



*Florida Department of Transportation*

**RICK SCOTT**  
GOVERNOR

1109 South Marion Avenue  
Lake City, Florida 32025-5874

**MIKE DEW**  
SECRETARY

September 28, 2018

Mr. Leon Smith  
Neptune Beach Public Works Office  
2010 Forest Avenue  
Neptune Beach, Florida 32266

**Subject: CONSTRUCTION & MAINTENANCE AGREEMENT AMENDMENT**  
**A1A Beaches Drainage Improvements**  
**Financial Project ID: 436077-1-52-01**  
**Federal ID: 4913-013-P**

Dear Mr. Smith:

Enclosed for your file is a fully executed copy of the Amended Construction & Maintenance Agreement for the subject project.

Thank you for your assistance in securing execution as soon as possible is appreciated. Should you have questions or need additional information, please contact me at 1-800-749-2967, Extension 7823.

Sincerely,

A handwritten signature in blue ink, appearing to read "Wm. David Cerlanek", is written over a faint, larger blue outline of the signature.

Wm. David Cerlanek, P.E.  
District Two Program Administration Engineer

Enclosures

CC: Mr. Bob Kosoy, P.E., Jacksonville Maintenance Engineer  
Ms. Brandi Vittur, P.E., Senior Project Manager  
Ms. Megan George, Deputy Director of Public Works

## **CONSTRUCTION & MAINTENANCE AGREEMENT AMENDMENT**

**THIS CONSTRUCTION & MAINTENANCE AGREEMENT AMENDMENT** ("Amendment") is made and entered into by and between the State of Florida Department of Transportation ("Department") and the City of Neptune Beach, Florida ("Agency").

### **-RECITALS-**

1. The terms and provisions set forth in this Amendment are incorporated into and made part of that certain Construction and Maintenance Agreement for Financial Project Number 436077-1-52-01 ("Original Agreement") entered into by the parties on October 16th, 2018, a copy of which is attached as **EXHIBIT "A"**; and
2. This Amendment shall be merged into and made part of the Contract and both documents shall be collectively referred to as the "Agreement"; and
3. The Original Agreement identified Bridge No. 726602 on Kings Road ("Kings Road Bridge") and Bridge No. 720845 on 5th Street ("5th Street Bridge") and collectively defined them as the "Bridges"; and
4. The sole purpose of this Amendment is to identify and clarify the ownership and maintenance responsibilities as pertaining to the Bridges; and
5. Upon completion of the construction, the Agency shall **own**, operate, maintain and repair all Off-System Improvements as more specifically defined in the Original Agreement, and which shall include Kings Road Bridge, at its sole cost and expense; and
6. Upon completion of the construction, the Agency shall operate, maintain and repair all On-System Improvements as more specifically defined in the Original Agreement, and which shall include 5th St Bridge, at its sole cost and expense; and
7. In the event of any conflict or inconsistency between the Original Agreement and this Amendment, the provisions of this Amendment shall control; and
8. All other terms and conditions of the Original Agreement shall remain in full force and effect.

**NOW THEREFORE**, in consideration of the recitals and mutual covenants and conditions in this Amendment, the parties, intending to be legally bound, acknowledge, covenant and agree as follows:

### **1. RECITALS**

The recitals set forth above and the attached exhibits are specifically incorporated by reference and made part of this Amendment.

### **2. OWNERSHIP AND MAINTENANCE RESPONSIBILITIES**

- A. The Agency shall own, operate, maintain, and repair the Off-System Improvements in accordance with Paragraph 9 of the Original Agreement. The Off-System Improvements include Kings Road Bridge.
- B. The Agency shall operate, maintain, and repair the On-System Improvements in accordance with Paragraph 10 of the Original Agreement. Ownership of 5th Street Bridge will remain with the Department.

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***SIGNATURES ON FOLLOWING PAGE***

IN WITNESS WHEREOF, intending to be legally bound, the parties execute this Addendum consisting of twenty-nine (29) pages.

**Florida Department of Transportation**

By: [Signature]  
Printed Name: Greg Evans  
Title: District Two Secretary  
Date: 09/28/18

**Attest:**

By: [Signature]  
Printed Name: Lisa Pelaez  
Title: Executive Secretary  
Date: Sept. 28, 2018

**Legal Review:**

By: [Signature] 9.25.18  
Office of the General Counsel  
Florida Department of Transportation



**City of Neptune Beach**

By: [Signature]  
Printed Name: Andrew E Hyatt  
Title: City Manager  
Date: 9/17/18

**Attest:**

By: [Signature]  
Printed Name: Catherine Panson  
Title: City Clerk  
Date: 9/17/18

**Legal Review:**

By: [Signature]  
Legal Counsel for City of Neptune Beach

## EXHIBIT "A"

Financial Project Id. No. 436077-1-52-01  
Federal Id. No. 4913-013-P  
Project Description A1A Beaches Drainage Improvements  
On System Department Construct Agency Maintain

### CONSTRUCTION & MAINTENANCE AGREEMENT

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

#### -RECITALS-

1. The Department is the fee simple owner of State Road A1A ("SR A1A") for which certain drainage improvements will be constructed via Financial Project Number 436077-1-52-01 ("Project") Improvement; and
2. As related to the Project, the Department currently owns a drainage easement that commences at 13th Avenue North and extends approximately 1000 feet west of Penman Road draining the SR A1A stormwater ("Drainage Easement") and eventually flows into Hopkins Creek, as shown in attached Exhibit "A" (Composites A-1 through A-8); and
3. The term "Property" shall refer to certain real property known as Kings Road and 5th Street both of which are located within the corporate limits of the City of Neptune Beach, Florida, and owned by the Agency, as more particularly shown on the right-of-way maps (highlighted in yellow) in attached Exhibit "A" (Composites A1 and A2); and
4. SR A1A drainage is conveyed through the Drainage Easement (highlighted in gold), an existing box culvert located at 5th Street, and under an existing bridge located at Kings Road located on or within the Property (collectively referred to as "Crossings"), and more particularly shown in Exhibit "A" (Composites A-1 through A-4 and A-8); and
5. In conjunction with the Project, the Department has acquired temporary construction easements (marked in red) for the purposes of expanding the current Crossings and constructing bridges as well as completing connections to certain drainage structures within the Drainage Easement, all of which will better facilitate both the SR A1A drainage and the Property drainage, as more particularly shown in Exhibit "A" (Composites A-1 through A-7); and
6. The term "Improvement" means and shall refer to the construction of Bridge No. 726602 on Kings Road and Bridge No. 720845 on 5th Street (collectively referred to as the "Bridges"), including without limitation, associated approaches, drainage systems, Agency utilities within the channel crossing structure (highlighted in yellow), pipe, roadway, pavement, signs & pavement markings, sidewalk, and pedestrian crossings (marked in red), as more particularly shown in attached Exhibit "B" (Composites B-1 through B-3); and
7. In order to facilitate the improved drainage system, portions of the Improvement will be constructed within the Drainage Easement ("On-System Improvements"); and
8. Those portions of the Improvements constructed within the temporary construction easements or on or within the Property shall be referred to as ("Off-System Improvements"); and
9. In order to perform the Bridge construction, it will be necessary for the Department to temporarily close access to the road and re-route vehicular traffic ("Detour Property") throughout the duration of the construction of the Improvement, as more particularly shown in Exhibit "C" (Composites C-1 through C-5); and
10. The Agency has requested that the Improvement be constructed and the Department is amenable to this request pursuant to the terms and conditions of this Agreement; and
11. The Department shall fund construction of the Improvement, which is wholly contingent upon appropriation of funds to the Department; and
12. The Department shall construct the Improvement on the Property and Drainage Easement; and

## EXHIBIT "A" CONT.

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13. A date for the commencement of construction of the Improvement has not been established; and
14. For purposes of this Agreement, the definition of Improvement shall include and incorporate the term Detour Property, as defined in Recital 9 above; and
15. During the period of construction of the Improvement, the Department shall be responsible for the operation, maintenance and repair of the Detour Property; and
16. Upon completion of the construction, the Agency shall own, operate, maintain, and repair the Off-System Improvements, inclusive of the Bridges at its sole cost and expense; and
17. Upon completion of the construction, the Agency shall own, operate, maintain, and repair the On-System Improvements; and
18. By Resolution 2017-08 dated October 2, 2017, the Agency authorized its representative to execute and enter this Agreement on behalf of the Agency, see **EXHIBIT "D"**.

**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. ACCESS**

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

### **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. 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**

## EXHIBIT "A" CONT.

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In the performance of the Agreement, the Agency may be required to obtain one or more Department permits, if applicable, 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**

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

B. The Department shall manage the performance, operation, maintenance, and repair of the Detour Property during the construction period.

C. Prior to commencement of construction and at their sole cost and expense, the Agency shall ensure that the Property is free and clear of any and all encroachments that may impede or in any way interfere with the Department's construction of the Improvement.

### **9. OPERATION, MAINTENANCE & REPAIR (OFF-SYSTEM IMPROVEMENTS)**

A. Upon completion of the construction, the Agency shall own, operate, maintain, and repair the Off-System Improvements and resume operation, maintenance, and repair of the Detour Property, 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. Nothing in this Agreement shall obligate the Department to maintain or repair the Improvement, said obligations to remain the sole responsibility of the Agency.

B. The Agency agrees that it will be solely responsible for the operation, maintenance, and repair of the Improvement. Should the Agency fail to operate, maintain, and repair the Off-System Improvements in accordance with the terms and provisions of this Agreement and applicable Governmental Law, and the Department be required to perform such operation, maintenance, or repair pursuant to 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 Off-System Improvements. The Department shall invoice the Agency for any operation, maintenance, or repair expenses charged to the Department, and the Agency shall pay such invoices in accordance with the Payment section of this Agreement. Nothing in this Agreement shall relieve the Agency of its financial obligations to the Department should this occur.

C. If at any time in the sole determination of the Department, the integrity or safety of the Off-System Improvements requires immediate maintenance or repair for the benefit of public health, safety or welfare, the Department may perform such maintenance and repairs it deems appropriate under the circumstances. The Department shall provide the Agency with written notice of the emergency maintenance and repairs performed by the Department and an invoice for the same. The Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

### **10. OPERATION, MAINTENANCE & REPAIR (ON-SYSTEM IMPROVEMENTS)**

A. The Agency shall operate, maintain and repair the On-System Improvements at its sole cost and expense, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement. Nothing in this Agreement shall obligate the Department to maintain or repair the Improvement, said obligations to remain the sole responsibility of the Agency.

## EXHIBIT "A" CONT.

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B. If the Department determines that the Agency is not maintaining and repairing the On-System Improvements in accordance with the terms and provisions of this Agreement, the Department shall deliver written notification of such to the Agency. The Agency shall have thirty (30) days from the date of the Department's written notice, or such other time as the Department and the Agency mutually agree in writing, to correct the deficiency and provide the Department with written notice of the same.

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

D. If at any time in the sole determination of the Department, the integrity or safety of the On-System Improvements requires immediate maintenance or repair for the benefit of public health, safety or welfare, the Department may perform such maintenance and repairs it deems appropriate under the circumstances. The Department shall provide the Agency with written notice of the emergency maintenance and repairs performed by the Department and an invoice for the same. The Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

### **11. IMPROVEMENTS & MODIFICATIONS**

A. The Department may require the Agency to improve or modify the Improvement 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.

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

C. 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.

### **12. UTILITIES**

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

### **13. 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.

B. 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.

### **14. REMOVAL**

A. The Department may require the Agency to remove the Improvement and restore the Drainage Easement to such condition as required by the Department if the Department determines: (1) the Improvement is not maintained in accordance with Governmental Law; (2) removal of the Improvement is

## EXHIBIT "A" CONT.

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required by applicable Governmental Law; (3) the Agency breaches a material provision (as determined by the Department) of this Agreement, or (4) removal of the Improvement will benefit the Department in the conduct of its business. Removal and restoration shall be completed by the Agency within sixty (60) days of the date of the Department's written notice requiring removal of the Improvement, or such other time as the Department and the Agency mutually agree in writing.

B. Removal and restoration shall be completed by the Agency in accordance with all applicable Governmental Law.

C. Should the Agency fail to complete the removal and restoration work as required herein, the Department may: (1) provide the Agency with written authorization granting such additional time as the Department deems appropriate to complete removal and restoration; or (2) complete the removal and restoration at the Agency's sole cost and expense. Should the Department elect to complete the removal and restoration, 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 Drainage Easement or the Improvement on or within the Drainage Easement 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 Drainage Easement 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. PAYMENT**

All Department invoices submitted to the Agency for payment pursuant to the terms and provisions of this Agreement are due and payable within thirty (30) 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.

### **18. 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 performance, or breach, of this Agreement ("Liabilities"). The term "Liabilities" shall also specifically include all civil and criminal environmental liability arising, directly or indirectly under any Governmental Law, including, without limitation, liability under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Air Act ("CAA") and the Clean Water Act ("CWA"). The Agency's duty to defend, indemnify and hold the Department harmless specifically does not encompass indemnifying the Department for its negligence, intentional or wrongful acts, omissions or breach of contract.

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



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### **19. 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).

### **20. 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: Jacksonville Maintenance Engineer  
838 Ellis Road  
Jacksonville, Florida 32205

- and -

Florida Department of Transportation  
Attention: Chief Counsel District Two  
1109 South Marion Avenue, Mail Station 2009  
Lake City FL 32025

Agency: Neptune Beach Public Works Office  
Attention: Mr. Leon Smith, Public Works Director  
2010 Forest Avenue  
Neptune Beach, Florida 32266

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.

### **21. GOVERNING LAW**

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

### **22. 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.

### **23. 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.

### **24. 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.

### **25. ASSIGNMENT**

The Agency shall not assign, pledge or transfer any of the rights, duties and obligations provided in this

## **EXHIBIT "A" CONT.**

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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.

### **26. 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.

### **27. 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.

### **28. 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.

### **29. 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.

### **30. 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.

### **31. 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.

### **32. 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.

### **33. 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.

### **34. 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.

### **35. 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.

## EXHIBIT "A" CONT.

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### **36. 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.

### **37. PUBLIC RECORDS**

Agency, or any persons or entities acquiring title to all or any portion of the real property which is the subject of this Agreement, shall:

A. Contact the Department's Custodian of Public Records at (386) 758-3727; D2 [prcustodian@dot.state.fl.us](mailto:prcustodian@dot.state.fl.us); and Public Records Custodian, 1109 South Marion Avenue, MS 2009, Lake City, Florida 32025, if Agency has any questions regarding the application of Chapter 119, Florida Statutes, and Agency's duty to provide public records relating to this Agreement.

B. Keep and maintain public records that ordinarily and necessarily would be required by the Department to perform this Agreement.

C. 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, Fla. Stat., or as otherwise provided by law.

D. 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.

E. Upon completion of this Agreement, transfer, at no cost, to the Department all public records in possession of Agency, as the case may be, or keep and maintain public records required by the Department to perform this Agreement. If Agency transfer 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.

F. Failure by Agency to act in accordance with 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.

### **38. ANNUAL APPROPRIATION / FUNDING**

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

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

**EXHIBIT "A" CONT.**

Financial Project Id. No. 436077-1-52-01  
Federal Id. No. 4913-013-P  
Project Description A1A Beaches Drainage Improvements  
On System Department Construct Agency Maintain

**IN WITNESS WHEREOF**, intending to be legally bound hereby, the parties execute this Agreement, consisting of twenty-six (26) pages.

**Florida Department of Transportation**

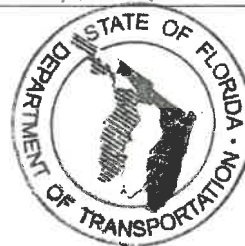
By: *Greg Evans*  
Printed Name: Greg Evans  
Title: District Two Secretary  
Date: 10/16/17

**Legal Review:**

By: *Melissa K. Burkhead* 10-13-17  
Office of the General Counsel  
Florida Department of Transportation

**Attest:**

By: *Lisa Lisa Pelaez*  
Printed Name: Lisa Pelaez  
Title: Executive Secretary  
Date: Oct. 16, 2017



**City of Neptune Beach**

By: *Andrew Hyatt*  
Printed Name: Andrew Hyatt  
Title: City Manager  
Date: 10/5/17

**Legal Review:**

By: *[Signature]*  
Legal Counsel for Agency

**Attest:**

By: *Catherine Panson*  
Printed Name: Catherine Panson  
Title: City Clerk  
Date: 10/5/17

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**EXHIBIT "A"**  
**Composite A-1**  
Highlighted areas are within the City of Neptune Beach's jurisdiction.

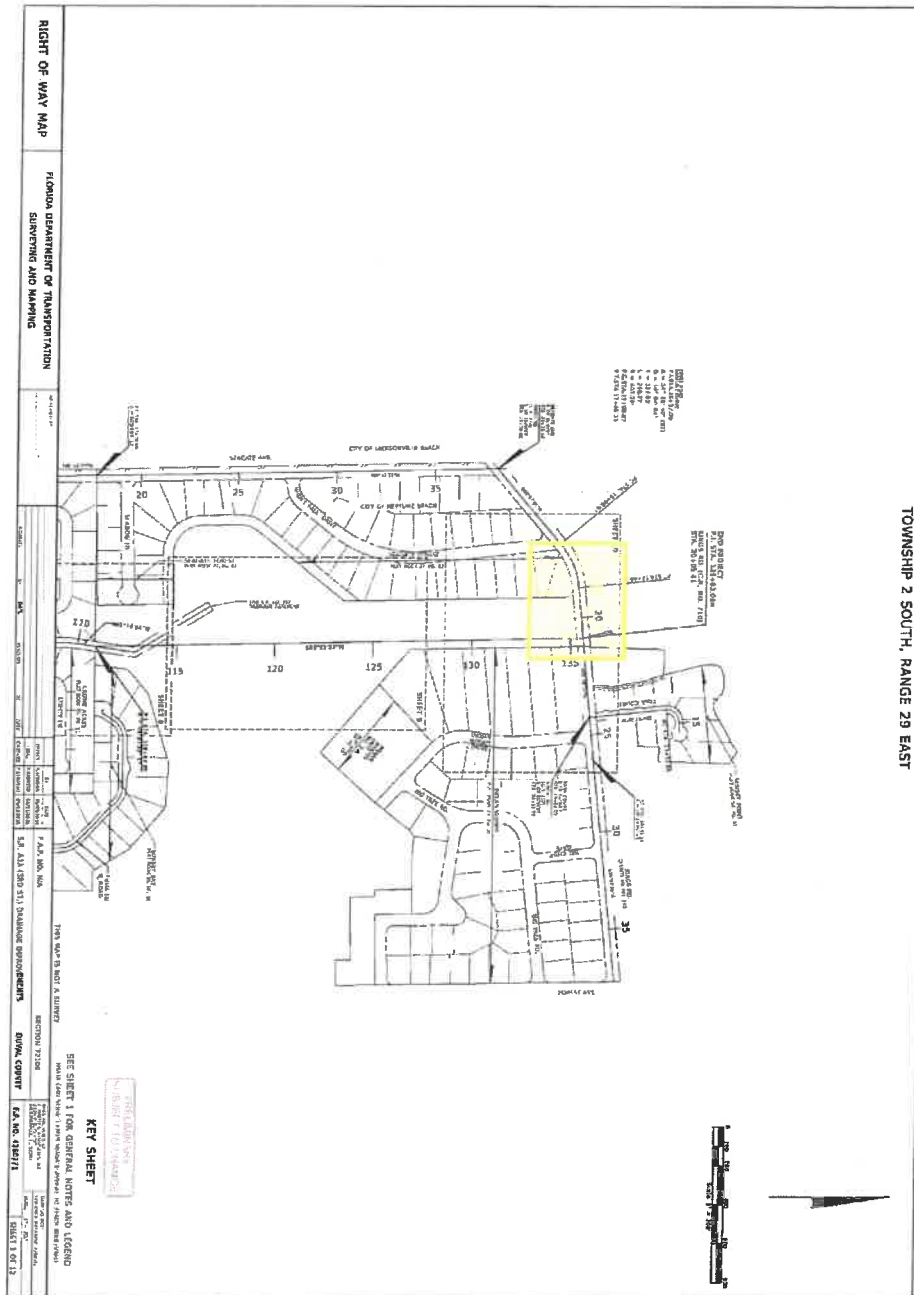


## EXHIBIT "A" CONT.

Financial Project Id. No. 436077-1-52-01  
 Federal Id. No. 4913-013-P  
 Project Description A1A Beaches Drainage Improvements  
 On System Department Construct Agency Maintain

### EXHIBIT "A" Cont. Composite A-2

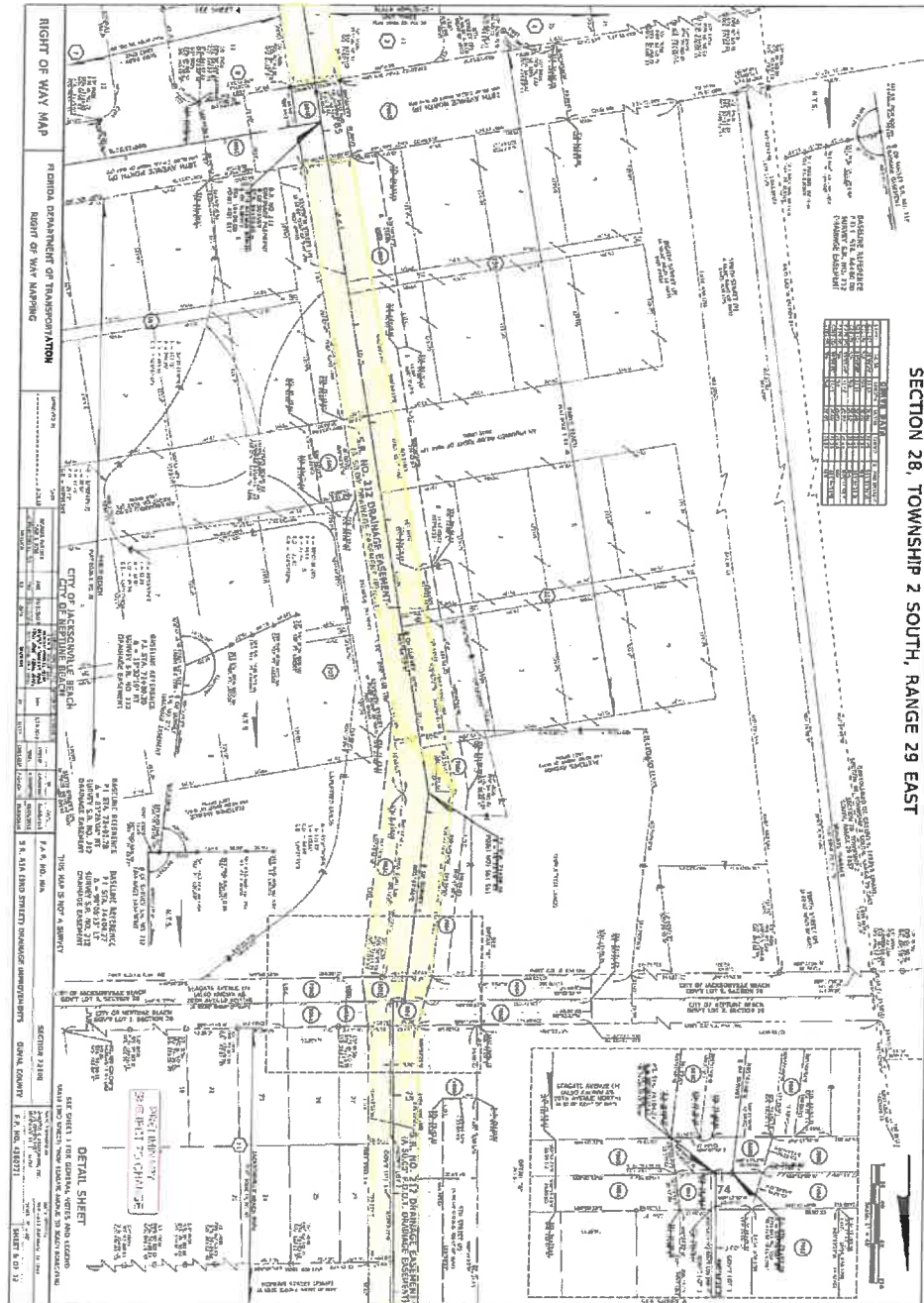
Highlighted areas are within the City of Neptune Beach's jurisdiction.



# EXHIBIT "A" CONT.

Financial Project Id. No. 436077-1-52-01  
 Federal Id. No. 4913-013-P  
 Project Description A1A Beaches Drainage Improvements  
 On System Department Construct Agency Maintain

## EXHIBIT "A" Cont. Composite A-3





Financial Project Id. No. 436077-1-52-01  
Federal Id. No. 4913-013-P  
Project Description A1A Beaches Drainage Improvements  
On System Department Construct Agency Maintain

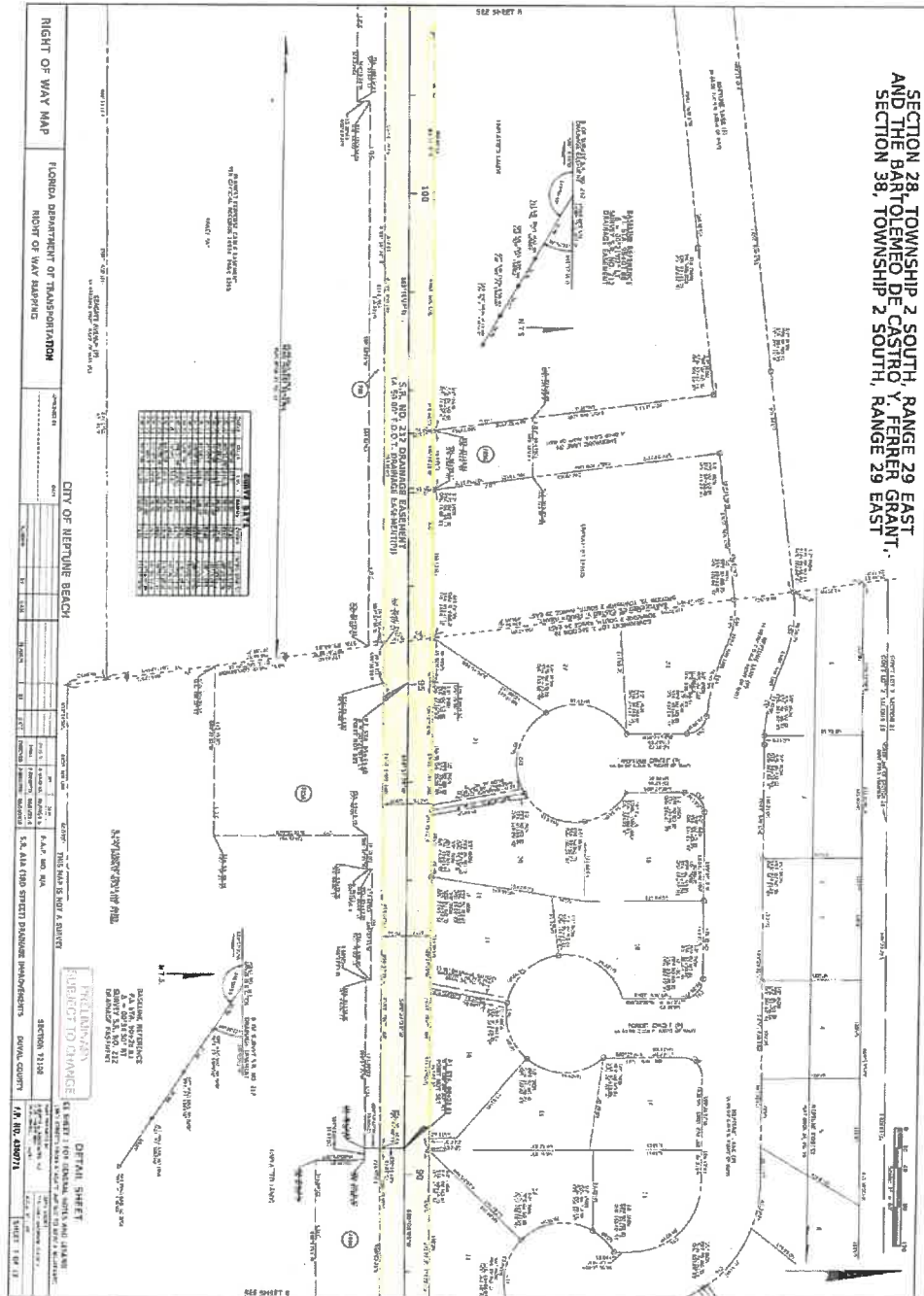
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# EXHIBIT "A" CONT.

Financial Project Id. No. 436077-1-52-01  
 Federal Id. No. 4913-013-P  
 Project Description A1A Beaches Drainage Improvements  
 On System Department Construct Agency Maintain

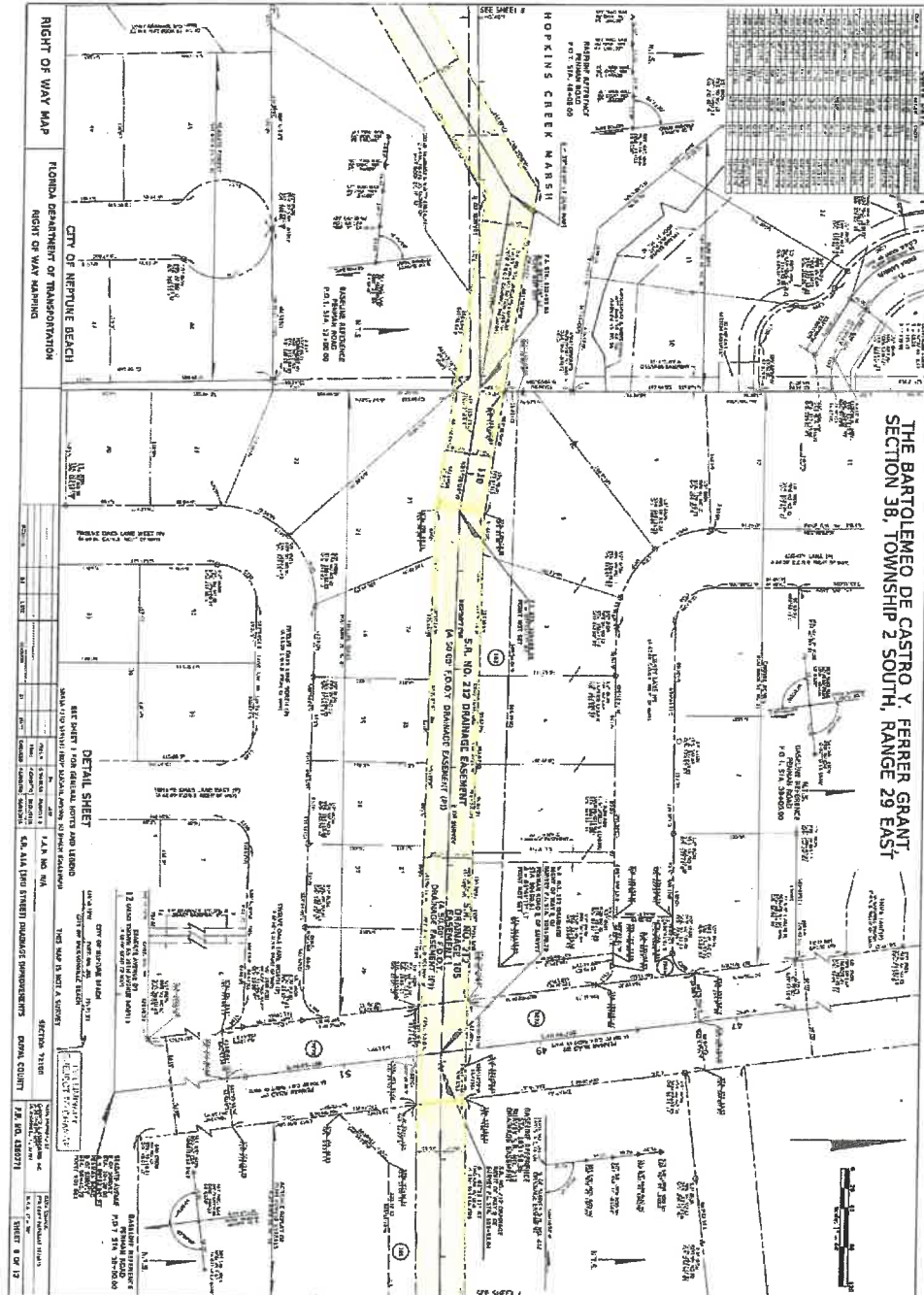
## EXHIBIT "A" Cont. Composite A-5



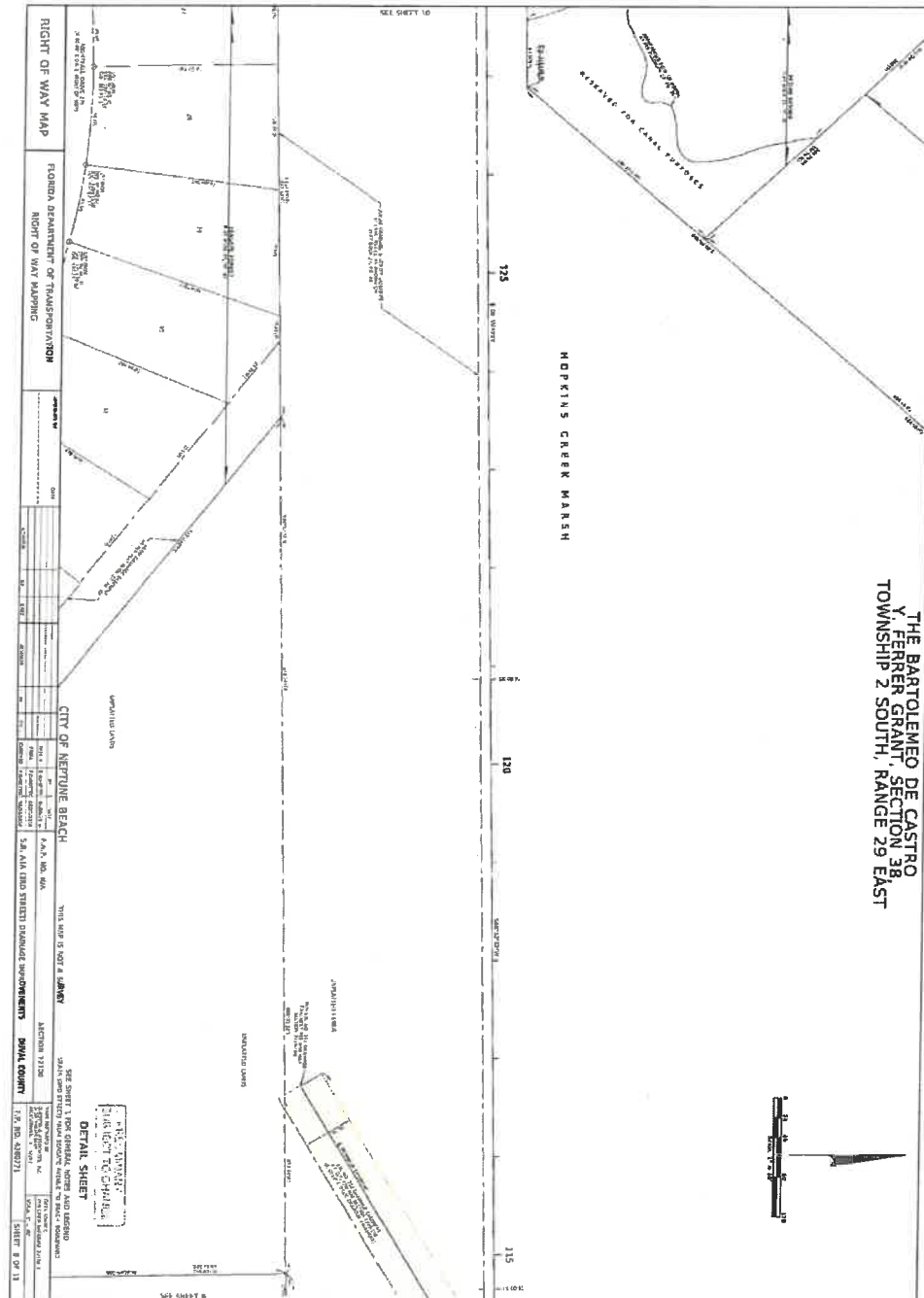
# EXHIBIT "A" CONT.

Financial Project Id. No. 436077-1-52-01  
 Federal Id. No. 4913-013-P  
 Project Description A1A Beaches Drainage Improvements  
 On System Department Construct Agency Maintain

## EXHIBIT "A" Cont. Composite A-6



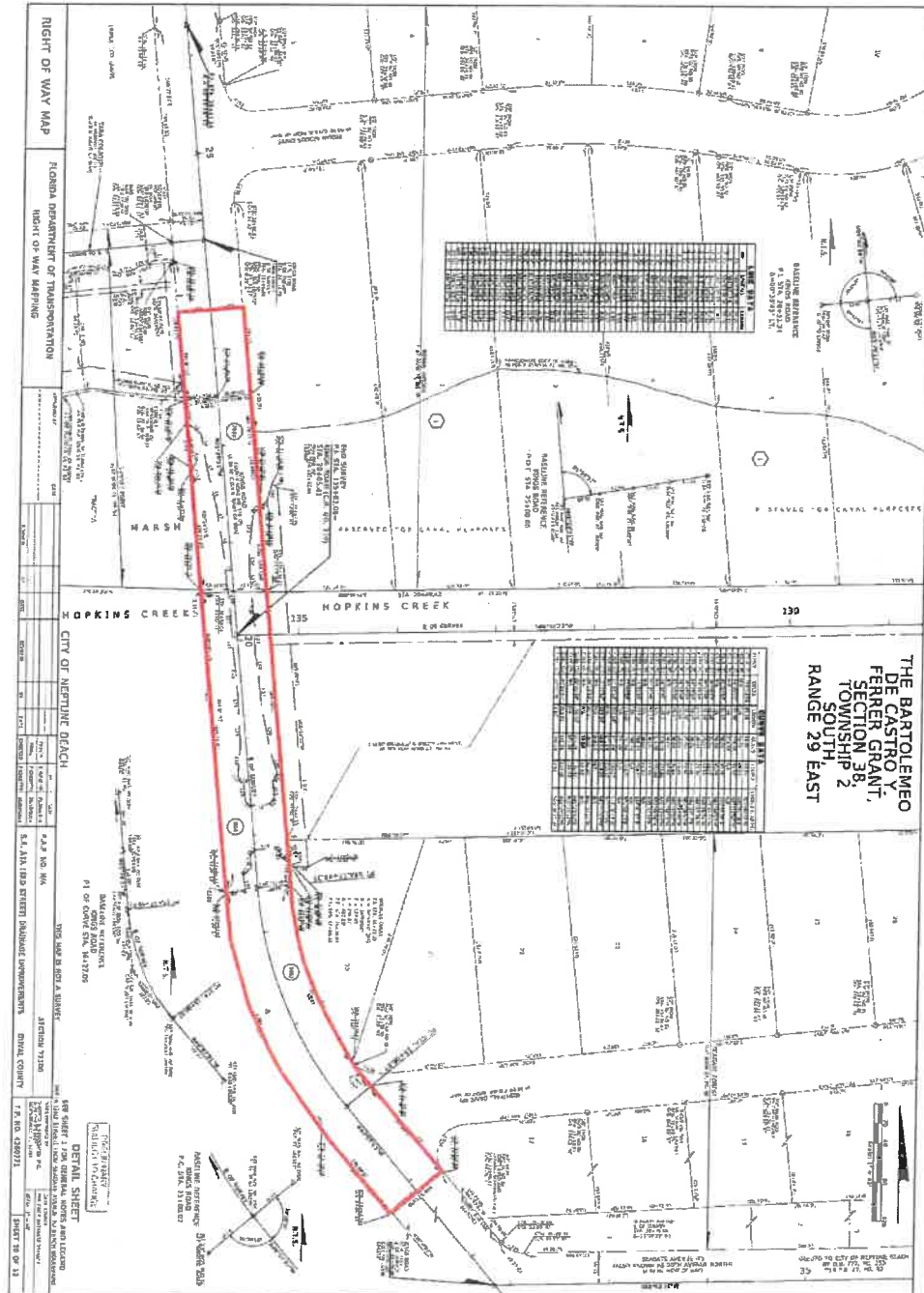
**EXHIBIT "A" Cont.**  
**Composite A-7**



# EXHIBIT "A" CONT.

Financial Project Id. No. 436077-1-52-01  
Federal Id. No. 4913-013-P  
Project Description A1A Beaches Drainage Improvements  
On System Department Construct Agency Maintain

## EXHIBIT "A" Cont. Composite A-8



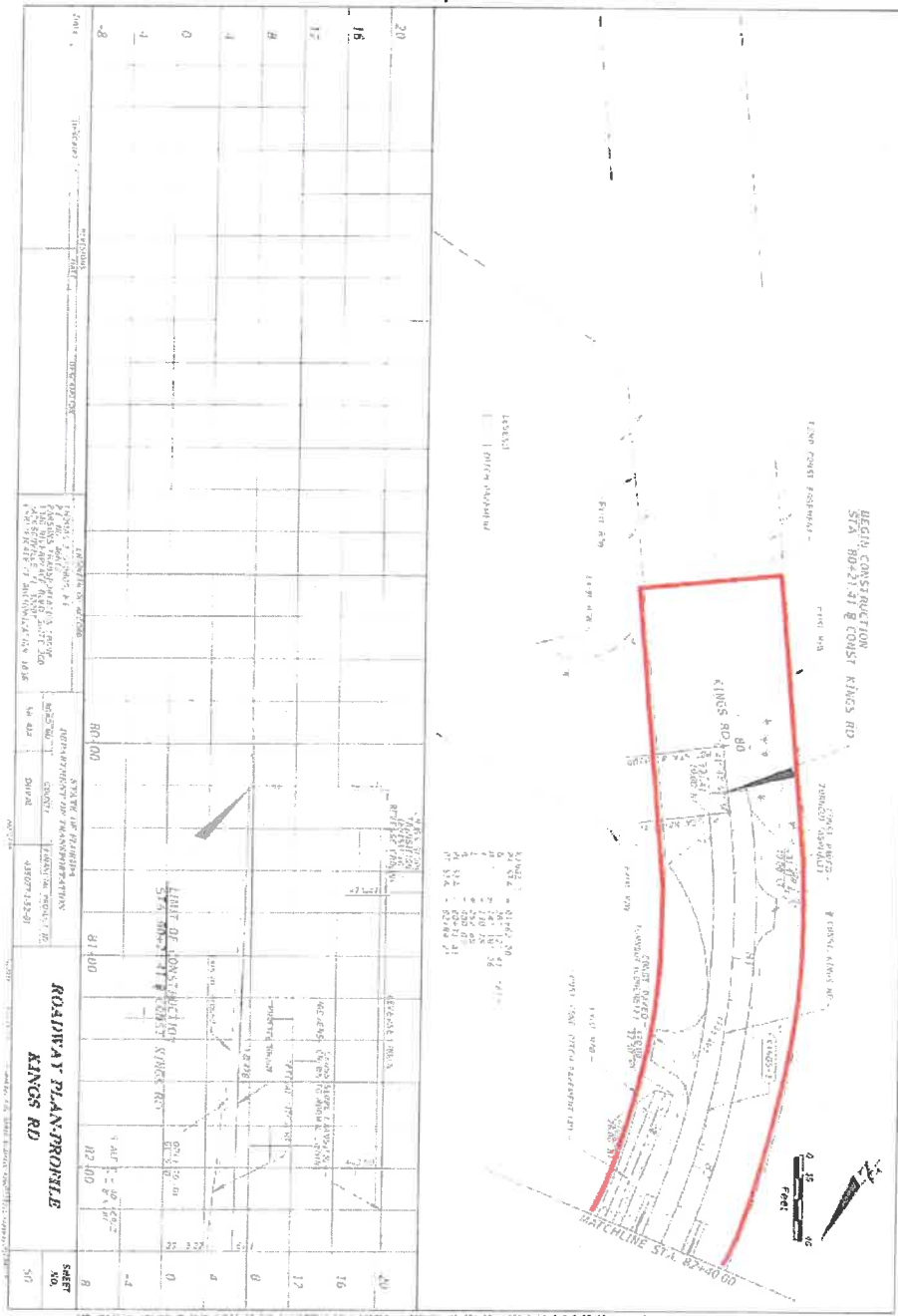
Financial Project Id. No. 436077-1-52-01  
Federal Id. No. 4913-013-P  
Project Description A1A Beaches Drainage Improvements  
On System Department Construct Agency Maintain



# EXHIBIT "A" CONT.

Financial Project Id. No. 436077-1-52-01  
 Federal Id. No. 4913-013-P  
 Project Description A1A Beaches Drainage Improvements  
 On System Department Construct Agency Maintain

## EXHIBIT "B" Cont. Composite B-2



Financial Project Id. No. 436077-1-52-01  
Federal Id. No. 4913-013-P  
Project Description A1A Beaches Drainage Improvements  
On System Department Construct Agency Maintain

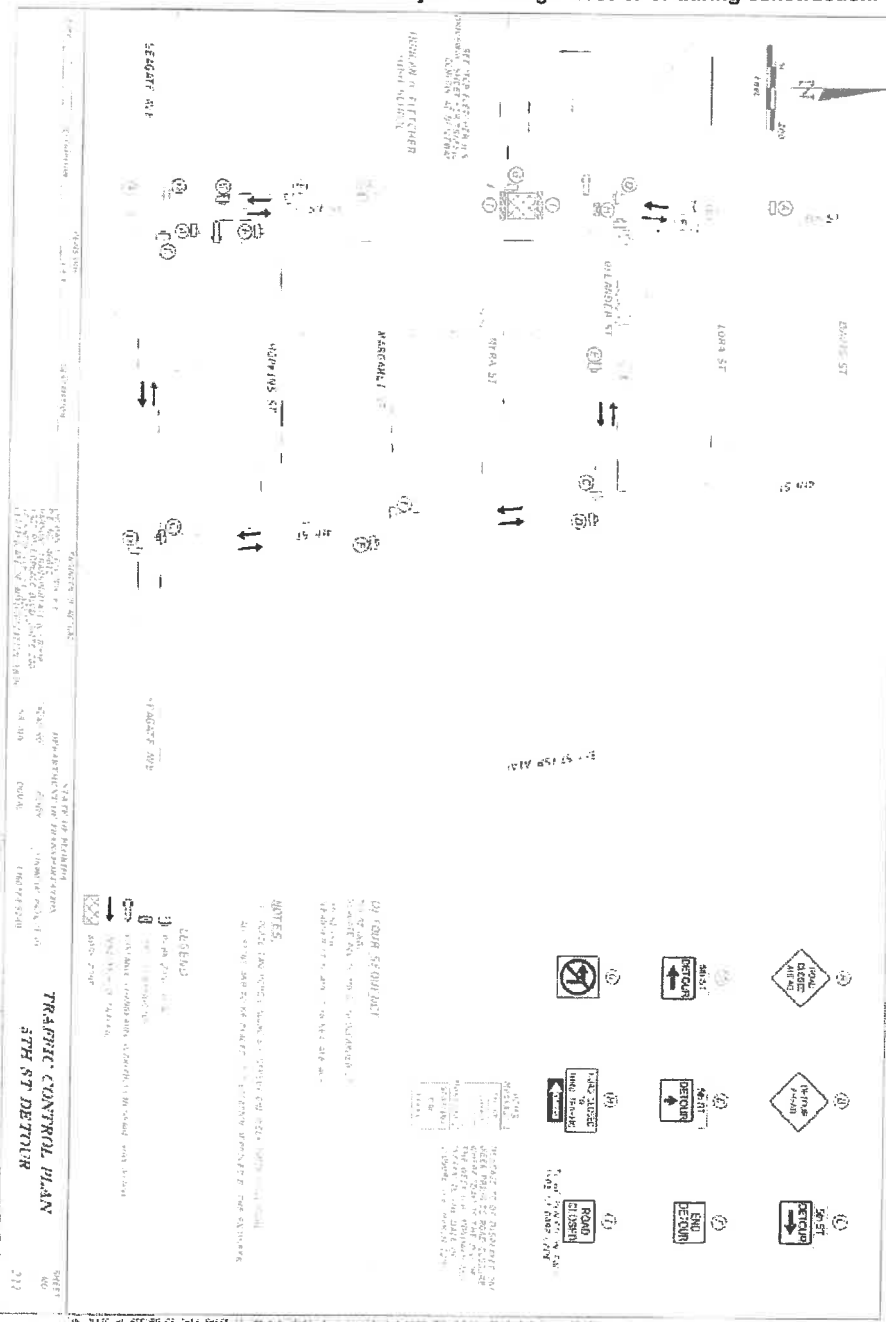
Financial Project Id. No. 436077-1-52-01  
Federal Id. No. 4913-013-P  
Project Description A1A Beaches Drainage Improvements  
On System Department Construct Agency Maintain

**NOTE: Traffic Control Plans could subject to change close to or during construction.**





**NOTE: Traffic Control Plans could subject to change close to or during construction.**



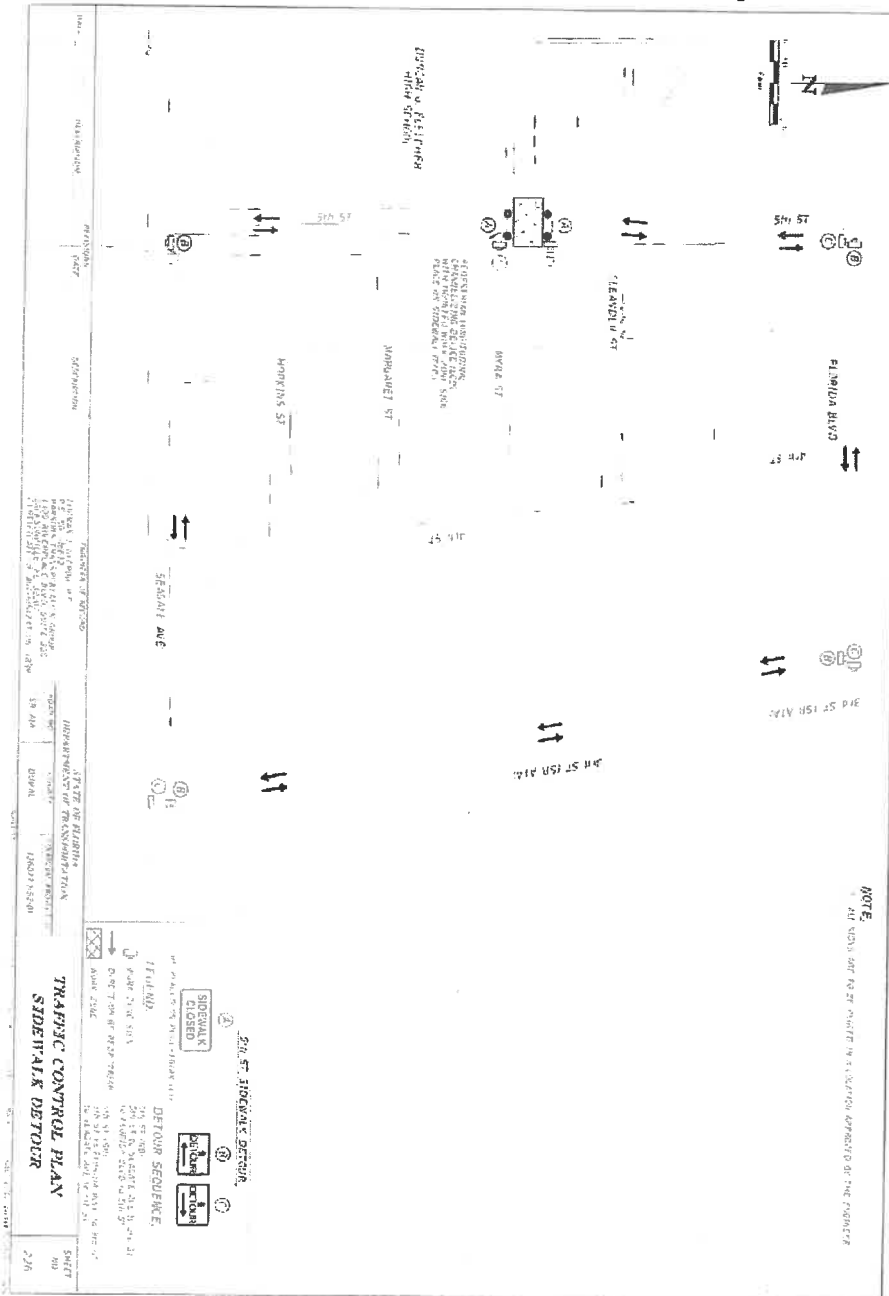
# EXHIBIT "A" CONT.

Financial Project Id. No. 436077-1-52-01  
 Federal Id. No. 4913-013-P  
 Project Description A1A Beaches Drainage Improvements  
 On System Department Construct Agency Maintain

## EXHIBIT "C" CONT'D

### Composite C-3

NOTE: Traffic Control Plans could subject to change close to or during construction.



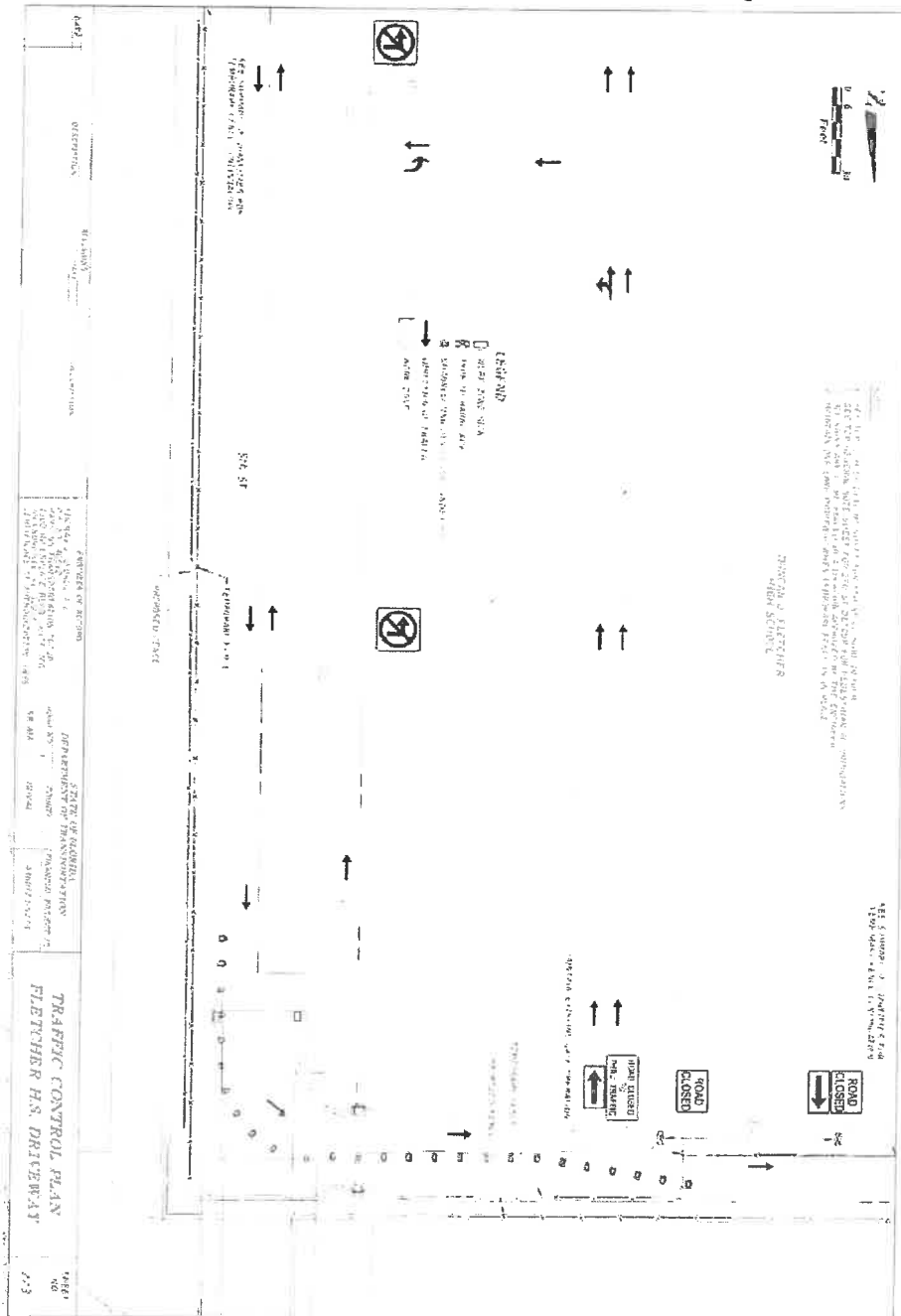
# EXHIBIT "A" CONT.

Financial Project Id. No. 436077-1-52-01  
 Federal Id. No. 4913-013-P  
 Project Description A1A Beaches Drainage Improvements  
 On System Department Construct Agency Maintain

## EXHIBIT "C" CONT'D

### Composite C-4

NOTE: Traffic Control Plans could be subject to change close to or during construction.

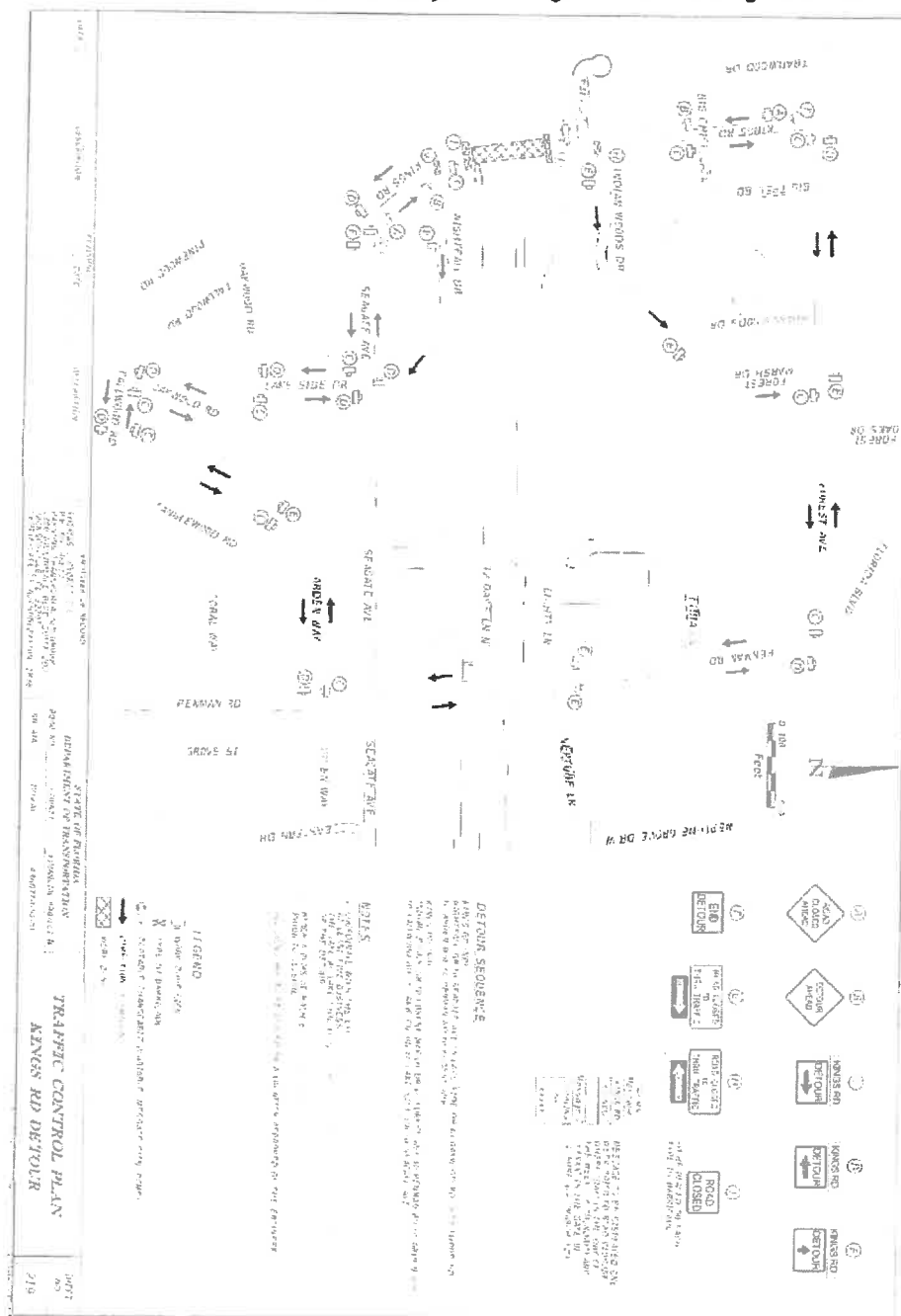


# EXHIBIT "A" CONT.

Financial Project Id. No. 436077-1-52-01  
 Federal Id. No. 4913-013-P  
 Project Description A1A Beaches Drainage Improvements  
 On System Department Construct Agency Maintain

## EXHIBIT "C" CONT'D Composite C-5

NOTE: Traffic Control Plans could subject to change close to or during construction.



## **EXHIBIT "A" CONT.**

Financial Project Id. No. 436077-1-52-01  
Federal Id. No. 4913-013-P  
Project Description A1A Beaches Drainage Improvements  
On System Department Construct Agency Maintain

## **EXHIBIT "D" RESOLUTION**

EXHIBIT "A" CONT.



RESOLUTION NO. 2017-08

**A RESOLUTION ALLOWING THE CITY MANAGER TO EXECUTE AND DELIVER THE CONSTRUCTION AND MAINTENANCE AGREEMENT FOR A1A BEACHES DRAINAGE IMPROVEMENTS PROJECT, FINANCIAL PROJECT ID# 436077-1-52-01, TO THE FLORIDA DEPARTMENT OF TRANSPORTATION**

WHEREAS, the State of Florida Department of Transportation, hereinafter referred to as the "FDOT" finds it is necessary for the City of Neptune Beach, hereinafter referred to as the Maintaining Agency, to provide the maintenance of A1A Beaches Drainage Improvements, Financial Project ID# 436077-1-52-01, and to execute and deliver to the FDOT the agreement identified as the Construction and Maintenance Agreement, hereinafter referred to as the Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAINTAINING AGENCY:**

That, Andrew E. Hyatt, City Manager, be hereby authorized and directed to execute and deliver the Agreement to the FDOT.

A certified copy of this Resolution shall be forwarded to the FDOT along with the executed Agreement.

ON MOTION of Councilor Diamond, seconded by Councilor Jones, the above RESOLUTION was introduced and adopted by the CITY OF NEPTUNE BEACH on the 2<sup>nd</sup> day of October, 2017.

  
Elaine Brown, Mayor

ATTEST:

  
Catherine Ponson, City Clerk



I certify this to be a true and correct copy of the official record on file in the office of the City Clerk.

WITNESSETH my hand and official seal of the City of Neptune Beach, Florida,

this the 2<sup>nd</sup> day of October, 2017

 City Clerk

Resolution 2017-08



RESOLUTION NO. 2018-11

**A RESOLUTION ALLOWING THE CITY MANAGER TO EXECUTE AND  
DELIVER THE CONSTRUCTION AND MAINTENANCE AGREEMENT  
AMENDMENT FOR A1A BEACHES DRAINAGE IMPROVEMENTS  
PROJECT(KINGS ROAD BRIDGE), FINANCIAL PROJECT ID# 436077-1-52-  
01, TO THE FLORIDA DEPARTMENT OF TRANSPORTATION**


**WHEREAS**, the **State of Florida Department of Transportation**, hereinafter referred to as the "FDOT" finds it is necessary for the City of Neptune Beach, hereinafter referred to as the Maintaining Agency, to provide the maintenance of A1A Beaches Drainage Improvements, Financial Project ID# 436077-1-52-01, and to execute and deliver to the FDOT the agreement identified as the Construction and Maintenance Agreement Amendment, hereinafter referred to as the Agreement Amendment.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAINTAINING AGENCY:**

That, Andrew E. Hyatt, City Manager, be hereby authorized and directed to execute and deliver the Agreement Amendment to the FDOT.

A certified copy of this Resolution shall be forwarded to the FDOT along with the executed Agreement Amendment.

The above Resolution was introduced and adopted by the **CITY OF NEPTUNE BEACH** on the 17<sup>th</sup> day of September, 2018.

  
Elaine Brown, Mayor

ATTEST:

  
Catherine Ponson, City Clerk

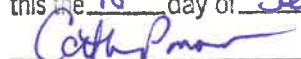


**CERTIFICATION**

I certify this to be a true and correct copy of the official record on file in the office of the City Clerk.

WITNESSETH my hand and official seal of the City of Neptune Beach, Florida.

Resolution 2018-11

this the 18<sup>th</sup> day of September, 20 18  
 City Clerk



RESOLUTION NO. 2018-11

A RESOLUTION ALLOWING THE CITY MANAGER TO EXECUTE AND  
DELIVER THE CONSTRUCTION AND MAINTENANCE AGREEMENT  
AMENDMENT FOR A1A BEACHES DRAINAGE IMPROVEMENTS  
PROJECT(KINGS ROAD BRIDGE), FINANCIAL PROJECT ID# 436077-1-52-  
01, TO THE FLORIDA DEPARTMENT OF TRANSPORTATION

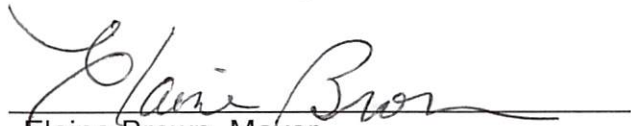
**WHEREAS**, the **State of Florida Department of Transportation**, hereinafter referred to as the "FDOT" finds it is necessary for the City of Neptune Beach, hereinafter referred to as the Maintaining Agency, to provide the maintenance of A1A Beaches Drainage Improvements, Financial Project ID# 436077-1-52-01, and to execute and deliver to the FDOT the agreement identified as the Construction and Maintenance Agreement Amendment, hereinafter referred to as the Agreement Amendment.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAINTAINING AGENCY:**


That, Andrew E. Hyatt, City Manager, be hereby authorized and directed to execute and deliver the Agreement Amendment to the FDOT.

A certified copy of this Resolution shall be forwarded to the FDOT along with the executed Agreement Amendment.

The above Resolution was introduced and adopted by the **CITY OF NEPTUNE BEACH** on the 17<sup>th</sup> day of September, 2018.

  
Elaine Brown, Mayor

ATTEST:

  
Catherine Ponson, City Clerk

