

OFF SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT

Between

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

(“DEPARTMENT”)

and

SEMINOLE 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 441365-1-52-01 (State Road 436 at Howell Branch Road Intersection) located in Seminole County, Florida, hereinafter referred to as the “Project”, some of which is 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 all aspects of any portion of the Project not on the State Highway System, including, but not necessarily limited to (1) constructing the Project through its completion and (2) providing Construction Engineering Inspection (CEI) as necessary for the Project; and

NOW THEREFORE,

1. The parties agree that the DEPARTMENT shall undertake and complete project FM Number 441365-1-52-01, generally described as Construction and Construction Engineering Inspection (CEI) services for State Road 436 at Howell Branch Road Intersection, 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 attached hereto as Exhibit “A-1”. The LOCAL GOVERNMENT shall fully cooperate with and shall support the DEPARTMENT’S work efforts in these regards. 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 final decision- making authority with respect to the design of the Project, the design review process, acquisition of property necessary for this Project, and for construction of the Project.

2. The LOCAL GOVERNMENT by virtue of the formal resolution, copy attached hereto as Exhibit "B", approving this Agreement, consents to and authorizes the DEPARTMENT to act on behalf of, for the benefit of, and in the name of the LOCAL GOVERNMENT, to further do all acts necessary, specifically the construction of improvements for the benefit of the LOCAL GOVERNMENT, providing Construction Engineering Inspection (CEI), securing all environmental and regulatory permits, acquiring all necessary right of way easements and temporary construction easements, and rights of entry associated with and necessary for the Project.

3. 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 or acquired right of way. The parties agree to meet on a periodic basis, as determined to be necessary by the DEPARTMENT, during the planning, 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. The parties acknowledge and agree that the DEPARTMENT will be utilizing federal highway interstate funds and as such, the cost of utility relocation will be considered a part of the cost of the Project to be paid by the DEPARTMENT.

4. The parties hereto acknowledge that the LOCAL GOVERNMENT is the owner of some of the underlying property and acknowledges that the right of way and the improvements and structures to be located within the 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.

5. The DEPARTMENT and the LOCAL GOVERNMENT shall cooperate with and keep each other well informed of the work efforts and progress hereunder. The DEPARTMENT shall have the sole authority with respect to make all decisions relating to, and including the need for, change orders and supplemental agreements associated with the construction contract for the Project.

6. 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 Howell Branch Road shall be made in name of and for the benefit of the LOCAL GOVERNMENT.

7. 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 shall be immediately responsible for the perpetual maintenance of those

portions of the Project that are located within the right of way limits of Howell Branch Road. Notwithstanding the issuance of the Notice of Final Acceptance, the DEPARTMENT shall have the right to assure completion of any punch list by the contractor. Additionally, the LOCAL GOVERNMENT understands and agrees that the DEPARTMENT shall transfer all permits for those portions of the Project that are located within the right of way limits of Howell Branch Road to the LOCAL GOVERNMENT as the operational maintenance entity and 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 agrees to cooperate and to support the DEPARTMENT'S efforts to secure permits necessary for and associated with the Project.

8. 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.

9. 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.

10. 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.

11. 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."

12. 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.

13. 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.

14. 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:
Seminole County Public Works
Attn: Charles Wetzel, P.E., County Traffic Engineer
140 Bush Loop
Sanford, Florida 32773

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

15. 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.

16. 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.

17. 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:
Seminole County Public Works
Attn: Charles Wetzel, P.E., County Traffic Engineer
140 Bush Loop
Sanford, Florida 32773

To the DEPARTMENT:
State of Florida, DEPARTMENT of Transportation
Alan E. Hyman, P.E., Director of Transportation Operations
719 South Woodland Boulevard
DeLand, Florida 32720

The remainder of this page intentionally left blank.

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

SEMINOLE COUNTY, FLORIDA

By: BOARD OF COUNTY COMMISSIONERS

By: _____

Name: Jay Zembower

Title: Chairman

As authorized for execution by the Board of
County Commissioners at their _____,
20____, regular meeting.

Attest:

Grant Maloy, Clerk to the Board of
County Commissioners of Seminole County

For the use and reliance of Seminole County only.
Approved as to form and legal sufficiency.

County Attorney

STATE OF FLORIDA

DEPARTMENT OF TRANSPORTATION

By: _____

Name: Alan E. Hyman, P.E.

Title: Director of Transportation Operations

Dated: _____

Attest:

Executive Secretary

Legal Review:

Department Attorney

Exhibit “A”
SCOPE OF SERVICES
FM# 441365-1-52-01

With respect to Howell Branch Road at the State Road (S.R.) 436 Intersection, the DEPARTMENT will do intersection improvements including:

Sta. 15+82 – Sta. 21+21: Widening of eastbound Howell Branch Road to add an additional left turn lane onto northbound SR 436, and modifying the traffic separator to extend the turn lane.

Sta. 11+58.29 to Sta. 18.60.29 and Sta. 50+00.00 to Sta. 54+97.58: Modify the northbound to eastbound free-flow right turn lane in the southeast quadrant of the SR 436 at Howell Branch Road intersection. Improvements are to include, but are not limited to, adjustments to the curb return and island to accommodate the revised right turn lane configuration, removal and reconstruction of sidewalk and curb ramps, milling/resurfacing through limits of curb reconstruction, modifications to one existing curb inlet and the addition of one new curb inlet, signing/pavement markings, pedestrian signal features, and lighting.

The DEPARTMENT will undertake and complete the construction 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 Protean Design Group, Inc., dated December 20, 2019, for Project FM# 441365-1-52-01. A copy of the coversheet of the plans is attached hereto as Exhibit “A-1”.

Exhibit “A-1”
CONSTRUCTION PLANS
FM# 441365-1-52-01

The Contract Plans for the construction of Department Project #441365-1-52-01, SR 436, are identified herein by attaching the cover sheet of said plans and by such, the entire set of Contract Plans are incorporated by reference.

Exhibit “B”
RESOLUTION
FM# 441365-1-52-01

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