



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 1

DATE: December 12, 2019

TO: Mayor Jerry L. Demings
and the
Board of County Commissioners

THROUGH: Paul Sladek, Manager *PS*
Real Estate Management Division

FROM: Alex Feinman, Leasing Program Manager *AF*
Real Estate Management Division

CONTACT PERSON: Paul Sladek, Manager

DIVISION: Real Estate Management
Phone: (407) 836-7090

ACTION REQUESTED: Approval and execution of Use and Occupancy Agreement between Orange County, Florida and State of Florida Department of Transportation and delegation of authority to the Real Estate Management Division to execute termination notice and furnish notices, required or allowed by the lease, as needed

PROJECT: Convention Center Employees & Contractors Parking
Northeast corner of Interstate 4 and State Road 528
Lease File #4046

District 6

PURPOSE: To continue to provide additional parking for employees and contractors at the Orange County Convention Center.

ITEM: Use and Occupancy Agreement
Cost: None
Size: 6.21 acres
Term: 5 years
Options: One, 5-year renewal

APPROVALS: Real Estate Management Division
County Attorney's Office
Orange County Convention Center
Risk Management Division

REMARKS: The State of Florida Department of Transportation (FDOT) and County entered into that certain Airspace Agreement approved by the Board on October 21, 2014 (Lease). Pursuant to the Lease, County currently occupies a portion of Interstate 4, on the northeast corner of Interstate 4 and State Road 528, (Site) to provide additional parking for employees and contractors at the Orange County Convention Center.

Although the Lease provided for one, 5-year renewal, FDOT has requested that County instead enter into this Use and Occupancy Agreement (Agreement) with FDOT to continue County's current use of the Site for another 5 years. No rent is due to FDOT pursuant to the Agreement, which also gives County one, 5-year option to renew, so long as such renewal would not interfere with FDOT's ongoing I-4 Ultimate project.

The terms and conditions of this Agreement are materially consistent with the terms and conditions of the prior Lease.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
USE AND OCCUPANCY AGREEMENT

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
JAN 14 2020

ITEM/SEGMENT NO.: 75004-2502
MANAGING DISTRICT: 5
F.A.P. NO.: _____
STATE ROAD NO.: 400 & Beachline
COUNTY: Orange
PARCEL NO.: 106 (part)

THIS AGREEMENT, made this 14th day of February, 2020, between Orange County, Florida at 201 S. Rosalind Ave., Orlando, FL 32801 (Lessee) and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (Department), an agency of the State of Florida (State).

WITNESSETH:

WHEREAS, the Department may convey a leasehold in the name of the State, in any land, buildings, or other property, real or personal, acquired under Section 337.25, Florida Statutes; and

WHEREAS, the United States Department of Transportation, Federal Highway Administration (FHWA), requires any use of airspace above, and/or below the highway's established gradeline, lying within the approved right of way limits on a Federal Aid System, to be accomplished pursuant to a right of way use and occupancy agreement in accordance with 23 CFR, Part 710, and

WHEREAS, the Department has acquired sufficient legal right, title, and interest in the right of way of SR 400 which includes the property described in Exhibit "A" attached hereto and made a part hereof, which right of way is part of a highway on a Federal Aid System; and

WHEREAS, the Department desires to lease to Lessee the airspace which is that space located above and/or below the gradeline of the property described in Exhibit "A", attached and such airspace is hereinafter referred to as the "real property interest" or the "leased property" and made a part hereof for the following purpose: Orange County Convention Center employee and contractor parking.

WHEREAS, the proposed use will not impair the full use and safety of the highway, require or permit vehicular access to such space directly from the established gradeline of said highway, or interfere with the free flow of traffic on said highway.

NOW, THEREFORE, in consideration of the premises made a part hereof, and the covenants, promises, understandings, and agreements made by each party to the other as set forth herein, the Department and the Lessee do hereby mutually agree as follows:

1. Premises

The premises hereto are true and correct and form an integral part of this Agreement.

2. Term

The Department does hereby lease unto Lessee the real property interest for a period of 5 years beginning with the date of this Agreement. One renewal of this Agreement may be made for See Addendum. However, except for a public purpose conveyance, such renewal may not exceed five years. Nothing herein shall be construed to in any way grant an interest in the property lying below said airspace.

3. Rent

a. Lessee shall pay to the Department as rent each month quarter year on or before the first day of each rent payment period, N/A plus applicable sales tax. When this Agreement is terminated, any unearned rent and sales tax payment shall be refunded to Lessee. However, no such refund shall be made where termination is due to Lessee's violation of a term or condition of this Agreement.

b. The Department reserves the right to review and adjust the rental fee biannually and at renewal to reflect market conditions.

c. All rental payments are to be made by check or money order, payable to the State of Florida Department of Transportation and delivered on or before the due date to: 719 S. Woodland Blvd., Deland, FL 32720 Attn: RW/MS 551

d. Lessee shall be responsible for all state, county, city, and local taxes that may be assessed, including real property taxes and special assessments. In the event that no rent is specified herein, then it has been determined that either the use by Lessee is a nonproprietary use by a governmental agency or an exception from the current fair market rental value requirement (23 U.S.C. Section 156) has been obtained for social, environmental, or economic mitigation (SEE) purposes. In the event that it should be determined at any time that the use is not a nonproprietary use by a governmental agency or that the SEE exception does not apply or has been revoked, Lessee agrees to pay, at that time, rent as determined to be the fair market rental value by an independent appraiser certified by the Department, and Lessee further agrees to pay such rent, under the remaining terms and conditions of this Paragraph 3, for the remaining term (including renewals) of this Agreement.

e. Any installment of rent not received within ten (10) days after the due date shall bear interest at the highest rate allowed by law from the due date thereof, per Section 55.03(1), Florida Statutes. This provision shall not obligate the Department to accept late rent payments or provide Lessee a grace period.

4. Use, Occupancy, and Maintenance

a. The Lessee shall be responsible for developing and operating the real property interest as set forth herein.

b. The Lessee's proposed use of the real property interest is as follows: Orange County Convention Center employee and contractor parking.

c. The general design for the use of the real property interest, including any facilities to be constructed, and the maps, plans, and sketches setting out the pertinent features of the use of the real property interest in relation to the highway facility are set forth in composite Exhibit "B" attached hereto and by this reference made a part hereof. In addition, said composite Exhibit "B" also contains a three-dimensional description of the space to be used, unless the use is of a surface area beneath an elevated highway structure or adjacent to a highway roadway for recreation, public park, beautification, parking of motor vehicles, public mass transit facilities, or other similar uses, in which case, a metes and bounds description of the surface area, together with appropriate plans or cross sections clearly defining the vertical use limits, may be substituted for said three-dimensional description in said composite Exhibit "B".

d. Any change in the authorized use of the real property interest or revision in the design or construction of the facility described in Exhibit "B" shall require prior written approval from the appropriate District Secretary of the Department, subject to concurrence by the FHWA.

e. The Department, through its duly authorized representatives, employees, and contractors, and any authorized FHWA representative, may enter the facility at any time for the purpose of inspection, maintenance, or reconstruction of the highway and adjacent facilities, when necessary; or for the purpose of surveying, drilling, monitoring well installations, sampling, remediation, and any other action which is reasonable and necessary to conduct an environmental assessment or to abate an environmental hazard.

f. Lessee, at Lessee's sole cost and expense, shall maintain the facility to occupy the real property interest so as to assure that the structures and the area within the highway right of way boundaries will be kept in good condition, both as to safety and appearance. Such maintenance will be accomplished in a manner so as to cause no unreasonable interference with the highway use. Lessee shall ensure vertical and horizontal access to the Department for maintenance purposes. In the event that Lessee fails to so maintain the facility, the Department, through its duly authorized representatives, employees, and contractors, may enter the facility to perform such work, and the cost thereof shall be chargeable to the Lessee and shall be immediately due and payable to the Department upon the performance of such work.

g. Portable or temporary advertising signs are prohibited.

h. The design, occupancy, and use of the real property interest shall not adversely affect the use, safety, appearance, or enjoyment of the highway by lights, sounds, wireless frequencies, smoke, fumes, vapors, odors, droppings, or any other objectionable discharges, or emissions, or nuisances of any kind therefrom.

coverage of not less than N/A (\$). All such policies shall be issued by companies licensed to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be canceled or modified unless the Department is given at least sixty (60) days prior written notice of such cancellation or modification. Lessee shall provide the Department certificates showing such insurance to be in place and showing the Department and FHWA as additional insured under the policies. If self-insured or under a risk management program, Lessee represents that such minimum coverage for liability will be provided for the property.

7. Termination

- a. This Agreement may be terminated by either party without cause upon Thirty (30) days prior written notice to the other party.
- b. It is understood and agreed to by the Lessee that the Department reserves the right to terminate this Agreement immediately without prior notice, in the event the Lessee violates any of the conditions of this Agreement and such violation is not corrected within a reasonable time after written notice of noncompliance has been given. In the event the Agreement is terminated and the Department deems it necessary to request the removal of the facility on the property, the removal shall be accomplished by the Lessee in a manner prescribed by the Department at no cost to the Department or the FHWA.
- c. The Lessee must notify the Department of its intention to renew this Agreement not later than thirty (30) days prior to the expiration of the original term. Lessee's failure to comply with the foregoing notice provision may result in the Department's refusal to renew the Agreement.
- d. Upon termination of this Agreement, Lessee shall deliver the property to the Department, or its agents, in the condition existing at the commencement of this Agreement, normal wear and tear excepted, unless a facility, any improvement, or any part thereof has been constructed on the property.
- e. If removal of the facility, improvements, or any part thereof is requested by the Department, any such structures shall be removed by the Lessee at Lessee's expense by midnight of the day of termination of this Agreement and the property restored as nearly as practicable.
- f. This Agreement is terminable by the Department in the event that the facility ceases to be used for its intended purpose, is abandoned, or if use of the facility is required by the Department for transportation, maintenance or emergency purposes.

8. Eminent Domain

Lessee acknowledges and agrees that its relationship with the Department under this Agreement is one of landlord and tenant and no other relationship either expressed or implied shall be deemed to apply to the parties under this Agreement. Termination of this Agreement for any cause shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any interest suffered or lost as a result of termination of this Agreement, including any residual interest in the Agreement or any other facts or circumstances arising out of or in connection with this Agreement.

Lessee hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including special damages, severance damages, removal costs, or loss of business profits, resulting from Lessee's loss of occupancy of the property specified in this Agreement, or any such rights, claims, or damages flowing from adjacent properties owned or leased by Lessee as a result of Lessee's loss of occupancy of the property specified in this Agreement. Lessee also hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort as set out above, as a result of Lessee's loss of occupancy of the property, when any or all adjacent properties owned or leased by Lessee are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether this Agreement is still in existence on the date of taking or sale or has been terminated prior thereto.

9. Miscellaneous

- a. The real property interest and Lessee's rights under this Agreement shall not be transferred, assigned, pledged or conveyed to another party without the prior written consent of the Department, subject to concurrence by the FHWA. Lessee shall not allow any liens or other encumbrances to attach to the leased property.
- b. In conformance with the Civil Rights Act of 1964 (Title VI, Appendix "C") and 49 CFR Part 21, Lessee agrees as follows:
 1. That as a part of the consideration hereof, Lessee does hereby covenant and agree as a covenant running with the land that (1) no person, on the grounds of race, color, sex, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said property and facility; (2) that in connection with the construction of any improvements on said property and facility and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors; and (3) that the Lessee shall use the property and facility in compliance with all other requirements imposed pursuant to 49 CFR part 21..

2. That in the event of breach of any of the above covenants, the Department shall have the right to terminate this Agreement and to re-enter and repossess said property and the facility thereon, and hold the same as if this Agreement had never been made or issued.

c. During the term of this Agreement Lessee shall, at Lessee's own cost and expense, promptly observe and comply with all present or future laws, requirements, orders, directions, ordinances, and regulations of the United States of America, the State of Florida, county or local governments, or other lawful authority whatsoever, affecting the land, property, and facility or appurtenances or any part thereof, and of all insurance policies covering the property, land, and facility, or any part thereof.

d. In addition to or in lieu of the terms and conditions contained herein, the provisions of any Addendum of even date herewith which is identified to be a part hereof is hereby incorporated herein and made a part hereof by this reference. In the event of any conflict between the terms and conditions hereof and the provisions of the Addendum(s), the provisions of the Addendum(s) shall control, unless the provisions thereof are prohibited by law.

e. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

f. Lessee acknowledges that it has reviewed this Agreement, is familiar with its terms, and has had adequate opportunity to review this Agreement with legal counsel of Lessee's choosing. Lessee has entered into this Agreement freely and voluntarily. This Agreement contains the complete understanding of the parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the parties and/or between Lessee and any previous owner of the property and landlord of Lessee are merged in this Agreement, which alone, fully and completely express the agreement between Lessee and the Department with respect to the subject matter hereof. No modification, waiver, or amendment of this Agreement or any of its conditions or provisions shall be binding upon the Department or Lessee unless in writing and signed by both parties.

g. Lessee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone, and telegraph services, or any other utility or service used on the property.

h. This Agreement shall be governed by the laws of the State of Florida, and any applicable laws of the United States of America.

i. All notices to the Department shall be sent to the address for rent payments and all notices to Lessee shall be sent to the property address provided herein or otherwise provided in writing to the Department.

j. The parties to this Agreement hereby understand and agree that the venue for any action that may arise as a result of this Agreement shall be in Leon County, Florida.

k. If Lessee is a "contractor" for the purposes of Section 119.0701, Florida Statutes, Lessee shall comply with public records laws and specifically shall:

1. Keep and maintain the public records that ordinarily and necessarily would be required to be kept and maintained by the Department in order to perform the services identified herein.
2. Provide the public with access to those public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
4. Meet all requirements for retaining the public records and transfer, at no cost, to the Department all the public records in possession of Lessee upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All such public records (if any) stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

If Lessee fails during such times to comply with a public records request, the Department shall enforce this section in accordance with this Agreement.

Lessee shall otherwise allow public access to all documents, papers, letters or other materials, made or received by Lessee in connection with this Agreement and the lease of the Demised Premises, to the extent such access is required because such documents, papers, letters or other materials are subject to the provisions of s. 24(a) of the State Constitution or Chapter 119, Florida Statutes.

l. Section 287.133(3)(a), Florida Statutes, requires that Lessee be informed of the following provisions of section 287.133 (2)(a), Florida Statutes: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity

crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, F.S., for Category two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

m. The Department shall consider the employment knowingly by Lessee of unauthorized aliens a violation of Section 274(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this Agreement.

n. This Agreement shall not create any third-party beneficiary hereunder, nor shall this Agreement authorize anyone not a party hereto to maintain a suit against the Department pursuant to the terms of this Agreement.

o. This Agreement shall be binding upon the successors, assigns and legal representatives of Lessee and the Department.

p. All Exhibits attached to this Agreement are made a part hereof as if fully copied herein. All submittals required to be submitted by Lessee that are approved by the Department are by reference made a part of this Agreement as if fully copied herein.

q. Nothing in this Agreement or in any documents executed pursuant to the terms of this Agreement shall be construed as a waiver or attempted waiver by the Department of its sovereign immunity in tort under the Constitution and laws of the State of Florida.

r. "RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

g. Lessee does not qualify for relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. Section 4601 et seq.)

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

Orange County, Florida
LESSEE (Company Name, if applicable)

By: Byron W. Brooks

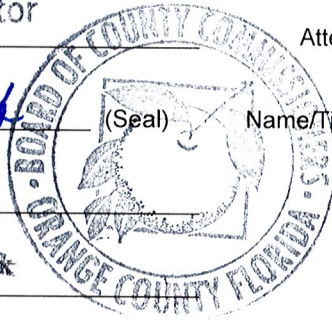
Name: Byron W. Brooks

Title: County Administrator

Attest: Katie Smith

Name: Katie Smith

Title: Deputy Clerk



STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: [Signature]
District Secretary

Name: Jared W. Perdue

Attest: [Signature]

Name/Title: NORMA MEJIAS / ADM. ASST

Legal Review:

[Signature]

District Counsel

Name: DMCDERMOTT

ADDENDUM

This is an Addendum to that certain Right of Way Use and Occupancy Agreement between Orange County

and the State of Florida Department of Transportation dated the 14th day of February, 2020.
In addition to the provisions contained in said Agreement, the following terms and conditions shall be deemed to be a part thereof pursuant to Paragraph 9 (d) of said Agreement:

See Exhibit A - RW Map
See Exhibit B - Aerial of parking

This lease may be renewed for an additional 5 year term, provided FDOT has reviewed said renewal and has determined that renewal will not interfere with the Ultimate I-4 construction. If a renewal will interfere with Ultimate I-4 construction, lease will be terminated at the conclusion of the original term. If lease is terminated at the conclusion of the original term a new lease can not be considered until after the completion of construction of the Ultimate I-4 project

Nothing contained in any provision of this Agreement shall constitute or be construed or interpreted as a waiver by the Lessee, or any state agency or subdivision as defined in Section 768.28(2), Florida Statutes, of its sovereign immunity or the protections and provisions of Section 768.28, Florida Statutes.

Orange County, Florida

LESSEE (Company Name, if applicable)

By: Byron W. Brooks

Byron W. Brooks

Name: _____

Title: County Administrator

Attest: Katie Smith (Seal)

Katie Smith

Name: _____

Title: Deputy Clerk

STATE OF FLORIDA

DEPARTMENT OF TRANSPORTATION

By: [Signature]

District Secretary

Name: Sared W. Perdue, P.E.

Attest: [Signature]

Name/Title: Noama Mejias / ADM ASST

Legal Review:

[Signature]

District Counsel

Name: DMCDEWITT

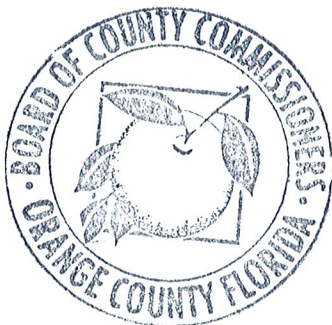
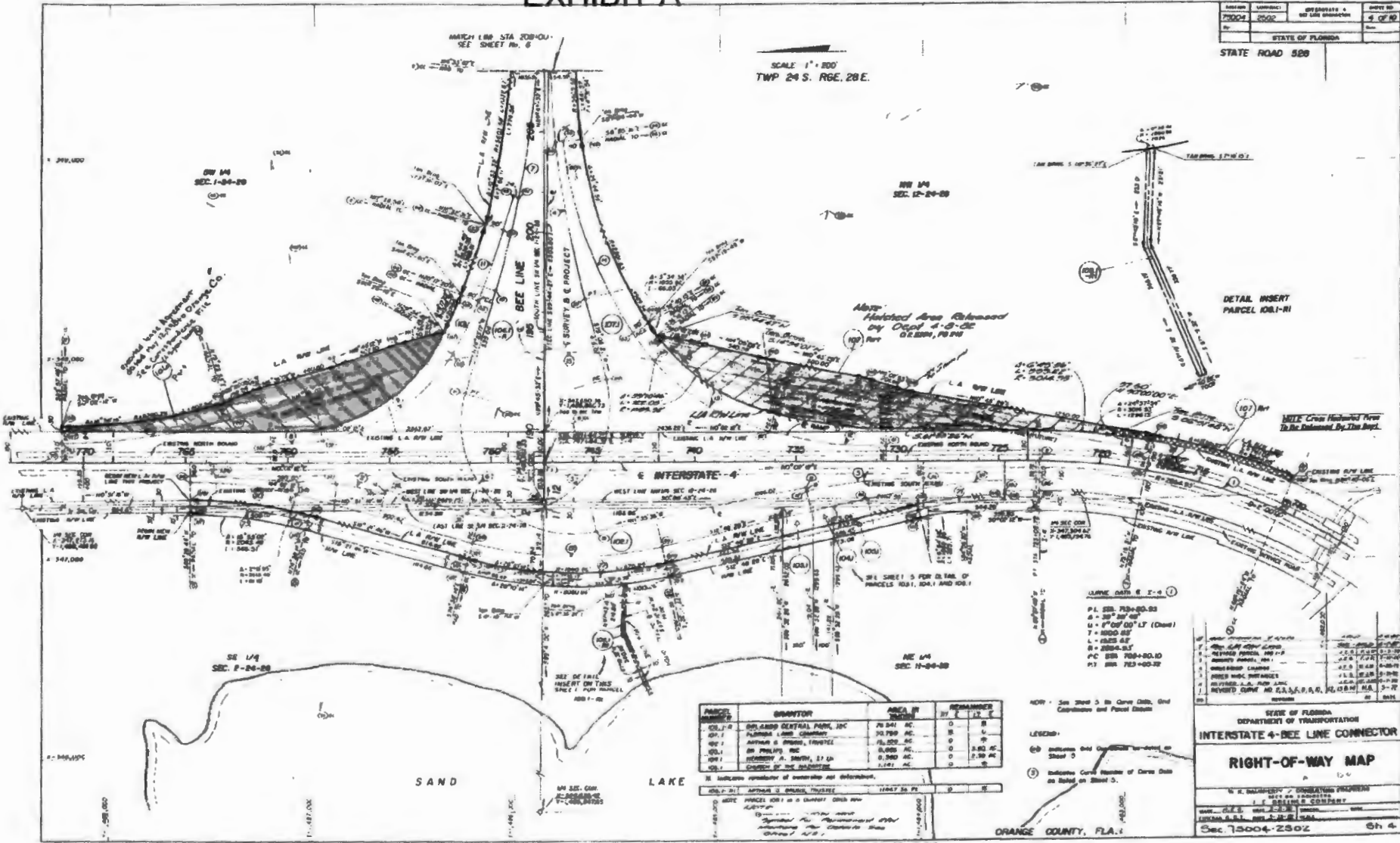


EXHIBIT A

SECTION	DATE	BY ENGINEER & SURVEYOR	SHEET NO.
75004	7/20/02		4 OF 10
STATE OF FLORIDA			

STATE ROAD 588

SCALE 1" = 200'
TWP 24 S. RGE. 28 E.



LINE DATA E I-4

P.I.	750+80.00
Δ	30° 00' 00"
Δ	6" 00' 00" LT (Chain)
7	1000.00
L	1000.00
R	1000.00
P.C.	750+80.00
P.T.	752+00.00

PARCEL NUMBER	OWNER	AREA IN ACRES	REMARKS
1081	DELANO CENTRAL PARK, INC	70.841 AC.	D R
1082	FLORIDA LAND COMPANY	70.799 AC.	S M
1083	ARTHUR G. BRADY, TRUSTEE	70.222 AC.	D R
1084	ED. PHILLIPS, INC.	0.000 AC.	D 2.50 AC.
1085	REBECCA A. SMITH, ET AL	0.980 AC.	D
1086	CHURCH OF THE MADONNE	1.181 AC.	D

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
INTERSTATE 4-BEE LINE CONNECTOR

RIGHT-OF-WAY MAP

W. E. BARNHART / ENGINEERING FIRM
1 E. BELLING COMPANY

DATE: 7/20/02
SCALE: 1" = 200'

Sec. 75004-2502 6th 4

REC'D 11/22/02

EXHIBIT B

