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**AGENDA ITEM
ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS**

Deadline for Submission - Wednesday 9 a.m. – Thirteen Days Prior to BCC Meeting

5/7/2019

BCC MEETING DATE

TO: Michael D. Wanchick, County Administrator

DATE: April 8, 2019

FROM: Jay Brawley, P.E., AICP, County Engineer

PHONE: 904 209-0113

SUBJECT OR TITLE: St. Johns County and Florida Department of Transportation (FDOT) Cost Share Agreement for design and construction of signal arms at the three intersections of US1 with CR-210, Lewis Point Road and Shore Drive.

AGENDA TYPE: Consent Agenda

BACKGROUND INFORMATION:

The State of Florida’s Division of Emergency Management (DEM) previously awarded design and construction funding in order to upgrade the existing strain-pole designs to mast arms at the three intersections referenced above. This was awarded under the Hazard Mitigation Grant Program (HMGP), which required a County cost share of \$403,361.00, (25 percent) of the expected project costs. All three intersections are located within FDOT right-of-way; consequently, County staff requested a cost-share agreement with FDOT in order to benefit both agencies. FDOT has agreed to fund the entire local match (\$403,361) pursuant to the attached Construction Reimbursement Agreement. This Agreement makes these projects 100 percent reimbursable. These three projects will provide significant upgrades to the signal support systems during extreme weather and other related events by replacing the strain poles with mast arms. These intersections are among the most heavily-traveled in the County’s roadway system, and all are positioned on a hurricane evacuation route.

1. IS FUNDING REQUIRED? No **2. IF YES, INDICATE IF BUDGETED.** No

IF FUNDING IS REQUIRED, MANDATORY OMB REVIEW IS REQUIRED:

INDICATE FUNDING SOURCE:

SUGGESTED MOTION/RECOMMENDATION/ACTION:

Motion to adopt Resolution 2019-_____ authorizing the Chair of the Board of County Commissioners to execute a reimbursement agreement on behalf of the County with the State of Florida’s Department of Transportation (FDOT) to reimburse the County’s 25 percent cost share under the HMGP program.

For Administration Use Only:

Legal: N/A OMB: N/A Admin: DML 4/17/2019

RESOLUTION NO. 2019-_____

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, PROVISIONS, AND REQUIREMENTS OF A CONSTRUCTION REIMBURSEMENT AGREEMENT WITH THE STATE OF FLORIDA'S DEPARTMENT OF TRANSPORTATION (FDOT) IN THE AMOUNT OF \$403,361.00 IN ORDER TO REIMBURSE THE COUNTY'S SHARE OF DESIGN AND CONSTRUCTION COSTS FOR SIGNALIZATION IMPROVEMENTS AT THE INTERSECTIONS OF US-1 WITH CR-210, SHORE DRIVE, AND LEWIS POINT ROAD; AUTHORIZING THE CHAIR OF THE BOARD OF COUNTY COMMISSIONERS TO EXECUTE THE GRANT AGREEMENT ON BEHALF OF ST. JOHNS COUNTY (COUNTY); AND AMENDING THE FISCAL YEAR 2019 IMPACT FEE BUDGET TO RECEIVE UNANTICIPATED REVENUE.

RECITALS

WHEREAS, FDOT has informed the County that funds have been approved to reimburse the County's design and construction costs for the upgrade of signals at three separate locations; and

WHEREAS, the Project will improve the strength and stability of traffic signals at three intersections, and prevent possible delays caused by storms and other significant events; and

WHEREAS, the Project has been approved for design and construction in the amount of \$403,361.00 for the County's share as set forth in Construction Reimbursement Agreement attached hereto, incorporated by reference and made a part hereof; and

WHEREAS, the State of Florida's Department of Transportation will award the funds to the County pursuant to the Construction Reimbursement Agreement; and

WHEREAS, in Fiscal Year 2019, the Engineering Department budgeted for infrastructure projects as approved by the Board of County Commissioners in the Fiscal Year 2019 Budget; and

WHEREAS, the County, when preparing its budget for Fiscal Year 2019, did not anticipate receiving revenue from FDOT to upgrade the signals at the referenced locations pursuant to the Construction Reimbursement Agreement; and

WHEREAS, recognizing and appropriating \$403,361.00 to the Engineering Department for the County's share will allow payment of expenses associated with the upgrade of the signals; and

WHEREAS, the Project is in the best interest of the County for the health, safety and welfare of its citizens.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution, and such Recitals are adopted as findings of fact.

Section 2. The Board of County Commissioners hereby approves the terms, conditions, provisions, and requirements of the Construction Reimbursement Agreement with the State of Florida's Department of Transportation, and authorizes the Chair of the Board of County Commissioners to execute the Agreement on behalf of the County for the purposes mentioned above and in substantially the form and format as attached.

Section 3. The Clerk is instructed to have two (2) copies of the original Grant Agreement executed by the Chair and mailed to State of Florida Department of Transportation, Attn: Kim Evans, District Local Programs Administrator, 1109 South Marion Avenue, Lake City, Florida, 32025.

Section 4. The Board of County Commissioners recognizes and appropriates unanticipated revenue in the amount of \$403,361.00 into the Impact Fee Fund.

Section 5. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this ____ day of _____, 2019.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

By: _____

Paul M. Waldron, Chair

ATTEST: Hunter S. Conrad, Clerk

By: _____

Deputy Clerk

CONSTRUCTION REIMBURSEMENT AGREEMENT

THIS CONSTRUCTION REIMBURSEMENT AGREEMENT ("Agreement") is made and entered into by and between the State of Florida Department of Transportation ("Department") and St. Johns County ("Agency").

-RECITALS-

1. The Department previously programmed Financial Project Number 432406-1-52-01 ("FIN") in order to perform certain transportation facility improvements, including the lighting signals located at the intersections of Lewis Point Road and State Road 5/US1 ("Lewis Point Intersection") and the intersection of Shore Drive and State Road 5/US 1 ("Shore Drive Intersection"); and
2. The Department is the fee simple owner of State Road 5/US1 ("SR 5"); and
3. The Agency desires to reconstruct three traffic signals located at the Lewis Point Intersection, the Shore Drive Intersection, and the intersection of County Road 210 and SR 5 ("CR 210 Intersection"); and
4. The Lewis Point Intersection, the Shore Drive Intersection, and the CR 210 Intersection are all located within the Agency's jurisdiction and will be referred to collectively herein as the "Intersections"; and
5. The Agency has received federal grant funding to reconstruct the traffic signals located at the Intersections with galvanized mast arms ("Agency Project"), as more particularly described in Exhibit "A" (Project Description and Responsibilities); and
6. The grant monies received by the Agency will only fund seventy-five percent (75%) of the Agency Project and the Agency has requested the Department's participation in funding the remaining twenty-five percent (25%); and
7. The Agency desires to construct the Project and the Department is amenable to this request based on the terms and conditions of this Agreement; and
8. The Department shall fund its portion of the Agency Project ("Department's Participation") in accordance with the Schedule of Financial Assistance as more particularly shown in Exhibit "B"; and
9. The Department's ability to fund the Department's Participation is wholly contingent on appropriation of funds to the Department; and
10. The Agency shall construct the Agency Project; and
11. Based on this Agreement and its terms, the Department has removed the FIN from its work program and project schedule in order for the Agency Project to proceed; and
12. The Agency, by Resolution No. _____, which is attached as Exhibit "C", has authorized its officers to execute this Agreement on its behalf; and

NOW THEREFORE, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the above 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 attached exhibits are specifically incorporated 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 Agreement.

3. TERM

The Agency shall complete construction of the Agency Project, inclusive of Final Acceptance (as defined in Section 7.E below) by the Department, on or before **December 31, 2021** ("Expiration Date"). In the event the Agency does not complete the Agency Project by the Expiration Date, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the Expiration Date is requested by the Agency and granted in writing by the Department prior to close of business on the Expiration Date. Expiration of this agreement will be considered termination of the Agency Project. The cost of any work performed after the Expiration Date of this Agreement will not be reimbursed by the Department.

4. 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.

5. COMPLIANCE

The Agency shall perform the Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions hereof 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").

6. 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.

7. CONSTRUCTION

A. The Agency shall submit to the Department for review at least Phase II and Phase IV plans. 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 Agency Project ("Plans and Specifications") prepared by a Florida registered professional engineer, or landscape architect providing 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 Agency Project until such time as the LME issues final written approval of the Plans and Specifications and Construction Schedule for the Agency Project 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 Agency Project without the prior written approval of the LME. Changes to the approved Plans and Specifications for the Agency Project 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 Agency Project.

E. The Agency shall complete construction of the Agency Project in accordance with the Construction Schedule and shall provide the Department's LME with written notice of completion of construction of the Agency Project, 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 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; or (2) 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 "Compensation and Payment" section of this Agreement.

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

8. OPERATION, MAINTENANCE & REPAIR

Upon completion of the Agency Project and following Final Acceptance by the Department, the Department shall own, operate, maintain, and repair the Agency Project.

9. PROJECT FUNDING AND AUDITS

A. The Department's maximum participation shall be an amount up to and not to exceed Four-Hundred Three Thousand Three-Hundred Sixty-One Dollars and No/100 Dollars (**\$403,361.00**) ("Maximum Participation Amount"). The Agency agrees to bear all expenses in excess of the Department's Maximum Participation Amount, as outlined in Exhibit B.

1. The Agency shall submit all invoices for payment to Kim Evans, Kimberly.evans@dot.state.fl.us immediately upon receipt by the Agency of the same.

2. The Parties agree that at such time as the Department has reached the Maximum Participation Amount, the Agency shall immediately bear all expenses in excess of the Maximum Participation Amount from that point forward.

B. Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit. Specifically, the Agency shall be required to comply as follows:

RECORDS RETENTION: The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of at least five (5) years from the date the audit report is issued, and shall allow the Department, or its designee, CFO, or Auditor General access to such records upon request. The Agency shall ensure that audit working papers are made available to the Department, or its designee, CFO, or Auditor General upon request for a period of at least five (5) years from the date the audit report is issued, unless extended in writing by the Department.

C. COMPENSATION AND PAYMENT:

a. The Department shall reimburse the Agency for costs incurred to perform services described in the Project Description and Responsibilities in Exhibit "A", and as set forth in the Schedule of Financial Assistance in Exhibit B.

b. The Agency shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Agency Project and the quantifiable, measurable, and verifiable units of deliverables are described more fully in Exhibit A. Any changes to the deliverables shall require an amendment executed by both parties.

- c. Invoices shall be submitted no more often than monthly and no less than quarterly by the Agency in detail sufficient for a proper pre-audit and post-audit, based on the quantifiable, measurable and verifiable deliverables as established in Exhibit A. Deliverables and costs incurred must be received and approved by the Department prior to reimbursements. Requests for reimbursement by the Agency shall include an invoice, progress report and supporting documentation for the period of services being billed that are acceptable to the Department. The Agency shall use the format for the invoice and progress report that is approved by the Department.
- d. Supporting documentation must establish that the deliverables were received and accepted in writing by the Agency and must also establish that the required minimum standards or level of service to be performed based on the criteria for evaluating successful completion as specified in Exhibit A has been met. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of charges.
- e. **Travel expenses are not compensable under this Agreement.**
- f. Payment shall be made only after receipt and approval of deliverables and costs incurred unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes or the Department's Comptroller under Section 334.044(29), Florida Statutes.
 - If this box is selected, advance payment is authorized for this Agreement and **Exhibit "G"**, Alternative Advance Payment Financial Provisions is attached and incorporated into this Agreement.

If the Department determines that the performance of the Agency is unsatisfactory, the Department shall notify the Agency of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Agency shall, within thirty (30) days after notice from the Department, provide the Department with a corrective action plan describing how the Agency will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Agency will not be reimbursed to the extent of the non-performance. The Agency will not be reimbursed until the Agency resolves the deficiency. If the deficiency is subsequently resolved, the Agency may bill the Department for the unpaid reimbursement request(s) during the next billing period. If the Agency is unable to resolve the deficiency, the funds shall be forfeited at the end of the Agreement's term.

Recipients of financial assistance from the Department should be aware of the following time frames. Inspection and approval of deliverables and costs incurred shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the deliverables and costs incurred are received, inspected, and approved.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the Recipient. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices that have to be returned to a Agency because of Agency preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agency who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

- g. The Agency shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to

the Department upon request. Records of costs incurred include the Recipient's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the contractor and subcontractors considered necessary by the Department for a proper audit of costs.

- h. **Progress Reports.** Upon request, the Agency agrees to provide progress reports along with invoices no more often than monthly and no less than quarterly to the Department in the standard format used by the Department and at intervals established by the Department. The Department will be entitled at all times to be advised, at its request, as to the status of the Agency Project and of details thereof.
- i. If, after Agency Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.
- j. The Agency must submit the final invoice on the Agency Project to the Department within 120 days after the completion of the Agency Project. Invoices submitted after the 120-day time period may not be paid.
- k. The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's financial assistance for this Agency Project is in multiple fiscal years, a notice of availability of funds from the Department's project manager must be received prior to costs being incurred by the Recipient. See Exhibit B for funding levels by fiscal year. Project costs utilizing any fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Recipient, in writing, when funds are available.
- l. In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 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 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."

- m. Any funds made available to the Agency by the Department pursuant to this Agreement which are determined by the Department to have been expended by the Agency in violation of this Agreement or any other applicable law or regulation, shall be promptly refunded in full to the Department. Acceptance by the Department of any documentation or certifications, mandatory or otherwise permitted, that the Agency files shall not constitute a waiver of the Department's rights as the funding agency to verify all information at a later date by audit or investigation.

In determining the amount of the payment, the Department will exclude all project costs incurred by the Agency prior to the execution of this Agreement, costs incurred prior to issuance of a Notice to Proceed, costs incurred after the expiration of the Agreement, costs which are not provided for in the latest approved **Schedule of Financial Assistance in Exhibit B** for the Agency Project, costs agreed to be borne by the Agency or its contractors and subcontractors for not meeting the Agency Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

10. PLACEMENT ON CONVICTED VENDOR LIST

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 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, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

11. COMPLETION OF THE PROJECT

A. If the Agency abandons or, before completion, discontinues the Agency Project, or for any other reason, the commencement, prosecution, or timely completion of the Agency Project by the Agency is rendered improbable, infeasible, impossible, or illegal, the Department will, by written notice to the Agency, suspend any or all of its obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected, or the Department may terminate any or all of its obligations under this Agreement.

B. Upon final payment to the contractor for the entire Agency Project, the Agency shall, within one hundred twenty (120) days, furnish the Department with two (2) copies of its final and complete billing of all cost incurred in connection with the work performed hereunder, such statement to follow as closely as possible the order of items contained in the job estimate. The final billing shall show the description and site of the Agency Project; the date on which the first work was performed or the date on which the earliest items of billed expense was incurred; the date on which the last work was performed or the last item of billed expense was incurred; and the location where records and accounts billed can be audited. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred includes the Agency's general accounting records and the project records, together with supporting documents and records, or the contractor and all subcontractors performing work on the Agency Project, and all other records of the contractor and subcontractors considered necessary by the Department for a proper audit of costs.

12. CONTRACTING WITH THIRD PARTIES

Except as otherwise authorized in writing by the Department, the Agency shall not execute any contract with any third party with respect to the Agency Project or obligate itself in any manner requiring the disbursement of Department funds without the prior written approval of the Department. Failure to obtain such prior written approval shall be sufficient cause for nonpayment by the Department. The Department specifically reserves the right to review the qualifications of any contractor and to approve or disapprove the employment of the same.

13. ACCESS TO RECORDS

A. The Department reserves the right to unilaterally cancel this Agreement for refusal by the contractor or Agency 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 in conjunction with this Agreement.

B. The Agency shall make the project records available to the Department for inspection and shall require its consultants to permit the Department's authorized representatives to inspect all work, payrolls, records, and to audit the books, records and accounts pertaining to the financing, development and construction of the Agency Project.

14. COMPLIANCE WITH ENVIRONMENTAL REGULATIONS

Execution of this Reimbursement Agreement constitutes a certification by the Agency that the Agency Project will be carried out in conformance with all applicable environmental regulations including the securing of any applicable permits. The Agency will be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the securing of any applicable permits, and will reimburse the Department for any loss incurred as a result of such non-compliance.

15. INDEMNIFICATION

A. 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 acts or omissions ("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 the Department's 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 City. 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), Fla. Stat. (2017). The limit of the Department's liability for breach of this Agreement shall be identical to the limitations of liability for tort actions set forth in §768.28(5), Florida Statutes.

17. GOVERNING LAW

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

18. 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.

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

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. SEVERANCE

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.

31. 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.

32. 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.

33. PUBLIC RECORDS

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

34. COMPLIANCE WITH STATUTE

The Agency agrees to comply with s.20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s.20.055(5), Florida Statutes.

***INTENTIONALLY LEFT BLANK
SIGNATURES ON FOLLOWING PAGE***

Financial Project No 443828-1-58-01

IN WITNESS WHEREOF, the Agency has caused this Agreement, consisting of fourteen (14) pages, to be executed in its behalf this _____ day of _____, 2019, by the _____, authorized to enter into and execute same by Resolution Number _____ of the Board on the _____ day of _____, _____, and the Department has executed this Agreement through its District Secretary for District Two, Florida Department of Transportation, this _____ day of _____, 2019.

ST. JOHNS COUNTY

ATTEST: _____(SEAL)
CLERK

BY: _____
CHAIR, BOARD OF COUNTY
COMMISSIONERS

Legal Review:

Legal Counsel for Agency

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

ATTEST: _____(SEAL)
EXECUTIVE SECRETARY

BY: _____
DISTRICT 2 SECRETARY

Legal Review:

Availability of Funds
Approval:

(Date)

EXHIBIT "A"
(PROJECT DESCRIPTION AND RESPONSIBILITIES)

This exhibit forms an integral part of that certain Construction Reimbursement Agreement between the State of Florida Department of Transportation (Department) and St. Johns County, Florida (Agency), dated _____.

PROJECT LOCATION:

The Agency Project is located at the intersections of CR 210 and SR 5, Lewis Point Road at US 1 (SR 5), and Shore Drive at US 1 (SR 5) in St. Johns County, Florida.

PROJECT DESCRIPTION:

Design, Construction and Construction Engineering and Inspection (CEI) of the traffic signals at CR 210 Intersection, the Lewis Point Intersection, and the Shore Drive Intersection using galvanized mast arms.

AGENCY RESPONSIBILITIES:

Any improvements constructed as part of the Agency Project and located on the FDOT system shall be reviewed and approved through the Department permitting process. If right-of-way activities become necessary, begin coordination with the Department at once. The Agency must use the RFP process to procure design and CEI consultants, if applicable. Prior to advertisement the Agency must provide the following: 1) signed and sealed plans (electronic, thru ERC) 2) Engineer's Estimate 3) documentation of RFP process for design and CEI consultant, if applicable 4) Right of Way, Railroad and Utility Certification and the bid documents include specification package and copy of advertisement.

Prior to concurrence by the Department: Agency shall submit: 1) name of lowest responsible / responsive bidder for Department verification 2) final bid documents 3) Agency's CEI selection 4) contractor's preliminary construction schedule 5) railroad coordination

Deliverables: Executed copy of the consultants and contractor's agreement with the Agency. Development of design plans and design related activities, Construction related activities and Construction Engineering and Inspection (CEI) related activities. Quarterly Invoices & Progress Report must be submitted. A field review must be done prior to final reimbursement request processed ensuring that all deliverables have been met in accordance with the contract. The Agency must invoice quarterly and provide a progress report. The Agency shall submit as-builts.

- The Agency shall commence the Agency Project activities subsequent to the execution of this Agreement and shall perform in accordance with the following schedule:

- a. Construction contract to be let on or before February 28, 2020.
- b. Construction to be completed on or before **December 31, 2021**.

If this schedule cannot be adhered to, the Agency shall notify the Department, in writing, with a revised schedule or the project is subject to the withdrawal of Department funding.

Time Extension is granted only for circumstances beyond the Agency's control.

SPECIAL CONSIDERATIONS BY DEPARTMENT:

The following conditions would warrant an administrative action by the Department which may result in termination and closure of the grant award:

- No invoice activity for 3 months, or
- No contract activity for 12 months.
- A field review must be done at the substantial completion of the project. To schedule a field review, contact Glenn English with Jacksonville Traffic Operations Department. Please copy in Kimberly Evans at Kimberly.evans@dot.state.fl.us..

EXHIBIT "A" CONT.
(PROJECT DESCRIPTION AND RESPONSIBILITIES)
"LOCATION MAP"

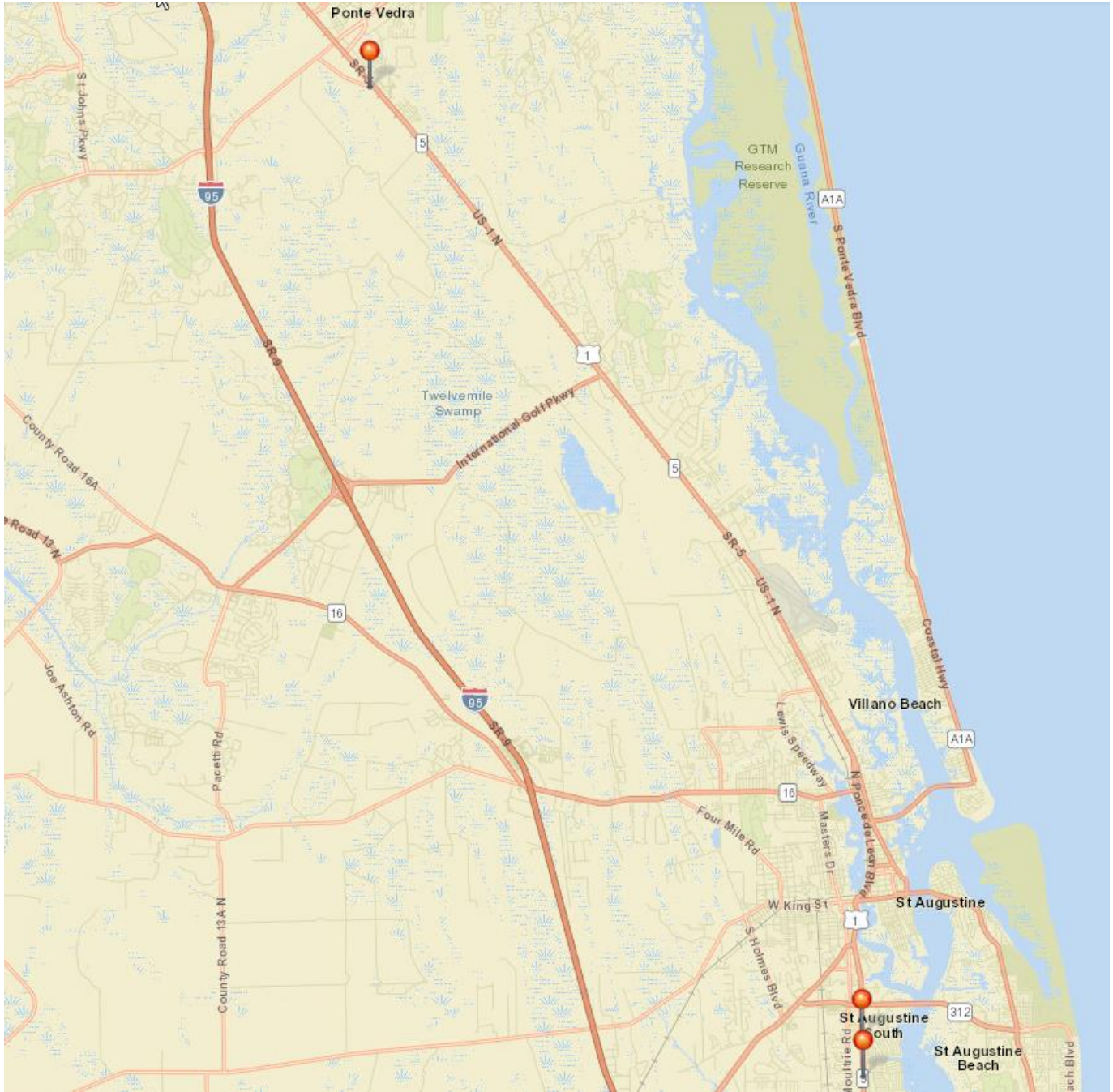


EXHIBIT "B"
(SCHEDULE OF FINANCIAL ASSISTANCE)

The Honorable Paul Waldron, Chair St. Johns County BOCC 500 San Sebastian View St. Augustine, Florida 32084St	STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION REIMBURSEMENT AGREEMENT SCHEDULE OF FINANCIAL ASSISTANCE	Financial Project ID: 443828-1-58-01
		Contract Number:

PROJECT DESCRIPTION

Name: Traffic signals installation at CR 210 Intersection, the Lewis Point Intersection, and the Shore Drive Intersection using galvanized mast arms

Termini: Intersections of CR 210 at US 1 (SR 5), Lewis Point Road at US 1 (SR 5), and Shore Drive at US 1 (SR 5) in St. Johns County

Description of Work: Design, Construction and Construction Engineering and Inspection (CEI) of the traffic signals at the intersections of CR 210 at US 1 (SR 5), Lewis Point Road at US 1 (SR 5), and Shore Drive at US 1 (SR 5) using galvanized mast arms

TYPE OF WORK By Fiscal Year	(1) TOTAL PROJECT ESTIMATE FUNDS (100%)	(2) AGENCY FUNDS (75%)	(3) STATE & FEDERAL FUNDS (25%) (3)
Design			
<u>2016-2017</u>	_____	_____	_____
<u>2017-2018</u>	_____	_____	_____
<u>2018-2019</u>	<u>\$ 289,000.00</u>	<u>\$ 289,000.00</u>	_____
Total Design Cost	<u>\$ 289,000.00</u>	<u>\$ 289,000.00</u>	_____
Construction			
<u>2018-2019</u>	<u>\$ 1,200,000.00</u>	<u>\$ 796,639.00</u>	<u>\$ 403,361.00</u>
<u>2019-2020</u>	_____	_____	_____
<u>2020-2021</u>	_____	_____	_____
<u>2021-2022</u>	_____	_____	_____
Total Design/Construction/CEI Costs	<u>\$ 1,200,000.00</u>	<u>\$ 796,639.00</u>	<u>\$ 403,361.00</u>
Construction Engineering and Inspection (CEI)			
<u>2018-2019</u>	<u>\$ 124,426.00</u>	<u>\$ 124,426.00</u>	_____
<u>2019-2020</u>	_____	_____	_____
<u>2020-2021</u>	_____	_____	_____
	<u>\$ 124,426.00</u>	<u>\$ 124,426.00</u>	_____
Total Cost of Project	\$ 1,613,426.00	\$ 1,210,065.00	\$ 403,361.00

The Department's fiscal year begins on July 1. For this project, funds are not projected to be available until after July 1st each fiscal year. The Department will notify the Agency, in writing, when funds are available.

EXHIBIT "C"

(RESOLUTION)