

OFF SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT

Between

**STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
("DEPARTMENT")**

and

**VOLUSIA COUNTY, FLORIDA, a political
subdivision of the State of Florida
("LOCAL GOVERNMENT")**

WHEREAS, the State of Florida Legislature has approved and mandated the DEPARTMENT to complete the various projects included in the DEPARTMENT'S Work Program; and

WHEREAS, included in the DEPARTMENT'S Work Program is Project FM Number 436292-1-52-01 I-95 at Pioneer Trail Interchange located in Volusia County, Florida, hereinafter referred to as the "Project", parts of which are not on the State Highway System; and

WHEREAS, the Parties hereto agree that it is in the best interest of the DEPARTMENT and of the LOCAL GOVERNMENT for the DEPARTMENT to act on behalf of the LOCAL GOVERNMENT in completing the aspects of the Project not on the State Highway System, including, but not necessarily limited to (1) acquiring all right of way that will not be a part of the State Highway System and that is necessary for the Project, (2) constructing the off system aspects of the Project through its completion, and (3) providing Construction Engineering Inspection (CEI) as necessary for all aspects of the Project, including the off system components of the Project.

NOW THEREFORE,

1. The parties agree that the DEPARTMENT shall undertake and complete project FM Number 436292-1-52-01, generally described as Right of Way acquisition, Construction, and Construction Engineering Inspection (CEI) services for the I-95 at Pioneer Trail Interchange, hereinafter "Project." The Project shall include the tasks described in Exhibit "A" hereto and all other tasks associated with or arising out of the tasks listed therein as well as the Construction Plans, the Key Sheet of which is attached hereto as Exhibit "B" for identification. The LOCAL GOVERNMENT approves of the design and shall fully cooperate with and shall support the DEPARTMENT'S work efforts associated with the off system components of the Project. The LOCAL GOVERNMENT hereby grants to the DEPARTMENT, its contractors, representatives, employees, and agents the right to enter onto LOCAL GOVERNMENT property to accomplish the tasks required by the Project. This right of entry shall continue in full force and effect throughout the time that the Project is ongoing. The DEPARTMENT shall have the final decision-making authority with respect to the acquisition of property necessary for all aspects of the Project and for the construction and for the CEI services.

2. The LOCAL GOVERNMENT by virtue of the formal resolution, a copy of which is attached hereto as Exhibit "C", approving this Agreement, consents to and authorizes the DEPARTMENT to act on behalf of, for the benefit of, and to the extent necessary, in the name of the LOCAL GOVERNMENT, to do all acts necessary for the off system aspects of the Project, specifically including the acquisition of right of way necessary to construct the Project along with the construction of improvements for the benefit of the LOCAL GOVERNMENT and providing Construction Engineering Inspection (CEI), necessary for the Project. In this regard the right of way to be acquired for the off system aspects of the Project shall be acquired as described in Exhibit "E" hereto. If the real estate interest is acquired in the DEPARTMENT'S name, for the benefit of Volusia County, the LOCAL GOVERNMENT agrees to accept the conveyance of all real property interest acquired that is necessary for the off system components of the Project. The parcels to be acquired by the DEPARTMENT for conveyance to LOCAL GOVERNMENT are identified in the DEPARTMENT's Right of Way Map for the Project, a copy of the cover page which is attached hereto as Exhibit "D". A list of the parcel numbers, sheet page numbers for the Map, the land area to be acquired and conveyed, and the quality of title are described in Exhibit "E" hereto.

3. The LOCAL GOVERNMENT acknowledges that the DEPARTMENT will be utilizing federal funds on the Project and as a result thereof, upon completion of the Project, the LOCAL GOVERNMENT will be responsible for the perpetual maintenance of the off system components of the Project. The DEPARTMENT will be responsible for the perpetual maintenance of the Interchange. A graphical depiction of the Project, attached hereto as Exhibit "F", identifies the specific areas that will be maintained by the LOCAL GOVERNMENT and those areas to be maintained by the DEPARTMENT. To the extent the Design-Build process modifies the Project in a material manner, the parties hereto will determine who will be responsible for maintenance of those aspects which are modified.

4. To the extent necessary, the LOCAL GOVERNMENT hereby appoints the DEPARTMENT as its agent for purposes of construction, reconstruction, and relocation of utilities under Section 337.403(1), Florida Statutes. The LOCAL GOVERNMENT agrees to fully cooperate with the DEPARTMENT in the construction, reconstruction, and relocation of utilities that may be located within the existing right of way. The parties agree to meet on a periodic basis, as determined to be necessary by the DEPARTMENT, during the design, construction, and post-construction phase to identify, plan, and to relocate utilities. The responsibility for the costs associated with the relocation of utilities shall be based on Florida law as it relates to said matters.

5. With respect to the off system local roadways, that include Pioneer Trail, Williamson Boulevard, and Turnbull Bay Road, herein, "Local Roadways", that are necessary to provide access to and from the Interchange, the LOCAL GOVERNMENT,

commits that it will assure that the local roadways on each side of the Interchange are complete and operational consistent with the DEPARTMENT'S design for the Project on the date that the Interchange is scheduled to be completed.

6. With respect to the off system Local Roadways within the Project limits but that are located outside of the Limited Access right of way of the interchange, the parties acknowledge that the LOCAL GOVERNMENT is the owner of the underlying property and acknowledges that the right of way and the improvements and structures to be located within the Local Roadways right of way, are and will remain under the ownership and control of the LOCAL GOVERNMENT and that the DEPARTMENT will not have any ownership interest in the right of way, improvements, or structures located thereon. For the area within the limits of right of way located inside the Limited Access right of way of the interchange, the DEPARTMENT will own the underlying fee ownership of the property.

7. The LOCAL GOVERNMENT will be jurisdictionally responsible to operate, maintain, repair, replace, and to reconstruct, as necessary, the Local Roadways, including those portions of the Local Roadways that pass through the area of the Interchange. The LOCAL GOVERNMENT'S responsibility of the Local Roadways is for the road surface, subsurface, signage, painting, striping, shoulders, and drainage associated with the Local Roadways. The DEPARTMENT will be responsible to maintain all other areas located within the interchange, including the ramps on and off of the interstate and the bridge structure for the Local Roadways.

8. The DEPARTMENT and the LOCAL GOVERNMENT shall cooperate with and keep each other well informed of the work efforts and progress hereunder. The DEPARTMENT, in coordination with the LOCAL GOVERNMENT, shall have final decision-making authority for construction of the Project.

9. All payment and performance bonds shall be issued in favor of the DEPARTMENT. All warranties, if any, for improvements made within the right of way limits of Pioneer Trail, Williamson Boulevard and Turnbull Bay Road, the Local Roadways, shall be made in name of and for the benefit of the LOCAL GOVERNMENT.

10. Upon completion of the Project, the DEPARTMENT shall issue a Notice of Final Acceptance to the contractor with a copy of said notice being provided to the LOCAL GOVERNMENT. Upon issuance of the Notice of Final Acceptance, the LOCAL GOVERNMENT, consistent with Exhibit "F" herein, shall be immediately responsible for the off system aspects of the Project as set forth in Paragraph 7 hereof. The DEPARTMENT shall issue a Notice of Final Acceptance once the project is complete to include completion of all punch list items. Additionally, the LOCAL GOVERNMENT understands and agrees that the DEPARTMENT shall transfer all permits for the off system components of the Project to the LOCAL GOVERNMENT as the operational maintenance entity. The LOCAL GOVERNMENT agrees to accept said transfer and to become fully responsible to comply with all operational and maintenance conditions of the permits. The LOCAL GOVERNMENT, as needed, agrees to cooperate and to

support the DEPARTMENT'S efforts to secure permits necessary for and associated with the Project.

11. This Agreement shall become effective as of the date both parties hereto have executed the Agreement and shall continue in full force and effect until the Project is completed by the DEPARTMENT and the improvements have been turned over to the LOCAL GOVERNMENT by the DEPARTMENT by formal notice from the DEPARTMENT. The DEPARTMENT reserves the right to unilaterally cancel its performance hereunder if it determines that it is in the best interest of the public to do so. This discretion shall include, but shall not be limited to, budgetary and bid cost considerations. If the DEPARTMENT, unilaterally cancels performance hereunder, the DEPARTMENT shall assign all permits, and to the extent permitted by the construction contract, and shall assign the construction contract to the LOCAL GOVERNMENT to complete the Project.

12. Pursuant to Section 287.058, Florida Statutes, the DEPARTMENT may unilaterally cancel this Agreement for refusal by the LOCAL GOVERNMENT to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes and made or received by the LOCAL GOVERNMENT in conjunction with this Agreement except for the obligation of the LOCAL GOVERNMENT to maintain the Project and said Agreement shall be perpetual as to that obligation.

13. In the event that any election, referendum, approval, or permit, notice or other proceeding or authorization is required to be undertaken by the LOCAL GOVERNMENT to enter into this agreement or to undertake the Project, the LOCAL GOVERNMENT will expeditiously initiate and consummate, as provided by law, all actions necessary with respect to any such matters with time being of the essence.

14. It is understood that the DEPARTMENT'S participation in said Project is subject to:

- a.) Legislative approval of the DEPARTMENT'S appropriation request in the work program year that the Project is scheduled.
- b.) Availability of funds based on the following limitations:
 - i.) The DEPARTMENT'S performance and obligations to pay under this Agreement is contingent upon an annual appropriation by the Florida Legislature. If the DEPARTMENT'S funding for this Project is in multiple years, funds approved from the DEPARTMENT'S Comptroller must be received every year prior to costs being incurred.
 - ii.) In the event this Agreement is in excess of \$25,000.00 and has a term of a period of more than one year, the provisions of §339.135(6)(a), Florida Statutes, are hereby incorporated. The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the

expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the DEPARTMENT that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executor only for the value of the services to be rendered or agreed to be paid in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT, which are for an amount in excess of \$25,000.00 and which have term for a period of more than one (1) year.”

15. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

16. The LOCAL GOVERNMENT shall utilize the U.S. Department of Homeland Security’s E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of:

- a.) All persons employed by the LOCAL GOVERNMENT during the term of the Contract to perform employment duties within Florida; and
- b.) All persons, including, subcontractors, assigned by the LOCAL GOVERNMENT to perform work pursuant to the contract with the DEPARTMENT.

17. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, express mail, or electronic mail (e-mail) and shall be deemed to have been received by the end of five business days from the proper sending thereof unless proof of prior actual receipt is provided. Each party hereto shall have the continuing obligation to notify each other of the appropriate persons for notices to be sent to pursuant to the terms of this Agreement. Unless otherwise notified in writing, notices shall be sent to the following:

To the LOCAL GOVERNMENT:
County of Volusia Engineering & Construction
Attn: Tadd Kasbeer, P.E., County Engineer
123 West Indiana Avenue
DeLand, Florida 32720
TKasbeer@volusia.org

To the DEPARTMENT:
State of Florida, Department of Transportation
District Five- Local Programs
719 South Woodland Boulevard, M.S. 4-520
DeLand, Florida 32720
D5-LocalPrograms@dot.state.fl.us

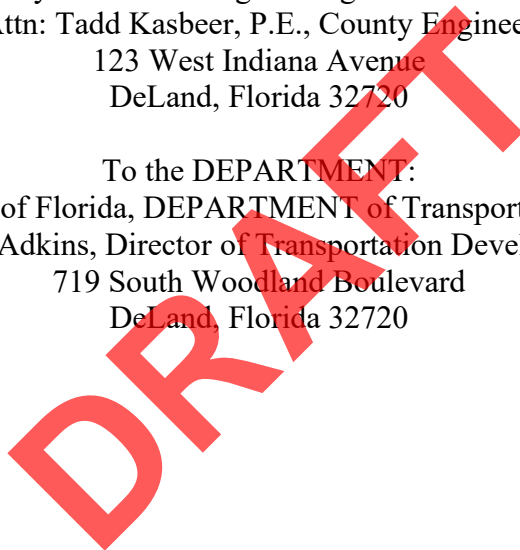
18. No modification of this Agreement shall be binding on the Parties unless reduced to writing and signed by a duly authorized representative of the Parties.

19. In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.

20. The individual identified as the person to receive notice hereunder shall have the authority to act on behalf of and to bind the LOCAL GOVERNMENT and the DEPARTMENT, respectively, as to all determinations required to be made under the terms of this Agreement.

To the LOCAL GOVERNMENT:
County of Volusia Engineering & Construction
Attn: Tadd Kasbeer, P.E., County Engineer
123 West Indiana Avenue
DeLand, Florida 32720

To the DEPARTMENT:
State of Florida, DEPARTMENT of Transportation
C. Jack Adkins, Director of Transportation Development
719 South Woodland Boulevard
DeLand, Florida 32720



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates exhibited, by the signatures below.

VOLUSIA COUNTY, FLORIDA

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

Name:

Title:

Date: _____

By: _____

Name: C. Jack Adkins

Title: Director of Transportation Development

Date: _____

Attest:

Attest:

County Manager

Executive Secretary

Local Government Legal Review:

Department Legal Review:

County Attorney

Department Attorney

DRAFT

Exhibit “A”
SCOPE OF SERVICES
FM# 436292-1-52-01

The DEPARTMENT has committed to performing the Right of Way acquisition phase for the LOCAL GOVERNMENT using federal funding for Project FM# 436292-1-52-01 (I-95 at Pioneer Trail Interchange) located in Volusia County, Florida, a Project partially not on the State Highway System.

The DEPARTMENT will acquire those parcels that are not located on the State Highway System and that are identified in the Right of Way Maps, Section 79002, F.P. 436292-1-52-01, I-95 at Pioneer Trail Interchange (Volusia County). The DEPARTMENT will acquire the real estate interests in the name of the LOCAL GOVERNMENT for the off system Local Roadways that include Pioneer Trail, Williamson Boulevard, and Turnbull Bay Road that will be constructed as a part of the I-95 at Pioneer Trail Interchange.

Additionally, with respect to the new interchange, I-95 at Pioneer Trail, the DEPARTMENT will construct the improvements including:

- Construct a partial cloverleaf interchange at I-95 and Pioneer Trail.
- Improvement to Pioneer Trail: Provide four lane urban section. Provide turn lanes for the ramp access and improvements to the Turnbull Bay Road and Williamson Boulevard intersections.
- Improvement to Turnbull Bay Road: Reconstruct a portion of the roadway to provide a vertical curve connection to superelevated Pioneer Trail. Accommodate pedestrian movements and construct a roundabout at the intersection of Pioneer Trail.
- Improvements to Williamson Boulevard: Mill and resurface as necessary for the intersection, pedestrian crossing, and signalization.
- Provide parallel deceleration lanes on I-95.
- Provide signalization at Williamson Boulevard, at the two interchange ramps, and a roundabout at Turnbull Bay Road.

The DEPARTMENT will undertake and complete the construction of the off system components of the Project for the benefit of the LOCAL GOVERNMENT including CEI and post design services that may be necessary for the Project.

The DEPARTMENT’S plans for the above-described Project are identified as plans prepared by Stantec, Inc., dated November 18, 2022, for Project FM# 436292-1-52-01 as identified below in Exhibit B hereto.

COMPONENTS OF CONTRACT PLANS SET
 ROADWAY PLANS
 SIGNING AND PAYMENT MARKING PLANS
 SIGNALIZATION PLANS
 INTELLIGENT TRANSPORTATION SYSTEMS PLANS
 LIGHTING PLANS

INDEX OF ROADWAY PLANS

SHEET NO.	SHEET DESCRIPTION
1	KEY SHEET
2	SIGNATURE SHEET
3 - 14	DRAINAGE MAP
15 - 41	TYPICAL SECTIONS
42	TYPICAL SECTION DETAILS
43 - 45	PROJECT LAYOUT
46 - 50	PROJECT CONTROL
51	CURVE OR COORDINATE DATA
52	GENERAL NOTES
53 - 80	ROADWAY PLAN
81 - 111	PROFILES
112	INTERCHANGE LAYOUT
113 - 120	INTERSECTION DETAIL
121 - 124	RAMP TERMINAL
125 - 138	DRAINAGE STRUCTURES
139 - 146	POUND DESIGN
147	ROADWAY SOIL SURVEY
148 - 155	ROADWAY BORING RESULTS
156 - 159	STORMWATER POND BORING RESULTS
160 - 235	CROSS SECTIONS
236 - 238	STORM WATER POLLUTION PREVENTION PLAN
239 - 264	EROSION CONTROL
265 - 341	TEMPORARY TRAFFIC CONTROL PLANS
342 - 365	UTILITY ADJUSTMENTS

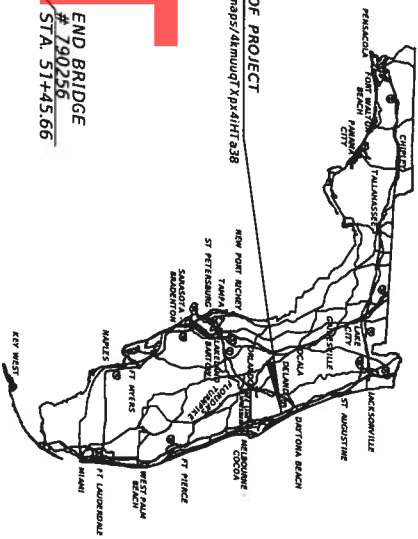
GOVERNING STANDARD PLANS:
 Florida Department of Transportation, FY2021-22 Standard Plans for Road and Bridge Construction and applicable Interim Revisions (IRs).
 Standard Plans for Road Construction and associated IRs are available at the following website: <http://www.fdot.gov/design/standardplans>
 APPLICABLE IRs: IR _____
 Standard Plans for Bridge Construction are included in the Structures Plans Component

GOVERNING STANDARD SPECIFICATIONS:
 Florida Department of Transportation, JULY 2021 Standard Specifications for Road and Bridge Construction at the following website:
<http://www.fdot.gov/procurement/management/implemented/specbooks>

**STATE OF FLORIDA
 DEPARTMENT OF TRANSPORTATION
 CONTRACT PLANS**

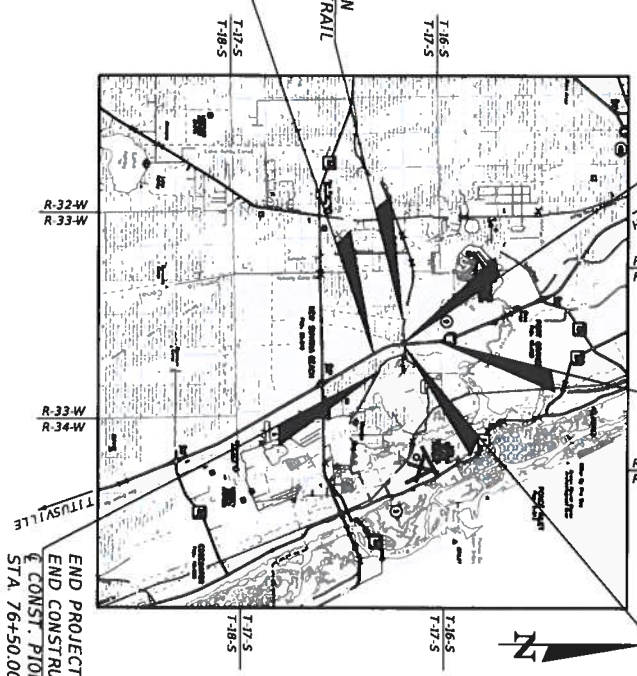
**FINANCIAL PROJECT ID 436292-1-52-01
 (FEDERAL FUNDS)**
 VOLUSIA COUNTY (79002)

LOCATION OF PROJECT
<https://goo.gl/maps/4kmnuq7Xpk4Ht1a38>



THIS PROJECT TO BE LET TO CONTRACT WITH FINANCIAL PROJECT ID: 436292-1-56-01

DRY
 BEGIN BRIDGE # 790256 STA. 48+68.32
 END BRIDGE # 790256 STA. 51+45.66
 BEGIN CONST. ON I-95 (SR9) STA. 4739+99.38 MP 19.552
 END CONST. ON I-95 (SR9) STA. 4739+99.38 MP 19.552
 STATE ROAD NO. SR-9
 PIONEER TRAIL INTERCHANGE (NEW)
 VOLUSIA COUNTY (79002)



90% PLANS SUBMITTAL

**ROADWAY PLANS
 ENGINEER OF RECORD:**
 MICHAEL VAN DER HYDEN, P.E.
 P.E. LICENSE NUMBER 41247
 STANTEC CONSULTING SERVICES, INC.
 4798 NEW BROAD STREET SUITE 100
 ORLANDO, FL 32814
 CONTRACT NO.: C9V03
 VENDOR NO.: Z1285710

FDOT PROJECT MANAGER:
 KATHLEEN ENOT, P.E.

CONSTRUCTION CONTRACT NO.	FISCAL YEAR	SHEET NO.
	TBD	1

Exhibit "C"
RESOLUTION
FM# 436292-1-52-01

The Local Government Resolution, or other official authorization, authorizing entry into this Agreement is attached and incorporated into this Agreement.

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EXHIBIT “E”
TABLE OF PARCELS TO BE ACQUIRED
FM# 436292-1-52-01

<u>Parcel #</u>	<u>Sheet #</u>	<u>Land Area</u>	<u>Description</u>
1000	17, 18	13,741 Sq Ft.	Acquire fee in name of Volusia County
1001	14	3,935 Sq Ft	Acquire fee in name of Volusia County
1002	14,15	1.705 acres	Acquire fee in name of Volusia County
1003	15, 16	1.446 acres	Acquire fee in name of Volusia County
1004	16	4,595 Sq Ft	Acquire fee in name of Volusia County
1006	17, 18, 19	1.001 acres	Acquire fee in name of Volusia County
1007	17, 18, 22	17,566 Sq Ft	Acquire fee in name of Volusia County, subject to easement in favor of FP&L
1008	17, 18	0.798 acres	Acquire fee in name of Volusia County
1009	18, 19	3,377 Sq Ft	Acquire fee in name of Volusia County
8804	15, 16, 21	2.192 acres	Acquire Flood Plain Compensation Easement in name of Volusia County
8805A	15, 16, 21	1.329 acres	Drainage Easement to be acquired in name of Volusia County
8805B	9, 15, 16, 21	5.889 acres	Drainage Easement to be acquired in name of Volusia County
8811	15	7,419 Sq Ft	Access Easement to be acquired in name of Volusia County subject to an existing FP&L easement

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