

TRANSFER AND MAINTENANCE AGREEMENT

THIS TRANSFER AND MAINTENANCE AGREEMENT ("Agreement") is made and entered into by and between the State of Florida Department of Transportation ("Department") and the City of Jacksonville ("Agency").

-RECITALS-

1. The term "Property" shall collectively refer to various parcels of real property located in Duval County, Florida, some of which is owned by the Agency ("Agency Property"), highlighted in green on attached **Exhibit "A", Aerials 1 - 5**, and some of which is owned by the Department, ("Department Property") highlighted in orange on attached **Exhibit "A" Aerials 1 - 5**; and
2. The portions of the Property currently owned and maintained by the Agency ("Maintained Property") include the following Agency streets: Belfort Road, Bowden Road, Spring Park Road, De Kalb Avenue, Abby Lane, Cactus Lane, Copper Circle West, Rodney Lane, Taylor Street, Glen Mawr Road and Merwyn Street and shown in green in **Exhibit "B" Composite B-1 through B-5**, shall continue to be maintained by the Agency; and
3. The Department will be constructing a transportation project and various improvements via FIN 432259-2-52-01 ("Project") which will be located on or within the Property; and
4. The term "Improvements" means and shall refer to the construction of various cul-de-sacs, curb and gutter, signage and pavement markings, construction of a diverging diamond interchange, drainage pipes and structures, construction and widening of various ponds and the addition of new lanes on or within the Property, as shown in **Exhibit "B" Composite B-1 through B-5**; and
5. For purposes of this agreement, the Agency shall operate, maintain and repair all Improvements located on Department Property ("On-System Improvements"), as highlighted in orange in **Exhibit "B" Composite B-3 through B-5**; and
6. The Agency shall continue to own, operate, maintain and repair the Maintained Property and any Improvements therein, at its sole cost and expense, as highlighted in green in attached **Exhibit "B" Composite 1 through 5**; and
7. Certain portions of the Department Property will be transferred ("Transferred Property") upon completion of the Project, which are in orange on attached **Exhibit "B" Composite 3 through 5**; and
8. The Department shall fund construction of the Project and Improvements; and
9. The Department's ability to fund construction of the Project and Improvements is wholly contingent on appropriation of funds to the Department; and
10. The Department shall construct the Improvements on the Property; and
11. A date for the commencement of construction of the Improvements has not been established; and
12. Upon completion of construction of the Improvements, the Department will transfer the Transferred Property and all Improvements to the Agency via map transfer or other any other means of conveyance as allowable by law ("Conveyance"); and
13. The Agency agrees to receive and accept ownership of the Transferred Property; and
14. Upon completion of the Conveyance, the Agency agrees that it shall own, operate, maintain and repair the Transferred Property and the Improvements contained therein at its sole cost and expense; and
15. The Agency shall also continue to own, operate, maintain, and repair the Maintained Property and all Improvements, therein; and

16. The Agency, by Resolution _____ dated _____, has authorized its representative to execute and enter this Agreement on behalf of the Agency, see Exhibit "C".

NOW THEREFORE, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the 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 will 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 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").

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

8. CONVEYANCE OF PROPERTY

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

9. OPERATION, MAINTENANCE & REPAIR ("MAINTAINED PROPERTY")

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

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

C. The Agency further agrees to allow the Department access to the Property and the Improvements should the events described in Paragraph B occur.

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 Improvements, said obligations to remain the sole responsibility of the Agency.

B. If the Department determines that the Agency is not maintaining and repairing the 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 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. 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 at the Agency's sole cost and expense.

12. WARRANTIES

After completion of construction of the Improvements and upon the Agency's written request, the Department shall transfer all transferable warranties concerning construction of the Improvements 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.

13. 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.

14. 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").

15. INDEMNIFICATION

A. The Agency shall promptly defend, indemnify, hold the Department harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs / penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, arising out of or related to the Agency's 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.

16. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY

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

17. 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: Jacksonville Maintenance Engineer
Jacksonville Maintenance Office
838 Ellis Road
Jacksonville, Florida 32205

Agency: City of Jacksonville
Public Works Director
214 Hogan Street, 10th Floor
Jacksonville, Florida 32202

18. GOVERNING LAW

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

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. FEDERAL NON-PARTICIPATING ITEMS

A. The parties agree that Improvements added to the Project are only compensable via this FIN if such items are deemed to federal participating as determined in accordance with the CFR.

B. Any items, in the Department's sole discretion and without limitation in accordance with the CFR, deemed to be federal non-participating items, shall be funded at the sole expense of the Agency.

35. ANNUAL APPROPRIATION / FUNDING

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

"The department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The department shall

require a statement from the comptroller of the department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

36. PUBLIC RECORDS

Agency shall comply with Chapter 119, Florida Statutes. Specifically, the Agency shall:

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

B. Upon request from the Department's custodian of public records, provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of the Agreement if Agency does not transfer the records to the Department.

D. Upon completion of this Agreement, transfer, at no cost, to the Department all public records in possession of Applicant or keep and maintain public records required by the Department to perform this Agreement. If Agency transfers all public records to the public Agency upon completion of this Agreement, Agency shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Agency keep and maintain public records upon completion of this Agreement, Agency shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department, upon request from the Department's custodian of public records, in a format that is compatible with the information technology systems of the Department.

Failure by Agency to act in accordance with Chapter 119 and the foregoing shall be grounds for immediate unilateral cancellation of this Agreement by the Department. Agency shall promptly provide the Department with a copy of any request to inspect or copy public records in possession of Agency and shall promptly provide the Department a copy of Applicant's response to each such request.

IF THE CONSULTANT/CONTRACTOR/VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S/CONTRACTOR'S/VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

District 2
386-758-3727
D2prcustodian@ dot.State.FL.us
Florida Department of Transportation
District 2 - Office of General Counsel
1109 South Marion Avenue, MS 2009
Lake City, FL 32025

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SIGNATURES ON FOLLOWING PAGE

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

Florida Department of Transportation

By: _____

Printed Name: Greg Evans

Title: District Two Secretary

Date: _____

Attest:

By: _____

Printed Name: Elizabeth Engle

Title: Office of the District Two Secretary

Date: _____

Legal Review:

By: _____

Office of the General Counsel
Florida Department of Transportation

City of Jacksonville

By: _____

Printed Name: _____

Title: _____

Date: _____

Attest:

By: _____

Printed Name: _____

Title: _____

Date: _____

Legal Review:

By: _____

Legal Counsel for Agency

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EXHIBIT "A"
Aerial 1



EXHIBIT "A" Cont'd
Aerial 2



EXHIBIT "A" Cont'd
Aerial 3



EXHIBIT "A" Cont'd
Aerial 4

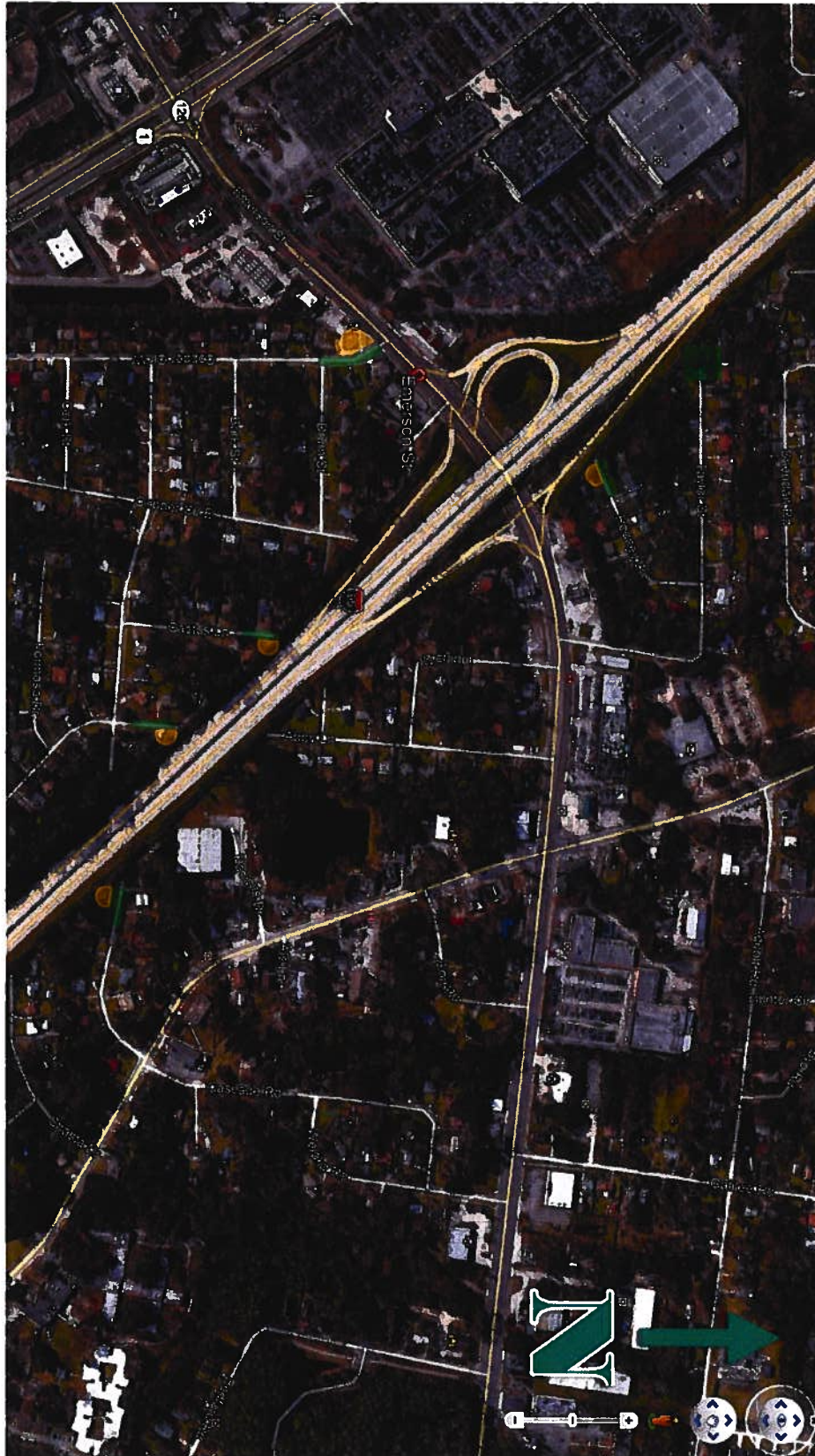


EXHIBIT "A" Cont'd
Aerial 5

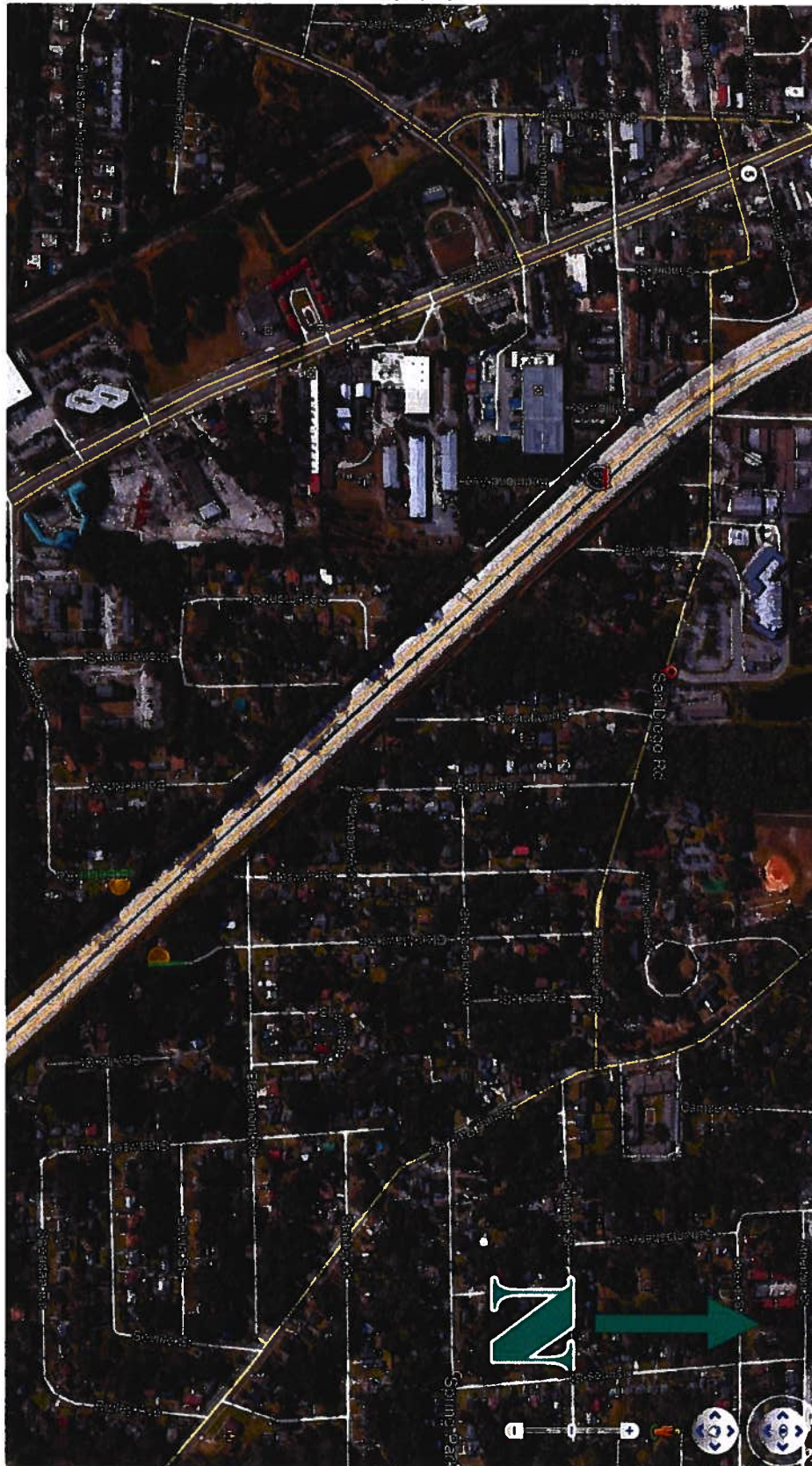
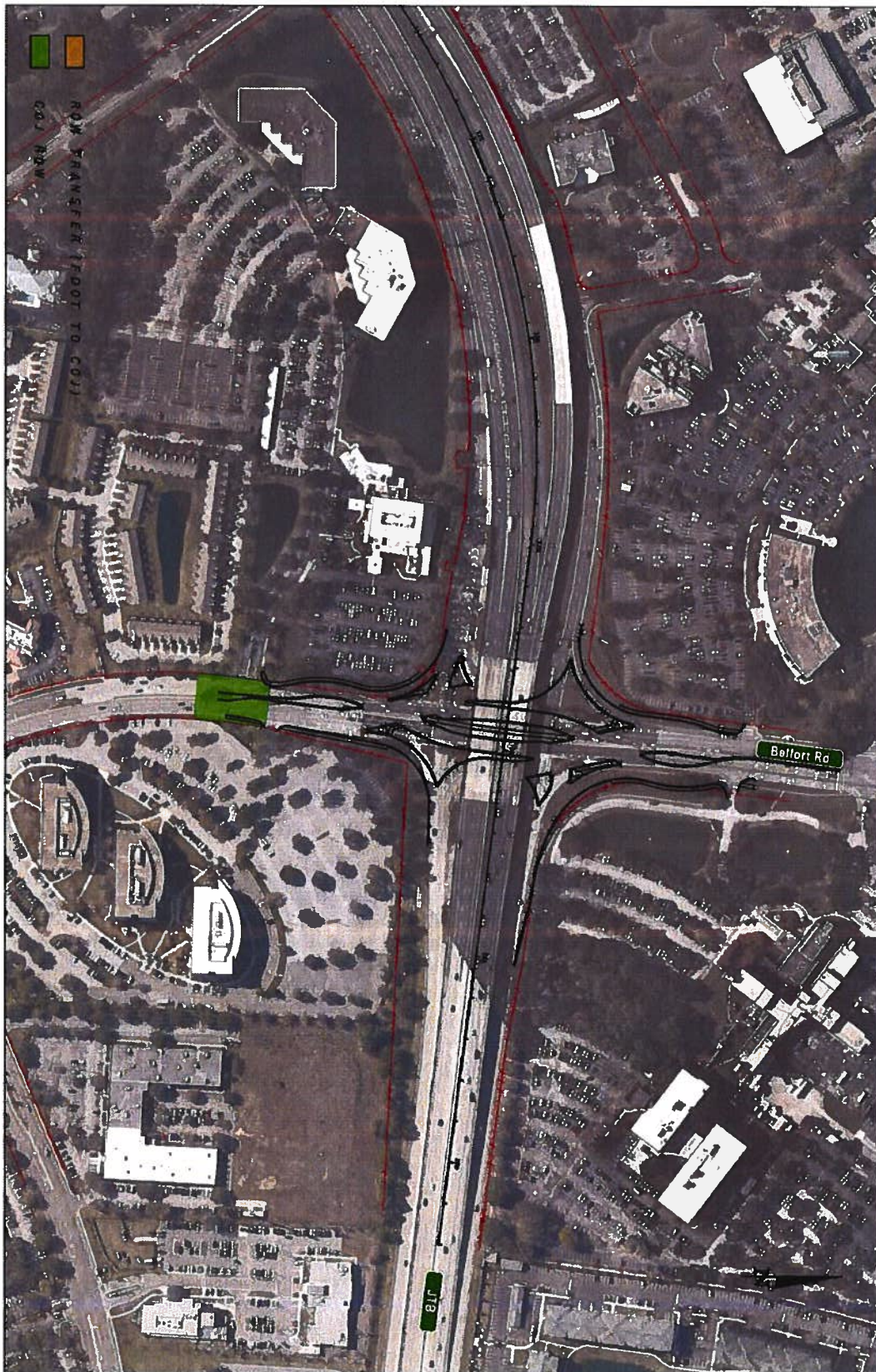
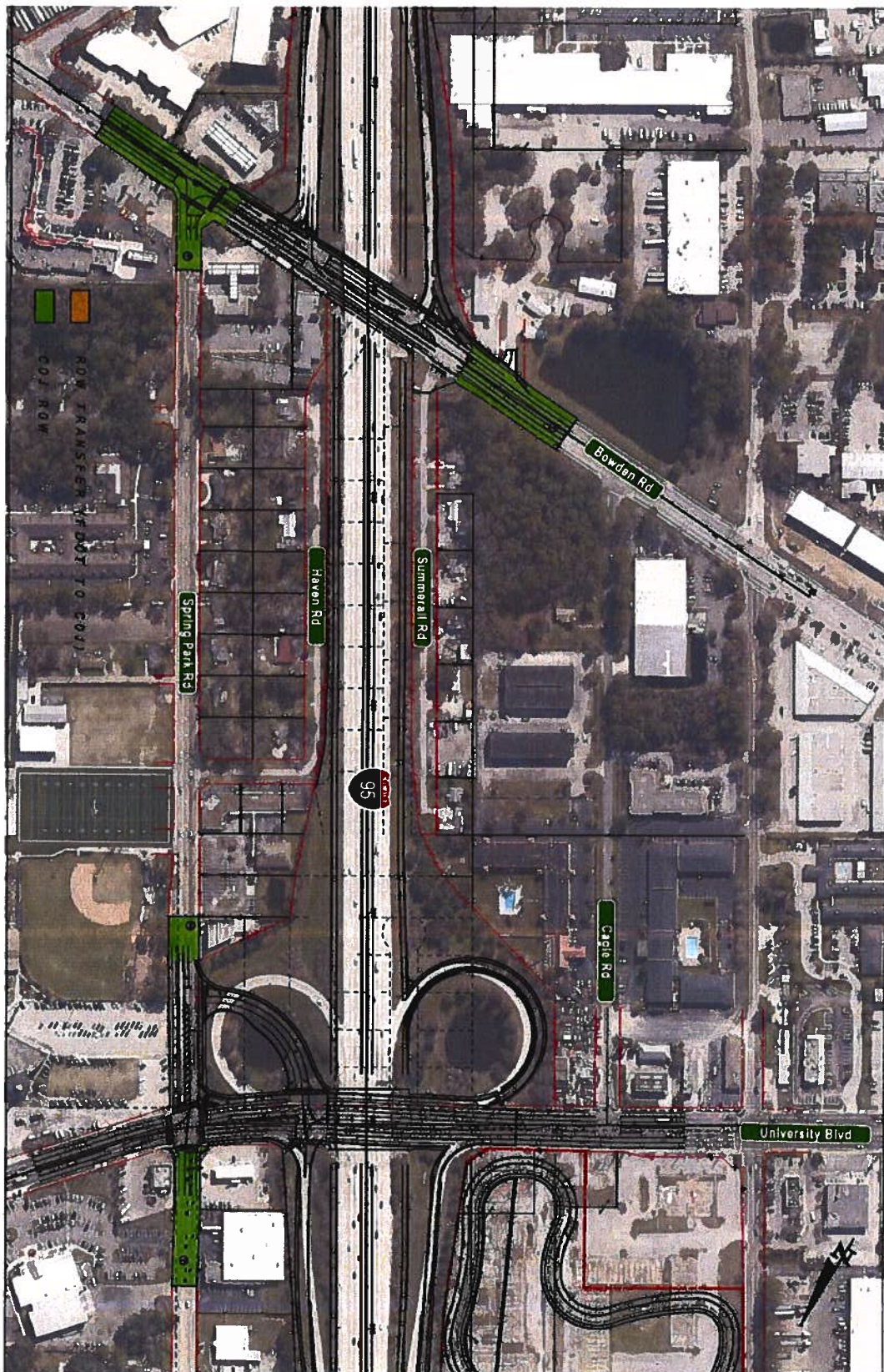


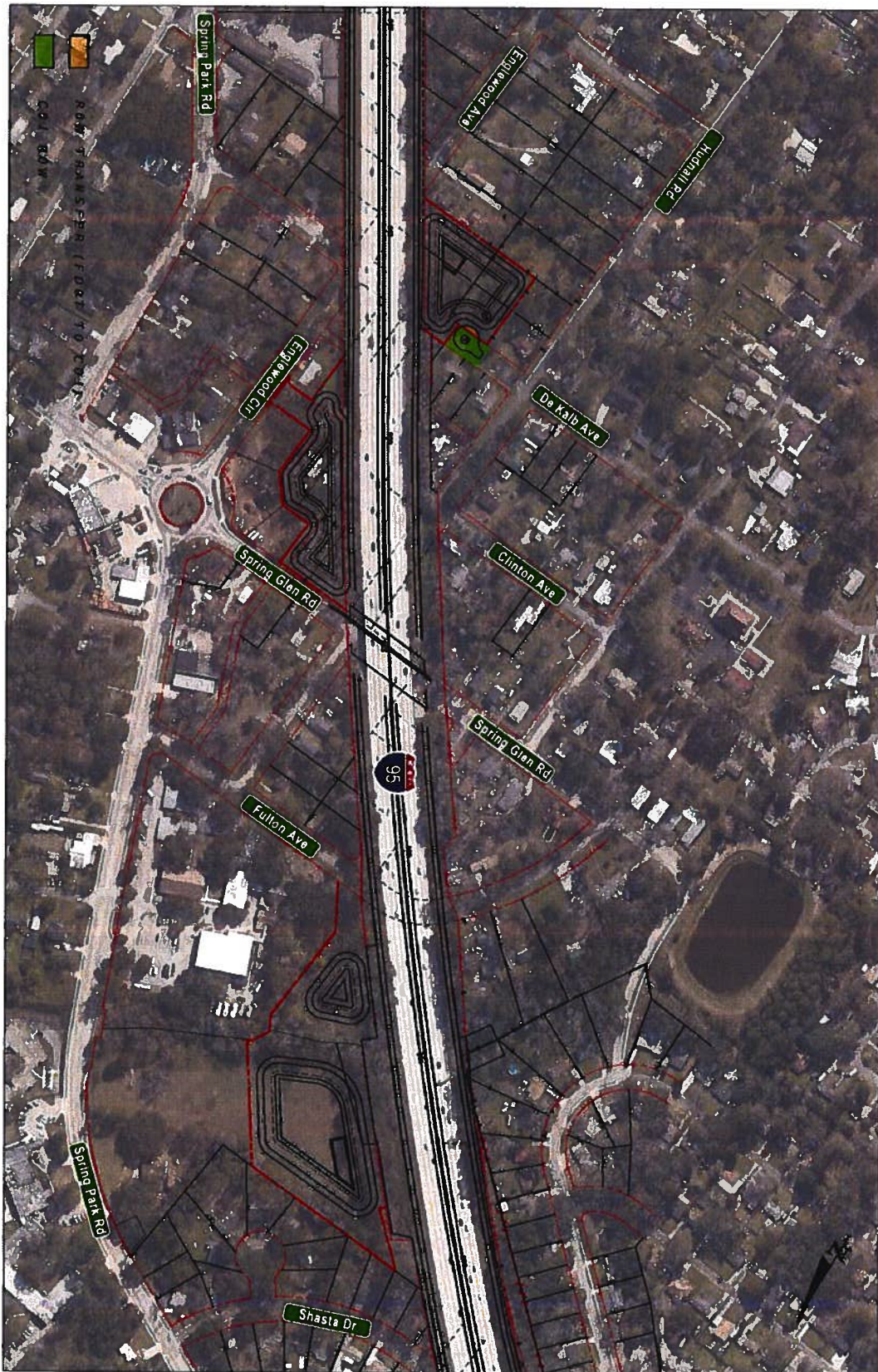
EXHIBIT "B"
Composite B-1



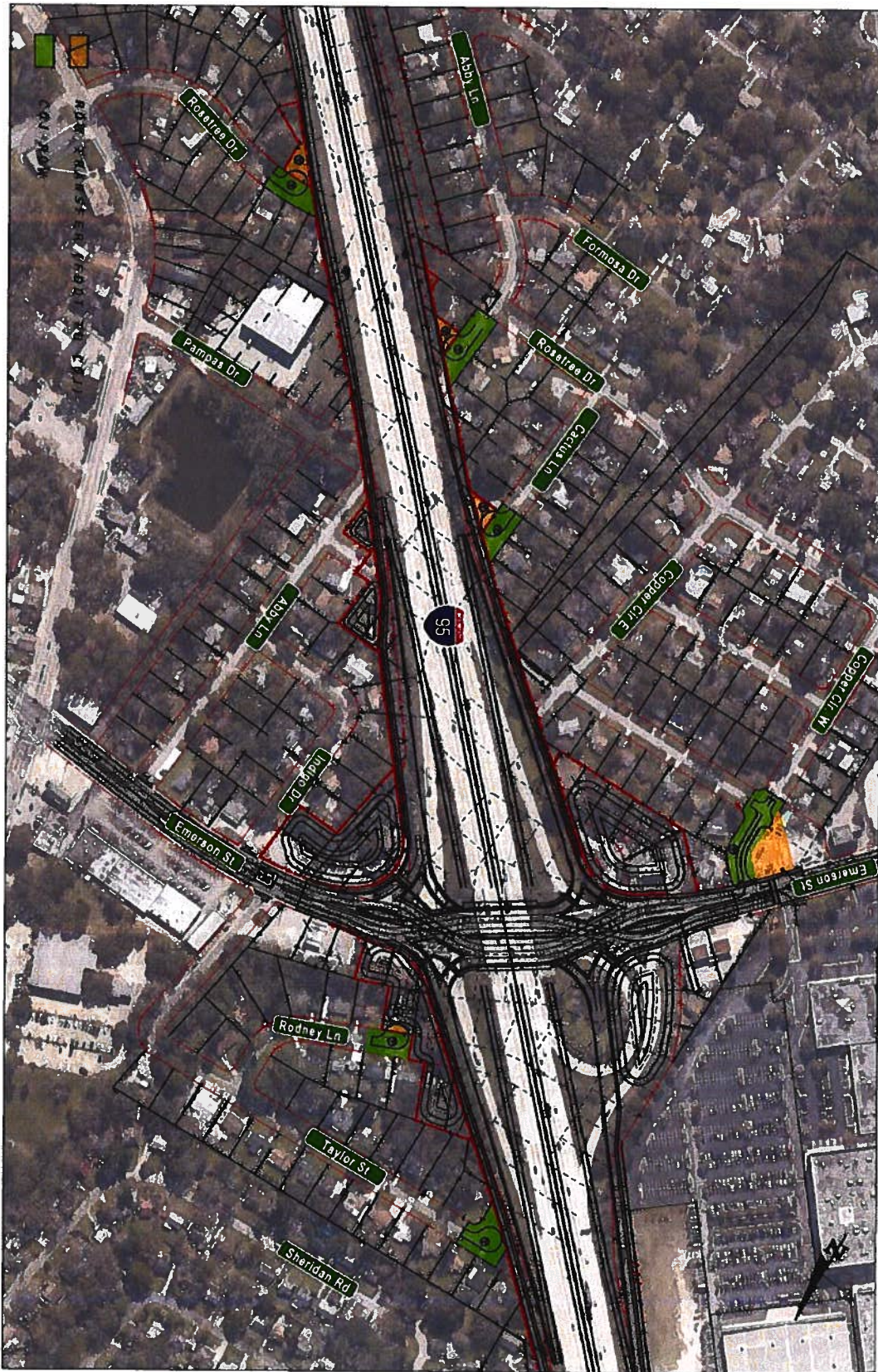
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Composite B-2**



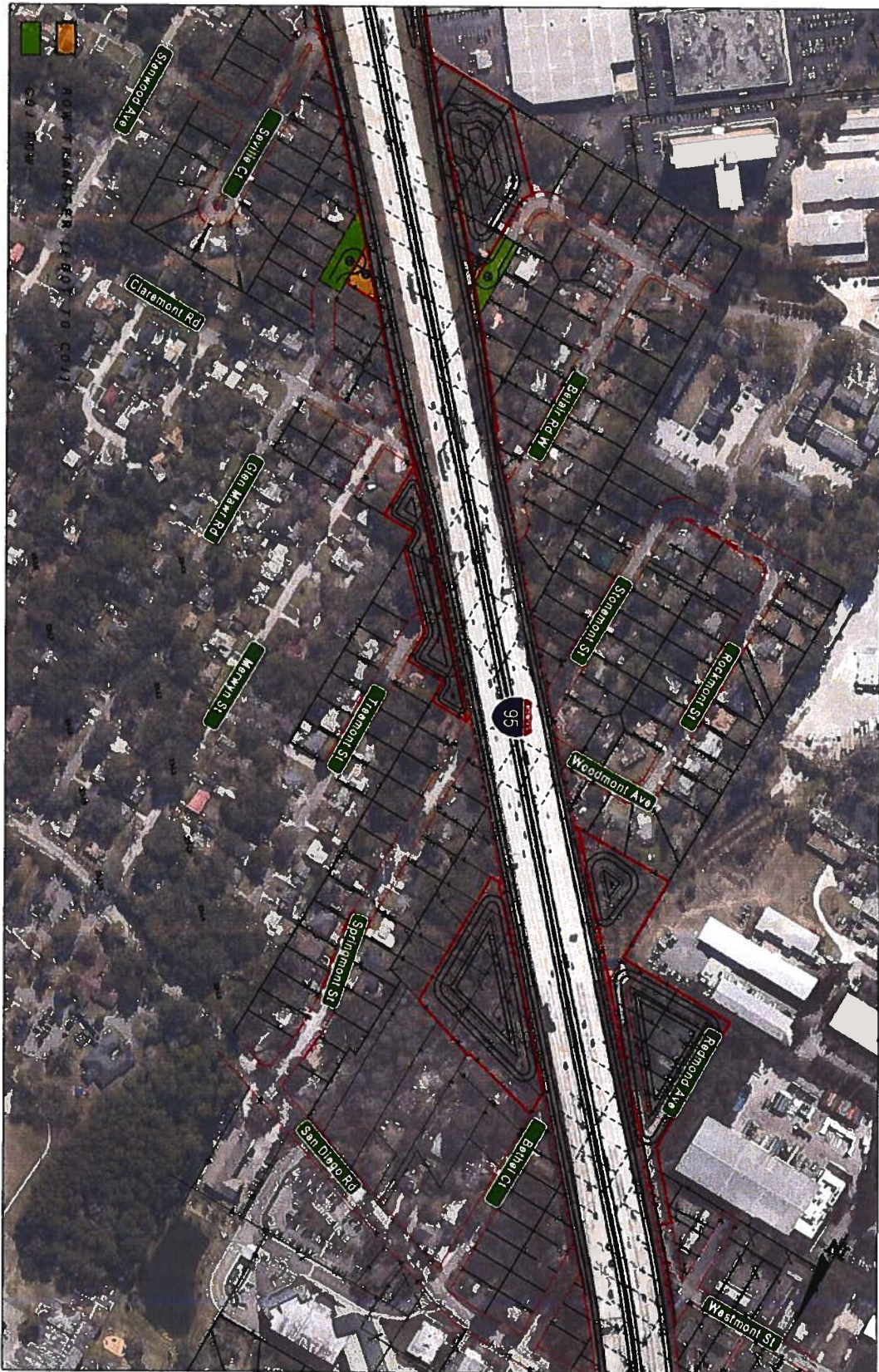
**EXHIBIT "B" Cont'd
Composite B-3**



**EXHIBIT "B" Cont'd
Composite B-4**



**EXHIBIT "B" Cont'd
Composite B-5**



Financial Project Id. No.: 432259-2-52-01
Federal Id. No.: D220-122-B
Project Description: Lane Reconstruction along SR 9 and SR 202
On & Off System D2 Construct, Agency Maintain

EXHIBIT "C"
(RESOLUTION)