

**AGREEMENT
BETWEEN DEPARTMENT AND CONTRACTOR
FOR CONSTRUCTION CONTRACT**

Contract No.:	_____
F.E.I.D. No:	<u>423446-9-52-04</u>
Appropriation No.:	<u>HB5001 1934B</u>
Procurement No:	<u>RFP-DOT-12-13-5007-CUL</u>
D.M.S. Catalog Class No.:	<u>973-160</u>

BY THIS AGREEMENT, effective as of the _____ day of _____ 20____, the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter called "Department") and _____, (hereinafter called "Contractor"), of _____, authorized to do business in the State of Florida, agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Phase 2 South Culverts Construction – MP A810.8 and MP A810.9.

ARTICLE 2 – THE PROJECT

The Project for which the Work under the Contract Documents may be the whole or only a part is generally identified by the Department as Project Financial Number 423446-9-52-04.

ARTICLE 3 – CONTRACT TIMES

3.01 *Time of the Essence*

- A. Time is of the essence to each and every obligation under this Agreement.

3.02 *Days to Achieve Completion of Work*

- A. The Work will be completed within **100** calendar days after the date when the Contract Time commences to run. It is understood and agreed that the date on which calendar days will begin to be charged to the project shall be either (1) the 30 calendar days from the date of issuance of the initial notice to begin work, or (2) the date on which the Contractor actually begins work, whichever date is the earlier.

3.03 *Liquidated Damages*

- A. Contractor and Department recognize that time is of the essence as stated in Paragraph 3.01 above and that Department will suffer financial loss if the Work is not

completed within the time specified in Paragraph 3.02 above, plus any extensions thereof allowed in accordance with Subarticle 8-7.3 of the Specifications. The parties also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by Department if the Work is not completed on time. Accordingly, instead of requiring any such proof, Department and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Department for each calendar day that expires after the time specified in Paragraph 3.02 above, plus any extensions thereof allowed in accordance with Subarticle 8-7.3 of the Specifications until the work is complete, the dollar amount as specified in Subarticle 8-10.2 of the Specifications .

ARTICLE 4 – CONTRACT PRICE

4.01 Department shall pay Contractor the Contract Price of \$_____, for completion of the Work—in accordance with the Contract Documents as a lump sum price, payable in accordance with the Specifications.

ARTICLE 5 – CONTRACT DOCUMENTS

5.01 *Contents*

A. The Contract Documents which comprise the entire agreement between Department and Contractor concerning the Work and which are incorporated herein by this reference consist of the following:

1. This Agreement.
2. Specifications.
3. The PUR 1000 conditions, which are deemed to be part of Division 1 of the Specifications.
4. Required Contract Provisions for Federal Transit Administration Federal-Aid Construction Contracts.
5. Plans.
6. Performance and Payment Bond.
7. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. All written Amendments, Supplemental Agreements, Work Orders, and other documents modifying or supplementing the Contract Documents pursuant to the Specifications.

B. There are no Contract Documents other than those listed above in this Article 5. The Contract Documents may only be amended, modified, or supplemented as provided in the Specifications.

ARTICLE 6 – MISCELLANEOUS

- 6.01 Department and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 6.02 Assignment of the Contract is addressed in Article 8-1 of the Specifications.
- 6.03 The Contractor 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 the Department's Engineer and securing the Department's prior written consent.
- 6.04 The Contractor shall 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.
- 6.05 If the Contractor is licensed by the Department of Business and Professional Regulation to perform the services herein contracted, then Section 337.162, Florida Statutes, applies as follows:
- A. If the Department has knowledge or reason to believe that any person has violated the provisions of state professional licensing laws or rules, it shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. The complaint shall be confidential.
 - B. 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 the person's employment, has knowledge to believe that any person has violated the provisions of state professional licensing laws or rules shall submit a complaint regarding 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, Florida Statutes, and the state licensing law applicable to that licensee. The complaint shall be confidential.
 - C. Any complaints submitted to the Department of Business and Professional Regulation are confidential and exempt from Section 119.07(1), Florida Statutes, pursuant to Chapter 455, Florida Statutes, and applicable state law.
- 6.06 The Contractor covenants and agrees that it and its employees and agents shall be bound by the standards of conduct provided in applicable law and applicable rules of the Board of Business and Professional Regulation as they relate to work performed under this Agreement. The Contractor further covenants and agrees that when a former state employee is employed by the Contractor, the Contractor shall require that strict adherence by the former state employee to Sections 112.313 and 112.3185, Florida Statutes, is a

condition of employment for said former state employee. These statutes will by reference be made a part of this Agreement as though set forth in full. The Contractor 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.

- 6.07 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 rely 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 Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- 6.08 An entity or affiliate 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 a public entity, and may not transact business with any public entity.
- 6.09 The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274 A (e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this agreement.
- 6.10 Pursuant to Section 216.347, Florida Statutes, the Contractor may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.
- 6.11 This Agreement involves the expenditure of federal funds and Section 946.515, Florida Statutes does not apply.
- 6.12 This Agreement will not be renewed.
- 6.13 The Contractor and its employees, agents, representatives, or 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, Contractor and its employees, agents, representatives, or 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 the Contractor or its employees, agents, representatives, or subcontractors. Contractor agrees to include this provision in all its subcontracts under this Agreement.
- 6.14 This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement

shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. The State of Florida terms and conditions, whether general or specific, shall take precedence over and supersede any inconsistent or conflicting provision in any attached terms and conditions of the Contractor.

- 6.15 It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- 6.16 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- 6.17 In any legal action related to this Agreement, instituted by either party, the Contractor 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 the county chosen by the Department and in the event that any such legal action is filed by the Contractor, the Contractor hereby consents to the transfer of venue to the county chosen by the Department upon the Department filing a motion requesting the same.

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

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Name of Contractor

By: _____
(Authorized Signature)

(Print/Type)

Title: _____

By: _____
(Authorized Signature)

(Print/Type)

Title: _____

FOR DEPARTMENT USE ONLY

APPROVED:

LEGAL APPROVAL:

Contractual Services Office
