

RESOLUTION 16-99

BE IT RESOLVED that the appropriate officers of the City are authorized but not required to accept and deliver on behalf of the City that certain preconstruction Agreement between the City and the Florida Department of Transportation, relating to the reconstruction and transfer of Front Beach Road Segment 2, in substantially the form attached and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 14th day of July, 2016.

CITY OF PANAMA CITY BEACH

By: 

Mayor Mike Thomas

ATTEST:


Diane Fowler, City Clerk



CITY OF PANAMA CITY BEACH AGENDA ITEM SUMMARY

1. DEPARTMENT MAKING REQUEST/NAME:

Community Redevelopment Area (CRA)/Kelly Jenkins

2. MEETING DATE:

7/14/2016

3. REQUESTED MOTION/ACTION:

Approve Agreement with DOT for the transfer of Front Beach Road Segment 2 and authorize its execution and minor amendments by City Manager

4. AGENDA

PRESENTATION
PUBLIC HEARING
CONSENT
REGULAR

5. IS THIS ITEM BUDGETED (IF APPLICABLE)? YES NO N/A
BUDGET AMENDMENT OR N/A

DETAILED BUDGET AMENDMENT ATTACHED YES NO N/A

6. BACKGROUND: (WHY IS THE ACTION NECESSARY, WHAT GOAL WILL BE ACHIEVED)

The CRA department's engineering consultants have completed construction drawings and specifications for the Front Beach Road CRA Segment 2 project. This project begins approximately 500' west of Richard Jackson Boulevard and continues along Front Beach Road to South Thomas Drive. The City of Panama City Beach has been involved in many discussions and negotiations with the Florida Department of Transportation (FDOT) over the years to have the ownership of Front Beach Road transferred from FDOT to the City. As part of the FDOT permitting process to begin construction of Front Beach Road Segment 2, it became clear that an agreement would need to be reached between both parties. This agreement would ensure that this portion of roadway would be transferred to the City as a condition of obtaining a permit to work within the FDOT right-of-way. The approval of the attached agreement provided will enable the Segment 2 construction project to move forward to the next step to begin construction.

While we believe this agreement to be in substantially final form, DOT's attorney has been out of the office since June 30 and we will not be able to confirm if any further changes are necessary until he returns next week. If any changes are made, we anticipate they will be minor, but will confirm at the Council's July 14 meeting.

Project 4263914
City of Panama City Beach
Segment 2 Front Beach Rd

AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
THE CITY OF PANAMA CITY BEACH

THIS AGREEMENT is made and entered into this _____ day of _____, 2016, by and between STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called the "DEPARTMENT," and the CITY OF PANAMA CITY BEACH, hereinafter called the "CITY."

WITNESSETH

1. The CITY desires to reconstruct a portion of Front Beach Road, specifically that portion of SR 30 Front Beach Road Section No. 46010000 from 500 feet west of Richard Jackson Boulevard (Beginning Mile Post 12.370 to Ending Mile Post 13.415) to South Thomas Drive (the "Road") and will provide all funds necessary for the reconstruction;
2. The DEPARTMENT and the CITY are desirous of having the CITY administer the project for the reconstruction of the portion of SR 30 Front Beach Road described above, all of the aforesaid being hereinafter referred to as the PROJECT;
3. The CITY has completed the design including without limitation the roadway, profiles and stormwater drainage for the above described portion of Front Beach Road within the CITY;
4. The CITY will enter a road jurisdictional transfer agreement to transfer said portion from the State Highway System to the City Street System, and will assume responsibility for the routine maintenance of the portion of SR 30 Front Beach Road described above if a notice to proceed with construction is issued to the CITY's contractor before the jurisdictional transfer of the road;
5. The manner set forth for completion of the PROJECT is in the interest of both the DEPARTMENT and the CITY and it would be more practical, expeditious, and economical for the CITY to perform such activities;
6. The DEPARTMENT is authorized pursuant to Section 334.044, Florida Statutes, to enter into contracts and agreements and is authorized pursuant to Section 339.12, Florida Statutes, to coordinate with governmental entities with respect to projects in the adopted work program.
7. The CITY is authorized to enter into this AGREEMENT pursuant to the Resolution of its City Council attached hereto.

NOW THEREFORE, in consideration of the mutual benefits to be derived from joint participation in the PROJECT, the parties agree to the following:

8. The recitals set forth in paragraphs 1 through 7 above are true and correct and are deemed incorporated into this AGREEMENT.

9. The CITY shall administer the PROJECT and shall comply with all laws, rules, guidelines, procedures, and specifications that the DEPARTMENT would have to comply with if the DEPARTMENT were administering the PROJECT. The CITY will not be required to obtain permits from the DEPARTMENT other than those that would be required if the DEPARTMENT were administering the PROJECT. In administering the PROJECT, the CITY shall not jeopardize federal funding of any current or future DEPARTMENT projects. Should the CITY fail to comply with the terms of this AGREEMENT, it shall be liable to the DEPARTMENT for any costs incurred by the DEPARTMENT for any losses resulting from such non-compliance. Until the transfer of the Road to the City, it is the DEPARTMENT's intention that the CITY shall have the rights under Section 337.274, Florida Statutes, which the DEPARTMENT would have if the DEPARTMENT were administering the PROJECT. The CITY shall be responsible for any and all actual damages it causes to lands, water, and premises as a result of the CITY's activities pursuant to Section 337.274, Florida Statutes, and the CITY shall reimburse the DEPARTMENT for any loss incurred in connection with the CITY's activities pursuant to Section 337.274, Florida Statutes.

10. Until the transfer of the Road to the CITY, the CITY shall:

a. Present the typical section package and the pavement design to the DEPARTMENT for approval or disapproval before moving forward with any phase of the PROJECT.

b. Design the PROJECT to comply with DEPARTMENT standards and specifications and, if there are variances or exceptions, they shall be identified and communicated in writing to the DEPARTMENT each time plans are sent for review. The plans shall be sent to the DEPARTMENT for review at the time of each review cycle and at any other time that significant plans changes are made. The DEPARTMENT shall have 30 working days to review the plans and make comments. Any comment made by the DEPARTMENT within the 30-day period shall be resolved and appropriate revisions shall be incorporated into the plans. However, if no comments are sent to the City within the 30-day period, the CITY may proceed without further notification to the DEPARTMENT. All design variances and exceptions shall be handled according to the requirements set forth in the DEPARTMENT's Plans Preparation Manual, specifically the requirements that variances be approved by the District Design Engineer and that all exceptions, and variances for design speed on the Florida Intrastate Highway System, be approved by the State Highway Engineer. The variances or exceptions previously approved in the PD&E would not require the approval of the District Design Engineer, and such original approvals shall be included in the design documentation submitted as required above. Any variances or exceptions not

included in the PD&E shall be submitted for approval as described above. As part of any review required by this paragraph, DEPARTMENT may identify features, variances, exceptions or enhancements (individually or collectively, "Enhancements") that DEPARTMENT would not normally include in a reconstruction project of a state road of similar width in a similar location.

c. Submit to the DEPARTMENT for review and approval all issues related to access management. At all times during the administration of the PROJECT by the CITY, the DEPARTMENT, through its procedure, Median Opening and Access Management Decision Process (Topic #625-010-021), shall have final authority to approve or disapprove issues related to access management. The CITY shall have the right to provide non-binding recommendations to the DEPARTMENT and its Access Management Committee, but decisions by the committee shall be final concerning issues between the CITY and the DEPARTMENT.

11. Contemporaneously with the execution of this AGREEMENT, the CITY shall authorize, execute and deliver the Roadway Transfer Agreement in the form of Exhibit A, attached hereto for the jurisdictional transfer of the Road from the DEPARTMENT to the CITY.

12. If the CITY issues a notice to proceed for construction of the PROJECT before the Secretary of Transportation approves the Road Transfer Agreement, the CITY shall, beginning on the date of such notice and thereafter until the date of the Secretary's approval, be responsible for maintaining SR 30 Front Beach Road Section No. 46010000 from 500 feet east of Richard Jackson Boulevard (Beginning Mile Post 12.537 to Ending Mile Post 13.415) to South Thomas Drive and such routine maintenance shall include all those activities set forth in the DEPARTMENT publication entitled "Routine Maintenance Activities July 1996," and as the same may be amended by the DEPARTMENT from time to time, and such maintenance shall be performed in a manner that meets or exceeds DEPARTMENT maintenance standards. CITY shall send a letter to the District Maintenance Engineer for District 3, with a copy to the DEPARTMENT's notice address provided under paragraph 26, setting forth the date when CITY's maintenance responsibility begins. The obligations of this paragraph terminate upon the approval of the transfer of the Road.

13. Except as otherwise set forth herein, this AGREEMENT shall continue in effect and be binding on both the CITY and the DEPARTMENT in perpetuity, or until said AGREEMENT is terminated by mutual written agreement between the parties; provided, however, that after the date the Secretary of Transportation approves the Road Transfer Agreement referred to above, the CITY shall not be required to comply with paragraph 9 of this AGREEMENT.

14. Until the transfer of the Road to the CITY, in the event that any portion of the urban streetscaping is at any time determined by the DEPARTMENT to not be in conformance with all applicable laws, rules, procedures and guidelines of the DEPARTMENT, or is

determined to be interfering with the safe and efficient operation of any transportation facility, or is otherwise determined to present a danger to public health, safety, or welfare, said portion shall be immediately brought into departmental compliance at the sole cost and expense of the CITY.

15. Until the transfer of the Road to the CITY, maintenance of the PROJECT shall be subject to periodic inspections by the DEPARTMENT.

16. Until the transfer of the Road to the CITY and prior to the start of any major construction or reconstruction activity related to the PROJECT, the CITY shall submit plans of the proposed work to all utilities with facilities within the limits of work for their review and comment. The CITY shall resolve any conflicts and/or concerns raised by the utilities prior to commencement of such activities. Prior to commencing any field activity on this project, the CITY shall notify all the utilities of their work schedule enabling facilities to be field located and marked to avoid damage.

17. Until the transfer of the Road to the CITY, if the CITY desires to perform maintenance activities, position vehicles, equipment, or personnel, within the DEPARTMENT's right of way, Maintenance of Traffic shall be performed in accordance with all Departmental Maintenance of Traffic Requirements contained in the Design Standards for Design, Construction, Maintenance and Utility Operations on the State Highway System (Topic 625-010-003) and the Manual of Uniform Traffic Control Devices ("MUTCD"). The CITY shall have Maintenance of Traffic certified personnel supervise the set up and operation of such Maintenance of Traffic devices and measures at the site of the construction or maintenance activity in accordance with the referenced standards.

18. This AGREEMENT is governed by and construed in accordance with the laws of the State of Florida.

19. This AGREEMENT and any interest herein shall not be assigned, transferred or otherwise encumbered by the CITY under any circumstances without the prior written consent of the DEPARTMENT. However, this AGREEMENT shall run to the DEPARTMENT and its successors.

20. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this AGREEMENT that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms and conditions herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

21. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity, crime, may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real

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property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes CATEGORY TWO for a period of thirty (36) months from the date of being placed on the convicted vendor list.

22. Notices pursuant to this AGREEMENT shall be in writing and sent by U.S. Mail to the following addresses:

FOR THE CITY
Mario Gisbert
City Manager
110 S. Arnold Road
Panama City Beach, Florida 32413
Telephone: (850) 233-5100
Fax: (850) 233-5108

FOR THE DEPARTMENT
Jared Perdue, P.E.
Director of Transportation Development
Department of Transportation
P.O. Box 607
1074 Highway 90 East
Chipley, Florida 32428
Phone: 850-330-1214
Fax: (850) 330-1761

The parties may change the addresses for notices hereunder by notice provided in accordance with this paragraph.

23. 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 one (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 \$25,000.000 and which have a term for a period of more than one (1) year.

24. To the extent allowed by the laws of Florida and pursuant to Section 768.28 Florida Statutes, the CITY hereby agrees to indemnify, defend, save, and hold harmless the DEPARTMENT from all claims, demands, liabilities, and suits of any nature arising out of,

because of, or due to any negligent act or occurrence or omission or commission of the CITY, its agents, or employees. It is specifically agreed between the parties executing this AGREEMENT that it is not intended by any of the provisions of any part of the AGREEMENT to authorize anyone not a party to this AGREEMENT to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this AGREEMENT.

25. This AGREEMENT may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute but one agreement.

26. Each party represents to the other that the individual signing below on its behalf is fully authorized to execute this AGREEMENT, and no further action by any board, council, employee or officer is required for the due execution and effectiveness of this AGREEMENT.

27. The CITY:

i. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by CITY during the term of the contract; and

ii. shall expressly require any contractor and 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.

28. The Parties agree to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

29. The CITY shall, or cause its contractor or consultant to carry and keep in force, during the term of this Agreement, a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$200,000 per person and \$300,000 each occurrence, and property damage insurance of at least \$200,000 each occurrence, for the services to be rendered in accordance with this Agreement. The CITY shall also, or cause its contractor or consultant to carry and keep in force Workers' Compensation Insurance as required by the State of Florida under the Workers' Compensation Law. With respect to any general liability insurance policy required pursuant to this Agreement, all such policies shall be issued by companies licensed to do business in the State of Florida. The CITY shall provide to the DEPARTMENT certificates showing the required coverage to be in effect with endorsements showing the DEPARTMENT to be an additional insured prior to commencing any work under this Agreement. Policies that include Self Insured Retention will not be accepted. The certificates and policies shall provide that in the event of any material change in or cancellation of the policies reflecting the required coverage, thirty days advance notice shall be given to the DEPARTMENT or as provided in accordance with Florida law.

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IN WITNESS WHEREOF, the CITY has caused this AGREEMENT to be executed in its behalf, by its _____, being authorized to enter into and execute same by the CITY; and the DEPARTMENT has executed this AGREEMENT through its District Secretary for District Three, State of Florida Department of Transportation, on the dates indicated below.

CITY OF PANAMA CITY BEACH

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: _____
Authorized Signature

BY: _____
District Secretary

Date: _____

Date: _____

ATTEST: _____

ATTEST: _____

Title: _____

Title: _____

LEGAL REVIEW:

LEGAL REVIEW:

CITY Attorney

Office of General Counsel

EXHIBIT A

FDOT/CITY OF PANAMA CITY BEACH

ROADWAY TRANSFER AGREEMENT

SR 30 Front Beach Road Section No. 46010000 from 500 feet west of Richard Jackson Boulevard (Beginning Mile Post 12.370 to Ending Mile Post 13.415) to South Thomas Drive

THIS AGREEMENT, is by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter called the "DEPARTMENT", and the CITY OF PANAMA CITY BEACH, FLORIDA, hereinafter called the CITY.

WITNESSETH

1. The DEPARTMENT has requested the transfer of SR 30 Front Beach Road Section No. 46010000 from 500 feet west of Richard Jackson Boulevard (Beginning Mile Post 12.370 to Ending Mile Post 13.415) to South Thomas Drive and as depicted on the map attached hereto as Exhibit A (the "Road"), from the State Highway System to the City Street System, and this transfer is mutually agreed upon between the CITY and the DEPARTMENT,

THEREFORE, in consideration of the mutual covenants and promises herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CITY and the DEPARTMENT agree as set forth below:

2. The recitals set forth in paragraph 1 above are true and correct, and are by reference made a part of this Agreement.
3. This Agreement sets forth the terms and conditions under which the CITY and the DEPARTMENT will abide.
4. By resolution, which is attached hereto, the CITY has authorized its representative whose name is signed below to enter into this Agreement.
5. This Agreement and transfer of the Road is subject to final approval by the Secretary of the Department. This Agreement is effective upon approval of this Agreement by the Secretary of the DEPARTMENT and 120 days after the District Three Secretary signs this Agreement, with the effective date of this Agreement being the later of the two events. Jurisdictional and maintenance responsibilities commence on the effective date of this Agreement.
6. With respect to the Road:
 - (a) The CITY accepts all responsibility for the right of way and for operation and maintenance of the roadway, including bridges. In addition to the roadbed, this Agreement includes all curbs, culverts, and drainage structures within the right of way at the time of transfer.

- (b) The CITY shall be responsible for maintenance of the right of way and of public sidewalks, bike paths, and other ways in the right of way.
 - (c) The DEPARTMENT gives up all rights to the Road, including the right of way, except as may be specified in this Agreement.
 - (d) If there will be any road number changes, the DEPARTMENT will offer an opportunity for a public hearing.
 - (e) It is agreed that all obligations of the DEPARTMENT, under any maintenance, utility, or railroad crossing agreement or other such agreement, relating to the Road, as listed on Exhibit B, shall be transferred at the same time and in the same manner as jurisdictional responsibility and regulatory authority over all pedestrian crossing permits is assigned to the CITY. If the agreements were made between the DEPARTMENT and the CITY, and the DEPARTMENT will no longer be involved after the transfer takes place, new agreements or amended agreements shall be made between the DEPARTMENT and the CITY. These agreements shall be negotiated and signed prior to District Secretary approval of the final Transfer Agreement. The DEPARTMENT acknowledges that copies of any existing permits, agreements and easements have been turned over to the receiving entity for their records prior to execution of this agreement.
 - (f) Disposition of telemetered traffic monitoring sites will be determined on an individual basis. The Traffic Data Section of the Transportation Statistics Office in cooperation with the District Office will determine if polling the sites is still desirable even if the traffic data are no longer needed for State Highway System reporting.
 - (g) If there is evidence of historical or archaeological resources that could be adversely impacted after a transfer, the CITY agrees to maintain the resources in accordance with the Cultural Resource Management Coordinator (CRMC) recommendations. If no evidence is found, the CITY agrees not to adversely affect any such resources if found after the transfer.
 - (h) If Federal-Aid funding has been used on the Road, the CITY agrees to enter into a project agreement with the Department in accordance with Topic Number 850-065-001, Inspection of Federal-aid Projects under Local Jurisdiction (State Maintenance Office).
 - (i) CITY shall record existing deeds or right-of-way maps in the public land records of Bay County in which the rights-of-way are located.
7. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

8. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.
9. This Agreement shall be exclusively governed by and construed in accordance with the laws of the State of Florida.
10. The parties may be reached at the following addresses and phone numbers:

Florida Department of Transportation
 Regina Battles, P.E.
 Interim Director of
 Transportation Development
 Post Office Box 607
 1074 Highway 90
 Chipley, Florida 32428
 Telephone: (850) 330-1203
 Fax: (850) 330-1761

City of Panama City Beach
 Mario Gisbert
 City Manager
 110 South Arnold Road
 Panama City Beach, Florida 32413
 Telephone: (850) 233-5100
 Fax: (850) 233-5108

11. Each party is an independent contractor and is not an agent of the other party. Nothing contained in this Agreement shall be construed to create any fiduciary relationship between the parties, during or after the performance of this Agreement. Neither party shall have the authority to bind the other party to any obligation whatsoever to any third party without the express specific written consent of the other.
12. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.
13. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having the jurisdiction to make such determination, the remainder of this Agreement shall remain in full force and effect provided that the part of this Agreement thus invalidated or declared unenforceable is not material to the intended operation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, on the dates set forth below:

CITY OF PANAMA CITY BEACH

**STATE OF FLORIDA
 DEPARTMENT OF TRANSPORTATION**

BY: _____

BY: _____

James T. Barfield, P.E.
 District 3 Secretary

Date: _____

Date: _____

ATTEST: _____

ATTEST: _____

Executive Secretary

BY: _____

Date: _____

Legal Review:

Legal Review:

City Attorney

Office of General Counsel

FINAL APPROVAL BY THE SECRETARY OF THE FLORIDA DEPARTMENT OF TRANSPORTATION

The Secretary of the Florida Department of Transportation approves the transfer and all provisions listed in this executed Transfer Agreement and the supporting Resolution between the Department and the City.

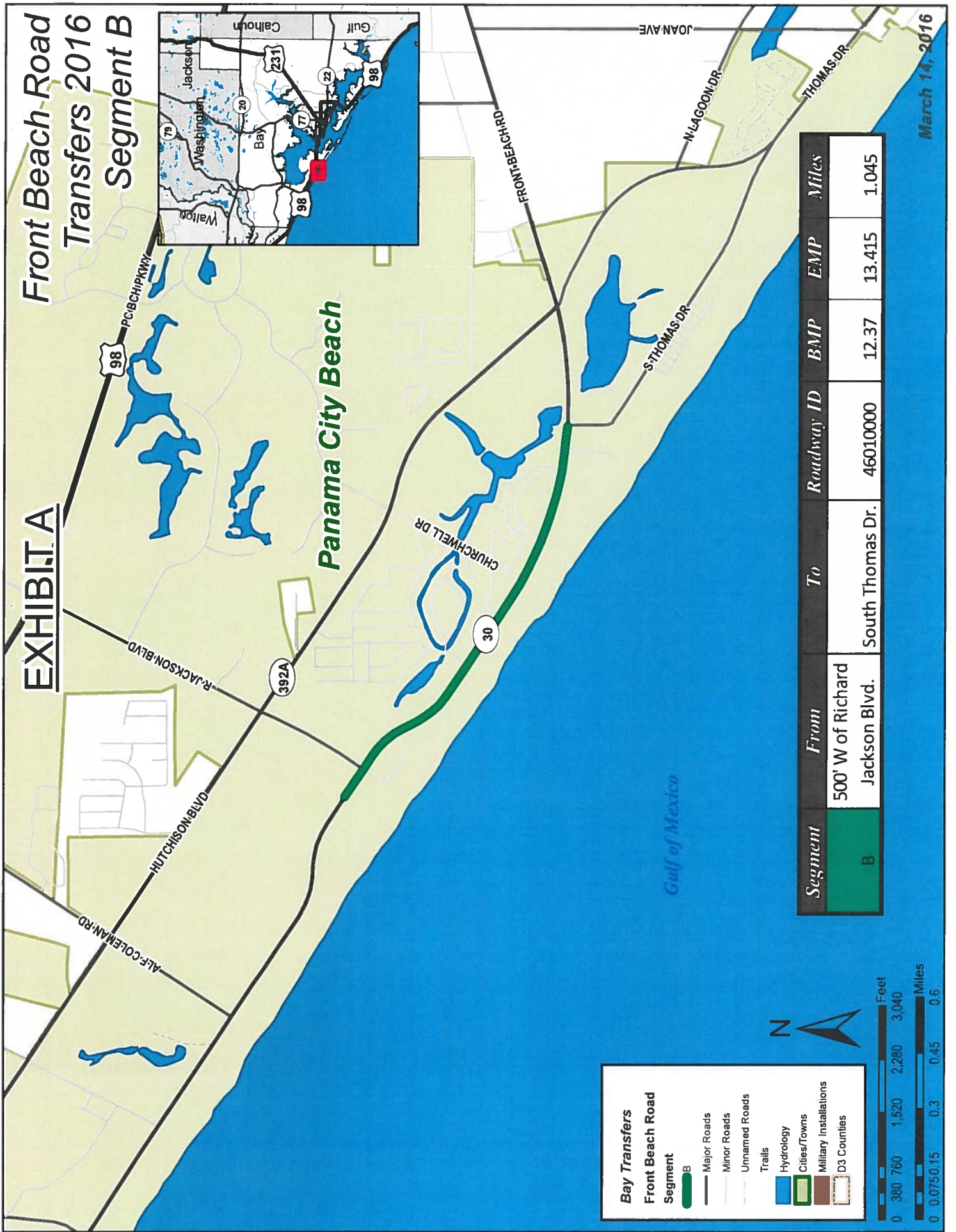
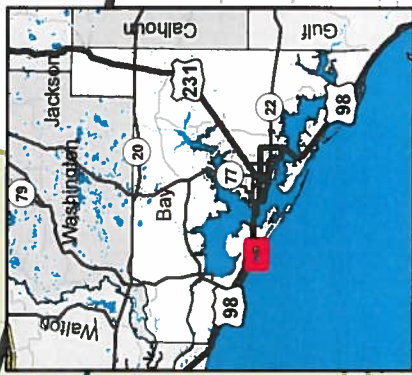
Signed: _____

Jim Boxold
Secretary of the Florida Department of Transportation

Date: _____

EXHIBIT A

Front Beach Road Transfers 2016 Segment B



Bay Transfers
Front Beach Road
Segment B

- Major Roads
- Minor Roads
- Unnamed Roads
- Trails
- Hydrology
- Cities/Towns
- Military Installations
- D3 Counties



Segment	From	To	Roadway ID	BMP	EMP	Miles
B	500' W of Richard Jackson Blvd.	South Thomas Dr.	46010000	12.37	13.415	1.045

March 14, 2016

EXHIBIT B—Segment 2

1. State Highway Lighting, Maintenance, and Compensation Agreement Contract No. AQA08.
2. Traffic Signal Maintenance and Compensation Agreement Contract No. ARW35
3. Majestic Towers Pedestrian Crossing Permit 04-K-391-0009
4. Majestic Towers II Pedestrian Crossing Permit 05-K-391-0018
5. Ocean Villa Pedestrian Crossing Permit 06-K-391-0011