STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION CONSTRUCTION AGREEMENT

850-040-89 MAINTENANCE 0GC - 07/13 Page 1 of 4

Construction Agreement No.: 2020-C-799-00012

THIS CONSTRUCTION AGREEMENT (this "Agreement") is made and entered into by and between the State of Florida, Department of Transportation, (Address) 5211 Ulmerton Road, Clearwater FL 33760

(hereinafter referred to as the "DEPARTMENT") and	Pinellas County, a political subdivision of the State of Florida
(Address) 315 Court Street, Clearwater FL 33756	(hereinafter referred to as the "Construction Coordinator").

WITNESSETH:

WHEREAS, the DEPARTMENT is authorized and required by Section 334.044(13), Florida Statutes, to coordinate the planning, development, and operation of the State Highway System; and

WHEREAS, pursuant to Section 339.282, Florida Statutes, the DEPARTMENT may contract with a property owner to finance, construct, and improve public transportation facilities; and

 WHEREAS, the Construction Coordinator proposes to construct certain improvements to

 SR
 SR55
 Section
 Subsection
 from Begin MP
 0
 to End MP
 0

 Local Name
 US Highway 19
 Iocated in
 Pinellas
 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 <u>See attached exhibit A scope of services/special provisions.</u>

2. The Project shall be designed and constructed in accordance with the latest edition of the DEPARTMENT'S Standard Specifications for Road and Bridge Construction and DEPARTMENT Design Standards and Manual of Uniform Traffic Control Devices ("MUTCD"). The following guidelines shall apply as deemed appropriate by the DEPARTMENT: the DEPARTMENT Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, the DEPARTMENT Plans Preparation Manual ("PPM") Manual for Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (the "Florida Green Book") and the DEPARTMENT Traffic Engineering Manual. The Construction Coordinator will be required to submit any construction plans required by the DEPARTMENT for review and 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 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. The Construction Coordinator shall notify the DEPARTMENT a minimum of 48 hours 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.

4. Pursuant to Section 7-13 of the DEPARTMENT 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

Local Government (Exempt) 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 <u>Local Government (Exempt)</u> and 00/100 Dollars (\$ 0.00) for property damage, or a combined coverage of not less than <u>Local Government (Exempt)</u> 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.

5. The Construction Coordinator shall be responsible for monitoring construction operations and the maintenance of traffic ("MOT") throughout the course of the project in accordance with the latest edition of the DEPARTMENT Standard Specifications, section 102. The Construction Coordinator is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of the DEPARTMENT Design Standards, Index 600 series. Any MOT plan developed by the Construction Coordinator that deviates from the DEPARTMENT Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the DEPARTMENT prior to implementation.

6. The Construction Coordinator shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility.

7. The Construction Coordinator will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.

8. 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.

9. 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.

10. 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.

11. 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.

12. All work and construction shall be completed within <u>9999</u> 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.

13. The Construction Coordinator shall be responsible to maintain and restore all features that might require relocation within the DEPARTMENT right of way.

14. 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.

15. 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 to 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.

16. 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) 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.

17. 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.

18. 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.

19. The Construction Coordinator shall not cause any liens or encumbrances to attach to any portion of DEPARTMENT right of way.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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 relinquished 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.

26. 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.

27. 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 principle purposes of this Agreement remain enforceable.

28. 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.

29. 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.

- 30. 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
 - (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.

31. <u>COMPLIANCE WITH LAWS</u>

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:

- (1) 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.
- (2) 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.
- (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.
- (4) 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.

2020-Ċ-799-00012 Michael Lenhart 9/9/2020

CONSTRUCTION COORDINATOR CONTACT INFORMATION

Name Pat Gerard	Title BCC Commission Chair
Office No. (727) 464-8928 ext Cell (727) 452-2679 ext	Email kjacobs@pinellascounty.org
Name Ken Jacobs	Title Division Director
Office No(727) 464-8928 ext Cell	Email kjacobs@pinellascounty.org
Mail Address 22211 US highway 19 Building 1,	Clearwater FL 33765, Clearwater, Florida 33765

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: Pat Serond	_ (Signature)
Pat Gerard	(Print Name)
Chairman, Board of County Commissioner	5 (Title)
August 11, 2020	(Date)

APPROVED AS TO FORM

By: Office of the County Attorney

ATTEST By:	KEN BURKE, CLERK	
	ATY COM	
	CAL	

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ADDENDUM TO CONSTRUCTION AGREEMENT

THIS ADDENDUM TO CONSTRUCTION AGREEMENT is a part of, and shall be read in conjunction with, State of Florida, Department of Transportation (the "DEPARTMENT") Construction Agreement No. ________ (Form 850-040-89; MAINTENANCE; OGC – 07/13), entered into between the DEPARTMENT and Pinellas County, Florida (the "County"). Execution by the parties of DEPARTMENT Construction Agreement No. ______ binds the parties to the terms of this Addendum; this Addendum is not a separate agreement and therefore no separate execution of this Addendum by the parties is required.

The following recitals and paragraphs of the Agreement are revised accordingly:

The following WHEREAS clauses are inserted below the first two (2) WHEREAS clauses:

WHEREAS, throughout DEPARTMENT Right-of-Way in Pinellas County, the DEPARTMENT operates an ITS/ATMS Conduit System consisting of a four (4) inch conduit containing three (3) innerducts reserved for fiber optic cable ("Fiber") use (the "DEPARTMENT ITS/ATMS Conduit System");

WHEREAS, the first innerduct in the DEPARTMENT ITS/ATMS Conduit System is reserved for Fiber use for the ITS/ATMS transportation system, the second innerduct is reserved for Fiber use by the DEPARTMENT, and the third innerduct is reserved for Fiber use by the County (the "County Innerduct");

WHEREAS, the County seeks to use and permit other public entities to use Fiber in the County innerduct for non-transportation uses countywide;

The third WHEREAS clause is modified as follows:

WHEREAS, the DEPARTMENT agrees to permit the County's use of the County innerduct to install fiber optic cable to be used for non-transportation purposes countywide (hereinafter, the "Project") subject to authorization by DEPARTMENT Utility Permits. This permission extends to existing as well as future fiber optic cable installed within the County Innerduct.

The fourth WHEREAS clause is modified as follows:

WHEREAS, the parties desire to enter into this Agreement for the County to make improvements within the DEPARTMENT'S Right-of-Way to construct the Project.

Paragraph 1 is revised as follows:

The recitals set forth above are specifically incorporated herein by reference and made a part of this Agreement. The County is authorized, subject to the conditions set forth herein, to enter the DEPARTMENT'S Right-of-Way to perform <u>all activities authorized by DEPARTMENT Utility Permits issued</u> <u>pursuant to Paragraph 32 of this Agreement.</u>

Paragraph 4 is deleted in its entirety.

The first sentence of Paragraph 8 is deleted.

Paragraph 12 is deleted in its entirety.

Approved 2020-C-799-00012 **Michael Lenhart** 9/9/2020

Paragraph 13 is deleted in its entirety.

The last sentence of Paragraph 15 is deleted.

Paragraph 17 is deleted and revised as follows: "Nothing herein shall be construed as a waiver of sovereign immunity or the limits set forth in F.S. Section 768.28 by either party. Further, nothing herein shall be construed as consent by either party to be sued by third parties in any manner arising out of this Agreement.

The County agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants or subconsultants, who perform work in accordance with this Agreement:

"To the extent provided by law, [ENTITY] shall indemnify, defend and hold harmless the County and the Florida Department of Transportation (the "Department"), 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 or their office or employment, in connection with the rights granted to or exercised by [ENTITY] hereunder, to the extent and within the limitations of Section 768.28, Florida Statutes."

Paragraph 21 is deleted and revised as follows: "This Construction Agreement, including both its obligations and benefits, shall pass to and be binding on the respective successors and assigns of the DEPARTMENT and the County. This Agreement may not be assigned or transferred, in whole or in part, by either party to any non-governmental entity. This Agreement is only assignable to a successor entity resulting from a merger, acquisition or consolidation by either party or an assignment to an entity under common control with, controlled by, or in control of either party.

Paragraph 29 is deleted in its entirety.

Paragraph 32 is added and provides as follows:

Prior to County installation or use of Fiber within the County Innerduct for non-transportation uses, the County shall obtain a DEPARTMENT Utility Permit authorizing such installation or use. The County may permit other public entities to install or use Fiber within the County Innerduct for non-transportation uses, so long as a separate DEPARTMENT Utility Permit is obtained authorizing such installation or use.

Paragraph 33 is added and provides as follows:

To the extent that relocation of the DEPARTMENT ITS/ATMS Conduit System within DEPARTMENT Right-of-Way is required, the DEPARTMENT shall be responsible for relocating the DEPARTMENT ITS/ATMS Conduit System, except for any Fiber within the County Innerduct used for non-transportation uses, which the County shall be responsible for relocating. The DEPARTMENT understands that the County may need to connect a separate conduit system to the DEPARTMENT ITS/ATMS Conduit System in order to facilitate non-transportation uses authorized herein. To the extent that relocation of any such conduit systems within the DEPARTMENT Right-of-Way is required, the County shall be responsible for relocating such conduit systems.



Paragraph 34 is added and provides as follows:

This Agreement shall remain in full force and effect until such time as either the DEPARTMENT or the County desire to terminate it. If either party requires termination of the Agreement, it shall provide one hundred eighty (180) days written notice of termination. Upon termination of this Agreement, all DEPARTMENT Utility Permits issued under its authority shall terminate as well. The DEPARTMENT and the County shall cooperate with the other to ensure the safe and orderly removal of fiber optic from the County innerduct.

Paragraph 35 is added and provides as follows:

This Agreement is not a general obligation of the County. The County is under no obligation to appropriate or make monies available beyond the fiscal year in which this Agreement is executed and no liability shall be incurred by the County beyond the monies budgeted and available. In the event funds are not appropriated by the County, the County shall promptly notify the Department in writing and such notice may include a provision terminating this Agreement in accordance with paragraph 34 herein without liability or penalty to the County.

In the event this Agreement is for services in excess of \$25,000.00 and a term for a period of more than one (1) year, the provisions of Section 339.135(6)(a), F.S. are 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 one (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; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year.

County Notice Information is provided under the "CONSTRUCTION COORDINATOR CONTACT INFORMATION" Section in the Agreement as follows:

Ken Jacobs Pinellas County Transportation Division Director Pinellas County Public Works Department 22211 U.S. Highway 19 N. Building #1, Clearwater, FL 33765 727-464-8928 <u>kjacobs@pinellascounty.org</u>

The County may designate alternative notice information at any time by providing written notice of same to the DEPARTMENT.

Approved 2020-C-799-00012 Michael Lenhart 9/9/2020 DEPARTMENT Notice Information for this Agreement is as follows:

Michael Lenhart FDOT Pinellas Operations Program Enginner FDOT Pinellas Operations 5211 Ulmerton Road Clearwater, FL 33760 727-575-8300 <u>Michael.Lenhart@dot.state.fl.us</u>

The DEPARTMENT may designate alternative notice information at any time by providing written notice of same to the County.

[End of this Addendum.]

Approved 2020-C-799-00012 Michael Lenhart 9/9/2020

