

OFF SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT
(“Agreement”) Between
STATE OF FLORIDA, DEPARTMENT OF
TRANSPORTATION (“FDOT”) and
HERNANDO COUNTY, FLORIDA, a political subdivision of the State of Florida
(“LOCAL GOVERNMENT”)

WHEREAS, the State of Florida Legislature has approved and mandated the FDOT to complete the various projects included in the FDOT’s Work Program; and

WHEREAS, included in the FDOT Work Program is Project Number FM 452889-1-52-01 (County Road 597) Shoal Line Boulevard from Jewfish Drive to Calienta Street. (Sta. 165+95.00) to (Sta. 249+48.00) Construction plans located in Hernando County, Florida, (“Project”), which are not located on the State Highway System; and

WHEREAS, the parties agree that it is in the best interest of each party for the FDOT to undertake and to complete all aspects of the Project, including but not limited to the design, construction, construction inspection, utilities, permits, and other associated tasks; and

WHEREAS, the LOCAL GOVERNMENT shall maintain the Project upon notice from the FDOT as set forth in this Agreement; and

WHEREAS, the FDOT will, upon approval of federal participation by the Federal Highway Administration (“FHWA”), undertake the Project.

WHEREAS, LOCAL GOVERNMENT, by Resolution Number _____, a copy of which is attached hereto as Exhibit “C”, and by reference made a part hereof, has authorized its officers to execute this Agreement on its behalf;

NOW THEREFORE, FDOT and the LOCAL GOVERNMENT agree as follows:

1. The parties agree that the FDOT shall act on behalf of the LOCAL GOVERNMENT to undertake and to complete the Project. The Project shall be maintained within the LOCAL GOVERNMENT’s Maintenance limits described in Exhibit “A” and Scope of Services attached as Exhibit “B” hereto and all other tasks associated with or arising out of the tasks listed therein. The LOCAL GOVERNMENT shall cooperate with and shall support the FDOT’s work efforts in these regards.
2. The LOCAL GOVERNMENT shall, through the passage of a formal resolution the consent to and authorize the FDOT to act on behalf of, for the benefit of and in the name of the LOCAL GOVERNMENT, to further do all acts necessary, including securing all environmental and regulatory permits, easements, temporary construction easements and rights of entry associated

with the Project, in the name of the LOCAL GOVERNMENT. This right of entry shall continue in full force and effect throughout the period of time that the Project is ongoing.

3. To the extent necessary, the LOCAL GOVERNMENT hereby appoints the FDOT as its agent for purposes of the construction; reconstruction, and relocation of utilities under section 337.403(1), Florida Statutes. The LOCAL GOVERNMENT agrees to fully cooperate with the FDOT in the construction, reconstruction and relocation of utilities that may be located within the existing LOCAL GOVERNMENT right of way. The parties agree to meet on a periodic basis, as determined to be necessary by the FDOT, 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 agree that if existing utilities owned by the LOCAL GOVERNMENT are required to be reconstructed or relocated as a result of the Project that the costs associated therewith shall be deemed to be a cost of the Project to be paid for by the LOCAL GOVERNMENT.

4. In the event that cost overruns, supplemental agreements and/or liquidated damages are determined by FHWA to be non-participating costs and therefore ineligible for reimbursement, the LOCAL GOVERNMENT shall be responsible for one-hundred percent (100%) of the funds required to make up the shortfall not paid by federal funds. Non-participating costs include but are not limited to: fishing piers; premium costs due to design or CEI errors or omissions; material or equipment called for in the plans but not used in construction. Section 7.3.10 of the FDOT's Construction Project Administration Manual (revision date: October 28, 2019) provides examples of such non-participating costs and is incorporated herein as Exhibit "D".

5. If there is a shortfall in funding for the Project due to a determination that certain costs are non-participating, the LOCAL GOVERNMENT agrees to provide, without delay, a deposit to the FDOT within thirty (30) calendar days of notification from the FDOT, to ensure that cash on deposit with the FDOT is sufficient to fully fund the shortfall. The FDOT must notify the LOCAL GOVERNMENT as soon as it becomes apparent there is a shortfall; however, the FDOT's failure to notify the LOCAL GOVERNMENT will not relieve the LOCAL GOVERNMENT from its obligation to pay non-participating costs during the Project and on final accounting, as provided below. If the LOCAL GOVERNMENT cannot provide the deposit to the FDOT of all funds required to make up the shortfall within thirty (30) days, a letter must be submitted to and approved by the FDOT's project manager indicating when the deposit will be made. The LOCAL GOVERNMENT understands the request for additional time could delay the Project which may result in additional non-participating costs being incurred.

6. The FDOT intends to have its final and complete accounting of all costs incurred in connection with the work performed within three hundred sixty (360) calendar days of final payment to the contractor for the Project. The FDOT considers the Project complete when the final payment has been made to the contractor for the Project, not when the construction work

is complete. All nonparticipating Project cost records and accounts must be subject to audit by a representative of the LOCAL GOVERNMENT for a period of three (3) years after final close out of the Project. The LOCAL GOVERNMENT will be notified by the FDOT of the total final non-participating cost of the Project. Both parties agree that in the event the final accounting of total non-participating costs pursuant to the terms of this Agreement is less than the total deposits to date, a refund of the excess deposited amount will be made by the FDOT to the LOCAL GOVERNMENT. If the FDOT does not perform the final accounting within three hundred and sixty (360) calendar days of final payment to the contractor for the Project, the LOCAL GOVERNMENT is not relieved from its obligation to pay.

7. In the event the final accounting shows that total non-participating costs are greater than the total deposits to date, the LOCAL GOVERNMENT will pay the FDOT the additional amount of outstanding non-participating costs to the FDOT within forty (40) calendar days from the date of receipt of the invoice from the FDOT. The LOCAL GOVERNMENT agrees to pay interest at a rate as established pursuant to Section 55.03, Florida Statutes, on any invoice not paid within forty (40) calendar days until the invoice is paid.

8. The LOCAL GOVERNMENT acknowledges that the right of way, the improvements, and structures within the right of way, as identified in Exhibit "A", are and will remain under the control of the LOCAL GOVERNMENT and that the FDOT will not have any ownership interest in the right of way, improvements or structures located thereon. Notwithstanding the requirements hereof, maintenance during construction, with the exception of litter removal and mowing, shall be the responsibility of the FDOT and its contractor.

9. FDOT shall have the sole authority with respect to making all decisions relating to, and including the need for, change orders and supplemental agreements associated with construction of the Project.

10. All payment and performance bonds shall be issued in favor of the FDOT. All warranties, if any, shall be made in favor of the LOCAL GOVERNMENT.

11. Upon completion, the FDOT shall issue a Notice of Final Acceptance to the FDOT's 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 maintenance of their respective portion of the Project. The FDOT shall also have the right to assign interim maintenance responsibility to the LOCAL GOVERNMENT for specified portions of the Project before the issuance of the Notice of Final Acceptance. Said assignment of maintenance responsibility shall be sent by the FDOT to the LOCAL GOVERNMENT in writing with sufficient description to place the LOCAL GOVERNMENT on notice of the interim maintenance responsibility. Notwithstanding the issuance of the Notice of Final Acceptance, the FDOT shall have the right to assure completion of any punch list by the contractor. Additionally, the LOCAL GOVERNMENT understands and agrees that the FDOT shall transfer all permits 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 for their respective portion of the project as indicated in Exhibit "A".

12. This Agreement shall become effective as of the date all parties hereto have executed the Agreement and shall continue in full force and effect until the FDOT has performed a final and complete accounting of costs and the LOCAL GOVERNMENT has paid the Department for all outstanding non-participating costs. The FDOT 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.
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 FDOT's participation in the Project is subject to:
 - a.) Legislative approval of the FDOT's appropriation request in the work program year that the Project is scheduled;
 - b.) Availability of funds based on the following limitations:
 - i.) The FDOT's performance and obligations to pay under this agreement is contingent upon an annual appropriation by the Legislature. If the FDOT's funding for this Project is in multiple years, funds approved from the FDOT'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 for a period of more than one year, the provisions of §339.135(6)(a), Fla. Stat. are hereby incorporated: The FDOT, 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 FDOT shall require a statement from the comptroller of the FDOT 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 1 year but any contract so made shall be executory 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 FDOT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than 1 year."
15. This Agreement shall be governed by the laws of the State of Florida. Any provision of the Agreement found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions of the Agreement.

16. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery or express 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:

Contact: Chairman, Hernando County Board of Commissioners

Address: 15470 Flight Path Drive Brooksville, FL. 34604

Phone: 352-754-4000

Fax: 352-754-4477

and

Contact: Hernando County Department of Public Works (D. Todd Crosby, P.E.)

Address: 1525 East Jefferson St., Brooksville, FL 34601

Phone: 352-754-4062 ext. 17016-5446

To the FDOT:

Contact Person: Francis Lewis, District 7 Director of Transportation Operations

Address: 11201 N Malcolm McKinley Drive, Tampa, FL. 33612-6403

Phone: 813-975-6133

Email: Francis.Lewis@dot.state.fl.us.

17. 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.

18. E-VERIFY REQUIREMENTS

PARTIES shall.

- (1) utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Agency during the term of the contract; and
- (2) expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

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

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
an Agency of the State of Florida**

**HERNANDO COUNTY, FLORIDA,
a political subdivision of the
State of Florida**

By: Francis Lewis _____

By: _____

Elizabeth Narverud

Title: Director of Transportation Operations

Title: Chairperson

Date: _____

Date: _____

Legal Review

Legal Review

Victoria Anderson

County Attorney

Exhibit “B”

SCOPE OF SERVICES FM.# 439698-1-52-01

The Project consists of construction of, but are not limited to, milling, resurfacing, construction in Hernando County, Florida on Shoal Line Boulevard between Jewfish Drive and Calienta Street. The Project will be located in the same general location and run in the same alignment as the existing roadway.

Exhibit “C”

HERNANDO COUNTY RESOLUTION

(attach resolution here)

Exhibit "D"

7.3.10 Obtaining Federal Highway Administration Approval and Participation for Construction Contract Changes on Federal Aid Projects

7.3.10.1 General

Federal Aid participation in all changes to Department Construction Contracts shall be determined as required by ***Federal Aid Policy Guide 23, CFR Section 635.120.***

The following project changes shall be Federal Aid Non-Participating:

(A) Spare parts turned over to the maintaining agency and not incorporated into the construction.

(B) Material or equipment called for in the plans but not used in the construction.

(C) Closed drainage systems on structures not justified in the environmental process.

(D) Fishing Piers.

(E) Drainage items, including water retention ponds, not supported through the environmental process.

(F) Premium costs due to design or CEI errors or omissions.

(G) Sole source items unless specifically approved by the Federal Highway Administration prior to project authorization.

(H) Construction changes for items that were set up as alternate bid items.

(I) Repairing items that had not been properly maintained (cleaning pipe, etc.)

(J) Additional contract time and/or costs for utility or right of way delays beyond what was identified in the contract documents.

(K) Additional contract time and/or costs to attain greater vertical or horizontal bridge clearance than deemed necessary to fulfill the intent of the original project documents.

(L) Additional contract time and/or costs due to arbitrary one foot or less backwater criteria in construction or reconstruction of Interstate Highway Bridges.

(M) MOT items for Federal Aid Non-participating

- (N) Work resulting from insufficient subsoil investigation.
- (O) Claim Settlement Costs paid solely to avoid the risk associated with failing to settle the claim as defined in **CPAM Section 7.3.4**.
- (P) Repair or replacing existing and installed items due to 3rd party damages or theft.
- (Q) Regular maintenance items such as mowing and litter removal.
- (R) Adjustment of private facilities (ie: signs, fences, irrigation) unless covered as a part of a right-of-way agreement or permit