

BOCC CONTRACT APPROVAL FORM

(Contract Management Use only)

CONTRACT
TRACKING NO.

CM 3024

GENERAL INFORMATION

Requesting Department Engineering Services

Contact Person: Robert Companion

Telephone: (904) 530-6225 Fax: () _____ Email: rcompanion@nassaucountyfl.com

CONTRACTOR INFORMATION

Name: Florida Department of Transportation

Address: 1109 South Marion Ave., Lake City, FL 32025

City

State

Zip

Contractor's Administrator Name: B. Robert Pierre-Louis Title: E I

Telephone: (386) 961-7872 Fax: () _____ Email: robert.pierre-louis@dot.state.fl.us

IDENTIFY WHO WILL SIGN CONTRACT ON BEHALF OF CONTRACTOR (NAME AND EMAIL ADDRESS)

Authorized Signatory Name: Greg Evans, District Two Secretary

Authorized Signatory Email: Greg.Evans@dot.state.fl.us

CONTRACT INFORMATION

Contract Name: Construction & Maintenance Agreement

Description: Amelia Island Trail from Fletcher Ave to Via Del Rey

GOODS AND/OR SERVICES TO BE PROCURED, PHYSICAL LOCATION, ETC.

Terms: Payment Period: _____ Amount per Period: _____

Total Amount of Contract: _____
APPROXIMATE IF NECESSARY

Source of Funds: See CM2967 attached Termination/Cancellation: _____

Authorized Signatory: Thomas R. Ford, Chairman

IDENTIFY WHO WILL SIGN CONTRACT ON BEHALF OF BOCC

Contract Dates: From: _____ to: _____

Status: ☒ New _____ Renew _____ Amend# _____ WA/Task Order

How Procured: ☐ Sole Source ☐ Single Source ☐ ITB ☐ RFP ☐ RFQ ☐ Coop. ☐ Other _____

If Processing an Amendment:

Contract #: _____ Increased Amount of Existing Contract: _____

New Contract Dates: _____ to _____ Total or Amendment Amount: _____

Continued on next page

CHECKLIST

Complete and attach before sending contract for final signature

| Requirement | Description | Certified Complete By |
|--|---|-----------------------|
| Contract, Exhibits and Appendices | 1) The contract and all documents incorporated by reference in the contract, including exhibits and appendices are attached (including E-Verify, Pricing, Scope, etc.) and properly identified; and 2) All such documents have been read and agreed to in their entirety by originating department and any faculty and staff members who have obligations under this contract. | |
| Name, Address, Contact Person | The full name, address, legal status (i.e., corporation, partnership, etc.) and contact person of other party are included. | |
| Understanding | Written contract matches the verbal understanding of all parties. All terms and conditions conform to the final negotiations/agreement of the parties. | |
| Competition/Conflicts and Existing Contracts/ Compliance | This contract does not conflict with any other contracts, promises or obligations of the BOCC. The requesting department verifies the BOCC can comply with all terms and conditions. | |
| Other Necessary Agreements | All other necessary agreements or waivers referred to in contract have been obtained and are attached and properly identified for reference. | |
| Indemnification | BOCC may not indemnify, hold harmless, be liable to, or reimburse any other party to the contract for claims, lawsuits, damages, attorney fees, or losses incurred by that party in connection with the contract. | |
| Term of Contract | Start and end dates of contract are included. Any renewals are included. | |
| Warranties/Guarantees | Warranties or guarantees give satisfactory protection. | |
| Insurance | Risk manager _____ has or _____ will approve insurance clauses. Levels confirmed ins requirements | |
| Governing Law | The contract is governed under the laws of the State of Florida. The contract may be silent on this issue but in no event will another state's law govern the agreement. | |
| Confidentiality Agreements | All nondisclosure clauses include exceptions regarding disclosure as required by law. If not applicable, indicate "n/a." | |
| Printed/Typed Names | Names of all persons signing contracts are printed or typed below signatures. | |

APPROVALS PURSUANT TO NASSAU COUNTY PURCHASING POLICY

1. Robert Companion 7/9/2021
Department Head Signature Date Submitting Department
2. Marshall Eyerman 7/9/2021
Procurement Date Funding Source/Acct #
3. Megan Diehl 7/9/2021
Office of Management & Budget Date
4. Michael S. Mullin 7/13/2021
County Attorney/Contract Management Date

COUNTY MANAGER – FINAL SIGNATURE APPROVAL

5. [Signature] 7/13/2021
County Manager Date

RETURN ORIGINAL(S) TO CONTRACT MANAGEMENT FOR DISTRIBUTION AS FOLLOWS:

Original: Clerk's Services; Contractor (original or certified copy)
Copies: Department: Procurement; Office of Management & Budget; County Attorney; Contract Management; Clerk Finance

Financial Project Id. No.: 437334-1-58-01
 Federal Id. No.: D220-075-B
 Project Description: Amelia Island Trail from Fletcher Ave to Via Del Rey Road
 On/Off System Agency Construct & Maintain

CONSTRUCTION & MAINTENANCE AGREEMENT

THIS CONSTRUCTION & MAINTENANCE AGREEMENT ("Agreement") is made and entered into by and between the State of Florida Department of Transportation ("Department") and Nassau County, Florida ("Agency").

1. The term "Property" shall collectively refer to certain real property located in Nassau County, Florida, portions of which are owned by the Agency, known as Amelia Island Parkway ("Agency Property") and highlighted in green, and portions of which are owned by the Department and known as State Road A1A/South Fletcher Avenue ("SR A1A") ("Department Property") and highlighted in red, more particularly shown in attached **Exhibit "A"**; and
2. The term "Multi-Use Trail" means and shall refer to the construction of an approximately 1 mile long and approximately 10-foot-wide asphalt/concrete bike path/trail including, without limitation, all signage and pavement markings, drainage pipe/structures and other drainage features, gravity wall, road widening, and ADA improvements, highlighted in blue on **Exhibit "B", Composite B-1 through B-9**, commencing at the SR A1A and extending approximately one (1) mile to Via Del Rey Road; and
3. The Agency requested construction of the Multi-Use Trail, and the Department is amenable to this request in accordance with the terms and conditions of this Agreement; and
4. For purposes of this agreement, "On-System Improvements" means and shall refer to the portion of the Multi-Use Trail constructed on the Department Property, as more particularly shown in red on **Exhibit "B" Composite B-1**; and
5. For purposes of this agreement, "Off-System Improvements" means and shall refer to the portion of the Multi-Use Trail constructed on the Agency Property, as more particularly shown in blue on **Exhibit "B" Composite B-2 to B-9**; and
6. The Department shall fund construction of the Multi-Use Trail, which is wholly contingent upon appropriation of funds to the Department, by and through execution of a separate Local Agency Program Agreement ("LAP"), executed by and between the parties on April 28, 2021, and attached as **Exhibit "C"**; and
7. The Agency shall construct the Multi-Use Trail on the Property; and
8. Upon completion of construction, the Department shall own, operate, maintain and repair the portion of the Multi-Use Trail located on the Department Property and all On System Improvements; and
9. Upon completion of construction, the Agency shall own and perpetually operate, maintain, and repair the portion of the Multi-Use Trail located on the Agency Property and all Off-System Improvements; and
10. The Agency by Resolution _____ dated _____ authorizes its representative to enter into this Agreement, see attached **Exhibit "D"**.

NOW THEREFORE, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the foregoing recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound, acknowledge and agree as follows:

1. RECITALS AND EXHIBITS

The above recitals and the attached exhibits are specifically incorporated herein by reference and made part of this Agreement.

2. EFFECTIVE DATE

The "Effective Date" of this Agreement shall be the date the last of the parties to be charged executes the

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the Agreement.

3. ACCESS

This Agreement authorizes the Department to access the Agency Property for the limited purpose of performing this Agreement.

4. TERM

The initial term of this Agreement shall be for a period of one (1) year, commencing on the Effective Date and concluding on the anniversary of the Effective Date. This Agreement shall automatically renew for successive and continuing like one (1) year terms unless terminated by the Department in writing.

5. E-VERIFY

The Agency (A) shall 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 (B) shall 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.

6. COMPLIANCE

The Agency shall perform the Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards, specifications and permits, as the same may be constituted and amended from time to time, including, without limitation, those of the Department, Water Management District with requisite jurisdiction, Florida Department of Environmental Protection, Environmental Protection Agency, Army Corps of Engineers, United States Coast Guard and local governmental entities ("Governmental Law").

7. PERMITS

In the performance of the Agreement the Agency may be required to obtain one or more Department permits which may include copies of the Agreement as an exhibit. Notwithstanding the inclusion or incorporation of the Agreement as part of any such Department permits, the Agreement shall remain separate and apart from such permits and shall not be merged into the same absent the prior written express consent of the Department. Should any term or provision of the Agreement conflict with any term, provision or requirement of any Department permit, the terms and provisions of the Agreement shall control unless specifically noted otherwise in any such Department permit. For purposes of this Agreement, the term "permit" shall also include the Department's Construction Agreement which may be required for permanent improvements installed within the Department's right-of-way.

8. PRECONSTRUCTION ACTIVITIES

The Department is hereby authorized to act on the Agency's behalf and engage in various preconstruction activities related to the Improvement. The Department is under no obligation to engage in preconstruction activities and the decision to do so shall be within the Department's sole discretion. Preconstruction activities include, by way of example and without limitation, the acquisition of right of way or assistance in obtaining various permits. In those instances where the Department acquires right of way or a permit on behalf of the Agency, regardless of whether the Department or the Agency provides the funding, the Agency shall immediately accept the right of way or permit upon delivery by the Department without condition or delay.

9. UTILITIES

The Agency shall be responsible for locating, removing and relocating utilities, both aerial and underground, if required for the Agency to perform this Agreement. The Agency shall ensure all utility locations are accurately documented on the construction Plans and Specifications, including the final as-built plans. All utility conflicts shall be resolved by the Agency directly with the applicable utility.

10. CONSTRUCTION

A. The Agency shall furnish the Department's Local Maintenance Engineer ("LME") with four (4) signed and sealed copies of the construction plans and specifications for the Multi-Use Trail ("Plans and Specifications") prepared by a Florida registered professional engineer, or landscape architect providing

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professional services pursuant to Chapter 481, Florida Statutes, together with a construction schedule ("Construction Schedule") and such other documentation as the Department may require.

B. The Agency shall not commence construction of the Multi-Use Trail until such time as the LME issues final written approval of the Plans and Specifications and Construction Schedule for the Multi-Use Trail via issuance of one or more appropriate Department permits.

C. The Agency shall not make any changes to the approved Plans and Specifications for the Multi-Use Trail without the prior written approval of the LME. Changes to the approved Plans and Specifications for the Improvements absent the prior written approval of the LME shall be deemed a material breach of this Agreement.

D. The Agency shall provide the Department with a minimum of seventy-two (72) hours prior written notice of its intent to commence construction of the Multi-Use Trail.

E. The Agency shall complete construction of the Multi-Use Trail in accordance with the Construction Schedule and shall provide the Department's LME with written notice of completion of construction of the Multi-Use Trail, including, final as-built plans and an engineering certificate that construction was completed in accordance with the Plans and Specifications. Thereafter, the LME, or designee, shall perform a final inspection. If the construction is in compliance with the Plans and Specifications and applicable Governmental Law, the Department shall issue a final acceptance letter ("Final Acceptance"). In determining compliance with applicable Governmental Law, the Department may defer to the appropriate local, state, federal, administrative, regulatory or environmental entity. The Department shall notify the Agency in writing if the construction is deficient or not in compliance with the Plans and Specifications and applicable Governmental Law. Thereafter, the Agency shall have thirty (30) days from the date of the Department's written notice, or such other time as the Department and the Agency mutually agree in writing, to correct the deficiency and provide the Department with written notice of the same. The Department shall not issue its Final Acceptance until the deficiency/non-compliance is corrected.

F. If the deficiency is not corrected timely, or if the Department determines that the construction remains deficient or non-compliant after receipt of the Agency's written notice indicating that the deficiency has been corrected, the Department, within its discretion, may: (1) provide the Agency with written authorization granting such additional time as the Department deems appropriate to complete correction of the deficiency; (2) require the Agency to remove the Multi-Use Trail and restore the Department Property pursuant to the "Removal" section of this Agreement; or (3) correct the deficiency at the Agency's sole cost and expense. Should the Department elect to correct the deficiency, the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

G. The Plans and Specifications, Construction Schedule, final as-built plans and engineering certificate for the Multi-Use Trail are incorporated herein and made part of this Agreement by reference.

11. FEDERAL NON-PARTICIPATION/FUNDING

A. The parties agree that any Multi-Use Trail constructed on the Property will be compensable by the Department only if such items are deemed to be federal participating as determined in accordance with the Federal Aid Policy Guide 23, CFR Section 635.120 ("CFR"). Examples of non-participating items may include, without limitation, the following: fishing piers; premium costs due to design or CEI errors/omissions; material or equipment called for in the plans but not used in construction of the Improvement.

B. The example items listed in paragraph A, above, are not intended to be an exhaustive list. A determination of an item as a federal non-participating cost, shall be made in the Department's sole discretion and, without limitation, in accordance with the CFR. Any item or Improvement deemed to be a federal non-participating item shall be funded at the sole expense of the Agency.

a. Should the Department identify a federal non-participating item, the Agency shall provide a deposit for the amount of the federal non-participating item to the Department within fourteen (14) calendar days of the Department's determination and notification of the same to the Agency.

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b. The Department shall notify the Agency as soon as it is determined that a non-participating federal item exists; however, failure of the Department to so notify the Agency shall not relieve the Agency of its obligation to pay for the entire amount of all federal non-participating costs accrued during the construction of the Improvement and upon final accounting.

c. In the event the Agency cannot provide the deposit within fourteen (14) calendar days, a letter, prior to expiration of that time, must be submitted to and approved by the Department's contract manager establishing a mutually agreeable date of deposit.

d. The Agency understands the extension of time, if so approved, may delay construction of the Improvement, and additional federal non-participating costs may be incurred due to the delay.

C. The Department intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred sixty days (360) of final payment to the Contractor. The Department considers the Project complete when the final payment has been made to the Contractor, not when the construction work is complete. All federal non-participating fund cost records and accounts shall be subject to audit by a representative of the Agency for a period of three (3) years after final close out of the Project. The Agency will be notified of the final federal non-participating costs of the Project. Both parties agree that in the event the final accounting of total federal non-participating costs pursuant to the terms of this Agreement is less than the total deposits to date, a refund of the excess will be made by the Department to the Agency. If the final accounting is not performed within three hundred and sixty (360) days, the Agency is not relieved of its obligation to pay. In the event the final accounting of total federal non-participating costs is greater than the total deposits to date, the Agency will pay the additional amount within forty (40) calendar days of the date of the invoice from the Department.

D. The payment of funds pursuant to this Agreement provision will be made directly to the Department for deposit.

12. OPERATION, MAINTENANCE & REPAIR (OFF-SYSTEM IMPROVEMENTS)

A. The Agency shall own, operate, maintain, and repair the Multi-Use Trail located on the Agency Property and all Off-System Improvements at its sole cost and expense, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement including applicable Governmental Law.

B. The Agency acknowledges and agrees that the Department will require the Agency to maintain Multi-Use Trail located on the Agency Property and all Off-System Improvements, according to the Department standards, which include, without limitation, the Americans with Disabilities Act, Design Standards, and the Standard Specifications, and as amended from time to time.

C. Maintenance items to be maintained by the Agency shall include, without limitation and as applicable, the following: vegetation management, repair of slopes/erosion, removal of graffiti, gravity walls, traffic barriers, railings, signing, pavement markings, pedestrian/bicycle signals, aesthetic features, and all other features of the Multi-Use Trail constructed pursuant to this Agreement. The Agency shall maintain pavement surfaces free from residue accumulation, algae, vegetation, and other slip or trip hazards. The Agency shall trim landscaping, mow, sweep, edge and provide weed control for the entirety of the Multi-Use Trail as identified in Exhibit B.

D. The Agency shall pay all utility bills associated or related to lighting, signals, or irrigation for the Multi-Use Trail Project.

E. The Agency shall conduct an annual inspection of the Multi-Use Trail located on the Agency Property and all Off-System Improvements to ensure that any and all safety deficiencies are immediately addressed, and at such time as the Multi-Use Trail Project located on the Agency Property is at the end of its useful life, the Agency shall prioritize the replacement or reconstruction of the Multi-Use Trail Project located on the Agency Property as if it was a new project.

F. The Agency shall ensure the safety of the Public by repairing slope erosion and maintaining signs, sign poles, striping, pavement symbols, traffic markings, detectable warning surfaces, pavers, crosswalks, walls, railings, pedestrian/bicycle signals and any other safety features within the Multi-Use Trail located on the Agency Property and all Off-System Improvements corridor in accordance with Department standards. The

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Agency shall maintain paint on railings, sign poles, and all other structures located within the Multi-Use Trail located on the Agency Property and all Off-System Improvements. Repairs to any Multi-Use Trail located on the Agency Property and all Off-System Improvements structural or safety feature shall be, at a minimum, in kind and to Department standards. The Agency shall maintain all landscaping to Department standards.

G. The Agency agrees that it will be solely responsible for the operation, maintenance, and repair of the Multi-Use Trail located on the Agency Property and all Off-System Improvements. Should the Agency fail to operate, maintain, and repair the Multi-Use Trail located on the Agency Property and all Off-System Improvements in accordance with the terms and provisions of this Agreement and applicable Governmental Law, and the Department be required to perform such operation, maintenance, or repair pursuant to 23 CFR 1.27 and under the authority of Title 23, Section 116, U.S. Code, the Agency agrees that it shall be fully responsible to the Department for repayment of any funds expended by the Department for the operation, maintenance, or repair of the Multi-Use Trail located on the Agency Property and all Off-System Improvements. The Department shall invoice the Agency for any operation, maintenance, or repair expenses charged to the Department, and the Agency shall pay such invoices in accordance with the Payment section of this Agreement. Nothing in this Agreement shall relieve the Agency of its financial obligations to the Department should this occur.

H. The Agency specifically agrees to allow the Department access to the Multi-Use Trail located on the Agency Property and all Off-System Improvements pursuant to Paragraph 3 above should the events described in Paragraph D occur.

I. If at any time, the Agency has not performed the maintenance responsibility on the Multi-Use Trail located on the Agency Property and all Off-System Improvements in accordance with this Agreement, the Department shall have the option of (a) notifying the Agency of the deficiency with a requirement that it be corrected within a specified time, or (b) the Department may perform the necessary maintenance at the Agency's sole cost and expense, and send an invoice to the Agency, equal to the cost incurred by the Department for such maintenance. Any action taken by the Department will not relieve any obligation of the Agency under the terms and conditions of this Agreement. Failure to perform maintenance of the Multi-Use Trail located on the Agency Property and all Off-System Improvements in accordance with this Agreement may impact Department funding participation in future Agency projects.

J. The Department may require the Agency to remove the Multi-Use Trail located on the Agency Property and all Off-System Improvements in whole or in part and restore the property to the condition that existed immediately prior to the effective date of this Agreement if the Department determines: (a) the Multi-Use Trail located on the Agency Property and all Off-System Improvements is not constructed or maintained in accordance terms and conditions of this Agreement or (b) the Agency breaches a material provision (as determined by the Department) of this Agreement. Removal and restoration shall be completed by the Agency within 30 days of the Department's written notice, or such time as the Department and the Agency mutually agree in writing. Removal and restoration shall be completed by the Agency in accordance with Department standards. Should the Agency fail to complete the removal and restoration work, the Department may complete the removal and restoration at the Agency's sole cost and expense and send an invoice to the Agency, equal to the cost incurred by the Department for such removal and restoration.

13. OPERATION, MAINTENANCE & REPAIR (ON-SYSTEM IMPROVEMENTS)

A. The Department shall own, operate, maintain and repair the Multi-Use Trail located on the Department Property and all On-System Improvements at its sole cost and expense.

14. EMINENT DOMAIN AND DAMAGES

Under no circumstances shall the Department's exercise of any right provided in this Agreement create any right, title, interest or estate entitling the Agency to full and just compensation from the Department either through inverse condemnation or eminent domain laws or any similar laws regarding the taking of property for public purposes. The Agency forever waives and relinquishes all legal rights and monetary claims which it has, or which may arise in the future, for compensation or damages, including, without limitation, special damages, severance damages, removal costs, and loss of business profits resulting in any manner from the Department's exercise of any right provided in this Agreement. This waiver and relinquishment specifically includes all damages flowing from adjacent properties owned, leased or otherwise controlled by the Agency, as a result of the Department's exercise of any right provided in this Agreement.

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15. INDEMNIFICATION

A. To the extent permitted by law, the Agency shall promptly defend, indemnify, hold the Department harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs / penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, arising out of or related to the Agency's performance, or breach, of this Agreement ("Liabilities"). The term "Liabilities" shall also specifically include all civil and criminal environmental liability arising, directly or indirectly under any Governmental Law, including, without limitation, liability under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Air Act ("CAA") and the Clean Water Act ("CWA"). The Agency's duty to defend, indemnify and hold the Department harmless specifically does not encompass indemnifying the Department for its negligence, intentional or wrongful acts, omissions or breach of contract.

B. The Agency shall notify the Department in writing immediately upon becoming aware of any Liabilities. The Agency's obligation to defend, indemnify and hold the Department harmless from any Liabilities, or at the Department's option to participate and associate with the Department in the defense and trial of any Liabilities, including any related settlement negotiations, shall be triggered by the Department's written notice of claim for indemnification to the Agency. The Agency's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph.

16. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving either party's sovereign immunity protections, or as increasing the limits of liability set forth in §768.28, Florida Statutes, as the same may be amended from time to time. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Department's limits of liability set forth in sections 376.305 and 337.27(4) Florida Statutes, as the same may be amended from time to time.

17. NOTICE

All notices, communications and determinations between the parties hereto and those required by the Agreement, including, without limitation, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States Mail, postage prepaid, to the parties at the following addresses:

Department: Florida Department of Transportation
Attention: Jacksonville Maintenance Engineer
Jacksonville Maintenance Office
838 Ellis Road
Jacksonville, Florida 32205

Agency: Nassau County
Attention: County Engineer
96135 Nassau Place, Suite 1
Yulee, FL 32097

18. GOVERNING LAW

This Agreement shall be governed in all respect by the laws of the State of Florida.

19. INITIAL DETERMINATION OF DISPUTES

The Department's District Two Secretary ("District Secretary") shall act as the initial arbiter of all questions, difficulties, and disputes concerning the interpretation, validity, performance or breach of the Agreement.

20. VENUE AND JURISDICTION

A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of the Agreement that are not resolved to the mutual satisfaction of the parties by the Department's District Secretary shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

B. The Agency and all persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever

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waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance or breach of this Agreement.

21. JURY TRIAL

The parties hereby waive the right to trial by jury of any dispute concerning the interpretation, validity, performance or breach of the Agreement, including, without limitation, damages allegedly flowing therefrom.

22. ASSIGNMENT

The Agency shall not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the Department's District Secretary or his/her designee. The Department has the sole discretion and authority to grant or deny proposed assignments of this Agreement, with or without cause. Nothing herein shall prevent the Agency from delegating its duties hereunder, but such delegation shall not release the Agency from its obligation to perform the Agreement.

23. THIRD PARTY BENEFICIARIES

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for herein.

24. VOLUNTARY EXECUTION OF AGREEMENT

Each party warrants and represents to the other: (i) that it understands all of the rights and obligations set forth in the Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of the Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of the Agreement and executes the Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and (iv) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of the Agreement.

25. ENTIRE AGREEMENT

This instrument, together with any exhibits and documents made part hereof by reference, contains the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in the Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of the Agreement, and any part hereof, are waived, merged herein and superseded hereby.

26. EXECUTION OF DOCUMENTS

The parties agree that they shall promptly execute and deliver to the other all documents necessary to accomplish the intent and purpose of the Agreement and shall do all other acts to effectuate the Agreement.

27. SUFFICIENCY OF CONSIDERATION

By their signature below, the parties hereby acknowledge the receipt, adequacy and sufficiency of consideration provided in the Agreement and forever waive the right to object to or otherwise challenge the same.

28. WAIVER

The failure of either party to insist on the strict performance or compliance with any term or provision of the Agreement on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

29. INTERPRETATION

No term or provision of the Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

30. CAPTIONS

Paragraph title or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend or describe the scope of the Agreement, or any provision hereof.

31. SEVERANCE

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If any section, paragraph, clause or provision of the Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of the Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of the Agreement remain enforceable.

32. COMPUTATION OF TIME

In computing any period of time prescribed in the Agreement, the day of the act, event or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

33. MODIFICATION OF AGREEMENT

A modification or waiver of any of the provisions of the Agreement shall be effective only if made in writing and executed with the same formality as the Agreement.

34. PUBLIC RECORDS

The Agency shall comply with Chapter 119, Florida Statutes. Specifically, the Agency shall:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the Department to perform this Agreement.
- B. Upon request from the Department's custodian of public records, provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of the Agreement if Agency does not transfer the records to the Department.
- D. Upon completion of this Agreement, transfer, at no cost, to the Department all public records in possession of Applicant or keep and maintain public records required by the Department to perform this Agreement. If Agency transfers all public records to the public Agency upon completion of this Agreement, Agency shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Agency keep and maintain public records upon completion of this Agreement, Agency shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department, upon request from the Department's custodian of public records, in a format that is compatible with the information technology systems of the Department.

Failure by Agency to act in accordance with Chapter 119 and the foregoing shall be grounds for immediate unilateral cancellation of this Agreement by the Department. Agency shall promptly provide the Department with a copy of any request to inspect or copy public records in possession of Agency and shall promptly provide the Department a copy of Applicant's response to each such request.

IF THE CONSULTANT/CONTRACTOR/VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S/CONTRACTOR'S/VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

District 2
 386-758-3727
 D2prcustodian@ dot.State.FL.us
 Florida Department of Transportation

Financial Project Id. No.: 437334-1-58-01

Federal Id. No.: D220-075-B

Project Description: Amelia Island Trail from Fletcher Ave to Via Del Rey Road
On/Off System Agency Construct & Maintain

**District 2 - Office of General Counsel
1109 South Marion Avenue, MS 2009
Lake City, FL 32025**

35. ANNUAL APPROPRIATION / FUNDING

Pursuant to §339.135(6)(a), Florida Statutes, the Department's obligation to fund construction of the Improvement is contingent upon annual appropriation by the Florida Legislature. This Agreement may be terminated by the Department without liability to the Agency if sufficient funds are not appropriated to the Department. The provisions of §339.135(6)(a), Florida Statutes, are set forth herein verbatim and made part of this Agreement, to wit:

"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 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 for 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 and which have a term for a period of more than 1 year."

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SIGNATURES ON FOLLOWING PAGE

Financial Project Id. No.: 437334-1-58-01
Federal Id. No.: D220-075-B
Project Description: Amelia Island Trail from Fletcher Ave to Via Del Rey Road
On/Off System Agency Construct & Maintain

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties execute this Agreement, consisting of fifty-three (53) pages, exclusive of exhibits.

Florida Department of Transportation

Attest:

By: _____

By: _____

Printed Name: Greg Evans

Printed Name: Elizabeth Engle

Title: District Two Secretary

Title: Office of the District Two Secretary

Date: _____

Date: _____

Legal Review:

By: _____

Office of the General Counsel
Florida Department of Transportation

Agency: Nassau County

Attest:

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Legal Review:

By: _____

Legal Counsel for Agency

INTENTIONALLY LEFT BLANK

Financial Project Id. No.: 437334-1-58-01

Federal Id. No.: D220-075-B

Project Description: Amelia Island Trail from Fletcher Ave to Via Del Rey Road
On/Off System Agency Construct & Maintain

EXHIBIT "A"
Composite A-1



LEGEND:

- DETECTABLE WARNING
- PROPOSED ROADWAY WIDENING
- CENTER LINE STRUCTURE (7' TALL)
- REFLECTOR TUBULAR REINFORCEMENT (SEE SPECIAL DETAIL SHEET 22)

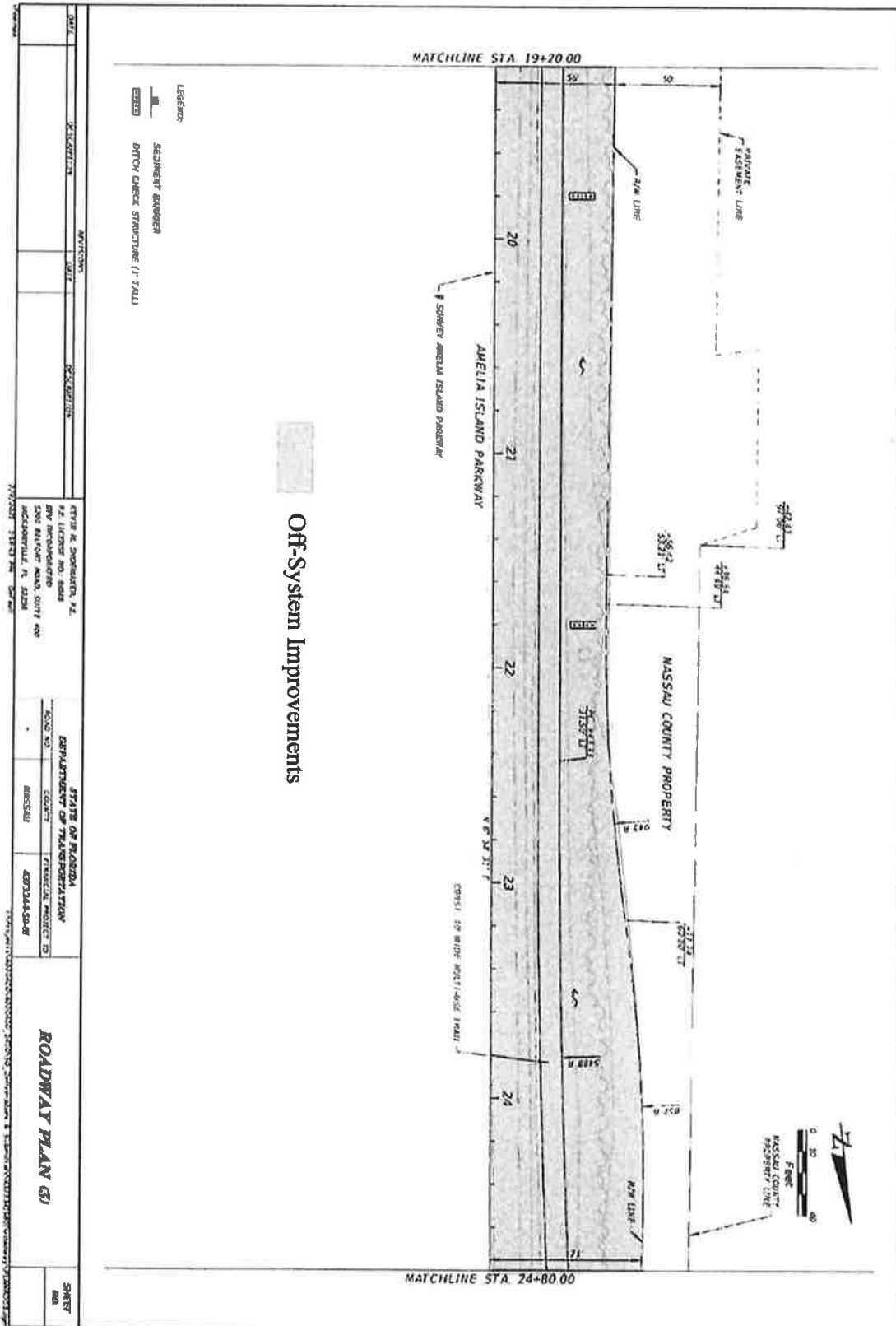
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|---------|----------|----------|----------|---------|----------|----------|----------|
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| 2 | 10+17.20 | 10+50.00 | 10+33.60 | 2 | 13+00.00 | 13+60.00 | 13+30.00 |
| 3 | 10+50.00 | 11+00.00 | 10+75.00 | 3 | 13+60.00 | 14+00.00 | 13+80.00 |
| 4 | 11+00.00 | 11+50.00 | 11+25.00 | 4 | 14+00.00 | 14+50.00 | 14+25.00 |
| 5 | 11+50.00 | 12+00.00 | 11+75.00 | 5 | 14+50.00 | 15+00.00 | 14+75.00 |
| 6 | 12+00.00 | 12+50.00 | 12+25.00 | 6 | 15+00.00 | 15+50.00 | 15+25.00 |
| 7 | 12+50.00 | 13+00.00 | 12+75.00 | 7 | 15+50.00 | 16+00.00 | 15+75.00 |
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| 9 | 13+50.00 | 14+00.00 | 13+75.00 | 9 | 16+50.00 | 17+00.00 | 16+75.00 |
| 10 | 14+00.00 | 14+50.00 | 14+25.00 | 10 | 17+00.00 | 17+50.00 | 17+25.00 |
| 11 | 14+50.00 | 15+00.00 | 14+75.00 | 11 | 17+50.00 | 18+00.00 | 17+75.00 |
| 12 | 15+00.00 | 15+50.00 | 15+25.00 | 12 | 18+00.00 | 18+50.00 | 18+25.00 |
| 13 | 15+50.00 | 16+00.00 | 15+75.00 | 13 | 18+50.00 | 19+00.00 | 18+75.00 |
| 14 | 16+00.00 | 16+50.00 | 16+25.00 | 14 | 19+00.00 | 19+50.00 | 19+25.00 |
| 15 | 16+50.00 | 17+00.00 | 16+75.00 | 15 | 19+50.00 | 20+00.00 | 19+75.00 |
| 16 | 17+00.00 | 17+50.00 | 17+25.00 | 16 | 20+00.00 | 20+50.00 | 20+25.00 |
| 17 | 17+50.00 | 18+00.00 | 17+75.00 | 17 | 20+50.00 | 21+00.00 | 20+75.00 |
| 18 | 18+00.00 | 18+50.00 | 18+25.00 | 18 | 21+00.00 | 21+50.00 | 21+25.00 |
| 19 | 18+50.00 | 19+00.00 | 18+75.00 | 19 | 21+50.00 | 22+00.00 | 21+75.00 |
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| 22 | 20+00.00 | 20+50.00 | 20+25.00 | 22 | 23+00.00 | 23+50.00 | 23+25.00 |
| 23 | 20+50.00 | 21+00.00 | 20+75.00 | 23 | 23+50.00 | 24+00.00 | 23+75.00 |
| 24 | 21+00.00 | 21+50.00 | 21+25.00 | 24 | 24+00.00 | 24+50.00 | 24+25.00 |
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| 27 | 22+50.00 | 23+00.00 | 22+75.00 | 27 | 25+50.00 | 26+00.00 | 25+75.00 |
| 28 | 23+00.00 | 23+50.00 | 23+25.00 | 28 | 26+00.00 | 26+50.00 | 26+25.00 |
| 29 | 23+50.00 | 24+00.00 | 23+75.00 | 29 | 26+50.00 | 27+00.00 | 26+75.00 |
| 30 | 24+00.00 | 24+50.00 | 24+25.00 | 30 | 27+00.00 | 27+50.00 | 27+25.00 |
| 31 | 24+50.00 | 25+00.00 | 24+75.00 | 31 | 27+50.00 | 28+00.00 | 27+75.00 |
| 32 | 25+00.00 | 25+50.00 | 25+25.00 | 32 | 28+00.00 | 28+50.00 | 28+25.00 |
| 33 | 25+50.00 | 26+00.00 | 25+75.00 | 33 | 28+50.00 | 29+00.00 | 28+75.00 |
| 34 | 26+00.00 | 26+50.00 | 26+25.00 | 34 | 29+00.00 | 29+50.00 | 29+25.00 |
| 35 | 26+50.00 | 27+00.00 | 26+75.00 | 35 | 29+50.00 | 30+00.00 | 29+75.00 |
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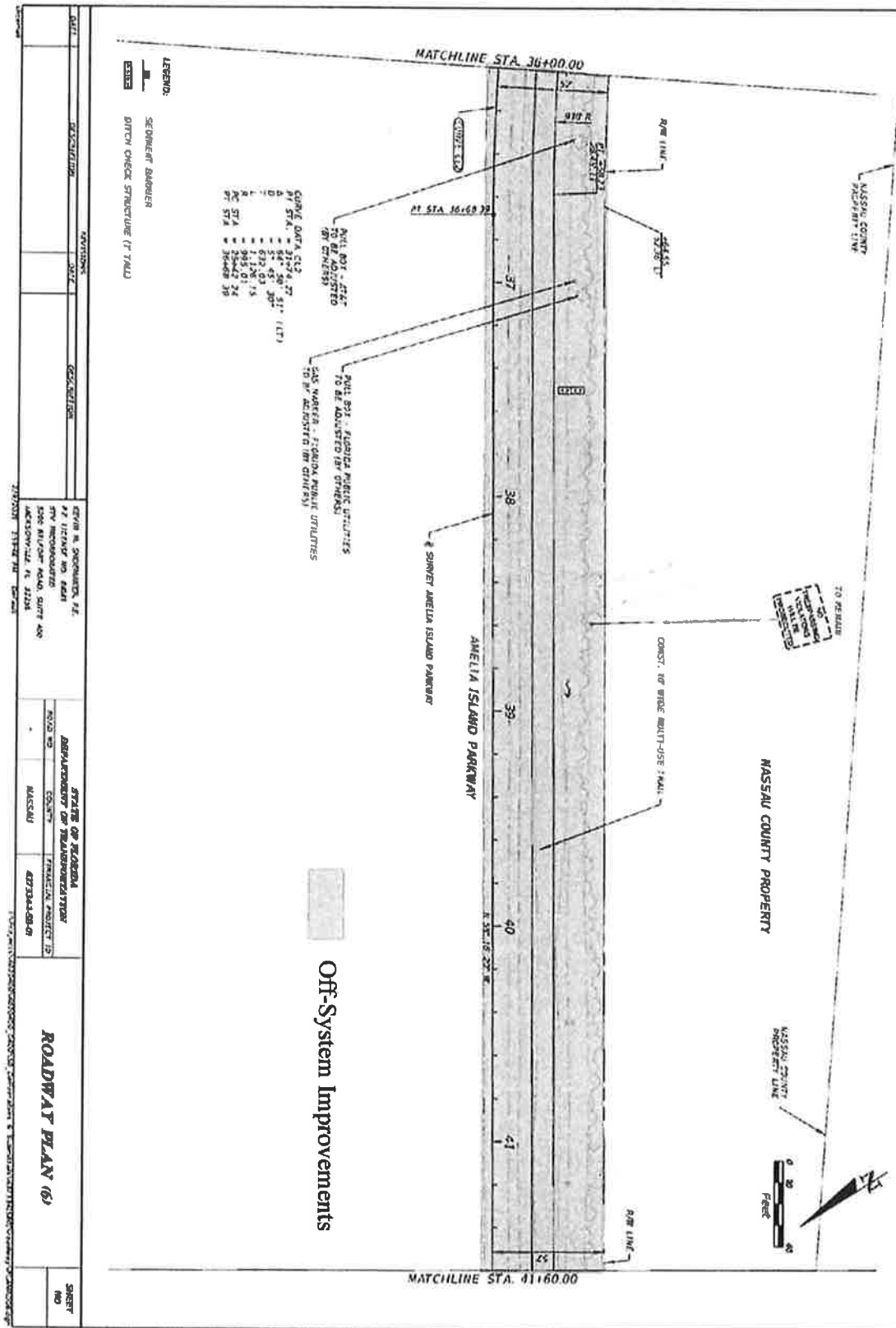
Financial Project Id. No.: 437334-1-58-01
 Federal Id. No.: D220-075-B
 Project Description: Amelia Island Trail from Fletcher Ave to Via Del Rey Road
 On/Off System Agency Construct & Maintain

EXHIBIT "B" Cont'd
Composite B-3



Financial Project Id. No.: 437334-1-58-01
 Federal Id. No.: D220-075-B
 Project Description: Amelia Island Trail from Fletcher Ave to Via Del Rey Road
 On/Off System Agency Construct & Maintain

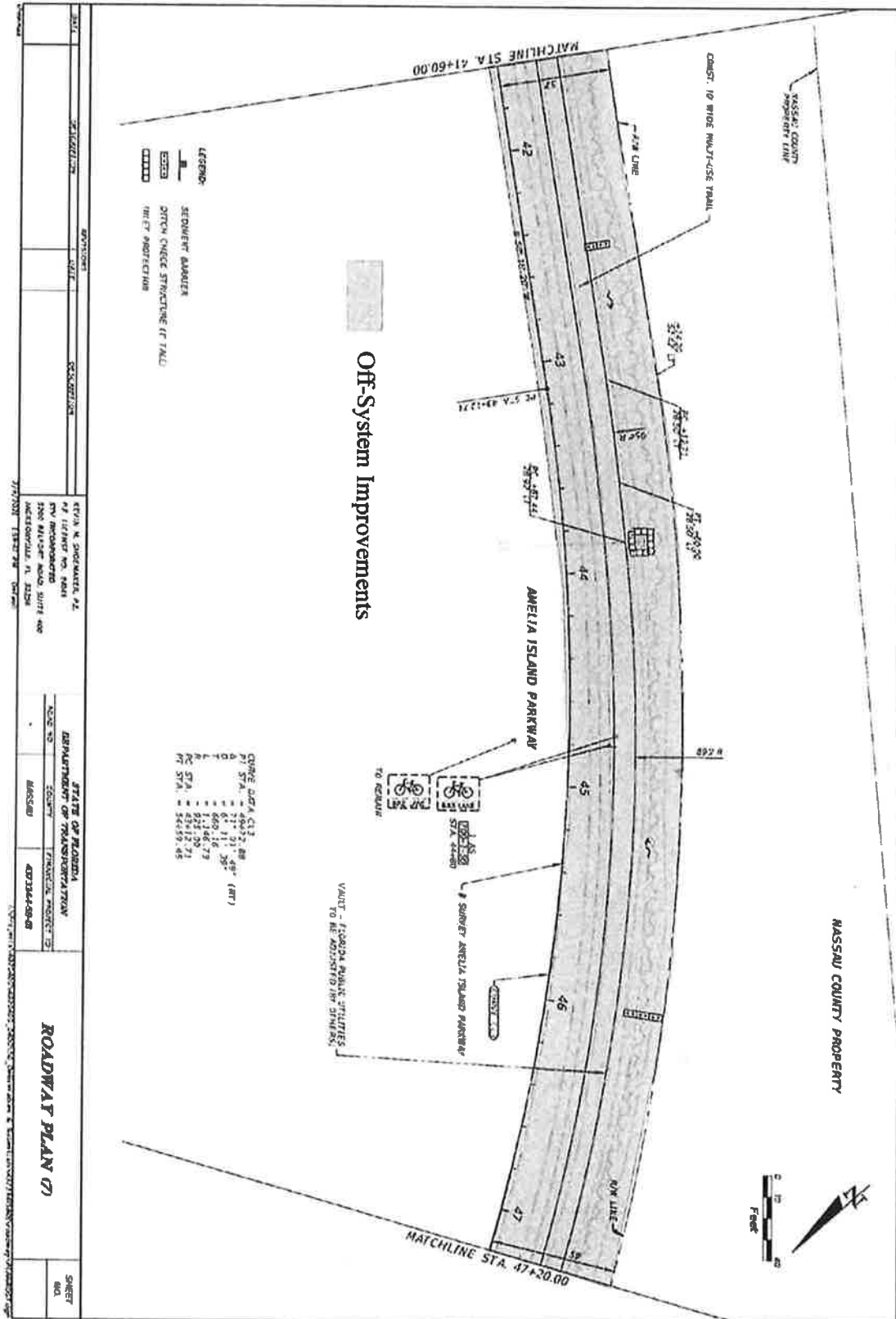
**EXHIBIT "B" Cont'd
 Composite B-6**



THE OFFICIAL RECORD OF THIS SHEET IS THE ELECTRONIC FILE DIGITALLY SIGNED AND SEALED UNDER PUBLIC KEY INFRASTRUCTURE (PKI) 0010-20-000, P. 0.0.

Financial Project Id. No.: 437334-1-58-01
 Federal Id. No.: D220-075-B
 Project Description: Amelia Island Trail from Fletcher Ave to Via Del Rey Road
 On/Off System Agency Construct & Maintain

**EXHIBIT "B" Cont'd
 Composite B-7**



THE OFFICIAL RECORD OF THIS SHEET IS THE ELECTRONIC FILE DIGITALLY SIGNED AND SEALED UNDER RULE 91015-23.004, F.A.C.

Financial Project Id. No.: 437334-1-58-01
 Federal Id. No.: D220-075-B
 Project Description: Amelia Island Trail from Fletcher Ave to Via Del Rey Road
 On/Off System Agency Construct & Maintain

**EXHIBIT "B" Cont'd
 Composite B-8**

