

AGREEMENT FOR MAINTENANCE OF IMPROVEMENTS

*SR 105/Hecksher Drive
from Milepost 13.072 to Milepost 13.144*

This Agreement for Maintenance of Improvements ("Agreement") is made and entered by and between the State of Florida Department of Transportation ("Department") and the City of Jacksonville, Florida ("City").

WHEREAS, for purposes of this Agreement, the term "Property" shall refer to a bridge known as Sister's Creek Bridge (Bridge Number 720061), as more particularly described in Exhibit "A" hereto; and

WHEREAS, the Property is located within the right-of-way of State Road 105/Hecksher Drive, County Section number 72250000 from Milepost 13.072 to Milepost 13.144; and

WHEREAS, the Department intends to discontinue the use of the Property in conjunction with Financial Project Number 209607-1-52-01 to build a new bridge; and

WHEREAS, the City desires to use and maintain the Property as a fishing pier ("Improvement"); and

WHEREAS, given the mutual obligations provided for in this Agreement, the Department is amenable to the City's request; and

WHEREAS, by Resolution _____ dated _____, the City authorized its representative to execute and enter this Agreement on behalf of the City, see Exhibit "B" hereto.

NOW THEREFORE, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the foregoing recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound hereby, acknowledge and agree as follows:

1. RECITALS & EXHIBITS

The recitals set forth above and Exhibits attached hereto are specifically incorporated herein by reference and made part of this Agreement.

2. EFFECTIVE DATE

The effective date of this Agreement shall be the date the last of the parties to be charged executes the Agreement ("Effective Date").

3. TERM

The initial term of the Agreement shall be for a period of one (1) year from the Effective Date. The Agreement shall automatically renew for successive and continuing like one (1) year terms unless terminated by either party upon sixty (60) days prior written notice to the other party, in accordance with the Removal section of this Agreement.

4. E-VERIFY

The City (A) 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 City during the term of the contract; and (B) 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.

5. COMPLIANCE

The City shall perform the Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions hereof and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards, specifications and permits, as the same may be constituted and amended from time to time, including, without limitation, those of the Department, the State of Florida Water Management District with requisite jurisdiction, Florida Department of Environmental Protection, Environmental Protection Agency, Army Corps of Engineers, United States Coast Guard and local governmental entities ("Governmental Law").

6. PERMITS

In the performance of this Agreement the City may be required to obtain one or more Department permits which may include copies of the Agreement as an exhibit. Notwithstanding the inclusion or incorporation of the Agreement as part of any such Department permits, the Agreement shall remain separate and apart from such permits and shall not be merged into the same absent the prior written express consent of the Department. Should any term or provision of this Agreement conflict with any term, provision or requirement of any Department permit, the terms and provisions of the Agreement shall control unless specifically noted otherwise in any such Department permit. For purposes of this Agreement, the term "permit" shall also include the Department's standard form Construction Agreement (form no. 850-040-89) which the Department may require for permanent improvements within the Department's right-of-way.

8. OPERATION, MAINTENANCE & REPAIR

A. The City shall operate, maintain, ensure a safe load carrying capacity for purposes of the Improvement's intended use as a fishing pier, and repair the Improvement at its sole cost and expense, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement. Nothing in this Agreement shall obligate the Department to maintain or repair the Improvement, said obligations to remain the sole responsibility of the City.

B. If the Department determines that the City is not maintaining and repairing the Improvement in accordance with the terms and provisions of this Agreement, the Department shall deliver written notification of such to the City. The City shall have sixty (60) days from the date of the Department's written notice, or such other time as the Department and the City mutually agree in writing, to correct the deficiency and provide the Department with written notice of the same.

C. If the deficiency is not corrected timely, or if the Department determines that the deficiency remains after receipt of the City's written notice indicating that the deficiency has been corrected, the Department, within its discretion, may: (1) provide the City with written authorization granting such additional time as the Department deems appropriate to correct the deficiency; (2) require the City to demolish and remove the Improvement and restore the Property pursuant to the "Removal" section of this Agreement; (3) correct the deficiency at the City's sole cost and expense. If the Department corrects the deficiency, the Department shall provide the City with an invoice for the costs incurred by the Department to correct the deficiency and the City shall pay the invoice in accordance with the "Payment" section of this Agreement.

D. If at any time in the sole determination of the Department, the integrity or safety of the Improvement requires immediate maintenance or repair for the benefit of public health, safety or welfare, the Department may perform such maintenance and repairs it deems appropriate under the circumstances. The Department shall provide the City with written notice of the emergency maintenance and repairs performed by the Department and an invoice for the same. The City shall pay the invoice in accordance with the "Payment" section of this Agreement.

E. In the event that any of the circumstances as described in Paragraphs B, C, and D above should occur, the City shall, immediately and without delay, close and discontinue use of the Improvement until such time as the deficiencies are corrected or the Improvement is demolished and removed, whichever the case may be. The City shall post the proper signage regarding closure of the Improvement for

purposes of notifying the general public. Closure of the Improvement and notification as to its closure shall be at the sole cost and expense of the City.

9. IMPROVEMENTS & MODIFICATIONS

A. The Department may require modifications to the Improvement if the Department determines: (1) modifications are required by applicable Governmental Law; or (2) modifications will benefit the Department in the conduct of its business. The Department shall provide the City with written notice of required modifications.

B. Required modifications shall be: (1) subject to the terms and provisions of this Agreement, specifically including, without limitation, the "Construction" and "Operation, Maintenance & Repair" sections hereof; and (2) constructed and completed by the City within sixty (60) days of the date of the Department's written notice requiring the modifications.

C. The City may elect not to modify the Improvement as directed by the Department. In such instance the City shall remove the Improvement and restore the Property pursuant to the "Removal" section of this Agreement. The removal and restoration shall be completed by the City within sixty (60) days of the date of the Department's written notice requiring modifications, or such other time as the Department and the City mutually agree in writing.

10. UTILITIES

The City shall be responsible for locating, removing and relocating utilities, both aerial and underground, if required for the City to perform this Agreement. The City shall ensure all utility locations are accurately documented on the construction Plans and Specifications, including the final as-built plans. All utility conflicts shall be resolved by the City directly with the applicable utility.

11. MAINTENANCE OF TRAFFIC

A. The City shall be responsible for the maintenance of traffic ("MOT") at all times during its performance of this Agreement. MOT shall be performed in accordance with applicable Governmental Law and the most current edition of each of the following, as the same may be constituted and amended from time to time, all of which are incorporated herein and made part of the Agreement by reference: (1) Section 102 of the Department's Standard Specifications for Road and Bridge Construction; (2) the Manual on Uniform Traffic Control Devices; and (3) the Department's Roadway Design Standards Index 600 Series.

B. If the City fails to perform MOT as required herein, the Department, within its discretion, may elect to perform MOT at the City's sole cost and expense. Should the Department perform MOT, the Department shall provide the City with an invoice for the costs incurred by the Department and the City shall pay the invoice in accordance with the "Payment" section of this Agreement.

12. REMOVAL AND DEMOLITION

A. The Department may require the City remove the Improvement and restore the Property to a condition that is satisfactory to the Department if the Department determines: (1) the Improvement is not maintained in accordance with the terms and provisions of this Agreement, including, without limitation, applicable Governmental Law; (2) removal of the Improvement is required by applicable Governmental Law; (3) the City breaches a material provision of this Agreement (as determined by the Department); (4) the Agreement is terminated by either party; or (5) removal of the Improvement will benefit the Department in the conduct of its business. Removal and restoration of the Improvement shall be completed by the City within sixty (60) days of the date of the Department's written notice requiring removal of the Improvement, or such other time as the Department and the City mutually agree in writing.

B. In the event that the Department deems removal of the Improvement to be necessary pursuant to any of the foregoing reasons stated in subsection A, the City will be required to demolish and remove the Improvement and restore the Property at its sole cost and expense. Nothing in this Agreement shall obligate the Department to demolish or remove the Improvement or restore the Property, that being the sole obligation of the City.

C. Demolition, removal and restoration shall be completed by the City in accordance with applicable Governmental Law, specifically including the Department's Standard Specifications for Road and Bridge Construction.

D. Should the City fail to complete the demolition, removal, and restoration work as required herein, the Department may: (1) provide the City with written authorization granting such additional time as the Department deems appropriate to complete demolition, removal and restoration; or (2) complete the demolition, removal and restoration at the City's sole cost and expense. Should the Department elect to complete the demolition, removal and restoration, the Department shall provide the City with an invoice for the costs incurred by the Department and the City shall pay the invoice in accordance with the "Payment" section of this Agreement.

13. PERMISSIVE USE AND ACCESS

A. This Agreement creates a permissive use only and neither the granting of permission to use the Property, nor maintenance of the Improvement on or within the Property shall operate to create or vest any property right to or in the City. The City shall not acquire any right, title, interest or estate in the Property by virtue of the execution, operation, effect or performance of this Agreement.

B. The Department has the jurisdiction to designate the Property's and Improvement's use pursuant to 23 C.F.R § 774.11. The Department has determined that the Property was acquired for transportation purposes and shall be required for future transportation purposes. The Department reserves the Property for such future transportation use. Notwithstanding the City's use of the Property and Improvement, including without limitation, as a fishing pier, the Department is in no way creating a long-term use of the Property or the Improvement, and both shall remain classified as a transportation corridor. The granting of permission to use the Property to operate, maintain, or repair the Improvement shall not operate to create or vest any U.S. Department of Transportation Act of 1966, Section 4(f) designation.

C. The City shall post appropriate signage, as approved by the Department, on the Property and Improvement which states that the use of the Property and Improvement is a temporary use and that the Department has designated the Property and Improvement for future transportation purposes.

14. EMINENT DOMAIN

Under no circumstances shall the Department's exercise of any right provided in this Agreement create any right, title, interest or estate entitling the City to full and just compensation from the Department either through inverse condemnation or eminent domain laws or any similar laws regarding the taking of property for public purposes. The City forever waives and relinquishes all legal rights and monetary claims which it has, or which may arise in the future, for compensation or damages, including, without limitation, special damages, severance damages, removal costs, and loss of business profits resulting in any manner from the Department's exercise of any right provided in this Agreement. This waiver and relinquishment specifically includes all damages flowing from adjacent properties owned, leased or otherwise controlled by the City, as a result of the Department's exercise of any right provided in this Agreement.

15. DUE DILIGENCE, WARRANTY OR FITNESS FOR PARTICULAR PURPOSE

A. All due diligence requirements related to the City's negotiation, execution and performance of this Agreement are the sole responsibility of the City.

B. The Department makes no representations or warranties of any kind, express or implied, concerning the Property, including, without limitation, representations and warranties concerning: (1) the physical condition of the Property; and (2) merchantability or fitness for a particular purpose.

16. PAYMENT

All Department invoices submitted to the City for payment pursuant to the terms and provisions of this Agreement are due and payable within forty-five (45) days of the date of the invoice ("Due Date"). Any portion of an invoice not received by the Department by the Due Date shall immediately thereafter begin accruing interest at a rate of interest established pursuant to §55.03, Florida Statutes, until paid in full.

17. INDEMNIFICATION

A. Subject to the provisions and limitations of Section 768.28, Florida Statutes, the City shall promptly defend, indemnify, hold the Department harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs / penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, arising out of or related to the City's negligent acts, omissions, or breach of this Agreement ("Liabilities"). The term "Liabilities" shall also specifically include all civil and criminal environmental liability arising, directly or indirectly under any Governmental Law, including, without limitation, liability under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Air Act ("CAA") and the Clean Water Act ("CWA"). The City's duty to defend, indemnify and hold the Department harmless specifically does not encompass indemnifying the Department for its negligence, intentional or wrongful acts, omissions or breach of contract. Notwithstanding the foregoing, any indemnification, hold harmless an defense given by the City is not, nor shall it be interpreted as a further waiver of its sovereignty beyond the limited legislative waiver thereof in Section 768.28, Florida Statutes, pursuant to authority in Article X, Section 13, Florida Constitution (1968 Rev.), as amended.

B. The City shall notify the Department in writing immediately upon becoming aware of any Liabilities. The City's obligation to defend, indemnify and hold the Department harmless from any Liabilities, or at the Department's option to participate and associate with the Department in the defense and trial of any Liabilities, including any related settlement negotiations, shall be triggered by the Department's written notice of claim for indemnification to the City. The City's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph.

18. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving either party's sovereign immunity protections, or as increasing the limits of liability set forth in §768.28, Florida Statutes, as the same may be amended from time to time.

19. NOTICE

All notices, communications and determinations between the parties hereto and those required by the Agreement, including, without limitation, 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 following addresses:

Department: Florida Department of Transportation
Bob Kosoy, P.E., Jacksonville Maintenance Engineer
838 Ellis Road
Jacksonville, Florida 32205

Agency: City of Jacksonville Parks and Recreation
Ms. Kelley Boree, CPRP, Director
214 N. Hogan Street, Suite 3102
Jacksonville, Florida 32202

20. GOVERNING LAW

This Agreement shall be governed in all respect by the laws of the State of Florida.

21. INITIAL DETERMINATION OF DISPUTES

The Department's District Two Secretary ("District Secretary") shall act as the initial arbiter of all questions, difficulties, and disputes concerning the interpretation, validity, performance or breach of the Agreement.

22. VENUE AND JURISDICTION

A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of the Agreement that are not resolved to the mutual satisfaction of the parties by the Department's District Secretary shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

B. The City and all persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance or breach of this Agreement.

23. JURY TRIAL

The parties hereby waive the right to trial by jury of any dispute concerning the interpretation, validity, performance or breach of the Agreement, including, without limitation, damages allegedly flowing therefrom.

24. ASSIGNMENT

The City shall 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 of this Agreement, with or without cause. Nothing herein shall prevent the City from delegating its duties hereunder, but such delegation shall not release the City from its obligation to perform the Agreement.

25. THIRD PARTY BENEFICIARIES

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. VOLUNTARY EXECUTION OF AGREEMENT

Each party warrants and represents to the other: (i) that it understands all of the rights and obligations set forth in the Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of the Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of the Agreement and executes the Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and (iv) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of the Agreement.

27. ENTIRE AGREEMENT

This instrument, together with any exhibits and documents made part hereof by reference, contains the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in the Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of the Agreement, and any part hereof, are waived, merged herein and superseded hereby.

28. EXECUTION OF DOCUMENTS

The parties agree that they shall promptly execute and deliver to the other all documents necessary to accomplish the intent and purpose of the Agreement and shall do all other acts to effectuate the Agreement.

29. SUFFICIENCY OF CONSIDERATION

By their signature below, the parties hereby acknowledge the receipt, adequacy and sufficiency of consideration provided in the Agreement and forever waive the right to object to or otherwise challenge the same.

30. WAIVER

The failure of either party to insist on the strict performance or compliance with any term or provision of the Agreement on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

31. INTERPRETATION

No term or provision of the Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

32. CAPTIONS

Paragraph title or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend or describe the scope of the Agreement, or any provision hereof.

33. SEVERANCE

If any section, paragraph, clause or provision of the Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of the Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of the Agreement remain enforceable.

34. COMPUTATION OF TIME

In computing any period of time prescribed in the Agreement, the day of the act, event or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

35. MODIFICATION OF AGREEMENT

A modification or waiver of any of the provisions of the Agreement shall be effective only if made in writing and executed with the same formality as the Agreement.

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties hereby execute this Agreement, consisting of eight (8) pages.

SIGNATURES ON FOLLOWING PAGE

Florida Department of Transportation

By: _____

Printed Name: _____

Title: _____

Date: _____

Legal Review:

By: _____

Office of the General Counsel
Florida Department of Transportation

Attest:

By: _____

Printed Name: _____

Title: _____

Date: _____

City of Jacksonville, Florida

By: _____

Printed Name: _____

Title: _____

Date: _____

Legal Review:

By: _____

Office of General Counsel

Attest:

By: _____

Printed Name: _____

Title: _____

Date: _____

In compliance with the Ordinance Code of the City of Jacksonville, I do certify that there is an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement and that provision has been made for the payment of the monies provided therein to be paid.

By: _____

Director of Finance

Contract No.

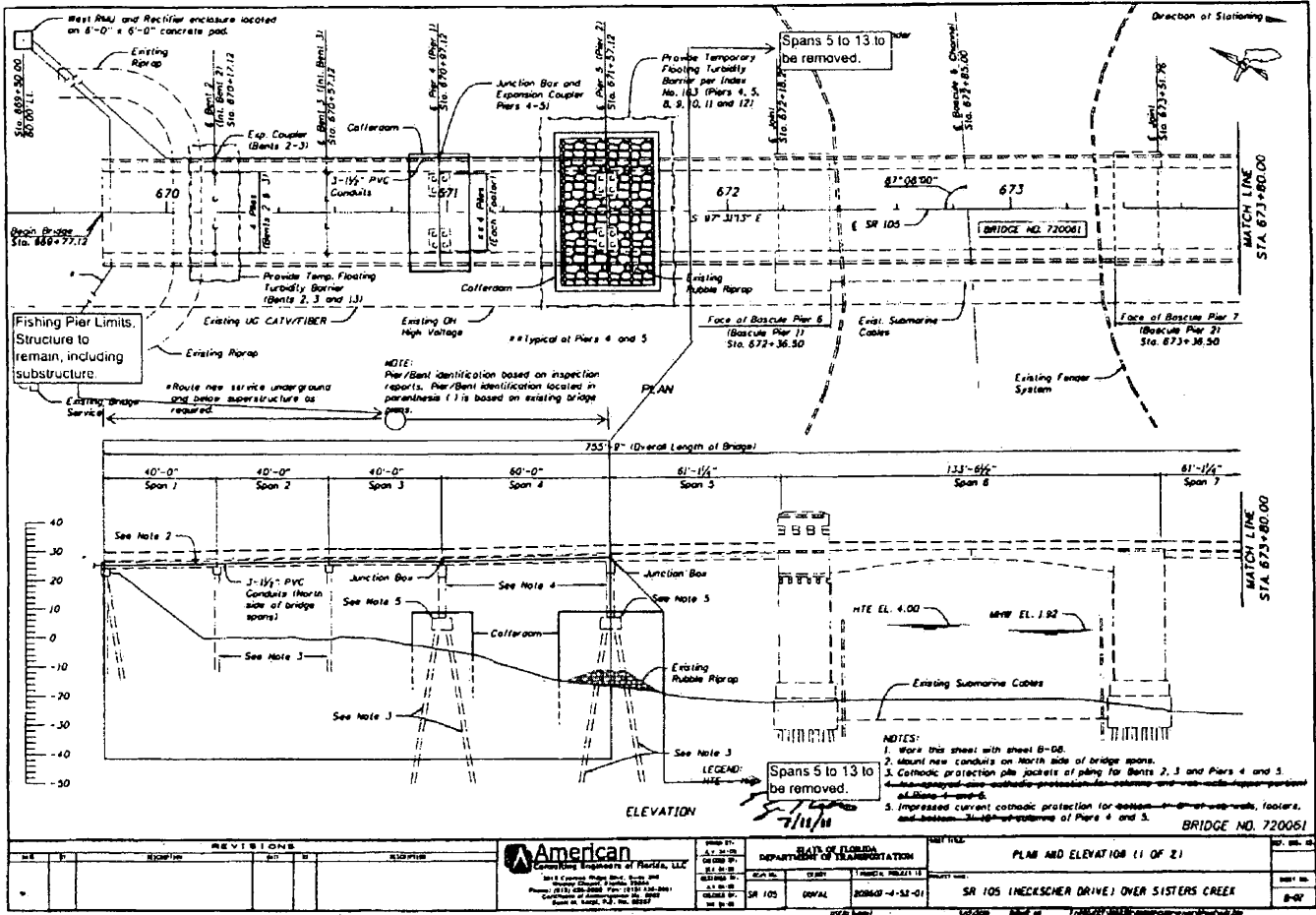
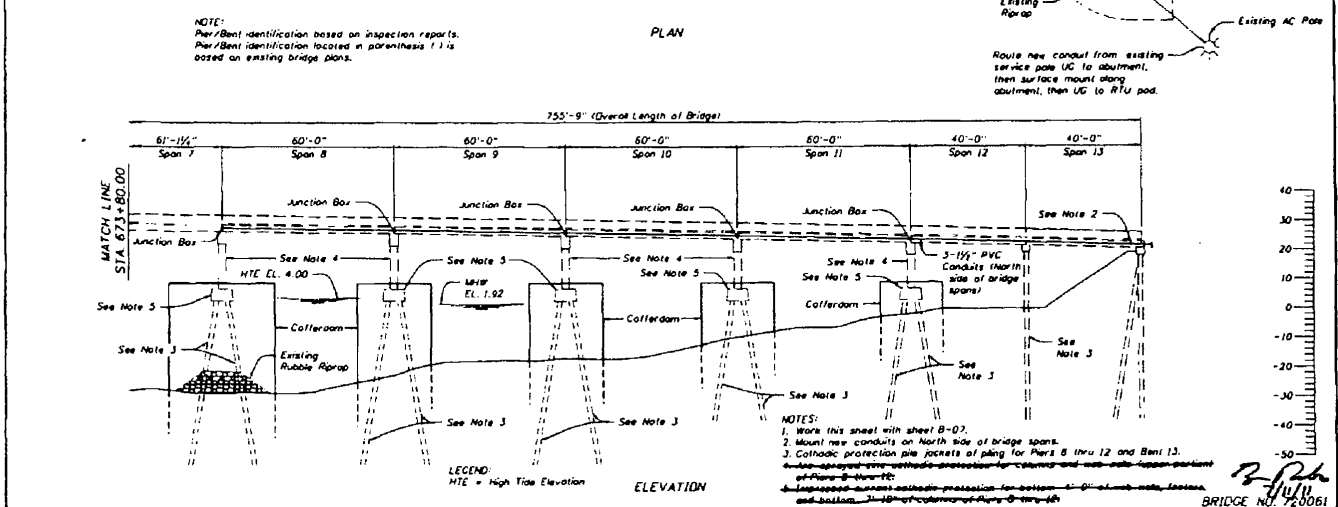
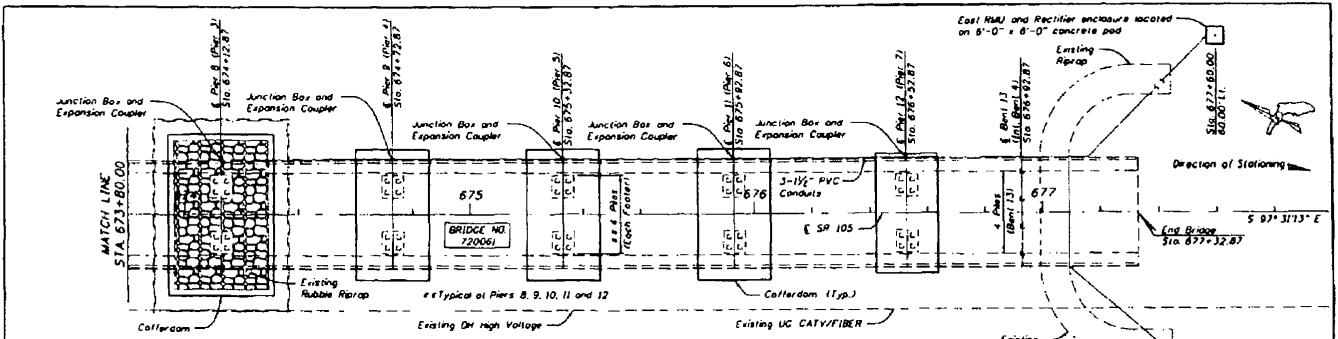


Exhibit "1"
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NO.	DATE	REVISIONS

American
Consulting Engineers of Florida, LLC

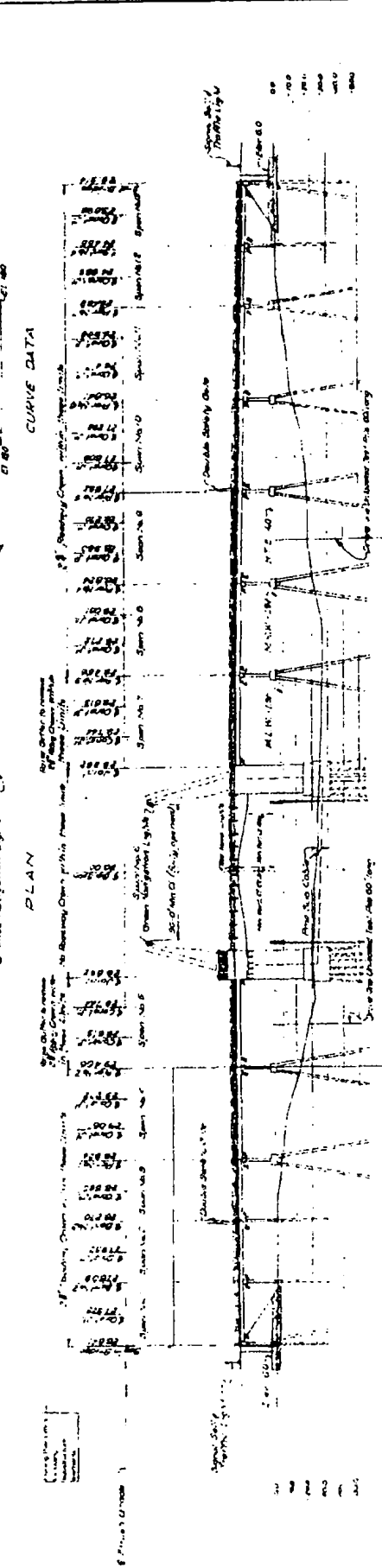
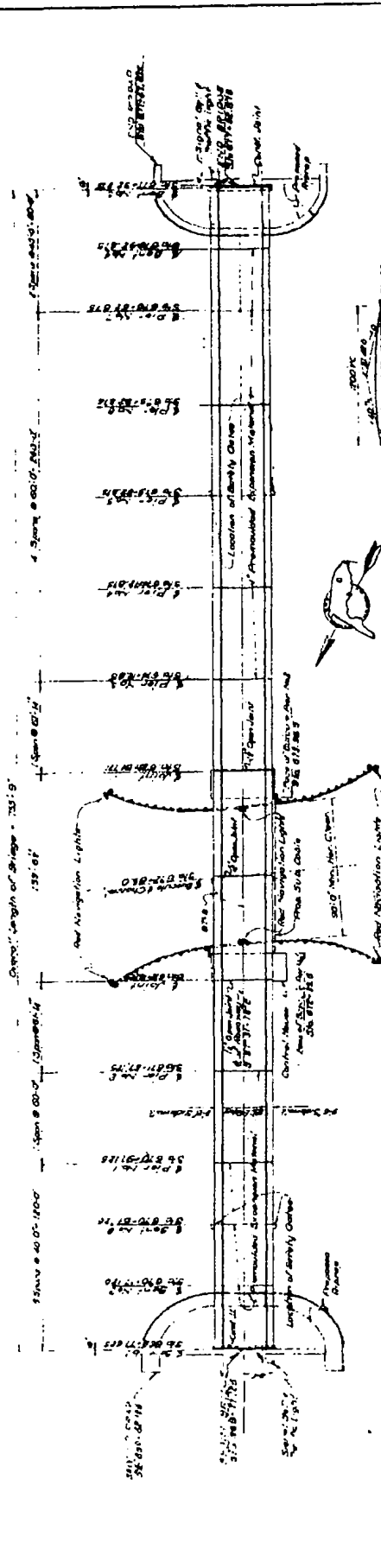
STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

PROJECT: SR 105 (MECKSCHER DRIVE) OVER SISTERS CREEK

BRIDGE NO. 720061

PLAN AND ELEVATION 12 OF 21

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PLAN & ELEVATION
STATE ROAD DEPARTMENT OF FLORIDA
BRIDGE DIVISION

BRIDGE OVER
SYSTEMS CREEK

708	BRIDGE	1928-707
709	BRIDGE	1928-707
710	BRIDGE	1928-707
711	BRIDGE	1928-707
712	BRIDGE	1928-707
713	BRIDGE	1928-707
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743	BRIDGE	1928-707
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747	BRIDGE	1928-707
748	BRIDGE	1928-707
749	BRIDGE	1928-707
750	BRIDGE	1928-707

CURVE DATA

PLAN

ELEVATION

- 1. THE BRIDGE SHALL BE CONSTRUCTED AS SHOWN ON THESE PLANS.
- 2. THE BRIDGE SHALL BE CONSTRUCTED TO STAND ON THE EXISTING GROUND SURFACE.
- 3. THE BRIDGE SHALL BE CONSTRUCTED TO STAND ON THE EXISTING GROUND SURFACE.
- 4. THE BRIDGE SHALL BE CONSTRUCTED TO STAND ON THE EXISTING GROUND SURFACE.
- 5. THE BRIDGE SHALL BE CONSTRUCTED TO STAND ON THE EXISTING GROUND SURFACE.