

Financial Project Id. No. 430916-2-52-01  
 Federal Id. No. (if applicable)  
 Project Description: Lime Street from SR A1A / SR 200 to South 14<sup>th</sup> Street  
 and Jasmine Street from 11<sup>th</sup> Street to East of South 15<sup>th</sup> Street  
 Southside Elementary School Safe Routes to School  
 Off 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 Nassau County Board of County Commissioners ("Agency").

**WHEREAS**, the term "Property" shall refer to certain real property located in Nassau County, Florida, owned by the Agency and described as Lime Street from SR A1A / SR 200 to South 14<sup>th</sup> Street and Jasmine Street from 14<sup>th</sup> Street to East of South 15<sup>th</sup> Street known as the Southside Elementary School Safe Routes to School project, further described in Exhibit "B" (Description of Work); and

**WHEREAS**, the term "Improvement" means and shall refer to sidewalks, signing and pavement markings, including two flashing beacons; and

**WHEREAS**, the Department shall construct the Improvement on the Property; and

**WHEREAS**, the Department's ability to fund construction of the Improvement is wholly contingent on appropriation of funds to the Department; and

**WHEREAS**, a date for the commencement of construction of the Improvement has not been established; and

**WHEREAS**, the Agency shall own, operate, maintain and repair the Improvement 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; and

**WHEREAS**, by Resolution 2012-125 dated 10-8-12, the Agency authorized its representative to execute and enter this Agreement on behalf of the Agency, see Exhibit "A" (Resolution).

**NOW THEREFORE**, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the foregoing recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound hereby, acknowledge and agree as follows:

#### **1. RECITALS AND EXHIBITS**

The recitals set forth above and Exhibits attached hereto are specifically incorporated herein 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 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. 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

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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. PROJECT MANAGEMENT**

The Department shall manage the Improvement and perform such activities as the Department deems necessary and appropriate to complete 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 Improvement at its convenience after the appropriation of sufficient funds.

## **8. OPERATION, MAINTENANCE & REPAIR**

A. The Agency shall operate, maintain, and repair the Improvement 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 Improvement. Should the Agency fail to operate, maintain, and repair the Improvement 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 Improvement. 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 Property and the Improvement should the events described in Paragraph B occur.

## **9. WARRANTIES**

After completion of construction of the Improvement and upon the Agency's written request, the Department shall transfer all transferable warranties concerning construction of the Improvement to the Agency. The assignment shall be evidenced by a separate written agreement signed by the parties and shall be subject to applicable Governmental Law and the construction agreement entered between the Department and its contractor.

## **10. 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

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owned, leased or otherwise controlled by the Agency, as a result of the Department's exercise of any right provided in this Agreement.

### **11. PAYMENT**

All Department invoices submitted 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 (past due principal and accrued interest shall be collectively referred to as "Past Due Sums").

### **12. INDEMNIFICATION**

A. Subject to and in accordance with Florida law and Section 13 of this Agreement ("Sovereign Immunity & Limitation of Liability"), 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.

### **13. 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.

### **14. NOTICE**

All notices, communications and determinations between the parties hereto and those required by the Agreement, including, without limitation, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States Mail, postage prepaid, to the parties at the following addresses:

Department: Florida Department of Transportation  
Attention: Mr. Bob Kosoy, P.E. ("LME")  
Florida Department of Transportation - Jacksonville Maintenance  
838 Ellis Road  
Jacksonville, Florida 32205

Agency: Mr. Scott Herring, Director  
Nassau County Public Works Office  
96161 Nassau Place  
Yulee, Florida 32097

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**15. GOVERNING LAW**

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

**16. 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.

**17. 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.

**18. 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.

**19. 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.

**20. 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.

**21. 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.

**22. 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.

**23. 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.

**24. 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.

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**25. 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.

**26. 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.

**27. 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.

**28. 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.

**29. 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.

**30. 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.

**31. 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."

***SIGNATURES ON FOLLOWING PAGE***

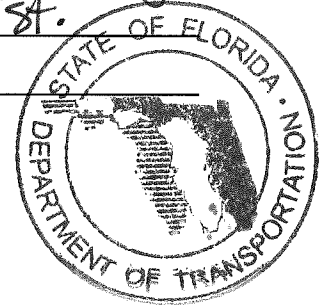
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**IN WITNESS WHEREOF**, intending to be legally bound hereby, the parties execute this Agreement, consisting of eight (8) pages.

**Florida Department of Transportation**

By: *Greg Evans*  
Printed Name: GREG EVANS  
Title: O.S.T. SEC  
Date: 10/18/12

Attest:  
By: *Rhonda Harrington*  
Printed Name: Rhonda Harrington  
Title: Admin. Assist.  
Date: 10/18/2012



**Legal Review:**

By: *Melissa K. Blackwell* 10-16-12  
Office of the General Counsel  
Florida Department of Transportation

**Nassau County BOCC  
a Florida Governmental Authority**

By: *Daniel B. Leeper*  
Printed Name: Daniel B. Leeper  
Title: Chairman  
Date: 10-8-12

Attest:  
By: *John A. Crawford*  
Printed Name: John A. Crawford  
Title: Ex-Officio Clerk  
Date: 10-10-12

MES 10-10-12

**Legal Review:**

By: *[Signature]*  
Legal Counsel for Agency

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**Exhibit "A"**  
**(RESOLUTION)**

EXHIBIT "A"

RESOLUTION NO. 2012- 125

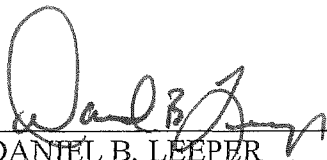
A RESOLUTION AUTHORIZING THE EXECUTION OF THE AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA

WHEREAS, the Board of County Commissioners of Nassau County, Florida, has determined that it is in the County's interest to execute a Construction Maintenance Agreement between the State of Florida Department of Transportation and Nassau County, Florida regarding the Maintenance of the Sidewalk(s) on Lime Street from SR 200 to South 14<sup>th</sup> Street and Jasmine Street from 14<sup>th</sup> Street to East of South 15<sup>th</sup> Street.

NOW, THEREFORE, BE IT RESOLVED, this 8th day of October, 2012, by the Board of County Commissioners of Nassau County, Florida as follows:

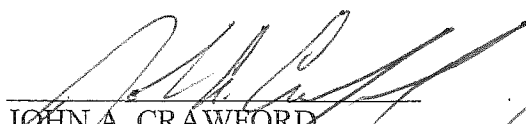
1. The Construction and Maintenance Agreement between the State of Florida Department of Transportation and Nassau County is hereby approved and the Chairman is authorized to execute said agreement.

BOARD OF COUNTY COMMISSIONERS  
NASSAU COUNTY, FLORIDA

  
 \_\_\_\_\_  
 DANIEL B. LEEPER  
 Its: Chairman

Attest as to Chairman's  
Signature:

Approved as to form by the  
Nassau County Attorney:

  
 \_\_\_\_\_  
 JOHN A. CRAWFORD  
 Its: Ex-Officio Clerk

  
 \_\_\_\_\_  
 DAVID A. HALLMAN

MES  
10-10-12

COPIES OF THIS COPY  
 John A. Crawford, Ex-Officio Clerk  
 by: Brenda K. Rixey, DC  
 Board of County Comm.  
 Florida



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**Exhibit "B"**  
**(DESCRIPTION OF WORK)**

The following are the various sidewalks, signing & pavement markings and two flashing beacons on Lime Street from SR A1A / SR 200 to South 14<sup>th</sup> Street and Jasmine Street from 14<sup>th</sup> Street to East of South 15<sup>th</sup> Street known as the Southside Elementary Safe Routes to School project for Financial Project #430916-2-52-01:

