

SECTION No.: 88061000
FM No.: 413048-2
AGENCY: Indian River County
C.R. No.: 606

**DISTRICT FOUR
HIGHWAY MAINTENANCE MEMORANDUM OF AGREEMENT**

THIS AGREEMENT, entered into this _____ day of _____, 20__, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, a component agency of the State of Florida, hereinafter called the DEPARTMENT and Indian River County, a political subdivision of the State of Florida, hereinafter called the AGENCY collectively referred to as Parties.

WITNESSETH:

WHEREAS, the AGENCY, as part of the County Roadway System has jurisdiction over:
Oslo Road from 90th Ave to 82nd Ave;
86th Ave from Oslo Road to 13th Street SW
5th Street SW from 82nd Ave to 74th Ave;
82nd Ave from 1st Street SW to Oslo Road; and

WHEREAS, pursuant to Sections 339.07, 339.08 and 339.12, Florida Statutes and Federal funding provisions the DEPARTMENT is authorized to undertake projects within the AGENCY's geographical limits and the AGENCY agrees to have this improvement constructed; and

WHEREAS, in accordance with Title 23, U.S. Code, Section 116 and Federal Highway Administration regulations issued pursuant thereto, there must be an agreement with the AGENCY to maintain the project; and

WHEREAS, pursuant to such authority, the DEPARTMENT and the AGENCY agrees to have the DEPARTMENT construct certain improvements more particularly described as Financial Project ID 413048-2, which involves constructing a new interstate interchange, widening Oslo Road, realigning 82nd Ave to accommodate the new interchange, and constructing 13th Street SW; hereinafter referred to as the "Project", as more particularly described in **Exhibit A**; and

WHEREAS, this project is eligible for use of ARPA state funds; and

WHEREAS, pursuant to that certain Right of Way MOA between the AGENCY and the DEPARTMENT dated February 7, 2020, and all subsequent amendments thereto, the DEPARTMENT will acquire Right of Way for the project on behalf of AGENCY; and

WHEREAS, upon acquisition of the necessary right-of-way, the DEPARTMENT will proceed to construct the Project; and

WHEREAS, the Parties hereto mutually recognize the need for entering into an Agreement designating and setting forth the responsibilities of each party; and

WHEREAS, the AGENCY by Resolution on the _____ day of _____, 20__, a copy of which is attached hereto as Exhibit B and by this reference made a part hereof, desires to enter into this Agreement and authorizes its officers to do so.

NOW THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the Parties covenant and agree as follows:

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. The DEPARTMENT has undertaken and obtained the approval of Federal participation for the Project. The AGENCY is responsible for additional Project costs determined to be Federal Aid Non-Participating. The AGENCY shall allow the DEPARTMENT and its contractors to enter onto the existing AGENCY property. No further permit or agreement from the Agency shall be required to construct this Project.
3. The Agency will construct paved surfaces on 90th Avenue from 13th Street SW to Oslo Road, and Oslo Road from 90th Avenue to the western project limits.
4. The AGENCY shall continue to maintain the existing roadway and any property owned by AGENCY until the DEPARTMENT begins construction of the Project. The DEPARTMENT shall be responsible for mowing and litter removal during the duration of the Project.
5. Upon "final acceptance" by the DEPARTMENT of the Project, (as "final acceptance" is described in the Standard Specifications for Roadway and Bridge Construction dated 2019, as amended), and Notice thereof to the AGENCY, the AGENCY shall maintain the Project, at its own cost, in accordance with the following Federally and State accepted standards: (a) FDOT Design Manual (FDM), current edition (b) Florida Green Book dated 2016, as amended (c) Governing standards and specifications: FDOT Design Standards dated FY 2019-20, as amended (d) Standard Specifications for Roadway and Bridge Construction dated 2019, as amended by contract documents, and (e) Manual on Uniform Traffic Control Devices (MUTCD), current edition, or as amended. Maintenance of said Project includes maintaining roadway, sidewalk, signing and pavement marking, and drainage systems that are outside of the Limited Access ROW.
 - a. The AGENCY grants to the DEPARTMENT all rights necessary to enter and construct the Project.
 - b. The Department shall give the AGENCY seven (7) days' notice before final inspection. The AGENCY will have the opportunity to inspect and identify corrections to the PROJECT within seven (7) days' notice and the DEPARTMENT agrees to undertake those corrections prior to final acceptance so long as the corrections comply with the Final Proposed Construction plans and specification previously approved by both the DEPARTMENT and the AGENCY.

- c. If the project requires one or more permits that are revocable by the permitting entity and the permitting entity's needs require the removal of the project facility or any portion of it, either:
 - i. The facility would be reconstructed or relocated in such a way as to continue serving the same need (e.g., roadway and sidewalk connectivity) at the Agency's expense and a funding source would be made available; or
 - ii. Federal funds would be repaid, again at the Agency's expense. The useful life of the facility would be determined and a schedule for repayment developed (i.e., the amount of repayment necessary for each year of the remaining useful life of the facility at the time of its removal).

- 6. Warranties: The DEPARTMENT shall transfer any applicable warranties to the AGENCY.

- 7. Environmental permitting: If requested by the DEPARTMENT, the AGENCY shall sign as a joint applicant and be responsible for the permits related to the Project. Further the AGENCY shall be solely responsible for ensuring that the Project remains in compliance with all permits after the construction is complete and the right of way is transferred to the AGENCY. To the extent permitted by law, the AGENCY shall indemnify the DEPARTMENT for any violations by the AGENCY of any permits issued to the Department or jointly to the AGENCY and the DEPARTMENT after construction is complete. The AGENCY shall execute all documentation required by the permitting agencies in a timely manner to accept transfer of the Project. The AGENCY shall be the applicant for all occupancy permits that are required for the Project.

- 8. Utilities: The AGENCY shall cooperate with the DEPARTMENT, to the extent necessary, to accomplish utility relocations for this Project. This shall include, but not be limited to, entering into utility subordination agreements with the affected utility owners, thereby assuming liability for future utility relocations within the AGENCY right of way and proposed right of way. At its own expense, the AGENCY shall comply with any and all request of the DEPARTMENT to provide written notice to utility owner to initiate work necessary to alleviate interference; to remove or relocate non-compliant utilities; and to place liens upon non-compliant utility owners within the AGENCY right of way, as defined in Florida Statutes 337.403 and 337.404. The AGENCY shall be liable and reimburse the DEPARTMENT for any cost incurred by the DEPARTMENT for the AGENCY's failure to timely comply with said request.
 - a. AGENCY'S Utilities: The AGENCY shall relocate and adjust its own utilities including connection with utility customers. The Parties will enter into an agreement to relocate and adjust utilities. The DEPARTMENT will pay for this work as part of the project cost. The PARTIES will enter into a separate agreement to extend utilities west of 82nd Avenue. The COUNTY will pay for this work.

- 9. Signals: The AGENCY shall cooperate with the DEPARTMENT to effect signal and interconnect connections for the Project.

10. Drainage: Drainage system and storm water management ponds shall be maintained per permit.
11. Unforeseen issues: If unforeseen issues shall arise, the AGENCY shall cooperate with the DEPARTMENT to the extent necessary to construct the Project. This shall include but not be limited to the execution of documents; allowing the Department and/or their contractors/consultants to enter upon the real property owned, leased, possessed and/or controlled by the Agency upon which the Project is to be constructed or any property adjacent thereto.
12. E-Verify requirements: The AGENCY:
- 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
 - shall expressly require any contractors 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 contractor during the contract term.
13. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings as represented in the Final Proposed Construction plans. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. []
14. The DEPARTMENT will provide the AGENCY with as-builts as a part of the final acceptance package.
15. This Agreement shall be governed, interpreted and construed according to the laws of the State of Florida.
16. LIST OF EXHIBITS
- **Exhibit A:** Project Scope
 - **Exhibit B:** AGENCY's Resolution
 - **Exhibit C:** Executed ROW MOA

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year provided below.

FOR DEPARTMENT:

FLORIDA DEPARTMENT OF
TRANSPORTATION, DISTRICT FOUR

By: _____

Steven C. Braun, P.E.

Director of Transportation Development

Administrative Assistant:

Print Name: _____

Legal Approval:

District Four Attorney

FOR AGENCY:

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

ATTEST: Jeffrey R. Smith
Clerk of Court and Comptroller

By: _____

Deputy Clerk

By: _____

Peter D. O'Bryan

Chairman

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

William K. DeBaal

Deputy County Attorney

This Memorandum of Agreement has been duly authorized and approved on _____ by
Indian River County Resolution No. _____.

SECTION No.: 88061000
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AGENCY: Indian River County
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EXHIBIT A

PROJECT SCOPE

All of the improvements are to be completed by DEPARTMENT within the AGENCY's existing and proposed right-of-way.

Oslo Road – Two travel lanes in each direction.

Relocated 82nd Ave – 2 travel lanes, with curb and gutter and sidewalks, closed drainage system.

Old 82nd Ave – turn around cul-de-sac.

86th Ave – turn around cul-de-sac.

13th Street SW – 2 travel lanes between 86th Ave and 90th Ave, open drainage system.

Permits will be acquired for the project as a whole. Post construction, permit requirements for the County roadway portion will become the responsibility of the County.

[

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EXHIBIT B

AGENCY's Resolution

SECTION No.: 88061000
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AGENCY: Indian River County
C.R. No.: 606

EXHIBIT C

Executed Right of Way Memorandum of Agreement

**RIGHT OF WAY ACQUISITION
MEMORANDUM OF AGREEMENT**

This is a Memorandum of Agreement ("MOA") made and entered into this 7th day of FEB, 20²⁰, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida ("DEPARTMENT") and INDIAN RIVER COUNTY, a political subdivision of the State of Florida ("AGENCY").

WITNESSETH:

WHEREAS, the DEPARTMENT is constructing a transportation project for the I-95 and Oslo Road Interchange ("Project"), as depicted in the attached Exhibit "A" and associated with Item / Segment Number 413048-2-52-01; and

WHEREAS, the AGENCY is the owner of Oslo Road; and

WHEREAS, pursuant to Sections 339.07, 339.08 and 339.12, Florida Statutes, and federal funding provisions, the DEPARTMENT is authorized to undertake projects within the AGENCY's geographical limits; and

WHEREAS, the Project will involve the acquisition of various property interests along the Project corridor; and

WHEREAS, the DEPARTMENT plans to construct the Project and conduct right of way acquisition and related activities, including eminent domain proceedings, on the Project for and on behalf of the AGENCY to prepare the Project for construction; and

WHEREAS, the DEPARTMENT will conduct its right of way acquisition activities in accordance with its right of way procedures and applicable federal acquisition requirements; and

WHEREAS, the parties agree that it is in the best interest of the public to promote a cooperative effort between the DEPARTMENT and the AGENCY for the successful completion of the Project.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, this MOA sets forth and outlines the following agreements between the DEPARTMENT and the AGENCY concerning the performance of acquisition and maintenance activities by the AGENCY and the DEPARTMENT for the AGENCY's Project:

1. The above recitals are true and correct and are incorporated herein by reference.
2. Upon completion of its acquisition and construction activities for the Project, the DEPARTMENT will transfer and the AGENCY will accept acquired property rights along the AGENCY facilities, including excess property acquired by the DEPARTMENT on behalf of the AGENCY, except areas designated as limited access right-of-way. The limited access right-of-way areas are shown in Exhibit "B". If for some reason the DEPARTMENT does not construct the Project, any acquired property, except for areas designated as limited access right-of-way shall be conveyed to the AGENCY by Quit Claim Deed containing a reverter clause limiting the use to highway purposes in accordance with all federal and state regulations, and the AGENCY shall accept the property and comply with all regulations.

3. Said conveyance shall include, and the AGENCY fully accepts, a transfer and assignment of all rights and obligations pursuant to any maintenance agreement, utility agreement, subordination, and/or other agreements or matters of record relating to the property to be conveyed and the AGENCY shall assume all responsibilities and liabilities arising from any obligations thereunder which responsibilities, liabilities and obligations as set forth in the conveyance documents shall run with the land. This provision shall survive the termination of this MOA.
4. Notwithstanding any other provision herein to the contrary, the DEPARTMENT shall not be responsible for any costs or attorney fees arising out of any liabilities or obligations incurred regarding the right of way after the transfer of property.
5. Maintenance prior to and during construction:
 - A. The following shall apply to areas designated in Exhibit "B" as limited access right-of-way: Prior to construction of the Project by the DEPARTMENT, the AGENCY shall be responsible for the maintenance of all properties acquired for the Project by the DEPARTMENT, keeping them in a safe condition. This includes responding to and addressing Code Enforcement violations and complaints from the public.
 - B. The following shall apply to areas designated in Exhibit "B" as non-limited access right-of-way: Prior to construction of the Project by the DEPARTMENT, the AGENCY shall be responsible for the maintenance of all properties acquired for the Project by the DEPARTMENT, keeping them in a safe condition. This includes responding to and addressing Code Enforcement violations and complaints from the public. During Construction of the Project by the DEPARTMENT, the AGENCY is responsible for mowing and litter removal unless a Locally Funded Agreement (LFA) is entered into that includes this work.
6. To the extent provided by law, the AGENCY shall indemnify, defend and hold harmless the DEPARTMENT and all of its officers, agents and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the AGENCY, its agents or employees during acquisition and other related activities on the Project except that neither the AGENCY, its officers, agents or employees will be liable for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the DEPARTMENT or any of its officers, agents or employees during the performance of acquisition and other related activities on the Project.
7. Any and all notices given or required under this MOA shall be in writing and either hand-delivered with receipt acknowledged or sent by certified mail, return receipt requested. All notices delivered shall be directed as follows:

As to the DEPARTMENT:

Anson Sonnett, P.E., Project Manager
Florida Department of Transportation
3400 West Commercial Boulevard
Fort Lauderdale, Florida 33309-3421
Phone: (954) 777-4474

With copy to:

Daniel Marwood, Deputy Right of Way Manager - Production
Florida Department of Transportation

3400 West Commercial Boulevard
Fort Lauderdale, Florida 33309-3421
Phone: (954) 777-4238

As to the AGENCY:

Richard B. Szpyrka, P.E.
Public Works Director
Indian River County
1801 27th Street
Vero Beach, FL 32960
(772) 226-1234

With copy to:

County Attorney
Indian River County
1801 27th Street
Vero Beach, FL 32960

8. Multiple copies of this MOA may be fully executed by all parties, each of which shall be deemed to be an original. The date entered above where indicated shall be the date the last party signed this MOA.

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IN WITNESS WHEREOF, the parties hereto have made and caused this Memorandum of Agreement to be authorized and duly executed on behalf of their respective entities.

FOR DEPARTMENT:

FLORIDA DEPARTMENT OF
TRANSPORTATION, DISTRICT FOUR

By: 
Steven C. Braun, P.E.
Director of Transportation Development

Administrative Assistant:



Print Name: Ann Latke

Legal Approval:


District Four Attorney

FOR AGENCY:

ATTEST: Jeffrey R. Smith
Clerk of Court and Comptroller

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

By: 
Deputy Clerk

By: 
Susan Adams
Chairman



APPROVED AS TO FORM
AND LEGAL SUFFICIENCY


William K. DeBaal
Deputy County Attorney

This Memorandum of Understanding has been duly authorized and approved on January 7, 2020
by County Resolution No. 2020-00.1.

EXHIBIT A

Project Layout

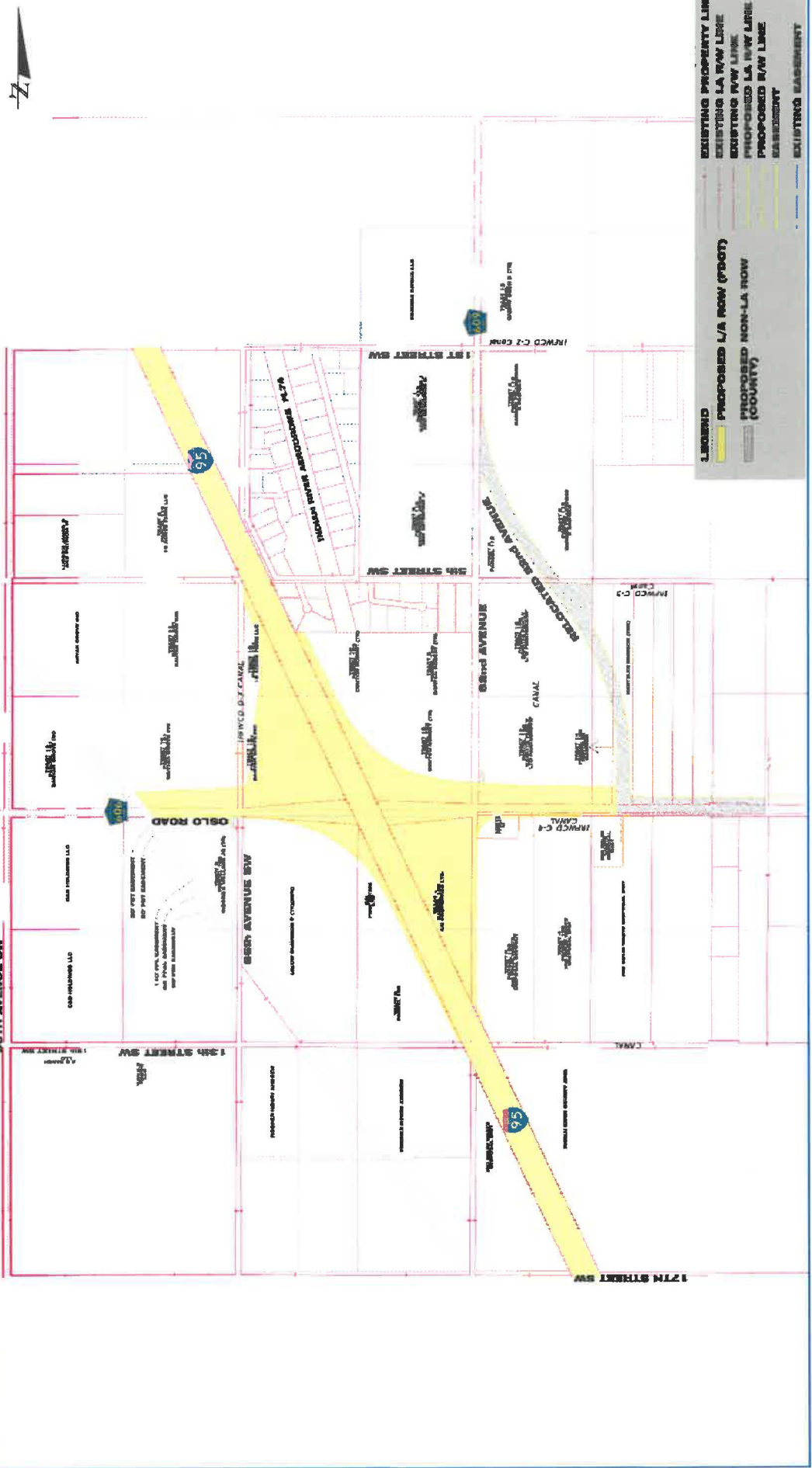
EXHIBIT B

Limited Access Right-of-way



I-95 at Oslo Road New Interchange
 FPID: 413048-2-52-01

Right of Way Ownership
 November 04, 2019



LEGEND

- EXISTING PROPERTY LINE
- EXISTING LA R/W LINE
- EXISTING ROW LINE
- PROPOSED LA R/W LINE
- PROPOSED LA R/W LINE (COUNTY)
- EXISTING CASSEMENT
- PROPOSED CASSEMENT
- EXISTING NON-LA ROW
- PROPOSED NON-LA ROW
- EXISTING EASEMENT
- PROPOSED EASEMENT

RESOLUTION NO. 2020-001

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, AUTHORIZING THE CHAIRMAN’S EXECUTION OF A RIGHT OF WAY ACQUISITION MEMORANDUM OF AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR ACQUISITION OF RIGHT OF WAY FOR THE RELOCATION OF 82ND AVENUE, CUL-DE-SAC CONSTRUCTION ON 86TH AVENUE SW, IMPROVEMENTS ON 13TH STREET SW, DRAINAGE IMPROVEMENTS, RECONSTRUCTIONS/RELOCATION OF EXISTING ROADWAYS, SIDEWALKS, CURB RAMS, PEDESTRIAN CROSSINGS, AND OTHER RELATED IMPROVEMENTS FOR THE OSLO ROAD AND I-95 INTERCHANGE PROJECT.

WHEREAS, the BCC previously accepted a resolution number 2017-022, in support of the improvements to Oslo Road/CR 606 and SR9/I-95, providing an interchange connection to I-95 from Oslo Road; and

WHEREAS, FDOT is authorized by Florida Statutes and Federal funding provisions to undertake projects within the geographical limits of Indian River County; and

WHEREAS, those improvements are being managed by the FDOT more particularly described as Financial Project No. 413048-2-52-01, which involves the design, acquisition of rights-of-way, construction of an interchange at Oslo Road and I-95, drainage improvements, reconstruction/relocation of existing roadways, sidewalks, curb ramps, pedestrian crossings, and other related improvements.

WHEREAS, the Florida Department of Transportation (FDOT) is prepared to provide funds to for the cost for right-of-way acquisition and Construction of the project; and

WHEREAS, the State of Florida, Department of Transportation, has requested Indian River County execute and deliver to the State of Florida, Department of Transportation, the Right of Way Acquisition Memorandum of Agreement for the aforementioned project; and

WHEREAS, a resolution to execute the Right of Way Acquisition Memorandum of Agreement for the aforementioned project is required.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, that the Chairman of the Board is hereby authorized to make, execute, and deliver to the State of Florida, Department of Transportation, the Right of Way Acquisition Memorandum of Agreement for the aforementioned project.

The foregoing resolution was offered by Commissioner Flescher who moved its adoption. The motion was seconded by Commissioner Zorc and, upon being put to a vote, the vote was as follows:

Chairman Susan Adams	<u>AYE</u>
Vice-Chairman Joseph E. Flescher	<u>AYE</u>
Commissioner Peter D. O’Bryan	<u>AYE</u>
Commissioner Bob Solari	<u>AYE</u>
Commissioner Tim Zorc	<u>AYE</u>

The Chairman thereupon declared the resolution passed and adopted this 7th day of January, 2020.

BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY, FLORIDA

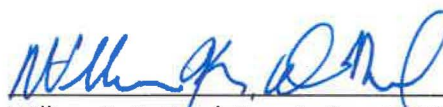
By 
Susan Adams, Chairman



Attest: Jeffrey R. Smith, Clerk of Court
and Comptroller

By: 
Deputy Clerk

Approved as to Form and Legal Sufficiency


William K. DeBaal, Deputy County Attorney