

## Appendix B

This is an amendment to the Construction Agreement No. 2023-C-190-00002 (“Agreement”) made and entered into between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (“DEPARTMENT”) and POLK COUNTY, a political subdivision of the State of Florida, (“Construction Coordinator”) with an effective date of \_\_\_\_\_ 2024. The DEPARTMENT and the Construction Coordinator may be referred to individually as a “Party” and collectively as the “Parties”.

Pursuant to the requirements of Paragraph 31 of the Construction Agreement (the “Agreement”), the Parties have agreed to modify the Agreement as follows:

The following clause replaces Paragraph 32 of the Agreement in its entirety:

32. To the extent provided by law, Construction Coordinator shall indemnify, defend, and hold harmless the Department against any actions, claims, liabilities, losses, costs or damages including but not limited to, reasonable attorney’s fees arising out of, relating to, or resulting from negligent, recklessness or wrongful act(s) of Construction Coordinator, or any of its officers, agents, or employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by Construction Coordinator hereunder, to the extent and within the limitations of Section 768.28, Florida Statutes. The foregoing indemnification shall not constitute a waiver of the Department’s or Construction Coordinator’s sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by Construction Coordinator to indemnify the Department for the negligent acts or omissions of the Department, its officers, agents, or employees, or for the acts of third parties. Nothing herein shall be construed as consent by Construction Coordinator to be sued by third parties in any manner arising out of this Agreement. This indemnification shall survive the termination of this Agreement.

The following numerical clauses are hereby added to the agreement:

36. Construction Coordinator agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants, or subconsultants (each referred to as “Entity” for the purposes of the below indemnification) who perform work in connection with this Agreement:

“To the extent provided by law, [ENTITY] shall indemnify, defend, and hold harmless the [Construction Coordinator] and the State of Florida, Department of Transportation, including the Department’s officers, agents, and employees, against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of [ENTITY], or any of its officers, agents, or employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by [ENTITY].

The foregoing indemnification shall not constitute a waiver of the Department’s or [Construction Coordinator]’s sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28. Nor shall

the same be construed to constitute agreement by [ENTITY] to indemnify [Construction Coordinator] for the negligent acts or omissions of [Construction Coordinator], its officers, agents, or employees, or third parties. Nor shall the same be construed to constitute agreement by [ENTITY] to indemnify the Department for the negligent acts or omissions of the Department, its officers, agents, or employees, or third parties. This indemnification shall survive the termination of this Agreement.”

37. The Construction Coordinator shall, or cause its contractor or consultant to carry and keep in force, during the term of this Agreement, a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording general liability insurance shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy for the services to be rendered in accordance with this Agreement. The Construction Coordinator shall also or cause its contractor or consultant to carry and keep in force Workers’ Compensation Insurance as required by the State of Florida under the Workers’ Compensation Law. With respect to any general liability insurance policy required pursuant to this Agreement, all such policies shall be issued by companies licensed to do business in the State of Florida. The Construction Coordinator shall provide the Department certificates showing the required coverage to be in effect with endorsements showing the Department to be an additional insured prior to commencing any work under this Agreement. Policies that include Self Insured Retention will not be accepted. The certificates and policies shall provide that in the event of any material change in or cancellation of the policies reflecting the required coverage, thirty days advance notice shall be given to the Department or as provided in accordance with Florida law.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement by their duly authorized representatives on the date above written.

**POLK COUNTY**

a political subdivision of the State of Florida

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

Title: \_\_\_\_\_

**ATTEST**

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

CORPORATE SEAL

Title: \_\_\_\_\_

APPROVED AS TO FORM

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**STATE OF FLORIDA**

**DEPARTMENT OF TRANSPORTATION**

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

Title: \_\_\_\_\_

LEGAL REVIEW

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Approved as to Form