

Construction Agreement No.: 2023-C-190-00002

THIS CONSTRUCTION AGREEMENT (“Agreement”) is made and entered into by and between the State of Florida, Department of Transportation, 801 N Broadway Ave, Bartow, FL 33830 (hereinafter referred to as the “DEPARTMENT”) and Polk County, a political subdivision of the State of Florida 30000 Sheffield Road, Winter Haven, FL 33880 (hereinafter referred to as the “Construction Coordinator”).

WITNESSETH:

WHEREAS, the DEPARTMENT is authorized and required by Section 334.044, Florida Statutes, to coordinate the planning, development, and operation of the State Highway System; and

WHEREAS, pursuant to Section 20.23(6), Florida Statutes, the DEPARTMENT is authorized to contract with local governmental entities and with the private sector under specific circumstances; and

WHEREAS, Section 339.282, Florida Statutes, provides incentives to private sector entities that finance, construct, and improve public transportation facilities; and

WHEREAS, pursuant to Section 334.175(2), Florida Statutes, the DEPARTMENT is required to review the Project's design plans for compliance with Department design standards; and

WHEREAS, the Construction Coordinator proposes to construct certain improvements to SR 25 Section 180 Subsection _____ from Begin MP 27.688 to End MP 27.688 Local Name _____ located in Polk County (hereinafter referred to as the “Project”); and

WHEREAS, the parties desire to enter into this Agreement for the Construction Coordinator to make improvements within the DEPARTMENT'S right of way to construct the Project, which will become the property of the DEPARTMENT upon acceptance of the work.

NOW, THEREFORE, based on the premises above, and in consideration of the mutual covenants contained herein, the parties hereby agree that the construction of the Project shall proceed in accordance with the following terms and conditions:

1. The recitals set forth above are specifically incorporated herein by reference and made a part of this Agreement. The Construction Coordinator is authorized, subject to the conditions set forth herein, to enter the DEPARTMENT'S right of way to perform all activities necessary for the construction of _____. **See attached Exhibit A Scope of Services/Special Provisions.**
2. The Project shall be designed and constructed in accordance with the latest edition of the Florida Department of Transportation (FDOT) Standard Specifications for Road and Bridge Construction (“FDOT Standard Specifications”), FDOT Standard Plans and FHWA Manual on Uniform Traffic Control Devices (“MUTCD”). The following guidelines shall apply as deemed appropriate by the DEPARTMENT: the FDOT Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, the FDOT Design Manual, Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (commonly known as the “Florida Greenbook”) and the FDOT Traffic Engineering Manual. The Construction Coordinator will be required to submit any construction plans required by the DEPARTMENT for review and written approval prior to any work being commenced. Should any changes to the plans be required during construction of the Project, the Construction Coordinator shall be required to notify the DEPARTMENT of the changes and receive written approval from the DEPARTMENT prior to the changes being constructed. The Construction Coordinator shall maintain the area of the Project at all times and coordinate any work needs of the DEPARTMENT during construction of the Project.
3. In its sole discretion, the DEPARTMENT may reject designs which do not meet DEPARTMENT standards. The DEPARTMENT may also, in its sole discretion, allocate DEPARTMENT-managed resources, including structures engineers and/or project managers, to projects involving complex design structures and other design structures not commonly used by the DEPARTMENT. In addition, all complex bridges and bridge types not commonly used by the DEPARTMENT constructed via this Agreement will be monitored and inspected by DEPARTMENT personnel.
4. The Construction Coordinator shall provide the DEPARTMENT a minimum of 2 business days' notice before beginning construction within DEPARTMENT right of way. The Construction Coordinator shall notify the DEPARTMENT should construction be suspended for more than 5 working days.
5. Pursuant to Section 7-13 of the FDOT Standard Specifications, the Construction Coordinator is required to possess a general liability insurance naming the DEPARTMENT as an additional insured and insuring the DEPARTMENT and the Construction Coordinator against any and all claims for injury or damage to persons and property, and for the loss of life or property that may occur (directly or indirectly) by reason of the Construction Coordinator accessing DEPARTMENT right of way and the Construction Coordinator's performance of the Project. Such amount shall be carried in a minimum amount of not less than zero and 00/100 Dollars (\$ 0.00) for bodily injury or death to any one person or any number of persons in any one occurrence, and not less than zero and 00/100 Dollars (\$ 0.00) for property damage, or a combined coverage of not less than zero and 00/100 Dollars (\$ 0.00). Additionally, the Construction Coordinator shall supply the DEPARTMENT with a payment and performance bond in the amount of the estimated cost of construction, provided by a surety authorized to do business in the State of Florida, payable to the DEPARTMENT. The bond and insurance shall remain in effect until completion of construction and acceptance by the DEPARTMENT. Prior to commencement of the Project and on such other occasions as the DEPARTMENT may reasonably require, the Construction Coordinator shall provide

the DEPARTMENT with certificates documenting that the required insurance coverage is in place and effective. If the Construction Coordinator is a governmental entity, they will be exempt from these requirements.

6. The Construction Coordinator shall be responsible for monitoring construction operations and Temporary Traffic Control (TTC) throughout the course of the Project in accordance with the latest edition of the FDOT Standard Specifications, Section 102, Maintenance of Traffic, and FDOT Standard Plans, 102-600 series. The Construction Coordinator is responsible for the development of a TTC Plan and making any changes to that plan as necessary. Any TTC plan developed by the Construction Coordinator that deviates from the FDOT Standard Plans must be signed and sealed by a professional engineer. TTC plans will require written approval by the DEPARTMENT prior to implementation.
7. The Construction Coordinator shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations are accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility.
8. The Construction Coordinator will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.
9. The Construction Coordinator shall take emergency steps to close any public road whenever there is a risk to life, health and safety of the travelling public. The safety of the travelling public is the DEPARTMENT'S first priority. If lane or road closures are required to ensure the life, health, and safety of the travelling public, the Construction Coordinator must notify the District Maintenance Engineer and District Traffic Operations Engineer immediately once the travelling public are not at imminent risk. The DEPARTMENT expects professional engineering judgement be applied in all aspects of locally or privately delivered projects. Defect management and supervision of Project bridge structures components must be proactively managed, monitored, and inspected by DEPARTMENT prequalified structures engineer(s). The District Maintenance Engineer must be notified immediately of defect monitoring that occurs in the Project construction, whether or not the defects are considered an imminent risk to life, health, or safety of the travelling public. When defects, including but not limited to, structural cracks, are initially detected during bridge construction, the engineer of record, construction engineering inspector, design-build firm, or local agency that owns or is responsible for the bridge construction has the authority to immediately close the bridge to construction personnel and close the road underneath. The Construction Coordinator shall also ensure compliance with the DEPARTMENT Construction Project Administration Manual, Section 9.1.8 regarding actions for maintenance of traffic and safety concerns.
10. It is hereby agreed by the parties that this Agreement creates a permissive use only and all improvements resulting from this agreement shall become the property of the DEPARTMENT. Neither the granting of the permission to use the DEPARTMENT right of way nor the placing of facilities upon the DEPARTMENT property shall operate to create or vest any property right to or in the Construction Coordinator, except as may otherwise be provided in separate agreements. The Construction Coordinator shall not acquire any right, title, interest, or estate in DEPARTMENT right of way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Construction Coordinator's use, occupancy, or possession of DEPARTMENT right of way. The parties agree that this Agreement does not, and shall not be construed to, grant credit for any future transportation concurrency requirements pursuant to Chapter 163, Florida Statutes.
11. The Construction Coordinator shall perform all required testing associated with the design and construction of the Project. Testing results shall be made available to the DEPARTMENT upon request. The DEPARTMENT shall have the right to perform its own independent testing during the course of the Project.
12. The Construction Coordinator shall exercise the rights granted herein and shall otherwise perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards, and permits, as the same may be constituted and amended from time to time, including, but not limited to, those of the DEPARTMENT, applicable Water Management District, Florida Department of Environmental Protection, Environmental Protection Agency, the Army Corps of Engineers, the United States Coast Guard, and local governmental entities.
13. The Construction Coordinator is responsible for the provision of Construction Engineering Inspection (CEI) services. The DEPARTMENT reserves the right to require the Construction Coordinator to hire a DEPARTMENT pre-qualified consultant firm that includes one individual that has completed the Advanced Maintenance of Traffic Level Training. Notwithstanding any provision of law to the contrary, design services and CEI services may not be performed by the same entity. Administration of the CEI staff shall be under the responsible charge of a State of Florida Licensed Professional Engineer who shall provide the certification that all design and construction for the Project meets the minimum construction standards established by DEPARTMENT. The DEPARTMENT shall have the right to approve the CEI firm. The DEPARTMENT shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the Project. Subject to the written approval of the DEPARTMENT, a local government agency may choose to satisfy the requirements set forth in this paragraph by either hiring a DEPARTMENT prequalified consultant firm or utilizing local government staff that meet the requirements of this paragraph, or a combination thereof.
14. If the DEPARTMENT determines a condition exists which threatens the public's safety, the DEPARTMENT may, at its discretion, cause construction operations to cease and immediately have any potential hazards removed from its right of way at the sole cost, expense, and effort of the Construction Coordinator. The Construction Coordinator shall bear all construction delay costs incurred by the DEPARTMENT.
15. All work and construction shall be completed within 365 days of the date of the last signature affixed to this agreement. If construction is not completed within this time, the DEPARTMENT may make a claim on the bond. The DEPARTMENT may terminate this

Agreement at any time, with or without cause and without DEPARTMENT liability to the Construction Coordinator, by providing sixty (60) days' prior written notice of termination to the Construction Coordinator.

16. The Construction Coordinator shall be responsible for maintaining and restoring all features that might require relocation within the DEPARTMENT right of way.
17. The Construction Coordinator will be responsible for clean up or restoration required to correct any environmental or health hazards that may result from construction operations.
18. Upon completion of construction, the Construction Coordinator will be required to submit to the DEPARTMENT final as-built plans and an engineering certification that construction was completed in accordance with the Plans. Prior to the termination of this Agreement, the Construction Coordinator shall remove its presence, including, but not limited to, all of the Construction Coordinator's property, machinery, and equipment from DEPARTMENT right of way and shall restore those portions of DEPARTMENT right of way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project.
19. If the DEPARTMENT determines that the Project is not completed in accordance with the Provisions of this Agreement, the DEPARTMENT shall deliver written notification of such to the Construction Coordinator. The Construction Coordinator shall have thirty (30) days from the date of receipt of the DEPARTMENT'S written notice, or such other time as the Construction Coordinator and the DEPARTMENT mutually agree to in writing, to complete the Project and provide the DEPARTMENT with written notice of the same (the "Notice of Completion"). If the Construction Coordinator fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the DEPARTMENT, within its discretion may: 1) provide the Construction Coordinator with written authorization granting such additional time as the DEPARTMENT deems appropriate to correct the deficiency(ies); or 2) file a claim against the payment and performance bond with the Surety for correction of the deficiency(ies) and completion of the contract; or 3) correct the deficiency(ies) at the Construction Coordinator's sole cost and expense, without DEPARTMENT liability to the Construction Coordinator for any resulting loss or damage to property, including, but not limited to, machinery and equipment. If the DEPARTMENT elects to correct the deficiency(ies), the DEPARTMENT shall provide the Construction Coordinator with an invoice for the costs incurred by the DEPARTMENT and the Construction Coordinator shall pay the invoice within thirty (30) days of the date of the invoice. If no payment is received within thirty (30) days from date of invoice submittal, the DEPARTMENT will file a claim against the bond for all expenses incurred, including services incidental to collecting losses.
20. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the DEPARTMENT'S sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes. The DEPARTMENT'S liability for breach of this Agreement is limited in amount and shall not exceed the limitations of liability for tort actions as set forth in Section 768.28(5), Florida Statutes.
21. All formal notices, proposed changes and determinations between the parties hereto and those required by this Agreement, including, but not limited to, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States mail, postage prepaid, to the parties at the contact information listed below. Electronic means of communication shall be sufficient if emailed to the parties at the contact information listed below.
22. The Construction Coordinator shall not cause any liens or encumbrances to attach to any portion of DEPARTMENT right of way.
23. This Agreement shall be governed by the laws of the State of Florida in terms of interpretation and performance. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.
24. The Construction Coordinator may not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the DEPARTMENT'S District Secretary or his/her designee. The DEPARTMENT has the sole discretion and authority to grant or deny proposed assignments, with or without cause. Nothing herein shall prevent the Construction Coordinator from delegating its duties hereunder, but such delegation shall not release the Construction Coordinator from its obligation to perform this Agreement.
25. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations, or remedies upon any other person or entity except as expressly provided for herein.
26. This instrument, together with the attached exhibits and documents made part hereof by reference, contain the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of this Agreement, and any part hereof, are waived, merged herein and superseded hereby.
27. By their signature below, the parties hereby acknowledge the receipt, adequacy and sufficiency of consideration provided in this Agreement and forever waive the right to object to or otherwise challenge the same.
28. The failure of either party to insist on one or more occasions on the strict performance or compliance with any term or provision of this Agreement shall not be deemed a waiver or relinquishment in the future of the enforcement thereof, and it shall continue in full force and effect unless waived or relinquished in writing by the party seeking to enforce the same.
29. No term or provision of this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.
30. If any section, paragraph, clause or provision of this Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of this Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principal purposes of this Agreement remain enforceable.
31. A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement. Modifications to the Agreement shall be included in Appendix B.

32. The Construction Coordinator agrees to promptly indemnify, defend, save and hold harmless the DEPARTMENT and all of its officers, agents and employees from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, penalties, costs, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, or arising out of or related to the performance or breach of this Agreement by the Construction Coordinator, including, without limitation, performance of the Project within the DEPARTMENT'S right of way. The term "liabilities" shall specifically include, without limitation, any act, action, neglect or omission by the Construction Coordinator, its officers, agents, employees or representatives in any way pertaining to this Agreement, whether direct or indirect, except that neither the Construction Coordinator nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages directly caused or resulting from the sole negligence, intentional or wrongful acts of the DEPARTMENT or any of its officers, agents or employees. The Construction Coordinator shall notify the DEPARTMENT in writing immediately upon becoming aware of such liabilities. The Construction Coordinator's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph. The indemnities assumed by the Construction Coordinator shall survive termination of this Agreement. The insurance coverage and limits required in this Agreement may or may not be adequate to protect the DEPARTMENT and such insurance coverage shall not be deemed a limitation on the Construction Coordinator's liability under the indemnities granted to the DEPARTMENT in this Agreement.
33. The Construction Coordinator 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 Construction Coordinator during the term of the contract; and
34. The Construction Coordinator 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.
35. The Construction Coordinator shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Construction Coordinator in conjunction with this Agreement. Specifically, if the Construction Coordinator is acting on behalf of a public agency the Construction Coordinator shall:
 - A. Keep and maintain public records that ordinarily and necessarily would be required by the DEPARTMENT in order to perform the services being performed by the Construction Coordinator.
 - B. Provide the public with access to public records on the same terms and conditions that the DEPARTMENT would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
 - C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
 - D. Meet all requirements for retaining public records and transfer, at no cost, to the DEPARTMENT all public records in possession of the Construction Coordinator upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the DEPARTMENT in a format that is compatible with the information technology systems of the DEPARTMENT. Failure by the Construction Coordinator to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the DEPARTMENT. The Construction Coordinator shall promptly provide the DEPARTMENT with a copy of any request to inspect or copy public records in possession of the Construction Coordinator and shall promptly provide the DEPARTMENT a copy of the Construction Coordinator's response to each such request.

IF THE CONSTRUCTION COORDINATOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSTRUCTION COORDINATOR'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, FL 32399-0458

CONSTRUCTION COORDINATOR CONTACT INFORMATION:

Name Bill Braswell Title Board of County Commissioner & Chairman
Office No. 863-534-6050 Cell _____ Email billbraswell@polk-county.net
Address _____ W. _____ Church _____ St. _____ Bartow _____ FL
33830

DEPARTMENT CONTACT INFORMATION:

Name Kristen Etheridge Title Maintenance Manager - Permits
Office No. 863-519-4318 Cell 863-370-3187 Email kristen.etheridge@dot.state.fl.us
Address 2740 SR60 West, Bartow, FL 33830

IN WITNESS WHEREOF, Construction Coordinator and the DEPARTMENT have executed this Agreement for the purposes herein expressed on the dates indicated below.

CONSTRUCTION COORDINATOR

By: _____ (Signature)
Bill Braswell (Print Name)
Board of County Commissioner & Chairman (Title)

(Date)

DEPARTMENT OF TRANSPORTATION

By: _____ (Signature)
Amarilys Alfonso-Perez (Print Name)
District Maintenance Engineer (Title)

(Date)

Legal Review:
