

Meeting Date
May 3, 2016



AGENDA	
Section	Consent
Item No.	II.C.2

**AGENDA REPORT**  
**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**

<b>SUBJECT:</b>	Approval, RE: Permission to Solicit and Request for Qualifications (RFQ)/Bids for Design and Construction; Approve a resolution to realign Parcel 1 and authorize the Chairman to execute documents necessary; Approve and authorize the Chairmen to execute FDOT LAP Agreement and Resolution for the Brevard Zoo Linear Trail.
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<b>DEPT/OFFICE:</b>	CENTRAL SERVICES/COMMUNITY SERVICES GROUP – PARKS AND RECREATION
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**Requested Action:**

It is requested the Board authorize the advertisement and award of a Request for Qualifications (RFQ) for Design Services and Permission to Bid and Award construction bids for the Brevard Zoo Trail Project. Additionally, approve and authorize the Chairman to execute RFQ/bid contracts and the pending FDOT LAP Agreement and Resolution, approve all budgetary documents, approve a resolution authorizing the realignment of Parcel 1 and authorize the Chairman to execute necessary documents and all agreements and resolutions related to this project contingent upon review and approval by the County Attorney and Risk Management.

**Summary Explanation & Background:**

The Brevard Zoo Linear Trail project was initially adopted by the Transportation Planning Office (TPO) Board on May 8, 2008, as part of the Showcase Trails Program. In the recent update of the TPO's Bicycle and Pedestrian Mobility Plan adopted in December of 2013, the Zoo Trail was stipulated a priority project in this category. This phase of the trail compliments and extends the 1.1 mile section from the north cell tower to Turtlemound Road or approximately 2 miles (Project No. 43195-1). The project design will be funded by the FDOT with a LAP Agreement totaling \$225,000. Project construction will be funded through the FDOT at an amount of \$3,177,410.

In 2013 A. Duda & Sons, Inc. (Duda) conveyed the 50-foot trail corridor to the County. Duda subsequently conveyed the lands surrounding the Linear Trail to the Zoo. The Zoo has requested an adjustment to a portion of the Linear Trail to better utilize its property. County Staff and the Zoo have approved the new location of undeveloped Parcel 1 and the County Surveyor is preparing a legal description for the Parcel 1 Realignment. A resolution is required by Section 125.38, Florida Statutes, to authorize the conveyances necessary to relocate Parcel 1.

**Fiscal Impact:** FY 2015-2016 \$ 225,000 for design  
FY 2016-2017 \$3,177,410 for construction

Name: Contact: Jack Masson, Parks and Recreation  
Phone: x5-2046, [Jack.Masson@brevardcounty.us](mailto:Jack.Masson@brevardcounty.us)

Teresa Camarata, Central Services Department  
Phone: x5-2543, [Teresa.Camarata@brevardcounty.us](mailto:Teresa.Camarata@brevardcounty.us)

Clerk to the Board instruction:

Exhibits Attached: Draft Resolution and LAP Agreement; Resolution authorizing Parcel 1 Realignment

<b>Contract /Agreement (If attached):</b>		<b>Reviewed by County Attorney</b>		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager		Assistant County Manager	Frank Abbate					Department Director / Extension	Teresa Camarata ext. 5-2543
Stockton Whitten		Assistant County Manager	Venetta Valdengo					Jack Masson ext. 5-2046	



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

May 4, 2016

MEMORANDUM

TO: Teresa Camarata, Central Services Director

RE: Item II.C.2., Approval for Permission to Solicit and Request for Qualifications (RFQ)/Bids for Design and Construction; Approve a Resolution to Realign Parcel 1 and Authorize the Chairman to Execute FDOT LAP Agreement; and Resolution for the Brevard Zoo Linear Trail

The Board of County Commissioners, in regular session on May 3, 2016, adopted Resolution No. 16-065, authorizing the alignment of Parcel 1; granted permission to advertise and award of a Request for Qualifications (RFQ) for Design Services; granted permission to bid and award construction bids for the Brevard Zoo Trail Project; adopted Resolution No. 16-064, authorizing the execution of Local Agency Participation (LAP) Agreement; authorized the Chairman to execute RFQ/bid contracts and the pending Florida Department of Transportation (FDOT) LAP Agreement; approved all budgetary documents; and authorized the Chairman to execute necessary documents and all agreements and resolutions related to this project contingent upon review and approval by the County Attorney and Risk Management.

**Upon execution by all parties, please return the fully-executed Resolution No. 16-064 and LAP Agreements to this office for attestation, distribution, and inclusion in the official minutes. By copy of this memorandum, Resolution No. 16-065, County Deed, and Tri-Party Agreement was provided to the County Attorney.**

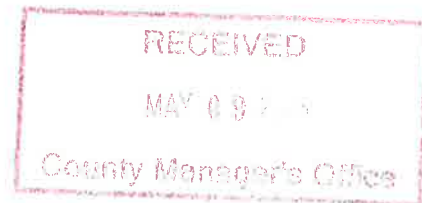
Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

cc: County Attorney  
Parks and Recreation Director  
Finance  
Budget





**Florida Department of Transportation**

RICK SCOTT  
GOVERNOR

719 S. Woodland Boulevard  
DeLand, Florida 32720-6834

JIM BOXOLD  
SECRETARY

June 23, 2016

Ms. Melissa Renninger  
Administrative Assistant to Department Director  
Brevard County Parks & Recreation  
2725 Judge Fran Jamieson Way  
Building B, Suite 203  
Viera, FL 32940

PKRECS-ADMIN  
JUN272016PM3:27

**SUBJECT: LOCAL AGENCY PROGRAM (LAP) SUPPLEMENTAL AGREEMENT**  
**FPN: 431925-1-38-01**  
**Contract No: G0D47**  
**Project: Design of the Zoo Trail from Cell Tower North of Pineda to Turtle Mound Road**

Dear Ms. Renninger:

One fully executed LAP Agreement is enclosed for your records and \$225,000.00 has been encumbered for this project.

As the County is being reimbursed for professional design services, consistent with Department Form 525-010-49, *Local Agency Program (LAP) Checklist for Federally Funded Professional Service Contracts Federal and State Requirements*, the following documentation is still required:

**Phase 2:** Copy of the short list (Requirement 7) with a minimum of 3 firms and related supporting documentation (i.e. how did they get to this ranking.) In addition, provide the required forms (Requirements 2-5) signed by shortlist firms and a Conflict of Interest statement signed by the evaluation/selection committee members (Requirement 3). Please keep in mind that the evaluation/selection Committee must consist of a minimum of three individuals.

If not already provided, the in-house, independent Staff Hour Estimate (Requirement 8) should be provided at this time.

*Upon determination that the short list process was handled per Federal regulations, an approval/notice to proceed with negotiations can be provided.*

**Phase 3:** Provide proof of negotiations (Requirement 10) including, but not limited to the consultant staff hour estimate(s). In addition, a copy of the draft contract should be provided for Department review and concurrence. Please keep in mind that Overhead Rates (indirect rates)

and Direct Salary Multipliers cannot be capped (Requirement 9.) The Contract must contain the following language/documentation (reference to the RFQ is not sufficient)

- Required Forms (Requirements 2 – 5)
  - Truth In Negotiation Certification (Requirement 2 – for contracts over \$195,000)
  - Conflict of Interest Certification (Requirement 3 – Form 375-030-50)
  - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Federal Aid Contracts (Requirement 4 – Form 375-030-32)
  - Certification for Disclosure of Lobbying Activities on Federal Aid Contracts (Requirement 5 – Form 375-030-33)
  - Standard Form-LLL, Disclosure of Lobbying Activities Form (Requirement 5, as needed – Form 375-030-34)
- Required language (Requirement 6)
  - Professional Liability Insurance
  - E-Verify (Executive Order 11-116)
  - Public Entity Crimes Statement (287.133, F.S.)
  - Drug Free Workplace Certification
  - Prompt Payment Provision
  - Public Access to Public Records
  - Terms for Federal Aid Contracts (Appendix I – Form 375-040-40)
  - Termination Clause for cause, convenience, and default
  - Notification of Performance Evaluation
  - Records Retention and Access to Records

*Upon determination that the draft contract contains all items required by Federal regulation, the checklist can be signed/approved a final notice to proceed and enter into the contract can be provided.*

Failure to provide this documentation in a timely manner may affect concurrence for design as well as the County's ability to seek reimbursement pursuant to the terms of the LAP Agreement.

If you have any questions, please call me at 386-943-5452.

Sincerely,



Lisa L. Buscher  
District Local Government Program Administrator

Enclosures

cc: Patricia "PJ" Ganung

TO: PG520BL@dot.state.fl.us

SUBJECT: FUNDS APPROVAL/REVIEWED FOR CONTRACT G0D47

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
FUNDS APPROVAL

Contract #G0D47 Contract Type: Method of Procurement:

Vendor Name: BREVARD COUNTY B

Vendor ID: VF596000523163

Beginning date of this Agmt: 06/29/16

Ending date of this Agmt: 05/01/17

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ORG-CODE \*EO \*OBJECT \*AMOUNT \*FIN PROJECT \*FCT \*CFDA

(FISCAL YEAR) \*BUDGET ENTITY \*CATEGORY/CAT YEAR

AMENDMENT ID \*SEQ. \*USER ASSIGNED ID \*ENC LINE(6S)/STATUS

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Action: ORIGINAL Funds have been: APPROVED

55 053010541 \*AY \*780000 \* 225000.00 \*43192513801 \*215 \*20.205

2016 \*55100100 \*088849/16

0001 \*00 \* \*0001/04

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TOTAL AMOUNT: \*\$ 225,000.00 \*  
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FUNDS APPROVED/REVIEWED FOR ROBIN M. NAITOVE, CPA, COMPTROLLER

DATE: 06/22/2016

**RESOLUTION**

**RESOLUTION NO. 2016 - 064**

**A RESOLUTION AUTHORIZING THE EXECUTION OF LOCAL AGENCY PARTICIPATION AGREEMENT FOR DESIGN AND CONSTRUCTION SERVICES FINANCIAL ASSISTANCE FOR THE BREVARD ZOO LINEAR TRAIL PROJECT**

**WHEREAS**, The Florida Department of Transportation (FDOT) and Brevard County desire to facilitate the services for the design and construction of the Brevard Zoo Linear Trail project adopted by the Transportation Planning Office Board on May 8, 2008, as part of the Showcase Trails Program and updated in the Transportation Planning Office's Bicycle and Pedestrian Mobility Plan adopted in December of 2013.

**WHEREAS**, The state of Florida Department of Transportation has requested Brevard County to execute and deliver to the State of Florida Department of Transportation the Local Agency Program Agreement for the aforementioned project, FPN 431925-1-38-01.

**NOW THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, that Jim Barfield, Chairman of the Board of County Commissioners, is hereby authorized to make, execute, and deliver to the State of Florida Department of Transportation the Local Agency Program Agreement for the aforementioned project, FPN 431925-1-38-01.

**DONE, ORDERED AND ADOPTED** in regular session this 3<sup>rd</sup> day of May 2016.

ATTEST:

  
\_\_\_\_\_  
Scott Ellis, Clerk

  
\_\_\_\_\_  
Robin Fisher, Commissioner for  
Jim Barfield, Chairman  
Board of County Commissioners  
Brevard County, Florida

As approved by the BOCC on: May 3, 2016

RESOLUTION NO. 2016-065

A RESOLUTION PURSUANT TO SECTION 125.38, FLORIDA STATUTES, AUTHORIZING THE CONVEYANCE OF FEE SIMPLE INTEREST IN COUNTY PROPERTY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Brevard County, a political subdivision of the State of Florida, 2725 Judge Fran Jamieson Way, Viera, Florida, 32940, hereafter known as Brevard County, owns certain real property described in Exhibit "A", also known as Parcel 1 of the Brevard Zoo Linear Trail; and

WHEREAS, Phase 1 of the Brevard Zoo Linear Trail was constructed in 2014. Grant funds recently became available to construct Phase 2. The East Coast Zoological Society, Inc., a Florida corporation not for profit, (hereinafter referred to as the "Brevard Zoo") currently owns the land surrounding undeveloped Parcel 1. The Brevard Zoo has requested a realignment of Parcel 1 to improve utilization of its property; and

WHEREAS, the County and Brevard Zoo are in agreement on the Parcel 1 Relocation and a new legal description is being prepared by the County Surveyor.

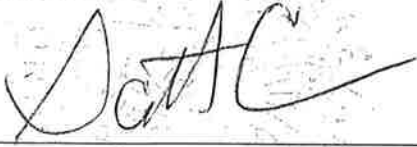
WHEREAS, the County wishes to convey Parcel 1 to the Brevard Zoo. In exchange, Brevard Zoo has agreed to contemporaneously convey the Parcel 1 Realignment to the County for construction of Phase 2 of the Brevard Zoo Linear Trail.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, that:

1. Brevard County hereby agrees to convey fee simple interest in the property described in Exhibit "A" for the purpose of realigning Parcel 1 of the Brevard Zoo Linear Trail.
2. Brevard County has determined that it is in its best interest to convey the Property for said purpose.
3. The interest in Parcel 1 is being transferred to the Brevard Zoo in exchange for the conveyance of the Parcel 1 Realignment to the County.
4. The County Attorney, or designee, is authorized to accept on behalf of Brevard County, a deed from the Brevard Zoo for the Parcel 1 Realignment.
5. This resolution shall take effect immediately.

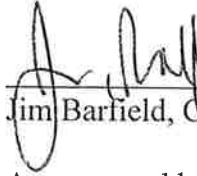
DONE, ORDERED and ADOPTED in Regular Session this 3rd day of May, 2016.

ATTEST



\_\_\_\_\_  
Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA



\_\_\_\_\_  
Jim Barfield, Chairman

As approved by the Board on May 3, 2016

## EXHIBIT "A – Parcel 1"

PART Tax ID: 26-36-22-00-00001.0-0000.00,  
Tax ID 26-36-27-00-00001.0-0000.00 and  
Tax ID 26-36-27-00-00003.0-0000.00

### LEGAL DESCRIPTION: PARCEL 1

A strip of land being 50 foot wide lying 25 Feet each side of the following described centerline, lying in Sections 22 and 27, Township 26 South, Range 36 East, Brevard County, Florida, being more particularly described as follows: Commence at the Southeast corner of said Section 27; thence North  $00^{\circ}43'25''$  West along the East line of the Southeast 1/4 of said Section 27, a distance of 2,646.44 Feet to the East 1/4 corner of said Section 27; thence North  $00^{\circ}59'19''$  West along the East line of the Northeast 1/4 of said Section 27, a distance of 280.48 Feet to the South line of Sawgrass at Suntree Phase Four, according to the Plat thereof, as recorded in Plat Book 46, Pages 83-85, of the Public Records of Brevard County, Florida; thence North  $28^{\circ}38'57''$  West along said South line, a distance of 621.12 Feet; thence South  $89^{\circ}02'36''$  West along said South line, a distance of 251.57 Feet to the Southwest corner of said Sawgrass at Suntree Phase Four; thence continue South  $89^{\circ}02'36''$  West along the Westerly extension of said South line and the North line of lands described in Official Records Book 5731, Page 4201 and Official Records Book 5731, Page 4210, of the said Public Records of Brevard County, a distance of 141.63 Feet to the POINT-OF-BEGINNING of the herein described centerline; said point also being the beginning of a circular curve concave to the Northeast, having a radius of 606.00 Feet and a central angle of  $60^{\circ}03'25''$ ; thence leaving said West extension and North line from a tangent bearing of North  $58^{\circ}46'13''$  West run Northerly a distance of 635.20 Feet; thence North  $01^{\circ}17'13''$  East, a distance of 300.27 Feet to the point of curvature of a circular curve concave to the West, having a radius of 200.00 Feet, and a central angle of  $43^{\circ}35'12''$ ; thence Northerly along the arc of said curve an arc distance of 152.15 Feet; thence North  $42^{\circ}17'59''$  West, a distance of 38.32 Feet to the point of curvature of a circular curve concave to the East, having a radius of 125.00 Feet, and a central angle of  $85^{\circ}53'11''$ ; thence Northerly along the arc of said curve an arc distance of 187.38 Feet; thence North  $43^{\circ}35'12''$  East, a distance of 82.23 Feet to the point of curvature of a circular curve concave to the West, having a radius of 108.00 Feet, and a central angle of  $42^{\circ}17'59''$ ; thence Northerly along the arc of said curve an arc distance of 79.73 Feet; thence North  $01^{\circ}17'13''$  East, a distance of 25.96 Feet to the point of curvature of a circular curve concave to the Southeast, having a radius of 106.00 Feet, and a central angle of  $64^{\circ}01'26''$ ; thence Northeasterly along the arc of said curve an arc distance of 118.45 Feet; thence North  $65^{\circ}18'39''$  East, a distance of 53.20 Feet to the point of curvature of a circular curve concave to the Northwest, having a radius of 106.00 Feet, and a central angle of  $66^{\circ}17'42''$ ; thence Northeasterly along the arc of said curve an arc distance of 122.65 Feet; thence North  $00^{\circ}59'03''$  West, a distance of 63.73 Feet to the point of curvature of a circular curve concave to the West, having a radius of 195.00 Feet, and a central angle of  $39^{\circ}38'17''$ ; thence Northerly along the arc of said curve an arc distance of 134.90 Feet; thence North  $40^{\circ}37'20''$  West, a distance of 88.88 Feet to the point of curvature of a circular curve concave to the East, having a radius of 150.00 Feet, and a central angle of  $63^{\circ}55'12''$ ; thence Northerly along the arc of said curve an arc distance of 167.34 Feet; thence North  $23^{\circ}17'51''$  East, a distance of 57.81 Feet to the point of curvature of a circular curve concave to the West, having a

radius of 157.00 Feet, and a central angle of  $59^{\circ}35'49''$ ; thence Northerly along the arc of said curve an arc distance of 163.31 Feet; thence North  $36^{\circ}17'58''$  West, a distance of 212.02 Feet to the point of curvature of a circular curve concave to the East, having a radius of 350.00 Feet, and a central angle of  $41^{\circ}42'07''$ ; thence Northerly along the arc of said curve an arc distance of 254.74 Feet to the point of reverse curvature of a circular curve concave to the West having a radius of 150.00 Feet, and a central angle of  $43^{\circ}05'20''$ ; thence Northerly along the arc of said curve an arc distance of 112.81 Feet; thence North  $37^{\circ}41'10''$  West, a distance of 384.20 Feet to the point of curvature of a circular curve concave to the East, having a radius of 150.00 Feet, and a central angle of  $60^{\circ}39'56''$ ; thence Northerly along the arc of said curve an arc distance of 158.82 Feet; thence North  $22^{\circ}58'46''$  East, a distance of 203.02 Feet to the point of curvature of a circular curve concave to the West, having a radius of 106.00 Feet, and a central angle of  $50^{\circ}29'45''$ ; thence Northerly along the arc of said curve an arc distance of 93.42 Feet; thence North  $27^{\circ}31'00''$  West, a distance of 217.27 Feet to the point of curvature of a circular curve concave to the Southwest, having a radius of 106.00 Feet, and a central angle of  $31^{\circ}12'16''$ ; thence Northwesterly along the arc of said curve an arc distance of 57.73 Feet; thence North  $58^{\circ}43'15''$  West, a distance of 27.83 Feet to the point of curvature of a circular curve concave to the Northeast, having a radius of 200.00 Feet, and a central angle of  $28^{\circ}22'31''$ ; thence Northwesterly along the arc of said curve an arc distance of 99.05 Feet; thence North  $30^{\circ}20'44''$  West, a distance of 310.47 Feet to the point of curvature of a circular curve concave to the east, having a radius of 86.71 Feet, and a central angle of  $67^{\circ}53'39''$ ; thence northerly along the arc of said curve an arc distance of 102.75 Feet; thence North  $37^{\circ}32'55''$  East, a distance of 528.43 Feet to the point of curvature of a circular curve concave to the West, having a radius of 150.00 Feet, and a central angle of  $74^{\circ}51'03''$ ; thence Northerly along the arc of said curve an arc distance of 195.96 Feet to the point of reverse curvature of a circular curve concave to the East having a radius of 106.00 Feet, and a central angle of  $45^{\circ}42'09''$ ; thence Northerly along the arc of said curve an arc distance of 84.55 Feet; thence North  $08^{\circ}24'01''$  East, a distance of 153.28 Feet to the point of curvature of a circular curve concave to the Southwest, having a radius of 66.00 Feet, and a central angle of  $135^{\circ}43'51''$ ; thence Northwesterly along the arc of said curve an arc distance of 156.35 Feet to the point of reverse curvature of a circular curve concave to the North having a radius of 122.00 Feet, and a central angle of  $76^{\circ}12'18''$ ; thence Westerly along the arc of said curve an arc distance of 162.26 Feet; thence North  $51^{\circ}07'32''$  West, a distance of 168.65 Feet to the point of curvature of a circular curve concave to the Northeast, having a radius of 256.00 Feet, and a central angle of  $51^{\circ}09'17''$ ; thence Northwesterly along the arc of said curve an arc distance of 228.56 Feet; thence North  $00^{\circ}01'45''$  East, a distance of 591.47 Feet to the point of curvature of a circular curve concave to the East, having a radius of 306.00 Feet, and a central angle of  $13^{\circ}28'14''$ ; thence Northerly along the arc of said curve an arc distance of 71.94 Feet; thence North  $13^{\circ}29'58''$  East, a distance of 645.34 Feet to the point of curvature of a circular curve concave to the East, having a radius of 2,356.00 Feet, and a central angle of  $03^{\circ}16'12''$ ; thence Northerly along the arc of said curve an arc distance of 134.46 Feet to the point of reverse curvature of a circular curve concave to the West having a radius of 356.00 Feet, and a central angle of  $13^{\circ}26'14''$ ; thence Northerly along the arc of said curve an arc distance of 83.49 Feet; thence North  $03^{\circ}19'55''$  East, a distance of 286.78 Feet; thence North  $20^{\circ}08'29''$  West, a distance of 57.53 Feet; thence North  $43^{\circ}36'54''$  West, a distance of 60.33 Feet to a point on the North line of the Northeast 1/4 of said Section 22 said point being the POINT-OF-TERMINUS of the aforesaid centerline. Said point-of terminus

being North  $87^{\circ}46'05''$  East, a distance of 1,042.14 Feet from the North 1/4 corner of said Section 22.

Less and except lands lying North of Section 22 and lands lying South of the North line of said Official Records Book 5731, Page 4210.

Containing 9.60 acres more or less.

**RESOLUTION NO. 2016-064a**

**A RESOLUTION AUTHORIZING THE EXECUTION OF LOCAL AGENCY PROGRAM AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE CONSTRUCTION AND CEI OF THE ZOO TRAIL FROM THE CELL TOWER NORTH TO TURTLE MOUND ROAD**

**WHEREAS**, the State of Florida Department of Transportation (FDOT) and Brevard County desire to construct the Zoo Trail from the Cell Tower North to Turtle Mound Road; and


**WHEREAS**, the Board authorized the Chairman to execute necessary documents and all agreements and resolutions related to the Zoo Trail; and

**WHEREAS**, the State of Florida Department of Transportation (FDOT) has requested Brevard County to execute and deliver to the State of Florida Department of Transportation (FDOT) the Local Agency Program (LAP) Agreement for the aforementioned project, Financial Management No. 431925-1-58/68-01; and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, that Curt Smith, Chairman, of the Board of County Commissioners, is hereby authorized to make, execute, and deliver to the State of Florida Department of Transportation (FDOT) the Local Agency Program (LAP) Agreement for the aforementioned project, Financial Management No. 431925-1-58/68-01.

**DONE AND RESOLVED** this 28<sup>th</sup> day of April, 2017.

ATTEST:

  
\_\_\_\_\_  
Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

  
\_\_\_\_\_  
Curt Smith, Chairman

As approved by the Board on 05-03-2016

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40  
PROGRAM MANAGEMENT  
OGC-02/17  
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FPN: <u>431925-1-58-01</u>	FPN: <u>431925-1-68-01</u>	FPN: _____
Federal No (FAIN): <u>D517-055-B</u>	Federal No (FAIN): <u>D517-055-B</u>	Federal No (FAIN): _____
Federal Award Date: _____	Federal Award Date: _____	Federal Award Date: _____
Fund: <u>SE/TALU/LF</u>	Fund: <u>SU/TALU</u>	Fund: _____
Org Code: <u>55054010508</u>	Org Code: <u>55054010508</u>	Org Code: _____
FLAIR Approp: <u>088717</u>	FLAIR Approp: <u>088718</u>	FLAIR Approp: _____

County No: 70 Contract No: \_\_\_\_\_  
Local Agency Vendor No: F596-000-523-164 Local Agency DUNS No: 78-324-8370  
Catalog of Federal Domestic Assistance (CFDA): 20.205 Highway Planning and Construction

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THIS LOCAL AGENCY PROGRAM AGREEMENT ("Agreement"), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017 between the State of Florida, Department of Transportation, an agency of the State of Florida ("Department"), and Brevard County, 2725 Judge Fran Jamieson Way, Suite A204, Viera, FL 32940 ("Agency").

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

1. **Authority:** The Agency, by Resolution No. \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_, 2017, a copy of which is attached as Exhibit "F" and made a part of this Agreement, has authorized its officers to execute this Agreement on its behalf. The Department has the authority pursuant to Section 339.12, Florida Statutes, to enter into this Agreement.

2. **Purpose of Agreement:** The purpose of this Agreement is to provide for the Department's participation in the construction and CEI of the Zoo Trail from Cell Tower North of Pineda to Turtle Mound Road, as further described in Exhibit "A", Project Description and Responsibilities attached to and incorporated in this Agreement ("Project"), to provide Department financial assistance to the Agency, state the terms and conditions upon which Department funds will be provided, and to set forth the manner in which the Project will be undertaken and completed.

3. **Term of Agreement:** The Agency agrees to complete the Project on or before November 30, 2018. If the Agency does not complete the Project within this time period, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of this Agreement will not be reimbursed by the Department.

4. **Project Cost:**

- A. The total cost of the Project is \$ 2,736,595.00. This amount is based upon the schedule of funding in Exhibit "B", Schedule of Funding attached to and incorporated in this Agreement. The Agency agrees to bear all expenses in excess of the total cost of the Project and any deficits involved. The schedule of funding may be modified by mutual agreement as provided for in paragraph 5.I.
- B. The Department agrees to participate in the Project cost up to the maximum amount of \$2,728,373.00 and as more fully described in Exhibit "B". This amount includes Federal-aid funds which are limited to the actual amount of Federal-aid participation.
- C. Project costs eligible for Department participation will be allowed only from the date of this Agreement. It is understood that Department participation in eligible Project costs is subject to:
  - i. Legislative approval of the Department's appropriation request in the work program year that the Project is scheduled to be committed;
  - ii. Availability of funds as stated in subparagraphs 5.L. and 5.M. of this Agreement;

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40  
PROGRAM MANAGEMENT  
OGC-02/17  
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- iii. Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement; and
- iv. Department approval of the Project scope and budget at the time appropriation authority becomes available.

**5. Requisitions and Payments:**

- A. The Agency shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project and the quantifiable, measurable, and verifiable units of deliverables are described more fully in Exhibit "A".
- B. Invoices shall be submitted by the Agency in detail sufficient for a proper pre-audit and post-audit based on the quantifiable, measurable and verifiable units of deliverables as established in Exhibit "A". Deliverables must be received and accepted in writing by the Department's Project Manager prior to payments.
- C. The Agency shall charge to the Project account all eligible costs of the Project except costs agreed to be borne by the Agency or its contractors and subcontractors. Costs in excess of the programmed funding or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.
- D. Supporting documentation must establish that the deliverables were received and accepted in writing by the Agency and must also establish that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Exhibit "A" was met.
- E. Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department's Contractor Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061, Florida Statutes and the most current version of the Disbursement Handbook for Employees and Managers.
- F. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes. If the Department determines that the performance of the Agency is unsatisfactory, the Department shall notify the Agency of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Agency shall, within five days after notice from the Department, provide the Department with a corrective action plan describing how the Agency will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Agency shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the Agency resolves the deficiency. If the deficiency is subsequently resolved, the Agency may bill the Department for the retained amount during the next billing period. If the Agency is unable to resolve the deficiency, the funds retained may be forfeited at the end of the Agreement's term.
- G. Agencies providing goods and services to the Department should be aware of the following time frames. Inspection and approval of goods or services shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to **Section 55.03(1), F.S.**, will be due and payable, in addition to the invoice amount, to the Agency. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment.

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Invoices that have to be returned to an Agency because of Agency preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agencies who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

- H. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Agency's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.
- I. Prior to the execution of this Agreement, a Project schedule of funding shall be prepared by the Agency and approved by the Department. The Agency shall maintain said schedule of funding, carry out the Project, and shall incur obligations against and make disbursements of Project funds only in conformity with the latest approved schedule of funding for the Project. The schedule of funding may be revised by execution of a Local Agency Program ("LAP") Supplemental Agreement between the Department and the Agency. The Agency acknowledges and agrees that funding for this project may be reduced upon determination of the agency's contract award amount. If revised, a copy of the Supplemental Agreement shall be forwarded to the Department's Comptroller. No increase or decrease shall be effective unless it complies with fund participation requirements of this Agreement and is approved by the Department's Comptroller.
- J. If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.
- K. The Agency must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.
- L. The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, funds approval from the Department's Comptroller must be received each fiscal year prior to costs being incurred. See Exhibit "B" for funding levels by fiscal year. Project costs utilizing these fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Agency, in writing, when funds are available.
- M. In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:
  - "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

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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."

- 6. Department Payment Obligations:** Subject to other provisions of this Agreement, the Department will honor requests for reimbursement to the Agency pursuant to this Agreement. However, notwithstanding any other provision of this Agreement, the Department may elect by notice in writing not to make a payment if:
- A. The Agency shall have made misrepresentation of a material nature in its application, or any supplement or amendment to its application, or with respect to any document or data furnished with its application or pursuant to this Agreement;
  - B. There is any pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, the Agreement or payments to the Project;
  - C. The Agency shall have taken any action pertaining to the Project which, under this Agreement, requires the approval of the Department or has made a related expenditure or incurred related obligations without having been advised by the Department that same are approved;
  - D. There has been any violation of the conflict of interest provisions contained in paragraph 16.J.; or
  - E. The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

The Department may suspend or terminate payment for that portion of the Project which the Federal Highway Administration ("FHWA"), or the Department acting in lieu of FHWA, may designate as ineligible for Federal-aid.

In determining the amount of the payment, the Department will exclude all Project costs incurred by the Agency prior to the Department's issuance of a Notice to Proceed ("NTP"), costs incurred after the expiration of the Agreement, costs which are not provided for in the latest approved schedule of funding in Exhibit "B" for the Project, costs agreed to be borne by the Agency or its contractors and subcontractors for not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

**7. General Requirements:** The Agency shall complete the Project with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement, and all applicable laws. The Project will be performed in accordance with all applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Agency Program Manual, which by this reference is made a part of this Agreement. Time is of the essence as to each and every obligation under this Agreement.

- A. A full time employee of the Agency, qualified to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of this Agreement shall be in responsible charge of the Project, which employee should be able to perform the following duties and functions:
  - i. Administers inherently governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
  - ii. Maintains familiarity of day to day Project operations, including Project safety issues;
  - iii. Makes or participates in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
  - iv. Visits and reviews the Project on a frequency that is commensurate with the magnitude and complexity of the Project;
  - v. Reviews financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse;

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- vi. Directs Project staff, agency or consultant, to carry out Project administration and contract oversight, including proper documentation;
  - vii. Is aware of the qualifications, assignments and on-the-job performance of the Agency and consultant staff at all stages of the Project.
- B.** Once the Department issues the NTP for the Project, the Agency shall be obligated to submit an invoice or other request for reimbursement to the Department no less than once every 90 days (quarterly), beginning from the day the NTP is issued. If the Agency fails to submit quarterly invoices to the Department, and in the event the failure to timely submit invoices to the Department results in the "FHWA" removing any unbilled funding or the loss of State appropriation authority (which may include the loss of state and federal funds, if there are state funds programmed to the Project), then the Agency will be solely responsible to provide all funds necessary to complete the Project and the Department will not be obligated to provide any additional funding for the Project. The Agency waives the right to contest such removal of funds by the Department, if the removal is related to FHWA's withdrawal of funds or if the removal is related to the loss of State appropriation authority. In addition to the loss of funding for the Project, the Department will also consider the de-certification of the Agency for future LAP Projects. No cost may be incurred under this Agreement until after the Agency has received a written NTP from the Department. The Agency agrees to advertise or put the Project out to bid thirty (30) days from the date the Department issues the NTP to advertise the Project. If the Agency is not able to meet the scheduled advertisement, the District LAP Administrator should be notified as soon as possible.
- C.** If all funds are removed from the Project, including amounts previously billed to the Department and reimbursed to the Agency, and the Project is off the state highway system, then the Department will have to request repayment for the previously billed amounts from the Agency. No state funds can be used on off-system projects, unless authorized pursuant to Exhibit "G", State Funds Addendum, which will be attached to and incorporated in this Agreement in the event state funds are used on the Project.
- D.** In the event that any election, referendum, approval, permit, notice or other proceeding or authorization is required under applicable law to enable the Agency to enter into this Agreement or to undertake the Project or to observe, assume or carry out any of the provisions of the Agreement, the Agency will initiate and consummate, as provided by law, all actions necessary with respect to any such matters.
- E.** The Agency shall initiate and prosecute to completion all proceedings necessary, including Federal-aid requirements, to enable the Agency to provide the necessary funds for completion of the Project.
- F.** The Agency shall submit to the Department such data, reports, records, contracts, and other documents relating to the Project as the Department and FHWA may require. The Agency shall use the Department's Local Agency Program Information Tool and applicable information systems as required.
- G.** Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable federal and State laws, the regulations in 23 Code of Federal Regulations (C.F.R.) and 49 C.F.R., and policies and procedures prescribed by the Division Administrator of FHWA. Federal funds shall not be paid on account of any cost incurred prior to authorization by FHWA to the Department to proceed with the Project or part thereof involving such cost (23 C.F.R. 1.9 (a)). If FHWA or the Department determines that any amount claimed is not eligible, federal participation may be approved in the amount determined to be adequately supported and the Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal participation. Where correctable non-compliance with provisions of law or FHWA requirements exists. Federal funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA or the Department may deny participation in parcel or Project costs in part or in total. For any amounts determined to be ineligible for federal reimbursement for which the Department has advanced payment, the Agency shall promptly reimburse the Department for all such amounts within 90 days of written notice.

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- H. For any project requiring additional right-of-way, the Agency must submit to the Department an annual report of its real property acquisition and relocation assistance activities on the project. Activities shall be reported on a federal fiscal year basis, from October 1 through September 30. The report must be prepared using the format prescribed in 49 C.F.R. Part 24, Appendix B, and be submitted to the Department no later than October 15 of each year.

8. **Audit Reports:** The administration of resources awarded through the Department to the Agency by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of federal awards or limit the authority of any State agency inspector general, the State of Florida Auditor General or any other State official. The Agency shall comply with all audit and audit reporting requirements as specified below.

- A. In addition to reviews of audits conducted in accordance with OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, monitoring procedures may include but not be limited to on-site visits by Department staff and/or other procedures including, reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to federal awards provided through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, State of Florida Chief Financial Officer (CFO) or State of Florida Auditor General.
- B. The Agency, a non-federal entity as defined by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as defined by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, as a subrecipient of a federal award awarded by the Department through this Agreement is subject to the following requirements:
- i. In the event the Agency expends a total amount of federal awards equal to or in excess of the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, the Agency must have a federal single or program-specific audit for such fiscal year conducted in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. **Exhibit "1", Federal Financial Assistance (Single Audit Act)** to this Agreement provides the required federal award identification information needed by the Agency to further comply with the requirements of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and the requirements of 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. In determining federal awards expended in a fiscal year, the Agency must consider all sources of federal awards based on when the activity related to the federal award occurs, including the federal award provided through the Department by this Agreement. The determination of amounts of federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. An audit conducted by the State of Florida Auditor General in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, will meet the requirements of this part.
  - ii. In connection with the audit requirements, the Agency shall fulfill the requirements relative to the auditee responsibilities as provided in OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as provided in 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014.

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- iii. In the event the Agency expends less than the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, in federal awards, the Agency is exempt from federal audit requirements for that fiscal year. However, the Agency must provide a single audit exemption statement to the Department at [FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us) no later than nine months after the end of the Agency's audit period for each applicable audit year. In the event the Agency expends less than the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, in federal awards in a fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, the cost of the audit must be paid from non-federal resources (*i.e.*, the cost of such an audit must be paid from the Agency's resources obtained from other than federal entities).
- iv. The Agency must electronically submit to the Federal Audit Clearinghouse (FAC) at <https://harvester.census.gov/facweb/> the audit reporting package as required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period. The FAC is the repository of record for audits required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and for audits required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, and this Agreement. However, the Department requires a copy of the audit reporting package also be submitted to [FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us) within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period as required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014.
- v. Within six months of acceptance of the audit report by the FAC, the Department will review the Agency's audit reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate action on all deficiencies has been taken pertaining to the federal award provided through the Department by this Agreement. If the Agency fails to have an audit conducted in accordance with OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, the Department may impose additional conditions to remedy noncompliance. If the Department determines that noncompliance cannot be remedied by imposing additional conditions, the Department may take appropriate actions to enforce compliance, which actions may include but not be limited to the following:
1. Temporarily withhold cash payments pending correction of the deficiency by the Agency or more severe enforcement action by the Department;
  2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
  3. Wholly or partly suspend or terminate the federal award;
  4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 and federal awarding agency regulations (or in the case of the Department, recommend such a proceeding be initiated by the federal awarding agency);
  5. Withhold further federal awards for the Project or program;
  6. Take other remedies that may be legally available.
- vi. As a condition of receiving this federal award, the Agency shall permit the Department, or its designee, the CFO or State of Florida Auditor General access to Agency's records including financial statements, the independent auditor's working papers and project records as necessary.

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Records related to unresolved audit findings, appeals or litigation shall be retained until the action is complete or the dispute is resolved.

vii. The Department's contact information for requirements under this part is as follows:

Office of Comptroller, MS 24  
605 Suwannee Street  
Tallahassee, Florida 32399-0450  
[FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us)

C. The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department, or its designee, the CFO or State of Florida Auditor General access to such records upon request. The Agency shall ensure that the audit working papers are made available to the Department, or its designee, the CFO, or State of Florida Auditor General upon request for a period of five years from the date the audit report is issued unless extended in writing by the Department.

**9. Termination or Suspension of Project:** The Department may, by written notice to the Agency, suspend any or all of the Agency's obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected or the Department may terminate this Agreement in whole or in part at any time the interest of the Department requires such termination.

- A. If the Department determines that the performance of the Agency is not satisfactory, the Department shall notify the Agency of the deficiency in writing with a requirement that the deficiency be corrected within thirty (30) days of such notice. Such notice shall provide reasonable specificity to the Agency of the deficiency that requires correction. If the deficiency is not corrected within such time period, the Department may either (1) immediately terminate the Agreement as set forth in paragraph 9.B. below, or (2) take whatever action is deemed appropriate by the Department to correct the deficiency. In the event the Department chooses to take action and not terminate the Agreement, the Agency shall, upon demand, promptly reimburse the Department for any and all costs and expenses incurred by the Department in correcting the deficiency.
- B. If the Department terminates the Agreement, the Department shall notify the Agency of such termination in writing, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- C. If the Agreement is terminated before the Project is completed, the Agency shall be paid only for the percentage of the Project satisfactorily performed for which costs can be substantiated. Such payment, however, shall not exceed the equivalent percentage of the contract price. All work in progress on Department right-of-way will become the property of the Department and will be turned over promptly by the Agency.
- D. The Department reserves the right to unilaterally cancel this Agreement for refusal by the Agency or any contractor, sub-contractor or materials vendor 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 in conjunction with this Agreement unless the records are exempt.
- E. Upon receipt of any final termination or suspension notice under this paragraph 9., the Agency shall proceed promptly to carry out the actions required in such notice, which may include any or all of the following: (a) necessary action to terminate or suspend, as the case may be, Project activities and contracts and such other action as may be required or desirable to keep to a minimum the costs upon the basis of which the financing is to be computed; or (b) furnish a statement of the Project activities and contracts and other undertakings the cost of which are otherwise includable as Project costs. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and cost as approved by the Department or upon the basis of terms and conditions imposed by the Department upon the failure of the Agency to furnish the schedule, plan, and estimate within a reasonable time. The

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closing out of federal financial participation in the Project shall not constitute a waiver of any claim which the Department may otherwise have arising out of this Agreement.

**10. Contracts of the Agency:**

- A. Except as otherwise authorized in writing by the Department, the Agency shall not execute any contract or obligate itself in any manner requiring the disbursement of Department funds, including consultant or construction contracts or amendments thereto, with any third party with respect to the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department. The Department specifically reserves the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of such consultant or contractor.
- B. It is understood and agreed by the parties to this Agreement that participation by the Department in a project with the Agency, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Agency's complying in full with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act, the federal Brooks Act, 23 C.F.R. 172, and 23 U.S.C. 112. At the discretion of the Department, the Agency will involve the Department in the consultant selection process for all projects funded under this Agreement. In all cases, the Agency shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act and the federal Brooks Act.
- C. The Agency shall comply with, and require its consultants and contractors to comply with applicable federal law pertaining to the use of Federal-aid funds. The Agency shall comply with the provisions in the FHWA-1273 form as set forth in Exhibit "C", FHWA 1273 attached to and incorporated in this Agreement. The Agency shall include FHWA-1273 in all contracts with consultants and contractors performing work on the Project.

**11. Disadvantaged Business Enterprise (DBE) Policy and Obligation:** It is the policy of the Department that DBE's, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement.

The Agency and its contractors agree to ensure that DBE's have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBE's have the opportunity to compete for and perform contracts. The Agency and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

**12. Compliance with Conditions and Laws:** The Agency shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project. Execution of this Agreement constitutes a certification that the Agency is in compliance with, and will require its contractors and subcontractors to comply with, all requirements imposed by applicable federal, state, and local laws and regulations, including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," in 49 C.F.R. Part 29, and 2 C.F.R. Part 200 when applicable.

**13. Performance Evaluations:** Agencies are evaluated on a project-by-project basis. The evaluations provide information about oversight needs and provide input for the recertification process. Evaluations are submitted to the Agency's person in responsible charge or designee as part of the Project closeout process. The Department provides the evaluation to the Agency no more than 30 days after final acceptance.

- A. Each evaluation will result in one of three ratings. A rating of Unsatisfactory Performance means the Agency failed to develop the Project in accordance with applicable federal and state regulations, standards and procedures, required excessive District involvement/oversight, or the Project was brought in-house by the Department. A rating of Satisfactory Performance means the Agency developed the Project in accordance with applicable federal and state regulations, standards and procedures, with

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minimal District involvement/oversight. A rating of Above Satisfactory Performance means the Agency developed the Project in accordance with applicable federal and state regulations, standards and procedures, without District involvement/oversight.

- B. The District will determine which functions can be further delegated to Agencies that continuously earn Satisfactory and Above Satisfactory evaluations.

**14. Restrictions, Prohibitions, Controls, and Labor Provisions:** During the performance of this Agreement, the Agency agrees as follows, and agrees to require its contractors and subcontractors to include in each subcontract the following provisions:

- A. The Agency will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964, the regulations of the U.S. Department of Transportation issued thereunder, and the assurance by the Agency pursuant thereto. The Agency shall include the attached Exhibit "E", Title VI Assurances in all contracts with consultants and contractors performing work on the Project that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21, and related statutes and regulations.
- B. The Agency will comply with all the requirements as imposed by the ADA, the regulations of the Federal government issued thereunder, and assurance by the Agency pursuant thereto.
- C. 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 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, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- D. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide 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 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.
- E. An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the Department to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Agency.
- F. Neither the Agency nor any of its contractors or their subcontractors shall enter into any contract, subcontract or arrangement in connection with the Project or any property included or planned to be included in the Project in which any member, officer or employee of the Agency or the locality during tenure or for 2 years thereafter has any interest, direct or indirect. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of tenure any such interest, and if such interest is immediately disclosed to the Agency, the Agency, with prior approval of the Department, may waive the prohibition contained in this paragraph provided that any such present member, officer or employee shall not participate in any action by the Agency or the locality relating to such contract, subcontract or arrangement. The Agency shall insert in all contracts entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of their subcontracts, the following provision:

"No member, officer or employee of the Agency or of the locality during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

The provisions of this paragraph shall not be applicable to any agreement between the Agency and its fiscal depositories or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

- G. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

**15. Indemnification and Insurance:**

- A. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or 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. The Agency guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Agency or any subcontractor, in connection with this Agreement. Additionally, the Agency agrees to include the following indemnification in all contracts with contractors/subcontractors, or consultants/subconsultants who perform work in connection with this Agreement:

"To the fullest extent permitted by law, the Agency's contractor shall indemnify and hold harmless the Agency, the State of Florida, Department of Transportation, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of this Contract."

This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity.

To the fullest extent permitted by law, the Agency's consultant shall indemnify and hold harmless the Agency, the State of Florida, Department of Transportation, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the consultant and persons employed or utilized by the consultant in the performance of this Contract.

This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity."

- B. The Agency 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 Agency 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 Agency 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.

**16. Miscellaneous Provisions:**

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- A. The Agency will be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith. The Agency will be responsible for securing any applicable permits. The Agency shall include in all contracts and subcontracts for amounts in excess of \$150,000, a provision requiring compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
- B. The Department shall not be obligated or liable hereunder to any individual or entity not a party to this Agreement.
- C. In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- D. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- E. By execution of the Agreement, the Agency represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.
- F. Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.
- G. In the event that this Agreement involves constructing and equipping of facilities, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency a written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate. After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency a written approval with said remainder of the Project. Failure to obtain this written approval shall be sufficient cause of nonpayment by the Department.
- H. Upon completion of right-of-way activities on the Project, the Agency must certify compliance with all applicable federal and state requirements. Certification is required prior to authorization for advertisement for or solicitation of bids for construction of the Project, including if no right-of-way is required.
- I. The Agency will certify in writing, prior to Project closeout that the Project was completed in accordance with applicable plans and specifications, is in place on the Agency's facility, adequate title is in the Agency's name, and the Project is accepted by the Agency as suitable for the intended purpose.
- J. The Agency agrees that no federally-appropriated funds have been paid, or will be paid by or on behalf of the Agency, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative

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agreement. If any funds other than federally-appropriated funds have been paid by the Agency to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. The Agency shall require that the language of this paragraph be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. No funds received pursuant to this contract may be expended for lobbying the Legislature, the judicial branch or a state agency.

- K. The Agency may not permit the Engineer of Record to perform Construction, Engineering and Inspection services on the Project.
- L. The Agency agrees to maintain any project not on the State Highway System constructed under this Agreement. If the Agency constructs any improvement on Department right-of-way, the Agency  will  will not maintain the improvements made for their useful life.
- M. The Agency shall comply with all applicable federal guidelines, procedures, and regulations. If at any time a review conducted by Department and or FHWA reveals that the applicable federal guidelines, procedures, and regulations were not followed by the Agency and FHWA requires reimbursement of the funds, the Agency will be responsible for repayment to the Department of all funds awarded under the terms of this Agreement.
- N. The Agency:
- 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 Agency 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.
- O. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.
- P. The Parties agree to comply with s.20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s.20.055(5), Florida Statutes.
- Q. If the Project is procured pursuant to Chapter 255 for construction services and at the time of the competitive solicitation for the Project 50 percent or more of the cost of the Project is to be paid from state-appropriated funds, then the Agency must comply with the requirements of Section 255.0991, Florida Statutes.
- R. Exhibits
- i. Exhibit "A", Project Description and Responsibilities, is attached and incorporated into this Agreement.
  - ii. Exhibit "B", Schedule of Funding, is attached and incorporated into this Agreement.
  - iii.  If this Project includes Phase 58 (construction) activities, then Exhibit "C", FHWA FORM 1273, is attached and incorporated into this Agreement.

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- iv.  An Alternative Pay Method is used on this Project. If an alternative Pay Method is used on this Project, then Exhibit "D", Alternative Pay Method, is attached and incorporated into this Agreement.
- v. Exhibit "E", Title VI Assurances is attached and incorporated into this Agreement.
- vi. Exhibit "F", the Agency Resolution authorizing entry into this Agreement, is attached and incorporated into this Agreement.
- vii.  State Funds are used on this Project. If State Funds are used on this Project, then Exhibit "G", State Funds Addendum, is attached and incorporated into this Agreement.
- viii.  This Project is located off the State Highway System and includes funding for landscaping. If this Project is located off the State Highway System and includes funding for landscaping, then Exhibit "L" is attached and incorporated into this Agreement.
- ix.  This Project utilizes Advance Project Reimbursement. If this Project utilizes Advance Project Reimbursement, then Exhibit "R" is attached and incorporated into this Agreement.
- x.  This Project includes funding for a roadway lighting system. If the Project includes funding for roadway lighting system, Exhibit "RL" is attached and incorporated into this Agreement.
- xi.  This Project includes funding for traffic signals and/or traffic signal systems. If this Project includes funding for traffic signals and/or traffic signals systems, Exhibit "T" is attached and incorporated into this Agreement.
- xii. Exhibit "1", Federal Financial Assistance (Single Audit Act) is attached and incorporated into this Agreement.
- xiii.  State Funds are used on this Project. If State Funds are used on this Project, then Exhibit "2", State Financial Assistance (Florida Single Audit Act), is attached and incorporated into this Agreement.

*The remainder of this page intentionally left blank.*

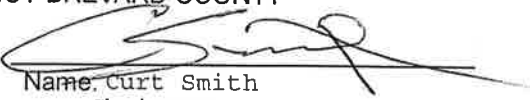
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IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written above.

AGENCY BREVARD COUNTY

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By:



Name: Curt Smith

Title: Chairman

Approved by the Board on: 5/3/16

By:

Name: Richard B. Morrow, P.E.

Title: Director of Transportation Development

Attest:



Scott Ellis, Clerk

Legal Review:

Approved for legal form and content:



Assistant County Attorney

**EXHIBIT "A"**

**PROJECT DESCRIPTION AND RESPONSIBILITIES**

FPN: 431925-1-58/68-01

This exhibit forms an integral part of the Local Agency Program Agreement between the State of Florida, Department of Transportation and

Brevard County, 2725 Judge Fran Jamieson Way, Suite A204, Viera, FL 32940.

**PROJECT LOCATION:**

- The project is on the National Highway System.
- The project is on the State Highway System.

**PROJECT LENGTH AND MILE POST LIMITS:** ~1.93 miles (including bid alternate)

**PROJECT DESCRIPTION:**

The Zoo Trail project is located in Brevard County. The project scope includes installation of a 12-foot wide multi-use trail from Turtle Mound Road to northeast of the north cell tower just south of the Brevard County Zoo. Total project length is approximately 10,185 feet (1.93 miles, including bid alternate length). The multi-use trail will vary between asphalt and boardwalk and will meet current ADA standards. Some sections will require the construction of a boardwalk over low lying and wetland areas to provide an elevated trail surface and avoid wetland impacts. Project elements include asphalt trail with stabilization and optional base group, boardwalk, concrete resting area, 2-foot maximum height retaining wall, fencing, gates, bollards, wetland plantings, and signage. The fencing will include a Type A fencing as well as a pine split rail fencing. The bid alternate includes a portion of asphalt trail (approximately 770 linear feet) from the Pineda tunnel east to the sidewalk on Pineda Causeway.

Mobilization, maintenance of traffic (MOT), erosion control, clearing and grubbing, and sodding are also included as part of this project.

The payment and performance bond (warranty bond) is a non-participating item and will not be federally funded. The proposed concrete which is 6" thick, 3,000 psi concrete is considered an upgrade. The County will only be reimbursed for the basic cover 4" thick, 2,500 psi concrete sidewalk. The 12" thickened edge is an in-eligible item and will be paid for through local funds.

**SPECIAL CONSIDERATIONS BY AGENCY:**

The audit report(s) required in the Agreement shall include a Schedule of Project Assistance that will reflect the Department's contract number, the Financial Project Number (FPN), the Federal Authorization Number (FAN), where applicable, the amount of state funding action (receipt and disbursement of funds), any federal or local funding action, and the funding action from any other source with respect to the project.

Invoices shall be submitted on a quarterly basis, and progress reports shall be submitted as requested, to:

Vince Vacchiano, Construction Manager  
Florida Department of Transportation  
719 South Woodland Boulevard, MS 3-506  
DeLand, Florida 32720

The Agency shall commence the project's activities subsequent to the execution of this Agreement and shall perform in

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**EXHIBIT "A"**

**PROJECT DESCRIPTION AND RESPONSIBILITIES**

accordance with the following schedule:

- a) Study to be completed by N/A.
- b) Design to be completed by N/A.
- c) Right-of-Way requirements identified and provided to the Department by N/A.
- d) Right-of-Way to be certified by N/A.
- e) Construction contract to be let by July 21, 2017.
- f) Construction to be completed by July 16, 2018.

If this schedule cannot be met, the Agency will notify the Department in writing with a revised schedule or the project is subject to the withdrawal of federal funding.

**SPECIAL CONSIDERATIONS BY DEPARTMENT:**

The project funding may be reduced to an amount equal to the award amount and/or the actual contract costs.

Invoice payments will be made on a pro-rata basis as a percentage of the federal funding amount compared to the actual award amount.

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**EXHIBIT "B"**

**SCHEDULE OF FUNDING**

AGENCY NAME & BILLING ADDRESS Brevard County 2725 Judge Fran Jamieson Way, Suite A204 Viera, FL 32940	FPN: 431925-1-58/68-01
--	------------------------

TYPE OF WORK By Fiscal Year	FUNDING			
	(1) TOTAL PROJECT FUNDS	(2) LOCAL FUNDS	(3) STATE FUNDS	(4) FEDERAL FUNDS
<b>Planning-18</b> FY: FY: FY:	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
<b>Total Planning Cost</b>				
<b>Project Development &amp; Environment (PD&amp;E) - 28</b> FY: FY: FY:	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
<b>Total PD&amp;E Cost</b>				
<b>Design - 38</b> FY: FY: FY:	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
<b>Total Design Cost</b>				
<b>Right-of-Way - 48</b> FY: FY: FY:	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
<b>Total Right-of-Way Cost</b>				
<b>Construction-58</b> FY: 2016-2017 FY: FY: FY:	<u>\$2,503,110.00</u> _____ _____ _____	<u>\$8,222.00</u> _____ _____ _____	<u>\$0.00</u> _____ _____ _____	<u>\$2,494,888.00</u> _____ _____ _____
<b>Total Construction Cost</b>	\$2,503,110.00	\$8,222.00	\$0.000	\$2,494,888.00
<b>Construction Engineering and Inspection (CEI) - 68</b> FY: 2016-2017 FY: FY:	<u>\$233,485.00</u> _____ _____	<u>\$0.00</u> _____ _____	<u>\$0.00</u> _____ _____	<u>\$233,485.00</u> _____ _____
<b>Total CEI Cost</b>	\$233,485.00	\$0.00	\$0.00	\$233,485.00
<b>Operations – 88</b> FY: FY: FY:	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
<b>Total Operations Costs</b>				
<b>TOTAL COST OF THE PROJECT</b>	\$2,736,595.00	\$8,222.00	\$0.00	\$2,728,373.00

The Department's fiscal year begins on July 1. For this project, funds are not projected to be available until after the 1st of July of each fiscal year. The Department will notify the Agency, in writing, when funds are available.

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**EXHIBIT "C"**

**FHWA FORM 1273  
FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:**

**LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC –  
COMPLIANCE WITH FHWA 1273.**

The FHWA-1273 version dated May 1, 2012 is appended in its entirety to this Exhibit. FHWA-1273 may also be referenced on the Department's website at the following URL address:  
<http://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>

Sub-recipients of federal grants awards for Federal-Aid Highway construction shall take responsibility to obtain this information and comply with all provisions contained in FHWA-1273.

**Exhibit "E"**  
**TITLE VI ASSURANCES**

During the performance of this contract, the consultant or contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as the "contractor") agrees as follows:

- (1.) **Compliance with REGULATIONS:** The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") *Title 49, Code of Federal Regulations, Part 21*, as they may be amended from time to time, (hereinafter referred to as the **REGULATIONS**), which are herein incorporated by reference and made a part of this contract.
- (2.) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the basis of race, color, national origin, or sex in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by **Section 21.5** of the **REGULATIONS**, including employment practices when the contract covers a program set forth in **Appendix B** of the **REGULATIONS**.
- (3.) **Solicitations for Sub-contractors, including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under sub-contract, including procurements of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the **REGULATIONS** relative to nondiscrimination on the basis of race, color, national origin, or sex.
- (4.) **Information and Reports:** The contractor shall provide all information and reports required by the **REGULATIONS** or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *Florida Department of Transportation* or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and Federal Motor Carrier Safety Administration* to be pertinent to ascertain compliance with such **REGULATIONS**, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the *Florida Department of Transportation, or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration* as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5.) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Florida Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or

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Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to:

- a. withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. cancellation, termination or suspension of the contract, in whole or in part.

**(6.) Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (7) in every sub-contract, including procurements of materials and leases of equipment, unless exempt by the **REGULATIONS**, or directives issued pursuant thereto. The contractor shall take such action with respect to any sub-contract or procurement as the *Florida Department of Transportation* or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the contractor may request the *Florida Department of Transportation* to enter into such litigation to protect the interests of the *Florida Department of Transportation*, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**(7.) Compliance with Nondiscrimination Statutes and Authorities:** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

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**EXHIBIT "F"**

**AGENCY RESOLUTION**

The agency Resolution authorizing entry into this Agreement is attached and incorporated into this Agreement.

**EXHIBIT "L"**

**LANDSCAPE MAINTENANCE**

**Paragraph 16.L** is modified to include the following provisions:

1. Until such time as the Project is removed from the project highway pursuant to paragraphs 3 and 4 of this Exhibit, the Agency shall, at all times, maintain the Project in a reasonable manner and with due care in accordance with all applicable Department guidelines, standards, and procedures hereinafter called "Project Standards." Specifically, the Agency agrees to:
  - a) Properly water and fertilize all plants, keeping them as free as practicable from disease and harmful insects;
  - b) Properly mulch plant beds;
  - c) Keep the premises free of weeds;
  - d) Mow and/or cut the grass to the proper length;
  - e) Properly prune all plants which responsibility includes removing dead or diseased parts of plants and/or pruning such parts thereof which present a visual hazard for those using the roadway; and
  - f) Remove or replace dead or diseased plants in their entirety, or remove or replace those plants that fall below original Project Standards.

The Agency agrees to repair, remove or replace at its own expense all or part of the Project that falls below Project Standards caused by the Agency's failure to maintain the same in accordance with the provisions of this Exhibit. In the event any part or parts of the Project, including plants, has to be removed and replaced for whatever reason, then they shall be replaced by parts of the same grade, size, and specification as provided in the original plans for the Project. Furthermore, the Agency agrees to keep litter removed from the project highway.

2. Maintenance of the Project shall be subject to periodic inspections by the Department. In the event that any of the aforementioned responsibilities are not carried out or are otherwise determined by the Department to not be in conformance with the applicable Project Standards, the Department, in addition to its right of termination under paragraph 4(a) in this Exhibit, may at its option perform any necessary maintenance without the need of any prior notice and charge the cost thereof to the Agency.
3. It is understood between the parties to this Agreement that any portion of or the entire Project may be removed, relocated or adjusted at any time in the future as determined to be necessary by the Department in order that the adjacent state road be widened, altered or otherwise changed to meet with the future criteria or planning of the Department. The Agency shall be given notice regarding such removal, relocation or adjustment and shall be allowed 60 days to remove all or part of the Project at its own cost. The Agency will own that part of the Project it removed. After the 60-day removal period, the Department will become the owner of the unresolved portion of the Project, and the Department then may remove, relocate or adjust the Project as it deems best, with the Agency being responsible for the cost incurred for the removal of the Project.
4. This Exhibit shall remain in force during the life of the originally installed landscaping and/or the life of any replacement landscaping installed with the mutual consent of the parties hereto until superseded by a Landscape Maintenance Agreement between the Department and the Agency.

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**EXHIBIT 1**

**FEDERAL FINANCIAL ASSISTANCE (SINGLE AUDIT ACT)**

**FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:**

**CFDA No.:** 20.205  
**CFDA Title:** Highway Planning and Construction  
Federal-Aid Highway Program, Federal Lands Highway Program  
**CFDA Program Site:** <https://www.cfda.gov/>  
**Award Amount:** \$2,728,373.00  
**Awarding Agency:** Florida Department of Transportation  
**Award is for R&D:** No  
**Indirect Cost Rate:** N/A

**FEDERAL RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:**

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles & Audit Requirements for Federal Awards  
<http://www.ecfr.gov/>

OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*  
[http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133\\_revised\\_2007.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf)

OMB Circular A-133 Compliance Supplement 2014  
[http://www.whitehouse.gov/omb/circulars/a133\\_compliance\\_supplement\\_2014](http://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2014)

**FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT MAY ALSO BE SUBJECT TO THE FOLLOWING:**

OMB Circular A-87 (Revised), *Cost Principles for State, Local and Indian Tribal Governments*  
[http://www.whitehouse.gov/omb/circulars\\_a087\\_2004/](http://www.whitehouse.gov/omb/circulars_a087_2004/)

OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*  
[http://www.whitehouse.gov/omb/circulars\\_a102/](http://www.whitehouse.gov/omb/circulars_a102/)

Title 23 – Highways, United States Code  
<http://uscode.house.gov/browse/prelim@title23&edition=prelim>

Title 49 – Transportation, United States Code  
<http://uscode.house.gov/browse/prelim@title49&edition=prelim>

Map-21 – Moving Ahead for Progress in the 21<sup>st</sup> Century, Public Law 112-141  
<http://www.gpo.gov/fdsys/pkg/PLAW-112publ141/pdf/PLAW-112publ141.pdf>

Federal Highway Administration – Florida Division  
<http://www.fhwa.dot.gov/fldiv/>

Federal Funding Accountability and Transparency Act (FFATA) Sub-award Reporting System (FSRS)  
<https://www.fsr.gov/>



Parks and Recreation Department  
2725 Judge Fran Jamieson Way  
Building B  
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

Inter-Office Memo

RECEIVED

APR 26 2017

County Manager's Office

April 26, 2017

TO: Commissioner Smith, District 4  
Scott Ellis, Clerk of Courts

THROUGH: Stockton Whitten, County Manager  
Venetta Valdengo, Assistant County Manager

FROM: Mary Ellen Donner, Parks and Recreation Director

RE: Resolution 2017 – LAP Agreement for Construction and CEI of the Brevard Zoo Linear Trail Extension

On May 3, 2016, the Board of County Commissioners authorized the Chairman to execute necessary documents and all agreements and resolutions related to this project contingent upon review and approval by the County Attorney and Risk Management. The design of the Brevard Zoo Linear Trail Extension is at the 100% phase. As such, FDOT has prepared the Local Agency Program (LAP) Agreement FPN 431925-1-58/68-01 for the construction and CEI of the project for execution by Brevard County.

Please find enclosed for your signature three (3) originals of the LAP Agreement and Resolution 2017-\_\_\_\_. Per AO-29, the LAP Agreement and Resolution have been reviewed and approved by the County Attorney and Risk Management. These items will be provided to the Clerk of the Court to attest your signature and for assignment of the Resolution number.

Please contact Melissa Renninger by email at melissa.renninger@brevardfl.gov or by phone 321-633-2046 (x32) to arrange pick up of the executed LAP Agreements and Resolution.

Please feel free to contact our office if you have any questions or concerns.

Encl: 05/04/2016 Clerk's Memorandum  
LAP /

16-064a

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**INITIAL CONTRACT FORM**

**SECTION I - The following information must be completed on all new contracts submitted to the Board.**

1. Contractor: State of Florida	
2. Fund/Account #:	Department Name: Parks & Recreation
4. Contract Description: LAP Agreement for the construction & CEI services for the Zoo Trail	
5. Contract Monitor:	6. Mail Stop #:
7. Dept./Office Director: Mary Ellen Donner	8. Contract Type:
ACTION DATE: 30 days from entry	ACTION REQUIREMENT: Need complete data

**SECTION II - The following departments must approve all contracts submitted to the Board:**

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	_____	_____	_____	_____
Risk Management	✓ _____	_____	ML _____	4-20-2017 _____
County Attorney	_____	_____	_____	_____

If any office denies approval, the package will be returned immediately to the User Agency.

**SECTION III - CONTRACT MANAGEMENT DATABASE CHECKLIST**

<u>DATABASE REQUIRED FIELDS</u>	<u>Complete</u> ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund and GL Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Data (No Additional renewals/extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in database (Initial Contract Form with County Attorney/Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>
<b>Note:</b> Insurance Certificates uploaded under collapsible/expandable <u>Monitor Bar Section</u> Change Order/Task Order uploaded under collapsible/expandable <u>Monitor Bar Section</u> Contract Renewal documents uploaded under collapsible/expandable <u>Renewal /Bar Section</u>	

**NOTE:** This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form, Executed/Attested Contract to department for contract to be entered and uploaded into the Contract Management System. See AO-29 for additional information.

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**INITIAL CONTRACT FORM**

**SECTION I - The following information must be completed on all new contracts submitted to the Board.**

<b>1. Contractor:</b> State of Florida	
<b>2. Fund/Account #:</b>	<b>Department Name:</b> Parks & Recreation
<b>4. Contract Description:</b> LAP Agreement for the construction & CEI services for the Zoo Trail	
<b>5. Contract Monitor:</b>	<b>6. Mail Stop #:</b>
<b>7. Dept./Office Director:</b> Mary Ellen Donner	<b>8. Contract Type:</b>
<b>ACTION DATE:</b> 30 days from entry	<b>ACTION REQUIREMENT:</b> Need complete data

**SECTION II - The following departments must approve all contracts submitted to the Board:**

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	_____	_____	_____	_____
Risk Management	_____	_____	_____	_____
County Attorney	X	_____	OK	4/24/17

If any office denies approval, the package will be returned immediately to the User Agency.

**SECTION III - CONTRACT MANAGEMENT DATABASE CHECKLIST**

<b>DATABASE REQUIRED FIELDS</b>	<b>Complete ✓</b>
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund and GL Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Data (No Additional renewals/extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in database (Initial Contract Form with County Attorney/Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>
<b>Note: Insurance Certificates uploaded under collapsible/expandable <u>Monitor Bar Section</u> Change Order/Task Order uploaded under collapsible/expandable <u>Monitor Bar Section</u> Contract Renewal documents uploaded under collapsible/expandable <u>Renewal /Bar Section</u></b>	

**NOTE:** This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form, Executed/Attested Contract to department for contract to be entered and uploaded into the Contract Management System. See AO-29 for additional information.



**Florida Department of Transportation**

RICK SCOTT  
GOVERNOR

719 S. Woodland Boulevard  
DeLand, Florida 32720-6834

MIKE DEW  
SECRETARY

June 26, 2017

Mr. Timothy Lawry  
Brevard County  
2725 Judge Fran Jamieson Way  
Bldg. A, Room 204  
Melbourne, FL 32940

**SUBJECT: LOCAL AGENCY PROGRAM (LAP) AGREEMENTS**  
**FPN: 431925-1-58/68-01**  
**Contract No.: G0N90**  
**Project: Zoo Trail from Cell Tower North of Pineda to Turtle Mound Road**

Dear Mr. Lawry,

This letter will serve as the Department's Notice-to-Proceed to Brevard County with advertisement for the construction of the above referenced project. The Notice-to-Proceed is effective June 26, 2017. Prior to awarding the construction contract, final concurrence from LAP Construction Project Manager, Vince Vacchiano, will be required.

Additionally, the Department previously provided Brevard County a Notice-to-Proceed with the advertisement for the construction, engineering and inspection (CEI) professional services for the above referenced project. The Notice-to-Proceed was effective April 6, 2017.

Consistent with Department Form 525-010-49, *Local Agency Program (LAP) Checklist for Federally Funded Professional Services Contracts Federal and State Requirements*, the following documentation is still required:

**Phase 2:** Copy of the short list (Checklist Requirement 7) with a minimum of 3 firms and related supporting documentation (i.e. how did they get to this ranking.) In addition, provide the required forms (Checklist Requirements 2-5) signed by shortlist firms and a Conflict of Interest statement signed by the evaluation/selection committee members (Checklist Requirement 3). Please keep in mind that the evaluation/selection Committee must consist of a minimum of three individuals.

*Upon determination that the short list process was handled per Federal regulations, an approval/notice to proceed with negotiations can be provided.*

**Phase 3:** Provide proof of negotiations (Checklist Requirement 10) including, but not limited to the initial and final consultant staff hour estimate(s).

Provide confirmation of prime consultant and sub-consultant eligibility qualifications verification. This can be in the form of screenshots from the SAM and DMS sites, or by completion of the Vendor Eligibility Check Prior to Contract Award (Checklist Requirement 4 - Form 375-030-91)

In addition, a copy of the final draft contract must be provided for Department review and concurrence. Please keep in mind that Overhead Rates (indirect rates) and Direct Salary Multipliers cannot be capped (Requirement 9.) The Contract must contain the following language/documentation (If language in the RFP/RFQ bring the contract in to compliance, the RFP/RFQ must be physically incorporated as part of the contract):

- Required Forms (Checklist Requirements 2 -- 5)
  - Truth In Negotiation Certification (Requirement 2 – Form 375-030-30 (for contracts over \$195,000))
  - Conflict of Interest Certification (Requirement 3)
  - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Federal Aid Contracts (Requirement 4 – Form 375-030-32)
  - Certification for Disclosure of Lobbying Activities on Federal Aid Contracts (Requirement 5 – Form 375-030-33)
  - Standard Form-LLL, Disclosure of Lobbying Activities Form (Requirement 5, as needed – Form 375-030-34)
- Required language (Checklist Requirement 6)
  - Professional Liability Insurance
  - E-Verify (Executive Order 11-116)
  - Public Entity Crimes Statement (287.133, F.S.)
  - Drug Free Workplace Certification
  - Prompt Payment Provision
  - Public Access to Public Records
  - Terms for Federal Aid Contracts (Appendix I – Form 375-040-84)
  - Termination Clause for cause, convenience, and default
  - Notification of Performance Evaluation
  - Records Retention and Access to Records
  - Remedies for contract violations or breaches

*Upon determination that the draft contract contains all items required by Federal regulation, the checklist can be signed/approved a final notice to proceed and enter into the contract can be provided.*

Failure to provide this documentation in a timely manner may affect concurrence for construction as well as Brevard County's ability to seek reimbursement pursuant to the terms of the LAP Agreements.

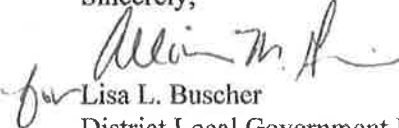
Per section 11.01 of the LAP Agreement, Brevard County will be subject to a Performance Evaluation for the construction and CEI phases of the above referenced project. The current performance evaluation can be found at the bottom of the Forms tab on the LAP website:

<http://www.dot.state.fl.us/programmanagement/LAP/Forms/LapForms.shtm>

Two (2) fully executed LAP Agreements are enclosed, and funds in the amount of \$2,728,373.00 have been encumbered for this project.

If you have any questions, please call me at 386-943-5452

Sincerely,

  
for Lisa L. Buscher

District Local Government Program Administrator

Enclosures



*Florida Department of Transportation*

RICK SCOTT  
GOVERNOR

719 S. Woodland Boulevard  
DeLand, Florida 32720-6834

MIKE DEW  
SECRETARY

MEMORANDUM

DATE: June 21, 2017  
TO: Whom It May Concern  
FROM: Lisa Buscher – District Local Government Program Administrator *LB*  
SUBJECT: Delegation of Signature Authority

As the District 5 LAP Administrator, I hereby delegate signature authority for the following documents related to the Local Agency Program (LAP) to Joyce Horne-Harley, Allison Godwin and Dawn Latchum:

- Local Agency Program (LAP) Checklist for Construction Contracts (Phase 58) – Federal Requirements (Form 525-010-44)
- Local Agency Program (LAP) Checklist for Federally Funded Professional Services Contracts – Federal and State Requirements (Form 525-010-49)

This authority is effective immediately and will stay in effect until modified or rescinded by me.

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FPN: <u>431925-1-58-01</u>	FPN: <u>431925-1-68-01</u>	FPN: _____
Federal No (FAIN): <u>D517-055-B</u>	Federal No (FAIN): <u>D517-055-B</u>	Federal No (FAIN): _____
Federal Award Date: <u>6-16-2017</u>	Federal Award Date: <u>6-16-2017</u>	Federal Award Date: _____
Fund: <u>SE/TALU/LF</u>	Fund: <u>SU/TALU</u>	Fund: _____
Org Code: <u>55054010508</u>	Org Code: <u>55054010508</u>	Org Code: _____
FLAIR Approp: <u>088717</u>	FLAIR Approp: <u>088718</u>	FLAIR Approp: _____

---

County No: 70 Contract No: G0N90  
Local Agency Vendor No: F596-000-523-164 Local Agency DUNS No: 78-324-8370  
Catalog of Federal Domestic Assistance (CFDA): 20.205 Highway Planning and Construction

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THIS LOCAL AGENCY PROGRAM AGREEMENT ("Agreement"), is made and entered into this 26<sup>th</sup> day of June, 2017 between the State of Florida, Department of Transportation, an agency of the State of Florida ("Department"), and Brevard County, 2725 Judge Fran Jamieson Way, Suite A204, Viera, FL 32940 ("Agency").

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

1. **Authority:** The Agency, by Resolution No. 2016-064a dated the 28 day of April, 2017, a copy of which is attached as Exhibit "F" and made a part of this Agreement, has authorized its officers to execute this Agreement on its behalf. The Department has the authority pursuant to Section 339.12, Florida Statutes, to enter into this Agreement.

2. **Purpose of Agreement:** The purpose of this Agreement is to provide for the Department's participation in the construction and CEI of the Zoo Trail from Cell Tower North of Pineda to Turtle Mound Road, as further described in Exhibit "A", Project Description and Responsibilities attached to and incorporated in this Agreement ("Project"), to provide Department financial assistance to the Agency, state the terms and conditions upon which Department funds will be provided, and to set forth the manner in which the Project will be undertaken and completed.

3. **Term of Agreement:** The Agency agrees to complete the Project on or before January 31, 2019. If the Agency does not complete the Project within this time period, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of this Agreement will not be reimbursed by the Department.

4. **Project Cost:**

A. The total cost of the Project is \$ 2,736,595.00. This amount is based upon the schedule of funding in Exhibit "B", Schedule of Funding attached to and incorporated in this Agreement. The Agency agrees to bear all expenses in excess of the total cost of the Project and any deficits involved. The schedule of funding may be modified by mutual agreement as provided for in paragraph 5.I.

B. The Department agrees to participate in the Project cost up to the maximum amount of \$2,728,373.00 and as more fully described in Exhibit "B". This amount includes Federal-aid funds which are limited to the actual amount of Federal-aid participation.

C. Project costs eligible for Department participation will be allowed only from the date of this Agreement. It is understood that Department participation in eligible Project costs is subject to:

i. Legislative approval of the Department's appropriation request in the work program year that the Project is scheduled to be committed;

ii. Availability of funds as stated in subparagraphs 5.L. and 5.M. of this Agreement;

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- iii. Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement; and
- iv. Department approval of the Project scope and budget at the time appropriation authority becomes available.

**5. Requisitions and Payments:**

- A. The Agency shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project and the quantifiable, measurable, and verifiable units of deliverables are described more fully in Exhibit "A".
- B. Invoices shall be submitted by the Agency in detail sufficient for a proper pre-audit and post-audit based on the quantifiable, measurable and verifiable units of deliverables as established in Exhibit "A". Deliverables must be received and accepted in writing by the Department's Project Manager prior to payments.
- C. The Agency shall charge to the Project account all eligible costs of the Project except costs agreed to be borne by the Agency or its contractors and subcontractors. Costs in excess of the programmed funding or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.
- D. Supporting documentation must establish that the deliverables were received and accepted in writing by the Agency and must also establish that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Exhibit "A" was met.
- E. Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department's Contractor Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061, Florida Statutes and the most current version of the Disbursement Handbook for Employees and Managers.
- F. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes. If the Department determines that the performance of the Agency is unsatisfactory, the Department shall notify the Agency of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Agency shall, within five days after notice from the Department, provide the Department with a corrective action plan describing how the Agency will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Agency shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the Agency resolves the deficiency. If the deficiency is subsequently resolved, the Agency may bill the Department for the retained amount during the next billing period. If the Agency is unable to resolve the deficiency, the funds retained may be forfeited at the end of the Agreement's term.
- G. Agencies providing goods and services to the Department should be aware of the following time frames. Inspection and approval of goods or services shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to **Section 55.03(1), F.S.**, will be due and payable, in addition to the invoice amount, to the Agency. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment.

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Invoices that have to be returned to an Agency because of Agency preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agencies who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

- H. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Agency's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.
- I. Prior to the execution of this Agreement, a Project schedule of funding shall be prepared by the Agency and approved by the Department. The Agency shall maintain said schedule of funding, carry out the Project, and shall incur obligations against and make disbursements of Project funds only in conformity with the latest approved schedule of funding for the Project. The schedule of funding may be revised by execution of a Local Agency Program ("LAP") Supplemental Agreement between the Department and the Agency. The Agency acknowledges and agrees that funding for this project may be reduced upon determination of the agency's contract award amount. If revised, a copy of the Supplemental Agreement shall be forwarded to the Department's Comptroller. No increase or decrease shall be effective unless it complies with fund participation requirements of this Agreement and is approved by the Department's Comptroller.
- J. If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.
- K. The Agency must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.
- L. The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, funds approval from the Department's Comptroller must be received each fiscal year prior to costs being incurred. See Exhibit "B" for funding levels by fiscal year. Project costs utilizing these fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Agency, in writing, when funds are available.
- M. In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"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

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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."

**6. Department Payment Obligations:** Subject to other provisions of this Agreement, the Department will honor requests for reimbursement to the Agency pursuant to this Agreement. However, notwithstanding any other provision of this Agreement, the Department may elect by notice in writing not to make a payment if:

- A. The Agency shall have made misrepresentation of a material nature in its application, or any supplement or amendment to its application, or with respect to any document or data furnished with its application or pursuant to this Agreement;
- B. There is any pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, the Agreement or payments to the Project;
- C. The Agency shall have taken any action pertaining to the Project which, under this Agreement, requires the approval of the Department or has made a related expenditure or incurred related obligations without having been advised by the Department that same are approved;
- D. There has been any violation of the conflict of interest provisions contained in paragraph 16.J.; or
- E. The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

The Department may suspend or terminate payment for that portion of the Project which the Federal Highway Administration ("FHWA"), or the Department acting in lieu of FHWA, may designate as ineligible for Federal-aid.

In determining the amount of the payment, the Department will exclude all Project costs incurred by the Agency prior to the Department's issuance of a Notice to Proceed ("NTP"), costs incurred after the expiration of the Agreement, costs which are not provided for in the latest approved schedule of funding in Exhibit "B" for the Project, costs agreed to be borne by the Agency or its contractors and subcontractors for not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

**7. General Requirements:** The Agency shall complete the Project with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement, and all applicable laws. The Project will be performed in accordance with all applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Agency Program Manual, which by this reference is made a part of this Agreement. Time is of the essence as to each and every obligation under this Agreement.

- A. A full time employee of the Agency, qualified to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of this Agreement shall be in responsible charge of the Project, which employee should be able to perform the following duties and functions:
  - i. Administers inherently governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
  - ii. Maintains familiarity of day to day Project operations, including Project safety issues;
  - iii. Makes or participates in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
  - iv. Visits and reviews the Project on a frequency that is commensurate with the magnitude and complexity of the Project;
  - v. Reviews financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse;

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- vi. Directs Project staff, agency or consultant, to carry out Project administration and contract oversight, including proper documentation;
  - vii. Is aware of the qualifications, assignments and on-the-job performance of the Agency and consultant staff at all stages of the Project.
- B.** Once the Department issues the NTP for the Project, the Agency shall be obligated to submit an invoice or other request for reimbursement to the Department no less than once every 90 days (quarterly), beginning from the day the NTP is issued. If the Agency fails to submit quarterly invoices to the Department, and in the event the failure to timely submit invoices to the Department results in the "FHWA" removing any unbilled funding or the loss of State appropriation authority (which may include the loss of state and federal funds, if there are state funds programmed to the Project), then the Agency will be solely responsible to provide all funds necessary to complete the Project and the Department will not be obligated to provide any additional funding for the Project. The Agency waives the right to contest such removal of funds by the Department, if the removal is related to FHWA's withdrawal of funds or if the removal is related to the loss of State appropriation authority. In addition to the loss of funding for the Project, the Department will also consider the de-certification of the Agency for future LAP Projects. No cost may be incurred under this Agreement until after the Agency has received a written NTP from the Department. The Agency agrees to advertise or put the Project out to bid thirty (30) days from the date the Department issues the NTP to advertise the Project. If the Agency is not able to meet the scheduled advertisement, the District LAP Administrator should be notified as soon as possible.
- C.** If all funds are removed from the Project, including amounts previously billed to the Department and reimbursed to the Agency, and the Project is off the state highway system, then the Department will have to request repayment for the previously billed amounts from the Agency. No state funds can be used on off-system projects, unless authorized pursuant to Exhibit "G", State Funds Addendum, which will be attached to and incorporated in this Agreement in the event state funds are used on the Project.
- D.** In the event that any election, referendum, approval, permit, notice or other proceeding or authorization is required under applicable law to enable the Agency to enter into this Agreement or to undertake the Project or to observe, assume or carry out any of the provisions of the Agreement, the Agency will initiate and consummate, as provided by law, all actions necessary with respect to any such matters.
- E.** The Agency shall initiate and prosecute to completion all proceedings necessary, including Federal-aid requirements, to enable the Agency to provide the necessary funds for completion of the Project.
- F.** The Agency shall submit to the Department such data, reports, records, contracts, and other documents relating to the Project as the Department and FHWA may require. The Agency shall use the Department's Local Agency Program Information Tool and applicable information systems as required.
- G.** Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable federal and State laws, the regulations in 23 Code of Federal Regulations (C.F.R.) and 49 C.F.R., and policies and procedures prescribed by the Division Administrator of FHWA. Federal funds shall not be paid on account of any cost incurred prior to authorization by FHWA to the Department to proceed with the Project or part thereof involving such cost (23 C.F.R. 1.9 (a)). If FHWA or the Department determines that any amount claimed is not eligible, federal participation may be approved in the amount determined to be adequately supported and the Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal participation. Where correctable non-compliance with provisions of law or FHWA requirements exists. Federal funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA or the Department may deny participation in parcel or Project costs in part or in total. For any amounts determined to be ineligible for federal reimbursement for which the Department has advanced payment, the Agency shall promptly reimburse the Department for all such amounts within 90 days of written notice.

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- H. For any project requiring additional right-of-way, the Agency must submit to the Department an annual report of its real property acquisition and relocation assistance activities on the project. Activities shall be reported on a federal fiscal year basis, from October 1 through September 30. The report must be prepared using the format prescribed in 49 C.F.R. Part 24, Appendix B, and be submitted to the Department no later than October 15 of each year.

8. **Audit Reports:** The administration of resources awarded through the Department to the Agency by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of federal awards or limit the authority of any State agency inspector general, the State of Florida Auditor General or any other State official. The Agency shall comply with all audit and audit reporting requirements as specified below.

- A. In addition to reviews of audits conducted in accordance with OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, monitoring procedures may include but not be limited to on-site visits by Department staff and/or other procedures including, reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to federal awards provided through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, State of Florida Chief Financial Officer (CFO) or State of Florida Auditor General.
- B. The Agency, a non-federal entity as defined by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as defined by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, as a subrecipient of a federal award awarded by the Department through this Agreement is subject to the following requirements:
- i. In the event the Agency expends a total amount of federal awards equal to or in excess of the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, the Agency must have a federal single or program-specific audit for such fiscal year conducted in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. **Exhibit "1", Federal Financial Assistance (Single Audit Act)** to this Agreement provides the required federal award identification information needed by the Agency to further comply with the requirements of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and the requirements of 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. In determining federal awards expended in a fiscal year, the Agency must consider all sources of federal awards based on when the activity related to the federal award occurs, including the federal award provided through the Department by this Agreement. The determination of amounts of federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. An audit conducted by the State of Florida Auditor General in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, will meet the requirements of this part.
  - ii. In connection with the audit requirements, the Agency shall fulfill the requirements relative to the auditee responsibilities as provided in OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as provided in 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014.

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- iii. In the event the Agency expends less than the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, in federal awards, the Agency is exempt from federal audit requirements for that fiscal year. However, the Agency must provide a single audit exemption statement to the Department at [FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us) no later than nine months after the end of the Agency's audit period for each applicable audit year. In the event the Agency expends less than the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, in federal awards in a fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, the cost of the audit must be paid from non-federal resources (*i.e.*, the cost of such an audit must be paid from the Agency's resources obtained from other than federal entities).
- iv. The Agency must electronically submit to the Federal Audit Clearinghouse (FAC) at <https://harvester.census.gov/facweb/> the audit reporting package as required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period. The FAC is the repository of record for audits required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and for audits required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, and this Agreement. However, the Department requires a copy of the audit reporting package also be submitted to [FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us) within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period as required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014.
- v. Within six months of acceptance of the audit report by the FAC, the Department will review the Agency's audit reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate action on all deficiencies has been taken pertaining to the federal award provided through the Department by this Agreement. If the Agency fails to have an audit conducted in accordance with OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, the Department may impose additional conditions to remedy noncompliance. If the Department determines that noncompliance cannot be remedied by imposing additional conditions, the Department may take appropriate actions to enforce compliance, which actions may include but not be limited to the following:
1. Temporarily withhold cash payments pending correction of the deficiency by the Agency or more severe enforcement action by the Department;
  2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
  3. Wholly or partly suspend or terminate the federal award;
  4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 and federal awarding agency regulations (or in the case of the Department, recommend such a proceeding be initiated by the federal awarding agency);
  5. Withhold further federal awards for the Project or program;
  6. Take other remedies that may be legally available.
- vi. As a condition of receiving this federal award, the Agency shall permit the Department, or its designee, the CFO or State of Florida Auditor General access to Agency's records including financial statements, the independent auditor's working papers and project records as necessary.

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Records related to unresolved audit findings, appeals or litigation shall be retained until the action is complete or the dispute is resolved.

vii. The Department's contact information for requirements under this part is as follows:

Office of Comptroller, MS 24  
605 Suwannee Street  
Tallahassee, Florida 32399-0450  
[FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us)

- C. The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department, or its designee, the CFO or State of Florida Auditor General access to such records upon request. The Agency shall ensure that the audit working papers are made available to the Department, or its designee, the CFO, or State of Florida Auditor General upon request for a period of five years from the date the audit report is issued unless extended in writing by the Department.

**9. Termination or Suspension of Project:** The Department may, by written notice to the Agency, suspend any or all of the Agency's obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected or the Department may terminate this Agreement in whole or in part at any time the interest of the Department requires such termination.

- A. If the Department determines that the performance of the Agency is not satisfactory, the Department shall notify the Agency of the deficiency in writing with a requirement that the deficiency be corrected within thirty (30) days of such notice. Such notice shall provide reasonable specificity to the Agency of the deficiency that requires correction. If the deficiency is not corrected within such time period, the Department may either (1) immediately terminate the Agreement as set forth in paragraph 9.B. below, or (2) take whatever action is deemed appropriate by the Department to correct the deficiency. In the event the Department chooses to take action and not terminate the Agreement, the Agency shall, upon demand, promptly reimburse the Department for any and all costs and expenses incurred by the Department in correcting the deficiency.
- B. If the Department terminates the Agreement, the Department shall notify the Agency of such termination in writing, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- C. If the Agreement is terminated before the Project is completed, the Agency shall be paid only for the percentage of the Project satisfactorily performed for which costs can be substantiated. Such payment, however, shall not exceed the equivalent percentage of the contract price. All work in progress on Department right-of-way will become the property of the Department and will be turned over promptly by the Agency.
- D. The Department reserves the right to unilaterally cancel this Agreement for refusal by the Agency or any contractor, sub-contractor or materials vendor 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 in conjunction with this Agreement unless the records are exempt.
- E. Upon receipt of any final termination or suspension notice under this paragraph 9., the Agency shall proceed promptly to carry out the actions required in such notice, which may include any or all of the following: (a) necessary action to terminate or suspend, as the case may be, Project activities and contracts and such other action as may be required or desirable to keep to a minimum the costs upon the basis of which the financing is to be computed; or (b) furnish a statement of the Project activities and contracts and other undertakings the cost of which are otherwise includable as Project costs. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and cost as approved by the Department or upon the basis of terms and conditions imposed by the Department upon the failure of the Agency to furnish the schedule, plan, and estimate within a reasonable time. The

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closing out of federal financial participation in the Project shall not constitute a waiver of any claim which the Department may otherwise have arising out of this Agreement.

**10. Contracts of the Agency:**

- A. Except as otherwise authorized in writing by the Department, the Agency shall not execute any contract or obligate itself in any manner requiring the disbursement of Department funds, including consultant or construction contracts or amendments thereto, with any third party with respect to the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department. The Department specifically reserves the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of such consultant or contractor.
- B. It is understood and agreed by the parties to this Agreement that participation by the Department in a project with the Agency, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Agency's complying in full with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act, the federal Brooks Act, 23 C.F.R. 172, and 23 U.S.C. 112. At the discretion of the Department, the Agency will involve the Department in the consultant selection process for all projects funded under this Agreement. In all cases, the Agency shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act and the federal Brooks Act.
- C. The Agency shall comply with, and require its consultants and contractors to comply with applicable federal law pertaining to the use of Federal-aid funds. The Agency shall comply with the provisions in the FHWA-1273 form as set forth in Exhibit "C", FHWA 1273 attached to and incorporated in this Agreement. The Agency shall include FHWA-1273 in all contracts with consultants and contractors performing work on the Project.

**11. Disadvantaged Business Enterprise (DBE) Policy and Obligation:** It is the policy of the Department that DBE's, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement.

The Agency and its contractors agree to ensure that DBE's have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBE's have the opportunity to compete for and perform contracts. The Agency and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

**12. Compliance with Conditions and Laws:** The Agency shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project. Execution of this Agreement constitutes a certification that the Agency is in compliance with, and will require its contractors and subcontractors to comply with, all requirements imposed by applicable federal, state, and local laws and regulations, including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," in 49 C.F.R. Part 29, and 2 C.F.R. Part 200 when applicable.

**13. Performance Evaluations:** Agencies are evaluated on a project-by-project basis. The evaluations provide information about oversight needs and provide input for the recertification process. Evaluations are submitted to the Agency's person in responsible charge or designee as part of the Project closeout process. The Department provides the evaluation to the Agency no more than 30 days after final acceptance.

- A. Each evaluation will result in one of three ratings. A rating of Unsatisfactory Performance means the Agency failed to develop the Project in accordance with applicable federal and state regulations, standards and procedures, required excessive District involvement/oversight, or the Project was brought in-house by the Department. A rating of Satisfactory Performance means the Agency developed the Project in accordance with applicable federal and state regulations, standards and procedures, with

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minimal District involvement/oversight. A rating of Above Satisfactory Performance means the Agency developed the Project in accordance with applicable federal and state regulations, standards and procedures, without District involvement/oversight.

- B. The District will determine which functions can be further delegated to Agencies that continuously earn Satisfactory and Above Satisfactory evaluations.

**14. Restrictions, Prohibitions, Controls, and Labor Provisions:** During the performance of this Agreement, the Agency agrees as follows, and agrees to require its contractors and subcontractors to include in each subcontract the following provisions:

- A. The Agency will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964, the regulations of the U.S. Department of Transportation issued thereunder, and the assurance by the Agency pursuant thereto. The Agency shall include the attached Exhibit "E", Title VI Assurances in all contracts with consultants and contractors performing work on the Project that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21, and related statutes and regulations.
- B. The Agency will comply with all the requirements as imposed by the ADA, the regulations of the Federal government issued thereunder, and assurance by the Agency pursuant thereto.
- C. 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 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, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- D. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide 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 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.
- E. An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the Department to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Agency.
- F. Neither the Agency nor any of its contractors or their subcontractors shall enter into any contract, subcontract or arrangement in connection with the Project or any property included or planned to be included in the Project in which any member, officer or employee of the Agency or the locality during tenure or for 2 years thereafter has any interest, direct or indirect. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of tenure any such interest, and if such interest is immediately disclosed to the Agency, the Agency, with prior approval of the Department, may waive the prohibition contained in this paragraph provided that any such present member, officer or employee shall not participate in any action by the Agency or the locality relating to such contract, subcontract or arrangement. The Agency shall insert in all contracts entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of their subcontracts, the following provision:

"No member, officer or employee of the Agency or of the locality during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

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The provisions of this paragraph shall not be applicable to any agreement between the Agency and its fiscal depositories or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

- G. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

**15. Indemnification and Insurance:**

- A. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or 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. The Agency guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Agency or any subcontractor, in connection with this Agreement. Additionally, the Agency agrees to include the following indemnification in all contracts with contractors/subcontractors, or consultants/subconsultants who perform work in connection with this Agreement:

"To the fullest extent permitted by law, the Agency's contractor shall indemnify and hold harmless the Agency, the State of Florida, Department of Transportation, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of this Contract."

This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity.

To the fullest extent permitted by law, the Agency's consultant shall indemnify and hold harmless the Agency, the State of Florida, Department of Transportation, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the consultant and persons employed or utilized by the consultant in the performance of this Contract.

This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity."

- B. The Agency 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 Agency 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 Agency 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.

**16. Miscellaneous Provisions:**

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- A. The Agency will be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith. The Agency will be responsible for securing any applicable permits. The Agency shall include in all contracts and subcontracts for amounts in excess of \$150,000, a provision requiring compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
- B. The Department shall not be obligated or liable hereunder to any individual or entity not a party to this Agreement.
- C. In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- D. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- E. By execution of the Agreement, the Agency represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.
- F. Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.
- G. In the event that this Agreement involves constructing and equipping of facilities, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency a written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate. After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency a written approval with said remainder of the Project. Failure to obtain this written approval shall be sufficient cause of nonpayment by the Department.
- H. Upon completion of right-of-way activities on the Project, the Agency must certify compliance with all applicable federal and state requirements. Certification is required prior to authorization for advertisement for or solicitation of bids for construction of the Project, including if no right-of-way is required.
- I. The Agency will certify in writing, prior to Project closeout that the Project was completed in accordance with applicable plans and specifications, is in place on the Agency's facility, adequate title is in the Agency's name, and the Project is accepted by the Agency as suitable for the intended purpose.
- J. The Agency agrees that no federally-appropriated funds have been paid, or will be paid by or on behalf of the Agency, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative

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agreement. If any funds other than federally-appropriated funds have been paid by the Agency to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. The Agency shall require that the language of this paragraph be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. No funds received pursuant to this contract may be expended for lobbying the Legislature, the judicial branch or a state agency.

- K.** The Agency may not permit the Engineer of Record to perform Construction, Engineering and Inspection services on the Project.
- L.** The Agency agrees to maintain any project not on the State Highway System constructed under this Agreement. If the Agency constructs any improvement on Department right-of-way, the Agency  will  will not maintain the improvements made for their useful life.
- M.** The Agency shall comply with all applicable federal guidelines, procedures, and regulations. If at any time a review conducted by Department and or FHWA reveals that the applicable federal guidelines, procedures, and regulations were not followed by the Agency and FHWA requires reimbursement of the funds, the Agency will be responsible for repayment to the Department of all funds awarded under the terms of this Agreement.
- N.** The Agency:
- 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 Agency 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.
- O.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.
- P.** The Parties agree to comply with s.20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s.20.055(5), Florida Statutes.
- Q.** If the Project is procured pursuant to Chapter 255 for construction services and at the time of the competitive solicitation for the Project 50 percent or more of the cost of the Project is to be paid from state-appropriated funds, then the Agency must comply with the requirements of Section 255.0991, Florida Statutes.
- R. Exhibits**
- i. Exhibit "A", Project Description and Responsibilities, is attached and incorporated into this Agreement.
  - ii. Exhibit "B", Schedule of Funding, is attached and incorporated into this Agreement.
  - iii.  If this Project includes Phase 58 (construction) activities, then Exhibit "C", FHWA FORM 1273, is attached and incorporated into this Agreement.

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- iv.  An Alternative Pay Method is used on this Project. If an alternative Pay Method is used on this Project, then Exhibit "D", Alternative Pay Method, is attached and incorporated into this Agreement.
- v. Exhibit "E", Title VI Assurances is attached and incorporated into this Agreement.
- vi. Exhibit "F", the Agency Resolution authorizing entry into this Agreement, is attached and incorporated into this Agreement.
- vii.  State Funds are used on this Project. If State Funds are used on this Project, then Exhibit "G", State Funds Addendum, is attached and incorporated into this Agreement.
- viii.  This Project is located off the State Highway System and includes funding for landscaping. If this Project is located off the State Highway System and includes funding for landscaping, then Exhibit "L" is attached and incorporated into this Agreement.
- ix.  This Project utilizes Advance Project Reimbursement. If this Project utilizes Advance Project Reimbursement, then Exhibit "R" is attached and incorporated into this Agreement.
- x.  This Project includes funding for a roadway lighting system. If the Project includes funding for roadway lighting system, Exhibit "RL" is attached and incorporated into this Agreement.
- xi.  This Project includes funding for traffic signals and/or traffic signal systems. If this Project includes funding for traffic signals and/or traffic signals systems, Exhibit "T" is attached and incorporated into this Agreement.
- xii. Exhibit "1", Federal Financial Assistance (Single Audit Act) is attached and incorporated into this Agreement.
- xiii.  State Funds are used on this Project. If State Funds are used on this Project, then Exhibit "2", State Financial Assistance (Florida Single Audit Act), is attached and incorporated into this Agreement.

*The remainder of this page intentionally left blank.*

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IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written above.

AGENCY BREVARD COUNTY

By: 

Name: Curt Smith

Title: Chairman

Approved by the Board on: 5/3/16

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By: 

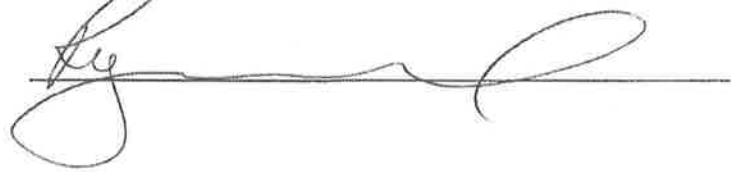
Name: Richard B. Morrow, P.E.

Title: Director of Transportation Development

Attest:

  
Scott Ellis, Clerk

Legal Review:



Approved for legal form and content:

  
Assistant County Attorney

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**EXHIBIT "A"**

**PROJECT DESCRIPTION AND RESPONSIBILITIES**

FPN: 431925-1-58/68-01

This exhibit forms an integral part of the Local Agency Program Agreement between the State of Florida, Department of Transportation and

Brevard County, 2725 Judge Fran Jamieson Way, Suite A204, Viera, FL 32940.

**PROJECT LOCATION:**

- The project is on the National Highway System.
- The project is on the State Highway System.

**PROJECT LENGTH AND MILE POST LIMITS:** ~1.93 miles (including bid alternate)

**PROJECT DESCRIPTION:**

The Zoo Trail project is located in Brevard County. The project scope includes installation of a 12-foot wide multi-use trail from Turtle Mound Road to northeast of the north cell tower just south of the Brevard County Zoo. Total project length is approximately 10,185 feet (1.93 miles, including bid alternate length). The multi-use trail will vary between asphalt and boardwalk and will meet current ADA standards. Some sections will require the construction of a boardwalk over low lying and wetland areas to provide an elevated trail surface and avoid wetland impacts. Project elements include asphalt trail with stabilization and optional base group, boardwalk, concrete resting area, 2-foot maximum height retaining wall, fencing, gates, bollards, wetland plantings, and signage. The fencing will include a Type A fencing as well as a pine split rail fencing. The bid alternate includes a portion of asphalt trail (approximately 770 linear feet) from the Pineda tunnel east to the sidewalk on Pineda Causeway.

Mobilization, maintenance of traffic (MOT), erosion control, clearing and grubbing, and sodding are also included as part of this project.

The payment and performance bond (warranty bond) is a non-participating item and will not be federally funded. The proposed concrete which is 6" thick, 3,000 psi concrete is considered an upgrade. The County will only be reimbursed for the basic cover 4" thick, 2,500 psi concrete sidewalk. The 12" thickened edge is an in-eligible item and will be paid for through local funds.

**SPECIAL CONSIDERATIONS BY AGENCY:**

The audit report(s) required in the Agreement shall include a Schedule of Project Assistance that will reflect the Department's contract number, the Financial Project Number (FPN), the Federal Authorization Number (FAN), where applicable, the amount of state funding action (receipt and disbursement of funds), any federal or local funding action, and the funding action from any other source with respect to the project.

Invoices shall be submitted on a quarterly basis, and progress reports shall be submitted as requested, to:

Vince Vacchiano, Construction Manager  
Florida Department of Transportation  
719 South Woodland Boulevard, MS 3-506  
DeLand, Florida 32720

The Agency shall commence the project's activities subsequent to the execution of this Agreement and shall perform in

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**EXHIBIT "A"**

**PROJECT DESCRIPTION AND RESPONSIBILITIES**

accordance with the following schedule:

- a) Study to be completed by N/A.
- b) Design to be completed by N/A.
- c) Right-of-Way requirements identified and provided to the Department by N/A.
- d) Right-of-Way to be certified by N/A.
- e) Construction contract to be let by August 21, 2017.
- f) Construction to be completed by September 4, 2018.

If this schedule cannot be met, the Agency will notify the Department in writing with a revised schedule or the project is subject to the withdrawal of federal funding.

**SPECIAL CONSIDERATIONS BY DEPARTMENT:**

The project funding may be reduced to an amount equal to the award amount and/or the actual contract costs.

Invoice payments will be made on a pro-rata basis as a percentage of the federal funding amount compared to the actual award amount.

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**EXHIBIT "B"**

**SCHEDULE OF FUNDING**

AGENCY NAME & BILLING ADDRESS Brevard County 2725 Judge Fran Jamieson Way, Suite A204 Viera, FL 32940	FPN: 431925-1-58/68-01
--	------------------------

TYPE OF WORK By Fiscal Year	FUNDING			
	(1) TOTAL PROJECT FUNDS	(2) LOCAL FUNDS	(3) STATE FUNDS	(4) FEDERAL FUNDS
<b>Planning-18</b> FY: _____ FY: _____ FY: _____ Total Planning Cost	_____	_____	_____	_____
<b>Project Development &amp; Environment (PD&amp;E) - 28</b> FY: _____ FY: _____ FY: _____ Total PD&E Cost	_____	_____	_____	_____
<b>Design - 38</b> FY: _____ FY: _____ FY: _____ Total Design Cost	_____	_____	_____	_____
<b>Right-of-Way - 48</b> FY: _____ FY: _____ FY: _____ Total Right-of-Way Cost	_____	_____	_____	_____
<b>Construction-58</b> FY: 2016-2017 FY: _____ FY: _____ FY: _____ Total Construction Cost	<u>\$2,503,110.00</u>	<u>\$8,222.00</u>	<u>\$0.00</u>	<u>\$2,494,888.00</u>
<b>Construction Engineering and Inspection (CEI) - 68</b> FY: 2016-2017 FY: _____ FY: _____ Total CEI Cost	<u>\$233,485.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$233,485.00</u>
<b>Operations - 88</b> FY: _____ FY: _____ FY: _____ Total Operations Costs	_____	_____	_____	_____
<b>TOTAL COST OF THE PROJECT</b>	\$2,736,595.00	\$8,222.00	\$0.00	\$2,728,373.00

The Department's fiscal year begins on July 1. For this project, funds are not projected to be available until after the 1st of July of each fiscal year. The Department will notify the Agency, in writing, when funds are available.

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**LOCAL AGENCY PROGRAM AGREEMENT**

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**EXHIBIT "C"**

**FHWA FORM 1273  
FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:**

**LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC --  
COMPLIANCE WITH FHWA 1273.**

The FHWA-1273 version dated May 1, 2012 is appended in its entirety to this Exhibit. FHWA-1273 may also be referenced on the Department's website at the following URL address:  
<http://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>

Sub-recipients of federal grants awards for Federal-Aid Highway construction shall take responsibility to obtain this information and comply with all provisions contained in FHWA-1273.

**Exhibit "E"**  
**TITLE VI ASSURANCES**

During the performance of this contract, the consultant or contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as the "contractor") agrees as follows:

- (1.) **Compliance with REGULATIONS:** The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") *Title 49, Code of Federal Regulations, Part 21*, as they may be amended from time to time, (hereinafter referred to as the **REGULATIONS**), which are herein incorporated by reference and made a part of this contract.
- (2.) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the basis of race, color, national origin, or sex in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by **Section 21.5** of the **REGULATIONS**, including employment practices when the contract covers a program set forth in **Appendix B** of the **REGULATIONS**.
- (3.) **Solicitations for Sub-contractors, including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under sub-contract, including procurements of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the **REGULATIONS** relative to nondiscrimination on the basis of race, color, national origin, or sex.
- (4.) **Information and Reports:** The contractor shall provide all information and reports required by the **REGULATIONS** or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *Florida Department of Transportation* or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and Federal Motor Carrier Safety Administration* to be pertinent to ascertain compliance with such **REGULATIONS**, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the *Florida Department of Transportation, or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration* as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5.) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Florida Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or

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Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to:

- a. withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. cancellation, termination or suspension of the contract, in whole or in part.

**(6.) Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (7) in every sub-contract, including procurements of materials and leases of equipment, unless exempt by the **REGULATIONS**, or directives issued pursuant thereto. The contractor shall take such action with respect to any sub-contract or procurement as the *Florida Department of Transportation* or the *Federal Highway Administration*, *Federal Transit Administration*, *Federal Aviation Administration*, or *Federal Motor Carrier Safety Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the contractor may request the *Florida Department of Transportation* to enter into such litigation to protect the interests of the *Florida Department of Transportation*, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**(7.) Compliance with Nondiscrimination Statutes and Authorities:** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

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**EXHIBIT "F"**

**AGENCY RESOLUTION**

The agency Resolution authorizing entry into this Agreement is attached and incorporated into this Agreement.

RESOLUTION NO. 2016-064a

**A RESOLUTION AUTHORIZING THE EXECUTION OF LOCAL AGENCY PROGRAM AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE CONSTRUCTION AND CEI OF THE ZOO TRAIL FROM THE CELL TOWER NORTH TO TURTLE MOUND ROAD**

**WHEREAS**, the State of Florida Department of Transportation (FDOT) and Brevard County desire to construct the Zoo Trail from the Cell Tower North to Turtle Mound Road; and

**WHEREAS**, the Board authorized the Chairman to execute necessary documents and all agreements and resolutions related to the Zoo Trail; and

**WHEREAS**, the State of Florida Department of Transportation (FDOT) has requested Brevard County to execute and deliver to the State of Florida Department of Transportation (FDOT) the Local Agency Program (LAP) Agreement for the aforementioned project, Financial Management No. 431925-1-58/68-01; and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, that Curt Smith, Chairman, of the Board of County Commissioners, is hereby authorized to make, execute, and deliver to the State of Florida Department of Transportation (FDOT) the Local Agency Program (LAP) Agreement for the aforementioned project, Financial Management No. 431925-1-58/68-01.

**DONE AND RESOLVED** this 28<sup>th</sup> day of April, 2017.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA



Scott Ellis, Clerk



Curt Smith, Chairman

As approved by the Board on 05-03-2016

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**EXHIBIT "L"**

**LANDSCAPE MAINTENANCE**

**Paragraph 16.L** is modified to include the following provisions:

1. Until such time as the Project is removed from the project highway pursuant to paragraphs 3 and 4 of this Exhibit, the Agency shall, at all times, maintain the Project in a reasonable manner and with due care in accordance with all applicable Department guidelines, standards, and procedures hereinafter called "Project Standards." Specifically, the Agency agrees to:
  - a) Properly water and fertilize all plants, keeping them as free as practicable from disease and harmful insects;
  - b) Properly mulch plant beds;
  - c) Keep the premises free of weeds;
  - d) Mow and/or cut the grass to the proper length;
  - e) Properly prune all plants which responsibility includes removing dead or diseased parts of plants and/or pruning such parts thereof which present a visual hazard for those using the roadway; and
  - f) Remove or replace dead or diseased plants in their entirety, or remove or replace those plants that fall below original Project Standards.

The Agency agrees to repair, remove or replace at its own expense all or part of the Project that falls below Project Standards caused by the Agency's failure to maintain the same in accordance with the provisions of this Exhibit. In the event any part or parts of the Project, including plants, has to be removed and replaced for whatever reason, then they shall be replaced by parts of the same grade, size, and specification as provided in the original plans for the Project. Furthermore, the Agency agrees to keep litter removed from the project highway.

2. Maintenance of the Project shall be subject to periodic inspections by the Department. In the event that any of the aforementioned responsibilities are not carried out or are otherwise determined by the Department to not be in conformance with the applicable Project Standards, the Department, in addition to its right of termination under paragraph 4(a) in this Exhibit, may at its option perform any necessary maintenance without the need of any prior notice and charge the cost thereof to the Agency.
3. It is understood between the parties to this Agreement that any portion of or the entire Project may be removed, relocated or adjusted at any time in the future as determined to be necessary by the Department in order that the adjacent state road be widened, altered or otherwise changed to meet with the future criteria or planning of the Department. The Agency shall be given notice regarding such removal, relocation or adjustment and shall be allowed 60 days to remove all or part of the Project at its own cost. The Agency will own that part of the Project it removed. After the 60-day removal period, the Department will become the owner of the unresolved portion of the Project, and the Department then may remove, relocate or adjust the Project as it deems best, with the Agency being responsible for the cost incurred for the removal of the Project.
4. This Exhibit shall remain in force during the life of the originally installed landscaping and/or the life of any replacement landscaping installed with the mutual consent of the parties hereto until superseded by a Landscape Maintenance Agreement between the Department and the Agency.

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**EXHIBIT 1**

**FEDERAL FINANCIAL ASSISTANCE (SINGLE AUDIT ACT)**

**FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:**

CFDA No.: 20.205  
CFDA Title: Highway Planning and Construction  
Federal-Aid Highway Program, Federal Lands Highway Program  
CFDA Program Site: <https://www.cfda.gov/>  
Award Amount: \$2,728,373.00  
Awarding Agency: Florida Department of Transportation  
Award is for R&D: No  
Indirect Cost Rate: N/A

**FEDERAL RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:**

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles & Audit Requirements for Federal Awards  
<http://www.ecfr.gov/>

OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*  
[http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133\\_revised\\_2007.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf)

OMB Circular A-133 Compliance Supplement 2014  
[http://www.whitehouse.gov/omb/circulars/a133\\_compliance\\_supplement\\_2014](http://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2014)

**FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT MAY ALSO BE SUBJECT TO THE FOLLOWING:**

OMB Circular A-87 (Revised), *Cost Principles for State, Local and Indian Tribal Governments*  
[http://www.whitehouse.gov/omb/circulars\\_a087\\_2004/](http://www.whitehouse.gov/omb/circulars_a087_2004/)

OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*  
[http://www.whitehouse.gov/omb/circulars\\_a102/](http://www.whitehouse.gov/omb/circulars_a102/)

Title 23 – Highways, United States Code  
<http://uscode.house.gov/browse/prelim@title23&edition=prelim>

Title 49 – Transportation, United States Code  
<http://uscode.house.gov/browse/prelim@title49&edition=prelim>

Map-21 – Moving Ahead for Progress in the 21<sup>st</sup> Century, Public Law 112-141  
<http://www.gpo.gov/fdsys/pkg/PLAW-112publ141/pdf/PLAW-112publ141.pdf>

Federal Highway Administration – Florida Division  
<http://www.fhwa.dot.gov/fldiv/>

Federal Funding Accountability and Transparency Act (FFATA) Sub-award Reporting System (FSRS)  
<https://www.fsrs.gov/>

To: Lisa.Buscher@dot.state.fl.us

**FLORIDA DEPARTMENT OF TRANSPORTATION  
FUNDS APPROVAL**

**GON90  
6/20/2017**

**CONTRACT INFORMATION**

Contract:	GON90
Contract Type:	GD - GRANT DISBURSEMENT (GRANT)
Method of Procurement:	G - GOVERNMENTAL AGENCY (287.057,F.S.)
Vendor Name:	BREVARD COUNTY BOCC
Vendor ID:	F596000523164
Beginning Date of This Agreement:	06/22/2017
Ending Date of This Agreement:	01/31/2019
Contract Total/Budgetary Ceiling:	ct = \$2,728,373.00
Description:	Zoo Trail from Cell Tower North of Pineda to Turtle Mound Road

**FUNDS APPROVAL INFORMATION**

**FUNDS APPROVED/REVIEWED FOR ROBIN M. NAITOVE, CPA, COMPTROLLER ON 6/20/2017**

Action:	Original	Original
Reviewed or Approved:	APPROVED	APPROVED
Organization Code:	55054010508	55054010508
Expansion Option:	AF	AC
Object Code:	780000	780000
Amount:	\$2,494,888.00	\$233,485.00
Financial Project:	43192515801	43192516801
Work Activity (FCT):	215	215
CFDA:	20.205	20.205
Fiscal Year:	2017	2017
Budget Entity:	55150200	55150200
Category/Category Year:	088717/17	088718/17
Amendment ID:	O001	O001
Sequence:	00	01
User Assigned ID:		
Enc Line (6s)/Status:	0001/04	0002/04

**Total Amount: \$2,728,373.00**

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FPN: <u>431925-1-38-01</u>	Fund: <u>SU/LF</u>	FLAIR Approp: <u>088849</u>
Federal No: <u>8886-915-A</u>	Org Code: <u>55053010541</u>	FLAIR Obj: <u>780000</u>
FPN: _____	Fund: _____	FLAIR Approp: _____
Federal No: _____	Org Code: _____	FLAIR Obj: _____
FPN: _____	Fund: _____	FLAIR Approp: _____
Federal No: _____	Org Code: _____	FLAIR Obj: _____

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County No: 70 Contract No: G0247 Vendor No: F596-000-523-163  
FDOT Data Universal Number System (DUNS) No: 80-939-7102 Local Agency DUNS No: 78-324-8370  
Catalog of Federal Domestic Assistance (CFDA): 20.205 Highway Planning and Construction

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THIS LOCAL AGENCY PROGRAM AGREEMENT ("Agreement"), is made and entered into this 23 day of June, 2016 between the State of Florida, Department of Transportation, an agency of the State of Florida ("Department"), and Board of County Commissioners of Brevard County, Florida, 2725 Judge Fran Jamieson Way, Building A, Suite 201, Viera, Florida 32940 ("Agency").

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

1. **Authority:** The Agency, by Resolution No. 2016-064 dated the 3rd day of May, 2016, a copy of which is attached as Exhibit "F" and made a part of this Agreement, has authorized its officers to execute this Agreement on its behalf. The Department has the authority pursuant to Section 339.12, Florida Statutes, to enter into this Agreement.

2. **Purpose of Agreement:** The purpose of this Agreement is to provide for the Department's participation in the design of the Zoo Trail from Cell Tower North of Pineda to Turtle Mound Road, as further described in Exhibit "A", Project Description and Responsibilities attached to and incorporated in this Agreement ("Project"), to provide Department financial assistance to the Agency, state the terms and conditions upon which Department funds will be provided, and to set forth the manner in which the Project will be undertaken and completed.

3. **Term of Agreement:** The Agency agrees to complete the Project on or before May 1, 2017. If the Agency does not complete the Project within this time period, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of this Agreement will not be reimbursed by the Department.

4. **Project Cost:**

A. The total cost of the Project is \$ 230,000.00. This amount is based upon the schedule of funding in Exhibit "B", Schedule of Funding attached to and incorporated in this Agreement. The Agency agrees to bear all expenses in excess of the total cost of the Project and any deficits involved. The schedule of funding may be modified by mutual agreement as provided for in paragraph 5.1.

B. The Department agrees to participate in the Project cost up to the maximum amount of \$225,000.00 and as more fully described in Exhibit "B". This amount includes Federal-aid funds which are limited to the actual amount of Federal-aid participation.

C. Project costs eligible for Department participation will be allowed only from the date of this Agreement. It is understood that Department participation in eligible Project costs is subject to:

i. Legislative approval of the Department's appropriation request in the work program year that the Project is scheduled to be committed;

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
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- ii. Availability of funds as stated in subparagraphs 5.L. and 5.M. of this Agreement;
- iii. Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement; and
- iv. Department approval of the Project scope and budget at the time appropriation authority becomes available.

**5. Requisitions and Payments:**

- A. The Agency shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project and the quantifiable, measurable, and verifiable units of deliverables are described more fully in Exhibit "A".
- B. Invoices shall be submitted by the Agency in detail sufficient for a proper pre-audit and post-audit based on the quantifiable, measurable and verifiable units of deliverables as established in Exhibit "A". Deliverables must be received and accepted in writing by the Department's Project Manager prior to payments.
- C. The Agency shall charge to the Project account all eligible costs of the Project except costs agreed to be borne by the Agency or its contractors and subcontractors. Costs in excess of the programmed funding or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.
- D. Supporting documentation must establish that the deliverables were received and accepted in writing by the Agency and must also establish that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Exhibit "A" was met.
- E. Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department's Contractor Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061, Florida Statutes and the most current version of the Disbursement Handbook for Employees and Managers.
- F. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes. If the Department determines that the performance of the Agency is unsatisfactory, the Department shall notify the Agency of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Agency shall, within five days after notice from the Department, provide the Department with a corrective action plan describing how the Agency will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Agency shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the Agency resolves the deficiency. If the deficiency is subsequently resolved, the Agency may bill the Department for the retained amount during the next billing period. If the Agency is unable to resolve the deficiency, the funds retained may be forfeited at the end of the Agreement's term.
- G. Agencies providing goods and services to the Department should be aware of the following time frames. Inspection and approval of goods or services shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

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If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to **Section 55.03(1), F.S.**, will be due and payable, in addition to the invoice amount, to the Agency. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices that have to be returned to an Agency because of Agency preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agencies who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

- H. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Agency's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.
- I. Prior to the execution of this Agreement, a Project schedule of funding shall be prepared by the Agency and approved by the Department. The Agency shall maintain said schedule of funding, carry out the Project, and shall incur obligations against and make disbursements of Project funds only in conformity with the latest approved schedule of funding for the Project. The schedule of funding may be revised by execution of a Local Agency Program ("LAP") Supplemental Agreement between the Department and the Agency. The Agency acknowledges and agrees that funding for this project may be reduced upon determination of the agency's contract award amount. If revised, a copy of the Supplemental Agreement shall be forwarded to the Department's Comptroller. No increase or decrease shall be effective unless it complies with fund participation requirements of this Agreement and is approved by the Department's Comptroller.
- J. If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.
- K. The Agency must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.
- L. The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, funds approval from the Department's Comptroller must be received each fiscal year prior to costs being incurred. See Exhibit "B" for funding levels by fiscal year. Project costs utilizing these fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Agency, in writing, when funds are available.
- M. In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"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

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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."

**6. Department Payment Obligations:** Subject to other provisions of this Agreement, the Department will honor requests for reimbursement to the Agency pursuant to this Agreement. However, notwithstanding any other provision of this Agreement, the Department may elect by notice in writing not to make a payment if:

- A. The Agency shall have made misrepresentation of a material nature in its application, or any supplement or amendment to its application, or with respect to any document or data furnished with its application or pursuant to this Agreement;
- B. There is any pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, the Agreement or payments to the Project;
- C. The Agency shall have taken any action pertaining to the Project which, under this Agreement, requires the approval of the Department or has made a related expenditure or incurred related obligations without having been advised by the Department that same are approved;
- D. There has been any violation of the conflict of interest provisions contained in paragraph 16.J.; or
- E. The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

The Department may suspend or terminate payment for that portion of the Project which the Federal Highway Administration ("FHWA"), or the Department acting in lieu of FHWA, may designate as ineligible for Federal-aid.

In determining the amount of the payment, the Department will exclude all Project costs incurred by the Agency prior to the Department's issuance of a Notice to Proceed ("NTP"), costs incurred after the expiration of the Agreement, costs which are not provided for in the latest approved schedule of funding in Exhibit "B" for the Project, costs agreed to be borne by the Agency or its contractors and subcontractors for not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

**7. General Requirements:** The Agency shall complete the Project with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement, and all applicable laws. The Project will be performed in accordance with all applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Agency Program Manual, which by this reference is made a part of this Agreement. Time is of the essence as to each and every obligation under this Agreement.

- A. A full time employee of the Agency, qualified to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of this Agreement shall be in responsible charge of the Project, which employee should be able to perform the following duties and functions:
  - i. Administers inherently governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
  - ii. Maintains familiarity of day to day Project operations, including Project safety issues;
  - iii. Makes or participates in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
  - iv. Visits and reviews the Project on a frequency that is commensurate with the magnitude and complexity of the Project;

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- v. Reviews financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse;
  - vi. Directs Project staff, agency or consultant, to carry out Project administration and contract oversight, including proper documentation;
  - vii. Is aware of the qualifications, assignments and on-the-job performance of the Agency and consultant staff at all stages of the Project.
- B.** Once the Department issues the NTP for the Project, the Agency shall be obligated to submit an invoice or other request for reimbursement to the Department on a quarterly basis, beginning from the day the NTP is issued. If the Agency fails to submit quarterly invoices to the Department, and in the event the failure to timely submit invoices to the Department results in the "FHWA" removing any unbilled funding or the loss of State appropriation authority (which may include the loss of state and federal funds, if there are state funds programmed to the Project), then the Agency will be solely responsible to provide all funds necessary to complete the Project and the Department will not be obligated to provide any additional funding for the Project. The Agency waives the right to contest such removal of funds by the Department, if the removal is related to FHWA's withdrawal of funds or if the removal is related to the loss of State appropriation authority. In addition to the loss of funding for the Project, the Department will also consider the de-certification of the Agency for future LAP Projects. No cost may be incurred under this Agreement until after the Agency has received a written NTP from the Department. The Agency agrees to advertise or put the Project out to bid thirty (30) days from the date the Department issues the NTP to advertise the Project. If the Agency is not able to meet the scheduled advertisement, the District LAP Administrator should be notified as soon as possible.
- C.** If all funds are removed from the Project, including amounts previously billed to the Department and reimbursed to the Agency, and the Project is off the state highway system, then the Department will have to request repayment for the previously billed amounts from the Agency. No state funds can be used on off-system projects, unless authorized pursuant to Exhibit "G", State Funds Addendum, which will be attached to and incorporated in this Agreement in the event state funds are used on the Project.
- D.** In the event that any election, referendum, approval, permit, notice or other proceeding or authorization is required under applicable law to enable the Agency to enter into this Agreement or to undertake the Project or to observe, assume or carry out any of the provisions of the Agreement, the Agency will initiate and consummate, as provided by law, all actions necessary with respect to any such matters.
- E.** The Agency shall initiate and prosecute to completion all proceedings necessary, including Federal-aid requirements, to enable the Agency to provide the necessary funds for completion of the Project.
- F.** The Agency shall submit to the Department such data, reports, records, contracts, and other documents relating to the Project as the Department and FHWA may require. The Agency shall use the Department's Local Agency Program Information Tool and applicable information systems as required.
- G.** Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable federal and State laws, the regulations in 23 Code of Federal Regulations (C.F.R.) and 49 C.F.R., and policies and procedures prescribed by the Division Administrator of FHWA. Federal funds shall not be paid on account of any cost incurred prior to authorization by FHWA to the Department to proceed with the Project or part thereof involving such cost (23 C.F.R. 1.9 (a)). If FHWA or the Department determines that any amount claimed is not eligible, federal participation may be approved in the amount determined to be adequately supported and the Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, Federal funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA or the Department may deny participation in parcel or Project costs in part or in total. For any amounts determined to be ineligible for federal reimbursement for which the Department has advanced payment, the Agency shall promptly reimburse the Department for all such amounts within 90 days of written notice.

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- H. For any project requiring additional right-of-way, the Agency must submit to the Department an annual report of its real property acquisition and relocation assistance activities on the project. Activities shall be reported on a federal fiscal year basis, from October 1 through September 30. The report must be prepared using the format prescribed in 49 C.F.R. Part 24, Appendix B, and be submitted to the Department no later than October 15 of each year.

**8. Audit Reports:** The administration of resources awarded through the Department to the Agency by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of federal awards or limit the authority of any State agency inspector general, the State of Florida Auditor General or any other State official. The Agency shall comply with all audit and audit reporting requirements as specified below.

- A. In addition to reviews of audits conducted in accordance with OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, monitoring procedures may include but not be limited to on-site visits by Department staff and/or other procedures including, reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to federal awards provided through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, State of Florida Chief Financial Officer (CFO) or State of Florida Auditor General.
- B. The Agency, a non-federal entity as defined by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as defined by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, as a subrecipient of a federal award awarded by the Department through this Agreement is subject to the following requirements:
  - i. In the event the Agency expends a total amount of federal awards equal to or in excess of the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, the Agency must have a federal single or program-specific audit for such fiscal year conducted in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. **Exhibit “1”, Federal Financial Assistance (Single Audit Act)** to this Agreement provides the required federal award identification information needed by the Agency to further comply with the requirements of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and the requirements of 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. In determining federal awards expended in a fiscal year, the Agency must consider all sources of federal awards based on when the activity related to the federal award occurs, including the federal award provided through the Department by this Agreement. The determination of amounts of federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. An audit conducted by the State of Florida Auditor General in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, will meet the requirements of this part.
  - ii. In connection with the audit requirements, the Agency shall fulfill the requirements relative to the auditee responsibilities as provided in OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as provided in 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014.

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- iii. In the event the Agency expends less than the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, in federal awards, the Agency is exempt from federal audit requirements for that fiscal year. However, the Agency must provide a single audit exemption statement to the Department at [FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us) no later than nine months after the end of the Agency's audit period for each applicable audit year. In the event the Agency expends less than the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, in federal awards in a fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, the cost of the audit must be paid from non-federal resources (*i.e.*, the cost of such an audit must be paid from the Agency's resources obtained from other than federal entities).
- iv. The Agency must electronically submit to the Federal Audit Clearinghouse (FAC) at <https://harvester.census.gov/facweb/> the audit reporting package as required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period. The FAC is the repository of record for audits required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and for audits required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, and this Agreement. However, the Department requires a copy of the audit reporting package also be submitted to [FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us) within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period as required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014.
- v. Within six months of acceptance of the audit report by the FAC, the Department will review the Agency's audit reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate action on all deficiencies has been taken pertaining to the federal award provided through the Department by this Agreement. If the Agency fails to have an audit conducted in accordance with OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, the Department may impose additional conditions to remedy noncompliance. If the Department determines that noncompliance cannot be remedied by imposing additional conditions, the Department may take appropriate actions to enforce compliance, which actions may include but not be limited to the following:
1. Temporarily withhold cash payments pending correction of the deficiency by the Agency or more severe enforcement action by the Department;
  2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
  3. Wholly or partly suspend or terminate the federal award;
  4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 and federal awarding agency regulations (or in the case of the Department, recommend such a proceeding be initiated by the federal awarding agency);
  5. Withhold further federal awards for the Project or program;
  6. Take other remedies that may be legally available.
- vi. As a condition of receiving this federal award, the Agency shall permit the Department, or its designee, the CFO or State of Florida Auditor General access to Agency's records including

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financial statements, the independent auditor's working papers and project records as necessary. Records related to unresolved audit findings, appeals or litigation shall be retained until the action is complete or the dispute is resolved.

vii. The Department's contact information for requirements under this part is as follows:

Office of Comptroller, MS 24  
605 Suwannee Street  
Tallahassee, Florida 32399-0450  
[FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us)

C. The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department, or its designee, the CFO or State of Florida Auditor General access to such records upon request. The Agency shall ensure that the audit working papers are made available to the Department, or its designee, the CFO, or State of Florida Auditor General upon request for a period of five years from the date the audit report is issued unless extended in writing by the Department.

**9. Termination or Suspension of Project:** The Department may, by written notice to the Agency, suspend any or all of the Agency's obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected or the Department may terminate this Agreement in whole or in part at any time the interest of the Department requires such termination.

- A. If the Department determines that the performance of the Agency is not satisfactory, the Department shall notify the Agency of the deficiency in writing with a requirement that the deficiency be corrected within thirty (30) days of such notice. Such notice shall provide reasonable specificity to the Agency of the deficiency that requires correction. If the deficiency is not corrected within such time period, the Department may either (1) immediately terminate the Agreement as set forth in paragraph 9.B. below, or (2) take whatever action is deemed appropriate by the Department to correct the deficiency. In the event the Department chooses to take action and not terminate the Agreement, the Agency shall, upon demand, promptly reimburse the Department for any and all costs and expenses incurred by the Department in correcting the deficiency.
- B. If the Department terminates the Agreement, the Department shall notify the Agency of such termination in writing, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- C. If the Agreement is terminated before the Project is completed, the Agency shall be paid only for the percentage of the Project satisfactorily performed for which costs can be substantiated. Such payment, however, shall not exceed the equivalent percentage of the contract price. All work in progress on Department right-of-way will become the property of the Department and will be turned over promptly by the Agency.
- D. The Department reserves the right to unilaterally cancel this Agreement for refusal by the Agency or any contractor, sub-contractor or materials vendor 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 in conjunction with this Agreement unless the records are exempt.
- E. Upon receipt of any final termination or suspension notice under this paragraph 9., the Agency shall proceed promptly to carry out the actions required in such notice, which may include any or all of the following: (a) necessary action to terminate or suspend, as the case may be, Project activities and contracts and such other action as may be required or desirable to keep to a minimum the costs upon the basis of which the financing is to be computed; or (b) furnish a statement of the Project activities and contracts and other undertakings the cost of which are otherwise includable as Project costs. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and cost as approved by the Department or upon the basis of terms and conditions imposed by the Department upon

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the failure of the Agency to furnish the schedule, plan, and estimate within a reasonable time. The closing out of federal financial participation in the Project shall not constitute a waiver of any claim which the Department may otherwise have arising out of this Agreement.

**10. Contracts of the Agency:**

- A.** Except as otherwise authorized in writing by the Department, the Agency shall not execute any contract or obligate itself in any manner requiring the disbursement of Department funds, including consultant or construction contracts or amendments thereto, with any third party with respect to the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department. The Department specifically reserves the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of such consultant or contractor.
- B.** It is understood and agreed by the parties to this Agreement that participation by the Department in a project with the Agency, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Agency's complying in full with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act, the federal Brooks Act, 23 C.F.R. 172, and 23 U.S.C. 112. At the discretion of the Department, the Agency will involve the Department in the consultant selection process for all projects funded under this Agreement. In all cases, the Agency shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act and the federal Brooks Act.
- C.** The Agency shall comply with, and require its consultants and contractors to comply with applicable federal law pertaining to the use of Federal-aid funds. The Agency shall comply with the provisions in the FHWA-1273 form as set forth in Exhibit "C", FHWA 1273 attached to and incorporated in this Agreement. The Agency shall include FHWA-1273 in all contracts with consultants and contractors performing work on the Project.

**11. Disadvantaged Business Enterprise (DBE) Policy and Obligation:** It is the policy of the Department that DBE's, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement.

The Agency and its contractors agree to ensure that DBE's have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBE's have the opportunity to compete for and perform contracts. The Agency and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

**12. Compliance with Conditions and Laws:** The Agency shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project. Execution of this Agreement constitutes a certification that the Agency is in compliance with, and will require its contractors and subcontractors to comply with, all requirements imposed by applicable federal, state, and local laws and regulations, including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions," in 49 C.F.R. Part 29, and 2 C.F.R. Part 200 when applicable.

**13. Performance Evaluations:** Agencies are evaluated on a project-by-project basis. The evaluations provide information about oversight needs and provide input for the recertification process. Evaluations are submitted to the Agency's person in responsible charge or designee as part of the Project closeout process. The Department provides the evaluation to the Agency no more than 30 days after final acceptance.

- A.** Each evaluation will result in one of three ratings. A rating of Unsatisfactory Performance means the Agency failed to develop the Project in accordance with applicable federal and state regulations, standards and procedures, required excessive District involvement/oversight, or the Project was brought in-house by the Department. A rating of Satisfactory Performance means the Agency developed the

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Project in accordance with applicable federal and state regulations, standards and procedures, with minimal District involvement/oversight. A rating of Above Satisfactory Performance means the Agency developed the Project in accordance with applicable federal and state regulations, standards and procedures, without District involvement/oversight.

- B. The District will determine which functions can be further delegated to Agencies that continuously earn Satisfactory and Above Satisfactory evaluations.

**14. Restrictions, Prohibitions, Controls, and Labor Provisions:** During the performance of this Agreement, the Agency agrees as follows, and agrees to require its contractors and subcontractors to include in each subcontract the following provisions:

- A. The Agency will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964, the regulations of the U.S. Department of Transportation issued thereunder, and the assurance by the Agency pursuant thereto. The Agency shall include the attached Exhibit "E", Title VI Assurances in all contracts with consultants and contractors performing work on the Project that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21, and related statutes and regulations.
- B. The Agency will comply with all the requirements as imposed by the ADA, the regulations of the Federal government issued thereunder, and assurance by the Agency pursuant thereto.
- C. 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 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, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- D. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide 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 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.
- E. An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the Department to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Agency.
- F. Neither the Agency nor any of its contractors or their subcontractors shall enter into any contract, subcontract or arrangement in connection with the Project or any property included or planned to be included in the Project in which any member, officer or employee of the Agency or the locality during tenure or for 2 years thereafter has any interest, direct or indirect. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of tenure any such interest, and if such interest is immediately disclosed to the Agency, the Agency, with prior approval of the Department, may waive the prohibition contained in this paragraph provided that any such present member, officer or employee shall not participate in any action by the Agency or the locality relating to such contract, subcontract or arrangement. The Agency shall insert in all contracts entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of their subcontracts, the following provision:

"No member, officer or employee of the Agency or of the locality during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

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The provisions of this paragraph shall not be applicable to any agreement between the Agency and its fiscal depositories or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

- G. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

**15. Indemnification and Insurance:**

- A. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or 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. The Agency guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Agency or any subcontractor, in connection with this Agreement. Additionally, the Agency agrees to include the following indemnification in all contracts with contractors/subcontractors, or consultants/subconsultants who perform work in connection with this Agreement:

"To the fullest extent permitted by law, the Agency's contractor shall indemnify and hold harmless the Agency, the State of Florida, Department of Transportation, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of this Contract.

This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity.

To the fullest extent permitted by law, the Agency's consultant shall indemnify and hold harmless the Agency, the State of Florida, Department of Transportation, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the consultant and persons employed or utilized by the consultant in the performance of this Contract.

This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity."

- B. The Agency 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 Agency 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 Agency 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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**16. Miscellaneous Provisions:**

- A. The Agency will be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith. The Agency will be responsible for securing any applicable permits. The Agency shall include in all contracts and subcontracts for amounts in excess of \$150,000, a provision requiring compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
- B. The Department shall not be obligated or liable hereunder to any individual or entity not a party to this Agreement.
- C. In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- D. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- E. By execution of the Agreement, the Agency represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.
- F. Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.
- G. In the event that this Agreement involves constructing and equipping of facilities, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency a written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate. After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency a written approval with said remainder of the Project. Failure to obtain this written approval shall be sufficient cause of nonpayment by the Department.
- H. Upon completion of right-of-way activities on the Project, the Agency must certify compliance with all applicable federal and state requirements. Certification is required prior to authorization for advertisement for or solicitation of bids for construction of the Project, including if no right-of-way is required.
- I. The Agency will certify in writing, prior to Project closeout that the Project was completed in accordance with applicable plans and specifications, is in place on the Agency's facility, adequate title is in the Agency's name, and the Project is accepted by the Agency as suitable for the intended purpose.
- J. The Agency agrees that no federally-appropriated funds have been paid, or will be paid by or on behalf of the Agency, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension,

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continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement. If any funds other than federally-appropriated funds have been paid by the Agency to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. The Agency shall require that the language of this paragraph be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. No funds received pursuant to this contract may be expended for lobbying the Legislature, the judicial branch or a state agency.

- K.** The Agency may not permit the Engineer of Record to perform Construction, Engineering and Inspection services on the Project.
- L.** The Agency agrees to maintain any project not on the State Highway System constructed under this Agreement. If the Agency constructs any improvement on Department right-of-way, the Agency  will  will not maintain the improvements made for their useful life.
- M.** The Agency shall comply with all applicable federal guidelines, procedures, and regulations. If at any time a review conducted by Department and or FHWA reveals that the applicable federal guidelines, procedures, and regulations were not followed by the Agency and FHWA requires reimbursement of the funds, the Agency will be responsible for repayment to the Department of all funds awarded under the terms of this Agreement.
- N.** The Agency:
- 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 Agency 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.
- O.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.
- P.** The Parties agree to comply with s.20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s.20.055(5), Florida Statutes.
- Q.** If the Project is procured pursuant to Chapter 255 for construction services and at the time of the competitive solicitation for the Project 50 percent or more of the cost of the Project is to be paid from state-appropriated funds, then the Agency must comply with the requirements of Section 255.0991, Florida Statutes.
- R. Exhibits**
- i. Exhibit "A", Project Description and Responsibilities, is attached and incorporated into this Agreement.
  - ii. Exhibit "B", Schedule of Funding, is attached and incorporated into this Agreement.
  - iii.  If this Project includes Phase 58 (construction) activities, then Exhibit "C", FHWA FORM 1273, is attached and incorporated into this Agreement.

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- iv.  An Alternative Pay Method is used on this Project. If an alternative Pay Method is used on this Project, then Exhibit "D", Alternative Pay Method, is attached and incorporated into this Agreement.
- v. Exhibit "E", Title VI Assurances is attached and incorporated into this Agreement.
- vi. Exhibit "F", the Agency Resolution authorizing entry into this Agreement, is attached and incorporated into this Agreement.
- vii.  State Funds are used on this Project. If State Funds are used on this Project, then Exhibit "G", State Funds Addendum, is attached and incorporated into this Agreement.
- viii.  This Project is located off the State Highway System and includes funding for landscaping. If this Project is located off the State Highway System and includes funding for landscaping, then Exhibit "L" is attached and incorporated into this Agreement.
- ix.  This Project utilizes Advance Project Reimbursement. If this Project utilizes Advance Project Reimbursement, then Exhibit "R" is attached and incorporated into this Agreement.
- x.  This Project includes funding for a roadway lighting system. If the Project includes funding for roadway lighting system, Exhibit "RL" is attached and incorporated into this Agreement.
- xi.  This Project includes funding for traffic signals and/or traffic signal systems. If this Project includes funding for traffic signals and/or traffic signals systems, Exhibit "T" is attached and incorporated into this Agreement.
- xii. Exhibit "1", Federal Financial Assistance (Single Audit Act) is attached and incorporated into this Agreement.
- xiii.  State Funds are used on this Project. If State Funds are used on this Project, then Exhibit "2", State Financial Assistance (Florida Single Audit Act), is attached and incorporated into this Agreement.

*The remainder of this page intentionally left blank.*

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IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written above.

AGENCY BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FL

By: \_\_\_\_\_

Name: Robin Fisher for Jim Barfield  
Title: Commissioner / Chairman  
As approved by the Board on May 3, 2016

Attest: \_\_\_\_\_

Title: Scott Ellis, Clerk to the Board

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_

Name: Frank J. O'Dea, P.E.  
Title: Director of Transportation Development

Reviewed for legal form and content:

\_\_\_\_\_  
*[Signature]*

(Assistant) County Attorney

Legal Review: \_\_\_\_\_

\_\_\_\_\_  
*[Signature]*

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**EXHIBIT "A"**

**PROJECT DESCRIPTION AND RESPONSIBILITIES**

FPN: 431925-1-38-01

This exhibit forms an integral part of the Local Agency Program Agreement between the State of Florida, Department of Transportation and

Board of County Commissioners of Brevard County, Florida, 2725 Judge Fran Jamieson Way, Building A, Suite 201, Viera, Florida 32940

**PROJECT LOCATION:**

The project is on the National Highway System.

The project is on the State Highway System.

**PROJECT LENGTH AND MILE POST LIMITS:** approximately 2.85 miles - see limits below

**PROJECT DESCRIPTION:**

This project consists of the design of a 12-foot wide paved multi-use trail that extends from Turtle Mound Road to the north cell tower just south of the Brevard Zoo for an approximate length of 2.85 miles. The north end of the project will tie in to an existing trail. Typical section includes a 12-foot wide asphalt paved trail with a minimum of 2-foot wide unpaved shoulders on each side. All trail construction shall be sufficient to support maintenance vehicles and access.

Sections of the trail will require the construction of boardwalk over wetland areas to mitigate wetland impacts. Gravity wall may be required in some sections of the trail. Signing and pavement markings for bicycle and pedestrian designation as well as additional guide signs will be required. Project may be required to include a trail head with picnic table, trash bin, benches as well as other resting areas throughout the limits of the trail. All pedestrian features shall adhere to current ADA standards.

Drainage analysis will be required to determine impacts to the existing conditions throughout the project limits. Permitting, survey, environmental survey, and wildlife mitigation are anticipated. Utility impacts are not anticipated.

Brevard County currently has committed all right of way for the proposed project and has secured maintenance agreements for the trail.

**SPECIAL CONSIDERATIONS BY AGENCY:**

The audit report(s) required in the Agreement shall include a Schedule of Project Assistance that will reflect the Department's contract number, the Financial Project Number (FPN), the Federal Authorization Number (FAN), where applicable, the amount of state funding action (receipt and disbursement of funds), any federal or local funding action, and the funding action from any other source with respect to the project.

The Agency is required to provide a copy of the design plans for the Department's review and approval to coordinate permitting with the Department, and notify the Department prior to commencement of any right-of-way activities.

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**EXHIBIT "A"**

**PROJECT DESCRIPTION AND RESPONSIBILITIES**

Invoices shall be submitted on a quarterly basis and progress reports shall be submitted as requested to:

Todd Long, Senior Project Manager  
Florida Department of Transportation  
719 South Woodland Boulevard, MS 2-542  
DeLand, Florida 32720

The Agency shall commence the project's activities subsequent to the execution of this Agreement and shall perform in accordance with the following schedule:

- a) Study to be completed by N/A.
- b) Design to be completed by January 1, 2017.
- c) Right-of-Way requirements identified and provided to the Department by N/A.
- d) Right-of-Way to be certified by N/A.
- e) Construction contract to be let by N/A.
- f) Construction to be completed by N/A.

If this schedule cannot be met, the Agency will notify the Department in writing with a revised schedule or the project is subject to the withdrawal of federal funding.

**SPECIAL CONSIDERATIONS BY DEPARTMENT:**

When real property rights are to be acquired for a transportation facility, a scaled drawing must be prepared to clearly show the right of way to be acquired. It must show sufficient technical data, including land ties, to permit the preparation of legal descriptions for use in acquisition documents, and serve as an aid in appraisal, acquisition. It is supported by a Control Survey Map (certified survey) and does not purport to be a survey. This map provides the certified survey support for the preparation of right of way related maps and is a depiction of the right of way survey field work performed for a specific transportation project.

The Project funding may be reduced to an amount equal to the award amount and/or the actual contract costs.

Invoice payments will be made on a pro-rata basis as a percentage of the federal funding amount compared to the actual award amount.

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**EXHIBIT "B"**

**SCHEDULE OF FUNDING**

AGENCY NAME & BILLING ADDRESS Board of County Commissioners of Brevard County, Florida 2725 Judge Fran Jamieson Way, Building A, Suite 201 Viera, Florida 32940	FPN: 431925-1-38-01
--	---------------------

TYPE OF WORK By Fiscal Year	FUNDING			
	(1) TOTAL PROJECT FUNDS	(2) LOCAL FUNDS	(3) STATE FUNDS	(4) FEDERAL FUNDS
<b>Planning-18</b>				
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
Total Planning Cost				
<b>Project Development &amp; Environment (PD&amp;E) - 28</b>				
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
Total PD&E Cost				
<b>Design - 38</b>				
FY: 2015-2016	<u>\$230,000.00</u>	<u>\$5,000.00</u>	<u>\$0.00</u>	<u>\$225,000.00</u>
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
Total Design Cost	\$230,000.00	\$5,000.00	\$0.00	\$225,000.00
<b>Right-of-Way - 48</b>				
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
Total Right-of-Way Cost				
<b>Construction-58</b>				
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
Total Construction Cost				
<b>Construction Engineering and Inspection (CEI) - 68</b>				
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
Total CEI Cost				
<b>Operations - 88</b>				
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
Total Operations Costs				
<b>TOTAL COST OF THE PROJECT</b>	<b>\$230,000.00</b>	<b>\$5,000.00</b>	<b>\$0.00</b>	<b>\$225,000.00</b>

The Department's fiscal year begins on July 1. For this project, funds are not projected to be available until after the 1st of July of each fiscal year. The Department will notify the Agency, in writing, when funds are available.

**Exhibit "E"**  
**TITLE VI ASSURANCES**

During the performance of this contract, the consultant or contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as the "contractor") agrees as follows:

- (1.) **Compliance with REGULATIONS:** The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") *Title 49, Code of Federal Regulations, Part 21*, as they may be amended from time to time, (hereinafter referred to as the **REGULATIONS**), which are herein incorporated by reference and made a part of this contract.
- (2.) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the basis of race, color, national origin, or sex in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by **Section 21.5** of the **REGULATIONS**, including employment practices when the contract covers a program set forth in **Appendix B** of the **REGULATIONS**.
- (3.) **Solicitations for Sub-contractors, including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under sub-contract, including procurements of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the **REGULATIONS** relative to nondiscrimination on the basis of race, color, national origin, or sex.
- (4.) **Information and Reports:** The contractor shall provide all information and reports required by the **REGULATIONS** or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *Florida Department of Transportation* or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and Federal Motor Carrier Safety Administration* to be pertinent to ascertain compliance with such **REGULATIONS**, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the *Florida Department of Transportation, or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration* as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5.) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Florida Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or

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Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to:

- a. withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. cancellation, termination or suspension of the contract, in whole or in part.

**(6.) Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (7) in every sub-contract, including procurements of materials and leases of equipment, unless exempt by the **REGULATIONS**, or directives issued pursuant thereto. The contractor shall take such action with respect to any sub-contract or procurement as the *Florida Department of Transportation* or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the contractor may request the *Florida Department of Transportation* to enter into such litigation to protect the interests of the *Florida Department of Transportation*, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**(7.) Compliance with Nondiscrimination Statutes and Authorities:** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

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**EXHIBIT "F"**

**AGENCY RESOLUTION**

The agency Resolution authorizing entry into this Agreement is attached and incorporated into this Agreement.

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**EXHIBIT 1**

**FEDERAL FINANCIAL ASSISTANCE (SINGLE AUDIT ACT)**

**FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:**

CFDA No.: 20.205  
CFDA Title: Highway Planning and Construction  
Federal-Aid Highway Program, Federal Lands Highway Program  
CFDA Program Site: <https://www.cfda.gov/>  
Award Amount: \$225,000.00  
Awarding Agency: Florida Department of Transportation  
Award is for R&D: No  
Indirect Cost Rate: N/A

**FEDERAL RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:**

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles & Audit Requirements for Federal Awards  
<http://www.ecfr.gov/>

OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*  
[http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133\\_revised\\_2007.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf)

OMB Circular A-133 Compliance Supplement 2014  
[http://www.whitehouse.gov/omb/circulars/a133\\_compliance\\_supplement\\_2014](http://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2014)

**FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT MAY ALSO BE SUBJECT TO THE FOLLOWING:**

OMB Circular A-87 (Revised), *Cost Principles for State, Local and Indian Tribal Governments*  
[http://www.whitehouse.gov/omb/circulars\\_a087\\_2004/](http://www.whitehouse.gov/omb/circulars_a087_2004/)

OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*  
[http://www.whitehouse.gov/omb/circulars\\_a102/](http://www.whitehouse.gov/omb/circulars_a102/)

Title 23 – Highways, United States Code  
<http://uscode.house.gov/browse/prelim@title23&edition=prelim>

Title 49 – Transportation, United States Code  
<http://uscode.house.gov/browse/prelim@title49&edition=prelim>

Map-21 – Moving Ahead for Progress in the 21<sup>st</sup> Century, Public Law 112-141  
<http://www.gpo.gov/fdsys/pkg/PLAW-112publ141/pdf/PLAW-112publ141.pdf>

Federal Highway Administration – Florida Division  
<http://www.fhwa.dot.gov/fldiv/>

Federal Funding Accountability and Transparency Act (FFATA) Sub-award Reporting System (FSRS)  
<https://www.fsrc.gov/>

COUNTY DEED

THIS DEED, made this 3rd day of May, 2016, by BREVARD COUNTY, a political subdivision of the State of Florida, Grantor, whose address is 2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida, 32940, and EAST COAST ZOOLOGICAL SOCIETY OF FLORIDA, INC., a Florida corporation not for profit, Grantee, whose mailing address is 8225 North Wickham Road, Melbourne, Florida, 32940.

WITNESSETH that the Grantor, for and in consideration of the sum of \$10.00 to it in hand paid by the Grantee, receipt whereof is hereby acknowledged, has granted, bargained and sold to the Grantee and its assigns forever, all that certain land in Brevard County, Florida described in Exhibit "A", attached hereto and made a part hereof.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining,

TO HAVE AND TO HOLD the same in fee simple forever.

This conveyance is subject to easements, restrictions, reservation and other matters of record.

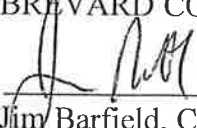
IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chairman and said Board, the day and year aforesaid.

State of Florida  
County of Brevard

ATTEST:

  
\_\_\_\_\_  
Scott Ellis, Clerk to the Board

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

By:   
\_\_\_\_\_  
Jim Barfield, Chairman  
As Approved by the Board on 5/3/16

## EXHIBIT "A – Parcel 1"

Parcel ID 26-36-22-00-00007.0-0000.00

Parcel ID 26-36-27-00-00009.0-0000.00

### LEGAL DESCRIPTION: PARCEL 1

A strip of land being 50 foot wide lying 25 Feet each side of the following described centerline, lying in Sections 22 and 27, Township 26 South, Range 36 East, Brevard County, Florida, being more particularly described as follows: Commence at the Southeast corner of said Section 27; thence North  $00^{\circ}43'25''$  West along the East line of the Southeast 1/4 of said Section 27, a distance of 2,646.44 Feet to the East 1/4 corner of said Section 27; thence North  $00^{\circ}59'19''$  West along the East line of the Northeast 1/4 of said Section 27, a distance of 280.48 Feet to the South line of Sawgrass at Suntree Phase Four, according to the Plat thereof, as recorded in Plat Book 46, Pages 83-85, of the Public Records of Brevard County, Florida; thence North  $28^{\circ}38'57''$  West along said South line, a distance of 621.12 Feet; thence South  $89^{\circ}02'36''$  West along said South line, a distance of 251.57 Feet to the Southwest corner of said Sawgrass at Suntree Phase Four; thence continue South  $89^{\circ}02'36''$  West along the Westerly extension of said South line and the North line of lands described in Official Records Book 5731, Page 4201 and Official Records Book 5731, Page 4210, of the said Public Records of Brevard County, a distance of 141.63 Feet to the POINT-OF-BEGINNING of the herein described centerline; said point also being the beginning of a circular curve concave to the Northeast, having a radius of 606.00 Feet and a central angle of  $60^{\circ}03'25''$ ; thence leaving said West extension and North line from a tangent bearing of North  $58^{\circ}46'13''$  West run Northerly a distance of 635.20 Feet; thence North  $01^{\circ}17'13''$  East, a distance of 300.27 Feet to the point of curvature of a circular curve concave to the West, having a radius of 200.00 Feet, and a central angle of  $43^{\circ}35'12''$ ; thence Northerly along the arc of said curve an arc distance of 152.15 Feet; thence North  $42^{\circ}17'59''$  West, a distance of 38.32 Feet to the point of curvature of a circular curve concave to the East, having a radius of 125.00 Feet, and a central angle of  $85^{\circ}53'11''$ ; thence Northerly along the arc of said curve an arc distance of 187.38 Feet; thence North  $43^{\circ}35'12''$  East, a distance of 82.23 Feet to the point of curvature of a circular curve concave to the West, having a radius of 108.00 Feet, and a central angle of  $42^{\circ}17'59''$ ; thence Northerly along the arc of said curve an arc distance of 79.73 Feet; thence North  $01^{\circ}17'13''$  East, a distance of 25.96 Feet to the point of curvature of a circular curve concave to the Southeast, having a radius of 106.00 Feet, and a central angle of  $64^{\circ}01'26''$ ; thence Northeasterly along the arc of said curve an arc distance of 118.45 Feet; thence North  $65^{\circ}18'39''$  East, a distance of 53.20 Feet to the point of curvature of a circular curve concave to the Northwest, having a radius of 106.00 Feet, and a central angle of  $66^{\circ}17'42''$ ; thence Northeasterly along the arc of said curve an arc distance of 122.65 Feet; thence North  $00^{\circ}59'03''$  West, a distance of 63.73 Feet to the point of curvature of a circular curve concave to the West, having a radius of 195.00 Feet, and a central angle of  $39^{\circ}38'17''$ ; thence Northerly along the arc of said curve an arc distance of 134.90 Feet; thence North  $40^{\circ}37'20''$  West, a distance of 88.88 Feet to the point of curvature of a circular curve concave to the East, having a radius of 150.00 Feet, and a central angle of  $63^{\circ}55'12''$ ; thence Northerly along the arc of said curve an arc distance of 167.34 Feet; thence North  $23^{\circ}17'51''$  East, a distance of 57.81 Feet to the point of curvature of a circular curve concave to the West, having a radius of 157.00 Feet, and a central angle of  $59^{\circ}35'49''$ ; thence Northerly along the arc of said curve an arc distance of 163.31 Feet; thence North  $36^{\circ}17'58''$  West, a distance of 212.02 Feet to the point of curvature of a circular curve concave to the East, having a radius of 350.00 Feet, and a central angle of  $41^{\circ}42'07''$ ; thence Northerly along the arc of said curve an arc distance of 254.74 Feet to the point of reverse curvature of a circular curve concave to the West having a radius of 150.00 Feet, and a

central angle of 43°05'20"; thence Northerly along the arc of said curve an arc distance of 112.81 Feet; thence North 37°41'10" West, a distance of 384.20 Feet to the point of curvature of a circular curve concave to the East, having a radius of 150.00 Feet, and a central angle of 60°39'56"; thence Northerly along the arc of said curve an arc distance of 158.82 Feet; thence North 22°58'46" East, a distance of 203.02 Feet to the point of curvature of a circular curve concave to the West, having a radius of 106.00 Feet, and a central angle of 50°29'45"; thence Northerly along the arc of said curve an arc distance of 93.42 Feet; thence North 27°31'00" West, a distance of 217.27 Feet to the point of curvature of a circular curve concave to the Southwest, having a radius of 106.00 Feet, and a central angle of 31°12'16"; thence Northwesterly along the arc of said curve an arc distance of 57.73 Feet; thence North 58°43'15" West, a distance of 27.83 Feet to the point of curvature of a circular curve concave to the Northeast, having a radius of 200.00 Feet, and a central angle of 28°22'31"; thence Northwesterly along the arc of said curve an arc distance of 99.05 Feet; thence North 30°20'44" West, a distance of 310.47 Feet to the point of curvature of a circular curve concave to the east, having a radius of 86.71 Feet, and a central angle of 67°53'39"; thence northerly along the arc of said curve an arc distance of 102.75 Feet; thence North 37°32'55" East, a distance of 528.43 Feet to the point of curvature of a circular curve concave to the West, having a radius of 150.00 Feet, and a central angle of 74°51'03"; thence Northerly along the arc of said curve an arc distance of 195.96 Feet to the point of reverse curvature of a circular curve concave to the East having a radius of 106.00 Feet, and a central angle of 45°42'09"; thence Northerly along the arc of said curve an arc distance of 84.55 Feet; thence North 08°24'01" East, a distance of 153.28 Feet to the point of curvature of a circular curve concave to the Southwest, having a radius of 66.00 Feet, and a central angle of 135°43'51"; thence Northwesterly along the arc of said curve an arc distance of 156.35 Feet to the point of reverse curvature of a circular curve concave to the North having a radius of 122.00 Feet, and a central angle of 76°12'18"; thence Westerly along the arc of said curve an arc distance of 162.26 Feet; thence North 51°07'32" West, a distance of 168.65 Feet to the point of curvature of a circular curve concave to the Northeast, having a radius of 256.00 Feet, and a central angle of 51°09'17"; thence Northwesterly along the arc of said curve an arc distance of 228.56 Feet; thence North 00°01'45" East, a distance of 591.47 Feet to the point of curvature of a circular curve concave to the East, having a radius of 306.00 Feet, and a central angle of 13°28'14"; thence Northerly along the arc of said curve an arc distance of 71.94 Feet; thence North 13°29'58" East, a distance of 645.34 Feet to the point of curvature of a circular curve concave to the East, having a radius of 2,356.00 Feet, and a central angle of 03°16'12"; thence Northerly along the arc of said curve an arc distance of 134.46 Feet to the point of reverse curvature of a circular curve concave to the West having a radius of 356.00 Feet, and a central angle of 13°26'14"; thence Northerly along the arc of said curve an arc distance of 83.49 Feet; thence North 03°19'55" East, a distance of 286.78 Feet; thence North 20°08'29" West, a distance of 57.53 Feet; thence North 43°36'54" West, a distance of 60.33 Feet to a point on the North line of the Northeast 1/4 of said Section 22 said point being the POINT-OF-TERMINUS of the aforesaid centerline. Said point-of terminus being North 87°46'05" East, a distance of 1,042.14 Feet from the North 1/4 corner of said Section 22.

Less and except lands lying North of Section 22 and lands lying South of the North line of said Official Records Book 5731, Page 4210.

Containing 9.60 acres more or less.



7380 Murrell Road, Suite 201 | Viera, Florida 32940

P: 321.242.1200 | F: 321.253.1800 | [VIERA.com](http://VIERA.com)

April 27, 2016

VIA HAND DELIVERY

Ms. Christine Lepore, Esq.  
Brevard County Attorney's Office  
2725 Judge Fran Jamieson Way  
Building C  
Viera, FL 32940

**RE: Brevard County/Brevard Zoo Tract Exchange:** Tri-Party Declaration of Restrictive Covenants and Easements Agreement among A. Duda & Sons, Inc. ("**Duda**"), Brevard County, Florida (the "**County**"), and East Coast Zoological Society of Florida, Inc. ("**Brevard Zoo**") (collectively, the "**Tri-Party Agreement**")

Dear Christine,

I have enclosed Duda's original signed and notarized counterpart of the Tri-Party Agreement. Please hold this counterpart in escrow until you have received the following signed documents relating to the above-referenced tract exchange between the County and Brevard Zoo (the "**Lot Exchange**"): (1) original signed and notarized counterparts of the Tri-Party Agreement from the County and Brevard Zoo; and (2) an original and signed deed from the County to Brevard Zoo and an original and signed deed from the Zoo to the County for their respective conveyances in connection with the Lot Exchange. Once you have received those documents from the County and Brevard Zoo, you are authorized to release Duda's signed counterpart of the Tri-Party Agreement from escrow and cause the Tri-Party Agreement to be recorded in the Public Records of Brevard County, Florida after the above-referenced deeds from the County and Brevard Zoo have been recorded. Please send me a copy of all recorded documents by either email to [benjamin.wilson@duda.com](mailto:benjamin.wilson@duda.com) or by mail for Duda's records.

I appreciate your assistance with this matter. Please feel free to contact me if you need any additional assistance from Duda on this matter.

Sincerely,

Benjamin E. Wilson, Esq.  
Associate Corporate Counsel

Enclosure

X:\LEGAL\_VC\Brevard Zoo Linear Park Trail Relocation and Consent (April 2016)\Cover Letter to Christine Lepore (4-26-16).docx

**Prepared by and return to:**

Benjamin E. Wilson, Esq.  
A. Duda & Sons, Inc.  
c/o The Viera Company  
7380 Murrell Road, Suite 201  
Viera, FL 32940  
(321) 419-1200

**TRI-PARTY DECLARATION OF RESTRICTIVE COVENANTS AND EASEMENTS AGREEMENT**

THIS TRI-PARTY DECLARATION OF RESTRICTIVE COVENANTS AND EASEMENTS AGREEMENT (this "**Agreement**") is by and among A. DUDA & SONS, INC., a Florida corporation ("**Duda**"), BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (the "**County**"), and EAST COAST ZOOLOGICAL SOCIETY OF FLORIDA, INC., a Florida not-for-profit corporation ("**Brevard Zoo**"). The effective date of this Agreement shall be the date that this Agreement is fully executed by Duda, the County, and Brevard Zoo (the "**Effective Date**").

**RECITALS**

WHEREAS, on September 30, 2013, Duda conveyed certain real property located in Brevard County, Florida, to the County for the County's construction of a linear park easterly of Interstate 95 (I-95) (the "**Linear Park**"), as evidenced by that certain Special Warranty Deed recorded on October 3, 2013 in Official Records Book 6982, Page 1207, of the Public Records of Brevard County, Florida (the "**Brevard Linear Park Deed**");

WHEREAS, the Brevard Linear Park Deed imposed certain restrictive covenants upon the conveyed land to assure its use as the Linear Park, with such covenants to be enforced by Duda as grantor, (the "**Linear Park Restrictive Covenants**"), and also reserved certain ingress and egress easements over and across portions of the conveyed land in favor of Duda, with both the Linear Park Restrictive Covenants and such reserved easements being covenants running with the land and more particularly described in the Brevard Linear Park Deed;

WHEREAS, on August 29, 2014, Duda conveyed certain real property located in Brevard County, Florida, to Brevard Zoo, as evidenced by that certain Special Warranty Deed recorded on August 29, 2014 in Official Records Book 7199, Page 15, of the Public Records of Brevard County, Florida (the "**Zoo Deed**");

WHEREAS, the Zoo Deed reserved certain reversion rights over the conveyed property in favor of Duda (the "**Duda Reversion Rights**") and also imposed certain restrictive covenants upon the conveyed land to be enforced by Duda as grantor (the "**Zoo Deed Restrictive Covenants**"), with the Duda Reversion Rights and the Zoo Deed Restrictive Covenants being covenants running with the land and more particularly described in the Zoo Deed;

WHEREAS, in connection with the Zoo Deed, on August 29, 2014, Brevard Zoo and Duda entered into that certain Access Easement Agreement whereby Brevard Zoo granted Duda an easement over a portion of the real property conveyed under the Zoo Deed for ingress and egress purposes to and from real property owned by Duda, which Access Easement Agreement was recorded on August 29, 2014 in Official Records Book 7199, Page 23, of the Public Records of Brevard County, Florida (the "**Duda Easement**");

WHEREAS, the County desires to relocate a portion of the Linear Park to a portion of real property owned by Brevard Zoo, and the County and Brevard Zoo have agreed to a real property exchange in connection therewith (the "Property Exchange");

WHEREAS, in connection with the Property Exchange,

(a) the County has conveyed a portion of the real property conveyed to it by Duda in the Brevard Linear Park Deed to Brevard Zoo (said property being referred to herein as the "Conveyed Linear Park Parcel") by a separate County Deed recorded in the Public Records of Brevard County, Florida, immediately prior to this Agreement, with the Conveyed Linear Park Parcel also known also as "Parcel 1" in the Brevard Linear Park Deed and the above-referenced County Deed, and having the legal description as set forth in SCHEDULE 1 attached hereto and incorporated herein by this reference; and

(b) Brevard Zoo has conveyed a portion of the real property conveyed to it by Duda in the Zoo Deed to the County (said property being referred to herein as the "Conveyed Zoo Parcel") by a separate Special Warranty Deed recorded in the Public Records of Brevard County, Florida, immediately prior to this Agreement, with the Conveyed Zoo Parcel also known as the "Parcel 1 Realignment" in the aforementioned Special Warranty Deed, and having the legal description as set forth in SCHEDULE 2 attached hereto and incorporated herein by this reference; and

WHEREAS, Duda, the County, and Brevard Zoo (collectively, the "Parties") desire to enter into this Agreement in connection with the Property Exchange for purposes of confirming the extent that the above-referenced restrictive covenants and easements will apply to the Conveyed Linear Park Parcel and the Conveyed Zoo Parcel from and after the Effective Date, as more particularly set forth below.

NOW, THEREFORE, in exchange for Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties hereby agree as follows:

1. RECITALS: The above recitals are true and correct and incorporated into this Agreement by this reference.

2. AGREEMENTS: The Parties hereby agree as follows in connection with the Property Exchange:

- a. The Conveyed Linear Park Parcel (*but no other portion of the real property conveyed by Duda to the County by the Brevard Linear Park Deed*) is hereby released from the Linear Park Restrictive Covenants as of the Effective Date; however, from and after the Effective Date, the Conveyed Linear Park Parcel shall be subject to (1) the Zoo Deed Restrictive Covenants for the 20-year term originally set forth in the Zoo Deed, subject to extension as set forth in the Zoo Deed, (*not a 20-year term originally commencing on the Effective Date*), which may be enforced by either Duda or the County, or both and cannot be released or amended without the written consent of both Duda and the County, and (2) the Duda Reversion Rights, which may only be enforced by Duda and cannot be released or amended without the written consent of Duda.

- b. From and after the Effective Date, the Conveyed Linear Park Parcel shall remain subject to the reserved easement rights in favor of Duda and the successors in title to Duda set forth in the Brevard Linear Park Deed.
- c. The Conveyed Zoo Parcel (*but no other portion of the real property conveyed by Duda to Brevard Zoo by the Zoo Deed*) is hereby released from the Zoo Deed Restrictive Covenants and the Duda Reversion Rights as of the Effective Date; however, from and after the Effective Date, the Conveyed Zoo Parcel shall be subject to the Linear Park Restrictive Covenants for the 20-year term originally set forth in the Brevard Linear Park Deed, subject to extension as set forth in the Brevard Linear Park Deed, (*not a 20-year term originally commencing on the Effective Date*), which may be enforced by either Duda or Brevard Zoo, or both and cannot be released or amended without the written consent of both Duda and Brevard Zoo.
- d. The easement rights granted to Duda in the Duda Easement shall be unaffected by the Property Exchange and this Agreement.
- e. The Parties agree to reasonably cooperate each other to execute or re-execute any documents reasonably necessary to effectuate the intentions of this Agreement so long as the cooperating party incurs no liability or expenses beyond that contemplated in this Agreement.

3. AMENDMENTS: This Agreement may only be amended in writing and by the Parties affected by such amendment to this Agreement.

4. GOVERNING LAW/VENUE: The provisions of this Agreement are governed by Florida law. The venue for any dispute relating to this Agreement shall be in Brevard County, Florida.

5. SEVERABILITY: To the extent that any provisions of this Agreement are deemed unenforceable under applicable law, such unenforceability shall not render the remainder of this Agreement unenforceable, and any unenforceable provisions shall be judicially modified if possible or stricken in order for the remainder of this Agreement to be enforceable under applicable law.

6. COUNTERPARTS: This Agreement may be executed by the Parties in in any number of duplicate counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

**(SIGNATURES ARE ON THE FOLLOWING PAGES)**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

WITNESSES:

Charlene R. Spangler  
Name: Charlene R. Spangler

Sandra Patrick  
Name: SANDRA PATRICK

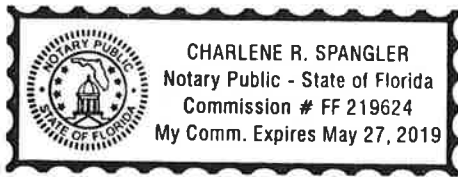
DUDA:

A. DUDA & SONS, INC.  
a Florida corporation

By: [Signature]  
Name: Stephen L. Johnson  
Title: Corp. V.P., Real Estate  
Date: 4/26/16

STATE OF FLORIDA            )  
  )  
COUNTY OF BREVARD        )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of April, 2016 by Stephen L. Johnson, as Corp. V.P., Real Estate of A. DUDA & SONS, INC., a Florida corporation, on behalf of the corporation. He She is () personally known to me or () provided a Florida Driver's License as proof of identification.



Charlene R. Spangler  
Notary Public, State of Florida  
Commission Expires: 5/27/2019  
Commission No. FF 219624

(Notary Seal)

**(COUNTY SIGNATURE PAGE IS ON THE FOLLOWING PAGE)**



WITNESSES:

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

BREVARD ZOO:

EAST COAST ZOOLOGICAL  
SOCIETY OF FLORIDA, INC.,  
a Florida not-for-profit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF FLORIDA            )

)

COUNTY OF BREVARD        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016  
by \_\_\_\_\_, as \_\_\_\_\_ of EAST COAST ZOOLOGICAL  
SOCIETY OF FLORIDA, INC., a Florida not-for-profit corporation, on behalf of the corporation. He/She  
is (\_\_\_\_) personally known to me or (\_\_\_\_) provided a Florida Driver's License as proof of identification.

\_\_\_\_\_  
Notary Public, State of Florida

Commission Expires: \_\_\_\_\_

Commission No. \_\_\_\_\_

(Notary Seal)

SCHEDULE 1

LEGAL DESCRIPTION OF THE CONVEYED LINEAR PARK PARCEL

PARCEL ID 26-36-22-00-7 AND PARCEL ID 26-36-27-00-9

LEGAL DESCRIPTION: PARCEL 1

A STRIP OF LAND BEING 50 FOOT WIDE LYING 25 FEET EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE, LYING IN SECTIONS 22 AND 27, TOWNSHIP 26 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 27; THENCE NORTH 00°43'25" WEST ALONG THE EAST LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 27, A DISTANCE OF 2,646.44 FEET TO THE EAST 1/4 CORNER OF SAID SECTION 27; THENCE NORTH 00°59'19" WEST ALONG THE EAST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 27, A DISTANCE OF 280.48 FEET TO THE SOUTH LINE OF SAWGRASS AT SUNTREE PHASE FOUR, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 46, PAGES 83-85, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE NORTH 28°38'57" WEST ALONG SAID SOUTH LINE, A DISTANCE OF 621.12 FEET; THENCE SOUTH 89°02'36" WEST ALONG SAID SOUTH LINE, A DISTANCE OF 251.57 FEET TO THE SOUTHWEST CORNER OF SAID SAWGRASS AT SUNTREE PHASE FOUR; THENCE CONTINUE SOUTH 89°02'36" WEST ALONG THE WESTERLY EXTENSION OF SAID SOUTH LINE AND THE NORTH LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 5731, PAGE 4201 AND OFFICIAL RECORDS BOOK 5731, PAGE 4210, OF THE SAID PUBLIC RECORDS OF BREVARD COUNTY, A DISTANCE OF 141.63 FEET TO THE POINT-OF-BEGINNING OF THE HEREIN DESCRIBED CENTERLINE; SAID POINT ALSO BEING THE BEGINNING OF A CIRCULAR CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 606.00 FEET AND A CENTRAL ANGLE OF 60°03'25"; THENCE LEAVING SAID WEST EXTENSION AND NORTH LINE FROM A TANGENT BEARING OF NORTH 58°46'13" WEST RUN NORTHERLY A DISTANCE OF 635.20 FEET; THENCE NORTH 01°17'13" EAST, A DISTANCE OF 300.27 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 200.00 FEET, AND A CENTRAL ANGLE OF 43°35'12"; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 152.15 FEET; THENCE NORTH 42°17'59" WEST, A DISTANCE OF 38.32 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 125.00 FEET, AND A CENTRAL ANGLE OF 85°53'11"; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 187.38 FEET; THENCE NORTH 43°35'12" EAST, A DISTANCE OF 82.23 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 108.00 FEET, AND A CENTRAL ANGLE OF 42°17'59"; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 79.73 FEET; THENCE NORTH 01°17'13" EAST, A DISTANCE OF 25.96 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 106.00 FEET, AND A CENTRAL ANGLE OF 64°01'26"; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 118.45 FEET; THENCE NORTH 65°18'39" EAST, A DISTANCE OF 53.20 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE NORTHWEST, HAVING A

RADIUS OF 106.00 FEET, AND A CENTRAL ANGLE OF  $66^{\circ}17'42''$ ; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 122.65 FEET; THENCE NORTH  $00^{\circ}59'03''$  WEST, A DISTANCE OF 63.73 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 195.00 FEET, AND A CENTRAL ANGLE OF  $39^{\circ}38'17''$ ; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 134.90 FEET; THENCE NORTH  $40^{\circ}37'20''$  WEST, A DISTANCE OF 88.88 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 150.00 FEET, AND A CENTRAL ANGLE OF  $63^{\circ}55'12''$ ; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 167.34 FEET; THENCE NORTH  $23^{\circ}17'51''$  EAST, A DISTANCE OF 57.81 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 157.00 FEET, AND A CENTRAL ANGLE OF  $59^{\circ}35'49''$ ; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 163.31 FEET; THENCE NORTH  $36^{\circ}17'58''$  WEST, A DISTANCE OF 212.02 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 350.00 FEET, AND A CENTRAL ANGLE OF  $41^{\circ}42'07''$ ; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 254.74 FEET TO THE POINT OF REVERSE CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 150.00 FEET, AND A CENTRAL ANGLE OF  $43^{\circ}05'20''$ ; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 112.81 FEET; THENCE NORTH  $37^{\circ}41'10''$  WEST, A DISTANCE OF 384.20 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 150.00 FEET, AND A CENTRAL ANGLE OF  $60^{\circ}39'56''$ ; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 158.82 FEET; THENCE NORTH  $22^{\circ}58'46''$  EAST, A DISTANCE OF 203.02 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 106.00 FEET, AND A CENTRAL ANGLE OF  $50^{\circ}29'45''$ ; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 93.42 FEET; THENCE NORTH  $27^{\circ}31'00''$  WEST, A DISTANCE OF 217.27 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 106.00 FEET, AND A CENTRAL ANGLE OF  $31^{\circ}12'16''$ ; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 57.73 FEET; THENCE NORTH  $58^{\circ}43'15''$  WEST, A DISTANCE OF 27.83 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 200.00 FEET, AND A CENTRAL ANGLE OF  $28^{\circ}22'31''$ ; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 99.05 FEET; THENCE NORTH  $30^{\circ}20'44''$  WEST, A DISTANCE OF 310.47 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 86.71 FEET, AND A CENTRAL ANGLE OF  $67^{\circ}53'39''$ ; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 102.75 FEET; THENCE NORTH  $37^{\circ}32'55''$  EAST, A DISTANCE OF 528.43 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 150.00 FEET, AND A CENTRAL ANGLE OF  $74^{\circ}51'03''$ ; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 195.96 FEET TO THE POINT OF REVERSE CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 106.00 FEET, AND A CENTRAL ANGLE OF  $45^{\circ}42'09''$ ; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 84.55 FEET; THENCE NORTH  $08^{\circ}24'01''$  EAST, A DISTANCE OF 153.28 FEET TO THE POINT OF CURVATURE OF A

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LESS AND EXCEPT LANDS LYING NORTH OF SECTION 22 AND LANDS LYING SOUTH OF THE NORTH LINE OF SAID OFFICIAL RECORDS BOOK 5731, PAGE 4210.

CONTAINING 9.60 ACRES MORE OR LESS.

SCHEDULE 2

LEGAL DESCRIPTION OF THE CONVEYED ZOO PARCEL

PARCEL 1 REALIGNMENT

PART OF PARCEL ID NO. 26-36-22-00-8  
PART OF PARCEL ID NO. 26-36-22-00-7  
PARCEL ID NO. 26-36-27-00-9

A STRIP OF LAND BEING 50 FOOT WIDE LYING 25 FEET EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE, LYING IN SECTIONS 22 AND 27, TOWNSHIP 26 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 27; THENCE NORTH 00°43'25" WEST ALONG THE EAST LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 27, A DISTANCE OF 2,646.44 FEET TO THE EAST 1/4 CORNER OF SAID SECTION 27; THENCE NORTH 00°59'19" WEST ALONG THE EAST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 27, A DISTANCE OF 280.48 FEET TO THE SOUTH LINE OF SAWGRASS AT SUNTREE PHASE FOUR, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 46, PAGES 83-85, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE NORTH 28°38'57" WEST ALONG SAID SOUTH LINE, A DISTANCE OF 621.12 FEET; THENCE SOUTH 89°02'36" WEST ALONG SAID SOUTH LINE, A DISTANCE OF 251.57 FEET TO THE SOUTHWEST CORNER OF SAID SAWGRASS AT SUNTREE PHASE FOUR; THENCE CONTINUE SOUTH 89°02'36" WEST ALONG THE WESTERLY EXTENSION OF SAID SOUTH LINE AND THE NORTH LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 5731, PAGE 4201 AND OFFICIAL RECORDS BOOK 5731, PAGE 4210, OF THE SAID PUBLIC RECORDS OF BREVARD COUNTY, A DISTANCE OF 141.63 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED CENTERLINE; SAID POINT ALSO BEING THE BEGINNING OF A CIRCULAR CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 606.00 FEET AND A CENTRAL ANGLE OF 60°03'25"; THENCE LEAVING SAID WEST EXTENSION AND NORTH LINE FROM A TANGENT BEARING OF NORTH 58°46'13" WEST RUN NORTHERLY A DISTANCE OF 635.20 FEET; THENCE NORTH 01°17'13" EAST, A DISTANCE OF 300.27 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 200.00 FEET, AND A CENTRAL ANGLE OF 43°35'12"; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 152.15 FEET; THENCE NORTH 42°17'59" WEST, A DISTANCE OF 38.32 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 125.00 FEET, AND A CENTRAL ANGLE OF 85°53'11"; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 187.38 FEET; THENCE NORTH 43°35'12" EAST, A DISTANCE OF 82.23 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 108.00 FEET, AND A CENTRAL ANGLE OF 42°17'59"; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 79.73 FEET; THENCE NORTH 01°17'13" EAST, A DISTANCE OF 25.96 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 106.00 FEET, AND A CENTRAL ANGLE OF 64°01'26"; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 118.45 FEET; THENCE NORTH 65°18'39" EAST, A DISTANCE OF 53.20 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE

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CONTAINING 9.40 ACRES MORE OR LESS.



Florida's Space Coast

Facilities Department  
2725 Judge Fran Jamieson Way, Suite A207  
Viera, FL 32940-6605

(321) 633-2050  
FAX: (321) 633-2051

[www.brevardcounty.us/centralservices/facilities](http://www.brevardcounty.us/centralservices/facilities)

*Rita Pritchett, D1*  
TO: Commissioner ~~Gurt Smith, D4~~ County Commissioner

FROM: Mary Bowers, Support Services Manager, Facilities *Mary Bowers*

DATE: October 23, 2017

**SUBJECT: Brevard County Zoo Linear Park Trail  
Extension to Turtle Mound Road  
CEI Services/DRMP**

Enclosed please three (3) each contracts with DRMP for the CEI services for the Brevard County Zoo Linear Park Trail.

Please sign all originals and call for pick up. Should you have any questions please contact our office at 633-2050.

Thank you.

/mb

Enclosures

**Brevard County Facilities Department**

**Construction Engineering and Inspection (CEI) Services**

**Brevard County Zoo Linear Park Trail  
Extension to Turtle Mound Road**

Brevard County Facilities Department  
2725 Judge Fran Jamieson Way, Bldg. A  
Viera, Florida, 32940  
321-633-2050

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## PROFESSIONAL SERVICES AGREEMENT

This is an agreement entered into this \_\_\_ day of \_\_\_\_\_, 2017, by and between Brevard County a political subdivision of the State of Florida, hereinafter referred to as COUNTY and DRMP, Inc. hereinafter referred to as CONSULTANT.

WHEREAS, the COUNTY construction engineering inspection services for the multi-use paved trail known as the Brevard County Zoo Linear Park Trail Extension to Turtle Mound Road Design, hereafter referred to as PROJECT. The Construction Engineering and Inspection (CEI) services for the PROJECT are described in Exhibit "A" Scope of Services, attached hereto and made a part hereof by this reference.

For and in consideration of the mutual agreement hereinafter contained, the COUNTY hereby retains the CONSULTANT, and the CONSULTANT hereby covenants to provide professional services as prescribed herein.

### **SECTION I - GENERAL IDENTIFICATION OF SERVICES**

All professional services provided by the CONSULTANT for the COUNTY shall be identified in the attached Exhibit "A" Scope of Services. No additional work shall be performed under this Agreement without a written Notice to Proceed signed by the Chairman of the Board of County Commissioners or other authorized representative of the COUNTY where approved by Board action. The written Notice to Proceed for additional services shall constitute an addendum to this Agreement.

### **SECTION II - COUNTY OBLIGATIONS**

The COUNTY agrees that they shall furnish to the CONSULTANT, upon request, any data available in the COUNTY'S files pertaining to the work to be performed under this Agreement.

### **SECTION III - PROFESSIONAL SERVICES**

Upon receipt of Notice to Proceed, CONSULTANT agrees to perform professional services associated with Exhibit "A" in accordance with the negotiated terms of this Agreement, and in accordance with accepted professional standards and practices.

The CONSULTANT represents the adequacy and constructability of any plans and/or specifications prepared by CONSULTANT under this Agreement and agrees to correct any errors and omissions and prepare any revisions which may be required because such plans/specifications were found defective. This remedy shall be cumulative to all other remedies available under law.

In connection with professional services to be rendered pursuant to this Agreement, the CONSULTANT further agrees to:

- A. Maintain an adequate staff of qualified personnel.
- B. Comply with federal, state and local laws, ordinances, or contract applicable to the work.
- C. Cooperate fully with the COUNTY in the scheduling and coordination of all phases of the work.
- D. Cooperate and coordinate with other COUNTY consultants, as directed by the COUNTY.
- E. Report the status of the work to the COUNTY upon request and hold pertinent data, calculations, field notes, records, sketches and other projects open to the inspection of the COUNTY or its authorized agent at any time.
- F. Submit for COUNTY review design computations, sketches and other data representative of the work's progress which may be stipulated in Exhibit "A". Submit for COUNTY approval the final work product upon incorporation of any modifications requested by the COUNTY during any previous review. Any COUNTY approval of the CONSULTANT'S plans, design and/or specifications shall not be deemed to diminish the CONSULTANT'S agreement set forth above.
- G. Confer with the COUNTY during the further development and implementation of improvements for which the CONSULTANT has provided design or other services.
- H. Interpret plans and other documents; correct errors and omissions and prepare any necessary plan or survey revisions required, at no additional cost.
- I. Prior to final approval of the work by the COUNTY, conduct and complete a preliminary check of any construction documents through any review committee,

third party consultant or any county, city, state or federal agency from which a permit or other approval is required. Any approval obtained from the COUNTY or any other agency shall not be deemed to diminish or discharge the CONSULTANT from the warranties provided for in this Agreement.

- J. Testify regarding construction plans in any condemnation action filed by the COUNTY in connection with this project.

#### **SECTION IV - TIME OF COMPLETION**

The services to be rendered by the CONSULTANT shall commence upon receipt of a written Notice to Proceed from the COUNTY subsequent to the execution of the Agreement and shall be completed within the time stated below:

CEI services must be completed within 365 days from Notice to Proceed from the COUNTY and as indicated in Exhibit "B" Schedule, attached hereto.

A reasonable extension of time shall be granted in the event there is a delay on the part of the COUNTY in fulfilling its part of the Agreement or should weather conditions, acts of God or hidden conditions delay performance of the engineer's duties. Such extensions of time shall be the sole remedy of the CONSULTANT for such delays, and the CONSULTANT will not be entitled to any damages or any claim for extra compensation.

#### **SECTION V - COMPENSATION**

The COUNTY agrees to pay and the CONSULTANT agrees to accept, for services rendered pursuant to this Agreement, fees and other compensation based on a fixed price lump sum fee for each phase of services performed. The CONSULTANT shall be paid for the professional services which are rendered as follows, except as noted in Exhibit A:

Construction Engineering Inspection Services \$233,475.90.

The fee for these services is the maximum cost to the COUNTY for all work

performed by the CONSULTANT for that phase pursuant to the Scope of Services described in Exhibit "A". Additional Services under this Agreement shall, if required and requested, be compensated in accordance with the attached Exhibit "C", Schedule of Fees.

#### **SECTION VI - PAYMENT AND PARTIAL PAYMENTS**

Subject to the COUNTY'S right to withhold any amounts reasonably necessary to complete or correct defective or substandard work, the COUNTY shall make monthly payments or partial payments to the CONSULTANT for all authorized work performed during the previous calendar month, and in accordance with Exhibit "A".

- A. The CONSULTANT shall submit signed invoices to the COUNTY.
- B. The amount of each invoice submitted shall be the amount due for all services performed to date in connection with authorized work, as certified by the CONSULTANT.
- C. Invoices for work other than lump sum shall include a breakdown for each part of the work billed and personnel as identified in Exhibit "C".
- D. The CONSULTANT shall provide a schedule of work with anticipated costs for each milestone in the schedule.
- E. The COUNTY shall adhere to the Florida Prompt Payment Act, Sections 218.80 through 218.80, Florida Statutes. COUNTY Administrative Order AO-33 directs the prompt payment of invoices, attached herein as Exhibit "F".

#### **SECTION VII - SCHEDULE OF WORK**

The COUNTY shall have the sole right to determine the units or sections of the work on which the CONSULTANT shall proceed and in what order. Should a work revision effect a change in scope, cost or schedule, the CONSULTANT shall submit such revisions for review and, if warranted, approval by the COUNTY in writing.

#### **SECTION VIII - RIGHT OF DECISIONS**

All services shall be performed by the CONSULTANT to reasonable professional standards and practices, and to the reasonable requirements of the COUNTY. The

COUNTY Central Services Director or designee shall decide and dispose of all claims, questions and disputes arising under this Agreement. Such determination shall be written and shall be final, conclusive and binding upon the parties hereto unless such determination is clearly arbitrary or unreasonable. In the event the CONSULTANT does not concur with the decisions of the COUNTY, within ten (10) days after determination by the Central Services Director or designee, the CONSULTANT shall present any such objections in writing to the COUNTY Central Services Director and, upon request, any adverse determination shall be referred to an appeal board comprised of a representative of the County Attorney's Office, County Manager's Office and the Central Services for review and disposition at a hearing to be held within ten (10) days after receipt of the appeal. This paragraph does not constitute a waiver of either party's right to proceed in a court of competent jurisdiction, provided that prior to filing any suit the CONSULTANT goes through the appeal process established in this Agreement and provided further that the CONSULTANT strictly abides by the ten-day time deadline set forth in this paragraph.

#### **SECTION IX - OWNERSHIP OF DOCUMENTS**

All design calculations, reports, tracings, plans, specifications, maps, contract documents, and/or other work products developed by the CONSULTANT pursuant to this Agreement shall become the property of the COUNTY without restrictions or limitations upon their use and shall be made available by the CONSULTANT at any time upon request by the COUNTY. When each individual section of work requested pursuant to this Agreement is complete, all of the above work products shall be delivered to the COUNTY for its use.

#### **SECTION X - REUSE OF DOCUMENTS**

The CONSULTANT may not reuse data or work products exclusively developed for this project by the CONSULTANT for the COUNTY without express written permission of the COUNTY.

## **SECTION XI - NOTICES**

Any notices, reports or other written communications from the CONSULTANT to the COUNTY shall be considered delivered when posted by certified mail or delivered in person to:

Mary Bowers  
Support Services Manager  
Facilities Department  
2725 Judge Fran Jamieson Way, Bld. A.  
Viera, FL 32940

Any notices, reports or other communications from the COUNTY to the CONSULTANT shall be considered delivered when posted by certified mail to the CONSULTANT at the last address left on file with the COUNTY or delivered in person to said CONSULTANT or the CONSULTANT'S authorized representative.

## **SECTION XII - AUDIT RIGHTS**

In performance of this Agreement, the CONSULTANT shall keep books, records, and accounts of all activities related to this Agreement in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the CONSULTANT in conjunction with this Agreement, and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the COUNTY. The CONSULTANT shall retain all documents, books and records for a period of five (5) years after termination of this Agreement, unless such records are exempt from section 24(a) of Article I of the State Constitution and Ch. 119, Florida Statutes. All records or documents created by or provided to the CONSULTANT by the COUNTY in connection with this Agreement are public records subject to Florida Public Records Law, Chapter 119, Florida Statutes. All records stored electronically must be provided to the COUNTY in a format compatible with the information technology systems of the COUNTY.

The CONSULTANT shall ensure that public records which are exempt or confidential and exempt from public records disclosure requirements are not disclosed,

except as authorized by law, for the duration of the Agreement and following termination of the Agreement if the CONSULTANT does not transfer the records to the public agency. In lieu of retaining all public records upon termination of this Agreement, the CONSULTANT may transfer, at no cost to the COUNTY, all public records in possession of the CONSULTANT. If the CONSULTANT transfers all public records to the COUNTY upon termination of the Agreement, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

### **SECTION XIII – PUBLIC RECORDS**

Pursuant to Section 119.0701, a request to inspect or copy public records relating to this Agreement must be made directly to the COUNTY. If the COUNTY does not possess the requested records, the COUNTY shall immediately notify the CONSULTANT of the request and the CONSULTANT must provide the records to the COUNTY or allow the records to be inspected or copied within twenty-four (4) hours (not including weekends and legal holidays) of the request so the COUNTY can comply with the requirements of Sections 119.07. The CONSULTANT may also provide a cost estimate to produce the requested documents consistent with the policy set forth in Brevard County Administrative Order AO-47, incorporated herein by this reference. A copy of AO-47 is available upon request from the COUNTY'S public records custodian designated below.

If the CONSULTANT fails to provide the requested public records to the COUNTY within a reasonable time, the CONSULTANT may face civil liability for the reasonable cost of enforcement incurred by the party requesting the records and may be subject to criminal penalties. Sections 119.0701, 119.110. The CONSULTANT'S failure to comply with public records requests is considered a material breach of this Agreement and grounds for termination.

Should the COUNTY face any legal action to enforce inspection or production of the records within the CONSULTANT'S possession and control, The CONSULTANT agrees to indemnify the COUNTY for all damages and expenses, including attorney's fees and costs. The CONSULTANT shall hire and compensate attorney(s) to represent the

CONSULTANT and COUNTY in defending such action. The CONSULTANT shall pay all costs to defend such action and any costs and attorneys fees awarded pursuant to Section 119.12.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: ROBERT HENDRICKS AT 321-617-7202 ROBERT.HENDRICKS@BREVARDFL.GOV.

**SECTION XIV – E-VERIFY**

The CONSULTANT shall utilize the U.S. Department of Homeland Security's E-Verify, per State of Florida Office of the Governor Executive Order 11-116, system to verify the employment eligibility of all new employees hired by the CONSULTANT during the term of the Agreement and shall expressly require any subcontractors performing work or providing services pursuant to the Agreement 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 Agreement term.

**SECTION XV - SUBCONTRACTING**

The CONSULTANT shall not subcontract, assign, or transfer any work under this Agreement without the written approval of the COUNTY. When applicable, the CONSULTANT shall cause the names of any subcontracted firms responsible for major portions (or separate specialty) of the work to be inserted in pertinent documents or data.

**SECTION XVI - ATTORNEY'S FEES**

In the event of any legal action to interpret or enforce the terms of this Agreement or any provision hereof, each party shall bear its own attorney's fees and costs and any trial shall be non-jury.

## **SECTION XVII – VENUE**

Venue for any legal action brought by any party to this Agreement to interpret, construe, or enforce this Agreement shall be in a court of competent jurisdiction in and for **Brevard County, Florida**.

## **SECTION XVIII - CONTINGENT FEES**

The CONSULTANT warrants that no person or company was employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, accepting bona fide employee, any fee commission, contribution, donation, percentage, gift, or any other consideration, contingent upon, or resulting from award of this Agreement. For any breach or violation of this provision, the COUNTY shall have the right to terminate this Agreement, without liability, and, at its discretion, to deduct from the Agreement price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration and any damages and shall be responsible for reporting the details of such breach or violation to the proper legal authorities where and when appropriate.

## **SECTION XIX - TERMINATION/MODIFICATION OF AGREEMENT**

- A. If through any cause, the CONSULTANT shall fail to fulfill its obligations under this Agreement, or if the CONSULTANT violates any of the covenants, agreements, or stipulations of this Agreement, the COUNTY shall have the right to terminate this Agreement by giving written notice to the CONSULTANT of such termination, specifying the effective date thereof. Notice shall be given at least ten (10) days before the effective date of such termination.
- B. The COUNTY reserves the right to terminate this Agreement, without cause, upon thirty (30) days written notice. The CONSULTANT may terminate this Agreement for any reason upon thirty (30) days written notice provided that any outstanding approved work is completed by the CONSULTANT.
- C. In the event of termination by the COUNTY, the COUNTY'S sole obligation to the CONSULTANT shall be payment for those portions of satisfactorily, completely, performed work previously authorized. Such payment shall be

determined on the basis of the hours of work performed by the CONSULTANT, or the percentage of work complete as estimated by the CONSULTANT and agreed upon by the COUNTY up to the time of termination. In the event of such termination, the COUNTY may, without penalty or other obligation to the CONSULTANT, elect to employ other persons to perform the same or similar services.

- D. The terms of this Agreement may be modified upon the mutual agreement of the CONSULTANT and the COUNTY as confirmed in writing.
- E. In the event that the CONSULTANT changes names, merges with another company, becomes a subsidiary or makes other substantial change in structure or in principals, the COUNTY reserves the right to terminate this Agreement subject to the terms described above.
- F. In the event of termination of this Agreement the CONSULTANT agrees to surrender any and all documents prepared by the CONSULTANT for the COUNTY in connection with this Agreement, of which, the COUNTY will shall have full ownership thereof, CONSULTANT shall retain copies of such documents for record purposes.

#### **SECTION XX - DURATION OF AGREEMENT**

This Agreement shall remain in full force and effect for the duration of the PROJECT, unless it is terminated by mutual consent of the parties as otherwise provided herein.

#### **SECTION XXI - DEFAULT**

In the event the CONSULTANT fails to comply with the provisions of this Agreement, the COUNTY may declare the CONSULTANT in default by written notification. In the event partial payment has been made for professional services not completed, the CONSULTANT shall return any sums due to the COUNTY as a result of CONSULTANT'S default within ten (10) days after notice and demand that said sums are due. The CONSULTANT shall not be compensated on a percentage of any deficient professional services which have been performed at the time the COUNTY

declares a default. The COUNTY shall pay for that portion, if any, of the performed work which is used or useful by any other consultant retained by the COUNTY to finish the work to the extent that the COUNTY does not incur additional costs over those set forth in the CONSULTANT'S Agreement.

## **SECTION XXII - INDEMNIFICATION & INSURANCE**

The CONSULTANT will be required to procure and maintain, at their own expense and without cost to the COUNTY, until final acceptance by the COUNTY of all products or services covered by this Agreement, the following types of insurance. The policy limits required are to be considered minimum amounts.

- A. General Liability Insurance policy with a \$1,000,000 combined single limit for each occurrence to include the following coverages: Operations, Products and Completed Operations, Personal Injury, Contractual Liability covering this contract.
- B. Auto Liability Insurance which includes coverage for all owned, non-owned and rented vehicles with \$1,000,000 combined single limit for each occurrence.
- C. Workers' Compensation and Employers Liability Insurance covering all persons conducting operations on the COUNTY'S premises or on behalf of the COUNTY.
- D. Professional Liability Insurance in the amount of \$1,000,000 per claim covering the risk of errors and omissions in the professional services provided under this Agreement. Such coverage written on a "claims made" basis shall be maintained in force for five years after the final payment of services.

The Consultant shall provide certificates of insurance to the COUNTY demonstrating that the aforementioned insurance requirements have been met prior to the commencement of work under this Agreement. The General Liability and Auto Liability certificates of insurance shall indicate that the policies have been endorsed to cover the COUNTY as an additional insured. All policies will be endorsed to the effect that they may not be cancelled or modified without thirty (30) days prior written notice to the COUNTY.

The insurance coverages enumerated above constitute the minimum requirements and shall in no way lessen or limit the liability of the CONSULTANT under the terms of

the contract. Sub-consultant's insurance shall be the responsibility of the CONSULTANT.

The CONSULTANT agrees to indemnify and hold harmless the COUNTY and their employees from claims, losses and expenses, including attorney's fees, arising out of or resulting from the services to be contracted, provided such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, death or personal injury, or to property damage, including loss of use, and (2) is caused in whole or in part by any negligent act or omission of the CONSULTANT, any sub-consultant or any of their employees. The CONSULTANT acknowledges adequate consideration has been received for this agreement.

**SECTION XXIII - QUALITY CONTROL**

The CONSULTANT agrees to a high level of quality control and accuracy. The COUNTY may request additional data collection or re-analysis of data at no expense to the COUNTY. If the original data collected and/or data analysis is found to be accurate and reasonable, the CONSULTANT shall be compensated for the additional work in accordance with Section V of this Agreement.

The COUNTY will evaluate the CONSULTANT'S performance upon completion of work. The evaluation will be used by the COUNTY in determining the CONSULTANT'S qualifications for future contracts with the COUNTY.

**SECTION XXIV – PUBLIC ENTITY CRIMES**

The CONSULTANT shall provide a fully executed Public Entity Crimes Affidavit in accordance with F.S. 287.133 prior to execution of this Agreement.

**SECTION XXV - TRUTH-IN-NEGOTIATIONS**

In accordance with the provisions of Chapter 287.055, Florida Statutes, the CONSULTANT agrees to execute a truth-in-negotiations certificate and agrees the original Agreement price and any additions may be adjusted to exclude any significant sums by which the Agreement price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs.

**SECTION XXVI - INTEREST OF COMMISSIONERS AND OTHERS**

No officers, members or employees of the COUNTY, and no members of its governing body, and no other public official of the governing body of the locality or localities in which services for the facilities are situated or carried out, who exercises any functions or responsibilities in the review or approval of this PROJECT, shall participate in any decision relating to this Agreement which affects their personal interest, or have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

**SECTION XXVII - INTEREST OF CONSULTANT**

The CONSULTANT covenants that it presently has no conflict of interest and shall not acquire any interest, direct or indirect, which shall conflict in any manner or degree with the performance of services required to be performed under this Agreement. The CONSULTANT further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

**SECTION XXVIII - ENTIRETY OF AGREEMENT**

This writing, together with documents referenced herein, embody the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein.

No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing, signed by both parties hereto as an addendum to this Agreement.

This Agreement, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida.

**SECTION XXIX – SEVERABILITY**

In the event a court of competent jurisdiction finds any sentence, provision, paragraph, or section of this Agreement void or unenforceable, the remaining parts of this Agreement shall continue to full force and effect as though such sentence,

provision, paragraph, section had been omitted from this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

ATTEST:




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Scott Ellis, Clerk

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Assistant County Attorney:

ATTEST:



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BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA



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RITA PRITCHETT VICE CHAIRWOMAN

AS APPROVED BY THE BOARD ON: 5/4/17

DRMP, INC.



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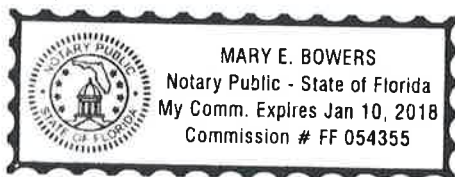
Wayne Chalifoux, President

STATE OF FLORIDA §  
COUNTY OF BREVARD §

I HEREBY CERTIFY that before me, an officer duly authorized to take acknowledgments, personally appeared \_\_\_\_\_ and \_\_\_\_\_ to me known to be the President and Secretary of \_\_\_\_\_, Inc., or provided as identification and who did (did not) take an oath, acknowledged before me that they executed the within instrument freely and voluntarily for the purposes therein expressed.

WITNESS my hand and official seal in the State and County last aforesaid this 23 day of October, 2017.

(SEAL)



Mary Bowers  
Signature

Mary Powers  
Notary Name (typed or printed)

Support Services Mgr.  
Title or Rank

**EXHIBIT "A"**

**SCOPE OF SERVICES**

## Scope of Services

Brevard County desires a consulting firm to provide Construction Engineering and Inspection (CEI) Services for the Brevard County Zoo Linear Park Extension to Turtlemound Road (Phase 2). Additional project task includes materials acceptance testing (Verification Testing), EEO compliance oversight, and construction contract administration.

DRMP will provide inspection as needed through the utilization of a construction Project Engineer, Project Administrator, Project Inspector, Project Resident Compliance Specialist and other administration staff who are familiar with the necessary CEI Inspection and documentation procedures. Our CEI personnel understand our responsibility is to provide field inspection and coordination services necessary to administer the construction contract in such a manner to determine that the project is constructed in reasonable conformity with the plans, specifications, and contract provisions.

To accomplish this DRMP is prepared to provide staff with the appropriate skills and qualifications to perform: **Inspection of the Contractor's Work; Coordinate Materials Sampling and Testing Services; and Construction Engineering Services.**

### *Inspection*

DRMP understands our primary role in providing CEI Services is to inspect the Contractor's work and act as an extension of Brevard County's staff. We realize the frequency and scope of our inspections depend on the work activity. All services will be in strict accordance with the accepted industry standards. Keeping in mind our primary goal is to determine that the project is constructed in reasonable conformity with the contract plans, specifications, and contract provisions.

### *Materials Sampling and Testing*

DRMP's project personnel recognizes its responsibility in ensuring that the materials incorporated into the work will meet or exceed the specifications. Our personnel will coordinate all required materials testing services with our Materials Testing Subconsultant, as necessary during construction. Methods of Sampling and Testing may include:

- ◆ Obtaining Physical Samples
- ◆ Certifications
- ◆ Qualified Products List
- ◆ Visual Examination

Our Project Administrator will verify all physical samples taken are recorded in a materials logbook by the inspection staff. Should any failing material reports be received, materials represented will be resampled, if possible, and appropriate County Facilities Staff will be consulted concerning removal or appropriate pay reductions.

### *Construction Engineering Services*

DRMP's project personnel will provide all construction management engineering services including: coordination of all parties throughout the construction duration; maintain organized, complete, accurate, and up-to-date documentation of the Contractor's work efforts and related events; provide interpretations of the contract plans, specifications, and contract provisions; make recommendations to the owners representatives on project issues, request for additional

compensation, or extra time; and maintain an adequate level of inspection of the completed work.

DRMP's Construction Services Staff will provide the following in addition to the abovementioned items:

- ◆ General project administration
- ◆ Onsite inspection services
- ◆ Documentation of significant activities and events
- ◆ Review Construction Contractor's Schedule
- ◆ Geotechnical testing and quality control oversight
- ◆ Coordination of testing services/maintain records
- ◆ Project documentation and reporting to include quantifying project items/monthly pay estimates
- ◆ Inspection of civil/site work/earthwork
- ◆ Conducting pre-construction and project progress meetings
- ◆ Monitoring erosion control methods
- ◆ Monitoring quantity determinations
- ◆ Monitoring Maintenance of Traffic (MOT)
- ◆ Monitoring contractor safety program
- ◆ Verifying and documenting payrolls for Davis-Bacon compliance
- ◆ Ensure performance of contractors and subcontractors assigned to the contract
- ◆ Monitor and ensure contractor and subcontractor compliance with EEO, AA, DBE, OJT and Federal Wage Provisions, as may be applicable to Federal and/or State funded projects.
- ◆ Ensure compliance with FDOT and FHWA, manuals, procedures and processes in effect as of the date of execution of the agreement, if applicable to the project.
- ◆ Act as a Liaison between County and contractor(s) by keeping County's Project Manager and/or Inspector(s) informed of all significant activities, decisions, correspondence, reports and other communications.
- ◆ Facilitate communications between all parties, ensuring responses and resolutions are provided in a timely manner
- ◆ Submit all administrative items relating to pay applications, lien releases, time extensions, and requests for information and change orders to the County's Project Manager for review and approval
- ◆ Maintain accurate records to document the communication process
- ◆ Perform Quality Assurance reviews as may be required
- ◆ Facilitate construction project closeout process including, but not limited to final pay application, releases, substantial and final completions and punch out lists.
- ◆ Perform Shop Drawing Reviews and Maintain Shop Drawing Tracking Database
- ◆ Provide plan Interpretation
- ◆ Perform Analysis and Recommendation of potential project issues or concerns
- ◆ Analyze plans, specifications, and contract provision changes
- ◆ Negotiate additional work/time cost with the Contractor
- ◆ Analyze Construction Claims and Make Recommendation to the County
- ◆ Analyze Construction Time Extension Request and Make Recommendation to the County
- ◆ Develop a project completion/final acceptance letter to distribute to all pertinent local entities

**EXHIBIT "B"**

**SCHEDULE**

**CEI Schedule**

**Brevard Zoo Linear Park Trail - Phase 2**

**Project FIN Numbers: 431925-1-68-01**

**Contract No.: G0N90**

**Project Description: Zoo Trail from Cell Tower North of Pineda to Turtle Mound Rd.**

**Brevard County - FDOT D5 LAP**

<b>Milestone Activities</b>	<b>TOTAL</b>	
	<b>Days</b>	<b>Date</b>
<b>NTP (TENTATIVE)</b>	15	11/2/2017
<b>Construction Boardwalk, Asphalt, Concrete &amp; Wetland Plantings</b>	225	6/15/2018
<b>Spur Alternative</b>	75	8/29/2018
<b>Substantial Completion</b>	1	8/30/2018
<b>Final Acceptance</b>	31	9/30/2018
<b>Project Close-out</b>	18	10/18/2018
<b>TOTAL CEI DAYS</b>	<b>365</b>	

**EXHIBIT "C"**  
**SCHEDULE OF FEES**

**DRMP - CEI Fees**

Brevard Zoo Linear Park Trail - Phase 2

Project FIN Numbers: 431925-1-68-01

Contract No.: G0N90

Project Description: Zoo Trail from Cell Tower North of Pineda to Turtle Mound Rd.

Brevard County - FDOT D5 LAP

<b>Total Const Days</b>	<b>Total CEI Days</b>
328	365

<b>Manpower - Totals</b>	<b>TOTAL</b>	<b>Unloaded Rate</b>	<b>Loaded Rate</b>	<b>Total Cost</b>
<b>Personnel Classification</b>	<b>Man-hours</b>			
CEI Senior Project Engineer	104	\$ 55.00	\$ 150.88	\$15,691.22
CEI Project Administrator/Senior Inspector	1782	\$ 42.00	\$ 115.22	\$205,313.56
CEI Resident Compliance Specialist	195	\$ 20.00	\$ 54.86	\$10,671.13
Materials Testing (EEC)	1 Lump Sum			\$1,800.00

<b>TOTAL CEI HOURS</b>	<b>2,081</b>
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<b>TOTAL CEI COST</b>	<b>\$233,475.90</b>
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<b>CEI Multiplier Calculation</b>	<b>%</b>
Labor (Unloaded)	100.00
Field Office Overhead	125.49
Operating Margin - Lump Sum	36.00
Facilities Cost of Money	0.362
Direct Expense (Field)	12.47
<b>Total</b>	<b>274.32</b>

**EXHIBIT "D"**  
**COMPLETED FORMS**

**Brevard County Zoo  
Linear Park Trail  
Extension to Turtle  
Mound Road**

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**TRUTH IN NEGOTIATION CERTIFICATION**

375-030-30  
PROCUREMENT  
05/14

Pursuant to Section 287.055(5)(a), Florida Statutes, for any lump-sum or cost-plus-a-fixed fee professional services contract over the threshold amount provided in Section 287.017, Florida Statutes for CATEGORY FOUR, the Department of Transportation (Department) requires the Consultant to execute this certificate and include it with the submittal of the Technical Proposal, or as prescribed in the contract advertisement.

The Consultant hereby certifies, covenants, and warrants that wage rates and other factual unit costs supporting the compensation for this project's agreement are accurate, complete, and current at the time of contracting.

The Consultant further agrees that the original agreement price and any additions thereto shall be adjusted to exclude any significant sums by which the Department determines the agreement price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such agreement adjustments shall be made within (1) year following the end of the contract. For purposes of this certificate, the end of the agreement shall be deemed to be the date of final billing or acceptance of the work by the Department, whichever is later.

DRMP, Inc.

Name of Consultant

By: Mark E. Puckett, PE



5/18/17

Date

**CONFLICT OF INTEREST/CONFIDENTIALITY CERTIFICATION  
FOR CONSULTANT/CONTRACTOR/TECHNICAL ADVISORS**

I certify that I have no present conflict of interest, that I have no knowledge of any conflict of interest that my firm may have, and that I will recuse myself from any capacity of decision making, approval, disapproval, or recommendation on any contract if I have a conflict of interest or a potential conflict of interest.

Consultants/Contractors are expected to safeguard their ability to make objective, fair, and impartial decisions when performing work for the Department, and therefore may not accept benefits of any sort under circumstances in which it could be inferred by a reasonable observer that the benefit was intended to influence a pending or future decision of theirs, or to reward a past decision. Consultants performing work for the Department should avoid any conduct (whether in the context of business, financial, or social relationships) which might undermine the public trust, whether or not that conduct is unethical or lends itself to the appearance of ethical impropriety.

I will maintain the confidentiality of all information not made public by the Florida Department of Transportation ("Department") related to the procurement of the above-referenced ("Project") that I gain access to as a result of my involvement with the Project ("Procurement Information"). I understand that Procurement Information includes, but is not limited to, documents prepared by or for the Department related to procurement of the Project. I also understand that Procurement Information includes, but is not limited to, documents submitted to the Department by entities seeking an award of the Project ("Proposers"). I understand that Procurement Information may include documents submitted by Proposers related to letters of response/letters of interest, technical proposals, price proposals, financial proposals, and information shared during exempt meetings. I also understand that Procurement Information may also include documents that evaluate or review documents submitted by Proposers, and information regarding Project cost estimates. I also agree not to discuss the Project with anyone who is a member of or acting on behalf of a Proposer.

Unless so ordered by a court of competent jurisdiction or an opinion of the Office of the Florida Attorney General, I will not divulge any Procurement Information except to individuals who have executed a Conflict of Interest/Confidentiality Certification which has been approved by the Department ("Project Personnel"). I understand that a list of Project Personnel will be maintained by Department. If I am contacted by any member of the public or the media with a request for Procurement Information, I will promptly forward such request to the Department's Procurement Office. I will also maintain security and control over all documents containing Procurement Information which are in my custody.

I agree not to solicit or accept gratuities, unwarranted privileges or exemptions, favors, or anything of value from any firm under consideration for an agreement associated with the Project, and I recognize that doing so may be contrary to statutes, ordinances, and rules governing or applicable to the Department or may otherwise be a violation of the law.

I agree not to engage in bid tampering, pursuant to Section 838.22, Florida Statutes.

I realize that violation of the above mentioned standards could result in the termination of my work for the Department. I further realize that violation of the above mentioned statute would be punishable in accordance with Section 838.22, Florida Statutes..

Advertisement No./ Solicitation No	Description	Financial Project Number(s)
3-17-04	Brevard Zoo Trall Extension	431925-1-68-01
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Each undersigned individual agrees to the terms of this Conflict of Interest/Confidentiality Certification.

Printed Names	Signatures	Date
Mark E. Puckett, PE		5/18/17
Ryan D. Pellarin, PE		5/18/17
_____	_____	_____
_____	_____	_____
_____	_____	_____

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION-  
LOWER TIER COVERED TRANSACTIONS FOR FEDERAL AID CONTRACTS**  
(Compliance with 2 CFR Parts 180 and 1200)

375-030-32  
PROCUREMENT  
11/15

It is certified that neither the below identified firm nor its principals are presently suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Name of Consultant/Contractor: DRMP, Inc.

By: Mark E. Puckett, PE *Mark E. Puckett*

Date: 5/18/17

Title: Vice-President

Instructions for Certification

Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**CERTIFICATION FOR DISCLOSURE OF LOBBYING ACTIVITIES  
ON FEDERAL-AID CONTRACTS  
(Compliance with 49CFR, Section 20.100 (b))**

The prospective participant certifies, by signing this certification, that to the best of his or her knowledge and belief:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions. (Standard Form-LLL can be obtained from the Florida Department of Transportation's Professional Services Administrator or Procurement Office.)

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Name of Consultant: DRMP, Inc.

By: Mark E. Puckett, PE Date: 5/18/17 Authorized Signature

Title: Vice-President



STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**DISCLOSURE OF LOBBYING ACTIVITIES**

375-030-34  
 PROCUREMENT  
 02/16

Is this form applicable to your firm?

YES  NO

If no, then please complete section 4 below for "Prime"

<b>1. Type of Federal Action:</b> a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	<b>2. Status of Federal Action:</b> a. bid/offer/application b. initial award c. post-award	<b>3. Report Type:</b> a. initial filing b. material change <b>For Material Change Only:</b> Year: _____ Quarter: _____ Date of last report: _____ (mm/dd/yyyy)
<b>4. Name and Address of Reporting Entity:</b> <input checked="" type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: 941 Lake Baldwin Lane Orlando, Florida 32814 _____ Congressional District, if known: 4c _____		<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b> _____ _____ _____ Congressional District, if known: _____
<b>6. Federal Department/Agency:</b> _____ _____	<b>7. Federal Program Name/Description:</b> _____ _____ CFDA Number, if applicable: _____	
<b>8. Federal Action Number, if known:</b> _____	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Registrant</b> (if individual, last name, first name, MI): _____ _____ _____	<b>b. Individuals Performing Services</b> (including address if different from No. 10a) (last name, first name, MI): _____ _____ _____	
<b>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>	Signature: <u>Mark E. Puckett</u> Print Name: <u>Mark E. Puckett, PE</u> Title: <u>Vice-President</u> Telephone No.: <u>407.896.0594</u> Date (mm/dd/yyyy): <u>05/18/2017</u>	
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the fullname, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**DRUG-FREE WORKPLACE PROGRAM CERTIFICATION**

375-040-18  
PROCUREMENT  
06/12

287.087 Preference to businesses with drug-free workplace programs. —Whenever two or more bids, proposals, or replies that are equal with respect to price, quality, and service are received by the state or by any political subdivision for the procurement of commodities or contractual services, a bid, proposal, or reply received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug-free workplace program, a business shall:

(1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.

(2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.

(3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).

(4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than 5 days after such conviction.

(5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community by, any employee who is so convicted.

(6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

**Does the individual responding to this solicitation certify that their firm has implemented a drug-free workplace program in accordance with the provision of Section 287.087, Florida Statutes, as stated above?**

YES

NO

NAME OF BUSINESS: DRMP, Inc.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**BID OPPORTUNITY LIST FOR COMMODITIES & CONTRACTUAL  
SERVICES**

375-040-62  
PROCUREMENT  
01/16

Prime Contractor: DRMP, Inc.

Address/Phone Number: 941 Lake Baldwin Lane, Orlando, Florida 32814

Procurement Number: 3-17-04

49 CFR Part 26.11 The list is intended to be a listing of all firms that are participating, or attempting to participate, on DOT-assisted contracts. The list must include all firms that bid on prime contracts, or bid or quote subcontracts and supplies materials on DOT-assisted projects, including both DBEs and non-DBEs. This list must include all subcontractors contacting you and expressing an interest in teaming with you on a specific DOT-assisted project. Prime contractors must provide information for Numbers 1, 2, 3 and 4, and should provide any information they have available on Numbers 5, 6, and 7 for themselves, and their subcontractors.

1. Federal Tax ID Number: 59-1791174  
2. Firm Name: DRMP, Inc.  
3. Phone: 407.896.0594  
4. Address: 941 Lake Baldwin Lane,  
Orlando, Florida 32814  
5. Year Firm Established: 1977

6.  DBE  
 Non-DBE

7. Annual Gross Receipts  
 Less than \$1 million  
 Between \$1 - \$5 million  
 Between \$5 - \$10 million  
 Between \$10 - \$15 million  
 More than \$15 million

1. Federal Tax ID Number: 26-4284102  
2. Firm Name: Elipsis Engineering & Consulting, LLC  
3. Phone: 407.982.7275  
4. Address: 530 S. Main Street,  
Winter Garden, Florida 34787  
5. Year Firm Established: 2009

6.  DBE  
 Non-DBE

7. Annual Gross Receipts  
 Less than \$1 million  
 Between \$1 - \$5 million  
 Between \$5 - \$10 million  
 Between \$10 - \$15 million  
 More than \$15 million

1. Federal Tax ID Number: 462844689  
2. Firm Name: PI Consulting Services, LLC  
3. Phone: 407.491.0418  
4. Address: 3078 Heirloom Rose Place  
Oviedo, FL 32766  
5. Year Firm Established: 2013

6.  DBE  
 Non-DBE

7. Annual Gross Receipts  
 Less than \$1 million  
 Between \$1 - \$5 million  
 Between \$5 - \$10 million  
 Between \$10 - \$15 million  
 More than \$15 million

1. Federal Tax ID Number: \_\_\_\_\_  
2. Firm Name: \_\_\_\_\_  
3. Phone: \_\_\_\_\_  
4. Address: \_\_\_\_\_  
5. Year Firm Established: \_\_\_\_\_

6.  DBE  
 Non-DBE

7. Annual Gross Receipts  
 Less than \$1 million  
 Between \$1 - \$5 million  
 Between \$5 - \$10 million  
 Between \$10 - \$15 million  
 More than \$15 million

**AS APPLICABLE, PLEASE SUBMIT THIS FORM WITH YOUR:**

**BID SHEET (Invitation to Bid – ITB)  
PRICE PROPOSAL (Request for Proposal – RFP)  
REPLY (Invitation to Negotiate – ITN)**

This Form Must Be Completed and Returned with your submittal

**BREVARD COUNTY FACILITIES DEPARTMENT**

**REQUEST FOR PROPOSAL**

RFP# 3-17-04

**PROFESSIONAL DESIGN SERVICES**

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**DISPUTES DISCLOSURE FORM**

Please answer the following questions "Yes" or "No". If you answer yes to any of the questions please provide a full explanation below the question.

1. Has your firm or any of its officers received a reprimand of any nature or been suspended by the Department of Professional Regulation or any other regulatory agency or professional association within the last five (5) years? NO

2. Has your firm or any member of your firm been declared in default, terminated or removed from a contract or job related to the services your firm provides in the regular course of business within the last five (5) years? NO If yes, indicate company name, contact name and telephone number, length of service provided, and reason for early cancellation/termination of contract.

3. Has your firm had filed against it or filed any requests for equitable adjustment, contract claims or litigation, within the last five (5) years? Yes If yes, the explanation must state the nature of the request for equitable adjustment, contract claim or litigation, a brief description of the case, the outcome or status of suit and the monetary amounts or extended contract time involved? See following page

I hereby certify that all statements contained herein are true. I agree and understand that any made are any misstatement or misrepresentation or falsification of facts shall be cause for disqualification of the submittal, immediate cancellation of any contract with the County that might arise from the representations contained herein, and forfeiture of rights for further consideration for work in the County of Brevard.

Firm: DRMP, Inc.

Name/ Title: Mark E. Puckett, PE, Vice-President

Authorized Signature / Date: Mark E Puckett 5/18/17

**This Form Must Be Completed and Returned with your submittal**

**BREVARD COUNTY FACILITIES DEPARTMENT**

**REQUEST FOR PROPOSAL**

**RFP#** 3-17-04

**PROFESSIONAL DESIGN SERVICES**

**SWORN STATEMENT UNDER SECTION 287.133 .F.S.**

**FLORIDA STATUTES ON PUBLIC ENTITY CRIMES**

**THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.**

1. This sworn statement is submitted to Brevard County Facilities Department

by Mark E, Puckett, PE, Vice-President

[print individual's name and title]

for DRMP, Inc.

[print name of entity submitting sworn statement]

whose business address is:

941 Lake Baldwin Lane, Orlando, Florida 32814

Federal Employer Identification Number (FEIN) is 59-1791174

(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: \_\_\_\_\_ .)

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentations.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means: 1. A predecessor or successor of a person convicted of a public entity crime; or 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

**This Form Must Be Completed and Returned with your submittal**

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on Real Estate Marketing Services RFP Page 7 of 7 contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. (Please indicate which statement applies.)

Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THE FORM TO THE BREVARD COUNTY FACILITIES DEPARTMENT IS FOR BREVARD COUNTY ONLY, AND THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM BREVARD COUNTY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF \$25,000 OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(Signature) Mark E. Puckett Date: 5/18/17

STATE OF FLORIDA, COUNTY OF Orange On this 18 day of May, 2017

Before me, the undersigned Notary Public of the State of Florida, personally appeared:

Mark E. Puckett, PE

(Name(s) of individuals who appeared before Notary)

Whose name(s) is/are Subscribed to the within instrument, and he/she/they acknowledge that he/sh/they executed it.

Sworn to and subscribed before me this  
18 day of May 2017

Lisa A. Greene, CPSM *Lisa A. Greene*  
NOTARY PUBLIC  
My commission expires:  
3/21/19

Personally Known  
 Produced Identification: (Type) \_\_\_\_\_  
 Did take an Oath  
 Did Not take and Oath



**EXHIBIT "E"**

**APPENDIX I**

**TERMS FOR FEDERAL AID CONTRACTS**

**Brevard County Zoo  
Linear Park Trail  
Extension to Turtle  
Mound Road**

**LOCAL AGENCY PROGRAM FEDERAL-AID TERMS  
For PROFESSIONAL SERVICES CONTRACTS**

375-040-84  
PROGRAM MANAGEMENT  
04/15  
Page 1 of 3

**TERMS FOR FEDERAL AID CONTRACTS (APPENDIX II):**

The following terms apply to all contracts in which it is indicated that the services involve the expenditure of federal funds:

- A. It is understood and agreed that all rights of the Local Agency relating to inspection, review, approval, patents, copyrights, and audit of the work, tracing, plans, specifications, maps, data, and cost records relating to this Agreement shall also be reserved and held by authorized representatives of the United States of America.
- B. It is understood and agreed that, in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of the U.S. Department of Transportation, anything to the contrary in this Agreement notwithstanding.
- C. **Compliance with Regulations:** The Consultant shall comply with the Regulations: relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- D. **Nondiscrimination:** The Consultant, with regard to the work performed during the contract, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of material and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- E. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations made by the Consultant, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.
- F. **Information and Reports:** The Consultant will provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Local Agency, Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or Federal Motor Carrier Safety Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Local Agency, Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- G. **Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Local Agency shall impose such contract sanctions as it or the Florida Department of Transportation, Federal Transit Administration, Federal Aviation Administration, and/or Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to,
  - 1. withholding of payments to the Consultant under the contract until the Consultant complies and/or
  - 2. cancellation, termination or suspension of the contract, in whole or in part.
- H. **Incorporation or Provisions:** The Consultant will include the provisions of Paragraph C through I in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as the Local Agency, Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event a Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the Consultant may request the Local Agency to enter into such litigation to protect the interests of the Local Agency, and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.
- I. **Compliance with Nondiscrimination Statutes and Authorities:** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment

LOCAL AGENCY PROGRAM FEDERAL-AID TERMS  
For PROFESSIONAL SERVICES CONTRACTS

of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

- J. Interest of Members of Congress: No member or delegate to the Congress of the United States will be admitted to any share or part of this contract or to any benefit arising therefrom.
- K. Interest of Public Officials: No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof. For purposes of this provision, public body shall include municipalities and other political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State.
- L. Participation by Disadvantaged Business Enterprises: The Consultant shall agree to abide by the following statement from 49 CFR 26.13(b). This statements shall be included in all subsequent agreements between the Consultant and any subconsultant or contractor.
- The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in termination of this contract or other such remedy as the recipient deems appropriate.
- M. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this Agreement is a violation of the Federal Law. Accordingly, United States Code, Title 18, Section 1020, is hereby incorporated by reference and made a part of this Agreement.
- N. It is understood and agreed that if the Consultant at any time learns that the certification it provided the Local Agency in compliance with 49 CFR, Section 26.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the Consultant shall provide immediate written notice to the Local Agency. It is further agreed that the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" as set forth in 49 CFR, Section 29.510, shall be included by the Consultant in all lower tier covered transactions and in all aforementioned federal regulation.
- O. The Local Agency hereby certifies that neither the consultant nor the consultant's representative has been required by the Local Agency, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to
1. employ or retain, or agree to employ or retain, any firm or person, or
  2. pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind;

The Local Agency further acknowledges that this agreement will be furnished to a federal agency, in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws,

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both criminal and civil.

P. The Consultant hereby certifies that it has not:

1. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above contractor) to solicit or secure this contract;
2. agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this contract; or
3. paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for the above contractor) any fee contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

The consultant further acknowledges that this agreement will be furnished to the Local Agency, the State of Florida Department of Transportation and a federal agency in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

**EXHIBIT "F"**  
**COUNTY REFERENCES**

**Brevard County Zoo  
Linear Park Trail  
Extension to Turtle  
Mound Road**



## ADMINISTRATIVE ORDER

NUMBER: A0-33  
CANCELS: 04/11/08  
APPROVED: 10/04/12  
ORIGINATOR: County Manager  
REVIEW: 10/04/13

**TITLE: Prompt Payment of Invoices**

### I. PURPOSE AND SCOPE

To specify the process for receiving invoices, evaluating invoices for proper content, notifying vendors of improper invoices and resolving disputes related to invoices, so that timely payment occurs.

### II. DEFINITIONS AND REFERENCES

- A. Agent: Means project architect, project engineer, or any other agency or person acting on behalf of the County. (A)
- B. Construction services: All labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property that require a license under parts I and II of Florida Statutes, Chapter 489.
- C. Contractor or provider of construction services: Any person who contracts directly with the County to provide construction services.
- D. County: A political subdivision of the state established pursuant to s. 1, Art. VIII of the State Constitution. For the purpose and scope of this Administrative Order, "County" shall mean the Board of County Commissioners of Brevard County, Florida and those departments and offices under the authority of the Board. (A)
- E. Florida Prompt Payment Act, Sections 218.70 through 218.80, Florida Statutes. (R)
- F. Payment request: A request for payment for construction services which conforms with all statutory requirements and all requirements specified by the County. (A)
- G. Proper Invoice: An invoice which conforms with all statutory requirements and all requirements set forth in Section V below. (R)
- H. Purchase: The purchase of goods, services, or construction services; the purchase or lease of personal property; or the lease of real property by the County. (A)

- I. Vendor: Any person who sells goods or services, sells or leases personal property, or leases real property directly to the County. (A)

### III. NOTIFICATION TO VENDORS OF COUNTY REQUIREMENTS

Purchasing, or in the case of contracts where Purchasing is not involved, the appropriate County department/agency shall make the invoice requirements set out herein available to the vendors. (A)

### IV. INVOICE RECEIPT

- A. The County agency first receiving an invoice shall mark the invoice with the agency's name and the date received by using a dated stamp, or by typing or writing in ink. (R)
- B. All Board agencies are required to submit undisputed invoices for payment to County Finance within fifteen (15) calendar days after receipt of invoice.
- C. All Board agencies are required to maintain a record of the receipt of services, receipt of invoice and subsequent submittal of invoice to County Finance.

### V. INVOICE EVALUATION FOR PROPER CONTENT

- A. The County agency receiving the items specified on the invoice shall review the invoice to ensure that the information is accurate and that it contains all of the information as follows (R):
  - 1. Invoice fully complies with applicable purchase order, contract, etc.
  - 2. Vendor name and address.
  - 3. Purchase order/contract number (if applicable)
  - 4. Invoice date
  - 5. Invoice Number
  - 6. Itemized invoice, including division of pmts and labor charges, if applicable.
    - a. Number of items
    - b. Type of items
    - c. Unit price, extended price and total
  - 7. Delivery date or date of service.
- B. Upon review, those invoices determined to be accurate and correct shall be signed by the agency staff person authorized to approve expenditures of their agency's funds and whose signature is on file with the Finance Department in accordance with A0-39, Signature Authorization Cards. The authorized reviewer shall also indicate the date the review was performed. (R)
- C. Full and partial payments shall be certified for payment and forwarded to County Finance.

VI. NOTIFYING VENDORS OF IMPROPER INVOICES

- A. Any errors shall be annotated on the invoice. (A)
- B. In any case in which an improper invoice (meaning the invoice contains incorrect information or is missing information required under this Administrative Order) is submitted by a vendor, the County agency reviewing the invoice for proper content shall, within 10 days after the improper invoice is first received by Brevard County, notify the vendor that the invoice is improper. (R)
- C. The County agency shall indicate, in writing, what corrective action on the part of the vendor is needed to make the invoice proper and the date by which a corrected invoice should be received by the County. (R)

VII. RESOLVING INVOICE DISPUTES

- A. In the event a dispute occurs between a vendor and the County concerning payment of a payment request or an invoice, such disagreement shall be resolved by a vendor dispute committee consisting of representatives of the affected County agency, Purchasing, and the County Attorney. (R)
- B. Proceedings to resolve the dispute shall commence no later than 45 days after the date on which a payment request or proper invoice was received by the County and shall be concluded by final decision by the County no later than 60 days after the date on which the payment request or proper invoice was received by the County. Resolution of disputes between a vendor and the County concerning payment of a payment request or an invoice will follow F.S. 218.76. (R)
- C. If the dispute is resolved in favor of the County, then interest charges shall begin to accrue 15 days after the County's final decision.
- D. If the dispute is resolved in favor of the vendor, then interest shall begin to accrue as of the original date the payment became due.

VIII. CALCULATION OF TIME UPON WHICH PAYMENT IS DUE (A)

- A. The time at which payment is due for a purchase other than construction services shall be calculated from:
  - 1. The date on which a proper invoice is received by the Finance Department after approval by the receiving department or office; or
  - 2. If a proper invoice is not received, whichever is the latest date of the following:
    - a. The date on which delivery of personal property is accepted by the County;
    - b. The date on which services are completed;
    - c. The date on which the rental period begins; or
    - d. The date on which the County and vendor agree in a contract that provides dates relative to payment periods

- B. Payment for purchases of construction services will follow F.S. 218.735 and are as follows:
1. The due date for payment for the purchase of construction services by the County is determined as follows:
    - (a) If the project architect or project engineer or other agent as defined must approve the invoice prior to the invoice being submitted to the County, payment is due 25 business days after the date on which the invoice is stamped as received by the agent as provided in Section IV.A of this Administrative Order. (R)
    - (b) If an agent need not approve the invoice which is submitted by the contractor, payment is due 20 business days after the date on which the invoice is stamped as received as provided in Section IV.A of this Administrative Order. (R)
  2. The County may reject the invoice within 20 business days after the date on which the invoice is stamped as received as provided in Section IV.A of this Administrative Order. The rejection must be written and must specify the deficiency in the invoice and the action necessary to make the invoice proper. (R)
  3. If an invoice is rejected under subsection (2) or this subsection and the contractor submits a corrected invoice, the corrected invoice must be paid or rejected no later than 10 business days after the date the corrected invoice is stamped as received.
  4. If a dispute between the County and the contractor cannot be resolved by the procedure in (2) and (3), the dispute will be resolved in accordance of Section VII of this Administrative Order. (A)
  5. The payment time periods provided in this section for construction services purchased by the County shall not affect contractual provisions or contractual covenants of the County in effect on September 30, 1995.
  6. Retainage for payments shall be as provided in F.S. 218.735.
- C. Payment by federal funds: If the County intends to pay for a purchase with federal funds, the County shall not make such purchase without reasonable assurance that the federal funds received will cover the cost. Where payment or the time of payment is contingent on receipt of federal funds or federal approval, any contract and any solicitation to bid shall clearly state such contingency. (R)

#### IX. TIMELY PAYMENT OF INVOICE

- A. The time by which payment for goods or services other than construction services is due shall be 45 days from the date established in Section VIII or specified in Section VII. (R)

#### X. INTEREST PAYMENT

- A. Non-timely payments bear interest from 30 days after the due date at the rate of one percent (1%) per month on the unpaid balance. Any overdue period of less than one (1) month shall be considered as one month in computing interest. Interest computation will follow F.S. 218.74.
- B. Vendors must invoice the County for the accrued interest. It is the responsibility of the department to fund the interest payment.
- C. No contract between the County and a vendor or a provider of construction services shall prohibit the collection of late payment interest charges allowable under F.S. 218.74. (A)

XI. REPORT OF INTEREST

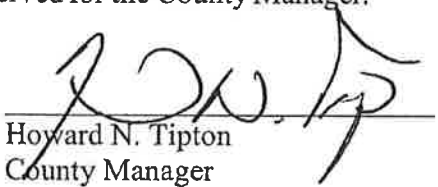
County Finance shall, during December of each year, report to the Board of County Commissioners, the number of interest payments exceeding \$250 made by the County during the preceding fiscal year and the total amount of such payments.

XII. STATUTORY REQUIREMENTS

Should any directives or procedures included herein conflict with requirements established within Sections 218.70 through 218.79, Florida Statutes or any other sections of Florida Statutes as amended, statutory requirements shall prevail. (A)

XIII. RESERVATION OF AUTHORITY

The authority to issue and/or revise this Administrative Order is reserved for the County Manager.

  
Howard N. Tipton  
County Manager



## ADMINISTRATIVE ORDER

**Title: COORDINATION OF PUBLIC  
RECORDS REQUESTS**

**Number: AO-47**  
 **Cancels: 04/07/2010**  
 **Approved: 10/06/2015**  
 **Originator: County Attorney**  
 **Review: 10/06/220018**

### **I. PURPOSE**

Brevard County is committed to the requirements set forth in Chapter 119, Florida Statutes, governing access to public records, also known as the Public Records Law.

The purpose of this Administrative Order is to provide guidelines and procedures for all county administrative personnel, department directors and staff to assure compliance and uniformity with regard to the handling of requests for inspection and copies of public records not exempted by state law.

### **I. AUTHORITY**

- A. Chapter 119, Florida Statutes – The Public Records Act
- B. BCC-22, Records Management Program
- C. BCC-30, Cost of Copying Documents for the Public
- D. BCC-33, Social Media Policy

### **II. DEFINITIONS**

- A. **Electronic Records** – any data files and databases, word processing files, spreadsheets, digital photos, voice and video recordings, electronically generated or maintained documents relating to county business and any other electronic messages relating to county business, including text messages, tweets, written communication on social networking websites, and email.
- B. **Records Custodian** - an employee appointed by the director of each county department to oversee the management, retention and timely disposition of their records, whether maintained on-site, offsite, in electronic systems or stored at the Records Management Center; and assists in carrying out the requirements of Florida Statute 119.07.

- C. **Records Coordinator** - the individual appointed by the County Attorney to coordinate the responses of the departments to requests for public records that are received.
- D. **Requestor** – the person requesting to inspect and/or receive copies of public records.
- E. **Redacting** – to electronically conceal or manually black out from a copy of an original public record any information deemed confidential or exempt from disclosure by statute.
- F. **Public Records Request Tracking Software** - a software program utilized by County staff and monitored by the appointed Records Coordinator to assist staff in assuring records requests are timely addressed.

### III. **WHAT IS A PUBLIC RECORD?**

Section 119.011(1), Florida Statutes, defines “public records” as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by the county.

#### **A. Public records include (but are not limited to):**

1. All paper documents maintained by county employees or county officials, including any archived documents stored in private or public facilities.
2. All Electronic Records relating to county business whether generated on work or home computers, phones, or other electronic devices including, but not limited to, email, text and voice mail.
3. All materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.
4. Draft documents, whether on paper or electronic, once they have been sent to or circulated to another person or persons.

#### **B. The following are not public records:**

1. Personal emails that do not involve official business of the county.
2. Draft documents that have not been circulated to another person or persons.
3. Personal notes concerning county business unless they are circulated or sent to others or if they were taken with the intention to perpetuate, communicate, or formalize knowledge.

#### **IV. RESPONDING TO A PUBLIC RECORDS REQUEST**

##### **A. General Employee Responsibilities**

- 1. Notify the department's Records Custodian of the request.**
- 2. Respect the requesting party's rights under the law**, including his or her right to remain anonymous. A requestor is not required to provide any identifying information, nor is the party required to put a request for public records in writing. The requestor can be asked for contact information, but if the requestor declines to give such information, it cannot be required. Any inquiry after that should be how to contact the requestor or have the requestor contact the employee about payment of any authorized deposits/fees or to pick up the records.
- 3. Refer the requestor to a location on Brevard County's website whenever possible.** In cases where the county's website hosts the same records as those requested, such as recordings of board meetings or presentations, providing a link to the specific webpage should be sufficient and may be more convenient and cost-effective for the requestor. **Do not simply provide a link or direction to the website. Take steps to: (1) ensure that the requesting party is able to access the relevant portion of the website; and (2) confirm that the information on the website is fully responsive to the request made.**
- 4. Follow approved procedures for processing public records requests**, which are outlined in this Administrative Order.

##### **B. DEPARTMENT DIRECTOR RESPONSIBILITIES**

- 1. Appoint an employee to be the Records Custodian for the department.**
- 2. Support the Records Custodian and other employees in fulfilling requests made and ensure they have appropriate training.** Fulfilling public records requests is a legally required part of the job of every County employee.
- 3. Follow approved procedures for processing public records requests**, which are outlined in this Administrative Order.

##### **C. RECORDS CUSTODIAN RESPONSIBILITIES**

- 1. Be knowledgeable about public records tracking software program.** A user manual for Records Custodians will be made available. It is important that Records Custodians understand how to enter requests into the program so that the County can track, and efficiently fulfill all records requests.
- 2. Direct the Requestor to the correct department for the records.** Sometimes, Requestors might approach the wrong department for records. If the records sought are being held by another department, the Requestor should be directed to the appropriate department. **If a record sought has an unknown origin, contact the Records Coordinator.**
- 3. Contact the Records Coordinator if a request might include records outside the department.** The Records Coordinator exists to facilitate multi-departmental requests. Do not hesitate to contact the Coordinator for assistance.

4. **Contact the Records Coordinator if a request includes emails.** The Office of the County Attorney and Information Systems are the only two departments with the capacity to comprehensively search county email. As a result, the Record Custodian may have to go to the Office of the County Attorney to review the results of such email searches performed.
5. **Make all non-exempt records available**, in their original format, for inspection and/or copying within a reasonable timeframe of the original request. **There are many exemptions and the county is required to invoke them when applicable.** If a department is unsure as to whether certain information is exempt under Florida law, contact the County Attorney's Office for clarification.
6. **In writing, acknowledge a request has been received and, if needed, clarify the request.** Many requests require clarification. Communicating with the requestor often will result in a more focused request that involves less time and expense to respond.
7. **Follow up on records requests promptly.** When the request is for particular records that are readily available, a best practice is to make them available to the requestor as soon as possible. In other cases, let the requesting party know when the records will be available for inspection, or that extensive research will be required.
8. **Charge requestors for the cost of duplication and for extensive staff time.** Extensive staff time is defined as any time after the first one-half hour that it takes to research, gather or process the public records request, as well as the time spent with the requestor to review the records.
9. **Provide the requesting party with a cost estimate prior to fulfilling his or her request.** This estimate should include the cost of the time required for redacting any exempted information as well as the time spent reviewing emails generated through the IT department.
10. **Refer to the attached *Public Records Request Fee and Cost Schedules* to quote, estimate and invoice for the costs associated with the public records request.**
11. **Collect 50 percent of the fees for the estimated duplication and staff time fees upfront before starting the work to gather or research or duplicate records.** Collect the remaining balance prior to release of the records, or reimburse any amount necessary should the amount collected be more than the actual cost of resources used.
12. **Close any open requests after 30 days with no contact with the requestor.** If a requestor has not been in contact with the department for more than 30 days after an letter /email is sent with deposit information or requesting clarification of the request, the department should close the request. The initial letter/email to the requestor should advise the requestor that if the County does not receive a response within 30 days of the letter/email, it will be assumed that the requestor does not wish to proceed with the request and the request will be considered closed. When closing the request, the Records Custodian should, if possible, send a written communication to the requestor notifying the requestor that the request has been closed. This communication should also inform the requestor that the request can be renewed at any time if desired.

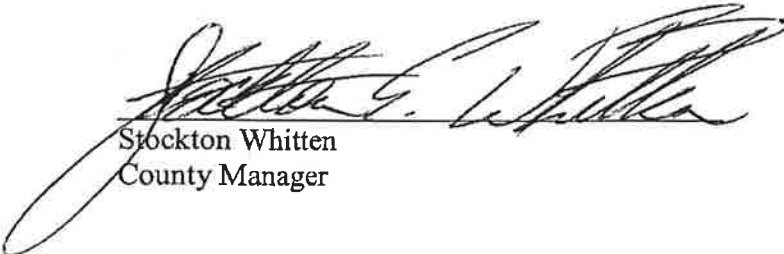
13. **Provide for and supervise all inspections of original or master copies of public records** to prevent damage, loss or alteration.
14. **Maintain a record of the request and its resolution.** Update the public records request tracking program on a regular basis to provide the status of the request until closed by providing the records or by notification to requester that request was closed based on lack of communication or failure to provide deposit after thirty or more days of initial contact from Records Custodian/Coordinator. Status updates would include a summary of contacts between a custodian and requestor that result in a revised request and how it was revised.
15. **Update the public records tracking software to note the location of the County's copy of what was provided in response to the records request.**
16. **Maintain public records in accordance with the dictates of BCC-22.**
17. **Follow approved procedures for processing public records requests, which are outlined in this Administrative Order.**

**V. COUNTY ATTORNEY SUPPORT FEE**

If the County Attorney's Office, or its appointed Records Coordinator, spends more than five (5) hours with a given department in ensuring a request gets fulfilled, the department will be assessed a \$200/hour fee for the support provided by the County Attorney's Office.

**V. RESERVATION OF AUTHORITY**

The authority to issue and/or revise this Administrative Order is reserved to the County Manager.



Stockton Whitten  
County Manager

October 6, 2015  
Date

### Public Records Request Fee Schedule\*

Those seeking copies of public records will be charged only the actual costs of making copies. However, if the nature or volume of the request requires extensive use of technology or clerical assistance by county staff, the county may charge, in addition to actual cost of duplication, an additional special service charge in accordance with Chapter 119(4)(d), Florida Statutes, and paragraph V.C.7 above.

Professional Rate <sup>1</sup>	Administrative Rate <sup>2</sup>
\$16.26/hr	\$9.44/hr

### Public Records Cost Schedule\*

As of the date of this revision of AO-47, the uniform fee for copies to be charged by all departments is as follows, unless otherwise provided by law:

Media	Cost
Paper: First 30 pages per month	Free
Paper: 11x8.5 or less - one-sided	.15
Paper: 11x8.5 or less - two-sided	.20
Paper: 14x8.5 or less - one-sided	.15
Paper: 14x8.5 or less - two-sided	.20
Paper: 11x17	.25
Media Storage Devices (Flash Drives, CDs, DVDs, VHS, etc.)	All actual cost of the media storage device and any associated sleeve/packaging. Actual mailing costs must be charged rather than a flat fee. Mailing costs include jewel case and padded mailing envelope, subtracting the sleeve cost, plus postage.
Postage	Large orders or those to be mailed out of country will be weighed and calculated individually, using <a href="http://www.usps.gov">www.usps.gov</a> for postage rates.
Copy Service Costs	Any unusually large volume of copying that requires the documents to be sent to a copy service for reproduction will be billed to the requester based on the actual cost to the county.

<sup>1</sup> Professional rate is calculated as the lowest professional rate County-wide, with “professional” determined by the EEO designation, as shown in the Pay and Classification Plan (updated September 28, 2013). Also, the Agriculture and Extension department wages are partially paid by the University of Florida (UF). Accordingly, that department’s pay rate was not considered in making this calculation.

<sup>2</sup> The Administrative rate is determined by the lowest clerical rate County-wide, with “clerical” determined by the EEO designation, as shown in the Pay and Classification Plan (updated September 28, 2013).

\*Fee and Cost Schedules approved by the Board of County Commissioners on October 6, 2015.