



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 12/08/09

SUBJECT: Sale of 2.0 State Wetland Mitigation Bank Credits to the County of Volusia for Pioneer Trail at Turnbull Bay Rd Intersection Improvements Project #5011.

DEPARTMENT: Public Utilities

RECOMMENDED MOTION:

Approve Resolution No. 09-106 and Reservation Agreement for the sale of 2.0 State wetland mitigation bank credits from the Port Orange Mitigation Bank in the total amount of \$100,000 and authorize the Mayor and City Manager to sign documents on behalf of the City.

SUMMARY:

The County of Volusia has requested purchase of 2.0 State wetland mitigation credits for the purpose of curve re-alignment and intersection improvements at Pioneer Trail and Turnbull Bay Rd. The credits are required to mitigate wetland impacts associated with the planned safety related improvements at the intersection.

Per their action on November 19, 2009, the Volusia County Council agreed to the terms of the Reservation Agreement for the purchase of mitigation credits in the amount of \$100,000 per existing City policies. The City has sufficient credits available to sell to the County for this project.

Staff recommends approval of the resolution and reservation agreement for the sale of 2.0 State mitigation credits to the County of Volusia. Upon execution of the agreement and payment received in full the City shall take formal action to officially record the sale in its mitigation bank ledger and notify the St. Johns River Water Management District of this project allocation.

ATTACHMENTS: Ordinance Resolution Budget Resolution

Other Support Documents/Contracts Available for Review in Manager's Office

DEPARTMENT HEAD	Michael G. Ulrich <i>Michael G. Ulrich</i>	Date 11/20/09
FINANCE DEPARTMENT	<i>[Signature]</i> Approved as to Budget Requirements	Date
CITY ATTORNEY	<i>[Signature]</i> Approved as to Form and Legality	Date 11.24.09
CITY MANAGER	<i>[Signature]</i> Approved Agenda Item For:	12/8/09

COUNCIL ACTION: Approved as Recommended Disapproved Tabled Indefinitely
 Continued to Date Certain Approved with Modification:

RESOLUTION NO. 09-106

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING THE RESERVATION AGREEMENT FOR SALE OF MITIGATION CREDITS TO VOLUSIA COUNTY, FLORIDA; AUTHORIZING THE MAYOR AND CITY MANAGER TO MAKE AMENDMENTS AND TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY OF PORT ORANGE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Port Orange and Volusia County desire to enter into a Reservation Agreement for Sale of Mitigation Credits.

NOW, THEREFORE BE IT RESOLVED BY THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The City of Port Orange Reservation Agreement for Sale of Mitigation Credits, a copy of which is attached hereto as Exhibit 1, is hereby approved.

Section 2. The Mayor and City Manager are hereby authorized to execute said Agreement on behalf of the City of Port Orange and such other documents as necessary to effectuate the purpose of the Agreement.

Section 3. This resolution shall become effective immediately upon adoption.

MAYOR ALLEN GREEN

ATTEST

Kenneth W. Parker

Adopted on the ____ day of _____, 2009.

Reviewed and Approved: _____


City Attorney



**RESERVATION AGREEMENT
FOR SALE OF MITIGATION CREDITS**

This RESERVATION AGREEMENT FOR SALE OF MITIGATION CREDITS (the "Agreement") is made and entered into as of the _____ day of _____, 2009, by and between the **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation, mailing address: c/o City Manager, 1000 City Center Circle, Port Orange FL 32129-4144 ("City"), and **COUNTY OF VOLUSIA**, a political subdivision of the State of Florida, mailing address: 123 West Indiana Avenue, Room 402, Deland, FL 32720 ("County").

RECITALS:

A. The City owns and operates a wetland mitigation bank located on approximately 5,000 acres of land, which bank includes state wetland mitigation credits granted by St. Johns River Water Management District ("SJRWMD").

B. The County intends to pursue permitting approval for curve re-alignment and intersection improvements at Pioneer Trail and Turnbull Bay Road, adjacent to the municipal boundaries of the City, known as Project No. 5011 as shown on Exhibit "A" attached hereto and by this reference made a part hereof ("Road Project").

C. The County has been informed by the St. Johns River Water Management District ("SJRWMD") that it will require two (2.0) mitigation credits for wetlands located within the Road Project. The County desires to obtain from the City the reservation and right to purchase, and the City is willing to reserve for the County, certain state wetland mitigation credits in connection with the County's Road Project.

NOW, THEREFORE, in consideration of the foregoing premises, payment to the City of deposit monies as hereinafter described, the mutual promises and covenants of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the County, intending to bind the respective entities and successors and assigns, hereby covenant and agree as follows:

1. The City does hereby reserve and set aside for a period of not more than twelve (12) months from the effective date of this Agreement, for future transfer to and for the sole benefit of the County a total of two (2.0) wetland mitigation credits ("Credits"). The Credits will be comprised of no more than two (2.0) state credits pursuant to the City's mitigation banking permit issued by SJRWMD under Permit No. 4-127-64024-1.

2. The City further grants to the County the right and option to purchase the Credits or fractional parts thereof, as the County may elect, upon the terms and conditions set forth in this Agreement.

(a) Upon execution of this Agreement, the County agrees to pay to the City a non-refundable reservation fee (applied against the purchase price) equal to Ten Percent (10%) of the current value of two (2.0) state mitigation credits.

(b) The parties acknowledge that if the Project is not approved by the SJRWMD within the 12-month period following execution of this Agreement, the County cannot close on the purchase of the Credits.

(c) The parties further acknowledge that if the County does not close on the purchase of the Credits within the 12-month term, the reservation fee shall not be credited against any future closings and the full amount of the reservation fee on deposit with the City shall be forfeited to and become the property of the City.

3. This reservation of Credits shall be assigned to the Road Project and available for use by the County and its successors and assigns in connection with mitigating adverse wetland impacts which may arise as a result of construction on the subject Road Project only. The City warrants that it will take no action inconsistent with the reservation and future assignment of the Credits as described herein.

4. The City warrants that the SJRWMD Mitigation Credits reserved herein are and will be available for future assignment to the County for application to the Road Project during the term of this Agreement, and any extensions thereof.

5. The County acknowledges that mitigation credit value of \$50,000.00 per Credit may increase during the term of this Agreement. The actual price to be paid to

the City will be the price in effect on the day of closing but in no event shall the total purchase price per Credit be more than \$65,000.00 as long as the purchase is closed within the initial Twelve (12) month term of this Agreement. If closed within the 12-month term or the extension as provided herein, the reservation fee and extension fee on deposit with the city shall be applied against the purchase price. Mitigation credits will not be transferred from the City's mitigation bank until payment in full is received. The mitigation credits are non-transferable to any other property and the reservation fee and extension fee is non-refundable to the County or its successors and assigns.

6. Term. The term of this Agreement shall be twelve (12) months from the effective date of this Agreement.

7. Reservation and Fee. The current purchase price for each wetland mitigation Credit is \$50,000.00 for each whole credit. Two (2.0) state credits have a current total value of \$100,000.00. Within Thirty (30) days from the effective date of this Agreement, the County agrees to tender payment to City by U.S. certified funds in the total amount of Ten Thousand and no/100 Dollars (\$10,000.00) representing the Reservation Fee for two (2.0) mitigation credits for development of the Road Project pursuant to the terms of this Agreement.

8. Application of the Fee at Closing. In the event the County's environmental permits authorize the use of less than all two (2.0) of the wetland mitigation Credits, the purchase price of the Credits actually needed by the County shall be calculated according to the then current price per credit as limited herein. If the Closing on the credits required for permitting is held in accordance with the terms of this Agreement, the Reservation Fee shall be applied toward the total purchase price. Closing shall be conducted by the City Attorney and the Mitigation Banker.

9. Notice of Credit Reservation. Upon payment of the Reservation Fee to the City, the City will issue and furnish a Notice of Credit Reservation to the County and will send a copy to the appropriate environmental regulatory agencies, including without limitation SJRWMD.

10. Termination of this Agreement. If the County fails to exercise its rights to purchase all or part of the Credits reserved for the term as provided herein, this Agreement shall be deemed to have expired on the date constituting the end of the then

effective term or, if such date should be a weekend or holiday, on the first business day thereafter. Upon termination or expiration, the reservation fee and extension fee on deposit with the City shall be forfeited to and shall become the property of the City.

11. Assignment. The County may not assign this Agreement to any other entity acquiring an interest in the Road Project.

12. Effective Date. The effective date of this Agreement shall be the last date upon which all parties hereto cause this Agreement to be executed as indicated below.

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The electronic (i.e. facsimile or email) transmittal of an executed copy of this Agreement shall be deemed valid as if an original signature was delivered.

14. Recitals. The above recitals are true and correct and are incorporated as terms of this Agreement.

15. Construction. The paragraph headings, captions, or abbreviations are used for convenience only and shall not be resorted to for interpretation of this Agreement. Whenever the context so requires, the masculine shall refer to the feminine, the singular shall refer to the plural, and vice versa.

16. Severability. In case any one or more provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not effect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

IN WITNESS WHEREOF, the City and the County have caused this Reservation Agreement for Sale of Mitigation Credits to be executed on behalf of the respective entities, their successors and assigns.

CITY OF PORT ORANGE, FLORIDA,
a Florida municipal corporation

By: _____
Allen Green, Mayor

Attest:

By: _____
Kenneth W. Parker, City Manager

(Corporate Seal)

DATE: _____, 2009.

Approved as to form and correctness:

By: _____
Margaret T. Roberts, City Attorney

COUNTY OF VOLUSIA, a political subdivision of the
State of Florida

By: _____
Name/Title: James T. Dinneen, County Manager

Approved as to legality and form

By: _____
Name/Title: Frank T. Bruno, Chair

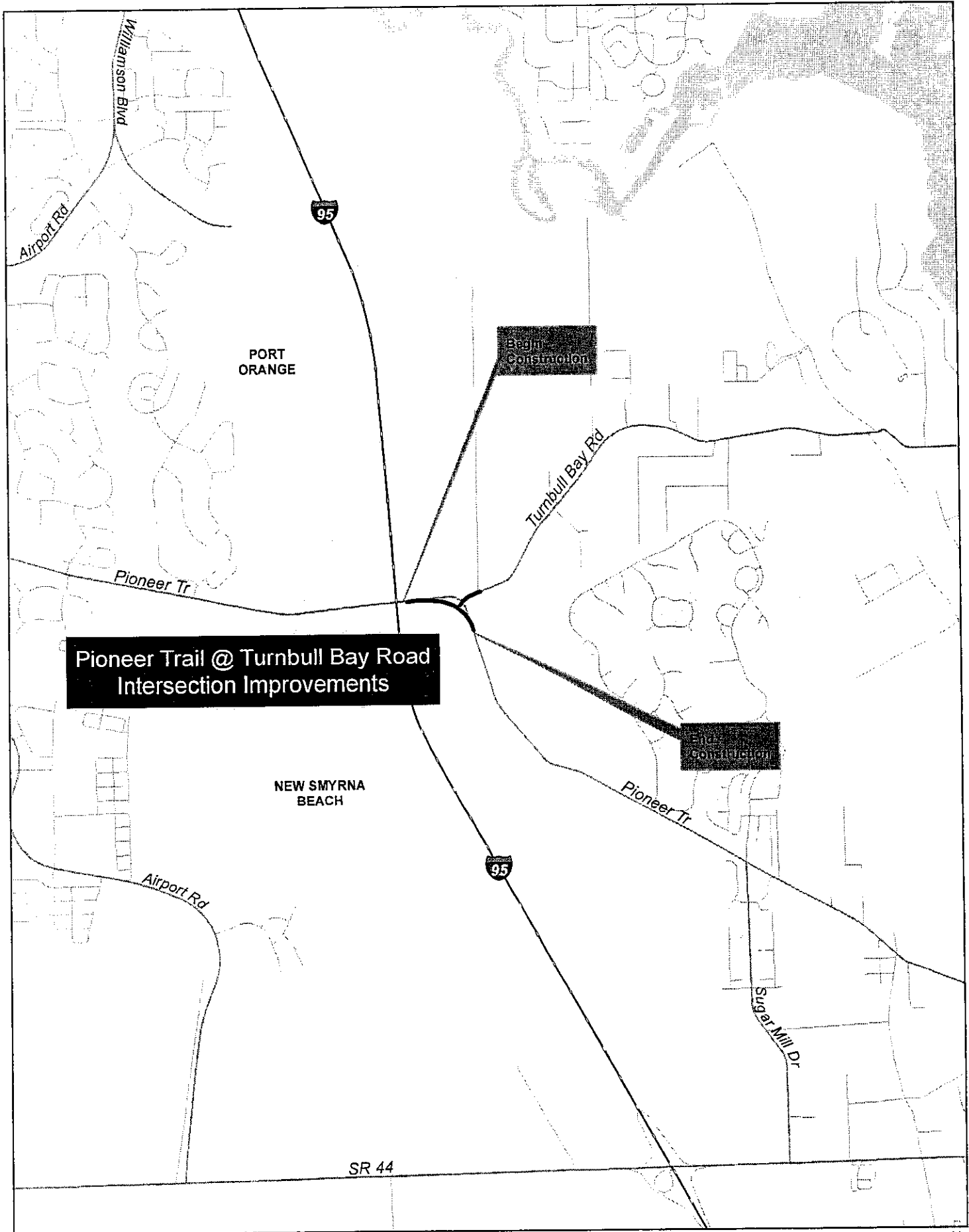
(Corporate Seal)

DATE: _____, 2009.

Approved as to form and correctness:

By: _____
Bruce Page, Assistant County Attorney

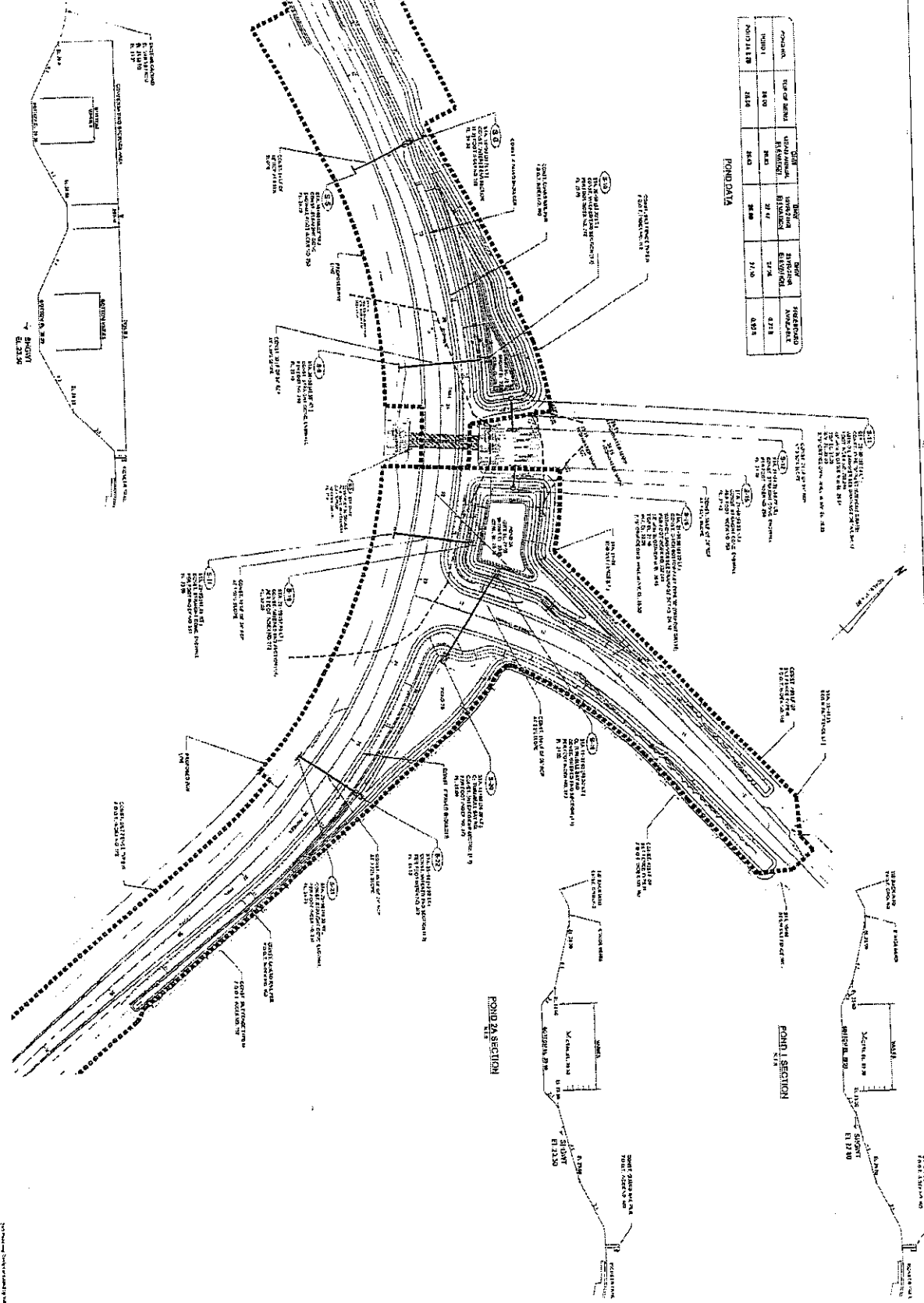
EXHIBIT "A"



**Pioneer Trail @ Turnbull Bay Road
Intersection Improvements**

**Begin
Construction**

**End
Construction**



DATE	1/1/2004
DESIGNED BY	G. ORTEGA
CHECKED BY	G. ORTEGA
APPROVED BY	G. ORTEGA
SCALE	AS SHOWN
PROJECT NO.	20-4
DATE	1/1/2004

STORMWATER & DRAINAGE PLAN
PIONEER TRAIL - VOLUSIA COUNTY
CURVE RE-ALIGNMENT

NO.	DATE	REVISION
1	1/1/2004	ISSUED FOR PERMITS
2	1/1/2004	ISSUED FOR PERMITS
3	1/1/2004	ISSUED FOR PERMITS
4	1/1/2004	ISSUED FOR PERMITS
5	1/1/2004	ISSUED FOR PERMITS
6	1/1/2004	ISSUED FOR PERMITS
7	1/1/2004	ISSUED FOR PERMITS
8	1/1/2004	ISSUED FOR PERMITS
9	1/1/2004	ISSUED FOR PERMITS
10	1/1/2004	ISSUED FOR PERMITS

SCIENTISTS, ENGINEERS, PLANNERS

EMS

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