

**RESOLUTION 20-04-23**

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING EXECUTION OF A SUBLEASE AGREEMENT WITH THE DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR UPLAND PORTION OF THE PROPERTY OWNED BY THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA, IDENTIFIED BY REAL ESTATE PARCEL ID NO. 00097221; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE SUBLEASE; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Islamorada, Village of Islands (the “Village”) is committed to the protection of coastal resources and the marine environment, providing safe water access and recreational opportunities for residents and visitors, and maintaining a positive image of the Village and the Florida Keys; and

**WHEREAS**, the area known as “the Fills” encompasses the roadway and adjacent land along US 1 connecting Upper Matecumbe and Lower Matecumbe Keys, from approximately Mile Marker 77.5 to 79.8, including Tea Table Key Fill, Indian Key Fill, Lignumvitae Key Fills as well as the connecting bridges; and

**WHEREAS**, the Fills has been, and continues to be, a local asset enjoyed by generations of citizens and visitors; and

**WHEREAS**, as the number of people visiting the Fills has risen, so has the amount of trash, human waste, shoreline erosion and human-made trails through the mangroves; and

**WHEREAS**, the property is approximately 7.38 acres of mostly submerged land that includes the area known as the Indian Key Boat Ramp, identified by Parcel ID Number 0097221 (the “Parcel”) is owned by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and leased to the Florida Department of Environmental Protection (the “FDEP”) Division of Recreation and Parks; and

**WHEREAS**, the Florida Department of Transportation (the “FDOT”) is the owner of the property comprising the remainder of the Fills not including the Lease Area; and

**WHEREAS**, by entering into short term agreements with the FDEP Division of Recreation and Parks and the FDOT in June 2019, the Village was allowed to manage the Fills area on a temporary basis; and

**WHEREAS**, the Village’s management activities included creating parking spaces, limiting areas of access by vehicles, installing additional trash drums, increasing the frequency of trash collection, placing and maintaining portable toilets, and assigning staff members to monitor and direct visitors; and

**WHEREAS**, the management activities were considered successful in the improvement of safety and enjoyment of the area while reducing the environmental damage caused by overuse; and

**WHEREAS**, the Village desires to develop a long-term plan to continue to the management activities, including an appropriate level of parking and recreational space; and

**WHEREAS**, the Village Council passed and adopted Resolution No. 19-10-96 approving submittal of a Board of Trustees of the Internal Improvement Trust Fund of the State of Florida Application for Use of State Owned Uplands to the Florida Department of Environmental Protection, Division of Recreation and Parks (the “FDEP”); and

**WHEREAS**, the Village received the approved Sublease Agreement for the upland portion of the Parcel from FDEP on March 10, 2020 which requires execution; and

**WHEREAS**, the Village Council of Islamorada, Village of Islands finds that a sublease of the upland portion of the Parcel and subsequent management of the area is in the best interest of the Village.

**NOW THEREFORE BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

**Section 2. Authorizing Execution.** The Village Council of Islamorada, Village of Islands hereby authorizes the Mayor to execute the Sublease Agreement attached hereto as Exhibit "1" for the upland portion of the property identified by Parcel ID Number 0097221, owned by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and leased to the Florida Department of Environmental Protection, Division of Recreation and Parks, subject to such non-material revisions as may be approved by the Village Attorney and Village Manager.

**Section 3. Authorizing Village Officials.** The Village Manager and/or his designee and the Village Attorney are authorized to take all necessary action required to implement the terms and conditions of the Sublease Agreement, execute any extension and/or amendment to the Agreement, subject to approval as to form and legality by the Village Attorney and submit all necessary documents to the Florida Department of Environmental Protection and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida.

**Section 4. Effective Date.** This resolution shall become effective immediately upon its adoption.

Motion to adopt by Councilman Chris Sante, second by Councilman Jim Mooney.

**FINAL VOTE AT ADOPTION**  
**VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS**

Mayor Mike Forster	YES
Vice Mayor Ken Davis	YES
Councilwoman Deb Gillis	YES
Councilman Jim Mooney	YES
Councilman Chris Sante	YES

**PASSED AND ADOPTED ON THIS 16<sup>TH</sup> DAY OF APRIL, 2020.**



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MIKE FORSTER, MAYOR

ATTEST:

Kelly J. Toth  
KELLY TOTH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND BENEFIT OF ISLAMORADA,  
VILLAGE OF ISLANDS ONLY

  
ROGET V. BRYAN, VILLAGE ATTORNEY

This Sublease was prepared by:  
Jay Sircy  
Bureau of Public Land Administration  
Division of State Lands  
Department of Environmental Protection, MS 130  
3900 Commonwealth Boulevard,  
Tallahassee, Florida 32399-3000  
AID# 41075

OAS2  
[3.00 acres +/-]

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF RECREATION AND PARKS

**SUBLEASE AGREEMENT**

Sublease Number 2534-001

THIS SUBLEASE AGREEMENT, is made and entered into this 16<sup>th</sup> day of June 2020, between the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF RECREATION AND PARKS, hereinafter referred to as "SUBLESSOR" and ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, a Florida municipal corporation, hereinafter referred to "SUBLESEE.".

**WITNESSETH**

In consideration of the covenants and conditions set forth herein, SUBLESSOR subleases the below-described premises to SUBLESEE on the following terms and conditions:

1. **ACKNOWLEDGMENTS:** The parties acknowledge that title to the subleased premises is held by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida ("TRUSTEES") and is currently managed by SUBLESSOR under TRUSTEES' Lease Number 2534.
2. **DESCRIPTION OF PREMISES:** The property subject to this sublease contains 3 acres, is situated in the County of Monroe, State of Florida, and is more particularly described in Exhibit "A" attached hereto and hereinafter referred to as the "subleased premises".
3. **SUBLEASE TERM:** The term of this sublease shall be for a period of five years with two-five year options for renewal commencing on June 15<sup>th</sup>, 2025, unless sooner terminated pursuant to the provisions of this sublease.
4. **PURPOSE:** SUBLESEE shall manage the subleased premises only for the conservation and protection of natural and historical resources and for resource based public outdoor recreation which is compatible with the conservation and protection of these public lands, as set forth in subsection 259.032, Florida Statutes, along with other related uses necessary for the accomplishment of this purpose as designated in the Management Plan required by paragraph 7 of this sublease.

5. **CONFORMITY:** This sublease shall conform to all terms and conditions of TRUSTEES' Lease No. 2534, as amended from time to time, a copy of which is attached hereto as Exhibit "B", and SUBLESSEE shall, through its agents and employees, prevent the unauthorized use of the property or any use thereof not in conformance with this sublease.

6. **QUIET ENJOYMENT AND RIGHT OF USE:** SUBLESSEE shall have the right of ingress and egress to, from and upon the subleased premises for all purposes necessary for the full quiet enjoyment by said SUBLESSEE of the rights conveyed herein.

7. **MANAGEMENT PLAN:** SUBLESSEE shall prepare and submit a Management Plan for the subleased premises in accordance with subsection 253.034, Florida Statutes, within twelve months of the effective date of this sublease. The Management Plan shall be submitted to SUBLessor for approval through the Division of State Lands. The subleased premises shall not be developed or physically altered in any way other than what is necessary for security and maintenance of the subleased premises without the prior written approval of TRUSTEES and SUBLessor until the Management Plan is approved. SUBLESSEE shall provide SUBLessor with an opportunity to participate in all phases of preparing and developing the Management Plan for the subleased premises. The Management Plan shall be submitted to SUBLessor in draft form for review and comments within ten months of the effective date of this sublease. SUBLESSEE shall give SUBLessor reasonable notice of the application for and receipt of any state, federal, or local permits as well as any public hearings or meetings relating to the development or use of the subleased premises. SUBLESSEE shall not proceed with development of said subleased premises including, but not limited to, funding, permit application, design or building contracts, until the Management Plan required herein has been submitted and approved. Any financial commitments made by SUBLESSEE which are not in compliance with the terms of this sublease shall be done at SUBLESSEE'S own risk. The Management Plan shall emphasize the original management concept as approved by TRUSTEES at the time of acquisition which established the primary public purpose for which the subleased premises were acquired. The approved Management Plan shall provide the basic guidance for all management activities and shall be reviewed jointly by SUBLESSEE, SUBLessor and TRUSTEES at least every ten years. SUBLESSEE shall not use or alter the subleased premises except as provided for in the approved Management Plan without the advance written approval of TRUSTEES and SUBLessor. The Management Plan prepared under this sublease shall identify management strategies for exotic species, if present. The introduction of exotic species is prohibited, except when specifically authorized by the approved Management Plan.

8. **ASSIGNMENT:** This sublease shall not be assigned in whole or in part without the prior written consent of TRUSTEES and SUBLessor. Any assignment made either in whole or in part without the prior written consent of TRUSTEES

and SUBLICENSOR shall be void and without legal effect.

9. **RIGHT OF INSPECTION:** TRUSTEES and SUBLICENSOR or their duly authorized agents, representatives or employees shall have the right at any and all times to inspect the subleased premises and the works and operations of SUBLICSEE in any matter pertaining to this sublease.

10. **PLACEMENT AND REMOVAL OF IMPROVEMENTS:** All buildings, structures, and improvements shall be constructed at the expense of SUBLICSEE in accordance with plans prepared by professional designers and shall require the prior written approval of SUBLICENSOR as to purpose, location, and design. Further, no trees other than non-native species shall be removed or major land alterations done by SUBLICSEE without the prior written approval of SUBLICENSOR. Removable equipment and removable improvements placed on the subleased premises by SUBLICSEE which do not become a permanent part of the subleased premises will remain the property of SUBLICSEE and may be removed by SUBLICSEE upon termination of this sublease.

11. **INSURANCE REQUIREMENTS:** During the term of this lease, SUBLICSEE shall procure and maintain policies of fire, extended risk, and liability insurance coverage. The extended risk and fire insurance coverage shall be in an amount equal to the full insurable replacement value of any improvements or fixtures located on the subleased premises. The liability insurance coverage shall be in amounts not less than \$200,000 per person and \$300,000 per incident or occurrence for personal injury, death, and property damage on the subleased premises. During the term of this lease, if Section 768.28, Florida Statutes, or its successor statute is subsequently amended to increase the amount of the liability coverages specified herein, SUBLICSEE shall immediately obtain liability coverage for the increased amounts. Such policies of insurance shall name SUBLICENSOR and the State of Florida as additional insureds. SUBLICSEE shall submit written evidence of having procured all insurance policies required herein prior to the effective date of this sublease and shall submit annually thereafter, written evidence of maintaining such insurance policies to the Bureau of Public Land Administration, Division of State Lands, State of Florida Department of Environmental Protection, Mail Station 130, 3800 Commonwealth Boulevard, Tallahassee, Florida 32399-3000. SUBLICSEE shall purchase all policies of insurance from a financially-responsible insurer duly authorized to do business in the State of Florida. In lieu of purchasing insurance, SUBLICSEE may elect to self-insure these coverages. Any certificate of self-insurance shall be issued or approved by the Chief Financial Officer, State of Florida. The certificate of self-insurance shall provide for casualty and liability coverage. SUBLICSEE shall immediately notify LESSOR and the insurer of any erection or removal of any building or other improvement on the subleased premises and any changes affecting the value of any improvements and shall request the insurer to make adequate changes in the coverage to reflect the changes in value. SUBLICSEE shall be

financially responsible for any loss due to failure to obtain adequate insurance coverage and the failure to maintain such policies or certificate in the amounts set forth shall constitute a breach of this sublease.

12. **LIABILITY:** SUBLESSEE shall assist in the investigation of injury or damage claims either for or against SUBLLESSOR, TRUSTEES, or the State of Florida pertaining to SUBLESSEE'S respective areas of responsibility under this easement or arising out of SUBLESSEE'S respective management programs or activities and shall contact SUBLLESSOR, and TRUSTEES regarding the legal action deemed appropriate to remedy such damage or claims. SUBLESSEE is responsible for, and, to the extent allowed by law, shall indemnify, protect, defend, save and hold harmless SUBLLESSOR, TRUSTEES, and the State of Florida, its officers, agents and employees from any and all damages, claims, costs, expense, including attorney's fees, demands, lawsuits, causes of action or liability of any kind or nature arising out of all personal injury and property damage attributable to the negligent acts or omissions of SUBLESSEE, and its officers, employees, and agents. Nothing herein shall be construed as a waiver of sovereign immunity enjoyed by any party hereto, as provided in Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations on claims. In the event SUBLESSEE subcontracts any part or all of the work performed in the subleased premises, the SUBLESSEE shall require each and every subcontractor to identify the SUBLLESSOR and TRUSTEES as an additional insured on all insurance policies required by the SUBLESSEE. Any contract awarded by SUBLESSEE for work in the subleased premises shall include a provision whereby the SUBLESSEE'S subcontractor agrees to indemnify, pay on behalf, and hold the SUBLLESSOR and TRUSTEES harmless for all injuries and damages arising in connection with the SUBLESSEE'S subcontract.

13. **PAYMENT OF TAXES AND ASSESSMENTS:** SUBLESSEE shall assume full responsibility for and shall pay all liabilities that accrue to the subleased premises or to the improvements thereon, including any and all drainage and special assessments or taxes of every kind and all mechanic's or materialman's liens which may be hereafter lawfully assessed and levied against the subleased premises.

14. **SIGNS:** SUBLESSEE shall ensure that the subleased premises are identified as being publicly owned and operated as a public outdoor recreation facility in all signs, literature, and advertising and shall erect signs identifying the facility as being open to the public. If federal grants or funds are used by SUBLESSEE for any project on the subleased premises, SUBLESSEE shall erect signs identifying the subleased premises as a federally assisted project.

15. **NO WAIVER OF BREACH:** The failure of SUBLLESSOR to insist in any one or more instances upon strict performance of any one or more of the covenants, terms, and conditions of this sublease shall not be construed as a waiver of such covenants, terms and conditions, but the same shall continue in full force and effect, and no waiver of SUBLLESSOR of any

of the provisions hereof shall in any event be deemed to have been made unless the waiver is set forth in writing, signed by SUBLLESSOR.

16. **TIME**: Time is expressly declared to be of the essence of this sublease.
17. **NON-DISCRIMINATION**: SUBLLESSEE shall not discriminate against any individual because of that individual's race, color, religion, sex, national origin, age, handicap, or marital status with respect to any activity occurring within the subleased premises or upon lands adjacent to and used as an adjunct of the subleased premises.
18. **UTILITY FEES**: SUBLLESSEE shall be responsible for the payment of all charges for the furnishing of gas, electricity, water and other public utilities to the subleased premises and for having all utilities turned off when the subleased premises are surrendered.
19. **RIGHT OF AUDIT**: SUBLLESSEE shall make available to SUBLLESSOR and TRUSTEES all financial and other records relating to this sublease and SUBLLESSOR and TRUSTEES shall have the right to either audit such records at any reasonable time or require the submittal of an independent audit by a Certified Public Accountant. This right shall be continuous until this sublease expires or is terminated. This sublease may be terminated by SUBLLESSOR should SUBLLESSEE fail to allow public access to all documents, papers, letters or other materials made or received in conjunction with this sublease, pursuant to the provisions of Chapter 119, Florida Statutes.
20. **MINERAL RIGHTS**: This sublease does not cover petroleum or petroleum products or minerals and does not give the right to SUBLLESSEE to drill for or develop the same.
21. **CONDITION OF PROPERTY**: SUBLLESSOR assumes no liability or obligation to SUBLLESSEE with reference to the condition of the subleased premises or the suitability of the subleased premises for any improvements. The subleased premises herein are subleased by SUBLLESSOR to SUBLLESSEE in an "as is" condition, with SUBLLESSOR assuming no responsibility for planning, bidding, contracting, permitting, restoration, construction, and the use, care, repair, maintenance or improvement of the subleased premises for the benefit of SUBLLESSEE.
22. **NOTICES**: All notices given under this sublease shall be in writing and shall be served by certified mail including, but not limited to, notice of any violation served pursuant to Section 253.04, Florida Statutes, to the last address of the party to whom notice is to be given, as designated by such party in writing. SUBLLESSOR and SUBLLESSEE hereby designate their address as follows:

SUBLESSOR: State of Florida Department of Environmental Protection  
Division of Recreation and Parks  
Office of Park Planning  
3800 Commonwealth Boulevard, M.S. 525  
Tallahassee, Florida 32399-3000

SUBLESEE: Islamorada, Village of Islands, Florida  
Attn: Seth Lawless  
86800 Overseas Highway  
Islamorada, Florida 33036

With a mandatory copy to:

Board of Trustees of the Internal Improvement Trust Fund  
c/o State of Florida Department of Environmental Protection  
Division of State Lands  
Bureau of Public Land Administration  
3800 Commonwealth Boulevard, M.S. 130  
Tallahassee, Florida 32399-3000

23. **BREACH OF COVENANTS TERMS, OR CONDITIONS:** Should SUBLESEE breach any of the covenants, terms, or conditions of this sublease, SUBLESSOR shall give written notice to SUBLESEE to remedy such breach within sixty days of such notice. In the event SUBLESEE fails to remedy the breach to the satisfaction of SUBLESSOR within sixty days of receipt of written notice, SUBLESSOR may either terminate this sublease and recover from SUBLESEE all damages SUBLESSOR may incur by reason of the breach including, but not limited to, the cost of recovering the subleased premises or maintain this sublease in full force and effect and exercise all rights and remedies conferred upon SUBLESSOR herein.

24. **DAMAGE TO THE PREMISES:** (a) SUBLESEE shall not do, or suffer to be done, in, on, or upon the subleased premises or as affecting said subleased premises or adjacent properties, any act which may result in damage or depreciation of value to the subleased premises or adjacent properties, or any part thereof. (b) SUBLESEE shall not generate, store, produce, place, treat, release, or discharge any contaminants, pollutants or pollution, including, but not limited to, hazardous or toxic substances, chemicals or other agents on, into, or from the subleased premises or any adjacent lands or waters in any manner not permitted by law. For the purposes of this sublease, "hazardous substances" shall mean and include those elements or compounds defined in 42 USC Section 9601 or which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency (EPA) and the list of toxic pollutants designated by the United States Congress or the EPA or defined by any other federal, state, or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance, material, pollutant or contaminant. "Pollutants" and "pollution" shall mean those products or substances defined in Chapters 376 and 403, Florida

Statutes, and the rules promulgated thereunder, all as amended or updated from time to time. In the event of SUBLESSEE'S failure to comply with this paragraph, SUBLESSEE shall, at its sole cost and expense, promptly commence and diligently pursue any legally required closure, investigation, assessment, cleanup, decontamination, remediation, restoration, and monitoring of (1) the subleased premises, and (2) all off-site ground and surface waters and lands affected by SUBLESSEE'S such failure to comply, as may be necessary to bring the subleased premises and affected off-site waters and lands into full compliance with all applicable federal, state or local statutes, laws, ordinances, codes, rules, regulations, orders and decrees, and to restore the damaged property to the condition existing immediately prior to the occurrence which caused the damage. SUBLESSEE'S obligations set forth in this paragraph shall survive the termination or expiration of this sublease. This paragraph shall not be construed as a limitation upon the obligations or responsibilities of SUBLESSEE as set forth herein. Nothing herein shall relieve SUBLESSEE of any responsibility or liability prescribed by law for fines, penalties, and damages levied by governmental agencies, and the cost of cleaning up any contamination caused directly or indirectly by SUBLESSEE'S activities or facilities. Upon discovery of a release of a hazardous substance or pollutant, or any other violation of local, state or federal law, ordinance, code, rule, regulation, order or decree relating to the generation, storage, production, placement, treatment, release, or discharge of any contaminant, LESSEE shall report such violation to all applicable governmental agencies having jurisdiction, and to SUBLESSOR, all within the reporting periods of the applicable agencies.

25. **ENVIRONMENTAL AUDIT:** At SUBLESSOR'S discretion, SUBLESSEE shall provide SUBLESSOR with a current Phase I environmental site assessment conducted in accordance with the State of Florida Department of Environmental Protection, Division of State Lands' standards prior to termination of this sublease, and if necessary a Phase II environmental site assessment.

26. **SURRENDER OF PREMISES:** Upon termination or expiration of this sublease, SUBLESSEE shall surrender the subleased premises to SUBLESSOR. In the event no further use of the subleased premises or any part thereof is needed, SUBLESSEE shall give written notification to SUBLESSOR and the Bureau of Public Land Administration, Division of State Lands, State of Florida Department of Environmental Protection, Mail Station 130, 3800 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, at least six months prior to the release of any or all of the subleased premises. Notification shall include a legal description, this sublease number and an explanation of the release. The release shall only be valid if approved by SUBLESSOR, TRUSTEES through execution of a release of sublease instrument with the same formality as this sublease. Upon release of all or any part of the subleased premises or upon termination or expiration of this sublease, all improvements, including both physical structures and modifications to the subleased premises, shall become the property of

TRUSTEES and SUBLLESSOR, unless SUBLLESSOR gives written notice to SUBLLESSEE to remove any or all such improvements at the expense of SUBLLESSEE. The decision to retain any improvements upon termination of this sublease shall be at SUBLLESSOR'S sole discretion. Prior to surrender of all or any part of the subleased premises, SUBLLESSOR shall perform an on-site inspection and the keys to any building on the subleased premises shall be turned over to SUBLLESSOR. If the subleased premises and improvements located thereon do not meet all conditions as set forth in paragraphs 18 and 36 herein, SUBLLESSEE shall pay all costs necessary to meet the prescribed conditions.

27. **BEST MANAGEMENT PRACTICES:** SUBLLESSEE shall implement applicable Best Management Practices for all activities conducted under this sublease in compliance with paragraph 18-2.018(2)(h), Florida Administrative Code, which have been selected, developed, or approved by SUBLLESSOR, SUBLLESSEE, or other land managing agencies for the protection and enhancement of the subleased premises.

28. **PUBLIC LANDS ARTHROPOD CONTROL PLAN:** SUBLLESSEE shall identify and subsequently designate to the respective arthropod control district or districts within one year of the effective date of this sublease, all of the environmentally sensitive and biologically highly productive lands contained within the subleased premises, in accordance with Section 388.4111, Florida Statutes and Chapter 5E-13, Florida Administrative Code, for the purpose of obtaining a public lands arthropod control plan for such lands.

29. **SOVEREIGNTY SUBMERGED LANDS:** This sublease does not authorize the use of any lands located waterward of the mean or ordinary high water line of any lake, river, stream, creek, bay, estuary, or other water body or the waters or the air space thereabove.

30. **PROHIBITIONS AGAINST LIENS OR OTHER ENCUMBRANCES:** Fee title to the subleased premises is held by TRUSTEES. SUBLLESSEE shall not do or permit anything to be done which purports to create a lien or encumbrance of any nature against the real property contained in the subleased premises including, but not limited to, mortgages or construction liens against the subleased premises or against any interest of TRUSTEES and SUBLLESSOR therein.

31. **CONDITIONS AND COVENANTS:** All of the provisions of this sublease shall be deemed covenants running with the land included in the subleased premises, and construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

32. **PARTIAL INVALIDITY:** If any term, covenant, condition or provision of this sublease shall be ruled by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

33. **ENTIRE UNDERSTANDING:** This sublease sets forth the entire understanding between the parties and shall only be amended with the prior written approval of TRUSTEES and SUBLLESSOR.

34. **EASEMENTS:** All easements of any nature including, but not limited to, utility easements are required to be granted by TRUSTEES. SUBLLESSEE is not authorized to grant any easements of any nature and any easement granted by SUBLLESSEE shall be void and without legal effect.

35. **SUBSUBLEASES:** This sublease is for the purposes specified herein and subsubleases of any nature are prohibited, without the prior written approval of TRUSTEES and SUBLLESSOR. Any subsublease not approved in writing by TRUSTEES and SUBLLESSOR shall be void and without legal effect.

36. **MAINTENANCE OF IMPROVEMENTS:** SUBLLESSEE shall maintain the real property contained within the subleased premises and any improvements located thereon, in a state of good condition, working order and repair including, but not limited to, removing all trash or litter, maintaining all planned improvements as set forth in the approved Management Plan, and meeting all building and safety codes. SUBLLESSEE shall maintain any and all existing roads, canals, ditches, culverts, risers and the like in as good condition as the same may be on the effective date of this sublease.

37. **COMPLIANCE WITH LAWS:** SUBLLESSEE agrees that this sublease is contingent upon and subject to SUBLLESSEE obtaining all applicable permits and complying with all applicable permits, regulations, ordinances, rules, and laws of the State of Florida or the United States or of any political subdivision or agency of either.

38. **ARCHAEOLOGICAL AND HISTORIC SITES:** Execution of this sublease in no way affects any of the parties' obligations pursuant to Chapter 267, Florida Statutes. The collection of artifacts or the disturbance of archaeological and historic sites on state-owned lands is prohibited unless prior authorization has been obtained from the State of Florida Department of State, Division of Historical Resources. The Management Plan prepared pursuant to Chapter 18-2, Florida Administrative Code, shall be reviewed by the Division of Historical Resources to ensure that adequate measures have been planned to locate, identify, protect and preserve the archaeological and historic sites and properties on the subleased premises.

39. **GOVERNING LAW:** This sublease shall be governed by and interpreted according to the laws of the State of Florida.

40. **SECTION CAPTIONS:** Articles, subsections and other captions contained in this sublease are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent, or intent of this sublease or any provisions thereof.

41. **SPECIAL CONDITIONS:** The following special conditions shall apply to this sublease:

A. SUBLLESSEE shall ensure public access to the parking area and boat ramp at all times.

- B. SUBLESSOR, or its contractors, shall be allowed access to the parking area and boat ramp as needed to perform their responsibilities and duties during sea grass restoration activities.
- C. SUBLESSOR reserves the right to store fill material during sea grass restoration efforts.
- D. SUBLESEE acknowledges and agrees that its use, possession and rights under this Sublease are subject to and shall not conflict with the Off System Construction and Maintenance Agreement between SUBLESSOR and the Florida Department of Transportation, dated January 8, 2020, attached hereto as Exhibit "C" and made part hereof (the "Off System Agreement"), except that SUBLESEE hereby assumes certain obligations under the Off System Agreement, as may be requested by SUBLESSOR specifically including the maintenance obligation as provided in paragraph 8.

*[Remainder of page intentionally left blank;*

*Signature page follows]*

IN WITNESS WHEREOF, the parties have caused this Sublease Agreement to be executed on the day and year first above written.

WITNESSES:

*Diane Martin*

Original Signature

*DIANE MARTIN*

Print/Type Name of Witness

*John Small*

Original Signature

*John Small*

Print/Type Name of Witness

STATE OF FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION, DIVISION OF  
RECREATION AND PARKS

(SEAL)

BY:

*P. Small*  
Parks Small, Assistant Director  
Division of Recreation and Parks

“SUBLESSOR”

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this 16th day of June, 2020 by Parks Small, Assistant Director, Division of Recreation and Parks, for and on behalf of the State of Florida Department of Environmental Protection, Division of Recreation and Parks. He is personally known to me or has produced \_\_\_\_\_ as identification.

*Demi P. Degagne*

Notary Public, State of Florida



My Commission #

Commission/Serial No. \_\_\_\_\_

Islamorada, Village of Islands, Florida,  
a Florida municipal corporation  
By its Village Council

Terry Abel  
Witness

Terry Abel  
Print/Type Witness Name

Ahn Linn  
Witness

Hatti Jenkins  
Print/Type Witness Name

By: Debb Gillis (SEAL)  
Debb Gillis, Mayor

Mike Forster

"SUBLESSEE"

STATE OF FLORIDA  
COUNTY OF MONROE

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this 20 day of April, 2020, by Debb Gillis, as Mayor, for and on behalf of Islamorada, Village of Islands, Florida, a Florida municipal corporation. She is personally known to me or has produced identification.

Mike Forster  
Notary Public, State of Florida

Kelly S. Toth  
Print/Type Notary Name

Commission Number:

Commission Expires:



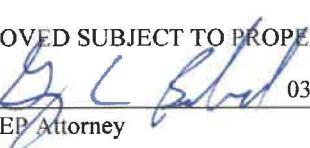
Consented to by the TRUSTEES on 16<sup>th</sup> day of June, 2020

**BOARD OF TRUSTEES OF THE INTERNAL  
IMPROVEMENT TRUST FUND OF THE STATE OF  
FLORIDA**

By: 

Brad Richardson, Chief, Bureau of Public Land  
Administration, Division of State Lands, State of  
Florida Department of Environmental Protection, as  
agent for and on behalf of the Board of Trustees of  
the Internal Improvement Trust Fund of the State of  
Florida

APPROVED SUBJECT TO PROPER EXECUTION

By:   
03-09-2020  
DEP Attorney

**Exhibit "A"**

A parcel of sovereignty lands and upland located in Section 12, Township 64 South, Range 36 East, Indian Key Fill, Monroe County, Florida, being part of the right of way of State Road 5 (US 1) the boundaries of which are described as follows:

Commencing at the Northeast corner of said Section 12; thence N 89°52'32" W, along the North line of said Section 12 to the intersection of said line with the monumented baseline of State Road 5, Section No. 90060 dated 3-25-80, at Station 315+73.27; thence S 60°52'23" W along said Baseline, 2023.27 feet to Station 295+50.00; thence N 29°07'37" W, perpendicular to said Baseline, 56.00 feet to the Point of Beginning; thence continue N 29°07'37" W, 160.86 feet to the Northwesterly right of way line of State Road 5; thence S 60°52'16" W, along said right of way line, 2000 feet; thence S 29°07'37" E, 160.70 feet to a point lying 56.00 feet from and perpendicular to the Baseline of State Road 5 at Station 275+50.00, thence N 60°52'23" E, parallel to said Baseline, 2000 feet to the Point of Beginning.

Less and Except:

All Sovereign Submerged Lands.

The above described parcel contains 3 acres, more or less.

BSM  
BY SK  
Date: 12.05.2019

## Exhibit "B"

## LEASE AGREEMENT

(1) 2534

No. 2534

Lignum Vitae and Shell Keys

Management Project No. 48

WHEREAS, the State of Florida Board of Trustees of the Internal Improvement Trust Fund by virtue of Section 253.03, Florida Statutes, as amended by Chapter 67-269 and as further amended by Chapter 67-2236, both acts of 1967, Laws of Florida, holds title to certain lands and property for the use and benefit of the State of Florida; and

WHEREAS, the State of Florida Department of Natural Resources by formal action on December 8, 1970 authorized and requested the said Trustees to enter into an agreement with the State of Florida Department of Natural Resources, for the use and benefit of the Division of Recreation and Parks, to permit certain uses of and activities on the lands and properties hereinafter described for the purpose of preserving, developing, operating, and maintaining said lands and property for outdoor recreational, park, conservation and related purposes.

NOW, THEREFORE, this agreement made between the STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND, as LESSOR, and the STATE OF FLORIDA DEPARTMENT OF NATURAL RESOURCES for the use and benefit of the Division of Recreation and Parks, as LESSEE.

## W I T N E S S E T H:

The parties hereto, for and in consideration of the mutual covenants and agreements hereinafter contained, do hereby covenant and agree as follows:

1. The lessor does hereby lease to the said lessee the following described parcels of lands, situate in Monroe County, Florida, viz:

(See Exhibit A - Attached)

APPROVED AS TO FORM AND LEGALITY  
TRUSTEES I. I. TRUST FUND - LEGAL  
BY H.V.H. 3/25/71

TO HAVE AND TO HOLD the above described land for a period of ninety-nine (99) years from the date hereof, for the purpose of preserving, developing, improving, operating, maintaining and otherwise managing said lands for public outdoor recreational, park, conservation and related purposes.

2. The lessee shall have the right to enter upon said land for all purposes necessary to the full enjoyment by said lessee of the rights herein conveyed to it.

3. The lessee shall through its agents and employees cooperate to prevent the unauthorized use of said land or any use thereof not in conformity with this lease.

4. This agreement is for the specific purpose of public outdoor recreational, park, conservation and related purposes, and the lessee shall have the right to enter into further agreements or to sublease all or any part of the within land so long as the agreement and/or sublease shall effectively carry out and further the general purposes herein described after written notice to the lessor.

5. The lessor or its duly authorized agent shall have the right at any time to inspect the said land and the works and operations thereon of the lessee in any matter pertaining to this agreement.

6. The lessee hereby covenants and agrees to investigate, to the extent it deems necessary, all claims of every nature at its own expense, and to indemnify, protect, defend, hold and save harmless the State of Florida Board of Trustees of the Internal Improvement Trust Fund and/or the State of Florida from any and all claims, actions, law-suits and demands of any kind or nature arising out of this agreement.

7. The lessor does not warrant or guarantee title, right or interest in the property described herein.

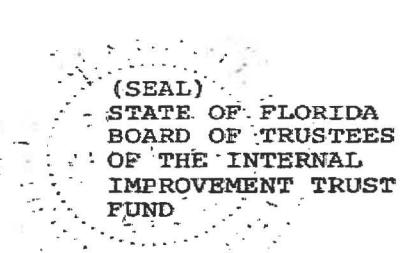
8. Any inequities that may subsequently appear in this lease shall be subject to negotiation upon written request of either party, and the parties agree to negotiate

No. 2534

in good faith as to any such inequities.

9. This agreement is executed in duplicate, each copy of which shall for all purposes be considered an original.

IN TESTIMONY WHEREOF the Trustees, for and on behalf of the State of Florida Board of Trustees of the Internal Improvement Trust Fund, have hereunto subscribed their names and have caused the official seal of the State of Florida Board of Trustees of the Internal Improvement Trust Fund to be hereunto affixed in the City of Tallahassee on this 8th day of June, 1971, and the State of Florida Department of Natural Resources, an agency of the State of Florida, have hereunto set their hands and official seal at Tallahassee, Florida, this 8th day of June, 1971.



Reuben O.D. Askew  
Governor

Richard (Dick) Stone  
Secretary of State

Robert L. Stein  
Attorney General

Frederick Dickenson  
Comptroller

Thomas D. Smalley  
Treasurer

Playd. Christian  
Commissioner of Education

No. 2534

Jack Gravel  
Commissioner of Agriculture

As and Constituting the State  
of Florida Board of Trustees  
of the Internal Improvement  
Trust Fund, Lessor.

Reuben O. Coker  
Governor

Richard (Dick) Stens  
Secretary of State

Robert L. Sevin  
Attorney General

Frederick D. Richardson  
Comptroller

Thomas W. O'Malley  
Treasurer

Jack Conner  
Commissioner of Agriculture

Lloyd T. Bruckman  
Commissioner of Education

As and Constituting the State  
of Florida Department of  
Natural Resources, Lessee.

This instrument prepared by:

A. F. Tolius  
A. F. Tolius  
Division of Recreation and Parks  
Larson Building  
Tallahassee, Florida 32304

Approved as to form and legality by:

Jack W. Pierce  
Jack W. Pierce, Attorney  
Department of Natural Resources  
Larson Building  
Tallahassee, Florida 32304

## Exhibit "A"

## Lignum Vitae and Shell Keys

No. 2534Management Project No. 48

The following described land, situate, lying and being in the County of Monroe, State of Florida, to-wit:

A parcel of submerged land in Sections 2, 3, 10 and 11, Township 64 South, Range 36 East, Monroe County Florida, more particularly described as follows:

From the Southwesterly end of the Indian Key Viaduct run South 61 degrees 27 minutes West along the centerline of the Overseas Highway a distance of 300 feet; thence North 28 degrees 33 minutes West a distance of 200 feet to the Northwesterly right of way line of the Overseas Highway; thence (1-2) continue North 28 degrees 33 minutes West 4360 feet to the Point of Beginning of the parcel hereinafter described; thence (2-3) North 61 degrees 27 minutes East 200 feet; thence (3-4) North 28 degrees 33 minutes West, 1950 feet, more or less, to the shoreline on the Easterly side of Lignumvitae Key; thence (4-5) Southerly, Westerly and Northwesterly, meandering the shoreline of Lignumvitae Key a distance of 5050 feet, more or less, to the Southwest corner of Lignumvitae Key; thence the following courses and distances along the Easterly side of Lignumvitae Channel; thence (5-6) South 34 degrees 00 minutes East 630 feet; thence (6-7) South 49 degrees 00 minutes East 690 feet; thence (7-8) South 32 degrees 30 minutes East 870 feet; thence (8-9) South 88 degrees 45 minutes East 280 feet; thence (9-10) South 61 degrees 10 minutes East 270 feet; thence (10-11) South 44 degrees 15 minutes East 80 feet leaving the Easterly side of Lignumvitae Channel; thence (11-12) North 61 degrees 27 minutes East 2560 feet to the Point of Beginning. Containing 100.5 acres, more or less.

Lot 1 of Section 25, and Lot 1 of Section 36, Township 63 South, Range 36 East of the Tallahassee Meridian, known as SHELL KEY, lying and being in Monroe County, Florida.

## ALSO

The Submerged and tidal lands in the Bay of Florida, situate easterly of and adjacent to Government Lot 1 of Section 25, Township 63 South, Range 36 East and easterly of and adjacent to Government Lot 1 of Section 36, Township 63 South, Range 36 East, the said lands being otherwise described as Government Lot 1 of Section 30, Township 63 South, Range 37 East and Government Lot 1 of Section 31, Township 63 South, Range 37 East, according to the U. S. Government Survey. Containing 189 acres, more or less.

Lot 1, in Section 2; and Lots 1 and 2, Section 3; all in Township 64 South, Range 36 East, situate, lying and being in the County of Monroe and State of Florida. Containing 270.53 acres, more or less.

EXHIBIT "C"

FM No. 443210-1-52-01 / Hurricane Irma Repairs  
Page 1

**OFF-SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT**

**Between**

**STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION**

**and**

**FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,  
DIVISION OF RECREATION AND PARKS**

THIS AGREEMENT is made and entered into as of January 8th, 2010, by and through the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida (the "Department"), and the FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISON OF RECREATION AND PARKS, an agency of the State of Florida ("DRP") its successors or assigns, collectively referred to as the "Parties."

**RECITALS**

A. Upon approval of the Department's Work Program by the State of Florida Legislature, and adoption by the Department Secretary, the Department shall complete the project included in the Department Work Program; and

B. Included in the Department's Work Program is the following project (hereinafter, the "Project"):

**Project Number FM No. 443210-1-52-01, Hurricane Irma Permanent Repairs – SR5/US1/Overseas Highway (SB and NB) from MM 78.3 to MM 79, which is depicted in Exhibit "A" attached hereto and made a part hereof.**

The Project is to be constructed under Lead Project FM No. 443307-1-52-01 on SR5/US1 from MM 74.0 to MM 75.0 and MM 77.0 to MM 80.0 and entails work on a roadway embankment area not on the State Highway System (for purposes of this Agreement, the "Project Limits"); and

C. The Board of Trustees of the Internal Improvement Trust Fund of the State of Florida ("Board of Trustees") is the holder of ownership rights to embankment and other areas along

SR5/US1/Overseas Hwy not on the State Highway System but included in **Project FM No. 443210-1-52-01 (MM 78.3 to MM 79)**. The Board of Trustee's land lying within the project area (hereinafter the "Subject Property") is depicted on Exhibit "B" attached hereto and made a part hereof; the Subject Property is managed by DRP pursuant to Lease 2534; and

D. The parties agree that it is in the best interest of each party for the Department to undertake and to complete all aspects of the Project, including but not limited to, the design, construction, construction inspection, utilities, permits, easements and other associated tasks; and

E. The parties further agree that it is in the best interest of each party to enter into this Agreement in order to allow the Department to construct and complete the Project.

#### TERMS

**NOW THEREFORE**, in consideration of the premises, the mutual covenants and other valuable considerations contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The recitals in this Agreement are true and correct, and incorporated into and made a part hereof.
2. The Parties agree that the Department will undertake and complete the Project, which includes restoration necessary to minimize damages caused by Hurricane Irma and to protect the remaining facility. Improvements upon the Subject Property include rip-rap as shown on Exhibit "B"; said improvements are necessary and are referred to in this Agreement as "Local Roadway Improvements":

The Project shall further include all activities associated with or arising out of the construction of the Local Roadway Improvements. DRP shall cooperate with and shall support the Department's work efforts with respect to the Local Roadway Improvements. The Department will design and construct the Project in accordance with all applicable federal and state laws and regulations and in accordance with Department design and construction standards as set forth in the Department's guidelines, standards, and procedures. The Department shall obtain approval of DRP with respect to the design, the design review process, and construction of the Local Roadway Improvements. In the event that the Project requires the acquisition of additional right-of-way within the Project Limits, the Department shall acquire such right-of-way in order to complete the Project. DRP shall cooperate with and shall support the Department's work efforts in these regards. The Department understands that this Agreement, or any approval of work contemplated herein does not constitute authorization to use sovereignty submerged lands, DRP, and its successors or assigns, shall cooperate with the Department to obtain any such authorization for the construction allowed under this agreement as may be necessary:

3. The Parties acknowledge and agree that DRP shall review and approve the Project Design Plans (“PDP”) for the Project and shall submit its comments, if any, via Electronic Reviewer Comments (“ERC”.) The Department shall provide DRP access to the ERC, and the Department shall use the ERC to submit the Project Design Plans for DRP to review. When the Department places the Project Design Plans in the ERC, the Department will designate a Comment Due Date and a Response Due Date. DRP shall submit its comments with regards to the Project Design Plans on or before the Comment Due Date, and the Department shall respond to DRP’s comments, if any, on or before the Response Due Date. If DRP does not submit its comments by the Comment Due Date, DRP will be deemed to have approved the Project Design Plans submitted by the Department. The review process for the Project Design Plans will be deemed concluded when the Department has submitted the Final Project Design Plans to the ERC, and the Comment Due Date and Response Due Date for the Final Project Design Plans have passed, and the Department has addressed all of DRP’s comments that were submitted through the ERC.
4. Once the review process is concluded, the DRP shall authorize the Department’s construction Contractor to construct the Project in accordance with the Final Project Design Plans submitted through the ERC. DRP shall grant all authorization required of the Department or its contractors for purposes of construction and maintenance of the Local Roadway Improvements. DRP acknowledges and agrees that, during construction of the Local Roadway Improvements, the Department will only utilize the services of law enforcement officers when required by the Department’s Standard Specifications for Road and Bridge Construction, and no additional requirements will be imposed. DRP agrees that it will not impose any conditions other than those included in this Agreement.
5. Major modifications of the permitted plans must be submitted to DRP for review. A Major Modification is any modification that materially alters the kind or nature of the work depicted in the permitted plans, or that alters the integrity or maintainability of the Local Roadway Improvements, or related components. DRP’s review shall be within the reasonable time schedule proposed by the Department, in order to avoid delay to the Department’s construction contract.

6. In the event that any Major Modifications are required during construction, the Department shall be entitled to proceed with the modifications that are necessary to complete the construction of the Project, and shall, upon identifying the need for a Major Modification, immediately notify DRP of the required changes, prior to proceeding with implementation of the same. It is specifically understood and agreed that any such changes during construction shall not delay nor affect the timely construction schedule of the Project.
7. The Department does not anticipate the relocation of any utilities as a part of this project. DRP agrees to fully cooperate with the Department in the construction, reconstruction and relocation of utilities that are located upon the Subject Property and within the Project Limits. Utility relocations, if any, which may be required by the Department for purposes of the Project, shall be done in accordance with the Department's guidelines, standards and procedures. The Department shall submit the proposed Utility Relocation Schedule to DRP if any, for approval. Utility relocations, if any, shall be done in accordance with the provisions of Chapter 337, F. S. Additionally, DRP agrees to fully cooperate with the Department in the removal of any encroachments or permitted improvements located upon the Subject Property within the Project Limits, that are in conflict with the Project. The Department shall coordinate with DRP for the removal of any such encroachments or permitted improvements, at no cost to DRP, which may be required as a result of the Project.
8. The Department may utilize federal funds to construct the Project. After the completion of the Project, DRP agrees to perpetually maintain the Local Roadway Improvements. To maintain means to perform normal maintenance operations for the preservation of the Local Roadway Improvements as are necessary for the safe and efficient use of the Local Roadway Improvements; however, this requirement does not obligate DRP to restore, repair or reconstruct any improvement made upon the Subject Property as part of the Project.
9. The Parties acknowledge and agree that the Subject Property and the improvements and structures located thereon, are and will remain under the ownership of the Board of Trustees, and that the Department will not have any ownership interest in the Subject Property, improvements, or structures located thereon or installed therein pursuant to the Project.

10. The Department shall require its construction Contractor to maintain, at all times during the construction, Commercial General Liability insurance providing continuous coverage for all work or operations performed under the construction contract. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy, or such other minimum insurance coverage that may be required by the Department for the construction of the Project, in accordance with the Department's Standards and Specifications for Road and Bridge Construction. The Department shall further cause its Contractor to name the Board of Trustees, DRP and the Department as additional insured Parties on the afore-stated policies, and to provide evidence of Workers' Compensation Insurance in accordance with the laws of the State of Florida and in amounts sufficient to secure the benefit of the Florida Workers' Compensation law for all employees.
11. The Department shall notify DRP's Park Manager by calling 305-664-2540 and 305-853-3571 at least 48 hours before beginning construction upon the Subject Property. Such notification shall also be provided via email at [Steven.Cutshaw@dep.state.fl.us](mailto:Steven.Cutshaw@dep.state.fl.us), and the notice requirements set forth in paragraph 25 shall not apply to this paragraph.
12. The Department agrees that DRP may, at reasonable times during the construction of the Local Roadway Improvements, inspect the Contractor's construction site and perform such tests as are reasonably necessary to determine whether the goods or services required to be provided by the Contractor, pursuant the Contractor's Construction Agreement with the Department, conform to the terms of said Construction Agreement. Upon request by DRP, the Department shall coordinate with its Contractor to provide access to DRP for performance of said inspections.
13. During the construction work related to the Project, DRP shall fully cooperate with any such work being performed by the Department and the Department's contractors. DRP shall not commit nor permit any act which may delay or interfere with the performance of any such work by the Department or the Department's contractors, unless the Department agrees in writing that DRP may commit or permit said act, or unless such act is due to a declared DRP's emergency or unless such act(s) are of regulatory nature within the normal course of business for an agency or department of DRP.

14. Maintenance during construction within the Project Limits, commencing as of the first date of construction, shall be the responsibility of the Department's Contractor with the exception of public litter removal and all necessary mowing shall be the responsibility of DRP, or its successors and assigns. After completion of construction, DRP shall assume all maintenance responsibilities as per the terms of this Agreement. Upon completion of construction, the Department will invite DRP on the Final Inspection of the work within the Project Limits, and will incorporate legitimate DRP concerns that are within the scope of the contract into the final Project's punch list to be corrected by the Contractor. The Final Inspection shall be performed and the Notice of Final Acceptance shall be issued in accordance with the Department's Standard Specifications for Road and Bridge Construction and the Construction Project Administration Manual (CPAM). DRP's presence at the Final Inspection, however, is not mandatory, and the Department shall conduct the Final Inspection, finalize the Project's punch list, and issue a Notice of Final Acceptance to its Contractor, whether or not DRP attends the Final Inspection.

Upon issuance of the Notice of Final Acceptance to the Contractor, the Department shall provide a copy of said notice to DRP. As of the date of the Notice of Final Acceptance, DRP shall be immediately responsible for the maintenance of the Local Roadway Improvements. The Department, however, shall have the right to assure completion of any punch list by the Contractor upon the Subject Property. Notwithstanding the issuance of the Notice of Final Acceptance, DRP may notify the Department Project Manager of deficiencies in the Local Roadway Improvements that may be covered by the warranty provisions in the contract between the Department and its Contractor. The Department shall enforce the warranty if the remedial action is required by the warranty provisions, as determined by the Department.

Upon completion of all work related to construction of the Project, the Department will be required to submit to DRP final as-built plans for the Local Roadway Improvements and an engineering certification that construction was completed in accordance with the plans. Additionally, the Department shall vacate the Subject Property, and shall remove the Department's property, machinery, and equipment from the Subject Property. Furthermore, the Department shall restore those portions of the Subject Property disturbed by the Project's construction activities to the same or better condition than that which existed immediately prior to commencement of the construction of the Project.

15. This Agreement shall become effective as of the date both parties hereto have executed the agreement and shall continue in full force and effect until the Project is completed, as evidenced by the Department's issuance of the Notice of Final Acceptance.

Prior to commencement of construction, the Department may, in its sole discretion, terminate this Agreement if it determines that it is in the best interest of the public to do so. If the Department elects to terminate this Agreement, the Department shall deliver formal notice of termination to DRP, as set forth in paragraph 25 of this Agreement.

16. In the event that any election, referendum, approval, ratification, or permit, notice or other proceeding, or authorization is required to carry out the Project, DRP agrees to expeditiously initiate and consummate, as provided by law, all actions necessary with respect to any such matters, with time being of the essence.

17. In the event that the Project shall be constructed using federal funds, all costs incurred must be in conformity with applicable federal and state laws, regulations, and policies and procedures.

18. The Department's performance and obligations under this Agreement are contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, funds approval from the Department's Comptroller must be received each fiscal year prior to costs being incurred. Project costs utilizing fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. Once construction of Local Roadway Improvements has commenced, if the Project is not funded by an annual appropriation or other means, the Department shall submit to DRP final as-builts plans for the Local Roadway Improvements which have been constructed, and an engineering certification that such construction was completed in accordance with the plans.

19. In the event that this agreement is in excess of \$25,000, and the agreement has a term for a period of more than one year, the provisions of Section §339.135(6)(a), Florida Statutes, are hereby incorporated into this agreement and are as follows:

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 any 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 a for a period of more than 1 year.

20. The Parties are state agencies, self-insured and subject to the provisions of Section 768.28, Florida Statutes. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Parties' sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.
21. A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this agreement; however, the parties agree that this Agreement shall be binding upon any successor to DRP.
22. This agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof. Venue for any and all actions arising out of or in ay way related to the interpretation, validity, performance or breach of this Agreement shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.
23. No term or provision of this Agreement shall be interpreted for or against any party because that party's legal counsel drafted the provision.
24. In accordance with Executive Order No. 11-02 the Department's Vendor/Contractor(s) shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of;
  - i. all persons employed by the Vendor/Contractor during the term of the Contract to perform employment duties within Florida; and

- ii. all persons, including subcontractors, assigned by the Vendor/Contractor to perform work pursuant to the contract with the Department.
25. All notices required pursuant to the terms hereof, shall be in writing and shall be sent by first class United States Mail, facsimile transmission, hand delivery, express mail or electronic mail. Notices shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided. Unless otherwise notified in writing, notices shall be sent to the following:

**To DRP:**

Division of Recreation and Parks  
Attn: Steve Cutshaw  
Steven.Cutshaw@dep.state.fl.us  
3900 Commonwealth Boulevard, Room 506H  
MS 35 Tallahassee FL 32399

**To the Department:**

Director of Transportation Operations  
State of Florida, Department of Transportation  
1000 N.W. 111<sup>th</sup> Avenue  
Miami, Florida 33172

26. This Agreement shall be binding upon the parties hereto, their heirs, executors, legal representatives, successors, or assigns.
27. DRP, has duly authorized the execution and delivery of this Agreement and agrees to be bound by the terms hereunder, and has further authorized the Department or his designee to take all necessary steps to effectuate the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates exhibited, by the signatures below.

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION, DIVISION OF  
RECREATION AND PARKS**

By: Eric Draper  
Name: Eric Draper  
Title: Division Director

Date: 01/08/2020

Approved subject to proper execution:

By: Melvin M. Saint  
Name: Gary L. Ballard Melvin M. Saint  
Title: Assistant Deputy General Counsel

**STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION**

By: Alexander G. Crooks  
Name: Harold Desdunes  
Title: Director of Transportation Operations

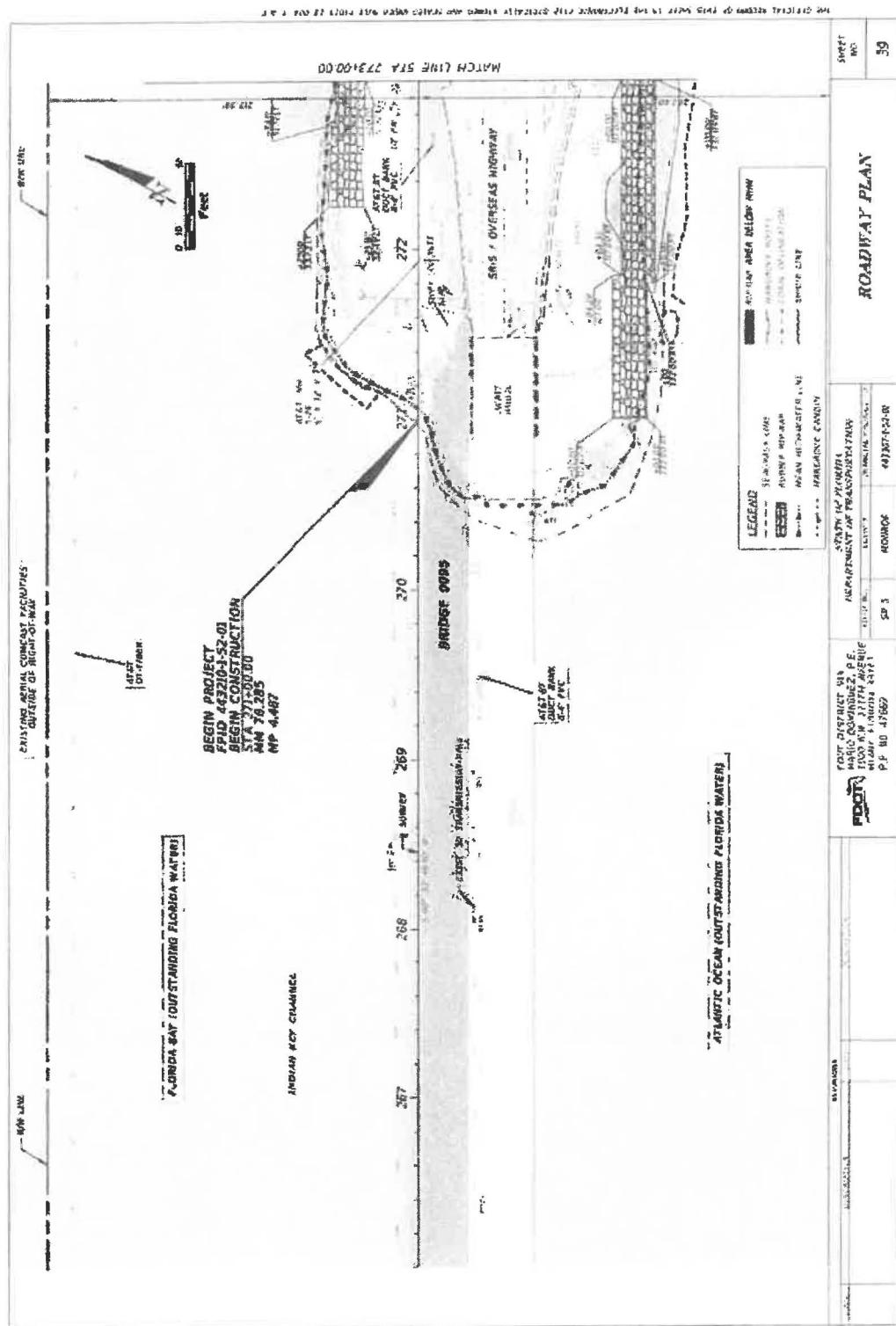
Date: 12/2/19

Department Legal Review:

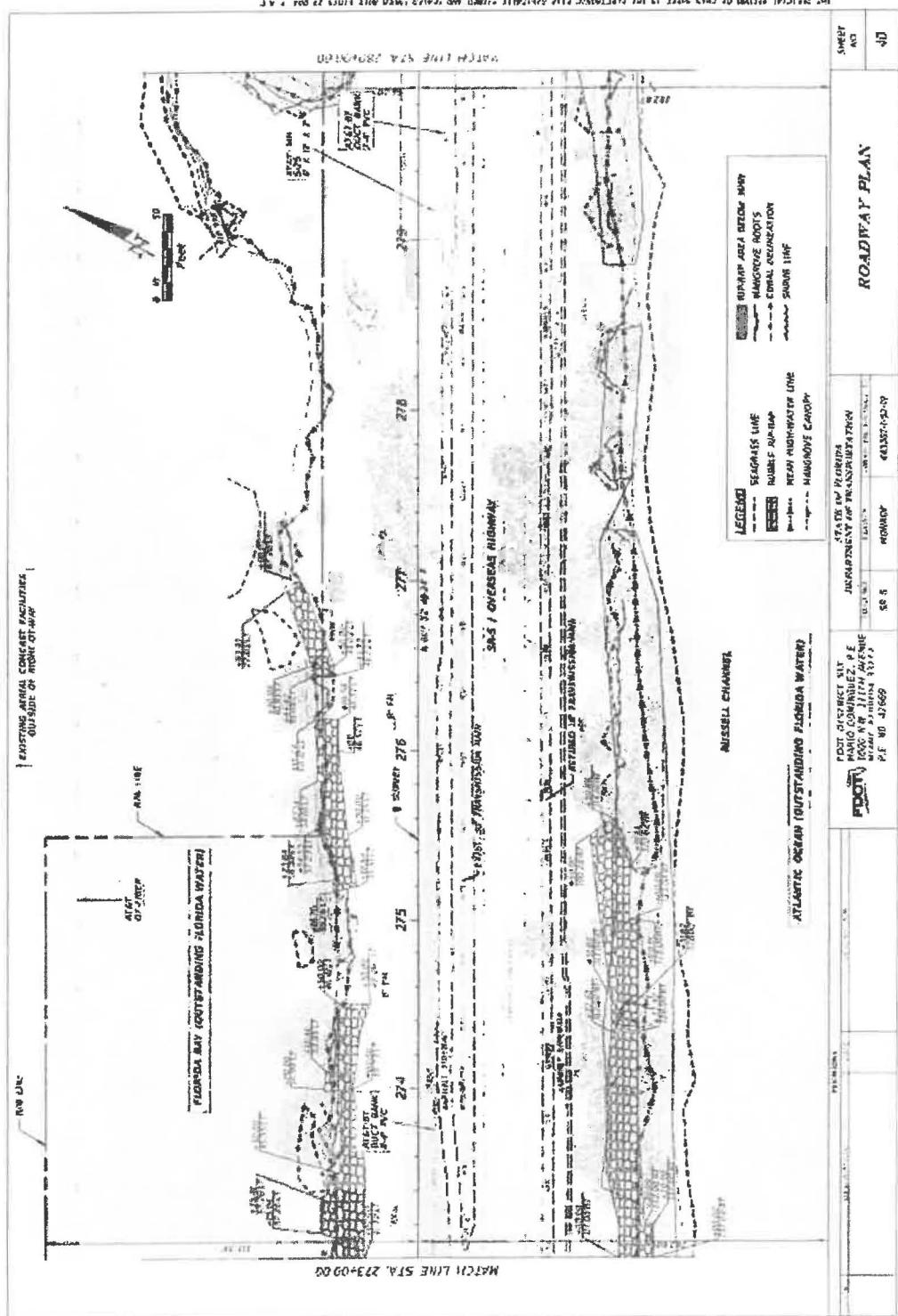
Andrea Gonzalez  
Assistant General Counsel

## Exhibit "A"

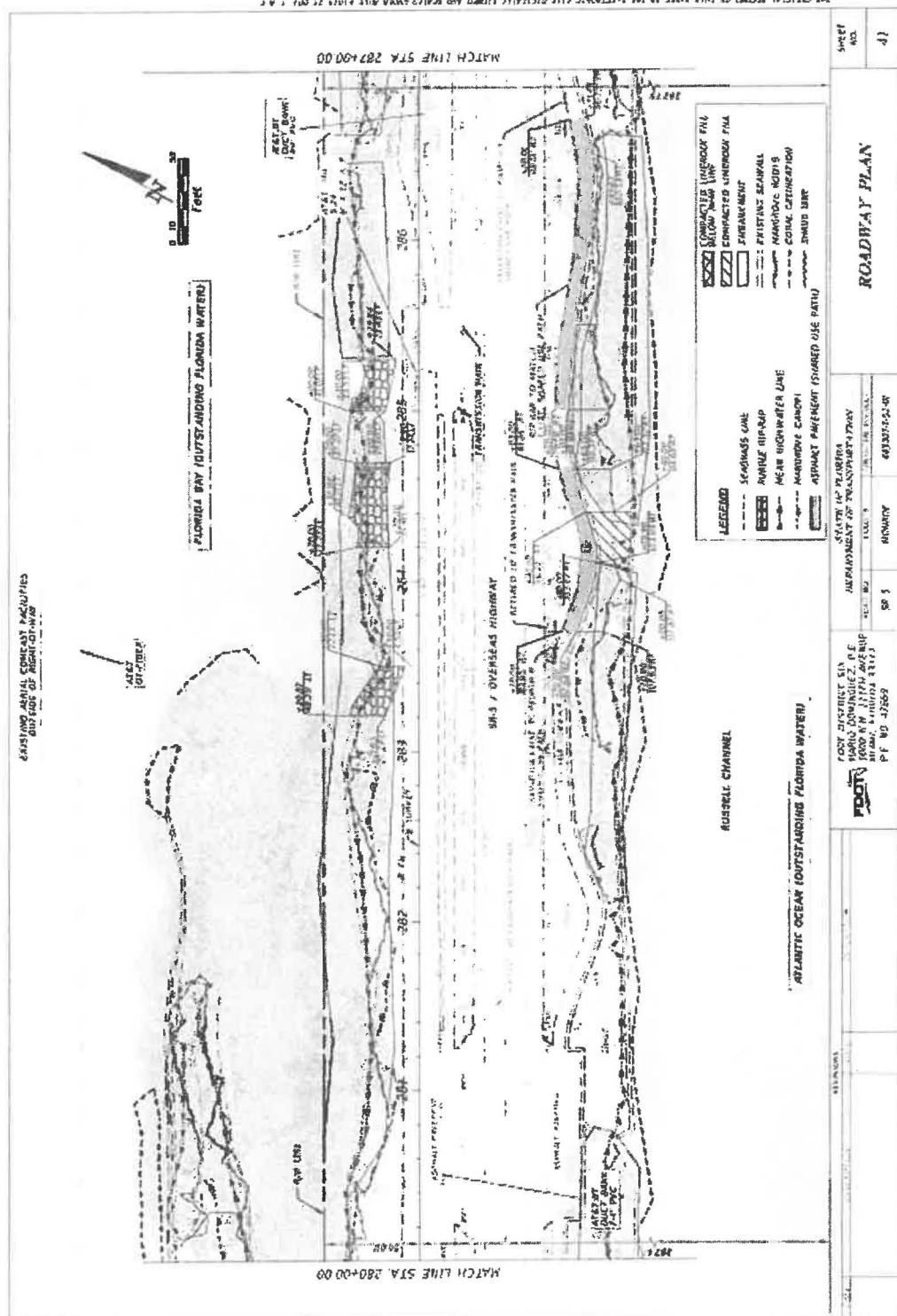
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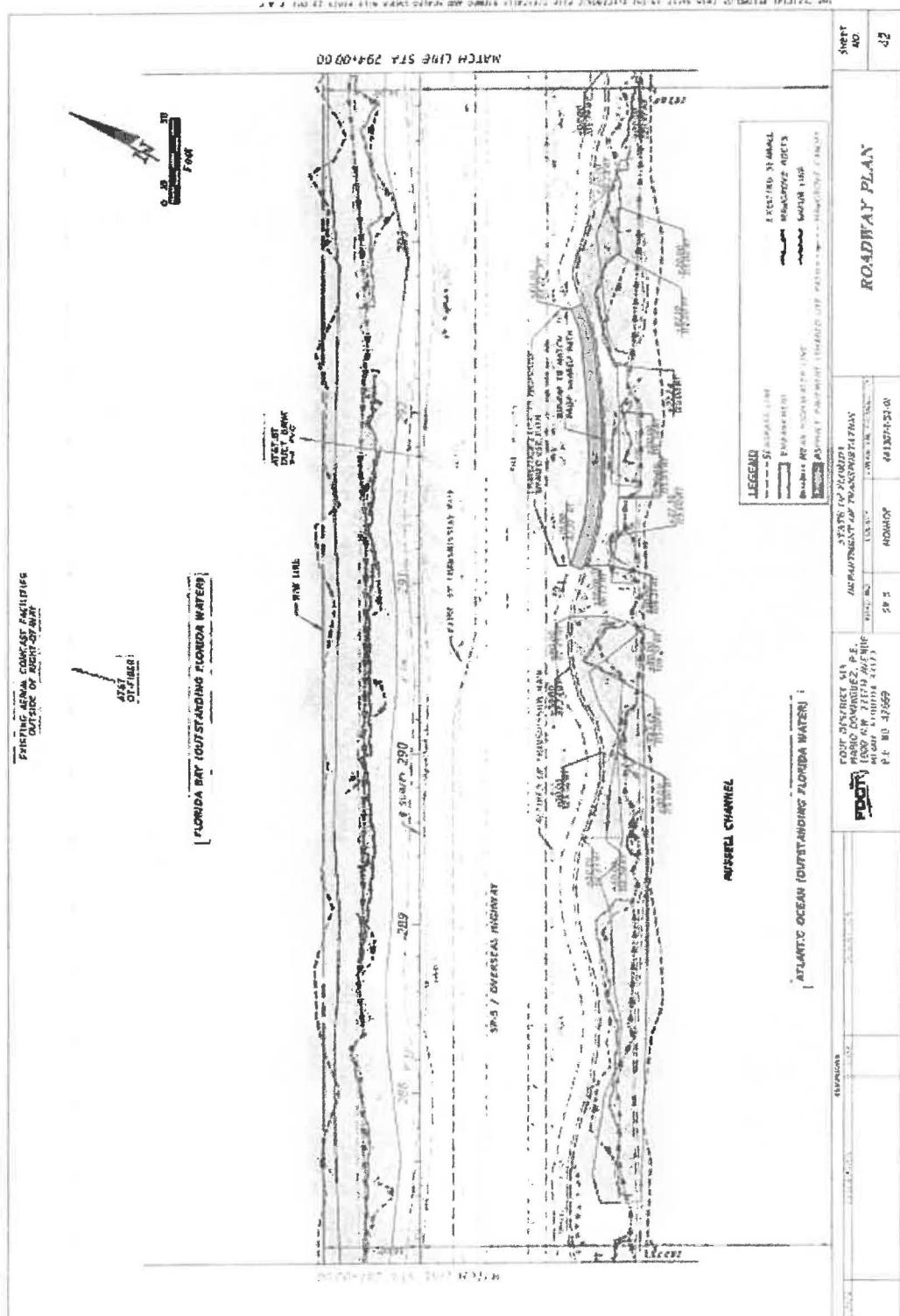
## Exhibit A



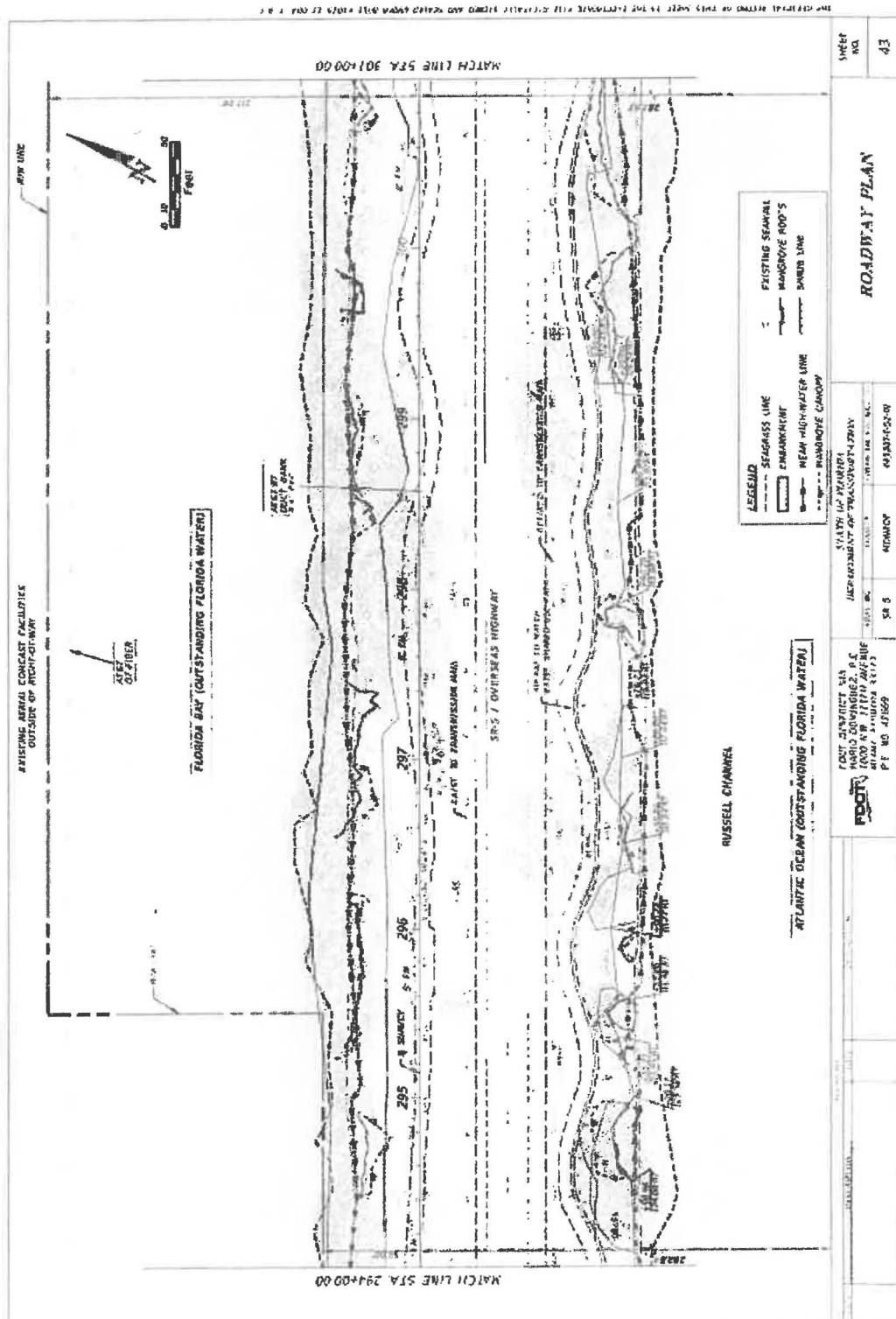
## Exhibit A



**Exhibit "A"**

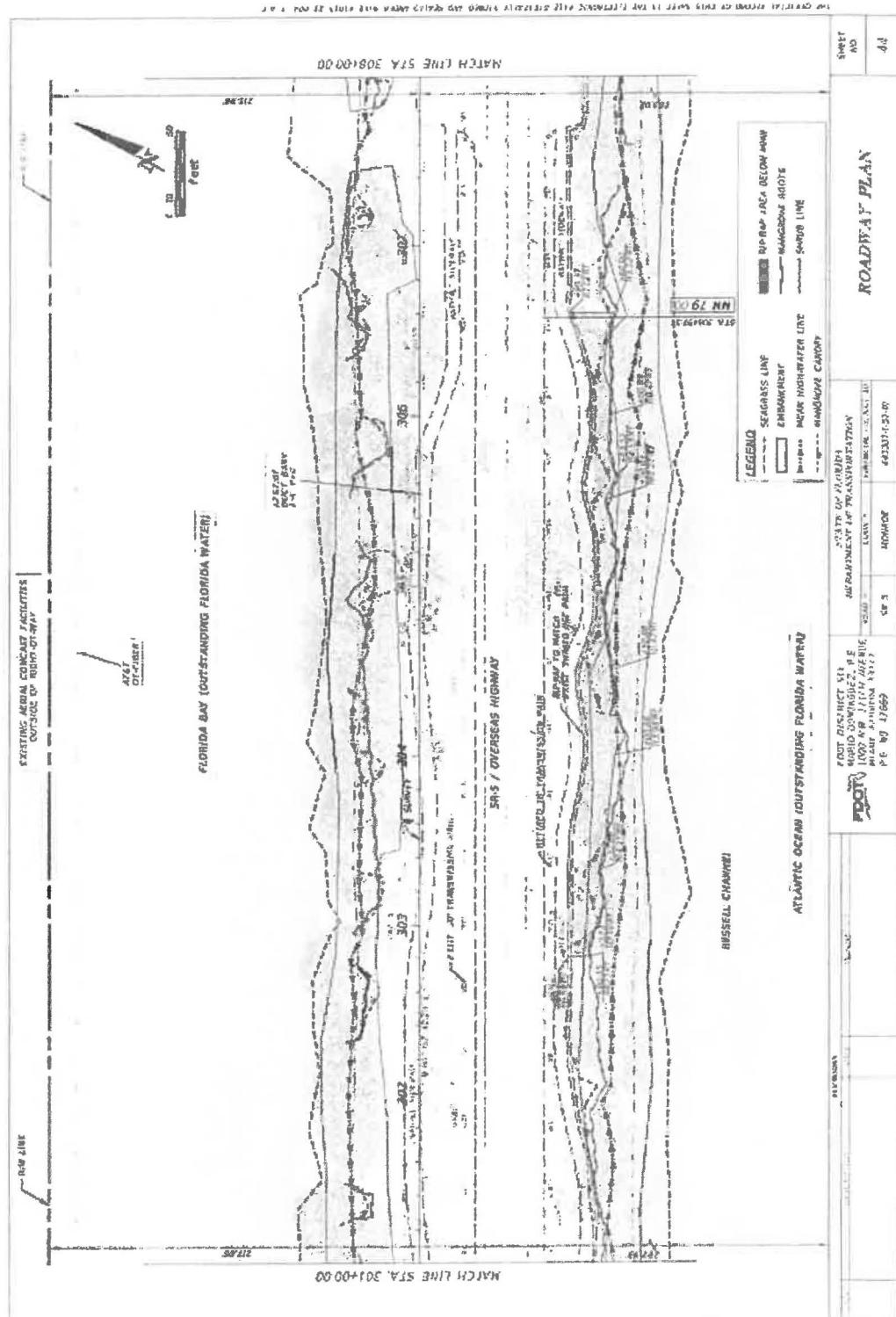


**Exhibit A**



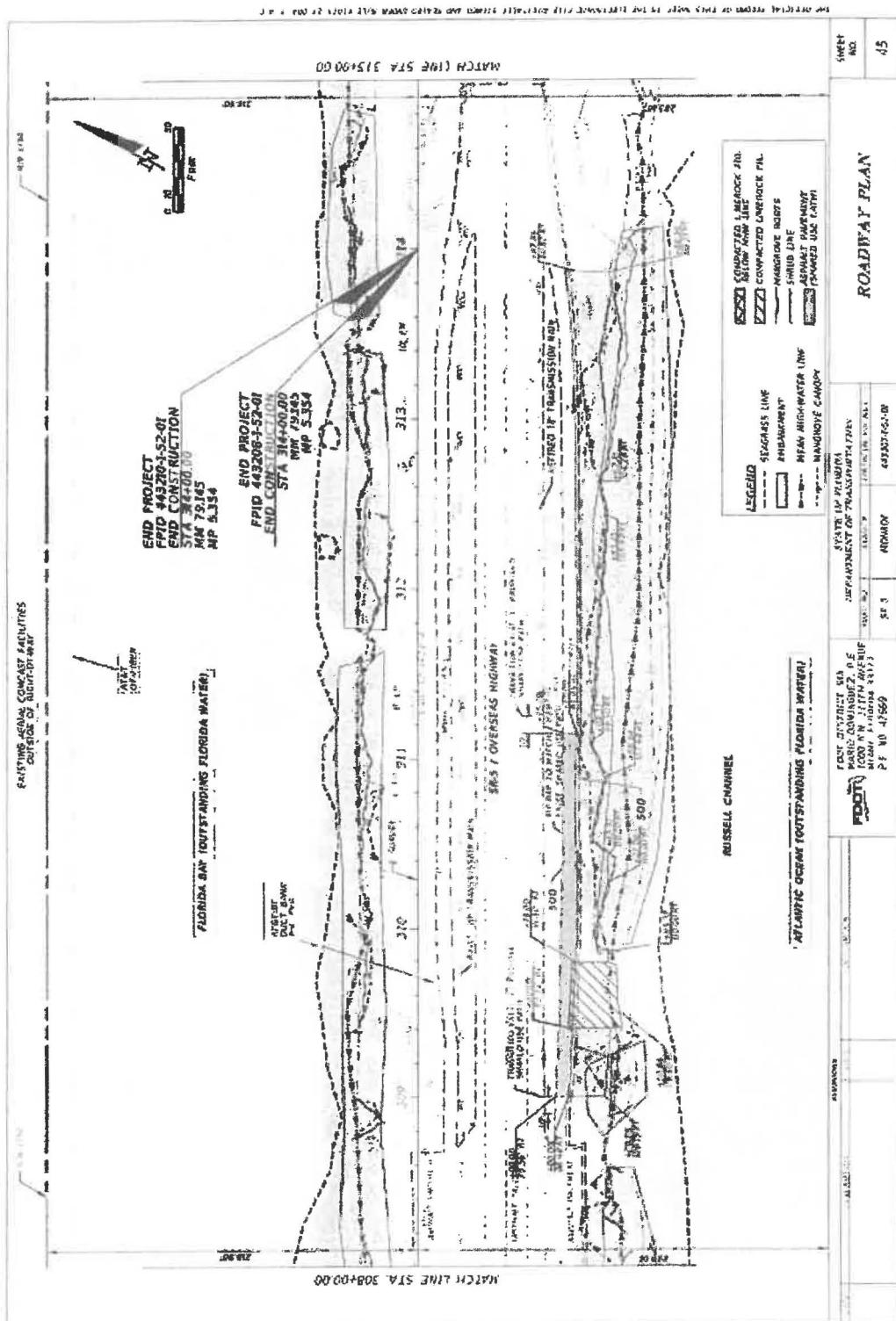
## Exhibit A

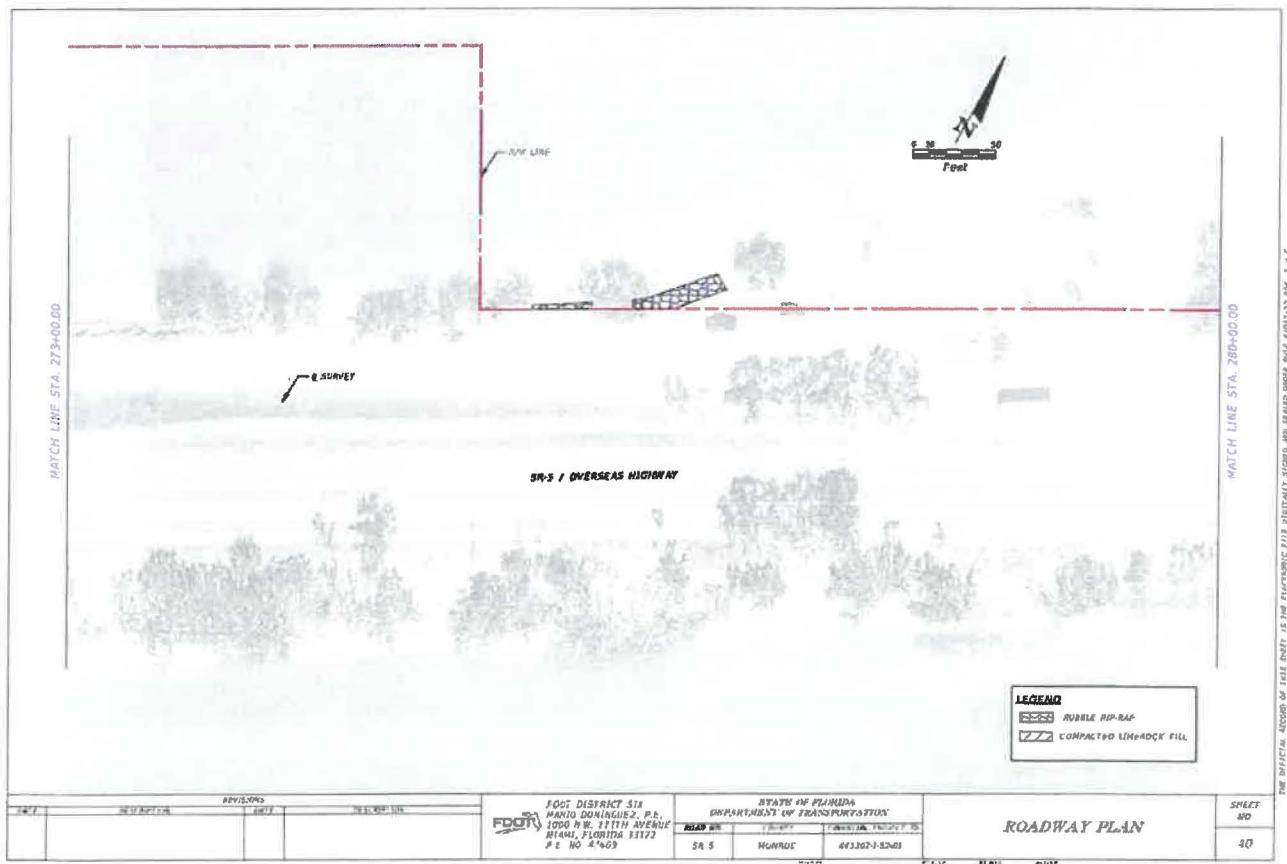
FM No. 443210-1-52-01 / Hurricane Irma Repairs  
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**Exhibit A**

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