

12

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

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

5/21/2024

BCC MEETING DATE

TO: Joy Andrews, County Administrator

DATE: April 22, 2024

FROM: Greg Caldwell, Public Works Director

PHONE: 209-0266

SUBJECT OR TITLE: Florida Department of Transportation (FDOT) Transfer and Maintenance Agreement for the First Coast Expressway

AGENDA TYPE: Consent Agenda, Contract, Resolution

BACKGROUND INFORMATION:

The Florida Department of Transportation (FDOT) is constructing a new limited access expressway in St. Johns County that will be part of State Road 23 (SR 23). The construction of this roadway will require the realignment of a portion of CR 16A and cross Silverlake Drive, a County road, and CR 2209. The attached agreement outlines the transfer of certain property associated with the realignment of CR 16A and establishes the maintenance requirements for the FDOT and the County related to this new limited access expressway.

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 2024-_____, approving the terms, conditions, provisions, and requirements of an agreement with the Florida Department of Transportation (FDOT) and St. Johns County for the transfer of property and maintenance requirements for roadways crossing SR 23.

For Administration Use Only:

Legal: Kealey West 5/2/2024

OMB: LF 5/2/2024

Admin: Colin Groff 5/2/2024

RESOLUTION 2024 - ____

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE AND DELIVER A MAINTENANCE AGREEMENT BY AND BETWEEN ST. JOHNS COUNTY AND FLORIDA DEPARTMENT OF TRANSPORTATION FOR MAINTENANCE RELATED TO FIRST COAST EXPRESSWAY (SR 23).

RECITALS

WHEREAS, Florida Department of Transportation owns and is constructing State Road 23 (“SR 23”) commencing at County Road 2209 (“CR 2209”) and extending east towards County Road 16A (“CR 16A”); and

WHEREAS, portions of a new county road Silverlake Drive and CR 16A will go underneath the new SR 23 (“Under Bridge Areas”); and

WHEREAS, the County agrees to operate, maintain and repair all improvements within the Project limits associated with CR 2209, Silverlake Drive and CR 16A except for the Under Bridge Areas; and

WHEREAS, the FDOT agrees to operate, maintain and repair all bridges, abutments, bridge approaches, bridge walls and drainage systems owned by FDOT and associated with SR 23; and

WHEREAS, the Board of County Commissioners has reviewed the agreement and determined executing the agreement will serve the best interest of St. Johns County.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida, as follows:

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

Section 2. The Board of County Commissioners hereby approves and authorizes the County Administrator, or designee, to execute and deliver a Maintenance Agreement between St. Johns County and Florida Department of Transportation, in substantially the same form as attached hereto.

Section 3. To the extent that there are typographical, administrative, or scrivener’s errors

that do not change the tone, tenor, or context of this Resolution, then this Resolution may be revised without further action by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, State of Florida, this ____ day of May, 2024.

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

By: _____
Sarah Arnold, Chair

ATTEST: Brandon J. Patty,
Clerk of the Circuit Court and Comptroller

By: _____ Deputy
Clerk

TRANSFER & MAINTENANCE AGREEMENT

THIS TRANSFER & MAINTENANCE AGREEMENT (“Agreement”) is made and entered into by and between the State of Florida Department of Transportation (“Department”) and St. Johns County, Florida (“Agency”).

-RECITALS-

1. The term “Property,” as shown in purple in attached **Exhibit “A,”** shall refer to certain parcels of real property located in St. Johns County, Florida, which are owned by the Department, or will be acquired by the Department (“Department Property”), and some of which are currently owned by the Agency (“Agency Property”); and
2. The Department is constructing a new limited access expressway on the Property that will be part of State Road 23 (“SR 23”), to provide additional capacity for future traffic needs, via Financial Project Number 422938-8-52-01 (“Project”), as shown in attached **Exhibit “A”;** and
3. This portion of SR 23 will commence at County Road 2209 (“CR 2209”) and extend east towards County Road 16A (“CR 16A”); and
4. The Agency is currently working on constructing a new road which will be known as Silverlake Drive (“Silverlake”), as shown in red on attached **Exhibit “B” composite “B-2” and “B-3,”** that will be on or within the limits of the Project; and
5. Portions of Silverlake and CR 16A, will go underneath the elevated portion of the Project and are collectively referred to as “Under Bridge Areas” as more particularly shown in red on **Exhibit “B” (Composite B-2 through B-5 and B-7);** and
6. The Department has acquired, or is in the process of acquiring those Under Bridge Areas; and
7. The portion of the parcels acquired by the Department to construct the Project, with the exception of the Under Bridge Areas, will be conveyed (“Transferred Property”) to the Agency upon completion of the Project, as shown in teal in attached **Exhibit “B” Composite B-2 through B-7;** and
8. For purposes of this Agreement, the term “Improvements” means and shall refer to all pavement, signs and pavement markings, guardrail, sidewalk, curb and gutter, fencing, turf and landscaping, litter removal, drainage pipes and drainage structures, and any existing or future Agency utilities and drainage systems located within the limits of the Project; and
9. The Department shall fund construction of the Improvements, which is wholly contingent upon appropriation of funds to the Department; and
10. The Department shall construct the Improvements on the Department, Agency, and Transferred Property; and
11. The Department will own, operate, maintain and repair all bridges, abutments, bridge approaches, bridge walls and drainage systems owned by the Department and associated with SR 23 located within the Department Property; and
12. The Agency will operate, maintain and repair all Improvements within the Project limits associated with CR 2209, Silverlake and CR 16A excluding the Under Bridge Areas; and
13. The Agency agrees to receive and accept ownership and operation, maintenance, and repair responsibilities of the Transferred Property and all Improvements contained therein, via any Conveyance method, as determined by the Department; and
14. At the time of Conveyance (“Conveyance”) of the Transferred Property, the Department shall also relinquish any Perpetual Easements it currently holds over the Agency Property, as shown in teal on **attached Exhibit “B-6,”** via such Conveyance method; and
15. The Agency, by Resolution _____ dated _____, has authorized its

representative to execute and enter this Agreement on behalf of the Agency, see **Exhibit "C"**.

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. 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.

4. ACCESS

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

5. TERM

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

6. COMPLIANCE

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

7. PERMITS

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

8. PROJECT MANAGEMENT

The Department shall manage the Project for the design and construction of the Improvements and perform such activities as the Department deems necessary and appropriate to complete the Project for the Improvements, including, without limitation, seeking and obtaining approval and participation by one or more federal agencies, design of the Improvements, acquisition of right-of-way, construction of the Improvements, and any other activities to facilitate satisfactory completion of the Improvements. The Department shall commence construction of the Improvements at its convenience after the appropriation of sufficient funds.

Prior to one-hundred percent plans and prior to releasing the plans for construction, the Department will coordinate with the Agency regarding the design plans as pertain to the Improvements. The Department will

coordinate with the Agency upon completion of the construction of the Improvements; however, Final Acceptance of the construction of the Improvements shall be within the sole discretion of the Department.

9. CONVEYANCE OF PROPERTY

The Agency agrees that upon completion of the Project it will accept and receive ownership of the Transferred Property and Improvements therein from the Department via the Conveyance.

10. OPERATION, MAINTENANCE & REPAIR (TRANSFERRED PROPERTY AND IMPROVEMENTS)

A. Upon completion of the Conveyance, the Agency shall own, operate, maintain, and repair the Transferred Property and all Improvements therein at its sole cost and expense, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement including applicable Governmental Law.

B. The Agency agrees that it will be solely responsible for the operation, maintenance, and repair of the Transferred Property and all Improvements therein following completion of the Project and Conveyance, respectively. Should the Agency fail to operate, maintain, and repair the Improvements in accordance with the terms and provisions of this Agreement and applicable Governmental Law, and the Department be required to perform such operation, maintenance, or repair pursuant to the *Inspection of Federal-Aid Projects Under Local Jurisdiction, Topic No. 850-065-001*, under the authority of *Title 23, Section 116, U.S. Code*, the Agency agrees that it shall be fully responsible to the Department for repayment of any funds expended by the Department for the operation, maintenance, or repair of the Improvements. The Department shall invoice the Agency for any operation, maintenance, or repair expenses charged to the Department, and the Agency shall pay such invoices in accordance with the Payment section of this Agreement. Nothing in this Agreement shall relieve the Agency of its financial obligations to the Department should this occur.

C. The Agency further agrees to allow the Department access to the Transferred Property and the Improvements pursuant to the foregoing Paragraph 4 should the events described in Paragraph 11(B) occur.

11. FEDERAL NON-PARTICIPATION/FUNDING

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

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

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

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

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

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

C. The Department intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred sixty days (360) of final payment to the Contractor. The Department considers the Project complete when the final payment has been made to the Contractor, not when

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

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

12. IMPROVEMENTS & MODIFICATIONS

The Department may require the Agency to improve or modify the Improvements within the Transferred Property if the Department determines: (1) improvements or modifications are required by applicable Governmental Law; or (2) improvements or modifications will benefit the Department in the conduct of its business.

Required improvements and modifications shall be subject to the terms and provisions of this Agreement, specifically including, without limitation, the "Operation, Maintenance & Repair" section for the Transferred Property hereof.

Improvements and modifications shall be constructed and completed by the Agency within sixty (60) days of the date of the Department's written notice requiring improvements or modifications.

13. UTILITIES

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

14. MAINTENANCE OF TRAFFIC

A. The Agency shall be responsible for the maintenance of traffic ("MOT") at all times during its performance of this Agreement. MOT shall be performed in accordance with applicable Governmental Law and the most current edition of each of the following, as the same may be constituted and amended from time to time, all of which are incorporated herein and made part of the Agreement by reference: (1) Section 102 of the Department's Standard Specifications for Road and Bridge Construction; (2) the Manual on Uniform Traffic Control Devices; and (3) the Department's Roadway Design Standards Index 600 Series.

If the Agency fails to perform MOT as required herein, the Department, within its discretion, may elect to perform MOT at the Agency's sole cost and expense. Should the Department perform MOT, the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

15. PERMISSIVE USE

This Agreement creates a permissive use only and neither the granting of permission to use the Department Property or the Improvements on or within the Department Property shall operate to create or vest any property right to or in the Agency. The Agency shall not acquire any right, title, interest or estate in the Department Property by virtue of the execution, operation, effect or performance of this Agreement.

16. EMINENT DOMAIN AND DAMAGES

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

Department's exercise of any right provided in this Agreement.

17. DUE DILIGENCE & WARRANTIES

All due diligence requirements related to the Agency's negotiation, execution and performance of this Agreement are the sole responsibility of the Agency.

The Department makes no representations or warranties of any kind, express or implied, concerning the Department Property, including, without limitation, representations and warranties concerning: (1) the physical condition of the Department Property; and (2) merchantability or fitness for a particular purpose.

18. PAYMENT

All Department invoices submitted to the Agency for payment pursuant to the terms and provisions of this Agreement are due and payable within forty-five (45) days of the date of the invoice ("Due Date"). Any portion of an invoice not received by the Department by the Due Date shall immediately thereafter begin accruing interest at a rate of interest established pursuant to §55.03, Florida Statutes, until paid in full.

19. INDEMNIFICATION

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

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

20. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY

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

21. NOTICE

All notices, communications and determinations between the parties hereto and those required to be given under this Agreement, including, without limitation, any change to the notification address set forth below, shall be in writing and shall be sufficient if mailed by registered or certified mail to the parties at the following addresses:

Department: Florida Department of Transportation
Attention: St. Augustine Maintenance Engineer
3600 DOT Road
St. Augustine, Florida 32095

Agency: St. Johns County
Attention: Duane Kent
2750 Industry Center Road
St. Augustine, Florida 32084

Agency agrees that if it fails to notify Department by certified mail of any changes to its notification address, Agency shall have waived any defense based on Department's failure to notify Agency.

22. GOVERNING LAW

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

23. 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.

24. VENUE AND JURISDICTION

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.

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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. ANNUAL APPROPRIATION / FUNDING

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

"The department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The department shall require a statement from the comptroller of the department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

39. PUBLIC RECORDS

Agency shall comply with Chapter 119, Florida Statutes, specifically, 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 Agency 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 Agency'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

SIGNATURES ON FOLLOWING PAGE

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IN WITNESS WHEREOF, intending to be legally bound hereby, the parties execute this Agreement, consisting of nineteen (19) pages.

Florida Department of Transportation

By: _____

Printed Name: Greg Evans

Title: District Two Secretary

Date: _____

Attest:

By: _____

Printed Name: Elizabeth Engle

Title: Office of the District Two Secretary

Date: _____

Legal Review:

By: _____
Office of the General Counsel
Florida Department of Transportation

St. Johns County

By: _____

Printed Name: _____

Title: _____

Date: _____

Attest:

By: _____

Printed Name: _____

Title: _____

Date: _____

Legal Review:

By: _____
Legal Counsel for Agency

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EXHIBIT "A"
Composite A-1

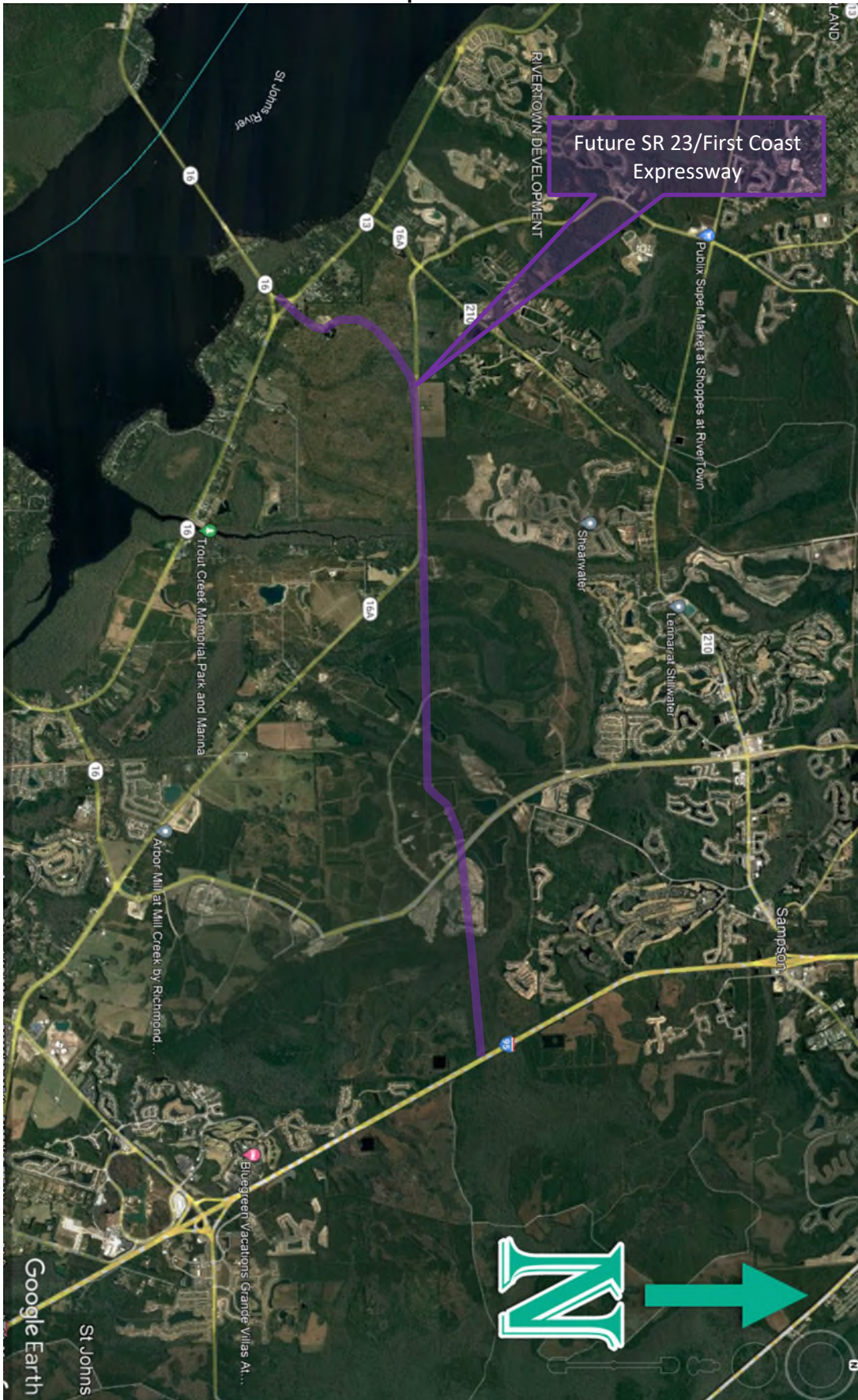
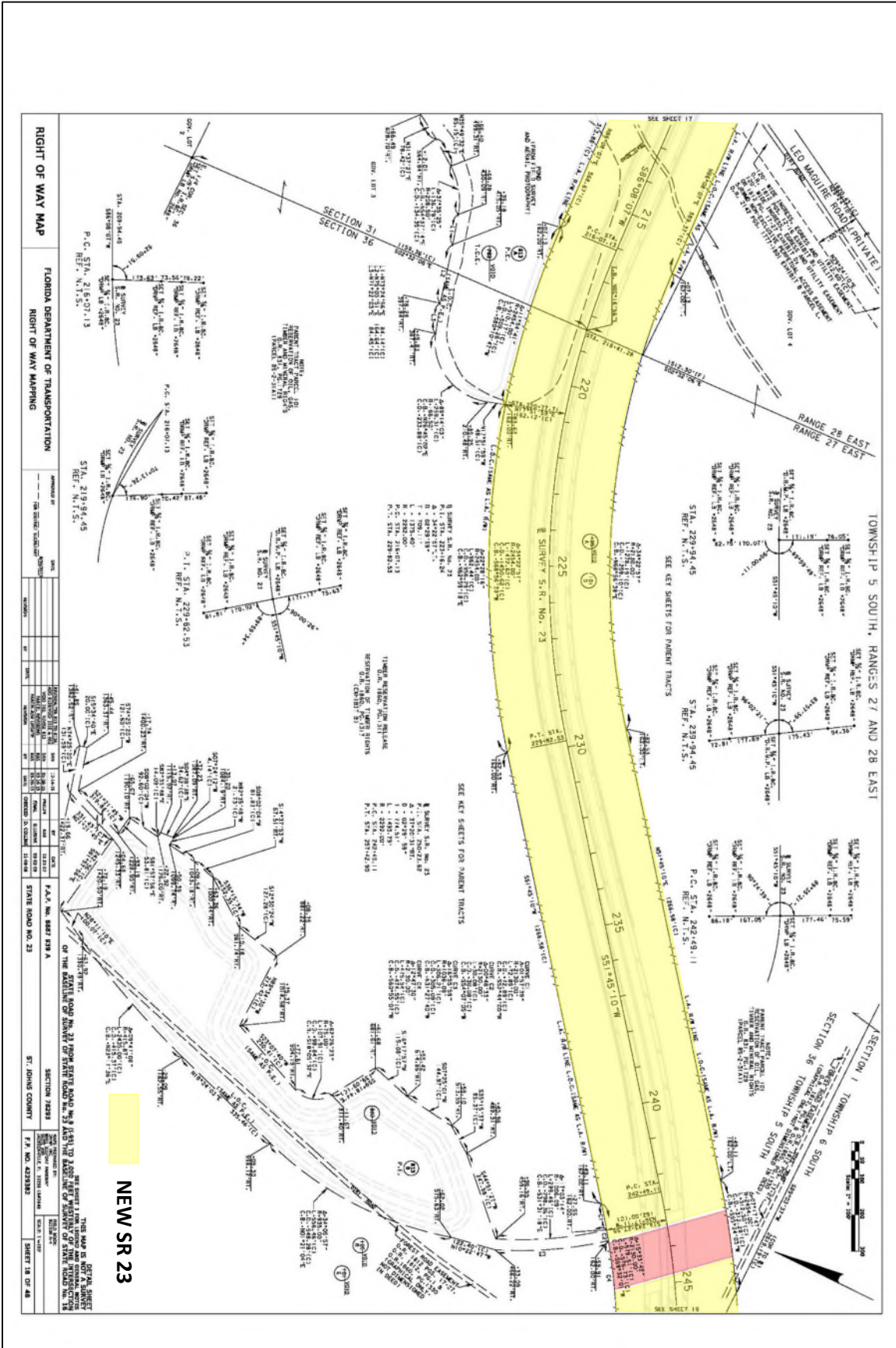


EXHIBIT "B"
Composite B-1



EXHIBIT "B" Cont.
 Composite B-2



Financial Project Id. No.: 422938-8-52-01

Federal ID No. D218-124-B

Project Description: SR 23/First Coast Expressway from East of CR 2209 to East of CR 16A
On/Off System Department Construct Agency Maintain

**EXHIBIT "B" Cont.
Composite B-3**

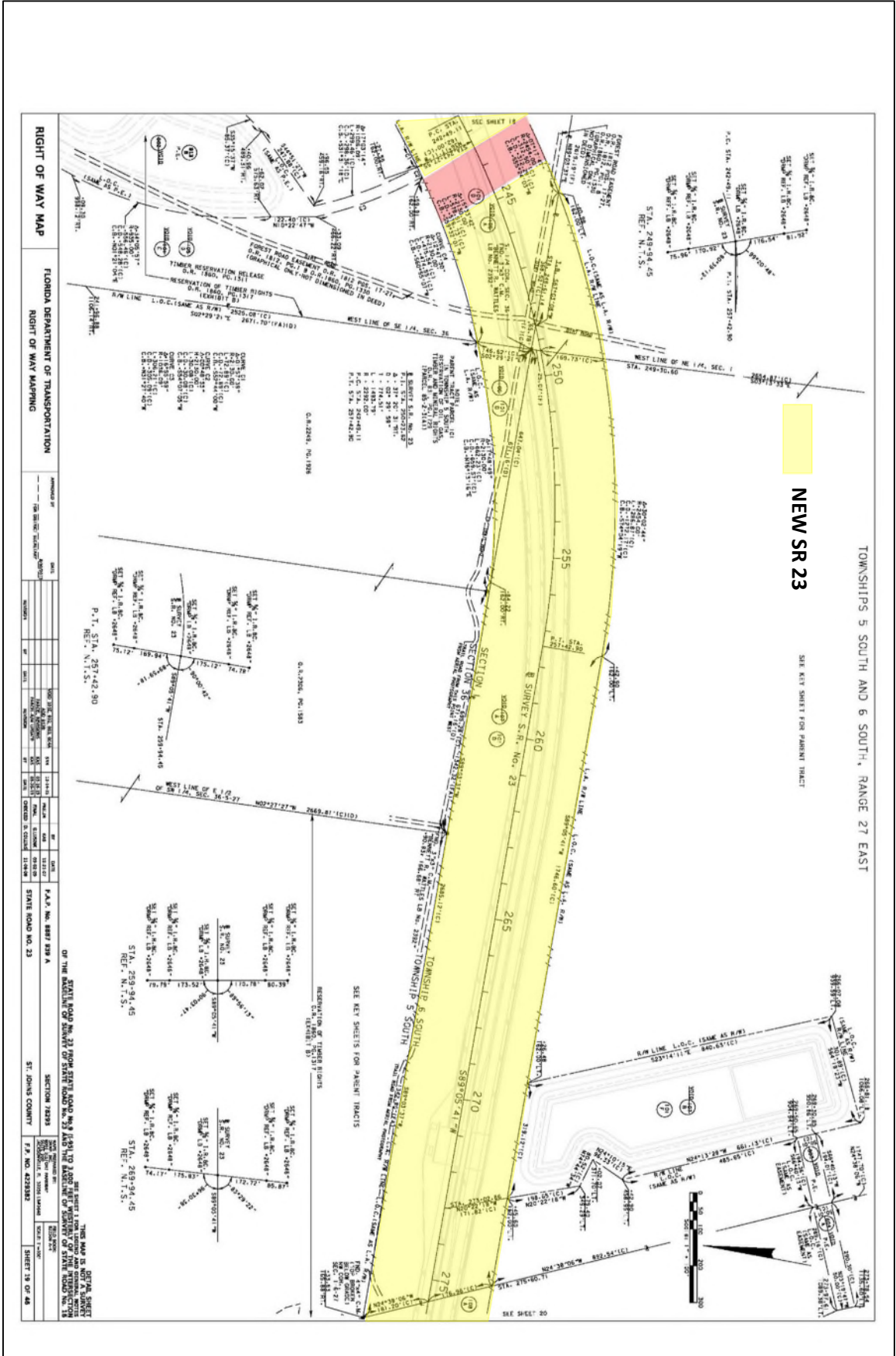


EXHIBIT "B" Cont.
 Composite B-4

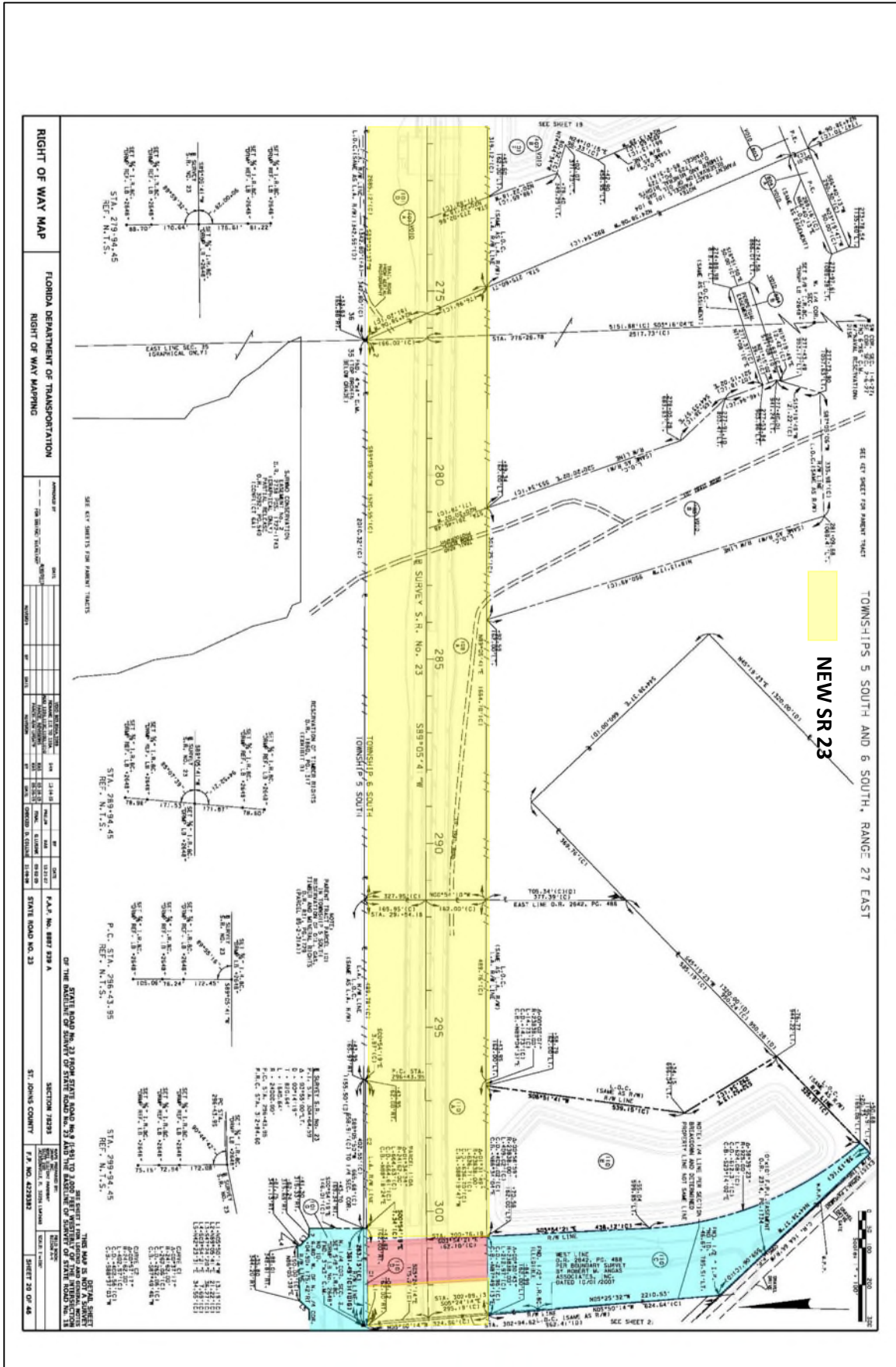


EXHIBIT "B"
Composite B-5

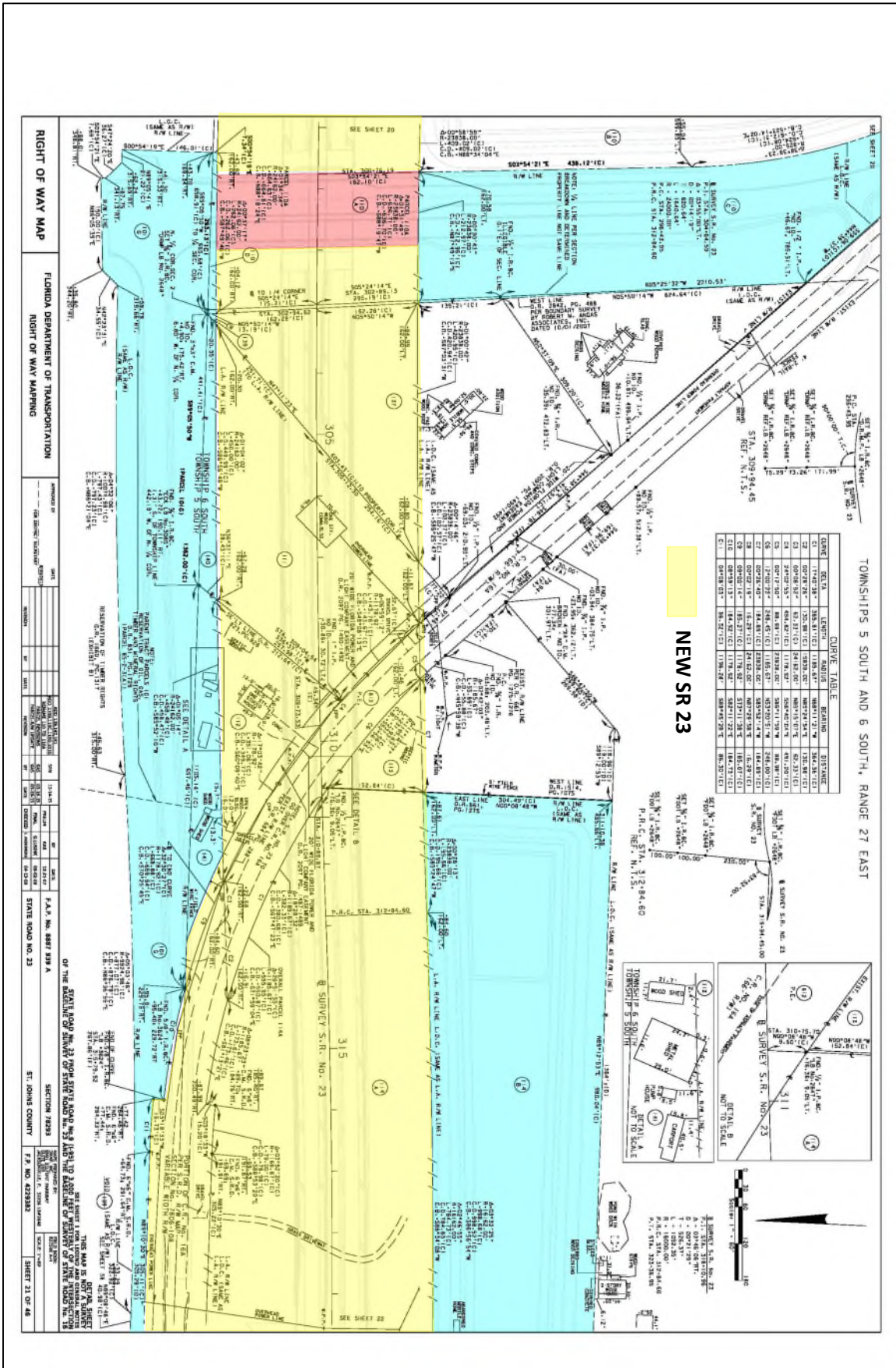


EXHIBIT "B" Cont.
 Composite B-6

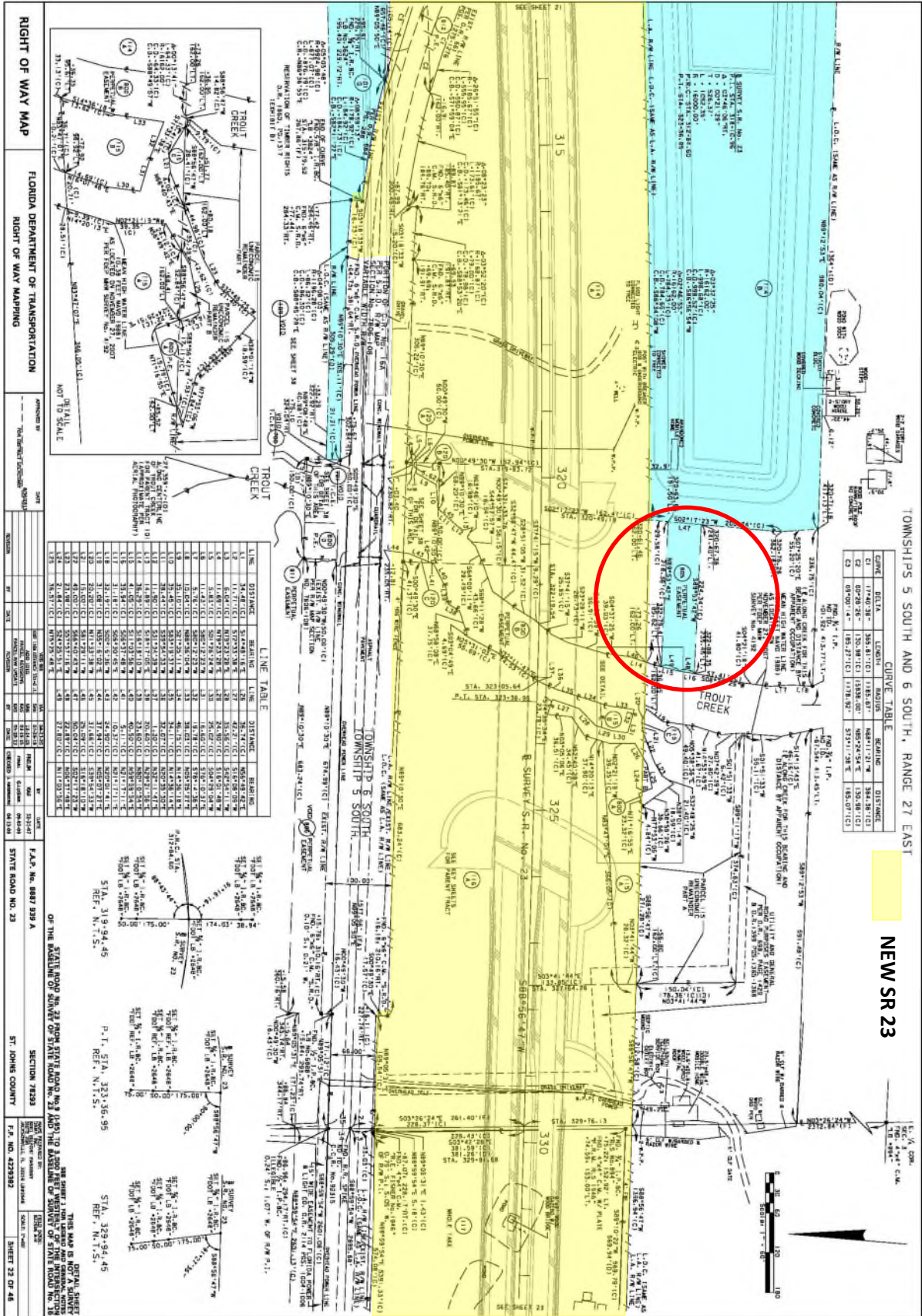


EXHIBIT "B" Cont.
 Composite B-7

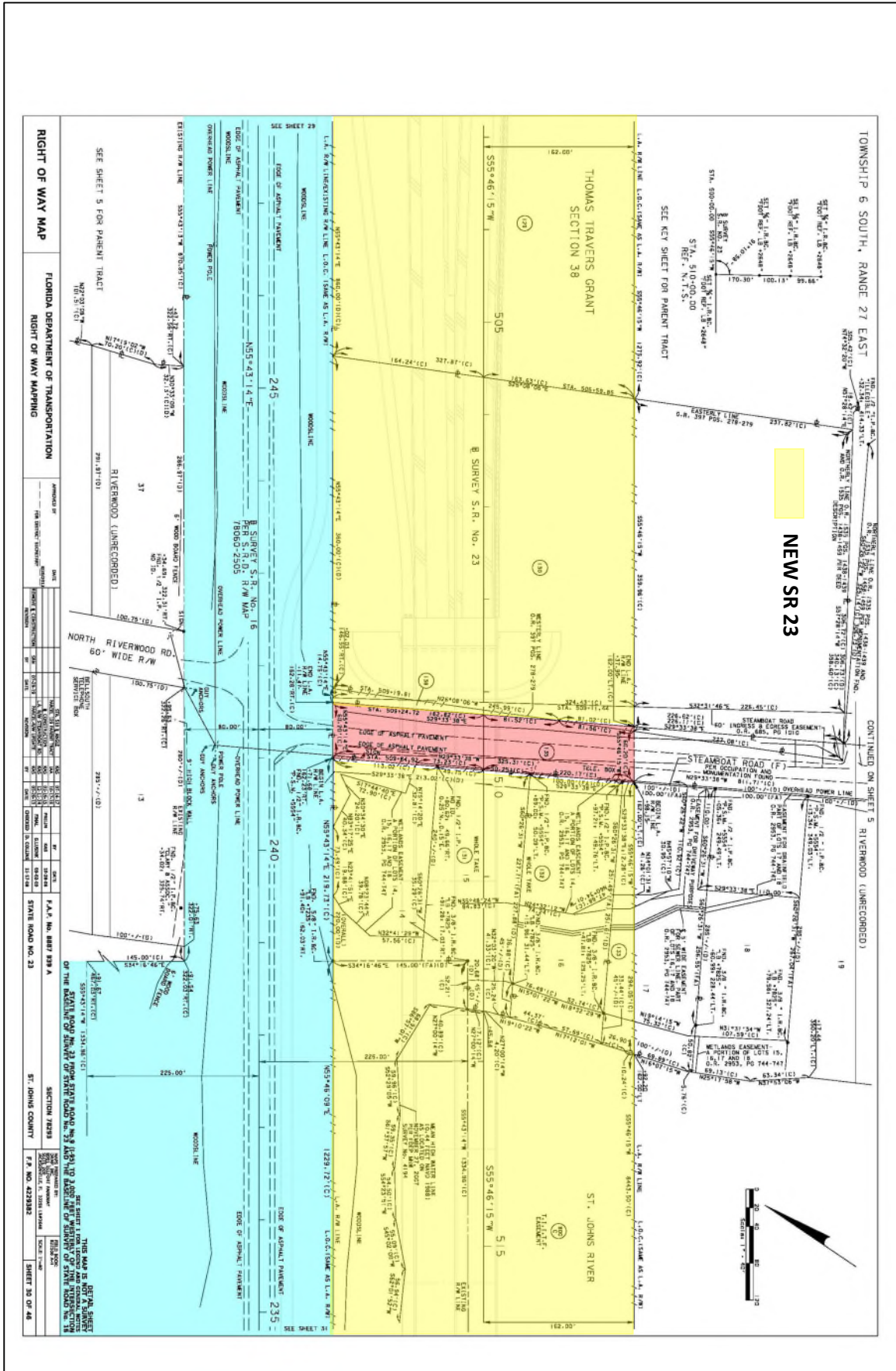


EXHIBIT "C"
RESOLUTION