

OFF SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT

Between

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

(“DEPARTMENT”)

and

ORANGE COUNTY, FLORIDA,

(“LOCAL GOVERNMENT”)

WHEREAS, this Agreement is entered into on _____ by and between the State of Florida, Department of Transportation, an Executive Agency of the State of Florida, herein “DEPARTMENT” and Orange County, herein “LOCAL GOVERNMENT”; and

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 Work Program is Financial Project Number (FPN) 447610-1-52-01, improvements to US 441 and State Road 500 (From Wadsworth Road to Lake County Line) located in Orange County, Florida (the Project); and

WHEREAS, due to the direct impact of the Project on off-system roadways that are under the jurisdiction of the LOCAL GOVERNMENT it is necessary for the DEPARTMENT to enter onto the LOCAL GOVERNMENT’s roadways and to construct certain improvements to said roadways; and

WHEREAS, the parties hereto agree that it is the best interest of the State of Florida and the LOCAL GOVERNMENT for the DEPARTMENT to undertake and complete the design, construction, construction inspection, utility accommodation, and securing of permits necessary to construct the Project; and

WHEREAS, the FHWA will review and approve the work described herein and shall authorize the expenditure of Federal Highway funding for the Project;

NOW THEREFORE,

- 1) The recitals set forth above are hereby incorporated herein as if restated and set forth herein.
- 2) The parties agree that the DEPARTMENT shall undertake and complete project number FPN 447610-1-52-01, generally described as, improvements to US 441 and State Road 500 From Wadsworth Road to Lake County Line located in Orange County, Florida. The project shall include the tasks described in Exhibit “A” Scope of Services attached hereto and all other tasks associated with or arising out of the tasks listed therein. 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 right of way to accomplish the tasks required by the Project. This right of entry shall continue in full force and effect throughout the period 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, the acquisition of property necessary for this Project and for the construction of the Project.

- 3) 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, construction of improvements for the benefit of the LOCAL GOVERNMENT, providing Construction Engineering Inspection (CEI) Services, and securing all environment and regulatory permits.
- 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 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.
- 5) The LOCAL GOVERNMENT acknowledges that the DEPARTMENT will be utilizing federal funds on the project and as a result thereof, the LOCAL GOVERNMENT agrees to maintain those portions of the Project that are located outside of DEPARTMENT right of way in perpetuity. Nothing herein shall be understood however to impose maintenance responsibility on the LOCAL GOVERNMENT of other DEPARTMENT owned property. The LOCAL GOVERNMENT further recognizes and acknowledges that the DEPARTMENT will be utilizing federal funds on the project that the NEPA process will need to be completed by the DEPARTMENT and the DEPARTMENT reserves the right to adjust the plans and or design of the project to meet the needs of the permits. The LOCAL GOVERNMENT agrees to fully cooperate in the provision of any and all studies and or data that may be necessary for the NEPA process and for all other permit matters.
- 6) Except as otherwise provided in this agreement, the Parties acknowledge and agree that the right of way and the improvements and structures located inside DEPARTMENT right of way or on other DEPARTMENT owned property will remain the right of way and the property of the DEPARTMENT and that the right of way and the improvements and structures located inside LOCAL GOVERNMENT right of way or on other LOCAL GOVERNMENT owned property will remain the right of way and the property of the LOCAL GOVERNMENT.

- 7) The LOCAL GOVERNMENT acknowledges that the DEPARTMENT has, historically, drained its stormwater through the locally maintained system along County Road 500A. The LOCAL GOVERNMENT agrees to continue to allow the DEPARTMENT to continue this use.
- 8) The DEPARTMENT and the LOCAL GOVERNMENT shall cooperate with each other 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 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 outside of the DEPARTMENT right of way and outside of other the DEPARTMENT property shall be made in favor of the LOCAL GOVERNMENT.
- 10) The DEPARTMENT shall require its Contractor to provide insurance as required by the DEPARTMENT construction contract specifications. The LOCAL GOVERNMENT shall be made an Additional Insured as to such insurance.
- 11) LOCAL GOVERNMENT shall have the right to periodically inspect the progress of the project and shall communicate to the DEPARTMENT any items the LOCAL GOVERNMENT feels need to be included in a punch list.
- 12) Upon completion of the Project, the DEPARTMENT, working with the LOCAL GOVERNMENT, 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 County Road 500A. 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, the LOCAL GOVERNMENT shall have final decision authority for completion, completion of any punch list items and determine if work is acceptable with respect to the work completed per plan within their right of way. 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 County Road 500A, if any, 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.
- 13) 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.

- 14) 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.
- 15) 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.
- 16) 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 executed 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."

- 17) 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.
- 18) 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.
- 19) 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.
- 20) 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.
- 21) 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 Orange County:
Brett Blackadar, P.E., PMP, PTOE
4200 South John Young Parkway
Orlando, Florida 32839-9205

To the Department:
Jack Adkins
c/o Johnny Demosthenes
State of Florida, Department of Transportation
Director of Transportation Development
719 South Woodland Boulevard
DeLand, Florida 32720-6834

- 22) 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 Orange County:
Brian Blackadar, P.E., PMP, PTOE
4200 South John Young Parkway
Orlando, Florida 32839-9205

To the Department:
Jack Adkins
c/o Johnny Demosthenes
State of Florida, Department of Transportation
Director of Transportation Development
719 South Woodland Boulevard
DeLand, Florida 32720-6834

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

ORANGE COUNTY, FLORIDA

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____
Name:
Title:

Date: _____

By: _____
Name:
Title:

Date: _____

Attest: _____
By:
Title:

Approved as to form and legality:

Department Legal Review:

By: Local Government Attorney

Exhibit “A”

Scope of Services

FPN# 447610-1-52-01

The project is to resurface the segment of U.S. 441/ S.R. 500 from Wadsworth Rd to the Lake County Line to extend the life of the existing roadway and to enhance safety with modifications at the intersection of U.S. 441 and County Road (C.R.) 500A.

At the Intersection of U.S. 441/S.R. 500 and C.R. 500A:

The work to be performed includes removing and realigning the right turn from eastbound C.R. 500A to southbound U.S. 441 and the left turn from eastbound C.R. 500A to northbound U.S. 441, as well as realigning the left turn from northbound U.S. 441 to westbound C.R. 500A.

Along C.R. 500A:

The work to be performed includes the reconstruction and resurfacing of the existing roadway, addition of new shoulder pavement, addition of new curb and gutter, driveway reconstruction, and the placement of drainage pipes and inlets.

At the Intersection of U.S. 441/S.R. 500 and Stoneybrook Hills Parkway:

The work to be performed includes milling and resurfacing of the intersection to accommodate pedestrian improvements that include new crosswalks, pedestrian signals, and enhanced lighting.

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 will continue to maintain the drainage system within its Right of Way on U.S. 441 while the LOCAL GOVERNMENT will maintain the drainage system within C.R. 500A outside of the DEPARTMENT Right of Way.

The DEPARTMENT’S plans for the above-described Project are identified as plans prepared by Bayer United Engineering Consultants, LLC, dated May 1st, 2024, for FPN# 447610-1-52-01 as identified below in Exhibit A-1 hereto, and are anticipated to be updated prior to construction of the project.

FPN # 447610-1-52-01

Exhibit "A-1"
Roadway Plans

The Roadway Plans including the Drainage plans are attached and incorporated into this Agreement.

CONTRACT PLANS COMPONENTS

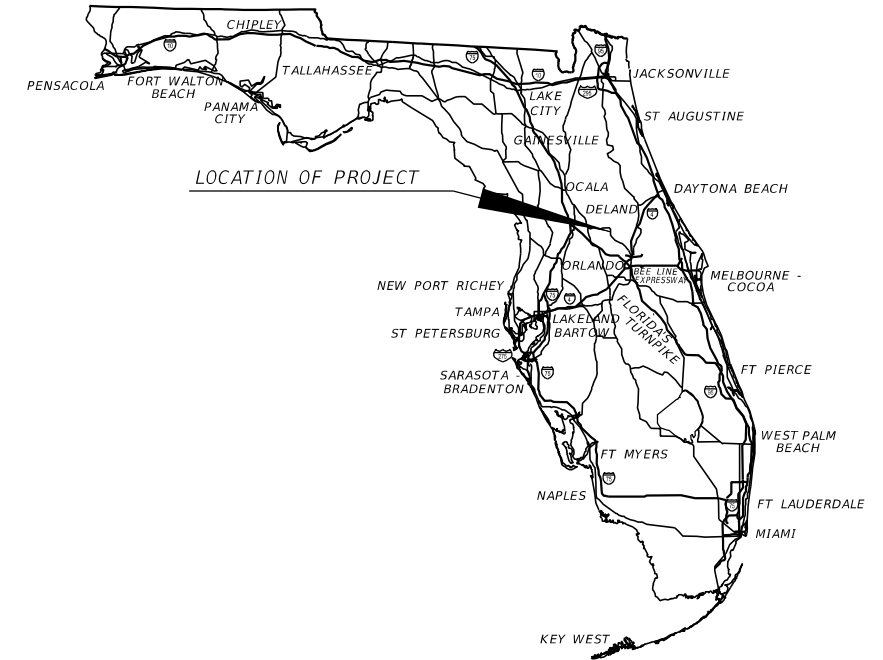
- ROADWAY PLANS
- SIGNING AND PAVEMENT MARKING PLANS
- SIGNALIZATION PLANS
- LIGHTING PLANS

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

ROADWAY PLANS

FINANCIAL PROJECT ID 447610-1-52-01
(FEDERAL FUNDS)
ORANGE COUNTY (75020)
STATE ROAD NO. 500 (US 441)

RRR FROM WADSWORTH RD TO LAKE COUNTY LINE



INDEX OF ROADWAY PLANS

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*UTV-1 - UTV-2 VERIFIED UTILITY LOCATE

* THESE SHEETS ARE INCLUDED IN THE INDEX OF ROADWAY PLANS ONLY TO INDICATE THAT IT IS PART OF THE ROADWAY PLANS. THIS SHEET IS CONTAINED IN A SEPARATE DIGITALLY SIGNED AND SEALED DOCUMENT.

PROJECT LOCATION URL:	https://tinyurl.com/4djcz6tf
PROJECT LIMITS:	BEGIN MP 21.781 - END MP 22.865
EXCEPTIONS:	NONE
BRIDGE LIMITS:	NONE
RAILROAD CROSSING:	NONE

GOVERNING STANDARD PLANS:

Florida Department of Transportation, FY2024-25 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>

GOVERNING STANDARD SPECIFICATIONS:

Florida Department of Transportation, FY2024-25 Standard Specifications for Road and Bridge Construction at the following website: <http://www.fdot.gov/programmanagement/Implemented/SpecBooks>

**ROADWAY PLANS
ENGINEER OF RECORD:**

ALEXANDRIA RENEE STANLEY, P.E.
P.E. LICENSE NUMBER 94220
BAYER UNITED ENGINEERING CONSULTANTS, LLC
320 W. KENNEDY BLVD., SUITE 650
TAMPA, FLORIDA 33606
CONTRACT NO.: CAL03
VENDOR NO.: 83-3015288

FDOT PROJECT MANAGER:

JOHNNY DEMOSTHENES, PE

CONSTRUCTION CONTRACT NO.	FISCAL YEAR	SHEET NO.
	25	1

FPN # 447610-1-52-01

Exhibit "B"

Orange County Resolution

The Resolution authorizing entry into this Agreement is attached and incorporated into this Agreement.