



2282 Killearn Center Boulevard
Tallahassee, Florida 32309
888.597.6872

**NATIONAL STORMWATER TRUST, INC.
CAPACITY PURCHASE AGREEMENT**

THIS CAPACITY PURCHASE AGREEMENT (“Agreement”) is made and entered into this 5th day of March, 2020, (the “Effective Date”) by and between NATIONAL STORMWATER TRUST, INC., having an address of 2282 Killearn Center Boulevard, Tallahassee, Florida 32309 (“Seller”), and Hillsborough County Aviation Authority, 4100 George J Bean Pkwy, Tampa, Florida 33607 (“HCAA” or “Buyer”).

RECITALS:

WHEREAS, Seller is the lessee of excess treatment capacity in a regional stormwater facility (or facilities) located in Hillsborough County, Florida, within the Tampa Bay basin and permitted by the Southwest Florida Water Management District under Permit Number(s) 27063.003 and 13922.004 (the “Facility”);

WHEREAS, Buyer is the operator and permittee of the Tampa International Airport Airside F RON Parking Project 8325 19 (“Project”) under Environmental Resource Permit application number TBD from Southwest Florida Water Management District (the “ERP”);

WHEREAS, as lessee of the excess treatment capacity at the Facility, Seller is responsible for developing, operating, and maintaining that excess treatment capacity in perpetuity;

WHEREAS, Buyer is required to provide treatment of a certain volume of stormwater runoff from the Project and elects to do so through the Buyer’s purchase from Seller of stormwater treatment capacity within the Facility under the provisions of this Agreement;

WHEREAS, Buyer’s purchase of stormwater treatment capacity within the Facility will satisfy Buyer’s obligations under the ERP to treat stormwater;

WHEREAS, Seller will develop, manage, operate, and maintain the Facility to treat stormwater in a manner sufficient to meet the ERP’s requirements for treatment of stormwater for the effective period of the ERP;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, it is agreed:

1. **Recitals.** The recitals are true and correct and incorporated herein by this reference and made a part of this Agreement.

2. **Compensation.** Subject to the terms and conditions of this Agreement, Buyer shall purchase from Seller and Seller shall sell to Buyer 2.6 acre-feet of stormwater treatment capacity within the Facility, which

has been determined to be sufficient to treat the stormwater runoff from HCAA's 62.4 acres of runway/taxiway and terminal land uses in accordance with the ERP (the "Capacity") for the Project.

a. Purchase Price. In exchange for the Capacity, Buyer shall, subject to the terms and conditions of this Agreement, pay to Seller a unit price of \$675,000.00 per acre-foot of capacity, for a sum total of one million seven hundred fifty-five thousand dollars (\$1,755,000.00) (the "Purchase Price").

b. Deposit. In order to secure a Reservation Period (as defined below), Buyer shall pay Seller a deposit of zero dollars (\$0.00) ("Deposit"). If Buyer wishes to extend the Reservation Period as provided below, Buyer may pay Seller another deposit of one hundred seventy-five thousand five-hundred fifty dollars (\$175,550.00) ("Second Deposit"). The Deposit and the Second Deposit are non-refundable but will be applied to the Purchase Price. If Buyer previously entered into an Intent to Reserve Capacity Agreement ("IRCA") with Seller, then any reservation fee paid pursuant to the IRCA shall be credited to the Deposit payable pursuant to this paragraph.

c. Payment Timing. On or before ten (10) days from the Effective Date, Buyer shall pay Seller the Deposit or the Purchase Price. The balance of the Purchase Price less the Deposit and the Second Deposit (the "Balance of Purchase Price") is due from Buyer to Seller upon the end of the Reservation Period.

d. Payment Method. All payments hereunder shall be made to National Stormwater Trust, Inc. or such other future successor or affiliated entity that Seller may designate in writing to Buyer. Buyer shall pay the Deposit, Second Deposit, Purchase Price, and Balance of Purchase Price by either a cashier's check drawn on a financial institution located in the United States of America, a government check, a wire transfer, or an Automated Clearing House ("ACH") transfer. In no instance shall the Capacity be made available to or otherwise used by Buyer prior to Seller having received payment of the Purchase Price and that payment clears Seller's bank account.

e. Other Terms. The purchase price and all capacity purchased under this Agreement, now or in the future, are non-refundable and non-transferrable by Buyer.

3. **Process.**

a. Reservation Period. Upon Seller's receipt of the Deposit, Seller will reserve the Capacity within the Facility for Buyer for ninety (90) days from the Effective Date ("Reservation Period"). If Buyer wishes to extend the Reservation Period by an additional ninety (90) days, Buyer shall pay to Seller the Second Deposit, for a maximum Reservation Period of one hundred eighty (180) days from the Effective Date, at the end of which the Balance of Purchase Price is due from Buyer to Seller.

b. Reservation Letter. Within three (3) business days of receiving a written request from Buyer, Seller will send a letter to Buyer indicating that the Capacity has been reserved by Buyer for the Project for the then-applicable Reservation Period ("Reservation Letter").

c. Allocation of the Capacity. Upon receipt by Seller of the ERP for the Project and the Purchase Price or Balance of Purchase Price, Seller shall initiate a modification of Seller's permit(s) for the Facility(ies) to allocate the Capacity for the ERP ("Permit Modification"). Seller shall provide a copy of the Permit Modification to Buyer. If, after receipt of the Purchase Price, Buyer has not received the ERP for the Project by the end of a Reservation Period, Seller will hold the applicable orphaned capacity on Seller's Capacity

ledger for a period not to exceed the Holding Period (as defined below), or until such time as Seller receives the ERP from Buyer.

d. Holding Period. Seller will reserve the Orphaned Capacity on Seller's Capacity ledger(s) for one year from the Effective Date ("Holding Period"). At Seller's discretion, at the end of the Holding Period, Seller will no longer reserve the Orphaned Capacity. However, if Buyer notifies Seller before the end of the Holding Period that Buyer wishes to extend the Holding Period, Seller, at its sole discretion, may extend the Holding Period by an additional one hundred eighty (180) days. The Holding Period may not be extended more than three (3) years from the Effective Date unless otherwise agreed to by Seller.

e. Termination and Remedies. At Seller's discretion, this Agreement shall automatically terminate if Buyer does not pay the Purchase Price or the Deposit to Seller on or before ten (10) days from the due dates listed above. Buyer's failure to make any required payments due under this Agreement within the time periods required herein shall constitute Buyer's default of this Agreement. In the event of Buyer's default and Buyer's failure to cure the default within five (5) business days of written notice of the default from Seller, Seller shall be entitled to terminate the Agreement and retain Buyer's deposits, any Purchase Price due and/or paid, and all capacity reserved, purchased, or withdrawn now or in the future on Buyer's behalf. If Seller defaults, Buyer's sole remedy shall be to terminate this Agreement and obtain a refund of Buyer's Purchase Price paid. The parties agree and acknowledge that the permitting agency(ies) have exclusive jurisdiction to enforce Seller's compliance with the terms and conditions of their respective permits authorizing the Capacity, and Buyer agrees it shall not be entitled to sue Seller, and hereby covenants not to sue Seller, to enforce compliance with the terms and conditions of any permit.

f. Transfer of Capacity to Buyer. The closing of the sale of the Capacity to Buyer will take place within thirty (30) days of Seller's receipt of approval of the Capacity allocation from the applicable regulatory entity, which transfers Buyer's stormwater related obligations under the ERP to Seller, unless extended in accordance with other provisions of this Agreement, and assuming Buyer is in full compliance with this Agreement. The closing may be conducted by mail or e-mail, at the offices of NST, or at a mutually agreed upon location. At the closing, NST shall deliver to Buyer a Capacity Allocation Certificate reflecting the agency-approved Capacity allocation.

4. Covenants and Representations. Seller represents that it is authorized to sell the Capacity within the Facility. Seller represents that Buyer's purchase of the Capacity will satisfy Buyer's obligations under the ERP in connection with management of stormwater. Seller shall be responsible for the development and maintenance of the Capacity in accordance with the requirements of the Facility permit(s). Seller shall be responsible for taking all measures at the Facility in connection with the Capacity subject to this Agreement that are necessary to satisfy Buyer's stormwater obligations under the ERP. Seller shall develop, operate, manage, and maintain the Facility to provide the Capacity subject to this Agreement for the entire period of time required by the ERP for stormwater treatment. Seller has good and sufficient title to the Capacity it will sell to Buyer. Buyer shall have no rights or obligations to perform any of the responsibilities of Seller regarding the development and maintenance of the Capacity or the Facility. Buyer shall not have any rights or obligations to enforce any of the responsibilities of Seller under the Facility permit(s).

5. Capacity Purchase Conditioned on Agency Approval. The purchase of the Capacity under this Agreement is conditioned on Seller and HCAA obtaining the necessary approvals of each applicable regulatory agency for the use of the Capacity to fulfill the requirements of the ERP(s). If either HCAA or Seller is unable to obtain the necessary approvals, then Buyer shall be entitled to receive a refund of the

Purchase Price (less Deposits if due to HCAA's failure) and Seller shall retain all Capacity reserved on Buyer's behalf. In such an event, this Agreement shall be null and void *ab initio*.

6. Additional Capacity Purchases Pursuant to this Agreement. Buyer may purchase additional capacity under this Agreement in the Facility or other Seller facilities, subject to availability and written agreement between the parties. The written agreement to purchase additional capacity shall be made an addendum to this Agreement and shall be in a form substantially similar to the attached Schedule A, Purchase of Additional Capacity ("Schedule A"), and signed by both parties. In the event that the language of this Agreement and the Schedule A conflict, the language of a fully-executed Schedule A shall control.

7. Notices. Any notices required or permitted hereunder shall be sufficiently given if delivered by overnight courier requiring a delivery signature or by United States certified mail, return receipt requested, to the parties hereto as follows:

If to Seller:

National Stormwater Trust, Inc.
Attn.: General Counsel
2282 Killlearn Center Boulevard
Tallahassee, Florida 32309

If to Buyer:

Hillsborough County Aviation Authority
Attn.: Chief Executive Officer
P.O. Box 22287
Tampa, Florida 33622

Copy to: General Counsel
Vice-President of Planning and Development

Any notice given by overnight courier shall be effective as of the date of delivery, and any notice given by United States certified mail, return receipt requested, shall be effective as of the fifth business day following its posting, regardless of whether the envelop or package is signed for by the intended recipient.

8. Prior Agreements. This Agreement shall supersede all prior understandings and agreements between the parties hereto, whether written or oral, with respect to the subject matter hereof and may be amended only by a written document stating the specifics of the amendment, executed by both Seller and Buyer.

9. Applicable Law. Seller and Buyer shall be contractually bound to this Agreement, which shall be governed by the laws of the state of Florida. Venue for any disputes under this Agreement shall be in Hillsborough County, Florida. Changes in federal, state, or local laws that might have otherwise impacted this Agreement shall not be enforced retroactively after execution of this Agreement. Each party shall be held harmless for damages sustained by the other party as a result of changes in federal, state, or local laws pertaining to this transaction or the interpretation or enforcement of said changes.

10. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of Seller and Buyer, as the case may be, and their respective successors and assigns. Buyer shall not assign any interest hereunder without the prior written approval of Seller.

11. **No Third Party Beneficiaries.** This Agreement does not confer any benefits to persons or entities whom are not either (a) parties to this Agreement, or (b) successors and permitted assigns of the parties to this Agreement.

12. **Confidentiality.** The terms of this Agreement are confidential and may not be disclosed to third parties except as otherwise required by Florida’s public records laws, court order, subpoena, or with the written permission of Seller and Buyer.

13. **Waiver of Jury Trial.** Buyer and Seller agree that each knowingly, voluntarily, and intentionally waives the right it may have to a trial by jury in respect to any litigation based on, or arising out of, under, or in connection with this Agreement or any document contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statement (whether oral or written), or action of the other party.

14. **Recording.** Seller reserves the right to record this Agreement (without pricing information) or a summary of this Agreement in the public records of the county in which the Facility is located. If recorded, Seller shall provide Buyer with a copy of the recorded document.

15. **Entire Agreement.** The terms and conditions of this Agreement, all fully executed Schedule As, and Exhibit A constitute the sole and entire agreement between the parties with respect to the subject matter hereof. This Agreement, the Schedule As, and Exhibit A may be amended, modified, or altered only by the written agreement of the parties. The parties acknowledge and agree that this may be a long-term agreement and, as such, Seller may request certain revisions to this Agreement in order to accommodate or comply with future permit, regulatory, risk management, or owner requirements. If such written requests are made by Seller to Buyer, Buyer agrees to promptly review and act upon the requests, and any approval by Buyer of the requests shall not be unreasonably withheld. This Agreement and the Schedule As supersede all previous oral or written agreements and understandings relating to the subject matter hereof and contain the entire agreement of the parties relating to the subject matter thereof. This Agreement and the Schedule As may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute a single agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

SELLER:
NATIONAL STORMWATER TRUST, INC.

By: _____

Its: _____

BUYER:

By: _____
Gary W. Harrod

Its: Chairman

ATTEST AS TO BUYER:

By: _____

Print name: _____

**APPROVED AS TO FORM FOR LEGAL
SUFFICIENCY:**

By: _____
Michael Kamprath, Assistant General Counsel



2282 Killearn Center Boulevard, Suite C
Tallahassee, Florida 32309
888.597.6872

**NATIONAL STORMWATER TRUST, INC.
INTENT TO RESERVE CAPACITY**

National Stormwater Trust, Inc., 2282 Killearn Center Boulevard, Suite C, Tallahassee, Florida 32309 ("Seller"), has identified and intends to seek authorization to develop stormwater runoff attenuation or treatment capacity within the Tampa Bay basin. Seller agrees to temporarily reserve for future sale to Hillsborough County Aviation Authority ("Buyer"), in accordance with the terms and conditions of this Agreement, sufficient stormwater treatment capacity to treat stormwater runoff from Hillsborough County Aviation Authority's 62.4 acres of runway/taxiway and terminal land uses in accordance with the current requirements of Chapter 62-330, F.A.C (the "Capacity").

1. The Capacity will be for Buyer's sole use in connection with treating or attenuating stormwater that may result from construction or other projects undertaken or to be undertaken by Buyer at the following location(s):

Tampa International Airport Project 8325 19 Airside F RON Parking

OR pursuant to the following permit(s):

Permittee: _____; Permit Number _____

2. The total Purchase Price for the Capacity reserved under this Agreement is one million seven hundred fifty-five thousand dollars (\$1,755,000.00), the not-to-exceed price for compensating treatment for runoff from 62.4 acres of airside land use. The timing of use of and payment for the Capacity shall be set forth in Seller's Capacity Purchase Agreement ("Capacity Agreement"). Buyer, upon execution of this Agreement, shall pay Seller a \$ 0.00, non-refundable fee to be deducted from the total Purchase Price.

3. Finalization of the reservation of the Capacity shall occur after complete execution of the Capacity Agreement, receipt of the Purchase Price in accordance with the Capacity Agreement, and Seller's receipt of the regulatory and property owner authorizations necessary to develop the Capacity.

4. After execution of this Agreement, Seller shall conduct due diligence over a period not to exceed sixty (60) days. In the event Seller determines through its diligence that it is not feasible to develop the Capacity, it shall notify Buyer in writing within three (3) business days of that determination, return to Buyer the non-refundable fee, and this Agreement shall be null and void unless the parties agree otherwise in writing.

5. Execution of the Capacity Agreement is subject to approval by Buyer's board. It is anticipated that the board will consider the Capacity Agreement at its ~~February 6~~March 5, 2020 meeting. In the event the Capacity Agreement is not approved at the ~~February 6~~March 5, 2020 board meeting and an extension is not requested and approved, this Agreement shall terminate.

6. This Agreement, along with Exhibit A, constitutes the entire agreement between the parties, and there are no agreements, understandings, restrictions, warranties, or representations among the parties other than those set forth in this Agreement. This Agreement supersedes all prior agreements and understandings, written or oral, that are related in any way to the subject matter hereof.

7. The effective date of this Agreement is February 3, 2020.

NATIONAL STORMWATER TRUST, INC.



Its: Jeff L. Mejohn, President

Date: 2/5/20

WITNESS:



Printed name: Ed STEINMEIER

Date: 2/5/20

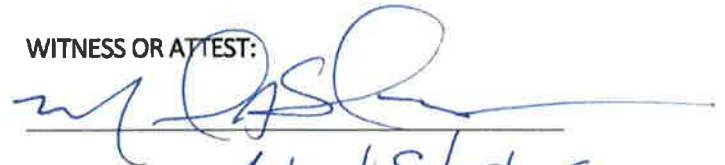
BUYER: HILLSBOROUGH COUNTY AVIATION AUTHORITY



Its: _____

Date: 2/3/20

WITNESS OR ATTEST:



Printed name: Michael Stephens

Date: 2-3-20

APPROVED AS TO FORM:



EXHIBIT A

NON-DISCRIMINATION

During the performance of this Contract, Seller, for itself, its assignees and successors in interest, agrees as follows:

- 1.01 In carrying out its stormwater services to Buyer and the Authority, Seller will comply with the regulations relative to non-discrimination in federally assisted programs of the Department of Transportation (DOT) Title 49, Code of Federal Regulations, Part 21, as amended from time to time (hereinafter referred to as the Regulations), which are incorporated herein by reference and made a part of this Agreement.

- 1.02 Civil Rights. Seller, with regard to the work performed by it under this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Seller will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21. During the performance of this Agreement, Seller, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities, including but not limited to:
 - A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
 - B. 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
 - C. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
 - E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
 - F. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
 - G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the

terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- H. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
 - I. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 - K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, Seller must take reasonable steps to ensure that LEP persons have meaningful access to Seller’s programs (70 Fed. Reg. at 74087 to 74100); and
 - L. Title IX of the Education Amendments of 1972, as amended, which prohibits Seller from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).
- 1.03 In all solicitations either by competitive bidding or negotiation made by the Seller for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier must be notified by Seller of Seller’s obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.
- 1.04 Seller will provide all information and reports required by the Regulations or directives issued pursuant thereto and must permit access to its books, records, accounts, other sources of information and its facilities as may be determined by Authority or the FAA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Seller is in the exclusive possession of another who fails or refuses to furnish this information, Seller will so certify to Authority or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
- 1.05 In the event of Seller’s non-compliance with the non-discrimination provisions of this Agreement, Authority will impose such contractual sanctions as it or the FAA may determine

to be appropriate, including, but not limited to, withholding of payments to Seller under this Agreement until Seller complies, and/or cancellation, termination or suspension of this Agreement, in whole or in part.

- 1.06 Seller will include the provisions of Paragraphs 1.01 through 1.05 in every subcontract and subconsultant contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued thereto. Seller will take such action with respect to any subcontract or procurement as Authority or the FAA may direct as a means of enforcing such provisions, including sanctions for non-compliance. Provided, however, that in the event Seller becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Seller may request Authority to enter into such litigation to protect the interests of Authority and, in addition, Seller may request the United States to enter into such litigation to protect the interests of the United States.
- 1.07 Seller assures that, in the performance of its obligations under this Agreement, it will fully comply with the requirements of 14 CFR Part 152, Subpart E (Non-Discrimination in Airport Aid Program), as amended from time to time, to the extent applicable to Seller, to ensure, among other things, that no person will be excluded from participating in any activities covered by such requirements on the grounds of race, creed, color, national origin, or sex. Seller, if required by such requirements, will provide assurances to Authority that Seller will undertake an affirmative action program and will require the same of its subconsultants.

ARTICLE 2

COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES PUBLIC RECORDS LAW

IF SELLER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SELLER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (813) 870-8721, ADMCENTRALRECORDS@TAMPAAIRPORT.COM, HILLSBOROUGH COUNTY AVIATION AUTHORITY, P.O. BOX 22287, TAMPA FL 33622.

In carrying out its credit rating services under this engagement Seller agrees in accordance with Florida Statute Section 119.0701 to comply with public records laws including the following:

- A. Keep and maintain public records required by Authority in order to perform the Services contemplated by this Agreement.
- B. Upon request from Authority custodian of public records, provide Authority with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat. or as otherwise provided by law.

- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement term and following completion of this Agreement.
- D. Upon completion of this Agreement, keep and maintain public records required by Authority to perform the Services. Seller shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Authority, upon request from Authority custodian of public records, in a format that is compatible with the information technology systems of Authority.

ARTICLE 3

COMPLIANCE WITH SECTION 20.055(5) FLORIDA STATUTES

The Seller agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5) Florida Statutes.