

Agency: City of Orlando Vendor No: F596000396 014	Fund: LF Contract Amount: \$300,000.00	Financial Management No.: 436014-1-52-11
--	---	---

**QUIET ZONE IMPROVEMENT AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
The CITY OF ORLANDO**

This **AGREEMENT**, made and entered into this ____ day of _____, 2016, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as the “DEPARTMENT”) and the CITY OF ORLANDO, a municipality incorporated under the laws of the State of Florida (hereinafter referred to as the “AGENCY”),

WITNESSETH:

WHEREAS, The Department has determined that the project described in Exhibit “A”, attached to and incorporated into this Agreement, is for the public purpose of a quiet zone capital improvements project in response to the use of locomotive horns at highway-rail grade crossings, and the Department is authorized pursuant to Chapter 2014-51, Laws of Florida, to approve an expenditure to the Agency for up to fifty percent of the nonfederal and non-private share of project costs, with the remaining share being provided by the Agency; and

WHEREAS, the Agency, by Resolution, a copy of which is attached hereto as Exhibit “C”, and made apart hereof, has authorized its officers to execute this Agreement on its behalf; and

WHEREAS, The Department is prepared, in accordance with its Adopted Five Year Work Program, to undertake and complete the project described as the design and construction of Quiet Zone Improvements, in Fiscal Year 2015/2016, which project is identified as **FM #436014-1-52-11** (the “Project” or “Quiet Zone Improvements”). The Project consists of the design and construction of quiet zone improvements which are located within the geographic limits of the SunRail corridor; and

WHEREAS, the implementation of the Project is in the interests of both the DEPARTMENT and the AGENCY and it would be most practical, expeditious, and economical for the AGENCY to provide the funds to the DEPARTMENT for the work; and

WHEREAS, in order to accomplish the Quiet Zone Improvements the DEPARTMENT will design and construct the work described in Exhibit "A" hereto and the cost for said work will be allocated consistent with Exhibit "B".

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the parties agree as follows:

1. The term of this Agreement shall begin upon the date of signature of the last party to sign and shall remain in full force and effect through completion of all services required of the DEPARTMENT and AGENCY. The DEPARTMENT may, at any time and at any stage, amend or terminate the Project in whole or in part if the DEPARTMENT determines that such action is in the best interests of the public. Upon termination of this Agreement, the DEPARTMENT shall return to AGENCY all unexpended AGENCY funds.

2. The DEPARTMENT shall perform necessary preliminary engineering, prepare any and all design plans, perform the construction, provide all necessary engineering supervision, and otherwise perform all other necessary work, all as may be applicable for the Quiet Zone Improvements as described in Exhibit "A" hereto. Nothing herein shall be construed as requiring the DEPARTMENT to perform any activity which is outside the scope of the Quiet Zone Improvements that are to be constructed inside of SunRail right of way. Except as specifically stated otherwise in this Agreement, all such activities shall be performed by such entities, at such times, in such manner, under such conditions, and pursuant to such standards as the DEPARTMENT, in its sole discretion, deems appropriate. The AGENCY shall not have any jurisdiction or control over the DEPARTMENT'S activities, except as specifically stated in this Agreement. The AGENCY shall be entitled to be advised of the progress of the Project at reasonable intervals upon request.

3. If necessary, the AGENCY shall perform necessary preliminary engineering, prepare any and all design plans, perform the construction, acquire any necessary right of way, provide all necessary engineering supervision, and otherwise perform all other necessary work, for roadway work that is associated with the Quiet Zone Improvements located outside of the SunRail right of way. The parties currently anticipate that the AGENCY will conduct roadway work outside of the SunRail right of way in the amount of \$0.00 as shown in Exhibit "B." AGENCY and DEPARTMENT agree that any additional costs incurred by AGENCY in the conduct of work outside the SunRail right of way shall be treated as "in-kind work" under Paragraph 5 (B), below. In the event work by the AGENCY outside of the rail right of way is

necessary to complete the Quiet Zone Improvements, the parties hereto may enter into a separate funding agreement to allow for the DEPARTMENT to provide funding to the AGENCY to accomplish said improvements. All such activities shall be performed by such entities, at such times, in such manner, under such conditions, and pursuant to such standards as the AGENCY deems appropriate. However, all work undertaken and completed by the AGENCY must meet all technical, legal and industry standards to allow the Quiet Zone Improvements to be put into service. The DEPARTMENT shall be entitled to be advised of the progress of the Project at reasonable intervals upon request.

4. Upon completion of the Project and subject to the Parties inspection and acceptance, the Parties agree that all improvements made except for roadway improvements outside the SunRail right of way, as described in Exhibit "A", will become part of the SunRail and will be owned by the DEPARTMENT. All maintenance activities associated with the Quiet Zone Improvements located within the SunRail right of way (together with rail equipment located outside of rail right of way) will be the responsibility of the DEPARTMENT and the cost of said maintenance will be governed by an existing railroad maintenance agreement associated with the grade crossing. Said railroad maintenance agreement will be amended to include the improvements being constructed pursuant to this Agreement. All roadway maintenance, including signs and pavement markings will be maintained by the governmental entity having jurisdiction over the roadway pursuant to the terms of an existing agreement, the terms of which will be amended to reflect and to include the upgrades.

5. Contribution by the AGENCY of the funds for the Quiet Zone Improvement Project shall be made as follows:

(A) The Parties agree the estimated total cost of all work required for the Quiet Zone Improvements is **\$600,000.00 (Six Hundred Thousand Dollars and 00/100)**, herein "Project Estimate" for the Quiet Zone Improvements. To assist the AGENCY with funding for the Quiet Zone Improvements, the DEPARTMENT is prepared to provide up to 50% of the Project Estimate, up to but not exceeding, **\$300,000.00 (Three Hundred Thousand Dollars and No/100)**. The DEPARTMENT'S performance and obligation to construct the Project is contingent upon an annual appropriation by the Florida Legislature. The parties agree that in the event funds are not appropriated to the DEPARTMENT for the Project, this Agreement may be terminated, which shall be effective upon the DEPARTMENT giving written notice to the AGENCY to that effect.

Upon termination of this Agreement, the DEPARTMENT shall return to AGENCY all unexpended AGENCY funds.

(B) The AGENCY agrees that it will, within thirty (30) days of execution of this Agreement, furnish the DEPARTMENT an advance deposit in the amount of **\$300,000.00 (Three Hundred Thousand Dollars and 00/100)**. Deposit of the Agency's funds shall be made to the Department of Financial Services, Division of Treasury as Escrow Agent pursuant to the terms of a Three Party Escrow Agreement to be entered into concurrently with this Agreement. The DEPARTMENT will utilize the cash deposit for payment of the cost of the Quiet Zone Improvements as described in Exhibit "B" hereto.

(C) Both parties further agree that in the event the Quiet Zone Improvements are not constructed or this Agreement is terminated prior to commencement of construction of the Project, the funds provided by the AGENCY for construction of the Quiet Zone Improvements will be returned to the AGENCY.

(D) If the accepted bid amount for the Quiet Zone Improvements is in excess of the Project Estimate amount, the AGENCY will provide an additional deposit within fourteen (14) calendar days of notification from the DEPARTMENT or prior to posting of the accepted bid, whichever is earlier. The additional deposit to be provided by the AGENCY will be equal to 100% of the difference between the Project Estimate and the accepted bid amount. The DEPARTMENT will notify the AGENCY as soon as it becomes apparent the accepted bid amount is in excess of the Project Estimate; however, failure of the DEPARTMENT to so notify the AGENCY shall not relieve the AGENCY from its obligation to pay for its full participation. If the AGENCY cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to the DEPARTMENT'S Project Manager indicating when the deposit will be made.

(E) If fifty percent (50%) of the accepted bid amount for the Quiet Zone Improvements is less than the Agency's advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit exceeds fifty percent (50%) of the accepted bid amount if such refund is requested by the AGENCY in writing. If the refund is not requested, the excess funds will be returned to the Agency at the completion of the Project.

(F) Should Project modifications or changes to bid items occur that increase the costs of the Quiet Zone Improvements, the AGENCY will be notified by the DEPARTMENT accordingly. The DEPARTMENT agrees to consult with AGENCY prior to the DEPARTMENT'S acceptance of any such modifications or changes in the bid items. If the modifications or changes are approved by the AGENCY, then AGENCY agrees to provide, without delay, in advance of the Quiet Zone work being performed, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the Quiet Zone Improvements. The DEPARTMENT shall notify the AGENCY as soon as it becomes apparent the actual costs will overrun the award amount; however, failure of the DEPARTMENT to so notify the AGENCY shall not relieve the AGENCY from its obligation to pay for its full participation during the Project and on final accounting as provided herein below.

(G) The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred sixty days (360) of final payment to the Contractor. The DEPARTMENT considers the Project complete when the final payment has been made to the Contractor, not when the construction work is complete. All Project cost records and accounts shall be subject to audit by a representative of the AGENCY for a period of three (3) years after final close out of the Project. The AGENCY will be notified of the final cost of the Quiet Zone Improvements. Both parties agree that in the event the final accounting of total costs for the Quiet Zone Improvements pursuant to the terms of this Agreement is less than the total deposits to date, a refund of the excess plus accrued interest will be made by the DEPARTMENT to the AGENCY. If the final accounting is not performed within three hundred and sixty (360) days, the AGENCY is not relieved from its obligation to pay.

(H) In the event the final accounting of total Project cost is greater than the total deposits plus accrued interest to date, the AGENCY will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The AGENCY agrees to pay interest at a rate as established pursuant to Florida Statutes, Section 55.03, on any invoice not paid within forty (40) calendar days until the invoice is paid. DEPARTMENT and AGENCY agree that each dollar expended for construction of the Project shall be allocated consistent with the ratio of each party's contribution as described in this Agreement.

(I) The payment of funds under this Agreement will be made directly to the DEPARTMENT for deposit and as provided in the attached Escrow Agreement between the AGENCY, the DEPARTMENT and the State of Florida, Department of Financial Services, Division of Treasury. All interest earned will remain in the account for purposes of the Project.

(J) The DEPARTMENT and the AGENCY agree that the payment shall be an asset of the DEPARTMENT for the cost of the work.

(G) Contact Persons:

Florida Department of Transportation

Teresa R. Hutson
Program Coordinator
719 South Woodland Boulevard, MS 4-520
De Land, Florida 32720
PH: (386) 943-5486
teresa.hutson@dot.state.fl.us

Agency

John Rhoades
Project Manager
Economic Development Department
Transportation Planning Division
400 South Orange Avenue, 8th Floor
Orlando, Florida 32801
PH: (407) 246-2293
John.rhoades@cityoforlando.net

6. All tracings, plans, specifications, maps, models, reports, or other work product prepared or obtained under this Agreement shall be considered works made for hire for the DEPARTMENT and shall at all times be and remain the property of the DEPARTMENT without restriction or limitation on their use. The AGENCY may, however, inspect those materials upon providing reasonable advance notice to the DEPARTMENT.

7. In the event this Agreement is in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) or has a term for a period of more than one (1) year, the provisions of Chapter 339.135(6)(a), Florida Statutes, are hereby incorporated 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 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 \$25,000.00 and which have a term for a period of more than one (1) year.”

8. The DEPARTMENT may unilaterally cancel this Agreement for refusal by the AGENCY to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by such party in conjunction with this Agreement.

9. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof, and incorporates and includes all proper negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. 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.

10. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

11. The DEPARTMENT and the AGENCY acknowledge and agree to the following:

- (A) 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
- (B) The AGENCY shall expressly require any contractors 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 contractor/subcontractor during the contract term.

The remainder of this page is blank.

IN WITNESS WHEREOF, the AGENCY has executed this Agreement this _____ day of _____, 2016, and the DEPARTMENT has executed this Agreement this _____ day of _____, 2016.

CITY OF ORLANDO

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Attest:

Attest:

Executive Secretary

Legal Review

Legal Review:

City Attorney

Financial Provisions Approval by
Department of Comptroller on:

EXHIBIT "A"

SCOPE OF SERVICES

Financial Project Number: 436014-1-52-11

This exhibit forms an integral part of that certain Quiet Zone Improvement Agreement entered into this _____ day of _____, 2016, between the State of Florida, Department of Transportation ("Department") and City of Orlando ("Agency").

PROJECT LOCATION:

City of Orlando in Orange County, Florida, USA

The Crossings are located on the SunRail Corridor in the portion that runs within the City of Orlando city limits. The crossing numbers and (local street names) for crossings where supplemental safety warning devices will be installed for this improvement are as follow:

#622188X (W. Washington Street), 622196P (America Street)

PROJECT DESCRIPTION:

The Agency requests rail development grant funds to perform Quiet Zone Improvements associated with at-grade railroad crossings.

SCOPE OF WORK:

The Department will design and construct the improvements as listed in Exhibit "B" at each of the above mentioned at-grade crossings in order to establish a quiet zone that is consistent with and meets or exceeds the quiet zone requirements of Title 49 Code of Federal Regulations (CFR) Part 222, Federal Railroad Administration (FRA), or that are necessary to permanently close the listed crossing.

Exhibit "B"

Estimate

FM#: 436014-1-52-11

Location:	Description of Work:	Estimated Total: State Funds:	
622188X	Lights/Gates/Signage	\$ <u>400,000.00</u>	\$ <u>200,000.00</u>
622196P	Lights/Gates/Signage	\$ <u>200,000.00</u>	\$ <u>100,000.00</u>
	TOTAL	\$ <u>600,000.00</u>	\$ <u>300,000.00</u>

Project Cost:	\$ <u>600,000.00</u>
State (DPTO) - 50% of total up to	\$ <u>300,000.00</u>
Local	\$ <u>300,000.00</u>

All work is scheduled to be completed by _____ (36 months after execution).

EXHIBIT “C”

Resolution

FM#: 436014-1-52-11