



Florida Department of Transportation

RICK SCOTT
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

JIM BOXOLD
SECRETARY

July 28, 2015

Khoa Nguyen
Director, Office of Technical Services
Federal Highway Administration
3500 Financial Plaza, Suite 400
Tallahassee, Florida 32312

Re: State Specifications Office
Section **007**
Proposed Specification: **SP0071201FGT Legal Requirements and Responsibility to the Public - Responsibility for Damages, Claims, Etc. (FGT Encroachment Agreements)**

Dear Mr. Nguyen:

We are submitting, for your approval, two copies of the above referenced Special Provision.

The changes are proposed by Thomas Bane of the State Program Management Office to address Florida Gas Transmission Company indemnity and insurance requirements in accordance with their Encroachment Agreements with FDOT.

Please review and transmit your comments, if any, within two weeks. Comments should be sent via email to daniel.scheer@dot.state.fl.us.

If you have any questions relating to this specification change, please call me at 414-4130.

Sincerely,

Signature on file

Daniel Scheer, P.E.
State Specifications Engineer

DS/ot
Attachment

cc: Florida Transportation Builders' Assoc.
State Construction Engineer

**LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC –
RESPONSIBILITY FOR DAMAGES, CLAIMS, ETC. (FGT ENCROACHMENT
AGREEMENTS).**

(REV ~~3-194-10295-16-197-228~~-15)

SUBARTICLE 7-12.1 is deleted and the following substituted:

7-12.1 Contractor to Provide Indemnification: The Contractor shall indemnify and hold harmless the Department, its officers and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney’s fees, to the extent caused by the negligence, recklessness, or intentional ~~wrongful~~ misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the ~~construction~~ Contract.

The Contractor shall indemnify and hold harmless Florida Gas Transmission Company, LLC (FGT) from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney’s fees, to the extent caused by the negligence, recklessness, or intentional ~~wrongful~~ misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract or caused by the violation of enforceable environmental statutes, ordinances, rules, orders, or regulations of any governmental entity or agency having jurisdiction resulting from the storage or generation of any hazardous or toxic wastes or substances. Include this provision in all subcontracts, and require all subcontractors to include it in their subcontracts with others.

It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract.

SUBARTICLE 7-13.2 is deleted and the following substituted:

7-13.2 Commercial General Liability Insurance: Carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Contract. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. Cause the Department to be made an Additional Insured as to such insurance. Such coverage shall be on an “occurrence” basis and shall include Products/Completed Operations coverage. The coverage afforded to the Department as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for ~~each any one occurrence~~ *person, not less than \$5,000,000 for each occurrence*, and not less than a \$5,000,000 *annual general aggregate* ~~annual general aggregate for each occurrence~~, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Contract, and may not be shared with or diminished by claims unrelated to the ~~contract~~ *Contract*. The policy/ies and coverage described herein may be subject to a deductible. Pay all deductibles as required by the policy. No policy/ies or coverage described

Projects involving FGT with Encroachment Agreements.

herein may contain or be subject to a Retention or a Self-Insured Retention. Prior to the execution of the Contract, and at all renewal periods which occur prior to final acceptance of the work, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have.

SUBARTICLE 7-13.4 is deleted and the following substituted:

7-13.4 Insurance for Protection of Utility Owners: When the Contract involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the Department as an Additional Insured on the policy/ies procured pursuant to subsection 7-13.2 above.

Prior to entering ~~Florida Gas Transmission Company (FGT)~~ property to conduct operations, provide FGT with a certificate of insurance evidencing the ~~required~~ insurance coverage ~~pursuant~~ required by ~~to~~ 7-13.2.

**LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC –
RESPONSIBILITY FOR DAMAGES, CLAIMS, ETC. (FGT ENCROACHMENT
AGREEMENTS).**

(REV 7-28-15)

SUBARTICLE 7-12.1 is deleted and the following substituted:

7-12.1 Contractor to Provide Indemnification: The Contractor shall indemnify and hold harmless the Department, its officers and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract.

The Contractor shall indemnify and hold harmless Florida Gas Transmission Company, LLC (FGT) from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract or caused by the violation of enforceable environmental statutes, ordinances, rules, orders, or regulations of any governmental entity or agency having jurisdiction resulting from the storage or generation of any hazardous or toxic wastes or substances. Include this provision in all subcontracts, and require all subcontractors to include it in their subcontracts with others.

It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract.

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Prior to entering FGT property to conduct operations, provide FGT with a certificate of insurance evidencing the insurance coverage required by 7-13.2.