



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.27.

11/14/2023

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### **Subject:**

Resolution authorizing the Chair to execute a Maintenance Memorandum of Agreement with FDOT pertaining to the A. Max Brewer Bridge

### **Fiscal Impact:**

None

### **Dept/Office:**

County Attorney's Office

### **Requested Action:**

It is requested that the Board adopt a resolution authorizing the Chair to execute a Maintenance Memorandum of Agreement with the Florida Department of Transportation (FDOT) establishing the maintenance responsibilities for State Road 406, A. Max Brewer Bridge, and associated facilities.

### **Summary Explanation and Background:**

On September 12, 2023, the Board authorized the Chair to accept and execute all necessary documents pertaining to the reconveyance of certain right-of-way from FDOT to Brevard County relating to the A. Max Brewer Bridge under the terms of a Memorandum of Agreement dated May 4, 2004. This action was necessary to allow the Parrish Park Trailhead Project to proceed.

FDOT has requested a formal resolution of the Board reflecting the Board's desire to enter into a new Maintenance Memorandum of Agreement and authorizing the Chair to execute such agreement and any related documents. The resolution reflects the Board's prior authorization on September 12.

The proposed resolution, the Clerk's Memorandum reflecting the Board's prior authorization, and the Maintenance Memorandum of Agreement are attached.

### **Clerk to the Board Instructions:**

Return a signed Resolution to the County Attorney's Office.



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

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Fax: (321) 264-6972  
Kimberly.Powell@brevardclerk.us

November 15, 2023

**M E M O R A N D U M**

**TO:** Morris Richardson, County Attorney

**RE:** Item F.27., Resolution Authorizing the Chair to Execute a Maintenance Memorandum of Agreement with Florida Department of Transportation (FDOT) Pertaining to the A. Max Brewer Bridge

The Board of County Commissioners, in regular session on November 14, 2023, adopted Resolution No. 23-140, authorizing the Chair to execute a Maintenance Memorandum of Agreement with FDOT establishing the maintenance responsibilities for State Road 406, A. Max Brewer Bridge, and associated facilities. Enclosed are two fully-executed Resolutions.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

*for:*   
Kimberly Powell, Clerk to the Board

/ds

Encls. (2)

cc: Contracts Administration

**RESOLUTION NO. 2023-140**

**A Resolution authorizing the Chair of the Board of County Commissioners to execute a maintenance memorandum of agreement with the Florida Department of Transportation establishing the maintenance responsibilities for State Road 406, A. Max Brewer Bridge, and associated facilities.**

**Whereas**, in 2004, Brevard County transferred A. Max Brewer Memorial Bridge and Causeway ("A. Max Brewer Bridge") to the State of Florida, Florida Department of Transportation ("F.D.O.T.") in order for F.D.O.T. to construct a new bridge; and

**Whereas**, as part of this transfer, the parties entered into a memorandum of agreement setting forth each parties' responsibilities as it pertains to maintenance obligations of certain properties within the surrounding area ("Original Memorandum"), which is incorporated herein by this reference; and

**Whereas**, the parties agreed that once F.D.O.T. completed construction of the new bridge, certain property and maintenance obligations would be transferred back to Brevard County, while F.D.O.T. would remain responsible for the roadway, bridge, and certain associated infrastructure and facilities; and

**Whereas**, the parties agree that a maintenance memorandum agreement is necessary to establish a clear understanding of each party's maintenance responsibilities for State Road 406, A. Max Brewer Bridge, and associated areas and facilities; and

**Whereas**, on September 12, 2023, the Board of County Commissioners authorized the Chair to accept and execute any and all documents necessary to reconvey A. Max Brewer Bridge.

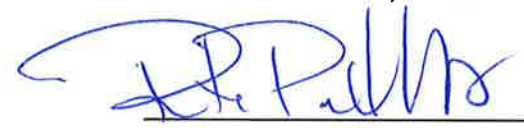
**Now, therefore, be it resolved** by Brevard County, through Rita Pritchett, Chair of the Board of County Commissioners of Brevard County, Florida, who is hereby authorized to make, execute, and deliver to the F.D.O.T. the Maintenance Memorandum of Agreement pertaining to State Road 406, A. Max Brewer Bridge, and associated areas and facilities for the property described further in **Attachment A**, which is attached hereto and incorporated herein by this reference.

**DONE AND RESOLVED** this 14<sup>th</sup> day of November, 2023.

ATTEST:

  
Rachel Sadoff, Clerk of the Court

BREVARD COUNTY, FLORIDA

  
Rita Pritchett, Chair

As approved by the Board on 11/14/2023.

**ATTACHMENT A**

PARCEL NO. 100

SECTION NO. 70160  
F.P. NO. 2412001

**ALL OF:**

The road right of way, together with the submerged and tidal lands in Sections 34, 35 and 36, Township 21 South, Range 35 East and Section 3, Township 22 South, Range 35 East, as shown and recorded in Road Plat Book 1, Page 1, dated March 8, 1978, Road Plat Book 1, Page 40, dated April 21, 1981 and Road Plat Book 1, Page 41, dated April 21, 1981, being recorded in the Public Records of Brevard County, Florida.

**LESS AND EXCEPT:**

"That portion of State Road 406, f/k/a SR/CR 402 also known as A. Max Brewer Memorial Parkway, as depicted on the Right of Way map prepared by the State of Florida Department of Transportation, Section 70160-2502 and recorded in Road Plat Book 1, Page 1, Public Records of Brevard County, Florida, from State Road 5 to Station 210+49.05, including any and all appurtenances thereto."

The above described lands being the same as recorded in Official Records Book 2977, Page 1420, Public Records of Brevard County, Florida.

**ALSO LESS AND EXCEPT:**

"A parcel of submerged land lying in Section 34, Township 21 South, Range 35 East, Brevard County, Florida.

Commence at the Department of Transportation survey line station 210+49.05 (bearing of said survey line being North 51°50'18" East) as recorded in Official Records 2297, Page 1420, Public Records of Brevard County, Florida, as depicted on the right of way map prepared by the State of Florida State Department of Transportation, Section 70160-2502 and recorded in Road Plat Book 1, Page 1, Public Records of Brevard County, Florida; thence run North 38°09'42" West, 30.00 feet to the Point of Beginning; thence run North 38°09'42" West, 270.00 feet to the north right of way line of State Road 406, f/k/a SR/CR 402 (A. Max Brewer Memorial Parkway); thence run North 51°50'18" East along said North right of way line 550.95 feet to a point at station 216+00.00; thence run South 38°09'42" East, 270.00 feet to a point lying 30.00 feet north of and parallel to aforementioned Department of Transportation survey line; thence run South 51°50'18" West parallel to Transportation survey line; thence run South 51°50'18" West parallel to said survey line 550.95 feet to the Point of Beginning; containing 3.41 acres."

The above described lands being the same as recorded in Official Records Book 5301, Page 1255, Public Records of Brevard County, Florida.

FLORIDA DEPARTMENT OF TRANSPORTATION  
MAINTENANCE MEMORANDUM OF AGREEMENT

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CONTRACT NO.:

This AGREEMENT is entered into the date of last signature below, by and between the Florida Department of Transportation, an executive agency of the State of Florida, hereinafter called the **DEPARTMENT**, and Brevard County, Florida, a political subdivision of the State of Florida, hereinafter called the **LOCAL GOVERNMENT**, sometimes collectively "Parties".

RECITALS

WHEREAS, the **DEPARTMENT** and the **LOCAL GOVERNMENT** recognize the importance of a clear understanding of maintenance responsibilities associated with areas on the State Highway System and areas and facilities not a part of the State Highway System; and

WHEREAS, the Parties hereto mutually recognize the need for entering into an Agreement designating and setting forth the responsibilities of each party as those responsibilities associated with SR 406 lying east of the A. Max Brewer Bridge, with said area being described by the deed attached hereto as **EXHIBIT "B"**; and

WHEREAS, the **LOCAL GOVERNMENT**, by Resolution attached hereto as **EXHIBIT "A"**, which by reference hereto shall become a part hereof, desires to enter into this Agreement and has authorized its Chair to do so.

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

1. The **DEPARTMENT's** maintenance responsibilities shall be limited to maintenance of the A. Max Brewer Bridge, all bridge support structures, State Road 406 ("roadway"), any and all drainage facilities, outfalls, and other appurtenances thereto, roadway shoulders, sidewalks and crosswalks that are located within the paved area of SR 406, seawalls that are located under the Bridge, approach slab(s) located under the Bridge, and concrete aprons located under the Bridge. The **DEPARTMENT** shall have no responsibility to maintain the north or south shoreline of the causeway except as the **DEPARTMENT** deems necessary to protect the Bridge or State Road 406 roadway. For the purpose of this Agreement, the maintenance activities to be performed by the **DEPARTMENT** include routine maintenance and the obligation to undertake all maintenance, repairs, replacement, and non-routine maintenance.
2. The **LOCAL GOVERNMENT** shall perform all other maintenance activities necessary for the area described in **EXHIBIT "B"**, including but not limited to routine and non-routine maintenance activities. The **LOCAL GOVERNMENT** has primary authority to review and approve use permits and agreements for all activities that are not associated with State Road 406.

3. The term of this Agreement shall begin as on the date of the last party to execute and will continue indefinitely. A revision may be made upon mutual agreement of the parties, made in writing, signed by both parties.
4. In the event this Agreement extends beyond the **DEPARTMENT's** current Fiscal year that begins July 1 of each year and ends June 30 of each succeeding year, the **LOCAL GOVERNMENT** and the **DEPARTMENT** mutually agree that the State of Florida's performance and obligation to pay under this contract is contingent upon and annual appropriation by the Legislature. In addition, Section 339.135(6)(a), Florida Statutes, is incorporated by reference, and is set forth herein below as follows:

*F.S. "339.135(6)(a)" - The Department, during any Fiscal Year, shall not expend money, incur any liability, or enter into any Contract which, by its terms, involves any 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 under 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 any other binding commitment of funds. Nothing herein shall prevent the making of Contracts for periods exceeding one (1) year, but any Contract so made shall be executory only for the value of 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 having a term for a period of more than one year.*

5. All notices regarding this Agreement shall be directed to the following points of contact:

a) For the **DEPARTMENT:**

**Field Operations Supervisor**

Brevard Operations

555 Camp Road

Cocoa, Florida 32927

Telephone: (321) 634-6100

b) For the **LOCAL GOVERNMENT:**

**Parks and Recreation Director**

Brevard County Public Works Department

2725 Judge Fran Jamieson Way

Building B Suite 203

Viera, FL 32940

Telephone: (321) 633-2046

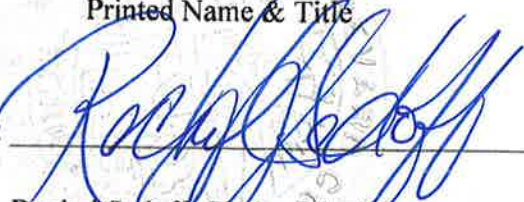
**IN WITNESS WHEREOF**, the parties have caused these presents to be executed the day and year first above written.

**LOCAL GOVERNMENT:**

By: 

Rita Pritchett, Chair of the Brevard County Board of County Commissioners

Printed Name & Title

Attest: 

Rachel Sadoff, Clerk of the Court

Printed Name & Title

Legal Approval: 

**DEPARTMENT:** As approved by the Board on 11/14/2023.

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

Charles M. Heffinger, Jr., P.E., Director of Transportation Operations

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

\_\_\_\_\_  
Printed Name & Title

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



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

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September 13, 2023

**M E M O R A N D U M**

**TO:** Marc Bernath, Public Works Director

**RE:** Item F.8., Approval for Right-of-Way Re-conveyance from the Florida Department of Transportation (FDOT) to Brevard County Relating to the A. Max Brewer Causeway Project

The Board of County Commissioners, in regular session on September 12, 2023, authorized the Chair to accept and/or execute any and all necessary documents, upon review and approval by the Parks and Recreation Department, Public Works Department, County Manager's Office, and the County Attorney, pertaining to the re-conveyance of certain right-of-way under the terms of the Memorandum of Agreement dated May 4, 2004; and authorized staff to record any necessary documents to effectuate the re-conveyance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

  
Kimberly Powell, Clerk to the Board

/sm

cc: County Manager  
County Attorney  
Parks and Recreation