AGENDA BOARD MEETING February 10, 2022 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 Board 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. Public Comment speakers that are present and have submitted their completed Public Comment form to the Recording Secretary at least 5 minutes prior to the scheduled start of the meeting will be called to speak. Each speaker shall be limited to 3 minutes. Any member of the public may also submit written comments which, if received during regular business hours at least 48 hours in advance of the meeting, will be included as part of the record and distributed to the Board members in advance of the meeting.

# C. APPROVAL OF DECEMBER 9, 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. NOMINATION FOR APPOINTMENT OF DANIEL MILLER TO THE OPERATIONS COMMITTEE BY BOARD MEMBER CHRISTOPHER "CJ" MAIER – Chairman Sean Parks (action item)
- 2. INTELLIGENT TRANSPORTATION SYSTEMS MASTER PLAN Bryan Homayouni, Director of Intelligent Transportation Systems (action item)
- 3. FISCAL YEAR 2022 MID-YEAR BUDGET REVIEW Michael Carlisle, Director of Accounting and Finance (info item)

# (CONTINUED ON PAGE 2)

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

# 4. VISITOR TOLL PASS PROGRAM UPDATE – Jim Greer, Chief of Technology/Operations (info item)

## G. BOARD MEMBER COMMENT

## H. ADJOURNMENT

This meeting is open to the public.

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

Persons who require translation services, which are provided at no cost, should contact CFX at (407) 690-5000 x5316 or by email at <u>Iranetta.Dennis@CFXway.com</u> 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 December 9, 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 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 Rafael "Ralph" Martinez, Gubernatorial Appointment Commissioner Victoria Siplin, Orange County

Board Member Participating By Phone: Christopher "CJ" Maier, Gubernatorial Appointment

Board Member Not Present: Commissioner Curt Smith, Brevard County

<u>Staff Present at Dais:</u> Laura Kelley, Executive Director Mimi Lamaute, Board Recording Secretary Diego "Woody" Rodriguez, General Counsel

<u>Non-Voting Advisor Present:</u> Nicola Liguori, Executive Director, Florida's Turnpike Enterprise

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

WWW.CFXWAY.COM

# B. PUBLIC COMMENT

- Public Comments from members of the audience:
  - Apopka Mayor, Bryan Nelson, commented on the City of Apopka and CFX partnership.
  - Seminole County, Commissioner Bob Dallari, thanked the Board for working with Seminole County.
- There were no written public comments received by the deadline.

# C. APPROVAL OF NOVEMBER 11, 2021 BOARD MEETING MINUTES

A motion was made by Commissioner Siplin and seconded by Mr. Martinez to approve the November 11, 2021 Board Meeting Minutes as presented. The motion carried unanimously with eight (8) board members in attendance voting AYE by voice vote. One (1) board member, Mr. Maier voting AYE via phone. Commissioner Smith was not present.

# D. APPROVAL OF CONSENT AGENDA

The Consent Agenda was presented for approval.

# CONSTRUCTION

1.	Approval of Constru	uction Contract Modifications on the	he following projects:
	Project 528-143	SEMA Construction, Inc.	\$ 538,914.56
	Project 538-165	The Lane Construction Corp.	\$1,563,608.11
	Project 599-526C	SICE, Inc.	(\$ 330,726.16)

- Approval of Contract Award to Johnson, Mirmiran & Thompson, Inc. for Construction Engineering and Inspection Services (CEI) for SR 429 Widening From West Road to SR 414, Project No. 429-153, Contract No. 001809 (Agreement Value: not-to-exceed \$10,670,000.00)
- Approval of Contract Award to Cathcart Construction Company Florida, LLC for McCoy Road Facility Improvements - Water and Sewer Lines, Project No. 599-416A/B, Contract No. 001833 (Agreement Value: \$651,254.45)
- 4. Approval of Contract Awards to United Signs & Signals, Inc., Traffic Control Devices, LLC and The New Florida Industrial Electric, Inc. for Rapid Response Contracts for Signs, Signals, ITS and Lighting, Contract Nos. 001864, 001865 and 001866 (Agreement Value: not-to-exceed \$3,000,000.00 each)
- 5. Approval of Contract Award to United Signs & Signals, Inc. for SR 414 Guide Sign Replacements, Project No. 414-640, Contract No. 001846 (Agreement Value: \$5,374,600.41)

# ENGINEERING

- Approval of Supplemental Agreement No. 5 with TLP Engineering Consultants, Inc. for Design Consultant Services for SR 417 Widening from International Drive to John Young Parkway – Post Design Services, Project No. 417-141, Contract No. 001312 (Agreement Value: not-to-exceed \$62,446.11)
- Approval of Final Ranking and Authorization of Contract Awards to Avant Engineering Group, LLC and Protean Design Group, Inc. for Miscellaneous Design Services – Small Sustainable Business Enterprise, Contract Nos. 001835 and 001836 (Agreement Value: \$3,000,000.00 each)
- Approval of Final Ranking and Authorization of Contract Award to the Balmoral Group for Miscellaneous Planning Consultant Services – Small Sustainable Business Enterprise Contract No. 001844 (Agreement Value: \$1,800,000.00)
- 9. Approval of Contract Award to Real Image Solutions for Interactive 3D Virtual Modeling, Contract No. 001870 (Agreement Value: not-to-exceed \$500,000.00)

# HUMAN RESOURCES

10. Approval of Second Contract Renewal with Tews Consulting, Inc. for Staffing Services, Contract No. 001678 (Agreement Value: \$90,000.00)

# **INTERNAL AUDIT**

- 11. Acceptance of Internal Audit Report:
  - a. Prior Audit Recommendations: Semi-Annual Follow Up
  - b. Secure Code Review

# <u>LEGAL</u>

- Approval of Partial Release and Reestablishment of Restriction and Partial Release of Easement and Maintenance Agreement Between the City of Apopka and CFX for Harmon Road, Project Number: 429-604 Portion of Parcels: 63-125 Pond and 63-117 Pond
- Approval of Right of Way Transfer and Continuing Maintenance Agreement Between the CFX and City of Apopka, Florida (Harmon Road), Project Numbers: 429-200 and 429-604, Portions of Parcels 63-117 and 63-118
- 14. Approval of Relocation of Drainage Easement Agreement Between CFX, City Of Apopka, Florida, and DHIC-Oakpoint, LLC, Project Number: SR 429, Parcel Number: 63-810

- 15. Approval of Real Estate Purchase Agreement Between CFX and Farmland Reserve, Inc., Project Number: 528-757 (Agreement Value: \$94,300.00)
- 16. Approval of Easement and Maintenance Agreement Between CFX and Orange County, Florida, Project Number: State Road 408, Parcel Numbers: 1-227 Partial, 1-251 Partial, 1-252 (a/k/a 8093), Pond 12 and 1-226, 1-228 Partial, 1-247 Partial (a/k/a 8093a), Pond 1

# MAINTENANCE

- Approval of First Contract Renewal with Jorgensen Contract Services, LLC for Roadway and Bridge Maintenance Services – SR 408, SR 417, SR 528 and Goldenrod Road Extension, Contract No. 001151 (Agreement Value: \$3,750,000.00)
- Ratification of Contract Award to Jorgensen Contract Services, L.L.C. for Roadway and Bridge Maintenance Services – SR 453, SR 429, SR 414 and SR 451, Contract No. 001861 (Agreement Value: \$2,100,000.00)

## RECORDS MANAGEMENT

19. Approval of First Contract Renewal with Access Information Protected for Offsite Records Storage Services, Contract No. 001523 (Agreement Value: \$0)

## TECHNOLOGY/TOLL OPERATIONS

- 20. Approval of Second Contract Renewal with Kyra Solutions, Inc. for Image Processing Solution, Contract No. 001660 (Agreement Value: \$500,000.00)
- 21. Approval of Purchase Order to Microsoft Corporation for Support Services (Agreement Value: \$115,897.00)

# TRAFFIC OPERATIONS

- 22. Approval of Coke Consulting, LLC as Subconsultant to AECOM Technical Services, Inc. for General Systems Consultant Services, Contract No. 001215
- Approval of Supplemental Agreement No. 5 with Vanasse Hangen Brustlin, Inc. for Design Consultant Services for Three-Line Dynamic Message Signs (DMS) Replacement Project – Post Design Services, Project No. 599-545, Contract No. 001419 (Agreement Value: \$88,862.78)

A motion was made by Commissioner Constantine and seconded by Commissioner Siplin to approve the Consent Agenda as presented. The motion carried unanimously with eight (8) board

members in attendance voting AYE by voice vote. One (1) board member, Mr. Maier voting AYE via phone. Commissioner Smith was not present.

# E. <u>REPORTS</u>

# 1. CHAIRMAN'S REPORT

Chairman Dyer commented on the following:

- The upcoming agenda items;
- There will not be a January board meeting. The next meeting is scheduled for February 10<sup>th</sup>; and
- Upcoming 2045 Master Plan Workshops.

# 2. TREASURER'S REPORT

Mayor Demings reported that as of the end of October, CFX's toll revenue year-to-date was \$199,680,483, which is 17% over budget and 34% over prior year.

Total Operations, Maintenance and Administration expenses were \$23,500,840 which is 6.1% under budget.

After debt service, the total net revenue available for projects for the year was \$107.4 million.

# 3. EXECUTIVE DIRECTOR'S REPORT

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

In addition, Ms. Kelley expanded on the following:

- Ms. Kelley thanked the team that worked on the Florida Automated Vehicle Summit which was a huge success.
- CFX has advertised for letters of interest for a Concept Feasibility and Mobility Study for an
  expressway connection between SR 417 and the Sanford International Airport. Responses are due
  December 17th and approval of the contract award will be requested at the March 10th board
  meeting.
- On Thursday, January 13<sup>th</sup> at 9:00 am CFX will host an Industry Forum. The forum will provide information on the most current procurement schedules for capital projects and information on CFX's minority participation process.
- House Bill 2221 has been filed by House Representative Fred Hawkins. This Bill would add eight (8) FHP officers to CFX's dedicated law enforcement troop. CFX reimburses the state for all the

associated costs. The Bill was passed in its first committee last week. A senate companion bill is expected to be filed in the coming weeks.

• Ms. Lamaute shared the historical events that led to the creation of the Central Florida Beltway.

# F. REGULAR AGENDA ITEMS

# 1. FEDERAL LEGISLATIVE UPDATES

Ms. Kelley announced that Mr. Jim Davenport with Thorn Run Partners was scheduled to update the Board regarding the new Infrastructure Bill, but he was not able to attend today's meeting.

Ms. Kelley provided details regarding the bill and efforts by CFX to coordinate the application of federal funds for the community.

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

# 2. FISCAL YEAR 2021 FINANCIAL STATEMENTS

Mr. Michael Carlisle, Director of Accounting and Finance, and Joel A. Knopp, Shareholder, MSL CPAs & Advisors detailed the FY 2021 Financial Statements.

A motion was made by Commissioner Smith and seconded by Mayor Demings for acceptance of Fiscal Year 2021 Financial Statements. The motion carried unanimously with eight (8) board members in attendance voting AYE by voice vote. One (1) board member, Mr. Maier voting AYE via phone. Commissioner Smith was not present.

# 3. STRATEGIC PLAN

Ms. Michelle Maikisch, Chief of Staff/Public Affairs Officer described the current CFX Strategic Plan and achieved performance measures. Ms. Maikisch explained that in the coming months the Board will receive the results of the performance measures in more detail and input will be requested from the Board as the plan is developed. The final Strategic Plan will be presented to the Board in the summer or fall for adoption.

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

# 4. SR 429 WIDENING FROM WEST ROAD TO SR 414

Mr. Will Hawthorne, Director of Engineering, provided the history, details, project timeline and bids received for the SR 429 Widening from West Road to SR 414 project.

A motion was made by Commissioner Constantine and seconded by Commissioner Parks for approval of the award of the contract to SEMA Construction, Inc. for the SR 429 widening from West Road to SR 414 in the amount of \$127,180,000.00. The motion carried unanimously with eight (8) board members in attendance voting AYE by voice vote. One (1) board member, Mr. Maier voting AYE via phone. Commissioner Smith was not present.

# 5. RELOAD: CUSTOMER SERVICE LANES

Mr. Jim Greer, Chief of Technology/Operations, provided an updated on Reload Customer Services Lanes, an in-lane, drive-up customer services program which allows customers to get a free E-PASS sticker, purchase a Uni and add funds (Reload) to their E-PASS account using cash or credit/debit card. He described the value, enhancements, metrics and project schedule.

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

# 6. BOARD OFFICER ELECTIONS

Mr. Diego "Woody" Rodriguez, General Counsel, explained the nomination/election of officers in accordance with Florida Statutes and CFX policy.

# Election of Chairman/Vice Chairman

A motion was made by Chairman Dyer and seconded by Mr. Martinez to elect Commissioner Parks as Chairman and Mayor Demings as Vice Chairman. The motion carried unanimously with eight (8) board members in attendance voting AYE by voice vote. One (1) board member, Mr. Christopher "CJ" Maier voting AYE via phone. Commissioner Smith was not present.

# Election of Treasurer

A motion was made by Commissioner Parks and seconded by Mr. Madara to elect Commissioner Constantine as Treasurer. The motion carried unanimously with eight (8) board members in attendance voting AYE by voice vote. One (1) board member, Mr. Maier voting AYE via phone. Commissioner Smith was not present.

# G. BOARD MEMBER COMMENT

The following Board Members commented:

- Mayor Demings;
- Commissioner Arrington;
- Mr. Madara;
- Commissioner Parks;
- Commissioner Constantine; and
- Chairman Dyer.

# H. ADJOURNMENT

Chairman Dyer adjourned the meeting at approximately 9:57 a.m.

Mayor Buddy Dyer Chairman Central Florida Expressway Authority Mimi Lamaute Recording Secretary Central Florida Expressway Authority

Minutes approved on

, 2022.

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, <u>PublicRecords@CFXway.com</u>, or 4974 ORL Tower Road, Orlando, FL 32807. Additionally, videotapes of Board meetings are available at the CFX website, <u>www.CFXway.com</u>.

# D. Consent Agenda

# CONSENT AGENDA February 10, 2022

# **CONSTRUCTION**

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

Project 408-764	Ranger Construction Industries, Inc.	(\$	413,502.78)
Project 417-141	Hubbard Construction Co.	\$	129,937.77
Project 417-142	Prince Contracting	(\$	128,870.82)
Project 417-751	Kiewit Infrastructure South Co.	(\$	60,312.54)
Project 538-165	The Lane Construction Corp.	\$	42,375.59
Project 599-756	S&D Industrial Painting, Inc.	(\$	113,135.23)

- 2. Approval of First Contract Renewal with Ardaman & Associates, Inc. for Systemwide Materials Testing and Geotechnical Services, Contract No. 001434 (Agreement Value \$500,000.00)
- Approval of Cooperative Purchase Agreement with HRV Conformance Verification Associates, Inc. for Materials Inspection, Sampling and Testing, Contract No. 001885 (Agreement Value: not-to-exceed \$1,500,000.00)
- 4. Approval of Cooperative Purchase Agreement with KTA-Tator, Inc. for Materials Inspection, Sampling and Testing, Contract No. 001886 (Agreement Value: not-to-exceed \$1,500,000.00)

# **ENGINEERING**

- 5. Approval of Supplemental Agreement No. 2 with WGI, Inc. for Design Consultant Services for Poinciana Parkway Extension (Segment 1) Project No. 538-234, Contract No. 001647 (Agreement Value: \$645,514.25)
- 6. Authorization for Negotiations for Design Services for SR 528 West Mainline Data Collection Gantries, Project No. 528-172, Contract No. 001845
- 7. Approval of Contract Award to The New Florida Industrial Electric, Inc. for SR 528 and SR 520 Interchange Lighting Project, Project No. 528-163, Contract No. 001867 (Agreement Value: \$2,954,003.18)
- 8. Authorization of Mitigation Credit Purchases with Holland Properties, Inc. d/b/a TM-Econ Mitigation Bank, Project 528-757 (Agreement Value: not-to-exceed \$580,000.00)

# **FINANCE**

 Approval of First Contract Renewal with Wells Fargo Bank, N.A. for Banking Services, Contract No. 001496 (Agreement Value: \$ 1,470,000.00)

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

# **INTERNAL AUDIT**

- 10. Acceptance of Internal Audit Report:
  - a. Engineering and Construction Invoicing Review
  - b. Procurement and Contract Billing Audit
  - c. Payment Card Industry Assessment
  - d. Department of Highway Safety and Motor Vehicles Data Security Assessment
  - e. Driver and Vehicle Information Data Base Data Security Assessment

# **LEGAL**

- Approval of Right of Way Transfer and Continuing Maintenance Agreement Between CFX and the City of Ocoee, Florida, Project No. 429-603, Parcels 62-161 Part A, Portion 3 (Tract 3), 62-161 Part B, Portion 1 (Tract 1), and 62-161 Part B, Portion 4 (Tract 2)
- 12. Approval of Declaration of Property as Surplus Property Available for Sale, Project Number 429-603, Parcels 62-161 Part A, Portion 1 (Tract D) and 62-161 Part B, Portion 2 (Tract C)
- Approval of Amended, Restated and Assigned Right of Way Acquisition Agreement (West Segment) between the CFX, Lake Nona Land Company, LLC, Lake Nona Research I, LLC, TDCP, LLC and Osceola County, Project No. 599-2260
- Approval of Amended and Restated Right of Way Acquisition Agreement (East Segment) between CFX, Central Florida Property Holdings 500, LLC, Central Florida Property Holdings 600, LLC and Springhead North, LLC, Project No. 599-2260
- 15. Approval of First Amendment to Agreement to Convey Conservation Lands between CFX, Suburban Land Reserve, Inc. and Tavistock East Holdings, LLC, Project No. 599-2260

# MAINTENANCE

- 16. Approval of Contract Award to Louis Berger Hawthorne Services, Inc. for, Roadway and Bridge Maintenance Services SR 414, SR 429, SR 451 and SR 453, Contract No. 001821 (Agreement Value: \$28,670,000.00)
- 17. Approval of Contract Award to Arazoza Brothers Corporation for SR 408 and SR 417 Interchange Landscaping, Project No. 408-831, Contract No. 001855 (Agreement Value: \$1,675,253.00)
- Ratification of Contract Award to Louis Berger Hawthorne Services, Inc. for Facilities Maintenance Services CFX's Toll Facilities, Contract No. 001860 (Agreement Value: \$1,326,000.00)
- 19. Approval of Subcontractors to Louis Berger Hawthorne Services, Inc. for Facilities Maintenance Services CFX's Toll Facilities, Contract No. 001860

# PUBLIC OUTREACH

20. Approval of Partnership Agreement Between CFX and WFTV for Fiscal Year 2022/23 Safety Campaign, Contract No. 001890 (Agreement Value: not-to-exceed \$156,000.00)

# TECHNOLOGY/TOLL OPERATIONS

21. Approval of Revised E-PASS User Agreement

# **TRAFFIC OPERATIONS**

- 22. Approval of Contract Award to Sice, Inc. for DMS Replacement Project Phase 2, Project No. 599-545B, Contract No. 001826 (Agreement Value \$ 4,263,203.36)
- Approval of EPG Engineering, Inc. as Subconsultant to Vanasse Hangen Brustlin, Inc. for Design Consultant Services for Three-Line Dynamic Message Signs Replacement Project, Project No. 599-545, Contract No. 001419

The following items are for information only:

- A. The following is a list of advertisement(s) from December 6, 2021 through February 6, 2022:
  - 1. 408-128A: SR 408 Sign Truss Installation Construction
  - 2. 417-246: Concept, Feasibility and Mobility Study for Proposed SR 417 (Seminole Expressway) to Orlando Sanford International Airport Connector
  - 3. 528-160: SR 528 Widening From Narcoossee Road to SR 417 Construction
  - 4. Highway Lighting Maintenance Services SR 414, SR 429, SR 451 & SR 453

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

- B. The following is a list of anticipated advertisements (3-4 month look ahead)
  - 1. 408-167: SR 408 Lighting Replacements (LAMS System) I-4 to SR 417 Construction
  - 2. 408-430: CFX HQ 2<sup>nd</sup> Floor Renovations
  - 3. 417-760: SR 417 Resurfacing between SR 528 and Curry Ford Rd Construction
  - 4. 429-427: Independence Mainline Photovoltaics Deployment Design/Build
  - 5. 451-767: SR 451 Resurfacing Construction
  - 6. 528-832: SR 528/436 Interchange Landscape
  - 7. 599-416C: McCoy Road Facility Building Reconstruction Construction
  - 8. 599-765: Systemwide Toll Plaza Facia and Roof Replacements Construction
  - 9. Advocacy Services
  - 10. Bond Counsel Services
  - 11. Disclosure Counsel Services
  - 12. External Auditing Services
  - 13. Headquarters and E-PASS Building Janitorial Services
  - 14. Investment Advisor
  - 15. Out Parcel Mowing SR 414, SR 429, SR 451 & SR 453
  - 16. Pressure Washing of Bridges SR 414, SR 429, SR 451 & SR 453
  - 17. Systemwide Facilities Maintenance
  - 18. Vegetation Control for MSE and Sound Walls SR 414, SR 429, SR 451 & SR 453

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

#### **MEMORANDUM**

TO: CFX Board Members

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

DATE: January 12, 2022

SUBJECT: **Construction Contract Modifications** 

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

Project No.	Contractor	Contract Description	Original Contract Amount (\$)	Previous Authorized Adjustments (\$)	Requested (\$) February 2022	Total Amount (\$) to Date*	Time Increase or Decrease
408-764	Ranger Construction Industries, Inc.	SR 408 Resurfacing, Woodbury Rd. to North of SR 50	\$ 2,741,835.23	\$-	\$ (413,502.78)	\$ 2,328,332.45	0
417-141	Hubbard Construction Co.	SR 417 Widening, International Dr. to John Young Parkway	\$ 81,671,607.60	\$-	\$ 129,937.77	\$ 81,801,545.37	0
417-142	Prince Contracting	SR 417, Widening John Young Parkway to Landstar Blvd.	\$ 116,845,417.00	\$ -	\$ (128,870.82)	\$ 116,716,546.18	0
417-751	Kiewit Infrastructure South Co.	SR 417 Bridge over SR 528 Preservation	\$ 1,369,850.00	\$-	\$ (60,312.54)	\$ 1,309,537.46	0
538-165	The Lane Construction Corp.	SR 538 Widening, Ronald Reagan Pkwy to Cypress Pkwy	\$ 92,628,420.00	\$ 1,748,814.92	\$ 42,375.59	\$ 94,419,610.51	0
599-756	S&D Industrial Painting, Inc.	Systemwide Coatings, Summerlin Ave. to Chickasaw Trail	\$ 4,988,886.91	\$ -	\$ (113,135.23)	\$ 4,875,751.68	0
				TOTAL	\$ (543,508.01)		

\* Includes Requested Amount for this current month.

Reviewed By:

Trellura

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

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

#### Project 408-764: SR 408 Resurfacing, Woodbury Rd. to North of SR 50 Ranger Construction Industries SA 408-764-0222-01

#### Composite Pay Factor (CPF) Adjustments

The contract contains provisions for CPF adjustments. In accordance with contract specifications, the Engineer has calculated pay item adjustments on asphalt placed with CPF for Lot 1 to Lot 12.

#### ADD THE FOLLOWING ITEM:

Composite Pay Factor (CPF) Adjustments

\$ (9,988.48)

#### Adjustment to Final Quantities for Completed Contract Items

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

INCREASE THE FOLLOWING ITEMS:		
Pavement Marking, Preformed Tape, Yellow, Solid, 6"	\$	23.90
Retro-Reflective Pavement Markers	\$	26.70
Pavement Marking, Preformed Tape, White, Skip, 12"	\$	39.90
Performance Turf, Sod	\$	1,968.00
Asphaltic Concrete Friction Course, Traffic D, FC-12.5, PG 76-22	\$	2,534.72
Superpave Asphaltic Concrete, Traffic D, PG 76-22	\$	3,685.16
Milling Existing Asphalt Pavement, 2 1/4" Avg Depth	\$	6,964.80
Superpave Asphaltic Concrete, Traffic C	\$	9,188.10
Superpave Asphaltic Concrete, Traffic C, PG 76-22	\$	13,386.40
Asphaltic Concrete Friction Course, Incl. Bit, FC-5, PG 76-22	\$	21,019.68
	\$	58,837.36
DECREASE THE FOLLOWING ITEMS:		
Work Order Allowance	\$	(299,505.00)
Superpave Asphaltic Concrete, Traffic D	\$	(48,737.80)
Maintenance of Traffic for Emergency Base Repair Contingency	\$	(32,520.00)
Allowance for Disputes Review Board	\$	(30,000.00)
Roadway Repair, Emergency Base Repair Contingency	\$	(26,800.00)
Miscellaneous Asphalt Pavement	\$	(11,119.08)
Milling Existing Asphalt Pavement, 4" Avg Depth	\$	(8,996.20)
Pavement Marking, Preformed Tape, White, Solid, 18"	\$	(1,566.40)
Single Post Sign, F&I, Ground Mount, Up to 12 SF	\$	(1,260.00)
Pavement Marking, Preformed Tape, Contrast, Skip, 9"	\$	(777.00)
Portable Changeable Message Sign, Temporary-Contingency	\$	(333.00)
Thermoplastic, Standard-Other Surfaces, White, Solid, 6"	\$	(219.60)
Pavement Marking, Preformed Tape, Contrast, Solid, 9"	\$	(157.60)
Single Post Sign, Remove	\$	(128.80)
Thermoplastic, Standard, White, Solid, 18" for Diagonals & Chevrons	\$	(85.80)
Thermoplastic, Standard, Yellow, Solid, 18" for Diagonals or Chevrons	\$	(79.80)
Thermoplastic, Preformed, White, Solid, 24" for Crosswalk	\$	(40.00)
Thermoplastic, Standard, White, Solid, 24" for Stop Line & Crosswalk	\$	(17.80)
Thermoplastic, Standard, White, Solid, 8" for Interchange & Urban Island	\$ \$	(7.78)
	\$	(462,351.66)
Subtotal: Adjustment Final Quantities for Completed Contract Items	\$	(403,514.30)

#### **TOTAL AMOUNT FOR PROJECT 408-764**

\$ (413,502.78)

#### Project 417-141: SR 417 Widening, International Dr. to John Young Parkway Hubbard Construction Co. SA 417-141-0222-01

#### John Young Mainline Toll Plaza Watermain

The existing watermain to the John Young Parkway mainline toll plaza building was found to be in direct conflict with proposed Noise Wall 1 and associated auger cast pile foundations for the noise wall. 1,325 feet of new watermain is required to be installed to eliminate conflict with the planned noise wall.

ADD THE FOLLOWING ITEM: John Young Mainline Toll Plaza Watermain	\$	15,917.22
<u>6" HDPE Outer Duct in lieu of 6" Black Steel Pipe at FO Conduit Crossings</u> 6" HDPE conduit sleeves were used in lieu of plan black steel pipe at fiber optic duct bank underground crossin	ıgs.	
ADD THE FOLLOWING ITEM: Fiber Optic Conduit, 6" HDPE SDR 11, Outer Duct w/ 9-1" SDR 11, Trench or Plow	\$	2,340.75
DECREASE THE FOLLOWING ITEM: Fiber Optic Conduit, 6" BSP Sch 40, Outer Duct w/ 9-1" SDR 11, Trench or Plow	\$	(2,594.50)
Subtotal: 6" HDPE Outer Duct in lieu of 6" Black Steel Pipe at FO Conduit Crossings	\$	(253.75)
<u>Reimbursement for Temporary Impact Attenuator Repairs</u> Reimbursement for repairs to temporary impact attenuators damaged on 7/2/21, 7/28/21 & 9/30/21 in accordan Technical Specification 120-9.8.	ce with the	contract,
ADD THE FOLLOWING ITEM: Reimbursement for Temporary Impact Attenuator Repairs	\$	50,067.00
Additional Batteries for Variable Speed Limit Uniterruptible Power Supply Assemblies Two additional batteries are to be provided for each of the twelve cabinets that serve variable speed limit signs to provide for extended r time in the event of a power outage. Total of 24 additional batteries to be furnished and installed.		
ADD THE FOLLOWING ITEM: Additional Batteries for Variable Speed Limit Uniterruptible Power Supply Assemblies	\$	7,169.34
Revised Uninterruptible Power Supply Models Revise the Uninterruptible Power Supply (UPS) models to upgraded series models in lieu of those specified in	the plans.	
ADD THE FOLLOWING ITEM: Revised Uninterruptible Power Supply Models	\$	18,310.59
<u>Revise Existing Drainage Structures</u> Dimensions of six existing drainage structures required modification in order to construct partial manholes per	the contract	t plans.
ADD THE FOLLOWING ITEM: Modify Existing Structures S-214, S-216, S-217 and S-219	\$	26,055.49
INCREASE THE FOLLOWING ITEM: Manholes, J-8, <10'	\$	12,329.08
DECREASE THE FOLLOWING ITEM: Manholes, P-8, Partial	\$	(12,661.02)
Subtotal: Revise Existing Drainage Structures	\$	25,723.55

<u>Remove Conduits in Conflict with Noise Wall 1</u> Remove existing conduits found to be in conflict with auger cast pile foundations at Noise Wall 1.

ADD THE FOLLOWING ITEM:	
Remove Conduits in Conflict with Noise Wall 1	\$ 13,003.82

#### TOTAL AMOUNT FOR PROJECT 417-141

<u>\$ 129,937.77</u>

# Project 417-142: SR 417 Widening, John Young Parkway to Landstar Blvd. Prince Contracting SA 417-142-0222-01

Adjustments to Quantities from Revisions 1 - 6

Multi-Conductor Communication Cable, F&I

Adjust contract pay item quantities issued by the Engineer of Record in Revisions 1, 2, 3, 4, 5 and 6.

INCREASE THE FOLLOWING ITEMS:		
Embankment	\$	13,471.85
Optional Base, Base Group 06, Limerock	\$	290.00
Superpave Asphaltic Concrete, Traffic B	\$	595.20
Inlets, DT Bot, Type A, <10'	\$	4,000.00
Manholes, P-8, <10'	\$	9,000.00
Pipe Culvert, Optional Material, Round, 18" S/CD	\$	19,800.00
Pipe Culvert, Optional Material, Round, 36" S/CD	\$	740.00
Median Concrete Barrier, Short Grade-Separated	\$	340.00
Median Concrete Barrier, Tall Grade-Separated	\$	330.00
Shoulder Concrete Barrier, 38" or 44" Height	\$	46,460.00
Sidewalk Concrete & Driveways, 4" Thick	\$	4,320.00
Fiber Optic Fusion Splice	\$	74.00
Existing Fiber Optic Splice Enclosure Re-Entry	\$	500.00
Small Fiber Optic Pull Box, 24" Dia, F&I	\$	5,000.00
Pull Box, Remove-All Types	\$	1,120.00
Concrete Manhole, 4x6.5x6.5, Doghouse, F&I	\$	16,600.00
Fiber Optic Conduit, 3-1" HDPE SDR 11, Trench or Plow, F&I	\$	3,840.00
Fiber Optic Conduit, 2-2" HDPE SDR 11, Trench or Plow, F&I	\$	4,800.00
Conduit, Underground, 2" Sch 40 PVC, 90 Degree Sweep, Trench, F&I	\$	37.50
Hardened Terminal Server, F&I	\$	1,215.00
Ethernet Media Converter, F&I	\$	2,500.00
Fiber Optic Patch Panel, 12 Port, F&I	\$	1,400.00
Cut-to-Length Fiber Optic Jumper, Single Mode, F&I	\$	82.00
Single Post Sign, F&I Ground Mount, Up to 12 SF	\$	400.00
Single Post Sign, F&I Ground Mount, 12-30 SF	\$	5,700.00
Single Post Sign, Remove	\$	690.00
Pavement Marking, Preformed Tape, Pavement Messages	\$	18,260.00
Pavement Marking, Preformed/Permanent Tape, Remove	\$	902.40
Lighting Conductors, F&I, Insulated, #8-6	\$	1,542.50
Lighting Conductors, F&I, Insulated, #4-2	\$	42,946.56
Light Pole Complete, F&I, Standard Pole, Standard Foundation, 40' Mount Height	\$	45,060.00
Light Pole Complete, F&I, Standard Pole, Standard Foundation, 45' Mount Height	\$	18,150.00
Luminaire, F&I, Roadway, Flood, Sign Light	\$	4,200.00
	\$	274,367.01
DECREASE THE FOLLOWING ITEMS.		
DECREASE THE FOLLOWING ITEMS: Regular Excavation	\$	(8,449.10)
Type B Stabilization	\$	(3,449.10) (1,572.00)
Miscellaneous Asphalt Pavement	\$ \$	(1,372.00) (2,827.50)
Pipe Culvert, Optional Material, Round, 30" S/CD	\$ \$	(2,827.30) (390.00)
Median Concrete Barrier, Variable Section Width for Sign or Pier Shielding	\$	(2,040.00)
Guardrail, Roadway, General, TL-3	\$ \$	(2,040.00) (4,060.20)
Conduit, F&I, Open Trench	\$	(4,000.20) (1,302.00)
Conduit, F&I, Directional Bore	\$ \$	(1,302.00) (685.80)
Conduit, F&I, Bridge Mount	\$ \$	(083.80) (19,363.50)
Conduit, F&I, Embedded Concrete Barriers & Traffic Railings	\$ \$	(19,303.30) (7,225.00)
Math Conductor Concrete Barriers & Traine Rainings	ው ው	(7,223.00)

\$

(5,370.10)

Fiber Optic Cable, 12SM Fiber, F&I	\$ (1,767.50)
Fiber Optic Cable, 72SM Fiber, F&I	\$ (142.50)
Fiber Optic Cable, 24MM Fiber, F&I	\$ (2,925.00)
Fiber Optic Splice Enclosure, 72 Splice, F&I	\$ (830.00)
Pull Box, F&I	\$ (2,550.00)
Large Fiber Optic Pull Box, 36" Dia, F&I	\$ (2,300.00)
Pull & Splice Box, F&I, 13"x24", Cover Size	\$ (16,200.00)
Junction Box, F&I, Mounted	\$ (850.00)
Junction Box, F&I, Embedded	\$ (6,000.00)
Fiber Optic Conduit, 4-2" HDPE SDR 11, Trench or Plow, F&I	\$ (7,040.00)
Conduit, Underground, 2-2" Sch 40 PVC, 90 Degree Sweep, Trench, F&I	\$ (31.50)
Conduit, Aboveground, 2" RGS, F&I	\$ (4,894.50)
Conduit, Aboveground, 2-2" RGS, F&I	\$ (1,525.00)
Conduit, Underground, 2-4" Sch 40 PVC, 90 Degree Sweep, Trench, F&I	\$ (420.00)
Conduit, Aboveground, 2-4" RGS, F&I	\$ (4,500.00)
Prestressed Concrete Pole, F&I, Type P-II Service Pole	\$ (29,700.00)
Single Post Sign, F&I, Barrier Mount Index 11871/700-013 Up to 12SF	\$ (1,525.00)
Multi-Post Sign, Remove	\$ (1,100.00)
Lighting Conductors, F&I, Insulated, #10 or <	\$ (7,794.92)
Light Pole Complete, F&I, Standard Pole, Standard Foundation, 35' Mounting Height	\$ (23,000.00)
Light Pole Complete, F&I, Standard Pole, Special Foundation, 40' Mounting Height	\$ (13,320.00)
Luminaire, F&I, Under Deck, Wall Mount	\$ (75,000.00)
Luminaire, F&I, Under Deck, Pendant Hung	\$ (108,640.00)
Remote LED Driver Cabinet, F&I, Small	\$ (56,770.00)
Remote LED Driver Cabinet, F&I, Medium	\$ (8,300.00)
	\$ (430,411.12)

Subtotal: Adjustments to Quantities from Revisions 1 - 6

Reimbursement for Repairs to Temporary Impact Attenuators

Reimbursement for repairs to temporary impact attenuators in accordance with the contract, Technical Specification 120-9.8.

#### ADD THE FOLLOWING ITEMS:

Temporary Impact Attenuator, Sta. 652+80 LT, Damaged 7/23/21	\$ 8,792.83
Temporary Impact Attenuator, Sta. 1445+59 LT, Damaged 9/28/21	\$ 11,292.78
Temporary Impact Attenuator, Sta. 652+80 LT, Damaged 10/6/21	\$ 7,087.68
	\$ 27,173.29

#### **TOTAL AMOUNT FOR PROJECT 417-142**

#### <u>\$ (128,870.82)</u>

\$ (156,044.11)

#### Project 417-751: SR 417 Bridge over SR 528 Preservation Kiewit Infrastructure South Co. SA 417-751-0222-01

#### Modify Existing Contract Pay Items

Adjustment to the pay items quantities for completed and adjusted work in the contract. This will adjust the contract quantities to reflect the actual work constructed.

DECREASE THE FOLLOWING ITEMS:	
Portable Changeable Message Sign, Temporary, Contingency	\$ (150.00)
Non-Shrink Grout, Miscellaneous	\$ (1,289.70)
Reinforcing Steel, Substructure	\$ (399.00)
Anchor Bolt Replacement	\$ (27,280.00)
Allowance for Disputes Review Board	\$ (5,000.00)
Work Order Allowance	\$ (26,193.84)
	\$ (60,312.54)

#### **TOTAL AMOUNT FOR PROJECT 417-751**

#### <u>\$ (60,312.54)</u>

#### Project 538-165: SR 538 Widening, Ronald Reagan Parkway to Cypress Parkway The Lane Construction Corp. SA 538-165-0222-04

#### Traffic Monitoring System (TMS) Location Revision

The Design/Build firm incurred additional costs to design and construct the Traffic Monitoring System (TMS) devices at a location dictated by CFX after the contract was awarded. This agreement compensates the Contractor for the additional pole, conduit, pull boxes, electrical service wire and open trench conduit, which are necessary for this change.

	¢	42 275 50
Traffic Monitoring System (TMS) Location Revision	\$	42,375.59
ADD THE FOLLOWING ITEM:		

#### **TOTAL AMOUNT FOR PROJECT 538-165**

<u>\$ 42,375.59</u>

#### Project 599-756: Systemwide Coatings, Summerlin Ave. to Chickasaw Trail S&D Industrial Painting SA 599-756-0222-01

#### Existing Paint Removal

Two sections of walls required removal of the existing paint surface to ensure adhesion of the new coating.

ADD THE FOLLOWING ITEM: Existing Paint Removal	\$ 51,418.07
Adjust Quantities for Existing Contract Pay Items	
Quantity adjustments to reflect the actual authorized and measured quantities under the Contract.	
INCREASE THE FOLLOWING ITEMS:	
Cleaning & Coating Surface, Non-Rib Sections	\$ 364,223.80
Cleaning & Coating Surface, Rib Sections	\$ 32,472.90
	\$ 396,696.70
DECREASE THE FOLLOWING ITEMS:	
Portable Changeable Message Sign, Temporary	\$ (11,250.00)
Allowance for Disputes Review Board	\$ (50,000.00)
Work Order Allowance	\$ (500,000.00)
	\$ (561,250.00)
Subtotal: Adjust Quantities for Existing Contract Pay Items	\$ (164,553.30)
TOTAL AMOUNT FOR PROJECT 599-756	\$ (113,135.23)

# MEMORANDUM

TO:	CFX Board Members
FROM:	Aneth Williams Will Director of Procurement
DATE:	January 6, 2022
SUBJECT:	Approval of First Contract Renewal with Ardaman & Associates, Inc. for Systemwide Materials Testing and Geotechnical Services Contract No. 001434

Board approval is requested for the first renewal of the referenced contract with Ardaman & Associates, Inc. in the amount of \$500,000.00 for one year beginning on May 1, 2022 and ending April 30, 2023. The original contract was for three years with two one-year renewals.

The work to be performed includes systemwide materials testing and geotechnical services.

Original Contract First Renewal Total

\$ 2,500,000.00 \$ 500,000.00 \$ 3,000,000.00

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

Reviewed by:

Ben Dreiling, PE Director of Construction

Glenn Pressimone, PE

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



### CENTRAL FLORIDA EXPRESSWAY AUTHORITY CONTRACT RENEWAL NO. 1 AGREEMENT CONTRACT NO. 001434

**THIS CONTRACT RENEWAL NO. 1 AGREEMENT** ("Renewal Agreement"), is made and entered into this 10th day of February 2022, by and between Central Florida Expressway Authority, a corporate body and agency of the State of Florida, hereinafter called "CFX", and Ardaman & Associates, Inc., registered and authorized to do business in the State of Florida, hereinafter called the ("Consultant"). CFX and Consultant are referred to herein sometimes as a "Party" or the "Parties".

#### WITNESSETH

**WHEREAS**, CFX and the Consultant entered into that certain Contract Agreement dated October 11, 2018, (collectively, the "Original Agreement"), with a Notice to Proceed date of June 1, 2019, whereby CFX retained the Consultant to perform systemwide materials testing and geotechnical services; and

**WHEREAS**, pursuant to Article 3 of the Original Agreement, CFX and Consultant wish to renew the Original Agreement 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 first renewal of said Initial CFX Contract, which renewal shall begin on May 1, 2022 and end on April 30, 2023 ("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 <u>Exhibit "B"</u> of the Original Agreement, in an amount up to \$500,000.00 ("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. <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.

#### **ARDAMAN & ASSOCIATES, INC.**

#### **CENTRAL FLORIDA EXPRESSWAY** AUTHORITY

By:			
Print N	lame:		
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 \_\_\_\_\_\_, 2022 for its exclusive use and reliance.

By:		
Print Name:		
-		

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

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

# AGREEMENT

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY AND ARDAMAN & ASSOCIATES, INC.

# SYSTEMWIDE MATERIALS TESTING AND GEOTECHNICAL SERVICES

CONTRACT NO. 001434

CONTRACT DATE: OCTOBER 11, 2018 CONTRACT AMOUNT: \$2,500,000.00

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

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

#### FOR

#### SYSTEMWIDE MATERIALS TESTING AND GEOTECHNICAL SERVICES

#### CONTRACT NO. 001434

## **MARCH 2019**

#### **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

# TABLE OF CONTENTS

Section	Title
AG	Agreement
А	Exhibit "A", Scope of Services
В	Exhibit "B", Method of Compensation
С	Exhibit "C", Details of Cost and Fees
D	Exhibit "D", Project Organization Chart
E	Exhibit "E", Potential Conflict Form

19

# Table of Contents

1.0.	DEFINITIONS.	
2.0.	SERVICES TO BE PROVIDED	2
3.0.	TERM OF AGREEMENT AND RENEWALS	3
4.0.	PROJECT SCHEDULE	
5.0.	PROFESSIONAL STAFF	3
6.0.	COMPENSATION	
7.0.	DOCUMENT OWNERSHIP AND RECORDS	
8.0.	COMPLIANCE WITH LAWS	7
9.0.	WAGE RATES AND TRUTH-IN-NEGOTIATIONS CERTIFICATE	
	TERMINATION	
	ADJUSTMENTS	
	HOLD HARMLESS AND INDEMNIFICATION, SOVEREIGN IMMUNITY	
	INFRINGEMENT OF PATENTS AND COPYRIGHTS	
	THIRD PARTY BENEFICIARY	
	INSURANCE	
	COMMUNICATIONS, PUBLIC RELATIONS, AND USE OF LOGOS	
	STANDARD OF CONDUCT	
	DOCUMENTED ALIENS	
	E-VERIFY CLAUSE	
	CONFLICT OF INTEREST	
	INSPECTOR GENERAL	
	PUBLIC ENTITY CRIME INFORMATION AND ANTI-DISCRIMINATION STATEMENT	
	COMPANIES PURSUANT TO SECTION 287.135 AND 215.473	
	AVAILABILITY OF FUNDS	
	AUDIT AND EXAMINATION OF RECORDS	
	GOVERNING LAW AND VENUE	
	NOTICE	
	HEADINGS	
	CONTRACT LANGUAGE AND INTERPRETATION	
	ASSIGNMENT	
	SEVERABILITY	
	INTEGRATION	
33.0.	ATTACHMENTS	18

## CENTRAL FLORIDA EXPRESSWAY AUTHORITY AGREEMENT FOR MATERIALS TESTING AND GEOTECHNICAL SERVICES CONTRACT NO. 001434

THIS AGREEMENT, made and entered into this 11<sup>th</sup> day of October, 2018, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a corporate body and agency of the State of Florida, created by Chapter 63-573 Laws of Florida, 1963, (Chapter 348, Part V, Florida Statutes) hereinafter called the "CFX" and ARDAMAN & ASSOCIATES, INC., hereinafter called "CONSULTANT", registered and authorized to conduct business in the State of Florida, carrying on professional practice in engineering with offices located at 8008 S. Orange Avenue, FL 32809.

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

#### 2.0. SERVICES TO BE PROVIDED

CFX does hereby retain the CONSULTANT to furnish materials testing and geotechnical services required by CFX. CFX is engaging the CONSULTANT to provide support personnel on an as-needed, per project basis for soil exploration, geotechnical exploration testing, highway materials testing, foundations studies, construction materials sampling, testing and reporting, pavement evaluation and reporting.

The work covered by this Agreement includes providing materials testing and geotechnical services for a variety of CFX projects including, but not necessarily limited to, roadway and bridge construction, signing construction, roadway lighting construction, drainage modifications/construction, utility construction, and toll facility renovations/modifications/construction.

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

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

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

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 year term from the date of the Notice to Proceed for the first task assignment. Renewal of this Agreement for up to two renewals periods may be exercised by CFX at its sole discretion. Renewals will be based, in part, on a determination by CFX that the value and level of service provided by the CONSULTANT are satisfactory and adequate for CFX's needs. 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 services for each assigned project 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) agreed to by the parties or as may be modified by subsequent Supplemental Agreement.

#### 4.0. PROJECT SCHEDULE

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

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

#### 5.0. PROFESSIONAL STAFF

The CONSULTANT shall maintain an adequate and competent professional staff to enable the CONSULTANT to timely perform under this Agreement. The CONSULTANT shall continue to be authorized to do business within the State of Florida. In the performance of these professional services, the CONSULTANT shall use that degree of care and skill ordinarily exercised by other similar

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

Prior to retaining a subconsultant, or assigning any work to a subconsultant, the CONSULTANT shall verify that the subconsultant does not have any conflicts and acknowledges its duty to comply with CFX's Code of Ethics. The CONSULTANT shall ensure that each subconsultant adheres to, and cause all subconsultants to be bound by, all requirements, conditions, and standards set forth herein. The CONSULTANT shall collect and maintain the necessary subconsultant compliance and acknowledgement documentation and remove any subconsultant immediately, if the necessary said documentation is unavailable or the subconsultant is not adhering to the requirements and standards herein. The CONSULTANT shall provide subconsultant compliance and acknowledgement documentation to CFX upon request.

The approved subconsultants are:

Page One Consultants, Inc. Elipsis Engineering and Consulting, LLC Tierra, Inc. GRL Engineers, Inc.

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

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

designee, but such subcontract shall contain a provision that provides that it shall be automatically terminated if not approved by CFX Board at its next regularly scheduled meeting.

#### 6.0. COMPENSATION

CFX agrees to pay the CONSULTANT compensation as detailed in **Exhibit "B"**, Method of Compensation, attached hereto and made a part hereof, in a not-to-exceed amount of \$2.5 million. Bills for fees or other compensation for services or expenses shall be submitted to CFX in detail sufficient for a proper pre-audit and post audit thereof.

The CONSULTANT may be liable for CFX costs resulting from negligent, reckless or intentionally wrongful errors or deficiencies in designs furnished under this Agreement. CFX may enforce such liability and collect the amount due if the recoverable cost will exceed the administrative cost involved or is otherwise in CFX's best interest. Records of costs incurred by the CONSULTANT under terms of this Agreement shall be maintained and made available upon request to CFX at all times during the period of this Agreement and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to CFX upon request. The CONSULTANT agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed. Records of costs incurred includes the CONSULTANT's general accounting records and the project records, together with supporting documents and records, of the CONSULTANT and all subconsultants performing work on the project, and all other records of the CONSULTANT and subconsultants considered necessary by CFX for a proper audit of project costs. The obligations in this paragraph survive the termination of the Agreement and continue in full force and effect.

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

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

#### 7.0. DOCUMENT OWNERSHIP AND RECORDS

All plans, documents, reports, studies, and/or other data prepared or obtained under this Agreement shall be considered instruments made for services and shall become the property of CFX without restriction or limitation on their use on this project; and shall be made available, upon request, to CFX at any time. CFX will have the right to visit the site for inspection of the work and the drawings of the CONSULTANT at any time. Unless changed by written agreement of the parties, said site shall be 8008 S. Orange Avenue, Orlando, FL 32809.

Notwithstanding Section 17, entitled "Communications, Public Relations, and Use of Logos," CONSULTANT acknowledges that CFX is a body politic and corporate, an agency of the State of Florida, and is subject to the Public Records Act codified in Chapter 119, Florida Statutes. To the extent that the CONSULTANT is in the possession of documents that fall within the definition of public records

subject to the Public Records Act, which public records have not yet been delivered to CFX, CONSULTANT agrees to comply with Section 119.0701, Florida Statutes.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT Phone: 407-690-5000, e-mail: publicrecords@cfxway.com, and address: Central Florida Expressway Authority, 4974 ORL Tower Road, Orlando, FL. 32807.

An excerpt of Section 119.0701, Florida Statutes is below.

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

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

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

The CONSULTANT shall allow public access to all documents, papers, letters, or other material as approved and authorized by CFX and subject to the provisions of Chapter 119, Florida Statutes, and made or received by the CONSULTANT in conjunction with this Agreement. Failure by the CONSULTANT to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by CFX.

The obligations in Section 7.0, Document Ownership and Records, shall survive the expiration or termination of this Agreement and continue in full force and effect.

#### 8.0. COMPLIANCE WITH LAWS

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

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

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

The CONSULTANT hereby certifies, covenants and warrants that wage rates and other factual unit costs as shown in attached **Exhibit "C"**, Details of Costs and Fees, supporting the compensation provided in Paragraph 6.0 are accurate, complete and current as of the date of this Agreement. It is further agreed that said price provided in Paragraph 7.0 hereof shall be adjusted to exclude any significant sums where CFX shall determine the price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. All such adjustments shall be made within one year following the date of final billing or acceptance of the work by CFX, whichever is later.

#### 10.0. TERMINATION

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

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

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

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

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

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

#### 11.0. ADJUSTMENTS

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

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

#### 12.0. HOLD HARMLESS AND INDEMNIFICATION, SOVEREIGN IMMUNITY

The CONSULTANT shall indemnify and hold harmless CFX, and its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the design professional in the performance of the Agreement.

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

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

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

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

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

#### 13.0. INFRINGEMENT OF PATENTS AND COPYRIGHTS

The CONSULTANT shall pay all royalties and assume all costs arising from the use of any invention, design, process materials, equipment, product or device which is the subject of patent rights or copyrights. The CONSULTANT shall, at its expense, hold harmless and defend CFX against any claim, suit or proceeding brought against CFX which is based upon a claim, whether rightful or otherwise, that

the goods or services, or any part thereof, furnished under this Agreement, constitute an infringement of any patent or copyright of the United States. The CONSULTANT shall pay all damages and costs awarded against CFX. The obligations in Section 13.0, Infringement of Patents and Copyrights, shall survive the expiration or termination of this Agreement and continue in full force and effect.

#### 14.0. THIRD PARTY BENEFICIARY

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement, and that the CONSULTANT has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted. For the breach or violation of this paragraph, CFX shall have the right to terminate this Agreement without liability, and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission percentage, gift or consideration.

#### 15.0. INSURANCE

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

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

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

15.1 Commercial General Liability coverage shall be on an occurrence form policy for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The limits shall be not less than One Million Dollars (\$1,000,000) per occurrence, Combined Single Limits (CSL) or its equivalent. The general aggregate limit shall apply separately to this Agreement (with the ISO CG 25 01 or insurer's equivalent endorsement provided to CFX) or the general aggregate limit shall be twice the required occurrence limit. CFX shall be listed as an additional insured. ISO Form CG 20 10 11 85 or if not available, ISO Forms CG 20 10 10 01 and CG 20 37 10 01, or if not available, their equivalent acceptable to CFX, shall be used to meet these requirements and a photocopy

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

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

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

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

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

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

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

In the event any of the aforementioned insurance policies provide greater coverage or greater limits than the minimum requirements set forth herein, then CFX shall be entitled to the full coverage and

limits of such policies, and these insurance requirements will be deemed to require such greater coverage and greater limits.

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

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

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

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

#### 16.0. COMMUNICATIONS, PUBLIC RELATIONS, AND USE OF LOGOS

The CONSULTANT agrees that it shall make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying CFX and securing its consent in writing, except as required by law. The CONSULTANT also agrees that it shall not publish, copyright or patent any of the data, documents, reports, or other written or electronic materials furnished in compliance with this Agreement, it being understood that, under Section 7.0 hereof, such data or information is the property of CFX.

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

#### 17.0. STANDARD OF CONDUCT

The CONSULTANT covenants and agrees that it and its employees shall be bound by the standards of conduct provided in Florida Statutes, Chapter 112, Part III, Section 348.753, and Section 104.31 and the CFX Code of Ethics as it relates to work performed under this Agreement, which

standards will by reference be made a part of this Agreement as though set forth in full. The CONSULTANT agrees to complete the Potential Conflict Disclosure Form with contract execution, annually by July 1, and in the event of changed circumstances. If the Disclosure Form is not submitted, or is submitted, but is incomplete, CFX has the right to withhold payments pending receipt of an explanation of such omissions or to terminate the contract for cause. The CONSULTANT agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

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

#### 18.0. DOCUMENTED ALIENS

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

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

#### 19.0. E-VERIFY CLAUSE

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

#### 20.0. CONFLICT OF INTEREST

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

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

engineering and inspection projects where they participated in the oversight of the projects or for any project which the subconsultant was involved in the preparation of plans and/or specifications.

#### 21.0. INSPECTOR GENERAL

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

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

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

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

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

#### 23.0. COMPANIES PURSUANT TO SECTION 287.135 AND 215.473

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

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

23.5. found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

#### 24.0. AVAILABILITY OF FUNDS

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

#### 25.0. AUDIT AND EXAMINATION OF RECORDS

#### 25.1 Definition of Records:

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

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

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

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

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

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

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

#### 26.0. GOVERNING LAW AND VENUE

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

#### 27.0. NOTICE

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

To CFX:

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

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

To CONSULTANT: Ardaman & Associates, Inc. 8008 S. Orange Avenue Orlando, FL 32809 Attn: Jason Parker

Ardaman & Associates, Inc. 8008 S. Orange Avenue Orlando, FL 32809 Attn: Ernest A. Cox, III

#### 28.0. HEADINGS

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

#### 29.0. CONTRACT LANGUAGE AND INTERPRETATION

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

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

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

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

#### 30.0. ASSIGNMENT

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

#### 31.0. SEVERABILITY

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

#### 32.0. INTEGRATION

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

#### 33.0. ATTACHMENTS

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

[ SIGNATURES TO FOLLOW ]

IN WITNESS WHEREOF, the CONSULTANT and CFX have caused this instrument to be signed by their respective duly authorized officials, as of the day and year first above written. This Contract was awarded by CFX's Board of Directors at its meeting on October 11, 2018.

#### **ARDAMAN & ASSOCIATES, INC. CENTRAL FLORIDA EXPRESSWAY AUTHORITY** BY: BY: Authorized Signature Director of Procurement Print Name: ANOth Williams SENIA V.P. Title: ATTEST (Seal) Secretary or Notary DEBRA VANCE Notary Public - State of Florida Commission # GG 176930 My Comm. Expires May 11, 2022 Bonded through National Notary Assn.

Approved as to form and execution, only.

General Counsel for CFX

Josep Hamitore

#### EXHIBIT "A" SCOPE OF SERVICES

#### MATERIALS SAMPLING, TESTING AND REPORTING

#### I. <u>PURPOSE</u>

The Central Florida Expressway Authority (CFX) requires the services of a Professional Consultant to support CFX in the field of soil exploration, geotechnical exploration testing, highway materials testing, foundations studies, construction materials sampling, testing and reporting, pavement evaluation and reporting for CFX projects.

In the execution of the services, the Consultant shall coordinate its activities with CFX's Director of Construction. (References to CFX's Director of Construction shall be taken to mean his designated representative as well.)

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

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

#### II. <u>STANDARDS</u>

The services by the Consultant provided in office, field, and lab shall be in compliance with the current edition including updates of all applicable manuals and guidelines as well as State and Federal regulations. This shall include but not limited to the following:

- CFX's General and Technical Specifications
- FDOT Standard Specification for Road and Bridge Construction as may be applicable to specific projects
- FDOT Roadway Plans Preparation Manual
- FDOT Design Standards
- FDOT Structural Design Guidelines
- FDOT Structure Design Office Standard Drawings
- FDOT Materials Manual
- FDOT Manual of Florida Sampling and Testing Methods
- FDOT Manual for Safety and Control of Equipment Containing Radioactive Materials
- FDOT Construction Project Administration Manual (CPAM)
- FDOT Construction Training and Qualification Manual (CTQM)
- FDOT / D5 Pavement Survey Evaluation Report Development Manual
- FDOT Soils and Foundation Handbook

- FDOT Right of Way Procedures Manual
- FDOT Radiation Safety Manual
- FHWA Administration Checklist and Guidelines for Review of Geotechnical Reports and Preliminary Plans and Specifications
- AASHTO Test Methods
- ASTM Standards
- Manual on Uniform Traffic Control Devices
- Code of Federal Regulations (CFRs)
- Safe Work Practices and Compliance Standards Handbook
- American Welding Society Bridge Welding Code (AWS D1.1 Structural Steel Welding Code)
- Occupational Safety and Health Administration (OSHA) 29 CFR 1910.1001 and 1926.58, 49 CFR 171 and 172

#### III. SERVICES TO BE PROVIDED

Consultant shall provide all transportation, manpower, equipment and materials to perform the appropriate services according to applicable specifications. Consultant shall also provide a means of direct communication between CFX's project personnel and the Consultant Technician.

Work of a specified nature as outlined in this Scope of Services will be assigned to the Consultant based on the needs of CFX and will not necessarily equal the total Contract Amount.

Services may be required at mines, quarries, mills, refineries, processors, producers, fabricators, constructors, laboratories, emergency repair sites, and project construction sites, some of which may be outside the State of Florida.

Work shall include, but is not limited to, the following:

- Acquisition and reporting of subsurface material, hydrological, and environmental information to be used for the construction and performance of transportation facilities.
- Conducting tests on soil and rock according to CFX approved specifications for the purpose of classifying materials and identifying their physical properties.
- Sampling, transporting, and testing various materials and reporting results and recommendations.
- Producing reports which include selection of the type (footings, piles, drilled shafts, etc.) and depth of foundation for bridges and other structures; bearing capacity and the predicted settlement of the selected foundation; slope stability; surcharge or stage construction time schedules for construction over soft ground; pile load tests; soil treatment; stabilization; and direction of field instrumentation installation, including the interpretation of data obtained and other foundation studies.
- Conducting inspections and investigations of various highway materials or products, together with the proper recording, analysis and reporting of results and recommendations.

- Weld Inspection Services, Metals Fabrication Inspection, Welding Procedure and Shop Drawing Reviews.
- Pavement Marking Inspections, and Pavement Marking Distress Evaluations.
- Emergency work such as sinkhole evaluation and mitigation.

#### A. MATERIALS SAMPLING, TESTING, AND REPORTING

The Consultant shall provide CFX with personnel that are qualified, trained and thoroughly familiar with CFX's rules, policies, and procedures in inspection, sampling, testing, and reporting in the following areas:

- Bituminous Construction Materials
- Sand, Coarse Aggregate, Limerock and Cemented Coquina Mine Inspection
- Base, Subgrade and Embankment Materials
- Pavement Marking Materials
- Portland Cement Concrete
- Precast Concrete Products
- Prestressed Concrete Products
- Drilled Shaft Inspection
- Non-Destructive Testing (NDT)
- Laboratory Information Management System (LIMS) Data Entry
- Pavement Coring Reporting (PCR) Data Entry
- Consultant Contract Project Management
- Construction Materials Investigations, Special Studies & Projects
- Miscellaneous Construction Related Activities
- Materials Inspection and Testing Related Maintenance Activities
- GIS Data Input
- CWI Welding Inspection
- Asphalt Concrete Inspection/Evaluation

The Consultant shall provide CTQP (when required) qualified and experienced technicians in the following:

- Aggregate Field Testing
- Aggregate Laboratory Testing
- Oualified Sampler
- LBR Technician
- Aggregate Chemical Analyst
- Asphalt Paving Level I
- Asphalt Paving Level II
- Asphalt Plant Level I
- Asphalt Plant Level II
- Concrete Field Technician Level I
- Concrete Field Technician Level II

- Concrete Laboratory Technician Level I
- Concrete Laboratory Technician Level II
- Certified Welding Inspection (CWI)
- CFX and FDOT Specification 450 (with Concrete Field Level I for Prestress Inspector)
- CTCI Concrete Transportation Construction Inspection
- ECI Level I
- ECI Level II
- Prestress Inspector
- Drilled Shaft Inspector

• Pile Driving Inspector

- IMSA Traffic Signal Level II
- FDOT Basic and Intermediate MOT

For information about Construction Training Qualification Program (CTQP) courses go to: http://www.dot.state.fl.us/construction/training/training.htm

#### B. MATERIALS MODEL

Sampling, Testing, and Reporting may be required on a "project-based" or "on-call" basis.

<u>Project-Based VT</u> refers to verification duties being issued to the Consultant on a per project basis by CFX. The Consultant shall be responsible for staffing, scheduling, and ensuring timely and correct completion of verification technician's duties for the life of the project. Avoiding conflict-of-interest is primarily the responsibility of the Consultant.

<u>On-Call</u> here refers to using a private industry approach i.e., dispatching testing technicians on an "as-needed" basis.

#### C. LABORATORY SERVICES

The Consultant shall have a materials laboratory that is capable as defined by the FDOT's Laboratory Qualification Program. The Consultant laboratory shall have a Quality Control Program that includes provisions for checking test equipment and lab personnel proficiency. The laboratory shall keep records of calibration checks. Consultant shall be able to process materials testing for any assigned project. Consultant shall assist CFX to make comparison between QC & VT data within 1 day of acceptance testing. Resolution samples shall be delivered to the laboratory designated by CFX within 3 days of resolution procedure initiation. Consultant shall assist as needed to finalize Resolution Procedure.

#### D. GEOTECHNICAL SOIL EXPLORATION AND FOUNDATIONS

The Consultant shall be responsible for a complete geotechnical investigation.

When necessary, the Director of Construction will make interpretations regarding CFX's geotechnical standards, policies and procedures and provide guidance to the Consultant. Prior to beginning the investigation, the Consultant shall meet with the Director of Construction to review the project scope and requirements.

1. Field Investigation

The geotechnical investigation for roadway and structural foundations includes bridges, box culverts, retaining walls, sea walls, high-mast lighting, overhead signing, mast arm signals and high embankment fills as required.

If the drilling program expects to encounter artesian conditions, the Consultant shall submit a methodology(s) for plugging the borehole to CFX for approval prior to commencing with the boring program.

The geotechnical investigation for sinkhole activities.

Perform specialized field testing as required by needs of project.

Provide latitude/longitude for all Standard Penetration Tests (SPT) and Cone Penetrometer Test (CPT) Soundings in accordance with CFX's instructions.

Preliminary Contamination Assessment (PCA)

When required, all work shall be performed in accordance with current DER and OSHA standards. The following work items shall be included but not be limited to:

- A minimum of four borings will be required per site.
- Soil gas analysis will be required by use of a flame ionization detector i.e., Organic Vapor Analyzer, etc.
- Installation of monitoring wells may be required.
- Water sampling and laboratory analysis may be required (Laboratory shall be HRS certified).
- Up to four drafts PCA reports will be required for review and up to six final reports (signed and sealed) will be required.
- 2. Preliminary Roadway Report

Up to four copies of the Preliminary Roadway Report shall be submitted before the 30% plans submittal. This report should include a field reconnaissance report, preliminary estimated seasonal high water table and review of existing data. Existing data to be reviewed and summarized should include but not be limited to: Topographical Maps, Aerial Photographs, Geological Maps and Reports, Soil Conservation Service Surveys (include copies in report), existing construction plans, potentiometric maps, and adjacent projects.

The Preliminary Roadway Report will be provided to the Roadway Designer to assist in setting road grades and locating potential problems.

3. Roadway Report

The roadway report shall include, but not be limited to:

- Copies of SCS and USGS maps with project limits.
- A report of tests sheet that summarizes the laboratory test results, the soil stratification (i.e., soils grouped into layers of similar materials) and construction recommendations relative to the current Standard Indices.

- Estimated seasonal high and/or low groundwater levels, and review with respect to proposed pavement grades.
- Recommend type of geosynthetic and A.O.S. for various applications.
- The Design LBR results from the 90% and mean methods.
- Permeability/infiltration parameters for water retention areas/exfiltration trenches/swales.
- A description of the site and subsoil conditions, design recommendations and a discussion of any special considerations (i.e., removal of unsuitable material, recompression of weak soils, estimated settlement time/amount, groundwater control etc.).
- An appendix which contains stratified soil boring profiles, laboratory test data sheets, Design LBR calculations/graphs, and any other pertinent information.

In addition to the roadway report, the Consultant will also provide stratified boring profiles to the Designer and review the entire set of plans for completeness before each submittal as requested by CFX. The Consultant shall assist the Designer with detailing limits on the cross-sections of subsoil excavation. Up to four drafts roadway reports shall be submitted to CFX for each review prior to incorporation of the Consultant's recommendations in the project design.

#### 4. Structures Report

The structure's report shall contain the following discussions as appropriate for the assigned project:

- Summary of structure background data, SCS, USGS and potentiometric data.
- Analysis of structure foundation alternatives including but not limited to the following: Spread footings, Pre-stressed concrete piling, Steel H piles, Steel pipe piles, Sheet piles, Drilled shafts, other feasible foundation types.
- Recommendations for most practical foundations types will be given along with the basis for selection.
- Analysis of allowable and/or ultimate foundation capacity and settlement potential for all feasible alternatives. Foundation capacity analyses shall be performed using the standards listed above or an FDOT approved alternate. For pile foundations, provide graphs of design soil resistance versus estimated minimum/maximum pile tip elevations (Adjusted for scour and/or Pre-drilling/Pre-forming if necessary).
- Provide the Structural Engineer with design soil profile(s), which include the soil model/type of each layer and all soil engineering properties required to run the Florida Pier computer program. For each pier/bent, review lateral analysis of selected foundation for geotechnical compatibility.
- Evaluation of external stability for conventional retaining walls and retained/reinforced earth wall systems (FHWA-RD-89-043, 11/90) and FHWA-SA-96-071, 10/96.
- Evaluation of embankment slope stability (PCSTABL), Reinforced Soil Slopes (RSS; FHWA-SA-96-071, 10/96) and settlement (EMBANK).
- Provide the Structural Engineer with the design soil profile(s), which include the soil model/type of each layer and all soil engineering properties required to run computer

programs for Sheet Pile Analysis (CWALSHT/FHWA DP-68-1 & RD-82-047/USS SSPDM).

- Provide the Structural Engineer with the design soil profile(s), which include the soil model/type of each layer and all soil engineering properties required to run computer programs for Mast Arm Signal, High Mast Light and Overhead Sign Structures.
- Draft of detailed boring/sounding standard sheet, including environmental classification and specialized construction requirements, for inclusion in final construction plans.
- Summary of soil test results including the following: Unit Weight, Consolidation parameters, Cohesion, Friction angle for cohesionless soils, Strain at 50% stress level from UU Triaxial compression, Modulus of subgrade reaction, other pertinent test results.
- Evaluation of lateral earth pressures on underground structures (i.e., box culverts, retaining walls, etc.).
- Shallow foundation bearing capacity (i.e., allowable bearing pressure, minimum footing width, and minimum embedment depth).
- Construction information addressing the following items:
  - A. Estimated maximum driving resistance anticipated for pile foundations.
    - B. Recommendations for footing or shaft installation, or other site preparation soilsrelated construction considerations with plan sheets as necessary.
    - C. Recommend quantity, location and length of test piles with or without instrumentation and a recommendation on the use of load tests.
- An appendix which includes SCS, USGS maps, SPT and CPT boring/sounding profiles, data from any specialized field tests, laboratory test data sheets, engineering analysis notes, example calculations and any other pertinent information.

Up to six draft structures reports shall be submitted to CFX or as requested prior to incorporation of the Consultant's recommendations in the project design.

5. Final Analyses and Reports

Separate final engineering reports will be submitted for roadway and structures. These final reports will contain any additional field or laboratory test results, recommended foundation alternatives along with design parameters and special provisions for the construction plans. These reports will be submitted to CFX for review prior to project completion. After review, the reports will be submitted in final form and will include the following:

- Signed and sealed final structures reports (up to six original reports).
- Two sets of plan sheets, unsigned xerographic bonds (half size and full size).
- Two sets of plan sheets signed and sealed xerographic bonds (half size and full size).
- Four signed and sealed sets of all applicable technical special provisions.
- Signed and sealed final roadway reports (up to six original reports).
- All reference and support documentation used in preparation of contract plans package.

All reports (Roadway, Structures, PCA, etc.), and all plan sheets shall be submitted in electronic format as requested by CFX. CADD files shall be submitted in Microstation (\*.DGN) format. Text files shall be submitted in Microsoft Word, and spreadsheets shall be submitted in Microsoft Excel format.

The final roadway and structures reports, as well as plan sheets, will be signed and sealed by a Professional Engineer registered by the State of Florida.

#### E. PILE DRIVING

The Consultant shall provide qualified personnel for pile driving services. The Consultant shall establish a strong line of communication with CFX's personnel so that all requests will be completed in a timely manner. The Consultant services shall include, but not be limited to, the following:

- Attend preconstruction and/or special meetings for the project.
- Perform WEAP runs to determine suitability of hammer driving system for the project. Provide results (check stresses, design capacity, and ultimate capacity) to CFX within 72 hours of the construction contractor's submittal.
- Review construction contractor's Pile Installation Plan and provide comments to the appropriate construction personnel within 72 hours of the construction contractor's submittal.
- Instrument test piling and production piling (when deemed necessary by CFX) during initial driving and redrives.
- When monitoring the test pile driving process, determine proper fuel settings, thickness of pile cushions and when they need changing. Record all pertinent information that is needed to determine the driving criteria such as jetting, preforming, predrilling, reference elevation, hammer serial number, hammer cushion material and thickness, pile cushion material and thickness, etc. Submit this information to CFX within 24 hours after the test pile driving process is completed. (In most cases this information will be requested immediately following test pile completion.)
- Perform Case Pile Wave Equation Analysis (CAPWAP) on selected blows, using the latest version. At a minimum, CAPWAPs shall be performed at the end of drive, before and after setchecks, and where the anticipated tip for the production piles is expected to occur. If requested, the end of drive CAPWAP will be performed in the field upon completion of the drive, otherwise it shall be completed within 24 hours of driving each pile.
- Perform all required WEAP analysis, using the latest version, to provide proof of compliance with the plans and specifications for production pile driving. This includes evaluation of all design loads, evaluation of soil parameters, assistance with cushion selection and stroke selection for driving stress control. The final wave equation analysis required for production driving shall be provided to CFX within 72 hours after the test pile program is completed, unless requested sooner.
- Analyze the test data and available soils data as required to establish production pile lengths and driving criteria. Submit a preliminary report recommending lengths and criteria to CFX for approval within 72 hours after the test pile program is completed, unless requested sooner. The preliminary report shall include CAPWAP and WEAP printed & plotted outputs, and all raw data obtained by the PDA and CAPWAP solutions (i.e. file 18's) on CD computer disks.

- Furnish final written letters, signed and sealed, in the agreed format for production pile lengths and the driving criteria which are in compliance with most current data, analysis, and report submittal requirements.
  - 1. Personnel

The Consultant must have personnel with the following minimum qualifications:

• Registered Professional Engineer to control the geotechnical work:

Registered as a Professional Engineer in the state of Florida and acceptable to CFX.

In responsible charge of the geotechnical work on at least two highway bridges constructed by CFX or FDOT.

Knowledgeable in the use and provisions of the PDA system, WEAP and CAPWAP computer programs to analyze concrete/steel/timber piling in conjunction with dynamic load tests on at least two highway bridges constructed by CFX or FDOT.

• Designer to perform dynamic testing in the field:

Proficient in the use and provisions of the PDA system, WEAP and CAPWAP computer programs to analyze concrete/steel/timber piling in conjunction with dynamic load tests on at least two highway bridges constructed by CFX or FDOT.

- 2. Minimum Field Equipment Required
- PAK model Pile Driving Analyzer with clicker and all other necessary hardware (i.e. gauges, cable, etc.). PDA-pak shall be capable of performing CAPWAP and WEAP analysis in the field. Otherwise a portable computer with these capabilities shall be present on-site.
- Survey level and equipment necessary to mark inches and record blows per inch.
- Equipment/software/hardware to transfer PDA files to CFX personnel.
- CD Disk Drive for transfer of data.
- Mobile Phone is required during business hours for PDA field personnel.

#### F. DRILLED SHAFTS

When requested, the Consultant shall provide the following services in support of Drilled Shaft Construction:

- Drilled Shaft Plans review.
- Provide CTQP Certified Drilled Shaft Inspector on site during the drilled shaft installation operations (excavation, stabilization, cleaning, steel insertion, and concrete placement, etc.).

- Shaft installation shall be documented using the following FDOT approved forms: DRILLED SHAFT LOG, Form no. 700-010-84, DRILLED SHAFT ROCK EXCAVATION LOG, Form no. 700-010-86, DRILLED SHAFT CONCRETE PLACEMENT LOG, Form 700-010-89, and DRILLED SHAFT CONSTRUCTION & PAY SUMMARY, Form no. 700-010-91.
- Detailed shaft excavation procedures are required by Section 455 of the technical Specifications including alignment, logging of excavated material, over-reaming and shaft cleanliness. The construction contractor should have an CFX approved Drilled Shaft Installation Plan (DSIP) for the dry and wet method of construction, as applicable.
- Document activities and note problems in the Daily Report of Construction. The first production drilled shaft shall be closely monitored and scrutinized to make sure the Drilled Shaft Installation Plan (DSIP) process is demonstrating satisfactory field performance. Any process or site condition issues (including different soils encountered, etc.) shall be reported to CFX for review and comment.
- Perform required slurry testing, shaft bottom cleanliness checks; rebar inspections, and concrete testing.
- Upon completion of the Drilled Shaft Installation, issue a Certification Letter, signed and sealed by a Professional Engineer, that the installed drilled shaft(s) met all applicable plan and specifications.

#### G. PAVEMENT CORING AND EVALUATION

The Consultant shall provide CFX with personnel that are qualified, trained and thoroughly familiar with CFX's rules, policies, procedures in pavement coring and evaluation. Activities generally include:

- Preliminary site visit and Coring Plan with drawing
- Pavement Survey & Evaluation Report with CD of all photos (including core photos) with hyperlinked PECD sheets.
- The report shall present and analyze the data collected, and make pavement rehabilitation recommendations
- Pavement Coring Reporting (PCR) system data entry
- Obtain samples for design LBR values as requested.
- Recommend design LBR based on the most conservative value from either the 90% Method or the ± 2% of Optimum LBR Method
- Other pavement coring and evaluation related services as requested.

The Consultant shall collect all necessary information needed for the Pavement Survey & Evaluation Report and Pavement Coring Reporting (PCR) system input

All core holes shall be filled immediately after the core sample is extracted. The equipment, materials and procedure used for filling the holes shall be subject to approval by CFX.

#### H. SPECIALTY ASPHALT EVALUATION

Specialty Asphalt Evaluations: Including, but not limited to pavement distress (rutting, cracking, etc.) evaluations, aggregate forensic evaluations, moisture susceptibility, field permeability testing, pavement slice sampling, etc. The Specialty Asphalt Evaluations should be performed by specialists and engineers with at least five (5) years of experience performing these types of evaluations.

#### I. STRUCTURAL CONCRETE EVALUATION

Structural Concrete Evaluations: Including, but not limited to calculation and evaluation of form removal, release strength and member handling of cast-in-place or precast concrete structures; evaluation of cracks and determination of structural adequacy; evaluation of structural concrete repair proposals; development and review of mass concrete temperature control plans and evaluation of mass concrete temperature problems.

#### IV. PROJECT REQUIREMENTS AND PROVISIONS OF WORK

The Consultant team shall have in its employ at least two Professional Engineers currently registered in the State of Florida that have the expertise in the discipline (i.e. Materials Testing, Geotechnical, etc.) covered in this Scope of Services. The Consultant shall have sufficient qualified staff, equipment, and laboratory and field apparatus in order to provide the services requested in time to meet schedules. For Preliminary Contamination Assessment (PCA) and Contamination Assessment (CA), field personnel and supervisor shall have proper OSHA training.

CFX reserves the right to remove Consultant personnel if they do not meet CFX qualifications or are not performing to CFX standards.

#### A. LETTER OF AUTHORIZATION

For each work order requested by CFX, the Consultant shall prepare an estimate of work and price based on approved rates. Once acceptable rates and the maximum amount have been agreed upon by the Consultant and CFX, a "Letter(s) of Authorization" will be issued by the Director of Construction.

The maximum amount will be the total compensation required to accomplish the work. Should any additional services be required due to some unforeseen circumstance in excess of this authorization, a separate letter of authorization will be negotiated and issued by CFX before the additional services can begin.

Unit estimates may vary and additional items in the Contract may be used to meet the project requirements. Prices will adhere to the negotiated fees in the approved proposal and shall not exceed the maximum amount. Work shall be billed at the rates in the approved proposal. All work authorizations shall be completed within the terms of the Contract.

#### B. SUBMITTALS

Upon completion of a work order, the Consultant shall deliver to CFX, in an organized manner, all project or work order files, maps, sketches, worksheets, plans, data and test reports, summary sheets, daily inspection reports, and other materials used or generated during the sampling, testing, and reporting of construction materials.

#### C. PROJECT RELATED CORRESPONDENCE

The Consultant shall furnish copies of all written correspondence between the Consultant and any party pertaining specifically to a work order to CFX within one week of the receipt or mailing of said correspondence.

The Consultant shall record and distribute the minutes of all meetings pertaining to this Scope of Services.

#### D. LEGAL PROCEEDINGS

The Consultant shall serve as an expert witness in any legal proceeding if required by CFX. The fee for these services shall be established if, and when, they are needed.

#### E. PROFESSIONAL ENDORSEMENT

The Consultant shall furnish to CFX upon completion of a work order all original plan sheets, two sets of record prints, one set of special provisions and all reference and support documents utilized in the preparation of the contract plans package (when applicable). Record prints, special provisions, and/or reference and support documents shall be professionally endorsed by the Consultant's Professional Engineer in responsible charge of the work order.

#### F. SUBCONTRACTUAL SERVICES

Services assigned to subconsultants must be approved in writing in advance by CFX. The subconsultants shall be qualified to perform all work assigned to them. Information on proposed subconsultants shall be included in the Consultant's proposal indicating which work items are to be performed by the subconsultants.

#### G. COOPERATION AND PERFORMANCE OF THE CONSULTANT

During the term of the Contract, CFX will conduct reviews of the various phases of the Consultant's operations. Reviews will be conducted in accordance with established CFX policy on work phases to determine compliance with the Contract and the sufficiency with which procedures are being effectively applied to assure that the activities are performed in reasonable conformity with CFX policies, plans, specifications and Contract provisions. The Consultant shall cooperate and assist CFX's representatives in conducting the reviews.

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

1. Further subdivide assigned responsibilities, reassign personnel or assign additional personnel. The Consultant shall comply with this action within one week of notification.

2. In any case of lost, damaged, or destroyed materials verification testing samples, the Consultant shall be responsible for any cost incurred to CFX and construction contractors for remediation. When this occurs CFX will request a written remediation plan from the Consultant. If the plan is accepted the Consultant shall implement the plan at no cost to CFX. If the plan is rejected CFX will ask an alternate consulting firm to submit a plan. The Consultant responsible for the lost, damaged, or destroyed samples shall pay for all damages suffered as a result thereof and those damages may be deducted from future invoice payments.

3. Replace personnel whose performance has been determined by CFX to be inadequate. When directed by CFX, any person whose performance has been determined to be unsatisfactory shall be immediately removed.

4. Some work items covered by this contract are Federal-Aid supported and are subject to review by representatives of the FHWA or FDOT. The Consultant shall fully cooperate with and assist in making such reviews.

5. Deficiencies incurred by the consultant will be recorded, and after review by CFX and mitigation by the consultant, may adversely affect CFX's evaluation of the Consultant's performance.

#### **END OF SCOPE**

#### MEMORANDUM

TO:	CFX Board Members
FROM:	Aneth Williams Will Director of Procurement
DATE:	January 14, 2022
SUBJECT:	Approval of Cooperative Purchase Agreement with HRV Conformance Verification Associates, Inc. for Materials Inspection, Sampling and Testing Contract No. 001885

Board approval of the Cooperative Purchase Agreement with HRV Conformance Verification Associates, Inc. in the not-to-exceed amount of \$1,500,000.00 is requested. This is a cooperative purchase (piggyback) agreement based on a contract between Florida Department of Transportation and HRV Conformance Verification Associates, Inc. allowing CFX to take advantage of the favorable rates already negotiated.

The work to be provided includes materials inspection, sampling and testing throughout the system.

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

Reviewed by: Ben Dreiling, PE Director of Construction

Glenn Pressimone, PE

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





# CONTRACT

## CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## AND

## HRV CONFORMANCE VERIFICATION ASSOCIATES, INC.

## CONTRACT NO. 001885

## **CONTRACT DATE: FEBRUARY 10, 2022**

**CONTRACT AMOUNT: \$1,500,000.00** 

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY COOPERATIVE PURCHASE AGREEMENT CONTRACT NO. 001885

**THIS COOPERATIVE PURCHASE AGREEMENT** ("Agreement") is made this 10<sup>th</sup> day of February 2022, between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, whose address is 4974 ORL Tower Road, Orlando, Florida 32827 ("CFX") and HRV CONFORMANCE VERIFICATION ASSOCIATES, INC., whose address is 420 Rouser Road, Suite 400, Moon Township, PA 15108 who is registered and authorized to conduct business in the State of Florida ("CONTRACTOR").

#### WITNESSETH:

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

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

**WHEREAS,** CFX has determined that it is necessary and convenient in the conduct of its business to retain the services of a CONTRACTOR to provide materials inspection, sampling and testing; and

**WHEREAS,** on or about November 22, 2021, the CONTRACTOR entered into an agreement with Florida Department of Transportation ("FDOT") to provide the same services as required by CFX; and

**WHEREAS,** the contract between the CONTRACTOR and FDOT was procured through a competitive bidding process, which process is substantially similar to those required by CFX, and included Bid Solicitation 18906 Major Project and the receipt of sealed bids from other contractors; and

WHEREAS, competitive bids seeking qualified contractors to perform such services for CFX was not required because the CONTRACTOR has an existing contract with FDOT, attached hereto as **Exhibit "1"** and incorporated herein by reference, which was awarded through a competitive bidding process ("FDOT Contract") for the same services to be provided hereunder, and CFX has decided to contract with CONTRACTOR for the performance of the services described herein under the same conditions previously negotiated by FDOT, subject to the terms and conditions hereof; and

**WHEREAS,** the CONTRACTOR agrees to provide the services under substantially the same terms and conditions as included in its contract with FDOT subject to the additional terms and conditions detailed below.

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

#### 1. **RECITALS**

The recitals are true and incorporated as terms. Any capitalized terms not specifically defined herein shall have the meaning ascribed to them in the FDOT Contract.

#### 2. ADOPTION OF TERMS IN THE FDOT CONTRACT

The parties adopt all parts of the FDOT Contract by reference as though set forth fully herein, subject to the following substitutions or revisions.

2.1 The terms "FDOT", "State of Florida Department of Transportation", "Department of Transportation" or "Department" in the FDOT Contract shall be replaced with the "Central Florida Expressway Authority."

2.2 In Article 2, of the Contract, the contract term of "5 year term" is hereby replaced with "three (3) year term with two one-year renewals"

2.3 In Article 2-B of the Contract, the total amount "\$7,500,000.00 – Budgetary Ceiling" is hereby replaced with "\$1,500,000.00 – Budgetary Ceiling".

2.4 Article 5 on page GC-3 entitled "FLORIDA PUBLIC RECORDS LAW" in the Department Contract shall be supplemented with the following:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT Phone: 407-690-5000, e-mail: publicrecords@cfxway.com, and address: Central Florida Expressway Authority, 4974 ORL Tower Road, Orlando, FL. 32807.

**3. SERVICES TO BE PROVIDED.** On a Work Order basis, the CONTRACTOR shall, for the consideration herein stated and at its cost and expense, do all the work and furnish all equipment, supplies, labor and incidentals necessary to perform this Agreement in the manner and to the full extent as required by CFX.

#### 4. WORK ORDER PROCESS

4.1 CFX Construction Dept will notify the CONTRACTOR in writing of a project to be completed with the allowed construction time and the specific technical specifications, special provisions and plans.

4.2 CONTRACTOR shall have three (3) days to respond with a proposal in writing utilizing the unit prices outlined in the FDOT Contract attached hereto as **Exhibit "1"**.

4.3 CFX Construction shall issue a work order based upon the documents outlined in 4.1 and 4.2 above. The work order shall include the start date or if unknown, a Notice to Proceed shall be issued when the date is known.

4.4 CONTRACTOR shall commence and complete the work in accordance with work order and contract documents.

5. **COMPENSATION FOR SERVICES.** Compensation shall be in accordance with the Price Proposal for each specific work order attached to this Agreement.

#### 6. CONTRACTOR INSURANCE.

CONTRACTOR shall carry and keep in force during the period of this Agreement, the required amount of coverage as stated in Section 5.11 of the General Specifications.

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

## HRV CONFORMANCE VERIFICATION ASSOCIATES, INC.

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By:Authorized Signature	By:Aneth Williams, Director of Procurement			
Print Name:				
Title:				
Attest:	(Seal)			
Date:				
	Approved as to legal form and sufficiency for the exclusive use and reliance of the Central Florida Expressway Authority.			
	By: Diego "Woody" Rodriguez General Counsel for CFX			
	Date:			

#### <u>Exhibits</u>

- 1, FDOT Contract
- 2. Potential Conflict Disclosure Form

EXHIBIT "1"



375-030-80 PROCUREMENT 01/17

### Florida Department of Transportation

DATE: February 22, 2018

- TO: HRV Conformance Verification Associates, Inc. Project Manager: Steve Duke FDOT Financial Services
- FROM: Procurement Office Professional Services
- SUBJECT: Transmittal of Consultant Agreement

Contract Number: C9X73 Agreement: Standard Professional Services Agreement

Attached is a copy of an executed agreement between the Department and <u>HRV Conformance</u> <u>Verification Associates, Inc.</u>. The Consultant is advised that no work should be performed under this agreement until receipt of a written Notice to Proceed or Task Work Order (for task assignment contracts). The Department's Project Manager will provide such a document to the Consultant with one copy to FDOT Financial Services and one to the Procurement Office.

These services were acquired in compliance with section 287.055, Florida Statutes.

The Consultant is also advised that invoices should be submitted to the Department's Project Manager.

DBE commitments must be submitted in the Department's Equal Opportunity Compliance (EOC) System located at the following website: <u>https://fdotwp1.dot.state.fl.us/EqualOpportunityCompliance/Account.aspx/LogIn?ReturnUrl=%2fEqual</u> <u>OpportunityCompliance</u>

Failure to timely input DBE commitment information into the Equal Opportunity Compliance System may adversely impact the DBE commitment letter grade for your consultant firm as well as the District DBE utilization numbers, and will cause your firm to appear as delinquent on the Equal Opportunity Compliance Report. Note: For TWO contracts, DBE commitments can only be entered into the EOC after the prime invoice has been paid in CITS.

## Execution Date: 2/16/2018 Service Ending Date: 2/15/2023 Term End Date (i.e. Ending Date in CFM): 2/15/2023

DocuSign Envelope ID: 07035A7B-F8BC-4298-AEF8-8FB9F43088E7

#### STANDARD PROFESSIONAL SERVICES AGREEMENT

375-030-12 PROCUREMENT

OGC - 09/16 Page 1 of 2

Contract No.: <u>C9X73</u> FDOT Financial ID No.(s)
Appropriation Bill Number(s)/Line Item Number(s) for 1st year of contract, pursuant to s. 216.313, F.S. <u>SB2500/1914</u> F.A.P. No.
THIS AGREEMENT, made and entered into on2/16/2018   8:41 AM EST, by and between the
Department and HRV Conformance Verification Associates, Inc.
FEID No.         F050564731         ) of         420 Rouser Road, Suite 400, Moon Township, PA 15108

authorized to conduct business in the State of Florida, hereinafter called the Consultant, agree as follows:

The Consultant and the Department mutually agree to abide by the Department's <b>Standard Professional Services</b>					
Agreement, Terms, dated	September, 2016	_ which are available as an appendix to this form in the			
Department's Professional Services web site or from the Department's Office of Procurement. The Standard					
Professional Services Agreement Terms, with the exception of the following non-applicable sections:					
None					

are incorporated by reference and made a part of this Agreement.

#### 1. SERVICES AND PERFORMANCE

- A. The Department does hereby retain the Consultant to furnish certain services as described in Exhibit "A", attached hereto and made a part hereof, in connection with <u>Materials Inspection, Sampling and Testing</u>
- B. Unless changed by written agreement, the site for inspection of work referenced in Section 1.I of the **Standard Professional Services Terms**, will be <u>420 Rouser Road</u>, Suite 400, Moon Township, PA 15108.

#### 2. <u>TERM</u>

- A. Unless otherwise provided herein or by Supplemental Agreement or Amendment, the provisions of this Agreement will remain in full force and effect through completion of all services required of the Consultant or a
  - 5 year term from the date of execution of this Agreement, whichever occurs first.
- B. Check applicable terms
  - The scheduled project services to be rendered by the Consultant will commence, subsequent to execution of this Agreement, on the date specified in the written notice to proceed from the Department's \_\_\_\_\_ which notice to proceed will become part of this Agreement. The Consultant will complete scheduled project services within \_\_\_\_\_ months of the commencement date specified in the notice to proceed or as modified by subsequent Amendment or Supplemental Agreement.
  - The project services to be rendered by the Consultant for each task assignment will commence, upon written notice from the Department's <u>Project Manager</u> and will be completed within the time period specified in each task assignment. All services performed under this contract will be completed within <u>60</u> months from the date of this Agreement. The total fee for all accumulated task assignments may not exceed \$<u>7,500,000.00</u>
  - The scheduled project services to be rendered by the Consultant will commence, subsequent to execution of this Agreement, on the date specified in the written notice to proceed from the Department's \_\_\_\_\_ which notice to proceed will become part of this Agreement. The Consultant will complete scheduled project services within \_\_\_\_\_ calendar days following completion of the construction contract(s) with which consultant services are associated. The anticipated length of the consultant services is \_\_\_\_\_ months.

#### STANDARD PROFESSIONAL SERVICES AGREEMENT

#### 3. **INSURANCE**

The amount of liability insurance to be maintained by the Consultant in accordance with Section 4.B of the Standard Professional Services Agreement Terms is \$500,000.00.

#### **SUBCONTRACTS** 4.

The following subconsultants are authorized under this Agreement in accordance with Section 7.A. of the Standard **Professional Services Agreement Terms:** 

AREHNA Engineering Inc.; Greenman-Pedersen, Inc.; NOVA Engineering and Environmental, LLC

#### **COMPENSATION** 5.

The Department agrees to pay the Consultant compensation as detailed in Exhibit "B", attached hereto and made a part hereof.

#### **MISCELLANEOUS** 6.

- A. Reference in this Agreement to Director will mean the Chief Engineer.
- The services provided herein 🛛 do 🗌 do not involve the expenditure of federal funds. In the event Β. federal funds are involved, Section 9 of the Standard Professional Services Agreement Terms is incorporated by reference.
- C. The following attachments are hereby incorporated into this Agreement as part hereof as though fully set forth herein.

Page <u>A-1</u> through Page <u>A-5</u> : Exhibit "A", Scope of Services

Page <u>B-1</u> through Page <u>B-5</u> : Exhibit "B", Method of Compensation

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

HRV Conformance Verification Associates, Inc.			DEPARTMENT	
	of Consultant Docusigned by: H. Pochelle Stachel Authorizeoustightature	BY:	DocuSigne	
	H.Rochelle Stachel (Print/Type)		Courtney (Print/Type)	
Title <sup>.</sup>	President	Title <sup>.</sup>	Chief Enc	

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

ed by: and 3ABE421.

Drummond, P.E.

gineer

FOR DEPARTMENT USE ONLY

APPROVED:

Ancisha Whitfield

Professional Services Unit

EGALigREVIEW Larry Kingers

General Counsel Office

#### STANDARD PROFESSIONAL SERVICES AGREEMENT TERMS September, 2016

#### 1. SERVICES AND PERFORMANCE

- A. Before making any additions or deletions to the work described in the Agreement, and before undertaking any changes or revisions to such work, the parties will negotiate any necessary cost changes and will enter into a Supplemental Agreement covering such work and compensation. Reference herein to the Agreement will be considered to include any Supplemental Agreement.
- B. In the performance of professional services, the Consultant will use that degree of care and skill ordinarily exercised by other similar professionals in the field under similar conditions in similar localities. The Consultant will use due care in performing its services and will have due regard for acceptable engineering standards and principles. Consultant's standard of care shall not be altered by the application, interpretation, or construction of any other provision of this Agreement.
- C. The Consultant agrees to provide project schedule progress reports in a format acceptable to the Department and at intervals established by the Department. The Department 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 will be maintained by the Consultant with representatives of the Department, or of other agencies interested in the project on behalf of the Department. Either party to the Agreement may request and be granted a conference.
- D. All services will be performed by the Consultant to the satisfaction of the Director who will decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of the Agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount and value thereof; and the decision upon all claims, questions and disputes will be final and binding upon the parties hereto. Adjustments of compensation and contract time because of any major changes in the work that may become necessary or desirable as the work progresses will be subject to mutual agreement of the parties, and Supplemental Agreement(s) of such a nature as required will be entered into by the parties in accordance herewith.

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

- E. In the event the work covered by this Agreement includes the preparation of construction plans, it is understood that the work may be divided into two or more construction projects by the Director and that, if this is done, the Consultant will supply construction plans for each project.
- F. The Consultant is authorized to use the Department's computer facilities utilizing Department programs required for the performance of the services herein. The Consultant will identify the programs required and submit a written request to the Department's Project Manager for approval.
- G. All design work performed by the Consultant for projects where anticipated construction cost is one million dollars (\$1,000,000) or more will be subject to Value Engineering. The Department further reserves the right to subject projects of lesser construction cost to Value Engineering should the Department deem circumstances are present that warrant such a decision. Value Engineering may be performed at any stage of the design process. Unless specifically identified in the Agreement, the Consultant will not be required to perform the Value Engineering analysis.
- H. The Consultant will not be liable for use by the Department of plans, documents, studies or other data for any purpose other than intended by the terms of this Consultant Agreement.
- I. All tracings, plans, specifications, maps, computer files and/or reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, will be

considered works made for hire and will become the property of the Department upon completion or termination without restriction or limitation on their use and will be made available, upon request, to the Department at any time during the performance of such services and/or upon completion or termination of this Agreement. Upon delivery to the Department of said document(s), the Department will become the custodian thereof in accordance with Chapter 119, Florida Statutes. The Consultant will not copyright any material and products or patent any invention developed under this agreement. The Department will have the right to visit the site for inspection of the work and the products of the Consultant at any time.

#### 2. <u>TERM:</u>

A. Services required after completion of scheduled project services, including, but not limited to, design assistance, construction assistance, and litigation assistance, will be completed within the term of this Agreement at written direction of the department. Supplemental Agreements may be negotiated for any post project schedule services needed by the Department after scheduled project services.

In the event it becomes impracticable or impossible for the Consultant to complete the expected services within the term of this Agreement due to delays on the part of the department or circumstances beyond the control of the Consultant, the Agreement may be extended. An extension of the Agreement must be in writing.

B. In the event there are delays caused by the Department in approval of any of the materials submitted by the Consultant or if there are delays occasioned by circumstances beyond the control and without fault or negligence of the Consultant which delay the scheduled project completion date, the Department may grant an extension of time equal to the aforementioned project schedule delay, as a minimum and not to exceed the Agreement term, by issuance of a Time Extension Letter. This letter will be for time only and does not include any additional compensation.

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

In the event time for performance of the scheduled project services expires and the Consultant has not requested, or if the Department has denied, an extension of the Project Schedule completion date; partial progress payments will be stopped on the date time expires. No payment shall be made for work performed after the Project Schedule completion date until a time extension is granted or all work has been completed and accepted by the Department if the Agreement term has not expired.

#### 3. COMPENSATION:

- A. Bills for fees or other compensation for services or expenses will be submitted to the Department in detail sufficient for a proper preaudit and postaudit thereof. The Department will render approval or disapproval of services within five working days of the receipt of a written progress report unless otherwise stated in the Agreement. The progress report will be accompanied by an appropriate invoice.
- B. The bills for any travel expenses, when authorized by terms of this Agreement and by the Department's Project Manager, will be submitted in accordance with Section 112.061, Florida Statutes. In addition, if compensation for travel is authorized under this Agreement and by the Department's Project Manager, then the Department shall not compensate the Consultant for lodging/hotel expenses in excess of \$150.00 per day (excluding taxes and fees). The Consultant may expend their own funds to the extent the lodging/hotel expense exceeds \$150.00 per day. The Department, in its sole discretion and pursuant to its internal policies and procedures, may approve compensation to the Consultant for lodging/hotel expenses in excess of \$150.00 per day.
- C. Records of costs incurred under terms of this Agreement will be maintained and made available upon request to the Department at all times during the period of this Agreement and for three years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records will be furnished to the Department upon request.

- D. Records of costs incurred will include 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 the Department for a proper audit of project costs.
- E. The general cost principles and procedures for the negotiation and administration, and the determination or allowance of costs under this Agreement will be as set forth in the Code of Federal Regulations, Titles 23, 48, 49, Rule Chapter 14-75, Florida Administrative Code, and other pertinent Federal and State Regulations, as applicable, with the understanding that there is no conflict between State regulations and Federal regulations in that the more restrictive of the applicable regulations will govern.
- F. The Consultant should be aware of the following time frames. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services, unless the Agreement specifies otherwise. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
- G. If a payment is not available within 40 days, a separate interest penalty at a rate established pursuant to Section 215.422, Florida Statutes, will be due and payable, in addition to the invoice amount, to the Consultant. Interest penalties of less than one dollar will not be paid unless the Consultant requests payment. Invoices which have to be returned to a Consultant because of Consultant preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.
- H. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.
- I. Except for issues arising from contract indemnification provisions, the Department will have the right to retain out of any payment due the Consultant under this Agreement an amount sufficient to satisfy any amount due and owing to the Department by the Consultant on any other Agreement between the Consultant and the Department. The Department may withhold payment on any invoice in the event that the Consultant is in default under any provision of this Agreement or any other Agreement between the Consultant and the Department as of the time of processing the invoice or as of the time payment is made available on the invoice. This right to withhold will continue until such time as the default has been cured, and, upon cure, the Department will have the right to retain an amount equal to the damages suffered as a result of the default.
- J. It is mutually agreed and understood that the following provision will be applicable to this Agreement if the compensation to be paid to the Consultant, whether by lump sum or cost-plus-a-fixed-fee, will exceed the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY FOUR.

The Consultant hereby certifies, covenants and warrants that wage rates and other factual unit costs provided the Department to support the compensation are accurate, complete and current as of the date of this Agreement. It is further agreed that the Agreement price will be adjusted to exclude any significant sums by which the Department determines the Agreement price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. All such Agreement adjustments must be made within one year following the end of the Agreement. For this purpose, the end of the Agreement is the date of final billing or acceptance of the work by the Department, whichever is later.

K. The Department, during any fiscal year, will not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department will require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained will prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

#### 4. INDEMNITY AND INSURANCE:

A. If the Consultant is an individual or entity licensed by the state of Florida who holds a current certificate of registration under Chapter 481, Florida Statutes, to practice architecture or landscape architecture, under Chapter 472, Florida Statutes, to practice land surveying and mapping, or under Chapter 471, Florida Statutes, to practice engineering, and who enters into a written agreement with the Department relating to the planning, design, construction, administration, study, evaluation, consulting, or other professional and technical support services furnished in connection with any actual or proposed construction improvement, alteration, repair, maintenance, operation, management, relocation, demolition, excavation, or other facility, land, air, water, or utility development or improvement, the Consultant will indemnify and hold harmless the Department, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of the contract.

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

- B. The Consultant will have and maintain during the term of this Agreement, a professional liability insurance policy or policies, or an irrevocable letter of credit established pursuant to Chapter 675 and Section 337.106, Florida Statutes, with a company or companies authorized to do business in the State of Florida, affording professional liability coverage for the professional services to be rendered in accordance with this Agreement in the amount specified in the Agreement.
- C. Under the terms of this agreement, the plans, reports and recommendations of the Consultant will be reviewed by the Department for conformity with Department standards and agreement terms. However, review by the Department does not constitute detailed review or checking of design components and related details, or the accuracy with which designs are depicted on the plans.
- D. Acceptance of the work by the Department or Agreement termination does not constitute Department approval and will not relieve the Consultant of the responsibility for subsequent corrections of any errors and/or omissions and the clarification of any ambiguities. The Consultant shall make all necessary revisions or corrections resulting from errors and/or omissions on the part of the Consultant without additional compensation. If these errors and/or omissions are discovered during the construction of the project, they shall be corrected without additional compensation.

#### 5. <u>COMPLIANCE WITH LAWS:</u>

- A. All final plans, documents, reports, studies and other data prepared by the Consultant shall bear the professional's seal/ signature, in accordance with the applicable Florida Statute that governs and Administrative Rules promulgated by the Department of Business and Professional Regulation, and guidelines published by the Department, in effect at the time of execution of this Agreement. In the event that changes in the Statute or Rules create a conflict with the requirements of the published guidelines, requirements of the Statute and/or Rules shall take precedence.
- B. Chapter 337.162 Florida Statutes applies as follows:
  - (1) If the Department has knowledge or reason to believe that any person has violated the provisions of state professional licensing laws or rules, it will submit a complaint about the violations to the Department of Business and Professional Regulation. The complaint will be confidential.
  - (2) Any person who is employed by the Department and who is licensed by the Department of Business and Professional Regulation and who, through the course of his employment, has knowledge to believe that any person has violated the provisions of state professional licensing laws or rules will submit a complaint about the violations to the Department of Business and Professional Regulation. Failure to submit a complaint about the violations may be grounds for disciplinary action pursuant to Chapter 455 and the state licensing law applicable to that licensee. The complaint will be confidential.
  - (3) Any confidential information submitted to the Department of Business and Professional Regulation will remain confidential pursuant to Chapter 455 and applicable state law.

- C. The Consultant will comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the performance of work under this Agreement.
- D. The Consultant warrants that the Consultant 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 he has not paid or agreed to pay any person, company, corporation, individual, or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted. For the breach or violation of this Paragraph, the Department 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.
- E. The Consultant shall comply with Chapter 119, Florida Statutes. Specifically, the Consultant shall:
  - (1) Keep and maintain public records required by the Department to perform the service.
  - (2) Upon request from the Department's custodian of public records, provide the Department 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 Chapter 119, Florida Statutes, 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 Agreement term and following completion of the Agreement if the Consultant does not transfer the records to the Department.
  - (4) Upon completion of the Agreement, transfer, at no cost, to the Department, all public records in possession of the Consultant or keep and maintain public records required by the Department to perform the service. If the Consultant transfers all public records to the Department upon completion of the Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the Agreement, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department, upon request from the Department's custodian of public records, in a format that is compatible with the information technology systems of the Department.

Failure by the Consultant to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Agreement by the Department.

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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**Central Office** 

850-414-5355 COprcustodian@dot.state.fl.us Office of the General Counsel Florida Department of Transportation 605 Suwannee Street, MS 58 Tallahassee, Florida 32399-0458

- F. The Consultant agrees that it will 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 the Department and securing its consent in writing. The Consultant also agrees that it will not publish, copyright or patent any of the data developed under this Agreement, it being understood that such data or information is the property of the Department.
- G. Consultant covenants and agrees that it and its employees will be bound by the standards of conduct provided in applicable Florida Statutes and applicable rules of the Department of Business and Professional Regulation as they relate to work performed under this Agreement. Consultant further covenants and agrees that when a former state employee is employed by the Consultant, the Consultant will require that strict adherence by the former state employee to Florida Statutes 112.313(9) and 112.3185 is a condition of employment of said former state employee. These statutes will by reference be made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.
- H. 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 on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids 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 Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- I. The Department will consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. Such violation will be cause for unilateral cancellation of this Agreement, by the Department, if the Consultant knowingly employs unauthorized aliens.
- J. DISCRIMINATION: An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.
- K. The Consultant agrees to comply with the Title VI Nondiscrimination Contract Provisions, Appendices A and E, available at http://www.dot.state.fl.us/procurement/index.shtm, incorporated herein by reference and made a part of this Agreement.
- L. The contractor/consultant/vendor agrees to comply with section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with section 20.055(5), Florida Statutes.

#### 6. TERMINATION AND DEFAULT

- A. The Department may terminate this Agreement in whole or in part at any time the interest of the Department requires such termination, as follows:
  - (1) If the Department determines that the performance of the Consultant is not satisfactory, the Department may notify the Consultant of the deficiency with the requirement that the deficiency be corrected within a specified time; but not less than 10 days. Otherwise the Agreement will be terminated at the end of such time or thirty (30) days whichever is sooner.
  - (2) If the Department requires termination of the Agreement for reasons other than unsatisfactory performance of the Consultant, the Department will notify the Consultant of such termination, with instructions as to the effective date of work stoppage or specify the stage of work at which the Agreement is to be terminated.

- (3) If the Agreement is terminated before performance is completed, the Consultant will be paid for the work satisfactorily performed. Payment is to be on the basis of substantiated costs, not to exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by the Agreement.
- B. The Department reserves the right to cancel and terminate this Agreement in the event the Consultant or any employee or agent of the Consultant is convicted for any crime arising out of or in conjunction with any work being performed by the consultant for or on behalf of the Department, without penalty. It is understood and agreed that in the event of such termination, all tracings, plans specifications, computer files, maps, and data prepared or obtained under this Agreement will immediately be turned over to the Department. The Department reserves the right to terminate or cancel this Agreement in the event the Consultant will be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors. The Department further reserves the right to suspend the qualifications of the Consultant to do business with the Department upon any such conviction.
- C. For Contracts \$1,000,000 and greater, if the Department determines the Consultant submitted a false certification under Section 287.135(5) of the Florida Statutes, or if the Consultant has been placed on the Scrutinized Companies with Activities in the Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List, the Department shall either terminate the Contract after it has given the Consultant notice and an opportunity to demonstrate the Department's determination of false certification was in error pursuant to Section 287.135(5)(a) of the Florida Statutes, or maintain the Contract if the conditions of Section 287.135(4) of the Florida Statutes are met.

#### 7. ASSIGNMENT AND SUBCONTRACTORS

- A. The Consultant will maintain an adequate and competent professional staff so as to enable Consultant to timely perform under this Agreement and must be authorized to do business within the State of Florida and may associate with it such subconsultants, for the purpose of its services hereunder, without additional cost to the Department, other than those costs negotiated within the limits and terms of this Agreement. The Consultant is fully responsible for satisfactory completion of all subcontracted work. The Consultant, however, will not sublet, assign or transfer any work under this Agreement to other than subconsultants specified in the Agreement without the written consent of the Department.
- B. The Consultant must state in all subcontracts that services performed by any such subconsultant will be subject to the Professional Consultant Work Performance Evaluation System as defined in Chapter 14-75, Florida Administrative Code.
- C. The following provision is hereby incorporated in and made a part of this Agreement when the services provided herein do not involve the expenditure of Federal funds:

It is expressly understood and agreed that any articles which are the subject of, or required to carry out this contract will be purchased from the Corporation identified under Chapter 946, Florida Statutes, in the same manner and under the same procedures set forth in Section 946.515(2) and (4), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract will be deemed to be substituted for this agency insofar as dealings with such Corporation.

The Corporation referred to in the above paragraph is Prison Rehabilitative Industries and Diversified Enterprises, Inc. Available pricing, products, and delivery schedules may be obtained by contacting:

PRIDE Enterprises 12425 28th Street North Suite 300 St Petersburg, Florida 33716

#### 8. MISCELLANEOUS

- A. All words used herein in the singular form will extend to and include the plural. All words used in the plural form will extend to and include the singular. All words used in any gender will extend to and include all genders.
- B. In the event that a court of valid jurisdiction finally determines that any provision of this Agreement is illegal or unenforceable, this Agreement will be construed as not containing such provision, and all other provisions

which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.

- C. There are no understandings or agreements except as herein expressly stated.
- D. This Agreement will be governed by and construed in accordance with the laws of the State of Florida.
- E. In any legal action related to this Agreement, instituted by either party, Consultant hereby waives any and all privileges and rights it may have under chapter 47 and Section 337.19, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule or case law, including, but not limited to those grounded on convenience. Any such legal action may be brought in the appropriate Court in any county chosen by the Department and in the event that any such legal action is filed by Consultant, Consultant hereby consents to the transfer of venue to the county chosen by the Department upon the Department filing a motion requesting the same.
- F. Consultant:
  - 1. 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; and
  - 2. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
- G. The Department may grant the Consultant's employees or subconsultants access to the Department's secure networks as part of the project. In the event such employees' or subconsultants' participation in the project is terminated or will be terminated, the Consultant shall notify the Department's project manager no later than the employees' or subconsultants' separation date from participation in the project or immediately upon the Consultant acquiring knowledge of such termination of employees' or subconsultants' participation in the project, whichever occurs later.

#### 9. TERMS FOR FEDERAL AID CONTRACTS (APPENDIX I):

The following terms apply to all contracts in which it is indicated in Section 6.B of the Standard Professional Services Agreement that the services involve the expenditure of federal funds: During the performance of this contract, the Consultant, for itself, its assignees and successors in interest agrees as follows:

- A. It is understood and agreed that all rights of the Department relating to inspection, review, approval, patents, copyrights, and audit of the work, tracing, plans, specifications, maps, data, and cost records relating to this Agreement shall also be reserved and held by authorized representatives of the United States of America.
- B. It is understood and agreed that, in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of the U.S. Department of Transportation, anything to the contrary in this Agreement not withstanding.
- C. Compliance with Regulations: The Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- D. Nondiscrimination: The Consultant, with regard to the work performed during the contract, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- E. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations made by the Consultant, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor or supplier shall

be notified by the Consultant of the Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.

- F. Information and Reports: The Consultant will provide all information and reports required by the Regulations, or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or Federal Motor Carrier Safety Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, Federal Motor Carrier Safety Administration, the Consultant shall so certify to the Florida Department of Administration, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration, and/or the Federal Motor Carrier Safety Administrations appropriate, and shall set forth what efforts it has made to obtain the information.
- G. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Florida Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to,
  - (1) withholding of payments to the Consultant under the contract until the Consultant complies and/or
  - (2) cancellation, termination or suspension of the contract, in whole or in part.
- H. Incorporation or Provisions: The Consultant will include the provisions of Paragraph C through I in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, or directives issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the Florida Department of Transportation, and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.
- Compliance with Nondiscrimination Statutes and Authorities: Title VI of the Civil Rights Act of 1964 (42 Ι. U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from

discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

- J. Interest of Members of Congress: No member of or delegate to the Congress of the United States will be admitted to any share or part of this contract or to any benefit arising therefrom.
- K. Interest of Public Officials: No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof. For purposes of this provision, public body shall include municipalities and other political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State.
- L. Participation by Disadvantaged Business Enterprises: The Consultant shall agree to abide by the following statement from 49 CFR 26.13(b). This statements shall be included in all subsequent agreements between the Consultant and any subconsultant or contractor.

The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in termination of this contract or other such remedy as the recipient deems appropriate.

- M. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this Agreement is a violation of the Federal Law. Accordingly, United States Code, Title 18, Section 1020, is hereby incorporated by reference and made a part of this Agreement.
- N. It is understood and agreed that if the Consultant at any time learns that the certification it provided the Department in compliance with 49 CFR, Section 26.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the Consultant shall provide immediate written notice to the Department. It is further agreed that the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" as set forth in 49 CFR, Section 29.510, shall be included by the Consultant in all lower tier covered transactions and in all aforementioned federal regulation.
- O. The Department hereby certifies that neither the consultant nor the consultant's representative has been required by the Department, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to
  - (1) employ or retain, or agree to employ or retain, any firm or person, or
  - (2) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind;

The Department further acknowledges that this agreement will be furnished to a federal agency, in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

- P. The Consultant hereby certifies that it has not:
  - employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above contractor) to solicit or secure this contract;
  - (2) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this contract; or
  - (3) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for the above contractor) any fee contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

The consultant further acknowledges that this agreement will be furnished to the State of Florida

Department of Transportation and a federal agency in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

A. Objective:

To provide inspection, sampling and testing services as required in connection with construction materials that will be utilized in FDOT construction and maintenance operations at facilities and locations throughout the United States. This contract may also be used for all inspection, sampling and testing services that the firm can provide. Inspection services beyond the United States may be required. All services shall conform to the requirements of the contract documents of the Department's construction contracts for which commercial inspection services are assigned and the desires of the Department as made known to the consultant. The Department may during the life of this agreement issue statements which clarify specification requirements. These statements will apply to all specifications which may be pertinent to Consultants' inspection, sampling and testing services.

B. Services:

The consultant will be qualified to provide services not limited to the following elements as required by the Department:

- 1. The inspection of structural steel and miscellaneous metal products. This shall include all investigations, recommendations, observations of fabrication or work in progress, sampling and testing together with the proper recording and reporting which are necessary to ensure that the work is fabricated of accepted materials by approved processes, completed through shipment where required in accordance with the requirements of the Contract Documents and applicable FDOT Specifications.
- 2. Coatings inspections and analysis of metalizing, galvanizing, powder coating, and wet painting or other applicable methods.
- 3. Precast Concrete, Prestressed Concrete, and Cementitious Materials: Performs independent assurance (IA), evaluations for qualifications (concrete field and concrete strength) to the active FDOT technicians assigned as described in department procedures and the Federal Aid Policy Guide. Document report findings.

Participate with the FDOT Districts when required/planned in the inspections, troubleshooting, and problems solving of the identified problems in the production of cementitious materials and precast/prestressed concrete products at the plants and/or project sites. Provide technical recommendations.

Review of the following documents: quality control plans, construction plans, specifications, procedures, and other appropriate documents as required.

Provide materials related technical support to district and central office in the area of concrete precast pipe and drainage structures. Provided technical support to the District Material Office during the review of the producer's quality control plans.

Perform field inspection of the pipe and precast drainage structure plants during the initial and routine annual plant qualification reviews.

- 4. The Consultant shall furnish the Department with records and reports covering the various work inspected, sampled and tested. Such records shall be submitted in PDF format to the Project Manager.
- 5. Provide engineering expertise to FDOT or the Engineer of Record in helping to solve project related problems related to engineering, design, structural, welding or other problems that may arise during fabrication.
- 6. When shipped to the job site, major components and all Bills of Lading for inspected and accepted material shall bear marks which will identify the Consultant and the inspector.
- C. Qualifications
  - 1. Demonstrate knowledge, experience, and abilities of AWS D1.1 Structural Welding Code Steel
  - 2. Demonstrate knowledge, experience, and abilities of AWS D1.5 Bridge Welding Code.
  - 3. Demonstrate knowledge, experience, and abilities of AWS D 1.2 Structural Welding Code Aluminum
  - 4. All in-shop and field welding inspectors providing services to the Department at a minimum will be AWS CWI certified. Other certifications may be required but not limited to the following, depending on assignment:
    - i. ASNT MT Level II
    - ii. ASNT PT Level II
    - iii. ASNT UT Level II
    - iv. ASNT RT Level II
    - v. ASNT VT Level II
    - vi. AWS Certified Radiographic Interpreter
    - vii. SSPC BCI Level I with a minimum of 2 years documented shop work experience.
    - viii. SSPC BCI level II
    - ix. NACE Level, I, II, or III
  - 5. Precast Concrete, Prestressed Concrete, and Cementitious Materials
    - i. Minimum two year experience in precast/prestressed operations
    - ii. CTQP Concrete Field Technician Level I
    - iii. CTQP Concrete Laboratory Level I
    - iv. Precast/Prestressed Concrete Institute (PCI) Quality Control Personnel Certification - Level II
  - 6. Demonstrate knowledge, experience, and abilities of the following:

- i. Florida Department of Transportation Materials Manual
- Florida Methods, 5-581 Performing Rotational Capacity Test Long Bolts in Tension Calibrator, 5-582 Rotational Capacity Test Bolts to Short to Fit into Tension Calibrator, 5-583 Direct Tension Indicator Device Performance
- iii. Florida Department of Transportation Standard Specifications for Road and Bridge Construction, applicable issues
- iv. Florida Department of Transportation Design Standards
- v. Other Methods, Standards, Codes, and Manuals as required by work assignments.
- 7. The Consultant(s) will supply a list of inspectors containing at a minimum all inspectors' names, locations, and certifications held by each inspector to the Project Manager. The Project Manager will be notified of any changes prior to the beginning of any work. The list will be kept current.
- D. Authorization of Services

The Department will request Consultant services on an as needed basis by a Task Work Order (TWO) for Professional Services. Services to be provided by the Consultant under this Agreement will be initiated and completed as directed by the Project Manager. Individual projects will be completed by the completion date indicated on the TWO. There is no guarantee that any or all of the services described in this scope will be assigned during the term of this agreement. Further, the Consultant is providing these services on a nonexclusive basis. The Department, at its option, may elect to have any of the services set forth herein performed by other consultants or Department staff.

The TWO will specify the work to be done and the authorized funds. No work shall be commenced by the Consultant until a TWO is executed.

All invoicing will be submitted in the Department's CITS program; invoice substantiating documents will be scanned and submitted via e-mail to the Project Manager. After inspection services are completed for each TWO the consultant will furnish the Department a Final Status Summary Report. The Department will execute a Termination Agreement between the Consultant and Department for that TWO.

E. Responsibilities of the Department

The Department shall provide a Project Manager who shall be responsible for all coordination with the Consultant pertaining to all contractual matters, invoicing and reporting. The Department may also designate a manager for each Task Work Order who shall be responsible for working with the Consultant Project Manager to define the specific work to be performed and the schedule for completion of each task, the Consultant staffing to be provided, and the cost. The Department Project Manager

shall be responsible for approval of any additional staffing to be provided including additional consultant staff (approval must be coordinated with the Procurement Office), and shall give approval of all products and services.

F. Responsibilities of the Consultant

The Consultant shall provide and maintain an up-to-date list of staff with agreed-to classifications and approved salaries (subject to the contract Exhibit "B") that would be available to be assigned to specific Task Work Orders. No consultant staff, except those specifically identified in a Task Work Order or those specifically agreed to by the Department Project Manager, shall charge time to that particular Task Work Order.

Consultant must request approval from the Department's Project Manager for any modifications or additions to the list of available staff prior to the initiation of any work by that individual. If applicable, new job classifications may be added to the contract via contract amendment. Consultant shall submit a copy of the resume and payroll register before new staff can be added.

G. Personnel Qualifications

The Consultant shall assign only competent technical and professional personnel qualified by the necessary experience and education to perform assigned work. The Consultant is responsible for ensuring that staff assigned to work under this Agreement has the training established by the Department as a prerequisite for consultant staff to perform work. If the required training is such that it can be applied by the trainee to work on other contracts, (regardless of whether or not the trainee would work on other agreements), the cost of the trainee's time and expenses associated with the training is not directly billable to the Department on this contract, and shall only be recoverable thru overhead for the Consultant firm.

H. Subconsultant Services

Services assigned to any subconsultants must be approved in writing and in advance by the Department Project Manager, Procurement Office, and the Consultant Project Manager in accordance with this Agreement. All subconsultants must be technically qualified by the Department to perform all work assigned to them. Additional subconsultants with specialized areas of expertise may be required to complete specific Task Work Order assignments. Any subconsultant to be hired and all work assignments to be performed, and all rates of compensation shall be agreed to by the Department Project Manager, Procurement Office and the Consultant Project Manager and documented in the contract file prior to any work being performed by the subconsultant.

I. Consultant Not Employee or Agent

The Consultant and its employees, agents, representatives, or subconsultants/ subcontractors are not employees of the Department and are not entitled to the benefits of State of Florida employees. Except to the extent expressly authorized herein, Consultant and its employees, agents, representatives, or subconsultants/subcontractors are not agents of the Department or the State for any purpose or authority such as to bind or represent the interests thereof, and shall not represent that it is an agent or that it is acting on the behalf of the Department or the State. The Department shall not be bound by any unauthorized acts or conduct of Consultant.

J. Ownership of Works and Inventions

The Department shall have full ownership of any works of authorship, inventions, improvements, ideas, data, processes, computer software programs, and discoveries (hereafter called intellectual property) conceived, created, or furnished under this Agreement, with no rights of ownership in Consultant or any subconsultants/subcontractors. Consultant and subconsultants/subcontractors shall fully and promptly disclose to the Department all intellectual property conceived. created, or furnished under this Agreement. Consultant or subconsultant/ subcontractor hereby assigns to the Department the sole and exclusive right, title, and interest in and to all intellectual property conceived, created, or furnished under this Agreement, without further consideration. This Agreement shall operate as an irrevocable assignment by Consultant and subconsultants/subcontractors to the Department of the copyright in any intellectual property created, published, or furnished to the Department under this Agreement, including all rights thereunder in perpetuity. Consultant and subconsultants/subcontractors shall not patent any intellectual property conceived, created, or furnished under this Agreement. Consultant and subconsultants/subcontractors agree to execute and deliver all necessary documents requested by the Department to effect the assignment of intellectual property to the Department or the registration or confirmation of the Department's rights in or to intellectual property under the terms of this Agreement. Consultant agrees to include this provision in all its subcontracts under this Agreement.

#### MEMORANDUM

TO:	CFX Board Members
FROM:	Aneth Williams Will Director of Procurement
DATE:	January 14, 2022
SUBJECT:	Approval of Cooperative Purchase Agreement with KTA-Tator, Inc. for Materials Inspection, Sampling and Testing Contract No. 001886

Board approval of the Cooperative Purchase Agreement with KTA-Tator, Inc. in the not-toexceed amount of \$1,500,000.00 is requested. This is a cooperative purchase (piggyback) agreement based on a contract between Florida Department of Transportation and KTA-Tator, Inc. allowing CFX to take advantage of the favorable rates already negotiated.

The work to be provided includes materials inspection, sampling and testing throughout the system.

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

Ben Dreiling, PE

Reviewed by:

Director of Construction

Glenn Pressimone, PE

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



# CONTRACT

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

AND

# **KTA-TATOR, INC.**

# CONTRACT NO. 001886

# **CONTRACT DATE: FEBRUARY 10, 2022**

**CONTRACT AMOUNT: \$1,500,000.00** 

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY COOPERATIVE PURCHASE AGREEMENT CONTRACT NO. 001886

**THIS COOPERATIVE PURCHASE AGREEMENT** ("Agreement") is made this 10<sup>th</sup> day of February 2022, between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, whose address is 4974 ORL Tower Road, Orlando, Florida 32827 ("CFX") and **KTA-TATOR, INC.**, whose address is 145 Enterprise Drive, Pittsburgh, PA 15275 who is registered and authorized to conduct business in the State of Florida ("CONTRACTOR").

#### WITNESSETH:

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

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

**WHEREAS,** CFX has determined that it is necessary and convenient in the conduct of its business to retain the services of a CONTRACTOR to provide materials inspection, sampling and testing; and

**WHEREAS,** on or about November 22, 2021, the CONTRACTOR entered into an agreement with Florida Department of Transportation ("FDOT") to provide the same services as required by CFX; and

**WHEREAS,** the contract between the CONTRACTOR and FDOT was procured through a competitive bidding process, which process is substantially similar to those required by CFX, and included Bid Solicitation 18906 Major Project and the receipt of sealed bids from other contractors; and

WHEREAS, competitive bids seeking qualified contractors to perform such services for CFX was not required because the CONTRACTOR has an existing contract with FDOT, attached hereto as **Exhibit "1"** and incorporated herein by reference, which was awarded through a competitive bidding process ("FDOT Contract") for the same services to be provided hereunder, and CFX has decided to contract with CONTRACTOR for the performance of the services described herein under the same conditions previously negotiated by FDOT, subject to the terms and conditions hereof; and

**WHEREAS,** the CONTRACTOR agrees to provide the services under substantially the same terms and conditions as included in its contract with FDOT subject to the additional terms and conditions detailed below.

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

#### 1. **RECITALS**

The recitals are true and incorporated as terms. Any capitalized terms not specifically defined herein shall have the meaning ascribed to them in the FDOT Contract.

#### 2. ADOPTION OF TERMS IN THE FDOT CONTRACT

The parties adopt all parts of the FDOT Contract by reference as though set forth fully herein, subject to the following substitutions or revisions.

2.1 The terms "FDOT", "State of Florida Department of Transportation", "Department of Transportation" or "Department" in the FDOT Contract shall be replaced with the "Central Florida Expressway Authority."

2.2 In Article 2, of the Contract, the contract term of "5 year term" is hereby replaced with "three (3) year term with two one-year renewals"

2.3 In Article 2-B of the Contract, the total amount "\$7,500,000.00 – Budgetary Ceiling" is hereby replaced with "\$1,500,000.00 – Budgetary Ceiling".

2.4 Article 5 on page A5-E entitled "FLORIDA PUBLIC RECORDS LAW" in the Department Contract shall be supplemented with the following:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT Phone: 407-690-5000, e-mail: publicrecords@cfxway.com, and address: Central Florida Expressway Authority, 4974 ORL Tower Road, Orlando, FL. 32807.

**3. SERVICES TO BE PROVIDED.** On a Work Order basis, the CONTRACTOR shall, for the consideration herein stated and at its cost and expense, do all the work and furnish all equipment, supplies, labor and incidentals necessary to perform this Agreement in the manner and to the full extent as required by CFX.

#### 4. WORK ORDER PROCESS

4.1 CFX Construction Dept will notify the CONTRACTOR in writing of a project to be completed with the allowed construction time and the specific technical specifications, special provisions and plans.

4.2 CONSTRACTOR shall have three (3) days to respond with a proposal in writing utilizing the unit prices outlined in the FDOT Contract attached hereto as **Exhibit "1"**.

4.3 CFX Construction shall issue a work order based upon the documents outlined in 4.1 and 4.2 above. The work order shall include the start date or if unknown, a Notice to Proceed shall be issued when the date is known.

4.4 CONTRACTOR shall commence and complete the work in accordance with work order and contract documents.

5. **COMPENSATION FOR SERVICES.** Compensation shall be in accordance with the Price Proposal for each specific work order attached to this Agreement.

#### 6. CONTRACTOR INSURANCE.

CONTRACTOR shall carry and keep in force during the period of this Agreement, the required amount of coverage as stated in Section 5.11 of the General Specifications.

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

#### **KTA-TATOR, INC.**

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By:Authorized Signature	By:Aneth Williams, Director of Procurement
Print Name:	Date:
Title:	
Attest:	(Seal)
Date:	
	Approved as to legal form and sufficiency for the exclusive use and reliance of the Central Florida Expressway Authority.
	By: Diego "Woody" Rodriguez General Counsel for CFX
	Date:

#### <u>Exhibits</u>

- **1.** FDOT Contract
- 2. Potential Conflict Disclosure Form

# EXHIBIT "1"



375-030-80 PROCUREMENT 07/20

# DATE: November 22, 2021

- TO: KTA-Tator, Inc. Project Manager: Timothy McCullough FDOT Financial Services
- FROM: Procurement Office Professional Services
- SUBJECT: Transmittal of Consultant Agreement

Contract Number: CAG71 Agreement: Standard Professional Services Agreement

Attached is a copy of an executed agreement between the Department and <u>KTA-Tator, Inc.</u>. The Consultant is advised that no work should be performed under this agreement until receipt of a written Notice to Proceed or Task Work Order (for task assignment contracts). The Department's Project Manager will provide such a document to the Consultant with one copy to FDOT Financial Services and one to the Procurement Office.

These services were acquired in compliance with section 287.055, Florida Statutes.

The Consultant is also advised that invoices should be submitted to the Department's Project Manager.

Subconsultant commitments (DBE, small business and other subconsultants) must be submitted in the Department's Equal Opportunity Compliance (EOC) System located at the following website: <a href="https://fdotwp1.dot.state.fl.us/EqualOpportunityCompliance/Account.aspx/LogIn?ReturnUrl=%2fEqualOpportunityCompliance">https://fdotwp1.dot.state.fl.us/EqualOpportunityCompliance/Account.aspx/LogIn?ReturnUrl=%2fEqualOpportunityCompliance</a>

Failure to timely input subconsultant commitment (DBE, small business and other subconsultants) information into the Equal Opportunity Compliance System may adversely impact the DBE commitment letter grade for your consultant firm as well as the District DBE utilization numbers, and will cause your firm to appear as delinquent on the Equal Opportunity Compliance Report. Note: For TWO contracts, Subconsultant commitments (DBE, small business and other subconsultants) can only be entered into the EOC after the prime invoice has been paid in CITS. Please refer to guidance document located <u>here</u> on how to enter DBE, small business and other subconsultant commitment info into EOC.

# Execution Date: <u>11/22/2021</u> Service Ending Date: <u>11/21/2026</u> Term End Date (i.e. Ending Date in CFM): <u>11/21/2026</u>

Attachment

DocuSign Envelope ID: EEF92712-269D-4035-88B0-DEB43EE1EAE8

#### STANDARD PROFESSIONAL SERVICES AGREEMENT

JA DEPARTMENT OF TRANSPORTATION

Contract No.: <u>CAG71</u> FDOT Financial ID No.(s)	District: <u>Central Office</u>
Appropriation/Line Item Number(s) for 1st year of contract, pursuant to s. 216.313, F.S. F.A.P. No.	(required for contracts in excess of \$5 million)
	11/22/2021   11:21 AM EST, by and between the (This date to be entered by DOT only) (TATION, an agency of the State of Florida, hereinafter called the
(FEID No. <u>F251342759</u> ) of	145 Enterprise Drive, Pittsburgh, PA 15275
authorized to conduct business in the State of Florida, h	ereinafter called the Consultant, agree as follows:
The Consultant and the Department mutually agree to a	bide by the Department's Standard Professional Services

Agreement, Terms, dated <u>February, 2021</u> which are available as an appendix to this form in the Department's Professional Services web site or from the Department's Office of Procurement. The **Standard Professional Services Agreement Terms**, with the exception of the following non-applicable sections:

none

are incorporated by reference and made a part of this Agreement.

#### 1. SERVICES AND PERFORMANCE

A. The Department does hereby retain the Consultant to furnish certain services as described in Exhibit "A", attached hereto and made a part hereof, in connection with
Materials Inspection Sampling and Tasting

Materials Inspection, Sampling, and Testing

B. Unless changed by written agreement, the site for inspection of work referenced in Section 1.I of the Standard Professional Services Terms, will be <u>145 Enterprise Drive</u>, Pittsburgh, PA 15275.

#### 2. <u>TERM</u>

- A. Unless otherwise provided herein or by Supplemental Agreement or Amendment, the provisions of this Agreement will remain in full force and effect through completion of all services required of the Consultant or a
  - <sup>5</sup> year term from the date of execution of this Agreement, whichever occurs first.
- B. Check applicable terms
  - The scheduled project services to be rendered by the Consultant will commence, subsequent to execution of this Agreement, on the date specified in the written notice to proceed from the Department's \_\_\_\_\_ which notice to proceed will become part of this Agreement. The Consultant will complete scheduled project services within \_\_\_\_\_ months of the commencement date specified in the notice to proceed or as modified by subsequent Amendment or Supplemental Agreement.
  - The project services to be rendered by the Consultant for each task assignment will commence, upon written notice from the Department's <u>Project Manager</u> and will be completed within the time period specified in each task assignment. All services performed under this contract will be completed within <u>60</u> months from the date of this Agreement. The total fee for all accumulated task assignments may not exceed \$<u>15,000,000.00</u>
  - The scheduled project services to be rendered by the Consultant will commence, subsequent to execution of this Agreement, on the date specified in the written notice to proceed from the Department's \_\_\_\_\_ which notice to proceed will become part of this Agreement. The Consultant will complete scheduled project services within \_\_\_\_\_ calendar days following completion of the construction contract(s) with which consultant services are associated. The anticipated length of the consultant services is \_\_\_\_\_ months.

#### STANDARD PROFESSIONAL SERVICES AGREEMENT

#### 3. INSURANCE

The amount of liability insurance to be maintained by the Consultant in accordance with Section 4.B of the **Standard Professional Services Agreement Terms** is <u>\$1,000,000.00</u>.

#### 4. SUBCONTRACTS

The following subconsultants/subcontractors are authorized under this Agreement in accordance with Section 7.A. of the **Standard Professional Services Agreement Terms**:

Elipsis Engineering & Consulting, LLC; HRV Conformance Verification Associates, Inc.; NOVA Engineering and Environmental, LLC

#### 5. <u>COMPENSATION</u>

The Department agrees to pay the Consultant compensation as detailed in Exhibit "B", attached hereto and made a part hereof.

#### 6. MISCELLANEOUS

・オ

- A. Reference in this Agreement to Director will mean the Chief Engineer.
- B. The services provided herein 🖂 do 🗌 do not involve the expenditure of federal funds. In the event federal funds are involved, Section 9 of the **Standard Professional Services Agreement Terms** is incorporated by reference.
- C. The following attachments are hereby incorporated into this Agreement as part hereof as though fully set forth herein.

Page <u>A-1</u> through Page <u>A-6</u> : Exhibit "A", Scope of Services

Page <u>B-1</u> through Page <u>B-6</u> : Exhibit "B", Method of Compensation

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

KTA-Tator, Inc.	STATE OF FLORIDA
Name of Consultant	DEPARTMENT OF TRANSPORTATION
BY: Jamie Hilfon Authorized Signature	BY: 022E6284290B41A
James K. Hilton, Jr.	William N. Watts, Jr., P.E.
(Print/Type)	(Print/Type)
Title: <u>Vice President</u>	Title: Chief Engineer
FOR DEPART	MENT USE ONLY
APPROVED:	LEGAL REVIEW
Docusigned by:	DocuSigned by:
Awisha Whitfield	Gíselle Justo
Professional Services Unit	Grenarataiaunsel Office

#### STANDARD PROFESSIONAL SERVICES AGREEMENT TERMS February 2021

#### 1. SERVICES AND PERFORMANCE

- A. Before making any additions or deletions to the work described in the Agreement, and before undertaking any changes or revisions to such work, the parties will negotiate any necessary cost changes and will enter into a Supplemental Agreement covering such work and compensation. Reference herein to the Agreement will be considered to include any Supplemental Agreement.
- B. In the performance of professional services, the Consultant will use that degree of care and skill ordinarily exercised by other similar professionals in the field under similar conditions in similar localities. The Consultant will use due care in performing its services and will have due regard for acceptable engineering standards and principles. Consultant's standard of care shall not be altered by the application, interpretation, or construction of any other provision of this Agreement.
- C. The Consultant agrees to provide project schedule progress reports in a format acceptable to the Department and at intervals established by the Department. The Department 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 will be maintained by the Consultant with representatives of the Department, or of other agencies interested in the project on behalf of the Department. Either party to the Agreement may request and be granted a conference.
- D. All services will be performed by the Consultant to the satisfaction of the Director who will decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of the Agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount and value thereof; and the decision upon all claims, questions and disputes will be final and binding upon the parties hereto. Adjustments of compensation and contract time because of any major changes in the work that may become necessary or desirable as the work progresses will be subject to mutual agreement of the parties, and Supplemental Agreement(s) of such a nature as required will be entered into by the parties in accordance herewith.

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

- E. In the event the work covered by this Agreement includes the preparation of construction plans, it is understood that the work may be divided into two or more construction projects by the Director and that, if this is done, the Consultant will supply construction plans for each project.
- F. The Consultant is authorized to use the Department's computer facilities utilizing Department programs required for the performance of the services herein. The Consultant will identify the programs required and submit a written request to the Department's Project Manager for approval.
- G. All design work performed by the Consultant for projects where anticipated construction cost is one million dollars (\$1,000,000) or more will be subject to Value Engineering. The Department further reserves the right to subject projects of lesser construction cost to Value Engineering should the Department deem circumstances are present that warrant such a decision. Value Engineering may be performed at any stage of the design process. Unless specifically identified in the Agreement, the Consultant will not be required to perform the Value Engineering analysis.
- H. The Consultant will not be liable for use by the Department of plans, documents, studies or other data for any purpose other than intended by the terms of this Consultant Agreement.
- I. All tracings, plans, specifications, maps, computer files and/or reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, will be

considered works made for hire and will become the property of the Department upon completion or termination without restriction or limitation on their use and will be made available, upon request, to the Department at any time during the performance of such services and/or upon completion or termination of this Agreement. Upon delivery to the Department of said document(s), the Department will become the custodian thereof in accordance with Chapter 119, Florida Statutes. The Consultant will not copyright any material and products or patent any invention developed under this agreement. The Department will have the right to visit the site for inspection of the work and the products of the Consultant at any time.

#### 2. <u>TERM:</u>

A. Services required after completion of scheduled project services, including, but not limited to, design assistance, construction assistance, and litigation assistance, will be completed within the term of this Agreement at written direction of the department. Supplemental Agreements may be negotiated for any post project schedule services needed by the Department after scheduled project services.

In the event it becomes impracticable or impossible for the Consultant to complete the expected services within the term of this Agreement due to delays on the part of the department or circumstances beyond the control of the Consultant, the Agreement may be extended. An extension of the Agreement must be in writing.

B. In the event there are delays caused by the Department in approval of any of the materials submitted by the Consultant or if there are delays occasioned by circumstances beyond the control and without fault or negligence of the Consultant which delay the scheduled project completion date, the Department may grant an extension of time equal to the aforementioned project schedule delay, as a minimum and not to exceed the Agreement term, by issuance of a Time Extension Letter. This letter will be for time only and does not include any additional compensation.

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

In the event time for performance of the scheduled project services expires and the Consultant has not requested, or if the Department has denied, an extension of the Project Schedule completion date; partial progress payments will be stopped on the date time expires. No payment shall be made for work performed after the Project Schedule completion date until a time extension is granted or all work has been completed and accepted by the Department if the Agreement term has not expired.

#### 3. COMPENSATION:

- A. Bills for fees or other compensation for services or expenses shall be submitted to the Department in detail sufficient for a proper preaudit and postaudit thereof. The Department will render approval or disapproval of services within five working days of the receipt of a written progress report unless otherwise stated in the Agreement. The progress report will be accompanied by an appropriate invoice.
- B. The bills for any travel expenses, when authorized by terms of this Agreement and by the Department's Project Manager, shall be submitted on the Department's Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061, F.S. and the most current version of the Disbursement Handbook for Employees and Managers.
- C. Records of costs incurred under terms of this Agreement will be maintained and made available upon request to the Department at all times during the period of this Agreement and for three years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records will be furnished to the Department upon request.
- D. Records of costs incurred will include the Consultant's general accounting records and the project records, together with supporting documents and records, of the Consultant and all subconsultants/subcontractors performing work on the project, and all other records of the Consultant and subconsultants/subcontractors considered necessary by the Department for a proper audit of project costs.

- E. The general cost principles and procedures for the negotiation and administration, and the determination or allowance of costs under this Agreement will be as set forth in the Code of Federal Regulations, Titles 23, 48, 49, Rule Chapter 14-75, Florida Administrative Code, and other pertinent Federal and State Regulations, as applicable, with the understanding that there is no conflict between State regulations and Federal regulations in that the more restrictive of the applicable regulations will govern.
- F. The Consultant should be aware of the following time frames. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services, unless the Agreement specifies otherwise. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
- G. If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the Consultant. Interest penalties of less than one (1) dollar will not be enforced unless the Consultant requests payment. Invoices that have to be returned to a Consultant because of Consultant preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.
- H. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.
- I. Except for issues arising from contract indemnification provisions, the Department will have the right to retain out of any payment due the Consultant under this Agreement an amount sufficient to satisfy any amount due and owing to the Department by the Consultant on any other Agreement between the Consultant and the Department. The Department may withhold payment on any invoice in the event that the Consultant is in default under any provision of this Agreement or any other Agreement between the Consultant and the Department as of the time of processing the invoice or as of the time payment is made available on the invoice. This right to withhold will continue until such time as the default has been cured, and, upon cure, the Department will have the right to retain an amount equal to the damages suffered as a result of the default.
- J. It is mutually agreed and understood that the following provision will be applicable to this Agreement if the compensation to be paid to the Consultant, whether by lump sum or cost-plus-a-fixed-fee, will exceed the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORYFOUR.

The Consultant hereby certifies, covenants and warrants that wage rates and other factual unit costs provided the Department to support the compensation are accurate, complete and current as of the date of this Agreement. It is further agreed that the Agreement price will be adjusted to exclude any significant sums by which the Department determines the Agreement price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. All such Agreement adjustments must be made within one year following the end of the Agreement. For this purpose, the end of the Agreement is the date of final billing or acceptance of the work by the Department, whichever is later.

K. In the event this Agreement is in excess of \$25,000 and has a term of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the Comptroller of the Department that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years."

L. The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

#### 4. INDEMNITY AND INSURANCE:

A. If the Consultant is an individual or entity licensed by the state of Florida who holds a current certificate of registration under Chapter 481, Florida Statutes, to practice architecture or landscape architecture, under Chapter 472, Florida Statutes, to practice land surveying and mapping, or under Chapter 471, Florida Statutes, to practice engineering, and who enters into a written agreement with the Department relating to the planning, design, construction, administration, study, evaluation, consulting, or other professional and technical support services furnished in connection with any actual or proposed construction improvement, alteration, repair, maintenance, operation, management, relocation, demolition, excavation, or other facility, land, air, water, or utility development or improvement, the Consultant will indemnify and hold harmless the Department, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of the contract.

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

- B. The Consultant will have and maintain during the term of this Agreement, a professional liability insurance policy or policies, or an irrevocable letter of credit established pursuant to Chapter 675 and Section 337.106, Florida Statutes, with a company or companies authorized to do business in the State of Florida, affording professional liability coverage for the professional services to be rendered in accordance with this Agreement in the amount specified in the Agreement.
- C. Under the terms of this agreement, the plans, reports and recommendations of the Consultant will be reviewed by the Department for conformity with Department standards and agreement terms. However, review by the Department does not constitute detailed review or checking of design components and related details, or the accuracy with which designs are depicted on the plans.
- D. Acceptance of the work by the Department or Agreement termination does not constitute Department approval and will not relieve the Consultant of the responsibility for subsequent corrections of any errors and/or omissions and the clarification of any ambiguities. The Consultant shall make all necessary revisions or corrections resulting from errors and/or omissions on the part of the Consultant without additional compensation. If these errors and/or omissions are discovered during the construction of the project, they shall be corrected without additional compensation.

#### 5. <u>COMPLIANCE WITH LAWS:</u>

- A. All final plans, documents, reports, studies and other data prepared by the Consultant shall bear the professional's seal/ signature, in accordance with the applicable Florida Statute that governs and Administrative Rules promulgated by the Department of Business and Professional Regulation, and guidelines published by the Department, in effect at the time of execution of this Agreement. In the event that changes in the Statute or Rules create a conflict with the requirements of the published guidelines, requirements of the Statute and/or Rules shall take precedence.
- B. Chapter 337.162 Florida Statutes applies as follows:
  - (1) If the Department has knowledge or reason to believe that any person has violated the provisions of state professional licensing laws or rules, it will submit a complaint about the violations to the Department of Business and Professional Regulation. The complaint will be confidential.
  - (2) Any person who is employed by the Department and who is licensed by the Department of Business and Professional Regulation and who, through the course of his employment, has knowledge to believe that any person has violated the provisions of state professional licensing laws or rules will submit a complaint about the violations to the Department of Business and Professional Regulation. Failure to submit a complaint about the violations may be grounds for disciplinary action pursuant to Chapter 455 and the state licensing law applicable to that licensee. The complaint will be confidential.
  - (3) Any confidential information submitted to the Department of Business and Professional Regulation will remain confidential pursuant to Chapter 455 and applicable state law.

- C. The Consultant will comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the performance of work under this Agreement.
- D. The Consultant warrants that the Consultant 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 he has not paid or agreed to pay any person, company, corporation, individual, or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted. For the breach or violation of this Paragraph, the Department 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.
- E. The Consultant shall comply with Chapter 119, Florida Statutes. Specifically, the Consultant shall:
  - (1) Keep and maintain public records required by the Department to perform the service.
  - (2) Upon request from the Department's custodian of public records, provide the Department 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 Chapter 119, Florida Statutes, 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 Agreement term and following completion of the Agreement if the Consultant does not transfer the records to the Department.
  - (4) Upon completion of the Agreement, transfer, at no cost, to the Department, all public records in possession of the Consultant or keep and maintain public records required by the Department to perform the service. If the Consultant transfers all public records to the Department upon completion of the Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the Agreement, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department, upon request from the Department's custodian of public records, in a format that is compatible with the information technology systems of the Department.

Failure by the Consultant to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Agreement by the Department.

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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

> Central Office 850-414-5355 COprcustodian@dot.state.fl.us Office of the General Counsel Florida Department of Transportation 605 Suwannee Street, MS 58 Tallahassee, Florida 32399-0458

- F. The Consultant agrees that it will 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 the Department and securing its consent in writing. The Consultant also agrees that it will not publish, copyright or patent any of the data developed under this Agreement, it being understood that such data or information is the property of the Department.
- G. Consultant covenants and agrees that it and its employees will be bound by the standards of conduct provided in applicable Florida Statutes and applicable rules of the Department of Business and Professional Regulation as they relate to work performed under this Agreement. Consultant further covenants and agrees that when a former state employee is employed by the Consultant, the Consultant will require that strict adherence by the former state employee to Florida Statutes 112.313(9) and 112.3185 is a condition of employment of said former state employee. These statutes will by reference be made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.
- H. 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 on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subconsultant/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 Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- I. The Department will consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. Such violation will be cause for unilateral cancellation of this Agreement, by the Department, if the Consultant knowingly employs unauthorized aliens.
- J. DISCRIMINATION: An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subconsultant/subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.
- K. The Consultant agrees to comply with the Title VI Nondiscrimination Contract Provisions, Appendices A and E, available at http://www.dot.state.fl.us/procurement/index.shtm, incorporated herein by reference and made a part of this Agreement.
- L. The contractor/consultant/vendor agrees to comply with section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with section 20.055(5), Florida Statutes.

#### 6. TERMINATION AND DEFAULT

- A. The Department may terminate this Agreement in whole or in part at any time the interest of the Department requires such termination, as follows:
  - (1) If the Department determines that the performance of the Consultant is not satisfactory, the Department may notify the Consultant of the deficiency with the requirement that the deficiency be corrected within a specified time; but not less than 10 days. Otherwise the Agreement will be terminated at the end of such time or thirty (30) days whichever is sooner.
  - (2) If the Department requires termination of the Agreement for reasons other than unsatisfactory performance of the Consultant, the Department will notify the Consultant of such termination, with instructions as to the effective date of work stoppage or specify the stage of work at which the Agreement is to be terminated.

- (3) If the Agreement is terminated before performance is completed, the Consultant will be paid for the work satisfactorily performed. Payment is to be on the basis of substantiated costs, not to exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by the Agreement.
- B. The Department reserves the right to cancel and terminate this Agreement in the event the Consultant or any employee or agent of the Consultant is convicted for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the Department, without penalty. It is understood and agreed that in the event of such termination, all tracings, plans specifications, computer files, maps, and data prepared or obtained under this Agreement will immediately be turned over to the Department. The Department reserves the right to terminate or cancel this Agreement in the event the Consultant will be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors. The Department further reserves the right to suspend the qualifications of the Consultant to do business with the Department upon any such conviction.
- C. A Consultant is ineligible to enter into a contract with the Department for goods or services of any amount if, at the time of entering into such contract, the Consultant is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135, Florida Statutes, also prohibits companies from entering into a contract for goods or services of \$1 million or more that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector Lists which were created pursuant to s. 215.473, Florida Statutes. If the Department determines the Consultant submitted a false certification under Section 287.135 of the Florida Statutes, the Department shall either terminate the Contract after it has given the Consultant notice and an opportunity to demonstrate the Department's determination of false certification was in error pursuant to Section 287.135 of the Florida Statutes are met.

#### 7. ASSIGNMENT AND SUBCONSULTANTS/SUBCONTRACTORS

- A. The Consultant will maintain an adequate and competent professional staff so as to enable Consultant to timely perform under this Agreement and must be authorized to do business within the State of Florida and may associate with it such subconsultants/subcontractors, for the purpose of its services hereunder, without additional cost to the Department, other than those costs negotiated within the limits and terms of this Agreement. The Consultant is fully responsible for satisfactory completion of all subcontracted work. The Consultant, however, will not sublet, assign or transfer any work under this Agreement to other than subconsultants/subcontractors specified in the Agreement without the written consent of the Department.
- B. The Consultant must state in all subcontracts that services performed by any such subconsultant/subcontractor will be subject to the Professional Consultant Work Performance Evaluation System as defined in Chapter 14-75, Florida Administrative Code.
- C. The following provision is hereby incorporated in and made a part of this Agreement when the services provided herein do not involve the expenditure of Federal funds:

It is expressly understood and agreed that any articles which are the subject of, or required to carry out this contract will be purchased from the Corporation identified under Chapter 946, Florida Statutes, in the same manner and under the same procedures set forth in Section 946.515(2) and (4), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract will be deemed to be substituted for this agency insofar as dealings with such Corporation.

The Corporation referred to in the above paragraph is Prison Rehabilitative Industries and Diversified Enterprises, Inc. Available pricing, products, and delivery schedules may be obtained by contacting:

PRIDE Enterprises 12425 28th Street North Suite 300 St Petersburg, Florida 33716

#### 8. MISCELLANEOUS

- A. All words used herein in the singular form will extend to and include the plural. All words used in the plural form will extend to and include the singular. All words used in any gender will extend to and include all genders.
- B. In the event that a court of valid jurisdiction finally determines that any provision of this Agreement is illegal or unenforceable, this Agreement will be construed as not containing such provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.
- C. There are no understandings or agreements except as herein expressly stated.
- D. This Agreement will be governed by and construed in accordance with the laws of the State of Florida.
- E. In any legal action related to this Agreement, instituted by either party, Consultant hereby waives any and all privileges and rights it may have under chapter 47 and Section 337.19, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule or case law, including, but not limited to those grounded on convenience. Any such legal action may be brought in the appropriate Court in any county chosen by the Department and in the event that any such legal action is filed by Consultant, Consultant hereby consents to the transfer of venue to the county chosen by the Department upon the Department filing a motion requesting the same.
- F. Consultant:
  - 1. 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; and
  - shall expressly require any subconsultants/subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subconsultant/subcontractor during the contract term; and
  - 3. shall adhere to requirements in section 448.095, Florida Statutes.
- G. The Department may grant the Consultant's employees or subconsultants/subcontractors access to the Department's secure networks as part of the project. In the event such employees' or subconsultants'/subcontractors' participation in the project is terminated or will be terminated, the Consultant shall notify the Department's project manager no later than the employees' or subconsultants'/subcontractor's separation date from participation in the project or immediately upon the Consultant acquiring knowledge of such termination of employees' or subconsultants'/subcontractors' participation in the project.

#### 9. TERMS FOR FEDERAL AID CONTRACTS (APPENDIX I):

The following terms apply to all contracts in which it is indicated in Section 6.B of the Standard Professional Services Agreement that the services involve the expenditure of federal funds: During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest agrees as follows:

- A. It is understood and agreed that all rights of the Florida Department of Transportation relating to inspection, review, approval, patents, copyrights, and audit of the work, tracing, plans, specifications, maps, data, and cost records relating to this Agreement shall also be reserved and held by authorized representatives of the United States of America.
- B. It is understood and agreed that, in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of the U.S. Department of Transportation (hereinafter "USDOT"), not withstanding anything to the contrary in this Agreement.
- C. Compliance with Regulations: The Consultant shall comply with the regulations relative to nondiscrimination

in Federally-assisted programs of the USDOT, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

- D. Nondiscrimination: The Consultant, with regard to the work performed during the Agreement, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subconsultants/subcontractors, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
- E. Solicitations for subconsultants/subcontractors, including Procurements of Materials and Equipment: In all solicitations made by the Consultant, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subconsultant/subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.
- F. Information and Reports: The Consultant will provide all information and reports required by the Regulations, or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or Federal Motor Carrier Safety Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration, and/or the Federal Motor Carrier Safety Administration, the Consultant shall so certify to the Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administrations appropriate, and shall set forth what efforts it has made to obtain the information.
- G. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the Florida Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to,
  - (1) withholding of payments to the Consultant under the Agreement until the Consultant complies and/or
  - (2) cancellation, termination or suspension of the Agreement, in whole or in part.
- H. Incorporation or Provisions: The Consultant shall include the provisions of Paragraph C through I in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, or directives issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event a Consultant becomes involved in, or is threatened with, litigation with a subconsultant/subcontractor or supplier as a result of such direction, the Consultant may request the Florida Department of Transportation to enter into such litigation to protect the interests of the Florida Department of Transportation, and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.
- I. Compliance with Nondiscrimination Statutes and Authorities: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended,

(prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by USDOT regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

- J. Interest of Members of Congress: No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.
- K. Interest of Public Officials: No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. For purposes of this provision, public body shall include municipalities and other political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State.
- L. Participation by Disadvantaged Business Enterprises ("DBE"): The Consultant shall agree to abide by the following statement from 49 CFR 26.13(b). The statement that follows shall be included in all subsequent agreements between the Consultant and any subconsultant/subcontractor:

"The Consultant, sub recipient or subconsultant/subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in termination of this Agreement or other such remedy as the recipient deems appropriate."

Pursuant to 49 CFR 26.11(c), the Consultant shall submit the bid opportunity list at the time of contract execution, and shall enter DBE commitment and payment information in the Florida Department of Transportation Equal Opportunity Compliance (EOC) system. The Consultant shall request access to the EOC system using Form No. 275-021-30.

- M. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this Agreement is a violation of the Federal Law. Accordingly, United States Code, Title 18, Section 1020, is hereby incorporated by reference and made a part of this Agreement.
- N. It is understood and agreed that if the Consultant at any time learns that the certification it provided the Florida Department of Transportation in compliance with 49 CFR, Section 26.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the Consultant shall provide immediate written notice to the Florida Department of Transportation. It is further agreed that the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" as set forth in 49 CFR, Section 29.510, shall be included by the Consultant in all lower tier covered transactions and in all aforementioned federal regulation.
- O. The Florida Department of Transportation hereby certifies that neither the Consultant nor the Consultant's representative has been required by the Florida Department of Transportation, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this Agreement, to

- (1) employ or retain, or agree to employ or retain, any firm or person, or
- (2) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind;

The Florida Department of Transportation further acknowledges that this Agreement will be furnished to a federal agency, in connection with this Agreement involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

- P. The Consultant hereby certifies that it has not:
  - (1) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person to solicit or secure this Agreement (except a bona fide employee or Agency); or
  - (2) agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out this Agreement; or
  - (3) paid, or agreed to pay, to any firm, organization or person any fee contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement (except a bona fide employee or Agency).

The Consultant further acknowledges that this Agreement will be furnished to the Florida Department of Transportation and a federal agency in connection with this Agreement involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

A. Objective:

To provide inspection, sampling and testing services as required in connection with construction materials that will be utilized in Florida Department of Transportation (FDOT) construction and maintenance operations at facilities and locations throughout the United States. This contract may also be used for all inspection, sampling, and laboratory testing services that the firm can provide. Inspection services beyond the United States may be required. All services shall conform to the requirements of the contract documents of the Department's construction contracts for which commercial inspection services are assigned and the desires of the Department have been made known to the consultant. The Department may during the life of this agreement issue statements which clarify specification requirements. These statements will apply to all specifications which may be pertinent to Consultants' inspection, sampling, and laboratory testing services.

B. Services:

The Consultant will be qualified to provide services not limited to the following elements as required by the Department:

- 1. The inspection of structural steel and miscellaneous metal products. This shall include all investigations, recommendations, observations of fabrication or work in progress, sampling and laboratory testing together with the proper recording and reporting which are necessary to ensure that the work is fabricated of accepted materials by approved processes, completed through shipment where required in accordance with the requirements of the Contract Documents and applicable FDOT Specifications.
- 2. Coatings inspections and analysis of metalizing, galvanizing, powder coating, and wet painting or other applicable methods.
- 3. Precast Concrete, Prestressed Concrete, and Cementitious Materials: Performs Independent Assurance (IA), evaluations for qualifications (concrete field and concrete strength) to the active FDOT technicians assigned as described in department procedures and the Federal Aid Policy Guide. Document report findings.
- 4. Participate with the FDOT Districts when required/planned in the inspections, troubleshooting, and problem solving of the identified problems in the production of cementitious materials and precast/prestressed concrete products at the plants and/or project sites. Provide technical recommendations.
- 5. Review of the following documents: quality control plans, construction plans, specifications, procedures, and other appropriate documents as required.
- 6. Provide materials related technical support to district and central office in the area of concrete precast pipe and drainage structures. Provided technical

support to the District Material Office during the review of the producer's quality control plans.

- 7. Perform field inspection of the pipe and precast drainage structure plants during the initial and routine annual plant qualification reviews.
- 8. The Consultant shall furnish the Department with records and reports covering the various work inspected, sampled, and tested. Such records shall be submitted in Portable Document Format (PDF) to the Project Manager.
- 9. Provide engineering expertise to FDOT or the Engineer of Record in helping to solve project related problems related to engineering, design, structural, welding, or other problems that may arise during fabrication.
- 10. When shipped to the job site, major components and all Bills of Lading for inspected and accepted material shall bear marks which will identify the Consultant and the inspector.
- 11. Laboratory testing should assist in materials identification and analysis. The scope would include destructive and non-destructive testing. Prices shall be included for the following tests:
  - a. Composition/chemistry analysis
  - b. X-ray fluorescence (XRF) / X-ray diffraction (XRD) analysis
  - c. Cutting and sectioning sample
  - d. Yield, tensile and elongation testing
  - e. Scanning Electron Microscopy (SEM) preparation and photomicrograph
  - f. Hardness testing
  - g. Hydrogen embrittlement testing
  - h. Forensic Evaluation
- C. Qualifications
  - 1. Demonstrate knowledge, experience, and abilities of American Welding Society (AWS) D1.1 Structural Welding Code Steel
  - 2. Demonstrate knowledge, experience, and abilities of AWS D1.5 Bridge Welding Code.
  - 3. Demonstrate knowledge, experience, and abilities of AWS D1.2 Structural Welding Code Aluminum
  - 4. Demonstrate knowledge, experience, and abilities of AWS D1.6 Structural Welding Code Stainless

- 5. All in-shop and field welding inspectors providing services to the Department at a minimum will have an active AWS Certified Welding Inspector certificate. Other certifications may be required but not limited to the following, depending on assignment:
  - i. American society of Non-Destructive Testing (ASNT) Magnetic Particle Testing (MT) Level I or II
  - ii. ASNT Penetrant Testing (PT) Level I or II
  - iii. ASNT Ultrasonic Testing (UT) Level I or II
  - iv. ASNT Radiographic Testing (RT) Level I or II
  - v. AWS Certified Radiographic Interpreter
  - vi. Society of Protective Coatings (SSPC) Bridge Coatings Inspector (BCI) Level I or NACE International (NACE) Coating Inspector Program (CIP) Level I with a minimum of 2 years documented shop work experience.
  - vii. SSPC BCI level II
  - viii. NACE Level II, or III
  - ix. Skidmore-Wilhelm Certified Pre-Installation Verification Inspector
  - x. Skidmore-Wilhelm Bolt Tension Training with a minimum of 2 years of documented work experience
- 6. Precast Concrete, Prestressed Concrete, and Cementitious Materials
  - i. Minimum two-year experience in precast/prestressed operations
  - ii. Construction Training and Qualification Program (CTQP) Concrete Field Technician – Level I
  - iii. CTQP Concrete Laboratory Level I
  - iv. Precast/Prestressed Concrete Institute (PCI) Quality Control Personnel Certification - Level II
- 7. Fiber Reinforced Polymers
  - i. Minimum two year experience in Fiber-Reinforced Polymer (FRP) fabrication, quality control and processes.
- ii. Knowledge of utilizing Non-destructive evaluation (NDE) techniques for FRP inspection.
  - 8. Demonstrate knowledge, experience, and abilities of the following:
    - i. Florida Department of Transportation Materials Manual
    - Florida Methods, 5-581 Performing Rotational Capacity Test Long Bolts in Tension Calibrator, 5-582 Rotational Capacity Test Bolts to Short to Fit into Tension Calibrator, 5-583 Direct Tension Indicator Device Performance
    - iii. Florida Department of Transportation Standard Specifications for Road and Bridge Construction, applicable issues
    - iv. Florida Department of Transportation Design Standards
    - v. Other Methods, Standards, Codes, and Manuals as required by work assignments.
  - 9. The Consultant(s) will supply a list of inspectors containing at a minimum all inspectors' names, locations, and certifications held by each inspector to the

Project Manager. All inspectors shall be approved prior to beginning work. The Project Manager will be notified of any changes prior to the beginning of any work. The list will be kept current.

### D. Authorization of Services

The Department will request Consultant services on an as needed basis by a Task Work Order (TWO) for Professional Services. Services to be provided by the Consultant under this Agreement will be initiated and completed as directed by the Project Manager. Individual projects will be completed by the completion date indicated on the TWO. There is no guarantee that any or all the services described in this scope will be assigned during the term of this agreement. Further, the Consultant is providing these services on a nonexclusive basis. The Department, at its option, may elect to have any of the services set forth herein performed by other consultants or Department staff.

The TWO will specify the work to be done and the authorized funds. No work shall be commenced by the Consultant until a TWO is executed.

Invoice substantiating documents will be scanned and submitted via e-mail to the Project Manager. After inspection services are completed for each TWO the consultant will furnish the Department a Final Status Summary Report. The Department will execute a Task Work Order Amendment between the Consultant and Department that specifically closes that TWO.

## E. Responsibilities of the Department

The Department shall provide a Project Manager who shall be responsible for all coordination with the Consultant pertaining to all contractual matters, invoicing and reporting. The Department may also designate a manager for each Task Work Order who shall be responsible for working with the Consultant Project Manager to define the specific work to be performed and the schedule for completion of each task, the Consultant staffing to be provided, and the cost. The Department Project Manager shall be responsible for approval of any additional staffing to be provided including additional Consultant staff (approval must be coordinated with the Procurement Office), and shall give approval of all work products and services.

#### **F.** Responsibilities of the Consultant

The Consultant shall provide and maintain an up-to-date list of staff with agreed-to classifications and approved salaries (subject to the contract Exhibit "B") that would be available to be assigned to specific Task Work Orders. No Consultant staff, except those specifically identified in a Task Work Order or those specifically agreed to by the Department Project Manager, shall charge time to that particular Task Work Order.

Consultant must request approval from the Department's Project Manager for any modifications or additions to the list of available staff prior to the initiation of any work by that individual. If applicable, new job classifications may be added to the contract via contract amendment. Consultant shall submit a copy of the resume and payroll register before new staff can be added.

For a Task Work Order where Consultant staff are anticipated to work the majority of a 40 hour week at Department facilities, the Consultant will be reimbursed at the field rate, and staff who are anticipated to work on average the majority of the week at the home office should be reimbursed at the home rate.

## G. Personnel Qualifications

The Consultant shall assign only competent technical and professional personnel qualified by the necessary experience and education to perform assigned work. The Consultant is responsible for ensuring that staff assigned to work under this Agreement has the training established by the Department as a prerequisite for Consultant staff to perform work. If the required training is such that it can be applied by the trainee to work on other contracts, (regardless of whether or not the trainee would work on other agreements), the cost of the trainee's time and expenses associated with the training is not directly billable to the Department on this contract, and shall only be recoverable through overhead for the Consultant firm.

## H. Subconsultant Services

Services assigned to any subconsultants must be approved in writing and in advance by the Department Project Manager, Procurement Office, and the Consultant Project Manager in accordance with this Agreement. All subconsultants must be technically qualified by the Department to perform all work assigned to them. Additional subconsultants with specialized areas of expertise may be required to complete specific Task Work Order assignments. Any subconsultant to be hired and all work assignments to be performed, and all rates of compensation shall be agreed to by the Department Project Manager, Procurement Office and the Consultant Project Manager and documented in the contract file prior to any work being performed by the subconsultant.

Any new subconsultant must be added to the contract via contract amendment (in coordination with the Procurement Office) prior to any issuance of work on a Task Work Order.

## I. Consultant Not Employee or Agent

The Consultant and its employees, agents, representatives, or subconsultants/ subcontractors are not employees of the Department and are not entitled to the benefits of State of Florida employees. Except to the extent expressly authorized

herein, Consultant and its employees, agents, representatives, or subconsultants/subcontractors are not agents of the Department or the State for any purpose or authority such as to bind or represent the interests thereof, and shall not represent that it is an agent or that it is acting on the behalf of the Department or the State. The Department shall not be bound by any unauthorized acts or conduct of Consultant.

## J. Ownership of Works and Inventions

The Department shall have full ownership of any works of authorship, inventions, improvements, ideas, data, processes, computer software programs, and discoveries (hereafter called intellectual property) conceived, created, or furnished under this Agreement, with no rights of ownership in Consultant or any subconsultants/subcontractors. Consultant and subconsultants/subcontractors shall fully and promptly disclose to the Department all intellectual property conceived, created, or furnished under this Agreement. Consultant or subconsultant/subcontractor hereby assigns to the Department the sole and exclusive right, title, and interest in and to all intellectual property conceived, created, or furnished under this Agreement, without further consideration. This Agreement shall operate as an irrevocable assignment by Consultant and subconsultants/subcontractors to the Department of the copyright in any intellectual property created, published, or furnished to the Department under this Agreement, including all rights thereunder in perpetuity. Consultant and subconsultants/subcontractors shall not patent any intellectual property conceived, created, or furnished under this Agreement. Consultant and subconsultants/subcontractors agree to execute and deliver all necessary documents requested by the Department to effect the assignment of intellectual property to the Department or the registration or confirmation of the Department's rights in or to intellectual property under the terms of this Agreement. Consultant agrees to include this provision in all its subcontracts under this Agreement.

# STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION PROFESSIONAL SERVICES LETTER OF RESPONSE

Advertisement No.: 22901	DOT FM Number:	<u>N/A</u>	
Submittal Date: 8/6/2021	Project Name: Ma	aterials Inspection	, Sampling, and Testing
Consultant's Name: <u>KTA-Tator, Inc.</u> (Firm must use the Street Address: <u>145 Enterprise Driv</u>	e name shown on the Cor	nsultant's qualificatior	ו letter.)
City: Pittsburgh	State:	PA	<b>Zip:</b> <u>15275</u>
Office Location: Pittsburgh, PA		_ Contact perso	on: James K. Hilton, Jr.
<ul> <li>Phone: (412) 722-0594</li> <li>By submittal of this letter the Consultant certific certifies that staff proposed are currently empl staff will become employed by the identified fin The Letter of Response should address the <ul> <li>Proposed approach and understandii</li> <li>Relevant project experience – Simila</li> <li>Other content provided by firm.</li> <li>Proposed key personnel and their protosed key personnel and their logo at the text port information in the header other than of Arial Narrow, 11 point was retained. Once your delete key after the last word in the Letter format is not permitted. This form works best requested at a later date in the procurement, the page.</li> </ul> </li> </ul>	ies that all information pro- loyed by the firm(s) identi- rm(s). <b>e following information</b> ing of critical issues. In type of work experience oposed roles (do not inclu- to fincluding font in graph no modification of font that's responsibility, due to the cater styling such as use of the transponsibility, due to the cater styling such as use of the transponsibility, due to the cater styling such as use of the transponsibility of the ter styling such as use of the transponsibility of the ter styling such as use of the transponsibility of the ter the test of the first page (direct on the logo. After pasting y your content is inserted, or of Response. Recreati- when saved with a .docx	ified, or the Consultar : e. ude resumes). hics, tables, and cap or spacing allowed. font and format restric f color, bold, and italic d columns, tables, gra- ng square" option app ctly underneath the he bodate insertion of the l your letter into this for delete any additional ion of the form in anot c extension. *Please l	true and accurate. The Consultant further int shall provide a statement indicating when be to be the standard Arial '2" clear margin on all sides must be ctions within this form, to work within the cs is allowed. Use of a table is aphics, and photos. All graphics and photos blied before cutting and pasting into this eader), however, the Consultant shall not logo. Consultants are not permitted to insert rm, highlight all text and ensure the font size blank pages that are generated by pressing ther software application to modify the form retain the source document as it may be

KTA-Tator, Inc. (KTA), with subconsultants NOVA, HRV, and Elipsis, is pleased to submit this Letter of Response (LOR) to the Florida Department of Transportation (FDOT) to provide materials inspection, sampling and testing services under prequalified Major Work Types 9.3 and 10.3. Our team includes subconsultants that are prequalified disadvantaged business enterprises (DBE) and Small Businesses. KTA offers FDOT distinct advantages compared to other firms including a proven approach to the Project and an understanding of the critical issues encountered. We provide nationwide coverage, qualified personnel and a history of successful partnering with FDOT that dates to 2001. With managers and inspectors certified in multiple disciplines and located strategically around the United States, KTA has provided, and proposes to continue to provide, quality inspection and engineering support services to FDOT.

#### KTA Background, Capabilities, and Key Personnel

KTA has been in business for over 70 years and our mission is to provide world class service to our clients to protect their most valuable assets. KTA's inspectors are selected, trained, and led by experienced fabrication managers to promote complete inspection services (Steel, NDT, Coatings, Concrete) to clients. We have provided these services to over 50 state departments of transportation and toll authorities.

KTA employs AWS Certified Welding Inspectors (CWI) with NDT qualifications and ACI/PCI certified concrete inspectors experienced in the inspection of all varieties of both fixed and moveable structures including continuous girders, curved girders, tub girders, Fracture Critical structures; truss, bascule, lift, and simple span bridges; sign structures, roadway grating, and all miscellaneous highway steel and concrete structures. KTA also employs experienced NACE inspectors and provides coating inspection and consulting services including assessments; failure analysis; lab testing; coating system evaluations; and specification preparation. Services include Quality Assurance (QA) observation of surface preparation and coating application including galvanizing, powder coating and metallizing operations. An independent and unbiased philosophy has permitted KTA to provide professional services to its clients for 72 years.

KTA's Team has the management, technical support, inspection and lab professionals to provide all services requested by FDOT. Our subconsultants employ CWI's, NDT, NACE, ACI/PCI, CTQP, materials engineers, and testing staff. KTA managers and supervisors accept responsibility for the KTA Team staff and their professional actions. Proposed key personnel:

- Jamie Hilton (Civil Engineer, CWI) Consulting, Technical Support, Inspector Staffing and Certification, Shop Auditing
- Ed Moore (CWI, NACE 3) TWO Mgmt., Inspector Supervision, Consulting
- Greg Richards (NACE 3, SSPC PCS, BCI 2) TWO Mgmt., Inspector Supervision, Condition Assessments, Consulting
- Peter Kinney, P.E. (P.E., CWI, NACE 3) Welding Procedure Specification (WPS) Review
- Michael Reina, P.E. (Florida registered P.E., NACE 3, SSPC PCS) Engineering Support
- Pedro Sanchez (NACE 2, SSPC PCS, BCI 2, CCI 2, MCI) Condition Assessments
- Amy King, P.E. (Florida registered P.E., CWI, ACI, PCI Level III) Concrete Consulting
- James Kretzler (ASNT Level III, CWI, NACE 1) NDT Consulting, Procedure Review
- Chuck Pennington (NOVA) (SCWI, ASNT Level III) Welding and NDT Consulting
- Tristan Rossi (NOVA) (PCI Level III, PTI Level I, Precast Specialist III) Concrete and Materials Consulting

#### Approach and Understanding of Critical Issues

Our approach begins with making sure that our team understands FDOT's objectives. We are assisting FDOT with their commitment to Florida residents and visitors to provide a safe and viable transportation system. Our team members understand the specifications and requirements to bring each assignment to a successful conclusion. The following is a general outline of our understanding of the critical issues and scope of services when serving as FDOT's "Construction Materials Inspection Consultant." We will perform these services to observe, verify, and document that:

- 1. Fabricator follows accepted Quality Control Plan (QCP) and Quality Control (QC) is adequate
- 2. All products are fabricated and coated with acceptable raw materials by approved processes
- 3. Major components produced in accordance with the Contract Documents are stamped and shipped to the jobsite
- 4. Inspection and testing is performed in accordance with the FDOT Standard Specifications for Road and Bridge Construction, Special Provisions, Technical Special Provisions, and applicable AWS codes. It is understood that some projects already in progress may be inspected in accordance with a previous edition of the Specifications that was current at the time of bid.
- 5. All records, reports, samples, and test results are reviewed, compiled, and submitted to FDOT.

To perform QA services for FDOT, KTA's Team will work in coordination with the FDOT districts, the CEI, and the fabricator's QC. KTA will not direct shop personnel and will coordinate all inspection activities and results with QC. Our principal objectives are to verify the quality of fabrication and coatings operations and to provide inspection and testing using experienced inspectors. All in-shop and field welding inspectors are certified in accordance with AWS QC-1. Inspectors performing NDT testing will be certified in accordance with ASNT Recommended Practice SNT-TC-1A. Coatings inspectors are trained in accordance with KTA procedures, adhere to FDOT requirements, and meet all minimum qualifications as listed in the scope of services. When needed, the Team will provide qualified and experienced personnel for Independent Assurance, evaluations for qualifications, inspections, laboratory testing, troubleshooting and problem solving of cementitious materials and precast/prestressed concrete products.

Our QA activities will follow the protocol of the FDOT Materials Manual and include:

- **Document Review** Verify specifications, plans, drawings, welding procedures, welder certifications, and personnel certifications
- Raw Material Inspection Verify heat numbers, Mill Test Reports (MTRs) and document traceability of material
- Welding Inspection Verify welder qualifications, weld joint preparation and fit-up, and application of welding procedures; Visually inspect welds; Evaluate critical and non-critical repairs of Fractural Critical Members; Observe straightening of members distorted by welding
- **Dimensional Inspection** Observe material cutting operations; Check tight fit and mill to bear conditions on stiffeners; Verify hole locations and spacing; Verify shop laydowns and assemblies; Verify general dimensions of completed components.
- Fasteners Verify proper installation and testing of high strength bolts

- Shop Painting Inspection Verify environmental conditions, preparation of material by abrasive blasting, mixing and application of paint, dry film thicknesses and visual acceptance of coating; Verify that repairs of coatings follow FDOT standard repair procedures or approved repair procedures.
- **Galvanizing and Powder Coating** Verify the appearance and integrity of the finished galvanizing; Verify the preparation and the application of the powder coating, dry film thickness and visual acceptance.
- Thermal Spray Coating Verify that the coating contractor has submitted a Quality Control Plan, with the required
  procedures, and product information and certifications; Verify environmental conditions; Observe preparation of test
  specimens daily for bend, adhesion, and cut testing; Verify preparation, and application of the thermal spray coating; Inspect
  and record coating thickness and pull-off test results; Verify proper application of seal coat; Verify proper repair of any
  damaged or unacceptable coating
- Non-Destructive Testing Verify operator qualifications; Witness radiographic (RT), magnetic particle (MT), and ultrasonic testing (UT); Perform confirmatory MT or UT if required or requested by the FDOT Project Manager
- Precast/Prestress Concrete Conduct independent assurance audits at Precast and Prestressed Plants throughout the State. Through the role of the FDOT SMO Precast Specialist III, provide independent assurance audits for concrete testing procedures of DOT field operation inspectors and contractors
- Shipping Perform final inspection; Monitor loading of members on trucks, rail or barge and check for damage to the coating and the members; Stamp the acceptable members and review and stamp the shipping papers
- **Reporting** Provide the minutes to Pre-fabrication meetings. Provide daily and weekly reports documenting quality inspections; Verify and report non-conformances and verify the proper repairs and corrections. Provide back-up documentation NDT reports, MTR's, QC reports, NCR's

Our trained and certified inspection supervisors, Ed Moore and Greg Richards, operate locally from central Florida-based offices. This allows our team supervisors to visit project sites regularly and address problems immediately. KTA operates under a quality management system (QMS) based on the requirements of ANSI/ISO/ASQ Q9001-2000, Requirements for Quality Management Systems and SSPC-QP 5. The QMS defines the organizational structure for administering quality management of KTA product and service groups, defines the competence, awareness, training and responsibilities of personnel, and provides the requirements for the control of processes. Our Quality Assurance Manager is responsible for the development and implementation of the QMS and reports directly to the President/CEO.

#### **Relevant Project Experience**

KTA has been providing material inspection, sampling, and testing services directly to FDOT and Florida's Turnpike Enterprise for 20 years. This has included auditing, technical support, and consulting services. We have also been providing weld inspection, NDT, coatings inspection, and concrete inspection for 60 years for over 50 other State Departments of Transportations and Toll Authorities including Alabama, Connecticut, Maryland, Massachusetts, Mississippi, New York, North Carolina, and Pennsylvania. Other supplemental services provided include WPS review, fabrication/coatings procedure review, fabrication/coatings repair procedure review, as well as other related consulting services. NOVA, HRV, and Elipsis are on our team to provide services as required with experience in Major Work Types 9.3 and 10.3. These firms have a successful history working with FDOT and have offices throughout Florida. References for KTA and its subconsultants are available upon request.

Our ability to respond rapidly to FDOT requests with high quality services is what makes our team unique. For example, KTA assembled three teams of UT technicians to inspect potentially failed bolts in the Hopkins frames of 16 bascule bridges. The teams responded in less than 24 hours and worked through the weekend to prevent a mass shutdown of the bridges and the waterways they spanned. KTA had the resources and capabilities to provide emergency services and cover on-going FDOT projects. Beyond inspection projects, we have worked closely with FDOT on laboratory research assignments, co-authored papers and presentations, provided timely technical support for welding and coatings issues, and provided professional consultation and lab testing to support FDOT on the Bridge of Lions DRB. Our history has proven our capabilities as a key partner with FDOT.



Florida Department of Transportation

RON DESANTIS GOVERNOR 605 Suwannee Street Tallahassee, Florida 32399 KEVIN J. THIBAULT, P.E. SECRETARY

August 25, 2021

rmcguire@hrvinc.com jhilton@kta.com apennoni@pennoni.com trshaw@trccompanies.com adil.khan2@woodplc.com

Re: Request for Proposal - Materials Inspection, Sampling and Testing

Dear Consultant:

I am pleased to advise you that your firm has been shortlisted for the <u>Materials Inspection</u>, <u>Sampling and Testing contract</u>. To enable the Department to complete the evaluation of your firm, you are requested to prepare a Technical Proposal, resumes, and organization chart or staffing chart. The Technical Proposal, resumes and organization chart or staffing chart must be prepared in accordance with the enclosed information, which includes a scope of services. Technical Proposal, resumes, organization chart or staffing chart, and required forms shall be e-mailed to <u>co.profserv@dot.state.fl.us</u>. All documents are due by <u>5:00PM</u>, <u>September 16, 2021</u>.

**Note:** All times listed in this letter and attached documents are Eastern Time Zone unless specifically noted otherwise.

Sincerely,

Ancisha Whitfield

Aneisha Whitfield, Contracts & Agreement Specialist Procurement Office

Attachments CC: Timothy McCullough

## Request For Technical Proposals For Materials Inspection, Sampling and Testing

1.	Purpose:	1
2.	Scope of Consultant Services:	1
3.	Length of Consultant Services:	1
4.	Contract Restrictions & Proposed Method of Compensation:	1
5.	Staffing Requirements:	4
6.	Scope of Services Meeting:	4
7.	Deadline for Questions:	4
8.	Resumes, Organization Chart or Staffing Chart, Required Certification, and Forms:	4
9.	Technical Proposals:	6
10.	Consultant Selection:	7
11.	Contract Negotiations:	7
12.	Schedule:	8
Attachn	nent A – Scope of Services	
Attachm	nent B – Standard Professional Services Agreement Terms	
Attachm	nent C – Technical Proposal Evaluation Form	

Attachment D – Required Certifications

### Request For Proposals

#### 1. Purpose:

The Florida Department of Transportation requires professional services for the project known as <u>Materials Inspection, Sampling and Testing</u>. Additional information is necessary to complete the evaluation of each shortlisted consultant's ability to provide the desired services. As a result, each shortlisted consultant is requested to provide a Technical Proposal, resumes, organization chart or staffing chart, and required certifications and forms.

Shortlisted Consultants: HRV Conformance Verification Associates, Inc. KTA-Tator, Inc. Pennoni Associates Inc. TRC Engineers, Inc. Wood Environment & Infrastructure Solutions, Inc.

#### 2. Scope of Consultant Services:

For a detailed description of the required consultant services, refer to Attachment A, Scope of Services.

#### 3. Length of Consultant Services:

The consultant services are scheduled for a maximum period of <u>5 years</u>. The consultant services shall begin only upon the receipt of written notice (i.e. Task Work Order) from the Department. The term of the contract is <u>5 years</u>.

#### 4. Contract Restrictions & Proposed Method of Compensation:

A standard consultant contract will be executed with the selected consultant for this project. The standard contract terms are provided as Attachment B. The following additional information is furnished to the consultant firm for consideration:

#### 4.1 Professional Liability Insurance Requirement: \$1,000,000.00.

- **4.2** <u>**Computer Usage:**</u> The selected Consultant firm may desire to use the Department's mainframe computer (not CADD) for project related tasks. Requested computer services will be considered during the contract negotiations.
- **4.3** <u>Subconsultant Services:</u> Services assigned to subconsultants must be approved in advance by the Department. Subconsultants performing the standard types of work covered by <u>Rule Chapter 14-75, F.A.C.</u>, must be technically prequalified with the Department or have an application for prequalification under review at the time that they are proposed.

Subconsultants with fees less than \$500,000, and/or performing specialty

services (non-standard types of work), a self-certified overhead statement may be accepted. These overhead statements must be sent to Central Office for review and approval.

Private attorney services may not be utilized on Department contracts without advance approval from the Attorney General's Office. The advance approval may only be requested by Agency General Counsel (FDOT), and not the consultant firm. Since approval cannot be assumed, consultant firms shall refrain from proposing legal firms as part of the professional services consultant team in their procurement response and proposal documents. As referenced in Section 287.059(3), F.S.:

"An agency requesting approval for the use of private attorney services shall first offer to contract with the Department of Legal Affairs for such attorney services at a cost pursuant to mutual agreement. The Attorney General shall decide on a case-by-case basis to accept or decline to provide such attorney services as staffing, expertise, or other legal or economic considerations warrant. If the Attorney General declines to provide the requested attorney services, the Attorney General's written approval shall include a statement that the private attorney services requested cannot be provided by the office of the Attorney General or that such private attorney services are cost-effective in the opinion of the Attorney General. The Attorney General shall not consider political affiliation in making such decision. The office of the Attorney General shall respond to the request of an agency for prior written approval within 10 working days after receiving such request. The Attorney General may request additional information necessary for evaluation of a request. The Attorney General shall respond to the request within 10 working days after receipt of the requested information."

When universities or colleges are needed to perform services, the Department's Project Manager shall procure such services by means of either a University Master Agreement task work order, a governmental agency contract, or a competitive solicitation for contractual services, as appropriate (reference Section 287.057(21), F.S.). Universities proposed as subconsultants will not be added to the professional services contract.

#### 4.4 <u>DBE/Small Business Participation</u>:

The Department encourages DBE and small business firms to compete for professional services projects, and also encourages all other firms to use DBE and small business consultants as subconsultants. However, use of DBE and small business subconsultants is not mandatory and no preference points will be given during the selection process for DBE and/or small business participation. Consultants are required to indicate their intention regarding DBE and non-DBE small business participation by way of FDOT Form No. 375-030-83. The completed form shall note the expected percentage of contract fees to be utilized

by "DBE's" and "non-DBE small businesses". The "DBE" and "non-DBE small business" subconsultant and their respective types of work shall be provided on this form.

Federal law requires states to maintain a database of all firms that are participating or attempting to participate in DOT-assisted contracts. To assist the Department in this endeavor, consultants should have already submitted their Bid Opportunity List through the Department's Equal Opportunity Compliance System found at the following link (https://fdotwp1.dot.state.fl.us/EqualOpportunityCompliance/Account.aspx/LogIn? ReturnUrl=%2fEqualOpportunityCompliance). If you have not yet completed your bid opportunity list through this online application, please do so at this time. Prime Consultants can obtain access to the new EOC system by filling out the Contractors and Consultants New Users Access Form. Please complete the form and submit it to EOOHelp@dot.state.fl.us.

Consultants please be reminded that if you are selected on this project, you need to enter your subsconsultant commitments of each task work order in the Equal Opportunity website after invoice has been paid in CITS. Also, if you are awarded amendments to task work orders, the subconsultant commitments will also need to be reported after the respective invoice has been paid.

#### 4.5 <u>Method of Compensation:</u>

This will be a <u>task assignment type</u> contract. A fee and method of compensation will be negotiated for each task assignment.

- **4.6 Public Entity Crimes:** 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.
- **4.7** <u>Vendor Registration through E-PROCUREMENT:</u> As per Rule 60A-1.030, all consultants doing business with the State shall register in the MyFloridaMarketPlace system. Information about the registration process is available, and registration may be completed by linking to the following web address: <u>https://vendor.myfloridamarketplace.com</u>

NOTE: Contracts procured under s. 287.055, Florida Statutes are exempt from the 1% transaction fee. Interested persons lacking internet access may request

assistance from MyFloridaMarketPlace Customer Services at (866) FLA-EPRO (352-3776) or State Purchasing, 4050 Esplanade Drive, Suite 300, Tallahassee, Florida 32399.

**4.8 Inspector General:** The Consultant agrees to comply with section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with section 20.055(5), Florida Statutes.

### 5. Staffing Requirements:

After submittal of Letters and up through contract execution, proposed subconsultants/subcontractors/sub-vendors, teaming arrangements, or key staff of the Consultant cannot be changed or substituted except in instances of force majeure or in the event of circumstances that cannot reasonably be anticipated and/or are beyond the control of the prime consultant. In such cases, changes or substitutions are subject to the discretion of the Department, and cannot be made without written approval of the Department. All such requests made during the procurement must be routed and coordinated through PSU only, as the official point of contact during contract procurement. After contract execution, subconsultant/subcontractor/sub-vendor, teaming arrangement, or key staff changes/substitutions require pre-approval of the Department's Project Manager before implementing. All qualification/certification requirements of the original advertisement shall govern, where applicable.

#### 6. Scope of Services Meeting:

A Scope of Services meeting is not required for this project.

#### 7. Deadline for Questions:

Any technical or administrative questions shall be addressed to the following:

Aneisha Whitfield, Procurement Office Phone: 850-414-4288 E-mail address: aneisha.whitfield@dot.state.fl.us

**NOTE:** The shortlisted consultant teams shall not have any conversations concerning this project with the project manager, technical review committee, selection committee, or any other persons regarding issues related to this project other than the specified procurement office personnel identified above.

## The deadline for technical questions is September 2, 2021.

There is no deadline for contract or administrative questions.

## 8. Resumes, Organization Chart or Staffing Chart, Required Certification, and

#### Forms:

The firms being considered for this project are required to electronically submit resumes, organization chart or staffing chart, required certification, and forms. Resumes must be no longer than <u>2</u> pages per resume. The organization chart or staffing chart is limited to a one page chart which can be either 8 ½" x 11" or 11" x 17", at the discretion of the Consultant. Font size of 11, with ½ inch margins are recommended for clarity, for Consultant submittals. Note: The Technical Proposal has a required font size and margin as specified in section 9 of this RFP. The Consultant firm may elect to submit an organization chart OR staffing chart, not both. Examples of acceptable and unacceptable content for organization charts, staffing charts, staff hour estimate charts, and a link to the Construction Training and Qualification Program (CTQP) system can be found at this link. Organization, staffing, or staff hour estimate charts containing extra narrative content (not in conformance with examples) will be deemed unacceptable, at the sole discretion of the Procurement Office, and will not be passed on to the Technical Review Committee for review and evaluation with the other submittals.

Resumes and organization chart or staffing chart shall include sufficient information to enable the Department to evaluate the technical capability of the firms to provide the desired services. Resumes shall be included only of persons who will actually be playing key roles in the project, if selected. Resumes and organization chart or staffing chart shall not contain links to other web pages that would provide additional technical content.

## 8.1 Other Information & Required Certifications:

- Organization Chart or Staffing Chart and Resumes (including Subconsultants): Consultant shall include the names and levels of key personnel (including Project Manager), names of subconsultant staff (if any). Resumes are limited to <u>2</u> pages in length.
- Form No. 375-030-30, Truth in Negotiation Certification-Attachment D
- Form No. 375-030-83, Professional Services Commitment Form– Attachment D
- Form No. 375-030-32, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Federal Aid Contracts – Attachment D
- Form No. 375-030-33, Certification for Disclosure of Lobbying Activities on Federal-Aid Contracts – Attachment D
- Form No. 375-030-34, Disclosure of Lobbying Activities Attachment D If this form is not applicable for your firm, please sign your firm name and write N/A on the top of the form.

- Form No. 375-030-60, Vendor Certification Regarding Scrutinized Companies Lists Attachment D
- Construction Training and Qualification Program (CTQP) printouts may also be submitted, if applicable.

The forms provided in Attachment D shall be executed by an officer of the consultant firm submitting the proposal.

## 8.2 <u>Copyrighted Material:</u>

Copyrighted material will be accepted as part of a technical proposal only if accompanied by a waiver that will allow the FDOT to make paper or electronic copies necessary for the use of Department staff and agents. It is noted that copyrighted material is not exempted from the Public Records Law, Chapter 119, Florida Statutes. Therefore, such material will be subject to viewing by the public, but copies of the material will not be provided the public.

#### 8.3 <u>Submittal of resumes, organization chart or staffing chart, required</u> <u>certification, and forms:</u>

The resumes, organization chart or staffing chart, required certification, and forms shall be submitted as an attached, single computer file via e-mail. PDF (Adobe Acrobat) is the preferred format, but a Word file is acceptable. Please do not include cover sheets or dividers. The Department has a 20 MB limit on e-mail attachments. The file shall be sent to <u>co.profserv@dot.state.fl.us</u>. Deadline for FDOT receipt of file is <u>5:00PM</u> on <u>September 16, 2021</u>.

#### 9. Technical Proposals:

Consultants under consideration for this project will be required to submit a Technical Proposal to be reviewed by the Technical Review Committee (TRC). The Technical Proposal is due by <u>5:00PM</u>, on <u>September 16, 2021</u>.

The firms being considered for this project are required to electronically submit a written technical proposal. The proposal is not to exceed 5 single-sided, letter sized (8 1/2x 11) pages, and minimum font size of 11, with  $\frac{1}{2}$  inch margins. Font must not be condensed. The page limit does not include resumes, organization chart or staffing chart, and required certifications and forms. Technical Proposal shall not contain links to other web pages that would provide additional technical content.

Technical proposal shall include sufficient information to enable the Department to evaluate the firm's technical capability for providing the desired services.

The technical proposal shall include, at a minimum, those items described in Attachment C – Technical Proposal Evaluation Form.

#### 10. Consultant Selection:

A technical review committee will review the Technical Proposal, resumes and the organization chart or staffing chart received from the consultant firms being considered for final selection. Attachment C provides the criteria to be considered by the technical review committee in the evaluation. Evaluations and comments will be provided to the Selection Committee.

The Selection Committee, consisting of <u>Courtney Drummond, Assistant Secretary,</u> <u>Engineering and Operations; Will Watts, Chief Engineer; Tim Ruelke, Director, Office of</u> <u>Materials</u>; and a representative of the Procurement Office, will meet to discuss the capabilities of the consultant firms. At the discretion of the Committee, other persons may be requested to provide information at the meeting.

The results of the final selection meeting will be posted on the FDOT Procurement Advertisements web page.

### 11. Contract Negotiations:

Contract discussions will be initiated with the firms ranked numbers 1,2, and 3 by the Selection Committee. The consultant will be asked to prepare a fee proposal with backup information to support the proposed wage rates for the services. The consultant's audit information will be used to determine the allowance for administrative overhead and fringe benefits for the project, facilities capital cost of money and direct expense percentage. If subconsultants are proposed to work on the project, information to substantiate each firm's overhead rate and proposed wage rates will also be required.

Should the Department be unable to negotiate a fair, reasonable, and competitive price for the consultant services with the firms ranked numbers 1,2, and 3, the Department will terminate the negotiations. The Department will then begin contract negotiations with the next ranked firm.

The proposed costs MUST be submitted in the Automated Fee Proposal Spreadsheet. The Automated Fee Proposal and Guidelines can be obtained by accessing the following link and clicking on the Automated Fee Proposal Spreadsheet: <u>http://www.fdot.gov/procurement/formmenu.shtm</u>.

When completing the AFP, it is the expectation that the Consultant submit resumes for each individual proposed on the project. Consultants, please understand that it is critical that you classify proposed staff in accordance with Attachment B of the Negotiation Handbook. If proposed staff is classed inappropriately, it may cause delays in having to revisit the staff hours (if applicable for this project). In order to minimize time delays, please utilize the Negotiation Handbook typical definitions found in Attachment B to best decide the proposed classifications.

Upon completion of the Automated Fee Proposal, the Awarded Prime Consultant shall

email the Automated Fee Proposal to the District Professional Services Unit.

The Awarded Prime Consultant MUST also prepare the back-up information to support the proposed wage, overhead and expense costs for services proposed.

The due date for the Automated Fee Proposal and backup documentation shall be provided in the Request for Fee Proposal document (or e-mail).

This webpage also contains an Automated Fee Proposal User's Guide which may be very helpful in understanding the spreadsheet. At a minimum, the fee proposal shall include the following:

- Identification of the Basis for Proposed Wage Rates
- Approved Overhead and Fringe Benefits and Expense Percentage
- Proposed Operating Margin
- Identification of the Basis for Loaded Rates
- Subconsultant Costs

The negotiated compensation will be in an amount the Department determines is fair, competitive, and reasonable considering the scope and complexity of the project.

#### 12. Schedule:

Date	Time	Action
September 2, 2021	5:00 PM	Cutoff Date for Technical Questions
September 16, 2021	5:00PM	Technical Proposals, resumes, organization chart or staffing chart, and required certifications and forms due
October 5, 2021	1:30PM	Final Selection

# Dates for selected firm after final selection, please note dates are subject to change:

Date	Time	Action
October 19, 2021	5:00PM	Fee Proposal Due
November 23, 2021		Planned end of Negotiation Date (Negotiation conclusion date)
December 3, 2021		Planned Date of Execution

**Note:** All times listed in this document are Eastern Time Zone unless specifically noted otherwise.

Attachment A – Scope of Services

A. Objective:

To provide inspection, sampling and testing services as required in connection with construction materials that will be utilized in Florida Department of Transportation (FDOT) construction and maintenance operations at facilities and locations throughout the United States. This contract may also be used for all inspection, sampling, and laboratory testing services that the firm can provide. Inspection services beyond the United States may be required. All services shall conform to the requirements of the contract documents of the Department's construction contracts for which commercial inspection services are assigned and the desires of the Department have been made known to the consultant. The Department may during the life of this agreement issue statements which clarify specification requirements. These statements will apply to all specifications which may be pertinent to Consultants' inspection, sampling, and laboratory testing services.

B. Services:

The Consultant will be qualified to provide services not limited to the following elements as required by the Department:

- 1. The inspection of structural steel and miscellaneous metal products. This shall include all investigations, recommendations, observations of fabrication or work in progress, sampling and laboratory testing together with the proper recording and reporting which are necessary to ensure that the work is fabricated of accepted materials by approved processes, completed through shipment where required in accordance with the requirements of the Contract Documents and applicable FDOT Specifications.
- 2. Coatings inspections and analysis of metalizing, galvanizing, powder coating, and wet painting or other applicable methods.
- 3. Precast Concrete, Prestressed Concrete, and Cementitious Materials: Performs Independent Assurance (IA), evaluations for qualifications (concrete field and concrete strength) to the active FDOT technicians assigned as described in department procedures and the Federal Aid Policy Guide. Document report findings.
- 4. Participate with the FDOT Districts when required/planned in the inspections, troubleshooting, and problem solving of the identified problems in the production of cementitious materials and precast/prestressed concrete products at the plants and/or project sites. Provide technical recommendations.
- 5. Review of the following documents: quality control plans, construction plans, specifications, procedures, and other appropriate documents as required.
- 6. Provide materials related technical support to district and central office in the area of concrete precast pipe and drainage structures. Provided technical

support to the District Material Office during the review of the producer's quality control plans.

- 7. Perform field inspection of the pipe and precast drainage structure plants during the initial and routine annual plant qualification reviews.
- 8. The Consultant shall furnish the Department with records and reports covering the various work inspected, sampled, and tested. Such records shall be submitted in Portable Document Format (PDF) to the Project Manager.
- 9. Provide engineering expertise to FDOT or the Engineer of Record in helping to solve project related problems related to engineering, design, structural, welding, or other problems that may arise during fabrication.
- 10. When shipped to the job site, major components and all Bills of Lading for inspected and accepted material shall bear marks which will identify the Consultant and the inspector.
- 11. Laboratory testing should assist in materials identification and analysis. The scope would include destructive and non-destructive testing. Prices shall be included for the following tests:
  - a. Composition/chemistry analysis
  - b. X-ray fluorescence (XRF) / X-ray diffraction (XRD) analysis
  - c. Cutting and sectioning sample
  - d. Yield, tensile and elongation testing
  - e. Scanning Electron Microscopy (SEM) preparation and photomicrograph
  - f. Hardness testing
  - g. Hydrogen embrittlement testing
  - h. Forensic Evaluation
- C. Qualifications
  - 1. Demonstrate knowledge, experience, and abilities of American Welding Society (AWS) D1.1 Structural Welding Code Steel
  - 2. Demonstrate knowledge, experience, and abilities of AWS D1.5 Bridge Welding Code.
  - 3. Demonstrate knowledge, experience, and abilities of AWS D1.2 Structural Welding Code Aluminum
  - 4. Demonstrate knowledge, experience, and abilities of AWS D1.6 Structural Welding Code Stainless

- 5. All in-shop and field welding inspectors providing services to the Department at a minimum will have an active AWS Certified Welding Inspector certificate. Other certifications may be required but not limited to the following, depending on assignment:
  - i. American society of Non-Destructive Testing (ASNT) Magnetic Particle Testing (MT) Level I or II
  - ii. ASNT Penetrant Testing (PT) Level I or II
  - iii. ASNT Ultrasonic Testing (UT) Level I or II
  - iv. ASNT Radiographic Testing (RT) Level I or II
  - v. AWS Certified Radiographic Interpreter
  - vi. Society of Protective Coatings (SSPC) Bridge Coatings Inspector (BCI) Level I or NACE International (NACE) Coating Inspector Program (CIP) Level I with a minimum of 2 years documented shop work experience.
  - vii. SSPC BCI level II
  - viii. NACE Level II, or III
  - ix. Skidmore-Wilhelm Certified Pre-Installation Verification Inspector
  - x. Skidmore-Wilhelm Bolt Tension Training with a minimum of 2 years of documented work experience
- 6. Precast Concrete, Prestressed Concrete, and Cementitious Materials
  - i. Minimum two-year experience in precast/prestressed operations
  - ii. Construction Training and Qualification Program (CTQP) Concrete Field Technician – Level I
  - iii. CTQP Concrete Laboratory Level I
  - iv. Precast/Prestressed Concrete Institute (PCI) Quality Control Personnel Certification - Level II
- 7. Fiber Reinforced Polymers
  - i. Minimum two year experience in Fiber-Reinforced Polymer (FRP) fabrication, quality control and processes.
- ii. Knowledge of utilizing Non-destructive evaluation (NDE) techniques for FRP inspection.
  - 8. Demonstrate knowledge, experience, and abilities of the following:
    - i. Florida Department of Transportation Materials Manual
    - ii. Florida Methods, 5-581 Performing Rotational Capacity Test Long Bolts in Tension Calibrator, 5-582 Rotational Capacity Test Bolts to Short to Fit into Tension Calibrator, 5-583 Direct Tension Indicator Device Performance
    - iii. Florida Department of Transportation Standard Specifications for Road and Bridge Construction, applicable issues
    - iv. Florida Department of Transportation Design Standards
    - v. Other Methods, Standards, Codes, and Manuals as required by work assignments.
  - 9. The Consultant(s) will supply a list of inspectors containing at a minimum all inspectors' names, locations, and certifications held by each inspector to the

Project Manager. All inspectors shall be approved prior to beginning work. The Project Manager will be notified of any changes prior to the beginning of any work. The list will be kept current.

### D. Authorization of Services

The Department will request Consultant services on an as needed basis by a Task Work Order (TWO) for Professional Services. Services to be provided by the Consultant under this Agreement will be initiated and completed as directed by the Project Manager. Individual projects will be completed by the completion date indicated on the TWO. There is no guarantee that any or all the services described in this scope will be assigned during the term of this agreement. Further, the Consultant is providing these services on a nonexclusive basis. The Department, at its option, may elect to have any of the services set forth herein performed by other consultants or Department staff.

The TWO will specify the work to be done and the authorized funds. No work shall be commenced by the Consultant until a TWO is executed.

Invoice substantiating documents will be scanned and submitted via e-mail to the Project Manager. After inspection services are completed for each TWO the consultant will furnish the Department a Final Status Summary Report. The Department will execute a Task Work Order Amendment between the Consultant and Department that specifically closes that TWO.

## E. Responsibilities of the Department

The Department shall provide a Project Manager who shall be responsible for all coordination with the Consultant pertaining to all contractual matters, invoicing and reporting. The Department may also designate a manager for each Task Work Order who shall be responsible for working with the Consultant Project Manager to define the specific work to be performed and the schedule for completion of each task, the Consultant staffing to be provided, and the cost. The Department Project Manager shall be responsible for approval of any additional staffing to be provided including additional Consultant staff (approval must be coordinated with the Procurement Office), and shall give approval of all work products and services.

## F. Responsibilities of the Consultant

The Consultant shall provide and maintain an up-to-date list of staff with agreed-to classifications and approved salaries (subject to the contract Exhibit "B") that would be available to be assigned to specific Task Work Orders. No Consultant staff, except those specifically identified in a Task Work Order or those specifically agreed to by the Department Project Manager, shall charge time to that particular Task Work Order.

Consultant must request approval from the Department's Project Manager for any modifications or additions to the list of available staff prior to the initiation of any work by that individual. If applicable, new job classifications may be added to the contract via contract amendment. Consultant shall submit a copy of the resume and payroll register before new staff can be added.

For a Task Work Order where Consultant staff are anticipated to work the majority of a 40 hour week at Department facilities, the Consultant will be reimbursed at the field rate, and staff who are anticipated to work on average the majority of the week at the home office should be reimbursed at the home rate.

## G. Personnel Qualifications

The Consultant shall assign only competent technical and professional personnel qualified by the necessary experience and education to perform assigned work. The Consultant is responsible for ensuring that staff assigned to work under this Agreement has the training established by the Department as a prerequisite for Consultant staff to perform work. If the required training is such that it can be applied by the trainee to work on other contracts, (regardless of whether or not the trainee would work on other agreements), the cost of the trainee's time and expenses associated with the training is not directly billable to the Department on this contract, and shall only be recoverable through overhead for the Consultant firm.

#### H. Subconsultant Services

Services assigned to any subconsultants must be approved in writing and in advance by the Department Project Manager, Procurement Office, and the Consultant Project Manager in accordance with this Agreement. All subconsultants must be technically qualified by the Department to perform all work assigned to them. Additional subconsultants with specialized areas of expertise may be required to complete specific Task Work Order assignments. Any subconsultant to be hired and all work assignments to be performed, and all rates of compensation shall be agreed to by the Department Project Manager, Procurement Office and the Consultant Project Manager and documented in the contract file prior to any work being performed by the subconsultant.

Any new subconsultant must be added to the contract via contract amendment (in coordination with the Procurement Office) prior to any issuance of work on a Task Work Order.

## I. Consultant Not Employee or Agent

The Consultant and its employees, agents, representatives, or subconsultants/ subcontractors are not employees of the Department and are not entitled to the benefits of State of Florida employees. Except to the extent expressly authorized herein, Consultant and its employees, agents, representatives, or subconsultants/subcontractors are not agents of the Department or the State for any purpose or authority such as to bind or represent the interests thereof, and shall not represent that it is an agent or that it is acting on the behalf of the Department or the State. The Department shall not be bound by any unauthorized acts or conduct of Consultant.

## J. Ownership of Works and Inventions

The Department shall have full ownership of any works of authorship, inventions, improvements, ideas, data, processes, computer software programs, and discoveries (hereafter called intellectual property) conceived, created, or furnished under this Agreement, with no rights of ownership in Consultant or any subconsultants/subcontractors. Consultant and subconsultants/subcontractors shall fully and promptly disclose to the Department all intellectual property conceived, created, or furnished under this Agreement. Consultant or subconsultant/subcontractor hereby assigns to the Department the sole and exclusive right, title, and interest in and to all intellectual property conceived, created, or furnished under this Agreement, without further consideration. This Agreement shall operate as an irrevocable assignment by Consultant and subconsultants/subcontractors to the Department of the copyright in any intellectual property created, published, or furnished to the Department under this Agreement, including all rights thereunder in perpetuity. Consultant and subconsultants/subcontractors shall not patent any intellectual property conceived, created, or furnished under this Agreement. Consultant and subconsultants/subcontractors agree to execute and deliver all necessary documents requested by the Department to effect the assignment of intellectual property to the Department or the registration or confirmation of the Department's rights in or to intellectual property under the terms of this Agreement. Consultant agrees to include this provision in all its subcontracts under this Agreement.

## **MEMORANDUM**

TO:	CFX Board Members
FROM:	Aneth Williams Will Director of Procurement
DATE:	January 21, 2022
SUBJECT:	Approval of Supplemental Agreement No. 2 with WGI, Inc. for Design Consultant Services for Poinciana Parkway Extension (Segment 1) Project No. 538-234, Contract No. 001647

Board approval of Supplemental Agreement No. 2 with WGI, Inc. for a not-to-exceed amount of \$645,514.25 is requested. The original contract was for five years with five one-year renewals.

The work to be performed includes additional design services.

Original Contract	\$5,750,000.00
Supplemental Agreement No. 1	\$ 0.00
Supplemental Agreement No. 2	<u>\$ 645,514.25</u>
Total	\$6,395,514.25

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

Reviewed by:

Will Hawthorne, PE

Director of Engineering

Glenn Pressimone, P.E.

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



#### **SUPPLEMENTAL AGREEMENT NO. 2**

#### ТО

#### AGREEMENT FOR PROFESSIONAL SERVICES

#### FINAL DESIGN

#### SR 538 Extension (Segment 1) From Orange Blossom Trail (US 17/92) to Ronald Reagan Parkway

THIS SUPPLEMENTAL AGREEMENT NO. 2 TO AGREEMENT FOR PROFESSIONAL SERVICES FINAL DESIGN ("Supplemental Agreement") is made and entered into this \_\_\_\_\_\_ day of \_\_\_\_\_\_, 2022, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a corporate body and agency of the State of Florida, hereinafter called "CFX", and the consulting firm of WGI, INC., a Florida corporation, hereinafter called the "CONSULTANT".

WHEREAS, CFX and CONSULTANT entered into that certain Agreement for Professional Services between CFX and the CONSULTANT, dated June 11, 2020, as amended or supplemented by that certain Supplemental Agreement No. 1 between CFX and CONSULTANT dated November 19, 2021 (collectively, "Agreement"); and

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

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

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

- CFX hereby authorizes the CONSULTANT to proceed with additional services as outlined in the Consultant's November 16, 2021 letter to CFX, which is attached hereto as Exhibit "A" and incorporated herein by reference ("Additional Services"). Exhibit "A" of the Agreement and the Scope of Services, as defined in the Agreement, shall be amended to include the Additional Services.
- 2. Exhibit "B" Method of Compensation of the Agreement is hereby amended as follows:
  - a. The Salary Related Costs are adjusted upward by \$545,088.24 to \$3,924,601.37
  - b. The Subcontract Items are adjusted upward by \$450,426.01 to \$2,372,707.48 and are modified as follows:

٠	Protean	\$12,8	07.45
---	---------	--------	-------

- Tierra \$437,618.56
- c. The Allowance is adjusted downward by \$350,000.00 to \$98,205.40
- d. The Total Maximum Limiting Amount is adjusted upward by \$645,514.25 to \$6,395,514.25.
- 3. All provisions of said Agreement, or any amendments or supplements thereto, not specifically modified herein, shall remain in full force and effect, the same as if they had been set forth herein. In the event of a conflict between the provisions of this Supplemental Agreement and the Agreement, or any existing supplements or

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

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement

to be executed the day and year first above written.

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

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

WGI, INC.

By:	
Print Name:_	
Title:	

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

By:\_\_

Diego "Woody" Rodriguez General Counsel



#### **MEMORANDUM**

Date:	January 10, 2022		
То:	Will Hawthorne, PE CFX Director of Engineering		
From:	Carnot Evans, PE CWC		
Subject: Design Consultant Services - Contract 001647			
	CFX Project No. 538-234		
	SR 538 Poinciana Parkway Extension from US 17/92 to Ronald Reagan Parkway (Segment 1)		
	Supplemental Agreement No. 2		

#### Comments:

I have reviewed the fee sheet and scope of services submitted by WGI provided via email on November 16, 2021 for the SR 538 Poinciana Parkway Extension from US 17/92 to Ronald Reagan Parkway (Segment 1) design project. This requested contract amendment is to provide additional design services for design of a new pond system for Ronald Reagan Parkway, extending the bridge structures across the Reedy Creek Swamp, design for sound walls, and design of bridge drainage that were not incorporated in the original contract.

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

\$ 545,088.24	WGI as Prime
\$ 450,426.01	Total Subconsultant Fees
\$ 995,514.25	Total Requested Contract Amount

The total staff hours for each task are reasonable and acceptable, and the man hour rates are consistent with their contract; therefore, I recommend approval of this agreement in the amount of \$995,514.25.

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

#### cc:

Keith Jackson, PE Dewberry File



November 16, 2021

Will Hawthorne, P.E. Director of Engineering Central Florida Expressway Authority 4974 Orlando Tower Rd. Orlando, FL 32807

Subject: Poinciana Parkway Extension (Segment 1) Project No.: 538-234 Supplemental Amendment 2 (Additional Services for Bridge Lengthening, Ronald Reagan Pond, and Noisewall)

Dear Mr. Hawthorne,

Attached is our supplemental for additional services for extending the limits of the eastbound (EB) and westbound (WB) Reedy Creek Mitigation Bank (RCMB) bridges, designing Ronald Reagan Pond, and a new noisewall. Services includes roadway engineering, drainage engineering, structural engineering, fiber optic network, and geotechnical services.

If you have any questions, please contact us at your earliest convenience.

Sincerely,

WG

Henri Belrose, P.E. VP, Senior Project Manager

## CFX 538-234 Poinciana Pkwy Extension Segment 1 – Supplemental 2

#### 4.0 WORK TO PERFORMED BY CONSULTANT

The consultant shall be responsible for the work outlined in this section. The work shall conform to the standards, criteria, and requirements of this Scope of Services.

#### 4.1 DESIGN FEATURES

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

The services will include final design and preparation of construction drawings / specifications for the proposed bridge lengthening approved in the RCMB Subsoil excavation memorandum. The proposed bridge lengthening will lengthen the EB and WB RCMB with new station limits of 430+00 to 468+80.75. The bridge lengthening section will also extend along the associated ramps. A new pond, Ronald Reagan pond is being proposed within the project limits as well as a noisewall within the southern portion of this project.

#### 4.5 GEOTECHNICAL INVESTIGATION

- A. The work required for this project includes preparation of final construction drawings and specifications as well as the preparation of a complete environmental resource application
- B. Modifications to bridge limits will result in 28 more bent locations that require geotechnical investigation. The need for geotechnical investigation to occur outside of the dry season will result in the use of amphibious mounted drill rigs to access proposed bridge boring locations.
- C. Currently 30 borings have been taken using amphibious equipment and 29 additional borings will be required using this method due to the extended project limits. This work has already been performed.
- C. Maintenance / Construction Road Parts of the service road will require soil improvements due to the adverse muck conditions; this will require additional cross-sections to determine limits of unsuitable soil.

#### 4.11 ROADWAY DESIGN

A. The Consultant shall design the geometrics for the RCMB bridge lengthening using the design standards included in the scope. The design elements shall include, but not be limited to, the horizontal and vertical alignments, cross section template development, lane width, shoulder widths, cross slopes, borders, sight distance, side slopes, lane transitions, superelevations, features of intersections, ramp terminal details, interchanges, and limited access points.

The consultant shall coordinate all relevant design elements with adjacent design teams. This effort shall include any required meetings with adjacent design teams. The consultant will establish new Begin Project Limits with adjustments to Delmar and RCMB mainline and ramp profiles. Optimization of profiles will reduce overall bridge and ramp heights.

- B. The Consultant shall prepare designs and contract documents for the roadway improvements, including, but not necessarily limited to:
  - 1. Update plans and profiles (plans at 1" = 50' scale)
  - 2. Update Interchange layout plans
  - 3. Update Ramp Terminal Details
  - 4. Update mainline cross-sections with access berm between RCMB bridges and ramps and Ronald Reagan Pond
  - 5. Update Traffic control sheets
  - 6. Update Details
- C. Subsoil excavation memorandum for RCMB bridge lengthening coordination, development, cost estimates for multiple surcharge alternatives and life-cycle maintenance cost estimate were provided.

#### 4.12 STRUCTURES DESIGN

- A. Update the Bridge Concept Memorandum (BCM) for approved RCMB bridge lengthened geometry
- B. The Consultant shall prepare designs and contract documents for structural design including, but not necessarily limited to the following items:
  - 1. Update complete bridge design for RCMB mainline and ramp geometry
    - a. Four (4) additional mainline and ramp GPEs for B1 (EB RCMB) and B2 (WB RCMB)
    - b. Update existing permit requirement plan sheets to include additional ramps

#### Exhibit "A"

- c. New intermediate bents through transition points on mainline and ramps; (2) additional ramp end bents
- d. New End bent geometry design on a curved alignment
- e. New foundation layout updates for ramps and mainline extension
- f. New prestressed beam designs for mainline and ramps
- g. Unique superstructure design through transition sections of lengthened mainline bridges
- 2. Subsoil Excavation memorandum consisted of two (2) new alternatives for subsoil excavation with superstructure and substructure layouts and (6) alternatives provided:
  - a. Short Bridge 8' of removal, Short Bridge 15' of removal, Medium Bridge, Long Bridge, Short Bridge w/ rigid inclusions, and PD&E concept
  - b. Estimates provided muck excavation, R/W acquisition changes, BDR cost estimates, wetland impacts, fill replacement, and surcharge program fill quantities. Exhibits show (6) alternatives, R/W limits, typical sections, and muck excavation limits where applicable.
  - c. Cross-sections show surcharge program on applicable alternatives.
  - d. Submitted as a Draft and Final package which included roadway, Geotech, rigid inclusion, and structural analysis.
- 3. Noisewall (locations to be finalized)

#### 4.13 DRAINAGE DESIGN

- A. As part of the drainage design requirements, the Consultant shall:
  - 1. Update hydrology to include Ronald Reagan Pkwy. due to the new bridge limits. Ditches to be provided along Ronald Reagan Pkwy. to convey runoff from new cul-de-sac.
  - 2. Finalize pond siting with new bridge limits and to include Ronald Reagan Pkwy. basin and pond
  - 3. Hydroplaning analysis for adjustments made to bridge length and profile
  - 4. Bridge deck drainage details and pollutant load analysis

#### 4.14 ROADWAY LIGHTING

- A. The Consultant will prepare designs and contract documents for lighting design including, but not necessarily limited to the following items.
  - 1. Update design and labeling of light poles, conductors, conduits, and pull boxes for new bridge / project limits.

#### 4.16 SIGNING AND PAVEMENT MARKING PLANS

A. The Consultant shall prepare designs and contract documents for final signing and pavement marking plans including layouts showing the locations of bridge mounted sign structure to be provided. Modifications to pavement marking will be provided at locations where bridge is replacing roadway.

#### 4.23 FIBER OPTIC NETWORK (FON)

- A. Fiber Optic Infrastructure Plans
  - 1. Updates to TMS and DCS sites per the new bridge limits. Updates to design and labeling of proposed SM FOC backbone, conductors and conduit runs, and pull boxes for new project limits.

#### **SUPPLEMENTAL AGREEMENT NO. 1**

#### TO

#### AGREEMENT FOR PROFESSIONAL SERVICES

#### FINAL DESIGN

#### SR 538 Extension (Segment 1) From Orange Blossom Trail (US 17/92) to Ronald Reagan Parkway

THIS SUPPLEMENTAL AGREEMENT NO. 1 TO AGREEMENT FOR PROFESSIONAL SERVICES FINAL DESIGN ("Supplemental Agreement") is made and entered into this <u>19th</u> day of <u>November</u>, 2021, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a corporate body and agency of the State of Florida, hereinafter called "CFX", and the consulting firm of WGI, INC., a Florida corporation, hereinafter called the "CONSULTANT".

WHEREAS, CFX and CONSULTANT entered into that certain Agreement for Professional Services between CFX and the CONSULTANT, dated June 18, 2020, (collectively, "Agreement"); and

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

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

- CFX hereby authorizes the CONSULTANT to proceed with additional services as outlined in the Consultant's November 17, 2021 letter to CFX, which is attached hereto as Exhibit "A" and incorporated herein by reference ("Additional Services"). Exhibit "A" of the Agreement and the Scope of Services, as defined in the Agreement, shall be amended to include the Additional Services.
- 2. Exhibit "B" Method of Compensation of the Agreement is hereby amended as follows:
  - a. The Salary Related Costs remains unchanged at \$3,379,513.13
  - b. The Subcontract Items remains unchanged at \$1,922,281.47, but are modified as follows:
    - Tierra, Inc. (\$126,112.21)
    - GEC \$126,112.21
  - c. The Allowance remains unchanged at \$448,205.40
  - d. The Total Maximum Limiting Amount remains unchanged at \$5,750,000.00.
- 3. All provisions of said Agreement, or any amendments or supplements thereto, not specifically modified herein, shall remain in full force and effect, the same as if they had been set forth herein. In the event of a conflict between the provisions of this Supplemental Agreement and the Agreement, or any existing supplements or amendments thereto, the provisions of this Supplemental Agreement, to the extent such provision is reasonable, shall take precedence.

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

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: Aneth Williams Digitally signed by Aneth Williams Aneth Williams, Director of Procurement

WGI, INC.

By: Print Name: F enri FOSE Title: VICO presid

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

Diego "Woody" By: Rodriguez Date: 2021.11.19 10:19:21 -05'00'

Diego "Woody" Rodriguez General Counsel



#### **MEMORANDUM**

Date:	November 17, 2021
То:	Will Hawthorne, PE CFX Director of Engineering
From:	Carnot Evans, PE CWC
Subject:	Design Consultant Services - Contract 001647
	CFX Project No. 538-234
	SR 538 Poinciana Parkway Extension from US 17/92 to Ronald Reagan Parkway (Segment 1)
	Supplemental Agreement No. 1

#### Comments:

I have reviewed the fee sheet and scope of services submitted by WGI provided via email on November 17, 2021 for the SR 538 Poinciana Parkway Extension from US 17/92 to Ronald Reagan Parkway (Segment 1) design project. This requested contract amendment is to shift fee between subconsultants for geotechnical field investigation to expedite services within the Reedy Creek Mitigation Bank Property.

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

\$ 0.00	WGI as Prime
\$ (126,112.21)	Reduction of fee from Tierra
\$ 126,112.21	Additional Fee to GEC
\$ 0.00	Total Subconsultant Fees
\$ 0.00	Total Requested Contract Amount

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

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

#### cc:

Keith Jackson, PE Dewberry File



November 17, 2021

Will Hawthorne, P.E. Director of Engineering Central Florida Expressway Authority 4974 Orlando Tower Rd. Orlando, FL 32807

Subject: Poinciana Parkway Extension (Segment 1) Project No.: 538-234 Supplemental Amendment 1 (Geotechnical Scope Transfer)

Dear Mr. Hawthorne,

In order to expedite the geotechnical investigations within Reedy Creek Mitigation Bank (RCMB) property, WGI is requesting to transfer this geotechnical scope from Tierra, Inc. (subconsultant) to Geotechnical and Environmental Consultants, Inc. (GEC – subconsultant). GEC will perform all the geotechnical effort from Delmar bridges to the existing RCMB bridges including roadway borings, pond borings, overhead cantilever and DMS structure borings within these adjusted limits (approximate station 469+00 to 526+00). Tierra agrees with the requested scope and budget transfer.

If you have any questions, please contact us at your earliest convenience.

Sincerely,

WG

and Bh

Henri Belrose, P.E. VP, Senior Project Manager

TIERRA

November 11, 2021

WGI, Inc. 2910 Maguire Road, Suite 2008 Ocoee, FL 34761

Attn: Mr. Henri Belrose, P.E.

RE: Fee Modification SR 538 Poinciana Parkway Bridge over Reedy Creek Mitigation Bank Osceola County, Florida CFX Project No.: 538-234 Tierra Project Number: 6511-20-154

Mr. Belrose,

Tierra, Inc. has received WGI's request to transfer \$126,112.21 in geotechnical services to GEC, Inc. The transfer of services is expected to amend the original agreement to assign/transfer geotechnical services to GEC, Inc. in the amount of \$126,112.21 to complete all geotechnical services for Roadway, Roadway Embankment, Walls, Miscellaneous Structures and Ponds from the End of Reedy Creek Management Bank Bridge (Approximate Station 469+00) to the End of Project (Approximate Station 526+00). The agreement will decrease Tierra's contract amount by \$126,112.21. Tierra is in agreement with the requested budget transfer.

Tierra, Inc. appreciates the opportunity to be of service to WGI, Inc. on this project. If you have any questions or comments regarding this letter, please contact our office at your earliest convenience.

Respectfully Submitted, **TIERRA, INC.** 

Joseph R. Antinori, P.E. Geotechnical Engineer

CENTRAL FLORIDA EXPRESSWAY AUTHORITY – SR 538 POINCIANA PARKWAY EXTENSION SEGMENT 1 -Supplemental Agreement # 1

#### SCOPE

Overall, there is no scope change associated with this Supplemental Agreement, but there is a scope change to Geotechnical and Environmental Consultants, Inc. assigned tasks with the same scope reduction to the Tierra Inc. assigned tasks.

#### **GEOTECHNIAL AND ENVIRONMENTAL CONSULTANTS, INC.**

#### CHANGE IN SCOPE

In addition to GEC's original geotech scope around the Delmar bridges, we are asking GEC to perform all geotech to the end project (i.e. from Delmar bridges to existing RCMB bridge).

GEC will collect roadway borings within the adjusted limits, borings for pond 400, 500, and RR pond, borings for OH cantilever sign and DMS truss within adjusted limits

# AGREEMENT

## CENTRAL FLORIDA EXPRESSWAY AUTHORITY AND WGI, INC.

## DESIGN CONSULTANT SERVICES FOR POINCIANA PARKWAY EXTENSION (SEGMENT 1)

**CONTRACT NO. 001647, PROJECT 538-234** 

**CONTRACT DATE: JUNE 11, 2020 CONTRACT AMOUNT: \$5,750,000.00** 

# **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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

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

FOR

#### POINCIANA PARKWAY EXTENSION (SEGMENT 1) PROJECT 538-234

#### **DESIGN CONSULTANT SERVICES**

#### CONTRACT NO. 001647

#### **JUNE 2020**

#### **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

## TABLE OF CONTENTS

Section	Title
AG	Agreement
А	Exhibit "A", Scope of Services
В	Exhibit "B", Method of Compensation
С	Exhibit "C", Details of Cost and Fees
D	Exhibit "D", Project Organization Chart
E	Exhibit "E", Project Location Map
F	Exhibit "F", Schedule
G	Exhibit "G", Potential Conflict Disclosure Form

1 - 19

## Table of Contents

1.0.	DEFINITIONS	
2.0.	SERVICES TO BE PROVIDED	1
3.0.	TERM OF AGREEMENT AND RENEWALS	2
4.0.	PROJECT SCHEDULE	2
5.0.	PROFESSIONAL STAFF	3
6.0.	COMPENSATION	
7.0.	DOCUMENT OWNERSHIP AND RECORDS	
8.0.	COMPLIANCE WITH LAWS	
9.0.	WAGE RATES AND TRUTH-IN-NEGOTIATIONS CERTIFICATE	7
	TERMINATION	
	ADJUSTMENTS	
	HOLD HARMLESS AND INDEMNIFICATION, SOVEREIGN IMMUNITY	
	INFRINGEMENT OF PATENTS AND COPYRIGHTS	
	THIRD PARTY BENEFICIARY	
	INSURANCE	
	COMMUNICATIONS, PUBLIC RELATIONS, AND USE OF LOGOS	
	CONFLICT OF INTEREST AND STANDARD OF CONDUCT	
	DOCUMENTED ALIENS	
	E-VERIFY CLAUSE	
	INSPECTOR GENERAL	
-	PUBLIC ENTITY CRIME INFORMATION AND ANTI-DISCRIMINATION STATEMENT	
22.0.	COMPANIES PURSUANT TO SECTION 287.135 AND 215.473	.14
	AVAILABILITY OF FUNDS	
	AUDIT AND EXAMINATION OF RECORDS	
	GOVERNING LAW AND VENUE	
26.0.	NOTICE	.16
	HEADINGS	
	CONTRACT LANGUAGE AND INTERPRETATION	
29.0.	ASSIGNMENT	.17
	SEVERABILITY	
	INTEGRATION	
32.0.	ATTACHMENTS	.18

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

THIS AGREEMENT, made and entered into this 11<sup>th</sup> day of June 2020, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a corporate body and agency of the State of Florida, created by Chapter 2014-171, Laws of Florida, which is codified in Chapter 348, Part III of the Florida Statutes, hereinafter "CFX," and WGI, 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 2910 Maguire Road, Suite 2008, Ocoee, Florida 34761.

#### WITNESSETH:

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

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

#### 1.0. DEFINITIONS.

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

#### 2.0. SERVICES TO BE PROVIDED

CFX does hereby retain the CONSULTANT to furnish certain professional services in connection with the design of Poinciana Parkway Extension Segment 1, identified as Project 538-234 and Contract No. 001647.

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

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

The work covered by this Agreement as described in **Exhibit "A,"** includes the preparation of construction plans for one construction project. If the work is divided into more than one construction project by CFX's Project Manager, then the CONSULTANT shall supply construction plans for each project. A Supplemental Agreement will be required for the additional work.

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

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

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

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

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

#### 3.0. TERM OF AGREEMENT AND RENEWALS

Unless otherwise provided herein or by Supplemental Agreement, the provisions of this Agreement will remain in full force and effect for a five (5) year term from the date of the Notice to Proceed for the required project services as detailed in **Exhibit "A,"** with five one-year renewals at CFX's option. The options to renew are at the sole discretion and election of CFX. Renewals will be based, in part, on a determination by CFX that the value and level of service provided by the CONSULTANT are satisfactory and adequate for CFX's needs. If a renewal option is exercised, CFX will provide CONSULTANT with written notice of its intent at least thirty (30) days prior to the expiration of the original term and subsequent renewal, if any.

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

#### 4.0. PROJECT SCHEDULE

The CONSULTANT agrees to provide Project Schedule progress reports for each project in a format acceptable to CFX and at intervals established by CFX. CFX will be entitled at all times to be advised, at its request, as to the status of work being done by the CONSULTANT and of the details

thereof. Coordination shall be maintained by the CONSULTANT with representatives of CFX, or of other agencies interested in the project on behalf of CFX. Either party to the Agreement may request and be granted a conference.

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

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

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

#### 5.0. PROFESSIONAL STAFF

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

Prior to retaining a subconsultant, or assigning any work to a subconsultant, the CONSULTANT shall verify that the subconsultant does not have any conflicts and acknowledges its duty to comply with CFX's Code of Ethics. The CONSULTANT shall ensure that each subconsultant adheres to, and cause all subconsultants to be bound by, all requirements, conditions, and standards set forth herein. The CONSULTANT shall collect and maintain the necessary subconsultant compliance and

acknowledgement documentation and remove any subconsultant immediately, if the necessary said documentation is unavailable or the subconsultant is not adhering to the requirements and standards herein. The CONSULTANT shall provide subconsultant compliance and acknowledgement documentation to CFX upon request.

The approved subconsultants are:

Base Consultants, Inc.	Class I
Geotechnical and Environmental Consultants, Inc.	Class II
Protean Design Group, Inc.	Class I
Singhofen & Associates, Inc.	Class I
Tierra, Inc.	Class II

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

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

#### 6.0. COMPENSATION

CFX agrees to pay the CONSULTANT compensation as detailed in **Exhibit "B"**, Method of Compensation, attached hereto and made a part hereof, in the not-to-exceed amount of \$5,750,000.00 for the initial five-year term of this Agreement. Bills for fees or other compensation for services or expenses shall be submitted to CFX in detail sufficient for a proper pre-audit and post audit thereof.

The CONSULTANT may be liable for CFX costs resulting from errors or deficiencies in designs furnished under this Agreement. CFX may enforce such liability and collect the amount due if the recoverable cost will exceed the administrative cost involved or is otherwise in CFX's best interest. Records of costs incurred by the CONSULTANT under terms of this Agreement shall be maintained and made available upon request to CFX at all times during the period of this Agreement and for five (5)

years after final payment is made. Copies of these documents and records shall be furnished to CFX upon request. The CONSULTANT agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed. Records of costs incurred includes the CONSULTANT's general accounting records and the project records, together with supporting documents and records, of the CONSULTANT and all subconsultants performing work on the project, and all other records of the CONSULTANT and subconsultants considered necessary by CFX for a proper audit of project costs. The obligations in this paragraph shall survive the termination of the Agreement and continue in full force and effect.

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

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

#### 7.0. DOCUMENT OWNERSHIP AND RECORDS

All plans, documents, reports, studies, and/or other data prepared or obtained under this Agreement shall be considered instruments made for services and shall become the property of CFX without restriction or limitation on their use on this project; and shall be made available, upon request, to CFX at any time. CFX will have the right to visit the site for inspection of the work and the drawings of the CONSULTANT at any time. Unless changed by written agreement of the parties, said site shall be 2910 Maguire Road, Suite 2008, Ocoee, Florida 34761.

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

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT Phone: 407-690-5000, e-mail: publicrecords@cfxway.com, and address: Central Florida Expressway Authority, 4974 ORL Tower Road, Orlando, FL. 32807.

An excerpt of Section 119.0701, Florida Statutes is below.

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

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

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

The CONSULTANT shall allow public access to all documents, papers, letters, or other material as approved and authorized by CFX and subject to the provisions of Chapter 119, Florida Statutes, and made or received by the CONSULTANT in conjunction with this Agreement. Failure by the CONSULTANT to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by CFX.

The obligations in Section 7.0, Document Ownership and Records, shall survive the expiration or termination of this Agreement and continue in full force and effect.

#### 8.0. COMPLIANCE WITH LAWS

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

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

8.1 Limitation of Liability: Pursuant to SECTION 558.0035(1)(d), Florida Statutes, CONSULTANT maintains any professional liability insurance required under this contract. Therefore, pursuant to Section 558.0035(1)(c), Florida Statutes, an individual employee or agent of the CONSULTANT may not be held individually liable for damages resulting from negligence occurring within the course and scope of professional services rendered under this professional services contract

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

The CONSULTANT hereby certifies, covenants and warrants that wage rates and other factual unit costs as shown in attached **Exhibit "C"**, Details of Costs and Fees, supporting the compensation provided in Section 6.0 are accurate, complete and current as of the date of this Agreement. It is further agreed that said price provided in Section 6.0 hereof shall be adjusted to exclude any significant sums where CFX shall determine the price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. All such adjustments shall be made within one year following the date of final billing or acceptance of the work by CFX, whichever is later.

#### 10.0. TERMINATION

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

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

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

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

Project 538-234 Contract No. 001647

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

#### 11.0. ADJUSTMENTS

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

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

#### 12.0. HOLD HARMLESS AND INDEMNIFICATION, SOVEREIGN IMMUNITY

The CONSULTANT shall indemnify and hold harmless CFX, and its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the design professional in the performance of the Agreement.

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 CFX will evaluate the notice of claim and report their findings to each other within fourteen (14) calendar days.

In the event a lawsuit is filed against CFX alleging negligence or wrongdoing by the CONSULTANT, CFX will immediately notify CONSULTANT, CFX and the CONSULTANT will jointly discuss options in defending the lawsuit. CFX and the CONSULTANT will pay their own cost for the evaluation, settlement negotiations and trial, if any.

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, any and all obligations of CFX to pay any costs, fees or expenses arising out of any lawsuit filed against CFX alleging negligence or wrongdoing by the Consultant, shall be limited to the amounts per person and in the aggregate contained in Section 768.28, Florida Statutes, even if the sovereign immunity limitations of that statute are not otherwise applicable to the matters as set forth in the lawsuit; provided, however, this monetary limitation shall not otherwise supersede any requirement of CFX to pay for work properly performed by Consultant in accordance with the terms of this Agreement.

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

#### 13.0. INFRINGEMENT OF PATENTS AND COPYRIGHTS

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

#### 14.0. THIRD PARTY BENEFICIARY

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement, and that the CONSULTANT has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted. For the breach or violation of this paragraph, CFX shall have the right to terminate this Agreement without liability, and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission percentage, gift or consideration.

#### 15.0. INSURANCE

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

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

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

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

15.2 Business Automobile Liability coverage shall be on an occurrence form policy for all owned, non-owned and hired vehicles issued on ISO form CA 00 01 or its equivalent. The limits shall be not less than One Million Dollars (\$1,000,000) per occurrence/annual aggregate. In the event the

CONSULTANT does not own automobiles the CONSULTANT shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

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

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

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

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

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

In the event any of the aforementioned insurance policies provide greater coverage or greater limits than the minimum requirements set forth herein, then CFX shall be entitled to the full coverage and limits of such policies, and these insurance requirements will be deemed to require such greater coverage and greater limits.

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

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

Compliance with these insurance requirements shall not relieve or limit the CONSULTANT's liabilities and obligations under this Agreement. Failure of CFX to demand such certificate or evidence

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

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

#### 16.0. COMMUNICATIONS, PUBLIC RELATIONS, AND USE OF LOGOS

The CONSULTANT agrees that it shall make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying CFX and securing its consent in writing, except as required by law. The CONSULTANT also agrees that it shall not publish, copyright or patent any of the data, documents, reports, or other written or electronic materials furnished in compliance with this Agreement, it being understood that, under Section 7.0 hereof, such data or information is the property of CFX.

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

#### 17.0. CONFLICT OF INTEREST AND STANDARD OF CONDUCT

<u>No Contingent Fees.</u> CONSULTANT warrants that it has not employed or retained any entity or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Contract, and that CONSULTANT has not paid or agreed to pay any person, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Contract. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted. For breach of this provision, CFX shall have the right to terminate this Contract without liability, and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission percentage, gift or consideration.

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

As required by Section 348.753, Florida Statutes, and CFX's Code of Ethics, CONSULTANT agrees to complete CFX's Potential Conflict Disclosure Form prior to the execution of the Contract, upon the occurrence of an event that requires disclosure, and annually, not later than July 1st.

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

CONSULTANT hereby certifies that no officer, agent or employee of CFX has any "material interest" (as defined in Section 112.312(15), Florida Statutes) either directly or indirectly, in the business of CONSULTANT, and that no such person shall have any such interest at any time during the term of this Agreement.

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

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

#### 18.0. DOCUMENTED ALIENS

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

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

#### 19.0. E-VERIFY CLAUSE

CONSULTANT shall utilize the U.S. Department of Homeland Security's E-Verify System to

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

#### 20.0. INSPECTOR GENERAL

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

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

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

"a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted vendor list." Pursuant to Section 287.134(2)(a), Florida Statutes, "an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity."

#### 22.0. COMPANIES PURSUANT TO SECTION 287.135 AND 215.473

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

- 22.1. submitted a false certification as provided under Florida Statute 287.135(5); or
- 22.2. been placed on the Scrutinized Companies with Activities in Sudan List; or

- 22.3. been placed on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or
- 22.4. been engaged in business operations in Cuba or Syria; or
- 22.5. found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

#### 23.0. AVAILABILITY OF FUNDS

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

#### 24.0. AUDIT AND EXAMINATION OF RECORDS

24.1 Definition of Records:

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

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

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

24.3 If CFX requests access to or review of any Contract Documents or Proposal Records and CONSULTANT refuses such access or review or delays such access or review for over ten (10) calendar days, CONSULTANT shall be in default under its Contract with CFX, and such refusal shall, without any other or additional actions or omissions, constitute grounds for suspension or disqualification of CONSULTANT. These provisions shall not be limited in any manner by the existence of any CONSULTANT claims or pending litigation relating to the Contract. Disqualification or suspension of the CONSULTANT for failure to comply with this section shall also preclude the CONSULTANT from

acting in the future as a subcontractor of another contractor doing work for CFX during the period of disqualification or suspension. Disqualification shall mean the CONSULTANT is not eligible for and shall be precluded from doing future work for CFX until reinstated by CFX.

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

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

24.6 The obligations in Section 24.0, Audit and Examination of Records, shall survive the expiration or termination of this Agreement and continue in full force and effect.

#### 25.0. GOVERNING LAW AND VENUE

This Agreement shall be governed by and constructed in accordance with the laws of the State of Florida. The parties consent to the exclusive jurisdiction of the courts located in Orange County, Florida. The obligations in Section 25.0, Governing Law and Venue, shall survive the expiration or termination of this Agreement and continue in full force and effect.

#### 26.0. NOTICE

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

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

Project 538-234 Contract No. 001647

To CONSULTANT: <u>WGI, Inc.</u> <u>2910 Maguire Road, Suite 2008</u>. <u>Ocoee, Florida 34761</u> Attn: <u>Henri Belrose, P.E.</u>

> WGI, Inc. 2910 Maguire Road, Suite 2008. Ocoee, Florida 34761 Attn: Nancy Clements, P.E.

#### 27.0. HEADINGS

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

#### 28.0. CONTRACT LANGUAGE AND INTERPRETATION

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

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

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

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

#### 29.0. ASSIGNMENT

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

#### 30.0. SEVERABILITY

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

#### 31.0. INTEGRATION

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

#### 32.0. ATTACHMENTS

Exhibit "A", Scope of Services Exhibit "B", Method of Compensation Exhibit "C", Details of Cost and Fees Exhibit "D", Project Organization Chart Exhibit "E", Project Location Map [Note: Attach if applicable] Exhibit "F", Project Schedule [Note: Attach if applicable] Exhibit "G", Potential Conflict Disclosure Form

[ SIGNATURES TO FOLLOW ]

Project 538-234 Contract No. 001647

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 Governing Board at its meeting on June 11, 2020.

WGI, INC.

BY:	d	4	2		
Aut	horized Sig	gnature	10.	_	
Drint Nom	horized Signer	WGI,	IND BA	-	
	2 1	00.00	A	1	-
Title: Ex	ecutive Vic	Pres	ideht / C	60	_
/	V2/K	JA A	4	mit	
ATTEST;	Males;	DE	tak	Seal)	
C	J Séore	RAFIDA	Notary	Seal)	

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

BY: Aneth Williams Digitally signed by Aneth Williams Date: 2020.06.18 10:19:00 -04'00'

Director of Procurement

Print Name:

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

Approved as to form and execution, only.

Diego "Woody"	Digitally signed by Diego
Rodriguez	Date: 2020.06.18 08:07:58 -04'00'

General Counsel for CFX

# EXHIBIT A

# **SCOPE OF SERVICES**

Exhibit A

## **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

### **SCOPE OF SERVICES**

### FOR

## S.R. 538 EXTENSION (Segment 1) FROM Orange Blossom Trail (US 17/92) to Ronald Reagan Parkway

## **PROJECT NO. 538-234**

## CONTRACT NO. 001647

## IN OSCEOLA AND POLK COUNTIES, FLORIDA

May 21, 2020

## Exhibit A SCOPE OF SERVICES

### TABLE OF CONTENTS

## Description

1.0	GENER	AL
	1.1	Location
	1.2	Description
	1.3	Purpose
	1.4	Organization
	1.5	Term of Agreement for Design Services
2.0	STAND	OARDS
3.0	DESIGN	N CRITERIA
	3.1	General
	3.2	Geometry
	3.3	Bridge and Other Structures
4.0	WORK	PERFORMED BY CONSULTANT 11
	4.1	Design Features
	4.2	Governmental Agencies
	4.3	Preliminary Design Report - Review11
	4.4	Surveys and Mapping12
	4.5	Geotechnical Investigation
	4.6	Contamination Impact Analysis
	4.7	Pavement Design
	4.8	Governmental Agency and Public Meetings
	4.9	Environmental Permits
	4.10	Utilities
	4.11	Roadway Design
	4.12	Structures Design
	4.13	Drainage Design
	4.14	Roadway Lighting
	4.15	Traffic Engineering
	4.16	Signing and Pavement Marking Plans
	4.17	Signalization Plans

	4.18	Right-of-Way Surveys	23
	4.19	Certified Right-of-Way Control Survey	24
	4.20	Right-of-Way Maps	26
	4.21	Cost Estimates	29
	4.22	Special Provisions and Specifications	29
	4.23	Fiber Optic Network (FON)	29
	4.24	Toll Plazas	32
	4.25	Post-Design Services	32
5.0	MATE	RIALS FURNISHED BY CFX OR ITS DESIGNEE	35
	5.1	Record Documents	35
	5.2	Traffic Data	35
	5.3	Other	35
6.0	WORK	PERFORMED BY CFX OR ITS DESIGNEE	36
	6.1	Right-of-Way Acquisition	36
	6.2	Utility Agreements	36
	6.3	Public Involvement	36
	6.4	Contracts and Specifications Services	36
	6.5	Post-Design Services	36
	6.6	Environmental Permits	36
	6.7	Conceptual Specialty Design	36
7.0	ADMI	NISTRATION	38
	7.1	Central Florida Expressway Authority	38
	7.2	CFX's Project Manager will:	38
	7.3	Consultant	38
	7.4	Project Control	39
	7.5	Work Progress	39
	7.6	Schedule	40
	7.7	Project Related Correspondence	40
	7.8	Quality Control	40
	7.9	Consultant Personnel	40
	7.10	Site Visit	40
	7.11	Acceptability of the Work	40
	7.12	Design Documentation	41
	7.13	Reviews and Submittals	42
	7.14	30% Roadway Plan Submittal	43

7.15	30% Bridge and Structural Plan Submittal	
7.16	60% Roadway Plan Submittal	
7.17	90% Bridge and Structure Plan Submittal	47
7.18	90% Roadway Plan Submittal	47
7.19	100% Roadway, Bridge, Structural and Right-of-Way Plans	
7.20	Pre-Bid Plans	
7.21	Bid Set	

#### 1.0 GENERAL

- 1.1 Location
  - A. See EXHIBIT "E", Project Location Map.
- 1.2 Description

The services will include final design and preparation of construction drawings / specifications for the proposed S.R. 538 extension from Orange Blossom Trail (SR 600, US 17/92) to Ronald Reagan Parkway. Specifically, the project consists of construction of a new limited access toll highway consisting of four lanes (two in each direction) between US 17/92 and Ronald Reagan Parkway, interchange ramps to/from US 17/92 (to/from the south only) connection to the existing SR 538 which is being widened with a concurrent project, and truncating Ronald Reagan Parkway with a culde-sac. This project will include construction of new bridge structures for the SR 538 main line over wetlands and floodplain areas within the Reedy Creek Mitigation Bank and over Delmar Lane. Additional elements include milling & resurfacing, surveying, drainage evaluation and design, permitting, lighting, signing and pavement markings, ITS (fiber optic network), maintenance of traffic, utility design and coordination, geotechnical analysis, right-of-way mapping, scheduling and project control, progress reporting and other tasks and associated activities.

- 1.3 Purpose
  - A. The purpose of this Exhibit is to describe the scope of work and responsibilities required in connection with Final Engineering and Final Construction Drawings and Documents for the proposed S.R. 538 extension from US 17/92 to Ronald Reagan Parkway.
  - B. The Consultant shall perform those engineering services as required for final roadway/drainage plans, final bridge plans, final lighting plans, final traffic control plans, utility coordination and final utility adjustment plans, final ITS (fiber optic network) plans, final signing and pavement marking plans and preparation of a complete environmental resource application (or permit modification) including 100% storm water management.
  - C. CFX's Project Manager will provide contract administration, management services, and technical reviews of all work associated with the preliminary and final designs.
  - D. It is understood that references throughout this document to items of work and services to be performed are the responsibility of the Consultant unless otherwise expressly stated as the responsibility of others.
- 1.4 Organization
  - A. CFX's Project Manager will administer the Consultant services detailed in this

scope. The following sections define the duties and obligations of CFX and the Consultant.

- **1.5** Term of Agreement for Design Services
  - A. The term of the Agreement to perform the required design services shall be within eighteen (18) months from notice to proceed, including all reviews. Any fast track of services will be at the direction of CFX's Project Manager.
  - B. The Consultant may continue the design efforts while design submittals are being reviewed. Doing so, however, in no way relieves the Consultant of the responsibility to incorporate review comments into the design, nor does it entitle the Consultant to any additional design fees as a result of making changes due to review comments.
    - 1. Project Milestones:

The Consultant will prepare a tabulation of major project milestones.

2. Project Schedule:

The Consultant shall include a schedule of major design tasks.

### 2.0 STANDARDS

- A. The applicable design and construction standards and policies of the Florida Department of Transportation, Federal Highway Administration (FHWA), American Association of State Highway and Transportation Officials (AASHTO), Transportation Research Board (TRB), Standard Building Code, CFX's Design Practices and Standard Notes and CFX's Guidelines for Preparation of Signing and Pavement Marking Plans shall be followed throughout the design and construction of the project unless specifically stated otherwise. The editions and updates of the applicable standards and policies in effect at the time of Contract execution shall be used as follows for this project:
  - 1. Division II, Construction Details, and Division III, Materials, of the FDOT Standard Specifications for Road and Bridge Construction, 2018 edition, and updates thereafter, shall be used for this project.
  - 2. The FDOT Standard Plans
  - 3. The FDOT Design Manual,
  - 4. The FDOT Basis of Estimates Handbook
  - 5. The AASHTO Policy on Geometric Design of Highway and Streets (Green Book), 2011 edition
  - 6. The FHWA Manual on Uniform Traffic Control Devices (MUTCD), 2009 edition, as currently amended
  - 7. CFX Design Guidelines 2020 Edition

## 3.0 DESIGN CRITERIA

3.1 General

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

- A. The design criteria listed in this section and Project Design Directives, provided by CFX during the course of the project, may supplement the Project Design Guidelines.
- B. Design year 2045
- C. Design vehicle WB-62FL
- D. Along with the 30% design submittal, the Consultant shall provide a tabulation of all applicable drainage and stormwater management criteria from Federal, State and local agencies and indicated which will be used for all segments and portions of the project. Unless otherwise directed by CFX, the Consultant shall use the most restrictive or conservative criteria applicable.
- **3.2** Geometry

The following criteria are to be incorporated into the design:

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

		9	
DESIGN ELEMENT	EXPRESSWAY		CROSSROADS/
	MAINLINE	RAMPS	COLLECTORS
Vertical Curvature (K) (K=Len./%grade change)			Rural
Crest	506 290 to 540 AASHTO	31 (30 mph) 136 (50 mph) 110 to 160 Other (AASHTO)	31 to 136
Sag	206 150 to 200 AASHTO	31 (30 mph) 136 (50 mph) 90 to 110 Other (AASHTO)	37 to 96
Decision Sight Dist., ft.	Refer to AASHTO	N/A	N/A
Cross Sections			
Lane Widths, ft.	12	12 dual lanes 15 min. single lane	12 inner lanes 12-16 outer lanes
Shoulder width, ft. Right Left	4-Lane 14 (12 paved) 14 (12 paved)	Single Lane 6 (4 paved) 6 (2 paved)	8 (4* paved) 2 (2 paved) * min. 5' paved
			* min. 5 paved
Right Left	6-Lane 14 (12 paved) 14 (12 paved)	Dual Lane 10* (8* paved) 8 (4 paved) (* add 2' for interstate)	
Bridges, ft. Right Left	4-Lane 10 6	Single-Lane 6 6	
Right Left	6(or more)-Lanes 12 12	Dual Lane 10 6	
Cross Slopes Traffic Lanes	2% (4-lane) 3% or tbd (6-lane)	2%	2%
Bridge Lanes Left Shoulder Right Shoulder	2% typ. (no break) Match Mainline Match Mainline	5% 6%	5% 6%

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

### Ramp Operations

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

#### Right of Way

- a. Ten (10) ft. from back of walls or limit of construction.
- b. Two (2) ft. from back of sidewalk on frontage roads.
- c. Drainage and construction easements as required
- d. Limited access right-of-way limits per Index 450
- e. Right of way limits for ramps is based upon limit of construction plus 10 feet.
- **3.3** Bridge and Other Structures
  - A. All plans and designs shall be prepared in accordance with the following standards and specifications in effect at the time of contract execution: AASHTO LRFD Bridge Design Specifications, FDOT Structures Manual, FDOT Design Manual, FDOT Standard Plans, FDOT Load Rating Manual, except as otherwise directed by CFX.

# 4.0 WORK PERFORMED BY CONSULTANT

The Consultant shall be responsible for the work outlined in this Section. The work shall conform to the standards, criteria, and requirements of this Scope of Services.

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

The services will include final design and preparation of construction drawings / specifications for the proposed S.R. 538 extension from just south of the US 17/92 bridge (Station 94+00 +/-) to connection with the SR 538 widening project at Ronald Reagan Parkway (Station 201+00 +/-). Specifically, the project consists of construction of a new limited access toll highway consisting of four lanes (two in each direction) between US 17/92 and Ronald Reagan Parkway, interchange ramps to/from US 17/92 (to/from the south only), connection to the existing SR 538 which is being widened with a concurrent project, and truncating Ronald Reagan Parkway with a cul-de-sac. This project will include construction of new bridge structures over wetlands and floodplain areas within the Reedy Creek Mitigation Bank and over Delmar Lane. Additional elements include milling & resurfacing, surveying, drainage evaluation and design, permitting, lighting, signing and pavement markings, ITS, maintenance of traffic, utility design and coordination, right-of-way mapping, geotechnical analysis, scheduling and project control, progress reporting and other tasks and associated activities.

- 4.2 Governmental Agencies
  - A. The Consultant shall coordinate with and assist in securing the approval of all interested agencies involved. These agencies may include, but are not necessarily limited to Osceola County, Polk County, FDOT, FDEP, FAA, and applicable Water Management District(s).
- **4.3** Preliminary Design Report Review
  - A. The Consultant shall review the project concept for proposed alternatives with regard to proposed design criteria, maintenance of traffic and construction feasibility.

At the completion of this review, the Consultant shall submit to CFX a written list of recommendations and proposed revisions, if any, to the basic layout. A conference will be scheduled by CFX's Project Manager with the Consultant to resolve any outstanding differences and agree upon a final layout for the project.

- B. Preliminary Design Report (PDR) Review: Brief report addressing the following items at a minimum:
  - 1. Horizontal alignment of SR 538, and Ronald Reagan Parkway
  - 2. Vertical alignment of SR 538, and Ronald Reagan Parkway
  - 3. Potential wall locations along SR 538
  - 4. Pavement analysis
  - 5. Hydroplaning Analysis
  - 6. Drainage pond locations
  - 7. Utility relocations
- 4.4 Surveys and Mapping
  - A. All Surveying and Mapping shall be performed under the direction of a Surveyor and Mapper properly licensed with the Florida Board of Professional Surveyors and Mappers, under Chapter 472, Florida Statutes. The Consultant shall review data provided by CFX and provide complete field surveys suitable for contract document preparation.

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

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

The Authority will provide aerial survey (topography and mapping) with limited control and coverage. Section 6.0 defines all work performed by the Authority or its designee.

The Authority has performed a Project Network Control Survey and documented the location and values at approximately one-half mile intervals. The Consultant shall supplement this information with additional points as necessary to meet project requirements.

- B. Alignment
  - 1. Establish Survey Centerline by establishing the tangent lines of existing Right of Way maps if such maps exist, or in the center of

dedicated Right of Way as per subdivision plats, or in the center of the pavement when no Right of Way map or dedication exists. Set alignment points Begin, End, PC's, PT's, PI's and at maximum 1400-foot intervals along alignment.

- 2. Establish and set alignment in the same manner on cross roads and major adjacent alignments.
- 3. Station all alignments at 100' intervals.
- 4. Meet with CFX's Project Manager to discuss methods for determining alignments prior to staking.
- C. Reference Points
  - 1. Set at all alignment points, left and right at 90-degrees to alignment where possible, outside the proposed construction limits.
  - 2. Show obstructions where alternate references are set.
- D. Bench Levels
  - 1. The Consultant shall establish new benchmarks at 1000' intervals along all alignments, using stable points. Elevation will be relative to North American Vertical Datum of 1988 (NAVD 88).
  - 2. The Bench Run will be based on closures between established benchmarks provided by the Authority.
- E. Topography
  - 1. Planimetric mapping and a digital terrain model (DTM), suitable for 1" =50' display scale shall be conducted by the Consultant.
  - 2. Cross-sections will be performed at 1000' intervals along the mainline to verify DTM.
  - 3. Additional topographic and DTM surveys, as needed for the project design, are the responsibility of the Consultant. These may include existing water bodies and pavement elevations.
- F. Drainage Survey

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

G. Underground Utilities

Locate all underground utilities, horizontally and vertically as flagged by

respective utility companies or a qualified utility marking consultant. Provide soft excavation verifications as needed to verify location and at utility conflict areas.

H. Side Street Surveys

As needed for engineering design, the Consultant will obtain existing pavement elevations and cross-slopes along the inside travel lane and outside travel lane every 100' and perform utility surveys of side streets.

I. Bridge Survey

Provide complete bridge survey data as needed for engineering design. Utilize Terrestrial Mobile and/or Static Lidar for clearance, features, and any other extraction needed to support design.

J. Jurisdictional Line Surveys

Perform Jurisdictional Line Surveys as needed for engineering design and permitting. Locate wetland flags delineated by CFX's GEC.

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. New right-of-way is anticipated.

- M. Prior to construction, the Consultant shall re-flag and reset project horizontal and vertical control points and meet with the construction contractor to review these points.
- N. CFX ITS/FON

CFX will locate the FON one time at the beginning of design during the survey phase. Once the FON/ITS lines are flagged, the Consultant shall survey the located FON/ITS locations in the field. The survey data collected will be included in the 30% plans submittal package.

The CFX GSC will review the plan submittals to ensure that the FON is shown correctly as actually located in the field. The CFX GSC will also determine if there are any overlapping projects that need to be represented in the design plans as a part of the ITS Component review of the 30% plans.

SUE will be done as required based on the Design Project Manager's recommendations and provided to CFX for their information.

# **4.5** Geotechnical Investigation

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

- **4.6** Contamination Impact Analysis
  - A. The testing of any sites including the use of ground penetrating radar, if required to complete the design and/or construction of the project, will be added to the Scope of Services by Supplemental Agreement.
- 4.7 Pavement Design
  - A. The Consultant shall prepare the pavement design as appropriate in accordance with the requirements of the FDOT Pavement Design Manual for mainline, ramps, and cross streets.
  - B. The proposed pavement design recommendation, resulting from the Consultant's analysis of the various alternatives, shall be contained in a Pavement Design Summary.
- **4.8** Governmental Agency and Public Meetings
  - A. Except as may be provided elsewhere in this Scope of Services, the Consultant shall have appropriate representatives present at such meetings, conferences or hearings as CFX may direct to secure necessary approvals and/or support of the project by county, municipal, or other governmental agencies. If so directed, the Consultant shall also have appropriate representatives present at meetings or conferences of CFX, its Chairman or staff.
  - B. The Consultant shall assist CFX in presentations to various parties. The Consultant shall prepare exhibits pertaining to basic roadway improvements. CFX will prepare exhibits pertaining to aesthetic treatments and other design issues if applicable. This scope assumes presentations at one meeting with adjacent property owners.
- **4.9** Environmental Permits
  - A. CFX's Project Manager will review, coordinate and submit the applications for all environmental permits, including EPA's NPDES General Permits for Stormwater Discharges from Construction Sites. The Consultant shall provide all information, permit applications and data relating to Stormwater Management and Floodplain Impacts required for the permits to CFX. (CFX will be responsible for preparing all of the Wetlands and Protected Species analysis and documentation required for the permits.) The Consultant shall:
    - 1. Attend the pre-application meetings and site visits with CFX and regulatory agencies.
    - 2. Provide additional information requested at the pre-application by regulatory agencies for permits.

- 3. Provide aerial maps at a 1"=400' scale which include SCS soils data, 100-year floodplain limits and proposed project.
- 4. Provide all plans, calculations, sketches and reports required for permits except as described above.
- 5. Provide copies of all drainage calculation, including pond routing nodal diagrams, for the project.
- 6. Assist CFX in responding to any requests for additional information made by regulatory agencies after the permit application is submitted.
- 7. Incorporate any changes required by changes in regulatory agency requirements during the course of the project. If this requires additional work by the Consultant a Supplemental Agreement will be prepared.
- 8. Prepare a list of adjacent landowners along with address and ninedigit zip code at all wetland encroachment sites.
- 9. Provide all permit application material in .pdf format.
- 10. The Consultant will provide dredge and fill sketched as required by the permitting agencies if applicable. Mitigation plans, if required, may be added as a supplemental service.
- 11. Determine extent of floodplain impacts, if any, and provide compensatory flood stages as required
- 12. Preliminary field evaluation of general land use and wildlife habitat within existing ROW
- 13. Pre-application meeting with SFWMD

### 4.10 Utilities

A. Location

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

- B. Utility Coordination
  - 1. The Consultant shall identify utility owners within the project limits and contact each to obtain utility system maps, plan mark-ups or equivalent utility sketches and/or as-built drawings depicting the location of their facilities. The Consultant shall prepare reproducible utility adjustments plans based on information provided by respective utility companies.
  - 2. Private utilities will prepare design plans for the relocation of their facilities. If a utility cannot or will not prepare these design plans, the work shall be added to the scope by Supplemental Agreement and the Consultant shall prepare design plans for utility relocation for approval of the utility and review by CFX.
  - 3. Where utility conflicts occur, which require utility relocation agreements between the affected utility and CFX, the Consultant shall prepare the necessary data/plans required for the agreements. The Consultant shall advise CFX seven days in advance of meetings with utility companies/agencies scheduled to discuss utility relocations.
  - 4. The preparation and negotiation of the agreement will be performed by CFX's Project Manager. After approval of the agreement by the utility and CFX, the Consultant shall prepare reproducible utility adjustment sheets identifying proposed relocations with respect to the construction plans.
  - 5. The Consultant shall prepare a utility conflict matrix to assist in identifying and resolving conflicts between utilities and proposed construction prior to completion of the plans.
  - 6. The Consultant shall obtain utility work schedules from the utility companies for all utility relocation or adjustments required to accommodate construction.
  - 7. The Consultant shall prepare the Utility Certification Letter certifying that all utility negotiations (full execution of each agreement, approved utility work schedule, technical special provisions written, etc.) have been completed with arrangements made for utility work to be undertaken and completed as required.
  - 8. The Consultant shall make two utility contacts with the utility agencies (after 60% roadway plan submittal and after 90% roadway plan submittal) and hold one utility conference.
- 4.11 Roadway Design
  - A. A Typical Section Package was approved with the PD&E Study. Available

typical sections shall be reviewed as part of the Preliminary Design Report and changes submitted to the Authority for review and approval. When cross roads or other facilities are maintained by another agency, the Consultant must coordinate approval of that typical section with the maintaining agency.

B. The Consultant shall design the geometrics for this project using the design standards included in the scope. The design elements shall include, but not be limited to, the horizontal and vertical alignments, cross section template development, lane width, shoulder widths, cross slopes, borders, sight distance, side slopes, lane transitions, superelevations, features of intersections, ramp terminal details, interchanges, and limited access points.

The consultant shall coordinate all relevant design elements with adjacent design teams. This effort shall include any required meetings with adjacent design teams.

- C. The Consultant shall prepare designs and contract documents for the roadway improvements, including, but not necessarily limited to:
  - 1. Cover sheet (key sheet)
  - 2. Summary of Pay Items
  - 3. General notes
  - 4. Summary Quantities sheets
  - 5. Project Layout
  - 6. Typical roadway sections
  - 7. Typical roadway details
  - 8. Plans and profiles (plans at 1"=50' scale)
  - 9. Interchange layout plans
  - 10. Ramp Terminal Details
  - 11. Crossroad plans and profiles (1" = 50" scale)
  - 12. Cross-sections (with pattern plan) (1" = 20' horiz.) (1" = 5' vert.)
    - a. Earthwork quantities
  - 13. Traffic Control Sheets including Temporary Drainage
  - 14. Utility Adjustment Sheets as deemed necessary
  - 15. Details

- 16. Special provisions
- 17. Special specifications
- 4.12 Structures Design
  - A. Prior to commencement of final design, the consultant shall prepare a Bridge Concept Memorandum which documents a limited range of structural alternatives and identifies preferred alternatives. Specifically, the alternatives to be examined include beam type, wall type / configuration, foundation pile type, and preliminary load rating analysis of existing exterior beams at widened sections.
  - B. The Consultant shall prepare designs and contract documents for structural design including, but not necessarily limited to the following items.
    - 1. Complete Bridge designs will be provided for all bridges.
    - 2. Retaining walls, including Critical Temporary walls
    - 3. Box Culverts
    - 4. Approach slabs
    - 5. Details
    - 6. Summary quantity tables
    - 7. Special provisions and specifications
    - 8. Stage construction-sequencing details
    - 9. Sign\Signal structures:
    - 10. Noise walls (Locations to be determined)
    - 11. The Consultant shall perform Load Rating Analysis per FDOT criteria for bridges at the 90% design phase. The Load Rating Analysis packages shall be submitted for their review and approval.

# 4.13 Drainage Design

- A. As part of the drainage design requirements, the Consultant shall:
  - 1. Perform all drainage design in accordance with the approved criteria from Section 3.1D.
  - 2. Finalize the pond design at the 30% submittal.

- 3. Have its chief drainage engineer available at the scheduled (biweekly/monthly) team meetings to review progress and discuss problems.
- 4. Notify CFX's Project Manager immediately if any deviation from approved design criteria is anticipated.
- 5. Provide drainage/contour maps as needed used in the development of the drainage design to CFX for use in scheduled reviews. These maps will be returned to the Consultant along with review comments at the end of the review process.
- 6. Provide copies of its internal quality control comments and calculations at the scheduled reviews.
- 7. Prepare a technical memorandum identifying existing drainage concerns along the corridor and potential fixes or modifications. Known existing drainage concerns include: None at this time.
- 8. Prepare a pond siting report.
- B. The Consultant shall prepare designs and contract documents for drainage features including, but not necessarily limited to:
  - 1. Connector pipes
  - 2. Drainage structure details
  - 3. Storm drain and culvert profiles and/or drainage cross-sections
  - 4. Lateral ditches/channels
  - 5. Outfall ditches/channels
  - 6. Retention/detention ponds/exfiltration system

#### 4.14 Roadway Lighting

A. The Consultant shall prepare a Lighting Justification Report. The report shall provide analyses for mainlines, interchanges, and arterial roads and shall include all back-up data such that the report stands on its own. Back up data shall include current ADT's, general crash data average cost from the Florida Highway Safety Improvement Manual, crash details data from the last three years, and preliminary lighting calculations.

The report shall address warrants to determine if lighting warrants are met and shall include a benefit-cost analysis to determine if lighting is justified. The report shall include calculations for the night-to-day crash ratio as well as a table summarizing the day-time and the night-time crashes. The report shall follow the procedures outlined in the FDOT Manual on Uniform Traffic Studies (MUTS) manual which utilize ADT, Three Year Crash Data, night/day crash ratio, percentage of night ADT, etc.

The Consultant shall provide a complete set of final roadway lighting documents in accordance with FDOT and CFX design criteria. These plans shall include installation of all CFX lighting on the corridor to as LED, including roadway and ramp fixtures, overhead sign lighting and underdeck lighting. The work shall include coordination with the local utility to provide electrical service. Plan sheet scale shall be at 1"=50' scale.

- B. If required, CFX will provide a cut sheet for the type of lighting fixtures to be used for this project.
- C. The Consultant will prepare designs and contract documents for lighting design including, but not necessarily limited to the following items.
  - 1. Cover sheet (key sheet)
  - 2. Tabulation of Quantities
  - 3. General notes
  - 4. Pole data and Legend sheet
  - 5. Project Layout sheet
  - 6. Plans sheets (plans at 1" =50' scale)
  - 7. Service point detail
  - 8. Special Details
- D. Perform an under-deck lighting analysis
- 4.15 Traffic Engineering
  - A. Traffic Data
    - 1. Traffic data will be furnished by the Authority.
  - B. Maintenance of Traffic Plans
    - 1. The Consultant shall prepare maintenance of traffic plans at scale no smaller than 1" =100' to safely and effectively move vehicular and pedestrian traffic during all phases of construction. The designs shall include construction phasing of roadways ingress and egress to existing property owners and businesses, routing, signing and pavement markings, and detour quantity tabulations. Special consideration shall be given to the construction of the drainage

system when developing the construction phases. Positive drainage must be maintained at all times.

- 2. The Consultant shall investigate the need for temporary traffic signals, signs, alternative detour roads, arrow boards, flagging operations, and the use of materials such as sheet pilings in the analysis. A certified designer who has completed the FDOT training course shall prepare the maintenance of traffic plan.
- 3. Traffic shall be maintained during all phases of project construction at all locations, including existing posted speed, lane widths and number of lanes unless determined by CFX and other governmental agencies. This includes meeting with the governmental agencies which may be impacted by the maintenance of traffic plans.
- 4.16 Signing and Pavement Marking Plans
  - A. The Consultant shall prepare designs and contract documents for final signing and pavement marking plans including layouts showing the locations of ground mounted and overhead signs, special sign details, lighting, and any structural or foundation requirements in accordance with applicable design standards. Any requirements for electric service shall be coordinated with the local electric utility.
  - B. CFX will provide conceptual signing plans for the project as deemed necessary.
  - C. Plan sheets will be developed at a scale of  $1^{"}=50^{"}$  ( $11^{"}x17^{"}$  format).
  - D. The Consultant shall determine the existing structures that will be impacted by the project and need to be replaced.
- **4.17** Signalization Plans
  - A. Signal plans will be needed for interchange at US 17/92, but produced by CFX project 538-235. Consultant to coordinate with CFX project 538-235 for any signalization needs. Signalization plans are not anticipated for this project.
- 4.18 Right-of-Way Surveys
  - A. Section Line Ties
    - 1. The Consultant shall perform a Control survey to locate Certified Corner Record locations, and prepared new Certified Corner Record forms.
    - 2. Perform all Section and fractional Section line surveys required for the R/W Control Surveys and R/W Mapping.

- B. Subdivision Ties/Property Line Ties
  - 1. Tie all subdivisions including condominium boundaries, at the beginning and end; block lines, and street right of way lines to the alignment. Ties will be made by closed traverse to assure acceptable closure. All block corners shall be found or set in the field with corners properly identified with size and type and shown on the R/W Control Survey.
  - 2. Make individual property line ties where apparent property line disputes may occur. If information is available from local surveyors, submit copies of their surveys.
- C. Maintained R/W Survey (Not required)
- D. Mean High Water/Safe Upland Line Survey
  - 1. Perform a Safe Upland Line Survey for all locations where the facility crosses Sovereign Waters of the State of Florida.
- E. R/W Monumentation (Not required)
- F. Stake R/W Parcels (Not required)

At the completion of the Design and Right of Way Surveys, provide all field books, certified to the Authority, and copies of electronic files on CDROM, with certification attached.

4.19 Certified Right-of-Way Control Survey

The field Right of Way survey will serve as the basis for the Right of Way Maps and shall be presented in the format of a certified drawing on 22" x 34" electronic format. The Consultant shall certify this drawing as Specific Purpose Survey, which meets the Minimum Technical Standards adopted by the Florida Board of Professional Surveyors and Mappers in Chapter 61G17-6 of the Florida Administrative Code. These survey drawings shall be at a scale of 1 inch = 400 feet for a key map and a scale of 1 inch = 50 feet for detail sheets or at a scale acceptable to the Authority. The surveyor shall furnish the Authority with four (4) signed, sealed and certified copies of the above maps along with the original reproducible film copy and the CADD drawing files on disk.

The Consultant shall submit Right of Way Control Survey maps to the Authority for review at the following stages of completion, with data as specified.

- A. 30% Right of Way Control Survey (Key Maps)
  - 1. Complete alignment data, including beginning of survey station, all curve data, bearings on all tangents along the alignment, all

intermediate control point stations, and end of survey station. All control points must be identified as to type and size of material set at each respective point.

- 2. All section lines, all quarter section lines, (and all quarter-quarter section lines when pertinent), must be shown with the station where their intersection with alignment occurs, a distance from the nearest corner to alignment, and bearings and distances between all corners. Type of corner, either found or set, should be spelled out or identified by a legend.
- 3. All Subdivision and Condominium boundaries with official names and recording information.
- 4. A separate sheet depicting all of the alignment control reference points and reference points for Public Land Survey corners along with the type and size of material used for each respective reference point. This sheet does not need to be plotted to scale. All references shall be shown with a North Arrow, pointing to the top of the page.
- 5. Sheet one of the key maps should contain all pertinent general survey notes and the Certification that the Specific Purpose Survey was made for the purpose of providing horizontal position data for the support or control of right of way related maps for the transportation facility shown and done under responsible charge and meets the Minimum Technical Standards of the Board of Professional Surveyors and Mappers 61G17-6 Florida Administrative Code.
- B. 60% Right of Way Control Survey (Detail Sheets)
  - 1. Complete alignment data, including beginning of survey station, all curve data, bearing on alignment, all intermediate control point stations, end of survey station. Show all control points identified as to type and size of material set at each respective point.
  - 2. All subdivisions, including condominium boundaries, with a station where the alignment and each subdivision line intersect. A sufficient amount of field ties must be made in order to establish the original block boundaries or existing right of way as shown on existing right of way maps in each subdivision and or condominium. A distance from alignment to the existing right of way line or nearest found or set corner and bearings and distances on all subdivision lines which were intersected with the alignment, all lot and block numbers, street names, plat book, page, and official name of each subdivision.
  - 3. Key Maps with any revisions or corrections

- C. 90% Right of Way Control Survey
  - 1. All revisions required to support the complete Right of Way Mapping.
- D. 100% Right of Way Control Survey
  - 1. Signed and sealed copies and final CADD files
- E. Computer Mapping All survey maps will be prepared using CADD and all submittals will include:
  - 1. CADD files in Microstation format. All maps will include point names generated on CADD level 62.
  - 2. Geometry files in an ASCII or other approved format. A computer coordinate geometry file showing point numbers with their (x, y) values and coordinate pair sets representing points and lines (alignment, blocks, R/W lines, section lines, etc.) respectively, will accompany all map submittals, all pertinent chains or figures, (i.e.: Alignment, R/W lines, Subdivision boundaries, etc.) will be in the form of an abbreviated chain or figure name followed by a point list defining the chain or figure.

## 4.20 Right-of-Way Maps

Right of Way Map shall be accurate, legible, complete, plotted to a scale as directed by the Authority. Right of Way Maps, Parcel Sketches and Legal Land Descriptions shall be prepared under the direction of a Surveyor and Mapper licensed with the Florida Board of Professional Surveyors and Mappers, under Chapter 472, Florida Statutes.

The Consultant shall be responsible for determining and justifying additional rights of way required by their design. The Consultant shall make every effort to minimize the limits of right of way acquisition through the creative use of existing right of way. Right of Way Maps shall be prepared by CADD. The Consultant shall be responsible for preparation of an abbreviated Right-of-Way Map for the project consisting of a Detail Sheet for the two parcels anticipated to be needed for the project. The Right-of-Way Control Survey Maps will be utilized as the background for the Right-of-Way Maps.

Right of Way Maps shall be plotted on 22" x 34" in electronic format at a scale of 1 inch = 50 feet for Detail Sheets or at a scale acceptable to the Authority. These scales should be adjusted appropriately to facilitate "uncluttered" mapping, depicting the necessary data without confusion to the users. Text size for mapping should not be smaller than 1/10".

The Consultant shall submit Map Sheets to the Authority for review at the following stages of completion, with data as specified:

- A. 90% Right of Way Maps
  - 1. Area of taking fully dimensioned with the bearings, distances and curve data, and parcel number bubble.
  - 2. Dimensions shown on all remainders. Dimensions of large remainders may be shown as an insert at a larger scale.
  - 3. Curve and Line tables may be used to eliminate clutter, but should be used only as needed, and shall be placed on all sheets where the curves are shown.
  - 4. Areas of large takings/remainders (one-half acre or more) shall be shown in acres, to 3 decimal places. Areas of small takings/remainders (less than one-half acre) shall be shown to the nearest square foot.
  - 5. Completed Title Block (all spaces must be filled in; if not applicable, show N/A). In using the strip title block, avoid placing text or mapping within 1" above the REVISION blocks.
  - 6. Limits of Construction consistent with Design Plans, including crosssections, drainage, mitigation, etc.
- B. 100% Right of Way Maps
  - 1. Completed Right of Way Maps revised in accordance with prior reviews.
  - 2. Map information agrees exactly with the Parcel Sketch and Legal Description.
- C. Computer Mapping

All Right of Way Maps will be prepared using the latest CADD version and submittals will include:

- 1. CADD files in Microstation format. All maps will include point names generated on CADD level 62.
- 2. Geometry files in an ASCII or other approved format. A computer coordinate geometry file showing point numbers with their (x, y) values and coordinate pair sets representing points and lines (alignment, blocks, R/W lines, section lines, etc.) respectively, will accompany all map submittals, all pertinent chains or figures, (i.e.: Alignment, R/W lines, Subdivision boundaries, etc.) will be in the form of an abbreviated chain or figure name followed by a point list defining the chain or figure.
- D. Title Search

- 1. The Authority shall furnish the Consultant the Title Search Reports for parcels affected by the proposed right of way throughout the project.
- E. Parcel Sketches and Legal Descriptions
  - 1. Parcel Sketches are critical deliverables and must follow the submittal timeline detailed in Section 7.13. Draft Parcel Sketches shall be prepared to a legible scale on 8-1/2" x 11" size for each taking, including Limited Access Right of Way, non-Limited Access Right of Way, Temporary and Permanent easements, Ponds, Mitigation Areas and Access Rights Only, and will include:
  - 2. Boundary and dimensions of parent tract and approximate dimensions of taking and remainder
    - 2. Existing easements affecting the property
    - 3. Improvements, buildings
    - 4. Approximate areas of each taking and remainder
    - 5. North arrow and scale
    - 6. "DRAFT PARCEL SKETCH", Project Number and Parcel Number prominently displayed at the top of the page
    - 7. Border with space for recording reserved at the upper right corner.
- F. Final Parcel Sketches and Legal Descriptions
  - 1. Parcel Sketches are critical deliverables and must follow the submittal timeline detailed in Section 7.13. Prepare final parcel sketches and legal descriptions for each taking, including Limited Access Right of Way, non-Limited Access Right of Way, Temporary and Permanent easements, Ponds, Mitigation Areas and Access Rights Only.
  - 2. Separate descriptions will be prepared for Limited Access and non-Limited Access Right of Way, even if the whole parcel is taken, and dimensioned on sketch.
  - 3. Parcel Sketches and Legal Descriptions will be prepared for County and Municipality Right of Way.
  - 4. Parcel Sketches and Legal Descriptions will include:
    - a. Boundary and dimensions of taking and remainder.
    - b. Existing easements affecting the property.
    - c. Improvements, buildings, with ties to taking line where within 25 feet.
    - d. Point of Commencement, Point of Beginning and monumentation referenced in the Legal Description.

- e. "SKETCH AND LEGAL DESCRIPTION", Project Number and Parcel Number prominently displayed at the top of the page.
- f. Areas of each taking and remainder.
- g. North arrow and scale.
- h. Border with space for recording reserved at the upper right corner.
- i. Legal descriptions of Limited Access taking, (with Limited access clause), Right of Way takings, proposed easements.
- j. All calls for adjoiners, including Section and fractional Section lines, Lot and Block lines, right of way lines, (with reference to maps if available).
- k. The Point of Commencement or Point of Beginning will be a monumented point outside limits of construction and will be a well-defined point of a Section or Grant.
- 5. Parcel Sketches and Legal Descriptions submitted for review shall include Geopak parcel closure files, (or alternate computation software,) and Microstation .dgn files, (separate files for each sheet).
- 4.21 Cost Estimates
  - A. The Consultant shall prepare and submit to CFX construction cost estimates at the 60%, 90%, 100%, Pre-Bid and Bid Set submittals outlined herein. The estimate shall be based on the current unit prices as applied to the latest concept of the proposed construction.
- **4.22** Special Provisions and Specifications
  - A. The Consultant shall prepare and submit at the 90% level special provisions, special specifications, and technical special provisions for items, details and procedures not adequately covered by CFX's Technical Specifications.
- 4.23 Fiber Optic Network (FON)
  - A. Fiber Optic Infrastructure Plans
    - 1. The site construction plans shall be developed at a scale of 1" equals 50 feet. These plans shall include the relocation of all existing fiber optic duct banks, cables, manholes, and pull boxes in areas where the existing locations conflict with construction and as necessary to relocate the FON into the new paved shoulder. The Consultant shall identify existing physical features and utilities that will impact the construction and installation of the equipment. The Consultant shall review and modify standard FON details as necessary. In general intent is to replace existing devices with new if they are being damaged or impacted by the widening.
    - 2. Fiber optic network (FON) plans shall include the following:

- a. Roadway geometry
- b. Rights-of-Way
- c. Existing utilities within the right-of-way including CFX's FON
- d. Physical features affecting construction/installation (sign structures, light poles, fences, etc.)
- e. Manhole/Pull box locations and stub-out details (standard details provided)
- f. Device layout
- g. Device installation details (standard details provided)
- 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
- m. Fiber cable splice details for new or relocated fiber optic cabling.
- n. Controller cabinet, CCTV/ TMS pole, and foundation details for proposed CCTV/ TMS sites.
- o. Service point details, one-line riser diagrams, panelboard schedules
- p. Power interconnect, calculations to support conductor size, and details. Power conductors to each device location shall be sized to the maximum connected load in the cabinet plus 10A to accommodate other loads such as UPS battery charging or Maintenance equipment (lowering device drill, shop vac, etc.). Determination on conductor sizing and voltage drop limits are only required for proposed sites and existing sites where the total site load is being significantly modified. Maximum voltage drop allowed is 5% with a Max Wire size of #2 AWG running at 480 V.
- q. Design Methodology Report shall include voltage drop calculation, load analysis, short circuit current analysis, arc flash hazard analysis, typical cabinet load summary table and CCTV sighting for proposed camera locations. Power conductors to each device location shall be sized to the capacity of the main breaker in the cabinet and shall also include a 10 Amp maintenance load that is carried to the end of each circuit.
- r. Grounding (standard details provided)
- s. Table of quantities
- t. Special notes
- u. Maintenance of fiber operations (protection of existing FON through all phases of construction and cutover phasing to ensure continuous operation of existing ITS devices)
- v. All existing and proposed FON to be included and shown with roadway cross sections and drainage cross sections

- w. Installation of CCTV sites and any necessary structures, foundations, attachment details, power service, fiber optic connections, and cabinets (standard details provided). The designer is to provide 100% coverage of the roadway and ramps.
- x. Installation of existing data collection sensor (DCS) sites and any necessary structures, foundations, attachment details, power service, fiber optic connections, and cabinets (standard details provided). At all exit ramps and DMS sites. The designer is to provide GPS locations to CFX for FCC permitting purposes.
- y. Installation of dynamic message sign (DMS) to be centered over the proposed roadway, including structures, foundations, attachment details, power service, fiber optic connections, and cabinets (standard details provided).
- z. Installation of traffic monitoring sites (TMS) sites and any necessary structures, foundations, attachment details, power service, fiber optic connections, and cabinets (standard details provided). TMS shall be located at all traffic movements (on-ramp, off-ramp, slip ramps, etc.)
- aa. ITS devices within the project limits shall be gigabit Ethernet field switches, and other cabinet equipment as needed to meet current CFX ITS equipment standards.
- bb. Install new WWDS at the following off-ramps:
  - SR 538 WB off ramp to US 17/92
- 3. Upgrading other cabinet equipment as needed to meet current CFX ITS equipment standards within the project limits The Consultant shall take the following information into consideration when developing the site construction plans:
  - a. Minimize utility conflicts and adjustments.
  - b. Minimize traffic impact.
  - c. Accessibility and ease of equipment maintenance.
  - d. Safety of equipment maintenance personnel and the traveling public.
  - e. Maintain the existing FON system through all phases of construction.
  - f. Environmental conditions.
  - g. Concurrent/future CFX projects.
  - h. Compatibility with existing and proposed ITS infrastructure (e.g. CFX enhanced grounding standards for ITS devices, CFX surge suppression device (SPD) standards for ITS devices, etc.)
  - i. Leased conduits in CFX FON duct bank that are occupied by the fiber optic cable of other agencies or entities.
  - j. Location of proposed sound walls
- B. Splice and Cable Routing Details

- 1. The Consultant shall provide splicing detail diagrams to document proposed fiber optic splices within and between manholes, ITS devices, tollbooths, and other junction points. This includes splice diagrams for re-termination of drop or end to end (butt) splices.
- 2. Proposed splicing tables shall include ITS device connectivity, fiber use, drop cable fiber identification, drop cable identification, backbone cable identification, translateral cable identification, backbone into mainline cable identification, and toll plaza patch panel jack.
- 3. The Consultant shall provide cable routing diagrams in CFX's standard format to document the functional connectivity between proposed fiber optic conduit and splices.
- C. Maintenance of Fiber Operations
  - 1. The Consultant shall provide a plan of action to ensure existing fiber optic network is not disrupted during construction operations.
  - 2. The Consultant shall determine the sequence of fiber optic cable splices to minimize disruption to communications.
- D. Inside Plant Plans
  - 1. The Consultant shall be responsible for any data collection necessary to complete its design.
  - 2. All equipment shown on the inside-plant construction plans shall be clearly delineated as existing, proposed, or by-others. The Consultant shall be responsible for identifying and detailing on the inside-plant construction plans with notes and drawings any make-ready work required. The Consultant shall also provide a table of quantities for all materials and equipment specified in the inside-plant construction plans.
  - 3. The Consultant shall sign and seal final inside-plant construction plans by a licensed professional Electrical Engineer registered in the state of Florida. The inside-plant construction plans shall be subject to the review and approval of CFX.
- E. Standard CFX specifications will be provided to the Consultant. The Consultant shall review the specifications and modify them as necessary.

# 4.24 Toll Plazas

- A. This project does not include any toll collection facilities.
- 4.25 Post-Design Services

- A. Services shall begin after authorization by CFX. The Consultant compensation for post-design services may be added by Supplemental Agreement and shall be at an hourly rate, inclusive of overhead, profit and expenses, and exclusive of travel. No compensation will be made for correction of errors and omissions.
- B. The Consultant shall support the post design process as follows:
  - 1. Answer questions relative to the plans, typical sections, quantities and special provisions.
  - 2. Make any necessary corrections to the plans, typical sections, quantities, notes, etc., as may be required.
  - 3. Attend pre-award meeting with construction contractor, CFX, and CFX's CEI.
- C. The Consultant shall, prior to the pre-bid conference, be prepared to walk the project with CFX's CEI to discuss the plans and details. The Consultant shall be prepared to attend the pre-bid conference and respond to questions related to the plans, details, and special provisions.
- D. The Consultant shall prepare any addenda required to clarify the work included in the construction contract documents. Addenda may be required based on the project inspection with the CEI, or questions developed in the pre-bid conference, or conditions discovered by bidders during the bid period. Addenda will not be issued for Contractor initiated design changes or value engineering proposed work.
- E. The Consultant shall be available to respond to questions in the field that may arise relative to the plans, details or special provisions during construction. The Consultant shall periodically (monthly) visit the project site to observe the progress of construction on the project. This visit will not replace the formal construction inspection by CFX. It is intended to provide the opportunity of the design team to observe whether the work is being performed in general conformance with the project plans. Written memos of all such field trips shall be submitted to CFX within five working days of the trip.
- F. The Consultant shall review and approve shop drawings for structural, lighting, signing, and ITS shop drawings. This work will include the erection procedure plans, review proposals for substitutions, develop supplemental agreements, and provide other engineering services required to facilitate construction of the project. Reviews will be conducted and returned within two weeks from receipt of information.
- G. The Consultant shall appoint a responsible member of the firm to be the contact person for all post-design services. The person should be continually available during the course of construction for review of design plans.

- H. The Consultant shall make every reasonable effort to process any material presented for review in a prompt manner recognizing a construction contract is underway.
- I. The Consultant's key staff shall attend a maximum of three (3) partnering meetings as requested by CFX's Project Manager. The Consultant shall also attend progress/coordination meetings as requested by CFX's Project Manager including, but not limited to, the Notice to Proceed meeting.
- J. Approved design bridge load ratings were obtained by the Consultant under the final design phase of this contract. The Contractor shall be responsible for revising and resubmitting the load ratings if changes to the bridge design occur during construction. Otherwise, the Consultant shall provide written correspondence to CFX when construction is complete that the bridges were constructed in accordance with the plans and the design load ratings still apply.
- K. The Consultant shall provide geotechnical engineering services as needed by CFX, relative to pile driving, earthwork, embankment and MSE wall construction.
- L. The Consultant shall provide utility consulting services as needed by CFX, relative to proposed utility adjustments within the project limits.
- M. The Consultant shall prepare Record Drawings in electronic format following completion of the construction phase. CFX shall provide all As- Built drawings from the Contractor / CEI to the Consultant for their use in preparation of the Record Drawings.

# 5.0 MATERIALS FURNISHED BY CFX OR ITS DESIGNEE

# 5.1 Record Documents

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

# 5.2 Traffic Data

- A. CFX will provide the following design traffic data:
  - 1. Current and design year ADT
  - 2. Current and design year peak hour volumes
  - 3. Turning movements at each intersection/interchange
  - 4. K, D and T factors
  - 5. Design speed See Section 3.02, Geometry.
  - 6. AVI Percentages
- 5.3 Other
  - A. Utility designates for the FON and roadway lighting within CFX right-ofway.

## 6.0 WORK PERFORMED BY CFX OR ITS DESIGNEE

- 6.1 Right-of-Way Acquisition
  - A. If necessary, CFX, or its designee, will review all right-of-way plans, parcel sketches and legal descriptions prepared by the Consultant. CFX will handle all appraisals, negotiations, relocations, condemnation, and property settlements.
- 6.2 Utility Agreements
  - A. CFX will support, as necessary, the Consultant's acquisition of information required for utility agreements.
- 6.3 Public Involvement
  - A. CFX will provide a moderator for all required public meetings and provide guidelines for the Public Involvement aspects of the project. The need for public meetings or public hearings will be determined by CFX. CFX will be responsible for mailings and advertisements for the public meetings.
- 6.4 Contracts and Specifications Services
  - A. CFX will prepare the necessary bid documents for the construction contract using plans, technical special provisions, and special specifications prepared by the Consultant.
- 6.5 Post-Design Services
  - A. CFX will be the principal initial contact for post-design questions and answer questions on a limited scope.
  - B. CFX's CEI representative will be responsible for collection and documentation of all As-Built information for the constructed improvements.
- **6.6** Environmental Permits
  - A. CFX will review and submit the environmental permit applications and coordinate with the Consultant on requests for additional information from the regulatory agencies.
  - B. CFX will stake wetland lines and coordinate agency site visits. CFX will also prepare the wetland and wildlife analysis and documentation for the permits.
  - C. CFX will be responsible for all permitting application fees.
- 6.7 Conceptual Specialty Design
  - A. CFX will provide a conceptual major guide signing plan.
  - B. CFX to provide proposed sound wall locations.

C. CFX will provide conceptual aesthetics design and treatments for structures.

### 7.0 ADMINISTRATION

- 7.1 Central Florida Expressway Authority
  - A. CFX's Project Manager will administer the Consultant services detailed in this scope.
  - B. All contractual payments and changes shall be reviewed and approved by CFX's Project Manager.
- 7.2 CFX's Project Manager will:
  - A. Conduct ongoing reviews of the Consultant's progress in performing the work and furnish technical comments in a timely manner.
  - B. Review the Consultant's billings.
  - C. Review and evaluate the Consultant's requests for extension of time and supplemental agreements and recommend appropriate action.
  - D. Review all correspondence with public agencies prior to the Consultant's mailing of any correspondence except for requests for information.
  - E. Coordinate the distribution of public information.
  - F. Coordinate the data (including documentation of prior rights, cost estimates and plans) necessary for CFX to prepare and execute all utility and railroad agreements.
  - G. Conduct an introductory meeting to deliver relevant information and explain the administration process.
  - H. Review the Consultant's Quality Control program and the Consultant's conformance to the Quality Control Program.
  - I. Provide a focal point contact for all questions, requests, and submittals.
  - J. Provide a system to monitor the Consultant's schedule, progress and key milestone submittal dates.
- 7.3 Consultant
  - A. The Consultant has total responsibility for the accuracy and completeness of the construction contract documents and related design prepared under this project and shall check all such material accordingly. The plans will be reviewed by CFX for conformity with CFX procedures and the terms of the Contract, as well as coordination with adjacent design contracts. Review by CFX does not include detailed review or checking of design of major components and related details or the accuracy with which such designs are

depicted on the plans. The responsibility for accuracy and completeness of such items remains solely that of the Consultant. The Consultant shall:

- 1. Establish, furnish and maintain suitable office facilities to serve as the project office for the duration of the project at a location acceptable to CFX.
- 2. Maintain an adequate staff of qualified support personnel to perform the work necessary to complete the project.
- 3. Establish internal accounting methods and procedures for documenting and monitoring project costs.
- 4. Establish and maintain contract administration procedures, which will include supplemental agreements, time extensions and subcontracts.

### 7.4 Project Control

- A. The Consultant shall provide data for CFX's Management Information System to monitor costs and manpower, and report progress. This project control system may include features to:
  - 1. Determine and highlight critical path work from initial plans as work progresses.
  - 2. Identify progress against schedule for each identified work item.
  - 3. Forecast completion dates from current progress.
  - 4. Highlight rescheduled work in any area which is out of required sequence.
  - 5. Highlight rescheduling that has overloaded any physical area that requires more resources than originally allocated.
  - 6. Forecast future conflicts in any area.

#### 7.5 Work Progress

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

action required to resolve any issues.

- 7.6 Schedule
  - A. Within twenty (20) calendar days after receipt of the Notice to Proceed, the Consultant shall provide a schedule of calendar deadlines in a format prescribed by CFX.
- 7.7 Project Related Correspondence
  - A. The Consultant shall furnish copies of all written correspondence between the Consultant and any party pertaining specifically to this project to CFX for its records within one (1) week of the receipt or mailing of said correspondence. The Consultant shall record and distribute the minutes of all meetings pertaining to this project.
- 7.8 Quality Control
  - A. The Consultant has total responsibility for the accuracy and completeness of the plans and related designs prepared under this project and shall check all such material accordingly. Consultant shall have a quality control plan in effect during the entire time work is being performed under the Contract. The plan shall establish a process whereby calculations are independently checked, plans checked, corrected and back checked. All plans, calculations, and documents submitted for review shall be clearly marked as being fully checked by a qualified individual other than the originator.
  - B. The Consultant's quality control plan shall be submitted to CFX within fifteen (15) working days of receipt of written notice to proceed.
- 7.9 Consultant Personnel
  - A. The Consultant's work shall be performed and/or directed by the key personnel identified in Exhibit "D". Any changes in the indicated key personnel or the Consultant's office in charge of the work shall be subject to review and approval by CFX.
- 7.10 Site Visit
  - A. The Consultant shall arrange a site visit within twenty (20) calendar days of receipt of written Notice to Proceed. Consultant personnel assigned to perform the work on the project shall attend. CFX representatives will be present. Within seven calendar days of the site visit, the Consultant shall issue to CFX a brief written report including observations, discussions, and any questions pertaining to the scope or level of effort of the project. The purpose of this visit is to acquaint key personnel with the details and features of the project to facilitate the design process.
- 7.11 Acceptability of the Work

- A. The plans, design, calculations, reports and other documents furnished under this Scope of Services shall conform to the "standards-of-the industry" quality as acceptable to CFX. The criteria for acceptance shall be a product of neat appearance, well organized, accurate and complete, technically and grammatically correct, checked in accordance with the approved Quality Control program, and have the maker and checker identified. The minimum standard of appearance, organization and content of drawings shall be similar to the type produced by the Florida Department of Transportation and CFX.
- 7.12 Design Documentation
  - A. The Consultant shall submit any design notes, sketches, worksheets, and computations to document the design conclusions reached during the development of the construction contract documents to CFX for review.
  - B. The design notes and computations shall be recorded on 8-1/2" x 11" computation sheets, appropriately titled, numbered, dated, indexed and signed by the designer and checker. Computer output forms and other oversized sheets shall be folded or legibly reduced to 8-1/2" x 11" size. The data shall be bound in a hard-back folder for submittal to CFX.
  - C. A CD/DVD with electronic (PDF Format) copies of the design notes and computations shall be submitted to CFX with each review submittal. When the plans are submitted for 90% review, the design notes and computations corrected for any CFX comments shall be resubmitted. At the project completion (bid set), one (1) hard copy of the final set of the design notes and computations, sealed by a Professional Engineer, registered in the State of Florida, shall be submitted with the record set of plans and tracings.
  - D. Design notes and calculations shall include, but are not necessarily limited to, the following data:
    - 1. Field survey notes and computations.
    - 2. Design criteria used for the project.
    - 3. Geometric design calculations for horizontal alignment.
    - 4. Vertical geometry calculations.
    - 5. Drainage calculations
    - 6. Structural design calculations.
    - 7. Geotechnical report.
    - 8. Hydraulics Report for each bridged stream crossing.

- 9. Earthwork calculations not included in the quantity computation booklet.
- 10. Calculations showing cost comparisons of various alternatives considered, if applicable
- 11. Computations of quantities.
- 12. Documentation of decisions reached resulting from meetings, telephone conversations, or site visits.
- 13. Lighting and voltage drop calculations.
- 14. Lighting service letter from the power company stating the following: service voltage, type of service (overhead or underground), location of power company service point, and any other power company requirements.
- 7.13 Reviews and Submittals
  - A. Review and coordination of the Consultant's work by CFX shall continue through the project development process
  - B. Formal submittals for review shall be made to CFX when the plans have been developed to the following levels of completion:
    - 1. Preliminary Design Report (Memorandum) (1 CD/DVD with all files in pdf format, and one (1) hard copy set to CFX of Final Report)
    - 2. 30% Roadway Plans (1 CD/DVD with PDF's of submittal package and one (1) hard copy of plans to CFX project manager; and electronic copies of plans to the CFX GEC project manager)
    - 3. 30% Bridge and Structural Plans (1 CD/DVD with PDF's of submittal package and one (1) hard copy of plans to CFX project manager; and electronic copies of plans to the CFX GEC project manager)
    - 4. 60% Roadway and specifications, Geotechnical Report (1 CD/DVD with PDF's of submittal package and one (1) hard copy of plans to CFX project manager; and electronic copies of plans to the CFX GEC project manager)
    - 5. 60% Bridge Plans required only on Category 2 bridges.
    - 6. 90% Bridge and Structural Plans (1 CD/DVD with PDF's of submittal package and one (1) hard copy of plans to CFX project

manager; and electronic copies of plans to the CFX GEC project manager)

- 7. 90% Roadway and specifications (1 CD/DVD with PDF's of submittal package and one (1) hard copy of plans to CFX project manager; and electronic copies of plans to the CFX GEC project manager)
- 8. 100% Roadway, Bridge and specifications, Geotechnical Report (1 CD/DVD with PDF's of submittal package and one (1) hard copy of plans to CFX project manager; and electronic copies of plans to the CFX GEC project manager)
- 9. Pre-Bid Plans (1 CD/DVD with PDF's of submittal package and one (1) hard copy of plans to CFX project manager; and electronic copies of plans to the CFX GEC project manager)
- 10. Bid Set (1 set signed and sealed plans, 1 set "clean" plans, 1 set signed and sealed reports and one (1) CD/DVD with .PDF of all plans and reports)
- C. Formal review submittals shall include copies as listed above. 8-1/2" x 11" and 11" x 17" documents do not require reproducible copies.
- D. Preparation and distribution of roadway and ROW plans to other than CFX or CFX GEC will not be made until approved by CFX.
- E. The format of review submittal plans shall conform to the FDOT Design Manual, except as amended by CFX.
- F. Due to the compact schedule of the design, review, and construction process, any modification to the agreed submittal dates will require a letter from the Consultant to CFX giving:
  - 1. The reason for the delay.
  - 2. The design components impacted.
  - 3. Proposed methods to maintain submittal dates.
- G. The Consultant shall submit all CADD files, including GEOPAK files, use in the preparation of the plans and right of way mapping on electronic format with the final submittal.
- 7.14 30% Roadway Plan Submittal
  - A. At the completion of this phase, design and plan development should be approximately 30 percent complete except stormwater pond designs. The designs of the stormwater ponds shall be at 90% complete. The following

material shall be developed and submitted for review:

- 1. Key Map Prepared
  - a. Location map shown complete with destinations, ranges and townships.
  - b. Beginning and ending stations shown.
  - c. Any equations on project shown.
  - d. Project numbers and title shown.
  - e. Index shown.
- 2. Drainage Map Prepared
  - a. Existing culvert sizes and elevations.
  - b. Horizontal alignment shown.
  - c. Drainage areas and flow arrows shown.
  - d. High water information shown.
  - e. Beginning and end stations shown along with any equations on project.
  - f. Interchange supplemental maps prepared.
- 3. Typical Section Sheets
  - a. Ramp typical sections developed.
  - b. Pavement structure shown.
  - c. Special details developed.
  - d. General notes shown.
- 4. Plan and Profile Sheets
  - a. Centerline plotted.
  - b. Reference points and bench marks shown.
  - c. Existing topography.
  - d. Base line of surveys, curve data, bearings, etc. shown.
  - e. Beginning and end stations (project and construction).
  - f. Geometric dimensions.
  - g. Proposed and existing limited access right-of-way lines.
  - h. Existing ground line.
  - i. Proposed profile grade.
  - j. Type, size and horizontal location of existing utilities.
  - k. Drainage structures and numbers are shown
  - 1. Drainage ponds are shown.
- 5. Cross Sections
  - a. Existing ground line.
  - b. Preliminary templates at critical locations (not to exceed 500 feet).
  - c. Existing utilities shown.

- 6. Interchange Layout and Ramp Profiles
  - a. Geometric dimensions.
  - b. Proposed profile grades.
- 7. Right-of-Way Control Survey
- 8. Signing and Pavement Markings
  - a. Striping layout.
  - b. Sign structure locations.
- 7.15 30% Bridge and Structural Plan Submittal
  - A. At completion of this phase, design and plan development should be approximately 30 percent complete. The Consultant shall refer to FDOT Structural Design Guidelines for plan contents and submittal requirements. Preliminary geotechnical results and recommendations should also be included with this submittal.
- 7.16 60% Roadway Plan Submittal
  - A. At completion of this phase, design and plan development should be approximately 60 percent complete except stormwater pond designs. The designs of the stormwater ponds shall be at 100% complete. The following material shall be developed and submitted for review:
    - 1. Key Map
      - a. Project description and number shown.
      - b. Equations, exceptions and bridge stations shown.
      - c. North arrow and scale included.
      - d. Consultant and CFX sign-offincluded.
      - e. Contract set index complete.
      - f. Index of sheets updated.
    - 2. Drainage Maps
      - a. Flood data shown.
      - b. Cross drains and storm sewer shown.
      - c. Bridges shown with beginning and ending stations.
      - d. Interchange supplemental sheets updated.
    - 3. Typical Section Sheets
      - a. All required typical sections are included.
      - b. Limited access right-of-way lines are shown.
      - c. Design speed and traffic are shown.

- d. Special details have been completed.
- e. Station limits of each typical section are shown.
- 4. Plan and Profile Sheets
  - a. Match lines shown.
  - b. Limited access right-of-way lines shown.
  - c. Stations and offset shown for all fence corners and angles.
  - d. All work shown should be within right-of-way or proposed easement.
  - e. Drainage structures and numbers are shown.
  - f. Drainage ponds shown.
  - g. Curve data and superelevation included.
  - h. Pavement edges, shoulders and dimensions shown.
  - i. Project and construction limits shown.
  - j. Bridges shown with beginning and ending stations.
  - k. General Notes.

#### 5. Drainage Structures

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

#### 6. Cross Sections

- a. Templates are shown at all stations.
- b. Limited access right-of-way lines are shown.
- c. Cross section pattern sheet included.
- d. Miscellaneous notes included.
- e. Boring profiles.
- 7. Interchange Layouts, Ramp Profiles and Intersection Details
  - a. Geometric data shown.
  - b. Profiles finalized.
  - c. Coordinate data shown.
  - d. Limited access right-of-way lines shown.
  - e. Curve data shown.
  - f. Bearings and bridges shown.
  - g. Cross roads, frontage roads, and access roads shown.
  - h. Intersection details shown.

#### 8. Traffic Control Plans

- 9. Utility Adjustments
- 10. Signing and Pavement Marking Plans
- 11. Intelligent Transportation System (ITS) Plans

- 12. Highway Lighting Plans
- 13. Selective Clearing and Grubbing (if required)
- 7.17 90% Bridge and Structure Plan Submittal
  - A. At completion of this phase, design and plan development should be approximately 90 percent complete. The Consultant shall refer to FDOT Structural Design Guidelines for plan contents and submittal requirements.
- 7.18 90% Roadway Plan Submittal
  - A. At completion of this phase, design and plan development should be approximately 90 percent complete. The following material shall be developed and submitted for review:
    - 1. Key Map
      - a. Length of Project with exceptions shown.
      - b. Index of sheets updated.
    - 2. Drainage Maps
      - a. Drainage divides, areas and flow arrows shown.
      - b. Elevation datum and design high water information shown.
      - c. Disclaimer and other appropriate notes added.
    - 3. Typical Section Sheets
    - 4. Plan and Profile Sheets
      - a. Curve Control Points (P.C., P.I., P.T.) flagged and labeled.
      - b. Limits of side road construction.
      - c. Angle and stationing for intersections.
      - d. Treatment for non-standard superelevation transitions diagramed.
      - e. General notes shown.
      - f. Special ditches profiled.

#### 5. Drainage Structures

- a. Existing structures requiring modifications are shown.
- b. Existing and proposed utilities are shown.
- 6. Soil Borings
  - a. Soils data and estimated high seasonal groundwater table shown.
- 7. Cross Section Sheets

- a. Scale and special ditch grades shown.
- b. Utilities plotted.
- c. Sub-excavation shown.
- d. Volumes computed and shown.
- 8. Utility Relocation Plans
  - a. Utility relocation plans prepared.
- 9. Traffic Control Plans
- 10. Signing and Pavement Marking Plans
- 11. Intelligent Transportation System (ITS) Plans
- 12. Highway Lighting Plans
- 13. Selective Clearing and Grubbing (if required)
- 7.19 100% Roadway, Bridge, Structural and Right-of-Way Plans
  - A. At the completion of this phase, the design plans and special provisions shall be 100 percent complete.
- 7.20 Pre-Bid Plans
- 7.21 Bid Set

#### **MEMORANDUM**

TO:	CFX Board Members
FROM:	Aneth Williams Will Director of Procurement
DATE:	January 12, 2022
SUBJECT:	Authorization for Negotiations for Design Services for SR 528 West Mainline Data Collection Gantries Project No. 528-172, Contract No. 001845

Letters of Interest for the above referenced project was advertised on October 3, 2021. One response was received by the October 25, 2021 deadline. As required by the Procurement Procedures, the Director of Procurement met with the Chief of Infrastructure and the Director of Engineering to review options when less than three responses are received. It was decided to readvertise the project. On November 30, 2021 a Letter of Interest was received from one proposer, Bentley Architects + Engineers, Inc. Again, the Director of Procurement met with the Chief of Infrastructure and the Director of Engineering to review options when less than three responses are received. It was decided at the meeting to review options when less than three responses are received. It was decided at the meeting to proceed with the solicitation process.

The Evaluation Committee was polled and unanimously agreed to shortlist Bentley Architects + Engineers, Inc. A recommendation to accept the Evaluation Committee decision was submitted to the Executive Director who accepted the recommendation.

Board authorization to enter into negotiations with Bentley Architects + Engineers, Inc. is requested. Once negotiations are completed, approval of the contract will be requested.

Reviewed by:

Will Hawthorne Director of Engineering

Glenn Pressimone, PE

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

WWW.CFXWAY.COM

### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

#### **MEMORANDUM**

TO:	Laura Kelley
	Executive Director
FROM:	Aneth Williams Will Director of Procurement
DATE:	December 8, 2021
SUBJECT:	Design Services for SR 528 West Mainline Data Collection Gantries Project 528-172, Contract No. 001845 Recommendation of Evaluation Committee

On October 25, 2021 a Letter of Interest was received from one proposer, Bentley Architects + Engineers, Inc. As required by the Procurement Procedures, I met with the Chief of Infrastructure and Director of Engineering to review options when less than three responses are received. It was decided to rebid the project. On November 30, 2021 a Letter of Interest was received from one proposer, Bentley Architects + Engineers, Inc., whose prequalifications have been verified. Again, I met with the Chief of Infrastructure and Director of Engineering to review options when less than three responses are received. It was decided at the meeting to proceed with the solicitation process. Notification of the solicitation was submitted to 1,678 recipients and was also advertised in the Orlando Sentinel. Eighty-two firms downloaded the solicitation.

The Evaluation Committee was provided with a Copy of the Notice to Professionals/Contractors requesting LOIs, Bentley Architects + Engineers, Inc.'s proposal, the Evaluation Committee Disclosure form, the Evaluation Committee Scoring Sheet and the selection process schedule. In the notification, the Committee was asked to respond via e-mail and either agree or disagree to shortlist Bentley Architects + Engineers, Inc. The Committee members unanimously agreed to shortlist Bentley Architects + Engineers, Inc. The responses are attached.

In accordance with the Procurement Procedures, if only one response is received and the Evaluation Committee determines that the consultant is technically qualified, no technical proposal will be required.

Your acceptance or rejection of the Committee's recommendation is requested.

Accept Committee Recommendation X Reject Committee Recommendation

Laura Kelley Laura Kelley, Executive Director

If rejected, reason(s) for rejection:

Attachment

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



#### **MEMORANDUM**

TO:	CFX Board Members
FROM:	Aneth Williams Will Director of Procurement
DATE:	January 12, 2022
SUBJECT:	Approval of Contract Award to The New Florida Industrial Electric, Inc. for SR 528 and SR 520 Interchange Lighting Project Project No. 528-163, Contract No. 001867

An Invitation to Bid for the above referenced project was advertised on November 28, 2021. Four (4) responses were received by the January 11, 2022 deadline.

Bid results were as follows:

<u>Bidder</u>	<u>Bid Amount</u>
1. The New Florida Industrial Electric, Inc.	\$2,954,003.18
2. United Signs & Signals, Inc.	\$2,963,034.00
3. Traffic Control Devices, LLC	\$3,079,000.00
4. Highway Safety Devices, LLC	\$3,374,410.10

The engineer's estimate for this project is \$2,380,527.93. Included in the Five-Year Work Plan is \$2,432,000.00.

The work to be performed includes providing all labor, materials, equipment, and incidentals necessary to upgrade the interchange and roadway lighting at SR 528 and SR 520.

Board award of the contract to The New Florida Industrial Electric, Inc. in the amount of \$2,954,003.18 is requested.

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

Reviewed by:

Will Hawthorne, PE Director of Engineering

Glenn Pressimone, PE

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

WWW.CFXWAY.COM

# CONTRACT



## AND

## THE NEW FLORIDA INDUSTRIAL ELECTRIC, INC.

## SR 528 AND SR 520 INTERCHANGE LIGHTING PROJECT

## **PROJECT NO. 528-163, CONTRACT NO. 001867**

## CONTRACT DATE: FEBRUARY 10, 2022 CONTRACT AMOUNT: \$2,954,003.18

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

## **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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

FOR

#### SR 528 AND SR 520 INTERCHANGE LIGHTING PROJECT

#### PROJECT NO. 528-163, CONTRACT NO. 001867

FEBRUARY 2022

#### TABLE OF CONTENTS

Section	Title	Page
С	CONTRACT	C-1 to C-2
	Memorandum of Agreement	1 to 5
GS	GENERAL SPECIFICATIONS	1 – 130
	Attachment A	ATT-1 to ATT-9
	(See General Specifications Table of Contents for listing of indiv specifications sections.)	idual
TS	TECHNICAL SPECIFICATIONS	TS-1 to TS-9
	(See Technical Specifications Table of Contents for listing specifications sections.)	g of individual
SP	SPECIAL PROVISIONS	SP-1 to SP-11
	(See Special Provisions Table of Contents for listing of each speci	al provision.)
	Addendum No. 1	
Р	PROPOSAL	P-1 to P-11
VR	VEHICLE REGISTRATION FORM	VR-1 to VR-2
РСВ	PUBLIC CONSTRUCTION BOND	PCB-1 to PCB-4

Plans

#### CONTRACT

This Contract No. 001867 (the "Contract"), made this 10<sup>th</sup> day of February 2022, between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, hereinafter called CFX and <u>The New</u> <u>Florida Industrial Electric, Inc.</u>, of <u>104 Commerce Street, Lake Mary, Florida 32746</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. 528-163, SR 528 and SR 520 Interchange Lighting Project, as detailed in the Contract Documents and any addenda or modifications thereto. Contract time for this project shall be 180 calendar days. The Contract Amount is \$2,954,003.18. This Contract was awarded by the Governing Board of CFX at its meeting on February 10, 2022.

The Contract Documents consist of:

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

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

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

By:		
	Director of Procurement	
А	neth Williams	
	Print Name	
JATE		
THE NEW FLORIDA	INDUSTRIAL ELECTRIC, I	NC.
Bv:		
·	Signature	
-	Print Name	
	Title	
	The	
ATTEST:		(Seal)
DATE		
Approved as to form a	and execution, only.	
General (	Counsel for CFX	

Print Name

Section Name		
Section 1 - Abbr	eviations and Definitions	1
	eneral	1
	bbreviations	1
1.3 D	pefinitions	2
Section 2 - Scop	e of Work	11
2.1 Ir	ntent of Contract	11
2.2 W	Vork Not Covered by the General Specifications	11
2.3 A	lteration of Plans	11
2.	3.1 General	
	3.2 Increase, Decrease or Alteration in the Work	
	3.3 Connections to Existing Pavements, Drives, and Walks	
	3.4 Differing Site Conditions	
	3.5 Changes Affecting Utilities	
	3.6 Cost Savings Initiative Proposal	
	laims by Contractor	24
	4.1 General	
	4.2 Notice of Claim	
	4.3 Content of Written Claim	
	4.4 Action on Claim	
	4.5 Compensation for Extra Work or Delay	
	4.6 Mandatory Claim Records	
	<ul><li>4.7 Claims for Acceleration</li><li>4.8 Certificate of Claim</li></ul>	
	4.8 Certificate of Claim 4.9 Non-Recoverable Items	
	4.10 Exclusive Remedies	
	4.11 Settlement Discussions	
	4.12 Personal Liability of Public Officials	
	4.13 Auditing of Claims	
	Inforeseeable Work	31
	ight To and Use of Materials Found at the Site of the Work	31
	6.1 Ownership and Disposal of Existing Materials	51
	6.2 Ornamental Trees and Shrubs	
	estoration of Right of Way	32

Section Nam Section 3 - C	-	fWorld	<u>Page No.</u> 34
	0111101 0	I WOIK	54
3.1	Plans	and Working Drawings	34
	3.1.1	Plans and Contract Documents	
	3.1.2	CFX Plans	
	3.1.3	Alterations in the Plans	
	3.1.4	Shop Drawings	
3.2	Coord	ination of Plans and Specifications	37
3.3	Confo	rmity of Work with Plans	38
	3.3.1	Record Drawings	
3.4	Pre-A	ward Meeting	39
3.5	Orders	s and Instructions	40
	3.5.1	Observation of the Work	
	3.5.2	Examination of the Work	
	3.5.3	Communications	
3.6	Engine	eering and Layout	42
	3.6.1	Control Points Furnished by CFX	
	3.6.2	Furnishing of Stake Material	
	3.6.3	Layout of Work	
	3.6.4	Specific Staking Requirements	
	3.6.5	Personnel, Equipment, and Record Requirements	
	3.6.6	Global Navigation Satellite Systems (GNSS) Work Plan	
	3.6.7	Payment	
3.7	Contra	actor's Supervision	45
	3.7.1	Prosecution of Work	
		Contractor's Superintendent	
		Supervision for Emergencies	
	3.7.4	Worksite Traffic Supervisor	
3.8		al Inspection Requirements	47
	3.8.1	Cooperation by Contractor	
	3.8.2	Failure of CFX to Reject Work During Construction	
	3.8.3	Failure to Remove and Renew Defective Materials and Work	
3.9		Inspection and Acceptance	48
	3.9.1	Maintenance Until Final Acceptance	
	3.9.2	Inspection for Substantial Completion	
	3.9.3	Final Inspection	
	3.9.4	Final Acceptance	
• • • •	3.9.5	Recovery Rights Subsequent to Final Payment	10
3.10	Audit	and Examination of Contract Records and Bid Records	49

Section Nam	e	Page No.
3.11	Escrow of Bid Records	51
3.12	Prevailing Party Attorney's Fees	52
Section 4 - C	Control of Materials	54
4.1	Acceptance Criteria	54
	4.1.1 General	
	4.1.2 Sampling and Testing	
	4.1.3 Certification	
	4.1.4 Warranty and Guaranty	
4.2	Designation of a Specific Product as a Criterion ("Or Equal" Clause)	55
4.3	Source of Supply and Quality Requirements	55
	4.3.1 Only Approved Materials to be Used	
	4.3.2 Notification of Placing Order	
	4.3.3 Approval of Source of Supply	
4.4	Inspection and Tests at Source of Supply	56
	4.4.1 General	
	4.4.2 Cooperation by Contractor	
	4.4.3 Retest of Materials	
4.5	Storage of Materials and Samples	57
	4.5.1 Method of Storage	
	4.5.2 Use of Right of Way for Storage	
	4.5.3 Responsibility for Stored Materials	
	4.5.4 Storage Facilities for Samples	
4.6	Defective Materials	57
Section 5 - L	egal Requirements and Responsibility to the Public	59
5.1	Laws to be Observed	59
	5.1.1 General	
	5.1.2 Plant Quarantine Regulations	
	5.1.3 Introduction or Release of Prohibited Aquatic Plants, Plant Pest Noxious Weeds	ts or
	5.1.4 Compliance with Federal Endangered Species Act	
	5.1.5 Occupational Safety and Health Requirements	
	5.1.6 Discovery of Unmarked Human Burial Site	
	5.1.7 Insecticides and Herbicides	
5.2	Permits and Licenses	61
5.3	Patented Devices, Materials and Processes	61

Section Name		Page No.
5.4	Right of Way Furnished by CFX	62
5.5	Sanitary Provisions	62
5.6	Control of the Contractor's Equipment	62
	5.6.1 Traffic Interference	
	5.6.2 Overloaded Equipment	
	5.6.3 Crossings	
	5.6.4 Protection from Damage by Tractor-Type Equipment	
	5.6.5 Contractor's Equipment on Bridge Structures	
	5.6.6 Posting of the Legal Gross Vehicular Weight	
5.7	Structures Over Navigable Waters	64
	5.7.1 Compliance with Jurisdictional Regulations	
5.8	Use of Explosives	64
5.9	Preservation of Property	64
	5.9.1 General	
	5.9.2 Failure to Restore Damaged Property	
	5.9.3 Contractor's Use of Streets and Roads	
	5.9.4 Traffic Signs, Signal Equipment, Highway Lighting and Guardra	il
	5.9.5 Operations Within Railroad Right of Way	
	5.9.6 Utilities	
5.10	Responsibility for Damages, Claims, etc.	69
	5.10.1 Contractor to Provide Defense Against Claims and Suits	
	5.10.2 Guaranty of Payment for Claims	
5.11	Insurance	71
	5.11.1 Schedule of Required Limits for Workers' Compensation,	
	General Liability and Automobile Liability	
	5.11.2 Workers' Compensation and Employer's Liability Insurance	
	5.11.3 Comprehensive General Liability Insurance	
	5.11.4 Comprehensive Automobile Liability Insurance	
	5.11.5 Umbrella/Excess Liability Insurance	
	5.11.6 Builder's Risk	
	5.11.7 Railroad Insurance	
	5.11.8 Pollution Legal Liability	
	5.11.9 Professional Liability	
5.12	Contract Bond (Public Construction Bond) Required	77
	5.12.1 General Requirements of the Bond	
	5.12.2 Continued Acceptability of Surety	
5.13	Contractor's Responsibility for Work	77
5.14	Opening Section of Highway to Traffic	78
5.15	Scales for Weighing Materials	78

Section	n Name			<u>Page No.</u>
		5.15.1	Applicable Regulations	
		5.15.2	Base for Scales	
		5.15.3	Protection and Maintenance	
	5.16	Source	e of Forest Products	78
	5.17	Regula	ations of Air Pollution	78
		5.17.1	General	
		5.17.2	Dust Control	
		5.17.3	Asphalt Material	
			Asphalt Plants	
	5.18	Dredg	ing and Filling	79
	5.19	0	n Control	79
	5.20	Contra	ctor's Motor Vehicle Registration	79
	5.21		al Revenue Service Form W-9	79
	5.22	Tolls a	and Access	80
	5.23	Reque	sts for References or Performance Evaluations	80
	5.24	1	norized Aliens	80
		Public	Records	81
	5.26		tor General	82
	5.27	-	cted Vendor List	82
	5.28		minatory Vendor List	82
	5.29	Severa	-	82
	5.30		anies Pursuant to Florida Statute Sections 287.135 and 215.473	83
Section	n 6 - Pro	osecutio	on and Progress of the Work	84
	6.1	Sublet	ting or Assigning of Contract	84
	6.2		Performed by Equipment Rental Agreement	86
	6.3		ution of Work	86
			Sufficient Labor, Materials and Equipment	
			Impacts by Adjacent Projects	
		6.3.3	Submission of Preliminary, Baseline, Updated Baseline, and Two Look-Ahead Schedules	o-Week
		6.3.4	Beginning Work	
			Provisions for Convenience of the Public	
		6.3.6	Pre-Construction Conference	
	6.4	Limita	tions of Operations	87
			Night Work	
			Sequence of Operations	
			Interference with Traffic	
		6.4.4	Coordination with Other Contractors	

Section Name			<u>Page No.</u>
	6.4.5	Drainage	-
	6.4.6	Fire Hydrants	
	6.4.7	Protection of Structures	
	6.4.8	Fencing	
	6.4.9	Hazardous or Toxic Waste	
	6.4.10	Milling	
6.5		ications of Contractor's Personnel	91
6.6	~	orary Suspension of Contractor's Operations	91
	-	CFX to Suspend Contractor's Operations	
	6.6.2	Prolonged Suspensions	
		Permission to Suspend Operations	
	6.6.4	Suspension of Contractor's Operations – Holidays	
6.7	Contra	ct Time	92
	6.7.1	General	
	6.7.2	Date of Beginning of Contract Time	
	6.7.3	Adjusting Contract Time	
6.8		e of Contractor to Maintain Satisfactory Progress	94
		General	
6.9	Defaul	t and Termination of Contract	95
	6.9.1	Determination of Default	
	6.9.2	Public Interest Termination of Contract	
	6.9.3	Completion of Work by CFX	
6.10		ated Damages for Failure to Complete the Work	98
	6.10.1	Liquidated Damages for Failure to Complete the Work	
		Determination of Number of Days of Default	
		Conditions Under Which Liquidated Damages are Imposed	
	6.10.4	Right of Collection	
	6.10.5	Allowing the Contractor to Finish Work	
	6.10.6	Liability for Liquidated Damages	
6.11	Releas	e of Contractor's Responsibility	98
6.12	Recove	ery of Damages Suffered by Third Parties	98
6.13	Expres	ss Warranty	99
Section 7 - Me	easurem	nent and Payment	100
7.1	Measu	rement of Quantities	100
	7.1.1	Measurement Standards	
	7.1.2	Method of Measurements	
	7.1.3	Determination of Pay Areas	
	7.1.4	Construction Outside Authorized Limits	

Section Name			Page No.
	7.1.5	Truck Requirements	-
	7.1.6	Ladders and Instrument Stands for Bridge Construction	
7.2	Scope of	of Payments	101
	7.2.1	Items Included in Payment	
	7.2.2	Non-Duplication of Payment	
7.3	Compe	nsation for Altered Quantities	101
	7.3.1	General	
	7.3.2	Payment Based on Plan Quantity	
	7.3.3	Lump Sum Quantities	
	7.3.4	Deviation from Plan Dimensions	
7.4	Force A	Account Work	104
	7.4.1	Method of Payment	
	7.4.2	Records	
	7.4.3	Preliminary Order-of-Magnitude Estimate	
7.5	Deleted	ł Work	107
7.6	Partial	Payments	107
	7.6.1	General	
	7.6.2	Unsatisfactory Payment Record	
		Withholding Payment for Defective Work	
	7.6.4	Partial Payments for Delivery of Certain Materials	
	7.6.5	Certification of Payment to Subcontractors	
		Reduction of Payment for Unsatisfactory Services or Products	
7.7	Record of Construction Materials		110
		General	
		Non-Commercial Materials	
7.8	-	ed Amounts Due Contractor	111
7.9	-	ance and Final Payment	111
7.10	Offsetti	ing Payments	113
Section 8 – Di	sadvanta	aged/Minority/Women Business Enterprise (D/M/WBE)	114
Pa	rticipati	on	
8.1	Genera	1	114
8.2	Disadv	antaged/Minority and Women Owned Businesses – Participation	
	Objecti	ves	115
	8.2.1	General	
	8.2.2	Definitions	
	8.2.3	Specific Requirements	
	8.2.4	Qualified Participation	
	8.2.5	Records and Reports	

#### GENERAL SPECIFICATIONS

Section Name	e	Page No.
8.3	Subletting of Contracts - Participation Objectives	120
Section 9 - B	inding Arbitration	121
Section 10 –	Disputes Resolution	123
10.1	<ul> <li>Disputes Resolution</li> <li>10.1.1 Disputes Review Board</li> <li>10.1.2 Continuance of Work During Dispute</li> <li>10.1.3 Disputes Review Board Membership</li> <li>10.1.4 Board Operations</li> <li>10.1.5 Procedure for Disputes Resolution</li> <li>10.1.6 Conduct of Disputes Hearings</li> <li>10.1.7 Compensation</li> <li>10.1.8 Three Party Agreement</li> </ul>	122

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 multi-span box culvert is considered a bridge when the length between the extreme ends of the openings exceeds 20 feet.
- 1.3.7 **Calendar Day** Every day shown on the calendar, ending and beginning at midnight.
- 1.3.8 **CFX** The Central Florida Expressway Authority. To avoid unnecessary repetition of expressions, whenever in the General Specifications, Technical Specifications, or Special Provisions, the term "CFX" is used, it is understood that "or designated representative" is a part of the term unless specifically indicated otherwise. Such designated representative may be the "Engineer", the "CEI", the "Resident Engineer" or other individual or entity identified by CFX and defined herein.
- 1.3.9 **Construction Engineering & Inspection (CEI) Consultant** The firm employed by CFX to observe the progress and quality of the Work being performed by the Contractor.
- 1.3.10 **Consultant** The Professional Engineer or engineering firm, registered in the State of Florida, under contract to CFX to perform professional services for CFX. The Consultant may be the Engineer of Record or may provide services through and be subcontracted to the Engineer of Record.
- 1.3.11 **Contract** The written agreement between CFX and the Contractor setting forth the obligations of the parties thereto including but not limited to, the performance of the Work, the furnishing of labor and materials, and the basis of payment.
- 1.3.12 **Contract Bond** The security furnished by the Contractor and the surety as a guaranty that the Contractor shall fulfill the terms of the Contract and pay all legal debts pertaining to the construction of the project.
- 1.3.13 **Contract Claim (Claim)** A written demand submitted to CFX by the Contractor in compliance with Article 2.4 of these General Specifications seeking additional monetary compensation, time and/or other adjustments to the Contract, the entitlement or impact of which is disputed by CFX.
- 1.3.14 **Contract Documents** The Contract, addenda (which pertain to the Contract Documents), the Memorandum of Agreement, Contractor's Bid (including documentation accompanying the Bid and any post-bid documentation submitted prior to the Notice of Award), the Notice to Proceed, the Public Construction Bond, these General Specifications, the Technical Specifications, the Standard Specifications, the Contractor's certification required pursuant to Article 3.4 of these General Specifications, the Special Provisions, the Plans, any supplemental

agreements required to complete the construction of the Project and elements incorporated by reference including, but not necessarily limited to, the FDOT Standard Plans (edition per plans).

- 1.3.15 **Contract Price** The money payable by CFX to the Contractor for completion of the Work in accordance with the Contract Documents.
- 1.3.16 **Contract Time** The number of calendar days allowed for completion of the Work including authorized time extensions.
- 1.3.17 **Contractor** The person, firm, or corporation with whom CFX has entered into the Contract.
- 1.3.18 **Contractor's Engineer of Record** A Professional Engineer registered in the State of Florida, other than the Engineer of Record or his subcontracted consultant, who undertakes the design and drawing of components of the permanent structure as part of a redesign or Cost Savings Initiative Proposal, or for repair designs and details of the permanent work. The Contractor's Engineer of Record may also serve as the Specialty Engineer.

The Contractor's Engineer of Record must be an employee of a prequalified firm. The firm shall be pre-qualified in accordance with the Rules of the Department of Transportation, Chapter 14-75. Any Corporation or Partnership offering engineering services must hold a Certificate of Authorization from the Florida Department of Business and Professional Regulation.

As an alternate to being an employee of a pre-qualified firm, the Contractor's Engineer of Record may be a Department-approved Specialty Engineer. For items of the permanent work declared by to be "major" or "structural", the work performed by a Department-approved Specialty Engineer must be checked by another Department-approved Specialty Engineer. An individual Engineer may become a Department-approved Specialty Engineer if the individual meets the Professional Engineer experience requirements set forth within the individual work groups in Chapter 14-75, Rules of the Department of Transportation, Florida Administrative Code. Department-approved Specialty Engineers are listed on the State Construction Website. Department-approved Specialty Engineers will not be authorized to perform redesigns or Cost Savings Initiative Proposal designs of items fully detailed in the Plans.

- 1.3.19 **Controlling Work Items** The activity or work item on the critical path having the least amount of total float. The controlling item of work will also be referred to as a Critical Activity.
- 1.3.20 **Culverts** Any structure not classified as a bridge, which provides an opening under the roadway.

- 1.3.21 **Delay** With the exception of the items listed in Subarticle 6.7.3.1 of these General Specifications, any unanticipated event, action, force or factor which extends the Contractor's time of performance of any critical path activity under the Contract. The term delay is intended to cover all such events, actions, forces or factors, whether styled "delay", "disruption", "interference", "impedance", "hindrance" or otherwise, which are beyond the control of and not caused by the Contractor or Contractor's subcontractors, materialmen, suppliers, or other agents. This term does not include Extra Work.
- 1.3.22 **Director of Construction** Director of Construction, Central Florida Expressway Authority, acting directly or through an authorized representative.
- 1.3.23 **Engineer** The term as may be used in various documents is understood to mean CFX or designated representative.
- 1.3.24 **Engineer of Record** The professional engineer or engineering firm, contracted by CFX and registered in the State of Florida, who develops criteria and concept for the Project, performs the analysis and is responsible for the preparation of the plans and specifications.
- 1.3.25 **Equipment** The machinery and equipment, together with the necessary supplies for upkeep and maintenance thereof, the tools and all other apparatus necessary for the construction and acceptable completion of the Work.
- 1.3.26 **Executive Director** Executive Director, Central Florida Expressway Authority, acting directly or through an assistant or other representative authorized by him; the chief officer of the Central Florida Expressway Authority
- 1.3.27 **Extra Work** Any Work which is required by CFX to be performed and which is not otherwise covered or included in the project by the existing Contract Documents, whether it be in the nature of additional work, altered work, deleted work, work due to differing site conditions or otherwise. This term does not include a "delay."
- 1.3.28 **Federal, State, and Local Rules and Regulations -** The term "Federal, State and Local Rules and Regulations" includes: any and all Federal, State, and Local laws, bylaws, ordinances, rules, regulations, orders, permits, or decrees including environmental laws, rules, regulations, and permits.
- 1.3.29 **Force Account** Work authorized by CFX and performed in addition to that set forth in the original Contract and is paid on an actual cost basis plus a fixed percent markup and stipulated rental rates for equipment. All costs paid under Force Account will be fully documented and signed by both parties not later than the following work day.

- 1.3.30 **Highway, Street, or Road** A general term denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way.
- 1.3.31 **Holidays** Martin Luther King, Jr. Day; Memorial Day; the Saturday and Sunday immediately preceding Memorial Day; Independence Day; Independence Day (Observed); Labor Day; the Friday, Saturday, and Sunday immediately preceding Labor Day; Veterans Day (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:

1 able 2.3.2.1
----------------

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

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

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

(1) A listing of on-site clerical staff, supervisory personnel and their pro-rated time assigned to the Contract,

(2) Actual Rate for items listed in Table 2.3.2.1,

(3) Existence of employee benefit plan for Holiday, Sick and Vacation benefits and a Retirement Plan, and,

(4) Payment of Per Diem is a company practice for instances when compensation for Per Diem is requested.

Such certification must be made by an officer or director of the Contractor with authority to bind the Contractor. Timely certification is a condition precedent to any right of the Contractor to recover compensations for such costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such costs. Any subsequent changes shall be certified to the CEI as part of the cost proposal or seven calendar days in advance of performing such extra work. (b) Materials and Supplies: For materials accepted by the CEI and used on the project, the Contractor will receive the actual cost of such materials incorporated into the work, including Contractor paid transportation charges (exclusive of equipment as hereinafter set forth). For supplies reasonably needed for performing the work, the Contractor will receive the actual cost of such supplies.

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

Allowable Equipment Rates will be established as set out below:

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

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

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

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

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

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

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

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

(i) Bond: The Contractor will receive compensation for any premium for acquiring a bond for such additional or unforeseen work at the original contract bond rate paid by the Contractor. Should the Contractor have previously elected to provide subguard coverage in lieu of requiring a bond from a sub on the original work, the Contractor shall be entitled to reimbursement for the subguard premium for the added work upon proof of said premium.

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

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

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

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. 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, both. 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 rightof-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.

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 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'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 cost of uncovering and/or removal to the unacceptable Work. If the exposed or examined Work is determined to be acceptable, the cost of uncovering and replacement of the covering or making good of the parts removed is determined to be acceptable, the cost of uncovering and/or removal and replacement of the covering or making good of the parts removed is determined to be acceptable.

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 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 offproject activity in conjunction with the Project (e.g., borrow pits, concrete or asphalt plant sites, material or Equipment storage sites), the Contractor shall certify to CFX that the Contractor has made, through the use of a qualified environmental scientist, such investigations as may be necessary to comply with the Federal Endangered Species Act. The Contractor shall immediately notify CFX if the Contractor's investigation reveals the need for a biological assessment to determine what measures, if any, are necessary to mitigate the impact on endangered species. The cost for any required biological assessment or subsequent measures required to mitigate the impact on endangered species shall be solely at the Contractor's expense.

No Work shall be performed on site preparation for any off-project activity until CFX receives the Contractor's certification.

5.1.5 Occupational Safety and Health Requirements: The Contractor shall take precautions necessary for the protection of life, health and general occupational welfare of all persons (including employees of both the Contractor, CFX and all of its officers, agents and consultants) until the Work has been completed and accepted by CFX.

The Contractor and all Subcontractors shall not allow any person employed in performance of the Work to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to health or safety, as determined under the safety and health standards, set forth in Title 29, Code of Federal Regulations, Part 1518 published in the Federal Register on April 17, 1971, as promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act, (83 Stat. 96) including any subsequent revisions and updates.

- 5.1.6 Discovery of Unmarked Human Burial Site: The Contractor shall notify the CEI within two hours of the Contractor's or subcontractor's discovery of an unmarked human burial site. All Contractor or subcontractor activity that may disturb the site shall cease immediately upon discovery of the site. The Contractor shall not resume activity at the burial site until written authorization is received from the CEI.
- 5.1.7 Insecticides and Herbicides: Contractor shall contact the Local County Extension Office for a list of approved Insecticides or Herbicides. Contractor shall: adhere to all labeling instructions; exercise extreme caution to prevent damage to vegetation adjacent to the treated area; and replace any damage as the result of these Materials being applied outside the designated treatment area at no expense to CFX.

## 5.2 Permits and Licenses

- 5.2.1 General: Except as specifically provided for elsewhere in the Specifications, the Contractor shall secure all permits and licenses and give all notices necessary and incidental to the due and lawful prosecution of the Work. The Contractor shall pay all charges and fees for any required licenses and permits.
- 5.2.2 Whenever the Work under or incidental to the Project requires structures and/or dredge/fill/construction activities within the Project limits in waters of the State, CFX will obtain the necessary permits. Any modifications or revisions to an original permit will also be obtained by CFX provided that it is shown that such modifications or revisions are required to complete the construction operations specifically called for in the Plans or Specifications and within the right-of-way limits.

The Contractor shall be responsible to obtain any permits that may be required for Work performed by the Contractor outside the right-of-way or easements for the Project.

In performing the Work, when under the jurisdiction of any environmental regulatory agency, the Contractor shall comply with all regulations issued by such agencies and with all general, special and particular conditions relating to construction activities of any kind and all permits issued to CFX as though such conditions were issued to the Contractor. The Contractor will be responsible for posting any permit placards in a protected location at the worksite.

In case of any discrepancy between any permit condition and a requirement of the Plans or Specifications, the permit condition shall prevail.

If the permit conditions require Work or the furnishing of Materials not specifically provided for in the basis of payment clause for a pay item, such Work or furnishing of Materials will be considered unforeseeable Work by CFX and the Contractor will be compensated in accordance with Article 2.5 of these General Specifications. Special sequencing or scheduling of operations that may be required by permit conditions will not be considered unforeseeable Work by CFX and no additional compensation will be made to the Contractor.

## 5.3 Patented Devices, Materials and Processes

Payments to the Contractor are understood to include all royalties and costs arising from patents, trademarks and copyrights in any way involved with the Work. Whenever the Contractor is required or desires to use any design, device, material or process covered by letters of patent, trademark, trade secret or copyright, CFX's and the Contractor's right for

such use shall be provided by suitable legal agreement with the patentee or owner of the copyright. A copy of such agreement shall be submitted to CFX; however, whether or not such agreement is made or filed, the Contractor and its surety, in all cases, shall indemnify and hold harmless CFX and all of its officers, agents, consultants and employees, from any and all claims for infringement by reason of the use of any such patented design, device, material or process, on the Work and shall indemnify CFX and all of its officers, agents, consultants and employees for any costs, expenses and damages which CFX may be obligated to pay by reason of any such infringement, at any time during the Work and for a period of three years after completion and acceptance of the Project by CFX.

5.4 Right-of-Way Furnished by CFX

Except as may be otherwise stipulated in the Specifications or as may be shown on the Plans, all right-of-way necessary for completion of the Project will be furnished by CFX without cost to the Contractor. If borrow material areas furnished by CFX contain limerock, such material shall not be removed from the pit without specific written approval from CFX.

5.5 Sanitary Provisions

The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of Contractor's employees as are necessary to comply with the requirements and regulations of the State and local boards of health. The Contractor shall not create any public nuisance.

- 5.6 Control of the Contractor's Equipment
  - 5.6.1 Traffic Interference: Contractor shall not permit Equipment to unreasonably interfere with traffic while the Equipment is on or traversing a road or street.
  - 5.6.2 Overloaded Equipment: Any hauling unit or Equipment loaded in excess of the maximum weights set out in the Florida Uniform Traffic Control Law (or lower weights that may be legally established for any section of road or bridge by the FDOT or local authorities) shall not be operated on any road or street except as provided in subarticle 5.6.3 below for crossings or as provided by a special permit issued by the governmental unit having jurisdiction over a particular road or bridge. This restriction applies to all roads and bridges inside and outside the Project limits as long as these roads and bridges are open for public use. Roads and bridges, which are to be demolished, may be overloaded after they are permanently closed to the public. All liability for loss or damages resulting from Equipment operated on a structure permanently closed to the public shall be the responsibility of the Contractor.

- 5.6.3 Crossings: Where it is necessary to cross an existing road, including specifically the existing travel lanes of a divided highway within the limits of the Project, the Contractor shall obtain the necessary permits from the governmental unit having jurisdiction. The Contractor shall comply with all permit conditions at no additional cost to CFX. The Contractor will be required to provide flagging and watchman service or approved signal devices, for the protection of traffic at all such crossings, in accordance with an approved written plan for that activity.
- 5.6.4 Protection from Damage by Tractor-Type Equipment: Positive measures shall be taken by the Contractor to assure that tractor-type Equipment does not cause damage to roads. If any such damage occurs, the Contractor shall immediately repair the damage to the satisfaction of the governmental unit having jurisdiction over the road and at no cost to CFX.
- 5.6.5 Contractor's Equipment on Bridge Structures: The Contractor, through its Specialty Engineer, shall analyze the effect of imposed loads on bridge structures, within the limits of the Project, resulting from the following operations:
  - 1) Overloaded Equipment as defined in subarticle 5.6.2 above:
    - a) Operating on or crossing over completed bridge structures.
    - b) Operating on or crossing over partially completed bridge structures.
  - 2) Equipment within legal load limits:
    - a) Operating on or crossing over partially completed bridge structures.
  - 3) Construction cranes:
    - a) Operating on completed bridge structures.
    - b) Operating on partially completed bridge structures.

Any pipe culvert or box culvert qualifying as a bridge, as defined under subarticle 1.3.3 of these General Specifications is excluded from the above requirements.

A completed bridge structure is a structure in which all elemental components comprising the load carrying assembly have been completed, assembled and connected in their final position. The components to be considered shall also include any related mediums transferring load to any bridge structure.

The Contractor shall determine the effect the Equipment loads have on the bridge structure and the procedures by which the loaded Equipment can be used without exceeding the load capacity for which the structure was designed.

The Contractor shall submit to the CEI for approval eight (8) copies of design calculations, layout drawings and erection drawings showing how the Contractor's Equipment will be used so that the bridge structure will not be overstressed. One (1) of the eight (8) copies of the drawings and the cover sheet of one (1) of the eight (8) copies of the calculations shall be signed and sealed by the Contractor's Specialty Engineer as the CFX record set.

- 5.6.6 Posting of the Legal Gross Vehicular Weight: The maximum legal gross weight, as set out in the Florida Uniform Traffic Code, shall be displayed in a permanent manner on each side of any dump truck or any dump type tractor-trailer unit hauling embankment material, construction aggregates, road base material or hot bituminous mixture to the Project over any public road. The weight shall be displayed in a location clearly visible to the scale operator, in numbers that contrast in color with the background and are readily visible and readable from a distance of 50 feet.
- 5.7 Structures Over Navigable Waters
  - 5.7.1 Compliance with Jurisdictional Regulations: Where structures are erected in, adjacent to or over navigable waters, the Contractor shall observe all regulations and instructions of jurisdictions having control over such waters. The Contractor shall not obstruct navigation channels without permission from the proper authority and shall provide and maintain navigation lights and signals in accordance with jurisdictional requirements.
- 5.8 Use of Explosives

The use of explosives will not be allowed.

- 5.9 Preservation of Property
  - 5.9.1 General: The Contractor shall preserve from damage all property along the line of Work or which is in the vicinity of or is any way affected by the Work, the removal or destruction of which is not called for by the Plans. This requirement shall apply to public and private property, public and private utilities (except as modified by subarticle 5.9.6 below), trees, shrubs, crops, signs, monuments, fences, guardrail, pipe, underground structures, public highways (except natural wear and tear of highway resulting from legitimate use thereof by the Contractor) and the like. Property damaged due to the activities of the Contractor shall be immediately restored, at Contractor's expense, to a condition similar or equal to that existing before such damage or injury was done by the Contractor.

The Contractor shall protect existing bridges from damage caused by Contractor's operations during the entire construction period. The Contractor will not be required to provide routine repairs or maintenance for such structures but will be required, at Contractor's expense, to make immediate repairs of any damage caused by the Contractor's operations.

The Contractor shall protect all geodetic monuments, horizontal or vertical, located within the limits of construction.

- 5.9.2 Failure to Restore Damaged Property: If the Contractor fails to restore such property, bridge or road CFX may, at its sole option and with 48 hours notice to the Contractor, proceed to repair, rebuild or otherwise restore the damaged property, bridge or road at Contractor's cost or expense. The cost of such repairs will be deducted by CFX from any monies due or which may become due the Contractor.
- 5.9.3 Contractor's Use of Streets and Roads

5.9.3.1 On Systems Other than the CFX System: Where the Contractor hauls material or Equipment to the Project over roads and bridges on the state park road system, state highway system, county road system or city street system and such hauling causes damage, the Contractor, at Contractor's cost and expense, shall immediately repair such roads or bridges to as good a condition as existed before the hauling began.

5.9.3.2 On the CFX System: The Contractor shall also be responsible for repairing damage caused by hauling Materials to the Project along roads and bridges outside the limits of the Project which are on the CFX system (roads

under the jurisdiction of CFX) or are specifically designated in the Plans as haul roads from CFX furnished Materials pits.

5.9.3.3 Within the Limits of the Project: The Contractor shall not operate Equipment or hauling units of such weight as to cause damage to previously constructed elements of the Project including but not necessarily limited to, bridges, drainage structures, base course and pavement. Equipment or hauling units loaded in excess of the maximum weights set out in subarticle 5.6.2 above shall not be operated on existing pavements that are to remain in place (including pavement being resurfaced), cement-treated subgrades and bases, concrete pavement, any course of asphalt pavement and bridges. Exceptions to these weight restrictions may be allowed for movement of necessary Equipment to and from its work site, for hauling of offsite fabricated components to be incorporated into the Project and for crossings as detailed in subarticle 5.6.3 above.

5.9.3.4 Cleaning and Maintenance of Streets and Roads: Whenever the Contractor utilizes any streets or roads, whether on the CFX system or otherwise, for cyclical material hauling operations, for example embankment, excavation, etc., the condition of all affected streets or roads will be assessed by the Contractor through an initial video survey with the CEI prior to hauling operations. Throughout the hauling operations or when changes to haul routes occur, the Contractor shall provide updated video surveys performed every two weeks to monitor the current street, road and/or facility conditions. The video survey will be submitted in duplicate to the CEI and narrated to identify the respective street, road or facility, with detail of specific features, condition, etc. Any deterioration, whatsoever, to the condition of the streets or roads from this initial video survey and subsequent two-week updates will be viewed as being a result of the Contractor's operations and shall be repaired to equal or better condition, at the Contractor's expense, within two weeks after notification by the CEI. The Contractor will be responsible to prevent, clean and replace areas of the travel ways and appurtenances (including but not limited to bridge decks, drainage, roadway surface, striping) utilized by the Contractor where tracking and/or spillage of materials have occurred. Cleaning and preventive measures that will not deteriorate the existing facility conditions will be utilized and may include pressure washing, sanding etc.

5.9.4 Traffic Signs, Signal Equipment, Highway Lighting, and Guardrail: Contractor shall protect all existing roadside signs, signal equipment, highway lighting and guardrail, for which permanent removal is not indicated, against damage or displacement. Whenever such signs, signal equipment, highway lighting or guardrail lie within the limits of construction, or wherever so directed by the CEI due to urgency of construction operations, take up and properly store the existing roadside signs, signal equipment, highway lighting and guardrail and subsequently reset them at their original locations or, in the case of widened pavement or roadbed, at locations designated by the CEI.

If CFX determines that damage to such existing or permanent installations of traffic signs, signal equipment, highway lighting or guardrail is caused by a third party(ies), and is not otherwise due to any fault or activities of the Contractor, CFX will, except for any damage resulting from vandalism, compensate the Contractor for the costs associated with the repairs. Contractor shall repair damage caused by vandalism at no expense to CFX.

5.9.5 Operations Within Railroad Right of Way

5.9.5.1 Notification to the Railroad Company: The Contractor shall notify the CEI and the railroad company's division engineer or superintendent a minimum of 72 hours in advance of beginning any operations within the limits of the railroad right of

way, any operations requiring movement of employees, trucks or other Equipment across the tracks of the railroad company at other than established public crossings, and any other Work which may affect railroad operations or property.

5.9.5.2 Contractor's Responsibilities: The Contractor shall comply with the requirements that the railroad company's division engineer or superintendent considers necessary to safeguard the railroad's property and operations. Any damage, delay or injury and any suits, actions or claims made because of damages or injuries resulting from the Contractor's operations within or adjacent to railroad right of way shall be the Contractor's responsibility.

5.9.5.3 Watchman or Flagging Services: When protective services are necessary during certain periods of the Project to provide safety for railroad operations, the railroad company will provide such services (watchman or flagging) and CFX will reimburse the railroad company for the cost thereof. The Contractor shall schedule Work that affects railroad operations to minimize the need for protective services by the railroad company.

## 5.9.6 Utilities

5.9.6.1 Arrangements for Protection or Adjustment: Work shall not commence at points where the Contractor's operations adjacent to utility facilities may result in expense, loss or disruption of service to the public or owners of the utilities until the Contractor has made all arrangements necessary for the protection of the utilities. The Contractor shall be solely and directly responsible to the owners and operators of such utilities for any damage, injury, expense, loss, inconvenience, or delay caused by the Contractor's operations.

CFX will make the necessary arrangements with the utilities owners for removal or adjustment of utilities where such removal or adjustment is determined by CFX to be essential to the performance of the Work. Relocations or adjustments requested by the Contractor based on the Contractor's proposed use of a particular method of construction or type of Equipment will not be considered as being essential to the Work if other commonly used methods and Equipment could be used without the necessity of relocating or adjusting the utility. CFX will determine the responsibility for any such required adjustments of utilities. Relocations or adjustments requested because of delivery to the Project of Materials furnished by the Contractor shall be the responsibility and expense of the Contractor.

Circumstance under which CFX will consider utility relocations or adjustments essential include, but are not necessarily limited to, the following:

1) Utilities lying within the vertical and horizontal construction limits plus the reasonably required working room necessary for operation of

Equipment normally used for the particular type of construction except as provide in subparagraph 4 below. In the case of overhead electrical conductors which carry more than 400 volts, a minimum of 10 feet clearance between the conductor and the nearest possible approach of any part of the Equipment will be required, except where the utility owner effects safeguards approved by the Florida Department of Labor and Employment Security.

2) Utilities lying within the horizontal limits of the Project and within 12 inches below the ground surface or the excavation surface on which the construction Equipment is to be operated or within 12 inches below the bottom of any stabilizing course called for on the Plans.

3) Utilities lying within the normal limits of excavation for underground drainage facilities or other structures (except as provided in subparagraph 4 below). Such normal limits shall extend to side slopes along the angle of repose as established by sound engineering practice, unless the Plans or Specifications require the sides of the excavation to be supported by sheeting or the Contractor elects to sheet such excavation for the Contractor's convenience.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 5.11 Insurance

Anything contained herein to the contrary notwithstanding, during the term of the Contract and for such additional time as may be further required, the Contractor shall provide, pay for and maintain in full force and effect insurance outlined in subarticles 5.11.1 through 5.11.9 below for coverage at not less than the prescribed minimum limits of liability, covering the Contractor's activities and those of any and all subcontractors (including officers, directors, employees or agents of each and their successors). All insurance shall be provided through companies authorized to do business in the State of Florida and considered acceptable by CFX.

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

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

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

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

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

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

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

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

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

Contract Amount	-	General Liability	Automobile
	Employer's Liability	(per occurrence/ aggregate)	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.

Contract Amount	Minimum Limit	Maximum Deductible
Up to \$1 million		10% of project cost or \$25,000, whichever is smaller
\$1 million and Up	\$1,000,000	\$100,000

## 5.12 Contract Bond (Public Construction Bond) Required

- 5.12.1 General Requirements of the Bond: The Contractor shall furnish to CFX and shall maintain in effect throughout the term of the Contract, an acceptable surety bond in a sum equal to the amount of the Contract. This bond shall remain in effect until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. Such bond shall be executed on the form furnished by CFX. The surety shall meet all requirements of the laws of Florida and shall be approved and at all times acceptable to CFX. The name, address and telephone number of the surety agent shall be clearly stated on the face of the Public Construction Bond.
- 5.12.2 Continued Acceptability of Surety: In the event that the surety executing the bond (although acceptable to CFX at the time of execution of the Contract) subsequently becomes insolvent or bankrupt or becomes unreliable or otherwise unsatisfactory due to any cause which becomes apparent after CFX's initial approval of the company, then CFX may require that the Contractor immediately replace the surety bond with a similar bond drawn on a surety company which is reliable and acceptable to CFX. In such event, all costs of the premium for the new bond, after deducting any amounts that might be returned to the Contractor from its payment of premium on the defaulting bond, will be borne by CFX.
- 5.13 Contractor's Responsibility for Work

Until final acceptance by CFX, the Work shall be under the charge and custody of the Contractor. The Contractor shall take every necessary precaution against injury or damage to the Work by the action of the elements or from any other cause whatsoever arising either from the execution or non-execution of the Work and shall rebuild, repair, restore and make good, without additional compensation, all injury or damage to any portion of the Work including extensive or catastrophic damages.

The Contractor is advised that the project is located within a hurricane region. The Contractor shall submit to CFX at the project Preconstruction Conference, a hurricane preparedness plan detailing the procedures to be followed by the Contractor to ensure the safety of personnel, equipment, stored materials, and the Work when a hurricane watch notice for the project area is issued by the United States Weather Service.

The Contractor will not be held responsible for damage to any landscape items caused by an officially declared hurricane that occurs after the final acceptance of the entire Work but during any remaining portion of the 90-day establishment period.

5.14 Opening Section of Highway to Traffic

When any bridge or section of roadway is, in the opinion of CFX, acceptable for travel, CFX may direct that the bridge or roadway be opened to traffic. Such opening shall not be considered, in any way, to be an acceptance of the bridge or roadway or any part thereof or as a waiver of any provision of the Contract. The Contractor shall make all repairs or renewals due to defective Work or Materials (or for any cause other than ordinary wear and tear) on such opened sections without additional compensation.

- 5.15 Scales for Weighing Materials
  - 5.15.1 Applicable Regulations: Prior to the use of any scales, the Contractor shall submit to the CEI a copy of a certificate of accuracy for the scales that is not more than 1 year old. All scales which are used for the determination of the weight of Materials upon which compensation will be made by CFX shall conform to the requirements of Chapter 531, Florida Statutes, pertaining to specifications, tolerances and regulations as administered by the Bureau of Weights and Measures of the Florida Department of Agriculture. CFX reserves the right to perform scale checks/inspections at its sole discretion.
  - 5.15.2 Base for Scales: Such scales shall be placed on a substantial horizontal base that will assure proper support, rigidity and maintenance of level of the scales.
  - 5.15.3 Protection and Maintenance: All scale parts shall be in proper condition as to level and vertical alignment and shall be fully protected against contamination by dust, dirt and other matter which might affect operation of the parts.
- 5.16 Source of Forest Products

As required by Section 255.20, Florida Statutes, all timber, timber piling or other forest products which are used in the construction of the Project shall be produced and manufactured in the State of Florida, price and quality being equal and provided such Materials produced and manufactured in Florida are available.

- 5.17 Regulations of Air Pollution
  - 5.17.1 General: All Work shall be done in accordance with all Federal, State and local laws and regulations regarding air pollution and burning.
  - 5.17.2 Dust Control: The Contractor shall ensure that excessive dust is not transported beyond the limits of construction in populated areas. Dust control for embankment or other cleared or unsurfaced areas may be by application of water or calcium

chloride, as directed by CFX. Any use of calcium chloride shall be in accordance with Section 102 of the Technical Specifications. When included in the Plans, mulch, seed, sod or temporary paving shall be installed as early as practical. Dust control for storage and handling of dusty materials may be made by wetting, covering or other means as approved by the CEI.

- 5.17.3 Asphalt Material: Any asphalt used shall be emulsified asphalt unless otherwise stated in the Plans and allowed by Chapter 17-2 of the Rules and Regulations of the Florida Department of Environmental Protection. Asphalt materials and components shall be stored and handled to minimize unnecessary release of hydrocarbon vapors.
- 5.17.4 Asphalt Plants: The operation and maintenance of asphalt plants shall be in accordance with Chapter 17-2 of the Rules and Regulations of the Florida Department of Environmental Protection. A valid permit as required under Chapter 17-2 shall be available at the plant site prior to the start of Work.

## 5.18 Dredging and Filling

If required by the Work, the Contractor shall comply with Section 370.033, Florida Statutes, regarding obtaining a certificate of registration from the Florida Department of Environmental Protection and keeping accurate records and logs of all dredge and fill activities.

5.19 Erosion Control

This Project will be constructed on properties that may be subject to environmental permits and regulation promulgated by city, county, state, federal, and regional authorities. Requirements for erosion control are included in the Technical Specifications.

5.20 Contractor's Motor Vehicle Registration

The Contractor shall provide proof to CFX that all motor vehicles operated or caused to be operated by the Contractor are registered in compliance with Chapter 320, Florida Statutes. Such proof of registration shall be submitted in the form of a notarized affidavit to CFX. No payment will be made to the Contractor until the required proof of registration is on file with CFX.

5.21 Internal Revenue Service Form W-9

The Contractor shall complete and return with the executed Contract, Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification.

## 5.22 Tolls and Access

The Contractor shall pay all tolls incurred from using CFX's Expressway System to transport personnel, equipment, or materials to and from the site of Work. Any costs incurred by the Contractor in payment of tolls shall be considered incidental and included in associated items. The term "equipment" in this context includes loaders, graders and similar self-propelled equipment, operating under their own power, passing through a toll plaza.

Contractor shall access the Project by existing expressway ramps. No access will be allowed through the right-of-way fence.

#### 5.23 Requests for References or Performance Evaluations

In the event CFX at any time receives any direct or third party inquiry or request concerning the Contractor, its employees or sub-contractors, or the performance of the Contractor, its employees or sub-contractors under this Contract, CFX, at any time and in all cases, may, but shall not be obligated to respond to any such inquiry or request, with or without notice to the Contractor, its employees, or subcontractors, as the case may be, but, in all cases, such response shall be limited to: (1) acknowledging that the Contractor has, or in the past has had, a contract with CFX; (2) the date, term and type of such contract; (3) whether a specified employee or subcontractor worked on the Contract, and if so, in what capacity; (4) whether such contract was terminated early for any reason other than the convenience of CFX; (5) whether such contract was eligible for renewal or extension; and, (6) if such contract was eligible for renewal or extension, whether in fact such contract was renewed or extended. Should the Contractor, its employees, its agents or subcontractors request that any further information be provided in response to such an inquiry or request, such additional information may be provided by CFX, in its sole discretion. Contractor for itself, its employees, its agents and sub-contractors, hereby expressly waives any and all claims of whatever kind or nature that the Contractor, its employees, its agents or sub-contractors may have, or may hereafter acquire, against CFX relating to, or arising out of CFX's response to any and all requests or inquiries concerning the Contractor, its employees or subcontractors under this Contract, or the performance of the Contractor, its employees or subcontractors under this Contract.

#### 5.24 Unauthorized Aliens

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

## 5.25 Public Records

# IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (407-690-5000, <u>publicrecords@CFXWay.com</u>, 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 keeps and maintains public records upon completion of the contract, 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 of false certification was made in error then CFX shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes and as allowed by law.

END OF SECTION 5

#### SECTION 6 - PROSECUTION AND PROGRESS OF THE WORK

#### 6.1 Subletting or Assigning of Contract

6.1.1 The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof or of Contractor's right, title or interest therein, without consent of CFX. The Contractor will be permitted to sublet a portion of the Work but shall perform, with its own organization, Work amounting to not less than 50% of the total Contract amount less the total amount for those Contract items specifically designated as "Specialty Work" below or as otherwise designated as Specialty Work by CFX. The granting or denying of consent under this provision is at CFX's sole discretion. The Certification of Sublet Work request will be deemed acceptable by CFX, for purposes of CFX's consent, unless the Engineer notifies the Contractor within 5 business days of receipt of the Certification of Sublet Work that CFX is not consenting to the requested subletting. If, at any time, a subcontractor is determined to be discriminatory, debarred or suspended by the FHWA, CFX or FDOT, the determination will be considered grounds for removal from the project.

The total Contract amount shall include the cost of Materials, manufactured component products and their transportation to the Project site. Off-site commercial production of Materials and manufactured component products purchased by the Contractor and their transportation to the Project will not be considered subcontracted Work.

If a part of a Contract item is sublet, only its proportional cost will be used in determining the percentage of subcontracted normal Work.

All subcontracts entered into by the Contractor shall be in writing and shall contain all pertinent provisions and applicable requirements of the Contract. All subcontracts shall require subcontractor to indemnify and hold harmless CFX on the same terms as contained in the General Specifications and the Contract. The Contractor shall furnish CFX with a copy of any subcontract requested by CFX. Subletting of Work shall not relieve the Contractor or surety of their respective liabilities.

The Contractor shall ensure that all Subcontractors are competent, careful and reliable. The Contractor shall submit the names and qualifications of all first and second tier subcontractors to CFX for approval prior to their beginning Work on the Project. All first and second tier subcontractors shall have the skills and experience necessary to properly perform the Work assigned and as required by the plans and specifications.

If, in the opinion of CFX, any Subcontractor employed by the Contractor is not qualified to perform the Work or is insubordinate, disorderly, disrupts or is detrimental to the progress of the Work, such first or second tier subcontractor shall be immediately removed from the Project by the Contractor upon written direction

from CFX. Such subcontractor shall not be employed again on the Project without the written permission of CFX. If the Contractor fails to immediately remove such subcontractor, CFX may, at its sole discretion, withhold payments due or which may become due, or may suspend the Work until the subcontractor is removed. The Contractor shall indemnify and hold harmless CFX, its agents, consultants, officials and employees from any and all claims, actions or suits arising from such removal, discharge or suspension of a Subcontractor based on the direction of CFX. All subcontracts shall expressly include an acknowledgment of CFX's right to remove any Subcontractor in accordance with this paragraph.

A Subcontractor shall be recognized only in the capacity of an employee or agent of the Contractor.

If the aggregate total of the dollar amount of Work performed by a subcontractor, including equipment rental agreements, equals or exceeds \$20,000, a formal subcontract agreement shall be entered into between the Contractor and the Subcontractor.

6.1.2 Specialty Work: The following Work is designated as Specialty Work:

Auxiliary Power Unit Cleaning, Coating, Injection, Grouting, Grinding, Grooving or Sealing Concrete Surfaces Deep Well Installation **Electrical Work** Fencing **Highway Lighting** Installing Pipe or Pipe Liner by Jacking and Boring Installing Structural Plate Pipe Structure Landscaping Painting Plugging Water Wells **Pressure Grouting** Pumping Equipment Roadway Signing and Pavement Marking Riprap **Removal of Buildings Rumble Strips** Sealing Wells by Injection Septic Tank and Disposal System Signalization Utility Works Vehicular Impact Attenuator Water and Sewage Treatment Systems

## 6.2 Work Performed by Equipment Rental Agreement

The limitations set forth in 6.1, regarding the amount of Work that may be subcontracted, do not apply to Work performed by Equipment rental agreements. The Contractor shall notify CFX, in writing, if the Contractor intends to perform any Work through an Equipment rental agreement. The notification shall be submitted to CFX before any rental Equipment is used on the Project. The notification shall include a list of the Equipment being rented, the Work to be performed by the Equipment and whether the rental includes an Equipment operator. Notification to CFX will not be required for Equipment being rented (without operators) from an Equipment dealer or from a firm whose principle business is renting or leasing Equipment.

## 6.3 Prosecution of Work

- 6.3.1 Sufficient Labor, Materials and Equipment: The Contractor shall provide sufficient labor, Materials and Equipment to ensure the completion of the Work no later than the Contract completion date.
- 6.3.2 Impacts by Adjacent Projects: When there is a potential impact between two or more projects due to close proximity or due to logistics in moving labor, Materials, and Equipment between projects, all authorized representatives of the parties performing the projects have a responsibility to communicate and coordinate their work so that impacts to either party are eliminated or mitigated and do not endanger, delay, or create additional work or costs to either party. The Contractor shall not be compensated for any additional costs or delays so incurred by either party.
- 6.3.3 Submission of Working Schedule: Within 21 calendar days after award of the Contract, or at the preconstruction conference, whichever is earlier, the Contractor shall submit a work progress schedule to CFX. The schedule shall show the various activities of work in sufficient detail to demonstrate that the Contractor has a reasonable and workable plan to complete the project within the Contract time allowed. The schedule shall show the order and interdependence of activities and the sequence in which the work will be accomplished as planned by the Contractor. All activities shall be described so that the work is readily identifiable and the progress on each activity can be readily measured. Each activity shall show a beginning work date, a duration, and a monetary value. Activities shall include procurement time for materials, plant and equipment, and review time for shop drawings where they are appropriate and essential to the timely completion of the project. The list of activities shall include milestones when required by the plans or specifications. If the project has more than 1 phase, each phase and its completion date shall be adequately identified and no activity shall span more than one phase.

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

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

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

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

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

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

- 6.3.6 Pre-Construction Conference: Prior to Contractor's commencement of Work on the Project, the CEI will schedule a pre-construction conference with the Contractor, utility companies and other affected parties to review the proposed Work activities and schedule of events.
- 6.4 Limitations of Operations
  - 6.4.1 Night Work: In all areas where Work is being performed during the hours of dusk or darkness, the Contractor shall furnish, place and maintain lighting facilities capable of providing light of sufficient intensity (5 foot-candles minimum) to permit good workmanship and proper inspection at all times. The lighting shall be arranged so as not to interfere with or impede traffic approaching the Work site(s) from either direction or produce undue glare to property owners and traveling public.

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

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

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

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

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

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

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

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

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

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

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

No private vehicles shall be parked within the limited access right of way. The Contractor's Worksite Traffic Supervisor shall continually and adequately review traffic control devices to ensure proper installation and working order, including monitoring of lights. Compensation for lighting for night Work shall be included in the Contract prices for the various items of the Contract. All lighting Equipment for night work shall remain the property of the Contractor.

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

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

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

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

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

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

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

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

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

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

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

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

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

6.5 Qualifications of Contractor's Personnel

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

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

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

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

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

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

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

#### 6.7 Contract Time

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

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

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

- 6.7.2 Date of Beginning of Contract Time: The date on which Contract time will begin shall be the date of notice to begin Work or as specified in the Notice to Proceed.
- 6.7.3 Adjusting Contract Time:

6.7.3.1 Contract Time Extension: CFX has established an allowable Contract duration, in terms of calendar days, sufficient to complete the Work covered by the Contract. By execution of the Contract, the Contractor agrees that the calendar days are sufficient to perform the Work and it has priced its bid considering the Contract duration. If the Contractor's Work (which Work is actually on the critical path) is impacted by one or more of the following events, CFX may (but is not obligated to) consider approving an extension of time:

- 1. War or other act of public enemies.
- 2. Riot that would endanger the well-being of Contractor's employees.
- 3. Earthquake.
- 4. Unpredictable acts of jurisdictional governmental authorities acting outside the scope of current laws and ordinances.
- 5. Hurricane (or other weather event) but only if the weather event results in the declaration of an emergency by the Governor of the State of Florida within the geographical area which includes the Work area.
- 6. Utility relocation and adjustment Work only if all the following criteria are met:
  - a. Utility work actually affected progress toward completion of Work on the critical path.
  - b. The Contractor took all reasonable measures to minimize the effect of utility work on critical path activities including cooperative scheduling of his operations with the scheduled utility work.
- 7. Temperature restrictions that prohibit placement of friction course (FC-5 only) provided all other Work is completed.
- 8. Epidemics, pandemics, quarantine restrictions, strikes (unless caused or provoked by actions of the Contractor, or its subcontractors, or its materialmen, or its suppliers or its agents), freight embargoes.

9. Impacts to the critical path caused by other contractors.

Time will not be granted for inclement weather other than as provided for in this section. In submitting a request for time extension, the Contractor shall comply with the following requirements:

- 1. Notify CFX in writing of the occurrence of a delay event within 48 hours of the beginning of the event.
- 2. Furnish a detailed written explanation of the impact of the delaying event on the scheduled Work with supporting documentation in the form of job records.
- 3. Provide proof that the Contractor has taken all necessary steps to protect the Work, the Contractor's employees, Materials and Equipment from the effects of the event.

CFX will consider the delays in delivery of materials or component equipment that affect progress on a controlling item of work as a basis for granting a time extension if such delays are beyond the control of the Contractor or supplier. Such delays may include an area-wide shortage, an industry-wide strike, or a natural disaster that affects all feasible sources of supply. In such cases, the Contractor shall furnish substantiating letters from a representative number of manufacturers of such materials or equipment clearly confirming that the delays in delivery were the result of an area-wide shortage, an industry-wide strike, etc. No additional compensation will be made for delays caused by delivery of materials or component equipment.

CFX will not consider requests for time extension due to delay in the delivery of custom manufactured equipment such as traffic signal equipment, highway lighting equipment, etc., unless the Contractor furnishes documentation that the Contractor placed the order for such equipment in a timely manner, the delay was caused by factors beyond the manufacturer's control, and the lack of such equipment caused a delay in progress on a controlling item of work. No additional compensation will be paid for delays caused by delivery of custom manufactured equipment.

6.7.3.2 An extension of time (rather than monetary compensation) will be the Contractor's sole and exclusive remedy in the event that an extension of time is justified under subarticle 6.7.3.1. The Contractor shall not be entitled to damages when an extension of time is permitted or granted under said subarticle.

- 6.8 Failure of Contractor to Maintain Satisfactory Progress
  - 6.8.1 General: Time is of the essence of the Contract. Unsatisfactory progress will be deemed to have occurred when:
    - 1. The allowed Contract time for performing the Work has expired and the GS-94

Contract Work is not complete; or

- 2. The specified time or date for performing a special milestone stage of the Work (as may be set forth in the Special Provisions) has expired and the Work for that milestone stage is not complete; or
- 3. The allowed Contract time has not expired and the net dollar value of completed Work (gross earnings less payment for stockpiled Materials) is 15 percentage points or more below the dollar value of Work that should have been completed according to the accepted working schedule for the Project. The dollar value of Work, which should have been completed, is defined as the average between the early start and late start scheduled earnings according to the approved working schedule. After falling 15 percent behind, the delinquency continues until the dollar value of Work is within 5 percentage points of the dollar value of Work that should be completed according to the accepted working schedule for the Project.

In addition to the retainage specified in Article 7.6 of these General Specifications, retainage may also be withheld on partial payments at any time throughout the duration of the Contract due to unsatisfactory progress. The amount of retainage withheld will be one (1) percent of the gross amount earned for the month for every one (1) percent the project is below the dollar value of the Work that should have been completed according to the accepted working schedule for the Project. Retainage held due to unsatisfactory progress will be returned once the delinquency has been cured.

- 6.9 Default and Termination of Contract
  - 6.9.1 Determination of Default: CFX will give notice in writing to the Contractor and Contractor's surety of such delay, neglect, or default for the following:
    - a. If the Contractor fails to begin the Work under the Contract within the time specified in the Notice to Proceed or;
    - b. fails to perform the Work with sufficient workmen and Equipment or with sufficient Materials to assure the prompt completion of the Contract as related to the schedule or;
    - c. performs the Work unsuitably or neglects or refuses to remove Materials or;
    - d. to perform anew such Work as may be rejected as unacceptable and unsuitable or;
    - e. discontinues the prosecution of the Work or;
    - f. fails to resume Work which has been discontinued within a reasonable time after notice to do so or;
    - g. fails to pay timely its subcontractors, suppliers or laborers or;
    - h. submits a false or fraudulent Certificate of Disbursement of Previous Payments form or;
    - i. becomes insolvent or is declared bankrupt or;
    - j. files for reorganization under the bankruptcy code or;
    - k. commits any act of bankruptcy or insolvency, either voluntarily or involuntarily or;
    - 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 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, 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 provide 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, <<u>supplier</u>> will be liable to the Contractor and the Central Florida Expressway Authority should <<u>supplier</u>> 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:

- Whether the Contractor, provided written notice to certified D/M/WBEs performing the type of Work that the Contractor intends to subcontract, advising the D/M/WBEs (a) of the specific Work the Contractor intends to subcontract; and (b) that their interest in the Contract is being solicited;
- (2) Whether the Contractor provided interested D/M/WBEs assistance in reviewing the Contract Plans and Specifications;
- (3) Whether the Contractor assisted interested D/M/WBEs in obtaining any required bonding, lines of credit, or insurance;
- (4) Whether the Contractor's efforts were merely pro forma and given all relevant circumstances, could not reasonably be expected to produce sufficient D/M/WBE participation to meet the objective.

The above list is not intended to be exclusive or exhaustive and CFX will look not only at the different kinds of efforts that the Contractor has made but also the quality, quantity and intensity of these efforts.

- 8.2 Disadvantaged, Minority and Women Owned Businesses Participation Objective
  - 8.2.1 General: The Contractor shall ensure that D/M/WBE as defined herein will have the maximum opportunity to participate in the performance of subcontracts. In this regard, the Contractor shall take all necessary and reasonable steps to accomplish that result.
  - 8.2.2 Definitions: The following words and phrases shall have the respective meanings set forth below unless a different meaning is plainly required by the context:
    - (1) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States or lawfully admitted permanent residents and who are women, Black Americans, Hispanic American, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans. Individuals in the following groups are presumed to be socially and economically disadvantaged:
      - (a) "Black Americans", which includes persons having origins in any of the black racial groups of Africa;
      - (b) "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;

- (c) "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific and the Northern Marianas;
- (d) "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (e) "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh; and
- (f) "Women".
- (2) "Joint Venture" means an association of two or more firms to carry out a single business enterprise for which purpose the firms combined their property, money, effects, skills or knowledge.
- (3) "Certified" means a finding by Orange County, Florida, the City of Orlando, Florida, and Florida Department of Transportation that the business is a bona fide Minority, Women or Disadvantaged owned and operated business.
- (4) "Independently Owned and Operated" means a business that is not affiliated or associated with the general contractor or prime contractor providing work or services on CFX project(s) or procurement in which the D/M/WBE seeks to participate. Affiliated status may be determined through common ownership, management, employees, facilities, inventory or any other factors, which would prevent or inhibit independent status
- (5) "Women Business Enterprise" comprises all women. All women business owners will be classified as a Women Business Enterprise.
- 8.2.3 Specific Requirements: The Contractor shall, among other things, implement techniques to facilitate D/M/WBE participation in contracting activities including, but not limited to:
  - 1. Soliciting price quotations and arranging a time for the review of plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of quotations;
  - 2. Providing assistance to D/M/WBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance;
  - 3. Carrying out information and communication programs or workshops on

contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate;

- 4. Contacting Minority Contractor Associations, city, and county agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible D/M/WBE contractors to apply for certification.
- 5. Meeting with appropriate officials of CFX, including its Supplier Diversity Office, to assist with the Contractor's efforts to locate D/M/WBEs and assist with developing joint ventures, partnering, and mentorship.
- 8.2.4 Qualified Participation: CFX will count D/M/WBE participation toward meeting D/M/WBE objective as follows:
  - 1. The total dollar value of the contract to be awarded to the certified D/M/WBE will not be counted toward the applicable D/M/WBE objective unless approved by CFX.
  - 2. A portion of the total dollar value of a contract, with an eligible joint venture, equal to the percentage of the ownership and control of the D/M/WBE partner in the joint venture may be counted toward the D/M/WBE objective.
  - 3. Only expenditures to D/M/WBEs that perform a commercially useful function may be counted toward the D/M/WBE objective. A D/M/WBE is considered to perform a commercially useful function when it actually performs and manages at least 51 percent of the work subcontracted to it. To determine whether a D/M/WBE is performing a commercially useful function, CFX will evaluate all relevant factors such as the amount of Work subcontracted and industry practices.
  - 4. Consistent with normal industry practices, a D/M/WBE may enter into subcontracts. If a D/M/WBE subcontracts 50 percent or more of the Work assigned to it, the D/M/WBE shall be presumed not to be performing a commercially useful function.
  - 5. Expenditures for materials and supplies obtained from D/M/WBE suppliers and manufacturers may be counted toward the D/M/WBE objective, provided that the D/M/WBEs assume the actual and contractual responsibility for the provision of the materials and supplies. The percentage allowed toward the D/M/WBE objective is as follows:
    - (a) All expenditures to a D/M/WBE manufacturer (i.e., a supplier that

produces goods from raw materials or substantially alters them before resale) may be counted toward the D/M/WBE objective.

- (b) 1. A Contractor may count toward its D/M/WBE objective 60 percent of its expenditures for materials and supplies required under a contract and obtained from a D/M/WBE regular dealer, and 100 percent of such expenditures to a D/M/WBE manufacturer.
  - 2. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.
  - 3. A regular dealer is a firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this Section.
- (c) A Contractor may count toward the D/M/WBE objective for the following expenditures to D/M/WBE firm(s) that are not manufacturers or regular dealers:
  - 1. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials of supplies required for performance of the Contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - 2. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for

similar services.

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

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

8.3 Subletting of Contracts - Participation Objective

GS-119

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 subcontractor or supplier, and against CFX, CEI, or any of their consultants that does not otherwise exist.

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

## END OF SECTION 9

### SECTION 10 - DISPUTES RESOLUTION

10.1 Disputes Resolution

10.1.1 Disputes Review Board

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

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

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

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

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

#### 10.1.2 Continuance of Work During Dispute

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

# 10.1.3 Disputes Review Board Membership

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

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

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

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

The criteria and limitations for membership will be as follows:

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

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

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

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

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

# 10.1.4 Board Operations

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

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

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

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

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

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

# 10.1.5 Procedure for Disputes Resolution

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

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

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

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

## 10.1.6 Conduct of Disputes Hearings

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

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

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

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

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

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

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

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

# 10.1.7 Compensation

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

10.1.8 Three Party Agreement

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

END OF SECTION 10

#### ATTACHMENT A

### DISPUTES REVIEW BOARD THREE PARTY AGREEMENT

 THIS THREE PARTY AGREEMENT ("Agreement") made and entered into this

 day of \_\_\_\_\_\_, 20\_\_, between the CENTRAL FLORIDA EXPRESSWAY

 AUTHORITY ("CFX"), \_\_\_\_\_\_ ("Contractor") and the DISPUTES

 REVIEW BOARD ("Board"), consisting of three members: \_\_\_\_\_\_, and \_\_\_\_\_ ("Members").

WHEREAS, CFX is now engaged in the construction of the , and

WHEREAS, the \_\_\_\_\_\_ contract ("Contract") provides for the establishment and operation of the Board to assist in resolving disputes and claims.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein (or attached, incorporated and made a part hereof), the parties agree as set forth herein.

#### I DESCRIPTION OF PURPOSE

To facilitate resolution of disputes between the Contractor and CFX, CFX has provided (in the Contract) for the establishment of the Board. The function of the Board is to fairly and impartially consider Contract disputes placed before it and provide written recommendations for resolution to both CFX and the Contractor. The Members of the Board shall perform the services designated in Section II, Scope of Work.

#### II SCOPE OF WORK

The Scope of Work includes, but is not limited to, the following items:

A. <u>Third Board Member Selection</u>. 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. <u>Procedures</u>. 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 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

ATT-4

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:\_\_\_\_\_

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.

# **MEMORANDUM**

TO:	CFX Board Members
FROM:	Aneth Williams Will Director of Procurement
DATE:	January 10, 2022
SUBJECT:	Authorization of Mitigation Credit Purchases with Holland Properties, Inc. d/b/a TM-Econ Mitigation Bank Project 528-757

Board authorization is requested for the Executive Director to enter into an agreement with TM-Econ Mitigation Bank for a not-to-exceed amount of \$580,000.00 for mitigation bank credits.

The SR 528 Farm Access Bridge Replacement project requires the purchase of mitigation credits to offset impacts to wetlands that are within the project limits.

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

Reviewed by:

Will Hawthorne, PE Director of Engineering

Glenn Pressimone, PE

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



# MEMORANDUM

TO:	CFX Board Members
FROM:	Aneth Williams Will Director of Procurement
DATE:	January 6, 2022
SUBJECT:	Approval of First Contract Renewal with Wells Fargo Bank, N.A. for Banking Services Contract No. 001496

Board approval is requested for the first renewal of the referenced contract with Wells Fargo Bank, N.A. in the amount of \$1,470,000.00 for one year beginning on June 01, 2022 and ending May 31, 2023. The original contract was for three years with two one-year renewals.

The work to be performed includes comprehensive banking services, including toll revenue collections.

> **Original Contract** Amendment No.1 First Renewal Total

\$ 4,402,000.00 \$ 0.00 \$ 1,470,000.00 \$ 5,872,000.00

This contract is included in the OM&A Budget.

Mal Cella

Reviewed by:

Michael Carlisle Director of Accounting and Finance

is ful and

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





#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY CONTRACT RENEWAL NO. 1 AGREEMENT CONTRACT NO. 001496

**THIS CONTRACT RENEWAL NO. 1 AGREEMENT** ("Renewal Agreement"), is made and entered into this 10th day of February 2022, by and between Central Florida Expressway Authority, a corporate body and agency of the State of Florida, hereinafter called "CFX", and Wells Fargo Bank, N.A., registered and authorized to do business in the State of Florida, hereinafter called the ("Bank"). CFX and Bank are referred to herein sometimes as a "Party" or the "Parties".

#### WITNESSETH

**WHEREAS**, CFX and the Bank entered into that certain Contract Agreement dated April 11, 2019, (collectively, the "Original Agreement"), with a Notice to Proceed date of June 1, 2019, whereby CFX retained the Bank to perform banking services; and

**WHEREAS**, pursuant to Article 8 of the Original Agreement, CFX and Bank wish to renew the Original Agreement 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 Bank agree to exercise the first renewal of said Initial CFX Contract, which renewal shall begin on June 1, 2022 and end on May 31, 2023 ("Renewal Term"), unless otherwise extended as provided in the Original Contract.

3. <u>Compensation for Renewal Term</u>. The Bank shall be compensated for any and all services performed during the Renewal Term under this Renewal Agreement in accordance with <u>Exhibit "B"</u> of the Original Agreement, in an amount up to \$1,470,000.00 ("Renewal Compensation"). The Renewal Compensation shall be in addition to the original compensation paid by CFX to the Bank 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.

#### WELLS FARGO BANK, N.A.

#### **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 \_\_\_\_\_\_, 2022 for its exclusive use and reliance.

By:	
Print Name:	
-	

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

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

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY AMENDMENT NO. 1 To CONTRACT NO. 001496

This Amendment No. 1 to Contract No. 001496 ("Agreement") entered into this day of <u>MAY</u>, 2019, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida ("CFX") and WELLS FARGO BANK, National Association ("BANK") for CFX Banking Services.

#### WITNESSETH:

WHEREAS, ("CFX") and ("BANK") desire to amend eight (8) provisions of the ("Agreement") whereas strikethrough indicates deletion; underline indicates addition.

WHEREAS, ("CFX") and ("BANK") desire to add one provision to the ("Agreement") whereas underline indicates addition.

WHEREAS, ("CFX") and ("BANK") desire to amend five (5) sections of Exhibit "A", Scope of Services, of the ("Agreement") whereas strikethrough indicates deletion; underline indicates addition.

NOW, THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ("CFX") and ("BANK") hereby amend the ("Agreement") with addenda as follows:

A. The following Agreement provisions are hereby amended:

1. Section 2.0, Controlling Provisions, is hereby amended by adding the text that is underlined and deleting the text that is stricken as follows:

"Except as otherwise specifically provided in Section 6 hereof, [I]n the event of any conflict between the specific provisions of this Agreement or any of the Exhibits hereto, and the requirements or provisions of the Scope of Services and/or Proposal, the requirements or provisions of the latter documents <u>Agreement</u> (without attachments) shall control. In circumstances of a conflict between the <u>Bank's</u> Proposal and Scope of Services, the Scope of Services shall prevail. Wherever possible, the provisions of all documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents. It is the intention of the parties that the Exhibits hereto set forth the day-to-day operational procedures to be complied with in connection with CFX's ordering of and the Bank's provision of specific banking services covered by the Proposal <u>subject to the order of precedence</u>. Excluding the Bank's exceptions related to: drug-free certification, boycott, and litigation, outlined on pages 1-3 of Tab H – Disclosures and Disclaimers of the Bank's Proposal, which were accepted, any other exceptions outlined in the Bank's Proposal are rejected unless expressly addressed in a written Amendment to this Agreement. If CFX elects to use any of the Bank's services not set forth in the Proposal, or the Bank, in the normal course of its business, develops specific service agreements in the future for banking services requested by CFX (in addition to those covered by the Exhibits hereto), the parties will execute specific service agreements with respect thereto in form and substance reasonably acceptable to the parties. Such agreements shall be deemed to be part of and subject to this Master Banking Services Agreement, whether or not so stated in such service agreement."

2. Section 3.0, Services to be Rendered, Subsection (c), is hereby amended by adding the text that is underlined and deleting the text that is stricken as follows:

"In rendering the services requested in the Scope of Services, the Bank shall be responsible for compliance with all licensing agreements and the payment of all costs for licensing fees and royalties for all software, intellectual property and other protected or copyrighted materials or hardware used or provided in connection with its performance under this Agreement<sub>5</sub>. The BANK and-shall be further responsible for any costs, damages, claims or liabilities arising from the violation of any license agreement, copyright, trademark or other protection of property that is reasonably related to the Scope of Services offered through the Bank under this agreement."

3. Section 3.0, Services to be Rendered, Subsection (d), is hereby amended by adding the following sentence at the end of the sub-section:

"This provision is limited to subcontractors hired specifically for services for CFX."

4. Section 7.0, Limitation of Liability, is hereby amended by adding the text that is underlined as follows:

"Notwithstanding any other term or provision of this Agreement, including Section 6, neither CFX nor the Bank shall ...."

5. Section 8.0, Term and Termination, Subsection (a), is hereby amended by adding the text that is underlined and deleting the text that is stricken as follows:

"(a) This Agreement shall have a term of three (3) years, commencing as of June 1, 2019 and ending at 11:59 p.m., on May

31, 2022. CFX and the BANK shall have the right to <u>mutually</u> agree in writing to-exercise a maximum of two (2) additional oneyear renewals to the term of this Agreement-by providing written notice to the Bank. CFX may give written notice to the Bank prior to the expiration of the then current term of its election not to have this Agreement so renewed."

6. Section 8.0, Term and Termination, is hereby amended by adding the text that is underlined to the end of the Section as follows:

"(f) Notwithstanding the above, Bank may terminate this Agreement (in whole or in part) with cause upon providing sixty (60) days written notice under any of the following circumstances, which shall constitute an event of default under the Agreement,

i. If CFX fails to pay Bank when due undisputed charges totaling at least two months' charges under the Agreement and fails to make such payment within thirty (30) days after receiving a notice of non-payment from Bank, Bank may terminate the Agreement as of a date specified in a separate written notice of termination given to the Bank regarding the termination or exit transition services to be provided by Bank;

ii. There is sufficient evidence to show that fraud, collusion, conspiracy, or other unlawful means were used by CFX in connection with the services provided by Bank or its subcontractor;

iii. CFX is adjudged bankrupt or enters into a general assignment for the benefit of its creditors or receivership due to insolvency;

iv. If a court of competent jurisdiction (or other administrative body empowered to issue such orders) issues a final order or judgment holding that this Agreement or certain services offered hereunder are in violation of the law, or if a party is required to terminate certain services of this Agreement by law, regulation, or bank regulatory authority (but such termination right only applies to the services required to be terminated due to the final order, judgment, law, regulation, or bank regulatory authority); or

v. CFX disregards laws and ordinances, rules or materially breaches any provision of this Agreement that is not cured within sixty (60) days of CFX receiving the notice of default." 7. Section 9, Changes, Subsection (b), is hereby amended by adding the text that is underlined and deleting the text that is stricken as follows:

"(b) The parties agree to undertake an annual review of the armored car component of the Scope of Services to determine if services can be provided more economically. The parties specifically agree that no later than thirty (30) days prior to the expiration of each one-year anniversary of the term of this Agreement, CFX shall have the option to recommend to the BANK that it would like to amend, delete or replace the provider armored car component of the Scope of Services. The Bank shall include this provision in any subcontract for armored car services."

8. Section 13, Governing Law, is hereby amended by adding the text that is underlined and deleting the text that is stricken as follows:

"This Agreement shall be construed and enforced in accordance with the applicable laws of the United States according to and the Laws of the State of Florida."

9. Section 17, Assignment, is hereby amended by adding the text that is underlined and deleting the text that is stricken as follows:

"Either party may assign the contract with the other party's consent, which consent will not be unreasonably withheld or delayed; however, that Bank may assign the Agreement without consent in connection with a merger, acquisition, or corporate restructuring involving Bank. Neither party shall assign this Agreement or any interest herein, or delegate any of its duties hereunder, without the other party's prior written consent. It is agreed by CFX, with the consent of CFX, that the Bank may delegate certain services to be provided through independent contractors."

10. Section 19, Inspector General, is hereby amended by adding the text that is underlined as follows:

"The BANK 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. Any such investigation, audit, inspection, review, or hearing is subject to BANK's record retention policy or five (5) fiscal years after the transaction is complete, whichever is greater, and will be at a mutually agreeable time and place, in accordance with BANK's policies. 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. Notwithstanding the foregoing, this Section does not authorize any on-site access to any of BANK's data, systems, networks or facilities."

- B. The following Agreement provision is hereby added:
  - 1. Section 21, Public Records, provision is hereby added to the Agreement by adding the text that is underlined as follows:

# "21. PUBLIC RECORDS

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

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

- 1. Keep and maintain public records required by the public agency to perform the service.
- 2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if CONTRACTOR does not transfer the records to the public agency.

4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of CONTRACTOR or keep and maintain public records required by the public agency to perform the service. If CONTRACTOR transfers all public records to the public agency upon completion of the contract, CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of the contract, CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

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

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

- C. The following Exhibit "A", Scope of Services, sections are hereby amended:
  - 1. Item II, B., Item 2, Second Paragraph is hereby amended by deleting the text that is stricken as follows:

"Each armored car service employee shall be appropriately uniformed for identification purposes and carry an identification card that will be presented to CFX employee and/or designated representative upon request. The Contractor shall provide CFX with a master list of armored car service employees authorized to receive deposits. The master list shall be updated when necessary to reflect any changes in authorized personnel. As with all other traffic, armored car personnel are prohibited from making u-turns anywhere on the System. For each instance in which an armored car driver makes a u-turn on the System, a fine of \$100 will be levied against the Contractor."

2. Item II, B., Item 12, d., is hereby amended by adding the text that is underlined as follows:

"iv. Credit will be provided same day on a best effort's basis (i.e., for example, in the unlikely event of a force majeure as outlined in Provision 16 of the Agreement, the BANK may not be able to process same day). If the deposit is received after the delivery cutoff at the vault, the BANK will backdate the deposit to the proper credit date."

3. Item II, B., Item 12, f., is hereby amended by adding the text that is underlined and deleting the text that is stricken as follows:

"f. Failure of the Contractor Bank to make toll collection account balances transfers in strict accordance with this schedule will result in the Contractor Bank paying interest compensation to CFX in an interest amount equal to the average of the prior four week's 13 week U.S. Treasury Bill Rates as published in the Wall Street Journal multiplied by the account balance and the number of days delinquent. providing CFX earnings credit compensation based on the proposed earnings credit rate of Targeted Fed Funds less 25 basis points. This indexed rate is good for the entire contract period. As interest rates increase CFX's earnings credit rate will improve."

4. Item II, E., Reimbursement for Shortages, is hereby amended by adding the text that is underlined and deleting the text that is stricken as follows:

"In the event that CFX ascertains through its coin vault audit program that coin vaults are being credited by the bank for an amount less than that counted by CFX, the Contractor shall reimburse to CFX the amount of shortage. The Contractor assumes full liability for sealed, coin vault contents after collection by the courier under contract to the Contractor. The Contractor is authorized to examine the audit program used by CFX to determine shortages for collections processed by the Contractor. Bank will provisionally credit CFX's Account for the currency shown on the deposit ticket enclosed in CFX's deposit bag as follows: (i) same day credit for deposits delivered to an office of Bank before that office's cut-off time on any Business Day or for deposits placed in night depository of Bank before 6:00 a.m. on any Business Day; or (ii) next Business Day credit for deposits delivered to an office of Bank on any Business Day on or after Bank's office's cut-off time or on any non-Business Day. All deposits are subject to Bank's acceptance and verification. Bank will verify the currency in CFX's deposit bag either at a later time in Bank's office or when CFX's deposit bag is delivered to Bank's cash vault. Checks will be verified when they are delivered to Bank's check processing center. Bank reserves the right to adjust (debit or credit) CFX's Account if Bank determines that the amount shown on CFX's deposit ticket is incorrect. Because the frequency of armored courier transportation from Bank's offices to Bank's vaults varies from office to office, the time it takes to verify CFX's deposit may vary, depending on the office to which CFX's deposit bag is delivered. In most cases, adjustments will be made and notification will be sent within three (3) Business Days. Adjustments will be effective when they are processed."

- 5. Item II, F., Bank Internal Security, is hereby amended by adding the text that is underlined and deleting the text that is stricken as follows:
  - The Contractor shall allow authorized employees of CFX to "I. visually inspect the internal security of the coin counting and teller-area operations-without prior-notification by CFX. After such inspection, CFX will notify the bank, in writing, of any internal control weaknesses noted. The bank shall make every effort to correct valid internal control-weaknesses within a five-day period-Any request for visual inspection by CFX of Bank's coin counting and teller area operations will be accommodated by the bank, and will not be unreasonably delayed or withheld by the Bank, subject to Bank's record retention policy and will be at a mutually agreeable time and place, in accordance with Bank's policies. Notwithstanding the foregoing, this Section does not authorize any on-site access to any of Bank's data, systems, networks or facilities unrelated to CFX.
  - 2. CFX shall be notified within ten (10) business days if any employees involved in the processing of CFX monies are disciplined, fired, charged with or convicted of a crime Per Bank policy, the Bank is not able to share if any employees involved in the processing of CFX monies are disciplined, fired, charged with or convicted of a crime."
- D. Except as expressly amended hereby, all the remaining provisions of the Agreement and all the remaining sections of Exhibit "A", Scope of Services shall remain in full force and effect.

Contract No. 001496 Amendment No. 1

AMENDMENT NO. 1

Contract Name: CFX Banking Services

Contract No.: \_\_\_\_\_001496 Project No.: \_\_\_\_\_N/A

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

CENTRAL FLORIDA EXPRESSWAY AUTHORITY 5/23/ By Director of Procurement

WELLS FARGO BANK, N.A.

By: Todd May	
Print Name: Todd Musley	
Title: SNP	
Attest: (Secretary or Notary)	(Seal)



Approved as to form and execution, only.

General Counsel for CFX

# CONTRACT

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY AND WELLS FARGO, N.A.

**CFX BANKING SERVICES** 

CONTRACT NO. 001496

CONTRACT DATE: APRIL 11, 2019 CONTRACT AMOUNT: \$4,402,000.00

# **CFX BANKING SERVICES**

#### CONTRACT NO. 001496

# **APRIL 2019**

# **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

#### TABLE OF CONTENTS

Title		Page
Agreement	C-	l to C-11
Scope of Services	A-1 to A-16	
Method of Compensation		B-1
Addendum No. 1 Addendum No. 2		
Potential Conflict Disclosure Form		1-8
Attached compact disk contains the following and are incorporated herein		
Technical Proposal		1 to 234
Price Proposal		l to 14

# CFX Banking Services Agreement Agreement No. 001496

# Table of Contents

Section 1.	Purpose and Effect of this Agreement: Delineation of Banking Services	1
Section 2.	Controlling Provisions	2
Section 3.	Services to be Rendered	2
Section 4.	Compensation for Services	3
Section 5.	Representations, Warranties and Covenants	3
Section 6.	Indemnification	4
Section 7.	Limitation of Liability	5
	Term and Termination	
Section 9.	Changes	6
Section 10	Equal Employment Opportunity; Non-discrimination.	7
Section 11	Waiver	7
Section 12	. Severability	8
Section 13		
Section 14	Attachments	8
Section 15	Notices	8
Section 16	. Force Majeure	9
Section 17		
Section 18		
Section 19	Inspector General	9
Section 20		

#### CFX BANKING SERVICES AGREEMENT

THIS AGREEMENT (the "Agreement") is made this 11th day of April, 2019, between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, created by Chapter 2014-171, Laws of Florida, which is codified in Chapter 348, Part III of the Florida Statutes, hereinafter "CFX," and WELLS FARGO BANK, National Association a national banking association (the "Bank"), registered and authorized to do business in the State of Florida, whose principal address is 800 n. Magnolia Avenue, Seventh Avenue, Orlando, Florida 32803.

#### WITNESSETH:

WHEREAS, CFX issued its Requests for Proposals for Banking Services on February 10, 2019 (the "RFP"), to solicit proposals to serve as CFX's primary relationship bank; and

WHEREAS, the Bank responded to the RFP by submitting its Technical and Price Proposal for Banking Services dated March 11, 2019 (the "Proposal"), which Proposal was duly accepted by CFX as the most favorable proposal submitted; and

WHEREAS, the Bank shall be providing banking services to CFX under the terms of this Agreement, the Scope of Services and the Proposal (hereinafter sometimes collectively called the "Contract").

WHEREAS, although the Scope of Services and the Proposal address in some detail the banking services to be provided, there are a number of operational issues not addressed by either the Scope of Services or the Proposal which the parties desired to address;

**NOW, THEREFORE**, in consideration of the foregoing premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, CFX and the Bank hereby covenant and agree as follows:

Section 1. Purpose and Effect of this Agreement: Delineation of Banking Services

The banking services to be provided to CFX by the Bank shall consist of:

- (a) Each of the specific requirements, terms and conditions set forth in the Scope of Services and any addenda thereto, which are hereby incorporated by reference in its entirety; and
- (b) Each of the services, terms and conditions set forth in the Proposal, which is hereby incorporated by reference in its entirety; and

(c) Unless the context requires otherwise, all references to "this Agreement," and use of the terms "herein," "hereby," "hereof," "hereto," "hereunder" and the like shall be deemed to include the Scope of Services, the Proposal, this Agreement and addenda.

#### Section 2. <u>Controlling Provisions</u>

Except as otherwise specifically provided in Section 6 hereof, in the event of any conflict between the specific provisions of this Agreement or any of the Exhibits hereto, and the requirements or provisions of the Scope of Services and/or Proposal, the requirements or provisions of the latter documents shall control. In circumstances of a conflict between the Proposal and Scope of Services, the Scope of Services shall prevail. Wherever possible, the provisions of all documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents. It is the intention of the parties that the Exhibits hereto set forth the day-to-day operational procedures to be complied with in connection with CFX's ordering of and the Bank's provision of specific banking services covered by the Proposal. If CFX elects to use any of the Bank's services not set forth in the Proposal, or the Bank, in the normal course of its business, develops specific service agreements in the future for banking services requested by CFX (in addition to those covered by the Exhibits hereto), the parties will execute specific service agreements with respect thereto in form and substance reasonably acceptable to the parties. Such agreements shall be deemed to be part of and subject to this Master Banking Services Agreement, whether or not so stated in such service agreement.

#### Section 3. Services to be Rendered

- (a) The Bank shall provide CFX with the banking services set forth in the Proposal, as more fully defined herein. With respect to CFX's depository demand deposit accounts, CFX funds collected daily shall be deposited in the accounts as described in the Scope of Services on the same day. Checks deposited shall be available as outlined in the Bank's Proposal if deposited in the Bank before it normally closes its transactions for the day, which is currently 2:00 p.m.
- (b) CFX will attempt to limit the number of bank accounts maintained with the Bank; however, where legal requirements dictate, separate bank accounts will be maintained with the Bank. If CFX uses services not requested in the Scope of Services, the Bank reserves the right to charge for those services in accord with its current published charges for said services.
- (c) In rendering the services requested in the Scope of Services, the Bank shall be responsible for compliance with all licensing agreements and the payment of all costs for licensing fees and royalties for all software, intellectual property

and other protected or copyrighted materials or hardware used or provided in connection with its performance under this Agreement, and shall be further responsible for any costs, damages, claims or liabilities arising from the violation of any license agreement, copyright, trademark or other protection of property.

(d) If, during the life of this Agreement and any renewals hereof, the Bank desires to subcontract any portion(s) of the services to a subcontractor that was not disclosed by the Bank to CFX at the time that the contract was originally awarded, and such subcontract would, standing alone or aggregated with prior subcontracts awarded to the proposed subcontractor, equal or exceed twenty five thousand dollars (\$25,000.00), the Bank shall first submit a request to CFX's Chief Financial Officer for authorization to enter into such subcontract. Except in the case of an emergency, as determined by CFX's Executive Director or his/her designee, no such subcontract shall be executed by the Bank until it has been approved by CFX Board. In the event of a designated emergency, the Bank may enter into such a subcontract with the prior written approval of CFX's 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.

#### Section 4. Compensation for Services

The not-to-exceed contract amount for the initial three-year term of this Agreement will be \$4,402,000.00. The Bank will prepare a monthly billing for services rendered in accordance with the Method of Compensation and Price Proposal. No other charges will be billed to CFX without prior and specific written authorization from CFX's Chief Financial Officer or Executive Director.

#### Section 5. <u>Representations, Warranties and Covenants</u>

- (a) The Bank represents and warrants to CFX it has full power and authority to enter into this Agreement and fully perform its obligations hereunder without the need for any further corporate or governmental consents or approvals, and that the persons executing this Agreement are authorized to execute and deliver it. Assuming the due authorization, execution, delivery, legality and enforceability hereof by or against CFX when executed and delivered by the parties, this Agreement will constitute a valid and binding agreement of the Bank, enforceable against it in accordance with its terms, subject only to the application of general principles of equity and limitations arising from bankruptcy, insolvency, moratorium and other similar laws affecting the rights of creditors generally.
- (b) The Bank has not employed or retained any person employed by CFX to solicit or secure this Agreement and it has not offered to pay, paid, or agreed

to pay any person employed by CFX any fee, commission percentage, brokerage fee, or gift of any kind contingent upon or resulting from the award of this Agreement.

- (c) The Bank is aware of the conflict of interest laws and policies of CFX, and the State of Florida, and covenants that it, the Bank, will fully comply in all material respects with the terms thereof.
- (d) CFX represents and warrants to the Bank it has full power and authority to enter into and perform all of its obligations under this Agreement without the need for any further bids, notices or other actions by Board or any other governmental authority. When executed and delivered by the parties, this Agreement will constitute a valid and binding agreement of CFX, enforceable against it in accordance with its terms, subject only to the application of general law and principles of equity and limitations arising from bankruptcy, insolvency, moratorium and other similar laws affecting the rights of creditors generally. CFX further represents and warrants to the Bank it has authorized CFX's Executive Director, Chief Financial Officer or persons designated by them in writing, to execute and deliver documents to the Bank as necessary hereunder or reasonably deemed appropriate by such officials to affect the transactions contemplated hereby. CFX acknowledges and agrees the Bank is fully authorized and directed to accept orders, requests and authorizations from such officials on CFX's behalf in connection with the implementation or provision of any of the banking services covered by the Proposal. Such authorization and direction shall not be deemed to prohibit or preclude the Bank from relying upon actions or requests of other CFX personnel so long as the Bank reasonably believes, in good faith, that such persons have been authorized in writing to act on behalf of CFX or by any of such officials.
- (e) At the request of the Bank, CFX agrees to cause its designated officials or their designees to execute such signature cards and other signature and identification verification documents as the Bank deems reasonably necessary for purposes of establishing appropriate security measures in connection with the banking services to be provided hereunder.

#### Section 6. Indemnification

(a) The Bank shall indemnify and save harmless CFX, its agents and employees from or on account of any losses or damages resulting from any breach of fiduciary duty committed during or on account of any operations connected with this Agreement or by any act of negligence in connection with the same; or by or on account of any negligent act or omission of the Bank or its subcontractors, agents, servants or employees. The Bank further agrees to indemnify and save harmless CFX, its agents or employees against any claims or liability arising from or based upon the violation of any federal, state, or county laws, by-laws, ordinances or regulations by the Bank, its agents, servants or employees.

- (b) To the extent of the monetary limits allowed pursuant to Section 768.28(5), <u>Florida Statutes</u>, CFX shall indemnify and save harmless the Bank, (its directors, officers, employees and agents) from or on account of any losses or damages resulting from any breach of this Agreement by CFX, or arising from the negligent acts or omissions of CFX or its employees acting within the scope of their employment.
- (c) If CFX desires to invoke the foregoing indemnity provisions (the "Indemnitee") against the Bank (the "Indemnitor"), the Indemnitee shall provide written notice to the Indemnitor within a reasonable time after discovery of the facts allegedly entitling it to indemnification hereunder, specifying in such notice the relevant facts and circumstances and requesting indemnification as provided herein. The Indemnitor shall defend at its own expense, or at the Indemnitee's option provide for such defense of, any and all claims of liability in all suits and action of every kind and description that may be brought against the Indemnitee which may result from the negligent actions or omissions under this Agreement by the Indemnitor, its employees or agents, as described in subsection (a).
- (d) If the Bank desires to invoke the foregoing indemnity provisions (the "Indemnitee") against CFX (the "Indemnitor"), the Indemnitee shall provide written notice to the Indemnitor within a reasonable time after discovery of the facts allegedly entitling it to indemnification hereunder, specifying in such notice the relevant facts and circumstances and requesting indemnification as provided herein. The Indemnitor shall defend at its own expense, or at the Indemnitee's option provide for such defense of, any and all claims of liability in all suits and action of every kind and description that may be brought against the Indemnitee which may result from the negligent actions or omissions under this Agreement by the Indemnitor, its employees or agents, as described in subsection (b).

#### Section 7. Limitation of Liability

Notwithstanding any other term or provision of this Agreement, neither CFX nor the Bank shall in any event be liable to the other for any amount in excess of the actual loss sustained by the injured party, and in no event shall either CFX or the Bank ever be liable hereunder or in any action in tort arising out of the services or relationship to be provided or established hereunder for any indirect, special, incidental, punitive or consequential loss or damage of any kind, including lost profits or opportunities or damage to reputation (whether or not advised of the possibility thereof) arising or allegedly arising therefrom. Actual loss shall include associated lost interest earnings calculated at the then applicable Federal Funds Rate.

#### Section 8. <u>Term and Termination</u>

- (a) This Agreement shall have a term of three (3) years, commencing as of June 1, 2019 and ending at 11:59 p.m., on May 31, 2022. CFX shall have the right to exercise a maximum of two (2) additional one-year renewals to the term of this Agreement by providing written notice to the Bank. CFX may give written notice to the Bank prior to the expiration of the then current term of its election not to have this Agreement so renewed.
- (b) The Bank agrees to maintain the banking relationship with CFX in accord with the terms of the Agreement or any extension for a period of six months from the date of expirations of the Agreement or of any extension period or upon written notice by CFX to close CFX's remaining accounts, whichever comes first. During this six-month period following the expiration of the Agreement or any extension period, CFX shall pay a monthly service charge for banking services based upon the pricing for banking services contained in the Proposal or made applicable to any extension period.
- (c) Either party may terminate this Agreement upon one hundred twenty (120) days advance written notice to the other, which notice must be signed by an authorized officer of the terminating party.
- (d) If either party does not comply with terms of this Agreement, non-defaulting party may give written notice of default to the defaulting party of the specific default. If the default(s) is/are not corrected within thirty (30) days, this Agreement (including the Scope of Services and Proposal) may be terminated thirty (30) days from the written notice of default, by the non-defaulting party.
- (e) In event of a termination under paragraphs (c) or (d) above, the Bank shall only be entitled to applicable fees and charges through the effective date of such termination. Termination of this Agreement, with or without cause, shall result in the simultaneous termination of all other banking services agreements referred to in Section 2 herein. However, any individual service agreement may be terminated separately and severally without affecting the continued enforceability of provisions of this Agreement or any non-terminated service agreements.

#### Section 9. <u>Changes</u>

(a) CFX may, from time to time, request changes in the scope of services performed by the Bank hereunder. Such changes, which are mutually agreed upon by CFX and the Bank, shall be incorporated in written amendments to this Agreement.

- (b) The parties agree to undertake an annual review of the armored car component of the Scope of Services to determine if services can be provided more economically. The parties specifically agree that no later than thirty (30) days prior to the expiration of each one-year anniversary of the term of this Agreement, CFX shall have the option to amend, delete or replace the provider armored car component of the Scope of Services. The Bank shall include this provision in any subcontract for armored car services.
- (c) The fees and charges set forth for the services to be provided to CFX will begin on the date the Agreement is signed, shall not be increased for a period of three (3) years after commencement of the term of this Agreement. After the three-year period, the Bank will give CFX four (4) months prior written notice before increasing or adding any fees; provided, however, fees in years four and five may not be increased by an amount greater than the Consumer Price Index (CPI) for all urban consumers over the last year of the initial three-year period.

#### Section 10. Equal Employment Opportunity; Non-discrimination

The Bank will not discriminate against any employee or an applicant for employment because of race, color, religion, sex, national origin or handicap. The Bank shall take affirmative action to ensure that applicants are employed (and that employees are treated fairly during employment) without regard to race, color, religion, sex, national origin or handicap.

Such action shall include, but not be limited, to the following: employment, upgrading, demotions or transfers, recruitment or recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training including apprenticeship; and participation in recreational and educational activities.

The Bank shall keep such records and submit such reports concerning racial and ethnic origin of applicants for employment and employees as the Secretary of Labor of the Untied States requires. The Bank agrees to comply with such rules, regulations and guidelines as the Secretary may issue to implement these requirements. Both Parties shall comply with all applicable laws, ordinances and codes of Federal, State and local governments applicable to that Party.

#### Section 11. <u>Waiver</u>

No waiver of a breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

#### Section 12. Severability

If any provisions, paragraphs, sentences, words or phrases contained in this Agreement are determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary to conform with such laws, and to the extent they cannot be so modified, then same shall be deemed severable. In either event, the remaining terms and provisions in the Agreement shall remain unmodified and in full force and effect.

#### Section 13. Governing Law

This Agreement shall be construed and enforced according to the Laws of the State of Florida.

#### Section 14. <u>Attachments</u>

The following documents are attached hereto and incorporated by reference herein:

- A. Scope of Services
- B. Method of Compensation
- C. Technical Proposal
- D. Price Proposal
- E. Potential Conflict Disclosure Form

Additional service agreements may be added from time to time as mutually agreed upon by the parties.

#### Section 15. Notices

All written notices, demands and other communications required or provided for under this Agreement shall be sent by certified mail, return receipt requested, postage prepaid, in the case of mailing, or by overnight or same day courier, or by electronic transmission producing a written record, or hand delivered to the following address and person bearing the following title for each party hereto or such other addressee or person as shall be designated by a party in a written notice given in the manner required hereby:

Central Florida Expressway Authority Chief Financial Officer 4974 ORL Tower Road Orlando, FL 32807 Wells Fargo, NA Mr. Todd Morley 800 N. Magnolia Avenue, Seventh Avenue Orlando, Florida 32803 Todd.morley@wellsfargo.com

All notices shall be deemed delivered when received.

#### Section 16. Force Majeure

CFX agrees the Bank shall have no responsibility or liability for delay in its performance under this Agreement or any losses arising out of delays and/or interruptions of business due to acts of God, acts of government authority, acts of public enemy of war, riots, civil disturbances, power failure, telecommunications failure, severe adverse weather conditions or other causes beyond the Bank's reasonable control. This time, if any, required for such performance under this Master Agreement shall be automatically extended during the period of such delay or interruption.

#### Section 17. Assignment

Neither party shall assign this Agreement or any interest herein, or delegate any of its duties hereunder, without the other party's prior written consent. It is agreed by CFX, with the consent of CFX, that the Bank may delegate certain services to be provided through independent contractors.

#### Section 18. Jurisdiction

The parties hereto agree that the state or federal courts located in the State of Florida shall have the exclusive jurisdiction over the parties and the subject matter of any litigation between the parties arising hereunder. Venue shall lie solely in Orange County, Florida.

#### Section 19. Inspector General

The Bank 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.

#### Section 20. Public Entity Crime Information and Anti-Discrimination Statement

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

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written below. This Contract was awarded by CFX's Board of Directors at its meeting on April 11, 2019.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY ector of Procurement 2019  $\overline{}$ Date:

WELLS FARGO BANK, N.A.

By: Tod May
Print Name: Jodd Mo-12)
Title:SUP
Attest: Vanesse Dance
Name & Title: Vanessa Danavan, Orfier
Date: 5-23-19

Approved as to form and execution, only.

General Counsel for CFX

#### EXHIBIT "A" SCOPE OF SERVICES BANKING SERVICES CONTRACT NO. 001496

## Table of Contents

I.	INTENT
II.	CONTRACTOR SERVICES 1
A	. General Banking Services 1
В	. Toll Collection Revenue Services
C	Miscellaneous
D	. Subcontracts
E	. Reimbursement for Shortages
F	Bank Internal Security
G	Documentation
Η	. Correspondence

i

Scope of Services Contract No. 001496

#### EXHIBIT "A" SCOPE OF SERVICES BANKING SERVICES CONTRACT NO. 001496

#### I. INTENT

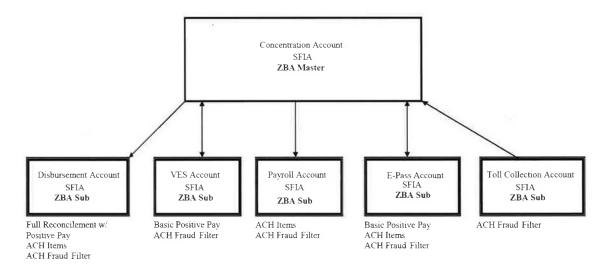
This Scope of Services specifies the comprehensive banking services, including toll revenue collections, required by CFX. Services to be provided by the Banking Services Contractor (Contractor) shall include, but are not necessarily limited to, deposit processing, deposit verification, toll revenue collection services, return item processing, electronic reporting, wire transfers, transaction research, disaster recovery and control, image processing, stop payments, overnight investments, courier service and armored car service.

#### II. CONTRACTOR SERVICES

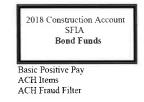
A. General Banking Services

The Contractor shall provide the following general banking services:

- 1. Establish demand deposit accounts as may be necessary to meet CFX's banking requirements.
- 2. Provide zero balance accounts (ZBA). The concentration account will fund disbursements from these accounts automatically on a daily basis. Currently, the account structure will require at least the following accounts.



3. In Addition to the ZBA accounts, the following stand-alone account will be required (CFX may require additional accounts setup in the future).



- 4. Disburse funds via repetitive wire transfer upon on-line request of an authorized person.
- 5. Accept and send ACH transactions on-line and provide on-line notification of ACH deposits same day. CFX currently sends ACH files over the internet.
- 6. Process direct deposit of employee payroll semi-monthly. All (approximately 70 employees) CFX employees currently participate in a direct deposit program.
- 7. Provide automated balance reporting services for all CFX accounts. Available information should include: closing ledger, closing collected, opening ledger, opening collected, float, previous day debit and credit detail (including bankcard deposits, ZBA transfers), and ACH credit and debit detail.
- 8. Provide on-line access to information on cleared and stop payment checks for all present and past accounts.
- 9. After minimum concentration account balance requirements are met, if applicable, sweep any excess cash balances into an approved overnight investment vehicle. Currently a typical balance of \$50,000,000 is available for overnight investment, but that number is subject to change.
- 10. Provide check reconciliation services. CFX currently uses partial reconciliation but may contemplate going to full reconciliation services in the future. In addition, the Contractor must be able to break down the cash collection by toll plaza.
- 11. Provide monthly activity statements and reports for all accounts. These statements shall include a monthly account analysis. The statement cutoff shall be the last day of the month. Statements shall be sent by no later than the 5th business day of the following month.

- 12. Provide the ability to place on-line stop pays. All stop payment orders will be made electronically. On rare occasions, it may be necessary to initiate a stop payment by telephone. When a stop payment order is placed, the bank shall immediately inform CFX electronically if the check has been cashed and provide an image of the cashed item. If not cashed, the bank shall provide an electronic confirmation of the stop payment. Stop payments shall be effective for a period of not less than eighteen months. Cancellation of a stop payment order will be processed in the same way as the stop payment order. All checks paid by the bank after the above procedure has been adhered to will be the responsibility of the bank.
- 13. Provide the capability to receive check images on-line.
- 14. Provide on-line balance reporting information.
- 15. Provide Positive Pay and ACH fraud programs for CFX accounts and provide this information on-line.
- 16. Provide overdraft protection services. It is not the intention of CFX to overdraw any account. In the event of an overdraft, all checks presented for payment shall be paid. CFX's Chief Financial Officer or designee will confirm wires or ACH transfers that will result in an overdraft. The bank shall complete the wire/ACH transfer after confirmation. No service fee shall be charged to the CFX for overdrafts. Overdrafts will be covered in the following manner:

The amount of the overdraft is to be deducted from the respective account balance before calculating the overnight interest earnings. Reductions to the investable cash balances must be shown on the monthly investment activity statement.

B. Toll Collection Revenue Services

The Contractor shall provide the following toll collection revenue services:

1. Contractor shall provide bonded and insured armored car pickup of money for deposit and provide change as ordered by CFX's Toll Operations Contractor (TOC). The administration buildings of the CFX's toll facilities are located at the addresses listed below. In addition, a pickup of checks only will be required at the CFX's Administration and Operations Building located at 4974 ORL Tower Road, Orlando, Florida 32807.

#### **Dean Main Toll Plaza**

10500 East-West Expressway Orlando, Florida 32825

#### **Conway East and West Toll Plazas**

5320 East-West Expressway Orlando, Florida 32807 And 4901 East-West Expressway Orlando, Florida 32807

#### **Pine Hills Main Toll Plaza**

4700 East-West Expressway Orlando, Florida 32805

## Hiawassee Main Toll Plaza

8302 East-West Expressway Orlando, Florida 32835

### Dallas Main Toll Plaza

12799 Beachline Expressway Orlando, Florida 32833

#### **Beachline Main Toll Plaza** 12500 Beachline Expressway

Orlando, Florida 32832

#### **John Young Main Toll Plaza** 14200 Greenway Orlando, Florida 32821

#### **Boggy Creek Main Toll Plaza** 13700 Greenway Orlando, Florida 32824

**Curry Ford Main Toll Plaza** 5300 Greenway Orlando, Florida 32829

#### **University Main Toll Plaza** 2600 Greenway Orlando, Florida 32817

**Independence Main Toll Plaza** 4002 State Road 429 Winter Garden, Florida 34787 **Forest Lake Toll Plaza** 3170 State Road 429 Ocoee, Florida 34761

**Coral Hills Toll Plaza** 2415 State Road 414 Apopka, FL 32703

Nothing in this Scope of Services shall prevent the change of, or addition to, the pickup locations initially specified in this Contract.

2. The vehicle used for transport shall be an armored type vehicle suitably marked for identification. The vehicle shall be capable of holding a mobile cage, owned by the armored car carrier and used for transporting coin vaults. The cage is 32" wide, 48" long and 44" high with casters that add 10" to the height. The cage is capable of holding 40-coin vaults.

Each armored car service employee shall be appropriately uniformed for identification purposes and carry an identification card that will be presented to CFX employee and/or designated representative upon request. The Contractor shall provide CFX with a master list of armored car service employees authorized to receive deposits. The master list shall be updated when necessary to reflect any changes in authorized personnel. As with all other traffic, armored car personnel are prohibited from making u-turns anywhere on the System. For each instance in which an armored car driver makes a u-turn on the System, a fine of \$100 will be levied against the Contractor.

- 3. Armored cars shall pay the appropriate toll as they pass through any toll lane. A prepaid plan, or E-PASS, is available for the Contractor or its subcontractors, if desired. The cost for such toll charges will be presumed to be included in the Contractor's Price Proposal. Additionally, any Contractor travel that may be required for the performance of the work of the Contract shall be an unreimbursed expense of the Contractor.
- 4. The Contractor shall pickup deposits from the designated CFX Toll Facilities daily, seven days per week at a time that allows for delivery to the bank for same day deposit (excluding bank holidays). The initial armored car service schedule shall be Monday through Sunday, inclusive. The seventh day, when it is a Sunday, may be delivered to the bank on Monday. Pick up at CFX's Administration

and Operations Building shall be Monday through Friday excluding CFX holidays.

- 5. Upon arrival at the toll facility, the armored car employee shall enter the vault room accompanied by a Toll Service Supervisor for the following purposes:
  - a. Opening the dual controlled, key/combination drop safe in conjunction with the Toll Service Supervisor using the master key provided by CFX for that purpose. Under unusual circumstances, the Contractor may be required to open the drop safe key lock for maintenance. CFX's Executive Director, or their designated representative, will be the only person to authorize this procedure.
  - b. Participating in the weighing and recording of the weight of each coin vault. (Coin vaults are weighed not counted. Currency received is counted.)
  - c. Picking up all of the plastic money bags and coin vaults. Each bag and vault shall be individually receipted for on the forms provided by CFX for that purpose.
  - d. Contractor possession of plastic money bags and coin vaults takes place when the Contractor's personnel pick them up.

Contractor and all subcontractors shall comply with CFX's security procedures regarding access to CFX's buildings and safes. In addition, the Contractor shall be responsible for damages caused by the Contractor (or any subcontractor) to CFX's coin vaults and buildings due to negligence of the Contractor or any subcontractor.

- 6. Deposits for each day's collections shall include:
  - a. Sealed plastic money bags, each containing a "Said to contain" deposit slip.
  - b. Locked Coin Vaults which are to be weighed and logged by TOC employees and armored car personnel, respectively, at the time of pickup and in the presence of both armored car employees and a Tolls Supervisor.
  - c. A copy of a separate Coin Vault Weighing Log for each day's collections.

- d. A bank transmittal form which lists the work date an individual bag and coin vault identification numbers for each day's collections and change orders.
- 7. CFX will provide the Contractor with master keys to the coin vaults and key-combination drop safes for each pickup location. Each pickup location shall be secured under dual controls at all times when not in use. Master keys shall not be placed in the possession of, or made available to, any employee other than the designee of CFX's Executive Director. Responsibility for the safety and security of the key resides solely with the Contractor once the Contractor has signed for the keys. Master keys shall not be duplicated under any circumstances and if a master key is damaged or lost CFX shall be notified immediately for replacement. If the Contractor loses a key, the Contractor shall be assessed the replacement cost of all coin vault locks or the re-keying costs of affected drop safes, as CFX deems appropriate.
- 8. Coin Vault Weighing Procedure
  - a. Each coin vault will be weighed by the armored car personnel in the presence of the TOC personnel and the results posted in the "Armored Car" columns of that workday's Coin Vault Weighing Log by the representative of CFX participating in the weighing.
  - b. Armored car personnel shall inspect coin vaults for obvious physical damage and shall have CFX's employee note damage on the "coin vault weight log" in the condition column.
  - c. Two copies of each day's signed Coin Vault Weighing Log shall be sealed in a dated manila envelope and delivered to the designated bank together with plastic money bags and coin vaults on the same day as they are picked up.
  - d. Prior to opening and counting of its contents, the Contractor shall weigh each coin vault and record the results on the Coin Vault Weighing Log. CFX will provide appropriate scales and maintenance.
  - e. After the "Bank" columns of the log are filled in as to individual weights and the times of weighing, each vault's weight, as shown in the "Armored Car" weight column, shall be compared with the "Bank" weight figure. If a difference in weights is discovered, {a difference in the

weight of a vault of 4 ounces (.25 pound) when dry and 8 ounces (.50 pound) when wet is allowable} the vault in question shall not be processed for deposit until the designee of CFX's Executive Director has been notified and permission to continue processing has been received. If no difference in weights is found, the bank shall complete the Coin Vault Weighing Log as to signature, date, time and condition.

- The completed log(s) shall be distributed as specified in f. Table 1 below. Once the weighing of a day's deposit has occurred, the counting and deposit process shall proceed as soon as possible.
- 9. Receipts
  - The armored car service employee picking up the deposit a. shall be required to acknowledge receipt of the funds by signing for each numbered plastic money bag, each coin vault and each sealed and dated manila envelope on the bank transmittal form.
  - b. Each individual plastic money bag, coin vault and any other listed item must be receipted for by the armored car service employee, and any comments or refused items must be signed and dated by both the armored car employee and a Toll Service Supervisor. If a pickup is made of receipts from more than one day, a separate signature is required for each day's plastic money bags, coins vaults and sealed manila envelope.
  - с.
  - The armored car service may use its own receipt form for internal control and billing purposes. However, control and responsibility for all collected revenues in the sealed coin vaults and Plastic money bags listed on the bank transmittal form (after being checked off and signed for by the armored car service employee) shall pass to the Contractor, either directly or indirectly, through its subcontractor.
- Upon delivery to the bank, an authorized bank employee shall sign 10. for each plastic money bag, each coin vault and each sealed and dated manila envelope (by number) on the bank transmittal form enclosed in the accompanying sealed manila envelope, noting the time of receipt. A separate signature is required for each day's plastic moneybags, coin vaults and manila envelope.

- 11. Responsibility for Bags and Vaults
  - a. The Contractor assumes full responsibility for the safekeeping and delivery of each sealed and/or locked container and the contents therein. Such liability shall begin when the sealed or locked container is received and receipted for by the Contractor or subcontractor and shall end when the funds are transferred by or for CFX or, in the event that delivery cannot be made, until the container is returned to CFX or CFX's consignee and is receipted for by recipient.
  - b. In the event of loss of any sealed and/or locked container, or any or all the contents therein, while in the possession of the Contractor or its subcontractor, the Contractor agrees, after receipt of proof of loss, to reimburse CFX for the full amount of such loss. Loss shall be defined as the value of the container, any additions to the container, and the contents therein as proved by documentation made available to representatives of the bank. If for any reason, representatives of the bank are not satisfied as to the documentation available, then "Contents" shall be defined as the average of the most recent seven-day's deposits recorded from a container(s) of like type collected from the same location as the container(s) in question. The bank shall not be liable for any delay in delivery caused by fire, strike, riot, war, insurrection, act of God, or other controlling cause not arising from the fault or negligence of the bank or its agent(s).
  - С.

The Contractor shall assume liability for damage or loss of the vaults, or their contents. CFX shall be reimbursed for all costs incurred for the repair or replacement of vaults. The costs for the repair or replacement price will be assessed to the Contractor in the event of damage, destruction or loss. All costs will be deducted from the Contractor's monthly invoice.

d. The Contractor shall provide all plastic bags required at the plazas at no charge. Empty plastic bags shall be retained by the bank for ninety (90) days before destruction. Empty coin vaults shall be returned to the point of origin in the same condition as received, as soon as possible after the funds contained therein have been processed. It is especially critical that CFX receives coin vaults as soon as possible prior to holidays and/or weekends. It is the

Contractor's responsibility to ensure that the armored car service returns empty coin vaults on the next day basis, with the exception of the Conway East and West toll plazas which are to receive coin vaults back the same day. CFX will assess a penalty of \$25 per day, per vault on the Contractor for vaults that are not returned on a next day basis.

- e. The Contractor shall provide canvas bags at each plaza to hold coins in the plastic deposit bags
- 12. Handling of Toll Collection Funds
  - a. The Contractor shall establish and maintain one Toll Collection depository account in the name of Central-Florida Expressway Authority. Each main toll plaza, as listed below, will have an encoded bank depository slip that identifies its location and name. All toll collection funds will be deposited into the Toll Collection depository account on the same day the funds are picked up from each main toll facility.

The titles of the bank deposit slips for each of the toll facilities are as follows:

1. Dean	9. Boggy Creek
2. Conway	10. Curry Ford
3. Pine Hills	11. Goldenrod*
4. Hiawassee	12. University
5. Dallas	13. Independence
6. Beachline Main	14. Forest Lake
7. Beachline Airport*	15. Coral Hills
8. John Young Parkway	

\*Goldenrod and Beachline Airport deposits are vaults only and are picked up at the Curry Ford Plaza and Beachline Main Plaza.

The monthly statement for the account (reporting banking transactions on a calendar month basis) shall be distributed as specified in Table 1 below.

b. Toll collection funds shall be credited to the appropriate depository account on the same day they are picked up by the armored car service. The Contractor shall ensure that the armored car service delivers all toll facility funds on the same day picked up at the toll facility and in sufficient time

to allow coin vault weighing, full processing of plastic money bags and coin vaults, and same day credit to the depository account. If toll collection funds are delivered on a Saturday or Sunday, all provisions concerning same day processing listed above shall apply. Credit for these funds shall be given effective the opening of the next weekday (excluding bank holidays). This provision in no way relieves the Contractor or its agent(s) from the responsibility to weigh (coin vaults) and count CFX's funds on the weekend-day picked up, if they are delivered to the bank on a weekend day or bank holiday. On the same day the day's receipts are processed, the Contractor shall notify the designee of CFX's Executive Director, of any individual toll collector's deposits which have an overage (or shortage) greater than three dollars (\$3.00). If, upon further investigation, it is agreed a debit or credit memo is required for the disputed amount, the debit or credit memo shall reference the original deposit and be sent to CFX's Headquarters or other location as designated by CFX's Executive Director as soon as possible.

- c. CFX may authorize changes in Contract terms from time to time as reflected by operational necessities. All such changes will conform to existing Contract terms and to all applicable statutes and guidelines regarding the establishment and maintenance of such Contract. The Executive Director's designee may authorize documented debit or credit memos for existing revenue deposits.
- d. If the Contractor is unable to provide credit according to the provisions specified herein, the following procedures shall apply:
  - i. CFX's account shall be credited the same day as the funds are picked up, based upon the average of the previous seven day's deposits from the same location(s), multiplied by the number of days work for which credit is not being provided in the normal manner.
  - ii. When the deposit is processed on the next working day, a matching debit shall be made, "washing" the credit based upon the seven-day average amount.
  - iii. CFX's account is credited, based upon the actual counting of CFX's funds by bank personnel. An

individual credit shall be made for each day's receipts received.

e.

The Contractor shall retain and prepare, at the bank, preprinted deposit slips for the Toll Collection Account. Unless specifically detailed in the price proposal, there shall be no itemized charges for ACH deposits, on-line services, preprinted deposit slips, checks, check deposits, additional statements, analyses, wire transfers, ACH fraud filter services, change orders, coin wrappers or other materials requested and/or used in administrative, audit or operational support of these accounts. CFX will assume that all such charges shall have been included in the bid price for these accounts. In addition, the Contractor shall be required to provide all applicable revenue deposit and verification information on electronic media compatible with CFX's PC-based computers. Two separate deposit slips for each of the main toll facilities, and fully automated data transmission(s) compatible with CFX's computer systems shall be prepared for each day's receipts (7 days each week):

- i. First daily deposit slip for the facility shall be for that day's plastic money bags and an attached calculation shall list each individual plastic bag number, the actual total revenue counted in each bag, bank employee number and a validated total for all of the plastic money bags from that day. If there is insufficient room on the first deposit slip to list all required detail, by plastic money bag, a second deposit slip shall be attached.
- ii.. Second daily deposit slip for the facility shall be for that day's coin vaults and shall list each individual coin vault number, the actual total revenue counted in each coin vault, and a validated total for all of the coin vaults from that day.
- iii.. The automated daily data transmission(s) shall contain all deposit and verification data i.e. facility name, plastic money bag number, coin vault ID, coin vault weight, deposit revenue denomination counts, indicated revenue, pick up date, deposit date, supervisor number, etc. Data transmission(s) shall be in a fixed field formatted text file in

accordance with the record layout specification described in Appendix A and example.

- f. Failure of the Contractor to make toll collection account balances transfers in strict accordance with this schedule will result in the Contractor paying interest compensation to CFX in an interest amount equal to the average of the prior four week's 13-week U.S. Treasury Bill Rates as published in the Wall Street Journal multiplied by the account balance and the number of days delinquent.
- 13. The Contractor shall comply with the TOC's orders for change, currency and bags. Orders for change shall be processed on a same day basis. A list of authorized toll facility employees and preset order limits will be provided by the TOC. Employees on this list (within pre-established limits) will order change by telephone or electronically. Confirmation of the order will be noted on the same day or next morning's Receipt for Bank Transmittal Form at the time of delivery. Under no circumstances shall the armored car service release the change order to the toll facility unless an appropriate amount of currency is tendered in exchange at the time of delivery. Debiting of the revenue account for the purpose of filling change orders is specifically prohibited by trust indenture obligations of CFX.
- C. Miscellaneous
  - 1. Paper cash deposits are bundled in standard straps. Loose bills that do not complete a standard strap amount are wrapped with a rubber band.
  - 2. CFX utilizes the electronic scanning of checks for most deposits. Checks written by CFX are printed in-house on blank check stock. CFX uses a MICR printer and checks are electronically signed by the printer.
  - 3. The denomination of the currency deposited is required as part of the daily transmission for reconciliation purposes.
- D. Subcontracts

The Contractor may subcontract with a reputable armored car service to provide the courier services required with prior approval of CFX. CFX shall be notified as soon as possible and, in no instance, less than three weeks prior to any change in armored car service. No change in armored car service shall take place without prior approval of CFX. Representatives of the Contractor, CFX, and the new armored car company shall meet no less than two weeks prior to the contemplated effective date of the change of service by the new subcontractor to discuss transition and specific procedures and requirements of the Contract.

E. Reimbursement for Shortages

In the event that CFX ascertains through its coin vault audit program that coin vaults are being credited by the bank for an amount less than that counted by CFX, the Contractor shall reimburse to CFX the amount of shortage. The Contractor assumes full liability for sealed, coin vault contents after collection by the courier under contract to the Contractor. The Contractor is authorized to examine the audit program used by CFX to determine shortages for collections processed by the Contractor.

- F. Bank Internal Security
  - 1. The Contractor shall allow authorized employees of CFX to visually inspect the internal security of the coin counting and teller area operations without prior notification by CFX. After such inspection, CFX will notify the bank, in writing, of any internal control weaknesses noted. The bank shall make every effort to correct valid internal control weaknesses within a five-day period.
  - 2. CFX shall be notified within ten (10) business days if any employees involved in the processing of CFX monies are disciplined, fired, charged with or convicted of a crime.
- G. Documentation
  - 1. The following documents shall be sent as indicated to the parties listed at addresses provided in Paragraph G., below:

DOCUMENT	SENT TO	SCHEDULE	
Master List of Armored Car Employees Authorized to Receive Deposits	Original to TOC Copy to CFX	48 Hrs. Prior to First Pickup	
Coin Vault Weighing Log	Original to CFX & Copy to TOC	Each Business Day	
Deposit Slips (Plastic money bags, coin vaults)	Original to CFX & Copy to TOC	Each Business Day	

Τ	ab	le	1

Scope of Services Contract No. 001496

Daily transmission Deposit & Verification Data	CFX & TOC	Each Business Day
Bank Transmittal Form	Original to CFX & Copy to TOC	Each Business Day
Monthly Statements (Clearing Accounts)	CFX	Monthly

- 2. Copies of all records acknowledging separate receipt for the bags, vaults and manila envelope representing each day's collections shall be retained by the Contractor and made available to CFX for review upon request.
- H. Correspondence
  - 1. Courier Service

The Contractor shall, on a daily basis, provide for pickup by courier to the TOC's office at the following address:

AECOM 4974 ORL Tower Road Orlando, Florida 32807

- 2. Mailing Addresses
  - a. Official correspondence to CFX shall be sent to the following address, or as otherwise directed by CFX's Executive Director:

Central Florida Expressway Authority Director of Accounting and Finance 4974 ORL Tower Road Orlando, Florida 32807-9913

b. Official correspondence to the TOC shall be addressed to:

Program Director AECOM 4974 ORL Tower Road Orlando, Florida 32807

#### END OF SCOPE OF SERVICES



### **MEMORANDUM**

TO: Central Florida Expressway Authority Board Members

FROM: Jeffrey Tecau, Managing Director, Protiviti

Aff-PSiZz

DATE: January 31, 2022

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 26, 2022.

- 1. Engineering and Construction Invoicing Review
- 2. Procurement and Contract Billing Audit
- 3. Payment Card Industry Assessment
- 4. Department of Highway Safety and Motor Vehicles Data Security Assessment
- 5. Driver and Vehicle Information Database Data Security Assessment

Reviewed by: \_\_\_\_\_\_





# ENGINEERING AND CONSTRUCTION INVOICING REVIEW

November 2021

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

Internal Audit, Risk, Business & Technology Consulting

## TABLE OF CONTENTS

Section Description	Page #
Executive Summary	
Overview	3
Objectives, Scope, and Approach	4
Summary of Observations	5
Contracting Methodology	7
Detailed Observations	
Invoice Review and Approval Workflow	9
Delegation of Authority	12
Integration Between SharePoint and Eden	14
Appendices	
Appendix A: Key Stakeholders & Interviews Performed	17
Appendix B: Protiviti – Six Elements of Infrastructure	18

2

### Overview

#### Background

3

The Central Florida Expressway Authority (CFX) currently owns and operates 125 centerline miles of roadway and is responsible for the construction, maintenance, and operation of the expressway system in the Central Florida Area. In FY22, CFX has more than 15 Planning Studies, Design Projects, and/or Construction Projects that are ongoing or completed on one of the nine CFX Toll Roads (SR 409, SR 414, SR 417, SR 429, SR 451, SR 528, SR 453, SR 538, and SR 516)

As part of CFX's efforts to continuously develop and maintain new and safe expressways, CFX engages third-party vendors for construction and professional services to conduct construction management and engineering activities. Third-party vendors are used for the following services:

- **Construction Management Consultant (CMC)** Overall management and oversight of construction projects to track project performance, review project documentation, and conduct quality controls of construction activity.
- Construction Engineering and Inspection Consultant (CEI) Management of day-to-day construction activities, contract administration, inspection, and verification of contract compliance by the general contractor (GC).
- General Engineering Consultant (GEC) Management and oversight of design, review, and coordination of the design and construction phases of CFX projects.
- General Contractor (GC) Construction of expressways within the design specifications, and procurement and management of construction subcontractors.

### Objectives, Scope, & Approach

#### **Objectives**

In accordance with the 2022 Internal Audit Plan, Internal Audit conducted a review of CFX's engineering and construction invoice management process with third-party vendors to identify improvement opportunities related to invoicing process efficiency, using technology to review and process invoices, and contracting methodologies with awarded vendors.

#### Scope and Approach

To achieve the objectives of this review, the following procedures were performed:

- Conducted interviews with CFX staff and reviewed applicable documentation regarding the current engineering and construction invoicing and payment process, the use of technology for payment processing and approvals, and contracting methodologies.
- Developed documentation of the current state and compared CFX's current state processes to leading practices utilized by companies to identify improvement opportunities related to:
  - o Invoice submission and receipt
  - o Invoice review and approval workflow
  - o Invoice reconciliation
  - o Invoice submission and processing by Accounts Payable
- Reviewed technologies currently utilized by CFX receive, review, and approve invoices to identify opportunities to improve consistency and efficiency.
- Reviewed CFX's contracting methods for professional services to better understand impacts of current terms and conditions and compare to a similar agency that executes similar types of projects.
- Conducted interviews with external, third-party general contractors and professional service vendors to better understand process inefficiencies and consistency issues related to invoice submission, required invoice support, and average time to payment.

### Summary of Observations

The following observations and improvement opportunities were noted during the review of CFX's Engineering and Construction invoicing process.

#### Invoice Review and Approval Workflow

Several opportunities exist to enhance the current engineering and construction invoice review and approval process related to the following areas:

- Invoice Submission Standardized submission requirements for vendor invoices and supporting documentation do not exist.
- Automated Invoice Routing and Re-routing Reviewed and approved invoices must be manually moved or routed to the next appropriate stakeholder. System-based workflows offered by SharePoint or other invoicing applications are not utilized.
- Manual Invoice Review Current procedures require CFX project stakeholders to manually review, recalculate, and potentially correct incorrect or inaccurate invoicing metrics (e.g., EA, PK, SQFT, Hours, etc.).
- Invoice Status Monitoring Current system limitations make it difficult for CFX project managers to easily identify the progress of vendor invoices within the review and approval workflow as well as current payment status.

### **Delegation of Authority**

Several opportunities exist within CFX's Delegation of Authority for engineering and construction invoices related to following areas:

- Out of Office Stakeholders The current CFX invoice review and approval processes require stakeholders to be cognitive of out of office stakeholders when routing for review and approval.
- Invoice Approval Thresholds CFX policy requires invoices greater than \$50,000 to receive executive approval. The high percentage of
  invoices that exceed this approval threshold funnel a large volume of invoices associated with projects that have been previously approved
  through the executive team for review and approval.
- **Redundant Review and Approval Requirements** Redundancies exist in the SharePoint folder structure where invoices are reviewed and approved multiple times through the lifecycle of the payment process.

### Summary of Observations (continued)

6

#### Integration Between SharePoint and Eden

Eden, CFX's ERP software, is not integrated with SharePoint. SharePoint is used to track, review, and approve invoices. This creates opportunities related to the following areas:

- Aggregation of Real-Time Project Data Lack of integration between SharePoint and Eden limits insight into real-time project data and requires manual and inefficient methods to aggregate project costs that may be inaccurate at the time of data collection.
- Payment Status Identification Limited insight into project payment status exists, impacting the ability to efficiently identify the status of a payment in the event of inquiry by a vendor.

### **Contracting Methodology**

Internal Audit conducted an analysis comparing CFX's current contracting methodologies with another government agency that executes similar roadway construction projects and general alternative contracting methods. The agency reviewed utilizes comparable contracting methodologies for Professional Service vendors. Internal Audit recommends that CFX should maintain its current contracting methods with consideration for other improvement opportunities to policy, process, and systems.

The following attributes were identified specific to CFX's Current Contracting Method as compared to the alternative contracting methods of Lump Sum and Time and Material (w/ Cap) / Not to Exceed.

CFX Hybrid Contracting Method	Lump Sum	Time and Material (w/ Cap) / Not to Exceed
<ul> <li>Hybrid Description:</li> <li>Limiting amount for salary related and subconsultant costs</li> <li>Fixed Fee for operating margin / profit paid</li> <li>Lump Sum amount for expenses</li> </ul> Pros: <ul> <li>Current contract structure of similar organizations for Service Providers</li> <li>Shifted risk from CFX to Service Provider</li> <li>Easily executed change order (if needed) due to pre-determined rates</li> </ul> Neutral: <ul> <li>Cons:</li> <li>Increased administrative review of Service Provider's invoice backup</li> </ul> This is the current contracting method in-use by CFX and similar agencies	<ul> <li>Pros: <ul> <li>Predictability of project budget / invoice amounts</li> <li>Expectation of Service Provider to complete services more efficiently</li> <li>Efficient invoicing process</li> <li>Decreased project oversight of Service Provider</li> <li>Project related risk shifted to Service Provider</li> </ul> </li> <li>Neutral: <ul> <li>Cons:</li> <li>Increased costs related to the shift in project risk from CFX to Service Provider</li> <li>Undefined scope of work / deliverables may result in increased costs</li> </ul> </li> <li>Scenario for Use: <ul> <li>Simple and straightforward scopes of work with clearly defined deliverables</li> </ul> </li> </ul>	<ul> <li>Pros: <ul> <li>Simple contract structure</li> <li>Pre-determined rates and material cost for invoicing</li> </ul> </li> <li>Neutral: <ul> <li>CFX and service provider share project / engagement related risk, with reduced risk to CFX for Not to Exceed</li> </ul> </li> <li>Cons: <ul> <li>Increased progress tracking to align with invoice amounts</li> <li>Maximum administrative requirement for CFX project management team</li> <li>Projects that are not meeting deliverable expectations may incur change orders / increased costs</li> </ul> </li> <li>Scenario for Use: <ul> <li>When services are in low-demand and CFX may capitalize on limited engagement opportunity</li> </ul> </li> </ul>

\*Contract review focused on contracting methods that may be appropriate for only professional services, and Construction remaining a unit price-based contract

© 2021 Protiviti Inc. All Rights Reserved. This document has been prepared for use by CFXs management, audit committee, and board of directors. This report provides information about the condition of risks and internal controls at one point in time. Future events and changes may significantly and adversely impact these risks and controls in ways that this report did not and cannot anticipate.

7

# **DETAILED OBSERVATIONS**

## **DETAILED OBSERVATIONS**

Observation 1 – Invoice Review and Approval Workflow





Elements of Infrastructure

#### **Observation**

9

The current invoice review and approval process was developed and implemented as a result of local and state-wide shutdowns during the COVID pandemic. It closely resembles previous manual processes, where paper invoices are delivered from one reviewer and approver to another. In the updated process, SharePoint is used to manually move invoicing documents from one folder to another. This new process represents a significant improvement in efficiency to review, approve, and retain documents. Further opportunities exist within the following areas:

- Invoice Submission Standardized submission requirements for vendor invoices and supporting documentation do not exist.
- Automated Invoice Routing and Re-routing Reviewed and approved invoices must be manually moved or routed to the next appropriate stakeholder and system-based workflows offered by SharePoint are not utilized.
- Manual Invoice Review Current procedures require CFX project stakeholders to manually review, recalculate, and potentially correct incorrect or inaccurate invoicing metrics (e.g., EA, PK, SQFT, Hours, etc.).
- Invoice Status Monitoring System limitations make it difficult for CFX project managers to identify the location of vendor invoices within the review and approval workflow, and to easily identify current payment status.

A comparison of Average Time to Payment between CFX and other organizations with similar roadway development projects is below. Based upon a discussion of FDOT's invoicing applications (e.g., CITS) and related procedures, FDOT has implemented invoicing applications for Professional Services and Construction to efficiently receive, route, approve, and process invoices in a timely and effective manner.

		Average Time to Payment (Days)	
Contractor	Contract Type	Similar Agency	CFX
SEMA Construction	Construction	10	35.5
The Lane Construction Corporation	Construction	10.5	40
RK&K	Construction	14	28
PI Consulting Services	Professional Services	14	30 – 45

\*Invoice processing information (in days) provided by external stakeholder from each of the third-parties listed

© 2021 Protiviti Inc. All Rights Reserved. This document has been prepared for use by CFXs management, audit committee, and board of directors. This report provides information about the condition of risks and internal controls at one point in time. Future events and changes may significantly and adversely impact these risks and controls in ways that this report did not and cannot anticipate.

## **DETAILED OBSERVATIONS**

Observation 1 - Invoice Review and Approval Workflow (continued)





Elements of Infrastructure

#### **Recommendation**

CFX should consider the below immediate, short-term recommendations and strategic, long-term recommendation to enhance the construction and engineering invoice review and approval workflow. The short-term recommendations are focused on enhanced leverage of current SharePoint functionality, while the long-term recommendation is contingent upon future investments in technology.

Short-Term Recommendations for SharePoint Enhancement:

- Workflow Approval SharePoint workflow capabilities that can route a document or item to collection of stakeholders for review and approval, can also be configured to re-route approval requirements based on stakeholders out of office.
- **Digital or Electronic Signature** SharePoint workflow can be configured to require approvers to provide a digital or electronic signature for specific stakeholders within an approval workflow.
- Stakeholder Feedback SharePoint configuration can include capabilities by reviewers to provide feedback from stakeholders to include for subsequent approvers to consider prior to any payment authorization.
- Workflow Automation SharePoint automation can include workflow capabilities to push documentation to appropriate next stakeholder in workflow to review and/or approve.
- User Notifications SharePoint 'Assign a Task' can be used to alert users when invoices have been delivered to individual folders or invoice review and approvals surpass key processing dates.

#### Long-Term Recommendation:

CFX should perform a comprehensive review of available and customizable invoice software applications to replace SharePoint. This should include the review and prioritization of business and end-user requirements of a selected application (e.g., third-party portal for document upload, automated workflow, predetermined or required inputs, electronic approval and signature, system notifications, audit functionality, etc.), the development of a short list of potential platforms, and, following a system selection, the performance of in-depth workshops with key stakeholders to identify all requirements for User Interface and User Experience. CFX should utilize the Short-Term Recommendation functionalities when selecting a future technology to replace the current SharePoint folder system.

protiviti

<sup>© 2021</sup> Protiviti Inc. All Rights Reserved. This document has been prepared for use by CFXs management, audit committee, and board of directors. This report provides information about the condition of risks and internal controls at one point in time. Future events and changes may significantly and adversely impact these risks and controls in ways that this report did not and cannot anticipate.

Observation 1 – Invoice Review & Approval Workflow (continued)



#### **Elements of Infrastructure**



#### Management Response

Management concurs

#### **Management Action Plan**

<u>Short Term Action Plan</u>: Adobe Sign is currently used throughout several CFX departments to route invoices for approval. Where practical, the Infrastructure Group will shift over to Adobe Sign for engineering and construction invoices.

Long Term Action Plan: CFX recognizes that restructuring of contract management and invoicing is tightly linked to our planned replacement of the legacy Eden ERP system. The ERP is the foundation on which more efficient contract management processes and procedures will be created. As a result, CFX has initiated an engagement to ensure the ERP procurement accommodates the requirements of these contract management functions.

#### Action Plan CFX / Due Date

Short Term Action Plan: Glenn Pressimone - June 30, 2022

Long Term Action Plan: Lisa Lumbard - June 30, 2024

Observation 2 – Delegation of Authority

Relative Priority	
Low	

#### **Elements of Infrastructure**



#### **Observation**

CFX's policies and procedures around delegation of authority limit the efficient processing of construction and engineering invoices. Currently, CFX relies on manual routing of invoices for stakeholders that are away and low approval thresholds. This often result in a large volume of invoices passing through a single approver, and a high number of reviewers, secondary reviewers and approvers within the current delegation of authority matrix.

Invoices received for construction and professional services greater than \$50,000 must be reviewed and approved by the Chief of Infrastructure,. This can cause a bottleneck when large volumes of invoices are received or when the Chief approver is away. In many cases, these invoices are part of a previously approved capital project budget or expenditure. Specifically, Internal Audit sampled 108 total invoices over a four-month period from vendors completing Engineering, Construction, and Consultant activities and found the following:

- Of 108 sampled invoices, 85 invoices (78%) were greater than \$50,000
- Of the 85 invoices greater than \$50,000, 28 invoices (33%) were greater than \$200,000
  - Construction invoices, 12 invoices (14%) greater than \$200,000
  - Consultant invoices, 2 invoices (2%) greater than \$200,000
  - Engineering Invoices, 14 invoices (16%) greater than \$200,000

#### **Recommendation**

CFX may benefit from changing the routing and approval thresholds associated with construction and engineering invoices. Suggested changes to consider include reducing the number of primary and secondary reviewers required prior to invoice approval, developing solutions (manual or automated) to re-route invoices for approval when approvers are out of the office, and considering increasing the approval threshold from \$50,000 to \$200,000 for the Chief of Infrastructure for engineering, construction and consultant invoices.

Observation 2 – Delegation of Authority (continued)

Relative Priority	
Low	

#### Management Response

Management concurs

#### **Management Action Plan**

Adobe Sign is currently used throughout several CFX departments to rout invoices for approval. The Infrastructure Group will investigate the possibility of shifting over to Adobe Sign for engineering and construction invoices.

The threshold for construction invoices requiring Chief of Infrastructure approval will be revised to \$200,000.

#### Action Plan CFX / Due Date

Lisa Lumbard – June 30, 2022

Elements of Infrastructure



<sup>© 2021</sup> Protiviti Inc. All Rights Reserved. This document has been prepared for use by CFXs management, audit committee, and board of directors. This report provides information about the condition of risks and internal controls at one point in time. Future events and changes may significantly and adversely impact these risks and controls in ways that this report did not and cannot anticipate.

Observation 3 – Integration Between SharePoint and Eden

Relative Priority	
Low	

Business Policies Processes Processes Processes Processes

Elements of Infrastructure

#### **Observation**

Eden, CFX's ERP software, is not integrated with SharePoint. SharePoint is used to track, review, and approve invoices. Because Eden and SharePoint are not integrated, CFX is limited in its ability to accurately and efficiently track and monitor project spending in real-time while reviewing invoices for payment. Current spend tracking is done manually by the CFX project management team in external applications. This current process lends itself to a higher chance of manual error caused by incorrectly inputting project metrics and to delays with capturing actual project information.

In addition to a relatively manual process to capture full project costs, the lack of integration between Eden and SharePoint creates a lack of transparency around invoice payment status (e.g., Paid, Scheduled, On-Hold, Approved Pending) and impacts CFX's ability to accurately forecast remaining budget estimates to completion for limited amount contracts.

#### **Recommendation**

CFX should consider the below immediate, short-term recommendations and strategic, long-term recommendation to enhance the use of technology to support construction and engineering invoice processing. While SharePoint is not the solution for the future, CFX must consider the following elements of a successful system that incorporates all review, approval, and invoice tracking into a single solution through software and/or integration.

#### Short-Term Recommendations:

Conduct a diagnostic to identify the most critical requirements that a system must be capable of related to the following areas:

- Invoice Workflow End-user requirements to track invoice payment status, processing issues, workflow activity
- Vendor Management Maintain clean master vendor file for access to systems (front-end vendor portal), payment information, and vendor tax information
- Project Tracking / Reporting Real-time project data from system of record to provide more effective reporting capabilities
- Path Forward Determination if SharePoint is the go-forward invoice application of the future for CFX

#### Long-Term Recommendation:

Identify an appropriate project team (internal or external) to conduct requirements workshops to identify components and capabilities of a successful integration of an invoice review and approval system and an ERP system, with with a focus on capturing overall project management and administrative benefits. Project management and administrative benefits may include things like real-time project data, mobile access, automated processing of approved invoices, and payment status to project stakeholders.



Observation 3 – Integration Between SharePoint and Eden (continued)



## Elements of Infrastructure



#### Management Response

Management concurs

#### Management Action Plan

Short Term Action Plan: CFX has engaged a consultant to assist with the following objectives:

- Inform CFX of solutions and approaches used by peer organizations pertaining to contract management.
- · Educate CFX staff on capabilities and limitations of leading software products and industry solutions
- Prepare CFX to specify requirements within the ERP procurement to ensure the selected platform aligns with our contract management goals

Long Term Action Plan: CFX recognizes that restructuring of contract management and invoicing is tightly linked to our planned replacement of the legacy Eden ERP system. The ERP is the foundation on which more efficient contract management processes and procedures will be created. As a result, CFX has initiated an engagement to ensure the ERP procurement accommodates the requirements of these contract management functions.

#### Action Plan CFX / Due Date

Short Term Action Plan: Jim Greer - June 30, 2022

Long Term Action Plan: Lisa Lumbard - June 30, 2024

## APPENDIX

### **APPENDIX A**

#### Key Stakeholders and Interviews Performed

Protiviti would like to thank the individuals listed in the table below for their assistance throughout this diagnostic review. All CFX, SEMA Construction, PI Consulting Services, Lane Construction, and RKK Engineering team members were professional, well prepared for the interviews, and shared objective insights into CFX's current invoicing methodologies and processes. Their contributions and perspectives were appreciated and aided Protiviti with this review.

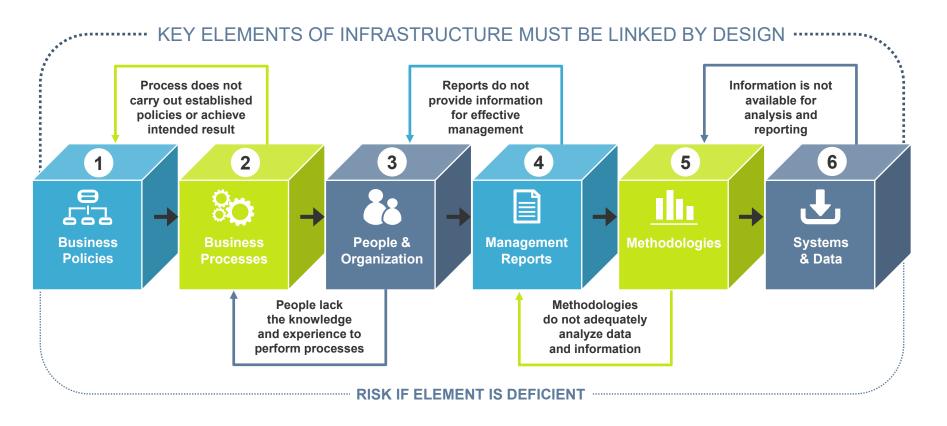
- Laura Kelley Executive Director
- · Lisa Lumbard Chief Financial Officer
- Glenn Pressimone Director of Engineering
- Ben Dreiling Director of Construction
- Kim Murphy Construction Project Administrator
- Carrie Baker Manager of Contract Compliance
- Jeannie Perez Contract Support Specialist

- Justin Oakes SEMA Construction
- Chaitali Prajapati PI Consulting Services
- Dylean Phillips Lane Construction
- Mike Lausier RKK Engineering

### **APPENDIX B**

#### Protiviti - Six Elements of Infrastructure

The Six Elements of Infrastructure identifies the key components that must be considered to effectively manage risk within an organization. Use of this infrastructure helps organize the otherwise complex network of risk management activities into a comprehensive and consistent framework. The term "infrastructure" may be used interchangeably with "capabilities." The Six Elements of Infrastructure is often combined with the Capability Maturity Model to assess the maturity of each key element.



© 2021 Protiviti Inc. All Rights Reserved. This document has been prepared for use by CFXs management, audit committee, and board of directors. This report provides information about the condition of risks and internal controls at one point in time. Future events and changes may significantly and adversely impact these risks and controls in ways that this report did not and cannot anticipate.

protiviti

## Face the Future with Confidence

© 2021 Protiviti Inc. All Rights Reserved. This document has been prepared for use by CFXs management, audit committee, and board of directors. This report provides information about the condition of risks and internal controls at one point in time. Future events and changes may significantly and adversely impact these risks and controls in ways that this report did not and cannot anticipate.





## PROCUREMENT AND CONTRACT BILLING AUDIT

December 2021

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

Internal Audit, Risk, Business & Technology Consulting

## **TABLE OF CONTENTS**

Section	Page
Executive Summary	3
Summary of Audit Procedures Performed and Results	5
Detailed Observations	6
Appendix A – Detailed Audit Procedures Performed	8

2

## **EXECUTIVE SUMMARY**

#### Overview / Objectives / Scope and Approach

#### **Overview**

In accordance with the 2022 Internal Audit Plan, Internal Audit selected two Central Florida Expressway Authority ("CFX") contracts for audit from a population of currently active engineering, service, maintenance, operations, and construction projects with a contract value in excess of \$2.03 billion. The combined contract value of these two contracts exceeded \$139.6 million (\$105.3 million in current expenditures). The last contract billing audit was completed during October 2020 and included a different set of contracts.

#### Objectives

3

The objectives of this audit were to (1) audit the accuracy of items billed to CFX in accordance with contract terms and conditions, and (2) identify and test key processes and controls related to contract procurement, contract administration, project and cost management, and supplemental agreement management.

#### **Project Scope and Approach**

This audit was performed using a four-phased approach as outlined below.

#### Phase I – Contract Analysis and Selection

To select contracts for audit, Internal Audit obtained a listing of all active contracts and identified a short-list of contracts for audit after interviewing management and performing a risk analysis based on contract size, duration, terms and conditions, and nature of the work. The following contracts were selected for review and approved by the Audit Committee Chair prior to audit:

- Sema Construction, Inc. (#001614) Contract for construction of SR 528 / SR 436 Interchange Improvements and SR 528 Widening from SR 436 to Goldenrod Road. Project of critical concern. This contract began in April 2020 and had a current contract value of approximately \$107 million at the time of audit. As taken from Eden, CFX's accounting system, total expenditures to date at the time of this audit were approximately \$79.4 million.
- Dewberry Engineers, Inc. (#001145) Contract for General Engineering Consultant (GEC) Services. This contract began in December 2016 and had a current contract value of approximately \$32.6 million at the time of audit. As taken from Eden, CFX's accounting system, total expenditures to date at the time of this audit were approximately \$25.9 million.

<sup>© 2021</sup> Protiviti Inc. All Rights Reserved. This document has been prepared for use by CFXs management, audit committee, and board of directors. This report provides information about the condition of risks and internal controls at one point in time. Future events and changes may significantly and adversely impact these risks and controls in ways that this report did not and cannot anticipate.

## **EXECUTIVE SUMMARY**

Overview / Objectives / Scope and Approach

#### Phase II – Processes and Controls Review

Internal Audit performed procedures to review CFX's processes, policies, and procedures related to procurement, contract administration, project and cost management, and supplemental agreement management. Key internal controls within each of these areas were identified and tested for each contract selected in Phase I. A summary of the procedures performed, results, and observations are provided on the following pages. Additional details on the procedures performed are included in Appendix A.

During September 2021, Internal Audit completed a review of recommendations issued during prior audits. No audit recommendations remained open from prior year Procurement and Contract Billing Audits. The changes resulting from prior audit recommendations issued during past audits were incorporated into the 2022 Procurement and Contract Billing Audit for review so that Internal Audit could verify that prior year findings were resolved and are not prevalent in the current year contracts selected for testing.

#### Phase III – Contract-Specific Audit Procedures

Internal Audit performed detailed procedures to review contract terms, costs billed to CFX, and other key attributes for each of the contracts selected for audit. The contracts selected, value, spend to date, sample tested, and percentage of spend tested are outlined below:

Contract	Contract Value	Spend to Date [1]	Sample Tested [2]	% Spend Tested
Sema Construction, Inc. (#001614)	\$107,020,926.32	\$86,697,018.04	\$52,191,761.05	60%
Dewberry Engineers, Inc. (#001145)	\$32,595,000.00	\$26,418,673.81	\$10,963,911.99	42%

[1] As of October 22, 2021

4

[2] Invoices were selected for testing using judgmental sampling. A detailed report of all invoices paid to date was obtained for each contract and analyzed on a month-over-month basis to select samples for testing. The invoices selected were tested for compliance with contract terms and conditions.

#### Phase IV – Reporting and Deliverables

Internal Audit prepared this report for management review and issuance to the CFX Audit Committee.

© 2021 Protiviti Inc. All Rights Reserved. This document has been prepared for use by CFXs management, audit committee, and board of directors. This report provides information about the condition of risks and internal controls at one point in time. Future events and changes may significantly and adversely impact these risks and controls in ways that this report did not and cannot anticipate.

## SUMMARY OF PROCEDURES PERFORMED AND RESULTS

#### Process Areas / Procedures / Controls Tested

For the contracts selected for audit, Internal Audit identified risks and tested key controls within the process areas outlined below. Where applicable, a sample of detailed project costs was reviewed and tested for compliance with contract terms and conditions. The table below provides an overview of the areas reviewed for each contract audited. Further details related to the specific procedures performed are provided in Appendix A.

Process	Procedures Performed / Key Areas Reviewed	Total Controls Tested	Number of Observations	Observation Reference
Procurement	Project funding and bid authorization, project bidding (sealed bids and competitive sealed proposals), bid awards, bid bond requirements, and contract renewals.	25	0	-
Contract Administration	Contract terms and conditions, insurance, bond and permitting requirements, and minority and women owned business ("MWBE") requirements.	11	0	-
Project and Cost Management	Invoice processing, project planning, scheduling, quality control, subcontract management, cost management, owner direct material purchases ("ODMP") management, and project reporting.	31	1	1 – Low
Change Order Management	Supplemental agreement review, approval, and execution.	8	0	-
Project Closeout	Preparation, approval, and submission of project close- out documents.	0	0	-
	TOTALS:	75	1	1

© 2021 Protiviti Inc. All Rights Reserved. This document has been prepared for use by CFXs management, audit committee, and board of directors. This report provides information about the condition of risks and internal controls at one point in time. Future events and changes may significantly and adversely impact these risks and controls in ways that this report did not and cannot anticipate.

protiviti

#### **Observation 1 – Invoice Review Procedures Documentation**

#### Observation **Relative Priority** Detailed review of invoices for Dewberry contract #1145 is performed by the Contract Support Specialist. Invoices are Low reviewed for adequate supporting documentation, compliance with contractual terms, and mathematical accuracy. For Dewberry contract #1145, no documented procedure manual or billing checklist exists to govern invoice review procedures. Contract billing checklists are employed as a leading practice to ensure invoices are reviewed consistently and with sufficient precision. Without clear documentation of invoice review procedures, invoice reviews may not be adequate to detect errors and instances of noncompliance with contractual terms; further, employee turnover may result in the loss of historical knowledge and competencies. Recommendation Documented criteria should exist to facilitate consistent and efficient invoice reviews, reduce the likelihood of billing disputes, and allow other CFX personnel to perform the process in the absence of the assigned reviewer. Management should coordinate with the Contract Support Specialist to document and approve the criteria governing invoice review procedures. **Management Response Project and Cost** Management concurs. Administration

#### **Management Action Plan**

Management will develop a streamlined invoice review guide by documenting baseline invoice review procedures for all engineering service contracts and including additional procedures unique to specific contracts where necessary. Once baseline procedures are documented, management will document any additional considerations unique to Dewberry contract #1145 if applicable. Baseline procedures and contract-specific procedures will be maintained and updated as needed.

Action Plan Owner / Due Date

7

Glenn Pressimone / December 31, 2022

## **APPENDIX A**

Detailed Audit Procedures Performed

### APPENDIX A Detailed Audit Procedures Performed

#### Procurement

Internal Audit performed detailed audit procedures related to the procurement, bidding, award, and renewal of all contracts selected for testing. The procedures performed included:

- Review of the process for establishing bid estimates for large construction contracts;
- Testing of Board approval to advertise for bids and proposals and Board approval of the contract award;
- Testing for the use of five-year contract terms and the option for five one-year renewals for contracts;
- Testing of the key components of the competitive sealed bid and proposal processes, including:
  - Completion and utilization of bidding and award schedules;
  - Timestamps applied to all received proposals and compliance with submission deadlines;
  - The use of bid opening and bid tabulation sheets;
  - Performance of unbalanced bid reviews for competitive bids;
  - Completion of disclosure forms by CFX's employees responsible for evaluating technical and price proposals; and
  - Comparison of evaluation and scoring to advertised request for proposals.
- Completion and distribution of the monthly expiring contracts report by the procurement department; and
- \* Completion and approval of the expiring contract renewal worksheet and Board approval of contract renewals.

Continued on the following page....

protiviti

9

<sup>© 2021</sup> Protiviti Inc. All Rights Reserved. This document has been prepared for use by CFXs management, audit committee, and board of directors. This report provides information about the condition of risks and internal controls at one point in time. Future events and changes may significantly and adversely impact these risks and controls in ways that this report did not and cannot anticipate.

### **APPENDIX A** Detailed Audit Procedures Performed

#### **Contract Administration**

Internal Audit performed detailed audit procedures related to key contract terms and conditions utilized by CFX including the satisfaction of insurance, bonding, permitting and MWBE requirements by the contractors selected for testing. The procedures performed included:

- Testing for the review of contracts by CFX's Legal Counsel;
- Testing of key contract reviews and clauses, including:
  - Right to review by CFX's Legal Counsel; and
  - Inclusion of key right to audit, termination, and indemnity clauses.
- \* Outlining and testing of insurance, bonding, and permitting requirements specific to the contracts selected; and
- Satisfaction of MWBE requirements set forth in the original bid and as required by CFX.

#### **Change Order Management**

Internal Audit performed detailed audit procedures related to supplemental agreement execution, review, and approval. The procedures performed included:

- Testing for Board approval of all supplemental agreements in excess of \$50,000;
- Testing for the approval of all supplemental agreements by the appropriate parties;
- Testing of adequate supporting documentation for compliance with contract terms and conditions regarding price and scope for all executed supplemental agreements related to the construction contracts selected for review; and
- \* Testing of a sample of fuel price and bituminous mix adjustments related to the construction contracts selected for review.

Continued on the following page....

<sup>© 2021</sup> Protiviti Inc. All Rights Reserved. This document has been prepared for use by CFXs management, audit committee, and board of directors. This report provides information about the condition of risks and internal controls at one point in time. Future events and changes may significantly and adversely impact these risks and controls in ways that this report did not and cannot anticipate.

## **APPENDIX A**

#### **Detailed Audit Procedures Performed**

#### **Project and Cost Management**

Internal Audit performed detailed audit procedures related to invoice processing and approval, project planning, scheduling and quality control, project cost management and reporting, subcontractor management, CEI oversight, and ODMP processing. The procedures performed included:

- Testing of a sample of invoices for the projects selected for adequate review and approval by the appropriate personnel and compliance with CFX's invoice processing procedures;
- Discussion of current practices regarding quality control, risk management plans and performance, and quality monitoring;
- Testing of subcontractor approval and a sample of payments made to subcontractors;
- Detailed testing of costs billed for a sample of invoices selected for each of the service contracts selected, and detailed testing of a sample of the quantities billed for each of the construction contracts selected;
- Utilization and monitoring of the CEI Consultants assigned to construction contracts;
- Discussion and limited testing of changes to project schedules;
- Review of reporting submitted to management on a regular basis; and
- Detailed testing of the ODMP programs implemented for the construction contracts selected.

#### **Project Close-Out**

Internal Audit performed detailed audit procedures related to completion of payments, Document Summary Manual from the CEI, and the contract closeout checklist. The procedures performed included:

Testing of the completion of key project closeout documents; including submission of final payment, completion of the Document Summary Manual by the CEI, and completion of the contract closeout checklist with supporting documentation. Face the Future with Confidence





## Central Florida Expressway Authority

Payment Card Industry (PCI) Assessment

Summary

January 2022



### 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	<ol> <li>Use and regularly update anti-virus software or programs</li> <li>Develop and maintain secure systems and applications</li> </ol>
Implement Strong Access Control Measures	<ol> <li>Restrict access to cardholder data by business need to know</li> <li>Assign a unique ID to each person with computer access</li> <li>Restrict physical access to cardholder data</li> </ol>
Regularly Monitor and Test Networks	<ol> <li>Track and monitor all access to network resources and cardholder data</li> <li>Regularly test security systems and processes</li> </ol>
Maintain an Information Security Policy	12. Maintain a policy that addresses information security for all personnel

## protiviti°

### Summary of the Assessment

- Protiviti team performed onsite and remote fieldwork between July 11, 2021 through December 15, 2021.
- Fieldwork was conducted through a variety of methods including documentation review, interviews, technical analysis, and physical investigation.
- Notable changes to the PCI environment in FY22:
  - Call center devices are now managed by AllianceOne, rather than CFX
  - The Virtual Observer software, which records calls with customers, was removed from scope and replaced with Nice In-Contact
  - The Goldenrod Service Center closed, and the Magnolia Service Center opened
- All CFX individuals involved were extremely helpful and well attuned to the importance of the assessment.



## protiviti°







## **DHSMV** Data Security Assessment

## **Central Florida Expressway Authority**

December 2021



#### **Table of Contents**

Executive Summary	1
<ul> <li>Overview</li> </ul>	1
<ul> <li>Scope and Approach</li> </ul>	2
<ul> <li>Summary of Results</li> </ul>	3
Appendix A – Controls Tested	4

© 2021 Protiviti Inc. All Rights Reserved. This document has been prepared for use by CFX Management, Internal Audit and board of directors. This report provides information about the condition of risks and internal controls at one point in time. Future events and changes may impact these risks and controls in ways that this report did not and cannot anticipate.



#### **Executive Summary**

#### **Overview**

During the period of November 29<sup>th</sup>, 2021 to December 16<sup>th</sup>, 2021, 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, ٠ but is not limited to, gueries 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. ٠
- All personnel with access to the information exchanged under the terms of the MOU will be instructed of, and acknowledge ٠ 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.

© 2021 Protiviti Inc. All Rights Reserved. This document has been prepared for use by CFX Management, Internal Audit and board of directors. This report provides information about the condition of risks and internal controls at one point in time. Future events and changes may impact these risks and controls in ways that this report did not and cannot 1 anticipate.

#### 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. ٠
- 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:
  - **Policies and Procedures** 0
  - **Application Access** 0
  - Segregation of Duties 0
  - Change Control 0
  - Data Storage 0
  - Data Transfer 0
  - Network Firewall 0
  - Network Architecture 0
  - Active Directory
  - Physical Security 0
- After testing was completed, analysis was performed to compare the results of testing to the control objectives outlined in the ٠ MOU.

© 2021 Protiviti Inc. All Rights Reserved. This document has been prepared for use by CFX Management, Internal Audit and board of directors. This report provides information about the condition of risks and internal controls at one point in time. Future events and changes may impact these risks and controls in ways that this report did not and cannot 2 anticipate.



#### **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.

© 2021 Protiviti Inc. All Rights Reserved. This document has been prepared for use by CFX Management, Internal Audit and board of directors. This report provides information about the condition of risks and internal controls at one point in time. Future events and changes may impact these risks and controls in ways that this report did not and cannot 3 anticipate.



#### **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.	<b>Policies and Procedures:</b> 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.	<b>TRIMS Access:</b> 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.	<b>TRIMS Access - Terminated Users:</b> 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

© 2021 Protiviti Inc. All Rights Reserved. This document has been prepared for use by CFX Management, Internal Audit and board of directors. This report provides information about the condition of risks and internal controls at one point in time. Future events and changes may impact these risks and controls in ways that this report did not and cannot anticipate.



#### FY2022 DHSMV Data Security Assessment

	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.	<b>Server-level Access:</b> 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.	<b>FTP Gateway Access:</b> 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.	<b>Oracle DB Access:</b> 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.	<b>DOCPRD2 Access:</b> 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

<sup>© 2021</sup> Protiviti Inc. All Rights Reserved. This document has been prepared for use by CFX Management, Internal Audit and board of directors. This report provides information about the condition of risks and internal controls at one point in time. Future events and changes may impact these risks and controls in ways that this report did not and cannot 5 anticipate.



#### FY2022 DHSMV Data Security Assessment

	Control Objective	Control Description	Testing Results
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.	<b>DHSMV Data Access:</b> 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
13	Access to the information exchanged will be protected in such a way that unauthorized persons cannot review or retrieve the information.	<b>Change Control / Patch Management:</b> 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.	<b>Change Control / Patch Management:</b> 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.	<b>Network - Active Directory:</b> 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

© 2021 Protiviti Inc. All Rights Reserved. This document has been prepared for use by CFX Management, Internal Audit and board of directors. This report provides information about the condition of risks and internal controls at one point in time. Future events and changes may impact these risks and controls in ways that this report did not and cannot anticipate.



#### FY2022 DHSMV Data Security Assessment

	Control Objective	Control Description	Testing Results
18	Information exchanged by electronic means will be stored in a place physically secure from access by unauthorized persons.	<b>Physical Security - Data Center:</b> 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.	<b>Physical Security - Work Areas:</b> 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
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.	<b>Logging &amp; Monitoring:</b> 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.	<b>Vulnerability Scanning / Penetration Testing:</b> CFX performs periodic external vulnerability scans and penetration tests.	Control Effective

© 2021 Protiviti Inc. All Rights Reserved. This document has been prepared for use by CFX Management, Internal Audit and board of directors. This report provides information about the condition of risks and internal controls at one point in time. Future events and changes may impact these risks and controls in ways that this report did not and cannot anticipate.





# protiviti® **Global Business Consulting**

© 2021 Protiviti Inc. All Rights Reserved. This document has been prepared for use by CFX Management, Internal Audit and board of directors. This report provides information about the condition of risks and internal controls at one point in time. Future events and changes may impact these risks and controls in ways that this report did not and cannot 8 anticipate.





## **DAVID Data Security Assessment**

## **Central Florida Expressway Authority**

November 2021



# **Table of Contents**

Executive Summary	1
<ul> <li>Overview</li> </ul>	1
<ul> <li>Scope and Approach</li> </ul>	2
<ul> <li>Summary of Results</li> </ul>	3
Appendix A – Controls Tested	4

# **Executive Summary**

# Overview

During the period of November 8<sup>th</sup>, 2021, to November 19<sup>th</sup>, 2021, 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 purpose, 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
  - o Application Access
  - Risk Management
  - Change Control
  - Data Storage
  - Data Transfer
  - o Network Firewall
  - o Network Architecture
  - System Authentication
  - Access Controls
  - o 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.	<b>Policies and Procedures:</b> 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.	<b>Risk Management:</b> 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).	<b>Procurement Activities:</b> 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.	<b>Change Control:</b> 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.	<b>System Monitoring:</b> 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 a yearly check is completed where all assets are checked against asset tags.	Control Effective
11	Ensure backups of information are conducted, maintained, and tested periodically.	<b>Backup Procedures:</b> Backups are conducted and tested periodically.	Control Effective
12	Establish a policy and procedure review process that facilitates continuous improvement to protection processes.	<b>Security Improvement:</b> 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.	<b>Technology Effectiveness:</b> CFX communicates the effectiveness of implemented technologies related to cybersecurity when deemed necessary.	Control Effective



	Control Objective	Control Description	Testing Results
14	Each agency shall perform maintenance and repairs of information systems and components consistent with agency-developed policies and procedures.	<b>System Maintenance:</b> Maintenance on in- scope systems is documented and performed by appropriate personnel or approved vendors where maintenance agreements are in place.	Control Effective
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	<b>Logging &amp; Monitoring:</b> 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



	Control Objective	Control Description	Testing Results
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



# **protiviti**® Global Business Consulting

#### **MEMORANDUM**

TO: CFX Board Members

FROM: Diego "Woody" Rodriguez, General Counsel

DATE: January 21, 2022

SUBJECT: Right of Way Transfer and Continuing Maintenance Agreement Between the Central Florida Expressway Authority and City of Ocoee, Florida Project No: 429-603 Parcels 62-161 Part A, Portion 3 (Tract 3), 62-161 Part B, Portion 1 (Tract 1), and 62-161 Part B, Portion 4 (Tract 2)

## BACKGROUND

Central Florida Expressway Authority's predecessor in interest (now "CFX") acquired various real properties for the construction of State Road 429 and associated facilities (collectively, the "Expressway Facilities"). In the course of the construction of the Expressway Facilities, CFX acquired certain real property for the benefit of the local jurisdictions to realign local roadways. When the construction was complete, CFX retained fee simple ownership of portions of certain local roadways and real property (collectively, the "CFX Parcels") that were intended to be a part of City of Ocoee Florida's ("City") local road network.

On or about February 2, 2021, the City submitted correspondence to CFX requesting the conveyance of the CFX Parcels to the City. The proposed Right of Way Transfer and Continuing Maintenance Agreement (herein referred to as "Agreement") was prepared and provided to the City for review and consideration and the City Commission approved the Agreement on January 4, 2022.

The Right of Way Committee was provided the attached memorandum which includes a map of the CFX Parcels and the Agreement. On January 19, 2022, the Right of Way Committee met and upon review of the information and presentation recommended that the Board approve the Agreement.

#### **REQUEST**

Approval of the Resolution Declaring Property as Surplus Property Available for Sale, Authorizing the Transfer of Surplus Property with City of Ocoee, Florida and the Approval of the Right of Way Transfer and Continuing Maintenance Agreement with CFX and City in a form substantially similar to the attached Agreement, subject to the following: (1) separate notice to the local government in which the CFX Parcels are located is not required; (2) conveyance of the CFX Parcels will be via Quit Claim Deed, rather than Special Warranty Deed, subject to a deed

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



Right of Way Transfer and Continuing Maintenance Agreement with City of Ocoee Page 2 of 2

restriction and right of reverter restricting the use of the CFX Parcels for public purposes; and (3) any minor or clerical revisions approved by the General Counsel or designee.

# **ATTACHMENTS**

A. Memo Dated January 10, 2022 to the Right of Way Committee with attachments.

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

#### **MEMORANDUM**

TO: CFX Right of Way Committee Members

FROM: Laura Newlin Kelly, Associate General Counsel

DATE: January 10, 2022

SUBJECT: Right of Way Transfer and Continuing Maintenance Agreement Between the Central Florida Expressway Authority and City of Ocoee, Florida Project No: 429-603 Parcels 62-161 Part A, Portion 3 (Tract 3), 62-161 Part B, Portion 1 (Tract 1), and 62-161 Part B, Portion 4 (Tract 2)

lnk

#### **BACKGROUND**

Central Florida Expressway Authority's predecessor in interest (now "CFX") acquired various real properties for the construction of State Road 429 and associated facilities (collectively, the "Expressway Facilities"). In the course of the construction of the Expressway Facilities and related improvements to Clarcona-Ocoee Road and West Road, CFX acquired certain real property for the benefit of the local jurisdictions and constructed thereon certain roadways and other improvements and relocated, reconfigured and realigned local roadways to ensure a minimal disruption of traffic to the citizens and to provide for a smooth transition to the Expressway System, thus making both the Expressway System and the local road system compatible. As a result of the reconfiguration of the local roadways and substantial nature of the acquisition of the public right of way for the Expressway Facilities, when the construction on the local roadway reconfigurations and the Expressway Facilities was complete, CFX retained fee simple ownership of portions of certain local roadways and real property that were intended to be a part of City of Ocoee Florida's ("City") local road network. Those portions of Parcels 62-161 Part A, Portion 3 (Tract 3), 62-161 Part B, Portion 1 (Tract 1), and 62-161 Part B, Portion 4 (Tract 2) (collectively, the "CFX Parcels") that are intended to be a part of the City roadway system are more particularly depicted on the map attached hereto as Attachment "A" ("Map"). On or about February 2, 2021, the City made application to CFX requesting the conveyance of the CFX Parcels to the City. A copy of the City's request is attached hereto as Attachment "B".

In order to ensure all local road right of way and associated facilities are owned by the City and all right of way and associated facilities operated as a part of the Expressway System are owned and maintained by CFX, CFX and the City desire to enter into the proposed Right of Way Transfer and Continuing Maintenance Agreement to effectuate the transfer of certain ownership interests. The proposed Right of Way Transfer and Continuing Maintenance Agreement is attached hereto as **Attachment "C"** ("Agreement"). Pursuant to the terms of the proposed Agreement, CFX agrees to transfer the CFX Parcels to the City for ownership and maintenance. The conveying instrument will include a deed restriction and reverter in the event the City fails to utilize the CFX

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



Parcels for public purposes. In exchange for said transfer, the City will agree to undertake the continuing maintenance of the CFX Parcels.

Pursuant to CFX's Property Acquisition, Disposition & Permitting Procedures Manual, CFX staff and CFX's General Engineering Consultant have examined the CFX Parcels and determined that the CFX Parcels are not needed to support existing Expressway Facilities. Accordingly, CFX's General Engineering Consultant has certified that the CFX Parcels are not essential for present or future construction, operation or maintenance of the Expressway Facilities or for CFX purposes and that the disposition of the CFX Parcels would not impede or restrict the Expressway System. A copy of the certification is attached hereto as **Attachment "D**". A copy of the draft resolution declaring the CFX Parcels as surplus is attached hereto as **Attachment "E**".

The proposed Agreement was prepared and provided to the City for review and consideration. The City has reviewed the Agreement and agrees with its form. This Agreement is anticipated to be heard by the City Commission on January 18, 2022.

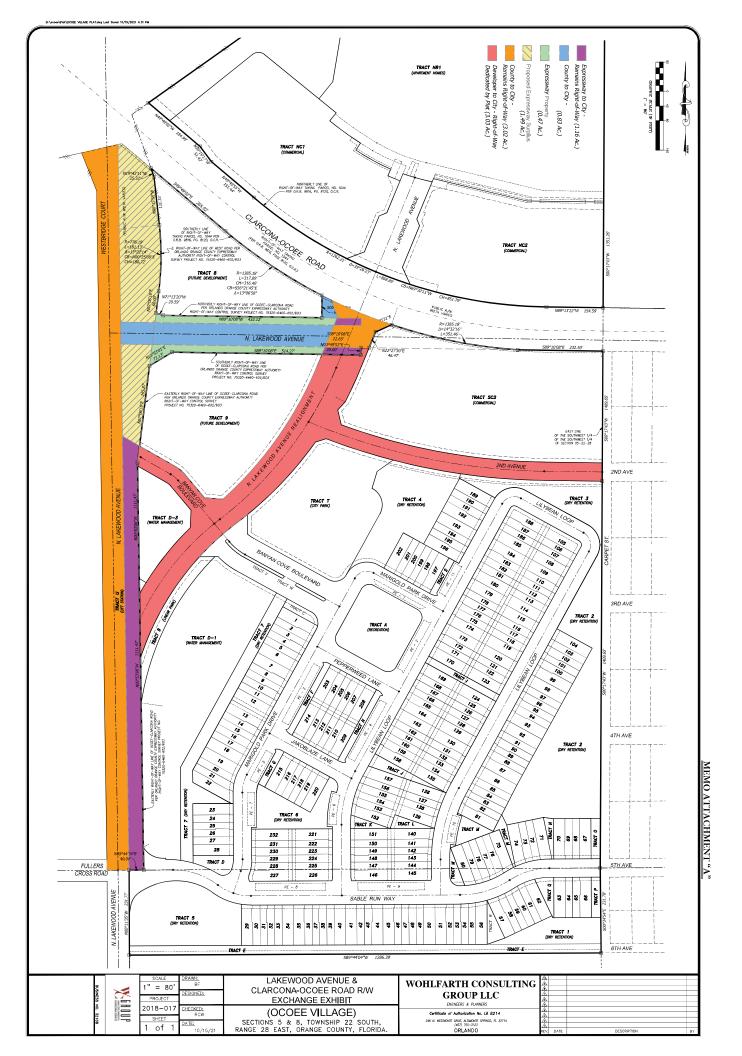
#### **REQUEST**

A recommendation by the Right-of-Way Committee for CFX Board's approval of the Resolution Declaring Property as Surplus Property Available for Sale, Authorizing the Transfer of Surplus Property with City of Ocoee, Florida and the Approval of the Right of Way Transfer and Continuing Maintenance Agreement with CFX and City in a form substantially similar to the attached Agreement, subject to the following: (1) separate notice to the local government in which the CFX Parcels are located is not required; (2) conveyance of the CFX Parcels will be via Quit Claim Deed, rather than Special Warranty Deed, subject to a deed restriction and right of reverter restricting the use of the CFX Parcels for public purposes; and (3) any minor or clerical revisions approved by the General Counsel or designee.

# **ATTACHMENTS**

A. Map

- B. Application from the City of Ocoee dated February 2, 2021
- C. Right of Way Transfer and Continuing Maintenance Agreement
- D. Certificate from CFX's General Engineering Consultant
- E. Resolution Declaring Property as Surplus Property Available for Sale, Authorizing the Transfer of Surplus Property with City of Ocoee, Florida Pursuant to a Right of Way Transfer and Continuing Maintenance Agreement



# MEMO ATTACHMENT "B"



<u>Mayor</u> Rusty Johnson

<u>City Manager</u> Robert Frank <u>Commissioners</u> Larry Brinson, Sr., District 1 Rosemary Wilsen, District 2 Richard Firstner, District 3 George Oliver III, District 4

February 3, 2021

Laura Kelly, Director Central Florida Expressway Authority 4974 ORL Tower Road Orlando, Florida 32807

"21 FEB 8 AM11:31

RE: Project No. State Road 429, 429-603 Parcels 62-157, 62-161 Parts A and B, 62-172 Part A, Partial 2, 62-176 Partial 2, and 62-177

Dear Ms. Kelly:

On behalf of the City of Ocoee, please consider this letter as a request for Central Florida Expressway to convey Parcels 62-157, 62-161 Parts A and B, 62-172 Part A, Partial 2, 62-176 Partial 2, and 62-177 to the City of Ocoee. A portion of the Right of Way Parcels will be owned and maintained by the City of Ocoee as public right of way for a linear park. Other portions of the Right of Way Parcels will be swapped, transferred and/or vacated with the Property Owner as part of the realignment of the North Lakewood Avenue/Clarcona-Ocoee Road intersection. In addition to dedicating the right of way necessary for the North Lakewood Avenue/Clarcona-Ocoee Road intersection, the Property Owner is required to construct certain public improvements in favor of the City of Ocoee, including roadway improvements and the linear park.

We request that the conveyance of the Right of Way Parcels to the City be free of any reversionary interest of CFX to allow for the realignment of the North Lakewood Avenue/Clarcona-Ocoee Road intersection to occur. We request that this matter be placed on the Board's February, 2021 agenda.

Thank you for your prompt attention to this matter. Should you have any questions, please do not hesitate to call me at (407) 554-7083.

Sincerely Michael Rumer

Development Services Director

Cc: Robert D. Frank, City Manager Richard Wohlfarth

Attachments: Sketch and Legal Descriptions provided by Central Florida Expressway

> City of Ocoee • 150 North Lakeshore Drive • Ocoee, Florida 34761 phone: (407) 905-3100 • fax: (407) 905-3167 • www.ocoee.org

CENTRAL FLORIDA EXPRESSWAY AUTHORITY SR 429 PROJECT NO. 429-603 PARCEL 62-157 - PORTION

PURPOSE: RIGHT OF WAY TRANSFER TO THE CITY OF OCOEE ESTATE: FEE SIMPLE

## LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND LYING IN THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 6, TOWNSHIP 22 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF SECTION 6, TOWNSHIP 22 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA, BEING A FOUND 6"X6" CONCRETE MONUMENT AS SHOWN ON THE CENTRAL FLORIDA EXPRESSWAY AUTHORITY RIGHT OF WAY MAP FOR WESTERN BELTWAY (SR 429), PROJECT NUMBER 75320-6460-602/603; THENCE SOUTH 00°53'06" EAST ALONG THE EAST LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 6, A DISTANCE OF 958.32 FEET TO THE INTERSECTION WITH THE NORTHEASTERLY PROJECTION OF THE SOUTHERLY LIMITED ACCESS RIGHT OF WAY LINE OF WESTERN BELTWAY (SR 429) AS SHOWN ON SAID MAP; THENCE DEPARTING SAID EAST LINE, RUN SOUTH 77°03'49" WEST ALONG SAID NORTHEASTERLY PROJECTION, A DISTANCE OF 30.68 FEET TO THE INTERSECTION WITH THE EXISTING WEST RIGHT OF WAY LINE OF WEST RIGHT OF WAY LINE, A DISTANCE OF 112.53 FEET TO THE INTERSECTION WITH THE EXISTING WEST RIGHT OF WAST RIGHT OF WAY LINE OF SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 112.53 FEET TO THE INTERSECTION WITH THE SOUTHWESTERLY LIMITED ACCESS RIGHT OF WAY LINE OF SAID WESTERN BELTWAY (SR 429); THENCE DEPARTING SAID PROJECTION LINE, RUN SOUTH 00°53'06" EAST ALONG SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 112.53 FEET TO THE INTERSECTION WITH THE SOUTHWESTERLY LIMITED ACCESS RIGHT OF WAY LINE OF SAID WESTERN BELTWAY (SR 429); THENCE DEPARTING SAID WEST RIGHT OF WAY LINE, RUN NORTH 21°34'28" WEST ALONG SAID SOUTHWESTERLY LIMITED ACCESS RIGHT OF WAY LINE, A DISTANCE OF 111.31 FEET TO THE INTERSECTION WITH THE AFORESAID SOUTHWESTERLY LIMITED ACCESS RIGHT OF WAY LINE, A DISTANCE OF 40.21 FEET TO THE INTERSECTION WITH THE AFORESAID SOUTHWESTERLY LIMITED ACCESS RIGHT OF WAY LINE, A DISTANCE OF 40.21 FEET TO THE INTERSECTION LINE, RUN NORTH 77°03'49" EAST ALONG THE AFORESAID NORTHEASTERLY PROJECTION LINE, A DISTANCE OF 40.21 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,213 SQUARE FEET, MORE OR LESS.

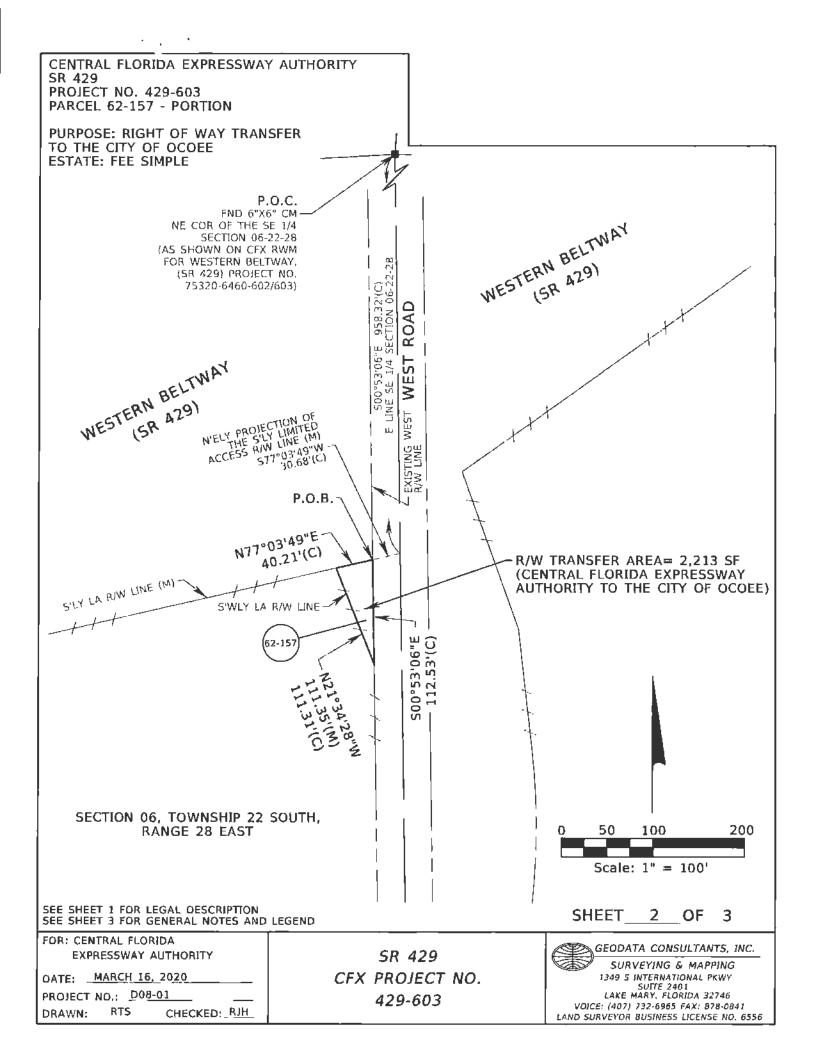
SEE SHEET 2 FOR SKETCH OF DESCRIPTION SEE SHEET 3 FOR GENERAL NOTES AND LEGEND

SHEET 1 OF 3

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY				
DATE: MARCH 16, 2020				
PROJECT NO.; D08-01				
DRAWN: RTS CHECKED: RJH				

SR 429 CFX PROJECT NO. 429-603

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



SKETCH OF DESCRIPTION

LEGEND	AND ABBREVIATIONS	N'LY	= NORTHERLY
		N'ELY	= NORTHEASTERLY
AC	= ACRES	NO.	= NUMBER
(C)	= CALCULATED	NT	= NON TANGENT
CB	= CHORD BEARING	PB	= PLAT BOOK
CFX	= CENTRAL FLORIDA EXPRESS	WAY PC	= POINT OF CURVATURE
UIA	AUTHORITY	PG	= PAGE
СН	= CHORD LENGTH	R.	= PROPERTY LINE
CM	= CONCRETE MONUMENT	P.O.B.	= POINT OF BEGINNING
COR	= CORNER	P.O.C.	= POINT OF COMMENCEMENT
(D)	= DEED	РТ	POINT OF TANGENCY
Δ	= DELTA	R	= RADIUS
FDOT	= FLORIDA DEPARTMENT OF	R/W	= RIGHT OF WAY
1 DOI	TRANSPORTATION	(RWM) OR (M)	= RIGHT OF WAY MAP
FND	= FOUND	SEC	= SECTION
	= LENGTH	S'LY	= SOUTHERLY
LA	= LIMITED ACCESS	SF	= SQUARE FEET
ORB	= OFFICIAL RECORDS BOOK	SR	= STATE ROAD
OND	= OFFICIAL RECORDS BOOK	S'WLY	= SOUTHWESTERLY
		твв	= TANGENT BEARING BACK

#### **GENERAL NOTES:**

- 1. THE PURPOSE OF THIS SKETCH IS TO DELINEATE THE DESCRIPTION ATTACHED HERETO. THIS DOES NOT REPRESENT A BOUNDARY SURVEY.
- 2. THE BEARINGS SHOWN HEREON ARE RELATIVE TO THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, WITH THE EAST LINE OF THE SOUTHEAST 1/4 OF SECTION 06, TOWNSHIP 22 SOUTH, RANGE 28 EAST, HAVING A BEARING OF SOUTH 00°53'06" EAST.
- 3. UNLESS IT BEARS THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER, THIS SKETCH IS FOR INFORMATIONAL PURPOSES ONLY.
- 4. THIS SKETCH MAY HAVE BEEN REDUCED IN SIZE BY REPRODUCTION. THIS MUST BE CONSIDERED WHEN OBTAINING SCALED DATA.
- 5. ALL RECORDING REFERENCES SHOWN ON THIS SKETCH REFER TO THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, UNLESS OTHERWISE NOTED.
- 6. THIS SKETCH IS NOT A SURVEY.

SEE SHEET 1 FOR LEGAL DESCRIPTION SEE SHEET 2 FOR SKETCH OF DESCRIPTIO	N			SHEET	<u>3 OF 3</u>
REVISION	BY	DATE	THE BEST OF MY KNOWLD DESCRIPTION AND SKETC FORTH BY THE FLORIDA CHAPTER 31-17, FLORIDA OF THE FLORIDA STATUTE	THIS LEGAL DESCRIPTION AND SKETCH R EDGE AND BELLEF. I FURTHER CERTIFY TH H MERTS THE STANDARDS OF PRACTICE A SOAD OF HORESSIGNAL SURVEYINGS AN ADMINISTRATIVE CODE, PURSUANT TO C SS, SUBJECT TO NOTES AND NUTATIONS S IONAL LINU SURVEYOR NO. 4990	NAT THIS LEGAL S SET D MARPERS NO NARTER 472
FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY DATE: MARCH 15, 2020 PROJECT NO,: D08-01 DRAWN: RTS CHECKED: RJH	CFX PRC 429		SR 429 PROJECT NO. 429-603 SURVEYING SURVEYING 1349 SINTERNA SUITE 2 LAKE MARY, FL VOICE: (407) 732-696.		CONSULTANTS, INC. YING & MAPPING TERNATIONAL PKWY JITE 2403 RY, FLORIDA 32746 2-6965 FAX: 878-0841 ISINESS LICENSE NO. 6556

CENTRAL FLORIDA EXPRESSWAY AUTHORITY SR 429 PROJECT NO. 429-603 PARCEL 62-161 - PORTION (PARTIAL 1)

PURPOSE: RIGHT OF WAY TRANSFER TO THE CITY OF OCOEE ESTATE: FEE SIMPLE

## LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND LYING IN THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 22 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 22 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA, BEING A FOUND 6"X6" CONCRETE MONUMENT AS SHOWN ON THE CENTRAL FLORIDA EXPRESSWAY AUTHORITY RIGHT OF WAY MAP FOR WESTERN BELTWAY (SR 429), PROJECT NUMBER 75320-6460-602/603; THENCE SOUTH 00°53'06" EAST ALONG THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 5, A DISTANCE OF 958.32 FEET TO THE INTERSECTION WITH THE NORTHEASTERLY PROJECTION OF THE SOUTHERLY LIMITED ACCESS RIGHT OF WAY LINE (WEST OF WEST ROAD) OF WESTERN BELTWAY (SR 429) AS SHOWN ON SAID MAP; THENCE DEPARTING SAID WEST LINE, RUN NORTH 77°03'49" EAST ALONG SAID NORTHEASTERLY PROJECTION, A DISTANCE OF 30.68 FEET TO THE INTERSECTION WITH THE EXISTING EAST RIGHT OF WAY LINE OF WEST ROAD AS SHOWN ON SAID MAP AND THE POINT OF BEGINNING; THENCE CONTINUE NORTH 77°03'49" EAST ALONG SAID NORTHEASTERLY PROJECTION, A DISTANCE OF 10.12 FEET TO THE INTERSECTION WITH THE SOUTHEASTERLY LIMITED ACCESS RIGHT OF WAY LINE OF WEST ROAD AS SHOWN ON SAID MAP AND THE POINT OF BEGINNING; THENCE CONTINUE NORTH 77°03'49" EAST ALONG SAID NORTHEASTERLY PROJECTION, A DISTANCE OF 11.41 FEET; THENCE DEPARTING SAID PROJECTION LINE, RUN SOUTH 49°48'07" EAST, A DISTANCE OF 103.12 FEET TO THE INTERSECTION WITH THE SOUTHEASTERLY LIMITED ACCESS RIGHT OF WAY LINE OF WAY LINE; RUN SOUTH 49°48'07" EAST, A DISTANCE OF 26.11 FEET; THENCE SOUTH 06°15'58" EAST, A DISTANCE OF 131.33 FEET; THENCE DEPARTING SAID SOUTHEASTERLY LIMITED ACCESS RIGHT OF WAY LINE; RUN SOUTH 19°42'11" EAST, A DISTANCE OF 26.11 FEET; THENCE SOUTH 06°15'58" EAST, A DISTANCE OF 131.33 FEET; THENCE DEPARTING SAID SOUTHEASTERLY LIMITED ACCESS RIGHT OF WAY LINE; RUN SOUTH 83°44'02" WEST, A DISTANCE OF 131.33 FEET; THENCE DEPARTING SAID SOUTHEASTERLY LIMITED ACCESS RIGHT OF WAY LINE; RUN SOUTH 83°44'02" WEST, A DISTANCE OF 131.33 FEET; THENCE DEPARTING SAID SOUTHEASTERLY LIMITED ACCESS RIGHT OF WAY LINE; THENCE NORTH 00°53'06" WEST ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 231.17 FEET TO THE

CONTAINING 19,771 SQUARE FEET, MORE OR LESS.

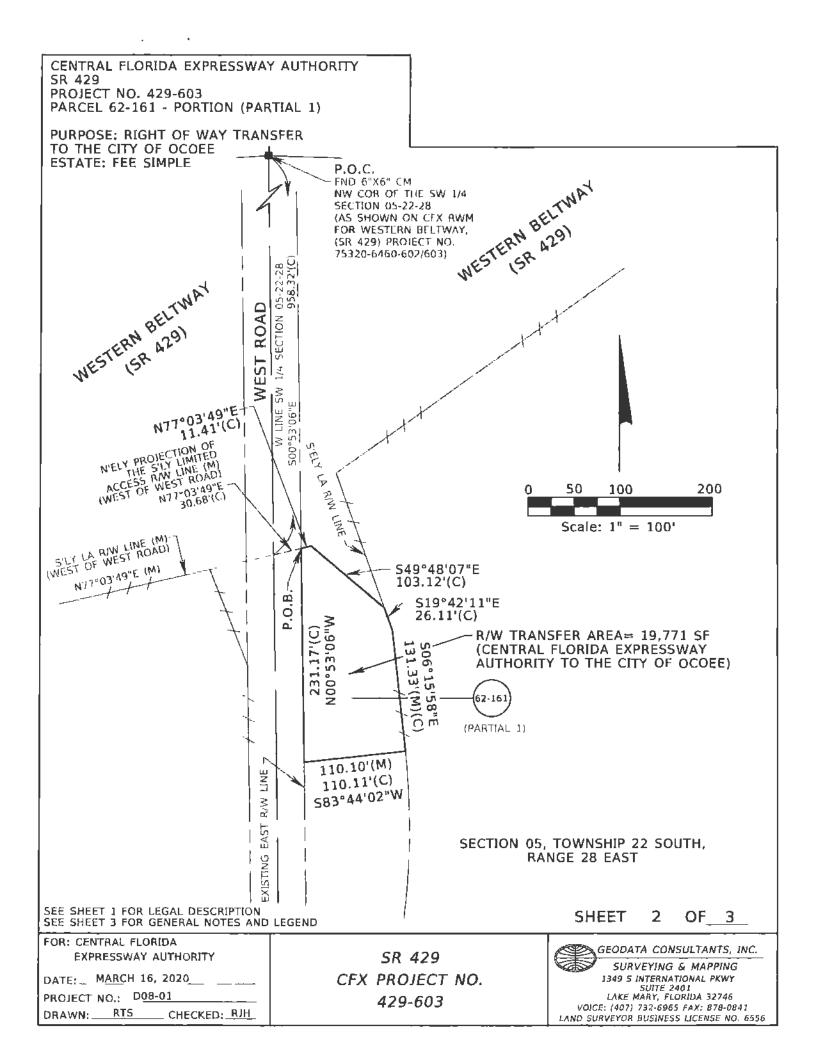
SEE SHEET 2 FOR SKETCH OF DESCRIPTION SEE SHEET 3 FOR GENERAL NOTES AND LEGEND

SHEET 1 OF

SR 429 CFX PROJECT NO. 429-603 GEODATA CONSULTANTS, INC. SURVEYING & MAPPING 1349 S INTERNATIONAL PKWY SUITE 2401 LAKE MARY, FLORIDA 32746 VOICE: (407) 732-6965 FAX: 878-0841

LAND SURVEYOR BUSINESS LICENSE NO. 6556

3



#### SKETCH OF DESCRIPTION

#### LEGEND AND ABBREVIATIONS

		- N'ELY	= NORTHEASTERLY
AC	= ACRES	NO.	= NUMBER
		NT	= NON TANGENT
(C)	= CALCULATED	PB	= PLAT BOOK
CB	= CHORD BEARING	DC	= POINT OF CURVATURE
CFX	= CENTRAL FLORIDA EXPRESS		
	AUTHORITY	PG	= PAGE
СН	= CHORD LENGTH	r_	= PROPERTY LINE
CM	= CONCRETE MONUMENT	P.O.B.	= POINT OF BEGINNING
		P.O.C.	= POINT OF COMMENCEMENT
COR	= CORNER	PT	= POINT OF TANGENCY
(D)	= DEED	R	= RADIUS
Δ	= DELTA	R/W	= RIGHT OF WAY
FDOT	⇒ FLORIDA DEPARTMENT OF		
	TRANSPORTATION	(RWM) OR (M)	= RIGHT OF WAY MAP
FND	= FOUND	SEC	= SECTION
I NO	= LENGTH	S'ELY	= SOUTHEASTERLY
	man the state	S'LY	= SOUTHERLY
LA	= LIMITED ACCESS	SF	= SOUARE FEET
ORB	= OFFICIAL RECORDS BOOK	SR	= STATE ROAD
		ТВВ	= TANGENT BEARING BACK

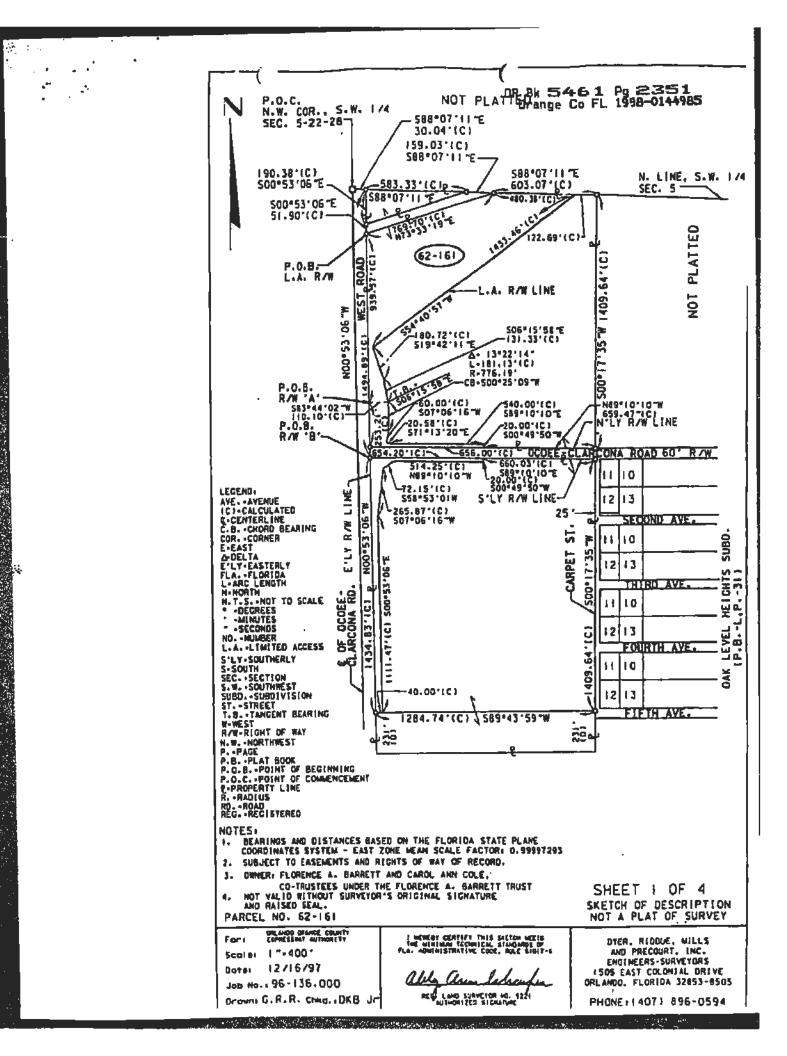
N'LY

= NORTHERLY

#### **GENERAL NOTES:**

- 1. THE PURPOSE OF THIS SKETCH IS TO DELINEATE THE DESCRIPTION ATTACHED HERETO. THIS DOES NOT REPRESENT A BOUNDARY SURVEY.
- 2. THE BEARINGS SHOWN HEREON ARE RELATIVE TO THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, WITH THE WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 05, TOWNSHIP 22 SOUTH, RANGE 28 EAST, HAVING A BEARING OF SOUTH 00°53'06" EAST.
- 3. UNLESS IT BEARS THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER, THIS SKETCH IS FOR INFORMATIONAL PURPOSES ONLY.
- 4. THIS SKETCH MAY HAVE BEEN REDUCED IN SIZE BY REPRODUCTION. THIS MUST BE CONSIDERED WHEN OBTAINING SCALED DATA.
- 5. ALL RECORDING REFERENCES SHOWN ON THIS SKETCH REFER TO THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, UNLESS OTHERWISE NOTEO.
- 6. THIS SKETCH IS NOT A SURVEY.

SEE SHEET 1 FOR LEGAL DESCRIPTION SEE SHEET 2 FOR SKETCH OF DESCRIPTION	N			SHEET	<u>3 OF 3</u>
REVISION	BY	DATE	THE BEST OF MY KNOWLE DESCHIPTION AND SKETCH FORTH BY THE FLORIDA B CHAPTER 51-17, FLORIDA OF THE FLORIDA STATUTE	HIS LEGAL DESCRIPTION AND SKETCH IS DEE AND BELIEF. I PURTHER CHITHY TH I MEETS THE SYANDARDS OF PRACTICE AS OAND OF PROFESSIONAL SURVEYORS AND ADMINISTRATIVE CODE. PURSUANT TO CH S. SUBJECT TO NOTES AND NOTATIONS SH DOTAL LAND SHIVEYOF NO. 4098	47 THIS LEGAL 5 SET 9 MAPPERS 1N 9APTER 472
FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY DATE: MARCH 16, 2020 PROJECT NO.: 008-01 DRAWN: RTS CHECKED: RJH	(	SR 429 CFX PROJECT NO. 429-603 SURVEYII 1349 S INTER SUIT LAKE MARY, VOICE: (407) 732-6		CONSULTANTS, INC. YING & MAPPING ERNATIONAL PKWY ITE 2401 IY, FLORIDA 32746 2-6965 FAXI 878-0841 SINESS LICENSE NO. 6556	



OR Bk 5461 Pg 2352 Orange Co FL 1998-0144985

## ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY STATE ROAD 429 SECTION 75320-6460-602/603

(

PARCEL 62-161

LIMITED ACCESS RIGHT OF WAY

#### LEGAL DESCRIPTION

A portion of the Southwest 1/4 of Section 5, Township 22 South, Range 28 East, Orange County, Florida, being more particularly described as follows: Commence at the Northwest corner of the Southwest 1/4 of said Section 5; thence run S.88°07'11"E. along the North line of the Southwest 1/4 of said Section 5 a distance of 30.04 feet to the easterly right of way line of West Road (a 60.00 foot right of way as now established); thence departing the North line of the Southwest 1/4 of said Section 5 run S.00°53'06"E. along the easterly right of way line of said West Road a distance of 242.28 feet for a POINT OF BEGINNING; thence departing the easterly right of way line of said West Road run N.73°33'19"E. 769.70 feet to the aforementioned North line of the Southwest 1/4 of Section 5 a distance of 480.38 feet; thence departing said north line of the Southwest 1/4 of Section 5 run S.06°15'58"E. 131.33 feet; thence run S.83°44'02"W. 110.10 feet to the aforementioned easterly right of way line of West Road; thence run N.00°53'06"W. along sald easterly right of way line of West Road 939.37 feet to the POINT OF BEGINNING.

Together with all rights of ingress, egress, light, air and view between the grantor's remaining property and any facility constructed on the above described property.

Containing 11.081 acres, more or less.

October 20, 1997

Sheet 2 of 4

OR Bk 5461 Pg 2353 Orange Co FL 1998-0144985

## ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY STATE ROAD 429 SECTION 75320-6460-602/603

PARCEL 62-161

#### **RIGHT-OF-WAY 'A'**

#### LEGAL DESCRIPTION

A portion of the Southwest 1/4 of Section 5, Township 22 South, Range 28 East, Orange County, Florida, being more particularly described as follows: Commence at the northwest corner of the Southwest 1/4 of said Section 5; thence run South 88°07'11" East along the north line of the Southwest 1/4 of said Section 5, a distance of 30.04 feet to the easterly right of way line of West Road (60.00 foot right of way as now established); thence departing the north line of the Southwest 1/4 of said Section 5, run South 00°53'06" East along said easterly right of way line of West Road a distance of 1,181.65 feet for a POINT OF BEGINNING; thence departing the easterly right of way line of said West Road run North 83°44'02" East a distance of 110.10 feet to a point on a curve, concave southwesterly, having a radius of 776.19 feet and a central angle of 13°22'14"; thence from a tangent bearing of South 06°15'58" East run southeasterly along the arc of said curve, a distance of 181.13 feet to the point of tangency; thence run South 07°06'16" West 60.00 feet; thence run South 71°13'20" East 20.58 feet; thence run South 89°10'10" East 540.00 feet; thence run South 00°49'50" West 20.00 feet to the northerly right of way line of Ococe-Clarcona Road (60.00 foot right of way as now established); thence run North 89°10'10" West along said north right of way line of Ococe-Clarcona Road a distance of 656.00 feet to an intersection with the aforesaid easterly right of way line of West Road; thence departing the northerly right of way line of Ococe-Clarcona Road run North 00°53'06" West along said easterly right of way line of West Road a distance of 253.21 feet to the POINT OF BEGINNING.

Containing 0.900 acres, more or less.

October 20, 1997

Sheet 3 of 4

OR Bk 5461 Pg 2354 Drange Co FL 1998-0144985

Recorded - Martha O. Haynie

#### ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY STATE ROAD 429 SECTION 75320-6460-602/603

PARCEL 62-161

#### RIGHT-OF-WAY 'B'

#### LEGAL DESCRIPTION

A portion of the Southwest 1/4 of Section 5, Township 22 South, Range 28 East, Orange County, Florida, being more particularly described as follows: Commence at the northwest corner of the Southwest 1/4 of said Section 5; thence run South 88°07'11" East along the north line of the Southwest 1/4 of said Section 5, a distance of 30.04 feet to the easterly right of way line of West Road (60.00 foot right of way as now established); thence departing the north line of the Southwest 1/4 of said Section 5, run South 00°53'06" East along the easterly right of way line of said West Road a distance of 1,494.89 feet to an intersection with the south right of way line of Occee-Clarcona Road (a 60.00 foot right of way as now established) for a POINT OF BEGINNING, thence departing a southerly extension of said easterly right of way line of West Road run South 89°10'10" East along said southerly right of way line of Occee-Clarcona Road a distance of 654.20 feet; thence departing said southerly right of way line of Occes-Clarcona Road run South 00°49'50" West a distance of 20.00 feet; thence run North 89°10'10" West 514.25 feet; thence run South 58°53'01" West 72.15 feet; thence run South 07°06'16" West 265.87 feet; thence run South 00°53'06" East 1.111.47 feet; thence run South 89°43'59" West 40.00 feet to an intersection with the easterly right of way line of the aforementioned Ococe-Clarcona Road; thence run North 00°53'06" West along said easterly right of way line of Ocoee-Clarcona Road a distance of 1,434.83 feet to the POINT OF BEGINNING.

Containing 1.771 acres, more or less.

October 20, 1997

Sheet 4 of 4

#### MEMO ATTACHMENT "C"

Project No. State Road 429, 429-603 Parcels 62-161 Part A, Portion 3 (Tract 3), 62-161 Part B, Portion 1 (Tract 1), and 62-161 Part B, Portion 4 (Tract 2)

# RIGHT OF WAY TRANSFER AND CONTINUING MAINTENANCE AGREEMENT BETWEEN CENTRAL FLORIDA EXPRESSWAY AUTHORITY AND CITY OF OCOEE, FLORIDA

(Lakewood Avenue)

THIS RIGHT OF WAY TRANSFER AND CONTINUING MAINTENANCE AGREEMENT ("Agreement") is made and entered into on the last date of execution below by and between the **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a body corporate and an agency of the State of Florida, created by Part III of Chapter 348, Florida Statutes, whose address is 4974 ORL Tower Road, Orlando, Florida 32807 ("CFX") and **CITY OF OCOEE**, a municipality of the State of Florida, whose address is 150 North Lakeshore Drive, Ocoee, Florida 34761 ("City"). CFX and City are sometimes collectively referred to herein as the "Parties."

#### WITNESSETH:

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

**WHEREAS**, pursuant to Section 335.0415, Florida Statutes, "public roads may be transferred between jurisdictions . . . by mutual agreement;" and

**WHEREAS**, Section 163.01, Florida Statutes, authorizes both Parties to this Agreement to enter into Interlocal Agreements; and

**WHEREAS**, in the course of the construction of State Road 429 and improvements to Clarcona-Ocoee Road, CFX acquired certain real property for the benefit of the local jurisdictions and constructed thereon certain roadways and other improvements to ensure a minimal disruption of traffic to the citizens and to provide for a smooth transition to the Expressway System, thus making both the Expressway System and the local road system compatible; and

**WHEREAS**, the construction of State Road 429 and improvements to Clarcona-Ocoee Road are completed, and both Parties desire to conclude the land conveyances to ensure that title to all of City's right of way and related facilities is vested in City, subject to certain rights retained by CFX; and

**WHEREAS,** concurrent with the conveyance of fee simple interest in the CFX Property (hereinafter defined), the Parties agree to release, relocate, and reestablish certain limited access lines in favor of CFX, and remove, relocate, or construct any fences, walls, or light poles within the limited access line in accordance with the terms and conditions hereof; and

**WHEREAS**, the Parties also desire to define the future and continuing maintenance responsibilities for the right of way and related facilities and to set responsibility therefore.

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

1. <u>Recital.</u> The above recitals are true and correct and form a material part of this Agreement and are incorporated herein by reference.

2. <u>**Right of Way Maps**</u>. CFX previously delivered to City a full and complete set of right of way maps consisting of SR 429 Project 429-603.

3. **<u>CFX Conveyance</u>**. CFX agrees to transfer, assign, and convey to City, and City agrees to accept by quit claim deed, all of CFX's right, title, and interest in and to the real property located in Orange County, Florida designated as a portion of CFX Parcels 62-161 Part A, Portion 3 (Tract 3), 62-161 Part B, Portion 1 (Tract 1), and 62-161 Part B, Portion 4 (Tract 2), as more specifically described in **<u>Exhibit "A"</u>** attached hereto and incorporated herein by reference (collectively, the "**CFX Property**"), subject to the covenants, reservations, conditions, restrictions, and easements of record, including, without limitation, a reservation for any air rights associated with any Expressway System bridge crossings of local roads. CFX and City agree that the quit claim deed to be executed and delivered under the provisions of this section shall be substantially in the form attached hereto as **<u>Exhibit "B"</u>** and incorporated herein by reference ("**CFX Deed"**).

4. **<u>Removal and Replacement of Fence, Light Poles, and Walls</u>**. At the Closing, City agrees to grant CFX a license to remove any existing fences, walls, light poles, or any other structures located within the CFX Property and replace, relocate, reinstall, or construct a new fence, wall, or light poles, within the CFX Property. This license shall remain in effect for eighteen (18) months from the Closing Date. CFX shall be responsible, at no cost to County, for any and all costs and expenses associated with CFX's exercise of the license and the removal, relocation, reinstallation, or construction of any fences, walls, light poles, or other structures associated with the license. This provision shall survive the Closing for a period of eighteen (18) months from the Closing Date.

5. **Future and Continuing Maintenance**. The Parties agree that it is necessary and desirable to define with specificity the locations for future and continuing maintenance, and the details of such maintenance responsibility applicable to the local roadways. The City agrees to perform, at its sole cost and expense, assume and accept responsibility for any and all continuing and future maintenance obligations and responsibility for the CFX Property and any local

roadways constructed thereon as of the Closing Date. City does hereby agree to perform the future and continuing maintenance responsibility of the CFX Property in a timely, workmanlike manner.

6. <u>Consideration</u>. The consideration for the CFX Property to be transferred to City shall be the respective values attributed to the removal and replacement of fences, light poles, and walls, and the continuing and future obligations to maintain the CFX Property.

7. **Evidence of Title**. At any time before Closing, City, at its sole cost and expense, shall have the right to order a commitment from an agent for a policy of owner's title insurance (**"Commitment"**) which shall be written on a title insurance company reasonably satisfactory and acceptable to the City.

8. <u>Survey</u>. City shall have the right, at any time before Closing, at its sole cost and expense, to have the CFX Property surveyed at its sole cost and expense ("Survey"). The surveyor shall provide certified legal descriptions and sketches of said descriptions and the legal descriptions will be included in the deed subject to the written approval of the Parties.

9. <u>Deed Restriction; Reverter.</u> The CFX Property conveyed to City shall be utilized for the purpose of public right of way, pedestrian, public utility, or recreational uses open to all residents of the City. The Parties agree that the CFX Property shall have imposed thereon a use restriction consistent with the following ("Use Restriction"):

"By acceptance of this deed, City agrees that the CFX Property shall only be used for public purposes, including, without limitation, public right of way, public stormwater drainage conveyance, retention and detention facilities, public utility, and pedestrian or recreational uses owned and maintained by the City that are open to all residents of the City (collectively, the "Permitted Use"). Notwithstanding the foregoing, City, or City's successors or assigns, shall not, without the prior written consent of CFX, use the CFX Property or any portion thereof for billboards or a telecommunications tower, whether public or private, that generate revenue. Further, the foregoing use restriction shall run with title to the CFX Property for a term of the lesser of forty (40) years after the date of recording of this deed or the maximum number of years allowable by law ("Term"). During the Term, if the CFX Property ceases to be used for a Permitted Use, CFX may elect to pursue any remedies available to the CFX in law or equity including, without limitation, specific performance, or for all right, title, and interest to the CFX Property that is not used for a Permitted Use to automatically revert back to CFX at no cost to CFX. In such event, CFX shall notify City in writing of its intent to exercise its right of reverter with respect to the CFX Property ("Reversion Notice"). Notwithstanding the foregoing, in the event City desires to cease operation of the CFX Property for a Permitted Use or otherwise sell, convey, or transfer the CFX Property to a third party, City shall provide written notice to CFX of such ("Sale Notice") and in such event, CFX shall have the right of first refusal and shall have ninety (90) days from CFX's receipt of the Sale Notice to deliver to City a Reversion Notice."

The conveyance provided herein is made by a governmental entity to a governmental entity and therefore excepted from the provisions of Section 689.18, Florida Statutes, and excluded from

the application of the statutory rules against perpetuities as set forth in Section 689.225(2), Florida Statutes.

10. <u>**Closing Date and Location**</u>. The closing of the conveyances contemplated under this Agreement ("**Closing**") shall be held on or before thirty (30) days after the Effective Date (hereinafter defined) or such earlier date selected by CFX upon not less than ten (10) days' prior written notice to City ("**Closing Date**"), at the offices of CFX, or CFX's attorney, or any other place which is mutually acceptable to the Parties. The Closing Date is subject to an option to extend that may be exercised with written approval from the City Manager and the Executive Director of CFX, as applicable.

11. <u>Conveyance of Title</u>. CFX shall execute and deliver to City the required CFX Deed, as described above.

12. <u>Closing Documents and FIRPTA Affidavit</u>. At Closing, CFX, as the owner of the CFX Property ("Owner") shall sign a closing statement, if applicable, and an affidavit that Owner is not a foreign person for purposes of the Foreign Investment in Real Property Tax Act (FIRPTA), as revised by the Deficit Reduction Act of 1984 and as same may be amended from time to time (which certificates shall include Owner's taxpayer identification numbers and address or a withholding certificate from the Internal Revenue Service stating that Owner is exempt from withholding tax on the consideration exchanged under FIRPTA) and such other documents as are necessary to complete the transaction. In the event City elects to obtain a Commitment, CFX shall execute an owner's affidavit including matters referenced in Section 627.7842(b) and (c), Florida Statutes.

13. **Recording**. City, at its sole cost and expense, agrees to record the CFX Deed no later than thirty (30) days after delivery of the original CFX Deed to City. City agrees to deliver to CFX a copy of the recorded CFX Deed.

As-Is Conveyance. City hereby agrees, acknowledges and understands that the CFX Property is being conveyed to City "AS IS, WHERE IS, WITH ALL FAULTS," in such condition as the same may be on the Closing Date, without any representations or warranties by CFX as to any condition of the CFX Property, including, without limitation, surface and subsurface environmental conditions, whether latent or patent. CFX makes no guarantee, warranty, or representation, express or implied, as to the quality, character, or condition of the CFX Property, or any part thereof, or to the fitness of the CFX Property, or any part thereof, for any use or purpose, or any representation as to the nonexistence of any hazardous substances. Neither party shall have any claim against the other, in law or in equity, based upon the condition of the CFX Property, or the failure of the CFX Property to meet any standards. In no event shall CFX be liable for any incidental, special, exemplary, or consequential damage. In the event that any hazardous substances are discovered on, at, or under the CFX Property, neither party shall maintain any action or assert any claim against the other, its successors and their respective members, employees, and agents arising out of or relating to any such hazardous substances. The provisions of this Section shall survive the Closing. (CFX Manual, Sec. 5-6.09) City has read and understands the provisions of this Section and acknowledges and agrees that except as expressly set forth in this Agreement,

it is acquiring the CFX Property "**AS-IS, WHERE IS AND WITH ALL FAULTS**" and that CFX has disclaimed herein any and all warranties, express or implied.

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

CFX:	CENTRAL FLORIDA EXPRESSWAY AUTHORITY 4974 ORL Tower Road Orlando, Florida 32807 Attn: Executive Director Telephone: (407) 690-5000 Facsimile: (407) 690-5011
With a copy to:	CENTRAL FLORIDA EXPRESSWAY AUTHORITY 4974 ORL Tower Road Orlando, Florida 32807 Attn: General Counsel Telephone: (407) 690-5000
CITY:	CITY OF OCOEE 150 North Lakeshore Drive Ocoee, Florida 34761 Attn: Manager Telephone: (407) 905-3100

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. The attorneys for the parties set forth herein may deliver and receive notices on behalf of their clients.

15. **Default**. In the event either of the Parties breaches any warranty or representation contained in this Agreement or fails to comply with or perform any of the conditions to be complied with or any of the covenants, agreements, or obligations to be performed by said party under the terms and provisions of this Agreement, the other party, in its sole discretion, and after thirty (30) days prior written notice and opportunity to cure, shall be entitled to: (i) exercise any and all rights and remedies available to said party at law and in equity, including, without limitation, the right of specific performance, or (ii) terminate this Agreement, whereupon the Agreement shall be deemed null and void and of no further force and effect, and no party hereto shall have any further rights, obligations, or liability hereunder. Upon any such termination, this

Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect.

16. General Provisions. No failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. This Agreement contains the entire agreement of the Parties hereto, and no representations, inducements, promises, or agreements, oral or otherwise, between the Parties not embodied herein shall be of any force or effect. Anv amendment to this Agreement shall not be binding upon any of the Parties hereto unless such amendment is in writing and executed by both Parties. Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday, or legal holiday, such time for performance shall be extended to the next business day. This Agreement may be executed in multiple counterparts, including by electronic (including digital) signature in compliance with Chapter 668, Florida Statutes, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. The headings inserted at the beginning of each paragraph of this Agreement are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph. City and CFX do hereby agree that such documents as may be legally necessary or otherwise appropriate to carry out the terms of this Agreement shall be executed and delivered by each party at or prior to Closing. This Agreement shall be interpreted under the laws of the State of Florida. The Parties hereto agree that the exclusive venue and jurisdiction for any legal action authorized hereunder shall be in the courts of Orange County, Florida. TIME IS OF THE ESSENCE OF THIS AGREEMENT AND EACH AND EVERY PROVISION HEREOF.

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

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

19. <u>Severability</u>. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules, and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

20. **Effective Date**. This Agreement shall be and become effective on the date that it is signed and executed by the last to sign of CFX and City (**"Effective Date"**).

[SIGNATURE PAGES TO FOLLOW]

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

#### "CITY"

**CITY OF OCOEE**, a Florida municipal corporation

By:

RUSTY JOHNSON Mayor Date:

FOR USE AND RELIANCE ONLY BY THE CITY OF OCOEE, FLORIDA; APPROVED AS TO FORM AND LEGALITY this \_\_\_\_ day of \_\_\_\_\_, 2022.

SHUFFIELD, LOWMAN & WILSON, P.A.

By:

City Attorney

Attest:

Melanie Sibbitt, City Clerk

Date:

APPROVED BY THE OCOEE CITY COMMISSION AT A MEETING HELD ON \_\_\_\_\_, UNDER AGENDA ITEM NO. \_\_\_\_.

[ADDITIONAL SIGNATURE PAGE TO FOLLOW]

#### "CFX"

## **CENTRAL FLORIDA EXPRESSWAY** AUTHORITY

By:\_\_\_\_\_ Sean Parks, Chairman

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

ATTEST:

Regla ("Mimi") Lamaute Recording Clerk

> Approved as to form and legality by legal counsel to the Central Florida Expressway Authority on this \_\_\_\_ day of \_\_\_\_\_ 2022 for its exclusive use and reliance. \_,

By:\_\_\_\_

Diego "Woody" Rodriguez General Counsel

LIST OF EXHIBITS Exhibit "A" - Legal Description of the CFX Property Exhibit "B" - CFX Deed

# **EXHIBIT "A"** Legal Description of the CFX Property



# WOHLFARTH CONSULTING GROUP LLC

ENGINEERS, PLANNERS

246 N. WESTMONTE DRIVE ALTAMONTE SPRINGS, FLORIDA 32714 (407) 750-3123

CERTIFICATE OF AUTHORIZATION NO. LB8214

# SKETCH AND DESCRIPTION ONLY (NOT A SURVEY)

EXHIBIT 'A'

## DESCRIPTION:

Tract 1

## CITY OF OCOEE R/W AGREEMENT (NORTH LAKEWOOD AVENUE)

Portions of Section 5, Township 22 South, Range 28 East, Orange County, Florida, being portions of the Right—of—Way for North Lakewood Avenue more particularly described as follows:

COMMENCE at the Southwest corner of the Southwest 1/4 of said Section 5; thence North 89°44'04" East along the Sauth line of said Sauthwest 1/4, a distance of 30.00 feet the POINT OF BEGINNING, said point being the Southwest corner of Parcel 62–161 Right-of-Way 'B' of the Orlando/Orange County Expressway Authority, as described in Stipulated Order of Taking recorded in Official Records Book 5461, Page 2341, of the Public Records of Orange Caunty, Florida; thence North 00°53'06" West along the West boundary of said Parcel 62–161 Right-of-Way 'B', a distance of 1,183.64 feet to a paint hereinafter known as Point A; thence departing said West boundary run South 60°15'56" East, a distance of 53.85 feet, the following two (2) courses being along the East boundary of said Parcel 62–161 Right-of-Way 'B'; thence South 07'06'16" West, a distance of 45.61 feet; thence South 00°53'06" East, a distance of 1,111.47 feet to a point on the South line of the Southwest 1/4 of said Section 5; thence South 89°44'04" West along the South line of said Southwest 1/4 and the Southernmost boundary of said Parcel 62–161 Right-of-Way 'B', a distance of 40.00 feet to the POINT OF BEGINNING. Containing 1.080 acres (47,036 square feet), more or less.

TOGETHER WITH:

Tract 2

COMMENCE at said Point A; thence Narth 00°53'06" West along the West boundary of said Parcel 62–161 Right—of—Way 'B', a distance of 251.19 feet; thence South 89°10'10" East along the North boundary of said

(Continued on Sheet 2 of 4)

#### NOTES:

1. UNLESS IT BEARS THE SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER THIS DRAWING, SKETCH, PLAT OR MAP IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT VALID. ADDITIONS OR DELETIONS TO SURVEY MAPS DR REPDRTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.

2. LANDS SHOWN HEREON WERE NOT ABSTRACTED BY WOHLFARTH CONSULTING GROUP LLC FOR EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

3. DATA SHOWN HEREON WAS COMPILED FROM OTHER INSTRUMENTS AND DOES NOT CONSTITUTE A FIELD SURVEY.

4. BEARINGS ARE BASED ON THE WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 22 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA, SAID WEST LINE HAVING AN ASSUMED BEARING OF NORTH 00753'06" WEST.

5. WOHLFARTH CONSULTING GROUP LLC CERTIFICATE OF AUTHORIZATION NO. LB 8214 IS ISSUED BY THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.

PROJECT NAME: OCOEE VILLAGE CENTER LOCATION: City of Ocoee, Orange County, Florida.

#### CERTIFICATION:

I HEREBY CERTIFY THAT THE ATTACHED SKETCH AND DESCRIPTION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELLEF AND THAT IT MEETS THE STANDAROS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE.

For the firm Wohlfarth Consulting Group LLC:

AND CONSUMER SERVICES.			WILSON E. WAY, P.S.M.						
REVISIONS	DATE	BY	PROFESSIONAL SURVEYOR and MAPPER #2885 STATE OF FLORIDA Q	NO.					
UPDATED PER COMMENTS	11/01/21	BF							
			BF BY WW BOOK N/A						



# WOHLFARTH CONSULTING GROUP LLC

ENGINEERS, PLANNERS

246 N. WESTMONTE DRIVE ALTAMONTE SPRINGS, FLORIDA 32714 (407) 750-3123

CERTIFICATE OF AUTHORIZATION NO. LB8214

# SKETCH AND DESCRIPTION ONLY (NOT A SURVEY)

EXHIBIT 'A'

RW-LAKEWOOD.dwg

D:\ocaee\Legals\PROPOSED-CITY

0F 4

2

SHEET

2018-01

## CITY OF OCOEE R/W AGREEMENT (NORTH LAKEWOOD AVENUE)

(Continued from Sheet 1 of 4)

## **DESCRIPTION:**

Parcel 62–161 Right-of-Way 'B', a distance of 556.36 feet to the POINT OF BEGINNING; thence continue South 89°10'10" East along said North boundary, a distance of 97.84 feet; thence South 00°49'50" West along the Easternmost boundary of said Parcel 62–161 Right-of-Way 'B', a distance of 20.00 feet; thence North 89°10'10" West along a South boundary of said Parcel 62–161 Right-of-Way 'B', a distance of 105.77 feet; thence departing from said South boundary run North 22°27'30" East, a distance of 21.51 feet to the POINT OF BEGINNING. Containing 0.047 acres (2,036 square feet), mare or less.

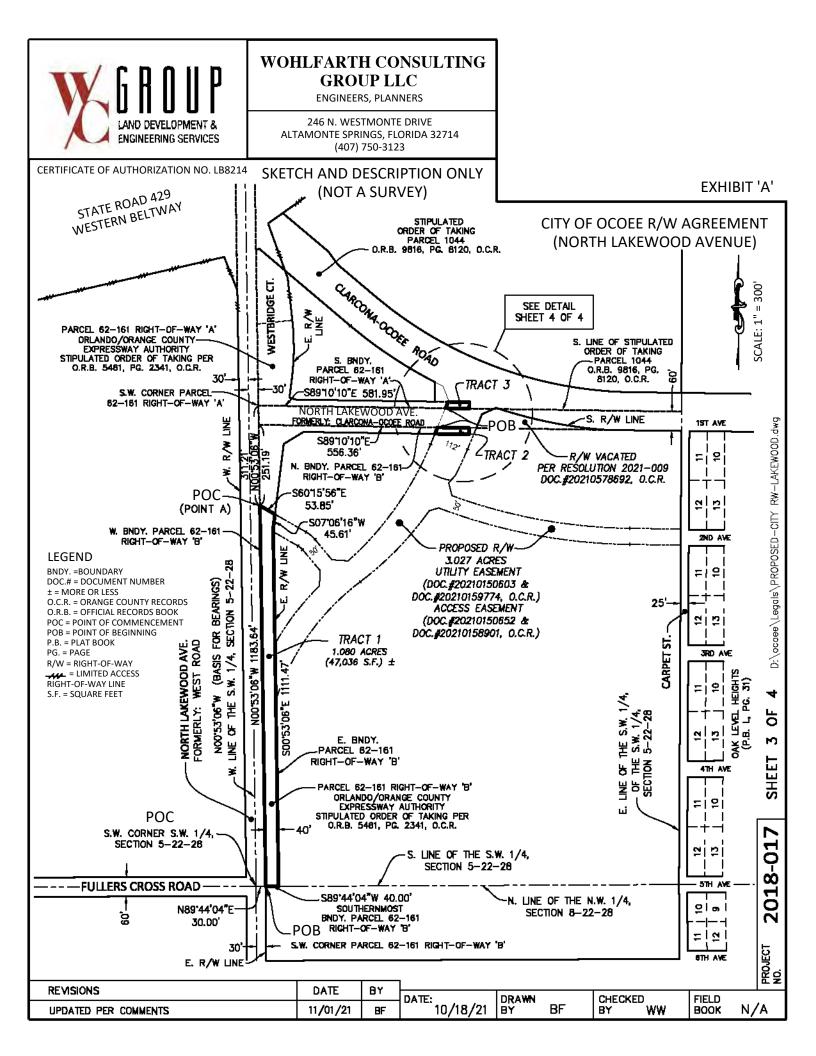
TOGETHER WITH:

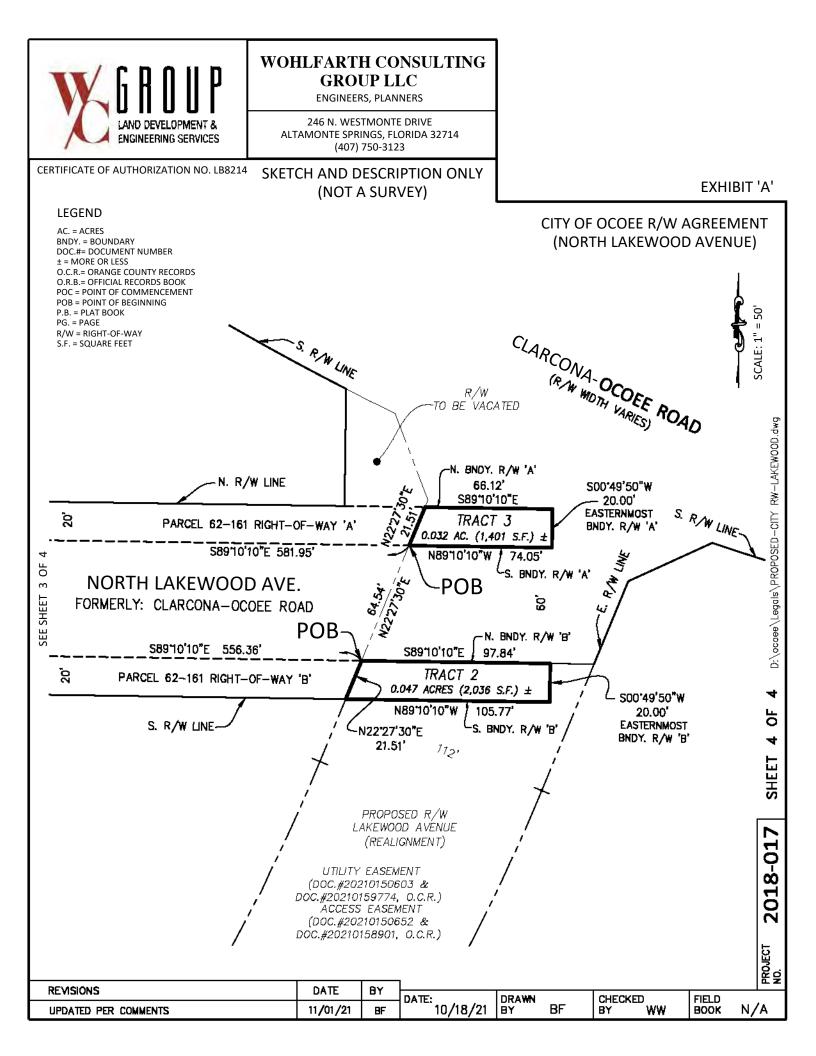
Tract 3

COMMENCE at said Point A; thence North 00'53'06" West along the West boundary of said Parcel 62–161 Right-of-Way 'B' and the Northerly extension thereof, a distance of 311.21 feet to the Southwest corner of Parcel 62–161 Right-of-Way 'A' of the Orlando/Orange County Expressway Authority, as described in Stipulated Order of Taking recorded in Official Records Baak 5461, Page 2341, of the Public Records of Orange County, Florida; thence Sauth 89'10'10" East along the South boundary of said Parcel 62–161 Right-of-Way 'A', a distance of 581.95 feet to the POINT OF BEGINNING; thence departing from said South boundary run North 22'27'30" East, a distance of 21.51 feet; thence South 89'10'10" East along a North boundary of said Parcel 62–161 Right-of-Way 'A', a distance of 66.12 feet; thence South 00'49'50" West along the Easternmost boundary of said Parcel 62–161 Right-af-Way 'A', a distance of 20.00 feet; thence North 89'10'10" West along the South boundary of said Parcel 62–161 Right-af-Way 'A', a distance of 74.05 feet to the POINT OF BEGINNING. Containing 0.032 acres (1,401 square feet), more or less.

Containing in the aggregate 1.159 acres (50,473 square feet), more or less.

											PROJECT No.
REVISIONS	DATE	BY	DATE:		DRAWN		CHECKE	<u>ר</u>	FIELD		<u>.</u>
UPDATED PER COMMENTS	11/01/21	BF		10/18/21	BY	BF	BY	ัพพ	BOOK	N//	Α





#### EXHIBIT "B" CFX Deed

**Prepared By:** Laura L. Kelly, Esquire Central Florida Expressway Authority 4974 ORL Tower Road Orlando, FL 32807

Reserved for Recording

Project No. State Road 429, 429-603 Parcels 62-161 Part A, Portion 3 (Tract 3), 62-161 Part B, Portion 1 (Tract 1), and 62-161 Part B, Portion 4 (Tract 2)

This deed is exempt from Florida documentary stamp tax under Department of Revenue Rules 12B-4.002(4)(a), 12B-4.014(10), F.A.C., and Section 201.02(6), Florida Statutes.

#### **QUIT CLAIM DEED**

THIS QUIT CLAIM DEED, dated as of the date of execution below, by CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body corporate and an agency of the State of Florida, created by Part III of Chapter 348, Florida Statutes, whose address is 4974 ORL Tower Road, Orlando, Florida 32807 ("Grantor"), and CITY OF OCOEE, a municipality of the State of Florida, whose address is 150 North Lakeshore Drive, Ocoee, Florida 34761 ("Grantee").

**WITNESSETH,** that the Grantor, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other valuable considerations, the receipt and sufficiency whereof is hereby acknowledged, does hereby remise, release, and forever quit-claim unto the said Grantee, all the right, title, interest, claim, and demand which the Grantor has in and to the following described real property, situate, lying and being in Orange County, Florida, more particularly described as follows ("**Property**"):

#### SEE ATTACHED EXHIBIT "A"

**TO HAVE AND TO HOLD** the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining and all the estate, right, title, interest, lien, equity,

and claim whatsoever of the Grantor, either in law or equity, to the only proper use, benefit, and behoove of the Grantee forever.

**SUBJECT TO** the covenants, conditions, restrictions, reservations, and easements which are set forth below:

- a) Grantor reserves unto itself, its successors and assigns, all rights of ingress, egress, light, air, and view to, from, or across any State Road (SR) 429 right of way property which may otherwise accrue to any portion of the Property abutting said right of way. Grantee has no rights of ingress, egress, or access to SR 429 from the Property, nor does Grantee have any rights of light, air or view from SR 429 associated with the Property. Grantor is not conveying or restoring any other abutters' rights, including, without limitation, any claims for ingress, egress, air, light and view between the Property being conveyed, any abutting property, SR 429 and any other remaining property owned by Grantor.
- b) Grantor reserves unto itself, its successors and assigns, all rights of ingress, egress, light, air, and view.
- c) By acceptance of this deed, Grantee expressly agrees for itself, and its successors and assigns, to prevent any use of the Property which would interfere with SR 429 or otherwise constitute a hazard for SR 429 or any related system or structure.
- d) By acceptance of this deed, Grantee acknowledges that portions of the Property were acquired via eminent domain and are subject to Section 73.013, Florida Statutes.
- e) By acceptance of this deed, Grantee expressly agrees for itself, and its successors and assigns, that in the event the Grantee no longer uses the Property (or any part thereof) for public purposes, including, without limitation, public right of way, public stormwater drainage conveyance, retention and detention facilities, public utility, and pedestrian or recreational uses owned and maintained by the City that are open to all residents of the City of Ocoee (collectively, the "Permitted Use"), then all right, title, and interest to the Property that is not used for a Permitted Use shall automatically revert back to Grantor, at Grantor's option and at no cost to Grantor. Notwithstanding the foregoing, Grantee or Grantee's successors or assigns, shall not, without the prior written consent of Grantor, use the Property or any portion thereof for billboards or a telecommunications tower, whether public or private, that generate revenue. Further, the foregoing use restriction shall run with title to the Property for a term of the lesser of forty (40) years after the date of recording of this deed or the maximum number of years allowable by law ("Term"). During the Term, if the Property ceases to be used for a Permitted Use, Grantor may elect to pursue any remedies available to the Grantor in law or equity including, without limitation, specific performance, or for all right, title, and interest to the Property that is not used for a Permitted Use to automatically revert back to Grantor at no cost to Grantor. In such event, Grantor shall notify Grantee in writing of its intent to exercise its right of reverter with respect to the Property ("Reversion Notice"). Notwithstanding the foregoing, in the event Grantee desires to

cease operation of the Property for a Permitted Use or otherwise sell, convey, or transfer the Property to a third party, Grantee shall provide written notice to Grantor of such ("Sale Notice") and in such event, Grantor shall have the right of first refusal and shall have ninety (90) days from Grantor's receipt of the Sale Notice to deliver to Grantee a Reversion Notice.

- f) The conveyance provided herein is made by a governmental entity to a governmental entity and therefore excepted from the provisions of Section 689.18, Florida Statutes, and excluded from the application of the statutory rules against perpetuities as set forth in Section 689.225(2), Florida Statutes.
- g) Easements, covenants, restrictions, agreements, conditions, limitations, reservations and matters of record, if any, provided; however, this reference shall not operate to reimpose the same.
- h) Ad valorem real property taxes and assessments, if applicable, for the year 2022 and subsequent years.

The preparer of this deed was neither furnished with, nor requested to review, an abstract of title for the above described Property and therefore expresses no opinion as to the condition of title.

**IN WITNESS WHEREOF**, the said Grantor has caused these presents to be signed in its name by its duly authorized representative.

Signed, sealed, and delivered in the presence of:

#### "GRANTOR"

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

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

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

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

Sean Parks, Chairman

Date:

ATTEST:

Regla ("Mimi") Lamaute Recording Clerk

Approved as to form and legality by legal counsel to the Central Florida Expressway Authority on this \_\_\_\_ day of \_\_\_\_\_, 2022 for its exclusive use and reliance.

By:\_

Diego "Woody" Rodriguez General Counsel The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization on this \_\_\_\_\_ day of \_\_\_\_\_\_, 2022, by Sean Parks, as Chairman of the Central Florida Expressway Authority, on behalf of the organization. He is personally known to me OR produced \_\_\_\_\_\_ as identification.

#### NOTARY PUBLIC

Signature of Notary Public - State of Florida	
Print Name:	
Commission No.:	
My Commission Expires:	_



Dewberry Engineers Inc. 800 N. Magnolia Ave, Suite 1000 Orlando, FL 32803 407.843.5120 407.649.8664 fax www.dewberry.com

November 18, 2021

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

#### **RE: TRANSFER OF PROPERTY**

SR 429, Project 603 CFX to City of Ocoee – Parcels 62-161 Part A, Portion 3 (Tract 3), 62-161 Part B Portion 1 (Tract 1), and 62-161 Part B Portion 4 (Tract 2)

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:

- We have reviewed the limits of the parcels associated with Clarcona-Ocoee Road and Lakewood Avenue depicted in Exhibit "A" attached hereto. The SR 429 Project 603 intersection with Clarcona-Ocoee Road is completed. It was anticipated the ownership and maintenance of the local roads, would be transferred to the local jurisdiction upon completion of the project. In our opinion, we certify that Parcels 62-161 Part A, Portion 3 (Tract 3), 62-161 Part B Portion 1 (Tract 1), and 62-161 Part B Portion 4 (Tract 2) are no longer essential for the current or future construction, operation or maintenance of the CFX Expressway System and the transfer of the subject parcels to City of Ocoee would not impede or restrict the current or future construction, operation or maintenance of the CFX Expressway System.
- 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.

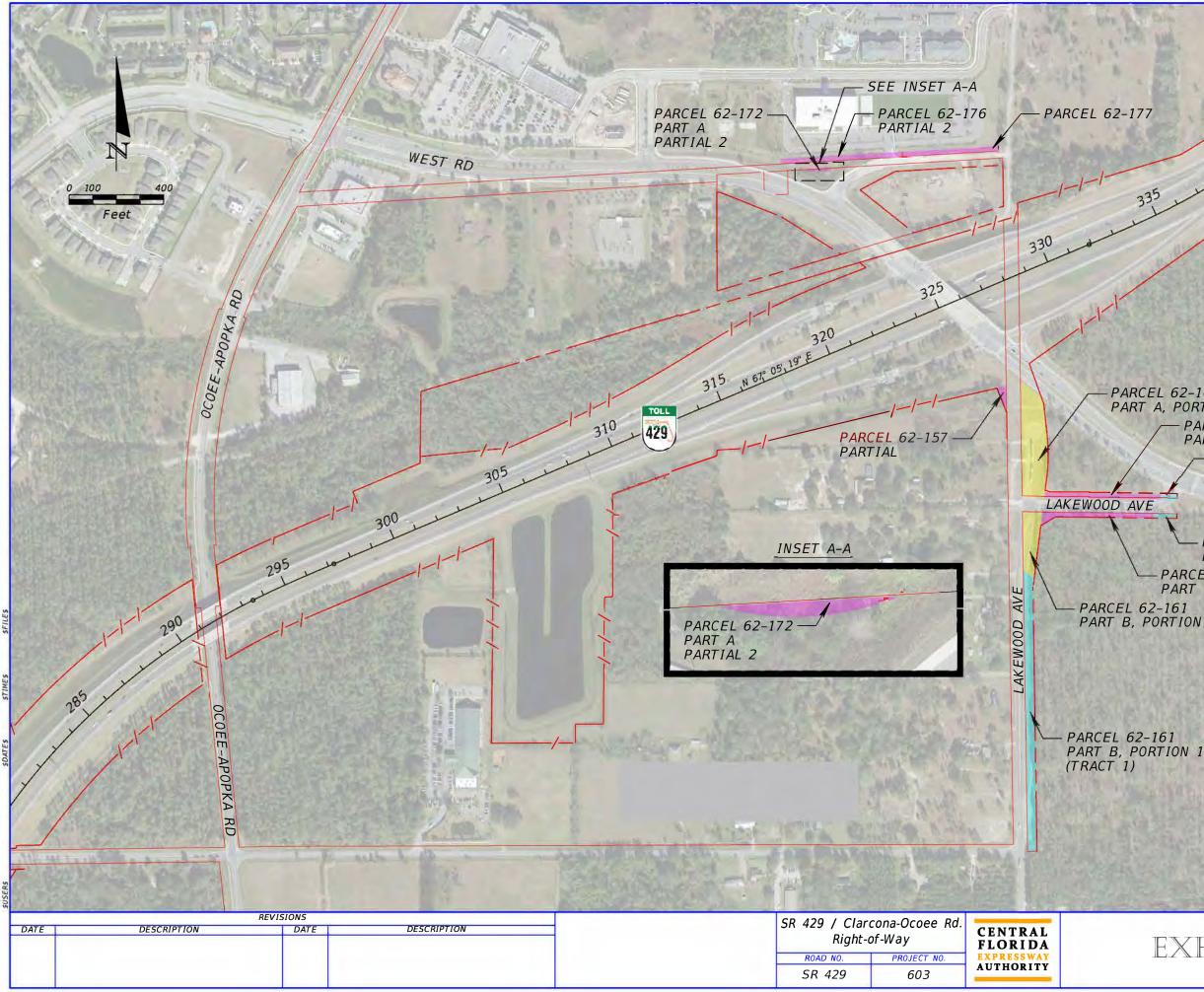
Sincerely,

R. Keith Jackson R. Keith Jackson, P.E.

R. Keith Jackson, P.E Program Manager

Attachments

cc: Laura N Kelly, Esq. CFX (w/ enc.)



PARCEL 62-161 PART A, PORTION 1 (TRACT D) PARCEL 62-161 PART A, PORTION 2 PARCEL 62-161 PART A, PORTION 3 (TRACT 3)

340

CLARCONA-OCOEE RD

PARCEL 62-161 PART B, PORTION 4 (TRACT 2) PARCEL 62-161 PART B, PORTION 3

PARCEL 62-161 PART B, PORTION 2 (TRACT C)

EXHIBIT A



SHEET NO.

# **MEMO ATTACHMENT "E"**

Resolution No. 2022 SR 429, Project 429-603 Parcels 62-161 Part A, Portion 3 (Tract 3), 62-161 Part B, Portion 1 (Tract 1), and 62-161 Part B, Portion 4 (Tract 2)

# A RESOLUTION OF THE CENTRAL FLORIDA EXPRESSWAY AUTHORITY DECLARING PROPERTY AS SURPLUS PROPERTY AVAILABLE FOR SALE AND AUTHORIZING THE TRANSFER OF SURPLUS PROPERTY WITH THE CITY OF OCOEE, FLORIDA

**WHEREAS**, the Central Florida Expressway ("CFX"), is empowered by Chapter 348, Part V, Florida Statutes, to acquire, hold, construct, improve, maintain, and operate the Central Florida Expressway System (the "Expressway Facilities"), and is further authorized to sell, lease, transfer or otherwise dispose of any property or interest therein at any time acquired by CFX; and

**WHEREAS**, CFX has adopted that certain Policy Regarding the Disposition of Excess Lands, section 5-6.01, *et. seq.*, of CFX's Property Acquisition, Disposition & Permitting Procedures Manual (referred to herein as the "Row Manual"), which Row Manual provides for the disposal of real property unnecessary or unsuitable for CFX's use; and

**WHEREAS,** pursuant to the Row Manual, "Excess Property" is "[r]eal property, of any monetary value, located outside of the current operating Right of Way limits of CFX not currently needed to support existing Expressway Facilities as determined by staff;" and

**WHEREAS**, pursuant to the Row Manual, where Excess Property is not essential for present or future construction, operation or maintenance of the Expressway Facilities or for CFX purposes, the CFX Board may declare such Excess Property to be "Surplus Property" through the adoption of a resolution and direct that the Surplus Property be sold; and

**WHEREAS**, section 5-1.01 of the Row Manual allows CFX to waive the procedures in a particular circumstance where deemed to be in the best interest of CFX and the public, provided that such waiver is not in conflict with state or federal law; and

WHEREAS, CFX staff and its General Engineering Consultant has examined the Expressway Facilities for State Road 429 in the proximity of Lakewood Avenue and determined that the real property referred to as portions of Parcels 62-161 Part A, Portion 3 (Tract 3), 62-161 Part B, Portion 1 (Tract 1), and 62-161 Part B, Portion 4 (Tract 2), as more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (collectively, the "CFX Parcels") are not needed to support existing Expressway Facilities; and

Resolution No. 2022-SR 429, Project 429-603 Parcels 62-161 Part A, Portion 3 (Tract 3), 62-161 Part B, Portion 1 (Tract 1), and 62-161 Part B, Portion 4 (Tract 2)

**WHEREAS**, CFX's General Engineering Consultant has certified that the CFX Parcels are not essential for present or future construction, operation or maintenance of the Expressway Facilities or for CFX purposes and that the disposition of the CFX Parcels would not impede or restrict the Expressway System; and

**WHEREAS**, CFX's Right of Way Committee has determined that it is in the best interest of CFX and the public to designate the CFX Parcels as Excess Property; and

**WHEREAS**, in light of the foregoing circumstances, CFX's Right of Way Committee has recommended that the CFX Board adopt a resolution declaring the CFX Parcels to be Surplus Property; and

**WHEREAS**, City of Ocoee, Florida, a municipality of the State of Florida ("City"), has requested a donation of the CFX Parcels from CFX to the City for public purposes; and

**WHEREAS**, CFX's Right of Way Committee has determined that the transfer of the CFX Parcels to the City for public purposes, in exchange for the City's assumption of the continuing maintenance obligations associated with the CFX Parcels, in accordance with the terms of the Right-of-way Transfer and Continuing Maintenance Agreement ("Agreement") would be in the best interest of CFX and the public; and

**WHEREAS**, CFX's Right of Way Committee has recommended that the CFX Parcels be donated to the City for public purposes, in accordance with CFX's Row Manual, except for the following conditions or modifications: (1) separate notice to the local government in which the CFX Parcels are located is not required; and (2) conveyance will be via Quit Claim Deed, rather than Special Warranty Deed, subject to a deed restriction and right of reverter restricting the use of the CFX Parcels for public purposes; and (3) any minor or clerical revisions approved by the General Counsel or designee.

# NOW, THEREFORE, BE IT RESOLVED BY THE CENTRAL FLORIDA EXPRESSWAY AUTHORITY AS FOLLOWS:

1. CFX hereby declares that the real property identified in **Exhibit "A"** attached hereto is not essential for present or future construction, operation or maintenance of the Expressway Facilities or essential for CFX purposes and is Excess Property.

2. CFX hereby finds that it is in the best interest of CFX and the public to declare the CFX Parcels as Surplus Property, and CFX hereby declares the CFX Parcels as Surplus Property available for sale.

3. CFX hereby finds that it is in the interest of both CFX and the public to transfer the CFX Parcels to the City for public right-of-way in exchange for the City's assumption of the

Resolution No. 2022-SR 429, Project 429-603 Parcels 62-161 Part A, Portion 3 (Tract 3), 62-161 Part B, Portion 1 (Tract 1), and 62-161 Part B, Portion 4 (Tract 2)

continuing maintenance obligations associated with the CFX Parcels in accordance with the terms of the Agreement.

4. Accordingly, CFX hereby declares that the CFX Parcels may be transferred to the City for public purposes, in accordance with CFX's Row Manual, except for the following conditions or modifications: (1) separate notice to the local government in which the CFX Parcels are located is not required; (2) conveyance will be via Quit Claim Deed, rather than Special Warranty Deed, subject to a deed restriction and right of reverter restricting the use of the Parcel for public right-of-way; and (3) any minor or clerical revisions approved by the General Counsel or designee.

5. This Resolution shall take effect immediately upon adoption by the CFX governing Board.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

Sean Parks, Chairman

ATTEST:

Regla ("Mimi") Lamaute Board Services Coordinator

Approved as to form and legality for the exclusive use and reliance of CFX.

Diego "Woody" Rodriguez General Counsel



# WOHLFARTH CONSULTING GROUP LLC

ENGINEERS, PLANNERS

246 N. WESTMONTE DRIVE ALTAMONTE SPRINGS, FLORIDA 32714 (407) 750-3123

CERTIFICATE OF AUTHORIZATION NO. LB8214

# SKETCH AND DESCRIPTION ONLY (NOT A SURVEY)

EXHIBIT 'A'

#### DESCRIPTION:

Tract 1

#### CITY OF OCOEE R/W AGREEMENT (NORTH LAKEWOOD AVENUE)

Portions of Section 5, Township 22 South, Range 28 East, Orange County, Florida, being portions of the Right—of—Way for North Lakewood Avenue more particularly described as follows:

COMMENCE at the Southwest corner of the Southwest 1/4 of said Section 5; thence North 89°44'04" East along the Sauth line of said Sauthwest 1/4, a distance of 30.00 feet the POINT OF BEGINNING, said point being the Southwest corner of Parcel 62–161 Right-of-Way 'B' of the Orlando/Orange County Expressway Authority, as described in Stipulated Order of Taking recorded in Official Records Book 5461, Page 2341, of the Public Records of Orange Caunty, Florida; thence North 00°53'06" West along the West boundary of said Parcel 62–161 Right-of-Way 'B', a distance of 1,183.64 feet to a paint hereinafter known as Point A; thence departing said West boundary run South 60°15'56" East, a distance of 53.85 feet, the following two (2) courses being along the East boundary of said Parcel 62–161 Right-of-Way 'B'; thence South 07'06'16" West, a distance of 45.61 feet; thence South 00°53'06" East, a distance of 1,111.47 feet to a point on the South line of the Southwest 1/4 of said Section 5; thence South 89°44'04" West along the South line of said Southwest 1/4 and the Southernmost boundary of said Parcel 62–161 Right-of-Way 'B', a distance of 40.00 feet to the POINT OF BEGINNING. Containing 1.080 acres (47,036 square feet), more or less.

TOGETHER WITH:

Tract 2

COMMENCE at said Point A; thence Narth 00°53'06" West along the West boundary of said Parcel 62–161 Right—of—Way 'B', a distance of 251.19 feet; thence South 89°10'10" East along the North boundary of said

(Continued on Sheet 2 of 4)

#### NOTES:

1. UNLESS IT BEARS THE SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER THIS DRAWING, SKETCH, PLAT OR MAP IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT VALID. ADDITIONS OR DELETIONS TO SURVEY MAPS DR REPDRTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.

2. LANDS SHOWN HEREON WERE NOT ABSTRACTED BY WOHLFARTH CONSULTING GROUP LLC FOR EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

3. DATA SHOWN HEREON WAS COMPILED FROM OTHER INSTRUMENTS AND DOES NOT CONSTITUTE A FIELD SURVEY.

4. BEARINGS ARE BASED ON THE WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 22 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA, SAID WEST LINE HAVING AN ASSUMED BEARING OF NORTH 00753'06" WEST.

5. WOHLFARTH CONSULTING GROUP LLC CERTIFICATE OF AUTHORIZATION NO. LB 8214 IS ISSUED BY THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.

PROJECT NAME: OCOEE VILLAGE CENTER LOCATION: City of Ocoee, Orange County, Florida.

#### CERTIFICATION:

I HEREBY CERTIFY THAT THE ATTACHED SKETCH AND DESCRIPTION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELLEF AND THAT IT MEETS THE STANDAROS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE.

For the firm Wohlfarth Consulting Group LLC:

AND CONSUMER SERVICES. WILSON E. WAY, P.S.M.							
REVISIONS	DATE	BY	PROFESSIONAL SURVEYOR and MAPPER #2885 STATE OF FLORIDA				
UPDATED PER COMMENTS	11/01/21	BF		NO.			
			BF BY WW BOOK N/A				



# WOHLFARTH CONSULTING GROUP LLC

ENGINEERS, PLANNERS

246 N. WESTMONTE DRIVE ALTAMONTE SPRINGS, FLORIDA 32714 (407) 750-3123

CERTIFICATE OF AUTHORIZATION NO. LB8214

# SKETCH AND DESCRIPTION ONLY (NOT A SURVEY)

EXHIBIT 'A'

RW-LAKEWOOD.dwg

D:\ocaee\Legals\PROPOSED-CITY

0F 4

2

SHEET

2018-01

#### CITY OF OCOEE R/W AGREEMENT (NORTH LAKEWOOD AVENUE)

(Continued from Sheet 1 of 4)

#### **DESCRIPTION:**

Parcel 62–161 Right-of-Way 'B', a distance of 556.36 feet to the POINT OF BEGINNING; thence continue South 89°10'10" East along said North boundary, a distance of 97.84 feet; thence South 00°49'50" West along the Easternmost boundary of said Parcel 62–161 Right-of-Way 'B', a distance of 20.00 feet; thence North 89°10'10" West along a South boundary of said Parcel 62–161 Right-of-Way 'B', a distance of 105.77 feet; thence departing from said South boundary run North 22°27'30" East, a distance of 21.51 feet to the POINT OF BEGINNING. Containing 0.047 acres (2,036 square feet), mare or less.

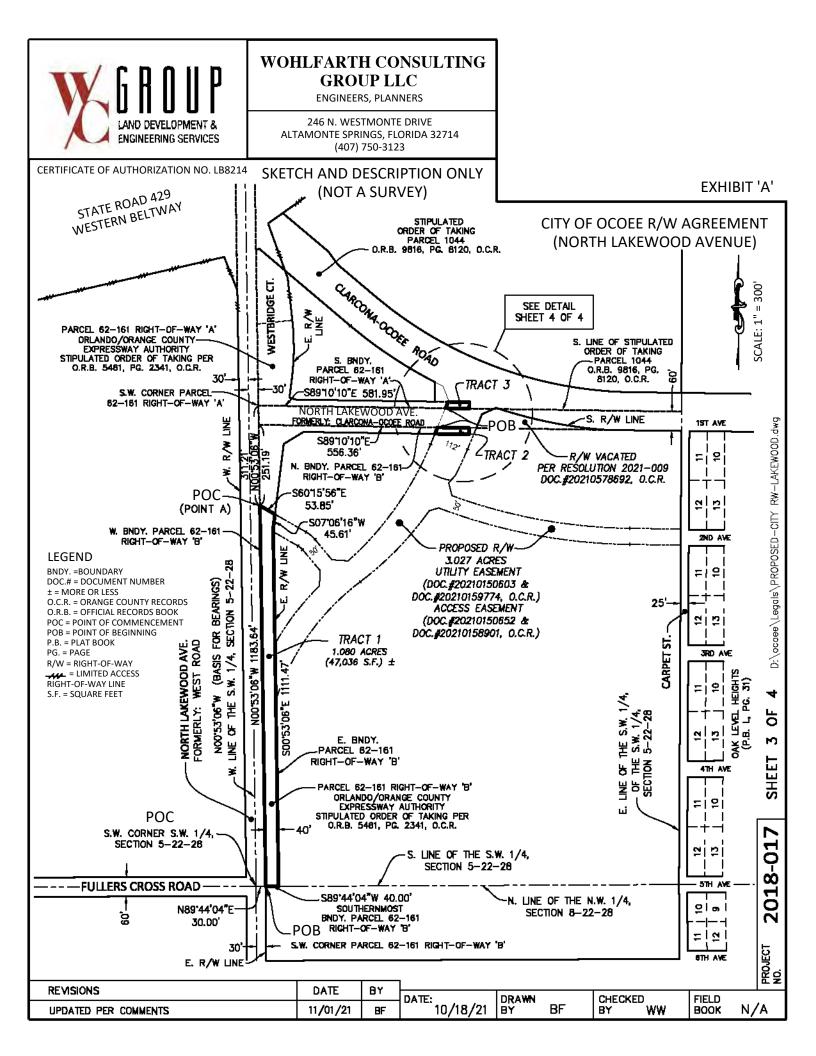
TOGETHER WITH:

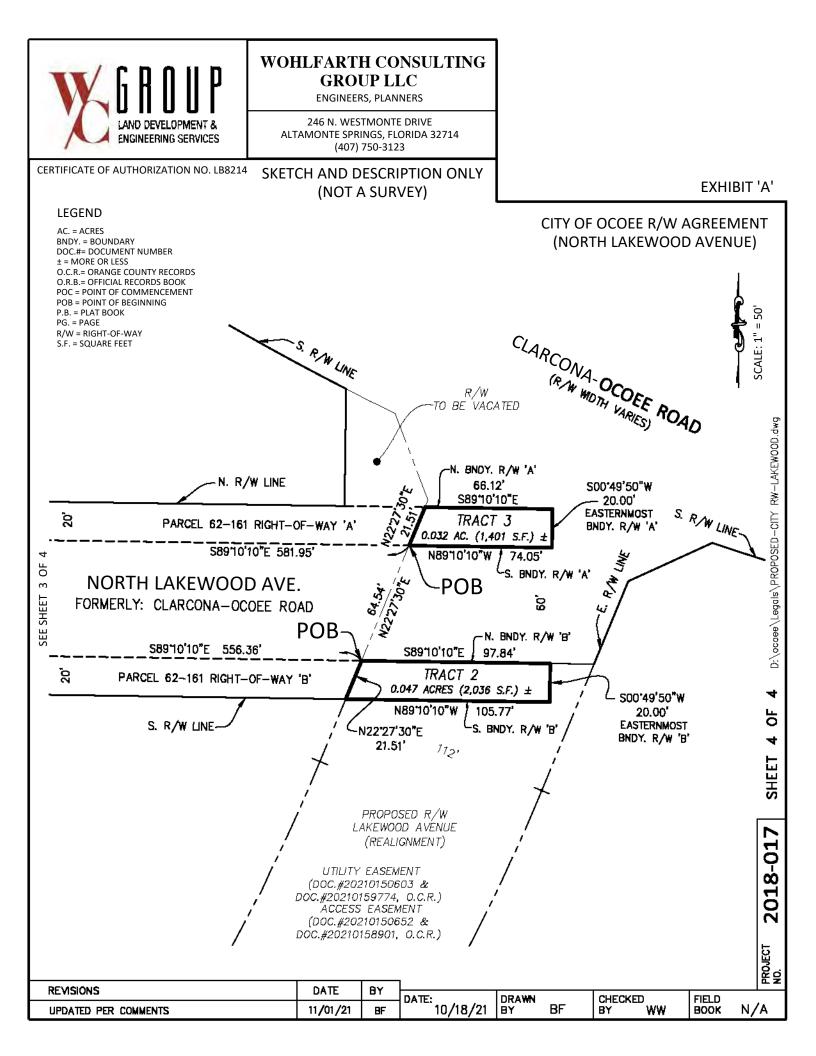
Tract 3

COMMENCE at said Point A; thence North 00'53'06" West along the West boundary of said Parcel 62–161 Right-of-Way 'B' and the Northerly extension thereof, a distance of 311.21 feet to the Southwest corner of Parcel 62–161 Right-of-Way 'A' of the Orlando/Orange County Expressway Authority, as described in Stipulated Order of Taking recorded in Official Records Baak 5461, Page 2341, of the Public Records of Orange County, Florida; thence Sauth 89'10'10" East along the South boundary of said Parcel 62–161 Right-of-Way 'A', a distance of 581.95 feet to the POINT OF BEGINNING; thence departing from said South boundary run North 22'27'30" East, a distance of 21.51 feet; thence South 89'10'10" East along a North boundary of said Parcel 62–161 Right-of-Way 'A', a distance of 66.12 feet; thence South 00'49'50" West along the Easternmost boundary of said Parcel 62–161 Right-af-Way 'A', a distance of 20.00 feet; thence North 89'10'10" West along the South boundary of said Parcel 62–161 Right-af-Way 'A', a distance of 74.05 feet to the POINT OF BEGINNING. Containing 0.032 acres (1,401 square feet), more or less.

Containing in the aggregate 1.159 acres (50,473 square feet), more or less.

											PROJECT No.
REVISIONS	DATE	BY	DATE:		DRAWN		CHECKE	<u>ר</u>	FIELD		<u>.</u>
UPDATED PER COMMENTS	11/01/21	BF		10/18/21	BY	BF	BY	ัพพ	BOOK	N//	Α





#### **MEMORANDUM**

TO: CFX Board Members

FROM: Diego "Woody" Rodriguez, General Counsel

DATE: January 21, 2022

SUBJECT: Declaration of Property as Surplus Property Available for Sale Project Number 429-603 Parcels 62-161 Part A, Portion 1 (Tract D) and 62-161 Part B, Portion 2 (Tract C)

#### BACKGROUND

Central Florida Expressway Authority's predecessor in interest (now "CFX") acquired various real properties for the construction of State Road 429 and associated facilities (collectively, the "Expressway Facilities"). In the course of the construction of the Expressway Facilities, CFX acquired certain real property for the benefit of the local jurisdictions to realign local roadways. When the construction was complete, CFX retained fee simple ownership of portions of certain local roadways and real property that were not necessary for the Expressway Facilities, including Parcels 62-161 Part A, Portion 1 (Tract D) and 62-161 Part B, Portion 2 (Tract C) (collectively, the "CFX Parcels").

CFX staff and CFX's General Engineering Consultant have examined the CFX Parcels and determined that they are not needed to support existing Expressway Facilities. The CFX Parcels will be appraised and will be eligible for public sale through a public auction process as provided for in CFX's Property Acquisition, Disposition & Permitting Procedures Manual. The proposed Resolution Declaring Property as Surplus Property Available for Sale (herein "Resolution") would direct CFX staff to proceed with the disposition of the CFX Parcels accordingly.

The Right of Way Committee was provided the attached memorandum which includes a map of the CFX Parcels and the Resolution. On January 19, 2022, the Right of Way Committee met and upon review of the information and presentation recommended that the Board approve the Resolution.

#### **REQUEST**

Approval of the Resolution Declaring Property as Surplus Property Available for Sale.

#### **ATTACHMENTS**

A. Memo Dated January 10, 2022 to the Right of Way Committee with attachments.

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

WWW.CFXWAY.COM



#### **MEMORANDUM**

TO:	CFX Right of Way Committee Members
FROM:	Laura Newlin Kelly, Associate General Counsel
DATE:	January 10, 2022
SUBJECT:	Declaration of Property as Surplus Property Available for Sale Project No: 429-603 Parcels 62-161 Part A, Portion 1 (Tract D) and 62-161 Part B, Portion 2 (Tract C)

#### BACKGROUND

Central Florida Expressway Authority's predecessor in interest (now "CFX") acquired various real properties for the construction of State Road 429 and associated facilities (collectively, the "Expressway Facilities"). In the course of the construction of the Expressway Facilities and related improvements to Clarcona-Ocoee Road and West Road, CFX acquired certain real property for the benefit of the local jurisdictions and constructed thereon certain roadways and other improvements and relocated, reconfigured and realigned local roadways to ensure a minimal disruption of traffic to the citizens and to provide for a smooth transition to the Expressway System, thus making both the Expressway System and the local road system compatible. As a result of the reconfiguration of the local roadways and substantial nature of the acquisition of the public right-of-way for the Expressway Facilities was complete, CFX retained fee simple ownership of portions of certain local roadways and real property that were not necessary for the Expressway Facilities, including Parcels 62-161 Part A, Portion 1 (Tract D) and 62-161 Part B, Portion 2 (Tract C) (collectively, the "CFX Parcels"). The CFX Parcels are more particularly depicted on the map attached hereto as **Attachment "A"** ("Map").

Pursuant to CFX's Property Acquisition, Disposition & Permitting Procedures Manual, CFX staff and CFX's General Engineering Consultant have examined the CFX Parcels and determined that the CFX Parcels are not needed to support existing Expressway Facilities. Accordingly, CFX's General Engineering Consultant has certified that the CFX Parcels are not essential for present or future construction, operation or maintenance of the Expressway Facilities or for CFX purposes and that the disposition of the CFX Parcels would not impede or restrict the Expressway System. A copy of the certification is attached hereto as **Attachment "B"**. A copy of the draft resolution declaring the CFX Parcels as surplus is attached hereto as **Attachment "C"**.

#### REQUEST

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

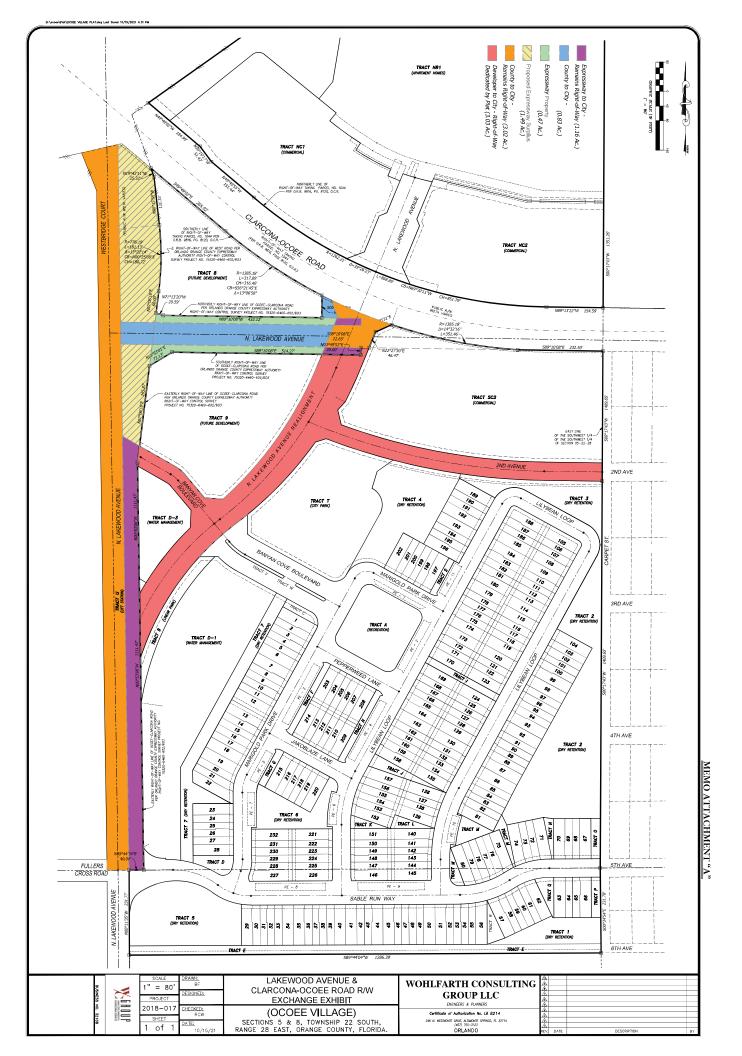
WWW.CFXWAY.COM

A recommendation by the Right of Way Committee for CFX Board's approval of the Resolution Declaring Property as Surplus Property Available for Sale.

# **ATTACHMENTS**

A. Map

- B. Certificate from CFX's General Engineering Consultant
- C. Resolution Declaring Property as Surplus Property Available for Sale



# **MEMO ATTACHMENT "B"**

November 18, 2021

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

#### **RE: DISPOSITION OF PROPERTY**

SR 429, Project 603 CFX Parcels 62-161 Part A, Portion 1 (Tract D), 62-161 Part B Portion 2 (Tract C)

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:

- We have reviewed the limits of Parcels 62-161 Part A, Portion 1 (Tract D), 62-161 Part B Portion 2 (Tract C) more particularly depicted in Exhibit "A" attached hereto (collectively, the "CFX Parcels"). In our opinion, the CFX Parcels are not essential for present or future construction, operation or maintenance of the CFX Expressway System or for CFX purposes and that the disposition of the CFX Parcels would not impede or restrict the Expressway System.
- 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.

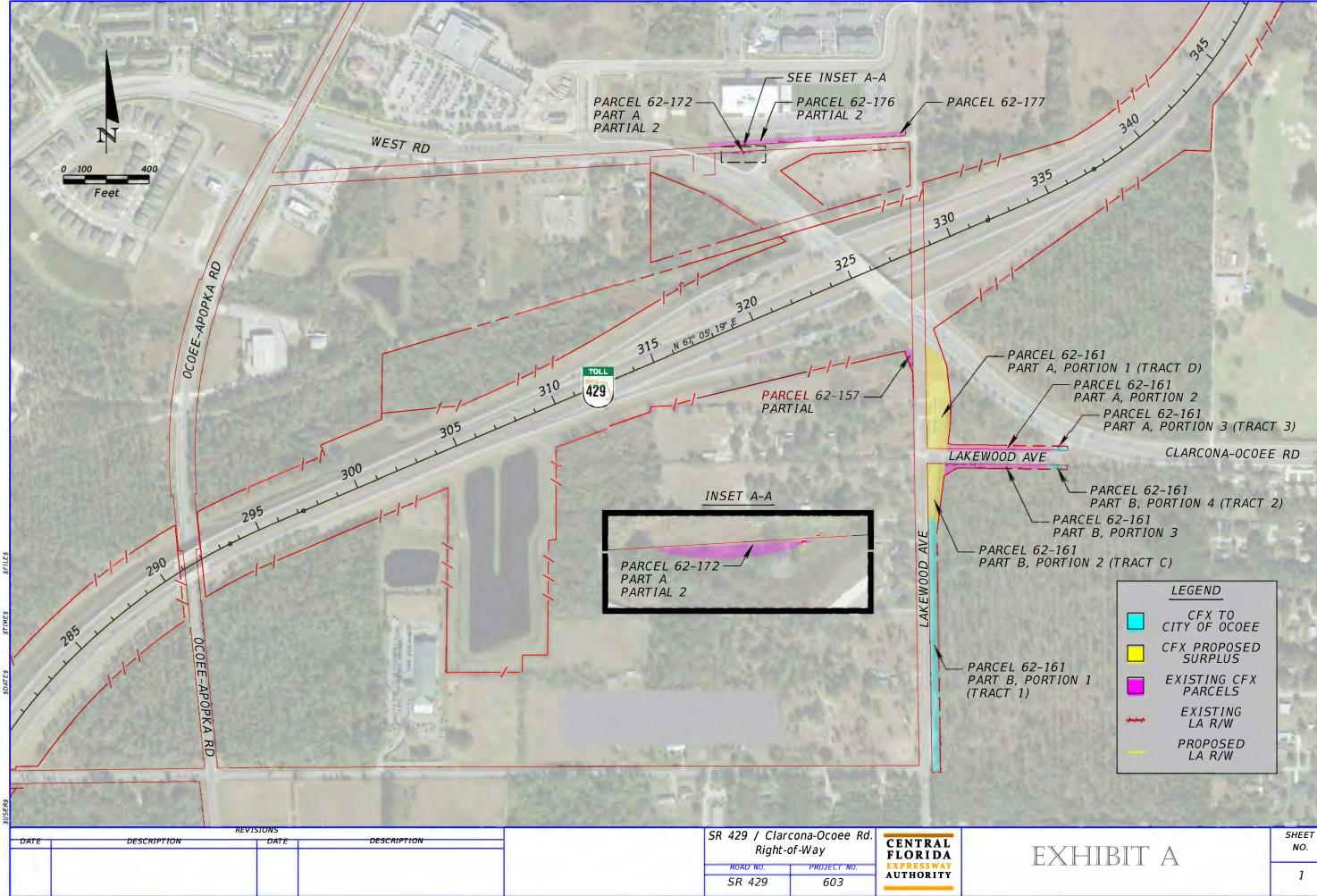
Sincerely,

R. Keith Jackson

R. Keith Jackson, P.E. Program Manager

Attachments

cc: Laura N. Kelly, Esq. CFX (w/ enc.)



# **MEMO ATTACHMENT "C"**

Resolution No. 2022-SR 429, Project 429-603 Parcels 62-161 Part A, Portion 1 (Tract D) and 62-161 Part B, Portion 2 (Tract C)

# A RESOLUTION OF THE CENTRAL FLORIDA EXPRESSWAY AUTHORITY DECLARING PROPERTY AS SURPLUS PROPERTY AVAILABLE FOR SALE

**WHEREAS**, the Central Florida Expressway ("CFX"), is empowered by Chapter 348, Part V, Florida Statutes, to acquire, hold, construct, improve, maintain, and operate the Central Florida Expressway System (the "Expressway Facilities"), and is further authorized to sell, lease, transfer or otherwise dispose of any property or interest therein at any time acquired by CFX; and

**WHEREAS**, CFX has adopted that certain Policy Regarding the Disposition of Excess Lands, section 5-6.01, *et. seq.*, of CFX's Property Acquisition, Disposition & Permitting Procedures Manual (referred to herein as the "Row Manual"), which Row Manual provides for the disposal of real property unnecessary or unsuitable for CFX's use; and

**WHEREAS,** pursuant to the Row Manual, "Excess Property" is "[r]eal property, of any monetary value, located outside of the current operating Right of Way limits of CFX not currently needed to support existing Expressway Facilities as determined by staff;" and

**WHEREAS**, pursuant to the Row Manual, where Excess Property is not essential for present or future construction, operation or maintenance of the Expressway Facilities or for CFX purposes, the CFX Board may declare such Excess Property to be "Surplus Property" through the adoption of a resolution and direct that the Surplus Property be sold; and

**WHEREAS**, CFX staff and its General Engineering Consultant has examined the Expressway Facilities for State Road 429 in the proximity of Lakewood Avenue and determined that the real property referred to as portions of Parcels 62-161 Part A, Portion 1 (Tract D) and 62-161 Part B, Portion 2 (Tract C), as more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference ("CFX Parcels") are not needed to support existing Expressway Facilities; and

**WHEREAS**, CFX's General Engineering Consultant has certified that the CFX Parcels are not essential for present or future construction, operation or maintenance of the Expressway Facilities or for CFX purposes and that the disposition of the CFX Parcels would not impede or restrict the Expressway System; and

**WHEREAS**, CFX's Right of Way Committee has determined that it is in the best interest of CFX and the public to designate the CFX Parcels as Excess Property; and

Resolution No. 2022-SR 429, Project 429-603 Parcels 62-161 Part A, Portion 1 (Tract D) and 62-161 Part B, Portion 2 (Tract C)

**WHEREAS**, in light of the foregoing circumstances, CFX's Right of Way Committee has recommended that the CFX Board adopt a resolution declaring the CFX Parcels to be Surplus Property; and

**WHEREAS,** the CFX Parcels shall be disposed of at a public sale in accordance with Section 5-6.06 of the Row Manual.

# NOW, THEREFORE, BE IT RESOLVED BY THE CENTRAL FLORIDA EXPRESSWAY AUTHORITY AS FOLLOWS:

1. CFX hereby declares that the real property identified in **Exhibit "A"** attached hereto is not essential for present or future construction, operation or maintenance of the Expressway Facilities or essential for CFX purposes and is Excess Property.

2. CFX hereby finds that it is in the best interest of CFX and the public to declare the CFX Parcels as Surplus Property, and CFX hereby declares the CFX Parcels as Surplus Property.

3. CFX hereby finds that it is in the best interest of CFX to dispose of the Surplus Property at a public sale in accordance with Section 6-6.06 of the Row Manual.

4. This Resolution shall take effect immediately upon adoption by the CFX governing Board.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

Sean Parks, Chairman

ATTEST:

Regla ("Mimi") Lamaute Board Services Coordinator

Approved as to form and legality for the exclusive use and reliance of CFX.

Diego "Woody" Rodriguez General Counsel



# WOHLFARTH CONSULTING GROUP LLC

ENGINEERS, PLANNERS

246 N. WESTMONTE DRIVE ALTAMONTE SPRINGS, FLORIDA 32714 (407) 750-3123

CERTIFICATE OF AUTHORIZATION NO. LB8214

## SKETCH AND DESCRIPTION ONLY (NOT A SURVEY)

**DESCRIPTION:** 

EXHIBIT 'A'

VAC.dwg

M

D:\ocoee\Legals\N-LAKEWOOD-WESTBRIDGE

4

Р

-

SHEET

8-01

0

#### RIGHT-OF-WAY TO BE VACATED (WESTBRIDGE COURT)

Portions of Section 5, Township 22 South, Range 28 East, Orange County, Florida, being more particularly described as follows:

Tract C

COMMENCE at the Southwest corner of the Southwest 1/4 of said Section 5; thence North 89'44'04" East along the South line of said Southwest 1/4, a distance of 30.00 feet to the Southwest corner of Parcel 62–161 Right-of-Way 'B' of the Orlando/Orange County Expressway Authority, as described in Stipulated Order of Taking recorded in Official Records Book 5461, Page 2341, of the Public Records of Orange County, Florida; thence North 00'53'06" West along the West boundary of said Parcel 62–161 Right-of-Way 'B', a distance of 1183.64 feet to the POINT OF BEGINNING; thence continue North 00'53'06" West along said West boundary, a distance of 251.19 feet to the Northwest corner of said Parcel 62–161 Right-of-Way 'B', a distance of 85.12 feet; thence departing from said North boundary run South 07'06'16" West, a distance 58.53 feet to a point on the Easterly boundary of said Parcel 62–161 Right-of-Way 'B', a distance of 26'16" West along said Easterly boundary, a distance of 220.24 feet; thence departing from said Easterly boundary run North 60'15'56" West, a distance of 53.85 feet to the POINT OF BEGINNING. Containing 0.404 acres (17,614 square feet), more or less.

TOGETHER WITH:

Tract D

COMMENCE at the Southwest corner of the Southwest 1/4 of said Section 5; thence North 89°44'04" East

(Continued on Sheet 2 of 4)

NOTES:

REVISIONS REVISED

1. UNLESS IT BEARS THE ORIGINAL SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER THIS DRAWING, SKETCH, PLAT OR MAP IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT VALID. ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN THE SIGNING PARTY OR PARTIES. IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.

2. LANDS SHOWN HEREON WERE NOT ABSTRACTED BY WOHLFARTH CONSULTING GROUP LLC FOR EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

3. DATA SHOWN HEREON WAS COMPILED FROM OTHER INSTRUMENTS AND DOES NOT CONSTITUTE A FIELD SURVEY.

4. BEARINGS ARE BASED ON THE WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 22 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA, SAID WEST LINE HAVING AN ASSUMED BEARING OF NORTH 00'53'06" WEST.

5. WOHLFARTH CONSULTING GROUP LLC CERTIFICATE OF AUTHORIZATION NO. LB 8214 IS ISSUED BY THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES. PROJECT NAME: OCOEE VILLAGE CENTER LOCATION: City of Ocoee, Orange County, Florida.

#### CERTIFICATION:

I HEREBY CERTIFY THAT THE ATTACHED SKETCH AND DESCRIPTION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT IT MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE.

FOR THE FIRM WOHLFARTH CONSULTING GROUP LLC:

r of	AGRICULTURE							.										
			-	WILSON E. WAY, P.S.M.														
	DATE	BY	PROFESSIONAL	WILSON E. WAY, P.S.M. ROFESSIONAL SURVEYOR and MAPPER #2885 STATE OF FLORIDA								PROFESSIONAL SURVEYOR and MAPPER #2885 STATE OF FLORIDA						
	11/18/21	BF		DRAWN		CHECKED	FIELD											
			11/03/21	BY	BF	BY WW	BOOK	N/A										



# WOHLFARTH CONSULTING GROUP LLC

ENGINEERS, PLANNERS

246 N. WESTMONTE DRIVE ALTAMONTE SPRINGS, FLORIDA 32714 (407) 750-3123

CERTIFICATE OF AUTHORIZATION NO. LB8214

# SKETCH AND DESCRIPTION ONLY (NOT A SURVEY)

EXHIBIT 'A'

## RIGHT-OF-WAY TO BE VACATED (WESTBRIDGE COURT)

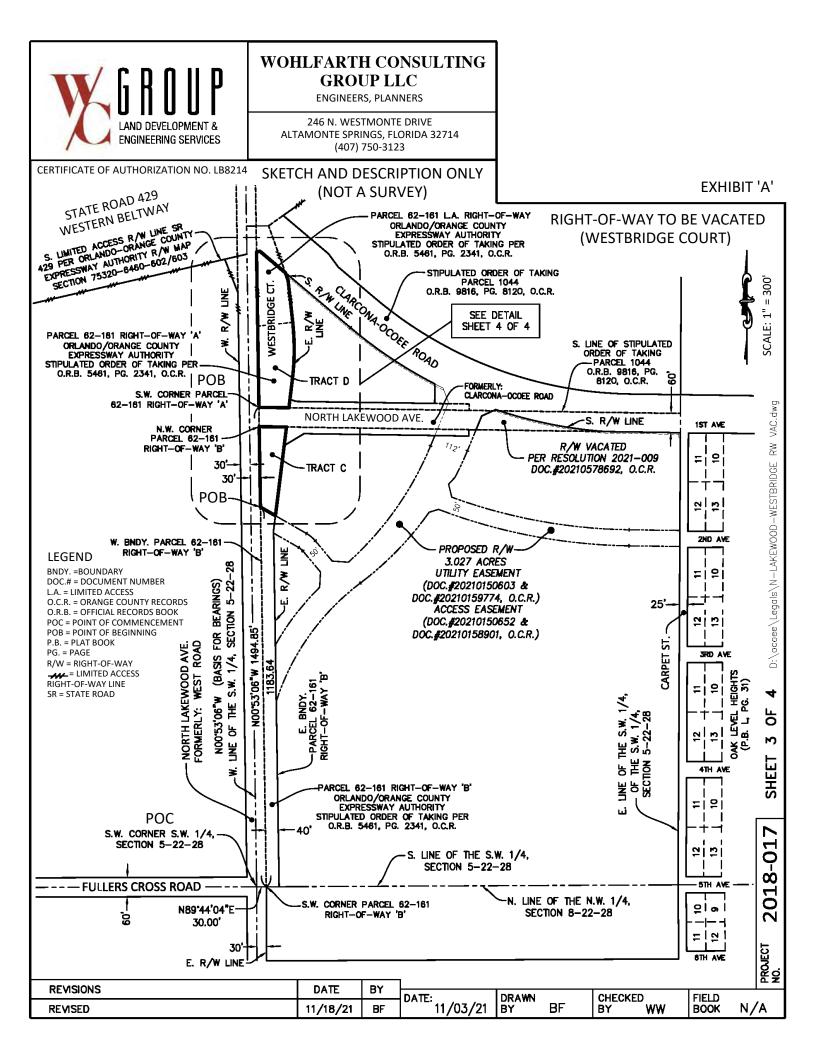
(Continued from Sheet 1 of 4)

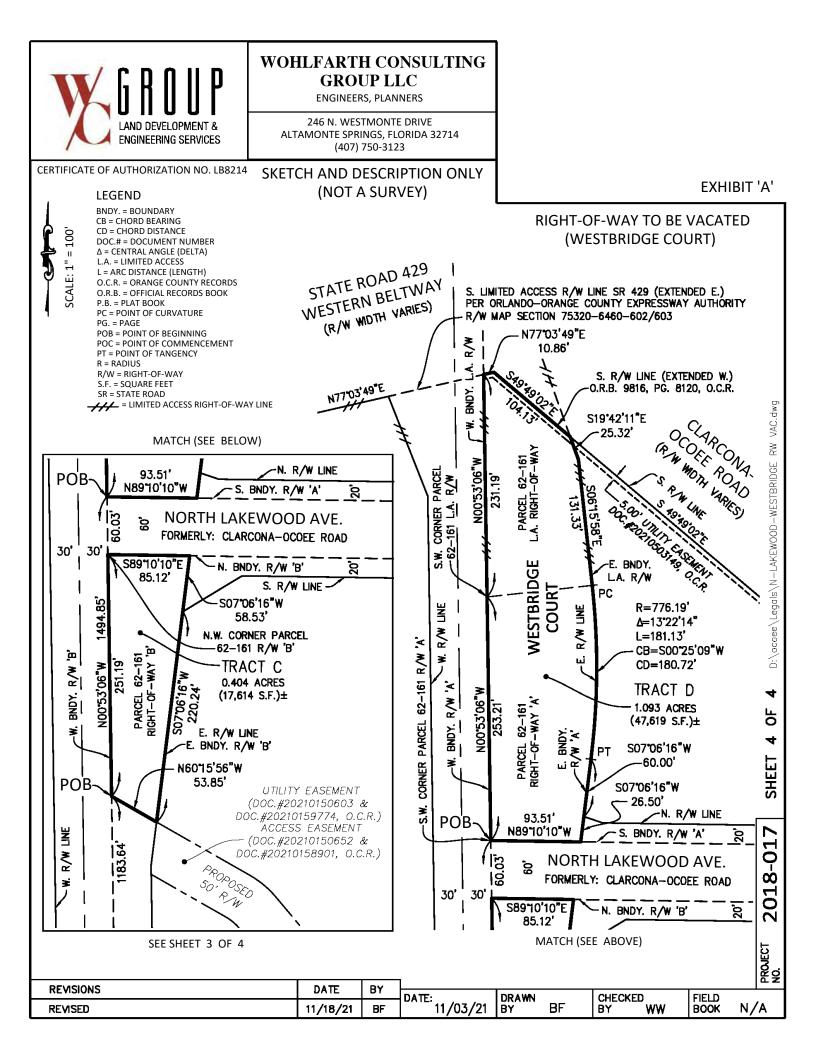
#### DESCRIPTION:

along the South line of said Southwest 1/4, a distance of 30.00 feet to the Southwest corner of Parcel 62–161 Right-of-Way 'B' of the Orlando/Orange County Expressway Authority, as described in Stipulated Order of Taking recorded in Official Records Book 5461, Page 2341, of the Public Records of Orange County, Florida; thence North 00°53'06" West along the West boundary of said Parcel 62–161 Right-of-Way 'B' and the Northerly extension thereof, a distance of 1,494.85 feet to the POINT OF BEGINNING, said point also being the Southwest corner of Parcel 62–161 Right-of-Way 'A' of the Orlando/Orange County Expressway Authority, as described in Stipulated Order of Taking recorded in Official Records Book 5461, Page 2341, of said Public Records; thence continue North 00'53'06" West along the West boundary of said Parcel 62–161 Right-of-Way 'A', a distance of 253.21 feet to the Southwest corner of Parcel 62-161 Limited Access Right-of-Way of the Orlando/Orange County Expressway Authority, as described in Stipulated Order of Taking recorded in Official Records Book 5461, Page 2341, of said Public Records; thence continue North 00°53'06" West along the West boundary of said Limited Access Right-of-Way, a distance of 231.19 feet to a point on the Easterly extension of the Southerly Limited Access right-of-way line for State Road 429 as shown on the Orlando–Orange County Expressway Authority Right–of Way Map, Section 75320–6460–602/603; thence North 77°03'49" East along said line, a distance of 10.86 feet to a point on the Westerly extension of the Southerly line of Parcel 1044, as described in Stipulated Order of Taking recorded in Official Records Book 9816, Page 8120, of said Public Records; thence South 49'49'02" East along said line, a distance of 104.13 feet, the following two (2) courses being along the Easterly boundary of said Parcel 62–161 Limited Access Right-of-Way; thence South 19'42'11" East, a distance of 25.32 feet; thence South 06'15'58" East, a distance of 131.33 feet to a point of curvature of a curve concave to the West; thence Southerly along an Easterly boundary of said Parcel 62–161 Right-of-Way 'A' and said curve having a radius of 776.19 feet, a chord bearing of South 00°25'09" West, a chord distance of 180.72 feet, a central angle of 13'22'14" for an arc distance of 181.13 feet to a point of tangency, thence South 07°06'16" West along an Easterly boundary of said Parcel 62–161 Right-of-Way 'A', a distance of 60.00 feet; thence departing from said Easterly boundary continue South 07°06'16" West, a distance of 26.50 feet to a point on the South boundary of said Parcel 62-161 Right-of-Way 'A'; thence North 8910'10" West along said South boundary, a distance of 93.51 feet to the POINT OF BEGINNING. Containing 1.093 acres (47,619 square feet), more or less.

Containing in aggregate 1.498 acres (65,233 square feet) more or less.

		r —	1			l a c
REVISIONS	DATE	BY	DATE:	CHECKED	FIELD	1
REVISED	11/18/21	BF	11/03/21 BY BF	BY WW	BOOK	N/A





#### **MEMORANDUM**

TO:	CFX Board Members
FROM:	Diego "Woody" Rodriguez, General Counsel
DATE:	January 21, 2022
SUBJECT:	Amended, Restated and Assigned Right of Way Acquisition Agreement (West Segment) between the Central Florida Expressway Authority, Lake Nona Land Company, LLC, Lake Nona Research I, LLC, TDCP, LLC, and Osceola County Project No.: 599-2260

On December 12, 2019, the Central Florida Expressway Authority Board approved the acquisition of certain parcels by CFX and for the conveyance of certain conservation lands to CFX. Since that date, the parties have further refined the legal descriptions to be conveyed including identification of certain easements, bifurcated the project as having two segments located east and west of Narcoossee Road, and updated the appraised value to reflect the new reduced acreage which results in a reduction in the land acquisition costs to CFX. The proposed amended and restated agreements memorialize those changes.

Approval of the Amended, Restated and Assigned Right of Way Acquisition Agreement (West Segment) between the Central Florida Expressway Authority, Lake Nona Land Company, LLC, Lake Nona Research I, LLC, TDCP, LLC, and Osceola County, is requested, subject to any minor or clerical revisions approved by the General Counsel or designee.

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



#### AMENDED, RESTATED AND ASSIGNED RIGHT-OF-WAY ACQUISITION AGREEMENT (West Segment)

THIS AMENDED, **RESTATED** AND ASSIGNED **RIGHT-OF-WAY** ACQUISITION AGREEMENT ("Agreement") is made and entered into as of the Effective Date (hereinafter defined), by and among LAKE NONA LAND COMPANY, LLC, a Florida limited liability company ("LNLC"), LAKE NONA RESEARCH I, LLC, a Florida limited liability company ("LNR"), TDCP, LLC, a Florida limited liability company ("TDCP") (LNLC, LNR, TDCP shall be referred to herein collectively as either "Tavistock" or the "Owners"), and OSCEOLA COUNTY, a charter county and political subdivision of the State of Florida, whose address is 1 Courthouse Square, Kissimmee, Florida 34741 ("County"), as joined in and consented to by CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and corporate and agency of the state, under the laws of the State of Florida, whose address is 4974 ORL Tower Road, Orlando, Florida 32807 ("CFX"), for the purposes and upon the terms expressly set forth herein. LNLC, LNR, TDCP and CFX and County are sometimes collectively referred to herein as the "Parties" and individually as a "Party". Everywhere County is referenced herein, it shall mean the County or its successor-in-title to the West Property (as defined herein). This Agreement is joined in and consented to by the POITRAS EAST COMMUNITY DEVELOPMENT **DISTRICT**, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, and located within the City of Orlando, Florida, whose address is 12051 Corporate Boulevard, Orlando, Florida 32817 (the "PECDD"), for purposes of agreeing to grant the Air Rights Easements (as defined herein) over its portion of the Air Rights Easement Areas (as defined herein).

#### WITNESETH:

WHEREAS, Tavistock owns or controls the land located in Orange County, Florida, as more particularly described or depicted on <u>Exhibit "A-1"</u> through <u>Exhibit "A-3"</u> attached hereto and incorporated herein by reference (the "West Property"). (<u>Exhibits "A-1"</u> through <u>Exhibit "A-3"</u> identify which portion of the West Property belongs to or is controlled by each entity comprising Tavistock); and

WHEREAS, Tavistock and PECDD own or control the land located in Orange County, Florida, as more particularly described or depicted on <u>Exhibit "B-1"</u> attached hereto and incorporated herein by reference (collectively, the "Air Rights Easement Areas"), <u>Exhibit "B-2"</u> attached hereto and incorporated herein by reference (collectively, the "Pier Foundations Easement Areas"), <u>Exhibit "B-3"</u> attached hereto and incorporated herein by reference (collectively, the "CFX TCE Areas"), <u>Exhibit "B-4"</u> attached hereto and incorporated herein by reference (collectively, the "Local Road / Pond TCE Areas"), and <u>Exhibit "B-5"</u> attached hereto and incorporated herein by reference (collectively, the "Offsite Ponds"), all of the foregoing being referred to herein collectively as the "Tavistock Easement Areas" which are owned by the applicable Tavistock entity stated herein; and

**WHEREAS**, CFX was created pursuant to Part III, Chapter 348, Florida Statutes (the "CFX Act") to, among other things, construct, improve, maintain, and operate a limited access toll road known as the Central Florida Expressway System, 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, County, CFX, and the Osceola County Expressway Authority ("OCX") previously entered into an Interlocal Agreement dated as of August 15, 2016 (the "Transition Agreement"), relating to various projects included in the OCX 2040 Master Plan, including extension of the Osceola Parkway from west of Boggy Creek Road to the proposed Northeast Connector Expressway, together with a proposed additional extension of Osceola Parkway commencing at the original terminus of the Osceola Parkway extension proposed in the OCX 2040 Master Plan and extending east approximately two miles to a point of intersection with a proposed new north-south arterial, which project is the subject of a project development and environment study conducted under FPID 432134-1-22-01, in Fiscal Year 2016/2017 (which entire extension project from west of Boggy Creek Road to the point of intersection with the new north-south arterial is known as FM #439193-1-38-01 and FM #439193-1-48-01), as re-evaluated by CFX and approved by the governing board of CFX on December 12, 2019 (the "Osceola Parkway Extension"); and

**WHEREAS**, County and CFX have entered into an Interlocal Agreement for Third-Party Funding as of February 20, 2018 and recorded April 6, 2018 under Document No. 20180205871 in the Public Records of Orange County, Florida (the "Funding Agreement"), which agreement was joined in for limited purposes by First American Title Insurance Company, a Florida corporation; and

**WHEREAS**, Tavistock, Suburban Land Reserve, Inc., a Utah corporation ("SLR"), and CFX entered into that certain Right-of-Way Acquisition Agreement with an effective date of December 17, 2019 (the "Original Agreement"), setting forth certain rights and obligations of the parties thereto for the right-of-way acquisition necessary for the construction of sections of the Osceola Parkway Extension; and

**WHEREAS**, commencing on December 17, 2019, CFX exercised its right to conduct any and all investigations, studies, examinations, surveys, and inspections reasonably necessary or desirable to determine the suitability of the West Property and Tavistock Easement Areas for the Project in accordance with Section 6 of the Original Agreement; and

WHEREAS, of even date herewith, SLR, SHN and CFX have entered into that certain Amended and Restated Right-of-Way Acquisition Agreement (East Segment) (the "East Segment Roadway Agreement") with respect to the East Property and the SLR Easement Areas (as both terms are defined in the East Segment Roadway Agreement); and **WHEREAS**, the West Property and the East Property may be referred to herein collectively as the "Property" and the Tavistock Easement Areas and SLR Easement Areas may be referred to herein collectively as the "Easement Areas"; and

WHEREAS, SLR, Tavistock East Holdings, LLC, and CFX have separately made and entered into that certain Agreement to Convey Conservation Lands with an effective date of December 17, 2019, as amended by that certain First Amendment to Agreement to Convey Conservation Lands executed concurrently herewith (collectively, the "Conservation Lands Agreement"), whereby Tavistock East Holdings, LLC and SLR have agreed to convey their interests in certain Conservation Lands (as defined in the Conservation Lands Agreement) to offset potential impacts of that alignment of the Osceola Parkway Extension known as the Project Alignment (hereinafter defined); and

**WHEREAS**, on or about December 12, 2019, CFX approved the alignment more particularly depicted in **Exhibit "C-1"** attached hereto and incorporated herein by reference as CFX's preferred alignment for the Osceola Parkway Extension ("Preferred Alignment"); and

**WHEREAS**, CFX has refined the boundaries of the Preferred Alignment based on further design and engineering efforts, which "Project Alignment" is substantially similar to, and does not substantially deviate in any material respect from, the Preferred Alignment; and

**WHEREAS**, County and CFX have identified the West Property and the Tavistock Easement Areas as a necessary right-of-way and related uses for future construction and maintenance of the Project under the Funding Agreement; and

WHEREAS, CFX has negotiated the business terms for acquisition of the Property under the Funding Agreement, and desires for the limited, temporary purposes of executing this Agreement and acquiring the West Property and the Easements (as defined herein) to assign and transfer unto County all of CFX's rights and privileges to purchase the West Property from Owners upon such terms and provisions as more specifically set forth herein; and

WHEREAS, County desires to assume from CFX all of CFX's rights, privileges, duties, obligations, liabilities, and responsibilities to purchase the West Property and the Easements in accordance with the terms of this Agreement and the Funding Agreement, and after County acquires the West Property and the Easements, the Parties intend County will convey them to CFX whereupon the obligations, duties, and liabilities (including without implied limitation County's covenants to indemnity, defend, and hold harmless) of County that are stated to, or by their nature do, survive closing shall devolve on CFX. Upon County's transfer of the West Property to CFX, all references herein to County shall be deemed to mean CFX; and

**WHEREAS**, the County desires to purchase from the Owners fee simple interest in the West Property and the Easements in, over, upon and through the Tavistock Easement Areas, and the Owners desire to convey to the County the West Property, in lieu of condemnation, in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements herein set forth, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby expressly acknowledged by the Parties hereto, the Parties hereby covenant and agree that the portion of the Original Agreement setting forth the terms and conditions for the conveyance and acquisition of the West Property and Tavistock Easement Areas are hereby assigned, superseded and replaced entirely with this Agreement which provides as follows:

1. **<u>Recitals</u>**. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **Defined Terms.** Capitalized terms used in this Agreement (except for headings) shall have the meanings that appear when the terms are first set forth in quotation marks. Any capitalized terms not specifically defined herein shall have the meaning ascribed to them in the Conservation Lands Agreement. All of the defined terms contained in this Agreement may be used in the singular or the plural and, except as the context may require otherwise, shall mean when used in the plural all objects, persons, and the like included in the definition. In addition to all other defined terms contained in this Agreement, the terms listed below, except as the context may require otherwise, shall have the meanings provided therefor:

a. "Lake Nona Revised Interchange" shall mean the System-to-System Interchange and Medical City Bridge over S.R. 417 (the "Medical City Bridge") as depicted on **Exhibit "D-1"** attached hereto and incorporated herein by reference.

b. "Laws" shall mean the codes, ordinances, rules, regulations, policies, standards, and requirements of any federal, state, or local governmental or quasi-governmental authority having jurisdiction over the matters and projects contemplated in this Agreement.

c. "People Mover Flyover" shall mean the proposed potential flyover at a location between the Lake Nona Revised Interchange and Lake Nona Boulevard for a peoplemover transit system which, if developed, shall be designed, permitted, and constructed by Tavistock, at its sole cost and expense, subject to the review and approval of CFX, not to be unreasonably withheld, conditioned or delayed.

d. "Permits" shall mean all permits, Project Permit (hereinafter defined), approvals, development orders, and other consents and authorizations of governmental authorities required for construction of the Project Alignment, the Ultimate Local Interchange, the Medical City Bridge, the People Mover Flyover or any applicable component or portion thereof, in accordance with the Plans and with applicable Laws.

e. "Plans" shall mean the design, engineering, and construction plans, rightof-way maps, parcel sketches, legal descriptions, specifications, surveys, estimates of costs, construction schedules, and bid-ready documents for construction of the Project Alignment, which includes without limitation the Ultimate Local Interchange, the Medical City Bridge, or any applicable component or portion thereof. f. "Project Alignment" shall mean that portion of the Extension that requires the real property depicted on <u>Exhibits "A-1"</u> through <u>"A-3"</u> hereto and <u>Exhibit "A"</u> of the East Segment Roadway Agreement, all of which are depicted in <u>Exhibit "C-2"</u> attached hereto. Any and all references in the Original Agreement and Conservation Lands Agreement to the Split Oak Alignment, as referenced herein, shall refer to the Project Alignment.

g. "System to System Interchange" shall mean the interchange included in the Project Alignment connecting the Project Alignment and SR 417 in the configuration depicted on **Exhibit "D-1"** attached hereto and incorporated herein by reference.

h. "Ultimate Local Interchange" shall mean the interchange included in the Project Alignment consisting of the Lake Nona Revised Interchange and the associated east and west frontage roads that are depicted on <u>Exhibit "D-2"</u>.

3. **Property**. County and CFX will consult with the Owners in establishing the final legal description of the West Property and Tavistock Easement Areas. County, or County's designee, at its expense, shall prepare legal descriptions of the West Property and the Tavistock Easement Areas, subject to review and approval by the County and each affected Owner, such approval not to be unreasonably withheld, conditioned, or delayed. The legal descriptions shall be prepared in accordance with the Section below titled "Survey."

4. <u>Agreement to Buy and Sell</u>. Owners agree to sell, grant, or convey to the County and the County agrees to purchase, receive, or accept from the Owners the West Property and Tavistock Easement Areas and Easements in lieu of condemnation, in the manner and upon the terms and conditions herein below set forth in this Agreement. By way of clarification, County shall have no right to purchase some of the West Property and Easements without purchasing all of the West Property and Easements. Further, the closing of the West Property and the granting of the Easements under this Agreement are expressly contingent upon the simultaneous closing of the East Property and the granting pursuant to the East Segment Roadway Agreement of the SLR Easements (as defined therein). Notwithstanding the foregoing, the Parties agree and acknowledge that the purchase of the West Property shall include transfer of fee simple ownership to the County, and the grant of easement interests and rights in the Tavistock Easement Areas in accordance with terms and conditions set forth herein.

5. <u>Parties</u>. All Parties to this Agreement hereby acknowledge that the terms contained in Section 20.055(5), Florida Statutes, may apply to this Agreement to the extent required by said statute. The Parties hereby agree to comply with this subsection of Florida Statutes.

## 6. **Purchase Price.**

a. Subject to the terms and conditions set forth in this Agreement, in consideration for conveyance of the West Property and Tavistock Easement Areas, County shall pay to the Owners at Closing, and only in the event of Closing, the sum of **Eighty Million Two Hundred Eighty-Five Thousand Three Hundred and No/100 United States Dollars** (\$80,285,300.00) (the "Purchase Price"). The Purchase Price shall be paid by federal wire transfer of immediate funds, adjusted for appropriate credits, adjustments and prorations as herein below

provided, and represents the full compensation to the Owners for the West Property, Easements and for any damages suffered by the Owners and/or any adjoining property owned by the Owners in connection with the transaction contemplated under this Agreement, including, without limitation, severance damages to the Owners' remaining property, business damages, consequential damages, any other damages whatsoever, together with interest, if any.

b. The Purchase Price is premised upon the West Property being comprised of approximately 296.47 acres in the aggregate and each Owner's portion of the West Property being approximately the same amount of acres as depicted in <u>Exhibit "A-1"</u> through <u>Exhibit "A-3"</u>, <u>Exhibit "B-1"</u> and <u>Exhibit "B-5"</u>, including approximately 256.54 acres of fee simple interest in the West Property, approximately 25.68 acres for the Offsite Drainage Easements (hereinafter defined), and approximately 19.15 acres for the Air Rights Easements, of which 4.9 acres is also part of the Offsite Drainage Easements.

c. Before the Inspection Deadline, County, or CFX as County's designee, shall obtain two appraisals of the Property prepared by a Florida licensed real property appraiser in accordance with the Uniform Standards of Professional Appraisal Practice. If the agreed upon Purchase Price exceeds by more than ten (10) percent the average appraised value of the two appraisals, (i) the Parties may negotiate in good faith and agree upon a new lower Purchase Price; (ii) the governing body of the County may approve the existing Purchase Price by an extraordinary vote; or (iii) the Parties may terminate this Agreement and the parties hereto shall thereafter be relieved of all liability hereunder except for those which expressly survive termination.

## 7. <u>County's Right of Inspection</u>.

a. <u>Delivery of Due Diligence</u>. The Parties acknowledge that CFX has exercised its right to conduct any and all investigations, studies, examinations, surveys, and inspections reasonably necessary or desirable to determine the suitability of the West Property and Tavistock Easement Areas for the Project in accordance with Section 6 of the Original Agreement since December 12, 2019. Within three (3) business days of written request from the County, CFX agrees to provide to the County any and all documentation, reports, studies, surveys, audits, or reports of any such investigations, studies, examinations, surveys, and inspections (collectively, the "Prior Studies"), for the County's use in determining the suitability of the West Property and Easements for the Project. CFX makes no warranties or representations whatsoever concerning the Prior Studies delivered to County by CFX, and County assumes all risk of relying thereon.

b. <u>Right of Inspection</u>. The County shall at all times prior to the scheduled date of Closing have the privilege of going upon the West Property and the Tavistock Easement Areas with its agents and engineers as needed to inspect, examine, survey and otherwise undertake those actions which the County, in its discretion, deems reasonably necessary or desirable to determine the suitability of the West Property and Tavistock Easement Areas for the Project; provided, however, no invasive testing or Phase 2 environmental site assessments shall be permitted without the prior written consent of the affected Owner whose West Property will be impacted by the Phase 2 environmental testing in accordance with subsection 7.c. hereof. Said privilege shall include, without limitation, the right to make surveys, soils tests, borings, percolation tests, compaction tests, environmental tests (other than Phase 2 testing), and tests to obtain any other information relating to the surface, subsurface (excluding invasive investigations) and topographic conditions of the West Property. The County shall enter the West Property at its sole risk, and the County hereby releases the Owners from any claims relating to the physical condition of the West Property, the Tavistock Easement Areas or to the entry thereon by the County. The County shall exercise its rights hereunder so as to minimize damage to the West Property and to avoid materially adverse impact on the Owners' uses thereof while allowing the County, its assignee or designee, to obtain the necessary information. County shall have the right, at any time and without the prior written consent of the Owners, to assign County's right to inspect the West Property and the Tavistock Easement Areas to CFX, and right to terminate this Agreement in accordance with this Section 7, provided CFX agrees to release the Owners from any claims relating to the physical condition of the West Property or to the entry thereon by CFX and to otherwise comply with the limitations and restrictions set forth in this Section 7.

Environmental Site Assessment. The Parties agree and acknowledge that c. the Owners have previously provided to County and CFX the following environmental site assessments prepared by PSI Environmental Services, Inc.: (i) that certain Phase I Environmental Site Assessment dated June 29, 2017, under Project Number 06633335-1 Poitras Property-E; (ii) that certain Phase I Environmental Site Assessment dated April 22, 2019, under Project Number 06633335-2 and 06634393 Poitras Property-W (collectively, the "Environmental Studies"). County and CFX acknowledge they have each received and reviewed the Environmental Studies as to the suitability of the West Property for the Project Alignment and its Intended Use (as defined herein). CFX, at CFX's sole cost and expense, may obtain any updates to any Environmental Studies conducted six (6) or more months prior to the Effective Date. To the extent the Environmental Studies do not cover all of the West Property, the County, or CFX as the County's assignee or designee, may, in its sole discretion and at its sole cost and expense, conduct a Phase I Environmental Site Assessment of the West Property ("Phase I") to determine the likelihood of the West Property containing any hazardous or toxic substances, wastes, materials, pollutants or contaminants. As used herein, "Hazardous Substances" shall mean and include all hazardous and toxic substances, wastes or materials, any pollutants or contaminates (including, without limitation, asbestos and raw materials which include hazardous components), or other similar substances, or materials which are included under or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or clean-up, including, without limitation, "CERCLA", "RCRA", or state superlien or environmental clean-up statutes (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). In the event the County or CFX determines, in its sole and absolute discretion, that the Phase I, prior Environmental Studies, or any Follow-up Assessment are not satisfactory, or otherwise deems the West Property or the Tavistock Easement Areas unsuitable for the Project, the County may terminate this Agreement no later than fifteen (15) days from the Effective Date (the "Inspection Deadline") upon which all Parties shall be relieved of all further obligations hereunder, other than obligations which, by the express terms of this Agreement, survive the Closing or the termination of this Agreement. In the event the County or CFX have not delivered written notice of termination to the Owners by 5:00 p.m., local Orlando time, on or before the Inspection Deadline, then the County and CFX shall be deemed to have waived its right to terminate under this Section 7.c.

County and CFX shall not conduct a Phase II Environmental Site Assessment, or any other environmental review more intrusive than the Phase I (a "Follow-up Assessment"), without first obtaining each affected Owners' written consents, which consents the Owners shall have the unconditional right to refuse. If the Owners elect to allow a Follow-up Assessment, the scope and other details thereof shall be subject to the applicable Owners' prior written approval exercised in such Owners' sole discretion. Further, if the applicable Owners authorize a Follow-up Assessment, such Owners shall have the right in their discretion to elect to perform the Follow-up Assessment (in lieu of County or CFX doing so), still at County or CFX's cost, as applicable. If the Owners so elect to perform the Follow-up Assessment, the Owners shall have the right in their discretion to keep confidential, even from CFX and County, the results thereof. If Owners elect to keep those results confidential from CFX and County, then CFX and County shall each have the right to terminate this Agreement at any time within ten (10) days after receipt of Owners' written notice of election to keep the results of the Follow-up Assessment confidential. In the event of such a termination, the Parties will be relieved of their respective obligations under this Agreement other than those obligations the Parties agree survive such a termination. If CFX or County fails to deliver written notice of termination to the Owners by 5:00 p.m., local Orlando time, on or before the expiration of the permitted 10-day period to elect to terminate this Agreement, CFX and County shall have forfeited the right to terminate.

d. <u>Termination</u>. In the event County or CFX elects to exercise its right to terminate this Agreement pursuant to the provisions of this Section 7, such election must be exercised by providing written notice of the election to Owner (the "Termination Notice"), which Termination Notice must be timely provided (pursuant to the Notices provisions in Section 26 hereof) prior to the then-scheduled Closing Date (hereinafter defined) or such other deadline which is expressly stated herein.

e. <u>Payment for Inspections</u>. County and CFX shall pay for all work and inspections performed by County or CFX, respectively, or on behalf of either County or CFX on or in connection with the West Property and shall not permit the filing of any lien against the West Property or Tavistock Easement Areas (or any portion thereof) in favor of any contractor, materialman, mechanic, surveyor, architect, engineer, laborer, or any other lienor performing services or supplying materials to the West Property or the Tavistock Easement Areas on CFX's or County's behalf or at CFX's or County's request. This subsection shall survive Closing and termination of this Agreement, whatever the reason for termination.

Protection of Owners. CFX and County shall maintain, and shall cause each f. of their contractors performing work on the West Property on their behalf to maintain, a policy or policies of commercial general liability insurance, with a combined single limit of not less than \$1,000,000 and \$2,500,000 in the aggregate protecting the Owners from claims, actions, losses, and liability relating to entries by or on behalf of CFX or County, as applicable, onto the West Property. This policy shall name the Owners and their officers, directors, employees, and agents as additional insureds. This policy shall be underwritten by an insurance company meeting the Owners' reasonable approval. CFX and County, or their contractors, shall deliver to the Owners a certificate or other evidence of such insurance before entering onto, or causing entry by another onto, the West Property. County and CFX, as a condition to either Party's exercise of its right of entry hereunder, agree to protect and indemnify the Owners with respect to liens, claims, expenses, damages, losses, obligations, and liabilities resulting from the exercise by County or CFX, or any of their agents, of this right of entry. Nothing contained herein shall be deemed a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes. Without waiving its right to sovereign immunity as provided in Section 768.28, Florida Statutes, County and CFX (but not their contractors) may each elect to self-insure for general liability with coverage

limits as set forth in Section 768.28, Florida Statutes, and shall provide an affidavit or certificate of insurance evidencing self-insurance commercial insurance for up to sovereign immunity limits and the Owners agree to accept such insurance with regard to County and CFX. This subsection shall survive Closing and termination of this Agreement, whatever the reason for termination.

Evidence of Title. No later than twenty (20) days before Closing, the County, or 8. County's designee or assignee, may obtain, at the County's sole cost and expense, a commitment or commitments for a policy of Owner's Title Insurance (the "Commitment") based on the legal descriptions obtained by the County, or County's designee or assignee, in accordance with Section 9 hereof, which shall be written on a nationally recognized title company of County's or CFX's choosing (the "Title Company"). The County will deliver (or will cause the Title Company to deliver) copies of the Commitment and all documents constituting the exceptions referred to in the Commitment to each affected Owner. The Commitment shall bind the Title Company to deliver to the County a policy of Owner's Title Insurance which shall insure the County's title to the West Property (and, if desired, any beneficial easements) in an amount equal to the Purchase Price. The County shall have five (5) days from the date of receipt of the latter of the Commitment or the Survey (as defined below) to examine the Commitment and Survey and notify Owner in writing of any defects, a defect being a matter which would render title unmarketable or render the West Property unsuitable, in the County's reasonable discretion, for the Project. The applicable Owner shall have ten (10) days from receipt of notice of the title defect (the "Title Curative Period") within which to remove (or notify County of any Owner's refusal to remove) such defect(s), and if the Owner is unsuccessful in removing, or elects not to remove, the same within said time period, the County or CFX shall have the option as its sole and exclusive remedy of: (i) accepting title as it then is without reduction in Purchase Price; or (ii) terminating this Agreement, whereupon each Party shall then be released of all further obligations hereunder, which option shall be made in writing within three (3) days after the expiration of the Title Curative Period. The Owners shall have no obligation to, and in its sole discretion may elect not to, undertake removal of any or all title defects identified in the County's notice of title defects, except to the extent such defect relates to a mortgage, lien, taxes, charges, or assessments on the West Property, or any portion thereof. The Owners' failure (or refusal) to correct a defect shall not constitute a default by the Owners. This obligation does not obligate the Owners to spend in excess of Ten Thousand and No/100 Dollars (\$10,0000.00) (in the aggregate and not per individual Owner) to resolve said defects, except to the extent such defect relates to a mortgage, lien, taxes, charges, or assessments on the West Property, the Tavistock Easement Areas, or any portion thereof. In the event any of the foregoing time periods extend beyond the Closing Date, the Closing Date shall extend accordingly. Those matters reflected in the Commitment and Survey and accepted in writing (or deemed accepted) by the County, shall be deemed and collectively referred to herein as the "Permitted Exceptions". Additionally, the Permitted Exceptions shall include: (a) the easements expressly contemplated hereunder to be recorded at or prior to Closing, (b) an electric easement in favor of Orlando Utilities Commission over and across that portion of the West Property more particularly described in Exhibit "E-1" attached hereto and made a part hereof to be granted in such form and content as mutually agreed upon by the applicable Parties no later than five (5) business days prior to Closing and to be recorded at or prior to Closing ("OUC Easement Agreement"); (c) a sanitary sewer easement in favor of the City of Orlando over and across that portion of the West Property more particularly described in Exhibit "E-2" attached hereto to be granted in such form and content as mutually agreed upon by the applicable Parties no later than five (5) business days prior to Closing and to be recorded at or prior to

Closing ("Sanitary Sewer Easement Agreement"); (d) the LNB Drainage Easement (as herein defined); and (e) a temporary construction and access easement in favor of the Lake Nona Land Company, LLC over and across that portion of the West Property designated for the OUC Easement Agreement for the construction and installation of the conduit necessary to serve OUC's facilities to be granted in such form and content as mutually agreed upon by the applicable Parties no later than five (5) business days prior to Closing and to be recorded at or prior to Closing ("Temporary Construction Easement Agreement")(collectively, the "Pending Easements"). The Owners agree and acknowledge that County and CFX hereby object to the restrictions more specifically set forth in the Deed of Conservation Easement between the Greater Orlando Aviation Authority, City of Orlando, and the SFWMD recorded on January 14, 2010 as Document Number 20100028591 in the Public Records of Orange County, Florida, and that certain Amended and Restated Conservation Easement between LNLC, City of Orlando, and SFWMD dated February 28, 2007 and recorded May 16, 2007 in Official Records Book 9262, Page 2315 in the Public Records of Orange County, Florida (collectively, the "Conservation Easements") and that the Owners shall resolve and cure the title objection to the Conservation Easements post-closing in accordance with the provisions of Section 13.b.(vii) hereof as one of the Construction Contingencies (hereinafter defined). In the event County or CFX elect to obtain a Survey, the lands to be encumbered at Closing by the Pending Easements shall be described and depicted on the Survey. County shall take title to the West Property subject to the Permitted Exceptions. At Closing, the County shall pay the premium for the Owner's Title Insurance Policy (including any endorsements thereto) to be issued. Notwithstanding anything contained herein to the contrary, CFX may, at CFX's sole and absolute discretion, exercise any of County's rights set forth in this Section 8 in accordance with the terms and conditions of the Transition Agreement and Funding Agreement by providing written notice of such election to County and Owners.

9. Survey. No later than twenty (20) days before Closing, the County or CFX may have the West Property and Tavistock Easement Areas (if desired) surveyed at its sole cost and expense (the "Survey"). If the County elects to obtain a Survey, the Survey shall be performed and certified to each applicable Owner, the County, the Title Company issuing the Commitment in accordance with applicable law, statutes and regulations and shall have located thereon all matters listed in the Commitment which are capable of being shown on a survey. Pursuant to Section 8 above, the County, or County's designee or assignee, may object to Survey conditions, which shall then be treated as title exceptions and cured, or not cured, as applicable, in accordance with the Section 8 above. In lieu of obtaining a boundary survey, the County, or County's designee or assignee, may elect to prepare, or have prepared on their behalf, certified legal descriptions and sketches of the West Property and the Tavistock Easement Areas. Because of the need for legal descriptions at Closing, CFX shall obtain at its expense either the Survey or the certified legal descriptions and sketches. The surveyor shall provide certified legal descriptions and sketches of said descriptions delineating the West Property into various portions of right of way (separated by ownership) and the legal descriptions will be included in the easement agreements executed and delivered at Closing by Owner in addition to the Deeds (as defined below). Upon request of County, the legal description from such Survey or sketch and description shall be substituted in the Deeds or applicable easement agreements conveying, or granting an easement over, the West Property at Closing, subject to Owners' reasonable approval of that legal description. No later than twenty (20) days before Closing, County shall provide the Owners with a complete and accurate legal description of the West Property for review and approval within ten (10) days. If the Owners do not object to the legal description within said ten (10) day period,

the legal description shall be deemed approved by the applicable Owner. Once approved by the Owners, the legal description shall be included in the documents signed at Closing. Notwithstanding anything contained herein to the foregoing, CFX may, at CFX's sole and absolute discretion, exercise any of County's rights set forth in this Section 9 in accordance with the terms and conditions of the Transition Agreement and Funding Agreement by providing written notice of such election to County and Owners. In the event CFX does not obtain a current Survey of the West Property and/or the Tavistock Easement Areas, then the standard survey exceptions will not be removed from the title policies. Further, CFX acknowledges and agrees that the title policies may include a specific survey exception based on the Survey.

## 10. <u>Conditions Precedent to Obligation to Close</u>.

a. <u>County's Conditions to Close</u>. County's obligation to purchase the West Property and the Easements shall be expressly conditioned upon the fulfillment of each of the following conditions precedent (collectively, the "County's Conditions to Close") on or before the date or dates hereinafter specifically provided and in no event later than the date of Closing:

i. The representations, warranties and covenants of the Owners contained in this Agreement shall be true and correct as of the Closing Date in all material respects.

ii. Owners shall have performed and complied with all covenants and agreements contained herein which are to be performed and complied with by Owners or prior to the Closing.

iii. The Title Company is unconditionally bound to issue the owner's title insurance policy in favor of CFX in the full amount of the Purchase Price, subject only to the Permitted Exceptions.

iv. The West Property and Tavistock Easement Areas shall not have been materially affected by any legislative or regulatory change, or any flood, accident or other materially adverse event that would prevent or prohibit the use of the West Property for the Project.

v. CFX and Tavistock shall have agreed upon the form, manner, location and content of the easement agreements conveying the easement interests in the Offsite Drainage Easements, Air Rights Easements, Pier Foundations Easements (hereinafter defined), CFX Temporary Construction Easements, Local Road / Pond Temporary Construction Easement, TDCP Temporary Construction Easement(s), and the Pending Easements. The Offsite Drainage Easements, Air Rights Easements, Pier Foundations Easements, CFX Temporary Construction Easements, Pier Foundations Easements, CFX Temporary Construction Easements, Local Road / Pond Temporary Construction Easements, Segments, CFX Temporary Construction Easements, Segments, CFX Temporary Construction Easements, Segments, CFX Temporary Construction Easements, Segments, Segments, CFX Temporary Construction Easements, Segments, Segments,

vi. Owners shall, at Owners' cost and expense, exempt (or shall cause the West Property to be exempt) from any assessments levied by the CDD, or any homeowners association or property owners' association applicable to the West Property.

b. <u>Owners' Conditions to Close</u>. Each Owner's obligation to sell the West Property and the Easements shall be expressly conditioned upon the fulfillment of each of the following conditions precedent (collectively, the "Owners' Conditions to Close" and together with CFX's Conditions to Close being referred to herein as the "Conditions to Closing" or "Conditions to Close") on or before the date or dates hereinafter specifically provided and in no event later than the date of Closing:

(i) The representations, warranties and covenants of County and CFX contained in this Agreement shall be true and correct as of the Closing Date in all material respects.

(ii) County and CFX shall have performed and complied with all covenants and agreements contained herein which are to be performed and complied with by County and CFX or prior to the Closing.

(iii) The West Property and Tavistock Easement Areas shall not have been materially affected by any legislative or regulatory change, or any flood, accident or other materially adverse event that would prevent or prohibit the use of the West Property for the Project.

(iv) The Owners shall have agreed upon the form, manner, location and content of the easement agreements conveying the easement interests in the Easements and the Pending Easements.

c. The Parties shall exercise commercially reasonable, diligent and good faith efforts to cause their respective Conditions to Close to be satisfied. The Parties may at any time or times on or before Closing, at each of their election, subject to restrictions of law, waive any of the foregoing conditions to its obligations hereunder and the consummation of such sale, but any such waiver shall be effective only if contained in writing signed by County and CFX and delivered to Owners or vice versa, as to the applicable Conditions to Closing.

d. In the event any of the foregoing Conditions to Closing or other conditions to this Agreement are not fulfilled or waived by the applicable Parties prior to the date of Closing, the Party who is benefited by such Conditions to Closing may elect, as its sole and exclusive remedy, to: (i) terminate this Agreement, (ii) waive any outstanding Conditions to Close and proceed to close and acquire the West Property and Easements without adjustment to the Purchase Price; or (iii) waive any of the Conditions to Close and, if and to the extent applicable and provided that the Parties mutually agree to the form and content, enter into a post-closing agreement or escrow agreement establishing a time certain to complete the unfinished conditions ("Post Closing Conditions") and the provision of a method to financially secure any Post Closing Conditions ("Post Closing Agreement").

### 11. <u>Closing Date and Closing Procedures and Requirements.</u>

a. <u>Closing Date</u>. The closing of the purchase and sale contemplated under this Agreement (the "Closing") shall be held on or before thirty (30) days from the expiration of the Inspection Deadline, or such earlier date selected by the County or CFX by providing not less than ten (10) days' prior written notice to Owners but in no event later than March 31, 2022 (the "Closing Date"), at the offices of the County, or the County's attorney, by mail or courier, or any other place which is mutually acceptable to the Parties.

b. <u>Closing Concurrent with Conservation Lands</u>. Unless otherwise subsequently mutually agreed upon in writing by the Parties, the lands conveyed under this Agreement, the East Segment Roadway Agreement, and the Conservation Lands Agreement will all close on the Closing Date; provided, however, the Parties acknowledge and agree that the deeds, conservation easements and other closing documents for the East Property, SLR Easement Areas, and Conservation Lands shall be held in escrow, pursuant to the terms of a separate escrow agreement (the "Escrow Agreement"), until the East Property Construction Contingencies as defined in the East Segment Roadway Agreement, and the Conservation Lands Contingencies, as defined in the Conservation Lands Agreement, and any other additional contingencies set forth in the Escrow Agreement have been satisfied. Accordingly, by way of clarification and notwithstanding any conflicting provision of this Agreement, the Closing under the East Segment Roadway Agreement and the Conservation Lands Agreement will be effective as of the closing under this Agreement but will not be released from escrow until the East Property Construction Contingencies and the Conservation Lands Contingencies have been satisfied.

c. <u>Delivery of Possession</u>. Title to the fee simple interests in the West Property and the Easements in the Tavistock Easement Areas shall transfer as of the Closing Date, unless otherwise mutually agreed upon by the Parties and, on or before said Closing Date, the Owners shall abandon and vacate the West Property and shall remove all personal property not included in this transaction that the Owners intend to remove from the West Property and for which the County has not paid the Owners as part of the Closing (except as otherwise provided in any licenses and leases included in the Permitted Exceptions). Except as otherwise provided in the Permitted Exceptions, the Owners shall surrender possession of the West Property to the County at the Closing free of any tenancies, sub-tenancies, or encumbrances, or by separate agreement of the Parties entered into prior to the Closing. Except as otherwise provided in any licenses and leases included in the Permitted Exceptions, any personal property or fixtures left by the Owners upon the West Property after the Closing Date shall be presumed to be abandoned, and the County will have the right to remove and destroy such property or fixtures without any responsibility or liability to any applicable Owner for any damages or claims whatsoever.

d. <u>Prorating of Taxes and Assessments</u>. Each of the Owners shall pay all taxes, assessments, and charges applicable to its portion of the West Property for the period of time prior to the Closing Date. All such taxes, assessments and charges shall be prorated as of the Closing Date. At Closing, each Owner will pay to the County or the closing agent, by credit to the Purchase Price or otherwise, such Owner's pro rata share of all taxes, assessments and charges as determined by the applicable taxing governmental authorities against its portion of the West Property and shall comply with the provisions of Section 196.295, Florida Statutes.

e. <u>Closing Costs</u>. The County shall, at Closing, pay: (i) the cost of recording the Deeds delivered hereunder and the easements agreements to grant the Easements; (ii) all costs pertaining to the Commitment, including, but not limited to, title insurance premiums, title search fees, and the premiums for any endorsements requested by the County, and all costs related to the issuance of the Commitment and a title insurance policy insuring title to the West Property, should the County desire to obtain a title insurance policy on the West Property; (iii) all of the costs and expenses associated with the Survey or the sketch and legal descriptions, as applicable; and (iv) any and all cost and expenses associated with its inspections including, without limitation, recertifying and updating the Environmental Studies and Follow-up Assessments. All other costs

incurred at Closing shall be borne by the Parties in accordance with the custom and usage in Orange County, Florida. The Parties anticipate the conveyance of the West Property will be exempt from documentary stamp taxes as a conveyance in lieu of condemnation. (See Section 1 2B-4.014(13), F.A.C.). If the Florida Department of Revenue or any authority with jurisdiction shall determine documentary stamp taxes must be paid on the conveyance of the West Property, the Owners shall pay the documentary stamp taxes at Closing. CFX shall reimburse County for any and all closing costs in accordance with Section 5 of the Funding Agreement.

General Closing Documents. At Closing, the Owners shall sign and provide f. to County the Deed(s) conveying fee simple interest in the West Property, the easement agreements conveying the Easements set forth herein in accordance with the terms hereof, a closing statement, an owner's affidavit sufficient to allow the Title Company to delete the applicable standard exceptions from the title policy, including matters referenced in Section 627.7842(1)(b) and (c), Florida Statutes, and an affidavit that such Owner is not a foreign person for purposes of the Foreign Investment in Real Property Tax Act (FIRPTA), as revised by the Deficit Reduction Act of 1984 and as same may be amended from time to time (which certificates shall include such Owner's taxpayer identification numbers and address or a withholding certificate from the Internal Revenue Service stating that such Owner is exempt from withholding tax on the Purchase Price under FIRPTA), an appropriate resolution authorizing such Owner to engage in the transaction, and such other documents as are necessary to complete the transaction as contemplated herein. If, at the time of Closing, any Owner holds title to the West Property in the form of a partnership, limited partnership, corporation, limited liability company, trust, or any form of representative capacity whatsoever, then at Closing such Owner(s) shall sign a Beneficial Interest Affidavit described in Section 286.23, Florida Statutes, as applicable (a copy of which is attached hereto as Exhibit "F"). Each Party shall also sign and deliver such additional documents, and take such other actions, as may be necessary or appropriate to implement or perform provisions of this Agreement and allow the Title Company to insure County's title in and to the West Property (and, if desired, any beneficial easements). Each closing document will be consistent with and will implement applicable provisions of this Agreement, and the form and content shall be subject to the reasonable approval of the Parties.

Legal Descriptions. The Parties understand and agree that the legal g. descriptions of the West Property and the Easements may not be finalized until the design for the Project is completed or until the future development of each Owner's adjacent lands is designed and permitted. As such, in the event the legal descriptions attached to the Deeds or the easements agreements granting the Easements need to be modified post-closing, the Parties shall cooperate and work in good faith to execute any and all documents reasonably necessary to accommodate the revisions to the legal description and any closing documents required to effectuate the revisions to the legal descriptions, provided; however, in no event shall County, or County's successor in interest, be required to accept, in its sole and absolute discretion, a decrease in the total acreage of the West Property or Easements without compensation therefore, or otherwise incur any additional costs or expenses, directly or indirectly, to revise the legal descriptions, including, without limitation, costs and expenses for the (i) preparation of the sketch and legal descriptions, surveys or closing documents, (ii) recording the deeds, easements agreements or any documents required to revise the legal descriptions; and (jjj) title search and commitment fees, or title insurance premiums to update the title policies previously issued to CFX, if any. The Owners understand and acknowledge that once the Project is under design, any revisions to the legal descriptions for the

Project will potentially require a redesign of the Project. In the event the Owners request to revise the legal descriptions for the West Property or Easement subsequent to CFX advertising for the design of the Project, the Owners agree to pay any and all costs required to redesign the Project to account for the revisions to the legal descriptions of the West Property and Easements. The foregoing terms and provisions shall expressly survive Closing.

### 12. <u>Conveyance of Title</u>.

a. At the Closing, each of the Owners shall execute and deliver to the County a Special Warranty Deed for their respective portions of the West Property (collectively referred to herein as the "Deeds", or individually as a "Deed") conveying fee simple record title of its respective portion of the West Property to the County, free and clear of all liens, outstanding general and special assessments, easements, reservations, restrictions and encumbrances whatsoever except for the Permitted Exceptions and other title exceptions to which County has not objected or which County has agreed to accept pursuant to Section 8. Notwithstanding anything contained herein to the contrary, County shall execute and deliver to CFX a special warranty deed and any other closing documents reasonably required by CFX to convey the County's fee simple record title of the West Property and assign any easements interests in the Easements to CFX in accordance with Section 5 of the Funding Agreement.

b. <u>Use Restriction and Alternate Use Restriction</u>. The Deeds will contain a restrictive covenant limiting use of the West Property in substantially the following form ("Use Restriction"):

"Use of the West Property shall be restricted and limited to construction, maintenance, repair, replacement, and operation of a limited access highway (the "Primary Use") and such other public transit or transportation facility or other public transit or transportation use ancillary to or in support of the Primary Use which is reasonably approved by the governing board of CFX (the "Ancillary Use" and together with the Primary Use referred to herein collectively as the "Permitted Use"). No Ancillary Use shall at any time be permitted in the absence of, or in lieu of, the Primary Use. Concurrent with a Permitted Use (but not before or in lieu thereof), use of the West Property may also include stormwater management ponds and facilities, lighting, landscaping, and underground (unless otherwise located on the bridge structures) public utilities, and communications facilities and other improvements and facilities appurtenant to and otherwise in support of the Permitted Use (collectively, the "Ancillary Facilities"); provided, however, (a) County and County's successors in interest or assigns, shall not, without prior written consent of the Owner, authorize use of the West Property for communications facilities providing service to any lands lying within the Lake Nona Planned Development (as generally described in that certain Ordinance of the City of Orlando, Florida, adopted by the City Council on December 10, 2018 under Document Number 1812101204, as reflected in that certain Municipal Planning Board Staff Report dated July 16, 2019 under ZON2019-10015, as amended by that certain Municipal Planning Board Staff Report approved on September 8, 2020 under ZON2019-10035, and that certain Ordinance No. 2021-46 of the City of Orlando, Florida, adopted by the City Council on July 19, 2021 under Document Number 2107191204), and (b) in no event shall the West Property be used for high-speed air mobility transportation facilities or similar uses. The West Property shall not be used for any other purposes or uses whatsoever. This restriction will run with title to the West Property for a term of fifty (50) years from the date and time of recording of this Special Warranty

Deed, as it may be extended automatically as expressly provided herein (the "Term") and be enforceable by Owner and its successors in interest, and assigns, in perpetuity. The persons and entities from time to time entitled to enforce this Use Restriction may do so by invoking all remedies at law and in equity, including without implied limitation specific performance and injunction.

In the event (1) any of the Construction Contingencies defined in Section 13.b. (i) through (ix) is not satisfied on or before the Construction Contingency Deadline; (2) if CFX fails to complete the construction of the West Segment (as defined herein) on or prior to the West Segment Completion Deadline (as defined herein), subject to delays caused by any Force Majeure Event; or (3) if during the Term, the West Property, or any portion thereof, ceases on a permanent basis to be used for the Permitted Use (collectively, a "Repurchase Event"), the Owners may elect to pursue any remedies available at law or in equity, and each Owner(s) who transferred the West Property and Easements (or applicable portions thereof) to the County shall have the assignable right to repurchase the portion of the West Property (together with the appurtenant Easements or the applicable portion thereof) conveyed by that Owner (either entirely or with respect only to the portion thereof that ceases to be so used) at a purchase price equal to the original purchase price paid by County for the West Property (or applicable portion thereof) (the "Right of Repurchase"). To the extent only a portion of the West Property ceases to be used for the Permitted Use, the purchase price for the Right of Repurchase shall be prorated against portions of the West Property and the Easements for any partial repurchase based on the original allocation of purchase price determined by the Owners at Closing and mutually agreed upon by the County at Closing pursuant to this Agreement. County and its successors in interest shall promptly notify the Owners in writing of the occurrence of a Repurchase Event ("Notice of Repurchase Event"). Notwithstanding the foregoing, in the event one or more of the Construction Contingencies have not been satisfied, or cannot be satisfied by the Construction Contingency Deadline (as it may be extended pursuant to Section 13.c below), regardless of whether such Construction Contingency Deadline has passed, after good faith and diligent efforts of County or its successors in interest, County or its successors in interest may, but are not obligated to, provide a Notice of Repurchase Event to the Owners. No later than one thousand ninety-five (1,095) days from receipt of such Notice of Repurchase Event (the "Repurchase Period"), the applicable Owner(s) shall notify County or County's successors in interest, in writing, of its intent to exercise its Right of Repurchase (the "Repurchase Notice"). In no event shall the Owners be permitted to purchase only a portion or segment of the West Property and appurtenant Easements (or the applicable portion thereof) without the express written consent of County or its successors in interest. In the event one or more of the Owners elects to repurchase the West Property and Easements ("Electing Owners") and one or more Owners is unable or unwilling to repurchase the West Property and Easements, the Electing Owners, or their assignees, shall be required to repurchase all of the West Property and Easements unless otherwise waived in writing by County or its successors in interest. Within thirty (30) days of County or County's successors in interest receipt of the Repurchase Notice, the parties shall negotiate in good faith to enter into a repurchase agreement based on the customary and standard terms for an arm's length transaction of this nature, or if such repurchase agreement cannot be agreed upon in form then the parties shall use the then current FARBAR form commercial contract; provided, however, subject to the conditions and requirements hereof: (i) the applicable Owner(s) will accept the physical condition of the West Property and Easements "as-is where-is" subject, however, to (a) the applicable Owner(s)' right to terminate or extinguish any easements benefiting County, CFX or other third-parties in anticipation of or in furtherance of the Permitted Use and any Ancillary

Facilities, all of which shall be subordinate and subject to Owners' Right of Repurchase (b) the County or County's successors in interest obligation to remove any monetary liens or encumbrances created by or through said party, and (c) the automatic release and termination of the Use Restriction; (ii) County or County's successor's in interest shall not be required to pay for any title insurance search or owners' policy or survey but shall be responsible for the costs of recording the deed, recording all title curative documents, transfer taxes, and any closing/escrow fees; (iii) County or County's successors in interest shall reconvey the West Property (or the applicable portion thereof) by special warranty deed and shall deliver exclusive possession thereof to the applicable Owner concurrently with the closing; and (iv) County, or County's successors in interest, whichever is applicable, shall prepare all documents related to the repurchase closing.

On an Owner's repurchase of any of the West Property pursuant to this Section, unless the Owner expressly agrees otherwise, title for the applicable portion of the West Property shall vest in the Owner free and clear of and unburdened by any matter to which the title was made subject after the original conveyance by Owners.

For purposes of this restriction, the West Property, or any portion thereof, shall be deemed permanently to cease being used as a limited access highway or Permitted Use if once the limited access highway or Permitted Use has opened to the general public for use, the highway or any lane or other portion thereof is closed to general public use for reasons other than temporary maintenance, repair, expansion, or upgrade for a period exceeding twenty-four (24) consecutive months. If County or its successors in interest at any time cease using the West Property, or any portion thereof, on a permanent basis as a limited access highway but fail in writing to so notify Owners, then Owners may at any time invoke any of the remedies provided in this deed, including, without implied limitation, the Right of Repurchase. The Use Restriction shall be prior and superior to all rights, titles, and other claims and interests granted, attaching, or otherwise affecting the West Property, or any portion thereof, after the date of this deed; and the Owners' taking title to the West Property (or applicable portion) through repurchase shall extinguish such rights, titles, claims, and interests without further action. The Owners' title for any portion of the West Property as a result of a repurchase shall not be subject to any such rights, titles, claims, and interests.

Notwithstanding the foregoing or anything contained herein, the Owners understand and acknowledge that County or its successors in interest will be required to maintain a minimum right-of-way width of 330 feet and minimum stormwater volume of 104 acre feet to operate a limited access highway and in no event shall the Owners, without the express written consent of County or its successors in interest be permitted to repurchase a portion of the West Property or Easements that would result in a minimum right-of-way width of less than 330 feet and minimum stormwater volume of 104 acre feet, or that would otherwise impact County's or its successors in interest's ability to operate the limited access highway on the remaining portions of the West Property.

In the event the Owners fail to provide a Repurchase Notice within the Repurchase Period, the Use Restriction shall automatically expire and shall be of no further force and effect. In such event, at no cost or expense to the Owners, the Owners shall cooperate and work in good faith with County or its successors in interest, to modify any existing development orders, planned developments, or other governmental approvals to enable the use of the West Property for uses other than the Permitted Use and Ancillary Facilities (the "Land Use Changes") provided that such Land Use Changes do not have an Adverse Impact (as defined herein) on any Owners or any of their successors in title or any of their affiliates or on adjacent real property owned by them. As used herein, the term "Adverse Impact" shall mean any consequence directly attributable to any Land Use Changes which consequence is materially adverse to the development, to the use, or to the cost of development or use, of any of the properties or improvements (existing or proposed) owned by Owner or their successors in title or affiliates lying within two (2) miles of the boundary of the Lake Nona Planned Development (the "Adjacent Lands"), or to the entitlements, mitigation, capacity and/or vested rights under any land use approvals for the Adjacent Lands.

Subsequent to the expiration of the Use Restriction, in the event County or its successors in interest receive a bona fide offer from a third-party buyer for the purchase of the West Property, or any portion thereof, and if County or its successors in interest desires to accept said offer, County or its successors in interest shall cause said offer to be reduced to writing and shall deliver a complete and accurate copy of the bona fide third party offer to Owners, together with County's or its successors in interests' intent to accept the same ("Offer Notice"). The Owners shall have the right, but not the obligation, to repurchase that portion of the West Property identified in the Offer Notice, together with any appurtenant Easements (or the applicable portion thereof), upon the terms and at the price set forth in the Offer Notice ("ROFR"). The ROFR shall only be applicable to that Owner who is the predecessor in title to that portion of the West Property identified in the Offer Notice. The Owners shall have thirty (30) days from receipt of the Offer Notice to notify County or its successors in interest of Owners intent to purchase that portion of the West Property identified in the Offer Notice. If all of the applicable Owners do not timely accept the Offer Notice, as-is and without modification, County or its successors in interest may proceed to sell the West Property and appurtenant Easements (or the applicable portion thereof) to the third-party buyer making the offer, and upon the closing of such sale, the Owners' ROFR set forth herein (as to the portions of the West Property contained in the Offer Notice) shall automatically extinguish and expire and shall be of no further force and effect as to any subsequent transfers of that portion of the West Property contained in the Offer Notice. If some but not all of the applicable Owners do not timely accept the Offer Notice, as-is and without modification, County or its successors in interest shall then be required to send a second 30-day notice to those Owner(s) who have accepted the Offer Notice providing them with an option to accept the Offer Notice on those portions of the West Property that were rejected by the other applicable Owners, and to the extent the Offer Notice is not accepted as to all of the West Property contained therein by such Owners, County or its successors in interest may proceed to sell the West Property and appurtenant Easements (or the applicable portion thereof) to the third-party buyer making the offer, and upon the closing of such sale, the Owners' ROFR set forth herein (as to the portions of the West Property contained in the Offer Notice) shall automatically extinguish and expire and shall be of no further force and effect as to any subsequent transfers of that portion of the West Property contained in the Offer Notice. In the event Owners accept the terms of the Offer Notice, Owners and County or its successors in interest shall proceed under a contract formed pursuant to the terms of the Offer Notice. With respect to any portion of the West Property, this ROFR shall only be effective as to the first transfer by County of the portion of the West Property that occurs subsequent to the expiration of the Use Restriction and will continue in effect with respect to all other portions until the first transfer thereof by County. In the event an Owner accepts the terms of the Offer Notice and acquires the West Property (or a portion thereof), unless the Owner expressly agrees otherwise, title for the West Property (or applicable portion) shall vest in the Owner free and clear of and unburdened by any matter to which the title was made subject after the original conveyance thereof by Owners, all of such matters being subordinate and subject to the ROFR.

Notwithstanding anything contained herein to the contrary, the Term of the Use Restriction shall be automatically extended upon the occurrence of each of the following events:

(i) if the Construction Contingency Deadline is extended pursuant to Section 13.c.(i) or (ii) of [the Agreement], then the Term shall automatically be extended for an equal period of time.

(ii) if the West Segment Completion Deadline is extended due to a Force Majeure Event, then the Term shall automatically be extended for an equal period of time."

(iii) Each Owner shall have the right from time to time, at such Owner's expense and as to such Owner's respective portion of the West Property, to install and maintain utility crossings perpendicular to the SR 417 right-of-way or Osceola Parkway Extension right-of-way in locations and configurations subject to CFX's prior written approval, not to be unreasonably withheld, conditioned or delayed, and pursuant to CFX's then standard right-of-way permits and procedures for utility crossings. The Owners' rights under this subsection shall survive Closing and be referenced in the Deeds.

The terms of this Section 12 shall survive Closing and shall be incorporated into the Deeds and the easements agreements granting the Easements by reference hereto.

### 13. <u>Construction Contingencies and Right to Repurchase</u>.

Requirement to Design and Construct West Segment. In the essence of a. time, no later than three (3) months from the later of (i) Closing or (ii) satisfaction of any Post Closing Conditions the Post Closing Agreement required to be completed as a condition of advertising for design of such first segment (collectively the "Deadline to Advertise"), CFX shall proceed with the advertisement for design of the first segment of the Project starting from SR 417 (including the Lake Nona Revised Interchange which shall be designed and constructed in order to accommodate the Ultimate Local Interchange) on the westerly end through to the easterly terminus approximately at the easterly right-of-way of Narcoossee Road (as depicted on Exhibit "D-3" and referred to herein as the "West Segment"). The Owners understand and acknowledge that CFX shall have the right to advertise for the design of the West Segment in one or more advertisements or phases, provided; however, in the event of multiple advertisements or phases, the first advertisement shall occur no later than the Deadline to Advertise. The Owners understand and acknowledge that CFX will advertise for the design of the second segment starting at the easterly right-of-way of Narcoossee Road on the westerly end through to the easterly terminus approximately at the easterly extension of Cyrils Drive (as depicted on Exhibit "D-4" and referred to herein as the "East Segment") within six (6) months of the satisfaction of the Construction Contingencies applicable to the East Segment as defined in the East Segment Roadway Agreement. Upon advertisement for design for each segment, CFX shall use good faith and diligent efforts to commence construction. Once construction has commenced, CFX shall use good faith and diligent efforts to complete construction of the West Segment no later than ten (10) years from the satisfaction (or waiver by County or its successors in interest) of the Construction

Contingencies, unless such deadline is otherwise mutually extended by the Parties hereto in writing ("West Segment Completion Deadline").

b. <u>Construction Contingencies</u>. In order to ensure the West Segment is constructed, the following conditions (collectively, the "Construction Contingencies") must be satisfied no later than ten (10) years from the date of the Deeds, subject to extension or waiver as provided below ("Construction Contingency Deadline"):

(i) CFX's having secured from all applicable governmental authorities all Final Approvals (as defined herein) for any and all Permits and other authorizations for constructing and operating the West Segment of the Project Alignment. "Final Approvals" shall mean the issuance by all applicable governmental authorities for constructing and operating the Extension within the West Segment of the Project Alignment, which approvals are either (1) affirmed on administrative and judicial review by final order of judgment for which no appeal is or can be taken in accordance with applicable Law, or (2) in effect beyond the period of limitations for administrative and judicial review in accordance with applicable Law, during which period no action or other proceeding is instituted for review or challenge thereof.

(ii) Final resolution of any challenges and appeals brought against those Permits or the designation of the West Segment of the Project Alignment for the Project.

(iii) CFX shall have completed the design of the West Segment of the Project and shall notify Owners it is prepared to advertise for the construction of the Project.

(iv) Reimbursement by the Florida Department of Transportation ("FDOT") to the County for the purchase of the West Property and Easements in the amount set forth in, and in accordance with the terms and conditions of, the Amendment to Joint Participation Agreement between the State of Florida Department of Transportation and Osceola County dated March 16, 2018 ("JPA"). If FDOT provides written notice at any time prior to the Construction Contingency Deadline that it will not fund the reimbursement of the Purchase Price for the West Property in accordance with the terms and conditions of the JPA, then this contingency shall be deemed unsatisfied. Notwithstanding the foregoing, CFX may, in its sole and absolute discretion, elect to waive this condition.

(v) CFX shall have secured any and all property rights reasonably required for the construction of the Project after using good faith and diligent efforts, which efforts shall include, without limitation, the exercise of CFX's power of eminent domain if deemed reasonably necessary in the sole discretion of the governing board of CFX.

(vi) The West Property and Tavistock Easement Areas, and the design, engineering, and construction of the Project have not been materially, adversely impacted by a Force Majeure Event (as defined herein).

(vii) Within thirty (30) days of receipt of CFX's application for an environmental resource permit for the Project (for that section of the Project that is affected by the Conservation Easements) from the South Florida Water Management District ("SFWMD") or a federal dredge and fill permit under section 404 of the Clean Water Act, permitted from the US

Army Corps of Engineers or the Florida Department of Environmental Protection ("FDEP") (individually, "Project Permit" and collectively, the "Project Permits"), Owners shall, at its sole cost and expense, initiate, prepare and submit to SFWMD and FDEP substantially complete applications to modify and amend SWFMD Permit No. 48-0195-S and 48-0063-S and US Army Corps of Engineers Permit No. 199805813 (IP-TB) (individually, the "Existing Permit" and collectively, the "Existing Permits") in order to obtain releases ("Releases") from the SFWMD, FDEP, and the City of Orlando, as applicable, of that portion of the West Property encumbered by the restrictions set forth in the Conservation Easements necessary for the Project as outlined in CFX's application. The Parties understand and agree that the modifications and amendments to the Existing Permits are most likely necessary to obtain the Releases, for the issuance of the Project Permits, and to permit the construction of the Project. To the extent CFX does not submit applications for the Project Permits concurrently, the Owner shall submit the application for the modification or amendment to the applicable Existing Permit within sixty (60) days of receipt of the application for the applicable Project Permit and shall submit the remaining application for modification or amendment within sixty (60) days of receipt of the application for the second Project Permit. The Owners shall, at its sole cost and expenses, in good faith employ commercially reasonable diligence to process and obtain the Final Approvals of the modifications of the Existing Permits and Releases from the SFWMD, FDEP, and the City, as applicable, including, without limitation, (i) identifying, purchasing, and conveying to SFWMD or the City of Orlando, any substitute property or mitigation credits to offset the credits that may have been previously obtained in connection with the recording of the Conservation Easements; and/or (ii) eliminating or reducing wetland impacts contemplated in the Existing Permits to remove the need for such credits. Said modification of the Existing Permits by Owners shall be sufficient to satisfy the requirements of the Release, although any mitigation for actual impacts to any wetlands within such areas released shall be satisfied at the cost and expense of CFX pursuant to the Project Permits. Owners shall cooperate in good faith with CFX to process the Releases and obtain Final Approval of the Project Permits, including, without limitation, joining in all applications and submissions, forms, or documents of any type that shall be reasonably required by any governmental authorities, and otherwise attending, answering or assisting in answering requests for information to facilitate the processing of the Releases and Final Approvals of the Project Permits.

(viii) Satisfaction of any Post Closing Conditions that a Post Closing Agreement entered into by the Parties specifies is a Construction Contingency.

(ix) Adequate funding and/or financing is available to complete the West Segment as designed and approved.

#### c. <u>Extension of Construction Contingency Deadline</u>.

(i) *CFX's Right to Extend.* If, prior to the Construction Contingency Deadline, CFX determines, after good faith and diligent efforts, there is a lack of available funds or financing to complete the West Segment as designed and approved, CFX shall have the right upon written notice to the Owners to extend the Construction Contingency Deadline for two (2) periods of up to twelve (12) months each to enable CFX to secure such additional funds or financing needed. Further, CFX covenants and agrees: (x) to provide prompt written notice to Owners upon becoming aware of any funding or financing deficit and specifying the amount of

said deficit, (y) to use commercially reasonable efforts to mitigate the effect of any funding or financing deficit, and (z) to continue to perform its other obligations hereunder.

(ii) *Owner's Right to Extend.* If despite the Parties' good faith and diligent efforts the Construction Contingencies are not satisfied ninety (90) days prior to the Construction Contingency Deadline for any reason, the Owners shall have the unanimous, one-time right upon written notice to CFX to extend the Construction Contingency Deadline up to, but not more than, sixty (60) months to a date that is mutually agreeable to CFX and Owners. If the Parties are unable to mutually agree upon the duration of the extension, the Construction Contingency Deadline shall extend for sixty (60) months.

(iii) *Effect of Extension*. In the event the Construction Contingency Deadline is extended pursuant to subpart (i) or (ii) above, the Term of the Use Restriction shall be extended for an equal period of time.

Owners' Right to Repurchase. In the event any of the Construction d. Contingencies in Section 13.b.(i) through (ix) is not satisfied on or before the Construction Contingency Deadline, as it may have been extended pursuant to subpart c. above, then the Owners of the West Property may elect to exercise the Right to Repurchase in accordance with the terms and conditions set forth in the Deeds. In no event shall the Owners be permitted to purchase some, but not all, of the West Property without the express written consent of County or its successors in interest. In the event one or more of the Electing Owners elects to repurchase the West Property and one or more Owners is unable or unwilling to repurchase the West Property, the Electing Owners shall be required to repurchase all of the West Property unless otherwise waived in writing by County or its successors in interest. Notwithstanding the foregoing, Tavistock reserves the right to assign this right to repurchase, or waiver of the right to repurchase, to any subsidiary or affiliated entity of Tavistock, to SLR or any subsidiary or affiliated entity of SLR, and to any third-party who is under contract with any Owners to receive a direct deed of the West Property and Easements at the closing of the repurchase; further, if any Owner elects not to exercise its right of repurchase, any other Owner hereunder may elect to exercise such declining Owner's right of repurchase. Notwithstanding anything contained herein to the contrary, in the event CFX completes construction of the West Segment by the West Segment Completion Deadline, Owners understand and agree that the Owners' Right to Repurchase the West Property and Easements pursuant to this Section 13.d shall be extinguished regardless of whether there are other construction contingencies remaining outstanding.

e. <u>Waiver of Construction Contingencies and Right to Repurchase</u>. CFX has the right, subject to the Owners' mutual agreement, which shall not be unreasonably withheld, conditioned or delayed, to elect to waive one or more of the Construction Contingencies by providing written notice to the Owners of CFX's waiver of such Construction Contingencies. In the event CFX elects to issue a notice to proceed with the construction on the West Segment prior to the satisfaction of the Construction Contingencies, CFX shall provide written notice to the Owners of such election at least thirty (30) days prior to issuing the notice to proceed with construction of the West Segment ("Construction Notice"). In the event of such election, the Owners have thirty (30) days from receipt of the Construction Notice to exercise the Right to Repurchase for the West Property based on the failure to satisfy the Construction Contingencies. In the event the Owners fail to exercise their Right to Repurchase for failure to satisfy the Construction Contingencies, the Owners shall automatically be deemed to waive their Right to Repurchase as it relates to the satisfaction of the Construction Contingencies only. Notwithstanding the foregoing, in no event shall the commencement of construction of the West Segment impact Owners' Rights to Repurchase based on the failure to complete the construction by the West Segment Completion Deadline or the failure to use the West Property or Easements for the Permitted Use and Ancillary Facilities. The terms of this section shall survive Closing and shall be incorporated into the Deeds and the easements agreements granting the Easements by reference hereto.

f. <u>No Further Encumbrances</u>. From and after the Closing until the later of (a) the expiration of the Construction Contingency Deadline or the satisfaction of the Construction Contingencies, whichever occurs first, or (b) the date upon which the Owners waive (or are deemed to have waived) the right to repurchase the West Property as provided in subparagraphs d. and e. above, the County and the County's successors in interest shall:

(a) keep and maintain the West Property in good order and condition and will comply with and abide by all Laws and Permitted Exceptions affecting the West Property or its use.

(b) cause no waste or material alterations of the West Property except in accordance with the Use Restriction.

(c) pay all taxes and assessments relative to the West Property prior to the due date thereof.

(d) shall not offer to sell, transfer, donate, or lease any of the West Property, or any interest therein or claim thereto, to any other person or entity or enter into any verbal or written agreement, understanding, or contract relating to the sale, lease or conveyance of the Property or any interest therein.

(e) shall not encumber the West Property (or any portion thereof) in any manner except in accordance with the Use Restriction, except as mutually agreed upon by the Parties in writing.

g. <u>Incorporation into the Deeds</u>. The terms of this Section 13 shall survive Closing and shall be incorporated into the Deeds and the easements agreements granting the Easements by reference hereto.

h. <u>Commercially Reasonable Diligence</u>. County and CFX shall in good faith employ commercially reasonable diligence to satisfy the Construction Contingencies on or before the Construction Contingency Deadline.

14. <u>Sequencing of Design of Interchanges</u>. CFX shall initially be responsible to design and construct only the Lake Nona Revised Interchange as depicted on <u>Exhibit "D-1"</u> and the West Segment of the Project Alignment ("Initial Phase"). Notwithstanding, however, the design of the Lake Nona Revised Interchange shall be performed in such manner to ensure that the Lake Nona Revised Interchange will align with the Ultimate Local Interchange. CFX shall undertake reasonable good-faith efforts to expeditiously commence and complete design work

for the Ultimate Local Interchange in order to meet the construction requirements in the following sentence. When CFX traffic analysis determines that either or both of the Lake Nona Boulevard exit off SR 417 and the Boggy Creek Road exit off SR 417 functions at a level of service ("LOS") rating of "D" or worse, CFX will place construction of the Ultimate Local Interchange into its Five-Year Work Plan with the highest priority for construction in accordance with CFX's standard policies and procedures. Notwithstanding anything to the contrary contained herein, CFX shall not be obligated to construct the People Mover Flyover. This provision shall survive the Closing.

Approval of Owners', County's and CFX's Boards. Notwithstanding any 15. apparently conflicting provision of this Agreement, although local or regional representatives of the Owners may have executed this Agreement, such execution shall be conditional and shall not bind Owners hereto until the respective Owner's applicable governing board or body ("Owner's Board") in its sole discretion shall have ratified and approved this Agreement. If an Owner's Board ratifies this Agreement, that Owner shall notify County and CFX in writing within ten (10) days after the Board meeting at which this Agreement was ratified, whereupon this Agreement shall be binding on that Owner in accordance with the terms hereof. Provided this Agreement is timely ratified by each Owner's Board, this Agreement shall continue in full force and effect, subject to the terms and provisions hereof. In the event an Owner's Board shall fail to ratify this Agreement within thirty (30) days after the Effective Date, this Agreement shall be deemed rejected by the Owner's Board. No later than thirty (30) days after receipt of written confirmation of all applicable Owner's Board approvals and ratifications of this Agreement, County shall present the Agreement for approval by the County Board of County Commissioners and shall notify Owners in writing within ten (10) days after the Board meeting at which this Agreement was approved, whereupon this Agreement shall be binding upon all Parties. No later than thirty (30) days after receipt of written confirmation of all applicable Owner's Board and County's Board approvals and ratifications of this Agreement, CFX shall present this Agreement for approval by the CFX Board and shall notify Owners in writing within ten (10) days after the Board meeting at which this Agreement was approved, whereupon this Agreement shall be binding upon all Parties. If this Agreement is rejected or deemed rejected by an Owner's Board, County's Board or the CFX Board, this Agreement shall automatically be null and void and of no further force or effect and the Parties shall be released from all further obligations and liabilities hereunder.

16. <u>Tavistock's Right to Advance Design of Lake Nona Revised Interchange,</u> <u>Ultimate Local Interchange, and People Mover Flyover and/or Construct Ultimate Local</u> <u>Interchange, Medical City Bridge, and People Mover Flyover</u>. Notwithstanding any other provision of this Agreement, Tavistock, or any successor in title of the West Property, shall have the option, but not the obligation, as follows:

a. <u>Ultimate Local Interchange / Medical City Bridge - Design</u>. Provided CFX has not yet commenced design work for the Ultimate Local Interchange (inclusive of the Medical City Bridge) concurrently with design of the Initial Phase as provided in Section 14 above, then Tavistock may, upon written notice to CFX, elect to advance design of the Lake Nona Revised Interchange (inclusive of the Medical City Bridge) and/or the Ultimate Local Interchange. In the event that Tavistock exercises this option, Tavistock and CFX will enter into a separate agreement or agreements that will implement, among other provisions, the following principles:

(i) CFX shall contract for and oversee such design work to be paid by Tavistock on a pay-as-performed basis. At regular intervals not more than monthly, CFX shall provide Tavistock with detailed statements and invoices for the design work performed and Tavistock shall be responsible to pay such invoices.

(ii) If Tavistock does not pay all such invoices in the agreed upon time period, CFX shall not be obligated to continue the design work but shall have the option to continue such design work on Tavistock's behalf and to recover the cost thereof from Tavistock. Tavistock's failure to pay any such invoices, however, shall not constitute an Owners' default of this Agreement, nor shall it impair Owners' rights or relieve or delay performance of County's or CFX's obligations under this Agreement.

(iii) Notwithstanding the foregoing, if Tavistock exercises this option and CFX ultimately proceeds to construct the Lake Nona Revised Interchange, but only in the event CFX proceeds to construction, then CFX shall reimburse Tavistock for the cost of design work advanced by Tavistock pursuant to this election.

b. <u>Ultimate Local Interchange / Medical City Bridge - Construction</u>. Upon completion of design of the Ultimate Local Interchange (inclusive of the Medical City Bridge), Tavistock, upon written notice to CFX, may elect to advance construction of the Medical City Bridge, and/or the Ultimate Local Interchange, and/or any segment thereof. In the event that Tavistock exercises this option, Tavistock and CFX (and, if applicable, the CDD (hereinafter defined)) will enter into a separate agreement or agreements that will implement, among other provisions, the following principles:

At Tavistock's election, either CFX, Tavistock, or a CDD having (i) jurisdiction over the West Property shall construct the Ultimate Local Interchange (inclusive of the Medical City Bridge) or any segment thereof, together with all appurtenant improvements associated therewith. CFX shall either secure or assist Tavistock (or, if applicable, the CDD) in its efforts to secure all Permits for the construction of the Ultimate Local Interchange (inclusive of the Medical City Bridge) or any segment thereof and all appurtenant improvements in accordance with the design and Plans therefor which shall include, without limitation, coordination with the City of the tie-in and limits of the future extension of Medical City Drive with the Medical City Bridge. The constructing party (whether CFX, Tavistock or the CDD) will then solicit for services to construct the Ultimate Local Interchange (inclusive of the Medical City Bridge) or any segment thereof and all appurtenant improvements in accordance with CFX's procurement requirements (and, if applicable, the CDD's procurement requirements unless the same otherwise conflicts with CFX's procurement requirements). Upon receipt and approval of the selected proposer or bidder, then the constructing party shall notify Tavistock and/or CFX, as applicable, of all estimated capital costs of construction of Ultimate Local Interchange (inclusive of the Medical City Bridge) or any segment thereof and all appurtenant improvements, including Permits, estimated costs of construction, construction engineering and inspection ("CEI") services, plus any contract contingency amount. The constructing party shall provide CFX with a financial guarantee of all such capital costs in the form of an irrevocable letter of credit, bond or other financial guarantee in favor of CFX in form and content acceptable to CFX in its sole discretion.

(ii) Unless Tavistock elects to perform the construction, Tavistock shall grant either CFX or the CDD such easements and other rights as may be reasonably necessary and appropriate to allow construction of the Ultimate Local Interchange (inclusive of the Medical City Bridge) or any segment thereof and appurtenant improvements to tie such improvements in with improvements on the adjoining property in form and content reasonably acceptable to Tavistock and CFX (or, if applicable, the CDD).

(iii) Upon satisfaction of the above conditions (i) and (ii), CFX will let construction of the Ultimate Local Interchange (inclusive of the Medical City Bridge) or any segment thereof and appurtenant improvements and shall thereafter either diligently pursue such construction or allow Tavistock or the CDD, whichever is applicable, diligently pursue such construction to completion in accordance with the Plans and all applicable Laws.

(iv) The constructing party (whether it is CFX, Tavistock or the CDD) shall construct the Ultimate Local Interchange (inclusive of the Medical City Bridge) or any segment thereof and appurtenant improvements at Tavistock's expense (if Tavistock is the constructing party) or at the CDD's expense (if the CDD is the constructing party) on a pay-as-performed basis. At regular intervals not more than monthly, the constructing party shall provide the paying party with detailed statements and invoices for the construction work performed and the paying party shall be responsible to pay such invoices.

(v) If the paying party does not pay all such invoices in the agreed upon time period, the constructing party shall not be obligated to continue the construction work but shall have the option to continue such on the constructing party's behalf and to recover the cost thereof from the paying party by drawing on Tavistock's financial guarantee for the cost of any unpaid construction work. The paying party's failure to pay any such invoices, however, shall not constitute an Owners' default of this Agreement, nor shall it impair Owners' rights or relieve or delay performance of County's or CFX's obligations under this Agreement.

(vi) Notwithstanding the foregoing, if Tavistock exercises this option and CFX ultimately proceeds to construct the Lake Nona Revised Interchange, but only in the event CFX proceeds to construction of the Lake Nona Revised Interchange, then CFX shall reimburse Tavistock or the CDD, whichever is the paying party, for the capital costs of construction of the Ultimate Local Interchange (inclusive of the Medical City Bridge) and appurtenant improvements.

(vii) CFX agrees to reasonably cooperate with Tavistock to cause the City, at no cost or expense to the City other than ongoing maintenance and repair expenses, to accept (whether by public dedication or conveyance) and maintain of the Medical City Drive Bridge and appurtenant improvements.

c. <u>People Mover Flyover</u>. Tavistock shall also have the option, but not the obligation, at its expense or at the CDD's expense, to elect to construct (or cause the

construction of) the People Mover Flyover in a location and configuration subject to CFX's prior written approval, not to be unreasonably withheld, conditioned or delayed. In order to so elect to perform that construction, Tavistock shall provide written notice to CFX and shall provide any proposed Plans and Permit applications to CFX for review, comment, and approval in accordance with CFX's design and construction standards prior to commencement of construction. After receipt of CFX's approval and all Permits, Tavistock or the CDD, whichever is applicable, shall promptly solicit bids for the construction of the People Mover Flyover or any portion thereof. In the event that Tavistock exercises this option, Tavistock and CFX (and, if applicable, the CDD) will enter into a separate agreement or agreements that will implement, among other provisions, the following principles:

(i) Tavistock shall retain responsibility at its own expense or the CDD's expense to prepare the Plans and to secure itself (or cause the CDD to secure) all Permits for its construction of the People Mover Flyover. Subject to CFX's review and approval in accordance with CFX standards and all applicable Laws, CFX shall grant to Tavistock (or, if applicable, the CDD) such permits, air rights and other rights as may be necessary and appropriate to allow construction of the People Mover Flyover on or over the West Property and other areas owned or controlled by CFX in and around the location of the People Mover Flyover.

(ii) On final approval of such Plans and Permits, Tavistock (or, if applicable, the CDD) will let construction of the People Mover Flyover for bid and will engage a contractor or contractors, subject to CFX's prior written approval not to be unreasonably withheld, conditioned or delayed (the "Contractor"), under a stipulated sum construction contract. If CFX requires a financial guarantee pursuant to Section 255.05, Florida Statutes, instead of the bond prescribed by Section 255.05, Florida Statutes, Tavistock may provide a financial guarantee in the form of an irrevocable letter of credit in favor of CFX or such other form of financial guarantee reasonably acceptable to CFX with a stated amount equal to the successful bid.

(iii) The construction contract shall require construction of the People Mover Flyover in accordance with, at a minimum, applicable CFX standards, all applicable Laws, the Plans, and the Permits. CFX shall be named as a third-party beneficiary of the Contractor's services and of all guaranties and warranties from the Contractor. The Contractor shall be required to provide liability and other insurance coverages complying with CFX's applicable insurance standards naming Tavistock, the CDD (if applicable), and CFX as insureds.

(iv) Tavistock (or, if applicable, the CDD) shall in good faith employ commercially reasonable diligence to cause construction of the People Mover Flyover to be substantially completed, subject to delays caused by a Force Majeure Event, within a mutually agreed period after commencement of construction. On completion of construction, Tavistock shall assign to CFX all contractor representations and warranties associated with construction of the People Mover Flyover and provide copies of same. (v) Each month during the construction, the project engineer shall certify to Tavistock, the CDD (if applicable) and CFX the progress of the construction of the People Mover Flyover (the "Engineer Certification"). The Engineer Certification shall include a statement that the completed portion of the work is consistent with the Plans and Permits. CFX shall have the right, but not the obligation, to retain CEI services at Tavistock's or the CDD's expense, whichever is applicable, and may inspect the progress of the any construction in accordance with its standard inspection process for such interchanges.

(vi) Tavistock (or, if applicable, the CDD) shall submit any proposed project change or Change Order to CFX for approval, together with such explanatory documentation as CFX may request.

(vii) After completion of construction in accordance with the Plans and Permits, Tavistock or its designee (which may be the CDD) will be obligated at its sole cost and expense to maintain the People Mover Flyover. If Tavistock or its designee fails to timely perform its maintenance obligations, CFX may perform on said party's behalf and collect the cost thereof from Tavistock or its designee, whichever is applicable.

(viii) Tavistock or the CDD, whichever is applicable as the contracting party, and its Contractor shall indemnify CFX against any claims, damages, loss, or expense arising from such party's exercise of its rights under the agreement or agreements.

(ix) The terms of the agreement or agreements will run with the land and be binding on the Parties, their successors in interest or title, or assigns. Without limiting anything herein, the right to construct the People Mover Flyover shall survive the Closing and conveyance of the West Property. Further, in the event Tavistock assigns its rights, duties and obligations under this subsection c. to the CDD, Tavistock shall not be relieved of its obligation to deliver a financial guarantee to CFX as required in subsection c.(ii) above.

(x) Tavistock's failure to pay or perform any obligation of Tavistock required in this subsection c. shall not constitute an Owners' default of this Agreement, nor shall it impair Owners' rights or relieve or delay performance of County's or CFX's obligations under this Agreement.

17. <u>Maintenance of West Property</u>. From and after the Effective Date and until Closing, the Owners will comply with and abide by all Laws affecting each Owner's respective portion of the West Property and its use thereof and will cause no waste or material alterations of the West Property, and the Owners will pay all taxes and assessments relative to each Owner's respective portion of the West Property prior to the due date thereof. From and after the Effective Date, the Owners shall not offer to sell or donate each Owner's respective portion of the West Property to any other person or entity or enter into any verbal or written agreement, understanding, or contract relating to the sale or conveyance of the West Property or any interest therein.

### 18. Drainage Easements – Offsite Ponds and LNB Conveyance Areas.

#### a. <u>Offsite Ponds</u>.

*(i)* Grant of Drainage Easement(s) for Offsite Ponds. TDCP desires to design, construct and install the Offsite Ponds which are intended to jointly serve the drainage needs of certain portions of both the Project and the adjacent real property owned by TDCP. At or prior to the Closing, unless otherwise incorporated into a Post Closing Agreement, as part of the Project, TDCP shall grant in favor of the County, and the County's successors in interest, for the benefit of the Project perpetual non-exclusive drainage easements (the "Offsite Drainage Easement(s)") over the Offsite Ponds that will be designed, permitted and constructed by Tavistock as stormwater drainage ponds for the purpose of providing joint use stormwater conveyance, retention and detention facilities for the Project. The form, manner, content, and location of the Offsite Drainage Easement(s) shall be mutually agreed upon by the Parties no later than five (5) business days prior to the Closing. The Offsite Drainage Easements shall be granted at Closing, unless otherwise agreed to by the Parties in a post-closing agreement but shall not be effective until such time as CFX commences construction of the Project. The Owners understand and agree that the legal descriptions of the Offsite Ponds may not be finalized until the design for the Project is completed or until the future development of TDCP's adjacent lands is designed and permitted. Notwithstanding the foregoing, TDCP understands and agrees that TDCP shall be required to obtain County and CFX's prior written review and approval of the size, configuration, and location of the Offsite Ponds, and in no event shall County or CFX be required to accept any size, location, or configuration of the Offsite Ponds that would materially or adversely impact County or CFX's facilities or materially reduce the Offsite Pond's ability to treat and attenuate stormwater as defined by the applicable water management district rules or otherwise negatively impact CFX's ability to construct, or accommodate the drainage needs of the Project in accordance with the Permits. County or CFX shall not be required to pay or incur any additional costs or expenses as a result of any change by TDCP to the location, configuration or size of the Offsite Ponds, including, without limitation, costs and expenses related to additional stormwater conveyance facilities, in the event the location of the Offsite Ponds is relocated or reconfigured to a location further from the boundaries of the Project. CFX and County both understand and acknowledge that TDCP shall only be required to design, permit, or construct the Offsite Ponds to the size and capacity reasonably necessary by CFX for the stormwater conveyance, retention, and detention needs of the Project with a minimum of 48.1 acre feet of stormwater capacity, including, without limitation, 17.5 acre feet located on Parel 534-857, 10.4 acre feet located on Parcel 534-858, 9.1 acre feet located on Parcel 534-859, and 11.1 acre feet located on Parcel 534-837 Part E ("Minimum SW Capacity") unless otherwise mutually agreed upon by CFX and TDCP, provided; however, the Parties understand and acknowledge that the calculation of the Minimum SW Capacity for the Offsite Ponds was based on the approximate locations of the Offsite Ponds depicted on Exhibit "B-5" attached hereto and in such event any of the Offsite Ponds are relocated, the stormwater basin may change and TDCP's obligation to provide the Minimum SW Capacity, may increase as a result thereof.

#### (ii) Design and Permitting of the Offsite Ponds.

(1) *Design of the Offsite Ponds.* Except as otherwise set forth herein, TDCP shall, at its sole cost and expense, prepare and provide to CFX for review a fully designed and engineered drainage site plan ("Drainage Site Plan") evidencing the size, location, and configuration of the Offsite Ponds. TDCP shall use commercially reasonable diligence to

design and engineer the Offsite Ponds in a location, shape, configuration, and manner substantially consistent with the Drainage Site Plan, or in such other similar size, location, configuration, or manner as may be mutually agreed upon by CFX and TDCP, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, TDCP understands and agrees that in the event TDCP elects to relocate, reshape, or reconfigure one or more of the Offsite Ponds from the initially designed location, configuration or shape, in no event shall CFX be required to pay or incur any additional costs or expenses, including, without limitation, costs and expenses related to additional stormwater conveyance facilities, in the event the location of the Offsite Ponds are relocated or reconfigured to a location further from the boundaries of the Project. TDCP understands and agrees that revisions to the size, configuration or location of the Offsite Ponds shall not materially or adversely impact CFX's facilities or materially reduce the Offsite Pond's ability to treat and attenuate stormwater as defined by the applicable water management district rules or otherwise reduce CFX's ability to construct, or accommodate the drainage needs of the Project below the Minimum SW Capacity in accordance with the Permits, unless otherwise mutually agreed upon by CFX and TDCP. Notwithstanding the foregoing, the Parties understand and acknowledge that the calculation of the Minimum SW Capacity for the Offsite Ponds was based on the approximate locations of the Offsite Ponds depicted on Exhibit "B-5" attached hereto and in such event any of the Offsite Ponds are relocated, the stormwater basin may change and TDCP's obligation to provide the Minimum SW Capacity, may increase as a result thereof. Once TDCP and CFX have mutually agreed upon the size, location, and configuration of the Offsite Ponds, TDCP shall prepare, or cause to be prepared, and provide to CFX for review certified legal descriptions and sketches identifying the metes and bounds of all of the Offsite Ponds, as may be relocated or reconfigured, for review, approval, and inclusion in the Offsite Drainage Easements, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything contained herein to the contrary, CFX acknowledges that the easternmost Offsite Pond has already been designed and constructed by TDCP.

(2) *Permitting of the Offsite Ponds.* Except as otherwise provided herein, TDCP shall, at its sole cost and expense, promptly take any and all action reasonably necessary to secure the Permits to construct and excavate the Offsite Ponds in accordance with the Drainage Site Plan and the terms and conditions hereof (collectively, the "Pond Permits"). To the extent required by the water management district, CFX shall cooperate with the Owners and execute any and all permit applications required to effectuate the intent hereof.

### (iii) Construction of the Offsite Ponds.

(1) *Construction of the Offsite Ponds.* Except as otherwise provided herein, TDCP, at its sole cost and expense, shall be responsible for the excavation and construction of the Offsite Ponds in good order and repair in accordance with the Drainage Site Plan, all applicable Pond Permits, and the terms and conditions of this Agreement.

(2) *Construction by CFX of the Offsite Ponds*. Notwithstanding anything contained herein to the contrary, in the event TDCP has not commenced construction of the applicable Offsite Ponds on or before date upon which CFX elects to commence construction of the Project, CFX may elect, in CFX's sole and absolute discretion, to construct or excavate one

or more of the Offsite Ponds by providing TDCP thirty (30) days prior notice of such election ("Pond Election Notice"), which notice shall include with specificity the Offsite Pond to be constructed by CFX and CFX's anticipated timeline for the construction and excavation of the affected Offsite Pond. Further, in the event TDCP commences construction of the Offsite Ponds but fails to continuously prosecute the performance of the same to completion with due diligence, CFX may, upon thirty (30) days prior notice and opportunity to cure to TDCP (the "Self-Help Notice Period"), elect, at CFX's sole discretion, to complete construction of the Offsite Ponds. In the event CFX elects to complete the construction and excavation of one or more of the Offsite Ponds, TDCP shall take any and all actions reasonably necessary to cooperate with CFX and assign and transfer to CFX any and all Pond Permits required for the construction and excavation of the affected Offsite Pond to the extent to enable CFX to exercise its rights hereunder.

(3) Temporary Construction Easement for Offsite Ponds. In the event CFX elects to exercise its rights under subsection (c)(ii) above, TDCP shall grant to CFX a temporary construction and access easement ("Offsite Pond TCE") over, upon, across, and onto the real property owned by TDCP adjacent to the Offsite Ponds in a mutually agreed upon location, for the purpose of constructing and excavating the affected Offsite Ponds. CFX agrees to be responsible for the operation and maintenance of the areas within the Offsite Pond TCE, at no cost or expense to TDCP. The Offsite Pond TCE shall be mutually agreed upon by TDCP and CFX prior to the Closing, and such Offsite Pond TCE shall be executed on or before the Closing and held in escrow until and in the event CFX issues the Pond Election Notice, at which point, CFX and TDCP shall proceed in good faith to finalize the location of the Offsite Pond TCE and deliver the Offsite Pond TCE to CFX no later than thirty (30) days from the date of the Pond Election Notice. The Offsite Pond TCE shall terminate upon the completion of the construction and excavation required to construct or excavate the Offsite Pond identified in the Pond Election Notice.

(4) *Fill Materials.* As consideration for conducting the construction and excavation of the Offsite Ponds, the constructing party, whether it be TDCP in accordance with subsection (c)(ii) above or CFX in accordance with subsection (c)(iii) hereof, shall have the right to remove and retain any and all fill materials removed or excavated from the area of the Offsite Ponds to the extent such fill is not otherwise necessary for the configuration of the Offsite Ponds in accordance with the Drainage Site Plan. The Parties agree and acknowledge that the value of the fill materials is full, fair and complete consideration and in exchange for any costs of construction and excavation of the Offsite Pond.

(iv) Maintenance of Offsite Ponds.

(1) Sole Use by CFX of Offsite Ponds. To the extent the Offsite Ponds are solely used for the drainage needs of the adjacent lands, and not otherwise modified or expanded to provide for additional capacity for the Project, TDCP, or its successor in interest, to be responsible for the design, engineering, permitting, construction, excavation, operation, and maintenance of the Offsite Ponds, at no cost or expense to CFX or County.

(2) *Joint Use of Offsite Ponds*. To the extent the Offsite Ponds are expanded to provide for the stormwater drainage needs of the Project, Tavistock shall operate and maintain the Offsite Ponds. County shall pay to the Owners at Closing an amount equal to

Three Million Three Hundred One Thousand Four Hundred Sixty-Five Thousand and No/100 Dollars (\$3,301,465.00) for the future maintenance, repair and replacement of the Offsite Ponds, which amount shall be deposited in an account for the benefit of the CDD or homeowners association responsible for the maintenance of the Offsite Ponds. There shall be no further reimbursements or payments due from the County (or its successor-in-title) for maintenance of the jointly used Offsite Ponds.

(v) *Expansion of the Offsite Ponds*. In the event any construction, modification, or addition to the Offsite Ponds is necessary to accommodate the additional volume for the joint use, the Owners or their assigns, if such obligation is assigned thereto, shall be responsible, at its sole cost and expense, for any and all costs associated with the design, permitting, engineering, construction, and excavation associated with the expansion of the Offsite Ponds unless otherwise agreed to in writing by CFX; provided, however, in no event shall the volume attributed to CFX in the Offsite Ponds in accordance with the applicable water management permits be reduced or otherwise impacted. Owners, and their assignee, shall perform all construction and excavation in good order and repair in accordance with all applicable permits and other governmental requirements and at no cost to CFX. Prior to commencing any alternations or modifications to the Offsite Ponds, Owners, and their assignee shall be responsible, at its sole cost and expense, for modifying the water management district permits to allow for the expansion of the Offsite Ponds and shall take any and all action reasonably necessary to ensure the drainage rights of CFX are not adversely impacted

(vi) *Fencing of Offsite Ponds*. The Parties agree and acknowledge that CFX shall have the right, but not the obligation, to install, maintain, repair and replace fencing around the perimeter of the Offsite Ponds adjacent to any real property owned by CFX, provided; however, CFX agrees not to install (and each Owner shall have the right to remove) any fencing on the side of the Offsite Ponds that is facing said Owner's adjacent lands. CFX shall have a temporary construction easement over the Offsite Ponds and adjoining lands for the purpose of exercising the rights of this subsection.

(vii) *Running with the Land.* The rights, duties and obligations of the Owners, County and CFX under this Section 18 shall survive Closing and shall be referenced in the Deeds and the easement agreements granting the Easements and shall run with title for the West Property. The Owners and CFX shall have the right to enforce this Section 18 by specific performance. In the event the Owners elect to exercise any Right of Repurchase set forth in the Deeds, the Owners shall be required to purchase the applicable Easements, unless otherwise waived by County or its successors in interest. The Right to Repurchase shall be incorporated into the easement agreements granting the Easements.

b. <u>LNB Conveyance Areas</u>. At Closing, CFX shall grant in favor of LNLC a perpetual, non-exclusive drainage easement for conveyance of stormwater benefiting LNLC's adjacent lands in such location being more particularly described and depicted on <u>Exhibit "G"</u> attached hereto and incorporated herein by reference (the "LNB Conveyance Areas"). LNLC shall design, engineer, permit and construct the drainage facilities within the LNB Conveyance Areas to accommodate the stormwater needs of LNLC's adjacent lands. CFX shall use commercially reasonable diligence to design and engineer the drainage system for the Project to minimize the impacts to the drainage facilities within the LNB Conveyance Areas; provided; however, in the

event CFX is required to relocate or incur any costs or expenses to design, engineer, permit, construct or relocate the LNB Conveyance Areas or improvements constructed therein that are required to accommodate the needs of LNLC's adjacent lands, LNLC shall be responsible for reimbursing CFX for any such costs and expenses within thirty (30) days of written notice to LNLC of any such costs or expenses. The form and content of the easement agreement for the LNB Conveyance Areas shall be mutually agreed upon by LNLC and CFX no later than five (5) business days prior to the Closing (the "LNB Drainage Easement").

### 19. Air Rights Easement.

a. <u>Grant of Air Rights Easements</u>. LNLC, TDCP, PECDD and the City are the fee simple owners of their respective portions of the Air Rights Easement Areas. Except for the Air Rights Easement to be granted by the City post-closing, at or prior to the Closing, unless otherwise incorporated into a post-closing agreement, as part of the Project, LNLC, TDCP, PECDD, and the City shall grant in favor of CFX for the benefit of the Project perpetual non-exclusive air rights easements (the "Air Rights Easement(s)") over the Air Rights Easement Areas for the purpose of providing constructing, operating and maintaining the facilities for the Project. The form, manner, content, and location of the Air Rights Easement(s) shall be mutually agreed upon by the Parties no later than five (5) business days prior to the Closing. The grant of the Air Rights Easement Areas for the purpose of designing, constructing, maintaining, operating and repairing the improvements and facilities for the Project, together with all incidental rights reasonably necessary for the use and enjoyment of the Air Rights Easement for its intended purposes. Tavistock shall coordinate directly with the City for the grant of the Air Rights Easement by the City.

b. <u>Maintenance of the Air Rights Easements</u>. CFX shall maintain, at its sole cost and expense, the Air Rights Easements and the improvements constructed therein by CFX in good order and condition and will comply with and abide by all Laws and Permits affecting the Air Rights Easement Areas.

c. <u>Running with the Land</u>. The rights, duties and obligations of the Owners, County and CFX under this Section 19 shall survive Closing and shall be referenced in the Deeds, the easement agreements granting the Easements and shall run with title for the West Property. The Owners and CFX shall have the right to enforce this Section 19 by specific performance. In the event the Owners elect to exercise any Right of Repurchase set forth in the Deeds, the Owners shall be required to purchase the applicable Easements, unless otherwise waived by County or its successors in interest. The Right to Repurchase shall be incorporated into the easement agreements granting the Easements.

### 20. Pier Foundations Easement.

a. <u>Grant of Pier Foundations Easements</u>. TDCP is the fee simple owner of the Pier Foundations Easement Areas. At or prior to the Closing, unless otherwise incorporated into a post-closing agreement, as part of the Project, TDCP shall grant in favor of CFX for the benefit of the Project a perpetual non-exclusive pier foundations easement ("Pier Foundations Easement") under, on, through and over the Pier Foundations Easement Areas for the purpose of constructing, repairing, replacing, operating and maintaining from time to time the pier foundations for the Project. The grant of the Pier Foundations Easement shall grant CFX the privilege to enter upon the Pier Foundations Easement Areas for the purpose of designing, constructing, maintaining, operating and repairing the pier foundations for the Project, together with all incidental rights reasonably necessary for the use and enjoyment of the Pier Foundations Easement for its intended purposes. The form, manner, content, and location of the Pier Foundations Easement shall be mutually agreed upon by the Parties no later than five (5) business days prior to the Closing. The Pier Foundations Easement shall be granted at Closing, unless otherwise mutually agreed to by the Parties in a post-closing agreement.

b. <u>Maintenance of Pier Foundations Easements</u>. CFX shall maintain, at its sole cost and expense, the Pier Foundations Easements and the improvements constructed therein by CFX in good order and condition and will comply with and abide by all Laws and Permits affecting the Pier Foundations Easement Areas.

c. <u>Running with the Land</u>. The rights, duties and obligations of the Owners, County and CFX under this Section 20 shall survive Closing and shall be referenced in the Deeds, the easement agreements granting Easements, and shall run with title for the West Property. The Owners shall have the right to enforce this Section 20 by specific performance. In the event the Owners elect to exercise any Right of Repurchase set forth in the Deeds, the Owners shall be required to purchase the applicable Easements, unless otherwise waived by County or its successors in interest. The Right to Repurchase shall be incorporated into the easement agreements granting the Easements.

### 21. <u>Temporary Construction and Access Easements</u>.

Temporary Construction Easements for the Project. LNLC, TDCP and a. PECDD are the fee simple owners of their respective portion of the CFX TCE Areas. At or prior to the Closing, unless otherwise incorporated into a post-closing agreement or as otherwise set forth in Section 16.b.(ii) above, LNLC, TDCP and PECDD shall grant in favor of CFX for the benefit of the Project a temporary non-exclusive construction and access easement over the CFX TCE Areas for the purpose of constructing and installing the improvements, facilities and structures necessary for the operation of the Project ("CFX Temporary Construction Easement(s)"). The grant of the CFX Temporary Construction Easements shall grant CFX the privilege, but not the obligation, to enter upon the CFX TCE Areas for the purpose of constructing and installing the improvements, facilities and structures necessary for the operation of the Project, staging and storing materials, equipment and tools, locating a construction trailer, and parking, together with all incidental rights reasonably necessary for the use and enjoyment of the CFX Temporary Construction Easement for its intended purposes. The right to use the CFX Temporary Construction Easements may be extended by CFX to its customers, employees, and contractors. The form, manner, content and location of the CFX Temporary Construction Easements shall be mutually agreed upon by the Parties no later than five (5) business days prior to the Closing. The CFX Temporary Construction Easements shall be granted at Closing, unless otherwise mutually agreed to by Parties in a post-closing agreement. The CFX Temporary Construction Easement shall terminate upon the completion of the construction of the Project. CFX agrees to be responsible for the operation and maintenance of the CFX TCE Areas, at no cost or expense to the Owners.

Temporary Construction Easements for the Local Roads and Pond b. Relocation. LNLC and TDCP are the fee simple owners of their respective portion of the Local Road / Pond TCE Areas as shown on **Exhibit "B-4"** attached hereto. At or prior to the Closing, unless otherwise incorporated into a post-closing agreement, LNLC and TDCP shall grant in favor of CFX for the benefit of the Project a temporary non-exclusive construction and access easement over the Local Road / Pond TCE Areas for the purpose of constructing certain local roads and, as to the portion of the Local Road / Pond TCE Areas owned by TDCP, excavating, reshaping, reconfiguring and relocating a portion of the stormwater drainage pond located adjacent to the West Property as mutually agreed upon by the Parties ("Local Road / Pond Temporary Construction Easement"). The right to use the Local Road / Pond Temporary Construction Easement may be extended by CFX to its customers, employees, and contractors. The form, manner, content and location of the Local Road / Pond Temporary Construction Easement shall be mutually agreed upon by the Parties no later than five (5) business days prior to the Closing. The Local Road / Pond Temporary Construction Easement shall be granted at Closing, unless otherwise mutually agreed to by Parties in a post-closing agreement. The CFX Temporary Construction Easement shall terminate upon the earlier of (i) completion of the construction of the Project; or (ii) written notice to the LNLC that the improvements to the pond have been completed in accordance with the terms hereof. CFX agrees to be responsible for the operation and maintenance of the Local Road / Pond TCE Areas, at no cost or expense to the Owners until the termination of the Local Road / Pond Temporary Construction Easement.

c. Reservation of Temporary Construction, Access, and Drainage Easements. TDCP shall have the right to reserve at or prior to Closing in favor of TDCP or any governmental entity, quasi-governmental, or public agency, including, without limitation, any CDD, temporary non-exclusive construction, access and drainage easements (collectively, the "TDCP Temporary Construction Easement(s)") over those portions of the West Property more particularly described and depicted on **Exhibit "H"** attached hereto and incorporated herein by reference ("TDCP TCE Areas") or as otherwise mutually determined by the applicable Parties as may be reasonably necessary for TDCP's exercise of its express rights hereunder or as may be reasonably necessary for the future development of TDCP's adjacent lands. The TDCP Temporary Construction Easements shall be for temporary rights of access and construction for the roadway lying underneath the Air Rights Easement designated as "534-237 Part F" and for the temporary outfall ditch for stormwater from adjacent properties which stormwater shall be diverted to its ultimate outfall in accordance with the terms and provisions of the applicable TDCP Temporary Construction Easement. The TDCP Temporary Construction Easements shall terminate upon the earlier of (i) December 31, 2022, or (ii) within thirty (30) days of prior written notice from CFX of its intention to commence construction of the Extension. By way of clarification, TDCP shall have no right to construct and install any improvements within any temporary construction areas except for those expressly contemplated and/or approved under this Agreement or in the TDCP Temporary Construction Easements; provided, however, TDCP shall have the right to maintain, abandon or fill the open drainage ditch lying within the TDCP TCE Areas. The form, manner, content and location of the TDCP Temporary Construction Easements shall be mutually agreed upon by the Parties no later than five (5) business days prior to the Closing. The TDCP Temporary Construction Easements shall be granted at Closing, unless otherwise mutually agreed to by Parties in a post-closing agreement.

# 22. Additional Parcel and Lift Station Requirements.

a. Additional Parcel. At Closing, and only in the event of Closing, Tavistock shall convey directly to CFX, at no cost or expense to CFX, that certain strip of land lying within Orange County, Florida being more particularly described on <u>Exhibit "I"</u> attached hereto and made a part hereof (the "Additional Parcel"). For purposes of this Agreement, the Additional Parcel shall be deemed included in the West Property with respect to all terms and provisions related thereto including, without limitation, the Use Restriction, the Alternate Use Restriction, the repurchase and reconveyance rights, limitations on further encumbrances.

b. Lift Station. The County and CFX acknowledge and agree that LNLC is currently coordinating with the City for the conveyance of certain real property lying within the City of Orlando, Orange County, Florida being more particularly depicted on **Exhibit "J"** attached hereto and made a part hereof (the "Lift Station 139 Parcel"). At or prior to Closing, LNLC shall have the right to convey a temporary, non-exclusive easement to the City for the existing utility lines connected to, or served by, the lift station lying within the Lift Station 139 Parcel which either have been or will be turned over to the City with the conveyance of the Lift Station 139 Parcel. From and after Closing, CFX agrees to pay for the relocation of said utility lines as part of CFX's construction of the West Segment of the Project. Until such relocation work is commenced by CFX, the County and CFX agree that all said utility lines shall be entitled to remain in place without disturbance or interference The form and substance of the temporary easement shall be mutually agreed upon by LNLC, the City and CFX no later than five (5) business days prior to Closing and to be recorded at or prior to Closing (the "City Temporary Easement"). The foregoing provisions shall expressly survive Closing hereunder.

23. <u>Warranties and Representations of Owners</u>. To induce the County and CFX to enter into this Agreement and to purchase the West Property, in addition to the other representations and warranties set forth herein, each Owner makes the following representations and warranties, as of the Effective Date and with respect to the Owner's respective portion of the West Property, each of which is material and is being relied upon by the County and CFX and shall survive Closing:

a. Each Owner warrants and represents that there are no actions, suits or proceedings of any kind or nature whatsoever, legal or equitable, affecting or relating to its portion of the West Property, or any portion thereof, or relating to or arising out of the ownership of its portion of the West Property, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, or agency or other governmental instrumentality, unless such action has been commenced by the County or CFX.

b. Each Owner warrants and represents that it has the full right, power, and authority to enter into and deliver this Agreement and to consummate the purchase and sale of the West Property in accordance herewith and to perform all covenants and agreements of such Owner hereunder.

c. Except as addressed elsewhere in this Agreement and as may be set forth in the Environmental Studies, each Owner warrants and represents that it has no knowledge of any Hazardous Substances, pollutants, contaminants, petroleum products or by-products, asbestos or other substances, whether hazardous or not, on or beneath the surface of its portion of the West Property, which Owner or any other person or entity has placed or caused or allowed to be placed upon its portion of the West Property, and which have caused or which may cause any investigation by any agency or instrumentality of government, which are or may be on its portion of the West Property in violation of any law or regulation of any local, state or federal government or which are or may be a nuisance or health threat to occupants of its portion of the West Property or other residents of the area.

d. Each Owner warrants and represents that, other than Owner, no person, firm, or other legal entity other than the County has any right or option whatsoever to acquire such Owner's portion of the West Property or any portion thereof or any interest therein.

e. Each Owner warrants and represents that the execution and delivery of this Agreement and the consummation of the transaction contemplated herein shall not and do not constitute a violation or breach by Owner of any provision of any agreement or other instrument to which Owner is a party or to which Owner may be subject although not a party, nor result in or constitute a violation or breach of any judgment, order, writ, injunction, or decree issued against Owner.

f. In the event that changes occur before Closing as to any information, documents, or exhibits referred to in the subparagraphs of this Section, or in any other part of this Agreement, of which Owner has knowledge, Owner will immediately disclose same to the County when such knowledge is first available to Owner; and in the event of any change which may be deemed by the County to be materially adverse to the Intended Use (as defined herein), the County may, at its election, terminate this Agreement.

All representations and warranties made herein are based on the actual, present knowledge (without duty of investigation or inquiry and without any personal liability hereunder) of Nicholas F. Beucher, III, in his capacity as President of Tavistock (the "Named Representative"). Neither the actual, present conscious knowledge of any other individual or entity, nor the constructive knowledge of the Named Representative or of any other individual or entity, shall be imputed to the Named Representative.

Acceptance AS-IS and Release. Except as expressly set forth in this Agreement 24. to the contrary, County is expressly purchasing the West Property and Easements in its existing condition "AS-IS, WHERE-IS, AND WITH ALL FAULTS" with respect to all facts, circumstances, conditions, and defects, and, Owners have no obligation to determine or correct, or to compensate County for, any such facts, circumstances, conditions, or defects. The Owners have specifically bargained for the assumption by County of all responsibility thoroughly to investigate the West Property and the Tavistock Easement Areas, and laws and regulations applicable to it, and all risk of adverse conditions. County is and will be relying strictly and solely upon its inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel, and officers. County assumes the full risk of any loss or damage occasioned by any fact, circumstance, condition, or defect pertaining to the West Property or the Tavistock Easement Areas, and hereby releases the Owners from, and disclaims any claims relating to, conditions on or facts or circumstances affecting, the West Property or the Tavistock Easement Areas that are not addressed in express warranties and representations of this Agreement. Except as expressly set forth in this Agreement to the contrary, the Owners disclaim all warranties of any kind or nature whatsoever (including, without limitation, warranties of fitness for particular purposes),

whether expressed or implied including, without limitation, warranties with respect to the West Property and the Tavistock Easement Areas. Except as is expressly set forth in this Agreement to the contrary, County acknowledges that it is not relying on any representation of any kind or nature made by the Owners or any of the Owners' direct or indirect members, partners, shareholders, officers, directors, employees, or agents with respect to the West Property or the Tavistock Easement Areas, and that, in fact, except as expressly set forth in this Agreement to the contrary, no such representations were made.

### 25. **Defaults.**

a. <u>Owner Default</u>. In the event that: (i) any of Owners' representations and warranties contained herein are not true and correct, or (ii) any Owner fails to perform any of its respective covenants and agreements contained herein within the time performance specified herein; County or CFX may exercise the following rights and remedies: (i) County or CFX shall have the right to terminate this Agreement, in which event the obligations of the Parties under this Agreement shall be terminated (other than obligations which, by the terms of this Agreement, expressly survive the termination of the Agreement) and this Agreement shall be null and void; or (ii) pursue an action for specific performance of this Agreement against the applicable Owner (County and CFX acknowledge they have waived any right to pursue an action for damages against the Owners, in the event of a default by any Owner); provided, however, that nothing contained in this subsection shall limit or prevent CFX or County from exercising its power of eminent domain to acquire, by condemnation, title to the West Property.

b. County Default. In the event the County breaches any warranty or representation contained in this Agreement or fails to comply with or perform any of the conditions to be complied with or any of the covenants, agreements or obligations to be performed by County under the terms and provisions of this Agreement, the Owners shall be entitled to: (i) exercise any and all rights and remedies available to it at law and in equity, including without limitation, the right of specific performance; or (ii) terminate this Agreement. The Owners hereby waive and release any right to pursue an action for any special, indirect, consequential or punitive damages against County. Upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect. The foregoing provision shall expressly survive the Closing. Notwithstanding the foregoing, Owners shall have the right to enforce County's express covenants in this Agreement to indemnify, defend, or hold harmless Owners. Nothing contained herein shall be deemed a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes. Further, nothing contained herein shall be deemed a waiver of any of Owners' rights or remedies in the event County or another authority pursues an action in eminent domain against the West Property or any portion thereof.

c. <u>CFX Default</u>. In the event CFX fails to comply with or perform any of the conditions to be complied with or any of the covenants, agreements, or obligations to be performed by CFX under the terms and provisions of this Agreement, the Owners shall be entitled to (i) exercise any and all rights and remedies available to it at law and in equity, including without limitation, the right of specific performance; or (ii) terminate this Agreement. The Owners hereby waive and release any right to pursue an action for any special, indirect, consequential or punitive damages against CFX. Notwithstanding the foregoing, the Owners shall have the right to enforce CFX's express covenants in this Agreement to indemnify, defend, or hold harmless the Owners.

Upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect. Nothing contained herein shall be deemed a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes. Further, nothing contained herein shall be deemed a waiver of any of Owners' rights or remedies in the event CFX or another authority pursues an action in eminent domain against the West Property or any portion thereof. The foregoing provision shall expressly survive the Closing.

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

County:	<b>OSCEOLA COUNTY</b> 1 Courthouse Square Kissimmee, Florida 34741
With a copy to:	OSCEOLA COUNTY COUNTY ATTORNEY 1 Courthouse Square Suite 4200 Kissimmee, Florid 34741
CFX:	<b>CENTRAL FLORIDA EXPRESSWAY AUTHORITY</b> 4974 ORL Tower Road Orlando, Florida 32807 Attn: Executive Director Telephone: (407) 690-5000 Email: Laura.Kelley@cfxway.com
With a copy to:	<b>CENTRAL FLORIDA EXPRESSWAY AUTHORITY</b> 4974 ORL Tower Road Orlando, Florida 32807 Attn: General Counsel Telephone: (407) 690-5000 Email: Woody.Rodriguez@cfxway.com
Tavistock:	LAKE NONA LAND COMPANY, LLC LAKE NONA RESEARCH I, LLC TDCP, LLC 6900 Tavistock Lakes Blvd., Suite 200 Orlando, Florida 32827 Attn: Nicholas F. Beucher, III, President Telephone: (352) 408-3570

Email: nbeucher@tavistock.com

With copies to: LAKE NONA LAND COMPANY, LLC LAKE NONA RESEARCH I, LLC TDCP, LLC 6900 Tavistock Lakes Blvd., Suite 200 Orlando, Florida 32827 Attn: Michelle Rencoret, Vice President & General Counsel Telephone: (407) 816-6682 Email: mrencoret@tavistock.com HOLLAND & KNIGHT LLP

200 South Orange Avenue, Suite 2600 Orlando, Florida 32801

Attn: Sara Bernard, Esq. Telephone: (407) 244-5162 Email: sara.bernard@hklaw.com

or to such other address as any Party hereto shall from time to time designate to the other Party by notice in writing as herein provided. Notice given by or to the attorney representing a Party under this Agreement shall be deemed to have been duly given in accordance with this Section by or to the applicable Party. The Executive Director of CFX or General Counsel of CFX shall be authorized to issue any notices and provide any and all consents or agreements as required hereunder.

27. <u>CDD Exemption</u>. The Parties acknowledge and agree that (a) certain portions (but not all) of the West Property lying within the City of Orlando, Florida lies within the boundaries of the PECDD, and (c) certain portions (but not all) of the West Property lying within the City of Orlando, Florida lies within the boundaries of the Boggy Creek Improvement District, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes (the "BCCDD"). The PECDD, the BCCDD, or any other independent special district or community development district having jurisdiction over the West Property (or any portion thereof) are collectively referred to herein as the "CDD".

The PECDD/BCCDD are an independent special district and community development district, respectively, established pursuant to the provisions of Chapter 190, Florida Statutes, for the purpose of planning, designing, financing, constructing, installing, operating, and/or maintaining certain infrastructure, including water management systems, transportation and roadway improvements, landscaping, drainage facilities, potable water and sanitary sewer facilities, wetland mitigation, recreation and other infrastructure improvements lying within or outside the boundaries of the applicable CDD, with the right to levy assessments in accordance with Sections 190.021 and 190.022, Florida Statutes (whether collected by Orange County as part of its tax rolls or by the CDD directly). Prior to Closing, Owners shall, at Owners' cost and expense, cause the applicable CDD to either adopt an amendment to the applicable CDD's assessment methodology or to issue an estoppel certificate to reflect that the West Property shall be exempt from the

payment of assessments so long as the real property is primarily used for the right-of-way purposes prescribed in the Deed (the "CDD Exemption").

28. Assignment of Rights. Except as otherwise set forth herein, CFX hereby assigns, conveys, transfers, and sets over unto the County any and all rights, privileges, duties, obligations, liabilities, and responsibilities of CFX to purchase the West Property under the Original Agreement, subject to the terms and conditions of this Agreement, and County hereby accepts and assumes all of CFX's rights, privileges, duties, responsibilities, liability, and obligations under the Original Agreement, as amended and restated hereby, to the extent applicable to the West Property, which arise or accrue on or after the Effective Date and agrees to perform all obligations of CFX under the Original Agreement which are to performed or which become due on or after the Effective Date. Notwithstanding the foregoing, CFX reserves any and all rights, privileges, duties, obligations, liabilities, and responsibilities more specifically reserved to CFX in this Agreement, including, without limitation, the rights and obligations set forth in Sections 7, 8, 9, 10, 13, 14, 15, 16, 18, 19, 20, 21, 22, 25, 29, 38, 40, 45, 46, and 47. The Parties acknowledge and agree that CFX's rights, obligations, duties and liabilities with respect to the East Property and SLR Easements are governed by the East Segment Roadway Agreement.

29. Limited Access. Owners hereby agree, acknowledge, and understand that the Extension is anticipated to be a limited access right-of-way, and as such, CFX has the right, at any time, to record and establish the limited access lines on and along real property owned by CFX for the Extension adjacent to any other real property owned or retained by the Owners located adjacent to the Extension. Each of the Owners waives and disclaims any claim against the other Parties, in law or in equity, based upon the establishment of limited access lines for the Extension. In no event shall CFX be liable for any claims or damages based on the establishment of the limited access lines, including, without limitation, any monetary, incidental, special, exemplary, or consequential damages. The provisions of this Section shall survive the Closing. The Owners have read and understands the provisions of this Section.

30. General Provisions. No failure of any Party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of the Party's right to demand exact compliance with the terms hereof. Nothing in this Agreement shall be deemed to create any joint and several liability of any of the Owners. This Agreement contains the entire agreement of the Parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the Parties not embodied herein shall be of any force or effect. Any amendment to this Agreement shall not be binding upon any of the Parties hereto unless such amendment is in writing and executed by Owner and the County. The provisions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, administrators, executors, personal representatives, successors and assigns. Time is of the essence of this Agreement. Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday, or Legal Holiday, such time for performance shall be extended to the next Business Day (hereinafter defined). This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. The headings inserted at the beginning of each paragraph of this Agreement are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph. The Owners and the County do hereby covenant and

agree that such documents as may be legally necessary or otherwise appropriate to carry out the terms of this Agreement shall be executed and delivered by each party at Closing. This Agreement shall be interpreted under the laws of the State of Florida. The Parties hereto agree that the exclusive venue for any legal action authorized hereunder shall be in the courts of Osceola County, Florida. TIME IS OF THE ESSENCE OF THIS AGREEMENT AND EACH AND EVERY PROVISION HEREOF.

31. <u>Owners</u>. No Party hereunder shall be liable under this Agreement except for the application of this Agreement to the portions of the West Property that such Party either owns or has the legal right to acquire but shall be binding upon their successors and assigns. Further, no Party shall be jointly and severally liable under this Agreement.

32. <u>Survival of Provisions</u>. Other than as specified to the contrary herein, all covenants, representations and warranties set forth in this Agreement shall survive the Closing and shall survive the execution or delivery of any and all deeds and other documents at any time executed or delivered under, pursuant to or by reason of this Agreement, and shall survive the payment of all monies made under, pursuant to or by reason of this Agreement.

33. <u>Severability</u>. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

34. <u>Attorneys' Fees</u>. Subject to the limitations set forth in Section 768.28, Florida Statutes, in the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising herefrom, the predominantly prevailing party shall be entitled to recover its reasonable costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney (in-house and outside counsel), paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, in mediation, arbitration or bankruptcy, at trial or on appeal.

35. <u>Waiver of Jury Trial</u>. OWNERS AND THE COUNTY VOLUNTARILY WAIVE A TRIAL BY JURY IN ANY LITIGATION OR ACTION ARISING FROM THIS AGREEMENT.

36. **<u>Radon Gas.</u>** Radon is naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

37. <u>Effective Date</u>. When used herein, the term "Effective Date" or the phrase "the date hereof" or "the date of this Agreement" shall mean the date as of which all Parties have signed this Agreement and their respective boards have given final approval of this Agreement.

38. **Release of County and CFX**. The Parties acknowledge and agree CFX intends to obtain the West Property for use in its limited-access expressway system (the "Intended Use"). By execution of this Agreement, each Owner acknowledges and agrees that as of the date of the Owners' execution and delivery of the Deeds, the Owners shall thereby remise, release, acquit, satisfy, and forever discharge County and CFX, of and from all, and all manner of action and actions, cause and causes of action, suits, sums of money, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, claims and demands whatsoever, in law or in equity, which the Owners ever had, then have, or which any personal representative, successor, heir or assign of either Owner, thereafter can, shall or may have, against County and CFX, for, upon or by reason of any matter, cause or thing whatsoever, arising out of or in any way connected with the Owners' conveyance of the West Property to County and subsequently to CFX or the Project, including, without limitation, any claim for loss of access, air, light or view to the Owners' remaining property, or other severance damages to Owners' remaining property, business damages, consequential damages, or any other damages, all from the beginning of the world to the day thereof, arising from or in connection with the use of the West Property for the Intended Use. A covenant shall be contained in the Deeds acknowledging the Owners' agreement to the foregoing, in which event if there is any conflict between the terms of the covenant in the Deeds and the terms of this Section, the terms of the covenant in the Deeds shall control.

39. <u>Not an Offer</u>. Notwithstanding anything to the contrary in this Agreement, in the event that the transaction under this Agreement does not close, this Agreement shall not be deemed an offer nor admissible in any subsequent eminent domain proceeding with respect to the West Property.

40. **Indemnifications Regarding Brokers, Finders, Etc.**. The Owners represent and warrant to County and CFX, and County and CFX likewise represent and warrant to the Owners, that they have neither dealt with, nor negotiated with, any broker, sales person or finder in connection with the sale of the West Property to County or the conveyance of any easements, licenses or any other rights expressly set forth herein, and each Party hereto agree to indemnify and hold the other Party harmless from any and all claims, demands, causes of action or other liabilities, and all costs and expenses (including reasonable attorneys' fees) incurred in defending against any claims arising from or pertaining to any other brokerage commission, fees, costs, or other expenses which may be claimed by any broker, sales person or entity arising out of any actions of County or CFX (including the indemnity obligations of County and CFX) or arising out of any actions of the Owners (including the indemnity obligations of the Owners).

41. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Florida. The venue for all legal proceedings arising out of this Agreement shall be exclusively in the Circuit Court in and for Osceola County, Florida.

42. <u>Waiver/Time</u>. The waiver of any breach of any provision hereunder by County or the Owners shall not be deemed to be a waiver of any proceeding or subsequent breach hereunder. No failure or delay of any party in the exercise of any right given hereunder shall constitute a waiver thereof nor shall any partial exercise of any right preclude further exercise thereof. Time is of the essence in this Agreement as to all dates and time periods set forth herein. To the extent that the last day of any time period stipulated in this Agreement falls on a Saturday, Sunday, or federal holiday, the period shall run until the end of the next day which is neither a Saturday,

Sunday or federal holiday. Any time period of five (5) days or less specified herein shall not include Saturdays, Sundays or federal holidays. Where used herein, the term "Business Days" shall be those days other than Saturdays, Sundays or federal holidays.

43. **<u>Representation by Counsel</u>**. County, CFX, and Owners are all represented in this transaction by counsel. This Agreement shall not be construed more or less favorably against any Party, regardless of which party may be deemed the drafter hereof.

44. <u>**Counterparts.**</u> This Agreement may be executed in any number of counterparts, including by digital or electronic means in accordance with Chapter 668, Florida Statutes, each of which shall be an original but all of which shall constitute one and the same Agreement. A party shall be bound by this Agreement by executing a counterpart hereof, then transmitting the executed counterpart to the other Parties via email in .pdf or similar format.

45. **<u>Recording</u>**. The Parties agree that they will not record, or permit to be recorded, this Agreement or any memorandum hereof; violation of this covenant by any Party shall constitute a default, and at the other Party's option, this Agreement shall become null and void and all of the rights of the Parties hereunder shall terminate. This Section is not intended and shall not be deemed to preclude the recordings expressly required or authorized in this Agreement.

46. Further Assurances. The Owners and CFX will, without additional consideration, sign, acknowledge, and deliver any other documents and take any other actions necessary or appropriate and reasonably requested by the other Party to carry out the intent and purposes of this Agreement. The Owners agree and acknowledge the final alignment of the Extension is subject to adjustment based on the design of the Extension, and as such, agree to cooperate with County and CFX to execute any and all documents reasonably necessary to ensure all real property that is owned by Owners and is required as part of the design for the Extension based on the Project Alignment shall be conveyed and transferred to County. To the extent the required acreage exceeds 256.54 acres of fee simple interest in the West Property, approximately 25.68 acres for the Offsite Drainage Easements, and approximately 19.15 acres for the Air Rights Easements, of which 4.9 acres is also part of the Offsite Drainage Easements, CFX shall compensate the Owners for the additional acreage on a per acre basis as mutually agreed upon by the Owners and CFX, which amount shall be based upon the per acre appraised value of that portion of the West Property or Tavistock Easement Areas, as applicable, located immediately adjacent to the additional acreage with the same or similar land use and property interest as reflected in that certain appraisal report prepared by Consortium Appraisal, Inc. dated January 24, 2022.

47. <u>Force Majeure</u>. A "Force Majeure Event" shall include, without limitation, an act of God, adverse weather conditions (such as tropical storms, tornados or hurricanes), act or regulations of public authorities, legislative bodies, or labor unions, labor difficulties, strike, riot, civil commotion or tumult, terrorism, war, sabotage, theft, vandalism, fire, explosion or similar casualty, epidemic, pandemic, interruption of transportation, shipping or trade delays, or material shortages. To claim a delay caused by a Force Majeure Event, the Party affected by a Force Majeure Event shall promptly provide notice of the occurrence of a Force Majeure Event to the other party within sixty (60) days after the initial onset or occurrence of a Force Majeure Event having a distinct or manifest onset (such as severe weather, issuance of executive orders or similar

orders, act of public authorities), and within such period as may be reasonably required to identify a Force Majeure Event the onset of which is not distinct or manifest (such as for example certain shipping or trade delays or material shortages) and such notice shall provide its best estimate of the effects of the Force Majeure Event on the performance of its obligations hereunder and the time for the resumption of performance of the affected obligations. Notwithstanding the foregoing, no Party may claim a delay pursuant to this Section retroactive by more than sixty (60) days from the date of the Party's notice of the occurrence of the Force Majeure Event. Failure to timely claim a delay caused by a Force Majeure Event shall be deemed a waiver of any delays caused by such Force Majeure Event. The affected Party shall use best efforts to mitigate the effect of the Force Majeure Event and to resume performance of affected obligations as soon as possible. The affected Party shall continue to perform its obligations hereunder not affected thereby. The Parties acknowledge and agree that delays in the performance of on-site construction due to normal rainfall shall not be considered a Force Majeure Event hereunder.

48. <u>Schedules and Exhibits</u>. The following Schedules and Exhibits referenced elsewhere in this Agreement are attached hereto and incorporated herein by reference:

a.	Exhibit "A-1" throu	gh <u>"A-3"</u> West Property
b.	Exhibit "B-1"	Air Rights Easement Areas
	Exhibit "B-2"	Pier Foundations Easement Areas
	Exhibit "B-3"	CFX TCE Areas
	Exhibit "B-4"	Local Road / Pond TCE Areas
	<u>Exhibit "B-5"</u>	Offsite Ponds
c.	<u>Exhibit "C-1"</u>	Preferred Alignment
	Exhibit "C-2"	Project Alignment
d.	Exhibit "D-1"	Lake Nona Revised Interchange
	Exhibit "D-2"	Ultimate Local Interchange
	Exhibit "D-3"	Detail of West Segment of Project Alignment
	Exhibit "D-4"	Detail of East Segment of Project Alignment
e.	Exhibit "E-1"	Electrical Easement Area
	Exhibit "E-2"	Sanitary Sewer Easement Area
f.	Exhibit "F"	Form of Beneficial Interest Affidavit
g.	Exhibit "G"	LNB Conveyance Areas

- h. <u>Exhibit "H"</u> TDCP TCE Areas
- i. <u>Exhibit "I"</u> Additional Parcel
- k. <u>Exhibit "J"</u> Lift Station 139 Parcel

## [SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed in their respective names as of the date first above written.

#### WITNESSES:

Print Name

Print Name:

### **"OWNERS"**

By:

LAKE NONA LAND COMPANY, LLC, a Florida limited liability company

By: Printed Name: T. Craig Collin tositen Title: Lice Date: 2022 PPD.

### LAKE NONA RESEARCH I, LLC

a Florida limited liability company

Printed Name: T. Crais

Title: Vire Tosider

Shamira M. Bartley Print Name;

Shamira M. Bartley

atcia

ara Print Name:

Date: 66 2 2027

Callin

Print Name Shamira M. Bartley

Print Name:

**TDCP, LLC** a Florida limited liability company

A	
By:	
Printed Name: T. Craig Collin	
Title: Vice President	
Date: Feb. 3, 1022	

### "COUNTY"

# OSCEOLA COUNTY, FLORIDA

	By:
Print Name	Chairman/Vice Chairman
	Board of County Commissioners
	Date:

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

(SEAL)

ATTEST:

Clerk/Deputy Clerk

As authorized for execution at the Board of County Commissioners meeting of:

### **CONSENT AND JOINDER OF CFX**

Central Florida Expressway Authority, a body politic and corporate and agency of the state, under the laws of the State of Florida, hereby joins in and consents to this Agreement for the purpose of (1) assigning, conveying, transferring, and setting over unto the County any and all rights, privileges, duties, obligations, liabilities, and responsibilities of CFX to purchase the Property under the Original Agreement, subject to the terms and conditions of this Agreement; and (2) agreeing to the terms, conditions and obligations of CFX set forth in Sections 7, 8, 9, 13, 14, 15, 16, 18, 19, 20, 21, 22, 25, 37 and 39 of this Agreement.

#### "CFX"

### **CENTRAL FLORIDA EXPRESSWAY** AUTHORITY

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

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

By:\_\_\_\_\_ Sean Parks, Chairman

Date:

ATTEST:\_\_\_\_

Regla ("Mimi") Lamaute Recording Clerk

> Approved as to form and legality by legal counsel to the Central Florida Expressway Authority on this \_\_\_\_ day of \_\_\_\_\_ 2022 for its exclusive use and reliance.

By:\_\_\_

Diego "Woody" Rodriguez General Counsel

### CONSENT AND JOINDER OF POITRAS EAST COMMUNITY DEVELOPMENT DISTRICT

The **POITRAS EAST COMMUNITY DEVELOPMENT DISTRICT**, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes ("PECDD"), and located within the City of Orlando, Florida, hereby joins in and consents to this Agreement for the purpose of agreeing to the terms, conditions and obligations of the PECDD to grant the Air Rights Easement over that portion of the Air Rights Easement Area owned by the PECDD as set forth in Section 19 of this Agreement.

Signed, sealed and delivered in the presence of the following witnesses:

## POITRAS EAST COMMUNITY DEVELOPMENT DISTRICT, a local unit

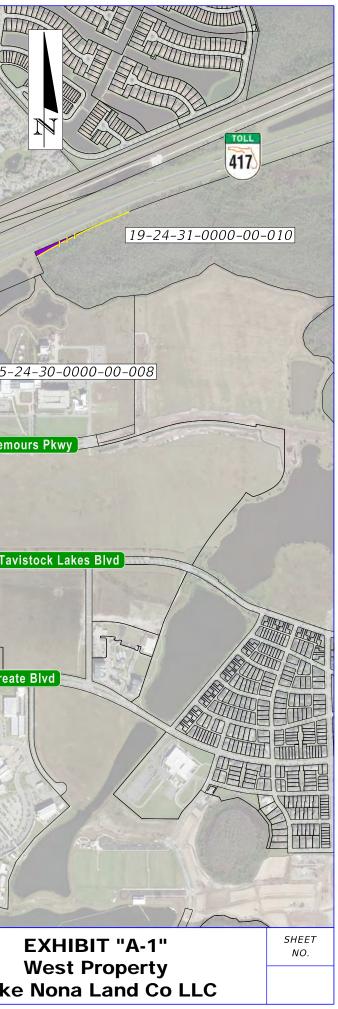
of special-purpose government established pursuant to Chapter 190, Florida Statutes, and located within the City of Orlando, Florida

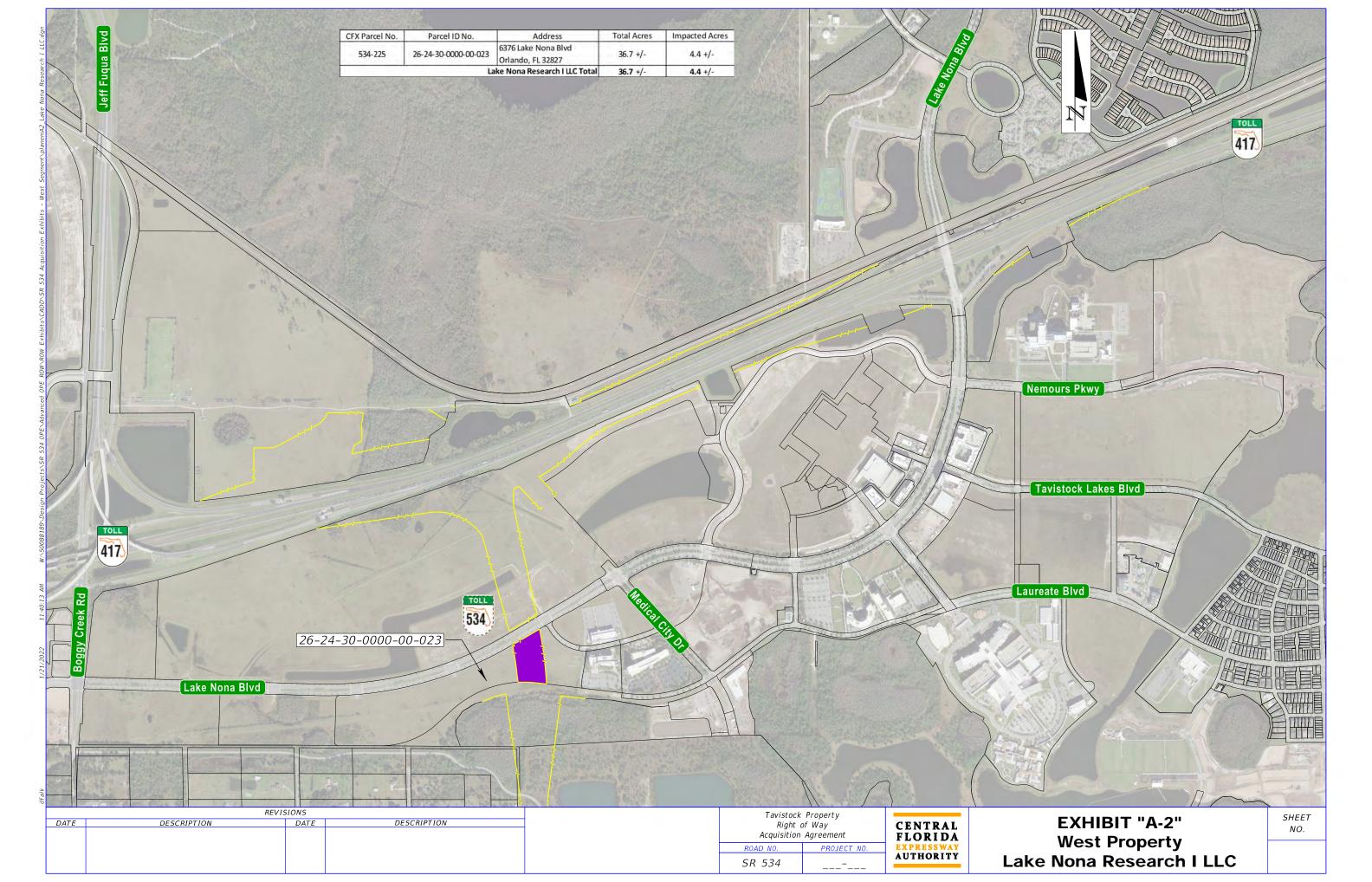
Print Name:\_\_\_\_\_

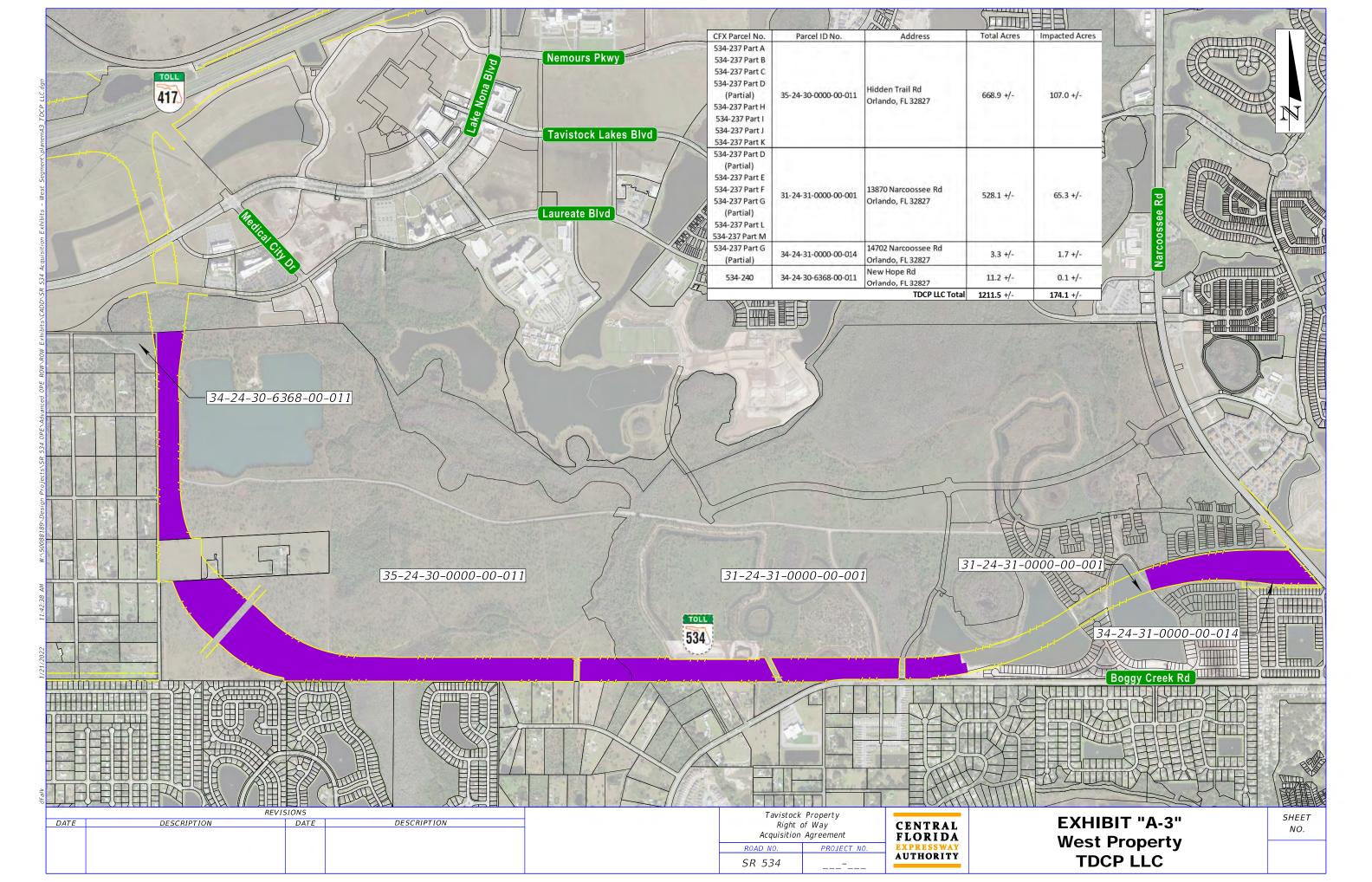
By: \_\_\_\_\_\_ Name: \_\_\_\_\_\_ Title:

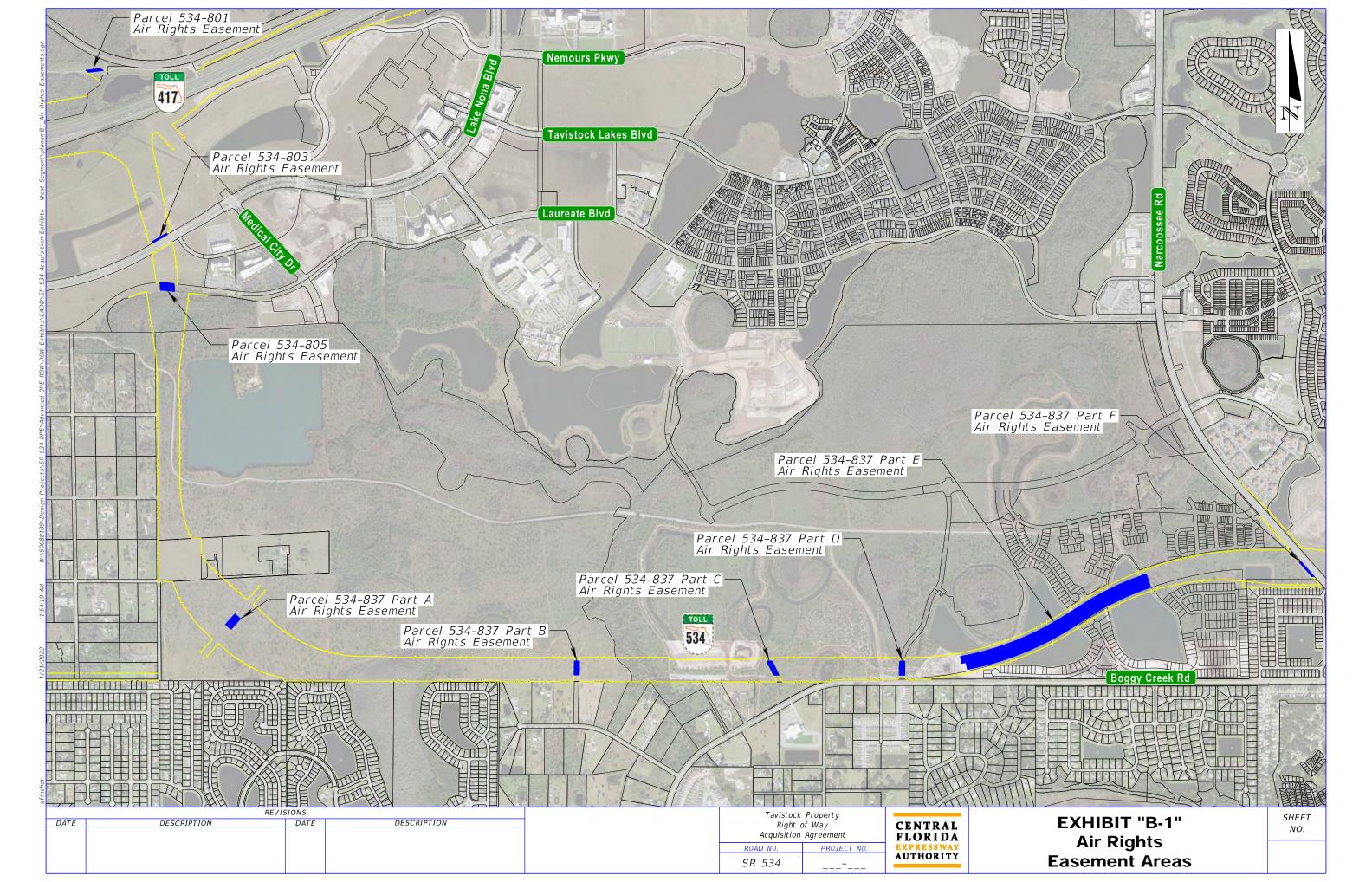
Print Name:

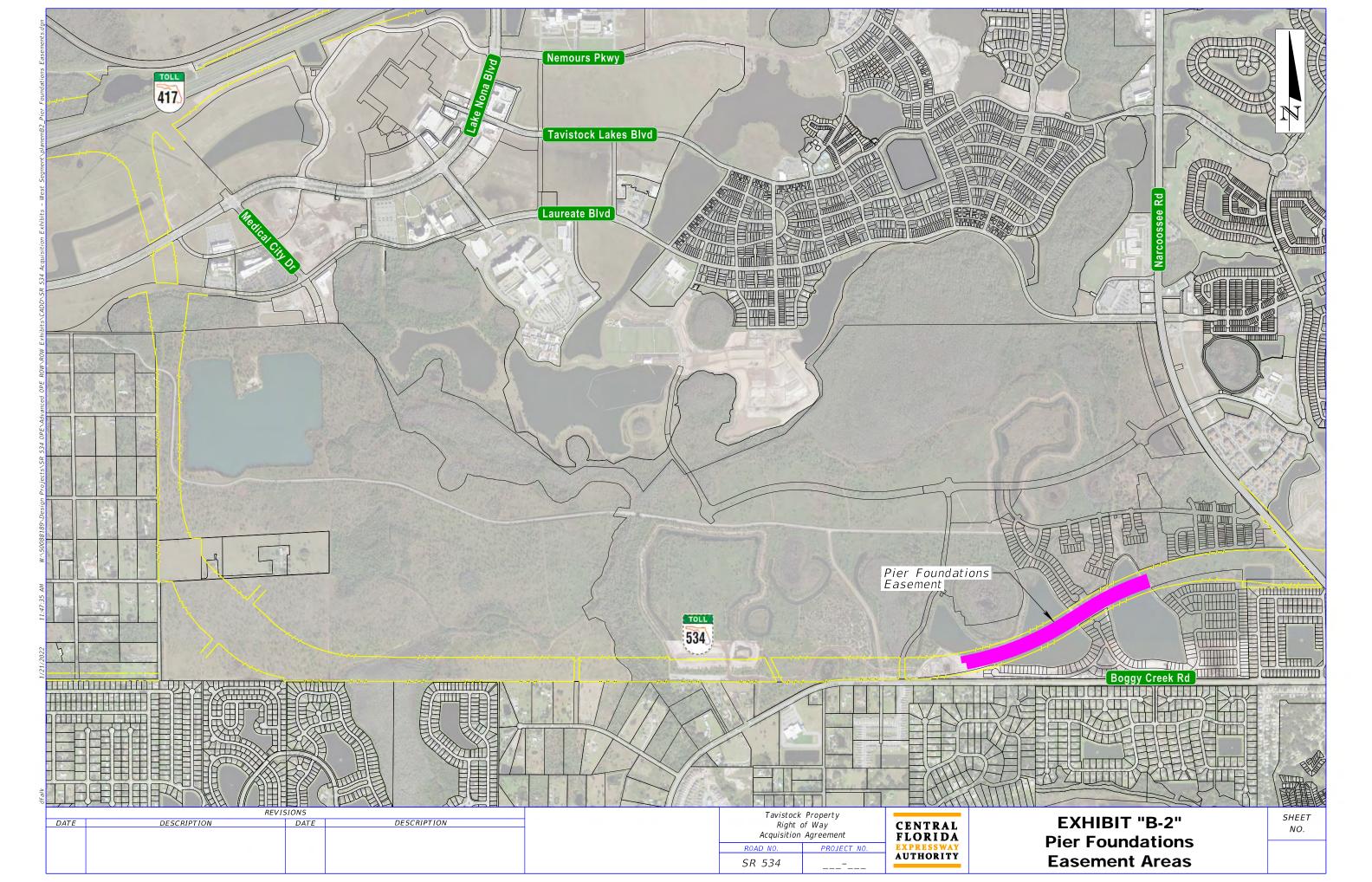
					Same Barris		- 70 .		
	CFX Parcel No.	Parcel ID No.	Address	Total Acres	Impacted Acres	- /2-	0		
Jeff Fuqua Blvd	534-201 Part A 534-201 Part B 534-201 Part C	22-24-30-0000-00-006	12903 Boggy Creek Rd Orlando, FL 32827	185.2 +/-	24.6 +/-			Late Mone Street	
Jeff Fu	534-203 Part A 534-203 Part B 534-203 Part C	26-24-30-0000-00-014	13849 Boggy Creek Rd Orlando, FL 32827	223.8 +/-	34.3 +/-	A MARY		e la	
WAI Lak	534-205	36-24-30-0000-00-004	Narcoossee Rd Orlando, FL 32827	33.6 +/-	8.5 +/-	Charles and			Tic
C blaner	534-207 Part A 534-207 Part B	26-24-30-0000-00-022	Lake Nona Blvd Orlando, FL 32827	19.7 +/-	5.0 +/-	4	(		
2edmen	534-209	23-24-30-0000-00-002	12749 Boggy Creek Rd Orlando, FL 32827	12.1 +/-	4.6 +/-				
- Mest	534-211	25-24-30-0000-00-008	7190 Lake Nona Blvd Orlando, FL 32827	13.6 +/-	0.6 +/-		2		15
synibits	534-213	19-24-31-0000-00-010	9901 Tavistock Lakes Blvd Orlando, FL 32827	293.6 +/-	0.4 +/-				
tition E	Sale Andre	12	Lake Nona Land Co LLC Total	781.6 +/-	78.0 +/-			///	
W-2000B1B0/DelictS/B 234 OPE-VANUEd DE ROWNON ENtilts/CODD/SR 334	-006		23-24-30-00	000-00-00.		26-24-30-00			Nemo Tav
26-24-3	0-0000-00-			-30-0000-					Laureat
						h			
REVISIONS DATE DESCRIPTION DATE	DI	SCRIPTION				Tavistock Right or Acquisition ROAD NO.	f Way Agreement PROJECT NO.	CENTRAL FLORIDA EXPRESSWAY AUTHORITY	Lake
						SR 534			Lake

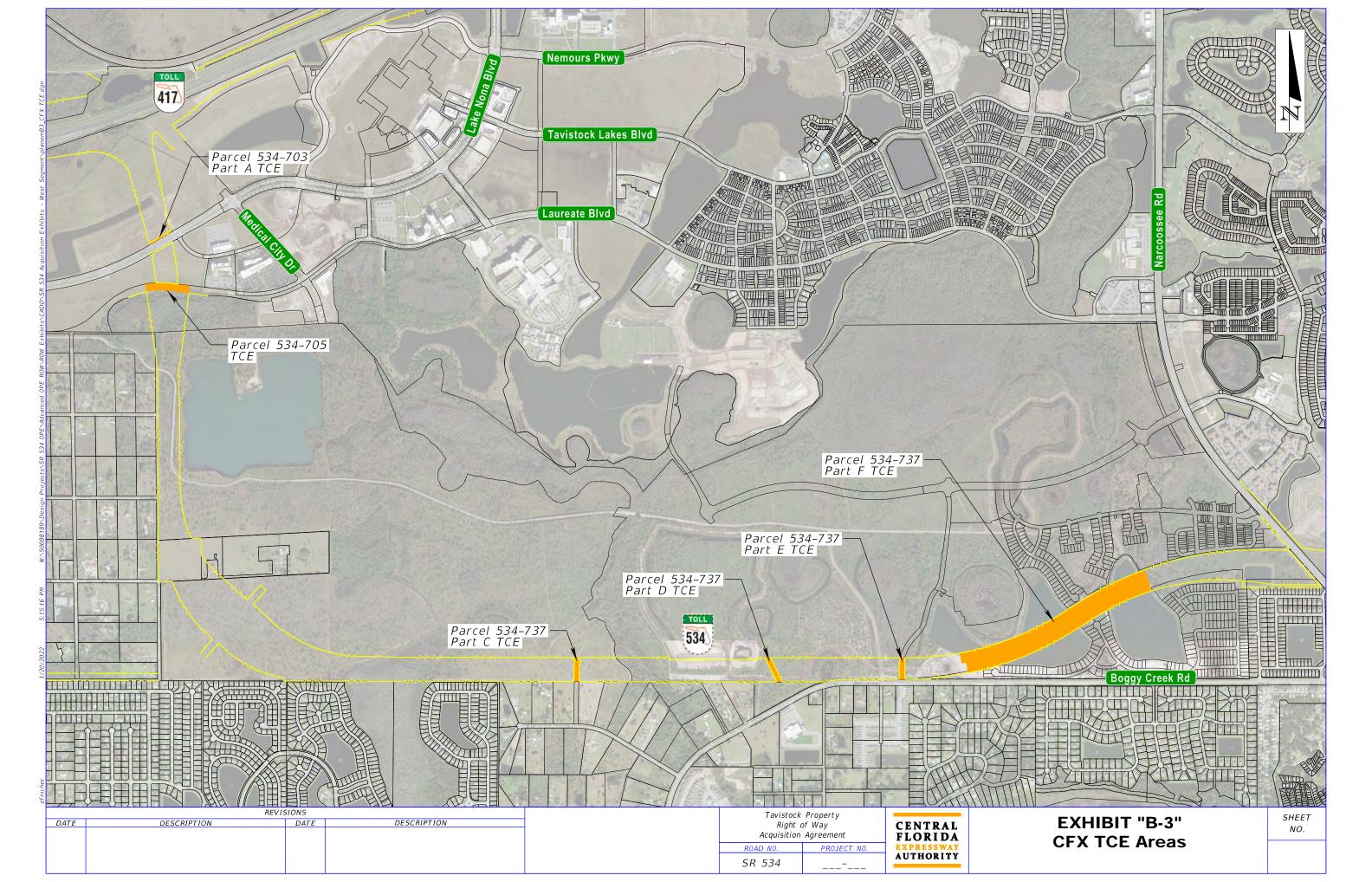


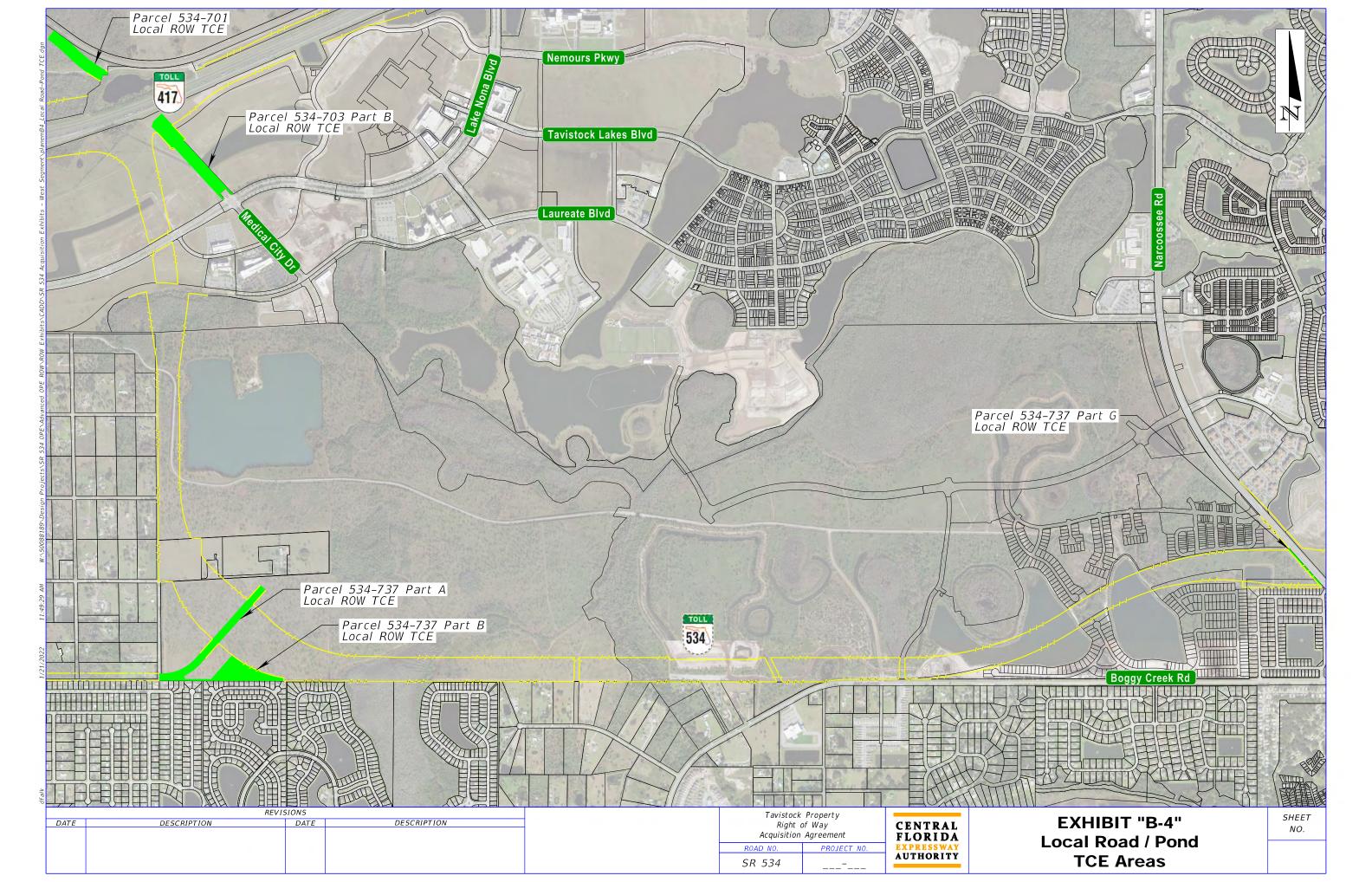


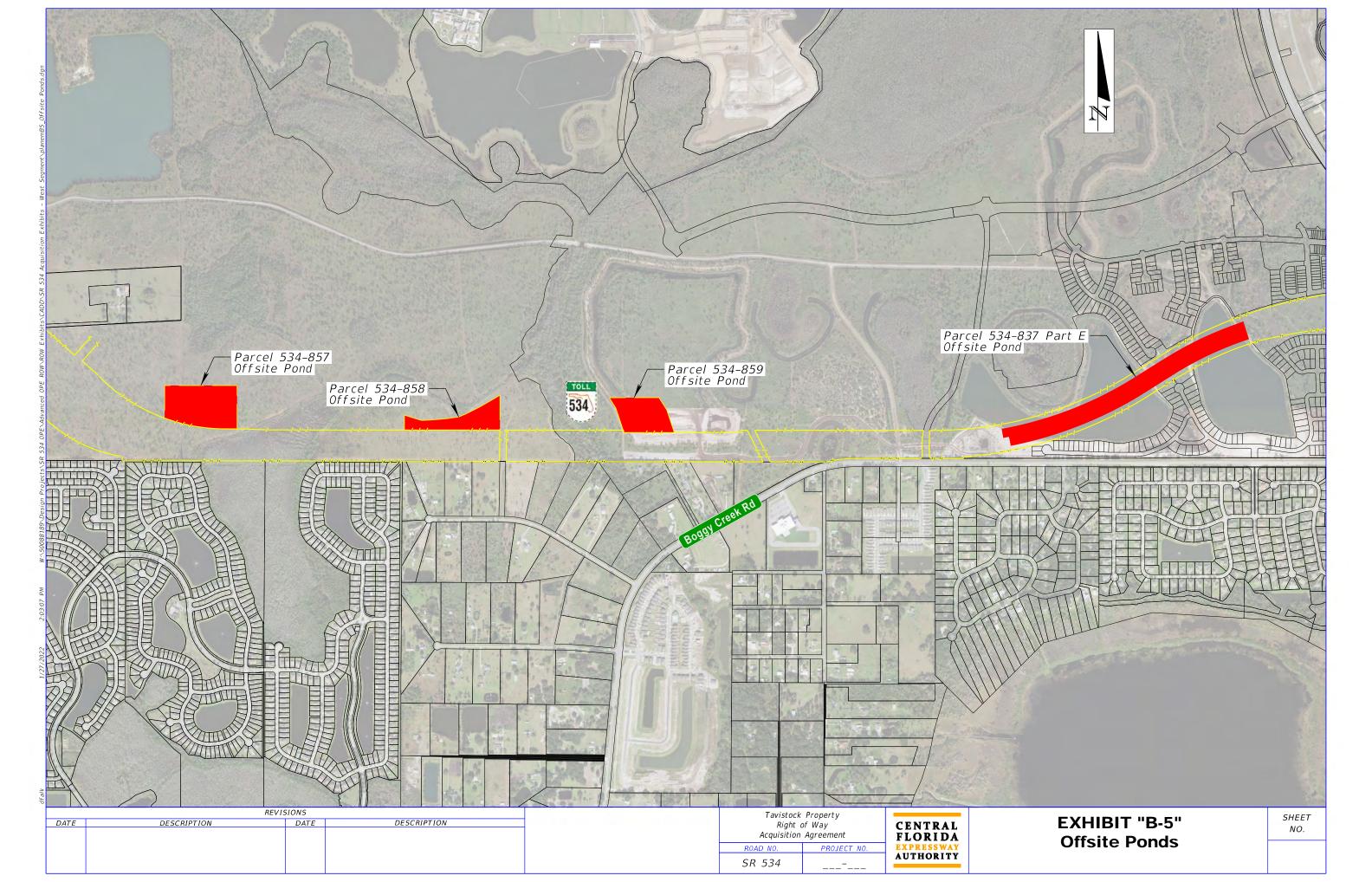


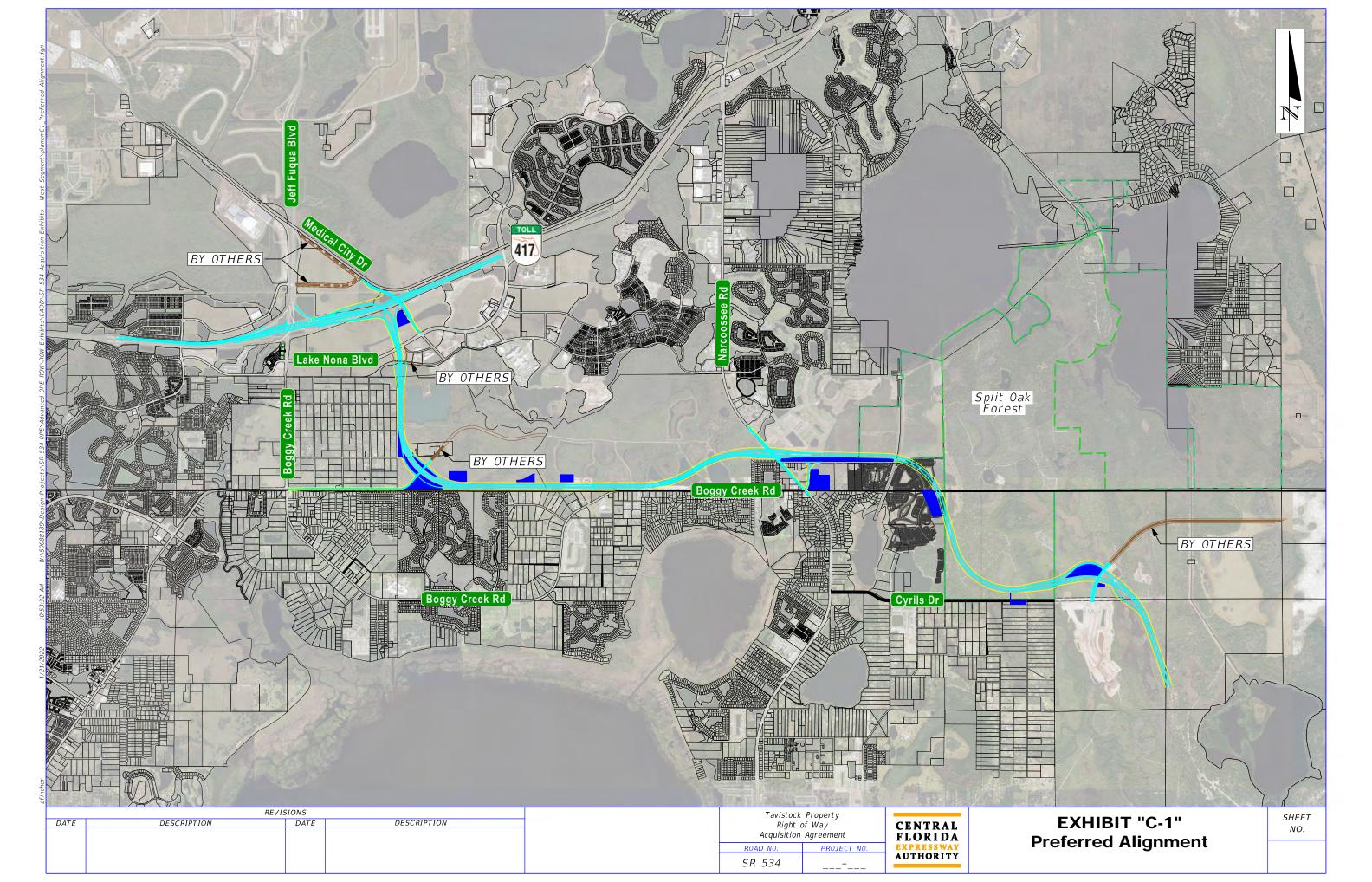


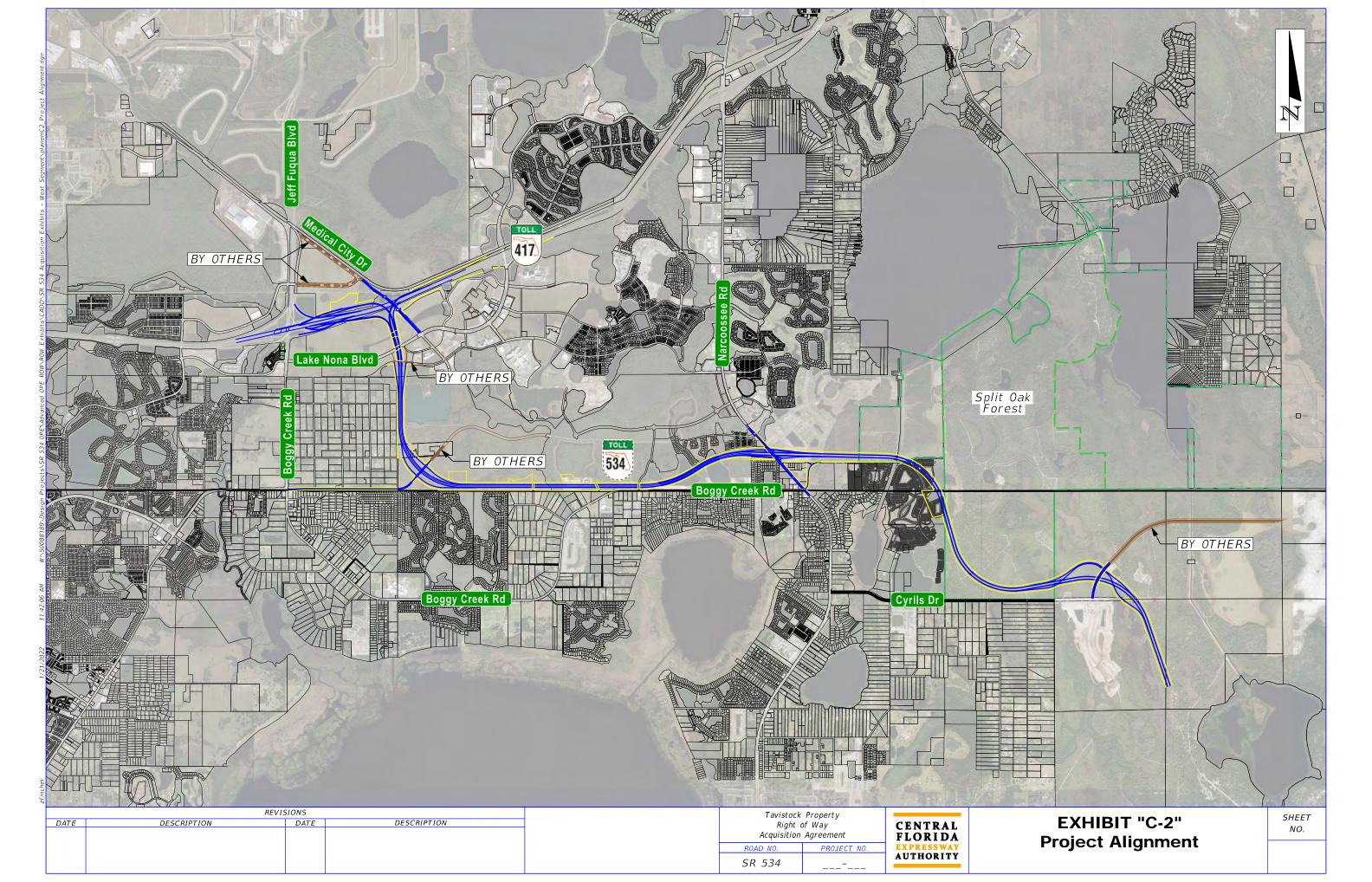


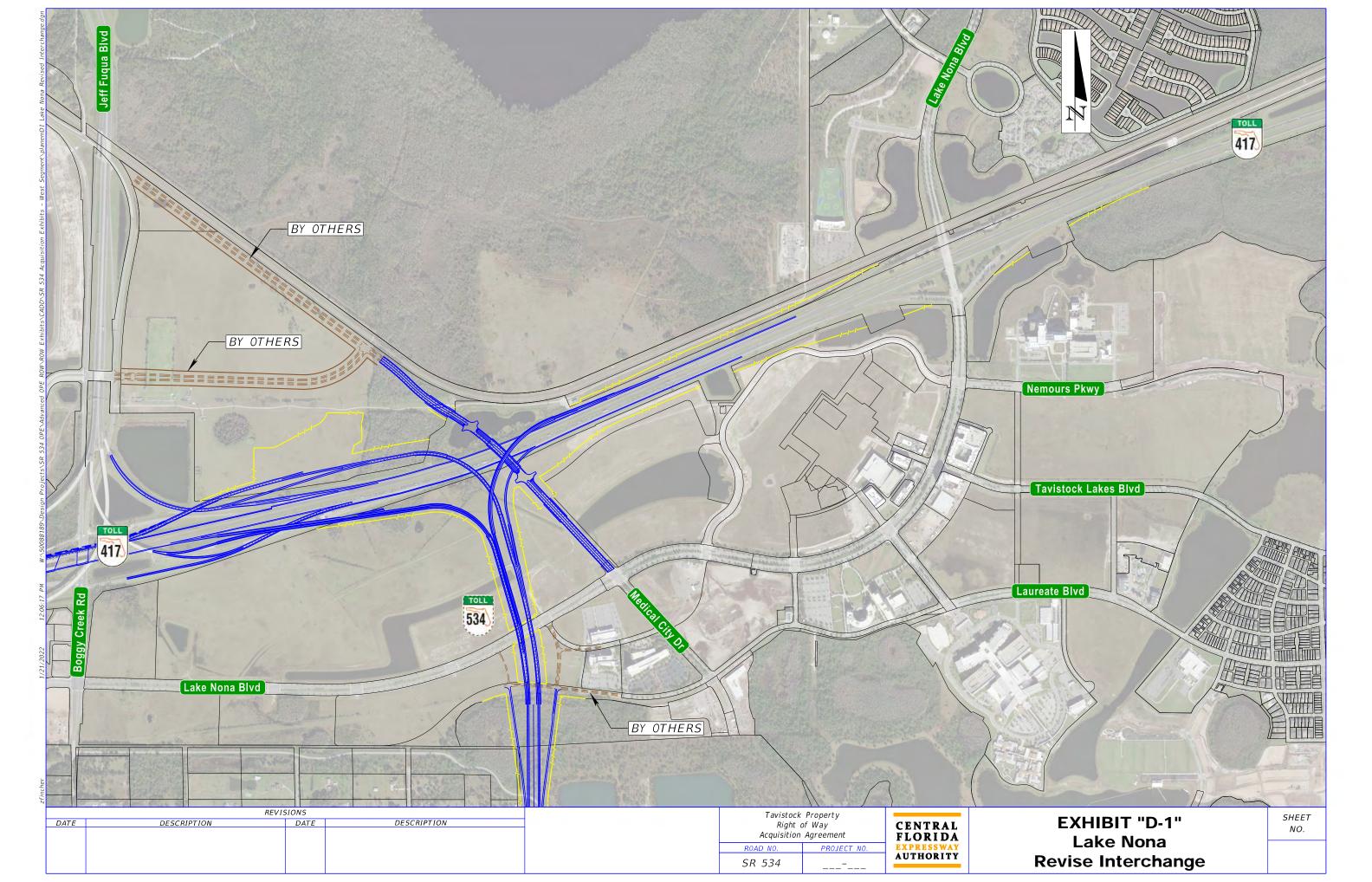


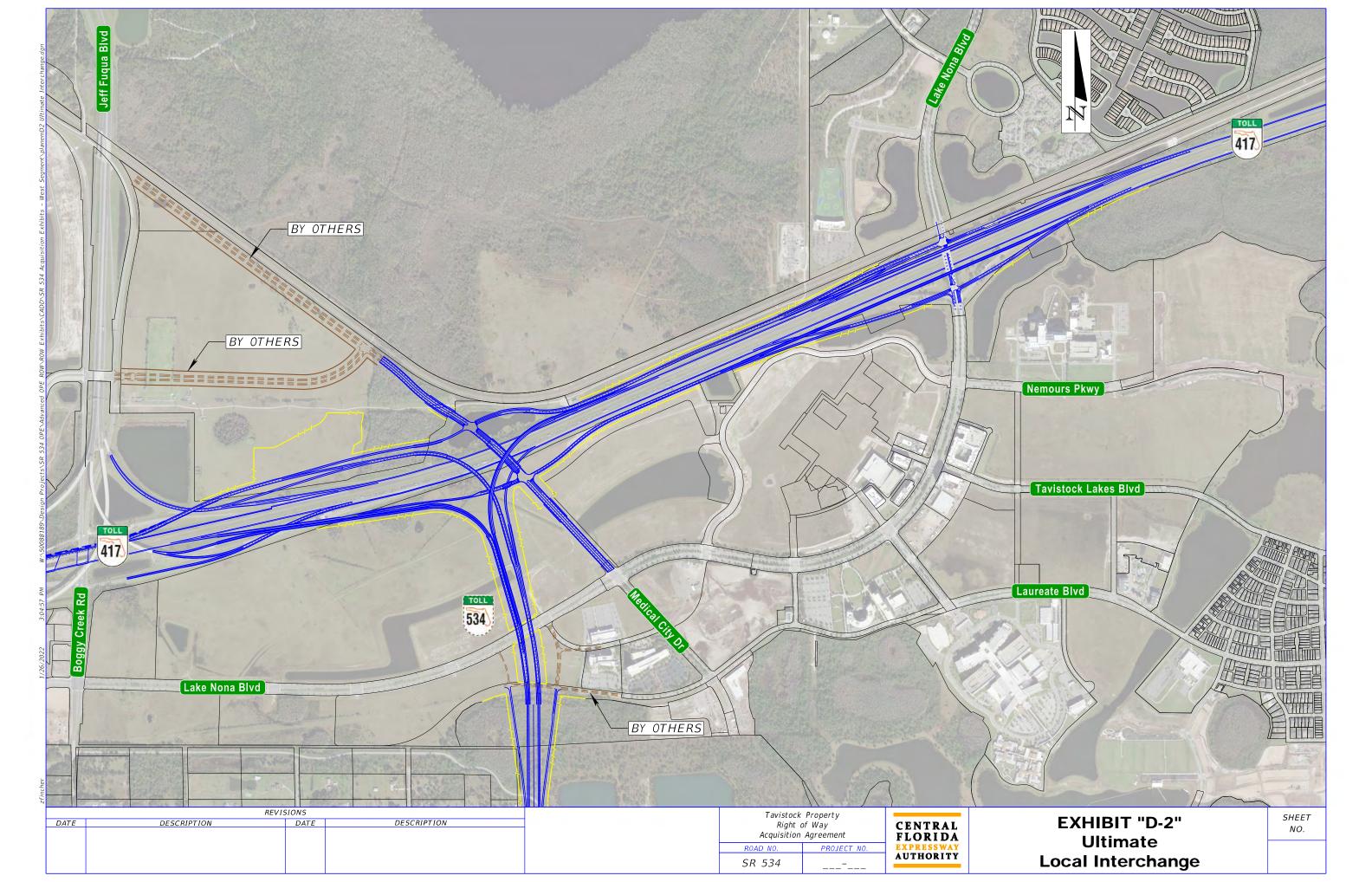


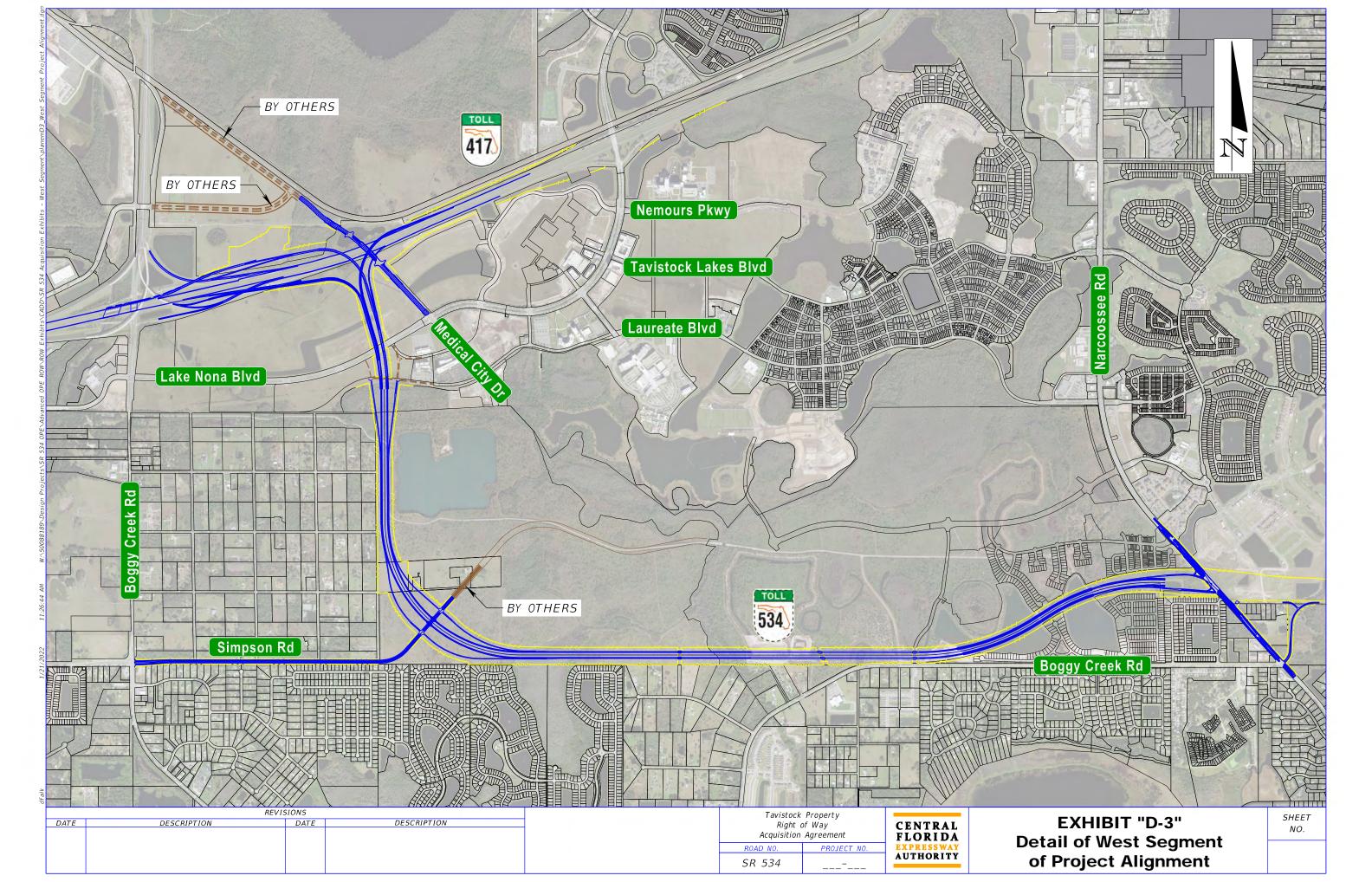


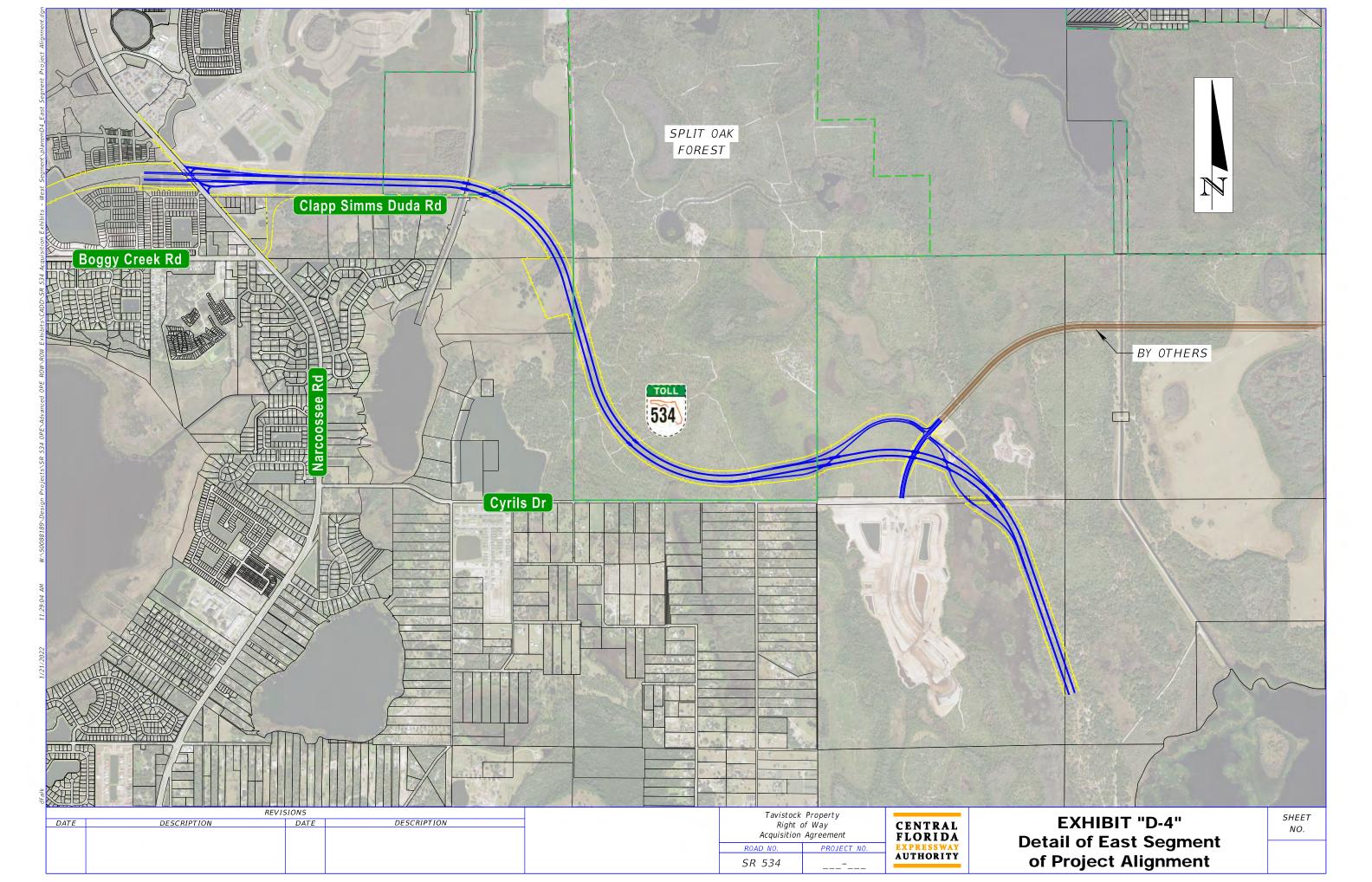












LEGAL DESCRIPTION:

PART C

A parcel of land in the Northwest 1/4 of Section 26, and the Northeast 1/4 of Section 27, all in Township 24 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

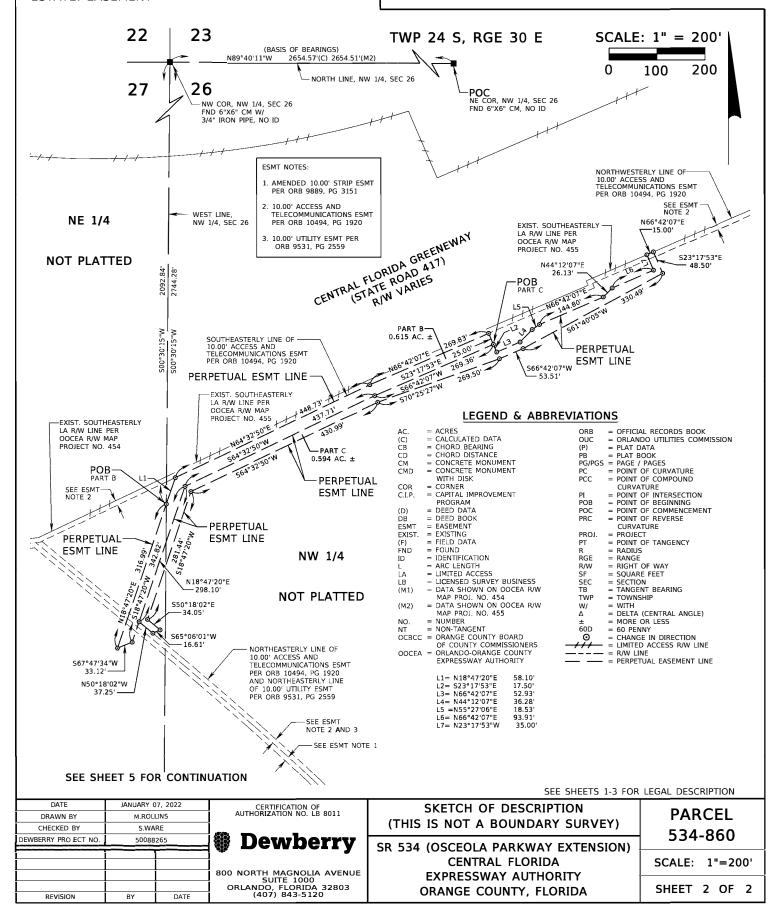
Commence at a found 6-inch by 6-inch concrete monument with no identification marking the Northeast corner of the Northwest 1/4 of Section 26, Township 24 South, Range 30 East, Orange County, Florida; thence run North 89'40'11" West along the North line of the Northwest 1/4 of said Section 26, a distance of 2654.57 feet to a found 6-inch by 6-inch concrete monument with a 3/4" iron pipe and no identification marking the Northwest corner of the Northwest 1/4 of said Section 26; thence departing said North line, run South 00°30'15" West along the West line, of said Section 26; thence departing said North line, run South 00°30'15" West along the West line of said Northwest 1/4, a distance of 2092.84 feet; thence departing said West line, run North 18'47'20" East, a distance of 58.10 feet to a point on the Southeasterly line of a 10.00 feet wide Access and Telecommunications Easement as described and recorded in Official Records Book 10494, Page 1920 of the Public Records of Orange County, Florida; thence run along said Southeasterly line the following two (2) courses and distances of 269.83 feet; thence departing said Southeasterly line, run South 23'17'53" East, a distance of 17.50 feet; thence North 66'42'07" East, a distance of 52.93 feet; thence North 44'12'07" East, a distance of 36.00 feet to the POINT OF BEGINNING; thence North 44'12'07" East, a distance of 35.00 feet to a point on the existing Southeasterly line; thence North 23'17'53" West, a distance of 35.00 feet to a point on the existing Southeasterly Right of Way as shown on Orlando-Orange County Expressway Authority (OOCEA) Right of Way fine and along said Northwesterly Easement line, a distance of 33.0.49 feet; thence Aorth 23'17'53" East, a distance of 35.51 feet; thence South 10'25'27'0" West, a distance of 48.50 feet; thence South 23'07" West, a distance of 43.51 feet; thence South 66'42'07" East along said Southeasterly Right of Way line and along said Northwesterly Easement line, a distance of 33.0.49 feet; thence Aorth 45'21'50" East, a dista

Containing 0.594 acres, more or less.

SEE SHEET 4 FOR LEGEND SEE SHEETS 4-5 FOR SKETCH OF DESCRIPTION

DATE DRAWN BY CHECKED BY			M.ROLLINS		CERTIFICATION OF AUTHORIZATION NO. LB 8011	SKETCH OF DESCRIPTION (THIS IS NOT A BOUNDARY SURVEY)	PARCEL 534-860
DEWBERRY PROJECT NO.	50088	3265	Dewberry	SR 534 (OSCEOLA PARKWAY EXTENSION) CENTRAL FLORIDA	SCALE: N/A		
REVISION	BY	DATE	800 NORTH MAGNOLIA AVENUE SUITE 1000 ORLANDO, FLORIDA 32803 (407) 843-5120	EXPRESSWAY AUTHORITY ORANGE COUNTY, FLORIDA	SHEET 1 OF 2		

# EXHIBIT "E-1" Electric Easement Areas



## EXHIBIT "E-2" Sanitary Sewer Easement Area

#### LEGAL DESCRIPTION:

PART B

SEE SHEET 4 FOR LEGEND

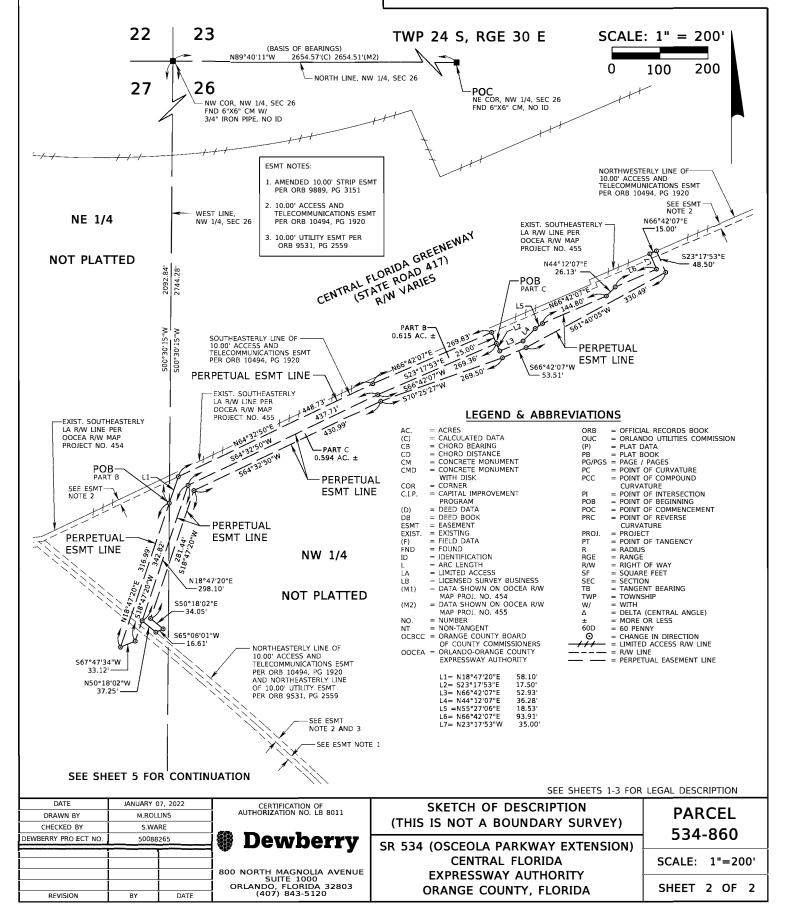
A parcel of land in the Northwest 1/4 of Section 26, and the Northeast 1/4 of Section 27, all in Township 24 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at a found 6-inch by 6-inch concrete monument with no identification marking the Northeast corner of the Northwest 1/4 of Section 26, Township 24 South, Range 30 East, Orange County, Florida; thence run North 89°40'11" West along the North line of the Northwest 1/4 of said Section 26, a distance of 2654.57 feet to a found 6-inch by 6-inch concrete monument with a 3/4" iron pipe and no identification marking the Northwest corner of the Northwest 1/4 of said Section 26; thence departing said North line, run South 00°30'15" West along the West line of said Northwest 1/4, a distance of 2092.84 feet to the POINT OF BEGINNING; thence departing said West line, run North 18°47'20" East, a distance of 58.10 feet to a point on the Southeasterly line of a 10.00 feet wide Access and Telecommunications Easement as described and recorded in Official Records Book 10494, Page 1920 of the Public Records of Orange County, Florida; thence run along said Southeasterly line the following two (2) courses and distances: thence North 64°32'50" East, a distance of 448.73 feet; thence North 66°42'07" East, a distance of 269.83 feet; thence departing said Southeasterly line, run South 23°17'53" East, a distance of 25.00 feet; thence South 66°42'07" West, a distance of 269.36 feet; thence South 64°32'50" West, a distance of 437.71 feet; thence South 18°47'20" West, a distance of 342.82 feet; thence South 67°47'34" West, a distance of 33.12 feet; thence North 18°47'20" East, a distance of 316.99 feet to the POINT OF BEGINNING.

Containing 0.615 acres, more or less.

SEE SHEETS 4-5 F	OR SKETCH	OF DESCRI	PTION			
DATE	JANUARY 07, 2022		CERTIFICATION OF	SKETCH OF DESCRIPTION		
DRAWN BY	M.ROL	LINS	AUTHORIZATION NO. LB 8011		PARCEL	
CHECKED BY			Í	(THIS IS NOT A BOUNDARY SURVEY)	574 960	
DEWBERRY PROJECT NO.	50088	32 65	🕲 Dewberry	SR 534 (OSCEOLA PARKWAY EXTENSION)	534-860	
			800 NORTH MAGNOLIA AVENUE	CENTRAL FLORIDA	SCALE: N/A	
REVISION	SUITE 1000 EXPRES		EXPRESSWAY AUTHORITY ORANGE COUNTY, FLORIDA	SHEET 1 OF 2		

## EXHIBIT "E-2" Sanitary Sewer Easement Area



### <u>EXHIBIT "F"</u> Form of Beneficial Interest Affidavit

#### AFFIDAVIT OF DISCLOSURE OF INTERESTS IN REAL PROPERTY

TO:

FROM:

#### **PROPERTY:** See **Exhibit "A"** attached hereto and incorporated herein by this reference

This Affidavit of Disclosure of Interests in Real Property is made for the sole purpose of compliance with Section 286.23, <u>Florida Statutes</u>, in connection with a conveyance of the Property to **OSCEOLA COUNTY**, a charter county and political subdivision of the State of Florida. Please be advised that the undersigned, after diligent search and inquiry, hereby states under oath, and subject to the penalties for perjury, that the name and address of each person having a beneficial interest in the Property is set forth on <u>Exhibit</u> <u>"B"</u> attached hereto and incorporated herein by reference.

I swear and affirm that the information furnished herein is accurate as of the date hereof, and I agree to promptly disclose any changes in the information contained herein, or any errors in such information.

This disclosure is made under oath, and I understand that I am subject to penalties for perjury for any false information contained herein.

a \_\_\_\_\_

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

## STATE OF \_\_\_\_\_ ) COUNTY OF \_\_\_\_\_ )

The foregoing instrument was sworn to and subscribed before me by means of [] physical presence or [] online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, by \_\_\_\_\_\_, as \_\_\_\_\_\_ of \_\_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_\_. He is [] personally known to me or [] has produced \_\_\_\_\_\_ as identification (if left blank, then personally known to me).

(Signature of Notary Public)

(Typed Name of Notary Public) Notary Public, State of \_\_\_\_\_\_ Commission No.:\_\_\_\_\_\_ My Commission Expires:\_\_\_\_\_\_

## <u>EXHIBIT "F"</u> Form of Beneficial Interest Affidavit

## EXHIBIT "A"

Legal Description

### **EXHIBIT "F"** Form of Beneficial Interest Affidavit

# EXHIBIT "B"

**Person(s) Holding a Beneficial Interest** 

<u>Name</u>:

Address:

# EXHIBIT "G" LNB Conveyance Areas

#### LEGAL DESCRIPTION:

PART A

A parcel of land in the Southwest 1/4 of Section 26, and the Southeast 1/4 of Section 27, all in Township 24 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at a found 6-inch by 6-inch concrete monument with no identification marking the Northeast corner of the Northwest 1/4 of Section 26, Township 24 South, Range 30 East, Orange County, Florida; thence run North 89°40'11" West along the North line of the Northwest 1/4 of said Section 26, a distance of 2654.57 feet to a found 6-inch by 6-inch concrete monument with a 3/4" iron pipe and no identification marking the Northwest corner of the Northwest 1/4 of said Section 26; thence departing said North line, run South 00°30'15" West along the West line of said Section 26; thence run South 00°43'30" West along the West line of said Southwest 1/4, a distance of 482.50 feet to the POINT OF BEGINNING; thence departing said West line, run North 59°32'50" East, a distance of 31.64 feet; thence South 11°52'04" East, a distance of 519.98 feet; thence North 30°27'10" West, a distance of 222.80 feet; thence South 68°54'18" West, a distance of 155.92 feet; thence North 30°27'10" West, a distance of 24.71 feet; thence South 59°32'50" West, a distance of 166.89 feet; thence North 16°13'01" West, a distance of 226.97 feet; thence North 59°32'50" East, a distance of 398.99 feet to the POINT OF BEGINNING.

Containing 2.548 acres, more or less.

### NOTES:

- 1. THIS SKETCH OF DESCRIPTION WAS PREPARED WITH THE BENEFIT OF CERTIFICATE OF TITLE PREPARED BY COMPANY NAME AS TO FILE NO. XXXXXXX, EFFECTIVE DATE OF MONTH XX, 2022
- 2. BEARINGS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, FLORIDA EAST ZONE (0901), 1983 NORTH AMERICAN DATUM, 2011 ADJUSTMENT, DERIVING A BEARING OF NORTH 89°40'11" WEST ALONG THE NORTH LINE OF THE NW 1/4 OF SECTION 26, TOWNSHIP 24 SOUTH, RANGE 30 EAST, ORANGE COUNTY, FLORIDA.
- 3. THE ELECTRONIC SIGNATURE HEREON IS IN COMPLIANCE WITH FLORIDA ADMINISTRATIVE CODE (FAC) 5J-17.062(3).
- 4. THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY WILLIAM D. DONLEY, PSM NO. 5381, ON XX/XX/XXXX PER FAC 5J-17.062(2).

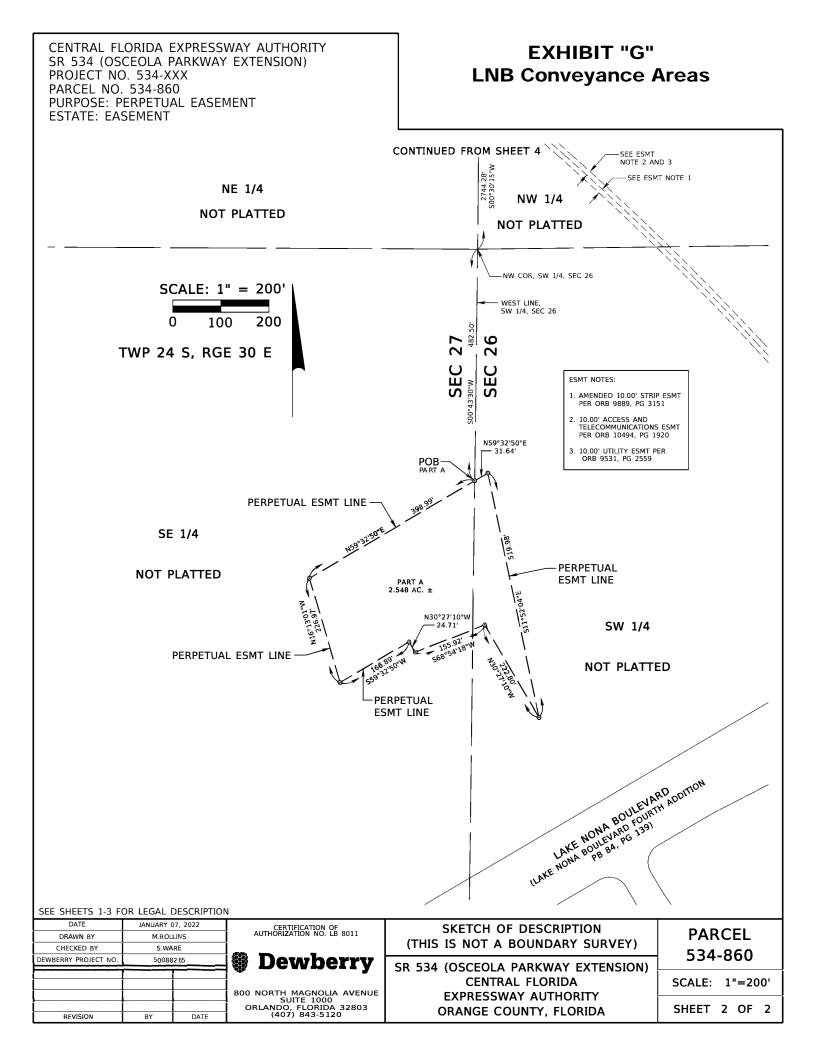
SEE SHEET 4 FOR LEGEND SEE SHEETS 4-5 FOR SKETCH OF DESCRIPTION I HEREBY CERTIFY THIS SKETCH OF DESCRIPTION IS IN ACCORDANCE WITH THE STANDARDS OF PRACTICE AS REQUIRED BY CHAPTER 5J-17 FLORIDA ADMINISTRATIVE CODE PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

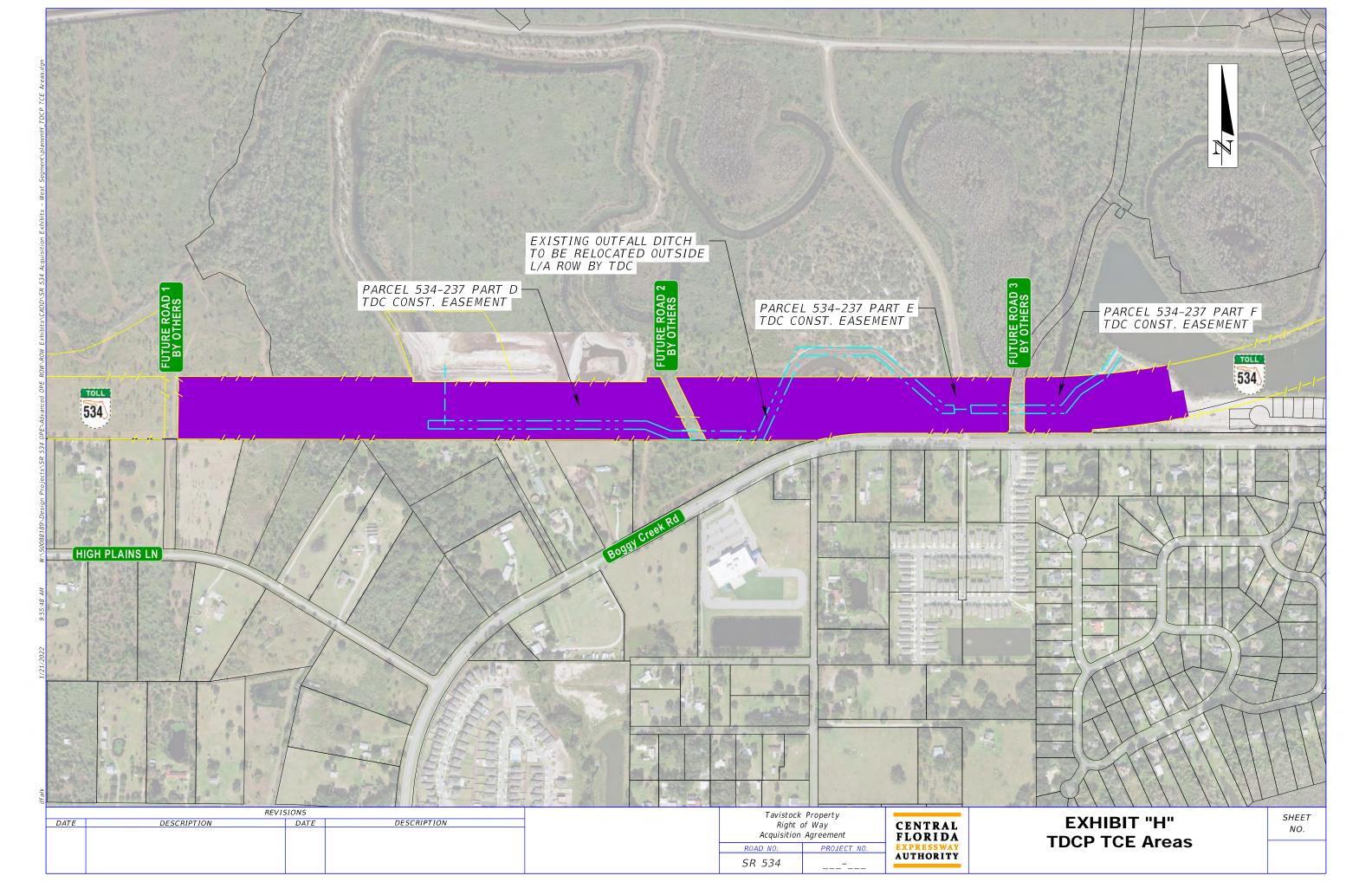
WILLIAM D. DONLEY, P.S.M. LICENSE NUMBER 5381



NOT VALID WITHOUT THE SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

SEE SHEETS 4-5 F	OR SKETCH O	F DESCRI	PTION			
DATE	DATE JANUARY 07, 2022		CERTIFICATION OF	SKETCH OF DESCRIPTION	PARCEL	
DRAWN BY	DRAWN BY M.ROLLINS		AUTHORIZATION NO. LB 8011			
CHECKED BY S.WARE			(THIS IS NOT A BOUNDARY SURVEY)	E24.0C0		
DEWBERRY PROJECT NO.	500882 65		Dewberry	SR 534 (OSCEOLA PARKWAY EXTENSION)	534-860	
			800 NORTH MAGNOLIA AVENUE	CENTRAL FLORIDA	SCALE: N/A	
REVISION BY I		DATE	SUITE 1000 ORLANDO, FLORIDA 32803 (407) 843-5120	EXPRESSWAY AUTHORITY ORANGE COUNTY, FLORIDA	SHEET 1 OF 2	





CENTRAL FLORIDA EXPRESSWAY AUTHORITY SR 534 (OSCEOLA PARKWAY EXTENSION) PROJECT NO. 534-XXX PARCEL NO. 534-237 PURPOSE: LIMITED ACCESS RIGHTS ONLY (PART N) RIGHT OF WAY (PART O) ESTATE: FEE SIMPLE

## EXHIBIT "I" Additional Parcel

#### LEGAL DESCRIPTION:

PART N

All rights of ingress, egress, light, air and view between the properties lying on either side of the following described line lying in a portion of the Southeast 1/4 of the Southwest 1/4 of Section 32, Township 24 South, Range 31 East, Orange County, Florida, being more particularly described as follows:

Commence at a found nail and washer with no identification in asphalt box cut-out marking the Southeast corner of the Southwest 1/4 of Section 32, Township 24 South, Range 31 East, Orange County, Florida; thence run North 01°11'30" West along the East line of the Southwest 1/4 of said Section 32, a distance of 1310.93 feet to a point on the existing Southwesterly Right of Way line of Narcoossee Road, a varied width Right of Way as shown on Orange County Board of County Commissioners Right of Way Map, Capital Improvement Program 5101; thence departing said East line, run North 41°42'12" West along said Southwesterly Right of Way line, a distance of 213.86 feet to a point on the North line of Fell's Landing according to the plat thereof as recorded in Plat Book 77, Page 42 of the Public Records of Orange County, Florida; thence departing said Southwesterly Right of Way line, run North 89°42'29" West along said North line, a distance of 37.94 feet to the POINT OF BEGINNING; thence departing said North line, run North 41°41'44" West, a distance of 60.55 feet to the POINT OF TERMINUS.

Limited Access rights only along a line without area.

#### PART O

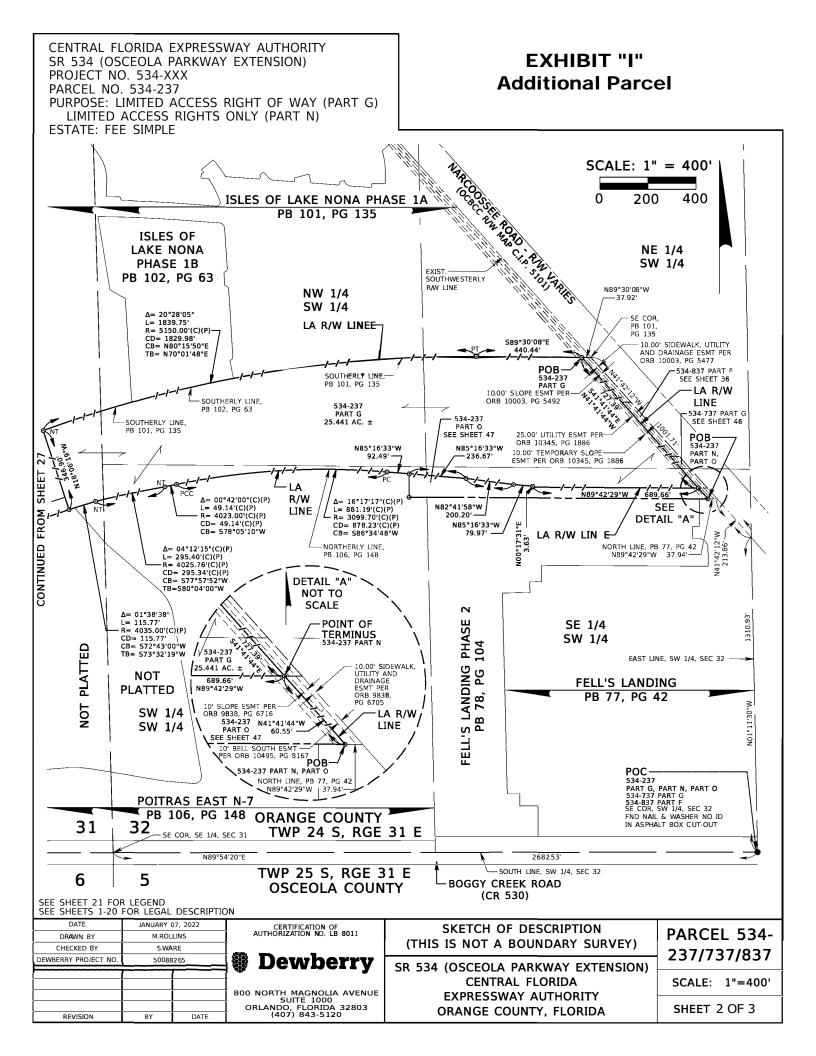
A parcel of land in the Southeast 1/4 of the Southwest 1/4 and the Southwest 1/4 of the Southwest 1/4 of Section 32, Township 24 South, Range 31 East, Orange County, Florida, being more particularly described as follows:

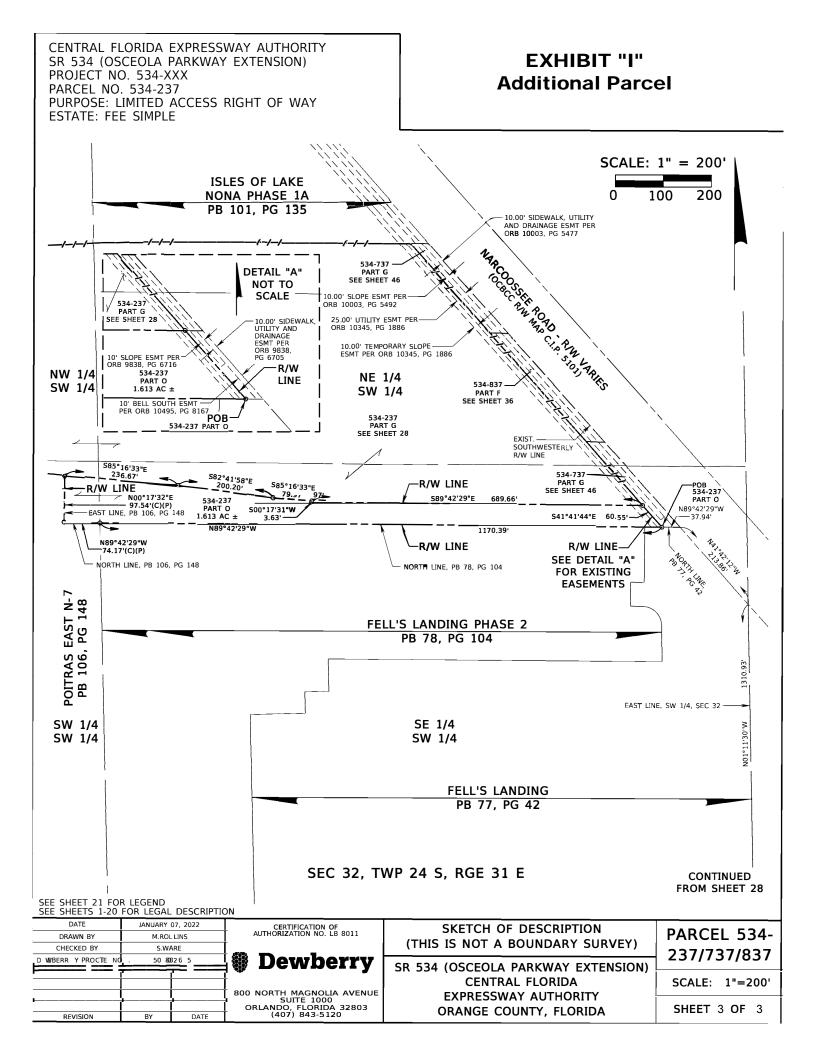
Commence at a found nail and washer with no identification in asphalt box cut-out marking the Southeast corner of the Southwest 1/4 of Section 32, Township 24 South, Range 31 East, Orange County, Florida; thence run North 01°11'30" West along the East line of the Southwest 1/4 of said Section 32, a distance of 1310.93 feet to a point on the existing Southwesterly Right of Way line of Narcoossee Road, a varied width Right of Way as shown on Orange County Board of County Commissioners Right of Way Map, Capital Improvement Program 5101; thence departing said East line, run North 41°42'12" West along said Southwesterly Right of Way line, a distance of 213.86 feet to a point on the North line of Fell's Landing according to the plat thereof as recorded in Plat Book 77, Page 42 of the Public Records of Orange County, Florida; thence departing said Southwesterly Right of Way line, run North 89°42'29" West along said North line, a distance of 37.94 feet to the POINT OF BEGINNING; thence continue North 89°42'29" West along said North line and along the North line of Fell's Landing thereof as recorded in Plat Book 78, Page 104 of the Public Records of Orange County, Florida, a distance of 1170.39 feet to a point on the North line of Poitras East N-7 according to the plat thereof as recorded in Plat Book 106, Page 148 of the Public Records of Orange County, Florida, a distance of 1170.39 feet to a point on the North line of said Poitras East N-7, acording to the plat thereof as recorded in Plat Book 106, Page 148 of the Public Records of Orange County, Florida; thence departing the North line of said Fell's Landing Phase 2, continue North 89°42'29" West along the North line of said Poitras East N-7, a distance of 74.17 feet to a point on the East line of said Poitras East N-7; thence departing said South So'16'33" East, a distance of 236.67 feet; thence departing said East line, run North 00°17'32" East along said East line, a distance of 236.67 feet; thence South 00°17'31" West, a distance of 3.63 feet; thence South 89°42

Containing 1.613 acres, more or less.

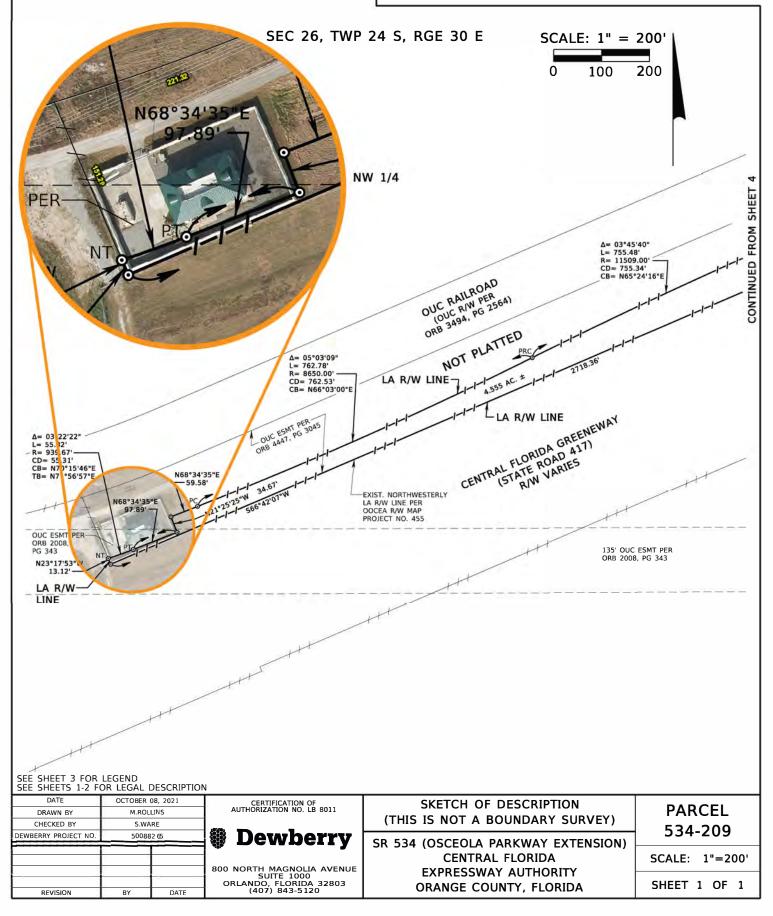
SEE	SHEET 2	21 FOR	LEG	END		
SEE	SHEETS	21-47	FOR	SKETCH	OF	DESCRIPTION

DATE DRAWN BY CHECKED BY	JANUARY 07, 2022 M.ROLLINS S.WARE	CERTIFICATION OF AUTHORIZATION NO. LB 8011	SKETCH OF DESCRIPTION (THIS IS NOT A BOUNDARY SURVEY)	PARCEL 534- 237/737/837	
DEWBERRY PROJECT NO.	500882 65	800 NORTH MAGNOLIA AVENUE	SR 534 (OSCEOLA PARKWAY EXTENSION) CENTRAL FLORIDA	SCALE: N/A	
REVISION	BY DATE	SUITE 1000 ORLANDO, FLORIDA 32803 (407) 843-5120	EXPRESSWAY AUTHORITY ORANGE COUNTY, FLORIDA	SHEET 1 OF 3	





CENTRAL FLORIDA EXPRESSWAY AUTHORITY SR 534 (OSCEOLA PARKWAY EXTENSION) PROJECT NO. 534-XXX PARCEL NO. 534-209 PURPOSE: LIMITED ACCESS RIGHT OF WAY ESTATE: FEE SIMPLE



#### **MEMORANDUM**

TO:	CFX Board Members
FROM:	للله Diego "Woody" Rodriguez, General Counsel
DATE:	January 21, 2022
SUBJECT:	Amended and Restated Right of Way Acquisition Agreement (East Segment) between the Central Florida Expressway Authority, Central Florida Property Holdings 500, LLC, Central Florida Property Holdings 600, LLC, and Springhead North, LLC Project No.: 599-2260

On December 12, 2019, the Central Florida Expressway Authority Board approved the acquisition of certain parcels by CFX and for the conveyance of certain conservation lands to CFX. Since that date, the parties have further refined the legal descriptions to be conveyed including identification of certain easements, bifurcated the project as having two segments located east and west of Narcoossee Road, and updated the appraised value to reflect the new reduced acreage which results in a reduction in the land acquisition costs to CFX. The proposed amended and restated agreements memorialize those changes.

Approval of the Amended and Restated Right of Way Acquisition Agreement (East Segment) between the Central Florida Expressway Authority, Central Florida Property Holdings 500, LLC, Central Florida Property Holdings 600, LLC, and Springhead North, LLC, is requested, subject to any minor or clerical revisions approved by the General Counsel or designee.

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



#### <u>AMENDED AND RESTATED</u> <u>RIGHT-OF-WAY ACQUISITION AGREEMENT</u> (East Segment)

THIS AMENDED AND RESTATED **RIGHT-OF-WAY ACQUISITION** AGREEMENT ("Agreement") is made and entered into as of the Effective Date (hereinafter defined), by and between CENTRAL FLORIDA PROPERTY HOLDINGS 500, LLC, a Florida limited liability company ("CFPH500"), and CENTRAL FLORIDA PROPERTY HOLDINGS 600, LLC, a Florida limited liability company ("CFPH600" and together with CFPH500 shall be referred to herein collectively as "SLR"), both whose address is 51 South Main Street, Suite 301, Salt Lake City, Utah 84111, SPRINGHEAD NORTH, LLC, a Florida limited liability company ("SHN" and together with CFPH500 and CFPH600 collectively referred to herein as the "Owners"), whose address is 6900 Tavistock Lakes Blvd., Suite 200, Orlando, Florida 32827, and CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and corporate and agency of the state, under the laws of the State of Florida, whose address is 4974 ORL Tower Road, Orlando, Florida 32807 ("CFX"), for the purposes and upon the terms expressly set forth herein. SLR, SHN, and CFX are sometimes collectively referred to herein as the "Parties" and individually as a "Party".

### WITNESETH:

WHEREAS, CFPH500 is the fee simple owner of that certain land located in Osceola County, Florida, as more particularly described or depicted on <u>Exhibit "A-1"</u> attached hereto and incorporated herein by reference (the "CFPH500 Property"); and

WHEREAS, CFPH600 is the fee simple owner of that certain land located in Osceola County, Florida, as more particularly described or depicted on <u>Exhibit "A-2"</u> attached hereto and incorporated herein by reference (the "CFPH600 Property"); and

WHEREAS, SHN is the fee simple owner of that certain land located in Orange County, Florida and Osceola County, Florida, as more particularly described or depicted on <u>Exhibit "A-3"</u> attached hereto and incorporated herein by reference (the "SHN Property" and together with the CFPH500 Property and the CFPH600 Property being referred to herein collectively as the "East Property"); and

WHEREAS, CFPH600 is the fee simple owner of that certain land located in Osceola County, Florida, as more particularly described or depicted on <u>Exhibit "B-1"</u> (the "TCE Easement Areas") and <u>Exhibit "B-2"</u> (the "Air Rights Easement Areas") attached hereto and incorporated herein by reference; and

**WHEREAS**, CFX was created pursuant to Part III, Chapter 348, Florida Statutes (the "CFX Act") to, among other things, construct, improve, maintain, and operate a limited access toll road known as the Central Florida Expressway System, 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, Osceola County (the "County"), CFX, and the Osceola County Expressway Authority ("OCX") previously entered into an Interlocal Agreement dated as of August 15, 2016 (the "Transition Agreement"), relating to various projects included in the OCX 2040 Master Plan, including extension of the Osceola Parkway from west of Boggy Creek Road to the proposed Northeast Connector Expressway, together with a proposed additional extension of Osceola Parkway commencing at the original terminus of the Osceola Parkway extension proposed in the OCX 2040 Master Plan and extending east approximately two miles to a point of intersection with a proposed new north-south arterial, which project is the subject of a project development and environment study conducted under FPID 432134-1-22-01, in Fiscal Year 2016/2017 (which entire extension project from west of Boggy Creek Road to the point of intersection with the new north-south arterial is known as FM #439193-1-38-01 and FM #439193-1-48-01), as re-evaluated by CFX and approved by the governing board of CFX on December 12, 2019 (the "Osceola Parkway Extension"); and

**WHEREAS**, County and CFX have entered into an Interlocal Agreement for Third-Party Funding as of February 20, 2018 and recorded April 6, 2018 under Document No. 20180205871 in the Public Records of Orange County, Florida (the "Funding Agreement"), which agreement was joined in for limited purposes by First American Title Insurance Company, a Florida corporation; and

WHEREAS, County, Lake Nona Land Company, LLC ("LNLC"), Lake Nona Research I, LLC ("LNR"), TDCP, LLC ("TDCP"), and SHN (SHN, LNLC, LNR, and TDCP shall be referred to herein collectively as "Tavistock"), SLR, and CFX entered into that certain Right-of-Way Acquisition Agreement with an effective date of December 17, 2019 (the "Original Agreement"), setting forth certain rights and obligations of the parties thereto for the right-of-way acquisition necessary for the construction of sections of the Osceola Parkway Extension; and

**WHEREAS**, commencing on December 17, 2019, CFX exercised its right to conduct any and all investigations, studies, examinations, surveys, and inspections reasonably necessary or desirable to determine the suitability of the East Property and SLR Easement Areas (hereinafter defined) for the Project in accordance with Section 6 of the Original Agreement; and

**WHEREAS**, of even date herewith, Tavistock, CFX, and the County have entered into that certain Amended, Restated, and Assigned Right-of-Way Acquisition Agreement (the "West Segment Roadway Agreement") amending, restating and assigning the Original Agreement with respect to the West Property and the Tavistock Easement Areas (as both terms are defined in the West Segment Roadway Agreement); and

WHEREAS, SLR, Tavistock East Holdings, LLC, and CFX have separately made and entered into that certain Agreement to Convey Conservation Lands with an effective date of December 17, 2019, as amended by that certain First Amendment to Agreement to Convey

Conservation Lands executed concurrently herewith (collectively, the "Conservation Lands Agreement"), whereby Tavistock East Holdings, LLC and SLR have agreed to convey their interests in certain Conservation Lands (as defined in the Conservation Lands Agreement) to offset potential impacts of that alignment of the Osceola Parkway Extension known as the Project Alignment (hereinafter defined); and

WHEREAS, on or about December 12, 2019, CFX recognized the alignment more particularly depicted in <u>Exhibit "C-1"</u> attached hereto and incorporated herein by reference as CFX's preferred alignment for the Osceola Parkway Extension ("Preferred Alignment"); and

**WHEREAS**, CFX has refined the boundaries of the Preferred Alignment based on further design and engineering efforts, which Project Alignment is substantially similar to, and does not substantially deviate in any material respect from, the Preferred Alignment; and

**WHEREAS**, the West Property and the East Property may be referred to herein collectively as the "Property" and the Tavistock Easement Areas and SLR Easement Areas may be referred to herein collectively as the "Easement Areas"; and

**WHEREAS**, CFX has identified the East Property and the SLR Easements (hereinafter defined) in the SLR Easement Areas as a necessary right-of-way for future construction and maintenance of the Project under the Funding Agreement; and

**WHEREAS**, CFX desires to purchase fee simple interest in the East Property and the SLR Easements in, over, upon and through the SLR Easement Areas, and the Owners desire to convey to CFX the East Property and SLR Easements, in lieu of condemnation, in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements herein set forth, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby expressly acknowledged by the Parties hereto, the Parties hereby covenant and agree that with respect to those provisions of the Original Agreement setting forth the terms and conditions for the conveyance and acquisition of the East Property and SLR Easements, the Original Agreement is hereby superseded and replaced entirely with this Agreement which provides as follows:

1. **<u>Recitals</u>**. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **Defined Terms.** Capitalized terms used in this Agreement (except for headings) shall have the meanings that appear when the terms are first set forth in quotation marks. Any capitalized terms not specifically defined herein shall have the meaning ascribed to them in the Conservation Lands Agreement. All of the defined terms contained in this Agreement may be used in the singular or the plural and, except as the context may require otherwise, shall mean when used in the plural all objects, persons, and the like included in the definition. In addition to all other defined terms contained in this Agreement, the terms listed below, except as the context may require otherwise, shall have the meanings provided therefor:

a. "Laws" shall mean the codes, ordinances, rules, regulations, policies, standards, and requirements of any federal, state, or local governmental or quasi-governmental authority having jurisdiction over the matters and projects contemplated in this Agreement.

b. "Permits" shall mean all permits, approvals, development orders, and other consents and authorizations of governmental authorities required for construction of the Project Alignment or any applicable component or portion thereof, in accordance with the Plans and with applicable Laws.

c. "Plans" shall mean the design, engineering, and construction plans, right-ofway maps, parcel sketches, legal descriptions, specifications, surveys, estimates of costs, construction schedules, and bid-ready documents for construction of the Project Alignment or any applicable component or portion thereof.

d. "Project Alignment" shall mean that portion of the Extension that requires the real property depicted on <u>Exhibit "A-1"</u> thru <u>Exhibit "A-3"</u> hereto and <u>Exhibits "A-1"</u> through <u>"A-3"</u> of the West Segment Roadway Agreement, all of which are depicted in <u>Exhibit "C-2"</u> attached hereto. Any and all references in the Original Agreement and Conservation Lands Agreement to the Split Oak Alignment, as referenced herein, shall refer to the Project Alignment.

3. **Property**. References in this Agreement to the "SLR Easement Areas" mean the TCE Easement Areas and the Air Rights Easement Areas, collectively. Further, references herein to the "SLR Easements" mean the easements and other rights affecting the SLR Easement Areas created by the easement instruments prescribed by this Agreement. CFX will consult with the Owners in establishing the final legal descriptions of the East Property and SLR Easement Areas. CFX, or CFX's designee, at its expense, shall prepare legal descriptions of the East Property and SLR Easement Areas, subject to review and approval by CFX and Owners, such approval not to be unreasonably withheld, conditioned, or delayed. The legal descriptions shall be prepared in accordance with the Section below titled "Survey."

4. **Agreement to Buy and Sell**. Owners agree to sell, grant, or convey to CFX and CFX agrees to purchase, receive, or accept from the Owners the East Property and SLR Easements in lieu of condemnation, in the manner and upon the terms and conditions herein below set forth in this Agreement. By way of clarification, CFX shall have no right to purchase some of the East Property and SLR Easements without purchasing all of the East Property and SLR Easements. Further, the Closing in Escrow (hereinafter defined) of the East Property and the SLR Easements under this Agreement is expressly contingent upon the simultaneous closing of the West Property and the granting of Tavistock's easements ("Tavistock's Easements") under the West Segment Roadway Agreement, and on the simultaneous closing in escrow of the Conservation Lands in accordance with the Conservation Lands Agreement. Notwithstanding the foregoing, the Parties agree and acknowledge that the purchase of the East Property shall include transfer of fee simple ownership to CFX, and purchase or granting of the SLR Easements shall consist of the grant of easement interests and rights in the SLR Easement Areas in accordance with terms and conditions set forth herein.

5. **Parties**. All Parties to this Agreement hereby acknowledge that the terms contained in Section 20.055(5), Florida Statutes, may apply to this Agreement to the extent required by said statute. The Parties hereby agree to comply with this subsection of Florida Statutes.

# 6. <u>Purchase Price</u>.

a. Subject to the terms and conditions set forth in this Agreement, in consideration for conveyance of the East Property and the SLR Easements, CFX shall deliver to the Escrow Agent (hereinafter defined) at Closing in Escrow and only in the event of Closing in Escrow, to be held in escrow for the benefit of the Owners in accordance with the terms of the Escrow Agreement (hereinafter defined) the sum of Nine Million Nine Hundred Forty-Six Thousand and No/100 United States Dollars (\$9,946,000.00) (the "Purchase Price"). The Purchase Price shall be paid by federal wire transfer of immediate funds, adjusted for appropriate credits, adjustments and prorations as herein below provided, and represents the full compensation to the Owners for the East Property, the SLR Easements and for any damages suffered by the Owners and/or any adjoining property owned by the Owners in connection with the transaction contemplated under this Agreement, including, without limitation, severance damages to the Owners' remaining property, business damages, consequential damages, any other damages whatsoever, together with interest, if any.

b. The Purchase Price is premised upon the East Property being comprised of approximately 141.79 acres in the aggregate of fee simple interest and approximately 2.3 acres for the Air Rights Easements (hereinafter defined).

# 7. CFX's Right of Inspection.

Right of Inspection. The Parties acknowledge that CFX has exercised its a. right to conduct any and all investigations, studies, examinations, surveys, and inspections reasonably necessary or desirable to determine the suitability of the East Property and SLR Easement Areas for the Project in accordance with Section 6 of the Original Agreement since December 12, 2019. CFX shall at all times prior to the scheduled date of Closing in Escrow have the privilege of going upon the East Property and the SLR Easement Areas with its agents and engineers as needed to inspect, examine, survey and otherwise undertake those actions which CFX, in its discretion, deems reasonably necessary or desirable to determine the suitability of the East Property and SLR Easement Areas for the Project; provided, however, no invasive testing or Phase 2 environmental site assessments shall be permitted without the prior written consent of the Owners of the lands to be impacted by the Phase 2 environmental testing in accordance with subsection 7.b. hereof. Said privilege shall include, without limitation, the right to make surveys, soils tests, borings, percolation tests, compaction tests, environmental tests (other than Phase 2 testing), and tests to obtain any other information relating to the surface, subsurface (excluding invasive investigations) and topographic conditions of the East Property. CFX shall enter the East Property and SLR Easement Areas at its sole risk, and CFX hereby releases the Owners from any claims relating to the physical condition of the East Property and SLR Easement Areas, or to the entry thereon by CFX. CFX shall exercise its rights hereunder so as to minimize damage to the East Property and SLR Easement Areas and to avoid materially adverse impact on the Owners' uses thereof while allowing CFX, its assignee or designee, to obtain the necessary information.

Environmental Site Assessment. The Parties agree and acknowledge that the b. Owners have previously provided to CFX the following environmental site assessments prepared by PSI Environmental Services, Inc.: (i) that certain Phase I Environmental Site Assessment dated November 13, 2015 under Project Number 06632550; (ii) that certain Phase I Environmental Site Assessment dated August 31, 2017 under Project Number 06633436; and (iii) that certain Phase I Environmental Site Assessment dated November 8, 2018 under Project Number 06633823 and 06634193 (collectively, the "Environmental Studies"). CFX acknowledges it has each received and reviewed the Environmental Studies as to the suitability of the East Property for the Project Alignment and its Intended Use (as defined herein). CFX, at CFX's sole cost and expense, may obtain any updates to any Environmental Studies conducted six (6) or more months prior to the Effective Date. To the extent the Environmental Studies do not cover all of the East Property, CFX may, in its sole discretion and at its sole cost and expense, conduct a Phase I Environmental Site Assessment of the East Property ("Phase I") to determine the likelihood of the East Property containing any hazardous or toxic substances, wastes, materials, pollutants or contaminants. As used herein, "Hazardous Substances" shall mean and include all hazardous and toxic substances, wastes or materials, any pollutants or contaminates (including, without limitation, asbestos and raw materials which include hazardous components), or other similar substances, or materials which are included under or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or clean-up, including, without limitation, "CERCLA", "RCRA", or state superlien or environmental clean-up statutes (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). In the event CFX determines, in its sole and absolute discretion, that the Phase I, prior Environmental Studies, or any Follow-up Assessment is not satisfactory, or otherwise deems the East Property or the SLR Easement Areas unsuitable for the Project, CFX may terminate this Agreement no later than fifteen (15) days from the Effective Date (the "Inspection Deadline") upon which all Parties shall be relieved of all further obligations hereunder, other than obligations which, by the express terms of this Agreement, survive the Closing in Escrow or the termination of this Agreement. In the event CFX has not delivered written notice of termination to the Owners by 5:00 p.m., local Orlando time, on or before the Inspection Deadline, then CFX shall be deemed to have waived its right to terminate under this Section 7.b.

CFX shall not conduct a Phase II Environmental Site Assessment, or any other environmental review more intrusive than the Phase I (a "Follow-up Assessment"), without first obtaining each affected Owners' written consents, which consents the Owners shall have the unconditional right to refuse. If the Owners elect to allow a Follow-up Assessment, the scope and other details thereof shall be subject to the applicable Owners' prior written approval exercised in such Owners' sole discretion. Further, if the applicable Owners authorize a Follow-up Assessment, such Owners shall have the right in their discretion to elect to perform the Follow-up Assessment (in lieu of CFX doing so), still at CFX's cost. If the Owners so elect to perform the Follow-up Assessment, the Owners shall have the right in their discretion to keep confidential, even from CFX, the results thereof. If Owners elect to keep those results confidential from CFX, then CFX shall have the right to terminate this Agreement at any time within ten (10) days after receipt of Owners' written notice of election to keep the results of the Follow-up Assessment confidential. In the event of such a termination, the Parties will be relieved of their respective obligations under this Agreement other than those obligations the Parties agree survive such a termination. If CFX fails to deliver written notice of termination to the Owners by 5:00 p.m., local Orlando time, on or before the expiration

of the permitted 10-day period to elect to terminate this Agreement, CFX shall have forfeited the right to terminate.

c. <u>Termination</u>. In the event CFX elects to exercise its right to terminate this Agreement pursuant to the provisions of this Section 7, such election must be exercised by providing written notice of the election to Owners (the "Termination Notice"), which Termination Notice must be timely provided (pursuant to the Notices provisions in Section 21 hereof) prior to the then-scheduled Escrow Date (hereinafter defined) or such other deadline which is expressly stated herein.

d. <u>Payment for Inspections</u>. CFX shall pay for all work and inspections performed by CFX, or on behalf of CFX, on or in connection with the East Property and the SLR Easement Areas, and shall not permit the filing of any lien against the East Property or SLR Easement Areas (or any portion of either) in favor of any contractor, materialman, mechanic, surveyor, architect, engineer, laborer, or any other lienor performing services or supplying materials to the East Property or the SLR Easement Areas on CFX's behalf or at CFX's request. This subsection shall survive Closing in Escrow, release of the Closing Deliveries (hereinafter defined) and recording of the Deeds, and termination of this Agreement, whatever the reason for termination.

Protection of Owners. CFX shall maintain, and shall cause each of their e. contractors performing work on the East Property or the SLR Easement Areas on their behalf, to maintain, a policy or policies of commercial general liability insurance, with a combined single limit of not less than \$1,000,000 and \$2,500,000 in the aggregate protecting the Owners from claims, actions, losses, and liability relating to entries by or on behalf of CFX onto the East Property or the SLR Easement Areas. This policy shall name the Owners and their officers, directors, employees, and agents as additional insureds. This policy shall be underwritten by an insurance company meeting the Owners' reasonable approval. CFX, or its contractors, shall deliver to the Owners a certificate or other evidence of such insurance before entering onto, or causing entry by another onto, the East Property or the SLR Easement Areas. CFX, as a condition of exercising its right of entry hereunder, agrees to protect and indemnify the Owners with respect to liens, claims, expenses, damages, losses, obligations, and liabilities resulting from the exercise by CFX, or any of its agents, of this right of entry. Nothing contained herein shall be deemed a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes. Without waiving its right to sovereign immunity as provided in Section 768.28, Florida Statutes, CFX (but not its contractors) may elect to self-insure for general liability with coverage limits as set forth in Section 768.28, Florida Statutes, and shall provide an affidavit or certificate of insurance evidencing self-insurance commercial insurance for up to sovereign immunity limits and the Owners agree to accept such insurance with regard to CFX. This subsection shall survive Closing in Escrow, release of the Closing Deliveries and recording of the Deeds, and termination of this Agreement, whatever the reason for termination.

8. **Evidence of Title.** No later than twenty (20) days before Closing in Escrow, CFX, or CFX's designee or assignee, may obtain, at CFX's sole cost and expense, a commitment or commitments for a policy of Owners' Title Insurance (the "Commitment") based on the legal descriptions obtained by CFX, or CFX's designee or assignee, in accordance with Section 9 hereof, which shall be written on a nationally recognized title company of CFX's choosing (the "Title Company"). CFX will deliver (or will cause the Title Company to deliver) copies of the

Commitment and all documents constituting the exceptions referred to in the Commitment to the Owners. The Commitment shall bind the Title Company to deliver to CFX a policy of Owners' Title Insurance which shall insure CFX's title to the East Property (and, if desired, any beneficial easements) in an amount equal to the Purchase Price. CFX shall have five (5) days from the date of receipt of the latter of the Commitment or the Survey (as defined below) to examine the Commitment and Survey and notify Owners in writing of any defects, a defect being a matter which would render title unmarketable or render the East Property unsuitable, in CFX's reasonable discretion, for the Project. The applicable Owners shall have ten (10) days from receipt of notice of the title defect (the "Title Curative Period") within which to remove (or notify CFX of any Owners' refusal to remove) such defect(s), and if an Owner is unsuccessful in removing, or elects not to remove, the same within said time period, CFX shall have the option as its sole and exclusive remedy of: (i) accepting title as it then is without reduction in Purchase Price; or (ii) terminating this Agreement, whereupon each Party shall then be released of all further obligations hereunder, which option shall be made in writing within three (3) days after the expiration of the Title Curative Period. The Owners shall have no obligation to, and in their sole discretion may elect not to, undertake removal of any or all title defects identified in CFX's notice of title defects, except to the extent such defect relates to a mortgage, lien, taxes, charges, or assessments on the East Property, or any portion thereof. The Owners' failure (or refusal) to correct a defect shall not constitute a default by the Owners. This obligation does not obligate the Owners to spend in excess of Ten Thousand and No/100 Dollars (\$10,0000.00) (in the aggregate and not per individual Owner) to resolve said defects, except to the extent such defect relates to a mortgage, lien, taxes, charges, or assessments on the East Property, SLR Easement Areas, or any portion thereof. In the event any of the foregoing time periods extend beyond the Escrow Date, the Escrow Date shall extend accordingly. Those matters reflected in the Commitment and Survey and accepted in writing (or deemed accepted) by CFX, shall be deemed and collectively referred to herein as the "Permitted Exceptions". Additionally, the Permitted Exceptions shall include the SLR Easements expressly contemplated hereunder to be recorded at or prior to Closing in Escrow (the "Pending Easements"). In the event CFX elects to obtain a Survey, the lands to be encumbered at Closing in Escrow by the Pending Easements shall be described and depicted on the Survey. CFX shall take title to the East Property subject to the Permitted Exceptions. At Closing in Escrow, CFX shall pay the premium for the Owners' Title Insurance Policy (including any endorsements thereto) to be issued.

9. **Survey.** No later than twenty (20) days before Closing in Escrow, CFX may have the East Property and SLR Easement Areas (if desired) surveyed at its sole cost and expense (the "Survey"). If CFX elects to obtain a Survey, the Survey shall be performed and certified to the Owners, CFX, and the Title Company issuing the Commitment in accordance with applicable law, statutes and regulations and shall have located thereon all matters listed in the Commitment which are capable of being shown on a survey. Pursuant to Section 8 above, CFX, or CFX's designee or assignee, may object to Survey conditions, which shall then be treated as title exceptions and cured, or not cured, as applicable, in accordance with the Section 8 above. In lieu of obtaining a boundary survey, the CFX, or CFX's designee or assignee, may elect to prepare, or have prepared on its behalf, certified legal descriptions and sketches of the East Property and SLR Easement Areas. Because of the need for legal descriptions at Closing in Escrow, CFX shall obtain at its expense either the Survey or the certified legal descriptions and sketches. The surveyor shall provide certified legal descriptions and sketches of said descriptions delineating the East Property and SLR Easement Areas into various portions of right of way (separated by ownership) and the

legal descriptions will be included in the easement agreements executed and delivered at Closing in Escrow by Owners in addition to the Deeds (as defined below). Upon request of CFX, the legal description from such Survey or sketch and description shall be substituted in the Deeds or applicable easement agreements conveying, or granting an easement over, the East Property or SLR Easement Areas at Closing in Escrow, subject to Owners' reasonable approval of that legal description. No later than twenty (20) days before Closing in Escrow, CFX shall provide the Owners with complete and accurate legal descriptions of the East Property and SLR Easement Areas for review and approval within ten (10) days. If the Owners do not object to the legal descriptions within said ten (10) day period, the legal descriptions shall be deemed approved by the applicable Owners. Once approved by the Owners, the legal description shall be included in the documents signed at Closing in Escrow. In the event CFX does not obtain a current Survey of the East Property and/or the SLR Easement Areas, then the standard survey exceptions will not be removed from the title policies. Further, CFX acknowledges and agrees that the title policies may include specific survey exceptions based on the Survey.

# 10. <u>Conditions Precedent to Obligation to Close</u>.

a. <u>CFX's Conditions to Close</u>. CFX's obligation to purchase the East Property and the SLR Easements shall be expressly conditioned upon the fulfillment of each of the following conditions precedent (collectively, the "CFX's Conditions to Close") on or before the date or dates hereinafter specifically provided and in no event later than the Escrow Date:

i. The representations, warranties and covenants of the Owners contained in this Agreement shall be true and correct as of the Escrow Date in all material respects.

ii. Owners shall have performed and complied with all covenants and agreements contained herein which are to be performed and complied with by Owners at or prior to the Closing in Escrow.

iii. The Title Company is unconditionally bound to issue the owner's title insurance policy in favor of CFX in the full amount of the Purchase Price, subject only to the Permitted Exceptions.

iv. The East Property or SLR Easement Areas shall not have been materially affected by any legislative or regulatory change, or any flood, accident or other materially adverse event that would prevent or prohibit the use of the East Property for the Project.

v. CFX and Owners shall have mutually agreed upon the form, manner, location and content of the easement agreements conveying the SLR Easements and the Drainage Easement (hereinafter defined).

vi. Owners shall, at Owners' cost and expense, exempt (or shall cause the Property to be exempt) from any assessments levied by the CDD, or any homeowners association or property owners' association applicable to the East Property.

vii. CFX and Owners shall have mutually agreed upon the form, content and manner of the Notice of Temporary Licenses (hereinafter defined).

b. <u>Owners' Conditions to Close</u>. Owners' obligation to sell the East Property and the SLR Easements shall be expressly conditioned upon the fulfillment of each of the following conditions precedent (collectively, the "Owners' Conditions to Close" and together with CFX's Conditions to Close being referred to herein as the "Conditions to Closing" or "Conditions to Close") on or before the date or dates hereinafter specifically provided and in no event later than the Escrow Date:

(i) The representations, warranties and covenants of CFX contained in this Agreement shall be true and correct as of the Escrow Date in all material respects.

(ii) CFX shall have performed and complied with all covenants and agreements contained herein which are to be performed and complied with by CFX at or prior to the Escrow Date.

(iii) The East Property and SLR Easement Areas shall not have been materially affected by any legislative or regulatory change, or any flood, accident or other materially adverse event that would prevent or prohibit the use of the East Property for the Project.

(iv) CFX and Owners shall have mutually agreed upon the form, content and manner of the Notice of Temporary Licenses.

(v) CFX and Owners shall have mutually agreed upon the form, manner, location and content of the easement agreements conveying the SLR Easements and the Drainage Easement.

c. The Parties shall exercise commercially reasonable, diligent and good faith efforts to cause their respective Conditions to Close to be satisfied and to remain satisfied from the Escrow Date to the Release Date. The Parties may at any time or times on or before Closing in Escrow, at each of their election, subject to restrictions of law, waive any of the foregoing conditions to its obligations hereunder and the consummation of such sale, but any such waiver shall be effective only if contained in writing signed by CFX and delivered to Owners or vice versa, as to the applicable Conditions to Closing.

d. In the event any of the foregoing Conditions to Closing or other conditions to this Agreement are not fulfilled or waived by the applicable Parties prior to the date of Closing in Escrow, the Party who is benefited by such Conditions to Closing may elect, as its sole and exclusive remedy, to: (i) terminate this Agreement, (ii) waive any outstanding Conditions to Close and proceed to Closing in Escrow without adjustment to the Purchase Price; or (iii) waive any of the Conditions to Close and, if and to the extent applicable and provided that the Parties mutually agree to the form and content, enter into a post-closing agreement or escrow agreement establishing a time certain to complete the unfinished conditions ("Post Closing Conditions") and the provision of a method to financially secure any Post Closing Conditions ("Post Closing Agreement").

# 11. Escrow Date and Closing Procedures and Requirements.

a. <u>Escrow Date</u>. The closing in escrow of the purchase and sale contemplated under this Agreement (the "Closing in Escrow") shall be held on or before thirty (30) days from the expiration of the Inspection Deadline, or such earlier date selected by CFX by providing not less than ten (10) days' prior written notice to Owners but in no event later than March 31, 2022 (the "Escrow Date"), at the offices of CFX, or CFX's attorney, by mail or courier, or any other place which is mutually acceptable to the Parties.

b. <u>Closing Concurrent with Conservation Lands</u>. Unless otherwise subsequently mutually agreed upon in writing by the Parties, the lands conveyed under this Agreement, the Conservation Lands Agreement, and the West Segment Roadway Agreement will all close in escrow or close, as applicable, on the Escrow Date; provided, however, the Parties acknowledge and agree that the Purchase Price, deeds, conservation easements, and other closing documents for the East Property, SLR Easement Areas, and Conservation Lands shall be held in escrow, pursuant to the terms of an escrow agreement, until the Construction Contingencies (hereinafter defined) and the Conservation Lands Contingencies and Additional Contingencies, as defined in the Conservation Lands Agreement, and any other additional contingencies set forth in the Escrow Agreement have been satisfied. Accordingly, by way of clarification and notwithstanding any conflicting provision of this Agreement, the Closing in Escrow under this Agreement and the Conservation Lands Agreement will be effective as of the Release Date.

Delivery of Possession. Title to the fee simple interests in the East Property c. and the SLR Easements in the SLR Easement Areas shall transfer to CFX upon satisfaction of the Construction Contingencies and any other additional contingencies set forth in and in accordance with the terms and conditions of the Escrow Agreement, unless otherwise mutually agreed upon by the Parties ("Release Date") and, on or before said Release Date, the Owners shall abandon and vacate the East Property and shall remove all personal property not included in this transaction that the Owners intend to remove from the East Property and for which CFX has not paid the Owners as part of the Closing in Escrow (except as otherwise provided in any licenses and leases included in the Permitted Exceptions). Except as otherwise provided in the Permitted Exceptions, the Owners shall surrender possession of the East Property to CFX as of the Release Date free of any tenancies, sub-tenancies, or encumbrances, or by separate agreement of the Parties entered into prior to the Escrow Date. Except as otherwise expressly set forth herein or in the Escrow Agreement, the Owners shall not enter into any agreements for any tenancies, sub-tenancies, or encumbrances, or other agreements impacting the East Property or SLR Easements between the Closing in Escrow and Release Date. Except as otherwise provided in any licenses and leases included in the Permitted Exceptions, any personal property or fixtures left by the Owners upon the East Property after the Release Date shall be presumed to be abandoned, and CFX will have the right to remove and destroy such property or fixtures without any responsibility or liability to any applicable Owners for any damages or claims whatsoever.

d. <u>Prorating of Taxes and Assessments</u>. Owners shall pay all taxes, assessments, and charges applicable to the East Property for the period of time prior to the Release Date. All such taxes, assessments and charges shall be prorated as of the Release Date. At or prior to the Release Date, Owners will pay to CFX or the closing agent, by credit to the Purchase Price or otherwise, Owners' pro rata share of all taxes, assessments and charges as determined by the applicable taxing governmental authorities against the East Property and shall comply with the provisions of Section 196.295, Florida Statutes.

e. <u>Closing Costs</u>. CFX shall, at Closing in Escrow, deliver to the Escrow Agent: (i) the cost of recording the Deeds delivered hereunder and the easements agreements to

grant the SLR Easements; (ii) all costs pertaining to the Commitment, including, but not limited to, title insurance premiums, title search fees, and the premiums for any endorsements requested by CFX, and all costs related to the issuance of the Commitment and a title insurance policy insuring title to the East Property, should CFX desire to obtain a title insurance policy on the East Property; (iii) all of the costs and expenses associated with the Survey or the sketch and legal descriptions, as applicable; and (iv) any and all cost and expenses associated with its inspections including, without limitation, recertifying and updating the Environmental Studies and Follow-up Assessments. All other costs incurred at Closing in Escrow shall be borne by the Parties in accordance with the custom and usage in the applicable county where the land is located. The Parties anticipate the conveyance of the East Property will be exempt from documentary stamp taxes as a conveyance in lieu of condemnation. (See Section 1 2B-4.014(13), F.A.C.). If the Florida Department of Revenue or any authority with jurisdiction shall determine documentary stamp taxes must be paid on the conveyance of the East Property, the Owners shall pay the documentary stamp taxes to the Title Company, as the escrow agent under the Escrow Agreement ("Escrow Agent"), which amount shall be disbursed by the Escrow Agent upon the release of Closing Deliveries from escrow on the Release Date.

General Closing Documents. At the Closing in Escrow, the Owners shall f. sign and provide to CFX the Deed(s) conveying fee simple interest in the East Property, the easement agreements conveying the SLR Easements set forth herein in accordance with the terms hereof, a closing statement, an Owners' affidavit sufficient to allow the Title Company to delete the applicable standard exceptions from the title policy, including matters referenced in Section 627.7842(1)(b) and (c), Florida Statutes, and an affidavit that such Owners is not a foreign person for purposes of the Foreign Investment in Real Property Tax Act (FIRPTA), as revised by the Deficit Reduction Act of 1984 and as same may be amended from time to time (which certificates shall include such Owners' taxpayer identification numbers and address or a withholding certificate from the Internal Revenue Service stating that such Owners is exempt from withholding tax on the Purchase Price under FIRPTA), an appropriate resolution authorizing the such Owners to engage in the transaction, and such other documents as are necessary to complete the transaction as contemplated herein. If, at the time of Closing in Escrow, any Owners holds title to the East Property in the form of a partnership, limited partnership, corporation, limited liability company, trust, or any form of representative capacity whatsoever, then at Closing in Escrow such Owners shall sign a Beneficial Interest Affidavit described in Section 286.23, Florida Statutes, as applicable (a copy of which is attached hereto as **Exhibit "D"**). Each Party shall also sign and deliver such additional documents, and take such other actions, as may be necessary or appropriate to implement or perform provisions of this Agreement and allow the Title Company to insure CFX's title in and to the East Property (and, if desired, any beneficial easements). Each closing document will be consistent with and will implement applicable provisions of this Agreement, and the form and content shall be subject to the reasonable approval of the Parties.

g. <u>Legal Descriptions</u>. The Parties understand and agree that the legal descriptions of the East Property and the SLR Easements may not be finalized until the design for the Project is completed or until the future development of Owners' adjacent lands is designed and permitted. As such, in the event the legal descriptions attached to the Deeds or the easements agreements granting the SLR Easements need to be modified after the Escrow Date or the Release Date, the Parties shall cooperate and work in good faith to execute any and all documents reasonably necessary to accommodate the revisions to the legal description and any closing documents required

to effectuate the revisions to the legal descriptions, provided; however, in no event shall CFX, or CFX's successor in interest, be required to accept, in its sole and absolute discretion, a decrease in the total acreage of the East Property or SLR Easements without compensation therefor, or otherwise incur any additional costs or expenses, directly or indirectly, to revise the legal descriptions, including, without limitation, costs and expenses for the (i) preparation of additional sketch and legal descriptions, surveys or closing documents, (ii) recording the deeds, easements agreements or any documents required to revise the legal descriptions; and (iii) title search and commitment fees, or title insurance premiums to update the title policies. The Owners understand and acknowledge that once the Project is under design, any revisions to the legal descriptions for the Project will potentially require a redesign of the Project. In the event the Owners request to revise the legal descriptions for the East Property or SLR Easement Areas subsequent to CFX advertising for the design of the Project, the Owners agree to pay any and all costs required to redesign the Project to account for the revisions to the legal descriptions of the East Property and SLR Easement Areas. This clause survives Closing in Escrow, release of the Closing Deliveries on the Release Date, and is enforceable by specific performance, in addition to other appropriate remedies.

### 12. <u>Conveyance of Title</u>.

a. At the Closing in Escrow, Owners shall execute and deliver to the Escrow Agent in favor of CFX a Special Warranty Deed for their respective portions of the East Property (collectively, the "Deeds") conveying fee simple record title of the East Property to CFX, free and clear of all liens, outstanding general and special assessments, easements, reservations, restrictions and encumbrances whatsoever except for the Permitted Exceptions and other title exceptions to which CFX has not objected or which CFX has agreed to accept pursuant to Section 8.

b. <u>Use Restriction and Alternate Use Restriction</u>. The Deeds will contain a restrictive covenant limiting use of the East Property in substantially the following form ("Use Restriction"):

"Use of the East Property shall be restricted and limited to construction, maintenance, repair, replacement, and operation of a limited access highway (the "Primary Use") and such other public transit or transportation facility or other public transit or transportation use ancillary to or in support of the Primary Use which is reasonably approved by the governing board of CFX (the "Ancillary Use" and together with the Primary Use referred to herein collectively as the "Permitted Use"). No Ancillary Use shall at any time be permitted in the absence of, or in lieu of, the Primary Use. Concurrent with a Permitted Use (but not before or in lieu thereof), use of the East Property may also include stormwater management ponds and facilities, lighting, landscaping, and underground (unless otherwise located on the bridge structures) public utilities, and communications facilities and other improvements and facilities appurtenant to and otherwise in support of the Permitted Use (collectively, the "Ancillary Facilities"); provided, however, (a) CFX and CFX's successors in interest or assigns, shall not, without prior written consent of the Owners, authorize use of the East Property for communications facilities providing service to any lands lying within the Lake Nona Planned Development (as generally described in that certain Ordinance of the City of Orlando, Florida, adopted by the City Council on December 10, 2018 under Document Number 1812101204, as reflected in that certain Municipal Planning Board Staff Report dated July 16, 2019 under ZON2019-10015, as amended by that certain Municipal Planning Board Staff Report approved on September 8, 2020 under ZON2019-10035, and that certain Ordinance No. 2021-46 of the City of Orlando, Florida, adopted by the City Council on July 19, 2021 under Document Number 2107191204), and (b) in no event shall the East Property be used for high-speed air mobility transportation facilities or similar uses. The East Property shall not be used for any other purposes or uses whatsoever. This restriction will run with title to the East Property for a term of fifty (50) years from the date and time of recording of this Special Warranty Deed, as it may be extended automatically as expressly provided herein (the "Term") and be enforceable by Owner and its successors in interest, and assigns, in perpetuity. The persons and entities from time to time entitled to enforce this Use Restriction may do so by invoking all remedies at law and in equity, including without implied limitation specific performance and injunction.

In the event CFX fails to complete the construction of the East Segment (as defined herein) on or prior to the East Segment Completion Deadline (as defined herein), subject to delays caused by any Force Majeure Event (as defined herein); or (2) if during the Term, the East Property, or any portion thereof, ceases on a permanent basis to be used for the Primary Use (collectively, a "Repurchase Event"), the Owners may elect to pursue any remedies available at law or in equity, and each Owner(s) who transferred the East Property and SLR Easements (or applicable portions thereof) to the CFX shall have the assignable right to repurchase the portion of the East Property (together with the appurtenant SLR Easements or the applicable portion thereof) conveyed by that Owner (either entirely or with respect only to the portion thereof that ceases to be so used) at a purchase price equal to the original purchase price paid by CFX therefor (the "Right of Repurchase"). To the extent only a portion of the East Property ceases to be used for the Primary Use, the Owners will allocate the purchase price for the Right of Repurchase over the portions of the East Property and the SLR Easements based on the original allocation of purchase price determined by the Owners at Closing in Escrow and mutually agreed upon by the CFX at Closing in Escrow pursuant to this Agreement. CFX and its successors in interest shall promptly notify the Owners in writing of the occurrence of a Repurchase Event ("Notice of Repurchase Event"). Notwithstanding the foregoing, in the event one or more of the Construction Contingencies have not been satisfied, or cannot be satisfied by the Construction Contingencies Deadline (as it may be extended pursuant to Section 13.c below), regardless of whether such Construction Contingencies Deadline has passed, after good faith and diligent efforts of CFX or its successors in interest, CFX or its successors in interest may, but are not obligated to, provide a Notice of Repurchase Event to the Owners. No later than one thousand ninety-five (1,095) days from receipt of such Notice of Repurchase Event (the "Repurchase Period"), the applicable Owner(s) shall notify CFX or CFX's successors in interest, in writing, of its intent to exercise its Right of Repurchase (the "Repurchase Notice"). In no event shall the Owners be permitted to purchase only a portion or segment of the East Property and appurtenant Easements (or the applicable portion thereof) without the express written consent of CFX or its successors in interest. In the event one or more of the Owners elects to repurchase the East Property and SLR Easements ("Electing Owners") and one or more Owners is unable or unwilling to repurchase the East Property and SLR Easements, the Electing Owners, or their assignees, shall be required to repurchase all of the East Property and SLR Easements unless otherwise waived in writing by CFX or its successors in interest. Within thirty (30) days of CFX or CFX's successors in interest receipt of the Repurchase Notice, the parties shall negotiate in good faith to enter into a repurchase agreement based on the customary and standard terms for an arm's length transaction of this nature, or if such repurchase agreement cannot be agreed upon in form then the parties shall use the then current FARBAR form commercial contract; provided, however, subject to the conditions and requirements hereof: (i) the applicable Owner(s) will accept the

physical condition of the East Property and SLR Easements "as-is where-is" subject, however, to (a) the applicable Owner(s)' right to terminate or extinguish any easements benefiting CFX or other third-parties in anticipation of or in furtherance of the Permitted Use and any Ancillary Facilities, all of which shall be subordinate and subject to Owners' Right of Repurchase (b) CFX or CFX's successors in interest obligation to remove any monetary liens or encumbrances created by or through said party, and (c) the automatic release and termination of the Use Restriction; (ii) CFX or CFX's successor's in interest shall not be required to pay for any title insurance search or owners' policy or survey but shall be responsible for the costs of recording the deed, recording all title curative documents, transfer taxes, and any closing/escrow fees; (iii) CFX or CFX's successors in interest shall reconvey the East Property (or the applicable portion thereof) by special warranty deed and shall deliver exclusive possession thereof to the applicable Owner concurrently with the closing; and (iv) CFX shall prepare all documents related to the repurchase closing.

On an Owner's repurchase of any of the East Property pursuant to this Section, unless the Owner expressly agrees otherwise, title for the applicable portion of the East Property shall vest in the Owner free and clear of and unburdened by any matter to which the title was made subject after the original conveyance by Owners.

For purposes of this restriction, the East Property, or any portion thereof, shall be deemed permanently to cease being used for the Primary Use if once the limited access highway has opened to the general public for use, the highway or any lane or other portion thereof is closed to general public use for reasons other than temporary maintenance, repair, expansion, or upgrade for a period exceeding twenty-four (24) consecutive months. If CFX or its successors in interest at any time cease using the East Property, or any portion thereof, on a permanent basis as a limited access highway but fail in writing to so notify Owners, then Owners may at any time invoke any of the remedies provided in this deed, including, without implied limitation, the Right of Repurchase. The Use Restriction shall be prior and superior to all rights, titles, and other claims and interests granted, attaching, or otherwise affecting the East Property, or any portion thereof, after the date of this deed; and the Owners' taking title to the East Property (or applicable portion) through repurchase shall extinguish such rights, titles, claims, and interests without further action. The Owners' title for any portion of the East Property as a result of a repurchase shall not be subject to any such rights, titles, claims, and interests.

Notwithstanding the foregoing or anything contained herein, the Owners understand and acknowledge that CFX or its successors in interest will be required to maintain a minimum right-of-way width of 330 feet and minimum stormwater volume of 104 acre feet to operate a limited access highway and in no event shall the Owners, without the express written consent of CFX or its successors in interest be permitted to repurchase a portion of the East Property or SLR Easements that would result in a minimum right-of-way width of less than 330 feet and minimum stormwater volume of 104 acre feet, or that would otherwise impact CFX's or its successors in interest's ability to operate the limited access highway on the remaining portions of the East Property.

In the event the Owners fail to provide a Repurchase Notice within the Repurchase Period, the Use Restriction shall automatically expire and shall be of no further force and effect. In such event, at no cost or expense to the Owners, the Owners shall cooperate and work in good faith with CFX or its successors in interest, to modify any existing development orders, planned developments, or other governmental approvals to enable the use of the East Property for uses other

than the Permitted Use and Ancillary Facilities (the "Land Use Changes") provided that such Land Use Changes do not have an Adverse Impact (as defined herein) on any Owners or any of their successors in title or any of their affiliates or on adjacent real property owned by them. As used herein, the term "Adverse Impact" shall mean any consequence directly attributable to any Land Use Changes which consequence is materially adverse to the development, to the use, or to the cost of development or use, of any of the properties or improvements (existing or proposed) owned by Owners (or any one of them) or their successors in title or affiliates lying within one (1) mile of the boundary of the Lake Nona Planned Development and Sunbridge Planned Development (the "Adjacent Lands"), or to the entitlements, mitigation, capacity and/or vested rights under any land use approvals for the Adjacent Lands.

Subsequent to the expiration of the Use Restriction, in the event CFX or its successors in interest receive a bona fide offer from a third-party buyer for the purchase of the East Property, or any portion thereof, and if CFX or its successors in interest desires to accept said offer, CFX or its successors in interest shall cause said offer to be reduced to writing and shall deliver a complete and accurate copy of the bona fide third party offer to Owners, together with CFX's or its successors in interests' intent to accept the same ("Offer Notice"). The Owners shall have the right, but not the obligation, to repurchase that portion of the East Property identified in the Offer Notice, together with any appurtenant Easements (or the applicable portion thereof), upon the terms and at the price set forth in the Offer Notice ("ROFR"). The ROFR shall only be applicable to that Owner who is the predecessor in title to that portion of the East Property identified in the Offer Notice. The Owners shall have thirty (30) days from receipt of the Offer Notice to notify CFX or its successors in interest of Owners' intent to purchase that portion of the East Property identified in the Offer Notice. If all of the applicable Owners do not timely accept the Offer Notice, as-is and without modification, CFX or its successors in interest may proceed to sell the East Property and appurtenant Easements (or the applicable portion thereof) to the third-party buyer making the offer, and upon the closing of such sale, the Owners' ROFR set forth herein (as to the portions of the East Property contained in the Offer Notice) shall automatically extinguish and expire and shall be of no further force and effect as to any subsequent transfers of that portion of the East Property contained in the Offer Notice. If some but not all of the applicable Owners do not timely accept the Offer Notice, as-is and without modification, CFX or its successors in interest shall then be required to send a second 30-day notice to those Owner(s) who have accepted the Offer Notice providing them with an option to accept the Offer Notice on those portions of the East Property that were rejected by the other applicable Owners, and to the extent the Offer Notice is not accepted as to all of the East Property contained therein by such Owners, CFX or its successors in interest may proceed to sell the East Property and appurtenant Easements (or the applicable portion thereof) to the thirdparty buyer making the offer, and upon the closing of such sale, the Owners' ROFR set forth herein (as to the portions of the East Property contained in the Offer Notice) shall automatically extinguish and expire and shall be of no further force and effect as to any subsequent transfers of that portion of the East Property contained in the Offer Notice. In the event Owners accept the terms of the Offer Notice, Owners and CFX or its successors in interest shall proceed under a contract formed pursuant to the terms of the Offer Notice. With respect to any portion of the East Property, this ROFR shall only be effective as to the first transfer by CFX of the portion of the East Property that occurs subsequent to the expiration of the Use Restriction and will continue in effect with respect to all other portions until the first transfer thereof by CFX. In the event an Owner accepts the terms of the Offer Notice and acquires the East Property (or a portion thereof), unless the Owner expressly agrees otherwise, title for the East Property (or applicable portion) shall vest in the Owner free and

clear of and unburdened by any matter to which the title was made subject after the original conveyance thereof by Owners, all of such matters being subordinate and subject to the ROFR.

Notwithstanding anything contained herein to the contrary, if the East Segment Completion Deadline is extended due to a Force Majeure Event, then the Term of the Use Restrictions shall automatically be extended for an equal period of time."

c. Each Owner shall have the right from time to time, at such Owner's expense and as to such Owner's respective portion of the East Property, to install and maintain utility crossings perpendicular to the SR 417 right-of-way or Osceola Parkway Extension right-of-way in locations and configurations subject to CFX's prior written approval, not to be unreasonably withheld, conditioned or delayed, and pursuant to CFX's then standard right-of-way permits and procedures for utility crossings. The Owners' rights under this subsection shall survive Closing in Escrow and the release of the Closing Deliveries from escrow and be referenced in the Deeds.

The terms of this Section 12 shall survive Closing in Escrow and release of the Closing Deliveries from escrow and shall be incorporated in the Deeds and easements agreements granting the SLR Easements.

# 13. <u>Construction Contingencies and Right to Repurchase</u>.

Requirement to Design and Construct the Project. In the essence of time, a. no later than three (3) months from the later of (i) Closing in Escrow or (ii) satisfaction of all of the post closing conditions set forth in any post closing agreement for the West Property ("Deadline to Advertise"), CFX shall proceed with the advertisement for design of the first segment of the Project starting from SR 417 (including the Lake Nona Revised Interchange which shall be designed and constructed in order to accommodate the Ultimate Local Interchange) on the westerly end through to the easterly terminus approximately at the easterly right-of-way of Narcoossee Road (as depicted on Exhibit "E-1" and referred to herein as the "West Segment"). The Owners understand and acknowledge that CFX shall have the right to advertise for the design of the West Segment in one or more advertisements or phases, provided; however, in the event of multiple advertisements or phases, the first advertisement shall occur no later than the Deadline to Advertise. The Owners understand and acknowledge that CFX will advertise for the design of the second segment starting at the easterly right-of-way of Narcoossee Road on the westerly end through to the easterly terminus approximately at the easterly extension of Cyrils Drive (as depicted on Exhibit "E-2" and referred to herein as the "East Segment") within six (6) months of the satisfaction of the Construction Contingencies (hereinafter defined). Upon completion of design of the East Segment, CFX shall use good faith and diligent efforts to commence construction. Once construction has commenced, CFX shall use good faith and diligent efforts to complete construction of the East Segment no later than ten (10) years from the satisfaction (or waiver by CFX) of the Construction Contingencies, unless such deadline is otherwise mutually extended by the Parties hereto in writing ("East Segment Completion Deadline").

b. <u>Construction Contingencies</u>. Concurrent with the Closing in Escrow, Owners and CFX shall deliver to the Escrow Agent all closing documents and funds reasonably required by the Title Company to convey to CFX fee simple title to the East Property and the easement interests in the SLR Easement Areas, subject to the Use Restriction, and otherwise in accordance with this Agreement, as amended (which documents and funds are collectively referred to herein as the "Closing Deliveries"). The Parties agree to direct the Escrow Agent to hold the Closing Deliveries in escrow in accordance with the terms and conditions of an escrow agreement in substantially the form set forth in **Exhibit "F"** attached hereto and incorporated herein by reference ("Escrow Agreement"). The Escrow Agreement shall prescribe that release of the Closing Deliveries and recording of the Deeds are expressly contingent on satisfaction on or before ten (10) years after the Closing in Escrow (the "Construction Contingencies Deadline"), unless mutually extended or waived by CFX in accordance with the terms hereof, of the following conditions, in addition to such other conditions and requirements as are prescribed in the Escrow Agreement (collectively referred to as the "Construction Contingencies"):

(i) CFX's having secured from all applicable governmental authorities all Final Approvals (as defined herein) for any and all Permits and other authorizations for constructing and operating the East Segment of the Project Alignment including, without limitation, the County, Orange County, Florida, Florida Communities Trust, Florida Fish and Wildlife Commission and Florida Department of Environmental Protection. "Final Approvals" shall mean the issuance by all applicable governmental authorities for constructing and operating the East Segment within the Project Alignment, which approvals are either (1) affirmed on administrative and judicial review by final order of judgment for which no appeal is or can be taken in accordance with applicable Law, or (2) in effect beyond the period of limitations for administrative and judicial review in accordance with applicable Law, during which period no action or other proceeding is instituted for review or challenge thereof.

(ii) Final resolution of any challenges and appeals brought against those Permits or the designation of the East Segment of the Project Alignment for the Project;

(iii) CFX shall have completed the design of the West Segment of the Project, shall notify Owners it is prepared to advertise for the construction of the West Segment of the Project, and shall notify Owners it is prepared to advertise for the design of the East Segment of the Project;

(iv) Reimbursement by the Florida Department of Transportation ("FDOT") to the County for the purchase of the West Property and Tavistock Easements in the amount set forth in, and in accordance with the terms and conditions of, the Amendment to Joint Participation Agreement between the State of Florida Department of Transportation and Osceola County dated March 16, 2018 ("JPA"). If FDOT provides written notice at any time prior to the Construction Contingencies Deadline, as defined in the West Property ROW Agreement, that it will not fund the reimbursement of the purchase price for the West Property in accordance with the terms and conditions of the JPA, then this contingency shall be deemed unsatisfied. Notwithstanding the foregoing, CFX may, in its sole and absolute discretion, elect to waive this condition.

(v) CFX shall have secured any and all property rights reasonably required for the construction of the Project after using good faith and diligent efforts, which efforts shall include, without limitation, the exercise of CFX's power of eminent domain if deemed reasonably necessary in the sole discretion of the governing board of CFX.

(vi) The East Property and SLR Easements Areas, and the design, engineering, and construction of the Project, have not been materially, adversely impacted by a Force Majeure Event (as defined herein).

(vii) Satisfaction of any and all Post Closing Conditions set forth in any Post Closing Agreement or Escrow Agreement entered into by the Parties.

(viii) Any and all Conditions to Closing have been satisfied and shall be satisfied, true and correct, as of the Release Date in all material respects.

(ix) Adequate funding and/or financing is available to complete the East Segment as then planned and approved.

(x) Any and all Construction Contingencies set forth in the West Segment Roadway Agreement have been satisfied.

(xi) Release of the Conservation Lands deeds and other documents from escrow after satisfaction of the Construction Contingencies (i) through (x) above and of all Conservation Lands Contingencies set forth in the Conservation Lands Agreement.

### c. <u>Extension of Construction Contingencies Deadline</u>.

(i) <u>CFX's Right to Extend</u>. If, prior to the Construction Contingencies Deadline, CFX determines, after good faith and diligent efforts, there is a lack of available funds or financing to complete the East Segment as planned and approved, CFX shall have the right upon written notice to the Owners to extend the Construction Contingencies Deadline for two (2) periods of up to twelve (12) months each to enable CFX to secure such additional funds or financing needed. Further, CFX covenants and agrees: (x) to provide prompt written notice to Owners upon becoming aware of any funding or financing deficit and specifying the amount of said deficit, (y) to use commercially reasonable efforts to mitigate the effect of any funding or financing deficit, and (z) to continue to perform its other obligations hereunder.

(ii) <u>Owner's Right to Extend</u>. If despite the Parties' good faith and diligent efforts the Construction Contingencies are not satisfied ninety (90) days prior to the Construction Contingencies Deadline for any reason, the Owners shall have the unanimous, one-time right upon written notice to CFX to extend the Construction Contingencies Deadline up to, but not more than, sixty (60) months to a date that is mutually agreeable to CFX and Owners. If the Parties are unable to mutually agree upon the duration of the extension, the Construction Contingencies Deadline shall extend for sixty (60) months.

(iii) <u>Effect of Extension</u>. In the event the Construction Contingency Deadline is extended pursuant to subpart (i) or (ii) above, the Term of the Use Restriction shall be extended for an equal period of time.

e. <u>Release of Closing Deliveries</u>. In the event any of the Construction Contingencies in Section 13.b.(i) through (xi) is not satisfied on or before the Construction Contingencies Deadline, as it may have been extended pursuant to subpart c. above, then the Escrow Agent shall be authorized to release, return or destroy, as applicable, the Closing Deliveries in accordance with the terms and conditions set forth in the Escrow Agreement.

f. <u>Waiver of Construction Contingencies</u>. CFX has the right subject to Owners' mutual agreement, which shall not be unreasonably withheld, conditioned, or delayed to elect to waive one or more of the Construction Contingencies by providing written notice to the Owners and Escrow Agent of CFX's waiver of such Construction Contingencies. In the event CFX elects with Owners' consent to waive a Construction Contingency in accordance with this Section, CFX shall be required to concurrently waive the corresponding Conservation Lands Contingencies and release the Conservation Lands from escrow pursuant to, and as defined in, the Conservation Lands Agreement and escrow agreement entered into pursuant thereto. Notwithstanding the foregoing, in no event shall the East Property and SLR Easements or the Conservation Lands be released from escrow if any of the Construction Contingencies is not satisfied or waived as provided herein, or if any of the Conservation Lands Contingencies or Additional Contingencies prescribed in the Conservation Lands Agreement has not been satisfied or waived as provided herein.

g. <u>No Further Encumbrances</u>. From and after the Closing in Escrow until the later of (a) the expiration of the Construction Contingencies Deadline or the satisfaction of the Construction Contingencies whichever occurs first, or (b) the Release Date, Owners shall:

(a) keep and maintain the East Property in substantially in the condition it is in on the Escrow Date and will comply with and abide by all Laws and Permitted Exceptions affecting the East Property or its use.

(b) cause no waste or material alterations of the East Property.

pay all taxes and assessments relative to the East Property prior to the

due date thereof.

(c)

(d) shall not offer to sell, transfer, donate, or lease any of the East Property, or any interest therein or claim thereto, to any other person or entity or enter into any verbal or written agreement, understanding, or contract relating to the sale, lease or conveyance of any of the East Property or any interest therein.

(e) shall not encumber the East Property (or any portion thereof) in any manner except in accordance with the Use Restriction, except as mutually agreed upon by the Parties in writing.

h. <u>Incorporation into the Deeds</u>. The terms of this Section 13 shall survive Closing in Escrow and release of the Closing Deliveries from escrow and shall be incorporated into the Deeds and the easements agreements granting the SLR Easements by reference hereto.

i. <u>Commercially Reasonable Diligence</u>. CFX shall in good faith employ commercially reasonable diligence to satisfy the Construction Contingencies on or before the Construction Contingencies Deadline.

# 14. **Easements**.

TCE Easements. At or prior to Closing in Escrow, unless otherwise a. incorporated into a Post Closing Agreement, as part of the Project, CFPH600, or their successorsin-title shall grant to CFX one or more temporary construction and access easements (collectively, the "TCE Easements") over, upon, across, and through the TCE Easement Areas for the purpose of constructing the roadway portion of the Project and for constructing and excavating the offsite ponds serving the Project. The grant of the TCE Easements shall grant CFX the privilege, but not the obligation, at the sole risk of CFX, to enter upon the TCE Easement Areas for the purpose of constructing and installing the improvements, facilities and structures necessary for the operation of the Project, staging and storing materials, equipment and tools, locating a construction trailer, and parking, together with all incidental rights reasonably necessary for the use and enjoyment of the TCE Easements for its intended purposes. The right to use the TCE Easements may be extended by CFX to its customers, employees, and contractors. The form, manner, and content and location of the easement agreements for the TCE Easements shall be mutually agreed upon by the Parties no later than five (5) business days prior to the Closing in Escrow. The TCE Easements shall terminate upon the completion of the construction and/or excavation specified in the applicable TCE Easement agreements. The foregoing obligation shall expressly survive Closing in Escrow and release of the Closing Deliveries from escrow for a period of ten (10) years from the Release Date.

b. Air Rights Easement. CFPH600 is the fee simple owner of the Air Rights Easement Areas. At or prior to the Closing in Escrow, unless otherwise incorporated into a postclosing agreement, as part of the Project, CFPH600 shall grant in favor of CFX for the benefit of the Project perpetual non-exclusive air rights easements (the "Air Rights Easement(s)") over the Air Rights Easement Areas for the purposes stated below. The form, manner, content, and location of the Air Rights Easement(s) shall be mutually agreed upon by the Parties no later than five (5) business days prior to the Closing in Escrow. The grant of the Air Rights Easements shall grant CFX the privilege to enter upon the Air Rights Easement Areas for the purposes of designing, constructing, maintaining, operating and repairing the improvements and facilities for the Project, together with all incidental rights reasonably necessary for the use and enjoyment of the Air Rights Easement for its intended purposes. CFX shall maintain, at its sole cost and expense, the Air Rights Easements and the improvements constructed therein by CFX in good order and condition and will comply with and abide by all Laws and Permits affecting the Air Rights Easement Areas. The rights, duties and obligations of CFPH600 and CFX under this Section 14.b shall survive Closing in Escrow and release of the Closing Deliveries from escrow for a period of ten (10) years from the Release Date. The easement agreements granting the SLR Easements shall run with title to the SLR Easement Areas. CFPH600 and CFX shall have the right to enforce this Section 14.b by specific performance. Owners shall coordinate directly with the County for the grant to CFX of any air rights easements necessary for the Project over and upon any real property owned by the County.

c. <u>Drainage Easement</u>. CFPH600 is the fee simple owner of Parcel 534-341 as more particularly described in <u>Exhibit "G"</u> attached hereto and incorporated herein by reference (the "Drainage Area"). At or prior to the Closing in Escrow, CFX shall grant in favor of CFPH600 a perpetual, non-exclusive drainage easement for conveyance of stormwater benefiting CFPH600's adjacent lands (the "Drainage Easement"). CFPH600 shall design, engineer, permit and construct the drainage facilities within the Drainage Area to accommodate the stormwater needs of CFPH600's adjacent lands. CFX shall use commercially reasonable diligence to design and engineer the drainage system for the Project to minimize the impacts to the drainage facilities within the Drainage Area; provided; however, in the event CFX is required to relocate or incur any costs or expenses to design, engineer, permit, construct or relocate the Drainage Area or improvements constructed therein that are required to accommodate the needs of CFPH600's adjacent lands, CFPH600 shall be responsible for reimbursing CFX for any such costs and expenses within thirty (30) days of written notice to CFPH600 of any such costs or expenses. The form and content of the easement agreement for the Drainage Area shall be mutually agreed upon by CFPH600 and CFX no later than five (5) business days prior to the Closing in Escrow.

15. Approval of Owners' and CFX's Boards. Notwithstanding any apparently conflicting provision of this Agreement, although local or regional representatives of the Owners may have executed this Agreement, such execution shall be conditional and shall not bind Owners hereto until the Owners' governing board or body ("Owners' Board") in its sole discretion shall have ratified and approved this Agreement. If the Owners' Board ratifies this Agreement, the Owners shall notify CFX in writing within ten (10) days after the Board meeting at which this Agreement was ratified, whereupon this Agreement shall be binding on the Owners in accordance with the terms hereof. Provided this Agreement is timely ratified by the Owners' Board, this Agreement shall continue in full force and effect, subject to the terms and provisions hereof. In the event the Owners' Board shall fail to ratify this Agreement within thirty (30) days after the Effective Date, this Agreement shall be deemed rejected by the Owners' Board. No later than thirty (30) days after receipt of written confirmation of the Owners' Board approvals and ratifications of this Agreement, CFX shall present the Agreement for approval by the CFX Board and shall notify the Owners in writing within ten (10) days after the Board meeting at which this Agreement was approved, whereupon this Agreement shall be binding upon all Parties. If this Agreement is rejected or deemed rejected by the Owners' Board or the CFX Board, this Agreement shall automatically be null and void and of no further force or effect and the Parties shall be released from all further obligations and liabilities hereunder.

16. <u>Maintenance of Property</u>. From and after the Effective Date and until the Release Date in accordance with the terms and conditions of the Escrow Agreement, the Owners will comply with and abide by all Laws affecting the East Property and its use thereof and will cause no waste or material alterations of the East Property, and the Owners will pay all taxes and assessments levied against the East Property prior to the due date thereof. From and after the Effective Date until the Release Date, the Owners shall not offer to sell or donate the East Property to any other person or entity or enter into any verbal or written agreement, understanding, or contract relating to the sale or conveyance of the East Property or any interest therein.

17. <u>**Temporary Trails; Existing Licenses and Lease</u></u>. A portion of the East Property is subject to the following licenses and lease (collectively, the "Trail Licenses") for the construction, use, operation and maintenance of temporary public trails and related facilities for hiking, cycling and other recreation purposes over, upon across and through certain portions of the East Property:</u>** 

• Unrecorded Lease Agreement dated March 1, 2021 by and between Central Florida Property Holdings 600, LLC, a Florida limited liability company, as landlord, and Sunbridge Marketing, LLC, a Florida limited liability company, as tenant.

- Unrecorded Limited License Agreement dated March 1, 2021 by and between Central Florida Property Holdings 600, LLC, a Florida limited liability company, as licensor, and Sunbridge Marketing, LLC, a Florida limited liability company, as licensee.
- Unrecorded Temporary Construction License Agreement (Nature Loop A, Nature Loop B, and Connector Trail) dated March 1, 2021 by and between Central Florida Property Holdings 600, LLC, a Florida limited liability company, as licensor, and Tavistock East Services, LLC, a Florida limited liability company, as licensee.
- Unrecorded Temporary License Agreement dated March 1, 2021 by and among Central Florida Property Holdings 500, LLC, a Florida limited liability company, Central Florida Property Holdings 600, LLC, a Florida limited liability company, collectively, as licensor, and Tavistock East Services, LLC, a Florida limited liability company, as licensee.

Prior to the Effective Date, the Owners have provided written copies of the Trail Licenses to CFX, which Trail Licenses include a provision that the Trail Licenses can be terminated (without incurring cost to CFX, or CFX's successor in interest or assign) by providing at least ninety (90) days prior written notice but in no event later than the date CFX provides written notice to the Owners of its intent to proceed with the advertisement for the construction of the Extension. Upon such termination, the East Property encumbered by the Trail Licenses shall be restored to the original condition existing prior to the Trail Licenses at no cost or expense to CFX or CFX's successor in interest or assign, unless otherwise agreed upon in writing by CFX, or CFX's successor in interest or assign. At or prior to Closing in Escrow, the Owners shall provide signage on areas encumbered by the Trail Licenses and record a notice in the public records of Orange County, Florida and Osceola County, Florida against the real properties owned by SLR or Tavistock, or any affiliated entity of SLR or Tavistock, adjacent to the portions of the Property encumbered by the Trail Licenses or otherwise adjacent to the Project east of Narcoossee Road adequately notifying all future property owners and users of the temporary nature of the trails set forth in the Trail Licenses and the requirement of the Owners to remove any and all trail improvements, upon ninety (90) days prior written notice, and to restrict future use of the trails (collectively, the "Notice of Temporary Licenses"). The Owners shall not take any action to terminate or rescind the Notice of Temporary Licenses without the express written consent of CFX. The form, manner, and content of the Notice of Temporary Licenses shall be mutually agreed upon by the Parties no later than five (5) business days prior to the Closing in Escrow. The rights, duties and obligations of the Owners and CFX under this Section 17 shall survive Closing in Escrow and release of the Closing Deliveries from escrow.

18. <u>Warranties and Representations of Owners</u>. To induce the CFX to enter into this Agreement and to purchase the East Property, in addition to the other representations and warranties set forth herein, each Owner makes the following representations and warranties, as of the Effective Date and with respect to the Owner's respective portion of the East Property, each of which is material and is being relied upon by the CFX and shall survive Closing in Escrow and release of the Closing Deliveries from escrow:

a. Each Owner warrants and represents that there are no actions, suits or proceedings of any kind or nature whatsoever, legal or equitable, affecting or relating to its portion of the East Property, or any portion thereof, or relating to or arising out of the ownership of its portion of the East Property, in any court or before or by any federal, state, CFX or municipal department, commission, board, bureau, or agency or other governmental instrumentality, unless such action has been commenced by CFX.

b. Each Owner warrants and represents that it has the full right, power, and authority to enter into and deliver this Agreement and to consummate the purchase and sale of the East Property in accordance herewith and to perform all covenants and agreements of such Owner hereunder.

c. Except as addressed elsewhere in this Agreement and as may be set forth in the Environmental Studies, each Owner warrants and represents that it has no knowledge of any Hazardous Substances, pollutants, contaminants, petroleum products or by-products, asbestos or other substances, whether hazardous or not, on or beneath the surface of its portion of the East Property, which Owner or any other person or entity has placed or caused or allowed to be placed upon its portion of the East Property, and which have caused or which may cause any investigation by any agency or instrumentality of government, which are or may be on its portion of the East Property in violation of any law or regulation of any local, state or federal government or which are or may be a nuisance or health threat to occupants of its portion of the East Property or other residents of the area.

d. Each Owner warrants and represents that, other than Owner, no person, firm, or other legal entity other than the CFX has any right or option whatsoever to acquire such Owner's portion of the East Property or any portion thereof or any interest therein.

e. Each Owner warrants and represents that the execution and delivery of this Agreement and the consummation of the transaction contemplated herein shall not and do not constitute a violation or breach by Owner of any provision of any agreement or other instrument to which Owners is a party or to which Owner may be subject although not a party, nor result in or constitute a violation or breach of any judgment, order, writ, injunction, or decree issued against Owner.

f. In the event that material changes occur before Closing in Escrow or at any time prior to the Release Date, as to any information, documents, or exhibits referred to in the subparagraphs of this Section, or in any other part of this Agreement, of which Owners has knowledge, Owners will immediately disclose same to the CFX when such knowledge is first available to Owners; and in the event of any change which may be deemed by the CFX to be materially adverse to the Intended Use (as defined herein), the CFX may, at its election, terminate this Agreement if within 120 days after receipt of notice of termination from CFX Owners are unable to remedy the adverse consequences of the change.

All representations and warranties made herein are based on the actual, present knowledge (without duty of investigation or inquiry and without any personal liability hereunder) of David Cannon on behalf of SLR (the "Named Representative"). Neither the actual, present conscious

knowledge of any other individual or entity, nor the constructive knowledge of the Named Representative or of any other individual or entity, shall be imputed to the Named Representative.

19. Acceptance AS-IS and Release. Except as expressly set forth in this Agreement to the contrary, CFX is expressly purchasing the East Property and SLR Easements in their existing condition "AS-IS, WHERE-IS, AND WITH ALL FAULTS" with respect to all facts, circumstances, conditions, and defects, and, Owners have no obligation to determine or correct, or to compensate CFX for, any such facts, circumstances, conditions, or defects. The Owners have specifically bargained for the assumption by CFX of all responsibility thoroughly to investigate the East Property and the SLR Easement Areas, and laws and regulations applicable thereto, and all risk of adverse conditions. CFX is and will be relying strictly and solely upon its inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel, and officers. CFX assumes the full risk of any loss or damage occasioned by any fact, circumstance, condition, or defect pertaining to the East Property or to the SLR Easement Areas, and hereby releases the Owners from, and disclaims any claims relating to, conditions on or facts or circumstances affecting, the East Property or the SLR Easement Areas that are not addressed in express warranties and representations of this Agreement. Except as expressly set forth in this Agreement to the contrary, the Owners disclaim all warranties of any kind or nature whatsoever (including, without limitation, warranties of fitness for particular purposes), whether expressed or implied including, without limitation, warranties with respect to the East Property and to the SLR Easement Areas. Except as is expressly set forth in this Agreement to the contrary, CFX acknowledges that it is not relying on any representation of any kind or nature made by the Owners or any of the Owners' direct or indirect members, partners, shareholders, officers, directors, employees, or agents with respect to the East Property or to the SLR Easement Areas, and that, in fact, except as expressly set forth in this Agreement to the contrary, no such representations were made.

### 20. **Defaults.**

a. <u>Owners Default</u>. In the event that: (i) Owners' representations and warranties contained herein are not true and correct, or (ii) Owners fail to perform any of its covenants and agreements contained herein within the time performance specified herein; CFX may exercise the following rights and remedies: (i) CFX shall have the right to terminate this Agreement, in which event the obligations of the Parties under this Agreement shall be terminated (other than obligations which, by the terms of this Agreement, expressly survive the termination of the Agreement) and this Agreement shall be null and void; or (ii) pursue an action for specific performance of this Agreement against the Owners (CFX acknowledges it has waived any right to pursue an action for damages against the Owners, in the event of a default by the Owners); provided, however, that nothing contained in this subsection shall limit or prevent CFX from exercising its power of eminent domain to acquire, by condemnation, title to the East Property.

b. <u>CFX Default</u>. In the event CFX fails to comply with or perform any of the conditions to be complied with or any of the covenants, agreements, or obligations to be performed by CFX under the terms and provisions of this Agreement, the Owners shall be entitled to (i) exercise any and all rights and remedies available to it at law and in equity, including without limitation, the right of specific performance; or (ii) terminate this Agreement. The Owners hereby waive and release any right to pursue an action for any special, indirect, consequential or punitive

damages against CFX. Notwithstanding the foregoing, the Owners shall have the right to enforce CFX's express covenants in this Agreement to indemnify, defend, or hold harmless the Owners. Upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect. Nothing contained herein shall be deemed a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes. Further, nothing contained herein shall be deemed a waiver of any of Owners' rights or remedies in the event CFX or another authority pursues an action in eminent domain against the East Property or any portion thereof. The foregoing provision shall expressly survive the Closing in Escrow and release of the Closing Deliveries from escrow.

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

CFX:	<b>CENTRAL FLORIDA EXPRESSWAY AUTHORITY</b> 4974 ORL Tower Road Orlando, Florida 32807 Attn: Executive Director Telephone: (407) 690-5000 Email: Laura.Kelley@cfxway.com
With a copy to:	<b>CENTRAL FLORIDA EXPRESSWAY AUTHORITY</b> 4974 ORL Tower Road Orlando, Florida 32807 Attn: General Counsel Telephone: (407) 690-5000 Email: Woody.Rodriguez@cfxway.com
CFPH500/600:	SUBURBAN LAND RESERVE, INC. 51 South Main Street, Suite 301 Salt Lake City, Utah 84111 Attn: David Cannon Telephone: (801) 321-7569 Email: djc@slreserve.com
With copies to:	KIRTON MCCONKIE 50 East South Temple Suite 400 Salt Lake City, UT 84111 Attn: Robert Hyde and Loyal Hulme Telephone: (801) 323-5913 Email: rhyde@kmclaw.com and lhulme@kmclaw.com

### **BURR & FORMAN LLP**

Page 26 of 35

	200 S. Orange Avenue, Suite 800 Orlando, Florida 32801 Attn: James R. Pratt, Esq. Telephone: (407) 540-6655 Email: jpratt@burr.com
SHN:	<b>SPRINGHEAD NORTH, LLC</b> 6900 Tavistock Lakes Blvd., Suite 200 Orlando, Florida 32827 Attn: James L. Zboril, Vice President Telephone: (407) 816-6598 Email: jzboril@tavistock.com
With copies to:	<b>SPRINGHEAD NORTH, LLC</b> 6900 Tavistock Lakes Blvd., Suite 200 Orlando, Florida 32827 Attn: Nicholas F. Beucher, III, President Telephone: (352) 408-3570 Email: nbeucher@tavistock.com
	<b>SPRINGHEAD NORTH, LLC</b> 6900 Tavistock Lakes Blvd., Suite 200 Orlando, Florida 32827 Attn: Michelle Rencoret,

Vice President & General Counsel Telephone: (407) 816-6682 Email: mrencoret@tavistock.com

#### HOLLAND & KNIGHT LLP

200 South Orange Avenue, Suite 2600 Orlando, Florida 32801 Attn: Sara Bernard, Esq. Telephone: (407) 244-5162 Email: sara.bernard@hklaw.com

or to such other address as any Party hereto shall from time to time designate to the other Party by notice in writing as herein provided. Notice given by or to the attorney representing a Party under this Agreement shall be deemed to have been duly given in accordance with this Section by or to the applicable Party. The Executive Director of CFX or General Counsel of CFX shall be authorized to issue any notices and provide any and all consents or agreements as required hereunder.

22. <u>**CDD Exemption**</u>. The Parties acknowledge and agree that the East Property lies within the boundaries of the Sunbridge Stewardship District, a local unit of special-purpose government established pursuant to Chapter 2017-220, Laws of Florida (the "**ISD**"). The ISD or

any other independent special district or community development district having jurisdiction over the Property (or any portion thereof) are collectively referred to herein as the "CDD".

The ISD is an independent special district and community development district, respectively, established pursuant to the provisions of Chapter 190, Florida Statutes, for the purpose of planning, designing, financing, constructing, installing, operating, and/or maintaining certain infrastructure, including water management systems, transportation and roadway improvements, landscaping, drainage facilities, potable water and sanitary sewer facilities, wetland mitigation, recreation and other infrastructure improvements lying within or outside the boundaries of the applicable CDD, with the right to levy assessments in accordance with Sections 190.021 and 190.022, Florida Statutes (whether collected by Osceola County or Orange County, whichever is applicable, as part of its tax rolls or by the CDD directly). Prior to Closing in Escrow, Owners shall, at Owners' cost and expense, cause the applicable CDD to adopt an amendment to the applicable CDD's assessment methodology or to issue an estoppel certificate to reflect that the East Property shall be exempt from the payment of assessments so long as the real property is primarily used for the right-of-way purposes prescribed in the Deed (the "CDD Exemption").

23. Limited Access. Owners hereby agree, acknowledge, and understand that the Extension is anticipated to be a limited access right-of-way, and as such, CFX has the right, at any time, to record and establish the limited access lines on and along real property owned by CFX for the Extension adjacent to any other real property owned or retained by the Owners located adjacent to the Extension. Each of the Owners waives and disclaims any claim against the other Parties, in law or in equity, based upon the establishment of limited access lines for the Extension. In no event shall CFX be liable for any claims or damages based on the establishment of the limited access lines, including, without limitation, any monetary, incidental, special, exemplary, or consequential damages. The provisions of this Section shall survive the Closing in Escrow and release of the Closing Deliveries from escrow. The Owners have read and understand the provisions of this Section.

24 General Provisions. No failure of any Party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of the Party's right to demand exact compliance with the terms hereof. Nothing in this Agreement shall be deemed to create any joint and several liability of any of the Owners. This Agreement contains the entire agreement of the Parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the Parties not embodied herein shall be of any force or effect. Any amendment to this Agreement shall not be binding upon any of the Parties hereto unless such amendment is in writing and executed by the Owners and CFX. The provisions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, administrators, executors, personal representatives, successors and assigns. Time is of the essence of this Agreement. Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday, or Legal Holiday, such time for performance shall be extended to the next Business Day (hereinafter defined). This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. The headings inserted at the beginning of each paragraph of this Agreement are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph. The Owners and CFX do hereby covenant and agree that such documents as may be

legally necessary or otherwise appropriate to carry out the terms of this Agreement shall be executed and delivered by each party at Closing in Escrow. This Agreement shall be interpreted under the laws of the State of Florida. The Parties hereto agree that the exclusive venue for any legal action authorized hereunder shall be in the courts of Osceola County, Florida. TIME IS OF THE ESSENCE OF THIS AGREEMENT AND EACH AND EVERY PROVISION HEREOF.

25. <u>**Owners**</u>. No Party hereunder shall be liable under this Agreement except for the application of this Agreement to the portions of the Property that such Party either owns or has the legal right to acquire but shall be binding upon their successors and assigns. Further, no Party shall be jointly and severally liable under this Agreement.

26. <u>Survival of Provisions</u>. Other than as specified to the contrary herein, all covenants, representations and warranties set forth in this Agreement shall survive the Closing in Escrow and release of the Closing Deliveries from escrow and shall survive the execution or delivery of any and all deeds and other documents at any time executed or delivered under, pursuant to or by reason of this Agreement, and shall survive the payment of all monies made under, pursuant to or by reason of this Agreement.

27. <u>Severability</u>. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

28. <u>Attorneys' Fees</u>. Subject to the limitations set forth in Section 768.28, Florida Statutes, in the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising herefrom, the predominantly prevailing party shall be entitled to recover its reasonable costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney (in-house and outside counsel), paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, in mediation, arbitration or bankruptcy, at trial or on appeal.

29. <u>Waiver of Jury Trial</u>. OWNERS AND CFX VOLUNTARILY WAIVE A TRIAL BY JURY IN ANY LITIGATION OR ACTION ARISING FROM THIS AGREEMENT.

30. <u>**Radon Gas.**</u> Radon is naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your CFX public health unit.

31. **Effective Date**. When used herein, the term "Effective Date" or the phrase "the date hereof" or "the date of this Agreement" shall mean the date as of which all Parties have signed this Agreement and their respective boards have given final approval of this Agreement.

32. **Release of CFX**. The Parties acknowledge and agree CFX intends to obtain the East Property for use in its limited-access expressway system (the "Intended Use"). By execution of this Agreement, each Owner acknowledges and agrees that as of the date of the Owners' execution and delivery of the Deeds, the Owners shall thereby remise, release, acquit, satisfy, and forever discharge CFX, of and from all, and all manner of action and actions, cause and causes of action, suits, sums of money, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, claims and demands whatsoever, in law or in equity, which the Owners ever had, then have, or which any personal representative, successor, heir or assign of either Owners, thereafter can, shall or may have, against CFX, for, upon or by reason of any matter, cause or thing whatsoever, arising out of or in any way connected with the Owners' conveyance of the East Property to CFX or the Project, including, without limitation, any claim for loss of access, air, light or view to the Owners' remaining property, or other severance damages to Owners' remaining property, business damages, consequential damages, or any other damages, all from the beginning of the world to the day thereof, arising from or in connection with the use of the East Property for the Intended Use. A covenant shall be contained in the Deeds acknowledging the Owners' agreement to the foregoing, in which event if there is any conflict between the terms of the covenant in the Deeds and the terms of this Section, the terms of the covenant in the Deeds shall control.

33. <u>Not an Offer</u>. Notwithstanding anything to the contrary in this Agreement, in the event that the transaction under this Agreement does not close, this Agreement shall not be deemed an offer nor admissible in any subsequent eminent domain proceeding with respect to the East Property.

34. **Indemnifications Regarding Brokers, Finders, Etc.**. The Owners represent and warrant to CFX, and CFX likewise represents and warrants to the Owners, that they have neither dealt with, nor negotiated with, any broker, sales person or finder in connection with the sale of the East Property to CFX or the conveyance of any easements, licenses or any other rights expressly set forth herein, and each Party hereto agrees to indemnify and hold the other Party harmless from any and all claims, demands, causes of action or other liabilities, and all costs and expenses (including reasonable attorneys' fees) incurred in defending against any claims arising from or pertaining to any other brokerage commission, fees, costs, or other expenses which may be claimed by any broker, sales person or entity arising out of any actions of CFX (including the indemnity obligations of CFX) or arising out of any actions of the Owners (including the indemnity obligations of the Owners).

35. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Florida. The venue for all legal proceedings arising out of this Agreement shall be exclusively in the Circuit Court in and for Osceola County, Florida.

36. <u>Waiver/Time</u>. The waiver of any breach of any provision hereunder by CFX or the Owners shall not be deemed to be a waiver of any proceeding or subsequent breach hereunder. No failure or delay of any party in the exercise of any right given hereunder shall constitute a waiver thereof nor shall any partial exercise of any right preclude further exercise thereof. Time is of the essence in this Agreement as to all dates and time periods set forth herein. To the extent that the last day of any time period stipulated in this Agreement falls on a Saturday, Sunday, or federal holiday, the period shall run until the end of the next day which is neither a Saturday, Sunday or

federal holiday. Any time period of five (5) days or less specified herein shall not include Saturdays, Sundays or federal holidays. Where used herein, the term "Business Days" shall be those days other than Saturdays, Sundays or federal holidays.

37. **<u>Representation by Counsel.</u>** CFX and Owners are all represented in this transaction by counsel. This Agreement shall not be construed more or less favorably against any Party, regardless of which party may be deemed the drafter hereof.

38. <u>**Counterparts.**</u> This Agreement may be executed in any number of counterparts, including by digital or electronic means in accordance with Chapter 668, Florida Statutes, each of which shall be an original but all of which shall constitute one and the same Agreement. A party shall be bound by this Agreement by executing a counterpart hereof, then transmitting the executed counterpart to the other Parties via email in .pdf or similar format.

39. **<u>Recording</u>**. CFX agrees that he will not record, or permit to be recorded, this Agreement or any memorandum hereof; violation of this covenant by CFX shall constitute a default, and at Owners' option, this Agreement shall become null and void and all of the rights of CFX hereunder shall terminate. This Section is not intended and shall not be deemed to preclude the recordings expressly required or authorized in this Agreement.

40. Further Assurances. The Owners and CFX will, without additional consideration, sign, acknowledge, and deliver any other documents and take any other actions necessary or appropriate and reasonably requested by the other Party to carry out the intent and purposes of this Agreement. The Owners agree and acknowledge the final alignment of the Extension is subject to adjustment based on the design of the Extension, and as such, agree to cooperate with CFX to execute any and all documents reasonably necessary to ensure all real property that is owned by Owners and is required as part of the design for the Extension based on the Project Alignment shall be conveyed and transferred to CFX. To the extent the required acreage exceeds 141.79 acres in the aggregate of fee simple interest for the East Property and approximately 2.3 acres for the Air Rights Easements, CFX shall compensate the Owners for the additional acreage on a per acre basis as mutually agreed upon by the Owners and CFX, which amount shall be based upon the per acre appraised value of that portion of the East Property or SLR Easement Areas, as applicable, located immediately adjacent to the additional acreage with the same or similar land use and property interest as reflected in that certain appraisal report prepared by Consortium Appraisal, Inc. dated January 24, 2022.

41. **Force Majeure**. A "Force Majeure Event" shall include, without limitation, an act of God, adverse weather conditions (such as tropical storms, tornados or hurricanes), act or regulations of public authorities, legislative bodies, or labor unions, labor difficulties, strike, riot, civil commotion or tumult, terrorism, war, sabotage, theft, vandalism, fire, explosion or similar casualty, epidemic, pandemic, interruption of transportation, shipping or trade delays, or material shortages. To claim a delay caused by a Force Majeure Event, the Party affected by a Force Majeure Event shall promptly provide notice of the occurrence of a Force Majeure Event to the other party within sixty (60) days after the initial onset or occurrence of a Force Majeure Event having a distinct or manifest onset (such as severe weather, issuance of executive orders or similar orders, act of public authorities), and within such period as may be reasonably required to identify a Force Majeure Event the onset of which is not distinct or manifest (such as for example certain

shipping or trade delays or material shortages) and such notice shall provide its best estimate of the effects of the Force Majeure Event on the performance of its obligations hereunder and the time for the resumption of performance of the affected obligations. Notwithstanding the foregoing, no Party may claim a delay pursuant to this Section retroactive by more than sixty (60) days from the date of the Party's notice of the occurrence of the Force Majeure Event. Failure to timely claim a delay caused by a Force Majeure Event shall be deemed a waiver of any delays caused by such Force Majeure Event. The affected Party shall use best efforts to mitigate the effect of the Force Majeure Event and to resume performance of affected obligations as soon as possible. The affected Party shall continue to perform its obligations hereunder not affected thereby. The Parties acknowledge and agree that delays in the performance of on-site construction due to normal rainfall shall not be considered a Force Majeure Event hereunder.

42. <u>Schedules and Exhibits</u>. The following Schedules and Exhibits referenced elsewhere in this Agreement are attached hereto and incorporated herein by reference:

a.	Exhibit "A-1"	CFPH500 Property
	Exhibit "A-2"	CFPH600 Property
	Exhibit "A-3"	SHN Property
b.	Exhibit "B-1"	CFPH600 TCE Easement Areas
	Exhibit "B-2"	CFPH600 Air Rights Easement Areas
c.	Exhibit "C-1"	Preferred Alignment
	Exhibit "C-2"	Project Alignment
d.	Exhibit "D"	Form Beneficial Interest Affidavit
e.	Exhibit "E-1"	West Segment of the Project Alignment
	Exhibit "E-2"	East Segment of the Project Alignment
f.	Exhibit "F"	Form of Escrow Agreement
g.	Exhibit "G"	Drainage Area

### [SIGNATURES APPEAR ON THE FOLLOWING PAGES]

**IN WITNESS WHEREOF**, the Parties hereto have caused these presents to be executed in their respective names as of the date first above written.

WITNESSES:

#### **"OWNERS"**

**CENTRAL FLORIDA PROPERTY HOLDINGS 500, LLC**, a Florida limited liability company

Print Name: N

By:

David Cannon, Manager

Date: January 31, 2022

**CENTRAL FLORIDA PROPERTY HOLDINGS 600, LLC**, a Florida limited liability company

Pri

Print Name: \_ Nick

By: Darl CM

David Cannon, Manager

Date: January 31, 2022

furt

AWA

**SPRINGHEAD NORTH, LLC** a Florida limited liability company

Mama
Name:

ву:	
Printed Name:	
Title:	
Date:	

Print Name: \_

**IN WITNESS WHEREOF**, the Parties hereto have caused these presents to be executed in their respective names as of the date first above written.

WITNESSES:	"OWNERS"		
	<b>CENTRAL FLORIDA PROPERTY</b> <b>HOLDINGS 500, LLC</b> , a Florida limited liability company		
Print Name:	By: David Cannon, Manager		
Print Name:	Date:		
	<b>CENTRAL FLORIDA PROPERTY</b> <b>HOLDINGS 600, LLC</b> , a Florida limited liability company		
Print Name:	By: David Cannon, Manager		
Print Name:			
	SPRINGHEAD NORTH, LLC a Florida limited liability company		
Print Name. <u>Shamira M. Bartley</u>	By: Printed Name: T. CRAIG COLLIN Title: Vi Ce President Date: Feb. 3, 2022		
Print Name: Diana Darcia			

#### "CFX"

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

Print Name:

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

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

Sean Parks, Chairman

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

ATTEST:\_\_

Regla ("Mimi") Lamaute Recording Clerk

Approved as to form and legality by legal counsel to the Central Florida Expressway Authority on this \_\_\_\_ day of \_\_\_\_\_, 2022 for its exclusive use and reliance.

By:\_\_\_\_

Diego "Woody" Rodriguez General Counsel

#### **CONSENT AND JOINDER OF SUNBRIDGE STEWARDSHIP DISTRICT**

The SUNBRIDGE STEWARDSHIP DISTRICT, a local unit of special-purpose government established pursuant to Chapter 2017-220, Laws of Florida (the "ISD"), hereby joins in and consents to this Agreement for the purpose of agreeing to the terms, conditions and obligations of the ISD to grant the Air Rights Easement over that portion of the Air Rights Easement Area owned by the ISD as set forth in Section 14.b of this Agreement.

#### SUNBRIDGE STEWARDSHIP

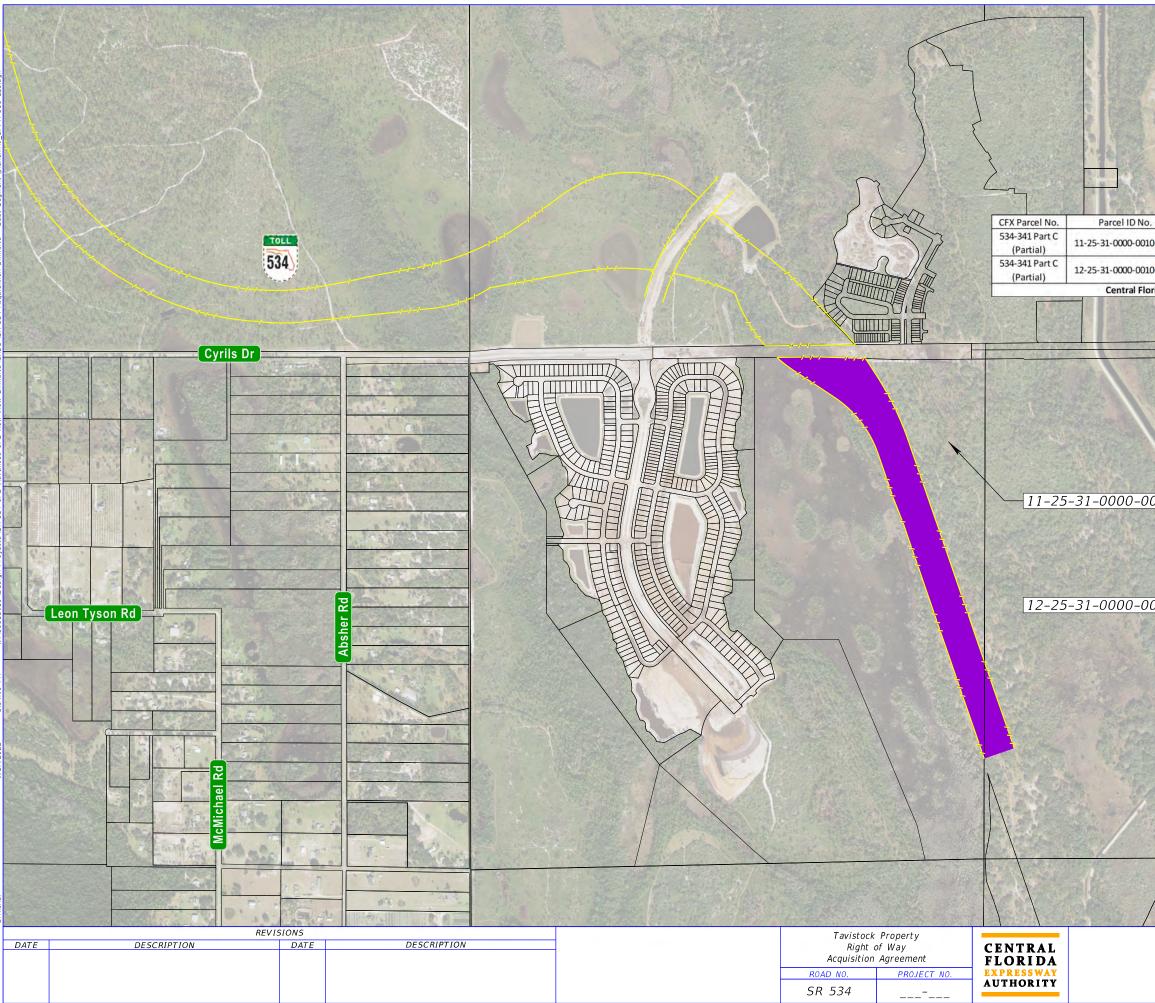
**DISTRICT**, a local unit of special-purpose government established pursuant to Chapter 2017-220, Laws of Florida

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

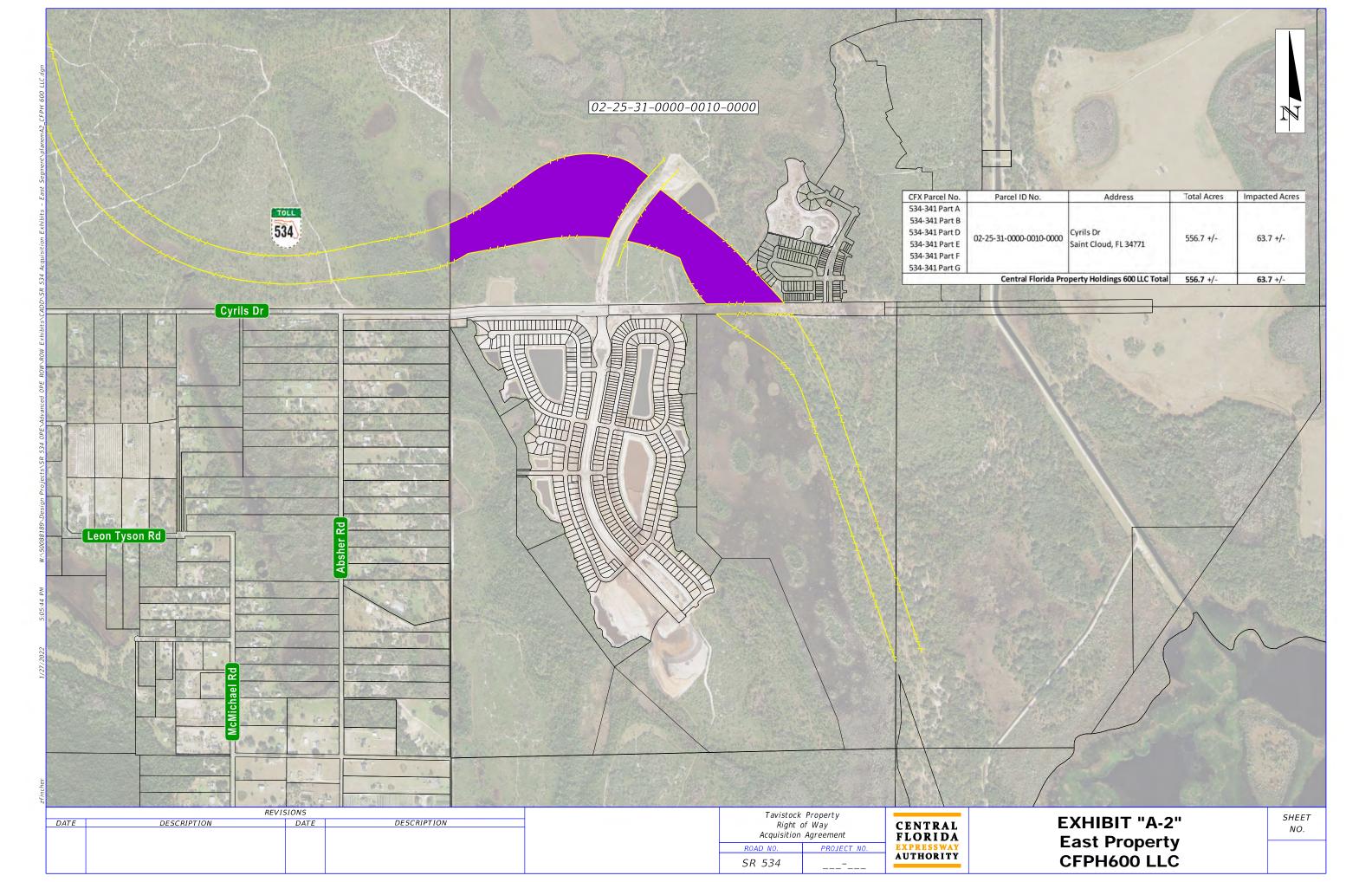
By:\_\_\_\_\_
Print Name:\_\_\_\_\_ Title:\_\_\_\_\_

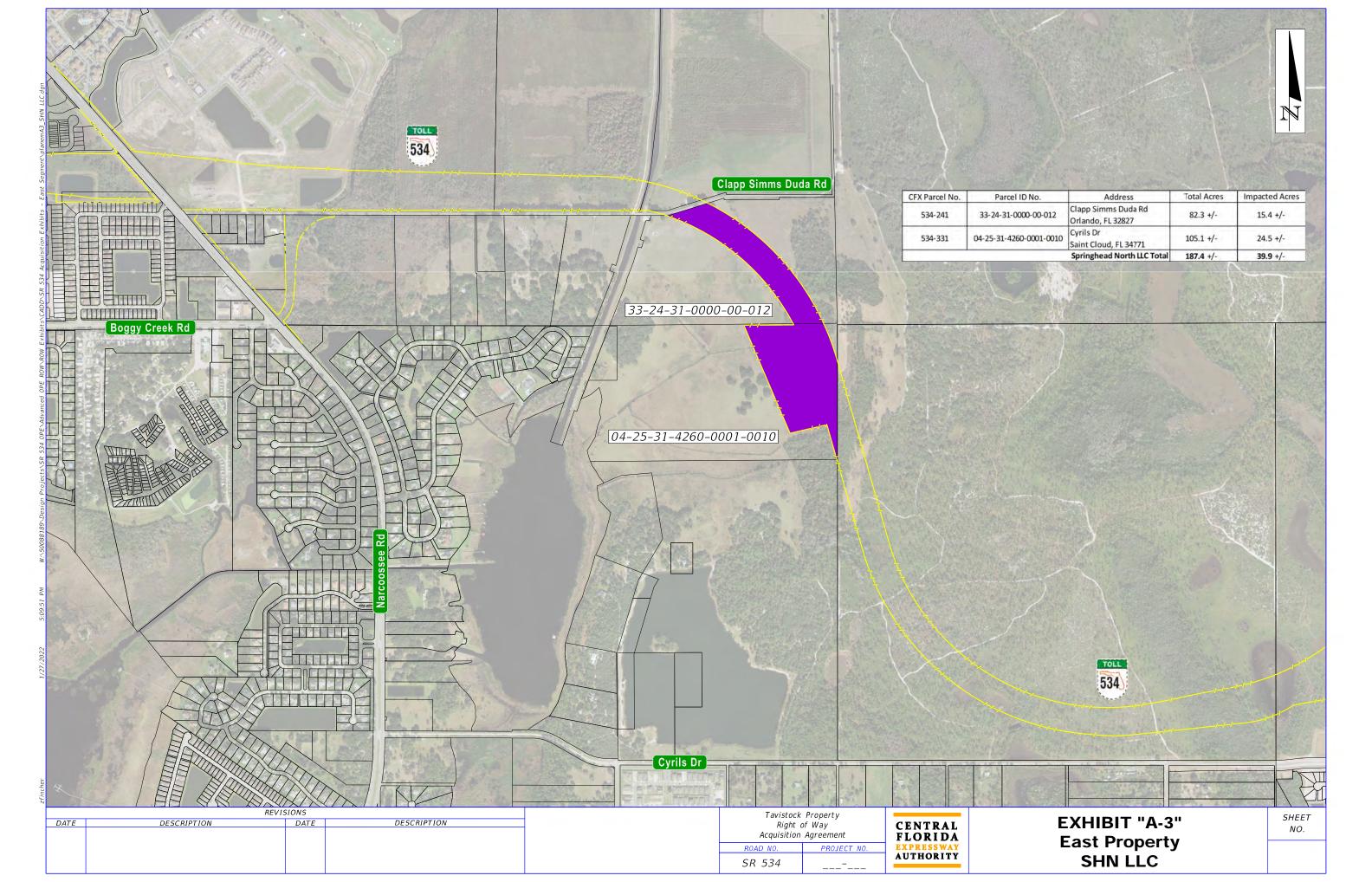
Print Name:\_\_\_\_\_

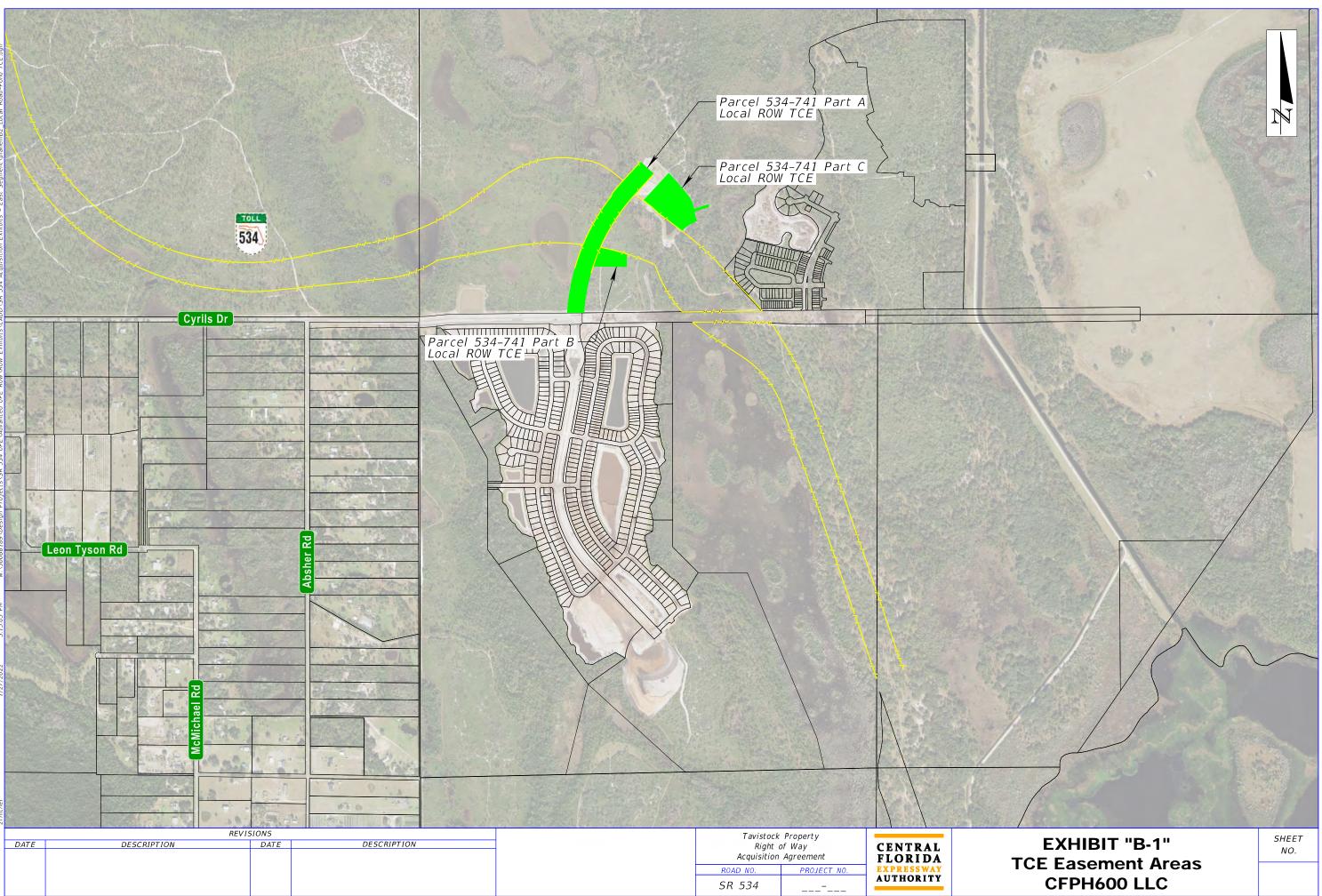
Secretary/Assistant Secretary

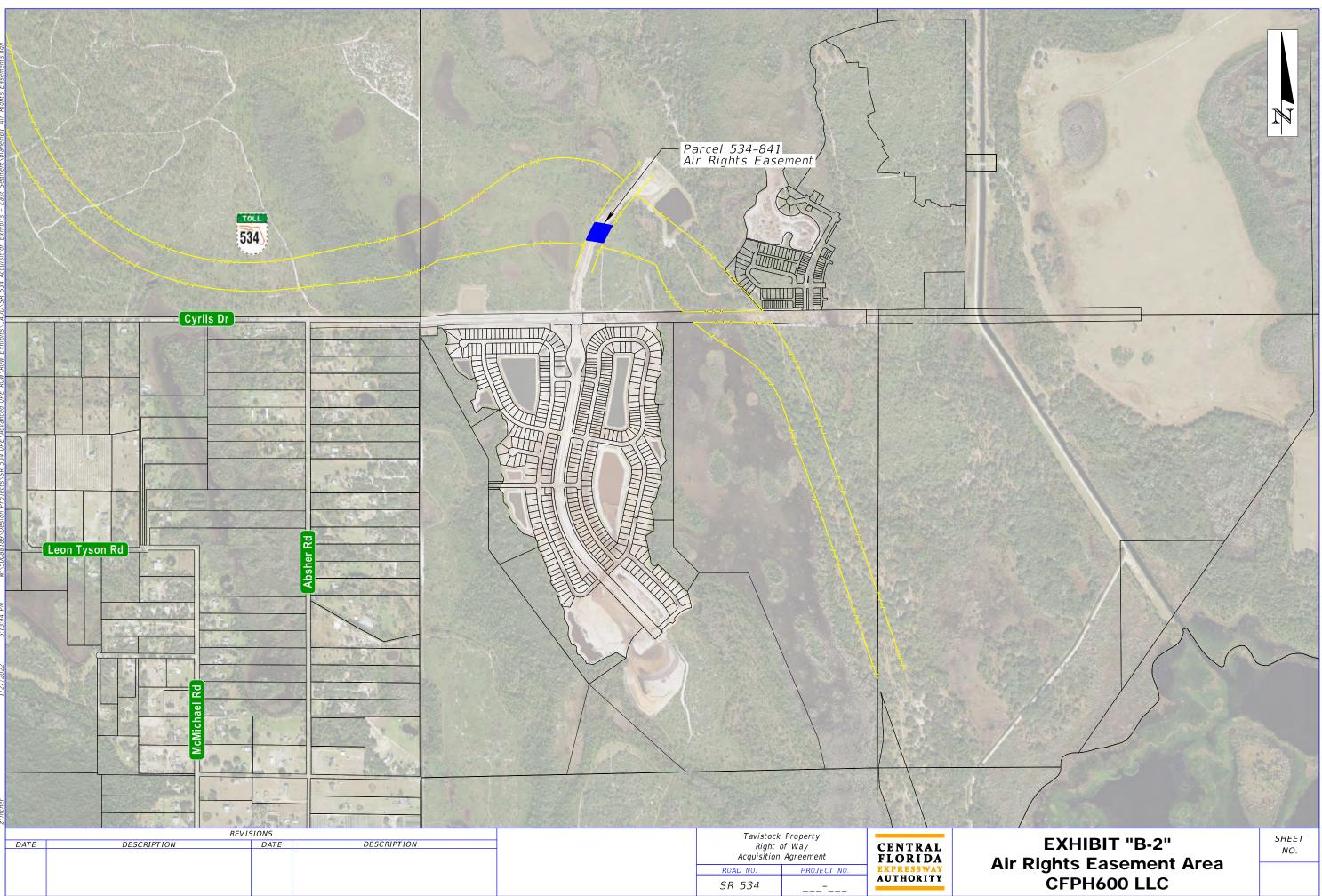


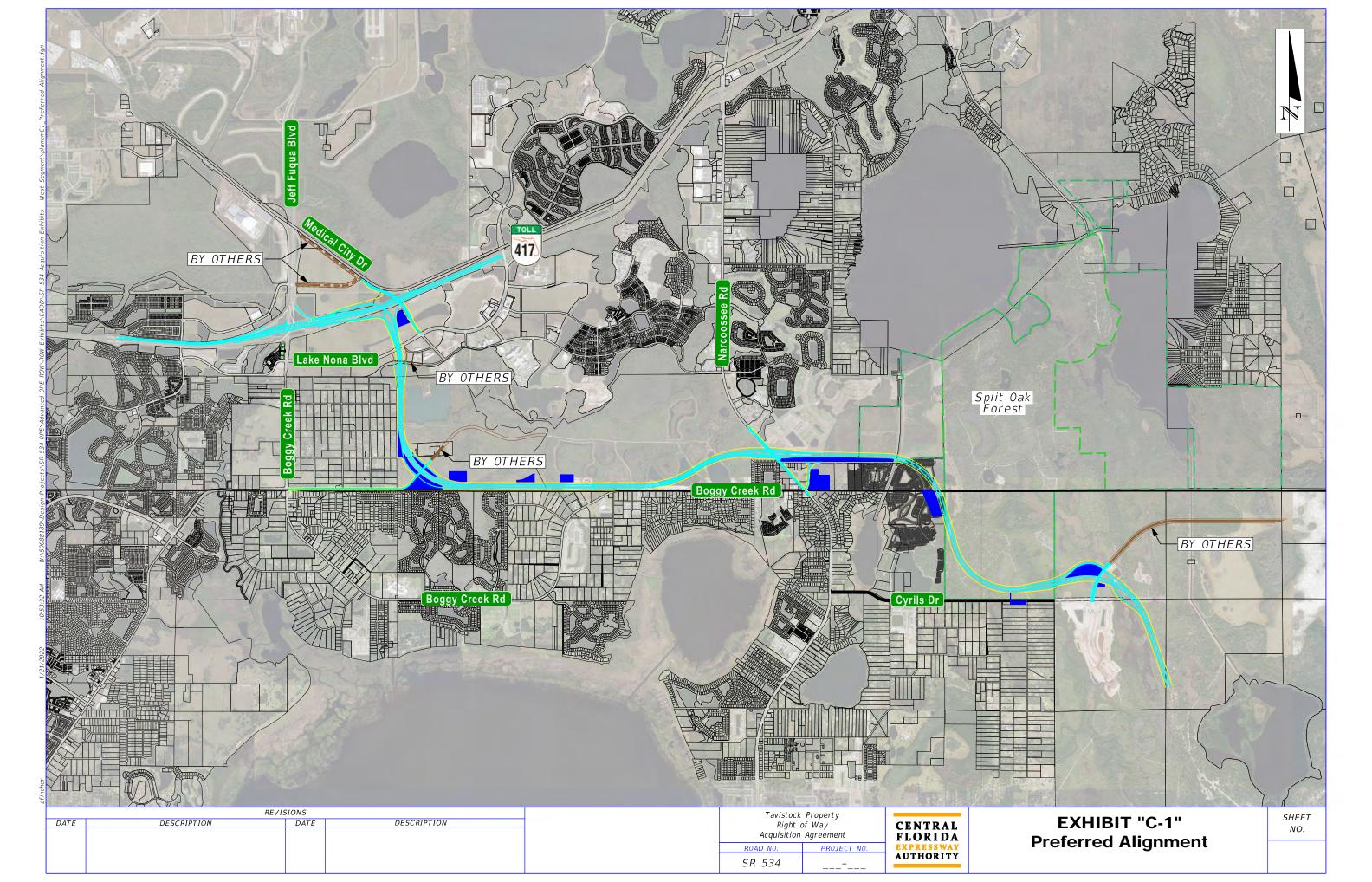
12 - 1 - 12 - 12 - 12 - 12 - 12 - 12 -			ľ	2
	the to a			and the
0.	Address	Total Acres	Impacted Acro	es
10-0000	Absher Rd Saint Cloud, FL 34771	342.5 +/-	34.6 +/-	Play
10-0000	Sun Grove Ln Saint Cloud, FL 34771	450.2 +/-	3.6 +/-	3.4
orida Pro	perty Holdings 500 LLC To	otal 792.7 +/-	38.2 +/-	
0010-				
(				
E	XHIBIT "A ast Prope FPH500 L	rty		IEET NO.

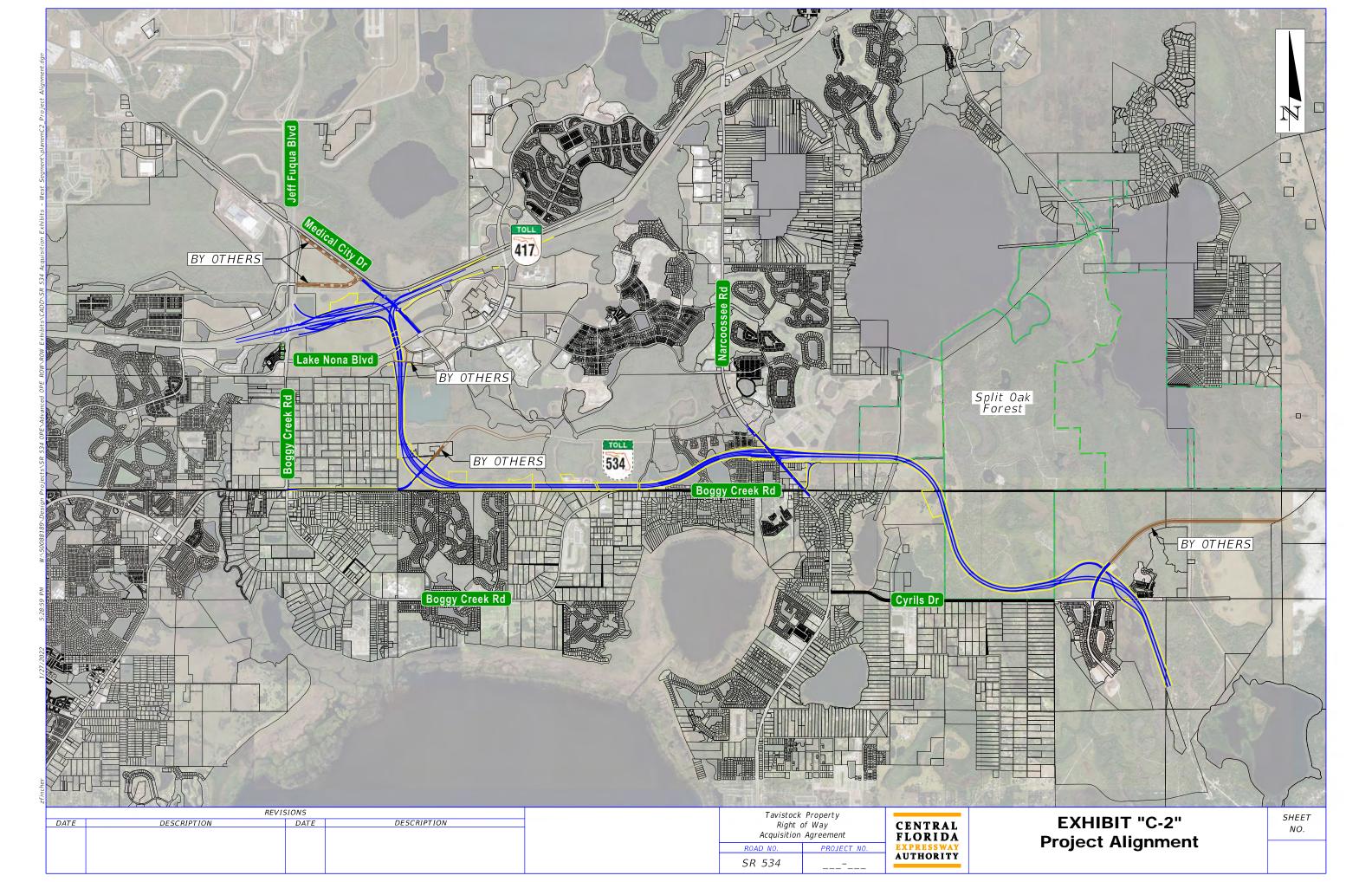












### **EXHIBIT "D"** Form of Beneficial Interest Affidavit

#### AFFIDAVIT OF DISCLOSURE OF INTERESTS IN REAL PROPERTY

TO:

FROM:

#### **PROPERTY:** See **Exhibit "A"** attached hereto and incorporated herein by this reference

This Affidavit of Disclosure of Interests in Real Property is made for the sole purpose of compliance with Section 286.23, <u>Florida Statutes</u>, in connection with a conveyance of the Property to **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a body politic and corporate and agency of the state of Florida. Please be advised that the undersigned, after diligent search and inquiry, hereby states under oath, and subject to the penalties for perjury, that the name and address of each person having a beneficial interest in the Property is set forth on <u>Exhibit "B"</u> attached hereto and incorporated herein by reference.

I swear and affirm that the information furnished herein is accurate as of the date hereof, and I agree to promptly disclose any changes in the information contained herein, or any errors in such information.

This disclosure is made under oath, and I understand that I am subject to penalties for perjury for any false information contained herein.

\_\_\_\_\_; a

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

# STATE OF \_\_\_\_\_ ) COUNTY OF \_\_\_\_\_ )

The foregoing instrument was sworn to and subscribed before me by means of [] physical presence or [] online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, by \_\_\_\_\_, as \_\_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_\_. He is [] personally known to me or [] has produced \_\_\_\_\_\_ as identification (if left blank, then personally known to me).

(Signature of Notary Public)

(Typed Name of Notary Public) Notary Public, State of \_\_\_\_\_\_ Commission No.:\_\_\_\_\_\_ My Commission Expires:\_\_\_\_\_\_

# <u>EXHIBIT "D"</u> Form of Beneficial Interest Affidavit

# EXHIBIT "A"

Legal Description

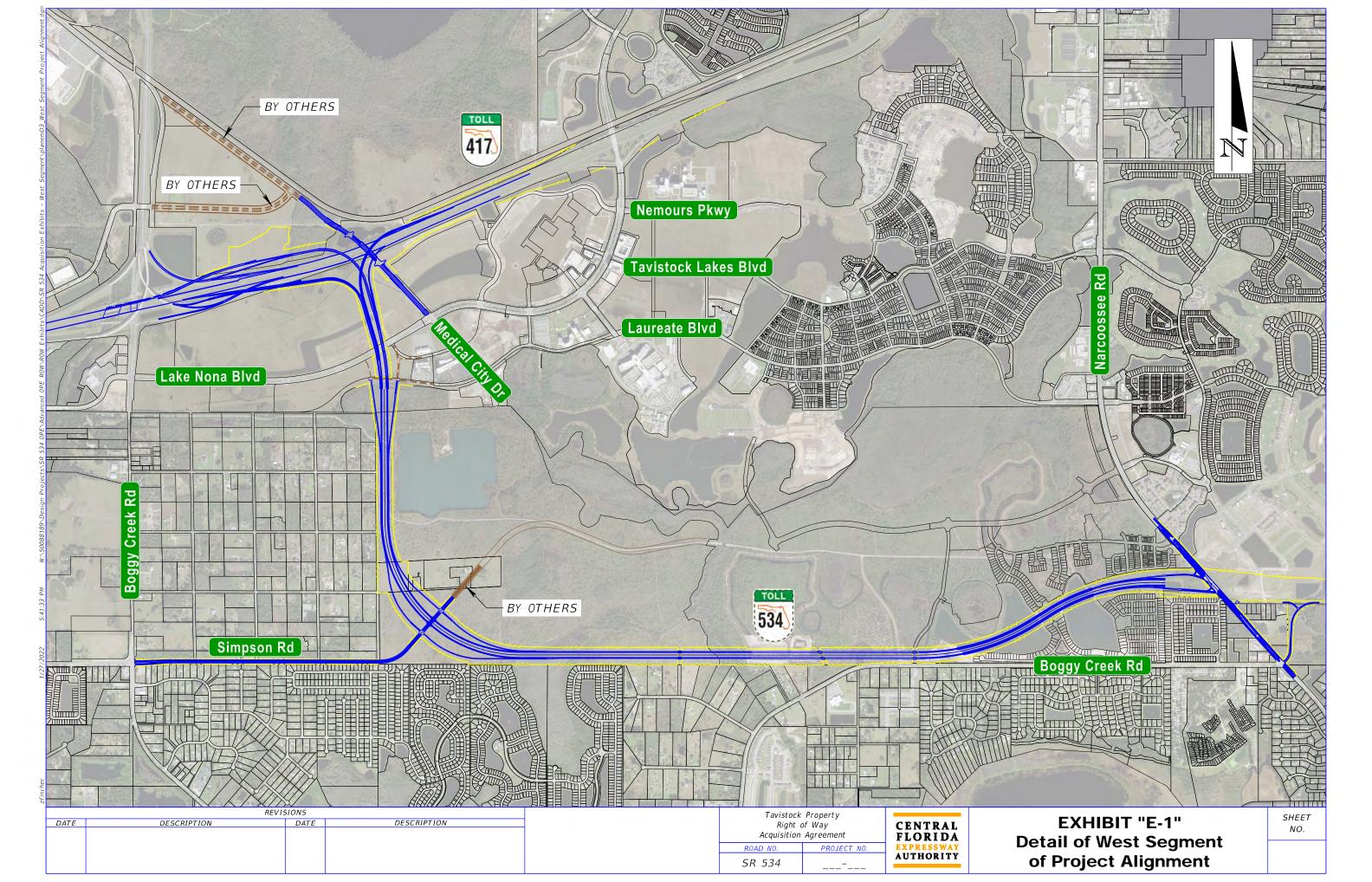
# **EXHIBIT "D"** Form of Beneficial Interest Affidavit

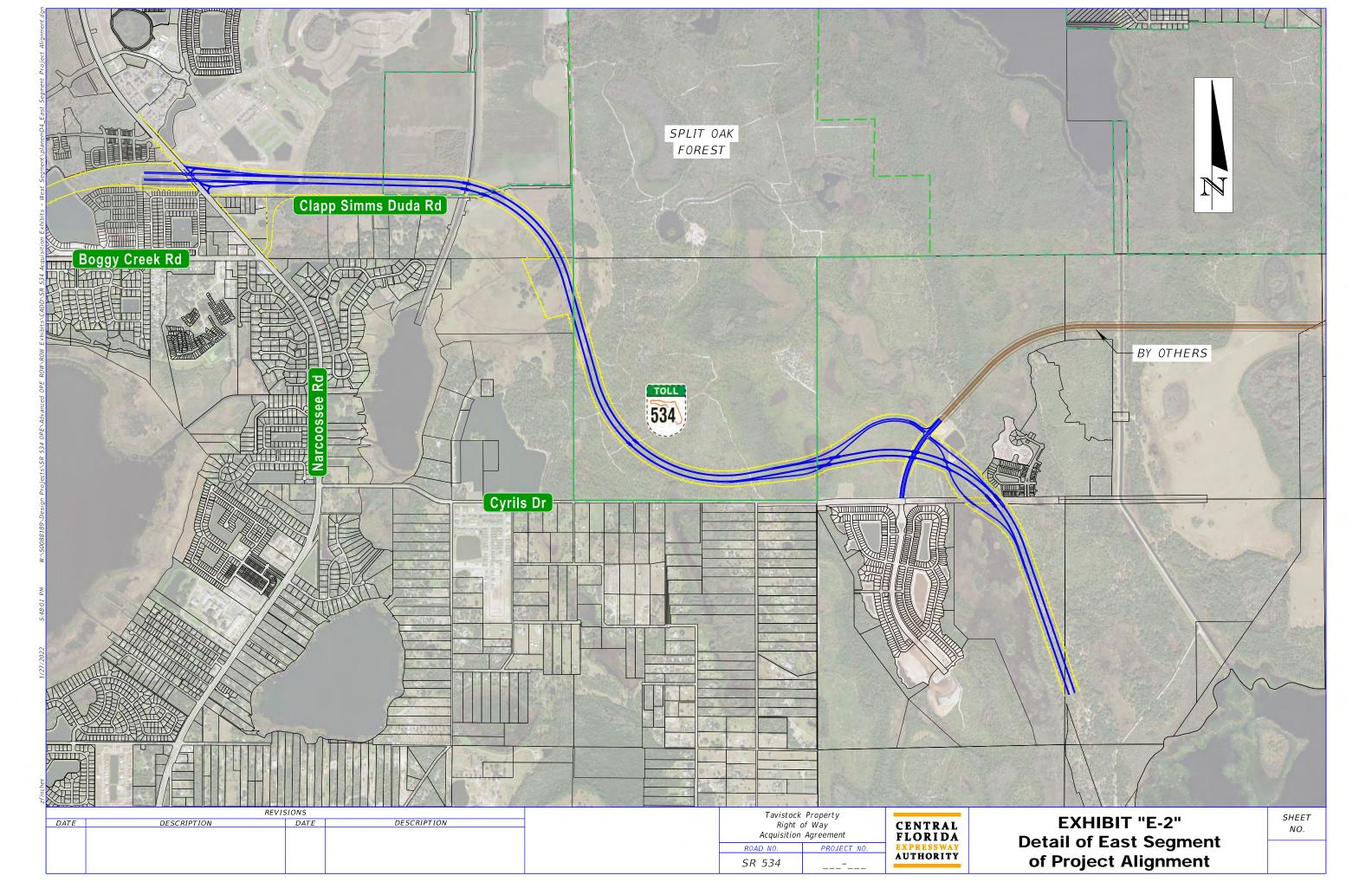
# EXHIBIT "B"

**Person(s) Holding a Beneficial Interest** 

<u>Name</u>:

Address:





# **EXHIBIT "F"** Form of Escrow Agreement

### **ESCROW AGREEMENT**

### (Right-of-Way Acquisitions Agreement—East Segment)

THIS ESCROW AGREEMENT (this "**Agreement**"), is made as of 20 Agent") among ſthe "Escrow located at email **CENTRAL FLORIDA PROPERTY HOLDINGS 500, LLC**, a Florida limited liability company ("**CFPH500**"), located Main Street, 301, Salt Lake City, Utah at 51 South Suite 84111. email ; and **CENTRAL FLORIDA PROPERTY HOLDINGS 600, LLC**, a Florida limited liability company ("**CFPH600**" and together with CFPH500 shall be referred to herein collectively as "SLR") located at 51 South Main Street, Suite 301, Salt Lake City, Utah ; and **SPRINGHEAD NORTH, LLC**, a Florida limited 84111. email liability company ("SHN"), located at 6900 Tavistock Lakes Blvd., Suite 200, Orlando, Florida 32827; and **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a body politic and corporate and agency of the state, under the laws of the State of Florida ("CFX") located at 4974 ORL Tower Road, Orlando, Florida 32807, email . SLR and SHN are referred to collectively below as "Owner." Escrow Agent, Owner, and CFX are at times referred to collectively below as the "Parties", and each individually as a "Party."

### BACKGROUND

Concurrently herewith Owner and CFX have executed and delivered the closing documents and funds (the "**Closing Deliveries**") that are listed on Exhibit "A" attached hereto and prescribed by a certain Amended and Restated Right-of-Way Acquisition Agreement (East Segment) entered into by them (the "**East ROW Agreement**"). The East ROW Agreement is incorporated herein by reference. The East ROW Agreement requires Owner and CFX to place the Closing Deliveries in escrow with Escrow Agent pending satisfaction of the conditions and requirements prescribed below in this Agreement. If the Parties satisfy those conditions and requirements by the deadline prescribed in the East ROW Agreement, the Parties will complete the closing of the East ROW Agreement by dispensing the Closing Deliveries as prescribed below. Capitalized terms (other than Section headings) used below that are not expressly defined in this Agreement have the meanings therefore provided in the East ROW Agreement.

NOW, THEREFORE, in consideration of the foregoing explanation, the mutual covenants contained in this Agreement and in the East ROW Agreement, and for other consideration, the Parties agree as follows:

1. <u>Establishment of Escrow</u>. Escrow Agent acknowledges receipt of the Closing Deliveries and agrees to hold them in escrow to be distributed solely in accordance with and subject to the terms of the East ROW Agreement and this Agreement.

2. **Distribution if Conditions Are Satisfied**. For purposes of this Agreement, the Construction Contingency Deadline has the meaning provided in the East ROW Agreement (which deadline may be extended in accordance with the East ROW Agreement).

- a. If the Construction Contingencies and the Additional Contingencies prescribed below in this Agreement are satisfied on or before the Construction Contingency Deadline, and the East ROW Agreement is not earlier terminated, the Parties will close the record conveyance of the Property and Easements, and to that end Escrow Agent shall distribute the Closing Deliveries as follows:
  - i. Escrow Agent will record in the Official Records of Orange or Osceola County, Florida (as appropriate) those documents identified as "Recording Documents" in the Closing Deliveries on the attached <u>Exhibit "A</u>."
  - ii. Escrow Agent will distribute or apply the funds included in the Closing Deliveries in accordance with the Closing Statement identified on Exhibit "A."
  - iii. Escrow Agent will distribute the remaining Closing Deliveries as directed on <u>Exhibit "A."</u>
  - iv. Escrow Agent will update the title insurance commitments previously issued pursuant to the East ROW Agreement and will issue policies of title insurance in favor of CFX in accordance with the East ROW Agreement.
- b. In order effectively to close the sale and purchase under the East ROW Agreement, CFX and Owner shall execute and deliver such additional documents and take such other actions as may be reasonably requested by a Party to satisfy reasonable legal concerns or ensure full performance of the East ROW Agreement, or as may otherwise be appropriate because of passage of time. Without limiting the foregoing, the Parties will do any of the following that becomes necessary:
  - i. Supplement or amend the Closing Statement;
  - Reprorate ad valorem taxes and other revenues and expenses the proration of which is required by the East ROW Agreement (and deliver to Escrow Agent such funds as either Party may owe based on the reprorations);
  - iii. Pay such costs of closing (as costs are allocated in the East ROW Agreement) as may have increased since the date of this Agreement;
  - iv. Add dates to documents; and
  - v. Execute such documents as Escrow Agent may reasonably require in order to insure CFX's title to the Property and Easements in accordance with the East ROW Agreement.

c. <u>Waiver of Construction Contingencies</u>. CFX has the right, subject to Owners' mutual agreement, which shall not be unreasonably, withheld, conditioned, or delayed, to elect to waive one or more of the Construction Contingencies by providing written notice to the Owners and Escrow Agent of CFX's waiver of such Construction Contingencies. In the event CFX elects with Owners' consent to waive a Construction Contingency in accordance with this Section, CFX shall be required to concurrently waive the corresponding Conservation Lands Contingencies and release the Conservation Lands from escrow pursuant to, and as defined in, the Conservation Lands Agreement and the escrow agreement entered into pursuant thereto. In no event shall the East Property and SLR Easements or the Conservation Lands be released from escrow if any of the Construction Contingencies is not satisfied or waived as provided herein, or if any of the Conservation Lands Contingencies or Additional Contingencies prescribed in the Conservation Lands Agreement has not been satisfied or waived as provided herein.

3. **Disposition if No Closing**. If for reasons outlined in this Agreement or in the East ROW Agreement, the East ROW Agreement is terminated without a closing, Escrow Agent will distribute the Closing Deliveries as follows:

- a. Each original document will be returned to the Party that signed the document. Escrow Agent will destroy each original document signed by multiple Parties (and will provide proof of their destruction that is satisfactory to all Parties).
- b. Escrow Agent will return the funds to the Parties that delivered the funds (as reflected on the Closing Statement).

4. <u>Additional Contingencies</u>. The following are the Additional Contingencies referenced in the Section above titled "Distribution if Conditions Are Satisfied:"

- a. Neither of the West Segment ROW Agreement or the Conservation Lands Agreement has been terminated.
- b. No default exists of covenants or obligations that survive closing of the West Segment ROW Agreement or that are contained in the deed or other documents executed at closing of the West Segment ROW Agreement.
- c. The escrow agreement executed in connection with the Conservation Lands Agreement remains in full force and effect, and the escrowed items held under that escrow agreement are being distributed concurrently in order to close the record conveyances of the properties and property interests that are the subject of that agreement.
- d. None of the parties to the West Segment ROW Agreement has invoked, nor do conditions exist that with the passage of time or giving of notice, or both, would permit a party's invoking provisions of that agreement requiring a repurchase or reconveyance of the properties and easements conveyed thereunder.

5. **Escrow Agent's Claim in Closing Deliveries**. Except as expressly provided to the contrary in this Agreement, the Escrow Agent does not have any interest in the Closing Deliveries but is serving as an escrow holder in a fiduciary capacity (as that fiduciary capacity may be created, controlled, or limited by this Agreement) only. The Parties to this Agreement will provide the Escrow Agent with appropriate executed forms necessary for the Escrow Agent to comply with all reporting and similar requirements, including. This Section shall survive the termination of this Agreement and the resignation or replacement of any Escrow Agent.

# 6. **Standard of Care for the Escrow Agent**.

a. The Escrow Agent shall be responsible only for performance of its duties as specified in this Agreement, and no implied covenants, duties, or obligations shall bind or be enforceable against the Escrow Agent. The Escrow Agent shall not be liable to the other Parties to this Agreement for any act or failure to act other than for the Escrow Agent's gross negligence or willful misconduct.

b. The Escrow Agent shall not be liable for any action taken or omitted by it, or any action suffered by it to be taken or administered in good faith, and in the exercise of its own best judgment, and may rely conclusively and shall be protected in acting upon any order, notice, demand, certificate, opinion or other advice of counsel (including counsel selected by the Escrow Agent), statement, instrument, report, or other document (not only as to its due execution and its validity and effectiveness, but also as to the truth and acceptability of any information contained in it) which is reasonably believed by the Escrow Agent to be genuine and to be signed by the proper person or persons.

c. The Escrow Agent shall not be bound by any notice or demand, or any waiver, modification, termination or rescission of this Agreement or any of its terms, unless executed in writing by all Parties to this Agreement.

d. The Escrow Agent shall not be bound by any notice, directive, or demand that Escrow Agent believes is inconsistent with or contravenes the requirements of this Agreement or the East ROW Agreement.

7. **Disagreements**. In any dispute concerning the distribution of all or any portion of the Closing Deliveries, or if any disagreements arise among the Parties to this Agreement concerning the interpretation of this Agreement, or concerning the Parties' respective rights and obligations under this Agreement, or the propriety of any action contemplated or taken by the Escrow Agent, or if the Escrow Agent in good faith is in doubt about what action should be taken under to this Agreement, the Escrow Agent shall not be obligated to resolve the dispute or disagreement or to make any distribution of all or any portion of the Closing Deliveries, but may commence an action in the nature of an interpleader and seek to deposit all or any portion of the Closing Deliveries in a court of competent jurisdiction in Orange County, Florida, and thereby be discharged from any further duty or obligation with respect to that portion of the Closing Deliveries so deposited so long as it is so deposited. The Escrow Agent, in its sole discretion, may elect in lieu of filing an interpleader to cease performance

of this Agreement and all instructions received in connection with this Agreement until the Escrow Agent has received a written notice of resolution of the dispute or disagreement signed by the parties to the dispute or disagreement; provided, however, that during the pendancy of such suspension the Escrow Agent shall continue to hold the Closing Deliveries in accordance with this Agreement and the East ROW Agreement.

8. **Notices.** Notices to be given under this Agreement shall be in writing. All notices shall be addressed as provided above, and sent by registered or certified United States Postal Service, return-receipt requested, with all postage and fees prepaid, or sent by a nationally recognized overnight courier service for delivery on the next business day with all fees and charges prepaid, or delivered by hand, or sent via email to the addresses provided above. Any notice sent by or to the attorney representing a Party shall be as effective as if sent by or to the applicable Party. Any Party may change the information provided above for giving notice by delivering notice of the new information to the other Parties in a manner permitted by this Section.

9. **Agreement for Sole Benefit of Escrow Agent, CFX, and Owner.** This Agreement and the rights and benefits created by it are for the sole and exclusive benefit of the Escrow Agent, CFX and Owner. Without limiting the generality of the foregoing, this Agreement shall not be deemed to be for the direct or indirect benefit of any third-party.

10. **No Waiver of Noncompliance**. No failure of any Party to this Agreement to exercise any power or right granted under this Agreement, or to insist upon strict compliance by any other Party of any obligation under this Agreement, and no course of dealing with regard to the terms of performance hereof, shall constitute a waiver of the rights of such Party to demand full and exact compliance with the terms of this Agreement.

11. **Entire Agreement**. This Agreement and the East ROW Agreement contain the entire agreement of the Parties relating to escrow of the Closing Deliveries, and no representations, inducements, promises, or agreements, whether oral or otherwise, of a Party that are not embodied in this Agreement or specifically incorporated into this Agreement by reference shall be of any force or effect.

12. **Severability of Clauses**. If any provision of this Agreement, the deletion of which would not adversely affect a Party's enjoyment of any material benefit intended by this Agreement nor substantially increase the burden of a Party under this Agreement, is found to be invalid or unenforceable, that provision will be severed from this Agreement and the remainder of this Agreement will continue to be binding and enforceable.

13. **<u>Counterparts</u>**. This Agreement may be executed in multiple counterparts, including by electronic or digital signatures. The signature of any Party to a counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart. A Party may bind itself to this Agreement by executing a counterpart hereof, then transmitting the executed counterpart to the other Parties via email in .pdf format.

14. **Enforcement by Specific Performance**. In addition to all remedies available at law

or in equity for enforcement of this Agreement, the Parties expressly agree they may enforce this agreement by specific performance.

15. **Further Assurances**. Each Party will, without additional consideration, sign, acknowledge, and deliver any other documents and take any other action necessary or appropriate and reasonably requested by another Party to carry out the intent and purpose of this Agreement.

16. **Construction**. Whenever the context permits or requires, the use of the singular in this Agreement shall include the plural, and the plural shall include the singular. Any reference herein to one gender shall likewise apply to the other gender and to the neuter; and any reference herein to the neuter shall refer likewise to one or both genders. Any reference herein to a person shall include trusts, partnerships, corporations, and other entities, as appropriate. The words "herein", "hereof", "hereunder", "hereinafter", "hereinabove", and other words of similar import refer to this Agreement as a whole and not to any particular Section, subsection, paragraph, clause, article, or other subdivision of this Agreement. For purposes of this Agreement, "will" or "shall" is a mandatory word denoting an obligation to pay or perform. "May" is a permissive word denoting an option, right, or choice, but not an obligation.

17. **Attorney's Fees**. If either party initiates or is made a party to legal proceedings (whether judicial, administrative, declaratory, in arbitration, or otherwise) in connection with this Agreement, then the substantially nonprevailing party in those proceedings will pay the costs and attorney's fees, including the costs and attorney's fees of appellate proceedings, incurred by the substantially prevailing party. This obligation to pay attorney's fees and costs will apply also to settlements of disputes and to collection efforts. 18.

[The Parties have signed on the following pages.]

# [Signature page of Escrow Agreement]

IN WITNESS OF THEIR AGREEMENT, the Parties hereby sign this Agreement.

"ESCROW AGENT"	"CFX"
	CENTRAL FLORIDA EXPRESSWAY AUTHORITY
By: Print name:	By: Print name:
As its:	As its:
"SLR"	"SHN"
CENTRAL FLORIDA PROPERTY HOLDINGS 500, LLC	SPRINGHEAD NORTH, LLC
Ву:	Ву:
Print name:	Print name:
As its:	As its:
AND	
CENTRAL FLORIDA PROPERTY HOLDINGS 600, LLC	
By:	
Print name:	
As its:	

# **EXHIBIT "A"** Closing Deliveries

CENTRAL FLORIDA EXPRESSWAY AUTHORITY SR 534 (OSCEOLA PARKWAY EXTENSION) PROJECT NO. 534-XXX PARCEL NO. 534-861 PURPOSE: PERPETUAL EASEMENT ESTATE: EASEMENT

# EXHIBIT "G" **CFPH600 Conveyance Areas**

#### LEGAL DESCRIPTION:

A parcel of land in the Southeast 1/4 of Section 2, Township 25 South, Range 31 East, Osceola County, Florida, being more particularly described as follows:

Commence at a found 4-inch by 4-inch concrete monument with disk stamped "PRM LB 6723" marking the Southwest corner of the Southwest 1/4 of Section 2, Township 25 South, Range 31 East, Osceola County, Florida; thence run North 89°23'51" East along the South line of said Southwest 1/4, a distance of 2720.15 feet to the Southeast corner of said Southwest 1/4; thence departing said South line, run North 00°51'29" West along the East line of said Southwest 1/4, a distance of 2720.15 feet to the Southeast corner of said Southwest 1/4, a distance of 2720.15 feet to the Southeast corner of said Southwest 1/4; thence departing said South line, run North 00°51'29" West along the East line of said Southwest 1/4, a distance of 2720.15 feet to the Southeast corner of said Southwest 1/4, a distance of 2720.15 feet to the Southeast corner of said Southwest 1/4; thence departing said South line, run North 00°51'29" West along the East line of said Southwest 1/4, a distance of 2720.15 feet to the Southeast corner of said Southwest 2.75 feet to the Southeast corner of said Southwest 2.75 feet to the Southeast corner of said Southwest 1/4; thence departing said South line, run North 00°51'29" West along the East line of said Southwest 2.75 feet to the Southeast corner of said Southwest 2.75 feet to the Southeast corner of said Southwest 2.75 feet to the Southeast corner of said Southwest 3.75 feet to the Southeast corner of said Southwest 3.75 feet to the Southeast 2.75 feet to distance of 619.28 feet to a point on a non-tangent curve, concave Southwesterly, having a radius of 2835.00 feet, a chord distance of 4.32 feet and a chord bearing of South 66°25'57" East, thence departing said East line, from a tangent bearing of South 66°28'34" East, run Southeasterly along the arc of said curve through a central angle of 00°05'14", a distance of 4.32 feet to the POINT OF the arc of said curve through a central angle of 00°05'14", a distance of 4.32 feet to the POINT OF BEGINNING; thence departing said curve run North 33°00'32" East, a distance of 258.50 feet; thence North 16°21'25" East, a distance of 279.59 feet; thence South 52°36'17" East, a distance of 37.50 feet; thence South 16°21'25" West, a distance of 271.25 feet; thence South 33°00'32" West, a distance of 258.06 feet to a point on a non-tangent curve, concave Southwesterly, having a radius of 2835.00 feet, a chord distance of 35.44 feet and a chord bearing of North 66°01'51" West; thence from a tangent bearing of North 65°40'21" West, run Northwesterly along the arc of said curve through a central angle of 00°42'59", a distance of 35.44 feet to the POINT OF BEGINNING BEGINNING.

Containing 18678 square feet, more or less

# NOTES:

- THIS SKETCH OF DESCRIPTION WAS PREPARED WITH THE BENEFIT OF CERTIFICATE OF TITLE PREPARED BY COMPANY NAME AS TO FILE NO. XXXXXXX, EFFECTIVE DATE OF MONTH XX, 2022
- 2. BEARINGS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, FLORIDA EAST ZONE (0901), 1983 NORTH AMERICAN DATUM, 2011 ADJUSTMENT, DERIVING A BEARING OF NORTH 89°23'51" EAST ALONG THE SOUTH LINE OF THE SW 1/4 OF SECTION 2, TOWNSHIP 25 SOUTH, RANGE 31 EAST, OSCEOLA COUNTY, FLORIDA.
- 3. THE ELECTRONIC SIGNATURE HEREON IS IN COMPLIANCE WITH FLORIDA ADMINISTRATIVE CODE (FAC) 5J-17.062(3).
- 4. THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY WILLIAM D. DONLEY, PSM NO. 5381, ON XX/XX/XXXX PER FAC 5J-17.062(2).

I HEREBY CERTIFY THIS SKETCH OF DESCRIPTION IS IN ACCORDANCE WITH THE STANDARDS OF PRACTICE AS REQUIRED BY CHAPTER 5J-17 FLORIDA ADMINISTRATIVE CODE PURSUANT TO SECTION 472.027. FLORIDA STATUTES.

WILLIAM D. DONLEY, P.S.M. LICENSE NUMBER 5381

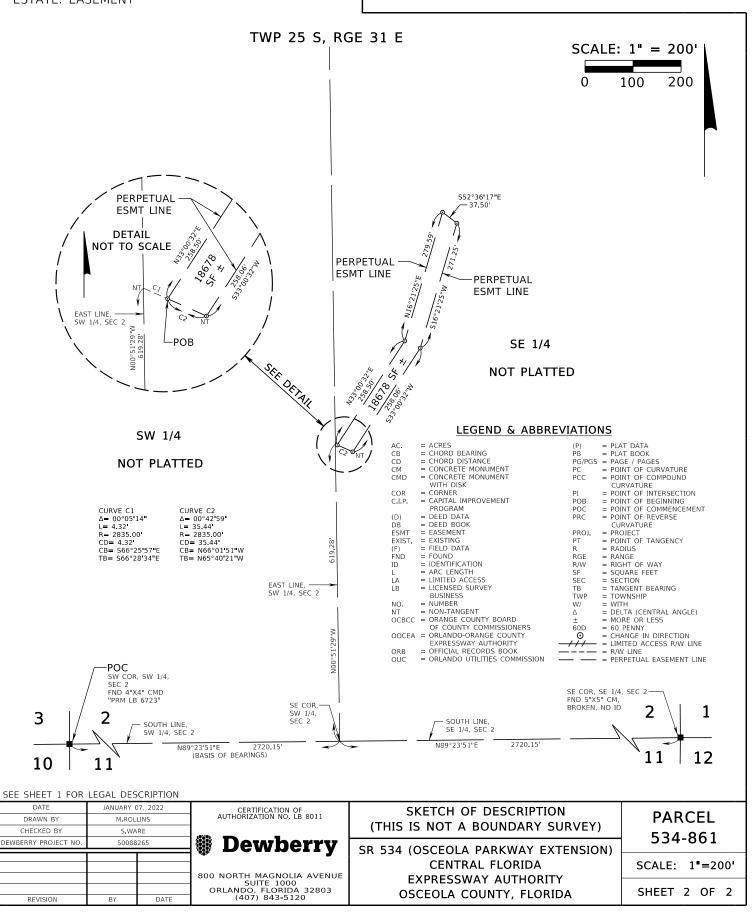


NOT VALID WITHOUT THE SIGNATURE

AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

SEE SHEET 2 FOR	LEGEND A	ND SKEICH	OF DESCRIPTION		
DATE	JANUARY	07, 2022	CERTIFICATION OF	SKETCH OF DESCRIPTION	DADOEL
DRAWN BY	M.ROL	LINS	AUTHORIZATION NO. LB 8011	(THIS IS NOT A BOUNDARY SURVEY)	PARCEL
CHECKED BY	S.WA	RE		(THIS IS NOT A BOUNDART SURVET)	534-861
DEWBERRY PROJECT NO.	50088	3265	<b>Dewberry</b>	SR 534 (OSCEOLA PARKWAY EXTENSION)	554-001
			800 NORTH MAGNOLIA AVENUE	CENTRAL FLORIDA	SCALE: N/A
REVISION	BY	DATE	SUITE 1000 ORLANDO, FLORIDA 32803 (407) 843-5120	EXPRESSWAY AUTHORITY OSCEOLA COUNTY, FLORIDA	SHEET 1 OF 2

CENTRAL FLORIDA EXPRESSWAY AUTHORITY SR 534 (OSCEOLA PARKWAY EXTENSION) PROJECT NO. 534-XXX PARCEL NO. 534-861 PURPOSE: PERPETUAL EASEMENT ESTATE: EASEMENT



#### **MEMORANDUM**

TO:	CFX Board Members
FROM:	WR Diego "Woody" Rodriguez, General Counsel
DATE:	January 21, 2022
SUBJECT:	First Amendment to Agreement to Convey Conservation Lands between the Central Florida Expressway Authority, Suburban Land Reserve, Inc., and Tavistock East Holdings, LLC Project No.: 599-2260

On December 12, 2019, the Central Florida Expressway Authority Board approved the acquisition of certain parcels by CFX and for the conveyance of certain conservation lands to CFX. Since that date, the parties have further refined the legal descriptions to be conveyed including identification of certain easements, bifurcated the project as having an East and West side, and updated the appraised value to reflect the new reduced acreage which results in a reduction in the land acquisition costs to CFX. The proposed First Amendment to that conveyance is necessary to conform this agreement to the proposed changes to the acquisition agreements.

Approval of the First Amendment to Agreement to Convey Conservation Lands between the Central Florida Expressway Authority, Suburban Land Reserve, Inc., and Tavistock East Holdings, LLC, is requested, subject to any minor or clerical revisions approved by the General Counsel or designee.

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



### FIRST AMENDMENT <u>TO</u> AGREEMENT TO CONVEY CONSERVATION LANDS

**THIS FIRST AMENDMENT TO AGREEMENT TO CONVEY CONSERVATION LANDS** ("Amendment") is made and entered into as of the Effective Date (hereinafter defined), by and among **SUBURBAN LAND RESERVE, INC.**, a Utah corporation, whose address is 51 South Main Street, Suite 301, Salt Lake City, Utah 84111 ("SLR"), **TAVISTOCK EAST HOLDINGS, LLC**, a Florida limited liability company, whose address is 6900 Tavistock Lakes Blvd., Suite 200, Orlando, Florida 32827 ("Tavistock"), and **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a body politic and corporate and agency of the state, under the laws of the State of Florida, whose address is 4974 ORL Tower Road, Orlando, Florida 32807 ("CFX"). SLR and Tavistock shall be referred to herein individually as an "Owner" and collectively as the "Owners". SLR, Tavistock, and CFX are sometimes collectively referred to herein as the "Parties" and individually as a "Party".

### WITNESETH:

**WHEREAS**, the Owners and CFX have entered into that certain Agreement to Convey Conservation Lands dated December 12, 2019 ("Agreement"), whereby Tavistock and SLR have agreed to convey their interests in certain Conservation Lands, as defined in the Agreement, as set forth in more detail in the Agreement; and

WHEREAS, Lake Nona Land Company, LLC, Lake Nona Research, LLC, and TDCP, LLC (collectively, "Lake Nona"), Springhead North, LLC ("SPN"), SLR, and CFX entered into that certain Right of Way Acquisition Agreement dated December 12, 2019, as amended, restated and assigned by that certain Amended, Restated and Assignment of Right-of-Way Acquisition Agreement West Segment ("West Segment ROW Agreement") dated concurrently herewith between Lake Nona and CFX, and assigned by CFX to Osceola County, Florida (the "County"), setting forth certain rights and obligations of the parties thereto for the right-of-way acquisition necessary for the construction and operation of CFX's West Segment (as defined therein) being a portion of the Osceola Parkway Extension (sometimes referred to hereinafter as the "West Segment"); and

WHEREAS, SPN, Central Florida Property Holdings 500, LLC and Central Florida Property Holdings 600, LLC (both of which are affiliates of SLR and are referred to collectively below as "CFPH"), and CFX entered into that certain Amended and Restated Right-of-Way Acquisition Agreement East Segment dated of even date herewith ("East Segment ROW Agreement" and together with the West Segment ROW Agreement being referred to herein collectively as the "ROW Agreements"), setting forth certain rights and obligations of the parties thereto for the right-of-way acquisition necessary for the construction and operation of CFX's East Segment (as defined therein), also being a portion of the Osceola Parkway Extension; and

WHEREAS, the East Segment and the West Segment fall within the alignment of the Osceola Parkway Extension (sometimes referred to hereinafter as the "Extension" or the "Project"); and

**WHEREAS**, on or about December 12, 2019, CFX approved the alignment more particularly depicted in <u>Exhibit "A"</u> attached hereto and incorporated herein by reference as CFX's preferred alignment for the Osceola Parkway Extension ("Preferred Alignment"); and

WHEREAS, CFX has refined the boundaries of the Preferred Alignment based on further design and engineering efforts, as depicted in <u>Exhibit "B"</u> attached hereto and incorporated herein by reference ("Project Alignment"), which Project Alignment is substantially similar to, and does not substantially deviate in any material respect from, the Preferred Alignment; and

**WHEREAS**, Owners and CFX desire to amend the terms and conditions of the Agreement in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements herein set forth, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby expressly acknowledged by the parties hereto, the Parties hereby covenant and agree as follows:

1. **<u>Recitals</u>**. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **Defined Terms.** Capitalized terms used in this Amendment (except for headings) shall have the meaning that appear when the terms are first set forth in quotation marks. Any capitalized terms not specifically defined herein shall have the meaning ascribed to them in the Agreement. In the event of any conflict between the defined terms, the definition in this Amendment shall control. All of the defined terms contained in this Amendment may be used in the singular or the plural and, except as the context may require otherwise, shall mean when used in the plural all objects, persons, and the like included in the definition.

### 3. <u>Revisions to Defined Terms</u>.

a. <u>Conservation Land Contingencies</u>. All references to the "Split Oak Contingencies" in the Agreement shall be replaced with the term "Conservation Land Contingencies." "Conservation Land Contingencies" used herein shall have the meaning set forth below.

b. <u>Project Alignment</u>. All references to the "Split Oak Alignment" in the Agreement shall be replaced with the term "Project Alignment".

c. <u>Closing in Escrow</u>. All references to the "Closing" in the Agreement shall be replaced with the term "Closing in Escrow".

d. <u>Escrow Date</u>. All references to the "Closing Date" in the Agreement shall be replaced with the term "Escrow Date," except as otherwise set forth herein.

4. The first two sentences of Section 7 of the Agreement are hereby amended and restated as follows:

No later than thirty (30) days from the Effective Date, Owners shall obtain and deliver to CFX a boundary survey of the Conservation Lands (the "Survey"), at CFX's sole cost and expense, which costs shall be reimbursed by CFX at the Closing in Escrow. The Survey shall satisfy the requirements of Section 627.7842, Florida Statutes, and shall be performed and certified as complying with applicable Law to CFX (and/or its Nominee), Owners, their respective attorneys, and to the Title Company.

5. The fourth sentence of Section 8.c. of the Agreement is hereby amended and restated in its entirety as follows:

SLR and County have entered into an agreement dated as of December 21, 2021 (the "Remediation Agreement") pursuant to which SLR, at its own expense, has agreed to remediate the contamination from the cattle dipping vat in accordance with the remediation plan that is attached to and incorporated in the Remediation Agreement (the "Remediation Plan"). In reliance on the Remediation Agreement, CFX shall not delay the Escrow Date pending completion of the remediation by SLR in accordance with the Remediation Plan. If the remediation in accordance with the Remediation Plan is not complete on the Escrow Date, then SLR will cause it to be completed thereafter as required in the Remediation Agreement, and for that purpose SLR and its engineers, consultants, contractors, employees, affiliates, and other persons shall have the right to enter onto and complete the remediation work at the Conservation Lands.

6. Section 9.b.(i) of the Agreement is hereby amended and restated in its entirety as follows:

Agreement(s) that the use of the Conservation Lands will be restricted pursuant to the Use Restriction set forth in Section 10.b.(iv) below.

7. Section 10 of the Agreement is hereby amended and restated in its entirety as follows:

### 10. Contingencies.

a. <u>Contingent on ROW Agreements</u>. Concurrently with signing this Amendment, Lake Nona, SHN, CFPH, CFX and the County have executed their respective ROW Agreements, whereby Lake Nona, SHN and CFPH agree to convey to County or CFX, as applicable, the property interests in the lands owned by Lake Nona, SHN and CFPH that the ROW Agreements identify and require be conveyed for the construction, operation and use of the

Extension within the Project Alignment. The ROW Agreements are incorporated herein by reference. In the ROW Agreements, Lake Nona, SHN and CFPH have contracted to sell to County or CFX, as applicable, and County and CFX have contracted to purchase from said parties, fee simple interest and easement interests in lands in Osceola County and Orange County, Florida intended as road right of way and stormwater ponds (and related facilities) required for constructing and operating the Extension within the Project Alignment. The ROW Agreements refer to those lands and easement interests collectively as the "Property" and "Easements".

i. Each Party's rights, interests, and obligations under this Agreement, as amended, are expressly contingent on the continuance and performance of the ROW Agreements. If before the Closing in Escrow, either or both of the ROW Agreements are terminated, or if after the Closing in Escrow the Closing Deliveries, as defined in the East Segment ROW Agreement, are returned to CFX, SHN and CFPH in accordance with the terms of the escrow agreement governing the Closing in Escrow for the East Segment ROW Agreement, this Agreement, as amended, shall also automatically terminate without any further action being required by the Parties. Further, a Party's default before or after the Closing in Escrow of either or both of the ROW Agreement.

ii. Unless otherwise subsequently agreed in writing by the Parties, the documents executed for closing under this Agreement, as amended, will be placed in escrow concurrently with the closings (or escrowed closing, as the case may be) of the Property being conveyed under the ROW Agreements, and will be held in escrow pending satisfaction of conditions prescribed in the Escrow Agreement (defined below). The executed documents and the funds for closing the East Segment ROW Agreement will also be delivered then placed in escrow in accordance with the East Segment ROW Agreement. Accordingly, notwithstanding any conflicting provision of this Agreement, the Closing in Escrow (hereinafter defined) under this Agreement will close at the same time and place as the closings under the ROW Agreements. Neither Party shall be obligated to close on one of the agreements without closing at the same time on the other agreements.

b. Conservation Land Contingencies. Concurrent with the Closing in Escrow, Owners and CFX shall deliver to the Escrow Agent, as defined in the ROW Agreements, all closing documents (as set forth in Section 11.g. of the Agreement) and funds required in the Agreement or reasonably required by the Title Company to convey to CFX, or the Nominee, fee simple title to the Conservation Lands, subject to the Use Restriction (as defined below), and otherwise in accordance with the Agreement, as amended (which documents and funds are collectively referred to herein as the "Closing Deliveries"). The Parties will mutually agree on the Nominee to be included in the Deed(s) in accordance with the Final Approvals. In the event the name of the Nominee is not included in the Deed(s) delivered to the Escrow Agent in escrow as of the Closing in Escrow, the Parties agree to cooperate to revise and re-execute, if necessary, any and all closing documents reasonably necessary to convey fee simple ownership of the Conservation Lands to the Nominee once the Parties identify the Nominee. The Parties agree to direct the Escrow Agent to hold the Closing Deliveries in escrow in accordance with the terms and conditions of an escrow agreement in substantially the form set forth in Exhibit "C" attached hereto and incorporated herein by reference ("Escrow Agreement"). The Escrow Agreement shall prescribe that release of the Closing Deliveries and recording of the Deed(s) are expressly contingent on satisfaction on or before ten (10) years after the Closing in Escrow (the "Conservation Lands Contingencies Deadline"), unless mutually extended or waived by the Parties in accordance with the terms of the Escrow Agreement, of the following conditions, in addition to such other conditions and requirements as are prescribed in the Escrow Agreement (collectively referred to as the "Conservation Lands Contingencies"):

i. CFX's securing from all applicable governmental authorities Final Approvals for any and all Approvals required for constructing and operating the Extension within the Project Alignment in a complete project, including, without limitation, required Approvals from the County, Orange County, State of Florida, Florida Communities Trust, Florida Fish and Wildlife Commission and Florida Department of Environmental Protection. "Final Approvals" shall mean the issuance by all applicable governmental authorities of all approvals required for constructing and operating the Extension within the Project Alignment, which Approvals are either (1) affirmed on administrative and judicial review by final order or judgment for which no appeal is or can be taken in accordance with applicable Law, or (2) in effect beyond the period of limitations for administrative and judicial review in accordance with applicable Law, during which period no action or other proceeding is instituted for review or challenge thereof.

ii. Final resolution of any challenges or appeals brought against the Approvals or the designation of the Project Alignment for the Extension;

iii. CFX's notifying Owners in writing that it is prepared to advertise for design of the West Segment. CFX will thereafter diligently proceed with the process to advertise of the design of the West Segment of the Project.

iv. The Parties' mutually agreeing on the terms and conditions of the use restriction to be included in the Deed(s) (hereinafter defined) limiting and restricting the use of the Conservation Lands to conservation, protection and enhancement of natural resources, and for such passive, natural resource-based public outdoor uses as may be compatible with conservation, protection and enhancement of natural resources and with all Laws and Final Approvals (the "Use Restriction");

v. Reimbursement by the Florida Department of Transportation ("FDOT") to the County and CFX of amounts paid respectively by them to purchase the Property and the Easements in the amount set forth in, and in accordance with the terms and conditions of, the Amendment to Joint Participation Agreement between the State of Florida Department of Transportation and Osceola County dated March 16, 2018 ("JPA").

vi. Substantial performance of, continuing enforceability of, and satisfaction or waiver of all contingencies prescribed in, this Agreement and the ROW Agreements by the parties thereto (including without implied limitation payment of the Purchase Prices prescribed by the ROW Agreements) and release from escrow of the documents and funds held in escrow to effect the final closing of this Agreement and of the East Segment ROW Agreement.

vii. CFX shall have secured any and all property rights reasonably required for the construction of the Project after using good faith and diligent efforts, which efforts

shall include, without limitation, the exercise of CFX's power of eminent domain if deemed reasonably necessary in the sole discretion of the governing board of CFX.

viii. The Conservation Lands, and the design, engineering, and construction of the Project have not been materially, adversely impacted by a Force Majeure Event (as defined herein).

ix. Adequate funding and/or financing is available to complete the West Segment as designed and approved.

x. Satisfaction or waiver of any and all Construction Contingencies, as defined in the ROW Agreements.

xii. Satisfaction of the Additional Conditions prescribed (and defined) in the Escrow Agreement.

If any of the Conservation Lands Contingencies is not satisfied on or before the Conservation Lands Contingencies Deadline, as may be extended or waived as provided herein, then any of the Owners will have the right to terminate this Agreement and the Escrow Agreement by delivering written notice of termination to the other Parties, the Closing Deliveries held pursuant to the Escrow Agreement shall be returned to the Parties that delivered them, and the Parties will have no further rights or obligations except those the Parties expressly agree survive such a termination.

c. <u>Extension of Conservation Lands Contingencies Deadline</u>.

i *CFX's Right to Extend.* If, prior to the Conservation Lands Contingencies Deadline, CFX determines, after good faith and diligent efforts, there is a lack of available funds or financing to complete the Project as designed and approved, CFX shall have the right upon written notice to the Owners to extend the Conservation Lands Contingencies Deadline for two (2) periods of up to twelve (12) months each to enable CFX to secure such additional funds or financing needed. Further, CFX covenants and agrees: (x) to provide prompt written notice to Owners upon becoming aware of any funding or financing deficit and specifying the amount of said deficit, (y) to use commercially reasonable efforts to mitigate the effect of any funding or financing deficit, and (z) to continue to perform its other obligations hereunder.

ii. *Owner's Right to Extend.* If despite the Parties' good faith and diligent efforts the Conservation Lands Contingencies are not satisfied ninety (90) days prior to the Conservation Lands Contingencies Deadline, either of CFX or Owners shall have the unilateral right upon written notice to the other Party to extend the Conservation Lands Contingencies Deadline up to, but not more than, sixty (60) additional months to a date that is mutually agreeable to CFX and Owners. If the Parties are unable to mutually agree upon the duration of the extension, the Conservation Lands Contingencies Deadline shall extend for sixty (60) additional months.

iii. *Effect of Extension*. In the event the Conservation Lands Contingencies Deadline is extended pursuant to subpart i. or ii. above, the Term of the Use Restriction shall be extended for an equal period of time.

d. <u>Waiver of Conservation Lands Contingencies</u>. CFX has the right subject to Owners' mutual agreement, which shall not be unreasonably withheld, conditioned, or delayed to elect to waive one or more of the Conservation Lands Contingencies by providing written notice to the Owners and Escrow Agent of CFX's waiver of such Conservation Lands Contingencies. In the event CFX elects to waive a Conservation Lands Contingency, CFX shall be required to concurrently waive the corresponding Construction Contingencies and release the East Segment from escrow pursuant to, and as defined in, the East Segment ROW Agreement and escrow agreement entered into pursuant thereto. Notwithstanding the foregoing, in no event shall the Conservation Lands or the East Segment be released from escrow if one or more of the Additional Contingencies is not satisfied or waived as provided herein, or if any of the other Conservation Lands Contingencies or any of the other Construction Contingencies prescribed in the East Segment has not been satisfied or waived as provided herein.

e. <u>Repurchase of West Segment</u>. In addition to the other consequences provided in this Agreement for failure to satisfy any of the Conservation Lands Contingencies on or before the Conservation Lands Contingencies Deadline, as it may have been extended pursuant to subpart c. above, if construction of the West Segment has not yet then commenced, then the Owners may elect to repurchase the Property and Easements conveyed at closing of the West ROW Agreement in accordance with the terms and conditions of the West ROW Agreement.

f. <u>Release of Closing Deliveries</u>. In the event any of the Conservation Lands Contingencies in Section 13.b.(i) through (x) is not satisfied on or before the Conservation Lands Contingencies Deadline, as it may have been extended pursuant to subpart c. above, then the Escrow Agent shall be authorized to release, return or destroy, as applicable, the Closing Deliveries in accordance with the terms and conditions of the Escrow Agreement.

8. Sections 11.a., d., and e. of the Agreement are hereby amended and restated in their entirety as follows:

11. a. <u>Closing in Escrow Deadline</u>. The Closing in Escrow shall occur concurrently with the closings (including in the case of the East Segment ROW Agreement, the closing in escrow) of the Property and Easements in accordance with the terms of the ROW Agreements at the offices of the Title Company, or such other location as agreed upon by the Parties, on a day and time mutually selected by the Parties (the "Escrow Date").

d. Owner shall surrender possession of the Conservation Lands to CFX or its Nominee as of the date the Closing Deliveries (defined in the Escrow Agreement) are released from escrow by the Title Agent to CFX or its Nominee ("Release Date") in accordance with this Agreement and the Escrow Agreement to effect the record conveyance of the Conservation Lands. Any personal property or fixtures left by Owners after the Release Date shall be presumed abandoned, and CFX or its Nominee will have the right to remove and destroy such property or fixtures without any responsibility or liability to Owners for any damages or claims whatsoever. e. <u>Payments and Prorations</u>. As of the Release Date, Owners shall pay all taxes, assessments and charges applicable to the Conservation Lands for all years prior to the Release Date. Owners shall continue to pay any and all taxes and assessments levied against the Conservations Lands from the Escrow Date to the Release Date. As of the Release Date, Owners will pay Owners' pro rata share of all taxes and assessments levied against the Conservation Lands for the year of release of the Conservation Lands from escrow in compliance with the procedures of Section 196.295, Fla. Stat. Any other revenues and expenses of the Conservation Lands shall be prorated as of the day before the Release Date.

f. <u>Costs of Closing</u>. Owners shall pay the cost of recording the Deed(s) (or other instrument conveying interest in the Conservation Lands as required under applicable Law and all conditions of the Final Approvals) to CFX or Nominee and costs of recording documents required to clear title. CFX shall pay all costs pertaining to the Commitment, including, but not limited to, title insurance premiums for an Owner's Policy, title search fees, and the premiums for any endorsements requested by CFX. Each Party shall pay all fees and costs for the services of the Parties' respective attorneys. The Parties anticipate the conveyance of the Conservation Lands will be exempt from documentary stamp taxes; however, if the Parties determine documentary stamp taxes must be paid on the conveyance of the Conservation Lands, Owner shall pay the documentary stamp taxes at the Release Date, which obligation shall expressly survive Closing.

9. Approval of Owners' and CFX Boards. Notwithstanding any apparently conflicting provision of this Amendment, although local or regional representatives of Owners may have executed this Amendment, such execution shall be conditional and shall not bind Owners hereto until the respective Owner's applicable governing board or body ("Owner's Board") in its sole discretion shall have ratified and approved this Amendment. If an Owner's Board ratifies this Amendment, that Owner shall notify CFX in writing within ten (10) days after the Board meeting at which this Amendment was ratified, whereupon this Amendment shall be binding on that Owner in accordance with the terms hereof. Provided this Amendment is timely ratified by each Owner's Board, this Amendment shall continue in full force and effect, subject to the terms and provisions hereof. In the event an Owner's Board shall fail to ratify this Amendment within thirty (30) days after the Effective Date, this Amendment shall be deemed rejected by the Owner's Board. No later than thirty (30) days after receipt of written confirmation of all applicable Owner's Board approvals and ratifications of this Amendment, CFX shall present the Amendment for approval by the CFX Board and shall notify Owners in writing within ten (10) days after the Board meeting at which this Amendment was approved, whereupon this Amendment shall be binding upon all Parties. If this Agreement is rejected or deemed rejected by an Owner's Board or the CFX Board, this Agreement shall automatically be null and void and of no further force or effect and the Parties shall be released from all further obligations and liabilities hereunder.

10. <u>Effective Date</u>. When used herein, the term "Effective Date" shall mean the date as of which all Parties have signed this Amendment and their respective boards have given final approval of this Amendment

11. <u>**Counterparts.**</u> This Amendment may be executed in any number of counterparts, including by digital or electronic means in accordance with Chapter 668, Florida Statutes, each of which shall be an original but all of which shall constitute one and the same agreement. A Party shall be bound by this Amendment by executing a counterpart hereof, then transmitting the executed counterpart to the other parties via email in .pdf or similar format.

12. <u>Effect of this Amendment</u>. All other terms of the Agreement not otherwise amended herein shall remain in full force and effect as if fully set forth herein. In the event of a conflict between the terms of the Agreement and this Amendment, the terms of this Amendment shall control.

13. Force Majeure. A "Force Majeure Event" shall include, without limitation, an act of God, adverse weather conditions (such as tropical storms, tornados or hurricanes), act or regulations of public authorities, legislative bodies, or labor unions, labor difficulties, strike, riot, civil commotion or tumult, terrorism, war, sabotage, theft, vandalism, fire, explosion or similar casualty, epidemic, pandemic, interruption of transportation, shipping or trade delays, or material shortages. To claim a delay caused by a Force Majeure Event, the Party affected by a Force Majeure Event shall promptly provide notice of the occurrence of a Force Majeure Event to the other party within sixty (60) days after the initial onset or occurrence of a Force Majeure Event having a distinct or manifest onset (such as severe weather, issuance of executive orders or similar orders, act of public authorities), and within such period as may be reasonably required to identify a Force Majeure Event the onset of which is not distinct or manifest (such as for example certain shipping or trade delays or material shortages) and such notice shall provide its best estimate of the effects of the Force Majeure Event on the performance of its obligations hereunder and the time for the resumption of performance of the affected obligations. Notwithstanding the foregoing, no Party may claim a delay pursuant to this Section retroactive by more than sixty (60) days from the date of the Party's notice of the occurrence of the Force Majeure Event. Failure to timely claim a delay caused by a Force Majeure Event shall be deemed a waiver of any delays caused by such Force Majeure Event. The affected Party shall use best efforts to mitigate the effect of the Force Majeure Event and to resume performance of affected obligations as soon as possible. The affected Party shall continue to perform its obligations hereunder not affected thereby. The Parties acknowledge and agree that delays in the performance of on-site construction due to normal rainfall shall not be considered a Force Majeure Event hereunder.

# [SIGNATURES APPEAR ON THE FOLLOWING PAGES]

**IN WITNESS WHEREOF**, the Parties hereto have caused these presents to be executed in their respective names as of the date written below.

### WITNESSES:

Print Name:

Print Name:

## "OWNERS"

TAVISTOCK EAST HOLDINGS, LLC, a Florida limited liability company

By: Printed Name: T Crain Collin Title: Vicestesident Date: Fobrua 25 2

**SUBURBAN LAND RESERVE, INC.,** a Utah corporation

Print Name:	

Shamira M. Bartley

7

m in

Printed Name:	
Title:	
Date:	

Print Name:

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed in their respective names as of the date written below.

### WITNESSES:

#### "OWNERS"

### TAVISTOCK EAST HOLDINGS, LLC, a Florida limited liability company

6	By:	
Print Name:	Printed Name:	
	Title:	-
	Date:	
Print Name:		

SUBURBAN LAND RESERVE, INC., a Utah corporation

Print

Printed Nat	me: Da	vid	Cannon	
Title: Pres	sident			
Date: Jan	uary 3	1 2	.022	

Print Name: Nick Anderson

#### "CFX"

### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

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

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

By:\_\_\_

Sean Parks, Chairman

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

ATTEST:\_\_\_\_\_

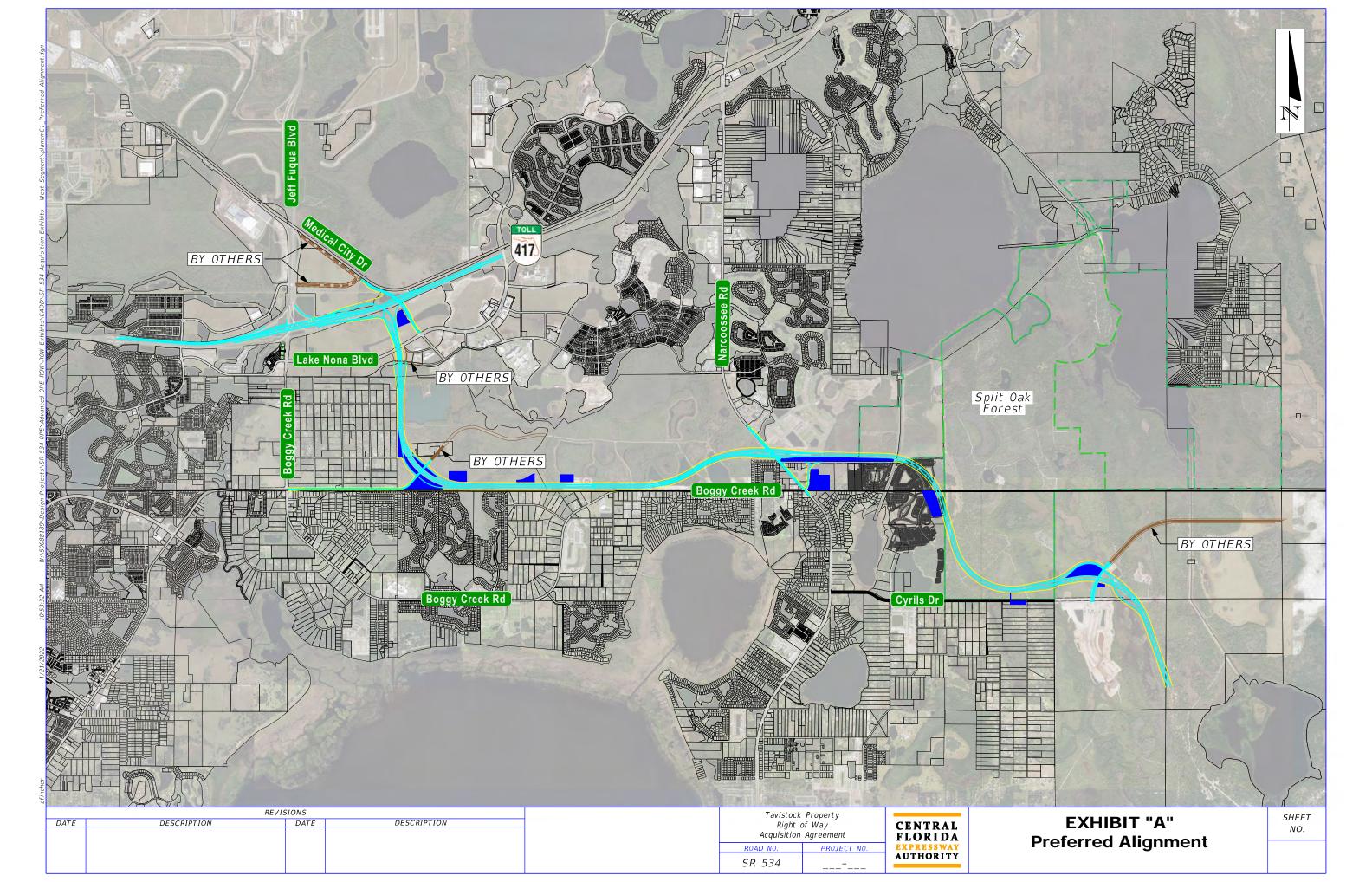
Regla ("Mimi") Lamaute Recording Clerk

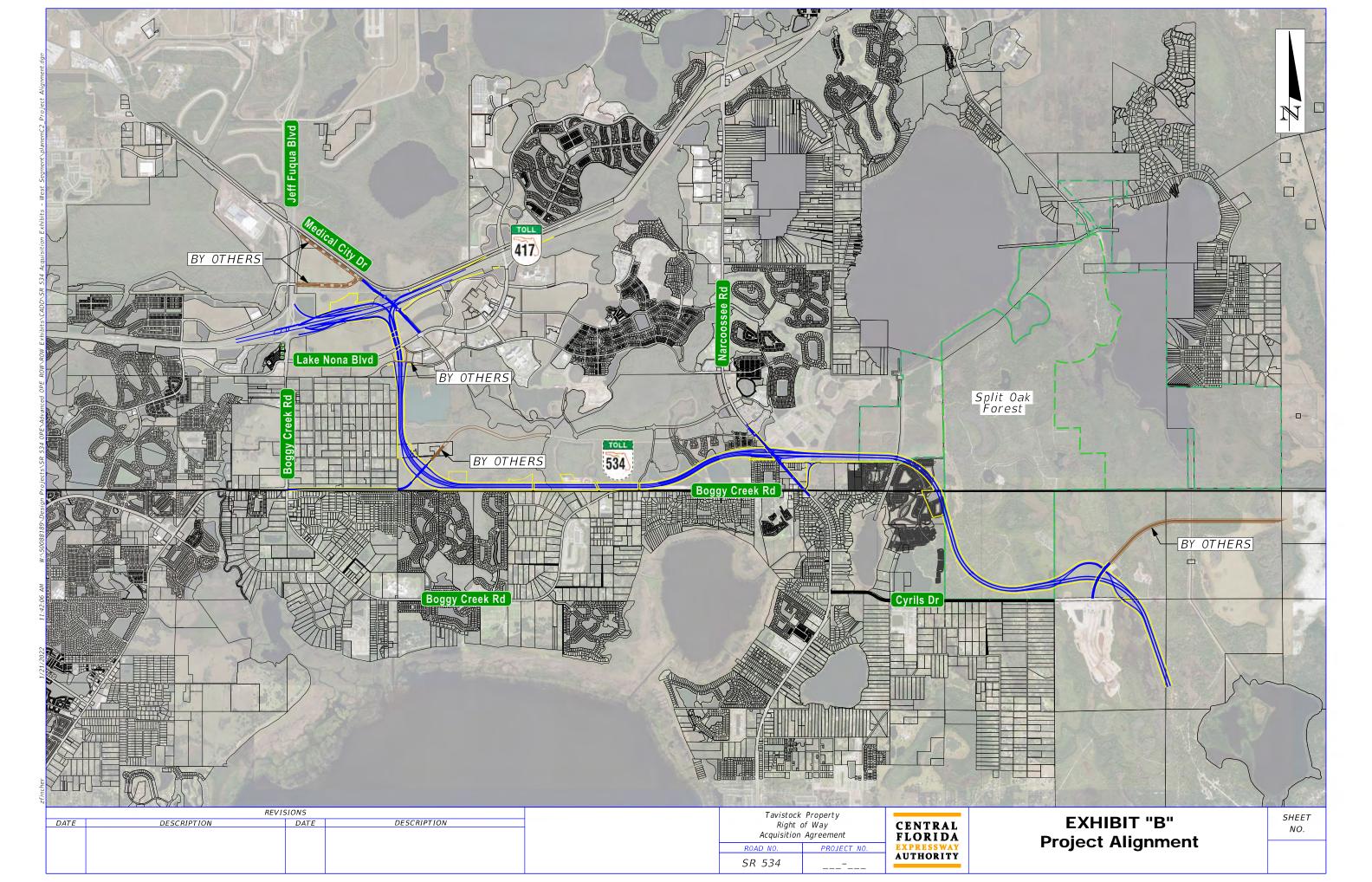
\_\_\_\_\_

Approved as to form and legality by legal counsel to the Central Florida Expressway Authority on this \_\_\_\_ day of \_\_\_\_\_, 2022 for its exclusive use and reliance.

By:\_\_\_\_

Diego "Woody" Rodriguez General Counsel





# EXHIBIT "C" Escrow Agreement

[See Attached]

#### **ESCROW AGREEMENT**

(Agreement to Convey Conservation Lands)

THIS ESCROW AGREEMENT (this "Agreement"), is made as of \_\_\_\_\_\_, 20\_\_\_\_\_\_ among \_\_\_\_\_\_\_ (the "Escrow Agent") located at \_\_\_\_\_\_\_, email \_\_\_\_\_\_\_, email \_\_\_\_\_\_\_; SUBURBAN LAND RESERVE, INC., a Utah corporation, ("SLR"), located at 51 South Main Street, Suite 301, Salt Lake City, Utah 84111, email \_\_\_\_\_\_\_; TAVISTOCK EAST HOLDINGS, LLC, a Florida limited liability company, ("Tavistock") located at 6900 Tavistock Lakes Blvd., Suite 200, Orlando, Florida 32827, email \_\_\_\_\_\_, and CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and corporate and agency of the state, under the laws of the State of Florida ("CFX") located at 4974 ORL Tower Road, Orlando, Florida 32807, email \_\_\_\_\_\_. SLR and Tavistock are referred to collectively below as "Owners." Escrow Agent, Owners, and CFX are at times referred to collectively below as the "Parties", and each individually as a "Party."

#### BACKGROUND

Concurrently herewith Owners and CFX have executed and delivered the closing documents and funds (the "**Closing Deliveries**") that are listed on Exhibit "A" attached hereto and prescribed by a certain Agreement to Convey Conservation Lands entered into by them (the "**Conservation Lands Agreement**", which term also includes amendments to the original agreement). The Conservation Lands Agreement is incorporated herein by reference. The Conservation Lands Agreement requires Owners and CFX to place the Closing Deliveries in escrow with Escrow Agent pending satisfaction of the conditions and requirements prescribed below in this Agreement. If the Parties satisfy those conditions and requirements by the deadline prescribed in the Conservation Lands Agreement, the Parties will complete the closing of the Conservation Lands Agreement by dispensing the Closing Deliveries as prescribed below. Capitalized terms (other than Section headings) used below that are not expressly defined in this Agreement have the meanings therefore provided in the Conservation Lands Agreement.

NOW, THEREFORE, in consideration of the foregoing explanation, the mutual covenants contained in this Agreement and in the Conservation Lands Agreement, and for other consideration, the Parties agree as follows:

1. **Establishment of Escrow**. Escrow Agent acknowledges receipt of the Closing Deliveries and agrees to hold them in escrow to be distributed solely in accordance with and subject to the terms of the Conservation Lands Agreement and this Agreement.

2. **Distribution if Conditions Are Satisfied**. For purposes of this Agreement, the Conservation Lands Contingencies Deadline has the meaning provided in the Conservation Lands Agreement (which deadline may be extended in accordance with the Conservation Lands Agreement).

- a. If the Conservation Lands Contingencies and the Additional Contingencies prescribed below in this Agreement are satisfied on or before the Conservation Lands Contingencies Deadline, and the Conservation Lands Agreement is not earlier terminated, the Parties will close the record conveyance of the Conservation Lands, and to that end Escrow Agent shall distribute the Closing Deliveries as follows:
  - i. Escrow Agent will record in the Official Records of Orange or Osceola County, Florida (as appropriate) those documents identified as "Recording Documents" in the Closing Deliveries on the attached <u>Exhibit "A</u>."
  - ii. Escrow Agent will distribute or apply the funds included in the Closing Deliveries in accordance with the Closing Statement identified on <u>Exhibit "A."</u>
  - iii. Escrow Agent will distribute the remaining Closing Deliveries as directed on <u>Exhibit "A."</u>
  - iv. Escrow Agent will update the title insurance commitments previously issued pursuant to the Conservation Lands Agreement and will issue policies of title insurance in favor of CFX or the Nominee in accordance with the Conservation Lands Agreement.
- b. In order effectively to close the sale and purchase under the Conservation Lands Agreement, CFX and Owners shall execute and deliver such additional documents and take such other actions as may be reasonably requested by a Party to satisfy reasonable legal concerns or ensure full performance of the Conservation Lands Agreement, or as may otherwise be appropriate because of passage of time. Without limiting the foregoing, the Parties will do any of the following that becomes necessary:
  - i. Supplement or amend the Closing Statement;
  - ii. Reprorate ad valorem taxes and other revenues and expenses the proration of which is required by the Conservation Lands Agreement (and deliver to Escrow Agent such funds as either Party may owe based on the reprorations);
  - iii. Pay such costs of closing (as costs are allocated in the Conservation Lands Agreement) as may have increased since the date of this Agreement;
  - iv. Substitute the name of the Nominee for the name of CFX in the documents;
  - v. Add dates to documents; and

vi. Execute such documents as Escrow Agent may reasonably require in order to insure CFX's title to the Conservation Lands in accordance with the Conservation Lands Agreement.

c. <u>Waiver of Conservation Lands Contingencies</u>. CFX has the right subject to Owners' mutual agreement, which shall not be unreasonably withheld, conditioned, or delayed to elect to waive one or more of the Conservation Lands Contingencies by providing written notice to the Owners and Escrow Agent of CFX's waiver of such Conservation Lands Contingencies. In the event CFX elects to waive a Conservation Lands Contingency, CFX shall be required to concurrently waive the corresponding Construction Contingencies and release the East Segment from escrow pursuant to, and as defined in, the East Segment ROW Agreement and escrow agreement entered into pursuant thereto. Notwithstanding the foregoing, in no event shall the Conservation Lands or the East Segment be released from escrow if one or more of the Additional Contingencies is not satisfied or waived as provided herein, or if any of the other Conservation Lands Contingencies or any of the other Construction Contingencies prescribed in the East Segment has not been satisfied or waived as provided herein.

3. **Disposition if No Closing**. If for reasons outlined in this Agreement or in the Conservation Lands Agreement, the Conservation Lands Agreement is terminated without a closing, Escrow Agent will distribute the Closing Deliveries as follows:

- a. Each original document will be returned to the Party that signed the document. Escrow Agent will destroy each original document signed by multiple Parties (and will provide proof of their destruction that is satisfactory to all Parties).
- b. Escrow Agent will return the funds to the Parties that delivered the funds (as reflected on the Closing Statement).

4. <u>Additional Contingencies</u>. The following are the Additional Contingencies referenced in the Section above titled "Distribution if Conditions Are Satisfied:"

- a. Neither of the West Segment ROW Agreement or the East Segment ROW Agreement has been terminated.
- b. No default exists of covenants or obligations that survive closing of the West Segment ROW Agreement or that are contained in the deed or other documents executed at closing of the West Segment ROW Agreement.
- c. The escrow agreement executed in connection with the East Segment ROW Agreement remains in full force and effect, and the escrowed items held under that escrow agreement are being distributed concurrently in order to close the record conveyances of the properties and property interests that are the subject of that agreement.

d. None of the parties to the West Segment ROW Agreement has invoked, nor do conditions exist that with the passage of time or giving of notice, or both, would permit a party's invoking provisions of that agreement requiring a repurchase or reconveyance of the properties and easements conveyed thereunder.

5. **Escrow Agent's Claim in Closing Deliveries.** Except as expressly provided to the contrary in this Agreement, the Escrow Agent does not have any interest in the Closing Deliveries but is serving as an escrow holder in a fiduciary capacity (as that fiduciary capacity may be created, controlled, or limited by this Agreement) only. The Parties to this Agreement will provide the Escrow Agent with appropriate executed forms necessary for the Escrow Agent to comply with all reporting and similar requirements, including. This Section shall survive the termination of this Agreement and the resignation or replacement of any Escrow Agent.

## 6. **Standard of Care for the Escrow Agent**.

a. The Escrow Agent shall be responsible only for performance of its duties as specified in this Agreement, and no implied covenants, duties, or obligations shall bind or be enforceable against the Escrow Agent. The Escrow Agent shall not be liable to the other Parties to this Agreement for any act or failure to act other than for the Escrow Agent's gross negligence or willful misconduct.

b. The Escrow Agent shall not be liable for any action taken or omitted by it, or any action suffered by it to be taken or administered in good faith, and in the exercise of its own best judgment, and may rely conclusively and shall be protected in acting upon any order, notice, demand, certificate, opinion or other advice of counsel (including counsel selected by the Escrow Agent), statement, instrument, report, or other document (not only as to its due execution and its validity and effectiveness, but also as to the truth and acceptability of any information contained in it) which is reasonably believed by the Escrow Agent to be genuine and to be signed by the proper person or persons.

c. The Escrow Agent shall not be bound by any notice or demand, or any waiver, modification, termination or rescission of this Agreement or any of its terms, unless executed in writing by all Parties to this Agreement.

d. The Escrow Agent shall not be bound by any notice, directive, or demand that Escrow Agent believes is inconsistent with or contravenes the requirements of this Agreement or the Conservation Lands Agreement.

7. **Disagreements**. In any dispute concerning the distribution of all or any portion of the Closing Deliveries, or if any disagreements arise among the Parties to this Agreement concerning the interpretation of this Agreement, or concerning the Parties' respective rights and obligations under this Agreement, or the propriety of any action contemplated or taken by the Escrow Agent, or if the Escrow Agent in good faith is in doubt about what action should be taken under to this Agreement, the Escrow Agent shall not be obligated to resolve the

dispute or disagreement or to make any distribution of all or any portion of the Closing Deliveries, but may commence an action in the nature of an interpleader and seek to deposit all or any portion of the Closing Deliveries in a court of competent jurisdiction in Orange County, Florida, and thereby be discharged from any further duty or obligation with respect to that portion of the Closing Deliveries so deposited so long as it is so deposited. The Escrow Agent, in its sole discretion, may elect in lieu of filing an interpleader to cease performance of this Agreement and all instructions received in connection with this Agreement until the Escrow Agent has received a written notice of resolution of the dispute or disagreement signed by the parties to the dispute or disagreement; provided, however, that during the pendancy of such suspension the Escrow Agent shall continue to hold the Closing Deliveries in accordance with this Agreement and the Conservation Lands Agreement.

8. **Notices.** Notices to be given under this Agreement shall be in writing. All notices shall be addressed as provided above, and sent by registered or certified United States Postal Service, return-receipt requested, with all postage and fees prepaid, or sent by a nationally recognized overnight courier service for delivery on the next business day with all fees and charges prepaid, or delivered by hand, or sent via email to the addresses provided above. Any notice sent by or to the attorney representing a Party shall be as effective as if sent by or to the applicable Party. Any Party may change the information provided above for giving notice by delivering notice of the new information to the other Parties in a manner permitted by this Section.

9. **Agreement for Sole Benefit of Escrow Agent, CFX, and Owners**. This Agreement and the rights and benefits created by it are for the sole and exclusive benefit of the Escrow Agent, CFX and Owners. Without limiting the generality of the foregoing, this Agreement shall not be deemed to be for the direct or indirect benefit of any third-party.

10. **No Waiver of Noncompliance**. No failure of any Party to this Agreement to exercise any power or right granted under this Agreement, or to insist upon strict compliance by any other Party of any obligation under this Agreement, and no course of dealing with regard to the terms of performance hereof, shall constitute a waiver of the rights of such Party to demand full and exact compliance with the terms of this Agreement.

11. **Entire Agreement**. This Agreement and the Conservation Lands Agreement contain the entire agreement of the Parties relating to escrow of the Closing Deliveries, and no representations, inducements, promises, or agreements, whether oral or otherwise, of a Party that are not embodied in this Agreement or specifically incorporated into this Agreement by reference shall be of any force or effect.

12. **Severability of Clauses**. If any provision of this Agreement, the deletion of which would not adversely affect a Party's enjoyment of any material benefit intended by this Agreement nor substantially increase the burden of a Party under this Agreement, is found to be invalid or unenforceable, that provision will be severed from this Agreement and the remainder of this Agreement will continue to be binding and enforceable.

13. **<u>Counterparts</u>**. This Agreement may be executed in multiple counterparts, including

by electronic or digital signatures. The signature of any Party to a counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart. A Party may bind itself to this Agreement by executing a counterpart hereof, then transmitting the executed counterpart to the other Parties via email in .pdf format.

14. **Enforcement by Specific Performance**. In addition to all remedies available at law or in equity for enforcement of this Agreement, the Parties expressly agree they may enforce this agreement by specific performance.

15. **Further Assurances**. Each Party will, without additional consideration, sign, acknowledge, and deliver any other documents and take any other action necessary or appropriate and reasonably requested by another Party to carry out the intent and purpose of this Agreement.

16. **Construction**. Whenever the context permits or requires, the use of the singular in this Agreement shall include the plural, and the plural shall include the singular. Any reference herein to one gender shall likewise apply to the other gender and to the neuter; and any reference herein to the neuter shall refer likewise to one or both genders. Any reference herein to a person shall include trusts, partnerships, corporations, and other entities, as appropriate. The words "herein", "hereof", "hereunder", "hereinafter", "hereinabove", and other words of similar import refer to this Agreement as a whole and not to any particular Section, subsection, paragraph, clause, article, or other subdivision of this Agreement. For purposes of this Agreement, "will" or "shall" is a mandatory word denoting an obligation to pay or perform. "May" is a permissive word denoting an option, right, or choice, but not an obligation.

17. **Attorney's Fees**. If either party initiates or is made a party to legal proceedings (whether judicial, administrative, declaratory, in arbitration, or otherwise) in connection with this Agreement, then the substantially nonprevailing party in those proceedings will pay the costs and attorney's fees, including the costs and attorney's fees of appellate proceedings, incurred by the substantially prevailing party. This obligation to pay attorney's fees and costs will apply also to settlements of disputes and to collection efforts. 18.

[The Parties have signed on the following pages.]

# [Signature page of Escrow Agreement]

IN WITNESS OF THEIR AGREEMENT, the Parties hereby sign this Agreement.

ESCROW AGENT		CFX	
Ву:		By:	
Print name:		Print name:	
As	its:	As	its:
SLR SUBURBAN LAND RESERVE, INC.			
By:			
Print name:			
As	its:		
TAVISTOCK TAVISTOCK EAST HOLDINGS, LLC			
By:			
Print name:			
As	its:		

## **EXHIBIT "A"** Closing Deliveries

46939479 v6 6608245-0000017

## MEMORANDUM

TO:	CFX Board Members
FROM:	Aneth Williams Director of Procurement
DATE:	January 11, 2022
SUBJECT:	Approval of Contract Award to Louis Berger Hawthorne Services, Inc. for Roadway and Bridge Maintenance Services - SR 414, SR 429, SR 451 and SR 453 Contract No. 001821

Request for Proposals (RFP) from qualified firms to provide roadway and bridge maintenance services was advertised on September 22, 2021. Two responses were received by the November 30, 2021 deadline. Those firms were Louis Berger Hawthorne Services, Inc., and Jorgensen Contract Services, LLC. As required by the Procurement Procedures Manual, the Director of Procurement met with the Chief of Infrastructure and Director of Maintenance to review options when less than three proposals are received. After discussion and consideration, it was agreed that the solicitation process should proceed.

The Evaluation Committee shortlisted the firms and interviews were held on December 14, 2021. The price proposals were then opened and scored. The combined scores for the technical and price proposals were calculated and the result is shown below:

<u>Ranking</u>	<u>Firm</u>	<b>Total Points</b>
1	Louis Berger Hawthorne Services, Inc.	88.30
2	Jorgensen Contract Services, LLC	81.07

The work to be performed includes roadway and bridge maintenance services on SR 429, SR 414, SR 451 and SR 453.

Board award of the contract to Louis Berger Hawthorne Services, Inc. in the amount of \$28,670,000.00 for a five year term with five one-year renewals is requested.

This contract is included in the OM&A Budget.

lans

Reviewed by:

Don Budnovich.PE Director of Maintenance

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

WWW.CFXWAY.COM



#### RFP-001821 Evaluation Committee- December 14, 2021 Minutes

Evaluation Committee for **Roadway and Bridge Maintenance Services; RFP-001821** held a duly noticed meeting on Tuesday, December 14, 2021, commencing at 9:00 a.m. in the Pelican Conference Room at CFX Administration Bldg., Orlando, Florida.

#### **Committee Members:**

Glenn Pressimone, Chief of Infrastructure Don Budnovich, Director of Maintenance Iranetta Dennis, Director of Supplier Diversity James Martin, Senior Roadway Inspector Matt Lewis, Senior Roadway Inspector

#### **Other Attendees:**

Aneth Williams, Director of Procurement Brad Osterhaus, Sr. Procurement/Quality Control Administrator

#### Presentations / Q and A:

Aneth began each interview with introduction of the firms and Committee members. This portion of the meeting is closed to the public and is being recorded in accordance with Florida Statute.

Jorgensen Contract Services, LLC	09:00 – 9:50 a.m.
Louis Berger Hawthorne Services, Inc.	10:00 – 10:50 a.m.

#### **Evaluation Portion:**

After the interviews, the committee members individually completed their scorings and submitted them for tallying. The scores are as shown:

Proposer	Points
Jorgensen Contract Services, LLC	217
Louis Berger Hawthorne Services, Inc.	216.5

#### Pricing

Upon completion of the interviews, Aneth opened the pricing proposals and scored the pricing proposals in accordance with the RFP requirements.

Proposer	Total Price	Points
Jorgensen Contract Services, LLC	\$34,250,000.00	37.67
Louis Berger Hawthorne Services, Inc.	\$28,670,000.00	45.00

#### **Total Points and Rankings**

Proposer	Avg.Tech. Points	Pricing Points	Total Points	Ranking
Jorgensen Contract Services, LLC	43.40	37.67	81.07	2
Louis Berger Hawthorne Services, Inc.	43.30	45.00	88.30	1

The Committee members agreed that the highest ranked firm would be recommended to the Board for award.

There being no further business to come before the Committee, the meeting was adjourned at 11:49 a.m. These minutes are considered to be the official minutes of scoring the technical proposals by the Evaluation Committee at its meeting held Tuesday, December 14, 2021.

Submitted by: Aneth Williams, Director of Procurement

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

Don Budnovich, Director of Maintenance

			CENTR	AL FLORIDA EXI	PRESSWAY AUTHORITY				
			TECHNICAL	AND PRICE PRO	POSAL SCORING SUMMARY				
				SR 414, SR 429, SI	MAINTENANCE SERVICES R 451, AND SR 453 ACT NO. 001821				
	Jorgenson Contrac	ting Services, LLC	Louis Berger Hawt	home Services, Inc.	1				
EVALUATOR	TECHNICAL	PRICE	TECHNICAL	PRICE					
Don Budnovich	51		51						
Glenn Pressimone	46		49						
Iranetta Dennis	48		47						
Matt Lewis	44		41,5						
James Martin	28		28						
TOTAL	217		216.5						
AVG. TECH POINTS	43.40		43.30		-				
PRICE PROPOSAL SUMMARY				1	POINT TOTALS AND FINAL RANKIN	G			
PROPOSER	PROPOSAL	AMOUNT	POINT VALUE	1	PROPOSER	TECHNICAL POINTS	PRICE POINTS	TOTAL POINTS	FINAL RANKING
Jorgenson Contracting Services, LLC	\$	34,250,000,00	37_67		Jorgenson Contracting Services, LLC	43,40	37.67	81.07	2
Louis Berger Hawthorne Services, Inc.	\$	28,670,000.00	45_00	1	Louis Berger Hawthorne Services, Inc.	43.30	45_00	88,30	1

utter Don B tresserion 0110 Matr 41 Tames Martin

Tuesday, December 14, 2021

# CONTRACT



AND

# LOUIS BERGER HAWTHORNE SERVICES, INC.

ROADWAY AND BRIDGE MAINTENANCE SERVICES SR 429, SR 414, SR 451 AND SR 453

CONTRACT NO. 001821

CONTRACT DATE: FEBRUARY 10, 2022 CONTRACT AMOUNT: \$28,670,000.00

CONTRACT, SCOPE OF SERVICES, MEMORANDUM OF AGREEMENT, ADDENDA, METHOD OF COMPENSATION, PRICE & TECHNICAL PROPOSAL, POTENTIAL CONFLICT DISCLOSURE FORM AND PERFORMANCE BOND

#### CONTRACT, SCOPE OF SERVICES, MEMORANDUM OF AGREEMENT, ADDENDA, METHOD OF COMPENSATION, PRICE & TECHNICAL PROPOSAL, POTENTIAL CONFLICT DISCLOSURE FORM AND PERFORMANCE BOND

#### ROADWAY AND BRIDGE MAINTENANCE SERVICES SR 429, SR 414, SR 451 AND SR 453

CONTRACT NO. 001821

FEBRUARY 2022

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY** 

## TABLE OF CONTENTS

<u>Title</u>		Page
CONTRAC	Г	1 to 27
(See Cont	ract Table of Contents for listing of individual sections.)	
Exhibit "A"	Scope of Services "A1" CFX Incident Response Plan "A2" CFX Maintenance Specifications "A3" CFX Asset Maintenance Contract Map (West)	
Exhibit "B"	1	
	Price Proposal	
	Technical Proposal	
Exhibit "E"	Potential Conflict Disclosure Form	
Memorandur	n of Agreement	
Addendum N	No. 1Addendum No. 2Addendum No. 3	

Addendum No. 1Addendum No. 2AddendumAddendum No. 4Addendum No. 5

## CONTRACT 001821

## Table of Contents

1.	SERVICES TO BE PROVIDED	2
2. '	TERM AND NOTICE	3
3.	CONTRACT AMOUNT AND COMPENSATION FOR SERVICES	5
4.	AUDIT AND EXAMINATION OF RECORDS	5
5.	PUBLIC RECORDS	6
6.	CONFLICT OF INTEREST AND STANDARDS OF CONDUCT	8
7.	DISADVANTAGED/MINORITY/WOMEN BUSINESS ENTERPRISES	9
8.	CONTRACTOR INSURANCE AND PERFORMANCE AND PAYMENT BOND	9
8.1	Commercial General Liability:	. 10
8.2		
8.3	Workers' Compensation Insurance:	. 10
8.4	Unemployment Insurance:	. 10
8.5	Professional Liability:	. 10
8.6	Information Security/Cyber Liability Insurance:	. 11
8.7	Commercial Crime Insurance:	. 11
8.8	Fiduciary Liability Insurance:	. 12
8.9	Performance and Payment Bond:	. 13
9.	CONTRACTOR RESPONSIBILITY	. 13
10.	INDEMNITY	. 15
11.	PRESS RELEASES	
12.	OWNERSHIP OF MATERIALS AND INTELLECTUAL PROPERTY RIGHTS	. 16
13.	PERMITS, LICENSES, ETC	. 18
14.	NONDISCRIMINATION	. 18
15.	NOTIFICATION OF CONVICTION OF CRIMES	
16.	COMPLIANCE WITH LAWS; EQUAL EMPLOYMENT OPPORTUNITY	. 19
17.	ASSIGNMENT AND REMOVAL OF KEY PERSONNEL	. 19
18.	SUBLETTING AND ASSIGNMENT	. 20
19.	DISPUTES	
20.	OTHER SEVERABILITY	. 21
21.	INTEGRATION	
22.	PUBLIC ENTITY CRIME INFORMATION AND ANTI-DISCRIMINATION STATEMENT	
23.	APPLICABLE LAW; VENUE	
24.	RELATIONSHIPS	
25.	INTERPRETATION	. 23
26.	WAGE RATES AND TRUTH-IN-NEGOTIATIONS CERTIFICATE	
27.	SURVIVAL OF EXPIRATION OR TERMINATION	
28.	OBLIGATIONS UPON EXPIRATION OR TERMINATION OF CONTRACT	
29.	INSPECTOR GENERAL	
30.	E-VERIFY	
31.	APPROPRIATION OF FUNDS	
32.	NOTICE TO THE PARTIES	
33.	EXHIBITS	. 26

#### Contract No. 001821

This Contract No. 001821 ("Contract") is made this 10<sup>th</sup> day of February 2022, between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, created by Chapter 2014-171, Laws of Florida, which is codified in Chapter 348, Part III of the Florida Statutes, hereinafter "CFX," and LOUIS BERGER HAWTHORNE SERVICES, INC., a Foreign Profit corporation, registered and authorized to do business in the State of Florida, whose principal address is 80 International Drive, Suite 130, Greenville, SC 29615, hereinafter "the CONTRACTOR."

#### WITNESSETH:

**WHEREAS**, CFX was created pursuant to Part III, Chapter 348, Florida Statutes (the "CFX Act") to, among other things, construct, improve, maintain, and operate a limited access toll road known as the Central Florida Expressway System, as defined in the CFX Act; and

**WHEREAS**, CFX has been granted the power under Section 348.754(2)(m) of Florida Statutes, "to do everything necessary or convenient for the conduct of its business and the general welfare of the authority in order to comply with this part or any other law;" and

WHEREAS, CFX has determined that it is necessary and convenient in the conduct of its business to retain the services of a contractor to perform roadway and bridge maintenance services on State Road ("S.R.") 429, S.R. 414, S.R. 451 and S.R. 453 under this Contract, and related tasks as may be assigned to the CONTRACTOR by CFX; and

**WHEREAS**, on or about October 27, 2021, CFX issued Request for Proposals ("RFP") seeking qualified contractors to perform roadway and bridge maintenance services on S.R. 429, S.R. 414, S.R. 451 and S.R. 453; and

**WHEREAS**, CONTRACTOR was selected as the most responsive and responsible proposer of two qualified firms that responded to the RFP and was ultimately selected.

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

## 1. SERVICES TO BE PROVIDED

The CONTRACTOR shall, for the consideration herein stated and at its cost and expense, perform all of the work and furnish all the labor, materials, equipment, tools, transportation, and supplies and labor necessary to perform this Contract in the manner and to the full extent as set forth in the Scope of Services, and any attachments thereto, attached hereto as <u>Exhibit "A"</u> which is are hereby adopted and made part of this Contract as completely as if incorporated herein (collectively, the "Services"). The Services to be provided under this Contract include performing maintenance of, and administration and management services related to roadway and bridge maintenance for S.R. 429, S.R. 414, S.R. 451and S.R. 453 in Orange County, Florida as detailed in the Contract Documents (hereinafter defined) and any amendments, supplements, or modifications thereto. The Contract shall be performed, and services provided to the satisfaction of the duly authorized representatives of CFX, who shall have at all times full opportunity to evaluate the Services provided under this Contract.

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

CONTRACTOR understands and acknowledges that CONTRACTOR shall only be responsible for performance of the Services outlined in the Scope of Services and Maintenance Specifications to the extent such Services were outlined in the bid item tabulation attached to the CONTRACTOR'S response to the RFP.

The "Contract Documents", in order of precedence, shall refer to and consist of, individually and collectively, as the:

- 1.1 This Contract, including insurance policies and bonds,
- 1.2 The Addenda (if any),
- 1.3 The Scope of Services (including Maintenance Specifications),
- 1.4 The Memorandum of Agreement,
- 1.5 The Method of Compensation,

- 1.6 The Technical Proposal submitted by CONTRACTOR, and
- 1.7 The Price Proposal submitted by CONTRACTOR.

#### 2. TERM AND NOTICE

The initial term of the Contract will be five (5) years from the date indicated in the notice to proceed with the Services issued by CFX ("Notice to Proceed"), hereinafter "Initial Contract Term." CFX may elect, in its sole and absolute discretion, to renew the Initial Contract Term for up to five (5) additional one-year terms (collectively or individually referred to herein as a "Renewal Term"). Renewals may be based, in part, on a determination by CFX that the value and level of service provided by CONTRACTOR are satisfactory and adequate for CFX's needs. If a Renewal Term is exercised, CFX will provide CONTRACTOR with written notice of its intent at least ninety (90) days prior to the expiration of the Initial Contract Term or any applicable Renewal Term. The Initial Contract Term and any Renewal Term exercised by CFX shall be collectively referred to herein as the "Term".

CFX shall have the right to immediately terminate or suspend the Contract, in whole or in part, at any time upon written notice for convenience or written notice for cause for CONTRACTOR's material failure to perform the provisions of the Contract. Under no circumstances shall a properly noticed termination by CFX (with or without cause) constitute a default by CFX. In the event of a termination for convenience or without cause, CFX shall notify CONTRACTOR (in writing) of such action with instructions as to the effective date of termination or suspension, in accordance with the time frames set forth in said written notification. CONTRACTOR will be paid for all work properly performed prior to the date of termination. CONTRACTOR will not be paid for special, indirect, consequential, or other undocumented costs and expenses arising from, or out of, the termination of this Contract by CFX in accordance with the terms hereof. Payment for work performed will be based on Contract prices, which prices are deemed to include profit and overhead. No profit or overhead will be allowed for work not performed, regardless of whether the termination is for convenience or for cause.

If CONTRACTOR: (i) fails to perform the Contract terms and conditions; (ii) fails to begin the work under the Contract within the time specified in the Notice to Proceed; (iii) fails to perform the work with sufficient, satisfactory, or suitable personnel or with sufficient, satisfactory, or suitable materials to assure the prompt performance of the work items covered or Services required by the Contract; (iv) fails to comply with the terms and conditions of the Contract, or (v) performs unsuitably or unsatisfactorily in the sole and absolute discretion of CFX, or for any other cause whatsoever, fails to carry on the Services in an acceptable manner, CFX will provide

notice in writing to the CONTRACTOR of such delay, neglect or default ("Default Notice"). If CONTRACTOR does not correct the default outlined in the Default Notice within the curative period, if any, described in the Default Notice, CFX will have the right, but not the obligation, to remove the work from CONTRACTOR and to declare the Contract in default. If the Contract is declared in default, CFX may elect in its sole and absolute discretion, to terminate all or a portion of the Services, this Contract in whole or in part, or otherwise remove the Services from the Contractor and assume and assign to another contractor the Services set forth in this Contract.

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 other contractors for the completion of the Services 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. In the event the expense of the Contract completion is less than the amount still outstanding under the Contract, the expense shall be deducted from the amount still outstanding. If the expense of Contract completion exceeds the sum which would have been payable under the Contract, the CONTRACTOR shall pay CFX the amount of the excess. If, after the default notice curative period has expired, but prior to any action by CFX to complete the work under the Contract, CONTRACTOR demonstrates an intent and ability to cure the default in accordance with CFX's requirements, CFX may, but is not obligated to, permit CONTRACTOR to resume work under the Contract. In such circumstances, any costs of CFX incurred by the delay (or from any reason attributable to the delay) will be deducted from any monies due or which may become due CONTRACTOR under the Contract. Any such costs incurred by CFX which exceed the remaining amount due on the Contract shall be reimbursed to CFX by CONTRACTOR. The financial obligations of this paragraph, as well as any other provision of the Contract which by its nature and context survives the expiration of earlier termination of the Contract, shall survive the expiration or earlier termination of the Contract.

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

CFX reserves the right to immediately cancel or immediately terminate this Contract in the event the CONTRACTOR or any employee, servant, or agent of the CONTRACTOR is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the CONTRACTOR for on behalf of CFX, without penalty. Such termination shall be deemed a termination for default. CFX reserves the right to immediately terminate or immediately cancel this Contract in the event the CONTRACTOR shall be placed in either voluntary or involuntary bankruptcy or an assignment is made for the benefit of creditors. Such termination shall be deemed a termination for default.

## 3. CONTRACT AMOUNT AND COMPENSATION FOR SERVICES

3.1 CFX agrees to pay CONTRACTOR for services performed in accordance with the Method of Compensation attached hereto as **Exhibit "B"** and incorporated by reference as though set forth fully herein.

3.2 The not to exceed Contract Amount for the Initial Contract Term is \$28,670,000.00 as defined in the Price Proposal attached hereto as **Exhibit "C"** and Technical Proposal attached hereto as **Exhibit "D"** incorporated by reference as though set forth fully herein.

## 4. AUDIT AND EXAMINATION OF RECORDS

## 4.1 Definition of Records:

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

(b) "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.

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

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

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

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

## 5. **PUBLIC RECORDS**

# 5.1 IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO

VER 9-20-21

Contract No. 001821

## 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.

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

(a) Keep and maintain public records required by the public agency to perform the service.

(b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if CONTRACTOR does not transfer the records to the public agency.

(d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of CONTRACTOR or keep and maintain public records required by the public agency to perform the service. If CONTRACTOR transfers all public records to the public agency upon completion of the contract, CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of the contract, CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

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

The obligations in this Section 5 shall survive the expiration or termination of this Contract and continue in full force and effect as set forth above.

## 6. CONFLICT OF INTEREST AND STANDARDS OF CONDUCT

6.1 <u>No Contingent Fees.</u> CONTRACTOR warrants that it has not employed or retained any entity or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Contract, and that CONTRACTOR has not paid or agreed to pay any person, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Contract. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted. For breach of this provision, CFX shall have the right to terminate this Contract without liability at its sole discretion.

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

6.3 As required by Section 348.753, Florida Statutes, and CFX's Code of Ethics, CONTRACTOR agrees to complete CFX's Potential Conflict Disclosure Form prior to the execution of the Contract, upon the occurrence of an event that requires disclosure, and annually, not later than July 1st. The Potential Conflict Disclosure Form is attached as **Exhibit "E."** 

6.4 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.

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

6.6 CONTRACTOR hereby certifies that no officer, agent or employee of CFX has any "material interest" (as defined in Section 112.312(15), Florida Statutes) either directly or indirectly, in the business of CONTRACTOR, and that no such person shall have any such interest at any time during the term of this Contract.

## 7. DISADVANTAGED/MINORITY/WOMEN BUSINESS ENTERPRISES

CFX has adopted a program to provide opportunities for small business, including Disadvantaged/Minority Business Enterprises ("D/MBEs") and Women's Business Enterprises ("WBEs") whereby CFX has adopted CFX Policy BD-1 setting a goal for D/MBE and WBE participation objective ("D/MBE Policy"). CONTRACTOR acknowledges CONTRACTOR has read and reviewed the D/MBE Policy and agrees to comply with the terms and conditions of the D/MBE Policy. Under CFX's program, CONTRACTOR is encouraged to grant small businesses the opportunity to participate in the provision of Services under the Contract with respect to the maintenance and operation of the Central Florida Expressway System in accordance with the D/MBE Policy. CONTRACTOR shall provide information regarding its employment of such businesses, the percentage of payments made to such businesses and others, and compliance with the program requirements of the D/MBE Policy. CONTRACTOR shall provide an annual report to CFX on or before each anniversary of the date indicated in the Notice to Proceed and throughout the Term, regarding use of small business D/MBEs and WBEs and the percentage of payments made to enterprises falling within such categories. Such report shall consolidate the information contained in CONTRACTOR's invoices and shall be in a form reasonably acceptable to CFX.

## 8. CONTRACTOR INSURANCE AND PERFORMANCE AND PAYMENT BOND

8.1 Anything contained herein to the contrary notwithstanding, during the Term of the Contract and for such additional time as may be further required, the CONTRACTOR shall provide, pay for and maintain in full force and effect insurance outlined below for coverage at

not less than the prescribed minimum limits of liability, covering the CONTRACTOR'S activities and those of any and all subcontractors (including officers, directors, employees or agents of each and their successors).

8.2 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 Services 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.

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

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

(b) 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;

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

(d) Unemployment Insurance Coverage in amounts and forms required by Florida law, as it may be amended from time to time hereafter;

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

(f) Information Security/Cyber Liability Insurance. If a data breach is possible, the CONTRACTOR shall maintain information security/cyber liability insurance to include Internet Media Liability including cloud computing and mobile devices, for protection of private or confidential information whether electronic or non-electronic, network security and privacy; privacy against liability for system attacks, digital asset loss, denial or loss of service, introduction, implantation or spread of malicious software code, security breach, unauthorized access and use; including regulatory action expenses; and notification and credit monitoring expenses with at least the minimum limits listed below.

- Each Occurrence – \$1,000,000

- Network Security / Privacy Liability -\$1,000,000

- Breach Response/ Notification Sublimit – A minimum limit of 50% of the policy aggregate

- Technology Products E&O – \$1,000,000 (Only applicable for Vendors supplying technology related services and or products)

- Coverage shall be maintained in effect during the Term of the Contract and for no less than two (2) years after termination/ completion of the Contract.

(g) Information Security/Cyber Liability Insurance written on a "claimsmade" basis covering Supplier, its employees, subcontractors and agents for expenses, claims and losses resulting from wrongful acts committed in the performance of, or failure to perform, all Services under this Contract, including, without limitation, claims, demand and any other payments related to electronic or physical security, breaches of confidentiality and invasion of or breaches of privacy.

(h) Commercial Crime Insurance: If the scope of the contract includes involvement with monies and monetary instruments, the Contractor shall maintain commercial crime insurance having a minimum coverage of Ten Million Dollars (\$10,000,000.00) per occurrence and a minimum of Ten Million Dollars (\$10,000,000.00) annual aggregate.

(i) Fiduciary Liability Insurance: If the scope of the contract includes fiduciary duties, the Contractor shall maintain commercial crime insurance having a minimum coverage of Ten Million Dollars (\$10,000,000.00) per claim and a minimum of Ten Million Dollars (\$10,000,000.00) annual aggregate.

8.4 Such insurance policies shall be without co-insurance, and shall (a) include CFX, and such other applicable parties CFX shall designate, as additional insureds for commercial general liability and business automobile liability, (b) be primary and noncontributory insurance, (c) include contractual liability for commercial general liability, (d) provide that the policy may not be canceled or materially changed without at least thirty (30) days prior written notice to CFX from the company providing such insurance, and (e) provide that the insurer waives any right of subrogation against CFX, to the extent allowed by law and to the extent the same would not void primary coverage for applicable insurance policies. CONTRACTOR shall be responsible for any deductible it may carry. Renewal Certificates of Insurance for all policies shall be submitted by the Contractor so that they are received by CFX no later than thirty (30) calendar days prior to the expiration of existing insurance coverage. Failure by the Contractor to meet this required timeframe shall result in suspension of partial payments on monthly estimates until the certificates are received and accepted by CFX. Procurement of insurance shall not be construed to limit CONTRACTOR's obligations or liabilities under the Contract. The requirement of insurance shall not be deemed a waiver of sovereign immunity by CFX.

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

8.6 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.

8.7 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.

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

8.9 Performance and Payment Bond:

The CONTRACTOR shall furnish to CFX and shall maintain in effect throughout the term of the Contract, an acceptable surety bond in a sum equal to the amount of the Contract. This bond shall remain in effect until one (1) 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 surety agent's name, address and telephone number shall be clearly stated on the face of the performance and payment bond.

In the event that the surety executing the bond (although acceptable to CFX at the time of execution of the Contract) subsequently becomes insolvent or bankrupt or becomes unreliable or otherwise unsatisfactory due to any cause which becomes apparent after CFX's initial approval of the company, then CFX may require that the CONTRACTOR immediately replace the surety bond with a similar bond drawn on a surety company which is reliable and acceptable to CFX. In such event, all costs of the premium for the new bond, after deducting any amounts that might be returned to the CONTRACTOR from its payment of premium on the defaulting bond, will be borne by CFX.

#### 9. CONTRACTOR RESPONSIBILITY

9.1 CONTRACTOR shall take any and 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:

(a) all employees of CONTRACTOR and its subcontractors and other persons who are on or about the Central Florida Expressway System or would reasonably be expected to be affected by the performance of the Services;

(b) 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 Central Florida Expressway System or other areas upon which Services are performed;

(c) members of the public who may be traveling on the Central Florida Expressway System and their vehicles.

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

- (a) those relating to the safety of persons and property and their protection from damage, injury or loss;
- (b) all workplace laws, regulations, and posting requirements;
- (c) 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
- (d) compliance with the public records laws of Chapter 119, Florida Statutes.

9.3 CONTRACTOR shall be responsible for all damage and loss that may occur with respect to any and all property located on or about the Central Florida Expressway System or in any way involved in the provision of Services by CONTRACTOR, whether such property is owned by CONTRACTOR, CFX, or any other person, to the extent such damage or loss shall have been caused or brought about by the acts or omissions of CONTRACTOR or its employees, agents, officers or subcontractors or any other persons for whom CONTRACTOR may be legally or contractually responsible.

9.4 CONTRACTOR shall ensure that all of its activities and the activities of its employees, agents, officers and subcontractors and all other persons for whom CONTRACTOR may be legally or contractually responsible are undertaken in a manner that will minimize the effect on surrounding property and the public.

9.5 CONTRACTOR shall immediately notify CFX of any material adverse change in CONTRACTOR's financial condition, business, prospects, affairs, or operations, or of such change of any partner, or of such change of any shareholder holding greater than a ten percent (10%) interest in CONTRACTOR, or of the existence of any material impairment of rights or ability of CONTRACTOR to carry on as its business and operations are currently conducted.

9.6 With respect to any employees of CONTRACTOR directly providing work to CFX, CONTRACTOR shall not make any requirement of any such employee or enter into a non-competition agreement with any such employee, whether oral or written, of any kind or nature,

that would prohibit those employees from leaving CONTRACTOR's employ and taking employment with any successor of CONTRACTOR to perform roadway and bridge maintenance services on behalf of CFX.

#### **10. INDEMNITY**

10.1 CONTRACTOR shall indemnify and hold harmless CFX, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of CONTRACTOR and other persons employed or utilized by CONTRACTOR in the performance of the Services and this Contract.

10.2 Further, CONTRACTOR shall indemnify, defend and hold harmless CFX, and its respective officers and employees, from actual suits, actions, claims, demands, costs as defined elsewhere herein, expenses (including reasonable attorneys' fees as defined elsewhere herein), judgments, liabilities of any nature whatsoever (collectively, "Claims") arising out of, because of, or due to breach of the Contract by the CONTRACTOR, its subcontractors, officers, agents or employees, or due to any negligent or intentional act or occurrence of omission or commission of the CONTRACTOR, its subcontractors, officers, agents or employees arising from or related to the performances or non-performance of the Services as required hereunder by the CONTRACTOR. This indemnification shall include, 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:

(a) violation of same by CONTRACTOR, its subcontractors, officers, agents or employees,

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

(c) CFX's full exercise of its rights under any license conveyed to it by CONTRACTOR,

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

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

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

(g) CONTRACTOR's breach of any of the warranties or representations contained in this Contract.

10.3 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 one percent (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 one percent (1%) is included in the amount negotiated for each authorized task.

#### 11. PRESS RELEASES

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

#### 12. OWNERSHIP OF MATERIALS AND INTELLECTUAL PROPERTY RIGHTS

CFX is and shall be and remain the sole owner of all rights, title, and interest in, to, and associated with all plans, documents, software in all forms, hardware, programs, procedures, specifications, drawings, brochures pamphlets, manuals, flyers, models, photographic or design images, negatives, videos and film, tapes, work product, information, data and other items (all whether in preliminary, draft, master, final, paper, electronic, or other form), along with the media on which they reside and with which they interface for function or aesthetics, that are generated or developed with respect to and in connection with this Contract and the performance thereof (collectively, the "CFX Property"). CFX's ownership of CFX Property includes without limitation all common law, statutory and other rights, title, and interest in, to, and associated with trademark, service mark, copyright, patent, trade secret, and publicity (collectively, the "CFX Intellectual Property"). CONTRACTOR, its employees, agents, officers, and subcontractors

acknowledge that E-PASS® is CFX's registered trademark name for CFX's electronic toll collection system and comprises a portion of CFX Intellectual Property.

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

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

12.1 CONTRACTOR was and is the sole owner of all right, title and interest in and to all CONTRACTOR Property and CONTRACTOR Intellectual Property; or

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

12.3 CONTRACTOR has not conveyed, and will not convey, any assignment, security interest, exclusive license, or other right, title, or interest that would interfere in any way with the CFX's use of the CONTRACTOR Property or any license granted to CFX for use of the CONTRACTOR Intellectual Property rights; and

12.4 Subject to Chapter 119, Florida Statutes (Florida Public Records Act), CONTRACTOR shall maintain CFX Property and CFX Intellectual Property in strictest confidence and may not transfer, disclose, duplicate, or otherwise use CFX Property or CFX Intellectual Property in any way, other than in performance of its Services under the terms of this Contract, without the prior written consent of CFX, which may be granted or denied in CFX's

sole discretion. CONTRACTOR shall not publish, copyright, trademark, service mark, patent, or claim trade secret, publicity, or other rights of any kind in any of the Property. In ensuring the confidentiality and security of CFX Property and CFX Intellectual Property, CONTRACTOR shall utilize the same standards of protection and confidentiality that CONTRACTOR uses to protect its own property and confidential information, but in no instance less than reasonable care plus the standards set forth anywhere in this Contract.

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

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

12.5 The statute of limitations on any action arising out of either party's conduct relating to this section, whether such action may be brought by CFX, CONTRACTOR, or a third party; **or** 

12.6 CFX's continued use (notwithstanding any temporary suspension of use) of any CONTRACTOR Property or CONTRACTOR Intellectual Property; and

12.7 Notwithstanding sections 12.5 and 12.6, the confidentiality and security provisions contained herein shall survive the term of this Contract for ten (10) years beyond 12.5 and 12.6.

## 13. PERMITS, LICENSES, ETC.

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

## 14. NONDISCRIMINATION

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

## 15. NOTIFICATION OF CONVICTION OF CRIMES

CONTRACTOR shall notify CFX if any of CONTRACTOR's Key Personnel (hereinafter defined) shall be convicted of any crime, whether state or federal, or felony or misdemeanor of any degree. Such notification shall be made no later than thirty (30) days after the conviction, regardless of whether such conviction is appealed.

## 16. COMPLIANCE WITH LAWS; EQUAL EMPLOYMENT OPPORTUNITY

CONTRACTOR shall conform and comply with and take reasonable precaution to ensure that every one of their directors, officers and employees abides by and complies with all applicable laws of the United States and the State of Florida, and all local laws and ordinances. Furthermore, CONTRACTOR agrees to and shall comply with all federal, state and local laws and ordinances prohibiting discrimination with regard to race, color, national origin, ancestry, creed, religion, age, sex, marital status or the presence of any sensory, mental or physical handicap or other disability, and will take affirmative steps to insure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, disability or national origin. This provision shall include, but not be limited to, the following: employment; promotion; demotion; transfer; recruitment; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

## 17. ASSIGNMENT AND REMOVAL OF KEY PERSONNEL

A significant factor in the decision of CFX to award this Contract to the CONTRACTOR is the level of expertise, knowledge and experience possessed by employees of CONTRACTOR, particularly the Project Manager, Quality Control Manager, Project Superintendent and Contract Support Specialist (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 in accordance with the Scope of Services. Throughout the Term of this Contract, CONTRACTOR shall employ individuals having significant training, expertise, and experience in the areas or disciplines more particularly set forth in the Scope of Services, together with such other areas of expertise or experience, as may be designated from time to time during the Term of this Contract by CFX. When CFX designates an additional area for which expertise or experience shall be required, CONTRACTOR shall use all reasonable and diligent efforts to promptly hire and retain one or more individuals possessing such experience or experience or experience.

CONTRACTOR shall use commercially reasonable efforts to maintain Key Personnel as employees throughout the Term of the Contract in accordance with the standards and requirements set forth in the Scope of Services. The identity of the individuals, initially assigned to each of such positions by CONTRACTOR, shall be submitted to CFX and CFX shall be notified in advance of any changes in the individuals. The Key Personnel shall be committed to performing Services on this Contract to the extent required.

If prior to the second anniversary of the Effective Date of this Contract, CONTRACTOR removes, suspends, dismisses, fires, transfers, reassigns, lays off, discharges, or otherwise terminates any Key Personnel, CONTRACTOR will use commercially reasonable efforts to replace Key Personnel with employees of like expertise.

Promptly upon request of CFX, CONTRACTOR shall use commercially reasonable efforts to substitute any remove any employee whom CFX considers unsuitable for such work.

#### **18.** SUBLETTING AND ASSIGNMENT

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

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

#### **19. DISPUTES**

All Services shall be performed by the CONTRACTOR to the reasonable satisfaction of CFX's Executive Director (or 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 Services that may become necessary or desirable as the work progresses shall be left to the absolute discretion of the Executive Director (and CFX Board if amendments are required) and supplemental agreement(s) of such nature as required may be entered into by the parties in accordance herewith.

#### 20. OTHER SEVERABILITY

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

#### 21. INTEGRATION

It is understood and agreed that the entire agreement of the parties is contained in this Contract herein and that this Contract supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. No waiver, amendment, or modification of these terms hereof will be valid unless in writing, signed by all parties and only to the extent therein set forth.

# **22.** PUBLIC ENTITY CRIME INFORMATION AND ANTI-DISCRIMINATION STATEMENT

CONTRACTOR hereby acknowledges that pursuant to Section 287.133(2)(a), Florida Statutes, "a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids,

proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted vendor list."

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

#### 23. GOVERNING LAW AND VENUE

This Contract, and all claims, controversies, and causes of action arising out of or relating to this Contract, whether sounding in contract, tort, or statute, shall be governed by, and enforced in accordance with, the internal laws of the State of Florida, including its statutes of limitations, without giving effect to any conflict-of-laws or other rule that would result in the application of the laws of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract. The parties consent to the exclusive jurisdiction of the courts located in Orange County, Florida. The obligations in Section shall survive the expiration or termination of this Contract and continue in full force and effect.

#### 24. **RELATIONSHIPS**

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

CONTRACTOR shall conduct no act or omission that would lead CONTRACTOR's employees or any legal tribunal or regulatory agency to believe or conclude that CONTRACTOR's employees would be employees of CFX. Any approval by CFX of a subcontract or other matter herein requiring CFX approval for its occurrence shall not be deemed a warranty or endorsement of any kind by CFX of such subcontract, subcontractor, or matter.

#### 25. INTERPRETATION

For purposes of this Contract, the singular shall include the plural, and the plural shall include the singular, unless the context clearly requires otherwise. Except for reference to women's business enterprises and matters relating thereto, reference to one gender shall include all genders. Reference to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the stated statute or regulation. Words not otherwise defined and that have well-known technical, industry, or legal meanings, are used in accordance with such recognized meanings, in the order stated. References to persons include their respective permitted successors and assigns and, in the case of governmental persons, persons succeeding to their respective functions and capacities. If CONTRACTOR discovers any material discrepancy, deficiency, or ambiguity in this Contract, or is otherwise in doubt as to the meaning of any provision of the Contract, CONTRACTOR may immediately notify CFX and request clarification of CFX's interpretation of the Contract.

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

The CONTRACTOR hereby certifies, covenants and warrants that wage rates and other factual unit costs as shown in attached documentation supporting the compensation are accurate, complete and current as of the date of this Contract. It is further agreed that said price shall be adjusted to exclude any significant sums where CFX shall determine the price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. All such adjustments shall be made within one (1) year following the date of final billing or acceptance of the work by CFX, whichever is later.

#### 27. SURVIVAL OF EXPIRATION OR TERMINATION

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

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

- 27.2 Payment to CONTRACTOR for satisfactory Services performed or for termination expenses, if applicable; and
- 27.3 Prohibition on non-competition agreements of CONTRACTOR's employees with respect to any successor of CONTRACTOR; and
- 27.4 Obligations upon expiration or termination of the Contract; and
- 27.5 Any other term or terms of this Contract which by their nature or context necessarily survive the expiration or earlier termination of the Contract for their fulfillment.

#### 28. OBLIGATIONS UPON EXPIRATION OR TERMINATION OF CONTRACT

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

#### **29. INSPECTOR GENERAL**

CONTRACTOR understands and shall comply with subsection 20.055(5), Florida Statutes, and to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing pursuant to this section. The undersigned further agrees that any subconsultants and subcontractors to the undersigned participating in the performance of this Contract shall also be bound contractually to this and all applicable Florida statutory requirements.

#### **30.** E-VERIFY

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

#### **31. APPROPRIATION OF FUNDS**

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

#### **32. NOTICE TO THE PARTIES**

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

CFX:	CENTRAL FLORIDA EXPRESSWAY CFX 4974 ORL Tower Road Orlando, Florida 32807 ATTN: Director of Maintenance
With a copy to:	CENTRAL FLORIDA EXPRESSWAY CFX 4974 ORL Tower Road Orlando, Florida 32807 ATTN: General Counsel
CONTRACTOR:	LOUIS BERGER HAWTHORNE SERVICES, INC. 80 International Drive, Suite 130 Greenville, SC 29615 ATTN: Kenneth Cockrill, Senior Vice President
With a copy to:	LOUIS BERGER HAWTHORNE SERVICES, INC. 640 Ocoee Business Parkway, Suite 10 Ocoee, FL 34761 ATTN: Christopher Warren, Vice President

### 33. EXHIBITS

This Contract references the exhibits listed below.

Exhibit "A"	Scope of Services	
	Exhibit "A1" CFX Incident Response Plan	
	Exhibit "A2" CFX Maintenance Specifications	
	Exhibit "A3" CFX Asset Maintenance Contract Map (West)	
Exhibit "B"	Method of Compensation	
Exhibit "C"	Price Proposal	
Exhibit "D"	Technical Proposal	
Exhibit "E"	Potential Conflict Disclosure Form	

[ SIGNATURES TO FOLLOW ]

IN WITNESS WHEREOF, the authorized signatures named below have executed this Contract on behalf of the parties as of the day and year first above written. This Contract was awarded by CFX's Board of Directors at its meeting on February 10, 2022.

ACCEPTED AND AGREED TO BY:

LOUIS BERGER HAWTHORNE SERVICES, INC.

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

Title

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

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By:

Director of Procurement

Print Name: Aneth Williams

Date:

Approved as to form and execution for the use and reliance by CFX only.

General Counsel for CFX

Diego "Woody" Rodriguez Print Name

27

VER 9-20-21

#### Exhibit A SCOPE OF SERVICES ROADWAY AND BRIDGE MAINTENANCE SERVICES S.R. 429, S.R. 414, S.R. 451 AND S.R. 453 CONTRACT NO. 001821

#### 1.0 OVERVIEW

1.1 The Contractor shall perform maintenance of, and administration and management services related to roadways and bridges along State Road ("S.R") 429 between Seidel Road to north of Mount Plymouth Road, along S.R. 414 between S.R. 429 and US 441, S.R. 451 from S.R. 414 to US 441 and SR 453 in Orange and Lake County, Florida.

The Contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies required to supply the services set forth herein and complete the roadway and bridge maintenance work in accordance with the specifications, procedures, and terms of the Contract, including the specific tasks and events set forth on the CFX Maintenance Specifications attached hereto and incorporated herein by reference.

It is the Contractor's responsibility to examine the Contract Documents and the site of the proposed Services carefully before submitting a proposal. The Contractor shall investigate the conditions to be encountered, as to the character, quality, and quantities of Services to be performed and materials to be furnished and as to the requirements of all Contract Documents. The Contractor's submission of a proposal in response to the RFP is prima facie evidence that the Contractor has made an examination as described above.

The existing CFX infrastructure is composed of several items that are unique to the Central Florida Expressway System and specifically identified and required by CFX. Unless otherwise specifically approved by the Director of Maintenance in writing prior to any replacement, all damaged items, parts, and components that require replacement, shall be replaced in kind with an identical new item, part and/or component.

This Contract excludes the following services: roadway lighting, out-parcel mowing, pressure washing of structures and MSE and sound wall herbicide. These items are addressed in the Scope of Services and Maintenance Specifications but would not be applicable unless CFX adds the work to the Contract via Supplemental Agreement. CFX reserves the right to add any of these services to this Contract at any time. If added, compensation for this work will be paid though the work order allowance or Supplemental Agreement.

1.2 The Contractor shall provide sufficient field staffing and supervision to accomplish the Services (hereinafter defined) required by this Contract. In addition to sufficient field staffing and supervision, the Contractor shall provide and maintain the following Key Personnel, as defined in the Contract, that possess the following minimum qualifications:

VER 9-20-21

- (a) Full Time Project Manager assigned exclusively to this Contract with a minimum of five (5) years' prior work experience performing similar duties who will be 100% responsible for direct oversight and management of the Services, including, without limitation, the following:
  - Serve as point of contact with CFX

• Oversee all operations and ensure all work is being performed per Contract

- Implement the Contractor Safety Plan
- Manage annual/quarterly project planning
- Coordinate contract administration
- Plan for D/MBE and WBE participation
- Develop and maintain community relations
- Ensure implementation of CFX's procedures, Florida Department of Transportation ("FDOT") procedures and the Florida

Administrative Code Rules

- Identify work needs
- Maintain 24/7 on-call status for emergency and incident response
- Perform Maintenance Assessments
- Review permits as requested
- (b) Full Time Quality Control Manager assigned exclusively to this Contract with a minimum of five (5) years prior work experience performing similar duties who will be 100% responsible for the following:
  - Ensure contract compliance through quality oversight
  - Enforce compliance with Contractor Safety Plan
  - Maintain 24/7 on-call status for emergency and incident response
  - Inspection of completed Services
- (c) Full Time Project Superintendent assigned exclusively to this Contract with a minimum of five (5) years prior work experience performing similar duties who will be 100% responsible for the following:

• Provide day-to-day oversight of the work crews for the roadways and facilities

- Coordinate and oversee 24/7 emergency response program
- Perform equipment maintenance and purchasing
- Ensure contract compliance through quality oversight
- Ensure preparedness for incident and emergency response
- Enforce compliance with Contractor Safety Plan
- (d) Full Time Contract Support Specialist assigned exclusively to this Contract, who will be 100% responsible for the following:
  - Must be proficient in data entry in data management programs

- Must be capable of learning and maintaining an internet web-based application
- Perform status reporting and record archiving in accordance with the requirements herein.
- (e) The Contractor, or an approved subcontractor, shall also employ a fulltime registered professional engineer licensed to practice in the State of Florida ("Professional Engineer") with sufficient qualified technical and professional staff to support activities and program areas including, but not limited to, roadway and bridge maintenance contract administration; maintenance contract implementation; maintenance condition survey management; and public / transportation safety items. The Professional Engineer shall have the ability to respond promptly to the any items that arise from the scope of this Contract and be available to be on-site as needed or requested by Contractor or CFX within six (6) hours of notification.
- 1.3 The Services to be provided by the Contractor shall be furnished through a combination of Contractor staff and personnel and subcontractors and subconsultants under contract to the Contractor. Through this combination, the Contractor shall provide maintenance and administrative personnel in appropriate numbers and at the proper times to ensure that the responsibilities assigned under the Contract are effectively carried out. Services to be provided by the Contractor include but are not necessarily limited to maintenance of roadway features (pavement); roadside features (e.g., soil shoulders, slopes, and fence); traffic services features (e.g., signs, striping, and guardrail); vegetation/aesthetics (e.g., mowing and litter); and drainage (e.g., ditches and inlets). The Services shall also include responsibility for traffic operations; reviewing bridge inspection reports and preparing and implementing a plan for repairs of noted deficiencies; daily patrol of all roadways to ensure Contract compliant conditions; perform Road Serviceability Analysis identified in Section 2.6 hereof; and responsibility for permit operations. These Services are described in detail in the maintenance specifications attached to this Scope of Services. Maintenance of toll facilities and equipment, the fiber optic network, landscaping and aquatic weed control are not a part of the Services and will be performed by others.
- 1.4 CFX does not guarantee that all of the Services described in this Scope of Services will be assigned during the term of the Contract. Further, the Contractor is providing these Services on a non-exclusive basis. CFX, at its option, may elect to expand, reduce, or delete the extent of each work element described in this Scope of Services document, provided such action does not alter the intent of the Contract.
- 1.5 Key Performance Items: The aesthetic appearance and cleanliness of the Central Florida Expressway System is of paramount importance. The Contract standard for weeds is "Virtually Weed Free" on or adjacent to CFX infrastructure items. The Contract standard for litter is "Virtually Litter Free" within the limits of the CFX right of way. The Contract Standard for all mowing items is a "Neat, Clean, Well Groomed" appearance through-out

the CFX right of way. The Contractor's approach and ability to deliver the Services in accordance with the standards set forth by CFX is a key element in the successful performance of this Contract. The following are identified as "Key Performance Items" and Liquidated Damages (hereinafter defined in Section 5.5) associated with the non-performance of the Key Performance Items.

ITEM	MINIMUM SERVICE	NON-PERFORMANCE
		LIQUIDATED DAMAGE
Litter Patrol	5 Full Time Crews, 6 Days	\$500 per day per crew
	per week	(PF-2)
Herbicide	Regular Intervals, 6 Times	\$1000 per day for a given
(Shoulder, Guardrail, MSE	per year	cycle (PF-3)
Walls, Soundwalls, Barrier		
Walls, Light poles etc.)		
Fence Line Herbicide	Regular Intervals, 4 Times	\$1000 per day for a given
	per year	cycle (PF-3)
Roadside Mowing	12 Times per year, Starting	\$1000 for each day late
_	the 1 <sup>st</sup> day of each month	(PF-3)
Slope Mowing	8 Times per year	\$1000 for each day late
	-	(PF-3)
Out-Parcel Mowing	24 Times per year, Starting	\$100 for each day late
_	the 1 <sup>st</sup> and 15 <sup>th</sup> of each	(PF -1)
	month	
Pressure Washing of	1 Time per year per bridge	\$100 for each day late per
Bridges		bridge (PF-1)
Highway Lighting	Daily Patrol, Documented	\$100 per day per light
	Inspection every 2 weeks	(PF-1)
Vacuum Sweeping	1 cycle every 2 weeks	\$500 for each day late
		(PF -2)
Pavement Markings	Daily Patrol	

Contractor understands and acknowledges that there are additional items addressed in the CFX Maintenance Specifications in which Liquidated Damages may be charged.

1.6 In addition to the Liquidated Damages set forth above and in Section 5.5 hereof, in the event the Contractor fails to perform any required Services within the specified time limits in the Contract, CFX, at its option, may elect to have another contractor, subcontractor, or staff of CFX perform the Services and subtract the costs for the performance of the Services plus a \$1,000 administrative fee from any unpaid amounts then or thereafter due the Contractor under the Contract if the Contractor had performed said Services.

1.7 The Contractor shall expect that all Liquidated Damages outlined in this Contract will be enforced. In the event the Contractor believes an assessed Liquidated Damage is the result of extenuating circumstances or is not being properly assessed, the Contractor may appeal the assessment of Liquidated Damages in writing to the Director of Maintenance. CFX reserves the right to reduce any assessment of Liquidated Damages and/ or reductions in compensation based upon the circumstances of that item. Any assessment of Liquidated Damages and /or reduction of compensation amount is at the sole discretion of the Director of Maintenance.

#### 2.0 ROADWAY MAINTENANCE AND INSPECTION

- 2.1 The Contractor shall be responsible for all routine bridge maintenance, roadway maintenance (roadway features, roadside features, traffic services features, vegetation/aesthetics and drainage) and inspection and administrative functions as defined in this Scope of Services, maintenance specifications and referenced manuals and procedures (collectively, the "Services").
- 2.2 In addition to the Key Personnel, the Contractor, through the use of subcontractors and subconsultants, shall provide qualified maintenance contractors, technical, and administrative personnel in appropriate numbers to ensure that maintenance is accomplished in accordance with the requirements and criteria set forth in this Scope of Services and the maintenance specifications. All Services shall be performed in accordance with the specifications, guides, standards, procedures and directives that are a part of or referenced within the Contract.
- 2.3 The Contractor shall comply with the CFX Incident Response Plan as defined in Exhibit A1 attached hereto and incorporated herein by reference.
- 2.4 The Contractor shall be responsible for the control and safety of traffic and the public during the performance of all Services under control of the Contractor, its agent, employees and subcontractors/subconsultants. When required by the Contractor's operations, the Contractor shall furnish, erect and maintain such fences, temporary railing, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents, damage or injury to the public.
- 2.5 The Contractor shall review Bridge and Sign Inspection Reports provided by CFX. The Contractor shall have complete responsibility for scheduling and performing bridge and sign maintenance and repairs. The Contractor shall return completed signed and dated FDOT and CFX work order forms to the Director of Maintenance to include photographs of any repairs completed on the bridge and signs. Each work order shall be completed by the Contractor and accepted by CFX within sixty (60) days of receipt by the Contractor of the work items for items deemed Priority 1 work orders, one hundred eighty (180) days for items Priority 2 and 3 work orders and within two (2) years for Priority 4 work orders. Services not completed within this time frame will be subject to a reduction in

compensation due the Contractor of \$200 per day per work order for each day the Services specified in the work order are not completed.

- 2.6 Road Serviceability Analysis The Contractor shall:
  - 2.6.1 Attend Maintenance Rating Program (MRP) inspections with FDOT and the Director of Maintenance or his/her designee. Review results of the MRP inspections performed by FDOT and initiate corrective action based on MRP inspections within thirty (30) days of receipt of the findings from the Director of Maintenance.
  - 2.6.2 Correct identified deficiencies in the roadways and bridges on an annual basis throughout the Term of the Contract, using the current years for each Annual Inspection Report compiled by CFX's General Engineering Consultant as a baseline of the deficiencies needing repair. The Contractor shall integrate findings from the Annual Inspection Report into the Contractor's Work Plan, as defined in Section 3 hereof.
- 2.7 Contract Administration The Contractor shall:
  - 2.7.1 Review maintenance contract reports relating to Contractor's performance and communicate with subcontractors, if necessary, regarding negative conformance to, or compliance with, specifications, workmanship, Key Performance Items, or any other areas or standards in accordance with the terms of this Contract.
  - 2.7.2 Prepare, maintain and provide one day in advance, a daily work schedule showing key activities and their planned location for that day. Prepare and maintain monthly progress schedules and summary reports of work planned and work completed applicable to all phases of maintenance operation and such special reports as may be required to keep CFX advised with respect to the progress of work activity.
    - (a) Provide the monthly report in a format that includes all Activity Groups and Activity Codes, quantities and applicable measurement units (i.e. acre, square foot/yard, each, etc.) as described in the FDOT Maintenance Cost Handbook.
  - 2.7.3 Assist CFX in responding to the public interest regarding maintenance activities.
- 2.8 In all cases and scenarios prepare and provide to CFX within twenty-four (24) hours of any such accident, any accident claim(s) in form and content reasonably satisfactory to CFX.
  - 2.8.1 For matters or incidents in an amount less than or equal to \$25,000.00, or the CFX insurance contract deductible, whichever is greater, in estimated repair damages

for any particular occurrence due to the intentional acts or negligence of any third party or parties, the Contractor shall:

- (a) Provide a copy of said accident claim to CFX for its records; and
- (b) Advance and pay for all expenses incurred in connection with the performance of its repair and/or maintenance duties and obligations under the Contract; and
- (c) Seek reimbursement of the expenses made in connection with the aforementioned repair and/or maintenance, at Contractor's sole expense, only from the negligent party or parties, tortfeasor or tortfeasors (collectively, the "Third Parties"), and/or their respective insurance carriers (the "Third Party Insurers"), if any. The Contractor shall not seek reimbursement from the CFX. Nor shall the Contractor seek reimbursement from the CFX insurance carrier or carriers without first obtaining written approval from CFX, which approval shall not be unreasonably withheld. Alternatively, the Contractor may pursue, at Contractor's sole cost and expense, any and all claims or actions against the Third Parties, and/or the Third-Party Insurers, but not against CFX, its employees, officers, agents, representatives, consultants, or their respective employees, officers and representatives, or the CFX insurance carrier or carriers, whether in law or in equity.
- 2.8.2 For matters or incidents in an amount greater than \$25,000.00, or CFX's insurance contract deductible, whichever is greater, in estimated repair damages for any particular occurrence due to the intentional acts or negligence of any third party or parties, as an absolute condition of the Contractor being reimbursed by CFX, the Contractor shall:
  - (a) Submit said accident claim to CFX; and
  - (b) Advance and pay for all expenses incurred in connection with the performance of its repair and/or maintenance duties and obligations under the Contract; and
  - (c) Notify CFX in writing, that the Contractor seeks reimbursement of the Contractor's expenses, reasonably related to such repairs and/or maintenance, whereby CFX, shall at its expense, file a reimbursement claim with the CFX insurance carrier or carriers. Should the CFX insurance carrier or carriers fail to pay all of any particular reimbursement claim, the Contractor may, but shall have no obligation to, seek reimbursement of any particular claim shortfall from the Third Parties, and/or the Third-Party Insurers, if any. The

VER 9-20-21

Contractor shall not seek any reimbursement from the CFX insurance carrier or carriers, whether or not the claim is based on bad faith or otherwise, without first obtaining written approval from CFX, which approval shall not be unreasonably withheld. Alternatively, the Contractor may pursue, at Contractor's sole cost and expense, any and all claims or actions against the Third Parties, and/or the Third-Party Insurers, but not against CFX, its employees, officers, agents, representatives, consultants, or their respective employees, officers and representatives, whether in law or in equity.

2.8.3 Contractor and its assigns, if any, hereby waive any and all claims, reimbursement requests, and the like, against any self-insurance policy or policies of CFX and of FDOT.

#### 3.0 CONTROL OF THE WORK

3.1 The Contractor shall develop, prepare, provide to CFX, and implement a Roadway Maintenance Operations Work Plan ("Work Plan").

The Work Plan is a 12 month look ahead schedule that the Contractor shall be prepared and submitted to CFX within thirty (30) days of the issuance of the Notice to Proceed in accordance with the terms of the Contract and updated every 3 months thereafter throughout the Term of the Contract. The Work Plan shall include each of the Key Performance Items addressed in Section 1.5. The Work Plan shall also contain a description of activities the Contractor intends to carry out during the 12-month period beginning on the Notice to Proceed date for the Contract and the scheduled date for each such activity. The Work Plan shall, at a minimum, provide a description of the Services to be performed for each week throughout the Term, or by any other more specific periods or date the Contractor selects.

Upon receipt of the Work Plan, CFX will review the plan and meet with the Contractor to resolve any concerns pertaining to the schedule and the activities and to finalize the plan.

Based upon the Notice to Proceed date as defining the first day of the contract year, the Contractor shall submit an updated Work Plan to CFX at least 30 days prior to the first day of each quarter to show a rolling 12-month period of detailed coverage.

Contractor understands and acknowledges that the Work Plan is a tool for assessing and monitoring the Services performed by the Contractor and is not intended by CFX to constrain or impede the Contractor's requirement to complete the work orders in a timely manner. While the Work Plan is required to be updated every three months, if a repair, replacement, or deficiency is identified, inclusion in the Work Plan shall not preclude said repair, replacement, or deficiency from being addressed by the Contractor.

3.2 Director of Maintenance

To avoid unnecessary repetition of expressions, whenever in the Scope of Services, Maintenance Specifications or other Contract Documents the term "Director of Maintenance" is used, it is understood that "or designated representative" is a part of the term unless specifically indicated otherwise.

All work shall be subject to review and acceptance by the Director of Maintenance who shall evaluate the Contractor's work for compliance with the Contract Documents. The Director of Maintenance has no duty to supervise or direct the performance of the Services, nor any responsibility or liability for the acts or omissions of the Contractor or any subcontractor or supplier.

#### 3.3 Coordination of Contract Documents

The Scope of Services, CFX Maintenance Specifications and all supplementary documents are integral parts of the Contract Documents and a requirement occurring in one document is as binding as though occurring in all documents. The Standard Specifications, (current edition at the time of Contract execution) and the FDOT Standard Plans, (current edition at the time of Contract execution), are incorporated by reference as if fully set forth herein. In a circumstance of inconsistency or discrepancy between documents, the priority order of the documents shall be as follows:

- 1. Scope of Services
- 2. CFX Maintenance Specifications
- 3. FDOT Standard Specifications, current edition at time of Contract execution.
- 4. FDOT Standard Plans, current edition at the time of Contract Execution.

Unless specifically allowed by the Director of Maintenance, the Method of Measurement and the Basis of Payment articles in all sections of the FDOT Standard Specifications will not apply to this Contract. All payments to the Contractor will be based on the lump sum, schedule of values and unit price amounts shown in the Price Proposal.

#### 3.4 Traffic Control and Lane Closures

The Contractor shall adhere to the requirements of Part 6 of the Florida Highway Administration's ("FHWA") Manual on Uniform Traffic Control Devices ("MUTCD"). For operations requiring closure of travel lane(s), Contractor shall comply with CFX Maintenance Specifications and FDOT Standard Plans.

All lane and ramp closures require the prior written approval of the Director of Maintenance. The Contractor shall submit a written lane closure request at least ten (10) working days in advance of the planned closure. In general, no work requiring lane closures shall occur on CFX's system between the hours of 6:00 a.m. and 11:00 p.m., Monday through Sunday. In general, ramp closures will only be permitted between the hours of 11:00 p.m. and 5:00 a.m. any day of the week.

VER 9-20-21

If, in the determination of the Director of Maintenance, any permitted lane closure(s) causes extended traffic congestion, the Contractor shall, at the direction of the Director of Maintenance, open any temporary lane closures until traffic is returned to an acceptable flow as determined by the Director of Maintenance.

The Contractor understands that delay costs to the public will result if all lanes are not open to traffic within the time constraints approved by the Director of Maintenance for each lane closure request as referenced above. The Contractor shall plan its operations such that all equipment and materials except those required for the safety of the traveling public are removed from the clear zone and lanes are reopened for traffic within the time constraints approved by the Director of Maintenance for each lane closure request as referenced above. A lane rental fee will be assessed on the Contractor in the amount of \$1,000 per lane/ramp for each minute that any lane/ramp is not open to traffic.

Lane rental fees will be assessed beginning at the appropriate time as shown above and continue until all lanes are open and traffic flow is restored as recorded by the Director of Maintenance. CFX shall have the right to apply as payment on such damages any money which is due to the Contractor by CFX. At the discretion of the Director of Maintenance, lane rental fees will not be assessed for failure to open traffic lanes if such cause is beyond the control of the Contractor i.e., catastrophic events, accidents not related or caused by the Contractor's operations.

Lanes closures on all local or state roads not a part of the Central Florida Expressway System shall be coordinated with and approved by the appropriate local or state governmental agency, such as Orange County, Lake County, Osceola County, City of Winter Garden, FDOT, FTE, etc.

#### 3.5 Other Work

If activities by CFX or other parties occur near or within the work locations, the Contractor shall coordinate its operations and cooperate with others and shall not be entitled to extra compensation or adjustments in Contract unit prices because of deletion of work items or delay because of activities by others.

#### 3.6 Subcontractors

The Contractor shall not sublet, sell, transfer, assign, delegate, subcontract, or otherwise dispose of the Contract or any portion thereof without the prior written consent of CFX which may be withheld in CFX's sole and absolute discretion. A list of approved subcontractors shall be made a part of the Contract. Subsequent to the execution of the Contract, any additions to the list will require prior written approval by the Director of Maintenance. Additionally, any such subcontract that would, standing alone or aggregated with prior subcontracts awarded to the proposed subcontractor, equal or exceed twentyfive thousand dollars (\$25,000.00), will also require prior approval by the CFX Board. No VER 9-20-21

such subcontract shall be executed by the Contractor until Board approval is given. Refer to Article 17, Subletting and Assignment, in the Contract for additional requirements.

Promptly upon request of CFX, the Contractor shall remove from the activities associated with or related to the performance of Services under the Contract any subcontractor, at any tier, whom CFX considers unsuitable for the performance of such Services. Such subcontractor shall not be reassigned to perform any work relating to the Services except with the express written consent of CFX.

#### 4.0 OTHER REQUIREMENTS

- 4.1 Permits, Notifications and Fees
  - 4.1.1 Unless otherwise specified, Contractor shall secure and pay for all permits necessary to conduct the maintenance or other work in accordance with required regulations and to notify all applicable utilities or parties affected by the Contractor's operations.
  - 4.1.2 The Contractor shall be responsible for all fees associated with the performance of the Contract. This includes payment of toll charges for all vehicles and equipment at the standard rate applicable to the general public. All toll payments made by the Contractor will be presumed to have been included in the Contract lump sum and unit prices for the items of work in the Contract.
  - 4.1.3 No Services shall be performed under the provisions of the Contract on any properties outside the limits of CFX-maintained right-of-way without the express written permission of the affected landowner. Any such permission shall be secured by the Contractor and shall identify the provisions under which such Services are to be performed. The Contractor shall provide a copy of the written permission to CFX.

Permissions obtained shall not constitute assumption of liability by CFX nor relieve the Contractor of its liabilities.

- 4.2 Hazardous or Toxic Waste, Pollutants
  - 4.2.1 When the Contractor's operations encounter or expose any abnormal condition which may indicate the presence of a hazardous substance, toxic waste, or pollutants such operations shall be discontinued in the vicinity of the abnormal condition and the Director of Maintenance shall be notified immediately, but no more than sixty (60) minutes from discovery of such abnormal condition. The presence of tanks or barrels; discolored earth, metal, wood, groundwater, etc.; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions which appear abnormal may be indicators of hazardous or toxic wastes or pollutants and shall be treated with extraordinary caution.

- 4.2.2 Contractor shall take any and all actions reasonably necessary 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 Director of Maintenance in writing.
- 4.2.3 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 Services 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 Services being performed.

#### 4.3 Responsibility for Damages

The Contractor shall protect from damage all property associated with, or which is in the vicinity of, or is in any way affected by, the Contractor's maintenance or other Services performed pursuant to the Contract. Any damages occurring to such properties caused by the acts or omissions of Contractor (or its employees, agents or invitees) shall be immediately repaired at the expense of the Contractor to a condition similar or equal to that existing before such damage occurred, which repair shall be conducted to the reasonable satisfaction of CFX.

- 4.4 Safety
  - 4.4.1 General: The Contractor shall comply with all federal, state, and local laws, bylaws, ordinances, rules and regulations which control the action or operation of those engaged or employed in the Services or which affect materials used by Contractor in the performance of the Services.
  - 4.4.2 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 Services have been completed and accepted by CFX.

The Contractor and all subcontractors shall not allow any person employed in performance of the Services 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.

VER 9-20-21

- 4.4.3 The Contractor shall ensure that its workers and subcontractors at all tiers use vest/garments in conformance with the FDOT Standard Plans. Protective safety helmet caps shall be worn at all work sites containing overhead hazards.
- 4.4.4 All vehicles used during the performance of the Services shall be equipped with flashing yellow strobe lights mounted on top of the vehicle to be clearly visible. All vehicles shall be marked with the Contractor's or any tier subcontractor's name and/or logo on both sides of the vehicle in a font easily read from a distance of 15 feet.
- 4.5 Contractor's Responsibility for Work

Until acceptance by the Director of Maintenance, the results of the maintenance or other Services shall be under the charge and custody of the Contractor who shall take every necessary precaution against injury or damage to the work results by the action of the elements or from any other cause whatsoever. The Contractor shall rebuild, repair and restore, without additional compensation, all injury or damage to any portion of the work occasioned by any of the above causes before its completion and acceptance; except, in the case of extensive or catastrophic damage CFX may, at its discretion, reimburse the Contractor for the repair of such damage due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to Acts of God, of the public enemy or of governmental authorities.

4.6 Disadvantaged, Minority and Women Owned Businesses (D/M/WBE)

General: The Contractor is encouraged to meet or demonstrate why the participation objective of 7% for this Contract 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 may elect to provide an exception for the Contractor's failure to meet the participation objective established for this project. The exception requires that the Contractor provide CFX with documentation supporting the Contractor's Good Faith Effort to meet the stated objective. CFX will have the sole and final determination of whether the support documentation provided by the Contractor does, in fact, meet CFX's standard for a Good Faith Effort herein. The Contractor shall demonstrate through documentation that every reasonable effort has been made to achieve CFX's participation objective. The Contractor shall be responsible for securing proof of the D/M/WBE certification(s) for the proposed subcontractors/suppliers and be able to provide copies of the certification(s) to the CFX's Supplier Diversity Office.

The Contractor shall meet or exceed the commitment stated in the Contractor's D/M/WBE Utilization Summary. Should the Contractor's D/M/WBE participation fall below the approved level for any reason whatsoever or should the Contractor substitute or self-perform work identified for a D/M/WBE subcontractor/supplier without prior written approval of CFX, the Contractor will be considered by CFX to be in material breach of the Contract. If found in breach of the Contract, the Contractor may be suspended from bidding on and/or participating in any further CFX projects for up to one (1) year as provided in Section 15 of CFX's Supplier Diversity Policy.

Any change in the D/M/WBE Utilization Summary will require prior approval by the CFX Director of Supplier Diversity. Should the Contractor determine that a subcontractor/supplier named in the Utilization Summary is unavailable or cannot perform the work, the Contractor shall request approval of a revised D/M/WBE Utilization Summary. The revised summary shall be submitted, in writing, to the CFX Supplier Diversity Office at 4974 ORL Tower Road, Orlando, Florida 32807, or by facsimile to (407) 690-5011.

The Contractor will not be allowed to perform the Services with its own forces if those Services have 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:

- Whether the Contractor, provided written notice to certified D/M/WBEs performing the type of Work that the Contractor intends to subcontract, advising the D/M/WBEs (a) of the specific Work the Contractor intends to subcontract; and (b) that their interest in the Contract is being solicited;
- (2) Whether the Contractor provided interested D/M/WBEs assistance in reviewing the Contract Plans and Specifications;
- (3) Whether the Contractor assisted interested D/M/WBEs in obtaining any required bonding, lines of credit, or insurance;
- (4) Whether the Contractor's efforts were merely pro forma and given all relevant circumstances, could not reasonably be expected to produce sufficient D/M/WBE participation to meet the objective.

The above list is not intended to be exclusive or exhaustive and CFX will look not only at the different kinds of efforts that the Contractor has made but also the quality, quantity and intensity of these efforts.

4.6.1 Disadvantaged, Minority and Women Owned Businesses - Participation Objective

4.6.1.1 General: The Contractor shall ensure that D/M/WBE as defined herein will have the maximum opportunity to participate in the performance of subcontracts. In this regard, the Contractor shall take all necessary and reasonable steps to accomplish that result.

4.6.1.2 Definitions: The following words and phrases shall have the respective meanings set forth below unless a different meaning is plainly required by the context:

- (1) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States or lawfully admitted permanent residents and who are women, Black Americans, Hispanic American, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans. Individuals in the following groups are presumed to be socially and economically disadvantaged:
  - (a) "Black Americans", which includes persons having origins in any of the black racial groups of Africa;
  - (b) "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;
  - (c) "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific and the Northern Marianas;
  - (d) "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - (e) "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh; and
  - (f) "Women".
- (2) "Joint Venture" means an association of two or more firms to carry out a single business enterprise for which purpose the firms combined their property, money, effects, skills or knowledge.
- (3) "Certified" means a finding by Orange County, Florida, the City of Orlando, Florida, and Florida Department of Transportation that the business is a bona fide Minority, Women or Disadvantaged owned and operated business.

- (4) "Independently Owned and Operated" means a business that is not affiliated or associated with the general contractor or prime contractor providing work or services on CFX project(s) or procurement in which the D/M/WBE seeks to participate. Affiliated status may be determined through common ownership, management, employees, facilities, inventory or any other factors, which would prevent or inhibit independent status
- (5) "Women Business Enterprise" comprises all women. All women business owners will be classified as a Women Business Enterprise.
- 4.6.2 Specific Requirements: The Contractor shall, among other things, implement techniques to facilitate D/M/WBE participation in contracting activities including, but not limited to:
  - 1. Soliciting price quotations and arranging a time for the review of plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of quotations;
  - 2. Providing assistance to D/M/WBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance;
  - 3. Carrying out information and communication programs or workshops on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate;
  - 4. Contacting Minority Contractor Associations, city, and county agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible D/M/WBE contractors to apply for certification.
  - 5. Meeting with appropriate officials of CFX, including its Supplier Diversity Office, to assist with the Contractor's efforts to locate D/M/WBEs and assist with developing joint ventures, partnering, and mentorship.
- 4.6.3 Qualified Participation: CFX will count D/M/WBE participation toward meeting D/M/WBE objective as follows:
  - 1. The total dollar value of the contract to be awarded to the certified D/M/WBE will not be counted toward the applicable D/M/WBE objective unless approved by CFX.
  - 2. A portion of the total dollar value of a contract, with an eligible joint venture, equal to the percentage of the ownership and control of the D/M/WBE partner in the joint venture may be counted toward the D/M/WBE objective.

- 3. Only expenditures to D/M/WBEs that perform a commercially useful function may be counted toward the D/M/WBE objective. A D/M/WBE is considered to perform a commercially useful function when it actually performs and manages at least 51 percent of the work subcontracted to it. To determine whether a D/M/WBE is performing a commercially useful function, CFX will evaluate all relevant factors such as the amount of Work subcontracted and industry practices.
- 4. Consistent with normal industry practices, a D/M/WBE may enter into subcontracts. If a D/M/WBE subcontracts 50 percent or more of the Work assigned to it, the D/M/WBE shall be presumed not to be performing a commercially useful function.
- 5. Expenditures for materials and supplies obtained from D/M/WBE suppliers and manufacturers may be counted toward the D/M/WBE objective, provided that the D/M/WBEs assume the actual and contractual responsibility for the provision of the materials and supplies. The percentage allowed toward the D/M/WBE objective is as follows:
  - (a) All expenditures to a D/M/WBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale) may be counted toward the D/M/WBE objective.
  - (b)
- 1. A Contractor may count toward its D/M/WBE objective 60 percent of its expenditures for materials and supplies required under a contract and obtained from a D/M/WBE regular dealer, and 100 percent of such expenditures to a D/M/WBE manufacturer.
- 2. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.
- 3. A regular dealer is a firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment.

Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this Section.

- (c) A Contractor may count toward the D/M/WBE objective for the following expenditures to D/M/WBE firm(s) that are not manufacturers or regular dealers:
  - 1. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials of supplies required for performance of the Contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - 2. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - 3. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- 4.6.4 Records and Reports: The Contractor shall develop a record keeping system to monitor its D/M/WBE participation and shall maintain the following records:
  - 1. The procedures adopted to comply with these special provisions;
  - 2. The number of subordinated contracts on CFX projects awarded to D/M/WBEs;
  - 3. The dollar value of the contracts awarded to D/M/WBEs;
  - 4. The percentage of the dollar value of all subordinate contracts awarded to D/M/WBEs as a percentage of the total contract amount;
  - 5. A description of the general categories of contracts awarded to D/M/WBEs; A-18 VER 9-20-21

- 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 the Director of Maintenance or Executive Director.

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

4.6.5 Subletting of Contracts - Participation Objective

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

#### 5.0 PROSECUTION AND PROGRESS OF WORK

5.1 Beginning Work

The Contractor shall commence work as of the date established in the Notice to Proceed. The Term of the Contract will begin on the date established in the Notice to Proceed.

#### 5.2 Status of Work

The Contractor shall keep the Director of Maintenance advised as to the status of the Services being completed by the Contractor and the details thereof on a daily basis. E-mail locations of work crews shall be sent to designated CFX maintenance personnel indicating roadway, start and proposed end location by mile post for each major work activity. Coordination shall be maintained by the Contractor with the Director of Maintenance. The Director of Maintenance or Contractor may request and be granted a conference with the other party.

5.3 Maintenance Operations

- 5.3.1 The Contractor shall be available 24 hours a day, 7 days a week, 52 weeks a year. The Contractor shall schedule maintenance operations to minimize inconvenience to adjacent businesses, residences and the motoring public.
- 5.3.2 Regular time is defined as 7:00 a.m. to 5:00 p.m., Monday through Friday excluding holidays (Thanksgiving Day, Christmas Day, New Year's Day, Memorial Day, Independence Day or Labor Day). When any of these holidays fall on a Sunday, no work under the Contract shall be done on the following Monday. If the holiday falls on a Saturday, no work shall be done on the preceding Friday.
- 5.3.3 Special time is defined as 5:00 p.m. to 7:00 a.m., Monday through Friday and allday Saturdays, Sundays, and holidays. For special operations, night work may be allowed between the hours of 5:00 p.m. to 7:00 a.m., with proper lighting, if so, authorized by the written approval of the Director of Maintenance (e-mail may be used).
- 5.3.4 No Services shall be performed when weather conditions limit good visibility to less than five hundred (500) feet. The Services may only be performed during prohibited times with written permission from the Director of Maintenance, or in circumstances of an emergency. Refer to the individual specifications (attachments) for specific requirements.
- 5.3.5 Prior to beginning maintenance operations, the Contractor shall submit to the Director of Maintenance, for approval, two (2) copies of the Contractor's proposed plan and methods for performing the required highway and bridge maintenance work including a listing of equipment and personnel anticipated for use. The plan shall show the proposed methods of ensuring safety and minimum interference with the normal flow of traffic in the travel lanes and local roadways. The Contractor shall provide all necessary instruments and special apparatus to conduct any testing that may be required. Approval of the plan shall not relieve the Contractor of responsibility or liability for injury to persons or damage to property caused by the operation of equipment and/or personnel.
- 5.3.6 All Contractor, subcontractors and second tier subcontractor's vehicles shall have clear identification of the company they represent. All Contractor, subcontractor and second tier subcontractor employees requiring access to any CFX facility shall wear name tags with photo identification. In addition, a list of such employees shall be provided to CFX prior to beginning work under the Contract. Any employee not on the Contractor's list and not having the proper photo identification will not be allowed access to facilities.
- 5.3.7 The Contractor shall park equipment left on the right-of-way overnight as close to the right-of-way line as possible and outside of the "Clear Zone" as defined in the FDOT Standard Plans. Equipment or vehicles shall be clearly marked with cones or lighted barricades. Do not park equipment overnight in the median regardless of

the width of the median. Conduct all service and supply operations as close to the right-of-way line as possible. No supply vehicles shall enter a roadway median except when necessary to repair or remove inoperable equipment.

- 5.3.8 In circumstances where the Services have assigned to them a specific time increment within which to accomplish the task (if any), the Director of Maintenance may grant an extension of the allowable time when a controlling item of work is delayed by factors which are beyond the control of the Contractor. Extensions will not be granted for delays due to the fault or negligence of the Contractor.
- 5.3.9 CFX will advise the Contractor when an emergency response will be required for critical situations. In general, emergency response time (the time taken by the Contractor to arrive at the site after notification) shall be 2 hours regardless of the day or time of the notification unless otherwise specified. Failure to meet the required priority response time may result in reductions to compensation for work performed according to the following reduction schedule:
  - a. Up to 1 hour late \$100.00 reduction.
  - b. More than 1 hour late \$200.00 reduction.
  - c. For each additional hour late \$200.00 reduction

The reduction will not be assessed if the Contractor can demonstrate to the satisfaction of the Director of Maintenance, in his sole and absolute discretion, that the delay was the result of events beyond the control of the Contractor.

Individual maintenance specifications may have specific response requirements that supersede the response time in this sub article.

No extension of the emergency response time will be granted by CFX due to travel distance requirements of the response crew.

- 5.3.10 With the exception of Regular Mowing and Slope Mowing, the Contractor may request time extensions for delays (in work performance which has completion dates associated therewith, if any) caused by the effects of inclement weather. Delays due to inclement weather will be handled differently from those resulting from other types of delay. Such time extensions are justified only when rains or other inclement weather conditions or related adverse soil conditions prevent the Contractor from productively performing controlling items of work (Key Items shown on the Contractors Work Plan (Article 3.1) or daily Work Schedule (Article 2.7.2), resulting in either:
  - (a) The Contractor being unable to work at least fifty percent (50%) of the normal work day on pre-determined controlling work items due to adverse weather conditions, or

(b) The Contractor being required to make major repairs to work damaged by weather; provided, however, the damage was not attributable to a failure to perform or neglect by the Contractor, and provided that the Contractor was unable to work at least fifty percent (50%) of the normal workday on predetermined controlling work items.

The Director of Maintenance will monitor the effects of weather and if deemed justified, in his sole and absolute discretion, recommend time extensions for performance of the Services. The Contractor will not be required to submit a request for additional time due to the effects of weather unless the Contractor disputes the additional time granted by CFX.

5.4 Suspension of the Services

CFX reserves the right (as may be exercised from time to time) to suspend the maintenance activities and Services covered by the Contract, wholly or in part, for such period as may be deemed necessary. The periods of suspension may include extreme adverse weather conditions (such as flooding due to catastrophic occurrences) or heavy traffic congestion due to special events that may cause hazardous conditions for the motorists. Such suspension if ordered will be in writing, giving detailed reasons for the suspension.

CFX anticipates future roadway and bridge construction in the Contract limits which could also result in suspension of the Services. Upon written direction from the Director of Maintenance, the Contractor shall reduce roadway maintenance activities in the construction areas designated by CFX until such time as the suspension is lifted. The only maintenance Services that shall be performed by the Contractor in the designated areas are litter / debris removal, herbicide applications and emergency response. Payment to the Contractor will be reduced based on the pro-rata share of the affected Pay Item(s) value for the work not performed. The Contractor shall review the CFX 5 Year Work Plan current at the time of bid and account for all upcoming construction projects published in that plan and include only the costs for the reduced Services in the Contractor's Price Proposal. Any changes to the CFX 5 Year Work Plan that occur after submittal of the Contractor's Price Proposal.

#### 5.5 Liquidated Damages

5.5.1 Contractor and CFX recognize that, since time is of the essence for the performance of the Services under this Contract, CFX will suffer financial loss if the Services are not preformed within the time specified in the Contract, as said time may be adjusted as provided for herein. In such event, the total amount of CFX's damages, will be difficult, if not impossible, to definitely ascertain and quantify. It is hereby agreed that it is appropriate and fair that CFX receive liquidated damages from Contractor, if Contractor fails to perform the Services within the time periods set forth in the Contract. The Contractor (or in the circumstance of the Contractor default, the surety) shall pay to CFX, not as a penalty but

VER 9-20-21

as liquidated damages per the following Performance Failure schedule (PF) for failure of the Contractor to complete the Services and Key Performance Items within the time stipulated in the work order or maintenance specifications or within such additional time as may have been granted by CFX (the "Liquidated Damages"):

- PF-1 \$100 per Task/Item per Day
- PF-2 \$500 per Task/Item per Day
- PF-3. \$1000 per Task/Item per Day

It shall be the responsibility of the Contractor to schedule the Services in a manner that prevents delays, stoppages and rework.

The Contractor hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted Liquidated Damages as a penalty, which the parties agree represents a fair and reasonable estimate of CFX's actual damages at the time of contracting if Contractor fails to perform the Services within the time specified herein.

- 5.5.2 For all work, regardless of whether the performance time is stipulated in calendar days or working days, liquidated damage charges will be assessed in calendar days, starting with the first day following the day the subject Task / Item was due to be completed.
- 5.5.3 Permitting the Contractor to continue and to finish the Services , or any part of it, after the expiration of the time allowed, including time extensions, shall in no way act as a waiver on the part of CFX of the Liquidated Damages due under the Contract.
- 5.5.4 In the event of default by the Contractor and the completion of the Services by CFX or by another contractor retained by CFX, the Contractor and the Contractor's surety shall be liable for the Liquidated Damages under the Contract until either CFX releases the default or the Services resume under the Contract Surety. No Liquidated Damages shall be chargeable for any delay in the final completion of the Services due to any unreasonable action or delay on the part of CFX.
- 5.5.5 The Services will be considered completed when all Services have been accepted by the Director of Maintenance. CFX reserves the right deduct any Liquidated Damages prescribed in this subsection from any unpaid amounts then or thereafter due Contractor under the Contract and any liquidated damages not so deducted shall be payable to CFX by Contractor upon demand by CFX plus interest from the date of demand at the maximum legal rate of interest until paid.

5.5.6 It is further mutually understood and agreed that CFX's assessment of liquidated damages for delays is intended to compensate CFX solely if Contractor fails to timely perform the Services in accordance with the terms of this Contract and shall not release the Contractor from liability from any other breach of Contract requirements. If the liquidated damages set forth herein are deemed unenforceable for any reason, CFX instead shall be entitled to recover those actual delay damages that it sustained as a result of the Contractor's failure to perform the Services.

#### 5.6 Sales and Use Taxes

Performance of the Services under the Contract is subject to the provisions of Chapter 212, Florida Statutes, Tax on State, Use and Other Transactions. Other state, local, or federal taxes may be applicable. The Contractor is responsible to remit to the appropriate governmental entity all applicable taxes. Any applicable tax shall be included in the Contractor's Price Proposal.

#### 5.7 Binding Arbitration

All claims, disputes and controversies between the CFX and the Contractor arising out of or related to the Contract shall be decided and resolved by binding arbitration. The arbitration shall occur in Orlando, Florida and shall be conducted by a three (3) member panel pursuant to and under the auspices of the Construction Industry Arbitration Rules of the American Arbitration Association.

#### 5.7.1 Procedure

Notice of the demand for arbitration will be filed in writing with the other party to the Contract and with the American Arbitration Association.

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

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

(a) 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

- (b) 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
- (c) the written consent of the other person or entity sought to be included and of CFX and Contractor has been obtained for such inclusion, which consent shall make specific reference to this paragraph.

In order to assure complete resolution of any claim or controversy, the Contractor shall provide and require (in the agreements with subcontractors and material suppliers) for joinder in such arbitration proceedings.

Therefore, if a claim, dispute or other matter in question between CFX and Contractor involves the work of a subcontractor, either CFX or Contractor may join such subcontractor as a party to the arbitration. Nothing in this paragraph nor in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of subcontractor or supplier, and against CFX or any of its consultants that does not otherwise exist.

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

- 5.8 Evaluation and Acceptance of the Services
  - 5.8.1 The performance of the Contractor under the terms of the Contract will be subject to review by CFX. Reworking required due to Contractor negligence, omission, or inadequate performance will be the responsibility of the Contractor. No additional payment will be due the Contractor for the reworking of non-acceptable areas or Services.
  - 5.8.2 For roadway maintenance Services, the major criterion used by CFX for evaluating the Contractor's performance and acceptability of the completed Services will be compliance with the Contract Specifications. In addition, CFX will also utilize the average "score" given to the roadway features, roadside features, traffic services features, vegetation/aesthetic (exclusive of landscape areas maintained by others) and drainage by FDOT through its annual MRP. CFX will use the current FDOT weighted scoring system when evaluating the roadway system. The Contractor shall achieve and maintain an overall MRP of 91 for S.R. 429, S.R. 414, S.R. 451 and S.R. 453.

Notwithstanding the foregoing, the MRP score is not the only evaluation criterion that CFX will use to evaluate Contractor's performance of the Services. In no event shall the Contractor's attainment of the required scores for each roadway relieve the Contractor from its responsibility to constantly monitor and maintain the roadways and all of their elements and characteristics to ensure compliance with the Contract Standards set forth herein for the Key Performance Standards. For example, with regard to vegetation/aesthetics, CFX expects the Contractor to keep

all roadways under this Contract virtually litter free on a daily basis and to ensure that all turf areas have a pleasing and presentable appearance at all times. CFX further expects the Contractor to be sensitive to the needs and perceptions of CFX's customers who feel that paying a toll to use a roadway entitles them to a ride that is not only safe, but also pleasing to the eye, smooth and comfortable.

The FDOT will conduct MRP ratings for CFX every four (4) months on S.R. 429, S.R. 414, S.R. 451 and S.R. 453. Contractor understands and agrees that the compensation anticipated to be paid to Contractor in accordance with the Schedule of Values is based on the expectation that the Contractor will attain the required MRP rating for the roadways. Beginning with the first four-month period, CFX will withhold from monies due the Contractor an amount equal to one percent (1%) of the cumulative amount of four (4) months payments for each point below an overall MRP of 91 for S.R. 429, S.R. 414, and S.R. 451. CFX will withhold from monies due the Contractor an amount equal to one-half of one percent (.5%) of the cumulative amount of four (4) months payments for each point below 89 on any element rating. CFX will withhold from monies due the Contractor an amount equal to one-tenth of one percent (0.10%) of the cumulative amount of four (4) months payments for each point below 89 on any element rating. CFX will withhold from monies due the Contractor an amount equal to one-tenth of one percent (0.10%) of the cumulative amount of four (4) months payments for each point below 89 on any element for each percent (0.10%) of the cumulative amount of four (4) months payments for each percenting with the exception of striping lighting and signs. For these characteristic rating will be withheld for any rating below the following:

- Striping 95
- Signs 90
- Lighting 85

If a characteristic falling below 80 is rated on fewer than 10 inspection points, CFX will conduct a supplemental inspection of those characteristics to provide a minimum of 10 points for evaluation.

The monies withheld by CFX will be placed in the Work Order Allowance for use at CFX's sole discretion to cover the cost of additional work. Any amount remaining in the Work Order Allowance at the end of the Contract term will remain the property of CFX.

#### 5.9 Compensation

The Contractor will be paid in accordance with Exhibit B attached hereto and incorporated herein by reference.

### END OF SECTION

CFX Maintenance Specifications

## Maintenance Specifications

### Table of Contents

1.	Roadside and Slope Mowing AT1-1
2.	Litter Removal AT2-1
3.	Guardrail Repair AT3-1
4.	Fence Repair AT4-1
5.	Roadway Lighting AT5-1
6.	Attenuator Repair and Replacement AT6-1
7.	Pavement Marking AT7-1
8.	Signing AT8-1
9.	Section 102 Maintenancxe of Traffic AT9-1
10.	Cable Barrier System Repair AT10-1
11.	Chemical Control of Weeds and Grass AT11-1
12.	Graffiti and Stain Removal AT12-1
13.	Pressure Washing AT13-
14.	Ashphalt Repair AT14-1
15.	Roadway Sweeping AT15-1
16.	Slope and Shoulder Repair AT16-1
17.	Drainage System Repair and Cleaning AT17-1
18.	Concrete Repairs and Joing Sealing AT18-1
19.	Tree Trimming and Removal AT19-1

# Attachment 1 ROADSIDE AND SLOPE MOWING

# 1.0 <u>Description</u>

- 1.1 Provide all labor, materials, equipment and incidentals necessary to perform routine mowing of grassed or vegetated roadside / slope areas located within the project limits including litter removal and disposal.
- 1.2 The work described herein includes the routine mowing of grassed or vegetated roadside, median, and slope areas within the project limits with conventional high production style mowing equipment, small machine mowing equipment, and specialized equipment and/ or string trimming as necessary. Vegetation shall consist of all grass, part grass and part succulent weed growth, or all succulent weed growth within the area to be mowed.
- 1.3 Apply Orthene (or equal approved by the Director of Maintenance) insecticide to all fire ant mounds located within turf areas adjacent to paving edge, guardrails, fence lines and all other roadside / drainage structures during each roadside mowing cycle and as directed by the Director of Maintenance to control fire ants when mounds form above normal ground line in mowed turf areas. Applications shall be performed during each mowing cycle. Previously treated, non-active mounds shall be knocked down and the soil either blown off paving or evenly distributed in turf areas during the following mowing cycle. Method of application and dosage shall be as recommended by the manufacturer. Submit product label, MSDS sheet, and proposed application method and rate to Director of Maintenance for approval prior to use. Daily pesticide application reports shall be collected and submitted to the Director of Maintenance on a weekly basis.

# 2.0 <u>Types of Mowing Areas</u>

2.1 "Roadside mowing" is defined as the mowing of all grassed and vegetated areas of shoulders, medians, ramps, all front and back slopes of less than 3:1 including retention areas, roadside ditch bottoms (both wet and dry), around retention ponds to water line (at time of each mowing cycle), dry retention areas, out parcels, raised roadside and median islands, along right of way fence line maintenance strips, various width utility strips (defined as the top of slope behind the guardrail), and similar areas as designated by the Director of Maintenance. Roadside mowing shall also include the edging behind curb, gutter and sidewalk at ramps, ramp plazas and toll gantries.

2.1.1 Utility strips shall be mowed in conjunction with roadside mowing cycle. Grasses behind guardrail adjacent to slope mowing areas shall also be mowed during each "Roadside Mowing" cycle and shall be mowed to a minimum horizonal distance of 5 feet from the back of the guardrail or to the top of the slope mowing area, whichever is greater. The grasses shall be mowed to a 6-inch height and shall be maintained so as not to exceed the height of the bottom of the guardrail. The intent of specification is to have no visible grasses above the guardrail.

- 2.2 "Slope mowing" is defined as the mowing of all grassed and vegetated areas of slopes greater or steeper than 3:1, e.g., steep slopes, canal banks, etc. Perform slope mowing using equipment that will not cause damage to the slopes or other vegetated areas.
- 2.3 "Out-Parcel Mowing" is defined as Contract required mowing areas that are located outside of the Limited Access Right of Way.

#### 3.0 Quantity and Frequency of Mowing

- 3.1 The mowing cycles specified represent the type of mowing to be accomplished (roadside, slope or out-parcel as defined in sections 2.1, 2.2 and 2.3). The area and limits of each type of mowing will be determined by the Contract.
- 3.2 The Contractor shall perform each mowing cycle in accordance with the Contractor's approved Work Plan unless directed otherwise by the Director of Maintenance. "Roadside mowing cycles" shall be performed twelve (12) times per year.

Slope mowing cycles shall be performed eight (8) times per year with the following cycle start dates February 1, April 1, May 15, July 1, August 15, October 1 and November 15. The number of roadside mowing cycles and slope mowing cycles performed per year may be increased or decreased as directed by the Director of Maintenance.

The Contractor shall mow the out-parcels identified in the Contract. These areas shall be mowed and edged bi-weekly (24 times per year).

3.3 Each roadside / slope mowing cycle shall begin on the first day of each month unless indicated differently in article 3.2 above or directed otherwise by the Director of Maintenance. Each roadside / slope mowing cycle shall be completed in its entirety within twenty-eight (28) calendar days of the beginning of each cycle including any weather conditions and correction of deficiencies identified by CFX staff. CFX will not grant additional cycle time for weather conditions or correction of mowing deficiencies.-Incomplete roadside or slope mowing cycles shall not delay the start and successful completion of subsequent scheduled cycles. Failure to complete a given cycle within the time frames above will result

VER 9-20-21

in a Liquidated Damage PF-3 (See Scope of Services 5.5). Incomplete roadside or slope mowing cycles shall not delay the start and successful completion of subsequent scheduled cycles.

3.4 All Out-Parcel mowing cycles shall be completed within 14 Calendar Days. Failure to complete a given cycle within the time frames above will result in a Liquidated Damage PF-3 (See Scope of Services 5.5). Incomplete out-parcel mowing cycles shall not delay the start and successful completion of subsequent scheduled cycles.

# 4.0 <u>Equipment</u>

- 4.1 All equipment shall be subject to inspection by the Director of Maintenance at any time. Properly maintain safety devices, as described in the Scope of Services, at all times.
- 4.2 If the Director of Maintenance determines that equipment is deficient in safety devices, the Contractor will be notified immediately. Remove the equipment from service until the deficiency is corrected to the satisfaction of the Director of Maintenance.
- 4.3 Inspection of the Contractor's equipment by the Director of Maintenance shall not relieve the Contractor of responsibility or liability for injury to persons or damage to property caused by the operation of the equipment.
- 4.4 Equipment which damages the pavement or turf in any way will not be allowed. Repair all damage caused by the Contractor's equipment to the satisfaction of the Director of Maintenance and at no cost to CFX. Repairs to pavement or turf shall be completed within 14 days after the damage occurs and/or is identified by the Director of Maintenance. Payment for mowing will be withheld until required repairs/replacements have been completed and accepted.

# 5.0 <u>Mowing Equipment</u>

- 5.1 The roadside, slope and out-parcel mowing equipment shall be in good repair and capable of producing a clean, sharp cut (minimum 6" height) with uniform distribution of the cuttings. Slope mowing equipment shall be capable of a clean, sharp cut (minimum 6" height) with uniform distribution of the cuttings without damaging or compromising the integrity of the slope.
- 5.2 The Contractor shall furnish all labor, material & equipment of the type and quantity necessary to perform the work satisfactorily within the time specified

herein. Any additional labor, material & equipment needed to complete the mowing cycles in accordance with the Work Plan shall be provided by the Contractor at no additional cost to CFX.

- 5.3 Furnish specialized equipment for the use when conventional mowing equipment is unable to reach wet mowing areas. Boom, arm or other specialized equipment with sufficient reach shall be used at no additional cost to CFX.
- 5.4 All large tractors (Roadside Mowing) and all slope mowers shall be equipped with and actively tracked by GPS. The Contractor shall keep all tracking records and supply these records with their monthly invoice.

# 6.0 <u>Method of Operations</u>

- 6.1 At least 3 working days prior to the beginning of each month, the Contractor shall submit to the Director of Maintenance, via email, a monthly schedule identifying proposed upcoming mowing cycle start, weekly progress, and ending dates and locations. Work progress interruptions due to equipment issues shall be communicated to the Director of Maintenance, via email, in the daily progress reports.
- 6.2 Each roadside and / or slope mowing cycle shall commence at the same starting location on the project and proceed continuously to the same completion location on the project. Each roadway corridor (State Road 414, 429, 451, 453 etc.) shall be mowed in its entirety before moving on to the next roadway corridor. On subsequent cycles, follow the pattern adopted for the first cycle unless the Director of Maintenance specifically authorizes a change in the pattern.
- 6.3 Daily mowing cycle progress shall be resourced such that all mowing from Right of way to Right of Way limits progresses uniformly and is completed in its entirety from the beginning to the end of a roadway corridor area Small mowers / trimming and edging work shall be performed before / ahead of large mower work within the roadway corridor area in which the Contractor is working. The Contractor shall provide sufficient man-power and equipment to ensure the small mowers / trimming / edging is performed within 2 working days of the large mower progress. Failure to resource this work within the time frame above will result in a Liquidated Damage PF-2 (See Scope of Services 5.5) for each occurrence.
- 6.4 Prior to the start of each cycle, the Contractor shall inspect and identify any areas where turf conditions, work by other CFX contractors, or any other circumstances could prevent required mowing. The Contractor shall immediately notify the Director of Maintenance of the existing conditions and provide the contractors plan as to how to proceed. If such conditions are eliminated during the period designated for that mowing cycle, the Director of Maintenance may require the Contractor to cut these areas as part of the cycle or have the areas mowed in the

subsequent cycle. Grassed areas that are saturated or contain standing water shall not be mowed with equipment that will rut or damage the turf. These areas shall be mowed using the specialized equipment described in 5.3 above or chemical treatment that will not damage the turf. If a saturated area cannot be effectively mowed using specialized equipment or chemical treatment, the Contractor may request a waiver from the Director of Maintenance to skip the affected area until the next mowing cycle.

- 6.5 Perform litter pick up immediately prior to the mowing operation to preclude the spread of litter. In the event litter is spread by mowing equipment, it shall be immediately (by the end of work shift) removed by contractor at no additional cost to CFX.
- 6.6 During mowing operations, the Director of Maintenance shall inspect work being performed to determine Contract compliance. In the event of deficient work, the Contractor will be directed to re-perform any Contract required task without additional compensation, in the area(s) identified so that the total mowing cycle may be satisfactorily completed within the monthly mowing cycle time period. The Director of Maintenance shall notify the Contractor, via email, of any identified deficiencies within 24 hours of discovery.
- 6.7 Unless addressed elsewhere in this contract items damaged during mowing operations shall be repaired/replaced to the satisfaction of the Director of Maintenance prior to the start of the next mowing cycle. Payment for mowing may be withheld until required repairs/replacements have been completed and accepted.

# 7.0 <u>Limitation of Operation</u>

- 7.1 When mowing within ten (10') feet of the travel way operate equipment in the direction of the traffic. This provision does not apply when the specific worksite is protected by flagmen and warning signs in accordance with the MUTCD.
- 7.2 Movement of equipment around the project site must be in accordance with requirements of the FDOT Standard Plans and not create an undue hazard to the traveling public or workers. 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.
  - When necessary for mowing equipment to cross the travel way, select a location that provides a minimum five hundred (500') feet of unobstructed sight distance. The mower operator shall stop before crossing the travel way and permit closely approaching vehicles to pass before crossing. Plan operations to minimize crossings.

• When necessary for mowing equipment to cross bridges, make the crossing on the shoulder. Keep such crossings to the minimum required to complete the work as specified.

# 8.0 <u>Quality of Work</u>

- 8.1 Mow all grass and vegetation to a height of six inches (6") with a maximum tolerance of one-half (1/2") inch plus or minus.
- 8.2 The accumulation or the piling of cuttings will not be permitted. Accumulations of cutting shall be evenly distributed throughout adjacent turf areas or removed and disposed of off-site
- 8.3 Mow / trim grass and vegetation around landscape beds, installed buffers, and naturalized areas so as not to damage adjacent plant material and trees. Mow around landscaped areas so as not to discharge clippings into the planting areas. Do not discharge clippings into travel lanes or any paved areas including concrete ditches or flumes. Grass or clippings spread by the Contractor on paved areas or landscaped areas as a result of mowing operations shall be removed immediately.
- 8.4 Do not mow within (1) foot of tree trunks and shrubs within installed buffer and naturalized areas with large or small machines. Only mow within this area with equipment that will not cause damage to the existing trees or shrubs.
- 8.5 During each mowing cycle, mow / trim around existing appurtenances to maintain grass and vegetation to height consistent with adjacent mowed turf areas or as directed by the Director of Maintenance. Appurtenances shall include, but are not necessarily limited to, sign post and bases, delineator posts, fences, guardrail or barrier walls, headwalls, end walls, pipes, drainage structures, roadway lighting poles, power poles, guy wires, landscape areas, etc. Mowing around appurtenances by small machine or by hand shall be coordinated with the large machine mowing to present a clean continuous appearance.

# 9.0 <u>Basis of Payment:</u>

Price and payment will be full compensation for all work specified in this section.

Payment will be made under:

Item No. 107-1A	Roadside Mowing paid per Schedule of Values - Table A: Cost per Cycle
Item No. 107-1B	Slope Mowing paid per Schedule of Values - Table B: Cost per Cycle
Item No. 107-1C	Out Parcel Mowing: Cost per Cycle

# Attachment 2 LITTER REMOVAL

### 1.0 <u>Description</u>

- 1.1 Provide all labor, materials, equipment, and incidentals necessary to pick up, remove and dispose of litter and debris from the limits of the highway right of way from fence to fence to include landscaped ramp areas and out parcels owned by CFX. Litter removal services under this contract are provided through two means (Monthly Litter Removal Cycle & Daily Litter Patrol) as described below.
- 1.2 Litter or debris consists of bottles, cans, paper, tires, tire pieces, lumber, vehicle parts, metal junk, brush, dead animals and other items not considered normal to the right-of-way.
- 1.3 The Contractor shall be responsible for the performance of its organization and completion of all work under this contract as set forth in these specifications and as directed by the Director of Maintenance.
- 1.4 These specifications are end result oriented. Although the litter activity is expected to be accomplished by manual means, these specifications are not intended to be restrictive or limit other techniques that achieve the specified and desired quality. The Contractor's chosen method(s) shall not cause damage to CFX property / infrastructure or create a safety hazard for the travelling public.

# 2.0 Quantity and Frequency of Removal

- 2.1 The Monthly Litter removal cycle shall occur in advance of the mowing operation. The Contractor shall complete a minimum of twelve (12 litter removal cycles per year. The actual number of cycles may be increased or decreased as directed by the Director of Maintenance.
- 2.2 For Daily Litter Patrol, provide five full- time litter patrol crews. Each crew shall consist of at least one (1) dedicated laborer, one (1) dedicated vehicle, each with necessary equipment to remove debris from the Right of Way. The daily patrol shall consist of constant and complete round trips through the Contract area, from 7am to 6pm, 6 days per week, 52 weeks per year, each direction, both sides of the roadway and ramps, including landscaped areas removing and disposing of the debris, including dead animals, vehicle tires and any materials on the paved surfaces. Large items visible from the driving surface such as cardboard boxes, tire pieces, buckets, etc., laying in the turf or landscaped areas shall also be removed. Remove accumulated debris from drainage inlets to include but not limited to, plastic bottles, cans paper and pine straw. The Contractor shall keep the area within the project limits virtually litter free on a daily basis to ensure that all turf areas have a pleasing and presentable appearance at all times. Daily patrol

VER 9-20-21

vehicles shall be equipped with GPS tracking. Payment will be made based upon GPS records demonstrating the required patrols have been completed. Failure to meet the above schedule will result in a Liquidated Damage PF-2 (See Scope of Services 5.5) per day, per vehicle.

### 3.0 <u>Equipment</u>

- 3.1 Equipment used to transport litter from the project site shall be constructed and operated to preclude distribution or loss of litter along the roadway.
- 3.2 All vehicles shall be equipped with safety equipment as described in the Scope of Services.
- 3.3 Specialized equipment designed for the mechanical removal of litter and debris may require additional safety devices in accordance with state and federal laws.

#### 4.0 <u>Disposal of Litter and Debris</u>

- 4.1 Remove all litter and debris from the right-of-way at the end of each working day and dispose of at locations provided by the Contractor. CFX will allow dumpsters to be placed by the contractor for temporary storage at locations to be approved by the Director of Maintenance. Dispose in accordance with applicable laws and regulations. Cost incurred for disposal shall be borne by the Contractor. Storage or stockpiling of litter or debris on the right-of-way will not be permitted.
- 4.2 Provide at least two (2) 30 cubic yard roll-off dumpsters for tire/rubber and roadside debris at the CFX property on West Road. The Contractor shall be responsible for the dumpster / debris haul off.

# 5.0 <u>Quality of Work</u>

5.1 Completed areas of work shall be free of litter and debris immediately after cleaning, as determined by the Director of Maintenance. CFX owned and maintained property either within the Right of Way or outparcel, are expected to be kept clean of litter and debris on a daily basis.

Work shall be subject to periodic daily inspection. The quality and acceptance of workmanship will be determined during these inspections. Areas that are determined by the Director of Maintenance or designated representative to be unacceptable shall be re-cleaned at no cost to CFX.

5.2 It is the intent of these specifications that cleaned areas are reasonably free of all litter and debris. It is not the intent to penalize the Contractor for litter and debris that may be deposited between the time an area is worked and when it is inspected. The decision of the Director of Maintenance as to acceptance or

VER 9-20-21

rejection of an area will be final.

# 6.0 <u>Basis of Payment:</u>

Price and payment will be full compensation for all work specified in this section.

Payment will be made under:

Item No. 107-2A	Monthly Litter Removal Cycle paid per Schedule of
	Values - Table A: Cost per Cycle
Item No. 107-2B	Daily Litter Patrol: paid per Crew per Day

# Attachment 3 GUARDRAIL REPAIR

#### 1.0 <u>Description</u>

1.1 Provide all labor, materials, equipment and incidentals necessary to remove, repair or replace damaged or destroyed sections of guardrail, realign panels, posts, blocks and anchorages and miscellaneous hardware.

#### 2.0 <u>Contractor Responsibilities</u>

- 2.1 Replace damaged guardrail and accessories using materials of a like kind unless directed otherwise by the Director of Maintenance or designated representative. Repair/restore any damaged or disturbed miscellaneous asphalt under guardrail and at posts.
- 2.2 All guardrails shall meet the design specifications in accordance with the Florida Department of Transportation (FDOT) Standard Plans unless directed otherwise by the Director of Maintenance.
- 2.3 Use any salvageable materials within the limits of each work site in that work site at no additional cost to CFX.
- 2.4 Remove all debris, including the original guardrail materials, from the right of way at the end of each working day unless otherwise allowed by the Director of Maintenance. All original guardrail materials removed and not used in the reinstallation shall become the property of the Contractor and shall be transported from CFX property and disposed of properly at locations provided by the Contractor unless otherwise directed by the Director of Maintenance.
- 2.5 Damaged guardrail is required to be secured with maintenance of traffic in conformance with MUTCD and FDOT Standard Plans immediately upon discovery. The Contractor shall perform any work (temporary or permanent) necessary to provide a safe condition prior to leaving the location. Permanent repairs to damaged guardrail must be completed within ten (10) days, unless, due to the severity of damage, the Director of Maintenance determines a shorter time frame is necessary. Failure to complete the repairs within the time frames above will result in a Liquidated Damage PF-3 (See Scope of Services 5.5) per location per day.
- 2.6 When directed by the Director of Maintenance, apply a paint coating over galvanized structural members and over areas of previously galvanized members on which the galvanizing has become significantly damaged. Use a galvanizing compound conforming to FDOT Specifications.

# 3.0. <u>Basis of Payment:</u>

Price and payment will be full compensation for all work specified in this section. Payment will be made under:

Item No. 999-10-11 Roadway and Bridge Asset Maintenance Services (LS)

# Attachment 4 FENCE REPAIR

### 1.0 <u>Description</u>

- 1.1 Provide all labor, materials, equipment and incidentals necessary to repair and maintain CFX right-of-way and other CFX fences. Repairs may be necessary on both chain link (Type B), special vinyl coated chain link wire fabric and farm type (Type A) fencing.
- 1.2 Remove and replace or repair deteriorated, damaged or destroyed fencing.
  - 1.2.1 All fencing shall be cleared of all brush and vegetative growth either by hand or mechanical equipment in a manner that will not damage the fence. The intent is to have fences free of any vegetative matter. Include in the Annual Work Plan a schedule detailing the method and locations of fence clearing/cleaning operations. See Attachment 11 Chemical Control of Weeds and Grass for fence line herbicide requirements.
- 1.3 This work may consist of the removal, furnishing of materials, and replacement or mending of wire fabric, special vinyl coated chain link wire fabric, barbed wire, line posts, corner brace posts, braces and associated fasteners, gates and other hardware, for both chain link (Type B) and farm (Type A) fencing.

#### 2.0 <u>Contractor Responsibilities</u>

- 2.1 Immediately (on the same day) secure any breach in the fence upon discovery or notification. Where possible, perform permanent repair to fence breaches and any damaged fence on the day of discovery. All fence breaches and damaged fence shall have permanent repairs completed within (14) calendar days. The Director of Maintenance can extend the allowable repair time at his / her discretion. Failure to complete the repairs within the time frames above will result in a Liquidated Damage PF-2 (See Scope of Services 5.5) per location per day.
  - 2.2 Obtain satisfactory permits or permission from property owners for any encroachments required to perform the work.
  - 2.3 As part of this work and prior to the installation of the replacement fence, clear the alignment of all brush and/or vegetation as may be required. Cleaning to a width of at least two feet on each side of the fence line but shall not go beyond the right-of-way line.

- 2.4 Mend or replace damaged fence and accessories using materials of a like kind. Contractor shall provide all necessary chains, and locks to secure all right-ofway gates with a CFX approved lock.
- 2.5 Perform installation in accordance with FDOT Standard Specifications and Standard Plans.
- 2.6 Remove all debris, including the original fence materials, from the right-of-way and dispose of at locations provided by the Contractor.
- 2.7 Replace all fence removed during any one working day during that same day. While the fence is down, provide continuous security to ensure that no automobiles or vehicles enter or exit the roadway from the temporarily unfenced area. Give specific attention to prevent any persons, animals, or vehicles moving from adjacent private property onto the roadway right-of-way.
- 2.8 All materials used in this work shall conform to the FDOT Standard Specifications.
- 2.9 Install replacement fence on the same alignment as the removed fence. Install the replacement fence or repairs at a uniform height and tension with all line and pull posts set in a vertical direction. Replace fence posts in kind.

#### 3.0. <u>Basis of Payment:</u>

Price and payment will be full compensation for all work specified in this section.

Payment will be made under:

Item No. 999-10-11 Roadway and Bridge Asset Maintenance Services (LS)

#### Attachment 5 ROADWAY LIGHTING MAINTENANCE AND REPAIR

# 1.0 <u>Description</u>

Provide all labor, equipment, materials and any incidentals to perform roadway lighting maintenance of the CFX Roadway Lighting System. CFX's Roadway Lighting System includes and is comprised of Conventional/Standard Lighting, High Mast Lighting, Sign Structure Lighting, Underdeck Lighting, Load Center and Lighting Control Cabinets and all associated peripherals.

The Contractor or its subcontractor must possess a license to perform business as a certified or registered electrical contractor pursuant to Chapter 489, Part II, Florida Statutes. A copy of all applicable licenses must be submitted prior to performing any maintenance on CFX's system. All work must be managed by a Journeyman Electrician possessing a current license from the local municipality or county. All work must be supervised by an onsite certified IMSA Roadway Lighting Technician Level 1.

The Contractor must comply with all local licensing requirements and ordinances governing performance of the work. All work must be performed in accordance with the laws of the State, all municipal ordinances, all regulations and requirements of the Public Service Commission, the National Electrical Code, the National Electrical Safety Code, the current edition of the CFX Design Specifications, the FDOT Standard Plans, and FDOT Standard Plans and Standard Plans current at the time of the Contract execution.

# 2.0 <u>Contractor Responsibilities</u>

- 2.1 Night Patrolling and Inspection
  - A. Contractor must perform a nighttime patrol and inspection of the entire lighting system within the contract limits on the 1<sup>st</sup> and the 15<sup>th</sup> of each month. The Contractor shall identify all lighting outages by providing the associated light pole numbers or structure number and associated load center on the inspection report in a form that is acceptable to the Director of Maintenance. Submit the completed inspection report along with an electronic file depicting the location of the lighting outage (KMZ or similar product) to CFX within <u>12</u> hours after the completion of each patrol inspection.
  - B. Contractor must perform all work necessary to restore any outage(s) based on the results of the inspection. CFX expects all lights on the system to operate as designed. The Contractor must perform any and all repairs or replacements to the lighting system within (48) hours of discovery or notification by CFX or its designee. Any repair or replacement to the

lighting system that exceeds (48) hours, shall result in a Liquidated Damages PF-1 (See Scope of Services 5.5). This liquidated damage shall be applied per light that is out and will continue to be assessed until the repair and/or replacement is completed.

- C. Upon completion of each nighttime patrol and inspection, the Contractor must notify the Director of Maintenance of any repairs required to make the HMLP system functional. Provide a schedule for approval, when specialized equipment is required to perform repairs or replacements (i.e. high-reach crane, etc.). All repairs and replacements must be completed within (10) days after schedule is approved. A hydraulic lowering device can be made available to the Contractor for short-term use and can be acquired through FDOT's South Orlando Maintenance yard which is located at SR 528 at SR 520. The Contractor must be responsible for any damage to the hydraulic lowering device equipment.
- 2.2 Diagnostic and Repair Work
  - A. Perform all diagnostic work at each pole, sign, underdeck, load center and/or electrical circuit location as identified by the nighttime patrol and inspection or other identified outage.
  - B. If through the Contractor's diagnosis it is determined that the problem is a routine or maintenance related item, as defined in section 2.3, the Contractor must perform such repairs or replacements at the same time as the diagnostic inspection. If the Contractor's diagnosis determines the problem is a major repair, as defined in section 2.5, the Contractor must submit a Diagnostic Work Report to the Director of Maintenance.
  - C. The Contractor must only use qualified personnel appropriate for the work.
- 2.3 Routine Maintenance
  - A. Perform routine and maintenance functions and/or repairs at the same time diagnostic work is performed.
  - B. Routine maintenance is defined as repairing, replacing or cleaning any or all of the following items:

- 1. Hardware, including but not limited to: hinges, latches, fasteners, locks, snaps, cover plates, inspection plates, pole caps, nuts, bolts, washers, grounding wires for metal pull box covers, and other small components.
- 2. Bird guards and reflectors.
- 3. Gaskets and filters.
- 4. Electrical shorts not requiring replacement of buried cable.
- 5. Lamp and photocell sockets (waterproof).
- 6. Tree trimming to allow servicing of lights.
- 7. All pole or structure wiring
- 8. Sign Lighting Bracket Arms.
- 9. Leveling of under-deck light fixtures or pole mast arms brackets.
- 10. Cleaning refractors (Glassware).
- 11. Drainage rock in pull boxes.
- 12. Electrical putty on ends of conduit.
- 13. Luminaire
- 14. Ballast / driver assembly.
- 15. Refractors (glassware).
- 16. Grounding wires, exothermic multi-shot cad weld kits and ground rods.
- 17. Fuses, Fuse Holders, High Mast Pole Breakers, Safety Switches, Surge Protectors/Arrestors, Sockets, and other such Electrical Components
- 18. Lighting control units (LCU's)
- 19. train reliefs, silicone filled wire nuts, LED drivers, circuit breakers, surge arrestors/protectors at load centers, light louvers/shields, silicone sealant at electrical disconnects and lighting control cabinets, etc.
- 20. Grounding resistance checks on existing ground systems.

# 2.4 Reporting and Tagging

- A. The Contractor must maintain detailed daily field work reports (dailies) for all crews. The dailies must include detailed descriptions of all work performed at all locations, and must contain all onsite staff positions and hours worked, vehicles/equipment used, a complete description of work performed, all pole/structure numbers and load centers worked on, quantity of parts and wiring uses, location description (by grid map or nearest count to a ramp or bridge), and a complete description of methods employed to correct problem(s) identified. Before leaving the location, the description of problem(s) to be corrected by another service crew must be noted on a tag which must be attached to the fixture or electrical device that is in need of additional service along with the date of tag placement. This must be noted on the Daily Report and Tag Procedure.
- B. The Contractor must submit Daily Field Work Reports to the Director of Maintenance upon request.
- C. The Contractor must meet with the Director of Maintenance on a monthly basis to discuss all work performed for the previous month, discrepancies identified and outstanding work remaining, upcoming work for the following month, any MOT closures planned or needed, expected major repairs and must prepare all meeting agendas as well as provide meeting minutes no more than (2) business days following the meeting. The Director of Maintenance may require additional meetings.
- 2.5 Major Repair
  - A. Work includes the repair or replacement of damaged or missing light poles, foundations, lighting load centers, transformer bases, luminaires, mast arms, underground conductors and conduit between poles and high mast lowering devices.
  - B. The Contractor must replace damaged or missing light poles and foundations as appropriate within five working days from the date of notification or fourteen days from when new foundations are cast-in-place. Work under major repair includes the removal of the damaged parts and debris, wiring (rewiring) as well as all hardware, which includes but is not limited to: covers, caps, splices and any appurtenances necessary to perform a complete replacement The Contractor must maintain a sufficient number of replacement poles, arms, light fixtures and related materials to replace multiple damaged light poles to perform the repairs within the time frames

listed above. The contractor shall submit to CFX a listing of their starting inventory at NTP.

- C. All damaged and unusable poles, mast arms, luminaires and any associated parts are the property of the contractor and must be disposed of properly.
- D. The contractor must submit quantities and descriptions of all components to be used for major repairs for CFX review. All major repair work must be submitted for review and approval by the Director of Maintenance prior to commencement of the work.
- E. The reuse of repaired or usable salvaged components may be permitted upon request and approval by the Director of Maintenance.
- F. All equipment, parts and peripherals and work must be in accordance with the latest CFX record drawings and per CFX's and FDOT's Standards and Specifications as defined in section 1.0 of this document. Alternate components must not be used unless requested in writing and subsequently approved by the Director of Maintenance. Any maintenance repair or replacement found to be defective or not performed in accordance with the requirements listed herein, shall be repaired or replaced at no cost to CFX.
- 2.6 Emergency Repairs

The Contractor must be available at all times, including both during and after normal work hours, weekends and holidays. The Contractor must adequately provide sufficient staffing levels for all anticipated work and must provide staffing and equipment to perform removals of knocked down poles or mast arms from the travel way, and for repairs to the lighting system in such a manner as to prevent electrical shock to CFX personnel, other Contractor's, the general public and Contractor's staff.

# 3.0 <u>Performance Standards</u>

- 3.1 General
- 3.1.1 Luminaire/Fixtures
  - A. Replace luminaire/fixture if damaged, not working or missing.

- B. Inspect luminaire/fixtures for rust, corrosion, oxidation, electrical shorts and water intrusion.
- 3.1.2 Lamps/LED Packs
  - A. Check all lamps/LED packs for looseness. If any are loose, remove and inspect the socket/connection.
  - B. Lamp/LED packs must be replaced with the same exact make and model and part number as the lamp/LED pack being removed.
  - C. Visually check all new lamps/LED packs for defects prior to installation.
  - D. Test lamps/LED packs for proper functionality after all repairs.
- 3.1.3 Glassware or Plastic
  - A. For enclosed assemblies with hinged door with glassware, remove, wash, rinse twice and dry the glassware.
    - 1. While glassware or plastic is removed for cleaning, brush bugs from that part of the fixture holding the glass (or plastic), in addition to that area surrounding the reflector still remaining in the head of the fixture.
    - 2. With a hinged-door fixture, unfasten and brush the second portion of the fixture, cleaning away the bugs and debris that have located along the ballast and transformer. Do not to disturb the wires while removing this debris.
  - B. Replace glassware with the same type and pattern as removed. Ensure that glassware with shields will be replaced with the same type.
  - C. Glass refractors may be replaced with plastic where it is shown to be necessary because of vandalism with CFX approval.
- 3.1.4 Reflectors
  - A. Replace reflector if the original reflective qualities cannot be maintained.
  - B. Replace with completely new fixture if reflector cannot be replaced separately.

#### 3.1.5 Gaskets and Filters

- A. Clean neoprene and silicon gaskets of foreign material and oxidation, rusting or corrosion and align as necessary.
- B. Spray neoprene and silicon gaskets with a special treatment to prevent oxidation and sticking.
- C. Replace all felt or Dacron gaskets with Dacron Sutron gaskets of the proper thickness and width to form a perfect seal.
- D. Glue gaskets with special non-hardening material and install correctly to stop entry of bugs.
- E. Replace all non-functioning, stretched or cracked gaskets.
- F. Check filters and replace when worn or dirty as necessary.
- 3.1.6 Hinges and Latches
  - A. Repair hinges and latches with parts that can be obtained or engineered and applied without removing the fixture.
  - C. If hinge or latch cannot be repaired, replace the fixture or part of the fixture on which the hinge or latch is located.
- 3.1.7 Fasteners and Snaps
  - A. Replace all fixtures which have fasteners or snaps that are obsolete.

# 3.1.8 Leveling

- A. Correct all fixtures which are not properly level.
- B. Shim the pole base so the pole will be vertical.
- C. On adjustable mast arms, adjust the arm to bring the head to proper alignment.

- D. On non-adjustable mast arms, adjust the fixture with the leveling device in the head.
- 3.1.9 Mast Arms
  - A. Inspect mast arm for rust, corrosion or oxidation.
  - B. Drill 1/8" weep holes where evidence of water pockets are found in certain types of aluminum arms.
  - C. Adjust mast arms that are bent or incorrectly positioned or loose. Replace if unable to be repaired.
  - D. If the mast arm is missing, install a new mast arm of the same length and shape as the existing.
- 3.1.10 Photo Cells
  - A. Check all photocells, whether on the fixture, pole, or remote, for proper cycling of turn-on, turn-off.
  - B. Replace any photocell failing to turn on at proper time.
  - C. If any photocell is located on a utility pole, obtain permission to check photo cell for continuity.
  - D. Some service points may include electric service supplied by the power company which is photo-electrically controlled by the Power Company. Only photo-electric cells and the associated contacts which are owned by CFX are included in this work.
- 3.1.11 Sockets
  - A. Replace defective photocell sockets.
  - B. Replace lamp sockets which are defective, not working or damaged.
  - C. Replace defective socket holders.
  - D. Correct improper connections.

- E. Replace lamp sockets in the same position to assure proper light distribution.
- 3.1.12 Hand Hole Plates
  - A. Check all hand hole plates and repair where needed.
  - B. Replace all missing hand hole plates and associated hardware.
- 3.1.13 Wiring

Perform all wiring, consistent with the policies and procedures specified by A.N.S.I. (American National Standards Institute), all appropriate Electrical Codes and CFX Lighting Design Standards.

- A. Luminaires
  - 1. Perform rewiring, as needed, on the luminaire head on the integral ballast/LED driver using methods prescribed for wiring in high heat environments and using materials which will withstand high temperatures.
  - 2. Where repairs are too extensive for complete repair in the field, remove the luminaire head and install an approved replacement unit in its place.
- B. Pole Risers
  - 1. Rewire poles where pole riser conductors show evidence of chaffing, or shorting, or openings which could affect the operation of the luminaire.
  - 2. When rewiring poles, use a CFX approved PCDS in accordance with the CFX Lighting Design Standards.
  - 3. Maintain lightning protection by connecting all metal components, i.e., luminaire housing, bracket arm, etc. to the associated ground rod at the base of each pole through means of electrothermic welding. The use of split bolts is not permitted.

- a. Wooden poles and concrete poles require a #6 AWG ground or bond wire connected from the pole top to the ground rod at the bottom.
- b. The current carrying neutral wire must not connected to ground at each pole, but only at the distribution panel.

# C. Grounding Wires

- 1. Ground all pole bases with a dedicated #6 AWG bare copper grounding wire within the pole foundation conduit to the ground rod.
- 2. Connect poles mounted on bridges and structures to a XHHW-2, green bond wire run that is sized in accordance with the NEC with the current carrying conductors inside the conduit on the structure. Connect insulated bond wire to a 20-foot ground rod driven into the soil within the associated pull box at each end of the structure/bridge.
- 3. The ground resistance of the connected grounding system must not be greater than 5 ohms at any location: (Using a direct reading three-point ground megger).
- 4. All conduit must contain a green insulated grounding wire as sized in accordance with the NEC.
- D. Pole Bases
  - 1. Use waterproof, pull-apart connectors at all frangible poles. The pole cable distribution shall be replaced with an Authority approved PCDS.
  - 2. Properly install weatherproof, pull-apart fused connectors, vulcanize as necessary, seal, lubricate, and protect from chaffing. Wire nut and split bolt connectors are not permitted.
  - 3. Install a #6 AWG bare solid grounding conductor that is exothermically welded to the ground rod to the grounding chair/lug within the base of all metal poles.
  - 4. Leave sufficient slack in all wires to allow the wire and connectors to be pulled and worked on outside the hand hole in accordance with the CFX Lighting Design Standards.

- 5. Seal ends of conduit with duct sealant.
- 6. Install wire copper keepers at the ends of all electrical conductor runs within each pull box.
- 7. Install strain relief fittings at both ends of the PCDS entering the light pole base.
- E. Circuit Current Carrying Conductors
  - 1. Avoid damage to insulation where new conductors are to be pulled into existing duct.
    - a. Use lubrication.
    - b. Use pulling aids. Attach pulling aides to conductors, not the cabling jacket.
    - c. Where practical, remove the pole from the foundation so the wire is pulled through the hand hole.
    - d. Install conductors of the same size as that removed. Use only stranded copper wire with XHHW-2 insulation with a 45-mil thickness rated in dry or wet conditions and rated for 600VAC.
  - 2. Where new conduit and conductors are to be installed, pre-wired duct may be used if approved by the Director of Maintenance.
  - 3. Install all new underground wiring in conduit. Direct burial is not acceptable.
  - 4. Lay conduit in trenches or directional drill with vertical walls at a minimum depth of 30 inches with warning tape at a depth of 18 inches.
- F. Distribution Boxes

Regardless of location, the lighting control cabinet, or circuit breaker panelboard enclosure which controls the lights shall be the responsibility of the Contractor and shall be padlocked with a lock provided by the Contractor and keyed to the CFX master locks. Furnish 10 sets of extra padlock keys to the Director of Maintenance. G. Foundations

Straighten, repair, replace or re-pour the foundation in accordance with original design. Precast foundations may be permitted at the discretion of the Director of Maintenance.

- 3.1.14 Ballast
  - A. Check ballast and replace any that are malfunctioning, defective or failed.
  - B. Wire ballast as specified under WIRING.
  - C. New ballast shall be of the regulator type and shall be wired for the appropriate voltage.

# 3.1.15 Fuses

- A. Replace blown fuses with dual element, 600V 10 Amp, type FNQ.
- B. Fuses are located as a part of the pull-apart connectors in the pole hand hole. Lubricate the pull-apart connector whenever the fuse is checked.
- 3.1.16 Grounding
  - A. Each pole shall be grounded. If not grounded, drive an approved twentyfoot grounding rod six inches below grade into the ground adjacent to the foundation of the pole. Ground rods shall have a resistance to ground not to exceed 25 ohms. Where the resistance of 25 ohms is not attained with a single rod, additional rods shall be driven until the 25 ohms is attained with rods connected parallel.
    - 1. Install a #6 solid copper grounding wire from the top of the grounding rod through the transformer base at a hole located there (Bore a hole if there is none). Connection to the grounding rod shall be through approved exothermic welds.

# 3.1.17 Transformer Base

- A. Replace missing transformer base doors.
- B. Re-tap broken bolts to hold the door securely in place to protect the inside of the base from the elements and unauthorized personnel. Use stainless steel bolts.

- C. Clean the inside wall of the base and the surface of the concrete foundation with a wire brush, then vacuum or blow free of all dust and debris.
- D. Disconnect, clean, lubricate and reconnect pull-apart connectors in all transformer bases as specified under WIRING.

# 3.1.18 Poles

- A. Replace missing inspection plate or hand hole cover. If bolts are broken off, re-tap, thread and place in proper position using stainless steel bolts.
- B. If the pole is leaning, shim at the base to return it to proper position.
- C. Replace bent or deformed poles.
- D. If any portion of the riser cable going from the base of the pole to the socket in the head of the fixture is frayed or damaged, completely replace with new cable.
- E. Plug conduit coming out of the foundation with duct sealant.
- F. Repair damaged poles where possible by replacing the damaged shoe base and pole section with replacement parts, so that mast arm position and hand hole position remain per design. (Retain breakaway capability).
- 3.1.19 Salvaged Materials and CFX Furnished Materials
  - A. Poles which are knocked down, bent, or otherwise replaced, and all parts thereof, shall remain the property of CFX. Deliver these poles to a site within the county (including the Contractor's yard) as directed by the Director of Maintenance. The Contractor may be required to use salvaged, repaired or materials furnished by CFX.
- 3.1.20 Sign Lights and Under Deck Lights
  - A. Fixture: Keep all drain holes in fixture open and filtered.
  - B. Gaskets: Properly treat and seal gaskets each time the fixture is serviced.
  - C. All conductor splices shall be made with silicone filled wire nuts.
  - D. Ballasts
    - 1. Replace defective ballasts with CFX approved parts.

- 3.1.21 Ground work, conventional lighting, load distribution centers etc., shall have a fourteen (14) day burn in period after completion of the work. If burn in is not achieved, further work will be performed until burn in is achieved.
- 3.1.22 Wiring
  - A. The size of wire to be used must be in accordance with the NEC and must be at least the same size as the wire it replaces. All wire shall be XHHW-2 copper wire unless approved in advance by the Director of Maintenance.

# 3.1.23 Conduit

- A. All underground conduit shall be 2" min. Schedule 40, PVC and shall be as defined in the CFX Lighting Design Standards
- B. Above ground conduit shall be GMC, galvanized (ASTM A-135, A-513, A-568), sized appropriately by the Contractor according to the NEC.
- C. Conduit trench surfaces shall be stabilized and restored by the Contractor to a maintenance free condition.
- D. The Contractor shall be responsible for all underground locates.

### 4.0. <u>Basis of Payment:</u>

Price and payment will be full compensation for all work specified in this section.

Payment will be made under:

Item No. 999-10-11 Roadway and Bridge Asset Maintenance Services (LS)

# Attachment 6 ATTENUATOR MAINTENANCE AND REPAIR

# 1.0 <u>Description</u>

1.1 Furnish all labor, equipment, and tools necessary to complete the work as specified for all attenuators including those at all mainline and ramp toll plazas. Use only experienced and qualified personnel to perform the required inspections and repairs.

# 2.0 <u>Contractor Responsibilities</u>

- 2.1 The manufacturers of CFX-approved vehicle attenuator devices have published written instructions that detail operational characteristics, maintenance check lists, impact repair procedures and a materials list for parts replacement. The Contractor shall obtain this information directly from the manufacturer. All repairs shall be performed in accordance with the attenuator manufacturers specifications.
- 2.2 Maintain an inventory of basic spare parts in stock at Contractor's facility. Replenish the stock as parts are used. Contractor shall have immediate access to repair parts for all CFX-approved attenuators.
  - 2.2.1 Maintain a complete inventory of all attenuators including units at mainline and ramp plazas by type, number of bays and location within the limits of this contract.
- 2.3 Completely repair or replace an attenuator with impact damage within three (3) calendar days after notification, discovery, FDOT semi-annual inspection report, or by TIM alert.
  - 2.3.1 Contractor shall make non-impact damage repairs to attenuators identified by semi-annual FDOT inspection reports within (10) days. Return completed and signed inspection report along with photographs of the completed repairs to FDOT with one (1) copy to the Director of Maintenance.
  - 2.3.2 Failure to complete the repairs within the time frames above will result in a Liquidated Damage PF-3 (See Scope of Services 5.5) per location per day.
- 2.4 Submit a copy of the repair reports to the Director of Maintenance within two days after the repairs are completed. The report shall show the date, time, location, and photographs of the repairs as well as a list of parts replaced and the name(s) of the Contractor or Subcontractor performing the repairs.

- 2.5 Damaged Parts are the property of the Contractor and shall be removed and disposed of properly.
- 2.6 From the time the damaged attenuator is discovered until the time the repair is complete, maintain and provide appropriate Maintenance of Traffic in accordance with this Contract, the CFX Maintenance Specifications and FDOT Standard Plans. This includes truck mounted attenuators and trailer mounted attenuators (Maintenance Specification 102-8.16). For extensive repairs, the Contractor may request to furnish and install a temporary attenuator system appropriate for the condition, provided that temporary attenuator system is on the FDOT Approved Products List (APL).
- 2.7 Comply with the requirements of the FDOT Standard Plans

# 3.0. <u>Basis of Payment:</u>

Price and payment will be full compensation for all work specified in this section.

Payment will be made under:

Item No. 999-10-11 Roadway and Bridge Asset Maintenance Services (LS)

# Attachment 7 PAVEMENT MARKING

# 1.0 <u>Description</u>

- 1.1 Provide all labor, equipment, materials, and incidentals necessary to install, maintain, and repair pavement markings on assets owned by or under the maintenance responsibility of CFX, including feeder roads, connector roads, and off-system roads in the area covered by the Contract.
- 1.2 Pavement marking work shall include reflective pavement markers (RPMs), flexible delineators, object markers, striping, and pavement messages.

# 2.0 <u>Contractor Responsibilities</u>

- 2.1 Complete pavement marking work that is classified as emergency response by the end of the next working day, excluding Sundays and legal holidays upon discovery or notification by the Director of Maintenance. In general, emergency response pavement marking work will consist of the repair or replacement of pavement markings damaged by a traffic accident or other malicious activity. No extension of the emergency response time will be granted by CFX due to travel distance requirements of the response crew or conflict (resource or otherwise) with other Contract work items. Failure to complete the work per the time frames above shall result in a reduction of compensation as defined in the Scope of Services (5.3.9).
- 2.2 As part of the daily service patrol, inspect the pavement markings. Pavement markings include striping, reflective pavement markers (RPMs), delineators (including guardrail / barrier), pavement messages and object markers (surface and roadside mounted).
  - 2.2.1 Pavement marking issues to be identified at time of service patrol shall include but are not limited to ripped, damaged or missing striping material, severe wear (i.e. wear beyond normal) and misaligned striping. These will typically be individual and/or smaller areas of less than 500 feet. Repair/replace these pavement markings within 30 calendar days of discovery, using 3M <sup>TM</sup> Company Stamark <sup>TM</sup> High Performance Tape Series 380IES unless otherwise approved by the Director of Maintenance. Straighten leaning or misaligned delineators within (14) calendar days of discovery. Failure to complete the work per the above time frame shall result in a Liquidated Damage PF-1 (See Scope of Services 5.5).

- 2.2.2 For areas that require a more widespread replacement, make a list of the pavement markings that require repair or replacement. Provide a copy of the list to the Director of Maintenance. Repair/replace pavement markings as approved by the Director of Maintenance.
- 2.2.3 Be prepared to replace missing or damaged RPMs, delineators, and object markers within 30 calendar days Failure to complete the work per the above time frame shall result in a Liquidated Damage / Performance Failure PF-1 (See Scope of Services 5.5).
- 2.3 The Contractor shall locate all underground utilities prior to beginning work on delineator and / or object marker installations where digging or post driving is required and avoid any damage to, or interference with, existing utilities or lighting. Contact Sunshine One Call of Florida (48) hours in advance for locates of CFX Fiber Optic lines and utilities owned by others. Utilities in the CFX Right of Way include but are not limited to underground power for lighting, underground power for ITS devices, electric supply lines for toll plazas, water and sewer lines for toll plazas, and buried telephone lines at mainline plazas.
- 2.4 Object Markers and Delineators shall meet the requirements of FDOT Standard Plans and Standard Specification Section 993.

# 3.0 Design Criteria and Installation

3.1 CFX Guidelines:

The CFX Signing and Pavement Marking Guidelines and subsequent updates are made part of the Contract by reference as if fully set forth herein. Where CFX standards, as specified in the Guidelines, differ from either Federal or State signing and pavement marking standards, the CFX Guidelines shall take precedent.

3.2 FDOT Standard Specifications:

The current edition of the FDOT Standard Specifications (at the time of Bid) shall apply.

1. In case of discrepancies, the CFX Design Standards and CFX Maintenance Specifications shall take precedence.

# 3.3 FDOT Standard Plans:

The current edition of the FDOT Standard Plans (at the time of Bid) shall apply.

- 1. In case of discrepancies, the CFX Design Standards and CFX Maintenance Specifications shall take precedence.
- 3.4 Unless otherwise directed by the Director of Maintenance or specified herein, all salvaged material will remain the property of CFX to be delivered by the Contractor to a designated storage facility. Material that is classified as waste by CFX shall become the property of the Contractor to be disposed of properly at locations provided by the Contractor.
- 3.5 For attenuators, furnish and install nine button Object Markers (OM1-1) as found in the FHWA Standard Highway Sign manual.
- 3.6 For delineators, roadside and surface mounted delineators that are removed will become the property of the Contractor to be disposed of properly.
- 3.7 For roadside flexible delineators, use Safe-Hit Corporation, type 2 Guide Posts (48" with flattened top).
- 3.8 For surface mounted delineators, use single unit Flex stake 48" Low Profile Surface Mount Delineators. Adhere the entire delineator base to the roadway surface.
- 3.9 For reflective markers, the type and color are to match the existing that were originally installed. If unsure, requested guidance from the Director of Maintenance:
  - Furnish and install 3M<sup>TM</sup> Company Series 290 Reflective Pavement Markers on the roadway surface. New pavement markers may be offset 1" from the pavement marking line if directed by the Director of Maintenance, to improve adhesion to old pavement.
  - Furnish and install guardrail reflective markers in kind or per the latest FDOT Standard Plans or as directed by the Director of Maintenance.
  - Furnish and install barrier wall reflective markers in kind or per the latest FDOT Standard Plans or as directed by the Director of Maintenance.
  - Old pavement markers will become the property of the Contractor to be disposed of properly at locations provided by the Contractor. Roadside disposal does not constitute proper disposal.

- 3.10 For pavement markings, use thermoplastic for stop bars, crosswalks, edge lines along loop ramps, ramp and main line toll plazas and standard pavement messages and directional arrows. Use 3M <sup>™</sup> Company Stamark <sup>™</sup> High Performance Tape Series 380IES for all other striping on the mainline and ramps unless CFX standards are revised. Furnish and install one stripe of the specified width, i.e.do not abut multiple stripes in order to meet the specified width (example: three 6-inch stripes to make one 18-inch stripe).
- 3.11 For all traffic striping and pavement markings, furnish and install in accordance with manufacturers specifications. including cleaning and protection of surfaces and curing and protection of all items as required. Removal of pavement marking shall be by a method which does not significantly damage the surface texture of the pavement and which will eliminate the previous marking pattern regardless of weather and light conditions. Repair any damage to the pavement which results from the marking removal operation.

#### 4.0. <u>Basis of Payment:</u>

Price and payment will be full compensation for all work specified in this section.

Payment will be made under:

Item No. 999-10-11 Roadway and Bridge Asset Maintenance Services (LS)

# Attachment 8 SIGNING

# 1.0 <u>Description</u>

- 1.1 Provide all labor, equipment, materials, and incidentals necessary to install, maintain, and repair signing owned by CFX including feeder roads, connector roads, and off-system roads in the area covered by the Contract.
- 1.2 Signing work will be defined as follows: 1 post signs (single post), 2 or more posts (multi-post) signs, and overhead signs. Work on overhead sign panels will include repair or replacement as directed by the Director of Maintenance. Work on overhead sign structures will be limited to minor repair work only, including welding of structures. This Contract does not include installation or replacement of overhead sign supports. All new single post, multi-post and overhead sign panels shall be installed using new hardware.
  - 1.2.1 Overhead sign repairs issued to the Contractor through the CFX Structure Inspection Program must be completed and returned to CFX within 180 calendar days of the issue date of the work order. Failure to complete the work per the time frames above after consideration of any procurement time (see 2.3 below) shall result in a Liquidated Damage PF-1 (See Scope of Services 5.5).
- 1.3 This Contract does not include repair or maintenance of Electronic Signs or Signs that are part of the CFX Wrong Way Driving Detection System.

# 2.0 <u>Contractor Responsibilities</u>

- 2.1 Complete emergency response sign work by the end of the next working day excluding Sundays and legal holidays upon discovery or notification by the Director of Maintenance. In general, emergency response sign work will include tightening, straightening and covering ground and overhead signs. No extension of the emergency response time will be granted by CFX due to travel distance requirements of the response crew. Failure to complete the work per the time frames above shall result in a reduction of compensation as defined in the Scope of Services (5.3.9).
- 2.2 Schedule non-emergency response single post and overhead sign work so as to be completed within 7 calendar days after discovery or notification. Complete multi-post sign work within 14 calendar days after discovery or notification. Completion of work shall not be affected by performance of emergency response

work. Failure to complete the work per the time frames above after consideration of any procurement time (see 2.3 below) shall result in a Liquidated Damage / Performance Failure PF-1 (See Scope of Services 5.5).

- 2.3 CFX will authorize a reasonable amount of procurement time, on a case by case basis, for manufacture of sign panels and supports by the Contractor. The time allowed will not exceed 45 calendar days or current industry standard based on the item(s) being manufactured.
- 2.4 As part of the daily service patrol, inspect the signing.
  - 2.4.1 Signing issues to be addressed at time of service patrol are:
    - Straighten all leaning or misaligned signs (including panel deflection angle).
    - Perform minor repairs including replacing required nuts, bolts, washers and similar incidental items.
  - 2.4.2 Make a list of all signs that require repair or replacement. Provide a copy of the list to the Director of Maintenance. Proceed to repair/replace the signing. If there is a question regarding the need to repair or replace a sign, please direct the question in writing to the Director of Maintenance for final determination.
- 2.5 The Contractor shall locate all underground utilities prior to beginning work on new sign installations where digging or post driving is required and avoid any damage to, or interference with, existing utilities or lighting. Contact Sunshine One Call of Florida 48 hours in advance for locates of CFX Fiber Optic lines and utilities owned by others. Utilities in the CFX Right of Way include but are not limited to underground power for lighting, Underground Power for ITS devices, Electric supply lines for Toll Plazas, Water and Sewer lines for Toll Plazas, buried telephone lines at Mainline Plazas.
- 2.6 Submit to CFX shop drawings from the sign panel manufacturer for approval prior to fabrication. Shop drawings are required for all new panels and overlays regardless of mounting type, i.e. single post, multi-post or overhead.

# 3.0 Design Criteria and Installation

3.1 CFX Guidelines:

The CFX Signing and Marking Guidelines and subsequent updates are made

part of the Contract by reference as if fully set forth herein. Where CFX standards, as specified in the Guidelines, differ from either Federal or State signing and pavement marking standards, the CFX Guidelines shall take precedent.

3.2 FDOT Standard Specifications:

The current edition of the FDOT Standard Specifications (at the time of Bid) shall apply.

- 1. In case of discrepancies the CFX Maintenance Specifications shall take precedence.
- 3.3 FDOT Standard Plans

The current edition of the FDOT Standard Plans (at the time of Bid) shall apply. Where CFX standards, as specified in the Guidelines, differ from either Federal or State signing and pavement marking standards, the CFX Guidelines shall take precedent.

- 3.4 Unless otherwise directed by the Director of Maintenance or specified herein, all salvaged material will remain the property of CFX to be delivered by the Contractor to a designated storage facility. Material that is classified as waste by CFX shall become the property of the Contractor to be disposed of properly at locations provided by the Contractor.
- 3.5 All tubing supports will require post anchor to prevent turning of the sign structure.
- 3.6 For all new signs regardless of mounting type (ground or overhead), stencil or apply a decal with the following information on the back of each panel: CFX/Maintenance; Fabricator's initials and date of fabrication (DOF); Sheeting manufacturer and name of sheeting; Date of installation (DOI). Stencil or apply decal in the lower left corner of the panel. Stencil or decal using black paint when back of panel is not painted black. If back of panel is painted black, stencil or decal using white paint. Stencil or decal in large enough letters to be clearly legible.
- 3.7 For full or partial overlays, regardless of mounting type (ground or overhead), stencil or apply decal meeting all requirements contained herein. Leave the existing decal visible.
- 3.8 For single and multi-post roadside sign relocation, abandoned sign footers must be removed.

- 3.9 All new single post, multi-post and overhead sign panels shall be a minimum of 0.125 inches thick aluminum. All overlays shall be a minimum of 0.08 inches thick aluminum. Extruded panels are not allowed. No more than one horizontal splice shall be allowed in large panel fabrication. The horizontal splice shall be at the centerline of an interior wind beam and shall be located between lines of copy on the panel face.
- 3.10 For new single post and multi-post assemblies or panel replacements, use 3M<sup>™</sup> Company Very High Bond (VHB) Acrylic Foam Tape number 4950 in combination with mechanical fasteners to attach panels to wind beams, brackets and splice plates. Install VHB tape meeting all 3M<sup>™</sup> requirements and in conformance with the requirements herein. Do not reuse VHB tape once installed. Submit VHB calculations with panel shop drawings.
- 3.11 Use countersunk screws for the mechanical fasteners when installing new single post, multi-post and overhead sign panels. Apply a patch matching the sheeting color and material over each countersunk screw. Patch shall be of sufficient diameter to secure patch to sign face. Orient the patch in the same direction as the sign face material.
- 3.12 For new signs and full or partial overlays, regardless of mounting type, use 3M TM Company Diamond Grade CubedTM (DG3) Reflective Sheeting. Use 3M TM Company Diamond Grade CubedTM (DG3) Fluorescent Yellow Reflective Sheeting when installing new panels or overlays for the following warning signs: Lane Drop (W4-2), Lane Ends (W9-1, W9-2), Reduce Speed Ahead (W3-5), curves and pedestrian crossing. Use 3M TM Company Diamond Grade CubedTM (DG3) Fluorescent Yellow-Green Reflective Sheeting when installing new panels or overlays for school crossing warning sign. 3M Company EC Film 1170NP (clear) shall be applied to all finished panels or overlays for the CFX Logo, the E-Pass Logo and the CFX toll shield either free standing or within a guide sign or mile post marker.
- 3.13 For full sign overlays, overlap of the existing panel is limited to between one (1) and three (3) inches. If new overlay matches the size of the existing sign, trim the corners of the existing sign if necessary, such that the existing corners are not visible when overlay installation is complete. Hex head bolts on the sign surface shall be replaced using countersunk screws. Remove all existing overlays prior to installing the new overlay.
- 3.14 For partial overlays, remove any existing overlay in the same location. Install pop rivets at a minimum of 6" centers on the border of the overlay and 12" centers across the face of the panel(s). Paint pop rivets to match color of sign sheeting at pop rivet locations.

- 3.15 For multi-post sign supports, aluminum and steel, furnish and install sign supports as specified including any breakaway devices necessary. Determine the number, length, and size of sign supports based on the latest FDOT Multi-post Sign computer program which the Contractor can download from the FDOT's internet site or, if necessary, will be provided on disk upon request. Submit the results of the computer run to the Director of Maintenance prior to the fabrication of the support(s). Supports shall meet the requirements of FDOT Standard Plans 700-020. Round multipost sign supports may be used at the Contractor's option. However, if these supports are used, submit to the Director of Maintenance for approval design drawings that have been signed and sealed by a Professional Engineer registered in the State of Florida.
- 3.16 For single post sign supports and foundations, furnish and install sign supports and breakaway devices meeting criteria in FDOT Standard Plans 700-010.
- 3.17 All ground mount signs, except where noted in the plans, shall utilize 3M VHB (Very High Bond) Acrylic Foam Tape Number 4950, or CFX-approved equal in combination with mechanical fasteners (countersunk screws) to fasten the sign panel to wind beams/ brackets and also to fasten sign panels together at vertical splice joints. One mechanical fastener shall be installed at each end of each wind beam on multi-post sign panels and at each end of each horizontal bracket on single post signs. One mechanical fastener shall be installed one inch (1") from the edge of each vertical splice at each wind beam. In addition, one mechanical fastener shall be used at the top and bottom of the vertical splice to attach the backing strips (Standard Plans 700-010 and 700-020) to the panel. See attached Typical Three Panel Sign sketch. Other mechanical fasteners per Standard Plans 700-010 and 700-020 shall remain.
  - A. The following procedure shall be used to determine the minimum amount of tape necessary for each sign for the attachment of the panel to the wind beams (z-bars):
    - 1. Sign Surface Area: Multiply the dimensions of the sign face, in feet, to determine the sign's surface area.

<u>length</u> ft. x <u>width</u> ft. = <u>(a)</u>  $ft^2$  of sign surface area.

2. Sign Weight: Multiply the surface area (a) by the appropriate weight per square foot (from Table below) for

the particular thickness of aluminum being used to determine the static load of the sign face.

Thickness (in.)	Weight (lb/ft <sup>2</sup> )	)
.080	1.15	
.100	1.44	From Table 7.4 of the
.125	1.80	ASTM Chart for sheet
		and plate weights
$\frac{ft^2}{(x)} x$	$lb/ft^2 =$	lbs. of static load.
(a) from Table (b	)	

3. Square Inches of Tape: Multiply pounds of load (b) by 4 in<sup>2</sup> of tape per pound to determine amount of tape required to support the load.

4. Lineal Feet of Tape: To convert the required square inches of tape into lineal feet of 1-inch wide tape to be applied to stiffeners, divide the required square inches (c) by 12 in./lineal foot.

$$\underbrace{in^2 \Box 12 \text{ in./ft.}}_{\text{(c)}} = \underbrace{lineal \text{ foot of 1-inch wide}}_{\text{(d)} \text{ tape required to}}_{\substack{\text{support the weight of the sign face}}$$

5. Area of Tape Per Z-Bar: Divide the lineal feet of 1-inch tape (d) by the number of z-bars.

Additional, or larger, z-bars in excess of the standard number or size per Standard Plans 700-020, may be required to achieve the square area of tape required per the above calculations. Payment shall be included in the unit price for the sign as bid.

The above calculations identify the minimum tape required. However, the entire length of all z-bars in all signs shall be covered with tape.

More tape may be necessary to fully cover all the stiffeners used to

prevent wind deflection for a particular sign design. The Contractor shall submit calculations to the Director of Maintenance for review by the manufacturer.

B. For connection of sign panel pieces at butt joints, the following procedure shall be used to determine the amount of VHB tape necessary. Backing strips 22 inches to 3 inches wide shall be used along the length of all sign panel butt joints. A 1-inch strip of VHB tape shall be placed along each edge of the backing strip (i.e., two 1-inch strips along the length). The center of the backing strip shall be placed at the center of the butt joint.

## C. Installation Procedures

Required Surface Preparation for All Applications

- 1. Application Temperature: The tape application temperature range shall be 70 degrees Fahrenheit to 100 degrees Fahrenheit.
- 2. Cleaning: All surfaces to be bonded shall be cleaned with a solvent such as a 50:50 mixture of isopropyl alcohol (rubbing alcohol) and water, then wipe the surface with a clean, dry cloth to remove solvent. Oil based solvents that inhibit adhesion, such as turpentine, shall not be used. Contractor shall follow solvent manufacturer's directions and precautions for handling solvent.
- 3. Abrading: Metal surfaces shall be lightly abraded with isopropyl alcohol saturated abrasive pad prior to applying tape. Metal with corrosion or other surface debris on any reclaimed metal shall be abraded before taping. Surface shall be re-cleaned with solvent after abrading. Conversion coated aluminum that is free of surface debris will not require abrading.
- 4. Rub Down Pressure: Firm application pressure shall be applied to ensure bond strength through adequate adhesive-to-surface contact.
- 5. Dwell Time: After proper application, the bond strength should increase as the adhesive flows onto the surface. At room temperature, approximately 50% of the ultimate strength should be achieved after 20 minutes, 90% after 24

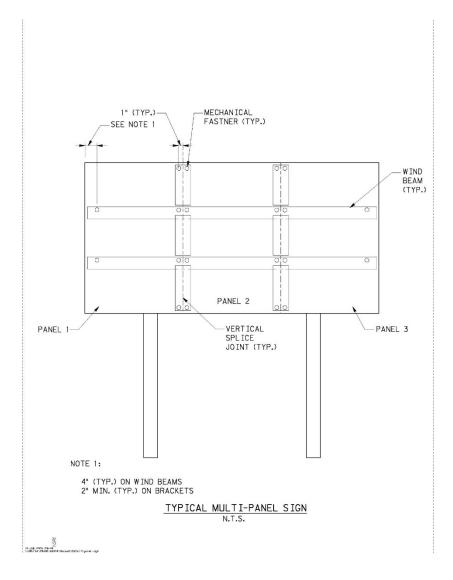
hours, and 100% after 72 hours. In some cases, bond strength can be increased, and ultimate bond strength can be achieved more quickly by exposing the bond to elevated temperatures e.g., 150 degrees Fahrenheit for 1 hour.

- D. Assembly Steps for Bonding Stiffeners
  - 1. Determine the amount of tape to be used from the procedures detailed above.
  - 2. All surfaces to be bonded shall be cleaned with a 50:50 mixture of isopropyl alcohol and water. Metal surfaces shall be lightly abraded to improve initial bond strength. Re-cleaning shall be performed after abrading (see Required Surface Preparation for All Applications).
  - 3. VHB tape shall be applied to a clean, dry, well unified surface of the stiffener with a hand-held roller or tape applicator.
  - 4. Laminated panels shall be aligned in the desired position and the stiffeners placed in the proper location for bonding to the panel.
  - 5. The sign surface where the stiffener is to be bonded shall be clean and dry.
  - 6. The stiffener shall be aligned in position and the release liner shall be removed. The stiffener shall be pressed in place on the panel and a hand-held roller used to aid in laminating the stiffeners to the panel. A flat firm surface shall be used to support the sign panels while pressure is being applied. Repeat steps 2-6 until all the stiffeners are bonded to the panels.
- E. Bonding Backing Strips on Multi-Panel Signs
  - 1. All surfaces to be bonded shall be cleaned with a 50:50 mixture of isopropyl alcohol and water (see Required Surface Preparation for All Applications).
  - 2. A strip of VHB tape shall be applied along both longitudinal edges of the backing strip.
  - 3. The backing strip shall be aligned on the panel seam so that

both edges of the two panels are covered with tape.

4. The release liner shall be removed, and the backing strip applied to panel seams. A hand roller shall be used to aid in laminating the batten strip to the panels.

Technical assistance and pricing information for this product may be obtained from 3M Industrial Tape and Specialties at 800-362-3550.



### 4.0. Basis of Payment:

Price and payment will be full compensation for all work specified in this section.

Payment will be made under:

Item No. 999-10-11 Roadway and Bridge Asset Maintenance Services (LS)

#### Attachment 9 SECTION 102 MAINTENANCE OF TRAFFIC (Maintenance Operations 5-21)

#### **102-1 Description:**

Maintain traffic within the limits of the project for the duration of the construction or maintenance period, including any temporary suspensions of the work. Construct and maintain detours. Provide facilities for access to residences, businesses, etc., along the project. Furnish, install and maintain traffic control and safety devices during construction. Furnish and install work zone pavement markings for maintenance of traffic (MOT) in construction areas. Provide any other special requirements for safe and expeditious movement of traffic specified in the Plans. MOT includes all facilities, devices and operations as required for safety and convenience of the public within the work zone.

Do not maintain traffic over those portions of the project where no work is to be accomplished or where construction operations will not affect existing roads. Do not obstruct or create a hazard to any traffic during the performance of the work and repair any damage to existing pavement open to traffic.

#### **102-2 Materials:**

Meet the following requirements:

Bituminous Adhesive	Section 970
Temporary Raised Pavement Markers	Section 990
Paint	Section 971
Removable Tape	Section 990
Glass Spheres	Section 971
Temporary Traffic Control Device Materials	Section 990
Retroreflective and Nonreflective Sheeting	
for Temporary Traffic Control Devices	Section 994

**102-2.1 Temporary Traffic Control Devices:** Use only the materials meeting the requirements of Section 990, Section 994, Standard Plans and the Manual on Uniform Traffic Control Devices (MUTCD).

**102-2.2 Detour:** Provide all materials for the construction and maintenance of all detours.

**102-2.3 Commercial Materials for Driveway Maintenance:** Provide materials of the type typically used for base, including reclaimed asphalt pavement (RAP) material, and having stability and drainage properties that will provide a firm surface under wet conditions.

#### **102-3 Specific Requirements.**

**102-3.1 Beginning Date of Contractor's Responsibility:** Maintain traffic starting the day work begins on the project or on the first day Contract Time is charged, whichever is earlier.

**102-3.2 Worksite Traffic Supervisor:** Provide a Worksite Traffic Supervisor who is responsible for initiating, installing, and maintaining all temporary traffic control devices as described in this Section and the Contract Documents. Provide all equipment and materials needed to set up, take down, maintain traffic control, and handle traffic-related situations. Use approved alternate Worksite Traffic Supervisors when necessary.

The Worksite Traffic Supervisor must meet the personnel qualifications specified in Section 105.

The Worksite Traffic Supervisor is to perform the following duties:

- 1. On site direction of all temporary traffic control on the project.
- 2. Is on site during all set up and take down and performs a drive through inspection immediately after setup.
- 3. Is on site during all nighttime operations ensuring proper temporary traffic control.
- 4. Immediately corrects all safety deficiencies and corrects minor deficiencies that are not immediate safety hazards within 24 hours.
- 5. Is available on a 24 hour per day basis and present at the site within 45 minutes after notification of an emergency situation and is prepared to respond to maintain temporary traffic control or to provide alternate traffic arrangements.
- 6. On Maintenance of Traffic lasting more than 24 hours conduct daily daytime and weekly nighttime inspections of projects with predominately daytime work activities, and daily nighttime and weekly daytime inspections of projects with predominantly nighttime work activities of all traffic control devices, traffic flow, pedestrian, bicyclist, and business accommodations. Advise the project personnel of the schedule of these inspections and give them the opportunity to join in the inspection as deemed necessary. Pedestrians are to be accommodated with a safe, accessible travel path around work sites separated from mainline traffic in compliance with the Americans with Disabilities Act (ADA) Standards for Transportation Facilities. Maintain existing or detour bicycle facilities satisfactorily throughout the project limits. Existing businesses in work areas are to be provided with adequate entrances for vehicular and pedestrian traffic during business hours.

CFX may disqualify and remove from the project a Worksite Traffic Supervisor who fails to comply with the provisions of this Section. The CFX may temporarily suspend all activities, except traffic, erosion control and such other activities that are necessary for project maintenance and safety, for failure to comply with these provisions.

**102-3.3 Lane Closures:** Approval for all lane closures, mobile operations, and traffic pacing operations is required. Submit routine requests to the Director of Maintenance fourteen calendar days in advance of planned lane closures, mobile operations, and traffic pacing operations. For unforeseen events that require cancelling or rescheduling lane closures, mobile operations, and traffic pacing operations, revise the lane closure request as soon as possible.

102-3.4 Reverse Lane Implementation Barrier (SR 528)

CFX maintains a movable median barrier located on SR 528 just East of SR 417 and just west of SR 520 to expedite the movement of large numbers of evacuees in the event of a worst case multi-regional disaster. Contractor shall inspect and operate the barrier to confirm it is operational and performs as intended. Inspect the barrier 3 time per year in April, August and December and prepare a report for the Director of Maintenance certifying the barrier is operational,

what preventative maintenance was performed and what repairs were made, if any.

### **102-4** Alternative Traffic Control Plan

The Contractor may propose an alternative traffic control plan (TCP) to the plan presented in the Contract Documents. The Contractor's Engineer of Record must sign and seal the alternative plan and submit to the Director of Maintenance. Prepare the TCP in conformance with and in the form outlined in the current version of the FDOT Design Manual as amended by CFX Design Guidelines. Indicate in the plan a TCP foreach phase of activities. Take responsibility for identifying and assessing any potential impacts to a utility that may be caused by the alternate TCP proposed by the Contractor and notify CFX in writing of any such potential impacts to utilities.

For projects with nighttime lane closure restrictions where paving is expected to extend into the winter months, the Contractor may propose an alternative TCP allowing for daytime lane closures for friction course paving. The alternative TCP must be a lane closure analysis based on actual traffic counts and prepared in accordance with the FDOT Design Manual with maximum 1-lane capacity not to exceed 1200 VPH.

Engineer's approval of the alternate TCP 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 Specifications, Design Plans (including TCPs) 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.

CFX reserves the right to reject any alternative TCP. Obtain the Director of Maintenance's written approval before beginning work using an alternate TCP. The Director of Maintenance's written approval is required for all modifications to the TCP. The Director of Maintenance will only allow changes to the TCP in an emergency without the proper documentation.

## **102-5 Traffic Control**

**102-5.1 Standards:** FDOT Standard Plans and FDOT Design Manual as amended by CFX Design Guidelines are the minimum standards for the use in the development of all TCPs. The MUTCD, Part VI is the minimum national standard for traffic control for highway construction, maintenance, and utility operations. Follow the basic principles and minimum standards contained in these documents for the design, application, installation, maintenance, and removal of all traffic control devices, warning devices and barriers which are necessary to protect the public and workers from hazards within the project limits.

**102-5.2 Maintenance of Roadway Surfaces:** Maintain all lanes that are being used for the MOT, including those on detours and temporary facilities, under all weather conditions. Keep the lanes reasonably free of dust, potholes and rutting. Provide the lanes with the drainage facilities necessary to maintain a smooth riding surface under all weather conditions.

**102-5.3 Number of Traffic Lanes:** Maintain at least one lane of traffic in each direction in accordance with the approved lane closure request. Construct each lane used for MOT at least as wide as the traffic lanes existing in the area before commencement of construction. Do not allow traffic control and warning devices to encroach on lanes used for MOT.

The Director of Maintenance may allow the Contractor to restrict traffic to one-way operation for short periods of time provided that the Contractor employs adequate means of traffic control and does not unreasonably delay traffic. When a construction activity requires restricting traffic to one-way operations, locate the flaggers within view of each other when possible. When visual contact between flaggers is not possible, equip them with 2-way radios, official, or pilot vehicles, or use traffic signals.

**102-5.4 Crossings and Intersections:** Provide and maintain adequate accommodations for intersecting and crossing traffic. Do not block or unduly restrict any median opening, road or street crossing the project unless approved by the Director of Maintenance. Before beginning any construction, submit to the Director of Maintenance the names and phone numbers of persons that can be contacted when signal operation malfunctions.

**102-5.5 Access for Residences and Businesses:** Provide continuous access to all residences and all places of business.

**102-5.6 Protection of the Work from Injury by Traffic:** Where traffic would be injurious to a base, surface course, or structure constructed as a part of the work, maintain all traffic outside the limits of such areas until the potential for injury no longer exists.

**102-5.7 Flagger:** Provide flaggers to control traffic when traffic in both directions must use a single lane and in other situations as required. All flaggers must meet the personnel qualifications specified in Section 105.

**102-5.8 Conflicting Pavement Markings:** Where the lane use or where normal vehicle or pedestrian paths are altered during construction, remove all pavement markings (paint, tape, thermoplastic, raised pavement markers, etc.) that will conflict with the adjusted vehicle or pedestrian paths. Use of paint to cover conflicting pavement markings is prohibited. Remove conflicting pavement markings using a method that will not damage the surface texture of the pavement and which will eliminate the previous marking pattern regardless of weather and light conditions. Grinding will not be permitted.

Remove all pavement markings that will be in conflict with "next phase of operation" vehicle pedestrian paths as described above, before opening to vehicle traffic or use by pedestrians.

**102-5.9 Vehicle and Equipment Visibility:** Equip all pickups and automobiles used on the project with a minimum of one Class 2 warning light that meets the Society of Automotive Engineers Recommended Practice SAE J595, dated November 1, 2008, or SAE J845, dated December 1, 2007, and incorporated herein by reference. Existing lights that meet SAE J845, dated March 1992, or SAE J1318, dated April 1986, may be used to their end of service life. The warning lights must be a high intensity amber or white rotating, flashing, oscillating or strobe light. Lights must be unobstructed by ancillary vehicle equipment such as ladders, racks or booms and be visible 360 degrees around the vehicle. If the light is obstructed, additional lights will be required. The lights must be operating when the vehicle is in a work area where a potential hazard exists, when operating at less than the average speed for the facility while performing work activities, making frequent stops or called for in the Plans or Standard Plans.

Equip all other vehicles and equipment with a minimum of 4 square feet of retroreflective sheeting or warning lights.

**102-5.10 No Waiver of Liability:** Conduct operations in such a manner that no undue hazard results due to the requirements of this Article. The procedures and policies described herein in no way acts as a waiver of any terms of the liability of the Contractor or his surety.

#### **102-6 Detours**

**102-6.1 General:** Construct and maintain detour facilities wherever it becomes necessary to divert traffic from any existing roadway or bridge, or wherever construction operations block the flow of traffic.

**102-6.2 Standards of Construction:** Plan, construct, and maintain detours for the safe passage of traffic in all conditions of weather. Provide the detour with all facilities necessary to meet this requirement.

Where pedestrian facilities are detoured, blocked or closed during the work, provide safe alternate accessible routes through or around the work zone meeting the requirements of the ADA Standards for Transportation Facilities. When temporary walkway surfaces and ramps are required to be constructed, ensure surfaces are stable, firm, slip resistant, and kept free of any obstructions and hazards such as holes, debris, mud, construction equipment and stored materials.

**102-6.3 Construction Methods:** Do not apply the requirements of the Standard Specifications pertaining to construction and material details to detour construction. Select and use construction methods and materials that shall provide a stable and safe detour facility. Construct the detour facility to have sufficient durability to remain in good condition, supplemented by maintenance, for the entire period that the detour is required.

**102-6.4 Removal of Detours:** Remove temporary detours when they are no longer needed and before the Contract is completed. Take ownership of all materials from the detour and dispose of them, except for materials which might be on loan from CFX with the stipulation that they be returned.

#### **102-7 Traffic Control Officer**

A uniformed law enforcement officer and marked vehicle shall be provided during all lane closure operations, and whenever temporary and/or new traffic signals are relocated and or adjusted. Contractor shall attempt to schedule traffic control officers from the Florida Highway Patrol, other agencies may be used only if the Florida Highway Patrol cannot accommodate the request.

Payment for traffic control officer shall be considered incidental to the lump sum price for Asset Maintenance and shall constitute full compensation for the services of the traffic control officer, including a marked law enforcement vehicle and all other direct and indirect costs. CFX will not consider any claim arising from the failure of a traffic control officer to be present or available on the project.

# **102-8** Temporary Traffic Control Devices

**102-8.1 Installation and Maintenance:** Install and maintain temporary traffic control devices as detailed in the Plans, Index 102-600 of the Standard Plans and when applicable, in accordance with the approved vendor drawings, as provided on FDOT's Approved Product List (APL). Erect the required temporary traffic control devices to prevent any hazardous conditions and in conjunction with any necessary traffic re-routing to protect the traveling public, workers, and to safeguard the work area. Use only those devices that are on the APL or meeting the requirements of the Standard Plans. Immediately remove or cover any devices that do not apply to existing conditions.

The APL number is to be permanently marked on the device at a readily visible location. Sheeting used on devices is exempt from this marking requirement.

Notify the Engineer in writing of any scheduled operation that will affect traffic patterns or safety sufficiently in advance of commencing such operation to permit review of the plan for the proposed installation of temporary traffic control devices.

Assign an employee the responsibility of maintaining the position and condition of all temporary traffic control devices throughout the duration of the Contract. Keep the Engineer advised at all times of the identification and means of contacting this employee on a 24-hour basis.

Maintain temporary traffic control devices in the correct position, properly oriented, clearly visible and clean, at all times. All applicable temporary traffic control devices must meet the classification category of Acceptable as defined in the American Traffic Safety Services Association (ATSSA) Quality Guidelines for Temporary Traffic Control Devices and Features. Temporary concrete barriers must meet the classification category of Acceptable defined in FDOT's Temporary Concrete Barrier Evaluation Guide, which may be viewed at the following URL: https://fdotwww.blob.core.windows.net/sitefinity/docs/default-

source/programmanagement/implemented/urlinspecs/files/docs/default-source/contentdocs/programmanagement/implemented/urlinspecs/files/temporaryconcretebarrierguide.pdf.pdf? sfvrsn=343b4c97\_10. Pedestrian longitudinal channelizing devices (LCDs) must meet the classification category of Acceptable as defined in the Pedestrian LCD Evaluation Guide, which may be viewed at the following URL:

https://fdotwww.blob.core.windows.net/sitefinity/docs/default-

source/programmanagement/implemented/urlinspecs/files/lcdevaluationguide.pdf?sfvrsn=166e0f 16\_2. Immediately repair, replace or clean damaged, defaced or dirty devices. Traffic control devices must not be cleaned while installed/used. Use of warning lights on any temporary traffic control device is prohibited, with the exception of the trailer mounted portable regulatory signs.

Employ an approved independent Channelizing Device Supplier (CDS) to provide and maintain the condition of the following non-fixed channelizing devices: drums, cones, vertical panels, barricades, tubular markers, and longitudinal channelizing devices. Cones may be provided and maintained by the Contractor.

The CDS shall not be affiliated with the Contractor and shall be approved by the Engineer (Director of Maintenance) in accordance with 102-9.1.1. The CDS shall submit a certification for each closure operation on letterhead that the channelizing devices mentioned above installed/used within the work zone meet classification category of Acceptable as defined in the Pedestrian LCD Evaluation Guide and the ATSSA Quality Guidelines for Temporary Traffic Control Devices and Features. The CDS certification shall include the following statement, "I certify that I have provided and maintained the following devices <list devices covered under the certification> in accordance with Pedestrian LCD Evaluation Guide and the ATSSA Quality Guidelines for Temporary Traffic Control Devices and Features." If the Contractor chooses to provide and maintain cones, the Contractor must submit a monthly Contractor certification on letterhead that all cones installed/used within the work zone meet acceptable standards as outlined in the ATSSA Quality Guidelines for Temporary Traffic Control Devices and Features. The Contractor certification shall include the following statement, "I certify that I have provide and maintain cones installed/used within the work zone meet acceptable standards as outlined in the ATSSA Quality Guidelines for Temporary Traffic Control Devices and Features. The Contractor certification shall include the following statement, "I certify that I have provided and maintained cones in accordance with the ATSSA Quality Guidelines for Temporary Traffic Control Devices and Features."

#### 102-8.1.1 Approved Independent Channelizing Device Supplier (CDS)

**Requirements:** Submit the following documents to the Director of Maintenance for independent CDS approval at least 14 Days prior to the lane closure. A CDS may elect to provide a one-time submittal of this information to the State Construction Office for review and pre-approval. Department approved CDSs are listed on the State Construction Office website. Inform the Director of Maintenance at least 3 Days in advance of the lane closure if a pre-approved CDS will be utilized.

- 1. A letter on company letterhead signed and dated by the owner of the company or company officer with the following information and statements:
  - a. The company's owners, stockholders, and officers.
  - b. A statement declaring that the company will not perform as a CDS on any project where there is common ownership, directly or indirectly, between the company and the Contractor.
  - c. A statement declaring that the company will furnish and maintain the condition of all channelizing devices with the exception of cones as required in 102-9.1 with its own forces.
  - d. A statement declaring at least five years of experience in providing channelizing device supplier services, with its own inventory of channelizing devices.
  - e. On a separate sheet, list a sample project history of the company's experience as a channelizing device supplier for the five years declared in item 1(d) above including the following information:
    - 1. Project name and number and a brief description of CDS work performed,
    - 2. Beginning and ending date of CDS project activities,
    - 3. Location of project (city, state),
    - 4. Monetary amount of CDS work on project,
    - 5. Owner of project, contact person and phone number with area code,
    - 6. Name of Contractor (client) that the work was performed for and phone number with area code.
- 2. A maintenance plan for approval by the CFX that outlines the frequency and methods for maintaining the condition of all channelizing devices, except cones owned and maintained by the Contractor, installed/used in the work zone.

**102-8.2 Work Zone Signs:** Furnish, install, maintain, remove and relocate signs in accordance with the Plans and Standard Plans, Index 102-600. Use signs that meet the material and process requirements of Section 994. Use Type IV sheeting for fluorescent orange work zone signs. Roll-up signs must meet the requirements of Type VI sheeting. Use Type IV or Type XI sheeting for all other work zone signs. Attach the sign to the sign support using hardware meeting the manufacturer's recommendations on the APL vendor drawings or as specified in the Standard Plans.

**102-8.2.1 Post Mounted Signs:** Meet the requirements of 990-8.

**102-8.2.2 Portable Signs:** Use only approved systems, which includes sign stands and attachment hardware (nuts, bolts, clamps, brackets, braces, etc.), meeting the vendor requirements specified on the APL drawings. Provide Federal Highway Administration's (FHWA) accepted sign substrate for use with accepted sign stands on the National Highway System (NHS) under the provisions of the NCHRP Report 350 "Recommended Procedures for the Safety Performance Evaluation of Highway Features."

**102-8.2.3 Barrier Mounted Signs:** If post mounting criteria cannot be achieved in accordance with Standard Plans, Index 102-600 and a barrier or traffic railing exists, use temporary sign criteria provided in Standard Plans, Index 700-013.

**102-8.3 Business Signs:** Provide and place signs in accordance with the Plans and Standard Plans, Index 102 series. Furnish signs having retroreflective sheeting meeting the requirements of Section 990.

**102-8.4 Channelizing Devices:** Furnish, install, maintain, remove and relocate channelizing devices in accordance with the Plans and Standard Plans.

**102-8.4.1 Retroreflective Collars for Traffic Cones:** Use collars for traffic cones listed on the APL that meet the requirements of Section 990. Use cone collars at night designed to properly fit the taper of the cone when installed. Place the upper 6-inch collar a uniform 3-1/2 inches distance from the top of the cone and the lower 4-inch collar a uniform 2 inches distance below the bottom of the upper 6-inch collar.

Collars must be capable of being removed for temporary use or attached permanently to the cone in accordance with the manufacturer's recommendations. Provide a white sheeting having a smooth outer surface and that has the property of a retroreflector over its entire surface.

**102-8.4.2 Longitudinal Channelizing Devices (LCDs):** Use LCDs listed on the APL and meeting the requirements of Section 990 and the Standard Plans. LCDs must be interlocked except for the stand-alone unit placed perpendicular to a sidewalk. For LCDs requiring internal ballasting, an indicator that clearly identifies the proper ballast level will be required. For LCDs requiring external ballasting, the ballasting methods must be detailed in the APL drawings including ballasting type and minimum weight.

Ensure that joints on the pedestrian LCDs are free of sharp edges and have a maximum offset of 1/2 inch in any plane.

Use alternating orange and white solid color vehicular LCDs. Vehicular LCDs may be substituted for drums, vertical panels, or barricades.

**102-8.5 Temporary Barrier:** Furnish, install, maintain, remove and relocate temporary barrier in accordance with the Plans and Standard Plans. Obtain and use precast temporary concrete barrier from a manufacturing plant that is on FDOT's Production Facility Listing. Temporary concrete barrier must meet the material and construction requirements of Section 521 unless noted otherwise in the Standard Plans. Proprietary temporary concrete, steel, or water filled barrier used must be listed on the APL.

The maximum allowable height increase between consecutive temporary barrier units in the direction of traffic is 1 inch.

Temporary barrier must comply with Standard Plans, Index 102-100 or 102-120. Install temporary barriers as either anchored or freestanding as shown in the Plans or the Standard Plans. An anchored unit is defined as having at least one stake or bolt into the underlying pavement or bridge deck. All other units, including those with keeper pins, are considered freestanding.

Remove temporary asphalt pads and repair all attachment scars to permanent structures

and pavements after barrier removal. Make necessary repairs due to defective material, work, or Contractor operations at no cost to the CFX. Restore barrier damaged by the traveling public within 24 hours after notification as authorized by the Engineer.

Trailer mounted barriers listed on the APL may be used at the option of the Contractor. Trailer mounted barriers listed on the APL must have an FHWA eligibility letter and be successfully crash tested in accordance with MASH TL-3 criteria. All trailer mounted barriers must be equipped with an APL listed truck mounted attenuator, an APL listed vehicle mounted arrow board and vehicle warning lights in accordance with this Section.

**102-8.5.2.1 Temporary Barrier Meeting the Requirements of Standard Plans, Index 102-120 and 102-110:** Ensure the marking requirements of the respective Index are met.

**102-8.5.2.2: Proprietary Precast Temporary Concrete Barrier Fabricated prior to 2005:** Submit a certification stating that all unmarked barrier units meet the requirements of the Specifications and the Standard Plans. Certifications will be project specific and non-transferable.

**102-8.5.2.3 Proprietary Precast Temporary Concrete Barrier Fabricated in 2005 or later:** Ensure each barrier unit has permanent clear markings, showing the manufacture date, serial number, manufacturer's name or symbol, and the APL number. Label the markings on a plate, plaque, or cast in the unit. Proprietary barrier fabricated prior to 2016 and marked with the "INDX 521" in lieu of the APL number will be permitted.

**102-8.5.2.4 Temporary Concrete Barrier Repair:** Before beginning the repair, remove all laitance, loose material, and any other deleterious matter to sound concrete or a minimum depth of one inch. Additionally, when reinforcing bars, inserts or weldments are exposed, remove the concrete to provide a minimum one-inch clearance all around. Fill the repair area with an approved high-performance concrete repair material in accordance with 930-5 and the manufacturer's recommendations. Restore surfaces and edges to the original dimensions and shape of the barrier.

Repairs are not allowed on barrier units that have one or more of the following deficiencies: structural cracking or cracks that exist through the entire cross-section; unit-to-unit connection assemblies or anchor slots are broken or no longer in a fixed position.

Do not paint repaired barriers.

**102-8.6 Barrier Delineators:** Install barrier delineators on top of temporary barrier and vehicular LCDs meeting the requirements of Section 705.

**102-8.7 Temporary Glare Screen:** Use temporary glare screens listed on the APL that meet the requirements of Section 990. Furnish, install, maintain, remove and relocate glare screen systems in conjunction with temporary barrier at locations identified in the Plans.

The anchorage of the glare screen to the barrier must be capable of safely resisting an equivalent tensile load of 600 pounds per foot of glare screen, with a requirement to use a minimum of three fasteners per barrier section.

When glare screen is utilized on temporary barrier, barrier delineators will not be required.

**102-8.8 Temporary Crash Cushion (Redirective or Gating):** Furnish, install, maintain and subsequently remove temporary crash cushions in accordance with the details and notes shown in the Plans, Standard Plans, and requirements of the pre-approved alternatives listed on the APL. Only redirective non-gating crash cushions are permitted for use as temporary crash cushions on CFX roadways unless otherwise approved by the Engineer.

Temporary crash cushions can be either new or used functionally sound refurbished

devices. Performance of intended function is the only condition for acceptance. All metallic components must be galvanized in accordance with Section 967.

Anchor abutting temporary barrier in accordance the Standard Plans or APL drawings, as required. Bidirectional installations must have a transition panel installed between the crash cushion and the abutting barrier. Delineate the crash cushion in accordance with Section 544. Maintain the crash cushions until their authorized removal. Do not place any materials or equipment within the length of the crash cushion.

Remove temporary asphalt or concrete pads and repair all attachment scars to permanent structures and pavements after crash cushion removal. Make necessary repairs due to defective material, work, or Contractor operations at no cost to the CFX. The Contractor will be reimbursed by CFX for the cost to repair attenuators depicted in the plans and damaged through no fault of the Contractor or its forces or subcontractors at the actual cost of materials (documented by cost breakdown acceptable to the CEI) plus a 20% markup. Restore crash cushions damaged by the traveling public within 24 hours after notification as authorized by the Engineer.

**102-8.9 Temporary Guardrail:** Furnish temporary guardrail in accordance with the Plans and Standard Plans. Meet the requirements of Section 536.

**102-8.10 Arrow Board:** Furnish arrow boards that meet the requirements of Section 990 as required by the Plans and Standard Plans to advise approaching traffic of lane closures or shoulder work. Ensure that the arrow board display panel is raised to a fully upright position and is fully visible to motorists. Type B arrow boards may be used on low to intermediate speed (0 mph to 50 mph) facilities or for maintenance or moving operations on any speed facility. Type C arrow boards must be used for all other operations on high-speed (50 mph and greater) facilities and may be substituted for Type B arrow boards on any speed facility.

**102-8.11 Portable Changeable Message Sign (PCMS):** Furnish PCMSs or truck mounted changeable message signs that meet the requirements of Section 990 as required by the Plans, Standard Plans or Director of Maintenance to supplement other temporary traffic control devices used in work zones. Ensure that the PCMS display panel is raised to a fully upright position and is fully visible to motorists.

Messages must have no more than two phases. The display time for each phase must be at least two seconds but no more than three seconds. The sum of the display time must be a maximum of six seconds.

**102-8.12 Portable Regulatory Signs (PRS):** Furnish PRSs that meet the requirements of Section 990 as required by the Plans and Standard Plans. Ensure that the PRS sign panel is raised to a fully upright position and is fully visible to motorists.

Activate portable regulatory signs only during active work activities and deactivate when no work is being performed.

**102-8.13 Radar Speed Display Unit (RSDU):** Furnish RSDUs that meet the requirements of Section 990 as required by the Plans and Standard Plans to inform motorists of the posted speed and their actual speed. Ensure that the RSDU display panel is mounted in accordance with the manufacturer's recommendations.

Activate the radar speed display unit only during active work activities and deactivate when no work is being performed.

**102-8.14 Temporary Signalization and Maintenance:** Provide temporary signalization and maintenance at existing, temporary, and new intersections including but not limited to the following:

- 1. Installation of temporary poles and span wire assemblies as shown in the Plans,
- 2. Temporary portable traffic signals as shown in the Plans,
- 3. Adding or shifting signal heads,
- 4. Trouble calls,
- 5. Maintaining intersection and coordination timing and preemption devices. Coordination timing will require maintaining functionality of system communications.

Restore any loss of operation within 12 hours after notification. Provide alternate temporary traffic control until the signalization is restored.

Provide traffic signal equipment that meets the requirements of the Standard Plans and 603-2. The Engineer may approve used signal equipment if it is in acceptable condition. Replacement components for traffic signal cabinet assemblies will be provided by the maintaining agency. For temporary signals used for lane closure operations on two-lane, two-way roadways meet the requirements in 102-9.21.

### 102-8.15 Temporary Traffic Detection and Maintenance: N/A

**102-8.16 Truck Mounted Attenuators and Trailer Mounted Attenuators:** Furnish, operate and maintain APL listed truck mounted and trailer mounted attenuators in accordance with the manufacturer's recommendations.

For posted speeds of 50 mph or greater, use either truck mounted attenuators or trailer mounted attenuators that meet TL-3 criteria (NCHRP Report 350 or MASH). For posted speeds of 45 mph or less, use either truck mounted attenuators or trailer mounted attenuators that meet TL-2 or TL-3 criteria (NCHRP Report 350 or MASH).

Attenuators will not be paid for separately. Include the cost of the truck with either a truck mounted attenuator or a trailer mounted attenuator in Maintenance of Traffic, lump sum. Payment includes all costs, including furnishing, operating maintaining and removal when no longer required, and all materials, labor, tools, equipment and incidentals required for attenuator maintenance.

**102-8.17 Temporary Raised Rumble Strip Set:** Furnish, install, maintain, remove, and reinstall temporary raised rumble strips per the manufacturer's recommendations and in accordance with Standard Plans, Index 102-603.

The temporary raised rumble strip may be either a removable polymer striping tape or a molded engineered polymer material.

**102-8.18 Automated Flagger Assistance Devices (AFAD):** Furnish, install, maintain, remove, and relocate AFADs in accordance with the Plans, Standard Plans, Index 102-603, and APL vendor drawings.

Position AFADs where they are clearly visible to oncoming traffic. AFADs may be placed on the centerline if they have been successfully crash tested in accordance with MASH TL-3 criteria. A gate arm is required in accordance with Section 990 if a single AFAD is used on the shoulder to control one direction of traffic.

The devices may be operated either by a single flagger at one end of the traffic control zone, from a central location, or by a separate flagger near each device location. Use only flaggers trained in accordance with Section 105 and in the operation of the AFAD. When in use, each AFAD must be in view of, and attended at all times by, the flagger operating the device.

Provide two flaggers on-site and use one of the following methods in the deployment of AFADs:

1. Place an AFAD at each end of the temporary traffic control zone, or

2. Place an AFAD at one end of the temporary traffic control zone and a flagger at the opposite end.

A single flagger may simultaneously operate two AFADs as described in (1) or a single AFAD as described in (2) if all of the following conditions are met:

- 1. The flagger has an unobstructed view of the AFAD(s),
- 2. The flagger has an unobstructed view of approaching traffic in both directions,
- 3. For two AFADs, the AFADs are less than 800 feet apart. For one AFAD, the AFAD and the flagger are less than 800 feet apart.
- 4. Two flaggers are available on-site to provide normal flagging operations should an AFAD malfunction.

AFADs may be either a remotely controlled Stop/Slow AFAD mounted on either a trailer or a movable cart system, or a remotely controlled Red/Yellow Lens AFAD.

Illuminate the flagging station when the AFAD is used at night. When the AFAD is not in use, remove or cover signs and move the AFAD device outside the clear zone or shield it with a barrier.

AFADs will not be paid for separately. AFADs may be used as a supplement or an alternate to flaggers in accordance with the Plans, Standard Plans, Index 102-603, and the APL vendor drawings. Include the cost for AFADs in Maintenance of Traffic, Lump Sum.

**102-8.19 Temporary Lane Separator:** Furnish, install, maintain, remove and relocate temporary lane separator in accordance with the Plans and Standard Plans, Index 102-600. Anchor the portable temporary lane separator with a removable anchor bolt. Use epoxy on bridge decks where anchoring is not allowed. Remove the epoxy from the bridge deck by hydro blasting or other method approved by the Engineer.

102-8.20 Temporary Signals for Lane Closures on Two-Lane, Two-Way Roadways:  $\rm N/A$ 

# **102-9 Work Zone Pavement Marking**

**102-9.1 Description:** Furnish and install work zone pavement markings for MOT in construction areas and in close conformity with the lines and details shown in the Plans and Standard Plans.

Centerlines, lane lines, edge lines, stop bars, standard crosswalks, and turn arrows will be required in work zones prior to opening the road to traffic and shall be in accordance with Section 6 of the MUTCD with the following additions:

(a) Install edge lines when a paved shoulder 4 feet or greater in width exists along the edge of a lane.

(b) Place edge lines on all detours where vehicle paths are altered from normal operations and where a lane is narrowed from its normal width for any reason.

(c) Apply Work Zone Pavement Markings, including arrows and messages determined by the CEI to be required for safe operation of the facility, prior to the end of the day if the highway is open to traffic. Channelizing devices may be used to direct traffic during the day prior to placing the Work Zone Pavement Markings.

(d) Work Zone Pavement Markings will be designated in the plans or by the CEI as removable or

non-removable.

Removable Work Zone Pavement Markings consists of materials that can be taken up by hand. An example of this category of markings is plastic film (Tape), or Work Zone Raised Pavement Markers (WZRPM's).

Non-Removable Work Zone Pavement Markings consists of markings that are not classified as removable.

Use of Removable or Non-Removable Work Zone Pavement Markings shall be as follows:

Application	Category
Finish Pavement*	
All stripes representing final pavement markings	Non-Removable
All stripes in an area where the traffic pattern will be altered prior to project acceptance	Removable
Intermediate Pavement Course	
All stripes in pavement areas that will be covered with a subsequent course of pavement prior to altering of the traffic pattern within such area.	Non-Removable
All stripes where the traffic pattern will be altered prior to placing of the subsequent paving course within such area.	Removable
Existing Pavement	
All stripes that will be removed or overlaid with new pavement prior to altering the traffic pattern within such area.	Non-Removable
All stripes where the traffic pattern will be altered prior to removal or overlaying of such area.	Removable

\*Place striping representing final markings in the permanent location unless accepted in writing by the CEI.

## **102.9.2 Painted Pavement Markings:**

**102-10.2.1 General:** Use painted pavement markings meeting the requirements of Section 710. Use standard paint unless otherwise identified in the Plans or approved by the Engineer.

## 102-9.3 Removable Tape:

**102-9.3.1 General:** Use removable tape listed on the APL as shown in the Plans and meeting the requirements of 990-4.

**102-9.3.2 Application:** Apply removable tape with a mechanical applicator to

provide pavement lines that are neat, accurate and uniform. Equip the mechanical applicator with a film cut-off device and with measuring devices that automatically and accumulatively measure the length of each line placed within an accuracy tolerance of plus or minus 2%. Ensure removable tape adheres to the road surface. Removable tape may be placed by hand on short sections, 500 feet or less, if it is done in a neat accurate manner.

**102-9.3.3 Retro reflectivity:** Apply white and yellow pavement markings that will attain an initial retro reflectivity of not less than 300 mcd/lx·m2 for white and contrast markings and not less than 250 mcd/lx·m2 for yellow markings. Black portions of contrast tapes and black masking tapes must be non-reflective and have a reflectance of less than 5 mcd/lx m2. At the end of the six-month service life, the retro reflectance of white and yellow removable tape shall not be less than 150 mcd/lx·m2.

**102-9.3.4 Removability:** Provide removable tape capable of being removed from bituminous concrete and portland cement concrete pavement intact or in substantially large strips, either manually or by a mechanical roll-up device, at temperatures above 40°F, without the use of heat, solvents, grinding or blasting.

**102-9.4 Temporary Raised Pavement Markers (RPMs):** Use Class B RPMs except for work that consists of ground-in rumble strips at centerline locations. For ground-in rumble strips at centerline locations, use temporary RPMs in accordance with Section 710. Provide only temporary RPMs listed on the APL. Install all markers in accordance with the manufacturer's recommendations, the Standard Plans, and Section 706. After initial installation, replace broken or missing temporary RPMs in locations where more than three consecutive temporary RPMs are broken or missing at no expense to the CFX.

#### **102-10 Materials for Driveway Maintenance**

**102-10.1 General:** Place material in driveways to residences and businesses to provide safe, stable, and reasonable access.

**102-10.2 Materials:** Provide material of the type typically used for base and having stability and drainage properties that will provide a firm surface under wet conditions.

**102-10.3 Construction Methods:** Place, level, manipulate, compact, and maintain the material, to the extent appropriate for the intended use.

As permanent driveway construction is accomplished at a particular location, the Contractor may salvage and reuse previously placed materials that are suitable for reuse on other driveways.

## 102-11 Method of Measurement 102-11.1 Maintenance of Traffic: N/A

## **102-12 Basis of Payment**

Price and payment will be full compensation for all work specified in this section.

Payment will be made under:

Item No. 999-10-11 Roadway and Bridge Asset Maintenance Services (LS)

## Attachment 10 CABLE BARRIER SYSTEM REPAIR

### 1.0 <u>Description</u>

1.1 Provide all labor, materials, equipment and incidentals necessary to remove, repair or replace damaged or destroyed sections of cable barrier, posts, cables, anchorages and miscellaneous hardware.

#### 2.0 <u>Contractor Responsibilities</u>

- 2.1 Repair or replace damaged cable barrier and accessories using materials of a brand and quality equal to or better than the ones being replaced and shall be compatible with the existing equipment.
- 2.2 Accomplish all installations in accordance with the manufacturer's requirements.
- 2.3 Parts provided by the Contractor shall be new. Rebuilt and or repaired parts will not be acceptable.
- 2.4 Remove and dispose of all debris from the right-of-way at the completion of the work.
- 2.5 Repair response time shall be a maximum of two (2) hours from time of notification. Failure to complete the work per the time frame above shall result in a reduction of compensation for emergency response as defined in the Scope of Services (5.3.9).
- 2.6 Damaged cable barrier is required to be secured with maintenance of traffic in conformance with the CFX Maintenance Specifications and FDOT Standard Plans.
  - 2.7 If the CFX Director of Maintenance concurs that permanent repairs cannot be completed during the initial response described in section 2.5 above, the permanent repairs to damaged cable barrier shall be completed no later than the end of the next day, unless, due to extenuating circumstances, the Director of Maintenance determines a longer time frame is necessary. Failure to repair the damaged cable barrier within the time specified by CFX shall result in a Liquidated Damage PF-3 (See Scope of Services 5.5) until the damaged cable is repaired/replaced and accepted by the Director of Maintenance.
  - 2.8 The Contractor shall maintain a sufficient inventory of spare parts for emergency repairs of the cable barrier system at no additional cost to CFX. Spare parts shall be immediately available so that repairs/replacements can be completed within the time frames specified above. Liquidated damages will not be waived due to contractor waiting on parts to be delivered. CFX expects the contractor to have sufficient parts for any type of repair to the cable barrier.

# 3.0. <u>Basis of Payment:</u>

Price and payment will be full compensation for all work specified in this section.

Payment will be made under:

Item No. 999-10-11 Roadway and Bridge Asset Maintenance Services (LS)

### Attachment 11 CHEMICAL CONTROL OF WEEDS AND GRASS

### 1.0 <u>Description</u>

- 1.1 Provide all labor, materials and equipment necessary to apply chemicals to vegetation located in areas maintained under this contract to treat undesirable weed and brush growth. These areas include vegetation around roadside obstructions, in surface joints, on paved surfaces, along fence lines, along shoulders, edge of pavement, curb and gutter, around guardrails where no landscaping exists, barrier walls, signs, culvert ends, bridge abutments, and narrow or wide concrete medians, on and around MSE walls, sound walls and any and all concrete structures. This work also includes the removal of the resulting dead or dying vegetation.
- 1.2 Provide all labor, materials and equipment necessary to apply aquatic vegetation control chemicals along outfall ditches, roadside ditches, around drainage structures and side drains.
- 1.3 <u>Chemicals shall not be applied to any areas that are located within or directly</u> <u>adjacent to a landscape planting bed.</u> Contractor shall be responsible for any overspray that damages a landscape area. Contractor shall reimburse CFX for any damages to landscape areas. Landscape areas are maintained under separate contract and are not the responsibility of the Contractor.
- 1.4 The Contractor shall provide a fulltime, on-site employee to directly supervise all chemical applications who possesses the Florida Department of Agriculture's Commercial Pesticide Applicators License for use of restricted pesticides in accordance with the Federal Environmental Pesticide Control Act of 1972 (PL 92-516, FIFRA) with the Right of Way (#6) and Aquatic (#5A) categories. The Contractor shall read the product labels carefully for complete compliance and follow all safety and precautionary measures as described therein. Copies of the required license shall be submitted to the Director of Maintenance before the first application is performed.
- 1.5 The work described in this attachment is divided into the following categories and corresponding Pay Items (See section 3.0 below):
  - 107-11A Fence Line Herbicide paid per Schedule of Values Table A: Cost per Cycle (4 cycles per year)
  - 107-11B Aquatic Herbicide for pond outfall ditches, roadside ditches, drainage structures and side drains. Paid per Schedule of Values - Table A: Cost per Cycle (4 cycles per year)

- 107-11C Roadside Herbicide (Pavement, under guardrail, and all other locations per scope) paid per Schedule of Values - Table A: Cost per Cycle (6 cycles per year)
- 107-11D MSE and Sound Wall Herbicide paid per Schedule of Values -Table C: Cost per Cycle (6 cycles per year)

The Contractor shall include each of the above items in the Annual Work Plan. The Contractor shall also provide a two week look ahead schedule to the Director of Maintenance at least 2 weeks in advance of the date, time and location where the herbicide will be applied. The Contractor shall submit a list of chemicals he plans to use as part of the two week look ahead schedule. No herbicide shall be applied until this process is completed. The Contractor shall only use herbicides that are in compliance with both State and Federal Law. All herbicides shall be applied in accordance with the manufacturer's directions and in compliance with State and Federal Law.

### 2.0 Additional <u>Contractor Responsibilities</u>

## 2.1 Frequency

All areas defined above shall receive the specified treatments using an appropriate pre-emergent / post-emergent herbicide. All herbicide applications shall be included in the Annual Work Plan. The contractor shall apply herbicide with a sufficient dosage to keep all items specified in section 1.1 above virtually weed free. Failure to complete the work per the time frames agreed to in the Annual Work Plan shall result in a Liquidated Damage PF-3 (See Scope of Services 5.5). Liquidated damages shall be applied on a per Pay Item basis.

## 2.2 Materials

All chemicals shall be commercial quality complying with the herbicide laws of the State of Florida. Prior to the first use of any product on the CFX system, the Contractor shall submit to the Director of Maintenance for acceptance, the manufacturer's Material Safety Data Sheets, product label, and a written statement of proposed locations, application rates and application equipment for all chemicals intended for use. All chemical applicator personnel shall have the product information listed above of the material they are working with in their work vehicle at all times. When chemicals are used around guardrail, curbs and miscellaneous obstructions, use a tracker dye to highlight the area(s) sprayed. Tracker dye shall not be used when applying chemicals on painted barrier walls, sound walls, MSE walls or any other painted surfaces. The Contractor shall select herbicides that will provide a effective kill of the targeted vegetation. If the subject herbicide

application does not provide an effective kill, additional treatments shall be applied as appropriate at no additional cost to CFX.

2.3 Equipment

All chemical applicator personnel shall also have all of the equipment required to correctly mix and apply all chemicals intended for use (measurement devices, personal safety equipment, and application devices).Use equipment specifically designed for commercial application of chemicals. Keep equipment in good repair and operating condition at all times and meet all safety requirements established for this type of work. Equipment is subject to inspection and acceptance by the Director of Maintenance.

- 2.4 Method of Application
  - 2.4.1 Use the FDOT publication called *A Guide for Roadside Vegetation Management, 2012 Edition*, which is hereby incorporated by reference and made a part of the Contract as if fully set forth herein, as the standard reference in determining desirable treatments.
  - 2.4.2 Properly use and dispose of all chemicals and herbicides in strict accordance with applicable local, state, and federal environmental regulations.
  - 2.4.3 All chemical applications performed in areas specified in Section 1.1 above, shall be performed in a "spot treatment" method. Any other method of chemical application must be approved by the Director of Maintenance prior to the beginning of work.
  - 2.4.4 Contractor shall replace desirable trees, shrubs, or other plants, at no cost to CFX that are injured or lost due to the Contractor's negligence in the application of chemicals.
- 2.5 The Contractor shall complete a daily FDOT Herbicide Application Log for each location where chemical applications are being performed. The forms must be thoroughly and accurately filled out prior to submittal. The Contractor shall submit completed forms to the Director of Maintenance on a weekly basis. These forms shall be forwarded via email to the Director of Maintenance by the following Monday for the previous week's applications.
- 2.6 Work will be subject to periodic daily inspection. The quality and acceptance of workmanship will be determined during these inspections; areas that are determined to be unacceptable shall be treated again at no additional cost to CFX.

#### 3.0 Basis of Payment:

Price and payment will be full compensation for all work specified in this section.

Payment will be made under:

- Item No. 107-11A Fence line Herbicide paid per Schedule of Values Table A: Cost per Cycle
- Item No. 107-11B Aquatic Herbicide for pond outfall ditches, roadside ditches, drainage structures and side drains paid per Schedule of Values-Table A: Cost per Cycle
- Item No. 107-11C Roadside Herbicide (Pavement, under guardrail, and all other locations per Scope) paid per Schedule of Values Table A: Cost per Cycle
- Item No. 107-11D MSE and Sound Wall Herbicide paid per Schedule of Values Table C: Cost per Cycle

## Attachment 12 GRAFFITI AND STAIN REMOVAL

## 1.0 <u>Description</u>

1.1 Provide all labor, materials, equipment and incidentals necessary to perform pressure cleaning and/or painting of bridges, including beams and columns, concrete barrier walls, sound walls, cladding walls, planter walls, concrete slopes, and reinforced/ retained earth wall faces and other structures to remove graffiti and other unsightly stains and markings.

## 2.0 <u>Contractor Responsibilities</u>

- 2.1 Protect vegetation, structures and equipment, and the general public during the time the work is underway.
- 2.2 Clean surfaces using equipment appropriate for removal of the graffiti or other unsightly stains and markings to include entertainer/campaign posters. Equipment shall not damage the surface being cleaned. Mechanical (e.g. scrub brushes), steam cleaning, pressure washing, or other means may be necessary. All surfactants or other cleaners must be approved by the coatings manufacturer and accepted by the Director of Maintenance prior to use. Do not use hydrocarbon solvents.
- 2.3 Graffiti removal is considered an Emergency Response Activity. Complete emergency maintenance response for graffiti and stain removal work, including application of the permanent coating(s) by the end of the next day (including Saturdays, Sundays and legal holidays) after discovery or notification. Graffiti determined to be profane or offensive by the Director of Maintenance shall be removed and, at a minimum, a temporary coating applied within two (2) hours of discovery or notification. Permanent coatings shall be completed within 48 hours of completion of the temporary work. Non-painted decorative surfaces shall be cleaned and not painted. Means and methods are up to contractor, CFX will not accept unpainted areas to be painted. No extension of the emergency response time will be granted by CFX due to travel distance requirements of the response crew. Completion of routine work shall not be affected by the need to perform emergency work.

Failure to complete the work per the time frames above shall result in a reduction of compensation as defined in the Scope of Services (5.3.9).

2.4 Apply the following finishes where applicable:

2.4.1 All painted concrete surfaces shall be painted to cover up any markings. This can include but not limited to traffic accidents, rubber tire markings (as directed by the Director of Maintenance), fires, etc.

2.4.2 Concrete surfaces shall receive a Class 5 finish in accordance with the FDOT Standard Specifications. Cleaning, surface preparation, application rates shall be in accordance with manufacturers recommendations. Class 5 concrete coatings materials may be obtained from Sherwin Williams B66-1100 series.

Dark Brown – Color 23446 Light Brown – Color 23690 Dark Green – Color 24227 Light Gray – Color 26622

- 2.4.2 Structural steel surfaces shall receive maintenance painting in accordance with the applicable FDOT Standard Specifications.
- 2.4.3 Painted concrete surfaces

Ambient Conditions Follow Manufacturer's recommendations

Do not apply any paint that contains more than 100 ppm lead.

Remove any paint that curls or lifts after application and repaint the areas as per CFX Specification and/or CFX Design Standard.

The color and scheme of the finish coat(s) shall match existing. Coating thickness and cure time shall be per manufacturer's recommendations.

Coating Materials: Concrete coatings materials may be obtained from Sherwin Williams B66-1100 series.

Dark Brown – Color 23446 Light Brown – Color 23690 Dark Green – Color 24227 Light Gray – Color 26622

- 2.5 Collect all debris resulting from the cleaning process and remove from the CFX right-of-way at the end of each workday.
- 2.6 Painted areas shall be comprised of complete panels or sections. Spot painting will not be accepted. Completed areas of work shall be free from graffiti and stains after cleaning as determined by the Director of Maintenance. Work shall be subject to periodic daily inspection. The quality and acceptance of workmanship will be determined during these inspections. Clean and or paint again areas that are determined to be unacceptable at no additional cost to CFX.

### 3.0 Special Maintenance Requirements

S.R. 429 (Wekiva Parkway) from US 441 to the north includes cast stone ornaments, precast concrete panels (architectural), simulated stone masonry, and concrete staining that were constructed using special aesthetic plans and specification that are included as part of this Attachment and shall be used to maintain these aesthetic features.

### 4.0. Basis of Payment:

Price and payment will be full compensation for all work specified in this section.

Payment will be made under:

Item No. 999-10-11 Roadway and Bridge Asset Maintenance Services (LS)

## Attachment 13 PRESSURE WASHING

## 1.0 <u>Description</u>

1.1 Provide all labor, materials, equipment and incidentals necessary to perform pressure washing of bridges, including beams and columns, concrete barrier walls, sound walls, cladding walls, planter walls, concrete slopes, and reinforced/ retained earth wall faces, and other structures as identified in the Contract Scope of Services.

## 2.0 <u>Contractor Responsibilities</u>

- 2.1 Protect vegetation, structures and equipment, and the general public during the time the work is underway.
- 2.2 Clean surfaces using equipment appropriate for cleaning of the structure including unsightly stains, markings, graffiti and entertainer/campaign posters. Equipment shall not damage the surface being cleaned. Mechanical (e.g. scrub brushes), steam cleaning, pressure washing, or other means may be necessary. All surfactants or other cleaners must be approved by the coatings manufacturer and reviewed by the Director of Maintenance prior to use. Do not use hydrocarbon solvents.
  - 2.2.1 The following CFX Infrastructure shall be pressure washed:
    - Bridge Areas: Bridges, cladding enclosures, MSE walls and sidewalks under and directly adjacent (attached) to CFX bridges. These items shall be pressure washed annually.
    - Sound walls (including traffic barrier when connected to sound wall). These items shall be pressure washed annually.
- 2.3 Collect all debris resulting from the cleaning process and remove from the CFX right-of-way at the end of each workday.
- 2.4 All areas defined above shall be included in the Annual Work Plan. Failure to complete the work per the time frames agreed to in the Annual Work Plan shall result in a Liquidated Damage PF-1 (See Scope of Services 5.5). Liquidated damages shall be applied on a per day per location basis.

## 3.0. Basis of Payment:

Price and payment will be full compensation for all work specified in this section. Payment will be made under:

Item No. 107-15 Pressure Washing of Structures paid per Schedule of Values -Table A: Cost per Cycle

## Attachment 14 ASPHALT-IN-PLACE REPAIR

## 1.0 Description

1.1 Provide all labor, materials, equipment, and incidentals necessary to perform the work as specified herein. For milling and asphalt paving operations, the Contractor or subcontractor shall be prequalified by the Florida Department of Transportation (FDOT).

The work required by the Contractor will typically fall into the following categories:

- A. Routine Asphalt Pavement Repair (No Milling): This work typically includes the repair of potholes, rutting in travel lanes, sealing of cracks within the travel lanes, settled or depressed pavement, raveled pavement etc.
- B. Repair (milling and replacement) of asphalt pavement that is damaged by vehicle accidents, spills, fire or other conditions as determined by the Director of Maintenance. This work is administered in accordance with article 2.8 of the Scope of Services.
- 1.2 Premature friction course failures caused by original construction or material deficiencies will not be the responsibility of the Contractor. At locations where settlement of the pavement (such as at bridge approach slabs), pot holes, depressions/settlement or raveling occurs, the Contractor shall make repairs as directed by the Director of Maintenance.

# 2.0 Contractor Responsibilities

- 2.1 Milling
  - 2.1.1 Method of Operation

Remove existing pavement to varying depths in a manner which will restore the pavement surface to a uniform longitudinal profile and cross section as specified by the Director of Maintenance.

Establish the longitudinal profile of the milled surface by a skid sensor on the side of the cut nearest the centerline of the road. Establish the cross slope of the milled surface by a second skid sensor near the outside edge of the cut or by an automatic cross slope control mechanism.

Multiple cuts may be made to achieve the required pavement configuration or depth of cut.

Operate the milling machine to effectively minimize the amount of dust being emitted from the machine. Pre-wetting of the pavement may be required.

Place temporary pavement markings to match existing lane lines.

2.1.2 Equipment

The equipment for this operation shall be a machine capable of maintaining a depth of cut and cross slope which will achieve the results specified herein. The machine shall be equipped with automatic grade controls which operate by sensing from one or more skids moving along the pavement surface.

If the machine is equipped with preheating devices, special attention is directed to the fact that local environmental and other regulations governing the operation of this type equipment may vary considerably at each location. Comply with all local regulations, as well as State and Federal rules, and obtain all necessary permits.

# 2.1.3 Milled Surface

The milled surface shall have a reasonably uniform texture which will provide good bonding, shall be within 1/4 inch of the true profile grade, and shall have no deviations in excess of 1/4 inch from a straightedge applied to the pavement perpendicular to the centerline. Areas varying from a true surface in excess of the above states tolerate may be accepted without correction if the Director of Maintenance determines that they were caused by a pre-existing condition which could not have reasonably been corrected by the milling operations. Correct any unsuitable texture or profile as determined by the Director of Maintenance.

The Director of Maintenance may require re-milling of any area which a surface lamination causes a non-uniform texture to occur.

# 2.2 Overlaying and Patching

# 2.2.1 Method of Operation

Place asphalt pavement as specified herein, at the direction of the Director of Maintenance. The work procedure shall be in accordance with accepted methods and materials to achieve a high quality and smooth riding asphalt overlay or patch.

The following is a basic and minimum procedure to be used to accomplish specific work.

- a. Establish traffic control
- b. Remove surface material within the marked boundaries leaving sides vertical and a reasonably square or rectangular hole.
- c. Inspect base for dryness and for adequate support. If base replacement is required, notify the Director of Maintenance.
- d. Apply light tack coat.
- e. Place mix and compact in lifts of two inches (2") maximum.

All patches shall be reasonably square or rectangular and shall not present a bump or depression and shall provide a smooth ride and transition.

Contractor shall have a twelve (12) foot minimum straight edge on the job site and may be required to test for results deemed unsatisfactory by the Director of Maintenance.

2.3 Materials

Use only materials conforming to the requirements of the specifications and approved by the Director of Maintenance. Unless otherwise specified, obtain asphaltic concrete mixes from a plant that is certified by the FDOT. Asphaltic concrete mixes shall use the current FDOT approval design mix for the materials specified herein. Submit a copy of the design mix to be used to the Director of Maintenance for approval prior to using the material on the project.

Unless otherwise specified, construct asphalt pavement with the following limitations:

- (i) Surface course material shall generally be compatible with existing pavement in the vicinity of the work.
- (ii) The use of reclaimed asphalt shall meet the requirements of the FDOT Standard Specifications.
- (iii) Layer thickness for asphaltic concrete structural courses shall comply with the FDOT Standard Specifications.
- (iv) Friction course material shall not be used for base, leveling or as a structural course.

Random testing of materials may be performed by the Director of Maintenance at any time during their preparation and used to verify compliance with the FDOT Standard Specifications.

2.4 Perform work in accordance with the FDOT Standard Specifications unless amended in this Attachment. References in the incorporated sections to the Engineer shall be taken to mean the Director of Maintenance.

In Standard Specification Section 327, Milling of Existing Asphalt Pavement, all references to opening of milled areas to traffic are hereby deleted. All milled areas must be resurfaced prior to opening to traffic. Any exception must have the specific approval of the Director of Maintenance.

Maintenance of traffic shall be in accordance with Maintenance Specifications Attachment 19, Section 102, Maintenance of Traffic

2.5 For milling existing asphalt pavement, mill existing asphalt pavement, haul off and stockpile or otherwise dispose of the milled material, including temporary striping and removal of existing reflective markers. Disposal at an appropriate site off the CFX right-of-way shall be the sole responsibility of the Contractor.

## 3.0. Basis of Payment:

Price and payment will be full compensation for all work specified in this section.

Payment will be made under:

Item No. 999-10-11 Roadway and Bridge Asset Maintenance Services (LS)

## Attachment 15 MECHANICAL ROAD SWEEPING

## 1.0 <u>Description</u>

Provide all labor, materials, equipment, and incidentals necessary to perform routine mechanical road sweeping to protect the roadways from excessive accumulation of debris along the roadways and ramps. The term debris includes all materials normally picked up by a mechanical sweeper such as sand, glass, paper, cans, and other materials. It also includes large limbs, wood, cable, and other materials in the areas to be swept.

## 2.0 <u>Contractor Responsibilities</u>

- 2.1 These specifications are end-result oriented. Although the sweeping activity is expected to be accomplished by mechanical means, these specifications are not intended to be restrictive or limit other techniques that achieve the specified and desired quality. Completed work shall be clean and free of all accumulated debris immediately after sweeping as determined by the Director of Maintenance regardless of the number of sweeping passes required to achieve the specified quality. All sweeping equipment will be equipped and actively monitored with GPS tracking devices. The Contractor shall provide a GPS tracking report with each cycle invoiced that include location, coverage and speed data for each piece of sweeping equipment.
- 2.2 Areas to be maintained:
  - 2.2.1 Perform sweeping and/or cleaning on the following designated areas of the highways:
    - (i) Along all outside and median paved shoulders, for the full length and width of the shoulder.
    - (ii) At all paved gore areas where interchange ramps converge and diverge from the through traffic lanes for the full width of the gore.
    - (iii) Along all concrete median barrier walls for the full length of the wall (full width).
    - (iv) Along all paved inside and outside shoulders of interchange ramps for the full length and width of the shoulders.
    - (v) Along all pavements including mainline pavements, bridges and interchange ramps at places where foreign matter has accumulated thereon.

- (vi) Along all curbs in any of the above areas.
- (vii) Along all bridge curbs and shoulders paralleling and adjacent to the traffic lanes.
- 2.3 Quantity and Frequency of Sweeping

Begin each sweeping cycle in accordance with the Contractor's approved Work Plan. The total number and the timing of cycles will be as follows:

- SR 414, SR 429, SR 451, SR 453: Mainline: 1 complete cycle every 2 weeks
- SR 414, SR 429, SR 451, SR 453: Ramps: 1 complete cycle every 2 weeks

The actual number of sweeping cycles may be increased or decreased as directed by the Director of Maintenance. Failure to complete the work within the time frames above will result in a Liquidated Damage PF-2 (See Scope of Services 5.5) per location per day.

## 2.3.1 Emergency Response

In the event of a major accident/spill, the Contractor shall respond within 1 hour upon notification. Before leaving the accident/spill site, the Contractor shall ensure that the road surface is free of debris and any fluids that can cause an unsafe condition. Sand or any other absorbent material used in the clean-up shall be collected and deposited in an approved collection facility. Failure to complete the work per the time frame above shall result in a reduction of compensation as defined in the Scope of Services (5.3.9).

## 2.4 Equipment

2.4.1 Furnish equipment of a type and quantity to perform the work satisfactorily within the time specified herein. If in the opinion of the Director of Maintenance the Contractor has insufficient equipment on the job to satisfactorily complete the work within the required time, provide additional equipment as directed by the Director of Maintenance. The Contractor will properly maintain all safety devices at all times while the equipment is in use.

- 2.4.2 The Contractor will remove any equipment that does not meet the requirements of section 2.4.1 above until the deficiency is corrected.
- 2.4.3 Do not use equipment which damages the pavement or turf. If this occurs, fix or replace damaged areas at no cost to CFX.

- 2.4.4 All sweeping operations must comply with the FDOT Standard Plans including the Maintenance of Traffic requirements.
- 2.5 Safety

In the event that an accident occurs involving the Contractor's equipment while the equipment is being used to accomplish authorized work, no relief in responsibility for work performance will be granted to the Contractor.

- 2.6 Method of Operations
  - 2.6.1 Perform all non-emergency sweeping cycles at night beginning no earlier than 10:00 PM and completed no later than 6:00 AM, Sunday night through Thursday night unless otherwise approved in writing by the Director of Maintenance.
  - 2.6.2 Complete each sweeping cycle in its entirety prior to beginning another cycle.
  - 2.6.3 Pick up and remove from the areas to be swept, any obstacle such as wood, tires, cans, etc., that cannot be traversed by the sweeper including the area under guardrail on paved shoulders. Remove any item such as newspaper, magazines, large boxes, etc., that would be torn, ripped, scattered or further subdivided by the sweeper that will result in an objectionable appearance.
  - 2.6.4 Dispose of debris properly and in accordance with state and local rules and regulations in effect at the time of disposal.
  - 2.6.5 Load, haul and dispose of all accumulated material to an approved disposal site outside the project limits.
  - 2.6.6 Do not create excessive airborne dust or other particulates. Use equipment supplied with functioning water spray equipment normal to the industry for dust control.
  - 2.6.7 During periods of sweeping operations, consult with the Director of Maintenance for inspection and tentative approval of work quality being accomplished. In the event of unsatisfactory work, re-sweep these areas so that the total sweeping cycle may be completed in a satisfactory manner within the specified time.

- 2.6.8 Sweep around vehicles that are parked in the sweeping area. The area occupied by a parked vehicle will be considered as work accomplished.
- 2.7 Limitation of Operation
  - 2.7.1 For all sweeping operations, operate the equipment in the direction of the traffic. Comply with the FDOT Standard Plans.
  - 2.7.2 When necessary for sweeping equipment to cross the travel way, select a location that provides a minimum of 500 feet of unobstructed sight distance. The operator shall stop before crossing the travel way and permit closely approaching vehicles to pass before crossing. Plan operations to minimize crossings. U-turns are not permitted.

### 3.0 <u>Basis of Payment:</u>

Price and payment will be full compensation for all work specified in this section.

All sweeping equipment will be equipped and actively monitored with GPS tracking devices. The Contractor shall provide a GPS tracking report with each cycle invoiced that include location, coverage and speed data for each piece of sweeping equipment. Payment will be based on the information provided by the GPS records and CFX's observations a quality cycle (or portion thereof) being performed

Payment will be made under:

Item No. 107-14A Mechanical Road Sweeping of Mainline Roadways paid per Schedule of Values - Table A: Cost per Cycle

Item No. 107-14B Mechanical Road Sweeping of Ramps paid per Schedule of Values - Table A: Cost per Cycle

## END OF SECTION

## Attachment 16 REPAIR AND RESTORATION OF SLOPES, SHOULDERS AND ROADSIDE DITCHES AND CANALS

## 1.0 <u>Description</u>

Provide all labor, materials, equipment, and incidentals necessary to repair and/or restore roadway shoulders, slopes, and roadside ditches including clearing and grubbing, site preparation, hauling, grading, stabilizing, sodding, seeding and mulching, miscellaneous asphalt pavement, miscellaneous concrete ditch and slope pavement, and riprap. Finished work shall generally conform to the lines and grades shown on the original approved for construction drawings. CFX will be responsible to secure and pay for any required environmental and water management permits for the work covered under the Contract.

## 2.0 <u>Contractor Responsibilities</u>

- 2.1 Comply with both the requirements of the FDOT Standard Plans, which is hereby incorporated by reference and made a part of the Contract as if fully set forth herein.
- 2.2 Blade down high points of shoulders, slopes, and accessible ditches, and rough grade, remove, and haul unsuitable material to appropriate disposal sites provided by the Contractor. Retain material on site for use as needed. The Director of Maintenance will make a determination as to the suitability of the retained material, which may be used as either stabilizer or backfill. Dispose of all suitable surplus material or uniformly spread in areas approved by the Director of Maintenance.
- 2.3 Place suitable material in low points of shoulders, slopes, and ditches, and rough grade and mix with existing material. Furnish suitable borrow or topsoil material necessary to complete the work if sufficient material is not available on site.
- 2.4 Roll completed shoulder areas with pneumatic-tired equipment.
- 2.5 Grade site(s) to meet adjacent contours and provide flow for surface drainage. Provide and maintain all measures required for the prevention, control and abatement of erosion and water pollution.
- 2.6 Place miscellaneous asphalt pavement, miscellaneous concrete ditch and slope pavement, sod, riprap and sand-cement filler as necessary to restore area to its original constructed condition (CFX to provide Original Contract Plans upon request).
- 2.7 Use water sprinkling or other suitable method to limit the amount of dust and dirt

rising and scattering in the air to the extent practical for the conditions of the work.

- 2.8 Use flowable fill (FDOT Standard Specification 121) and/or pressure injected grout as appropriate to fill voids in bridge approaches and at other locations as necessary or requested by the Director of Maintenance.
- 2.9 Perform work in accordance with the appropriate sections of the FDOT Standard Specifications for Road and Bridge Construction and FDOT Standard Plans, current editions at Contract execution, which are hereby incorporated by reference and made a part of the Contract as if fully set forth herein. References in the incorporated sections to the Engineer shall be taken to mean the Director of Maintenance or designated representative. In case of conflicts between the Standard Specifications and these specifications, these specifications will take precedence.
- 2.10 Repair damage caused by operations to adjacent facilities. Do not use equipment that damages the pavement or turf area.
- 2.11 Leave site(s) in clean condition free from materials, rubbish, and debris. Grade site(s) to meet adjacent contours and provide flow for surface drainage.
- 2.12 When cleaning and reshaping ditches, clear wet ditches and/or canals of vegetation and reshape them to a uniform grade to provide for proper drainage; spread suitable material obtained from excavations or furnished by the Contractor; and haul surplus suitable/unsuitable material (vegetation) from site.
- 2.13 For ditch construction, construct ditches and/or canals to a uniform grade to provide for proper drainage; spread suitable material obtained from excavations or furnished by the Contractor; and haul surplus suitable/unsuitable material (vegetation) from site.
- 2.14 Install lime rock material and compact to a firm and unyielding base. Compaction will be based on visual inspection by the Director of Maintenance or authorized representative in lieu of density testing.

## 3.0. Basis of Payment:

Price and payment will be full compensation for all work specified in this section.

Payment will be made under:

Item No. 999-10-11 Roadway and Bridge Asset Maintenance Services (LS)

## END OF SECTION

## Attachment 17 DRAINAGE SYSTEM REPAIR AND CLEANING

## 1.0 <u>Description</u>

Provide all labor, materials, equipment, and incidentals necessary to perform jet/vacuuming and cleaning drainage pipe, catch basins, junction boxes, and associated grates; clean underdrains; clean ditch pavement; repair or replace skimmers with fiberglass; and adjust manholes and inlets. Perform minor repairs (replace broken frames and/or missing grates, reset frame and grate, patch spalled areas and seal cracks in structures).

## 2.0 <u>Contractor Responsibilities</u>

- 2.1 Comply with the requirements of the FDOT Standard Plans.
- 2.2 The Contractors daily road patrol shall look for any drainage inlets that are clogged or restricting the flow of stormwater into drainage system. These items when found, will be addressed on the day of discovery.
- 2.3 Perform a quarterly visual inspection of all drainage inlets and outlets within the Contract limits to ensure they are not blocked or restricting drainage system functionality. The Contractor shall provide the results of this inspection to the Director of Maintenance within 14 calendar days of completion.
- 2.4 Clean drainage systems and structures using equipment appropriate for the required cleaning operation. Unit shall be equipped with an evacuating system large enough to handle the quantity of water used to clean the systems and the resulting debris.
- 2.5 Collect all debris resulting from the cleaning process, remove from the site and dispose of properly and in accordance with state, federal, and local regulations.
- 2.6 Respond to emergency situations with sufficient resources to clear the drainage system and restore positive drainage as required. Response time to a site shall be 2 hours or less after notification. Failure to respond per the time frame above shall result in a reduction of compensation for emergency response as defined in the Scope of Services (5.3.9).
- 2.7 Perform minor repairs including sealing leaks in catch basins, junction boxes and similar structures, replace broken grates, and reset existing frames and grates.
- 2.8 Protect the general public, vegetation, structures, slopes, and roadways at all times when work is in progress.
- 2.9 Do not use equipment which damages the pavement or turf. If this occurs, repair

or replace damaged areas at no cost to CFX.

- 2.10 Completed areas of work shall be reasonably free from debris after cleaning as determined by the Director of Maintenance. Work shall be subject to periodic daily inspection. The quality and acceptance of workmanship will be determined during these inspections. Clean areas that are determined to be unacceptable at no additional cost to CFX. The Director of Maintenance will use reasonable judgment when evaluating completed work and any decision as to acceptance or rejection will be final.
- 2.11 Make necessary miscellaneous repairs to drainage system components. Repairs include, but are not limited to, repairs that are required due to damage resulting from vandalism, fire, theft, vehicular impact, or acts of God. Repairs that are required due to the negligence of the Contractor shall be repaired by the Contractor at no cost to CFX.
- 2.12 Provide drainage system materials that are equal to or better than the materials that were previously used or found in use and with 100% compatibility with existing drainage system.

## 3.0. <u>Basis of Payment:</u>

Price and payment will be full compensation for all work specified in this section.

Payment will be made under:

Item No. 999-10-11 Roadway and Bridge Asset Maintenance Services (LS)

END OF SECTION

## Attachment 18 CONCRETE REPAIRS AND JOINT SEALING

## 1.0 <u>Description</u>

Provide all labor, materials, equipment and incidentals necessary to seal joints on bridges, roadways, slope pavement, and reinforced earth retaining walls. Patch spalled areas on bridge decks, pier caps, handrails, concrete pavement and the partial or total replacement of roadway slabs.

## 2.0 <u>Contractor Responsibilities</u>

- 2.1 Protect vegetation, structures and equipment, and the general public during the time the work is underway.
- 2.2 When working over or in a travel lane, close that lane to traffic and use proper traffic control devices in accordance with the FDOT Standard Plans.
- 2.3 Joint Repairs on Bridge Decks: Furnish a Type D silicone sealant material with backer rod as required. The Type D silicone sealant material used in the system shall be Dow Corning (DOW 902 RCS) and meet the requirements of Section 932 of the FDOT Standard Specifications.
  - 2.3.1 Submit shop drawings showing all expansion joint materials including seal manufacturer, seal designation and proposed method of installation. The selected seal shall be a heavy-duty bridge seal and shall accommodate the joint size shown in accordance with the manufacturer's recommendations.
  - 2.3.2 Where applicable, accurately cut seal opening with a power saw using concrete cutting blade after existing joint material is removed. Form a joint in the new widened portion of the deck to match existing. Saw cut will be allowed.
  - 2.3.3 All joints shall be cleaned and prepped in accordance with 2.4.2 below. All seals shall be installed in conformance with the manufacturer's recommendations, including adjustments for temperature variances
  - 2.3.4 Compression seals shall be continuous from gutter to gutter on the bridge.
  - 2.3.5 Restore spalled areas of existing edge of deck slab, using approved methods and materials, before saw cutting the joint.
- 2.4 Joint Repairs on Bridge Approaches and Concrete Pavement:

- 2.4.1 Remove old joint materials or, if joint is unsealed, saw or chip, as required, prior to sealing. Sufficient depth shall be obtained to hold material below the concrete surface (2 inch minimum).
- 2.4.2 Clean joints before applying new material. The following is a basic and minimum procedure to be used to accomplish the specified work. All work performed shall comply with the manufacturer's recommended procedures and practices for the specific joint products.
  - 1. Remove all expansion joint filler material and clean the vertical faces of the existing joint throat to remove all debris and contaminants.
  - 2. Vacuum or air blast all excessive dust from the vertical faces of the existing joint throat. All faces of the joint shall be completely dry before placement of the surface conditioner and sealant.
  - 3. Apply a surface conditioner, if required by the manufacturer, to all faces of the joint throat that are to receive the sealant and allow sufficient time to dry, as specified by the manufacturer.
  - 4. Place an appropriately sized backer rod into the joint throat and cover with bond breaker.
  - 5. Mix the sealant (Dow Corning 902 RCS) in accordance with the manufacturer's recommendations and place into the joint opening. The pourable sealant shall be self-leveling and allowed to cure for the appropriate time.
- 2.4.3 Use filler or bond breaker rod, where required, prior to applying joint sealant.
- 2.4.4 Furnish a Type D silicone sealant material with backer rod as required. The Type D silicone sealant material used in the system shall be Dow Corning (DOW 902 RCS) and meet the requirements of Section 932 of the FDOT Standard Specifications.
- 2.5 Joint Repairs on Slope Pavement and Miscellaneous Concrete:

Repair procedure generally follows that specified for bridge approaches and concrete pavement in paragraph 2.4 above.

2.6 Repairs to Concrete Bridge Deck, Concrete Roadway Slabs, Pier Caps, Handrails:

- 2.6.1 Remove unsound concrete and perform repair per the manufacturer's product specifications.
- 2.6.2 Patching material shall be on the FDOT Approved Products List (APL). Place patch material and finish consistent and level with surrounding pavement, deck or other surface.
- 2.7 Removal and Disposal of Joint Materials

Remove and properly dispose of old joint material.

- 2.8 Collect all debris resulting from the work and remove from CFX right-of-way.
- 2.9 Work will be subject to periodic daily inspection. The quality and acceptance of workmanship will be determined during these inspections. Reseal areas that are determined to be unacceptable at no additional cost to CFX.

## 3.0. <u>Basis of Payment</u>:

Price and payment will be full compensation for all work specified in this section.

Payment will be made under:

Item No. 999-10-11 Roadway and Bridge Asset Maintenance Services (LS)

END OF SECTION

## Attachment 19 TREE TRIMMING AND REMOVAL

## 1.0 <u>Description</u>

1.1 Trim desired trees and brush or remove undesired trees and brush and dispose of resulting waste and debris. Perform all work meeting the requirements of recognized and approved arboriculture principles with emphasis on tree health and symmetry as set forth in "The American National Standard for Tree Care Operations – Tree, Shrub and Other Woody Plant Maintenance – Standard Practices" (ANSI A300-2014). Perform all work without damage to trees and shrubs that are intended to remain in the work area.

Prior to beginning work, report all damaged fence, fence posts and other appurtenances (i.e., sign posts and bases, delineator posts, guardrail or barrier walls, light poles, endwalls, pipes, drainage structures, poles, guys, landscape areas, etc.) to the Director of Maintenance. Replace any fence, fence post or other appurtenance found damaged after beginning work at no cost to CFX.

## 2.0 <u>Contractor's Responsibilities</u>

- 2.1 Tree trimming and removal shall be required to maintain visibility and clear obstructions from signs, lighting, roadway surveillance cameras, guardrail, fences and other roadway features. Tree trimming may be required to remove dead, decaying, dying or diseased branches or trees or as may be directed by the Director of Maintenance.
- 2.2 Use equipment designed for the performance of work described herein. Maintain equipment in good repair and operating condition at all times meeting all applicable safety requirements. Maintain safety devices at all times while the equipment is in use. Cut and trim the trees to the height and width desired using mobile, mechanical equipment capable of vertical, horizontal and angle cuts.

Do not use equipment on CFX right-of-way that damages the pavement, curbs or turf area. Repair damage resulting from work activities at no cost to CFX before resuming project activities.

2.3 Obtain any and all permits and licensing required by law during the term of this contract. Provide and distribute any announcements or written notices that may be required.

- 2.4 Trim the trees to the height and width required to clear the obstruction as directed by the Director of Maintenance. Remove all dead, dying, diseased, decaying, interfering, suckering, obstructing and weak branches. Cut and remove all branches or limbs in accordance with ANSI A300 Standards. Topping or heading back is not allowed. If the height of a tree must be reduced, all cuts will be made to strong laterals or to the parent limb. Do not cut limbs back to stubs. When practical, cuts will be made in accordance to A-300 Standards, and the natural shape and structure of the tree should be maintained.
- 2.5 Remove trees by severing and lowering to the ground suitable sized sections of limbs or trunk. Use suitable ropes, slings, guidelines and block and tackle to safely lower the severed branches and trunk sections. Cut the main trunk at or below the ground surface. Treat the stumps with an herbicide labeled for stump use. Use of soil sterilant or residual type materials will not be permitted.
- 2.6 Brush Removal: Cut and remove vegetation with multiple trunks extending from a common root-base (i.e., Brazilian pepper, myrtle, palmettos, bamboo, palms, etc.) flush with the ground surface. Remove all stumps or debris.
- 2.7 Tree and Brush Removal from Fence Lines: Cut and remove trees and brush within the right-of-way and adjacent to the fence creating a corridor measuring ten (10) feet in width and 15 feet in height. The corridor should be cut to avoid the trees marked by the Director of Maintenance not to be removed while maintaining a clear corridor to the dimensions stated above. Cut and remove trees and brush diagonally from the roadway to the right-of-way fence creating access corridors (10 feet in width and 15 feet in height at intervals of not more than (2000 feet, or as required by outfall ditches, natural drains, or other intersecting roadways, railroads, etc.
- 2.8 Stump Removal: Remove stumps (including protruding roots and debris) to a depth of (12-inches below the surface of the original ground. Provide acceptable fill material, grade and compact holes or voids created by the removal of the stumps.
- 2.9 Disposal of Debris: Dispose of all debris and waste in compliance with all local, state and federal regulations. Debris may be stockpiled in the CFX right-of-way for a period of time determined by and with the written approval of the Director of Maintenance. With the approval of the Director of Maintenance, wood chips may be evenly distributed to a depth of no more than one inch in designated areas in CFX right-of-way.
- 2.10 Quality: Ensure the work site and adjacent properties are clean and free of trimmings, stumps, roots, logs or any other debris at all times.

## 3.0. <u>Basis of Payment</u>:

Price and payment will be full compensation for all work specified in this section.

Payment will be made under:

Item No. 999-10-11 Roadway and Bridge Asset Maintenance Services (LS)

## END OF SECTION

## MEMORANDUM

TO:	CFX Board Members
FROM:	Aneth Williams Will Director of Procurement
DATE:	January 6, 2022
SUBJECT:	Approval of Contract Award to Arazoza Brothers Corporation for SR 408 and SR 417 Interchange Landscaping Project No. 408-831, Contract No. 001855

An Invitation to Bid for the above referenced project was advertised on November 1, 2021. Two (2) responses were received by the December 14, 2021 deadline.

Bid results were as follows:

### **Bidder**

1.	Arazoza Brothers Corporation
2.	Aero Groundtek, LLC

Bid Amount \$ 1,675,253.00 \$ 1,996,610.00

The engineer's estimate for this project is \$1,606,419.07. Included in the Five-Year Work Plan is \$1,929,000.00.

The work to be performed includes providing all labor, materials, equipment and incidentals necessary for landscape improvements at the SR 408 and SR 417 Interchange.

Board award of the contract to Arazoza Brothers Corporation in the amount of \$1,675,253.00 is requested.

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

1kmB

Reviewed by:

Don Budnovich, PE Director of Maintenance

Glenn Pressimone, PE

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

WWW.CFXWAY.COM



# CONTRACT



## AND

## ARAZOZA BROTHERS CORPORATION

## SR 408 SR 417 INTERCHANGE LANDSCAPING

**PROJECT NO. 408-831, CONTRACT NO. 001855** 

## CONTRACT DATE: FEBRUARY 10, 2022 CONTRACT AMOUNT: \$1,675,253.00

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

## **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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

FOR

## SR 408 SR 417 INTERCHANGE LANDSCAPING

### **PROJECT NO. 408-831, CONTRACT NO. 001855**

FEBRUARY 2022

## TABLE OF CONTENTS

Section	Title	Page
С	CONTRACT	C-1 to C-2
	Memorandum of Agreement	1 to 5
GS	GENERAL SPECIFICATIONS	1 – 129
	Attachment A	ATT-1 to ATT-9
	(See General Specifications Table of Contents for listing of indiv specifications sections.)	idual
TS	TECHNICAL SPECIFICATIONS	TS-1 to TS-2
	(See Technical Specifications Table of Contents for listing specifications sections.)	g of individual
SP	SPECIAL PROVISIONS	SP-1 to SP-2
	(See Special Provisions Table of Contents for listing of each speci	ial provision.)
	Addendum No. 1	
Р	PROPOSAL	P-1 to P-13
VR	VEHICLE REGISTRATION FORM	VR-1 to VR-2
РСВ	PUBLIC CONSTRUCTION BOND	PCB-1 to PCB-4

Plans

## CONTRACT

This Contract No. 001855 (the "Contract"), made this 10<sup>th</sup> day of February 2022, between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, hereinafter called CFX and Arazoza Brothers Corporation, of 7027 SW 87<sup>th</sup> Court, Miami, FL. 33173, 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. 408-831, SR 408 SR 417 Interchange Landscaping, as detailed in the Contract Documents and any addenda or modifications thereto. Contract time for this project shall be 820 calendar days. The Contract Amount is \$1,675,253.00. This Contract was awarded by the Governing Board of CFX at its meeting on February 10, 2022.

The Contract Documents consist of:

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

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

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

•	Director of Procurement	nt
	Director of Floculence	110
	Aneth Williams	
	Print Name	
DATE:		
	ROTHERS CORPORATION	
AKALULA B	ROTHERS CORPORATION	
By:	Signature	
	Signature	
	Print Name	
	Title	
	<b></b>	
ATTE	ST:	(Seal)
DATE	:	
Approved as t	to form and execution, only.	
rippio vou us v	to form and excedution, only.	
(	General Counsel for CFX	

Print Name

Section Name			
Section 1 - Abbr	1		
	bbreviations	1	
1.3 D	pefinitions	2	
Section 2 - Scop	e of Work	11	
2.1 Ir	ntent of Contract	11	
2.2 W	Vork Not Covered by the General Specifications	11	
2.3 A	lteration of Plans	11	
2.	3.1 General		
	3.2 Increase, Decrease or Alteration in the Work		
	3.3 Connections to Existing Pavements, Drives, and Walks		
	3.4 Differing Site Conditions		
	3.5 Changes Affecting Utilities		
	3.6 Cost Savings Initiative Proposal		
	laims by Contractor	24	
	4.1 General		
	4.2 Notice of Claim		
	4.3 Content of Written Claim		
	4.4 Action on Claim		
	4.5 Compensation for Extra Work or Delay		
	4.6 Mandatory Claim Records		
	<ul><li>4.7 Claims for Acceleration</li><li>4.8 Certificate of Claim</li></ul>		
	4.8 Certificate of Claim 4.9 Non-Recoverable Items		
	4.10 Exclusive Remedies		
	4.11 Settlement Discussions		
	4.12 Personal Liability of Public Officials		
	4.13 Auditing of Claims		
	Inforeseeable Work	31	
	ight To and Use of Materials Found at the Site of the Work	31	
	6.1 Ownership and Disposal of Existing Materials	51	
	6.2 Ornamental Trees and Shrubs		
	estoration of Right of Way	32	

Section Nam Section 3 - C	-	fWorld	<u>Page No.</u> 34	
	0111101 0	I WOIK	54	
3.1	Plans and Working Drawings			
	3.1.1	Plans and Contract Documents		
	3.1.2	CFX Plans		
	3.1.3	Alterations in the Plans		
	3.1.4	Shop Drawings		
3.2	Coord	ination of Plans and Specifications	37	
3.3	Confo	rmity of Work with Plans	38	
	3.3.1	Record Drawings		
3.4	Pre-A	ward Meeting	39	
3.5	Orders	s and Instructions	40	
	3.5.1	Observation of the Work		
	3.5.2	Examination of the Work		
	3.5.3	Communications		
3.6	Engine	eering and Layout	42	
	3.6.1	Control Points Furnished by CFX		
	3.6.2	Furnishing of Stake Material		
	3.6.3	Layout of Work		
	3.6.4	Specific Staking Requirements		
	3.6.5	Personnel, Equipment, and Record Requirements		
	3.6.6	Global Navigation Satellite Systems (GNSS) Work Plan		
	3.6.7	Payment	45	
3.7	Contra	Contractor's Supervision		
	3.7.1	Prosecution of Work		
		Contractor's Superintendent		
		Supervision for Emergencies		
	3.7.4	Worksite Traffic Supervisor		
3.8		al Inspection Requirements	47	
	3.8.1	Cooperation by Contractor		
	3.8.2	Failure of CFX to Reject Work During Construction		
	3.8.3	Failure to Remove and Renew Defective Materials and Work		
3.9		Inspection and Acceptance	48	
	3.9.1	Maintenance Until Final Acceptance		
	3.9.2	Inspection for Substantial Completion		
	3.9.3	Final Inspection		
	3.9.4	Final Acceptance		
• • • •	3.9.5	Recovery Rights Subsequent to Final Payment	10	
3.10	Audit	and Examination of Contract Records and Bid Records	49	

Section Name				
3.11	Escrow of Bid Records	51		
3.12	Prevailing Party Attorney's Fees	52		
Section 4 - C	Control of Materials	54		
4.1	Acceptance Criteria	54		
	4.1.1 General			
	4.1.2 Sampling and Testing			
	4.1.3 Certification			
	4.1.4 Warranty and Guaranty			
4.2	Designation of a Specific Product as a Criterion ("Or Equal" Clause)	55		
4.3	Source of Supply and Quality Requirements	55		
	4.3.1 Only Approved Materials to be Used			
	4.3.2 Notification of Placing Order			
	4.3.3 Approval of Source of Supply			
4.4	Inspection and Tests at Source of Supply	56		
	4.4.1 General			
	4.4.2 Cooperation by Contractor			
	4.4.3 Retest of Materials			
4.5	Storage of Materials and Samples			
	4.5.1 Method of Storage			
	4.5.2 Use of Right of Way for Storage			
	4.5.3 Responsibility for Stored Materials			
	4.5.4 Storage Facilities for Samples			
4.6	Defective Materials	57		
Section 5 - L	egal Requirements and Responsibility to the Public	59		
5.1	Laws to be Observed	59		
	5.1.1 General			
	5.1.2 Plant Quarantine Regulations			
	5.1.3 Introduction or Release of Prohibited Aquatic Plants, Plant Pest Noxious Weeds	ts or		
	5.1.4 Compliance with Federal Endangered Species Act			
	5.1.5 Occupational Safety and Health Requirements			
	5.1.6 Discovery of Unmarked Human Burial Site			
	5.1.7 Insecticides and Herbicides			
5.2	Permits and Licenses	61		
5.3	Patented Devices, Materials and Processes	61		

Section Name		Page No.	
5.4	Right of Way Furnished by CFX	62	
5.5	Sanitary Provisions		
5.6	Control of the Contractor's Equipment	62	
	5.6.1 Traffic Interference		
	5.6.2 Overloaded Equipment		
	5.6.3 Crossings		
	5.6.4 Protection from Damage by Tractor-Type Equipment		
	5.6.5 Contractor's Equipment on Bridge Structures		
	5.6.6 Posting of the Legal Gross Vehicular Weight		
5.7	Structures Over Navigable Waters	64	
	5.7.1 Compliance with Jurisdictional Regulations		
5.8	Use of Explosives	64	
5.9	Preservation of Property	64	
	5.9.1 General		
	5.9.2 Failure to Restore Damaged Property		
	5.9.3 Contractor's Use of Streets and Roads		
	5.9.4 Traffic Signs, Signal Equipment, Highway Lighting and Guardra	il	
	5.9.5 Operations Within Railroad Right of Way		
	5.9.6 Utilities		
5.10	Responsibility for Damages, Claims, etc.	69	
	5.10.1 Contractor to Provide Defense Against Claims and Suits		
	5.10.2 Guaranty of Payment for Claims		
5.11	Insurance	71	
	5.11.1 Schedule of Required Limits for Workers' Compensation,		
	General Liability and Automobile Liability		
	5.11.2 Workers' Compensation and Employer's Liability Insurance		
	5.11.3 Comprehensive General Liability Insurance		
	5.11.4 Comprehensive Automobile Liability Insurance		
	5.11.5 Umbrella/Excess Liability Insurance		
	5.11.6 Builder's Risk		
	5.11.7 Railroad Insurance		
	5.11.8 Pollution Legal Liability		
	5.11.9 Professional Liability		
5.12	Contract Bond (Public Construction Bond) Required	77	
	5.12.1 General Requirements of the Bond		
	5.12.2 Continued Acceptability of Surety		
5.13	Contractor's Responsibility for Work	77	
5.14	Opening Section of Highway to Traffic	78	
5.15	Scales for Weighing Materials	78	

Section	n Name			<u>Page No.</u>
5.15.1 Applicable Regulations				
		5.15.2	Base for Scales	
		5.15.3	Protection and Maintenance	
	5.16	Source	e of Forest Products	78
	5.17	Regula	ations of Air Pollution	78
		5.17.1	General	
		5.17.2	Dust Control	
		5.17.3	Asphalt Material	
			Asphalt Plants	
	5.18	Dredg	ing and Filling	79
	5.19	0	n Control	79
	5.20	Contra	ctor's Motor Vehicle Registration	79
	5.21		al Revenue Service Form W-9	79
	5.22	Tolls a	and Access	80
	5.23	Reque	sts for References or Performance Evaluations	80
	5.24	1	norized Aliens	80
		Public	Records	81
	5.26		tor General	82
	5.27	-	cted Vendor List	82
	5.28		minatory Vendor List	82
	5.29	Severa	-	82
	5.30		anies Pursuant to Florida Statute Sections 287.135 and 215.473	83
Section	n 6 - Pro	osecutio	on and Progress of the Work	84
	6.1	Sublet	ting or Assigning of Contract	84
	6.2		Performed by Equipment Rental Agreement	86
	6.3		ution of Work	86
			Sufficient Labor, Materials and Equipment	
			Impacts by Adjacent Projects	
		6.3.3	Submission of Preliminary, Baseline, Updated Baseline, and Two Look-Ahead Schedules	o-Week
		6.3.4	Beginning Work	
			Provisions for Convenience of the Public	
		6.3.6	Pre-Construction Conference	
	6.4	Limita	tions of Operations	87
			Night Work	
			Sequence of Operations	
			Interference with Traffic	
		6.4.4	Coordination with Other Contractors	

Section Name			<u>Page No.</u>
	6.4.5	Drainage	-
	6.4.6	Fire Hydrants	
	6.4.7	Protection of Structures	
	6.4.8	Fencing	
	6.4.9	Hazardous or Toxic Waste	
	6.4.10	Milling	
6.5		ications of Contractor's Personnel	91
6.6	~	orary Suspension of Contractor's Operations	91
	-	CFX to Suspend Contractor's Operations	
	6.6.2	Prolonged Suspensions	
		Permission to Suspend Operations	
	6.6.4	Suspension of Contractor's Operations – Holidays	
6.7	Contra	ct Time	92
	6.7.1	General	
	6.7.2	Date of Beginning of Contract Time	
	6.7.3	Adjusting Contract Time	
6.8		e of Contractor to Maintain Satisfactory Progress	94
		General	
6.9	Defaul	t and Termination of Contract	95
	6.9.1	Determination of Default	
	6.9.2	Public Interest Termination of Contract	
	6.9.3	Completion of Work by CFX	
6.10		ated Damages for Failure to Complete the Work	98
	6.10.1	Liquidated Damages for Failure to Complete the Work	
		Determination of Number of Days of Default	
		Conditions Under Which Liquidated Damages are Imposed	
	6.10.4	Right of Collection	
	6.10.5	Allowing the Contractor to Finish Work	
	6.10.6	Liability for Liquidated Damages	
6.11	Releas	e of Contractor's Responsibility	98
6.12	Recove	ery of Damages Suffered by Third Parties	98
6.13	Expres	ss Warranty	99
Section 7 - Me	easurem	nent and Payment	100
7.1	Measu	rement of Quantities	100
	7.1.1	Measurement Standards	
	7.1.2	Method of Measurements	
	7.1.3	Determination of Pay Areas	
	7.1.4	Construction Outside Authorized Limits	

Section Name			Page No.
	7.1.5	Truck Requirements	
	7.1.6	Ladders and Instrument Stands for Bridge Construction	
7.2	Scope of	of Payments	101
	7.2.1	Items Included in Payment	
	7.2.2	Non-Duplication of Payment	
7.3	Compe	nsation for Altered Quantities	101
	7.3.1	General	
	7.3.2	Payment Based on Plan Quantity	
	7.3.3	Lump Sum Quantities	
	7.3.4	Deviation from Plan Dimensions	
7.4	Force A	Account Work	104
	7.4.1	Method of Payment	
	7.4.2	Records	
	7.4.3	Preliminary Order-of-Magnitude Estimate	
7.5	Deleted	l Work	107
7.6	Partial	Payments	107
	7.6.1	General	
	7.6.2	Unsatisfactory Payment Record	
		Withholding Payment for Defective Work	
	7.6.4	Partial Payments for Delivery of Certain Materials	
	7.6.5	Certification of Payment to Subcontractors	
		Reduction of Payment for Unsatisfactory Services or Products	
7.7	Record	of Construction Materials	110
	7.7.1	General	
	7.7.2	Non-Commercial Materials	
7.8	-	ed Amounts Due Contractor	111
7.9	Accept	ance and Final Payment	111
7.10	Offsetti	ing Payments	113
Section 8 – Di	sadvanta	aged/Minority/Women Business Enterprise (D/M/WBE)	114
Pa	rticipati	on	
8.1	Genera	1	114
8.2	Disadv	antaged/Minority and Women Owned Businesses – Participation	
	Objecti	ves	115
	8.2.1	General	
	8.2.2	Definitions	
	8.2.3	Specific Requirements	
	8.2.4	Qualified Participation	
	8.2.5	Records and Reports	

## GENERAL SPECIFICATIONS

Section Name			
8.3	Subletting of Contracts - Participation Objectives	120	
Section 9 - B	inding Arbitration	121	
Section 10 –	Disputes Resolution	123	
10.1	<ul> <li>Disputes Resolution</li> <li>10.1.1 Disputes Review Board</li> <li>10.1.2 Continuance of Work During Dispute</li> <li>10.1.3 Disputes Review Board Membership</li> <li>10.1.4 Board Operations</li> <li>10.1.5 Procedure for Disputes Resolution</li> <li>10.1.6 Conduct of Disputes Hearings</li> <li>10.1.7 Compensation</li> <li>10.1.8 Three Party Agreement</li> </ul>	122	

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 multi-span box culvert is considered a bridge when the length between the extreme ends of the openings exceeds 20 feet.
- 1.3.7 **Calendar Day** Every day shown on the calendar, ending and beginning at midnight.
- 1.3.8 **CFX** The Central Florida Expressway Authority. To avoid unnecessary repetition of expressions, whenever in the General Specifications, Technical Specifications, or Special Provisions, the term "CFX" is used, it is understood that "or designated representative" is a part of the term unless specifically indicated otherwise. Such designated representative may be the "Engineer", the "CEI", the "Resident Engineer" or other individual or entity identified by CFX and defined herein.
- 1.3.9 **Construction Engineering & Inspection (CEI) Consultant** The firm employed by CFX to observe the progress and quality of the Work being performed by the Contractor.
- 1.3.10 **Consultant** The Professional Engineer or engineering firm, registered in the State of Florida, under contract to CFX to perform professional services for CFX. The Consultant may be the Engineer of Record or may provide services through and be subcontracted to the Engineer of Record.
- 1.3.11 **Contract** The written agreement between CFX and the Contractor setting forth the obligations of the parties thereto including but not limited to, the performance of the Work, the furnishing of labor and materials, and the basis of payment.
- 1.3.12 **Contract Bond** The security furnished by the Contractor and the surety as a guaranty that the Contractor shall fulfill the terms of the Contract and pay all legal debts pertaining to the construction of the project.
- 1.3.13 **Contract Claim (Claim)** A written demand submitted to CFX by the Contractor in compliance with Article 2.4 of these General Specifications seeking additional monetary compensation, time and/or other adjustments to the Contract, the entitlement or impact of which is disputed by CFX.
- 1.3.14 **Contract Documents** The Contract, addenda (which pertain to the Contract Documents), the Memorandum of Agreement, Contractor's Bid (including documentation accompanying the Bid and any post-bid documentation submitted prior to the Notice of Award), the Notice to Proceed, the Public Construction Bond, these General Specifications, the Technical Specifications, the Standard Specifications, the Contractor's certification required pursuant to Article 3.4 of these General Specifications, the Special Provisions, the Plans, any supplemental

agreements required to complete the construction of the Project and elements incorporated by reference including, but not necessarily limited to, the FDOT Standard Plans (edition per plans).

- 1.3.15 **Contract Price** The money payable by CFX to the Contractor for completion of the Work in accordance with the Contract Documents.
- 1.3.16 **Contract Time** The number of calendar days allowed for completion of the Work including authorized time extensions.
- 1.3.17 **Contractor** The person, firm, or corporation with whom CFX has entered into the Contract.
- 1.3.18 **Contractor's Engineer of Record** A Professional Engineer registered in the State of Florida, other than the Engineer of Record or his subcontracted consultant, who undertakes the design and drawing of components of the permanent structure as part of a redesign or Cost Savings Initiative Proposal, or for repair designs and details of the permanent work. The Contractor's Engineer of Record may also serve as the Specialty Engineer.

The Contractor's Engineer of Record must be an employee of a prequalified firm. The firm shall be pre-qualified in accordance with the Rules of the Department of Transportation, Chapter 14-75. Any Corporation or Partnership offering engineering services must hold a Certificate of Authorization from the Florida Department of Business and Professional Regulation.

As an alternate to being an employee of a pre-qualified firm, the Contractor's Engineer of Record may be a Department-approved Specialty Engineer. For items of the permanent work declared by to be "major" or "structural", the work performed by a Department-approved Specialty Engineer must be checked by another Department-approved Specialty Engineer. An individual Engineer may become a Department-approved Specialty Engineer if the individual meets the Professional Engineer experience requirements set forth within the individual work groups in Chapter 14-75, Rules of the Department of Transportation, Florida Administrative Code. Department-approved Specialty Engineers are listed on the State Construction Website. Department-approved Specialty Engineers will not be authorized to perform redesigns or Cost Savings Initiative Proposal designs of items fully detailed in the Plans.

- 1.3.19 **Controlling Work Items** The activity or work item on the critical path having the least amount of total float. The controlling item of work will also be referred to as a Critical Activity.
- 1.3.20 **Culverts** Any structure not classified as a bridge, which provides an opening under the roadway.

- 1.3.21 **Delay** With the exception of the items listed in Subarticle 6.7.3.1 of these General Specifications, any unanticipated event, action, force or factor which extends the Contractor's time of performance of any critical path activity under the Contract. The term delay is intended to cover all such events, actions, forces or factors, whether styled "delay", "disruption", "interference", "impedance", "hindrance" or otherwise, which are beyond the control of and not caused by the Contractor or Contractor's subcontractors, materialmen, suppliers, or other agents. This term does not include Extra Work.
- 1.3.22 **Director of Construction** Director of Construction, Central Florida Expressway Authority, acting directly or through an authorized representative.
- 1.3.23 **Engineer** The term as may be used in various documents is understood to mean CFX or designated representative.
- 1.3.24 **Engineer of Record** The professional engineer or engineering firm, contracted by CFX and registered in the State of Florida, who develops criteria and concept for the Project, performs the analysis and is responsible for the preparation of the plans and specifications.
- 1.3.25 **Equipment** The machinery and equipment, together with the necessary supplies for upkeep and maintenance thereof, the tools and all other apparatus necessary for the construction and acceptable completion of the Work.
- 1.3.26 **Executive Director** Executive Director, Central Florida Expressway Authority, acting directly or through an assistant or other representative authorized by him; the chief officer of the Central Florida Expressway Authority
- 1.3.27 **Extra Work** Any Work which is required by CFX to be performed and which is not otherwise covered or included in the project by the existing Contract Documents, whether it be in the nature of additional work, altered work, deleted work, work due to differing site conditions or otherwise. This term does not include a "delay."
- 1.3.28 **Federal, State, and Local Rules and Regulations -** The term "Federal, State and Local Rules and Regulations" includes: any and all Federal, State, and Local laws, bylaws, ordinances, rules, regulations, orders, permits, or decrees including environmental laws, rules, regulations, and permits.
- 1.3.29 **Force Account** Work authorized by CFX and performed in addition to that set forth in the original Contract and is paid on an actual cost basis plus a fixed percent markup and stipulated rental rates for equipment. All costs paid under Force Account will be fully documented and signed by both parties not later than the following work day.

- 1.3.30 **Highway, Street, or Road** A general term denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way.
- 1.3.31 **Holidays** Martin Luther King, Jr. Day; Memorial Day; the Saturday and Sunday immediately preceding Memorial Day; Independence Day; Independence Day (Observed); Labor Day; the Friday, Saturday, and Sunday immediately preceding Labor Day; Veterans Day (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:

1 able 2.3.2.1
----------------

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

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

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

(1) A listing of on-site clerical staff, supervisory personnel and their pro-rated time assigned to the Contract,

(2) Actual Rate for items listed in Table 2.3.2.1,

(3) Existence of employee benefit plan for Holiday, Sick and Vacation benefits and a Retirement Plan, and,

(4) Payment of Per Diem is a company practice for instances when compensation for Per Diem is requested.

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

(b) Materials and Supplies: For materials accepted by the CEI and used on the project, the Contractor will receive the actual cost of such materials incorporated into the work, including Contractor paid transportation charges (exclusive of equipment as hereinafter set forth). For supplies reasonably needed for performing the work, the Contractor will receive the actual cost of such supplies.

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

Allowable Equipment Rates will be established as set out below:

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

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

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

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

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

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

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

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

(i) Bond: The Contractor will receive compensation for any premium for acquiring a bond for such additional or unforeseen work at the original contract bond rate paid by the Contractor. Should the Contractor have previously elected to provide subguard coverage in lieu of requiring a bond from a sub on the original work, the Contractor shall be entitled to reimbursement for the subguard premium for the added work upon proof of said premium.

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

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

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

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. 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, both. 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 rightof-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.

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 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'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 cost of uncovering and/or removal to the unacceptable Work. If the exposed or examined Work is determined to be acceptable, the cost of uncovering and replacement of the covering or making good of the parts removed is determined to be acceptable, the cost of uncovering and/or removal and replacement of the covering or making good of the parts removed is determined to be acceptable.

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 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 offproject activity in conjunction with the Project (e.g., borrow pits, concrete or asphalt plant sites, material or Equipment storage sites), the Contractor shall certify to CFX that the Contractor has made, through the use of a qualified environmental scientist, such investigations as may be necessary to comply with the Federal Endangered Species Act. The Contractor shall immediately notify CFX if the Contractor's investigation reveals the need for a biological assessment to determine what measures, if any, are necessary to mitigate the impact on endangered species. The cost for any required biological assessment or subsequent measures required to mitigate the impact on endangered species shall be solely at the Contractor's expense.

No Work shall be performed on site preparation for any off-project activity until CFX receives the Contractor's certification.

5.1.5 Occupational Safety and Health Requirements: The Contractor shall take precautions necessary for the protection of life, health and general occupational welfare of all persons (including employees of both the Contractor, CFX and all of its officers, agents and consultants) until the Work has been completed and accepted by CFX.

The Contractor and all Subcontractors shall not allow any person employed in performance of the Work to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to health or safety, as determined under the safety and health standards, set forth in Title 29, Code of Federal Regulations, Part 1518 published in the Federal Register on April 17, 1971, as promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act, (83 Stat. 96) including any subsequent revisions and updates.

- 5.1.6 Discovery of Unmarked Human Burial Site: The Contractor shall notify the CEI within two hours of the Contractor's or subcontractor's discovery of an unmarked human burial site. All Contractor or subcontractor activity that may disturb the site shall cease immediately upon discovery of the site. The Contractor shall not resume activity at the burial site until written authorization is received from the CEI.
- 5.1.7 Insecticides and Herbicides: Contractor shall contact the Local County Extension Office for a list of approved Insecticides or Herbicides. Contractor shall: adhere to all labeling instructions; exercise extreme caution to prevent damage to vegetation adjacent to the treated area; and replace any damage as the result of these Materials being applied outside the designated treatment area at no expense to CFX.

### 5.2 Permits and Licenses

- 5.2.1 General: Except as specifically provided for elsewhere in the Specifications, the Contractor shall secure all permits and licenses and give all notices necessary and incidental to the due and lawful prosecution of the Work. The Contractor shall pay all charges and fees for any required licenses and permits.
- 5.2.2 Whenever the Work under or incidental to the Project requires structures and/or dredge/fill/construction activities within the Project limits in waters of the State, CFX will obtain the necessary permits. Any modifications or revisions to an original permit will also be obtained by CFX provided that it is shown that such modifications or revisions are required to complete the construction operations specifically called for in the Plans or Specifications and within the right-of-way limits.

The Contractor shall be responsible to obtain any permits that may be required for Work performed by the Contractor outside the right-of-way or easements for the Project.

In performing the Work, when under the jurisdiction of any environmental regulatory agency, the Contractor shall comply with all regulations issued by such agencies and with all general, special and particular conditions relating to construction activities of any kind and all permits issued to CFX as though such conditions were issued to the Contractor. The Contractor will be responsible for posting any permit placards in a protected location at the worksite.

In case of any discrepancy between any permit condition and a requirement of the Plans or Specifications, the permit condition shall prevail.

If the permit conditions require Work or the furnishing of Materials not specifically provided for in the basis of payment clause for a pay item, such Work or furnishing of Materials will be considered unforeseeable Work by CFX and the Contractor will be compensated in accordance with Article 2.5 of these General Specifications. Special sequencing or scheduling of operations that may be required by permit conditions will not be considered unforeseeable Work by CFX and no additional compensation will be made to the Contractor.

# 5.3 Patented Devices, Materials and Processes

Payments to the Contractor are understood to include all royalties and costs arising from patents, trademarks and copyrights in any way involved with the Work. Whenever the Contractor is required or desires to use any design, device, material or process covered by letters of patent, trademark, trade secret or copyright, CFX's and the Contractor's right for

such use shall be provided by suitable legal agreement with the patentee or owner of the copyright. A copy of such agreement shall be submitted to CFX; however, whether or not such agreement is made or filed, the Contractor and its surety, in all cases, shall indemnify and hold harmless CFX and all of its officers, agents, consultants and employees, from any and all claims for infringement by reason of the use of any such patented design, device, material or process, on the Work and shall indemnify CFX and all of its officers, agents, consultants and employees for any costs, expenses and damages which CFX may be obligated to pay by reason of any such infringement, at any time during the Work and for a period of three years after completion and acceptance of the Project by CFX.

5.4 Right-of-Way Furnished by CFX

Except as may be otherwise stipulated in the Specifications or as may be shown on the Plans, all right-of-way necessary for completion of the Project will be furnished by CFX without cost to the Contractor. If borrow material areas furnished by CFX contain limerock, such material shall not be removed from the pit without specific written approval from CFX.

5.5 Sanitary Provisions

The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of Contractor's employees as are necessary to comply with the requirements and regulations of the State and local boards of health. The Contractor shall not create any public nuisance.

- 5.6 Control of the Contractor's Equipment
  - 5.6.1 Traffic Interference: Contractor shall not permit Equipment to unreasonably interfere with traffic while the Equipment is on or traversing a road or street.
  - 5.6.2 Overloaded Equipment: Any hauling unit or Equipment loaded in excess of the maximum weights set out in the Florida Uniform Traffic Control Law (or lower weights that may be legally established for any section of road or bridge by the FDOT or local authorities) shall not be operated on any road or street except as provided in subarticle 5.6.3 below for crossings or as provided by a special permit issued by the governmental unit having jurisdiction over a particular road or bridge. This restriction applies to all roads and bridges inside and outside the Project limits as long as these roads and bridges are open for public use. Roads and bridges, which are to be demolished, may be overloaded after they are permanently closed to the public. All liability for loss or damages resulting from Equipment operated on a structure permanently closed to the public shall be the responsibility of the Contractor.

- 5.6.3 Crossings: Where it is necessary to cross an existing road, including specifically the existing travel lanes of a divided highway within the limits of the Project, the Contractor shall obtain the necessary permits from the governmental unit having jurisdiction. The Contractor shall comply with all permit conditions at no additional cost to CFX. The Contractor will be required to provide flagging and watchman service or approved signal devices, for the protection of traffic at all such crossings, in accordance with an approved written plan for that activity.
- 5.6.4 Protection from Damage by Tractor-Type Equipment: Positive measures shall be taken by the Contractor to assure that tractor-type Equipment does not cause damage to roads. If any such damage occurs, the Contractor shall immediately repair the damage to the satisfaction of the governmental unit having jurisdiction over the road and at no cost to CFX.
- 5.6.5 Contractor's Equipment on Bridge Structures: The Contractor, through its Specialty Engineer, shall analyze the effect of imposed loads on bridge structures, within the limits of the Project, resulting from the following operations:
  - 1) Overloaded Equipment as defined in subarticle 5.6.2 above:
    - a) Operating on or crossing over completed bridge structures.
    - b) Operating on or crossing over partially completed bridge structures.
  - 2) Equipment within legal load limits:
    - a) Operating on or crossing over partially completed bridge structures.
  - 3) Construction cranes:
    - a) Operating on completed bridge structures.
    - b) Operating on partially completed bridge structures.

Any pipe culvert or box culvert qualifying as a bridge, as defined under subarticle 1.3.3 of these General Specifications is excluded from the above requirements.

A completed bridge structure is a structure in which all elemental components comprising the load carrying assembly have been completed, assembled and connected in their final position. The components to be considered shall also include any related mediums transferring load to any bridge structure.

The Contractor shall determine the effect the Equipment loads have on the bridge structure and the procedures by which the loaded Equipment can be used without exceeding the load capacity for which the structure was designed.

The Contractor shall submit to the CEI for approval eight (8) copies of design calculations, layout drawings and erection drawings showing how the Contractor's Equipment will be used so that the bridge structure will not be overstressed. One (1) of the eight (8) copies of the drawings and the cover sheet of one (1) of the eight (8) copies of the calculations shall be signed and sealed by the Contractor's Specialty Engineer as the CFX record set.

- 5.6.6 Posting of the Legal Gross Vehicular Weight: The maximum legal gross weight, as set out in the Florida Uniform Traffic Code, shall be displayed in a permanent manner on each side of any dump truck or any dump type tractor-trailer unit hauling embankment material, construction aggregates, road base material or hot bituminous mixture to the Project over any public road. The weight shall be displayed in a location clearly visible to the scale operator, in numbers that contrast in color with the background and are readily visible and readable from a distance of 50 feet.
- 5.7 Structures Over Navigable Waters
  - 5.7.1 Compliance with Jurisdictional Regulations: Where structures are erected in, adjacent to or over navigable waters, the Contractor shall observe all regulations and instructions of jurisdictions having control over such waters. The Contractor shall not obstruct navigation channels without permission from the proper authority and shall provide and maintain navigation lights and signals in accordance with jurisdictional requirements.
- 5.8 Use of Explosives

The use of explosives will not be allowed.

- 5.9 Preservation of Property
  - 5.9.1 General: The Contractor shall preserve from damage all property along the line of Work or which is in the vicinity of or is any way affected by the Work, the removal or destruction of which is not called for by the Plans. This requirement shall apply to public and private property, public and private utilities (except as modified by subarticle 5.9.6 below), trees, shrubs, crops, signs, monuments, fences, guardrail, pipe, underground structures, public highways (except natural wear and tear of highway resulting from legitimate use thereof by the Contractor) and the like. Property damaged due to the activities of the Contractor shall be immediately restored, at Contractor's expense, to a condition similar or equal to that existing before such damage or injury was done by the Contractor.

The Contractor shall protect existing bridges from damage caused by Contractor's operations during the entire construction period. The Contractor will not be required to provide routine repairs or maintenance for such structures but will be required, at Contractor's expense, to make immediate repairs of any damage caused by the Contractor's operations.

The Contractor shall protect all geodetic monuments, horizontal or vertical, located within the limits of construction.

- 5.9.2 Failure to Restore Damaged Property: If the Contractor fails to restore such property, bridge or road CFX may, at its sole option and with 48 hours notice to the Contractor, proceed to repair, rebuild or otherwise restore the damaged property, bridge or road at Contractor's cost or expense. The cost of such repairs will be deducted by CFX from any monies due or which may become due the Contractor.
- 5.9.3 Contractor's Use of Streets and Roads

5.9.3.1 On Systems Other than the CFX System: Where the Contractor hauls material or Equipment to the Project over roads and bridges on the state park road system, state highway system, county road system or city street system and such hauling causes damage, the Contractor, at Contractor's cost and expense, shall immediately repair such roads or bridges to as good a condition as existed before the hauling began.

5.9.3.2 On the CFX System: The Contractor shall also be responsible for repairing damage caused by hauling Materials to the Project along roads and bridges outside the limits of the Project which are on the CFX system (roads

under the jurisdiction of CFX) or are specifically designated in the Plans as haul roads from CFX furnished Materials pits.

5.9.3.3 Within the Limits of the Project: The Contractor shall not operate Equipment or hauling units of such weight as to cause damage to previously constructed elements of the Project including but not necessarily limited to, bridges, drainage structures, base course and pavement. Equipment or hauling units loaded in excess of the maximum weights set out in subarticle 5.6.2 above shall not be operated on existing pavements that are to remain in place (including pavement being resurfaced), cement-treated subgrades and bases, concrete pavement, any course of asphalt pavement and bridges. Exceptions to these weight restrictions may be allowed for movement of necessary Equipment to and from its work site, for hauling of offsite fabricated components to be incorporated into the Project and for crossings as detailed in subarticle 5.6.3 above.

5.9.3.4 Cleaning and Maintenance of Streets and Roads: Whenever the Contractor utilizes any streets or roads, whether on the CFX system or otherwise, for cyclical material hauling operations, for example embankment, excavation, etc., the condition of all affected streets or roads will be assessed by the Contractor through an initial video survey with the CEI prior to hauling operations. Throughout the hauling operations or when changes to haul routes occur, the Contractor shall provide updated video surveys performed every two weeks to monitor the current street, road and/or facility conditions. The video survey will be submitted in duplicate to the CEI and narrated to identify the respective street, road or facility, with detail of specific features, condition, etc. Any deterioration, whatsoever, to the condition of the streets or roads from this initial video survey and subsequent two-week updates will be viewed as being a result of the Contractor's operations and shall be repaired to equal or better condition, at the Contractor's expense, within two weeks after notification by the CEI. The Contractor will be responsible to prevent, clean and replace areas of the travel ways and appurtenances (including but not limited to bridge decks, drainage, roadway surface, striping) utilized by the Contractor where tracking and/or spillage of materials have occurred. Cleaning and preventive measures that will not deteriorate the existing facility conditions will be utilized and may include pressure washing, sanding etc.

5.9.4 Traffic Signs, Signal Equipment, Highway Lighting, and Guardrail: Contractor shall protect all existing roadside signs, signal equipment, highway lighting and guardrail, for which permanent removal is not indicated, against damage or displacement. Whenever such signs, signal equipment, highway lighting or guardrail lie within the limits of construction, or wherever so directed by the CEI due to urgency of construction operations, take up and properly store the existing roadside signs, signal equipment, highway lighting and guardrail and subsequently reset them at their original locations or, in the case of widened pavement or roadbed, at locations designated by the CEI.

If CFX determines that damage to such existing or permanent installations of traffic signs, signal equipment, highway lighting or guardrail is caused by a third party(ies), and is not otherwise due to any fault or activities of the Contractor, CFX will, except for any damage resulting from vandalism, compensate the Contractor for the costs associated with the repairs. Contractor shall repair damage caused by vandalism at no expense to CFX.

5.9.5 Operations Within Railroad Right of Way

5.9.5.1 Notification to the Railroad Company: The Contractor shall notify the CEI and the railroad company's division engineer or superintendent a minimum of 72 hours in advance of beginning any operations within the limits of the railroad right of

way, any operations requiring movement of employees, trucks or other Equipment across the tracks of the railroad company at other than established public crossings, and any other Work which may affect railroad operations or property.

5.9.5.2 Contractor's Responsibilities: The Contractor shall comply with the requirements that the railroad company's division engineer or superintendent considers necessary to safeguard the railroad's property and operations. Any damage, delay or injury and any suits, actions or claims made because of damages or injuries resulting from the Contractor's operations within or adjacent to railroad right of way shall be the Contractor's responsibility.

5.9.5.3 Watchman or Flagging Services: When protective services are necessary during certain periods of the Project to provide safety for railroad operations, the railroad company will provide such services (watchman or flagging) and CFX will reimburse the railroad company for the cost thereof. The Contractor shall schedule Work that affects railroad operations to minimize the need for protective services by the railroad company.

### 5.9.6 Utilities

5.9.6.1 Arrangements for Protection or Adjustment: Work shall not commence at points where the Contractor's operations adjacent to utility facilities may result in expense, loss or disruption of service to the public or owners of the utilities until the Contractor has made all arrangements necessary for the protection of the utilities. The Contractor shall be solely and directly responsible to the owners and operators of such utilities for any damage, injury, expense, loss, inconvenience, or delay caused by the Contractor's operations.

CFX will make the necessary arrangements with the utilities owners for removal or adjustment of utilities where such removal or adjustment is determined by CFX to be essential to the performance of the Work. Relocations or adjustments requested by the Contractor based on the Contractor's proposed use of a particular method of construction or type of Equipment will not be considered as being essential to the Work if other commonly used methods and Equipment could be used without the necessity of relocating or adjusting the utility. CFX will determine the responsibility for any such required adjustments of utilities. Relocations or adjustments requested because of delivery to the Project of Materials furnished by the Contractor shall be the responsibility and expense of the Contractor.

Circumstance under which CFX will consider utility relocations or adjustments essential include, but are not necessarily limited to, the following:

1) Utilities lying within the vertical and horizontal construction limits plus the reasonably required working room necessary for operation of

Equipment normally used for the particular type of construction except as provide in subparagraph 4 below. In the case of overhead electrical conductors which carry more than 400 volts, a minimum of 10 feet clearance between the conductor and the nearest possible approach of any part of the Equipment will be required, except where the utility owner effects safeguards approved by the Florida Department of Labor and Employment Security.

2) Utilities lying within the horizontal limits of the Project and within 12 inches below the ground surface or the excavation surface on which the construction Equipment is to be operated or within 12 inches below the bottom of any stabilizing course called for on the Plans.

3) Utilities lying within the normal limits of excavation for underground drainage facilities or other structures (except as provided in subparagraph 4 below). Such normal limits shall extend to side slopes along the angle of repose as established by sound engineering practice, unless the Plans or Specifications require the sides of the excavation to be supported by sheeting or the Contractor elects to sheet such excavation for the Contractor's convenience.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 5.11 Insurance

Anything contained herein to the contrary notwithstanding, during the term of the Contract and for such additional time as may be further required, the Contractor shall provide, pay for and maintain in full force and effect insurance outlined in subarticles 5.11.1 through 5.11.9 below for coverage at not less than the prescribed minimum limits of liability, covering the Contractor's activities and those of any and all subcontractors (including officers, directors, employees or agents of each and their successors). All insurance shall be provided through companies authorized to do business in the State of Florida and considered acceptable by CFX.

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

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

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

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

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

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

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

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

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

Contract Amount	-	General Liability	Automobile
	Employer's Liability	(per occurrence/ aggregate)	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.

Contract Amount	Minimum Limit	Maximum Deductible
Up to \$1 million		10% of project cost or \$25,000, whichever is smaller
\$1 million and Up	\$1,000,000	\$100,000

# 5.12 Contract Bond (Public Construction Bond) Required

- 5.12.1 General Requirements of the Bond: The Contractor shall furnish to CFX and shall maintain in effect throughout the term of the Contract, an acceptable surety bond in a sum equal to the amount of the Contract. This bond shall remain in effect until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. Such bond shall be executed on the form furnished by CFX. The surety shall meet all requirements of the laws of Florida and shall be approved and at all times acceptable to CFX. The name, address and telephone number of the surety agent shall be clearly stated on the face of the Public Construction Bond.
- 5.12.2 Continued Acceptability of Surety: In the event that the surety executing the bond (although acceptable to CFX at the time of execution of the Contract) subsequently becomes insolvent or bankrupt or becomes unreliable or otherwise unsatisfactory due to any cause which becomes apparent after CFX's initial approval of the company, then CFX may require that the Contractor immediately replace the surety bond with a similar bond drawn on a surety company which is reliable and acceptable to CFX. In such event, all costs of the premium for the new bond, after deducting any amounts that might be returned to the Contractor from its payment of premium on the defaulting bond, will be borne by CFX.
- 5.13 Contractor's Responsibility for Work

Until final acceptance by CFX, the Work shall be under the charge and custody of the Contractor. The Contractor shall take every necessary precaution against injury or damage to the Work by the action of the elements or from any other cause whatsoever arising either from the execution or non-execution of the Work and shall rebuild, repair, restore and make good, without additional compensation, all injury or damage to any portion of the Work including extensive or catastrophic damages.

The Contractor is advised that the project is located within a hurricane region. The Contractor shall submit to CFX at the project Preconstruction Conference, a hurricane preparedness plan detailing the procedures to be followed by the Contractor to ensure the safety of personnel, equipment, stored materials, and the Work when a hurricane watch notice for the project area is issued by the United States Weather Service.

The Contractor will not be held responsible for damage to any landscape items caused by an officially declared hurricane that occurs after the final acceptance of the entire Work but during any remaining portion of the 90-day establishment period.

5.14 Opening Section of Highway to Traffic

When any bridge or section of roadway is, in the opinion of CFX, acceptable for travel, CFX may direct that the bridge or roadway be opened to traffic. Such opening shall not be considered, in any way, to be an acceptance of the bridge or roadway or any part thereof or as a waiver of any provision of the Contract. The Contractor shall make all repairs or renewals due to defective Work or Materials (or for any cause other than ordinary wear and tear) on such opened sections without additional compensation.

- 5.15 Scales for Weighing Materials
  - 5.15.1 Applicable Regulations: Prior to the use of any scales, the Contractor shall submit to the CEI a copy of a certificate of accuracy for the scales that is not more than 1 year old. All scales which are used for the determination of the weight of Materials upon which compensation will be made by CFX shall conform to the requirements of Chapter 531, Florida Statutes, pertaining to specifications, tolerances and regulations as administered by the Bureau of Weights and Measures of the Florida Department of Agriculture. CFX reserves the right to perform scale checks/inspections at its sole discretion.
  - 5.15.2 Base for Scales: Such scales shall be placed on a substantial horizontal base that will assure proper support, rigidity and maintenance of level of the scales.
  - 5.15.3 Protection and Maintenance: All scale parts shall be in proper condition as to level and vertical alignment and shall be fully protected against contamination by dust, dirt and other matter which might affect operation of the parts.
- 5.16 Source of Forest Products

As required by Section 255.20, Florida Statutes, all timber, timber piling or other forest products which are used in the construction of the Project shall be produced and manufactured in the State of Florida, price and quality being equal and provided such Materials produced and manufactured in Florida are available.

- 5.17 Regulations of Air Pollution
  - 5.17.1 General: All Work shall be done in accordance with all Federal, State and local laws and regulations regarding air pollution and burning.
  - 5.17.2 Dust Control: The Contractor shall ensure that excessive dust is not transported beyond the limits of construction in populated areas. Dust control for embankment or other cleared or unsurfaced areas may be by application of water or calcium

chloride, as directed by CFX. Any use of calcium chloride shall be in accordance with Section 102 of the Technical Specifications. When included in the Plans, mulch, seed, sod or temporary paving shall be installed as early as practical. Dust control for storage and handling of dusty materials may be made by wetting, covering or other means as approved by the CEI.

- 5.17.3 Asphalt Material: Any asphalt used shall be emulsified asphalt unless otherwise stated in the Plans and allowed by Chapter 17-2 of the Rules and Regulations of the Florida Department of Environmental Protection. Asphalt materials and components shall be stored and handled to minimize unnecessary release of hydrocarbon vapors.
- 5.17.4 Asphalt Plants: The operation and maintenance of asphalt plants shall be in accordance with Chapter 17-2 of the Rules and Regulations of the Florida Department of Environmental Protection. A valid permit as required under Chapter 17-2 shall be available at the plant site prior to the start of Work.

# 5.18 Dredging and Filling

If required by the Work, the Contractor shall comply with Section 370.033, Florida Statutes, regarding obtaining a certificate of registration from the Florida Department of Environmental Protection and keeping accurate records and logs of all dredge and fill activities.

5.19 Erosion Control

This Project will be constructed on properties that may be subject to environmental permits and regulation promulgated by city, county, state, federal, and regional authorities. Requirements for erosion control are included in the Technical Specifications.

5.20 Contractor's Motor Vehicle Registration

The Contractor shall provide proof to CFX that all motor vehicles operated or caused to be operated by the Contractor are registered in compliance with Chapter 320, Florida Statutes. Such proof of registration shall be submitted in the form of a notarized affidavit to CFX. No payment will be made to the Contractor until the required proof of registration is on file with CFX.

5.21 Internal Revenue Service Form W-9

The Contractor shall complete and return with the executed Contract, Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification.

#### 5.22 Tolls and Access

The Contractor shall pay all tolls incurred from using CFX's Expressway System to transport personnel, equipment, or materials to and from the site of Work. Any costs incurred by the Contractor in payment of tolls shall be considered incidental and included in associated items. The term "equipment" in this context includes loaders, graders and similar self-propelled equipment, operating under their own power, passing through a toll plaza.

Contractor shall access the Project by existing expressway ramps. No access will be allowed through the right-of-way fence.

#### 5.23 Requests for References or Performance Evaluations

In the event CFX at any time receives any direct or third party inquiry or request concerning the Contractor, its employees or sub-contractors, or the performance of the Contractor, its employees or sub-contractors under this Contract, CFX, at any time and in all cases, may, but shall not be obligated to respond to any such inquiry or request, with or without notice to the Contractor, its employees, or subcontractors, as the case may be, but, in all cases, such response shall be limited to: (1) acknowledging that the Contractor has, or in the past has had, a contract with CFX; (2) the date, term and type of such contract; (3) whether a specified employee or subcontractor worked on the Contract, and if so, in what capacity; (4) whether such contract was terminated early for any reason other than the convenience of CFX; (5) whether such contract was eligible for renewal or extension; and, (6) if such contract was eligible for renewal or extension, whether in fact such contract was renewed or extended. Should the Contractor, its employees, its agents or subcontractors request that any further information be provided in response to such an inquiry or request, such additional information may be provided by CFX, in its sole discretion. Contractor for itself, its employees, its agents and sub-contractors, hereby expressly waives any and all claims of whatever kind or nature that the Contractor, its employees, its agents or sub-contractors may have, or may hereafter acquire, against CFX relating to, or arising out of CFX's response to any and all requests or inquiries concerning the Contractor, its employees or subcontractors under this Contract, or the performance of the Contractor, its employees or subcontractors under this Contract.

#### 5.24 Unauthorized Aliens

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

### 5.25 Public Records

# IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (407-690-5000, <u>publicrecords@CFXWay.com</u>, 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 keeps and maintains public records upon completion of the contract, 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 of false certification was made in error then CFX shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes and as allowed by law.

END OF SECTION 5

#### SECTION 6 - PROSECUTION AND PROGRESS OF THE WORK

#### 6.1 Subletting or Assigning of Contract

6.1.1 The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof or of Contractor's right, title or interest therein, without consent of CFX. The Contractor will be permitted to sublet a portion of the Work but shall perform, with its own organization, Work amounting to not less than 50% of the total Contract amount less the total amount for those Contract items specifically designated as "Specialty Work" below or as otherwise designated as Specialty Work by CFX. The granting or denying of consent under this provision is at CFX's sole discretion. The Certification of Sublet Work request will be deemed acceptable by CFX, for purposes of CFX's consent, unless the Engineer notifies the Contractor within 5 business days of receipt of the Certification of Sublet Work that CFX is not consenting to the requested subletting. If, at any time, a subcontractor is determined to be discriminatory, debarred or suspended by the FHWA, CFX or FDOT, the determination will be considered grounds for removal from the project.

The total Contract amount shall include the cost of Materials, manufactured component products and their transportation to the Project site. Off-site commercial production of Materials and manufactured component products purchased by the Contractor and their transportation to the Project will not be considered subcontracted Work.

If a part of a Contract item is sublet, only its proportional cost will be used in determining the percentage of subcontracted normal Work.

All subcontracts entered into by the Contractor shall be in writing and shall contain all pertinent provisions and applicable requirements of the Contract. All subcontracts shall require subcontractor to indemnify and hold harmless CFX on the same terms as contained in the General Specifications and the Contract. The Contractor shall furnish CFX with a copy of any subcontract requested by CFX. Subletting of Work shall not relieve the Contractor or surety of their respective liabilities.

The Contractor shall ensure that all Subcontractors are competent, careful and reliable. The Contractor shall submit the names and qualifications of all first and second tier subcontractors to CFX for approval prior to their beginning Work on the Project. All first and second tier subcontractors shall have the skills and experience necessary to properly perform the Work assigned and as required by the plans and specifications.

If, in the opinion of CFX, any Subcontractor employed by the Contractor is not qualified to perform the Work or is insubordinate, disorderly, disrupts or is detrimental to the progress of the Work, such first or second tier subcontractor shall be immediately removed from the Project by the Contractor upon written direction

from CFX. Such subcontractor shall not be employed again on the Project without the written permission of CFX. If the Contractor fails to immediately remove such subcontractor, CFX may, at its sole discretion, withhold payments due or which may become due, or may suspend the Work until the subcontractor is removed. The Contractor shall indemnify and hold harmless CFX, its agents, consultants, officials and employees from any and all claims, actions or suits arising from such removal, discharge or suspension of a Subcontractor based on the direction of CFX. All subcontracts shall expressly include an acknowledgment of CFX's right to remove any Subcontractor in accordance with this paragraph.

A Subcontractor shall be recognized only in the capacity of an employee or agent of the Contractor.

If the aggregate total of the dollar amount of Work performed by a subcontractor, including equipment rental agreements, equals or exceeds \$20,000, a formal subcontract agreement shall be entered into between the Contractor and the Subcontractor.

6.1.2 Specialty Work: The following Work is designated as Specialty Work:

Auxiliary Power Unit Cleaning, Coating, Injection, Grouting, Grinding, Grooving or Sealing Concrete Surfaces Deep Well Installation **Electrical Work** Fencing **Highway Lighting** Installing Pipe or Pipe Liner by Jacking and Boring Installing Structural Plate Pipe Structure Landscaping Painting Plugging Water Wells **Pressure Grouting** Pumping Equipment Roadway Signing and Pavement Marking Riprap **Removal of Buildings Rumble Strips** Sealing Wells by Injection Septic Tank and Disposal System Signalization Utility Works Vehicular Impact Attenuator Water and Sewage Treatment Systems

#### 6.2 Work Performed by Equipment Rental Agreement

The limitations set forth in 6.1, regarding the amount of Work that may be subcontracted, do not apply to Work performed by Equipment rental agreements. The Contractor shall notify CFX, in writing, if the Contractor intends to perform any Work through an Equipment rental agreement. The notification shall be submitted to CFX before any rental Equipment is used on the Project. The notification shall include a list of the Equipment being rented, the Work to be performed by the Equipment and whether the rental includes an Equipment operator. Notification to CFX will not be required for Equipment being rented (without operators) from an Equipment dealer or from a firm whose principle business is renting or leasing Equipment.

#### 6.3 Prosecution of Work

- 6.3.1 Sufficient Labor, Materials and Equipment: The Contractor shall provide sufficient labor, Materials and Equipment to ensure the completion of the Work no later than the Contract completion date.
- 6.3.2 Impacts by Adjacent Projects: When there is a potential impact between two or more projects due to close proximity or due to logistics in moving labor, Materials, and Equipment between projects, all authorized representatives of the parties performing the projects have a responsibility to communicate and coordinate their work so that impacts to either party are eliminated or mitigated and do not endanger, delay, or create additional work or costs to either party. The Contractor shall not be compensated for any additional costs or delays so incurred by either party.
- 6.3.3 Submission of Working Schedule: Within 21 calendar days after award of the Contract, or at the preconstruction conference, whichever is earlier, the Contractor shall submit a work progress schedule to CFX. The schedule shall show the various activities of work in sufficient detail to demonstrate that the Contractor has a reasonable and workable plan to complete the project within the Contract time allowed. The schedule shall show the order and interdependence of activities and the sequence in which the work will be accomplished as planned by the Contractor. All activities shall be described so that the work is readily identifiable and the progress on each activity can be readily measured. Each activity shall show a beginning work date, a duration, and a monetary value. Activities shall include procurement time for materials, plant and equipment, and review time for shop drawings where they are appropriate and essential to the timely completion of the project. The list of activities shall include milestones when required by the plans or specifications. If the project has more than 1 phase, each phase and its completion date shall be adequately identified and no activity shall span more than one phase.

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

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

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

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

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

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

- 6.3.6 Pre-Construction Conference: Prior to Contractor's commencement of Work on the Project, the CEI will schedule a pre-construction conference with the Contractor, utility companies and other affected parties to review the proposed Work activities and schedule of events.
- 6.4 Limitations of Operations
  - 6.4.1 Night Work: In all areas where Work is being performed during the hours of dusk or darkness, the Contractor shall furnish, place and maintain lighting facilities capable of providing light of sufficient intensity (5 foot-candles minimum) to permit good workmanship and proper inspection at all times. The lighting shall be arranged so as not to interfere with or impede traffic approaching the Work site(s) from either direction or produce undue glare to property owners and traveling public.

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

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

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

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

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

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

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

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

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

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

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

No private vehicles shall be parked within the limited access right of way. The Contractor's Worksite Traffic Supervisor shall continually and adequately review traffic control devices to ensure proper installation and working order, including monitoring of lights. Compensation for lighting for night Work shall be included in the Contract prices for the various items of the Contract. All lighting Equipment for night work shall remain the property of the Contractor.

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

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

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

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

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

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

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

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

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

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

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

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

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

6.5 Qualifications of Contractor's Personnel

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

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

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

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

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

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

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

#### 6.7 Contract Time

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

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

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

- 6.7.2 Date of Beginning of Contract Time: The date on which Contract time will begin shall be the date of notice to begin Work or as specified in the Notice to Proceed.
- 6.7.3 Adjusting Contract Time:

6.7.3.1 Contract Time Extension: CFX has established an allowable Contract duration, in terms of calendar days, sufficient to complete the Work covered by the Contract. By execution of the Contract, the Contractor agrees that the calendar days are sufficient to perform the Work and it has priced its bid considering the Contract duration. If the Contractor's Work (which Work is actually on the critical path) is impacted by one or more of the following events, CFX may (but is not obligated to) consider approving an extension of time:

- 1. War or other act of public enemies.
- 2. Riot that would endanger the well-being of Contractor's employees.
- 3. Earthquake.
- 4. Unpredictable acts of jurisdictional governmental authorities acting outside the scope of current laws and ordinances.
- 5. Hurricane (or other weather event) but only if the weather event results in the declaration of an emergency by the Governor of the State of Florida within the geographical area which includes the Work area.
- 6. Utility relocation and adjustment Work only if all the following criteria are met:
  - a. Utility work actually affected progress toward completion of Work on the critical path.
  - b. The Contractor took all reasonable measures to minimize the effect of utility work on critical path activities including cooperative scheduling of his operations with the scheduled utility work.
- 7. Temperature restrictions that prohibit placement of friction course (FC-5 only) provided all other Work is completed.
- 8. Epidemics, pandemics, quarantine restrictions, strikes (unless caused or provoked by actions of the Contractor, or its subcontractors, or its materialmen, or its suppliers or its agents), freight embargoes.

9. Impacts to the critical path caused by other contractors.

Time will not be granted for inclement weather other than as provided for in this section. In submitting a request for time extension, the Contractor shall comply with the following requirements:

- 1. Notify CFX in writing of the occurrence of a delay event within 48 hours of the beginning of the event.
- 2. Furnish a detailed written explanation of the impact of the delaying event on the scheduled Work with supporting documentation in the form of job records.
- 3. Provide proof that the Contractor has taken all necessary steps to protect the Work, the Contractor's employees, Materials and Equipment from the effects of the event.

CFX will consider the delays in delivery of materials or component equipment that affect progress on a controlling item of work as a basis for granting a time extension if such delays are beyond the control of the Contractor or supplier. Such delays may include an area-wide shortage, an industry-wide strike, or a natural disaster that affects all feasible sources of supply. In such cases, the Contractor shall furnish substantiating letters from a representative number of manufacturers of such materials or equipment clearly confirming that the delays in delivery were the result of an area-wide shortage, an industry-wide strike, etc. No additional compensation will be made for delays caused by delivery of materials or component equipment.

CFX will not consider requests for time extension due to delay in the delivery of custom manufactured equipment such as traffic signal equipment, highway lighting equipment, etc., unless the Contractor furnishes documentation that the Contractor placed the order for such equipment in a timely manner, the delay was caused by factors beyond the manufacturer's control, and the lack of such equipment caused a delay in progress on a controlling item of work. No additional compensation will be paid for delays caused by delivery of custom manufactured equipment.

6.7.3.2 An extension of time (rather than monetary compensation) will be the Contractor's sole and exclusive remedy in the event that an extension of time is justified under subarticle 6.7.3.1. The Contractor shall not be entitled to damages when an extension of time is permitted or granted under said subarticle.

- 6.8 Failure of Contractor to Maintain Satisfactory Progress
  - 6.8.1 General: Time is of the essence of the Contract. Unsatisfactory progress will be deemed to have occurred when:
    - 1. The allowed Contract time for performing the Work has expired and the GS-94

Contract Work is not complete; or

- 2. The specified time or date for performing a special milestone stage of the Work (as may be set forth in the Special Provisions) has expired and the Work for that milestone stage is not complete; or
- 3. The allowed Contract time has not expired and the net dollar value of completed Work (gross earnings less payment for stockpiled Materials) is 15 percentage points or more below the dollar value of Work that should have been completed according to the accepted working schedule for the Project. The dollar value of Work, which should have been completed, is defined as the average between the early start and late start scheduled earnings according to the approved working schedule. After falling 15 percent behind, the delinquency continues until the dollar value of Work is within 5 percentage points of the dollar value of Work that should be completed according to the accepted working schedule for the Project.

In addition to the retainage specified in Article 7.6 of these General Specifications, retainage may also be withheld on partial payments at any time throughout the duration of the Contract due to unsatisfactory progress. The amount of retainage withheld will be one (1) percent of the gross amount earned for the month for every one (1) percent the project is below the dollar value of the Work that should have been completed according to the accepted working schedule for the Project. Retainage held due to unsatisfactory progress will be returned once the delinquency has been cured.

- 6.9 Default and Termination of Contract
  - 6.9.1 Determination of Default: CFX will give notice in writing to the Contractor and Contractor's surety of such delay, neglect, or default for the following:
    - a. If the Contractor fails to begin the Work under the Contract within the time specified in the Notice to Proceed or;
    - b. fails to perform the Work with sufficient workmen and Equipment or with sufficient Materials to assure the prompt completion of the Contract as related to the schedule or;
    - c. performs the Work unsuitably or neglects or refuses to remove Materials or;
    - d. to perform anew such Work as may be rejected as unacceptable and unsuitable or;
    - e. discontinues the prosecution of the Work or;
    - f. fails to resume Work which has been discontinued within a reasonable time after notice to do so or;
    - g. fails to pay timely its subcontractors, suppliers or laborers or;
    - h. submits a false or fraudulent Certificate of Disbursement of Previous Payments form or;
    - i. becomes insolvent or is declared bankrupt or;
    - j. files for reorganization under the bankruptcy code or;
    - k. commits any act of bankruptcy or insolvency, either voluntarily or involuntarily or;
    - 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 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, 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 provide 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, <<u>supplier</u>> will be liable to the Contractor and the Central Florida Expressway Authority should <<u>supplier</u>> 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:

- Whether the Contractor, provided written notice to certified D/M/WBEs performing the type of Work that the Contractor intends to subcontract, advising the D/M/WBEs (a) of the specific Work the Contractor intends to subcontract; and (b) that their interest in the Contract is being solicited;
- (2) Whether the Contractor provided interested D/M/WBEs assistance in reviewing the Contract Plans and Specifications;
- (3) Whether the Contractor assisted interested D/M/WBEs in obtaining any required bonding, lines of credit, or insurance;
- (4) Whether the Contractor's efforts were merely pro forma and given all relevant circumstances, could not reasonably be expected to produce sufficient D/M/WBE participation to meet the objective.

The above list is not intended to be exclusive or exhaustive and CFX will look not only at the different kinds of efforts that the Contractor has made but also the quality, quantity and intensity of these efforts.

- 8.2 Disadvantaged, Minority and Women Owned Businesses Participation Objective
  - 8.2.1 General: The Contractor shall ensure that D/M/WBE as defined herein will have the maximum opportunity to participate in the performance of subcontracts. In this regard, the Contractor shall take all necessary and reasonable steps to accomplish that result.
  - 8.2.2 Definitions: The following words and phrases shall have the respective meanings set forth below unless a different meaning is plainly required by the context:
    - (1) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States or lawfully admitted permanent residents and who are women, Black Americans, Hispanic American, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans. Individuals in the following groups are presumed to be socially and economically disadvantaged:
      - (a) "Black Americans", which includes persons having origins in any of the black racial groups of Africa;
      - (b) "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;

- (c) "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific and the Northern Marianas;
- (d) "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (e) "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh; and
- (f) "Women".
- (2) "Joint Venture" means an association of two or more firms to carry out a single business enterprise for which purpose the firms combined their property, money, effects, skills or knowledge.
- (3) "Certified" means a finding by Orange County, Florida, the City of Orlando, Florida, and Florida Department of Transportation that the business is a bona fide Minority, Women or Disadvantaged owned and operated business.
- (4) "Independently Owned and Operated" means a business that is not affiliated or associated with the general contractor or prime contractor providing work or services on CFX project(s) or procurement in which the D/M/WBE seeks to participate. Affiliated status may be determined through common ownership, management, employees, facilities, inventory or any other factors, which would prevent or inhibit independent status
- (5) "Women Business Enterprise" comprises all women. All women business owners will be classified as a Women Business Enterprise.
- 8.2.3 Specific Requirements: The Contractor shall, among other things, implement techniques to facilitate D/M/WBE participation in contracting activities including, but not limited to:
  - 1. Soliciting price quotations and arranging a time for the review of plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of quotations;
  - 2. Providing assistance to D/M/WBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance;
  - 3. Carrying out information and communication programs or workshops on

contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate;

- 4. Contacting Minority Contractor Associations, city, and county agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible D/M/WBE contractors to apply for certification.
- 5. Meeting with appropriate officials of CFX, including its Supplier Diversity Office, to assist with the Contractor's efforts to locate D/M/WBEs and assist with developing joint ventures, partnering, and mentorship.
- 8.2.4 Qualified Participation: CFX will count D/M/WBE participation toward meeting D/M/WBE objective as follows:
  - 1. The total dollar value of the contract to be awarded to the certified D/M/WBE will not be counted toward the applicable D/M/WBE objective unless approved by CFX.
  - 2. A portion of the total dollar value of a contract, with an eligible joint venture, equal to the percentage of the ownership and control of the D/M/WBE partner in the joint venture may be counted toward the D/M/WBE objective.
  - 3. Only expenditures to D/M/WBEs that perform a commercially useful function may be counted toward the D/M/WBE objective. A D/M/WBE is considered to perform a commercially useful function when it actually performs and manages at least 51 percent of the work subcontracted to it. To determine whether a D/M/WBE is performing a commercially useful function, CFX will evaluate all relevant factors such as the amount of Work subcontracted and industry practices.
  - 4. Consistent with normal industry practices, a D/M/WBE may enter into subcontracts. If a D/M/WBE subcontracts 50 percent or more of the Work assigned to it, the D/M/WBE shall be presumed not to be performing a commercially useful function.
  - 5. Expenditures for materials and supplies obtained from D/M/WBE suppliers and manufacturers may be counted toward the D/M/WBE objective, provided that the D/M/WBEs assume the actual and contractual responsibility for the provision of the materials and supplies. The percentage allowed toward the D/M/WBE objective is as follows:
    - (a) All expenditures to a D/M/WBE manufacturer (i.e., a supplier that

produces goods from raw materials or substantially alters them before resale) may be counted toward the D/M/WBE objective.

- (b) 1. A Contractor may count toward its D/M/WBE objective 60 percent of its expenditures for materials and supplies required under a contract and obtained from a D/M/WBE regular dealer, and 100 percent of such expenditures to a D/M/WBE manufacturer.
  - 2. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.
  - 3. A regular dealer is a firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this Section.
- (c) A Contractor may count toward the D/M/WBE objective for the following expenditures to D/M/WBE firm(s) that are not manufacturers or regular dealers:
  - 1. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials of supplies required for performance of the Contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - 2. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for

similar services.

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

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

8.3 Subletting of Contracts - Participation Objective

GS-119

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

# END OF SECTION 8

### SECTION 9 - BINDING ARBITRATION

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

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

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

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

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

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

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

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

### END OF SECTION 9

### SECTION 10 - DISPUTES RESOLUTION

10.1 Disputes Resolution

10.1.1 Disputes Review Board

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

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

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

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

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

### 10.1.2 Continuance of Work During Dispute

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

# 10.1.3 Disputes Review Board Membership

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

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

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

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

The criteria and limitations for membership will be as follows:

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

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

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

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

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

# 10.1.4 Board Operations

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

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

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

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

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

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

### 10.1.5 Procedure for Disputes Resolution

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

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

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

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

### 10.1.6 Conduct of Disputes Hearings

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

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

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

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

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

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

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

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

# 10.1.7 Compensation

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

10.1.8 Three Party Agreement

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

END OF SECTION 10

#### ATTACHMENT A

### DISPUTES REVIEW BOARD THREE PARTY AGREEMENT

 THIS THREE PARTY AGREEMENT ("Agreement") made and entered into this

 day of \_\_\_\_\_\_, 20\_\_, between the CENTRAL FLORIDA EXPRESSWAY

 AUTHORITY ("CFX"), \_\_\_\_\_\_ ("Contractor") and the DISPUTES

 REVIEW BOARD ("Board"), consisting of three members: \_\_\_\_\_\_, and \_\_\_\_\_ ("Members").

WHEREAS, CFX is now engaged in the construction of the , and

WHEREAS, the \_\_\_\_\_\_ contract ("Contract") provides for the establishment and operation of the Board to assist in resolving disputes and claims.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein (or attached, incorporated and made a part hereof), the parties agree as set forth herein.

#### I DESCRIPTION OF PURPOSE

To facilitate resolution of disputes between the Contractor and CFX, CFX has provided (in the Contract) for the establishment of the Board. The function of the Board is to fairly and impartially consider Contract disputes placed before it and provide written recommendations for resolution to both CFX and the Contractor. The Members of the Board shall perform the services designated in Section II, Scope of Work.

#### II SCOPE OF WORK

The Scope of Work includes, but is not limited to, the following items:

A. <u>Third Board Member Selection</u>. 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. <u>Procedures</u>. 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 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

ATT-4

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:\_\_\_\_\_

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.

### **MEMORANDUM**

TO:	CFX Board Members
FROM:	Aneth Williams Will Director of Procurement
DATE:	January 6, 2022
SUBJECT:	Ratification of Contract Award to Louis Berger Hawthorne Services, Inc. for Facilities Maintenance Services – CFX's Toll Facilities Contract No. 001860

On October 22, 2021, CFX was notified that Infrastructure Corporation of America, a contractor that provided facilities maintenance services, intended to cease operations at the end of the day. On October 27, 2021 quotes were requested from qualified firms to provide facilities maintenance services for CFX's toll facilities to take the place of Infrastructure Corporation of America. Two responses were received by the November 1, 2021 deadline. Those firms were Louis Berger Hawthorne Service, Inc. and Roy Jorgensen Contract Services, LLC.

In accordance with CFX's Procurement Policy and Florida Statutes, the Executive Director approved the emergency contract to Louis Berger Hawthorne Service, Inc. on December 2, 2021. Board ratification of the contract award to Louis Berger Hawthorne Service, Inc.in the amount of \$1,326,000.00 for six months is requested.

Reviewed by:

Inst

Don Budnovich, PE Director of Maintenance

Glenn Pressimone, PE

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





# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

# MEMORANDUM

TO:	Laura Kelley Executive Director
FROM:	Aneth Williams Will Director of Procurement
SUBJECT:	Approval of Emergency Contract to Louis Berger Hawthorne Services, Inc. for Facilities Maintenance Services - CFX's Toll Facilities
DATE:	December 2, 2021

In accordance with the Procurement Policy, Article XII, Exemption from Competitive Procurement Processes, paragraph N, Emergency Purchases, your approval is requested to proceed with the award of contract to Louis Berger Hawthorne Services, Inc. in the amount of \$221,000.00 monthly for a total of \$1,326,000.00 for six (6) months to provide facilities maintenances services.

On October 22, 2021, CFX was notified that Infrastructure Corporation of America, a contractor that provides facilities maintenance services to CFX, intended to cease operations at the end of the day. On October 27, 2021 the Procurement Department requested quotes from two (2) qualified contractors, Louis Berger Hawthorne Services, Inc. and Roy Jorgenson Associates, Inc., per Florida Statutes 287.057(3)(a).

Subject to your approval, and in accordance with Florida Statutes 287.057(3)(a) and CFX's Procurement Policy, I will prepare a memo to the Board requesting ratification of the contract award.

Approved	Rejected	

Laura Kelley

**Executive Director** 

If rejected, reason(s) for rejection:

cc: Lisa Lumbard Don Budnovich Woody Rodriguez

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

WWW.CFXWAY.COM

### CENTRAL FLORIDA EXPRESSWAY AUTHORITY CONTRACT NO. 001860

This Contract No. 001860 (the "Contract" as defined herein below), is made this 3rd day of December 2021, between the CENTRAL FLORIDA EXPRESSWAY, a body politic and agency of the State of Florida, hereinafter called CFX and Louis Berger Hawthorne Services, Inc., hereinafter the CONTRACTOR:

#### WITNESSETH:

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

**WHEREAS,** CFX has been granted the power under Section 348.754(2)(m) of Florida Statutes, to do everything necessary or convenient for the conduct of its business and the general welfare of CFX, in order to comply with the law; and,

**WHEREAS,** CFX has determined that it is necessary and convenient in the conduct of its business to retain the services of a contractor to provide facilities maintenance services for toll facilities on S.R. 453, S.R. 414, S.R. 417, S.R. 528, S.R. 429, and Goldenrod Road Extension and related tasks as may from time to time be assigned to the CONTRACTOR; and,

WHEREAS, on or about January 24, 2016, CFX issued a Request for Proposals (RFP001150) seeking qualified contractors to perform such tasks; and,

**WHEREAS,** Infrastructure Corporation of America (ICA) was the successful one of three qualified firms that responded to the Request for Proposals and was ultimately selected;

**WHEREAS,** on April 14, 2016, CFX and Infrastructure Corporation of America (ICA) entered into an Agreement identified as 001150 to perform such tasks; and,

WHEREAS, On October 22, 2021, CFX was notified that Infrastructure Corporation of America (ICA), a contractor that provides facilities maintenance services and roadway and bridge maintenance services to CFX, intended to cease operations at the end on the day. DBI Services, as the successor in interest to Infrastructure Corporation of America, was previously awarded two contracts, 001150 and 001152, which require significant maintenance responsibilities of our roadways and facilities. A lapse of maintenance or failure of any of these items would represent an immediate danger to the public health, safety or welfare, particularly during a pandemic when there is a need for heightened custodial care for public buildings and areas utilized by CFX employees; and,

**WHEREAS,** on October 25, 2021, in accordance with Section 287.057(3)(a), Florida Statutes, the CFX Executive Director declared that an immediate danger to the public health, safety or welfare exists requiring emergency action including the procurement of emergency services for certain necessary maintenance services; and,

**WHEREAS,** on or about October 27, 2021, CFX issued an emergency Request for Quotes seeking an interim qualified contractor to perform such tasks; and,

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

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

### **1. SERVICES TO BE PROVIDED**

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

The services to be provided under this Contract include maintenance of, and administration and management services related to, toll facilities on S.R. 408, S.R. 414, S.R. 417, S.R. 528, S.R. 429, and Goldenrod Road Extension, the CFX Headquarters Building (4974 ORL Tower Road), the former CFX office (525 S. Magnolia Avenue), and the E-PASS Service Centers (Pinar Plaza, 762 South Goldenrod Road and in the Good Homes Shopping Center, 8919 West Colonial Drive) in Orange County, Florida as detailed in the Contract Documents and any amendments, supplements, or modifications thereto.

CFX does not guarantee that all of the services described in the Scope of Services (including the Addendum to the Scope of Services and the Maintenance Specifications) attached as **Exhibit "A."** will be assigned during the term of the Contract. Further, the CONTRACTOR is providing these services on a non-exclusive basis. CFX, at its option, may elect to have any of the services set forth herein performed by other contractors or CFX staff.

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

- 1.1 The Contract, including insurance policies and bonds,
- 1.2 The Addenda (if any),
- 1.3 The Scope of Services (including the Addendum to the Scope of Services and the Maintenance Specifications),
- 1.4 The Method of Compensation,
- 1.5 The Price Proposal submitted by CONTRACTOR,

(collectively, the "Contract Documents").

### 2. TERM AND NOTICE

The term of the Contract shall be on a month to month basis and shall commence from the date in the Notice to Proceed from CFX until the Contractor is provided a Notice of Termination. The month to month term is to allow CFX time to successfully identify a permanent Contractor through a Request for Proposal process and the mobilization of the permanent Contractor to begin said services. CFX hereby notifies the interim Contractor that no privileges, rights, or guarantees are conferred upon them that will benefit them in the final selection of a Permanent Contractor.

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

If CONTRACTOR: (i) fails to perform the Contract terms and conditions; (ii) fails to begin the work under the Contract within the time specified in the "Notice to Proceed"; (iii) fails to perform the work with sufficient personnel or with sufficient materials to assure the prompt performance of the work items covered by the Contract; (iv) fails to comply with the Contract, or (v) performs unsuitably or unsatisfactorily in the opinion of CFX reasonably exercised, or for any other cause whatsoever, fails to carry on the work in an acceptable manner. CFX will give notice in writing to the CONTRACTOR of such delay, neglect or default. If the Contract is declared in default, CFX may require the CONTRACTOR's surety to take over and complete the Contract performance. Upon the failure or refusal of the surety to assume the Contract within the time demanded, CFX may take over the work covered by the Contract.

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

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

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

CFX reserves the right to cancel and terminate this Contract in the event the CONTRACTOR or any employee, servant, or agent of the CONTRACTOR is indicted for any crime arising out of or in conjunction with any work being performed by the CONTRACTOR for or on behalf of CFX, without penalty. Such termination shall be deemed a termination for default.

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

### 3. CONTRACT AMOUNT AND COMPENSATION FOR SERVICES

3.1 CFX agrees to pay CONTRACTOR for services performed in accordance with the Method of Compensation attached as **Exhibit "B."**.

3.2 The month to month Contract Amount is \$221,000.00 in accordance with the Contractor's Price Proposal attached as **Exhibit "C."**.

### 4. AUDIT AND EXAMINATION OF RECORDS

4.1 Definition of Records:

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

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

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

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

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

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

### 5. DISADVANTAGED/MINORITY AND WOMEN'S BUSINESS ENTERPRISES

CFX has adopted a program to provide opportunities for small business, including Disadvantaged/Minority Business Enterprises ("D/MBEs") and Women's Business Enterprises ("WBEs"). Under CFX's program, CONTRACTOR is encouraged to grant small businesses the maximum opportunity to participate in the provision of the Services with respect to the operation and maintenance of the System. CONTRACTOR shall provide information regarding its employment of such businesses and the percentage of payments made to such businesses and others. CONTRACTOR shall provide an annual report to CFX on or before each anniversary of

the Contract Date hereof and throughout the Term, regarding use of small business D/MBEs and WBEs and the percentage of payments made to enterprises falling within such categories. Such report shall consolidate the information contained in CONTRACTOR's invoices, and shall be in a form reasonably acceptable to CFX.

### 6. CONTRACTOR INSURANCE

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

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

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

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

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

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

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

If CONTRACTOR fails to obtain the proper insurance policies or coverages, or fails to provide CFX with certificates of same, CFX may obtain such 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 areas upon which services are performed;

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

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

7.3 CONTRACTOR shall be responsible for actual damage and loss that may occur with respect to any and all property located on or about any structures in any way involved in the provision of services by CONTRACTOR, whether such property is owned by CONTRACTOR, CFX, or any other person, to the extent such damage or loss shall have been caused or brought

about by the negligent acts or omissions of CONTRACTOR or its employees, agents, officers or subcontractors or any other persons for whom CONTRACTOR may be legally or contractually responsible.

7.4 CONTRACTOR shall ensure that all of its activities and the activities of its employees, agents, officers and subcontractors and all other persons for whom CONTRACTOR may be legally or contractually responsible are undertaken in a manner that will minimize the effect on surrounding property and the public.

7.5 CONTRACTOR shall immediately notify CFX of any material adverse change in CONTRACTOR's financial condition, business, prospects, affairs, or operations, or of such change of any partner, or of such change of any shareholder holding greater than a 10% interest in CONTRACTOR, or of the existence of any material impairment of rights or ability of CONTRACTOR to carry on as its business and operations are currently conducted.

7.6 CONTRACTOR shall not make any requirement of any employee, or enter into a non-competition agreement with any employee, whether oral or written, of any kind or nature, that would prohibit CONTRACTOR's employees from leaving CONTRACTOR's employ and taking employment with any successor of CONTRACTOR for CFX's facilities maintenance services.

### 8. ASSIGNMENT AND REMOVAL OF KEY PERSONNEL

A significant factor in the decision of CFX to award this Contract to the CONTRACTOR is the level of expertise, knowledge and experience possessed by employees of CONTRACTOR, particularly the Program Manager, Project Manager and Superintendent (the "Key Personnel") and CONTRACTOR's covenant to have employees possessing such expertise, knowledge and experience available at all times to assist in the provision of the services. Throughout the Term of this Contract, CONTRACTOR shall employ individuals having significant training, expertise, and experience in the areas or disciplines more particularly set forth in the Scope of Services, together with such other areas of expertise or experience, as may be designated from time to time during the Term of this Contract by CFX. When CFX designates an additional area for which expertise or experience shall be required, CONTRACTOR shall use all reasonable and diligent efforts to promptly hire and retain one or more individuals possessing such experience or expertise.

CONTRACTOR shall hire and maintain Key Personnel as employees throughout the Term of the Contract. The identity of the individuals, initially assigned to each of such positions by CONTRACTOR, shall be submitted to CFX and CFX shall be notified in advance of any changes in the individuals. The Key Personnel shall be committed to performing services on this Contract to the extent required. Key Personnel may be dismissed for unsatisfactory performance or any reason set forth below.

If prior to the second anniversary of the Effective Date of this Contract, CONTRACTOR removes, suspends, dismisses, fires, transfers, reassigns, lays off, discharges, or otherwise terminates any Key Personnel without the prior notification to CFX, such action shall constitute an event of default by CONTRACTOR hereunder. CONTRACTOR may cure such event of default only by replacing the Key Personnel with another employee having comparable experience and qualifications.

Promptly upon request of CFX, CONTRACTOR shall remove from activities associated with or related to the performance of this Contract any employee whom CFX considers unsuitable for such work. Such employee shall not be reassigned to perform any work relating to the services except with the express written consent of CFX

The CONTRACTOR's managers and superintendents shall speak and understand English, and at least one responsible management person who speaks and understands English shall be at each of the work locations during all working hours.

# 9. INDEMNITY

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

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

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

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

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

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

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

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

CONTRACTOR will not be liable for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of CFX or any of its officers, agents or employees. The parties agree that 1% of the total compensation to the CONTRACTOR for

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

# **10. PUBLIC RECORDS**

Upon receipt of any request by a member of the public for any documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by CONTRACTOR in conjunction with this Contract (including without limitation CONTRACTOR Records and Proposal Records, if and as applicable), CONTRACTOR shall immediately notify CFX. Thereafter, CONTRACTOR shall follow CFX'S instructions with regard to such request. To the extent that such request seeks non-exempt public records, CFX shall direct CONTRACTOR to provide such records for inspection and copying 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. PRESS RELEASES

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

# 12. OWNERSHIP OF MATERIALS AND INTELLECTUAL PROPERTY RIGHTS

CFX is and shall be and remain the sole owner of all rights, title, and interest in, to, and associated with all plans, documents, software in all forms, hardware, programs, procedures, specifications, drawings, brochures pamphlets, manuals, flyers, models, photographic or design images, negatives, videos and film, tapes, work product, information, data and other items (all whether in preliminary, draft, master, final, paper, electronic, or other form), along with the media on which they reside and with which they interface for function or aesthetics, that are generated or developed with respect to and in connection with this Contract and the performance thereof (collectively, the "CFX Property"). CFX's ownership of CFX Property includes without limitation all common law, statutory and other rights, title, and interest in, to, and associated with trademark, service mark, copyright, patent, trade secret, and publicity (collectively, the "CFX Intellectual Property"). CONTRACTOR, its employees, agents, officers, and subcontractors acknowledge that E-PASS® is CFX's registered trademark name for CFX's electronic toll collection system, and comprises a portion of CFX Intellectual Property.

CONTRACTOR, its employees, agents, officers, and subcontractors may not use CFX Property or CFX Intellectual Property in any way, other than in performance of its services under the terms of this Contract, without the prior written consent of CFX, which may be granted or denied in CFX's sole discretion. CONTRACTOR, its employees, agents, officers, and subcontractors' access to and/or use of CFX Property and CFX Intellectual Property is without any warranty or representation by CFX regarding same. For all materials listed hereinabove that are not generated or developed under this Contract or performance hereof, but rather are brought in, provided, or installed by CONTRACTOR (collectively, the "CONTRACTOR Property"), and the intellectual property rights associated therewith (collectively, the "CONTRACTOR Intellectual Property"), CONTRACTOR (its employees, officers, agents, and subcontractors, which for purposes of this section shall collectively be referred to as "CONTRACTOR") warrants and represents the following:

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

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

12.3 CONTRACTOR has not conveyed, and will not convey, any assignment, security interest, exclusive license, or other right, title, or interest that would interfere in any way with CFX's use of the CONTRACTOR Property or any license granted to CFX for use of the CONTRACTOR Intellectual Property rights; **AND** 

12.4 Subject to Chapter 119, Florida Statutes (Florida Public Records Act), CONTRACTOR shall maintain CFX Property and CFX Intellectual Property in strictest confidence and may not transfer, disclose, duplicate, or otherwise use CFX Property or CFX Intellectual Property in any way, other than in performance of its services under the terms of this Contract, without the prior written consent of CFX, which may be granted or denied in CFX's sole discretion. CONTRACTOR shall not publish, copyright, trademark, service mark, patent, or claim trade secret, publicity, or other rights of any kind in any of the Property. In ensuring the confidentiality and security of CFX Property and CFX Intellectual Property, CONTRACTOR shall utilize the same standards of protection and confidentiality that CONTRACTOR uses to protect its own property and confidential information, but in no instance less than reasonable care plus the standards set forth anywhere in this Contract.

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

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

12.5 The statute of limitations on any action arising out of either party's conduct relating to this section, whether such action may be brought by CFX, CONTRACTOR, or a third party; **or** 

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

12.7 Notwithstanding sections 12.5 and 12.6, the confidentiality and security provisions contained herein shall survive the term of this Contract for ten (10) years beyond 12.5 and 12.6.

# 13. PERMITS, LICENSES, ETC.

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

# 14. CONFLICT OF INTEREST AND STANDARDS OF CONDUCT

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

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

As required by Section 348.753, Florida Statutes, and CFX's Code of Ethics, CONTRACTOR agrees to complete CFX's Potential Conflict Disclosure Form prior to the execution of the Contract, upon the occurrence of an event that requires disclosure, and annually, not later than July 1st. The Potential Conflict Disclosure Form is attached as **Exhibit "D"**.

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

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

# **15. NONDISCRIMINATION**

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

# 16. NOTIFICATION of CONVICTION of CRIMES

CONTRACTOR shall notify CFX if any of CONTRACTOR's Key Personnel shall be convicted of any crime, whether state or federal, or felony or misdemeanor of any degree. Such notification shall be made no later than thirty (30) days after the conviction, regardless of whether such conviction is appealed.

## **17. SUBLETTING AND ASSIGNMENT**

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

Notwithstanding the foregoing:

17.1 CONTRACTOR may assign its rights to receive payment under this Agreement (except for an assignment made for the benefit of creditors) with CFX's prior written consent, which consent shall not be unreasonably withheld. CFX may assign all or any portion of its rights under this Agreement without consent of or advance notice to CONTRACTOR; and

17.2 Subject to the right of CFX to review and approve or disapprove subcontracts, and subject to the compliance by CONTRACTOR with the provisions of this Contract with regard to Key Personnel, CONTRACTOR shall be entitled to subcontract some of the services hereunder to other entities, provided that all subcontracts:

(i) shall name CFX as a third party beneficiary and provide that the subcontract is assignable to CFX (or its successor in interest under the terms of this Contract) without the prior approval of the parties thereto, and that the assignment thereof shall be effective upon receipt by the subcontractor of written notice of the assignment from CFX. Upon such event, CFX shall be deemed to assume all rights and obligations of the CONTRACTOR under the subcontract, but only to the extent such rights and obligations accrue from and after the date of the assignment. Without limitation, all warranties and representations of subcontractor shall inure to the benefit of CFX, and

(ii) shall require the subcontractor to comply with all laws, as all may be revised, modified and supplemented from time to time, and must require the subcontractor to carry forms and amounts of insurance satisfactory to CFX in its sole discretion, and shall provide CFX with certificates of insurance upon request. CFX shall be listed as an additional insured on all such insurance policies, and copies of correct insurance certificates and policies shall be delivered to CFX upon request, and

(iii) shall require the subcontractor to join in any dispute resolution proceeding upon request of CFX, and

(iv) shall include the same or similar terms as are included in this Contract with respect to subcontractors, providing CFX with equal or greater protections than herein.

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

### **18. DISPUTES**

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

### **19. REMEDIES**

In addition to any remedies otherwise available to CFX under law, upon an uncured default CFX shall have the right to appropriate or use any or all materials and equipment on the sites where work is or was occurring, and may enter into agreements with others for the completion of the work under the Contract, or may use other methods which in the opinion of CFX are required for Contract completion. All costs and charges incurred by CFX because of or related to the CONTRACTOR's default including, but not limited to, the costs of completing Contract performance shall be charged against the CONTRACTOR. If the expense of Contract completion exceeds the remaining sum which would have been payable under the balance of the Contract, in no event shall CFX have any liability to the CONTRACTOR for expenses or profits related to unfinished work, or for CFX's use of any CONTRACTOR materials or equipment on the work sites, including without limitation the CONTRACTOR Property and CONTRACTOR Intellectual Property.

### 20. PREVAILING PARTY ATTORNEY'S FEES

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

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

For purposes of determining whether the judgment of award is eighty percent (80%) or more of the contested claims, "adjusted award" or "adjusted judgment" shall mean the amount designated in the award or final judgment as compensation to CONTRACTOR for its claims (exclusive of interest, cost or expenses), <u>less</u>: (i) any amount awarded to CFX (exclusive of interest, costs or expenses) on claims asserted by CFX against CONTRACTOR in connection with the Contract, and (ii) any amount offered in settlement prior to initiation of CONTRACTOR litigation (exclusive of interest, cost or expense), which for purposes of enforcing this section only shall be admissible into evidence.

The term "contested claim" or "claims" shall include "Claims" as defined in Section 9, as well as the initial written claim (s) submitted to CFX by CONTRACTOR (disputed by CFX) which have not otherwise been resolved through ordinary close-out procedures of the Contract prior to the initiation of litigation. CONTRACTOR claims or portions thereof, which CFX agrees or offers to pay prior to initiation of litigation, shall not be deemed contested claims for purposes of this provision. If CONTRACTOR submits a modified, amended or substituted claim after its original claim and such modified, amended or substituted claim(s) is for an amount greater than the prior claim(s), the higher amount shall be the claim(s) for purposes of determining whether the award is at least eighty percent (80%) of CONTRACTOR's claim(s).

Attorneys' fees and costs awarded to the prevailing party shall mean reasonable fees and costs incurred in connection with and measured from the date a claim is initially submitted to CFX through and including trial, appeal and collection. In the circumstance where an original claim is subsequently modified, amended or a substituted claim is filed therefore, fees and costs shall accrue from the date of the first written claim submitted, regardless of whether the original or subsequent claim amount is ultimately used in determining if the judgment or award is at least eighty percent (80%) of the cumulative claims.

"Attorneys' fees" shall include but not be limited to fees and charges of attorneys, paralegals, legal assistants, attorneys' CONTRACTOR's, expert witnesses, court reporters, photocopying, telephone charges, travel expenses, or any other charges, fees, or expenses incurred through use of legal counsel, whether or not such fees are provided by statute or contained in State-Wide guidelines, and shall apply to any pretrial fees (whether or not an action is filed), trial, appeal, collection, bankruptcy, arbitration, mediation, or administrative proceedings arising out of this Contract.

"Costs" shall include but not be limited to any filing fees, application fees, expert witnesses' fees, court reporters' fees, photocopying costs, telephone charges, travel expenses, or any other charges,

fees, or expenses incurred whether or not legal counsel is retained, whether or not such costs are provided by statute or contained in State-Wide guidelines, and shall apply to any pretrial costs (whether or not an action is filed), trial, appeal, collection, bankruptcy, arbitration, mediation or administrative proceeding arising out of this Contract.

As a condition precedent to filing a claim with any legal or administrative tribunal, CONTRACTOR shall have first submitted its claim (together with supporting documentation) to CFX, and CFX shall have had sixty (60) days thereafter within which to respond thereto.

The purpose of this provision is to discourage frivolous or overstated claims and, as a result thereof, CFX and CONTRACTOR agree that neither party shall avail itself of Section 768.79, Florida Statutes, or any other like statute or rule involving offers of settlement or offers of judgment, it being understood and agreed that the purpose of such statute or rule are being served by this provision.

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

# 21. OTHER SEVERABILITY

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

# 22. GOVERNING LAW

This Contract is accepted and entered into in Florida and any question regarding its validity, construction, enforcement, or performance shall be governed by Florida law. The parties consent to the exclusive jurisdiction of the courts located in Orange County, Florida.

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

# 23. **RELATIONSHIPS**

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

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

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

## 24. INTERPRETATION

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

# 25. SURVIVAL OF EXPIRATION OR TERMINATION

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

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

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

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

25.4 Obligations upon expiration or termination of the Contract, as set forth in Section 26; and

25.5 Any other term or terms of this Contract which by their nature or context necessarily survive the expiration or earlier termination of the Contract for their fulfillment.

## 26. OBLIGATIONS UPON EXPIRATION OR TERMINATION OF CONTRACT

26.1 CONTRACTOR shall initiate settlement of all outstanding liabilities and claims arising out of the Contract and any subcontracts or vending agreements to be canceled. All settlements shall be subject to the approval of CFX.

# 27. EXHIBITS

Exhibit "A" Scope of Services (including the Addendum to the Scope of Services and the Maintenance Specifications)

Exhibit "B" Method of Compensation

Exhibit "C" Price Proposal

Exhibit "D" Potential Conflict Disclosure Form

IN WITNESS WHEREOF, the authorized signatures named below have executed this Contract on behalf of the parties as of the day and year first above written. This Contract was awarded by CFX's Executive Director on December 2, 2021.

D	irector of	Digitally signed by Aneth W Date: 2021.12.14 14:00:32 -0 Procurement	
Print Name:		Aneth Williams	
Ву: Х.	NDE	ORNE SERVICES, INC.	
Print Name: Kenne			
Title: Senior	· Vice Pre	esident	10111111111
Mark \ ATTEST:	/. Sadov	Digitally signed by Mark V. Sadowski DN: cn-Mark V. Sadowski, o=WSP USA, ou=Corporate Counsel/ Assistant Secretary, email=mark.sadowski@wsp.com, c=US Date: 2021.12.08 1233.17 4500	STANTHORNE S
Mark S	adowski,	Assistant Secretary	1984 3 4 1984 3 1844 3 1984 3 1984 3 1984 3 1984 3 1984 3 1984 3 1984 3 1984 3 1984
Approved a	s to form	and execution, only.	
Diego "V Rodrigue	ez	Digitally signed by Diego "Woody" Rodriguez Date: 2021.12.14 10:05:53 -05'00'	
Ge	eneral Co	unsel for CFX	
		Woody" Rodriguez	

#### EXHIBIT "A"

### SCOPE OF SERVICES FACILITIES MAINTENANCE SERVICES

### 1.0 OVERVIEW

1.1 The Contractor shall perform routine maintenance, administration and management services including, but not necessarily limited to, maintenance of electrical, mechanical and HVAC equipment as well as painting, carpentry and general building maintenance activities at: the CFX's toll plaza facilities (14 existing mainline plazas and 75 existing ramp plazas) along S.R. 408 (East-West Expressway), S.R. 417 (Central Florida GreeneWay), S.R. 528 (Beachline Expressway), S.R. 429 (Daniel Webster Western Beltway) and S.R. 414 (John Land Apopka Expressway), and the Goldenrod Road Extension (see listing included in the appendix); the CFX Headquarters Building (4974 ORL Tower Road), the former CFX office (525 S. Magnolia Ave.), and the E-PASS Service Centers (Pinar Plaza, 762 South Goldenrod Road and in the Good Homes Shopping Center, 8919 West Colonial Drive) in Orange County, Florida.

The Contractor shall also perform routine maintenance services including, but not necessarily limited to generators, air conditioners and roofs at the All Electronic Toll (AET) facility at Poinciana Parkway located in Osceola County. This facility is not staffed and has no restroom.

During the Contract duration it is anticipated three all electronic tolling facilities will be completed on S.R. 429 (Wekiva Parkway) (429-207 in March 2017; 429-207A and 429-207B in December 2017) Two ramp plazas are scheduled be completed on S.R. 528 at the new Innovation Way interchange in December 2017. The Backup Data Center at the Hiawassee Mainline Plaza is scheduled be completed in August 2016. As these facilities are added to the system, CFX and the Contractor will negotiate the additional maintenance cost and execute a supplemental agreement.

The Contractor shall furnish all labor, materials, equipment, tools, transportation and supplies required to supply the services and complete the maintenance work in accordance with the specifications, procedures and terms of the Contract, including the specific tasks and events set forth on the attached specifications.

1.2 The Contractor shall employ on Contractor's staff, or as a subcontractor, a registered professional engineer licensed to practice in the State of Florida. The Contractor shall also provide sufficient qualified technical staff to support activities and program areas related to facilities maintenance. CFX, at its option, may elect to expand, reduce, or delete

the extent of each work element described in this Scope of Services document, provided such action does not alter the intent of the Contract.

- 1.3 The services to be provided by the Contractor shall be furnished through a combination of Contractor staff/personnel and subcontractors under contract to the Contractor. Through this combination, the Contractor shall provide maintenance and administrative personnel in appropriate numbers and at the proper times to ensure that the responsibilities assigned under the Contract are effectively carried out. Services to be provided by the Contractor include, but are not necessarily limited to maintenance of: drinking water systems, septic and wastewater systems, electrical, mechanical and HVAC systems. The Contractor shall be responsible for painting, caulking, carpentry, general building maintenance activities and all other maintenance services required to maintain the facilities to the standards set forth in this Scope of Services and the maintenance specifications. The Contractor shall also move furniture, files, equipment, etc., between offices and/or buildings as directed by the Director of Maintenance. These services are described in detail in the maintenance specifications attached to this Scope of Services. Maintenance of toll equipment, fiber optic network, telephone system, guardrail, landscaping and irrigation systems are not a part of this scope and will be performed by others.
- 1.4 To avoid unnecessary repetition of expressions, whenever the term "Director of Maintenance" is used, it is understood that "or designated representative" is a part of the term unless specifically indicated otherwise.

### 2.0 MAINTENANCE AND INSPECTION

- 2.1 The Contractor shall be responsible for all facilities maintenance and inspection as defined in this Scope of Services, maintenance specifications and referenced manuals and procedures.
- 2.2 The Contractor, through the use of its own forces or subcontractors, shall provide qualified maintenance contractors and technical and administrative personnel in appropriate numbers to ensure that required maintenance is accomplished in accordance with the requirements and criteria set forth in this Scope of Services and the maintenance specifications. All activities shall be performed in accordance with the specifications, guides, standards, procedures and directives that are a part of the Contract. Contractor's personnel assigned to service or repair facilities shall have the applicable manufacturer's certification and required training to perform the required service or repair.

- 2.3 The Contractor shall comply with the CFX Emergency Response Manual and Hurricane Response Plan. These manuals provide procedures for situational analysis, mobilizing personnel and equipment, information to the public, taking protective action, assessing damage, record keeping, planning recovery/restoration, and coordinating emergency response and hurricane response activities.
- 2.4 The Contractor shall be responsible for the control and safety of traffic and the public during the performance of all work under control of the Contractor, its agents, employees and subcontractors. When required by the Contractor's operations, the Contractor shall furnish, erect and maintain such fences, temporary railing, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents, damage or injury to the public.
- 2.5 Contract Administration The Contractor shall:
  - 2.5.1 Provide maintainability review of facilities design plans and specifications for the purpose of reducing the overall cost of maintenance.
  - 2.5.2 Review reports relating to the Contractor's performance and communicate with subcontractors, if necessary, regarding conformance to specifications, workmanship, etc.
  - 2.5.3 Prepare and maintain monthly progress schedules and reports applicable to all phases of maintenance operation and such special reports as may be required to keep the Director of Maintenance advised with respect to the progress of work activity. All reports and/or submittals are to be submitted via e-mail to the Director of Maintenance in pdf format, unless otherwise requested by the Director of Maintenance. The Director of Maintenance may, at any time, request hard copies of such reports and/or submittals. All pdf submittals shall be put on a cd and shall, at a minimum include:
    - a. cover page as the first page of the pdf (including report name and date)
    - b. indexed bookmarks
    - c. table of contents
    - d. specifics to the report (such as location, times, etc.), as specified in the attached maintenance specifications
  - 2.5.4 Assist the CFX in the preparation of annual maintenance budget. Identify and recommend projects to be included in the 5 Year Work Plan. Track and forecast expenditures by Mainline and Ramp Plaza.

- 2.5.5 Prepare accident claim affidavits and initiate the reimbursement process for damages to CFX property. The Contractor shall receive all reimbursements that are collected for damages to CFX property that the Contractor repairs.
- 2.5.6 Perform field review and analysis of accidents to determine any engineering deficiencies.
- 2.5.7 Assist the CFX in responding to the public interest regarding maintenance activities.
- 2.5.8 Attend, as a minimum, the following meetings:
  - a. Monthly meeting with the CFX toll operations contractor
  - b. Other meetings affecting or involving facilities maintenance activities or operations as may be scheduled by the Director of Maintenance
- 2.6 The CFX will provide the Contractor with available information concerning warranties in force for various products (e.g. pavement markings and signs, roofs, air conditioning and heating units, etc.) at CFX facilities. When a product under warranty fails to meet the required performance criteria, the Contractor shall notify the responsible manufacturer to schedule repair work to correct the deficiency. All repairs shall be in accordance with the warranty requirements and shall be monitored by the Contractor. The Contractor shall notify the Director of Maintenance in writing of the location and type of the non-conforming product, quantity of the non-performing product and the schedule for repair work.

### 3.0 CONTROL OF THE WORK

3.1 The Contractor shall develop, prepare, and implement a Facilities Maintenance Operations Work Plan. The Work Plan shall contain a description of activities the Contractor intends to carry out during the 12-month period beginning on the Notice to Proceed date for the Contract and the scheduled date for each such activity. The date may be expressed by week or by any other more specific periods or date the Contractor selects.

A draft of the Work Plan shall be submitted to the Director of Maintenance within 30 days after the date of the Notice to Proceed. After reviewing the plan, a meeting with the Contractor will be conducted to resolve any concerns pertaining to the schedule and the activities and to finalize the plan.

The Contractor shall submit an updated Work Plan to the Director of Maintenance at least 30 days prior to the first day of each quarter to show a rolling 12-month period of detailed coverage.

### 3.2 CFX Director of Maintenance

All work shall be subject to review and acceptance by the CFX Director of Maintenance (or such other person designated by the Executive Director), or designated representative, who shall evaluate the Contractor's work for compliance with the Contract Documents. The CFX has no duty to supervise or direct the performance of the work, nor any responsibility or liability for the acts or omissions of the Contractor or any subcontractor or supplier.

#### 3.3 Traffic Control

The Contractor shall adhere to the requirements of FHWA's MUTCD, latest edition, Part 6. For operations requiring closure of travel lane(s), the Contractor shall comply with the FDOT Standard Specifications for Road and Bridge Construction, latest edition, Section 102-3.2, Worksite Traffic Supervisor, and FDOT Index Drawings Series 600, latest edition, which are hereby incorporated by reference as if fully set forth herein.

The Contractor shall assist the CFX toll operations contractor in the handling and maintenance of traffic during special events in the Orlando area such as the Citrus Bowl game(s), other sporting events impacting toll facilities and space vehicle launches from Cape Canaveral. The Contractor shall provide traffic control devices including, but not limited to, message boards at the Beachline Main Toll Plaza and Dallas Mainline. The Contractor shall also provide necessary labor to assist the CFX toll operations contractor in moving the traffic control devices. Maintenance of traffic requirements at the Beachline Main and Dallas Toll Plazas during space vehicle launches may occur day or night and will control the traffic going to and returning from the launches until all traffic has returned to normal flow. Traffic conditions related to launches may be continuous for several days.

The Contractor shall include four (4) events associated with the Citrus Bowl and eight (8) events on S.R. 528 annually. Additional events beyond those anticipated will be considered additional compensation for time and costs to be negotiated and paid from the Work Order Allowance.

### 3.4 Other Work

If activities by the CFX or other parties occur near or within the work locations, the Contractor shall coordinate its operations and cooperate with others and shall not be entitled to extra compensation or adjustments in Contract prices because of deletion of work items or delay because of activities by others.

The Contractor shall coordinate and cooperate to the fullest extent in the scheduling and performance of work by the CFX toll equipment contractor in order to obtain the highest level of service possible.

#### 3.5 Subcontractors

The Contractor shall not sublet, sell, transfer, assign, delegate, subcontract, or otherwise dispose of the Contract or any portion thereof without the written consent of CFX which may be withheld in CFX's sole and absolute discretion. A list of approved subcontractors shall be made a part of the Contract.

Subsequent to the execution of the Contract, any additions to the list will require prior approval by the Director of Maintenance. Additionally, any such subcontract that would, standing alone or aggregated with prior subcontracts awarded to the proposed subcontractor, equal or exceed twenty-five thousand dollars (\$25,000.00), will also require prior approval by the CFX Board. No such subcontract shall be executed by the Contractor until Board approval is given. Refer to the Contract, Article 17, Subletting and Assignment, for additional requirements.

### 4.0 OTHER REQUIREMENTS

### 4.1 Permits, Notifications and Fees

- 4.1.1 Unless otherwise specified, the Contractor shall secure and pay for all permits necessary to conduct the maintenance or other work in accordance with required regulations and to notify all applicable utilities or parties affected by the Contractor's operations.
- 4.1.2 The Contractor shall be responsible for all fees associated with the performance of the Contract. This includes payment of toll charges for all vehicles and equipment at the standard rate applicable to the general public. All toll payments made by the Contractor will be presumed to have been included in the Contract price.

- 4.1.3 No work shall be performed under the provisions of the Contract on any properties outside the limits of the CFX-maintained right-of-way without the express written permission of the affected landowner. Any such permission shall be secured by the Contractor and shall identify the provisions under which such work is to be performed. Permissions obtained shall not constitute assumption of liability by the CFX nor relieve the Contractor of its liabilities.
- 4.2 Hazardous or Toxic Waste, Pollutants
  - 4.2.1 When the Contractor's operations encounter or expose any abnormal condition which may indicate the presence of a hazardous substance, toxic waste, or pollutants such operations shall be discontinued in the vicinity of the abnormal condition and the Director of Maintenance shall be notified immediately. The presence of tanks or barrels; discolored earth, metal, wood, groundwater, etc.; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions which appear abnormal may be indicators of hazardous or toxic wastes or pollutants and shall be treated with extraordinary caution.
  - 4.2.2 The Contractor shall minimize the spread of any hazardous substance, toxic waste or pollutant into uncontaminated areas. The Contractor's operations in the affected area shall not resume until directed by the Director of Maintenance.
  - 4.2.3 The Contractor shall dispose of the hazardous substance, toxic waste or pollutant in accordance with the laws, requirements and regulations of any local, state, or federal agency having jurisdiction.
- 4.3 Responsibility for Damages

The Contractor shall protect from damage all property associated with, or which is in the vicinity of, or is in any way affected by, the Contractor's maintenance or other work performed pursuant to the Contract. Any damages occurring to such properties caused by the acts or omissions of the Contractor (or its employees, agents or subcontractors) shall be immediately repaired at the expense of the Contractor to a condition similar or equal to that existing before such damage occurred.

- 4.4 Safety
  - 4.4.1 With respect to the activities contemplated to occur pursuant to the Contract, and to the extent reasonably applicable, the Florida Department of Transportation Loss Prevention Manual (current issue at time of Proposal submittal) is

incorporated by reference and made a part of the Contract, and shall be made a condition of each subcontract (if any) entered into pursuant to the Contract. In circumstances of conflict with the Federal Safety and Health Standards, the more restrictive requirements will apply.

- 4.4.2 The Contractor (and any subcontractor) shall not require any person employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety, as determined under the construction safety and health standards set forth in Title 29, Code of Federal Regulations, Part 1518 published in the Federal Register on April 17, 1971, as promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act, (83 Stat. 96).
- 4.4.3 Contractor and subcontractor personnel shall wear reflectorized high visibility orange or lime safety vests within 15 feet of the roadway. Protective safety helmet caps shall be worn at all work sites containing overhead hazards.
- 4.4.4 Vehicles used on the roadway shall be equipped with flashing strobe lights approved by the Director of Maintenance.
- 4.5 Contractor's Responsibility for Work

Until acceptance by the Director of Maintenance, the results of the maintenance or other work shall be under the charge and custody of the Contractor who shall take every necessary precaution against injury or damage to the work results by the action of the elements or from any other cause whatsoever. The Contractor shall rebuild, repair and restore, without additional compensation, all injury or damage to any portion of the work occasioned by any of the above causes before its completion and acceptance; except, in the case of extensive or catastrophic damage the CFX may, at its discretion, reimburse the Contractor for the repair of such damage due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to Acts of God, of the public enemy or of governmental authorities.

4.6 Escrow of Price Proposal Records

With the execution of the Contract, the Contractor shall submit to CFX, in sealed container(s), a legible copy of the Proposal Records used by the Contractor to prepare its Price Proposal for the Contract. The container(s) shall be clearly marked "Price Proposal Records for Contract" and shall show on the face of the container(s) the Contractor's

name, address, date of submittal and Contract number. CFX will maintain the container(s) in a sealed condition.

In addition to the Proposal Records, the Contractor shall execute and submit an affidavit, signed under oath by the Contractor, listing each Proposal Record submitted by author, date, nature and subject matter. By executing this affidavit, the Contractor waives the right to use, directly or indirectly, any Proposal Record, other than the Proposal Records placed in escrow in the sealed container(s), in any dispute arising out of the Contract. Failure by the Contractor to provide the affidavit will be sufficient cause for CFX to nullify the award of the Contract to the Contractor.

Following execution of the Contract, CFX will hold the sealed container(s) and the original affidavit until the Contractor seeks an adjustment in time or money and files a claim or initiates arbitration against CFX. Such acts by the Contractor shall be sufficient grounds for CFX to open the sealed container(s). CFX reserves the right to reveal the contents of the sealed container(s) to consultants, experts and legal counsel retained by CFX to assist with claims evaluation and arbitration preparation. Confidentiality of the bid documents included in the sealed container(s) will be protected by CFX insofar as such protection does not conflict with the requirements of the Florida Public Records Act and Florida Sunshine laws.

When the Contractor executes a binding release of all claims and potential causes of action related to the Contract, CFX will release the sealed container(s) to the Contractor. The Contractor shall sign a receipt acknowledging that the sealed container(s) has/have been returned to the Contractor unopened.

#### 4.7 Minority and Women Owned Businesses (M/WBE)

General: The Contractor is encouraged to continue to meet or demonstrate the 15% participation objectives could not be met. At any time, CFX's Executive Director may grant a partial or complete waiver of the D/M/WBE objective for the Project due to consideration of property, public safety, and health, including financial impact to CFX.

CFX has provided an exception for the Contractor's failure to meet the participation objective established for this project. The exception requires that the Contractor provide CFX with documentation supporting the Contractor's Good Faith Effort to meet the stated objective. CFX will have the sole and final determination of whether the support documentation provided by the Contractor does, in fact, meet CFX's standard for a Good Faith Effort herein. The Contractor shall demonstrate through documentation that every reasonable effort has been made to achieve CFX's participation objective. The Contractor shall be responsible for securing proof of the D/M/WBE certification(s) for the proposed subcontractors/suppliers and be able to provide copies of the certification(s) to the CFX's

Supplier Diversity Office.

The Contractor shall meet or exceed the commitment stated in the Contractor's D/M/WBE Utilization Summary. Should the Contractor's D/M/WBE participation fall below the approved level for any reason whatsoever, or should the Contractor substitute or self-perform work identified for a D/M/WBE subcontractor/supplier without prior written approval of CFX, the Contractor will be considered by CFX to be in material breach of the Contract. If found in breach of the Contract, the Contractor may be suspended from bidding on and/or participating in any further CFX projects for up to one (1) year as provided in Section 15 of CFX's Supplier Diversity Policy.

Any change in the D/M/WBE Utilization Summary will require prior approval by the CFX Director of Supplier Diversity. Should the Contractor determine that a subcontractor/supplier named in the Utilization Summary is unavailable or cannot perform the work, the Contractor shall request approval of a revised D/M/WBE Utilization Summary. The revised summary shall be submitted, in writing, to the Director of Maintenance 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:

- Whether the Contractor, provided written notice to certified D/M/WBEs performing the type of Work that the Contractor intends to subcontract, advising the D/M/WBEs (a) of the specific Work the Contractor intends to subcontract; and (b) that their interest in the Contract is being solicited;
- (2) Whether the Contractor provided interested D/M/WBEs assistance in reviewing the Contract Plans and Specifications;
- (3) Whether the Contractor assisted interested D/M/WBEs in obtaining any required bonding, lines of credit, or insurance;
- (4) Whether the Contractor's efforts were merely pro forma and given all relevant circumstances, could not reasonably be expected to produce sufficient D/M/WBE participation to meet the objective.

The above list is not intended to be exclusive or exhaustive and CFX will look not only at the different kinds of efforts that the Contractor has made but also the quality, quantity and intensity of these efforts.

4.7.1 Disadvantaged, Minority and Women Owned Businesses - Participation Objective

4.7.1.1 General: The Contractor shall ensure that D/M/WBE as defined herein will have the maximum opportunity to participate in the performance of subcontracts. In this regard, the Contractor shall take all necessary and reasonable steps to accomplish that result.

4.7.1.2 Definitions: The following words and phrases shall have the respective meanings set forth below unless a different meaning is plainly required by the context:

- (1) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States or lawfully admitted permanent residents and who are women, Black Americans, Hispanic American, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans. Individuals in the following groups are presumed to be socially and economically disadvantaged:
  - (a) "Black Americans", which includes persons having origins in any of the black racial groups of Africa;
  - (b) "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;
  - (c) "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific and the Northern Marianas;
  - (d) "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - (e) "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh; and

- (f) "Women".
- (2) "Joint Venture" means an association of two or more firms to carry out a single business enterprise for which purpose the firms combined their property, money, effects, skills or knowledge.
- (3) "Certified" means a finding by Orange County, Florida, the City of Orlando, Florida, and Florida Department of Transportation that the business is a bona fide Minority, Women or Disadvantaged owned and operated business.
- (4) "Independently Owned and Operated" means a business that is not affiliated or associated with the general contractor or prime contractor providing work or services on CFX project(s) or procurement in which the D/M/WBE seeks to participate. Affiliated status may be determined through common ownership, management, employees, facilities, inventory or any other factors, which would prevent or inhibit independent status
- (5) "Women Business Enterprise" comprises all women. All women business owners will be classified as a Women Business Enterprise.
- 4.7.2 Specific Requirements: The Contractor shall, among other things, implement techniques to facilitate D/M/WBE participation in contracting activities including, but not limited to:
  - 1. Soliciting price quotations and arranging a time for the review of plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of quotations;
  - 2. Providing assistance to D/M/WBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance;
  - 3. Carrying out information and communication programs or workshops on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate;
  - 4. Contacting Minority Contractor Associations, city, and county agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible D/M/WBE contractors to apply for certification.
  - 5. Meeting with appropriate officials of CFX, including its Supplier Diversity Office, to assist with the Contractor's efforts to locate D/M/WBEs and assist

with developing joint ventures, partnering, and mentorship.

- 4.7.3 Qualified Participation: CFX will count D/M/WBE participation toward meeting D/M/WBE objective as follows:
  - 1. The total dollar value of the contract to be awarded to the certified D/M/WBE will not be counted toward the applicable D/M/WBE objective unless approved by CFX.
  - 2. A portion of the total dollar value of a contract, with an eligible joint venture, equal to the percentage of the ownership and control of the D/M/WBE partner in the joint venture may be counted toward the D/M/WBE objective.
  - 3. Only expenditures to D/M/WBEs that perform a commercially useful function may be counted toward the D/M/WBE objective. A D/M/WBE is considered to perform a commercially useful function when it actually performs and manages at least 51 percent of the work subcontracted to it. To determine whether a D/M/WBE is performing a commercially useful function, CFX will evaluate all relevant factors such as the amount of Work subcontracted and industry practices.
  - 4. Consistent with normal industry practices, a D/M/WBE may enter into subcontracts. If a D/M/WBE subcontracts 50 percent or more of the Work assigned to it, the D/M/WBE shall be presumed not to be performing a commercially useful function.
  - 5. Expenditures for materials and supplies obtained from D/M/WBE suppliers and manufacturers may be counted toward the D/M/WBE objective, provided that the D/M/WBEs assume the actual and contractual responsibility for the provision of the materials and supplies. The percentage allowed toward the D/M/WBE objective is as follows:
    - (a) All expenditures to a D/M/WBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale) may be counted toward the D/M/WBE objective.
    - (b) 1. A Contractor may count toward its D/M/WBE objective 60 percent of its expenditures for materials and supplies required under a contract and obtained from a D/M/WBE regular

dealer, and 100 percent of such expenditures to a D/M/WBE manufacturer.

- 2. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.
- 3. A regular dealer is a firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this Section.
- (c) A Contractor may count toward the D/M/WBE objective for the following expenditures to D/M/WBE firm(s) that are not manufacturers or regular dealers:
  - 1. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials of supplies required for performance of the Contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - 2. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- 3. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- 4.7.4 Records and Reports: The Contractor shall develop a record keeping system to monitor its D/M/WBE participation and shall maintain the following records:
  - 1. the procedures adopted to comply with these special provisions;
  - 2. The number of subordinated contracts on CFX projects awarded to D/M/WBEs;
  - 3. the dollar value of the contracts awarded to D/M/WBEs;
  - 4. the percentage of the dollar value of all subordinate contracts awarded to D/M/WBEs as a percentage of the total contract amount;
  - 5. a description of the general categories of contracts awarded to D/M/WBEs;
  - 6. the specific efforts employed to identify and award contracts to D/M/WBEs;
  - 7. maintenance of records of payments and monthly reports to CFX;
  - 8. Subcontract Agreement between Contractor and D/M/WBE subcontractors; and
  - 9. any other records required by CFX's Director of Maintenance or Executive Director.

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

4.7.5 Subletting of Contracts - Participation Objective

No request to sublet Work will be approved unless it is in compliance with the Contractor's approved D/M/WBE Utilization Form "Certification of Subcontract Amount to D/M/WBE Contractor", which shall be completed and submitted with the

"Request For Authorization To Sublet Work". One copy of the certification will be attached to each copy of the "Request For Authorization To Sublet Work".

# 5.0 PROSECUTION AND PROGRESS OF WORK

### 5.1 Beginning Work

The Contractor shall commence work on the date specified in the Notice to Proceed. The term of the Contract will begin on the date established in the Notice to Proceed.

5.2 Status of Work

The Contractor shall keep the Director of Maintenance advised as to the status of work being done by the Contractor and the details thereof. Coordination shall be maintained by the Contractor with the CFX. The CFX or Contractor may request and be granted a conference with the other party.

- 5.3 Facilities Maintenance Operations
  - 5.3.1 The Contractor shall be available on a 24-hour a day, 7-day a week, 52-week a year basis. The Contractor shall schedule maintenance operations to minimize inconvenience to operations staff, adjacent businesses, residences and the public.

An individual shall be designated as the Contractor's contact in emergencies and in cases where immediate action must be taken to handle any other problem that might arise. The contact person shall have the ability to speak and understand the English language.

The Contractor shall submit by certified mail to the Florida Highway Patrol and other local law enforcement agencies, a description of the Project and the name(s) and telephone number(s) of individual(s) designated to be contacted in cases of emergencies. A copy of these submittals shall also be provided to the CFX.

5.3.2 Unless otherwise specified or approved by the CFX, the Contractor's normal work hours shall be 7:00 a.m. to 5:00 p.m., Monday through Friday. The Contractor is advised that certain maintenance activities may need to be performed during other than regular hours (e.g. 5:00 p.m. to 7:00 a.m.) to avoid affecting toll collection capacity.

No work shall be done when weather conditions limit good visibility to less than five hundred (500) feet. Work may only be performed during prohibited times with written permission from the CFX, or in circumstances of an emergency. Refer to the individual specifications (attachments) for specific requirements.

- 5.3.3 Prior to beginning maintenance operations, the Contractor shall submit to the CFX, for approval, two (2) copies of the Contractor's proposed plan and methods for performing the required facilities maintenance work including a listing of equipment and personnel anticipated for use. The plan shall show lines of communication with the CFX's toll equipment contractor and toll collection contractor. The plan shall show the proposed methods of ensuring safety and minimum interference with the normal operations of facilities and the normal flow of traffic in the travel lanes and local roadways. The Contractor shall provide all necessary instruments and special apparatus to conduct any testing that may be required. Approval of the plan shall not relieve the Contractor of responsibility or liability for injury to persons or damage to property caused by the operation of equipment and/or personnel.
- 5.3.4 All Contractor and subcontractor vehicles shall have clear identification of the company they represent. All Contractor and subcontractor employees requiring access to any CFX facility shall wear name tags with photo identification. In addition, a list of such employees shall be provided to the Director of Maintenance prior to beginning work under the Contract. Any employee not on the Contractor's list and not having the proper photo identification will not be allowed access to toll facilities.
- 5.3.5 The Contractor shall park equipment left on the right-of-way overnight as close to the right-of-way (fence) line as possible. Do not park equipment overnight in the median regardless of the width of the median. Conduct all service and supply operations as close to the right-of-way (fence) line as possible. No supply vehicles shall enter a roadway median except when necessary to repair or remove inoperable equipment.
- 5.3.6 In circumstances where the work task has assigned to it a specific time increment within which to accomplish the task (if any), the CFX may grant an extension of the allowable time when a controlling item of work is delayed by factors which are beyond the control of the Contractor. Extensions will not be granted for delays due to the fault or negligence of the Contractor.

- 5.3.7 The Director of Maintenance will advise the Contractor when an emergency response will be required for critical situations. In general, emergency response time (the time taken by the Contractor to arrive at the site after notification) shall not exceed 2 hours regardless of the day or time of the notification unless otherwise specified. Failure to meet the required priority response time may result in reductions to compensation for work performed according to the following reduction schedule:
  - a. Up to 1 hour late \$250.00 reduction.
  - b. More than 1 hour late \$250.00 reduction per hour.

The reduction will not be assessed if the Contractor can demonstrate to the satisfaction of the Director of Maintenance that the delay was the result of events beyond the control of the Contractor.

Individual maintenance specifications may have specific response requirements that supersede the response time in this sub article.

No extension of the emergency response time will be granted by the CFX due to travel distance requirements of the response crew. Completion of routine work orders shall not be affected by the issuance of emergency response work orders.

- 5.3.8 Time extensions for delays (in work performance which has completion dates associated therewith, if any) caused by the effects of inclement weather will be handled differently from those resulting from other types of delay. Such time extensions are justified only when rains or other inclement weather conditions or related adverse soil conditions prevent the Contractor from productively performing controlling items of work, resulting in either:
  - (i) The Contractor being unable to work at least fifty percent (50%) of the normal work day due to adverse weather conditions, or
  - (ii) The Contractor being required to make major repairs to work damaged by weather; provided, however, the damage was not attributable to a failure to perform or neglect by the Contractor, and provided that the Contractor was unable to work at least fifty percent (50%) of the normal workday.

The Director of Maintenance will monitor the effects of weather and, when found justified, recommend time extensions. The Contractor will not be required to submit a request for additional time due to the effects of weather unless the Contractor disputes the additional time granted by the CFX.

### 5.4 Suspension of Work

The CFX will have the right (exercised from time to time) to suspend the maintenance activities and work covered by the Contract, wholly or in part, for such period as may be deemed necessary. The periods of suspension may include extreme adverse weather conditions (such as flooding due to catastrophic occurrences) or heavy traffic congestion due to special events that may cause hazardous conditions for the motorists. Such suspension if ordered will be in writing, giving detailed reasons for the suspension.

### 5.5 Liquidated Damages

- 5.5.1 The Contractor shall pay to the CFX liquidated damages not to exceed \$1000 per day for failure of the Contractor to complete the work within the time stipulated in the Work Plan or within such additional time as may have been granted by the CFX. It shall be the responsibility of the Contractor to schedule work in a manner that prevents delays, stoppages and rework.
- 5.5.2 For all work, regardless of whether the performance time is stipulated in calendar days or working days, default days shall be counted in calendar days.
- 5.5.3 If the Contractor (or, in circumstance of the Contractor default, the surety) fails to complete the work within the time stipulated in the Work Plan, or within such extra time as may have been granted by the CFX, the Contractor (or the surety) shall pay to the CFX, not as a penalty but as liquidated damages, the amount due.
- 5.5.4 Permitting the Contractor to continue and to finish the work, or any part of it, after the expiration of the time allowed, including time extensions, shall in no way act as a waiver on the part of the CFX of the liquidated damages due under the Contract.
- 5.5.5 In the event of default by the Contractor and the completion of the work by the CFX, the Contractor and the Contractor's surety shall be liable for the liquidated damages under the Contract. No liquidated damages shall be chargeable for any

delay in the final completion of the work due to any unreasonable action or delay on the part of the CFX.

- 5.5.6 The work will be considered completed when all work has been accepted by the Executive Director or authorized designee. The CFX reserves the right to apply as payment on such liquidated damages any money due the Contractor by the CFX.
- 5.6 Evaluation and Acceptance of Work
  - 5.6.1 The performance of the Contractor under the terms of the Contract will be subject to review by the Director of Maintenance. Reworking required due to Contractor negligence, omission, or inadequate performance will be the responsibility of the Contractor. No additional payment will be due the Contractor for the reworking of non-acceptable areas or work.
  - 5.6.2 Acceptable work quality will be determined by the Director of Maintenance.
  - 5.6.3 The Contractor shall certify that work quantities and quality were accomplished in accordance with the maintenance specifications. The certification shall be included in the monthly payment request documentation.
  - 5.6.4 Parts and materials provided by the Contractor for repairs and maintenance shall be new. Rebuilt or repaired parts will not be acceptable.
  - 5.6.5 All parts and materials shall be of a brand or quality equal to or better than the ones being replaced and shall be 100% compatible with the existing equipment.
  - 5.6.6 The CFX reserve the right to make other arrangements for purchasing parts and materials necessary for repairs and maintenance at any time, if the interest of the CFX requires such arrangements.

### 5.7 Binding Arbitration

All claims, disputes and controversies between the CFX and the Contractor arising out of or related to the Contract shall be decided and resolved by binding arbitration. The arbitration shall occur in Orlando, Florida and shall be conducted by a three (3) member panel pursuant to and under the auspices of the Construction Industry Arbitration Rules of the American Arbitration Association.

5.7.1 Procedure

Notice of the demand for arbitration will be filed in writing with the other party to the Contract and with the American Arbitration Association.

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

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

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

In order to assure complete resolution of any claim or controversy, the Contractor shall provide and require (in the agreements with subcontractors and material suppliers) for joinder in such arbitration proceedings.

Therefore, if a claim, dispute or other matter in question between CFX and Contractor involves the work of a subcontractor, either CFX or Contractor may join such subcontractor as a party to the arbitration. Nothing in this paragraph nor in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of subcontractor or supplier, and against CFX or any of its consultants that does not otherwise exist.

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

# END OF SCOPE OF SERVICES

- SA1 N/A Changes have been incorporated into the scope.
- SA2 CFX desires to add maintenance by the Contractor of the Hiawassee Backup Data Center including the following services in accordance with the applicable specifications: locksmith; pest control; plumbing inspection twice per year; annual roof inspection; plumbing maintenance; roof maintenance; annual dry chemical inspection; painting; miscellaneous building repairs. Maintenance services will not include air conditioning repair and maintenance or generator repair and maintenance which will be performed by others.
- SA3 CFX desires to add maintenance by the Contractor of the Ponkan, Coronado and Mount Plymouth toll plaza buildings including the following services in accordance with the applicable specifications: locksmith; pest control; plumbing inspection twice per year; annual roof inspection; plumbing maintenance; roof maintenance; annual dry chemical inspection; painting; miscellaneous building repairs.
- SA4 CFX desires to add maintenance by the Contactor of the CFX Headquarters building including the following services in accordance with the applicable specifications: Additional Janitorial services for second shift. (1) additional staff person will be provided from 9:00 p.m. 2:00 a.m.
- SA5 N/A added funding only.
- SA6 1. CFX desires to add maintenance by the Contactor of the CFX Headquarters building including the following services in accordance with the applicable specifications: Additional Janitorial services for second shift. (1) additional staff person and additional supplies will be provided from 7:00 p.m. 11:00 p.m., Monday through Friday.

2. CFX desires to add maintenance by the Contactor of the CFX Headquarters building including the following services in accordance with the applicable specifications: Additional Janitorial services for second shift. (1) additional staff person and additional supplies will be provided from 7:00 p.m. - 11:00 p.m., Monday through Friday.

3. CFX desires to add maintenance by the Contactor of the CFX Headquarters building including the following services in accordance with the applicable specifications: Additional Janitorial services for the New Patio Area during the first shift. (1) additional staff person and additional supplies will be provided from 10:00 a.m. - 3:00 p.m., Monday through Friday.

- SA7 N/A added funding only.
- SA8 N/A added funding only.

# **MEMORANDUM**

TO: CFX Board Members

FROM: Aneth Williams Will Director of Procurement

DATE: January 20, 2022

SUBJECT: Approval of Subcontractors to Louis Berger Hawthorne Services, Inc. for Facilities Maintenance Services – CFX's Toll Facilities Contract No. 001860

Board approval of IQuest Concepts, LLC d/b/a IQ Painters, Skyline Elevator, Inc., Modern Plumbing Industries, Inc. Falcon Lawn & Pest, Inc. and ABM Industries, Inc. d/b/a ABM Building Services LLC as subcontractors to Louis Berger Hawthorne Services, Inc., CFX's Facilities Maintenance Services Contractor to provide painting, elevator services, plumbing, pest control, and HVAC services, is requested. The cost is expected to exceed the \$25,000.00 threshold for each subcontractor established by the Procurement Policy for subcontractors not disclosed by Louis Berger Hawthorne Services, Inc. when its contract with CFX was originally awarded.

Reviewed by:

Don Budnovich, PE Director of Maintenance

Glenn Pressimone, PE

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



#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

### **REQUEST FOR AUTHORIZATION TO SUBLET SERVICES**

Consultant/Contractor: Louis Berger Hawthorne Services, Inc. Date: <u>1/19/2022</u>
CFX Contract Name: Central Florida Expressway Authority CFX Contract No.: 001860
Authorization is requested to sublet the services identified below which are included in the above referenced Contract. Consultant/Contract requests approval to sublet services to:
Subconsultant/Subcontractor Name: IQuest Concepts, LLC (dba IQ Painters)
Address: <u>113 Tarry Town Trail, Longwood, FL. 32750</u>
Phone No.: <u>407-575-8432</u>
Federal Employee ID No.: <u>26-1629931</u>
Description of Services to Be Sublet: Painting Services
Estimated Beginning Date of Sublet Services: <u>1/19/2022</u> Estimated Completion Date of Sublet Services: <u>7/31/2022</u>
Estimated Value of Sublet Services*: \$ <u>30,900.00</u> *(Not to exceed \$24,999.99 without prior Board Approval)
Consultant/Contractor hereby certifies that the proposed subconsultant/subcontractor has been advised of, and agrees to, the terms and conditions in the Consultant's/Contractor's Contract with CFX that are applicable to the subconsultant/subcontractor and the services to be sublet:
Requested By: <u>Rita Charles (For Wendy Joinville)</u> (Signature of Consultant/CompactorRepresentative) <u>Office Manager</u> Title
Recommended by: (Signature of Appropriate CFX Director/Manager) Jan 20, 2022 Date:
Approved by: Glenn Pressimone (Jan 21, 2022 07:44 EST) (Signature of Appropriate Services Chief) Date: Jan 21, 2022
Attach Subconsultant's/Subcontractor's Certificate of Insurance to this Request.

#### **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

### **REQUEST FOR AUTHORIZATION TO SUBLET SERVICES**

Consultant/Contractor: Louis Berger Hawthorne Services, Inc. Date: <u>12/29/2021</u>
CFX Contract Name: Central Florida Expressway Authority CFX Contract No.: 001860
Authorization is requested to sublet the services identified below which are included in the above referenced Contract. Consultant/Contractor requests approval to sublet services to:
Subconsultant/Subcontractor Name: Skyline Elevator Inc
Address: P.O. Box 850, Groveland, Fl. 34736
Phone No.: <u>352-429-7688</u>
Federal Employee ID No.: <u>26-1258219</u>
Description of Services to Be Sublet: <u>Elevator Services</u>
Estimated Beginning Date of Sublet Services: <u>12/29/2021</u>
Estimated Completion Date of Sublet Services: 7/31/2022
Estimated Value of Sublet Services*: \$27,415.00 *(Not to exceed \$24,999.99 without prior Board Approval)
Consultant/Contractor hereby certifies that the proposed subconsultant/subcontractor has been advised of, and agrees to, the terms and conditions in the Consultant's/Contractor's Contract with CFX that are applicable to the subconsultant/subcontractor and the services to be sublet:
Requested By: <u><i>Pita Charles (For Wondy Joinville)</i> (Signature of Consultant/Contractor Representative) <i>Office Manager</i> Title</u>
Recommended by: (Signature of Appropriate CFX Director/Manager) Jan 20, 2022 Date:
Approved by: Glenn Pressimone (Jan 21, 2022 07:44 EST) Date: Jan 21, 2022 (Signature of Appropriate Services Chief)

Attach Subconsultant's/Subcontractor's Certificate of Insurance to this Request.

#### **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

#### **REQUEST FOR AUTHORIZATION TO SUBLET SERVICES**

Consultant/Contractor: Louis Berger Hawthorne Services, Inc. Date: <u>12/29/2021</u>
CFX Contract Name: Central Florida Expressway Authority CFX Contract No.: 001860
Authorization is requested to sublet the services identified below which are included in the above referenced Contract. Consultant/Contractor requests approval to sublet services to:
Subconsultant/Subcontractor Name: Modern Plumbing Industries, Inc.
Address: 255 Old Sanford Oviedo Road, Winter Springs, Fl. 32708
Phone No.: <u>407-327-6000</u>
Federal Employee ID No.: 59-1884437
Description of Services to Be Sublet: <u>Plumbing Services</u>
Estimated Beginning Date of Sublet Services: 12/29/2021
Estimated Completion Date of Sublet Services: 7/31/2022
Estimated Value of Sublet Services*: \$ <u>35,400.00</u> *(Not to exceed \$24,999.99 without prior Board Approval)
Consultant/Contractor hereby certifies that the proposed subconsultant/subcontractor has been advised of, and agrees to, the terms and conditions in the Consultant's/Contractor's Contract with CFX that are applicable to the subconsultant/subcontractor and the services to be sublet:
Requested By: Rita Charles (For Wendy Joinville)

(Signature of Consultant/Contractor Bepresentative)

<u>fice Manager</u> <sub>Title</sub>

Recommended by: 📈

m12

Jan 20, 2022 Date:

\_\_\_\_\_

(Signature of Appropriate CFX Director/Manager)

Approved by: Glenn Pressimone (Jan 21, 2022 07:43 EST)

Jan 21, 2022 Date: \_\_\_\_

(Signature of Appropriate Services Chief)

Attach Subconsultant's/Subcontractor's Certificate of Insurance to this Request.

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

#### **REQUEST FOR AUTHORIZATION TO SUBLET SERVICES**

Consultant/Contractor: Louis Berger Hawthorne Services, Inc. Date: <u>12/29/2021</u>	
CFX Contract Name: Central Florida Expressway Authority CFX Contract No.: 001860	
Authorization is requested to sublet the services identified below which are included in the above referenced Contract. Consultar requests approval to sublet services to:	nt/Contractor
Subconsultant/Subcontractor Name: Falcon Lawn & Pest, Inc.	
Address: 4062 S. Goldenrod Road, Orlando, FL. 32822	
Phone No.: <u>1-800-532-5266</u>	
Federal Employee ID No.: <u>59-3476298</u>	
Description of Services to Be Sublet: Pest Control	
Estimated Beginning Date of Sublet Services: <u>12/29/2021</u> Estimated Completion Date of Sublet Services: <u>7/31/2022</u> Estimated Value of Sublet Services*: <u>\$29,937.15</u> *(Not to exceed \$24,999.99 without prior Board Approval) Consultant/Contractor hereby certifies that the proposed subconsultant/subcontractor has been advised of, and agrees to, the term conditions in the Consultant's/Contractor's Contract with CFX that are applicable to the subconsultant/subcontractor and the services: Requested By: <u>Lita Charles (For Wendy Opinvills)</u> (Signature of Consultant/Contractor Representative) <u>Utice Manager</u> Title	
Recommended by: (Signature of Appropriate CFX Director/Manager) Jan 20, 2022 Date:	
Approved by: Glenn Pressimone (Jan 21, 2022 07:43 EST) (Signature of Appropriate Services Chief) Jan 21, 202 Date:	2

Attach Subconsultant's/Subcontractor's Certificate of Insurance to this Request.

#### **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

#### **REQUEST FOR AUTHORIZATION TO SUBLET SERVICES**

Consultant/Contractor: Louis Berger Hawthorne Services, Inc.	Date: <u>12/29/2021</u>
CFX Contract Name: Central Florida Expressway Authority	CFX Contract No.: 001860
Authorization is requested to sublet the services identified below which are increquests approval to sublet services to:	cluded in the above referenced Contract. Consultant/Contractor
Subconsultant/Subcontractor Name: <u>ABM Industries Inc (dba ABM Building</u>	Services LLC)
Address: 14141 S W Freeway, Suite 400, Sugar Land, TX. 77478	
Phone No.: <u>813-654-9000</u>	
Federal Employee ID No.: 20-0357050	
Description of Services to Be Sublet: HVAC Services	
Estimated Beginning Date of Sublet Services: <u>12/29/2021</u>	_
Estimated Completion Date of Sublet Services: Estimated Value of Sublet Services*: <u>\$86, 331.00</u> *(Not to exceed \$24,999.99 without prior Board Approval)	
Consultant/Contractor hereby certifies that the proposed subconsultant/subcom conditions in the Consultant's/Contractor's Contract with CFX that are applica sublet:	
Requested By: <u><i>Rita Charles (For Wendy Jou</i></u> (Signature of Consultant/Contractor Gepres <u><i>Office Manager</i></u> Title	inville) entative)
Recommended by: (Signature of Appropriate CFX Director/Manager)	Jan 20, 2022 Date:
Approved by: Glenn Pressimone (Jan 21, 2022 07:42 EST)	Jan 21, 2022 Date:

(Signature of Appropriate Services Chief)

Attach Subconsultant's/Subcontractor's Certificate of Insurance to this Request.

### MEMORANDUM

TO:	CFX Board Members
FROM:	Aneth Williams Will Director of Procurement
DATE:	January 28, 2022
SUBJECT:	Approval of Partnership Agreement Between CFX and WFTV for FY2022/23 Safety Campaign Contract No. 001890

Board approval is requested to enter into a partnership agreement with WFTV, the local ABC affiliate which is operated by Cox Media Group for a not-to-exceed amount of \$156,000.00 to promote Drive Smart Florida Safety Campaign.

CFX will work in partnership with WFTV to develop and produce video and digital media assets that will be distributed through the WFTV media platforms; online, on-air and on radio. CFX will be able to repurpose and distribute video and media assets developed during this partnership.

The Drive Smart Florida Safety Campaign's objective is to reinforce safe driving habits. The rules of merging, maintaining a safe trailing distance, navigating work zones and steps to take after a car accident will be promoted.

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

Reviewed by: <u>Angela Melton</u> Angela Melton

Director of Public Outreach and Communications

Jan 31, 2022 10:32 EST)

Michelle Maikisch

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



# Partnership Elements Contract No. 001890

- Safety Two Min Segments- All New five (5) Safety two-minute segments to air in Eyewitness News with new traffic anchor Alexa
- 6AM Fixed Sponsorship- CFX Logo will air at the close of each 6am Newscast while anchors direct viewers to WFTV.com
- 6AM Commercial- CFX :15 sec commercial will air as a fixed position leading into GMA
- WFTV & WRDQ, Antenna Broadcast TV-132x :15 sec ROS CFX safety vignettes (9.5 Million IMP A18+)
- WFTV.com Display 1,200,000 total estimated ROS display impressions
- WFTV.com Takeovers 4 total FAP/Takeovers on WFTV.com
- WFTV.com Pre-Roll 330,000 total estimated pre-roll impressions on WFTV.com
- WFTV Live Stream 330,000 total estimated impressions WFTV's Live Stream OTT platforms
- Paid Social Paid social campaign served to custom audience
- **TrueView YouTube** 30,000 total estimated completed video views
- WFTV.com Archive Landing Page All previous and future Safety Campaign assets stored on the page
- Publisher OTT digital TV Estimated 225,000 IMP targeted audience schedule



BILLING COMPANY:	
ADVERTISER:	Central Florida Expressway Authority
AGENCY:	Day Communications
ADDRESS:	4974 Orl Tower Rd.
CITY/STATE/ZIP:	Orlando, FL 32807
SPONSORSHIP:	Safety Campaign
CONTACT NAME:	Angela Melton
CONTACT PHONE:	(407)690-5000
CONTACT EMAIL:	billing@cfxway.com
RUN DATES:	March 2022-December 2022
TOTAL CONTRACT AMOUNT:	\$155,450 campaign total
MONTHLY BILLING AMOUNT:	(Production \$9,500 on time) Monthly billing avg. \$24,325 NET

- 30-Day Cancellation required in writing.
- If Advertiser does not presently maintain credit with Publisher, payment will be made in advance, at the agreed upon rate set above.
- Advertising content subject to final review and approval by Publisher.



### **MEMORANDUM**

TO: CFX Board Members
FROM: Diego "Woody" Rodrigue<sup>*wle*</sup> General Counsel
DATE: January 25, 2022
SUBJECT: Approval of Revised E-PASS User Agreement

Board approval is requested of the revised E-PASS User Agreement. The revisions consolidate and clarify language in the agreement. In addition, language is included prohibiting the unauthorized sale, barter, exchange or transfer of CFX transponders under Section 6.2.

Reviewed by:

David Wynne Director of Toll Operations

Jim Greer Chief of Technology & Operations

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



# **E-PASS Customer Agreement**

CFX Board Approved March 12, 2019 on February 10, 2022

# **TABLE OF CONTENTS**

Section 1.	Defined Terms	2
Section 2.	Acknowledgement and Acceptance of Terms	3
Section 3.	Intent of the CFX Transponders	4
Section 4.	User Responsibilities to Provide and Maintain Certain Information	4
Section 5.	User Responsibility to Pay Tolls and Maintain their Account Current	6
Section 6.	CFX Transponder Licenses	6
Section 7.	Privacy Policy	8
Section 8.	E-PASS Customer Account Types	9
Section 9.	CFX Transponder Usage1	0
Section 10.	Non-Semi Trailer (e.g. Boat, Camper, Utility, etc.) Registrations1	4
Section 11.	Prepaid and Postpaid Accounts1	5
Section 12.	Replenishment of Prepaid Accounts1	
Section 13.	Payment of Postpaid Account2	
Section 14.	Voluntary or Involuntary Termination of User's CFX Transponder2	4
Section 15.	Lost or Stolen CFX Transponder2	5
Section 16.	Damaged or Malfunctioning CFX Transponders2	:6
Section 17.	Withdrawal of Prepaid Account Balance or Payment of Tolls Owed at	
	Account Closure2	8
Section 18.	Dispute of Charges2	8
Section 19.	Miscellaneous Provisions2	8

E-PASS<sup>\*</sup> Customer Service Center: P.O. Box 720218 •Orlando, FL 32872 • (800) 353-7277 • E-pass@cfxway.comE-PASS<sup>\*</sup> is a registered trademark of the Central Florida Expressway Authority.

Page 1 of 23

# **E-PASS Customer Agreement**

CFX Board Approved on February 10, 2022

## Section 1. Defined Terms

<u>1.1</u> This E-PASS Customer Agreement (<u>hereafter hereinafter</u> referred to as "Agreement") is entered into between you (<u>hereafter hereinafter</u> referred to as "User") and the Central Florida Expressway Authority (<u>hereafter hereinafter</u> individually referred to as "CFX"), regarding the use of the E-PASS Prepaid TollProgram (hereafter referred to any CFX issued transponders which collectively all such transponders shall be referred to herein as "<u>E-PASS</u>"), and Postpaid the "CFX Transponders" and may include any of the following:

- E-PASS Portable Transponder (hereinafter individually referred to as "E-PASS Portable");
- Visitor Toll Pass<sup>®</sup> (hereafter hereinafter referred to as "Visitor Toll Pass<sup>®</sup>"), the E-PASS Portable transponder (hereafter specifically referred to as "E-PASS Portable Transponder"), ");
- E-PASS Bumper transponder (hereafter specificallyTransponder (hereinafter individually referred to as "E-PASS or "Bumper Transponder"), the ");
- E-PASS Sticker transponder (hereafter specificallyTransponder (hereinafter individually referred to as ""E-PASS Sticker-Transponder"), the ");
- E-PASS Xtra transponder (hereafter specifically Transponder (hereinafter individually referred to as "<u>"Xtra");</u>
- Collegiate Pass Transponders, including but not limited to GatorPass<sup>®</sup>, KnightPass<sup>®</sup> and NolePass<sup>®</sup> (hereinafter collectively referred to as the "Collegiate Pass <u>Transponders"); and,</u>
- UNI Transponder<sup>®</sup> (hereinafter individually referred to as the "UNI")

<u>1.2</u> E-PASS Portable, Visitor Toll Pass, Bumper, Xtra, and Uni which utilize the E-PASS Xtra Transponder") and Visitor Toll Pass<sup>®</sup> Transponder (hereafter Portable Transponders are herein collectively referred to as "Visitor Toll the "Portable Transponders."

<u>1.3 E-Pass Sticker and Collegiate</u> Pass<sup>®</sup> Transponder") Transponders, which utilize E-Pass Sticker Transponders are herein collectively referred to as the "Sticker Transponders."

<u>1.4</u> This Agreement governs the use of CFX Transponders on toll roads, bridges, parking and other facilities within the State of Florida and within other states <u>or tolling authorities</u> for which the toll operators have entered into reciprocity agreements with other <del>Interoperable</del> <u>interoperable</u> partners of which CFX is a party for electronic toll collection interoperability and thereby accept <u>E-PASSCFX</u> Transponders for electronic payment (such other states <u>hereafteror tolling authorities hereinafter</u> referred to as "Interoperable <u>States"</u>). This agreement governs User's Parties"). 1.5 The term "User's Account" shall refer to any Prepaid Account or Postpaid Account created or maintained by User with CFX for purposes of registering any CFX Transponder and making payments.

1.6 The term "CFX Customer Service Channels" shall include the following methods of communication by which a User may communicate with CFX and can create, maintain, update or terminate a User's Account. Such methods include:

(a) access via CFX's website at www.CFXWay.com;

(b) access via CFX's mobile application also known as E-PASS Toll App;

(c) by calling the E-PASS account (hereafter referred to as "Prepaid Account") and Visitor Toll Pass<sup>\*</sup> account (hereafter referred to as "Post Paid Account"). Customer Service Center at 1-800-353-7277;

(d) by submitting an email to: E-PASS@CFXWay.com (e) by mail to CFX, P.O. Box 720218, Orlando, FL 32872 (f) in person by visiting the CFX Customer Service Center located at 525 South Magnolia Avenue, Orlando, FL 32801 during regular business hours (f) by such other means as may be provided by CFX in the future.

Section 2. Acknowledgement and Acceptance of Terms

<u>2.1</u> Use of the <u>TransponderCFX Transponders</u> by User shall be acknowledgment and acceptance by User of the terms and conditions of this Agreement. CFX may alter, amend, or otherwise change the terms and conditions of this Agreement at any time. Alterations, amendments or other changes will be posted in the Customer Agreement section online aton the or CFX website and/or the Mobile App and shall be effective upon the date of posting. User is responsible for keeping current: User's address, contact information, vehicle and license plate information, and any and all E PASS Prepaid or Visitor Toll Pass<sup>®</sup> Postpaid Account information. For your convenience, updates may be made by logging onto User's account at E PASS website, the Mobile App or by contacting the E PASS Customer Service Center at 1-800 353-7277.

2.2 If User does not accept the terms and conditions of this Agreement, or any future alterations, amendments or other changes to the terms and conditions of the this Agreement by with CFX, User shall discontinue use of all <u>CFX</u> Transponders and shall notify <u>CFX</u> through one of the E-PASS<u>CFX</u> Customer Service <u>CenterChannels</u>. The terms for voluntary or involuntary closure of a User's <u>Prepaid</u> Account or <u>Postpaid</u> Account, including notification, will be applied in accordance with Section <u>1116</u> of this <u>agreementAgreement</u>.

# Section <u>1.3.</u> Intent of the <u>E-PASS and Visitor Toll Pass System</u><u>CFX</u> <u>Transponders</u>

<u>3.1</u> The intent of <u>E-PASS and Visitor Toll Pass<sup>®</sup>CFX Transponders</u> is to provide a safe transportation system, and reduce traffic congestion and air pollution by providing efficient and convenient electronic payment. Users may payCFX Transponders are licensed to User by CFX for the specific purpose of paying tolls and/or other services electronically by using a CFX Transponder at any Florida or Interoperable StateParties' location where <u>E-PASS or Visitor Toll Pass<sup>®</sup> isCFX Transponders are</u> accepted for payment. One or more CFX Transponders may be activated by establishing a Prepaid Account for <u>E-PASS or a single transponder</u> in the case of the <u>Postpaid</u>-Visitor Toll Pass<sup>®</sup> Program. The <u>E-PASS or a single transponder</u> in the case of the <u>Postpaid</u>-Visitor Toll Pass<sup>®</sup> Program. The <u>E-PASS or a single transponder</u> is a privilege and not a right.

# Section 4. User Responsibilities to Provide and Maintain Certain Information

4.1 All vehicles in which the User intends to use a CFX Transponder must be listed within the account, but a vehicle license plate may only be actively subscribed to one account at a time. The license plate number and issuing state must be provided at the time of transponder activation and updated as changes occur. User must notify E-PASSThe year, make, model and color of the vehicle must be provided within sixty (60) days of transponder activation and updated as changes occur, if applicable.

4.2 User accepts there may be occurrences when a CFX Transponder is not identified even though it is present in the vehicle. In cases where a CFX Transponder is not identified but the vehicle license plate is recorded, CFX reserves the right to add the vehicle license plate and issuing state to the User's Account. CFX will exercise this right when CFX determines a confident match has been made between the registered owner of vehicle for the license plate and the customer information on the User's Account.

**1.1** <u>4.3</u> User is responsible for providing and keeping current: User's mailing address, contact information, e-mail address, vehicle and license plate information, and any and all account information as may be required. Any changes can be made through one of the CFX Customer Service CenterChannels as identified in Section 1.6 herein.

<u>User shall notify CFX</u> of any change in vehicle and/or vehicle registration and/or license plate prior to using Florida or Interoperable <u>StateParties'</u> toll facility. Failure to update this information may result in additional charges and fees or a toll violation resulting in the User and/or the registered owner of the vehicle used on the <u>User's failure to inform CFX of the current registration and/or license plate number on the vehicle prior to using any toll facility being held responsible and liable for anywill result in a breach of this Agreement and may result in the issuance of a Uniform Traffic Citation issued pursuant to §("UTC") under <u>Section</u> 316.1001, Florida Statutes for violations occurring in the State of Florida and traffic citations issued by other states for violations occurring in(2021), or the applicable laws in an Interoperable Statesas a result of User's failure to update this information.</u>

In Parties' location. These remedies are in addition, to any remedies available to CFX under federal law, Florida common law, statutes, administrative rules, and this Agreement.

**1.2** <u>4.4</u> User <u>shallhas a further duty to</u> notify the State of Florida, Department of Highway Safety & Motor Vehicles (DHSMV) if <u>applicable</u>:

Page 5 of 23

Driver License Office within ten (10thirty (30) days of any change toin a name and/or any change of mailing address to a driver's license issued by the State of Florida pursuant to <u>§Section</u> 322.19, Florida Statutes (2007).

<u>2021) or the Motor Vehicle (Tag) Office within twenty (20thirty (30)</u> days of any change of mailing address pursuant to <u>§Section 320.02(4)</u>, Florida Statutes (2021). Any changes in such information that may be communicated by User to CFX will not serve as a substitute for any requirements of Florida law to update information to driver's licenses or motor vehicle tags and CFX shall assume no responsibility to notify DHSMV of any changes it receives from User.

### Section 5. User Responsibility to Pay Tolls and Maintain their Account Current

<u>5.1</u> User and/or the registered owner of the vehicle used on the toll facility is responsible and liable for any unpaid toll or <u>traffic citationany UTC</u> issued as a result of User's <u>Transpondertransponder</u> not being read by the receiving equipment in any toll facility. User shall not use this Agreement as a defense to a toll violation if the <u>CFX</u> Transponder is not read by the receiving equipment unless the supplemental lane transactions show a problem with the receiver in the lane at the time of the alleged violation. "Defective Transponders," <u>malfunctioning</u>", "Malfunctioning Transponders," and not properly mounting the <u>CFX</u> Transponder do not relieve the User and/or the owner of the motor vehicle involved in anof any unpaid toll from liability under <u>Section 316.1001</u>, Florida Statutes, or the applicable laws in an Interoperable Parties' location.

§316.1001, Florida Statutes or the applicable laws of an Interoperable State.

5.2 User is responsible for pre-paying all tolls if using a Prepaid Account for E-PASS. User must immediately pay cash <u>or make other arrangements</u> for payment and may be <u>subject to the Pay-By-Plate rates for</u> tolls and <u>shall</u> stop using <u>CFX</u> Transponder when the balance on the account is insufficient to pay any toll. (Refer to Sections 5.7 and 5.7.1 for more details.) Whether <u>or notthe</u> User actually knewhas actual knowledge of the balance on the account <u>and whether such balance</u> was insufficient to make payment shall not be a defense to a toll violation and <u>the</u> User and/<del>or</del> the owner of the vehicle used on the toll facility isshall be responsible and liable for any <u>Uniform Traffic CitationUTC that may be</u> issued pursuant to <u>\$Section</u> 316.1001, Florida Statutes, or the applicable laws <u>ofin</u> an Interoperable <del>State</del>Parties' location.

**1.3** User's failure to inform E PASS Customer Service Center of the current registrationand/or

license plate number on the vehicle prior to using any toll facility will result in a breach of this

Agreement and may result in the issuance of a Uniform Traffic Citation ("UTC") under

§316.1001, Florida Statutes, or the applicable laws of an Interoperable State. These remedies

Page 6 of 23

are in addition to any remedies available to CFX under federal law, Florida common law, statutes, administrative rules, and this Agreement.

# Section 2. E-PASS License and Visitor Toll Pass<sup>®</sup> License<u>6. CFX Transponder</u> Licenses

<u>6.1</u> The User shall be responsible for each <u>CFX</u> Transponder issued to User under this and/or subsequent Agreements and all amendments to such Agreements. The <u>Transponder(s)CFX Transponders</u> may be used at designated <u>EPASSE-PASS</u> Lanes; E-PASS enabled lanes or any other venues that accept E-PASS or Visitor Toll Pass<sup>®</sup> as payment for services inside or outside the State of Florida. Whether paying electronically using a <u>CFX</u> Transponder or by <u>a manualany other</u> payment method, User remains responsible for any toll payments, toll violations, or payments for any other services. Failure to collect payment electronically, even though User has a <u>CFX</u> Transponder, shall not release User of payment responsibility.

6.2 CFX Transponders are for the exclusive use of User as a purchaser of the CFX Transponder and User acknowledges and agrees not to sell, barter, exchange or otherwise transfer the CFX Transponder in exchange for any goods, services or other consideration. Any such sale, barter, exchange or transfer may render the CFX Transponder void and any privileges or rights associated with such CFX Transponder shall be terminated.

### Section 3. 7. Privacy Policy

<u>7.1</u> CFX respects the privacy of all account holders. CFX does not sell or share its customer list with outside marketers. In addition, personal identifying information generally is exempt from disclosure under Florida's public records law, pursuant to Section 338.155(6), Florida Statutes, (2021), and can only be obtained by persons outside of CFX or authorized law enforcement agencies only by subpoena or court order, except CFX may share certain Prepaid Account or Post PaidUser's Account information with operators of other toll facilities for toll payment, collection and notice purposes without obtaining a subpoena or court order.

<u>7.2</u> User acknowledges and agrees that Interoperable <u>StatesParties</u> will observe their respective state laws regarding the disclosure of records and other information related to transactions that use an <u>E-PASS Transponder (Portable, Bumper, Sticker or Xtra) or Visitor Toll</u> <u>Pass<sup>®</sup>CFX</u> Transponder on toll facilities of the Interoperable <u>StatesParties</u>, including Prepaid Account or <u>Postpaid Account</u> information provided by CFX to <u>the</u> Interoperable <u>StatesParties</u> for the purpose of toll payment, collection, or notice. Under no circumstances will User information be disclosed to any nonaffiliated third parties for use in <u>telemarketing, direct mail</u> marketing, or other marketing.

<u>7.3</u> User acknowledges and agrees that CFX may use the<u>data from any CFX</u> Transponder or may authorize any other governmental agencies to use the <u>Transponderdata</u> <u>collected from CFX Transponders</u> to <u>collectcompile</u> anonymous traffic, travel, or other statistical information.

Section 4. Choosing the right <u>8. E-PASS</u> Customer Account Type Types

E-PASS provides both Personal, Business, Rental Car Toll Collection and Visitor Toll Pass<sup>®</sup> Accounts.

<u>8.1</u> Personal Prepaid Accounts: Primarily for personal, non-business Users with privately owned or leased vehicles and/or trailers. While multiple Transponders may be linked to personal accounts, the number is typically less than 10. The minimum opening balance for a Personal Prepaid Account is \$10.00. When adding additional <u>CFX</u> Transponders to an existing Prepaid Account, additional prepaid funds may also be required.

<u>8.2</u> Business Prepaid Accounts: Primarily for companies or businesses with corporate owned or leased vehicles and/or trailers. A current Federal Employer Identification Number (FEIN) ismay be required to open an account of this typea Business Prepaid Account. FEIN information must be kept current and may be requested by an E-PASS representative at any time. The minimum opening balance for a Business Prepaid Account is dependent on the User's estimated monthly usage but must be a minimum of \$10.00.will be established by CFX based on the number of transponders and potential transactions. User shall be notified of any changes to the required replenishment amount on their monthly Account Summary Statement or via emailemails or text message (messages, for which standard text message rates may apply) if applicable. For Business Prepaid Accounts to qualify for tax exempt status, User must provide a valid tax exemption certificate. If a tax exemption certificate is provided after account a Business Prepaid Account is established, the tax exemption isshall be effective from earlier than the date proof is provided.

**4.1** Rental Car Toll Collection Service Accounts: Primarily for national rental car companies or service providers who act as an intermediary between CFX and nationalrental car companies, for the purpose of making "E-PASS Only" lanes available to customers of national rental car companies via the use of the video-based PAY-BY-

Page 9 of 23

PLATE system or the transponder-based E-PASS system. The rental car company or service provider must enter into a separate Marketing and Operations Agreement for Rental Car Toll Collection Services and abide by the terms thereof. Rental car customers of national rental car companies are given a choice to:

- (1) pay cash at toll booths when using toll roads, if the cash payment option is available for the toll facility location to be used;
- (2) pay the cash rate of tolls plus a minimal daily fee; or
- (3) pay a flat daily fee for unlimited tolls.

The rental car company or service provider will establish and maintain one or more Prepaid Accounts for use in providing services to client companies and/or their customers and will be subject to automatic replenishment via a commercial credit card or other method approved by CFX. This service provides customer service to both the rental car companies and toll agency customers, reduces paperwork between rental car companies and their customers, and eliminates toll violations.

<u>8.3</u> Visitor Toll Pass<sup>®</sup> Accounts: Primarily for travelers arriving via an airport who will be renting a vehicle during their stay. This account allows only for a single transponder to be linked to an account. The account is a Postpaid account whereas tolls will be charged via credit card at one or more times during or at the end of the rental period. Customers are provided with a Visitor Toll Pass<sup>®</sup> Transponder to use during their rental period. If the transponder is not returned at the end of the rental the customer will be charged for the transponder. An initial deposit is required to obtain the Visitor Toll Pass<sup>®</sup> Transponder.

Section 5. E-PASS and Visitor Toll Pass<sup>®</sup>9. CFX Transponder Usage

**5.1**–<u>9.1</u> Unless otherwise directed by CFX, User agrees to properly mount <u>or apply</u> the <u>TransponderCFX Transponders</u>, as explained in the E-PASS <u>User ManualInstallation</u> <u>Guides</u> available <u>online at the E-PASS website, through</u> CFX <u>website, Mobile AppCustomer</u> <u>Service Channels</u> or <u>in materials provideprovided</u> to the <u>customerUser</u> during account initiation, <u>during all toll road travel and/or other available services.</u> Holding a <u>CFX</u> Transponder in the

Page 10 of 23

User's hand or leaving it on the dashboard or in another non-mounted position in the vehicle is strictly prohibited. Not properly mounting the <u>CFX</u> Transponder may result in the <u>User'sCFX</u> Transponder being denied for electronic payment, resulting in unpaid tolls. Such <u>unpaid tolls may result in additional charges and fees or the issuance of a UTC under</u> <u>Section 316.1001, Florida Statutes, or under the applicable laws in an Interoperable Parties'</u> <u>location</u>.

Unpaid tolls may result in additional charges and fees or the issuance of a UTC under

§316.1001, Florida Statutes or under the applicable laws of an Interoperable State.

9.2 User should never have more than one transponder in the vehicle while traveling through toll lanes or other Interoperable systems that accept CFX Transponders. If another Portable Transponder must be placed in the vehicle it should be stored inside a Radio Frequency shield bag ("RF shield bag") which prevents the CFX Transponder from being read by the system. The RF shield bag is available, free of charge, through any of the CFX Customer Service Channels.

<u>9.3</u> User acknowledges User's responsibility under this Agreement and User agrees to comply with all applicable traffic laws while using toll roads and bridges. <u>Under no circumstances should a User drive through a transponder-only toll lane at a speed greater than that posted by CFX or other applicable governmental authorities.</u>

**5.2** Under no circumstances should a <u>9.4</u> The User drive through a <u>acknowledges that they</u> must exercise extra caution before proceeding through any lane that is designated E-PASSas an automated coin machine lane, staffed toll lane or E-PASS enabled lane at a speed greater than that posted by CFX or other applicablegovernmental authorities.

When using a toll lane that is not E-PASS only (i.e. an<u>that otherwise requires</u> exact change-or change lane that also displays the E-PASS logo), even with a working and funded <u>CFX</u> Transponder, the User must bring the vehicle to a complete stop before proceeding through the toll lane.

<u>9.5</u> User accepts that sharing a <u>CFX</u> Transponder for electronic payment at the same time in the same location is prohibited.

<u>9.6</u> Under no circumstance may a <u>CFX</u> Transponder be used in a vehicle that has not been registered as an authorized vehicle for the <u>User's Prepaid or PostpaidUser's</u> Account. The vehicle and its unique license plate must be associated to the <u>User's accountUser's</u> <u>Account</u> information and a vehicle may not be actively listed on more than one <u>Prepaid or Postpaid Account</u>.

<u>9.7</u> Failure to pay a toll is a violation which may result in the issuance of a traffic citation.UTC. CFX takes a photographphotographic image of theany vehicles that of all

<u>vehicles, including those hat</u> do not pay the required toll. If User's Prepaid Account does not have sufficient balance to pay the toll, User <u>must use</u><u>may be billed at a higher Pay-By-</u><u>Plate rate via an invoice sent by US mail to the User's registered home address or the</u><u>address associated with the vehicle's license tag registration. If User elects to pay cash</u><u>lanesin a lane</u>, if cash lanes are available, <u>or avoid using toll facilities until the account is</u> <u>replenished and in the Active status. When paying cash, User User shall place the <u>E PASSCFX</u><u>Transponder in the RF shield bag or remove the CFX Transponder from the vehicle.</u></u> Portable, Bumper or Xtra Transponder in the Radio Frequency {"RF") shield bag, or remove the EPASS Portable, Bumper or Xtra Transponder from the vehicle. The RF shield bag is available, free of charge, by calling 1-800-353-7277.

<u>9.8</u> User shall <u>immediately</u> turn over the<u>any CFX</u> Transponder at the request of<u>that is</u> requested by law enforcement or CFX because of toll <u>violation(s)violations</u> relating to the misuse or termination of a <u>Prepaid or PostpaidUser's</u> Account in connection with a violation of local, state or federal law. <u>E PASS or Visitor Toll Pass</u><sup>®</sup>CFX Transponders that have been forfeited under this <u>sectionSection</u> may be returned to User when the <u>Prepaid orPostpaid</u> Account account has been returned to good standing.

Users9.9 User acknowledges that paying with cash while an E-PASS Portable, Bumper, Sticker, Xtra Transponder or Visitor Toll Pass\*a CFX Transponder is installed on the vehicle may beresult in a double charged/charge or getting double billed. E PASS for the same transaction. CFX will not credit your account User's Account for duplicate activity when paying with cash unless valid cash receipts are provided to E PASSService CenterCFX within ninety (90) days of the original transaction. The manner in which cash receipts shall be submitted to CFX can be obtained through any of the CFX Customer Service Channels. The amount of the credit will be at the E-PASS toll rate. Cash receipts are not available at all locations or times of day. No credit or refund will be due if one or more tolls are paid by cash at a location or at a time of day for which cash receipts are not available.

<u>9.10</u> User shall not, under any circumstances, authorize another person or third party to use <u>his or hertheir CFX</u> Transponder, unless User has previously added to his or her Prepaid or Postpaid Account the <u>third-party's</u> vehicle and license plate information for each vehicle authorized byto the User's Account as provided in Section 4.3 herein. User to use the Transponder.acknowledges that User is responsible for any and all transactions incurred by User's <u>CFX</u> Transponder in the event someone other than User uses a toll facility with User's <u>CFX</u> Transponder.

<u>9.11</u> User agrees that User shall not attempt to, reverse engineer or otherwise attempt to reverse engineer, alter, modify or tamper with the mechanical or electrical operation of theany CFX Transponder or any software coding, or otherwise attempt to use the <u>CFX</u> Transponder or other equipment in order to avoid payment of tolls or fees.

# Section 6. Vehicle and <u>10.</u> Non-Semi Trailer Information(e.g. Boat, Camper, Utility, etc.) Registrations

**6.1** All vehicles in which the User intends to use a <u>Transponder must be listed within the</u> account, but a vehicle license plate may only be actively subscribed to one account at a time. The license plate number and issuing state must be provided at the time of transponder activation and updated as changes occur. The year, make, model and colorof the vehicle must be provided within 60 days of transponder activation and updated aschanges occur, if applicable. For convenience, vehicle information may be updated on the E-PASS website, the Mobile App or through the E-PASS Service Center. User accepts there may be occurrences when a Transponder is not identified even though it is present in the vehicle. In cases where a Transponder is not identified but the vehicle license plate is recorded, CFX reserves the right to add the vehicle license plate and issuing state to the User's account. CFX will not exercise this right unless a confident match can be made between the registered owner of vehicle for the license plate and the customer information on the User's account.

<u>10.1</u> All Non-Semi trailers {e.g. Boat, Camper, Utilityboat, camper, utility vehicle, etc.) pulled by vehicles in which the User intends to use a <u>CFX</u> Transponder must be listed within the account, but a trailer license plate may only be actively subscribed to one account at a time. The license plate number and issuing state must be provided and updated as changes occur. For convenience, this information mayAny updates should be updated onprovided through the <u>E\_PASS website</u>, the Mobile App or <u>E\_PASS walk in or call center.CFX</u> Customer Service Channels. User accepts there may be occurrences when a <u>CFX</u> Transponder is not identified even though it is present in the vehicle pulling the trailer. In cases where a <u>CFX</u> Transponder is not identified but the trailer license plate is recorded, CFX reserves the right to add the trailer license plate and issuing state to the <u>User's account</u>.<u>User's Account</u>. CFX will not-exercise this right <u>unless when CFX</u> determines a confident match <u>can behas been</u> made between the registered owner of the trailer for the license plate and the customer information on the <u>User's account</u>.<u>User's Account</u>.

# Section 7.11. Prepaid Accountand Postpaid Accounts

<u>11.1</u> For Prepaid Accounts, User is responsible for pre-payment of all tolls used prior to using toll facilities. For Postpaid Accounts, User is responsible for payment of all tolls used.

<u>11.2</u> For both Prepaid and Postpaid Accounts, User is responsible for maintaining a working <u>CFX</u> Transponder at all times and required to contact CFX if inoperable. If the <u>CFX</u> Transponder is not read by the receiver in the electronic toll collection lane for any reason, including but not limited to improper mounting, problem windshields, <u>a damaged CFX</u> <u>Transponder</u> or other <u>CFX</u> Transponder malfunction, User <u>willmay</u> be subject to the issuance of a traffic citation.<u>UTC</u>. User <u>willhereby acknowledges that User shall</u> be liable for payment of the unpaid toll along with fines, court costs and other penalties which may include points on User's driving record which may result in the suspension of User's driver license or vehicle registration. <u>User accepts responsibility to maintain a sufficient balance in</u> <u>User's Prepaid Account at all times to cover applicable tolls and other charges as described below</u>.

7.1 User authorizes CFX to deduct the following charges from the User's Prepaid

Account:

11.3 For Prepaid Accounts, User accepts responsibility to always maintain a sufficient balance in User's Prepaid Account to cover applicable tolls and other charges as described herein. In the event the required toll is not paid, and the prepaid account does not have sufficient funds to pay the toll electronically, User shall be liable for any UTC that may be issued pursuant to Section 316.1001, Florida Statutes, or the applicable laws in an Interoperable Parties' location.

11.4 For Postpaid Accounts, User accepts responsibility to maintain a credit card, in good standing, on file with sufficient balance at all times to cover applicable tolls and other charges as described herein. In the event the required toll is not paid, User shall be liable for any UTC that may be issued pursuant to Section 316.1001, Florida Statutes, or the applicable laws in an Interoperable Parties' location.

<u>11.5</u> User accepts and agrees that all charges, both in Florida and <u>in Interoperable</u> <u>Statesoutside the state of Florida</u>, paid electronically using their <u>CFX</u> Transponder(s)), will be deducted from <u>either</u> the User's Prepaid Account<u>-</u> or Postpaid Account. Where charges are paid using <u>traditional payment methods</u> any other method and User's Transponder is also in the vehicle resulting in the same charges being paid electronically, the User must produce valid receipt(s) for any payments for tolls <u>madepaid</u> in order to have the electronically paid charges reversed. The receipt(s) must be received by CFX within <u>ninety (90)</u> days of the <u>original</u> transaction. The amount of the credit and will be at the E PASS toll ratecredited in accordance with the provisions in Section 9.9 herein.

Returned Check Charge: A deduction of \$25.00, as may be increased ordecreased from time to time, will be made from User's Prepaid Account if 11.6 If any check is not paid on demand by the

bank upon which the check is written- or if CFX incurs any returned check charges, CFX will make every effort to collect the full amount of the worthless drafts or checks which may include the face value of the draft or check, as well as applicable bank fees, service charges, collection costs and attorney's fees as specific in Section 68.065, Florida Statutes (2021).

**7.1.1** Monthly Account Statement Charge: A<u>11.7</u> For Prepaid Accounts, where a User has requested or subscribed to receive monthly summary or detailed statements by mail, a deduction of \$0.5075, as may be increased or decreased by CFX from time to time, will be made from User's Prepaid Account for each monthly summary or detailed statement of User's Prepaid Account delivered by mail. Statement prices may be adjusted from time to timeby CFX. Statements printed directly from the website or the Mobile App are free of charge.

<u>11.8</u> In cases where the <u>CFX</u> Transponder is not read and an image of the vehicle's <u>license plate</u> or <u>a</u> non-semi trailer's (e.g. Boat, Camper, Utility, etc.) license plate is recorded, and the plate is listed on the <u>User's PrepaidUser's</u> Account, any unpaid charges may still be paid electronically using the vehicle's/trailer's license plate number, hereinafter called an "Image Toll" or " I-Toll". If in any given month the <u>User's PrepaidUser's</u> Account records an excessive amount of <u>Hmage</u> Toll transactions per license plate, CFX may charge the User the <u>PAY-BY-PLATEPay-By-Plate</u> rate if such option is available and, in the event the <u>PAY-BY-PLATEPay-By-Plate</u> rate is not available, then the cash rate will be charged on those transactions. User accepts that vehicle license plate recording may not be available at all locations or states where <u>E-PASS isCFX Transponders are</u> accepted for electronic payment. Where vehicle license plate recording is not available, Image Tolls will not be processed. The <u>I-tollImage Toll</u> process does not prevent law enforcement officers from issuing citations<u>a UTC</u> for observed toll violations.

**7.1.2** In the event the required toll is not paid, and the prepaid account does not have

sufficient funds to pay the toll electronically, a traffic citation may be issued.

<u>11.9</u> Full account information and services will be provided to Users with registered Prepaid Accounts only. An account is considered registered when the User has provided full contact information, including but not limited to: Name, Address, Telephone number, User Name, Password (User Name and Password applies to online registration only), PIN, Vehicle License Plate(s), and Driver's License Number and for business accounts the FEIN. <u>CFX may also request additional information, including a valid email address for each account.</u>

**7.1.3** <u>11.10</u> CFX strives to ensure charges are accurately recorded. User

accepts that miscalculations in account balances may occur. In such cases,

CFX maintains the right to make adjustments, without notice, where evidence

can be provided that the adjustment is appropriate. , User accepts that

miscalculations in account balances may occur. In such cases, CFX maintains the right

to make adjustments, without notice, where evidence can be provided

Page 17 of 23

that the adjustment is appropriate. Such adjustments will be presented in detail or summary on the User's Account Detailed Activity Statement or Account Summary Statement respectively or the User's Account History.

<u>11.11</u> User accepts and agrees that no interest shall ever be paid <u>by CFX</u> nor due to User on <u>Prepaid Accountaccount</u> balances at any time, even if miscalculations in account balances <u>occur</u>.

<u>11.12</u> CFX reserves the right to limit the availability of historical <u>User's</u> Prepaid <u>or Postpaid</u> Account Activity. The period of availability, either on-line or upon request from CFX, shall not exceed three years.

### Section 8. Postpaid Account

User is responsible for payment of all tolls used. User is responsible for maintaining a working Transponder at all times and required to contact E-PASS Service Center if inoperable. If the Transponder is not read by the receiver in the electronic toll collection lane for any reason, including but not limited to improper mounting, problem windshields, or other Transponder malfunction, User will be subject to the issuance of a traffic citation. User will be liable for payment of the unpaid toll along with fines, court costs and other penalties which may include points on User's driving record which may result in the suspension of User's driver license or vehicle registration. User accepts responsibility to maintain a credit card on file with sufficient balance at all times to cover applicable tolls and other charges as described below.

**8.1** User authorizes CFX to deduct the following charges from the User's Postpaid Account:

**8.1.1** User accepts and agrees that all charges, both in Florida and Interoperable State, paid electronically using their Transponder(s) will be paid from the User's Postpaid Account. Where charges are paid using traditional payment methods and User's Transponder is also in the vehicle resulting in the same charges beingpaid electronically, the User must produce valid receipt(s) for any payments for

Page 19 of 23

tolls made in order to have the electronically paid charges reversed. The receipt(s) must be received by CFX within 90 days of the transaction. The amount of the credit will be at the E-PASS toll rate.

**8.1.2** Returned Check Charge: A deduction of \$25.00, as may be increased or decreased from time to time, will be made from User's Postpaid Account if anycheck is not paid on demand by the bank upon which the check is written.

**8.1.3** In cases where the Transponder is not read and an image of the vehicle's or nonsemi trailer's (e.g. Boat, Camper, Utility, etc.) license plate is recorded, and the plate is listed on the User's Postpaid Account, any unpaid charges may still be paid electronically using the vehicle's/trailer's license plate number, hereinafter called an "Image Toll" or "I Toll". If in any given month the User's Postpaid Account records an excessive amount of I Toll transactions per license plate, CFX may charge the User the PAY BY PLATE rate if such option is available and, in the event the PAY-BY-PLATE rate is not available, then the cash rate will be charged on those transactions. User accepts that vehicle license plate recording may not be available at all locations or states where Visitor Toll Pass<sup>®</sup> is accepted for electronic payment. Where vehicle license plate recording is not available, Image Tolls will not be processed. The I toll process does not prevent law enforcement officers from issuing citations for observed toll violations.

**8.1.4** In the event the required tolls due are not paid a traffic citation may be issued.

**8.1.5** CFX strives to ensure charges are accurately recorded, User accepts that miscalculations in account balances may occur. In such cases, CFX maintains the right to make adjustments, without notice, where evidence can be provided that the adjustment is appropriate. Such adjustments will be presented in detailor summary on the User's account history.

Page 20 of 23

**8.2** CFX reserves the right to limit the availability of historical Postpaid Account Activity. The

period of availability, either on line or upon request from CFX, shall not exceed three years.

### Section 9. 12. Replenishment of Prepaid AccountAccounts

<u>12.1</u> User accepts responsibility for replenishing the Prepaid Account in a manner that ensures a sufficient balance is maintained in the Prepaid Account at all times. Use of <u>any</u> E- PASS lanes, designated or enabled, without a sufficient balance in the Prepaid Account to pay the charge <u>willmay</u> result in termination of User's Prepaid Account in accordance with <u>section 11Section 14</u> of this <u>agreementAgreement</u>.

12.2 E-PASS Auto Replenishment: User may elect or may be required to enroll in E-PASS Auto Replenishment, which is a feature that links a credit or debit card in good standing to their Prepaid Account. This feature will automatically replenish the User's Prepaid Account balance by a pre-set amount whenever the balance in the Prepaid Account drops to a preset low-balance threshold. A credit card is considered in good standing if it belongs to an active, non-expired account having sufficient credit available. Failure to maintain the credit or debit card linked to an E-PASS account with Auto Replenishment active in good standing may result in the termination of User's Prepaid Account and an interruption in electronic payment using the User's CFX Transponder(s). This may result in the issuance of traffic citations. (Refera UTC that may be issued pursuant to Section 11.2 for more details regarding Termination of Prepaid Account.)316.1001, Florida Statutes, or the applicable laws in an Interoperable Parties' location. The minimum replenishment threshold and replenishment amount is determined during E-PASS enrollment based on expected usage. For Personal Accounts, a minimum of \$10.00 in prepaid tolls is required. CFX may periodically analyze account activity and adjust the replenishment amounts and replenishment thresholds of its customers at their discretion.

<u>12.3</u> E-PASS Users are automatically opted in to allowing E-PASS as a payment option at an E-PASS facility or interoperable facility accepting E-PASS as a payment option. In addition, Users accept that any charge due at an E-PASS facility or interoperable facility accepting any CFX Transponder as a payment option exceeding the User's current Prepaid Account balance will be charged directly to the credit or debit card linked to the E-PASS account. accepting E PASS as a payment option exceeding the User's current Prepaid Accountbalance <u>12.4</u> User agrees that CFX may be charged directly toautomatically update the credit or debit card linked to the E-PASS information listed in User's Account, such as new account numbers and expiration dates, if received from User's financial institution.

<u>12.5</u> Replenishment payments may be submitted through various payment channels to methods including the E PASSCEX Customer Service Center or made in person at participatingCFX authorized facilities and locations as determined from time to time by CFX. User may contact CFX through the Customer Service Channels for updated information on such methods and locations.

<u>12.6</u> Check payments must be received at least <u>three (3)</u> business days before the balance in the User's Prepaid Account becomes insufficient to cover charges paid electronically by the User's Transponder. <u>For additional details and locations, please contact CFX through the Customer Service Channels.</u>

9.1 Cash replenishments to Prepaid Accounts may be made at CFX authorized locations

throughout Florida. For additional details and locations, please contact the E-PASS Service

Center.

### Section <u>10.</u> Payment of Postpaid Account

<u>13.1</u> User accepts responsibility for payment of tolls by ensuring that a credit or debit card with a sufficient <u>balance</u> available <u>balance</u> is maintained in the Postpaid Account at all times. Use of <u>any</u> E-PASS lanes, designated or enabled, without a credit or debit card capable of accepting an appropriate charge <u>will, may</u> result in termination of User's Postpaid Account in accordance with <u>section 11Section 14</u> of this <u>agreementAgreement</u>.

<u>13.2</u> A credit or debit card is considered in good standing if it belongs to an active, nonexpired account having sufficient credit available. Failure to maintain the credit or debit card in good standing may result in the termination of User's Postpaid Account and an interruption in electronic payment using the User's <u>Transponder(s).Visitor Toll Pass®</u>. This may result in the issuance of <u>traffic citations</u>. (Refera UTC that may be issued pursuant to Section <u>11.2 for more details regarding Termination of Prepaid Account.)</u><u>316.1001</u>, Florida <u>Statutes</u>, or the applicable laws in an Interoperable Parties' location.

**10.1** <u>13.3</u> Users are automatically opted in to allowing Visitor Toll Pass<sup>®</sup> as a payment optionsoption at an E-PASS facility or interoperable facility accepting E-PASS <u>Visitor Toll Pass<sup>®</sup></u> as a payment option. In addition, Users accept that any charge due at an E-PASS facility or

\_interoperable facility accepting E-PASS as a payment option maywill be charged directly to the credit or debit card linked to the Visitor Toll Pass<sup>®</sup> account.

<u>13.4</u> User agrees that CFX may automatically update the credit or debit card information listed in User's Postpaid account, such as new account numbers and expiration dates, if received from User's financial institution.

### Section <u>11.</u> Voluntary or Involuntary Termination of User's <u>CFX</u> Transponder

<u>14.1</u> If User's <u>CFX</u> Transponder is terminated, either voluntarily or involuntarily, User shall immediately: (i) Cease using the <u>CFX</u> Transponder for electronic payment; <u>Remove any E-PASS Transponder(s) or Visitor Toll Pass</u> Transponder and permanently(ii) Permanently remove themany CFX Transponder from any vehicle that may travel on E-PASS enabled lanes or other states that accept <u>CFX</u> Transponders for electronic payment; and <u>(iii)</u> discontinue traveling on designated <u>EPASSE-PASS</u> Lanes and other E-PASS enabled lanes or other states that accept <u>CFX</u> Transponders for electronic payment; and <u>(iii)</u> discontinue traveling on designated <u>EPASSE-PASS</u> Lanes and other E-PASS enabled lanes or other states that accept <u>CFX</u> Transponders for electronic payment.

14.2 Using a <u>CFX</u> Transponder while terminated may subject the User to toll violations and issuance of traffic citations.a UTC. All activity incurred during terminated status willmay be charged to the <u>User's Prepaid or Postpaid User's</u> Account at the toll rate charged to customers paying by <u>PAY BY PLATEPay-By-Plate</u> rate or applicable <u>rates</u> at that particular location. No credits will be issued upon reactivating a terminated <del>Transponder(s). Users paying</del> cash while an E PASS Transponder or Visitor Toll Pass<sup>®</sup> is installed on the vehicle windshield may be double charged/double billed. E PASS will not credit your account for duplicate activity when paying with cash unless valid cash receipts are provided to <u>CFX Transponder(s)</u>.

E-PASS within 90 days of the original transaction. The amount of the credit will be at the E-PASS toll rate. Cash receipts are not available at all locations or times of day.

<u>14.3</u> If a User fails to remove an E-PASS<u>a CFX</u> Transponder<u>or Visitor Toll Pass</u><sup>®</sup> from a vehicle following a voluntary or involuntary termination of <u>User's Prepaid or PostpaidUser's</u> Account, then no credit or refund will be due if one or more tolls are paid by cash at a location or at a time of day for which cash receipts are not available.

**11.1** Voluntary or Involuntary Closure of User's Prepaid or Postpaid Account: <u>14.4</u> If

User's Prepaid or Postpaid Account is closed, either voluntarily or involuntarily, all CFX

Transponders listed on the User's User's Account will be terminated. User agrees to

comply with the terms for voluntary or involuntary termination of User's <u>CFX</u>

Transponder(s) detailed

in <u>this</u> Section <u>11</u> of <u>this agreement</u> <u>Agreement</u>. CFX may prohibit User from opening subsequent account(s) if any previous account has been closed involuntarily. Any remaining balance of the User's Prepaid Account shall be refunded in accordance with Section <u>1317</u> of this Agreement and any remaining balance owed will be the responsibility of the User for payment.

Termination of Prepaid or Postpaid Account: <u>14.5</u> CFX may terminate User's <u>Prepaid or</u> Postpaid Account at any time for any reason. Where a <u>Prepaid or PostpaidUser's</u> Account has been terminated, all <u>CFX</u> Transponders listed on the <u>User's</u> Account(<u>s</u>) will be terminated. User agrees to comply with the terms for voluntary or involuntary termination of User's Transponder(s) detailed in <u>this</u> Section <u>11</u> of this Agreement. In lieu of account termination, CFX may allow User to retain the account, provided any outstanding balance is paid in full, and User enrolls in E-PASS Auto Replenishment or supplies a credit or debit card with sufficient balance to process any appropriate charges for the remainder of the Agreement as described <u>in Section 9 and 10 of this Agreement</u>. Using Transponder while terminated may subject the User to toll violations and issuance of traffic citations. All activity incurred during a terminated status will be charged to the account at the toll rate charged to customers paying the PAY BY PLATE rate or applicable at that particular location. No credits will be issued upon reactivating a terminated Transponder.<u>herein</u>. No new Prepaid or Postpaid Account shall be open until all monies owed to CFX have been paid in full.

#### Section <u>12.</u> Lost or Stolen <u>CFX</u> Transponder

<u>15.1</u> In the event the <u>CFX</u> Transponder is lost or stolen, User shall immediately <u>update</u> and change the <u>CFX</u> Transponder status to Lost/Deactivated <u>onthrough one of</u> the <u>E</u>-<u>PASS website, the Mobile App or notify the E-PASSCFX</u> Customer Service <u>CenterChannels</u>. All charges paid electronically using a lost or stolen <u>CFX</u> Transponder will continue to be reflected on the User's <u>Prepaid or Postpaid</u> Account until notification of the loss or theft is reported in accordance with this Section. The User's Transponder status will be modified upon receipt by CFX of User's notification of the loss or theft. The User will not be held responsible for future toll activity on a lost or stolen <u>CFX</u> Transponder after the status is changed online or <u>CFX</u> has received notification

Page 25 of 23

is received by the E-PASS Customer Service Center unless the vehicle that went through the toll facility had a license plate listed in the User's Account.

<u>15.2</u> In the event that the User does not have any other <u>CFX</u> Transponder(s) or does not purchase a replacement <u>CFX</u> Transponder on the Prepaid or Postpaid Account, any remaining balance or amount owed may be refunded or charged to the last credit or debit card used previously or listed on the account or by check in accordance with Section <u>1517</u>. Authorized or unauthorized use of the <u>CFX</u> Transponder in any vehicle registered to the User's Prepaid or Postpaid<u>User's</u> Account until notification is made to CFX in accordance with this Agreement, and the license plate is removed from the <u>User's Prepaid or Postpaid Account</u>. If a Transponder previously reported Lost/Stolen is reactivated, any unpaid charges recorded while the Transponder was in a lost or stolenstatus will be charged to User's Prepaid or Postpaid Account if CFX determines the usage was the result of the User's vehicle incurring the charges. User's Account.

15.3 If a CFX Transponder previously reported Lost/Stolen is reactivated, any unpaid charges recorded while the CFX Transponder was in a lost or stolen status will be charged to User's Account if CFX determines the usage was the result of the User's vehicle incurring the charges.

Section <u>13.</u> Damaged <u>Transponder</u>or <u>Malfunctioning</u> CFX Transponders

<u>16.1</u> Damaged <u>CFX</u> Transponders are not covered by warranty. For purposes of this Agreement, damage is defined as the rendering of <u>thea CFX</u> Transponder defective or inoperable due to tampering, abuse, improper use, defacement, or <u>destruction</u>, <u>whether</u> accidental <u>destructionor otherwise</u>. Removal of or attempt to remove an E-PASS Sticker or <u>Collegiate Pass</u> Transponder from the vehicle windshield may <u>also</u> render <u>the unitthose</u> <u>units as damaged and thereby</u> useless.

# Section 14. Malfunctioning Transponder

**14.1**<u>16.2</u> In the event of failure or malfunction of an E-PASS Portable, Bumper, Sticker, Xtraany CFX Transponder or Visitor Toll Pass<sup>\*</sup><sub>7</sub>. User must immediately discontinue use of the CFX Transponder and changeupdate the status to deactivated online at E-PASS website, through the Mobile App or contactby contacting the E-PASS Customer Service Center, in accordance with Section 4.3 herein. Where failure or malfunction occurs, CFX Transponder shall be terminated and the terms for voluntary or involuntary termination of User's Transponder(s) detailed in Section 1114 of this Agreement shall apply.

<u>16.3</u> Malfunctioning or defective <u>CFX</u> Transponders due to a manufacturing defect shall be replaced at no cost to User only when returned to <u>the E-CFX</u> within the 90-day warranty period. Damaged CFX Transponders are not covered by warranty. User will contact CFX through one of the CFX Customer Service Channels to obtain current instructions for returning a malfunctioning CFX Transponder. Costs related to shipment of the CFX Transponder to CFX are the responsibility of the User. CFX may require delivery

confirmation in the event the CFX Transponder is not received. User is responsible for any and all unpaid tolls and/or any UTC issued as a result of any attempt to use a malfunctioning and/or defective transponder to pay tolls.

PASS Customer Service Center within the 90-day warranty period. Damaged Transponders are not covered by warranty. Costs related to shipment of the Transponder to the E-PASS Customer Service Center are the responsibility of the User. CFX may require delivery confirmation in the event the Transponder is not received. User is responsible for any and all unpaid tolls and/or traffic citations issued as a result of any attempt to use a malfunctioning and/or defective transponder to pay tolls.

# Section <u>15.</u> Withdrawal of Prepaid Account Balance or Payment of Tolls Owed at Account Closure

<u>17.1</u> In the event the Prepaid Account is closed, the remaining balance of the Prepaid Account shall be refunded after <u>thirty (30)</u> days to the User once all toll payments and any appropriate charges have been deducted. (Refer to Sections 11.1 and 11.2 for more details regarding Voluntary or Involuntary Closure of User's Prepaid or Postpaid Account and Termination of Prepaid or Postpaid Account.) Depending upon the User's method of payment for the Prepaid or PostpaidUser's Account being closed, refunds may be issued in accordance with the method of payment used to replenish or charge the Prepaid or PostpaidUser's Account. If User's Prepaid or Postpaid Account has any outstanding balance owed, User shall pay the amount owed at time of closure.

### Section <u>16.</u> Dispute of Charges

<u>18.1</u> CFX must be notified of any disputes of charges appearing on User's Prepaid or Postpaid Account within <u>ninety (90)</u> days of the charge being posted. All disputes are subject to review and approval by CFX and may require additional documentation or evidence from the User.

# Section <u>17.</u> <u>19.</u> <u>Miscellaneous</u> <u>Provisions</u>

17.1 19.1 User releases CFX, its officers, employees, or agents (collectively "CFX"),

from all loss, damage, or injury whatsoever from the use or performance of E-PASS and

theany CFX Transponder. CFX shall not have any obligation or liability to the User with

respect to the use or the performance of E-PASS or the Transponder.any CFX

Transponders. The only relief available to

\_the User shall be replacement by CFX of any defective or malfunctioning <u>CFX</u> Transponder in accordance with Section <u>1416</u> of this Agreement. User agrees to indemnify, protect, and hold harmless CFX from liability for all loss, damage, or injury to persons or property arising from <u>E-PASS and/or</u> the <u>use of any CFX</u> Transponder.

<u>19.2</u> It is expressly understood and agreed that CFX, with verbal or written authorization from User, may make charges against User's credit or debit card. User's providing credit or debit card information by any manner such as verbally, written or electronic shall constitute User's contractual authorization <u>and consent</u> to CFX to make charges against User's credit or debit card for E-PASS charges, wherever incurred. User expressly understands and accepts <u>that</u> CFX shall not be liable to User for any financial costs resulting from these actions. Additionally, CFX shall not be liable for: shall not be liable for:

Any<u>19.3</u> User acknowledges that CFX shall not be liable for any incidental, indirect, special or consequential damages, including, but not limited to, loss of use, revenues, profits, or savings, incurred by User as a result of CFX's use of User's credit or debit card.

<u>Claims19.4</u> User acknowledges that CFX shall not be liable for any claims, demands, or actions against User by any person, corporation, or other legal entity resulting from the use of the <u>CFX</u> Transponder(s), <u>including any costs incurred by User for any</u> credit report inquiry, check authorization, and/or <del>chargingcharges</del> against User's credit card.

<u>19.5</u> User accepts responsibility of all costs, including, but not limited to the associated costs and ramifications of a conviction related to a traffic citation, collection fees, attorney's feesany UTC, and court costs incurred by CFX in the enforcement of the terms and conditions of this Agreement, including any collection fees, attorney's fees, and/or court costs.

<u>19.6</u> If for any reason User's <u>Prepaid or Postpaid</u> Account is insufficient for tolls or any other charges due or owing to CFX, User shall remain liable to CFX for such insufficiencies and all applicable charges.

<u>19.7</u> Unpaid balances due to CFX may be turned over to a collection agency for enforcement and collection activities.

Page 29 of 23

<u>19.8</u> Should User be the subject of any Bankruptcy proceeding under the Bankruptcy Act or become insolvent, CFX shall have the right to terminate <u>User's Prepaid or PostpaidUser's</u> Account and services provided. User shall remain and be liable for the payment of all unpaid charges hereunder exclusive of any other remedy provided herein or by law.

<u>19.9</u> This Agreement shall be binding upon and inure to the benefit of User and User's successors and CFX and its successors and assigns. User shall not be permitted to assign the obligations or benefits of this Agreement without the <u>express written</u> consent of CFX.

**17.2** <u>19.10</u> User accepts that User's retaining, using, or permitting others to use thea <u>CFX</u> Transponder shall thereby constitute User's acknowledgment of and acceptance of the terms and conditions of this Agreement.

User accepts that when allowing others to retain or use User's Transponder, User accepts responsibility to pay the tolls and applicable charges of such permitted use and the obligations of this Agreement shall fully bind and be applicable to User as if User had incurred the tolls and charges.

<u>19.11</u> To the full extent of Florida's severance law, the invalidity of any portion of this Agreement shall not affect any other portion of this Agreement, which shall remain in full force and effect.

17.3 User shall immediately inform CFX of any changes to the information contained in the E-

PASS Prepaid or Postpaid Account records, including without limitation, credit or debit card

number and expiration date, payment method, name or address changes, Transponder

ownership changes, and vehicular information changes (make/model, license plate

information) for all vehicles in which the Transponder is used.

<u>19.12</u> CFX reserves the right to reject any request to open or service an E PASS or Visitor Toll Pass® accounta User Account or to reject any request to issue any CFX Transponder.

<u>19.13</u> CFX reserves the right to offset and/or charge amounts owed to CFX for usage of E-PASS Transponder and Visitor Toll Pass<sup>®</sup> transponder<u>CFX transponders</u> from funds in User's Prepaid or Postpaid<u>User's</u> Account.

<u>19.14</u> User accepts that by providing User's e-mail address and/or telephone number, User may receive information from CFX, its consultants, agents or other toll facility operators.

<u>19.15</u> Questions regarding User's Prepaid or PostpaidUser's Account or transactions charged to User's Prepaid or PostpaidUser's Account should be directed to <u>CFX through one of</u> the <u>E-PASSCFX</u> Customer Service Center at the address and telephone number listed below, on the Mobile App orat www.cfxway.com/contact\_us/.Channels.

<u>19.16</u> This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Florida, with the exception of Florida's choice of law provisions. Other than toll citations, any civil action or legal proceeding arising out of or relating to this Agreement shall be brought exclusively in the courts of <u>recordcompetent jurisdiction</u> of the State of Florida in Orange County, Florida. The forum for Florida Uniform Traffic Citations shall be in the traffic and/or county court for the county where the alleged toll violation occurred. Toll violations occurring in an Interoperable State may be subject to the local laws of the jurisdiction in which the violation occurred.

CENTRAL FLO RIDA EXPRESS WAY AUTHORITY By: Title: ector L Date:

ATTEST:

vante By Title

**REVIEWED AND APPROVECBYCFXLEGAL** 

<del>DA\_\_\_\_;(</del>\_\_\_\_\_;

E-P ASS® Customer Service Center: P.O. Box 720218 •Orlando, FL 32872 • (800) 353-7277 • E-pass@cfxway.com E-PASS® is a registered trademark of the Central Florida Expressway Authority. © 2016, Central Florida Expressway Authority. All rights reserved.

E-PASS® Customer Service Center: P.O. Box 720218 •Orlando, FL 32872 • (800) 353-7277 • E-pass@cfxway.com

E-PASS<sup>\*</sup> is a registered trademark of the Central Florida Expressway Authority. © 2016, Central Florida Expressway Authority. All rights reserved.

Page 32 of 15

#### Page 23of23

19.17 CFX Transponders may not be sold, bartered, exchanged or otherwise transferred without the express written consent of CFX. Any such sale, barter, exchange or transfer may render the CFX Transponder void and any privileges or rights associated with such CFX Transponder shall be terminated immediately.

© 2016, Central Florida Expressway Authority. All rights reserved.

## **E-PASS Customer Agreement**

CFX Board Approved on February 10, 2022

## **TABLE OF CONTENTS**

Defined Terms
Acknowledgement and Acceptance of Terms 3
Intent of the CFX Transponders
User Responsibilities to Provide and Maintain Certain Information 3
User Responsibility to Pay Tolls and Maintain their Account Current 4
CFX Transponder Licenses
Privacy Policy
E-PASS Customer Account Types 5
CFX Transponder Usage
Non-Semi Trailer (e.g. Boat, Camper, Utility, etc.) Registrations
Prepaid and Postpaid Accounts 8
Replenishment of Prepaid Accounts 10
Payment of Postpaid Account 11
Voluntary or Involuntary Termination of User's CFX Transponder 11
Lost or Stolen CFX Transponder 12
Damaged or Malfunctioning CFX Transponders
Withdrawal of Prepaid Account Balance or Payment of Tolls Owed at Account Closure
Dispute of Charges 13
Miscellaneous Provisions 13

# E-PASS Customer Agreement

CFX Board Approved on February 10, 2022

## Section 1. Defined Terms

1.1 This E-PASS Customer Agreement (hereinafter referred to as "Agreement") is entered into between you (hereinafter referred to as "User") and the Central Florida Expressway Authority (hereinafter individually referred to as "CFX"), regarding the use of any CFX issued transponders which collectively all such transponders shall be referred to herein as the "CFX Transponders" and may include any of the following:

- E-PASS Portable Transponder (hereinafter individually referred to as "E-PASS Portable");
- Visitor Toll Pass<sup>®</sup> (hereinafter referred to as "Visitor Toll Pass");
- E-PASS Bumper Transponder (hereinafter individually referred to as or "Bumper");
- E-PASS Sticker Transponder (hereinafter individually referred to as "E-PASS Sticker");
- E-PASS Xtra Transponder (hereinafter individually referred to as "Xtra");
- Collegiate Pass Transponders, including but not limited to GatorPass<sup>®</sup>, KnightPass<sup>®</sup> and NolePass<sup>®</sup> (hereinafter collectively referred to as the "Collegiate Pass Transponders"); and,
- UNI Transponder<sup>®</sup> (hereinafter individually referred to as the "UNI")

1.2 E-PASS Portable, Visitor Toll Pass, Bumper, Xtra, and Uni which utilize the E-PASS Portable Transponders are herein collectively referred to as the "Portable Transponders."

1.3 E-Pass Sticker and Collegiate Pass Transponders, which utilize E-Pass Sticker Transponders are herein collectively referred to as the "Sticker Transponders."

1.4 This Agreement governs the use of CFX Transponders on toll roads, bridges, parking and other facilities within the State of Florida and within other states or tolling authorities for which the toll operators have entered into reciprocity agreements with other interoperable partners of which CFX is a party for electronic toll collection interoperability and thereby accept CFX Transponders for electronic payment (such other states or tolling authorities hereinafter referred to as "Interoperable Parties").

1.5 The term "User's Account" shall refer to any Prepaid Account or Postpaid Account created or maintained by User with CFX for purposes of registering any CFX Transponder and making payments.

1.6 The term "CFX Customer Service Channels" shall include the following methods of communication by which a User may communicate with CFX and can create, maintain, update or terminate a User's Account. Such methods include:

- (a) access via CFX's website at www.CFXWay.com;
- (b) access via CFX's mobile application also known as E-PASS Toll App;

 $\ensuremath{\mathbb{C}}$  2016, Central Florida Expressway Authority. All rights reserved.

Page 2 of 15

(c) by calling the E-PASS Customer Service Center at 1-800-353-7277;

(d) by submitting an email to: E-PASS@CFXWay.com

(e) by mail to CFX, P.O. Box 720218, Orlando, FL 32872

(f) in person by visiting the CFX Customer Service Center located at 525 South Magnolia Avenue, Orlando, FL 32801 during regular business hours

(f) by such other means as may be provided by CFX in the future.

## Section 2. Acknowledgement and Acceptance of Terms

2.1 Use of the CFX Transponders by User shall be acknowledgment and acceptance by User of the terms and conditions of this Agreement. CFX may alter, amend, or otherwise change the terms and conditions of this Agreement at any time. Alterations, amendments or other changes will be posted in the Customer Agreement section online on the CFX website and/or the Mobile App and shall be effective upon the date of posting.

2.2 If User does not accept the terms and conditions of this Agreement, or any future alterations, amendments or other changes to the terms and conditions of this Agreement with CFX, User shall discontinue use of all CFX Transponders and shall notify CFX through one of the CFX Customer Service Channels. The terms for voluntary or involuntary closure of a User's Account, including notification, will be in accordance with Section 16 of this Agreement.

#### Section 3. Intent of the CFX Transponders

3.1 The intent of CFX Transponders is to provide a safe transportation system and reduce traffic congestion and air pollution by providing efficient and convenient electronic payment. CFX Transponders are licensed to User by CFX for the specific purpose of paying tolls and/or other services electronically by using a CFX Transponder at any Florida or Interoperable Parties' location where CFX Transponders are accepted for payment. One or more CFX Transponders may be activated by establishing a Prepaid Account or a single transponder in the case of the Visitor Toll Pass<sup>®</sup> Program. Any User's Account balance must be kept in good standing to avoid interruptions in electronic payment. Use of CFX Transponders by electronic payment system is a privilege and not a right.

## Section 4. User Responsibilities to Provide and Maintain Certain Information

4.1 All vehicles in which the User intends to use a CFX Transponder must be listed within the account, but a vehicle license plate may only be actively subscribed to one account at a time. The license plate number and issuing state must be provided at the time of transponder activation and updated as changes occur. The year, make, model and color of the vehicle must be provided within sixty (60) days of transponder activation and updated as changes occur, if applicable.

4.2 User accepts there may be occurrences when a CFX Transponder is not identified even though it is present in the vehicle. In cases where a CFX Transponder is not identified but the vehicle license plate is recorded, CFX reserves the right to add the vehicle license plate and issuing state to the User's Account. CFX will exercise this right when CFX determines a

Page 3 of 15\_\_\_\_

confident match has been made between the registered owner of vehicle for the license plate and the customer information on the User's Account.

4.3 User is responsible for providing and keeping current: User's mailing address, contact information, e-mail address, vehicle and license plate information, and any and all account information as may be required. Any changes can be made through one of the CFX Customer Service Channels as identified in Section 1.6 herein. User shall notify CFX of any change in vehicle and/or vehicle registration and/or license plate prior to using Florida or Interoperable Parties' toll facility. User's failure to inform CFX of the current registration and/or license plate number on the vehicle prior to using any toll facility will result in a breach of this Agreement and may result in the issuance of a Uniform Traffic Citation ("UTC") under Section 316.1001, Florida Statutes (2021), or the applicable laws in an Interoperable Parties' location. These remedies are in addition to any remedies available to CFX under federal law, Florida common law, statutes, administrative rules, and this Agreement.

4.4 User has a further duty to notify the State of Florida, Department of Highway Safety & Motor Vehicles (DHSMV) within thirty (30) days of any change in a name and/or any change of mailing address to a driver's license issued by the State of Florida pursuant to Section 322.19, Florida Statutes (2021) or the Motor Vehicle (Tag) Office within thirty (30) days of any change of mailing address pursuant to Section 320.02(4), Florida Statutes (2021). Any changes in such information that may be communicated by User to CFX will not serve as a substitute for any requirements of Florida law to update information to driver's licenses or motor vehicle tags and CFX shall assume no responsibility to notify DHSMV of any changes it receives from User.

## Section 5. User Responsibility to Pay Tolls and Maintain their Account Current

5.1 User and/or the registered owner of the vehicle used on the toll facility is responsible and liable for any unpaid toll or any UTC issued as a result of User's transponder not being read by the receiving equipment in any toll facility. User shall not use this Agreement as a defense to a toll violation if the CFX Transponder is not read by the receiving equipment unless the supplemental lane transactions show a problem with the receiver in the lane at the time of the alleged violation. "Defective Transponders", "Malfunctioning Transponders" and not properly mounting the CFX Transponder do not relieve the User and/or the owner of the motor vehicle involved of any unpaid toll from liability under Section 316.1001, Florida Statutes, or the applicable laws in an Interoperable Parties' location.

5.2 User is responsible for pre-paying all tolls if using a Prepaid Account for E-PASS. User must immediately pay cash or make other arrangements for payment and may be subject to the Pay-By-Plate rates for tolls and shall stop using CFX Transponder when the balance on the account is insufficient to pay any toll. Whether the User has actual knowledge of the balance on the account and whether such balance was insufficient to make payment shall not be a defense to a toll violation and the User and the owner of the vehicle used on the toll facility shall be responsible and liable for any UTC that may be issued pursuant to Section 316.1001, Florida Statutes, or the applicable laws in an Interoperable Parties' location.

## Section 6. CFX Transponder Licenses

6.1 The User shall be responsible for each CFX Transponder issued to User under this and/or subsequent Agreements and all amendments to such Agreements. CFX Transponders may be used at designated E-PASS Lanes; E-PASS enabled lanes or any other venues that accept E-PASS or Visitor Toll Pass<sup>®</sup> as payment for services inside or outside the State of Florida. Whether paying electronically using a CFX Transponder or by any other payment method, User remains responsible for any toll payments, toll violations, or payments for any other services. Failure to collect payment electronically, even though User has a CFX Transponder, shall not release User of payment responsibility.

6.2 CFX Transponders are for the exclusive use of User as a purchaser of the CFX Transponder and User acknowledges and agrees not to sell, barter, exchange or otherwise transfer the CFX Transponder in exchange for any goods, services or other consideration. Any such sale, barter, exchange or transfer may render the CFX Transponder void and any privileges or rights associated with such CFX Transponder shall be terminated.

## Section 7. Privacy Policy

7.1 CFX respects the privacy of all account holders. CFX does not sell or share its customer list with outside marketers. In addition, personal identifying information generally is exempt from disclosure under Florida's public records law, pursuant to Section 338.155(6), Florida Statutes (2021), and can only be obtained by persons outside of CFX or authorized law enforcement agencies by subpoena or court order, except CFX may share certain User's Account information with operators of other toll facilities for toll payment, collection and notice purposes without obtaining a subpoena or court order.

7.2 User acknowledges and agrees that Interoperable Parties will observe their respective state laws regarding the disclosure of records and other information related to transactions that use an CFX Transponder on toll facilities of the Interoperable Parties, including Prepaid Account information provided by CFX to Interoperable Parties for the purpose of toll payment, collection, or notice. Under no circumstances will User information be disclosed to any nonaffiliated third parties for use in marketing.

7.3 User acknowledges and agrees that CFX may use data from any CFX Transponder or may authorize any other governmental agencies to use the data collected from CFX Transponders to compile anonymous traffic, travel, or other statistical information.

## Section 8. E-PASS Customer Account Types

8.1 Personal Prepaid Accounts: Primarily for personal, non-business Users with privately owned or leased vehicles and/or trailers. The minimum opening balance for a Personal Prepaid Account is \$10.00. When adding additional CFX Transponders to an existing Prepaid Account, additional prepaid funds may also be required.

Page 5 of 15\_\_\_

8.2 Business Prepaid Accounts: Primarily for companies or businesses with corporate owned or leased vehicles and/or trailers. A current Federal Employer Identification Number (FEIN) may be required to open a Business Prepaid Account. FEIN information must be kept current and may be requested by an E-PASS representative at any time. The minimum opening balance will be established by CFX based on the number of transponders and potential transactions. User shall be notified of any changes to the required replenishment amount on their monthly Account Summary Statement or via emails or text messages, for which standard text message rates may apply. For Business Prepaid Accounts to qualify for tax exempt status, User must provide a valid tax exemption certificate. If a tax exemption certificate is provided after a Business Prepaid Account is established, the tax exemption shall be effective no earlier than the date proof is provided.

8.3 Visitor Toll Pass<sup>®</sup> Accounts: Primarily for travelers arriving via an airport who will be renting a vehicle during their stay. This account allows only for a single transponder to be linked to an account. The account is a Postpaid account whereas tolls will be charged via credit card at one or more times during or at the end of the rental period. Customers are provided with a Visitor Toll Pass<sup>®</sup> Transponder to use during their rental period. If the transponder is not returned at the end of the rental the customer will be charged for the transponder. An initial deposit is required to obtain the Visitor Toll Pass<sup>®</sup> Transponder.

## Section 9. CFX Transponder Usage

9.1 Unless otherwise directed by CFX, User agrees to properly mount or apply the CFX Transponders, as explained in the E-PASS Installation Guides available through CFX Customer Service Channels or in materials provided to the User during account initiation. Holding a CFX Transponder in the User's hand or leaving it on the dashboard or in another non-mounted position in the vehicle is strictly prohibited. Not properly mounting the CFX Transponder may result in the CFX Transponder being denied for electronic payment, resulting in unpaid tolls. Such unpaid tolls may result in additional charges and fees or the issuance of a UTC under Section 316.1001, Florida Statutes, or under the applicable laws in an Interoperable Parties' location.

9.2 User should never have more than one transponder in the vehicle while traveling through toll lanes or other Interoperable systems that accept CFX Transponders. If another Portable Transponder must be placed in the vehicle it should be stored inside a Radio Frequency shield bag ("RF shield bag") which prevents the CFX Transponder from being read by the system. The RF shield bag is available, free of charge, through any of the CFX Customer Service Channels.

9.3 User acknowledges User's responsibility under this Agreement and User agrees to comply with all applicable traffic laws while using toll roads and bridges. Under no circumstances should a User drive through a transponder-only toll lane at a speed greater than that posted by CFX or other applicable governmental authorities.

9.4 The User acknowledges that they must exercise extra caution before proceeding through any lane that is designated as an automated coin machine lane, staffed toll lane or that otherwise requires exact change, even with a working and funded CFX Transponder.

Page 6 of 15

9.5 User accepts that sharing a CFX Transponder for electronic payment at the same time in the same location is prohibited.

9.6 Under no circumstance may a CFX Transponder be used in a vehicle that has not been registered as an authorized vehicle for the User's Account. The vehicle and its unique license plate must be associated to the User's Account information and a vehicle may not be actively listed on more than one account.

9.7 Failure to pay a toll is a violation which may result in the issuance of a UTC. CFX takes a photographic image of any vehicles of all vehicles, including those hat do not pay the required toll. If User's Prepaid Account does not have sufficient balance to pay the toll, User may be billed at a higher Pay-By-Plate rate via an invoice sent by US mail to the User's registered home address or the address associated with the vehicle's license tag registration. If User elects to pay cash in a lane, if cash lanes are available, User shall place the CFX Transponder in the RF shield bag or remove the CFX Transponder from the vehicle.

9.8 User shall immediately turn over any CFX Transponder that is requested by law enforcement or CFX because of toll violations relating to the misuse or termination of a User's Account in connection with a violation of local, state or federal law. CFX Transponders that have been forfeited under this Section may be returned to User when the account has been returned to good standing.

9.9 User acknowledges that paying with cash while a CFX Transponder is installed on the vehicle may result in a double charge or getting double billed for the same transaction. CFX will not credit User's Account for duplicate activity when paying with cash unless valid cash receipts are provided to CFX within ninety (90) days of the original transaction. The manner in which cash receipts shall be submitted to CFX can be obtained through any of the CFX Customer Service Channels. The amount of the credit will be at the E-PASS toll rate. Cash receipts are not available at all locations or times of day. No credit or refund will be due if one or more tolls are paid by cash at a location or at a time of day for which cash receipts are not available.

9.10 User shall not, under any circumstances, authorize another person or third party to use their CFX Transponder, unless User has previously added the third-party's vehicle and license plate information to the User's Account as provided in Section 4.3 herein. User acknowledges that User is responsible for any and all transactions incurred by User's CFX Transponder in the event someone other than User uses a toll facility with User's CFX Transponder.

9.11 User agrees that User shall not reverse engineer or otherwise attempt to reverse engineer, alter, modify or tamper with the mechanical or electrical operation of any CFX Transponder or any software coding, or otherwise attempt to use the CFX Transponder or other equipment in order to avoid payment of tolls or fees.

## Section 10. Non-Semi Trailer (e.g. Boat, Camper, Utility, etc.) Registrations

10.1 All Non-Semi trailers {e.g. boat, camper, utility vehicle, etc.) pulled by vehicles in which the User intends to use a CFX Transponder must be listed within the account, but a trailer

license plate may only be actively subscribed to one account at a time. The license plate number and issuing state must be provided and updated as changes occur. Any updates should be provided through the CFX Customer Service Channels. User accepts there may be occurrences when a CFX Transponder is not identified even though it is present in the vehicle pulling the trailer. In cases where a CFX Transponder is not identified but the trailer license plate is recorded, CFX reserves the right to add the trailer license plate and issuing state to the User's Account. CFX will exercise this right when CFX determines a confident match has been made between the registered owner of the trailer for the license plate and the customer information on the User's Account.

## Section 11. Prepaid and Postpaid Accounts

11.1 For Prepaid Accounts, User is responsible for pre-payment of all tolls used prior to using toll facilities. For Postpaid Accounts, User is responsible for payment of all tolls used.

11.2 For both Prepaid and Postpaid Accounts, User is responsible for maintaining a working CFX Transponder at all times and required to contact CFX if inoperable. If the CFX Transponder is not read by the receiver in the electronic toll collection lane for any reason, including but not limited to improper mounting, problem windshields, a damaged CFX Transponder or other CFX Transponder malfunction, User may be subject to the issuance of a UTC. User hereby acknowledges that User shall be liable for payment of the unpaid toll along with fines, court costs and other penalties which may include points on User's driving record which may result in the suspension of User's driver license or vehicle registration.

11.3 For Prepaid Accounts, User accepts responsibility to always maintain a sufficient balance in User's Prepaid Account to cover applicable tolls and other charges as described herein. In the event the required toll is not paid, and the prepaid account does not have sufficient funds to pay the toll electronically, User shall be liable for any UTC that may be issued pursuant to Section 316.1001, Florida Statutes, or the applicable laws in an Interoperable Parties' location.

11.4 For Postpaid Accounts, User accepts responsibility to maintain a credit card, in good standing, on file with sufficient balance at all times to cover applicable tolls and other charges as described herein. In the event the required toll is not paid, User shall be liable for any UTC that may be issued pursuant to Section 316.1001, Florida Statutes, or the applicable laws in an Interoperable Parties' location.

11.5 User accepts and agrees that all charges, both in Florida and outside the state of Florida, paid electronically using their CFX Transponder(s), will be deducted from either the User's Prepaid Account or Postpaid Account. Where charges are paid using any other method and User's Transponder is also in the vehicle resulting in the same charges being paid electronically, the User must produce valid receipt(s) for any payments for tolls paid in order to have the electronically paid charges reversed. The receipt(s) must be received by CFX within ninety (90) days of the original transaction and will be credited in accordance with the provisions in Section 9.9 herein.

11.6 If any check is not paid on demand by the bank upon which the check is written or if CFX incurs any returned check charges, CFX will make every effort to collect the full amount of the worthless drafts or checks which may include the face value of the draft or check, as well as applicable bank fees, service charges, collection costs and attorney's fees as specific in Section 68.065, Florida Statutes (2021).

11.7 For Prepaid Accounts, where a User has requested or subscribed to receive monthly summary or detailed statements by mail, a deduction of \$0.75, as may be increased or decreased by CFX from time to time, will be made from User's Prepaid Account for each monthly summary or detailed statement of User's Prepaid Account delivered by mail. Statements printed directly from the website or the Mobile App are free of charge.

11.8 In cases where the CFX Transponder is not read and an image of the vehicle's license plate or a non-semi trailer's license plate is recorded, and the plate is listed on the User's Account, any unpaid charges may still be paid electronically using the vehicle's/trailer's license plate number, hereinafter called an "Image Toll". If in any given month the User's Account records an excessive amount of Image Toll transactions per license plate, CFX may charge the User the Pay-By-Plate rate if such option is available and, in the event the Pay-By-Plate rate is not available, then the cash rate will be charged on those transactions. User accepts that vehicle license plate recording may not be available at all locations or states where CFX Transponders are accepted for electronic payment. Where vehicle license plate recording is not available, Image Tolls will not be processed. The Image Toll process does not prevent law enforcement officers from issuing a UTC for observed toll violations.

11.9 Full account information and services will be provided to Users with registered Prepaid Accounts only. An account is considered registered when the User has provided full contact information, including but not limited to: Name, Address, Telephone number, User Name, Password (User Name and Password applies to online registration only), PIN, Vehicle License Plate(s), and Driver's License Number and for business accounts the FEIN. CFX may also request additional information, including a valid email address for each account.

11.10 CFX strives to ensure charges are accurately recorded. User accepts that miscalculations in account balances may occur. In such cases, CFX maintains the right to make adjustments, without notice, where evidence can be provided that the adjustment is appropriate. Such adjustments will be presented in detail or summary on the User's Account Detailed Activity Statement or Account Summary Statement or the User's Account History.

11.11 User accepts and agrees that no interest shall ever be paid by CFX nor due to User on account balances at any time, even if miscalculations in account balances occur.

11.12 CFX reserves the right to limit the availability of historical User's Prepaid or Postpaid Account Activity. The period of availability, either on-line or upon request from CFX, shall not exceed three years.

## Section 12. Replenishment of Prepaid Accounts

12.1 User accepts responsibility for replenishing the Prepaid Account in a manner that ensures a sufficient balance is maintained in the Prepaid Account at all times. Use of any E-PASS lanes, designated or enabled, without a sufficient balance in the Prepaid Account to pay the charge may result in termination of User's Prepaid Account in accordance with Section 14 of this Agreement.

12.2 E-PASS Auto Replenishment: User may be required to enroll in E-PASS Auto Replenishment, which is a feature that links a credit or debit card in good standing to their Prepaid Account. This feature will automatically replenish the User's Prepaid Account balance by a pre-set amount whenever the balance in the Prepaid Account drops to a pre-set low-balance threshold. A credit card is considered in good standing if it belongs to an active, non-expired account having sufficient credit available. Failure to maintain the credit or debit card linked to an E-PASS account with Auto Replenishment active in good standing may result in the termination of User's Prepaid Account and an interruption in electronic payment using the User's CFX Transponder(s). This may result in the issuance of a UTC that may be issued pursuant to Section 316.1001, Florida Statutes, or the applicable laws in an Interoperable Parties' location. The minimum replenishment threshold and replenishment amount is determined during E-PASS enrollment based on expected usage. CFX may periodically analyze account activity and adjust the replenishment amounts and replenishment thresholds of its customers at their discretion.

12.3 E-PASS Users are automatically opted in to allowing E-PASS as a payment option at an E-PASS facility or interoperable facility accepting E-PASS as a payment option. In addition, Users accept that any charge due at an E-PASS facility or interoperable facility accepting any CFX Transponder as a payment option exceeding the User's current Prepaid Account balance will be charged directly to the credit or debit card linked to the E-PASS account.

12.4 User agrees that CFX may automatically update the credit or debit card information listed in User's Account, such as new account numbers and expiration dates, if received from User's financial institution.

12.5 Replenishment payments may be submitted through various payment methods including the CFX Customer Service Center or made in person at CFX authorized facilities and locations as determined from time to time by CFX. User may contact CFX through the Customer Service Channels for updated information on such methods and locations.

12.6 Check payments must be received at least three (3) business days before the balance in the User's Prepaid Account becomes insufficient to cover charges paid electronically by the User's Transponder. For additional details and locations, please contact CFX through the Customer Service Channels.

## Section 13. Payment of Postpaid Account

13.1 User accepts responsibility for payment of tolls by ensuring that a credit or debit card with a sufficient available balance is maintained in the Postpaid Account at all times. Use of any E-PASS lanes, designated or enabled, without a credit or debit card capable of accepting an appropriate charge, may result in termination of User's Postpaid Account in accordance with Section 14 of this Agreement.

13.2 A credit or debit card is considered in good standing if it belongs to an active, nonexpired account having sufficient credit available. Failure to maintain the credit or debit card in good standing may result in the termination of User's Postpaid Account and an interruption in electronic payment using the User's Visitor Toll Pass<sup>®</sup>. This may result in the issuance of a UTC that may be issued pursuant to Section 316.1001, Florida Statutes, or the applicable laws in an Interoperable Parties' location.

13.3 Users are automatically opted in to allowing Visitor Toll Pass<sup>®</sup> as a payment option at an E-PASS facility or interoperable facility accepting Visitor Toll Pass<sup>®</sup> as a payment option. In addition, Users accept that any charge due at an E-PASS facility or interoperable facility accepting E-PASS as a payment option will be charged directly to the credit or debit card linked to the Visitor Toll Pass<sup>®</sup> account.

13.4 User agrees that CFX may automatically update the credit or debit card information listed in User's Postpaid account, such as new account numbers and expiration dates, if received from User's financial institution.

## Section 14. Voluntary or Involuntary Termination of User's CFX Transponder

14.1 If User's CFX Transponder is terminated, either voluntarily or involuntarily, User shall immediately: (i) Cease using the CFX Transponder for electronic payment; (ii) Permanently remove any CFX Transponder from any vehicle that may travel on E-PASS enabled lanes or other states that accept CFX Transponders for electronic payment; and (iii) discontinue traveling on designated E-PASS Lanes and other E-PASS enabled lanes or other states that accept CFX Transponders for electronic payment; and (iii) discontinue traveling on designated E-PASS Lanes and other E-PASS enabled lanes or other states that accept CFX Transponders for electronic payment.

14.2 Using a CFX Transponder while terminated may subject the User to toll violations and issuance of a UTC. All activity incurred during terminated status may be charged to the User's Account at the toll rate charged to customers paying by Pay-By-Plate rate or applicable rates at that particular location. No credits will be issued upon reactivating a terminated CFX Transponder(s).

14.3 If a User fails to remove a CFX Transponder from a vehicle following a voluntary or involuntary termination of User's Account, then no credit or refund will be due if one or more tolls are paid by cash at a location or at a time of day for which cash receipts are not available.

14.4 If User's Account is closed, either voluntarily or involuntarily, all CFX Transponders listed on the User's Account will be terminated. User agrees to comply with the terms for voluntary or

Page 11 of 15\_\_\_\_

involuntary termination of User's CFX Transponder(s) detailed in this Section of the Agreement. CFX may prohibit User from opening subsequent account(s) if any previous account has been closed involuntarily. Any remaining balance of the User's Prepaid Account shall be refunded in accordance with Section 17 of this Agreement and any remaining balance owed will be the responsibility of the User for payment.

14.5 CFX may terminate User's Account at any time for any reason. Where a User's Account has been terminated, all CFX Transponders listed on the User's Account(s) will be terminated. User agrees to comply with the terms for voluntary or involuntary termination of User's Transponder(s) detailed in this Section of this Agreement. In lieu of account termination, CFX may allow User to retain the account, provided any outstanding balance is paid in full, and User enrolls in E-PASS Auto Replenishment or supplies a credit or debit card with sufficient balance to process any appropriate charges for the remainder of the Agreement as described herein. No new Prepaid or Postpaid Account shall be open until all monies owed to CFX have been paid in full.

## Section 15. Lost or Stolen CFX Transponder

15.1 In the event the CFX Transponder is lost or stolen, User shall immediately update and change the CFX Transponder status to Lost/Deactivated through one of the CFX Customer Service Channels. All charges paid electronically using a lost or stolen CFX Transponder will continue to be reflected on the User's Account until notification of the loss or theft is reported in accordance with this Section. The User's Transponder status will be modified upon receipt by CFX of User's notification of the loss or theft. The User will not be held responsible for future toll activity on a lost or stolen CFX Transponder after CFX has received notification unless the vehicle that went through the toll facility had a license plate listed in the User's Account.

15.2 In the event that the User does not have any other CFX Transponder(s) or does not purchase a replacement CFX Transponder on the Prepaid or Postpaid Account, any remaining balance or amount owed may be refunded or charged to the last credit or debit card used in accordance with Section 17. Authorized or unauthorized use of the CFX Transponder in any vehicle registered to the User shall be chargeable to the User's Account until notification is made to CFX in accordance with this Agreement, and the license plate is removed from the User's Account.

15.3 If a CFX Transponder previously reported Lost/Stolen is reactivated, any unpaid charges recorded while the CFX Transponder was in a lost or stolen status will be charged to User's Account if CFX determines the usage was the result of the User's vehicle incurring the charges.

## Section 16. Damaged or Malfunctioning CFX Transponders

16.1 Damaged CFX Transponders are not covered by warranty. For purposes of this Agreement, damage is defined as the rendering of a CFX Transponder defective or inoperable due to tampering, abuse, improper use, defacement, or destruction, whether accidental or otherwise. Removal of or attempt to remove an E-PASS Sticker or Collegiate Pass Transponder from the vehicle windshield may also render those units as damaged and thereby useless.

Page 12 of 15\_\_\_\_

16.2 In the event of failure or malfunction of any CFX Transponder, User must immediately discontinue use of the CFX Transponder and update the status to deactivated online at E-PASS website, through the Mobile App or by contacting the E-PASS Customer Service Center in accordance with Section 4.3 herein. Where failure or malfunction occurs, CFX Transponder shall be terminated and the terms for voluntary or involuntary termination of User's Transponder(s) detailed in Section 14 of this Agreement shall apply.

Malfunctioning or defective CFX Transponders due to a manufacturing defect shall be 16.3 replaced at no cost to User only when returned to CFX within the 90-day warranty period. Damaged CFX Transponders are not covered by warranty. User will contact CFX through one of the CFX Customer Service Channels to obtain current instructions for returning a malfunctioning CFX Transponder. Costs related to shipment of the CFX Transponder to CFX are the responsibility of the User. CFX may require delivery confirmation in the event the CFX Transponder is not received. User is responsible for any and all unpaid tolls and/or any UTC issued as a result of any attempt to use a malfunctioning and/or defective transponder to pay tolls.

## Section 17. Withdrawal of Prepaid Account Balance or Payment of Tolls Owed at **Account Closure**

17.1 In the event the Prepaid Account is closed, the remaining balance of the Prepaid Account shall be refunded after thirty (30) days to the User once all toll payments and any appropriate charges have been deducted. Depending upon the User's method of payment for the User's Account being closed, refunds may be issued in accordance with the method of payment used to replenish or charge the User's Account. If User's Account has any outstanding balance owed, User shall pay the amount owed at time of closure.

## Section 18. Dispute of Charges

18.1 CFX must be notified of any disputes of charges appearing on User's Account within ninety (90) days of the charge being posted. All disputes are subject to review and approval by CFX and may require additional documentation or evidence from the User.

## Section 19. Miscellaneous Provisions

19.1 User releases CFX, its officers, employees, or agents (collectively "CFX"), from all loss, damage, or injury whatsoever from the use or performance of any CFX Transponder. CFX shall not have any obligation or liability to the User with respect to the use or the performance of any CFX Transponders. The only relief available to the User shall be replacement by CFX of any defective or malfunctioning CFX Transponder in accordance with Section 16 of this Agreement. User agrees to indemnify, protect, and hold harmless CFX from liability for all loss, damage, or injury to persons or property arising from the use of any CFX Transponder.

19.2 It is expressly understood and agreed that CFX may make charges against User's credit or debit card. User's providing credit or debit card information by any manner such as verbally,

Page 13 of 15

written or electronic shall constitute User's contractual authorization and consent to CFX to make charges against User's credit or debit card for E-PASS charges, wherever incurred. User expressly understands and accepts that CFX shall not be liable to User for any financial costs resulting from these actions.

19.3 User acknowledges that CFX shall not be liable for any incidental, indirect, special or consequential damages, including, but not limited to, loss of use, revenues, profits, or savings, incurred by User as a result of CFX's use of User's credit or debit card.

19.4 User acknowledges that CFX shall not be liable for any claims, demands, or actions against User by any person, corporation, or other legal entity resulting from the use of the CFX Transponder(s), including any costs incurred by User for any credit report inquiry, check authorization, and/or charges against User's credit card.

19.5 User accepts responsibility of all costs, including, but not limited to the associated costs and ramifications of a conviction related to any UTC, and costs incurred by CFX in the enforcement of the terms and conditions of this Agreement, including any collection fees, attorney's fees, and/or court costs.

19.6 If for any reason User's Account is insufficient for tolls or any other charges due or owing to CFX, User shall remain liable to CFX for such insufficiencies and all applicable charges.

19.7 Unpaid balances due to CFX may be turned over to a collection agency for enforcement and collection activities.

19.8 Should User be the subject of any Bankruptcy proceeding under the Bankruptcy Act or become insolvent, CFX shall have the right to terminate User's Account and services provided. User shall remain and be liable for the payment of all unpaid charges hereunder exclusive of any other remedy provided herein or by law.

19.9 This Agreement shall be binding upon and inure to the benefit of User and User's successors and CFX and its successors and assigns. User shall not be permitted to assign the obligations or benefits of this Agreement without the express written consent of CFX.

19.10 User accepts that User's retaining, using, or permitting others to use a CFX Transponder shall thereby constitute User's acknowledgment of and acceptance of the terms and conditions of this Agreement. User accepts responsibility to pay the tolls and applicable charges of such permitted use and the obligations of this Agreement shall fully bind and be applicable to User as if User had incurred the tolls and charges.

19.11 To the full extent of Florida's severance law, the invalidity of any portion of this Agreement shall not affect any other portion of this Agreement, which shall remain in full force and effect.

19.12 CFX reserves the right to reject any request to open or service a User Account or to reject any request to issue any CFX Transponder.

Page 14 of 15

19.13 CFX reserves the right to offset and/or charge amounts owed to CFX for usage of CFX transponders from funds in User's Account.

19.14 User accepts that by providing User's e-mail address and/or telephone number, User may receive information from CFX, its consultants, agents or other toll facility operators.

19.15 Questions regarding User's Account or transactions charged to User's Account should be directed to CFX through one of the CFX Customer Service Channels.

19.16 This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Florida, with the exception of Florida's choice of law provisions. Other than toll citations, any civil action or legal proceeding arising out of or relating to this Agreement shall be brought exclusively in the courts of competent jurisdiction of the State of Florida in Orange County, Florida. The forum for Florida Uniform Traffic Citations shall be in the traffic and/or county court for the county where the alleged toll violation occurred. Toll violations occurring in an Interoperable State may be subject to the local laws of the jurisdiction in which the violation occurred.

19.17 CFX Transponders may not be sold, bartered, exchanged or otherwise transferred without the express written consent of CFX. Any such sale, barter, exchange or transfer may render the CFX Transponder void and any privileges or rights associated with such CFX Transponder shall be terminated immediately.

## MEMORANDUM

TO:	CFX Board Members
FROM:	Aneth Williams Will Director of Procurement
DATE:	January 12, 2022
SUBJECT:	Approval of Contract Award to Sice, Inc. for Dynamic Message Sign (DMS) Replacement Project – Phase 2 Project No. 599-545B, Contract No. 001826

An Invitation to Bid for the above referenced project was advertised on September 26, 2021. Four (4) responses were received by the November 10, 2021 deadline.

Bid results were as follows:

	<u>Bidder</u>	Bid Amount
1.	Sice, Inc.	\$4,263,203.36
2.	Chinchor Electric, Inc.	\$4,313,048.95
3.	Traffic Management Solutions, Inc.	\$4,686,000.00
4.	The New Florida Industrial Electric, Inc.	\$4,898,350.97

The engineer's estimate for this project is \$3,275,534.56. Included in the Five-Year Work Plan is \$4,062,000.00.

The work to be performed includes providing all labor, materials, equipment, and incidentals necessary to add, replace, transport, install, and test 3-line DMS and sign structures along SR 417 and SR 528.

Board award of the contract to Sice, Inc. in the amount of \$4,263,203.36 is requested.

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

Reviewed by: Bryan Homayouni, PE

Director of Intelligent Transportation Systems

Glenn Pressimone, PE

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

WWW.CFXWAY.COM



# CONTRACT



## AND

# SICE, INC.

## **DMS REPLACEMENT PROJECT – PHASE 2**

PROJECT NO. 599-545B, CONTRACT NO. 001826

CONTRACT DATE: FEBRUARY 10, 2022 CONTRACT AMOUNT: \$4,263,203.36

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

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

FOR

## DMS REPLACEMENT PROJECT – PHASE 2

#### PROJECT NO. 599-545B, CONTRACT NO. 001826

FEBRUARY 2022

## TABLE OF CONTENTS

Section	Title	Page
С	CONTRACT	C-1 to C-2
	Memorandum of Agreement	1 to 7
GS	GENERAL SPECIFICATIONS	1 – 146
	Attachment A	ATT-1 to ATT-9
	(See General Specifications Table of Contents for listing of i specifications sections.)	individual
TS	TECHNICAL SPECIFICATIONS	TS-1 to TS-11
	(See Technical Specifications Table of Contents for li specifications sections.)	isting of individual
SP	SPECIAL PROVISIONS	SP-1 to SP-11
	(See Special Provisions Table of Contents for listing of each s	special provision.)
	Addendum No. 1Addendum No.Addendum No. 3	o. 2
Р	PROPOSAL	P-1 to P-12
VR	VEHICLE REGISTRATION FORM	VR-1 to VR-2
PCB	PUBLIC CONSTRUCTION BOND	PCB-1 to PCB-4

Plans

#### CONTRACT

This Contract No. 001826 (the "Contract"), made this 10<sup>th</sup> day of February 2022, between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, hereinafter called CFX and SICE, INC., of 14350 NW 56th Ct., # 105, Miami, Fl., 33054, 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. 599-545B, DMS Replacement Project – Phase 2, as detailed in the Contract Documents and any addenda or modifications thereto. Contract time for this project shall be 415 calendar days. The Contract Amount is \$4,263,203.36. This Contract was awarded by the Governing Board of CFX at its meeting on February 10, 2022.

The Contract Documents consist of:

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

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

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

By:	Director of Procureme	ent
	Aneth Williams	
	Print Name	
DATE:		
SICE, INC.		
By:		
5	Signature	
	Print Name	
	Title	
	Title	
ATTEST:		(Seal)
DATE		

## CENTRAL FLORIDA EXPRESSWAY AUTHORITY

Approved as to form and execution, only.

General Counsel for CFX

Diego "Woody" Rodriguez Print Name

Section Name		
Section 1 - A	Abbreviations and Definitions	1
1.1		1
	Abbreviations	1
1.3	Definitions	2
Section 2 - S	Scope of Work	11
2.1	Intent of Contract	11
2.2	Work Not Covered by the General Specifications	11
2.3	Alteration of Plans	11
	2.3.1 General	
	2.3.2 Increase, Decrease or Alteration in the Work	
	2.3.3 Connections to Existing Pavements, Drives, and Walks	
	2.3.4 Differing Site Conditions	
	2.3.5 Changes Affecting Utilities	
	2.3.6 Cost Savings Initiative Proposal	
2.4	Claims by Contractor	24
	2.4.1 General	
	2.4.2 Notice of Claim	
	2.4.3 Content of Written Claim	
	2.4.4 Action on Claim	
	2.4.5 Compensation for Extra Work or Delay	
	2.4.6 Mandatory Claim Records	
	2.4.7 Claims for Acceleration	
	2.4.8 Certificate of Claim	
	2.4.9 Non-Recoverable Items	
	2.4.10 Exclusive Remedies	
	2.4.11 Settlement Discussions	
	2.4.12 Personal Liability of Public Officials	
	2.4.13 Auditing of Claims	
2.5	Unforeseeable Work	31
2.6	Right To and Use of Materials Found at the Site of the Work	31
	2.6.1 Ownership and Disposal of Existing Materials	
	2.6.2 Ornamental Trees and Shrubs	<i>c</i> -
2.7	Restoration of Right of Way	32

Section Nam	e		Page No.
Section 3 - C	ontrol of	f Work	33
3.1	Plans a	and Working Drawings	33
	3.1.1	Plans and Contract Documents	
	3.1.2	CFX Plans	
	3.1.3	Alterations in the Plans	
	3.1.4	Shop Drawings	
3.2	Coord	ination of Plans and Specifications	36
3.3	Confo	rmity of Work with Plans	37
	3.3.1	Record Drawings	
3.4		ward Meeting	38
3.5		s and Instructions	39
		Observation of the Work	
		Examination of the Work	
		Communications	
3.6	U	eering and Layout	41
	3.6.1	Control Points Furnished by CFX	
		Furnishing of Stake Material	
		Layout of Work	
		Specific Staking Requirements	
		Personnel, Equipment, and Record Requirements	
	3.6.6	Global Navigation Satellite Systems (GNSS) Work Plan	
2.7	3.6.7	Payment	4.4
3.7		actor's Supervision	44
	3.7.1	Prosecution of Work	
		Contractor's Superintendent	
	3.7.3 3.7.4	Supervision for Emergencies Worksite Traffic Supervisor	
3.8		al Inspection Requirements	45
5.0	3.8.1	Cooperation by Contractor	Ъ
	3.8.2	Failure of CFX to Reject Work During Construction	
	3.8.3	Failure to Remove and Renew Defective Materials and Work	
3.9		Inspection and Acceptance	47
5.9	3.9.1	Maintenance Until Final Acceptance	17
	3.9.2	Inspection for Substantial Completion	
	3.9.3	Final Inspection	
	3.9.4	Final Acceptance	
	3.9.5	Recovery Rights Subsequent to Final Payment	
3.10		and Examination of Contract Records and Bid Records	48

Section Nam	e	Page No.
3.11	Escrow of Bid Records	50
3.12	Prevailing Party Attorney's Fees	51
Section 4 - C	Control of Materials	53
4.1	Acceptance Criteria	53
	4.1.1 General	
	4.1.2 Sampling and Testing	
	4.1.3 Certification	
	4.1.4 Warranty and Guaranty	
4.2	Designation of a Specific Product as a Criterion ("Or Equal" Clause)	54
4.3	Source of Supply and Quality Requirements	54
	4.3.1 Only Approved Materials to be Used	
	4.3.2 Notification of Placing Order	
	4.3.3 Approval of Source of Supply	
4.4	Inspection and Tests at Source of Supply	55
	4.4.1 General	
	4.4.2 Cooperation by Contractor	
	4.4.3 Retest of Materials	
4.5	Storage of Materials and Samples	56
	4.5.1 Method of Storage	
	4.5.2 Use of Right of Way for Storage	
	4.5.3 Responsibility for Stored Materials	
	4.5.4 Storage Facilities for Samples	
4.6	Defective Materials	56
Section 5 - L	egal Requirements and Responsibility to the Public	58
5.1	Laws to be Observed	58
	5.1.1 General	
	5.1.2 Plant Quarantine Regulations	
	5.1.3 Introduction or Release of Prohibited Aquatic Plants, Plant Pest Noxious Weeds	ts or
	5.1.4 Compliance with Federal Endangered Species Act	
	5.1.5 Occupational Safety and Health Requirements	
	5.1.6 Discovery of Unmarked Human Burial Site	
	5.1.7 Insecticides and Herbicides	
5.2	Permits and Licenses	60
5.3	Patented Devices, Materials and Processes	60

Section Name		Page No.
5.4	Right of Way Furnished by CFX	61
5.5	Sanitary Provisions	61
5.6	Control of the Contractor's Equipment	61
	5.6.1 Traffic Interference	
	5.6.2 Overloaded Equipment	
	5.6.3 Crossings	
	5.6.4 Protection from Damage by Tractor-Type Equipment	
	5.6.5 Contractor's Equipment on Bridge Structures	
	5.6.6 Posting of the Legal Gross Vehicular Weight	
5.7	Structures Over Navigable Waters	63
	5.7.1 Compliance with Jurisdictional Regulations	
5.8	Use of Explosives	63
5.9	Preservation of Property	63
	5.9.1 General	
	5.9.2 Failure to Restore Damaged Property	
	5.9.3 Contractor's Use of Streets and Roads	
	5.9.4 Traffic Signs, Signal Equipment, Highway Lighting and Guardra	il
	5.9.5 Operations Within Railroad Right of Way	
	5.9.6 Utilities	
5.10	Responsibility for Damages, Claims, etc.	68
	5.10.1 Contractor to Provide Defense Against Claims and Suits	
	5.10.2 Guaranty of Payment for Claims	
5.11	Insurance	70
	5.11.1 Schedule of Required Limits for Workers' Compensation,	
	General Liability and Automobile Liability	
	5.11.2 Workers' Compensation and Employer's Liability Insurance	
	5.11.3 Comprehensive General Liability Insurance	
	5.11.4 Comprehensive Automobile Liability Insurance	
	5.11.5 Umbrella/Excess Liability Insurance	
	5.11.6 Builder's Risk	
	5.11.7 Railroad Insurance	
	5.11.8 Pollution Legal Liability	
	5.11.9 Professional Liability	
5.12	Contract Bond (Public Construction Bond) Required	76
	5.12.1 General Requirements of the Bond	
	5.12.2 Continued Acceptability of Surety	
5.13	Contractor's Responsibility for Work	76
5.14	Opening Section of Highway to Traffic	77
5.15	Scales for Weighing Materials	77

Section Name	_		<u>Page No.</u>
5.15.1 Applicable Regulations			
	5.15.2	Base for Scales	
	5.15.3	Protection and Maintenance	
5.16	Source	e of Forest Products	77
5.17	Regula	ations of Air Pollution	77
	5.17.1	General	
	5.17.2	Dust Control	
	5.17.3	Asphalt Material	
	5.17.4	Asphalt Plants	
5.18	Dredgi	ing and Filling	78
5.19	-	n Control	78
5.20	Contra	ctor's Motor Vehicle Registration	78
5.21	Interna	al Revenue Service Form W-9	78
5.22	Tolls a	and Access	79
5.23	Reque	sts for References or Performance Evaluations	79
5.24	Unautl	horized Aliens	79
5.25	Public	Records	80
5.26	Inspec	tor General	81
5.27	Convicted Vendor List		
5.28	Discriminatory Vendor List		
5.29	Severa	ıbility	81
5.30	Compa	anies Pursuant to Florida Statute Sections 287.135 and 215.473	82
Section 6 - Pro	osecutio	on and Progress of the Work	83
6.1	Sublet	ting or Assigning of Contract	83
6.2		Performed by Equipment Rental Agreement	85
6.3		ution of Work	85
	6.3.1	Sufficient Labor, Materials and Equipment	
	6.3.2	Impacts by Adjacent Projects	
	6.3.3	Submission of Preliminary, Baseline, Updated Baseline, and Two	o-Week
		Look-Ahead Schedules	
	6.3.4	Beginning Work	
	6.3.5	Provisions for Convenience of the Public	
	6.3.6	Pre-Construction Conference	
6.4	Limita	tions of Operations	103
	6.4.1	Night Work	
	6.4.2	Sequence of Operations	
	6.4.3	Interference with Traffic	
	6.4.4	Coordination with Other Contractors	

Section Name			Page No.
	6.4.5	Drainage	
	6.4.6	Fire Hydrants	
	6.4.7	Protection of Structures	
	6.4.8	Fencing	
	6.4.9	Hazardous or Toxic Waste	
	6.4.10	Milling	
6.5		ications of Contractor's Personnel	107
6.6	Tempo	prary Suspension of Contractor's Operations	107
	6.6.1	CFX to Suspend Contractor's Operations	
	6.6.2	Prolonged Suspensions	
	6.6.3	Permission to Suspend Operations	
	6.6.4	Suspension of Contractor's Operations – Holidays	
6.7	Contra	ct Time	108
	6.7.1	General	
		Date of Beginning of Contract Time	
	6.7.3	Adjusting Contract Time	
6.8	Failure	e of Contractor to Maintain Satisfactory Progress	110
	6.8.1	General	
6.9		t and Termination of Contract	111
	6.9.1	Determination of Default	
	6.9.2	Public Interest Termination of Contract	
	6.9.3	Completion of Work by CFX	
6.10	Liquid	ated Damages for Failure to Complete the Work	114
	6.10.1	Liquidated Damages for Failure to Complete the Work	
	6.10.2	Determination of Number of Days of Default	
	6.10.3	Conditions Under Which Liquidated Damages are Imposed	
	6.10.4	Right of Collection	
	6.10.5	Allowing the Contractor to Finish Work	
		Liability for Liquidated Damages	
6.11		e of Contractor's Responsibility	114
6.12		ery of Damages Suffered by Third Parties	114
6.13	Expres	s Warranty	115
Section 7 - Me	easurem	ent and Payment	116
7.1	Measu	rement of Quantities	1116
	7.1.1	Measurement Standards	
	7.1.2	Method of Measurements	
	7.1.3	Determination of Pay Areas	
	7.1.4	Construction Outside Authorized Limits	

Section Name			Page No.
	7.1.5	Truck Requirements	
	7.1.6	Ladders and Instrument Stands for Bridge Construction	
7.2	Scope	of Payments	117
		Items Included in Payment	
		Non-Duplication of Payment	
7.3	-	ensation for Altered Quantities	117
		General	
		Payment Based on Plan Quantity	
		Lump Sum Quantities	
		Deviation from Plan Dimensions	
7.4		Account Work	120
		Method of Payment	
		Records	
		Preliminary Order-of-Magnitude Estimate	
7.5		d Work	123
7.6		Payments	123
	7.6.1		
		Unsatisfactory Payment Record	
		Withholding Payment for Defective Work	
		Partial Payments for Delivery of Certain Materials	
		Certification of Payment to Subcontractors	
		Reduction of Payment for Unsatisfactory Services or Products	
7.7		l of Construction Materials	127
		General	
- 0		Non-Commercial Materials	
7.8	-	ed Amounts Due Contractor	127
7.9	-	tance and Final Payment	127
7.10	Offsett	ting Payments	129
Section 8 – Di	sadvant	taged/Minority/Women Business Enterprise (D/M/WBE)	130
Pa	rticipat	ion	
8.1	Genera	al	130
8.2		vantaged/Minority and Women Owned Businesses – Participation	150
0.2	Object	<b>č i</b>	131
	8.2.1	General	101
	8.2.2	Definitions	
	8.2.3	Specific Requirements	
	8.2.4	Qualified Participation	
	8.2.5	Records and Reports	
	5.2.0	the star and the points	

## GENERAL SPECIFICATIONS

Section Nam	<u>1e</u>	Page No.
8.3	Subletting of Contracts - Participation Objectives	136
Section 9 - Binding Arbitration		137
Section 10 – Disputes Resolution		139
10.1	<ul> <li>Disputes Resolution</li> <li>10.1.1 Disputes Review Board</li> <li>10.1.2 Continuance of Work During Dispute</li> <li>10.1.3 Disputes Review Board Membership</li> <li>10.1.4 Board Operations</li> <li>10.1.5 Procedure for Disputes Resolution</li> <li>10.1.6 Conduct of Disputes Hearings</li> <li>10.1.7 Compensation</li> <li>10.1.8 Three Party Agreement</li> </ul>	139

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 multi-span box culvert is considered a bridge when the length between the extreme ends of the openings exceeds 20 feet.

- 1.3.7 **Calendar Day** Every day shown on the calendar, ending and beginning at midnight.
- 1.3.8 **CFX** The Central Florida Expressway Authority. To avoid unnecessary repetition of expressions, whenever in the General Specifications, Technical Specifications, or Special Provisions, the term "CFX" is used, it is understood that "or designated representative" is a part of the term unless specifically indicated otherwise. Such designated representative may be the "Engineer", the "CEI", the "Resident Engineer" or other individual or entity identified by CFX and defined herein.
- 1.3.9 **Construction Engineering & Inspection (CEI) Consultant** The firm employed by CFX to observe the progress and quality of the Work being performed by the Contractor.
- 1.3.10 **Consultant** The Professional Engineer or engineering firm, registered in the State of Florida, under contract to CFX to perform professional services for CFX. The Consultant may be the Engineer of Record or may provide services through and be subcontracted to the Engineer of Record.
- 1.3.11 **Contract** The written agreement between CFX and the Contractor setting forth the obligations of the parties thereto including but not limited to, the performance of the Work, the furnishing of labor and materials, and the basis of payment.
- 1.3.12 **Contract Bond** The security furnished by the Contractor and the surety as a guaranty that the Contractor shall fulfill the terms of the Contract and pay all legal debts pertaining to the construction of the project.
- 1.3.13 **Contract Claim (Claim)** A written demand submitted to CFX by the Contractor in compliance with Article 2.4 of these General Specifications seeking additional monetary compensation, time and/or other adjustments to the Contract, the entitlement or impact of which is disputed by CFX.
- 1.3.14 **Contract Documents** The Contract, addenda (which pertain to the Contract Documents), the Memorandum of Agreement, Contractor's Bid (including documentation accompanying the Bid and any post-bid documentation submitted prior to the Notice of Award), the Notice to Proceed, the Public Construction Bond, these General Specifications, the Technical Specifications, the Standard Specifications, the Contractor's certification required pursuant to Article 3.4 of these General Specifications, the Special Provisions, the Plans, any supplemental agreements required to complete the construction of the Project and elements incorporated by reference including, but not necessarily limited to, the FDOT

Standard Plans (edition per plans).

- 1.3.15 **Contract Price** The money payable by CFX to the Contractor for completion of the Work in accordance with the Contract Documents.
- 1.3.16 **Contract Time** The number of calendar days allowed for completion of the Work including authorized time extensions.
- 1.3.17 **Contractor** The person, firm, or corporation with whom CFX has entered into the Contract.
- 1.3.18 **Contractor's Engineer of Record** A Professional Engineer registered in the State of Florida, other than the Engineer of Record or his subcontracted consultant, who undertakes the design and drawing of components of the permanent structure as part of a redesign or Cost Savings Initiative Proposal, or for repair designs and details of the permanent work. The Contractor's Engineer of Record may also serve as the Specialty Engineer.

The Contractor's Engineer of Record must be an employee of a prequalified firm. The firm shall be pre-qualified in accordance with the Rules of the Department of Transportation, Chapter 14-75. Any Corporation or Partnership offering engineering services must hold a Certificate of Authorization from the Florida Department of Business and Professional Regulation.

As an alternate to being an employee of a pre-qualified firm, the Contractor's Engineer of Record may be a Department-approved Specialty Engineer. For items of the permanent work declared by to be "major" or "structural", the work performed by a Department-approved Specialty Engineer must be checked by another Department-approved Specialty Engineer. An individual Engineer may become a Department-approved Specialty Engineer if the individual meets the Professional Engineer experience requirements set forth within the individual work groups in Chapter 14-75, Rules of the Department of Transportation, Florida Administrative Code. Department-approved Specialty Engineers are listed on the State Construction Website. Department-approved Specialty Engineers will not be authorized to perform redesigns or Cost Savings Initiative Proposal designs of items fully detailed in the Plans.

- 1.3.19 **Controlling Work Items** The activity or work item on the critical path having the least amount of total float. The controlling item of work will also be referred to as a Critical Activity.
- 1.3.20 **Culverts** Any structure not classified as a bridge, which provides an opening under the roadway.
- 1.3.21 Delay With the exception of the items listed in Subarticle 6.7.3.1 of these General Specifications, any unanticipated event, action, force or factor which extends the Contractor's time of performance of any critical path activity under the Contract. The term delay is intended to cover all such events, actions, forces or factors,

whether styled "delay", "disruption", "interference", "impedance", "hindrance" or otherwise, which are beyond the control of and not caused by the Contractor or Contractor's subcontractors, materialmen, suppliers, or other agents. This term does not include Extra Work.

- 1.3.22 **Director of Construction** Director of Construction, Central Florida Expressway Authority, acting directly or through an authorized representative.
- 1.3.23 **Engineer** The term as may be used in various documents is understood to mean CFX or designated representative.
- 1.3.24 **Engineer of Record** The professional engineer or engineering firm, contracted by CFX and registered in the State of Florida, who develops criteria and concept for the Project, performs the analysis and is responsible for the preparation of the plans and specifications.
- 1.3.25 **Equipment** The machinery and equipment, together with the necessary supplies for upkeep and maintenance thereof, the tools and all other apparatus necessary for the construction and acceptable completion of the Work.
- 1.3.26 **Executive Director** Executive Director, Central Florida Expressway Authority, acting directly or through an assistant or other representative authorized by him; the chief officer of the Central Florida Expressway Authority
- 1.3.27 **Extra Work** Any Work which is required by CFX to be performed and which is not otherwise covered or included in the project by the existing Contract Documents, whether it be in the nature of additional work, altered work, deleted work, work due to differing site conditions or otherwise. This term does not include a "delay."
- 1.3.28 **Federal, State, and Local Rules and Regulations -** The term "Federal, State and Local Rules and Regulations" includes: any and all Federal, State, and Local laws, bylaws, ordinances, rules, regulations, orders, permits, or decrees including environmental laws, rules, regulations, and permits.
- 1.3.29 **Force Account** Work authorized by CFX and performed in addition to that set forth in the original Contract and is paid on an actual cost basis plus a fixed percent markup and stipulated rental rates for equipment. All costs paid under Force Account will be fully documented and signed by both parties not later than the following work day.
- 1.3.30 **Highway, Street, or Road** A general term denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way.
- 1.3.31 Holidays Martin Luther King, Jr. Day; Memorial Day; the Saturday and Sunday immediately preceding Memorial Day; Independence Day; Independence Day

(Observed); Labor Day; the Friday, Saturday, and Sunday immediately preceding Labor Day; Veterans Day; Veterans Day (Observed); the Wednesday immediately preceding Thanksgiving Day; Thanksgiving Day; the Friday, Saturday and Sunday immediately following Thanksgiving Day; and December 24 through January 2, inclusive.

- 1.3.32 **Inspector** An authorized representative of the Engineer, assigned to make official inspections of the materials furnished and of the work performed by the Contractor and to monitor compliance with the Plans and Specifications of the Contract.
- 1.3.33 **Invitation to Bid** The invitation by which the Contractor submitted its Bid for the Work.
- 1.3.34 **Laboratory** A Testing facility certified with the Florida Department of Transportation.
- 1.3.35 **Major Item of Work** Any item of Work having an original Contract value in excess of 5% of the original Contract amount.
- 1.3.36 Materials Any substances to be incorporated in the Work.
- 1.3.37 **Median** The portion of a divided highway or street separating the traveled ways for traffic moving in opposite directions.
- 1.3.38 **Memorandum of Agreement** A formal summarization of the Project Pre-Award meeting, signed by CFX and a representative of the Contractor and made part of the contract documents.
- 1.3.39 **Notice to Proceed** A written notice given by CFX to the Contractor fixing the latest date on which the Contract Time will commence to run and on which the Contractor shall start to perform the Contractor's obligations under the Contract Documents.
- 1.3.40 **Plans** The drawings which show the scope, extent, and character of the Work to be furnished and performed by the Contractor and which are referred to in the Contract Documents.
- 1.3.41 **Project** The total construction of which the Work to be provided under the Contract Documents may be the whole or a part as indicated elsewhere in the Contract Documents.
- 1.3.42 **Public Construction Bond** The security furnished by the Contractor and the surety as a guaranty that the Contractor will fulfill the terms of the Contract in accordance with the Contract Documents and pay all legal debts pertaining to the construction of the Project.

- 1.3.43 **Resident Engineer** The authorized representative of the CEI who may be assigned to the site or any part thereof.
- 1.3.44 **Right of Way** The land to which CFX has title or right of use for the road and its structures and appurtenances and for material pits furnished or to be furnished by CFX.
- 1.3.45 **Roadbed** That portion of the roadway occupied by the subgrade and shoulders.
- 1.3.46 **Roadway** The portion of a highway within the limits of construction.
- 1.3.47 **Shop Drawings** All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for the Contractor and submitted by the Contractor to illustrate some portion of the Work.
- 1.3.48 **Shoulder** That portion of the roadbed outside the edges of the travel way (or back of curb) and extending to the top of front slopes. The shoulders may be either paved or unpaved.
- 1.3.51 **Special Event** Any event, including but not limited to, a festival, fair, run or race, motorcade, parade, civic activity, cultural activity, charity or fund drive, sporting event, rocket/shuttle launch or similar activity.
- 1.3.49 **Special Provisions** Specific requirements for the Project not otherwise addressed in the General Specifications, Technical Specifications, or Standard Specifications.
- 1.3.50 **Specialty Engineer** A Professional Engineer registered in the State of Florida (specifically other than the Engineer of Record or its subcontracted consultant) who undertakes the design and drawing preparation of components, systems, or installation methods and equipment for specific portions of the Project Work. The Specialty Engineer may be an employee or officer of the Contractor or a fabricator, an employee or officer of an entity providing components to a fabricator or an independent consultant.

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

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

- 1. Registration as a Professional Engineer in the State of Florida
- 2. Education and experience necessary to perform the submitted design as required by the Florida Department of Professional Regulation.
- 1.3.52 **Specifications** The directions, provisions, and requirements contained in the General Specifications, Technical Specifications, Special Provisions, and Standard Specifications.
- 1.3.53 **Standard Plans** "Standard Plans for Road and Bridge Construction", an electronic book describing and detailing aspects of the Work. Where the term Design Standards appears in the Contract Documents, it will be synonymous with Standard Plans.
- 1.3.54 Standard Specifications The FDOT Standard Specifications for Road and Bridge Construction, July 2019 edition, Divisions II and III, hereby incorporated by reference and as may be amended in the Technical Specifications and Plans. Division I of the FDOT Standard Specifications is specifically not included in this definition and is not a part of the Contract Documents.
- 1.3.55 State State of Florida
- 1.3.56 **Subarticle** Any headed subdivision of an Article of the General Specifications, Technical Specifications, or Standard Specifications.
- 1.3.57 **Subgrade** That portion of the roadbed immediately below the base course or pavement (including below the curb and gutter, valley gutter, shoulder and driveway pavement), the limits of which will ordinarily include those portions of the roadway bed shown in the plans to be constructed to a design bearing value or to be otherwise specially treated. Where no limits are shown in the plans, the subgrade section shall be considered to extend to a depth of 12 inches below the bottom of the base or pavement and outward to 6 inches beyond the base, pavement or curb and gutter.
- 1.3.58 **Subcontractor** An individual, firm or corporation having a direct contract with the Contractor or with any other subcontractor for performance of a part of the Work at the site.
- 1.3.59 **Substantial Completion** The completion of all pay item Work in their entirety in conjunction with the performance of the inspection for Substantial Completion. As a minimum the following conditions apply;
  - 1. All pay item work is installed and functioning including Supplemental Agreement Work, Force Account, or Extra Work.

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

The inspection for Substantial Completion may generate a punch list that will be provided to the Contractor within seven (7) calendar days following the conclusion of the inspection. Direction by CFX to open a bridge or roadway or portion thereof does not constitute an acceptance or Substantial Completion of the Project or portion or waive any part of the Contract provisions.

- 1.3.60 **Substructure** All of that part of a bridge structure below the bridge seats including the parapets, backwalls and wingwalls of abutments.
- 1.3.61 **Superintendent** The Contractor's authorized representative responsible and in charge of the Work.
- 1.3.62 **Superstructure** The entire bridge structure above the substructure including anchorage and anchor bolts but excluding the parapets, backwalls, and wingwalls of abutments.
- 1.3.63 **Supplemental Agreement** A written agreement between CFX and the Contractor, signed by the surety, modifying the Contract within the limitations set forth in these specifications.
- 1.3.64 **Surety** The corporate body that is bound by the Contract Bond with and for the Contractor and responsible for the performance of the Contract and for payment of all legal debts pertaining thereto.
- 1.3.65 **Supplier** A manufacturer, fabricator, supplier, distributor, materialmen, or vendor having a direct contract with the Contractor or with any subcontractor to furnish materials or equipment to be incorporated in the Work by the Contractor or any subcontractor.

- 1.3.66 **Technical Specifications** Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the Work associated with road and bridge construction.
- 1.3.67 **Travel Way** The portion of the roadway for the movement of vehicles, exclusive of shoulders and bicycle lanes.
- 1.3.68 **Unilateral Adjustment** A payment of money or granting of Contract time made to the Contractor by CFX for sums CFX determines to be due to the Contractor for work performed on the project, and whereby the Contractor by acceptance of such payment does not waive any rights the Contractor may otherwise have against CFX for payment of any additional sums the Contractor claims are due for the work.
- 1.3.69 **Work** The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and furnishings and incorporating materials and equipment into the construction and performing or furnishing services and furnishing documents all as required by the Contract Documents.
- 1.3.70 **Working Day -** Any calendar day on which the Contractor works or is expected to work in accordance with the approved work progress schedule.
- 1.3.71 Work Order Allowance A monetary amount established by CFX and included in the Contract Price to cover the cost of Work, that may or may not be anticipated, but is not otherwise defined by defined by the Plans or Specifications. No Work paid for under the Work Order Allowance shall be performed until written authorization is given to the Contractor by CFX. Any amount remaining in the Allowance upon completion and acceptance of the project remains the property of CFX.

# END OF SECTION 1

## SECTION 2 - SCOPE OF WORK

## 2.1 Intent of Contract

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

Upon execution of the Contract, written communication associated with the Contract may be conducted using a paperless electronic means. When the Specifications require a submission of documentation, such documents may be submitted and exchanged electronically.

Documents requiring a signature may be executed electronically by both parties in accordance with Chapter 668, Florida Statutes, and have the same force and effect as a written signature. All persons requiring access to any collaboration sites shall be identified during the preconstruction conference and instructions for access to this site will be discussed and documented in the minutes. Persons may be added or removed during the life of the Contract on an as needed basis. All signatories executing documents electronically must acquire digital signature certificates.

2.2 Work Not Covered by the General Specifications

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

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

The term "significant change" applies only when:

A) CFX determines that the Work as altered differs materially in kind or

nature from that involved or included in the original proposed construction or

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

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

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

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

The monetary compensation provided for below constitutes full and complete payment

for such additional work and the Contractor shall have no right to any additional monetary compensation for any direct or indirect costs or profit for any such additional work beyond that expressly provided below. The Contractor shall be entitled to a time extension only to the extent that the performance of any portion of the additional work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. All time related costs for actual performance of such additional work are included in the compensation already provided below and any time extension entitlement hereunder will be without additional monetary compensation. The Contractor shall have no right to any monetary compensation or damages whatsoever for any direct or indirect delay to a controlling work item arising out of or in any way related to the circumstances leading up to or resulting from additional work (but not relating to the actual performance of the additional work, which is paid for as otherwise provided herein), except only as provided for under 2.4.5.3.

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

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

Payment for burden shall be limited solely to the following:

Table 2.3.2.1

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

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

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

(1) A listing of on-site clerical staff, supervisory personnel and their pro-rated time assigned to the Contract,

(2) Actual Rate for items listed in Table 2.3.2.1,

(3) Existence of employee benefit plan for Holiday, Sick and Vacation benefits and a Retirement Plan, and,

(4) Payment of Per Diem is a company practice for instances when compensation for Per Diem is requested.

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

(b) Materials and Supplies: For materials accepted by the CEI and used on the project, the Contractor will receive the actual cost of such materials incorporated into the work, including Contractor paid transportation charges

(exclusive of equipment as hereinafter set forth). For supplies reasonably needed for performing the work, the Contractor will receive the actual cost of such supplies.

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

Allowable Equipment Rates will be established as set out below:

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

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

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

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

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

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

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

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

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

(i) Bond: The Contractor will receive compensation for any premium for acquiring a bond for such additional or unforeseen work at the original contract bond rate paid by the Contractor. Should the Contractor have previously elected to provide subguard coverage in lieu of requiring a bond from a sub on the original work, the Contractor shall be entitled to reimbursement for the subguard premium for the added work upon proof of said premium.

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

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

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

Where A = Original Contract Amount

B = Original Contract Time

C = 8%

D = Average Overhead Per Day

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

2.3.2.2 Subcontracted Work: For work performed by a subcontractor, compensation for the additional or unforeseen work shall be solely limited to as provided for in 2.3.2.1 (a), (b), (c) and (d)(1), with the exception of, in the instance of subcontractor performed work only, the subcontractor may receive compensation for any premium for acquiring a bond for the additional or unforeseen work; provided, however, that such payment for additional subcontractor bond will only be paid upon presentment to CFX of clear and convincing proof that the subcontractor has actually provided and paid for separate bond premiums for such additional or unforeseen work in such amount. The Contractor shall require the subcontractor to provide a certification, in accordance with 2.3.2.1(a), as part of the cost proposal and provide such to the CEI. Such certification must be made by an officer or director of the subcontractor with authority to bind the subcontractor. Timely certification is a condition precedent to any right of the Contractor to recover compensation for such subcontractor costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such subcontractor costs.

- 2.3.3 No Waiver of Contract: Changes made by CFX will not be considered to waive any of the provisions of the Contract, nor may the Contractor make any claim for loss of anticipated profits because of the changes or by reason of any variation between the approximate quantities and the quantities of Work actually performed. All Work shall be performed as directed by CFX and in accordance with the Contract Documents.
- 2.3.4 Suspensions of Work Ordered by CFX: If the performance of all or any portion of the Work is suspended or delayed by CFX, in writing, for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes additional compensation is due as a result of such suspension or delay, the Contractor shall submit to CFX in writing a request for adjustment within 7 calendar days of receipt of the notice to resume Work. The

request shall be complete, set forth all the reasons and support for such adjustment.

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

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

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

2.3.5 Conditions Requiring Supplemental Agreement: A Supplemental Agreement will be used to clarify the Plans and Specifications of the Contract; to document quantities that deviate from the original Contract amount; to provide for unforeseen Work, grade changes or alterations in Plans which could not reasonably have been contemplated or foreseen in the original Plans and Specifications; to change the limits of construction to meet field conditions; to provide a safe and functional connection to an existing pavement; to make the project functionally operational in accordance with the intent of the original Contract and subsequent amendments thereto; to settle Contract claims.

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

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

Work CFX directed to be performed in lieu of pursuing a Supplemental Agreement.

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

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

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

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

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

2.3.9 Differing Site Conditions: During the progress of the Work, if subsurface or latent conditions are encountered at the site differing materially from those indicated on the Plans or in the Specifications or if unknown physical conditions of an unusual nature (differing materially from those ordinarily encountered and generally recognized as inherent in the Work) are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before they are disturbed and before the affected Work is performed.

Upon written notification from the Contractor, CFX will have the conditions investigated and if it is determined that the conditions differ materially and cause an increase or decrease in the cost or time required for the performance of any Work under the Contract, an adjustment (excluding loss of anticipated profits) will be made and the Contract modified in writing accordingly. CFX will notify the Contractor whether an adjustment of the Contract is warranted.

No Contract adjustment that results in a benefit to the Contractor will be allowed

unless the Contractor has provided the required written notice.

No Contract adjustment will be allowed under this clause for any impacts caused to or by any other projects.

2.3.10 Changes Affecting Utilities: The Contractor shall be responsible for identifying and assessing any potential impacts to a utility that may be caused by the changes proposed by the Contractor and the Contractor shall, at the time of making the request for change, notify CFX in writing of any such potential impacts to utilities.

CFX approval of a Contractor proposed change does not relieve the Contractor of sole responsibility for all utility impacts, costs, delays or damages, whether direct or indirect, resulting from Contractor initiated changes in the design or construction activities from those in the original Contract, design plans (including traffic control plans) or other Contract Documents and which effect a change in utility work different from that shown in the utility plans, joint project agreements or utility relocation schedules.

2.3.11 Cost Savings Initiative Proposal

2.3.11.1 Intent and Objective: This subarticle applies to any Cost Savings Initiative Proposal (CSIP) that the Contractor initiates and develops for the purpose of refining the Contract to increase cost effectiveness or significantly improve the quality of the end result. Any potential CSIPs being considered by the Contractor shall NOT be discussed at the pre-award meeting, as this meeting is for the sole purpose of discussing the Contractor's bid and the documents on which the bid is based. Subsequent to Contract execution and prior to Contract Time beginning, a mandatory Cost Savings Initiative Workshop will be held for the Contractor and CFX to discuss potential Proposals.

This subarticle does not apply to any CSIP unless the Contractor identifies it at the time of its submission to CFX as a CSIP submitted in accordance with this subarticle.

CFX will consider CSIPs that, in the sole opinion of CFX, will result in net savings to CFX by providing a decrease on the cost of the Contract. Additionally, the CSIP must result in savings without impairing essential functions and characteristics such as safety, service life, reliability, economy of operation, ease of maintenance, aesthetics, and necessary standard design features. CFX will not recognize the Contractor's elimination of work or correction of plan errors that result in a cost reduction as a CSIP.

CFX reserves the right to reject, at its sole discretion, any CSIP submitted that proposes a change in the design of the pavement system or that would require additional right-of-way. Pending CFX's execution of a formal supplemental agreement implementing an approved CSIP, the Contractor shall remain obligated to perform the Work in accordance with the terms of the Contract. CFX is under no obligation to grant time extensions to allow for the time required to develop and review a CSIP.

For potential CSIPs not discussed between Contract Execution and Contract Time beginning, a mandatory concept meeting will be held between CFX and the Contractor to discuss the potential CSIP prior to its development.

2.3.11.2 Data Requirements: As a minimum, the Contractor shall submit the following information with each CSIP:

1. a description of the differences between the existing Contract requirements, including any time extension request, and the proposed change, and the comparative advantages and disadvantages.

2. separate detailed (Labor, Equipment, Material, and Subcontract) cost estimates for both the existing Contract requirement and the proposed change. Allocate the above detailed cost estimates by pay item numbers indicating quantity increases or decreases and deleted pay items. Identify additional proposed work not covered by pay items within the Contract, by using pay item numbers in the FDOT Basis of Estimates Manual. In preparing the estimates, include overhead, profit, and bond within pay items in the Contract. Separate pay item(s) for the cost of overhead, profit, and bond will not be allowed.

3. an itemization of the changes, deletions, or additions to plan details, plan sheets, Standard Plans, and Specifications that are required to implement the CSIP if CFX adopts it. Provide preliminary plan drawings sufficient to describe the proposed changes.

4. engineering or other analysis in sufficient detail to identify and describe specific features of the Contract that must be changed if CFX accepts the CSIP with a proposal as to how the changes can be accomplished and an assessment of their effect on other Project elements. CFX may require that engineering analyses be performed by a Specialty Engineer in the applicable class of work. Support all design changes that result from the CSIP with drawings and computations signed and sealed by the Contractor's Specialty Engineer. Written documentation or drawings shall be provided that clearly delineate the responsibility of the Contractor's Specialty Engineer.

5. the date by which CFX must approve the CSIP to obtain the total estimated cost reduction during the remainder of the Contract, noting any effect on the Contract completion time or delivery schedule.

# 6. a revised Project schedule that would be followed upon approval of the CSIP. The schedule shall include submittal dates and review time for CFX review.

2.3.11.3 Processing Procedures: The Contractor shall submit the CSIP to CFX. CFX will process the CSIP expeditiously; however, CFX is not liable for any delay in acting upon a CSIP submitted pursuant to this subarticle. The Contractor may withdraw, in whole or in part, a CSIP not accepted by CFX within the period specified in the CSIP. CFX is not liable for any CSIP development cost in the case where CFX rejects, or the Contractor withdraws, a CSIP.

CFX is the sole judge of the acceptability of a CSIP and of the estimated net savings in construction costs from the adoption of all or any part of the CSIP. In determining the estimated net savings, CFX reserves the right to disregard the Contract bid prices if, in the judgment of CFX, such prices do not represent a fair measure of the value of the Work to be performed or to be deleted.

Prior to approval, CFX may modify a CSIP, with the concurrence of the Contractor, to make it acceptable. If any modification increases or decreases the net savings resulting from the CSIP, CFX will determine the Contractor's fair share upon the basis of the CSIP as modified and upon final quantities. CFX will compute the net savings by subtracting the revised total cost of all bid items affected by the CSIP from the total cost of the same bid items as represented in the Contract, provided that in the sole judgment of CFX that such bid item prices represent fair measure of the value of the associated work.

Prior to approval of the CSIP that initiates the supplemental agreement, provide acceptable Contract-quality plan sheets revised to show all details consistent with the CSIP design.

2.3.11.4 Computation for Change in Contract Cost Performance: If the CSIP is adopted, the Contractor's share of the net savings as defined hereinafter represents full compensation to the Contractor for the CSIP.

CFX will include its cost to process and implement a CSIP in the estimate.

2.3.11.5 Conditions of Acceptance for Major Design Modifications of Category 2 Bridges: A CSIP that proposes major design modifications of a category 2 bridge, as determined by CFX, shall have the following conditions of acceptance:

1. All bridge plans relating to the CSIP shall undergo an independent peer review conducted by a single independent engineering firm referred to for the purpose of this requirement as the Independent Review Engineer (IRE). The IRE shall not be the originator of the CSIP design and shall be pre-qualified by FDOT in accordance with Rule 14-75, Florida Administrative Code. The independent

peer review is intended to be a comprehensive and thorough verification of the original Work, giving assurance that the design is in compliance with all CFX requirements. The IRE's comments, along with the resolution of each comment, shall be submitted to CFX. The IRE shall sign and seal the submittal cover letter stating that all comments have been adequately addressed and the design is in compliance with CFX's requirements. If there are any unresolved comments, the IRE shall specifically list all unresolved issues in the signed and sealed cover letter.

2. CFX reserves the right to require the Contractor's Specialty Engineer to assume responsibility for the design of the entire structure.

3. New designs and independent peer reviews shall be in compliance with all applicable CFX, FDOT, and AASHTO criteria requirements including bridge loading ratings.

2.3.11.6 Sharing Arrangements: If CFX approves a CSIP, the Contractor will receive 50% of the net reduction in the cost of performance of the Contract as determined by the final negotiated agreement between the Contractor and CFX. The net reduction will be determined by subtracting from the savings of the construction costs the reasonable documented engineering costs incurred by the Contractor to design and develop a CSIP and CFX's direct costs for reviewing the CSIP. Contractor's engineering costs will be based on the Specialty Engineer's certified invoice and may include the costs of the IRE. The Contractor's total engineering costs to be subtracted from the savings to determine the net reduction will be limited to 25% of the construction savings and will not include any markup by the Contractor for the costs for engineering services performed by the Contractor.

2.3.11.7 Notice of Intellectual Property Interests and CFX's Future Rights to a CSIP: The Contractor's CSIP submittal shall identify with specificity any and all forms of intellectual property rights that either the Contractor or any officer, shareholder, employee, consultant, or affiliate, of the Contractor, or any other entity who contributed in any measure to the substance of the Contractor's CSIP development, have or may have that are in whole or in part implicated in the CSIP. Such required intellectual property rights notice includes, but is not limited to, disclosure of any: issued patents, copyrights, or licenses; pending patent, copyright or license applications; and any intellectual property right that though not yet issued, applied for or intended to be pursued, could nevertheless otherwise be subsequently the subject of patent, copyright or license protection by the Contractor or others in the future. The notice requirement does not extend to intellectual property rights as to stand-alone or integral components of the CSIP that are already on the FDOT's APL or Standard Plans, Standard Plans indexes, or are otherwise generally known in the industry as being subject to patent or copyright protection.

Notwithstanding Article 5.3 of the General Specifications nor any provisions of the Standard Specifications, upon acceptance of the CSIP, the Contractor grants to CFX and its contractors (such grant being expressly limited solely to any and all existing or future CFX construction projects and any other CFX projects that are partially or wholly funded by or for CFX) a royalty-free and perpetual license under all forms of intellectual property rights to manufacture, to use, to design, to construct, to disclose, to reproduce, to prepare and fully utilize derivative works, to distribute, display and publish, in whole or in part, and to permit others to do any of the above, and to otherwise in any manner and for any purpose whatsoever do anything reasonably necessary to fully utilize any and all aspects of such CSIP on any and all existing and future construction projects and any other CFX projects.

The Contractor shall hold harmless and indemnify CFX and its contractors and others in privity therewith from and against any and all claims, liabilities, other obligations or losses, and reasonable expenses related thereto (including reasonable attorney's fees) which are incurred or are suffered by any breach of the foregoing grants, and regardless of whether such intellectual property rights were or were not disclosed by the Contractor pursuant to the language herein, unless CFX has by express written exception in the CSIP acceptance process specifically released the Contractor from such obligation to hold harmless and indemnify as to one or more disclosed intellectual property rights.

- 2.4 Claims by Contractor
  - 2.4.1 General: When the Contractor deems that extra compensation, or a time extension is due beyond that agreed to by CFX, whether due to delay, additional Work, altered Work, differing site conditions, breach of Contract, or for any other cause, the Contractor shall follow the procedures set forth herein for preservation, presentation, and resolution of the claim.

#### 2.4.2 Notice of Claim:

2.4.2.1 Claims For Extra Work: Where the Contractor deems that additional compensation or a time extension is due for Work or Materials not expressly provided for in the Contract or which is by written directive expressly ordered by CFX pursuant to 2.3, the Contractor shall notify CFX in writing, including the words "NOTICE OF CLAIM" in the document heading of the intention to make a claim for additional compensation before beginning the Work on which the claim is based, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 6.7.3 within ten (10) calendar days after commencement of a delay. If such notification is not given and CFX is not afforded the opportunity for keeping strict account of actual labor, Materials, Equipment, and time, the Contractor waives the claim for additional compensation or a time extension. Such

notice by the Contractor, and the fact that CFX has kept account of the labor, Materials, and Equipment, and time, shall not in any way be construed as establishing the validity of the claim or method for computing any compensation or time extension for such claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after the start of such occurrence or event (unless CFX allows additional time for the Contractor to submit additional or more accurate data in support of the claim) and shall be accompanied by the Contractor's written statement that the adjustment claimed covers all known amounts to which the Contractor is entitled as a result of said occurrence or event. For any claim or part of a claim that pertains solely to final estimate quantity disputes the Contractor shall submit full and complete claim documentation as described in 2.4.3, as to such final estimate claim dispute issues, within 30 calendar days of the Contractor's receipt of CFX's Offer of Final Payment. Submission of timely notice of intent to file a claim, preliminary time extension request, time extension request, and the claim, together with full and complete claim documentation, are each a condition precedent to the Contractor bringing any arbitration or other formal claims resolution proceeding against CFX for the items and for the sums or time set forth in the Contractor's written claim, and the failure to provide such notice of intent, preliminary time extension request, time extension request, claim and full and complete claim documentation within the time required shall constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to additional compensation or a time extension for such claim.

2.4.2.2 Claims For Delay: Where the Contractor deems that additional compensation or a time extension is due on account of delay, differing site conditions, breach of Contract, or any other cause other than for Work or Materials not expressly provided for in the Contract (Extra Work) or which is by written directive of CFX expressly ordered by CFX pursuant to 2.3, the Contractor shall submit a written notice of intent to CFX within 48 hours after commencement of a delay to a Work item on the critical path expressly notifying CFX that the Contractor intends to seek additional compensation, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 6.7.3 within 48 hours after commencement of a delay to a Work item on the critical path, as to such delay and providing a reasonably complete description as to the cause and nature of the delay and the possible impacts to the Contractor's Work by such delay. The timely providing of a written notice of intent or preliminary time extension request to CFX are each a condition precedent to any right on behalf of the Contractor to request additional compensation or an extension of Contract Time for that delay, and the failure of the Contractor to provide such written notice of intent or preliminary time extension request within the time required shall constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to additional compensation or a time extension for that delay. Notice of the amount of the claim with supporting data shall be delivered within sixty days after the start of such occurrence or event (unless CFX allows additional time for the Contractor to submit additional or more accurate

data in support of the claim) and shall be accompanied by the Contractor's written statement that the adjustment claimed covers all known amounts to which the Contractor is entitled as a result of said occurrence or event. There shall be no Contractor entitlement to any monetary compensation or time extension for any delays or delay impacts, whatsoever, that are not related to a Work item on the critical path, and then as to any such delay to such item entitlement to any monetary compensation or time extension shall only be to the extent such is otherwise provided for expressly under 2.3 or 2.4, except that in the instance of delay to an item of Work not on the critical path the Contractor may be compensated for the direct costs of idle labor or Equipment only, at the rates set forth in 2.3, and then only to the extent the Contractor could not reasonably mitigate such idleness. The existence of an accepted schedule, including any required update(s), as stated in Article 6.3.3, is a condition precedent to the Contractor having any right to the granting of an extension of Contract Time arising out of any delay. Contractor failure to have an accepted schedule, including any required update(s), for the period of potential impact, or in the event the currently accepted schedule and applicable update(s) do not accurately reflect the actual status of the project or fail to accurately show the true controlling or non-controlling work activities for the period of potential impact, will result in any entitlement determination as to time or money for such period of potential impact being limited solely to CFX's analysis and identification of the actual controlling or non-controlling work activities. Further, in such instances. CFX's determination as to entitlement as to either time or compensability will be final, unless the Contractor can prove by clear and convincing evidence to a Disputes Review Board that the CFX's determination was without any reasonable factual basis.

- 2.4.3 Content of Written Claim: As a condition precedent to the Contractor being entitled to additional compensation or a time extension under the Contract for any claim, the Contractor shall submit a written claim to CFX which will include for each individual claim, at a minimum, the following information:
  - (a) A detailed factual statement of the claim providing all relevant dates, locations, and items of Work affected and included in each claim;
  - (b) The date or dates on which actions or events resulting in the claim occurred or conditions resulting in the claim became evident;
  - (c) Identification of all pertinent documents and the substance of any material oral communications relating to such claim and the name of the persons making such material oral communications;
  - (d) Identification of the provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim, or alternatively, the provisions of the Contract which allegedly have been breached and the actions constituting such breach;
  - (e) A detailed compilation of the amount of additional compensation sought and a breakdown of the amount sought as follows:
    - (1) documented additional job site labor expenses;

- (2) documented additional cost of Materials and supplies;
- (3) a list of additional Equipment costs claimed, including each piece of Equipment and the rental rate claimed for each;
- (4) any other additional direct costs or damages and the documents in support thereof;
- (5) any additional indirect costs or damages and all documentation in support thereof;
- (f) A detailed compilation of the specific dates and the exact number of calendar days sought for a time extension, the basis for entitlement to time for each day, all documentation of the delay, and a breakout of the number of days claimed for each identified event, circumstance or occurrence.

Further, the Contractor shall be prohibited from amending either the basis of entitlement or the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder, and any arbitration or other formal claims resolution proceeding shall be limited solely to the basis of entitlement and the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder. This shall not, however, preclude the Contractor from withdrawing or reducing any of the basis of entitlement and the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder.

- 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, both. 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 rightof-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.

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 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'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: <u>http://www.motadmin.com/find-a-training-provider.aspx</u>

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 replacement of the covering or making good of the parts removed and replacement of the standard to be parts removed, shall be acceptable, the cost of uncovering and/or removal and replacement of the covering or making good of the parts removed is determined to be acceptable, the cost of uncovering and/or removal and replacement of the covering or making good of the parts removed and replacement of the covering or making good of the parts removed and replacement of the covering or making good of the parts removed and replacement of the covering or making good of the parts removed 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 offproject 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 or guardrail and subsequently reset them at their original locations or, in the case of widened pavement or roadbed, at locations designated by the CEI.

If CFX determines that damage to such existing or permanent installations of traffic signs, signal equipment, highway lighting or guardrail is caused by a third party(ies), and is not otherwise due to any fault or activities of the Contractor, CFX will, except for any damage resulting from vandalism, compensate the Contractor for the costs associated with the repairs. Contractor shall repair damage caused by vandalism at no expense to CFX.

### 5.9.5 Operations Within Railroad Right of Way

5.9.5.1 Notification to the Railroad Company: The Contractor shall notify the CEI and the railroad company's division engineer or superintendent a minimum of 72 hours in advance of beginning any operations within the limits of the railroad right of way, any operations requiring movement of employees, trucks or other Equipment across the tracks of the railroad company at other than established public crossings, and any other Work which may affect railroad operations or property.

5.9.5.2 Contractor's Responsibilities: The Contractor shall comply with the requirements that the railroad company's division engineer or superintendent considers necessary to safeguard the railroad's property and operations. Any damage, delay or injury and any suits, actions or claims made because of damages or injuries resulting from the Contractor's operations within or adjacent to railroad right of way shall be the Contractor's responsibility.

5.9.5.3 Watchman or Flagging Services: When protective services are necessary during certain periods of the Project to provide safety for railroad operations, the railroad company will provide such services (watchman or flagging) and CFX will reimburse the railroad company for the cost thereof. The Contractor shall schedule Work that affects railroad operations to minimize the need for protective services by the railroad company.

## 5.9.6 Utilities

5.9.6.1 Arrangements for Protection or Adjustment: Work shall not commence at points where the Contractor's operations adjacent to utility facilities may result in expense, loss or disruption of service to the public or owners of the utilities until the Contractor has made all arrangements necessary for the protection of the utilities. The Contractor shall be solely and directly responsible to the owners and operators of such utilities for any damage, injury, expense, loss, inconvenience, or delay caused by the Contractor's operations.

CFX will make the necessary arrangements with the utilities owners for removal or adjustment of utilities where such removal or adjustment is determined by CFX to be essential to the performance of the Work. Relocations or adjustments requested by the Contractor based on the Contractor's proposed use of a particular method of construction or type of Equipment will not be considered as being essential to the Work if other commonly used methods and Equipment could be used without the necessity of relocating or adjusting the utility. CFX will determine the responsibility for any such required adjustments of utilities. Relocations or adjustments requested because of delivery to the Project of Materials furnished by the Contractor shall be the responsibility and expense of the Contractor. Circumstance under which CFX will consider utility relocations or adjustments essential include, but are not necessarily limited to, the following:

1) Utilities lying within the vertical and horizontal construction limits plus the reasonably required working room necessary for operation of Equipment normally used for the particular type of construction except as provide in subparagraph 4 below. In the case of overhead electrical conductors which carry more than 400 volts, a minimum of 10 feet clearance between the conductor and the nearest possible approach of any part of the Equipment will be required, except where the utility owner effects safeguards approved by the Florida Department of Labor and Employment Security.

2) Utilities lying within the horizontal limits of the Project and within 12 inches below the ground surface or the excavation surface on which the construction Equipment is to be operated or within 12 inches below the bottom of any stabilizing course called for on the Plans.

3) Utilities lying within the normal limits of excavation for underground drainage facilities or other structures (except as provided in subparagraph 4 below). Such normal limits shall extend to side slopes along the angle of repose as established by sound engineering practice, unless the Plans or Specifications require the sides of the excavation to be supported by sheeting or the Contractor elects to sheet such excavation for the Contractor's convenience.

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

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

5.9.6.2 Cooperation with Utility Owners: The Contractor shall cooperate with the utility owners in the removal and/or rearrangement of utilities. If utility service is interrupted due to construction operations, the Contractor shall immediately notify the owner of the utility and the CEI and cooperate in the prompt restoration of service. If water service is interrupted, the Contractor's repair work shall be continuous until the service is restored. No Work shall be undertaken around fire hydrants until the local fire authority has approved provisions for continued service.

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

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

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

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

herein to CFX or its officers, agents and employees shall be the total amount of the Agreement in aggregate or the insurance policy amount as required in article 5.11 herein, whichever is greater. The total amount of the Agreement in aggregate will be determined by the date the notice of claim was received by CFX.

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

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

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

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

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

### 5.11 Insurance

Anything contained herein to the contrary notwithstanding, during the term of the Contract and for such additional time as may be further required, the Contractor shall provide, pay for and maintain in full force and effect insurance outlined in subarticles 5.11.1 through 5.11.9 below for coverage at not less than the prescribed minimum limits of liability, covering the Contractor's activities and those of any and all subcontractors (including officers, directors, employees or agents of each and their successors). All insurance shall be provided through companies authorized to do business in the State of Florida and considered acceptable by CFX.

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

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

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

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

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

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

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

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

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

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

Contract Amount	Minimum Limit	Maximum Deductible
Up to \$1 million		10% of project cost or \$25,000, whichever is smaller
\$1 million and Up	\$1,000,000	\$100,000

## 5.12 Contract Bond (Public Construction Bond) Required

- 5.12.1 General Requirements of the Bond: The Contractor shall furnish to CFX and shall maintain in effect throughout the term of the Contract, an acceptable surety bond in a sum equal to the amount of the Contract. This bond shall remain in effect until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. Such bond shall be executed on the form furnished by CFX. The surety shall meet all requirements of the laws of Florida and shall be approved and at all times acceptable to CFX. The name, address and telephone number of the surety agent shall be clearly stated on the face of the Public Construction Bond.
- 5.12.2 Continued Acceptability of Surety: In the event that the surety executing the bond (although acceptable to CFX at the time of execution of the Contract) subsequently becomes insolvent or bankrupt or becomes unreliable or otherwise unsatisfactory due to any cause which becomes apparent after CFX's initial approval of the company, then CFX may require that the Contractor immediately replace the surety bond with a similar bond drawn on a surety company which is reliable and acceptable to CFX. In such event, all costs of the premium for the new bond, after deducting any amounts that might be returned to the Contractor from its payment of premium on the defaulting bond, will be borne by CFX.
- 5.13 Contractor's Responsibility for Work

Until final acceptance by CFX, the Work shall be under the charge and custody of the Contractor. The Contractor shall take every necessary precaution against injury or damage to the Work by the action of the elements or from any other cause whatsoever arising either from the execution or non-execution of the Work and shall rebuild, repair, restore and make good, without additional compensation, all injury or damage to any portion of the Work including extensive or catastrophic damages.

The Contractor is advised that the project is located within a hurricane region. The Contractor shall submit to CFX at the project Preconstruction Conference, a hurricane preparedness plan detailing the procedures to be followed by the Contractor to ensure the safety of personnel, equipment, stored materials, and the Work when a hurricane watch notice for the project area is issued by the United States Weather Service.

The Contractor will not be held responsible for damage to any landscape items caused by an officially declared hurricane that occurs after the final acceptance of the entire Work but during any remaining portion of the 90-day establishment period.

5.14 Opening Section of Highway to Traffic

When any bridge or section of roadway is, in the opinion of CFX, acceptable for travel, CFX may direct that the bridge or roadway be opened to traffic. Such opening shall not be considered, in any way, to be an acceptance of the bridge or roadway or any part thereof or as a waiver of any provision of the Contract. The Contractor shall make all repairs or renewals due to defective Work or Materials (or for any cause other than ordinary wear and tear) on such opened sections without additional compensation.

- 5.15 Scales for Weighing Materials
  - 5.15.1 Applicable Regulations: Prior to the use of any scales, the Contractor shall submit to the CEI a copy of a certificate of accuracy for the scales that is not more than 1 year old. All scales which are used for the determination of the weight of Materials upon which compensation will be made by CFX shall conform to the requirements of Chapter 531, Florida Statutes, pertaining to specifications, tolerances and regulations as administered by the Bureau of Weights and Measures of the Florida Department of Agriculture. CFX reserves the right to perform scale checks/inspections at its sole discretion.
  - 5.15.2 Base for Scales: Such scales shall be placed on a substantial horizontal base that will assure proper support, rigidity and maintenance of level of the scales.
  - 5.15.3 Protection and Maintenance: All scale parts shall be in proper condition as to level and vertical alignment and shall be fully protected against contamination by dust, dirt and other matter which might affect operation of the parts.
- 5.16 Source of Forest Products

As required by Section 255.20, Florida Statutes, all timber, timber piling or other forest products which are used in the construction of the Project shall be produced and manufactured in the State of Florida, price and quality being equal and provided such Materials produced and manufactured in Florida are available.

- 5.17 Regulations of Air Pollution
  - 5.17.1 General: All Work shall be done in accordance with all Federal, State and local laws and regulations regarding air pollution and burning.
  - 5.17.2 Dust Control: The Contractor shall ensure that excessive dust is not transported beyond the limits of construction in populated areas. Dust control for embankment or other cleared or unsurfaced areas may be by application of water or calcium

chloride, as directed by CFX. Any use of calcium chloride shall be in accordance with Section 102 of the Technical Specifications. When included in the Plans, mulch, seed, sod or temporary paving shall be installed as early as practical. Dust control for storage and handling of dusty materials may be made by wetting, covering or other means as approved by the CEI.

- 5.17.3 Asphalt Material: Any asphalt used shall be emulsified asphalt unless otherwise stated in the Plans and allowed by Chapter 17-2 of the Rules and Regulations of the Florida Department of Environmental Protection. Asphalt materials and components shall be stored and handled to minimize unnecessary release of hydrocarbon vapors.
- 5.17.4 Asphalt Plants: The operation and maintenance of asphalt plants shall be in accordance with Chapter 17-2 of the Rules and Regulations of the Florida Department of Environmental Protection. A valid permit as required under Chapter 17-2 shall be available at the plant site prior to the start of Work.

# 5.18 Dredging and Filling

If required by the Work, the Contractor shall comply with Section 370.033, Florida Statutes, regarding obtaining a certificate of registration from the Florida Department of Environmental Protection and keeping accurate records and logs of all dredge and fill activities.

5.19 Erosion Control

This Project will be constructed on properties that may be subject to environmental permits and regulation promulgated by city, county, state, federal, and regional authorities. Requirements for erosion control are included in the Technical Specifications.

5.20 Contractor's Motor Vehicle Registration

The Contractor shall provide proof to CFX that all motor vehicles operated or caused to be operated by the Contractor are registered in compliance with Chapter 320, Florida Statutes. Such proof of registration shall be submitted in the form of a notarized affidavit to CFX. No payment will be made to the Contractor until the required proof of registration is on file with CFX.

5.21 Internal Revenue Service Form W-9

The Contractor shall complete and return with the executed Contract, Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification.

#### 5.22 Tolls and Access

The Contractor shall pay all tolls incurred from using CFX's Expressway System to transport personnel, equipment, or materials to and from the site of Work. Any costs incurred by the Contractor in payment of tolls shall be considered incidental and included in associated items. The term "equipment" in this context includes loaders, graders and similar self-propelled equipment, operating under their own power, passing through a toll plaza.

Contractor shall access the Project by existing expressway ramps. No access will be allowed through the right-of-way fence.

### 5.23 Requests for References or Performance Evaluations

In the event CFX at any time receives any direct or third party inquiry or request concerning the Contractor, its employees or sub-contractors, or the performance of the Contractor, its employees or sub-contractors under this Contract, CFX, at any time and in all cases, may, but shall not be obligated to respond to any such inquiry or request, with or without notice to the Contractor, its employees, or subcontractors, as the case may be, but, in all cases, such response shall be limited to: (1) acknowledging that the Contractor has, or in the past has had, a contract with CFX; (2) the date, term and type of such contract; (3) whether a specified employee or subcontractor worked on the Contract, and if so, in what capacity; (4) whether such contract was terminated early for any reason other than the convenience of CFX; (5) whether such contract was eligible for renewal or extension; and, (6) if such contract was eligible for renewal or extension, whether in fact such contract was renewed or extended. Should the Contractor, its employees, its agents or subcontractors request that any further information be provided in response to such an inquiry or request, such additional information may be provided by CFX, in its sole discretion. Contractor for itself, its employees, its agents and sub-contractors, hereby expressly waives any and all claims of whatever kind or nature that the Contractor, its employees, its agents or sub-contractors may have, or may hereafter acquire, against CFX relating to, or arising out of CFX's response to any and all requests or inquiries concerning the Contractor, its employees or subcontractors under this Contract, or the performance of the Contractor, its employees or subcontractors under this Contract.

### 5.24 Unauthorized Aliens

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

immediately and unilaterally terminate the Contract for cause.

# 5.25 Public Records

# IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (407-690-5000, <u>publicrecords@CFXWay.com</u>, 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 keeps and maintains public records upon completion of the contract, 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 of false certification was made in error then CFX shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes and as allowed by law.

# END OF SECTION 5

### SECTION 6 - PROSECUTION AND PROGRESS OF THE WORK

### 6.1 Subletting or Assigning of Contract

6.1.1 The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof or of Contractor's right, title or interest therein, without consent of CFX. The Contractor will be permitted to sublet a portion of the Work but shall perform, with its own organization, Work amounting to not less than 50% of the total Contract amount less the total amount for those Contract items specifically designated as "Specialty Work" below or as otherwise designated as Specialty Work by CFX. The granting or denying of consent under this provision is at CFX's sole discretion. The Certification of Sublet Work request will be deemed acceptable by CFX, for purposes of CFX's consent, unless the Engineer notifies the Contractor within 5 business days of receipt of the Certification of Sublet Work that CFX is not consenting to the requested subletting. If, at any time, a subcontractor is determined to be discriminatory, debarred or suspended by the FHWA, CFX or FDOT, the determination will be considered grounds for removal from the project.

The total Contract amount shall include the cost of Materials, manufactured component products and their transportation to the Project site. Off-site commercial production of Materials and manufactured component products purchased by the Contractor and their transportation to the Project will not be considered subcontracted Work.

If a part of a Contract item is sublet, only its proportional cost will be used in determining the percentage of subcontracted normal Work.

All subcontracts entered into by the Contractor shall be in writing and shall contain all pertinent provisions and applicable requirements of the Contract. All subcontracts shall require subcontractor to indemnify and hold harmless CFX on the same terms as contained in the General Specifications and the Contract. The Contractor shall furnish CFX with a copy of any subcontract requested by CFX. Subletting of Work shall not relieve the Contractor or surety of their respective liabilities.

The Contractor shall ensure that all Subcontractors are competent, careful and reliable. The Contractor shall submit the names and qualifications of all first and second tier subcontractors to CFX for approval prior to their beginning Work on the Project. All first and second tier subcontractors shall have the skills and experience necessary to properly perform the Work assigned and as required by the plans and specifications.

If, in the opinion of CFX, any Subcontractor employed by the Contractor is not qualified to perform the Work or is insubordinate, disorderly, disrupts or is detrimental to the progress of the Work, such first or second tier subcontractor shall be immediately removed from the Project by the Contractor upon written direction

from CFX. Such subcontractor shall not be employed again on the Project without the written permission of CFX. If the Contractor fails to immediately remove such subcontractor, CFX may, at its sole discretion, withhold payments due or which may become due, or may suspend the Work until the subcontractor is removed. The Contractor shall indemnify and hold harmless CFX, its agents, consultants, officials and employees from any and all claims, actions or suits arising from such removal, discharge or suspension of a Subcontractor based on the direction of CFX. All subcontracts shall expressly include an acknowledgment of CFX's right to remove any Subcontractor in accordance with this paragraph.

A Subcontractor shall be recognized only in the capacity of an employee or agent of the Contractor.

If the aggregate total of the dollar amount of Work performed by a subcontractor, including equipment rental agreements, equals or exceeds \$20,000, a formal subcontract agreement shall be entered into between the Contractor and the Subcontractor.

6.1.2 Specialty Work: The following Work is designated as Specialty Work:

Auxiliary Power Unit Cleaning, Coating, Injection, Grouting, Grinding, Grooving or Sealing Concrete Surfaces Deep Well Installation **Electrical Work** Fencing **Highway Lighting** Installing Pipe or Pipe Liner by Jacking and Boring Installing Structural Plate Pipe Structure Landscaping Painting Plugging Water Wells **Pressure Grouting** Pumping Equipment Roadway Signing and Pavement Marking Riprap **Removal of Buildings Rumble Strips** Sealing Wells by Injection Septic Tank and Disposal System Signalization Utility Works Vehicular Impact Attenuator Water and Sewage Treatment Systems

### 6.2 Work Performed by Equipment Rental Agreement

The limitations set forth in 6.1, regarding the amount of Work that may be subcontracted, do not apply to Work performed by Equipment rental agreements. The Contractor shall notify CFX, in writing, if the Contractor intends to perform any Work through an Equipment rental agreement. The notification shall be submitted to CFX before any rental Equipment is used on the Project. The notification shall include a list of the Equipment being rented, the Work to be performed by the Equipment and whether the rental includes an Equipment operator. Notification to CFX will not be required for Equipment being rented (without operators) from an Equipment dealer or from a firm whose principle business is renting or leasing Equipment.

# 6.3 Prosecution of Work

- 6.3.1 Sufficient Labor, Materials and Equipment: The Contractor shall provide sufficient labor, Materials and Equipment to ensure the completion of the Work no later than the Contract completion date.
- 6.3.2 Impacts by Adjacent Projects: When there is a potential impact between two or more projects due to close proximity or due to logistics in moving labor, Materials, and Equipment between projects, all authorized representatives of the parties performing the projects have a responsibility to communicate and coordinate their work so that impacts to either party are eliminated or mitigated and do not endanger, delay, or create additional work or costs to either party. The Contractor shall not be compensated for any additional costs or delays so incurred by either party.
- 6.3.3 Submission of Preliminary, Baseline, Updated Baseline, and Two-Week Look-Ahead Schedules:

# 6.3.3.1 Scheduling Terminology

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

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

receipt of the Contractor's submittal of the Updated Baseline Schedule.

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

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

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

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

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

CPM: Critical Path Method of scheduling.

Critical Path: Defined as the Longest Path.

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

Excusable Delay: As defined in subarticle 6.7.3.1.

Adjustments to Contract Time.

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

Lag: An undefined delay between two scheduled activities. For instance, a 5 day lag

between activity A (the predecessor) and activity B (the successor) with a Finish to Start (FS) relationship would mean that activity B would not start until 5 days after the finish of activity A.

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

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

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

Planned Dates: Also called early and late dates.

P6: The scheduling software Primavera P6 Professional, produced by Oracle, Inc., which shall be used by the Contractor for all CPM scheduling tasks.

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

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

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

CFX and Contractor agree that float is not for the exclusive use or benefit of either the Contractor or CFX and must be used in the best interest of completing the Project on time. The Contractor agrees that: 1) float time may be used by CFX; and 2) there shall be no basis for a Project time extension as a result of any Project problem, change order or delay which only results in the loss of available positive float, or negative float that is greater that the most negative float in the CPM. The Contractor will not be permitted to alter float through such applications as extending duration estimates or changing sequence relationships, etc., to consume available positive float. Time Impact Analysis: If the Contractor requests a time extension to any required milestone date for changes in the Work ordered by CFX, the Contractor shall furnish such justification and supporting evidence in the form of a Time Impact Analysis illustrating the influence of the change on the Contract time such that CFX can evaluate the request. This Time Impact Analysis shall include a network analysis demonstrating how the Contractor has incorporated the change in the schedule. Each such Time Impact Analysis shall demonstrate the time impact of the performance of the changed Work as the date upon which the change arose or was otherwise ordered, the status of the Work at that time based upon the CPM schedule update prevailing at that time and the duration or logic computations for all of the affected activities. The Time Impact Analysis shall be submitted within ten (10) calendar days following the commencement of the delay event. Failure to make notification in the time and manner required shall be considered a waiver of the Contractor's entitlement to any time extension resulting from such delay. No time extension will be considered unless it specifically contains at least the following detailed information:

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

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

Weather Event: As defined in 6.7.3

6.3.3.2 General Requirements for all Scheduling Tasks and Submittals:

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

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

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

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

6.3.3.3 Submission of the Preliminary Schedule:

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

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

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

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

Contractor's Oral Presentation: At the pre-construction conference, the Contractor shall show and refer to the geographical layout of the Project in an oral presentation of the Contractor's approach to performing the Work under the Contract. The Contractor's oral presentation shall conform to the format and content of the written narrative. Within five (5) days after receipt of the Preliminary Schedule, CFX will either accept or reject the schedule. If the Preliminary Schedule is rejected, CFX and Contractor will meet within 3 days after notice of rejection at which time CFX will present the Contractor with a list of required changes to the Preliminary Schedule. The Contractor shall make the changes and submit a revised preliminary schedule acceptable to CFX within 3 days after receipt of the required changes.

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

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

6.3.3.4 Submission of the CPM Baseline and Updated Baseline Schedules: The Contractor's CPM schedule shall be a detailed CPM schedule. The CPM schedule shall be generated by the latest version of Primavera (P6 Professional) by Oracle, Inc. The Contractor shall pay the scheduling software yearly maintenance fees and maintain scheduling software upgrades throughout the duration of the contract. The Contractor shall use all default settings in Primavera P6 Professional for all schedule submittals. This includes using the "Retained Logic" setting for all calculations, unless CFX chooses to allow the use of the "Progress Override" setting.Each Baseline and Updated Baseline schedule submittal shall include all reports and graphics listed in specification section 6.3.3.4.9. All Baseline Schedule submittals shall also include the Logic Diagram required under Item number 4.

The Contractor shall submit to CFX two CDs with exported copies of the above schedules in ".xer" format. Other methods of electronic submittal may be approved by the CEI.

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

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

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

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

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

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

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

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

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

Bridge Activities:Test Pile installation per bent per structure.Production Pile installation per bent per structure.Drilled shaft installation per pier per structure.Pile caps per bent per structure.Footings per pier per structure.Columns per pier per structure.

GS-91

Caps per pier per structure. End bents per structure. Beam or girder erection-span by span per structure. Diaphragms. Deck placement-span by span per structure. Parapets-span by span per structure. **Roadway Activities:** Internal access and haul roads (location and duration in-place). Utility relocation work by utility and by stationing and roadway. Clearing and grubbing by stationing and roadway. Excavation by stationing and roadway. Embankment for each abutment location. Embankment placed for each roadway by stationing and roadway. Drainage by run with stationing and roadway. Box Culvert or other large Pre-cast structure with stationing and roadway. Reinforced Earth Wall leveling pad per bent per structure. Reinforced Earth Wall per bent per structure. Reinforced Earth Wall Coping per bent per structure. Retaining walls by stationing and roadway. Stabilization/Subgrade by stationing and roadway. Limerock Base by stationing and roadway. Asphalt Base by stationing and roadway. Curb and Gutter by stationing and roadway. Structural Pavement (asphalt and/or concrete) by stationing and roadway. Bridge approach slabs per bridge and roadway. Guardrail by stationing and roadway. Slope pavement or riprap by stationing and roadway. Roadway lighting by stationing and roadway. Signing for each sign structure by stationing and roadway. Striping by stationing and roadway. Traffic signals by stationing and roadway. Topsoil, sodding, seeding and mulching by stationing and roadway. Landscaping by stationing and roadway. Architectural Treatments. Sound Walls. Fiber Optic Concrete Removal and Replacement. Milling and Resurfacing. Ponds. Planter Walls. Photovoltaic systems. Integration of Photovoltaic and ITS systems. Burn-In periods. Tolls.

**Building Activities:** 

Sitework, including, but not limited to clearing, excavation, storm and sanitary drainage, utility work, fill, grading, curb & gutter, sidewalks, asphalt and concrete paving, striping, retention pond excavation and grading, sodding.

Foundation work, including, but not limited to, piling, building pads, column, stem wall, slab work, conduit and piping.

Concrete work, including, but not limited to, stairwells, stairs, elevator shafts, tunnels.

Exterior Structures, including, but not limited to structural steel bridges, walkways, railings.

Exterior Walls, including, but not limited to, block, brick, pre-cast, poured-in-place concrete, wood and metal stud, stucco.

Roof, including, but not limited to, structural steel framing, wood framing, pre-cast, parapet walls, metal, poured-in-place, sheathing, underlayment, built-up, roof drainage, and soffits.

Exterior doors, windows, and store-front framing.

Interior Build-out, including, but not limited to, wood and metal stud, interior doors and windows, cabinetry, specialty work, drywall, insulation, sound proofing, carpet, tile, painting, furnishings, and miscellaneous finishes.

Electrical, including, but not limited to conduit, power supply, fixtures, wiring, finishes, and testing.

Plumbing, including, but not limited to, piping, sanitary sewer, water supply, fixtures, finishes, and testing.

HVAC, including, but not limited to, air handlers, compressors, duct work, finishes, and testing.

Fire Systems, including, but not limited to piping, sprinkler heads, and testing.

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

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

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

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

The Contract Completion Date as defined in section 6.3.2.1 shall be entered into the Primavera Project Details window under "Project must finish by".

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

6.3.3.4.2 Activity Codes: The Contractor shall define and assign as appropriate, project-specific activity codes to allow for filtering, grouping, and sorting of activities by category to facilitate review and use of the Progress Schedule. The Contractor shall define the activity codes using the project-level option. The following are the minimum required activity codes and their values that are to be assigned to each activity in P6:

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

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

Responsibility: Entity responsible for performing the work (i.e. CFX, Contractor, sub-Contractors, suppliers, utility companies, etc.).

Crew: Crew assigned to the work (i.e. Grading Crew #1, Drainage Crew #2, Pile Driving Crew, Concrete Crew, Paving Crew, Striping Crew, Signing Crew, etc.).

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

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

6.3.3.4.4 Schedule Constraints: All Contract milestone activities shall be constrained, as applicable, with a "Start On or After" (Early Start) date or "Finish On or Before" (Late Finish) date equal to the "Start No Earlier Than" or "Must Finish By" date specified in the Contract, except as specified below. The Contractor's use of schedule constraints not associated with Contract milestones is not allowed, unless approved by the CFX. The use of schedule constraints such as "Start On" or "Finish On" for the purpose of manipulating float or the use of schedule constraints that violate network logic such "Mandatory Start" or "Mandatory Finish" will not be allowed. When a schedule constraint is used, other than the schedule constraints specified herein, the Contractor shall provide explanation for the use of such constraint in the Progress Schedule or Progress Schedule Narrative.

Project Calendars: The Contractor shall define and assign as appropriate, project-specific calendar to each activity to indicate when the activity can be performed. The Contractor shall define the project calendars using the project-level option. The project calendars shall all use the same standard working hours per day, such as 8:00AM to 4:00PM. One of four calendars shall be used for each activity:

A. Calendar 1: shall be used for 5-day workweek activities: Monday through Friday. All holidays and non-work days shall be assigned to this calendar. This calendar shall be used for all normal Work activities. Calendar 1 shall be the default calendar.

B. Calendar 2: shall be used for 7-day workweek activities. No nonwork days shall be entered into this calendar. Activities such as friction course curing shall use this calendar.

C. Calendar 3: shall be used for 7-day workweek activities. All holidays shall be entered into this calendar.

D. Calendar 4: shall be used for 6-day workweek activities. All holidays and non-work days shall be assigned to this calendar.

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

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

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

### 6.3.3.4.6 Updating the Baseline Schedule

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

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

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

Schedule Update Process: The schedule update process shall include updating the activity actual start and finish dates, percent completion, remaining duration, and adjusting schedule logic to correct for activities being performed out of sequence, adjusting resource allocations for activities, and changing the calendar assignments to activities as needed. The Contractor must submit evidence to CFX that any revision to schedule logic, resources, or calendar assignment is a logical, reasonable, and necessary change. If CFX decides that the revision is not sufficiently supported and does not serve a useful purpose, CFX shall request that the Contractor remove the revision from the schedule update, and the Contractor shall comply. The Contractor shall not change an activity original duration for any reason.

6.3.3.4.7 Revisions to the Baseline Schedule

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

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

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

Submittal date. Contractor Name. Complete CFX Contract Number. Project Description. Contract Resident Engineer. Four character P6 Project Number - Data Date

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

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

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

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

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

Activities worked out of sequence. Changes in Total Float.

GS-98

Changes in Early and Late Dates. Changes in Original and Remaining Duration. Changes in Activity Constraints. Changes in Activity Predecessors, Successors, Relationship Type, and Lags. Changes in Activity Resource Assignments. Changes in Activity Cost Loading. Changes in Activity percent completion. Changes in Longest Path Activities.

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

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

- A. Each activity on a single line containing ID number, activity description, and a bar representing activity original duration, early start dates, early finish dates, late start dates, late finish dates and total float.
- B. Key to identify all components in the bar chart and CPM.
- C. Key to identify all the abbreviations used.
- 4. Revenue Loading Report: The Contractor shall submit to CFX a report entitled "Revenue Loading Report". The report shall include the following information:
  - A. Activity ID number
  - B. Description of activity
  - C. List of pay items included in activity including:
    - 1. Pay item number
    - 2. Pay item description
    - 3. Quantity of pay item to be applied
    - 4. Unit measure of pay item
    - 5. Unit-price of pay item
    - 6. Total price for pay item to be applied
  - D. Total revenue loading of activity (Sum of "C")
- 5. Revenue Flow Diagram: For any baseline Schedule, the Contractor shall submit to CFX a Revenue Flow Diagram by month. The Revenue Flow Diagram shall show the early and late curves representing the accumulated projected dollars to be earned for each month of the Contract.

- 6. Tabular Revenue Report: For any Baseline Schedule, the Contractor shall submit a Tabular Revenue Report by day. The tabular report shall show columns for the accumulated and incremental projected dollar amounts to be earned on the early and late curve for each Contract day.
- 7. P6 Schedule Backup: The Contractor shall submit to CFX two copies of each baseline, revised baseline, and updated baseline schedule exported in ".xer" format. The files shall be submitted on compact disk (cd) or via the electronic submittal process approved by the CEI. Each submission shall have a typed label showing the following information:

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

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

6.3.3.4.9 Two Week Look Ahead Schedule: The Contractor shall submit a two-week look-ahead bar chart schedule produced in Microsoft Excel at the weekly project progress meeting. The bar chart shall show all major Work in progress.

The bar chart shall show at least one week behind for actual Work performed and two weeks ahead for planned Work.

The bar chart shall be date synchronized to the CEI's Weekly Summaries.

Changes and revisions that require the approval of CFX shall be brought forward for discussion.

6.3.3.4.10 Adjustments to Contract Time:

1. The Contract Completion Date shall not be changed in any schedule unless CFX approves a Supplemental Agreement granting an extension to the Contract Time.

- 2. The Contractor has the right to finish the Contract early; however, the Contractor agrees that any impact to the projected early completion date does not justify a request for a time extension because it would constitute changing the Contract completion date to match the Contractor's projected early completion date. Any float available as a result of a schedule showing early completion shall be considered project float for joint use by CFX and the Contractor.
- 3. The Contractor acknowledges and agrees that for purposes of considering a time extension request, a schedule activity shall not be considered to have been subject to a claimed delay unless all originally and presently scheduled predecessor activities have been completed so that no other restraints to the performance of that activity exist in the CPM schedule at the time claimed for the delay impact. The Contractor agrees that a Contract time extension request shall only be considered for one of the following reasons:
  - A. The Contractor performed Extra Work that met all of the following conditions:
    - 1. CFX stated that the Extra Work was not to be performed concurrently with other Contract Work.
    - 2. The Extra Work delayed the Contract Completion Date.
    - 3. The Extra Work impacted one or more activities on the current CPM schedule longest path.
  - B. The Contractor experienced an Excusable Delay, as defined in subarticle 6.7.3.1, that met all of the following conditions:
    - 1. The Contract Completion Date was delayed due to circumstances beyond the control of the Contractor.
    - 2. The Contractor took every reasonable action to prevent the delay.
    - 3. The delay impacted one or more activities on the current CPM schedule longest path.
    - 4. The Contractor agrees that there shall be no basis for a Contract Time extension as a result of any Contract problem, Supplemental Agreement, or delay, which only results in the loss of available positive float, or GS-101

an increase of negative float belonging to activities that do not reside on the CPM schedule's Longest Path.

6.3.3.4.11 Supplemental Agreements: Supplemental Agreements shall include a time impact analysis from the Contractor as to the effect of the requested change on the detailed schedule. In cases where the requested change has no impact on the Project duration, the time impact analysis shall still be included. The time impact analysis shall include a listing of the activities that are affected by the requested changes and an analysis of the change on the longest path of the detailed schedule. The Contractor and the CEI shall agree upon the impact to the schedule before a Supplemental Agreement is approved.

The approved Supplemental Agreements shall be incorporated into the next monthly schedule update.

6.3.3.4.12 Adjustment to the Contract Time: Adjustments to the Contract time are detailed in subarticle 6.7.3.

6.3.3.4.13 CPM Recovery Schedule: Should any of the following conditions exist, the Contractor shall, at no extra cost to CFX, prepare a CPM Recovery Schedule, which shall be submitted in addition to a Progress-Only schedule update of the same data date:

- 1. Should the Contractor's monthly progress review indicate that a CPM Recovery Schedule is required;
- 2. Should the CPM schedule show the Contractor to be thirty (30) or more days behind schedule at any time during the construction period;
- 3. Should the Contractor request to make changes in the logic of the CPM schedule which, in the opinion of CFX, are of a major nature.

The same requirements and submittals for the CPM Recovery Schedule shall apply as the original baseline schedule.

- 6.3.4 Beginning Work: See Article 6.7 below.
- 6.3.5 Provisions for Convenience of the Public: The Contractor shall schedule operations to minimize any inconvenience to adjacent businesses, vehicular or pedestrian traffic or residences. CFX reserves the right to direct the Contractor as to the performance and scheduling of Work in any areas along the Project where restrictions caused by construction operations present significant hazards to the health and safety of the general public.

When working adjacent to or over travel lanes, the Contractor shall ensure that dust, mud and other debris from Contractor's operation does not interfere with normal traffic operations or adjacent properties. All debris shall be removed from the Work area and clear zone of the Project before Work ends for the day. Trash shall be picked up and removed daily from the job by the Contractor.

6.3.6 Pre-Construction Conference: Prior to Contractor's commencement of Work on the Project, the CEI will schedule a pre-construction conference with the Contractor, utility companies and other affected parties to review the proposed Work activities and schedule of events.

# 6.4 Limitations of Operations

6.4.1 Night Work: In all areas where Work is being performed during the hours of dusk or darkness, the Contractor shall furnish, place and maintain lighting facilities capable of providing light of sufficient intensity (5 foot-candles minimum) to permit good workmanship and proper inspection at all times. The lighting shall be arranged so as not to interfere with or impede traffic approaching the Work site(s) from either direction or produce undue glare to property owners and traveling public.

Lighting of Work site(s) may be accomplished using any combination of portable floodlights, standard Equipment lights, existing street lights, temporary street lights, etc., that will provide the proper illumination. The Contractor shall provide a light meter to demonstrate that the minimum light intensity is being maintained. The Contractor shall provide sufficient fuel, spare lamps, generator, etc., to maintain lighting of the Work site.

The Contractor's lighting plan shall provide for and show the location of all lights necessary for every aspect of Work to be done at night. The plan shall be presented on standard size roadway plan sheets (no larger than 24" x 36") and on a scale of either 100' or 50' to the inch. The Contractor's lighting plan shall be submitted to the CEI for review and approval at least 10 days prior to beginning any night Work. The CEI may require that modifications be made to the lighting setup to fit field conditions.

The Contractor shall furnish and place variable message signs to alert approaching motorists of lighted construction area(s) ahead.

The Contractor's pickups and automobiles used on the Project shall be provided with amber flashing lights or flashing white strobe lights. These lights shall be in operation at all times while in the Project limits and/or Work area.

The Contractor's Equipment shall be provided with a minimum of four square feet of reflective sheeting or flashing lights that will be visible to approaching motorists.

The Contractor shall provide its personnel with reflective safety vests. The Contractor shall ensure that all Subcontractors are also provided with reflective safety vests. Vests shall be worn at all times while workers are within the Work area.

The Contractor shall use padding, shielding or locate mechanical and electrical Equipment to minimize noise as directed by the CEI. Noise generated by portable generators shall comply with all applicable Federal, State and local environmental regulations.

The Contractor shall have a superintendent present to control all operations involved during night Work. The superintendent shall maintain contact with the CEI and ensure that all required actions are taken to correct any problem noted.

All required traffic control devices such as signs, stripes, etc., shall be in place before the Contractor commences Work for the night and before the Contractor leaves the Work site the next morning.

Work operations that result in traffic delays more than five minutes may be temporarily suspended by the CEI to minimize the impact on the traveling public.

No private vehicles shall be parked within the limited access right of way. The Contractor's Worksite Traffic Supervisor shall continually and adequately review traffic control devices to ensure proper installation and working order, including monitoring of lights.

Compensation for lighting for night Work shall be included in the Contract prices for the various items of the Contract. All lighting Equipment for night work shall remain the property of the Contractor.

- 6.4.2 Sequence of Operations: The Contractor shall not start new Work that will adversely impact Work in progress. Under such circumstances, CFX reserves the right to require the Contractor to finish a section on which Work is in progress before Work is started on any new section.
- 6.4.3 Interference with Traffic: The Contractor shall at all times conduct the Work in such a manner and such sequence as to ensure the least practicable interference with traffic. The Contractor's vehicles and other Equipment shall be operated in such a manner that they will not be a hazard or hindrance to the traveling public. Materials stored along the roadway shall be placed to minimize obstruction to the traveling public.

Where existing pavement is to be widened and stabilizing is not required, the Contractor shall schedule operations such that at the end of each workday the full thickness of the base for widening will be in place. Construction of the widening strips will not be permitted simultaneously on both sides of the road except where

separated by a distance of at least one-fourth of a mile along the road, where either the Work of excavation has not been started or the base has been completed.

6.4.4 Coordination with Other Contractors: The right is reserved by CFX to have other work performed by other contractors and to permit public utility companies and others to do work during the construction of and within the limits of or adjacent to the Project. The Contractor shall arrange the Work and dispose of Materials so as not to interfere with the operations of other contractors engaged upon adjacent work and shall perform the Work in the proper sequence in relation to that of other contractors and shall join with and connect to the work of others as required by the Plans and Specifications all as may be directed by the CEI.

Contractor shall be responsible for any damage done by Contractor's operations to the work performed by other contractors. Similarly, other contractors will be held responsible for damage caused their operations to the Contractor's Work. The Contractor agrees to make no claims against CFX for additional compensation due to delays or other conditions created by the operations of such other parties. Should a difference of opinion arise as to the rights of the Contractor and others working within the limits of, or adjacent to, the Project, CFX will decide as to the relative priority of all concerned.

- 6.4.5 Drainage: The Contractor shall conduct operations and maintain the Work in such condition that adequate drainage will be in effect at all times. Existing functioning storm sewers, gutters, ditches and other runoff facilities shall not be obstructed.
- 6.4.6 Fire Hydrants: Fire hydrants on or adjacent to the roadway shall be kept accessible to fire apparatus at all times and no material or obstruction shall be placed within 15 feet of any such hydrant.
- 6.4.7 Protection of Structures: Heavy Equipment shall not be operated close enough to pipe headwalls or other structures to cause their displacement.
- 6.4.8 Fencing: The Contractor shall expedite the installation of fencing at those locations where, in the opinion of the CEI, such installation is necessary for the protection, health, and safety of the public. All fencing shall be maintained by the Contractor at all times. Fence cuts shall be immediately replaced. All fence removed during any one working day shall be replaced during that same day. While the fence is down, continuous security shall be provided by the Contractor to ensure that no pedestrians or vehicles enter or exit the roadway from the temporarily unfenced area. Specific attention shall be given to prevent any persons, animals, or vehicles moving from adjacent private property onto the roadway right-of-way.
- 6.4.9 Hazardous or Toxic Waste: When the Contractor's operations encounter or expose any abnormal condition which may indicate the presence of a hazardous substance, toxic waste or pollutants such operations shall be discontinued in the vicinity of the abnormal condition and the CEI shall be notified immediately. The presence of GS-105

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
  - Authority to Suspend Contractor's Operations: CFX, at its sole discretion, may 6.6.1 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; Independence Day (Observed); Labor Day; the Friday, Saturday, and Sunday immediately preceding Thanksgiving Day; Thanksgiving Day; the Friday, Saturday and Sunday immediately following Thanksgiving Day; and December 24 through January 2, inclusive. Contract Time will be charged during these holiday periods regardless of whether or not the Contractor's operations have been suspended. The Contractor is not entitled to any additional compensation for suspension of operations during such holiday periods.

During such suspensions, the Contractor shall remove all Equipment and Materials from the clear zone, except those required for the safety of the traveling public and retain sufficient personnel at the job site to properly meet the requirements of Sections 102 and 104 of the Technical Specifications. The Contractor is not entitled to any additional compensation for removal of Equipment from clear zones or for compliance with Section 102 and Section 104 during such holiday periods.

Any special events known to CFX that may impact Contractor operations are shown on the Plans.

### 6.7 Contract Time

6.7.1 General: The Contractor shall complete the Work in accordance with the Plans and Specifications and within the Contract Time specified in the Special Provisions including approved extensions.

For scheduling purposes, the Contractor shall take into consideration holidays and all weather conditions (except those listed in subarticle 6.7.3) that may be encountered during the performance of the Work.

The effect on job progress of utility relocations and adjustments and scheduling of construction operations to maintain traffic shall also be considered by the Contractor in the scheduling of Contract time.

- 6.7.2 Date of Beginning of Contract Time: The date on which Contract time will begin shall be the date of notice to begin Work or as specified in the Notice to Proceed.
- 6.7.3 Adjusting Contract Time:

6.7.3.1 Contract Time Extension: CFX has established an allowable Contract duration, in terms of calendar days, sufficient to complete the Work covered by the Contract. By execution of the Contract, the Contractor agrees that the calendar days are sufficient to perform the Work and it has priced its bid considering the Contract duration. If the Contractor's Work (which Work is actually on the critical path) is impacted by one or more of the following events, CFX may (but is not obligated to) consider approving an extension of time:

- 1. War or other act of public enemies.
- 2. Riot that would endanger the well-being of Contractor's employees.
- 3. Earthquake.
- 4. Unpredictable acts of jurisdictional governmental authorities acting outside the scope of current laws and ordinances.
- 5. Hurricane (or other weather event) but only if the weather event results in the declaration of an emergency by the Governor of the State of Florida within the geographical area which includes the Work area.
- 6. Utility relocation and adjustment Work only if all the following criteria are met:
  - a. Utility work actually affected progress toward completion of Work on the critical path.
  - b. The Contractor took all reasonable measures to minimize the effect of utility work on critical path activities including cooperative scheduling of his operations with the scheduled utility work.
- 7. Temperature restrictions that prohibit placement of friction course (FC-5 only) provided all other Work is completed.
- 8. Epidemics, pandemics, quarantine restrictions, strikes (unless caused or provoked by actions of the Contractor, or its subcontractors, or its materialmen, or its suppliers or its agents), freight embargoes.

9. Impacts to the critical path caused by other contractors.

Time will not be granted for inclement weather other than as provided for in this section. In submitting a request for time extension, the Contractor shall comply with the following requirements:

- 1. Notify CFX in writing of the occurrence of a delay event within 48 hours of the beginning of the event.
- 2. Furnish a detailed written explanation of the impact of the delaying event on the scheduled Work with supporting documentation in the form of job records.
- 3. Provide proof that the Contractor has taken all necessary steps to protect the Work, the Contractor's employees, Materials and Equipment from the effects of the event.

CFX will consider the delays in delivery of materials or component equipment that affect progress on a controlling item of work as a basis for granting a time extension if such delays are beyond the control of the Contractor or supplier. Such delays may include an area-wide shortage, an industry-wide strike, or a natural disaster that affects all feasible sources of supply. In such cases, the Contractor shall furnish substantiating letters from a representative number of manufacturers of such materials or equipment clearly confirming that the delays in delivery were the result of an area-wide shortage, an industry-wide strike, etc. No additional compensation will be made for delays caused by delivery of materials or component equipment.

CFX will not consider requests for time extension due to delay in the delivery of custom manufactured equipment such as traffic signal equipment, highway lighting equipment, etc., unless the Contractor furnishes documentation that the Contractor placed the order for such equipment in a timely manner, the delay was caused by factors beyond the manufacturer's control, and the lack of such equipment caused a delay in progress on a controlling item of work. No additional compensation will be paid for delays caused by delivery of custom manufactured equipment.

6.7.3.2 An extension of time (rather than monetary compensation) will be the Contractor's sole and exclusive remedy in the event that an extension of time is justified under subarticle 6.7.3.1. The Contractor shall not be entitled to damages when an extension of time is permitted or granted under said subarticle.

- 6.8 Failure of Contractor to Maintain Satisfactory Progress
  - 6.8.1 General: Time is of the essence of the Contract. Unsatisfactory progress will be deemed to have occurred when:
    - 1. The allowed Contract time for performing the Work has expired and the GS-110

Contract Work is not complete; or

- 2. The specified time or date for performing a special milestone stage of the Work (as may be set forth in the Special Provisions) has expired and the Work for that milestone stage is not complete; or
- 3. The allowed Contract time has not expired and the net dollar value of completed Work (gross earnings less payment for stockpiled Materials) is 15 percentage points or more below the dollar value of Work that should have been completed according to the accepted working schedule for the Project. The dollar value of Work, which should have been completed, is defined as the average between the early start and late start scheduled earnings according to the approved working schedule. After falling 15 percent behind, the delinquency continues until the dollar value of Work is within 5 percentage points of the dollar value of Work that should be completed according to the accepted working schedule for the Project.

In addition to the retainage specified in Article 7.6 of these General Specifications, retainage may also be withheld on partial payments at any time throughout the duration of the Contract due to unsatisfactory progress. The amount of retainage withheld will be one (1) percent of the gross amount earned for the month for every one (1) percent the project is below the dollar value of the Work that should have been completed according to the accepted working schedule for the Project. Retainage held due to unsatisfactory progress will be returned once the delinquency has been cured.

- 6.9 Default and Termination of Contract
  - 6.9.1 Determination of Default: CFX will give notice in writing to the Contractor and Contractor's surety of such delay, neglect, or default for the following:
    - a. If the Contractor fails to begin the Work under the Contract within the time specified in the Notice to Proceed or;
    - b. fails to perform the Work with sufficient workmen and Equipment or with sufficient Materials to assure the prompt completion of the Contract as related to the schedule or;
    - c. performs the Work unsuitably or neglects or refuses to remove Materials or;
    - d. to perform anew such Work as may be rejected as unacceptable and unsuitable or;
    - e. discontinues the prosecution of the Work or;
    - f. fails to resume Work which has been discontinued within a reasonable time after notice to do so or;
    - g. fails to pay timely its subcontractors, suppliers or laborers or;
    - h. submits a false or fraudulent Certificate of Disbursement of Previous Payments form or;
    - i. becomes insolvent or is declared bankrupt or;
    - j. files for reorganization under the bankruptcy code or;
    - k. commits any act of bankruptcy or insolvency, either voluntarily or involuntarily or;
    - 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 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, 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 provide 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, <<u>supplier</u>> will be liable to the Contractor and the Central Florida Expressway Authority should <<u>supplier</u>> default in the performance of this agreement."

"Notwithstanding anything to the contrary, this agreement, and the performance bond issued pursuant to this agreement, does not alter, modify, or otherwise change the Contractor's obligation to furnish the materials described in this agreement to the Central Florida Expressway Authority."

- 3) The agreement between the Contractor and the supplier of the stockpiled materials shall include provisions that the supplier will store the materials and that such materials are the property of the Contractor.
- 7.6.5 Certification of Payment to Subcontractors: Prior to receipt of any progress (partial) payment, the Contractor shall certify that all subcontractors having an interest in the Contract have received their pro rata share of previous progress payments from the Contractor for all work completed and Materials furnished the previous period. This certification shall be in the form designated by CFX. The term "subcontractor", as used herein, shall also include persons or firms furnishing Materials or Equipment incorporated into the Work or stockpiled in the vicinity of the Project for which partial payment has been made by CFX and Work done under Equipment-rental agreements.

On initial payment, the Contractor shall assure that all subcontractors and Materials suppliers having an interest in the Contract receive their share of the payments due. CFX will not make any progress payments after the initial partial payment until the Contractor certifies pro rata shares of the payment out of previous progress payments received by the Contractor have been disbursed to all subcontractors and suppliers having an interest in the Contract, unless the Contractor demonstrates good cause for not making any required payment and furnishes written notification of any such good cause to both CFX and the affected subcontractors and suppliers. Contractor shall execute and submit a Certification of Disbursement of Previous Payments form, supplied by CFX, with each payment request after the initial request. Submitting a false or fraudulent certification will result in a determination of default by the Contractor in accordance with Article 6.9.1 of these General Specifications.

# 7.6.6 Reduction of Payment for Unsatisfactory Services or Products

If any defined action, duty or service, part or product required by the Contract is not performed by the Contractor, the value of such action, duty or service or part thereof will be determined by CFX and deducted from any invoice or monthly billing period claiming such items for payment.

If the action, duty or service, part or product thereof has been completed and is determined to be unsatisfactory by CFX, the Contractor will be notified and given the opportunity to correct any deficiencies within a time certain. Payment (for the unsatisfactory Work) will be withheld by CFX from any invoice or monthly billing period until the Work is determined to be acceptable.

- 7.7 Record of Construction Materials
  - 7.7.1 General: For all construction Materials used in the construction of the Project (except Materials exempted by Subarticle 7.7.2), the Contractor shall preserve for inspection by CFX all invoices and records of the Materials for a period of 3 years from the date of completion of the Project. This requirement shall also apply to Materials purchased by subcontractors. The Contractor shall obtain the invoices and other Materials records from the subcontractors.

Not later than 30 days after the date of final completion of the Project, the Contractor shall furnish to CFX a certification of construction Materials procured for the Project by the Contractor and all subcontractors. The certification shall consist of an affidavit completed on a form furnished by CFX.

- 7.7.2 Non-Commercial Materials: The requirement to preserve invoices and records of Materials shall not apply to Materials generally classed as non-commercial such as fill Materials local sand, sand-clay or local Materials used as stabilizer.
- 7.8 Disputed Amounts Due Contractor

CFX reserves the right to withhold from the final estimate any disputed amounts between the Contractor and CFX. Release of all other amounts due shall be made as provided in Article 7.9.

7.9 Acceptance and Final Payment

When the Work of the Contract has been completed by the Contractor and the final inspection and final acceptance have been given by CFX, a tentative final estimate showing the value of the Work will be prepared by CFX as soon as the necessary measurements and computations can be made, usually within 30 days of final acceptance. All prior estimates and payments will be subject to correction in the final estimate and payment. The Contractor and CFX will have 30 days from the date of the tentative final estimate to resolve any outstanding issues. At the end of the 30 days, CFX will make a written Offer of Final Payment. Provided that the requirements of A) through J) of this Article have been met, the amount of the Offer of Final Payment, less any sums that may have been deducted or retained under the provisions of the Contract will be paid to the Contractor as soon as practicable.

A) The Contractor has submitted written acceptance of the balance due, as determined by CFX, as full settlement of the Contractor's account under the Contract and of all claims in connection therewith.

Or, the Contractor shall accept the balance due with the stipulation that acceptance of such payment will not constitute any bar, admission or estoppel or have any effect as to those payments in dispute or the subject of a pending claim between the Contractor and CFX. The Contractor shall define the dispute or pending claim in writing in the form of a qualified acceptance letter with full particulars of all items/issues in dispute including itemized amounts claimed. Failure by the Contractor to provide either a written acceptance letter or qualified acceptance letter within 60 calendar days of the Offer of Final Payment shall constitute full acceptance of the balance due without qualification.

If the Contractor provides a qualified acceptance letter, then the Contractor agrees that a complete claim package in accordance with Article 2.4 of the General Specifications, and limited to the particulars in the qualified acceptance letter, will be provided within 120 calendar days of the Offer of Final Payment. Additionally, the Contractor agrees that any pending or future arbitration must be limited to the particulars in the qualified acceptance letter and must begin within 210 calendar days from the date of the Offer of Final Payment.

- B) The Contractor has properly maintained the Project as specified hereinbefore.
- C) The Contractor has furnished a sworn affidavit to the effect that all bills are paid and no suits are pending (other than those exceptions listed if any) in connection with the Work of the Contract and that the Contractor has not offered or made any gift or gratuity to or made any financial transaction of any nature with, any employee of CFX. Tort liability exceptions, if any, shall be accompanied by evidence of adequate insurance as required in Article 5.11 of these General Specifications.
- D) The surety on the Public Construction Bond has consented (by completion of its portion of the affidavit and surety release) to final payment to the Contractor and agrees that the making of such payment shall not relieve the surety of any of its obligations under the bond.
- E) The Contractor has submitted all mill tests and analysis reports to CFX.
- F) The Contractor has submitted insurance certificates for extended coverage as required by Article 5.11 of these General Specifications.
- G) The Contractor has previously submitted As-built Drawings as required by

Article 3.3.1 of these General Specifications.

- H) The Contractor has submitted the completed density log book as required by Article 120-10.4.2 of the Technical Specifications.
- I) The Contractor has submitted the final material testing certification as required by Article 105-6 of the Technical Specifications.
- J) The Contractor has submitted all warranties and operation and maintenance manuals required by various Articles and Subarticles of Specifications.

If the Contractor fails to furnish all required Contract Documents listed in B) through J) of this Article within 90 calendar days of the Offer of Final Payment, CFX may deduct from the retainage due the Contractor, \$1,000 for each calendar day beyond the 90 calendar days that the Contractor fails to provide the required Contract Documents.

### 7.10 Offsetting Payments

If payment of any amount due CFX after settlement or arbitration is not made by the Contractor within 60 days, CFX may, at its sole discretion, offset such amount from payments due the Contractor for Work performed under any other contract with CFX, excluding amounts owed to subcontractors, suppliers and laborers. Offsetting any amount in this manner shall not be considered a breach of the Contract by CFX.

# END OF SECTION 7

# SECTION 8 – DISADVANTAGED/MINORITY/WOMEN BUSINESS ENTERPRISE (D/M/WBE) PARTICIPATION

8.1 General: The Contractor is encouraged to continue to meet or demonstrate the participation objectives could not be met. At any time, CFX's Executive Director may grant a partial or complete waiver of the D/M/WBE objective for the Project due to consideration of property, public safety, and health, including financial impact to CFX.

CFX has provided an exception for the Contractor's failure to meet the participation objective established for this project. The exception requires that the Contractor provide CFX with documentation supporting the Contractor's Good Faith Effort to meet the stated objective. CFX will have the sole and final determination of whether the support documentation provided by the Contractor does, in fact, meet CFX's standard for a Good Faith Effort as detailed in this Section 8. The Contractor shall demonstrate, through documentation, that every reasonable effort has been made to achieve CFX's participation objective. The Contractor shall be responsible for securing proof of the D/M/WBE certification(s) for the proposed subcontractors/suppliers and be able to provide copies of the certification(s) to the CFX's Supplier Diversity Office.

The Contractor shall meet or exceed the commitment stated in the Contractor's D/M/WBE Utilization Summary (page P-6 of the Proposal). Should the Contractor's D/M/WBE participation fall below the approved level for any reason whatsoever, or should the Contractor substitute or self-perform work identified for a D/M/WBE subcontractor/supplier without prior written approval of CFX, the Contractor will be considered by CFX to be in material breach of the Contract. If found in breach of the Contract, the Contractor may be suspended from bidding on and/or participating in any further CFX projects for up to one (1) year as provided in Section 15 of CFX's Supplier Diversity Policy.

Any change in the D/M/WBE Utilization Summary will require prior approval by the CFX Director of Supplier Diversity. Should the Contractor determine that a subcontractor/supplier named in the Utilization Summary is unavailable or cannot perform the work, the Contractor shall request approval of a revised D/M/WBE Utilization Summary. The revised summary shall be submitted, in writing, to the CFX Supplier Diversity Office at 4974 ORL Tower Road, Orlando, Florida 32807, or by facsimile to (407) 690-5011.

The Contractor will not be allowed to perform Work with its forces that has been identified on the Utilization Form to be performed by D/M/WBE firms. If a D/M/WBE subcontractor is unable to successfully perform the Work, the Contractor shall make a Good Faith Effort to replace that firm with another D/M/WBE firm. In evaluating a Contractor's Good Faith Efforts, CFX will consider:

(1) Whether the Contractor, provided written notice to certified D/M/WBEs performing the type of Work that the Contractor intends to subcontract, advising

the D/M/WBEs (a) of the specific Work the Contractor intends to subcontract; and (b) that their interest in the Contract is being solicited;

- (2) Whether the Contractor provided interested D/M/WBEs assistance in reviewing the Contract Plans and Specifications;
- (3) Whether the Contractor assisted interested D/M/WBEs in obtaining any required bonding, lines of credit, or insurance;
- (4) Whether the Contractor's efforts were merely pro forma and given all relevant circumstances, could not reasonably be expected to produce sufficient D/M/WBE participation to meet the objective.

The above list is not intended to be exclusive or exhaustive and CFX will look not only at the different kinds of efforts that the Contractor has made but also the quality, quantity and intensity of these efforts.

- 8.2 Disadvantaged, Minority and Women Owned Businesses Participation Objective
  - 8.2.1 General: The Contractor shall ensure that D/M/WBE as defined herein will have the maximum opportunity to participate in the performance of subcontracts. In this regard, the Contractor shall take all necessary and reasonable steps to accomplish that result.
  - 8.2.2 Definitions: The following words and phrases shall have the respective meanings set forth below unless a different meaning is plainly required by the context:
    - (1) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States or lawfully admitted permanent residents and who are women, Black Americans, Hispanic American, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans. Individuals in the following groups are presumed to be socially and economically disadvantaged:
      - (a) "Black Americans", which includes persons having origins in any of the black racial groups of Africa;
      - (b) "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;
      - (c) "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the

Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific and the Northern Marianas;

- (d) "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (e) "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh; and
- (f) "Women".
- (2) "Joint Venture" means an association of two or more firms to carry out a single business enterprise for which purpose the firms combined their property, money, effects, skills or knowledge.
- (3) "Certified" means a finding by Orange County, Florida, the City of Orlando, Florida, and Florida Department of Transportation that the business is a bona fide Minority, Women or Disadvantaged owned and operated business.
- (4) "Independently Owned and Operated" means a business that is not affiliated or associated with the general contractor or prime contractor providing work or services on CFX project(s) or procurement in which the D/M/WBE seeks to participate. Affiliated status may be determined through common ownership, management, employees, facilities, inventory or any other factors, which would prevent or inhibit independent status
- (5) "Women Business Enterprise" comprises all women. All women business owners will be classified as a Women Business Enterprise.
- 8.2.3 Specific Requirements: The Contractor shall, among other things, implement techniques to facilitate D/M/WBE participation in contracting activities including, but not limited to:
  - 1. Soliciting price quotations and arranging a time for the review of plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of quotations;
  - 2. Providing assistance to D/M/WBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance;
  - 3. Carrying out information and communication programs or workshops on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate;

- 4. Contacting Minority Contractor Associations, city, and county agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible D/M/WBE contractors to apply for certification.
- 5. Meeting with appropriate officials of CFX, including its Supplier Diversity Office, to assist with the Contractor's efforts to locate D/M/WBEs and assist with developing joint ventures, partnering, and mentorship.
- 8.2.4 Qualified Participation: CFX will count D/M/WBE participation toward meeting D/M/WBE objective as follows:
  - 1. The total dollar value of the contract to be awarded to the certified D/M/WBE will not be counted toward the applicable D/M/WBE objective unless approved by CFX.
  - 2. A portion of the total dollar value of a contract, with an eligible joint venture, equal to the percentage of the ownership and control of the D/M/WBE partner in the joint venture may be counted toward the D/M/WBE objective.
  - 3. Only expenditures to D/M/WBEs that perform a commercially useful function may be counted toward the D/M/WBE objective. A D/M/WBE is considered to perform a commercially useful function when it actually performs and manages at least 51 percent of the work subcontracted to it. To determine whether a D/M/WBE is performing a commercially useful function, CFX will evaluate all relevant factors such as the amount of Work subcontracted and industry practices.
  - 4. Consistent with normal industry practices, a D/M/WBE may enter into subcontracts. If a D/M/WBE subcontracts 50 percent or more of the Work assigned to it, the D/M/WBE shall be presumed not to be performing a commercially useful function.
  - 5. Expenditures for materials and supplies obtained from D/M/WBE suppliers and manufacturers may be counted toward the D/M/WBE objective, provided that the D/M/WBEs assume the actual and contractual responsibility for the provision of the materials and supplies. The percentage allowed toward the D/M/WBE objective is as follows:
    - (a) All expenditures to a D/M/WBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale) may be counted toward the D/M/WBE objective.

- (b) 1. A Contractor may count toward its D/M/WBE objective 60 percent of its expenditures for materials and supplies required under a contract and obtained from a D/M/WBE regular dealer, and 100 percent of such expenditures to a D/M/WBE manufacturer.
  - 2. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.
  - 3. A regular dealer is a firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this Section.
- (c) A Contractor may count toward the D/M/WBE objective for the following expenditures to D/M/WBE firm(s) that are not manufacturers or regular dealers:
  - 1. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials of supplies required for performance of the Contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - 2. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for

similar services.

- 3. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- 4. Those sums that, subsequent to the receipt of bids, CFX elects, under the provisions of the Direct Materials Purchase Option, to purchase materials originally proposed by the Contractor to CFX to have been an element of the Work of a certified D/M/WBE contractor/subcontractor/vendor.
- 8.2.5 Records and Reports: The Contractor shall develop a record keeping system to monitor its D/M/WBE participation and shall maintain the following records:
  - 1. the procedures adopted to comply with these special provisions;
  - 2. The number of subordinated contracts on CFX projects awarded to D/M/WBEs;
  - 3. the dollar value of the contracts awarded to D/M/WBEs;
  - 4. the percentage of the dollar value of all subordinate contracts awarded to D/M/WBEs as a percentage of the total contract amount;
  - 5. a description of the general categories of contracts awarded to D/M/WBEs;
  - 6. the specific efforts employed to identify and award contracts to D/M/WBEs;
  - 7. maintenance of records of payments and monthly reports to CFX;
  - 8. Subcontract Agreement between Contractor and D/M/WBE subcontractors; and
  - 9. any other records required by CFX's Project Manager or Executive Director.

The records maintained by the Contractor in accordance with this Section shall be provided to CFX for review within 48 hours of the CFX request. The Contractor shall submit a properly executed D/M/WBE Payment Certification monthly during the life of the D/M/WBE subcontract whether payment is made or not.

# 8.3 Subletting of Contracts - Participation Objective

No request to sublet Work will be approved unless it is in compliance with the Contractor's approved D/M/WBE Utilization Form "Certification of Subcontract Amount to D/M/WBE Contractor", shall be completed and submitted with the Request for Authorization to Sublet Work. One copy of the certification will be attached to each copy of the Request for Authorization to Sublet Work.

#### END OF SECTION 8

### SECTION 9 - BINDING ARBITRATION

- 9.1 CFX and the Contractor shall submit any and all unsettled claims, counterclaims, and disputes to the Disputes Review Board (DRB) prior to initiating a demand for arbitration pursuant to this Section.
- 9.2 No demand for arbitration of any claim, dispute or other matter referred to the DRB initially for decision will be made until after final acceptance, per Article 3.9, of all Contract Work by CFX. The filing party shall pay all applicable fees associated with requested arbitration proceedings.

The failure to demand arbitration within thirty (30) days after final acceptance will result in the DRB's decision being final and binding upon CFX and Contractor.

- 9.3 Notice of the demand for arbitration is satisfied when it is filed in writing with the other party to the Contract and with the American Arbitration Association (including required fees). A copy will be sent to the Board for information.
- 9.4 The arbitration shall occur in Orlando, Florida and shall be conducted by a three (3) member panel pursuant to and under the auspices of the Construction Industry Arbitration Rules of the American Arbitration Association.
- 9.5 Procedure for Binding Arbitration

Arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations of this Section. The agreement to arbitrate (and any other agreement or consent to arbitrate entered into in accordance herewith) will be specifically enforceable under the laws of Florida.

Arbitration shall include by consolidation, joinder or in any other manner any person or entity who is not a party to the Contract in circumstances where:

- the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration, and
- such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings, and
- the written consent of the other person or entity sought to be included and of CFX and Contractor has been obtained for such inclusion, which consent shall make specific reference to this paragraph.

In order to assure complete resolution of any claim or controversy, the Contractor shall provide and require (in the agreements with subcontractors and material suppliers) for joinder in such arbitration proceedings. Therefore, if a claim, dispute or other matter in question between CFX and Contractor involves the work of a Subcontractor, either CFX or Contractor may join such subcontractor as a party to the arbitration. Nothing in this paragraph or in the provision of such subcontractor or supplier, and against CFX, CEI, or any of their consultants that does not otherwise exist.

In connection with the arbitration proceedings all participants shall be afforded pre-hearing discovery in accordance with the rules of the American Arbitration Association.

### END OF SECTION 9

### SECTION 10 - DISPUTES RESOLUTION

10.1 Disputes Resolution

10.1.1 Disputes Review Board

A Disputes Review Board ("Board") will be established to assist in the resolution of disputes arising out of the Work on the Project. This document describes the purpose, procedure, function and features of the Board.

The Board will provide special expertise to assist and facilitate the timely and equitable resolution of disputes and controversies between CFX and the Contractor in an effort to avoid construction delays and future claims.

It is not intended for CFX or the Contractor to avoid the normal responsibility to cooperatively and fairly settle differences by indiscriminately requesting dispute resolution by the Board. It is intended the Board encourage CFX and the Contractor to first try resolving potential disputes without resorting to the procedure set forth herein.

The Board will be used only when the claims procedure detailed in the Contract has been followed and has been unsuccessful. It is a condition of the Contract that the parties use the Board. Adherence to the Contract claims procedure is a condition precedent to the submission of a dispute to the Board, and the submission of an unresolved dispute to the Board is, in turn, a condition precedent to arbitration of such issue.

The Board will fairly and impartially consider disputes referred to it. The Board will receive testimony and other relevant evidence regarding such disputes, will analyze the facts within the parameters of the Contract, and will then provide written recommendations (to CFX and Contractor) to assist in the resolution of the disputes. The recommendations of the Board will not be binding on either CFX or the Contractor; however, the Board's recommendations and findings shall be admissible for all purposes in any subsequent arbitration proceedings or the judicial enforcement thereof.

#### 10.1.2 Continuance of Work During Dispute

During the dispute resolution process the Contractor shall conform to the CEI's decision or order and continue with the Work as directed by the CEI in a diligent manner and without delay. Such Work will be governed by all applicable provisions of the Contract. With respect to any protested Work, the Contractor will keep complete records of extra costs and time incurred. Except for sealed Bid Records, the Contractor will permit CEI and the Board access to any records needed for evaluating the dispute, without any claim of privilege or confidentiality.

# 10.1.3 Disputes Review Board Membership

The Board will consist of three Members, one Member selected by CFX and approved by the Contractor, and one Member selected by the Contractor and approved by CFX. The first two Members will mutually select and agree on the third Member, which third Member shall not be subject to approval by either the Contractor or CFX. Normally, the third Member will act as Chairman for all Board activities. If the third Member declines to act as Chairman, the Members shall select an alternative Chairman. Neither the Contractor nor CFX shall seek to influence the Chairman selection decision.

The Contractor and CFX shall each submit the name and credentials of their proposed Member to the other within ten (10) days of the Contract award. The two Members, upon acceptance, shall meet promptly and mutually agree on the third Member. A Notice to Proceed shall not be issued until the Board Members have been selected and have signed the Three-Party Agreement. All three Members shall attend the Pre-Construction Meeting.

All Board Members shall be experienced with major road and bridge construction and the associated construction methods involved in the Project, in the interpretation of contract documents and in contract dispute resolution. The goal in selecting the third Member is to complement the construction experience of the first two Members and to provide leadership of the Board's activities.

It is imperative that Board Members show no partiality to either the Contractor or CFX, or have any conflict of interest.

The criteria and limitations for membership will be as follows:

- a. The person selected will not have any direct or indirect ownership or financial interest in (i) the Contractor, (ii) CEI or the CFX General Engineering Consultant ("GEC"), (iii) any subcontractor or supplier of the Project, or (iv) the employer of other Board Members.
- b. Except for services as a Board Member on CFX projects, no Member shall have been an employee, contractor or consultant to the Contractor or CFX, CEI, the GEC or any subcontractor or supplier for the Project within a period of ten (10) years prior to the Contract award.
- c. No Member will have had a close personal, professional or business relationship with CFX or the Contractor (or an employee or officer of CFX or the Contractor).
- d. No Member will have had any prior involvement in the Project (other than as a dispute board member) of a nature which could be construed to compromise an ability to impartially resolve disputes.

- e. No Member will be employed by the Contractor, the CEI, the GEC or any subcontractor or supplier of the Project during the term of the Contract, except as a Board Member pursuant to the Three Party Agreement.
- f. During the term of the Contract no discussion or agreement will be made between a Board Member and CFX or Contractor regarding employment after the Contract is completed.
- g. During the term of the Contract, ex-parte communications between a Board Member and a party to the Three Party Agreement is prohibited.

Before appointments are final, the first two prospective Members will submit complete disclosure statements for the approval of both CFX and the Contractor. Each statement (in the form prepared by CFX) will include a statement of experience and a declaration describing all past, present and anticipated or planned future relationships to the Project and with the parties to the Contract. Disclosure of professional or personal relationships with parties to the Contract will be included. The third Board Member will supply a similar statement to the first two Board Members (and to CFX and the Contractor) before the third Member appointment is finalized.

CFX and the Contractor will each select a Member, execute the Three Party Agreement (described below) and assure the Members execute the Three-Party Agreement within the first three (3) weeks after Contract award. CFX and the Contractor will immediately notify the selected Members to begin selection of the third Member. The first two Members will ensure the third Member meets all of the criteria listed above. The third Member will be selected within two (2) weeks after the first two Members are notified to proceed with the selection of the third Member. If there is an impasse in the selection of the third Member, the third Member will be selected by CFX and the Contractor, with the first consideration to the nominees reviewed by the first two Members.

In the event of death, disability or resignation of a Member, such Member shall be replaced in the same manner as the Member being replaced was selected. If for whatever other reason a Member fails or is unable to serve, the Chairman (or failing the action of the Chairman, then either of the other Members) shall inform the parties and such non-serving Member shall be replaced in the same manner as the Member being replaced was selected. Any replacement made by the parties shall be completed within fifteen (15) days after the event giving rise to the vacancy on the Board, failing which the replacement shall be made by the two remaining Members of the Board. Replacement shall be considered completed when the new Member executes the Dispute Review Board Three Party Agreement.

# 10.1.4 Board Operations

The Board will formulate procedures of operation that shall be flexible with respect to the functioning of the Board. The Board may formulate new or revised procedures respecting its operation from time to time to accommodate the needs of the Board and the circumstances.

Each Board Member shall be provided a complete set of the Contract Documents. CFX and the Contractor shall keep the Board informed of construction activity and progress by submitting written progress reports and other relevant data at least monthly. The Board will visit the Project at regular intervals and/or at times of critical construction events and meet with CEI and the Contractor. In circumstances of unresolved disputes, the Board will meet at least monthly until the unresolved disputes are concluded. The frequency of visits will be agreed upon by CFX, the Contractor and the Board, depending upon the progress of the Work.

Regular meetings will be held at the job site. Each meeting will consist of an informal discussion and a field inspection of the Work. The informal discussion will be attended by selected personnel from CFX, the CEI and the Contractor. Agenda for regular meetings of the Board will generally include the following:

- a. Meeting opened by the Chairman of the Board.
- b. Remarks by the CEI.
- c. A description by the CEI and the Contractor of Work accomplished since the last meeting, current status of the Work schedule, schedule for the future, potential problems and proposed solutions to anticipated problems.
- d. Discussion by the CEI of Work schedule, potential new disputes or claims, status of past disputes and claims and other issues.
- e. Set a date for next meeting.

The CEI will prepare minutes of all Board meetings and circulate them for comments, revisions and/or approval by all concerned.

The field inspection will cover all active segments of the Work. The Board will be accompanied by representatives of both the CEI and the Contractor. Soliciting any Board Member's advice or consultation regarding the Work or the Contract is expressly prohibited.

# 10.1.5 Procedure for Disputes Resolution

Disputes will be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Steps may be omitted as agreed by both parties and the time periods stated below may be shortened in order to hasten resolution.

- a. If either CFX or Contractor object to any decision of the CEI with respect to claims, change order requests, or other actions or orders of the CEI, the objecting party may file a written protest with the CEI within fifteen (15) days after the CEI's disputed decision, action or order. The written protest must clearly state in detail the basis for the objection.
- b. The CEI will consider the written protest to its decision or directive, and make a final decision on the basis of the pertinent Contract provisions, together with the facts and circumstances involved in the protest. The decision will be furnished to CFX and Contractor in writing within fifteen (15) days after receipt of the written protest.
- c. The CEI's decision with respect to the protest will be final, unless a written exception is filed by CFX or Contractor with the CEI within fifteen (15) days after receiving the protest decision. If either rejects the CEI's final decision, the disputed matter may be referred to the Board by either CFX or the Contractor.
- d. Upon receipt by the Board of a written dispute, the Board will first decide when to conduct the hearing. If the matter is not urgent, it may be heard at the next regularly scheduled Board meeting. For an urgent matter, the Board will meet at its earliest convenience.
- e. Either party furnishing written evidence or documentation to the Board will furnish copies of such information to the other party a minimum of fifteen (15) days prior to the date the Board sets to hear the dispute. If the Board requests additional documentation or evidence prior to, during or after the hearing, CFX and/or the Contractor will provide the requested information to the Board and to the other party. Because each side needs a reasonable opportunity to understand and rebut the opposing side's point of view, failure of either party to timely provide written documentation in accordance with this provision shall result in such written documentation being excluded from the hearing before the Board unless the other party consents to its admission or consents to a delay in the hearing.

- f. The Contractor and CFX will each be afforded an opportunity to be heard by the Board and to offer evidence. The Board will consider all relevant evidence presented and analyze the same solely within the parameters of the Contract. Hearsay evidence shall be admissible but shall not be the sole basis for any recommendation of the Board.
- g. The Board's recommendations for resolution of the dispute will be given in writing within fifteen (15) days of completion of the hearing(s). In cases of extreme complexity, both parties may agree to allow additional time for the Board to formulate its recommendations. Generally, the Board will initially focus its attention (in the written report) only to matters of entitlement, and allow the parties to thereafter determine the monetary relief. If both parties request, and sufficient documentation is available, the Board may also make a recommendation of monetary relief, but only after formulation of the entitlement recommendation and only after the parties have attempted to agree upon the monetary relief amount.
- h. If the Board's recommendation for resolution is not unanimous, the dissenting member shall prepare a separate written opinion.
- i. Within fifteen (15) days of receiving the Board's recommendations, both CFX and the Contractor will respond to the other and to the Board in writing, signifying either acceptance or rejection of the Board's recommendations. The failure of a party to respond within the fifteen (15) day period will be deemed an acceptance by such party of the Board's recommendations. If CFX and the Contractor are able to resolve the dispute (with or without the aid of the Board's recommendations), CFX will promptly process any required Contract changes.
- j. If the dispute remains unresolved because of a bona fide lack of clear understanding of the recommendation, either party may request the Board clarify specific portions of its recommendations. Further, if new evidence becomes available, either party may request the Board reconsider its prior recommendation Only evidence which did not exist at the time of the hearing, or which existed but which could not be discovered with reasonable and normal diligence shall be considered new evidence.
- k. If the Board's recommendation is rejected, either party may thereafter initiate resolution of the dispute by binding arbitration conducted pursuant to the Contract.

Both CFX and the Contractor should carefully consider the Board's recommendations, as the recommendations are binding unless written notice is provided to the other party within 30 days of the recommendations stating the party's intent to bring the disputed issue to arbitration. However, if the Board's recommendations do not resolve the dispute, all records and written recommendations, including any minority reports, will be admissible for informational purposes in any subsequent dispute resolution procedures. Such informational purposes shall include but not be limited to establishing that the Board considered the dispute, the qualifications of the Board Members, and the Board's recommendation that resulted from the dispute resolution process.

### 10.1.6 Conduct of Disputes Hearings

Each party shall file three copies of its written arguments with the Board no less than seven days prior to the scheduled hearing and shall simultaneously deliver a copy of such written arguments to the opposing party. Each party shall also submit to the Board along with its written arguments copies of its written evidence and documentation which has been previously provided to the opposing party as provided above.

Normally, the hearing will be conducted at the job site. However, any location more convenient and which provides all required facilities and access to necessary documentation is satisfactory.

While the Board will keep a record of its sessions during consideration of a dispute, the Board will not be required to keep its record in any particular form. The nature and completeness of the record will depend upon the nature and magnitude of the dispute and the desires of the parties. If possible, the hearings shall be kept informal. Formal records of the Board meetings may be taken and transcribed by a court reporter if requested by a party (at the requesting party's cost). Audio and/or video recording of the meeting is discouraged and shall only be made with the prior agreement of all parties and a majority of the Board.

CFX and the Contractor will have representatives at all dispute resolution hearings. The party requesting Board review will first discuss the dispute, followed by the other party. Each party will then be allowed successive rebuttals until all aspects are fully covered to the Board's satisfaction. The Members and the parties may ask questions, request clarification or ask for additional data. In large or complex cases, additional hearings may be necessary in order to consider and fully understand all evidence presented by both parties.

During the hearings, no Member will express any opinion concerning the merit of any facet of the dispute.

After the hearings are concluded, the Board will meet in private to formulate recommendations supported by two or more Members. All Board deliberations will be conducted in private, with individual views kept strictly confidential. No minutes shall be

prepared of the Board's private meetings. The Board's recommendations and discussions of its reasoning will be submitted as a written report to both parties. The recommendations will be based on the pertinent Contract provisions and the facts and circumstances involved in the dispute.

The Board will make every effort to reach a unanimous decision. If a unanimous decision is not possible, the dissenting Member may (but is not required to) prepare a minority report.

# 10.1.7 Compensation

The Contractor shall pay the fees of all three Board Members for services rendered under the Three Party Agreement. An allowance pay item has been established in the Contract for the reimbursing the Contractor. Funds remaining in the pay item, if any, at the completion of the Project will belong to CFX. CFX and the Contractor shall agree on the procedures and method of processing payments made against the allowance. CFX or the CEI will mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services. If the Board desires special services, such as legal consultation, accounting, data research, etc., both parties must agree and the costs will be paid from the allowance.

10.1.8 Three Party Agreement

The Contractor, CFX and the Members of the Board will execute the Dispute Review Board Three Party Agreement within four (4) weeks of the final selection of the third Member.

END OF SECTION 10

#### ATTACHMENT A

### DISPUTES REVIEW BOARD THREE PARTY AGREEMENT

 THIS THREE PARTY AGREEMENT ("Agreement") made and entered into this

 day of \_\_\_\_\_\_, 20\_\_, between the CENTRAL FLORIDA EXPRESSWAY

 AUTHORITY ("CFX"), \_\_\_\_\_\_ ("Contractor") and the DISPUTES

 REVIEW BOARD ("Board"), consisting of three members: \_\_\_\_\_\_, and \_\_\_\_\_ ("Members").

WHEREAS, CFX is now engaged in the construction of the , and

WHEREAS, the \_\_\_\_\_\_ contract ("Contract") provides for the establishment and operation of the Board to assist in resolving disputes and claims.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein (or attached, incorporated and made a part hereof), the parties agree as set forth herein.

#### I DESCRIPTION OF PURPOSE

To facilitate resolution of disputes between the Contractor and CFX, CFX has provided (in the Contract) for the establishment of the Board. The function of the Board is to fairly and impartially consider Contract disputes placed before it and provide written recommendations for resolution to both CFX and the Contractor. The Members of the Board shall perform the services designated in Section II, Scope of Work.

#### II SCOPE OF WORK

The Scope of Work includes, but is not limited to, the following items:

A. <u>Third Board Member Selection</u>. 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. <u>Procedures</u>. 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 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

ATT-4

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:\_\_\_\_\_

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.

#### MEMORANDUM

FROM: Aneth Williams Will Director of Procurement

DATE: January 31, 2022

SUBJECT: Approval of EPG Engineering, Inc. as Subconsultant to Vanasse Hangen Brustlin, Inc. for Design Consultant Services for Three-Line Dynamic Message Signs Replacement Project Project No. 599-545; Contract No. 001419

Board approval of EPG Engineering, Inc. as subconsultant to Vanasse Hangen Brustlin, Inc., to provide ARC flash analysis is requested. The cost is expected to exceed the \$25,000.00 threshold established by the Procurement Policy for subconsultants not disclosed by Vanasse Hangen Brustlin, Inc. when its contract with CFX was originally awarded.

Reviewed by:

Bryan Homayouni, P.E. Director of Intelligent Transportation Systems

Glenn Pressimone, P.E.

4974 ORL TOWER RD. ORLANDO, FL 32807 | PHONE: (407) 690-5000 | FAX: (407) 690-5011



#### **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

#### **REQUEST FOR AUTHORIZATION TO SUBLET SERVICES**

Consultant: Vanasse Hangen Brustlin, Inc.

Date: <u>1/31/22</u>

CFX Contract Name: Design Services for 3 Line DMS Replacement CFX Contract No.: 001419, 599-545

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: EPG Engineering, Inc.

Address: 1325 S. Bumby Ave, Orlando, FL 32806

Phone No.: <u>407-896-7411</u>

Federal Employee ID No.: 43-1948654

Description of Services to Be Sublet: <u>Post-design services to meet project objectives involving the replacement of listed 3-line DMS per</u> <u>CFX's direction</u>. Subconsultant will provide ARC Flash Analysis for 8 locations, shop drawing reviews related to electrical equipment identified in the design of the project and provide support to develop responses related to the Requests for Information from the CEI related to electrical designs.

Estimated Beginning Date of Sublet Services: <u>3/22/2021</u>

Estimated Completion Date of Sublet Services: <u>4/25/2022</u>

Estimated Value of Sublet Services\*: <u>Over \$25,000</u> \*(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 CFX that are applicable to the subconsultant and the services to be sublet:

Requested By: (Demond Hazley)

zley) (Signature of Consultant Representative)

Interim Managing Director - Orlando

\_\_\_\_\_

Recommended by:

ignature of Appropriate CFX Director/Manager)

Title

Date: 2/1/2022

Approved by:

(Signature of CFX Division Chief)

Date: 02/01/2022

Attach Subconsultant's Certificate of Insurance to this Request.



## Reports

## **E.1.** Chairman's Report

## THERE ARE NO BACKUP MATERIALS FOR THIS ITEM

ļ

## **E.2.** Treasurer's Report

#### MEMORANDUM

TO:	CFX Board Members
FROM:	Michael Carlisle, Director of Accounting and Finance
DATE:	January 31, 2022 Mid & Call
RE:	December 2021 Financial Reports

Attached please find the December 2021 Financial Reports. Please feel free to contact me if you have any questions or comments with regard to any of these reports.

4974 ORL TOWER RD. ORLANDO, FL 32807 | PHONE: (407) 690-5000 | FAX: (407) 690-5011

WWW.CFXWAY.COM



#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY CALCULATION OF NET REVENUES AS DEFINED BY THE BOND RESOLUTIONS AND RELATED DOCUMENTS FOR THE MONTH ENDING DECEMBER 31, 2021 AND YEAR-TO-DATE

		FY 22 MONTH ACTUAL	FY 22 FY 22 MONTH YEAR-TO-DATE BUDGET ACTUAL		FY 22 YEAR-TO-DATE BUDGET		FY 22 YEAR-TO-DATE VARIANCE		FY 22 YEAR-TO-DATE % VARIANCE	FY 21 - 22 YEAR-TO-DATE COMPARISON	
REVENUES											
TOLLS	\$	51,972,596	\$ 43,451,955	\$	301,341,455	\$	255,056,922	\$	46,284,533	18.1%	31.5%
FEES COLLECTED VIA UTN/UTC'S AND PBP'S	3	558,820	605,971		2,640,032		2,550,233		89,799	3.5%	-22.8%
TRANSPONDER SALES		159,962	76,246		1,021,235		456,802		564,432	123.6%	123.7%
OTHER OPERATING		156,077	132,383		818,029		669,300		148,729	22.2%	60.3%
INTEREST		177,617	196,704		912,515		1,180,227		(267,711)	-22.7%	-86.2%
MISCELLANEOUS		65,954	63,454		404,473		380,725		23,748	6.2%	8.4%
TOTAL REVENUES	\$	53,091,025	\$ 44,526,714	\$	307,137,739	\$	260,294,209	\$	46,843,530	18.0%	27.7%
O M & A EXPENSES											
OPERATIONS	\$	7,019,898	\$ 6,670,828	\$	30,011,200	\$	30,853,739	\$	842,539	2.7%	19.8%
MAINTENANCE		1,852,910	1,926,910		5,366,206		5,753,039		386,833	6.7%	-12.5%
ADMINISTRATION		794,553	832,050		3,955,427		4,284,255		328,828	7.7%	1.7%
OTHER OPERATING		249,915	222,583		824,040		834,728		10,688	1.3%	-3.3%
TOTAL O M & A EXPENSES	\$	9,917,276	\$ 9,652,372	\$	40,156,873	\$	41,725,761	\$	1,568,888	3.8%	11.8%
NET REVENUES BEFORE DEBT SERVICE	\$	43,173,749	\$ 34,874,342	\$	266,980,865	\$	218,568,448	\$	48,412,418	22.1%	30.5%
COMBINED NET DEBT SERVICE	\$	17,928,951	\$ 18,048,746	\$	108,259,550	\$	108,292,477	\$	32,928	0.0%	-1.2%
NET REVENUES AFTER DEBT SERVICE	\$	25,244,798	\$ 16,825,596	\$	158,721,316	\$	110,275,971	\$	48,445,345	43.9%	67.0%

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 DECEMBER 31, 2021 AND YEAR-TO-DATE

	FY 2022 ACTUAL	FY 2022 BUDGET	VARIANCE	FY 22 YEAR-TO-DATE % VARIANCE
Operations	\$ 30,011,200	\$ 30,853,7	39 \$ 842,53	9 2.7%
Maintenance	5,366,206	5,753,0	39 386,83	3 6.7%
Administration	3,955,427	4,284,2	55 328,82	8 7.7%
Other Operating	824,040	834,7	2810,68	81.3%
Total O M & A	\$ 40,156,873	\$ 41,725,7	61 \$ 1,568,88	8 3.8%
Capital Expenditures				
Operations	\$ 749	\$ 25,0	00 \$ 24,25	1 97.0%
Maintenance	1,247	23,0	00 21,75	3 94.6%
Administration		11,2	5011,25	0100.0%
Total Capital Expenditures	\$ 1,997	\$ 59,2	50 \$ 57,25	3 96.6%

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 Operations - Comparison of Actual to Budget For the Six Months Ending December 31, 2021

	YTD Actual	YTD Budget	Budget Variance	Variance Percentage
Toll Operations Image Review	354,445 5,888,097	392,371 5,343,692	37,927 (544,405)	9.67% -10.19%
Special Projects	72,092 2,208,102	130,380 2,287,907	58,288 79,805	44.71% 3.49%
Information Technology E-PASS Service Center	12,359,025	12,144,367	(214,658)	-1.77%
Business Relations	69,361	80,750	11,389	14.10%
Public Outreach/Education	1,041,774	1,069,277	27,503	2.57%
Subtotal CFX	\$21,992,896	\$21,448,743	\$(544,153)	-2.54%
Plazas	8,019,054	9,429,996	1,410,942	14.96%
Subtotal Toll Facilities	\$8,019,054	\$9,429,996	\$1,410,942	14.96%
Total Operations Expenses	\$30,011,949	\$30,878,739	\$866,790	2.81%



#### Central Florida Expressway Authority Maintenance - Comparison of Actual to Budget For the Six Months Ending December 31, 2021

	YTD Actual	YTD Budget	Budget Variance	Variance Percentage
Maintenance Administration	1,435,441	1,522,221	86,780	5.70%
Traffic Operations	1,497,619	1,571,012	73,394	4.67%
Routine Maintenance	2,434,394	2,682,806	248,412	9.26%
Total Maintenance Expenses	\$5,367,454	\$5,776,039	\$408,586	7.07%



#### Central Florida Expressway Authority Administration - Actual to Budget by Cost Center For the Six Months Ending December 31, 2021

	YTD Actual	YTD Budget	Budget Variance	Variance Percentage
General	244,173	256,672	12,498	4.87%
Administrative Services	1,079,800	1,118,324	38,524	3.44%
Communications	266,519	397,414	130,895	32.94%
Human Resources	149,835	154,876	5,041	3.25%
Supplier Diversity	123,027	139,423	16,396	11.76%
Accounting	769,893	819,299	49,406	6.03%
Construction Administration	31,783	35,224	3,441	9.77%
Risk Management	273,911	294,410	20,499	6.96%
Procurement	310,560	336,876	26,316	7.81%
Legal	351,584	361,382	9,798	2.71%
Internal Audit	111,651	119,000	7,349	6.18%
525 Magnolia	27,550	25,650	(1,900)	-7.41%
Engineering	36,842	38,614	1,772	4.59%
Records Management	178,298	198,341	20,043	10.11%
Grand Total Expenses	\$3,955,427	\$4,295,505	\$340,078	<u> </u>
••••••	<u> </u>	<u>,200,000</u>	<u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u></u>	

#### CENTRAL FLORIDA EXPRESSWAY AUTHORITY CALCULATION OF NET REVENUES AS DEFINED BY THE BOND RESOLUTIONS PREVIOUS YEAR BUDGET TO ACTUAL COMPARISON FOR THE MONTH ENDING DECEMBER 31, 2021 AND YEAR-TO-DATE

	FY 22 YEAR-TO-DATE ACTUAL	FY 22 YEAR-TO-DATE BUDGET	FY 22 YEAR-TO-DATE VARIANCE	FY 21 YEAR-TO-DATE ACTUAL	FY 21 YEAR-TO-DATE BUDGET	FY 21 YEAR-TO-DATE VARIANCE	YEAR-TO-DATE VARIANCE COMPARISON
REVENUES							
TOLLS	\$ 301,341,455	\$ 255,056,922	\$ 46,284,533	\$ 229,204,153	\$ 172,600,000	\$ 56,604,153	\$ (10,319,620)
FEES COLLECTED VIA UTN/UTC'S AND PBP'S	2,640,032	2,550,233	89,799	3,421,932	3,820,733	(398,801)	488,600
TRANSPONDER SALES	1,021,235	456,802	564,432	456,533	443,650	12,883	551,549
OTHER OPERATING	818,029	669,300	148,729	510,182	684,181	(173,999)	322,728
INTEREST	912,515	1,180,227	(267,711)	6,605,209	3,030,660	3,574,549	(3,842,260)
MISCELLANEOUS	404,473	380,725	23,748	372,985	371,576	1,409	22,339
TOTAL REVENUES	\$ 307,137,739	\$ 260,294,209	\$ 46,843,530	\$ 240,570,994	\$ 180,950,800	\$ 59,620,194	\$ (12,776,665)
O M & A EXPENSES							
OPERATIONS	\$ 30,011,200	\$ 30,853,739	\$ 842,539	\$ 25,050,522	\$ 27,272,237	\$ 2,221,715	\$ (1,379,176)
MAINTENANCE	5,366,206	5,753,039	386,833	6,132,436	6,634,172	501,736	(114,903)
ADMINISTRATION	3,955,427	4,284,255	328,828	3,889,285	4,102,841	213,556	115,272
OTHER OPERATING	824,040	834,728	10,688	852,344	971,054	118,710	(108,022)
TOTAL O M & A EXPENSES	\$ 40,156,873	\$ 41,725,761	\$ 1,568,888	\$ 35,924,587	\$ 38,980,304	\$ 3,055,717	\$ (1,486,829)
NET REVENUES BEFORE DEBT SERVICE	\$ 266,980,865	\$ 218,568,448	\$ 48,412,418	\$ 204,646,407	\$ 141,970,496	\$ 62,675,911	\$ (14,263,494)
COMBINED NET DEBT SERVICE	\$ 108,259,550	\$ 108,292,477	\$ 32,928	\$ 109,602,702	\$ 109,646,550	\$ (43,848)	\$ 76,776
NET REVENUES AFTER DEBT SERVICE	\$ 158,721,316	\$ 110,275,971	\$ 48,445,345	\$ 95,043,705	\$ 32,323,946	\$ 62,719,759	\$ (14,274,414)

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 CALCULATION OF NET REVENUES AS DEFINED BY THE BOND RESOLUTIONS PREVIOUS YEAR COMPARISON FOR THE MONTH ENDING DECEMBER 31, 2021 AND YEAR-TO-DATE

	 FY 22 MONTH ACTUAL	 FY 21 MONTH ACTUAL	SA	FY 21 - 22 ME MONTH MPARISON	 FY 22 EAR-TO-DATE ACTUAL		FY 21 YEAR-TO-DATE ACTUAL		FY 21 - 22 EAR-TO-DATE OMPARISON	
REVENUES										
TOLLS	\$ 51,972,596	\$ 41,451,515	\$	10,521,081	\$ 301,341,455	\$	229,204,153	\$	72,137,302	
FEES COLLECTED VIA UTN/UTC'S AND PBP'S	558,820	691,650		(132,830)	2,640,032		3,421,932		(781,900)	
TRANSPONDER SALES	159,962	99,993		59,969	1,021,235		456,533		564,702	
OTHER OPERATING	156,077	96,841		59,236	818,029		510,182		307,847	
INTEREST	177,617	1,095,825		(918,208)	912,515		6,605,209		(5,692,694)	
MISCELLANEOUS	 65,954	 61,949		4,005	 404,473		372,985		31,488	
TOTAL REVENUES	\$ 53,091,025	\$ 43,497,773	\$	9,593,252	\$ 307,137,739	\$	240,570,994	\$	66,566,744	
O M & A EXPENSES										
OPERATIONS	\$ 7,019,898	\$ 5,686,175	\$	1,333,723	\$ 30,011,200	\$	25,050,522	\$	4,960,678	
MAINTENANCE	1,852,910	1,159,727		693,183	5,366,206		6,132,436		(766,230)	
ADMINISTRATION	794,553	742,178		52,375	3,955,427		3,889,285		66,142	
OTHER OPERATING	 249,915	 349,073		(99,158)	 824,040		852,344		(28,304)	
TOTAL O M & A EXPENSES	\$ 9,917,276	\$ 7,937,153	\$	1,980,123	\$ 40,156,873	\$	35,924,587	\$	4,232,286	
NET REVENUES BEFORE DEBT SERVICE	\$ 43,173,749	\$ 35,560,620	\$	7,613,129	\$ 266,980,865	\$	204,646,407	\$	62,334,458	
COMBINED NET DEBT SERVICE	\$ 17,928,951	\$ 18,251,023	\$	(322,072)	\$ 108,259,550	\$	109,602,702	\$	(1,343,152)	
NET REVENUES AFTER DEBT SERVICE	\$ 25,244,798	\$ 17,309,597	\$	7,935,202	\$ 158,721,316	\$	95,043,705	\$	63,677,610	

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.

E.3.

## **Executive Director's Report**

### THE EXECUTIVE DIRECTOR'S REPORT WILL BE PROVIDED PRIOR TO THE BOARD MEETING

## **F.** Regular Agenda Items



#### DANIEL MILLER

1224 Stetson St, Orlando, FL 32804 | 407-496-4269 | DanielAllenMiller@gmail.com

#### SUMMARY

- 15+ years of experience in a combination of systems, laser, electro-optical and infrared disciplines
- Led cross-functional teams and delivered results under strict scheduling and budget constraints
- Extensive involvement with customer base to understand and meet requirements and expectations
- International MBA experience assisting a firm in France refocus its business strategy to meet customer needs

#### **EXPERIENCE**

#### LOCKHEED MARTIN MISSILES AND FIRE CONTROL

Systems Engineering Manager, Air to Ground Missile Systems/SEIT for JAGM Block 1 09/2018 - Present

JAGM (Joint Air To Ground Missile) Block 1 All Up Round IPT Lead

- Successfully lead \$75M spiral upgrade program as AUR Lead through SRR, second phase funding awarded ٠
- Functional manager for ~23 engineers largest Systems group in AGMS, including an off-site team(Eglin AFB)
- Significantly grown the bench of I&T Engineers for development missile build and test activities •

#### Staff Systems Engineer, Air to Ground Missile Systems

contributor for Integration and Test activities for HELLFIRE Tango

- Successfully lead POP missile flight test(4 AURs), one of only two Mission Success Milestones for Tango(AGMS) Accountable for meeting program and customer driven requirements
  - Managed complex multi-missile event from planning, procurement, build, and execution
  - Previous success (2 for 2) supporting Tango POP2/3 event in Yuma, AZ Aug 2017
  - Management recognition for rapid resolution of critical hardware failure of AUR during PFCT in Redstone

#### OCEANEERING ENTERTAINMENT SYSTEMS

#### Systems Engineer / Project Engineer

Portfolio-level Lead Systems Engineer for multiple tracked/trackless ride vehicle systems in major theme parks across the country

- Revolutionary trackless ride vehicle system for a major US theme park
  - o Responsible for material procurement, inspection, manufacturing, qualification testing and installation activities in Anaheim, CA
  - Functional management for a team of 15+ engineers and technicians
- Process Improvement
  - Established organization-wide processes for requirements traceability and verification/validation, based in CRADLE database management tool
  - Developed Integrated Master Schedules for build and test phases

#### **DRS TECHNOLOGIES, C4ISR**

#### Senior Electro-Optical Systems Engineer / Project Engineer

Led / collaborated on several infrared weapons development projects

- Ground Combat Vehicle (GCV) gimbal mounted electro-optic FLIR sensor suite weapon system
  - Supervised multiple subcontractors for >\$20M build effort cradle to grave, defined process growth
  - o Led the systems design effort, including BDTM, requirements traceability and Earned Value (EVMS)
  - o Defined requirements and test procedures for the engineering design and build of prototype hardware
  - o 2014 and 2013 Northrop Grumman Supplier Excellence Award Team Recipient; DRS was 1 of only 24 suppliers to receive the award out of 5,000+ candidates
  - Led the ITAR/EAR compliance management for international imports/exports
  - o Primary Test Director/Safety liaison for live-fire demonstrations for multi-star General
  - Integration and Test lead for weapon platform first article validation
- Joint Effects Targeting System (JETS) Tech Development phase, Laser Marker Module

#### Orlando, FL

#### 04/2015 - 03/2017

#### Melbourne, FL

#### 09/2011-04/2015

Orlando, FL

03/2017 - 09/2018 Key

- Managed cross-functional team to meet extremely aggressive SWAP (Size, Weight and Power) requirements goals, while staying within Design to Cost objectives
- Enhanced Long-Range Advanced Scout Surveillance Suite (eLRAS3)
  - Led prototype build for rapid delivery with minimal staff support and cost constraints
- Live-fire TOW/ITAS missile FLIR data collection
  - o Performed LWIR/MWIR high-speed measurements at Redstone Arsenal, AL with live munitions
- Engineering Security / Laser Safety
  - Assisted FSO to properly receive, process and send classified documents (SAFE/AMRDEC)
  - o Instituted a new laser safety program to cover all of manufacturing and engineering facilities

#### NORTHROP GRUMMAN LASER SYSTEMS

#### Laser Design Engineer / Laser Safety Officer

- Responsible for the build, integration and test of the initial Nd:YAG based Multi-Function Laser designator/rangefinder/MILES prototype laser systems for the FCS contract
- Responsible for the design, build, integration and test for an upgrade program on the M1-Abrams Battle Tank multiwavelength laser system
- Use of ZEMAX non-sequential to predict boresight over temperature shifts of a multi-wavelength system
- Performed integration and test of a compact ring Optical Parametric Oscillator cavity (OPO) into various ground-based tactical systems
- Performed optical metrology tests on various laser cavity components, including use of a ZYGO interferometer
- Managed and improved a Class 10K cleanroom; responsible for all labs within the Engineering department (two campus locations, >40 labs)
- Performed stray light testing on the various man-portable laser systems
- Laser safety responsibilities required interactions with various government entities (DOH, FDA, CDRH & LCH)

#### **Optical Systems Test Engineer**

- Responsible for the optical qualification of the LLDR-II diode pumped laser designator/rangefinder
- Measured various optical parameters over temperature (energy, pulse width, pre-lase threshold, boresight)
- Constructed and maintained an optical test bench setup used to qualify several production lasers

#### L-3 Harris ALST

#### **Optical Engineer**

- Developed and modified existing models to predict system range performance, system pointing error and range accuracy to validate performance against levied and derived system specifications
- Led and served on laser development teams for new Nd:YAG and Er:Glass based electro-optic systems using passive and active E/O Q-switches, both diode and flashlamp pumped through design, specification, procurement, build, and verification phases including test and boresight verification in thermal and vibration environments for military systems

#### **EDUCATION**

Master in Business Administration (International Business & Management) Rollins College, Crummer School of Business

Bachelor of Science in Electrical Engineering Technology – Photonics University of Central Florida

#### CLEARANCE

**DOD Secret-level security clearance** 

#### 11/2007 - 01/2009

#### Orlando, FL

#### 01/2006 - 11/2007

Spring 2011

Winter Park, FL

Orlando, FL

Apopka, FL 01/2009 - 09/2011

Fall 2005

## **F. 2.**

# The presentation for this item will be sent at a later date.

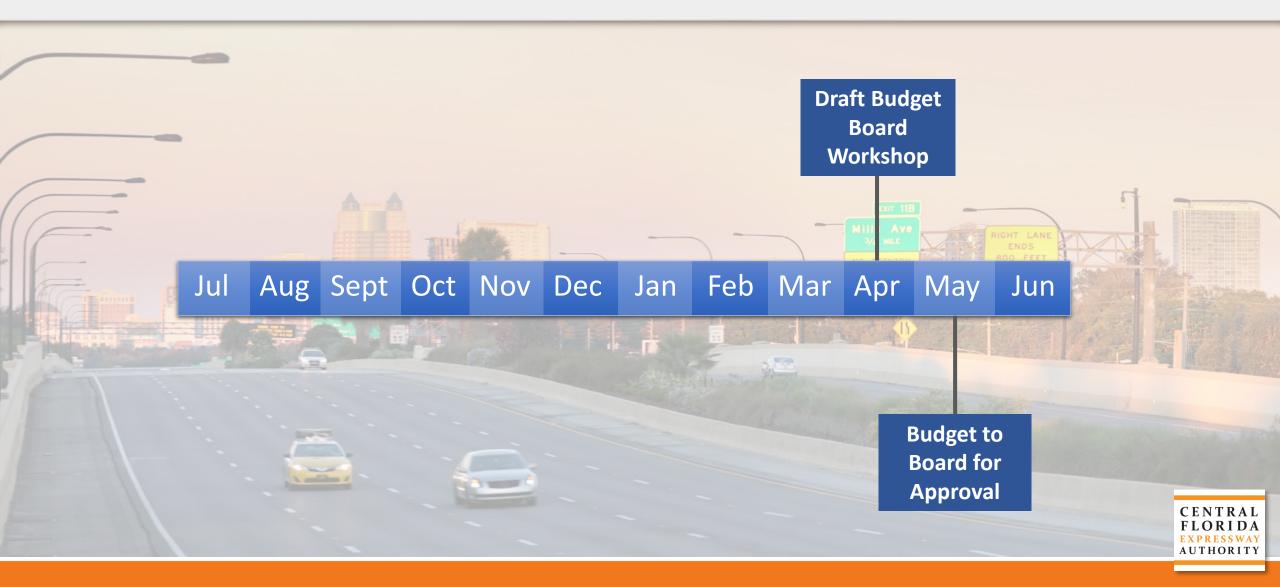
## **F. 3**.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

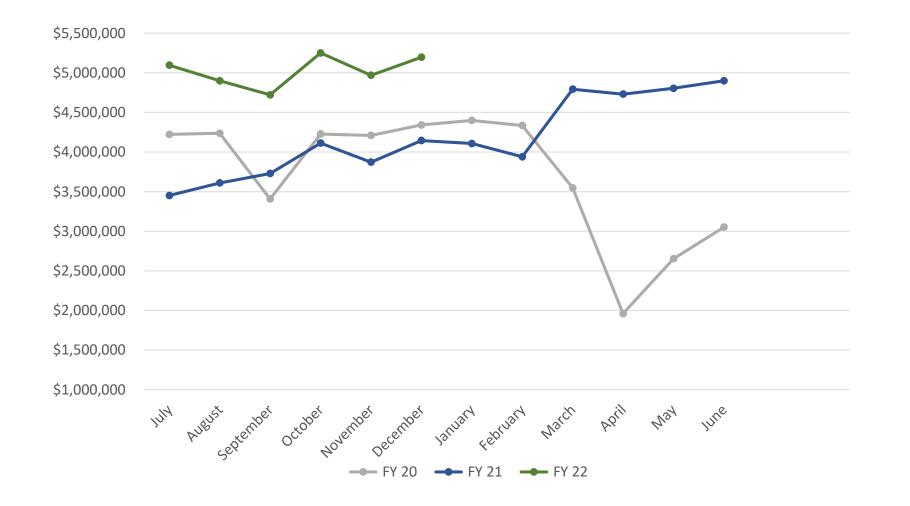
**FY 2022 MID-YEAR BUDGET REVIEW** Michael Carlisle, Director of Accounting and Finance

- February 10, 2022 -

### Fiscal Year Budget Cycle (July – June)



### **Toll Revenue**





### Budget vs Actual **REVENUES**

	<u>FY 2022</u> <u>Year-to-</u> <u>Date</u> <u>Budget</u>	<u>FY 2022</u> <u>Year-to-</u> <u>Date</u> <u>Actual</u>	<u>FY 2022</u> <u>Year-to-</u> <u>Date</u> <u>Variance</u>
Tolls	\$255,056,922	\$301,341,455	18%
Fees	2,550,233	2,640,032	4%
Transponder Sales	456,802	1,021,235	124%
Other Operating	669,300	818,029	22%
Interest	1,180,227	912,515	-23%
Miscellaneous	380,725	404,473	6%
TOTAL REVENUES	\$260,294,209	\$307,137,739	18%



\*As of 12.31.2021

### Budget vs Actual **EXPENSES**

	<u>FY 2022</u> <u>Year-to-</u> <u>Date</u> <u>Budget</u>	<u>FY 2022</u> <u>Year-to-</u> <u>Date</u> <u>Actual</u>	<u>FY 2022</u> <u>Year-to-</u> <u>Date</u> <u>Variance</u>
Operations	\$30,853,739	\$30,011,200	3%
Maintenance	5,753,039	5,366,206	7%
Administration	4,284,255	3,955,427	8%
Other Operating	834,728	824,040	1%
TOTAL OM&A Expenses	\$41,725,761	\$40,156,873	4%
Work Plan Expenses	\$577,207,000	\$151,073,863	26%



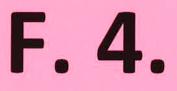
\*As of 12.31.2021

### **Debt Service Ratio**

- Budgeted Fiscal Year 2022 2.12
- Projected Fiscal Year 2022 End 2.33
- Planning Target 1.60
- Board Policy 1.45
- Bond Covenants 1.20





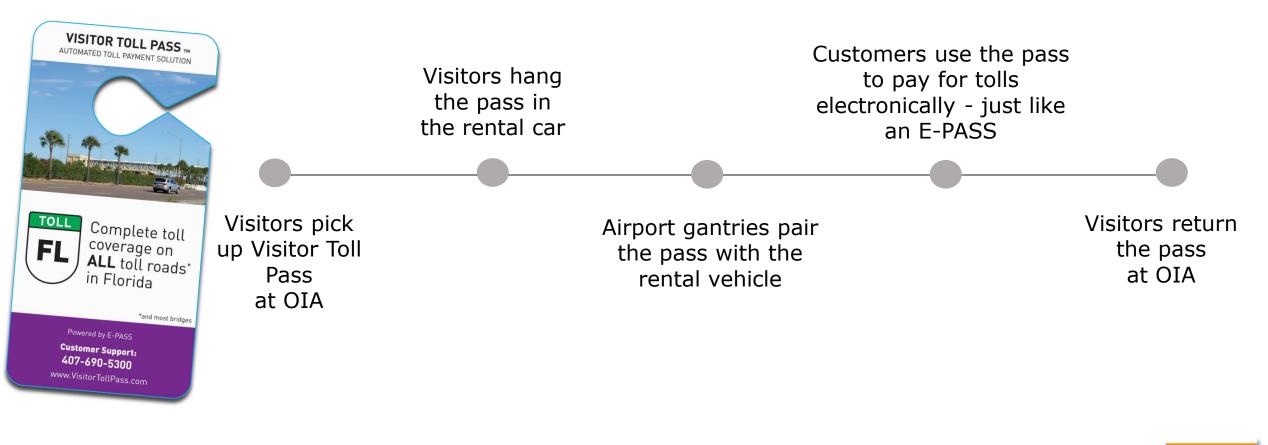




# VISITOR TOLL PASS<sup>TM</sup>

Jim Greer, Chief of Technology and Operations -February 10, 2022CENTRAL FLORIDA EXPRESSWAY AUTHORITY

### **Visitor Toll Pass Program First of Its Kind**





#### **VTP Saves Rental Car Customers 80% or More on Tolls**

Rental Car Company	Tolling Fees*
Advantage	\$9.99 per day
Alamo	\$3.95 per day + tolls
Avis	\$5.95 per usage day + tolls
Budget	\$5.95 per usage day + tolls
Enterprise	\$3.95 per usage day + tolls
Hertz	\$4.95 + tolls
National	\$3.95 per usage day + tolls
Payless	\$6.95 per usage day + tolls
Visitor Toll Pass	<b>\$0 + Discounted Tolls</b>

 $\checkmark$  Free to use

- $\checkmark$  Pay the lowest toll rate
- ✓ Works on all FL toll roads
- ✓ Nonstop toll travel
- ✓ Works in all rental cars

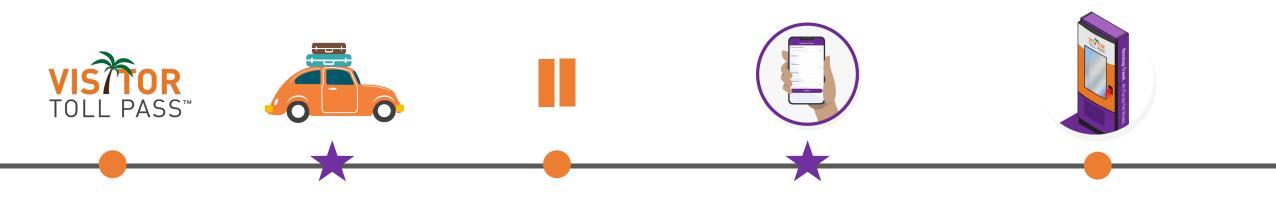


## 27,000 Visitors Participated In The Pilot

- **97%** said the airport pick-up process was smooth
- **78%** said the drop boxes were easy to locate
- **99%** said they would recommend Visitor Toll Pass to other visitors



#### **CFX Took Advantage of Paused Travel to Develop Technology to Scale Program**



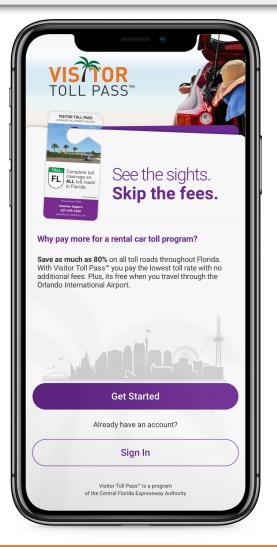
May 2019 Pilot Launched 27,000+ travelers utilized VTP in first months

Mar 2020 Program temporarily paused due to COVID-19 impact Mobile app developed to streamline customer process

June 2021 Mobile app released and program returns to OIA



#### Visitor Toll Pass Mobile App Makes Reservations and Trip Management Easier



✓ Make Visitor Toll Pass reservations
 ✓ Manage trip details
 ✓ Manage toll payment information
 ✓ Monitor toll activity in real-time
 ✓ Seamless pick-up at OIA



CENTRAL FLORIDA

HORITY

#### Visitor Toll Pass Vending Machine Makes Airport Pick Up Seamless



- ✓ Syncs with Visitor Toll Pass app
- ✓ Automates pick-up to help reduce staff burden
- ✓ Located in Terminal A of OIA





# The Customer Experience

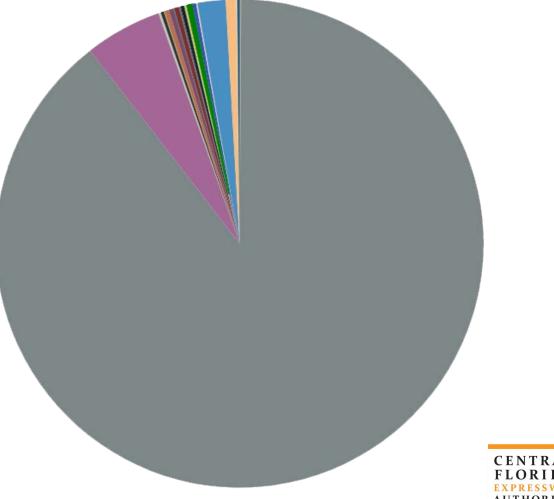


### 12,900+ Customers since June 2021

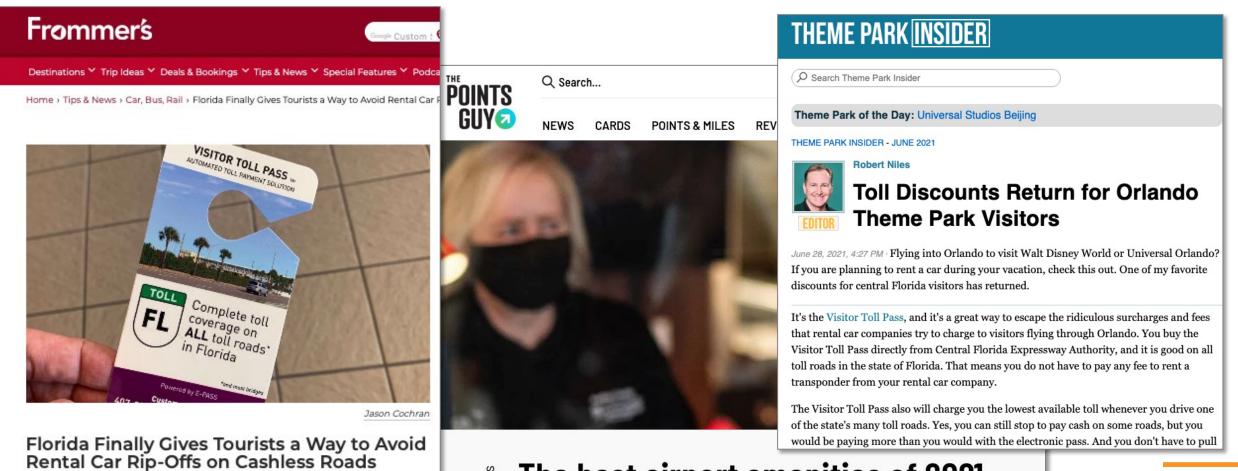
Visitors from over **60 countries** served worldwide

Top 3 rental car agencies: Budget Avis Alamo





#### Visitor Toll Pass Receives Strong Reviews from Top Travel Blogs



The best airport amenities of 2021

CENTRAL FLORIDA

THORITY

### **Customer Feedback**

"Saves a ton of money! Wish I knew about this sooner!"

"We were very happy with this experience! The pick up process was easy and usage worked perfectly."

"As someone who visits Orlando a couple of times a year, I am so excited about this program and hope it expands throughout the rest of the state... and soon!"









