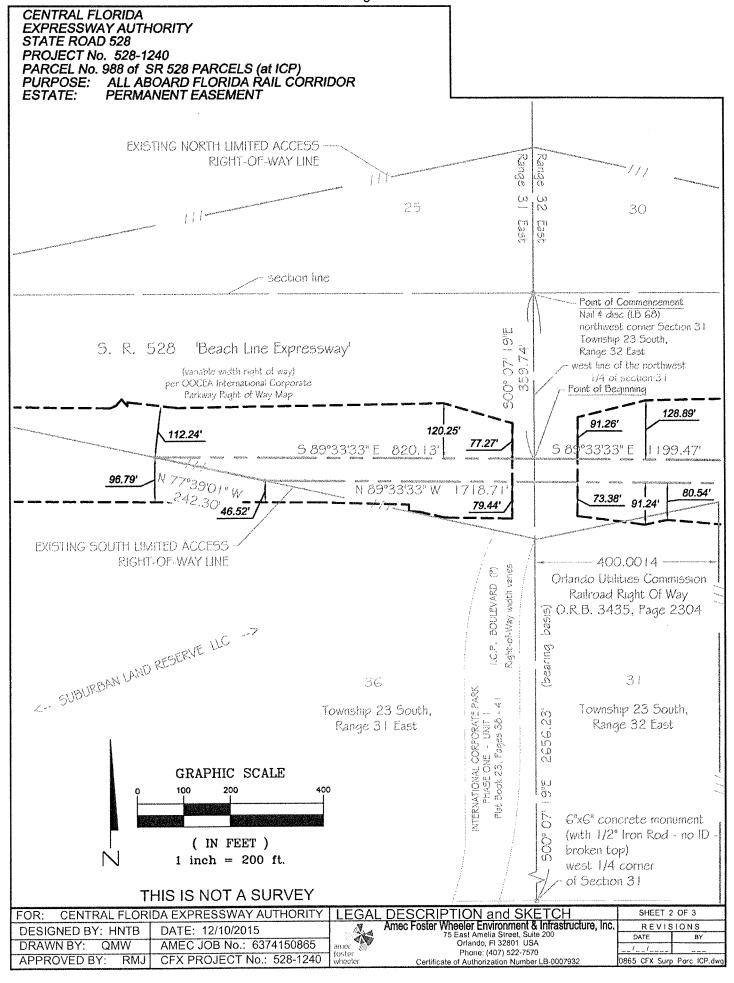
I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

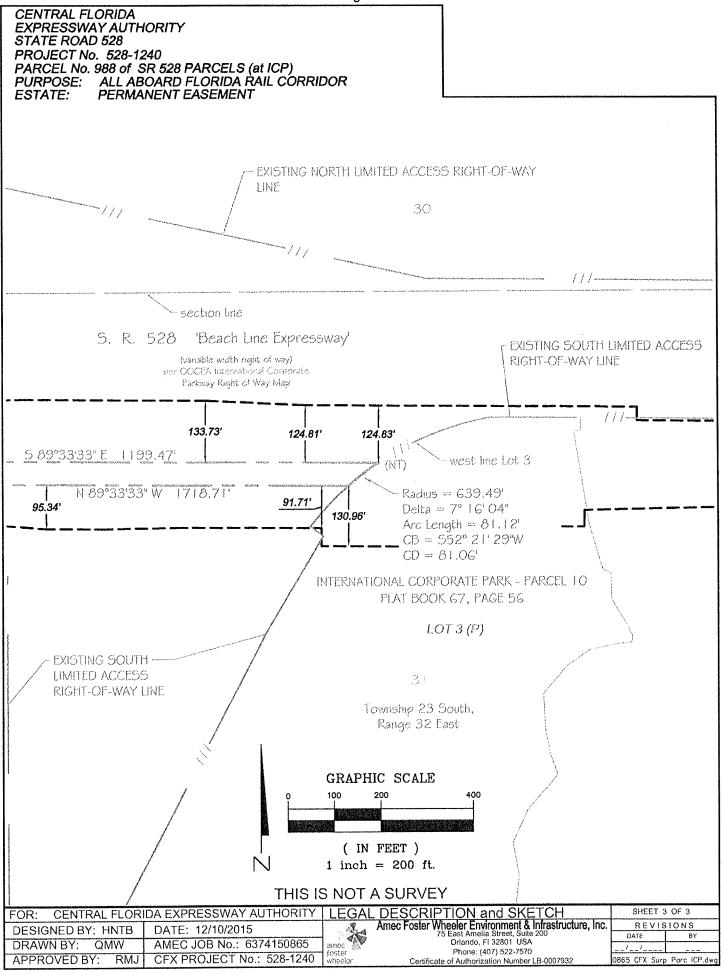
12/10/15: AMENDED THIS WORK PRODUCT TO DEPICT LOCATION OF LIMIT OF SLOPE PROPERTY IN RELATION TO PARCEL BOUNDARY

Robert M. Jones, PLS

Florida Surveyor and Mapper, License No. LS-0004201

FOR: CENTRAL FLOR	DA EXPRESSWAY AUTHORITY	LEGAL	DESCRIPTION and SKETCH	SHEET 1	OF 3		
DESIGNED BY: HNTB	DATE: 12/10/2015	34	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200	REVIS	IONS		
DRAWN BY: QMW	AMEC JOB No.: 6374150865	amec 🦓 🔭	Orlando, Fl 32801 USA Phone: (407) 522-7570	11			
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler		0865 CFX Surp	Parc ICP.dwg		





PARCEL No. 989 of S.R. 528 PARCELS

ALL ABOARD FLORIDA RAIL CORRIDOR PURPOSE:

PERMANENT EASEMENT ESTATE:

A parcel of land lying in Section 32, Township 23 South, Range 32 East, Orange County, Florida, lying within and adjacent to the southerly right-of-way of State Road 528, per Orlando Orange County Expressway Authority Right-of-Way Map, Sections No. 1.1 and No. 1.2, being more particularly described as follows:

Commence at a 1" Iron Rod (old axle) marking the Northwest Corner of Section 32, Township 23 South, Range 32 East, Orange County, Florida; thence run South 00°09'37" West, along the west line of the northwest ¼ of said Section 32, a distance of 414.41 feet to the POINT OF BEGINNING; thence departing said west line run South 89°33'33" East, a distance of 256.31 feet; thence South 89°31'24" East, distance of 124.05 feet; thence run South 89°19'09" East, distance of 124.05 feet to a point of curvature of a curve concave to the south; thence run easterly along the arc of said curve, having a radius of 17203.76 feet, a central angle of 01°19'46", a chord length of 399.15 feet bearing South 88°28'52"East, an arc distance of 399.16 feet; thence run South 87°38'35" East, a distance of 124.05 feet; thence run South 87°26'20" East, a distance of 124.05 feet; thence run South 87°24'11" East, a distance of 380.98 feet; thence run South 87°26'20" East, a distance of 62.71 feet to the southerly limited access right-of-way line of said State Road 528; thence run South 78°29'33" West, along said southerly limited access right-of-way line, a distance of 205.34 feet; thence departing said southerly limited access right-of-way line run North 87°24'11" West, distance of 244.54 feet; thence run North 87°26'19" West, a distance of 123.87 feet; thence run North 87°38'34" West, a distance of 123.87 feet to a point of curvature of a curve concave to the south; thence run westerly along the arc of said curve, having a radius of 17153.76 feet, a central angle of 01°19'46", a chord length of 397.99 feet bearing North 88°28'52" West, an arc distance of 398.00 feet; thence run North 89°19'10" West, a distance of 123.87 feet; thence run North 89°31'24" West, a distance of 331.86 feet to the south right-of-way line of said State Road 528; thence run North 77°37'04" West, along said south right-of-way line, a distance of 49.19 feet to said west line; thence run North 00°09'37" East, along said west line, a distance of 39.69 feet the POINT OF BEGINNING.

Containing 1.71 acres, more or less.

#### LEGEND:

Calculated (D) Deed (M) = Measured

O.R.B.≈ Official Records Book

Pg. Page Radius

Length of curve (arc distance)

CD = Chord distance Delta = central angle CB Chord Bearing ND Identification = Line Not To Scale

ΡÍD = Parcel Identification Number

= State Road

= Central Florida Expressway Authority R/W = Right-of-Way

= Centerline

= Limited Access Right-of-way line

*--∭* PC = Point of Curvature = Point of Tangency

= Point of Compound Curvature PCC

PRC = Point of Reverse Curvature

(NT) = Non Tangent = All Aboard Florida

OOCEA = Orlando Orange County Express Way Authority

Limit of Slope Property

#### **Surveyors Notes**

- 1. This Legal Description and Sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
- 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. The location and configuration of the lands described and depicted hereon were provided by the client.
- 4. 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 32 East as being South 00° 09' 37" West. The average combined scale factor is 0.999939.
- 5. The location of the right-of-way lines of interest is based on the follow right-of-way

Orlando Orange County Expressway Authority State Road 528, Section No. 1.1 and Section No. 1.2 and Project 528-403

- 6. This legal description and sketch may have been reduced in size by reproduction.
- 7. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 24, 2015, file number NCS-586539-9-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

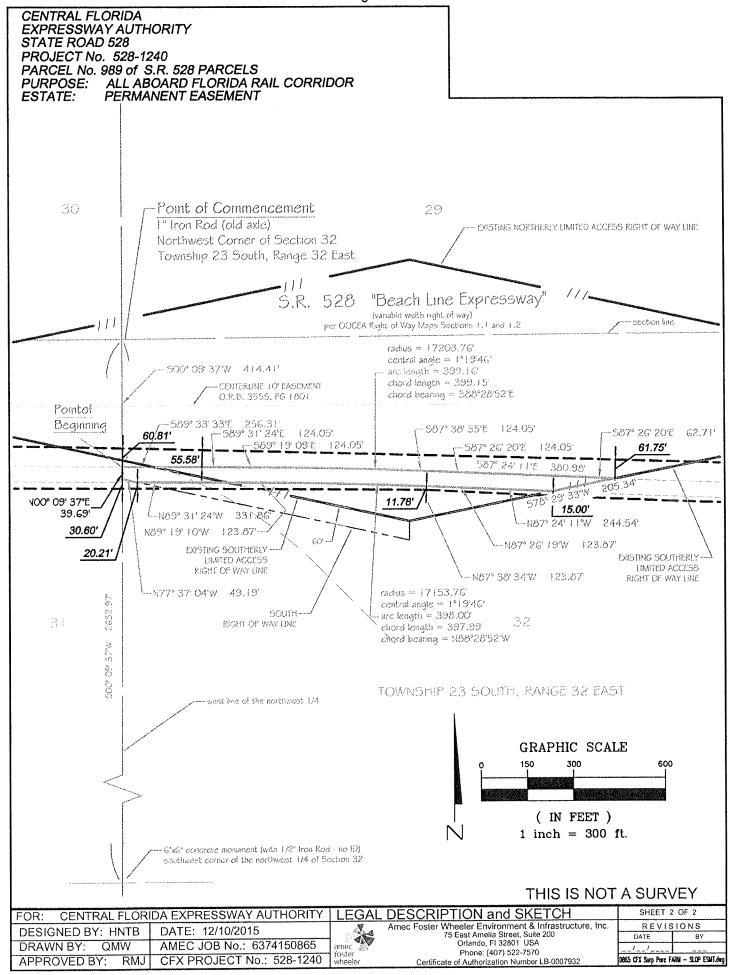
I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

> 12/10/15: AMENDED THIS WORK PRODUCT TO DEPICT LOCATION OF LIMIT OF SLOPE PROPERTY IN RELATION TO PARCEL BOUNDARY

Robert M. Jones, PLS

Florida Surveyor and Mapper, License No. LS-0004201

111101011011	• • — •			***************************************	
FOR: CENTRAL FLORID.	A EXPRESSWAY AUTHORITY	LEGAL	DESCRIPTION and SKETCH	SHEET 1	OF 2
DESIGNED BY: HNTB	DATE: 12/10/2015	S.	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200	REVIS	IONS
DRAWN BY: QMW	AMEC JOB No.: 6374150865	arnec	Orlando, Fl 32801 USA Phone: (407) 522-7570	//	
APPROVED BY: RM.I	CEX PROJECT No : 528-1240	foster wheeler	Cortificate of Authorization Number I R-0007932	0865 CFX Surp Parc FA	URN - SLOP ESMT.dva



PARCEL No.9810 of S.R. 528 PARCELS (at Econlockatchee River)

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

A parcel of land lying in Section 34, Township 23 South, Range 32 East, Orange County, Florida, lying within and adjacent to the southerly limited access right-of-way line of State Road 528, per Orlando Orange County Expressway Authority Right-of-Way Map, Section No. 1.1 and Section No. 1.2, being more particularly described as follows:

Commence at a 6"x6" concrete monument (with 1/4" iron rod - no idenification) marking the Southwest Corner of Section 27, Township 23 South, Range 32 East, Orange County, Florida; thence run South 52°12"30" West, a distance of 72.39 feet to a 4"x4" concrete monument (broken top - no identification) marking the Southeast Corner of Section 28, Township 23 South, Range 32 East as depicted on said Right of Way Map; thence run South 00°09'30" East, a distance of 300.02 feet to said southerly limited access right-of-way line; thence run North 89°15'33" East, along said southerly limited access right-of-way line, a distance of 1079.69 feet to the west boundary of a drainage right of way as depicted on said Right of Way Map; thence run South 00°44'24" East, along said west boundary, a distance of 173.44 feet to the POINT OF BEGINNING; thence run South 89°33'33" East, departing said west boundary, a distance of 600.13 feet to the intersection with the east boundary of said drainage right of way; thence run South 00°44'24" East, along said east boundary, a distance of 50.01 feet; thence run North 89°33'33" West, departing said east boundary, a distance of 50.01 feet to the intersection with said west boundary; thence run North 00°44'24" West, along said west boundary, a distance of 50.01 feet to the POINT OF BEGINNING.

Containing 0.69 acres, more or less.

#### **Surveyors Notes**

- 1. This Legal Description and Sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
- 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. The location and configuration of the lands described and depicted hereon were provided by the client.
- 4. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the north line of the northwest 1/4 of Section 34, Township 23 South, Range 32 East as being South 89° 01' 43" West. The average combined scale factor is 0.999938.
- 5. The location of the right-of-way lines of interest is based on the follow right-of-way maps:

Orlando Orange County Expressway Authority State Road 528, Section No. 1.1 and Section No. 1.2 and Project 528-403

- 6. This legal description and sketch may have been reduced in size by reproduction.
- 7. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539-10-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

12/10/15: AMENDED THIS WORK PRODUCT TO DEPICT LOCATION OF LIMIT OF SLOPE PROPERTY IN RELATION TO PARCEL BOUNDARY

## LEGEND:

(C) = Calculated (D) = Deed (M) = Measured

(P) = Plat O.R.B.= Official Records Book

Pg. = Page R = Radius

L = Length of curve (arc distance)

C = Chord distance
Delta = central angle
CB = Chord Bearing
ID = Identification
= Line Not To Scale

PID = Parcel Identification Number

S.R. = State Road

CFX = Central Florida Expressway Authority

R/W = Right-of-Way
C = Centerline

\_\_\_\_\_ = Centerline \_\_\_\_\_ = Limited Access Right-of-way line

PC = Limited Access Right
PC = Point of Curvature

PT = Point of Tangency
PCC = Point of Compound Curvature
PRC = Point of Reverse Curvature

PRC = Point of Reverse C (NT) = Non Tangent AAF = All Aboard Florida

OOCEA = Orlando Orange County Express Way Authority

No. = Number

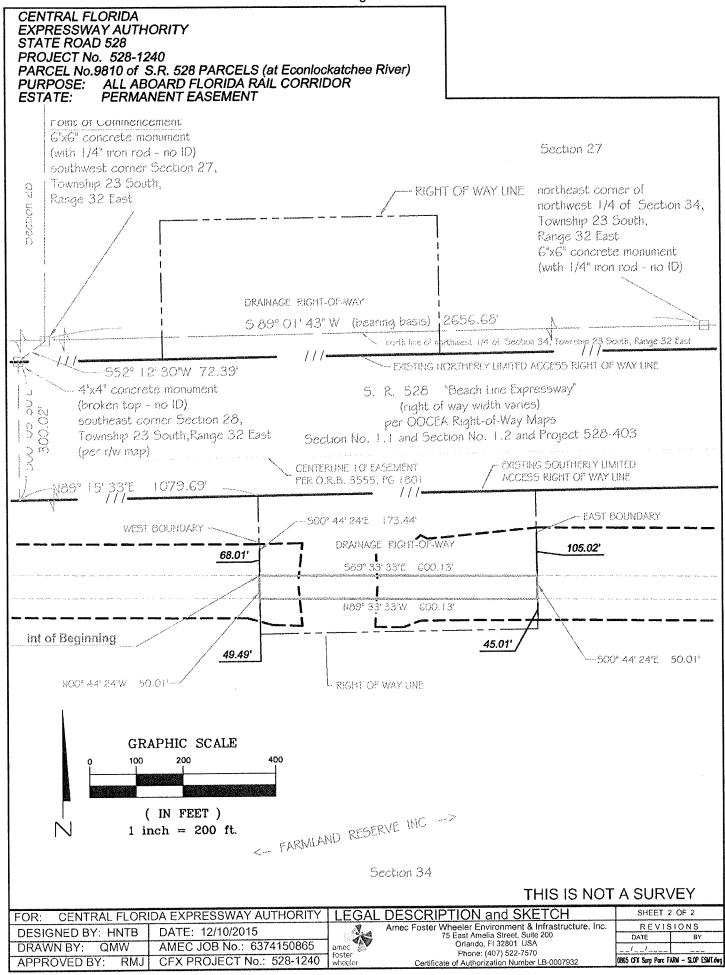
Limit of Slope Property

Robert M. Jones, PLS

#### THIS IS NOT A SURVEY

Florida Surveyor and Mapper, License No. LS-0004201

FOR: CENTRAL FLORI	DA EXPRESSWAY AUTHORITY	LEGAL	DESCRIPTION and SKETCH	SHEET 1	OF 2
DESIGNED BY: HNTB	DATE: 12/10/2015		Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200	REVIS	IONS BY
DRAWN BY: QMW	AMEC JOB No.: 6374150865	amec	Orlando, Fl 32801 USA Phone: (407) 522-7570	//	
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Certificate of Authorization Number LB-0007932	0865 CFX Surp Parc F	ARM - SLOP ESMT.dwg



PARCEL No. 9811 of S.R. 528 PARCELS (at 1st Dallas pond) PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

A parcel of land lying in Section 36, Township 23 South, Range 32 East, Orange County, Florida, lying within and adjacent to the southerly limited access right-of-way line of State Road 528, per Orlando Orange County Expressway Authority Right-of-Way Maps, Section No. 1.1 and Section No. 1.2 and Project No. 528-403, being more particularly described as follows:

Commence at a 6"x6" concrete monument (broken top - no identification) marking the Northwest Corner of Section 36, Township 23 South, Range 32 East, Orange County, Florida; thence run South 00°01'32" East, a distance of 312.86 feet to said southerly limited access right-of-way line; thence run North 89°15'11" East, along said southerly limited access right-of-way line, a distance of 2793.59 feet; thence run South 00°44'24" East, along said southerly limited access right-of-way line, a distance of 154.29 feet to the POINT OF BEGINNING; thence run North 89°19'30" East, departing said southerly limited access right-of-way line, a distance of 768.78 feet to the intersection with said southerly limited access right-of-way line, a distance of 50.00 feet; thence run South 89°19'30" West, departing said southerly limited access right-of-way line, a distance of 768.78 feet to the intersection with said southerly limited access right-of-way line, a distance of 768.78 feet to the intersection with said southerly limited access right-of-way line, a distance of 50.00 feet; thence run North 00°44'24" West, along said southerly limited access right-of-way line, a distance of 50.00 feet to the POINT OF BEGINNING.

Containing 0.88 acres, more or less.

#### Surveyor's Notes:

- 1. This Legal Description and Sketch is not valid without the signature and the original raised seal of the signing Florida licensed Surveyor and Mapper.
- 2. The lands surveyed were not abstracted for ownership, easements, right-of-way or other title matters by this firm.
- The location and configuration of the lands described and depicted hereon were provided by the client.
- 4. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the north line of the northwest 1/4 of Section 36, Township 23 South, Range 33 East as being North 89°38'44" West. The average combined scale factor is 0.999938.
- 5. The location of the right-of-way lines of interest is based on the following right-of-way maps:

Orlando Orange County Expressway Authority State Road 528, Section No. 1.1 and Section No. 1.2 and Project 528-403

- 6. This Legal Description and Sketch may have been reduced in size by reproduction.
- 7. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539-11-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

= Length of curve (arc distance)

C = Chord distance
Delta = central angle
CB = Chord Bearing
ID = Identification

= 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. = Numbe

Limit of Slope Property

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.

12/10/15: AMENDED THIS WORK PRODUCT TO DEPICT LOCATION OF LIMIT OF SLOPE PROPERTY IN

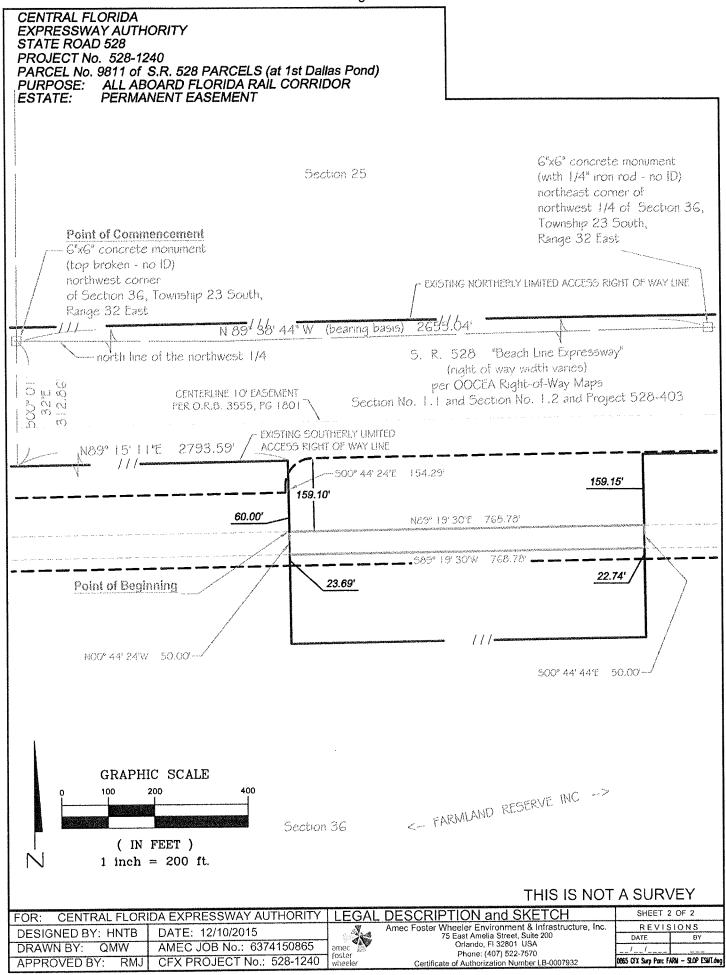
RELATION TO PARCEL BOUNDARY

Robert M. Jones, PLS

THIS IS NOT A SURVEY

Florida Surveyor and Mapper, License No. LS-0004201

FOR: CENTRAL FLORI	DA EXPRESSWAY AUTHORITY	LEGAL	DESCRIPTION and SKETCH	SHEET 1	OF 2
DESIGNED BY: HNTB	DATE: 12/10/2015	A.A	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200	REVIS	
1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	AMEC JOB No.: 6374150865	amec	Orlando, Fl 32801 USA	DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	0865 CFX Surp Parc F	NRW - SLOP ESWT.dwg



PARCEL No. 9812 of S.R. 528 PARCELS (at 2nd Dallas pond) PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

A parcel of land lying in Section 31, Township 23 South, Range 33 East, Orange County, Florida, lying within and adjacent to the southerly limited access right-of-way line of State Road 528, per Orlando Orange County Expressway Authority Right-of-Way Maps Section No. 1.1 and Section No. 1.2 and Project 528-403, being more particularly described as follows:

Commence at a 4"x4" concrete monument (broken top- no identification) marking the Northeast Corner of Section 31, Township 23 South, Range 33 East, Orange County, Florida; thence run South 00°44'03" East, a distance of 268.13 feet to said southerly limited access right-of-way line; thence run South 89°15'16" West, along said southerly limited access right-of-way line, a distance of 1414.59 feet; thence run South 00°44'44" East, along said southerly limited access right-of-way line, a distance of 100.50 feet to the POINT OF BEGINNING; thence run South 00°44'44" East, along said southerly limited access right-of-way line, a distance of 50.00 feet; thence run South 89°15'08" West, departing said southerly limited access right-of-way line, a distance of 277.92 feet; thence run South 89°12' 18" West, a distance of 139.33 feet; thence run South 88°55'53" West, a distance of 139.33 feet to a point on a curve concave to the south; thence run westerly along the arc of said curve, having a radius of 14439.75 feet, a central angle of 00°57'39", a chord length of 242.12 feet bearing South 88°13'10" West, an arc distance of 242.13 feet to the intersection with said southerly limited access right-of-way line; thence run North 00°44'44" West, along said southerly limited access right-of-way line, a distance of 50.02 feet to a point on a non-tangent curve concave to the south; thence run easterly along the arc of said curve, having a radius of 14489.75 feet, a central angle of 00° 57' 20", a chord length of 241.64 feet bearing North 88°13'20" East, an arc distance of 241.64 feet; thence run North 88° 55'52" East, a distance of 139.57 feet; thence run North 89° 15' 08" East, a distance of 277.92 feet to the POINT OF BEGINNING.

Containing 0.92acres, more or less.

LEGEND:

O.R.B.=

Pg.

C

CB

N

ΡÍD

R/W

*--∭* PC

PΤ

PCC

PRC

(NT)

=

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Calculated

Measured

Official Records Book

Length of curve (arc distance)

= Parcel Identification Number

= Central Florida Expressway Authority

OOCEA = Orlando Orange County Express Way Authority

= Limited Access Right-of-way line

= Point of Reverse Curvature

Deed

Page

Delta = central angle

Radius

Chord distance

Chord Bearing

IdentificationLine Not To Scale

= State Road

= Right-of-Way = Centerline

= Point of Curvature

Point of TangencyPoint of Compound Curvature

= All Aboard Florida

= Non Tangent

#### Surveyor's Notes:

- 1. This Legal Description and Sketch is not valid without the signature and the original raised seal of the signing Florida licensed Surveyor and Mapper.
- 2. The lands surveyed were not abstracted for ownership, easements, right-of-way or other title matters by this firm.
- 3. The location and configuration of the lands described and depicted hereon were provided by the client.
- 4. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the north line of Section 31, Township 23 South, Range 33 East as being South 89°29'32" West. The average combined scale factor is 0.999938.
- 5. The location of the right-of-way lines of interest is based on the following right-of-way maps:

Orlando Orange County Expressway Authority State Road 528, Section No. 1.1 and Section No. 1.2 and Project 528-403

Florida Department Of Transportation State Road 528, Section 75005-2501 and State Road 520 Section 75140

- 6. This Legal Description and Sketch may have been reduced in size by reproduction.
- 7. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539-12-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

12/10/15: AMENDED THIS WORK PRODUCT TO DEPICT LOCATION OF LIMIT OF SLOPE PROPERTY IN RELATION TO PARCEL BOUNDARY

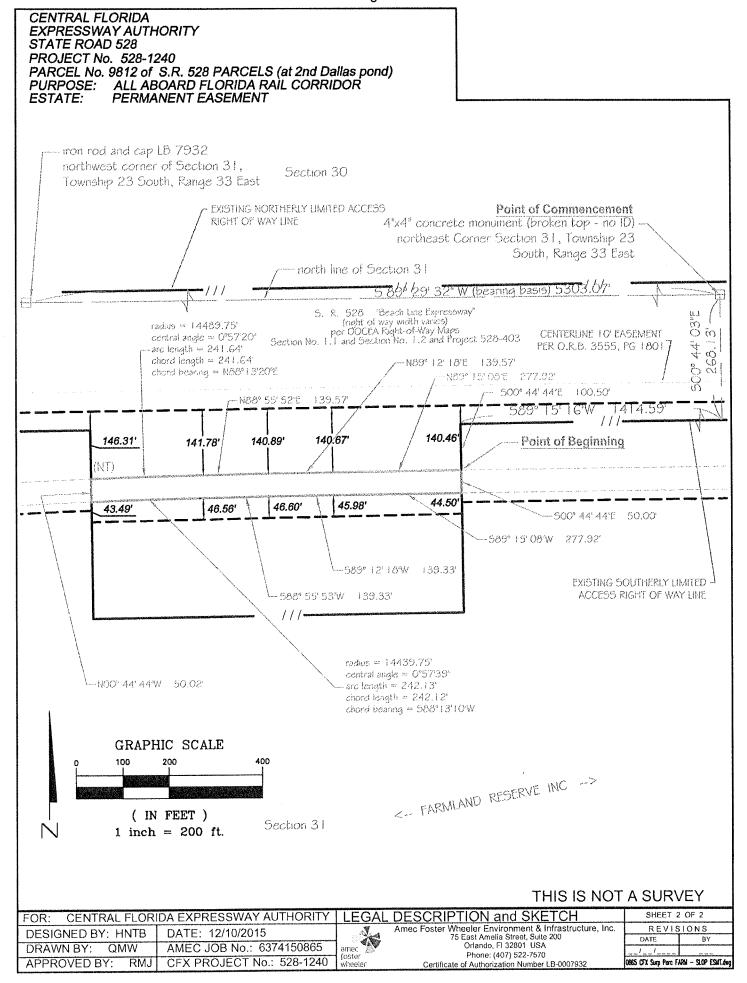
Limit of Slope Property

Robert M. Jones, PLS

## THIS IS NOT A SURVEY

Florida Surveyor and Mapper, License No. LS-0004201

SHEET 1 OF 2 FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY | LEGAL DESCRIPTION and SKETCH Amec Foster Wheeler Environment & Infrastructure, Inc. REVISIONS DESIGNED BY: HNTB DATE: 12/10/2015 75 East Amelia Street, Suite 200 Orlando, Fl 32801 USA DATE BY DRAWN BY: QMW AMEC JOB No.: 6374150865 Phone: (407) 522-7570 CFX PROJECT No.: 528-1240 0865 CFX Surp Porc FARM - SLOP ESMT.dwg APPROVED BY: RMJ Certificate of Authorization Number LB-0007932



CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 9813 of S.R. 528 PARCELS (at Farm Road 2) ALL ABOARD FLORIDA RAIL CORRIDOR PURPOSE:

ESTATE: PERMANENT EASEMENT

A parcel of land lying in Sections 32 and 33 Township 23 South, Range 33 East, Orange County, Florida, lying within and adjacent to the southerly limited access right-of-way line of State Road 528, per Orlando Orange County Expressway Authority Right-of-Way Maps, Section No. 1.1 and Section No. 1.2, being more particularly described as follows:

Commence at a 6"x6" concrete monument (broken top- no identification) marking the Northwest Corner of Section 33. Township 23 South, Range 33 East, Orange County, Florida; thence run South 01°11'05" East, along the southerly projection of the west line of the southwest 1/4 of Section 28 Township 23 South, Range 33 East, a distance of 427.86 feet to the POINT OF BEGINNING, said point lying on a non-tangent curve concave to the north; thence run easterly along the arc of said curve, having a radius of 98206.34 feet, a central angle of 00°06'32", a chord length of 186.42 feet bearing North 89° 47' 14" East, an arc distance of 186.42 feet; thence run North 89°43'15" East, a distance of 62.00 feet; thence run North 89° 42'53" East , a distance of 907.94 feet to said existing southerly limited access right of way line of State Road 528: thence South 77°58'56" West, along said southerly limited access right-of-way line, a distance of 245.89 feet; thence departing said southerly limited access right-of-way line, run South 89°42'53" West, a distance of 667.20 feet; thence run South 89° 43' 15" West, a distance of 62.01 feet to a curve concave to the north; thence run westerly along the arc of said curve, having a radius of 98256.34 feet, a central angle of 00°06'05", a chord distance of 173.93 feet bearing South 89° 47'01" West, an arc distance of 173.93 feet to said southerly limited access right-of-way line; thence run North 78°29'25" West, along said southerly limited access right-of-way line, a distance of 248.57 feet; thence departing said southerly limited access right of way line, run North 89° 59' 14" East, a distance of 2.01 feet to a point on a non-tangent curve concave to the north; thence run easterly along the arc of said curve having a radius 98206.34 feet, a central angle of 00°08'01", a chord distance of 228.83 feet bearing North 89°54'30" East, an arc distance of 228.83 feet to the POINT OF BEGINNING.

Containing 1.31 acres, more or less.

LEGEND:

O.R.B.=

Delta =

(M)

Pg. R

С

СB =

ID V PID

S.R.

CFX

R/W

Ç

PC

PΤ

PCC PRC

(NT)

== Deed

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Calculated

Measured

Official Records Book

Length of curve (arc distance)

= Parcel Identification Number

= Central Florida Expressway Authority

OOCEA = Orlando Orange County Express Way Authority

= Limited Access Right-of-way line

= Point of Reverse Curvature

Plat

Page

Radius

Chord distance

Chord Bearing

Identification Line Not To Scale

= State Road

= Right-of-Way

Centerline

= Point of Curvature

= Point of Tangency = Point of Compound Curvature

= Non Tangent = All Aboard Florida

= Number

central angle

# Surveyor's Notes:

- 1) This Legal Description and Sketch is not valid without the signature and the original raised seal of the signing Florida licensed Surveyor and Mapper.
- 2) The lands surveyed were not abstracted for ownership, easements, right-of-way or other title matters by this firm.
- 3) The location and configuration of the lands described and depicted hereon were provided by the client.
- 4) 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 southwest 1/4 of Section 28, Township 23 South, Range 33 East as being South 01°11'05" East. The average combined scale factor is 0.999938.
- 5) The location of the right-of-way lines of interest is based on the following right-of-way maps:

Section No. 1.2

6) This Legal Description and Sketch may have been reduced in size by reproduction. 7. A commitment for Title Insurance prepared by First American Title Insurance Company, dated

Orlando Orange County Expressway Authority State Road 528, Section No. 1.1 and

Oct. 14, 2015, file number NCS-586539-13-ORL was reviewed by this firm. Schedule B-II

exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant

to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

12/10/15; AMENDED THIS WORK PRODUCT TO DEPICT LOCATION OF LIMIT OF SLOPE PROPERTY IN RELATION TO PARCEL BOUNDARY

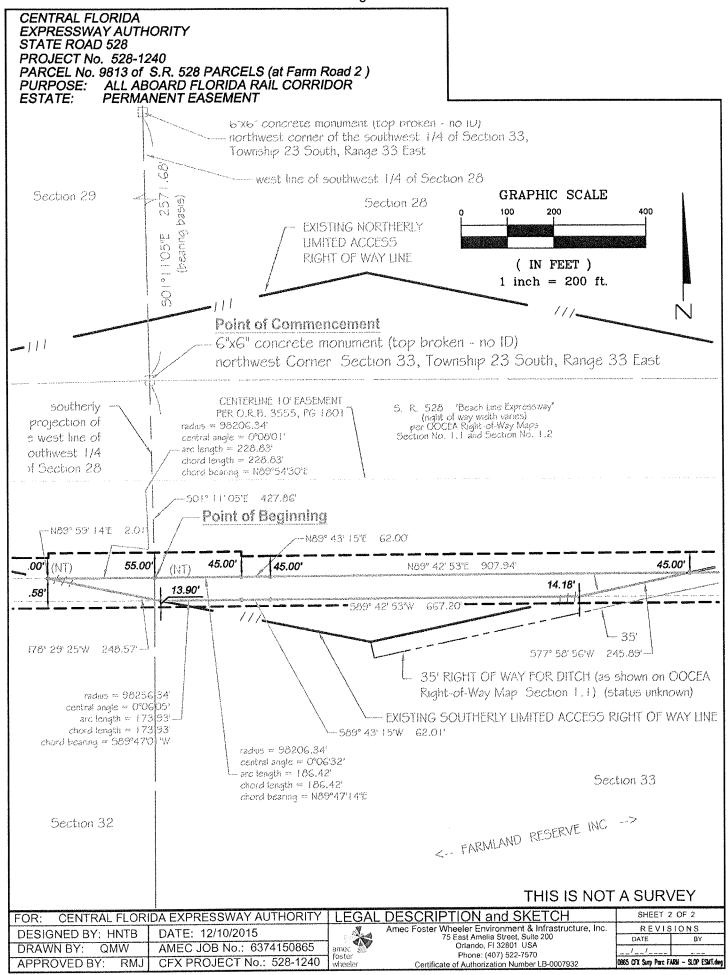
## Limit of Slope Property

# THIS IS NOT A SURVEY

Florida Surveyor and Mapper, License No. LS-0004201

FOR: CENTRAL FLORI	DA EXPRESSWAY AUTHORITY	LEGAL	DESCRIPTION and SKETCH	SHEET 1	OF 2
DESIGNED BY: HNTB	DATE: 12/10/2015	3La	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200	R E V I S	IONS
DRAWN BY: QMW	AMEC JOB No.: 6374150865	amec	Orlando, Fl 32801 USA Phone: (407) 522-7570	//	
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Certificate of Authorization Number LB-0007932	0865 CFX Surp Porc Fa	VRN - SLOP ESWIT.dwg

Robert M. Jones, PLS



# 20150654568 Page 96 of 166

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 9814 Part A and Part B of S.R. 528 PARCELS (at S.R. 520)

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

#### Part A

A parcel of land lying in Sections 35 and 36, Township 23 South, Range 33 East, Orange County, Florida, lying within and adjacent to the southerly limited access right-of-way line of State Road 528, per Orlando Orange County Expressway Authority State Road 528 Right-of-Way Maps, Section No. 1.1 and Section No. 1.2, Florida Department of Transportation State Road 528 Right of Way Map, Section 75005-2501 and State Road 520 Right of Way Map Section 75140, being more particularly described as follows:

Commence at a 6"x6" concrete monument (no identification) marking the northeast corner of Section 36, Township 23 South, Range 33 East, Orange County, Florida; thence run South 89°28'54" West, along the north line of said Section 36, a distance of 5531.97 feet to the northwest corner of said Section 36; thence run South 00°00'00" East, a distance of 563.24 feet; to the POINT OF BEGINNING, said point lying on a non-tangent curve concave to the north; thence run easterly along the arc of said curve, having a radius of 11444.19 feet, a central angle of 0°26'33", a chord length of 88.36 feet bearing South 89°38'01" East. an arc distance of 88.36 feet to the westerly right-of-way line of said State Road 520; thence run South 34°26'05" East, along said right-of-way line, a distance of 60.67 feet to a point on a non-tangent curve concave to the north; thence, departing said right-of-way line, run westerly along the arc of said curve, having a radius of 11494.19 feet, a central angle of 02°36'22", a chord length of 522.79 feet bearing North 88°43'24" West, an arc distance of 522.84 feet; thence run North 87°03'52" West, a distance of 170.76 feet; thence run North 86°38'23" West, a distance of 170.76 feet; thence run North 86°34'04" West, a distance of 320.42 feet to said southerly limited access right-of-way line; thence run North 52°31'20" West, along said southerly limited access right-of-way line, a distance of 89.31 feet; thence, departing said southerly limited access right-of-way line, run South 86°34'04" East, a distance of 394.42 feet; thence South 86°38'23" East, a distance of 170.39 feet; thence South 87°03'50" East, a distance of 170.39 feet to a point on a non-tangent curve concave to the north; thence, run easterly along the arc of said curve, having a radius of 11444.19 feet, a central angle of 01°59'32", a chord length of 397.90 feet bearing South 88°24'59" East, an arc distance of 397.92 feet to the POINT OF BEGINNING.

Containing 1.38 acres, more or less.

Together with:

#### Part B

A parcel of land lying in Section 36, Township 23 South, Range 33 East, Orange County, Florida, lying within and adjacent to the southerly limited access right-of-way line of State Road 528, per Orlando Orange County Expressway Authority State Road 528 Right-of-Way Maps, Section No. 1.1 and Section No. 1.2, Florida Department of Transportation State Road 528 Right of Way Map, Section 75005-2501 and State Road 520 Right of Way Map Section 75140, being more particularly described as follows:

Commence at a 6"x6" concrete monument (no identification) marking the northeast corner of Section 36, Township 23 South, Range 33 East, Orange County, Florida; thence run South 89°28'54" West, along the north line of said Section 36, a distance of 5531.97 feet to the northwest corner of said Section 36; thence run South 00°00'00" East, a distance of 563.24 feet to a point lying on a non-tangent curve concave to the north; thence run easterly along the arc of said curve, having a radius of 11444.19 feet, a central angle of 01°38'59", a chord length of 329.53 feet bearing North 89°45'46" East, an arc distance of 329.54 feet to the easterly right-of-way line of said State Road 520 and the POINT OF BEGINNING; thence run easterly along the arc of said curve, having a radius of 11444.19 feet, a central angle of 01°19'12", a chord length of 263.64 feet bearing North 88°16'40" East, an arc distance of 263.65 feet to said southerly limited access right-of-way line; thence run South 10°28'50" West, along said southerly limited access right-of-way line, run westerly along the arc of said curve, having a radius of 11494.19 feet, a central angle of 01°05'57", a chord length of 220.48 feet bearing South 88°13'27" West, an arc distance of 220.48 feet to said easterly right-of-way line, run North 34°26'05" West, a distance of 59.82 feet to the POINT OF BEGINNING.

Containing 12,103 square feet or 0.28 acres, more or less.

# THIS IS NOT A SURVEY

				T	
FOR: CENTRAL FLORI	DA EXPRESSWAY AUTHORITY	LEGAL	DESCRIPTION and SKETCH	SHEET 1	OF 3
DESIGNED BY: HNTB	DATE: 12/10/2015	N.	Amec Foster Wheeler Environment & Infrastructure, Inc.	REVIS	IONS
DESIGNED BY, HIVE		75	75 East Amelia Street, Suite 200	DATE	BY
DRAWN BY: QMW	AMEC JOB No.: 6374150865	amec 🔭	Orlando, FI 32801 USA		
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	0865 CFX Surp Porc F	VAN - SLOP ESMT.dwg

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 9814 Part A and Part B of S.R. 528 PARCELS (at S.R. 520)

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

# Surveyor's Notes:

- 1) This Legal Description and Sketch is not valid without the signature and the original raised seal of the signing Florida licensed Surveyor and Mapper.
- 2) The lands surveyed were not abstracted for ownership, easements, right-of-way or other title matters by this firm.
- 3) The location and configuration of the lands described and depicted hereon were provided by the client.
- 4) Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the north line of Section 36, Township 23 South, Range 33 East as being South 89°28'54" West. The average combined scale factor is 0.999938.
- 5) The location of the right-of-way lines of interest is based on the following right-of-way maps:

Orlando Orange County Expressway Authority State Road 528, Section No. 1.1 and Section No. 1.2

Florida Department Of Transportation State Road 528, Section 75005-2501 and State Road 520 Section 75140

- 6) This Legal Description and Sketch may have been reduced in size by reproduction.
- 7. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539-14-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

12/10/15: AMENDED THIS WORK

PRODUCT TO DEPICT LOCATION

OF LIMIT OF SLOPE PROPERTY IN

RELATION TO PARCEL BOUNDARY

Robert M. Jones, PLS

# Limit of Slope Property

# THIS IS NOT A SURVEY

LEGEND:

O.R.B.=

(D)

(M)

(P) == Plat

Pg.

CB

ÁΙΝ

S.R.

CFX

R/W

PΤ

PCC

PRC

(NT)

AAF

Calculated

Measured

Official Records Book

Chord distance

= Chord Bearing

= State Road

= Right-of-Way = Centerline

= Point of Curvature

= Point of Tangency = Point of Compound Curvature

= Non Tangent = All Aboard Florida

= Number

Identification

= Line Not To Scale

= Parcel Identification Number

= Central Florida Expressway Authority

OOCEA = Orlando Orange County Express Way Authority

= Limited Access Right-of-way line

= Point of Reverse Curvature

FDOT = Florida Department of Transportation

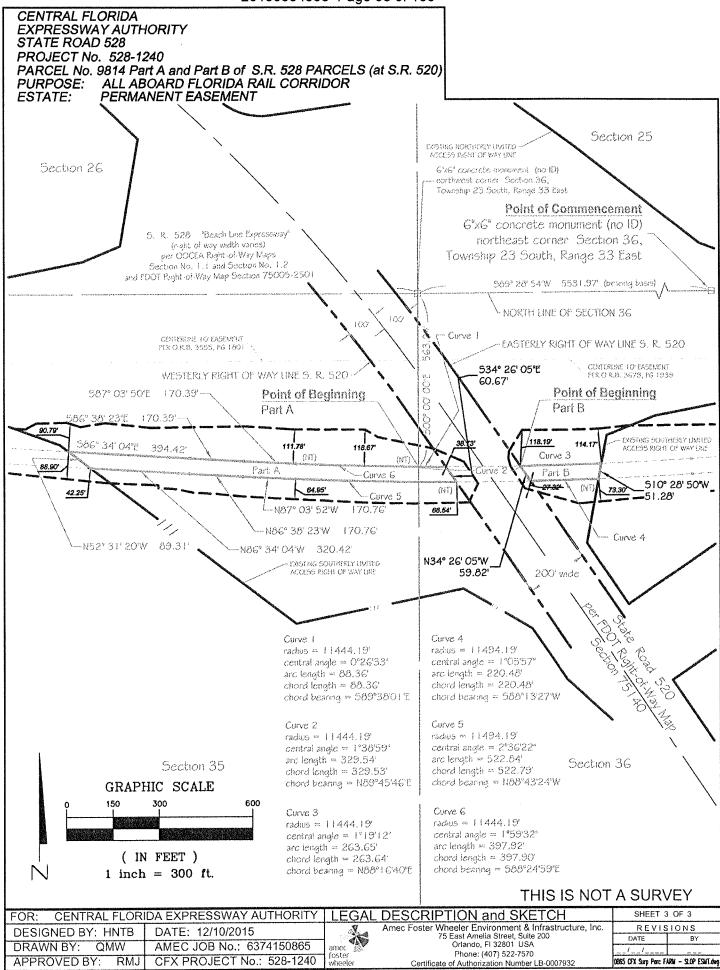
Length of curve (arc distance)

Deed ==

Page

Delta = central angle

FOR: CENTRAL FLORIDA EXPRESSWAY A	UTHORITY LEGA	L DESCRIPTION and SKETCH	SHEET 2	OF 3
DESIGNED BY: HNTB DATE: 12/10/2015	A.	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200	REVIS	IONS
DRAWN BY: QMW AMEC JOB No.: 63		Orlando, Fl 32801 USA	DATE:	8Y
APPROVED BY: RMJ CFX PROJECT No.:	.: 528-1240 foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	0885 CFX Surp Pare F/	URM - SLOP ESMT.dwg



# COMPOSITE EXHIBIT "B" DESCRIPTION OF THE PROPERTY

# 20150654568 Page 100 of 166

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528

PROJECT No. 528-1240

PARCEL No. 981 of SR 528 PARCELS (at OIA)

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

A parcel of land lying in the Sections 34 and 35, Township 23 South, Range 30 East, Orange County, Florida, lying within and adjacent to the existing limited access right of way of State Road 528 as depicted on Orlando Orange County Expressway Authority Map Section 1.2 and Airport Interchange-Bee Line Improvements Right of Way Maps, being more particularly described as follows:

Commence at 6"x6" concrete monument marking the Northeast Corner of Section 34, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°22'19"East, along the East line of the Northeast 1/4 of said Section 34, a distance of 552.65 feet to the POINT OF BEGINNING; thence South 79°11'53"East, a distance of 15.10 feet to the existing southerly limited access right of way line of said State Road 528; thence along said southerly limited access right of way line, run North 80°13'05"West a distance of 2048.32 feet to a point on a curve with a radius of 5579.58 feet, concave to the south; thence westerly along said existing southerly limited access right of way line and said curve to the left through a central angle of 9°57'40", a distance of 970.03 feet where the chord bears North 85°10'21"West a distance of 968.81 feet; thence South 89°50'49"West, along said existing southerly limited access right of way line, a distance of 260.95 feet; thence South 86°01'30"West, along said existing southerly limited access right of way line, a distance of 34.35 feet; thence South 89°55'38"West, departing said existing southerly limited access right of way line, a distance of 34.51 feet; thence South 89°31'05"West a distance of 58.59 feet; thence South 87°28'14"West a distance of 58.60 feet to a point on a non-tangent curve with a radius of 851.92 feet concave to the southeast; thence southwesterly along said curve to the left through a central angle of 93°13'07", a distance of 1386.05 feet where the chord bears South 39°12'31"West a distance of 1238.16 feet; thence South 09°07'20"East a distance of 61.55 feet; thence South 11°10'07"East a distance of 61.54 feet; thence South 11°30'37"East a distance of 215.27 feet to said existing southerly limited access right of way line; thence along said existing southerly limited access right of way line the following three (3) courses and distances; thence run South 05°26'17"West a distance of 62.41 feet to a point on a curve with a radius of 2980.79 feet concave to the west; thence southerly along said curve to the right through a central angle of 2°24'25", a distance of 125.23 feet where the chord bears South 03°24'20"East a distance of 125.22 feet; thence South 10°55'22"West a distance of 14.82 feet; thence departing said existing southerly limited access right of way line, run North 11°30'37"West a distance of 55.11 feet; thence continue North 11°30'37"West a distance of 357.67 feet; thence North 11°10'09"West a distance of 62.52 feet; thence North 09°08'37"West a distance of 62.53 feet to a point on a curve with a radius of 893.31 feet, concave to the southeast; thence northeasterly along said curve to the right through a central angle of 93°20'55", a distance of 1455.42 feet where the chord bears North 39°12'31"East a distance of 1299.70 feet; thence North 87°33'40"East a distance of 62.53 feet; thence North 89°35'12"East a distance of 62.52 feet; thence North 89°55'39"East a distance of 271.31 feet; thence South 89°58'09"East a distance of 62.08 feet to a point on a curve with a radius of 5752.62 feet, concave to the south; thence easterly along said curve to the right through a central angle of 10°15'19", a distance of 1029.65 feet where the chord bears South 84°38'07" East a distance of 1028.28 feet; thence South 79°18'04" East, a distance of 62.08 feet; thence South 79°11'53"East, a distance of 1908.76 feet to the POINT OF BEGINNING.

Containing 168051.87 square feet or 3.86 acres, more or less.

# LEGEND:

(C) = Calculated (D) = Deed (M) = Measured (P) = Plat

O.R.B.= Official Records Book

Pg. = Page R = Radius

= Length of curve (arc distance)

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

# Surveyors Notes

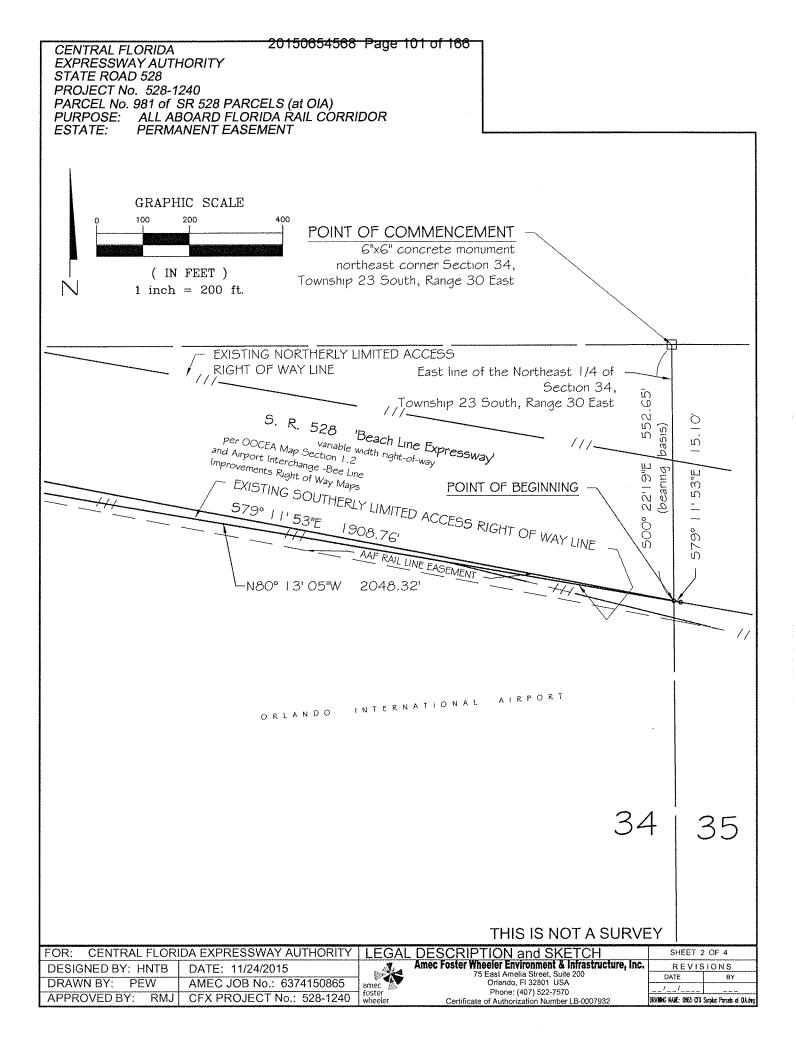
- 1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the east line of the northeast 1/4 of Section 34, Township 23 South, Range 30 East as being South 00° 22' 19" East. The average combined scale factor is 0.999952.
- 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-586539-1-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

Robert M. Jones, PLS

# THIS IS NOT A SURVEY

	FOR: CENTRAL FLORI	DA EXPRESSWAY AUTHORITY		. DESCRIPTION and SKETCH	SHEET	1 OF 4
I	DESIGNED BY: HNTB	DATE: 11/24/2015	a de	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200		
t	DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec	Orlando, Fl 32801 USA	OATE	BY
l	APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	DRAMMIG NAME: 0865 OTX	Surplus Parcels at OlAding



20150654568 Page 102 of 166 CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240 PARCEL No. 981 of SR 528 PARCELS (at OIA) PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR ESTATE: PERMANENT EASEMENT GRAPHIC SCALE 200 400 ( IN FEET ) 1 inch = 200 ft.EXISTING NORTHERLY LIMITED ACCESS RIGHT OF WAY LINE S. R. 528 'Beach Line Expressway' 111variable width right-of-way radius = 5752.62'///\_ per OOCEA Map Section 1.2 central angle =  $10^{\circ}15'19''$ and Airport Interchange -Bee Line Improvements Right of Way Maps arclength = 1029.65'chord length = 1028.28chord bearing = 584°38'07"E AAF RAIL LINE EASEMENT ·S79° 18' 04"E 62.08 579° | | ' 53"E 1908.76 EXISTING SOUTHERLY LIMITED ACCESS RIGHT OF WAY LINE radius = 5579.58'central angle =9°57'40" arc length = 970.03'chord length = 968.81'chord bearing = N85°10'21"W AIRPORT ORLANDO INTERNATIONAL THIS IS NOT A SURVEY CENTRAL FLORIDA EXPRESSWAY AUTHORITY LEGAL DESCRIPTION and SKETCH SHEET 3 OF 4 Amec Foster Wheeler Environment & Infrastructure, Inc. **DESIGNED BY: HNTB** REVISIONS DATE: 11/24/2015 75 East Amelia Street, Suite 200 Orlando, FI 32801 USA DATE AMEC JOB No.: 6374150865 DRAWN BY: PEW amec ( foster wheeler Phone: (407) 522-7570 APPROVED BY: RMJ CFX PROJECT No.: 528-1240 DRAWNG NAME: 0865 DFX Surplus Parcels at DIA.des

Certificate of Authorization Number LB-0007932

20150654568 Page 103 of 166 CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240 PARCEL No. 981 of SR 528 PARCELS (at OIA) PURPOSE: ALL ABOARD FLORIDA RAIL CÓRRIDOR ESTATE: PERMANENT EASEMENT N89° 55' 39"E 271.31'-589° 58' 09"E N89° 35' | 2"E 62.52'-62.081 N87° 33' 40"E 62.53'-5. R. 528 'Beach Line Expressway' variable width right-of-way per OOCEA Map Section 1.2 and Airport Interchange -Bee Line 589° 50′ 49″W Improvements Right of Way Maps 260.95 -586° 01' 30"W - 34.35' -S89° 55' 38"W 34.51' radius = 893.31'-589° 31' 05"W 58.59' central angle =93°20'55" L587° 28' 14"W arc length = 1455.42'chord length = 1299.70chord bearing = N39°12'31"E EXISTING SOUTHERLY LIMITED ACCESS RIGHT OF WAY LINE radius = 851.92'central angle =  $93^{\circ}13'07''$ arc length = 1386.05chord length = 1238.16RAIL chord bearing = 539°12'31"W AAF AIRPORT INTERNATIONAL ORLANDO -N09° 08' 37"W 62.53'509° 07' 20"E 61.55 N11°10'09"W 62.52' 34 S11° 10' 07"E 61.54 5 357 511° 30' 37"E 215.27 GRAPHIC SCALE 4DD 37"W 505° 26' 17"W 62.41' radius = 2980.79'30 ( IN FEET ) central angle = 2°24'25" arclenath = 125.23'1 inch = 200 ft.chord length = 125.22'chord bearing = 503°24'20"E NII° 30' 37"W 55.11' S10° 55' 22"W 14.82' THIS IS NOT A SURVEY CENTRAL FLORIDA EXPRESSWAY AUTHORITY FOR: LEGAL DESCRIPTION and SKETCH SHEET 4 OF 4 Amec Foster Wheeler Environment & Infrastructure, Inc. REVISIONS DESIGNED BY: HNTB DATE: 11/24/2015 75 East Amelia Street, Suite 200 Orlando, Fl 32801 USA DATE DRAWN BY: PEW AMEC JOB No.: 6374150865 Phone: (407) 522-7570 CFX PROJECT No.: 528-1240 APPROVED BY: RMJ Certificate of Authorization Number LB-0007932 DRAMBNG NAME: 0865 DFX Surplus Parcels at Oth de

# 20150654568 Page 104 of 166

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 982 of SR 528 PARCELS (at OIA) (GOLDENROD ROAD EXTENSION)

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

A parcel of land lying in the Sections 34 and 35, Township 23 South, Range 30 East, Orange County, Florida, lying within and adjacent to the south limited access right of way for Goldenrod Road Extension as depicted on Orlando Orange County Expressway Authority Project No. 903 Right-of-Way Maps, being more particularly described as follows:

Commence at 6"x6" concrete monument marking the Northeast Corner of Section 34, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°22'19"East, along the East line of the Northeast 1/4 of said Section 34, a distance of 552.65 feet; thence South 79°11'53"East, a distance of 15.10 feet to a point of intersection with the existing southerly limited access right of way line of State Road 528 ("Beachline Expressway") per Orlando Orange County Expressway Authority right of way Map Section 1.2 and the POINT OF BEGINNING; thence, departing said southerly limited access right of way line, run South 79°11'53"East a distance of 24.82 feet; thence South 79°06'03"East a distance of 77.65 feet; thence South 78°31'10"East a distance of 77.65 feet to a point on a curve with a radius of 3834.83 feet, concave to the south; thence easterly along said curve to the right through a central angle of 8°54'36", a distance of 596.35 feet where the chord bears 5outh 73°34'50"East a distance of 595.75 feet; thence South 68°38'30"East a distance of 77.65 feet; thence South 68°03'37"East a distance of 77.65 feet; thence South 67°57'47"East a distance of 231.17 feet; thence South 68°09'12"East a distance of 139.19 feet; thence South 69°17'24"East a distance of 139.20 feet to a point on a curve with a radius of 3493.02 feet concave to the northeast; thence southeasterly along said curve to the left through a central angle of 17°51'51", a distance of 1089.08 feet where the chord bears South 79°10'25"East a distance of 1084.67 feet; thence South 88°33'00"East a distance of 58.66 feet to the south limited access right of way line of said Goldenrod Road Extension; thence, along said south limited access right of way line of Goldenrod Road Extension, South 84°42'52"West a distance of 194.65 feet; thence South 13°30'54"West, continuing along said south limited access right of way line of Goldenrod Road Extension, a distance of 15.44 feet to a point on a curve with a radius of 3520.52 feet concave to the northeast; thence, departing said south limited access right of way line of Goldenrod Road Extension run westerly along said curve to the right through a central angle of 15°39'38", a distance of 962.26 feet where the chord bears North 78°04'18"West a distance of 959.26 feet; thence North 69°17'29"West a distance of 139.87 feet; thence North 68°09'15"West a distance of 139.62 feet; thence North 67°57'47"West a distance of 232.57 feet; thence North 68°07'32"West a distance of 99.85 feet to a point on said south limited access right of way line of Goldenrod Road Extension, said point lying on a curve with a radius of 2770.79 feet concave to the southwest; thence westerly along said south limited access right of way line of Goldenrod Road Extension and said curve to the left through a central angle of 5°00'38", a distance of 242.30 feet where the chord bears North 70°07'58"West a distance of 242.22 feet to a point on a non-tangent curve with a radius of 3807.33 feet, concave to the south; thence, departing said south limited access right of way line of Goldenrod Road Extension, run westerly along said curve to the left through a central angle of 6°05'25", a distance of 404.70 feet where the chord bears North 74°59'25"West a distance of 404.51 feet; thence North 78°30'30"West a distance of 74.73 feet to said south limited access right of way line of Goldenrod Road Extension; thence North 76°11'34"West, along said south limited access right of way line of Goldenrod Road Extension, a distance of 619.43 feet to said existing southerly limited access right of way line of State Road 528; thence, along said existing southerly limited access right of way line, run South 80°13'05" East a distance of 515.20 feet to the POINT OF BEGINNING.

Containing 111124.01 square feet or 2.55 acres, more or less.

#### LEGEND:

(C) = Calculated (D) = Deed (M) = Measured (P) = Plat

O.R.B.= Official Records Book

Pg. = Page R = Radius

L = Length of curve (arc distance)

C = Chord distance
Delta = central angle
CB = Chord Bearing
ID = Identification
Line Not To Scale
PID = Parcel Identification

PID = Parcel Identification Number

S.R. = State Road

CFX = Central Florida Expressway Authority R/W = Right-of-Way

Ç = 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

#### Surveyors Notes

- 1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the east line of the northeast 1/4 of Section 34, Township 23 South, Range 30 East as being South 00° 22' 19" East. The average combined scale factor is 0.999952.
- 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-586539-2-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

Robert M. Jones, PLS

# THIS IS NOT A SURVEY

Florida Surveyor and Mapper, License No. LS-0004201

CENTRAL FLORIDA EXPRESSWAY AUTHORITY LEGAL DESCRIPTION and SKETCH SHEET 1 OF 3 Amec Foster Wheeler Environment & Infrastructure, Inc. 16 REVISIONS DESIGNED BY: HNTB DATE: 11/24/2015 75 East Amelia Street, Suite Orlando, Fl 32801 USA DATE DRAWN BY: PEW AMEC JOB No.: 6374150865 Phone: (407) 522-7570 APPROVED BY: RMJ CFX PROJECT No.: 528-1240 DRAWNG NAME: 0865 OFX Surplus Porcels at OXA.dw Certificate of Authorization Number LB-0007932

20150654568 Page 105 of 166 CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240 PARCEL No. 982 of SR 528 PARCELS (at OIA) (GOLDENROD ROAD EXTENSION) ALL ABOARD FLORIDA RAIL CORRIDOR PURPOSE: PERMANENT EASEMENT ESTATE: POINT OF COMMENCEMENT GRAPHIC SCALE 6"x6" concrete monument 200 400 northeast corner Section 34, Township 23 South, Range 30 East ( IN FEET ) 1 inch = 200 ft.East line of the Northeast 1/4 of Section 34, EXISTING NORTHERLY LIMITED ACCESS 65 Township 23 South, RIGHT OF WAY LINE Range 30 East Ŋ, EXISTING SOUTHERLY LIMITED ACCESS RIGHT OF WAY LINE OF STATE ROAD 528 ي آٿا bearing per OOCEA Right-of-Way Map Section 1.2  $\tilde{\sigma}$ -25 2 5 ---111\_ ŝ 57 radius = 3834.83' 580° 13'05"E POINT OF BEGINNING central angle =8°54'36" 515.20' arc length = 596.35'chord length = 595.75' chord bearing = 573°34'50"E 568° 03' 37"E 77.65'-AAF RAIL LINE EASEMENT 568° 38' 30"E 77.65'-AAF RAIL LINE EASEMENT 619,43 N76° 11' 34"W OUC Electric Link O.R.B. 55 N78° 30' 30"W 74.73 PARCEL B-1 O.R.B. 3485 PG. 85 OUC Water Easement (20 wide) O.R.B. 5986, Pg. 4492 radius = 3807.33central angle =6°05'25" arc length = 404.70' radius = 2770,79 chord length = 404.51central angle =5°00'38" chord bearing = N74°59'25"W arc length = 242.30' chord length = 242.22' chord bearing = N70°07'58"W 35 N68° 07' 32"W 99,85'-SOUTH LIMITED ACCESS RIGHT OF WAY LINE OF GOLDENROD ROAD EXTENSION per OOCEA Project No. 903 Right-of-Way Map THIS IS NOT A SURVEY DESCRIPTION and SKETCH
Amec Foster Wheeler Environment & Infrastructure, Inc. SHEET 2 OF 3 FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY LEGAL amec foster REVISIONS DESIGNED BY: HNTB DATE: 11/24/2015 75 East Amelia Street, Suite 200 Orlando, Fl 32801 USA DATE BY DRAWN BY: PEW AMEC JOB No.: 6374150865 Phone: (407) 522-7570 APPROVED BY: RMJ CFX PROJECT No.: 528-1240 DRAMMIC NAME: 0865 OFX Supplus Porcels of CIA do Certificate of Authorization Number LB-0007932

20150654568 Page 106 of 166 CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240 PARCEL No. 982 of SR 528 PARCELS (at OIA) (GOLDENROD ROAD EXTENSION) PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR PERMANENT EASEMENT ESTATE: GRAPHIC SCALE 400 200 ( IN FEET ) 1 inch = 200 ft.EXISTING NORTHERLY LIMITED ACCESS RIGHT OF WAY LINE EXISTING SOUTHERLY LIMITED ACCESS RIGHT OF WAY LINE OF STATE ROAD 528 per OOCEA -/// Right-of-Way Map Section 1.2 567° 57' 47"E 231.17' -568° 09' 12"E 139.19' -569° 17' 24"E 139.20 radius = 3520.52' -/// central angle =  $15^{\circ}39'38''$ arc length = 962.26'radius = 3493.02' chord length = 959.26' central angle =  $17^{\circ}51'51"$ chord bearing = N78°04'18"W arc length = 1089.08chord length = 1084.67' chord bearing = 579°10'25"E 588° 33' 00"E 58.66' -N69° 17' 29"W AAF RAIL LINE EASEMENT 09' 15"W 139.62' 232.57' SOUTH LIMITED ACCESS RIGHT OF WAY LINE OF GOLDENROD ROAD EXTENSION per OOCEA Project No. 903 Right-of-Way Map MAINTENANCE AGREEMENT O.R.B. 6948 PG. 2771 EXHIBIT "A" 513° 30' 54"W | 15.44'-O.R.B. 3585 PG. 890 584° 42' 52 W 194.65'-OUC Water Easement (20' wide) O.R.B. 5986, Fg. 4492 THIS IS NOT A SURVEY FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY LEGAL DESCRIPTION and SKETCH SHEET 3 OF 3 Amec Foster Wheeler Environment & Infrastructure, Inc. 1 DESIGNED BY: HNTB REVISIONS DATE: 11/24/2015 75 East Amelia Street, Suite 200 Orlando, Fl 32801 USA DATE DRAWN BY: PEW AMEC JOB No.: 6374150865 Phone: (407) 522-7570 APPROVED BY: RMJ CFX PROJECT No.: 528-1240 DRAMMIG HAME: 0865 DTX Surplus Porcels of DIA.du Certificate of Authorization Number LB-0007932

# 20150654568 Page 107 of 166

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 983 of SR 528 PARCELS (at OIA) (GOLDENROD ROAD EXTENSION)

PURPOSE: ALL ABOARD FLORIDA RÀIL CORRIDOR

ESTATE: PERMANENT EASEMENT

A parcel of land lying in the Section 35, Township 23 South, Range 30 East, Orange County, Florida, lying within and adjacent to the limited access right of way for Goldenrod Road Extension as depicted on Orlando Orange County Expressway Authority Project No. 903 Right-of-Way Maps, being more particularly described as follows:

Commence at 6"x6" concrete monument marking the Northeast Corner of Section 35, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°06'56" East, along the East line of the Northeast 1/4 of said Section 35, a distance of 1250.09 feet to a point of intersection with the existing southerly limited access right of way line of State Road 528 ("Beachline Expressway") per Orlando Orange County Expressway Authority Right-of-Way Map Section 1.2; thence North 89°51'21" West, along said existing southerly limited access right of way line, a distance of 976.57 feet to a point on a curve with a radius of 5879.58 feet, concave to the north; thence westerly along said southerly limited access right of way line and curve to the right through a central angle of 2°29'51", a distance of 256.28 feet where the chord bears North 88°30'26"West a distance of 256.26 feet to a point lying on the south limited access right of way line of said Goldenrod Road Extension and the POINT OF BEGINNING; thence run along said south limited access right of way line of said Goldenrod Road Extension, being a non-tangent curve with a radius of 4969.00 feet concave to the north; thence westerly along said curve to the right through a central angle of 5°55'11", a distance of 513.38 feet where the chord bears North 89°57'17"West a distance of 513.15 feet; thence continuing along said south limited access right of way line of Goldenrod Road Extension, run North 86°59'42"West, a distance of 100.09 feet; thence departing said south limited access right of way line of Goldenrod Road Extension, run North 89°36'58"East, a distance of 262.97 feet; thence North 89°38'14"East, a distance of 62.03 feet; thence North 89°45'49"East, a distance of 62.03 feet to a point on a curve with a radius of 14046.65 feet, concave to the south; thence easterly along said curve to the right through a central angle of 0°21'35", a distance of 88.16 feet where the chord bears South 89°57'04"East a distance of 88.16 feet to a point on said existing southerly limited access right of way line of State Road 528, said point lying on a non-tangent curve with a radius of 5879.58 feet, concave to the north; thence easterly along said existing southerly limited access right of way line of State Road 528, and said curve to the left through a central angle of 1°20'47", a distance of 138.15 feet where the chord bears South 86°41'07"East a distance of 138.15 feet to the POINT OF BEGINNING.

Containing 5768.72 square feet or 0.132 acres, more or less.

#### LEGEND:

Calculated (D)Deed (M) === Measured (P) = Plat

O,R.B.≃ Official Records Book

Pg. ≖ Page = Radius

Length of curve (arc distance)

Chord distance Delta = central angle СВ Chord Bearing Identification ID. Line Not To Scale PID

Parcel Identification Number

S.R. == State Road

CFX Central Florida Expressway Authority = Right-of-Way R/W

= Centerline

= Limited Access Right-of-way line

= Point of Curvature = Point of Tangency

= Point of Compound Curvature PCC PRC = Point of Reverse Curvature

(NT) = Non Tangent = All Aboard Florida

OOCEA = Orlando Orange County Express Way Authority

# Surveyors Notes

- 1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the east line of the northeast 1/4 of Section 35, Township 23 South, Range 30 East as being South 00° 06' 56" East. The average combined scale factor is 0.999952.
- 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-586539-3-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

Robert M. Jones, PLS

# THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH	SHEET 1 OF 2	
DESIGNED BY: HNTB	DATE: 11/24/2015	Amec Foster Wheeler Environment & Infrastructure, Inc		
DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec Orlando, Fl 32801 USA	DATE BY	
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster Phone: (407) 522-7570 wheeler Certificate of Authorization Number LB-0007932	DRAWNIG NAME: 0865 CFX Surplus Porcels at OIA.d	

<del>20150654568 Page 108 of 166</del> CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240 PARCEL No. 983 of SR 528 PARCELS (at OIA) (GOLDENROD ROAD EXTENSION) PURPOSE: ALL ABOARD FLORIDA ŔÀIL CORRIDOR ESTATE: PERMANENT EASEMENT POINT OF COMMENCEMENT GRAPHIC SCALE 6"x6" concrete monument 250. northeast corner Section 35, 100 200 basis) Township 23 South, Range 30 East EXISTING SOUTHERLY LIMITED ACCESS East line RIGHT OF WAY LINE OF STATE ROAD 528 per OOCEA Right-of-Way Map Section 1.2 of the Northeast 1/4 . 06' 56"E (bearing ( IN FEET ) of Section 35, radius = 5879.58'Township 23 South, central angle =2°29'51" 1 inch = 100 ft.arc length = 256.28' Range 30 East 500° <-- see below chord length = 256.26' chord bearing = N88°30'26"W (NT) 440 N89° 51' 21"W 976.57' AAF RAIL LINE EASEMENT POINT OF BEGINNING 35 AIRPORT INTERNATIONAL ORLANDO EXISTING NORTHERLY LIMITED ACCESS RIGHT OF WAY LINE Easement (135' RVV) .B.1838, Pg. 953 5. R. 528 "Beach Line Expressway" variable width right-of-way EXISTING SOUTHERLY LIMITED ACCESS RIGHT OF WAY LINE OF STATE ROAD 528 per OOCEA Right-of-Way Map Section 1.2 Power 1 ΩŽ Ö radius = 14046.65'central angle =0°21'35" radius = 5879.58'arc length = 88.16' central angle = 1°20'47" chord length = 88.16' arc length = 138.15 chord bearing = \$89°57'04"E chord length = 138.15' chord bearing = 586°41'07"E N89° 45' 49"E 62.03' see above --> N89° 38' 14"E 62.03'-(NT) N&9° 36' 58"E 262.97 (NT) AAF RAIL LINE EASEMENT NB6° 59′ 42″W 100.09 EXHIBIT "A" O.R.B. 3555 PG. 2727 SOUTH LIMITED ACCESS RIGHT OF WAY LINE OF GOLDENROD ROAD POINT OF BEGINNING EXTENSION per OOCEA Project No. 903 Right-of-Way Map AIRPORT 25' INGRESS-EGRESS EASEMENT INTERNATIONAL radius = 4969.00'O.R.B. 3555 PG 2727 ORLANDO central angle =5°55'11" arc length = 513.38'chord length = 513.15THIS IS NOT A SURVEY chord bearing = N89°57'17"W DESCRIPTION and SKETCH

Amec Foster Wheeler Environment & Infrastructure, Inc.
75 East Amelia Street, Suite 200
Orlando, Fl 32801 USA CENTRAL FLORIDA EXPRESSWAY AUTHORITY SHEET 2 OF 2 REVISIONS DESIGNED BY: HNTB DATE: 11/24/2015 DRAWN BY: PEW AMEC JOB No.: 6374150865 amec foster Phone: (407) 522-7570 APPROVED BY: RMJCFX PROJECT No.: 528-1240 DRAMING NAME: 0865 CEX Surplus Parcels at O'A.dw Certificate of Authorization Number LB-0007932

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 984 of SR 528 PARCELS (at OIA)

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

A parcel of land lying in the Section 35, Township 23 South, Range 30 East, Orange County, Florida lying within the existing limited access right of way of State Road 528, being more particularly described as follows:

Commence at 6"x6" concrete monument marking the Northeast Corner of Section 35, Township 23 South, Range 30 East, Orange County, Florida; thence run, South 00°06'56" East, along the East line of the Northeast 1/4 of said Section 35, a distance of 1250.09 feet to a point of intersection with the existing southerly limited access right of way line of State Road 528 ("Beachline Expressway"); thence North 89°51'21" West, along said existing southerly limited access right of way line, a distance of 674.55 feet to the POINT OF BEGINNING; thence continue, North 89°51'21"West, along said existing southerly limited access right of way line, a distance of 302.02 feet to a point on a curve with a radius of 5879.58 feet, concave to the north; thence westerly along said existing southerly limited access right of way line and curve to the right through a central angle of 3°50'37", a distance of 394.43 feet where the chord bears North 87°56'02"West a distance of 394.35 feet to a point on a non-tangent curve with a radius of 14046.65 feet, concave to the south; thence departing said existing southerly limited access right of way line, run easterly along said curve to the right through a central angle of 1°03'22", a distance of 258.91 feet where the chord bears South 89°14'35"East a distance of 258.90 feet; thence South 88°32'47"East, a distance of 124.07 feet; thence South 88°27'43"East, a distance of 313.32 feet to the POINT OF BEGINNING.

Containing 3746.49 square feet or 0.086 acres, more or less.

#### LEGEND:

(C) = Calculated (D) = Deed (M) = Measured (P) = Plat

O.R.B.= Official Records Book

Pg. = Page R = Radius

L = Length of curve (arc distance)

C = Chord distance
Delta = central angle
CB = Chord Bearing
ID = Identification
Line Not To Scale

PID = Parcel Identification Number

S.R. = State Road

CFX = Central Florida Expressway Authority

R/W = Right-of-Way
C = Centerline

\_\_\_\_\_ = Limited Access Right-of-way line

PC = Point of Curvature
PT = Point of Tangency

PCC = Point of Compound Curvature PRC = Point of Reverse Curvature

(NT) = Non Tangent AAF = All Aboard Florida

OOCEA = Orlando Orange County Express Way Authority

No. = Number

# Surveyors Notes

- 1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the east line of the northeast 1/4 of Section 35, Township 23 South, Range 30 East as being South 00° 06′ 56″ East. The average combined scale factor is 0.999952.
- 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-586539-4-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

Robert M. Jones, PLS

# THIS IS NOT A SURVEY

FOR: CENTRAL FLORI	DA EXPRESSWAY AUTHORITY	LEGAL DESCRIPTION and SKETCH	SHEET 1 OF 2
DESIGNED BY: HNTB	DATE: 11/24/2015	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street. Suite 200	
DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec Orlando, Fl 32801 USA	DATE BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster Phone: (407) 522-7570 wheeler Certificate of Authorization Number LB-0007932	DRAMMIC NAME: 0865 CTX Surplus Parcels at CIA.dwg

EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240 PARCEL No. 984 of SR 528 PARCELS (at OIA) PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR ESTATE: PERMANENT EASEMENT POINT OF COMMENCEMENT 6"x6" concrete monument GRAPHIC SCALE northeast corner Section 35, Township 23 South, Range 30 East 100 200 East line ( IN FEET ) of the Northeast 1/4 1 inch = 100 ft.of Section 35, Township 23 South, EXISTING NORTHERLY LIMITED ACCESS Range 30 East RIGHT OF WAY LINE 250. ///-56.T 06 5. R. 528 "Beach Line Expressway" 500° variable width right-of-way EXISTING SOUTHERLY LIMITED ACCESS RIGHT OF WAY LINE EXISTING SOUTHERLY LIMITED ACCESS RIGHT OF WAY LINE OF STATE ROAD 528 N89° 51' 21"W 674.55' radius = 14046.65' per OOCEA Right-of-Way Map Section 1.2 central angle =  $1^{\circ}03'22"$ arc length = 258.91' POINT OF BEGINNING chord length =  $258.90^{\circ}$ chord bearing = 589° 14'35"E (NT) 588° 32' 47"E 124.07 588° 27' 43"E 313.32 N89° 51' 21"W 302.02' AAF RAIL LINE EASEMENT 25' INGRESS-EGRESS EASEMENT 5879.58' central angle =3°50'37" AIRPORT INTERNATIONAL arc length = 394.43' ORLANDO chord length = 394.35chord bearing = N87°56'02"W THIS IS NOT A SURVEY DESCRIPTION and SKETCH
Amec Foster Wheeler Environment & Infrastructure, Inc.
75 East Amelia Street, Suite 200
Orlando, Fl 32801 USA CENTRAL FLORIDA EXPRESSWAY AUTHORITY LEGAL SHEET 2 OF 2 REVISIONS DESIGNED BY: HNTB DATE: 11/24/2015 DRAWN BY: PEW AMEC JOB No.: 6374150865 amec 7 Phone: (407) 522-7570

DRAWNG NAME: 0865 CFX Surplus Parcels at OtA-dwg

Certificate of Authorization Number LB-0007932

20150654568 Page 110 of 166

CENTRAL FLORIDA

APPROVED BY:

RMJ

CFX PROJECT No.: 528-1240

# 20150654568 Page 111 of 166

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 985 Part A of S.R. 528 Parcels (at Narcoossee Road)

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

A parcel of land lying in Section 36, Township 23 South, Range 30 East, Orange County, Florida, lying within the existing limited access right of way of State Road 528 per Orlando Orange County Expressway Authority State Road 528 / Narcoossee Road Interchange, Project No. 907 Right-of-Way Map, being more particularly described as follows:

Commence at 6"x6" concrete monument (no identification) marking the northeast corner of Section 36, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°15'33" West, along the east line of the northeast 1/4 of said Section 36, a distance of 1216.19 feet; thence South 89°18'55" West, a distance of 1162.57 feet to the westerly right of way line of Narcoossee Road per said Right of Way Map and the POINT OF BEGINNING; thence along said westerly right of way line, run South 30°08'04" East, a distance of 57.42 feet; thence departing said westerly right of way line, run South 89°18'55" West, a distance of 1012.36 feet to the existing southerly limited access right of way line of State Road 528 per said Right-of-Way Map; thence along said existing southerly limited access right of way line, run North 79°44'28" West, a distance of 95.75 feet; thence run North 85°39'53" West, continuing along said existing southerly limited access right of way line, a distance of 363.68 feet; thence departing said existing southerly limited access right of way line, run North 89°18'55" East, a distance of 1440.42 feet to the POINT OF BEGINNING.

Containing 1.37 acres, more or less.

## **Surveyors Notes**

- 1. This Legal Description and Sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
- 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. The location and configuration of the lands described and depicted hereon were provided by the client.
- 4. 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 36, Township 23 South, Range 30 East as being South 00° 15' 33" West. The average combined scale factor is 0.999945.
- 5. The location of the right-of-way lines of interest is based on the follow right-of-way

Orlando Orange County Expressway Authority State Road 528 / Narcoossee Road Interchange, Project No. 907.

- 6. This legal description and sketch may have been reduced in size by reproduction.
- 7. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539-5-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

#### LEGEND:

Calculated (D) Deed (M) Measured Plat

Official Records Book O.R.B.=

≔ Page R = Radius

= Length of curve (arc distance)

Chord distance Delta = central angle Chord Bearing ID or id = Identification = Line Not To Scale ΡĺD = Parcel Identification Number

SR State Road

CFX = Central Florida Expressway Authority

R/W = Right-of-Way = Centerline Ç

= Limited Access Right-of-way line

= Point of Curvature

= Point of Tangency = Point of Compound Curvature PCC = Point of Reverse Curvature PRC

(NT) = Non Tangent AAF = All Aboard Florida

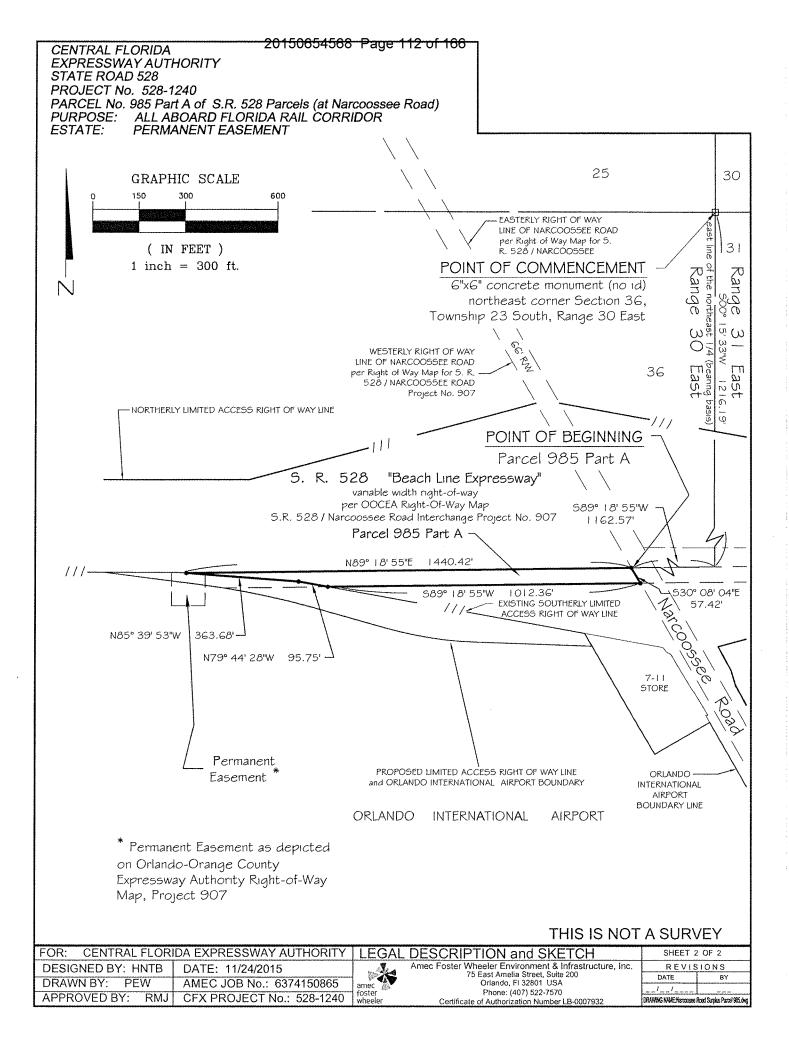
OOCEA = Orlando Orange County Express Way Authority

= Number

Robert M. Jones, PLS

# THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 1 OF 2	
DESIGNED BY: HNTB	DATE: 11/24/2015	N.	Amec Foster Wheeler Environment & Infrastructure, Inc.	REVIS	IONS
DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec 🍀	75 East Amelia Street, Suite 200 Orlando, Fl 32801 USA	DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster	Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	DRAWING NAME: Nancoosee R	read Surplus Perrel 985 dun



# 20150654568 Page 113 of 166

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528

PROJECT No. 528-1240

PARCEL No. 985 Part B of S.R. 528 Parcels (at Narcoossee Road)

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

A parcel of land lying in Section 36, Township 23 South, Range 30 East and Section 31, Township 23 South, Range 31 East, Orange County, Florida, lying within the existing limited access right of way of State Road 528 per Orlando Orange County Expressway Authority State Road 528 / Narcoossee Road Interchange, Project 907 Right-of-way Map, being more particularly described as follows:

Commence at 6"x6" concrete monument (no identification) marking the northwest corner of Section 31, Township 23 South, Range 31 East, Orange County, Florida; thence run South 00°15'33" West, along the west line of the northwest 1/4 of said Section 31, a distance of 1216.19 feet to the POINT OF BEGINNING; thence run North 89°18'55" East, a distance of 561.11 feet; thence run North 89°05'51" East, a distance of 201.14 feet; thence run North 87°47'19" East, a distance of 175.65 feet to a point on a non-tangent curve concave to the north, lying on the existing southerly limited access right of way line of State Road 528 per said Right-of-Way Map; thence along said existing southerly limited access right of way line the following three (3) courses; thence westerly along the arc of said curve, having a radius of 5879.58 feet, a central angle of 07°38'01", a chord length of 782.78 feet bearing South 86°17'21" West, an arc distance of 783.36 feet; thence run North 89°53'38" West, a distance of 156.73 feet to said west line of the northwest 1/4; thence, along said west line, run South 00°15'33" West, a distance of 16.29 feet; thence departing said west line and said existing southerly limited access right of way line, run South 89°18'55" West, a distance of 39.87 feet to said existing southerly limited access right of way line; thence, along said existing southerly limited access right of way line, North 40°38'20" West, a distance of 6.54 feet; thence South 75°03'04" West, continuing along said existing southerly limited access right of way line, a distance of 20.34 feet; thence departing said existing southerly limited access right of way line run South 89°18'55" West, a distance of 993.94 feet to the easterly right of way line of Narcoossee Road per said Right of Way Map; thence along said easterly right of way line run North 30°08'04" West, a distance of 57.42 feet; thence departing said easterly right of way line, run North 89°18'55" East, a distance of 1086.78 feet to the POINT OF BEGINNING.

Containing 1.80 acres, more or less.

#### **Surveyors Notes**

- 1. This Legal Description and Sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
- 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. The location and configuration of the lands described and depicted hereon were provided by the client.
- 4. 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 31, Township 23 South, Range 31 East as being South 00° 15' 33" West. The average combined scale factor is 0.999945.
- 5. The location of the right-of-way lines of interest is based on the follow right-of-way man:

Orlando Orange County Expressway Authority State Road 528 Narcoossee Road Interchange, Project No. 907.

- 6. This legal description and sketch may have been reduced in size by reproduction.
- 7. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539-5-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

# LEGEND:

(C) = Calculated (D) = Deed (M) = Measured (P) = Plat

O.R.B.= Official Records Book

Pg. = Page R = Radius

= Length of curve (arc distance)

C = Chord distance

Delta = central angle

CB = Chord Bearing

ID = Identification

= Line Not To Scale

PID = Parcel Identification Number

S.R. = State Road

CFX = Central Florida Expressway Authority

R/W = Right-of-Way
C = Centerline

= Limited Access Right-of-way line

PC = Point of Curvature PT = Point of Tangency

PCC = Point of Compound Curvature PRC = Point of Reverse Curvature

(NT) = Non Tangent AAF = All Aboard Florida

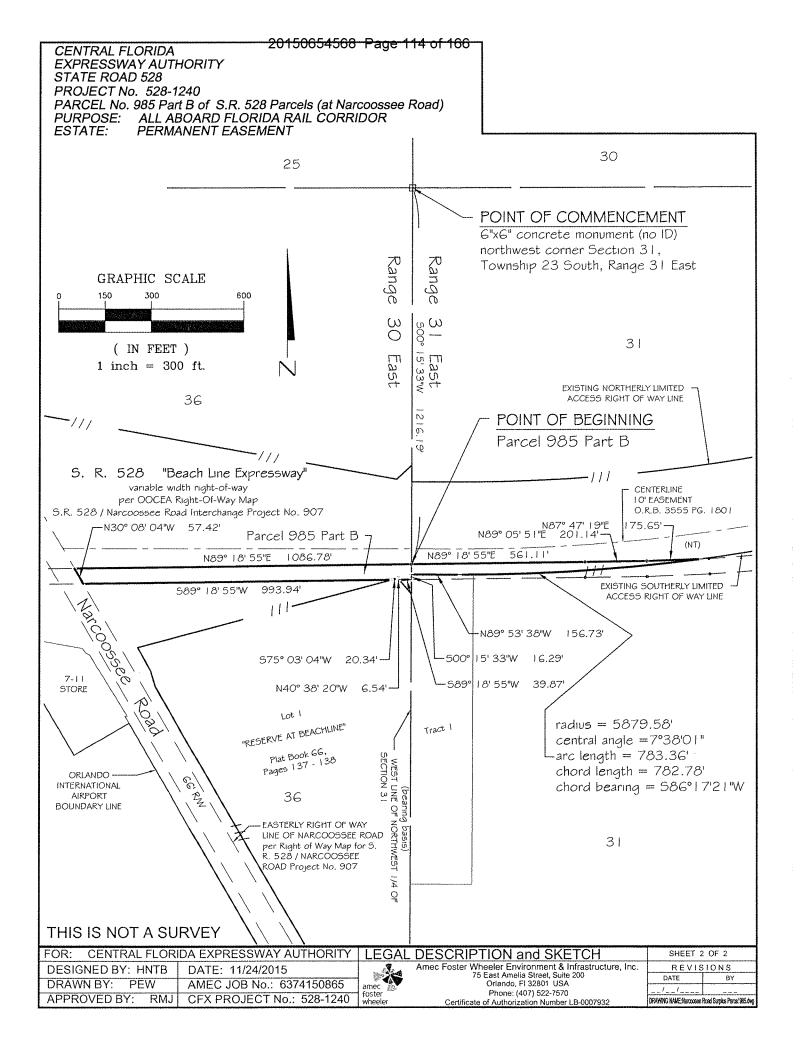
OOCEA = Orlando Orange County Express Way Authority

No. = Number

Robert M. Jones, PLS

# THIS IS NOT A SURVEY

	FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL	DESCRIPTION and SKETCH	SHEET 1 OF 2	
1	DESIGNED BY: HNTB	DATE: 11/24/2015	L	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200	REVIS	
	DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec	Orlando, Fl 32801 USA	DATE	BY
1	APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	DRAWING NAME Natoosee I	Road Surplus Parcel 965.dwg



# 20150654568 Page 115 of 166

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 986 of SR 528 PARCELS

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

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 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 301.63 feet to a point on a non-tangent curve with a radius of 4926.15 feet, concave to the south and the POINT OF BEGINNING; thence easterly along said curve to the right through a central angle of 01°25'11", a distance of 122.06 feet where the chord bears South 85°05'06"East a distance of 122.05 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 South 89°45'06" West, along said south Right of Way line, a distance of 121.65 feet to said west line of the Northwest 1/4; thence along said west line, run North 00°13'49"East, a distance of 10.98 feet to the POINT OF BEGINNING.

Containing 699 square feet or 0.02 acres, more or less

# LEGEND:

(C) = Calculated (D) = Deed (M) = Measured

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

C = Centerline

\_\_\_\_\_ = Limited Access Right-of-way line

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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

# Surveyors Notes

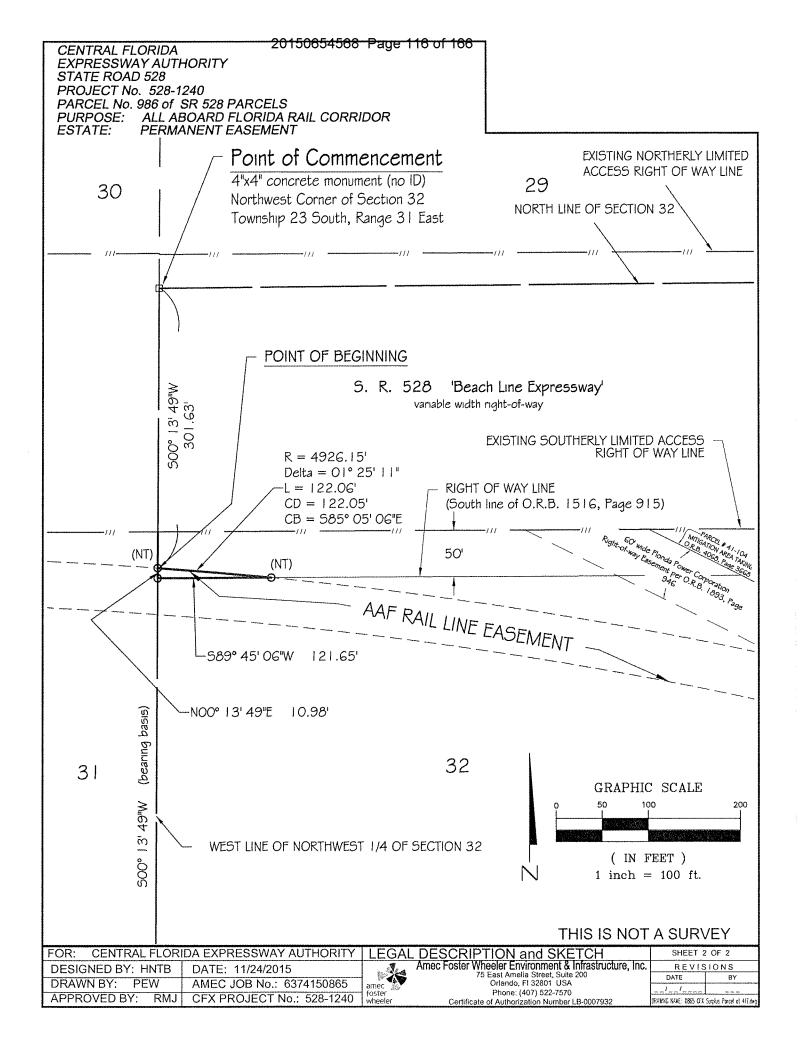
- 1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the west line of the northwest 1/4 of Section 32, Township 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.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

Robert M. Jones, PLS

# THIS IS NOT A SURVEY

	FOR: CENTRAL FLORI	DA EXPRESSWAY AUTHORITY	LEGAL	DESCRIPTION and SKETCH	SHEET 1	OF 2
-	DESIGNED BY: HNTB	DATE: 11/24/2015	V.	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200		IONS
	DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec 🎜	Orlando, Fl 32801 USA	DATE	BY
	APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	DRAWING NAVIE: 0865 CFX	Surplus Parcel at 417.dkg



# <del>20150654568 Page 117 of 166</del>

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528

PROJECT No. 528-1240

PARCEL No. 987 of SR 528 PARCELS ALL ABOARD FLORIDA RAIL CORRIDOR PURPOSE:

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 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; thence run South 63°45'43" East, along said southerly line and northerly Right-of-Way line, a distance of 348.80 feet to a point on a non-tangent curve with a radius of 4926.15 feet, concave to the southwest and the POINT OF BEGINNING; thence southeasterly along said curve to the right through a central angle of 08°43'04", a distance of 749.53 feet where the chord bears S70°17'30"E a distance of 748.80 feet; thence South 65°01'46"East, a distance of 186.29 feet; thence South 63°56'38"East, a distance of 186.27 feet; thence South 63°45'46"East, a distance of 1055.67 feet; thence North 26°14'14"East, a distance of 15.00 feet; thence South 63°45'46"East, a distance of 85.00 feet; thence South 26°14'14"West, a distance of 15.00 feet; thence South 63°45'46"East, a distance of 287.54 feet; thence South 64°03'06"East, a distance of 232.01 feet; thence South 65°48'05"East, a distance of 232.05 feet; to a point on a curve with a radius of 3797.06 feet, concave to the northeast; thence southeasterly and easterly along said curve to the left through a central angle of 19°35'13", a distance of 1298.04 feet where the chord bears South 77°03'03"East a distance of 1291.73 feet to the existing southerly limited access right of way line of State Road 528 as depicted on Orlando Orange County Expressway Authority Right of Way Map, Project No. 6440-401/402; thence, along said existing southerly limited access right of way line, run South 33°00'37"West, a distance of 57.53 feet to a point on a non-tangent curve with a radius of 3847.06 feet, concave to the northeast; thence departing said existing southerly limited access right of way line of State Road 528 run westerly and northwesterly along said curve to the right through a central angle of 19°09'37", a distance of 1286.50 feet where the chord bears North 76°50'15"West a distance of 1280.51 feet; thence North 65°48'25"West, a distance of 233.58 feet; thence North 64°03'13"West, a distance of 233.53 feet; thence North 63°45'46"West, a distance of 1428.22 feet; thence North 63°56'34"West, a distance of 185.33 feet; thence North 65°01'37"West, a distance of 185.34 feet to a point on a curve with a radius of 4876.15 feet concave to the southwest; thence northwesterly along said curve to the left through a central angle of 5°03'05", a distance of 429.91 feet where the chord bears North 68°27'31"West a distance of 429.77 feet to a point on said southerly line of Parcel #41-104 Mitigation Area Taking, also being a point on the northerly 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 North 63°45'43" West, a distance of 317.51 feet to the POINT OF BEGINNING.

Containing 4.80 acres, more or less

# LEGEND:

Calculated (D) = Deed (M) = Measured = Plat

O.R.B.= Official Records Book

Pg. Page R = Radius

Length of curve (arc distance)

CD Chord distance Delta = central angle CR # Chord Bearing ID, Identification Line Not To Scale ΡID

Parcel Identification Number

S.R. State Road

CFX Central Florida Expressway Authority R/W

= Right-of-Way = Centerline

= Limited Access Right-of-way line ---/// ₽¢

= Point of Curvature PT = Point of Tangency

PCC = Point of Compound Curvature PRC = Point of Reverse Curvature

= Non Tangent = All Aboard Florida AAF

THIS IS NOT A SURVEY

OOCEA = Orlando Orange County Express Way Authority

# Surveyors Notes

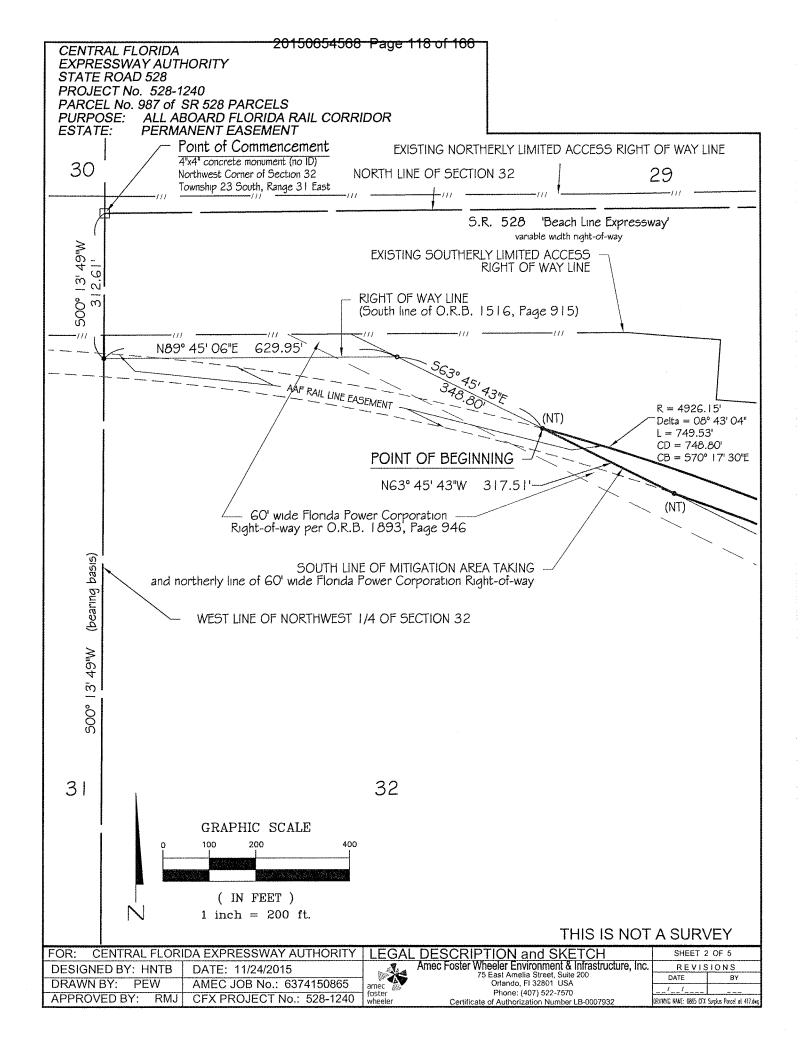
- 1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the west line of the northwest 1/4 of Section 32, Township 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.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

Robert M. Jones, PLS

Florida Surveyor and Mapper, License No. LS-0004201

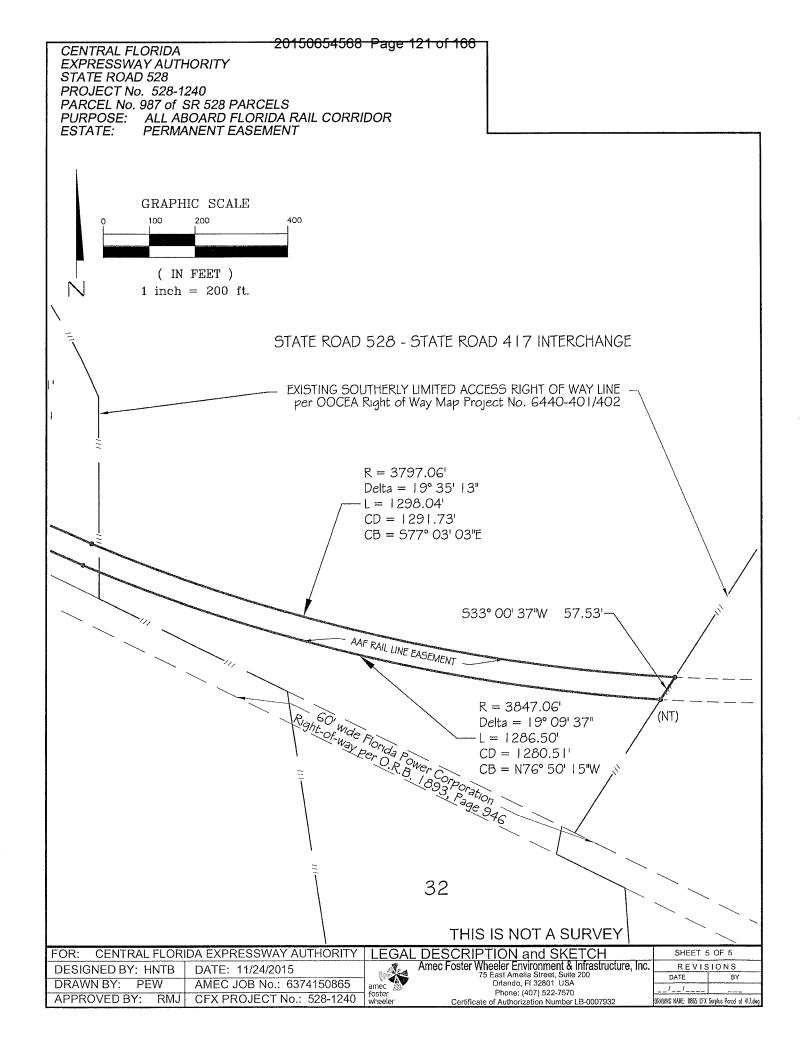
#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY LEGAL DESCRIPTION and SKETCH SHEET 1 OF 5 Amec Foster Wheeler Environment & Infrastructure, Inc. 1 DESIGNED BY: HNTB REVISIONS DATE: 11/24/2015 75 East Amelia Street, Suite 200 Orlando, Fl 32801 USA DATE DRAWN BY: PEW AMEC JOB No.: 6374150865 amec Phone: (407) 522-7570 foster APPROVED BY: RMJ CFX PROJECT No.: 528-1240 Certificate of Authorization Number LB-0007932 DRAMING NAME: 0865 OFX Surplus Porcel of 417.dw



20150654568 Page 119 of 166 CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240 PARCEL No. 987 of SR 528 PARCELS PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR ESTATE: PERMANENT EASEMENT S. R. 528 'Beach Line Expressway' variable width right-of-way EXISTING SOUTHERLY LIMITED ACCESS RIGHT OF WAY LINE R = 4926.15'Delta = 08° 43' 04" L = 749.53'CD = 748.80' $CB = 570^{\circ} 17' 30''E$ ·565° 01' 46"E 186.29 563° 56' 38"E 186.27 AAFRAIL LINE EASEMENT SOUTH LINE OF NE Corporation Right-of 60' MAREA TAKING OWER └N63° 56' 34"W 185.33' -N65° 01' 37"W 185.34' R = 4876.15'Delta = 05° 03' 05" L = 429.91'CD = 429.77'CB = N68° 27' 31"W 60' wide Florida Power Corporation Right-of-way per O.R.B. 1893, Page 946 GRAPHIC SCALE 32 200 400 ( IN FEET ) 1 inch = 200 ft.THIS IS NOT A SURVEY CENTRAL FLORIDA EXPRESSWAY AUTHORITY **DESCRIPTION** and SKETCH SHEET 3 OF 5 Amec Foster Wheeler Environment & Infrastructure, Inc. REVISIONS **DESIGNED BY: HNTB** DATE: 11/24/2015 75 East Amelia Street, Suite 20 DATE DRAWN BY: PEW AMEC JOB No.: 6374150865 Orlando, FI 32801 USA Phone: (407) 522-7570 amec foster APPROVED BY: RMJ CFX PROJECT No.: 528-1240 Certificate of Authorization Number LB-0007932 DRAKING NAME: 0865 CFX Surplus Porcel of 417.dwg

20150654568 Page 120 of 166 CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240 PARCEL No. 987 of SR 528 PARCELS PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR ESTATE: PERMANENT EASEMENT EXISTING SOUTHERLY LIMITED ACCESS RIGHT OF WAY LINE GRAPHIC SCALE 200 400 ( IN FEET ) 1 inch = 200 ft.-563° 45' 46"E | 1055.67' -N26° | 4' | 4"E | | 15.00' ·563° 45' 46"E 85.00' -526° | 4' | 4"W | | 15.00' 3° 45' 46"W

Right-of-way per O.R.B. 1893, Page 946 -563° 45' 46"E 287.54' ·564° 03' 06"E 232.01' 565° 48' 05"E 232.05'-AAF RAIL LINE EASEMENT SOUTH LINE OF MITIGATION AREA TAKING Corporation Right-of-way N64° 03' 13"W 233.53 N65° 48' 25"W 233.58 32 THIS IS NOT A SURVEY LEGAL DESCRIPTION and SKETCH SHEET 4 OF 5 CENTRAL FLORIDA EXPRESSWAY AUTHORITY Amec Foster Wheeler Environment & Infrastructure, Inc. REVISIONS **DESIGNED BY: HNTB** DATE: 11/24/2015 Orlando, Fl 32801 USA DATE AMEC JOB No.: 6374150865 DRAWN BY: PEW Phone: (407) 522-7570 APPROVED BY: RMJ CFX PROJECT No.: 528-1240 Certificate of Authorization Number LB-0007932 DRAWING NAME: 0865 CFX Surplus Porcel of 417.dwg



# 20150654568 Page 122 of 166

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 988 of SR 528 PARCELS (at ICP)

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

A parcel of land lying in the Section 36, Township 23 South, Range 31 East and in Section 31, Township 23 South, Range 32 East, Orange County, Florida, lying within the existing limited access right of way of State Road 528 as depicted on Orlando Orange County Expressway Authority International Corporate Parkway Interchange Right of Way Map, being more particularly described as follows:

Commence at a nail and disc (LB 68) marking the Northwest Corner of Section 31, Township 23 South, Range 32 East, Orange County, Florida; thence run South 00°07'19"East, along the West line of the Northwest 1/4 of said Section 31, a distance of 359.74 feet to the POINT OF BEGINNING; thence departing said west line run South 89°33'33"East, a distance of 1199.47 feet to a point lying on the existing southerly limited access right of way line of said State Road 528 and the west line of Lot 3 of INTERNATIONAL CORPORATE PARK - PARCEL 10 according to the plat thereof as recorded in Plat Book 67 at Page 56 of the Public Records of Orange County, Florida, said point lying on a non-tangent curve with a radius of 639.49 feet concave to the southeast; thence along said southerly limited access right of way line and said west line of Lot 3, run southwesterly along said curve to the left through a central angle of 7°16'04", a distance of 81.12 feet where the chord bears South 52°21'29"West a distance of 81.06 feet; thence departing said existing southerly limited access right of way line and said west line of Lot 3, run North 89°33'33"West a distance of 1718.71 feet to said existing southerly limited access right of way line; thence along said existing southerly limited access right of way line, run North 77°39'01"West a distance of 242.30 feet; thence, departing said existing southerly limited access right of way line, run South 89°33'33"East a distance of 820.13 feet to the POINT OF BEGINNING.

Containing 2.14 acres, more or less.

#### LEGEND:

Calculated (D) Deed (M) Measured Plat

O.R.B.= Official Records Book

Pg. = Page R Radius

Length of curve (arc distance)

CD Chord distance Delta = central angle Chord Bearing ID, Identification Line Not To Scale

Ρ́ΙD = Parcel Identification Number

S.R. State Road

= Central Florida Expressway Authority CFX

R/W = Right-of-Way = Centerline

= Limited Access Right-of-way line -*III*-

= Point of Curvature = Point of Tangency

= Point of Compound Curvature PCC PRC = Point of Reverse Curvature

(NT) = Non Tangent AAF = All Ahoard Florida

THIS IS NOT A SURVEY

OOCEA = Orlando Orange County Express Way Authority

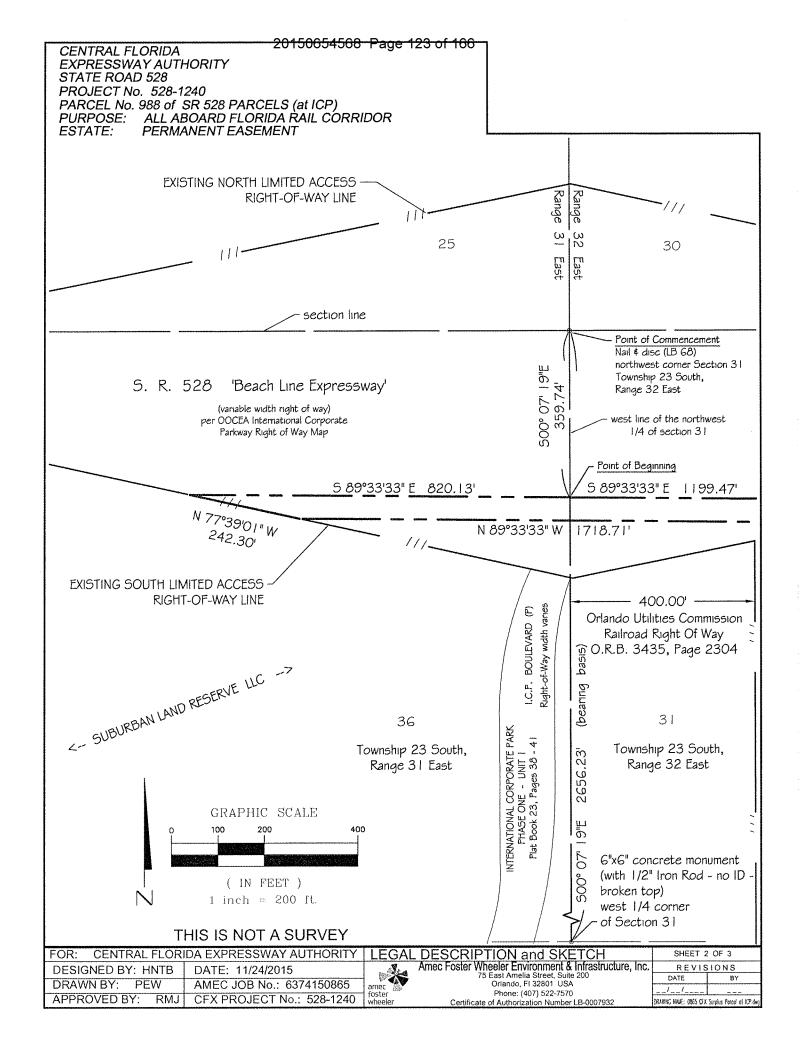
#### Surveyors Notes

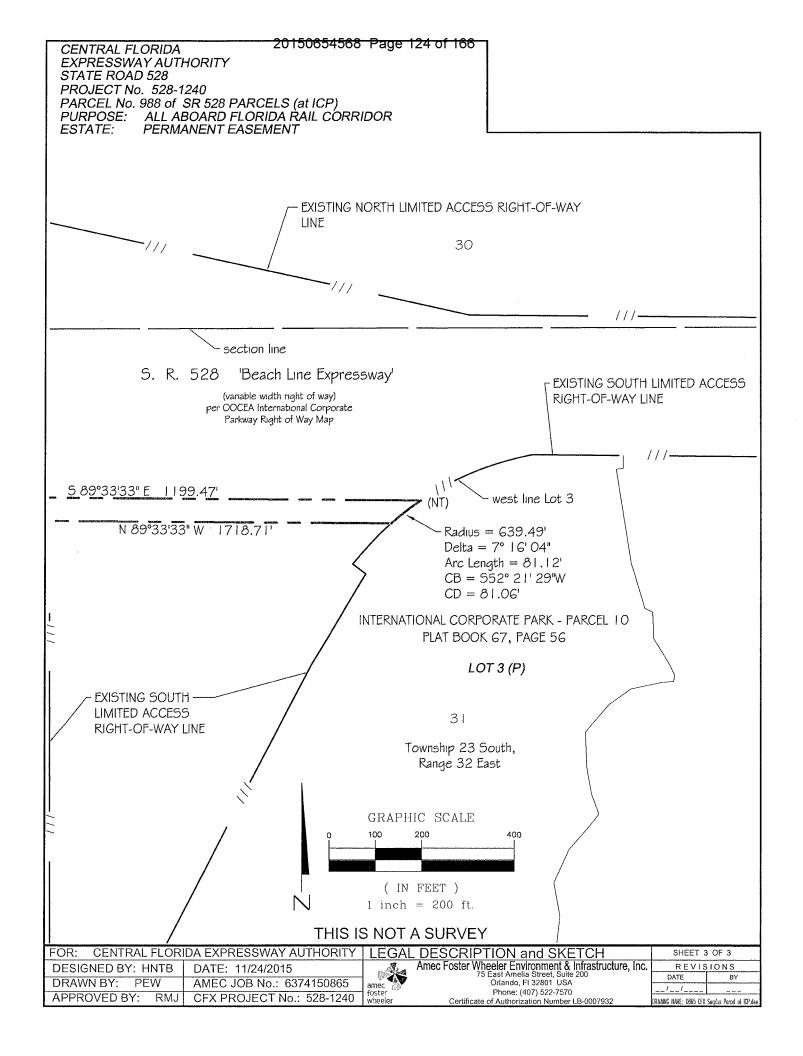
- 1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the west line of the northwest 1/4 of Section 31, Township 23 South, Range 32 East as being South 00° 07' 19" East. The average combined scale factor is 0.999939.
- 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-586539-8-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472. Florida Statutes. Subject to notes and notations shown hereon.

# Robert M. Jones, PLS

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL		SHEET 1	OF 3
DESIGNED BY: HNTB	DATE: 11/24/2015	nud Ela	Amec Foster Wheeler Environment & Infrastructure, Inc.		IONS
DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec	75 East Amelia Street, Suite 200 Orlando, Fl 32801 USA	DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	DRAWSIG NAVE: 0865 CFX	Surolus Porcel et ICP.dec





# 20150654568 Page 125 of 166

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 989 of S.R. 528 PARCELS

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

A parcel of land lying in Section 32, Township 23 South, Range 32 East, Orange County, Florida, lying within and adjacent to the southerly right-of-way of State Road 528, per Orlando Orange County Expressway Authority Right-of-Way Map, Sections No. 1.1 and No. 1.2, being more particularly described as follows:

Commence at a 1" Iron Rod (old axle) marking the Northwest Corner of Section 32, Township 23 South, Range 32 East, Orange County, Florida; thence run South 00°09'37" West, along the west line of the northwest ¼ of said Section 32, a distance of 414.41 feet to the POINT OF BEGINNING; thence departing said west line run South 89°33'33" East, a distance of 256.31 feet; thence South 89°31'24" East, distance of 124.05 feet; thence run South 89°19'09" East, distance of 124.05 feet to a point of curvature of a curve concave to the south; thence run easterly along the arc of said curve, having a radius of 17203.76 feet, a central angle of 01°19'46", a chord length of 399.15 feet bearing South 88°28'52"East, an arc distance of 399.16 feet; thence run South 87°38'35" East, a distance of 124.05 feet; thence run South 87°26'20" East, a distance of 124.05 feet; thence run South 87°24'11" East, a distance of 380.98 feet; thence run South 87°26'20" East, a distance of 62.71 feet to the southerly limited access right-of-way line of said State Road 528; thence run South 78°29'33" West, along said southerly limited access right-of-way line, a distance of 205.34 feet; thence departing said southerly limited access right-of-way line run North 87°24'11" West, distance of 244.54 feet; thence run North 87°26'19" West, a distance of 123.87 feet; thence run North 87°38'34" West, a distance of 123.87 feet to a point of curvature of a curve concave to the south; thence run westerly along the arc of said curve, having a radius of 17153.76 feet, a central angle of 01°19'46", a chord length of 397.99 feet bearing North 88°28'52" West, an arc distance of 398.00 feet; thence run North 89°19'10" West, a distance of 123.87 feet; thence run North 89°31'24" West, a distance of 331.86 feet to the south right-of-way line of said State Road 528; thence run North 77°37'04" West, along said south right-of-way line, a distance of 49.19 feet to said west line; thence run North 00°09'37" East, along said west line, a distance of 39.69 feet the POINT OF BEGINNING.

Containing 1.71 acres, more or less.

# Surveyors Notes

- 1. This Legal Description and Sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
- 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. The location and configuration of the lands described and depicted hereon were provided by the client.
- 4. 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 32 East as being South 00° 09' 37" West. The average combined scale factor is 0.999939.
- 5. The location of the right-of-way lines of interest is based on the follow right-of-way maps:

Orlando Orange County Expressway Authority State Road 528, Section No. 1.1 and Section No. 1.2 and Project 528-403

- 6. This legal description and sketch may have been reduced in size by reproduction.
- 7. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 24, 2015, file number NCS-586539-9-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

#### LEGEND:

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Line Not To Scale

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OOCEA = Orlando Orange County Express Way Authority

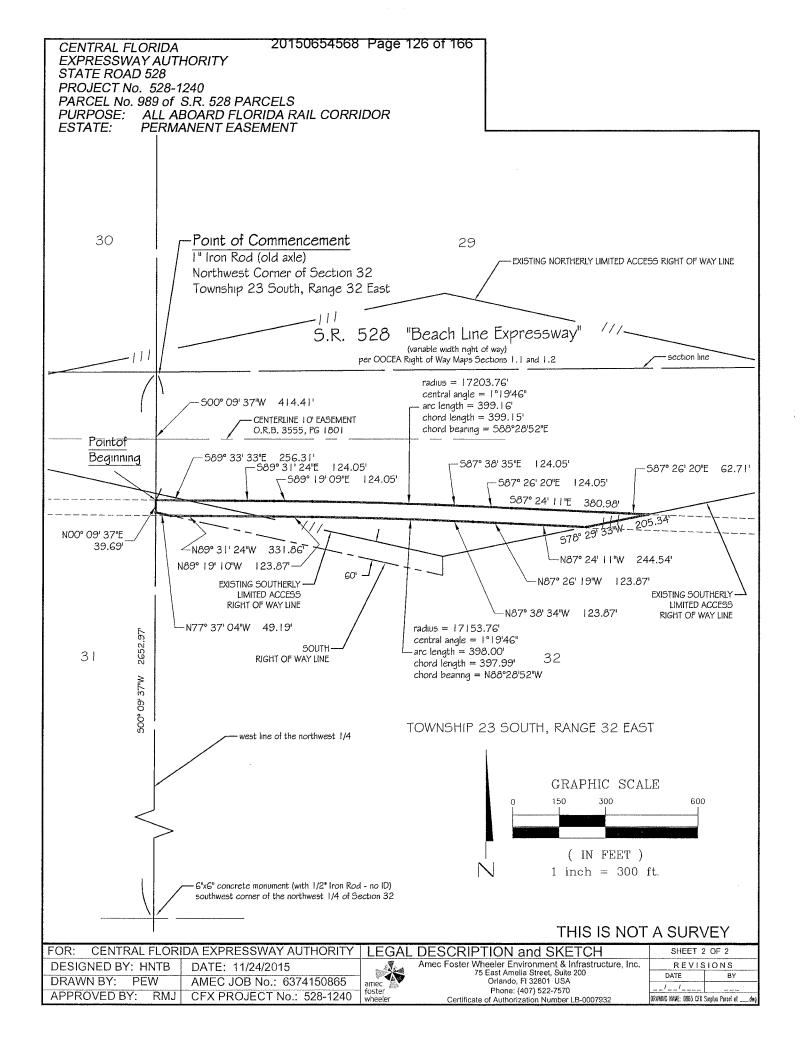
No. = Number

Robert M. Jones, PLS

Florida Surveyor and Mapper, License No. LS-0004201

# THIS IS NOT A SURVEY

FOR: CENTRAL FLOR	DA EXPRESSWAY AUTHORITY	LEGAL	DESCRIPTION and SKETCH	SHEET 1	OF 2
DESIGNED BY: HNTB	DATE: 11/24/2015	<i></i>	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200	REVIS	
DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec 🤲	Orlando, Fl 32801 USA	DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number I B-0007932	DRAWING NAVE: 0865 CEX	Gurales Parcel aldea



# 20150654568 Page 127 of 166

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No.9810 of S.R. 528 PARCELS (at Econlockatchee River)

PURPOSE: ALL ABOARD FLORIDA RÀIL CORRIDOR

ESTATE: PERMANENT EASEMENT

A parcel of land lying in Section 34, Township 23 South, Range 32 East, Orange County, Florida, lying within and adjacent to the southerly limited access right-of-way line of State Road 528, per Orlando Orange County Expressway Authority Right-of-Way Map, Section No. 1.1 and Section No. 1.2, being more particularly described as follows:

Commence at a 6"x6" concrete monument (with 1/4" iron rod - no identification) marking the Southwest Corner of Section 27, Township 23 South, Range 32 East, Orange County, Florida; thence run South 52°12"30" West, a distance of 72.39 feet to a 4"x4" concrete monument (broken top - no identification) marking the Southeast Corner of Section 28, Township 23 South, Range 32 East as depicted on said Right of Way Map; thence run South 00°09'30" East, a distance of 300.02 feet to said southerly limited access right-of-way line; thence run North 89°15'33" East, along said southerly limited access right-of-way line, a distance of 1079.69 feet to the west boundary of a drainage right of way as depicted on said Right of Way Map; thence run South 00°44'24" East, along said west boundary, a distance of 173.44 feet to the POINT OF BEGINNING; thence run South 89°33'33" East, departing said west boundary, a distance of 600.13 feet to the intersection with the east boundary of said drainage right of way; thence run South 00°44'24" East, along said east boundary, a distance of 50.01 feet; thence run North 89°33'33" West, departing said east boundary, a distance of 600.13 feet to the intersection with said west boundary; thence run North 00°44'24" West, along said west boundary, a distance of 50.01 feet to the POINT OF BEGINNING.

Containing 0.69 acres, more or less.

#### Surveyors Notes

- 1. This Legal Description and Sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
- 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. The location and configuration of the lands described and depicted hereon were provided by the client.
- 4. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the north line of the northwest 1/4 of Section 34, Township 23 South, Range 32 East as being South 89° 01' 43" West. The average combined scale factor is 0.999938.
- 5. The location of the right-of-way lines of interest is based on the follow right-of-way maps:

Orlando Orange County Expressway Authority State Road 528, Section No. 1.1 and Section No. 1.2 and Project 528-403

- 6. This legal description and sketch may have been reduced in size by reproduction.
- 7. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539-10-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

#### LEGEND:

(C) = Calculated (D) = Deed (M) = Measured (P) = Plat

O.R.B.= Official Records Book

Pg. = Page R = Radius

L = Length of curve (arc distance)

C = Chord distance
Delta = central angle
CB = Chord Bearing
ID = Identification
= Line Not To Scale

PID = Parcel Identification Number

S.R. = State Road

CFX = Central Florida Expressway Authority

R/W = Right-of-Way

© = 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

AAE = All Aboard Florida

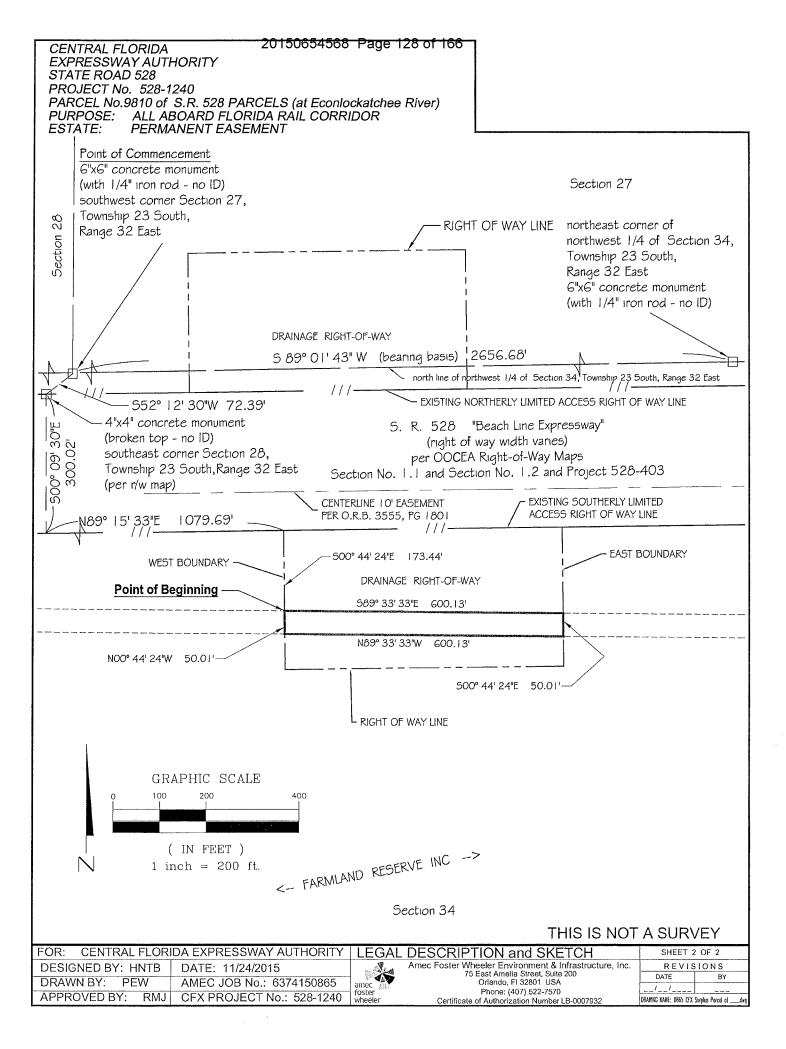
OOCEA = Orlando Orange County Express Way Authority

No. = Number

Robert M. Jones, PLS

#### THIS IS NOT A SURVEY

FOR: CENTRAL FLORI	DA EXPRESSWAY AUTHORITY	LEGAL	DESCRIPTION and SKETCH	SHEET 1	OF 2
DESIGNED BY: HNTB	DATE: 11/24/2015	ૌંક	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200	REVIS	
DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec	Orlando, Fl 32801 USA	DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	DRAWING HAME: 0865 CFX	Surplus Parce: atdwg



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CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528

PROJECT No. 528-1240

PARCEL No. 9811 of S.R. 528 PARCELS (at 1st Dallas pond) PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

A parcel of land lying in Section 36, Township 23 South, Range 32 East, Orange County, Florida, lying within and adjacent to the southerly limited access right-of-way line of State Road 528, per Orlando Orange County Expressway Authority Right-of-Way Maps, Section No. 1.1 and Section No. 1.2 and Project No. 528-403, being more particularly described as follows:

Commence at a 6"x6" concrete monument (broken top - no identification) marking the Northwest Corner of Section 36, Township 23 South, Range 32 East, Orange County, Florida; thence run South 00°01'32" East, a distance of 312.86 feet to said southerly limited access right-of-way line; thence run North 89°15'11" East, along said southerly limited access right-of-way line, a distance of 2793.59 feet; thence run South 00°44'24" East, along said southerly limited access right-of-way line, a distance of 154.29 feet to the POINT OF BEGINNING; thence run North 89°19'30" East, departing said southerly limited access right-of-way line, a distance of 768.78 feet to the intersection with said southerly limited access right-of-way line, a distance of 50.00 feet; thence run South 89°19'30" West, departing said southerly limited access right-of-way line, a distance of 768.78 feet to the intersection with said southerly limited access right-of-way line, a distance of 768.78 feet to the intersection with said southerly limited access right-of-way line, a distance of 50.00 feet to the POINT OF BEGINNING.

Containing 0.88 acres, more or less.

# Surveyor's Notes:

- 1. This Legal Description and Sketch is not valid without the signature and the original raised seal of the signing Florida licensed Surveyor and Mapper.
- 2. The lands surveyed were not abstracted for ownership, easements, right-of-way or other title matters by this firm.
- 3. The location and configuration of the lands described and depicted hereon were provided by the client.
- 4. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the north line of the northwest 1/4 of Section 36, Township 23 South, Range 33 East as being North 89°38'44" West. The average combined scale factor is 0.999938.
- 5. The location of the right-of-way lines of interest is based on the following right-of-way maps:

Orlando Orange County Expressway Authority State Road 528, Section No. 1.1 and Section No. 1.2 and Project 528-403

- 6. This Legal Description and Sketch may have been reduced in size by reproduction.
- 7. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539-11-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

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C = Chord distance
Delta = central angle
CB = Chord Bearing
ID = Identification
= Line Not To Scale

PID = Parcel Identification Number

S.R. = State Road

CFX = Central Florida Expressway Authority

R/W = Right-of-Way
C = Centerline

-///-- = Limited Access Right-of-way line

PC = Point of Curvature
PT = Point of Tangency

PCC = Point of Compound Curvature PRC = Point of Reverse Curvature

(NT) = Non Tangent AAF = All Aboard Florida

OOCEA = Orlando Orange County Express Way Authority

lo. = Number

Robert M. Jones, PLS

# THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 1 OF 2	
DESIGNED BY: HNTB	DATE: 11/24/2015	S.	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200	REVIS	
DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec amec	Orlando, FI 32801 USA	DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	DRAWANG HAME: 0865 CFX	Surplus Porcel atdwg

20150654568 Page 130 of 166 CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240 PARCEL No. 9811 of S.R. 528 PARCELS (at 1st Dallas Pond) ALL ABOARD FLORIDA RAÌL CORRIDOR PURPOSE: ESTATE: PERMANENT EASEMENT 6"x6" concrete monument Section 25 (with 1/4" iron rod - no ID) northeast corner of northwest 1/4 of Section 36, Township 23 South, **Point of Commencement** Range 32 East 6"x6" concrete monument (top broken - no ID) northwest corner EXISTING NORTHERLY LIMITED ACCESS RIGHT OF WAY LINE of Section 36, Township 23 South, Range 32 East 2655.04 N 89° 38' 44" W (bearing basis) S. R. 528 "Beach Line Expressway" north line of the northwest 1/4 (right of way width varies) 00°01 32"E 12.86' per OOCEA Right-of-Way Maps CENTERLINE 10' EASEMENT Section No. 1.1 and Section No. 1.2 and Project 528-403 PER O.R.B. 3555, PG 1801 EXISTING SOUTHERLY LIMITED ACCESS RIGHT OF WAY LINE N89° 15' 11"E 2793.59 -500° 44' 24"E | 154.29' **Point of Beginning** N89° 19' 30"E 768.78' 589° 19' 30"W 768.78' NOO° 44' 24"W 50.00' 500° 44' 44"E 50.00' GRAPHIC SCALE <-- FARMLAND RESERVE INC --> Section 36 ( IN FEET ) 1 inch = 200 ft.THIS IS NOT A SURVEY CENTRAL FLORIDA EXPRESSWAY AUTHORITY FOR: **DESCRIPTION** and SKETCH SHEET 2 OF 2 Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 Orlando, Fl 32801 USA REVISIONS **DESIGNED BY: HNTB** DATE: 11/24/2015 DRAWN BY: PEW AMEC JOB No.: 6374150865 amec // /\_\_/\_ Phone: (407) 522-7570 ORAMNIC NAME: 0865 CEX Surplus Porcel of

Certificate of Authorization Number LB-0007932

APPROVED BY: RMJ

CFX PROJECT No.: 528-1240

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CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528

PROJECT No. 528-1240

PARCEL No. 9812 of S.R. 528 PARCELS (at 2nd Dallas pond) PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

A parcel of land lying in Section 31, Township 23 South, Range 33 East, Orange County, Florida, lying within and adjacent to the southerly limited access right-of-way line of State Road 528, per Orlando Orange County Expressway Authority Right-of-Way Maps Section No. 1.1 and Section No. 1.2 and Project 528-403, being more particularly described as follows:

Commence at a 4"x4" concrete monument (broken top- no identification) marking the Northeast Corner of Section 31, Township 23 South, Range 33 East, Orange County, Florida; thence run South 00°44'03" East, a distance of 268.13 feet to said southerly limited access right-of-way line; thence run South 89°15'16" West, along said southerly limited access right-of-way line, a distance of 1414.59 feet; thence run South 00°44'44" East, along said southerly limited access right-of-way line, a distance of 100.50 feet to the POINT OF BEGINNING; thence run South 00°44'44" East, along said southerly limited access right-of-way line, a distance of 50.00 feet; thence run South 89°15'08" West, departing said southerly limited access right-of-way line, a distance of 277.92 feet; thence run South 89°12' 18" West, a distance of 139.33 feet; thence run South 88°55'53" West, a distance of 139.33 feet to a point on a curve concave to the south; thence run westerly along the arc of said curve, having a radius of 14439.75 feet, a central angle of 00°57'39", a chord length of 242.12 feet bearing South 88°13'10" West, an arc distance of 242.13 feet to the intersection with said southerly limited access right-of-way line; thence run North 00°44'44" West, along said southerly limited access right-of-way line, a distance of 50.02 feet to a point on a non-tangent curve concave to the south; thence run easterly along the arc of said curve, having a radius of 14489.75 feet, a central angle of 00° 57' 20", a chord length of 241.64 feet bearing North 88°13'20" East, an arc distance of 241.64 feet; thence run North 89° 15' 08" East, a distance of 139.57 feet; thence run North 89° 12' 18" East, a distance of 139.57 feet; thence run North 89° 15' 08" East, a distance of 277.92 feet to the POINT OF BEGINNING.

Containing 0.92acres, more or less.

# Surveyor's Notes:

- 1. This Legal Description and Sketch is not valid without the signature and the original raised seal of the signing Florida licensed Surveyor and Mapper.
- 2. The lands surveyed were not abstracted for ownership, easements, right-of-way or other title matters by this firm.
- 3. The location and configuration of the lands described and depicted hereon were provided by the client.
- 4. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the north line of Section 31, Township 23 South, Range 33 East as being South 89°29'32" West. The average combined scale factor is 0.999938.
- 5. The location of the right-of-way lines of interest is based on the following right-of-way maps:

Orlando Orange County Expressway Authority State Road 528, Section No. 1.1 and Section No. 1.2 and Project 528-403

Florida Department Of Transportation State Road 528, Section 75005-2501 and State Road 520 Section 75140

- 6. This Legal Description and Sketch may have been reduced in size by reproduction.
- 7. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539-12-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

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- Line Not To Seal

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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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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

Robert M. Jones, PLS

# THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL DESCRIPTION and SKETCH		SHEET 1 OF 2	
DESIGNED BY: HNTB	DATE: 11/24/2015	N.	Amec Foster Wheeler Environment & Infrastructure, Inc.	REVIS	IONS
DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec	75 East Amelia Street, Suite 200 Orlando, Fl 32801 USA	DATE	BY
D. 0.1.1.1.1.			Phone: (407) 522-7570		
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Certificate of Authorization Number LB-0007932	ORAWAG HAVE: 0865 OFX	Surplus Porcel ofding

20150654568 Page 132 of 166 CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240 PARCEL No. 9812 of S.R. 528 PARCELS (at 2nd Dallas pond) PURPOSE: ALL ABOARD FLORIDA RAÌL CORRIDOR ESTATE: PERMANENT EASEMENT iron rod and cap LB 7932 northwest corner of Section 31, Section 30 Township 23 South, Range 33 East EXISTING NORTHERLY LIMITED ACCESS RIGHT OF WAY LINE **Point of Commencement** 4"x4" concrete monument (broken top - no ID) northeast Corner Section 31, Township 23 South, Range 33 East north line of Section 31 5 896/291 32" W (bearing basis) 5303.07 5. R. 528 "Beach Line Expressway" (right of way width varies) per OOCEA Right-of-Way Maps Section No. 1.1 and Section No. 1.2 and Project 528-403 03"E radius = 14489.75' CENTERLINE 10' EASEMENT central angle = 0°57'20" 500° 44' ( 268.13 arc length = 241.64' PER O.R.B. 3555, PG 18017 chord length = 241.64' N89° 12' 18"E 139.57' chord bearing = N88° 13'20"E N89° 15' 08"E 277.92' 500° 44' 44"E 100.50' N88° 55′ 52″E 139.57 1414.59 589° 15' 16"W **Point of Beginning** (NT) 500° 44' 44"E 50.00' -589° 15' 08"W 277.92' 589° 12' 18"W 139.33' EXISTING SOUTHERLY LIMITED -588° 55' 53"W | 139.33' ACCESS RIGHT OF WAY LINE radius = 14439.75' central angle = 0°57'39" NOO° 44' 44"W 50.02' -arc length = 242.13'chord length = 242.12' chord bearing = 588°13'10"W GRAPHIC SCALE 400 <-- FARMLAND RESERVE INC --> ( IN FEET ) Section 31 1 inch = 200 ft.THIS IS NOT A SURVEY FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY LEGAL DESCRIPTION and SKETCH SHEET 2 OF 2 Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 Orlando, Fl 32801 USA **DESIGNED BY: HNTB** REVISIONS DATE: 11/24/2015 DATE DRAWN BY: PEW AMEC JOB No.: 6374150865 amec & Phone: (407) 522-7570 APPROVED BY: RMJ CFX PROJECT No.: 528-1240 DRAWAS NAME: D865 CFX Surplus Porcel of Certificate of Authorization Number LB-0007932

# 20150654568 Page 133 of 166

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 9813 of S.R. 528 PARCELS (at Farm Road 2 ) PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

A parcel of land lying in Sections 32 and 33 Township 23 South, Range 33 East, Orange County, Florida, lying within and adjacent to the southerly limited access right-of-way line of State Road 528, per Orlando Orange County Expressway Authority Right-of-Way Maps, Section No. 1.1 and Section No. 1.2, being more particularly described as follows:

Commence at a 6"x6" concrete monument (broken top- no identification) marking the Northwest Corner of Section 33. Township 23 South, Range 33 East, Orange County, Florida; thence run South 01°11'05" East, along the southerly projection of the west line of the southwest 1/4 of Section 28 Township 23 South, Range 33 East, a distance of 427.86 feet to the POINT OF BEGINNING, said point lying on a non-tangent curve concave to the north; thence run easterly along the arc of said curve, having a radius of 98206.34 feet, a central angle of 00°06'32", a chord length of 186.42 feet bearing North 89° 47' 14" East, an arc distance of 186.42 feet; thence run North 89°43'15" East, a distance of 62.00 feet; thence run North 89° 42'53" East, a distance of 907.94 feet to said existing southerly limited access right of way line of State Road 528; thence South 77°58'56" West, along said southerly limited access right-of-way line, a distance of 245.89 feet; thence departing said southerly limited access right-of-way line, run South 89°42'53" West, a distance of 667.20 feet; thence run South 89° 43' 15" West, a distance of 62.01 feet to a curve concave to the north; thence run westerly along the arc of said curve, having a radius of 98256.34 feet, a central angle of 00°06'05", a chord distance of 173.93 feet bearing South 89° 47'01" West, an arc distance of 173.93 feet to said southerly limited access right-of-way line; thence run North 78°29'25" West, along said southerly limited access right-of-way line, a distance of 248.57 feet; thence departing said southerly limited access right of way line, run North 89° 59' 14" East, a distance of 2.01 feet to a point on a non-tangent curve concave to the north; thence run easterly along the arc of said curve having a radius 98206.34 feet, a central angle of 00°08'01", a chord distance of 228.83 feet bearing North 89°54'30" East, an arc distance of 228.83 feet to the POINT OF BEGINNING.

Containing 1.31 acres, more or less.

# Surveyor's Notes:

- 1) This Legal Description and Sketch is not valid without the signature and the original raised seal of the signing Florida licensed Surveyor and Mapper.
- The lands surveyed were not abstracted for ownership, easements, right-of-way or other title matters by this firm.
- 3) The location and configuration of the lands described and depicted hereon were provided by the
- 4) 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 southwest 1/4 of Section 28, Township 23 South, Range 33 East as being South 01°11'05" East. The average combined scale factor is 0.999938.
- 5) The location of the right-of-way lines of interest is based on the following right-of-way maps:

Orlando Orange County Expressway Authority State Road 528, Section No. 1.1 and Section No. 1.2

- 6) This Legal Description and Sketch may have been reduced in size by reproduction.
- 7. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539-13-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

#### LEGEND:

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C = Chord distance

Delta = central angle

CB = Chord Bearing

ID = Identification

= Line Not To Scale

PID = Parcel Identification Number

S.R. = State Road

CFX = Central Florida Expressway Authority

R/W = Right-of-Way

C = Centerline

= Limited Access Right-of-way line

PC = Point of Curvature
PT = Point of Tangency

PCC = Point of Compound Curvature PRC = Point of Reverse Curvature

(NT) = Non Tangent AAF = All Aboard Florida

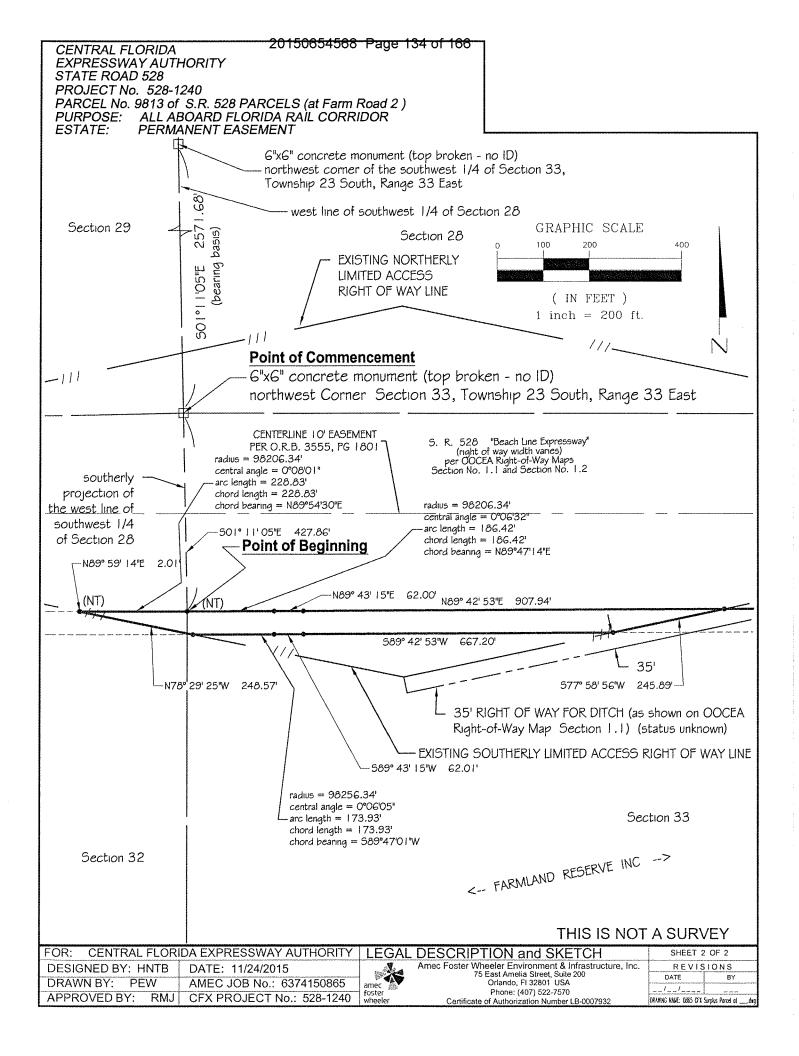
OOCEA = Orlando Orange County Express Way Authority

No. = Number

Robert M. Jones, PLS

# THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL	DESCRIPTION and SKETCH	SHEET 1	OF 2
DESIGNED BY: HNTB	DATE: 11/24/2015	N.	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200	REVIS	IONS
DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec	Orlando, FI 32801 USA	DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	BRANNIG NAME: 0865 CFX	Surplus Parcel aldwg



20150654568 Page 135 of 166

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 9814 Part A and Part B of S.R. 528 PARCELS (at S.R. 520)

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

#### Part A

A parcel of land lying in Sections 35 and 36, Township 23 South, Range 33 East, Orange County, Florida, lying within and adjacent to the southerly limited access right-of-way line of State Road 528, per Orlando Orange County Expressway Authority State Road 528 Right-of-Way Maps, Section No. 1.1 and Section No. 1.2, Florida Department of Transportation State Road 528 Right of Way Map, Section 75005-2501 and State Road 520 Right of Way Map Section 75140, being more particularly described as follows:

Commence at a 6"x6" concrete monument (no identification) marking the northeast corner of Section 36, Township 23 South, Range 33 East, Orange County, Florida; thence run South 89°28'54" West, along the north line of said Section 36, a distance of 5531.97 feet to the northwest corner of said Section 36; thence run South 00°00'00" East, a distance of 563.24 feet; to the POINT OF BEGINNING, said point lying on a non-tangent curve concave to the north; thence run easterly along the arc of said curve, having a radius of 11444.19 feet, a central angle of 0°26'33", a chord length of 88.36 feet bearing South 89°38'01" East, an arc distance of 88.36 feet to the westerly right-of-way line of said State Road 520; thence run South 34°26'05" East, along said right-of-way line, a distance of 60.67 feet to a point on a non-tangent curve concave to the north; thence, departing said right-of-way line, run westerly along the arc of said curve, having a radius of 11494.19 feet, a central angle of 02°36'22", a chord length of 522.79 feet bearing North 88°43'24" West, an arc distance of 522.84 feet; thence run North 87°03'52" West, a distance of 170.76 feet; thence run North 86°38'23" West, a distance of 170.76 feet; thence run North 86°34'04" West, a distance of 320.42 feet to said southerly limited access right-of-way line; thence run North 52°31'20" West, along said southerly limited access right-of-way line, a distance of 89.31 feet; thence, departing said southerly limited access right-of-way line, run South 86°34'04" East, a distance of 394.42 feet; thence South 86°38'23" East, a distance of 170.39 feet; thence South 87°03'50" East, a distance of 170.39 feet to a point on a non-tangent curve concave to the north; thence, run easterly along the arc of said curve, having a radius of 11444.19 feet, a central angle of 01°59'32", a chord length of 397.90 feet bearing South 88°24'59" East, an arc distance of 397.92 feet to the POINT OF BEGINNING.

Containing 1.38 acres, more or less.

Together with:

## Part B

A parcel of land lying in Section 36, Township 23 South, Range 33 East, Orange County, Florida, lying within and adjacent to the southerly limited access right-of-way line of State Road 528, per Orlando Orange County Expressway Authority State Road 528 Right-of-Way Maps, Section No. 1.1 and Section No. 1.2, Florida Department of Transportation State Road 528 Right of Way Map, Section 75005-2501 and State Road 520 Right of Way Map Section 75140, being more particularly described as follows:

Commence at a 6"x6" concrete monument (no identification) marking the northeast corner of Section 36, Township 23 South, Range 33 East, Orange County, Florida; thence run South 89°28'54" West, along the north line of said Section 36, a distance of 5531.97 feet to the northwest corner of said Section 36; thence run South 00°00'00" East, a distance of 563.24 feet to a point lying on a non-tangent curve concave to the north; thence run easterly along the arc of said curve, having a radius of 11444.19 feet, a central angle of 01°38'59", a chord length of 329.53 feet bearing North 89°45'46" East, an arc distance of 329.54 feet to the easterly right-of-way line of said State Road 520 and the POINT OF BEGINNING; thence run easterly along the arc of said curve, having a radius of 11444.19 feet, a central angle of 01°19'12", a chord length of 263.64 feet bearing North 88°16'40" East, an arc distance of 263.65 feet to said southerly limited access right-of-way line; thence run South 10°28'50" West, along said southerly limited access right-of-way line, a distance of 51.28 feet to a point on a non-tangent curve concave to the north; thence, departing said southerly limited access right-of-way line, run westerly along the arc of said curve, having a radius of 11494.19 feet, a central angle of 01°05'57", a chord length of 220.48 feet bearing South 88°13'27" West, an arc distance of 220.48 feet to said easterly right-of-way line, run North 34°26'05" West, a distance of 59.82 feet to the POINT OF BEGINNING.

Containing 12,103 square feet or 0.28 acres, more or less.

# THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY			LEGAL	DESCRIPTION and SKETCH	SHEET 1	OF 3
	DESIGNED BY: HNTB	DATE: 11/24/2015	34	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200	REVIS	
	DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec	Orlando, FI 32801 USA	DATE	BY
	APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	DRAHING NAME: 0865 CFX	

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CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528

PROJECT No. 528-1240

PARCEL No. 9814 Part A and Part B of S.R. 528 PARCELS (at S.R. 520)

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

# Surveyor's Notes:

- 1) This Legal Description and Sketch is not valid without the signature and the original raised seal of the signing Florida licensed Surveyor and Mapper.
- 2) The lands surveyed were not abstracted for ownership, easements, right-of-way or other title matters by this firm.
- 3) The location and configuration of the lands described and depicted hereon were provided by the client.
- 4) Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the north line of Section 36, Township 23 South, Range 33 East as being South 89°28'54" West. The average combined scale factor is 0.999938.
- 5) The location of the right-of-way lines of interest is based on the following right-of-way maps:

Orlando Orange County Expressway Authority State Road 528, Section No. 1.1 and Section No. 1.2

Florida Department Of Transportation State Road 528, Section 75005-2501 and State Road 520 Section 75140

- 6) This Legal Description and Sketch may have been reduced in size by reproduction.
- 7. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539-14-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my

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.

knowledge and belief. I further certify that this legal description and sketch

# LEGEND:

(C) = Calculated (D) = Deed (M) = Measured (P) = Plat

O.R.B.= Official Records Book

Pg. = Page R = Radius

L = Length of curve (arc distance)

C = Chord distance
Delta = central angle
CB = Chord Bearing
ID = Identification
Line Not To Scale
PID = Parcel Identification No

PID = Parcel Identification Number

S.R. = State Road

CFX = Central Florida Expressway Authority

R/W = Right-of-Way
C = Centerline

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

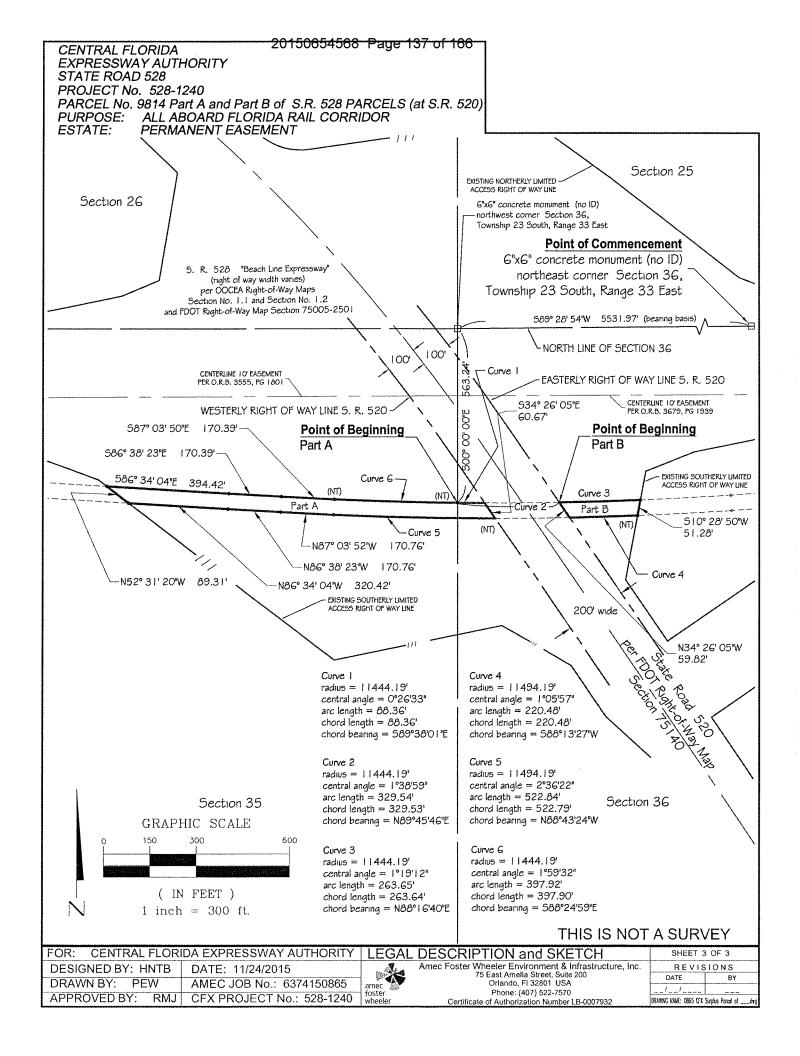
No. = Number

FDOT = Florida Department of Transportation

Robert M. Jones, PLS

# THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY			DESCRIPTION and SKETCH	SHEET 2	OF 3
DESIGNED BY: HNTB	DATE: 11/24/2015		Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200	REVIS	
DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec	Orlando, Fl 32801 USA	DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number I B-0007932	DRAWAG NAME: 0865 COX S	Surplus Porcel ofdwo



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# EXHIBIT "C" THE PROJECT AND ANCILLARY AND INCIDENTAL USES

# **PROJECT**

The Project consists of the design, development, acquisition, construction, installation, equipping, ownership, operation and maintenance of a privately owned and operated intercity passenger rail system and related facilities, with stations located in Orlando, West Palm Beach, Fort Lauderdale and Miami, Florida.

The Company's passenger rail service will offer leisure, business, and personal travelers fast, reliable, convenient and comfortable travel within Southeast and Central Florida. The Company expects 16 daily departures from each of Miami and Orlando, with stops in West Palm Beach and Fort Lauderdale when fully operational. The Project's express trains will be able to make the 235-mile trip between Miami and Orlando in approximately three hours, travelling at speeds of up to 125 mph while offering on-board amenities to passengers. Train stations will be conveniently located in city centers and Orlando International Airport, and will offer multiple connections to local commuter rail and public ground transportation.

# ANCILLARY AND INCIDENTAL USES

As ancillary and incidental uses in the operation of the Project, AAF, without the Authority's consent, may enter into the following arrangements which are exclusively for the benefit of Project Passengers and AAF's Project crew and contractors/vendors engaged in the construction, operation, or maintenance of the Project.

# • Construction

O Construction, installation, repair, replacement of the Intercity Passenger Rail Improvements

# • Maintenance

- o Maintenance of Intercity Passenger Rail Improvements (includes routine maintenance activities, inspections, installation, repair, replacement)
- o Maintenance of Rolling Stock (includes routine maintenance activities, inspections and repairs)
- o Maintenance of Southern Slope Improvements (including mowing, repairing and replacement)

# Operations

- o Scheduled passenger service and special/charter service
- o Cleaning (interior of train)
- o Food and beverage service on the train (complimentary and for sale)
- o Retail on the train (complimentary and for sale)
- O Wi-Fi & cellular service on the train (complimentary and for sale)
- o Emergency access as required
- O Ability to bring in equipment and vehicles related to derailment & rerailment
- o Marketing, advertising, promotions, exposure in and on the train
- o No Fueling Operations

# EXHIBIT "D" RULES

# Rules Regarding Access to Property and the Pond, Slope Property, and Maintenance Access Ways

The following provisions (as the same may be amended from time to time by All Aboard Florida – Operations LLC, a Delaware limited liability company ("AAF") shall be included by the Central Florida Expressway Authority, a body corporate and politic existing pursuant to Chapter 348, Florida Statutes (the "Authority") in any agreement for work or services entered into by the Authority and any third party referred to below as a "Consultant") pursuant to which such Consultant may require access to the Property and the Pond, Slope Property, and Maintenance Access Ways (all as defined in the foregoing Rail Line Easement to which this exhibit is attached, collectively, the "ROW") as part of its agreement with the Authority. In the event that Authority utilizes its own employees, in lieu of the Consultant, for any work on the ROW, then Authority and its employees shall comply with all of the provisions contained in this Exhibit "D".

# Contract Provision ROW REQUIREMENTS

Consultant acknowledges that in the performance of its Services, Consultant may access the ROW. Consultant's access to the ROW is subject to the foregoing Rail Line Easement, including this Exhibit "D" (the "Governing Documents"). Consultant shall not do or permit to be done any act or thing which will constitute a breach or violation of any of the terms, covenants, conditions, or provisions of the Governing Documents. Moreover, Consultant agrees to be bound by and agrees to perform all of the acts and responsibilities required by the Governing Documents as are applicable to the access to and use of the ROW. This includes, without limitation, the requirements and restrictions set forth in the ROW Requirements set forth below. Further, whether or not Consultant performs services within the ROW, Consultant shall adopt, monitor and enforce reasonable rules and regulations for the conduct of its employees, patrons, agents and contractors (including employees thereof) or any other persons to protect them from injury while on, about or near any track on or adjoining the ROW.

# **ROW REQUIREMENTS**

As provided in the Agreement, if the services of Consultant relate to property located within the ROW, Consultant shall comply with, and not do or permit to be done any act or thing which is restricted under, the provisions of the easement rights granted to AAF. This includes, without limitation, the following (the "ROW Requirements"):

- A. Consultant shall not in any way, or at any time, interfere with or obstruct the use of ROW by the Authority or AAF or their respective agents, employees, patrons or assigns.
- B. Consultant will not discharge surface water upon any portion of the ROW or any of AAF's property and/or railroad tracks and Consultant hereby expressly releases the Authority and AAF from liability for any surface water flowing across the ROW.

- C. Consultant further agrees not to alter the ROW so as to cause water to drain or flow onto the ROW or any of AAF's property nor so as to cause an undermining of the ROW or any adjacent property.
- D. Consultant shall not have or assert any claim or demand whatsoever for compensation or damages against the Authority, AAF, the ROW or to any improvements now or hereafter erected or property located thereon which may be caused by the operation, maintenance, repair, relocation, or removal of AAF's railroad, its operations or which may be caused by vibration resulting from the operation of said railroad and Consultant releases the Authority and AAF from any liability for any such damage.
- E. Consultant acknowledges and agrees that no right of way, expressed or implied, over the ROW is granted by this Agreement.
- Consultant acknowledges that Consultant will have no authority or power, express or F. implied, to create or cause any construction lien or mechanics' or materialmen's lien or claim of any kind against any portion of the ROW. Consultant will promptly cause any such liens or claims to be released by payment, bonding or otherwise, but in any event not more than ten (10) business days after request by the Authority, and will indemnify the Authority, and AAF against losses arising out of any such claim including, without limitation, legal fees and court costs. NOTICE IS HEREBY GIVEN THAT AAF WILL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIAL FURNISHED OR TO BE FURNISHED TO SUPPLIER HEREUNDER, OR TO ANYONE PROVIDING LABOR, SERVICES, MATERIALS OR EQUIPMENT THROUGH OR UNDER SUPPLIER, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES, MATERIALS OR EQUIPMENT WILL ATTACH TO OR AFFECT THE INTEREST OF AAF IN THE ROW. CONSULTANT WILL DISCLOSE THE FOREGOING PROVISIONS TO EACH CONTRACTOR OR PARTY ENGAGED BY CONSULTANT PROVIDING LABOR, SERVICES, MATERIALS AND/OR EQUIPMENT WITH REGARD TO THE ROW.
- G. Consultant shall have no claim of any kind or description for damages to goods, wares, personal property or merchandise on the ROW from <u>any cause whatsoever</u>, INCLUDING FIRE, STORM, CASUALTY OR ACT OF GOD, OR NEGLIGENCE OF THE AUTHORITY OR RAIL COMPANY UNLESS CAUSED BY THE WILLFUL OR INTENTIONAL ACTS OF THE AUTHORITY OR AAF.
- H. A railroad watchman or flagman shall be present at all times work is being performed by Consultant to the extent that a watchman and/or flagman is required to comply with any applicable laws, the then-existing documented safety policies of AAF, and those of the Florida East Coast Railway, L.L.C., or if requested by the Authority or AAF. The Authority or AAF shall advise if a railway watchman or flagman is to be present during the time Services are being performed by Consultant (including by anyone acting on Consultant's behalf). Consultant shall provide the Authority and AAF no less than fourteen (14) calendar days' advance written notice of its intention to perform work at or around the ROW to allow the Authority or AAF to provide such notice regarding required watchmen or flagmen, if and as necessary. Such notice to AAF shall be provided in writing via email and facsimile to the attention of the following person:

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# All Aboard Florida - Operations LLC 2855 LeJeune Road, 4th Floor, Coral Gables, FL 33134 Attn: Adrian Share

Email address: Adrian.Share@allaboardflorida.com Facsimile Number: 305-520-2400

The Consultant shall pay the cost and expense of any such required watchmen and/or flagmen.

- I. Consultant hereby waives any and all claims against AAF and the Authority relating to accidents, injuries, loss or damage of or to any person (including the employees, agents or representatives of Consultant or any other entity working for or through the Consultant) or property arising from or in any manner relating to the use of or access to the ROW and hereby agrees to indemnify and hold harmless AAF and the Authority against any and all damages and costs resulting from any claims made against AAF and/or the Authority by any person or entity working for or through the Consultant including the employees, agents or representatives thereof.
- J. Without limiting Consultant's obligations in the Agreement to comply with applicable law, it is understood that Consultant shall comply with all applicable federal, state and municipal regulations as to health, safety, zoning, police, nuisance, fire, water, liquid, solid waste and hazardous waste, highways, sidewalks and other matters, and with the regulations of all persons or corporations supplying water, gas, heat, electricity, telephone, or steam on the ROW, and shall indemnify the Authority and AAF against all fines, penalties, expense, damages and costs for violation thereof.
- K. Without limiting Consultant's obligations in the Agreement to obtain all necessary permits and approvals related to the performance of the Services, it is understood that Consultant is solely responsible for obtaining any and all applicable federal, state and local licenses, permits, or other authority for its use of the ROW and shall indemnify and hold harmless the Authority and AAF against all fines, penalties, expenses, damage and costs for violation of or failure to comply with any federal, state or local laws or regulations.
- L. Consultant agrees and acknowledges that the Authority intends to consult with AAF to confirm whether or not Consultant's use of and access to the ROW is in compliance with the terms of the Agreement, and upon the written request of the Authority, Consultant shall provide the information and assistance needed to resolve any non-compliance issues identified by AAF.
- M. In addition to the insurance requirements set forth in the Agreement,
  - 1. Consultant shall procure and maintain the following insurance in accordance with the terms and conditions set forth in the Agreement, as well as <u>Railroad Protective</u> Liability Insurance, of \$2,000,000 per accident, \$6,000,000 aggregate, naming AAF as a named insured. The definition of designated contractor must be amended in such insurance policy to include contractors of every tier.
  - 2. All policies required by the Agreement and herein shall: (i) name the Authority, and AAF as additional insureds (with the exception of workers' compensation insurance and professional liability insurance); (ii) be non-contributing with, and shall apply only as primary and not as excess to any other insurance available to the Authority and/or AAF or any mortgagee or lender thereto; and (iii) have all railroad exclusions removed.

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- 3. The CGL policy must delete restrictions for indemnity or work within 50 feet of a railroad or on railroad property.
- 4. All policies required to be provided pursuant to this Agreement shall contain a waiver of subrogation in favor of the Authority and AAF and their insurers, officers, officials, employees and volunteers. Consultant's insurance companies, in their endorsements, must agree to such waiver of subrogation.
- N. The Authority shall advise Consultant of any other applicable requirements or restrictions related to the AAF's easements prior to the commencement of Services. Consultant agrees that it shall comply with, and not do or permit to be done any act or thing which is restricted under, any such other requirements or restrictions about which it receives notice from the Authority or AAF.
- O. All notices given under these ROW Requirements may be given by receipt-confirmed email.
- P. The provisions of these ROW Requirements shall survive the expiration or termination of this Agreement.
- Q. Without limiting the generality of the foregoing, any Authority or Consultant employees that utilize any access over the Property must undergo specific right-of way training.
- R. Consultant shall comply with all rules and regulations mandated by the Federal Railroad Administration regarding access to right-of way for railroad purposes.
- S. Consultant shall comply with all provisions of the Florida East Coast Railway Company Handbook for Contractors, which AAF hereby adopts and incorporate herein by reference.
- T. AAF shall provide a three-hour timeframe for access to the ROW within any 24-hour period, when such access is requested by the Authority, in writing, with respect to the Authority's exercise of the foregoing access rights, including the right to maintain, expand, install, construct, alter, repair, renew, replace and/or otherwise modify the Authority's transportation facilities by either going over or under the ROW and AAF's Intercity Passenger Rail Improvements thereon. Authority's access to the ROW during such three-hour timeframe within any 24-hour period shall not be deemed to affect AAF's use and operation of the Intercity Passenger Rail Service or the Intercity Passenger Rail Project ("Project") in a material respect (with it being understood that it is material for AAF to be able to operate and maintain the Project in a safe manner in order to deliver uninterrupted service to AAF Passengers).
- U. Authority shall review with AAF any and all proposed improvements to the ROW from and after the Effective Date of the Rail Line Easement in order to ensure that any such action is taken in a manner consistent with the Authority's commitment to minimize interference with AAF's use and enjoinment of the ROW, which includes an agreement by the Authority to refrain from taking or allowing any action with respect to the ROW that would adversely affect AAF's ability to construct and/or operate the Project as contemplated hereunder, whether taken before or after the completion of the Project plans or the commencement of construction.

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# EXHIBIT "E" SOUTHERN SLOPE PROPERTY AND NORTHERN SLOPE PROPERTY

See depiction of Southern Slope Property and Northern Slope Property as shown by the dashed line on the depiction of the Overall Property on Exhibit A.

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# EXHIBIT "F" RIGHT OF ENTRY AGREEMENT

# RIGHT OF ENTRY AGREEMENT

This RIGHT OF ENTRY AGREEMENT ("Agreement") is made and entered into on this day of, 201, by and between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and corporate and an agency of the State of Florida								
("Authority"), with a principal address of 4974 ORL Tower Road, Orlando, FL 32807, as ("Licensee")								
who is duly authorized to conduct business in the State of Florida and whose mailing addres								
RECITALS								
WHEREAS, Authority is the fee simple owner of certain real property located in County, Florida, more particularly described on <b>Exhibit A</b> , attached hereto and incorporated herein by reference ("Property"), which real property is generally located								
and								
WHEREAS, Licensee intends to perform the work described in the plans attached hereto as <b>Exhibit B</b> and incorporated herein by reference ("Project"), generally described as follows:								
and								
WHEREAS, Licensee desires to enter upon the Property in order to construct the Project; and								
WHEREAS, Licensee has requested a temporary non-exclusive right of entry to enter upon the Property to commence such work.								
NOW, THEREFORE, in consideration of the above-stated premises, the Authority and								

- 1. The above recitals are true and correct and are incorporated herein by reference.
- 2. <u>Right of Entry</u>. Authority hereby authorizes Licensee and its employees, contractors, and agents to enter upon the Property for the sole and limited purpose of constructing the Project. Under no circumstances may Licensee block any Authority roadway or operation or impede Authority in its normal functions without the prior written consent and approval from the Authority.

Licensee hereby agree as follows:

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3.	Special Conditions. Licensee further agrees to the following special conditions:
a.	No pullboxes or other surface structures shall be permanently placed within Authority right-of-way.
b.	Licensee shall apply for and obtain all necessary permits, including permits issued by or through the Florida Department of Transportation, and comply with all applicable laws, rules, ordinances, and regulations.
c.	
d.	
e.	
f.	
4. terminated soo(b)	Term. This is a license agreement terminable at will by the Authority. Unless oner, this Agreement will expire upon the earlier of: (a) completion of the Project; or() days from the date of execution by Authority.
be accomplish Geiss at 407-roadway light	Coordination. Activities to be performed in connection with the Project shall be ith Authority prior to the initiation of the activity. Coordination with Authority shall ed through contact and cooperation with both Pat Collins at 407-690-5056 and Steve 630-5335, at least 72 hours in advance to assist in locating the existing Authority ing lines, fiber optic network lines, and any other underground improvements and to going maintenance in the area.
around the Pro all materials g for the proper regulations. A caused by the the Property s	Restoration of Site. Licensee shall be responsible for any and all costs related to reluding installation, operation and removal and restoration of equipment on and operty. At Licensee's sole cost and expense, Licensee shall remove from the Property generated during its activities at the Property and Licensee shall be fully responsible disposal of such materials in accordance with applicable laws, rules, ordinances and Additionally, Licensee agrees to promptly repair any and all damage to the Property Project with specific attention to surface sod, concrete, and asphalt. Restoration of shall be equal or superior to its present condition as nearly as may reasonably be on completion of restoration, Licensee shall contact Pat Collins at 407-690-5056 and

Steve Geiss at 407-630-5335, who shall inspect the Property and, if satisfied, issue a notice of satisfaction, which notice may be transmitted by electronic mail. Failure to obtain said notice of satisfaction may result in pursuit by Authority against Licensee or its contactors or agents for

damages and costs associated with proper restoration of the Property.

- 7. <u>Indemnification</u>. Licensee shall indemnify, defend and hold Authority harmless and shall cause Licensee's contractors and agents to indemnify, defend and hold Authority harmless from and against any and all costs, expenses, fines, fees, penalties, claims, suits or proceedings (including attorneys' fees at the trial or appellate level), demands, liabilities, damages, injuries (including death) arising from their respective use or work performed on or about the Property or in connection with the Project, excepting only those claims arising from the sole negligence of the Authority, its officials, or employees.
- 8. <u>Sovereign Immunity</u>. Nothing contained in this Agreement shall be construed as a waiver or attempt at a waiver by the Authority of its sovereign immunity under the Constitution and laws of the State of Florida.
- 9. <u>Insurance</u>. Licensee shall provide a certificate of general liability insurance and specifically list Authority as an additional insured or provide a policy covering contractual liability before any work commences. Policy shall be an occurrence basis policy, with minimum limits of \$1 million per occurrence with a deductible of no more than \$500, and \$2 million in the aggregate combined single limits covering bodily injury, property damage, personal injury and liability.
- 10. <u>Assumption of Risk; Release</u>. Licensee, on behalf of its employees, contractors, and agents, assumes the risk associated with any activities arising out of this Agreement or on or around the Property. Licensee, on behalf of its employees and agents, hereby releases Authority, its officials, employees, and contractors from any and all liability, loss, claims, damages, costs and expenses of any nature in connection with any injury or damage to any person or any real or personal property which Licensee and its employees, contractors, or agents may suffer or incur in connection with this Agreement.
- 11. <u>Reservation of Rights</u>. Authority expressly reserves all rights to pursue any claims it may have against the Licensee, its contractors or its agents for damages, violations, contributions and indemnity, or for any other losses which may have been caused by the Licensee, its contractors, or its agents within the Property.
- 12. <u>Governing Law</u>. All parties agree that this Agreement and the contents thereof are to be interpreted and enforced pursuant to the laws of the State of Florida. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provision hereof shall be instituted and maintained only in the courts of the State of Florida.
- 13. <u>Notice</u>. Except as otherwise provided in the paragraphs with the headings of Coordination and Restoration of Site, all notices required to be delivered to Licensee or Authority shall be delivered via certified mail return receipt requested to the respective parties at the addresses provided below:

With re	espect to Licensee:

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With respect to Authority:

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

4974 ORL Tower Road Orlando, FL 32807-1684 Telephone: (407) 690-5000 Facsimile: (407) 690-5011

Attention: Deputy Executive Director of Engineering, Operations

Construction & Maintenance

and

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

4974 ORL Tower Road Orlando, FL 32807-1684 Telephone: (407) 690-5000 Facsimile: (407) 690-5011 Attention: General Counsel

- 14. <u>Authorized Signatories</u>. Licensee represents and warrants that the person signing below is duly authorized to sign this Agreement to which the Licensee and its employees, contractors, and agents will be duly bound.
- 15. The Parties agree that neither this Agreement nor any memorandum or notice of the same shall be recorded in the Official Records of Orange County, Florida or any other County in the State of Florida.
- 16. Licensee understands and agrees that this Agreement does not take effect until it is fully executed by all the parties and that Licensee cannot rely upon the representations of staff.

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IN WITNESS HEREOF, Authority and Licensee have executed this Right of Entry Agreement effective on the last date of execution.

Witnesses:	LICENSEE:
	Name:
First Witness	
By:	By:
Print Name:	Print Name:
	Title:
Second Witness	Date:
By:	
Print Name:	
Witnesses:	CENTRAL FLORIDA EXPRESSWAY AUTHORITY
First Witness	
By:	By:
Print Name:	Print Name:
	Title:
<b>Second Witness</b>	Date:
Ву:	
Print Name:	
	APPROVED AS TO FORM FOR EXECUTION BY A SIGNATORY OF THE CENTRAL FLORIDA EXPRESSWAY AUTHORITY
	By: General Counsel /Deputy General Counsel Date:

# **Attachments**

Exhibit A. Description of the Real Property Exhibit B. Project Plans

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# COMPOSITE EXHIBIT "G" DESCRIPTION OF SIGNAL POLE AREA

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 981 Part A of SR 528 PARCELS (at OIA) PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR SIGNAL POLE PERMANENT EASEMENT ESTATE:

A parcel of land lying in the Section 34, Township 23 South, Range 30 East, Orange County, Florida, lying within and adjacent to the existing limited access right of way of State Road 528 as depicted on Orlando Orange County Expressway Authority Map Section 1.2 and Airport Interchange-Bee Line Improvements Right of Way Maps, being more particularly described as follows:

Commence at 6"x6" concrete monument marking the Northeast Corner of Section 34, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°22'19" East, along the east line of the northeast 1/4 of said Section 34, a distance of 552.65 feet; thence departing said east line, run North 79°11'53" West, a distance of 1908.76 feet; thence run North 79°18'04"West a distance of 62.08 feet to a point on a curve with a radius of 5752.62 feet, concave to the south; thence westerly along said curve to the left through a central angle of 4°03'34", an arc distance of 407.59 feet where the chord bears North 81°32'14" West a distance of 407.50 feet to the POINT OF BEGINNING; thence continue westerly along said curve to the left with a radius of 5752.62 feet, through a central angle of 0°11'57", an arc distance of 20.00 feet where the chord bears North 83°40'00"West a distance of 20.00 feet; thence North 06°20'00" East, a distance of 5.00 feet; thence South 83°40'00" East, a distance of 20.00 feet; thence South 06°20'00" West, a distance of 5.00 feet to the POINT OF BEGINNING.

Containing 100 square feet or 0.002 acres, more or less.

### **Surveyors Notes**

- 1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the east line of the northeast 1/4 of Section 34, Township 23 South, Range 30 East as being South 00° 22' 19" East. The average combined scale factor is 0.999952.
- 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-586539-1-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

#### LEGEND:

Calculated (D) Deed = (M) Measured (P) Plat

Official Records Book O.R.B.=

== Pg. Page

=

Radius

Length of curve (arc distance)

Chord distance Delta = central angle Chord Bearing CB = Identification ID, = Line Not To Scale

PID = Parcel Identification Number

S.R. = State Road

CFX = Central Florida Expressway Authority

R/W = Right-of-Way

= Centerline

<u>--</u>∏. PC = Limited Access Right-of-way line

= Point of Curvature РΤ

= Point of Tangency = Point of Compound Curvature PCC

= Point of Reverse Curvature PRC (NT) = Non Tangent

= All Aboard Florida

OOCEA = Orlando Orange County Expressway Authority

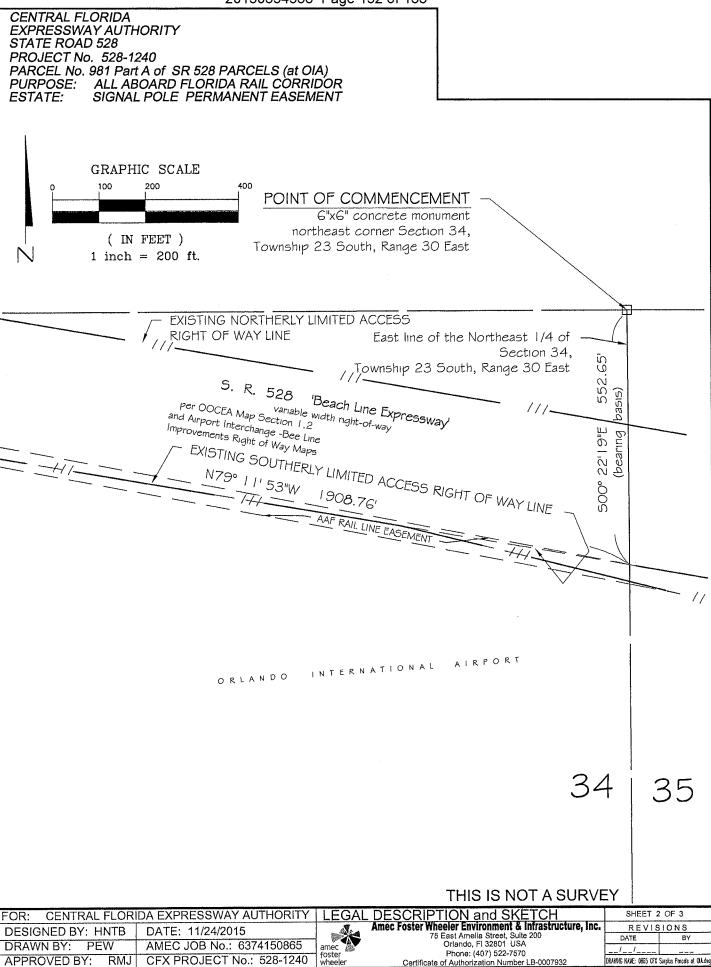
= Number

Robert M. Jones, PLS

## THIS IS NOT A SURVEY

CENTRAL FLORIDA EXPRESSWAY AUTHORITY	LEGAL DESCRIPTION and SKETCH	SHEET 1 O	⊮F 3
IGNED BY: HNTB   DATE: 11/24/2015	Amec Foster Wheeler Environment & Infrastructure, Inc.		
101 DV DEW ANTO 100 No. 007/4/50005	75 East Amelia Street, Suite 200 Orlando, FI 32801 USA	DATE	BY
ROVED BY: RMJ CEX PROJECT No.: 528-1240	nster ***** Phone: (407) 522-7570	DRAWING NAME: 0865 CFX Surplu	

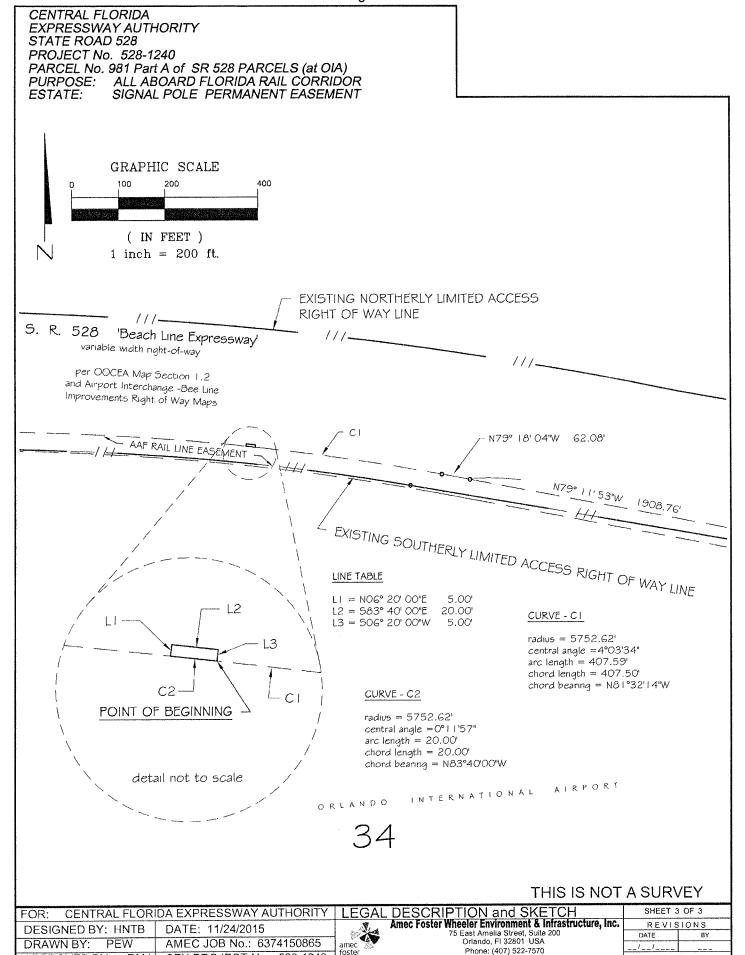
# 20150654568 Page 152 of 166



DRAWNG NAME: 0855 CFX Surplus Porcels of OIA.dw

APPROVED BY: RMJ

CFX PROJECT No.: 528-1240



DRAWNIC NAME: 0805 OFX Surplus Porcels of CIA.dwg

Certificate of Authorization Number LB-0007932

APPROVED BY: RMJ

CFX PROJECT No.: 528-1240

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 987 Part C of S.R. 528 Parcels (at S.R. 417 Interchange)
PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR
ESTATE: SIGNAL POLE PERMANENT EASEMENT

Part C:

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; thence run South 63°45'43" East, along said southerly line and northerly Right-of-Way line, a distance of 348.80 feet to a point on a non-tangent curve with a radius of 4926.15 feet, concave to the southwest; thence southeasterly along said curve to the right through a central angle of 08°43'04", an arc distance of 749.53 feet where the chord bears South 70°17'30" East a distance of 748.80 feet; thence South 65°01'46"East, a distance of 186.29 feet; thence South 63°56'38"East, a distance of 186.27 feet; thence South 63°45'46" East, a distance of 1055.61 feet to the POINT OF BEGINNING; thence North 26°14'14"East, a distance of 5.00 feet; thence South 63°45'46" East, a distance of 20.00 feet; thence run South 26°14'14" West, a distance of 5.00 feet; thence run North 63°45'46" West, a distance of 20.00 feet to the POINT OF BEGINNING.

Containing 100 square feet or 0.002 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-586839-7-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

#### LEGEND:

(C) = Calculated (D) = Deed (M) = Measured

(P) = Plat O.R.B.= Official Records Book

Pg. = Page

Length of curve (arc distance)

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

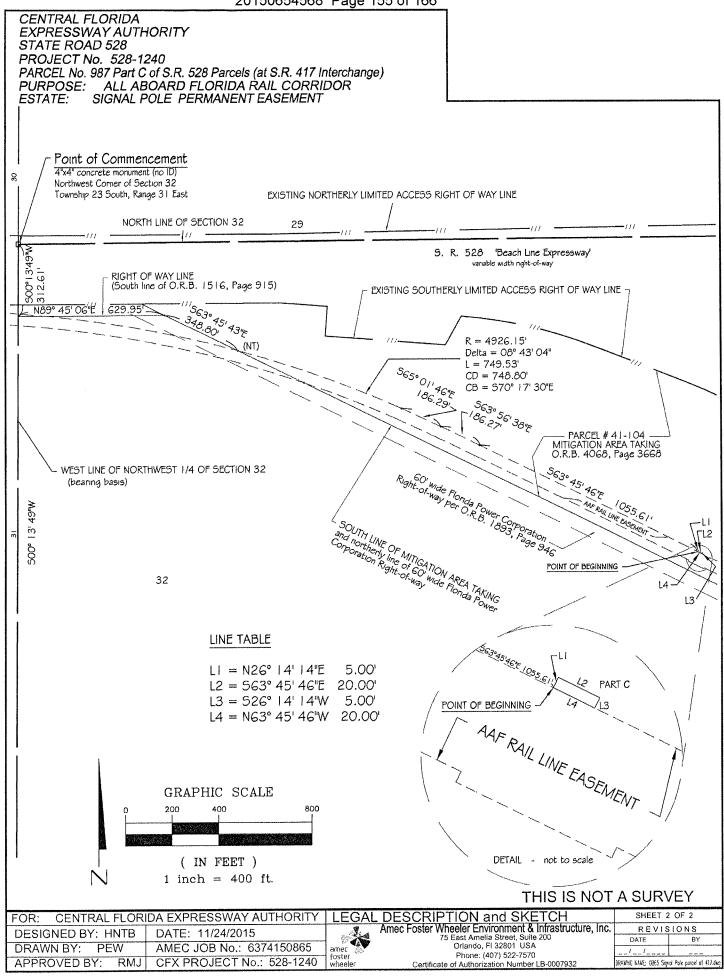
OOCEA = Orlando Orange County Expressway Authority
No. = Number

THIS IS NOT A SURVEY

Robert M. Jones, PLS

FOR: CENTRAL FLORI	DA EXPRESSWAY AUTHORITY	LEGAL	DESCRIPTION and SKETCH	SHEET 1	OF 2
DESIGNED BY: HNTB	DATE: 11/24/2015	***	Amec Foster Wheeler Environment & Infrastructure, Inc.	REVIS	IONS
DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec	75 East Amelia Street, Suite 200 Orlando, Fl 32801 USA	DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	DRAWING NAME: 0865 Sign	nal Pole parcel at 417.dwg

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# 20150654568 Page 156 of 166

# COMPOSITE EXHIBIT "H" DESCRIPTION OF BRIDGE PIERS AND RETAINING WALL AREAS

# 20150654568 Page 157 of 166

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 985 Part D and Part E of S.R. 528 Parcels (at Narcoossee Road)

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: BRIDGE and RETAINING WALL PERMANENT EASEMENT

#### Part D:

A parcel of land lying in Section 36, Township 23 South, Range 30 East, Orange County, Florida, lying within the existing limited access right of way of State Road 528 per Orlando Orange County Expressway Authority State Road 528 / Narcoossee Road Interchange, Project 907 Right-of-way Map, being more particularly described as follows:

Commence at 6"x6" concrete monument (no identification) marking the northwest corner of Section 31, Township 23 South, Range 31 East, Orange County, Florida; thence run South 00°15'33" West, along the west line of the northwest 1/4 of said Section 31, a distance of 1216.19 feet; thence run South 89°18'55" West, a distance of 50.59 feet to the POINT OF BEGINNING; thence run South 89°18'55" West, a distance of 205.00 feet; thence run North 80°41'05" West, a distance of 25.66 feet; thence run North 82°24'20" East, a distance of 147.74 feet; thence run North 89°18'55" East, a distance of 58.33 feet; thence run South 00°41'05" East, a distance of 43.44 feet to the POINT OF BEGINNING.

Containing 7,601.21 square feet or 0.17 acres, more or less.

#### Part E:

A parcel of land lying in Section 36, Township 23 South, Range 30 East, Orange County, Florida, lying within the existing limited access right of way of State Road 528 per Orlando Orange County Expressway Authority State Road 528 / Narcoossee Road Interchange, Project 907 Right-of-way Map, being more particularly described as follows:

Commence at 6"x6" concrete monument (no identification) marking the northwest corner of Section 31, Township 23 South, Range 31 East, Orange County, Florida; thence run South 00°15'33" West, along the west line of the northwest 1/4 of said Section 31, a distance of 1216.19 feet; thence run South 89°18'55" West, a distance of 255.59 feet; thence run South 00°41'05" East, a distance of 50.00 feet to the POINT OF BEGINNING; thence run North 89°18'55" East, a distance of 190.98 feet to the existing southerly limited access right of way line of State Road 528; thence, along said existing southerly limited access right of way line, run South 75°03'04" West, a distance of 197.05 feet; thence run North 00°41'05" West, a distance of 48.55 feet to the POINT OF BEGINNING.

Containing 4,636.27 square feet or 0.11 acres, more or less.

### Surveyors Notes

- 1. This Legal Description and Sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
- 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. The location and configuration of the lands described and depicted hereon were provided by the client.
- 4. 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 31, Township 23 South, Range 31 East as being South 00° 15' 33" West. The average combined scale factor is 0.999945.
- 5. The location of the right-of-way lines of interest is based on the follow right-of-way map:

Orlando Orange County Expressway Authority State Road 528 Narcoossee Road Interchange, Project 907.

- 6. This legal description and sketch may have been reduced in size by reproduction.
- 7. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539-5-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

# LEGEND:

(C) = Calculated (D) = Deed (M) = Measured (P) = Plat

O.R.B.= Official Records Book

Pg. = Page R = Radius

= Length of curve (arc distance)

C = Chord distance

Delta = central angle

CB = Chord Bearing

ID = Identification

= Line Not To Scale

PID = Parcel Identification Number

S.R. = State Road

CFX = Central Florida Expressway Authority

R/W = Right-of-WayC = 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 Expressway Authority

No. = Number

Robert M. Jones, PLS

# THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY			LEGAL	DESCRIPTION and SKETCH	SHEET 1	OF 2
	DESIGNED BY: HNTB	DATE: 12/14/2015	ંટ્રેલ	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200	R E V I S	IONS
	DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec 🐼	Orlando, FI 32801 USA	//	DI
	APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	DRAWN, NAME: 0865 Bridge and p	er porcelo el Norcoosco Roccideo

20150654568 Page 158 of 166 CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240 PARCEL No. 985 Part D and Part E of S.R. 528 Parcels (at Narcoossee Road) PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR BRIDGE and RETAINING WALL PERMANENT EASEMENT 30 25 POINT OF COMMENCEMENT 6"x6" concrete monument (no ID) northwest corner Section 31, Range Township 23 South, Range 31 East GRAPHIC SCALE 600 300  $\omega$ ( IN FEET ) East TT-1 inch = 300 ft.25t EXISTING NORTHERLY LIMITED ACCESS RIGHT OF WAY LINE 5. R. 528 "Beach Line Expressway" variable width right-of-way CENTERLINE TO EASEMENT per OOCEA Right-Of-Way Map O.R.B. 3555 PG, 1801 S.R. 528 / Narcoossee Road Interchange Project No. 907 L7 POINT OF BEGINNING LG. Parcel 985 Part D L51 LIO L3 Parcel 985 Part D EXISTING SOUTHERLY LIMITED ACCESS RIGHT OF WAY LINE Parcel 985 Part E POINT OF BEGINNING Parcel 985 Part E EXISTING SOUTHERLY LIMITED 31 ACCESS RIGHT OF WAY LINE LINE TABLE: 36 = N89° 18' 55"E 190.98 = 575° 03' 04"W 197.05' = NOO° 41' Q5"W 48.55' Lot 1 = 589° 18' 55"W 205.00 "RESERVE AT BEACHLINE" WEST = NOO° 41' 05"W 25.66' = N82° 24' 20"E ORLANDO 147.74 E Plat Book 66. NTERNATIONAL = N89° 18' 55"E (bearing) LINE OF N 58.33' By. Pages 137 - 138 AIRPORT 18 = 500° 41' 05"E 43 44 SOUNDARY LINE = 589° 18' 55"W 1.9 50.59 LIO = 500° 41' 05"E g basis) NORTHWEST 50.00 EASTERLY RIGHT OF WAY LINE OF NARCOOSSEE ROAD L4+L9 = 589° 18' 55"W 255.59' per Right of Way Map for S. R. 528 / NARCOOSSEE ROAD Project No. 907 74 읶 THIS IS NOT A SURVEY CENTRAL FLORIDA EXPRESSWAY AUTHORITY LEGAL DESCRIPTION and SKETCH SHEET 2 OF 2 Amec Foster Wheeler Environment & Infrastructure, Inc. REVISIONS DESIGNED BY: HNTB DATE: 12/14/2015 ୢୖ୵ 75 East Amelia Street, Suite 200 DATE DRAWN BY: PEW AMEÇ JOB No.: 6374150865 amec s foster wheeler Orlando, Fl 32801 USA Phone: (407) 522-7570 APPROVED BY: RMJ CFX PROJECT No.: 528-1240 DRAMPK MANE 1865 Bridge and pier parcels at Norcoosee Food de Certificate of Authorization Number LB-0007932

# 20150654568 Page 159 of 166

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 985 Part F of S.R. 528 Parcels (at Narcoossee Road)

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR ESTATE: BRIDGE and RETAINING WALL PERMANENT EASEMENT

Part F:

A parcel of land lying in Section 36, Township 23 South, Range 30 East, Orange County, Florida, lying within the existing limited access right-of-way of State Road 528 per Orlando Orange County Expressway Authority State Road 528/Narcoosee Road Interchange Project 907 right-of-way map, being more particularly described as follows:

Commence at 6"x6" concrete monument (no identification) marking the northeast corner of Section 36, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°15'33" West, along the east line of the northeast 1/4 of said Section 36, a distance of 1216:19 feet; thence run South 89°18'55" West, a distance of 2204.16 feet to the POINT OF BEGINNING; thence continue South 89°18'55" West, a distance of 68.00 feet; thence run North 00°41'05" West, a distance of 51.43 feet; thence run South 76°02'26" East, a distance of 70.28 feet; thence run South 00°41'05" East, a distance of 33.66 feet to the POINT OF BEGINNING.

Containing 2,893 square feet or 0.07 acres, more or less.

#### **Surveyors Notes**

- 1. This Legal Description and Sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
- 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. The location and configuration of the lands described and depicted hereon were provided by the client.
- 4. 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 36, Township 23 South, Range 30 East as being South 00° 15' 33" West. The average combined scale factor is 0.999945.
- 5. The location of the right-of-way lines of interest is based on the follow right-of-way maps:

Orlando Orange County Expressway Authority State Road 528 / Narcoossee Road Interchange, Project 907.

- 6. This legal description and sketch may have been reduced in size by reproduction.
- 7. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539-5-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

### LEGEND:

(C) = Calculated (D) = Deed (M) = Measured (P) = Plat

O.R.B.= Official Records Book

Pg. = Page R = Radius

Radius

L = Length of curve (arc distance)
C = Chord distance

Pelta = central angle

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 Expressway Authority

No. = Number

Robert M. Jones, PLS

## THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		LEGAL	DESCRIPTION and SKETCH	SHEET 1 OF 2	
DESIGNED BY: HNTB	DATE: 12/14/2015		Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200	REVIS	
DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec	Orlando, Fl 32801 USA	DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	ORANNO NAME: 0855 Bridge and	

20150654568 Page 160 of 166 CENTRAL FLORIDA **EXPRESSWAY AUTHORITY** STATE ROAD 528 PROJECT No. 528-1240 PARCEL No. 985 Part F of S.R. 528 Parcels (at Narcoossee Road) PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR BRIDGE and RETAINING WALL PERMANENT EASEMENT 25 30 GRAPHIC SCALE 600 300 31 ( IN FEET ) ine Range 3 500° 15' 33"v of the northeast Range 3( 1 inch = 300 ft.POINT OF COMMENCEMENT Rang 6"x6" concrete monument (no ID) northeast corner Section 36, Township 23 South, Range 30 East East 36 0 basis) NORTHERLY LIMITED ACCESS RIGHT OF WAY LINE -S. R. 528 "Beach Line Expressway" variable width right-of-way per OOCEA Right-Of-Way Map 576° 02' 26"E 70.28 S.R. 528 / Narcoossee Road Interchange Project No. 907 500° 41' 05"E 33.66' Parcel 985 Part F POINT OF BEGINNING Parcel 985 Part F NOO° 41' 05"W 51.43 589° 18' 55"W 2204.16 EXISTING SOUTHERLY LIMITED // ACCESS RIGHT OF WAY LINE 589° 18' 55"W 68.00'-PROPOSED LIMITED ACCESS RIGHT OF WAY LINE and ORLANDO INTERNATIONAL. AIRPORT BOUNDARY ORI ANDO ORLANDO INTERNATIONAL AIRPORT INTERNATIONAL AIRPORT BOUNDARY LINE THIS IS NOT A SURVEY CENTRAL FLORIDA EXPRESSWAY AUTHORITY SHEET 2 OF 2 LEGAL **DESCRIPTION and SKETCH** Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200 amec foster wheeler REVISIONS DESIGNED BY: HNTB DATE: 12/14/2015 Orlando, Fl 32801 USA DRAWN BY: PEW AMEC JOB No.: 6374150865 Phone: (407) 522-7570

DRAMNO KAMI 1865 Bridge and pile parcels of Narcouser Ross

Certificate of Authorization Number LB-0007932

CFX PROJECT No.: 528-1240

APPROVED BY: RMJ

# 20150654568 Page 161 of 166

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 987 Part A and Part B of S.R. 528 Parcels (at S.R. 417 Interchange)

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: BRIDGE and RETAINING WALL PERMANENT EASEMENT

#### Part A:

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; thence run South 63°45'43" East, along said southerly line and northerly Right-of-Way line, a distance of 348.80 feet to a point on a non-tangent curve with a radius of 4926.15 feet, concave to the southwest; thence southeasterly along said curve to the right through a central angle of 08°43'04", a distance of 749.53 feet where the chord bears South 70°17'30" East a distance of 748.80 feet; thence South 65°01'46"East, a distance of 186.29 feet; thence South 63°56'38"East, a distance of 186.27 feet; thence South 63°45'46"East, a distance of 1428.21 feet; thence South 64°03'06"East, a distance of 232.01 feet; thence South 65°48'05"East, a distance of 232.05 feet to a point on a curve with a radius of 3797.06 feet, concave to the northeast; thence southeasterly and easterly along said curve to the left through a central angle of 04°09'33", an arc distance of 275.63 feet where the chord bears South 69°20'13"East a distance of 275.57 feet to the POINT OF BEGINNING; thence run North 18°20'48"East, a distance of 134.80 feet; thence run North 90°00'00"East, a distance of 108.42 feet; thence run South 22°44'03"East, a distance of 170.34 feet; thence run South 12°37'43"East, a distance of 39.89 feet to a point on a non-tangent curve with a radius of 3797.06 feet, concave to the northeast; thence northwesterly along said curve to the right through a central angle of 03°33'13", an arc distance of 235.50 feet where the chord bears North 73°11'36"West a distance of 235.46 feet to the POINT OF BEGINNING.

Containing 27,375 square feet or 0.63 acres, more or less

#### Part B:

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; thence run South 63°45'43" East, along said southerly line and northerly Right-of-Way line, a distance of 348.80 feet to a point on a non-tangent curve with a radius of 4926.15 feet, concave to the southwest; thence southeasterly along said curve to the right through a central angle of 08°43'04", a distance of 749.53 feet where the chord bears South 70°17'30" East a distance of 748.80 feet; thence South 65°01'46"East, a distance of 186.29 feet; thence South 63°56'38"East, a distance of 186.27 feet; thence South 63°45'46"East, a distance of 1428.21 feet; thence South 64°03'06"East, a distance of 232.01 feet; thence South 65°48'05"East, a distance of 232.05 feet to a point on a curve with a radius of 3797.06 feet, concave to the northeast; thence southeasterly and easterly along said curve to the left through a central angle of 16°11'05", an arc distance of 1072.58 feet where the chord bears South 75°20'59." East a distance of 1069.01 feet to the POINT OF BEGINNING; thence run North 23°59'19"East, a distance of 153.86 feet; thence run South 81°54'32"East, a distance of 103.98 feet; thence run South 04°12'22"West, a distance of 140.93 feet to a point on a non-tangent curve with a radius of 3797.06 feet, concave to the northeast; thence northwesterly along said curve to the right through a central angle of 02°21'06", an arc distance of 155.85 feet where the chord bears North 84°37'04"West a distance of 155.84 feet to the POINT OF BEGINNING.

Containing 18,755 square feet or 0.43 acres, more or less

# THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY			DESCRIPTION and SKETCH	SHEET 1 OF 4	
DESIGNED BY: HNTB	DATE: 11/24/2015	- Ze	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200	REVIS	IONS BY
DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec 🐉	Orlando, Fl 32801 USA Phone: (407) 522-7570	//	D1
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler		DRAWNG NAVE: 0855 Bridge	and pier percels of 417.dwg

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 987 Part A and Part B of S.R. 528 Parcels (at S.R. 417 Interchange)

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

BRIDGE and RETAINING WALL PERMANENT EASEMENT ESTATE:

# **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.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

# LEGEND:

Calculated (C) Deed (M) = Measured = Plat (P)

O.R.B.= Official Records Book

= Page = Radius

= Length of curve (arc distance)

CD = Chord distance Delta = central angle CB = Chord Bearing N = Identification

= Line Not To Scale ΡID = Parcel Identification Number

S.R. = State Road

= Central Florida Expressway Authority CEX

R/W = Right-of-Way

= Centerline

= Limited Access Right-of-way line

= Point of Curvature = Point of Tangency

PCC = Point of Compound Curvature = Point of Reverse Curvature PRC

= Non Tangent = All Aboard Florida AAF

OOCEA = Orlando Orange County Expressway Authority

= Number

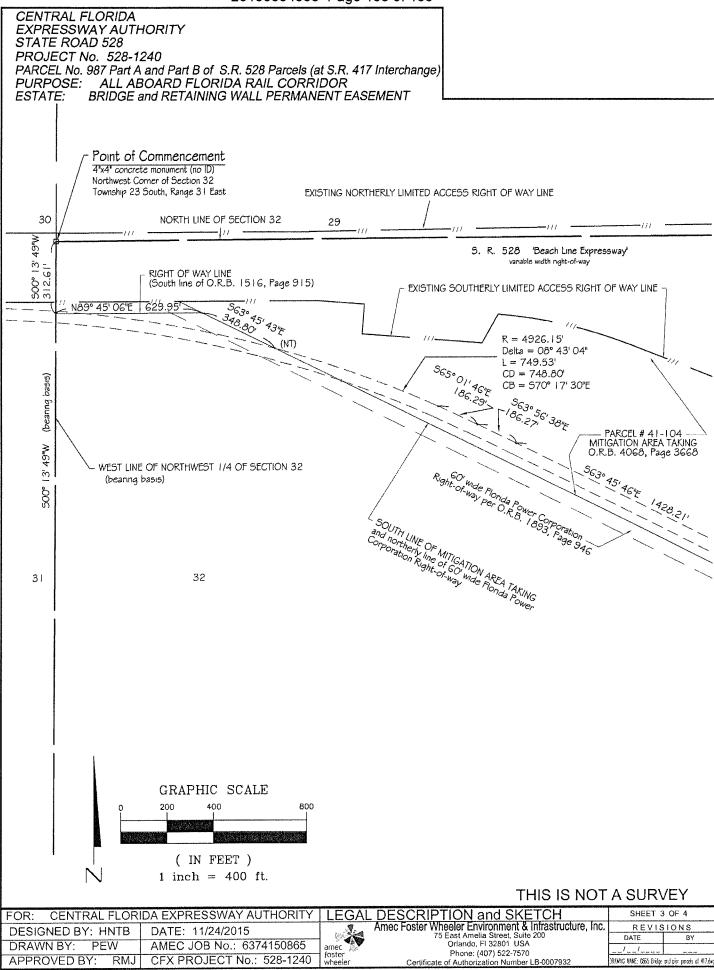
(NT)

Robert M. Jones, PLS

Florida Surveyor and Mapper, License No. LS-0004201

# THIS IS NOT A SURVEY

1	FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY			DESCRIPTION and SKETCH	SHEET 2 OF 4	
١	DESIGNED BY: HNTB	DATE: 11/24/2015	<b>7.</b>	Amec Foster Wheeler Environment & Infrastructure, Inc. 75 East Amelia Street, Suite 200		
ı	DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec	Orlando, Fl 32801 USA	DATE	BY
l		CFX PROJECT No.: 528-1240	foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	DEANING HAVE: 0865 Bridge	ond pier parcels at 417.dw



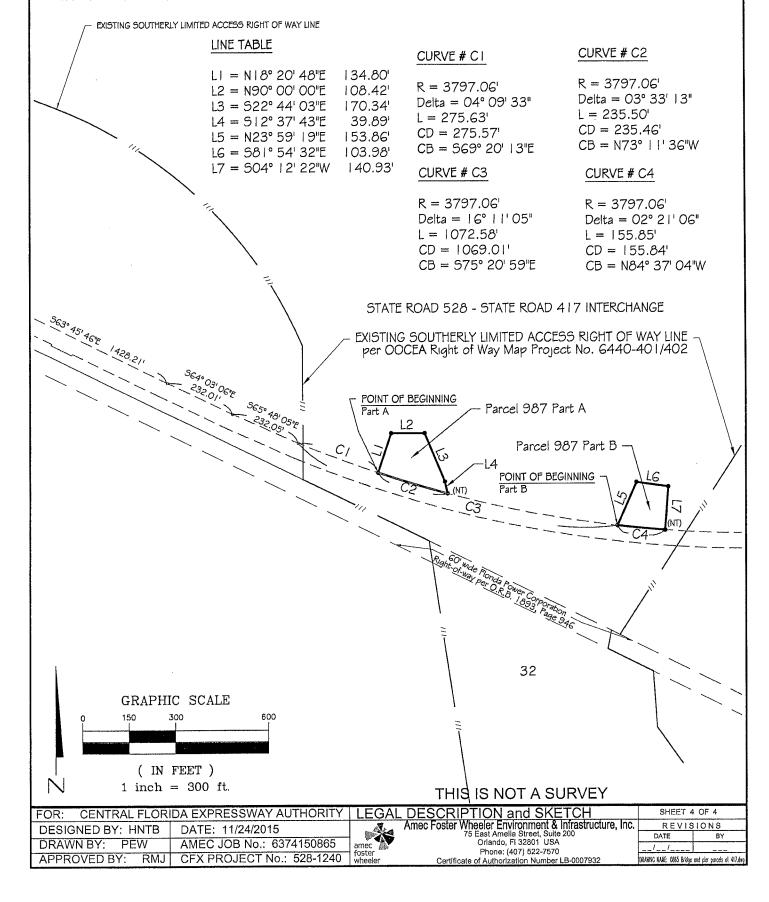
CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528

PROJECT No. 528-1240

PARCEL No. 987 Part A and Part B of S.R. 528 Parcels (at S.R. 417 Interchange)

PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: BRIDGE and RETAINING WALL PERMANENT EASEMENT



CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 988 Part A of S.R. 528 PARCELS (at ICP) PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

BRIDGE and RETAINING WALL PERMANENT EASEMENT ESTATE:

A parcel of land lying in Section 31, Township 23 South, Range 32 East, Orange County, Florida, lying within the existing limited access right of way of State Road 528 as depicted on Orlando Orange County Expressway Authority International Corporate Parkway Interchange Right of Way Map, being more particularly described as follows:

Commence at a nail and disc (LB 68) marking the northwest corner of Section 31, Township 23 South, Range 32 East, Orange County, Florida; thence run South 00°07'19"East, along the west line of the northwest 1/4 of said Section 31, a distance of 359.74 feet; thence departing said west line run South 89°33'33" East, a distance of 19.40 feet to the POINT OF BEGINNING; thence run North 00°45'57" East a distance of 3.00 feet; thence run South 89°33'33" East a distance of 22.00 feet; thence run South 00°45'57" West a distance of 3.00 feet; thence run North 89°33'33" West a distance of 22.00 feet to the POINT OF BEGINNING.

Containing 66.00 square feet or 0.001 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 31, Township 23 South, Range 32 East as being South 00° 07' 19" East. The average combined scale factor is 0.999939.
- 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-586539-8-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

### LEGEND:

Calculated Deed (M) = Measured

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CD Chord distance Delta = central angle = Chord Bearing ID V PID = Identification = Line Not To Scale

Parcel Identification Number

S.R. = State Road

CFX = Central Florida Expressway Authority

R/W = Right-of-Way

= Centerline

= Limited Access Right-of-way line

РС = Point of Curvature PT = Point of Tangency

= Point of Compound Curvature PCC = Point of Reverse Curvature

= Non Tangent

= All Aboard Florida OOCEA = Orlando Orange County Expressway Authority

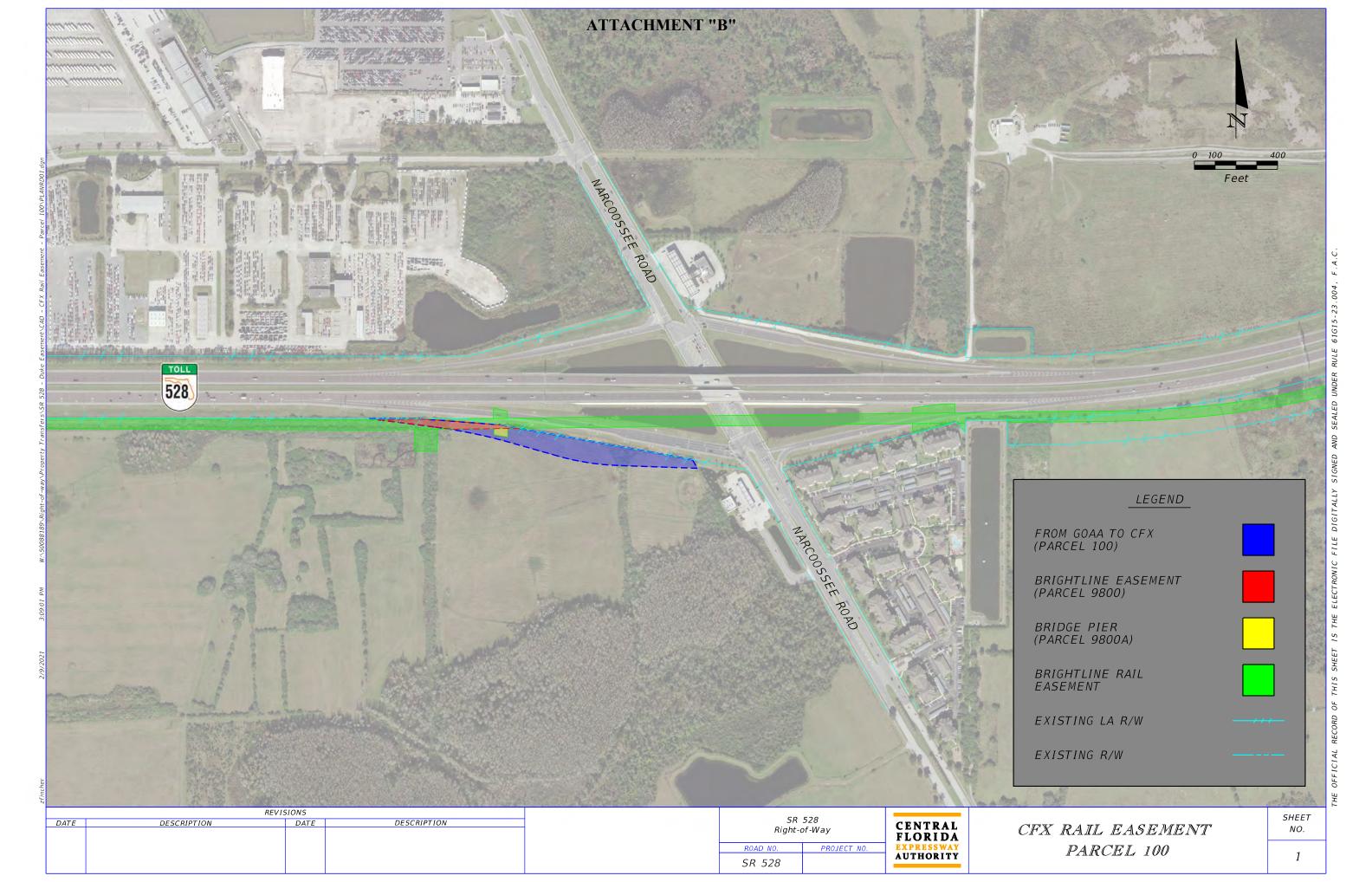
Robert M. Jones, PLS

Florida Surveyor and Mapper, License No. LS-0004201

# THIS IS NOT A SURVEY

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY			DESCRIPTION and SKETCH	SHEET 1 OF 2	
DESIGNED BY: HNTB	DATE: 11/24/2015	a dia	Amec Foster Wheeler Environment & Infrastructure, Inc.		SIONS
DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec	Orlando, Fl 32801 USA	DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	DRAWNG NAME: 0865 Brids	e and Pier Parcel al ICP.dir

20150654568 Page 166 of 166 CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240 PARCEL No. 988 Part A of S.R. 528 PARCELS (at ICP) ALL ABOARD FLORIDA RAIL CORRIDÓR PURPOSE: BRIDGE and RETAINING WALL PERMANENT EASEMENT Range Range 25 S 32 30 East Point of Commencement Nail \$ disc (LB 68) section line northwest corner Section 31 GRAPHIC SCALE Township 23 South, 200 Range 32 East 359.74 5. R. 528 'Beach Line Expressway' ( IN FEET ) (variable width right of way) 1 inch = 100 ft.per OOCEA International Corporate Parkway Right of Way Map 19TF 0 31 LINE TABLE 36 CENTERLINE 10' EASEMENT O.R.B. 3555 PG 1801 LI = 5 89°33'33" E 19.40' west line of the northwest 1/4 of section 31  $L2 = N 00^{\circ}45'57'' E$ 3.00 (bearing basis) L3 = 5 89°33'33" E 22.00' L3  $L4 = 5.00^{\circ}45'57'' W 3.00'$ L2  $L5 = N 89^{\circ}33'33'' W 22.00'$ -- L4 LI L5 EXISTING SOUTH LIMITED ACCESS RIGHT-OF-WAY LINE Point of Beginning 400.00 Right-of-Way width varies **EXISTING SOUTH**  $\mathbb{E}$ LIMITED ACCESS .C.P. BOULEVARD Orlando Utilities Commission 2656.2 RIGHT-OF-WAY LINE Railroad Right Of Way O.R.B. 3435, Page 2304 07' 19"E (bearing b 6"x6" concrete monument (with 1/2" Iron Rod - no ID broken top) west 1/4 corner Township 23 South, Township 23 South, of Section 31 Range 31 East Range 32 East THIS IS NOT A SURVEY SHEET 2 OF 2 DESCRIPTION and SKETCH
Amec Foster Wheeler Environment & Infrastructure, Inc. CENTRAL FLORIDA EXPRESSWAY AUTHORITY LEGAL 16 REVISIONS DESIGNED BY: HNTB DATE: 11/24/2015 75 Fast Amelia Street, Suite 200 Orlando, Fl 32801 USA DRAWN BY: PEW AMEC JOB No.: 6374150865 Phone: (407) 522-7570 CFX PROJECT No.: 528-1240 APPROVED BY: RMJ DRAMING NAME: 0865 Bridge and Pier Parcel of KP.: Certificate of Authorization Number LB-0007932



#### ATTACHMENT "C"

Prepared by/Return to:

Kolleen Cobb, Esq. 700 NW 1<sup>st</sup> Avenue, Suite 1620 Miami, Florida 33136

### AMENDMENT TO CENTRAL FLORIDA EXPRESSWAY AUTHORITY RAIL LINE EASEMENT OF EXISTING AUTHORITY PROPERTY

THIS AMENDMENT TO RAIL LINE EASEMENT OF EXISTING AUTHORITY PROPERTY (this "Amendment") is made effective as of \_\_\_\_\_\_\_, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body corporate and politic existing pursuant to Chapter 348, Florida Statutes (the "Authority") and BRIGHTLINE TRAINS FLORIDA LLC, a Delaware limited liability company (f/k/a Virgin Trains USA Florida LLC, f/k/a Brightline Trains LLC, f/k/a All Aboard Florida – Operations LLC) ("Brightline" or "AAF" and collectively with the Authority referred to as the "Parties").

#### RECITALS

**WHEREAS,** the Authority and Brightline entered into that certain Rail Line Easement of Existing Authority Property with an effective date as of December 16, 2015, and recorded on December 18, 2015 as Document # 20150654568, Book 11029, Page 9231, of the Public Records of Orange County, Florida (the "Easement" or "Agreement); and

WHEREAS, the Authority and Brightline desire to make certain amendments to the Agreement.

**NOW, THEREFORE,** for and in consideration of the foregoing and the mutual covenants and agreements herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the Parties hereby agree as follows:

- 1. <u>Recitals</u>. The foregoing recitals are true and correct and incorporated herein by this reference.
- 2. <u>Defined Terms</u>. Any capitalized terms used in this Amendment, but which are not defined herein, shall have the meanings attributed to those terms in the Agreement.
- 3. Overall Property. The Parties agree to add to the Overall Property (as defined in the Agreement) the real property described in Exhibit "A-1" attached to this Amendment and made a part hereof; therefore, the Parties agree that Exhibit "A-1" to this Amendment is hereby added to and made a part of Exhibit "A" attached to the Agreement.
- 4. <u>Property</u>. The Parties agree to add to the Property (as defined in the Agreement) the real property described in Exhibit "B-1" attached to this Amendment and made a part hereof; therefore, the Parties agree that Exhibit "B-1" to this Amendment is hereby added to and made a part of Composite Exhibit "B" attached to the Agreement.

- 5. <u>Bridge Piers and Retaining Wall Areas</u>. The Parties agree to add to the Bridge Piers and Retaining Wall Areas (as defined in the Agreement) the real property described in Exhibit "H-1" attached to this Amendment and made a part hereof; therefore, the Parties agree that Exhibit "H-1" to this Amendment is hereby added to and made a part of Composite Exhibit "H" attached to the Agreement.
- 6. <u>Authority</u>. The Authority and Brightline affirm and covenant that each has the authority to enter this Amendment, to abide by the terms hereof, and that the signatories hereto are authorized representatives of their respective entities empowered by their respective entities to execute this Amendment.
- 7. <u>Provisions of Amendment Control</u>. To the extent the provisions of this Amendment are inconsistent with the Agreement, the terms of this Amendment shall control.
- 8. <u>Force and Effect</u>. Except as expressly amended or modified herein, all other terms, covenants and conditions of the Agreement shall remain in full force and effect.
- 9. <u>Successors and Assigns</u>. This Amendment shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
  - 10. <u>Recording</u>. This Amendment may be recorded in any public records.
- 11. <u>Counterparts and Digital Signatures</u>. This Amendment may be executed in any number of counterparts and by the separate Parties hereto in separate counterparts, including by electronic or digital signatures in compliance with Chapter 668, each of which when taken together shall be deemed to be one and the same instrument.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment the day and year first above written.

	<b>AUTHORITY:</b>
Witnesses:	CENTRAL FLORIDA EXPRESSWAY AUTHORITY
	B <sub>V</sub> .
Print Name:	By:Buddy Dyer, Chairman
Print Name:	
ATTEST: Regla ("Mimi") Lamaute Board Services Coordinator	Approved as to form and legality by legal counsel to the Central Florida Expressway Authority on this day of, 20 for its exclusive use and reliance.
	By: Diego "Woody" Rodriguez General Counsel
State of Florida County of Orange	
notarization, this day of	efore me by means of □ physical presence or □ online, 2021, by Buddy Dyer, as Chairman of the Central e and politic existing pursuant to Chapter 38, Florida
(Seal)	
(Signature of Notary) (Printed, Typed, or Stamped Name of Notary)	
[] Personally Known OR [] Produced Identification  Type of Identification*	

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment the day and year first above written.

	BRIGHTLINE:
Witnesses:	BRIGHTLINE TRAINS FLORIDA LLC
Print Name:	By: Name: Title:
Print Name:	
State of Florida County of Miami-Dade	
notarization, this day of	ed before me by means of □ physical presence or □ online, 20, by as ains Florida LLC, a Delaware limited liability company.
(Seal)(Signature of Notary) (Printed, Typed, or Stamped Name of Nota	
[ ] Personally Known OR [ ] Produced Identification Type of Identification*	

#### EXHIBIT A-1

[See attached description added to Overall Property]

STATE ROAD 528

PROJECT No.: 528-1240 PARCEL No.: 100

PURPOSE: LIMITED ACCESS RIGHT OF WAY

ESTATE: FEE SIMPLE

A parcel of land lying in Section 36, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at a 6"x6" concrete monument marking the Northwest Corner of Section 36, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°06'58" East, along the West line of the Northwest 1/4 of said Section 36, a distance of 1249.98 feet to the existing southerly Limited Access Right-of-Way Line of State Road 528 per Orlando Orange County Expressway Authority, Section 1.1 and 1.2 and Project 907 Right-of-Way Maps; thence run along said existing southerly Limited Access Right-of-Way Line the following four courses and distances: run South 89°53'39" East, a distance of 2364.44 feet for the POINT OF BEGINNING; thence continue South 89°53'39" East, a distance of 238.95 feet; thence run South 85°39'53" East, a distance of 392.00 feet; thence run South 79°44'28" East, a distance of 940.93 feet to the Northwest corner of Lot 1 of the plat of "7 - ELEVEN STORE NO. 27590" as recorded in Plat Book 76 at Page 119 of the Public Records of Orange County, Florida; thence departing said existing southerly Limited Access Right-of-Way Line, run South 30°06'18" East, along the west line of said Lot 1, a distance of 47.70 feet; thence departing said west line, run North 88°00'03" West, a distance of 381.24 feet to a point of curvature of a curve concave to the northeast; thence run northwesterly along the arc of said curve having a radius of 1216.00 feet, a central angle of 13°47'50", a chord length of 292.12 feet bearing North 81°06'08" West, an arc distance of 292.82 feet; thence run North 74°12'13" West, a distance of 240.19 feet to a point of curvature of a curve concave to the southwest; thence run northwesterly along the arc of said curve having a radius of 2530.00 feet, a central angle of 08°28'51", a chord length of 374.14 feet bearing North 78°26'38" West, an arc distance of 374.49 feet; thence run North 82°41'04" West, a distance of 314.91 feet to the POINT OF BEGINNING.

Together with all rights of ingress, egress, light, air and view to, from or across any of the above described right-of-way property which may otherwise accrue to any property adjoining said right-of-way.

Containing 2.28 acres, more or less.

#### LEGEND:

(P)

= Calculated (D) Deed (M) Measured

Plat O.R.B.= Official Records Book

= Page =

Length of curve (arc distance)

CD = Chord distance Delta = central angle CB = **Chord Bearing** ID, Identification Line Not To Scale

ΡΊD = Parcel Identification Number

S.R. = State Road

**CFX** = Central FL Expressway Authority

R/W Right-of-Way = Centerline

- = Limited Access Right-of-way line -111-

PC = Point of Curvature РΤ = Point of Tangency

**PCC** = Point of Compound Curvature PRC = Point of Reverse Curvature

(NT) = Non Tangent CM = Concrete Monument

= section line = 1/4 section line OOCEA = Orlando Orange County

Expressway Authority Nο = Number

#### **Surveyors Notes**

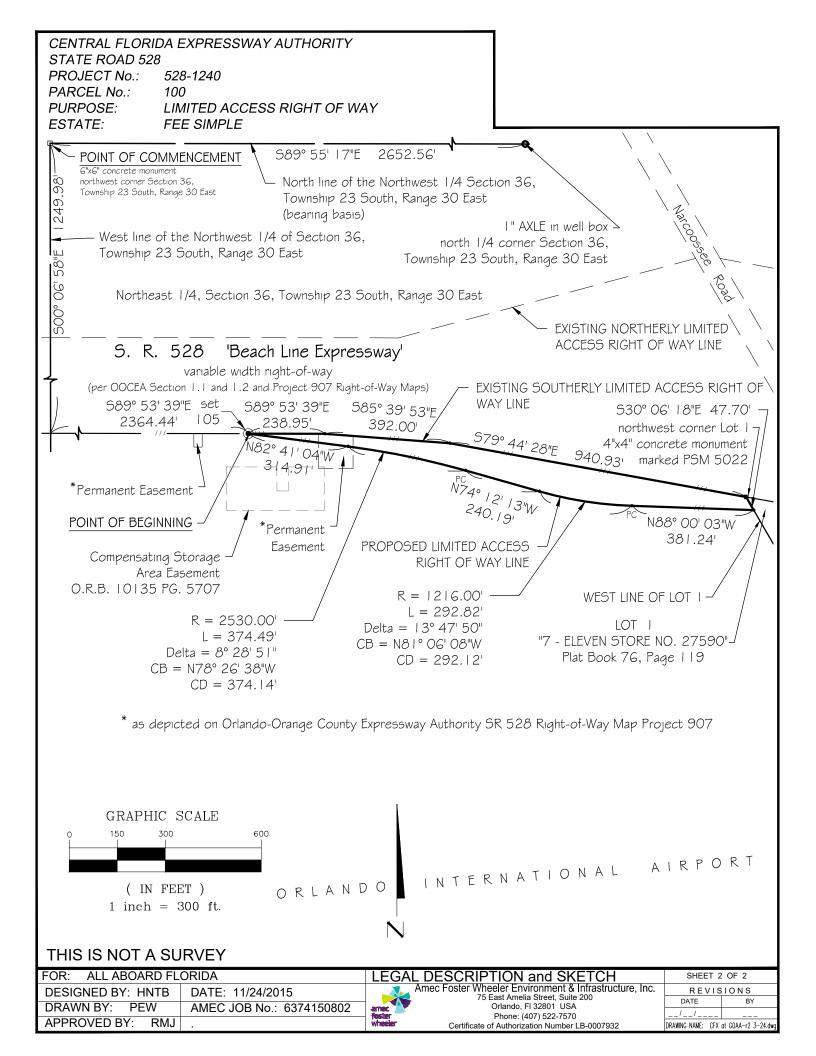
- 1. Bearings and distances depicted hereon are relative to the North American Datum of 1983/ Adjustment of 2011 (NAD83/11) and are expressed in the Florida State Plane Coordinate System (FSPCS), Florida East Zone (901), US Survey Foot, based on the north line of the northwest 1/4 of Section 36, Township 23 South, Range 30 East as being South89°55'17"East. The average combined scale factor is 0.9999452.
- 2. The lands described and depicted hereon were not abstracted by this firm for rights-of-way, easements, ownership or other instruments of record.
- 3. This legal description and sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
- 4. The location and configuration of the lands described and depicted hereon were provided by the
- 5. This legal description and sketch may have been reduced in size by reproduction.
- 6. A Commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539A-1-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.
  - I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 59-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes, Subject to notes and notations shown hereon.

THIS IS NOT A SURVEY

Florida Surveyor and Mapper, License No. LS-0004201

ALL ABOARD FLORIDA LEGAL DESCRIPTION and SKETCH FOR: SHEET 1 OF 2 <del>///</del>| Amec Foster Wheeler Environment & Infrastructure, Inc. REVISIONS **DESIGNED BY: HNTB** DATE: 11/24/2015 75 East Amelia Street, Suite 200 DATE BY Orlando, FI 32801 USA DRAWN BY: PEW AMEC JOB No.: 6374150802 Phone: (407) 522-7570 APPROVED BY: RMJ DRAWING NAME: CFX at GOAA-r2 3-24.dw Certificate of Authorization Number LB-0007932

Robert M. Adines PLS



#### EXHIBIT B-1

[See attached description added to Property]

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 9800 of S.R. 528 Parcels (at Narcoossee Road) PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: PERMANENT EASEMENT

A parcel of land lying in Section 36, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at 6"x6" concrete monument (no identification) marking the northeast corner of Section 36, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°15'33" West, along the east line of the northeast 1/4 of said Section 36, a distance of 1216.19 feet; thence run South 89°18'55" West, a distance of 2602.99 feet to the existing southerly limited access right of way line of State Road 528 per Orlando Orange County Expressway Authority State Road 528/Narcoosee Road Interchange, Project 907 right-of-way map and the POINT OF BEGINNING; thence along said existing southerly limited access right of way, run South 85°39'53" East, a distance of 363.68 feet; thence run South 79°44'28" East, continuing along said existing southerly limited access right of way line, run South 89°18'55" West, a distance of 95.75 feet; thence departing said existing southerly limited access right of way line, run South 89°18'55" West, a distance of 335.10 feet to a point on the proposed limited access right of way line of State Road 528 and Orlando International Airport boundary line, said point lying on a non-tangent curve concave to the south; thence westerly along said curve and said proposed limited access right of way line and boundary line, having a radius of 2530.00 feet, a central angle of 01°45'11", a chord length of 77.41 feet bearing North 81°48'28" West, an arc distance of 77.41 feet; thence North 82°41'04" West, along said proposed limited access right of way line and boundary line, a distance of 273.43 feet; thence departing said proposed limited access right of way line and boundary line, run North 89°18'55" East, a distance of 226.05 feet to the POINT OF BEGINNING.

Containing 15,649 square feet or 0.36 acres, more or less.

#### **Surveyors Notes**

- 1. This Legal Description and Sketch is not valid without the signature and original raised seal of the signing Florida registered surveyor and mapper.
- 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. The location and configuration of the lands described and depicted hereon were provided by the client.
- 4. 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 36, Township 23 South, Range 30 East as being South 00° 15' 33" West. The average combined scale factor is 0.999945.
- 5. The location of the right-of-way lines of interest is based on the follow right-of-way maps:

Orlando Orange County Expressway Authority State Road 528 / Narcoossee Road Interchange, Project No. 907.

- 6. This legal description and sketch may have been reduced in size by reproduction.
- 7. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539A-1-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

I hereby certify that this legal description and sketch is correct to the best of my knowledge and belief. I further certify that this legal description and sketch meets the Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes. Subject to notes and notations shown hereon.

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Pg. = Page R = Radius

= Radius= Length of curve (arc distance)

C = Chord distance

Delta = central angle

CB = Chord Bearing

ID = Identification

L = Line Not To Scale

PID = Parcel Identification Number

S.R. = State Road

CFX = Central Florida Expressway Authority

Ç = 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

Robert M. Jones, PLS

#### THIS IS NOT A SURVEY

Florida Surveyor and Mapper, License No. LS-0004201

2/15/2021 revised description to address CFX comments



2 / 15 / 2021

DRAWING NAME: Narcoosee Road Surplus Parcel 985.dv

Phone: (407) 522-7570

Certificate of Authorization Number LB-0007932

TW

APPROVED BY:

RMJ

CFX PROJECT No.: 528-1240

#### EXHIBIT H-1

[See attached description added to Bridge Piers and Retaining Wall]

CENTRAL FLORIDA EXPRESSWAY AUTHORITY STATE ROAD 528 PROJECT No. 528-1240

PARCEL No. 9800 Part A of S.R. 528 Parcels (at Narcoossee Road)
PURPOSE: ALL ABOARD FLORIDA RAIL CORRIDOR

ESTATE: BRIDGE and RETAINING WALL PERMANENT EASEMENT

Parcel 9800 Part A:

A parcel of land lying in Section 36, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at 6"x6" concrete monument (no identification) marking the northeast corner of Section 36, Township 23 South, Range 30 East, Orange County, Florida; thence run South 00°15'33" West, along the east line of the northeast 1/4 of said Section 36, a distance of 1216.19 feet; thence run South 89°18'55" West, a distance of 2204.16 feet; thence run South 00°41'05" East, a distance of 50.17 feet to the POINT OF BEGINNING; thence continue South 00°41'05" East, a distance of 41.08 feet; thence run North 80°57'01" West, a distance of 66.95 feet; thence run North 00°41'05" West, a distance of 29.76 feet; thence run North 89°18'55" East, a distance of 65.99 feet to the POINT OF BEGINNING,

Containing 2,337 square feet or 0.05 acres, more or less.

#### **Surveyors Notes**

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- 4. 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 36, Township 23 South, Range 30 East as being South 00° 15′ 33″ West. The average combined scale factor is 0.999945.
- 5. The location of the right-of-way lines of interest is based on the follow right-of-way maps:

Orlando Orange County Expressway Authority State Road 528 / Narcoossee Road Interchange, Project 907.

- 6. This legal description and sketch may have been reduced in size by reproduction.
- 7. A commitment for Title Insurance prepared by First American Title Insurance Company, dated Oct. 14, 2015, file number NCS-586539A-1-ORL was reviewed by this firm. Schedule B-II exceptions, if any, that can be plotted are shown.

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Robert M. Jones, P.S.

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= Limited Access Right-of-way line

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PCC = Point of Company

PCC = Point of Compound Curvature PRC = Point of Reverse Curvature

(NT) = Non Tangent AAF = All Aboard Florida

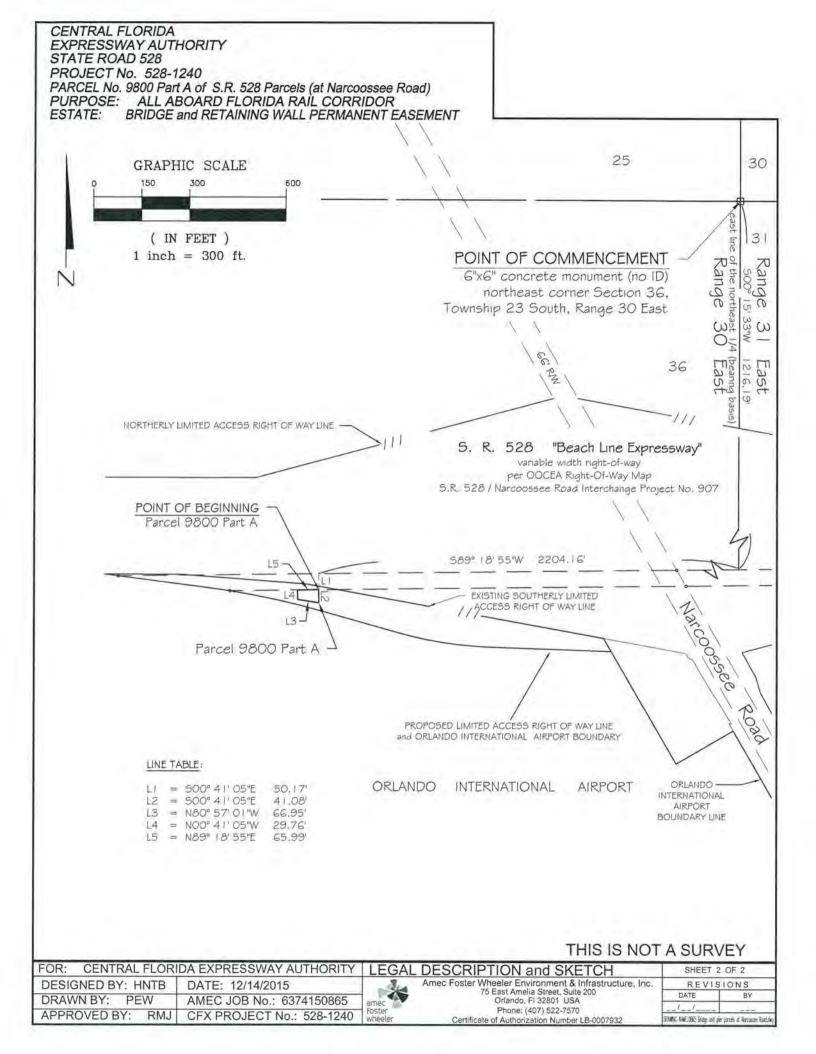
OOCEA = Orlando Orange County Expressway Authority

No. = Number

#### THIS IS NOT A SURVEY

Florida Surveyor and Mapper, License No. LS-0004201

FOR: CENTRAL FLORI	DA EXPRESSWAY AUTHORITY	LEGAL	DESCRIPTION and SKETCH	SHEET 1	OF 2
DESIGNED BY: HNTB	DATE: 12/14/2015	- La	Amec Foster Wheeler Environment & Infrastructure, Inc., 75 East Amelia Street, Suite 200	REVIS	ONS
DRAWN BY: PEW	AMEC JOB No.: 6374150865	amec	Orlando, Fl 32801 USA	DATE	BY
APPROVED BY: RMJ	CFX PROJECT No.: 528-1240	foster wheeler	Phone: (407) 522-7570 Certificate of Authorization Number LB-0007932	NAMES NAME (NEW BYOME BOD PIET	parcels of Narcoone Rootales



#### ATTACHMENT "D"



Dewberry Engineers Inc. | 407.843.5120 800 N. Magnolia Ave, Suite 1000

407.649.8664 fax Orlando, FL 32803 | www.dewberry.com

February 17, 2021

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

RE: BRIGHTLINE TRAINS FLORIDA, LLC, f/k/a VIRGIN TRAINS USA

FLORIDA, LLC, f/k/a BRIGHTLINE TRAINS, LLC, f/k/a ALL ABOARD

FLORIDA - OPERATIONS LLC

Project: 528-1240

CFX Parcel: Portions of 100

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 Amendment to the existing CFX Rail Easement, dated December 16, 2015. Subsequently CFX acquired additional real property and identify it as Parcel 100. A portion (parcel 9800) of which is identified in Exhibit A, attached. This Amendment to the Rail Easement is for the installation of bridge piers and retaining wall area as defined in the agreement. In our opinion, based upon the foregoing, we certify that this Agreement 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,

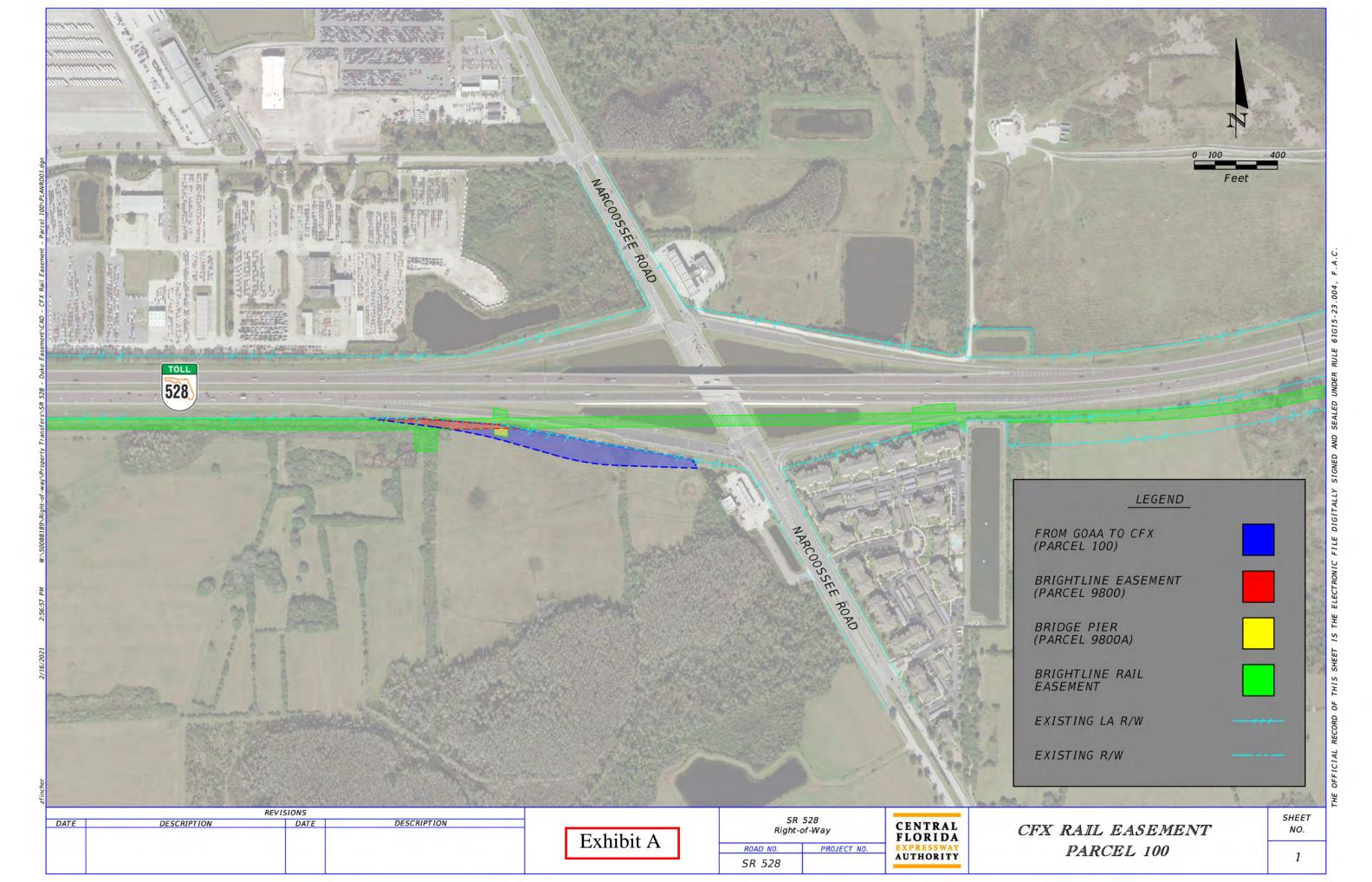
R. Keith Jackson, P.E.

R. Keith Jackson

Program Manager

**Attachments** 

Laura N Kelly, Esq. CFX (w/enc.) CC:



# CONSENT AGENDA ITEM #16

#### **MEMORANDUM**

TO: **CFX Board Members** 

Aneth Williams // FROM:

**Director of Procurement** 

DATE: March 1, 2021

SUBJECT: Approval of Supplemental Agreement No. 1 with Nabors, Giblin &

Nickerson, P.A. for Disclosure Counsel Services

Contract No. 001690

Board approval of Supplemental Agreement No. 1 with Nabors, Giblin & Nickerson, P.A. for a not-to-exceed amount of \$260,000.00 is requested. The contract period expires September 30, 2021.

The service to be provided includes disclosure counsel for issuance of revenue bonds and other debt instruments.

> \$ 45,000.00 **Original Contract** Supplemental Agreement No. 1 \$260,000.00 Total \$305,000.00

Reviewed by: Woody Rodriguez

Diego Woody" Rodriguez

General Counsel

Chief Financial Officer

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY DISCLOSURE COUNSEL SERVICES CONTRACT NO. 001690 SUPPLEMENTAL AGREEMENT NO. 1

This Supplemental Agreement No. 1 is entered into this \_\_\_\_\_ day of March 2021, by and between CENTRAL FLORIDA EXPRESSWAY AUTHORITY (herein referred to as "CFX") and NABORS, GIBLIN & NICKERSON, P.A., (herein referred to as "COUNSEL"), a professional association authorized to do business in the State of Florida and collectively CFX and COUNSEL shall be referred to as the "PARTIES."

#### WITNESSETH:

WHEREAS, the PARTIES entered into CFX Contract No. 001057 on or about January 8, 2015 wherein COUNSEL was to provide competent and qualified legal services to serve as CFX's Disclosure Counsel relating to new debt offerings; and,

WHEREAS, that Contract terms expired and the PARTIES entered into CFX Contract No. 001690 on or about January 9, 2020 wherein COUNSEL was to provide competent and qualified legal services to serve as CFX's Disclosure Counsel relating to prior debt offerings as well as other financial matters; and,

WHEREAS, the original contract provided for COUNSEL to provide a different scope of legal services for prior debt offerings with a set fee schedule of \$250 per hour; and,

WHEREAS, CFX now is need of Disclosure Counsel to provide services related to new debt offerings which require significantly more comprehensive legal services and a revision of the scope of services in CFX Contract No. 001690 as well as a different fee schedule;

NOW THEREFORE, the PARTIES hereby agree to supplement and amend CFX Contract No. 001690 and replace the existing Scope of Services and Fee Schedule found on Pages 10 through 12 of said Contract No. 001690 and replace them with the following:

#### SCOPE OF SERVICES for DISCLOSURE COUNSEL SERVICES

The firm(s) selected will be required to perform all services and duties customarily and usually performed by Disclosure Counsel. Services to be performed by Disclosure Counsel and Co-Disclosure Counsel (if designated) may include, but are not limited to, the following:

- A. Services Relative to Primary Debt Offerings:
  - 1. Serve as a member of the CFX's financing team.
  - 2. Assist the financing team in determining the information and specific language to be included in the Official Statement for bond and/or note issuances.

- 3. Make inquiries to assure that all material facts are fully disclosed to potential investors and that there have been no material omissions or misstatements of fact regarding financing.
- 4. Advise the financing team as to disclosure requirements relative to issuance of the debt instruments.
- 5. Prepare, with the assistance of financing team members, the Preliminary Official Statement and Official Statement and any amendments thereto in connection with CFX financings.
- 6. Render appropriate opinions as to the adequacy and completeness of information included in the offering documents relating to CFX financings.
- 7. Assist the CFX in complying with Federal and State regulatory agencies' laws and regulations including securities laws and perform other related services as required to meet disclosure requirements of Federal and State Securities Laws.
- 8. Negotiate and prepare the Continuing Disclosure Undertaking.
- 9. Review transcripts of all proceedings in connection with CFX financing and indicate any necessary corrective action.
- 10. Attend meetings with CFX staff and officials, the CFX's Bond Counsel, financial advisor, underwriters, rating agencies and others, if necessary, for development or dissemination of information in connection with the issuance of debt instruments.
- 11. Counsel and provide advice to the CFX in the preliminary process of developing the appropriate financial plan to fund potential projects contemplated by the CFX.
- 12. Assist the CFX in ensuring the following disclosure requirements are met:
  - Disclosure of potential conflicts of interest and material financial relationships among issuers, advisors and underwriters including those arising from political contributions.
  - Disclosure regarding the terms and risks of securities being offered.
  - Disclosure of issuer's financial condition, results of operation and cash flows.
  - Disclosure of material events for which filings must be made.

- Disclosure of instances of non-compliance with any previous continuing disclosure undertakings under SEC Rule 15c2 12, during the preceding five years.
- 13. Review of primary financing documents, as applicable.
- 14. Review and commenting on the Bond Purchase Agreement between the CFX and the Underwriters.
- 15. Such additional matters as the CFX may from time-to-time direct Disclosure Counsel to undertake.
- B. Services Relative to Review and Assistance with the Annual Disclosure Document.
  - 1. Assist the CFX in determining what types of financial information/operating data should be included in the Annual Disclosure Document.
  - 2. Review the Annual Disclosure Document and provide appropriate comment and recommendations for modification.
  - 3. Provide training to the CFX staff regarding SEC Rule 15c2 12 and the responsibilities of CFX staff with respect thereto.
- C. Services Relative to Formulation of Comprehensive Policies and Standardized Documents for Primary and Secondary Disclosure.
  - 1. Assist the CFX in reviewing and updating current written policy to provide continuing disclosure in compliance with SEC Rule 15c2 12.
  - 2. Assist the CFX in further developing standardized disclosure documents/language and electronic publications for use in connection with primary debt offerings. Said language to include, but not be necessarily limited to:
    - Written agreement for the benefit of the bondholders committing to continuing disclosure (Continuing Disclosure Undertaking).
    - Language to be included in the Official Statements describing the Continuing Disclosure Undertaking.
- D. Services Relative to Providing General Advice and Consultation to the CFX and its financing team related to disclosure issues.

The CFX separately selects other financing team members, including Bond Counsel and Issuer's Counsel. The CFX may adjust the responsibilities and assignments of the financing team members in order to best utilize, in the CFX's judgment, the expertise of its various financing team members.

#### **NEW FEE SCHEDULE**

The following fee schedule shall apply for Disclosure Counsel services for New Debt Offerings:

#### 1. <u>Time Basis.</u>

Disclosure Counsel services unrelated to specific transactions will be charged at a blended hourly rate of \$250. The hourly rate shall remain firm during the term of the Agreement

#### 2. Fixed Fee.

Bonds Issued	<u>Fee</u>
\$0 to \$25,000,000	\$1.25 (per \$1,000 of bonds issued)
\$25,000,000 to \$50,000,000	\$0.80 (per \$1,000 of bonds issued)
\$50,000,000 to \$100,000,000	\$0.22 (per \$1,000 of bonds issued)
\$100,000,000 to \$200,000,000	\$0.20 (per \$1,000 of bonds issued)
\$200,000,000 and greater	\$0.16 (per \$1,000 of bonds issued)

Disclosure Counsel fees are specifically capped at \$125,000 per transaction for all transactions.

Disclosure Counsel fees shall be contingent upon closing the transaction. Expenses actually incurred will be billed to the CFX whether or not a transaction is completed and a minimum not to exceed amount could be negotiated up front based on the facts and circumstances regarding the transaction. Expenses shall be limited to \$1,000 per transaction and shall be substantiated. The expense limit is exclusive of filing fees such as publications and notices, if any, and transcript expenses.

IN WITNESS WHEREOF, the authorized signatures named below have executed this Supplement No. 1 on behalf of the respective parties as of the day and year first above written.

By: Direc	ctor of Procurement
Print Name:	
NABORS, GIBI	IN & NICKERSON, P.A.
Print Name: <u>L.</u>	Thomas Giblin
Title: Sharehold	der
ATTEST:	Koraii Fitzen
	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.
	2021 for its exclusive use and refinite.

# CONSENT AGENDA ITEM #17

#### **MEMORANDUM**

TO: CFX Board Members

FROM: Aneth Williams Ansth Williams

**Director of Procurement** 

DATE: February 18, 2021

SUBJECT: Approval of BluRock, LLC as a Subcontractor for Jorgensen Contract

Services, LLC for Roadway and Bridge Maintenance Services

Contract No. 001151

Board approval of BluRock, LLC as a subcontractor to Jorgensen Contract Services, LLC to perform slope mowing and litter removal 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:

Don Budnovich, PE Director of Maintenance Glann Pressimone PF

#### REQUEST FOR AUTHORIZATION TO SUBLET SERVICES

Consultant/Contractor: <u>Jorgensen Contract Services, LLC</u> Date:	02/17/2021
CFX Contract Name: Roadway and Bridge Maintenance Services CFX Contra	act No.:001151
Authorization is requested to sublet the services identified below which are included in the above requests approval to sublet services to:  Subconsultant/Subcontractor Name: BluRock, LLC  Address: 225 Aranel Ct, Winter Garden, FL 34787	
Phone No.: 407-921-8607	
Federal Employee ID No.: 82-2009471	
	tion Form and Certification also required)
Estimated Businesis Data of Sublactions November 1, 2020	
Estimated Beginning Date of Sublet Services: November 1, 2020	
Estimated Completion Date of Sublet Services: TBD  Estimated Value of Sublet Services*: \$_65,000.00  *(Not to exceed \$24,999.99 without prior Board Approval)  Consultant/Contractor hereby certifies that the proposed subconsultant/subcontractor has been acconditions in the Consultant's/Contractor's Contract with CFX that are applicable to the subconsulter:	
Requested By: Kim Jones  (Signature of Consultant/Contractor Representative)  Vendor Coordinator  Title	
Recommended by: (Signature of CFX Director of Maintenance)	Feb 17, 2021
Approved by: Glenn Pressimone (Feb 17, 2021 15:59 EST)  (Signature of Chief of Infrastructure)	Pate: Feb 17, 2021

# CONSENT AGENDA ITEM #18

#### **MEMORANDUM**

TO: CFX Board Members

FROM: Aneth Williams Anoth Williams

**Director of Procurement** 

DATE: February 19, 2021

SUBJECT: Approval of Purchase Order to Convergint Technologies LLC for

Main Plaza Camera Replacement Project

Board authorization is requested to issue a purchase order to Convergint Technologies LLC in the amount of \$276,629.15 for installation and programming of seventy-nine (79) AXIS P3277-LVE IP cameras and seventy-nine (79) Genetec camera licenses at thirteen (13) Main Plazas. This purchase is for the replacement of analog cameras that are at end of life and will allow CFX to connect the new camers int the Genetec platform. Convergint Technologies LLC has been designated as a single source provider for these services.

This purchase order is included in the Five-Year Work Plan.

Reviewed by: David Wynne David Wynne

Director of Toll Operations

Jim Greer Van Greer

#### **MEMORANDUM**

TO:

Aneth Williams

Director of Procurement

FROM:

Don Budnovich

Director of Maintenance

DATE:

May 2, 2019

SUBJECT:

Single Source Justification for Convergint Technologies

Convergint Technologies 6202 Benjamin Rd. Ste 116 Tampa, FL 33634

The following is a list of reasons to Single Source with this vendor.

Convergint Technologies currently provides support for CFX Headquarters security systems. CFX security systems are considered exempt from public records and privileged information. In order to minimize the exposure of the CFX security system setup, CFX desires to single source this vendor.

Approve:

Aneth Williams

# CONSENT AGENDA ITEM #19

#### **MEMORANDUM**

TO: CFX Board Members

FROM: Aneth Williams Aneth Williams

**Director of Procurement** 

DATE: February 19, 2021

SUBJECT: Approval of Purchase Order to Dasher Technologies for Hewlett Packard

Enterprise (HPE) Server and Equipment Maintenance and Support Services for the

**Infinity Toll Collection System** 

Board authorization is requested to issue a purchase order to Dasher Technologies in a not-to-exceed amount of \$365,331.37 for HPE server and storage maintenance and support services covering the Infinity Toll Collection System IT infrastructure. This will be a cooperative (piggyback) procurement based on HP NASPO ValuePoint Master Agreement number MNNVP-134 and the State of Florida Participating Addendum number 43211500-WSCA-15-ACS.

This purchase order is included in the OM&A Budget.

Reviewed by: Rafael Millan

Rafael Millan Director of IT Jim Green

## CONSENT AGENDA ITEM #20

#### **MEMORANDUM**

TO: CFX Board Members

FROM: Aneth Williams Anoth Williams

**Director of Procurement** 

DATE: February 19, 2021

SUBJECT: Approval of Purchase Order to Dasher Technologies for Hewlett

Packard Enterprise (HPE) Nimble Storage Hardware.

Board approval is requested to issue a purchase order to Dasher Technologies in a not-to-exceed amount of \$92,052.02 for additional HPE Nimble storage hardware to accommodate current and future growth of CFX's production systems. This will be a cooperative (piggyback) procurement based on HP NASPO ValuePoint Master Agreement number MNNVP-134 and the State of Florida Participating Addendum number 43211500-WSCA-15-ACS.

This purchase order included in the Five-Year Work Plan.

Reviewed By: Rafael Millan

Rafael Millan Director of IT <u>Jim Greer</u> Jim Greer

### CONSENT AGENDA ITEM #21

#### MEMORANDUM

TO: **CFX Board Members** 

Aneth Williams Anoth Williams FROM:

**Director of Procurement** 

DATE: February 18, 2021

SUBJECT: Approval of Amendment No. 4 with TransCore, LP

> for Toll System Upgrade Contract No. 001021

Board approval is requested for the fourth amendment of the referenced contract with TransCore, LP in the amount of \$14,254,132.19.

This amendment expands the statement of work and clarifies and amends Supplemental Agreements 3, 4, 5 and 8. It also increases the contract amount to address changes CFX has added during the implementation of the Toll System Upgrade Project.

Original Contract	\$	85,000,000.00
Supplemental Agreement No. 1	\$	(693,692.16)
Supplemental Agreement No. 2	\$	( 75,000.00)
Supplemental Agreement No. 3	\$	0.00
Supplemental Agreement No. 4	\$	1,102,791.68
Supplemental Agreement No. 5	\$	0.00
Supplemental Agreement No. 6	\$	39,491.54
Supplemental Agreement No. 7	\$	1,902,965.56
Amendment No. 1	\$	0.00
Amendment No. 2	\$	0.00
Supplemental Agreement No. 8	\$	42,482.16
Amendment 1 to Supplement Agreement No. 8	\$	85,953.53
Amendment No. 3	\$	0.00
Supplemental Agreement No. 9	\$	90,324,81.00
Amendment No. 4	\$	14,254,132.19
Total	\$1	01,749,449.31

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

Reviewed by:

**Director of Special Projects** 

Joann Chizlett

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



# AMENDMENT NO. 4 TO CONTRACT NO. 001021 CENTRAL FLORIDA EXPRESSWAY AUTHORITY TOLL SYSTEM UPGRADE

THIS AMENDMENT NO. 4 TO CONTRACT NO. 001021 (this "Amendment") 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 TRANSCORE, LP, a Delaware limited partnership, whose address is 2416 Lake Orange Drive. Suite Orlando, FL ("Contractor"). CFX 32837 and Contractor 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, CFX and Contractor entered into that certain Contract No. 001021 for Toll System Upgrades dated May 14, 2015, as amended by that certain Amendment No. 1 dated November 8, 2018, Amendment No. 2 dated April 8, 2019, Amendment No. 3 dated June 18, 2019, and supplemented by that certain Supplemental Agreement No. 1 dated December 1, 2015, Supplemental Amendment No. 2 dated February 26, 2016, Supplemental Agreement No. 3 dated January 8, 2016 ("SA 3"), Supplemental Agreement No. 4 dated May 12, 2016, Supplemental Agreement No. 5 dated July 12, 2016 ("SA 5"), Supplemental Agreement No. 6 dated July 18, 2016, Supplemental Agreement No. 7 dated January 12, 2017, Supplemental Agreement No. 8 dated April 12, 2019, as amended ("SA 8"), and Supplemental Agreement No. 9 dated August 13, 2020 (collectively, the "Contract"); and

**WHEREAS**, pursuant to Supplemental No. 3, CFX and Contractor agreed to expand the terms of the Contract Statement of Work, as defined in the Contract, to include transponder distribution services without an increase in the Contract Amount, as defined in the Contract; and

WHEREAS, the Parties desire to amend the Contract to clarify, amend and supplement the terms and conditions of the Contract and to reconcile and increase the Contract Amount to address changes occurring during the construction of the Toll System Upgrade Project as 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. <u>Recitals and Definitions</u>. 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 Contract.

### 2. <u>Contract Amount and Price Proposal.</u>

- (a) The Parties agree to amend the Contract Amount for the Contract Term set forth in Section 3.1 of the Contract to increase the Contract Amount by an additional \$14,254,132.19, which will increase the original Contract Amount from \$87,495,317.12 to \$101,749,449.31. The Contract Amount shall include any and all amounts set forth in any and all supplemental agreements, as may be amended from time to time.
- (b) The Parties agree that Price Proposal shall be amended to include the costs and expenses more particularly set forth in **Exhibit "A"** attached hereto and incorporated herein by reference ("Price Proposal Amendment").
- 3. <u>Contract Statement of Work</u>. The Parties agree to amend and expand the Contract Statement of Work and Scope of Services to include the following items:
  - (a) Implementation of software and configuration updates needed to support new business rule 084 against mainline and ramp ACM lanes, including integration, some regression testing and onsite testing as more particularly set forth in **Exhibit** "B" attached hereto and incorporated herein by reference. CFX shall pay to Contractor a not-to-exceed amount equal to \$23,188.56, as more particularly outlined in Price Proposal Amendment for the costs and fees for the business rule change set forth herein in accordance with the terms and conditions of the Contract.
  - (b) Deletions, additions or recategorizations of pay items in the Statement of Work, Scope of Services, and the Price Proposal as more particularly outlined in the Price Proposal Amendment, including, without limitation, the following:
  - (i) Commissioning services required under the Contract of Work shall be charged on a price per travel lane, not per plaza for any modifications to an already existing Infinity plaza installation. A commissioning of a full/complete plaza conversion to Infinity will still be invoiced at the price specified in Pay Item 107.
  - (ii) Contractor shall be required to provide Phase V Warranty Work and Phase VI System Maintenance as identified in Sections 2.6 and 2.7 of the Statement of Work for any and all systems, lanes and improvements identified in the Price Proposal, the Contract or any supplemental agreements thereto.
  - (iii) The number of tolls lanes contained in the Scope of Services and Price Proposal of the tolling system replacement project shall be increased, decreased and recategorized as more particularly identified in **Exhibit "C"** attached hereto and incorporated herein by reference.

- (iv) Contractor shall furnish and install the uninterruptible power supply to the ramps more specifically outlined in the Price Proposal Amendment.
- (v) Contractor shall obtain updates to any and all as-built drawings to reflect any modifications in installation or materials to an existing Infinity system for the lanes identified in the Price Proposal Amendment.
- (vi) Contractor shall provide to CFX an equipment credit for the reconfiguration of any lanes with existing Infinity equipment, to the extent such equipment is in good working order, and as more specifically identified in the Price Proposal Amendment.
- (vii) Any and all other new pay items, modification, deletions, or changes specifically identified in the Price Proposal Amendment.
- 4. <u>Amendment to SA 3</u>. The third sentence of SA 3 shall be amended and restated in its entirety as follows:

NOW THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties agree to the expansion of the Contract Statement of Work to include transponder distribution services when so directed by CFX, with no increase in the Contract time. CFX shall pay to Contractor a not-to-exceed amount equal to \$218,642.24 as more particularly set forth in the Price Proposal Amendment for the costs and fees for the transponder distribution service in accordance with the terms and conditions of the Contract.

### 5. **Amendment to SA 4.** SA 4 shall be amended as follows:

- (a) CFX and Contractor agree that the Scope of Services and Statement of Work for the interim full hardware and software maintenance conducted during the Initial System Maintenance of the toll system installed at the Marigold and KOA tolling facilities on the Poinciana Parkway shall include, without limitation, any and all replacement parts, labor and maintenance of traffic reasonably required to conduct any such maintenance of the tolling facilities prior to Phase VI System Maintenance. CFX and Contractor agree that any and all replacement parts, labor or maintenance of traffic related to the full maintenance of the tolling facilities during the Initial System Maintenance shall not be subject to a 15% markup on materials and equipment. The costs of performing the Initial System Maintenance, or interim maintenance, in accordance herewith shall be determined as set forth in the Contract Amount, as supplemented in SA 4.
- (b) CFX and Contractor agree that the Marigold and KOA tolling facilities on the Poinciana Parkway shall be owned by CFX, rather than Osceola County, and shall be maintained by Contractor in accordance with the terms and conditions of the Contract and the requirements of the Initial System Maintenance until such time as Final System Acceptance when the Marigold and KOA tolling facilities on Poinciana Parkway enter Phase VI System Maintenance. Contractor shall be

required to provide Phase V Warranty Work and Phase VI System Maintenance as identified in Sections 2.6 and 2.7 of the Statement of Work for the Marigold and KOA tolling facilities on the Poinciana Parkway.

(c) The Period of Performance of the Initial Systems Maintenance, or hardware and software maintenance required under SA 4, shall be extended to the earlier of March 31, 2022, or until such time as the Marigold and KOA tolling facilities on the Poinciana Parkway enter Phase VI System Maintenance.

### 6. **Amendment to SA 5.** SA 5 shall be amended as follows:

- (a) CFX and Contractor agree and acknowledge that Contractor was not eligible for any early completion bonus pursuant to Section C. of SA 5.
- (b) In addition to per lane fee set forth in Section A of SA 5, CFX shall pay to Contractor a not-to-exceed amount equal to \$910,849.11 ("Holdback Amount") for the costs and fees associated with the interim software and hardware maintenance of the toll system lanes identified as part of the TSUP and payable upon Final System Acceptance in accordance with the terms of the Contract, which Holdback Amount is more particularly outlined in the Price Proposal Amendment. CFX and Contractor agree and acknowledge that CFX shall have the right to holdback the payment of the Holdback Amount associated with the interim software and hardware maintenance during the Initial System Maintenance until such time as Final System Acceptance has been achieved.
- (c) The total cost of the Initial Systems Maintenance, or interim software and hardware maintenance, of the lanes pursuant to the TSUP shall be a not-to-exceed amount of \$4,167,584.64 per lane, plus the Holdback Amount.

### 7. **Amendment to SA 8.** SA 8 shall be amended as follows:

- (a) CFX shall pay to Contractor an additional not-to-exceed amount equal to \$150,000.00 as more particularly outlined in the Price Proposal Amendment for the costs and fees associated with the Initial Systems Maintenance, which shall include the full hardware and software maintenance, of the Automated Vehicle Identification (AVI) and License Plate Recognition (LPR) System for the Orlando Airport Rental Car Pilot Program installed at the Greater Orlando International Airport, including, without limitation, any and all replacement parts, labor and maintenance of traffic reasonably required to conduct any such maintenance of the AVI and LPR systems, in accordance with the terms and conditions of the Contract and SA 8. CFX and Contractor agree that any and all replacement parts, labor or maintenance of traffic related to the full maintenance of the AVI and LPR systems for the Greater Orlando International Airport facilities shall be subject to up to a 15% markup on materials and equipment.
- (b) The Period of Performance of the Initial Systems Maintenance, or hardware and software maintenance required under SA 8, shall be extended to the earlier of

March 31, 2022, or until such time as the AVI and LPR enter Phase VI System Maintenance.

- CFX shall pay Contractor for the Phase VI System Maintenance of the (c) Visitor Toll Pass (VTP) AVI and LPR systems in accordance with the pricing schedule attached hereto as Exhibit "D" and incorporated herein by reference. which amounts incorporated the Price have been Proposal Amendment.
- 8. Electronic Signatures and Counterparts. To facilitate execution, CFX and Contractor 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.
- 9. **Effect on Contract**. Except as modified herein, the Contract 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 Contract and this Amendment, this Amendment shall control.
- 10. <u>Effective Date</u>. 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:
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:
"CONTRACTOR"
TRANSCORE, LP
By:
Name:Title:
Deter

# EXHIBIT "A" Amendments to Price Proposal

Table #	Description	Associated \$ Amount
	Contract Value Changes for Pay Items due to Configuration Changes and	
1	New Pay Items	\$11,067,190.15
2	Contract Value Changes for Pay Items due to Maintenance Changes	\$ 1,884,262.03
3	Increases in Supplemental Amounts	\$ 1,279,491.45
4	Addition of Business Rule Update	\$ 23,188.56
	Total Infinity Contract Changes Required:	\$14,254,132.19

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY TOLL SYSTEM UPGRADE CONTRACT NO. 001021 SUPPLEMENTAL AGREEMENT NO. 9

This Supplemental Agreement No. 9 ("Supplemental Agreement") is entered into this 13<sup>th</sup> day of August 2020, by and between Central Florida Expressway Authority ("CFX") and TransCore, L.P. ("Contractor").

### WITNESSETH:

WHEREAS, CFX and the Contractor on May 14, 2015, entered into an agreement ("the Contract") whereby CFX retained the Contractor to provide toll system upgrade services; and

WHEREAS, CFX has determined it necessary and desirable to expand the Contract Statement of Work to include:

- 1. The installation of additional conduit for the following ramp plazas: Bumby On, Bumby Off, Semoran WB Off, Hiawassee 408 On, Hiawassee 408 Off, OBT 408 On and OBT 408 Off.
- 2. Removing the infinity equipment from the Bumby On ramp dedicated lane booth and installing it in the recorder room in the ramp plaza building and repairing the dedicated lane booth once the installation of the new conduit at Bumby On ramp is complete. This will include all labor, any new cabling and miscellaneous material required, MOT and verification that the system is performing as expected following the equipment move.

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties agree that the Contractor shall furnish and install the additional conduit at Bumby On, Bumby Off, Semoran WB Off, Hiawassee 408 On, Hiawassee 408 Off, OBT 408 On and OBT 408 Off and furnishing and removing the infinity equipment from the Bumby On ramp dedicated lane booth and installing it in the recorder room in the ramp plaza building and repair the dedicated lane booth once the installation of the new conduit is complete at a not-to-exceed cost of \$90,324.81.

All other provisions of the Contract 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 any supplements and amendments made previously thereto, the provisions of this Supplemental Agreement shall take precedence.

WITNESS THEREOF, the parties hereto have caused these presents to be executed on the day and year first written above.

### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

	Aneth Williams Digitally signed by Aneth Williams Date: 2020,09,09 13:09:42-0400'  Director of Procurement
	TRANSCORE. L.P.
	Molan
	Print Name: JIM W SON
A Kenner	SVP
Title:	

Approved as to form and legality by legal counsel to the Central Florida Expressway Authority on this 9th day of September, 2020 for its exclusive use and remance.

By: Woody Rodriguez Diego "Woody" Rodriguez General Counsel

Legal Approved as to Form

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY TOLL SYSTEM UPGRADE AMENDMENT NO. 3 TO CONTRACT NO. 001021 AS SUPPLEMENTED

This Amendment No. 3 to Contract No. 001021 with Supplemental Agreements 1, 2, 3, 4, 5, 6, and 7, is entered into this 18<sup>th</sup> day of June, 2019, by and between Central Florida Expressway Authority ("CFX") and TransCore, L.P. ("Contractor").

"19 JUN 27 AK 10:49

### WITNESSETH:

WHEREAS, CFX and the Contractor on May 15, 2015, entered into an agreement ("the Contract") whereby CFX retained the Contractor to provide toll system upgrade services; and

WHEREAS, CFX and the Contractor supplemented the Contract seven (7) times; and

WHEREAS, CFX and Contractor wish to amend the language in Volume V Method of Compensation, pay items numbers as set forth below.

NOW, THEREFORE, CFX and the Contractor agree as follows:

1. Pay Item #s 501.b, 502.a, 502.b, 503.a, 503.b, 504.a, 504.b,505.a, 505.b, 506.a, 506.b, 507.a, 507.b, 508.a, 508.b, 509.a, 509.b, 510.a, 510.b, 511.a, 511.b, 512.a, 512.b, 513.a and 513.b of Volume V Method of Compensation shall be modified by deleting the text that is stricken and adding the text that is underlined as follows:

50% upon delivery of equipment and verification of inventory at Houston warehouse 40% upon Plaza Acceptance

10% upon System Acceptance

50% upon delivery of equipment and verification of inventory at Houston warehouse 30% upon submission and CFX acceptance of plaza commissioning report for the installed lanes. Lanes can be submitted in a commissioning report by 1) mainline plaza ORT zone per direction, 2) mainline plaza barrier lanes or 3) all ramp plazas associated with a mainline plaza

10% upon Plaza Acceptance

10% upon System Acceptance

2. Pay Item 401.a 90% upon Plaza acceptance 10% upon System acceptance

50% upon successful completion of commissioning of plaza ORT zones (both directions) approved by CFX for all plazas (physical and virtual) reporting to the physical plaza machine

40% upon Plaza acceptance

### 10% upon System acceptance

 Pay Item #107 100% upon Successful Completion of Commissioning of each Plaza Group approved by CFX.

Upon successful completion of Commissioning of each plaza sub-group approved by CFX where the plaza sub-group are defined as:

- 1) Mainline plaza ORT zones (both directions) 33.33%
- 2) Mainline plaza barrier lanes (both directions) 33.33%
- 3) All ramp plazas associated with a mainline plaza 33.33%
- 4. All other provisions of the Contract as supplemented seven (7) times 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 Amendment and the Contract as supplemented, the provisions of this Amendment shall take precedence.

'19 JUN 27 AH10:49

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

### CENTRAL FLORDA EXPRESSWAY AUTHORITY

By:

Director of Procurement

'19 JUN 27 AH10:50

TRANSCORE, L.P.

Bv

Print Name:

Title:

Attest: VLICIZIA DLOVIEZ

Title: Idministrative lastout

VALERIA NARVAEZ

Notary Public - State of Florida

Commission # GG 289295

My Comm. Expires Feb 26, 2023

Bonded through National Notary Assn.

Approved as to form and execution, only.

General Counsel for CFX

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY TOLL SYSTEM UPGRADE CONTRACT NO. 001021 AMENDMENT NO. 1 TO SUPPLEMENTAL AGREEMENT NO. 8

This Amendment No. 1 to Supplemental Agreement No. 8 ("Supplemental Agreement") is entered into this 10<sup>th</sup> day of October 2019, by and between the Central Florida Expressway Authority ("CFX") and TransCore, L.P. ("Contractor").

### WITNESSETH:

WHEREAS, CFX and the Contractor on May 14, 2015, entered into an agreement ("the Contract") whereby CFX retained the Contractor to provide toll system upgrade services; and

WHEREAS, CFX has determined it necessary to extend the period of performance beginning November 1, 2019 to July 31, 2020 for the maintenance services pertaining to the Automated Vehicle Identification (AVI) and License Plate Recognition (LPR) System for the Orlando Airport Rental Car Pilot Program. This time can be extended for six months based on mutual agreement between CFX and TransCore, L.P.

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties agree to the extension of the period of performance for the maintenance services for the Automated Vehicle Identification (AVI) and License Plate Recognition (LPR) System for the Orlando Airport Rental Car Pilot Program, with no increase in the Contract time. Increase in the Contract amount will be based on costs and fees as outlined in Exhibit "A" in a not-to-exceed amount of \$85,953.53. Additional work not explicitly covered by "Exhibit A" must be mutually agreed between CFX and TransCore, L.P. on a time and material basis. Rater per 1.14 Amendment Price Sheet – Table 6.0: Support Services Personnel "Exhibit B".

All other provisions of the Contract 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 Amendment No. 1 to Supplemental Agreement No. 8 and any supplements made previously thereto, the provisions of this Amendment shall take precedence.

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

### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: Director of Procurement

TRANSCORE, L.P.

Print Name: Edgardo

Title:

Title:\_

Approved as to form and execution, only.

General Counsel for CFX



September 19, 2019

Central Florida Expressway Authority 4974 ORL Tower Road Orlando, FL 32807 Attn: David Wynne - Director of Toll Operations

Subject:

Supplemental Agreement to Toll System Upgrade (TSUP) Contract #001021 - Maintenance

Services for Orlando Airport Rental Car Pilot Program

Dear Mr. Wynne:

TransCore is pleased to present this proposal to provide maintenance services for an Automated Vehicle Identification (AVI) and License Plate Recognition (LPR) System at the Orlando Airport Rental Car Pilot Program. Our proposal is based on discussions during a recent meeting with CFX.

Scope of Services: Will provide 24/7 coverage including support for holidays and weekends for hardware and software maintenance. Please see Appendix A for system description. The following items detail the coverage for the maintenance services:

- Responding to service calls from CFX.
- Daily visual inspections of the lane and plaza equipment.
- Monitoring will consist of daily verification of system functionality by the MMC thru an email generated alert/report. This alert/report will include location, transactions date/time, OCR result and LP data.
- Corrective maintenance as needed for lane plaza/lane hardware failures and software troubleshooting and correcting.
- Failed hardware replacements for equipment provided by TransCore.
- TransCore will provide labor for repairs and RMA support. TransCore and CFX will agree to a minimum set of spares needed. CFX will be responsible for purchasing spare parts and repair costs.
- Storage/warehousing for spare parts and deployment as needed.
- Maintenance facility (shop) as needed including part repairs or part replacement.
- Maintenance vehicles, including their fuel and vehicle maintenance as needed.
- Tools, diagnostic equipment, procedures as needed.
- Clean-up and removal of any debris resulting from vendor maintenance activity.

CFX will help coordinate and provide necessary physical and network access/permissions for TransCore to provide the services herewith described.

Because this is a unique system, it is mutually understood that maintenance needs or requirements may need to be updated in the future. TransCore and CFX will continue to work together to better define needs, requirements and further monitoring capabilities for this system. Those efforts will be priced separately.

Period of Performance: November 01, 2019 thru July 31, 2020. The period of performance can be extended for 6 months based on mutual agreement between CFX and TransCore.

### Exclusions:

Taxes and permits are excluded from our proposal.

- Monitoring application software, i.e. SolarWinds, What's Up Gold and MOM, their integration and maintenance are not included in this quotation.
- Network backbone/communications
- Maintenance of Traffic
- Structures or any engineering thereof
- Software licenses, renewals, upgrades, updates, or changes, including related testing, to accommodate changes to program business rules.
- Any tasks not explicitly described in this proposal.

### Pricing Schedule:

Option 1: Per scope of services. Response time requirement per TSUP applies. Liquidates damages shall not exceed 15% of the monthly fee.

Item	Quantity	Unit Monthly Price	Extended Monthly Price
Lanes	5	\$1,021.32	\$5,106.59
Plaza	1	\$1,186.59	\$1,186.59
Non-standard Lane Service Fee	5	\$207.00	\$1,035.00
		Total	\$7,328.17

Additional work not explicitly covered by this change order to be mutually agreed between CFX and TransCore on a time and material basis. Rates per 1.14 Amendment Price Sheet - Table 6.0: Support Services Personnel.

Pricing proposed is valid for a period of 60 days from the date of submittal. Pricing includes 1-year warranty on TransCore manufactured parts, and depot-level labor. Invoicing will be conducted monthly.

Thank you for your consideration. If there are any questions, feel free to contact me at (321) 281-4153.

Sincerely,

TransCore, LP

**Edgardo Torres Associate Vice President** 

**Appendix A - System Description** 

The Airport Rental Car Pilot Program consist of 5 locations (single lanes) and one plaza equipment located at the Orlando International Airport premises. It is worth noting that these subsystems are different from a Plaza and Toll Lane subsystem.

Plaza equipment includes 2 Dell servers, 1 Time Synch unit, Single board computer, UPS, KVM/Mouse combo and one (1) switch provided by CFX.

Lane equipment, per location, consist of 1 equipment enclosure, 1 antenna, 1 RFID reader, 1 in-ground loop, LPR cameras, UPS, A/C units and 1 switch (provided by CFX).

Plaza and Lane Equipment is installed at the following locations at:

- Plaza: Main Server Terminal Room.
- Lanes: Terminal A (Rental Car Exit, Rental Car Return 1, Rental Car Return 2) and Terminal B (Rental Car Exit, Rental Car Return)

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY TOLL SYSTEM UPGRADE CONTRACT NO. 001021 SUPPLEMENTAL AGREEMENT NO. 8

This Supplemental Agreement No. 8 ("Supplemental Agreement") is entered into this 12<sup>th</sup> day of April, 2019, by and between the Central Florida Expressway Authority ("CFX") and TransCore, L.P. ("Contractor").

### WITNESSETH:

WHEREAS, CFX and the Contractor on May 14, 2015, entered into an agreement ("the Contract") whereby CFX retained the Contractor to provide toll system upgrade services; and

WHEREAS, CFX has determined it necessary and desirable to expand the Contract Statement of Work to include maintenance services for an Automated Vehicle Identification (AVI) and License Plate Recognition (LPR) System for the Orlando Airport Rental Car Pilot Program from May 1, 2019 to October 31, 2019. This time can be extended for six months based on mutual agreement between CFX and TransCore, L.P.

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties agree to the expansion of the Contract Statement of Work to include maintenance services for an Automated Vehicle Identification (AVI) and License Plate Recognition (LPR) System for the Orlando Airport Rental Car Pilot Program, with no increase in the Contract time. Increase in the Contract amount will be based on costs and fees as outlined in Exhibit "A" in a not-to-exceed amount of \$42,482.16.

All other provisions of the Contract 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 any supplements made previously thereto, the provisions of this Supplemental Agreement shall take precedence.

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

### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

Director of Procurement

TRANSCORE, L.P.

Print Name: Edgar du 1884

Title: Assoute Vice lives

Title: ASSOCIATE VICE PESUPENT

Approved as to form and execution, only.

General Counsel for CFX

'19 APR 22 AM 8:37



2416 Lake Orange Drive, Suite 100 Orlando, FL 32837 407.382.1301 tel.

March 12, 2019

Central Florida Expressway Authority 4974 ORL Tower Road Orlando, FL 32807 Attn: David Wynne - Director of Toll Operations

'19 APR 22 AM 8:37

Subject:

Supplemental Agreement to Toll System Upgrade (TSUP) Contract #001021 - Maintenance

Services for Orlando Airport Rental Car Pilot Program

Dear Mr. Wynne:

TransCore is pleased to present this proposal to provide maintenance services for an Automated Vehicle Identification (AVI) and License Plate Recognition (LPR) System at the Orlando Airport Rental Car Pilot Program. Our proposal is based on discussions during a recent meeting with CFX.

Scope of Services: Will provide 24/7 coverage including support for holidays and weekends for hardware and software maintenance. Please see Appendix A for system description. The following items detail the coverage for the maintenance services:

- Responding to service calls from CFX.
- Daily visual inspections of the lane and plaza equipment.
- Monitoring will consist of daily verification of system functionality by the MMC thru an email generated alert/report. This alert/report will include location, transactions date/time, OCR result and LP data.
- Corrective maintenance as needed for lane plaza/lane hardware failures and software troubleshooting and correcting.
- Failed hardware replacements for equipment provided by TransCore.
- TransCore will provide labor for repairs and RMA support. TransCore and CFX will agree to a minimum set of spares needed. CFX will be responsible for purchasing spare parts and repair costs.
- Storage/warehousing for spare parts and deployment as needed.
- Maintenance facility (shop) as needed including part repairs or part replacement.
- Maintenance vehicles, including their fuel and vehicle maintenance as needed.
- Tools, diagnostic equipment, procedures as needed.
- Clean-up and removal of any debris resulting from vendor maintenance activity.

CFX will help coordinate and provide necessary physical and network access/permissions for TransCore to provide the services herewith described.

Because this is a unique system, it is mutually understood that maintenance needs or requirements may need to be updated in the future. TransCore and CFX will continue to work together to better define needs, requirements and further monitoring capabilities for this system. Those efforts will be priced separately.

Period of Performance: May 1, 2019 thru October 31, 2019. The period of performance can be extended for 6 months based on mutual agreement between CFX and TransCore.

### Exclusions:

Taxes and permits are excluded from our proposal.

- Monitoring application software, i.e. SolarWinds, What's Up Gold and MOM, their integration and maintenance are not included in this quotation.
- Network backbone/communications
- Maintenance of Traffic
- · Structures or any engineering thereof
- Software licenses, renewals, upgrades, updates, or changes, including related testing, to accommodate changes to program business rules.
- · Any tasks not explicitly described in this proposal.

### Pricing Schedule:

Per scope of services. Response time requirement per TSUP applies. Liquidates damages shall not exceed 15% of

the monthly fee. No other requirements and penalties shall apply.

Item	Quantity	Unit M	onthly Price	ed Monthly Price
Lanes	5	\$	986.78	\$ 4,933.9
Plaza	1	\$	1,146.46	\$ 1,146.46
Non-standard Lane Service Fee	5	\$	200.00	\$ 1,000.00
			Total	\$ 7,080.36

Pricing proposed is valid for a period of 60 days from the date of submittal. Pricing includes 1-year warranty on TransCore manufactured parts, and depot-level labor. Invoicing will be conducted monthly.

Thank you for your consideration. If there are any questions, feel free to contact me at (321) 281-4153.

Sincerely,

TransCore, LP

'19 APR 22 AM 8:37

Edgardo Torres Associate Vice President

### Appendix A - System Description

The Airport Rental Car Pilot Program consist of 5 locations (single lanes) and one plaza equipment located at the Orlando International Airport premises. It is worth noting that these subsystems are different from a Plaza and Toll Lane subsystem.

Plaza equipment includes 2 Dell servers, 1 Time Synch unit, Single board computer, UPS, KVM/Mouse combo and one (1) switch provided by CFX.

Lane equipment, per location, consist of 1 equipment enclosure, 1 antenna, 1 RFID reader, 1 in-ground loop, LPR cameras, UPS, A/C units and 1 switch (provided by CFX).

Plaza and Lane Equipment is installed at the following locations at:

- Plaza: Main Server Terminal Room.
- Lanes: Terminal A (Rental Car Exit, Rental Car Return 1, Rental Car Return 2) and Terminal B (Rental Car Exit, Rental Car Return)

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# CENTRAL FLORIDA EXPRESSWAY AUTHORITY TOLL SYSTEM UPGRADE AMENDMENT NO. 2 CONTRACT NO. 001021 AS SUPPLEMENTED

This Amendment No. 2 to Contract No. 001021 with Supplemental Agreements 1, 2, 3, 4, 5, 6, and 7, is entered into this 8<sup>th</sup> day of April, 2019, by and between Central Florida Expressway Authority ("CFX") and TransCore, L.P. ("Contractor").

### WITNESSETH:

WHEREAS, CFX and the Contractor on May 15, 2015, entered into an agreement ("the Contract") whereby CFX retained the Contractor to provide toll system upgrade services; and

WHEREAS, CFX and the Contractor supplemented the Contract seven (7) times; and

WHEREAS, CFX and Contractor wish to amend the language in Volume V Method of Compensation, Pay Item # 501.a as set forth below.

NOW, THEREFORE, CFX and the Contractor agree as follows:

1. Pay Item # 501.a of Volume V Method of Compensation shall be modified by deleting the text that is stricken and adding the text that is underlined as follows:

50% upon delivery of equipment and verification of inventory at Houston warehouse 40% upon Plaza Acceptance
10% upon System Acceptance

50% upon delivery of equipment and verification of inventory at Houston warehouse 30% upon submission and CFX acceptance of plaza commissioning report for the installed lanes. Lanes can be submitted in a commissioning report by 1) mainline plaza ORT zone per direction, 2) all mainline plaza barrier lanes per direction—or 3) all ramp plazas associated with a mainline plaza.

10% upon Plaza Acceptance

10% upon System Acceptance

2. All other provisions of the Contract as supplemented seven (7) times 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 Amendment and the Contract as supplemented, the provisions of this Amendment shall take precedence. IN WITNESS THEREOF, the parties hereto have caused these presents to be executed to be executed, in duplicate, on the day and year first written above.

# CENTRAL FLORDA EXPRESSWAY AUTHORITY By: Director of Procurement TRANSCORE, L.P. By MMM Print Name: Jim Wilson Title: SV? Attest: \_\_\_\_\_\_ Title: \_\_\_\_\_\_

Approved as to form and execution, only.

General Counsel for CFX

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY TOLL SYSTEM UPGRADE AMENDMENT NO. 1 CONTRACT NO. 001021 AS SUPPLEMENTED

This Amendment No. 1 to Contract No. 001021 with Supplemental Agreements 1, 2, 3, 4, 5, 6, and 7, is entered into this 8<sup>th</sup> day of November, 2018, by and between the Central Florida Expressway Authority ("CFX") and TransCore, L.P. ("Contractor").

### WITNESSETH:

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WHEREAS, CFX and the Contractor on May 15, 2015, entered into an agreement ("the Contract") whereby CFX retained the Contractor to provide toll system upgrade services; and

WHEREAS, CFX and the Contractor supplemented the Contract seven (7) times; and

WHEREAS, CFX and Contractor wish to amend the language in Paragraph B of Supplemental Agreement 5 as set forth below.

NOW, THEREFORE, CFX and the Contractor agree as follows:

- 1. Paragraph B of Supplemental Agreement 5 shall be modified by deleting the text that is stricken and adding the text that is underlined as follows:
  - B. The current milestone payment term of 50% upon complete delivery of equipment to local (Orlando) warehouse, and verification of inventory will be modified to payment terms of 25% upon delivery of equipment and verification of inventory at Houston warehouse and 25% upon delivery of equipment and verification of inventory at Orlando warehouse.

The current milestone payment term of 25% upon complete delivery of equipment and verification of inventory at Houston warehouse and 25% upon delivery of equipment and verification of inventory at Orlando warehouse will be modified to payment terms of 50% upon delivery of equipment and verification of inventory at Houston warehouse.

Contractor will be responsible for CFX equipment as defined in section 7.3 of the Contract. If required by CFX, Contractor will reimburse CFX or designee for time and travel costs to Houston to verify inventory.

Contractor will be responsible for CFX equipment as defined in Exhibit 1.7 – Vol III Statement of Work, sections 11.3.6.5 and 11.3.6.6 of the Contract. If required, Contractor will reimburse CFX or designee for time and travel costs to Houston to verify inventory.

All other provisions of the Contract as supplemented seven (7) times shall remain 2. 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 Amendment and the Contract as supplemented, the provisions of this Amendment shall take precedence.

to

	REOF, the parties hereto have caused these presents to be executed to the day and year first written above.
	By: Director of Procurement
	'18 NOV 16 AM 7:48
	TRANSCORE, L.P.
	Print Name: Tim Wilsoul  Title: SVP
Attestively	District .

Approved as to form and execution, only.

Title:

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY TOLL SYSTEM UPGRADE CONTRACT NO. 001021 SUPPLEMENTAL AGREEMENT NO. 7

This Supplemental Agreement No. 8. ("Supplemental Agreement") is entered into this 12<sup>th</sup> day of January, 2017, by and between the Central Florida Expressway Authority ("CFX") and TransCore, L.P. ("Contractor").

### WITNESSETH:

WHEREAS, CFX and the Contractor on May 14, 2015, entered into an agreement ("the Contract") whereby CFX retained the Contractor to provide toll system upgrade services; and

WHEREAS, CFX has determined it necessary and desirable to reconfigure some of its toll plazas. Due to this reconfiguration it is necessary to modify the Contract Scope of Work to purchase additional toll system lane equipment to support the reconfiguration as well as provide Owner Furnished materials for new plazas.

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties agree that the Contractor shall reconfigure some toll plazas and purchase additional toll system lane equipment at a cost of \$1,902,965.56.

All other provisions of the Contract 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 Supplement Agreement and any supplements may previously thereto, the provisions of this Supplemental Agreement shall take precedence.

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

CENTRAL FLORDA EXPRESS	WAY AUTHORITY
By: Director of Procurement	
	23 JAN 17 and9:
TRANSCORE, L.P.	
By MWlsy	
Print Name: Jim Wilson	
Title: SVP	

Attest:

Title: VICE PRESIDENT

Approved as to form and execution, only.

General Counsel for CFX

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY TOLL SYSTEM UPGRADE CONTRACT NO. 001021 SUPPLEMENTAL AGREEMENT NO. 6

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This Supplemental Agreement No. 6 ("Supplemental Agreement") is entered into this 18<sup>th</sup> day of July, 2016, by and between the Central Florida Expressway Authority ("CFX") and TransCore, L.P. ("Contractor").

### WITNESSETH:

WHEREAS, CFX and the Contractor on May 14, 2015, entered into an agreement ("the Contract") whereby CFX retained the Contractor to provide toll system upgrade services; and

WHEREAS, CFX has determined it necessary and desirable expand the Contract Statement of Work to include the replacement of the UPS at the Forest Lake Plaza to support the new toll system replacement project.

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties agree that the Contractor shall furnish and install the UPS at the Forest Lake Plaza at a cost of \$39,491.54.

All other provisions of the Contract 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 Supplement Agreement and any supplements may previously thereto, the provisions of this Supplemental Agreement shall take precedence.

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

### CENTRAL FLORDA EXPRESSWAY AUTHORITY

By: QQ 1 1

TRANSCORE, L.P.

Ву

Print Name

Title:

Attest:

Title: VICE PRESIDENT

Approved as to form and execution, only.

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY TOLL SYSTEM UPGRADE CONTRACT NO. 001021 SUPPLEMENTAL AGREEMENT NO. 5

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This Supplemental Agreement No. 5 ("Supplemental Agreement") is entered into this 12<sup>th</sup> day of July, 2016, by and between the Central Florida Expressway Authority ("CFX") and TransCore, L.P. ("Contractor").

### WITNESSETH:

WHEREAS, CFX and the Contractor on May 14, 2015, entered into an agreement ("the Contract") whereby CFX retained the Contractor to provide toll system upgrade services; and

WHEREAS, CFX has determined it necessary and desirable to accelerate the Toll System Upgrade Project ("TSUP") schedule and share in the cost savings realized by the acceleration.

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties agree to acceleration of the installation portion of the Toll System Replacement Project to include the following changes and edits:

- A. Reducing the number of toll lanes contained in the scope of the TSUP from 341 to 339. This factor revises the per lane payment of \$10,747.48, a reduction of \$4,856.05 per lane.
- B. The current milestone payment term of 50% upon complete delivery of equipment to local (Orlando) warehouse, and verification of inventory will be modified to payment terms of 25% upon delivery of equipment and verification of inventory at Houston warehouse and 25% upon delivery of equipment and verification of inventory at Orlando warehouse.

Contractor will be responsible for CFX equipment as defined in section 7.3 of the Contract. If required, Contractor will reimburse CFX or designee for time and travel costs to Houston to verify inventory.

- C. The early completion bonus of \$1,048,378.97 to the Contractor will be paid as follows:
- A 50 percent payment or \$524,189.48 paid on a per-lane basis. Which would increase the payment to \$12,293.76 per lane.

• The remaining 50 percent or \$524,189.49 will be paid as a time-based bonus per the following schedule:

Months Early (max baseline May 2018)	Completion Bonus
8 (installation completed by end of May 2018)	\$524,189.49
7 (installation completed by end of June 2018)	\$458,665.80
6 (installation completed by end of July 2018)	\$393,142.11
5 (installation completed by end of August 2018)	\$327,618.42
4 (installation completed by end of September 2018)	\$262,094.75
3 (installation completed by end of October 2018)	\$196,571.04
2 (installation completed by end of November 2018)	\$131,047.37
1 (installation completed by end of December 2018)	\$ 65,523.69

D. Contractor contends that there will be no excuses in schedule delays related to project design, project review comments, testing delays, or installation issues; schedule delays due to force majeure, as defined in section 19.2(viii) of the contract, shall be cause for a matching relief in schedule. Contractor shall document and sent to CFX any perceived delay within one (1) business day for review and concurrence. The Contractor will add additional installation crew at no further cost to CFX which is expected to reduce the duration of the installation by upwards of eight (8) months. In the event the Contractor is able to achieve a schedule acceleration greater than above, additional credit to CFX and/or Contractor is not part of this Supplement Agreement.

All other provisions of the Contract 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 Supplement Agreement and any supplements may previously thereto, the provisions of this Supplemental Agreement shall take precedence.

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

CENTRAL FLORDA EXPRESSWAY AUTHORITY

By:

**Director of Procurement** 

TRANSCORE, L.P.

Вv

Print Name:

Title: \_SV7

Attest

Title: VICE PRESIDEN

Approved as to form and execution, only.

General Counsel for CFX

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY TOLL SYSTEM UPGRADE CONTRACT NO. 001021 SUPPLEMENTAL AGREEMENT NO. 4

This Supplemental Agreement No. 4 ("Supplemental Agreement") is entered into this 12<sup>th</sup> day of May, 2016, by and between the Central Florida Expressway Authority ("CFX") and TransCore, L.P. ("Contractor").

### WITNESSETH:

WHEREAS, CFX and the Contractor on May 14, 2015, entered into an agreement ("the Contract") whereby CFX retained the Contractor to provide toll system upgrade services; and

WHEREAS, CFX has determined it necessary and desirable to expand the Contract Statement of Work to include full maintenance of the toll system installed at the Marigold and KOA tolling facilities on the Poinciana Parkway when so directed by CFX.

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties agree to the expansion of the Contract Statement of Work to include full maintenance of the toll system installed at the Marigold and KOA tolling facilities on the Poinciana Parkway when so directed by CFX, with no increase in the Contract time. Increase(s) in the Contract Amount will be based on costs and fees as outlined in Exhibit "A" in a not to exceed amount of \$1,102,791.68.

All other provisions of the Contract 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 any supplements made previously thereto, the provisions of this Supplemental Agreement shall take precedence.

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

C	ENTRAL FLORIDA EXPRESSWAY AUTHORITY  By: World Color of the Color of t
	Director of Procurement
	TRANSCORE, L.P.
	By: MWlon
1,1	Print Name: Jim Wilson
Attest: 1-11	Title: SV?
Title: VICE PREJIDENT	·
	Approved as to form and execution, only.
	1 111.4

### OCX MAINTENANCE PRICE - ATTACHMENT A

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Summary Period	Duration (months)	_	Total cost
interim period.	; )	\$	36,753.57
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Milnienante	: 60	Ś	792,275.29
Grand Terral		3	1.101791.68

## CENTRAL FLORIDA EXPRESSWAY AUTHORITY TOLL SYSTEM UPGRADE CONTRACT NO. 001021 SUPPLEMENTAL AGREEMENT NO. 3

This Supplemental Agreement No. 3 ("Supplemental Agreement") is entered into this 8<sup>th</sup> day of January, 2016, by and between the Central Florida Expressway Authority ("CFX") and TransCore, L.P. ("Contractor").

#### WITNESSETH:

WHEREAS, CFX and the Contractor on May 14, 2015, entered into an agreement ("the Contract") whereby CFX retained the Contractor to provide toll system upgrade services; and

WHEREAS, CFX has determined it necessary and desirable to expand the Contract Statement of Work to include transponder distribution services when so directed by CFX.

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties agree to the expansion of the Contract Statement of Work to include transponder distribution services when so directed by CFX, with no increase in the Contract time. Increase(s) in the Contract Amount will be based on costs and fees negotiated between CFX and the Contractor at the time the services are required and approved by CFX.

All other provisions of the Contract 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 any supplements made previously thereto, the provisions of this Supplemental Agreement shall take precedence.

20 JAN 18 ALCO 18

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

CENTRAL	By: Director of Procurement
	TRANSCORE, L.P.
	By: MWB
0 11	Print Name: Jim Wilson
Attest: Juff / tuf	Title: SV?
Title: AVP	

### SUPPLEMENTAL AGREEMENT NO. 2 TO CONTRACT FOR TOLL SYSTEM UPGRADE CONTRACT NO. 001021

This Supplemental Agreement is made and entered as of the last date of execution below, by and between, TRANSCORE, LP, duly registered to do business in the State of Florida, having a place of business at 2100 Lake Orange Drive, Suite 100, Orlando, Florida 32837, and CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, hereinafter "CFX."

#### WITNESSETH:

WHEREAS, Contract No. 001021 for a Toll System Upgrade, executed on or about May 14, 2015, requires TransCore to provide source code, corresponding configuration settings, documentation, compilers and other necessary materials required to create executable software from the source code, hereinafter collectively referred to as "Source Code;" to CFX, annually and at all significant events, including the first plaza acceptance test, Final System Acceptance, and routine updates and releases as indicated in Contract Exhibit 1.2, item number 13.

WHEREAS, the Contract provides that "CFX has the right to make copies, to use the code on its systems, and to alter or modify the source code, as upgraded, enhanced, modified, or configured, at its risk and option, which right survives the term of the Contract."

WHEREAS, one of TransCore's subcontractors, QFree America Inc., hereinafter "QFree," will not agree to provide CFX with the Source Code.

WHEREAS, the CFX's Board of Directors at its meeting on the 14<sup>th</sup> day of January 2016, agreed to enter into an Escrow Agreement; CFX Contract No. 001183, with QFree and NCC Group Escrow Associates, to provide protocol procedures for access to the source code in case of a release event.

WHEREAS, QFree has agreed in addition to the Escrow Agreement, to reduce the contractual cost to TransCore by \$75,000.

WHEREAS, CFX has determined it necessary to obtain a credit from TransCore in the amount of \$75,000.

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties agree with a total credit to the Contract of \$75,000.00, as detailed in the attached Exhibit A, Details of Credit to the Contract. The remaining total compensation to the Contractor shall be \$84,231,307.84 for all materials and services required under the Contract.

IN WITNESS WHEREOF, the authorized signatures named below have executed this Supplemental Agreement on behalf of the parties as of the last day of execution below.

Date: 200 110 By: WWW WAY

Print Name: JW WW Sav

Title: SV (Seal)

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

Date: 2-26-K By Director of Procurement

APPROVED AS TO FORM
AND EXECUTION ONLY

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY TOLL SYSTEM UPGRADE CONTRACT NO. 001021 SUPPLEMENTAL AGREEMENT NO. 2

### EXHIBIT A DETAILS OF CREDIT TO THE CONTRACT

The \$75,000 credit shall be applied towards the Factory Acceptance Test (FAT), line item 105 of Exhibit 1.15 of the contract.

<u>Line item</u>	Nomenclature Nomenclature		
105	Factory Acceptance Test (FAT)	Extended Price - \$199,307.56	
		Credit	- <u>-\$75,000.00</u>
		Total	\$124,307.56

END OF EXHIBIT A

## CENTRAL FLORIDA EXPRESSWAY AUTHORITY TOLL SYSTEM UPGRADE CONTRACT NO. 001021 SUPPLEMENTAL AGREEMENT NO. 1

This Supplemental Agreement No. 1 ("Supplemental Agreement") is entered into this 1st day of December, 2015, by and between the Central Florida Expressway Authority ("CFX") and TransCore, L.P. ("Contractor").

#### WITNESSETH:

WHEREAS, CFX and the Contractor on May 14, 2015, entered into an agreement ("the Contract") whereby CFX retained the Contractor to provide toll system upgrade services; and

WHEREAS, CFX has determined it necessary to delete from the Contract requirements the Patron Toll Displays, Island Traffic Lights, and Violator Beacons with audible alarms on the Traffic Control Pedestal for 262 lanes.

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties agree to the deletion of the equipment in accordance with the attached Exhibit A, Scope of Services, with a total credit to the Contract of \$693,692.16, as detailed in the attached Exhibit B, Details of Credit to the Contract. The remaining total compensation to the Contractor shall be \$84,306,307.84 for all materials and services required under the Contract.

All other provisions of the Contract 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 any supplements made previously thereto, the provisions of this Supplemental Agreement shall take precedence.

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

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

TRANSCORE, L.P.

Print Name: Tracy Marks

President Title:\_

Contract/Manager

Title:\_

## CENTRAL FLORIDA EXPRESSWAY AUTHORITY TOLL SYSTEM UPGRADE CONTRACT NO. 001021 SUPPLEMENTAL AGREEMENT NO. 1

### EXHIBIT A SCOPE OF WORK

#### I. General

CFX wishes to delete from the Contract requirements the Patron Toll Displays, Island Traffic Lights, and Violator Beacons with audible alarms on the Traffic Control Pedestal for 262 lanes. A detailed breakdown of credit for each item is included in Exhibit B.

#### II. Conditions

The Contractor shall identify and bring to CFX's attention in writing any unique field conditions, different configurations, etc., not otherwise mentioned in this Supplemental Agreement that will affect the Contractor's work.

#### III. Schedule Impact

The removal of the existing equipment is considered a constructive acceleration of the work and does not impact the critical path schedule; therefore, there is no change to the overall project schedule. The Contractor shall have no right to make any claim for constructive acceleration or include the same as an element of any claim the Contractor may otherwise submit under the Contract.

END OF EXHIBIT A

## CENTRAL FLORIDA EXPRESSWAY AUTHORITY TOLL SYSTEM UPGRADE CONTRACT NO. 001021 SUPPLEMENTAL AGREEMENT NO. 1

### EXHIBIT B DETAILS OF CREDIT TO THE CONTRACT

Delete the Patron Toll Displays, Island Traffic Lights, and Violator Beacons with audible alarms on the Traffic Control Pedestal from the contract requirements for 262 lanes. This total includes 8 lanes in Osceola County identified as:

- 4 Manned/AVI lanes at Shingle Creek Mainline Plaza
- 2 Dedicated AVI lanes at Shingle Creek Mainline Plaza
- 1 Dedicated AVI lane at Poinciana Off Ramp
- 1 Dedicated AVI lane and Poinciana On Ramp

262 lanes x \$2,647.68 credit per lane = \$693,692.16 Total Credit to the Contract calculated as follows:

Component	Unit Price	Total Credit
2 Aspect (R/G) Signal @	\$493.72 each x 262 lanes =	\$129,354.64
Patron Toll Display @	1,719.49 each x 262 lanes =	\$450,506.38
Violation Beacon @	\$434,47 each x 262 lanes =	\$113,841.14
_	\$2,647.68	\$693,692.16

This total includes costs for labor, mounting brackets, and cable associated with each cable.

#### **END OF EXHIBIT B**

### **CONTRACT**

## CENTRAL FLORIDA EXPRESSWAY AUTHORITY AND TRANSCORE, LP

#### **TOLL SYSTEM UPGRADE**

**CONTRACT NO. 001021** 

CONTRACT DATE: MAY 14, 2015 CONTRACT AMOUNT: \$85,000,000.00

### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

CONTRACT, NEGOTIATED AREAS, TRANSCORE MODIFICATIONS AND CLARIFICATIONS, REVISED CDRL APPENDIX K, AGREED CHANGES TO MILESTONE PAYMENTS, THE ADDENDA, STATEMENT OF WORK, SYSTEM REQUIREMENTS, METHOD OF COMPENSATION, APPENDICES, TRANSCORE PROJECT MANAGEMENT MATRIX, TRANSCORE MAINTENANCE PERSONNEL MATRIX, TRANSCORE REVISED PROJECT SCHEDULE, TECHNICAL PROPOSAL, PRICE PROPOSAL, TRANSCORE "ALLEGRO TOLL TRANSPONDER REPLACEMENT PROPOSAL", BONDS, AND INSURANCE POLICIES

CONTRACT, NEGOTIATED AREAS, TRANSCORE MODIFICATIONS AND CLARIFICATIONS, REVISED CDRL APPENDIX K, AGREED CHANGES TO MILESTONE PAYMENTS, THE ADDENDA, STATEMENT OF WORK, SYSTEM REQUIREMENTS, METHOD OF COMPENSATION, APPENDICES, TRANSCORE PROJECT MANAGEMENT MATRIX, TRANSCORE MAINTENANCE PERSONNEL MATRIX, TRANSCORE REVISED PROJECT SCHEDULE, TECHNICAL PROPOSAL, PRICE PROPOSAL, TRANSCORE "ALLEGRO TOLL TRANSPONDER REPLACEMENT PROPOSAL", BONDS, AND INSURANCE POLICIES

FOR

#### **TOLL SYSTEM UPGRADE**

CONTRACT NO. 001021

#### **MAY 2015**

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

#### Members of the Board

Welton G. Cadwell, Chairman
S. Scott Boyd, Vice Chairman
Brenda Carey, Secretary/Treasurer
Fred Hawkins, Jr., Board Member
Teresa Jacobs, Orange County Mayor
Buddy Dyer, City of Orlando Mayor
Walter A. Ketcham, Jr., Board Member
Jay Madara, Member
S. Michael Scheeringa, Member
Diane Guitierrez-Scaccetti, Non-Voting Advisor

#### TABLE OF CONTENTS

<u>Title</u> Page

CONTRACT 1 to 28

Below listed documents included on CD

(Negotiated Areas, TransCore modifications and clarifications, Revised CDRL Appendix K, Agreed changes to Milestone Payments, The Addenda, Statement of Work, System Requirements, Method of Compensation, Appendices, TransCore Project Management Matrix, TransCore Maintenance Personnel Matrix, TransCore Revised Project Schedule, Technical Proposal, Price Proposal, TransCore "Allegro Toll Transponder Replacement Proposal")

Below listed documents included at the back of this binder behind the Contract (Bonds, and Insurance policies)

#### CONTRACT

This Contract (the "Contract" as defined herein below), is made this 14<sup>th</sup> day of May, 2015, between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, hereinafter called the CFX and <u>TransCore</u>, <u>LP</u>, hereinafter the CONTRACTOR:

#### WITNESSETH:

WHEREAS, the CFX was created by statute and is charged with acquiring, constructing, operating and maintaining a system of limited access roadways known as the Orlando-Orange County Expressway System; and,

WHEREAS, the CFX has been granted the power under Section 348.754(2)(m) of Florida Statutes, "to do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority, in order to carry out the powers granted to it (by state law);" and,

WHEREAS, the CFX has determined that it is necessary and convenient in the conduct of its business to retain the services of a CONTRACTOR to design, furnish, install and maintain toll collection system replacement equipment and related tasks as may from time to time be assigned to the CONTRACTOR by the CFX; and,

WHEREAS, on or about September 29, 2014, the CFX issued a Request for Proposals seeking qualified contractors to perform such tasks; and,

WHEREAS, CONTRACTOR was the sole qualified firm that responded to the Request for Proposals and was ultimately selected; and,

NOW THEREFORE, in consideration of the mutual covenants and benefits set forth herein and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged by each party to the other, the parties hereto agree as follows:

#### 1. SERVICES TO BE PROVIDED

The CONTRACTOR shall, for the consideration herein stated and at its cost and expense, do all the work and furnish all the materials, equipment, supplies and labor necessary to perform this Contract in the manner and to the full extent as set forth in the Contract Documents all of which are hereby adopted and made part of this Contract as completely as if incorporated herein. The Contract shall be performed and services provided to the satisfaction of the duly authorized representatives of the 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 designing, furnishing, installing and maintaining toll collection system replacement equipment as detailed in the Contract Documents and any amendments, supplements, or modifications thereto.

The 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. The 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 Negotiated Areas v12 dated 4/21/2015
- 1.3 TransCore modifications and clarifications
- 1.4 Revised CDRL Appendix K dated 2/24/2015
- 1.5 Agreed changes to Milestone Payments
- 1.6 The Addenda (RFP001021 Addendum 1, 2, & 3) modifying the Contract Documents,
- 1.7 The Statement of Work,
- 1.8 The System Requirements,
- 1.9 The Method of Compensation,
- 1.10 TransCore Project Management Matrix
- 1.11 TransCore Maintenance Personnel Matrix
- 1.12 TransCore Revised Project Schedule
- 1.13 The Technical Proposal submitted by CONTRACTOR
- 1.14 The Price Proposal submitted by CONTRACTOR,
- 1.15 TransCore "Allegro Toll Transponder Replacement Proposal"
- 1.16 Bonds, and
- 1.17 Insurance policies

(collectively, the "Contract").

#### 2. TERM AND NOTICE

The term of the Contract will be from the date established in the Notice to Proceed from the CFX as shown in the table below:

Table III.00.02 – Project Milestones			
Brojeqt:Phase		Milestone	Time Frame
	1	Completion of Mobilization	8/27/2015
Phase I System Design Development  3	2	Satisfactory Completion of Preliminary Design Review (PDR)	9/7/2015
	3	Satisfactory Completion of Detail Design Review (DDR)	10/21/2015

Table III.00.02 - Project Milestones			
Projectie hase	Mile- stone No	Milestone	Time/Frame)
Phase II System Integration & Testing	4	Satisfactory Completion of Factory Acceptance Test (FAT)	2/22/2016
Phase III System Implementation, Installation, Commissioning & Testing 7	5	Satisfactory Completion of Implementation of Toll Host Environment Subsystems& Message Converter Interface w/Legacy	3/7/2016
	6	Satisfactory Completion of Toll Host Environment Interoperability & External Interface Testing	6/7/2016
	7	Satisfactory Completion of System Initial End-to-End Testing (SIETET)	11/28/2016
	8	Satisfactory Completion of Plaza Acceptance Testing (PAT) at Last Plaza Group	12/3/2019
Phase IV Final System Acceptance	9	Satisfactory Completion of Final System Acceptance Testing (SAT)	6/27/2019
Phase V Warranty Period			11/28/2016 THRU 12/19/2019  H/W: Host Environment: Date of Host Environment Commissioning for 3 years.  Plaza Group: Date of 1st Plaza Group  Commissioning for 1 year.  S/W: Date of 1st Plaza Group Commissioning  thru end of Contract Term.
Phase VI System	10	End of Initial System Maintenance Period	6/27/2019 H/W: Date of Final System Acceptance. S/W: Date of Final System Acceptance.
Maintenance Period	11	End of Operational System Maintenance Period	5 years after Date of Final System Acceptance.

#### EXTENDED SYSTEM MAINTENANCE

At CFX's sole option, CONTRACTOR shall provide extended system maintenance for ten (10) additional one-year periods, or portions thereof, with a price that shall not increase more than the prior year's average annual increase as reported in the Consumer Price Index (CPI) for All Urban Consumers (not seasonally adjusted, south urban, all items) published by the Bureau of Labor Statistics or no more than 3% per year, whichever is lower. If the CPI is negative, then the price shall not decrease, but remain the same as the prior year.

The CFX shall have the right to terminate or suspend the Contract, in whole or in part, at any time with 120 days notice for convenience or 60 days with cure notice for cause for CONTRACTOR's material failure to perform the provisions of the Contract. Under no circumstances shall a properly noticed termination by the CFX (with or without cause) constitute a default by the CFX. In the event of a termination for convenience or without cause, CFX shall notify CONTRACTOR (in writing) of such action with instructions as to the effective date of termination or suspension, in accordance with the time frames set forth hereinabove. CONTRACTOR will be paid for all work performed prior to termination and any reasonable, documented, direct, normal, and ordinary termination expenses. CONTRACTOR will not be paid for special, indirect, consequential, or undocumented termination expenses. Payment for work performed will be based on Contract prices, which prices are deemed to include profit and overhead. No profit or overhead will be allowed for work not performed, regardless of whether the termination is for cause.

If CONTRACTOR: (i) fails to perform the Contract terms and conditions; (ii) fails to begin the work under the Contract within the time specified in the "Notice to Proceed"; (iii) fails to perform the work with sufficient personnel or with sufficient materials to assure the prompt performance of the work items covered by the Contract; (iv) fails to comply with the Contract, or (v) performs unsuitably or unsatisfactorily in the opinion of CFX reasonably exercised, or for any other cause whatsoever, fails to carry on the work in an acceptable manner, or if the surety executing the bond, for any reasonable cause, becomes unsatisfactory in the opinion of the CFX, the CFX will give notice in writing to the CONTRACTOR and CONTRACTOR's surety of such delay, neglect or default. If the Contract is declared in default, the 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, the CFX may take over the work covered by the Contract.

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

Upon declaration of default and termination of the Contract, CFX will have the right to appropriate or use any or all materials and equipment on the sites where work is or was occurring, as the CFX determines, and may retain others for the completion of the work under the Contract, or may use other methods which in the opinion of CFX are required for Contract completion. All costs and charges incurred by CFX because of, or related to, the CONTRACTOR's default (including the costs of completing Contract performance) shall be charged against the CONTRACTOR. If the expense of Contract completion exceeds the sum which would have been payable under the Contract, the CONTRACTOR and the surety shall be jointly and severally liable and shall pay the CFX the amount of the excess. If, after the default notice curative period has expired, but prior to any action by CFX to complete the work under the Contract, CONTRACTOR demonstrates an intent and ability to cure the default in accordance with CFX's requirements, CFX may, but is not obligated to, permit CONTRACTOR to resume work under the Contract. In such circumstances, any costs of CFX incurred by the delay (or from any reason attributable to the delay) will be deducted from any monies due or which may become due CONTRACTOR under the Contract. Any such costs incurred by CFX which exceed the remaining amount due on the Contract shall be

reimbursed to CFX by CONTRACTOR. The financial obligations of this paragraph, as well as any other provision of the Contract which by its nature and context survives the expiration of earlier termination of the Contract, shall survive the expiration or earlier termination of the Contract.

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

CFX reserves the right to cancel and terminate this Contract in the event the CONTRACTOR or any employee, servant, or agent of the CONTRACTOR is indicted for any crime arising out of or in conjunction with any work being performed by the CONTRACTOR for on behalf of the CFX, without penalty. Such termination shall be deemed a termination for default.

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

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

- 3.1 The Contract Amount for the Contract term is \$85,000,000.00.
- 3.2 CFX agrees to pay CONTRACTOR for services performed in accordance with the Method of Compensation, Contract Exhibit 1.9 as amended by Contract Exhibit 1.5.

#### 4. AUDIT AND EXAMINATION OF RECORDS

#### 4.1 Definition of Records:

- (i) "Contract Records" shall include, but not be limited to, all information, communications and data, whether in writing or stored on a computer, computer disks, microfilm, writings, working papers, drafts, computer printouts, field notes, charts or any other data compilations, books of account, photographs, videotapes and audiotapes supporting documents, any other papers or preserved data in whatever form, related to the Contract or the CONTRACTOR's performance of the Contract determined necessary or desirable by the 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 the CFX.
- (ii) "Proposal Records" shall include, but not be limited to, any material relating to the determination or application of equipment rates, home and field overhead rates, related time schedules, labor rates, efficiency or productivity factors, arithmetic extensions, quotations from subcontractors, or material suppliers, profit contingencies and any manuals standard in the industry that may be used by CONTRACTOR in determining a price.

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

If the 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 the 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 the CFX until reinstated by the CFX.

Final Audit for Project Closeout: The CONTRACTOR shall permit the CFX, at the 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 the CFX because of accounting errors or charges not in conformity with the Contract, the CONTRACTOR agrees that such amounts are due to the 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 the 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

The CFX encourages participation of local minority and women business enterprises on contracts considered for an award. The CONTRACTOR has committed to a two point seven (2.7%) M/WBE participation objective for this project.

The CONTRACTOR shall ensure that 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.

The CONTRACTOR shall submit a draft M/WBE Participation Plan to the CFX for review within 15 days after the Notice to Proceed for the project. The CONTRACTOR's M/WBE plan shall meet the CONTRACTOR's objective approved by the CFX.

At any time, the CFX's Executive Director may grant a partial or complete waiver of the M/WBE objectives for the project due to consideration of property, public safety, and health, including financial impact to the CFX.

- 5.1 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 Americans, 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, or the City of Orlando, Florida that the business is a bona fide Minority or Women owned and operated business.
  - (4) "Women Business Enterprise" comprises all women. All minority women business owners will be classified as a Women Business Enterprise.

- 5.2 Specific Requirements: The CONTRACTOR shall, among other things, implement techniques to facilitate continuing 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 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 and city and county agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible M/WBE contractors to apply for certification.
  - (5) Meeting with appropriate officials of the CFX, including its Business Development Program Office, to assist with the CONTRACTOR's efforts to locate M/WBEs and assist with developing joint ventures, partnering, and mentorship.
- 5.3 The CFX will count M/WBE participation toward meeting M/WBE objectives as follows:
  - (1) The total dollar value of the contract to be awarded to the certified M/WBE may be counted toward the applicable M/WBE objective.
  - (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 M/WBE partner in the joint venture may be counted toward the M/WBE objective.
  - (3) Only expenditures to M/WBEs that perform a commercially useful function may be counted toward the M/WBE objective. An 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 an M/WBE is performing a commercially useful function, the CFX will evaluate all relevant factors such as the amount of work subcontracted and industry practices.
  - (4) Consistent with normal industry practices, an M/WBE may enter into subcontracts. If an M/WBE subcontracts 50 percent or more of the work

- assigned to it, the M/WBE shall be presumed not to be performing a commercially useful function.
- (5) Expenditures for materials and supplies obtained from M/WBE suppliers and manufacturers may be counted toward the M/WBE objective, provided that the M/WBEs assume the actual and contractual responsibility for the provision of the materials and supplies. The percentage allowed toward the M/WBE objective is as follows:
  - (a) All expenditures to an M/WBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale) may be counted toward the M/WBE objective.
  - (b) CONTRACTOR may count toward its M/WBE objective 60 percent of its expenditures for materials and supplies required under a contract and obtained from an M/WBE regular dealer, and 100 percent of such expenditures to an M/WBE manufacturer.

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.

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 packages shall not be regarded as manufacturers or regular dealers within the meaning of this article.

- (c) CONTRACTOR may count toward M/WBE objectives the following expenditures to M/WBE firms that are not manufacturers or regular dealers:
  - 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.
- 5.4 Records and Reports: The CONTRACTOR shall develop a record keeping system to monitor its 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 M/WBEs;
  - (3) the dollar value of the contracts awarded to M/WBEs;
  - (4) the percentage of the dollar value of all subordinate contracts awarded to M/WBEs as a percentage of the total contract amount;
  - (5) a description of the general categories of contracts awarded to M/WBEs;
  - (6) the specific efforts employed to identify and award contracts to M/WBEs;
  - (7) maintenance of records of payments and monthly reports to the CFX;
  - (8) Subcontract Agreement between CONTRACTOR and M/WBE subcontractors; and
  - (9) any other records required by the CFX's Project Manager or Executive Director.

The records maintained by the CONTRACTOR in accordance with this article shall be provided to the CFX for review within 48 hours of the CFX's request. The CONTRACTOR shall submit a

properly executed M/WBE Payment Certification (Form No. 275-020-001-A) monthly during the life of the M/WBE subcontract whether payment is made or not.

CONTRACTOR shall provide information regarding its employment of such businesses and the percentage of payments made to such businesses and others. CONTRACTOR shall provide an annual report to CFX on or before each anniversary of the Contract Date hereof and throughout the Term, regarding use of small business MBEs and WBEs and the percentage of payments made to enterprises falling within such categories. Such report shall consolidate the information contained in CONTRACTOR's invoices, and shall be in a form reasonably acceptable to CFX.

#### 6. CONTRACTOR INSURANCE AND PERFORMANCE PAYMENT BOND

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

- 6.1 Commercial General Liability Insurance having a minimum coverage of Five Million Dollars (\$5,000,000.00) per occurrence of bodily injury or property damage and a minimum of Ten Million Dollars (\$10,000,000.00) annual aggregate for both General and Products and Completed Operations. Liability insurance shall be current ISO simplified form including products and completed operations coverage. The contractual liability insurance coverage shall include coverage for tort liability for bodily injury and property damages assumed by CONTRACTOR under this Contract.
- 6.2 Business Automobile Liability (for bodily injury, death and property damage) having a minimum coverage of Five Million Dollars (\$5,000,000.00) for each accident;
- 6.3 Workers' Compensation Insurance Coverage, including all coverage required under the laws of the state of Florida (as amended from time to time hereafter);
- 6.4 Unemployment Insurance Coverage in amounts and forms required by Florida law, as it may be amended from time to time hereafter.
  - 6.5 Performance and Payment Bond equal to the amount of the Contract;
- 6.6 Employees Fidelity Bond covering each employee for a minimum of \$100,000.00 per employee, covering each employee of CONTRACTOR employed on this Contract. Commercial Crime insurance with limits no less than \$5,000,000 is acceptable in lieu of an Employees Fidelity Bond.

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

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

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

#### 7. CONTRACTOR RESPONSIBILITY

- 7.1 CONTRACTOR shall take all reasonable precautions in the performance of the Services and shall cause its employees, agents and subcontractors to do the same. CONTRACTOR shall be solely responsible for the safety of, and shall provide protection to prevent damage, injury or loss to:
  - (i) all employees of CONTRACTOR and its subcontractors and other persons who would reasonably be expected to be affected by the performance of the Services;
  - (ii) other property of CONTRACTOR and its employees, agents, officers and subcontractors and all other persons for whom CONTRACTOR may be legally or contractually responsible on or adjacent to the plazas or other areas upon which services are performed;
  - (iii) members of the public who may be traveling through the plazas and their vehicles.
- 7.2 CONTRACTOR shall comply, and shall cause its employees, agents, officers and subcontractors and all other persons for whom CONTRACTOR may be legally or contractually responsible, with the applicable laws, ordinances, rules, regulations, orders of public authorities, sound business practices, including without limitation:
  - (i) those relating to the safety of persons and property and their protection from damage, injury or loss, and

- (ii) all workplace laws, regulations, and posting requirements, and
- (iii) implementation of a drug-free workplace policy at least of a standard comparable to, and in compliance with, CFX's Drug-Free Workplace Policy; and
- (iv) compliance with the public records laws of Chapter 119, Florida Statutes.
- 7.3 CONTRACTOR shall be responsible for actual damage and loss that may occur with respect to any and all property located on or about any structures in any way involved in the provision of services by CONTRACTOR, whether such property is owned by CONTRACTOR, CFX, or any other person, to the extent such damage or loss shall have been caused or brought about by the negligent acts or omissions of CONTRACTOR or its employees, agents, officers or subcontractors or any other persons for whom CONTRACTOR may be legally or contractually responsible.
- 7.4 CONTRACTOR shall ensure that all of its activities and the activities of its employees, agents, officers and subcontractors and all other persons for whom CONTRACTOR may be legally or contractually responsible are undertaken in a manner that will minimize the effect on surrounding property and the public. CONTRACTOR shall immediately notify CFX of any material adverse change in CONTRACTOR's financial condition, business, prospects, affairs, or operations, or of such change of any partner, or of such change of any shareholder holding greater than a 10% interest in CONTRACTOR, or of the existence of any material impairment of rights or ability of CONTRACTOR to carry on as its business and operations are currently conducted.
- 7.5 CONTRACTOR shall not make any requirement of any employee, or enter into a non-competition agreement with any employee, whether oral or written, of any kind or nature, that would prohibit CONTRACTOR's employees from leaving CONTRACTOR's employ and taking employment with any successor of CONTRACTOR.

#### 8. ASSIGNMENT AND REMOVAL OF KEY PERSONNEL

A significant factor in the decision of the CFX to award this Contract to the CONTRACTOR is the level of expertise, knowledge and experience possessed by employees of CONTRACTOR, particularly the Principal-In-Charge; Project Manager; Deputy Project Manager, System Design; Deputy Project Manager, System Installation; Manager, Quality Assurance/Quality Control; Manager, Application Development; Database Administrator; Toll Installation and Maintenance Liaison Leader(s); Manager, Training (the "Key Personnel") and CONTRACTOR's covenant to have employees possessing such expertise, knowledge and experience available at all times to assist in the provision of the services. Throughout the Term of this Contract, CONTRACTOR shall employ individuals having significant training, expertise, and experience in the areas or disciplines more particularly set forth in the Statement of Work, together with such other areas of expertise or experience, as may be designated from time to time during the Term of this Contract by the CFX. When the CFX designates an additional area for which expertise or experience shall be required, CONTRACTOR shall use all reasonable and diligent efforts to promptly hire and retain one or more individuals possessing such experience or expertise.

CONTRACTOR shall hire and maintain Key Personnel as employees throughout the Term of the Contract. The identity of the individuals, initially assigned to each of such positions by CONTRACTOR, shall be submitted to CFX and the CFX shall be notified in advance of any changes in the individuals. The Key Personnel shall be committed to performing services on this Contract to the extent required. Key Personnel may be dismissed for unsatisfactory performance or any reason set forth below.

If prior to the second anniversary of the Effective Date of this Contract, CONTRACTOR removes, suspends, dismisses, fires, transfers, reassigns, lays off, discharges, or otherwise terminates any Key Personnel without the prior notification to the CFX, such action shall constitute an event of default by CONTRACTOR hereunder. CONTRACTOR may cure such event of default only by replacing the Key Personnel with another employee having comparable experience and qualifications.

Promptly upon request of CFX, CONTRACTOR shall remove from activities associated with or related to the performance of this Contract any employee whom CFX considers unsuitable for such work. Such employee shall not be reassigned to perform any work relating to the services except with the express written consent of the CFX.

#### 9. INDEMNITY

The CONTRACTOR shall indemnify, defend and hold harmless CFX and all of its respective officers, CONTRACTOR's or employees from actual suits, actions, claims, demands, costs as defined elsewhere herein, expenses (including reasonable attorneys' fees as defined elsewhere herein), judgments, liabilities of any nature whatsoever (collectively, "Claims") arising out of, because of, or due to breach of the Contract by the CONTRACTOR (its subcontractors, officers, agents or employees) or due to any negligent or intentional act or occurrence of omission or commission of the CONTRACTOR (its subcontractors, officers, agents or employees), including without limitation any misappropriation or violation of third party copyright, trademark, patent, trade secret, publicity, or other intellectual property rights or other third party rights of any kind by or arising out of any one or more of the following:

- 9.1 violation of same by CONTRACTOR, its subcontractors, officers, agents or employees,
- 9.2 CFX's use or possession of the CONTRACTOR Property or CONTRACTOR Intellectual Property (as defined herein below),
- 9.3 CFX's full exercise of its rights under any license conveyed to it by CONTRACTOR,
- 9.4 CONTRACTOR's violation of the confidentiality and security requirements associated with the CFX Property and CFX Intellectual Property (as defined herein below),
- 9.5 CONTRACTOR's failure to include terms in its subcontracts as required by this Contract,

- 9.6 CONTRACTOR's failure to ensure compliance with the requirements of the Contract by its employees, agents, officers, or subcontractors, or
- 9.7 CONTRACTOR's breach of any of the warranties or representations contained in this Contract.

CONTRACTOR will not be liable for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of the CFX or any of its officers, agents or employees. The parties agree that 1% of the total compensation to the CONTRACTOR for performance of each task authorized under the Contract is the specific consideration from CFX to CONTRACTOR for CONTRACTOR's indemnity and the parties further agree that the 1% is included in the amount negotiated for each authorized task.

#### 10. PUBLIC RECORDS

Upon receipt of any request by a member of the public for any documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by CONTRACTOR in conjunction with this Contract (including without limitation CONTRACTOR Records and Proposal Records, if and as applicable), CONTRACTOR shall immediately notify the CFX. Thereafter, CONTRACTOR shall follow CFX's instructions with regard to such request. To the extent that such request seeks non-exempt public records, the CFX shall direct CONTRACTOR to provide such records for inspection and copying incompliance with Chapter 119. A subsequent refusal or failure by CONTRACTOR to timely grant such public access will be grounds for immediate, unilateral cancellation of the Contract by CFX.

#### 11. INFORMATION 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.

CONTRACTOR shall protect and shall make no release of any information, data, customer information, system metrics, to anyone outside of the Contract, unless otherwise explicitly authorized by CFX. The CONTRACTOR shall secure all network interfaces and take prudent measures to protect CFX data and information within the CONTRACTOR'S organization from both internal and external potential threats of data theft and misuse.

#### 12. OWNERSHIP OF MATERIALS AND INTELLECTUAL PROPERTY RIGHTS

CFX is and shall be and remain the sole owner of all rights, title, and interest in, to, and associated with all plans, documents, software in all forms, hardware, programs, procedures, specifications, drawings, brochures pamphlets, manuals, flyers, models, photographic or design images, negatives, videos and film, tapes, work product, information, data and other items (all whether in

preliminary, draft, master, final, paper, electronic, or other form), along with the media on which they reside and with which they interface for function or aesthetics, that are generated or developed with respect to and in connection with this Contract and the performance thereof (collectively, the "CFX Property").

CFX's ownership rights apply to all data gathered, processed, stored or otherwise used by the System. CFX shall have unrestricted, free access to all such System data at all times. CFX's rights to all data shall be at no additional cost. The CONTRACTOR shall in a timely manner support all data requests made by CFX.

CFX's ownership of the 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 the CFX's registered trademark name for the CFX's electronic toll collection system, and comprises a portion of the CFX Intellectual Property.

CONTRACTOR, its employees, agents, officers, and subcontractors may not use the 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 the CFX's sole discretion. CONTRACTOR, its employees, agents, officers, and subcontractors' access to and/or use of the CFX Property and CFX Intellectual Property is without any warranty or representation by CFX regarding same.

For all materials listed hereinabove that are not generated or developed under this Contract or performance hereof, but rather are brought in, provided, or installed by CONTRACTOR (collectively, the "CONTRACTOR Property"), and the intellectual property rights associated therewith (collectively, the "CONTRACTOR Intellectual Property"), CONTRACTOR (its employees, officers, agents, and subcontractors, which for purposes of this section shall collectively be referred to as "CONTRACTOR") warrants and represents the following:

- 12.1 CONTRACTOR was and is the sole owner of all right, title and interest in and to all CONTRACTOR Property and CONTRACTOR Intellectual Property; OR
- 12.2 CONTRACTOR has obtained, and was and is the sole holder of one or more freely assignable, transferable, non-exclusive licenses in and to the CONTRACTOR Property and CONTRACTOR Intellectual Property, as necessary to provide and install the CONTRACTOR Property and/or to assign or grant corresponding to CFX all licenses necessary for the full performance of this Contract; and that the CONTRACTOR is current and will remain current on all royalty payments due and payable under any license where CONTRACTOR is licensee; AND
- 12.3 CONTRACTOR has not conveyed, and will not convey, any assignment, security interest, exclusive license, or other right, title, or interest that would interfere in any way with the CFX's use of the CONTRACTOR Property or any license granted to CFX for use of the CONTRACTOR Intellectual Property rights; AND

12.4 Subject to Chapter 119, Florida Statutes (Florida Public Records Act), CONTRACTOR shall maintain the CFX Property and CFX Intellectual Property in strictest confidence and may not transfer, disclose, duplicate, or otherwise use the 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 the 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 the CFX Property and CFX Intellectual Property, CONTRACTOR shall utilize the same standards of protection and confidentiality that CONTRACTOR uses to protect its own property and confidential information, but in no instance less than reasonable care plus the standards set forth anywhere in this Contract.

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

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

- 12.5 The statute of limitations on any action arising out of either party's conduct relating to this section, whether such action may be brought by CFX, CONTRACTOR, or a third party; or
- 12.6 CFX's continued use (notwithstanding any temporary suspension of use) of any CONTRACTOR Property or CONTRACTOR Intellectual Property; and
- 12.7 Notwithstanding sections 12.5 and 12.6, the confidentiality and security provisions contained herein shall survive the term of this Contract for ten (10) years beyond 12.5 and 12.6.

#### 13. CUSTOM SOFTWARE OWNERSHIP AND LICENSING

All custom software provided under this agreement, as the term "custom software" is defined in Volume VI, Appendix "A", including documentation, executable code and source code, will be owned by CFX or licensed to CFX as stated below.

#### 13.1 Custom Software Ownership

The CONTRACTOR shall provide to CFX a license for all custom software and any related software including any product upgrades for the life of the system. The CONTRACTOR or its subcontractor(s) shall grant CFX a non-exclusive, no cost, royalty free, perpetual license for unlimited CFX use of the custom software and documentation including executable code and source code. Such license shall extend to any CFX owned or operated facility. All such software will remain the property of the CONTRACTOR or its subcontractor(s) and all title and rights will remain with the CONTRACTOR or its subcontractor(s) subject to CFX's license. Said license of the CONTRACTOR or its subcontractor(s) shall grant CFX or any third party under contract with CFX the right to modify or change any software (source and executable code) in performance of maintenance and enhancement functions. Any modification of the source code by CFX, its agents, or third party contractors shall nullify and invalidate CONTRACTOR's software warranty for that particular piece of software.

If CFX decides to release licensed custom software during the term of this Contract to any firm specializing in software integration for toll collection systems, it shall provide the CONTRACTOR with sufficient notification to allow the CONTRACTOR to facilitate the execution of a non-disclosure agreement between the owner and the receiving party. CFX shall not release the software and/or source code until the non-disclosure agreement is fully executed. The owner of the software shall act within a reasonable time and fashion to execute the non-disclosure agreement with the receiving party, but in no event shall the owner execution exceed 30 calendar days from owner receipt of non-disclosure agreement signed by the recipient; otherwise the owner waives its right to such non-disclosure agreement. The CONTRACTOR shall include such provision in all CONTRACTOR software subcontracts where CFX will be licensed custom software. The CONTRACTOR and CFX will utilize mutually agreed upon non-disclosure forms. Such non-disclosure agreement shall not be required beyond the term of this Contract.

#### 14. PERMITS, LICENSES, ETC.

Throughout the Term of the Contract, the CONTRACTOR shall, unless otherwise specified, 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.

#### 15. 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 the CFX in accordance with the 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.

#### 16. 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.

#### 17. NOTIFICATION of CONVICTION of CRIMES

CONTRACTOR shall notify the CFX if any of CONTRACTOR's Key Personnel shall be convicted of any crime, whether state or federal, or felony or misdemeanor of any degree. Such notification shall be made no later than thirty (30) days after the conviction, regardless of whether such conviction is appealed.

#### 18. SUBLETTING AND ASSIGNMENT

CFX has selected CONTRACTOR to perform the Services based upon, among other considerations, characteristics and qualifications of CONTRACTOR and its employees. Therefore, CONTRACTOR shall not sublet, sell, transfer, assign, delegate, subcontract, or otherwise dispose of this Contract or any portion thereof, or of the CONTRACTOR's right, title, or interest therein without the written consent of the CFX, which may be withheld in the CFX's sole and absolute discretion. Any attempt by CONTRACTOR to dispose of this Contract as described above, in part or in whole, without CFX's written consent shall be null and void and shall, at CFX's option, constitute a default under the Contract. Notwithstanding the foregoing:

- 18.1 CONTRACTOR may assign its rights to receive payment under this Agreement with CFX's prior written consent, which consent shall not be unreasonably withheld. CFX may assign all or any portion of its rights under this Agreement without consent of or advance notice to CONTRACTOR; and
- 18.2 Subject to the right of CFX to review and approve or disapprove subcontracts, and subject to the compliance by CONTRACTOR with the provisions of this Contract with regard to Key Personnel, CONTRACTOR shall be entitled to subcontract some of the services hereunder to other entities, provided that all subcontracts:
  - (i) shall name CFX as a third party beneficiary and provide that the subcontract is assignable to the CFX (or its successor in interest under the terms of this Contract) without the prior approval of the parties thereto, and that the assignment thereof shall be effective upon receipt by the subcontractor of written notice of the assignment from the CFX. Upon such event, the CFX shall be deemed to assume all rights and obligations of the CONTRACTOR under the subcontract, but only to the extent such rights and obligations accrue from and after the date of the assignment. Without limitation, all warranties and representations of subcontractor shall inure to the benefit of CFX, and

- (ii) shall require the subcontractor to comply with all laws and the SOP Manual, as all may be revised, modified and supplemented from time to time, and must require the subcontractor to carry forms and amounts of insurance satisfactory to the CFX in its sole discretion, and shall provide CFX with certificates of insurance upon request. The CFX shall be listed as an additional insured on all such insurance policies, and copies of correct insurance certificates and policies shall be delivered to the CFX upon request, and
- (iii) shall require the subcontractor to join in any dispute resolution proceeding upon request of CFX, and
- (iv) shall include the same or similar terms as are included in this Contract with respect to subcontractors, providing the CFX with equal or greater protections than herein.

If, during the Term of the Contract, CONTRACTOR desires to subcontract any portion(s) of the work to a subcontractor that was not disclosed by the CONTRACTOR to the 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 the CFX's Director of Procurement requesting approval to enter into such subcontract. Except in the case of an emergency, as determined by the Executive Director or his/her designee, no such subcontract shall be executed by the CONTRACTOR until it has been approved by the CFX Board. In the event of a designated emergency, the CONTRACTOR may enter into such a subcontract with the prior written approval of the Executive Director or his/her designee, but such subcontract shall contain a provision that provides that it shall be automatically terminated if not approved by the CFX Board at its next regularly scheduled meeting.

#### 19. DAMAGES

CFX and the CONTRACTOR recognize that time is an essential element of the Contract, and that such conditions including without limitation: delay in completing the work on time; failure of the System to perform with the required functionality or at required service levels; and/or failure to provide the required level of service for Contract activities such as System Maintenance; will result in damages due to public inconvenience, obstruction to traffic, interference with business, loss of revenues, and increasing of inspection and administrative costs to CFX.

#### 19.1 Liquidated Damages

It is therefore agreed that in view of the difficulty of making a precise determination of actual damages, a sum of money in the amount stipulated in Appendix E of Volume VI, will be charged against the CONTRACTOR for failure to perform within the time required, not as penalty, but as liquidated damages.

#### 19.2 Assessment and Collection of Damages

(i) The Contractor's delay in completing the work in accordance with the baseline schedule and subsequent revisions shall result in a damage to CFX. These damages

will be assessed as Liquidated Damages as indicated herein. The assessment for each applicable milestone, phase or plaza group implementation shall be one thousand dollars (\$1,000.00) per calendar day for each day of delay beyond the scheduled date of completion. Assessment of and collection of payment for such Liquidated Damages will occur upon completion of work the milestone, phase, or plaza group for which the Liquidated Damages occur. Liquidated Damages shall apply to the following completion dates for milestones, phases and plaza groups as provided in the baseline schedule:

- a. Failure to meet the schedule date for Milestone 7 Completion of the System Initial End-to-End Test (SIETET).
- b. Failure to meet the scheduled dates for completion of the Plaza Acceptance Test by individual Plaza group (subset of Milestone 8)
- (ii) Assessment and collection of liquidated damages for failure to meet service level requirements shall occur at the completion of each invoice period (generally monthly).
- (iii) Assessment and collection of actual damages such as for loss of revenues, etc. shall occur at the completion of each invoice period (generally monthly).
- (iv) CFX shall have the right to apply as payment on such liquidated or actual damages any money that is due to the CONTRACTOR by CFX.
- (v) CFX does not waive its right to liquidated or actual damages due under the Contract by allowing the CONTRACTOR to continue and to finish the work, or any part of it, after the expiration of the contract time for a phase including granted time extensions. CFX considers a phase complete when the CONTRACTOR has completed all work and CFX has accepted the work.
- (vi) CFX reserves the right to delay assessment of liquidated and/or actual damages or waive damages in whole or in part at any time if CFX determines such waiver is in its best interest. Any such waiver is at CFX's sole discretion.
- (vii) CFX reserves the right to assess and collect actual damages as a result of poor workmanship or failure of the CONTRACTOR to follow manufacturer's instructions relating to any supplied installed product. This provision includes but is not limited to the Point of Sale (POS) equipment in the event of a compromise that results in damages and fines to CFX which is attributable to the device not being installed, operated or maintained in accordance with the manufacturer's instructions.
- 19.3 Schedule of Liquidated Damages The amounts and descriptions of various warrants for Liquidated Damages are provided throughout the Contract documents, particularly in Volume III, Statement of Work; Volume IV, System Requirements; and in Volume VI, Appendix E, Performance Measures and Service Levels.

#### 19.4 Not used

- 19.5 Permitting CONTRACTOR to Finish Work Permitting the CONTRACTOR to continue and to finish the work, or any part of it, after the expiration of the contract time allowed for a phase, including extensions of time granted to the CONTRACTOR, shall in no way act as a waiver on the part of CFX of the damages due under the Contract.
- 19.6 Completion of Work by CFX In case 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 damages under the contract, but no shall be chargeable for any delay in the final completion of the work by CFX due to any unreasonable action or delay on the part of CFX.
- 19.7 Reduction in Payment for Liquidated or Actual Damages Liquidated or actual damages for days of delay will be charged against the payment(s) due the CONTRACTOR for a Phase before the balance thereof is released and paid to the CONTRACTOR. In the event the balance due the CONTRACTOR for a Phase is insufficient to offset the liquidated damages due CFX, CFX shall have the right of offset against other payments due the CONTRACTOR under other phases of work. When neither offset provision remedies the damages amount due CFX, damages are due CFX upon demand.
- 19.8 Contract Cap on Liquidated Damages related to Appendix E of Volume VI, An overall Contract cap to Liquidated Damages will apply for the duration of this Contract related to the requirements stipulated in Appendix E of Volume VI. After the first month of operations, Liquidated Damages, if any, are capped at a maximum of fifteen percent (15%) of the monthly Contract's invoice. After the second month of operations, Liquidated Damages, if any, are capped at a maximum of thirty percent (30%) of the monthly Contract's invoice. After the third month of operations, Liquidated Damages, if any, are capped at a maximum of forty-five percent (45%) of the monthly Contract's invoice. After the fifth month of operations, Liquidated Damages, if any, are capped at a maximum of seventy-five percent (75%) of the monthly Contractor's invoice. After the sixth month of operations and thereafter, Liquidated Damages, if any, are capped at a maximum of ninety percent (90%) of the monthly Contractor's invoice.
- 19.9 Contract Cap on Actual Damages The Contract cap to Actual Damages is divided into two phases as follows:

#### (i) Prior to Final System Acceptance

 Cap for toll revenue losses is capped at the amount of the lost toll revenue due to any issue that results in a loss of revenues. (Note: for current toll revenue and traffic information, refer to CFX's monthly statistical report which can be found on CFX's website: https://www.cfxway.com/CorporateInformation/FinancialReportsampStatistics/StatisticalReports.aspx)

- 2) Cap for non-toll revenue losses is capped at five million dollars (\$5,000,000.00).
- (ii) After Final System Acceptance

The cap is ten million dollars (\$10,000,000.00).

19.10 At its sole discretion, CFX may waive Liquidated Damages and assess the Contractor Actual Damages to recover revenue loss due to system malfunctioning and the costs associated with researching such system malfunctioning, which may include but not limited to labor costs, consultant costs, and any other miscellaneous costs.

#### 20. DISPUTES

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

#### 21. REMEDIES

In addition to any remedies otherwise available to the CFX under law, upon an uncured default the CFX shall have the right to appropriate or use any or all materials and equipment on the sites where work is or was occurring, and may enter into agreements with others for the completion of the work under the Contract, or may use other methods which in the opinion of the CFX are required for Contract completion. All costs and charges incurred by the CFX because of or related to the CONTRACTOR's default including, but not limited to, the costs of completing Contract performance shall be charged against the CONTRACTOR. If the expense of Contract completion exceeds the remaining sum which would have been payable under the balance of the Contract, CONTRACTOR shall be liable to the CFX for the difference. On a Contract terminated for default, in no event shall the CFX have any liability to the CONTRACTOR for expenses or profits related to unfinished work, or for CFX's use of any CONTRACTOR materials or equipment on the work sites, including without limitation the CONTRACTOR Property and CONTRACTOR Intellectual Property.

#### 22. PREVAILING PARTY ATTORNEY'S FEES

If any contested claim arises hereunder or relating to the Contract (or CONTRACTOR's work hereunder), and either party engages legal counsel, the prevailing party in such dispute, as "prevailing party" is hereinafter defined, shall be entitled to recover reasonable attorneys' fees and costs as defined herein, from the non-prevailing party.

In order for CONTRACTOR to be the prevailing party, CONTRACTOR must receive an adjusted judgment or adjusted award equal to at least eighty percent (80%) of its contested claims filed with CFX, failing which CFX will be deemed the prevailing party for purposes of this Contract.

For purposes of determining whether the judgment of award is eighty percent (80%) or more of the contested claims, "adjusted award" or "adjusted judgment" shall mean the amount designated in the award or final judgment as compensation to CONTRACTOR for its claims (exclusive of interest, cost or expenses), less: (i) any amount awarded to CFX (exclusive of interest, costs or expenses) on claims asserted by CFX against CONTRACTOR in connection with the Contract, and (ii) any amount offered in settlement prior to initiation of CONTRACTOR litigation (exclusive of interest, cost or expense), which for purposes of enforcing this section only shall be admissible into evidence.

The term "contested claim" or "claims" shall include "Claims" as defined in Section 9, as well as the initial written claim (s) submitted to CFX by CONTRACTOR (disputed by CFX) which have not otherwise been resolved through ordinary close-out procedures of the Contract prior to the initiation of litigation. CONTRACTOR claims or portions thereof, which CFX agrees or offers to pay prior to initiation of litigation, shall not be deemed contested claims for purposes of this provision. If CONTRACTOR submits a modified, amended or substituted claim after its original claim and such modified, amended or substituted claim(s) is for an amount greater than the prior claim(s), the higher amount shall be the claim(s) for purposes of determining whether the award is at least eighty percent (80%) of CONTRACTOR's claim(s).

Attorneys' fees and costs awarded to the prevailing party shall mean reasonable fees and costs incurred in connection with and measured from the date a claim is initially submitted to CFX through and including trial, appeal and collection. In the circumstance where an original claim is subsequently modified, amended or a substituted claim is filed therefore, fees and costs shall accrue from the date of the first written claim submitted, regardless of whether the original or subsequent claim amount is ultimately used in determining if the judgment or award is at least eighty percent (80%) of the cumulative claims.

"Attorneys' fees" shall include but not be limited to fees and charges of attorneys, paralegals, legal assistants, attorneys' CONTRACTOR's, expert witnesses, court reporters, photocopying, telephone charges, travel expenses, or any other charges, fees, or expenses incurred through use of legal counsel, whether or not such fees are provided by statute or contained in State-Wide guidelines, and shall apply to any pretrial fees (whether or not an action is filed), trial, appeal, collection, bankruptcy, arbitration, mediation, or administrative proceedings arising out of this Contract.

"Costs" shall include but not be limited to any filing fees, application fees, expert witnesses' fees, court reporters' fees, photocopying costs, telephone charges, travel expenses, or any other charges, fees, or expenses incurred whether or not legal counsel is retained, whether or not such costs are provided by statute or contained in State-Wide guidelines, and shall apply to any pretrial costs (whether or not an action is filed), trial, appeal, collection, bankruptcy, arbitration, mediation or administrative proceeding arising out of this Contract.

As a condition precedent to filing a claim with any legal or administrative tribunal, CONTRACTOR shall have first submitted its claim (together with supporting documentation) to CFX, and CFX shall have had sixty (60) days thereafter within which to respond thereto.

The purpose of this provision is to discourage frivolous or overstated claims and, as a result thereof, CFX and CONTRACTOR agree that neither party shall avail itself of Section 768.79, Florida Statutes, or any other like statute or rule involving offers of settlement or offers of judgment, it being understood and agreed that the purpose of such statute or rule are being served by this provision.

Should this section be judged void, unenforceable or illegal, in whole or in substantial part, by a court of competent jurisdiction, this section shall be void in its entirety and each party shall bear its own attorneys' fees and costs.

#### 23. 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.

#### 24. 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.

#### 25. RELATIONSHIPS

CONTRACTOR acknowledges that no employment relationship exists between AUTHORTIY and CONTRACTOR or CONTRACTOR's employees. CONTRACTOR shall be responsible for all direction and control of its employees and payment of all wages and salaries and other amounts due its employees. CONTRACTOR shall be responsible for all reports and obligations respecting such employees, including without limitation social security tax and income tax withholding, unemployment compensation, workers compensation, and employment benefits.

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

#### 26. 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.

#### 27. WAGE RATES AND TRUTH-IN-NEGOTIATIONS CERTIFICATE

The CONTRACTOR hereby certifies, covenants and warrants that wage rates and other factual unit costs as shown in attached documentation supporting the compensation are accurate, complete and current as of the date of this Contract. It is further agreed that said price shall be adjusted to exclude any significant sums where the 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 the CFX, whichever is later.

#### 28. 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:

- 28.1 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
- 28.2 Payment to CONTRACTOR for satisfactory work performed or for termination expenses, if applicable; and
- 28.3 Prohibition on non-competition agreements of CONTRACTOR's employees with respect to any successor of CONTRACTOR; and
- 28.4 Obligations upon expiration or termination of the Contract, as set forth in Section 27; and

28.5 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.

#### 29. OBLIGATIONS UPON EXPIRATION OR TERMINATION OF CONTRACT

- 29.1 Immediately upon expiration or termination of this Contract: CONTRACTOR shall submit to CFX a report containing the last known contact information for each subcontractor or employee of CONTRACTOR who performed work under the Contract; and
- 29.2 CONTRACTOR shall initiate settlement of all outstanding liabilities and claims arising out of the Contract and any subcontracts or vending agreements to be canceled. All settlements shall be subject to the approval of CFX.

IN WITNESS WHEREOF, the authorized signatures named below have executed this Contract on behalf of the parties as of the day and year first above written. This Contract was awarded by the CFX's Board of Directors at its meeting on May 14, 2015.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY	
By: _ Aude Mille	
Director of Procurement	
Print Name: Claude Miller	
	!
TRANSCORE LP.	
By: Tray Philip	İ
Print Name: Tracy Marks	
Title: President	
ATTEST: MUST/a	Seal)
Approved as to form and execution, only.	MARCH 3, 1994
General Counsel for the CFX	

### CONSENT AGENDA ITEM #22

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

#### **MEMORANDUM**

TO: CFX Board Members

FROM: Aneth Williams Ansth Williams

**Director of Procurement** 

DATE: February 21, 2021

SUBJECT: Approval of Purchase Orders to Transportation Control Systems

for Systemwide UPS Battery Replacement

Project No. 599-560

An Invitation to Bid for the above-referenced project was advertised on January 24, 2021. Responses to the Invitation were received from three (3) bidders by the February 17, 2021 deadline.

Bid results were as follows:

	<u>Bidder</u>	Bid Amount
1.	Transportation Control Systems	\$178,800.00
2.	Temple, Inc.	\$179,600.00
3.	Integrated Synergy, Inc.	\$209,800.00

Included in the Five-Year Work Plan is \$250,000.00.

The purchase of UPS batteries will be used to replace existing equipment that has reached the end of useful life.

The Procurement Department has evaluated the bids and has determined the bid from Transportation Control Systems to be responsible and responsive to the bidding requirements. Board approval to issue purchase orders to Transportation Control Systems totaling \$178,800.00 for 800 Power Sonic–PG-12V103 FR batteries and 400 battery shelves is recommended.

These purchase orders are included in the Five-Year Work Plan.

Reviewed by:

Bryan Homayouni, PE

Manager of Traffic Operations

Glenn Pressimone, PE

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



E.
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** 

Michael Carlisle, Director of Accounting and Finance FROM:

March 3, 2021 March 3 DATE:

RE: January 2021 Financial Reports

Attached please find the January 2021 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 JANUARY 31, 2021 AND YEAR-TO-DATE

		FY 21 MONTH ACTUAL	FY 21 MONTH BUDGET	_ Y	FY 21 EAR-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
REVENUES											
TOLLS	\$	39,996,087	\$ 41,300,000	\$	266,207,943	\$	213,900,000	\$	52,307,943	24.5%	-8.3%
FEES COLLECTED VIA UTN/UTC'S AND PBP'S	3	511,403	629,900		3,933,336		4,450,633		(517,298)	-11.6%	-40.6%
TRANSPONDER SALES		100,112	77,200		556,645		520,850		35,795	6.9%	8.2%
OTHER OPERATING		108,426	168,714		618,608		852,895		(234,286)	-27.5%	-42.4%
INTEREST		337,265	506,132		6,942,474		3,536,792		3,405,682	96.3%	28.0%
MISCELLANEOUS		61,942	61,929		434,927		433,505	_	1,422	0.3%	-0.3%
TOTAL REVENUES	\$	41,115,236	\$ 42,743,875	\$	278,693,932	\$	223,694,675	\$	54,999,257	24.6%	-8.5%
O M & A EXPENSES											
OPERATIONS	\$	4.383.700	\$ 4,346,619	\$	29,434,223	\$	31,618,856	\$	2.184.633	6.9%	-15.9%
MAINTENANCE	•	2.030.836	1.741.034		8.163.272	·	8.375.206	·	211.934	2.5%	1.1%
ADMINISTRATION		749,308	763,904		4,638,593		4,866,745		228,152	4.7%	4.4%
OTHER OPERATING		201,684	228,483		1,054,027		1,199,537	_	145,510	12.1%	19.5%
TOTAL O M & A EXPENSES	\$	7,365,528	\$ 7,080,040	\$	43,290,115	\$	46,060,344	\$	2,770,230	6.0%	-10.5%
NET REVENUES BEFORE DEBT SERVICE	\$	33,749,708	\$ 35,663,835	\$	235,403,818	\$	177,634,331	\$	57,769,487	32.5%	-8.1%
COMBINED NET DEBT SERVICE	\$	18,204,558	\$ 18,240,647	\$	127,807,259	\$	127,887,197	\$	79,938	0.1%	17.1%
NET REVENUES AFTER DEBT SERVICE	\$	15,545,150	\$ 17,423,187	\$	107,596,558	\$	49,747,134	\$	57,849,425	116.3%	-26.8%

The monthly Treasurer's Report is provided as interim information for management's use. It is prepared on a modified cash basis and has not been audited, nor should it be deemed final. For audited financial statements, please see CFX's Comprehensive Annual Financial Reports.

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY SUMMARY OF OPERATIONS, MAINTENANCE AND ADMINISTRATION COMPARISON OF ACTUAL TO BUDGET FOR FISCAL YEAR 2021 FOR THE MONTH ENDING JANUARY 31, 2021 AND YEAR-TO-DATE

	FY 2021 ACTUAL		_	FY 2021 BUDGET		VARIANCE		FY 21 YEAR-TO-DATE % VARIANCE
Operations	\$	29,434,223		\$	31,618,856	\$	2,184,633	6.9%
Maintenance		8,163,272			8,375,206		211,934	2.5%
Administration		4,638,593			4,866,745		228,152	4.7%
Other Operating		1,054,027	_		1,199,537		145,510	12.1%
Total O M & A	\$	43,290,115		\$	46,060,344	\$	2,770,230	6.0%
Capital Expenditures								
Operations	\$	-		\$	50,000	\$	50,000	100.0%
Maintenance		5,512			19,000		13,488	71.0%
Administration			_		5,417		5,417	100.0%
Total Capital Expenditures	\$	5,512		\$	74,417	\$	68,905	92.6%



# Central Florida Expressway Authority Operations - Comparison of Actual to Budget For the Seven Months Ending January 31, 2021

	YTD Actual	YTD Budget	Budget Variance	Variance Percentage
Tall Operations	241 110	357,439	16,320	4.57%
Toll Operations	341,119	•	46,602	1.25%
Image Review	3,683,105	3,729,707		37.34%
Special Projects	53,220	84,940	31,719	
Information Technology	3,168,215	3,232,379	64,164	1.99%
E-PASS Service Center	9,702,138	10,666,302	964,164	9.04%
E-PASS Business Services	83,825	92,164	8,338	9.05%
Public Outreach/Education	1,152,315	1,253,045	100,730	8.04%
Subtotal CFX	\$18,183,937	\$19,415,976	\$1,232,038	<u>6.35%</u>
Plazas	11,250,286	12,252,880	1,002,595	8.18%
Subtotal Toll Facilities	\$11,250,286	\$12,252,880	\$1,002,595	8.18%
Total Operations Expenses	\$29,434,223	\$31,668,856	\$2,234,633	7.06%



# Central Florida Expressway Authority Maintenance - Comparison of Actual to Budget For the Seven Months Ending January 31, 2021

	YTD Actual	YTD Budget	Budget Variance	Variance Percentage
Maintenance Administration	1,516,458	1,560,999	44,541	2.85%
Traffic Operations	1,684,990	1,838,680	153,691	8.36%
Routine Maintenance	4,967,336	4,994,527	27,191	0.54%
Total Maintenance Expenses	\$8,168,784	\$8,394,206	\$225,423	<u>2.69%</u>



# Central Florida Expressway Authority Administration - Actual to Budget by Cost Center For the Seven Months Ending January 31, 2021

	YTD Actual	YTD Budget	Budget Variance	Variance Percentage
General	500,152	505,970	5,819	1.15%
Administrative Services	1,226,052	1,244,949	18,897	1.52%
Communications	325,703	351,856	26,154	7.43%
Human Resources	165,706	178,596	12,890	7.22%
Supplier Diversity	108,537	113,214	4,677	4.13%
Accounting	991,431	1,041,820	50,389	4.84%
Construction Administration	35,429	36,604	1,175	3.21%
Risk Management	77,780	93,362	15,581	16.69%
Procurement	347,039	357,066	10,027	2.81%
Legal	360,773	398,902	38,129	9.56%
Internal Audit	245,278	261,122	15,844	6.07%
525 Magnolia	22,654	23,959	1,305	5.45%
Engineering	42,256	53,622	11,366	21.20%
Records Management	189,803	211,119	21,316	10.10%
Grand Total Expenses	\$4,638,593	\$4,872,162	\$233,569	4.79%
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# CENTRAL FLORIDA EXPRESSWAY AUTHORITY CALCULATION OF NET REVENUES AS DEFINED BY THE BOND RESOLUTIONS PREVIOUS YEAR BUDGET TO ACTUAL COMPARISON FOR THE MONTH ENDING JANUARY 31, 2021 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
REVENUES							
TOLLS	\$ 266,207,943	\$ 213,900,000	\$ 52,307,943	\$ 290,461,347	\$ 275,851,584	\$ 14,609,763	\$ 37,698,180
FEES COLLECTED VIA UTN/UTC'S AND PBP'S	3,933,336	4,450,633	(517,298)	6,619,664	5,303,329	1,316,335	(1,833,633)
TRANSPONDER SALES	556,645	520,850	35,795	514,646	428,807	85,839	(50,044)
OTHER OPERATING	618,608	852,895	(234,286)	1,073,541	431,846	641,695	(875,981)
INTEREST	6,942,474	3,536,792	3,405,682	5,422,553	4,057,555	1,364,998	2,040,684
MISCELLANEOUS	434,927	433,505	1,422	436,419	425,915	10,504	(9,082)
TOTAL REVENUES	\$ 278,693,932	\$ 223,694,675	\$ 54,999,257	\$ 304,528,170	\$ 286,499,036	\$ 18,029,134	\$ 36,970,123
O M & A EXPENSES							
OPERATIONS	\$ 29,434,223	\$ 31,618,856	\$ 2,184,633	\$ 34,992,266	\$ 36,108,017	\$ 1,115,751	\$ 1,068,882
MAINTENANCE	8,163,272	8,375,206	211,934	8,075,925	9,246,057	1,170,132	(958,198)
ADMINISTRATION	4,638,593	4,866,745	228,152	4,444,613	4,944,607	499,994	(271,842)
OTHER OPERATING	1,054,027	1,199,537	145,510	882,263	1,313,779	431,516	(286,006)
TOTAL O M & A EXPENSES	\$ 43,290,115	\$ 46,060,344	\$ 2,770,230	\$ 48,395,067	\$ 51,612,460	\$ 3,217,393	\$ (447,163)
NET REVENUES BEFORE DEBT SERVICE	\$ 235,403,818	\$ 177,634,331	\$ 57,769,487	\$ 256,133,103	\$ 234,886,576	\$ 21,246,527	\$ 36,522,960
COMBINED NET DEBT SERVICE	\$ 127,807,259	\$ 127,887,197	\$ 79,938	\$ 109,157,009	\$ 110,229,232	\$ (1,072,223)	\$ 1,152,161
NET REVENUES AFTER DEBT SERVICE	\$ 107,596,558	\$ 49,747,134	\$ 57,849,425	\$ 146,976,094	\$ 124,657,344	\$ 22,318,750	\$ 35,530,675

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY CALCULATION OF NET REVENUES AS DEFINED BY THE BOND RESOLUTIONS PREVIOUS YEAR COMPARISON FOR THE MONTH ENDING JANUARY 31, 2021 AND YEAR-TO-DATE

	 FY 21 MONTH ACTUAL	ONTH I		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	
REVENUES											
TOLLS	\$ 39,996,087	\$	43,996,109	\$	(4,000,022)	\$	266,207,943	\$	290,461,347	\$	(24,253,404)
FEES COLLECTED VIA UTN/UTC'S AND PBP'S	511,403		1,158,179		(646,776)		3,933,336		6,619,664		(2,686,328)
TRANSPONDER SALES	100,112		75,202		24,910		556,645		514,646		41,999
OTHER OPERATING	108,426		192,870		(84,444)		618,608		1,073,541		(454,933)
INTEREST	337,265		638,731		(301,466)		6,942,474		5,422,553		1,519,921
MISCELLANEOUS	 61,942		62,756		(814)	_	434,927		436,419		(1,492)
TOTAL REVENUES	\$ 41,115,236	\$	46,123,847	\$	(5,008,611)	\$	278,693,932	\$	304,528,170	\$	(25,834,238)
O M & A EXPENSES											
OPERATIONS	\$ 4,383,700	\$	7,909,726	\$	(3,526,026)	\$	29,434,223	\$	34,992,266	\$	(5,558,043)
MAINTENANCE	2,030,836		1,887,199		143,637		8,163,272		8,075,925		87,347
ADMINISTRATION	749,308		770,568		(21,260)		4,638,593		4,444,613		193,980
OTHER OPERATING	 201,684		207,984		(6,300)	_	1,054,027		882,263		171,764
TOTAL O M & A EXPENSES	\$ 7,365,528	\$	10,775,477	\$	(3,409,949)	\$	43,290,115	\$	48,395,067	\$	(5,104,952)
NET REVENUES BEFORE DEBT SERVICE	\$ 33,749,708	\$	35,348,370	\$	(1,598,662)	\$	235,403,818	\$	256,133,103	\$	(20,729,285)
COMBINED NET DEBT SERVICE	\$ 18,204,558	\$	18,684,792	\$	(480,234)	\$	127,807,259	\$	109,157,009	\$	18,650,250
NET REVENUES AFTER DEBT SERVICE	\$ 15,545,150	\$	16,663,578	\$	(1,118,428)	\$	107,596,558	\$	146,976,094	\$	(39,379,536)

# E.3.

**Executive Director's Report** 

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

### Executive Director Report March 2021

#### **COMMUNITY PARTNERSHIPS**

#### CFX/Orange County Public Schools STEM Learning Days

CFX is developing curriculums for three hands-on learning days for Orange County Public Schools during the 2021/2022 school year. A survey of high school STEM teachers identified three main STEM topics of interest:

- 1) CFX solar projects and ASPIRE expressway charging pilot project
- 2) UCF ATTAIN and BEEP autonomous shuttle systems
- 3) CFX toll technology, SunTrax and Regional Traffic Management Center

CFX staff and consultants hope to provide more learning day opportunities to other counties throughout our jurisdiction as the program develops.

#### <u>Orlando Business Journal Business of Transportation Event</u>

I joined my transportation colleagues on February 11 for a virtual panel discussion on the future of transportation in Central Florida. Safe transport and the impacts of the pandemic on the mobility industry were discussed.

#### CFX PROFESSIONAL DEVELOPMENT

#### **Toastmasters**

CFX will host its first Toastmasters virtual event on March 25, 2021. CFX Administration Building staff worked to organize a chapter to help everyone practice and improve their presentation skills while providing networking opportunities. The inaugural officers are:

President - Taylor Williams Vice President - Kendra Howard Secretary - Brent Poole

#### TRANSPORTATION PARTNERSHIPS

#### Brightline

The Florida Department of Transportation and the Central Florida Expressway Authority extended lease negotiations with Brightline Trains, LLC for intercity passenger rail service from Orlando to Tampa. The extension letter is attached and requires a list of requirements to be met prior to execution of a lease agreement. Negotiations are extended through July 31, 2021. Brightline has agreed to provide updates and obtain input from the CFX Board at each Board meeting from now until the end of the extension.

#### DASHBOARD

#### Wrong Way Driving Program

In January, there were 10 detections system-wide with 8 of the 10 detections resulting in documented turn arounds. Details of the remaining events are listed below:

SR 417 NB Exit 34 at SR 50; Sunday 1/24/2021 6:31 AM

A black sedan was observed traveling up the ramp in the wrong direction. The Regional Traffic Management Center activated the dynamic message signs notifying right way drivers of the wrong way driving event. The Regional Traffic Management Center also notified the Florida Highway Patrol. The Regional Traffic Management Center confirmed that the vehicle self-corrected at the end of the ramp to enter the mainline in the correct direction. There were no citations or crashes associated with this event.

SR 408 EB Exit 17 at Chickasaw Trail; Monday 1/25/2021 9:36 PM A black sedan was observed traveling up the ramp in the wrong direction. The Regional Traffic Management Center confirmed that the vehicle self-corrected at the end of the ramp to enter the mainline in the correct direction (EB). 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 continues to be challenging. The most impactful change to service levels has been a staggered seating plan to ensure that each customer service agent has their own space. While we have been able to partially offset this by converting conference rooms to customer service agent stations, there is not enough space to allow staffing to match peak call volumes.

We are pleased to report that we continue to make progress with our remote agent plans. We now have 13 customer service agents working remotely. This number will continue to grow and allow us to add more staff and bring our service levels back on target.

We are also exploring the new capabilities within our upgraded phone system to improve customer experience. For example, features such as Virtual Hold allow callers to receive a call back instead of waiting in queue. We are continuing to focus efforts on improving and expanding customer self-service options.

#### PRESENTATIONS

March 2, 2021: People of Lockhart Neighborhood Association

SR 414 Expressway Extension PD&E

March 10, 2021: Virtual Public Meeting: Northeast Connector Expressway

Phase 1 PD&E Study

#### **MEETINGS**

February 11, 2021: Master Plan 2045: Seminole County

February 16, 2021: Master Plan 2045: Brevard County/Space Coast TPO

February 16, 2021: Master Plan 2045: Florida Turnpike Enterprise

February 17, 2021: Master Plan 2045: Florida Department of Transportation

February 24, 2021: MetroPlan Community Advisory Committee

February 24, 2021: Lake Sumter MPO Governing Board

February 25, 2021: MasterPlan 2045: Polk TPO

February 26, 2021: MetroPlan Technical Advisory Committee

February 26, 2021: MetroPlan Transportation Systems Management & Ops

March 1, 2021: Master Plan 2045: Duke Energy

March 4, 2021: MetroPlan Municipal Advisory Committee

March 8, 2021: Florida Automated Vehicle Summit Host Committee March 8, 2021: Space Coast TPO Technical Advisory Committee

March 8, 2021: Master Plan 2045: City of Orlando

March 9. 2021: Environmental Advisory Group Meeting for Osceola/Brevard

County Connectors Concept, Feasibility & Mobility Study

March 9, 2021: Project Advisory Group Meeting for Osceola/Brevard County

Connectors Concept, Feasibility & Mobility Study

March 10, 2021: MetroPlan Governing Board

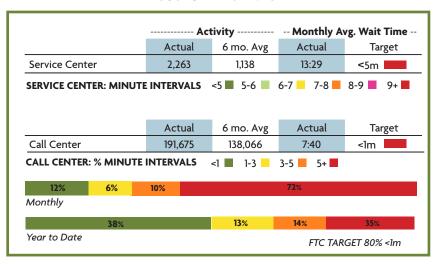
March 10, 2021: Space Coast TPO Governing Board



### PERFORMANCE DASHBOARD JANUARY 2021

Fiscal year runs from July 1-June 30

#### **CUSTOMER SERVICE**



#### WRONG WAY DRIVING (WWD)

Month	JUNE	JULY	AUG	SEPT	ост	NOV	DEC	JAN
Total Vehicles Detected	10	19	12	14	5	13	12	10
Documented Turn Arounds	9	18	11	13	4	12	11	8

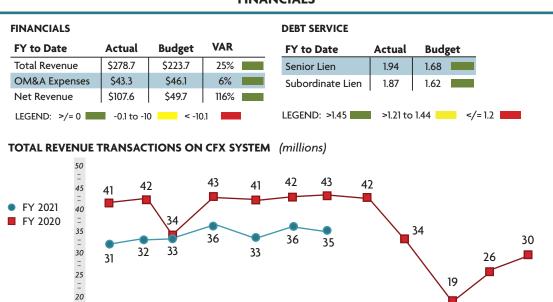
#### **RELOAD CUSTOMER SERVICE LANE ACTIVITY**

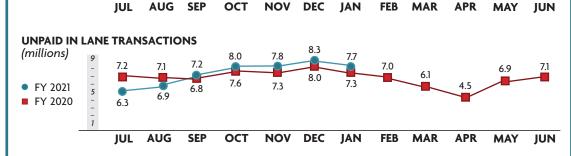


#### PROGRESS OF MAJOR CONSTRUCTION PROJECTS

	Contract (millions)	Spent (millions)	% Time	% Spent	VAR	Contract Completion Date
SR 528 / SR 436 Interchange Improvements	\$105.7	\$42.4	18%	40%		Feb. 2023
SR 538 Widening, Ronald Reagan Pkwy to Cypress Pkwy	\$92.6	\$1.8	8%	2%		Nov. 2023
SR 417 Widening, International Dr. to John Young Pwky	\$81.6	\$0.0	0%	0%		Oct. 2023
SR 417 Widening, John Young Pkwy to Landstar Blvd.	\$116.8	\$0.0	0%	0%		TBD
LEGEND: % Time - % Spent ≤ 10 11-20 ≥	Contract (millions)	Spent (millions)	Lanes Complet 332/415	C 0.	. VA	Lanes AR Completion Date
Toll System Upgrade	\$54.4	\$38.3	80%	89%	6	March 2021
LEGEND: % Lanes Complete - % Lanes Goal >/= 0 -0.	1 to -10	< -10.1	•			

#### **FINANCIALS**







RON DESANTIS GOVERNOR 605 Suwannee Street Tallahassee, FL 32312

KEVIN J. THIBAULT, P.E. SECRETARY

March 1, 2021

Mr. Patrick Goddard President Brightline 161 NW 6 Street, Suite 900 Miami, FL 33136

Re: Sixth Request for Extension of Lease Negotiations—Leasing of Department and Central Florida Expressway Authority Rights of Way for an Intercity Passenger Rail System

#### Dear Mr. Goddard:

Thank you for Brightline Trains, LLC (Brightline)'s October 6, 2020 response to the Florida Department of Transportation (Department)'s September 11, 2020 correspondence seeking additional information in support of Brightline's request to restart the currently suspended lease negotiations. As requested by the Department, Brightline provided responsive information regarding its current progress and a planned schedule of future activities, as well as re-submitting its proposed draft lease agreement modeled on the existing lease agreement for certain portions of the State Road (SR) 528 corridor for intercity passenger rail service between Orlando and Miami.

While the Department appreciates the information provided in your letter and attached exhibits, there are still some unanswered questions regarding implementation of the Orlando to Tampa route. The Department is willing to enter into an additional lease extension, which shall conclude no later than July 31, 2021, in accordance with the items listed below.

#### Terms to be Negotiated Prior to Lease Execution

The Department is amenable to one final extension of negotiations. The items listed below must be negotiated to the Department's satisfaction prior to the conclusion of negotiations. Successful negotiation of the terms of these items will serve as a condition precedent to the execution of any lease agreement:

- Agree that Brightline will submit a ridership and toll diversion study and analysis with updated traffic and methodology and documentation acceptable to CFX and Florida's Turnpike Enterprise;
- Agree to the method that will be used for Central Florida Expressway Authority (CFX) and the Department to recover any loss of toll revenue due to the construction and operation of the Brightline system;
- Agree to provide a Lease Valuation that addresses the concerns raised with the previously submitted study;
- Execute an agreement with the Department that meets the requirements for use of the Central Florida Rail Corridor (CFRC) defined in the September 11, 2020 letter to Brightline;
  - This includes obtaining a resolution from the Central Florida Commuter Rail
     Commission that concurs with the agreement;
- Obtain a resolution from Greater Orlando Aviation Authority (GOAA), stating that it continues to support the intercity passenger rail connection between Orlando and Tampa;
- Obtain a written response from the Federal Railroad Administration (FRA) stating that:
  (1) the project will be handled as a reevaluation of the original Record of
  Decision/Environmental Impact Statement, and that it will consult with the Department
  throughout the reevaluation process; or (2) if FRA determines that any portion of the
  project will be handled as a separate class of action, provide a written response from FRA
  stating the class of action and confirming that the Department will be consulted on that
  project.
- Agree that Brightline will develop 15% plans for review and concurrence by the Department and CFX on the location and dimensions of the Brightline corridor;
- Agree that Brightline will submit 30%, 60%, 90% and final design plans for comment by the Department with final design subject to approval by the Department; and

The Department anticipates that negotiations will conclude with the execution of a lease agreement, provided that the negotiations appropriately address the above-listed items. The Department believes the best course forward would be a phased lease approach with appropriate milestones and deadlines contained within the lease.

#### The RFP's Requirements Will Guide Lease Terms and Conditions

Ultimately, the Department's primary interest is ensuring consistency with the purpose of the Request for Proposals (RFP), specifically advancement of the entire Orlando to Tampa portion of the rail project. To realize the Intercity Passenger Rail System, the Department will require that our negotiations include the development of enforceable milestones tying the service operations from Orlando International Airport to Disney Springs and the completion of the full connection to Tampa. Further, it should be recognized that establishing conditions for fully satisfying the requirements of the RFP will be a condition precedent to finalizing and executing the phased lease. Finally, although Brightline's proposed lease agreement is modeled after the 2018 lease for certain portions of the SR 528 corridor, all parties agree that the corridor contemplated for the

Mr. Patrick Goddard March 1, 2021 Page 3

Agreed and Acknowledged:

Print Name: Patrick Goddard

Title: President/CEO

Date: March 1, 2021

Brightline Trains, LLC

construction and operation of intercity rail between Orlando and Tampa is unique and complex. Therefore, we anticipate revisions to the proposed lease to address those complexities.

#### Lease Negotiations Are Extended Through July 31, 2021

Through this letter, I am confirming the Department's consent to one final extension of lease negotiations. Please confirm Brightline's acceptance of this extension by returning a copy of this letter signed in the space provided below, no later than March 10, 2021. It is the Department's understanding that CFX concurs with this extension. By copy of this letter, the Department requests that CFX confirm its agreement by returning a copy signed by an authorized representative of CFX in the space provided below. Upon full execution, please immediately contact me to resume and conclude negotiations.

	Sincerely,
1	Salth
l	Brad Thoburn
	Assistant Secretary for Strategic Development
	Agreed and Acknowledged:
	Central Florida Expressway Authority
	Signature:

Date: 3-1-2

F.

Regular Agenda Items

# F. 1.



# brightline

Michael Cegelis Central Florida Expressway Authority

March 11, 2021





BOCA RATON

FT. LAUDERDALE

**AVENTURA** 

MIAMICENTRAL O

#### Connecting two of the largest and most congested markets in the nation

Three completed & operational stations: Miami Central, Fort Lauderdale and West Palm Beach

49%

Two additional In-Line stations underway: Aventura and Boca Raton

- Orlando extension and station under construction:
  - **Orlando International Airport**
- Engineering underway for extension to Tampa

1000+

\$2.7B man-hours worked to date workers on the job complete investment \*\*\*\*

**2.7mm** 

6

#### **Orlando Construction Update**

- Vehicle Maintenance Facility steel structure erection
- Tug Road 4 along Jeff Fuqua Blvd.
- Track work from Cocoa to West Palm Beach











#### Tampa Extension - 85-miles from OIA-Tampa

- Stations proposed for Tampa and Disney Springs, possibly Meadow Woods
- FDOT deadline, July 31, 2021:
  - Establish toll diversion and lease valuation protocols
  - Execute agreement for use of CFRC (SunRail corridor),
     including concurrence from CFCRC
  - Resolution of Support from GOAA
  - Written statement from FRA outlining NEPA Class of Action
  - Approval from CFX and FDOT on the location and dimensions for use of their corridors (from 15% design)
  - Commit to 30/60/90% design reviews with CFX and FDOT



ON DESANTIS GOVERNOR nnee Street KEVIN J. THIBAU e, FL 32312 SECRETAR

March 1, 2021

Mr. Patrick Goddard President Brightline 161 NW 6 Street, Suite 900 Miami, FL 33136

Re: Sixth Request for Extension of Lease Negotiations—Leasing of Department and Central Florida Expressway Authority Rights of Way for an Intercity Passenger Rail

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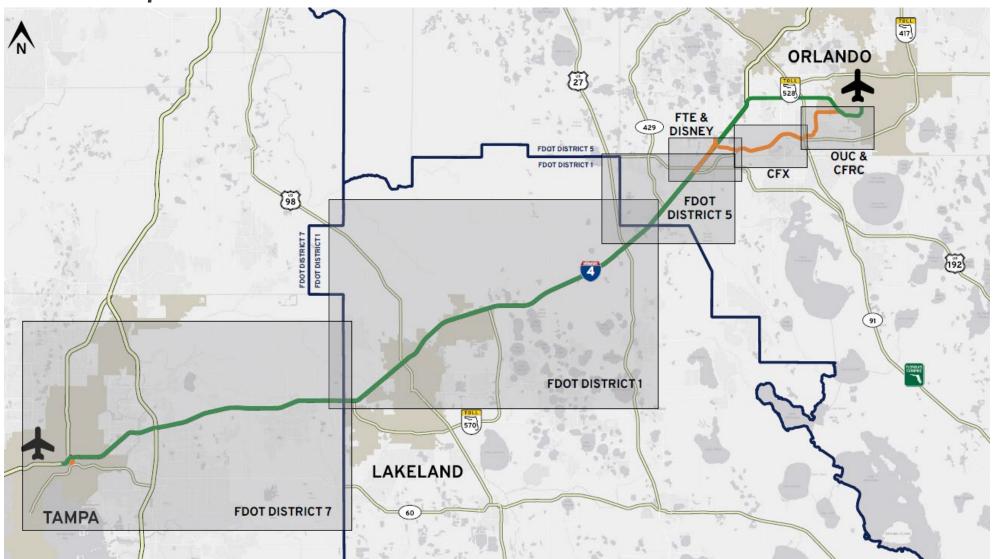
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#### Tampa Extension – Status

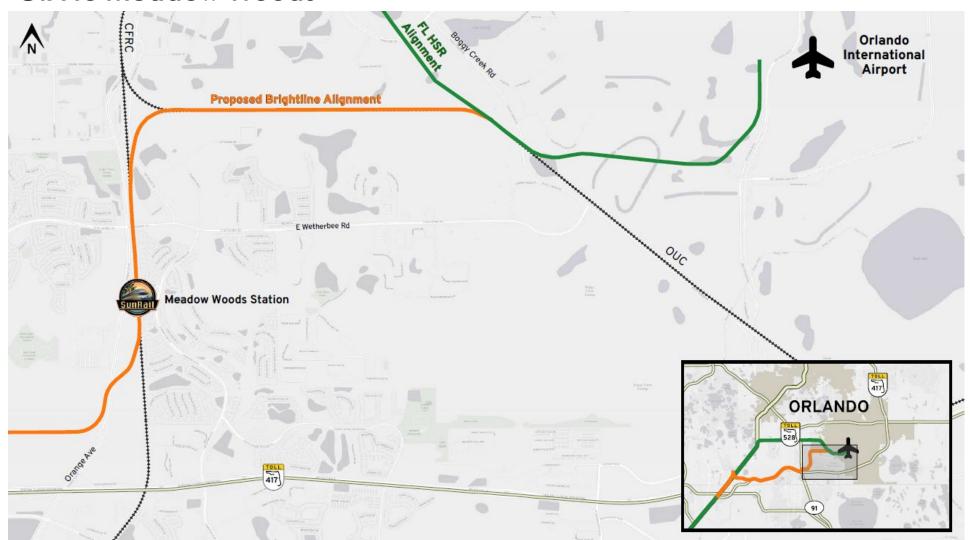
- Negotiations underway with GOAA, OUC, CFX, FDOT/FTE, private landowners
- Design is underway corridor-wide
  - Route optimization
  - Collaborating with stakeholders
- NEPA process underway with FRA/FDOT
- Study underway for joint use of OIA-Meadowoods track with SunRail
- Grant possibilities being evaluated

### 6

#### Brightline CFRC / SR 417 Alignment OIA to Tampa



#### <u>Brightline CFRC / SR 417 Alignment</u> OIA to Meadow Woods



# B

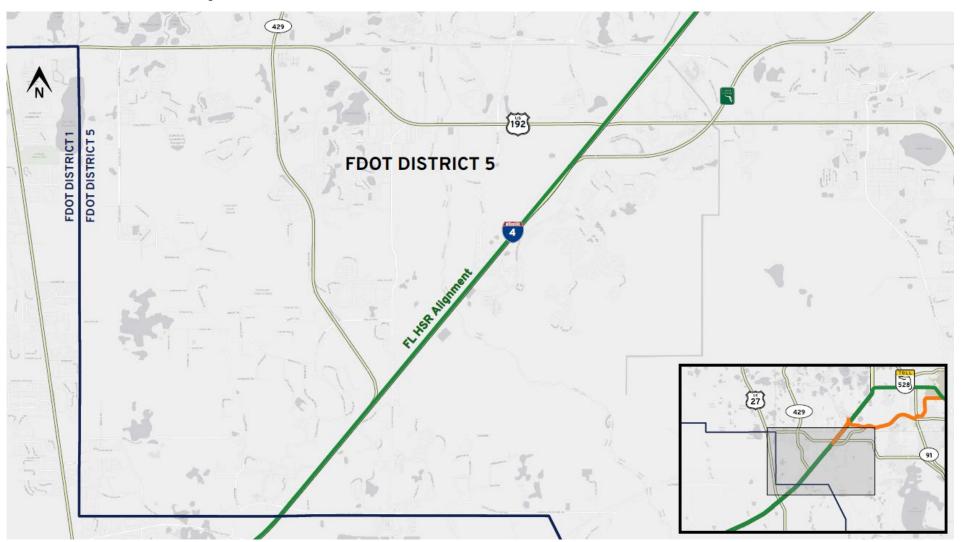
#### Brightline CFRC / SR 417 Alignment Orlando to Tampa, CFX detail



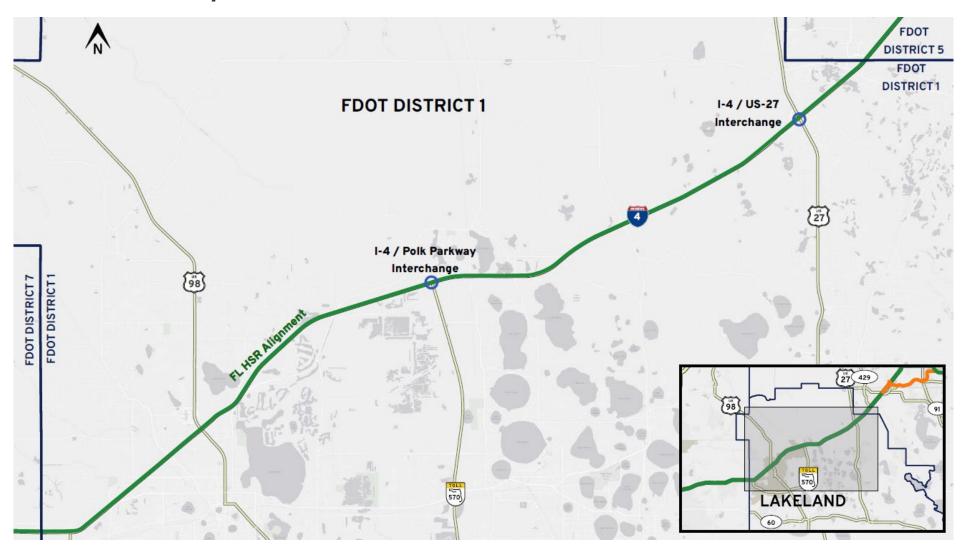
# Brightline CFRC / SR 417 Alignment Orlando to Tampa, FTE and Disney detail



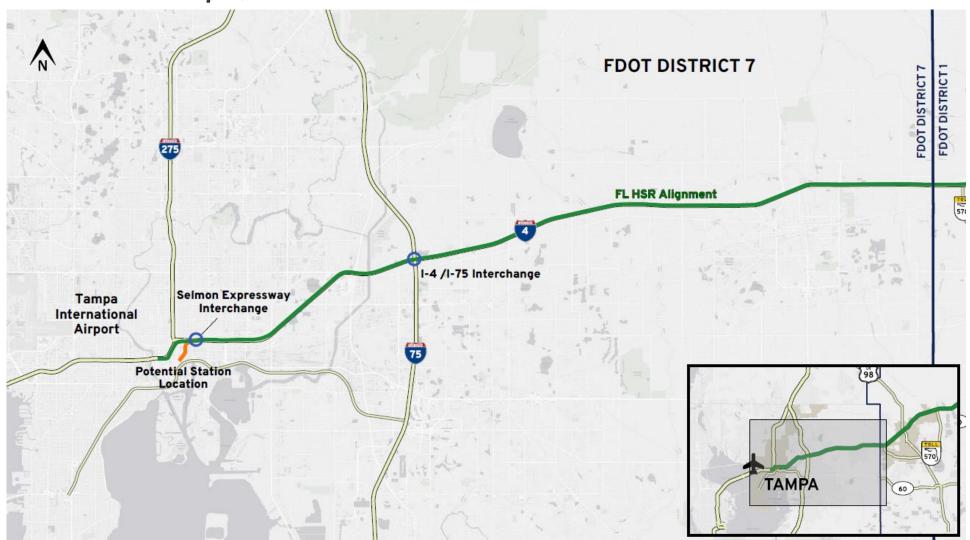
#### Brightline CFRC / SR 417 Alignment Orlando to Tampa, FDOT District 5



#### Brightline CFRC / SR 417 Alignment Orlando to Tampa, FDOT District 1



#### <u>Brightline CFRC / SR 417 Alignment</u> Orlando to Tampa, FDOT District 7



#### Brightline Route vs. Florida High-Speed Rail Routes (from 2010 Record of Decision)

#### Brightline – CFRC / SR 417 Alignment (2021)

- SR 417 route preferred
  - Anticipated cost of \$1.03B, established schedule
  - 3 private properties affected by rail alignment
  - Efficient SunRail access to OIA (shared infrastructure)

#### Florida High-Speed Rail Alignment (2010)

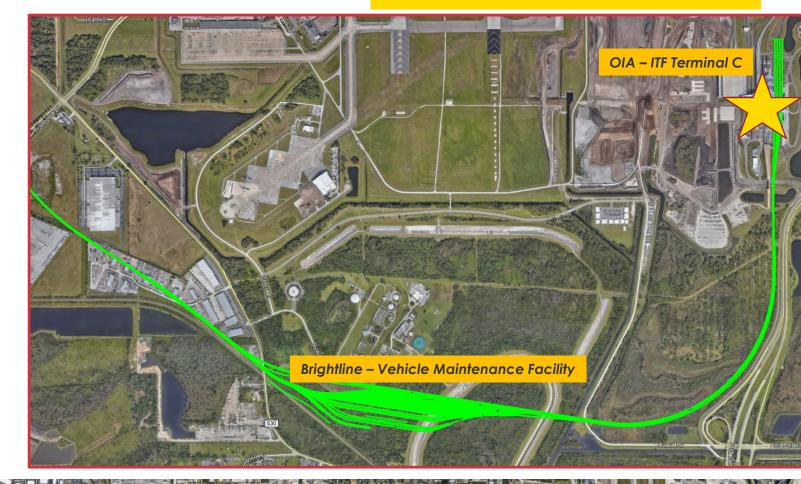
- Taft Vineland/SR 528 route
  - Anticipated cost of \$2.1B, unestablished schedule
  - 76 private properties affected by rail alignment
  - More complex/costly SunRail access to OIA

#### **Value of Multiple Transportation Options**

- Brightline (intercity rail)
  - 1-hour headways, connects city-to-city
- Local transportation options (commuter rail)
  - frequent headways, connects within metro region

# Florida HSR Alignment (2010) OIA to Tradeport Dr.

- GOAA property
  - OIA to Boggy Creek Rd.
- Private property
  - West of Boggy Creek Rd.





# Florida HSR Alignment (2010) Tradeport Dr. to Orange Ave.

- Mostly private property
- Over Orange Ave. and SunRail corridor (CFRC)
- No interface with SunRail
- Transitions to north side of Taft-Vineland Rd.

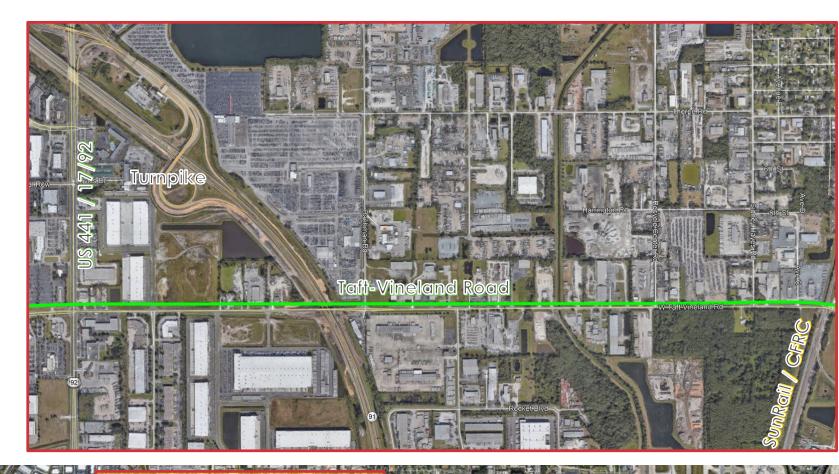




#### Florida HSR Alignment (2010)

# North side of Taft Vineland Rd.

- All elevated
- Impacts to adjacent businesses (driveway modifications, noise and vibration)
- Utilities relocation
- Elevated crossing of Florida's Turnpike

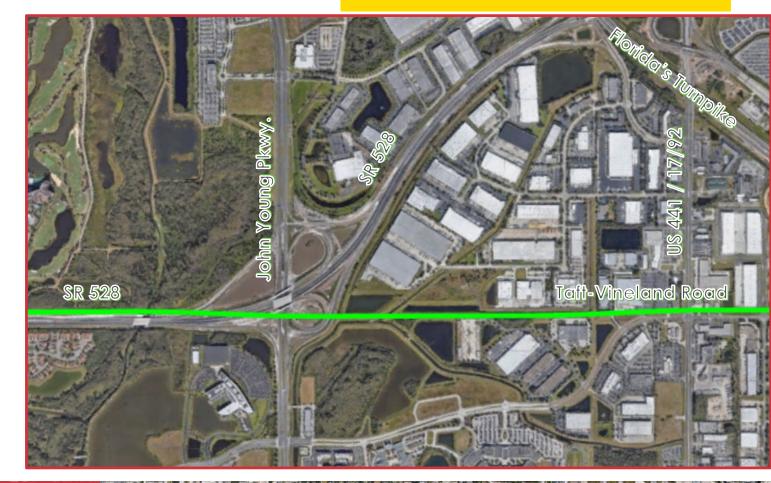




#### Florida HSR Alignment (2010)

# Taft Vineland Rd. to SR 528 Corridor

- All elevated
- Complex bridges and elevated through JYP interchange
- North side of SR 528 adjacent to Shingle Creek Resort

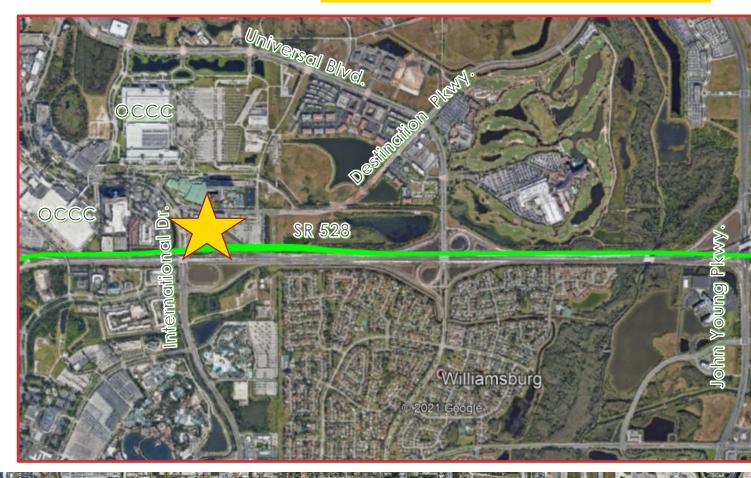




#### Florida HSR Alignment (2010)

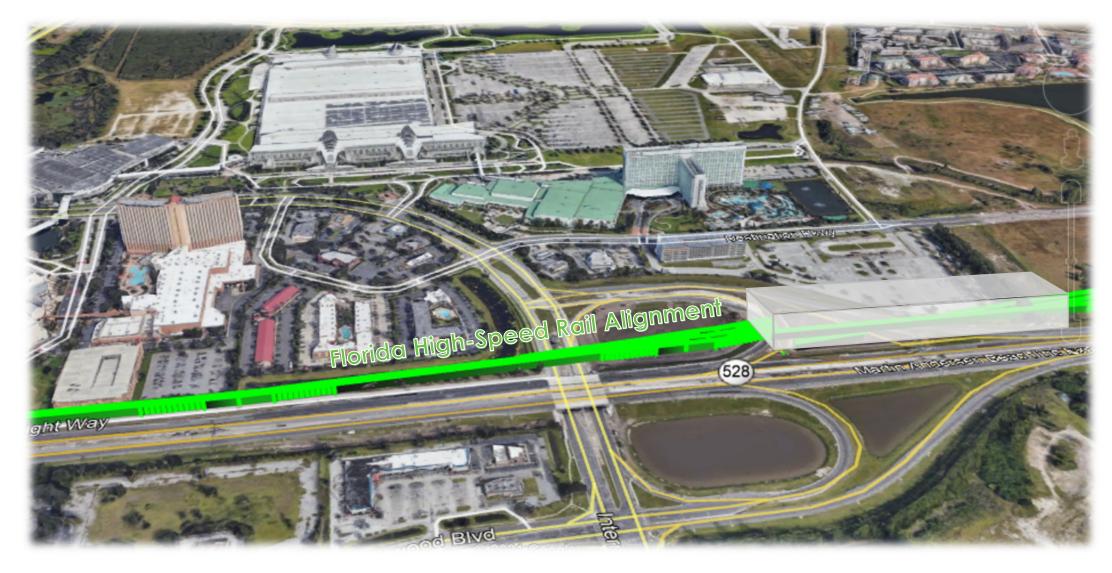
# Walkthrough: SR 528 to I-Drive / OCCC Station

- All elevated
- Elevated platform north of SR 528 and east of I-Drive
- Complex construction to integrate within SR 528 / I-Drive interchange
- North side of SR 528 adjacent to Shingle Creek Resort





#### Taft Vineland/SR 528 Route: SR 528 to I-Drive / OCCC Station



OIA to TPA - Segment 1 Conceptual Estimate / Route Compar	ison
---	------

	4	117 F	Route	Taft Vineland-SR 528 Rou		
Unit	Quantity		Cost	Quantity		Cost
		\$	704,700,000		\$	1,475,500,000
TF	156,463	\$	81,300,000	177,325	\$	74,900,000
SF	1,896,808	\$	96,400,000	491,835	\$	25,800,000
SF	341,226	\$	158,300,000	1,914,093	\$	937,300,000
MI	16.7	\$	166,200,000	16.7	\$	113,800,000
MI	16.7	\$	80,700,000	16.7	\$	77,100,000
LS	1	\$	93,800,000	1	\$	189,200,000
LS	1	\$	28,000,000	1	\$	57,400,000
		\$	119,200,000		\$	247,200,000
	11.1%	\$	91,300,000	9.3%	\$	160,600,000
LS	7.7%	\$	63,700,000	6.1%	\$	104,400,000
LS	3.3%	\$	27,600,000	3.3%	\$	56,200,000
LS	12.4%	\$	113,400,000	12.4%	\$	232,600,000
	16.7 mi	\$	1,028,600,000	16.7 mi	\$	2,115,900,000
	TF SF SF MI LS LS LS LS	TF 156,463 SF 1,896,808 SF 341,226 MI 16.7 LS 1	Unit         Quantity           TF         156,463         \$           SF         1,896,808         \$           SF         341,226         \$           MI         16.7         \$           LS         1         \$           LS         1         \$           LS         1         \$           LS         7.7%         \$           LS         3.3%         \$           LS         12.4%         \$	\$ 704,700,000  TF 156,463 \$ 81,300,000  SF 1,896,808 \$ 96,400,000  SF 341,226 \$ 158,300,000  MI 16.7 \$ 166,200,000  LS 1 \$ 93,800,000  LS 1 \$ 93,800,000  LS 1 \$ 28,000,000  LS 1 \$ 91,300,000  LS 7.7% \$ 63,700,000  LS 3.3% \$ 27,600,000  LS 12.4% \$ 113,400,000	Unit         Quantity         Cost         Quantity           TF         156,463         \$ 81,300,000         177,325           SF         1,896,808         \$ 96,400,000         491,835           SF         341,226         \$ 158,300,000         1,914,093           MI         16.7         \$ 166,200,000         16.7           MI         16.7         \$ 80,700,000         16.7           LS         1         \$ 93,800,000         1           LS         1         \$ 28,000,000         1           LS         1         \$ 91,300,000         9.3%           LS         7.7%         \$ 63,700,000         6.1%           LS         3.3%         \$ 27,600,000         3.3%           LS         12.4%         \$ 113,400,000         12.4%	Unit         Quantity         Cost         Quantity           TF         156,463         \$ 81,300,000         177,325         \$           SF         1,896,808         \$ 96,400,000         491,835         \$           SF         341,226         \$ 158,300,000         1,914,093         \$           MI         16.7         \$ 166,200,000         16.7         \$           MI         16.7         \$ 80,700,000         16.7         \$           LS         1         \$ 93,800,000         1         \$           LS         1         \$ 28,000,000         1         \$           LS         1         \$ 28,000,000         1         \$           LS         7.7%         \$ 63,700,000         6.1%         \$           LS         3.3%         \$ 27,600,000         3.3%         \$           LS         12.4%         \$ 113,400,000         12.4%         \$

#### **Looking Forward to Tampa:**

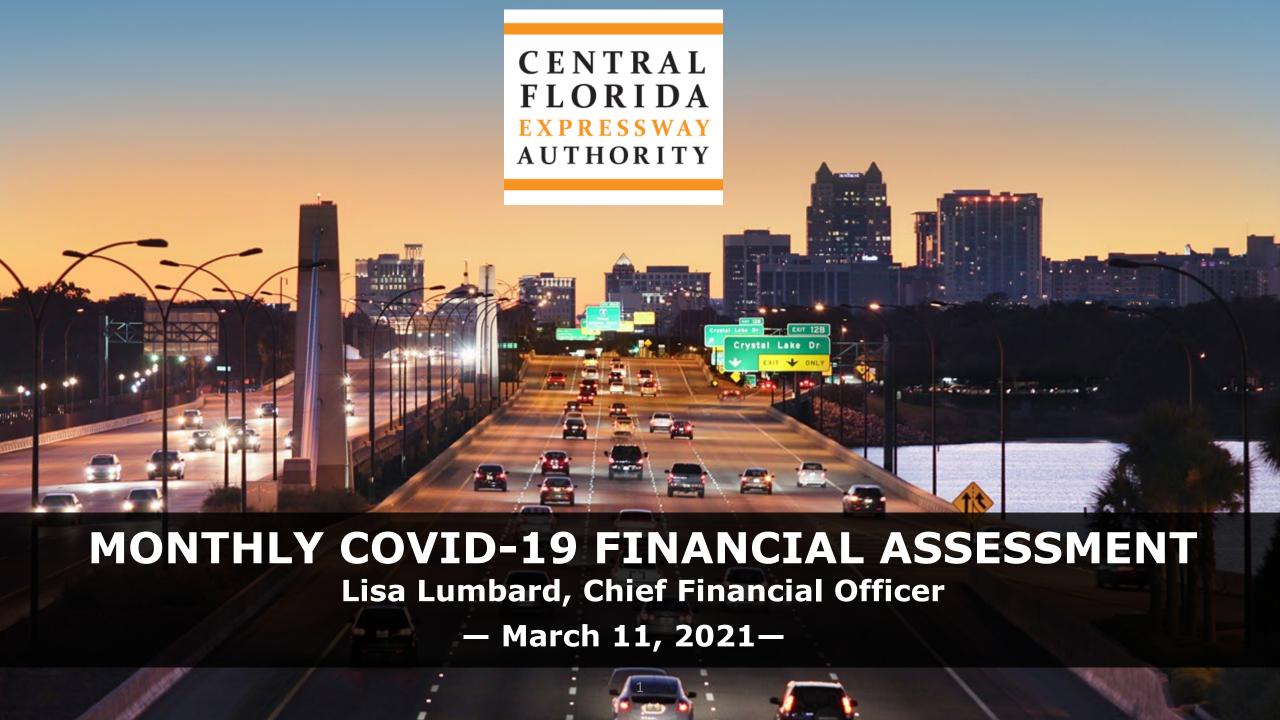
- Meet conditions precedent and execute leases with FDOT and CFX: July 31, 2021:
- Readiness for Federal Grants: NOFO ~June 1, 2021, deadline July 31, 2021:
- NEPA re-evaluation complete: late 2021
- Utility relocations begin: late Q1 2022
- Anticipated construction start: Q2 2023
- Anticipated revenue service first segment (including SunRail to Airport): Q3-Q4 2026

# brightline

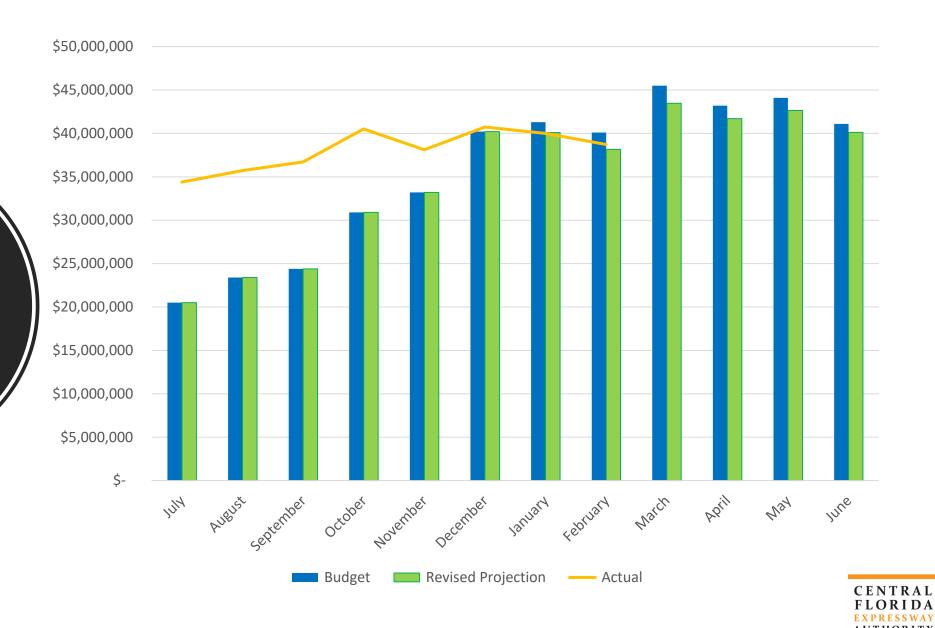


GoBrightline.com

# F. 2.



Actual
Revenue vs.
Budget and
Revised
Projection



# Strengths

881 days cash on hand

\*as of 02.26.2021

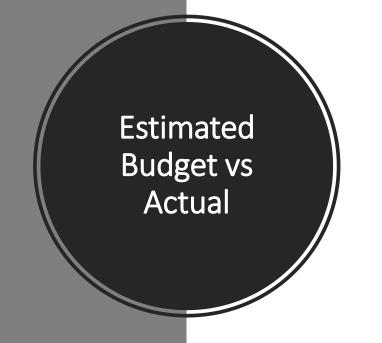
Reserve balance of \$159,822,624

\*as of 02.26.2021

Construction fund cash balance is \$354,230,894

\*as of 02.26.2021



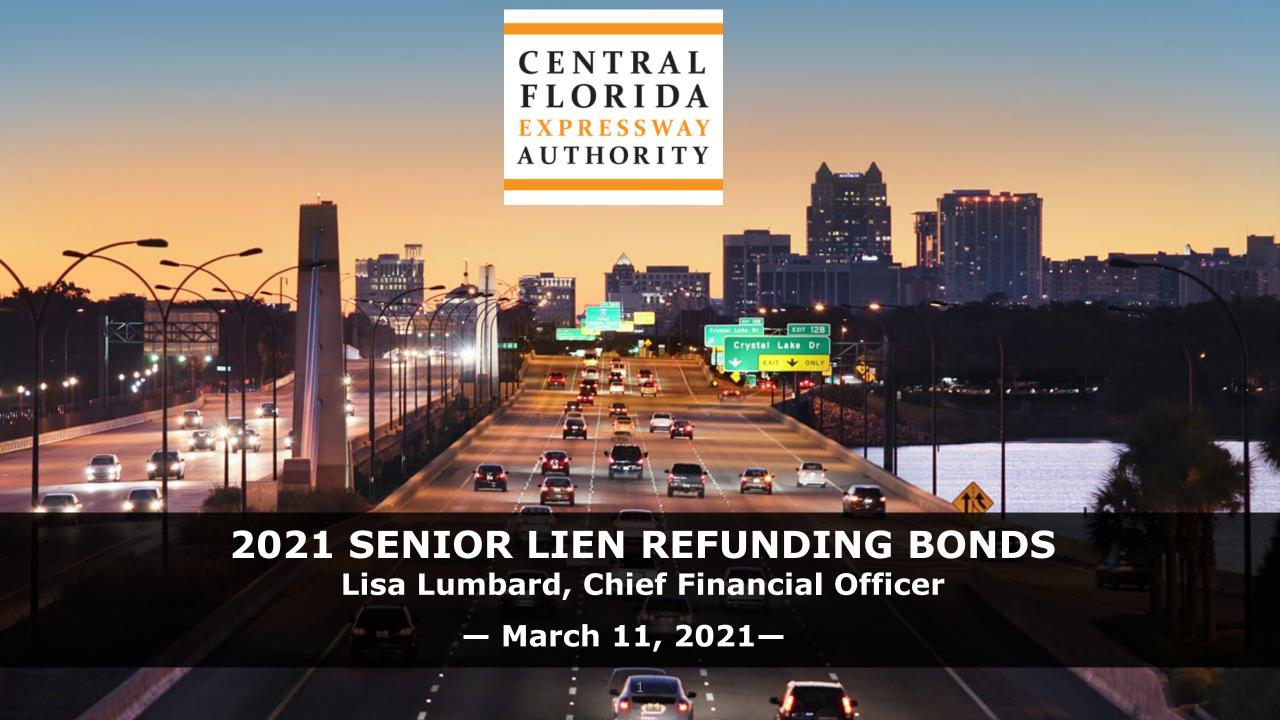


	FY 2021 Year-to- Date Budget	FY 2021 Year- to-Date Actual	FY 2021 Year-to- Date % Variance
Total Revenues	\$265,250,217	\$318,495,287	20%
Total OM&A Expenses	55,426,172	51,952,350	6%
Net Revenues After Debt Service	63,717,670	120,535,678	89%
Work Plan Expenses	262,658,000	83,672,761	32%





F. 3.





Outstanding Principal as of March 1, 2021

Series	Original Principal	Outstanding Principal	Final Maturity	Туре	
Fixed Rate Debt - Senio	r Lien				
2012	201,925,000	109,740,000	7/1/2025	Natural Fixed	
2013A	242,320,000	242,320,000	7/1/2035	Natural Fixed	
2013B	174,315,000	95,095,000	7/1/2025	Natural Fixed	
2016A	151,695,000	148,700,000	7/1/2037	Natural Fixed	
2016B	631,330,000	620,030,000	7/1/2040	Natural Fixed	
2017	341,210,000	338,630,000	7/1/2042	Natural Fixed	
2018	221,045,000	215,520,000	7/1/2048	Natural Fixed	
2019A	129,550,000	128,370,000	7/1/2049	Natural Fixed	
2019B	441,390,000	437,485,000	7/1/2049	Natural Fixed	
2020A	155,915,000	155,915,000	7/1/2032	Natural Fixed	
Fixed Rate Debt - Junio	r Lien				
2012A	59,060,000	35,780,000	7/1/2025	Natural Fixed	
TIFIA Loan	193,695,000	193,695,000	7/1/2049	Natural Fixed	
SUBTOTAL	2,943,450,000	\$2,721,280,000	% of Total Debt	84.65%	
Synthetic Fixed Rate De	bt				
2008B-1	131,025,000	129,560,000	7/1/2040	Synthetic Fixed	
2008B-2	118,500,000	117,090,000	7/1/2040	Synthetic Fixed	
2008B-3	149,760,000	148,120,000	7/1/2040	Synthetic Fixed	
2008B-4	99,820,000	98,720,000	7/1/2040	Synthetic Fixed	
SUBTOTAL	499,105,000	\$493,490,000	% of Total Debt	15.35%	
TOTAL	3,442,555,000	\$3,214,770,000			



# Bond Series 2008B Overview

- May 2008 Variable Rate Refunding Revenue Bonds Series 2008B1-4 in the initial par amount of \$499,105,000 were issued
- Interest due on the Series 2008B Bonds is reset weekly
- Swap counterparties paid monthly a fixed interest of 4.7753%
- Swap counterparties pay variable interest based on the Security Industry/Financial Market Association (SIFMA) Weekly Index to CFX monthly



## **Market Condition – Refunding Opportunity**



Terminate swaps

Pay counterparties a termination payment



Issue tax-exempt refunding bonds

Refund outstanding Series 2008B Bonds

Finance the termination payment

At or near breakeven



## Refunding Results

Terminating the swaps would eliminate variable rate interest risk associated with the underlying 2008B Bonds and the swaps

#### Swap Termination Overview as of 3/10/2021

#### Amounts in \$ millions

Swap Counterparty	UBS AG, Stamford Branch	Royal Bank of Canada	JPMorgan Chase Bank, N.A.	Citibank, N.A., New York	Morgan Stanley Capital Services Inc.	Total
Associated Bonds	2008B-1 / 2008B-2	2008B-1 / 2008B-2	2008B-1 / 2008B-2	2008B-3	2008B-4	Series 2008B
Refunded Par	\$197.3	\$24.7	\$24.7	\$148.1	\$98.7	\$493
Net Cost to Unwind (\$)	(\$0.0)	(\$.6)	(\$.6)	(\$3.5)	(\$2.3)	(\$7.1)
Net Cost to Unwind (%)	0.0%	-2.5%	-2.5%	-2.4%	-2.4%	-1.4%



### **Recommended Motion**

Approval of the Twenty-Seventh Supplemental Revenue Bond Resolution authorizing the issuance of Senior Lien Refunding Revenue Bonds (Multiple Series) and authorizing the forms of certain documents and agreements related to the Bonds.





Resolution No. 2021-\_\_\_\_

CENTRAL	FLORIDA EXPRESSWAY AUTHORITY
	y-Seventh Supplemental Revenue Bond solution Authorizing the Issuance of:
Senior Lier	Refunding Revenue Bonds (Multiple Series)
	Adopted on March 11, 2021

#### TWENTY-SEVENTH SUPPLEMENTAL REVENUE BOND RESOLUTION

TWENTY-SEVENTH SUPPLEMENTAL REVENUE RESOLUTION OF THE CENTRAL FLORIDA **EXPRESSWAY** AUTHORITY ("CFX") SUPPLEMENTING THE MASTER BOND RESOLUTION OF CFX ADOPTED ON FEBRUARY 3, 2003, AS SUPPLEMENTED; AUTHORIZING THE ISSUANCE OF SENIOR LIEN REFUNDING REVENUE BONDS, SERIES 2021 IN ONE OR MORE SERIES AND/OR SUBSERIES IN AN AGGREGATE PRINCIPAL AMOUNT TO BE SET FORTH IN THE FINAL OFFICIAL STATEMENT RELATED TO SUCH BONDS FOR THE PURPOSES OF REFUNDING ALL OR A PORTION OF ONE OR MORE OF CFX'S OUTSTANDING SERIES 2008B-1, 2008B-2, 2008B-3 OR 2008B-4 BONDS (THE "REFUNDED BONDS"): PROVIDING FUNDS OR PAYING THE PREMIUM ON EACH SERIES RESERVE ACCOUNT CREDIT FACILITY TO BE DEPOSITED INTO THE SERIES RESERVE SUBACCOUNT ESTABLISHED HEREUNDER WITH RESPECT TO EACH SERIES OF BONDS ISSUED HEREUNDER; PAYING ANY FEES, COSTS AND EXPENSES ASSOCIATED WITH THE TERMINATION OF OUALIFIED SWAP AGREEMENTS ASSOCIATED WITH THE REFUNDED BONDS: AND PAYING CERTAIN COSTS OF ISSUANCE IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS: DELEGATING AUTHORITY AND ESTABLISHING CRITERIA FOR DETERMINING THE DATE, INTEREST RATES, INTEREST PAYMENT DATES, PRINCIPAL AMOUNTS, PROVISIONS FOR REDEMPTION AND MATURITY SCHEDULES FOR SUCH BONDS: AUTHORIZING AN AUTHORIZED OFFICER OF CFX TO AWARD THE SALE OF SAID BONDS ON A NEGOTIATED BASIS AND APPROVING THE CONDITIONS AND CRITERIA OF SUCH SALE; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT WITH RESPECT TO THE SALE OF SAID BONDS: APPROVING THE FORM OF AND AUTHORIZING THE DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT AND AUTHORIZING THE CHAIRMAN OR VICE CHAIRMAN TO DEEM FINAL THE PRELIMINARY OFFICIAL STATEMENT FOR PURPOSES OF SECURITIES AND EXCHANGE COMMISSION RULE 15c2-12; AUTHORIZING THE CHAIRMAN OR VICE CHAIRMAN TO APPROVE AND EXECUTE A FINAL OFFICIAL STATEMENT; APPROVING UNCERTIFICATED BOOK-ENTRY-ONLY REGISTRATION OF SUCH BONDS: APPROVING THE FORM AND AUTHORIZING EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUSTEE, PAYING AGENT AND REGISTRAR AGREEMENT: APPROVING THE **FORM** 

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AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT; APPOINTING A TRUSTEE, PAYING AGENT, AND REGISTRAR; APPOINTING AN ESCROW AGENT AND A VERIFICATION AGENT; AUTHORIZING AND DELEGATING AUTHORITY TO SELECT THE PROVIDER OF A BOND INSURANCE POLICY AND A SERIES RESERVE ACCOUNT CREDIT FACILITY WITH RESPECT TO SUCH BONDS; AUTHORIZING CERTAIN OFFICIALS AND EMPLOYEES OF CFX TO TAKE ALL ACTIONS REQUIRED IN CONNECTION WITH THE ISSUANCE OF SAID BONDS; CERTAIN COVENANTS AND **AGREEMENTS** CONNECTION WITH THE ISSUANCE OF SUCH BONDS; PROVIDING CERTAIN OTHER DETAILS WITH RESPECT THERETO; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, on February 3, 2003, CFX adopted that certain Master Bond Resolution Authorizing Orlando-Orange County Expressway Authority Revenue Bonds, as amended and supplemented from time to time (the "Master Bond Resolution"); and

**WHEREAS**, pursuant to the terms of the Master Bond Resolution, as supplemented, CFX previously issued its Orlando-Orange County Expressway Authority Refunding Revenue Bonds, Series 2008B-1, 2008B-2, 2008B-3 and 2008B-4 (collectively, the "Refunded Bonds"); and

**WHEREAS**, on June 20, 2014, CFX assumed the governance and control of the Orlando-Orange County Expressway Authority (the "Prior Authority"), including the assets personnel, contracts, obligations (including the obligations evidenced by the Refunded Bonds), liabilities, facilities and tangible and intangible property of the Prior Authority; and

WHEREAS, after thorough analysis, CFX has determined that it is in the best interest of CFX to supplement the Master Bond Resolution to authorize the issuance of its Central Florida Expressway Authority Senior Lien Refunding Revenue Bonds, Series 2021 in one or more Series and/or subseries (the "Bonds"), each as a Series of Bonds under the Master Bond Resolution, the proceeds of which will be used to: (a) refund all or a portion of the Refunded Bonds, (b) provide funds or pay the premium on the Series Reserve Account Credit Facility to be deposited into the Series Reserve Subaccount established hereunder with respect to the Bonds, (c) paying any fees, costs and expenses associated with the termination of Qualified Swap Agreements associated with the Refunded Bonds, and (d) pay certain costs in connection with the issuance of the Bonds, including without limitation, the premium on any Bond Insurance Policy with respect to the Bonds; and

**WHEREAS**, CFX anticipates receiving one or more favorable offers to purchase the Bonds from its underwriting team members to be designated by CFX and described in the Bond Purchase Agreement (as hereinafter defined), and CFX desires to authorize the execution and delivery of one or more Bond Purchase Agreements, the form of which is attached hereto as **Exhibit A**; and

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- **WHEREAS**, in connection with the offering and sale of the Bonds from time to time, CFX desires to approve one or more Preliminary Official Statements to be used with respect to the Bonds, the form of which is attached hereto as **Exhibit B** (the "Preliminary Official Statement"), and to authorize the use of the Preliminary Official Statements and final Official Statements with respect to the Bonds; and
- **WHEREAS**, in connection with the issuance of the Bonds from time to time, CFX desires to approve the form and authorize the execution and delivery of one or more Continuing Disclosure Agreements with respect to the Bonds pursuant to Securities Exchange Commission Rule 15c2-12, the form of which is attached hereto as **Exhibit C**; and
- **WHEREAS**, in connection with the issuance of the Bonds from time to time, CFX desires to approve the form and authorize the execution and delivery of one or more Trustee, Paying Agent and Registrar Agreements, the form of which is attached hereto as **Exhibit D**; and
- **WHEREAS,** in connection with the issuance of the Bonds from time to time, CFX desires to approve the form of and authorize the execution and delivery of one or more Escrow Deposit Agreements, the form of which is attached hereto as **Exhibit E**; and
- **WHEREAS**, CFX further desires to set forth certain terms and provisions for the Bonds and to provide certain further matters related to the authorization, sale, issuance and delivery of the Bonds and other matters related thereto;

#### NOW, THEREFORE, BE IT RESOLVED BY THE CENTRAL FLORIDA EXPRESSWAY AUTHORITY AS FOLLOWS:

#### ARTICLE I AUTHORITY AND DEFINITIONS

- **SECTION 1.01.** <u>Authority for this Resolution</u>. This Resolution is adopted and implemented pursuant to the Central Florida Expressway Authority Act, Chapter 348, Part III, Florida Statutes, as amended, and other applicable provisions of law not inconsistent with the foregoing (collectively, the "Act") and the Master Bond Resolution.
- **SECTION 1.02.** <u>Definitions</u>. All terms used herein in capitalized form, except as otherwise defined herein, shall have the meanings ascribed thereto in Section 1.2 of the Master Bond Resolution. As used herein, the following terms shall have the meanings set forth below:
- A. "Bond Counsel's Opinion" means, with respect to each Series of Bonds issued hereunder, a written opinion of an attorney or firm of attorneys selected by CFX which is of nationally recognized standing in the field of law relating to municipal bonds and the exclusion from gross income for federal income tax purposes of interest on municipal bonds.
- B. "Bond Insurance Policy" means, if obtained with respect to all or a portion of one or more Series or subseries of Bonds issued pursuant to the terms of this Resolution, the municipal bond insurance policy issued by the Series Bond Insurer insuring the payment when due of the principal of and interest on all or a portion of such Series or Subseries of Bonds, if any.

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- C. "Bond Purchase Agreement" means the Bond Purchase Agreement to be entered into between CFX and the Purchaser with respect to one or more Series of Bonds, the proposed form of which is attached hereto as **Exhibit A**.
- D. "Bonds" means the Central Florida Expressway Authority Senior Lien Refunding Revenue Bonds, Series 2021 to be issued in one or more Series and/or subseries, authorized pursuant to this Resolution.
  - E. "Finance Committee" means the Finance Committee of CFX.
  - F. "Financial Advisor" means PFM Financial Advisors LLC.
- G. "Maturity Date" means the final maturity date of the Bonds which shall be on or before the date specified in Section 4.01 hereof.
- H. "Purchaser" means, collectively, each managing underwriter designated pursuant to the terms of this Resolution, for itself and as the representative of the underwriters described in the Bond Purchase Agreement.
- I. "Repository" shall have the meaning set forth in the Continuing Disclosure Agreement attached hereto as  $\underline{Exhibit\ C}$ .
  - J. "Refunded Bonds" shall have the meaning specified in the Recitals hereto.
  - K. "Secretary" means the Secretary or any Assistant Secretary of CFX.
- L. "Series Bond Insurer" means, if designated with respect to one or more Series or subseries of the Bonds issued pursuant to this Resolution, the issuer of the Bond Insurance Policy, or any successor thereto or assignee thereof, as identified in the final Official Statement for a Series of Bonds issued hereunder.
- M. "Series Cost of Issuance Account" means the subaccount or subaccounts described in Section 7.01 hereof.
- N. "Series Reserve Account Credit Facility" means, if obtained with respect to one or more Series or subseries of the Bonds issued pursuant to this Resolution, the reserve subaccount insurance policy or policies issued by the Series Reserve Facility Provider.
- O. "Series Reserve Facility Provider" means, if designated with respect to one or more Series or subseries of the Bonds issued pursuant to this Resolution, the issuer of the Series Reserve Account Credit Facility, or any successor thereto or assignee thereof as identified in the final Official Statement for a Series of Bonds issued hereunder.
- P. "Series Reserve Subaccount" means the subaccount or subaccounts described in Section 7.02 hereof.

# ARTICLE II FINDINGS

**SECTION 2.01. Findings**. CFX hereby finds, determines and declares as follows:

- A. This Resolution supplements the Master Bond Resolution.
- B. CFX owns, operates and derives revenues from the Expressway System and has previously financed or refinanced certain improvements to the Expressway System with the proceeds of the Refunded Bonds.
- C. It is necessary, desirable, convenient and in the best interest of CFX that all or a portion of the Refunded Bonds be refinanced as contemplated in this Resolution. CFX is authorized to issue the Bonds in one or more Series and/or subseries for the valid public purposes set forth in this Resolution.
- D. The Bonds shall not be issued unless the requirements of the Master Bond Resolution for the issuance of each Series thereof as "Parity Bonds" are satisfied on or prior to the issuance thereof. Upon the issuance thereof, each Series of Bonds shall constitute Bonds under the Master Bond Resolution and shall be entitled to all the security and benefits thereof.
- E. Because of the characteristics of the Bonds, the current and potential volatility of the market for municipal obligations such as the Bonds, it is in the best interest of CFX, upon the satisfaction of the terms and conditions set forth herein, to sell each Series of Bonds by delegated negotiated sale, allowing CFX to enter the market at the most advantageous time, rather than at a specified advertised date, thereby permitting CFX to obtain the best possible price and interest rate for the Bonds.
- F. CFX anticipates receiving a favorable offer to purchase each Series of Bonds from a Purchaser within the parameters set forth in Sections 4.01 and 5.01 hereof and desires to authorize the execution and delivery of one or more Bond Purchase Agreements, the form of which is attached hereto as **Exhibit A**.
- G. Prior to the sale of the Bonds, each Purchaser with respect to a Series of Bonds will provide CFX with a disclosure statement containing the information required by Section 218.385(6), Florida Statutes, and each Bond Purchase Agreement will include a truth-in-bonding statement in accordance with Section 218.385, Florida Statutes.

# ARTICLE III CONTRACTUAL OBLIGATION

In consideration of the acceptance of the Bonds authorized to be issued hereunder by those who shall hold the same from time to time, the Master Bond Resolution, as supplemented by this Resolution, shall be deemed to be and shall constitute a contract between CFX and the registered Holders of the Bonds. The covenants and agreements set forth herein and in the Master Bond Resolution to be performed by CFX shall be for the equal benefit, protection and security of the registered Holders of the Bonds, and the Bonds shall be of equal rank with the Outstanding Bonds, or any Parity Bonds hereafter issued and Qualified Swap Payments related

to any Bonds issued under the Master Bond Resolution, without preference, priority or distinction over any other thereof. All applicable terms, provisions and covenants contained in the Master Bond Resolution shall be fully applicable to the Bonds as if originally issued thereunder, except as otherwise specifically provided herein.

### ARTICLE IV AUTHORIZATION AND ISSUANCE OF BONDS

#### **SECTION 4.01.** Authorization of Issuance and General Description of Bonds.

- Subject and pursuant to the provisions hereof and of the Master Bond Resolution, Α. Bonds to be known as the "Central Florida Expressway Authority Senior Lien Refunding Revenue Bonds" are hereby authorized to be issued in one or more Series or subseries in the aggregate principal amount to be set forth in the final Official Statement(s) with respect to such Bonds that are publicly offered, or the final form of credit, continuing covenants agreement, or other similar agreement with respect to such Bonds that are directly placed with a financial institution, with such Series designations and principal amounts as may be approved by the Chairman, Vice Chairman or Authorized Officer of CFX for the purposes of: (a) refunding one or more Series or subseries of the Refunded Bonds on a current basis, as permitted and applicable, (b) providing funds or paying the premium on the Series Reserve Account Credit Facility to be deposited into the Series Reserve Subaccount established hereunder with respect to each Series or subseries of Bonds issued hereunder, (c) paying any fees, costs and expenses associated with the termination of Qualified Swap Agreements associated with the Refunded Bonds, and (d) paying the costs of issuance of each Series or subseries of Bonds, including, but not limited to, premiums for one or more Bond Insurance Policies, if any, for such Bonds. It shall be a condition to the issuance of the Bonds pursuant to this Resolution without further action by the Governing Board that, as a result of the issuance of such Bonds hereunder, that the net present value cost from the issuance of the Bonds, after taking into account any termination payments paid or received with respect to the Qualified Swap Agreements with respect to the Refunded Bonds is equal to or less than three percent (3%) of the par amount of the Refunded Bonds. The final maturity date of any Bonds issued hereunder shall not be later than July 1, 2051.
- B. Each Series of Bonds shall be issued as fixed rate Bonds and may be issued in one or more Series or subseries, as shall be approved and designated by the Chairman, Vice Chairman or Authorized Officer, based upon the advice of the Financial Advisor, which advice shall be based upon a determination of what is reasonably anticipated to further CFX's desire to refund the Refunded Bonds for savings based upon the parameters set forth in Section 4.01(A) above. The title and series (or subseries) designation of each Series of Bonds may be approved by the Chairman, Vice Chairman or Authorized Officer of CFX to accurately reflect the structure and specific terms of such Bonds to be issued, as provided in (i) the Bond Purchase Agreement and the Official Statement related to such Series of Bonds that are sold by public offering, or (ii) the credit agreement, continuing covenants agreement or similar agreement related to such Series of Bonds that are sold by direct placement. Such changes in the designation, terms and provisions of the Bonds shall be evidenced by CFX's execution and delivery of the Bond Purchase Agreement authorized pursuant to this Resolution for such Series of Bonds that are sold

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by public offering, or the credit agreement, continuing covenants agreement or similar agreement related to such Series of Bonds that are sold by direct placement.

- C. CFX hereby delegates to the Chairman, Vice Chairman or Authorized Officer the authority to make the foregoing determinations set forth in paragraphs (A) and (B) of this Section 4.01, provided that each of the parameters set forth in this Resolution are satisfied. The Chairman, Vice Chairman or Authorized Officer may rely on the certification of the Financial Advisor regarding compliance with the above-referenced parameters.
- D. Notwithstanding anything contained herein to the contrary, each Series of Bonds hereunder shall not be issued until CFX has complied with the requirements for the issuance thereof as Bonds under the Master Bond Resolution, and any requirements or delegation parameters set forth herein. The Chairman, Vice Chairman or Authorized Officer of CFX may conclusively rely upon the opinion of its counsel as to any such legal requirements, and a certification of its Financial Advisor in determining whether any financial delegation parameters set forth herein are satisfied.
- E. All or a portion of a Series of Bonds issued hereunder may be secured by a Bond Insurance Policy issued by the Series Bond Insurer, and the Debt Service Reserve Requirement for the Bonds may be satisfied by deposit into the Series Reserve Subaccount referenced in Section 7.02 hereof of the Series Reserve Account Credit Facility issued by the Series Reserve Facility Provider in an amount equal to the Debt Service Reserve Requirement for such Series of Bonds. The decision whether to obtain a Bond Insurance Policy for all or a portion of a Series of Bonds issued hereunder shall be made by the Chairman, Vice Chairman or Authorized Officer based upon the advice of the Financial Advisor, which advice shall be based upon a determination of what is reasonably anticipated to be the most cost effective to CFX given the then current market conditions for the issuance of such Bonds.
- F. Each Series of Bonds shall be dated the date of their original issuance and delivery, and shall mature on or before the Maturity Date, subject to prior redemption as provided in Sections 4.10 and 4.11 hereof.
- **SECTION 4.02.** <u>Denominations, Numbers, Letters</u>. Each Series of Bonds shall be issued solely in the form of fully registered bonds in the denomination of \$5,000. Each Series of Bonds shall be numbered consecutively from 1 upward with the letter "R" and the series designation prefixed to the number. Each Series of Bonds may be issued in subseries bearing different CUSIP numbers and may bear such additional designations, if any, as may be set forth in: (a) the Bond Purchase Agreement and the Official Statement with respect to such Series of Bonds, or (b) the credit agreement, continuing covenants agreement, or similar agreement with respect to Bonds sold by direct placement.

### SECTION 4.03. Place of Payment; Trustee, Paying Agent and Registrar.

A. The principal of, premium, if any, and interest on each Series of Bonds shall be payable upon presentation and surrender at the corporate trust operations office in Minneapolis, Minnesota of Wells Fargo Bank, National Association or its successors or assigns, and such banking institution is hereby appointed as Trustee, Paying Agent and Registrar for each Series of

Bonds issued hereunder. The principal and redemption price, if any, of each Series of Bonds shall also be payable at any other place which may be provided for such payment by the appointment of any other Paying Agent or Paying Agents as permitted by the Master Bond Resolution. Interest on the Bonds shall be paid by check or draft drawn upon the Paying Agent and mailed to the registered Holders of the Bonds at the addresses as they appear on the registration books maintained by the Trustee, as Registrar, at the close of business on the 15th day (whether or not a Business Day) of the month next preceding the interest payment date (the "Record Date"), irrespective of any transfer or exchange of such Bonds subsequent to such Record Date and prior to such interest payment date, unless CFX shall be in default in payment of interest due on such interest payment date. In the event of any such default, such defaulted interest shall be payable to the Holders in whose names such Bonds are registered at the close of business on a special record date for the payment of such defaulted interest as established by notice deposited in the U.S. mails, postage prepaid, by the Trustee to the registered Holders of such Bonds not less than fifteen (15) days preceding such special record date. Such notice shall be mailed to the Holders in whose names the Bonds are registered at the close of business on the fifth (5<sup>th</sup>) day (whether or not a Business Day) preceding the date of mailing.

- B. If the date for payment of the principal of, premium, if any, or interest on the Bonds is not a Business Day, then the date for such payment shall be the next succeeding Business Day, and payment on such Business Day shall have the same force and effect as if made on the nominal date of payment, without accrual of additional interest.
- C. Notwithstanding the foregoing, or anything provided in the Master Bond Resolution to the contrary, a registered Holder of \$1,000,000 or more in principal amount of the Bonds may provide for payment of principal, redemption price, if any, and interest with respect to such Bonds by wire transfer in immediately available funds on the applicable payment date by written request submitted (i) in the case of principal or redemption price, if any, to the Trustee or Paying Agent with the presentation or surrender of the Bonds to be paid, and (ii) in the case of interest, to the Trustee, as Registrar, at least fifteen (15) Business Days prior to the applicable Record Date, specifying the account number, address and other relevant information as may be reasonably required by the Trustee or Paying Agent. In the case of interest, the notice may provide that it will remain in effect for later interest payments until changed or revoked by another written notice. Each payment of interest, principal and premium, whether by check or by wire transfer shall include or be accompanied with a statement of the CUSIP number and amount of the payment pertaining to each CUSIP number (if more than one CUSIP number).

### **SECTION 4.04.** Registration and Exchange.

A. The registration of any Bond may be transferred upon the registration books as provided in the Master Bond Resolution. So long as the Bonds are issued solely in fully registered form and notwithstanding anything contained in the Master Bond Resolution to the contrary, the provisions of the Master Bond Resolution with respect to the interchangeability of registered bonds for coupon bonds shall not be applicable to any of the Bonds. In all cases of a transfer of a Bond, the Registrar shall at the earliest practical time in accordance with the terms hereof enter the transfer of ownership in the registration books and shall deliver in the name of the new transferee or transferees a new fully registered Bond or Bonds of the same Series, maturity and of authorized denomination or denominations, for the same aggregate principal

amount and payable from the same source of funds. CFX and the Registrar may charge the registered owner for the registration of every transfer or exchange of a Bond an amount sufficient to reimburse them for any tax, fee or any other governmental charge required (other than by CFX) to be paid with respect to or in connection with any such transfer or exchange, and may require that such amounts be paid before any such new Bond shall be delivered.

B. CFX and the Trustee, Paying Agent and Registrar may deem and treat the registered Holder of any Bond as the absolute Holder of such Bond for the purpose of receiving payment of the principal thereof and the interest and premiums, if any, thereon. Subject to the provisions of Section 4.04(A) above, each Bond may be exchanged at the office of the Registrar for a like aggregate principal amount of Bonds, of other authorized denominations of the same Series and maturity.

**SECTION 4.05.** Terms of Bonds. The Bonds shall be dated the date of delivery thereof, shall bear interest payable from such date, payable semiannually on January 1 and July 1 of each year, commencing on the date provided for in the Bond Purchase Agreement for such Series of Bonds, at the rates and shall mature and be subject to optional and mandatory redemption substantially in accordance with the maturity and redemption schedules and terms, all as set forth or incorporated by reference in the Bond Purchase Agreement for such Series of Bonds, as such interest payment dates, rates, maturity schedules and redemption schedules and terms may be approved by the Chairman, Vice Chairman or Authorized Officer, based upon the advice of the Financial Advisor, provided that the requirements set forth in Section 4.01 hereof have been satisfied.

**SECTION 4.06. Source of Payment.** Each Series of Bonds shall be "Bonds" as such term is used in the Master Bond Resolution. The scheduled payment of principal of, interest on and redemption premium, if any, with respect to each Series of Bonds and all other payments required pursuant to the terms of the Master Bond Resolution and the terms hereof will be payable solely from the System Pledged Revenues, on a parity with any Bonds issued under the Master Bond Resolution whether currently Outstanding or hereinafter issued and any Qualified Swap Payments related to such Bonds, if any. THE PAYMENT THEREOF WILL NOT CONSTITUTE A GENERAL INDEBTEDNESS OF CFX, BREVARD COUNTY, ORANGE COUNTY, FLORIDA, LAKE COUNTY, FLORIDA, OSCEOLA COUNTY, FLORIDA, SEMINOLE COUNTY, FLORIDA (THE "COUNTIES"), THE CITY OF ORLANDO, FLORIDA (THE "CITY") OR ANY OTHER POLITICAL SUBDIVISION IN THE STATE OF FLORIDA, WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER PROVISION OR LIMITATION, AND IT IS EXPRESSLY AGREED THAT THE BONDS AND THE OBLIGATION EVIDENCED THEREBY SHALL NOT CONSTITUTE NOR BE A LIEN UPON ANY PROPERTY OF THE COUNTIES, THE CITY OR CFX, EXCEPT THE SYSTEM PLEDGED REVENUES DERIVED FROM THE EXPRESSWAY SYSTEM AND OTHER MONEYS PLEDGED THEREFOR TO THE EXTENT PROVIDED IN THE RESOLUTION. NEITHER THE GENERAL FAITH AND CREDIT OF CFX, THE COUNTIES, THE CITY, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF OR THE TAXING POWER OF THE COUNTIES. THE CITY. THE STATE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF THE BONDS OR ANY PREMIUM OR INTEREST THEREON. CFX HAS NO TAXING POWER. NO REGISTERED OWNER OF THE BONDS SHALL EVER HAVE

THE RIGHT TO REQUIRE OR COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE COUNTIES, THE CITY, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF FOR THE PAYMENT OF THE PRINCIPAL OF OR ANY INTEREST OR PREMIUM DUE THEREON, AND CFX IS NOT AND SHALL NEVER BE UNDER ANY OBLIGATION TO PAY THE PRINCIPAL OF, INTEREST ON OR ANY PREMIUM WITH RESPECT TO THE BONDS EXCEPT FROM THE SYSTEM PLEDGED REVENUES DERIVED FROM THE EXPRESSWAY SYSTEM AND OTHER MONEYS PLEDGED THEREFOR, IN THE MANNER PROVIDED IN THE RESOLUTION. No recourse shall be had for the payment of the principal of or premium or interest on the Bonds or for any claim based thereon or on the Master Bond Resolution or this Resolution or otherwise with respect thereto or hereto against any board member, officer or employee of CFX or any person executing the Bonds and nothing in the Bonds, the Master Bond Resolution or herein shall create or give rise to any personal liability of any such board member, officer or employee of CFX or the County or person executing the Bonds.

**SECTION 4.07.** Application of Proceeds of Bonds. The proceeds of the Bonds shall be applied simultaneously with the delivery of such Bonds for the purposes described in this Resolution and pursuant to a certificate of an Authorized Officer or a closing memorandum executed in connection with the issuance and delivery of the Bonds.

**SECTION 4.08.** Form of Bonds. Subject to the provisions of the Master Bond Resolution, the Bonds and the Registrar's certificate of authentication with respect thereto shall be in substantially the following forms, with such insertions or omissions, endorsements and variations as may be permitted by the Master Bond Resolution and the Act, including changes as shall be necessary to reflect differences between the Bonds, and approved by the Chairman or Vice Chairman of CFX, execution and delivery of the Bonds to be conclusive evidence of such approval.

No. R 2021 -	r
NO. K 2021 -	<b>)</b>

# UNITED STATES OF AMERICA STATE OF FLORIDA CENTRAL FLORIDA EXPRESSWAY AUTHORITY SENIOR LIEN REFUNDING REVENUE BONDS, SERIES 2021

Interest Rate	Maturity Date	Original Dated Date	CUSIP No.
%	July 1, 20	, 201_	

PRINCIPAL AMOUNT: \_\_\_\_\_\_ DOLLARS

The Central Florida Expressway Authority (the "Authority"), for value received, hereby
promises to pay to the Registered Owner identified above, or to registered assigns or legal
representatives, on the Maturity Date identified above (or earlier as hereinafter provided), but
solely from the sources hereinafter described, the Principal Amount identified above, in any coin
or currency of the United States of America which at the time of payment is legal tender for the
payment of public and private debts upon presentation and surrender hereof at the corporate trust
operations office in Minneapolis, Minnesota of Wells Fargo Bank, National Association, or its
successors or assigns, as Trustee, Paying Agent and Registrar (hereinafter referred to as the
"Registrar" or the "Trustee"), and to pay, solely from such sources, interest on the Principal
Amount from the Original Dated Date identified above, or from the most recent interest payment
date to which interest has been paid, at the Interest Rate per annum identified above, until
payment of the outstanding Principal Amount hereof, or until provision for the payment thereof
has been duly provided for, such interest being payable semiannually on the first day of January
and the first day of July of each year, commencing on July 1, 2021. Except as otherwise
provided in the Resolution (as defined below), interest will be paid by check or draft mailed to
the Registered Owner hereof at his address as it appears on the registration books of CFX
maintained by the Registrar at the close of business on the fifteenth (15th) day (whether or not a
Business Day) of the month next preceding the interest payment date (the "Record Date"),

irrespective of any transfer or exchange of such Bond subsequent to such Record Date and prior to such interest payment date, unless CFX shall be in default in payment of interest due on such interest payment date. In the event of any such default, such defaulted interest shall be payable to the person in whose name such Bond is registered at the close of business on a special record date for the payment of such defaulted interest as established by notice deposited in the U.S. Mail, postage prepaid, by the Trustee to the Registered Owners of Bonds not less than fifteen (15) days preceding such special record date. Such notice shall be mailed to the persons in whose names the Bonds are registered at the close of business on the fifth (5th) day (whether or not a

This Bond is one of a duly authorized issue of Bonds designated "Central Florida Expressway Authority Senior Lien Refunding Revenue Bonds, Series 2021 \_\_" (this "Bond" or the "Bonds") issued by CFX under the authority of and pursuant to Chapter 348, Part III, Florida Statutes, as amended, and under and pursuant to an Amended and Restated Master Bond Resolution of CFX adopted on February 3, 2003, as supplemented from time to time and in

4844-4717-8206 v.4 11

Business Day) preceding the date of mailing.

REGISTERED OWNER: CEDE & CO.

particular, as supplemented by that certain Twenty-Seventh Supplemental Revenue Bond Resolution adopted by CFX on March 11, 2021 (collectively, the "Resolution"). Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the Resolution. As provided in the Resolution, this Bond and the interest and premium, if any, hereon are payable solely from and secured by a pledge of the System Pledged Revenues of the Expressway System (each as defined in the Resolution) owned and operated by CFX, upon deposit of such System Pledged Revenues into the System General Revenue Fund established by the Resolution, and other funds held or set aside under the Resolution (excluding the Rebate Fund). Such pledge is on parity with Bonds issued from time to time under the Resolution (whether currently Outstanding or hereafter issued), and any Qualified Swap Payments related to such Bonds. No Supplemental Payments are pledged to secure the repayment of the Bonds. Reference is hereby made to the Resolution for the provisions, among others, relating to the terms of, lien on and security for the Bonds, the custody and application of the proceeds of the Bonds, the rights and remedies of the registered owners of the Bonds, the extent of and limitations on CFX's rights, duties and obligations, the provisions permitting the issuance of additional Bonds, [the provisions pursuant to which the Series Bond Insurer is given the sole right to exercise certain rights of the Holders of Bonds insured by such Series Bond Insurer], and the provisions permitting amendments to the Resolution with and without consent of the Holders of the Bonds, to all of which provisions the Registered Owner hereof for himself and his successors in interest irrevocably assents by acceptance of this Bond. Copies of the Resolution are on file and available at the principal office of the Registrar.

THIS BOND SHALL NOT BE OR CONSTITUTE A GENERAL INDEBTEDNESS OF CFX, BREVARD COUNTY, FLORIDA, ORANGE COUNTY, FLORIDA, LAKE COUNTY, FLORIDA, OSCEOLA COUNTY, FLORIDA, SEMINOLE COUNTY, FLORIDA (THE "COUNTIES"), THE CITY OF ORLANDO, FLORIDA (THE "CITY"), OR ANY OTHER POLITICAL SUBDIVISION IN THE STATE OF FLORIDA, WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER PROVISION OR LIMITATION, AND IT IS EXPRESSLY AGREED THAT THIS BOND AND THE OBLIGATION EVIDENCED HEREBY SHALL NOT CONSTITUTE NOR BE A LIEN UPON ANY PROPERTY OF THE COUNTIES, THE CITY OR CFX, EXCEPT THE SYSTEM PLEDGED REVENUES DERIVED FROM THE EXPRESSWAY SYSTEM AND OTHER MONEYS PLEDGED THEREFOR TO THE EXTENT PROVIDED IN THE RESOLUTION. NEITHER THE GENERAL FAITH AND CREDIT OF CFX, THE COUNTIES, THE CITY, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF OR THE TAXING POWER OF THE COUNTIES, THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF THE BONDS OR CFX HAS NO TAXING POWER. ANY PREMIUM OR INTEREST THEREON. REGISTERED OWNER OF THIS BOND SHALL EVER HAVE THE RIGHT TO REQUIRE OR COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE COUNTIES, THE CITY, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF FOR THE PAYMENT OF THE PRINCIPAL OF THIS BOND OR ANY INTEREST OR PREMIUM DUE HEREON, AND CFX IS NOT AND SHALL NEVER BE UNDER ANY OBLIGATION TO PAY THE PRINCIPAL OF, INTEREST ON OR ANY PREMIUM WITH RESPECT TO THIS BOND EXCEPT FROM THE SYSTEM PLEDGED REVENUES DERIVED FROM THE EXPRESSWAY SYSTEM AND OTHER MONEYS PLEDGED THEREFOR, IN THE MANNER PROVIDED IN THE RESOLUTION. No recourse

shall be had for the payment of the principal of, premium, if any, or interest on the Bonds or for any claim based thereon or on the Resolution or otherwise with respect thereto against any member, officer or employee of CFX or any person executing the Bonds and nothing in the Bonds or the Resolution shall create or give rise to any personal liability of any such member, officer or employee of CFX or person executing the Bonds.

The Bonds are being issued for the purposes of (a) refunding one or more Series or subseries of the Refunded Bonds on a current basis, (b) providing funds or paying the premium on the Series Reserve Account Credit Facility to be deposited into the Series Reserve Subaccount established hereunder with respect to each Series or subseries of Bonds issued hereunder, (c) paying any fees, costs and expenses associated with the termination of Qualified Swap Agreements associated with the Refunded Bonds, and (d) paying the costs of issuance of each Series or subseries of Bonds, including, but not limited to, premiums for one or more Bond Insurance Policies, if any, for such Bonds.

As provided in the Resolution, additional Bonds may be issued from time to time pursuant to supplemental resolutions in one or more series, in various principal amounts, may mature at different times, may bear interest at different rates and otherwise may vary as provided in the Resolution. The aggregate principal amount of Bonds which may be issued under the Resolution is not limited except as provided in the Resolution, and all bonds issued and to be issued under the Resolution (including any Qualified Swap Payments related thereto) will be equally secured by the pledge and covenants made therein, except as otherwise expressly provided or permitted in the Resolution.

[Insert applicable mandatory and/or optional redemption provisions (including any related selection and notice provisions) here, if any. Form language below is subject to modification, amendment or elimination based upon the specific terms of the Bonds]

The Bonds maturing on, 20 are subject to mandatory redemption in part prior
to maturity in accordance with the amortization installments at redemption prices equal to one
hundred percent (100%) of the principal amount thereof, plus accrued interest to the date of
redemption, on1 in the following years and in the following principal amounts:

Year	Principal Amount
20	\$
20	
20	
20	
20 (maturity)	

The Bonds maturing before  $\_$ \_\_\_\_\_, 20\_ are not subject to optional redemption prior to maturity. The Bonds maturing on and after  $\_$ \_\_\_\_\_ 1, 20\_\_ are subject to redemption prior to their maturity at the option of CFX upon published notice as hereinafter provided, as a whole or in part at anytime, on and after  $\_$ \_\_\_\_\_ 1, 20\_\_, at the respective redemption prices

(expressed as percentages of the principal amount of the Bonds or portions thereof to be redeemed) set forth below, together with accrued interest to the redemption date:

Period During which Redeemed	Redemption
(both dates inclusive)	Price

Notwithstanding anything in the Resolution to the contrary, at any time the Bonds are subject to optional redemption pursuant to the Resolution, all or a portion of the Bonds to be redeemed as specified in the notice of redemption, may be purchased by the Trustee at the direction of CFX on the date which would be the redemption date if such Bonds were redeemed rather than purchased in lieu thereof at a purchase price equal to the redemption price which would have been applicable to such Bonds on the redemption date for the account of and at the direction of CFX who shall give the Trustee notice at least ten (10) days prior to the scheduled redemption date accompanied by Bond Counsel's Opinion to the effect that such purchase will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds. In the event the Trustee is so directed to purchase Bonds in lieu of optional redemption, no notice to the Registered Owners of Bonds to be so purchased (other than the notice of redemption otherwise required hereunder) shall be required, and the Trustee shall be authorized to apply to such purchase the funds which would have been used to pay the redemption price for such Bonds if such Bonds had been redeemed rather than purchased. Each Bond so purchased shall not be canceled or discharged and shall be registered in the name of CFX. Bonds to be purchased hereunder which are not delivered to the Trustee on the purchase date shall be deemed to have been so purchased and not redeemed on the purchase date and shall cease to accrue interest as to the former Registered Owner on the purchase date.

If less than all of the Bonds are to be redeemed or purchased in lieu thereof, the maturities (including CUSIP numbers within a maturity to the extent that there are multiple Bonds with the same maturity) and principal amounts of each such maturity to be redeemed or purchased (other than redemptions from Sinking Fund Installments which shall be made from the corresponding maturities specified above) shall be selected by CFX, and in the event less than all of the Bonds of an entire maturity are redeemed or purchased, the Bonds of such maturity or a series thereof shall be selected by CFX; provided, however, that the portion of any Bond of a denomination of more than \$5,000 to be redeemed or purchased shall be in the principal amount of \$5,000 or any integral multiple thereof, and that in selecting portions of such Bonds for redemption or purchase, the Trustee shall treat each such Bond as representing that number of Bonds of \$5,000 denomination which is obtained by dividing the principal amount of such Bond to be redeemed or purchased in part by \$5,000.

The Bonds are payable upon redemption at the above-mentioned offices of the Registrar. Notice of optional redemption shall be published not less than twenty (20) days prior to the redemption date, all in the manner and upon the terms and conditions set forth in the Resolution. The Bonds or portions thereof specified in said notice to be optionally redeemed shall become due and payable at the applicable redemption price on the redemption date therein designated, and if, on the redemption date, moneys for the payment of the redemption price of all the Bonds

to be optionally redeemed, together with interest to the redemption date, shall be available for such payment on said date, then from and after the redemption date interest on such Bonds shall cease to accrue and become payable to the registered owners entitled to payment thereof. No redemption notice shall be required with respect to the Bonds that are subject to mandatory redemption.

If the date for payment of the principal of, [premium, if any,] or interest on this Bond shall be a day which is not a Business Day pursuant to the Resolution, then the date for such payment shall be the next succeeding Business Day and payment on such succeeding Business Day shall have the same force and effect as if made on the nominal date of payment.

This Bond is transferable, as provided in the Resolution, only upon the books of CFX kept for that purpose at the above-mentioned office of the Registrar by the Registered Owner hereof in person, or by his duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the Registered Owner or his duly authorized attorney, and thereupon a new registered Bond or Bonds, of the same series and maturity and in the same aggregate principal amount, shall be issued to the transferee in exchange therefor as provided in the Resolution, and upon payment of the charges therein prescribed, provided that neither CFX nor the Registrar is required to exchange or transfer this Bond for a period of twenty (20) days next preceding any selection of Bonds to be redeemed and thereafter until after the first publication or mailing of any notice of redemption, and, in addition, for a period of twenty (20) days preceding an interest payment date. CFX, the Trustee, the Registrar and the Paying Agent may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and the interest due hereon and for all other purposes. The Bonds are issuable in the form of fully registered bonds without coupons in the denomination of \$5,000 or any integral multiple of \$5,000.

By purchasing and accepting delivery of the Bonds, the holders of the Bonds shall be deemed to have consented to amend the terms and provisions of the Lease Purchase Agreement to discontinue the Department's payment obligations for operations and/or maintenance of certain portions of the Expressway System effective on July 1, 2028. CFX shall comply with the terms of the Lease Purchase Agreement in connection with any additional modifications, amendments or supplements to the Lease Purchase Agreement.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, to happen, and to be performed precedent to and in connection with the issuance of this Bond, exist, have happened and have been performed in regular and due form and time as required by the laws and Constitution of the State of Florida applicable thereto, and that the issuance of this Bond is in full compliance with all constitutional and statutory limitations, provisions and restrictions.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication endorsed hereon shall have been duly executed by the Trustee.

IN WITNESS WHEREOF, the Central Florida Expressway Authority has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of the Chairman (or Vice Chairman) of the Central Florida Expressway Authority, and its corporate seal (or a facsimile thereof) to be affixed, imprinted, engraved or otherwise reproduced hereon and attested by the manual or facsimile signature of the Secretary (or Assistant Secretary).

(SEAL)	CENTRAL FLORIDA EXPRESSWAY AUTHORITY
	By: Its [Vice-] Chairman
ATTESTED AND COU	UNTERSIGNED:
Ву:	
its [Assistant] Secret	ary
	REGISTRAR'S CERTIFICATION OF AUTHENTICATION
This Bond is one	of the Bonds of the issue described in the within-mentioned Resolution.
	Wells Fargo Bank, National Association, AS REGISTRAR
	By
	Authorized Signature
Date of Authentic	eation: 20

#### **ASSIGNMENT**

For value received, the undersigned sells, assigns and transfers unto

# 

### [BOND INSURANCE

	_, has delivered its
bond insurance policy (the "Policy" with respect to the scheduled paymen	nts of principal of and
interest on this Bond to Wells Fargo Bank, National Association, as pays	ing agent on behalf of
the holders of the Bonds (the "Paying Agent"). Such Policy is on	file and available for
inspection at the principal office of the Paying Agent and a copy thereof	may be obtained from
or the Paying Agent. All payments requi	
the Policy shall be made in accordance with the provisions thereof. The	
acknowledges and consents to the subrogation rights of	as more fully
set forth in the Policy.]	
Signature guaranteed:	
NOTICE. Signature must be guaranteed by	
<b>NOTICE</b> : Signature must be guaranteed by an institution which is a participant in the	
Securities Transfer Agent Medallion Program	
(STAMP) or similar program.	
(DITHILL) OF SHIPPING PROGRAMS.	

**NOTICE**: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever and the Social Security Number or other identifying number of such assignee must be supplied.

The following abbreviations, when used in the inscription on the face of the within bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common
TEN ENT - as tenants in the entireties
JT TEN - as joint tenants with right of survivorship and not as tenants in common
UNIF TRANS MIN ACT(Cust.)
Custodian for
under Uniform Transfer to Minors Act of
(State)

Additional abbreviations may also be used though not in list above.

[End of Bond Form]

### SECTION 4.09. <u>Book-Entry Only System</u>.

The Bonds when initially issued shall be registered in the name of Cede & Co., or such other name as may be requested by an authorized representative of the Depository Trust Company ("DTC"), as nominee of DTC, in the form of a single fully registered Bond for each maturity of the Bonds. DTC is hereby appointed initial securities depository for the Bonds, subject to the provisions of subsection (B) of this Section. So long as DTC or its nominee, as securities depository, is the Bondholder of Bonds, individual purchases of beneficial ownership interests in such Bonds may be made only in book form by or through DTC participants, and purchasers of such beneficial ownership interest in Bonds will not receive physical delivery of bond certificates representing the beneficial ownership interests purchased. So long as DTC or its nominee, as securities depository, is the Bondholder of Bonds, payments of principal and the redemption price of and premium (if any) and interest on such Bonds will be made by wire transfer to DTC or its nominee, or otherwise pursuant to DTC's rules and procedures as may be agreed upon by CFX, the Paying Agent and DTC. Transfers of principal, the redemption price and interest payments to DTC participants will be the responsibility of DTC. Transfers of such payments to beneficial owners of Bonds by DTC participants will be the responsibility of such participants, indirect participants and other nominees of such beneficial owners. So long as DTC or its nominee, as securities depository, is the Bondholder of Bonds, CFX shall send, or cause the Paying Agent to send, or take timely action to permit the Paying Agent to send to DTC notice of redemption of such Bonds and any other notice required to be given to Bondholders of Bonds pursuant to the Resolution, as supplemented herein, in the manner and at the times prescribed by the Resolution, as supplemented herein, or otherwise pursuant to DTC's rules and procedures or as may be agreed upon by CFX, the Paying Agent (if applicable) and DTC.

Neither CFX nor any fiduciary shall have any responsibility or obligation to the DTC participants, beneficial owners or other nominees of such beneficial owners for (i) sending transaction statements; (ii) maintaining, supervising or reviewing, or the accuracy of, any records maintained by DTC or any DTC participant, indirect participant or other nominees of such beneficial owners; (iii) payment or the timeliness of payment by DTC to any DTC participant, indirect participant or other nominees of beneficial owners to any beneficial owner of any amount due in respect of the principal or the redemption price of or interest on Bonds; (iv) delivery or timely delivery by DTC to any DTC participant or indirect participant, or by any DTC participant, indirect participant or other nominees of beneficial owners to any beneficial owners of any notice (including notice of redemption) or other communication which is required or permitted under the terms of the Resolution, as supplemented herein to be given to Bondholders of Bonds; (v) the selection of the beneficial owners to receive payment in the event of any partial redemption of Bonds; or (vi) any action taken by DTC or its nominee as the Bondholder of the Bonds.

Notwithstanding any other provisions of the Master Bond Resolution to the contrary, CFX, the Paying Agent and each other fiduciary shall be entitled to treat and consider the Holder in whose name each Bond is registered in the registration books of as the absolute Holder of such Bond for the purpose of payment of principal or the redemption price of and premium (if any) and interest on such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Paying Agent shall pay all principal and the redemption

price of and premium (if any) and interest on the Bonds only to or upon the order of the respective Holders, as shown on the registration books as provided in the Master Bond Resolution, as supplemented by this Resolution, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge CFX's obligations with respect to payment of principal or the redemption price of and premium (if any) and interest on the Bonds to the extent of the sum or sums so paid.

Notwithstanding any other provisions of the Master Bond Resolution, as supplemented by this Resolution, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal or the redemption price of and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, pursuant to DTC rules and procedures.

Payments by the DTC participants to beneficial owners will be governed by standing instructions and customary practices, as is now the case with municipal securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such DTC participant and not of DTC, the Paying Agent or CFX, subject to any statutory and regulatory requirements as may be in effect from time to time.

Provisions similar to those contained in this subsection (A) may be made by CFX in connection with the appointment by CFX of a substitute securities depository, or in the event of a successor to any securities depository.

- B. CFX shall issue Bond certificates (the "Replacement Bonds") directly to the beneficial owners of the Bonds, or their nominees, in the event that DTC determines to discontinue providing its services as securities depository with respect to such Bonds, at any time by giving notice to CFX, and CFX fails to appoint another qualified securities depository to replace DTC, In addition, CFX shall issue Replacement Bonds directly to the beneficial owners of the Bonds, or their nominees, in the event CFX discontinues use of DTC as securities depository at any time upon determination by CFX, in its sole discretion and without the consent of any other person, that beneficial owners of the Bonds shall be able to obtain certificated Bonds.
- C. In connection with any notice of redemption provided in accordance with the Master Bond Resolution, as supplemented by this Resolution, notice of such redemption shall also be sent by the Paying Agent by first class mail, overnight delivery service or other secure overnight means, postage prepaid, to any Rating Agency then maintaining a rating with respect to the Bonds and to the Repository, in accordance with applicable rules and regulations then in effect, in each case not later than the mailing of notice required herein.

### **SECTION 4.10.** Redemption Prices and Terms: Purchase in Lieu of Redemption.

A. <u>Optional Redemption</u>. Each Series of the Bonds shall be subject to such optional redemption provisions as and to the extent such optional redemption is subsequently provided for in: (i) the Bond Purchase Agreement and the final Official Statement for such Series of Bonds sold by public offering or (ii) the credit agreement, continuing covenants agreement or similar

agreement with respect to Bonds sold by direct placement, all of the foregoing, as approved by the Chairman, Vice Chairman or Authorized Officer pursuant to the authority provided herein.

- B. <u>Mandatory Redemption</u>. Each Series of the Bonds shall also be subject to mandatory redemption to satisfy sinking fund installments as and to the extent such mandatory redemption is subsequently provided for in: (i) the Bond Purchase Agreement and the final Official Statement for such Series of Bonds sold by public offering, or (ii) the credit agreement, continuing covenants agreement or similar agreement with respect to Bonds sold by direct placement, all of the foregoing, as approved by the Chairman, Vice Chairman or Authorized Officer pursuant to the authority provided herein.
- <u>Purchase in Lieu of Optional Redemption</u>. Notwithstanding anything in this Resolution to the contrary, if the Bonds are subject to optional redemption pursuant to this Resolution, all or a portion of the Bonds to be redeemed as specified in the notice of redemption, may be purchased by the Trustee at the direction of CFX on the date which would be the redemption date if such Bonds were redeemed rather than purchased in lieu thereof at a purchase price equal to the redemption price which would have been applicable to such Bonds on the redemption date for the account of and at the direction of CFX who shall give the Trustee notice at least ten (10) days prior to the scheduled redemption date accompanied by Bond Counsel's Opinion to the effect that such purchase will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds. In the event the Trustee is so directed to purchase Bonds in lieu of optional redemption, no notice to the Registered Owners of Bonds to be so purchased (other than the notice of redemption otherwise required hereunder) shall be required, and the Trustee shall be authorized to apply to such purchase the funds which would have been used to pay the redemption price for such Bonds if such Bonds had been redeemed rather than purchased. Each Bond so purchased shall not be canceled or discharged and shall be registered in the name of CFX. Bonds to be purchased under this Section 4.10.C. which are not delivered to the Trustee on the purchase date shall be deemed to have been so purchased and not optionally redeemed on the purchase date and shall cease to accrue interest as to the former Registered Owner on the purchase date.
- D. <u>Selection of Bonds to be Redeemed or Purchased</u>. If and to the extent that less than all of the Bonds are to be redeemed or purchased in lieu thereof, the maturities (including CUSIP numbers within a maturity to the extent that there are multiple Bonds with the same maturity) and principal amounts of each such maturity to be redeemed or purchased (other than from sinking fund installments which shall be made from the corresponding maturities designated as provided above) shall be selected by CFX, and in the event less than all of the Bonds of an entire maturity or a series thereof are redeemed or purchased, the Bonds of such maturity shall be selected by CFX; provided, however, that the portion of any Bond of a denomination of more than \$5,000 to be redeemed or purchased shall be in the principal amount of \$5,000 or any integral multiple of \$5,000 in excess thereof, and in selecting portions of such Bonds for redemption or purchase, the Trustee shall treat each such Bond as representing that number of Bonds of \$5,000 denomination which is obtained by dividing the principal amount of such Bond to be redeemed or purchased in part by \$5,000.

**SECTION 4.11.** Notice of Redemption. To the extent applicable to the Bonds, any redemption of the Bonds shall be subject to the requirements of the Master Bond Resolution, provided however, that (a) the provisions of Section 3.2 of the Master Bond Resolution regarding notice of redemption is required solely with respect to the exercise by CFX of its right to optionally redeem the Bonds, and (b) the thirty (30) day notice period set forth in Section 3.2 of the Master Bond Resolution for the notice of optional redemption of the Bonds is hereby changed to twenty (20) days with respect to the Bonds.

So long as DTC is effecting book-entry transfers of the Bonds and to the extent that the Bonds are subject to redemption, the Paying Agent shall provide the redemption notices referenced in this Section 4.11 only to DTC. It is expected that DTC shall, in turn, notify its participants and that the participants, in turn, will notify or cause to be notified the beneficial owners. Any failure on the part of DTC or a participant, or failure on the part of a nominee of a beneficial owner of a Bond to notify the beneficial owner of the Bond so affected, shall not affect the validity of any applicable redemption of such Bond.

To the extent applicable to the Bonds, any notice of optional redemption given pursuant to this Section 4.11 shall state that it is conditional upon receipt by the Paying Agent of moneys sufficient to pay the redemption price, plus interest accrued to the Redemption Date, or upon the satisfaction of any other condition, or that it may be rescinded upon the occurrence of any other event, and any conditional notice so given may be rescinded at any time before payment of such redemption price and accrued interest if any such condition so specified is not satisfied or if any such other event occurs. Notice of such rescission shall be given by the Paying Agent to affected Holders of Bonds as promptly as practicable upon the failure of such condition or the occurrence of such other event.

# ARTICLE V SALE OF BONDS

SECTION 5.01 Approval of Bond Purchase Agreement. Offers with respect to one or more Series of Bonds in the form of the Bond Purchase Agreement attached hereto as Exhibit A are hereby approved, subject to such changes, insertions and omissions and filling of blanks therein as may be approved and made in such form by the Chairman, the Vice Chairman or an Authorized Officer in a manner consistent with the terms of this Resolution, execution and delivery of such Bond Purchase Agreement(s) to be conclusive evidence of such approval. Upon receipt of a disclosure statement from the Purchaser and a financial analysis from the Purchaser and the Financial Advisor evidencing that the requirements set forth in Section 4.01 above are met, the Chairman, the Vice Chairman or an Authorized Officer is hereby authorized to accept the offers of the Purchaser to purchase the Bonds in an aggregate principal amount of not to exceed the amount specified in Section 4.01.A. above and at a purchase price reflecting an underwriter's discount of not greater than 0.50% of the par amount of the Bonds, reduced by any original issue discount and increased by any premium reflected in the original offering price to the public of such current interest paying bonds, if any, thereon, plus accrued interest thereon to the date of delivery, upon the terms and conditions set forth in the Bond Purchase Agreement. The Chairman or Vice Chairman or Authorized Officer is hereby authorized to designate the member or members of its underwriting team to serve as Purchaser with respect to a Series of Bonds issued hereunder and to execute one or more Bond Purchase Agreements, if necessary, for

and on behalf of CFX pursuant to the terms hereof. If CFX is unable to reach an agreement with a designated Purchaser regarding the purchase of the Bonds in a timely manner, then the Chairman or Vice Chairman or Authorized Officer is hereby authorized to select and negotiate with another member of CFX's underwriting team to purchase the Bonds, subject to the terms and conditions of this Resolution and such other selected underwriter shall be deemed to be the Purchaser for the purposes of this Resolution.

#### SECTION 5.02. Official Statement; Credit Agreement.

- CFX hereby approves the form and content of the draft Preliminary Official A. Statement attached hereto as **Exhibit B** with respect to such Series of Bonds to be sold by public offering. The Chairman, Vice Chairman or an Authorized Officer of CFX are hereby authorized to incorporate into the body of the Preliminary Official Statement current available operating and financial information, reports and data that CFX staff has provided or presented to the CFX governing board, and to approve the final form of a Preliminary Official Statement for each Series of Bonds issued hereunder, including for purposes of making findings required for purposes of Rule 15c2-12 of the Securities Exchange Commission ("Rule 15c2-12"), together with such changes, insertions, omissions and filling of blanks therein as the Chairman, Vice Chairman or Authorized Officer, in his or her discretion, may approve in a manner consistent with the terms of this Resolution, including such changes as may be necessary to make appropriate disclosure of CFX's financial and operational results, and otherwise in substantially the form attached hereto, execution of a certificate deeming the Preliminary Official Statement for each Series of Bonds issued hereunder final for purposes of Rule 15c2-12 to be conclusive evidence of such approval, and to authorize the distribution of such Preliminary Official Statement by the Purchaser in the initial marketing of the Bonds. The Chairman, Vice Chairman or an Authorized Officer is hereby authorized to approve and execute, on behalf of CFX, a final Official Statement with respect to each Series of Bonds issued hereunder, with such changes, supplements, modifications, insertions and deletions from the applicable Preliminary Official Statement as the Chairman or Vice Chairman, in his sole discretion, shall approve, such execution to be conclusive evidence of such approval. CFX hereby consents to the use by the Purchaser of the applicable Preliminary Official Statement and final Official Statement for a Series of Bonds issued hereunder.
- B. CFX hereby delegates to an Authorized Officer the authority to negotiate a credit agreement, continuing covenants agreement or similar agreement with respect to a Series of Bonds sold by direct placement. The terms and provisions of any such agreement shall comply with the parameters set forth in this Resolution. The Chairman, Vice Chairman or Authorized Officer of CFX is hereby authorized to execute and deliver such an agreement for each Series of Bonds issued hereunder on behalf of CFX and sold by direct placement.

**SECTION 5.03.** Continuing Disclosure Agreement. For purposes of enabling the Purchaser to comply with the requirements of Rule 15c2-12, the Continuing Disclosure Agreement for each Series of Bonds issued hereunder to which Rule 15c2-12 applies, in the form attached hereto as **Exhibit C**, is hereby approved in a manner consistent with the terms of this Resolution, subject to such changes, insertions, omissions and filling of blanks therein as may be approved and made in such form by the officers of CFX executing the same, execution and delivery thereof to be conclusive evidence of such approval. The Chairman or Vice Chairman of

CFX is hereby authorized to execute and deliver the Continuing Disclosure Agreement for each Series of Bonds issued hereunder on behalf of CFX and in substantially the form attached hereto with such changes, insertions, omissions and filling of blanks therein as such officer shall approve in a manner consistent with the terms of this Resolution.

SECTION 5.04. Trustee, Paying Agent and Registrar Agreement. The form of the Trustee, Paying Agent and Registrar Agreement for each applicable Series of Bonds issued hereunder and attached hereto as Exhibit D is hereby approved, subject to the changes, insertions and omissions and filling of blanks therein as may be approved and made in such form of Trustee, Paying Agent and Registrar Agreement by the officers of CFX executing the same, in a manner consistent with the terms of this Resolution, such execution to be conclusive evidence of such approval. The Chairman or Vice Chairman is hereby authorized to execute the Trustee, Paying Agent and Registrar Agreement on behalf of CFX in substantially the form attached hereto with such changes, insertions, omissions and filling of blanks therein as such officer shall approve in a manner consistent with the terms of this Resolution. Wells Fargo Bank, National Association is hereby designated as the initial Trustee, Paying Agent and Registrar under each Trustee, Paying Agent and Registrar Agreement for a Series of Bonds issued hereunder and shall serve until it resigns or is removed and a successor Trustee, Paying Agent and Registrar is appointed for such Bonds as provided in the Trustee, Paying Agent and Registrar Agreement. To the extent that a Bond Insurance Policy is obtained with respect to all or a portion of a Series of Bonds, the Paying Agent shall transfer the Bond Insurance Policy for such Bonds and the Series Reserve Account Credit Facility to any successor Paying Agent. The Paying Agent shall not have a lien on any (i) proceeds received from the Bond Insurance Policy, if any, or (ii) proceeds received from the Series Reserve Account Credit Facility, if any. The Chairman, Vice Chairman or other Authorized Officer is authorized to approve the form of and to execute on behalf of CFX the Trustee, Paying Agent and Registrar Agreement for each Series of Bonds, in accordance with the requirements of this Section 5.04.

**SECTION 5.05** Approval of Form of Escrow Deposit Agreement; Designation of Escrow Agent; Designation of Verification Agent. The form of the Escrow Deposit Agreement for each Series of Bonds issued hereunder and attached hereto as **Exhibit E** is hereby approved, subject to the changes, insertions and omissions and filling of blanks therein as may be approved and made in such form of Escrow Deposit Agreement by the officers of CFX executing the same, in a manner consistent with the terms of this Resolution, such execution to be conclusive evidence of such approval. The Chairman or Vice Chairman is hereby authorized to execute the Escrow Deposit Agreement on behalf of CFX with respect to one or more Series or subseries of the Refunded Bonds. Wells Fargo Bank, National Association is hereby designated as the Escrow Agent under each Escrow Deposit Agreement. An Authorized Officer is hereby authorized to designate the Verification Agent to provide verification services with respect to amounts deposited with the Escrow Agent pursuant to each Escrow Deposit Agreement.

SECTION 5.06. <u>Bond Insurance Policy</u>; Series Reserve Account Credit Facility. CFX hereby designates the Bond Insurance Policy as a "Bond Credit Facility" for the Bonds, approves the selection of the Series Bond Insurer as the provider of the Series Bond Insurance Policy, authorizes the delivery by the Series Bond Insurer of one or more Bond Insurance Policies with respect to the issuance of the Bonds, and the payment of the premium associated with each Bond Insurance Policy. The determination of whether to obtain a Bond Insurance

Policy for all or a portion of a Series of Bonds shall be made by the Chairman, Vice Chairman or Authorized Officer, based upon the advice of the Financial Advisor. CFX further approves the selection of the Series Reserve Facility Provider as the provider of each Series Reserve Account Credit Facility, authorizes the delivery by the Series Reserve Facility Provider of each Series Reserve Account Credit Facility, and the payment of the premiums associated with the Series Reserve Account Credit Facilities. The determination of whether to obtain the Series Reserve Account Credit Facility for all or a portion of the Bonds shall be made by the Chairman, Vice Chairman or Authorized Officer, based upon the advice of the Financial Advisor. The Chairman, Vice Chairman or Authorized Officer is hereby authorized to execute on behalf of CFX any and all documents, instruments, certificates and agreements in connection with the purchase and delivery of each Bond Insurance Policy and Series Reserve Account Credit Facility for the Bonds, with such changes, insertions, omissions and filling of blanks therein as such officer shall approve.

# ARTICLE VI TAX COMPLIANCE AND REBATE PROVISIONS

**SECTION 6.01.** The Series Rebate Fund. There is hereby created and established one or more funds to be known as the "Central Florida Expressway Authority Senior Lien Refunding Revenue Bonds, Series 2021\_\_ Rebate Fund" (each fund hereinafter referred to as a "Series Rebate Fund"). CFX hereby delegates to the Chairman, Vice Chairman or Authorized Officer to designate by closing certificate at the time of issuance of a Series of Bonds hereunder the Series of Bonds to which each Series Rebate Fund will apply. The Series Rebate Fund shall be maintained with the Paying Agent and shall be kept separate and apart from all other funds of CFX, and used for the purpose and in the manner provided in this Section, and shall be and constitute a trust fund for such purposes. The Bonds, including any Additional Bonds or Refunding Bonds hereafter issued pursuant to and within the terms, limitations and conditions contained in the Master Bond Resolution, as supplemented by this Resolution, shall have no lien on or pledge of the moneys at any time or from time to time on deposit in the Series Rebate Fund and the moneys in the Series Rebate Fund shall be available for use only as herein provided. CFX shall use moneys deposited in the Series Rebate Fund only for the payment of the Rebate Amount with respect to the Bonds to the United States. Funds on deposit in the Series Rebate Fund in excess of the Rebate Amount, however, may be withdrawn and paid over to t CFX. In complying with the foregoing, CFX may rely upon Bond Counsel's Opinion with respect thereto.

If any amount shall remain in the Series Rebate Fund after payment in full of all Bonds issued hereunder and after payment in full of the Rebate Amount to the United States in accordance with the terms hereof, such amount shall be available to CFX for any lawful purpose.

Notwithstanding any other provision of this Resolution or the Master Bond Resolution, including in particular Section 5.1 of the Master Bond Resolution, the obligation to pay over the Rebate Amount to the United States and to comply with all other requirements of Section 6.02 hereof and this Section 6.01 shall survive the defeasance or payment in full of the Bonds.

**SECTION 6.02.** Covenants Concerning Compliance with Tax Laws. In addition to any other requirements contained in the Master Bond Resolution, CFX hereby covenants and agrees, for the benefit of the holders from time to time of the Bonds, to comply with the

requirements contained in the Code to the extent necessary, and any other requirements which, in Bond Counsel's Opinion, are necessary to preserve the exclusion of interest on the Bonds from the gross income of the owners thereof for federal income tax purposes throughout the term of the issue.

**SECTION 6.03.** <u>Amendments to Article VI</u>. Any provision of this Resolution or of the Master Bond Resolution to the contrary notwithstanding, the provisions of this Article VI may be amended from time to time without the consent of the Paying Agent or the Bondholders upon delivery to the Paying Agent of a Bond Counsel's Opinion to the effect that such amendment will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

# ARTICLE VII ESTABLISHMENT OF CERTAIN ACCOUNTS

SECTION 7.01. Series Cost of Issuance Account. CFX hereby establishes with the Trustee for each Series of the Bonds the "Central Florida Expressway Authority Senior Lien Refunding Revenue Bonds, Series 2021\_ Cost of Issuance Account" (the "Series Cost of Issuance Account") as separate accounts under the Master Bond Resolution. CFX hereby delegates to the Chairman, Vice Chairman or Authorized Officer to designate by closing certificate at the time of issuance of a Series of Bonds hereunder the Series of Bonds to which each Series Cost of Issuance Account will apply. Proceeds of the Bonds, and any other monies of CFX, if any, deposited in the Series Cost of Issuance Account shall be used only for the payment of cost of issuance associated with the issuance of the Series of Bonds to which such Account applies, and until applied to the payment of such costs, shall be held by the Trustee and be subject to a lien on charge in favor of the Bondholders and for the further security of such Bondholders. Any funds remaining on deposit in the Series Cost of Issuance Account after the payment of all costs of issuance of the Bonds shall be transferred to the Interest Account of the Sinking Fund to be used for purposes of paying interest on the Bonds.

**SECTION 7.02.** Series Reserve Subaccount. CFX hereby establishes with the Trustee the "Central Florida Expressway Authority Series 2021\_\_ Bonds Debt Service Reserve Subaccount" (the "Series Reserve Subaccount") as separate subaccounts within the Debt Service Reserve Account established pursuant to the Master Bond Resolution. CFX hereby delegates to the Chairman, Vice Chairman or Authorized Officer to designate by closing certificate at the time of issuance of a Series of Bonds hereunder the Series of Bonds to which each Series Reserve Subaccount will apply. The Debt Service Reserve Requirement, if any, with respect to a Series of Bonds issued hereunder shall be determined on the date that such Bonds are sold. The Series Reserve Subaccount may be funded by CFX through the deposit in a lump sum or installments of available money, proceeds of such Bonds, a Series Reserve Account Credit Facility, or any combination of thereof. The Series Reserve Subaccount shall be fully funded by CFX on or before sixty (60) months following the date that the Bonds are issued. If the Series Reserve Subaccount is to be funded in installments as provided in this paragraph: (i) CFX shall make substantially equal monthly installments in order that the amounts on deposit therein and available amounts under any Series Reserve Account Credit Facility at the end of such period shall equal the Debt Service Reserve Requirement, and (ii) the deposits required to be made to the Series Reserve Subaccount pursuant to the foregoing may be limited to the amount which

will be sufficient to pay the required monthly installments specified in such resolution, plus an additional amount necessary to make up any deficiencies caused by withdrawals or resulting from the valuation of investments of funds on deposit therein. The Series Reserve Subaccount is pledged solely to secure the repayment of the Bonds, and Holders of the Bonds shall not be secured by any other money on deposit in the Debt Service Reserve Account. Application of amounts drawn on the Series Reserve Account Credit Facility or funds deposited in the Series Reserve Subaccount, as applicable, shall be in accordance with the Master Bond Resolution unless otherwise provided herein.

**SECTION 7.03.** Additional Funds, Accounts and Subaccounts. CFX may, by certificate of an Authorized Officer and based on the advice of Bond Counsel or the Financial Advisor, establish separate funds, accounts or subaccounts associated with (a) termination payments with respect to the Qualified Swap Agreements with respect to the Refunded Bonds, or (b) any one or more Series of the Bonds, as CFX may reasonably determine are necessary or desirable.

# ARTICLE VIII SERIES BOND INSURER PROVISIONS

To the extent that it is determined pursuant to Section 5.06 hereof to obtain a Bond Insurance Policy with respect to all or a portion of one or more Series of the Bonds, an Authorized Officer is hereby authorized to enter into an Insurance Agreement with respect to any such Bond Insurance Policy (the "Insurance Agreement") and during the term that any such Bond Insurance Policy is in effect and the Series Bond Insurer is in compliance with its obligations under the Bond Insurance Policy, the terms and provisions of the Bond Insurance Policy and the related Insurance Agreement shall be controlling and are hereby incorporated into the body of this Resolution as if set forth herein. If entered into, the terms of the Insurance Agreement shall be disclosed in the final Official Statement and a copy of the Insurance Agreement shall be appended to this Resolution as **Exhibit F**.

## ARTICLE IX TRUSTEE PROVISIONS

**SECTION 9.01.** Duty to Act. The Trustee shall not be under any obligation to institute any suit, take any remedial proceeding under this Resolution or the Master Senior Lien Bond Resolution or to enter any appearance or in any way defend in any suit in which it may be made defendant or to take any steps in the execution of the trust hereby created or in the enforcement of any rights and powers hereunder until it shall be indemnified to its satisfaction against any and all reasonable cost and expenses, outlays and counsel fees and other disbursements and against all liability not due to its misconduct, negligence or bad faith.

**SECTION 9.02.** <u>Limitations on Liability</u>. The Trustee shall not be liable or responsible because of the failure of CFX to perform any act required by this Resolution or the Master Senior Lien Bond Resolution. The Trustee shall not be liable in connection with the performance of its duties under this Resolution or the Master Senior Lien Bond Resolution except for its own misconduct, negligence or bad faith.

**SECTION 9.03.** <u>Compensation</u>. CFX shall pay to the Trustee such reasonable compensation as shall be agreed upon between CFX and the Trustee.

**SECTION 9.04.** <u>Reliance</u>. The Trustee shall be protected and shall incur no liability for acts or omissions made in good faith, reasonably and in accordance with the terms of this Resolution, upon any resolution, order, notice, request, consent, waiver, or other paper or document which it shall, in good faith, reasonably believe to be genuine and to have been adopted and signed by the proper board or person or to have been prepared and furnished pursuant to the provisions of this Resolution. The Trustee shall not be responsible for determining what are Permitted Investments.

**SECTION 9.05.** Resignation. The Trustee may resign and thereby become discharged from the trust created under this Resolution or the Master Senior Lien Bond Resolution by notice, in writing, to be given to CFX not less than ninety (90) days before such resignation is to take effect, but such resignation shall take effect immediately upon the appointment and acceptance of a successor trustee pursuant to Section 8.07 hereof if said appointment and acceptance shall be before the time specified by such notice.

**SECTION 9.06.** <u>Removal</u>. The Trustee may be removed at any time by CFX in accordance with the terms of the Trustee, Paying Agent and Registrar Agreement referenced in Section 5.02 hereof. Written notice of such removal shall be provided to the Holders by CFX.

### **SECTION 9.07. Successor Trustee.**

- A. If at any time the Trustee shall resign, or shall be removed, be dissolved or otherwise become incapable of acting or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator thereof, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee or of its property or affairs, the position of Trustee shall become vacant for any of the foregoing reasons or for any other reason, CFX shall, within thirty (30) days, appoint a successor Trustee to fill such vacancy. The Trustee appointed under this Section shall be a bank or trust company eligible under the laws of the State of Florida to accept trusts and operate in a fiduciary capacity. Any such successor Trustee shall have combined capital, surplus, and undivided profits of at least \$50,000,000. Anything contained in this Resolution to the contrary notwithstanding, no resignation or removal shall become effective until a successor has been appointed and accepted the responsibilities hereunder.
- B. Every successor Trustee appointed under this Resolution shall execute, acknowledge and deliver to its predecessor, and also to CFX, an instrument in writing accepting such appointment, and thereupon such successor Trustee without further act, deed, or conveyance, shall become fully vested with all monies, estates, properties, rights, immunities, powers and trusts, and subject to all the duties and obligations of its predecessor, with like effect as if originally named as such Trustee; but such predecessor shall, nevertheless, on the written request of its successor or of CFX, and upon payment of the compensation, expenses, charges and other disbursements of such predecessor which are due and payable pursuant to Section 9.03, execute and deliver an instrument transferring to such successor Trustee all the rights, immunities, powers and trusts of such predecessor; and every predecessor Trustee shall deliver

all property and moneys held by it under this Resolution to its successor. Should any instrument in writing from CFX be required by any successor Trustee for more fully and certainly vesting in such Trustee the rights, immunities, powers and trusts vested or intended to be vested in the predecessor Trustee, any such instrument in writing shall, on request, be executed, acknowledged and delivered by CFX.

**SECTION 9.08.** Mergers and Consolidations. Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee shall sell or transfer all or substantially all of the bond administration portion of its corporate trust business, provided such company shall be a bank, or trust company eligible under the laws of the State of Florida to accept trusts and operate in a fiduciary capacity, shall be successor to the Trustee without the execution or filing of any paper or performance of any further act.

# ARTICLE X MISCELLANEOUS

SECTION 10.01. Authorizations. The Chairman or the Vice Chairman is hereby authorized to countersign the Bonds by his or her manual or facsimile signature in the manner provided herein. The Chairman, Vice Chairman, Secretary, Assistant Secretaries, Executive Director, Chief Financial Officer or other Authorized Officer, are each hereby authorized and directed, individually or with others pursuant to their direction or authorization, to execute such other documents, certificates, instruments, contracts, and agreements whether or not expressly contemplated hereby, and to execute and do all acts and things required by the provisions of this Resolution as may be necessary for the full, punctual and complete performance of all the terms, covenants, provisions and agreements herein and therein contained, or as otherwise may be necessary or desirable to effectuate the purpose and intent of this Resolution, including without limitation, any providing or executing any authorizations, approvals, consents, documents certificates, notices, requests or agreements related to or in connection with the Qualified Swap Agreements with respect to the Refunded Bonds. The Chairman, the Secretary, Assistant Secretaries, Executive Director, and Chief Financial Officer of CFX are hereby designated as the Authorized Officers of CFX charged with the responsibility of issuing the Bonds. In the absence or unavailability of the Chairman, the Vice Chairman is hereby authorized to act in his place. If any officer of CFX who has signed the Bonds or any other documents, certificates, instruments, contracts, and agreements in furtherance of this Resolution shall cease to hold such office before the delivery date of such Bonds, documents, certificates, instruments, contracts, and agreements, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such person had remained in office until delivery.

**SECTION 10.02.** Parties Interested Herein. Nothing in this Resolution, expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than CFX, the Trustee, the Paying Agent, and the registered owner of the Bonds, any right, remedy or claim under or by reason of this Resolution or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Resolution, by and on behalf of CFX shall be for the sole and exclusive benefit of CFX, the Trustee, the Paying Agent, and the registered owner of the Bonds.

SECTION10.03. Controlling Law; Members; Members of Authority not Liable. All covenants, stipulations, obligations and agreements of CFX contained in this Resolution shall be deemed to be covenants, stipulations, obligations and agreements of CFX to the full extent authorized by the Act and provided by the Constitution and laws of the State of Florida. No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, agent, officer or employee of CFX in his or her individual capacity, and neither the members of the Governing Body of CFX nor any official executing the Bonds shall be liable personally on the Bonds or under this Resolution or shall be subject to any personal liability or accountability by reason of the issuance of the Bonds or the execution thereof by CFX or such officers thereof.

**SECTION 10.04.** Consent to Amendments to Lease Purchase Agreement. By purchasing and accepting delivery of the Bonds, the holder of the Bonds issued hereunder shall be deemed to have consented to amend the terms and provisions of the LPA to discontinue the Department's payment obligations for operations and/or maintenance of certain portions of the Expressway System effective on July 1, 2028. CFX shall comply with the terms of the LPA in connection with any additional modifications, amendments or supplements to the LPA.

**SECTION 10.05.** <u>Effective Date</u>. This Resolution shall become effective upon approval.

[SIGNATURES FOLLOW NEXT PAGE]

This Resolution was approved and adopted by the Central Florida Expressway Authority on March 11, 2021.

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By:_	Buddy Dyer, Chairman
ATTEST:	
By: Mimi Lamaute Board Services Coordinator	_
Signed:	
Based upon review by Bond Counsel acting up the direction of General Counsel, this Resolution	

approved as to form and legal sufficiency for the

sole use and reliance of CFX and its Board.

S-1

# EXHIBIT A

# FORM OF BOND PURCHASE AGREEMENT

[Attached]

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

# \$[\*] SENIOR LIEN REFUNIDNG REVENUE BONDS, SERIES 2021

#### BOND PURCHASE AGREEMENT<sup>1</sup>

[\*], 2021

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

Ladies and Gentlemen:

The undersigned, [\*], acting on behalf of itself and as representative (the "Representative") of the other underwriters listed on **Exhibit B** attached hereto (collectively, including the Representative, the "Underwriters"), offers to enter into this Bond Purchase Agreement (this "Bond Purchase Agreement") with the Central Florida Expressway Authority (the "Issuer") for the purchase by the Underwriters and the sale by the Issuer of the hereinafter described Series 2021 Bonds (as defined herein).

The offer made herein by the Underwriters is subject to acceptance thereof by the Issuer at or prior to 6:00 p.m., prevailing time in Orlando, Florida, on the date hereof and, upon such acceptance, evidenced by the signature of a duly Authorized Officer (as defined in the hereinafter defined Bond Resolution) in the space provided below, this Bond Purchase Agreement shall be in full force and effect in accordance with its terms and shall be binding upon the Issuer and the Underwriters.

I. Upon the terms and conditions negotiated between the Representative and the Issuer and in reliance upon the respective representations, warranties, covenants and agreements, all as set forth herein, the Underwriters, jointly and severally, hereby agree to purchase from the Issuer for a bona fide offering to the public and the Issuer hereby agrees to sell and deliver to the Underwriters for such purpose, all (but not less than all) of (i) \$[\*] in aggregate principal amount of its Senior Lien Refunding Revenue Bonds, Series 2021 (the "Series 2021 Bonds") for a purchase price of \$[\*] (the "Purchase Price"), which represents the par amount of the Series 2021 Bonds of \$[\*], plus/less [net] bond premium/discount of \$[\*], less an underwriters' discount of \$[\*], which Purchase Price shall be payable to the Issuer on the Closing Date (as defined herein) as provided in Section 6 below. The date for delivery of and payment for the Series 2021 Bonds is expected to be [[\*], 2021], and is referred to herein as the "Closing Date." The Series 2021 Bonds shall be

<sup>&</sup>lt;sup>1</sup> This document is in substantial form and is subject to modification and amendment based on delegated authority provided in the Twenty-Seventh Supplemental Revenue Bond Resolution and may be amended and modified to reflect updated operating and financial information for CFX as well as changes in underwriting standards.

dated as of the Closing Date, shall mature on such dates and in such principal amounts and pay interest at such rates as described in **Exhibit G** attached hereto. Interest shall be payable semi-annually on each January 1 and July 1, commencing July 1, 2021. The Series 2021 Bonds shall be subject to redemption as described in **Exhibit G** attached hereto.

Prior to the date hereof, the Issuer has provided to the Underwriters the Preliminary Official Statement relating to the Series 2021 Bonds dated [\*], 2021, including the cover page, inside cover page, appendices and any addendum thereto (the "Preliminary Official Statement"). The Preliminary Official Statement as amended to delete the preliminary language, to reflect the date and the terms of this Bond Purchase Agreement and to reflect the maturities, principal amounts, interest rates, and redemption provisions of the Series 2021 Bonds and with such additional changes and amendments as shall be approved by the Issuer and the Underwriters is hereinafter referred to as the "Official Statement."

The Series 2021 Bonds shall be as described in, and will be issued pursuant to, Chapter 348, Part III, Florida Statutes (the "Act"), and that certain Amended and Restated Master Bond Resolution adopted by the Issuer on February 3, 2003 (the "Master Bond Resolution"), as supplemented and amended from time to time, and as particularly supplemented by the Twenty-Seventh Supplemental Revenue Bond Resolution authorizing the issuance of Senior Lien Refunding Revenue Bonds, Series 2021, adopted by the Issuer on March 11, 2021 (the "Twenty-Seventh Supplemental Resolution," and together with the Master Bond Resolution, the "Bond Resolution"). Capitalized terms used herein and not otherwise expressly defined herein shall have the meanings assigned thereto in the Bond Resolution or the Official Statement, as applicable.

The Series 2021 Bonds are being issued by the Issuer to provide funds to (a) refund all or a portion of the Refunded Bonds, (b) provide funds or pay the premium on the Series Reserve Account Credit Facility to be deposited into the Series Reserve Subaccount established hereunder with respect to the Bonds, (c) paying any fees, costs and expenses associated with the termination of Qualified Swap Agreements associated with the Refunded Bonds, and (d) pay certain costs in connection with the issuance of the Bonds, including without limitation, the premium on any Bond Insurance Policy with respect to the Bonds.

The Series 2021 Bonds and all obligations under the Bond Resolution are limited obligations of the Issuer payable solely from the System Pledged Revenues, and, if applicable, any Supplemental Payments or Series Payments hereafter pledged to the payment of the Series 2021 Bonds and earnings and funds held in certain funds and accounts, as respectively provided in the Bond Resolution. The Series 2021 Bonds will be secured by a pledge of and lien on the System Pledged Revenues on a parity with the Outstanding Parity Bonds and any Parity Bonds hereafter issued under the Bond Resolution and any Qualified Swap Agreements related to such Parity Bonds.

The terms of the Disclosure Statement of the Underwriters required by Section 218.385(6), Florida Statutes, including a Truth-in-Bonding Statement, are provided in **Exhibit A** attached hereto.

The Representative, on behalf of the Underwriters, has delivered a corporate check to the Issuer payable to the order of the Issuer in the amount of \$[\*]which is one percent (1%) of the preliminary par amount of the Series 2021 Bonds shown on the cover of the Preliminary Official Statement (the "Good Faith Check") as security for the performance by the Underwriters of their obligation to accept and purchase the Series 2021 Bonds on the Closing Date subject to the terms of this Bond Purchase Agreement. The Good Faith Check shall be retained uncashed by the Issuer unless the Issuer is entitled to retain the same in accordance with the terms hereof. If the offer made hereby is accepted, then the Good Faith Check shall be held uncashed by the Issuer and, subject, however, to the terms set forth below, shall be returned by the Issuer to the Representative at the Closing (as defined herein). If the Issuer does not accept this offer, then the Good Faith Check shall be immediately returned by the Issuer to the Representative and this Bond Purchase Agreement shall become null and void, and of no force or effect without any other action by the parties hereto.

In the event the Underwriters fail to purchase the Series 2021 Bonds at the Closing, unless such failure is permitted as provided in Sections 7 and 8 hereof, or if this Bond Purchase Agreement has been terminated by the Underwriters other than as permitted by Section 8 hereof, the Issuer shall retain and cash the Good Faith Check as full compensation for such failure or non-permitted termination as and for full liquidated damages, and not as a penalty, for such failure or non-permitted termination and for any default under this Bond Purchase Agreement on the part of the Underwriters and such retention shall constitute a full release and discharge of all claims by the Issuer and the Underwriters arising out of the transactions contemplated hereby. In such event and except for those expenses set forth in Section 11 hereof, no party hereto shall have any further rights against any other party hereunder.

In the event the Issuer fails to deliver the Series 2021 Bonds at Closing or if the Issuer shall be unable to satisfy the conditions precedent to the obligations of the Underwriters contained herein (unless such conditions precedent are waived in writing by the Representative), or if the obligations of the Underwriters shall be terminated for any reason permitted herein, the Issuer shall immediately return the Good Faith Check to the Representative, without interest. Such return of the Good Faith Check shall constitute a full release and discharge of all claims by the Underwriters against the Issuer arising out of the transactions contemplated hereby. In such event and except for those expenses set forth in Section 11 hereof, no party hereto shall have any further rights against any other party hereunder.

2. The Issuer agrees to provide, or cause to be provided, to the Representative, within seven (7) business days after the execution of this Bond Purchase Agreement by the Issuer or three (3) business days prior to the Closing, whichever comes first, the Preliminary Official Statement and the final Official Statement in sufficient quantity to permit the Underwriters to comply with paragraph (b)(4) of Rule 15c2-12 ("Rule 15c2-12") promulgated by the Securities and Exchange Commission of the United States (the "SEC"), under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the applicable rules of the SEC and the Municipal Securities Rulemaking Board (the "MSRB"). The Issuer shall also provide electronic copies of the Preliminary Official Statement and the Official Statement in word searchable portable document format ("Electronic Form") to enable the Underwriters to comply with their obligations pursuant to Rule G-32 of the MSRB, and Representative hereby acknowledges and agrees that the electronic

delivery of the Preliminary Official Statement and the Official Statement in Electronic Form shall satisfy the requirements set forth in the first sentence of this paragraph.

The Issuer hereby authorizes the Representative to file the Official Statement, not later than the Closing Date, and the Representative hereby agrees to file the Official Statement with the MSRB's Electronic Municipal Market Access system within the timeframe required by MSRB Rule G-32. Failure of the Issuer's printer to provide copies of the Official Statement in Electronic Form or otherwise within seven (7) business days after the execution of this Bond Purchase Agreement by the Issuer or three (3) business days prior to Closing, whichever comes first, will not constitute a breach of this Bond Purchase Agreement by the Issuer if such failure is proximately caused by the Representative, any of the other Underwriters, or any agent or employee of any of the Underwriters.

- 3. The Issuer hereby ratifies and confirms the use by the Underwriters of the Preliminary Official Statement in the marketing of the Series 2021 Bonds and hereby authorizes the circulation by the Underwriters of the Official Statement, including any supplements or amendments thereto approved by the Issuer, in connection with the public offering of the Series 2021 Bonds, in printable paper form and/or in Electronic Form. The Issuer acknowledges that it has deemed the Preliminary Official Statement "final" as of its date, within the meaning of the Rule 15c2-12 except for omissions permitted by Rule 15c2-12. The Underwriters reserve the right to lower the initial offering prices set forth in the Official Statement as they deem necessary in connection with the marketing of the Series 2021 Bonds. The Underwriters may offer and sell the Series 2021 Bonds to certain dealers (including dealers depositing the Series 2021 Bonds into investment trusts) and others at prices lower than the initial public offering price or prices set forth in the Official Statement. The Underwriters also reserve the right to: (i) over-allot or effect transactions which stabilize or maintain the market price of the Series 2021 Bonds at levels above those that might otherwise prevail in the open market and (ii) discontinue such stabilizing, if commenced, at any time without prior notice.
- 4. The Representative, on behalf of the Underwriters, agrees to assist the Issuer in establishing the issue price of the Series 2021 Bonds and shall execute and deliver to the Issuer at Closing an "issue price" or similar certificate, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as **Exhibit H**, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Representative, the Issuer, and Co-Bond Counsel (as defined herein), to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Series 2021 Bonds.

Except as otherwise set forth in  $\underline{\text{Exhibit H}}$  attached hereto, the Issuer will treat the first price at which 10% of each maturity of the Series 2021 Bonds (the "10% Test" is sold to the public as the issue price of that maturity (if different interest rates apply within a maturity, each separate CUSIP number within that maturity will be subject to the 10% Test).

The Representative confirms that the Underwriters have offered all maturities of the Series 2021 Bonds to the public on or before the date of this Bond Purchase Agreement at the offering price or prices (the "initial offering price"), or at the corresponding yield or yields, set forth in **Exhibit H** attached hereto. **Exhibit H** also sets forth, as of the date of this Bond Purchase

Agreement, the maturities, if any, of the Series 2021 Bonds for which the 10% test has not been satisfied and for which the Issuer and the Representative, on behalf of the Underwriters, agree that the restrictions set forth in the next sentence shall apply, which will allow the Issuer to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the "hold-the-offering-price rule"). So long as the hold-the-offering-price rule remains applicable to any maturity of the Series 2021 Bonds, the Underwriters will neither offer nor sell unsold Series 2021 Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

the close of the fifth (5th) business day after the sale date; or

the date on which the Underwriters have sold at least 10% of that maturity of the Series 2021 Bonds to the public at a price that is no higher than the initial offering price to the public.

### The Representative confirms that:

- (a) any agreement among underwriters, any selling group agreement and each retail distribution agreement (to which the Representative is a party) relating to the initial sale of the Series 2021 Bonds to the public, together with the related pricing wires, contains or will contain language obligating each Underwriter, each dealer who is a member of the selling group, and each broker-dealer that is a party to such retail distribution agreement, as applicable, to:
  - (A) (i) report the prices at which it sells to the public the unsold Series 2021 Bonds of each maturity allotted to it until it is notified by the Representative that either the 10% Test has been satisfied as to the Series 2021 Bonds of that maturity or all Series 2021 Bonds of that maturity have been sold to the public and (ii) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Representative and as set forth in the related pricing wires,
  - (B) promptly notify the Representative of any sales of the Series 2021 Bonds that, to its knowledge, are made to a purchaser who is a related party to an Underwriter participating in the initial sale of the Series 2021 Bonds to the public (each such term being used as defined below), and
  - (C) acknowledge that, unless otherwise advised by an Underwriter, dealer or broker-dealer, the Representative shall assume that each order submitted by an Underwriter, dealer or broker-dealer is a sale to the public; and
- (b) and any agreement among underwriters or selling group agreement relating to the initial sale of the Series 2021 Bonds to the public, together with the related pricing wires, contains or will contain language obligating each Underwriter that is a party to a retail distribution agreement to be employed in connection with the initial sale of the Series 2021 Bonds to the public to require each broker-dealer that is a party to such retail distribution agreement to (A) report the prices at which it sells to the public the unsold

Series 2021 Bonds of each maturity allotted to it until it is notified by the Representative or an Underwriter that either the 10% Test has been satisfied as to the Series 2021 Bonds of that maturity or all Series 2021 Bonds of that maturity have been sold to the public and (B) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Representative or an Underwriter and as set forth in the related pricing wires.

The Underwriters acknowledge that sales of any Series 2021 Bonds to any person that is a related party to an Underwriter shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

- (i) "public" means any person other than an underwriter or a related party,
- (ii) "underwriter" means (A) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Series 2021 Bonds to the public, and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Series 2021 Bonds to the public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Series 2021 Bonds to the public),
- (iii) a purchaser of any of the Series 2021 Bonds is a "related party" to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) at least 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and
- (iv) "sale date" means the date of execution of this Bond Purchase Agreement by all parties.
- 5. The Issuer hereby agrees with, and makes the following representations to the Underwriters as of the date hereof and as of the Closing Date, which representations and warranties shall survive the Closing as described in Section 16 hereof:
  - (a) The Issuer is a body politic and corporate and an agency of the State of Florida duly created and existing under the constitution and laws of the State of Florida;

- (b) The Issuer has full legal right, power and authority to and has taken all necessary official actions to: (i) enter into this Bond Purchase Agreement, (ii) adopt, execute and deliver the Bond Resolution, (iii) sell, issue and deliver the Series 2021 Bonds to the Underwriters as provided herein, (iv) authorize and execute the Continuing Disclosure Agreement dated [[\*], 2021] between the Issuer and Digital Assurance Certification, L.L.C. (the "Continuing Disclosure Agreement"), and (v) carry out and consummate the transactions contemplated by this Bond Purchase Agreement, the Bond Resolution, the Continuing Disclosure Agreement, and the Official Statement, and as of the date hereof is in compliance, in all material respects, with the Act as it applies to the issuance of the Series 2021 Bonds;
- (c) By all necessary official actions prior to or concurrently with the acceptance hereof, (i) the Issuer has duly adopted the Bond Resolution, (ii) the Issuer has prior to the mailing of the Preliminary Official Statement and will have prior to the mailing of the Official Statement, duly approved the form, content, circulation and use of the same and (iii) the Issuer has duly authorized the execution and delivery of the Series 2021 Bonds and the performance by the Issuer of the obligations on its part contained in the Series 2021 Bonds, the Bond Resolution, the Continuing Disclosure Agreement and this Bond Purchase Agreement, and the consummation by the Issuer of all other transactions contemplated by this Bond Purchase Agreement in connection with the issuance of the Series 2021 Bonds;
- (d) The Issuer is currently not in material breach of or material default under the Bond Resolution, the Act or any other applicable constitutional provision, law or administrative regulation of the State of Florida or the United States or any applicable judgment or decree, or any relevant loan agreement, indenture, bond, note or resolution, agreement or other relevant instrument to which the Issuer is a party or to which the Issuer is otherwise subject, and no event has occurred and is continuing that with the passage of time or the giving of notice, or both, would constitute a default or event of default under any such instrument, which breach or default covered by this subsection (d) would materially adversely affect the ability of the Issuer to perform its obligations under the Bond Resolution, the Series 2021 Bonds, the Continuing Disclosure Agreement, or this Bond Purchase Agreement;
- (e) The adoption of the Bond Resolution and the execution and delivery of the Series 2021 Bonds, the Continuing Disclosure Agreement, and this Bond Purchase Agreement and compliance with the provisions on the part of the Issuer contained therein, will not constitute a material breach of or material default under any applicable constitutional provision, law, administrative regulation, judgment, decree, or any relevant loan agreement, indenture, bond, note, resolution, agreement or other relevant instrument to which the Issuer is a party or to which the Issuer is otherwise subject, which breach or default would materially adversely affect the ability of the Issuer to perform its obligations under the Bond Resolution, the Continuing Disclosure Agreement, the Series 2021 Bonds or this Bond Purchase Agreement, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any material lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Issuer except as provided by the Series 2021 Bonds, and the Bond Resolution;

- (f) All authorizations, approvals, consents or registrations and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction over matters which are required for the due authorization or which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by the Issuer of its obligations in connection with the issuance of the Series 2021 Bonds under this Bond Purchase Agreement, and the Bond Resolution and which are required to be obtained by the Issuer have been duly obtained and will be as of the Closing Date in full force and effect;
- (g) The Series 2021 Bonds, when issued, executed and delivered in accordance with the Bond Resolution and sold to the Underwriters as provided herein, will be entitled to the benefits of the Bond Resolution:
- (h) As of its date and as of the date hereof, the information contained in the Preliminary Official Statement was and is true and correct in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact which is necessary to make the statements therein, in the light of circumstances under which they were made, not misleading; provided that the Issuer makes no representations with respect to information supplied by the Depository Trust Company, New York, New York ("DTC"), or the Underwriters for use in the Official Statement, and (ii) the information contained in the Official Statement will be, as of its date and at all times up to and including the Closing Date, complete, accurate, true, and correct, will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein made, in light of the circumstances under which they were made, not misleading; provided that the Issuer makes no representations with respect to information supplied by DTC, or the Underwriters for use in the Official Statement;
- (i) The Issuer will not take or omit to take any action, which action or omission will in any way cause the proceeds from the sale of the Series 2021 Bonds to be applied in a manner other than as provided in the Bond Resolution and described in the Official Statement or which would cause the interest on the Series 2021 Bonds to become includable in the gross income of the owners thereof for federal income tax purposes;
- (j) To the best knowledge of the undersigned signatory of the Issuer, after due inquiry, as of the date hereof and except as described in the Official Statement, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending (and concerning which service of process or other adequate legal notice has been made) or, to the best knowledge of the undersigned signatory of the Issuer, threatened against the Issuer to a degree constituting a significant possibility that they will be instituted, affecting or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Series 2021 Bonds or the collection of the System Pledged Revenues pledged to pay the principal of, premium, if any, and interest on the Series 2021 Bonds, and the amounts held in the funds and accounts established pursuant to the Bond Resolution, or contesting or affecting as to the Issuer, the authorization for the issuance of the Series 2021 Bonds, the adoption of the Bond Resolution, the execution and delivery of the Continuing Disclosure Agreement, this Bond Purchase Agreement, or contesting the exclusion from gross income of interest on the Series 2021 Bonds for federal

income tax purposes, or contesting the completeness or accuracy of the Preliminary Official Statement or any supplement or amendment thereto, or contesting the authority of the Issuer for the issuance of the Series 2021 Bonds, the adoption of the Bond Resolution, or the execution and delivery by the Issuer of this Bond Purchase Agreement, and the Continuing Disclosure Agreement;

- (k) The Issuer will furnish such information, execute such documents and certificates and take such other action in cooperation with the Underwriters as the Representative may reasonably request in order to (i) qualify the Series 2021 Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Representative may designate and (ii) determine the eligibility of the Series 2021 Bonds for investment under the laws of such states and other jurisdictions or to continue such qualifications in effect so long as required for the distribution of the Series 2021 Bonds; provided, however, that the Issuer shall not be required to (A) spend money, (B) execute a general or special consent to service of process, (C) qualify to do business in such states and other jurisdictions in connection with any such qualification or determination in any jurisdiction or (D) register as a dealer or broker in any such jurisdiction;
- (l) Any certificate or document required under this Bond Purchase Agreement that is signed by an Authorized Officer and delivered to the Underwriters in connection with the issuance of the Series 2021 Bonds shall be deemed a representation by the Issuer to the Underwriters as to the statements made therein;
- From the date hereof until the earlier of: (i) ninety (90) days after the End (m) of the Underwriting Period (as defined herein), or (ii) the time when the Official Statement is available to any person from a nationally recognized municipal securities information repository, but in no case less than twenty-five (25) days following the End of the Underwriting Period, if any event occurs as a result of which the Issuer or the Representative believes it may be necessary to amend or supplement the Official Statement in order to correct any untrue statement of a material fact contained in the Official Statement or to include a statement of material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the Issuer and the Representative will notify each other thereof and, if in the opinion of Disclosure Counsel (as defined herein), after consultation with the Issuer and the Representative, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the Issuer will prepare and furnish to the Underwriters an amendment or supplement to the Official Statement, in form and substance jointly approved by the Issuer and the Representative, which approval shall not be unreasonably withheld, so the Official Statement, as so amended or supplemented, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which such statements were made, not misleading; provided, however, the Underwriters shall not be liable to the Issuer for any claims arising out of the Issuer's decision not to amend or supplement the Official Statement. The cost of any such amendment or supplement shall be borne by the Issuer:

- (n) For purposes of this Bond Purchase Agreement, the "End of the Underwriting Period" is used as defined in Rule 15c2-12 and shall occur on the later of (i) the Closing Date, or (ii) when the Underwriters no longer retain an unsold balance of the Series 2021 Bonds; unless otherwise advised in writing by the Representative on or prior to the Closing Date, or otherwise agreed to by the Issuer and the Representative, the Issuer may assume that the End of the Underwriting Period is the Closing Date;
- (o) If a change referenced to in paragraph (m) above occurs subsequent to the Closing, the Issuer will furnish to the Underwriters such legal opinions, certificates, instruments, and documents as the Representative may reasonably request to evidence the truth and accuracy of such corrected information (thereafter, this Bond Purchase Agreement will refer to such corrected information);
- Between the date of execution of this Bond Purchase Agreement and the (p) Closing Date, except as set forth in or contemplated by the Official Statement, (i) the Issuer has not incurred and will not have incurred any material liabilities or obligations relating to the System, direct or contingent, except in the ordinary course of business, and has not entered and will not have entered into any material transaction relating to the System not in the ordinary course of business, (ii) there has not been and will not have been any increase in the long term debt payable from System Pledged Revenues or material decrease in the funds and accounts of the Issuer which shall secure the payment of such long term debt, (iii) there has not been and will not have been any material adverse change in the business or the financial position or results of operations of the System, (iv) no loss or damage (whether or not insured) to the property of the System has been or will have been sustained which materially and adversely affects the operations of the System, and (v) no legal or governmental proceeding affecting the System or the transactions contemplated by this Bond Purchase Agreement has been or will have been instituted or threatened which is reasonably anticipated to have a material adverse effect on the financial conditions or operations of the Issuer;
- (q) Except as disclosed in the Official Statement, during the previous five years the Issuer has not failed to comply with any prior undertakings to provide continuing disclosure on a timely basis pursuant to Rule 15c2-12; and
- (r) The Issuer will furnish or otherwise make available to the Underwriters, upon request, for so long as the Series 2021 Bonds remain outstanding, annual audited financial statements of the Issuer as soon as such financial statements become available. The Issuer may satisfy its obligation to furnish such financial statements by making them available on its website, or by other electronic means.

Notwithstanding any provision to the contrary in this Bond Purchase Agreement, the Issuer makes no representation or warranty with respect to compliance with applicable federal or state securities laws or Blue Sky laws of any jurisdiction in connection with the issuance and sale of the Series 2021 Bonds.

6. On or before 5:00 p.m., Orlando, Florida time, on the Closing Date or at such other date and time as may be mutually agreed upon by the Issuer and the Representative, the Issuer

will, subject to the terms and conditions hereof, deliver the Series 2021 Bonds to the Underwriters in definitive form, duly executed and authenticated, together with the other documents required pursuant to Section 9 hereto, and, subject to the terms and conditions hereof, the Underwriters will accept such delivery and pay the Purchase Price to the order of the Issuer, as set forth in Section 1 hereof, by wire transfer of Federal Funds, in an aggregate amount equal to the Purchase Price, upon the receipt of which the Issuer shall return the Good Faith Check to the Representative. Delivery and payment as aforesaid shall be made at such place as may be mutually agreed upon by the Issuer and the Representative. The foregoing payments and deliveries are herein referred to as the "Closing." Delivery of the Series 2021 Bonds shall be accomplished by the issuance of one printed bond certificate in the appropriate denomination for each maturity, bearing a CUSIP number (provided neither the printing of a wrong CUSIP number on any Series 2021 Bond nor the failure to print a CUSIP number thereon will constitute cause to refuse delivery of any Series 2021 Bond) and registered in the name of Cede & Co., as nominee of DTC, as securities depository for the Series 2021 Bonds; provided, that each printed bond certificate shall be prepared and made available to the Representative at least one business day before the Closing for purposes of inspection. Unless otherwise agreed by the Representative, the Series 2021 Bonds will be delivered under DTC's FAST delivery system.

- 7. The Underwriters may terminate their obligations hereunder by written notice to the Issuer if, at any time subsequent to the date hereof and on or prior to the Closing Date:
  - An amendment to the Constitution of the United States or the State of (a) Florida shall have been passed, or new legislation (including modifications or amendments to legislation that was pending or introduced prior to the date hereof) shall have been introduced in or enacted by the Congress of the United States or enacted by the State of Florida or any governmental body, department or agency thereof, or new legislation (including modifications or amendments to legislation that was pending or introduced prior to the date hereof) shall be pending in the Congress of the United States, or new legislation (including modifications or amendments to legislation that was pending or introduced prior to the date hereof) shall have been endorsed for passage by the Treasury Department of the United States, the Internal Revenue Service or the Chairman or ranking minority member of the Committee on Finance of the United States Senate or the Committee on Ways and Means of the United States House of Representatives or new legislation (including modifications or amendments to legislation that was pending or introduced prior to the date hereof) shall have been proposed for consideration by either such Committee, by the staff of such Committee or by the staff of the Joint Committee on Taxation of the Congress of the United States, or new legislation (including modifications or amendments to legislation that was pending or introduced prior to the date hereof) shall have been favorably reported for passage to either Chamber of Congress of the United States by a Committee of such Chamber to which such legislation has been referred for consideration, or a decision shall have been rendered by a court of the United States or the State of Florida, including the Tax Court of the United States, or a ruling shall have been made or a regulation shall have been proposed or made or some form of notice shall have been made or been issued by the Treasury Department of the United States, or the Internal Revenue Service or other Federal or State of Florida authority, with respect to Federal or State of Florida taxation upon revenues or other income of the general character to be derived by the Issuer or by any similar body, or upon interest on obligations of the general character

of the Series 2021 Bonds, which new legislation (including modifications or amendments to legislation that was pending or introduced prior to the date hereof) (i) may have the purpose or effect, directly or indirectly, of affecting the tax status of the Issuer, its property or income, its securities (including the Series 2021 Bonds) or the interest thereon, or the validity of any applicable tax exemption granted or authorized by the State of Florida and, (ii) which, in the reasonable opinion of the Representative, affects adversely the market for the Series 2021 Bonds, or the market price generally of obligations of the general character of the Series 2021 Bonds; or

- (i) in the Representative's reasonable judgment, the market price of the (b) Series 2021 Bonds is materially adversely affected because: (A) additional material restrictions not in force as of the effective date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange; (B) the New York Stock Exchange or other national securities exchange, or any governmental authority, shall impose, as to the Series 2021 Bonds or similar obligations, any material restrictions not now in force, or increase materially those now in force; (C) a general banking moratorium shall have been established by federal, New York or Florida authorities and be in force; or (ii) there shall be in force a general suspension of trading on any national securities exchange, the effect of which on the financial markets of the United States is such as, in the reasonable judgment of the Representative and the Issuer, would materially adversely affect the market for the Series 2021 Bonds or the sale, at the contemplated offering prices, by the Underwriters of the Series 2021 Bonds; or (iii) there shall have occurred any material change, or any other event which in the Representative's reasonable opinion, subsequent to consultation with appropriate representatives of the Issuer, materially adversely affects the marketability of the Series 2021 Bonds at the Purchase Price set forth in Section 1 herein; or (iv) any litigation shall be instituted, pending or threatened to restrain or enjoin the issuance, sale or delivery of the Series 2021 Bonds or in any way contesting or affecting any authority for or the validity of the Series 2021 Bonds, any of the proceedings of the Issuer taken with respect to the issuance or sale thereof, the pledge or application of any moneys or securities provided for the payment of the Series 2021 Bonds or the existence or powers of the Issuer; or
- (c) (i) in the Representative's reasonable judgment, following consultation with appropriate representatives of the Issuer and the Underwriters listed in **Exhibit B**, the Purchase Price of the Series 2021 Bonds set forth in Section 1 herein is adversely affected because a war involving the United States of America shall have been declared, or (ii) any other national or international calamity shall have occurred (economic or otherwise), or any conflict involving the armed forces of the United States of America shall have escalated to such magnitude as to materially affect the Underwriters' physical or technical ability to market the Series 2021 Bonds, it being agreed by the parties hereto that any war or conflict in which the United States of America is currently involved has not escalated or risen to such a magnitude as of the date hereof; or
- (d) a stop order, release, regulation, or no-action letter by or on behalf of the SEC or any other governmental agency having jurisdiction over the subject matter shall have been issued or made to the effect that the issuance, offering, or sale of the Series 2021 Bonds, including all the underlying obligations as contemplated hereby or by the Official

Statement, or any document relating to the issuance, offering or sale of the Series 2021 Bonds is subject to registration or qualification under the Securities Act of 1933, as amended (the "Securities Act"), or Trust Indenture Act of 1939, as amended (the "Trust Indenture Act of 1939") or would be in violation of any provision of the federal securities laws at the Closing Date, including the Securities Act, the Exchange Act and the Trust Indenture Act of 1939; or

- (e) there shall be established any new restriction on transactions in securities materially affecting the free market for securities of the type and nature of the Series 2021 Bonds (including the imposition of any limitation on interest rates); or
- (f) legislation shall be enacted or be proposed or actively considered for enactment, or a decision by a court of the United States shall be rendered, or a ruling, or regulation, by or on behalf of the SEC or other governmental agency having jurisdiction over the subject matter shall be made, to the effect that the Series 2021 Bonds or any securities of the Issuer, any obligations of the general character of the Series 2021 Bonds, or the Bond Resolution, are not exempt from the registration, qualification or other requirements of the Securities Act or the Trust Indenture Act of 1939, as then in effect, or otherwise, or would be in violation of any provision of the federal securities laws; or
- (g) any event or circumstance shall have occurred or shall exist which, in the reasonable opinion of the Representative, would (i) cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading as of such time and (ii) materially adversely affect the marketability of the Series 2021 Bonds; or
- (h) any material amendment is made to the Official Statement which, in the reasonable judgment of the Representative, will materially adversely affect the market price of the Series 2021 Bonds or the ability of the Underwriters to enforce confirmations for the purchase of the Series 2021 Bonds; or
- (i) there shall be a reduction or withdrawal in any of the underlying ratings assigned to the Series 2021 Bonds, or, as of the Closing Date, the failure by any of the rating agencies to assign the underlying ratings to the Series 2021 Bonds noted in Section 9(m) herein.
- 8. The Underwriters have entered into this Bond Purchase Agreement in reliance upon the representations and agreements of the Issuer contained herein, and in reliance upon the representations and agreements to be contained in the documents and instruments to be delivered at the Closing enumerated in Section 9 hereof, in form and substance mutually satisfactory to the Issuer, the Issuer's Counsel (as defined herein), Co-Bond Counsel, Disclosure Counsel, [\*] \_\_\_\_\_\_, Florida ("Underwriters' Counsel") and the Underwriters, and upon the performance by the Issuer of its obligations hereunder, both as of the date hereof and as of the date of the Closing. Accordingly, the Underwriters' obligations under this Bond Purchase Agreement to purchase, to accept delivery of and to pay for the Series 2021 Bonds are conditioned upon the performance by

the Issuer of its obligations to be performed hereunder and the delivery of such documents and instruments required to be delivered hereby, as described in Section 9 hereof, in form and substance reasonable under the circumstances, at or prior to the Closing, and are also subject to the following additional conditions:

- (a) The representations and agreements of the Issuer contained herein shall be true, complete and accurate in all material respects on the date hereof and at the date of the Closing;
- (b) At the time of the Closing, the Bond Resolution shall be in full force and effect in accordance with its terms and shall not have been amended, modified or supplemented, and the Official Statement shall not have been supplemented or amended in any material respect, except after notice to and approval by the Representative (such approval not to be unreasonably withheld); and
- (c) At the time of the Closing, all official action of the Issuer relating to this Bond Purchase Agreement, the Series 2021 Bonds and the Twenty-Fifth Supplemental Resolution shall be in full force and effect in accordance with their respective terms and shall not have been amended, modified or supplemented in any material respect, except after notice to and approval by the Representative.
- 9. At or prior to the Closing, each of the following shall have been delivered to the Representative:
  - (a) Five copies of the Official Statement executed on behalf of the Issuer by its authorized officials;
  - (b) Copies of the Consulting Engineer's Report dated [\*], 202\_ prepared in connection with the Series 2021 Bonds and the Traffic Engineer's FY 20\_\_ General Traffic and Earnings Consultant's Annual Report dated [\*], 202\_, included in the Official Statement as Appendices C and D, together with the respective letters referenced in Section 9(l) hereof, and
  - (c) a copy of the Audited Financial Statements of the Issuer for the fiscal years ended June 30, 2020 and June 30, 2019, including the signed audit report of Moore Stephens Lovelace P.A. attached to the Official Statement as Appendix G thereto;
  - (d) The Bond Resolution certified by the Secretary or an Assistant Secretary as having been duly adopted by the Issuer and as being in full force and effect, with such supplements or amendments since the date hereof as may have been agreed to by the Underwriters;
  - (e) The unqualified approving opinion of Nelson Mullins Broad and Cassel, Orlando, Florida, as bond counsel (collectively, "Bond Counsel"), dated the Closing Date, addressed to the Issuer and the Underwriters in substantially the form attached to the Official Statement as **Appendix H**;

- (f) The supplemental opinion of Bond Counsel, dated the Closing Date, addressed to the Underwriters and the Issuer in substantially the form attached hereto as **Exhibit C**;
- (g) [The opinion of Shutts & Bowen LLP, Orlando, Florida, as Counsel to the Issuer ("Issuer's Counsel") dated the Closing Date, addressed to the Underwriters and the Issuer in substantially the form attached hereto as **Exhibit D**;]
- (h) An opinion of [Nabors, Giblin & Nickerson, P.A.] as disclosure counsel, Tampa, Florida ("Disclosure Counsel"), dated the Closing Date, in substantially the form attached hereto as **Exhibit E** and a reliance letter addressed to the Representative on behalf of the Underwriters dated the Closing Date;
- (i) An opinion of Underwriters' Counsel dated the Closing Date, addressed to the Underwriters substantially in the form and substance attached hereto as **Exhibit F**; provided, however, that failure of Underwriters' Counsel to deliver such opinion shall not excuse performance by the Underwriters hereunder unless the failure of Underwriters' Counsel to render such opinion is due to such counsel being aware of a fact or circumstance that causes it to believe that the Official Statement contains an untrue statement of a material fact or omits to state any material fact necessary to be stated in order to make the statements therein, in light of the circumstances under which they were made, not misleading and such counsel has provided notice thereof to the Issuer;
- (j) A certificate of the Issuer, dated the Closing Date, executed by the Chairman and Executive Director, to the effect that, to the best of their knowledge, the Issuer has performed all obligations to be performed hereunder as of the Closing Date;
- (k) The General and Non-Litigation Certificate of the Issuer, dated the Closing Date, signed by the Chairman and Executive Director or other appropriate official reasonably satisfactory to the Representative, which shall state, among other things, that:
  - (i) the representations of the Issuer herein are true and correct in all material respects as of the Closing Date;
  - (ii) except as disclosed in the Official Statement, no litigation is pending or threatened, to a degree constituting a significant possibility that it will be instituted in any court or administrative body (A) to restrain or enjoin the issuance or delivery of any of the Series 2021 Bonds, or (B) in any way contesting or affecting any authority for the issuance of the Series 2021 Bonds or the validity or enforceability of the Series 2021 Bonds, the Bond Resolution, the Continuing Disclosure Agreement, or this Bond Purchase Agreement; and
  - (iii) with respect to information in the Official Statement except for information relating to DTC or supplied by the Underwriters, such information did not, as of the date of the Official Statement, and does not, as of the Closing Date, contain any untrue statement of a material fact or omit to state a material fact which should be included therein for the purpose

for which the Official Statement is to be used, or which is necessary in order to make the statements contained therein, in light of the circumstances in which they were made, not misleading;

- (l) The respective letters, dated the date of the execution of this Bond Purchase Agreement, to be updated by letters dated the Closing Date, from the Traffic Engineer and the Consulting Engineer, to the effect that:
  - (i) they believe that the assumptions used in compiling their report and arriving at the conclusions stated therein are reasonable; and
  - (ii) their report was prepared in accordance with generally accepted practices for similar traffic and earnings reports and consulting engineer's reports.

Provided the letter of the Traffic Engineer shall also include that they know of no material change in the matters described in the Traffic and Earnings Report contained in the Preliminary Official Statement or the Official Statement or in the information and data contained in such Preliminary Official Statement or Official Statement attributed to them.

- (m) Copies of rating letters or other evidence satisfactory to the Representative that the Series 2021 Bonds have been assigned underlying ratings of "A+" (stable outlook), "A1" (stable outlook) and "A+" (stable outlook), respectively from S&P Global, Inc. ("S&P"), Fitch Ratings Inc. ("Fitch") and Moody's Investor Services ("Moody's"), and that such ratings are in effect on the Closing Date;
  - (n) An executed copy of the Continuing Disclosure Agreement;
- (o) A certificate of the Issuer deeming the Preliminary Official Statement "final" as of its date for purposes of Rule 15c2-12;
  - (p) A copy of the Issuer's DTC Blanket Issuer Letter of Representations;
  - (q) A tax certificate of the Issuer, in a form satisfactory to Co-Bond Counsel;
- (r) Evidence that a Form 8038-G relating to the Series 2021 Bonds has been executed by the Issuer and will be filed with the Internal Revenue Service; and
- (s) Such additional legal opinions, certificates, instruments and other documents as the Underwriters may reasonable request to evidence the truth and accuracy, as of the date hereof and as of the Closing Date, of the Issuer representations and agreements contained herein and of the statements and information contained in the Official Statement and the due performance or satisfaction by the Issuer on or prior to the Closing Date of all the agreements herein then to be performed and conditions then to be satisfied by it.
- 10. The Underwriters shall be under no obligation to pay, and the Issuer shall pay from the proceeds of the Series 2021 Bonds, any expense incident to the performance of the

Issuer's obligations hereunder including, but not limited to: (i) the cost of preparing, printing and delivery of the Bond Resolution, copies of the Preliminary Official Statement and copies of the Official Statement, including any supplements thereto; (ii) the cost of preparing and printing of the Series 2021 Bonds; (iii) all expenses related to the printing of CUSIP numbers on the Series 2021 Bonds; (iv) the fees and disbursements of Co-Bond Counsel, Disclosure Counsel, Issuer's Counsel, and such other legal counsel as the Issuer deems reasonable; (v) initial fees for bond ratings; (vi) fees and disbursements of the Traffic Engineers or Consulting Engineer for their services as consultants to the Issuer; (vii) costs for any other engineers, accountants, and other experts, consultants or advisors retained by the Issuer; and (viii) other reasonable costs of the Issuer incurred in connection with issuance of the Series 2021 Bonds; provided that the costs of printing described in (i), (ii) and (iii) above shall be paid by the Issuer only if the printers used are the printers designated and authorized by the Issuer. The Issuer shall pay for expenses (included in the expense component of the underwriting spread) incurred on behalf of the Issuer's employees which are incidental to implementing this Bond Purchase Agreement.

- 11. (a) The Underwriters shall pay any expense incident to the performance of the Underwriters' obligations hereunder including but not limited to: (i) the Bond Purchase Agreement, the Agreement Among Underwriters, if any, and the Blue Sky Memorandum; (ii) all advertising expenses and Blue Sky filing fees in connection with the public offering of the Series 2021 Bonds and the cost, if any, to continue the eligibility of the Series 2021 Bonds for investment; (iii) all expenses associated with obtaining CUSIP numbers for the Series 2021 Bonds; (iv) all other expenses incurred by them or any of them in connection with the public offering of the Series 2021 Bonds and delivery of and the payment for the Series 2021 Bonds, including the fees and disbursements of Underwriters' Counsel. The Issuer has agreed to pay the Underwriters' discount set forth in this Bond Purchase Agreement in immediately available funds on the Closing Date and inclusive in the expense component of the Underwriters' discount are actual expenses incurred or paid for by the Underwriters on behalf of the Issuer in connection with the marketing, issuance, and delivery of the Series 2021 Bonds, including, but not limited to, fees and expenses of Underwriters' Counsel, the costs of any Preliminary and Final Blue Sky Memoranda, and CUSIP fees.
- (b) The Underwriters agree to indemnify and hold harmless the Issuer and each of its board members, directors, officers and employees from and against any claim or loss arising out of or resulting from any statement contained in the Preliminary Official Statement or the Official Statement under the caption "UNDERWRITING" that is or alleged to be untrue or incorrect in any material respect, or any omission or alleged omission of any statement in such section which would have been necessary in order to make the statements therein, in light of the circumstances under which they were made, to not be misleading.
- 12. The Representative, on behalf of itself and each of the other Underwriters, represents and warrants to the Issuer that:
  - (a) The Representative is duly authorized to transact business in, and remains in good standing with, the State of Florida and shall have full authority to take such other actions in connection with this Purchase Agreement as it may deem advisable. Any actions taken under this Bond Purchase Agreement by the Representative will be binding upon all the Underwriters;

- (b) The Representative has been duly authorized to execute this Bond Purchase Agreement on behalf of itself and each of the other Underwriters and that it has been authorized to act hereunder on behalf of the Underwriters;
- (c) The Representative has the full power and authority to take all actions required or permitted to be taken by the Representative by or under, and to perform and observe the covenants and agreements on its part contained in, this Bond Purchase Agreement;
- (d) This Bond Purchase Agreement has been duly executed and delivered by the Representative, on behalf of itself and each of the other Underwriters and is legally valid, binding and enforceable against the Representative and the Underwriters;
- (e) The execution of this Bond Purchase Agreement and the sale of the Series 2021 Bonds to the Underwriters shall not constitute a violation of Section 215.684, Florida Statutes;
- (f) The Representative and each of the other Underwriters, on its own behalf, represents that it is either registered with the Financial Industry Regulatory Authority, Inc. ("FINRA") as a broker-dealer and the MSRB as a municipal securities dealer, or is otherwise registered with the necessary regulatory authorities required for it to serve as an underwriter for the Series 2021 Bonds under this Bond Purchase Agreement, and that at all times during the offering and sale of the Series 2021 Bonds, such entities will continue to be so registered; and
- (g) To the best knowledge of the undersigned signatory of the Representative, after due inquiry, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the best knowledge of the undersigned signatory of the Representative, after due inquiry, threatened against or affecting the Representative to a degree constituting a significant possibility that they will be instituted, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or by the Official Statement or the validity and legality of this Bond Purchase Agreement or the Official Statement. To the best knowledge of the undersigned signatory of the Representative, after due inquiry, the Representative is not aware of any violation of any of the rules and regulations of FINRA (to the extent it is regulated by the FINRA) and any other body which regulates it which would adversely affect the transactions contemplated hereby or by the Official Statement or the validity and legality of this Bond Purchase Agreement or the Official Statement.

The foregoing representations and warranties of the Representative and the obligations set forth under Section 11 hereof shall survive the execution and delivery of this Bond Purchase Agreement, the execution and delivery of the Series 2021 Bonds and the instruments and documents contemplated thereby.

Simultaneously with the delivery of this Bond Purchase Agreement, the Representative shall cause to be delivered to the Issuer certificates executed by the properly authorized

representatives of each of the other Underwriters listed on **Exhibit B** attached hereto certifying the matters set forth in this Section 12 with respect to each such firm.

- 13. The provision of any data, document, or assurance required to be provided hereunder may be waived, in writing, by all of the signatories hereto. This Bond Purchase Agreement shall not be construed for or against any party because that party wrote it.
- All notices provided for in this Bond Purchase Agreement shall be made in writing either by actual delivery of the notice into the hands of the parties entitled thereto, by confirmed facsimile transmission, or by sending the notice by air courier or mailing by certified or registered mail, return receipt requested, in the United States mail to the address as stated below (or at such other address as may have been designated by written notice), of the party entitled thereto. The notice shall be deemed to be received in case of actual delivery on the date of its actual receipt by the party entitled thereto, in case of delivery by facsimile, on the date receipt is confirmed, in case of delivery by air courier on the date of delivery, and in case of mailing on the date of receipt by United States mail, postage prepaid.

All communications hereunder, except as herein otherwise specifical	lly provided, shall be
in writing and mailed or delivered to the Issuer at 4974 ORL Tower Road, Or	rlando, Florida 32807
and to the Representative at [*],	, FL

- 15. This Bond Purchase Agreement is made solely for the benefit of the Issuer and the Underwriters (including the successors of any of the parties) and no other person shall acquire or have any right hereunder or by virtue hereof. All of the Issuer's representations warranties and agreements contained in this Bond Purchase Agreement shall remain operative and in full force and effect regardless of: (i) any investigations made by or on behalf of any of the Underwriters; (ii) delivery of and payment for the Series 2021 Bonds pursuant to this Bond Purchase Agreement; and (iii) any termination of this Bond Purchase Agreement.
- The Underwriters have provided the following statements in connection with the transaction contemplated by this Bond Purchase Agreement (the "Transaction"): (i) the primary role of the Underwriters, as underwriters, is to purchase securities, for resale to investors, in an arm's length commercial transaction between the Issuer and the Underwriters and the Underwriters have financial and other interests that differ from those of the Issuer; (ii) the Underwriters are acting solely as principals and are not acting as municipal advisors, financial advisors or fiduciaries to the Issuer and have not assumed any advisory or a fiduciary responsibility to the Issuer in connection with the matters contemplated by this Bond Purchase Agreement, and the discussions, understandings and procedures leading thereto (irrespective of whether the Underwriters have provided other services or are currently providing other services to the Issuer on other matters); (iii) the only obligations the Underwriters have to the Issuer with respect to the Transaction contemplated hereby are expressly set forth in this Bond Purchase Agreement; and (iv) the Issuer should consult its own financial and/or municipal, legal, accounting, tax and other advisors, as applicable.
- 17. This Bond Purchase Agreement shall become effective upon its execution by the appropriate officials of the Issuer and the Representative on behalf of the Underwriters and shall be valid, binding and enforceable at the time of such execution. This Bond Purchase Agreement

may be executed in one or more counterparts with the same force and effect as if all signatures appeared on a single instrument.

18. This Bond Purchase Agreement will be governed by and construed in accordance with the laws of the State of Florida. Venue of any action arising out of or relating to this Bond Purchase Agreement shall be solely in Orange County, Florida. This Bond Purchase Agreement is made solely for the benefit of the signatories hereto (including the successors or assigns of the Underwriters) and no other person shall acquire or have any right hereunder or by virtue hereof. The Issuer may not assign this Bond Purchase Agreement. The term "successor" shall not include any holder of any Series 2021 Bonds merely by virtue of such holding. All representations, warranties, agreements and indemnities contained in this Bond Purchase Agreement shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of any of the Underwriters, and shall survive the delivery of and payment for the Series 2021 Bonds and any termination of this Bond Purchase Agreement.

If any provision of this Bond Purchase Agreement is, or is held or deemed to be, invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions because it conflicts with any provisions of any constitution, statute, rule of public policy or for any other reason, such circumstances shall not make the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or make any other provision or provisions of this Bond Purchase Agreement invalid, inoperative or unenforceable to any extent whatever.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[*], on behalf of itself and as Representative of the other Underwriters listed in <b>Exhibit B</b>
By:
Name:
Title:

SIGNATURE PAGE TO BOND PURCHASE AGREEMENT

Very truly yours,

Acce	nte	А	•
ALLE	տւշ	u	

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By:	
Name:	
Title: _	

SIGNATURE PAGE TO BOND PURCHASE AGREEMENT

#### **EXHIBITS**

- Exhibit A Disclosure Statement
- Exhibit B List of Underwriters
- Exhibit C Form of Supplemental Opinions of Co-Bond Counsel
- Exhibit D Form of Opinion of Issuer's Counsel
- Exhibit E Form of Opinion of Disclosure Counsel
- Exhibit F Form of Opinion of Underwriters' Counsel
- Exhibit G Maturity Schedule and Redemption Provisions
- Exhibit H Form of Issue Price Certificate

#### EXHIBIT A

# \$[\_\_\_\_] CENTRAL FLORIDA EXPRESSWAY AUTHORITY SENIOR LIEN REFUNDING REVENUE BONDS, SERIES 2021

#### DISCLOSURE STATEMENT

	[, 2021	]
Central Florida Expressway		
Authority 4974 ORL Tower Road		
Orlando, Florida 32807		

Ladies and Gentlemen:

In connection with the proposed issuance by the Central Florida Expressway Authority (the "Issuer") of [\$ \_\_\_\_\_] aggregate principal amount of its Senior Lien Refunding Revenue Bonds, Series 2021 (the "Series 2021 Bonds"),[\*] (the "Representative"), on behalf of itself, [ADD CO-MANAGERS] (collectively, the "Underwriters") are underwriting a public offering of the Series 2021 Bonds.

The purpose of this letter is to furnish, pursuant to the provisions of Section 218.385(6), Florida Statutes, certain information in respect to the arrangements contemplated for the underwriting of the Series 2021 Bonds as follows:

- (a) The nature and estimated amount of expenses to be incurred by the Representative in connection with the sale of the Series 2021 Bonds are set forth in **Schedule I** attached hereto.
- (b) No person has entered into an understanding with the Underwriters, or to the knowledge of the Underwriters, with the Issuer, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the Issuer and the Underwriters or to exercise or attempt to exercise any influence to effect any transaction in the purchase of the Series 2021 Bonds.
- (c) The underwriting spread, the difference between the price at which the Series 2021 Bonds will be initially offered to the public by the Underwriters and the price to be paid to the Issuer for the Series 2021 Bonds, exclusive of accrued interest will be ([\$\_\_\_\_\_] per \$1,000 of Series 2021 Bonds issued),
- (d) As part of the estimated underwriting spread set forth in Paragraph (c) above, the Underwriters will charge a management fee of [\$\_\_].
- (e) No other fee, bonus or other compensation is estimated to be paid by the Underwriters in connection with the issuance of the Series 2021 Bonds to any

person not regularly employed or retained by the Underwriters (including any "finder" as defined in Section 218.386(1)(a), Florida Statutes), except as specifically enumerated as expenses to be incurred by the Underwriters, as set forth in Paragraph (a) above.

(f) Truth-in-Bonding Statement. The Issuer is proposing to issue the Series 2021 Bonds to provide funds to (a) refund all or a portion of the Refunded Bonds, (b) provide funds or pay the premium on the Series Reserve Account Credit Facility to be deposited into the Series Reserve Subaccount established hereunder with respect to the Bonds, (c) paying any fees, costs and expenses associated with the termination of Qualified Swap Agreements associated with the Refunded Bonds, and (d) pay certain costs in connection with the issuance of the Bonds, including without limitation, the premium on any Bond Insurance Policy with respect to the Bonds.

Assur	eries 2021 Bonds are expected to be repaid over a period of approximately [] years. ning a true interest cost rate of [%] the total estimated interest paid over e of the Series 2021 Bonds will be [\$].
System Pledg obligation wi	ource of repayment or security for the Series 2021 Bonds is limited solely to the ed Revenues (as defined in the Official Statement). The authorization of this debt or all result in an average of [\$] of System Pledged Revenues not being the Issuer to finance other projects or services each year for approximately [] years.
(g)	The names and addresses of the Underwriters are:
	[*]
	, FL
	[ADD CO-MANACERS]

We understand that you do not repursuant to Section 218.385(6), Florida Sta	equire any further disclosure from the Underwriters atutes.
	Very truly yours,
	[*], on behalf of itself and as Representative of the other Underwriters
	By:

## **SCHEDULE I**

#### REPRESENTATIVE'S ESTIMATED EXPENSES

	\$/1000	Amount	
Underwriters' Counsel Fee	\$[	\$[]	
i-Deal Bookrunning	[]	[]	
i-Deal Wires	[]	[]	
i-Deal Order Monitor	[]	[]	
CUSIP Charge & Disclosure Fee	[]	[]	
DTC Service Fee	[	[]	
Out-of-Pocket, Meals & Travel	[	[]	
Investor Presentation		[]	
Total	\$[	\$[]	

## **EXHIBIT B**

#### LIST OF UNDERWRITERS

## CENTRAL FLORIDA EXPRESSWAY AUTHORITY Senior Lien Refunding Revenue Bonds, Series 2021

## **EXHIBIT C**

#### FORM OF SUPPLEMENTAL OPINIONS OF CO-BOND COUNSEL

[TO BE PROVIDED BY CO-BOND COUNSEL]

#### **EXHIBIT D**

## FORM OF OPINION OF ISSUER'S COUNSEL

[TO BE PROVIDED BY ISSUER'S COUNSEL]

#### **EXHIBIT E**

## FORM OF OPINION OF DISCLOSURE COUNSEL

[TO BE PROVIDED BY DISCLOSURE COUNSEL]

## **EXHIBIT F**

#### FORM OF OPINION OF UNDERWRITERS' COUNSEL

[TO BE PROVIDED BY UNDERWRITERS' COUNSEL]

## **EXHIBIT G**

#### MATURITY SCHEDULE AND REDEMPTION PROVISIONS

<b>\$</b> []
CENTRAL FLORIDA EXPRESSWAY
<b>AUTHORITY SENIOR LIEN REFUNDING REVENUE BONDS</b>
SERIES 2021

\$[\_\_\_\_] Serial Bonds

Maturity	<b>Principal</b>	<b>Interest</b>			Initial
( <b>July 1</b> )	Amount	Rate	Yield	Price	CUSIP No.
	\$	%	%		

\$[	] []% Term Bond, Due [ <b>July 1, 20</b> ], Yield [ Price [], Initial CUSIP No. 153476[]	]%,
\$[	] []% Term Bond, Due [ <b>July 1, 20</b> ], Yield [ Price [], Initial CUSIP No. 153476[]	_]%,

<u>Optional Redemption</u>. The Series 2021 Bonds maturing on or before [July 1, 20\_\_] shall not be subject to redemption prior to their respective maturity date. The Series 2019A Bonds maturing on or after [July 1, 20\_\_] are subject to optional redemption by the Issuer in whole or in part at any time on or after [July 1, 20\_\_], in such maturities or amortization installments as the Issuer may determine and by lot within any maturity or amortization installments, at a redemption price of 100% of the principal amount thereof to be redeemed, plus accrued interest to the redemption date.

<u>Mandatory Redemption</u>. The Series 2021 Bonds maturing on [July 1, 20\_\_] are subject to mandatory redemption in part prior to maturity in accordance with the amortization installments at redemption prices equal to 100% of the principal amount thereof, plus accrued interest to the date of redemption, on July 1 in the years and in the principal amounts set forth below:

#### Series 2021 Bonds maturing [July 1, 20\_\_]

<b>Principal Amount</b>			
\$			

The Series 2021 Bonds maturing on [July 1, 20\_\_] are subject to mandatory redemption in part prior to maturity in accordance with the amortization installments at redemption prices equal to 100% of the principal amount thereof, plus accrued interest to the date of redemption, on July 1 in the years and in the principal amounts set forth below:

Series 2021 Bonds maturing [July 1, 20\_\_]

Year	<b>Principal Amount</b>			
	\$			
*				
*				
* Maturity.				

## **EXHIBIT H**

## FORM OF ISSUE PRICE CERTIFICATE

## **SCHEDULE A**

# SALE PRICES OF THE GENERAL RULE MATURITIES Series 2021 Bonds

## EXHIBIT B

## FORM OF PRELIMINARY OFFICIAL STATEMENT

[Attached]

\*\* This Form of Preliminary Official Statement shall be updated in connection with the issuance of the Series 2021 Bonds to incorporate current operating and financial information with respect to CFX which has already been presented to or provided to CFX's governing board \*\* PRELIMINARY OFFICIAL STATEMENT DATED NOVEMBER 1, 2019

NEW ISSUE - BOOK-ENTRY ONLY

Ratings: See "RATINGS" herein

In the opinion of Co-Bond Counsel, under existing law, interest on the Series 2019 Bonds (a) is excluded from gross income for federal income tax purposes and (b) is not an enumerated item of tax preference for purposes of the federal alternative minimum tax. The opinion contains greater detail, and is subject to certain assumptions and exceptions, as noted in "LEGAL MATTERS - Opinion of Co-Bond Counsel" herein.

CENTRAL FLORIDA AUTHORITY

\$125,720,000\* CENTRAL FLORIDA EXPRESSWAY AUTHORITY SENIOR LIEN REVENUE BONDS. SERIES 2019A

\$447,940,000\* CENTRAL FLORIDA EXPRESSWAY AUTHORITY SENIOR LIEN REVENUE BONDS, SERIES 2019B

Dated: Date of Delivery

Due: July 1, as shown on inside cover

This Official Statement relates to the issuance by the Central Florida Expressway Authority ("CFX") of \$125,720,000\* in aggregate principal amount of its Senior Lien Revenue Bonds, Series 2019A (the "Series 2019A Bonds") and \$447,940,000\* in aggregate principal amount of its Senior Lien Revenue Bonds, Series 2019B (the "Series 2019B Bonds," and together with the Series 2019A Bonds, the "Series 2019 Bonds"). The Series 2019 Bonds are being issued as fully registered bonds, initially registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). Purchases of beneficial interests in the Series 2019 Bonds will be made in book-entry form only, in denominations of \$5,000 or any integral multiple thereof, as described therein. Purchasers of beneficial interests in the Series 2019 Bonds will not receive physical delivery of certificates. Transfers of beneficial interests in the Series 2019 Bonds will be effected through the DTC book-entry system as described herein. See "DESCRIPTION OF THE SERIES 2019 BONDS - Book-Entry Only System" herein.

The Series 2019 Bonds are being issued pursuant to Chapter 348, Part III, Florida Statutes and that certain Amended and Restated Master Bond Resolution adopted by CFX on February 3, 2003 (the "Master Bond Resolution"), as supplemented by that certain Twenty-Fifth Supplemental Revenue Bond Resolution adopted by CFX on October 10, 2019 (the "Twenty-Fifth Supplemental Resolution" and together with the Master Bond Resolution collectively hereinafter referred to as the "Bond Resolution"). All capitalized terms used herein and not otherwise defined herein are used with the meanings assigned thereto in "APPENDIX A - AMENDED AND RESTATED MASTER BOND RESOLUTION" and "APPENDIX B - TWENTY-FIFTH SUPPLEMENTAL RESOLUTION" attached

The Series 2019 Bonds shall mature on such dates and in such principal amounts and shall bear interest at the rate or rates set forth on the inside cover of this Official Statement payable semiannually on January 1 and July 1 of each year, commencing on July 1, 2020 (each, an "Interest Payment Date") until the respective maturities of the Series 2019 Bonds. Interest on the Series 2019 Bonds will be payable by Wells Fargo Bank, N.A., as registrar, paying agent and trustee, in Minneapolls, Minnesota (the "Paying Agent") to Cede & Co., as nominee of DTC at the close of business on the 15th day (whether or not a Business Day) of the month next preceding the Interest Payment Date. Payments of principal of, premium, if any, and interest on the Series 2019 Bonds will be made at the designated corporate trust office of the Paying Agent. See "DESCRIPTION OF THE SERIES 2019 BONDS" herein.

The Series 2019 Bonds are subject to redemption prior to maturity as described herein. See "DESCRIPTION OF THE SERIES 2019 BONDS - Redemption Provisions" herein.

The Series 2019A Bonds are being issued by CFX to provide funds to: (i) finance the costs of purchasing and acquiring a toll facility known as the Poinciana Parkway (SR 538) from Osceola County, Florida, (ii) deposit funds or pay the premium on a reserve account credit facility to be deposited into the debt service reserve account created under the Bond Resolution and (iii) pay certain costs in connection with the issuance of the Series 2019A Bonds. The Series 2019B Bonds are being issued by CFX to provide funds to: (i) finance, refinance, or reimburse CFX for the costs of acquiring, constructing and equipping the 2019 System Projects (defined herein), (ii) deposit funds or pay the premium on a reserve account credit facility to be deposited into the debt service reserve account created under the Bond Resolution and (iii) pay certain costs in connection with the issuance of the Series 2019B Bonds. See "PLAN OF FINANCE" and "ESTIMATED SOURCES AND USES OF FUNDS" herein and "APPENDIX B - TWENTY-FIFTH SUPPLEMENTAL RESOLUTION" attached hereto.

All or a portion of the Series 2019 Bonds may be insured pursuant to the purchase of a municipal bond insurance policy from which purchase will be at the option and expense of CFX. See "MUNICIPAL BOND INSURANCE" herein.

The Series 2019 Bonds are secured by a pledge of and lien on the System Pledged Revenues on a parity with the Outstanding Parity Bonds (as defined herein) and any additional Parity Bonds hereafter issued pursuant to the Bond Resolution and any Qualified Swap Payments related to such Bonds. See "SECURITY FOR THE Series 2019 Bonds," "SUMMARY OF CERTAIN TERMS AND PROVISIONS OF THE BOND RESOLUTION" and "VARIABLE RATE EXPOSURE AND INTEREST RATE EXCHANGE AGREEMENTS" herein.

NONE OF THE STATE OF FLORIDA (THE "STATE"), BREVARD COUNTY, FLORIDA, ORANGE COUNTY, FLORIDA, LAKE COUNTY, FLORIDA, SEMINOLE COUNTY, FLORIDA, OSCEOLA COUNTY, FLORIDA (COLLECTIVELY, THE "COUNTIES"), THE CITY OF ORLANDO, FLORIDA (THE "CITY"), NOR ANY POLITICAL SUBDIVISION OF THE STATE SHALL BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE SERIES 2019 BONDS, AND THE FULL FAITH AND CREDIT OF THE STATE, THE COUNTIES, THE CITY OR OF ANY OTHER POLITICAL SUBDIVISION OF THE STATE SHALL NOT BE DEEMED TO HAVE BEEN PLEDGED FOR THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE SERIES 2019 BONDS. CFX HAS NO TAXING POWER. NO OWNER OF ANY OF THE SERIES 2019 BONDS SHALL EVER HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE STATE, THE COUNTIES, THE CITY OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE, OR TAXATION IN ANY FORM OF REAL PROPERTY THEREIN, OR THE APPLICATION OF ANY FUNDS, OTHER THAN FUNDS PLEDGED TO THE PAYMENT OF THE SERIES 2019 BONDS. THE SERIES 2019 BONDS ARE NOT SECURED BY A MORTGAGE ON OR SECURITY INTEREST IN ANY OF THE REAL OR PERSONAL PROPERTY CONSTITUTING PART OF THE SYSTEM.

This cover page contains limited information for quick reference only. It is not a summary of the matters relating to the Series 2019 Bonds. Potential investors must read the entire Official Statement (including the cover page and all Appendices attached hereto) to obtain information essential to the making of an informed investment decision.

The Series 2019 Bonds are offered for delivery when, as and if issued, by CFX, subject to the approving opinions of Nelson Mullins Broad and Cassel, Orlando, Florida and Marchena and Graham, P.A., Orlando, Florida, Co-Bond Counsel. Certain legal matters will be passed upon by Counsel to CFX, Shutts & Bowen LLP, Orlando, Florida. Nabors, Giblin & Nickerson, P.A., Tampa, Florida is serving as Disclosure Counsel to CFX. PFM Financial Advisors LLC, Orlando, Florida is serving as Financial Advisors to CFX with respect to the Series 2019 Bonds. Greenberg Traurig, P.A., Orlando, Florida is serving as Counsel to the Underwriters. It is expected that the Series 2019 Bonds will be delivered through the facilities of DTC in New York, New York, on or about November \_\_, 2019.

**BofA Securities** Barclays

Citigroup

J.P. Morgan **RBC Capital Markets** Jefferies Morgan Stanley

Wells Fargo Securities Ramirez & Co., Inc.

PNC

## MATURITIES, PRINCIPAL AMOUNTS, INTEREST RATES, YIELDS, PRICES AND INITIAL CUSIP NUMBERS

#### \$125,720,000\* CENTRAL FLORIDA EXPRESSWAY AUTHORITY SENIOR LIEN REVENUE BONDS, SERIES 2019A

Maturity	Principal	Interest	Lattre!	26.01	Initial
(July 1)	Amount*	Rate	Yield	Price	CUSIP No.†
2020	\$1,190,000	96	96		
2021	2,000,000				
2022	2,100,000				
2023	2,205,000				
2024	2,315,000				
2025	2,430,000				
2026	2,550,000				
2027	2,680,000				
2028	2,810,000				
2029	2,950,000				
2030	3,100,000				
2031	3,255,000				
2032	3,415,000				
2033	3,590,000				
2034	3,770,000 3,955,000				
2035 2036	4,155,000				
2037	4,360,000				
2038	4,580,000				
2039	4,810,000				
2040	5,050,000				
2041	5,300,000				
2042	5,565,000				
2043	5,845,000				
2044	6,135,000				
2045	6,445,000				
2046	6,765,000				
2047	7,105,000				
2048	7,460,000				
2049	7,830,000				
	\$	*% Term 20	19A Bonds, Due July	1, 20;	
	Price	; Yield%; Initi	al CUSIP Number –	Al-	
	\$	*- % Term 20	19A Bonds, Due July	1.20 :	
	Price -		al CUSIP Number -		

#### \$447,940,000\* CENTRAL FLORIDA EXPRESSWAY AUTHORITY SENIOR LIEN REVENUE BONDS, SERIES 2019B

		SERIES	2013D		
Maturity	Principal	Interest			Initial
(July 1)	Amount*	Rate	Yield	Price	CUSIP No.†
2020	\$ 4,240,000	96	96	to the second	Sec. 2012 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
2021	7,120,000				
2022	7,475,000				
2023	7,850,000				
2024	8,240,000				
2025	8,655,000				
2026	9,085,000				
2027	9,540,000				
2028	10,020,000				
2029	10,520,000				
2030	11,045,000				
2031	11,595,000				
2032	12,175,000				
2033	12,785,000				
2034	13,425,000				
2035	14,095,000				
2036 2037	14,800,000				
2038	15,540,000 16,320,000				
2039	17,135,000				
2040	17,990,000				
2041	18,890,000				
2042	19,835,000				
2043	20,825,000				
2044	21,865,000				
2045	22,960,000				
2046	24,110,000				
2047	25.315,000				
2048	26,580,000				
2049	27,910,000				
	23,022,000	0.407046	100000000000000000000000000000000000000	1441	
	\$		19B Bonds, Due July	1, 20_;	
	Price	; Yield –%; Initi	al CUSIP Number –		
	\$	* - 96 Term 20	19B Bonds, Due July	1,20_;	
	Price -		al CUSIP Number -		
	A fice -		THE STATE STREET		

Preliminary, subject to change.

CUSIP numbers have been assigned to the Series 2019 Bonds by an organization not affiliated with CFX. CFX is not responsible for the selection or use of the CUSIP numbers in this Official Statement nor is any representation being made as to their accuracy on the Series 2019 Bonds, or as indicated above. The CUSIP numbers are included herein solely for the convenience of the readers of this Official Statement.

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY 4974 ORL Tower Road Orlando, Florida 32807

#### BOARD MEMBERS

Jay Madara, Chairman
Brenda Carey, Seminole County Representative, Vice Chairman
Buddy Dyer, Mayor of Orlando, Treasurer
Leslie Campione, Lake County Representative, Board Member
Jerry Demings, Orange County Mayor, Board Member
Brandon Arrington, Osceola County Representative, Board Member
Andria Herr, Board Member
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Betsy VanderLey, Orange County Representative, Board Member

#### MANAGEMENT

Laura Kelley, Executive Director
Glenn Pressimone, P.E., Chief of Infrastructure
Lisa Lumbard, Chief Financial Officer
Michelle Maikisch, Chief of Staff/Public Affairs Officer
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Marchena and Graham, P.A. Orlando, Florida

# INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

Moore Stephens Lovelace P.A. Orlando, Florida

#### GENERAL ENGINEERING CONSULTANT

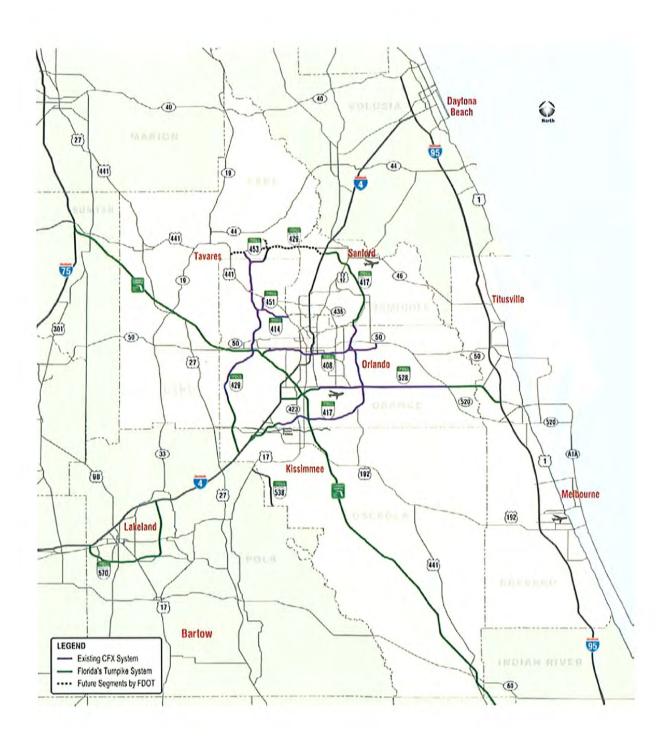
Dewberry Engineers Inc. Orlando, Florida

#### TRAFFIC AND EARNINGS CONSULTANT

CDM Smith Maitland, Florida

#### FINANCIAL ADVISOR

PFM Financial Advisors LLC Orlando, Florida



This Official Statement does not constitute a contract between CFX and any one or more owners of the Series 2019 Bonds, nor does it constitute an offer to sell or the solicitation of an offer to buy the Series 2019 Bonds in any jurisdiction to any person to whom it is unlawful to make such an offer in such jurisdiction.

No dealer, broker, salesman or any other person has been authorized by CFX to give any information or to make any representation, other than those contained in this Official Statement, in connection with the offering of the Series 2019 Bonds, and if given or made, such information or representations must not be relied upon as having been authorized by CFX. The information and expressions of opinion in this Official Statement are subject to change without notice, and this Official Statement speaks only as of its date. Neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create the implication that there has been no change in the matters described herein since the date hereof. The information contained in this Official Statement, including in the appendices, has been obtained from representatives of CFX and from public documents, records and other sources considered to be reliable.

THE UNDERWRITERS HAVE PROVIDED THE FOLLOWING SENTENCES FOR INCLUSION IN THIS OFFICIAL STATEMENT. IN CONNECTION WITH THE OFFERING OF THE SERIES 2019 BONDS, THE UNDERWRITERS MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2019 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

THE SERIES 2019 BONDS HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR HAS THE BOND RESOLUTION BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS. THE REGISTRATION OR QUALIFICATION OF THE SERIES 2019 BONDS IN ACCORDANCE WITH APPLICABLE PROVISIONS OF THE SECURITIES LAWS OF THE STATES, IF ANY, IN WHICH THE SERIES 2019 BONDS HAVE BEEN REGISTERED OR OR REGISTRATION **EXEMPTION** FROM **OUALIFIED** AND THE QUALIFICATION IN CERTAIN OTHER STATES CANNOT BE REGARDED AS A RECOMMENDATION THEREOF. NEITHER THESE STATES NOR ANY OF THEIR AGENCIES HAVE PASSED UPON THE MERITS OF THE SERIES 2019 BONDS OR THE ACCURACY OR COMPLETENESS OF THIS OFFICIAL ANY REPRESENTATION TO THE CONTRARY MAY BE A STATEMENT. CRIMINAL OFFENSE.

In making an investment decision, investors must rely on their own examination of CFX, and the terms of the offering, including the merits and risks involved. The Series 2019 Bonds have not been recommended by any federal or state securities commission or

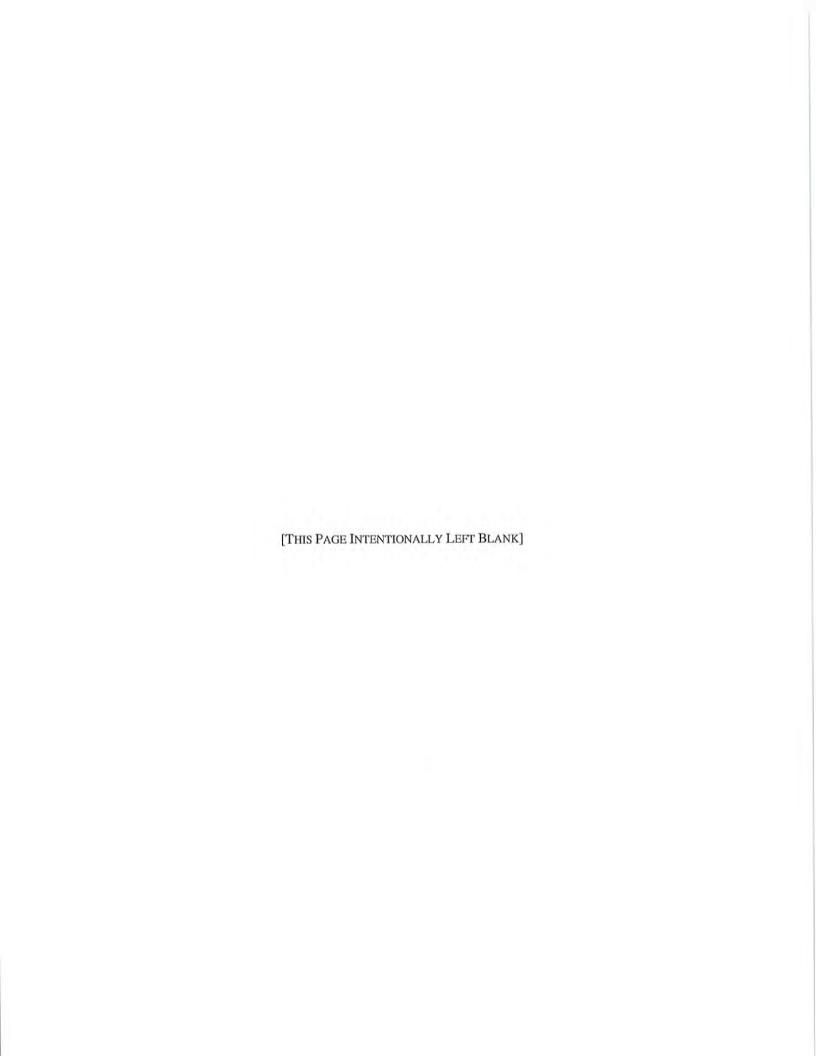
regulatory authority. Furthermore, other than as expressly provided in certificates to be delivered to the Underwriters in connection with the closing, CFX has not confirmed the accuracy or determined the adequacy of this Official Statement. Any representation to the contrary may be a criminal offense.

INCORPORATED STATEMENTS INCLUDED OR CERTAIN **OFFICIAL** STATEMENT CONSTITUTE IN THIS REFERENCE SUCH STATEMENTS GENERALLY "FORWARD-LOOKING STATEMENTS." ARE IDENTIFIABLE BY THE TERMINOLOGY USED, SUCH AS "PLAN," "EXPECT," "ESTIMATE," "BUDGET" OR OTHER SIMILAR WORDS. FORWARD-LOOKING STATEMENTS INCLUDE BUT ARE NOT LIMITED TO CERTAIN STATEMENTS CONTAINED IN THE INFORMATION UNDER THE "FORWARD-LOOKING STATEMENTS," "SYSTEM CAPTIONS REVENUES - HISTORICAL AND PROJECTED REVENUES," "HISTORICAL AND PROJECTED OPERATING RESULTS OF THE SYSTEM" HEREIN. OR OTHER EXPECTATIONS RESULTS CERTAIN OF ACHIEVEMENT CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS THAT MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS INCLUDED IN THIS OFFICIAL STATEMENT. ASIDE FROM ITS CUSTOMARY FINANCIAL REPORTING ACTIVITIES, CFX DOES NOT PLAN TO ISSUE ANY UPDATES OR REVISIONS TO THOSE FORWARD-LOOKING STATEMENTS IF OR WHEN ITS EXPECTATIONS OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS ARE BASED OCCUR, SUBJECT TO ANY CONTRACTUAL OR LEGAL RESPONSIBILITIES TO THE CONTRARY.

THIS OFFICIAL STATEMENT IS BEING PROVIDED TO PROSPECTIVE PURCHASERS IN EITHER BOUND OR PRINTED FORMAT ("ORIGINAL BOUND FORMAT"), OR IN ELECTRONIC FORMAT ON THE FOLLOWING WEBSITES: WWW.EMMA.MSRB.ORG. PROSPECTIVE OR WWW.MUNIOS.COM PURCHASERS MAY RELY ON THE INFORMATION CONTAINED IN THIS OFFICIAL STATEMENT IN EITHER THE ORIGINAL BOUND FORMAT OR THE FORMAT, PROVIDED, HOWEVER THAT PROSPECTIVE ELECTRONIC PURCHASERS MUST READ THE ENTIRE OFFICIAL STATEMENT (INCLUDING THE COVER PAGE AND ALL APPENDICES ATTACHED HERETO) TO OBTAIN ALL OF THE INFORMATION ESSENTIAL TO THE MAKING OF AN INFORMED INVESTMENT DECISION.

The Underwriters have provided the following sentence for inclusion in this Official Statement. The Underwriters have reviewed the information in this Official Statement in accordance with, and as part of, their respective responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

References to website addresses presented herein are for informational purposes only and may be in the form of a hyperlink solely for the reader's convenience. Unless specified otherwise, such websites and the information or links contained therein are not incorporated into, and are not part of, this final official statement for purposes of, and as that term is defined in, SEC rule 15c2-12.

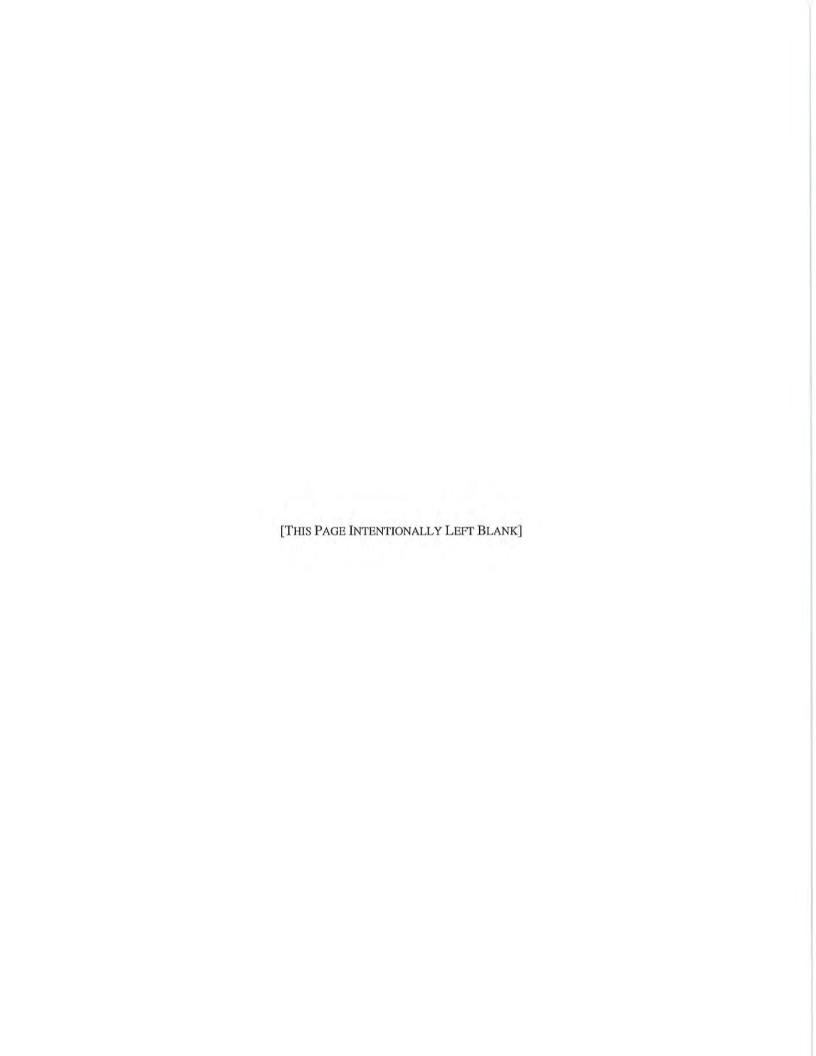


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# OFFICIAL STATEMENT relating to

\$125,720,000\*
CENTRAL FLORIDA
EXPRESSWAY AUTHORITY
SENIOR LIEN
REVENUE BONDS,
SERIES 2019A

\$447,940,000\*
CENTRAL FLORIDA
EXPRESSWAY AUTHORITY
SENIOR LIEN
REVENUE BONDS,
SERIES 2019B

#### INTRODUCTION

The purpose of this Official Statement, which includes the cover page, the inside cover page and the Appendices attached hereto, is to furnish information concerning the Central Florida Expressway Authority ("CFX"), the System (as defined herein) and certain other information in connection with the sale by CFX of \$125,720,000\* in aggregate principal amount of its Senior Lien Revenue Bonds, Series 2019A (the "Series 2019A Bonds") and \$447,940,000\* in aggregate principal amount of its Senior Lien Revenue Bonds, Series 2019B (the "Series 2019B Bonds," and together with the Series 2019A Bonds, the "Series 2019 Bonds").

CFX is an agency of the State of Florida which on June 20, 2014 assumed the governance and control of the Orlando-Orange County Expressway Authority (the "Prior Authority"), including the assets, personnel, contracts, obligations, liabilities, facilities and tangible and intangible property of the Prior Authority. See "CFX" herein.

The Series 2019 Bonds are being issued pursuant to Chapter 348, Part III, Florida Statutes (the "Act") and that certain Amended and Restated Master Bond Resolution adopted by CFX on February 3, 2003 (the "Master Bond Resolution"), as amended and supplemented, and particularly as supplemented by that certain Twenty-Fifth Supplemental Revenue Bond Resolution Authorizing the Issuance of Senior Lien Revenue Bonds, Series 2019 (One or more Series) adopted by CFX on October 10, 2019 (the "Twenty-Fifth Supplemental Resolution" and together with the Master Bond Resolution collectively hereinafter referred to as the "Bond Resolution"). All capitalized terms used herein and not otherwise defined herein are used with the meanings assigned "APPENDIX A - AMENDED AND RESTATED MASTER BOND thereto in SUPPLEMENTAL RESOLUTION" and "APPENDIX B - TWENTY-FIFTH RESOLUTION" attached hereto.

The Series 2019 Bonds are subject to optional and mandatory redemption prior to maturity as described herein. See "DESCRIPTION OF THE SERIES 2019 BONDS - Redemption Provisions" herein.

<sup>\*</sup>Preliminary, subject to change.

Prior to the issuance and delivery of the Series 2019 Bonds, the following Parity Bonds will be outstanding in the aggregate principal amount of \$2,480,460,000: (a) Variable Rate Refunding Revenue Bonds, Series 2008B-1 (the "Series 2008B-1 Bonds"); (b) Variable Rate Refunding Revenue Bonds, Series 2008B-2 (the "Series 2008B-2 Bonds"); (c) Variable Rate Refunding Revenue Bonds, Series 2008B-3 (the "Series 2008B-3 Bonds"); (d) Variable Rate Refunding Revenue Bonds, Series 2008B-4 (the "Series 2008B-4 Bonds" and together with the Series 2008B-1 Bonds, Series 2008B-2 Bonds and Series 2008B-3 Bonds, the "Series 2008B Bonds"); (e) Refunding Revenue Bonds, Series 2010B (the "Series 2010B Bonds"); (f) Refunding Revenue Bonds, Series 2012 (the "Series 2012 Bonds"); (g) Refunding Revenue Bonds, Series 2013A (the "Series 2013A Bonds"); (h) Refunding Revenue Bonds, Series 2013B (the "Series 2013B Bonds"); (i) Refunding Revenue Bonds, Series 2013C (the "Series 2013C Bonds"); (j) Senior Lien Refunding Revenue Bonds, Series 2016A (the "Series 2016A Bonds"); (k) Senior Lien Refunding Revenue Bonds, Series 2016B (the "Series 2016B Bonds"); (1) Senior Lien Refunding Revenue Bonds, Series 2017 (the "Series 2017 Bonds") and (m) Senior Lien Revenue Bonds, Series 2018 (the "Series 2018 Bonds"). See "SYSTEM FINANCING - Bonded Indebtedness" herein. Accordingly, such outstanding Series 2008B Bonds, Series 2010B Bonds, Series 2012 Bonds, Series 2013A Bonds, Series 2013B Bonds, Series 2013C Bonds, Series 2016A Bonds, Series 2016B Bonds, Series 2017 Bonds and Series 2018 Bonds are collectively referred to herein as the "Outstanding Parity Bonds." The Series 2019 Bonds, the Outstanding Parity Bonds and any Parity Bonds hereafter issued under the Bond Resolution are collectively referred to herein as the "Bonds." On October 19, 2018, CFX refunded all of its \$193,695,000 Senior Lien Bond Anticipation Notes, Series 2015 (the "Refunded Series 2015 Notes") from proceeds of a draw made against a loan (the "Junior TIFIA Loan") to CFX by the U.S. Department of Transportation acting by and through the Build America Bureau (the "TIFIA Lender") pursuant to a loan agreement effective March 25, 2015, between CFX and the TIFIA Lender (the "Junior TIFIA Loan Agreement"), all as described further herein. See "JUNIOR TIFIA LOAN AGREEMENT" herein.

The Series 2019A Bonds are being issued by CFX to provide funds to: (i) finance the costs of purchasing and acquiring a toll facility known as the Poinciana Parkway (SR 538) from Osceola County, Florida ("Osceola County"), (ii) deposit funds or pay the premium on a reserve account credit facility to be deposited into the debt service reserve account created under the Bond Resolution and (iii) pay certain costs in connection with the issuance of the Series 2019A Bonds. The Series 2019B Bonds are being issued by CFX to provide funds to: (i) finance, refinance, or reimburse CFX for the costs of acquiring, constructing and equipping the 2019 System Projects (defined herein), (ii) deposit funds or pay the premium on a reserve account credit facility to be deposited into the debt service reserve account created under the Bond Resolution and (iii) pay certain costs in connection with the issuance of the Series 2019B Bonds. See "PLAN OF FINANCE" and "ESTIMATED SOURCES AND USES OF FUNDS" herein and "APPENDIX B - TWENTY-FIFTH SUPPLEMENTAL RESOLUTION" attached hereto.

The Series 2019 Bonds will be secured by a pledge of and lien on the System Pledged Revenues (as defined in the Bond Resolution) on a parity with the Outstanding Parity Bonds and any Parity Bonds hereafter issued under the Bond Resolution and any Qualified Swap Payments related to such Bonds. See "SECURITY FOR THE SERIES 2019 BONDS" herein and "AMENDED AND RESTATED MASTER BOND RESOLUTION" attached hereto as APPENDIX A and "TWENTY-FIFTH SUPPLEMENTAL RESOLUTION" attached hereto as APPENDIX B.

All or a portion of the Series 2019 Bonds may be insured pursuant to the purchase of a municipal bond insurance policy from \_\_\_\_\_\_ which purchase will be at the option and expense of CFX. See "MUNICIPAL BOND INSURANCE" herein.

In connection with the issuance of the Series 2019 Bonds, Dewberry Engineers Inc., Orlando, Florida (the "General Engineering Consultant"), was retained by CFX to prepare a Consulting Engineer's Report, dated September 30, 2019 (the "Consulting Engineer's Report"). Similarly, CFX previously retained CDM Smith, Maitland, Florida (the "Traffic and Earning's Consultant") to prepare a FY 2018 General Traffic and Earning's Consultant's Report dated May 2019 (the "System Traffic and Earnings Report"). The System Traffic and Earnings Report is not being updated in connection with the issuance of the Series 2019 Bonds and therefore the financial and operating information related to the System presented therein do not include any such amounts attributable to the Poinciana Parkway described below under "PLAN OF FINANCE -Poinciana Parkway Acquisition." The Consulting Engineer's Report is attached hereto as APPENDIX C and the System Traffic and Earnings Report is attached hereto as APPENDIX D. THE CONSULTING ENGINEER'S REPORT AND THE SYSTEM TRAFFIC AND EARNINGS REPORT ARE INTEGRAL COMPONENTS OF THIS OFFICIAL STATEMENT. PROSPECTIVE INVESTORS SHOULD CLOSELY REVIEW, IN THEIR ENTIRETY, THE CONSULTING ENGINEER'S REPORT AND THE SYSTEM TRAFFIC AND EARNINGS ATTACHED AS APPENDICES C AND D HERETO, RESPECTIVELY, PRIOR TO MAKING AN INVESTMENT DECISION WITH RESPECT TO THE SERIES 2019 BONDS.

For a more complete description of the terms and conditions of the Series 2019 Bonds, reference is made to the proceedings authorizing the issuance of the Series 2019 Bonds. The descriptions of the Series 2019 Bonds, the Bond Resolution, the Lease-Purchase Agreement (as defined herein), the Junior TIFIA Loan Agreement, the Consulting Engineer's Report, the System Traffic and Earnings Report, the Poinciana LPA (as defined herein) and the Continuing Disclosure Agreement (as defined herein) and any other matters or documents contained or referenced herein are brief outlines of certain provisions thereof and do not purport to be comprehensive or definitive. All references herein to such documents and statements are qualified in their entirety by the

actual content of such documents and statements to which reference is made herein. Copies of such documents not otherwise attached hereto are available from the Office of the Chief Financial Officer, 4974 ORL Tower Road, Orlando, Florida 32807.

#### PLAN OF FINANCE

## Poinciana Parkway Acquisition

A portion of the proceeds of the Series 2019A Bonds will be applied to finance the costs of purchasing and acquiring a toll facility known as the Poinciana Parkway (SR 538) from Osceola County (the "Poinciana Parkway Acquisition"). The Poinciana Parkway Acquisition is being undertaken in accordance with an Amended and Restated Lease Purchase Agreement, effective as of December 31, 2018, between CFX and Osceola County (the "Poinciana LPA") pursuant to which CFX currently operates the Poinciana Parkway as a Non-System Project. See "CFX - Osceola County Expressway System Transfer" herein. Under the Poinciana LPA, the right-of-way and tangible personal property comprising the Poinciana Parkway will be conveyed to CFX upon the payment by CFX of a purchase price based on several components as provided further in the Poinciana LPA, CFX and Osceola County are currently working to satisfy the various requirements necessary to complete the Poinciana Parkway Acquisition under the Poinciana LPA.

The Bond Resolution provides that the Series 2019A Bonds shall not be issued until all such conditions to the Poinciana Parkway Acquisition have been satisfied, including without limitation: (i) all documents necessary to transfer to the right, title and interests of Osceola County in an and to the Poinciana Parkway free and clear of all liens and encumbrances have been fully executed and shall be released to CFX upon issuance of the Series 2019A Bonds and (ii) a signed defeasance opinion by bond counsel to Osceola County covering all obligations of the Osceola County that are outstanding with respect to or secured by the Poinciana Parkway or the revenues generated thereby.

Upon such acquisition by CFX, the Poinciana Parkway will be operated as a System Project and the revenues attributable thereto shall be included as part of System Pledged Revenues. Currently, the Poinciana Parkway consists of an approximately 7-mile long, two-lane, two-way, limited access toll road extending from the Polk-Osceola County line to Cypress Parkway in Poinciana, a census designated place in the northwestern part of Osceola County. The Poinciana Parkway initially opened to traffic on April 30, 2016 and became fully operational on November 18, 2016. There are two toll gantries on Poinciana Parkway at which tolls are collected via electronic toll collection ("ETC") or Pay By Plate video billing. See "DESCRIPTION OF THE SYSTEM - Toll Collection" herein. In Fiscal Year 2018, the Poinciana Parkway generated approximately \$5.9 million of toll revenue from approximately 4.0 million toll transactions compared to total System Toll Revenues of \$458.1 million from

approximately 455.0 million transactions during the same time period. See "HISTORICAL AND PROJECTED OPERATING RESULTS OF THE SYSTEM - Historical Operating Results of Poinciana Parkway" herein for information regarding historical revenues and expenses associated with the Poinciana Parkway. It is anticipated that CFX will make various improvements to the Poinciana Parkway in the future.

## 2019 System Projects

A portion of the proceeds of the Series 2019B Bonds will be applied to pay a portion of the costs of various capital improvements to the System included in the Five-Year Work Plan (as defined herein) adopted by CFX from time to time, as the same may be amended, and includes reimbursing CFX for the costs of such improvements that were paid on an interim basis from other available funds of CFX (collectively, the "2019 System Projects").

See "DESCRIPTION OF THE SYSTEM" herein and the Consulting Engineer's Report attached hereto as APPENDIX C for a further description of the System, the Five-Year Work Plan and the various capital improvements therein comprising the 2019 System Projects.

## ESTIMATED SOURCES AND USES OF FUNDS

The proceeds of the Series 2019 Bonds are expected to be applied as follows:

	Series 2019A Bonds	Series 2019B Bonds
Sources of Funds Par Amount	\$	\$
Net Bond Premium/Discount Total Sources of Funds	\$	\$
Uses of Funds		ò
Poinciana Parkway Acquisition Deposit to Construction Fund <sup>(1)</sup>	\$	\$
Deposit to Common Reserve Subaccount of Debt Service Reserve Account		
Costs of Issuance <sup>(2)</sup> Total Uses of Funds		\$

(1) To be applied to finance all or a portion of the 2019 System Projects.

<sup>(2)</sup> Includes legal fees, underwriters' discount, financial advisor and consultant fees, rating agency fees, printing costs, and other fees and costs.

#### **DESCRIPTION OF THE SERIES 2019 BONDS**

## General

The Series 2019 Bonds are being issued as fully registered bonds without coupons in the denomination of the par amount of the Series 2019 Bonds; shall be dated the date of the initial delivery thereof, and shall bear interest from such date, payable semiannually on January 1 and July 1 of each year, commencing January 1, 2020. The Series 2019 Bonds shall mature on July 1 in the years and principal amounts, and shall bear interest at the rates set forth on the inside of the cover page hereof.

## Registration and Payment

Principal of, and premium, if any, or interest on the Series 2019 Bonds will be payable upon presentation and surrender of the Series 2019 Bonds at the designated corporate trust operations office of Wells Fargo Bank, N.A. or its successors or assigns as Registrar, Paying Agent and Trustee (the "Registrar," "Paying Agent" or "Trustee") in Minneapolis Minnesota. Interest on the Series 2019 Bonds will be paid by check or draft drawn upon the Paying Agent and mailed to the registered Bondholders of the Series 2019 Bonds at the addresses as they appear on the registration books maintained by the Registrar, at the close of business on the 15th day (whether or not a Business Day) of the month next preceding the interest payment date (the "Record Date"), irrespective of any transfer or exchange of such Series 2019 Bonds subsequent to such Record Date and prior to such interest payment date, unless CFX shall be in default in payment of interest due on such interest payment date. In the event of any such default, such defaulted interest will be payable to the Bondholders in whose name such Series 2019 Bonds are registered at the close of business on a special record date for the payment of such defaulted interest as established by notice deposited in the U.S. mails, postage prepaid, by the Trustee to the registered Bondholders of such Series 2019 Bonds not less than 15 days preceding such special record date. Such notice shall be mailed to the Bondholders in whose name the Series 2019 Bonds are registered at the close of business on the fifth day (whether or not a Business Day) preceding the date of mailing.

If the date for payment of the principal of, premium, if any, or interest on the Series 2019 Bonds is not a Business Day, then the date for such payment shall be the next succeeding Business Day, and payment on such Business Day will have the same force and effect as if made on the nominal date of payment, without accrual of additional interest.

Notwithstanding the foregoing, or anything provided in the Master Bond Resolution to the contrary, a registered Bondholder of \$1,000,000 or more in principal amount of Series 2019 Bonds may provide for payment of principal, redemption price and interest with respect to such Series 2019 Bonds by wire transfer in immediately available funds on the applicable payment date by written request submitted (i) in the

case of principal or redemption price, to the Paying Agent with the presentation or surrender of the Series 2019 Bonds to be paid, and (ii) in the case of interest, to the Paying Agent, as registrar, at least 15 Business Days prior to the applicable Record Date. In the case of interest, the notice may provide that it will remain in effect for later interest payments until changed or revoked by another written notice.

CFX and the Registrar, Paying Agent, and Trustee may deem and treat the registered Bondholders of any Series 2019 Bond as the absolute Bondholders of such Series 2019 Bond for the purpose of receiving payment of the principal thereof and the interest and prepayment price, if any, thereon.

## Transfer and Exchange

Each Series 2019 Bond may be transferred upon the registration books of CFX kept for that purpose at the office of the Registrar as provided in the Bond Resolution. All Series 2019 Bonds presented for transfer, exchange, or payment (if so required by CFX or the Registrar) shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to CFX and the Registrar, duly executed by the Bondholders or by a duly authorized attorney. New Series 2019 Bonds delivered upon any transfer, purchase or exchange shall be valid obligations of CFX, evidencing the same debt as the Series 2019 Bonds surrendered, shall be secured by the Bond Resolution, and shall be entitled to all of the security and benefits thereof to the same extent as the Series 2019 Bonds surrendered.

In all cases of a transfer of the Series 2019 Bonds, the Registrar shall at the earliest practical time in accordance with the terms of the Bond Resolution enter the transfer of ownership in the registration books and shall deliver in the name of the new transferee new fully registered Series 2019 Bonds of the same Series, maturity and of authorized denomination, for the same aggregate principal amount and payable from the same source of funds.

CFX and Registrar may charge the Registered Owner for the registration of every transfer or exchange of the Series 2019 Bonds an amount sufficient to reimburse them for any tax, fee or any other governmental charge required (other than by CFX) to be paid with respect to or in connection with any such transfer or exchange, and may require that such amounts be paid before any such new Series 2019 Bonds shall be delivered.

# **Redemption Provisions**

Optional Redemption. The Series 2019 Bonds maturing on or before July 1, 20\_shall not be subject to redemption prior to their respective maturity date. The Series 2019 Bonds maturing on or after July 1, 20\_ are subject to optional redemption by CFX in whole or in part at any time on or after July 1, 20\_, in such maturities or amortization installments as CFX may determine and by lot within any maturity or amortization

installments, at a redemption price of 100% of the principal amount thereof to be redeemed, plus accrued interest to the redemption date.

## Mandatory Redemption.

The Series 2019A Bonds maturing on July 1, 20\_ are subject to mandatory redemption in part prior to maturity in accordance with the amortization installments at redemption prices equal to 100% of the principal amount thereof, plus accrued interest to the date of redemption, on July 1 in the years and in the principal amounts set forth below:

Series 2019A Bonds			
Year	Amortization	Year	Amortization
(July 1)	Installments	(July 1)	Installments

The Series 2019B Bonds maturing on July 1, 20\_ are subject to mandatory redemption in part prior to maturity in accordance with the amortization installments at redemption prices equal to 100% of the principal amount thereof, plus accrued interest to the date of redemption, on July 1 in the years and in the principal amounts set forth below:

## Series 2019B Bonds

Year	Amortization	Year	Amortization
(July 1)	Installments	(July 1)	Installments

<u>Selection of Bonds to be Redeemed or Purchased</u>. If and to the extent that less than all of the Series 2019 Bonds are to be redeemed or purchased in lieu thereof, the maturities and principal amounts of each such maturity to be redeemed or purchased

<sup>\*</sup>Final Maturity

<sup>\*</sup>Final Maturity

shall be selected by CFX, and in the event less than all of the Series 2019 Bonds of an entire maturity thereof are redeemed or purchased, the Series 2019 Bonds of such maturity shall be selected at random by the Paying Agent, as trustee, in such manner as the Paying Agent, as trustee, in its discretion may deem fair and appropriate; provided, however, that the portion of any Series 2019 Bond of a denomination of more than \$5,000 to be redeemed or purchased shall be in the principal amount of \$5,000 or any integral multiple of \$5,000 in excess thereof, and in selecting portions of such Series 2019 Bonds for redemption or purchase, the Paying Agent, as trustee shall treat each such Series 2019 Bond as representing that number of Series 2019 Bonds of \$5,000 denomination which is obtained by dividing the principal amount of such Series 2019 Bond to be redeemed or purchased in part by \$5,000.

## Notice of Redemption

Unless waived by any Holder of the Series 2019 Bonds to be redeemed, notice of any optional redemption made pursuant to the Bond Resolution shall be given by the Paying Agent, as registrar, on behalf of CFX mailing a copy of an official redemption notice by first class mail, postage prepaid, at least 20 days prior to the date fixed for redemption to each Holder of the Series 2019 Bonds to be redeemed at the address of such Holder shown on the registration books maintained by the Registrar or at such other address as shall be furnished in writing by such Holder to the Registrar; provided, however, that no defect in any notice given pursuant to this section to any Holder of the Series 2019 Bonds to be redeemed, nor any failure to give such notice, shall in any manner defeat the effectiveness of a call for optional redemption as to all other Holders of the Series 2019 Bonds to be redeemed.

Every official notice of optional redemption shall be dated and shall state: (a) the redemption date, (b) the redemption price of the Series 2019 Bonds to be redeemed, (c) if less than all outstanding Series 2019 Bonds are to be redeemed, the number (and, in the case of partial redemption of any Series 2019 Bond, the principal amount) of each Series 2019 Bond to be redeemed, (d) that on the redemption date the redemption price will become due and payable upon each such Series 2019 Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date, and (e) that such Series 2019 Bonds to be redeemed, whether as a whole or in part, are to be surrendered for payment of the redemption price plus accrued interest at the office of the Paying Agent.

In addition to the foregoing notice, further notice shall be given by CFX as set out below (provided however, the provisions of the Master Bond Resolution regarding notice of redemption is required solely with respect to the exercise by CFX of its right to optionally redeem the Series 2019 Bonds) but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as above prescribed:

- (a) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (i) the CUSIP numbers of all Series 2019 Bonds being redeemed; (ii) the original issue date of the Series 2019 Bonds; (iii) the rate of interest borne by each Series 2019 Bond being redeemed; (iv) the maturity date of each Series 2019 Bond being redeemed; and (v) any other descriptive information needed to identify accurately the Series 2019 Bonds being redeemed.
- (b) Each further notice of redemption shall be sent by registered or certified mail or overnight delivery service or telecopy to any Rating Agency whose rating is then on the Series 2019 Bonds, to the issuer of any Bond Credit Facility and to all registered securities depositories then in the business of holding substantial amounts of obligations of types similar to the type of which the Series 2019 Bonds consist (such depositories now being Depository Trust Company of New York, New York ("DTC"), Midwest Securities Trust Company of Chicago, Illinois, and the Philadelphia Depository Trust Company of Philadelphia, Pennsylvania) and to one or more national information services that disseminate notices of prepayment or redemption of obligations such as the Series 2019 Bonds.
- (c) Each such further notice shall be published one time in <u>The Bond Buyer</u> of New York, New York or, if such publication is impractical or unlikely to reach a substantial number of the Holders of the Series 2019 Bonds, in some other financial newspaper or journal which regularly carries notices of redemption of obligations similar to the Series 2019 Bonds.

So long as DTC is effecting book-entry transfers of the Series 2019 Bonds, the Paying Agent shall provide the redemption notices referenced above only to DTC. It is expected that DTC shall, in turn, notify its participants and that the participants, in turn, will notify or cause to be notified the beneficial owners. Any failure on the part of DTC or a participant, or failure on the part of a nominee of a beneficial owner of a Series 2019 Bond to notify the beneficial owner of the Series 2019 Bond so affected, shall not affect the validity of the redemption of such Series 2019 Bond.

Any notice of optional redemption given pursuant to the provisions stated above or the Bond Resolution may state that it is conditional upon receipt by the Paying Agent of moneys sufficient to pay the redemption price, plus interest accrued to the redemption date, or upon the satisfaction of any other condition, or that it may be rescinded upon the occurrence of any other event, and any conditional notice so given may be rescinded at any time before payment of such redemption price and accrued interest if any such condition so specified is not satisfied or if any such other event occurs. Notice of such rescission shall be given by the Paying Agent to affected Bondholders of the Series 2019 Bonds as promptly as practicable upon the failure of such condition or the occurrence of such other event.

Purchase in Lieu of Optional Redemption. Notwithstanding anything in the Bond Resolution to the contrary, at any time the Series 2019 Bonds are subject to optional redemption pursuant to the Bond Resolution, all or a portion of the Series 2019 Bonds to be redeemed as specified in the notice of redemption may be purchased by the Paying Agent, as trustee, at the direction of CFX, on the date which would be the redemption date if such Series 2019 Bonds were redeemed rather than purchased in lieu thereof at a purchase price equal to the redemption price which would have been applicable to such Series 2019 Bonds on the redemption date for the account of and at the direction of CFX who shall give the Paying Agent, as trustee, notice at least ten days prior to the scheduled redemption date accompanied by Co-Bond Counsel's Opinion to the effect that such purchase will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Series 2019 Bonds. In the event the Paying Agent, as trustee, is so directed to purchase Series 2019 Bonds in lieu of optional redemption, no notice to the Registered Owners of Series 2019 Bonds to be so purchased (other than the notice of redemption otherwise required under the Bond Resolution) shall be required, and the Paying Agent, as trustee, shall be authorized to apply to such purchase the funds which would have been used to pay the redemption price for such Series 2019 Bonds if such Series 2019 Bonds had been redeemed rather than purchased. Each Series 2019 Bond so purchased shall not be canceled or discharged and shall be registered in the name of CFX. Series 2019 Bonds to be purchased under the Bond Resolution in the manner set forth above which are not delivered to the Paying Agent, as trustee, on the purchase date shall be deemed to have been so purchased and not optionally redeemed on the purchase date and shall cease to accrue interest as to the former Registered Owner on the purchase date.

# **Book-Entry Only System**

DTC will act as securities depository for the Series 2019 Bonds. The Series 2019 Bonds will be issued as fully-registered bonds registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered bond certificate will be issued for each maturity of the Series 2019A Bonds and the Series 2019B Bonds, each in the aggregate principal amount of such issue, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants (the "Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited

securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (the "Indirect Participants"). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at <a href="https://www.dtcc.com">www.dtcc.com</a>.

Purchases of the Series 2019 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for such Series 2019 Bonds on DTC's records. The ownership interest of each actual purchaser of each Series 2019 Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2019 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of the Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2019 Bonds, except in the event that use of the book-entry system for the Series 2019 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2019 Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Series 2019 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2019 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2019 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping an account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements made among them,

subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Series 2019 Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2019 Bonds, such as defaults, and proposed amendments to the bond documents. For example, Beneficial Owners of Series 2019 Bonds may wish to ascertain that the nominee holding the Series 2019 Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Series Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such Bonds to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series 2019 Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to CFX as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2019 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption, proceeds, distributions, and dividend payments on the Series 2019 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from CFX or the Paying Agent on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee, the Registrar, the Paying Agent or CFX, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of CFX and/or the Paying Agent for the Series 2019 Bonds. Disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of the Direct and Indirect Participants.

CFX, the Trustee, the Paying Agent and the Registrar do not have any responsibility or obligation to the Direct Participants, Indirect Participants or the Beneficial Owners with respect to (1) the accuracy of any records maintained by DTC or any Direct Participant or Indirect Participant, (2) the payment by DTC or any Direct Participant or Indirect Participant of any amount due to any Beneficial Owner in respect

of the principal of an interest on the Series 2019 Bonds, (3) the delivery or timeliness of delivery by DTC or any Direct Participant or Indirect Participant of any notice to any Beneficial Owner which is required or permitted under the terms of the Bond Resolution to be given to Bondholders, or (4) any consent given or other action taken by DTC, or its nominee, Cede & Co., as Bondholders.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that CFX believes to be reliable, but CFX takes no responsibility for the accuracy thereof.

## Discontinuance of Book-Entry Only System

DTC may discontinue providing its services as securities depository with respect to the Series 2019 Bonds at any time by giving reasonable notice to CFX. Under such circumstances, in the event that a successor securities depository is not obtained, the Series 2019 Bond certificates are required to be printed and delivered directly to the Beneficial Owners of the Series 2019 Bonds, or their nominees.

CFX may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository) upon compliance with all applicable rules and procedures. In that event, the Series 2019 Bond certificates will be printed and delivered.

So long as Cede & Co. is the Registered Owner of the Series 2019 Bonds, as nominee of DTC, references in this Official Statement to the Bondholders of Series 2019 Bonds or Registered Owners of the Series 2019 Bonds shall mean Cede & Co., and shall not mean the Beneficial Owners of the Series 2019 Bonds.

#### SECURITY FOR THE SERIES 2019 BONDS

#### General

The Series 2019 Bonds are payable from and secured by a pledge of and lien on System Pledged Revenues, which currently consists of, among other things, Net Revenues and until applied in accordance with the provisions of the Bond Resolution, amounts on deposit in certain of the funds and accounts established under the Bond Resolution. See "SECURITY FOR THE SERIES 2019 BONDS - Net Revenues" herein.

The pledge of and lien on the System Pledged Revenues securing the Series 2019 Bonds is on a parity with the pledge thereof and lien thereon securing the other Outstanding Parity Bonds, any additional Parity Bonds hereafter issued pursuant to the Bond Resolution and any Qualified Swap Payments related to such Bonds, if any. See "SUMMARY OF CERTAIN TERMS AND PROVISIONS OF THE BOND RESOLUTION - Issuance of Senior Obligations" and "VARIABLE RATE EXPOSURE AND INTEREST RATE EXCHANGE AGREEMENTS" herein.

The Bond Resolution permits CFX to pledge Supplemental Payments (as defined therein), as additional security for the payment of one or more Series of Bonds to the extent System Pledged Revenues (and if pledged to a particular Series of Bonds, Series Payments), are insufficient therefor. See the definition of "Supplemental Payments" in "APPENDIX A - AMENDED AND RESTATED MASTER BOND RESOLUTION" attached hereto for the criteria for additional revenue sources to constitute Supplemental Payments. However, no such Supplemental Payments are currently pledged to the payment of the Series 2019 Bonds or any Outstanding Parity Bonds.

The Bond Resolution also permits CFX to pledge additional revenue sources as System Payments which shall constitute a portion of the System Pledged Revenues, however, no such System Payments are currently pledged to the payment of the Series 2019 Bonds or any other Bonds. See the definition of "System Payments" in "APPENDIX A - AMENDED AND RESTATED MASTER BOND RESOLUTION" attached hereto for the criteria for additional revenue sources to constitute System Payments and to be included as part of the System Pledged Revenues.

Pursuant to the Bond Resolution, a particular Series of Bonds may also be secured by a pledge of Series Payments. See the definition of "Series Payments" in "APPENDIX A - AMENDED AND RESTATED MASTER BOND RESOLUTION" attached hereto for the criteria for additional revenue sources to constitute Series Payments. There are no Series Payments currently pledged to the payment of the Series 2019 Bonds or any other Bonds.

Certain of the Outstanding Parity Bonds and the Series 2019 Bonds, are also secured by and payable from monies in the respective subaccount within the Debt Service Reserve Account related to such Series of Bonds and various funds and accounts created pursuant to the Bond Resolution. See "SUMMARY OF CERTAIN TERMS AND PROVISIONS OF THE BOND RESOLUTION - Flow of Funds" herein for a description of such funds and accounts. See "SECURITY FOR THE SERIES 2019 BONDS - Debt Service Reserve Account" herein for a description of the Debt Service Reserve Account and the Series 2019 Reserve Subaccount therein.

#### **Net Revenues**

Net Revenues pledged to the payment of principal of and interest on the Series 2019 Bonds are derived by deducting from the Gross Revenues of the System, the Cost of Maintenance, the Cost of Operation, required deposits to the OM&A Reserve Account, and Administrative Expenses. The Bond Resolution defines "Gross Revenues" as (1) all tolls, leasehold payments, concession payments, revenues, rates, rents, charges and other income and receipts derived by or for the account of CFX from the leasing or operation of the System, (2) investment income received on any amounts held pursuant to the Bond Resolution or any Supplemental Authorizing Resolution in the System General Revenue Fund, the System General Reserve Fund, the System Projects Fund, the OM&A Fund and

the Renewal and Replacement Fund, and (3) the proceeds of any use and occupancy insurance on any portion of the System. "Gross Revenues" do not include Supplemental Payments, Series Payments, System Payments, revenues derived from the operation of Non-System Projects (unless designated part of the System pursuant to the Bond Resolution), payments pursuant to a Bond Letter of Credit, payments pursuant to a Qualified Swap Agreement, or the proceeds of any gifts, grants, or other payments to CFX from the United States government, the State or any public or private instrumentality, individual or entity that are not in the nature of an operating, concession or rental payment with respect to the use and operation of the System. See "HISTORICAL AND PROJECTED OPERATING RESULTS OF THE SYSTEM" herein.

#### **Debt Service Reserve Account**

The Series 2019 Bonds will be secured by the Central Florida Expressway Authority Common Reserve Subaccount (the "Common Reserve Subaccount"), a separate subaccount within the Debt Service Reserve Account established pursuant to the Master Bond Resolution and held by the Paying Agent. The Common Reserve Subaccount was initially funded with a deposit of Series 2018 Bond proceeds in an amount equal to the Debt Service Reserve Requirement for the Series 2018 Bonds, which at issuance, equaled \$14,469,000.00. On the date of issuance of the Series 2019 Bonds, CFX will use Series 2019 Bond Proceeds to fund a deposit to the Common Reserve . After such deposit of Series 2019 Subaccount in an amount equal to \$ Bond proceeds, the total amount on deposit in the Common Reserve Subaccount ) will be equal to the aggregate Debt Service Reserve Requirement for the Series 2019 Bonds and Series 2018 Bonds. Amounts deposited in the Common Reserve Subaccount are pledged to secure the repayment of the Series 2019 Bonds, the Series 2018 Bonds and any Additional Bonds issued in the future by CFX and designated by CFX from time to time as being secured by the Common Reserve Subaccount. Deposits into and application of amounts in the Common Reserve Subaccount shall be in accordance with the Master Bond Resolution. Draws from the Common Reserve Subaccount shall be restored from the first System Pledged Revenues available to CFX after all required payments have been made to the Interest Account, the Principal Account and the Bond Redemption Account.

All other money and Reserve Account Credit Facilities on deposit in the Debt Service Reserve Account, or subaccounts therein, shall secure the Outstanding Parity Bonds except as otherwise provided in the Bond Resolution. Unless the authorizing resolution for any Series of Bonds provides for the funding of the Debt Service Reserve Account in installments as permitted by the Bond Resolution, the Debt Service Reserve Account shall be fully funded immediately upon the issuance of such Series of Bonds.

See "AMENDED AND RESTATED MASTER BOND RESOLUTION" attached hereto as APPENDIX A and "TWENTY-FIFTH SUPPLEMENTAL RESOLUTION"

attached hereto as APPENDIX B for the provisions concerning the funding of the Debt Service Reserve Account.

CFX has purchased Reserve Account Credit Facilities from various providers for the benefit of each Series of Bonds outstanding except the Series 2008B Bonds and the Series 2013C Bonds. The Bond Resolution does not require minimum ratings for providers of Reserve Account Credit Facilities. The Debt Service Reserve Requirement associated with the Series 2008B Bonds is zero so long as the credit facilities supporting the Series 2008B Bonds remain in effect. The Debt Service Reserve Requirement for the Series 2016B Bonds was funded with a combination of cash and a Reserve Account Credit Facility and the 2016B Reserve Subaccount secures the repayment of the Series 2016B Bonds only. The Debt Service Reserve Requirement for the Series 2017 Bonds was funded with a combination of cash and a Reserve Account Credit Facility and the 2017 Reserve Subaccount secures the repayment of the Series 2017 Bonds only. Other Series of Outstanding Parity Bonds are secured by investments in subaccounts established for such Series in the Debt Service Reserve Account. The Series 2013C Bonds are not secured by any amounts or Reserve Account Credit Facilities on deposit in the Debt Service Reserve Account.

## **Limited Obligations**

The Series 2019 Bonds and all obligations under the Bond Resolution are limited obligations of CFX payable solely from the System Pledged Revenues, and, if applicable, any Supplemental Payments or Series Payments hereafter pledged to the payment of the Series 2019 Bonds and earnings on funds held in certain funds and accounts, as respectively provided in the Bond Resolution.

NONE OF THE STATE OF FLORIDA, BREVARD COUNTY, FLORIDA, ORANGE COUNTY, FLORIDA, LAKE COUNTY, FLORIDA, SEMINOLE COUNTY, FLORIDA, OSCEOLA COUNTY, FLORIDA (COLLECTIVELY, THE "COUNTIES"), THE CITY OF ORLANDO, FLORIDA (THE "CITY"), NOR ANY POLITICAL SUBDIVISION OF THE STATE SHALL BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON, THE SERIES 2019 BONDS AND THE FULL FAITH AND CREDIT OF THE STATE, THE COUNTIES OR OF ANY OTHER POLITICAL SUBDIVISION OF THE STATE SHALL NOT BE DEEMED TO HAVE BEEN PLEDGED FOR THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE SERIES 2019 BONDS. NO OWNER OF ANY OF THE SERIES 2019 BONDS SHALL EVER HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE STATE, THE COUNTIES, THE CITY OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE, OR TAXATION IN ANY FORM OF REAL PROPERTY LOCATED THEREIN, OR THE APPLICATION OF ANY FUNDS, OTHER THAN FUNDS PLEDGED FOR THE PAYMENT OF THE SERIES 2019 BONDS. CFX HAS NO TAXING POWER. THE SERIES 2019 BONDS ARE NOT SECURED BY A MORTGAGE ON OR SECURITY INTEREST IN ANY OF THE REAL OR PERSONAL PROPERTY CONSTITUTING PART OF THE SYSTEM.

#### MUNICIPAL BOND INSURANCE OPTION

CFX has received a commitment from \_\_\_\_\_\_\_\_ (the "Insurer"), for the issuance of a municipal bond insurance policy on all or a portion of the Series 2019 Bonds. The determination as to whether to purchase such insurance, if available, and payment of all associated costs, including the premium charged by the Insurer, will be at the option and expense of CFX at the time of pricing the Series 2019 Bonds. If any portion of the Series 2019 Bonds is sold on an insured basis, reference to the insurance policy will appear in the final official statement and on the Series 2019 Bonds; however the provisions of the financing documents will not be altered, nor will CFX consent to make additional representations, undertakings or warranties.

## SUMMARY OF CERTAIN TERMS AND PROVISIONS OF THE BOND RESOLUTION

#### **Toll Provisions**

<u>Toll Covenant</u>. Pursuant to the Bond Resolution, CFX covenants that, except as described below in this section under "Adjustments and Classifications of Tolls; Free Passage," it will at all times charge and collect or cause to be charged and collected, tolls, leasehold payments, concession payments, revenues, rates, rents and other charges for the use of the System at rates not less than as shall be required so that:

- (a) System Pledged Revenues, plus Supplemental Payments, if any, in an amount not to exceed the aggregate Annual Debt Service Requirement for such Fiscal Year for all Series of Bonds to which such Supplemental Payments are pledged, in each Fiscal Year will be sufficient to make deposits required to be made into the Debt Service Reserve Account pursuant to the Bond Resolution and shall equal at least 120% of the Annual Debt Service Requirement in such Fiscal Year with respect to all Bonds then outstanding; provided, however, that System Pledged Revenues will in no event provide in each Fiscal Year less than 120% of the Annual Debt Service Requirement with respect to all Bonds then outstanding; and
- (b) Gross Revenues shall be sufficient to pay all payments required by the terms of the Bond Resolution including:
  - (i) 100% of the Cost of Operation during such Fiscal Year as provided in the Annual Budget of CFX for such year prepared in conformity with the Bond Resolution;

- (ii) 100% of the Administrative Expenses of CFX, as provided in the Annual Budget of CFX prepared in conformity with the Bond Resolution;
- (iii) 100% of the Cost of Maintenance during such Fiscal Year as provided in the Annual Budget of CFX prepared in conformity with the Bond Resolution; and
- (iv) 100% of the required deposits to the OM&A Reserve Account in such Fiscal Year.
- (c) System Pledged Revenues for each Fiscal Year shall be sufficient to pay 100% of:
  - (i) deposits and payments required pursuant to the Bond Resolution;
  - (ii) deposits and payments required pursuant to any resolution, indenture or other authorizing instrument under which any obligations of CFX secured by a pledge of the System Pledged Revenues junior and subordinate to the Bonds are issued; and
    - (iii) the Renewal and Replacement Requirement.

The definition of "Annual Debt Service Requirement" provides for certain credits against debt service and assumptions in calculating debt service on Bonds with respect to interest earnings, capitalized interest, Series Payments, Qualified Swap Payments and inverse floating rate bonds. See the definition of "Annual Debt Service Requirement" in "APPENDIX A - AMENDED AND RESTATED MASTER BOND RESOLUTION" attached hereto.

Failure in any Fiscal Year to comply with the rate covenant described in the Bond Resolution shall not constitute an Event of Default under the Bond Resolution if CFX complies with the requirements of the Bond Resolution with respect to annual review of the financial condition of the System and the sufficiency of the Gross Revenues, System Pledged Revenues, Supplemental Payments and Series Payments and implementation of schedules of tolls and other rates and charges recommended by an Independent Consultant; provided that if an Independent Consultant shall be of the opinion that a schedule of tolls and other rates and charges for the System which would meet such rate covenant is impracticable at the time, and CFX therefore cannot comply with such requirements, then CFX shall fix and establish such tolls and other rates and charges as to be recommended by an Independent Consultant to comply as nearly as practicable with such rate covenant, and in such event, failure to comply with the rate covenant will not be an Event of Default under the Bond Resolution. See "AMENDED AND RESTATED MASTER BOND RESOLUTION" attached hereto as APPENDIX A.

Upon acquisition by CFX of the Poinciana Parkway as described herein, the Poinciana Parkway will be classified as a System Project and will therefore be subject to the obligations of CFX with regards to the System under the Bond Resolution and as otherwise described herein.

In addition to the foregoing, CFX is bound by certain covenants under the Junior TIFIA Loan Agreement regarding tolls rates and related coverage ratios which are similar to the above-described covenants under the Bond Resolution. See "JUNIOR TIFIA LOAN AGREEMENT - Affirmative Covenants - Rate Coverage" herein for a description of such toll covenants under the Junior TIFIA Loan Agreement.

Reduction of Tolls. Except as described below in this section under "Adjustments and Classification of Tolls; Free Passage," CFX also covenants in the Bond Resolution not to reduce any rate of toll fixed for transit over the System unless, it shall first obtain or certify as follows in connection with any action of CFX authorizing such reduction: (a) CFX shall have obtained a certificate of an Independent Consultant setting forth estimates of the Gross Revenues, System Pledged Revenues, Supplemental Payments and Series Payments pledged to the Bonds for the then current and each future Fiscal Year to and including the latest maturity of the Bonds, which may take into consideration, among other things, the additional use of the System projected to result from such reduction in the rate of tolls; (b) CFX shall have received a favorable recommendation from an Independent Consultant that such proposed reduction be placed in effect, (c) approval by the Department, if applicable, and (d) CFX has filed with the Department, if applicable, a certificate of an Authorized Officer of CFX setting forth (i) the Annual Debt Service Requirement for the then current and each future Fiscal Year, (ii) that the estimated System Pledged Revenues for the then current and each future Fiscal Year are not less than 1.50 times the Annual Debt Service Requirement for such respective current or future Fiscal Year, (iii) that CFX is not in default in the performance of any of the covenants, conditions, agreements or provisions contained in the Bond Resolution, and (iv) that immediately prior to such proposed reduction, the amount on deposit in the Debt Service Reserve Account was equal to the Debt Service Reserve Requirement with respect to the Bonds. The certificate of an Independent Consultant referenced above is to be based, in part, on estimates of the Cost of Operation, the Cost of Maintenance, deposits to the OM&A Reserve Account and the Administrative Expenses of CFX for the System prepared by CFX and certified by an Authorized Officer of CFX.

Adjustments and Classification of Tolls; Free Passage. CFX covenants in the Bond Resolution that tolls will be classified in a reasonable way to cover all traffic, so that tolls will be uniform in application to all traffic falling within any reasonable class regardless of status or character of any person, firm or corporation participating in the traffic, except that classification of tolls based upon frequency, volume, time of such traffic, distance traveled, method of payment, or other method of classification used by comparable tolling authorities shall be deemed to be a reasonable classification for the

purposes of the Bond Resolution. CFX may increase toll rates at any time and, with the approval of the Department with respect to those portions of the System for which the Department pays the Cost of Operation, increase the number of toll gates at any time upon recommendation of an Independent Consultant. CFX may make any other adjustment or reclassification of toll rates or establish special toll rates, introductory tolls or temporary tolls, provided that such action is recommended by an Independent Consultant and will not cause CFX to fail to comply with the respective toll covenants in the Bond Resolution. For a discussion of CFX's current program of toll volume discounts, see "SYSTEM REVENUES - Discount Programs" herein.

CFX further covenants in the Bond Resolution that they will not allow or permit any free use of the toll facilities of the System except to officials or employees of CFX and the Department engaged in official business of CFX and the Department, or law enforcement officers, or emergency vehicles while in the discharge of their official duties, or except as required by existing law. See "SYSTEM REVENUES - Toll Suspension" herein.

#### **Issuance of Senior Obligations**

CFX covenants in the Bond Resolution that it will not issue any bonds, evidences of indebtedness or other obligations payable on a senior or priority basis to the Bonds from the System Pledged Revenues and Supplemental Payments, nor shall it voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or any other charge having priority to the lien of the Bonds issued pursuant to the Bond Resolution. CFX further covenants in the Bond Resolution that it will not issue any bonds, evidences of indebtedness or other obligations except upon the conditions and in the manner provided in the Bond Resolution, payable on a parity from the System Pledged Revenues and Supplemental Payments, nor voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or any other charge payable on a parity basis with the lien of the Bonds issued pursuant to the Bond Resolution and the interest thereon, upon any of the System Pledged Revenues and Supplemental Payments. Notwithstanding the foregoing, CFX may issue other obligations secured by a pledge of the System Pledged Revenues and Supplemental Payments in addition to the Bonds authorized by the Bond Resolution provided such obligations contain an express statement that such obligations are junior, inferior and subordinate in all respects to the Bonds issued pursuant to the Bond Resolution as to lien on and source and security for payment from the System Pledged Revenues and Supplemental Payments and in all other respects.

Additionally, the Junior TIFIA Loan Agreement imposes certain conditions on the issuance of such senior obligations and the creation of any additional lien rights outside of the Bond Resolution and the Master Junior Lien Bond Resolution, adopted by CFX on March 12, 2015 with respect to its Junior Lien Bonds (as supplemented from time to time, the "Master Junior Lien Bond Resolution") with respect to System Pledged

Revenues. See "JUNIOR TIFIA LOAN AGREEMENT - Issuance of Additional Indebtedness" herein for more complete statement of the terms and conditions related to senior obligations under the Junior TIFIA Loan Agreement.

## **Issuance of Parity Bonds**

CFX may issue Parity Bonds (a) for the purpose of financing System Projects, either alone or jointly with other persons, public bodies or private bodies, (b) for the purpose of financing Non-System Projects, either alone or jointly with other persons, public bodies or private bodies, (c) for the purpose of refunding Outstanding Bonds, (d) for the purpose of completing any System Project for which Bonds have been previously issued pursuant to the Bond Resolution, or (e) for the purpose of refunding subordinated indebtedness.

Except with respect to Refunding Bonds and Completion Bonds, no such Parity Bonds shall be issued unless the following, among other conditions, are complied with:

(a) The amount of the System Pledged Revenues and any Supplemental Payments received or available during the immediately preceding Fiscal Year or any 12 consecutive calendar months selected by CFX out of the 15 consecutive calendar months immediately preceding the issuance of said Parity Bonds, adjusted as described in the Bond Resolution, as verified by the Verification Agent, equaled at least 120% of the Annual Debt Service Requirement on the Bonds then outstanding and the Parity Bonds proposed to be issued; and such System Pledged Revenues without regard to Supplemental Payments must equal at least 120% of the Annual Debt Service Requirement on the Bonds then outstanding and the Parity Bonds proposed to be issued.

The System Pledged Revenues calculated pursuant to this paragraph (a) may be adjusted, at the option of CFX, if CFX, prior to the issuance of the proposed Parity Bonds, has increased the tolls for transit over the toll facilities of the System. The Net Revenues for the 12 consecutive months out of the 15 months immediately preceding the issuance of said Parity Bonds, shall be adjusted, based upon a certificate of an Independent Consultant, showing the Net Revenues which would have been derived from the System in such 12 consecutive months as if such increased tolls of the System had been in effect during all of such 12 consecutive months.

(b) (i) If CFX is constructing or acquiring a System Project from the proceeds of such Parity Bonds and assuming, except as described below, that the toll rates and charges in effect at the time of issuance of such Parity Bonds will be the toll rates and charges to be charged and collected from users of the System when such System Project is completed and open for transit, the annual System Pledged Revenues estimated by an Independent Consultant to be derived during ten full Fiscal Years of operation after the estimated date of completion of the construction or acquisition of said System Project, plus an amount equal to the

Supplemental Payments (not to exceed the portion of the Maximum Annual Debt Service Requirement attributable to the Series of Bonds secured by such Supplemental Payments) available (or, as provided by a projection of an Independent Consultant that would have been available had the pledge of such Supplemental Payments been in effect) during any 12 consecutive calendar months out of the 15 consecutive calendar months preceding the date of calculation, will be equal to at least 120% of the corresponding Annual Debt Service Requirement on the Bonds then outstanding and the Parity Bonds then proposed to be issued; and such System Pledged Revenues without regard to Supplemental Payments must equal at least 120% of such Annual Debt Service Requirement. Any adjustment (including any increase or decrease) in the toll rate structure or other charges scheduled to be put in place may be incorporated into the System Pledged Revenues estimate by an Independent Consultant pursuant to this subparagraph (i) only if CFX has established a forecast of tolls or other charges to be charged and collected from users of the System when such System Project is completed and open for transit. For purposes of calculating the System Pledged Revenues, the amount of System Payments to be included shall be equal to the amount of such System Payments received (or, as provided by a projection of an Independent Consultant, that would have been received had such System Payment been in effect) in any 12 consecutive calendar months out of the 15 consecutive calendar months preceding the date of calculation.

- (ii) System Pledged Revenues for the System, plus Supplemental Payments pledged to the Bonds for the preceding Fiscal Year or for 12 consecutive months of the preceding 15 months, must equal at least the Maximum Annual Debt Service Requirement. In calculating the System Pledged Revenues for purposes of this paragraph only, such System Pledged Revenues may be adjusted as follows:
  - (A) If a toll increase has been adopted for the System prior to the issuance of the proposed Parity Bonds, the System Pledged Revenues may be adjusted, based on a certificate of an Independent Consultant to show the System Pledged Revenues which would have been derived from said System in such 12 consecutive months as if such tolls of said System had been in place during all of such 12 consecutive months; and
  - (B) Such System Pledged Revenues for the System may also be estimated by an Independent Consultant for the first full Fiscal Year of operation of the System Project to be financed from the proposed Parity Bonds. Such projection, as certified by an Independent Consultant, may not be for a Fiscal Year which exceeds three full Fiscal Years beyond the year of issuance of such Parity Bonds.

See "AMENDED AND RESTATED MASTER BOND RESOLUTION" attached hereto as APPENDIX A for a more complete statement of the terms and conditions for the issuance of Parity Bonds, including the conditions for the issuance of Parity Bonds for purposes of financing Non-System Projects.

As previously described herein, CFX is bound by additional covenants regarding the issuance of Parity Bonds pursuant to the Junior TIFIA Loan Agreement. See "JUNIOR TIFIA LOAN AGREEMENT - Issuance of Additional Indebtedness" herein for a discussion of the limitations thereunder.

# **Issuance of Refunding Bonds and Completion Bonds**

CFX may issue Refunding Bonds and Completion Bonds under the Bond Resolution payable on a parity with the Outstanding Bonds in the manner and upon compliance with the conditions set forth under "SUMMARY OF CERTAIN TERMS AND PROVISIONS OF THE BOND RESOLUTION - Issuance of Parity Bonds" herein, except that CFX need not comply with the provisions of sub-paragraph (b)(i) and (ii) thereunder nor the requirements under the Bond Resolution relating to a supplemental Lease-Purchase Agreement, System Payments, Series Payments and Supplemental Payments nor the delivery of a certificate of an Authorized Officer and a certificate of the Independent Consultant. See "AMENDED AND RESTATED MASTER BOND RESOLUTION" attached hereto as APPENDIX A for a more complete discussion of the requirements for the issuance of Refunding Bonds and Completion Bonds.

Notwithstanding the foregoing, the Junior TIFIA Loan Agreement requires that, and prior to the issuance of any Completion Bonds, CFX comply with certain additional requirements as stated therein including the provisions of sub-paragraph (b)(i) discussed in the immediately preceding paragraph and excepted under the Bond Resolution.

# Qualified Swap Agreements

The Bond Resolution permits CFX to enter into one or more Qualified Swap Agreements with respect to one or more Series of Bonds. Qualified Swap Payments payable by CFX under any such agreement will be payable from the Interest Account on a parity with interest payments with respect to Bonds. Certain termination fees and payments associated with the Qualified Swap Agreements will be subordinate to the payment of the Bonds and Qualified Swap Payments. See "VARIABLE RATE EXPOSURE AND INTEREST RATE EXCHANGE AGREEMENTS" herein and "AMENDED AND RESTATED MASTER BOND RESOLUTION" attached hereto as APPENDIX A.

Additionally, the Junior TIFIA Loan Agreement provides that, during the term of the Junior TIFIA Loan, with respect to any Parity Bonds or Junior Lien Bonds bearing interest at a variable rate issued after March 25, 2015, CFX shall have in full force and

effect a Qualified Swap Agreement with a stated maturity date not earlier that the final maturity date of the related Parity Bond or Junior Lien Bond, as applicable. See "JUNIOR TIFIA LOAN AGREEMENT - Swap Covenants Under Junior TIFIA Loan Agreement" herein for a discussion of such requirements.

#### Flow of Funds

Pursuant to the Bond Resolution, the entire Gross Revenues derived from the operation of the System shall be collected by CFX, or its agents, and, to the extent practicable, deposited daily in the System General Revenue Fund. Upon the pledging of any System Payments, there shall also be created in the System General Revenue Fund a separate account designated the "System Payments Account." Funds on deposit in the System General Revenue Fund and the System Payments Account will constitute System Pledged Revenues under the Bond Resolution.

In addition to the System General Revenue Fund and the accounts thereunder, the following funds and accounts shall be continued and maintained under the Bond Resolution so long as Bonds are Outstanding and shall constitute funds and accounts established under the Bond Resolution:

- (a) The "Expressway System Operation, Maintenance and Administrative Expenses Fund" (the "OM&A Fund"). There are also created four separate accounts in the OM&A Fund to be known as the "Cost of Operation Account," the "Cost of Maintenance Account," the "Administrative Expenses Account" and the "OM&A Reserve Account."
- (b) The "Expressway System General Reserve Fund" (the "System General Reserve Fund").
- (c) The "Expressway System Renewal and Replacement Fund" (the "Renewal and Replacement Fund").
  - (d) The "Expressway System Projects Fund" (the "System Projects Fund").

In addition to the foregoing, the following funds and accounts are created by the Bond Resolution for the benefit of outstanding Bonds:

- (a) The "Expressway System Sinking Fund" (the "Sinking Fund") and four separate accounts therein to be known as the "Interest Account," the "Principal Account," the "Bond Redemption Account," and the "Debt Service Reserve Account."
- (b) The "Expressway System Series Payment Fund" (the "Series Payment Fund") provided that a Series of Bonds to which Series Payments are pledged is outstanding. The creation and establishment from time to time of separate accounts in the Series Payment Fund are also authorized.

- (c) The "Expressway System Supplemental Payments Fund" (the "Supplemental Payments Fund") provided that a Series of Bonds to which Supplemental Payments are pledged is outstanding. The creation and establishment from time to time of separate accounts in the Supplemental Payments Fund are also authorized.
- (d) The "Expressway System Construction Fund" (the "Construction Fund"). CFX may by Supplemental Authorizing Resolution establish individual Construction Accounts for particular Series of Bonds issued pursuant to such Supplemental Authorizing Resolution. The Twenty-Fifth Supplemental Resolution creates a Series 2019 Construction Account within the Construction Fund into which a portion of the proceeds of the Series 2019 Bonds will be deposited and applied to finance a portion of the 2019 System Projects. See "ESTIMATED SOURCES AND USES OF FUNDS" herein.
- (e) The "Expressway System Rebate Fund" (the "Rebate Fund"). CFX may, by Supplemental Authorizing Resolution, establish individual Rebate Accounts for particular Series of Bonds.
- (f) Such other funds, accounts, or sub-accounts as CFX shall determine pursuant to a Supplemental Authorizing Resolution.

The amounts on deposit in the funds and accounts created by or continued under the Bond Resolution including, but not limited to, the System General Revenue Fund, the OM&A Fund, the System General Reserve Fund, the System Projects Fund and the Renewal and Replacement Fund shall constitute System Pledged Revenues, and trust funds for the purposes provided in the Bond Resolution, and for the purposes of accounting are required to be kept separate and distinct from all other funds of CFX and used only for the purposes and in the manner provided for in the Bond Resolution. The Sinking Fund and the accounts therein are required to be held pursuant to the Bond Resolution by a trustee. The Supplemental Payments Fund and the accounts therein shall be established and held in compliance with the document or agreement providing for such Supplemental Payments.

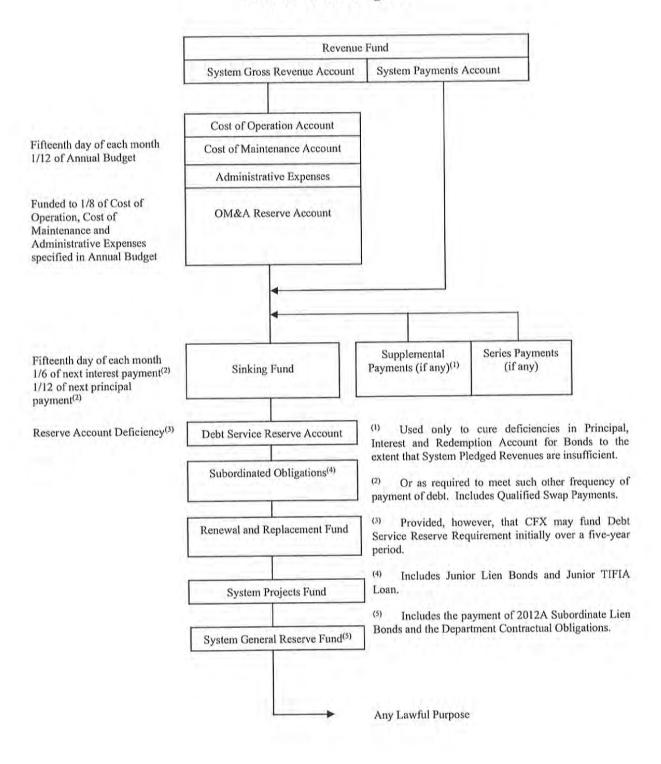
All System Payments shall be deposited by CFX into the System Payments Account in the System General Revenue Fund immediately upon receipt thereof. All Series Payments shall be deposited by CFX into the Series Payments Fund (or if established, the applicable subaccount therein) immediately upon receipt thereof.

Amounts at any time remaining on deposit in the System General Revenue Fund and the System Gross Revenue Account shall be applied in accordance with the provisions of the Bond Resolution.

The following diagram presents a summary of the application of Gross Revenues, System Payments, Series Payments and Supplemental Payments to the various funds and accounts as provided in the Bond Resolution. See "AMENDED AND RESTATED MASTER BOND RESOLUTION" attached hereto as APPENDIX A and "TWENTY-FIFTH SUPPLEMENTAL RESOLUTION" attached hereto as APPENDIX B for a complete description of the application of such funds under the Bond Resolution.

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## Flow of Funds Diagram



## SYSTEM FINANCING

#### **Bonded Indebtedness**

The following table summarizes CFX's Outstanding Parity Bonds prior to the issuance and delivery of the Series 2019 Bonds.

Bonded Indebtedness	Purpose	Outstanding Par Amount
Series 2008B-1 Bonds	Refunded certain Bonds	\$ 129,875,000
Series 2008B-2 Bonds	Refunded certain Bonds	117,395,000
Series 2008B-3 Bonds	Refunded certain Bonds	148,490,000
Series 2008B-4 Bonds	Refunded certain Bonds	98,965,000
Series 2010B Bonds	Refunded certain Bonds	60,760,000
Series 2012 Bonds	Refunded certain Bonds	134,315,000
Series 2013 A Bonds	Refunded certain Bonds	242,320,000
Series 2013B Bonds	Refunded certain Bonds	115,725,000
Series 2013C Bonds	Refunded certain Bonds	102,820,000
Series 2016A Bonds	Refunded certain Bonds	149,495,000
Series 2016B Bonds	Refunded certain Bonds	621,990,000
Series 2017 Bonds	Refunded certain Bonds	339,275,000
Series 2018 Bonds	Funded a portion of the Five-Year Work Plan	219,035,000
Total	A A CONTRACT OF SALES	\$2,480,460,000

Source: CFX.

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# **Estimated Annual Debt Service**

The following table presents the estimated annual debt service obligations of CFX on the Outstanding Parity Bonds prior to the issuance and delivery of the Series 2019 Bonds. See "VARIABLE RATE EXPOSURE AND INTEREST RATE EXCHANGE AGREEMENTS" herein.

## **Estimated Annual Debt Service**

Year Ending June 30	Outstanding Parity Bonds <sup>(1)(2)</sup>	Series 2019	A Bonds	Series 2019	B Bonds	Total Annual Debt Service
		Principal	Interest	Principal	Interest	
2019	\$ 170,131,966	\$	S	S	\$	\$ 170,131,966
2020	175,984,032					175,984,032
2021	177,666,526					177,666,526
2022	174,226,222					174,226,222
2023	173,096,547					173,096,547
2024	171,954,190					171,954,190
2025	185,242,637					185,242,637
2026	195,650,154					195,650,154
2027	195,560,670					195,560,670
2028	195,874,340					195,874,340
2029	192,036,622					192,036,622
2030	192,468,620					192,468,620
2031	192,436,035					192,436,035
2032	192,441,374					192,441,374
2033	194,069,355					194,069,355
2034	190,658,116					190,658,116
2035	191,294,677					191,294,677
2036	152,132,345					152,132,345
2037	151,429,420					151,429,420
2038	153,157,243					153,157,243
2039	153,943,655					153,943,655
2040	153,136,901					153,136,901
2041	53,805,250					53,805,250
2042	53,803,750					53,803,750
2043	14,466,250					14,466,250
2044	14,466,500					14,466,500
2045	14,464,750					14,464,750
2046	14,464,750					14,464,750
2047	14,465,000					14,465,000
2048	14,469,000					14,469,000
2049						
Total	\$4,118,996,899					\$4,118,996,899

<sup>(</sup>i) Estimated debt service on the Outstanding Parity Bonds, including the Series 2008B Bonds, which is net of ongoing expenses such as Bond Credit Facility fees, letter of credit fees, and remarketing fees, where applicable, as the same are not included as part of debt service under the Bond Resolution. Debt service on the Series 2008B Bonds is calculated based upon the fixed rate provided in the Interest Rate Swap Agreements relating to such Series of Bonds plus any applicable spreads for subseries currently in a direct purchase mode for the duration of the current facility. Following the expiration of the current direct purchase modes, debt service is calculated assuming 100 basis points of credit facility fees.

Totals may not add due to rounding.

Source: Prepared by PFM Financial Advisors LLC and approved by CFX.

<sup>(2)</sup> Per the Bond Resolution, amounts due on July 1 of any year are included in the previous Fiscal Year.

# **Certain Subordinated Obligations**

2012A Subordinate Lien Bonds. On November 29, 2012, CFX issued its General Reserve Fund Obligation Bond, Series 2012A (Subordinate Lien) (the "2012A Subordinate Lien Bonds") in the original aggregate principal amount of \$59,060,000 to fund termination payments associated with the optional termination of a portion of CFX's Qualified Swap Agreements. The 2012A Subordinate Lien Bonds are secured by a pledge of and lien on System Pledged Revenues junior, inferior and subordinate in all respects to the pledge of and lien on System Pledged Revenues securing CFX's payment obligations with respect to: (1) Bonds and Qualified Swap Payments that are currently issued and outstanding or may be issued in the future under CFX's Master Bond Resolution and (2) certain other subordinate obligations of CFX, including Junior Lien Bonds issued by CFX pursuant to its Master Junior Lien Bond Resolution. As of the date hereof, the 2012A Subordinate Lien Bonds were outstanding in the aggregate principal amount of \$42,195,000.

Under the Master Junior Lien Bond Resolution, upon the payment in full or discharge of the LPA Repayments (defined below) under the Lease-Purchase Agreement, the 2012A Subordinate Lien Bonds shall be deemed to be issued and outstanding under the Master Junior Lien Resolution and therefore, entitled to the pledge of and lien on System Pledged Revenues provided therein. In addition, under the Junior TIFIA Loan Agreement CFX has agreed to: (i) reclassify the 2012A Subordinate Lien Bonds as a Junior Lien Bond reissued and delivered pursuant to the Master Junior Lien Bond Resolution and (ii) provide notice and a copy of the replacement 2012A Junior Lien Bond to the TIFIA Lender. In Fiscal Year 2017, CFX made a prepayment in satisfaction of all accumulated and future LPA Repayments due under the Lease-Purchase Agreement, as described further below. The obligations currently evidenced by the 2012A Subordinate Lien Bonds shall be entitled to the benefits of a Junior Lien Bond (including payment of principal and interest on parity with any other Junior Lien Bonds) at such time as a new 2012A Junior Lien Bond is executed, authenticated and issued in accordance with the terms of the Junior TIFIA Loan Agreement and the Master Junior Lien Bond Resolution. Under the Junior TIFIA Loan Agreement, such reclassification of the 2012A Subordinate Lien Bonds was a condition precedent to disbursement of any proceeds of the Junior TIFIA Loan. However, the TIFIA Lender previously waived such precondition prior to the disbursement of Junior TIFIA Loan proceeds to CFX in September 2018. "JUNIOR TIFIA LOAN AGREEMENT" herein. CFX is currently working with the Department and the Florida Division of Financial Services to complete certain other contingencies required prior to the reclassification of the 2012A Subordinate Lien Bonds.

<u>Department Contractual Obligations</u>. On May 29, 2012 the Department and CFX signed a memorandum of understanding (the "Wekiva MOU") setting forth the required terms of the hereinafter described and subsequently executed Wekiva Interlocal Agreement pursuant to which the parties would build the extension of SR 429 known as

the "Wekiva Parkway." Certain key provisions of the Wekiva MOU were codified in Sections 348.7546 and 348.757(9), Florida Statutes, effective July 1, 2012. "DESCRIPTION OF THE SYSTEM - Wekiva Parkway (SR 429)" and " - Capital Improvement Program" herein for a more detailed description of the Wekiva Parkway and the Wekiva Interlocal Agreement, respectively. Pursuant to such statutes and the Wekiva Interlocal Agreement, CFX was required to repay its long-term debt owing to the Department under the Lease-Purchase Agreement (the "Department Contractual Obligations"), by making annual payments (the "LPA Repayments") from the System General Reserve Fund beginning on July 1, 2013 through July 1, 2025. On October 12, 2016, CFX exercised its discretionary authority to make a prepayment in satisfaction of all accumulated and future LPA Repayments due under the Lease-Purchase Agreement in the amount of \$150,870,102 from moneys on deposit and legally available for such purpose in the System General Reserve Fund. The prepayment of the LPA Repayments did not have a material adverse effect on CFX's finances or its ability to undertake and fund the Five-Year Work Plan (as defined herein). Any future Department Contractual Obligations of CFX under the Lease-Purchase Agreement which remain outstanding are junior and subordinate to the lien on System Pledged Revenues under the Bond Resolution. See "SUMMARY OF CERTAIN TERMS AND PROVISIONS OF THE BOND RESOLUTION - Flow of Funds" and "DESCRIPTION OF THE DEPARTMENT OF TRANSPORTATION AND ITS RELATIONSHIP TO THE EXPRESSWAY SYSTEM" herein for a further discussion of the flow of funds and priority of payments under the Bond Resolution.

See Note 5 of the "AUDITED FINANCIAL STATEMENTS OF CFX FOR THE FISCAL YEAR ENDED JUNE 30, 2019 AND JUNE 30, 2018" attached hereto as APPENDIX G for further information regarding the subordinated obligations and other indebtedness of CFX.

#### JUNIOR TIFIA LOAN AGREEMENT

#### General

In July 2015, CFX issued the Refunded Series 2015 Notes to, among other things, provide short-term financing for the portion of the Wekiva Parkway project for which CFX is responsible (the "2015 Project"). Pursuant to the Junior TIFIA Loan Agreement, the TIFIA Lender has agreed to extend the Junior TIFIA Loan to CFX in an amount not to exceed approximately \$193.7 million. The proceeds of the Junior TIFIA Loan were applied to the payment, reimbursement or refinancing of certain costs of the 2015 Project that were eligible to be financed with proceeds of the Junior TIFIA Loan pursuant to federal law, including repayment of the Refunded Series 2015 Notes. The Junior TIFIA Loan is secured by a pledge of and lien on System Pledged Revenues which is junior, inferior and subordinate in all respects to the pledge of and lien on System Pledged Revenues under the Bond Resolution in favor of the Outstanding Parity Bonds and any

Parity Bonds issued in the future thereunder. The Junior TIFIA Loan Agreement and all other TIFIA loan documents are currently in full force and effect and CFX is in full compliance with the terms thereof. The proceeds of the Junior TIFIA Loan were drawn and received by CFX on September 17, 2018, and such proceeds were applied to pay the Refunded Series 2015 Notes in full on October 19, 2018.

The following is a brief summary of certain terms of the Junior TIFIA Loan Agreement which may, under certain circumstances, affect the rights of the Holders of the Series 2019 Bonds.

## **Events of Default and Remedies**

# Events of Default.

The Junior TIFIA Loan Agreement specifies various events constituting events of default thereunder, including but not limited to:

- (a) Payment Default. CFX fails to pay any of the principal amount of or interest on the Junior TIFIA Loan, when due.
- (b) Covenant Default. CFX fails to observe or perform any covenant, agreement or obligation of CFX under the Junior TIFIA Loan Agreement, or any other TIFIA loan document, and such failure is not cured within 30 days after receipt by CFX from the TIFIA Lender of written notice thereof.
- (c) Acceleration of Bonds or Other Material Indebtedness. Any acceleration shall occur of the maturity of any Bonds, or junior lien obligations under the Master Junior Lien Bond Resolution or of any other indebtedness of CFX, in an aggregate principal amount equal to or greater than \$1 million.

# (d) Cross Default.

- (i) Any of the representations, warranties or certifications of CFX made in or delivered pursuant to the documents under which certain indebtedness shall be created, shall prove to be false or misleading in any material respect, or any default shall occur in respect of the performance of any covenant, agreement or obligation of CFX under such documents, if the effect of such default shall permit the immediate acceleration of the maturity of any or all of such indebtedness.
- (ii) CFX shall fail to pay principal of, or interest on any bond, note, certificate, warrant, lease, contract or other financial obligation or security of CFX that is not secured, in whole or in part, by a lien on the System Pledged Revenues, as and when such amounts become due and payable.

(e) Judgments. One or more judgments for the payment of money in an aggregate amount in excess of \$5,000,000 and not otherwise covered by insurance shall be rendered against CFX and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of CFX to enforce any such judgment.

## Remedies.

Whenever any event of default under the Junior TIFIA Loan Agreement has occurred and is continuing, in addition to the other remedies otherwise described therein, the TIFIA Lender:

- (a) shall be entitled and empowered to institute any actions or proceedings at law or in equity to enforce the collection of any sums due and unpaid under the Junior TIFIA Loan Agreement or any other TIFIA loan documents:
- (b) may prosecute any such judgment or final decree against CFX and collect in the manner provided by law out of the property of CFX the moneys adjudged or decreed to be payable, but only in accordance with and to the extent permitted under the Master Junior Lien Bond Resolution;
- (c) may take such actions at law or in equity as may appear necessary or desirable to collect all amounts payable by CFX under the Junior TIFIA Loan Agreement or the other TIFIA loan documents then due and thereafter to become due; and
- (d) to the extent the Florida Uniform Commercial Code is applicable to any collateral then pledged to the TIFIA Lender pursuant to the Master Junior Lien Bond Resolution including, but not limited to, the System Pledged Revenues, shall have all of the rights and remedies of a secured creditor under the Uniform Commercial Code with respect to such collateral.

#### Issuance of Additional Indebtedness

In addition to certain limitations imposed by the Bond Resolution and discussed hereinafter, CFX has covenanted in the Junior TIFIA Loan Agreement that, except for certain types of permitted debt as described therein, including Parity Bonds ("Permitted Debt"), CFX must receive prior written consent of the TIFIA Lender to issue or incur indebtedness of any kind; provided, that CFX shall not incur any indebtedness of any kind payable from or supported by the System Pledged Revenues, including Permitted Debt, without the prior written consent of the TIFIA Lender following the occurrence of and during the continuation of an event of default under the Junior TIFIA Loan

Agreement. The Junior TIFIA Loan Agreement requires that prior to the issuance by CFX of any Permitted Debt, including Parity Bonds and Junior Lien Bonds, it must comply with certain conditions precedent listed therein, including, but not limited to, securing the TIFIA Lender's consent to the issuance of such Debt or certifying compliance with certain requirements and financial ratios listed therein. The applicability of specific conditions precedent is based on the type of Permitted Debt proposed to be issued, and in certain circumstances may affect CFX's ability to issue debt under the Bond Resolution, the Master Junior Lien Bond Resolution, or otherwise. The definition of Permitted Debt under the Junior TIFIA Loan Agreement allows for the issuance of Additional Bonds, including the Series 2019 Bonds, by CFX pursuant to certain conditions specified therein.

See "SUMMARY OF CERTAIN TERMS AND PROVISIONS OF THE BOND RESOLUTION" herein for a description of the aforementioned additional limitations on additional indebtedness under the Bond Resolution.

# Swap Covenants Under Junior TIFIA Loan Agreement

CFX has covenanted in the Junior TIFIA Loan Agreement to comply with certain requirements pertaining to interest rate exchange agreements, including, but not limited to the following:

- (a) With respect to variable rate Parity Bonds issued after March 25, 2015 and at all times when the Junior TIFIA Loan is outstanding, CFX shall have in full force and effect floating-to-fixed interest rate protection agreements (defined individually therein as a "Qualified Hedge") with an aggregate notional amount of not less than 98% and not more than 102% of the aggregate principal amount of such Bonds projected by CFX from time to time to be outstanding during the term of the Junior TIFIA Loan, and such Qualified Hedges shall have a stated maturity date not earlier than the final maturity date of such related Bonds.
- (b) Each Qualified Hedge shall provide for a fixed interest rate or interest rate cap resulting in fixed payment amounts payable by CFX. CFX's payment and termination obligations under such Qualified Hedges shall be from the sources and in the priority specified in the Bond Resolution. CFX shall ensure that, as of the day following the termination date of any Qualified Hedge, either (i) a subsequent Qualified Hedge is in full force and effect to the extent any such Bonds, bear interest at a variable interest rate, or (ii) such variable rate Bonds have been converted to a fixed rate, in each case in accordance with the Junior TIFIA Loan Agreement.
- (c) Other than as provided in the Junior TIFIA Loan Agreement, CFX shall neither terminate, transfer nor consent to any transfer of any existing Qualified Hedge without the TIFIA Lender's prior written consent as long as CFX is required to maintain a Qualified Hedge pursuant to the Junior TIFIA Loan Agreement; and

(d) Notwithstanding the foregoing, CFX's affirmative covenants under the Junior TIFIA Loan Agreement related to Qualified Hedges shall not apply to (i) any Qualified Swap Agreements with respect to Outstanding Parity Bonds that were entered into prior to March 25, 2015 and that are described in the Junior TIFIA Loan Agreement (each an "Existing Hedge"), and (ii) the replacement of any Existing Hedge resulting from a novation (not a termination) of such Existing Hedge, provided that, with respect to subclause (b), (1) the terms and conditions of any replacement Qualified Swap Agreement shall be substantially the same as the terms and conditions of the Qualified Swap Agreement related to the Existing Hedge and (ii) the counterparty to such replacement Qualified Hedge is a qualified provider under the terms of the Junior TIFIA Loan Agreement.

## Junior TIFIA Loan Agreement

The Junior TIFIA Loan Agreement was attached in its entirety as an appendix to the Official Statement related to the Refunded Series 2015 Notes and may be accessed through the Municipal Securities Rulemaking Board's EMMA website at the following address: <a href="http://emma.msrb.org/EA731073-EA573166-EA969026.pdf">http://emma.msrb.org/EA731073-EA573166-EA969026.pdf</a>.

# VARIABLE RATE EXPOSURE AND INTEREST RATE EXCHANGE AGREEMENTS

# Variable Rate Exposure

As of the date of this Official Statement, CFX has variable rate demand debt in the aggregate outstanding par amount of approximately \$494,725,000. Of this amount, the Series 2008B-1 Bonds are outstanding in the amount of \$129,875,000 and are privately placed with Bank of America, N.A., the Series 2008B-2 Bonds are outstanding in the amount of \$117,395,000 and are privately placed with RBC Capital Markets, LLC, the Series 2008B-3 Bonds are outstanding in the amount of \$148,490,000 and are privately placed with Bank of America, N.A., and the Series 2008B-4 Bonds are outstanding in the amount of \$98,965,000 and are privately placed with Wells Fargo Bank, National Association. The Series 2008B Bonds are each in the "Bank Rate Mode" pursuant to which they bear interest at a variable rate at a defined spread over the SIFMA Index but are not by supported by a credit facility and/or a liquidity facility. CFX continues to closely manage its rollover and re-pricing risks and seek opportunities to reduce such risks in accordance with its current Interest Rate Risk Management Policy and market conditions. However, any inability of CFX to obtain replacement credit facilities and/or liquidity facilities with respect to any of its variable rate demand debt supported by credit facilities and/or liquidity facilities could require CFX to refinance such Bonds at substantially higher interest rates than the current interest rates on such Bonds and/or could force CFX to accept a shorter term out or the acceleration of the maturity of such Bonds as a condition to obtaining a substitute facility. Any such acceleration would be

subject to the consent of the TIFIA Lender under the Junior TIFIA Loan Agreement. Additionally, the Junior TIFIA Loan Agreement imposes certain conditions to the issuance by CFX of Permitted Debt, including variable rate demand debt. See "JUNIOR TIFIA LOAN AGREEMENT - Issuance of Additional Indebtedness" herein. For more information relating to CFX's variable rate portfolio, see Note 5 of the "AUDITED FINANCIAL STATEMENTS OF CFX FOR THE FISCAL YEAR ENDED JUNE 30, 2019 AND JUNE 30, 2018" attached hereto as APPENDIX G. See "VARIABLE RATE EXPOSURE AND INTEREST RATE EXCHANGE AGREEMENTS - Interest Rate Exchange Agreements" herein for a discussion of CFX's interest rate exchange agreements.

# **Interest Rate Exchange Agreements**

General. CFX has entered into the transactions described below, and may enter into additional interest rate exchange agreements, forward purchase agreements, or other synthetic financial instruments in the future for the purpose of managing the interest cost of its debt and its capacity to fund additional projects. Interest rate exchange agreements and other synthetic financial instruments involve risks that could result in an economic CFX's payment obligations under the transactions described below constitute Qualified Swap Payments under the Bond Resolution and are therefore payable from System Pledged Revenues on a parity with CFX's payment obligations with respect to the Series 2019 Bonds, the Outstanding Parity Bonds and any Parity Bonds hereafter issued under the Bond Resolution, provided however, that any termination payments payable by CFX under the transactions described below are payable from System Pledged Revenues on a subordinate basis to CFX's payment obligations with respect to the Series 2019 Bonds, the Outstanding Parity Bonds and any Parity Bonds hereafter issued under the Bond Resolution, unless CFX elects to finance any such termination payment payable by CFX with the proceeds of Parity Bonds. CFX has adopted an Interest Rate Risk Management Policy for the purpose of managing its risk with respect to these transactions and has complied with all relevant provisions of such policy as in effect from time to time.

Governmental accounting standards require derivative instruments, such as the interest rate exchange agreements described below, to be reported on the face of the entity's financial statement. Since the interest rate exchange agreements described below meet the definition of "qualified hedge," the fair market value of such interest rate exchange agreements is recorded in CFX's audited financial statements as an asset and liability. See "AUDITED FINANCIAL STATEMENTS OF CFX FOR THE FISCAL YEAR ENDED JUNE 30, 2019 AND JUNE 30, 2018" attached hereto as APPENDIX G.

<u>Outstanding Qualified Swap Agreements</u>. In July 2004, CFX entered into five floating-to-fixed interest rate exchange agreements in connection with the issuance of CFX's Variable Rate Revenue Bonds, Series 2005 (the "Series 2005 Bonds") having a combined notional amount of \$499,105,000 (the "2004 Swaps"). Such interest rate

exchange agreements were amended and restated on February 8, 2005. Pursuant to the terms of the 2004 Swaps and a novation agreement transferring the obligation from Bear Stearns Financial Products Inc., CFX has agreed to pay a fixed rate of 4.7753% to each of UBS AG, Citibank, N.A., Morgan Stanley Capital Services Inc., Royal Bank of Canada and JPMorgan Chase Bank, N.A. (collectively, the "2004 Counterparty") and the 2004 Counterparty will make payments at a variable rate based on the SIFMA Index to CFX. The contractual amounts due for payment by or on behalf of CFX under the 2004 Swaps are guaranteed under a separate insurance policy issued by Ambac Assurance Corporation ("Ambac") in favor of each 2004 Counterparty. Effective March 24, 2010, Ambac established an optional segregated account pursuant to Wisconsin Statute §611.24 (the "Segregated Account") for the purpose of segregating certain segments of its liabilities and consented to the rehabilitation of the Segregated Account. Based upon petition of the Commissioner of Insurance for the State of Wisconsin (the "CIW"), an Order of Rehabilitation was entered by the Circuit Court in Dane County, Wisconsin, the Segregated Account was placed in rehabilitation and a "Rehabilitator" was appointed to take possession of the assets in the Segregated Account and proceed in accordance with the Plan of Operation proposed by the CIW. All five of the insurance policies issued in connection with the 2004 Swaps have been included in the Segregated Account.

The Series 2005 Bonds were refunded with the proceeds of the Series 2008B Bonds. Pursuant to the Amended Ninth Supplemental Bond Resolution authorizing the issuance of the Series 2008B Bonds, the 2004 Swaps were designated as Qualified Swap Agreements with respect to the Series 2008B Bonds and are currently in place with respect to the Series 2008B Bonds.

#### **Termination Risk**

CFX previously acquired swap insurance policies for the swaps associated with the 2004 Swaps. Under certain conditions set forth in the swap agreements, neither CFX nor the respective 2004 Counterparty may designate an early termination date without the consent of the respective insurer of the related swap unless an "Insurer Event" has occurred whereby such insurer (i) fails to meet its payment obligations under the swap, (ii) fails to maintain a minimum claims paying ability rating or financial strength rating from either S&P Global, Inc. ("S&P") or Moody's Investors Service, Inc. ("Moody's") described in the respective swap agreements or (iii) has its rating from either S&P or Moody's withdrawn or suspended and such rating is not reinstated within 30 days of such withdrawal or suspension.

Additionally, for the 2004 Swaps a separate Credit Support Annex was negotiated with each of the respective counterparties. During Fiscal Year 2009, Ambac, the insurer on the 2004 Swaps, was downgraded below the A-/A3 level. As such, an "Insurer Event" under the 2004 Swaps did take place. Three of the five 2004 Swaps required that CFX demonstrate that it had maintained its own rating above the A-/A3 levels, to prevent a termination, which CFX has and continues to maintain. One of the 2004 Swaps did not

provide for an "Insurer Event" grounds for early termination unless some additional event of default had taken place, such as failure to meet the payment obligations, none of which have taken place and no posting of collateral is required at this time because the amount of the termination value is below the threshold amount. One of the 2004 Swaps required that CFX either replace the insurance policy with another credit support facility or post collateral in the amount of the termination value in excess of \$15 million, based on CFX's credit rating. CFX received the notice of an "Insurer Event" from the related 2004 Counterparty on June 25, 2009 and posted collateral in July 2009 (Fiscal Year 2010). The collateral funds were drawn from an internal discretionary reserve which CFX has established to, among other things, manage the termination risks associated with its swap portfolio. As of the date of this Official Statement, CFX has allocated \$160 million to such internal discretionary reserve. All investment income on the securities posted as collateral and the securities themselves, are income to and assets of CFX, respectively. The original collateral has been returned to CFX and no other notice to post collateral has been received by CFX.

For more information regarding the termination value of CFX's swap portfolio as of June 30, 2019 and a full discussion of the objectives of CFX's swap portfolio, the fair value thereof as well as certain other risks associated with CFX's swap portfolio, see Note 5 of the "AUDITED FINANCIAL STATEMENTS OF CFX FOR THE FISCAL YEAR ENDED JUNE 30, 2019 AND JUNE 30, 2018" attached hereto as APPENDIX G.

## CFX

#### Introduction

The Central Florida Expressway Authority is an agency of the State of Florida created by the Florida Legislature. On June 20, 2014, the Governor of Florida signed the bill to create CFX (the "2014 CFX Bill"), which assumed the governance and control of the former Orlando-Orange County Expressway Authority, including its assets, personnel, contracts, obligations, liabilities, facilities and tangible and intangible property. On July 1, 2017, by order of House Bill 299, the geographical boundary of Brevard County was added to the area served by CFX (collectively, with the 2014 CFX Bill, the "CFX Bill"). CFX is an independent, locally controlled transportation authority responsible for the construction, maintenance and operation of toll roads in Seminole, Lake, Osceola, Orange and Brevard Counties, and may also acquire, construct and equip rapid transit, trams and fixed guideways within the rights-of-way of the Expressway System. The Governing Board of CFX is made up of ten members, consisting of: (a) one member each appointed by the respective chairs of the county commissions of Brevard, Lake, Osceola and Seminole Counties; (b) one member appointed by the Mayor of Orange County; (c) three citizens appointed by the Governor; (d) the Mayor of Orange County; and (e) the Mayor of the City of Orlando. The Florida Turnpike Enterprise ("FTE") Executive Director serves as a non-voting advisor.

CFX is responsible for the planning, design, construction and operation of the "System." The Master Bond Resolution defines the "Expressway System" or "System" as the entire Orlando-Orange County Expressway (now Central Florida Expressway) System in existence on the date of adoption of the Master Bond Resolution, including but not limited to, all approaches, roads, bridges, avenues of access for such System and those extensions, additions or improvements to the System as contemplated by the Master Bond Resolution or the Act, including System Projects. See "DESCRIPTION OF THE SYSTEM" herein. The Master Bond Resolution also provides that in no event shall Non-System Projects be part of the System unless such Non-System Projects shall meet the requirements of the Master Bond Resolution for conversion to a System Project. See "AMENDED AND RESTATED MASTER BOND RESOLUTION" attached hereto as APPENDIX A. Since its establishment, CFX has constructed 118 centerline miles of limited access expressways, which currently includes portions of the Martin Andersen Beachline Expressway (formerly Bee Line Expressway) (SR 528), the Spessard L. Holland East-West Expressway/Arnold Palmer Expressway (SR 408), the Central Florida GreeneWay (SR 417), the Daniel Webster Western Beltway/Wekiva Parkway (SR 429), the John Land Apopka Expressway (SR 414), the Western Beltway Connector (SR 451) and SR 453. Subsequent to the issuance of the Series 2019 Bonds and the acquisition by CFX of the Poinciana Parkway as described herein, the System will also include the Poinciana Parkway (SR 538). CFX is authorized to issue revenue bonds to finance extensions and improvements to the System under the provisions of the Act.

The Florida Transportation Commission is required to monitor the efficiency, productivity and management of the various transportation authorities in the State including CFX and has developed and delivered performance measures which are used to review each such transportation authority once a year.

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# **CFX Governing Board**

The current members of CFX's Governing Board, officers and terms of office are as follows:

Position	CFX Governing Board Term Expires		
Chairman	December 31, 2022		
Vice-Chairman	At the discretion of the Chair of the Seminole County Board of County Commissioners		
Treasurer	At conclusion of tenure as Mayor of Orlando, Florida		
Board Member	At the discretion of the Chair of the Lake County Board of County Commissioners		
Board Member	At conclusion of tenure as Mayor of Orange County, Florida		
Board Member	At the discretion of the Chair of the Osceola County Board of County Commissioners		
Board Member	December 31, 2018*		
Board Member	December 31, 2018*		
Board Member	At the discretion of the Chair of the Brevard County Board of County Commissioners		
Board Member	At the discretion of the Mayor of Orange County, Florida		
	Chairman Vice-Chairman Treasurer Board Member		

<sup>\*</sup>A member whose term has expired continues to serve until a successor is appointed by the Governor.

CFX's Governing Board operates through various standing and ad hoc committees. The Committees are composed of at least six voting members and up to nine, with six members being staff members or citizen representatives from all the jurisdictions of CFX and the rest being a citizen representative appointed by the CFX Governing Board after receiving nominations submitted by the gubernatorial Board appointees. The members of the Finance Committee should have financial management expertise in governmental accounting and experience in public finance. The Finance Committee reviews all matters related to CFX's finances and makes recommendations to CFX's Governing Board with respect to such matters. The members of the Audit Committee should have financial expertise in general accounting principles and experience reviewing financial statements and audit reports. The Audit Committee oversees all internal and external audit functions. The members of the Right-of-Way Committee have experience in Florida eminent domain matters and possess sufficient experience in property acquisition and disposition. The Right-of-Way Committee is responsible for providing oversight and

control of the property acquisition and disposition process. The members of the Operations Committee should have operations and management experience. The Operations Committee is responsible for reviewing operational information such as toll collection and violation processing functions, and to establish agency performance indicators to monitor agency operations.

# **CFX Management**

The System is managed by an Executive Director who is appointed by CFX's Governing Board and oversees a staff of approximately 77 full-time employees.

Biographical data concerning certain key officials of CFX is set forth below.

# Laura Kelley, Executive Director.

Laura L. Kelley, Executive Director since May 14, 2015, has been with the agency since 2006. Ms. Kelley holds a Bachelor of Science Degree in Accounting from Florida State University. Prior to joining CFX, she served as the Executive Director for the Florida Transportation Commission in Tallahassee, Florida. Among her accomplishments, Ms. Kelley developed the Florida Transportation Commission Investment Plan for Continued Economic Growth. She has more than 30 years of experience in transportation policy analysis and management.

# Lisa Lumbard, Chief Financial Officer.

Lisa Lumbard, Chief Financial Officer, has been with CFX since 1998. She oversees all CFX's financial areas, including finance, accounting, budget, procurement and supplier diversity. Ms. Lumbard holds Bachelor of Science Degrees in Finance and International Business from Florida State University. Ms. Lumbard is active in the Florida Government Finance and Officers' Association and the Government Finance Officers Association. Ms. Lumbard is also on the Finance Standing Committee and Investment Subcommittee for the International Bridge, Tunnel and Turnpike Association.

# Diego "Woody" Rodriguez, Esq., General Counsel.

Diego "Woody" Rodriguez, Esq., General Counsel, joined CFX in 2019. Mr. Rodriguez received his Bachelor of Arts degree in English with an Emphasis in Business as well as his Juris Doctorate degree from Florida State University. For the nine years prior to joining CFX, Mr. Rodriguez served as General Counsel to Orange County Public Schools, the ninth largest school district in the country. Mr. Rodriguez is Board Certified in City, County, Local Government Law and serves as President of the Foundation for Foster Children.

# Glenn Pressimone, P.E., Chief of Infrastructure.

Glenn M. Pressimone, P.E., Chief of Infrastructure, has been with CFX since May 2008. He oversees all phases of design, construction, maintenance and expressway operations. Mr. Pressimone holds a Bachelor of Science degree in Civil Engineering from the State University of New York at Buffalo. Mr. Pressimone is a licensed Professional Engineer in Florida and currently serves as President for the Central Florida section of the American Society of Highway Engineers.

# James Greer, Chief of Technology/Operations.

James Greer, Chief Technology and Operations Officer, has been with CFX since 2017. Mr. Greer previously served in the private sector for over 20 years where he held advancing roles at a global business services technology organization. He oversees the Information Technology and Operations Departments that support CFX's tolling, operations, customer service, and fulfillment systems. Mr. Greer received a Bachelor of Science degree from Cornell University.

# Michelle Maikisch, Chief of Staff/Public Affairs Officer.

Michelle Maikisch, Chief of Staff/Public Affairs Office, has more than 15 years in the transportation industry and has been with the agency since 2008. As Chief of Staff/Public Affairs Officer, Ms. Maikisch oversees Human Resources, Records Management and Communications, including legislative affairs. She received her Bachelor of Science Degree in Communication from Florida State University. She is a member of Women in Transportation Services.

# **Pension Funding**

Most permanent employees of CFX participate in the State of Florida Retirement System (the "FRS"), a multiple-employer, cost-sharing, public retirement system administered by the Florida Department of Administration, Division of Retirement. Beginning in 2002, the FRS became one system with two primary plans; a defined benefit pension plan (the "FRS Pension Plan") and a defined contribution plan alternative to the defined benefit plan known as the Public Employee Optional Retirement Program (the "FRS Investment Plan") to provide retirement, disability, and death benefits for active members, retirees, surviving beneficiaries, and deferred retirement option program participants. Benefits under the FRS are established by Chapter 121, Florida Statutes, and Chapter 605, Florida Administrative Code. As a general rule, membership in the FRS is compulsory for all employees working in a regular, established position for a state agency, county government, district school board, state university, community college or a participating city or special district within the State of Florida. Benefits are computed on the basis of age, average final compensation, and service credit. Employees are classified in either the regular service class or the

senior management service class for members who fill senior-level management positions. In addition, the FRS administers a deferred retirement option program ("DROP") which allows eligible employees to defer receipt of monthly retirement benefit payments, while continuing employment with an FRS employer for a period not to exceed 60 months after electing to participate. Deferred monthly benefits are held in the FRS Trust Fund and accrue interest.

The State of Florida issues a publicly available financial report that includes financial statements, required supplementary information for the FRS and other information including historical data regarding funding progress and actuarial values and liabilities. The most recent available report for the plan year ended June 30, 2018 may be obtained by writing the Florida Division of Retirement, P.O. Box 9000, Tallahassee, Florida 32315-9000 or by accessing their website at http://www.dms.myflorida.com/workforce\_operations/retirement/publications/annual reports.

The 2018 FRS Annual Report available as mentioned in the preceding paragraph stated that as of June 30, 2018, the market value of assets for the FRS Pension Plan was approximately \$160.4 billion. This reflects a 8.98% annualized investment return. The fiduciary net position as of June 30, 2018, was \$161.2 billion, 5.0% increase over the previous year. As of July 1, 2017, the date of the last actuarial valuation, the FRS Pension Plan was 83.9% funded on a valuation funding basis and 84.3% funded on a Governmental Accounting Standards Board Statement No. 67 reporting basis.

CFX has no responsibility to the FRS other than to make the periodic payments required by Florida Statutes. Participating employers must comply with the statutory contribution requirements. Section 121.031(3), Florida Statutes, requires an annual actuarial valuation of the FRS Pension Plan, which is provided to the Florida Legislature as guidance for funding decisions. Employer contribution rates under the uniform rate structure (a blending of both the FRS Pension Plan and FRS Investment Plan rates) are recommended by the actuary but set by the Florida Legislature. The Fiscal Year 2019 contribution rate for the FRS Pension Plan applied to regular employee salaries was 8.26%, including 1.66% for a post-retirement health insurance subsidy ("HIS"). The Fiscal Year 2018 contribution rate was 7.92%, which included 1.66% for HIS. The Fiscal Year 2019 contribution rate applied to senior management salaries was 24.06%, including 1.66% for HIS. The Fiscal Year 2018 contribution rate was 22.71%, which included 1.66% for HIS. The Fiscal Year 2019 contribution rate applied to the salaries of employees in DROP was 14.03%, including 1.66 for HIS. The Fiscal Year 2018 contribution rate was 13.26%, which included 1.66% for HIS.

For the Fiscal Years ended June 30, 2019 and 2018 CFX's actual contributions to the FRS totaled \$896,000 and \$790,000, respectively, which were equal to the required actuarially determined contributions for such Fiscal Years. Therefore CFX does not have a pension asset or liability as determined in accordance with GASB Statement No. 27.

Prior to the spring 2011 legislative session, the FRS was noncontributory for members. However, as of July 1, 2011, Chapter 2011-68 of the Laws of Florida requires members of the FRS not enrolled in DROP to contribute 3% of their salary to the FRS in order to reduce employers' required contributions. Employee contributions were \$212,500 and \$195,000 for the Fiscal Years ended June 30, 2019 and 2018, respectively.

In June 2012, the Government Accounting Standards Board ("GASB") issued Statement No. 68 "Accounting and Financial Reporting for Pensions – an amendment of GASB Statement No. 27" ("GASB No. 68"). The scope of GASB No. 68 addresses accounting and financial reporting for pensions that are provided to employees of state and local governmental employers that meet certain characteristics. GASB No. 68 establishes standards for measuring and recognizing liabilities, deferred outflows/inflows of resources and expense/expenditures. For defined benefit pensions such as the FRS Pension Plan, GASB No. 68 identifies methods and assumptions that should be used to project benefit payments, discount projected benefit payments to their actuarial present value and attribute that present value to periods of employee service.

CFX reported a liability of \$8,312,000 and \$7,979,000, for Fiscal Years 2019 and 2018, respectively, for its proportionate share of the net pension liability of FRS and HIS. The net pension liability as of June 30, 2019 and June 30, 2018 was measured as of June 30, 2018 and June 30, 2017, respectively, and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of those dates. The increase in FRS and HIS contributions between Fiscal Years 2018 and 2019 was primarily attributable to an increase in salaries for all CFX employees as well as the addition of positions.

At June 30, 2018, CFX's proportion of the FRS was 0.0205%, which was an increase of 0.0004% from its proportion measured as of June 30, 2017. At June 30, 2018, CFX's proportion of the HIS was 0.0202%, which was an increase of 0.0013% from its proportion measured as of June 30, 2017.

For the Fiscal Year ended June 30, 2019, CFX recognized pension expense of \$1,356,000 an \$223,000 for FRS and HIS, respectively. For the Fiscal Year ended June 30, 2018, CFX recognized pension expense of \$1,278,000 and \$200,000 for FRS and HIS, respectively.

See Note 8 of the "AUDITED FINANCIAL STATEMENTS OF CFX FOR THE FISCAL YEAR ENDED JUNE 30, 2019 AND JUNE 30, 2018" attached hereto as APPENDIX G for further information regarding the FRS and the retirement plans available to the employees of CFX.

# Legislative Matters

General. CFX is an independent special district established by the Florida Legislature. CFX may, from time to time in the future, be subject to changes in laws or regulations, many of which are beyond the control of CFX, that could have an effect on the existence, revenues, management, operations and finances of CFX. Notwithstanding any of the foregoing, pursuant to the current provisions of the Act, the State has covenanted not to limit or alter the rights vested in CFX and the Department under the Act until all Outstanding Bonds, including the Series 2019 Bonds, are fully paid and discharged.

HB 385. On July 3, 2019, Florida Governor Ron Desantis signed HB 385 which dissolved the Miami-Dade Expressway Authority and created the Greater Miami Expressway agency in its place. HB 385 transfers the assets of the Miami-Dade Expressway Authority, including all toll facilities, to the Greater Miami Expressway Authority and prohibits the new agency from increasing toll rates until 2029. The provisions of HB 385 were expressly limited to the Miami-Dade Expressway Authority and its facilities and do not mention or affect CFX or the System in any manner. The Miami-Dade Expressway Authority has since filed suit challenging HB 385. While the eventual outcome of such litigation remains uncertain as of the date hereof, it is not expected to have any impact on CFX or the System.

# Osceola County Expressway System Transfer

Pursuant to the CFX Bill, all powers, governance, and control of the Osceola County Expressway System (the "OCX System") and the assets, liabilities, facilities, property, and any other legal rights of the Osceola County Expressway Authority ("OCX"), shall be transferred to CFX effective December 31, 2018. Upon such transfer, the OCX System facilities shall each be considered Non-System Projects of CFX. However, the effective date of such transfer shall be extended until the date on which the current and forecasted total debt service coverage ratio with respect to all bonds, notes, loans, and other debt obligations issued to finance such facilities to be transferred is certified by the financial advisor for CFX to be equal to or greater than 1.5x for each and every year during which such obligations are then scheduled to be outstanding, including scheduled reimbursement obligations to other governmental entities. The CFX Bill provides that after the transfer of the OCX System to CFX, CFX shall include the uncompleted elements of the OCX May 8, 2012 Master Plan (the "OCX Master Plan"), and the additional extension of the Osceola Parkway as described therein (the "Osceola Parkway Extension") in the equivalent CFX master or long-range plan, each as Non-System Projects.

Upon the transfer of the OCX System to CFX, CFX shall comply with any and all obligations of the OCX to reimburse other governmental entities for costs incurred on behalf of the OCX System from revenues of the OCX System available after payment of

all amounts required for operation and maintenance of the OCX System and all amounts required to be paid under the terms of any resolution authorizing the issuance of bonds to fund the acquisition, design, or construction of any portion of the OCX System. This reimbursement obligation specifically includes, but is not limited to, any obligation of the OCX to reimburse Osceola County and Polk County for costs incurred, or debt issued, to fund the acquisition, development, construction, operation, and maintenance of the OCX System.

The transfer of any reimbursement obligation of the OCX does not make any reimbursement obligation a general obligation of CFX, and does not constitute an independent pledge or lien on revenues of the CFX for the benefit of any person or entity. To the extent that revenues generated by the OCX System are insufficient to pay a reimbursement obligation, CFX may, but is not required to, make any payment from other revenues of CFX available for such purpose after payment of all amounts required:

- (a) otherwise by law or contract;
- (b) by the terms of any resolution authorizing the issuance of bonds by CFX or the former Orlando-Orange County Expressway Authority; and
  - (c) under the Wekiva MOU.

Pursuant to the CFX Bill, CFX shall have no obligation to financially support any elements of the OCX Master Plan, or the additional extension of the Osceola Parkway Extension, from System Pledged Revenues. To the extent the Governing Board, in its sole discretion, votes to financially support any elements of the OCX Master Plan, or the Osceola Parkway Extension, it must treat any such element as a Non-System Project and shall only finance such element from System Pledged Revenues to the extent permitted by and in accordance with the terms of the Bond Resolution. For the purpose of advancing the design, acquisition, and construction of the elements of the OCX Master Plan, and the Osceola Parkway Extension, CFX is specifically authorized to enter into new or amended lease-purchase agreements with Osceola County for the leasing, construction, operation, and maintenance of any facility described in the OCX Master Plan, and the Osceola Parkway Extension.

In order to provide for the orderly transition of responsibility for the design, acquisition and construction of the elements of the OCX Master Plan in accordance with the CFX Bill, on September 8, 2016, CFX, Osceola County and OCX entered into an Interlocal Agreement (the "OCX Interlocal Agreement") to address CFX's role in the future development of OCX System facilities. As previously described herein, the Poinciana Parkway will be classified as a System Project upon its acquisition by CFX from Osceola County in accordance with the Poinciana LPA. See "PLAN OF FINANCE - Poinciana Parkway Acquisition" herein.

System Pledged Revenues are not currently pledged to the repayment of the revenue bonds issued by Osceola County or otherwise pledged to support the Poinciana Parkway. After the acquisition of the Poinciana Parkway by CFX and its designation as a System Project, System Pledged Revenues will be pledged to support the Poinciana Parkway in accordance with the Bond Resolution.

#### DESCRIPTION OF THE SYSTEM

The following includes information describing the System provided by CFX in addition to summaries of certain information describing the System contained in the Consulting Engineer's Report attached hereto as APPENDIX C. The Consulting Engineer's Report should be read in its entirety to obtain a more complete description of the System and other proposed roadways. A map of the System is set forth at the beginning of this Official Statement for the reader's reference.

# System Overview

Since the establishment of CFX in 1963, it has opened to traffic 118 centerline miles of limited access expressways consisting of 830 lane miles (including ramps), 69 interchanges, 339 bridges, 14 mainline toll plazas, three mainline gantries and 74 ramp toll facilities (including three ramp gantries) for a total of 324 tolled lanes. The System consists of seven expressways: the Beachline Expressway (SR 528), the East-West Expressway (SR 408), the Central Florida GreeneWay (SR 417), the Western Beltway/Wekiva Parkway (SR 429), the Apopka Expressway (SR 414), the Western Beltway Connector (SR 451) and SR 453. Traffic on the System has more than tripled since 1994. Between calendar years 2017 and 2018, the System has experienced an increase in traffic of approximately 8.3%.

CFX also operates the previously described Poinciana Parkway (SR 538) and the Goldenrod Road Extension as Non-System Projects. See "PLAN OF FINANCE - Poinciana Parkway Acquisition" herein. The Goldenrod Road Extension is a four-lane two mile tolled controlled access roadway, meaning there are some cross streets with traffic signals. Revenues generated and expenses incurred by the Goldenrod Road Extension are tracked separately and are not included as a part of the System Pledged Revenues.

In 2004, the Florida Legislature amended the Act to authorize, as part of the System, the financing and construction of the Wekiva Parkway (SR 429 Northern Extension) and the Apopka Expressway (SR 414), including realignment of SR 429 north from the interchange with SR 414.

# Beachline (formerly Bee Line) Expressway (SR 528)

The Martin Andersen Beachline Expressway was formerly known as the Bee Line Expressway, and was CFX's first project. The Beachline Expressway provides access to Universal Studios, Sea World, the Orange County Convention Center, Orlando Central Park and Orlando International Airport. The entire SR 528 extends from I-4 on the west to US 1 on the east, just west of the John F. Kennedy Space Center. CFX's portion of the Beachline Expressway extends from McCoy/Boggy Creek Road on the west to SR 520 on the east, a distance of 23 miles, and includes two mainline toll plazas and ten ramp toll facilities (including two ramp gantries). Other portions of the Beachline Expressway, to the east and to the west of CFX's section, were constructed and are owned and operated by the FTE. The Dallas Mainline Toll Plaza, located between the Dallas Boulevard Interchange and SR 520, opened to traffic in March 2012. In November 2014, CFX began construction on a project (the "Airport Mainline Toll Plaza Demolition Project") to remove the Airport Mainline Toll Plaza, construct new ramp toll plazas to/from the Beachline Expressway east at Tradeport Drive and to/from the Beachline Expressway east and west at Boggy Creek Road, and widen the existing portion of the Beachline Expressway from McCoy Road to SR 436. The new tolling scheme was implemented on January 31, 2016, and through an agreement with FTE, tolls are collected at the Beachline West Main Plaza and at the new ramp plazas constructed as part of such Project. The Airport Mainline Toll Plaza Demolition Project was completed in Fall 2016. The FTE-owned portions of the Beachline Expressway connect to CFX's portion and extend further west to I-4 and extend further east to Brevard County coastal areas, including the John F. Kennedy Space Center and I-95. See the map of the System on the inside cover of this Official Statement.

See "DESCRIPTION OF THE SYSTEM - Summary of Level of Service for System" herein for a table summarizing historical traffic volume and roadway capacity for the Beachline Expressway.

# East-West Expressway (SR 408)

The Spessard L. Holland East-West Expressway was opened to traffic in 1973 and now extends from an interchange with Florida's Turnpike in the west to an interchange with SR 50 east of SR 434 (Alafaya Trail) on the east. CFX is responsible for the 22 miles of the East-West Expressway between SR 50 west (at Clarke Road) and SR 50 east. There are five mainline toll plazas and 22 ramp toll facilities on this portion of the East-West Expressway. The Department is responsible for the remainder of the East-West Expressway. On July 1, 2017, the segment of the East-West Expressway extending from Clarke Road to Kirkman Road was re-designated as the Arnold Palmer Expressway. See the map of the System on the inside cover of this Official Statement.

See "DESCRIPTION OF THE SYSTEM - Summary of Level of Service for System" herein for a table summarizing historical traffic volume and roadway capacity for the East-West Expressway.

# Central Florida GreeneWay (SR 417)

CFX operates and maintains the portion of the Central Florida GreeneWay that begins at an intersection with International Drive near SR 535 and runs east and north to the Seminole County/Orange County line for a total of 32 miles. The Central Florida GreeneWay provides a high-speed connection between I-4 on the west and the Beachline Expressway on the east and also provides southerly access to Orlando International Airport, which provides relief to the existing north access from the airport to the Beachline Expressway and is considered essential for continued airport expansion. As it operates today, the Central Florida GreeneWay includes four mainline toll plazas and 26 ramp toll facilities.

In 1996, the Department extended the Central Florida GreeneWay as a toll road southwest from CFX terminus at International Drive to I-4 south of US 192 in Osceola County. The Central Florida GreeneWay was extended north from the Orange County/Seminole County line one-half mile to SR 426 (Aloma Avenue) in 1988 by the Seminole County Expressway Authority and an additional 12 miles to US 17-92 in 1994 by the Department.

In 2002, the segment of the Central Florida GreeneWay from US 17-92 to I-4 south of SR 46 in Seminole County was opened to traffic completing the eastern beltway around Orlando. These extensions of the Central Florida GreeneWay are a part of FTE's system, owned and managed by the Department and are not a part of the System. See the map of the System on the inside cover of this Official Statement.

See "DESCRIPTION OF THE SYSTEM - Summary of Level of Service for System" herein for a table summarizing historical traffic volume and roadway capacity for the Central Florida GreeneWay.

# Western Beltway/Wekiva Parkway (SR 429)

Western Beltway. Located in western Orange County, CFX operates and maintains 23 miles of the Daniel Webster Western Beltway, a four-lane limited access expressway that begins at Seidel Road and runs north to its terminus at US 441 in Apopka. Three of the 23 miles are part of a dual route with the Apopka Expressway. The initial portion of the Western Beltway was opened to traffic in July 2000 and extended from Florida's Turnpike in Ocoee to US 441 in Apopka, for a total of approximately 11 centerline miles. In December 2002, the next segment of the Western Beltway was opened to traffic extending the Western Beltway approximately 3.5 miles from CR 535 north to Florida's Turnpike. The remaining segment of the Western

Beltway, extending approximately 7.5 miles from CR 535 to Seidel Road, opened to traffic in December 2005. The last segment of the Western Beltway, the dual route SR 429/SR 414, opened to traffic in January 2013 and extends the Western Beltway from SR 429/SR 414 in Apopka to US 441 near Plymouth Sorrento Road. With the opening of the SR 429/SR 414 dual route, the two mile segment of SR 429 north of SR 414 to US 441 near Vick Road was re-designated as SR 451.

Previously, FTE extended SR 429 an additional 11 miles south of CFX terminus at Seidel Road. FTE's first segment of the Western Beltway was opened to traffic in December 2005 and extends from US 192 to Seidel Road. FTE's final segment of the Western Beltway was opened in December 2006 and extends from an interchange with I-4 in Osceola County to US 192. See the map of the System on the inside cover of this Official Statement.

<u>Wekiva Parkway</u>. The Northern extension of SR 429 from US 441 to I-4 is called the Wekiva Parkway. This extension of SR 429 is a planned approximately 24-mile toll road that will complete the beltway around Metropolitan Orlando. Authorized in 2004 by the Wekiva Parkway and Protection Act (Chapter 369, Part III, Florida Statutes), the Wekiva Parkway provides alternatives to US 441, SR 46 and many local roads in the greater Apopka, Mount Dora and Sanford areas in addition to providing a much needed connection through the environmentally sensitive Wekiva River protection areas.

As a dual agency project, CFX is responsible for the design and construction of approximately 11 miles and the Department is responsible for the design and construction of approximately 13 remaining miles. The CFX section of the Wekiva Parkway includes two mainline toll gantries in an open road, all electronic toll collection facility, with interchanges at US 441, Kelly Park Road, and SR 453. In July 2017, CFX opened the first four miles of its portion of the Wekiva Parkway from US 441 to Kelly Park Road including one mainline toll gantry. The final segment of the CFX portion connecting Kelly Park Road to the Department owned section at CR 435 opened to traffic in March 2018 and includes one mainline toll gantry. The Department's portion of the Wekiva Parkway is currently under construction and will be owned and operated by the Department upon its expected completion in 2022. See "DESCRIPTION OF THE SYSTEM - Capital Improvement Program" herein for a discussion of the Wekiva Parkway and the respective obligations of CFX and the Department related thereto.

As it operates today, SR 429 includes two mainline toll plazas, two mainline gantries and 12 ramp toll facilities. See "DESCRIPTION OF THE SYSTEM - Summary of Level of Service for System" herein for a table summarizing historical traffic volume and roadway capacity for the Western Beltway/Wekiva Parkway.

# Apopka Expressway (SR 414)

The John Land Apopka Expressway opened to traffic in May 2009. The Apopka Expressway is a nine mile limited access expressway which extends east from the Western Beltway to Maitland Boulevard at SR 500/US 441. The Apopka Expressway provides direct access to the Western Beltway, I-4, and employment centers such as the Maitland Center, while relieving congestion on US 441 and many local roads in the greater Apopka area. In addition, the Apopka Expressway serves primarily as a bypass route around the heavily congested Apopka urban area. The Apopka Expressway was constructed with six interchanges, one mainline toll plaza, and four ramp toll facilities. In June 2010, construction began for Phase II of this project. The new System interchange with the Western Beltway and the extension of the Apopka Expressway from the Western Beltway to Boy Scout Road was completed in September 2012. Phase II also includes the extension of Boy Scout Road to US 441 West, which opened to traffic in January 2013. See the map of the System on the inside cover of this Official Statement.

See "DESCRIPTION OF THE SYSTEM - Summary of Level of Service for System" herein for a table summarizing historical traffic volume and roadway capacity for the Apopka Expressway.

# Western Beltway Connector (SR 451)

The Western Beltway Connector was previously the northern portion of the Western Beltway, which opened to traffic in July 2000. With the opening of the dual route SR 429/SR 414 in January 2013, this two mile segment north of the Apopka Expressway to US 441 near Vick Road was re-designated as SR 451. There are no mainline or ramp toll plazas associated with this portion of the System.

#### SR 453

SR 453 is a two-mile limited access facility connecting the Wekiva Parkway (SR 429) north to SR 46 crossing the Orange/Lake County line. SR 453 includes one mainline toll gantry and two interchanges. Locally referred to as the "Mount Dora Connector," SR 453 was constructed as part of CFX's overall contribution to the Wekiva Parkway project and opened to traffic in March 2018.

See "DESCRIPTION OF THE SYSTEM - Summary of Level of Service for System" herein for a table summarizing historical traffic volume and roadway capacity for SR 453.

# Poinciana Parkway (SR 538)

As previously described herein, the Poinciana Parkway will be designated as a System Project upon its acquisition by CFX from Osceola County in accordance with the

Poinciana LPA. See "PLAN OF FINANCE - Poinciana Parkway Acquisition" herein for additional information regarding the Poinciana Parkway Acquisition and "HISTORICAL AND PROJECTED OPERATING RESULTS OF THE SYSTEM - Historical Operating Results of Poinciana Parkway" herein for information regarding historical revenues and expenses associated with the Poinciana Parkway.

## **Traffic Volumes**

The following table provides the historic traffic volumes and roadway capacity for the mainline toll plazas of the System for calendar years 2009 through 2018 as well as the generalized Level of Service ("LOS") "E" traffic volume for the mainline in the vicinity of each plaza. LOS provides a measure of the congestion level of a particular roadway; each letter designation describes a range of operating conditions on a particular type of facility, where LOS "A," is the least congested and LOS "F" is the worst or forced flow conditions. The basis for this level of service analysis is generalized daily roadway level of service volumes for urban freeways derived from the FDOT 2013 Quality/Level of Service Handbook. The LOS "E" volume is the largest average weekday traffic volume that could be processed by the expressway before forced flow conditions are reached.

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Traffic Volumes at Mainline Toll Gantries/Plazas and Selected Expressway Segments - Existing System

		East-West Expressway (SR 408)	xpressway .08)			Central Florida G (SR 417)	Central Florida GreeneWay (SR 417)	
Fxpresswav	Hiawassee	Pine Hills	Conway	Dean	John	Boggy Creek	Curry Ford	University
Mainline	Mainline	Mainline	Mainline	Mainline	Mainline	Mainline	Mainline	Mainline
Toll Gantries/Plazas	Toll Plaza <sup>(8)</sup>	Toll Plaza	Toll Plaza(5)	Toll Plaza	Toll Plaza	Toll Plaza	Toll Plaza	Toll Plaza
LOSE								
Volume <sup>(1)</sup>	123,300	123,300	166,800	79,900	79,900	79,900	123,300	79,900
(Calendar Year)			Annual A	verage Weekday	Traffic (AAWD]	r) (3)		
2018(3)	84.600	100,800	151,600	85,500	83,600	87,600	117,800	110,100
2017(4)	72,200	95,000	147,300	83,600	76,900	78,900	105,700	103,100
2016(5)	73,600	89,100	140,400	79,600	62,200	96,700	97,300	95,700
2015	69,500	85,300	133,000	74,200	51,500	54,600	86,100	86,700
2014	61.500	77,300	122,400	71,200	44,800	44,900	73,800	74,100
2013	57,800	72,100	115,600	67,400	41,900	40,300	006'99	71,700
2012(6)	56,400	71,200	117,600	67,200	41,300	38,400	65,000	72,800
2011	57,200	72,100	119,600	66,700	41,400	38,300	62,600	74,900
2010	56,700	71,200	117,900	68,200	39,700	36,600	63,200	72,900
2009(7)	29,900	008'69	112,800	65,900	38,200	35,900	63,300	70,500

Capacities used were obtained from the generalized daily Level of Service (LOS) E volumes for urban freeways shown in the FDOT 2013 Quality / Level of Service Handbook. 3

2008-2016 AAWDT volumes were developed by CFX's prior General Engineering Consultant, Atkins North America, Inc. (f/k/a PBS&J, Inc.). The first annual toll increase implemented by the "Customer First" toll policy went into effect July 1, 2018.
All plazas had tolls suspended due to Hurricane Irma from September 5, 2017 through September 21, 2017.
All plazas had tolls suspended due to Hurricane Matthew from October 5, 2016 through October 10, 2016. £ 3 8 8

A systemwide toll increase was applied in July 2012. (9)

A systemwide toll increase was applied in April 2009.

The six-lane widening of SR 408 from Good Homes Road to Hiawassee Road was completed in 2018.

Source: Consulting Engineer's Report dated September 30, 2019 attached hereto as APPENDIX C.

Traffic Volumes at Mainline Toll Gantries/Plazas and Selected Expressway Segments - Existing System (continued)

	Apopka Expressway (SR 414)	Δ	Western Beltway/Wekiva Parkway (SR 429)	Wekiva Parkw (29)	ay	SR 451 <sup>(10)</sup>	SR 453 <sup>(11)</sup>
Expressway Mainline		Independence Mainline	Forest Lake Mainline	Ponkan Mainline	Mt. Plymouth Mainline	SR 429/414 to	Coronado Mainline
Toll Gantries/Plazas		Toll Plaza	Toll Plaza	Gantry <sup>(8)</sup>	Gantry <sup>(9)</sup>	US 441	Gantry <sup>(11)</sup>
LOSE				2000			
Volume <sup>(1)</sup>	123,300	79,900	79,900	79,900	79,900	79,900	123,300
(Calendar Year)			Annual Average	Weekday Tra	ffic (AAWDT) (2)		
2018(3)	41,600	49,200	66,700	14,700	5,300	18,200	7,800
2017 <sup>(4)</sup>	37	41,300	61,000	009'6	Not Open	17,300	Not Open
2016(5)		31,600	53,600	Not Open	Not Open	15,800	Not Open
2015		26,200	46,400	Not Open	Not Open	14,600	Not Open
2014	24,200	19,600	39,000	Not Open	Not Open	12,900	Not Open
2013		16,700	34,500	Not Open	Not Open	12,300	Not Open
2012(6)		16,000	31,700	Not Open	Not Open	26,100	Not Open
2011		14,200	29,600	Not Open	Not Open	26,700	Not Open
2010	P	13,700	29,500	Not Open	Not Open	26,500	Not Open
2009(7)	10,500	12,500	27,600	Not Open	Not Open	26,500	Not Open

Capacities used were obtained from the generalized daily Level of Service (LOS) E volumes for urban freeways shown in the FDOT 2013 Quality / Level of

Source: Consulting Engineer's Report dated September 30, 2019 attached hereto as APPENDIX C.

<sup>2008-2016</sup> AAWDT volumes were developed by CFX's prior General Engineering Consultant, Atkins North America, Inc. (f/k/a PBS&J, Inc.). The first annual toll increase implemented by the "Customer First" toll policy went into effect July 1, 2018. All Plazas had tolls suspended due to Hurricane Irma from September 5, 2017 through September 21, 2017.

All Plazas had tolls suspended due to Hurricane Matthew from October 5, 2016 through October 10, 2016.

A systemwide toll increase was applied in July 2012. £ 5 9 E

A systemwide toll increase was applied in April 2009.

The Ponkan Gantry was opened for automatic vehicle identification traffic in July 2017. (8) 6

The Mt. Plymouth Gantry opened for automatic vehicle identification traffic in March 2018.

No mainline plazas are associated with SR 451. Traffic data was obtained from traffic sensors for this segment. With the opening of SR 429/414 in January 2013, the existing north portion was re-designated as SR 451. (11)

SR 453 and the Coronado Gantry opened for automatic vehicle identification traffic in March 2018.

Traffic Volumes at Mainline Toll Gantries/Plazas and Selected Expressway Segments - Existing System (continued)

		Beachline Expressway (SR 528)	xpressway 528)	
		SR 528 Mainline		
Expressway	Airport	Boggy Creek Road to	Beachline	Dallas
Mainline	Mainline	Tradeport	Mainline	Mainline
Toll Gantries/Plazas	Toll Plaza <sup>(8)</sup>	Drive <sup>(9)</sup>	Toll Plaza	Toll Plaza(10)
Volume <sup>(1)</sup>	N/A	123,300	79,900	79,900
(Calendar Year)	Annual	Annual Average Weekday Traffic (AAWDT) (2)	ay Traffic (AAV	VDT)(2)
2018(3)	Demolished	112,400	72,700	57,300
2017(4)	Demolished	109,200	65,600	51,200
2016(5)	Demolished	110,600	008'09	46,900
2015	Demolished	104,600	56,200	45,600
2014	83,800	009'86	53,600	40,900
2013	80,700	92,200	49,300	39,200
2012(6)	80,800	94,400	48,500	38,400
2011	78,700	90,800	46,900	Not Open
2010	77,800	88,800	46,300	Not Open
2009(7)	75,200	85,400	43,300	Not Open

Capacities used were obtained from the generalized daily Level of Service (LOS) E volumes for urban freeways shown in the FDOT 2013 Quality / Level of Service Handbook.

2008-2016 AAWDT volumes were developed by CFX's prior General Engineering Consultant, Atkins North America, Inc. (f/k/a PBS&J, Inc.). The first annual toll increase implemented by the "Customer First" toll policy went into effect July 1, 2018. All Plazas had tolls suspended due to Hurricane Irma from September 5, 2017 through September 21, 2017.

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All Plazas had tolls suspended due to Hurricane Matthew from October 5, 2016 through October 10, 2016.

A systemwide toll increase was applied in July 2012. (9)

A systemwide toll increase was applied in April 2009. 6

In 2015/2016 the Airport Mainline Plaza was taken out of service and demolished. This toll is now collected at the FTE's Beachline West Main Plaza. (8)

No mainline toll plazas associated with the mainline SR 528 segment from Boggy Creek to Tradeport Drive. Traffic data was obtained from traffic sensors for this 6

The Dallas Mainline Plaza, located east of the Dallas Boulevard Interchange, opened to traffic in March 2012. segment.

Source: Consulting Engineer's Report dated September 30, 2019 attached hereto as APPENDIX C.

# Summary of Level of Service for System

The following table provides a general summary of the level of service, for selected expressway segments, at which the System is operating. The System generally operates at acceptable levels of service (LOS "D" or better) throughout the day and has adequate capacity to accommodate near-term traffic volume increases. However, some ramps and roadway segments experience congestion or significant delays, usually during the morning or evening peak hours. Improvements to the System to reduce congestion and delays on these segments are addressed in the current Five-Year Work Plan. See "DESCRIPTION OF THE SYSTEM - Capital Improvement Program" herein.

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# Summary of Level of Service for Selected Expressway Segments

	Existing (	Conditions	Calendar	Generalized	I Level of Serv	rice (LOS)
C	Number of Lanes (mainline)	Level of Service "E" Volume <sup>(1)</sup>	Year 2018 Annual Average Weekday Traffic <sup>(2)</sup>	Volume to LOS E Volume Capacity Ratio	Density <sup>(3)</sup> pc/mi/ln	Level o Service (LOS)
Expressway/Location	(maintine)	volume	Transco	Katio	религи	(LOS)
Beachline Expressway (SR 528) Airport Mainline Toll Plaza		Taken out of	service and der	nolished Febru	ary 2016	
SR 528 Mainline Boggy Creek Road to		Taken out of	service and der	nonaned rebru	ary 2010	
Tradeport Drive <sup>(4)</sup>	6	123,300	112,400	0.91	24.80	C
Beachline Mainline Toll Plaza	4	79,900	72,700	0.91	22.89	č
Dallas Mainline Toll Plaza	4	79,900	57,300	0.72	14.36	В
Danas Mainine Ton Flaza		79,900	37,300	0.72	14.50	
East-West Expressway (SR 408)						
Hiawassee Mainline Toll Plaza <sup>(5)</sup>	6	123,300	84,600	0.69	21.59	C
Pine Hills Mainline Toll Plaza	6	123,300	100,800	0.82	26.59	D
Conway Mainline Toll Plaza	8	166,800	151,600	0.91	32.57	D
Dean Mainline Toll Plaza <sup>(6)</sup>	4	79,900	85,500	1.07	27.27	D
Dean Mannine Ton Flaza	- 4	75,500	05,500	1.07	201.201	
Central Florida GreeneWay (SR 417)						
John Young Mainline Toll Plaza(7)	4	79,900	83,600	1.05	30.06	D
Boggy Creek Mainline Toll Plaza(7)	4	79,900	87,600	1.10	24.77	C
Curry Ford Mainline Toll Plaza	6	123,300	117,800	0.96	27.04	D
University Mainline Toll Plaza <sup>(6)</sup>	4	79,900	110,100	1.38	49.15	F
		45.77.45				
Western Beltway/Wekiva Parkway (SR	429)					
Independence Mainline Toll Plaza	4	79,900	49,200	0.62	15.21	В
Forest Lake Mainline Toll Plaza <sup>(7)</sup>	4	79,900	66,700	0.83	24.36	C
SR 429/414 to SR 429 Connector Road <sup>(3)</sup>	6	123,300	36,000	0.29	10.42	A
Ponkan Gantry	4	79,900	14,700	0.18	8.25	A
Mt. Plymouth Gantry <sup>(8)</sup>	4	79,900	5,300	0.07	2.87	A
Apopka Expressway (SR 414)						
Coral Hills Mainline Toll Plaza	6	123,300	41,600	0.34	15.65	В
SR 451 <sup>(9)</sup>						
SR 429/414 to US 441	4	79,900	18,200	0.23	8.12	A
SR 453 <sup>(8)</sup>						
Coronado Gantry <sup>(8)</sup>	6	123,300	7,800	0.06	0.00	A

Capacities used were obtained from the generalized daily LOS E volumes for urban freeways shown in the FDOT 2013 Quality / Level of Service Handbook.

<sup>(2) 2018</sup> AAWDT volumes were obtained from traffic sensors and plaza counts and applying the appropriate seasonal factors.

<sup>(3)</sup> Level of Service Criteria for the basic freeway segments per the new 2010 Highway Capacity manual is to be defined by Density (pc/mi/ln). Density LOS is described as follows: LOS A <= 11; 11 < LOS B <= 18; 18 < LOS C <= 26; 26 < LOS D <= 35; 35 < LOS E <= 45</p>

<sup>(4)</sup> There are no mainline gantries or plazas associated with this segment. Traffic data was obtained from traffic sensors for this segment.

<sup>(5)</sup> The six-lane widening of SR 408 from Good Homes Road to Hiawassee Road was completed in 2018.

<sup>(6)</sup> Widening projects currently under construction.

<sup>(7)</sup> Widening projects currently programmed in the Fiscal Year 2020-2024 Work Plan.

<sup>(8)</sup> Mt. Plymouth Gantry, SR 453 and Coronado Gantry opened for automatic vehicle identification traffic in March 2018.

With the opening of SR 429/414 in January 2013, the existing north portion of SR 429 was re-designated as SR 451. Source: Consulting Engineer's Report dated September 30, 2019 and attached hereto as APPENDIX C.

## **Toll Collection**

CFX processes both cash and electronic transactions. CFX's electronic toll collection ("ETC") system has been a highly successful program. The ETC system improved the effectiveness of CFX's toll revenue operations by reducing operating costs and improving traffic operation. The fully computerized ETC system includes lane controller computers on each toll lane, plaza computers at each mainline toll plaza, a service center with computers and a system host computer. As of September 1, 2019, the number of vehicles equipped with E-PASS transponders was 837,573, representing 490,745 accounts. Over 79% of all toll revenues and over 82% of transactions are paid using ETC. The ETC System has offered the following benefits to CFX:

- (a) Provides CFX with more effective management, accounting and auditing capability;
- (b) Helps accommodate the projected traffic growth of the System through enhanced traffic management capability;
- (c) Provides increased toll facility capacity by allowing faster transactions and non-stop movement of traffic which has allowed CFX to delay or reduce the need for toll facility expansion; and
- (d) Enhances security through software which allows access only by authorized operations and management personnel.

The ETC system features automatic vehicle identification technology, referred to a "E-PASS," which allows motorists with prepaid accounts to electronically pay the required tolls without stopping at toll booths. The ETC system also includes a violation enforcement system which uses a camera to capture a picture of a toll violator's vehicle and license plate. Currently, the E-PASS transponders are interoperable with all other toll agencies within the State and the North Carolina Turnpike (Quick Pass) and Georgia State Road Tolling Authority (Peach Pass) systems. On September 1, 2018, CFX joined the E-ZPass group which currently provides interoperable ETC across 16 eastern states. On October 1, 2018, CFX began offering "E-PASS Extra" transponders powered by E-PASS and E-ZPass, which will allow CFX customers to use a single transponder on both the System and whilst traveling up and down the Eastern Seaboard on E-ZPass compatible facilities.

CFX has begun an initiative to replace the current ETC system which is more than 15 years old and is now at the end of its service life. Integrated video tolling/enhanced violation enforcement with robust optical character recognition and automated processes will be some of the new features included in the replacement system. The replacement system is also expected to include improved express lane features, overview and monitoring capabilities, and a major upgrade of the back office, customer service center

and IT environment in general. Such replacement carries inherent risks, including, but not limited to, disruption of vehicle identification/transaction detection, billing and collection of tolls. The new system, as with the replacement of any system, is subject to failure and/or other significant shortcomings. Many of these factors are beyond the control of CFX and, should they occur, could increase costs and have negative impact of CFX's revenues.

Due to the success of the E-PASS program, CFX has recently completed a plan to convert all traditional barrier style toll plazas into open road tolling plazas. At open road tolling plazas, E-PASS customers can travel through exclusive mainline E-PASS lanes and pay their toll while maintaining the posted speed without slowing or stopping. Non-ETC users must exit the mainline lanes to a separate cash toll plaza. With the recent demolition of the Airport Mainline Toll Plaza on SR 528, all 14 of CFX's mainline toll plazas are operating in an open road tolling configuration. CFX has also implemented a Pay-By-Plate program concurrent with the opening of the first Wekiva Parkway segment in July 2017.

Currently, CFX has privatized its toll collections operations. In 1995, Florida Toll Services was selected as the toll facility operations and management services contractor and continued to serve CFX in that capacity through September 2015. In December 2015, the Governing Board entered into a new contract for toll facility operations and management services with URS Energy & Construction, Inc. The contract expires in December 2020 with five one-year extension options.

The privatization of toll collections has allowed CFX to increase its control over revenue collections and toll facility operations. Through the toll facility operations and management contractor, CFX now is better able to address customer relations during the toll collection process. Overall, privatization has increased the efficiency of the toll collections process and has resulted in cost savings in toll plaza operations.

As mentioned above, E-PASS transponders are interoperable with all other State toll agency ETC systems, including "SunPass," the statewide ETC system operated by FTE for use by customers utilizing FTE, Tampa-Hillsborough County Expressway Authority ("THEA") and Miami-Dade Expressway Authority ("MDX") toll roads. Additionally, SunPass transponders are interoperable for toll collection by CFX's ETC system. Tolls charged to customers using SunPass at System tolling plazas are processed by FTE and remitted to CFX (and vice-versa for E-PASS customers using FTE, THEA and MDX facilities) on a weekly basis. On June 5, 2018, FTE began implementing an upgrade to the SunPass system including the implementation of a new statewide Centralized Customer Service System ("CCSS") designed to provide all electronic tolling customer support functions for FTE, THEA and MDX under a single operation. CCSS operations include billing, invoicing and customer account management. As part of the upgrade process, the SunPass system was expected to experience downtime as the new third-party vendor implemented its system. However, the third-party vendor experienced

problems with properly processing transactions following the activation of the updated system and ongoing delays in processing toll transactions. As a result, remittance of tolls owed to CFX from SunPass users, and to FTE from E-PASS users, was delayed. The CCSS interruption has since been resolved and the CCSS is currently operating on a normal weekly processing basis. As of the date hereof, the Department and CFX have reconciled all affected transactions to bring CFX current with all transactions and revenue owed to CFX since the system interruption began. CFX does not believe that this issue had any material effect on its financial position nor did it result in any disruption in the funding or payment of debt service on any of its Bonds.

See "SYSTEM REVENUES - Discount Programs" herein for a discussion of the discount programs offered to certain users of the System.

# **Intelligent Transportation Systems**

In 1999, CFX concluded a systemwide Intelligent Transportation Systems ("ITS") Master Plan study that identified opportunities to improve the management of incidents and the operation of the System. In January 2000, CFX commissioned the construction of its existing fiber optic network (the "FON") which is comprised of over 230 miles of fiber optic cable extending on both sides of CFX's right-of-way in a route-redundant configuration along all CFX-maintained expressway corridors. The FON serves CFX's immediate and long-term telecommunications needs for data, voice, video transmission, and any future ITS applications by providing linked telecommunication services for CFX between its headquarters office, mainline and ramp facilities. A direct fiber optic connection also exists between CFX Headquarters and the FDOT District 5 Regional Traffic Management Center to allow for sharing of video and data for traffic management purposes. CFX currently leases a portion of one of the eight total FON conduits to a third party. Additionally, the FON enabled CFX to advance an ITS program of projects known as the "Expressway Management System." The Expressway Management System provides systemwide expressway coverage and equips CFX with real-time operational tools to manage incidents and provide decision quality information to its customers.

See the Consulting Engineer's Report attached hereto as APPENDIX C for a detailed discussion of CFX's current ITS program, including the Expressway Management System and the related projects CFX plans to undertake in the future.

# Physical Condition of Expressway System

The Bond Resolution requires that the General Engineering Consultant for CFX, perform an annual inspection of the System and issue an Annual Inspection Report regarding the physical condition of the System. The Annual Inspection Report summarizes the findings of these examinations by category for (a) roadways, (b) bridges and (c) buildings. CFX uses the Annual Inspection Report as a guide for their maintenance staff to perform needed repairs and improvements to the System. The 2017

Annual Inspection Report was completed in January 2018 by the General Engineering Consultant, and found that overall, the System is in good repair, working order and condition. Most of the conditions identified in this most recent Annual Inspection Report are correctable and will be addressed by CFX under the routine maintenance programs funded by CFX and supplemented by the Department. Those conditions not corrected under the routine maintenance programs will be corrected as renewal and replacement projects under the Five-Year Work Plan. See "MAINTENANCE OF SYSTEM" herein.

# Capital Improvement Program

In August 1983, CFX finalized the first of its Long-Range Expressway Plans to meet the transportation improvement needs of the Central Florida urban area through the year 2000. Since then, CFX has periodically updated its Long-Range Expressway Plan to continuously meet the growing and changing needs of the Central Florida area. Most recently, in May 2016, CFX adopted its 2040 Master Plan which serves as CFX's blueprint for System improvements and new projects that support its mission, and accrues economic, customer and community benefits to the region and the State.

The 2040 Master Plan is the basis for the five-year work plan (the "Five-Year Work Plan"). The Five-Year Work Plan is an important tool used by CFX to effectively manage its program of improvements, enhancements and rehabilitation to the System with the purpose of identifying those projects which CFX anticipates funding during the next five years. The Five-Year Work Plan is updated annually to reflect and prioritize the needs of CFX and was most recently approved by CFX's Governing Board on June 13, 2019. Once approved, the Five-Year Work Plan is then submitted to MetroPlan Orlando for its use in development of a regional transportation improvement plan. The current Five-Year Work Plan covers the five-year period from Fiscal Year 2020 to Fiscal Year 2024 and contains 155 projects (of which a portion will comprise the 2019 System Projects), with a combined total estimated project cost of approximately \$2.52 billion. See the Consulting Engineer's Report attached hereto as APPENDIX C for a detailed discussion of the Five-Year Work Plan and the capital improvements included therein, and "Funding of Five-Year Work Plan" below.

Pursuant to the aforementioned Wekiva MOU and in accordance with Sections 348.7546 and 348.757(9), Florida Statutes, CFX and the Department entered into an Interlocal Agreement (the "Wekiva Interlocal Agreement"), dated June 11, 2014, setting forth the terms of their partnership to build the Wekiva Parkway Project. The Wekiva Interlocal Agreement provides that CFX will finance, acquire, design, construct, own, operate, manage, and maintain 11.32 miles of the Wekiva Parkway Project, to be located in Orange and Lake Counties, while the Department will finance, acquire, design, construct, own, operate, manage and maintain the remaining 12.81 miles of the Wekiva Parkway Project. Under the Wekiva Interlocal Agreement, CFX was required to repay the Department Contractual Obligations by making the previously described annual LPA

Repayments. See "SYSTEM FINANCING - Certain Subordinated Obligations - Department Contractual Obligations" herein.

On October 12, 2016, CFX exercised its discretionary authority under the Wekiva Interlocal Agreement to make a prepayment in satisfaction of all accumulated and future LPA Repayments due under the Lease-Purchase Agreement from moneys on deposit and legally available for such purpose in the System General Reserve Fund. The prepayment of the LPA Repayments did not have a material adverse effect on CFX's finances or its ability to undertake and fund the Five-Year Work Plan. After satisfaction of said prepayment by CFX, it was no longer be subject to the covenants regarding the LPA Repayments or the requirement to obtain the consent of the Department to issue additional indebtedness.

Pursuant to the Wekiva Interlocal Agreement, the Department and CFX also agreed to execute an amendment to the Lease-Purchase Agreement and to include in all future CFX bond issues, including the issuance of the Series 2019 Bonds, the following disclosure language describing such amendment:

CFX has entered into the Wekiva Interlocal Agreement with the Department, effective June 11, 2014, in which the parties have agreed to discontinue the obligations of the Department under the existing Lease-Purchase Agreement after July 1, 2028. The parties have also agreed to terminate the Lease-Purchase Agreement upon the earlier of the defeasance, redemption or payment in full of CFX's bonds issued and outstanding as of the effective date of the Wekiva Interlocal Agreement or the receipt of sufficient bondholder consents to such termination. Upon the termination of the Lease-Purchase Agreement, title to CFX System shall remain vested in CFX.

Accordingly, and simultaneously with the execution of the Wekiva Interlocal Agreement, CFX and the Department executed a Third Supplement to Lease-Purchase Agreement, dated June 11, 2014 (the "Third Supplement") which amended the Lease-Purchase Agreement in accordance with the terms of Section 348.757(9), Florida Statutes to: (a) discontinue the obligations of the Department under the Lease-Purchase Agreement after July 1, 2028; (b) terminate the Lease-Purchase Agreement upon the earlier to occur of (1) the defeasance, redemption, or payment in full of CFX's Bonds issued and outstanding as of June 11, 2014, or (2) the receipt of the requisite consents of CFX's bondholders to such termination; and (c) eliminate a prior provision so that CFX will now retain title to the System upon termination of the Lease-Purchase Agreement. The Third Supplement shall become effective on the first date that it may take effect under the terms of the existing Lease-Purchase Agreement.

# Funding of the Five-Year Work Plan

CFX anticipates funding all projects comprising the Five-Year Work Plan, including ongoing costs for projects commenced during prior Five-Year Work Plan periods and future costs for projects that commence within the current Five-Year Work Plan, with a combination of (a) available and projected surplus revenues, (b) proceeds of the Series 2019 Bonds and proceeds of several Series of additional Parity Bonds which CFX plans to issue through Fiscal Year 2025, and (c) other sources, which may include contributions from other public agencies or private entities or the issuance of additional unplanned Parity Bonds. Such amounts and sources may change depending on other circumstances affecting CFX, its revenues and the Five-Year Work Plan, as the same may be revised on an annual basis. Available funding for the Five-Year Work Plan is based on the current toll rate policy and assumes adjustments as currently provided under CFX's current toll rate schedule and policy. The next toll rate increase is scheduled to go into effect on July 1, 2020. See "SYSTEM REVENUES - System Toll Structure" herein for a description of CFX's current toll policy. Any additional toll rate adjustment will affect the Five-Year Work Plan both by changing the funds available to construct projects and by potentially changing the year of need of the projects (as traffic patterns may shift). See "SUMMARY OF CERTAIN TERMS AND PROVISIONS OF THE BOND RESOLUTION - Issuance of Parity Bonds" for a description of the conditions for the issuance of additional Parity Bonds under the Master Bond Resolution. The following table presents a breakdown of the expected funding sources for the Five-Year Work Plan.

Five-Year Work Plan Funding Sources (Millions)

<b>Estimated Amount</b>	% of Total
\$1,097	44%
108	4
500	20
813	32
\$2,518	100%
	\$1,097 108 500 813

Source: Prepared by PFM Financial Advisors LLC and approved by CFX.

# Acquisition of SR 528 Super Corridor

In December 2015, CFX completed all of its real property acquisitions related to right-of-way for SR 528. This "SR 528 Super Corridor" runs east to west starting from the intersection of SR 520 and SR 528 and ending at the Orlando International Airport. The approximately 516.35 acres of newly acquired right-of-way will be used for future expansion of SR 528 and to accommodate a 50-foot wide railway easement for the Virgin Trains USA inter-city passenger rail project from Miami to Orlando. This railway easement was conveyed to All Aboard Florida – Operations LLC by CFX for a purchase price of \$31,737,187. In accordance with the Bond Resolution, a report of an

Independent Consultant was filed with CFX projecting the potential loss of toll revenues due to the operation of a competing facility and a corresponding payment of \$4,003,848 to account for such loss was included in the purchase price of the easement.

#### MAINTENANCE OF SYSTEM

In the Bond Resolution, CFX covenants that it will operate the System, or cause the System to be operated, properly and in a sound economic manner and that it will maintain or cause the same to be maintained in good repair, working order and condition, and shall from time to time make all necessary and proper repairs, replacements and renewals so that at all times the operation of the System may be properly and See "DESCRIPTION OF THE DEPARTMENT OF advantageously conducted. TRANSPORTATION AND ITS RELATIONSHIP TO THE EXPRESSWAY SYSTEM" herein and "AMENDED AND RESTATED MASTER BOND RESOLUTION" attached hereto as APPENDIX A and "LEASE-PURCHASE AGREEMENT" attached hereto as APPENDIX E. The Lease-Purchase Agreement requires the Department to operate the System in a sound and economic manner and to maintain or cause it to be maintained in good repair, working order and condition and to make all necessary and proper repairs, replacements and renewals. The Lease-Purchase Agreement, however, permits the Department, with the approval of CFX, to reassign to CFX any duties or responsibilities, other than payment obligations, arising out of the Lease-Purchase Agreement. In 1993 the Department transferred to CFX all responsibility for maintenance of the System.

After taking over direct responsibility for maintenance of the System in 1993 CFX privatized most maintenance activities. CFX does retain staff to manage the various private contractors which perform maintenance services on the System. instituted a Maintenance Rating Program ("MRP") to evaluate performance of roadway and bridge maintenance contractors. The MRP monitors current operations and is used to identify recurring problems. The program allows for early identification of maintenance issues, increases accountability and provides assurance that assets are being maintained at an adequate level. Under the MRP, sample units for different asset groups (roads, bridges, and facilities) are randomly selected for the entire year. conducted every two months on a portion of the sample units from each corridor. Individual characteristics are evaluated on pass/fail criteria. The resulting scores are weighted and combined for the asset groups. A total composite score is used to evaluate maintenance effectiveness. CFX strives to maintain an MRP score of at least 90. For Fiscal Year 2020, CFX reported an overall MRP score of 90. As of the most recent inspection, there are currently 339 bridge structures on CFX's System with a rating of "excellent" or "good" for a Bridge Condition Rating of 99.4%. CFX maintained lane miles have a rating of "good" or better for 92% of the System.

# DESCRIPTION OF THE DEPARTMENT OF TRANSPORTATION AND ITS RELATIONSHIP TO THE EXPRESSWAY SYSTEM

CFX and the Department have entered into that certain Lease-Purchase Agreement, dated as of December 23, 1985 (the "Original Lease-Purchase Agreement"), as amended and supplemented by that certain (i) First Supplement to Lease-Purchase Agreement dated as of November 25, 1986, among CFX, the Department and the Division of Bond Finance of the State of Florida Department of General Services (the "Division"); (ii) Second Supplement to Lease-Purchase Agreement, dated as of October 27, 1988, among CFX, the Department, and the Division; and (iii) Third Supplement to Lease-Purchase Agreement, dated as of June 11, 2014, between CFX and the Department and set to become effective on the first date it may take effect under the Original Lease-Purchase Agreement (collectively, the "Lease-Purchase Agreement"), executed copies of which are attached hereto as APPENDIX E. See "DESCRIPTION OF THE SYSTEM - Capital Improvement Program" herein.

Under the terms of the Lease-Purchase Agreement, all tolls collected on the System are deposited into the System General Revenue Fund. Such toll revenues are then applied by CFX in accordance with the terms of the Master Bond Resolution and the application thereof constitutes the payment of all rental and purchase price payments due from the Department under the Lease-Purchase Agreement. See "SUMMARY OF CERTAIN TERMS AND PROVISIONS OF THE BOND RESOLUTION - Flow of Funds" for a description of the application of toll revenues under the Master Bond Resolution. At the end of the lease term as described below, CFX shall retain title and absolute ownership to the System. See "DESCRIPTION OF THE SYSTEM - Capital Improvement Program" herein.

Under the terms of the Lease-Purchase Agreement, the Department is obligated to operate or cause to be operated the System property in a sound and economic manner and to maintain, preserve and keep the System in good repair, working order and condition and, from time to time, to make all necessary and proper repairs, replacements and renewals so that at all times the operation of the System may be advantageously conducted. The Lease-Purchase Agreement permits the Department, with the approval of CFX, to reassign to CFX its duties and responsibilities, other than its payment obligations, regarding the System. In 1993, CFX assumed responsibility for the maintenance of the System. On January 20, 1995, the Department and CFX entered into that certain FDOT/OCX Interagency Agreement Reassignment of Operations (as amended, the "Interagency Agreement"), pursuant to which the Department reassigned to CFX the duty and responsibility for operating the System, other than the Department's payment obligations under the Lease-Purchase Agreement.

While CFX currently has responsibility for operating and maintaining the System, under the Lease-Purchase Agreement responsibility for paying the costs of operating and maintaining certain portions of the System is divided between CFX and the Department.

Payment of Cost of Operation and Cost of Maintenance attributable to the Department are made from funds of the Department and not from Gross Revenues, while the Cost of Operation and Cost of Maintenance attributable to CFX are paid by CFX from Gross Revenues. The amount of money that the Department contributes for maintenance of those portions of the System for which it is obligated to pay the cost of maintenance is determined by a formula tied to the roads' rating under the Department's Maintenance Rating Program. Under the Interagency Agreement, the Department pays such obligation in a lump sum amount to CFX annually. In order to achieve a higher maintenance standard, CFX uses Gross Revenues to pay for maintenance at levels above that which the Department will fund. See "MAINTENANCE OF SYSTEM" herein.

On May 26, 2011, Governor Scott exercised his line item veto authority to remove from the State's fiscal year 2011-12 budget approved by the Florida Legislature \$11,152,281 from the State's Transportation Trust Fund which was intended to fund the Department's payment obligations to local transportation authorities pursuant to agreements such as the Lease-Purchase Agreement; \$5,569,167 of this amount is estimated to have been allocated towards the advances to CFX. On April 17, 2012, Governor Scott once again exercised his line item veto authority to remove from the State's fiscal year 2012-13 budget approved by the Florida Legislature \$12,322,862 from the State's Transportation Trust Fund intended to, among other things, fund the Department's payment obligations under the Lease-Purchase Agreement; \$5,482,652 of this amount is estimated to have been allocated towards the advances to CFX.

Neither the express language of the Lease-Purchase Agreement nor CFX's enabling act indicates that the Department's payment obligations are subject to appropriation or to the best efforts of the Department in obtaining an appropriation. Accordingly, notwithstanding the Department's position, CFX maintains that the Department's obligation under the Lease-Purchase Agreement to pay for the costs of operations on certain segments of the System is an absolute, irrevocable contractual obligation and is not subject to appropriation. The prior failure of the Department to make its payment obligations under the Lease-Purchase Agreement did not have a material adverse impact on CFX's financial position. The Bondholders have the right to enforce all provisions of the Lease-Purchase Agreement against the Department and CFX in a court proceeding.

In order to resolve the issues associated with the Department's payment obligations under the Lease-Purchase Agreement, on February 14, 2013, CFX and the Department entered into a Memorandum of Agreement dated February 14, 2013, (the "LPA MOA") with respect to the payment by the Department of future operations and maintenance payments to CFX as provided in the Lease-Purchase Agreement. Pursuant to the LPA MOA, beginning with the final approval of the Department's 2014 fiscal year budget and continuing for each successive fiscal year thereafter until the Department's obligations under the Lease-Purchase Agreement are terminated, the Department will

make all operations and maintenance payments to CFX as provided in the Lease-Purchase Agreement. CFX will then exercise its right under the Bond Resolution to fully reimburse the Department for the costs of operations and maintenance on certain portions of the System that are paid by the Department to CFX under the Lease-Purchase Agreement, within 60 days of receipt by CFX of a payment from the Department for such costs, from surplus revenues available for such purpose and remaining on deposit in the General Reserve Fund after CFX has met its financial obligations (the "Reimbursement Obligation"). If CFX fails to meet this Reimbursement Obligation at any time, the amount not reimbursed by CFX will be added to the Department Contractual Obligations due and owing under the Lease-Purchase Agreement. In addition, in the event CFX fails to reimburse the Department as provided in the LPA MOA, CFX will be obligated to raise tolls, defer projects, or reduce its administrative and other expenses until CFX is able to fully reimburse the Department for such costs that are paid by the Department under the Lease-Purchase Agreement. The LPA MOA is legally sufficient to bind the parties without further interlocal agreements.

On October 12, 2016, CFX exercised its discretionary authority to make a prepayment in satisfaction of all accumulated and future LPA Repayments due under the Lease-Purchase Agreement from moneys on deposit and legally available for such purpose in the System General Reserve Fund. The prepayment of the LPA Repayments did not have a material adverse effect on CFX's finances or its ability to undertake and fund the Five-Year Work Plan. CFX is working with the Department and the Florida Division of Financial Services to establish a defeasance escrow for the purpose of depositing from generally available funds on deposit in CFX's General Reserve Fund into escrow in an amount equal to the Reimbursement Obligation. The Lease Purchase Agreement and the respective future obligations of CFX and the Department thereunder shall remain in effect through July 1, 2028.

The estimated Net Revenues available for debt service included in this Official Statement assume advances from the Department for operations and maintenance will continue to be made annually pursuant to the Lease-Purchase Agreement, the Interagency Agreement and the LPA MOA. See "HISTORICAL AND PROJECTED OPERATING RESULTS OF THE SYSTEM" and "MANAGEMENT'S DISCUSSION AND ANALYSIS OF RESULTS OF OPERATIONS" herein.

Other obligations of the Department under the Lease-Purchase Agreement include inspection of the System on an annual basis, and preparation of a corresponding report regarding conditions of the System.

On June 11, 2014, the Department and CFX entered into an Interlocal Agreement which contains an agreement by the Department and CFX to amend the Lease-Purchase Agreement to: (i) discontinue the obligations of the Department under the Lease-Purchase Agreement after July 1, 2028, (ii) terminate the Lease-Purchase Agreement upon the earlier defeasance, redemption or payment in full of Bonds issued and

Outstanding as of the effective date of the Interlocal Agreement or the receipt of sufficient bondholder consents to such termination, and (iii) eliminate the provision in the Lease-Purchase Agreement by which title to the System is transferred to the Department so that CFX will retain title.

In accordance with Section 348.757(9), Florida Statutes and the Wekiva Interlocal Agreement, the Lease-Purchase Agreement will stay in effect until the earlier of (i) such time as all Bonds issued under the Master Bond Resolution (and any Bonds refunding the same) have been fully paid, redeemed or defeased; or (ii) the receipt of sufficient CFX Bondholder consent to termination of the Lease-Purchase Agreement. See "DESCRIPTION OF THE SYSTEM - Capital Improvement Program" herein.

Additionally, and pursuant to the CFX Bill, the Department shall also include elements of the OCX Master Plan and an additional extension of the Osceola Parkway Extension, in its work program as tolled facilities. The Department shall cooperate with the OCX, CFX, and Osceola County in working to identify solutions to potential barriers to implementation of the projects included in the OCX Master Plan, and an additional extension of the Osceola Parkway Extension, including funding sources and revenues that may be available for implementation of those improvements. See "CFX - Osceola County Expressway System Transfer" herein for a discussion of CFX's obligations with respect to the OCX System under the CFX Bill.

#### CONSENT TO FUTURE AMENDMENT TO LEASE-PURCHASE AGREEMENT

CFX has entered into the Wekiva Interlocal Agreement with the Department effective June 11, 2014, in which the parties have agreed to discontinue the obligations of the Department under the existing Lease-Purchase Agreement after July 1, 2028. The parties have also agreed to terminate the Lease-Purchase Agreement upon the earlier of the defeasance, redemption or payment in full of CFX's bonds issued and outstanding as of the effective date of the Wekiva Interlocal Agreement or the receipt of sufficient bondholder consents to such termination. Upon the termination of the Lease-Purchase Agreement, title to CFX System shall remain vested in CFX.

Purchasers of the Series 2019 Bonds, by their purchase and acceptance thereof, are deemed to have expressly and irrevocably consented, in writing, to amend the terms and provisions of the Lease-Purchase Agreement to discontinue the Department's payment obligations for operation and/or maintenance of certain portions of the System effective July 1, 2028. CFX will comply with the terms of the Lease-Purchase Agreement in connection with any additional modifications, amendments or supplements to the Lease-Purchase Agreement.

#### SYSTEM REVENUES

#### General

The following is a summary of certain information contained in the System Traffic and Earnings Report prepared by the Traffic and Earning's Consultant which was commissioned by CFX to study the historical and projected traffic and revenues of the System, including the impact of the latest available data on economic conditions, fuel cost trends, land use assumptions in Central Florida, and actual System traffic trends. The System Traffic and Earnings Report attached hereto as APPENDIX D speaks as of its date and should be read in its entirety to obtain information essential to understanding the projections and assumptions therein. The System Traffic and Earnings Report has not been updated since May 2019 and the financial and operating data of the System presented therein does not include the Poinciana Parkway.

Certain data regarding area growth and recent economic activity are included in the System Traffic and Earnings Report, attached hereto as APPENDIX D and will not be updated in connection with the issuance of the Series 2019 Bonds. As discussed in the System Traffic and Earnings Report, there is always some uncertainty inherent in future traffic and revenue forecasts for any toll facility, and differences between forecasted and actual results (which may be material) may occur due to events and circumstances beyond the control of the forecasters and CFX, including without limitation, economic conditions, fuel costs, destruction or temporary closure due to acts of nature, increased and/or unanticipated costs of operation and maintenance and other factors. Additionally, management of CFX provides monthly unaudited statistical reports to the public which include toll data presented on a monthly basis. Such reports may be accessed through CFX's website at the following address: <a href="https://www.cfxway.com/agency-information/investor-relations/reports-policies/statistical-reports/">https://www.cfxway.com/agency-information/investor-relations/reports-policies/statistical-reports/</a>.

#### System Toll Structure

In 2009, CFX adopted and implemented a toll policy which instituted higher tolls at most tolling points, CFX's first since 1990. In addition, the policy provided for additional indexed increases to be implemented every five years, the first of which was implemented on July 1, 2012. The July 1, 2012 increase also marked the first implementation of differential toll rates, by which cash customers pay a higher rate than customers paying with transponders.

On February 9, 2017, CFX adopted a new toll policy which eliminated the 15% planned toll adjustment scheduled for July 1, 2017. Under the new policy, beginning on July 1, 2018 and every year thereafter, all then current tolls shall be automatically adjusted to an amount higher of either the annual increase to the Consumer Price Index for All Urban Consumers (CPI-U) in the South or 1.5% per annum. The rate for cash collections shall be increased upward to the next quarter when the electronic rate reaches

to within 10% of the cash rate at each individual plaza. The rate for electronic collection shall be based upon the actual calculated percentage rounded to the nearest cent. The rate for Pay-By-Plate collection will be set by CFX based on actual costs. Pursuant to the new toll policy, toll rates were increased by 2.05% in Fiscal Year 2019 (July 1, 2018) and by 2.22% in Fiscal Year 2020 (July 1, 2019).

On October 10, 2019, CFX adopted a System-wide Pay-By-Plate toll rate which will take effect on July 1, 2020 (Fiscal Year 2021). At such time, toll rates charged for Pay-By-Plate collection at any tolling point will equal double the corresponding ETC toll rates charged at such tolling point, which rates at substantially all tolling points will be greater than the rates currently charged. Currently, Pay-By-Plate customers pay the cash toll rate plus \$0.20. The traffic and revenue forecasts contained in this Official Statement and in the System Traffic and Earnings Report attached hereto as APPENDIX D do not include the impacts of the new Pay-By-Plate toll rates, which are expected to be revenue positive.

The following table presents System toll rates by tolling point as of July 1, 2019.

# CFX System Toll Rates as of July 1, 2019(1)

	Motorcy	cle & 2 Axles	3	Axles	4	Axles	5 or M	ore Axles
	E-PASS	Cash <sup>(3)</sup>						
SR 408 (East West Expressway)	The second	1.01.	1000		17.000	7091		
Hiawassee Main Plaza	\$0.86	\$1.00	\$1.71	\$2.00	\$1.99	\$2.25	\$2.57	\$3.00
Good Homes Road	0.28	0.50	0.28	0.50	0.28	0.50	0.28	0.50
Hiawassee Road	0.57	0.75	0.57	0.75	0.57	0.75	0.57	0.75
Pine Hills Main Plaza	1.13	1.25	1.71	2.00	1.99	2.25	2.57	3.00
Old Winter Garden Road/Ortman Dr.	0.86	1.00	0.86	1.00	0.86	1.00	0.86	1.00
John Young Parkway (SR 423)	0.86	1.00	0.86	1.00	0.86	1.00	0.86	1.00
Orange Blossom Trail	0.57	0.75	0.57	0.75	0.57	0.75	0.57	0.75
Mills Avenue	0.57	0.75 1.25	0.57	0.75 2.00	0.57 1.99	0.75 2.25	0.57 2.57	0.75 3.00
Conway Main Plaza	1.13 0.57	0.75	1.71 0.57	0.75	0.57	0.75	0.57	0.75
Bumby Avenue Conway Road	0.86	1.00	0.86	1.00	0.86	1.00	0.86	1.00
Andes/SR 436 (Semoran Blvd)	1.13	1,25	1.13	1.25	1.13	1.25	1.13	1.25
SR 436 (Semoran Blvd)/Yucatan Dr	0.86	1.00	0.86	1.00	0.86	1.00	0.86	1.00
Dean Main Plaza	0.86	1.00	1.71	2.00	1.99	2.25	2.57	3.00
Dean Road	0.57	0.75	0.57	0.75	0.57	0.75	0.57	0.75
Rouse Road	0.57	0.75	0.57	0.75	0.57	0.75	0.57	0.75
SR 414 (Apopka Expressway)	4,,	4,12	0.57	40.10	0.07	40.00	0.57	0.75
Coral Hills Main Plaza	1.13	1.25	1.71	2.00	2.27	2.50	2.85	3,25
Keene Road	0.57	0.75	0.57	0.75	0.57	0.75	0.57	0.75
Hiawassee Road	0.30	0.50	0.30	0.50	0.30	0.50	0.30	0.50
SR 417 (Central Florida GreeneWay)	446	2.00	7155	7,77	2.00	3375	4.5.0	0.50
John Young Main Plaza	1.43	1.75	1.99	2.25	2.57	3.00	3.13	3.50
John Young Parkway (SR 423)	0.86	1.00	0.86	1.00	0.86	1.00	0.86	1.00
Orange Blossom Trail	0.57	0.75	0.57	0.75	0.57	0.75	0.57	0.75
Landstar Boulevard	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50
Boggy Creek Main Plaza	1.43	1.75	1.99	2.25	2.57	3.00	3.13	3.50
South Access Rd/Int'l Airport	1.13	1.25	1.13	1.25	1.13	1.25	1.13	1.25
Boggy Creek Road	1.13	1.25	1.13	1.25	1.13	1.25	1.13	1.25
Lake Nona Boulevard	0.86	1.00	0.86	1.00	0.86	1.00	0.86	1.00
Narcoossee Road	0.86	1.00	0.86	1.00	0.86	1.00	0.86	1.00
Moss Park Road	0.57	0.75	0.57	0.75	0.57	0.75	0.57	0.75
Innovation Way	0.57	0.75	0.57	0.75	0.57	0.75	0.57	0.75
Curry Ford Main Plaza	0.86	1.00	1.71	2.00	1.99	2.25	2.57	3.00
Lee Vista Boulevard	0.57	0.75	0.57	0.75	0.57	0.75	0.57	0.75
Curry Ford Road (SR 552)	0.57	0.75	0.57	0.75	0.57	0.75	0,57	0.75
University Main Plaza	0.86	1.00	1.71	2.00	1.99	2.25	2.57	3.00
Colonial Drive (SR 50)	0.57	0.75	0.57	0.75	0.57	0.75	0.57	0.75
University Boulevard	0.57	0.75	0.57	0.75	0.57	0.75	0.57	0.75
SR 528 (Beachline Expressway)								
Boggy Creek Road/McCoy Road	1.13	1.25	1.13	1.25	1.13	1.25	1.13	1.25
Conway Road/Tradeport Drive	1.13	1.25	1.13	1.25	1.13	1.25	1,13	1.25
Beachline Main Plaza	0.91	1.25	1.79	2.00	2.09	2.50	2.66	3.00
Innovation Way	0.61	0.75	0.61	0.75	0.61	0.75	0.61	0.75
Dallas Main Plaza <sup>(2)</sup>	0.78	1.50	1.05	1.75	1.30	2,00	1.30	2.00
Dallas Boulevard	0.52	0.75	0.52	0.75	0.52	0.75	0.52	0.75
SR 429 (Western Beltway)			3.521		TJ 61	323	15%	12.0
Forest Lake Main Plaza	1.43	1.75	1.99	2.25	2.57	3.00	3.13	3.50
CR 437A (Ocoee-Apopka Road)	0.57	0.75	0.57	0.75	0.57	0.75	0.57	0.75
West Road	0.86	1.00	0.86	1.00	0.86	1.00	0.86	1.00
Plant Street/Franklin Street/SR 438	0.30	0.50	0.30	0.50	0.30	0.50	0.30	0.50
Independence Mainline Plaza	1.43	1.75	1.99	2.25	2.57	3.00	3,13	3,50
CR 535	0.57	0.75	0.57	0.75	0.57	0.75	0.57	0.75
New Independence Parkway	0.86	1.00	0.86	1.00	0.86	1.00	0.86	1.00
Schofield Road	0.57	0.75	0.57	0.75	0.57	0.75	0.57	0.75
	Motorcy	cle & 2 Axles	3	Axles	- 4	Axles	5 or M	ore Axles Pay by
re stands force and a	E-PASS	Pay by Plate	E-PASS	Pay by Plate	E-PASS	Pay by Plate	E-PASS	Plate
SR 429 (Wekiva Parkway)	4000	100	10.00	na turbri h		A STAN	1111	200
Ponkan Gantry	0.82	1.41	1.23	1.82	1.64	2,23	2.04	2.63
Mount Plymouth Gantry	0.77	1.36	1.16	1.75	1.53	2.12	1.92	2,51
SR 453 Coronado Gantry	0.66	1.25	1.00	1.59	1.33	1.92	1.67	2.26
SR 538 (Poinciana Parkway) <sup>(4)</sup>	12/401	200	Alda	Just	g. as w.	3 25 to		an have a
Koa Toll Gantry	0.50	0.70	0.75	0.95	1.00	1.20	See Note (5)	See Note (5
Marigold Toll Gantry	2.05	2.25	3.10	3.30	4.10	4.30	See Note (6)	See Note 16

<sup>(</sup>D)Toll Rate increase effective July 1, 2019 (No rate change at Good Homes Road and Landstar Boulevard).

(D)Toll rates shown for the Dallas Mainline Toll Plaza include a \$0,26 E-PASS and \$0.75 Cash toll charge regardless of the number of axles that is allocated to the FDOT.

(D)Cash or Pay by Plate: Pay by Plate invoices include the Cash rate plus a \$0,20 fee,

(D)Poinciana Parkway is currently operated by CFX as a Non-System Project. See "PLAN OF FINANCE - Poinciana Parkway Acquisition" herein.

(D)SR 538 rates for "5 or more Axles" are based on the actual number of axles, not a flat rate. Kon Toll Gantry E-Pass rate equals \$0.25 per axle. The Pay By Plate rate equals the E-Pass rate plus a \$0.20

fee. 68 fee. 68 fee. 69 fee. 6 equals the E-Pass rate plus a \$0.20 fee. Source: CFX.

## **Discount Programs**

<u>General</u>. The Bond Resolution provides that CFX may establish preferential toll rates based upon frequency, volume, time of day, distance traveled or method of payment, and that CFX may make any other adjustment or reclassification of toll rates or establish special toll rates, introductory tolls or temporary tolls, provided such action is recommended by an Independent Consultant and will not cause CFX to fail to comply with the rate covenant in the Bond Resolution.

<u>E-PASS Discount Programs</u>. In 1998, CFX began a program to offer discounts to frequent E-PASS customers of the system (the "Volume Discount Program"). The Volume Discount Program offers a 5% rebate to E-PASS customers with 40 or more transactions per month and a 10% rebate to customers with 80 or more transactions per month. While the E-PASS system is interoperable with SunPass, as well as LeeWay (Lee County), transactions on these systems do not apply towards the Volume Discount Program.

Beginning on May 1, 2016 (Fiscal Year 2016), CFX implemented the E-PASS Customer Loyalty Discount Program (the "Loyalty Discount Program") to replace the previously described Volume Discount Program. The Loyalty Discount Program is a tiered program that provides toll discounts to E-PASS customers based on the number of transactions per transponder each month on the System. There is no enrollment process or monthly fee and all E-PASS customers are automatically eligible to participate in the Loyalty Discount Program. The Loyalty Discount Program offers a 10% rebate to E-PASS customers with 40 or more transactions per month and a 15% rebate to customers with 80 or more transactions per month. Only E-PASS customers are eligible for this discount. In the first Fiscal Year of implementation (1998), the discount totaled approximately \$0.7 million or approximately 0.7% of gross revenues of the System. In Fiscal Year 2018, the discount totaled approximately \$16.3 million or approximately 4.0% of gross revenues of the System.

<u>I-4 Commuter Discount Programs</u>. Beginning in Fiscal Year 2016 (July 2015), CFX implemented the I-4 Ultimate Commuter Discount Program (the "I-4 Commuter Discount Program"), which is being offered for a six-year period to provide relief for, and options to, customers during the planned construction activities on I-4. The I-4 Commuter Discount Program provides an additional 5.0% discount to customers with 20 or more transactions in a month on the CFX "beltway" facilities, which include SR 417, SR 429 and SR 414. The discount will only be offered in months when actual toll revenue exceeds the revenue projections by more than 2.0%. In Fiscal Year 2018, this discount program provide \$5.4 million in rebates to customers.

In Fiscal Year 2019, the Loyalty Discount Program and I-4 Commuter Discount Program accounted for an aggregate discount of \$20.4 million, which equates to approximately 4.2% of the total System revenues.

School Bus Rebate Program. Beginning in February 2016, CFX implemented a regional public school bus rebate program (the "School Bus Rebate Program," and together with the Volume Discount Program, the Loyalty Discount Program and the I-4 Commuter Discount Program, the "Discount Programs"). The School Bus Rebate Program provides a 99% rebate for school buses from Brevard, Lake, Orange, Osceola, Polk, Seminole, and Volusia Counties using the System. Such 99% rebate will only be offered in months when actual toll revenue exceeds current revenue projections by more than 2%. See "FY 2018 GENERAL TRAFFIC AND EARNINGS CONSULTANT'S ANNUAL REPORT DATED MAY 2019 - 1.3.1 Discount Programs" in APPENDIX D hereto. In Fiscal Year 2018, this discount program provided \$0.3 million in rebates to local school districts.

# **Toll Suspension**

<u>General</u>. State law permits the Governor to suspend tolls from time to time in the event of a State emergency. However, as part of its forecasting methodology, the revenue projections conducted by CDM Smith assume that no local, regional or national emergency will arise which will abnormally restrict the use of motor vehicles or substantially alter economic activity or freedom of mobility. See "MANAGEMENT'S DISCUSSION AND ANALYSIS OF RESULTS OF OPERATIONS" herein and "FY 2018 GENERAL TRAFFIC AND EARNINGS CONSULTANT'S ANNUAL REPORT DATED MAY 2019 - 1.6.3 Forecasting Assumptions" in APPENDIX D hereto.

Hurricane Irma. On September 3, 2017 and in response to Hurricane Irma, a major Category 4 storm approaching the State, Governor Rick Scott declared a state of emergency in all of the State's 67 counties. Pursuant to State law, at 5 P.M. on September 5, 2017, Governor Scott directed the Florida Department of Transportation to suspend all tolls across the State, including those tolls charged by CFX for use of the System, for the duration of the storm's impacts. On September 10, 2017, the center of Hurricane Irma made landfall at Cudjoe Key in the lower Florida Keys as a Category 4 storm. The center of Hurricane Irma made a second landfall on mainland Florida as a Category 3 storm, later that day, near Marco Island and moved north up the entirety of the State through September 11, 2017.

The toll suspension order was lifted at 12:01 A.M. on September 21, 2017, which was 16 days after it was effectuated. CFX projects that approximately \$19 million in toll revenue was lost due to the direct suspension of tolls. The System suffered minor physical damage including two depressions on the roadway on SR 429 and some damaged road signs. As of the date hereof, physical repairs to the System have been completed by CFX at a cost of approximately \$1 million.

<u>Hurricane Dorian</u>. On August 28, 2019 and in response to Hurricane Dorian, an eventual Category 5 storm approaching the State at the time, Governor Ron DeSantis declared a state of emergency for those counties in the State in the path of the storm.

Pursuant to State law, on September 1, 2019, Governor DeSantis directed the Florida Department of Transportation to suspend tolls on certain transportation facilities across the State, including those tolls charged for use of SR 408, SR 414, SR 417, SR 429, SR 453, SR 528, SR 538 and SR 551. Hurricane Dorian remained off the eastern coast of the State as it moved northward and did not make landfall in the State. The System suffered no damage as a result of Hurricane Dorian.

The toll suspension order was lifted at 12:01 A.M. on September 6, which was 5 days after it was effectuated. CFX estimates that approximately \$5.9 million in toll revenue was lost due to the direct suspension of tolls.

## Historical and Projected Revenues

The System's toll revenues (less all discount programs and including recaptured Pay By Plate invoices) were \$463.2 million in Fiscal Year 2019 and are projected to increase to \$570.6 million by Fiscal Year 2025 and to \$729.1 million by Fiscal Year 2035. See "HISTORICAL AND PROJECTED OPERATING RESULTS OF THE SYSTEM" herein. For a more complete discussion of the historical and projected revenues and expenses of the System, a detailed description of the forecasting methodology as well as the assumptions upon which the Traffic Engineer has based its revenue projections, see "SYSTEM REVENUES" herein and "FY 2018 GENERAL TRAFFIC AND EARNINGS CONSULTANT'S ANNUAL REPORT DATED MAY 2019 in APPENDIX D hereto.

# HISTORICAL AND PROJECTED OPERATING RESULTS OF THE SYSTEM

The following tables present historical and projected revenues, expenses and debt service coverage of the System. These tables should be reviewed in conjunction with the information contained under the caption "SYSTEM REVENUES" herein and in the FY 2018 General Traffic and Earnings Consultant's Annual Report dated May 2019 attached hereto as APPENDIX D.

# Historical Total System Toll Revenues (Thousands)(1)

Fiscal		System Toll Revenues					Discount	Total System Toll Revenues
Year	SR 408	SR 528	SR 417	SR 429	SR 414(2)	SR 453(3)	Programs(4)	Less Discount Programs
2010(5)(6)	\$108,705	\$46,974	\$ 79,558	\$23,593	\$ 4,225	112	\$ 9,445	\$253,610
2011(6)	110,020	48,824	80,892	24,562	5,180		9,466	260,012
2012(6)	110,209	49,376	81,738	25,154	5,737	9	9,606	262,608
2013(5)(6)	122,806	55,494	92,993	29,830	7,860	- 8	10,819	298,164
2014(6)	129,425	57,480	100,585	34,022	9,343	1.4	11,722	319,133
2015(6)	138,261	61,977	113,411	39,733	10,715	-	13,170	350,927
2016(6)	147,029	69,003	133,718	47,394	12,453	-	18,695	390,902
2017(6)	150,241	75,676	147,095	53,701	13,590		16,555	423,748
2018(6)	148,946	76,118	156,926	61,146	14,613	\$ 341	16,320	441,768
2019(6)(7)	149,845	78,155	165,789	72,463	15,929	1,478	20,421	463,236

<sup>(</sup>i) The "Total System Toll Revenues" figures only include toll revenues and do not include actual receipts from other non-toll revenue sources, interest revenues nor any revenues or costs associated with the Poinciana Parkway or Goldenrod Road Extension.

Numbers may not add due to rounding.

Source: CFX,

<sup>(2)</sup> SR 414 opened in February 2009 to electronic traffic and in May 2009 to cash traffic.

<sup>(3)</sup> SR 453 opened to traffic in March 2018.

<sup>(4)</sup> Prior to May 1, 2016, the Volume Discount Program provided a 5% discount to customers with at least 40 transactions per month and a 10% discount to customers with at least 80 transactions per month. On May 1, 2016, CFX replaced the Volume Discount Program with the Loyalty Discount Program which provides a 10% discount to customers with at least 40 transactions per month and a 15% discount to customers with at least 80 transactions per month. The I-4 Commuter Discount Program, instituted for a six-year period beginning in Fiscal Year 2017, provides an additional 5% discount to customers with 20 or more transactions per month on the CFX "beltway" facilities (SR 417, SR 429 and SR 414). This discount is only offered during months when actual total revenue exceeds the current revenue projections by more than 2.0%. The School Bus Rebate Program, which began on February 1, 2016, provides a 99% discount to school buses in Orange, Brevard, Lake, Osceola, Polk, Seminole and Volusia Counties transporting students on official school business on CFX facilities. This rebate is only offered during months when actual total revenue exceeds the current revenue projections by more than 2.0%. See "SYSTEM REVENUES - Discount Programs" herein.

Under CFX's prior toll policy, the first of the scheduled toll increases took effect in Fiscal Year 2009 and the second on July 1, 2012. On February 9, 2017, CFX adopted a new toll policy which eliminated the 15% planned toll increase scheduled for July 1, 2017 in favor of annual indexed increases beginning July 1, 2018. See "SYSTEM REVENUES - System Toll Structure" herein.

<sup>(6)</sup> Total System Toll Revenues include recaptured unpaid toll notices/Pay By Plate invoices and account adjustments, which adjustments occur throughout the Fiscal Year. The FY 2018 General Traffic and Earnings Consultant's Annual Report dated May 2019 and attached hereto as APPENDIX D only presents these effects on a System-wide basis. Accordingly, the toll revenues presented by facility shown in this table may differ from those shown in such Annual Report.

First annual indexed toll rate increase under new toll policy took place on July 1, 2018. See "SYSTEM REVENUES -System Toll Structure" herein.

# Historical System Operating, Maintenance and Administrative Expenses (Millions)

Fiscal Year	Operating Expenses <sup>(1)</sup>	Plus Maintenance Expenses	Plus Administrative Expenses	Less Department Participation	Total Net Expenses <sup>(2)</sup>
2010	\$34.2	\$13.6	\$5.2	\$8.6	\$44.4
2011	35.6	13.7	5.3	7.4	47.2
2012	35.4	12.4	5.6	2.5	50.9
2013	36.7	13.6	5.5	2.7	53.1
2014	38.3	14.3	5.1	8.5	49.2
2015	40.3	14.4	5.6	8.7	51.6
2016	42.5	13.6	6.4	7.7	54.8
2017 2018	49.5 55.6	15.1 17.6	7.1 7.7	6.7 6.9	65.0 74.0
2019	65.4	17.8	8.4	7.0	84.6

<sup>(1)</sup> Does not include depreciation, preservation or expenses listed as "other."

Total sum of Operating Expenses, Maintenance Expenses and Administrative Expenses, less Department participation.

Numbers may not add due to rounding. Does not include amounts attributable to Poinciana Parkway.

Source: CFX.

Historical Debt Service Ratio (Thousands)

Debt Service

Ratio of Net Revenues and Supplemental Payments to Debt Service <sup>(3)</sup>	1.87	1.73	1.57	1.98	2.05	2.27	2.49	2.26	2.32	2.33
Debt Service Ratio of Net Revenues to Debt Service	1.80	1.66	1.51	1.91	1.99	2.20	2.42	2.26	2.32	2.33
Total Debt Service	\$119,935	132,998	145,679	131,957	139,498	140,047	143,882	165,163	164,563	170,170
Net Revenues Available for Debt Service Including Supplemental Payments <sup>(3)</sup>	\$224,051	229,710	228,179	260,708	286,325	317,319	358,108	372,830	381,302	396,970
Net Revenues Available for Debt Service	\$215,776	221,436	219,956	252,374	277,760	308,231	348,711	372,830	381,302	396,970
Less Deposits into Operations, Maintenance & Administration Reserve	1,	69 S	118	367	303	1,295	972	1,073	735	1,086
Plus Advances from Department for Operations and Maintenance <sup>(2)</sup>	\$8,616	7,372	2,494	2,771	8,507	8,663	7,699	6,694	6,930	7,041
Less Operations, Maintenance & Administration Expense	\$52.988	54,565	53,373	55,839	57,642	60.292	62 553	71,687	80.970	91,640
Plus Interest Revenues	\$ 4.101	5.259	4.311	2,162	1 594	1 970	3 677	4 954	3,642	6,458
Operating Revenues <sup>(1)</sup>	\$256.047	263,439	266 642	303 647	325,604	359 185	400 860	433 942	452 435	476,197
Fiscal Vear	2010	2011	2012	2013	2012	2015	2016	2010	2018	2019

The "Operating Revenues" figures reflect toll revenues plus actual receipts from other non-toll revenue sources, less the Discount Programs; however, these figures do not include interest revenues or any revenues or costs associated with the Goldenrod Road Extension. 3

Commencing in Fiscal Year 2014, such advances are returned to the Department within 60 days of receipt.

Supplemental Payments were pledged only to the Series 1990 Bonds and were available to pay debt service only on such Series of Bonds. These calculations only applied to such Series 1990 Bonds which are no longer outstanding as of the date hereof. 8 8

Does not include amounts attributable to Poinciana Parkway.

## Historical Operating Results of Poinciana Parkway

The following table presents historical revenues and expenses of Poinciana Parkway for Fiscal Years 2015 through 2018. As previously described herein, the Poinciana Parkway is currently operated as a Non-System Project pursuant to the Poinciana LPA. Upon the acquisition of the Poinciana Parkway by CFX from Osceola County, it will be reclassified as a System Project and the revenues attributable thereto shall be included as part of System Pledged Revenues. See "PLAN OF FINANCE - Poinciana Parkway Acquisition" herein.

#### Historical Revenues and Expenses (Thousands)

	Fotal Net evenues <sup>(1)</sup>
\$ 132.6	\$(132.6)
3 770.4	(610.6)
2,067.1	1,579.5
3 2,996.3	2,863.0
2	*** Expenses R **** \$ 132.6 \$ \$ 770.4 \$ 6 \$ 2,067.1

<sup>(</sup>i) Amounts are not considered System Pledged Revenues. See "PLAN OF FINANCE - Poinciana Parkway Acquisition" herein.

<sup>(2)</sup> The Poinciana Parkway initially opened to traffic on April 30, 2016 and become fully operational on November 16, 2016. Source: CFX.

### Projected Total System Toll Revenues (Millions)

Fiscal Year <sup>()</sup>		Pay By Plate Revenues <sup>(3)</sup>	Total System Toll Revenues	Discount Programs <sup>(4)</sup>	System Toll Revenues Available	Percent Annual Change
2020	\$462.6	\$38.0	\$500.6	\$21.2	\$479.4	2.4%
2021	480.0	39.3	519.3	22.5	496.8	3.6
2022	497.5	41.1	538.6	23.8	514.8	3.6
2023	513.4	42.4	555.8	17.6	538.2	4.5
2024	529.5	43.8	573.3	18.4	554.9	3.1
2025	544.8	45.0	589.8	19.2	570.6	2.8
2026	559.9	46.5	606.4	20.0	586.4	2.8
2027	575.1	47.8	622.9	20.8	602.1	2.7
2028	590.6	49.3	639.9	21.7	618.2	2.7
2029	605.8	50.7	656.5	22.5	634.0	2.5
2030	620.7	52.7	673.4	23.4	650.0	2.5
2031	636.2	53.9	690.1	24.3	665.8	2.4
2032	651.4	55.1	706.5	25.2	681.3	2.3
2033	666.8	57.0	723.8	26.2	697.6	2.4
2034	682.1	58.2	740.3	27.1	713.2	2.2
2035	697.2	59.9	757.1	28.0	729.1	2.2
2036	712.7	61.2	773.9	29.0	744.9	2.2
2037	728.6	63.1	791.7	30.0	761.7	2.3
2038	743.8	64.2	808.0	31.0	777.0	2.0
2039	759.7	66.1	825.8	32.1	793.7	2.1
2040	775.8	67.4	843.2	33.1	810.1	2.1
2041	791.7	69.0	860.7	34.2	826.5	2.0
2042	807.9	71.0	878.9	35.3	843.6	2.1
2043	823.9	73.1	897.0	36.4	860.6	2.0
2044	840.3	74.3	914.6	37.6	877.0	1.9
2045	856.4	76.1	932.5	38.7	893.8	1.9
2046	873.0	77.5	950.5	39.9	910.6	1.9
2047	889.3	79.4	968.7	40.7	928.0	1.9
2048	905.7	81.6	987.3	41.9	945.4	1.9

<sup>(</sup>I) System-wide toll rate increase. "Customer First" toll policy adopted by CFX Board on February 9, 2017. First toll rate adjustment under new policy took place on July 1, 2018. See "SYSTEM REVENUES - System Toll Structure" herein.

Does not include amounts attributable to Poinciana Parkway.

Source: FY 2018 General Traffic and Earnings Consultant's Annual Report dated May 2019, attached hereto as APPENDIX D.

Paid In-Lane Revenues provided and audited by CFX. Includes the sum of revenue collected from ETC and cash collection. System Paid In-Lane Revenues may not equal the sum of Paid In-Lane Revenue by plaza group shown in the System Traffic and Earnings Report due to rounding and end-of year adjustments. The adjustments occur periodically throughout the Fiscal Year and are not tied to the collected revenue of any particular plaza group.

<sup>(3)</sup> Pay By Plate revenues involves identifying the customer license plate and mailing an invoice to their home. This revenue is not collected in the toll lanes. There has been a dramatic increase in the proportion of revenue collected through Pay By Plate. These long-term forecasts maintain Pay By Plate revenues are just under 9% of the Paid In-Lane Revenue.

The Loyalty Discount Program provides a 10% discount to customers with at least 40 transactions per month and a 15% discount to customers with at least 80 transactions per month. The I-4 Commuter Discount Program, instituted for a six-year period beginning in Fiscal Year 2017, provides an additional 5% discount to customers with 20 or more transactions per month on the CFX "beltway" facilities (SR 417, SR 429 and SR 414). This discount is only offered during months when actual total revenue exceeds the current revenue projections by more than 2.0%. The School Bus Rebate Program, which began on February 1, 2016, provides a 99% discount to school buses in Orange, Brevard, Lake, Osceola, Polk, Seminole and Volusia Counties transporting students on official school business on CFX facilities. This rebate is only offered during months when actual total revenue exceeds the current revenue projections by more than 2.0%. See "SYSTEM REVENUES - Discount Programs" herein.

### Estimated Net Revenues Available for Debt Service (Millions)

	Fiscal Year	Projected Total System Toll Revenues Less Discount Programs <sup>(1)</sup>	Plus Interest Income and Other System Revenues	Less Operations, Maintenance & Administration Expense Less Advances from Department for Operations and Maintenance <sup>(2)</sup>	Less Deposits into Operations, Maintenance & Administration Reserve	Estimated Net Revenues Available for Debt Service
14	2020	\$479.4	\$19.2	\$ 92.9	\$0.8	\$405.0
	2021	496.8	28.0	96.6	0.5	427.7
	2022	514.8	23.6	100.5	0.5	437.4
	2023	538.2	16.0	104.5	0.5	449.2
	2024	554.9	16.3	108.7	0.6	462.0
	2025	570.6	16.7	113.0	0.6	473.7
	2026	586.4	17.0	117.5	0.6	485.2
	2027	602.1	17.3	122.2	0.6	496.6
	2028	618.2	17.7	127.1	0.7	508.1
	2029	633.9	18.1	142.9	0.7	508.3

The "Projected Total System Toll Revenues Less Discount Programs" numbers were obtained from the FY 2018 General Traffic and Earnings Consultant's Annual Report dated May 2019 and attached hereto as APPENDIX D.

Numbers may not add due to rounding. Does not include amounts attributable to Poinciana Parkway.

Source: CFX, PFM Financial Advisors LLC, except for "Projected Total System Toll Revenues Less Discount Programs" figures which are obtained from the FY 2018 General Traffic and Earnings Consultant's Annual Report dated May 2019 attached hereto as APPENDIX D.

<sup>(2)</sup> Assumes advances from the Department for Operations and Maintenance will continue to be made annually pursuant to the Lease-Purchase Agreement and the Interagency Agreement. See "DESCRIPTION OF THE DEPARTMENT OF TRANSPORTATION AND ITS RELATIONSHIP TO THE EXPRESSWAY SYSTEM" herein.

#### Estimated Debt Service Coverage Ratio (Millions)

Year Ending June 30	Estimated Net Revenues Available for Debt Service	Total Aggregate Debt Service <sup>(1)</sup>	Less Debt Service Reserve and Sinking Fund Interest Earnings	Net Aggregate Debt Service <sup>(2)</sup>	Debt Service Ratio of Net Revenues Available for Debt Service to Net Aggregate Debt Service <sup>(3)</sup>
2020	\$405.0	\$199.0	\$3.8	\$195.3	2.07x
2021	427.7	215.2	3.9	211.3	2.02
2022	437.4	216.5	3.9	212.5	2.06
2023	449.2	242.1	4.3	237.8	1.89
2024	462.0	256.6	5.0	251.6	1.84
2025	473.7	269.9	5.4	264.5	1.79
2026	485.2	280.3	5.5	274.9	1.77
2027	496.6	280.2	5,5	274.8	1.81
2028	508.1	280.5	5.5	275.1	1.85
2029	508.3	276.7	5.4	271.3	1.87

Estimated debt service on the Series 2019 Bonds and Outstanding Parity Bonds, including the Series 2008B Bonds, which is net of ongoing expenses such as Bond Credit Facility fees, letter of credit fees, and remarketing fees, where applicable, as the same are not included as part of debt service under the Bond Resolution. Debt service on the Series 2008B Bonds is calculated based upon the fixed rate provided in the Interest Rate Swap Agreements relating to each such Series of Bonds plus any applicable spreads for sub-series currently in a direct purchase mode for the duration of the current facility. Following the expiration of the current direct purchase modes, debt service is calculated assuming 1.00% of credit facility fees. Assumes approximately \$813 million of additional Parity Bonds are issued over the next five years. The future issuances are based on completion of all projects commenced in CFX's currently approved Five-Year Work Plan. CFX updates the Five-Year Work Plan annually and will plan according to the 1.60x coverage planning target per the Debt Policy. See "MANAGEMENT'S DISCUSSION AND ANALYSIS OF RESULTS OF OPERATIONS - Capital Planning Methodology" herein. See "MANAGEMENT'S DISCUSSION AND ANALYSIS OF RESULTS OF OPERATIONS - Capital Planning Methodology" herein.

(2) Net Aggregate Debt Service is computed by subtracting the Debt Service Reserve and Sinking Fund Interest Earnings from the Total Aggregate Debt Service.

(3) Debt Service Ratio is computed by dividing the Net Aggregate Debt Service into the Estimated Net Revenues Available for Debt Service.

Numbers may not add due to rounding. Does not include amounts attributable to Poinciana Parkway.

Source: CFX, except for "Debt Service Ratio of Net Revenues Available for Debt Service to Net Aggregate Debt Service" and 
"Debt Service Ratio of Net Revenues Available for Debt Service plus Supplemental Payments to Debt Service" figures 
which were prepared by PFM Financial Advisors LLC and approved by CFX.

# MANAGEMENT'S DISCUSSION AND ANALYSIS OF RESULTS OF OPERATIONS

For an overview and analysis of the financial activities of CFX for the Fiscal Years 2019 and 2018, see "Management's Discussion and Analysis" in the "AUDITED FINANCIAL STATEMENTS OF CFX FOR THE FISCAL YEAR ENDED JUNE 30, 2019 AND JUNE 30, 2018" attached hereto as APPENDIX G.

<u>Liquidity Position</u>. As of September 30, 2019, CFX had \$157,722,821 in unrestricted funds, \$960,232 in restricted funds and \$198,877,668 in reserves, excluding CFX's debt service reserve funds but including the internal discretionary reserve. As of the date of this Official Statement, CFX has allocated \$160 million to such internal discretionary reserve. See "VARIABLE RATE EXPOSURE AND INTEREST RATE EXCHANGE AGREEMENTS - Termination Risk" herein.

<u>Budget</u>. As of September 30, 2019, CFX's year to date revenue was approximately \$124.7 million which is 0.7% above projections. For the same time, period Operations, Maintenance and Administration Expenses were approximately \$14.6 million, which is 8.6% below budget.

#### LITIGATION

There is not now any litigation pending or, to the knowledge of CFX, threatened, which if successful would affect the validity of the Series 2019 Bonds or the proceedings and authority under which they are to be issued. In addition to the actions described below, CFX, from time to time, engages in routine litigation the outcome of which is not expected to have any material adverse effect on the issuance and delivery of the Series 2019 Bonds or the financial condition of CFX.

#### **Eminent Domain**

CFX has acquired property for the Wekiva Parkway (SR 429) through voluntary acquisitions and involuntary acquisitions, which require the filing of a petition in eminent domain, the deposit of a good faith estimate of value, and the determination of full compensation, including compensation for the property taken, attorney's fees, expert fees, costs, and relocation expenses. Several eminent domain cases have outstanding post-judgment issues that have not yet been finally resolved. CFX does not believe that payment of compensation for the aforementioned post-judgment issues will materially adversely affect its financial position.

#### **Class Actions**

<u>Tropical Trailer</u>. On January 5, 2015, Tropical Trailer Leasing LLC, a management company, and eight of its affiliates, who own and lease fleets of chassis and semitrailers, all of whom are based in Miami-Dade County, Florida, filed an amended

class action complaint against CFX and the Executive Director in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida, arising from tolls charged to the owners of trailers or semitrailers that are towed by third party drivers, who use CFX toll roads without paying the required tolls. The class action complaint seeks injunctive relief, declaratory relief and damages under several theories, including injunctive and declaratory relief under common law, damages under Article I, § 18 of the Florida Constitution, and relief under the federal civil rights statute codified in 42 USC § 1983. For declaratory and injunctive relief, Plaintiffs request that CFX should be enjoined from issuing citations or notices of toll violation to Plaintiffs or other class members and that the court should declare that the Plaintiffs should not be charged with the payment of tolls or registration holds when the Plaintiffs' trailers are towed by third parties.

On September 17, 2015, and again on November 30, 2015, the trial court dismissed with prejudice the Section 1983 claims, but denied the motion to dismiss as to the remaining claims. Plaintiffs appealed the dismissal of the Section 1983 claims, but then dismissed this appeal, which was accepted by the appellate court on June 8, 2016.

By Order dated February 2, 2016, the trial court granted Plaintiffs' motion for class certification and certified the lawsuit as a class action, but narrowed the class to "all owners of a trailer or semitrailer or chassis who within the four years preceding the filing of this lawsuit were charged a highway toll by CFX . . . because the driver or owner of the differently owned motorized vehicle towing the trailer or semitrailer or chassis failed to immediately pay the applicable toll." Both CFX and the Plaintiffs appealed the order certifying the class. The appellate court affirmed the trial court's decision certifying the narrowed class and remanded the case back to the trial court to resolve the remaining counts for injunctive relief, declaratory relief, and damages under Article I, § 18 of the Florida Constitution.

On September 24, 2018 the trial court granted CFX's motion for summary judgment. On February 4, 2019, CFX filed an amended motion for summary judgment as to all remaining counts. The trial court granted CFX's amended motion for summary judgment and entered a Final Judgment in favor of CFX on or about June 27, 2019. Plaintiffs did not appeal. As the prevailing party, CFX filed a motion to tax costs.

#### LIMITATION AND ENFORCEABILITY OF REMEDIES

The remedies available to owners of the Series 2019 Bonds upon an Event of Default under the Bond Resolution are limited to the institution of an action for specific performance in a writ of mandamus or other suit, action or proceeding compelling and requiring CFX and its officers to observe and perform any covenant, condition or obligation prescribed in the Bond Resolution, including the fixing, charging and collecting of rates, fees or other charges for the services and facilities of the System. The remedies provided with respect to the Series 2019 Bonds under the Bond Resolution are

in many respects dependent upon statutory, regulatory provisions (including the federal bankruptcy code) and judicial decisions which are often subject to discretion and delay and therefor may not be readily available or may be limited. The various legal opinions delivered or to be delivered concurrently with the delivery of the Series 2019 Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally. See "APPENDIX A - AMENDED AND RESTATED MASTER BOND RESOLUTION" attached hereto.

# DISCLOSURE REQUIRED BY FLORIDA BLUE SKY REGULATIONS

Section 517.051, Florida Statutes and the regulations promulgated thereunder require that CFX make full and fair disclosure of any bonds or other debt obligations of such entities that have been in default as to payment of principal or interest at any time after December 31, 1975. CFX is not presently and, since December 31, 1975, has not been in default as to payment of principal or interest on any bonds or other debt obligations.

#### CONTINUING DISCLOSURE

In order to assist the Underwriters in complying with Rule 15c2-12(b)(5) of the SEC promulgated pursuant to the Securities Exchange Act of 1934 (the "Rule"), CFX will enter into a Continuing Disclosure Agreement, with Digital Assurance Certification, L.L.C., as Dissemination Agent, dated the date of delivery (the "Continuing Disclosure Agreement") which is attached hereto as "APPENDIX F - FORM OF CONTINUING DISCLOSURE AGREEMENT," for the benefit of the Holders (as defined in the Continuing Disclosure Agreement) of the Series 2019 Bonds. Under the Continuing Disclosure Agreement, CFX, as an "obligated person" under the Rule and, initially, the sole obligated person under the Continuing Disclosure Agreement, will provide certain financial information and operating data (the "Annual Report") relating to CFX and notices of the occurrence of certain enumerated events with respect to the Series 2019 Bonds.

The Annual Report, and notices of the occurrence of certain enumerated events, will be filed by or on behalf of CFX to the centralized information repository developed and operated by the Municipal Securities Rulemaking Board ("MSRB") through the Electronic Municipal Market Access system ("EMMA"), in an electronic format prescribed by the MSRB. The nature of the information to be provided in the Annual Report and the notices of such enumerated events is set forth in "APPENDIX F - FORM OF CONTINUING DISCLOSURE AGREEMENT" attached hereto. The Continuing Disclosure Agreement further provides that a default under the Continuing Disclosure Agreement shall not constitute an Event of Default under the Bond Resolution.

In the past five-years, CFX did not timely post a defeasance notice relating to that portion of the Series 2007A Bonds which were refunded by the Series 2016A Bonds. CFX has subsequently filed the defeasance notice with EMMA.

#### UNDERWRITING

The Series 2	019 Bonds are being purchased by .	J.P. Morgan Securities LLC, on
behalf of itself, and	as representative of the Underwriters	s listed on the cover page of this
Official Statement	(collectively, the "Underwriters"). T	he Underwriters have agreed to
	2019 Bonds at a price of \$	(representing the principal
amount of \$	[plus/minus] bond [premium/d	iscount] of \$, less an
Underwriters' disco	unt of \$ ).	

The prices and other terms with respect to the offering and sale of the Series 2019 Bonds may be changed from time to time by the Underwriters after such Series 2019 Bonds are released for sale, and the Series 2019 Bonds may be offered and sold at prices other than the initial offering prices, including sales to dealers who may sell the Series 2019 Bonds into investment accounts.

The Underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage services. Certain of the Underwriters and their respective affiliates have, from time to time, performed, and may in the future perform, various financial advisory and investment banking services for CFX, for which they received or will receive customary fees and expenses.

In the ordinary course of their various business activities, the Underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities, which may include credit default swaps) and financial instruments (including bank loans) for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investment and securities activities may involve securities and instruments of CFX.

In addition, certain of the Underwriters have entered into distribution agreements with other broker-dealers (that have not been designated by CFX as Underwriters) for the distribution of the Series 2019 Bonds at the original issue prices. Such agreements generally provide that the relevant Underwriter will share a portion of its underwriting compensation or selling concession with such broker-dealers.

The Underwriters and their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments

and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

#### RATINGS

The Series 2019 Bonds have been assigned a rating of "A+" (stable outlook) from S&P, "A1" (stable outlook) from Moody's and "A+" (stable outlook) from Fitch Ratings Inc. ("Fitch"). Such ratings express only the views of S&P, Moody's and Fitch (collectively, the "Rating Agencies"). An explanation of the significance of such ratings may be obtained from the Rating Agencies furnishing the same. There is no assurance that any rating will be maintained for any given period of time or that it will not be revised downward or withdrawn entirely by the Rating Agencies if, in their judgment, circumstances so warrant. Any such downward revision or withdrawal of such ratings or other actions by the Rating Agencies or either of them, may have an adverse effect on the liquidity and/or market price of the Series 2019 Bonds. CFX undertakes no responsibility to oppose any such revision or withdrawal.

#### LEGAL MATTERS

#### General

Certain legal matters incident to the validity of the Series 2019 Bonds and the issuance thereof by CFX are subject to the approval of Nelson Mullins Broad and Cassel, Orlando, Florida and Marchena and Graham, P.A., Orlando, Florida, Co-Bond Counsel. The proposed form of the opinion of Co-Bond Counsel is attached hereto as APPENDIX H. Certain legal matters will be passed upon by Counsel to CFX, Shutts & Bowen LLP, Orlando, Florida. Nabors, Giblin & Nickerson, P.A., Tampa, Florida is serving as Disclosure Counsel for CFX. Certain legal matters in connection with the Series 2019 Bonds will be passed upon for the Underwriters by Greenberg Traurig, P.A., Orlando, Florida, counsel to the Underwriters.

# **Opinion of Co-Bond Counsel**

Certain legal matters incident to the authorization, validity, and issuance of the Series 2019 Bonds are subject to the unqualified approving opinion of Nelson Mullins Riley & Scarborough LLP, Orlando, Florida and Marchena and Graham, P.A., Orlando, Florida, Co-Bond Counsel, whose approving opinion will be available at the time of delivery of the Series 2019 Bonds. It is anticipated that the approving opinion will be in substantially the form attached to this Official Statement as Appendix H.

The Internal Revenue Code of 1986, as amended (the "Code"), contains various requirements and restrictions which apply to the Series 2019 Bonds. These include restrictions on investments, requirements for periodic payment of any arbitrage profits to the United States, requirements regarding the use of Series 2019 Bond proceeds,

including the use of property financed with Series 2019 Bond proceeds, and other restrictions and requirements. Failure to comply with certain of such requirements and restrictions may cause interest on the Series 2019 Bonds to become subject to federal income taxation, retroactive, in some cases, to the date of issuance of the Series 2019 Bonds.

In the opinion of Co-Bond Counsel, under existing statutes, regulations, rulings, and court decisions, interest on the Series 2019 Bonds (including any original issue discount properly allocable to an owner thereof) is excluded from gross income for federal income tax purposes (including for purposes of the tax imposed by Chapter 2A of Subtitle A of the Code (the "Affordable Care Tax")) and is not an enumerated item of tax preference for purposes of the federal alternative minimum tax imposed on taxpayers other than corporations. Interest on the Series 2019 Bonds, by virtue of being excluded from gross income under Chapter 1 of Subtitle A of the Code, is excluded from the modified adjusted gross income of individuals, from the adjusted gross income of estates and trusts, and from the net investment income of taxpayers that are subject to the 3.8% tax imposed pursuant to the Affordable Care Tax. However, gain, if any, from the sale or other disposition of Series 2019 Bonds may be included in each of the foregoing measures of income.

The Affordable Care Tax is imposed on individuals on the lesser of (1) net investment income and (2) any excess of modified adjusted gross income over the applicable threshold amount. For individuals filing joint federal tax returns or as surviving spouses, the applicable threshold is \$250,000; for married individuals filing separate returns, the applicable threshold is \$125,000; and for other individuals, the applicable threshold is \$200,000. For estates and trusts this 3.8% tax is imposed on the lesser of (1) undistributed net investment income and (2) any excess of adjusted gross income over the dollar amount at which the highest tax bracket in Section 1(e) of the Code begins for the taxable year.

In concluding that interest on the Series 2019 Bonds is excluded from gross income for federal income tax purposes (including the Affordable Care Tax), Co-Bond Counsel will rely, as to questions of fact material to its opinion, upon certified proceedings and other certifications of public officials furnished to Co-Bond Counsel, without undertaking to verify any of them by independent investigation. If certain of these items are incorrect, interest on the Bonds may become included in gross income for federal income tax purposes (including the Affordable Care Tax) retroactive, in some cases, to the date of issuance of the Series 2019 Bonds. The foregoing opinions are also subject to the condition that the CFX comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Series 2019 Bonds in order that the interest thereon be, or continue to be, excluded from gross income for federal income tax purposes. Failure to comply with certain of such requirements may cause the inclusion of the interest on the Series 2019 Bonds in gross income for federal income tax purposes (including the Affordable Care Tax) to be retroactive to the date of issuance of the Bonds.

Co-Bond Counsel expresses no opinion regarding any other federal tax consequences arising with respect to the Series 2019 Bonds.

Interest on the Series 2019 Bonds may or may not be subject to state or local income taxation in jurisdictions, including Florida, under applicable state or local laws. Purchasers of the Bonds should consult their tax advisors as to the taxable status of the Bonds in a particular state or local jurisdiction.

# Original Issue Discount and Premium

Original issue discount on tax-exempt obligations accrues on a constant yield-to-maturity basis. The amount of original issue discount that accrues to an owner of a Discount Bond who acquires such Discount Bond in this offering during any accrual period generally equals (i) the issue price of such Discount Bond plus the amount of original issue discount accrued in all prior accrual periods, multiplied by (ii) the yield-to-maturity of such Discount Bond (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period), less (iii) any interest payable on such Discount Bond during such accrual period.

The amount of original issue discount that so accrues in a particular accrual period will be considered to be received ratably on each day of the accrual period, will be excluded from gross income for federal income tax purposes, and will increase the owner's tax basis in such Discount Bond for the purpose of determining gain or loss upon a subsequent sale, exchange, payment, or redemption. Any gain realized by an owner from a sale, exchange, payment, or redemption of a Discount Bond would be treated as gain from the sale or exchange of such Discount Bond.

Owners of Discount Bonds should consult their own tax advisors with respect to the state and local tax consequences of owning Discount Bonds. Under the tax laws of certain state and local jurisdictions, the amount of interest considered to have accrued to an owner of a Discount Bond may also be deemed to be received in the year of such accrual, even though there will not be a corresponding cash payment, rather than upon the disposition, redemption, or maturity of such Discount Bond for purposes of determining such owner's income tax liability under such state or local tax laws.

The Series 2019 Bond	ds maturing		in the principal a	mount of
\$ ),	through	_, inclusive, and		_ (each a
"Premium Bond"), are being	sold at prices	in excess of the	principal amoun	t thereof.
Under the Code, the excess of	f an owner's co	st basis of a bond	I over the principa	al amount
of such bond (other than a bo	nd held as inve	ntory, stock in tra	de, or for sale to c	customers
in the ordinary course of bus	siness) is gener	ally characterized	d as "bond premit	ım." For
federal income tax purposes	, bond premiur	n is amortized or	ver the term of th	ne related
bond (or to its earlier call date				
in the Premium Bonds by the				
taxable year it holds Premi				
attributable to each taxable y				
rate compounded on each				
attributable to a taxable y				
Purchasers of Premium Bond				
precise determination for fed				premium
upon sale, redemption, or oth	er disposition o	f Premium Bonds	•	

# **Collateral Federal Tax Consequences of Owning Bonds**

Ownership of the Series 2019 Bonds may result in collateral federal tax consequences to certain taxpayers, including, without limitation, financial institutions and other taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry the Series 2019 Bonds, property and casualty insurance companies, certain recipients of Social Security or railroad retirement benefits, foreign corporations operating branches in the United States, certain Subchapter S corporations, and persons who purchase Series 2019 Bonds other than in the initial public offering or other than at the initial public offering price(s). The following is a general description of certain of these consequences:

- 1. No deduction is allowable for interest on indebtedness incurred or continued to purchase or carry the Series 2019 Bonds or, in the case of a financial institution, that portion of the owner's interest expense allocated to interest on the Bonds. With respect to certain financial institutions (within the meaning of Section 265(b)(5) of the Code), the amount so allocated is determined under Section 291 of the Code.
- 2. Property and casualty insurance companies are required to reduce the amount of their deductible underwriting losses by 25% of their amount of tax-exempt interest, including interest on the Series 2019 Bonds. If the amount of this reduction exceeds the amount otherwise deductible as losses incurred, such excess may be includable in income.
- 3. Certain recipients of Social Security benefits and railroad retirement benefits will be required to include a portion of such benefits within gross income by reason of receipt or accrual of interest on the Series 2019 Bonds.

- 4. A branch-level tax is imposed on certain earnings and profits of foreign corporations operating branches in the United States, and interest on the Series 2019 Bonds may be included in the determination of such domestic branches' taxable bases on which this tax is imposed.
- 5. Passive investment income, including interest on the Series 2019 Bonds, may be subject to federal income taxation for any Subchapter S corporation that has Subchapter C earnings and profits at the close of the taxable year, if greater than 25% of the gross receipts of such Subchapter S corporation is passive investment income.
- 6. Purchasers of Series 2019 Bonds for less than the initial public offering price or not in the initial public offering may, in addition to the tax consequences described above, experience collateral federal tax consequences. For example, purchasers who purchase Series 2019 Bonds in the initial public offering for less than the initial public offering price will have market discount which is taxable when recognized for federal tax purposes.
- 7. Payments of interest on the Series 2019 Bonds are subject to reporting to the Internal Revenue Service (the "IRS") and to payees on Form 1099-INT (or successor form), and the Paying Agent (or its agent) may be required to withhold federal tax (referred to as "backup withholding") from any such payment on a Series 2019 Bond, which is imposed at the rate of 24% of the gross amount of any such payment, if (i) the owner fails to furnish the Paying Agent (or its agent) his or her taxpayer identification number ("TIN"), the accuracy of which has been certified under the penalty of perjury, (ii) the Paying Agent (or its agent) has been notified by the IRS that the owner of the Series 2019 Bond has supplied an incorrect TIN, (iii) the IRS has notified the Paying Agent (or its agent) that the owner of the Series 2019 Bond has failed properly to report certain income to the IRS, or (iv) when required to do so, the owner of the Series 2019 Bond fails to certify under the penalty of perjury that he or she is not subject to backup withholding.

The foregoing is not intended as a detailed or comprehensive description of all possible consequences of purchasing or holding the Series 2019 Bonds. Persons considering the purchase of the Series 2019 Bonds should consult with their tax advisor as to the consequences of buying or holding the Series 2019 Bonds in their particular circumstances.

## Changes in Federal Law

From time to time, legislative proposals may be made to change federal or state law that, if enacted, would eliminate the exclusion of interest on tax-exempt bonds from gross income for federal income tax purposes or any state law exemption or that would otherwise diminish the advantages of ownership of tax-exempt bonds for one or more categories of taxpayers for federal or state law purposes. Any such proposal could, in

certain circumstances, even become effective with respect to tax-exempt bonds issued or purchased prior to enactment or announcement of the proposal.

In addition, from time to time, administrative actions, including regulations, rulings, and other administrative authorities, may be announced or proposed and litigation may be commenced or threatened that, if they become a legal authority, could eliminate or diminish the advantages of ownership of tax-exempt bonds for one or more categories of taxpayers for federal or state law purposes. The mere existence or announcement of any such legislative proposal or commencement or threatening of any such administrative action or litigation could impair the marketability or market value of the Series 2019 Bonds, at least temporarily, whether or not it is ultimately enacted into law or becomes a legal authority.

The opinion expressed by Co-Bond Counsel is based upon the U.S. Constitution and the Constitution of the State of Florida, implemented by statutes enacted thereunder, and as interpreted by judicial, regulatory, and other administrative authorities existing as of the date of issuance and delivery of the Series 2019 Bonds. Co-Bond Counsel expresses no opinion as of any date subsequent thereto or with respect to any proposed or pending legislation or proposed, pending, or threatened administrative actions or litigation. Potential purchasers of the Series 2019 Bonds should consult their tax advisors regarding any pending or proposed legislation, administrative action, or litigation of the type referred to or characterized above as part of their investment decision and thereafter, as appropriate.

#### PROFESSIONAL CONSULTANTS

#### Financial Advisor

PFM Financial Advisors LLC, Orlando, Florida serve as Financial Advisor to CFX. The Financial Advisor assisted CFX in the preparation of this Official Statement and in other matters relating to the planning, structuring and issuance of the Series 2019 Bonds, and provided other advice. However, the Financial Advisor, with the exception of the sections herein regarding "SYSTEM FINANCING - Estimated Annual Debt Service," and "HISTORICAL AND PROJECTED OPERATING RESULTS OF THE SYSTEM - Estimated Debt Service Coverage Ratio," have not been engaged and are not obligated to undertake, and have not undertaken to make, independent verification of the accuracy, completeness, or fairness of the information contained in this Official Statement. The Financial Advisor did not participate in the underwriting of the Series 2019 Bonds.

#### **Independent Auditors**

The financial statements of CFX for the Fiscal Years ended June 30, 2019 and June 30, 2018 attached hereto as APPENDIX G have been audited by Moore Stephens

Lovelace P.A., independent auditors, as stated in their report appearing in APPENDIX G attached hereto. Moore Stephens Lovelace P.A. has not examined, compiled or applied agreed-upon procedures to the projected and/or forecasted data contained herein and, therefore, assumes no responsibility for such data.

## **Engineers**

Dewberry Engineers Inc. serves as CFX's General Engineering Consultant. See "CONSULTING ENGINEER'S REPORT DATED SEPTEMBER 30, 2019" attached hereto as APPENDIX C. CDM Smith serves as CFX's Traffic Engineer. See "FY 2018 GENERAL TRAFFIC AND EARNINGS CONSULTANT'S ANNUAL REPORT DATED MAY 2019" attached hereto as APPENDIX D.

#### CONTINGENT FEES

Payment of the fees of Co-Bond Counsel, Disclosure Counsel and the Financial Advisor and the payment of a discount to the Underwriters are each contingent upon the issuance and sale of the Series 2019 Bonds.

# FORWARD-LOOKING STATEMENTS

The statements contained in this Official Statement, and in any other information provided by CFX, that are not purely historical, are forward-looking statements, including statements regarding CFX's expectations, hopes, intentions, or strategies regarding the future. Readers should not place undue reliance on forward-looking statements. All forward-looking statements included in this Official Statement are based on information available to CFX on the date hereof, and CFX assumes no obligation to update any such forward-looking statements. It is important to note that CFX's actual results could differ materially from those in such forward-looking statements.

The forward-looking statements herein are necessarily based on various assumptions and estimates and are inherently subject to various risks and uncertainties, including risks and uncertainties relating to the possible invalidity of the underlying assumptions and estimates and possible changes or developments in social, economic, business, industry, market, legal and regulatory circumstances and conditions and actions taken or omitted to be taken by third parties, including customers, suppliers, business partners and competitors, and legislative, judicial and other governmental authorities and officials. Assumptions related to the foregoing involve judgments with respect to, among other things, future economic, competitive, and market conditions and future business decisions, all of which are difficult or impossible to predict accurately and many of which are beyond the control of CFX. Any of such assumptions could be inaccurate and, therefore, there can be no assurance that the forward-looking statements included in this Official Statement would prove to be accurate.

# MISCELLANEOUS

This Official Statement is not to be construed as a contract with the purchasers of the Series 2019 Bonds. The references, excerpts and summaries of all documents referred to in this Official Statement do not purport to be complete statements of the provisions of such documents, and reference is directed to all such documents for full and complete statements of all matters relating to the Series 2019 Bonds, the security for the payment of the Series 2019 Bonds and the rights and obligations of the owners of the Series 2019 Bonds. The information and expressions of opinion in this Official Statement are subject to change without notice and neither the delivery of this Official Statement nor any sale made shall under any circumstances create any implication that there has been no change in the matters referred to in this Official Statement since its date.

So far as any statements made in this Official Statement involve matters of opinion or of estimates, whether or not expressly stated, they are set forth as such and not as representations of fact. No representation is made that any of the opinions or estimates will be realized.

## AUTHORIZATION OF AND CERTIFICATION CONCERNING OFFICIAL STATEMENT

This Official Statement has been authorized and approved by CFX. Upon the delivery of the Series 2019 Bonds, the undersigned will furnish a certificate to the effect that this Official Statement did not as of its date, and does not contain any untrue statement of a material fact or omit to state a material fact which should be included herein for the purpose for which this Official Statement is to be used, or which is necessary in order to make the statements contained herein, in light of the circumstances under which they were made, not misleading.

AUTHORITY	
By:	
Chairman	
Executive Director	

EXPRESSWAY

CENTRAL FLORIDA

# EXHIBIT C

# FORM OF CONTINUING DISCLOSURE AGREEMENT

[Attached]

# CONTINUING DISCLOSURE AGREEMENT<sup>1</sup>

by and between

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

and

DIGITAL ASSURANCE CERTIFICATION, L.L.C.

relating to:

\$[\*] CENTRAL FLORIDA EXPRESSWAY AUTHORITY SENIOR LIEN REFUNDING REVENUE BONDS, SERIES 2021

**DATED** [\*], 2021

<sup>&</sup>lt;sup>1</sup> Note: This document is in substantial form and is subject to modification and amendment based on delegated authority provided in the Twenty-Seventh Supplemental Revenue Bond Resolution and may be amended and modified to reflect updated operating and financial information for CFX.

#### **CONTINUING DISCLOSURE AGREEMENT**

This **CONTINUING DISCLOSURE AGREEMENT** (this "Disclosure Agreement"), dated [\*], 2021, is executed and delivered by the **CENTRAL FLORIDA EXPRESSWAY AUTHORITY** ("CFX") and **DIGITAL ASSURANCE CERTIFICATION**, **L.L.C.**, and any successor disclosure dissemination agent serving hereunder pursuant to Section 10 hereof as Disclosure Dissemination Agent (the "Disclosure Dissemination Agent" or "DAC").

#### **RECITALS:**

- A. Contemporaneously with the execution and delivery of this Disclosure Agreement, CFX issued its Senior Lien Refunding Revenue Bonds, Series 2021 (the "Series 2021 Bonds"), pursuant to that certain Amended and Restated Master Bond Resolution adopted by CFX on February 3, 2003 (the "Master Bond Resolution"), as supplemented by the Twenty-Seventh Supplemental Revenue Bond Resolution Authorizing the Issuance of Senior Lien Revenue Bonds, Series 2021 adopted by CFX on March 11, 2021, (the "Twenty-Seventh Supplemental Resolution" and together with Master Bond Resolution, the "Bond Resolution").
- B. CFX has authorized the preparation and distribution of the Preliminary Official Statement dated [\*], 2021 with respect to the Series 2021 Bonds (the "Preliminary Official Statement").
- C. Upon the initial sale of the Series 2021 Bonds to the underwriter(s) named in the hereinafter referenced Official Statement (collectively, the "Underwriters"), CFX authorized the preparation and use of the Official Statement dated [\*], 2021 with respect to the Series 2021 Bonds (the "Official Statement").
- D. As a condition precedent to the initial purchase of the Series 2021 Bonds by the Underwriters in accordance with the bond purchase agreement and in compliance with the Underwriters' obligations under the Rule (as defined herein), CFX has agreed to undertake certain disclosure obligations with respect to the Series 2021 Bonds for the benefit of the Holders (hereinafter defined) as specified hereunder on an ongoing basis during the term hereof and has agreed to retain the Disclosure Dissemination Agent to perform certain disclosure dissemination tasks as provided for herein on its behalf.
- **NOW THEREFORE**, in consideration of the purchase of the Series 2021 Bonds by the Underwriters and the mutual promises and agreements made herein, the receipt and sufficiency of which consideration is hereby mutually acknowledged, CFX and the Disclosure Dissemination Agent do hereby certify and agree as follows:
- **SECTION 1.** <u>Incorporation of Recitals</u>. The above recitals are true and correct and are incorporated into and made a part hereof.
- **SECTION 2.** <u>Definitions.</u> Capitalized terms used, but not otherwise defined in this Disclosure Agreement shall have the meaning assigned in the Rule or, to the extent not in conflict with the Rule, in the Bond Resolution or the Official Statement, as applicable. In addition to the terms defined elsewhere herein, the following capitalized terms shall have the following meanings for the purposes of this Disclosure Agreement:

- "Annual Report" means an Annual Report described in and consistent with Section 4 of this Disclosure Agreement.
- "Annual Filing Date" means the date, set in Sections 3(a) and 3(f) hereof, by which the Annual Report is to be filed with the Repositories.
- "Annual Financial Information" means annual financial information as such term is used in paragraph (b)(5)(i) of the Rule and specified in Section 4(a) of this Disclosure Agreement.
- "Audited Financial Statements" means the General Purpose Financial Statements for CFX prepared in accordance with GAAP (as defined herein) for the prior Fiscal Year, certified by an independent auditor and specified in Section 4(b) of this Disclosure Agreement.
- "Business Day" means a day other than a Saturday or a Sunday or a day on which banks in Florida are authorized or required by law to close.
- "Certification" means a written certification of compliance signed by the Disclosure Representative stating that the Annual Report, Audited Financial Statements, Voluntary Report or Notice Event notice delivered to the Disclosure Dissemination Agent is the Annual Report, Audited Financial Statements, Voluntary Report or Notice Event notice required to be submitted to each Repository under this Disclosure Agreement. A Certification shall accompany each such document submitted to the Disclosure Dissemination Agent by CFX and include the full name of the Series 2021 Bonds and, to the best of its knowledge, the 9-digit CUSIP numbers for all Series 2021 Bonds to which the document applies.
- **"Disclosure Representative"** means the Chief Financial Officer of CFX or her designee, or such other person as CFX shall designate in writing to the Disclosure Dissemination Agent from time to time as the person responsible for providing Information to the Disclosure Dissemination Agent.
- "Disclosure Dissemination Agent" means Digital Assurance Certification, L.L.C., acting in its capacity as Disclosure Dissemination Agent hereunder, or any successor Disclosure Dissemination Agent designated in writing by CFX pursuant to Section 10 hereof.
- **"EMMA"** means the MSRB's Electronic Municipal Market Access system as described in 1934 Act Release No. 59062 and maintained by the MSRB for purposes of the Rule. Further information regarding EMMA can be retrieved by visiting the web site <a href="http://emma.msrb.org/">http://emma.msrb.org/</a>.
- **"Financial Obligation"** as used in this Disclosure Agreement is defined in the Rule, as (i) a debt obligation; (ii) derivative instrument entered into in connection with, or pledged as a security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term "Financial Obligation" shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.
- **"Fiscal Year"** means the fiscal year of CFX, which currently is the twelve-month period beginning July 1 and ending on June 30 of the following year, or any such other twelve-month period designated by CFX, from time to time, to be its fiscal year.

- "GAAP" means generally accepted accounting principles promulgated by the Government and Financial Accounting Standards Boards as in effect from time to time in the United States.
- "Holder" means any person (a) having the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Series 2021 Bonds (including persons holding Series 2021 Bonds through nominees, depositories or other intermediaries) or (b) treated as the owner of any Series 2021 Bonds for federal income tax purposes.
- **"Information"** means the Annual Financial Information, the Audited Financial Statements (if any), the Notice Event notices and the Voluntary Reports.
- "MSRB" means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(l) of the Securities Exchange Act of 1934.
  - "Notice Event" means an event listed in Section 5(a) of this Disclosure Agreement.
- "Obligated Person" means CFX and any person who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all or part of the obligations on the Series 2021 Bonds (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities). CFX confirms that currently it is the only Obligated Person.
- **"Repository"** or **"NRMSIR"** means any Nationally Recognized Municipal Securities Information Repository recognized for purposes of the Rule and the MSRB, as reflected on the website of the SEC at <a href="www.sec.gov">www.sec.gov</a>. Currently, the sole Repository is the MSRB, through the operation of EMMA.
- **"Rule"** means Rule 15c2-12 of the SEC promulgated pursuant to the Securities Exchange Act of 1934, as the same may be amended from time to time.
  - "SEC" means the United States Securities and Exchange Commission.
  - "State" means the State of Florida.
- **"Voluntary Report"** means the information provided to the Disclosure Dissemination Agent by CFX pursuant to Section 8.

#### **SECTION 3. Provision of Annual Reports.**

(a) CFX shall provide, annually, an electronic copy of the Annual Report and Certification to the Disclosure Dissemination Agent on or before the Annual Filing Date. Promptly upon receipt of an electronic copy of the Annual Report and the Certification, the Disclosure Dissemination Agent shall provide an Annual Report to each Repository not later than March 31 after the end of each Fiscal Year, commencing with the Fiscal Year ending June 30, 2021. If March 31 falls on a weekend, the Annual Report will be due the first Business Day thereafter. Such date and each anniversary thereof is the Annual Filing Date. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement.

- (b) If the Disclosure Dissemination Agent has not received a copy of the Annual Report and Certification by 12:00 p.m. Eastern time on the Annual Filing Date, the Disclosure Dissemination Agent shall contact the Disclosure Representative by e-mail and telephone to remind CFX of its undertaking to provide the Annual Report pursuant to Section 3(a). Upon such reminder, the Disclosure Representative shall either (i) provide the Disclosure Dissemination Agent with an electronic copy of the Annual Report and the Certification or (ii) instruct the Disclosure Dissemination Agent in writing that CFX will not be able to file the Annual Report within the time required under this Disclosure Agreement, state the date by which the Annual Report for such year will be provided and instruct the Disclosure Dissemination Agent that an event as described in Section 3(e)(iii)(15) has occurred and to immediately send a notice to each Repository in substantially the form attached as **Exhibit A**.
- (c) If the Disclosure Dissemination Agent has not received an Annual Report and Certification by 6:00 p.m. Eastern time on Annual Filing Date (or, if such Annual Filing Date falls on a non-Business Day, then the first Business Day thereafter) for the Annual Report, an event described in Section 3(e)(iii)(15) shall have occurred and CFX irrevocably directs the Disclosure Dissemination Agent to immediately send a notice to the MSRB in substantially the form attached as Exhibit A without reference to the anticipated filing date for the Annual Report, accompanied by a cover sheet completed by the Disclosure Dissemination Agent in the form set forth in Exhibit B.
- (d) If the Audited Financial Statements of CFX are prepared but not available prior to the Annual Filing Date, CFX shall, when the Audited Financial Statements are available, provide in a timely manner an electronic copy to the Disclosure Dissemination Agent, accompanied by a Certificate, for filing with each Repository.
  - (e) The Disclosure Dissemination Agent shall:
  - (i) upon receipt, promptly file each Annual Report received under Section 3(a) with each Repository;
  - (ii) upon receipt, promptly file each Audited Financial Statement received under Section 3(d) with each Repository;
  - (iii) upon receipt, promptly file the text of each disclosure to be made with each Repository together with a completed copy of the MSRB Material Event Notice Cover Sheet in the form attached as **Exhibit B**, describing the event by checking the box indicated below when filing pursuant to the Section of this Disclosure Agreement indicated:
    - 1. "Principal and interest payment delinquencies," pursuant to Sections 5(c) and 5(a)(l) hereof;
    - 2. "Non-Payment related defaults," pursuant to Sections 5(c) and 5(a)(2) hereof;
    - 3. "Unscheduled draws on debt service reserves reflecting financial difficulties," pursuant to Sections 5(c) and 5(a)(3) hereof;

- 4. "Unscheduled draws on credit enhancements reflecting financial difficulties," pursuant to Sections 5(c) and 5(a)(4) hereof;
- 5. "Substitution of credit or liquidity providers, or their failure to perform," pursuant to Sections 5(c) and 5(a)(5) hereof;
- 6. "Adverse tax opinions or events adversely affecting the tax-exempt status of the Series 2021 Bonds," pursuant to Sections 5(c) and 5(a)(6) hereof;
- 7. "Modifications to rights of securities Holders," pursuant to Sections 5(c) and 5(a)(7) hereof;
  - 8. "Bond calls," pursuant to Sections 5(c) and 5(a)(8) hereof;
  - 9. "Defeasances," pursuant to Sections 5(c) and 5(a)(9) hereof;
- 10. "Release, substitution, or sale of property securing repayment of the Series 2021 Bonds," pursuant to Sections 5(c) and 5(a)(10) hereof;
- 11. "Ratings changes on the Series 2021 Bonds," pursuant to Sections 5(c) and 5(a)(11) hereof;
- 12. "Bankruptcy, insolvency, receivership or similar event" pursuant to Sections 5(c) and 5(a)(12) hereof;
- 13. "Merger, consolidation, or acquisition" pursuant to Sections 5(c) and 5(a)(13) hereof;
- 14. "Appointment of a successor or additional trustee or a change in the name of a trustee" for the Series 2021 Bonds pursuant to Sections 5(c) and 5(a)(14) hereof:
- 15. "Incurrence of a Financial Obligation of the Obligated Person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Obligated Person, any of which affect security holders, if material" pursuant to Sections 5(c) and 5(a)(15) hereof;
- 16. "Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Obligated Person, any of which reflect financial difficulties" pursuant to Sections 5(c) and 5(a)(16) hereof;
- 17. "Failure to provide annual financial information as required," pursuant to Section 3(b)(ii) or Section 3(c) hereof, together with a completed copy of **Exhibit A** to this Disclosure Agreement;

- 18. "Other material event notice (specify)," pursuant to Section 8 hereof, together with the summary description provided by the Disclosure Representative; and
- (iv) provide CFX evidence of the filings of each of the above when made, which shall be by means of the DAC system, for so long as DAC is the Disclosure Dissemination Agent under this Disclosure Agreement.
- (f) CFX may adjust the Annual Filing Date upon change of its Fiscal Year by providing written notice of such change and the new Annual Filing Date to the Disclosure Dissemination Agent and the Repositories, provided that the period between the existing Annual Filing Date and new Annual Filing Date shall not exceed one year.

#### **SECTION 4.** Content of Annual Reports.

- (a) Each Annual Report shall contain Annual Financial Information with respect to CFX, consisting of or cross-referencing the following:
  - (i) The Audited Financial Statements.
  - (ii) Annual, updated historical financial formation and operating data for CFX of the type included under the tables titled [subject to modification]:
    - a. "DESCRIPTION OF THE SYSTEM -Traffic Volumes at Mainline Toll Plazas/Selected Expressway Segments Existing System;"
    - b. "DESCRIPTION OF THE SYSTEM Summary of Level of Service for Selected Expressway Segments;"
    - c. "SYSTEM REVENUES CFX System Toll Rates, As of July 1, 2021;"
    - d. "HISTORICAL AND PROJECTED OPERATING RESULTS OF THE SYSTEM Historical Total System Toll Revenues;"
    - e. "HISTORICAL AND PROJECTED OPERATING RESULTS OF THE SYSTEM - Historical System Operating, Maintenance and Administrative Expenses;" and
    - f. "HISTORICAL AND PROJECTED OPERATING RESULTS OF THE SYSTEM Historical Debt Service Ratio."
- (b) Audited Financial Statements will be included in the Annual Report; provided, however, if the Audited Financial Statements are not completed prior to March 31 of any year, CFX shall provide unaudited financial statements on such date and shall provide the Audited Financial Statements as soon as practicable following their completion. Audited Financial Statements will be provided pursuant to Section 3(d) hereof.

Any or all of the items listed above may be included by specific reference from other documents, including official statements of debt issues with respect to which CFX is an "obligated person" (as defined by the Rule), which have been previously filed with the SEC. If the document incorporated by reference is a final official statement, it must be available from the MSRB. CFX will clearly identify each such document so incorporated by reference.

If CFX has not filed the Annual Report when due, then CFX or the Dissemination Agent, on behalf of CFX, shall file a notice with each Repository as required by the Rule.

#### **SECTION 5. Reporting of Notice Events.**

- (a) The occurrence of any of the following events, with respect to the Series 2021 Bonds constitutes a Notice Event:
  - 1. Principal and interest payment delinquencies;
  - 2. Non-payment related defaults, if material;
  - 3. Unscheduled draws on debt service reserves reflecting financial difficulties;
  - 4. Unscheduled draws on credit enhancements relating to the Series 2021 Bonds reflecting financial difficulties;
  - 5. Substitution of credit or liquidity providers, or their failure to perform;
  - 6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax-exempt status of the Series 2021 Bonds, or material events affecting the tax-exempt status of the Series 2021 Bonds;
  - 7. Modifications to rights of Holders of the Series 2021 Bonds, if material;
  - 8. Bond calls (excluding sinking fund mandatory redemptions), if material, and tender offers;
  - 9. Defeasances of the Series 2021 Bonds;
  - 10. Release, substitution, or sale of property securing repayment of the Series 2021 Bonds, if material;
  - 11. Rating changes on the Series 2021 Bonds;
  - 12. Bankruptcy, insolvency, receivership or similar event of CFX;
  - 13. The consummation of a merger, consolidation, or acquisition involving CFX or the sale of all or substantially all of the assets of CFX, other than in the ordinary course of business, the entry into a definitive agreement to

- undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- 14. Appointment of a successor or additional trustee or the change of name of a trustee, if material;
- 15. Incurrence of a Financial Obligation of an Obligated Person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of an Obligated Person, any of which affect the Holders of the Series 2021 Bonds, if material; and
- 16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of an Obligated Person, any of which reflect financial difficulties.

CFX shall promptly, and in no event later than ten (10) Business Days after the occurrence thereof, notify the Disclosure Dissemination Agent in writing upon the occurrence of a Notice Event. Such notice shall instruct the Disclosure Dissemination Agent to immediately report the occurrence pursuant to subsection (c). Such notice shall be accompanied with the text of the disclosure that CFX desires to make, the written authorization of CFX for the Disclosure Dissemination Agent to disseminate such information, and the date CFX desires for the Disclosure Dissemination Agent to disseminate the information.

- (b) The Disclosure Dissemination Agent is under no obligation to notify CFX or the Disclosure Representative of an event that may constitute a Notice Event. In the event the Disclosure Dissemination Agent so notifies the Disclosure Representative, the Disclosure Representative will within the earlier of: two (2) Business Days after receipt of such notice or nine (9) Business Days from the occurrence of such event, instruct the Disclosure Dissemination Agent that (i) a Notice Event has not occurred and no filing is to be made or (ii) a Notice Event has occurred and the Disclosure Dissemination Agent is to immediately report the occurrence pursuant to subsection (c), together with the text of the disclosure that CFX desires to make, the written authorization of CFX for the Disclosure Dissemination Agent to disseminate such information, and the date CFX desires for the Disclosure Dissemination Agent to disseminate the information.
- (c) If the Disclosure Dissemination Agent has been instructed by CFX as prescribed in subsection (a) or (b)(ii) of this Section 5 to report the occurrence of a Notice Event, the Disclosure Dissemination Agent shall promptly, and in any event within in one (1) Business Day, file a notice of such occurrence with each Repository.

**SECTION 6.** <u>CUSIP Numbers.</u> Whenever providing information to the Disclosure Dissemination Agent, including but not limited to Annual Reports, documents incorporated by reference to the Annual Reports, Audited Financial Statements, notices of Notice Events and Voluntary Reports filed pursuant to Section 8(a), CFX shall indicate the full name of the Series 2021 Bonds and, to the best of its knowledge, the 9-digit CUSIP numbers for the Series 2021 Bonds as to which the provided information relates. CFX by providing the CUSIP numbers is not representing or certifying as to the accuracy thereof.

**SECTION 7.** <u>Additional Disclosure Obligations.</u> CFX acknowledges and understands that other state and federal laws, including but not limited to the Securities Act of 1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to CFX, and that the failure of the Disclosure Dissemination Agent to so advise CFX shall not constitute a breach by the Disclosure Dissemination Agent of any of its duties and responsibilities under this Disclosure Agreement. CFX acknowledges and understands that the duties of the Disclosure Dissemination Agent relate exclusively to execution of the mechanical tasks of disseminating information as described in this Disclosure Agreement.

#### **SECTION 8. Voluntary Reports.**

- (a) CFX may instruct the Disclosure Dissemination Agent to file information with the Repositories, from time to time pursuant to a Certification of the Disclosure Representative accompanying such information (a "Voluntary Report").
- (b) Nothing in this Disclosure Agreement shall be deemed to prevent CFX from disseminating any other information through the Disclosure Dissemination Agent using the means of dissemination set forth in this Disclosure Agreement or including any other information in any Annual Report, Annual Financial Statement, Voluntary Report or Notice Event notice, in addition to that required by this Disclosure Agreement. If CFX chooses to include any information in any Annual Report, Annual Financial Statement, Voluntary Report or Notice Event notice in addition to that which is specifically required by this Disclosure Agreement, CFX shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report, Annual Financial Statement, Voluntary Report or Notice Event notice.

#### **SECTION 9.** Termination of Reporting Obligation.

- (a) The obligations of CFX and the Disclosure Dissemination Agent under this Disclosure Agreement shall terminate with respect to the Series 2021 Bonds (i) upon the legal defeasance, prior redemption or payment in full of all of the Series 2021 Bonds of such issue, (ii) when CFX is no longer an Obligated Person with respect to the Series 2021 Bonds, or (iii) upon the termination of the continuing disclosure requirements of the Rule by legislative, judicial or administrative action.
- (b) If in the opinion of nationally recognized bond counsel satisfactory to CFX, the Rule shall be amended, modified or changed so that all or any part of the information currently required to be provided thereunder shall no longer be required to be provided thereunder, then such information shall no longer be required to be provided hereunder, and if and to the extent in the opinion of nationally recognized note counsel satisfactory to CFX, the Rule, or any provisions thereof, shall be declared by a federal court of competent and final, non-appealable jurisdiction to be, in whole or in part, invalid, unconstitutional, null and void, or otherwise inapplicable to the Series 2021 Bonds, then the information required to be provided hereunder, insofar as it was required to be provided by a provision of the Rule so declared, shall no longer be required to be provided hereunder.

(c) If a termination or cessation described in either Section 9(a) or (b) hereof occurs prior to the final maturity of the Series 2021 Bonds, CFX shall give or cause to be given notice of such event in the same manner as for a Notice Event under Section 5(c) hereof.

**SECTION 10.** <u>Disclosure Dissemination Agent.</u> CFX has appointed Digital Assurance Certification, L.L.C. as exclusive Disclosure Dissemination Agent under this Disclosure Agreement. CFX may, upon 30 days' written notice to the Disclosure Dissemination Agent, replace or appoint a successor Disclosure Dissemination Agent. Upon termination of DAC's services as Disclosure Dissemination Agent, whether by notice of CFX or DAC, CFX agrees to appoint a successor Disclosure Dissemination Agent or, alternately, agrees to assume all responsibilities of Disclosure Dissemination Agent under this Disclosure Agreement for the benefit of the Holders of the Series 2021 Bonds. The Disclosure Dissemination Agent may resign at any time by providing thirty days' prior written notice to CFX.

**SECTION 11.** Remedies. In the event of a failure of CFX or the Disclosure Dissemination Agent to comply with any provision of this Disclosure Agreement, the Holders' rights to enforce the provisions of this Agreement shall be limited solely to a right, by action in mandamus or for specific performance, to compel performance of the parties' obligation under this Disclosure Agreement, it being CFX's position that money damages would be inadequate recompense and/or difficult to ascertain. A default under this Disclosure Agreement shall not constitute a default on the Series 2021 Bonds or be deemed an Event of Default under the Bond Resolution or under any other document relating to the Series 2021 Bonds, and all rights and remedies shall be limited to those expressly stated herein.

SECTION 12. Duties, Immunities and Liabilities of Disclosure Dissemination Agent. The Disclosure Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement. The Disclosure Dissemination Agent's obligation to deliver the information at the times and with the contents described herein shall be limited to the extent CFX has provided such information to the Disclosure Dissemination Agent as required by this Disclosure Agreement. The Disclosure Dissemination Agent shall have no duty with respect to the content of any disclosures or notice made pursuant to the terms hereof. The Disclosure Dissemination Agent shall have no duty or obligation to review or verify any Information or any other information, disclosures or notices provided to it by CFX and shall not be deemed to be acting in any fiduciary capacity for CFX, the Holders of the Series 2021 Bonds or any other party. The Disclosure Dissemination Agent shall have no responsibility for CFX's failure to report to the Disclosure Dissemination Agent a Notice Event or a duty to determine the materiality thereof. The Disclosure Dissemination Agent shall have no duty to determine, or liability for failing to determine, whether CFX has complied with this Disclosure Agreement. The Disclosure Dissemination Agent may conclusively rely upon certifications of CFX at all times.

**SECTION 13.** <u>Amendment; Waiver.</u> Notwithstanding any other provision of this Disclosure Agreement, CFX and the Disclosure Dissemination Agent may amend this Disclosure Agreement and any provision of this Disclosure Agreement may be waived, if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws acceptable to CFX to the effect that such amendment or waiver does not materially impair the interests of Holders of the Series 2021 Bonds and would not, in and of itself, cause the undertakings herein to violate the Rule if such amendment or waiver had been effective on the date hereof but taking into account

any subsequent change in or official interpretation of the Rule; provided CFX shall not be obligated to agree to any amendment modifying their respective duties or obligations without their consent thereto.

Notwithstanding the preceding paragraph, CFX shall have the right to adopt amendments to this Disclosure Agreement necessary to comply with modifications to and interpretations of the provisions of the Rule as announced by the SEC from time to time by giving not less than 20 days' written notice of the intent to do so together with a copy of the proposed amendment to the Disclosure Dissemination Agent.

**SECTION 14.** <u>Beneficiaries.</u> This Disclosure Agreement shall inure solely to the benefit of CFX, the Disclosure Dissemination Agent, the Underwriters, and the Holders from time to time of the Series 2021 Bonds, and shall create no rights in any other person or entity.

**SECTION 15.** Governing Law. This Disclosure Agreement shall be governed by and construed in accordance with the internal laws of the State (without regard to conflict of law principles thereof), provided that, to the extent this Disclosure Agreement addresses matters of federal securities laws, including the Rule, this Disclosure Agreement shall be construed in accordance with such federal securities laws and official interpretation thereof.

**SECTION 16.** No Personal Liability. None of the members or employees of CFX shall be charged personally with any liability, or held liable under any term or provision of this Disclosure Agreement because of its execution or attempted execution, or because of any breach or attempted or alleged breach thereof.

THE DISCLOSURE OBLIGATIONS UNDER THIS DISCLOSURE AGREEMENT ARE NOT OBLIGATIONS OF BREVARD COUNTY, FLORIDA, ORANGE COUNTY, FLORIDA, LAKE COUNTY, FLORIDA, SEMINOLE COUNTY, FLORIDA, OSCEOLA COUNTY, FLORIDA, THE CITY OF ORLANDO, FLORIDA OR THE STATE.

**SECTION 17.** Severability. In case any part of this Disclosure Agreement is held to be illegal or invalid, such illegality or invalidity shall not affect the remainder or any other section of this Disclosure Agreement. This Disclosure Agreement shall be construed or enforced as if such illegal or invalid portions were not contained therein, nor shall such illegality or invalidity of any application of this Disclosure Agreement affect any legal and valid application.

**SECTION 18.** <u>Counterparts</u>. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Signatures on following page]

The Disclosure Dissemination Agent and CFX have caused this Continuing Disclosure Agreement to be executed, on the date first written above, by their respective officers duly authorized.

DIG	SITAL ASSURANCE CERTIFICATION, L.L.C., as
Disc	closure Dissemination Agent
By:	
<i>y</i> =	Authorized Signatory
CEN	WEDAL ELODIDA EVDDECOWAY AUTHODITY
CEI	NTRAL FLORIDA EXPRESSWAY AUTHORITY
By:_	
	Chairman
D.,,	
1 ) V	
<i>D</i> <sub>j</sub>	Executive Director

# **EXHIBIT A**

#### NOTICE TO REPOSITORY OF FAILURE TO FILE ANNUAL REPORT

Issuer:	Central Florida Expressway Authority
Obligated Person:	Central Florida Expressway Authority
Name of Bond Issue:	Central Florida Expressway Authority Senior Lien Revenue Bonds, Series 2021
Date of Issuance:	[*], 2021
Continuing Disclosure A Certification, L.L.C., as Dissemination Agent that	ual Report with respect to the above-named Bonds as required by the Agreement, dated [*], 2021, between CFX and Digital Assurance Disclosure Dissemination Agent. CFX has notified the Disclosure it anticipates that the Annual.
	DIGITAL ASSURANCE CERTIFICATION L.L.C., as Disclosure Dissemination Agent, or behalf of CFX

Issuer

Obligated Person

cc:

#### EXHIBIT B

#### MATERIAL EVENT NOTICE COVER SHEET

This cover sheet and material event notice should be sent to each Repository pursuant to Securities and Exchange Commission Rule 15c2-12(b)(5)(i)(C) and (D). Issuer's and/or Other Obligated Person's Name:

Central Floric	la Expressway Authority		
Issuer's Six-D	Digit CUSIP Number:		
or Nine-Digit	CUSIP Number(s) of the notes to which this material event notice relates:		
Number of pa	ages of attached material event notice:		
Description o	f Material Events Notice (Check One):		
1.	Principal and interest payment delinquencies		
2.	Non-Payment related defaults		
3.	Unscheduled draws on debt service reserves reflecting financial difficulties		
4.	Unscheduled draws on credit enhancements reflecting financial difficulties		
5.	Substitution of credit or liquidity providers, or their failure to perform		
6.			
7.	Modifications to rights of securities holders		
8.	Note calls		
9.	Defeasances		
10.	Release, substitution, or sale of property securing repayment of the securities		
11.	Rating changes		
12.	Bankruptcy, insolvency, receivership or similar event		
13.	Merger, consolidation, or acquisition		
14.	Appointment of successor or additional trustee or a change in name of trustee		
15.	Incurrence of a Financial Obligation of the Obligated Person, if material, or		
	agreement to covenants, events of default, remedies, priority rights, or other similar		
	terms of a Financial Obligation of the Obligated Person, any of which affect		
	security holders, if material; and		
16.	Default, event of acceleration, termination event, modification of terms, or other		
	similar events under the terms of a Financial Obligation of the Obligated Person,		
	any of which reflect financial difficulties		
17.	Failure to provide annual financial information as required		
18.	Other material event notice (specify):		

I hereby represent that I am au publicly:	thorized by CFX or its agent to distribute this information
Signature:	
Name:	Title
Employer: Digital A	Assurance Certification, L.L.C. Address:
	City, State, Zip Code:
Voice Telephone Number:	

# EXHIBIT D

# FORM OF TRUSTEE, PAYING AGENT AND REGISTRAR AGREEMENT

[Attached]

#### TRUSTEE, PAYING AGENT AND REGISTRAR AGREEMENT

THIS TRUSTEE, PAYING AGENT AND REGISTRAR AGREEMENT (this "Agreement"), dated as of [\*], 2021, by and between CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, having its designated office in Minneapolis, Minnesota (the "Trustee").

#### WITNESSETH:

**WHEREAS**, CFX, by the Bond Resolution (as hereinafter defined), has designated the Trustee as Trustee, Paying Agent and Registrar for its \$[\*] Senior Lien Refunding Revenue Bonds, Series 2021 (the "Series 2021 Bonds"); and

**WHEREAS**, CFX and the Trustee desire to set forth the Trustee's duties as Trustee, Paying Agent and Registrar and the compensation to be paid to the Trustee for its services;

**NOW, THEREFORE**, it is agreed by the parties hereto as follows:

**SECTION 1. DUTIES**. The Trustee agrees to serve as Trustee, Paying Agent and Registrar for the Series 2021 Bonds and to perform the duties of Trustee, Paying Agent and Registrar as specified in or contemplated by that certain Amended and Restated Master Bond Resolution adopted by CFX on February 3, 2003, as supplemented from time to time, as particularly supplemented by that certain Twenty-Sixth Supplemental Revenue Bond Resolution Authorizing the Issuance of Senior Lien Refunding Revenue Bonds, adopted by CFX on March 11, 2021 (collectively, the "Bond Resolution") in connection with the issuance of the Series 2021 Bonds. The Trustee is authorized to do business in Florida and carry out the duties and obligations contemplated herein. Unless otherwise defined herein, capitalized terms used herein shall have the respective meanings set forth in the Bond Resolution.

**SECTION 2. DEPOSIT OF FUNDS**. CFX shall deposit or cause to be deposited with the Trustee into the appropriate funds and accounts created under or pursuant to the Bond Resolution and established and maintained for the purposes hereof by the Trustee, on or before the Business Day prior to the date payment is due on the Series 2021 Bonds, sufficient funds from System Pledged Revenues pledged for the payment of the Series 2021 Bonds under the Bond Resolution to pay when due and payable the principal of, premium, if any, and interest on the Series 2021 Bonds.

**SECTION 3. USE OF FUNDS; CANCELED SERIES 2021 BONDS**. The Trustee shall use the funds received from CFX pursuant to Section 2 of this Agreement to pay the principal of and interest on the Series 2021 Bonds in accordance with the Bond Resolution. To the extent that the Series 2021 Bonds is in its possession, the Trustee shall destroy the canceled Series 2021 Bonds in accordance with its retention policy then in effect.

**SECTION 4. STATEMENTS**. Each month during the term of this Agreement, or as often as the Trustee normally distributes statements for similar accounts, the Trustee shall prepare and shall send to CFX written statements of account relating to all transactions effected by the Trustee pursuant to this Agreement.

**SECTION 5. OBLIGATION TO ACT**. The Trustee shall be obligated to act only in accordance with the Bond Resolution and any written instructions received in accordance therewith; provided, however, that the Trustee is authorized hereby to comply with any orders, judgments or decrees of any court with or without jurisdiction and shall not be liable as a result of its compliance with the same.

**SECTION 6. RELIANCE BY TRUSTEE**. The Trustee may rely absolutely upon the genuineness and authorization of the signature and purported signature of any party upon any instruction, notice, release, request, affidavit or other document delivered to it pursuant to the Bond Resolution.

SECTION 7. COUNSEL; INDEMNITY. The Trustee may consult with counsel (licensed to practice in Florida) of its own choice and shall have sole and complete authorization and protection for any action taken or suffered by it under the Bond Resolution in good faith and in accordance with the opinion of such counsel. The Trustee shall have no liability or responsibility for any statement made by CFX or any other person in connection with the issuance of the Series 2021 Bonds, or for the use or application of any money received by CFX in connection with the Series 2021 Bonds. The Trustee may rely upon any instructions provided to it by CFX in connection with its duties and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with such instructions. No provision of this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it. The Trustee may act through agents and shall not be responsible for the negligence or willful misconduct of any agent appointed by the Trustee with due care. To the fullest extent permitted by applicable law, CFX will indemnify the Trustee (including its directors, officers and employees) for, and hold it harmless against, any loss, liability or expense incurred without negligence or willful misconduct on its part arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense (including its counsel fees) of defending itself against any claim or liability in connection with its acceptance or administration of its duties hereunder. The foregoing indemnities in this paragraph shall survive the resignation or removal of the Trustee hereunder and the termination of this Agreement.

**SECTION 8. FEES AND EXPENSES**. In consideration of the services rendered by the Trustee under this Agreement, CFX agrees to and shall pay to the Trustee its proper fees and all expenses, charges, attorneys' fees and other disbursements incurred by it or its attorneys, agents and employees in and about the performance of its powers and duties under this Agreement as set forth in the attached **EXHIBIT A**. The Trustee shall not be obligated to allow and credit interest upon any moneys in respect of principal, interest or premium, if any, due in respect of the Series 2021 Bonds, which it shall at any time receive under any of the provisions of the Bond Resolution or this Agreement.

**SECTION 9. FURNISHING INFORMATION; AUTHORIZATION**. The Trustee shall, at all times, when requested to do so by CFX, furnish full and complete information pertaining to its functions under this Agreement and shall without further authorization, execute

all necessary and proper deposit slips, checks, certificates and other documents with reference thereto.

**SECTION 10. TERMINATION; EXPIRATION.** Subject to the terms of the Bond Resolution, either of the parties hereto, at its option, may terminate this Agreement after giving ninety (90) days written notice to the other party of its intention to terminate this Agreement, and this Agreement may be terminated at any time by mutual consent of the parties hereto. This Agreement shall expire without further action upon final payment of the Series 2021 Bonds and the interest appertaining thereto.

SECTION 11. SURRENDER OF FUNDS, REGISTRATION RECORDS; NOTIFICATION OF BONDHOLDERS. In the event of a termination of this Agreement, CFX shall deliver any reasonable, proper and necessary releases to the Trustee (in a form reasonably acceptable to the Trustee and CFX) upon demand by the Trustee and the Trustee shall upon demand by an Authorized Officer of CFX pay over the funds on deposit with the Trustee under this Agreement in connection with the Series 2021 Bonds and surrender all registration books and related records to or upon the order of CFX, and CFX may appoint and name a successor to act as Trustee, Paying Agent and Registrar for the Series 2021 Bonds. CFX shall, in such event, at its expense, notify all holder of the Series 2021 Bonds of the appointment and name of the successor, by providing notice in the manner required for the redemption of the Series 2021 Bonds.

**SECTION 12. NONASSIGNABILITY**. This Agreement shall not be assigned by either party without written consent of the other party.

**SECTION 13. MODIFICATION**. No modification of this Agreement shall be valid unless made by a written agreement, duly executed and approved by the parties hereto.

**SECTION 14. SEVERABILITY**. Should any section or part of any section of this Agreement be declared void, invalid or unenforceable by any court of law for any reason, such determination shall not render void, invalid or unenforceable any other section or other part of any section of this Agreement.

**SECTION 15. GOVERNING LAW**. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.

**SECTION 16. MERGER OR CONSOLIDATION OF THE TRUSTEE**. Any corporation or association into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion or consolidation to which the Trustee shall be a party or to which the Trustee sells or transfers all or substantially all of the bond administration portion of its corporate trust business, shall be the successor Trustee, Paying Agent and Registrar under this Agreement, without the execution or filing of any paper or any further act on the part of the parties hereto, provided, however, that such corporation or association must be eligible under the laws of the State of Florida to accept trusts and operate in a fiduciary capacity.

**SECTION 17. COUNTERPARTS**. This Agreement may be executed in one or more counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized officers or agents and their official seals to be affixed and attested as of the date first set forth above.

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY (SEAL) Buddy Dyer, Chairman ATTEST: By:\_\_\_\_\_\_ Mimi Lamaute

**Board Services Coordinator** 

[Signature Page to Trustee, Paying Agent and Registrar Agreement]

# [WELLS FARGO BANK, NATIONAL ASSOCIATION], as Trustee, Paying Agent and Registrar

inu Kegisuai
By:
ts: Authorized Officer

[Signature Page to Trustee, Paying Agent and Registrar Agreement]

# **EXHIBIT A**

#### FEES AND EXPENSES

[See Attached]

# EXHIBIT E

# FORM OF ESCROW DEPOSIT AGREEMENT

[Attached]

#### **ESCROW DEPOSIT AGREEMENT**

THIS ESCROW DEPOSIT AGREEMENT (this "Agreement"), dated as of [\*], 2021, is entered into by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY (the "CFX") and WELLS FARGO BANK, N.A., a national banking association organized and existing under the laws of the United States of America (the "Escrow Agent").

**WHEREAS**, CFX has previously issued its Orlando-Orange County Expressway Authority Refunding Revenue Bonds, Series 2008B-1, 2008B-2, 2008B-3 and 2008B-4 (collectively, the "Refunded Bonds") pursuant to that certain Amended and Restated Master Bond Resolution of CFX, adopted February 3, 2003 (the "Master Bond Resolution"), as supplemented and amended from time to time; and

**WHEREAS**, CFX has determined to currently refund the Refunded Bonds as further described in **Schedule "A"** attached hereto; and

**WHEREAS,** the Master Bond Resolution provides that the Refunded Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the Master Bond Resolution upon compliance by CFX with the provisions of Section 7.2 of the Master Bond Resolution, which provisions of the Master Bond Resolution CFX hereby represents have not been amended or supplemented; and

WHEREAS, CFX has determined to issue, pursuant to the Master Bond Resolution as supplemented by that certain Twenty-Seventh Supplemental Revenue Bond Resolution Authorizing the Issuance of Refunding Revenue Bonds, in one or more Series or Subseries, adopted on March 11, 2021 (the "Supplemental Bond Resolution" and together with the Master Bond Resolution, the "Bond Resolution"), its Central Florida Expressway Authority Senior Lien Refunding Revenue Bonds, Series 2021 (the "Refunding Bonds"), a portion of the proceeds of which will be invested in State and Local Government Securities and Defeasance Obligations (as defined in the Bond Resolution) or otherwise held as uninvested cash deposited into the Escrow Deposit Fund (defined below), together with legally available moneys, if any, in order to provide for the advance refunding and redemption of the Refunded Bonds and the discharge and satisfaction of the pledge, lien and other obligations of CFX under the Bond Resolution in regard to such Refunded Bonds; and

**WHEREAS**, the issuance of the Refunding Bonds and the deposit of a portion of the proceeds, together with legally available moneys, if any, into the Escrow Deposit Fund to be held by the Escrow Agent and the discharge and satisfaction of the pledge, lien and other obligations of CFX under the Bond Resolution in regard to the Refunded Bonds shall occur as a simultaneous transaction; and

**WHEREAS**, this Agreement is intended to effectuate such simultaneous transaction;

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. **Recitals**. The recitals stated above are true and correct and incorporated herein.

- 2. **Acknowledgement of Resolution**. Receipt of a true and correct copy of the above-mentioned Bond Resolution is hereby acknowledged by the Escrow Agent. The applicable and necessary provisions of the Bond Resolution, and in particular Section 7.2 of the Master Bond Resolution, are incorporated herein by reference. Reference herein to or citation herein of any provisions of the Bond Resolution shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if the same were fully set forth herein. Capitalized terms used in this Agreement that are not defined shall have the respective meanings set forth in the Bond Resolution.
- 3. **Establishment of Escrow Deposit Fund; Escrow Proceeds**. There is hereby created and established with the Escrow Agent a special, segregated and irrevocable Escrow Deposit Fund designated as the "Central Florida Expressway Authority Series 2021 Escrow Deposit Fund" (the "Escrow Deposit Fund"). The Escrow Deposit Fund shall be held in the custody of the Escrow Agent as a trust fund for the benefit of the Holders of the Refunded Bonds separate and apart from other funds of CFX and the Escrow Agent. The Escrow Agent hereby accepts its appointment as Escrow Agent, has established the Escrow Deposit Fund in accordance with this Agreement, and acknowledges the receipt of and deposit to the credit of the Escrow Deposit Fund, which deposit CFX hereby approves, of the sum \$[\*], consisting of: (i) \$[\*] (the "Escrow Proceeds"), (ii) \$[\*] from the Refunded Bonds Debt Service Funds (the "Refunded Bonds Debt Service Funds"), in immediately available funds and (iii) \$[\*] from CFX (the "Good Faith Deposit" and together with the Refunded Bonds Debt Service Funds, collectively, "Other Moneys"), in immediately available funds.
- 4. **Sufficiency of Escrow Proceeds and Other Moneys**. CFX, based on the Verification Report of [\*] (the "Verification Agent"), represents that the Escrow Proceeds and the Other Moneys held as uninvested cash in the Escrow Deposit Fund, available to the Escrow Agent to pay the amounts of principal and accrued interest due and to become due on the Refunded Bonds upon the optional redemption thereof, as described in **Schedule "B"** attached hereto. No redemption premium is owed in connection with the redemption of the Refunded Bonds. If the Escrow Proceeds and the Other Moneys shall be insufficient to make such redemption payments, CFX shall timely deposit in the Escrow Deposit Fund, solely from legally available funds of CFX, such additional amounts as may be required to pay the Refunded Bonds as described in **Schedule "B"** hereto. Notice of any insufficiency shall be given by the Escrow Agent to CFX as promptly as possible, but not less than five (5) days prior to a scheduled and required payment date, but the Escrow Agent shall in no manner be responsible for CFX's failure to make such deposits.
- 5. **Irrevocable Escrow**. The deposit of the Escrow Proceeds, the Other Moneys and Defeasance Obligations, if any, in the Escrow Deposit Fund shall constitute an irrevocable deposit of Escrow Proceeds, Other Moneys and Defeasance Obligations, if any, in trust with the Escrow Agent solely for the payment of the principal of, plus accrued interest on the Refunded Bonds at such times and amounts as set forth in **Schedule "B"** hereto, and subject to the provisions of Section 7 hereof, the principal of and interest earnings, if any, on such Defeasance Obligations shall be used solely for such purposes. [With respect to the Currently Redeemable Bond, CFX expressly reserves the right to optionally redeem such bond any time on or after July 1, 2021; provided, however, that CFX shall be obligated to fully fund any additional amounts for deposit into the Escrow Deposit Fund necessary to accomplish such optional redemption, if any.

Such deposit shall be a condition to the delivery by the Escrow Agent of a Notice of Optional Redemption].

- 6. **Redemption of Refunded Bonds**. CFX hereby directs, and the Escrow Agent hereby agrees, that it will undertake the timely transfer of money to Wells Fargo Bank, National Association, the Paying Agent for the Refunded Bonds or any successors or assigns thereto (the "Refunded Bonds Paying Agent") in accordance with **Schedule "B"** attached hereto, in order to effectuate this Agreement and to redeem the Refunded Bonds in the amounts and at the times provided in said **Schedule "B"**. The liability of the Escrow Agent to make such transfer for the payment of the principal of, plus accrued interest on the Refunded Bonds pursuant to this Agreement shall be limited to the application of the Escrow Proceeds, the Other Moneys and Defeasance Obligations, if any, available for such purposes in the Escrow Deposit Fund.
- 7. **Investments**. Money deposited in the Escrow Deposit Fund shall be invested in State and Local Government Securities and other Defeasance Obligations, as described in the attached **Schedule "C"**. In addition, the Escrow Agent may subsequently sell and purchase, on behalf of and for the account of CFX, Defeasance Obligations upon written direction of CFX (which direction may be in the form of a resolution of CFX or written instructions from an Authorized Officer of CFX, as such term is defined in the Bond Resolution) and where, prior to any such reinvestment or substitution, the Escrow Agent and Build America Mutual Assurance Company of a portion of the Refunded Bonds (the "Insurer") has received from CFX the following:
  - (1) a written opinion by an independent certified public accountant or firm of independent certified public accountants, of recognized standing, appointed by CFX, to the effect that after such investment, reinvestment or substitution the principal amount of the Defeasance Obligations, together with the interest thereon together with any cash, will be sufficient to pay the Refunded Bonds as described in **Schedule "B"** hereto; and
  - (2) a written opinion of nationally recognized bond counsel to the effect that (i) such investment will not cause the Refunded Bonds or the Refunding Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, its statutory predecessor, as applicable, and the regulations promulgated thereunder or otherwise cause the interest on the Refunded Bonds or the Refunding Bonds to be subject to federal income tax, and (ii) such investment does not violate any resolution of CFX relating to the Refunded Bonds or the Refunding Bonds.

In the event the above-referenced verification concludes that there are surplus moneys in the Escrow Deposit Fund, such surplus moneys shall be promptly released to CFX, upon CFX's written request. The Escrow Deposit Fund shall continue in effect until the date upon which the Escrow Agent makes the final payment to the Refunded Bonds Paying Agent in an amount sufficient to pay the Refunded Bonds as described in **Schedule "B"** hereto, whereupon the Escrow Agent shall sell or redeem any Defeasance Obligations remaining in the Escrow Deposit Fund, and shall remit to CFX the proceeds thereof, together with all other money, if any, then remaining in the Escrow Deposit Fund.

- 8. **Redemption Notice**. CFX hereby informs the Escrow Agent that it has elected to call the Refunded Bonds for early redemption on the dates and at the prices described on **Schedule "A"**, plus accrued interest to the redemption date, and this Escrow Agreement is being entered into subject to CFX's right to optionally redeem the Refunded Bonds. CFX hereby directs the Escrow Agent, in its capacity as the Refunded Bonds Paying Agent, to notify the Refunded Bonds Holders of such redemption and provide notice of such redemption of the Refunded Bonds as provided in the Bond Resolution. The form of the Redemption Notice shall be in the form attached hereto as **Schedule "D"**.
- 9. **Defeasance of Refunded Bonds**. Concurrently with the deposit of the Escrow Proceeds and the Other Moneys set forth in Section 3 hereof, the Refunded Bonds shall cease to be entitled to any lien, benefit or security under the Bond Resolution, and all covenants, agreements and obligations of CFX to the holders of the Refunded Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.
- 10. Lien on Escrow Proceeds, Other Moneys and Escrow Securities. The Escrow Deposit Fund hereby created shall be irrevocable and the holders of the Refunded Bonds shall have an express lien on all Escrow Proceeds, Other Moneys and Defeasance Obligations, if any, deposited in the Escrow Deposit Fund pursuant to the terms hereof and the interest earnings thereon, if any, until paid out, used and applied in accordance with this Agreement. Neither CFX nor the Escrow Agent shall cause or permit any other lien or interest to be imposed upon the Escrow Deposit Fund.
- 11. **Amendments**. This Agreement is made for the benefit of CFX and the holders from time to time of the Refunded Bonds and it shall not be repealed, revoked, altered or amended without the written consent of all such holders and the written consent of the Escrow Agent, provided, however, that CFX and the Escrow Agent may, without the consent of, or notice to, such holders, enter into such agreements supplemental to this Agreement as shall not adversely affect the rights of such holders and as shall not be inconsistent with the terms and provisions of this Agreement, for any one or more of the following purposes:
  - (1) to cure any ambiguity or formal defect or omission in this Agreement;
  - (2) to grant, or confer upon, the Escrow Agent for the benefit of the holders of the Refunded Bonds, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Agent;
    - (3) to subject to this Agreement additional funds, securities or properties; and
  - (4) to exercise CFX's right, in its sole discretion, to currently redeem the Currently Redeemable Bond.

The Escrow Agent shall be entitled to rely exclusively upon an unqualified opinion of nationally recognized bond counsel with respect to compliance with this Section 11, including the extent, if any, to which any change, modification or addition affects the rights of the holders of the Refunded Bonds, or that any instrument executed hereunder complies with the conditions and provisions of this Section 11. Notice of and copies of any revocation, alteration or

amendment to this Agreement shall be provided to the rating agencies rating the Refunding Bonds.

Compensation of Escrow Agent; Liability. In consideration of the services 12. rendered by the Escrow Agent under this Agreement, CFX is simultaneously paying to the Escrow Agent \$[2,500.00], and an annual fee of \$[1,500.00], thereafter; provided, that such fee shall not include any actual and reasonable expenses associated with the performance by the Escrow Agent at the request of CFX of any extraordinary services hereunder, which are payable by CFX upon presentation of an invoice therefor from the Escrow Agent. The Escrow Agent shall have no lien whatsoever upon any of the Escrow Proceeds, Other Moneys or Defeasance Obligations, if any, in the Escrow Deposit Fund for the payment of such proper fees and expenses. CFX further agrees to indemnify and save the Escrow Agent harmless, to the extent allowed by law, against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder, and which are not due to its negligence or default. Anything in this Agreement to the contrary notwithstanding, in no event shall the Escrow Agent be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action; provided however, that the Escrow Agent shall be responsible for such loss or damage caused by its gross negligence.

Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action under this Agreement, such matter may be deemed to be conclusively established by a certificate signed by an authorized officer of CFX. The Escrow Agent may conclusively rely, as to the correctness of statements, conclusions and opinions therein, upon any certificate, report, opinion or other document furnished to the Escrow Agent pursuant to any provision of this Agreement; the Escrow Agent shall be protected and shall not be liable for acting or proceeding, in good faith, upon such reliance, except for Escrow Agent's gross negligence; and the Escrow Agent shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument. The Escrow Agent may execute any of its powers and perform its duties hereunder directly or through agents or attorneys and may, consult with counsel, accountants and other skilled persons to be selected and retained by it. The Escrow Agent shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons, except for Escrow Agent's gross negligence. In no event shall the Escrow Agent be liable for any failure or delay in the performance of its obligations hereunder because of circumstances beyond the Escrow Agent's control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, strikes or work stoppages for any reason, embargo, government action, including any laws, ordinances, regulations or the like which restrict or prohibit the providing of the services contemplated by this Escrow Agreement, inability to obtain material, equipment, or communications or computer facilities, or the failure of equipment or interruption of communications or computer facilities, and other causes beyond the Escrow Agent's control whether or not of the same class or kind as specifically named above.

13. **Resignation or Removal of Escrow Agent**. The Escrow Agent, at the time acting hereunder, may at any time resign and be discharged from the duties and obligations hereby created by giving not less than thirty (30) days' written notice to CFX and mailing notice

thereof, specifying the date when such resignation will take effect to the holders of all Refunded Bonds then outstanding, but no such resignation shall take effect unless a successor Escrow Agent shall have been appointed by the holders of a majority in aggregate principal amount of the Refunded Bonds then outstanding or by CFX as hereinafter provided and such successor Escrow Agent shall have accepted such appointment, in which event such resignation shall take effect immediately upon the appointment and acceptance of a successor Escrow Agent.

The Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing, delivered to the Escrow Agent and to CFX and signed by the holders of a majority in aggregate principal amount of the Refunded Bonds then outstanding.

In the event the Escrow Agent hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case the Escrow Agent shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the holders of a majority in aggregate principal amount of the Refunded Bonds then outstanding by an instrument or concurrent instruments in writing, signed by such holders, or by their attorneys in fact, duly authorized in writing; provided, nevertheless, that in any such event, CFX shall appoint a temporary Escrow Agent to fill such vacancy until a successor Escrow Agent shall be appointed by the holders of a majority in aggregate principal amount of the Refunded Bonds then outstanding in the manner above provided, and any such temporary Escrow Agent so appointed by CFX shall immediately and without further act be superseded by the Escrow Agent so appointed by such holders.

In the event that no appointment of a successor Escrow Agent or a temporary successor Escrow Agent shall have been made by such holders or CFX pursuant to the foregoing provisions of this Section 13 within thirty (30) days after written notice of resignation of the Escrow Agent has been given to CFX, the holder of any of the Refunded Bonds or any retiring Escrow Agent may apply to any court of competent jurisdiction for the appointment of a successor Escrow Agent, and such court may thereupon, after such notice, if any, as it shall deem proper, appoint a successor Escrow Agent.

No successor Escrow Agent shall be appointed unless such successor Escrow Agent shall be a corporation with trust powers organized under the banking laws of the United States or any state, and shall have at the time of appointment capital and surplus of not less than \$50,000,000.

Every successor Escrow Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to CFX an instrument in writing accepting such appointment hereunder and thereupon such successor Escrow Agent, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, and trusts, of its predecessor; but such predecessor shall nevertheless, on the written request of such successor Escrow Agent or CFX execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Escrow Agent shall deliver all securities and moneys held by it to its successor; provided, however, that before any such delivery is required to be made, all fees, advances and expenses of the retiring or removed Escrow Agent shall be paid in full. Should any transfer, assignment or instrument in writing from CFX be required by any successor Escrow

Agent for more fully and certainly vesting in such successor Escrow Agent the estates, properties, rights, powers and trusts hereby vested or intended to be vested in the predecessor Escrow Agent, any such transfer, assignment and instruments in writing shall, on request, be executed, acknowledged and delivered by CFX.

Any corporation into which the Escrow Agent, or any successor to it in the trusts created by this Agreement, may be merged or converted or with which it or any successor to it may be consolidated, or transfers all or substantially all of its corporate trust business to, or any corporation resulting from any merger, conversion, consolidation or tax-free reorganization to which the Escrow Agent or any successor to it shall be a party shall be the successor Escrow Agent under this Agreement without the execution or filing of any paper or any other act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

- 14. **Termination**. This Agreement, except for Section 12 hereof, shall terminate when all transfers and payments required to be made by the Escrow Agent under the provisions hereof shall have been made. Upon such termination, all moneys remaining in the Escrow Deposit Fund shall be released to CFX.
- 15. **Governing Law**. This Agreement shall be governed by the applicable laws of the State of Florida.
- 16. **Severability**. If any one or more of the covenants or agreements provided in this Agreement on the part of CFX or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.
- 17. **Counterparts**. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.
- 18. **Notices**. Any notice, authorization, request or demand required or permitted to be given in accordance with the terms of this Agreement shall be in writing and sent by registered or certified mail addressed to:

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

Attention: Lisa Lumbard, Chief Financial Officer

Wells Fargo Bank, N.A., as Escrow Agent 123 S. Broad Street

Suite 1500; 15<sup>th</sup> Floor MAC: Y1379-157

Philadelphia, PA 19109

Attention: Corporate Municipal and Escrow Services

[SIGNATURES ON FOLLOWING PAGES]

**IN WITNESS WHEREOF**, the parties hereto have each caused this Escrow Deposit Agreement to be executed by their duly authorized officers and appointed officials and their seals to be hereunder affixed and attested as of the date first above written.

CENTRAL FLORIDA
<b>EXPRESSWAY AUTHORITY</b>

By:	
-	Buddy Dyer, Chairman

[Signature Page to Escrow Deposit Agreement]

**IN WITNESS WHEREOF**, the parties hereto have each caused this Escrow Deposit Agreement to be executed by their duly authorized officers and appointed officials and their seals to be hereunder affixed and attested as of the date first above written.

WELLS FARGO BANK, N.A.		
By:	Authorized Signatory	
Ву:	Authorized Signatory	

[Signature Page to Escrow Deposit Agreement]

# **SCHEDULE A**

# **Description of Refunded Bonds**

.

# SCHEDULE B

# **Redemption Schedule**

# SCHEDULE C

Description of State and Local Government Securities and Defeasance Obligations

# SCHEDULE D

# Form of Notice of Redemption Central Florida Expressway Authority

[See Attached]

#### FORM OF THE NOTICE OF OPTIONAL REDEMPTION

CENTRAL FLORIDA EXPRESSWAY AUTHORITY **REVENUE BONDS, SERIES 2007A** DATED DATE: June 28, 2007

Redemption Date: Redemption Reason/Source of Funds:		[], 20[_	_]	
		Optional R	Redemption	
Total Redemp	tion Amount:	\$[]		
CHCID	MATUDITY	DATE	AMOUNT	DDICE
CUSIP	MATURITY	RATE	AMOUNT	PRICE
	["	To Be Provide	d]	
NOTI	CE IS HEREBY GIVEN	that, pursuan	t to Section 4.10 of	that certain Seventh
Supplemental	Revenue Bond Resolution	n, adopted on	May 23, 2007, whi	ich supplements that
certain Amend	ded and Restated Master E	Sond Resolution	on of CFX adopted of	on February 3, 2003,
that the Centra	al Florida Expressway Autl	hority (the "Iss	suer") has exercised	its right to optionally
redeem its ou	tstanding Central Florida	Expressway A	Authority Revenue B	onds, Series 2007A,
with maturity	dates described above (th	e "2007A Bor	nds") on [], 20[	], at a redemption

Payment of the redemption proceeds will be made on or after the redemption date upon presentation and surrender of the securities to Wells Fargo Bank, N.A. (the "Paying Agent"). Payment of the Redemption Price on the Bonds called for redemption will be paid only upon the presentation and surrender thereof in the following manner:

price of 100% of par plus accrued interest to [\_\_\_\_], 20[\_\_]. On and after [\_\_\_\_], 20[\_\_],

#### **Registered/Certified Mail:** Air Courier:

interest on the 2007A Bonds will cease to accrue.

Wells Fargo Bank, N.A. **Corporate Trust Operations** MAC:N9300-070 P.O. Box 1517 Minneapolis, MN 55480-1517

Wells Fargo Bank, N.A. **Corporate Trust Operations** 9300-070 600 Fourth Street South, 7<sup>th</sup> Floor Minneapolis, MN 55479

Interest on the principal amount designated to be redeemed shall cease to accrue on and after the Redemption Date.

#### **REQUIREMENT INFORMATION**

Wells Fargo Bank, N.A. policy does not allow the safekeeping of securities within Corporate Trust Operations for a period of longer than 30 days. Please DO NOT submit your securities for payment more than 30 days in advance of the Redemption Date. A \$25.00 wire transfer fee will be deducted from each payment requested to be made by wire. When inquiring about this redemption, please have the Bond number available. Please inform the customer service representative of the CUSIP number(s) of the affected Bond. Customer Service can be reached at 612-667-9764 or Toll Free at 1-800-344-5128.

#### **IMPORTANT NOTICE**

Under section 3406(a)(1) of the Internal Revenue Code, the Paying Agent making payment of interest or principal on securities may be obligated to withhold a percentage of the payment to a holder who has failed to furnish the Registrar with a valid taxpayer identification number, certification that the number supplied is correct, and that the holder is not subject to backup withholding. Holders of the Refunded Bonds who wish to avoid the application of these provisions should submit either a complete IRS (Internal Revenue Service) Form W-9 (use only if the holder is a U.S. person, including a resident alien), or the appropriate form W-8 (use only if you are neither a U.S. person or a resident alien), when presenting the Bonds for payment. See IRS publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities. Publication 515 and W-8 forms and instructions are available through the IRS via their web site at www.irs.gov.

<sup>\*</sup> The Paying Agent shall not be held responsible for the selection or use of the CUSIP number, nor is any representation made as to its correctness indicated in the Redemption Notice. It is included solely for the convenience of the bondholders.

Dated: [], 20[]		CENTRAL FLORIDA EXPRESSWAY AUTHORITY		
		By: Wells Fargo Bank, National Association, Paying Agent		
cc:	Moody's Investors Service Fitch Ratings Standard and Poor's Depository Trust Company Financial Guaranty Insurance Con	mpany		
	Information Services: Municipal Securities Rulemaking			

### FORM OF THE NOTICE OF OPTIONAL REDEMPTION

CENTRAL FLORIDA EXPRESSWAY AUTHORITY REVENUE BONDS, SERIES 2010A DATED DATE: March 25, 2010

Redemption Date: July 1, 2020

Redemption Reason/Source of Funds: Optional Redemption

Total Redemption Amount: \$120,760,000

CUSIP MATURITY RATE AMOUNT PRICE

[To Be Provided]

NOTICE IS HEREBY GIVEN that, pursuant to Section 4.10 of that certain Tenth Supplemental Revenue Bond Resolution, adopted on February 24, 2010, which supplements that certain Amended and Restated Master Bond Resolution of CFX adopted on February 3, 2003, that the Central Florida Expressway Authority (the "Issuer") has exercised its right to optionally redeem its outstanding Central Florida Expressway Authority Revenue Bonds, Series 2010A, with maturity dates described above (the "2010A Bonds") on July 1, 2020, at a redemption price of 100% of par plus accrued interest to July 1, 2020. On and after July 1, 2020, interest on the 2010A Bonds will cease to accrue.

Payment of the redemption proceeds will be made on or after the redemption date upon presentation and surrender of the securities to Wells Fargo Bank, N.A. (the "Paying Agent"). Payment of the Redemption Price on the Bonds called for redemption will be paid only upon the presentation and surrender thereof in the following manner:

#### **Registered/Certified Mail:** Air Courier:

Wells Fargo Bank, N.A. Corporate Trust Operations MAC:N9300-070 P.O. Box 1517 Minneapolis, MN 55480-1517 Wells Fargo Bank, N.A.
Corporate Trust Operations
9300-070
600 Fourth Street South
7<sup>th</sup> Floor
Minneapolis, MN 55479

Interest on the principal amount designated to be redeemed shall cease to accrue on and after the Redemption Date.

### **REQUIREMENT INFORMATION**

Wells Fargo Bank, N.A. policy does not allow the safekeeping of securities within Corporate Trust Operations for a period of longer than 30 days. Please DO NOT submit your securities for payment more than 30 days in advance of the Redemption Date. A \$25.00 wire transfer fee will be deducted from each payment requested to be made by wire. When inquiring about this redemption, please have the Bond number available. Please inform the customer service representative of the CUSIP number(s) of the affected Bond. Customer Service can be reached at 612-667-9764 or Toll Free at 1-800-344-5128.

### **IMPORTANT NOTICE**

Under section 3406(a)(1) of the Internal Revenue Code, the Paying Agent making payment of interest or principal on securities may be obligated to withhold a percentage of the payment to a holder who has failed to furnish the Registrar with a valid taxpayer identification number, certification that the number supplied is correct, and that the holder is not subject to backup withholding. Holders of the Refunded Bonds who wish to avoid the application of these provisions should submit either a complete IRS (Internal Revenue Service) Form W-9 (use only if the holder is a U.S. person, including a resident alien), or the appropriate form W-8 (use only if you are neither a U.S. person or a resident alien), when presenting the Bonds for payment. See IRS publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities. Publication 515 and W-8 forms and instructions are available through the IRS via their web site at www.irs.gov.

<sup>\*</sup> The Paying Agent shall not be held responsible for the selection or use of the CUSIP number, nor is any representation made as to its correctness indicated in the Redemption Notice. It is included solely for the convenience of the bondholders.

Dated: June 1, 2021

### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: Wells Fargo Bank, National Association,

Paying Agent

cc: Moody's Investors Service

Fitch Ratings

Standard and Poor's

**Depository Trust Company** 

Financial Guaranty Insurance Company

**Information Services:** 

Municipal Securities Rulemaking Board - EMMA

### FORM OF THE NOTICE OF OPTIONAL REDEMPTION

CENTRAL FLORIDA EXPRESSWAY AUTHORITY REFUNDING REVENUE BONDS, SERIES 2008B-1, 2008B-2, 2008B-3 AND 2008B-4 DATED DATE: \_\_\_\_\_, 20\_\_\_ Redemption Date: \_\_\_\_\_1, 2021 Redemption Reason/Source of Funds: **Optional Redemption** Total Redemption Amount: MATURITY **CUSIP** RATE AMOUNT **PRICE** [To Be Provided] NOTICE IS HEREBY GIVEN that, pursuant to Section \_\_\_\_\_ of that certain \_ Supplemental Revenue Bond Resolution, adopted on \_\_\_\_\_, 20\_\_, which supplements that certain Amended and Restated Master Bond Resolution of CFX adopted on February 3, 2003, that the Central Florida Expressway Authority (the "Issuer") has exercised its right to optionally redeem its outstanding Central Florida Expressway Authority Refunding Revenue Bonds, Series 2008B-1, 2008B-2, 2008B-3 and 2008B-4, with maturity dates described above (the "2008 Bonds") on \_\_\_\_\_ 1, 2021, at a redemption price of 100% of par plus accrued interest to \_\_\_\_\_\_ 1, 2021. On and after \_\_\_\_\_ 1, 2021, interest on the 2008 Bonds will cease to accrue. Payment of the redemption proceeds will be made on or after the redemption date upon presentation and surrender of the securities to Wells Fargo Bank, N.A. (the "Paying Agent"). Payment of the Redemption Price on the Bonds called for redemption will be paid only upon the

# presentation and surrender thereof in the following manner:

### **Registered/Certified Mail:**

### **Air Courier:**

Wells Fargo Bank, N.A. Corporate Trust Operations MAC:N9300-070 P.O. Box 1517 Minneapolis, MN 55480-1517

Wells Fargo Bank, N.A. **Corporate Trust Operations** 9300-070 600 Fourth Street South, 7<sup>th</sup> Floor Minneapolis, MN 55479

Interest on the principal amount designated to be redeemed shall cease to accrue on and after the Redemption Date.

### REQUIREMENT INFORMATION

Wells Fargo Bank, N.A. policy does not allow the safekeeping of securities within Corporate Trust Operations for a period of longer than 30 days. Please DO NOT submit your securities for payment more than 30 days in advance of the Redemption Date. A \$25.00 wire transfer fee will be deducted from each payment requested to be made by wire. When inquiring about this redemption, please have the Bond number available. Please inform the customer service representative of the CUSIP number(s) of the affected Bond. Customer Service can be reached at 612-667-9764 or Toll Free at 1-800-344-5128.

### **IMPORTANT NOTICE**

Under section 3406(a)(1) of the Internal Revenue Code, the Paying Agent making payment of interest or principal on securities may be obligated to withhold a percentage of the payment to a holder who has failed to furnish the Registrar with a valid taxpayer identification number, certification that the number supplied is correct, and that the holder is not subject to backup withholding. Holders of the Refunded Bonds who wish to avoid the application of these provisions should submit either a complete IRS (Internal Revenue Service) Form W-9 (use only if the holder is a U.S. person, including a resident alien), or the appropriate form W-8 (use only if you are neither a U.S. person or a resident alien), when presenting the Bonds for payment. See IRS publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities. Publication 515 and W-8 forms and instructions are available through the IRS via their web site at www.irs.gov.

\* The Paying Agent shall not be held responsible for the selection or use of the CUSIP number, nor is any representation made as to its correctness indicated in the Redemption Notice. It is included solely for the convenience of the bondholders.

Date	d:1, 2021	
		CENTRAL FLORIDA EXPRESSWAY AUTHORITY
		By: Wells Fargo Bank, National Association, Paying Agent
cc:	Moody's Investors Service	
	Fitch Ratings Standard and Poor's Depository Trust Company	
	Information Services:	
	Municipal Securities Rulemakin	g Board – EMMA

Dated: June 1, 2020

### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: Wells Fargo Bank, National Association, Paying Agent

cc: Moody's Investors Service

Fitch Ratings

Standard and Poor's

**Depository Trust Company** 

Financial Guaranty Insurance Company

**Information Services:** 

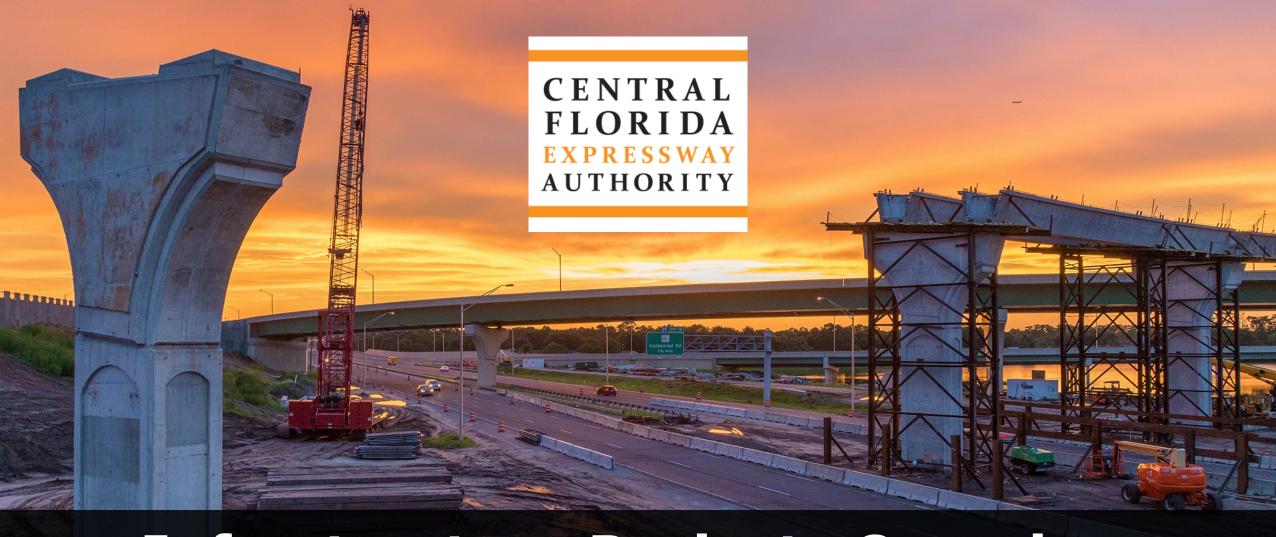
Municipal Securities Rulemaking Board - EMMA

### EXHIBIT F

### INSURANCE AGREEMENT (if applicable)

See Article VIII of the Resolution.

F. 4.



# Infrastructure Projects Overview

Glenn Pressimone, Chief of Infrastructure
— March 11, 2021 —

# **Tolls Paid Here, Stay Here**

### \$2.7B Five-Year Work Plan

- Funding all operations and projects solely by tolls, no taxes
- 74 miles of new alignments contemplated
- 60 miles of capacity improvements on existing CFX expressways
- Creating more than 32,500 jobs
- Contributing \$2.4B in gross domestic product



### PROJECT DEVELOPMENT PROCESS

New Alignment Expansion Projects

### **Identify Project**

Project identified in CFX Board approved Visioning +2040 Master Plan (Long-Range Transportation Plan).

### Work Plan

Is project identified in the approved Five-Year Work Plan?

Project is placed on hold to be revisited in the future.

**CFX Board** approves findings of feasibility study on the project?

Project is placed on hold to be revisited in the future.

### **Feasibility Study**

Board approve PD&E Study?

> Project is placed on hold to be revisited in the future.

No

#### PD&E Study

Does CFX

Does CFX **Board approve** project for the Final Design Phase?

Recommended

Preferred/Final Design

#### Project is placed on hold to be revisited in the future.

### Right-of-Way

Does CFX Board accept the Right-of-Way Committee's requested acquisitions and approve start of right-of-way purchasing?

### Permitting

Does CFX **Board accept** the proposed mitigation/ conservation easement settlements and approve permit agreements?

#### Utilities

Does CFX **Board accept** the proposed utilities relocation settlements and approve utility agreements?

Project is placed on hold to be revisited in the future.

#### **Advertise Bids**

Does CFX Board approve CFX's request to advertise bids for construction?

#### Project is placed on hold to be revisited in the future.

#### **Award Contract**

Does CFX accept bid and approve award of contract to construct roadway?

CFX may re-advertise project to accept new bids OR project design is revised and/or repackaged for bids.

No

#### Construction

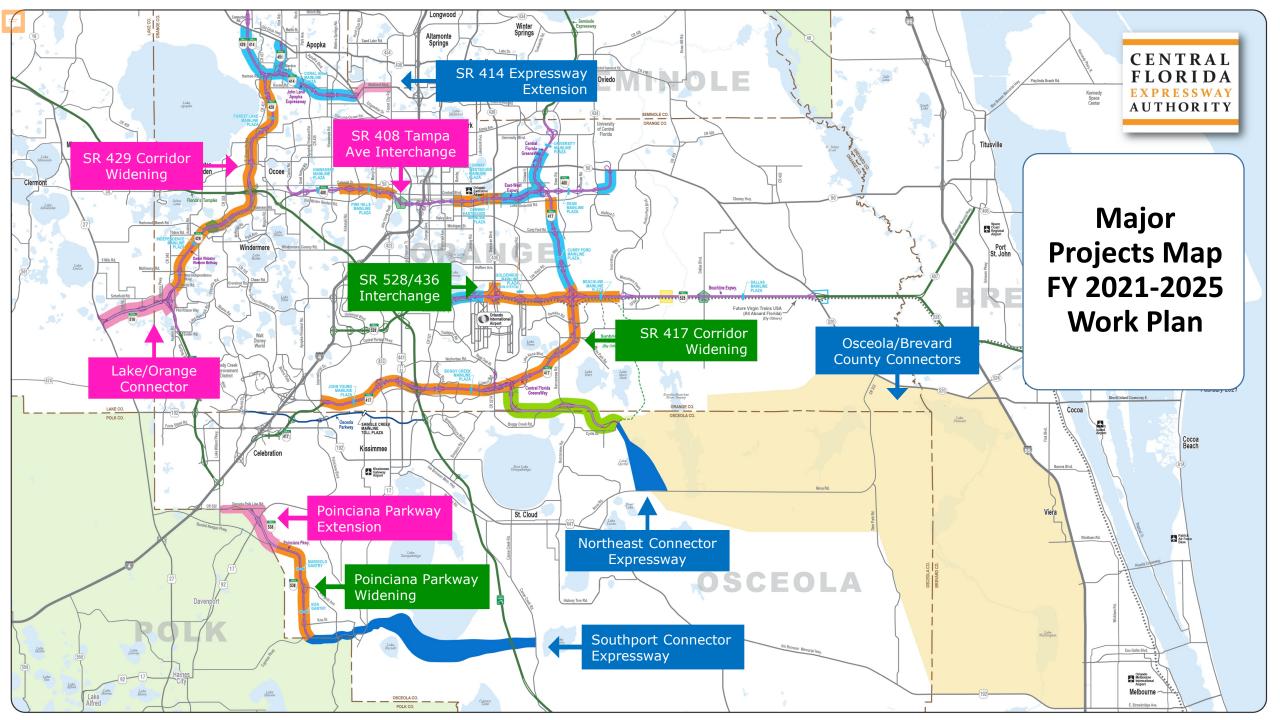
Construction commences.

### Newly

constructed roadway is opened to traffic.

Open to Traffic





# Osceola/Brevard County Connectors

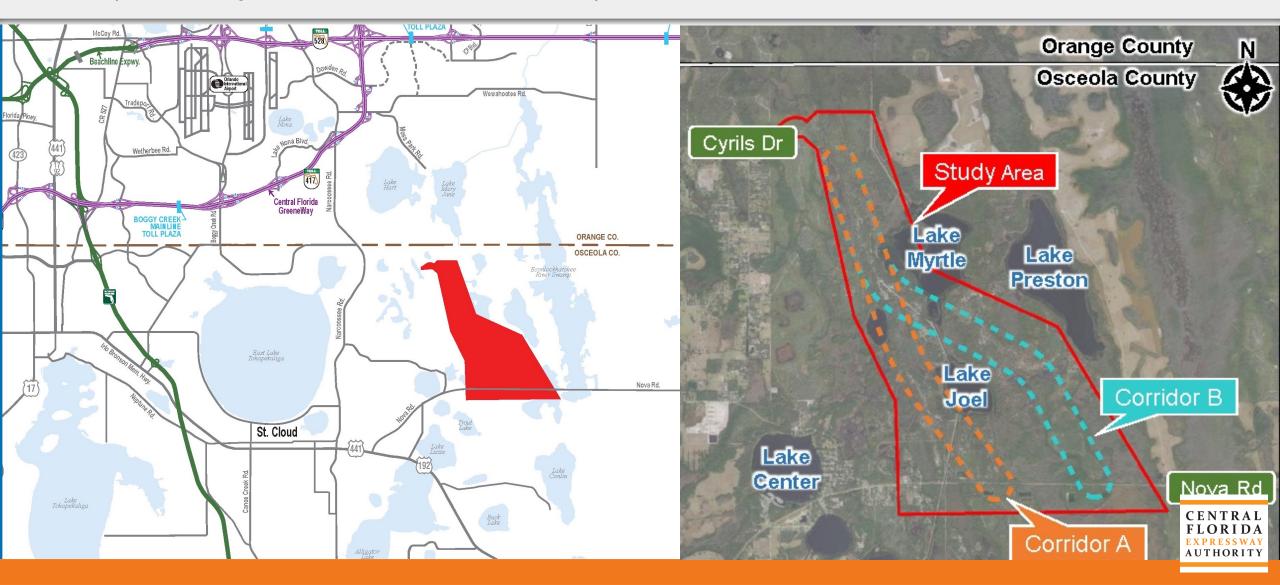
CFX Expansion Project I Current Phase: CF&M Study





# Northeast Connector Expressway (Phase 1)

CFX Expansion Project | Current Phase: PD&E Study



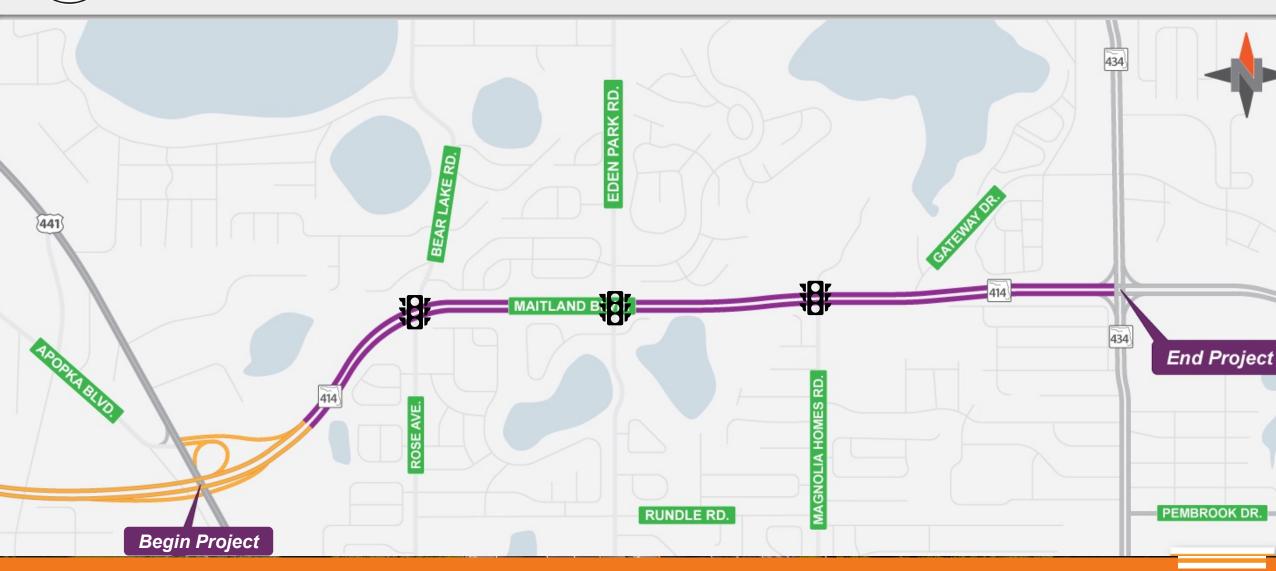
# **Southport Connector Expressway**

CFX Expansion Project | Current Phase: PD&E Study





# SR 414 Expressway Extension CFX Expansion Project | Current Phase: PD&E Study





# **Poinciana Parkway Extension**

CFX Expansion Project | Current Phase: Design





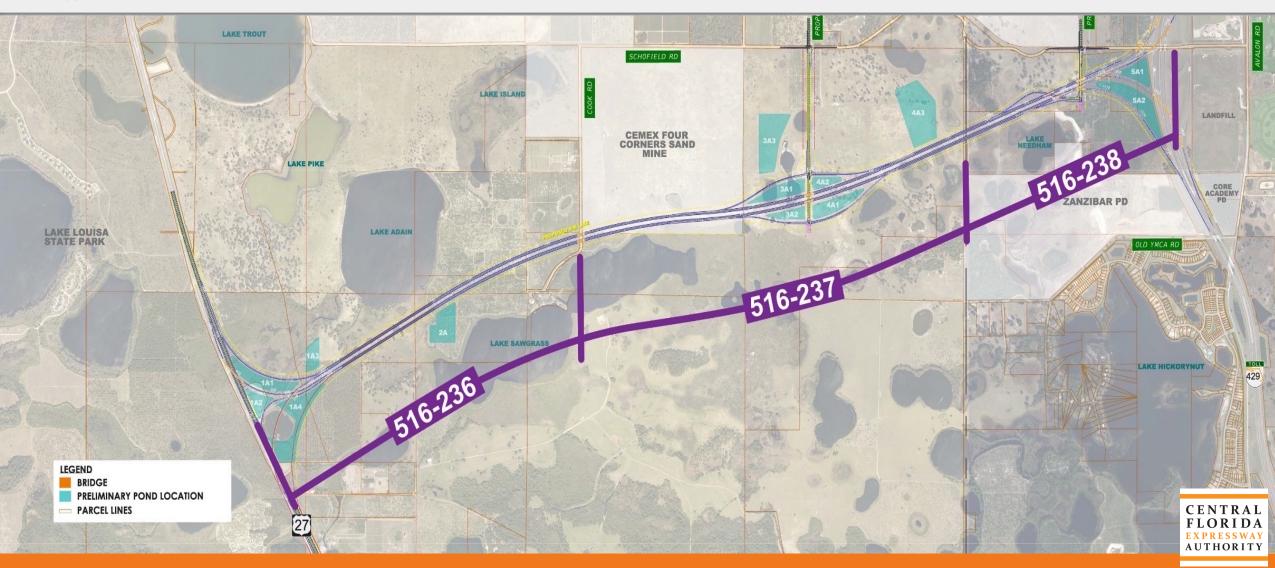
# SR 408 Tampa Ave Interchange CFX Interchange Project | Current Phase: Design





# SR 516 Lake/Orange Expressway

CFX Expansion Project | Current Phase: Design





# **SR 429 Corridor Widening**

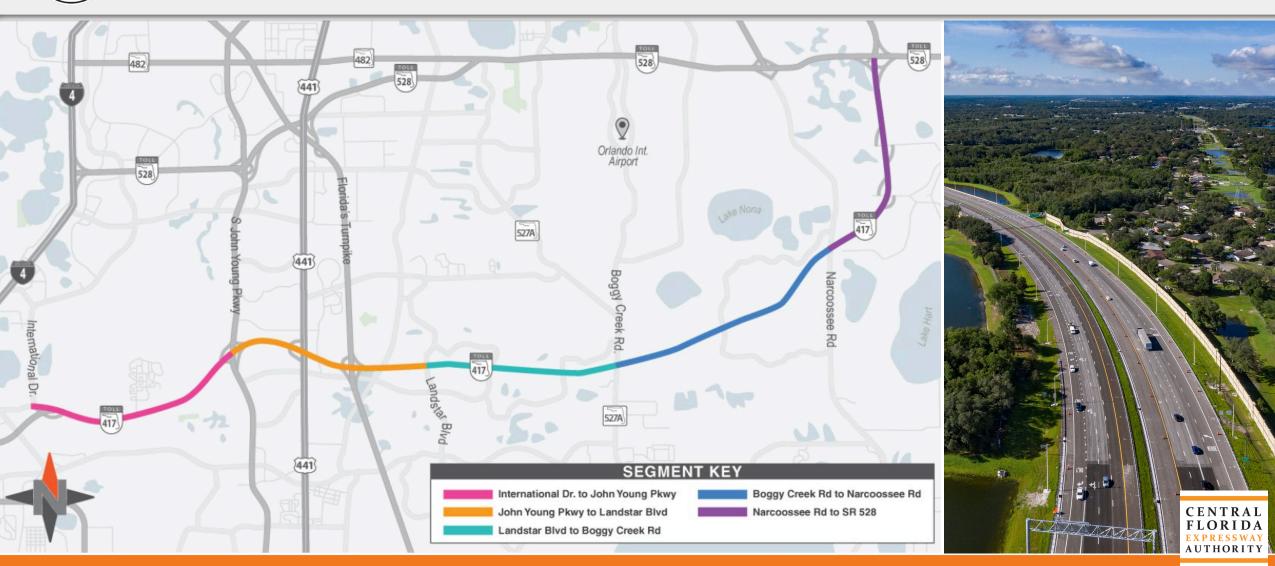
CFX Capacity Improvement | Current Phase: Design





# **SR 417 Corridor Widening**

CFX Capacity Improvement | Current Phase: Design & Construction



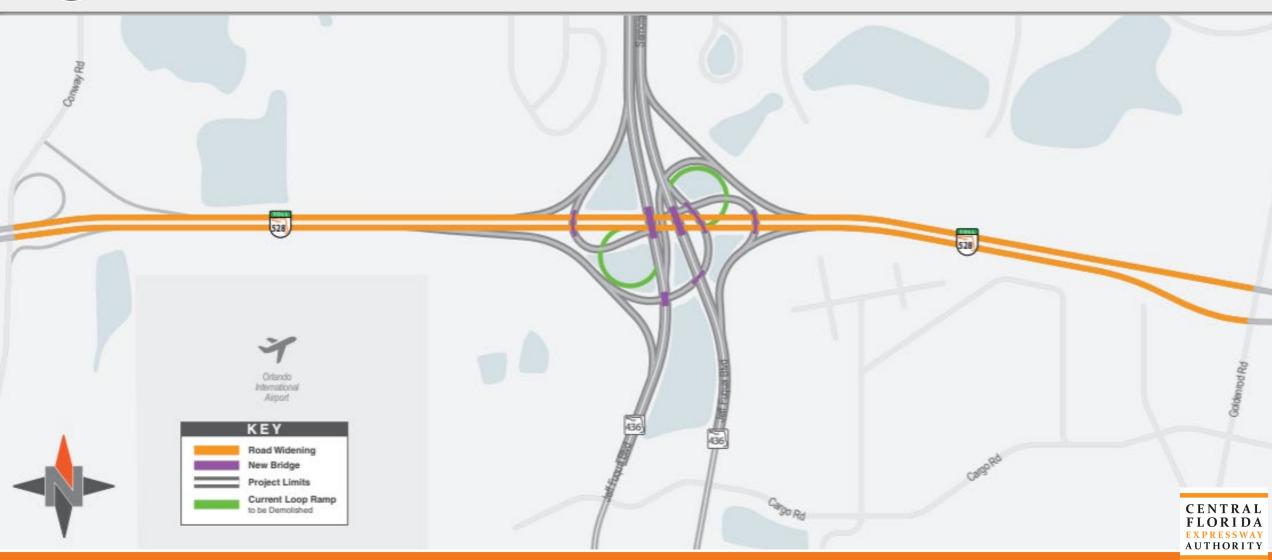


# Poinciana Parkway Widening CFX Capacity Improvement | Current Phase: Construction





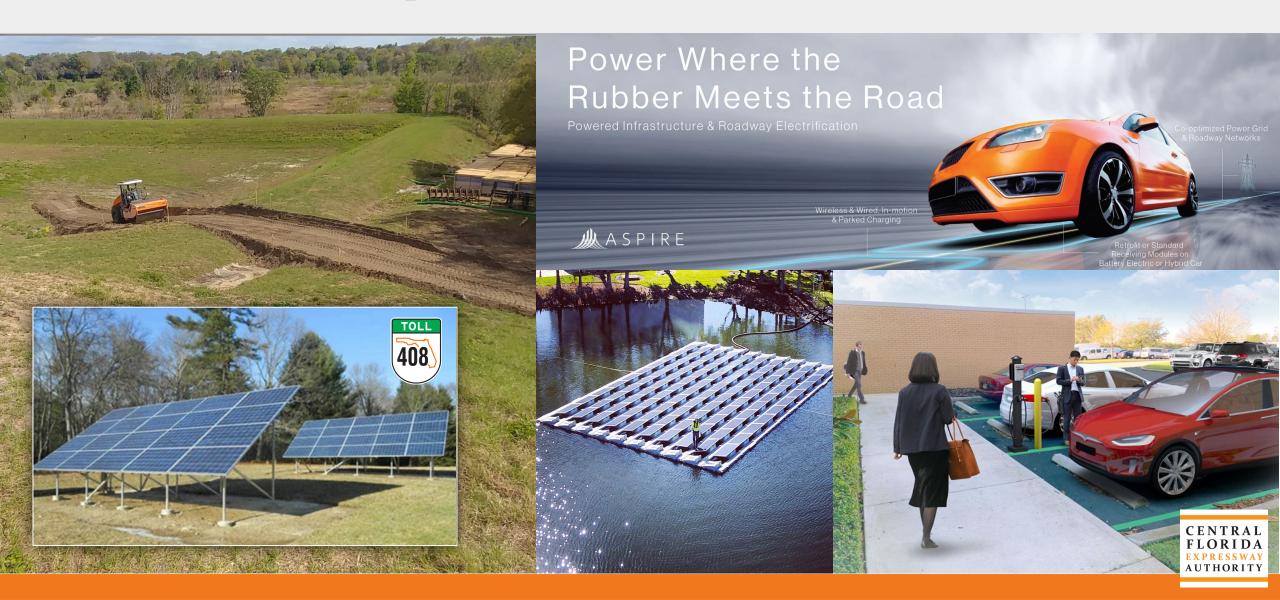
# SR 528 / 436 Interchange CFX Capacity Improvement | Current Phase: Construction



# **Intelligent Transportation Sytems (ITS)**



# Sustainability



## **Maintenance**



## **CFX Infrastructure Group**

### **Chief of Infrastructure**

Glenn Pressimone, PE



### **Director of Maintenance**

Don Budnovich, PE

### **Contract Support Specialist**

Kellie Bridwell

### **Roadway Team**

### Sr. Roadway Inspectors

Steve Geiss Matthew Lewis James Martin

### Landscape Architect Chris Bloodwell

Landscape Maintenance Inspector Matthew Bryant

### **Facilities Team**

### Facilities Maintenance Supervisors

Mike Bakidis Robert Glasemann



### **Director of Engineering**

Will Hawthorne, PE

### **Contract Support Specialist**

Jeannie Perez

### Manager of Engineering

Dana Chester, PE

### **Engineering Project Manager**

Jamison Edwards, PE

### **Office Coordinator**

Elizabeth Klejnowski



### Director of Construction

Ben Dreiling, PE

### Resident Engineer

Jack Burch, PE

### Project Administrator

Kim Murphy



### Manager of Traffic Operations

Bryan Homayouni, PE

### ITS Analyst Brent Poole

F.O.N. Technician





