ERRORS & OMISSIONS GUIDELINES AND FORMS

INTRODUCTION:

This guide serves as a companion to FDOT Procedure: ***RESOLUTION OF ERRORS, OMISSIONS, AND CONTRACTUAL BREACHES BY PROFESSIONAL ENGINEERS ON DEPARTMENT CONTRACTS*** (***Topic No.: 375-020-010***).

This guide also includes sample forms and worksheets which may be used as a starting point in processing and documenting project issues.

PROCEDURE GUIDANCE:

1. GENERAL

Consultant-prepared construction plans and contract documents may contain errors or omissions; as a result, cost and time overruns may occur on a construction project. Cost and time overruns may also occur on a construction project because of a breach of the consultant CEI contract.

When consultant errors or omissions, or contractual breaches cause added project costs or increased time the Department evaluates whether to prosecute recovery of these added project costs (premium costs). The Department PM may utilize the Office of the General Counsel to assist with prosecuting the recovery of these costs.

To ensure compliance with ***337.015(3), F.S,*** the Department shall vigorously pursue recovery of incurred construction Premium Costs which are considered to be due to consultant E&O. There are no thresholds or minimum amounts to trigger recovery. Each issue determined to be an E&O issue must be managed and documented according to the E&O procedure. Issues coded in construction and brought over to PSEE Resolution Tracking Module (RTM) must be managed as E&O issues until resolution.

Early communication with the consultant and documentation of the discovery of an E&O issue or a potential E&O issue, is of utmost importance. The discovery of an issue or potential issue is the Discovery Date, and that starts the clock for the Statute of Limitations (***Appendix B***).

1.1 E&O PROCESS OVERVIEW

An overview of the E&O process for both EOR and CEI issues can be found in ***Appendix H***. This process begins at Discovery of an issue during construction. Early communication and coordination between all parties is critical.

1.2 TRACKING AND DOCUMENTATION

All issues must be tracked by the PM in the Resolution Tracking Module (RTM) within PSEE. The District may elect for the District E&O Liaison (EOL) to assist in managing E&O issue documentation and tracking in RTM.

Issues may be tracked in RTM prior to issuance of a Supplemental Agreement (SA) or Work Order (WO) in Construction…as early as Discovery. Those issues can be tracked as RFIs in RTM and later reconciled with the SA/WO should it occur. Any relevant dates, project information and emails or other documentation may be entered into RTM once an issue is being tracked in RTM.

At any time after the **E&O Notification Letter** is sent to the Consultant, resolution of an issue must be documented through either **Settlement Agreement** or **E&O Closeout Letter**.

All formal documents, which are specifically referred to in the procedure by title (e.g., **E&O Notification Letter**, **Premium Cost Demand Letter**) and sent to an Officer at the Consulting Firm, must be transmitted in a way in which receipt of delivery is acknowledged and documented (e.g., DocuSign, Certified Mail). DocuSign may be used for electronic delivery and signature in lieu of hardcopy notarization for any documents that require notarization for hardcopies (e.g., Settlement Agreement). The DocuSign Delivery Certificate must be retained.

The PM/EOL should monitor RTM regularly for new issues (Status = NEW). Issues identified with a Status of NEW are brought into RTM automatically. These issues must be changed to IN-REVIEW Status (or another appropriate status) as soon as the PM/EOL are aware of the issue. Issues must not remain in NEW status for more than one month, as the CO E&O Program Administrator produces a monthly report which includes identification of NEW issues.

See ***Section 2*** for Design Consultant E&O issues and ***Section 3*** for CEI Consultant E&O issues.

Please note that the **Discovery Date** (discussed in ***Section 2.1*** and ***Section 3.1***) ties directly to the Statute of Limitations (see ***Appendix B***). If resolution efforts for an issue are prolonged and are approaching the Statute of Limitations limits, it may be necessary to engage in a Tolling Agreement between the Department and the Consultant. If this occurs, the Department PM should update the issue status in RTM to: *In-Review-TollingAgreement*. Tolling Agreements must be developed in coordination with the OGC.

2. DESIGN CONSULTANT (EOR) ERRORS AND OMISSIONS

Note: *This section applies to EOR E&O issues.*

During the construction phase of a project, issues may occur that require clarification or evaluation of the construction plans and contract documents. Such issues are generally resolved/clarified through a ***Request for Information (RFI)***. However, evaluation may indicate that such project issues require design revisions and/or contract modification as a result of the performance of the EOR. As partners in the project, the CPM, DPM, and EOR must work together to resolve these issues as quickly as possible in order to minimize construction interruptions.

The first flowchart in ***Appendix H*** lays out the process for addressing Design Consultant (EOR) E&O issues.

2.1 DISCOVERY

Written early discovery notification provides the EOR an opportunity to minimize and mitigate any added project costs, as well as separately track their time related to the issue (should it become an E&O issue). In addition, such discovery and notification may prevent or minimize contractor claims against the Department. The DPM should also notify the EOL of the potential E&O issue at this point.

The date the issue is discovered is the **Discovery Date,** regardless of whether the issue is deemed an E&O issue at the time of discovery. If the project issue is ultimately determined to be an EOR E&O issue, the **Discovery Date** is entered in RTM.

2.2 STAGE 1 ASSESMENT

The Stage 1 Assessment is the DPM's initial assessment of the project issue to determine if the EOR may have potential liability for any portion of the issue. This should include a review of the issue details with consideration to the Consultant's obligations. The DPM must work with the EOR to clarify the project issues by reviewing the plans and specifications, the EOR's original scope of services, and any specific requirements the Department imposed on the EOR.

Project issues may initially appear to be the result of E&O but may subsequently be determined to be beyond the EOR's contractual scope of services. Accordingly, the DPM must review the consultant's scope of services, Department criteria, standards and specifications applicable to the project, project-specific information provided to the consultant, any relevant correspondence with the Consultant and any other Department instructions, to determine the consultant's responsibility for the project issues. If the DPM is not a professional engineer, the review must be performed by the professional engineer in responsible charge of the DPM.

The DPM may seek the advice of the District Design Engineer (DDE) and Office of General Counsel (OGC) Legal Counsel for assistance with the determination of consultant negligence and with evaluating and documenting the EOR's responsibility for premium costs.

If it is determined that the project issue appears to have been caused by EOR E&O, the DPM must notify the EOL (if they haven't already been notified), and the DPM should begin tracking the issue in RTM (if not already being tracked).

If it is determined that the project issue initially does not appear to have been caused by EOR E&O, or if it is unclear, the DPM will further assess the issue during the Stage 2 Assessment.

2.3 DEVELOP / IMPLEMENT SOLUTION

The CEI, CPM, DPM, and EOR must work together to identify, clarify, and evaluate a resolution of the project design issues.

With DDE/DPM/CPM approval, the EOR may work directly with the construction contractor to resolve design project issues, provided the Department incurs no premium economic or time costs as a result. In this case, the DPM must request the EOR to include the DPM and CPM in any correspondence to the contractor.

The CEI must negotiate any additional cost and time required to implement the proposed resolution with the construction contractor. The CEI shall document the time and cost of a resolution with the construction contractor by a Work Order, Supplemental Agreement or Unilateral Payment document.

Resolving project design issues typically requires a change to the original construction contract through a supplemental agreement/work order (SA/WO). The CEI shall enter the premium cost amount and assign initial SA/WO coding in the Contract Change Tracking System (CCTS) (with coding input from the CPM, DPM, and EOR). For an explanation of the codes involved in a contract modification, see the attachment to ***CPAM Section 7.3*** published under the "***Coding Contract Changes***" heading on the State Construction Office website. This includes the coding which identifies the party responsible for the issue causing the contract modification (Avoidability Code).

An Avoidability Code of **1-Avoidable Production Consultant** must also indicate the corresponding Cost Recovery Code of **R-Action Recommended**. A Cost Recovery Code of **N-No Action Recommended** must not be used for an Avoidability Code of **1** when a Premium Cost is assigned. As mentioned previously, the Department has a statutory responsibility to *vigorously pursue* recovery of construction Premium Costs incurred due to Consultant E&O.

The CEI must perform an ***Entitlement Analysis*** on every SA/WO.

2.4 STAGE 2 ASSESSMENT AND E&O NOTIFICATION

The Stage 2 Assessment is the DPM's in-depth assessment of the project issue to determine what degree of responsibility or liability the EOR has for the issue and related

premium costs. This assessment takes place after contract modifications have been made and premium costs have been calculated.

A project issue may initially appear to be an EOR E&O but subsequently determined to be beyond the EOR's contractual obligations. The DPM should seek legal advice from the OGC and input from the DDE, DCPME, CPM and CEI, in assessing the EOR E&O premium cost responsibility.

If the DPM determines that the project issue appears to have been caused by EOR E&O, the DPM must provide the EOR with a formal written notification using the **E&O Notification Letter.** (See ***Appendix G***). From this point on, all documentation related to the E&O issue and its resolution must be tracked in RTM.

If the DPM determines that the project issue was not caused by an EOR E&O, the project issue is resolved. The DPM must provide the EOR a written notification of the Department's determination that the EOR is not responsible for the project issue and that the EOR may invoice applicable post-design services. If the issue was being tracked in RTM, the DPM must mark the issue as "Resolved" and document the issue resolution.

2.5 STAGE 3 ASSESSMENT

The Stage 3 Assessment is the DPM's final assessment of the project issue to conclude what degree of responsibility or liability the EOR has for premium costs. The DPM should seek legal advice from the OGC and input from the DDE, DCPME, CPM and CEI, in assessing the EOR's premium cost responsibility. The DPM should also consider the EOR's response to the **E&O Notification Letter**.

The EOR's response to the **E&O Notification Letter** should state their position and provide any supporting documentation. The DPM, CPM and CEI should meet with the EOR to discuss the response to the **E&O Notification Letter** and gain a better understanding of the EOR's position. If the EOR accepts full or partial responsibility for the project issue, or agrees to discuss settlement, the Department and the EOR will begin settlement discussions and negotiations.

The DPM should seek legal advice from the OGC and input from the DDE, DCPME, CPM and CEI, in assessing the EOR's premium cost responsibility. The DPM must enter the EOR's premium cost responsibility into RTM as the **E&O Premium Cost.** This is the basis for the Cost Claim.

If the DPM determines that the project issue was not caused by an EOR E&O, or if the Department decides not to pursue recovery supported by a **B/C Analysis** (see the **Benefit/Cost Analysis Guidelines** in ***Appendix D***), the DPM will close the issue and document the project issue resolution in RTM and notify the EOR of the issue resolution using the **E&O Closeout Letter** (See ***Appendix G***).

2.6 SETTLEMENT

If the EOR accepts responsibility for the project issue or is willing to discuss settlement, the Department and the EOR will begin negotiations. If the Department and EOR agree on terms for a settlement, preparation of the **Settlement Agreement** (see ***Appendix E***) will be coordinated with the OGC.

If the Department and EOR are unable to agree on terms for a settlement, and the **B/C Analysis** supports recovery pursuit (if applicable), the Department must decide whether to continue pursuing recovery of premium costs. This decision is made through evaluation of the issue by the Director of Transportation Development in the Director Level Evaluation (See ***Section 4***).

3. CEI CONSULTANT ERRORS & OMISSIONS

Note: *This section applies to CEI E&O issues.*

Project issues may also arise as a result of Consultant CEI contract administration. Discovery typically occurs during periodic reviews of the CEI's work product, Supplemental Agreements, time extensions, staffing, equipment, and project records. The Department's CPM is responsible to identify Errors and Omissions that are the result of Consultant CEI contract administration.

The CPM is responsible for documenting CEI E&O issue management in RTM. This may be accomplished through the E&O Liaison (EOL).

The second flowchart in ***Appendix H*** lays out the process for addressing Consultant CEI E&O issues.

3.1. DISCOVERY

The discovery of a project issue typically occurs during periodic reviews of the CEI's work products (e.g., Supplemental Agreements, time extensions, project records). Inspection issues may also be discovered if contractor workmanship or material issues are overlooked and then later identified. When a project issue is discovered, and that project issue is a potential CEI E&O issue, the CEI or CPA must promptly notify the CPM.

The date the issue is discovered is the **Discovery Date,** regardless of whether the issue is deemed an E&O issue at the time of discovery. If the project issue is ultimately determined to be a CEI E&O issue, the **Discovery Date** is entered in RTM.

3.2 STAGE 1 ASSESSMENT

The Stage 1 Assessment is the CPM's initial assessment of the project issue to determine if the CEI may have potential liability for any portion of the issue, determine the appropriate corrective action, and establish a reasonable time frame to implement the solution. The CEI must track their time related to the issue separately (should it become an E&O issue).

The CPM may seek the advice of the District Construction Engineer (DCE) and OGC Legal Counsel advice for assistance with the determination of consultant negligence and with evaluating and documenting the CEI's responsibility for premium costs.

If the Department determines that the CEI is not responsible for the issue (the issue is determined to not be CEI E&O), the DCE's delegate shall promptly notify the CEI of the results, and all reasonable costs incurred by the CEI during this process shall be billable.

If the Department determines that the project issue appears to have been caused by CEI E&O, the CPM must notify the EOL, and may begin tracking the issue in RTM.

If the Department determines that the project issue does not appear to be caused by CEI E&O, or if it is unclear, the CPM will further assess the project issue during the Stage 2 Assessment.

3.3 DEVELOP / IMPLEMENT SOLUTION

The CEI, CPM, CPA and DCE must work together to identify, clarify, and evaluate a resolution of the project issues. This provides the CEI an opportunity to minimize and mitigate any added project costs, as well as separately track their time related to the issue (should it become an E&O issue). The CPM must determine an appropriate course of action and the solution.

For each SA and WO, the CPM must determine the premium costs associated with resolving the project issue and perform an Entitlement Analysis. The CPM should prepare the SA, WO, or UP with input from the CEI, DCE, OGC, and the Contractor. **Topic No. 700-000-000, Construction Project Administration Manual (CPAM), Section 7.3** defines the Department's method to initiate, document, and execute SA, WO, and UP documents.

The CPM must enter the premium cost amount and assign initial SA/WO coding in CCTS (with coding input from the DCE). For an explanation of the codes involved in a contract modification, see the attachment to ***CPAM Section 7.3*** published under the "***Coding Contract Changes***" heading on the State Construction Office website. This includes the coding which identifies the party responsible for the issue causing the contract modification (Avoidability Code).

An Avoidability Code of **3 Avoidable Consultant CEI** must also indicate the corresponding Cost Recovery Code of **R-Action Recommended**. A Cost Recovery Code of **N-No Action Recommended** must not be used for an Avoidability Code of **3** when a Premium Cost is assigned. As mentioned previously, the Department has a statutory responsibility to *vigorously pursue* recovery of construction Premium Costs incurred due to Consultant E&O.

3.4 STAGE 2 ASSESSMENT / E&O NOTIFICATION

The Stage 2 Assessment is the CPM's in-depth assessment of the project issue to determine what degree of responsibility or liability the CEI has for the issue and related premium costs. This assessment takes place after contract modifications have been made and premium costs have been calculated.

A project issue may initially appear to a CEI E&O but subsequently determined to be beyond the CEI's contractual obligations. When determining CEI E&O premium cost responsibility, the CPM should seek legal advice from the OGC and input from DCE.

If the CPM determines that the project issue appears to have been caused by CEI E&O, the CPM must provide the CEI with a formal written notification using the **E&O Notification Letter** (See ***Appendix G***). The **E&O Notification Letter** also reminds the CEI to track their time expended on the project issue separately because they will not be compensated for their services unless the Department later determines the project issue was not caused by a CEI E&O. From this point on, all documentation related to the E&O issue and its resolution must be tracked in RTM.

If the CPM determines that the project issue was not caused by a CEI E&O, the project issue is resolved. The CPM must provide the CEI a written notification of the Department's determination that the CEI is not responsible for the project issue. If the project issue is being tracked in RTM, the CPM must mark the issue as "Resolved" and document the issue resolution.

3.5 STAGE 3 ASSESSMENT

The Stage 3 Assessment is the final assessment of the project issue to conclude what degree of responsibility or liability the CEI has for premium costs. This assessment is conducted by the DCE with input from the CPM.

The CEI's response to the **E&O Notification Letter** should state their position and provide any supporting documentation. The DCE and CPM should meet with the CEI to discuss the response to the **E&O Notification Letter** and gain a better understanding of the CEI's position. If the CEI accepts full or partial responsibility for the project issue, or agrees to discuss settlement, the Department and the CEI will begin settlement discussions and negotiations.

The DCE should seek legal advice from the OGC, and input from the CPM in assessing the EOR's premium cost responsibility. The CPM must enter the CEI's premium cost responsibility into RTM as the **E&O Premium Cost.** This is the basis for the Cost Claim.

If the DCE determines that the project issue was not caused by a CEI E&O, or if the Department decides not to pursue recovery supported by a **B/C Analysis** (see the **Benefit/Cost Analysis Guidelines** in ***Appendix D***), the CPM will close the issue and document the project issue resolution in RTM and notify the CEI of the issue resolution using the **E&O Closeout Letter** (See ***Appendix G***).

3.6 SETTLEMENT

If the CEI accepts responsibility for the project issue or is willing to discuss settlement, the Department and the CEI will begin negotiations. If the Department and CEI agree on terms for a settlement, preparation of the **Settlement Agreement** (see ***Appendix E***) will be coordinated with the OGC.

If the Department and CEI are unable to agree on terms for a settlement, and the **B/C Analysis** supports recovery pursuit (if applicable), the Department must decide whether to continue pursuing recovery of premium costs. This decision is made through evaluation of the issue by the Director of Transportation Operations in the Director Level Evaluation (See ***Section 4***).

4. DIRECTOR LEVEL

This section applies to both EOR and CEI E&O, and occurs when a Settlement Agreement cannot be reached, and a decision is made to continue pursuing the recovery of premium costs.

- The term *Director* refers to the Director of Transportation Development for EOR issues, or the Director of Transportation Operations for CEI issues..
- The term *Department PM* refers to the DPM for EOR issues, or the CPM for CEI issues.
- The term *Consultant* refers to the design firm responsible for the EOR E&O, or the CEI firm responsible for the CEI E&O.

If the Cost Claim exceeds $100k at this point, the Department PM should update the issue status in RTM to: *In-Review-Chief Engineer*.

4.1 DIRECTOR EVALUATION

The Department PM must provide the Director (or Designee) a Claim Package which identifies the Cost Claim determined by the Department PM and includes all pertinent supporting documentation. The Director will perform an initial evaluation of the Claim Package to determine Consultant responsibility and decide whether or not to continue to pursue recovery of the Cost Claim.

For evaluation of the Claim Package, the Director may be assisted by a group of advisors (Director Group). The Director Group is typically made up of the following participants:

- For EOR Issues: Director, DPM, CPM, DDE, and DCPME.
- For CEI Issues: Director, CPM and DCE.

The Director should also consult the OGC and the EOL regarding the liability of the Consultant for the Cost Claim.

4.2 CLAIM MEETING

The Director should schedule a Claim Meeting if additional information is needed to evaluate the Cost Claim or determine Consultant responsibility, and to discuss resolution of the Cost Claim (and potentially reach a settlement). The Claim Meeting typically includes the Director Group, the Consultant and their representatives. The Director may also include the Chief Engineer in the Claim Meeting if the Cost Claim exceeds $100k (based on the Director's evaluation). If the Consultant declines to attend or participate in the Claim Meeting, then the Director may conduct the Claim Meeting without the Consultant.

The Cost Claim Meeting attendees must agree that all discussions, representations, and documents made and utilized in the Claim Meeting are deemed settlement discussions and therefore subject to applicable privileges set forth by law. Attendees must sign the ***Notice of Attendance at Claim Meeting and Acknowledgement of Privileged Discussions*** (see ***Appendix G***).

The Director must make a final determination on pursuing recovery of the Cost Claim based on Director's initial evaluation of the Claim Package and the outcome of the Cost Claim Meeting.

4.3 FINAL DETERMINATION

If the Consultant and the Department reach a settlement as a result of the meeting, then the OGC will prepare a **Settlement Agreement** and oversee its execution.

If the Consultant does not participate in the Claim Meeting or does not reach a settlement with the Department as a result of the meeting, then the Department will make a determination on whether or not to pursue recovery of the Cost Claim as follows:

- For Cost Claims $100,000 or less: the Director has final decision authority for the resolution of all pending issues with the Consultant.

- For Cost Claims greater than $100,000: the Director has initial decision authority for the resolution of all pending issues with the Consultant, which is subject to approval by the Chief Engineer, who has final authority.

If the final decision is to pursue the recovery of the Cost Claim, the Director will notify the Consultant using a **Premium Costs Demand Letter**. The letter must summarize the following:

- Nature and scope of the project issue
- Premium Costs and any additional terms for settlement
- The Department's intent to pursue recovery through litigation

The Consultant may resolve the Cost Claim by written acceptance of the terms of the **Premium Costs Demand Letter** within 15 calendar days of the date of the letter. If the

Consultant accepts the terms within the 15-day period, the OGC will prepare a **Settlement Agreement** and oversee its execution. The **Settlement Agreement** must be signed by authorized representatives of the Department and the Consultant. The proposed resolution must resolve all pending issues and provide for a full release by both parties. Each party must bear its own attorney's fees and costs related to the resolution of the Cost Claim.

If the final decision is not to pursue recovery of the Cost Claim, the Director will inform the Department PM to notify the Consultant of the decision using the **E&O Closeout Letter**. The Department PM must mark the issue status as "*Resolved*" in RTM and document the issue resolution in RTM.

5. LITIGATION

If the Consultant does not respond to the **Premium Costs Demand Letter** within the 15-day period or does not accept the terms for settlement, the offer expires and the Department may pursue recovery through litigation.

Once litigation is initiated, all settlement discussions should be handled through the OGC. The District will designate its representative with authority to settle all pending matters.

If litigation is initiated, the Department PM must continue maintaining the issue in RTM and provide available documents to the OGC upon request. This includes all correspondence and documentation pertaining to each E&O Cost Claim. At this point, the Department PM should update the issue status in RTM to: *In-Review-Litigation.*

6. RECOVERED AMOUNTS

The OGC must advise the Department PM of the amounts recovered through litigation to be entered into the RTM (Recovered Amount). The Department PM must provide documentation to the Office of Comptroller (OOC), General Accounting Office (GAO), Accounts Receivable Section (ARS) and Cashier's Office for all funds recovered or services in kind rendered.

6.1 RECEIVED PAYMENTS

The Department PM must submit received payments to the Office of Comptroller (OOC), Cashier's Office via the Department's **Receipt Processing System** (RPS) in accordance with ***Procedure No. 350-080-300, Receipt Processing***.

Payments must be received directly from the Consultant and not from the individual responsible engineer (i.e., personal check), a sub-consultant, or other third party. The contract is between the Department and the Consultant.

6.2 SERVICES IN KIND

Recovery of the Cost Claim is typically in the form of a money payment from the Consultant as restitution for damages caused by E&O. On occasion, a consultant may request to repay the Department via services in kind, in lieu of money. The Department may accept services in kind from a Consultant, however this is solely at the discretion of the District. See ***Appendix C*** for guidance on accepting services in kind.

If the Department elects to allow services in kind from the Consultant, such services must be equivalent to the value of the damages incurred by the Department. Services in kind must also be stipulated in the Settlement Agreement (describing the services to be provided, including the proposed consultant personnel and their compensation rates).

If the Department elects to allow services in kind from the Consultant, the Department PM should update the issue status in RTM to: *In-Review-ServicesInKind.*

The Department PM must notify the Deputy Comptroller and the Accounts Receivable Section (ARS) of this decision and provide a copy of the Settlement Agreement. This can be done using the **Reporting, Collection, and Cash Received (Services in Kind)** letter (or through another means which conveys the same information as the letter).

The DDE (for EOR issues) or DCE (for CEI issues) must determine the scope of equivalent services that will satisfy the Consultant's obligation to reimburse the Department. With input from the District Professional Services Unit (PSU) or Procurement Office, the DDE or DCE must also determine the appropriate Consultant personnel (number, level, compensation rate) to accomplish the scope of equivalent services.

Services in kind may not be used to circumvent the **Consultants' Competitive Negotiation Act (CCNA) (Section 287.055, F.S.)** or to provide an advantage to the Consultant in **CCNA** selection for services on future projects.

If the Department elects to allow services in kind from the Consultant, the Department PM should update the issue status in RTM to: *In-Review-ServicesInKind.*

6.3 TRACKING RECOVERY

The Department PM must monitor and document the receipt of services in kind and provide quarterly updates to the Accounts Receivable Section (ARS). When the Consultant's obligation to provide services has been satisfied, the Department PM must notify the Consultant and the OOC-GAO and mark the issue as "*Resolved*" in RTM.

Please note, the Department PM should only mark the issue status as "*Resolved*" in RTM and document the issue resolution in RTM after full payment has been received or all agreed upon services in kind have been fully received.

The ARS must maintain a system to document and track recovery of all funds received from Consultants for E&O. This is handled through the RPS. Reimbursement may be received in a lump sum or through a set schedule of payments, when approved by the

Deputy Comptroller (or delegate). For lump-sum payments, initial recovery efforts are handled at the District level. If payment is not timely, the Department PM must notify the ARS, who will continue the collection effort. This can be done using the **Reporting, Collection, and Cash Received (Request for Assistance to Recover Funds)** letter (or through another means which conveys the same information as the letter). If further collection efforts are not successful, the account may be turned over to the State's contracted collection agency.

The ARS must coordinate and collect any approved series of payments. The Department PM must notify the Deputy Comptroller to request approval of the recovery payment schedule, and the ARS to track payment and report recovery. This can be done using the **Reporting, Collection, and Cash Received (Request for Assistance to Recover/Track a Series of Payments)** letter (or through another means which conveys the same information as the letter). Refer to **Procedure No. 350-060-303, Accounts Receivable** for more detailed information.

FORMS:

This procedure requires use of the following forms contained in ***Appendix G***:

(a) Sample RFI email

(b) E&O Notification Letter

(c) Premium Costs Demand Letter

(d) Notice of Attendance at Claim Meeting and Acknowledgement of Privileged Discussion

(e) E&O Closeout Letter

Use of the following forms is optional, however the information contained within them must still be submitted:

(a) Reporting, Collection and Cash Received - (Request for assistance to recover funds)

(b) Reporting, Collection and Cash Received - (Request for assistance to recover/track a series of payments)

(c) Reporting, Collection and Cash Received - (Services in Kind)

APPENDICIES

APPENDIX A – DEFINITIONS

Note: Additional definitions are found in the procedure.

Construction Project Manager (CPM): The Department employee whose duties include managing consultant CEI contracts.

Consultant: Engineering entity (Either the EOR or CEI) under contract with the Department to provide engineering services.

Consultant CEI: A consulting engineering firm, holding a certificate of qualification, and retained by the Department to perform construction engineering and inspection services (CEI) on a project or a series of projects. For this procedure only, all references to CEI include the appropriate coordination with the CPM.

Consultant Project Administrator (CPA): The Consultant's administrator in charge of more than one aspect of the construction or administration of the project CEI.

Contract Documents: The term "Contract Documents" includes: Advertisement for Proposal, Proposal, Certification as to Publication and Notice of Advertisement for Proposal, Appointment of Agent by Nonresident Contractors, Noncollusion Affidavit, Warranty Concerning Solicitation of the Contract by Others, Resolution of Award of Contract, Executed Form of Contract, Performance Bond and Payment Bond, Standard Specifications, Supplemental Specifications, Special Provisions, plans, Addenda, or other information mailed or otherwise transmitted to the prospective bidders prior to the receipt of bids, Work Orders, and Supplemental Agreements, all of which are to be treated as one instrument whether or not set forth at length in the form of contract.

Contractual Obligation: The legal responsibility to satisfy the terms and conditions of the professional consultant contract.

Design Project Manager (DPM): The Department employee whose duties include managing consultant design contracts.

Engineer of Record (EOR): As defined in ***Rule 61G15-30.002 (1), Florida Administrative Code***: "A Florida professional engineer who is in responsible charge for the preparation, signing, dating, sealing and issuing of any engineering document(s) for any engineering service or creative work." For this procedure only, the EOR is a professional consulting engineer retained by the Department to provide said services. In the Resolution Tracking Module, the EOR is referred to as the Production Consultant.

Errors and Omissions Liaison (EOL): The District employee who is responsible for coordinating with DPM and CPM in tracking and resolution of E&O issues.

APPENDIX B – FLORIDA LAW & FEDERAL GUIDANCE

There is a 2 (two) year time period to bring a lawsuit for errors and omissions by Professional Engineers on Department Contracts. **Section 95.11(4)(a), F.S,** provides that the two (2) year statute of limitation period for professional malpractice begins to run "from the time the cause of action is discovered or should have been discovered." Given this short time period, it is imperative that the Chief of Litigation, Office of the General Counsel (OGC), be consulted as soon as possible to provide an opinion of the applicable limitation period and when a lawsuit must be filed. The Chief of Litigation can be reached at the OGC (850-414-5265).

STATUTES OF LIMITATIONS (EXCERPTS DATED 10/2020)

http://www.leg.state.fl.us/Statutes/

F.S. 20.23(3)(a) –

20.23 Department of Transportation.—There is created a Department of Transportation which shall be a decentralized agency.

(3)(a) The central office shall establish departmental policies, rules, procedures, and standards and shall monitor the implementation of such policies, rules, procedures, and standards in order to ensure uniform compliance and quality performance by the districts and central office units that implement transportation programs. Major transportation policy initiatives or revisions shall be submitted to the commission for review.

F.S. 95.11(3)(c) –

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(3) WITHIN FOUR YEARS.**—**

(c) An action founded on the design, planning, or construction of an improvement to real property, with the time running from the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, the action must be commenced within 10 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest. However, counterclaims, cross-claims, and third-party claims that arise out of the conduct, transaction, or occurrence set out or attempted to be set out in a pleading may be commenced up to 1 year after the pleading to

which such claims relate is served, even if such claims would otherwise be time barred. With respect to actions founded on the design, planning, or construction of an improvement to real property, if such construction is performed pursuant to a duly issued building permit and if a local enforcement agency, state enforcement agency, or special inspector, as those terms are defined in s. 553.71, has issued a final certificate of occupancy or certificate of completion, then as to the construction which is within the scope of such building permit and certificate, the correction of defects to completed work or repair of completed work, whether performed under warranty or otherwise, does not extend the period of time within which an action must be commenced. Completion of the contract means the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made.

F.S. 95.11(4)(a) –

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(4) WITHIN TWO YEARS.—

(a) An action for professional malpractice, other than medical malpractice, whether founded on contract or tort; provided that the period of limitations shall run from the time the cause of action is discovered or should have been discovered with the exercise of due diligence. However, the limitation of actions herein for professional malpractice shall be limited to persons in privity with the professional.

F.S. 287.055 –

287.055 Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties.—

F.S. 287.057 –

287.057 Procurement of commodities or contractual services.—

F.S. 334.048(3) –

334.048 Legislative intent with respect to department management accountability and monitoring systems.—The department shall implement the following accountability and monitoring systems to evaluate whether the department's goals are being accomplished efficiently and cost-effectively, and ensure compliance with all laws, rules, policies, and procedures related to the department's operations:

(3) The central office shall adopt policies, rules, procedures, and standards which are necessary for the department to function properly, including establishing accountability for all aspects of the department's operations.

F.S. 337.015(3) –

337.015 Administration of public contracts.—Recognizing that the inefficient and ineffective administration of public contracts inconveniences the traveling

public, increases costs to taxpayers, and interferes with commerce, the Legislature hereby determines and declares that:

(3) To protect the public interest, the department shall vigorously pursue claims against contractors and consultants for time overruns and substandard work products.

F.S. 471.033(1)(g) –

471.033 Disciplinary proceedings.—

(1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

(g) Engaging in fraud or deceit, negligence, incompetence, or misconduct, in the practice of engineering.

FLORIDA ADMINISTRATIVE CODE (EXCERPTS DATED 10/2020)

https://www.flrules.org/

F.A.C. Rule 61G15-18.011(1), Definitions.

(1) "Responsible Charge" shall mean that degree of control an engineer is required to maintain over engineering decisions made personally or by others over which the engineer exercises supervisory direction and control authority. The engineer in responsible charge is the Engineer of Record as defined in subsection 61G15-30.002(1), F.A.C.

F.A.C. Rule 61G15-19.001(4), Grounds for Disciplinary Proceedings.

(**4)** A professional engineer shall not be negligent in the practice of engineering. The term negligence set forth in Section 471.033(1)(g), F.S., is herein defined as the failure by a professional engineer to utilize due care in performing in an engineering capacity or failing to have due regard for acceptable standards of engineering principles. Professional engineers shall approve and seal only those documents that conform to acceptable engineering standards and safeguard the life, health, property and welfare of the public.

Failure to comply with the procedures set forth in the Responsibility Rules as adopted by the Board of Professional Engineers shall be considered as non-compliance with this section unless the deviation or departures therefrom are justified by the specific circumstances of the project in question and the sound professional judgment of the professional engineer.

F.A.C. Rule 61G15-30.002 (1), Definitions Common to All Engineer's Responsibility Rules.

(1) Engineer of Record. A Florida professional engineer who is in responsible charge for the preparation, signing, dating, sealing and issuing of any engineering document(s) for any engineering service or creative work.

CODE OF FEDERAL REGULATIONS (EXCERPTS DATED 10/2020)

https://www.ecfr.gov/

Federal Aid Policy Guide 23, Section 635.120, Code of Federal Regulations. –

§635.120 Changes and extra work.

(a) Following authorization to proceed with a project, all major changes in the plans and contract provisions and all major extra work shall have formal approval by the Division Administrator in advance of their effective dates. However, when emergency or unusual conditions justify, the Division Administrator may give tentative advance approval orally to such changes or extra work and ratify such approval with formal approval as soon thereafter as practicable.

(b) For non-major changes and non-major extra work, formal approval is necessary but such approval may be given retroactively at the discretion of the Division Administrator. The STD should establish and document with the Division Administrator's concurrence specific parameters as to what constitutes a non-major change and non-major extra work.

(c) Changes in contract time, as related to contract changes or extra work, should be submitted at the same time as the respective work change for approval by the Division Administrator.

(d) In establishing the method of payment for contract changes or extra work orders, force account procedures shall only be used when strictly necessary, such as when agreement cannot be reached with the contractor on the price of a new work item, or when the extent of work is unknown or is of such character that a price cannot be determined to a reasonable degree of accuracy. The reason or reasons for using force account procedures shall be documented.

(e) The STD shall perform and adequately document a cost analysis of each negotiated contract change or negotiated extra work order. The method and degree of the cost analysis shall be subject to the approval of the Division Administrator.

(f) Proposed changes and extra work involved in nonparticipating operations that may affect the design or participating construction features of a project, shall be subject to review and concurrence by the Division Administrator.

APPENDIX C – GUIDELINES FOR ACCEPTING SERVICES IN KIND IN LIEU OF PAYMENT FOR CLAIMS AGAINST CONSULTANTS

Services in Kind (SIK) agreements must be completed, approved, and monitored in accordance with ***Procedure No. 350-060-303, Accounts Receivable.***

When the Department decides to pursue a claim for damages against a consultant in accordance with ***Procedure No. 375-020-010, "RESOLUTION OF ERRORS, OMISSIONS, AND CONTRACTUAL BREACHES BY PROFESSIONAL ENGINEERS ON DEPARTMENT CONTRACTS,"*** the Department may accept services from the consultant equivalent to the value of the damages as stipulated in a settlement agreement. This method of restitution should only be considered when requested by the consultant. Acceptance of in-kind services is completely at the discretion of the Department, and several factors must be considered before agreeing to accept services in lieu of payment.

1. If the amount of damages exceeds the threshold for advertisement and competitive selection required by statute, the competitive selection processes required by ***Chapter 287.055, F.S.,*** or ***287.057, F. S.***, as applicable, may not be circumvented. The option to accept in-kind-services in lieu of payment should only be considered if the consultant has an existing contract in place in the district that still has sufficient work to be performed to accommodate the amount of the claim. The contract selected for in-kind services can be for any work type, e.g. PD&E, Design, CE&I, but the selected contract must be with the same legal entity as the design contract on which the error or omission occurred.

2. The Department shall not agree to accept services in kind on a future contract based on the assumption that the consultant will be selected. Not only does this delay the final resolution of the claim unnecessarily, it can give the appearance of an unfair advantage for the consultant in future selections.

3. If an appropriate contract is in place with the consultant and in-kind services are accepted in lieu of payment, provision must be made for a detailed accounting of the cost of the services provided. The contract will have to be amended to either reduce the dollar amount of the contract without reducing the services to be performed or add work to be performed within the intent and purpose of the original scope of services.

    a. If the contract is a lump sum contract, an amendment must be executed reducing the dollar amount of the contract by the amount stipulated in the settlement agreement, with no reduction in the services to be performed or in the deliverables to be provided.

    b. If a lump sum supplemental amendment expanding the services to be provided or a new Task Work Order (TWO) is to be issued for a lump sum amount, negotiations for the compensation for the additional services will be conducted in the normal manner and should include reasonable operating

margin. Detailed documentation of the negotiations demonstrating how the lump sum amount was determined must be maintained in the project files. The additional services to be provided must be within the intent of the original scope of services.

c. If the contract is a limiting amount, an amendment must be executed reducing the original limiting amount by the amount due with no reduction in the scope of services to be provided. Invoices must be identified for non-payment and they must be submitted manually, outside CITS. Complete documentation of the invoiced amounts - including time sheets, certified wage rates and expense receipts - must be provided by the consultant and reviewed and approved by the Department's Project Manager and be retained for audit purposes in the project files.

d. If a limiting amount supplemental amendment or TWO is issued, negotiations for the compensation for the additional services will be conducted in the normal manner and should include a reasonable operating margin. Invoices must be identified for non-payment and they must be submitted manually, outside the Consultants' Invoice Transmittal System (CITS). Complete documentation of the invoiced amounts - including time sheets, certified wage rates and expense receipts - must be provided by the consultant and reviewed and approved by the Department's Project Manager and be retained for audit purposes in the project files.

In all cases, the executed amendment or TWO must be forwarded to the Office of the Comptroller's General Accounting Office (OOC-GAO) to establish the receivable account. Quarterly updates of the equivalent dollar value of the services received must be forwarded to OOC-GAO for adjustment of the accounts receivable. Upon completion of the work, final notification that the obligation is satisfied must be forwarded to OOC-GAO to close the account.

In summary, services in kind should only be considered in lieu of payment when the district has an appropriate contract already in place with the consultant. A complete accounting of the costs of the services must be maintained, including negotiated and invoiced amounts. Because of the effort involved in identifying an appropriate contract, negotiating the work effort required to satisfy the claim, compiling and maintaining the documentation necessary to support manual invoices and verify the process, it is usually preferable to insist on monetary reimbursement.

APPENDIX D – BENEFIT/COST ANALYSIS GUIDELINES

Overview

The Department incurs unplanned costs on construction projects. When they are considered Premium Costs as defined in the Construction Project Administration Manual (CPAM), some can be attributable to Errors and Omissions (E&O) as defined ***in Procedure 375-020-010, Errors and Omissions and Contractual Breaches by Consultants on Department Contracts***. They can be caused by the design consultant, i.e., Engineer of Record (EOR), or the Construction Engineering and Inspection consultant (CCEI), and in some cases, both.

337.015(3), Florida Statutes, states "To protect the public interest, the department shall vigorously pursue claims against contractors and consultants for time overruns and substandard work products." When EOR E&O or CCEI E&O issues are identified, the Department must pursue recovery from the EOR consultant or CEI consultant. The following general determinations apply:

1. ***Procedure 375-020-010*** defines the processes for managing E&O issues on construction contracts.

2. The Department will need to assess each issue to substantiate the consultant's responsibility for E&O and Premium Costs the Department incurred to correct them. The resultant E&O Premium Cost (or Cost Claim) is the amount for which the Department will pursue recovery.

   Responsibility for substantiating consultant E&O responsibility rests with the Design Project Manager (DPM) for Design Consultant E&O and the Construction Project Manager (CPM) for CEI Consultant E&O.

   Design Consultant E&O resolution participants will be the District E&O Liaison, DPM, District Consultant Project Management Engineer (DCPME), District Design Engineer (DDE), CPM, District Director of Transportation Development (DTD), District Legal (DL), Chief Engineer (CE) and Office of General Counsel (OGC).

   CEI Consultant E&O resolution participants will be the District E&O Liaison, CPM, District Construction Engineer (DCE), District Director of Transportation Operations (DTO), DL, CE and OGC.

3. ***Benefit/Cost Analysis Evaluation Guidelines*** will apply only to issues for which E&O responsibility is "debatable," meaning the Department has been unable to settle with the consultant following the Stage 3 Assessment, and the cost to continue pursuit could outweigh the benefit of recovering the cost claim.

   Refer to ***FIGURE D.1 – PARTICIPANT CHECKLIST***.

   Refer to ***FIGURE D.2 – BENEFIT/COST ANALYSIS (FOR DEBATABLE ISSUES)*** for a flowchart.

Refer to ***FIGURE D.3 – PURSUE EXAMPLE***, and ***FIGURE D.4 – DO NO PURSUE*** EXAMPLE, for examples of B/C analysis. Regardless of whether E&O is certain or debatable, the Department will reserve the right to pursue recovery of Premium Cost.

Process

Attempt first to resolve the issue at the project level in the Stage 2 and Stage 3 Assessments. For Design Consultant E&O, initially limit participants to the E&O Liaison, CPM, DPM, DCPME, DDE and DL. For CEI Consultant E&O, initially limit participants to the E&O Liaison, CPM, DCE and DL. Involve DTD, DTO, CE and OGC as prescribed by procedure.

Design Consultant E&O:

1. Construction made the assessment of E&O and determined the Initial Premium Cost.
2. The DPM shall assess the Premium Cost portion (all/part/none) for which the consultant should be held responsible (E&O Premium Cost). This amount is the Cost Claim and will be referred to as the "Benefit." The DPM shall consult with DL and obtain concurrence.
3. DPM shall proceed with Benefit/Cost (B/C) analysis to determine action on pursuit of recovery.
    - The DPM shall estimate hours each participant (DPM, E&O Liaison, CPM, DCPME and DDE) will spend to substantiate Consultant responsibility. The DPM shall apply hourly rates to the hours to the estimated hours and sum to arrive at a total investment. This amount will be referred to as the "Cost."
    - A B/C ratio shall be calculated.
    - If B/C is 1.0 or greater, pursuit of E&O recovery shall proceed.
    - If B/C is less than 1.0, a decision to not pursue E&O recovery is justified.
4. DPM may opt to delay action, but, on a monthly basis, shall reconsider performing further analysis to determine whether or not to pursue recovery. Considerations for delay include, but are not limited to the following:

- Small Cost Claim
- Early into construction contract time (could group with other issues at a later date)
- Previous E&O issue resolution experience with same EOR.

CEI Consultant E&O:

1. Construction made the assessment of E&O and determined the Initial Premium Cost.
2. The CPM shall assess the Premium Cost portion (all/part/none) for which the consultant should be held responsible (E&O Premium Cost). This amount is the Cost Claim and will be referred to as the "Benefit." The CPM shall consult with DL and obtain concurrence.
3. CPM shall proceed with Benefit/Cost (B/C) analysis to determine action on pursuit of recovery.
    - The CPM shall estimate hours each participant (CPM, E&O Liaison, and DDE) will spend to substantiate Consultant responsibility. The CPM shall apply hourly rates to the hours to the estimated hours and sum to arrive at a total investment. This amount will be referred to as the "Cost."
    - A B/C ratio shall be calculated.

- If B/C is 1.0 or greater, pursuit of E&O recovery shall proceed.
- If B/C is less than 1.0, E&O a decision to not pursue recovery is justified.

4. CPM may opt to delay action, but, on a monthly basis, shall reconsider performing further analysis to determine whether or not to pursue recovery. Considerations for delay include, but are not limited to the following:

- Small Cost Claim
- Early into construction contract time (could group with other issues at a later date)
- Previous E&O issue resolution experience with same CCEI

Action Delay:

1. Explanation for delay must be documented.
2. When an issue has remained IN REVIEW 120 days after Construction Passed Date action on issue resolution using B/C analysis must proceed.

Figure D.1 – Participant Checklist

	Design Consultant E&O		CEI Consultant E&O	
	Cost Claim ≤ $100K	Cost Claim ≥ $100K	Cost Claim ≤ $100K	Cost Claim ≥ $100K
CPM	X	X	X	X
DPM	X	X	X	X
DCPME	X	X		
DCE			X	X
DDE	X	X		
DTD	X	X		
DTO			X	X
DL	X	X	X	X
CE		X		X
OGC	X[1]	X	X[1]	X
E&O Liaison	X	X	X	X

Legend:

CPM: Construction Project Manager
DPM: Design Project Manager
DCPME: District Consultant Project Management Engineer
DCE: District Construction Engineer
DDE: District Design Engineer
DTD: Director of Transportation Development
DTO: Director of Transportation Operations
DL: District Legal
CE: Chief Engineer
OGC: Office of General Counsel

Notes: 1. Not prescribed in procedure, only if essential

Figure D.2 – Benefit/Cost Determination (Debatable Issues)

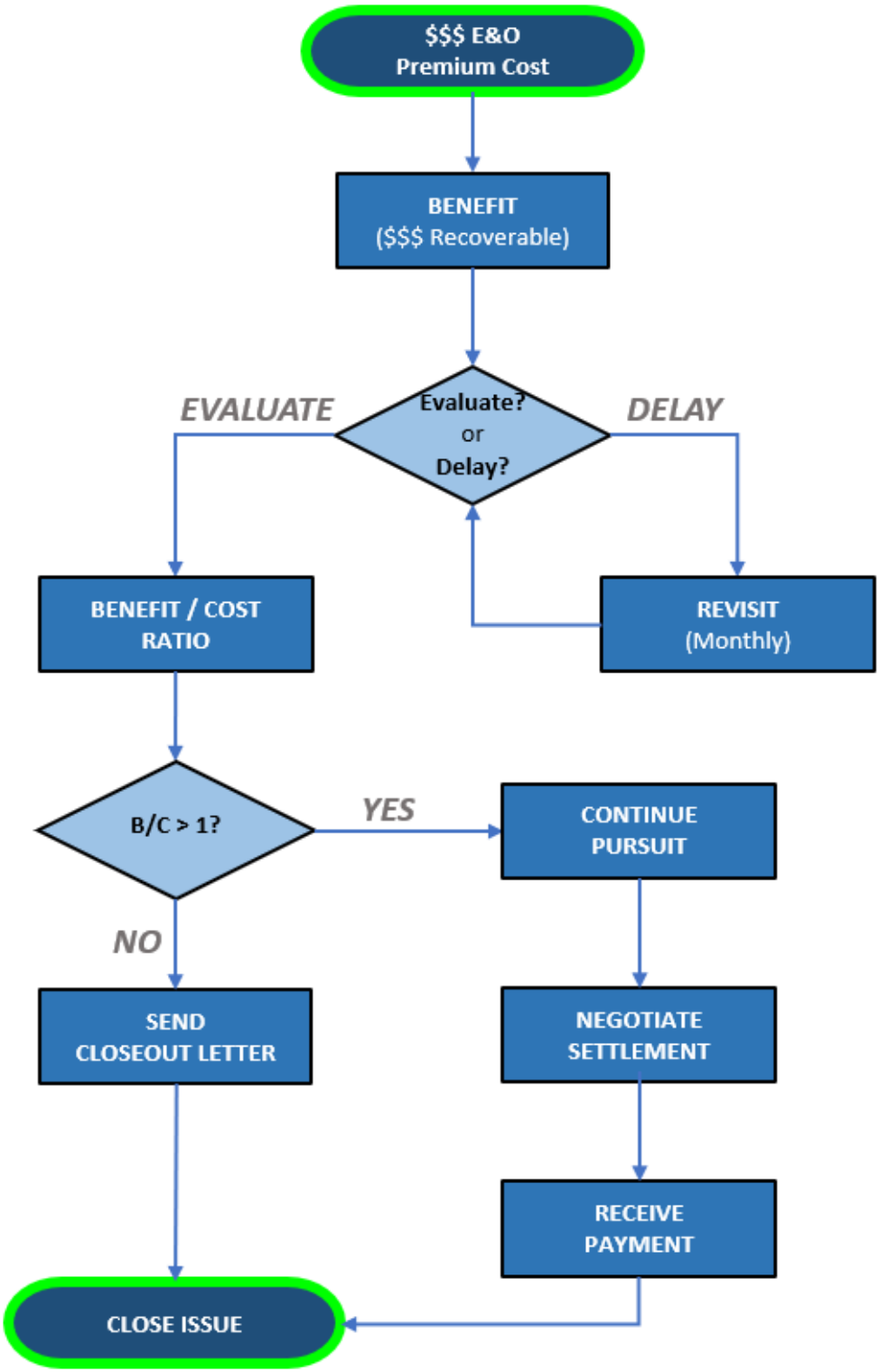


Figure D.3 – PURSUE EXAMPLE

Design Consultant E&O			
Pursuable Premium Cost (BENEFIT)			$134,805
Participant	Hours	Hourly Rate	Cost
CPM	15	$125	$1,875
DPM	5	$125	$625
DCPME	10	$150	$1,500
DCE		$175	
DDE	10	$175	$1,750
DTD	5	$200	$1,000
DTO		$200	
DL	5	$175	$875
CE	5	$200	$1,000
OGC	2	$250	$500
E&O Liaison	5	$100	$500
Total COST			$9,625
BENEFIT/COST			14.010
			Pursue

Legend
CPM: Construction Project Manager
DPM: Design Project Manager
DCPME: District Consultant Project Management Engineer
DCE: District Construction Engineer
DDE: District Design Engineer
DTD: Director of Transportation Development
DTO: Director of Transportation Operations
DL: District Legal
CE: Chief Engineer
OGC: Office of General Counsel

Figure D.4 – DO NOT PURSUE EXAMPLE

Design Consultant E&O			
Pursuable Premium Cost (BENEFIT)			$4,125
Participant	Hours	Hourly Rate	Cost
CPM	5	$125	$625
DPM	5	$125	$625
DCPME	5	$150	$750
DCE		$175	
DDE	5	$175	$875
DTD	5	$200	$1,000
DL	2	$175	$350
CE		$200	
OGC		$250	
E&O Liaison	5	$100	$500
Total COST			$4,725
BENEFIT/COST			0.873
			Do Not Pursue

Legend
CPM: Construction Project Manager
DPM: Design Project Manager
DCPME: District Consultant Project Management Engineer
DCE: District Construction Engineer
DDE: District Design Engineer
DTD: Director of Transportation Development
DTO: Director of Transportation Operations
DL: District Legal CE: Chief Engineer
OGC: Office of General Counsel

APPENDIX E –SETTLEMENT AGREEMENTS

SAMPLE SETTLEMENT AGREEMENT #1

THIS SETTLEMENT AGREEMENT (Agreement) is made by and between: (ABC Consulting, Inc.) (FIRM) and the State of Florida, Department of Transportation (the "Department"). The Department and FIRM are collectively referred to in this Agreement as the "Parties."

RECITALS

A. The Department advised design contractor of design errors in the plans prepared by FIRM for (Construction Contract No.)(Project) by letters dated_____ copies of which are attached hereto as Composite Exhibit "A"; and

B. The design errors and omissions arise from: ***(insert Description of Issue from E&O Notification Letter.*** (Issue insert issue #); and

C. Without admitting liability, FIRM and the Department mutually and voluntarily wish to resolve, compromise, and settle all claims related to the alleged design errors on the Project through this Agreement. The alleged design errors settled by this Agreement shall be referred to as the "Design Issues."; and

D. In consideration of the mutual and good faith covenants, promises, and releases contained in this Agreement, and to avoid additional costs and risks of future litigation, the Parties hereby agree as follows:

AGREEMENT

1. RECITALS & EXHIBITS

The recitals set forth above and attached exhibits are incorporated in and made part of this Agreement.

2. EFFECTIVE DATE

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

3. PAYMENT (Cash payment option)

a. As full and final settlement of the Design Issues, FIRM shall pay the Department premium costs in the amount of (insert written out sum) dollars ($0.00) ("Settlement Amount") by check made payable to the State of Florida, Department of Transportation. FIRM shall pay the Settlement Amount to the Department within thirty (30) calendar days of receiving a copy of this Agreement fully executed by the Department.

b. This Agreement settles all claims which could have been raised by the Department and/or FIRM concerning, pertaining to, or related to the Design Issues. No interest of any kind or any other payment is to be added to the Settlement Amount to be paid by FIRM to the Department.

3. PAYMENT (In-Kind Services option)

a. As full and final settlement of all Design Issues, FIRM will perform SETTLEMENT AMOUNT ($XXXX.XX) in in-kind services on Contract No. _____. The Design Issues settled by this Agreement are the issues more specifically identified in Exhibit "A" to this Agreement.

b. This Agreement settles all claims which could have been raised by the Department and/or FIRM concerning, pertaining to, or related to the Design Issues. No interest of any kind or any other payment is to be added to the Settlement Amount to be paid by FIRM to the Department.

4. RELEASES

In return for and upon complete performance of paragraphs 3.a and 3.b, above, and the releases and promises contained in this Agreement:

a. The Department for itself, its agents, representatives, and attorneys does hereby fully, finally and forever release and discharge FIRM and its attorneys, administrators, officers, directors, stockholders, subsidiaries, affiliates, successors, and assigns, of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever arising from any or all of the Design Issues, including but not limited to those claims which could have been asserted by or on behalf of the Department against FIRM within any federal, state, or local agency or court concerning the Design Issues.

b. FIRM for itself, their attorneys, administrators, successors, and assigns, does hereby fully, finally, and forever release and discharge the Department and its agents, representatives, and attorneys of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever arising from any and all of the Design Issues, including but not limited to those claims which might have been asserted by or on behalf of FIRM against the Department within any federal, state, or local agency or court concerning the Design Issues.

5. CONTINUING CONTRACTUAL OBLIGATIONS

Nothing in this Agreement shall alter or change in any manner the force and effect of Department Contract No. (Design Consultant Contract #), including any previous amendments thereto, except insofar as the same may be altered and/or amended by this Agreement.

6. ATTORNEY'S FEES

The Parties agree to bear their own attorneys' fees and costs in connection with any work performed relating to the settlement negotiations, including, but not limited to, the negotiation, drafting and execution of this Agreement. In the event that any action or proceeding is brought to enforce the terms of this Agreement, venue shall only be proper in the appropriate court located in Leon County, Florida and the prevailing party shall be entitled to recover its attorneys' fees and costs.

7. GOVERNING LAW AND VENUE

This Agreement shall be governed in all respect by the laws of the State of Florida. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of the Agreement shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

8. ENTIRE AGREEMENT

This instrument, together with any exhibits and documents made part hereof by reference, contains the entire agreement of the parties for Design Issues 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 Design Issues and any part hereof, are waived, merged herein and superseded hereby.

9. 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.

10. NON-ASSIGNMENT

The Parties represent that no portions of the claims, demands or causes of action referred to by and released by this Agreement have been sold, assigned, transferred or conveyed to any third party.

11. 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.

12. NO ADMISSION OF LIABILITY

The Parties agree and represent that this Agreement is entered into only for settlement and compromise and any action taken pursuant to this Agreement is not to be construed or considered as an admission of liability or fault on the part of either of the Parties. The Parties further acknowledge, understand, and represent that the execution of this Agreement shall not be construed as an admission of liability or validity of any claim on the part of either of the Parties in any respect and that this Agreement is entered into to settle and terminate the dispute and avoid additional expense.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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, that judgment shall not affect: (a) any other provision of this Agreement; (b) the application of such provision in any other circumstances; and (c) the validity or enforceability of this Agreement as a whole.

18. EXECUTION AND SIGNATURES
FIRM will execute two (2) copies of the Agreement and have the signature attested and notarized. Following FIRM executing the Agreement, the Department will execute the copies executed by FIRM and have the signature attested and notarized. Each party will be provided an original executed and notarized copy of the Agreement.

19. CAPACITY AND AUTHORITY
Each party represents and warrants to the other party that it has the capacity and full authority to make this Agreement. The persons signing this Agreement warrant that they are authorized to do so on behalf of the party they represent.

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties hereby execute this Agreement, consisting of ***X*** (***X***) pages, excluding content of the attached exhibits.

(ABC Consulting, Inc)
authorized representative under Design Contract
(insert design consultant contract No.)
By: _____

Printed Name: _____

Title: _____

Date: _____

Florida Department of Transportation
By: _____

Printed Name: _____

Title: _____

Date: _____

Legal Review:

By:
Office of the General Counsel
Florida Department of Transportation

SAMPLE SETTLEMENT AGREEMENT #2

THIS SETTLEMENT AGREEMENT (Agreement) is made by and between: {Consultant Company Name} (FIRM) and the State of Florida, Department of Transportation (the "Department"). The Department and FIRM are collectively referred to in this Agreement as the "Parties."

RECITALS

A. The Department advised design contractor of design errors in the plans prepared by FIRM for (Construction Contract No. {Constr. Contract No}) (Project) by letter "Click or tap here to enter text." dated Click or tap to enter a date., by "{Referenced Letter}" dated Click or tap to enter a date., email "{Referenced email}" dated Click or tap to enter a date., and {Any Attachments}. The copies of which are attached hereto as Composite Exhibit "A"; and

B. The design errors and omissions arise from: *{Brief description of project issue(s)}* (Issue: {Referenced Issue}); and

C. Without admitting liability, FIRM and the Department mutually and voluntarily wish to resolve, compromise, and settle all claims related to the alleged design errors on the Project through this Agreement. The alleged design errors settled by this Agreement shall be referred to as the "Design Issues."; and

D. In consideration of the mutual and good faith covenants, promises, and releases contained in this Agreement, and to avoid additional costs and risks of future litigation, the Parties hereby agree as follows:

AGREEMENT

1. RECITALS & EXHIBITS

The recitals set forth above and attached exhibits are incorporated in and made part of this Agreement.

2. EFFECTIVE DATE

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

3. PAYMENT (In-Kind Services option)

a. As full and final settlement of all Design Issues, FIRM will perform SETTLEMENT AMOUNT (${0,000.00}) in in-kind services on Contract No. . The Design Issues settled by this Agreement are the issues more specifically identified in Exhibit "A" to this Agreement.

b. This Agreement settles all claims which could have been raised by the Department and/or FIRM concerning, pertaining to, or related to the Design Issues. No interest of any kind or any other payment is to be added to the Settlement Amount to be paid by FIRM to the Department.

3. PAYMENT (Cash payment option)

a. As full and final settlement of the Design Issues, FIRM shall pay the Department premium costs in the amount of {and $^{00}/_{100}$} dollars (${0,000.00}) ("Settlement Amount") by check made payable to the State of Florida, Department of Transportation. FIRM shall pay the Settlement Amount to the Department within thirty (30) calendar days of receiving a copy of this Agreement fully executed by the Department.

b. This Agreement settles all claims which could have been raised by the Department and/or FIRM concerning, pertaining to, or related to the Design Issues. No interest of any kind or any other payment is to be added to the Settlement Amount to be paid by FIRM to the Department.

4. RELEASES

In return for and upon complete performance of paragraphs 3.a and 3.b, above, and the releases and promises contained in this Agreement:

a. The Department for itself, its agents, representatives, and attorneys does hereby fully, finally and forever release and discharge FIRM and its attorneys, administrators, officers, directors, stockholders, subsidiaries, affiliates, successors, and assigns, of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever arising from any or all of the Design Issues, including but not limited to those claims which could have been asserted by or on behalf of the Department against FIRM within any federal, state, or local agency or court concerning the Design Issues.

b. FIRM for itself, their attorneys, administrators, successors, and assigns, does hereby fully, finally, and forever release and discharge the Department and its agents, representatives, and attorneys of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever arising from any and all of the Design Issues, including but not limited to those claims which might have been asserted by or on behalf of FIRM against the Department within any federal, state, or local agency or court concerning the Design Issues.

5. CONTINUING CONTRACTUAL OBLIGATIONS

Nothing in this Agreement shall alter or change in any manner the force and effect of Department Contract No. ({Design Contract}), including any previous amendments thereto, except insofar as the same may be altered and/or amended by this Agreement.

6. ATTORNEY'S FEES

The Parties agree to bear their own attorneys' fees and costs in connection with any work performed relating to the settlement negotiations, including, but not limited to, the negotiation, drafting and execution of this Agreement. In the event that any action or proceeding is brought to enforce the terms of this Agreement, venue shall only be proper in the appropriate court located in Leon County, Florida and the prevailing party shall be entitled to recover its attorneys' fees and costs.

7. GOVERNING LAW AND VENUE

This Agreement shall be governed in all respect by the laws of the State of Florida. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of the Agreement shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

8. ENTIRE AGREEMENT

This instrument, together with any exhibits and documents made part hereof by reference, contains the entire agreement of the parties for Design Issues 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 Design Issues and any part hereof, are waived, merged herein and superseded hereby.

9. 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.

10. NON-ASSIGNMENT

The Parties represent that no portions of the claims, demands or causes of action referred to by and released by this Agreement have been sold, assigned, transferred or conveyed to any third party.

11. 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.

12. NO ADMISSION OF LIABILITY

The Parties agree and represent that this Agreement is entered into only for settlement and compromise and any action taken pursuant to this Agreement is not to be construed or considered as an admission of liability or fault on the part of either of the Parties. The Parties further acknowledge, understand, and represent that the execution of this Agreement shall not be construed as an admission of liability or validity of any claim on the part of either of the Parties in any respect and that this Agreement is entered into to settle and terminate the dispute and avoid additional expense.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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, that judgment

shall not affect: (a) any other provision of this Agreement; (b) the application of such provision in any other circumstances; and (c) the validity or enforceability of this Agreement as a whole.

18. EXECUTION AND SIGNATURES
FIRM will execute the Agreement electronically using DocuSign which will be sent to them by the Department. Following FIRM executing the Agreement, the Department will execute the Agreement electronically as well. Upon execution by all parties, the signed Agreement will be digitally provided via DocuSign to all parties.

19. CAPACITY AND AUTHORITY
Each party represents and warrants to the other party that it has the capacity and full authority to make this Agreement. The persons signing this Agreement warrant that they are authorized to do so on behalf of the party they represent.

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties hereby execute this Agreement, consisting of four (4) pages, excluding content of the attached exhibits.

{Consultant Company Name}
authorized representative under Design Contract ({Design Contract})

By: _____

Name: _____

Title: _____

Acknowledged receipt of signed agreement.

By: _____

Name: _____

Title: _____

Legal Review:

By: _____
Office of the General Counsel
Florida Department of Transportation

Florida Department of Transportation

By: _____

Printed Name: _____

Title: _____

APPENDIX F –TOLLING AGREEMENTS

SAMPLE TOLLING AGREEMENT #1

Agreement between the Florida Department of Transportation and *CONSULTANT*

FPID* and *DESCRIPTION
CONTRACT NUMBER

This agreement (Tolling Agreement) is made between the State of Florida, Department of Transportation (Department) and ***CONSULTANT*** regarding Department ***CONTRACT NUMBER*** (Contract). Department and ***CONSULTANT*** are collectively referred to as the "Parties."

WHEREAS, by letter dated ***DATE*** (Exhibit "A"), the Department has informed ***CONSULTANT*** that there are alleged design errors in the plans prepared by ***CONSULTANT*** (Plans) for the ***PROJECT*** (Project). These design errors are referred to in this Tolling Agreement as the Tolled Claims. ***CONSULTANT*** has disputed the Department's evaluation of the Tolled Claims (Exhibit "B"), and the Parties have commenced discussions to explore a mutually acceptable settlement of the Tolled Claims.

WHEREAS, the Parties desire to avoid litigation and allow a further opportunity to discuss and evaluate the Tolled Claims.

The Parties, in consideration of the covenants set out in this Tolling Agreement, agrees as follows:

1. The new expiration date of the statute of limitations for filing a lawsuit regarding the Tolled Claims is ***DATE***. This new expiration date of the statute of limitations applies to any and all causes of action and theories of liability concerning the Tolled claims. By amendment to this Tolling Agreement, the Parties may add additional alleged design errors to be included within the Tolled Claims.

2. The defenses of laches, estoppel, waiver, or other similar equitable defenses based upon the running or expiration of any statute of limitations time period shall not be asserted, applied, alleged, plead, or be applicable in any lawsuit regarding the Tolled Claims filed on or before ***DATE***.

3. This Tolling Agreement may not be modified except in a writing signed by both the Department and ***CONSULTANT***. The Parties acknowledge that this Tolling Agreement may be extended for such period of time as the Parties agree to in writing.

4. At any time during the Tolling Period (***DATE*** through ***DATE***), the Department or ***CONSULTANT*** may commence suit after providing thirty (30) days written notice to the other party. This thirty-day notice period does not extend the expiration date of the statute of limitations as set forth in paragraph 1 above.

If the Department or ***CONSULTANT*** elects to file suit under this paragraph, the expiration date for the statute of limitations for the Tolled Claims shall remain as set forth in Paragraph 1.

5. This Tolling Agreement does not change any provision of the Contract. With respect to the Tolled Claims, the Department and ***CONSULTANT*** expressly reserve all rights and defenses that may be available to them, whether at law or in equity, concerning the Project or under the Contract, except those defenses related to the statutes of limitations, laches, estoppel, and waiver which are modified by the terms of this Tolling Agreement. For ***CONSULTANT***, these reservations include, without limitation, the right to challenge the propriety of the Department's position that ***CONSULTANT*** breached the Contract, was negligent, or was professionally negligent in preparing the Plans for the Project. For the Department, these reservations include, without limitation, the right to sue ***CONSULTANT*** for breach of contract and/or professional negligence.

6. This Tolling Agreement contains the entire agreement between the Parties. The Parties agree that this Tolling Agreement supersedes all other written or oral exchanges, agreements or negotiations between the Parties concerning the subject-matter of this Tolling Agreement. The Parties state that there are no representations, agreements, arrangements, or understandings, oral or written, concerning the subject matter of this Tolling Agreement that are not fully expressed and incorporated in this Tolling Agreement. With the exception of paragraph 8 below, nothing in this Tolling Agreement is intended to, nor shall it be construed to, give any person or entity, other than the Parties, any right, remedy, or claim under or by reason of this Tolling Agreement.

7. The Contract includes the supplemental agreements, amendments, authorizations, agreements, assignments, re-assignments, and task work orders.

8. This Tolling Agreement shall be binding on and shall inure to the benefit of the legal and personal representatives, heirs, executors, administrators, successors and assigns, trustees, agents, attorneys, respective officers, directors, agents, employees, partners, administrators, representatives, shareholders, accountants, and all the present and former parents, partners, subsidiaries, divisions, operating companies, and affiliated corporations, partnerships and companies of the Parties.

9. The Parties agree and represent that this Tolling Agreement is entered into only for the purpose of tolling the statutes of limitations for claims related to the Contract, and that any action taken pursuant to this Tolling Agreement is not to be construed or considered an admission of liability or fault or the validity of any claim on the part of either of the Parties in any respect.

10. The Parties represent that this Tolling Agreement is entered into after a full and independent investigation and they explicitly acknowledge that they are entering into this Tolling Agreement entirely of their own free will, uninfluenced by any duress, economic coercion or other factors that might have the effect of negating the free will with which they entered into this Tolling Agreement. In executing this Tolling Agreement, the Parties represent that they have not relied on any statement or representation relating to this matter made by another party, or any other person or persons representing such other party. The Parties further acknowledge and represent that they have read and understand this Tolling Agreement and would not sign it if they did not understand it and agree to be bound by its terms.

11. The Parties understand and agree that the promises and undertakings set forth in this Tolling Agreement are the sole consideration for the Tolling Agreement, that the terms and conditions are contractual and are not mere recitals. This Tolling Agreement shall be construed and interpreted in accordance with the laws of the State of Florida.

12. The Parties acknowledge their present legal obligation to retain all documents relevant to the Tolled Claims including e-mail messages. This obligation to retain documents includes ***CONSULTANT***'s communications and work for any other entities and persons.

13. For purposes of this Tolling Agreement, written notice is deemed to have been properly given when provided to the indicated representative of the named Parties below or the successor to the named representative. A copy of the written notice shall be concurrently provided to the named Parties' indicated legal counsel.

Florida Department of Transportation – DISTRICT:
DISTRICT SECRETARY
ADDRESS

Copy to:
DISTRICT LEGAL OFFICE
ADDRESS

CONSULTANT
CONTACT
ADDRESS

Copy to:
CONSULTANT LEGAL COUNSEL
ADDRESS

14. Each Party represents and warrants to the other party that it has the capacity and full authority to make and enter into the terms and conditions of this Tolling Agreement. The persons signing this Tolling Agreement warrant that they are authorized to do so individually or on behalf of the entity or person they represent, and has had the benefit of legal counsel.

15. In the event that any action or proceeding is brought to enforce the terms of this Tolling Agreement, venue shall only be proper in the appropriate court located in Leon County, Florida, and the prevailing party shall be entitled to recover its attorneys' fees and costs.

16. The Parties agree to execute all documents and to take all reasonable actions which are necessary or helpful to effectuate the purpose of this Tolling Agreement.

17. This Agreement shall become effective when all parties have signed it. The date this Agreement is signed by the last party to sign it (as indicated by the date stated under that party's signature) shall be deemed the date of this Agreement.

SIGNATURES

The State of Florida, Department of Transportation — Florida's Turnpike Enterprise agrees to the terms and conditions of this Tolling Agreement by its duly authorized representatives on this ___ day of ***MONTH***, ***YEAR***.

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION - *DISTRICT*

By: _____
Printed Name: ***DISTRICT SECRETARY***
Title: ***TITLE***

Approved as to form by:

_____

CONSULTANT agrees to the terms and conditions of this Tolling Agreement by its duly authorized representatives on this ___ day of ***MONTH***, ***YEAR***.

CONSULTANT

By: _____
Printed Name: ***CONTACT***
Title: ***TITLE***

Approved as to form by:

_____

APPENDIX G – SAMPLES/TEMPLATES

G1 – RFI/EARLY NOTIFICATION EMAIL FROM PROJECT MANAGER TO EOR

You must notify the EOR AND DPM (Design Project Manager)/Consultant PM via an early notification letter/email. Design Project Manager may utilize similar language for direct notification to EOR when necessary. Below is sample language you can include in your email:

> Dear Design Consultants:
> Project Issues have been identified in the referenced contract that require immediate attention. (make reference to verbal/written communication as per Section 1). The Department respectfully requests your assistance to fully evaluate the following issue(s) and determine the appropriate course of action:
>
> - **(brief description of project issues)**
>
> This issue may impact the overall project cost and contract time and has the potential to be classified as Errors and Omissions, therefore your immediate attention is required. Engineering/inspection services associated with this RFI shall be billable unless premium costs are incurred by the Department and the issue is subsequently determined to be the result of Errors and Omissions.
>
> Please track all additional services separately for potential compensation. Thank you for your attention to these matters and response by **(insert date)**.

Every WO/SA should have DPM notified on the Claim Review Sheet and the email included as backup in the WO/SA. If you later determine there is premium and it is coded as design error/omission (recoverable) OR its strictly unforeseen and there is no premium, then you'll send a follow-up email to the EOR and DPM at that time following up and notifying them as such.

Note: The only exemption to this rule is design-build projects, all other projects must follow this process.

Revised ~~1/11/2022~~3/23/2023

G2 – E&O NOTIFICATION LETTER

March 24, 2023~~January 11, 2022~~

{Consultant Company Officer's Name}
{Consultant Company Name}
{Street Address}
{City, State, Zip}

Re: Errors and Omissions Notification - {issue short name}
Project: {Department Project Name/Brief Description}
Financial Project ID: {FPID}
Construction Contract Number: {Constr. Contract No. & Fiscal Year}
Supplemental Agreement Number: {SA#}

Dear {Consultant Company Officer's Name}:

In preparing the referenced Supplemental Agreement on the subject project, the Department determined that premium costs exist as a result of your Errors and Omissions (E&O) in the construction plans and contract documents. Premium costs in the amount of {$$ **amount**} and Post Design Services fees of {$$ **amount**} were incurred. These premium costs do not add value to the project and should have been avoided. The Department intends to pursue recovery of these costs.

Please respond to this letter within **15 business days** and state your position on the Department's assessment of costs and responsibility for the following E&O:

{**Brief description of project issue(s); provide additional attachments, as necessary.**}

Enclosed is a copy of the cost documentation.

Sincerely,

{DocuSign Signature & Date/Time}

FDOT District Project Manager

{DocuSign Signature & Date/Time}

cc: {Consultant Company EOR}

Addressee Acknowledges Receipt

Attachments: {List of Attachments}

Revised ~~1/11/2022~~3/23/2023

G3 - PREMIUM COSTS DEMAND LETTER

March 24, 2023~~January 11, 2022~~

{Consultant Company Officer's Name}
{Consultant Company Name}
{Street Address}
{City, State, Zip}

Re: Premium Costs Demand - {issue short name}
Project: {Department Project Name/Brief Description}
Financial Project ID: {FPID}
Construction Contract Number: {Constr. Contract No. & Fiscal Year}
Supplemental Agreement Number: {SA#}

Dear {Consultant Company Officer's Name}:

Previously, the Department advised you of damages incurred on the referenced contract in the amount of {**$$ amount**}. These additional project costs are the result of your Errors and Omissions and should have been avoided. I recently met with the Director Group {and the Chief Engineer (*if applicable*)} and the Department has determined that the assessment of premium costs against your company was appropriate and recommended that the Department pursue recovery.

You may accept this offer and settle this claim for the amount set forth above by executing this letter at the bottom and returning it to the Department within **15 business days** of receipt of this letter. Upon payment of the premium costs, the Department will provide an appropriate release. If you elect not to accept this offer within the designated time period, the Department will initiate legal action to recover these damages.

Sincerely,

{DocuSign Signature & Date/Time}

Director of Transportation Development

{DocuSign Signature & Date/Time}

cc: {Consultant Company EOR}

Addressee Acknowledged Receipt

ACCEPTANCE OFFER:
{Consultant Company Name} accepts the offer of the Department to settle all claims for premium costs in the amount of {**$$ amount**} as a result of its alleged conduct in the above referenced project/contract and agrees to enter into a Settlement Agreement with the Department within 30 days of the date of this Acceptance.

{DocuSign Signature & Date/Time}

Designated Representative of {Consultant Company Name}

Revised ~~1/11/2022~~3/23/2023

G4 – CLAIMS MEETING ATTENDANCE AND PRIVILEGED DISCUSSION ACKNOWLEDGEMENT

Project: {Department Project Name/Brief Description}
Financial Project ID: {FPID}
Construction Contract Number: {Constr. Contract No. & Fiscal Year}
Supplemental Agreement Number: {SA#}

Location and Date: {Location and Date of Claims Meeting}
March 24, 2023~~January 11, 2022~~

The undersigned persons and entities acknowledge and agree, in their individual and representative capacities, that the discussions held in the above referenced Claims Meeting regarding the referenced matter (and any subsequent related settlement discussions) are for the purpose of settlement of certain claims and disputes between the Department and Consultant and are subject to certain settlement privileges in accordance with Florida law. They further acknowledge that they are represented by legal counsel or have had the opportunity to obtain legal counsel and advice for this Claims Meeting.

NAME (print)	**COMPANY**	**TITLE**	**SIGNATURE**

G5 – ERRORS AND OMISSIONS (E&O) RESOLUTION/CLOSE-OUT LETTER

March 24, 2023~~January 11, 2022~~

{Consultant Company Officer's Name}
{Consultant Company Name}
{Street Address}
{City, State, Zip}

Re: Errors and Omissions (E&O) Resolution/Close-Out - {issue short name}
Project: {Department Project Name/Brief Description}
Financial Project ID: {FPID}
Construction Contract Number: {Constr. Contract No. & Fiscal Year}
Supplemental Agreement Number: {SA#}

Dear {Consultant Company Officer's Name}:

The Department had previously notified you of our determination that premium costs were incurred as a result of your Errors and Omissions (E&O) in the construction plans and contract documents for the following project issue(s):

{**Brief description of project issue(s) and associated premium costs}**

{SELECT APPLICABLE CASE:}
After further review of additional information related to the project issue, as well as consideration of your company's position, the premium costs incurred are found to not be a result of your Errors and Omissions, and the project issue(s) is deemed resolved. You may now invoice for any previously unbilled services related to the project issue(s). Please note that the Department reserves the right to pursue recovery of premium costs associated with this issue if any new evidence is brought to our attention that warrants a different determination.

Thank you for your cooperation and commitment to the Department in bringing resolution to this issue.
{– OR –}
After further review of additional information related to the project issue, as well as consideration of your company's position, the premium costs incurred are found to be a result of your Errors and Omissions; however, the Department is not pursuing recovery. Although deemed resolved, you may not invoice for any previously unbilled time or services related to the project issue(s).

Thank you for your cooperation and commitment to the Department in bringing resolution to this issue.

Sincerely,

{DocuSign Signature & Date/Time}

FDOT District Project Manager

cc: {Consultant Company EOR}

Attachments: {List of Attachments}

Revised ~~1/11/2022~~3/23/2023

G6 – FUNDS RECOVERY ASSISTANCE LETTER

March 24, 2023~~January 11, 2022~~

Accounts Receivable Administrator
OOC – General Accounting Office
Florida Department of Transportation
605 Suwannee Street, MS 42 B
Tallahassee, FL 32399

Re: Funds Recovery Assistance - {issue short name}
Project: {Department Project Name/Brief Description}
Financial Project ID: {FPID}
Federal Aid Project Number: {Fed. Aid Project Number}
Construction Contract Number: {Constr. Contract No. & Fiscal Year}

Dear Accounts Receivable Administrator:

The District has not yet received funds as restitution for Errors and Omissions on the referenced project, as stipulated in the attached Settlement Agreement. Please invoice the firm and then send to a collection agency if you are unable to recover the funds. We also request that you work with the Cashier's Office, so they may annually report the recovered amount to the Program Development Office, and thus ensure that the funds will be reallocated to the District.

Name of Consultant Firm:	{Consultant Company Name}
Amount of Recovery:	{$$ amount}
Scheduled Date for Recovery:	{Scheduled Recovery Date}
Funds Transmittal Number:	{Funds Transmittal Number}
Object Code:	018051

Thank you for your assistance.

Sincerely,

{DocuSign Signature & Date/Time}

District Project Manager

{DocuSign Signature & Date/Time}

Addressee Acknowledged Receipt

Attachments: {List of Attachments}

Revised ~~1/11/2022~~3/23/2023

G7 – REQUEST ASSISTANCE TO RECOVER/TRACK SERIES OF PAYMENTS LETTER

March 24, 2023~~January 11, 2022~~

Deputy Comptroller
OOC – General Accounting Office
Florida Department of Transportation
605 Suwannee Street, MS 42 B
Tallahassee, FL 32399

Re: Request Assistance to Recover/Track Series of Payments - {issue short name}
Project: {Department Project Name/Brief Description}
Financial Project ID: {FPID}
Federal Aid Project Number: {Fed. Aid Project Number}
Construction Contract Number: {Constr. Contract No. & Fiscal Year}

Dear Deputy Comptroller, GAO:

The District requests your approval of the recovery schedule attached as restitution for Errors and Omissions on the referenced project. If you do not approve this schedule, please suggest another one. We also ask that you track the payment of these funds and annually report the successful recovery to the Office of Financial Development, Program and Resource Allocation Office, so that the funds may be reallocated to the District.

Name of Consultant Firm:	{Consultant Company Name}
Amount of Recovery Payment:	{$$ amount}
Dates of Recovery Payments:	{Scheduled Recovery Date}
Funds Transmittal Number:	{Funds Transmittal Number}
Object Code:	018051

Thank you for your assistance.

Sincerely,

{DocuSign Signature & Date/Time}

District Project Manager

{DocuSign Signature & Date/Time}

cc: {Accounts Receivable Section}

Addressee Acknowledged Receipt

Revised ~~1/11/2022~~3/23/2023

G8 – SERVICES IN-KIND LETTER

March 24, 2023~~January 11, 2022~~

Deputy Comptroller
OOC – General Accounting Office
Florida Department of Transportation
605 Suwannee Street, MS 42 B
Tallahassee, FL 32399

Re: Services In-Kind - {issue short name}
Project: {Department Project Name/Brief Description}
Financial Project ID: {FPID}
Federal Aid Project Number: {Fed. Aid Project Number}
Construction Contract Number: {Constr. Contract No. & Fiscal Year}

Dear Deputy Comptroller, GAO:

The District requests your approval to accept Services In-Kind as restitution for Errors and Omissions on the referenced project. The attached Settlement Agreement describes the services to be provided, including the proposed consultant personnel and their compensation rates. The District provides the following information in fulfillment of the Settlement Agreement:

Name of Consultant Firm:	{Consultant Company Name}
Date(s) Services Provided:	{Date Services Provided}
Original Balance:	{$$ Original Balance}
Previously Received Services:	{Previously Received Services}
Current Services Provided:	{Current Services Provided}
Balance:	{$$ Balance}

Thank you for your assistance.

Sincerely,

{DocuSign Signature & Date/Time}

District Project Manager

{DocuSign Signature & Date/Time}

Addressee Acknowledged Receipt

Revised ~~1/11/2022~~3/23/2023

G9 – SETTLEMENT AGREEMENT LETTER

March 24, 2023~~January 11, 2022~~

Electronic Delivery

{Consultant Company Officer's Name}
{Consultant Company Officer's Title}
{Consultant Company Name}
{Street Address}
{City, State, Zip}

Re: Settlement Agreement – {issue short name}
Project: {Department Project Name/Brief Description}
Financial Project ID: {FPID}
Construction Contract Number: {Constr. Contract No. & Fiscal Year}
Supplemental Agreement Number: {Referenced Issue}
Settlement Agreement No.: {#}

Dear {Consultant Company Officer's Name}:

Please see the attached settlement agreement for Premium Cost ${0,000.00}. This agreement is in reference to {Referenced Issue} and the Errors and Omissions in the construction plans. Below is summary of the error as referenced:

{Brief description of project issue(s)}

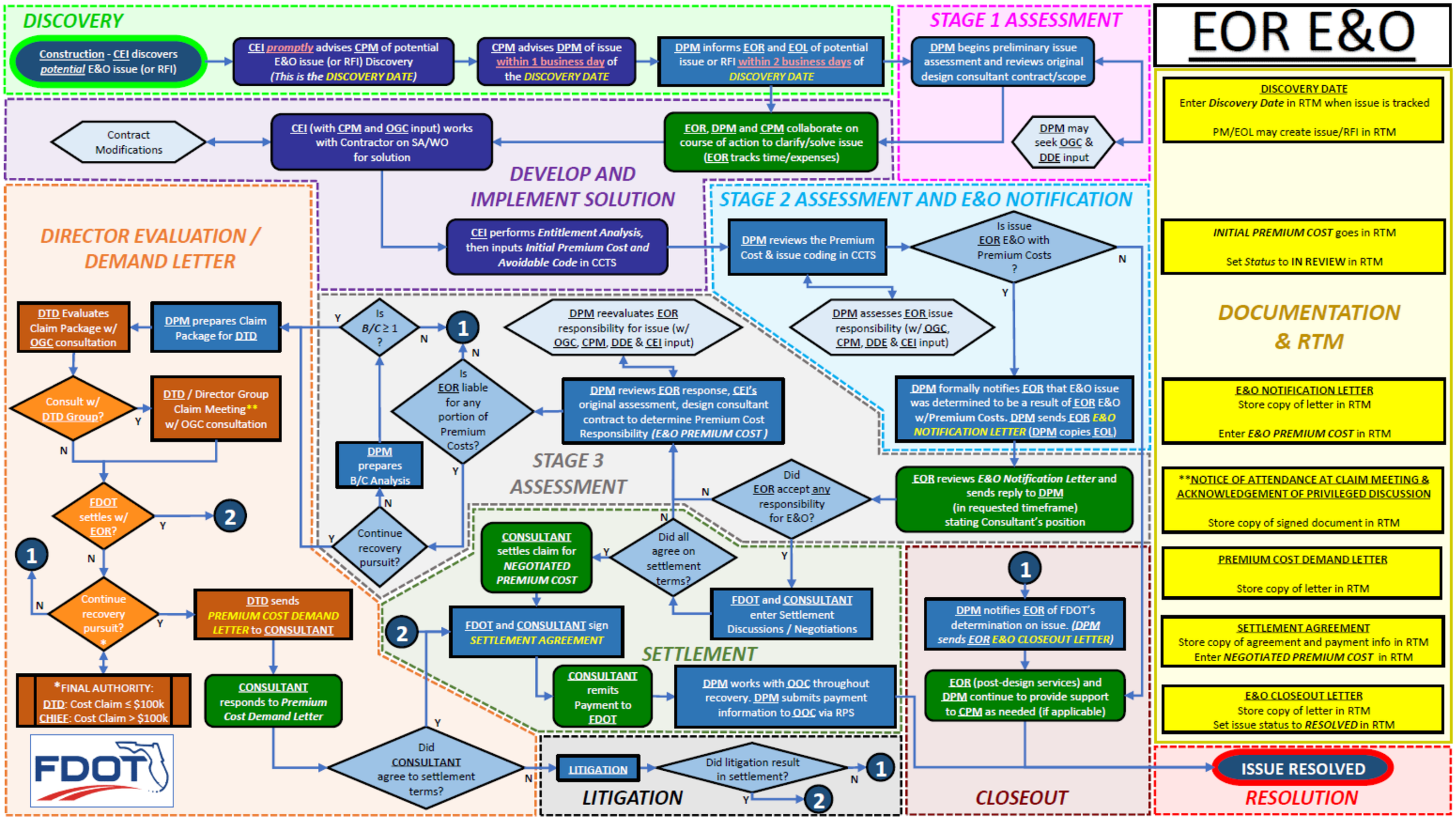
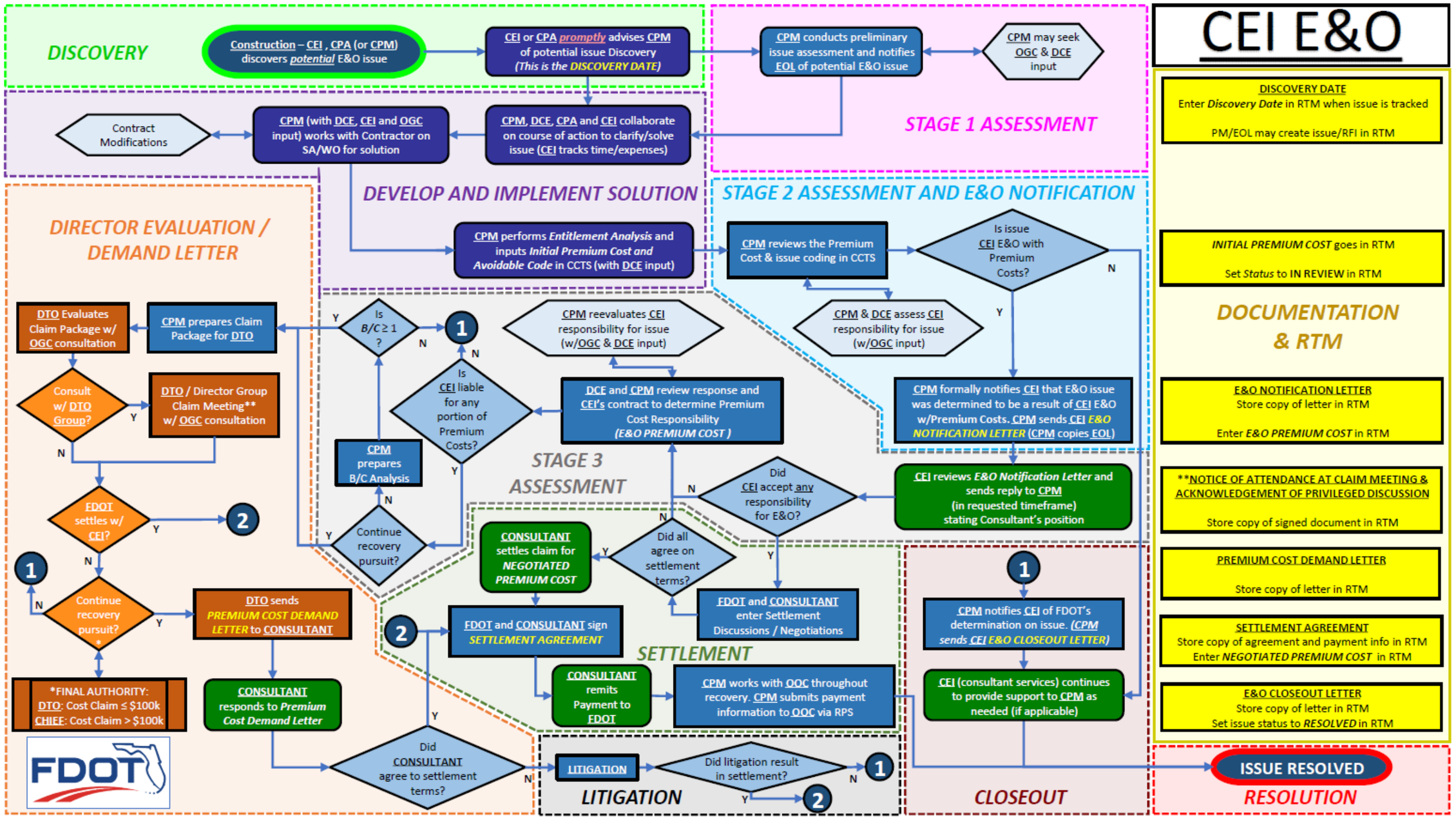
The Department intends to finalize and close this issue once the settlement agreement is executed and payment is received. Please contact {DPM, CPM or EOL} at {(000) 000-0000} or {First.Last}@dot.state.fl.us, if you have any questions or comments.
.

Sincerely,

{Director's Name}, P.E.
Director of Transportation { Development or Operations}

APPENDIX H – PROCESS FLOWCHARTS

APPENDIX H1 – EOR ISSUES FLOWCHART



APPENDIX H2 – CEI ISSUES FLOWCHART