

PIPELINE NEWS

Suncoast Utility Contractors Association Newsletter

July 2018

2018 SUCA SHOWCASE



Grand Door Prizes:

50" Flat Screen TV & YETI Cooler

Door Prizes all night! Approximately 50 Gift Cards totaling over \$2,000 will be given away

On display will be the latest technologies, products and services being offered by the leading manufacturers and suppliers in the utility construction industry.

- FREE Hors d'oeuvres
- Cash Bar
- Give-Away Bag
- 50/50 Raffle
- Grand Door Prizes!
- 50" Flat Screen TV
- YETI Cooler

WHEN:

Thursday August 30, 2018
Showtime 4-7 pm

WHERE:

Crowne Plaza Tampa Westshore
5303 West Kennedy Blvd
Tampa, FL 33609

General Admission is **FREE!**

To Pre-register and get a FREE Drink Ticket! Email Theresa Mannix at tmannix@suca.org.

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NUCA of Florida

Safety News

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SUCA Showcase

Fish Fry

Save the Dates



www.suca.org



letter from the
chairman

Traditionally, summer is a slower time of the year for SUCA. We all try to spend extra time with family and friends and hopefully get that much needed downtime. Well, SUCA hasn't taken a break; we have been busier than ever advocating for our industry. SUCA isn't just about socials and dinner meetings. We spend a great deal of time collaborating with municipalities and industry partners locally, statewide and nationally for the betterment of our industry.

Several months ago, the City of Tampa made changes to their standard indemnification clause for new contracts. The change was made without any industry discussion and impacts contractors and engineers greatly. The changes potentially created uninsurable risk for the contractors and the potential of not being able to obtain a bond. SUCA joined forces with other industry organizations to address this issue with the City. Attached are the letters sent from SUCA and Gray Robinson. Since that time, we have received revised language from the City for comments. The dialog is ongoing and we will keep you posted on the progression of this issue as it directly impacts many of our members.

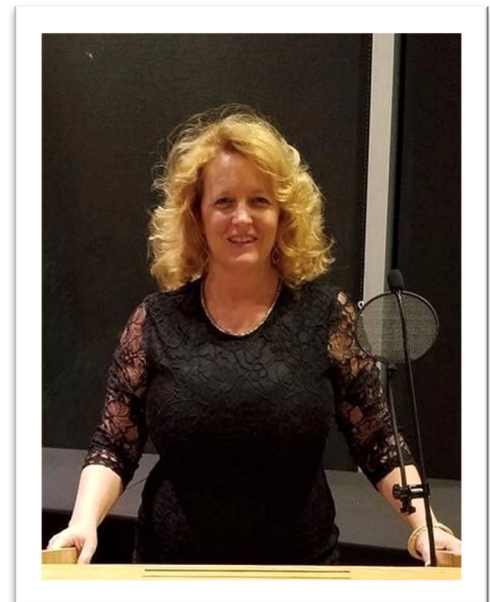
The NUCA of Florida conference was held at Ocean Reef in Key Largo earlier this month. The three day event was filled with engaging speakers, productive dialog amongst industry leaders and summertime fun. In the PAC Committee meetings, we discussed whom our industry should support, where our PAC funds are best spent and honed in on our priority issues. The NUCA of Florida board meeting was as spirited as ever. We discussed industry funding, education funding, regional issues and our relationship with NUCA National as it relates to the State and Local Chapters. As you will see in the photos, it was hard to miss the SUCA delegation in our purple SUCA shirts. We were certainly the hit of the day on Friday! Thank you to Theresa Mannix and Linda Shutt for organizing the "Sea of Purple". If you have not been to a NUCA of Florida conference, mark your calendar for next year. It is right in our backyard at the Wyndham Grand Clearwater Beach from July 18th – 20th, 2019.

The SUCA 2018 membership recruitment initiative is moving along. Currently we are offering half-price dues to any new member. Now is the time to reach out to companies you are doing business with that are Non-SUCA members and enlighten them! It's important that we continue to grow our organization. The bigger we are the louder our voice becomes. Not to mention, the competitive side of me, NUCA of North Florida and NUCA of South Florida have grown significantly this year, they are right on our heels for the largest Chapter in Florida. Let's grow our membership and retain that number one spot!

As summer draws to a close and we head back to our normal routine, try to fit SUCA into your schedule. Attend regularly and help with an event. SUCA is a strong organization, but we are only as strong as our membership!

-Penny Danielecki

****SUCA Members do business with SUCA Members****





June 15, 2018

Brad L. Baird, P.E. Administrator
306 East Jackson Street
Tampa, FL 33602

Mr. Baird,

Suncoast Utility Contractors Association (SUCA) is a contractor association with over 100 members founded in 1975. Our members are devoted to improving our industry and the Tampa Bay Area. It has come to our attention that the City has made a change to their standard indemnification clause for upcoming contracts. This change was apparently made without any discussion or notice to our industry. It impacts both contractors and engineers to a point that many of our members and many of the engineers we have spoken with will not be able to do business with the City if this change is not fixed.

Several of our members sent the revised language to our insurance agents and bond agents. The reaction was that a good deal of the change creates uninsurable risk for the contractors and that the bonding companies were not sure they would be able to bond jobs with this requirement.

Here is the new indemnification requirement:

“5.2 **Indemnity.** Firm releases and agrees to defend, indemnify and hold harmless the City, its lender, and any federal/state/ or other required program or funding entity, their respective elected or appointed officials, departments, officers, employees, agents, and volunteers, one or any combination thereof (collectively, “City Indemnified Parties”) from and against any and all losses, liabilities, damages, penalties, settlements, judgments, charges, or costs (including without limitation attorneys’ fees, professional fees, or other expenses) of every kind and character arising out of any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character cause by or resulting from, directly or indirectly, in whole or in part, by any act, negligence, recklessness, wrongful misconduct, omission or other conduct of Firm or any tier of subcontractor/subconsultant/ supplier, agent, employee, or anyone for whom Firm may be liable, in connection with, arising directly or indirectly out of the execution or performance of the obligations assumed under or incidental to this Agreement hereof (singularly or collectively “Claims”), even if it is alleged that the City Indemnified Parties were negligent, unless such injuries or damages are ultimately proven to be solely the result of grossly negligent or willful acts or omissions on the part of the City Indemnified Parties. Without limiting the generality of the foregoing, any and all such Claims, including but not limited to personal injury, disease, sickness, death, damage to property, natural resources, or the environment (including destruction or loss of use, costs of hazardous or toxic substance cleanup and disposal), defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or any actual or alleged violation of common law, any applicable law, statute, ordinance, administrative order,



rule, or regulation or decree of any court, shall be included in the indemnity hereunder and, to the extent required, the defined term "Claims". Firm further agrees to investigate, handle, respond to, provide defense (including without limitation attorney fees, paralegal fees, and expert fees to and through appellate, supplemental, or bankruptcy proceedings) for and defend any such Claim at its sole cost and expense through counsel approved in writing by the City and agrees to bear all other costs and expenses related thereto, even if the Claims are groundless, false, or fraudulent. Firm shall advance or promptly reimburse to a City Indemnified Party any and all costs and expenses incurred by such City Indemnified Party in connection with investigating, preparing to defend, settling, or defending any legal proceeding for which the City Indemnified Party is entitled to indemnification hereunder. This obligation shall in no way be limited in any nature whatsoever by any limitation on the amount or type of Firm's insurance coverage.

The parties agree that to the extent the written terms of this indemnification are deemed by a court of competent jurisdiction to be in conflict with any provisions of Florida law, in particular FLA. STAT. §§ 725.06 and 725.08, the written terms of this indemnification shall be deemed by any court of competent jurisdiction to be modified in such a manner as to be in fully and complete compliance with all such laws and to contain such limiting conditions or limitations of liability, or to not contain any unenforceable or prohibited term or terms, such that this indemnification shall be enforceable in accordance with and to the maximum extent permitted by Florida law. Further, whenever there appears in this Agreement (or any other documents made a part hereof) an indemnification within the purview of FLA. STAT. § 725.06, the monetary limitation on the extent of the indemnification under such provision shall be \$1 Million Dollars or a sum equal to the total contract price, service cost, or project value whichever is greater.

The obligation of Firm under this Section is absolute and unconditional; it is not conditioned in any way on any attempt by a City Indemnified Party to collect from an insurer any amount under a liability insurance policy, and is not subject to any set-off, defense, deduction, or counterclaim that the Contactor might have against the City Indemnified Party. The duty to defend hereunder is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Firm, the City, and any City Indemnified Party. The duty to defend arises immediately upon presentation of a Claim by any party and written notice of such Claim being provided to Firm. Firm's defense and indemnity obligations hereunder will survive the expiration or earlier termination of this Agreement. Firm agrees and recognizes that the City Indemnified Parties shall not be held liable or responsible for any Claims which may result from any actions or omissions of Firm in which the City Indemnified Parties participated either through providing data or advice and/or review or concurrence of Firm's actions. In reviewing, approving or rejecting any submissions by Firm or other acts of Firm, the City in no way assumes or shares any responsibility or liability of Firm or any tier of subcontractor/subconsultant/supplier, under this Agreement. In the event the law is construed to require a specific consideration for such indemnification, the parties agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnification and the providing of such indemnification is deemed to be part of the specifications with respect to the services provided by Firm."



Our relationships with the City have always been based on what is fair. This new requirement is not fair in the opinion of the many engineers and contractors we have reviewed it with. It is not legal in the opinion of many attorneys. The City is putting many of our members in the position of not being able to work for the City, for some a 40 plus year client. This will put the City in the position of paying higher prices due to getting fewer bids on projects, which is not in the best interest of the taxpayers.

We, as have many of the engineering associations, have had our attorney review this new language and he informs us that it violates state statutes, please see attached letter.

We respectfully request that the City revisit this change and either revert to the old language, which no one seems to have had a problem with for many years, or propose new language that is fair, complies with current law, is an insurable risk and a bondable risk and acceptable to both the engineers and contractors. We offer any assistance we can be in the effort to develop the new language and are certain we could get you input from the insurance carriers and bond companies to assist in this effort.

Respectfully yours,

Suncoast Utility Contractors Association
Penny Danielecki
Chairman

813-273-5033

GEORGE.SPOFFORD@GRAY-ROBINSON.COM

June 14, 2018

Salvatore Territo
City of Tampa City Attorney
Old City Hall, 5th Floor
315 E. Kennedy Blvd.
Tampa, FL 33602

Re: Indemnity provision being utilized in City Engineering contracts

Dear Mr. Territo:

David Smith suggested that I contact you and he sends you his regards. I serve as the General Counsel to the National Utility Contractors Association of Florida. The local west coast chapter, the Suncoast Utility Contractors Association ("SUCA"), has asked for my assistance in a matter that involves the City of Tampa.

Enclosed is a copy of the indemnity provision that I am told is currently being included in the City's engineering contracts and will soon be included in the City's construction contracts. This provision is a significant departure from the indemnity provision historically used by the City. The provision is problematic for a number of reasons.

First and foremost, the provision violates Florida law, specifically Florida Statutes, Section 725.08, the statute governing indemnity pursuant to public engineering contracts. Within the first sentence alone, I see at least six clear violations of Section 725.08 and another five probable violations of the statute. Granted, the first sentence is 209 words long, but the length notwithstanding, in my view the indemnity provision will not pass judicial muster. As I have not yet been provided with a copy of the provision that will be included in the City construction contracts, I cannot say whether the construction indemnity provision will violate Florida Statutes, Section 725.06, which applies to construction contract indemnity agreements. If the construction contract provision is similar to the engineering provision, then the construction provision will also violate the applicable statute.

The problem for the industry is that the City's indemnity provision goes too far and demands that the vendor assume too much risk. As a result, the industry is finding that insurance carriers and bonding companies are refusing to participate in City of Tampa contracts that include the current indemnity provision. That means fewer vendors to compete for City work, which means higher prices and potentially a lack of vendors entirely once the vendors become fully aware of the indemnity provision. The indemnity provision violates Florida law, but the

City of Tampa
June 14, 2018
Page 2

vendors , insurance carriers, and sureties are unwilling to incur the cost of litigation to prove that the provision is unenforceable. Instead, they are taking their business elsewhere.

I have been a member of SUCA for more than 20 years and am aware that the City and SUCA have an admirable relationship. On behalf of SUCA, we request that the City suspend use of the current indemnity provision, abandon any plans for use of a similar provision in City construction contracts, and solicit SUCA's participation in the preparation of an indemnity provision that satisfies the City's needs, SUCA's needs, and complies with Florida law.

I am happy to discuss this issue if you like.

Very truly yours,

GrayRobinson, P.A.



George E. Spofford, IV

GES/djc
Enclosure

cc: Theresa Mannix, Executive Director, SUCA

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with governmental agencies, Firm will furnish copies to the City upon request.

4.5 **Standards.** Firm shall furnish the Work by experienced personnel under the supervision of proficient and experienced personnel, all said personnel to be licensed as applicable under Florida law, exercising a degree of care and diligence in performing the Work in compliance with Applicable Law and in accordance with the standards of care, skill, and diligence as would be provided by a professional in a similar field with extensive and special expertise in the type of services required and geographic area within which they are to be performed. Firm is solely responsible for the professional quality, accuracy, efficacy, and coordination of all Work.

4.6 **Works for Hire.** All sketches, tracings, drawings, specifications, photographs, architectural or other works, surveys, maps, computations, details, design calculations, computer files, and/or reports developed, prepared, authored, provided, or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, including without limitation all electronic digital copies that arise out of or result from this Agreement ("Materials") will be considered works made for hire and shall be, become, and remain the property of the City without restriction or limitation on their use and regardless of project execution, and will be made available upon request, to the City at any time during the performance of such services and/or upon completion or termination of this Agreement. Firm shall not copyright any Materials and products or patent any invention developed under this Agreement. All Materials are subject to reuse by the City as provided in FLA. STAT. § 287.055 (10). City shall have the right to inspect the work and the products of Firm at any time. Firm shall have a license in the Materials to the extent necessary to perform the applicable Work and shall be permitted to retain copies, including reproducible copies, solely for information and reference in connection with the City's use and/or occupancy of a particular Work Order project. Failure of Firm to promptly deliver all or a portion of the Materials or documents/deliverables as may otherwise be required hereunder, both hard copy and digital, to the City Project Manager (or designee) shall be just cause for the City to withhold payment of any amounts due hereunder (or under any other agreement between Firm and the City) until Firm delivers all such documents. Firm shall have no recourse from these requirements. If for any reason all or a portion of the Materials should not be considered a "Work for Hire" under applicable law, then the Firm shall be deemed to have transferred to the City, its successors and assigns, the Firm's entire right, title, and interest in and to said Materials and the legal rights therein, including but not limited to, copyright, included therein.

Article 5 – INSURANCE AND INDEMNITY

5.1 **Insurance.** Firm shall comply as required by the attached and incorporated **Exhibit C**; provided, however, notwithstanding anything to the contrary herein or therein:

(a) **Professional Liability Insurance.** Paragraph G of said **Exhibit C**, entitled *Architects & Engineers Liability/Professional Liability (E&O)/Contractors Professional Liability (CPrL)*, shall be modified to the extent necessary to be deemed "ALWAYS APPLICABLE" and to require such insurance to be maintained for at least four (4) years after completion of work/services and the City's acceptance of same.

(b) **Deductibles/Self-Insured Retentions (SIR).** Given the nature of this Agreement, the City's Risk Manager has specifically determined that Self-Insured Retentions (SIR) are **not allowed** and deductibles for coverages associated with Paragraph G of said **Exhibit C**, entitled *Architects & Engineers Liability/Professional Liability (E&O)/Contractors Professional Liability (CPrL)* **shall not** exceed \$20,000.

(c) An express condition precedent to Firm commencing performance under any approved Work Order, shall be the City's receipt of: (i) certificate(s) of insurance provided by Firm's agent or broker on the most recent ISO form, (ii) cop(ies) of the signed declarations page(s); and (iii) a copy of all required endorsements.

5.2 **Indemnity.** Firm releases and agrees to defend, indemnify and hold harmless the City, its lender, and any federal/state/ or other required program or funding entity, their respective elected or appointed officials, departments, officers, employees, agents, and volunteers, one or any combination thereof (collectively, "City Indemnified Parties") from and against any and all losses, liabilities, damages, penalties, settlements, judgments, charges, or costs (including without limitation attorneys' fees, professional fees, or other expenses) of every kind and character arising out of any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character cause by or resulting from, directly or indirectly, in whole or in part, by any act, negligence, recklessness, wrongful misconduct, omission or other conduct of Firm or any tier of subcontractor/subconsultant/supplier, agent, employee, or anyone for whom Firm may be liable, in connection with, arising directly or indirectly out of the execution or performance of the obligations assumed under or incidental to this Agreement hereof (singularly or collectively "Claims"), even if it is alleged that the City Indemnified Parties were negligent, unless such injuries or damages are ultimately proven to be solely the result of grossly negligent or willful acts or omissions on the part of the City Indemnified Parties. Without limiting the generality of the foregoing, any and all such Claims, including but not limited to personal injury, disease, sickness, death, damage to property, natural resources, or the environment (including destruction or loss of use, costs of hazardous or toxic substance cleanup and disposal), defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or any actual or alleged violation of common law, any

applicable law, statute, ordinance, administrative order, rule, or regulation or decree of any court, shall be included in the indemnity hereunder and, to the extent required, the defined term "Claims". Firm further agrees to investigate, handle, respond to, provide defense (including without limitation attorney fees, paralegal fees, and expert fees to and through appellate, supplemental, or bankruptcy proceedings) for and defend any such Claim at its sole cost and expense through counsel approved in writing by the City and agrees to bear all other costs and expenses related thereto, even if the Claims are groundless, false, or fraudulent. Firm shall advance or promptly reimburse to a City Indemnified Party any and all costs and expenses incurred by such City Indemnified Party in connection with investigating, preparing to defend, settling, or defending any legal proceeding for which the City Indemnified Party is entitled to indemnification hereunder. This obligation shall in no way be limited in any nature whatsoever by any limitation on the amount or type of Firm's insurance coverage.

The parties agree that to the extent the written terms of this indemnification are deemed by a court of competent jurisdiction to be in conflict with any provisions of Florida law, in particular FLA. STAT. §§ 725.06 and 725.08, the written terms of this indemnification shall be deemed by any court of competent jurisdiction to be modified in such a manner as to be in fully and complete compliance with all such laws and to contain such limiting conditions or limitations of liability, or to not contain any unenforceable or prohibited term or terms, such that this indemnification shall be enforceable in accordance with and to the maximum extent permitted by Florida law. Further, whenever there appears in this Agreement (or any other documents made a part hereof) an indemnification within the purview of FLA. STAT. § 725.06, the monetary limitation on the extent of the indemnification under such provision shall be \$1 Million Dollars or a sum equal to the total contract price, service cost, or project value whichever is greater.

The obligation of Firm under this Section is absolute and unconditional; it is not conditioned in any way on any attempt by a City Indemnified Party to collect from an insurer any amount under a liability insurance policy, and is not subject to any set-off, defense, deduction, or counterclaim that the Contactor might have against the City Indemnified Party. The duty to defend hereunder is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Firm, the City, and any City Indemnified Party. The duty to defend arises immediately upon presentation of a Claim by any party and written notice of such Claim being provided to Firm. Firm's defense and indemnity obligations hereunder will survive the expiration or earlier termination of this Agreement. Firm agrees and recognizes that the City Indemnified Parties shall not be held liable or responsible for any Claims which may result from any actions or omissions of Firm in which the City Indemnified Parties participated either through providing data or advice and/or review or concurrence of Firm's actions. In reviewing, approving or rejecting any submissions by Firm or other acts of Firm, the City in no way assumes or shares any responsibility or liability of Firm or any tier of subcontractor/subconsultant/supplier, under this Agreement. In the event the law is construed to require a specific consideration for such indemnification, the parties agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnification and the providing of such indemnification is deemed to be part of the specifications with respect to the services provided by Firm.

Article 6 – TERMINATION OR SUSPENSION OF AGREEMENT

6.1 **City's Right to Terminate.** Except as otherwise stated herein, the City shall have the right by and through the Director, with or without cause, for any reason or no reason, to terminate Firm's right to proceed under this Agreement, in whole or in part (including without limitation directing the Firm to reduce or terminate any or all of the Firm's Work Order(s), Task Order(s), or Subcontracts), upon no less than seven (7) calendar days written notice setting forth the date of such reduction or termination ("Termination Date"). Such reduction or termination shall be without waiver or release of the City's rights and remedies against Firm's sureties and without prejudice to any other right or remedy the City may be entitled to hereunder or by law. As part of such reduction or termination, the City shall have the right but not the obligation to take assignments of any of Firm's Subcontracts or purchase orders that City may designate, and complete all or any portion of the Work by whatever means, method or agency which City, in its sole discretion, may choose. Firm shall have no recourse or remedy from any termination made by the City except to retain allowable costs or reimbursable expenses, earned compensation for duly authorized Work that was performed in complete compliance with the Agreement through to the Termination Date, as full and final settlement of any claim, action, demand, cost, charge or entitlement it may have, or will, have against the City Indemnified Parties.

6.2 **City's Right to Suspend.** If the City suspends all or any portion of the Work (including without limitation directing the Firm to reduce or terminate any or all of the Firm's individual Work Orders, Task Orders, or Subcontracts) for the convenience of the City for more than three (3) consecutive months, Firm shall be paid for services duly authorized, performed prior to such suspension, together with the cost of authorized reimbursable services and expenses then due, and all appropriate, applicable, and documented expenses resulting from such suspension. If same is resumed after having been suspended for more than three (3) consecutive months, Firm's further compensation shall be subject to renegotiations.

Article 7 – EQUAL OPPORTUNITY

7.1 **Assurance of Nondiscrimination in Contracting and Employment.** This Agreement



LEGISLATIVE PRIORITIES:

CRITICAL WATER INFRASTRUCTURE

TRANSPORTATION & THE HIGHWAY TRUST FUND

CAREER TECHNICAL EDUCATION

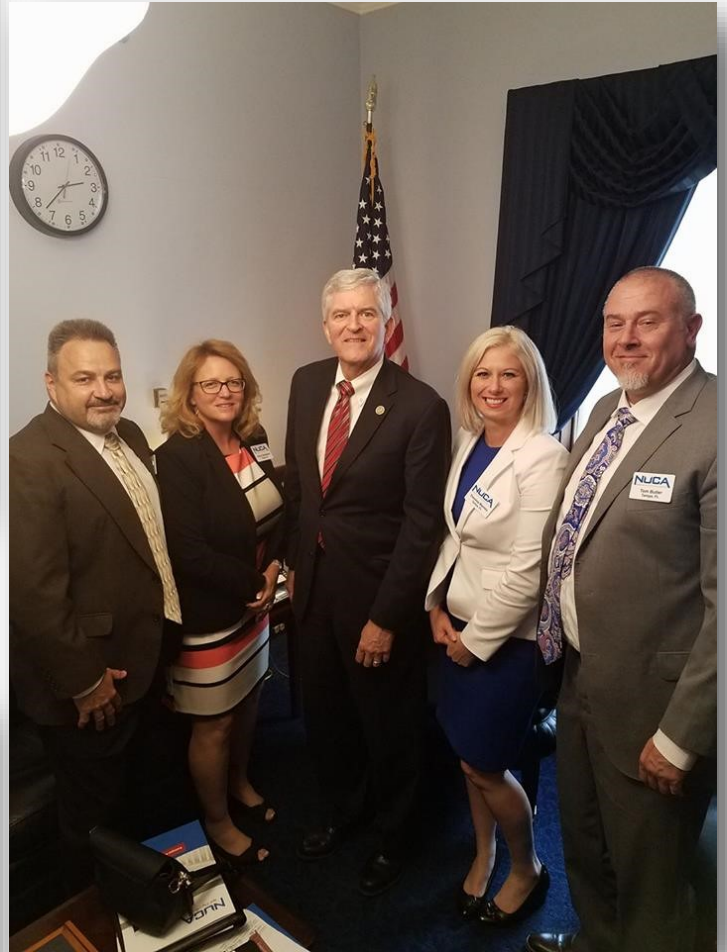


Florida Constituents showed up in force to walk Capital Hill and make our presence known to our Congressman. It was an impactful day with great conversations and sharing of ideas. We thank all who attended and encourage our membership to attend in future years. This is an experience you do not want to miss!

CONGRESSIONAL MEETINGS



Meeting with Congressman Crist



Meeting with Congressman Webster



Meeting with Congressman Bilirakis

In addition to the meetings pictured above the SUCA Chapter Members also met with the staff of Senator Rubio, Congressman Ross, Congresswoman Castor and Congressman Buchanan. It is important for our industry to make our voices heard and meet with our legislators both in DC and at home. We encourage you to contact your legislator and make an appointment to visit them in their home office or invite them out to your jobsite.



NUCA Political Insiders Report – 7/24/18

Chairman Shuster Releases Draft Infrastructure Bill

- House Transportation and Infrastructure Committee Chairman Bill Shuster released his draft bill providing for a comprehensive infrastructure plan.
- For underground utilities, this bill includes increased funding for the Clean Water State Revolving Fund (CWSRF) and reauthorization of the Water Infrastructure Finance and Innovation Act (WIFIA) program.
- The legislation also includes a short-term fix for the Highway Trust Fund, and calls for the development of a long-term solution.

Summary - On the evening of July 23, 2018, House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) released a draft infrastructure bill. This legislation largely focuses on the long-term stabilization of the Highway Trust Fund, but it also addresses clean water infrastructure and other infrastructure more broadly. While there has been much talk about infrastructure in Washington since President Trump's election, this bill is the most notable legislative text to be put forward. In this edition of Political Insiders, I will provide a summary of Chairman Shuster's proposal and its prospects for advancement.

Water Infrastructure - To start with the issues that are most important to us, this legislation includes improvements to the Water Infrastructure Finance and Innovation Act (WIFIA) loan program as well as the Clean Water State Revolving Fund (CWSRF). Specifically, the bill reauthorizes WIFIA through 2024 at \$50 million per year. Using previous estimates of WIFIA's leveraging power, this \$50 million would make approximately \$2.5 billion in financing available for water infrastructure projects. In addition to funding and extending the program, the bill also includes provisions to streamline WIFIA and reduce administrative burdens on participants.

For the CWSRF, the bill increases authorized funding to \$3 billion dollars per year through 2023. The program was last authorized through 1994, and Congress provided approximately \$1.69 billion in FY18. Therefore, Chairman Shuster's bill provides a much needed increase to the program. Additionally, the bill also requires the EPA to establish simplified procedures for States to get assistance from the program.

The Chairman's proposal also puts forth other ideas, such as expanding technical assistance for wastewater infrastructure financing and streamlining the permitting process for infrastructure projects.

The Highway Trust Fund - Probably the most talked about aspect of the Chairman's draft bill is his solution for the Highway Trust Fund (HTF). His legislation calls for both a short-term and long-term solution to the issue. To provide an immediate solution to the fund's pending insolvency in Fiscal Year 2021, the bill would increase the existing federal gas tax and diesel fuel tax by 15 cents and 20 cents per gallon, respectively, over three years. After calendar year 2021, the taxes would be indexed to inflation through 2028. Additionally, the bill would levy new taxes on mass transit buses' fuel, electric vehicle batteries, commuter rail diesel fuel, and bicycle tires to shore up the trust fund. Combined, these taxes would keep the HTF solvent and provide for increased funding to highway and surface transportation projects through 2028.

To address the HTF after 2028, the bill calls for the establishment of a "Highway Trust Fund Commission" that would be responsible for determining future transportation system needs and identifying revenue sources to meet those needs. The Commission would be required to propose actual legislation that would solve these challenges, and this legislation would then be considered in Congress under expedited procedures. The one important restriction for this Commission is that their plan cannot rely on a gas tax for future HTF solvency. Essentially, Chairman Shuster's plan requires a new combination of funding mechanisms for the HTF. One potential funding source could be a per-mile user fee, and the draft bill provides for the establishment of a pilot program to test this idea.

Next Steps - While it is encouraging to see Chairman Shuster put forward a proposal to address our nation's infrastructure needs, it is highly unlikely that Congress will consider this legislation before the end of the year. For one, House Speaker Paul Ryan and other Republican leadership have expressed their opposition to a gas tax increase. Additionally, given the upcoming midterm elections, Democrats are not likely to cut a deal when they have at least a 50-50 chance of taking the House majority.

With that said, it is important that the Chairman has proposed these ideas and put them to paper. Particularly for the CWSRF, this legislation recognizes the need for increased investment in clean water infrastructure, and will provide for us a starting point as NUCA negotiates on the issue moving forward.

Bryce Mongeon

Director of Government Relations

NUCA--Representing Utility & Excavation Contractors

www.nuca.com | 703.358.9300



2018 Sawyer Memorial Scholarship Winner & Runner-Ups

We proudly announce our 2018 \$6,000 Scholarship Winner, Manuel Tarango III, son of Manuel & Nora Tarango, RIPA & Associates. Manuel graduated from Pasco High School this year and has been accepted to the Florida State University where he plans to major in biological sciences with a pre-med concentration. He has earned a position in the Health Professionals Living Learning Community which will help with internships and ways to build his resume during his college experience. After becoming an MD. He would like to specialize in Orthopedics in order to one day work as a team physician for a sports team. During his high school career he has done college prep classes through the International Cambridge AICE program and also did dual enrollment at Pasco Hernando State College to knock out pre-requisites. Manuel was ranked 28th out of 410 students in his class. He held a 5.0 GPA for all of Junior and Senior Year and held honor roll all 4 years of school. He was awarded the Cambridge Assessment International Education Scholar Award and Outstanding Senior Award by the Dade City Rotary Club. Extracurricular activities included Science Club, Treasurer, Cross Country, Co- Captain, and Student Council where he volunteered time both as Secretary in 10th and Treasurer in 11th. Outside of school Manuel has competitively boxed for the last 5 years. He is a four time Florida State Champion, two time Regional Champion and National Junior Olympic Bronze Medalist.



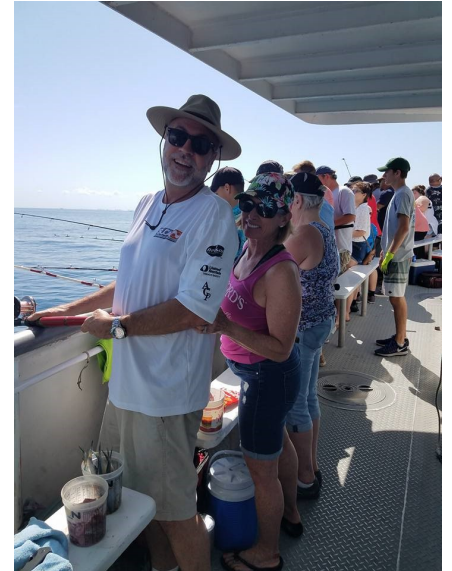
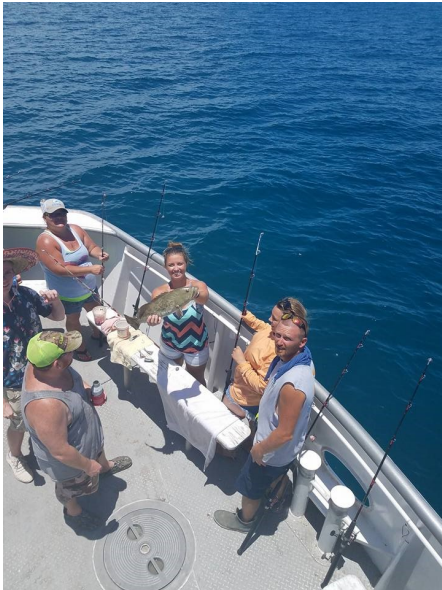
We had so many talented entries for the 2018 Scholarship this year the Committee decided to award two Runner-Up \$1,000 awards. Pictured above Jackson Rowland son of Kevin & Tiffany Rowland and Colman Mansfield, son of Jo Dee Colonius & Richard Mansfield accepting their checks.

Congratulations



ANNUAL CHARTERED FAMILY FISHING TRIP

What a fantastic day on the water! This event is always a blast and quick sell out! All that have been on the boat know exactly why. The day was filled with clear skies, blue waters, dolphins, fish, and cold beverages amongst great friends. Congratulations to our biggest fish winner, Summer Larson! After all these years she finally won! We would like to thank our major sponsor Synergy Equipment for supporting this years event! In addition to our Committee that helped plan another great year. Tim Carmichael, ACP, Linda Shutt, Nelson Construction, David Atkins, Keystone Excavators and Brandon Strout, National Trench Safety. Special volunteer, Mary Catherine McLaughlin, aka "Shark Bait" is always appreciated with her assistance at registration.





THANK YOU SPONSORS!

PLATINUM

Synergy Rents

GOLD

Nelson Construction

ACME Barricades

ACP

Dallas 1 Construction

Tampa 1

National Trench Safety

SILVER

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Making the Case: “Isolated Instance of Unpreventable Employee Misconduct”

**By
Wayne Jensen
Stahl & Associates Insurance**

OSHA, as we all know, does not issue citations to employees. Citations are always directed to the employer on the premise that employee misconduct is the direct result of “failures” on the part of the management/ownership team and their business system. In the case of a citation, the question OSHA is always asking “Did the employer fail to create a work environment where it is *virtually impossible* for an employee to do something that does not comply with regulation?” The employer is faced with the task of proving to OSHA that it did everything in its power to provide a safe & healthy work environment that includes eliminating instances of employee misconduct.

The standard defense for citations involving cases of employee misconduct is proving the incident was an “isolated instance of unpreventable employee misconduct” by demonstrating the following:

One example in case law is *Daniel Int’l Corp. v. OSHRC*, 683 F.2d 361, 364 (11th Cir. 1982). Under that defense, the *employer* has the burden of proving each of four elements. The employer must prove that it has:

- (1) Established work rules designed to prevent the violation,
- (2) Adequately communicated those rules to its employees,
- (3) Taken steps to discover violations, and
- (4) Effectively enforced the rules when violations have been discovered.

If the body of documentation is conclusive, OSHA may accept that the employer is indeed sincere about making sure the prohibited behavior does not occur and that the cited observation of OSHA was indeed an “Isolated Instance of Unpreventable Employee Misconduct”.

OSHA, thinks like you do in regard to your own observations of “employee misconduct”. When an employee, who is caught violating a safety rule, tells the supervisor that they “never” broke the rule before, the supervisor *never believes the statement*. The supervisor knows that, statistically, it is nearly impossible for them to randomly observe an employee violating a safety rule for a few seconds or minutes out of the years of employment of that person. The supervisor always realizes that if they randomly catch a person violating a safety rule that it is very likely that they are always violating the safety rule.

Companies should always attempt to make the case with OSHA that their cited observation was indeed a case of an “Isolated Instance of Unpreventable Employee Misconduct” but never assume this is the case for internal purposes. It is extremely important for companies to conduct a critical evaluation of their operations to assure themselves that they don’t, unwittingly, have numerous cases of employee and supervisory misconduct that can be attributed to management failures to eliminate a given behavior. The benefit of the exercise is that if you can prove, “internally,” the case really is an “isolated instance” of unpreventable employee misconduct it will be easy to prove the case to OSHA.

Below is a system of analyzing the entire business management system of a company to eliminate any “root causes” of any business failure. The system has been tailored to match the needs of a company to eliminate business failures that could allow a field supervisor or field worker to work without complying with company or governmental regulations as it relates to safety. Each element of this system has a label (M-1 through M-4, S-1 through S-4 and I-1 through I-4). These labels designate the location of the root cause that would allow a failure to occur. These labels help companies focus on the elements in their business system that must be in place to prevent “business failures.” The labels are also used in a mathematical and graphical root cause analysis system should that ever be needed to prove a case.

Road Map for Making the Case of “Isolated Instance of Unpreventable Employee Misconduct”—Roles & Responsibilities¹:

1. **Management Responsibility¹ in proving the case:** Management must demonstrate that they have fulfilled their responsibility to create a work environment that eliminates every observed instance of the condition or work behavior of concern.
 - a. Company must have a written and/or well documented and communicated policy and procedure governing an observed unsafe condition or behavior (**M-1**)
 - b. Company must show it has consistently applied the policy and procedure governing the unsafe condition or work behavior across the entire organization (**M-2**)
 - c. Company must show it has a system for checking and monitoring to determine if there is universal compliance with policy & procedure governing the observed unsafe condition or behavior (**M-3**)
 - d. Company must show it enforces the policy and procedure governing the observed unsafe condition or behavior when they discover an instance there is non-compliance. (**M-4**)
2. **Supervision Responsibility¹ in proving the case:** (Typically Foremen and their Supervisors)
 - a. Management must document they have communicated the policy and procedure to their Field Supervisory team and that the Supervisory team has communicated what was wanted to their Foremen and their people with regard to compliance with safety policies(**S-1**)
 - b. Supervisors must document they have provided their Foremen and their people with the means for compliance including providing all necessary supplies (PPE), tools, resources, knowledge/training (**S-2**)
 - c. Supervisors must verify they personally comply with the policy and procedure themselves, both in how they direct their people and what they physically do themselves, thereby proving they are a good example for their Foremen and their people (**S-3**)
 - d. Supervisors cannot just give lip service to policy and procedure with no intent of enforcing its mandates; they must be well documented in the area of enforcement of safety rules (**S-4**)
3. **Responsibility of Supervisors and Foreman¹ to “prove the case” by providing evidence of holding Individuals accountable to comply with policy and procedure**
 - a. Supervisors and Foremen MUST document that they terminate, or otherwise remove from the workplace, any individual that has made it 100% clear that they will never consistently comply with the policy and procedure (**I-1**)
 - b. Supervisors and Foremen must document or verify that they have communicated what was wanted in regard to compliance to a given individual on a one-to-one basis leaving no doubt that individuals know what is expected for compliance (**I-2**)
 - c. Supervisors and Foremen must document their efforts to personally train, motivate or enforce policy and procedure as it applies to a given individual (**I-3**)
 - d. Supervisors and Foremen recognize and reward individuals for improved performance especially after previous enforcement action (**I-4**)

The key is that a company must always seek to determine if any observed instance of non-compliance with policy & procedure is the result of a true “Isolated Instance of Unpreventable Employee Misconduct” or if it is an indicator of other corporate failures that allow such instances of non-compliance to routinely occur. It is important to have a corporate model for eliminating all instances of non-compliance to policy and procedure. The corporate “process” to eliminate all instances of employee misconduct is the defense mechanism against OSHA citations and more importantly, it prevents employees that will not comply with safety rules from getting hurt or killed.

¹Roles & Responsibilities developed by Bobby Jones & Associates “Behavioral Justification”, Tyler, TX

MEET YOUR BOARD MEMBER

Bud Shores, Dallas 1 Construction



1. Briefly tell us about your professional background.

I started in the construction industry for a local Tampa contractor in September of 1997. Straight out of high school I began as a labor/operator and quickly worked my way up to an Assistant Project Engineer. In May of 2000 I accepted a position as a Dispatcher for Dallas 1 Construction and Development. Soon after, I began to grow with the company and held numerous positions such as assistant Superintendent, Estimator, Project Management and my current role as Chief Operating Officer. I am currently a State of Florida Underground and Excavation licensed contractor and in the process of obtaining my State of Florida Class 5 fire line license.

2. How long have you lived in Florida?

All my life, I was born & raised in Tampa in 1978.

3. What are your hobbies or interest outside of work?

BBQ Competition (Hardwood BBQ), Gator

Hunting, Golf even though I stink at it.

4. Grill master or reservations?

Grill Master.

5. What is your favorite travel location?

A cruise to anywhere!!!

6. What is the secret to your success?

Hard work, Drive, Dedication, Focus, Organization and Approachability. Never be afraid to ask a question and do not think you know everything. I have been blessed to have amazing mentors throughout my career.

7. Do you have any "guilty pleasure" TV Shows?

Sons Of Anarchy, Game of Thrones, Breaking Bad, Seinfeld, and The Walking Dead.

8. Tell us about the services your company provides.

Dallas 1 is a Commercial, Residential and Government contractor specializing in all underground utilities and Roadway. Dallas 1 has been serving the Tampa Bay Area since 1985.



9. What is your favorite sports teams?

Tampa Bay Bucs, Tampa Bay Rays, Tampa Bay Lightning, The Florida Gators

10. What was the first car you drove?

1989 Ford GT Escort with a standard transmission.

11. What do you find to be the best benefit of being a SUCA member?

The relationships built between vendors, contractors & professionals in our industry.

Vogel Bros. Building Co. Announces New Leadership

Darren Vogel is named VP of Operations in Lakeland, FL

For Immediate Release
June 5, 2018

Media Contact: Heather Manke
608.663.8974

LAKELAND, FL. – Vogel Bros. Building Co., a fifth generation construction services company, is excited to announce that Darren Vogel has been promoted to Vice President of Operation of its Florida office. Darren will oversee the day-to-day operations of the Lakeland, FL division.

Darren was born and raised in Lakeland, Florida and represents the fifth generation of Vogel family members to provide leadership for the company. Darren earned both his bachelor's and master's degrees in Civil Engineering from the University of Florida – Gainesville. He is a registered Professional Engineer in the State of Florida. Prior to joining Vogel Bros., Darren spent four years with a major design engineering firm working on the planning, design and construction of water and wastewater facilities. Darren has been around the construction industry his entire life and is following his father Dan's footsteps in leading the Vogel Bros. Florida office.

"I am excited for the opportunity to continue the legacy of servant leadership that has been passed to me by my grandfather, father and uncle," said Darren Vogel. "Since childhood I have wanted to be an integral part of this company, and I look forward to helping guide the next generation through our continued development."

Active with community organizations, Darren is a member of the Lakeland Area Chamber of Commerce, Lakeland South Rotary Club, and National Utility Contractors Association. He is an active member of St. Paul's Lutheran Church and a graduate of Leadership Lakeland Class 35. Darren resides in Lakeland, Florida with his wife and their three children.

"Vogel Bros. believes people are they key to our success, and the succession of Darren Vogel to VP was a clear decision made because of his dedication to Vogel Bros.' beliefs and values. He will continue to be an excellent advocate for our company's mission and vision, and will lead by example," stated Peter Vogel, President and CEO of Vogel Bros. Building Co.

Vogel Bros. Building Co. (<http://vogelbldg.com>) is a fifth-generation construction services company with offices in Madison, WI and Lakeland, FL. As an award-winning company, Vogel Bros. has earned recognition for completing large-scale complex projects, encouraging innovation, embracing new technologies, and making a difference in our communities. We owe our success and longevity to the values established by the Vogel family that have been shared through the generations and are embodied in our employees.

###

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- YETI Cooler

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Showtime 4-7 pm

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General Admission is FREE!

To Pre-register and get a FREE Drink Ticket! Email Theresa Mannix at tmannix@suca.org.



www.suca.org



EXHIBITORS



For Immediate Release
For More Information: Anita Lum
[813.579.3278](tel:813.579.3278)
alum@trentcotney.com

Cotney Construction Law Announces New Partners

Tampa, FL, June 28, 2018 – Cotney Construction Law (CCL), a leading national law firm for construction, specialty trades, and OSHA law, is pleased to announce that Daniel Auerbach, Virgil Tray Batchter, Hilary Morgan, and Anthony Tilton have been named partners of the firm.

“Each of these attorneys epitomizes the diverse talent our firm offers,” said Trent Cotney, CEO of CCL. “Not only have they demonstrated superb legal capabilities, but they have also shown that they are committed to both their clients and the construction industry as a whole.”

Daniel Auerbach’s practice areas encompass construction litigation and various transactional matters. Specifically, Dan focuses on contract review and drafting, contract negotiation, bond & lien law, building code violation defense, construction defense litigation, OSHA defense, bid protests, and contractor licensing defense. He currently serves as General Counsel for the Space Coast Licensed Roofers Association and the Treasure Coast Roofing and Sheet Metal Association.

Virgil Tray Batchter joined Cotney Construction Law in 2012 and represents clients in all aspects of construction law including lien law, bond law, construction defect litigation, OSHA defense, and licensing. Prior to becoming a lawyer, Tray worked in the construction industry as an estimator for a multi-million dollar structural contracting company. He currently serves as General Counsel for the Florida Refrigeration and Air Conditioning Contractors Association.

Hilary Morgan focuses her practice on all aspects of construction law, including lien law, surety bond law, litigation, arbitration, construction defects, contract review and drafting, delay claims, bid protests, design professional liability, corporate law, and administrative law. Hilary serves on Associated Builders and Contractors National Young Professional Committee and is currently General Counsel for National Women in Roofing.

Anthony Tilton practices in all areas of construction law. He works primarily on matters relating to OSHA and licensing defense. This includes the management and development of safety and health strategies. Anthony is also a Certified Building Contractor and has been involved in the industry his whole life – he has done framing, floor installation, remodels, site supervision, and served as safety officer for various construction companies. Anthony is General Counsel for the Tile Roofing Institute.

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About Cotney Construction Law

Cotney Construction Law is a national law firm that provides representation for general, roofing, HVAC and specialty contractors. Experienced in the representation of businesses and professionals in construction disputes and transactions, Cotney is a well-known advisor and legal counsel in the construction industry. The firm’s practice areas include construction law, litigation, arbitration, contract review & drafting, immigration, employment, OSHA defense, licensing defense, bid protests, lien law, bond law and alternative dispute resolution. The firm has Florida offices in Tampa, Orlando, Tallahassee, Jacksonville, and Ft. Lauderdale, as well as locations in Denver, Grand Rapids, Houston, Mobile, and Nashville. For more information, visit www.cotneycl.com.



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Contact Theresa Mannix at 727-600-7158 or tmannix@suca.org with your donation items. You can deliver to the SUCA Office at 6601 Memorial Hwy, Suite 206, Tampa, FL 33615 OR Contact Theresa to schedule a pick up.

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Contact Us!

Let us know your thoughts and ideas for upcoming Pipelines!

Submit your funny photographs from your jobsite. The best will make the next Pipeline!

SUCA

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Tampa, FL 33622

(727) 600-7158

tmannix@suca.org

Visit us on the web at
www.suca.org



Chairman Penny Danielecki and Executive Director, Theresa Mannix visited Jackie Toledo at her home for a birthday celebration. SUCA and NUCA of Florida made a contribution to her campaign.

Suncoast Utility Contractor Association
P.O. Box 21424, Tampa FL 33622
Tampa, FL 33622



SUNCOAST UTILITY CONTRACTORS ASSOCIATION