

**Lee County Board Of County Commissioners  
Agenda Item Summary**

**Blue Sheet No. 20070635**

**1. ACTION REQUESTED/PURPOSE:** Approve the Airspace Agreement and attached Addendum with the Florida Department of Transportation for Estero Parkway. Also approve authorizing resolution for Chairman to execute the agreement.

**2. FUNDING SOURCE:** No funds required.

**3. WHAT ACTION ACCOMPLISHES:** Allows County to proceed with construction of Estero Parkway over the Interstate.

**4. MANAGEMENT RECOMMENDATION:** Approve

**5. Departmental Category:** 09 CQC

**6. Meeting Date:** MAY 01 2007

**7. Agenda:**

- Consent
- Administrative
- Appeals
- Public
- Walk-On

**8. Requirement/Purpose:** (specify)

- Statute
- Ordinance
- Admin. Code
- Other

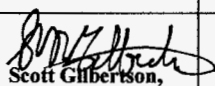
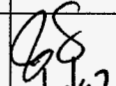


**9. Request Initiated:**

Commissioner \_\_\_\_\_  
 Department Transportation  
 Division \_\_\_\_\_  
 By: Scott M. Gilbertson, P.E.

**10. Background:**

The Airspace Agreement was originally approved by the BOCC on June 27, 2006. Subsequent to BOCC approval and prior to FDOT signing the document, FDOT staff requested additional conditions pertaining to the construction and maintenance of the overpass structure. These conditions were incorporated into an addendum and sent to the Federal Highway Administration (FHWA) for approval. FHWA has approved the agreement and addendum and FDOT has forwarded to the County for execution.

**11. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
 Scott Gilbertson, Director Date: 4/13/07				 4/17/07	RK 4/18	NF 4/18/07	4/18/07		4/13/07 

**12. Commission Action:**

- Approved
- Deferred
- Denied
- Other

RECEIVED BY  
 COUNTY ADMIN: RK  
4/18/07  
9am  
 COUNTY ADMIN  
 FORWARDED TO: PK  
4-18-07  
1pm.

Rec. by CoAtty  
 Date: 4/17/07  
 Time: 11:33am  
 Forwarded To:

4/17/07  
 4:45pm

LEE COUNTY RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING LEE COUNTY TO ENTER  
INTO AN AIRSPACE AGREEMENT AND ADDENDUM  
WITH THE FLORIDA DEPARTMENT OF  
TRANSPORTATION**

This is a Resolution of the Board of County Commissioners, Lee County, Florida, a political subdivision of the State, authorizing the execution of an Airspace Agreement and Addendum with the Florida Department of Transportation.

**WHEREAS**, Lee County, Florida, has the statutory authority to enter into this Agreement with the Florida Department of Transportation in accordance with Section 338.251, Florida Statutes.

**NOW THEREFORE, BE IT IS RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, that:**

1. The Airspace Agreement and Addendum for the Estero Parkway Overpass project are hereby approved.
2. The Chairman or Chairwoman of the Board of County Commissioners of Lee County, Florida, or designee per Lee County Administrative Code 1-3 are hereby authorized to execute said Agreement.
3. The Clerk of the Circuit Court is hereby authorized and directed to transmit one (1) certified copy of this Resolution to the Florida Department of Transportation along with the executed Agreements.

The foregoing Resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and, being put to a vote, the vote was as follows:

BRIAN BIGELOW \_\_\_\_\_

BOB JANES \_\_\_\_\_

RAY JUDAH \_\_\_\_\_

TAMMARA HALL \_\_\_\_\_

FRANK MANN \_\_\_\_\_

DULY PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

ATTEST:  
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Deputy Clerk

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Office of County Attorney

**AIRSPACE AGREEMENT**

ITEM/SEGMENT NO.: 2009411  
 MANAGING DISTRICT: One  
 F.A.P. NO.: I-75-5 (4) 828  
 STATE ROAD NO.: 93 (I-75)  
 COUNTY.: Lee  
 PARCEL NO.: 100 (Part)

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, between  
Lee County, a political\* at Post Office Box 398, Fort Myers, Florida 33902-0398  
 (Lessee) and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (Department), an agency  
 of the State of Florida (State). \*subdivision of the State of Florida

**WITNESSETH:**

**WHEREAS**, the Department may convey a leasehold in the name of the State, in any land, buildings, or other property, real or personal, acquired under Section 337.25, Florida Statutes; and

**WHEREAS**, the United States Department of Transportation, Federal Highway Administration (FHWA), requires any use of airspace above, and/or below the highway's established gradeline, lying within the approved right of way limits on a Federal Aid System, to be accomplished pursuant to an airspace agreement in accordance with 23 CFR, Part 710, and

**WHEREAS**, the Department has acquired sufficient legal right, title, and interest in the right of way of \_\_\_\_\_  
 State Road 93 (I-75) which includes the property described in Exhibit "A" attached hereto and made a part hereof, which right  
 of way is part of a highway on a Federal Aid System; and

**WHEREAS**, the Department desires to lease to Lessee the airspace above or below gradeline of the property described in  
 Exhibit "A", attached and made a part hereof for the following purpose: Construction and maintenance of a  
four-lane vehicular bridge over and across the State Road 93 (I-75) corridor for the extension of  
Esteros Parkway in Lee County, Florida.

**WHEREAS**, the proposed use will not impair the full use and safety of the highway, require or permit vehicular access to such space directly from the established gradeline of said highway, or interfere with the free flow of traffic on said highway.

**NOW, THEREFORE**, in consideration of the premises made a part hereof, and the covenants, promises, understandings, and agreements made by each party to the other as set forth herein, the Department and the Lessee do hereby mutually agree as follows:

1. Premises

The premises hereto are true and correct and form an integral part of this Agreement.

2. Term

The Department does hereby lease unto Lessee the airspace above or below gradeline of the property for a period of ninety-nine years beginning with the date of this Agreement. One renewal of this Agreement may be made for N/A. However, except for a public purpose conveyance, such renewal may not exceed five years. Nothing herein shall be construed to in any way grant an interest in the property lying below said airspace.

### 3. Rent

a. Lessee shall pay to the Department as rent each  month  quarter  year on or before the first day of each rent payment period, N/A plus applicable sales tax. When this Agreement is terminated, any unearned rent and sales tax payment shall be refunded to Lessee. However, no such refund shall be made where termination is due to Lessee's

b. The Department reserves the right to review and adjust the rental fee biennially and at renewal to reflect market conditions.

c. All rental payments are to be made by check or money order, payable to the State of Florida Department of Transportation and delivered on or before the due date to: N/A

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d. Lessee shall be responsible for all state, county, city, and local taxes that may be assessed, including real property taxes and special assessments. In the event that no rent is specified herein, then it has been determined that either the use by Lessee is a nonproprietary use by a governmental agency or an exception from the current fair market rental value requirement (23 U.S.C. Section 156) has been obtained for social, environmental, or economic mitigation (SEE) purposes. In the event that it should be determined at any time that the use is not a nonproprietary use by a governmental agency or that the SEE exception does not apply or has been revoked, Lessee agrees to pay, at that time, rent as determined to be the fair market rental value by an independent appraiser certified by the Department, and Lessee further agrees to pay such rent, under the remaining terms and conditions of this Paragraph 3, for the remaining term (including renewals) of this Agreement.

e. Any installment of rent not received within ten (10) days after the due date shall bear interest at the highest rate allowed by law from the due date thereof. This provision shall not obligate the Department to accept late rent payments or provide Lessee a grace period.

### 4. Use, Occupancy, and Maintenance

a. The Lessee shall be responsible for developing and operating the airspace as set forth herein.

b. The Lessee's proposed use of the airspace is as follows: Construction and maintenance of a four-lane vehicular bridge for the extension of Estero Parkway.

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c. The general design for the use of the airspace, including any facilities to be constructed, and the maps, plans, and sketches setting out the pertinent features of the use of the airspace in relation to the highway facility are set forth in composite Exhibit "B" attached hereto and by this reference made a part hereof. In addition, said composite Exhibit "B" also contains a three-dimensional description of the space to be used, unless the use is of a surface area beneath an elevated highway structure or adjacent to a highway roadway for recreation, public park, beautification, parking of motor vehicles, public mass transit facilities, or other similar uses, in which case, a metes and bounds description of the surface area, together with appropriate plans or cross sections clearly defining the vertical use limits, may be substituted for said three-dimensional description in said composite Exhibit "B".

d. Any change in the authorized use of the airspace or revision in the design or construction of the facility described in Exhibit "B" shall require prior written approval from the appropriate District Secretary of the Department, subject to concurrence by the FHWA.

e. The Department, through its duly authorized representatives, employees, and contractors, and any authorized FHWA representative, may enter the facility at any time for the purpose of inspection, maintenance, or reconstruction of the highway and adjacent facilities, when necessary; or for the purpose of surveying, drilling, monitoring well installations, sampling, remediation, and any other action which is reasonable and necessary to conduct an environmental assessment or to abate an environmental hazard.

f. Lessee, at Lessee's sole cost and expense, shall maintain the facility to occupy the airspace so as to assure that the structures and the area within the highway right of way boundaries will be kept in good condition, both as to safety and appearance. Such maintenance will be accomplished in a manner so as to cause no unreasonable interference with the highway use. In the event that Lessee fails to so maintain the facility, the Department, through its duly authorized representatives, employees, and contractors, may enter the facility to perform such work, and the cost thereof shall be chargeable to the Lessee and shall be immediately due and payable to the Department upon the performance of such work.

g. Portable or temporary advertising signs are prohibited.

h. The design, occupancy, and use of the airspace shall not adversely affect the use, safety, appearance, or enjoyment of the highway by smoke, fumes, vapors, odors, droppings, or any other objectionable discharges or emissions, or nuisances of any kind therefrom.

i. When, for the proposed use of the airspace, the highway requires additional highway facilities for the proper operation and maintenance of the highway, such facilities shall be provided by the Lessee without cost to either the Department or the FHWA and subject to both Department and FHWA approval.

j. The proposed use shall not cause or allow any changes in the existing drainage on the property under the airspace.

k. Lessee shall not occupy, use, permit, or suffer the airspace, the property, the facility, or any part thereof to be occupied or used for any illegal business use or purpose, for the manufacture or storage of flammable, explosive, or hazardous material, or any other hazardous activity, or in such manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any present or future federal, state, or local laws, orders, directions, ordinances, or regulations.

l. Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations, or as those terms are understood in common usage, are specifically prohibited. The use of petroleum products, pollutants, and other hazardous materials affecting the property is prohibited. Lessee shall be held responsible for the performance of and payment for any environmental remediation that may be necessary, as determined by the Department. Similarly, if any contamination either spread to or was released onto adjoining property as a result of Lessee's use of the airspace under lease, the Lessee shall be held similarly responsible. The Lessee shall indemnify, defend, and hold harmless the Department from any claim, loss, damage, cost, charge, or expense arising out of any such contamination.

m. Existing utilities and all corresponding easements shall remain in place and Lessee shall not disturb or interfere with the same.

5. Indemnification. To the extent provided by law, Lessee shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by Lessee, its officers, agents, or employees, during the performance of the Agreement, except that neither Lessee, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Department or any of its officers, agents, or employees during the performance of the Agreement.

When the Department receives a notice of claim for damages that may have been caused by Lessee in the performance of services required under this Agreement, the Department will immediately forward the claim to Lessee. Lessee and the Department will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to require the participation of Lessee in the defense of the claim or to require that Lessee defend the Department in such claim as described in this section. The Department's failure to promptly notify Lessee of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by Lessee. The Department and Lessee will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any.

6. Insurance. Lessee at its expense, shall maintain at all times during the term of this Agreement, public liability insurance protecting the Department and Lessee against any and all claims for injury and damage to persons and property, and for the loss of life or property occurring in, on, or about the land arising out of the act, negligence, omission, nonfeasance, or malfeasance of Lessee, its employees, agents, contractors, customers, licensees, and invitees. Such insurance shall be carried in a minimum amount of not less than per Florida Statute 768.28 (\$ 0.00 ) for bodily injury or death to any one person or any number of persons in any one occurrence and not less than per Florida Statute 768.28 (\$ 0.00 ) for property damage, or a combined coverage of not less than per Florida Statute 768.28 (\$ 0.00 ). All such policies shall be issued by companies licensed to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be canceled or modified unless the Department is given at least sixty (60) days prior written notice of such cancellation or modification. Lessee shall provide the Department certificates showing such insurance to be in place and showing the Department as additional named insured under the policies. If self-insured or under a risk management program, Lessee represents that such minimum coverage for liability will be provided for the property.

## 7. Termination

- a. This Agreement may be terminated by either party without cause upon \_\_\_\_\_ ( 180 ) days prior written notice to the other party.
- b. It is understood and agreed to by the Lessee that the Department reserves the right to terminate this Agreement immediately without prior notice, in the event the Lessee violates any of the conditions of this Agreement and such violation is not corrected within a reasonable time after written notice of noncompliance has been given. In the event the Agreement is terminated and the Department deems it necessary to request the removal of the facility on the property, the removal shall be accomplished by the Lessee in a manner prescribed by the Department at no cost to the Department or the FHWA.
- c. The Lessee must notify the Department of its intention to renew this Agreement not later than thirty (30) days prior to the expiration of the original term. Lessee's failure to comply with the foregoing notice provision may result in the Department's refusal to renew the Agreement.
- d. Upon termination of this Agreement, Lessee shall deliver the property to the Department, or its agents, in the condition existing at the commencement of this Agreement, normal wear and tear excepted, unless a facility, any improvement, or any part thereof has been constructed on the property.
- e. If removal of the facility, improvements, or any part thereof is requested by the Department, any such structures shall be removed by the Lessee at Lessee's expense by midnight of the day of termination of this Agreement and the property restored as nearly as practicable.
- f. This Agreement is terminable by the Department in the event that the facility ceases to be used for its intended purpose or is abandoned.

## 8. Eminent Domain

Lessee acknowledges and agrees that its relationship with the Department under this Agreement is one of landlord and tenant and no other relationship either expressed or implied shall be deemed to apply to the parties under this Agreement. Termination of this Agreement for any cause shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any interest suffered or lost as a result of termination of this Agreement, including any residual interest in the Agreement or any other facts or circumstances arising out of or in connection with this Agreement.

Lessee hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including special damages, severance damages, removal costs, or loss of business profits, resulting from Lessee's loss of occupancy of the property specified in this Agreement, or any such rights, claims, or damages flowing from adjacent properties owned or leased by Lessee as a result of Lessee's loss of occupancy of the property specified in this Agreement. Lessee also hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort as set out above, as a result of Lessee's loss of occupancy of the property, when any or all adjacent properties owned or leased by Lessee are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether this Agreement is still in existence on the date of taking or sale or has been terminated prior thereto.

## 9. Miscellaneous

- a. The airspace and Lessee's rights under this Agreement shall not be transferred, assigned, or conveyed to another party without the prior written consent of the Department, subject to concurrence by the FHWA.
- b. In conformance with the Civil Rights Act of 1964 (Title VI, Appendix "C") and 49 CFR Part 21, Lessee agrees as follows:
  1. That as a part of the consideration hereof, Lessee does hereby covenant and agree as a covenant running with the land that (1) no person, on the ground of race, color, sex, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said property and facility; (2) that in connection with the construction of any improvements on said property and facility and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors; and (3) that the Lessee shall use the property and facility in compliance with all other requirements imposed pursuant to 15 CFR Part 8, Subpart A.

2. That in the event of breach of any of the above covenants, the Department shall have the right to terminate this Agreement and to re-enter and repossess said property and the facility thereon, and hold the same as if this Agreement had never been made or issued.

c. During the term of this Agreement Lessee shall, at Lessee's own cost and expense, promptly observe and comply with all present or future laws, requirements, orders, directions, ordinances, and regulations of the United States of America, the State of Florida, county or local governments, or other lawful authority whatsoever, affecting the land, property, and facility or appurtenances or any part thereof, and of all insurance policies covering the property, land, and facility, or any part thereof.

d. In addition to or in lieu of the terms and conditions contained herein, the provisions of any Addendum of even date herewith which is identified to be a part hereof is hereby incorporated herein and made a part hereof by this reference. In the event of any conflict between the terms and conditions hereof and the provisions of the Addendum(s), the provisions of the Addendum(s) shall control, unless the provisions thereof are prohibited by law.

e. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

f. This Agreement shall not be recorded in the public records of any state, city, county, or other governmental entity.

g. Lessee acknowledges that it has reviewed this Agreement, is familiar with its terms, and has had adequate opportunity to review this Agreement with legal counsel of Lessee's choosing. Lessee has entered into this Agreement freely and voluntarily. This Agreement contains the complete understanding of the parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the parties and/or between Lessee and any previous owner of the property and landlord of Lessee are merged in this Agreement, which alone, fully and completely express the agreement between Lessee and the Department with respect to the subject matter hereof. No modification, waiver, or amendment of this Agreement or any of its conditions or provisions shall be binding upon the Department or Lessee unless in writing and signed by both parties.

h. Lessee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone, and telegraph services, or any other utility or service used on the property.

i. This Agreement shall be governed by the laws of the State of Florida, and any applicable laws of the United States of America.

j. All notices to the Department shall be sent to the address for rent payments and all notices to Lessee shall be sent to the property address provided herein or otherwise provided in writing to the Department.



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

LEE COUNTY, FLORIDA, BY ITS BOARD\*  
LESSEE (Company Name, if applicable)  
\*OF COUNTY COMMISSIONERS

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

Name: \_\_\_\_\_

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

Attest: \_\_\_\_\_ (Seal)

Name: \_\_\_\_\_

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

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

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

District Secretary

Name: \_\_\_\_\_

Attest: Stanley M. Cann, P.E.

Name/Title: \_\_\_\_\_

Legal Review:

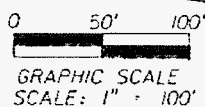
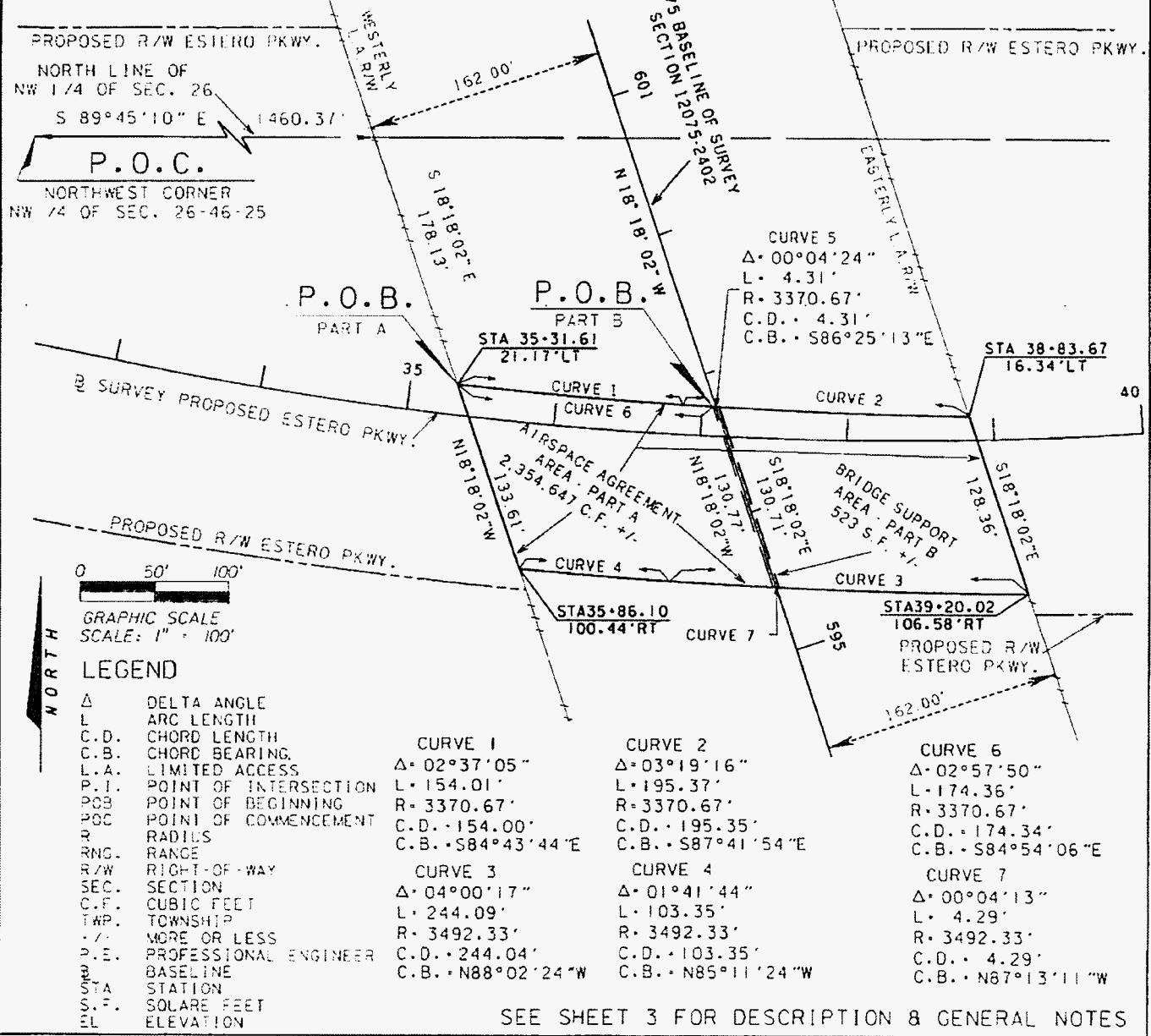
\_\_\_\_\_  
District Counsel

Name: \_\_\_\_\_

This sketch is NOT a survey.

SECTION 26, TOWNSHIP 46 SOUTH, RANGE 25 EAST  
LEE COUNTY, FLORIDA

PLAN VIEW



LEGEND

Δ	DELTA ANGLE			
L	ARC LENGTH			
C.D.	CHORD LENGTH			
C.B.	CHORD BEARING			
L.A.	LIMITED ACCESS			
P.I.	POINT OF INTERSECTION			
P.O.B.	POINT OF BEGINNING			
P.O.C.	POINT OF COMMENCEMENT			
R	RADIUS			
RNG.	RANGE			
R/W	RIGHT-OF-WAY			
SEC.	SECTION			
C.F.	CUBIC FEET			
TWP.	TOWNSHIP			
+/-	MORE OR LESS			
P.E.	PROFESSIONAL ENGINEER			
B.L.	BASELINE			
STA	STATION			
S.F.	SQUARE FEET			
EL	ELEVATION			

	<b>CURVE 1</b>	<b>CURVE 2</b>	<b>CURVE 6</b>
	Δ = 02°37'05"	Δ = 03°19'16"	Δ = 02°57'50"
	L = 154.01'	L = 195.37'	L = 174.36'
	R = 3370.67'	R = 3370.67'	R = 3370.67'
	C.D. = 154.00'	C.D. = 195.35'	C.D. = 174.34'
	C.B. = S84°43'44"E	C.B. = S87°41'54"E	C.B. = S84°54'06"E
	<b>CURVE 3</b>	<b>CURVE 4</b>	<b>CURVE 7</b>
	Δ = 04°00'17"	Δ = 01°41'44"	Δ = 00°04'13"
	L = 244.09'	L = 103.35'	L = 4.29'
	R = 3492.33'	R = 3492.33'	R = 3492.33'
	C.D. = 244.04'	C.D. = 103.35'	C.D. = 4.29'
	C.B. = N88°02'24"W	C.B. = N85°11'24"W	C.B. = N67°13'11"W

SEE SHEET 3 FOR DESCRIPTION & GENERAL NOTES

SKETCH AND DESCRIPTION  
EASEMENTS

JOB NO.	100806.05	DATE	10/20/05
FIELD BOOK	N/A	REV.	04/19/06
SCALE	1" = 100'	REV.	
DRAWN BY	DMC	CHECKED BY	PMM

I hereby certify that the attached "Sketch and Description" is true and correct to the best of my knowledge and belief as recently prepared under my direction and that this sketch meets the intent of the minimum technical standards for surveying pursuant to Section 472.027, Florida Statutes and Chapter 61G17-6, Florida Administrative Code.

*Dianne M. Collins*

DIANNE M. COLLINS  
PROFESSIONAL SURVEYOR & MAPPER • 3936  
STATE OF FLORIDA

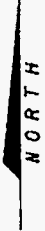
**PBS** ENGINEERS, PLANNERS & SURVEYORS  
5300 WEST CYPRESS STREET SUITE 200  
TAMPA, FLORIDA 33607  
(813) 282-7275

SHEET 1 OF 3

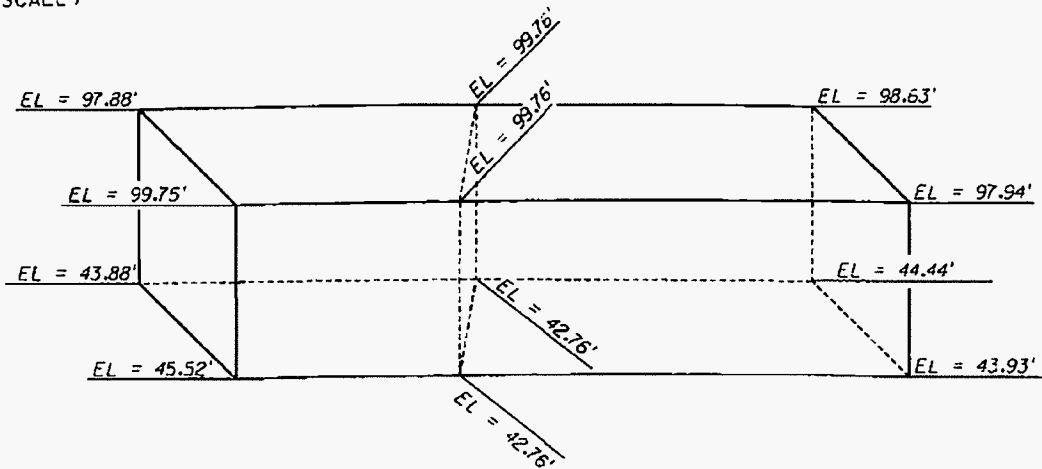
This sketch is NOT a survey.

SECTION 26, TOWNSHIP 46 SOUTH, RANGE 25 EAST  
LEE COUNTY, FLORIDA

ISOMETRIC VIEW



(NOT TO SCALE)



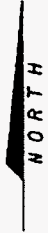
DRAWN BY:	DMC	CHECKED BY:	PMM
<b>PBSJ</b> ENGINEERS, PLANNERS & SURVEYORS 5300 WEST CYPRESS STREET, SUITE 300 TAMPA, FLORIDA 33607 (813)-282-7275			
			SHEET 2 OF 3

SEE SHEET 3 FOR DESCRIPTION  
& GENERAL NOTES

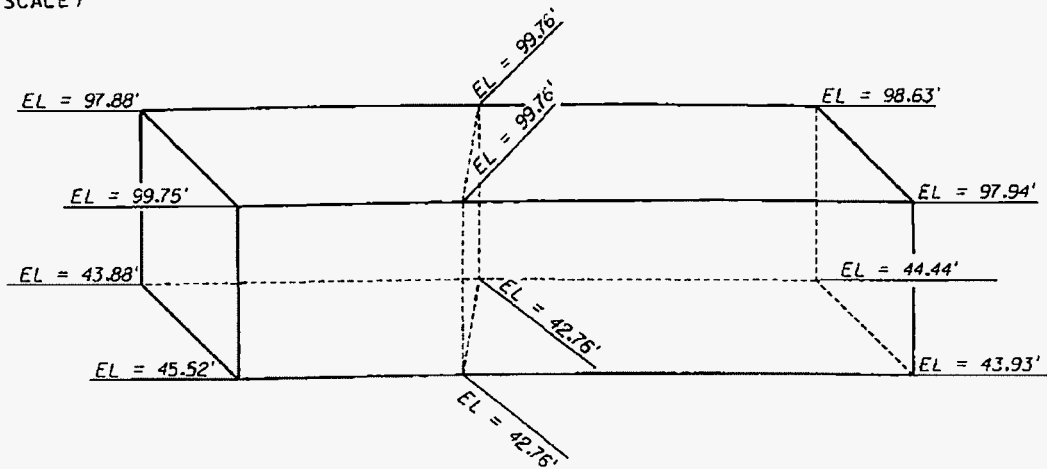
*This sketch is NOT a survey.*

SECTION 26, TOWNSHIP 46 SOUTH, RANGE 25 EAST  
LEE COUNTY, FLORIDA

ISOMETRIC VIEW



(NOT TO SCALE)



DRAWN BY:

DMC

CHECKED BY:

PMM



ENGINEERS, PLANNERS & SURVEYORS  
5300 WEST CYPRESS STREET, SUITE 300  
TAMPA, FLORIDA 33607  
(813) 282-7275

SHEET 2 OF 3

SEE SHEET 3 FOR DESCRIPTION  
& GENERAL NOTES

DESCRIPTION

PART A: (AIRSPACE AGREEMENT)

AN AIRSPACE AGREEMENT AREA OVER A PORTION OF EXISTING RIGHT OF WAY FOR INTERSTATE 75 LYING IN THE NORTHWEST 1/4 OF SECTION 26, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA. ELEVATIONS ARE BASED ON THE NATIONAL GEODETIC VERTICAL DATUM OF 1929 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 26, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE S89°45'10"E, ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 1460.37 FEET TO THE WESTERLY LIMITED ACCESS RIGHT OF WAY LINE OF SAID INTERSTATE 75 PER FLORIDA DEPARTMENT OF TRANSPORTATION SECTION JOB 12075-2402; THENCE S18°18'02"E, ALONG SAID WESTERLY LIMITED ACCESS RIGHT OF WAY LINE, 178.13 FEET TO A POINT ON A CURVE CONCAVE NORTHERLY HAVING MINIMUM ELEVATION OF 43.88 FEET AND A MAXIMUM ELEVATION OF 97.88 FEET AND THE POINT OF BEGINNING; THENCE EASTERLY 154.01 FEET ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 3370.67 FEET, A CENTRAL ANGLE OF 02°37'05" AND A CHORD BEARING AND DISTANCE OF S84°43'44"E, 154.00 FEET TO A POINT HAVING A MINIMUM ELEVATION OF 42.76 FEET AND A MAXIMUM ELEVATION OF 99.76 FEET; THENCE CONTINUE EASTERLY 195.37 FEET ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 3370.67 FEET, A CENTRAL ANGLE OF 03°19'16" AND A CHORD BEARING AND DISTANCE OF S87°41'54"E, 195.35 FEET TO THE EASTERLY EXISTING LIMITED ACCESS RIGHT OF WAY LINE OF INTERSTATE 75 AT A POINT HAVING A MINIMUM ELEVATION OF 44.44 FEET AND A MAXIMUM ELEVATION OF 98.63 FEET; THENCE S18°18'02"E, ALONG SAID EASTERLY LIMITED ACCESS RIGHT OF WAY LINE, 128.36 FEET TO A POINT ON A CURVE CONCAVE NORTHERLY HAVING MINIMUM ELEVATION OF 43.93 FEET AND A MAXIMUM ELEVATION OF 97.94 FEET; THENCE WESTERLY 244.09 FEET ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 3492.33 FEET, A CENTRAL ANGLE OF 04°00'17" AND A CHORD BEARING AND DISTANCE OF N88°02'24"W, 244.04 FEET TO A POINT HAVING A MINIMUM ELEVATION OF 42.76 FEET AND A MAXIMUM ELEVATION OF 99.76 FEET; THENCE CONTINUE WESTERLY 103.35 FEET ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 3492.33 FEET, A CENTRAL ANGLE OF 01°41'44" AND A CHORD BEARING AND DISTANCE OF N85°11'24"W, 103.35 FEET TO THE SAID WESTERLY LIMITED ACCESS RIGHT OF WAY LINE AT A POINT HAVING A MINIMUM ELEVATION OF 45.52 FEET AND A MAXIMUM ELEVATION OF 99.75 FEET; THENCE N18°18'02"W, ALONG SAID WESTERLY LIMITED ACCESS RIGHT OF WAY LINE, 133.61 FEET TO THE SAID POINT OF BEGINNING.

CONTAINING 42386 SQUARE FEET AND 2,354,647 CUBIC FEET, MORE OR LESS.

PART B: (BRIDGE SUPPORT LOCATION)

A PARCEL OF LAND LYING WITHIN THE NORTHWEST 1/4 OF SECTION 26, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 26, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE S89°45'10"E, ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 1460.37 FEET TO THE WESTERLY LIMITED ACCESS RIGHT OF WAY LINE OF SAID INTERSTATE 75 PER FLORIDA DEPARTMENT OF TRANSPORTATION SECTION JOB 12075-2402; THENCE S18°18'02"E, ALONG SAID WESTERLY LIMITED ACCESS RIGHT OF WAY LINE, 178.13 FEET TO A POINT ON A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 3370.67 FEET, A CENTRAL ANGLE OF 02°57'50" AND A CHORD BEARING AND DISTANCE OF S84°54'06"E, 174.34 FEET; THENCE EASTERLY 174.36 FEET ALONG THE ARC OF SAID CURVE TO THE POINT OF BEGINNING; THENCE CONTINUE 4.31 FEET ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 3370.67 FEET, A CENTRAL ANGLE OF 00°04'24", A CHORD BEARING AND DISTANCE OF S86°25'13"E, 4.31 FEET; THENCE S18°18'02"E, 130.71 FEET TO A POINT ON A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 3492.33 FEET, A CENTRAL ANGLE OF 00°04'13" AND A CHORD BEARING AND DISTANCE OF N87°13'11"W, 4.29 FEET; THENCE WESTERLY 4.29 FEET ALONG THE ARC OF SAID CURVE; THENCE N18°18'02"W, 130.77 FEET TO THE SAID POINT OF BEGINNING.

CONTAINING 523 SQUARE FEET, MORE OR LESS.

SURVEYOR'S NOTES:

- 1. Reproductions of this sketch are not valid without the signature and the original raised sealed of a Florida licensed Surveyor and Mapper.
2. The sketch shown hereon is for graphic representation only and does not represent a boundary survey.
3. Corner monuments were not set in conjunction with the preparation of this drawing.
4. Legal description prepared by PBS&J.
5. Bearings shown hereon are based on the Florida State Plane Coordinate System, West Zone, 1983 North American Datum, 1990 Adjustment, with the bearing of the North line of the NW 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida, being S89°45'10"E.
6. The purpose of this described Airspace Agreement area is to construct an overhead bridge with a center support over Interstate 75 and all vertical information in conjunction with this easement is located in the plans for Estero Parkway (Koreshan Boulevard Extension) from Three Oaks Parkway to Ben Hill Griffin Parkway.
7. Elevations shown hereon were supplied to PBS&J by Ben R. Homola, P.S.M. of McKim B Creed and are based on National Geodetic Vertical Datum of 1929.

Table with 2 columns: DRAWN BY: DMC, CHECKED BY: PMM. Below the table is the logo for PBS&J ENGINEERS, PLANNERS & SURVEYORS, 5300 WEST CYPRESS STREET, SUITE 300 TAMPA, FLORIDA 33607, 18131-282-7275. SHEET 3 OF 3

Item/Segment No.: 2009411  
Managing District: One  
F.A.P. No.: I-75-5(4) 828  
State Road No.: 93 (I-75)  
County: Lee  
Parcel No.: 100 (Part)

### ADDENDUM

This is an Addendum to that certain Airspace Agreement between Lee County, a political subdivision of the State of Florida and the State of Florida Department of Transportation dated the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_. In addition to the provisions contained in said Agreement, the following terms and conditions shall be deemed to be a part thereof pursuant to Paragraph 9 (d) of said Agreement:

1. The work performed may require authorization, under the Clean Water Act, by the U.S. Environmental Protection Agency for Storm Water Discharges from construction sites. Lessee is responsible for obtaining the National Pollutant Discharge Elimination System Permit and all other necessary permits for construction of the bridge. This Airspace Agreement shall constitute the existence of a sufficient interest for Lessee to obtain all permits in Lessee's name.
2. The DEPARTMENT shall appoint and authorize a single individual to serve as the DEPARTMENT'S representative to coordinate and manage the DEPARTMENT review of Lessee activities pursuant to this Agreement. The individual shall have the authority to act on behalf of the DEPARTMENT in all matters relative to this Agreement and his or her approval shall be binding on the DEPARTMENT. Lessee shall notify the representative at least 48 hours in advance of starting proposed work and again immediately upon completion of work. The representative for this project is as follows: Ft. Myers Operation Center Engineer. Lessee shall provide the DEPARTMENT with a contact name and phone number for reporting deficiencies that may be discovered during the service life of the structure. Lessee's contact is as follows: Department of Transportation Director or Public Works Director.
3. Lessee shall perform all required testing associated with the design and construction of the necessary improvements in accord with DEPARTMENT standards and requirements. Lessee shall, as directed by the DEPARTMENT representative, procure independent assurance testing. Said testing results shall be provided to the DEPARTMENT representative. The DEPARTMENT shall have the right, but not the obligation, to perform such independent testing from time to time during the course of the construction.
4. Lessee shall utilize only a DEPARTMENT pre-qualified prime contractor ("Contractor") and a DEPARTMENT qualified construction engineering and inspection firm ("CEI") to perform the work. The Lessee shall submit documentation required within this addendum in a timely manner and schedule through the Department the initial inspection prior to opening to traffic. The structure should not be opened to traffic until the Lessee has a signed and sealed final bridge load rating that meets the requirements for all Florida legal loads completed.

5. Lessee shall not modify the intent of the design plans or the maintenance of traffic concept without appropriate submission by the Engineer of Record (the "Engineer") and approval by DEPARTMENT; provided, however, in the event of an emergency, Lessee shall immediately make any necessary changes and notify DEPARTMENT after the modifications.
6. DEPARTMENT may request and shall be granted a conference with Lessee and at Lessee's option, Lessee's CEI Firm, to discuss any part of the work that DEPARTMENT determines to be inconsistent with the previously approved design plans or the DEPARTMENT'S specifications. After such a meeting, if DEPARTMENT determines that construction activities are being performed inconsistent with these standards, the parties will follow the following process: (1) DEPARTMENT will notify Lessee of its determination of inconsistency, specifying the inconsistencies, (2) within seven days of such notification, Lessee will develop a proposed corrective action with a time frame for accomplishing same, (3) Lessee will monitor the corrective action and provide DEPARTMENT status reports at such intervals as are reasonable based on the corrective action undertaken, (4) DEPARTMENT may, but is not obligated to, review independently the progress of the corrective action, (5) if DEPARTMENT determines the corrective action is not being done sufficiently, it shall notify Lessee in writing that the operation will cease within seventy-two hours and (6) Lessee will stop all work within seventy-two hours until an acceptable resolution is reached. If the DEPARTMENT determines a condition exists which threatens the public's safety, the DEPARTMENT may, at its discretion, issue an immediate stop work order. This will be in concurrence with the District Secretary or Director of Transportation Operations.
7. Lessee shall have the continuous obligation to monitor the maintenance of traffic and construction operation during the course of the work so that the safe and efficient movement of the traveling public is maintained. Lessee is further obligated to make such changes to the maintenance of traffic plan as may be necessary. During construction, Lessee shall take measures, including the placing and display of safety devices that are necessary in order to safely conduct the public through the project area in accordance with the latest and current version of the Federal Highway Administration Manual on Uniform Traffic Control Devices for Streets and Highways, the DEPARTMENT'S Standard Specifications for Road and Bridge Construction, the DEPARTMENT'S Design Standards, and the DEPARTMENT'S Plans Preparation Manual as those sources may be amended from time to time. Lessee may assign the responsibility of this paragraph to the Contractor or its CEI for the construction of the road improvements.
8. It is understood and agreed that the rights and privileges herein set out are granted only to the extent of the State's right, title and interest in the land to be entered upon and used by Lessee.
9. Upon completion of the work in accord with the Plans, Lessee shall furnish a set of "as-built" plans certified by the Engineer that the necessary improvements have been completed in accordance with the Plans as the same may be modified in accord with the terms of this Agreement. This certification shall include a statement that necessary inspections, tests, and physical measurements have been made, and that all materials entering into the work conform to the Plans, conform to the applicable specifications contained in the Standard Specifications for Road and Bridge Construction, or otherwise conform to or meet generally accepted professional practices. In addition, Lessee shall, at such time, provide

the DEPARTMENT with such other construction records from the project as the DEPARTMENT may request (such as pile driving records, bridge load rating records, density log book, etc.).

10. In the event contaminated soil is encountered by the Lessee or anyone within the DEPARTMENT right of way, the Lessee shall immediately cease work and notify the DEPARTMENT. The DEPARTMENT shall coordinate with the appropriate agencies and notify the Lessee of any required action related thereto.
11. Lessee shall be the owner and maintainer of the structure. The bridge shall be inspected under the Department's inspection program and maintained in accordance with Department procedures and standard engineering, materials and construction practices. If possible, traffic impact to I-75 shall be avoided or limited to night and off-peak hours. If I-75 lane closures are required, maintenance of traffic plans shall be submitted to the Department as a permit request for review and approval thirty days in advance of the work activity. For non-emergency structural repairs, plans shall also be submitted to the Department for review and concurrence in a timely manner to facilitate the performance of work. For emergency structural repair work, the Lessee shall timely communicate and coordinate with the Department to facilitate the review, concurrence and implementation of the proposed repairs. Should the Lessee not implement required structural repairs, the Department reserves the right to implement same at the Lessee's cost. The Lessee shall be responsible for public information and advance notification of lane closures in accordance with Department requirements.
12. The term of the Agreement shall be for the period provided in Section 2 of the Agreement unless terminated earlier pursuant to the provisions of this Addendum Section 12.
  - 12.a. In the event the DEPARTMENT initiates any transportation project that could impact the facilities constructed pursuant to this Agreement, the DEPARTMENT will notify Lessee of the initiation of the project and provide Lessee with the opportunity to provide input into the project development and project design efforts of the DEPARTMENT. The Lessee and the DEPARTMENT agree to work together through these processes with the goal of minimizing any negative impacts to said facilities; however, nothing herein shall be deemed to prevent the DEPARTMENT from ultimately exercising its discretion as to the planning, design, construction, operation and maintenance of transportation facilities. In the event that those efforts do not result in an agreed approach to the DEPARTMENT'S project and the DEPARTMENT determines that Lessee's use conflicts with the transportation project, the DEPARTMENT may terminate this Agreement no earlier than six (6) months after providing written notice of intent to terminate. During the six month period, Lessee will have a final opportunity to propose to modifications to Lessee's use to eliminate the conflict. Lessee's proposal shall be in writing and shall provide sufficient information for the DEPARTMENT to determine that the proposed modification eliminates the conflict. In the event that Lessee does not provide sufficient information or the DEPARTMENT determines that in the DEPARTMENT'S sole judgment, the conflict is not sufficiently eliminated, the DEPARTMENT shall notify the Lessee in writing that the Agreement will be terminated effective the later of the end of the original six month period or three (3) months from this subsequent notice.
13. Notwithstanding anything contained in the Agreement to the contrary, no rental payment shall be required during the term of this Agreement.



14. Notwithstanding anything contained in the Agreement to the contrary, Lessee is permitted to self-insure in lieu of the insurance requirements provided in Section 6 of the Agreement. Lessee shall provide the DEPARTMENT written proof of said self insurance upon request.
  
15. Notwithstanding anything contained in the Agreement to the contrary, Lessee is authorized to construct, operate and maintain a public road and overpass structure within the leased area.

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
District Secretary

Name: Stanley M. Cann, P.E.

Attest: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Legal Review:

\_\_\_\_\_  
District Counsel

Name: \_\_\_\_\_

LESSEE:

LEE COUNTY, FLORIDA, BY ITS BOARD OF  
COUNTY COMMISSIONERS

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

Name: \_\_\_\_\_

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

Attest: \_\_\_\_\_ (Seal)

Name: \_\_\_\_\_

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