

Meeting Date
April 5, 2016



AGENDA	
Section	Consent
Item No.	II A 3

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval RE: Backup Funding Agreement between Brevard County and The Viera Company (TVC) and the Local Agency Program Agreement and Resolution with the Florida Department of Transportation (FDOT) for the Wickham Road and Stadium Parkway Intersection Improvements Project FPN 434423-1-58/68-01 District 4 (Fiscal Impact: Up to \$585,116.00 Reimbursement from FDOT and an estimated \$299,283.00 Reimbursement from TVC for Excess Costs)
DEPT/OFFICE:	Public Works Department – Finance & Contracts Administration

Requested Action:

It is requested that the Board of County Commissioners approve the Backup Funding Agreement between Brevard County and The Viera Company and the Local Agency Program Agreement and Resolution with the Florida Department of Transportation for the Wickham Road and Stadium Parkway Intersection Improvements Project FPN 434423-1-58/68-01; authorize the Chairman to execute the Backup Funding Agreement, Local Agency Program Agreement, and Resolution; and approve any necessary Budget Change Requests associated with this request.

Summary Explanation & Background:

The Wickham Road and Stadium Parkway Intersection Improvements project includes the widening of a portion of Wickham Road, the addition of a southbound left turn lane along Stadium Parkway, and the signalization of the intersection located in Viera. The total cost of this project is estimated at \$884,399.00. The Local Agency Program (LAP) Agreement with the Florida Department of Transportation (FDOT) will provide financial assistance to Brevard County towards the construction of the Wickham Road and Stadium Parkway Intersection Improvements Project FPN 434423-1-58-01 in the amount of \$510,626.00. This construction funding amount provided by FDOT includes a maximum limiting amount of \$124,378.74 towards the construction of the mast arms. This limiting amount includes costs for the mobilization, maintenance of traffic and mast arm assemblies related to the mast arm construction to signalize the intersection. Total costs above the \$124,378.74 maximum limiting amount will not be eligible for reimbursement by FDOT. Additionally, FDOT will provide financial assistance to the County in the amount of \$74,490.00 for the construction engineering inspection (CEI) services under FPN 434423-1-68-01.

The Viera Company (TVC) has agreed to participate in the project. TVC has agreed that in the event the cost of constructing the project exceeds the LAP financial assistance amount, TVC will reimburse the County for the excess costs. TVC and the County acknowledge that the difference between the actual total mast arm costs and the maximum limiting amount will not be included in the LAP financial assistance amount. Furthermore, other costs may exceed the LAP financial assistance amount, including but not limited to, construction change orders, engineer of record construction phase services, geotechnical testing, and other construction related expenses. All these additional expenses are included in the commitment of TVC to reimburse the County in

Clerk to the Board Instructions: Please return LAP Agreement and Resolution (3 originals) to Public Works for further execution by FDOT.
 Please return Backup Funding Agreement (2 fully executed originals).

Exhibits Attached: LAP Agreement and Resolution (3 originals); Backup Funding Agreement (3 originals)

Contract /Agreement (If attached):		Reviewed by County Attorney	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR <input type="checkbox"/>
County Manager		Assistant County Manager		Department Director / Extension			
Stockton Whitten		Assistant County Manager		 Andrew J. Holmes, PE / Asst. PW Director - 56524			

Page Two

Approval RE: Wickham Road and Stadium Parkway

April 5, 2016

the event the cost of constructing the project exceeds the LAP funding. The Backup Funding Agreement stipulates the terms and conditions to provide the County with funding to complete the intersection improvements.

It is requested that the Board approve the Backup Funding Agreement between Brevard County and The Viera Company and the Local Agency Program Agreement and Resolution with FDOT for the Wickham Road and Stadium Parkway Intersection Improvements Project FPN 434423-1-58/68-01. It is further requested that the Board authorize the Chairman to execute the Backup Funding Agreement, Local Agency Program Agreement and Resolution and approve any necessary Budget Change Requests associated with this request.

Fiscal Impact: FY 15/16/17 – Up to \$585,116.00 Reimbursement from FDOT to Brevard County for Fund 1700 Grants. TVC reimbursement will be deposited in Fund 1168 Transportation Reimbursements.

**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: N/A	
2. Fund/Account #: 1700	Division Name: Finance and Contracts Administration
4. Contract Description: LAP Agreement FPN 434423-1-58/68-01 Wickham Rd & Stadium Pkwy Intersection	
5. Contract Monitor: Jeanette Scott	6. Mail Stop #: 81
7. Dept./Office Director: Public Works / John P. Denninghoff	8. Contract Type: Intergovernmental - State
ACTION DATE: For April 5, 2016 Board meeting	ACTION REQUIREMENT: Review for approval

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	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>HL</u>	<u>3/29/16</u>
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>JLS</u>	<u>3/28/2016</u>
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>[Signature]</u>	<u>3/23/2016</u>

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

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 to department for contract to be entered into the Contract Management System. See AO-29 for additional information.

AO-29: EXHIBIT I



BOARD OF COUNTY COMMISSIONERS

Public Works Department

2725 Judge Fran Jamieson Way
Building A, Room 201
Viera, Florida 32940

June 6, 2016

Tammy Rowe, Deputy Clerk
Clerk to the Board
400 South Street
Titusville, FL 32781

RE: April 5, 2016 Board of County Commissioners Agenda Item II.A.3
Backup Funding Agreement with The Viera Company, Resolution, and Local Agency Program Agreement
with Florida Department of Transportation (FDOT) for Wickham Road and Stadium Parkway Intersection
Improvements Project FPN 434423-1-58/68-01

As requested in the Clerk's Memorandum, please find enclosed the fully-executed Local Agency Program Agreement for inclusion in the official minutes.

Thank you,

Jeanette Scott

Jeanette Scott, Construction Contracts Technician

Encl. (1)

cc: Deanna Toro



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

April 6, 2016

MEMORANDUM

TO: John Denninghoff, Public Works Director Attn: Andrew Holmes

RE: Item II.A.3., Backup Funding Agreement with The Viera Company, Resolution, and Local Agency Program Agreement with Florida Department of Transportation (FDOT) for Wickham Road and Stadium Parkway Intersection Improvements Project FPN 434423-1-58/68-01

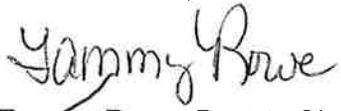
The Board of County Commissioners, in regular session on April 5, 2016, executed Backup Funding Agreement with The Viera Company, adopted Resolution No. 16-042, and executed Local Agency Program Agreement with FDOT for Wickham Road and Stadium Parkway Intersection Improvements Project FPN 434423-1-58/68-01. Enclosed are two fully-executed Backup Funding Agreements, one certified and two fully-executed Resolutions, and three executed Local Agency Program Agreements.

Upon execution by FDOT, please return a fully-executed Local Agency Program Agreement to this office for inclusion in the official minutes.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK


Tammy Rowe, Deputy Clerk

Encls. (8)

cc: Contracts Administration
Finance
Budget

BACKUP FUNDING AGREEMENT
FOR INTERSECTION IMPROVEMENT PROJECT

THIS BACKUP FUNDING AGREEMENT FOR INTERSECTION IMPROVEMENT PROJECT is made and entered into as of the 5th day of APRIL, 2016 by and between THE VIERA COMPANY, a Florida corporation (hereinafter referred to as "TVC"), and the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as the "County").

RECITALS:

A. The County has entered into that certain Local Program Agency Program Agreement dated _____, 2016 (hereinafter referred to as the "Funding Agreement") with the State of Florida Department of Transportation (hereinafter referred to as "FDOT") concerning the construction of a traffic signal and related improvements at the intersection of Wickham Road and Stadium Boulevard (hereinafter referred to as the "Project"). The Project will be constructed in accordance with the plans entitled Construction Plans for Wickham Road & Stadium Parkway Roadway and Signalization Improvements dated November 19, 2015, as last revised March 25, 2016, prepared by BSE Consultants, Inc. and the plans entitled Stadium Parkway at Wickham Road Signalization Plans dated February 4, 2016 prepared by Lassiter Transportation Group, all of which plans will be furnished by TVC at TVC's sole cost and expense (hereinafter collectively referred to as the "Plans and Specifications"). A copy of the Funding Agreement is attached hereto as Exhibit "A" and incorporated herein by reference.

B. Under the terms of the Funding Agreement, FDOT has agreed to provide financial assistance to the County for the construction and completion of the Project in the amount of Five Hundred Eighty-Five Thousand One Hundred Sixteen Dollars (\$585,116.00) (hereinafter referred to as the "Project Cost Funding Amount") based upon a "Schedule of Funding" attached to the Funding Agreement as an exhibit (the Project Cost Funding Amount is referenced in the Funding Agreement as the "Project Cost"). The Project Cost Funding Amount provided by FDOT will include a maximum limited amount of One Hundred Twenty Four Thousand Three Hundred Seventy-Eight and 74/100 Dollars (\$124,378.74) (hereinafter referred to as the "Maximum Mast Arm Funding Amount") that federal funds will contribute toward the mast arm pay items of the Project, including mobilization and maintenance of traffic related to mast arm construction (hereinafter collectively referred to as the "Total Mast Arm Costs"). The amount by which the actual Total Mast Arm Costs exceeds the Maximum Mast Arm Funding Amount shall be the responsibility of Brevard County under the Funding Agreement.

C. In order to induce the County to commence construction of the Project, and to induce the County to construct the Project with mast arms as specified in the Plans and Specifications (the cost of which may not be included within the Project Cost Funding Amount), TVC has agreed that in the event the cost of constructing the Project incurred by the County

exceeds the Project Cost Funding Amount, TVC will reimburse the County for such excess in accordance with the terms and conditions hereinafter set forth. TVC and County recognize that the difference between (i) the actual Total Mast Arms Costs, and (ii) the Maximum Mast Arm Funding Amount, will not be included in the Project Cost Funding Amount and that this and other factors (such as change orders, engaging the engineer of record to supervise the construction phase services, cost overruns and other construction related expenses) may result in the cost of constructing the Project incurred by the County exceeding the Project Cost Funding Amount. All these additional expenses are included in the commitment of TVC to reimburse the County in the event the cost of constructing the Project exceeds the Project Cost Funding Amount. Further, TVC has also agreed that in the event FDOT terminates the Funding Agreement in whole or in part, TVC will provide the County with funding to complete the Project in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The recitals set forth hereinabove are true and correct in all respects and are incorporated herein by reference as if set forth herein verbatim.

2. Construction of Project. The County agrees to undertake the construction and completion of the Project pursuant to the Plans and Specifications in accordance with the provisions of the Funding Agreement. Without limiting the generality of the preceding sentence, the County agrees to submit invoices to FDOT on a timely basis with respect to the Project in accordance with the Funding Agreement, to complete the Project on or before the expiration date provided for in the Funding Agreement, to provide to FDOT such data, reports, records, contracts and other documents relating to the Project as FDOT may require, and to carry out and complete the Project in accordance with the schedule of funding approved by FDOT. The County shall also maintain records, comply with any and all state or federal audit requirements, and submit reports to FDOT and other governmental agencies concerning the Project as required by the Funding Agreement. TVC acknowledges the difference that the difference between (i) the Total Mast Arms Cost, and (ii) the Maximum Mast Arm Funding Amount, will not be included in the Project Cost Funding Amount and that this and other factors will result in the cost of constructing the Project incurred by the County exceeding the Project Cost Funding Amount.

3. Reimbursement by TVC for Costs Exceeding Project Cost Funding Amount. In the event the cost of constructing the Project incurred by the County exceeds the Project Cost Funding Amount, County will provide TVC with an application for reimbursement (hereinafter referred to as an "Excess Cost Reimbursement Request") in the amount of such excess. For purposes of this Agreement, the phrase "the costs of constructing the Project incurred by the County" means all out-of-pocket costs and expenses incurred by County in constructing and completing the Project. An Excess Cost Reimbursement Request shall provide a detailed listing of (i) all costs of constructing the Project incurred by the County, and (ii) all funds received by the County from FDOT pursuant to the Funding Agreement. An Excess Costs Reimbursement Request shall also include reasonable and customary documentation for cost verification purposes. In the event TVC determines that any of the costs of constructing the Project incurred by the County listed in an Excess Cost Reimbursement Request cannot be reasonably verified

based upon the documentation provided by the County, TVC shall notify the County within ten (10) days of TVC's determination thereof and advise County of the required documentation to verify the applicable cost. The County shall have thirty (30) days from the date of its receipt of TVC's notice that a cost cannot be verified within which to provide TVC with the requested additional documentation to verify the cost. Within thirty (30) days after receipt of an Excess Cost Reimbursement Request and any additional documentation timely requested by TVC from County, TVC shall pay County the amount requested in the Excess Cost Reimbursement Request (less any amounts which TVC reasonably disputes, explaining its objections with specificity, as not being properly documented or eligible for reimbursement hereunder). In the event TVC disputes any amounts due pursuant to the preceding sentence, (i) TVC will pay the undisputed portion of the amount requested in the Excess Cost Reimbursement Request within such thirty (30) day period, and (ii) the parties agree to meet within ten (10) days of TVC's delivery of partial payment and work diligently in good faith to resolve the dispute or other issue.

4. Contribution by TVC due to Termination of Agreement by FDOT. In the event FDOT terminates the Funding Agreement in whole or in part, the County shall promptly notify TVC of such termination and provide TVC with copies of all correspondence related to such termination. Upon any termination, the County shall comply with all provisions of the Funding Agreement related to termination (including the repayment to FDOT of any over payments). If required by the Funding Agreement, the County shall also secure the permission of FDOT to complete construction of the Project. The County shall also prepare and submit a schedule for completion of the Project and accompanying funding (hereinafter referred to as the "Completion Schedule") to TVC for its approval, which approval shall not be unreasonably withheld, conditioned or delayed. Upon receiving approval of the Completion Schedule (and, if required, obtaining FDOT's approval to complete the Project), the County shall promptly commence work on the completion of the Project and use diligent efforts to complete the Project in accordance with the Completion Schedule. The County shall submit applications for reimbursement (hereinafter referred to as a "Construction Completion Funding Request") to TVC on a periodic basis (not more frequently than monthly) for the cost of constructing the Project incurred by the County after approval of the Completion Schedule. A Construction Completion Funding Request shall provide a detailed listing of all costs of constructing the Project incurred by the County since the prior Construction Completion Funding Request (or in the case of the initial Construction Completion Funding Request, all costs of constructing the Project incurred by the County since the date the Completion Schedule was approved and such other amounts as the Construction Schedule authorizes for payment in the initial Construction Completion Funding Request). A Construction Completion Funding Request shall also include reasonable and customary documentation for cost verification purposes. In the event TVC determines that any of the costs of constructing the Project incurred by the County listed in a Construction Completion Funding Request cannot be reasonably verified based upon the documentation provided by the County, TVC shall notify the County within ten (10) days of TVC's determination thereof and advise County of the required documentation to verify the applicable costs. The County shall have thirty (30) days from the date of its receipt of TVC's notice that a cost cannot be verified within which to provide TVC with the requested additional documentation to verify the cost. Within thirty (30) days after receipt of a Construction Completion Funding Request, TVC shall pay County the amount requested in the Construction Completion Funding Request (less any amounts which TVC reasonably disputes, explaining its objections with specificity, as not being properly documented or eligible for reimbursement

hereunder). In the event TVC disputes any amounts due pursuant to the preceding sentence, (i) TVC will pay the undisputed portion of the amount requested in the Construction Completion Funding Request within such thirty (30) day period, and (ii) the parties agree to meet within ten (10) days of TVC's delivery of partial payment and work diligently in good faith to resolve the dispute or other issue.

5. Security. The obligations of TVC under this Agreement shall be secured by either a surety bond in the amount of one hundred twenty-five percent (125%) of the Project Cost Funding Amount in form and content mutually agreed upon by TVC and the County or by a letter of credit issued by a national bank selected by TVC in the amount of one hundred twenty-five percent (125%) of the Project Cost Funding Amount. Brevard County must be entitled to make presentment of and collect on any letter of credit utilized by TVC either (i) in person in Brevard County, Florida, (ii) by delivery by facsimile copy to a location outside of Brevard County, Florida (TVC acknowledges, however, that the County may elect to make presentment by facsimile copy as much as ten (10) days in advance of any deadline date to avoid any delay or difficulties in collection).

6. Notices. Any notices or other communications which may be required or desired to be given under the terms of this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, if delivered by a nationally recognized courier service (such as Federal Express or UPS), if delivered by electronic delivery provided the addressee himself or herself expressly acknowledges receipt of the electronic delivery (an automatic "read receipt" shall not constitute such an acknowledgement), or if mailed by United States certified mail, return receipt requested, postage prepaid, addressed to the respective party at the addresses set forth below:

To TVC: The Viera Company
7380 Murrell Road
Suite 201
Viera, FL 32940
Attn: Stephen L. Johnson, President
Jay A. Decator, III, Esq.

To the County: Board of County Commissioners of
Brevard County, Florida
2725 Judge Fran Jamison Way
Viera, FL 32940
Attn: County Manager
And Public Works Support Services Manager
2725 Judge Fran Jamison Way. Suite A201
Viera, FL 32940

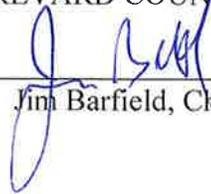
Any notice so given, delivered or made by mail shall be deemed to have been duly given, delivered or made on the date the same is deposited in the United States mail in the manner specified hereinabove. Any notice which is not given, delivered or made by United States mail in the manner specified above shall be deemed to have been duly given, delivered or made upon

actual receipt of the same by the party to whom the same is to be given, delivered or made. Either party may change the address to which notices are to be sent to such party by written notice to the other party specifying such change of address.

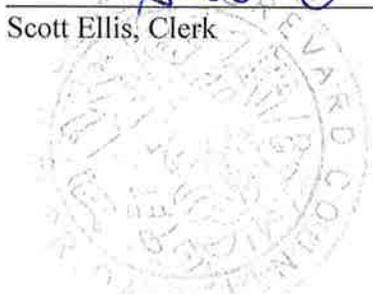
7. Miscellaneous. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Facsimile or electronically transmitted copies of this Agreement and the signatures thereon shall have the same force and effect as if the same were original documents. Facsimile or electronically transmitted signatures are acceptable and shall be deemed to be original signatures. This writing constitutes the entire agreement between the parties and supersedes and merges all prior oral or written agreements, representations, statements, proposals and undertakings between the parties regarding the subject matter hereof. No covenants, agreements, terms, provisions, undertakings, statements, representations or warranties, whether written or oral, made or executed by any party hereto or any employee or agent thereof, shall be binding upon any party hereto unless specifically set forth in this Agreement. The exhibits attached hereto and referred to herein are by such attachment and reference made a part of this Agreement for all purposes. This Agreement or any provision hereof may be amended or waived only by written agreement signed by both parties. No failure or delay by a party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Nothing contained herein shall be construed to imply a partnership, joint venture, principal and agent or employer and employee relationship between the parties. No provision in this Agreement shall provide to any person not a party to this Agreement any remedy, claim or cause of action, or create any third-party beneficiary rights against either party. In the event that any one or more of the provisions in this Agreement shall for any reason be held to have no force and effect, this Agreement shall, if possible, be interpreted in a manner so as to effectuate the intention of the parties. This Agreement is the subject of negotiation between the parties and should not be interpreted more favorably toward one party over the other. The paragraph headings herein contained are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement; the paragraph headings shall be ignored in construing and interpreting this Agreement. Whenever used herein, the singular number includes the plural, the plural the singular, and the use of any gender includes all genders. Provisions contained in this Agreement that, by their sense and context, are intended to survive the suspension or termination of this Agreement, shall so survive. Neither party may assign this Agreement without the prior written consent and approval of the other party. No party shall be responsible for failure or delay in performance hereunder if such delay or failure in performance is caused by conditions beyond such party's reasonable control, including without limitation fire, flood, riot, strikes, labor disputes, acts of God or of the public enemy, war or civil disturbances, or any future laws, rules, regulations or acts of any government (including any orders, rules or regulations issued by any official or agency of such government). All disputes related to this Agreement shall in the first instance be referred to the appropriate executives of each party for resolution. In connection with any litigation, including appellate proceedings, arising out of or under this Agreement, each party shall bear its attorneys' fees and costs. This Agreement and the interpretation and enforcement thereof shall be governed by and construed in accordance with the laws of the State of Florida. The venue of any litigation arising out of this Agreement shall be Brevard County, Florida.

IN WITNESS WHEREOF, TVC and the County have caused this instrument to be duly executed in their respective names as of the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

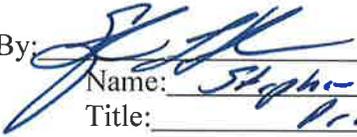
By: 
Jim Barfield, Chairman

ATTEST: 
Scott Ellis, Clerk



As approved by Board 4/5/16

THE VIERA COMPANY, a Florida
corporation

By: 
Name: Stephen L. Johnson
Title: Pres

Approved as to _____


Deputy County Attorney
V0268498.v10

RESOLUTION NO. 2016- 042

A RESOLUTION AUTHORIZING THE EXECUTION OF LOCAL AGENCY PROGRAM AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE INTERSECTION IMPROVEMENTS AT WICKHAM ROAD/COUNTY ROAD 509 AND STADIUM PARKWAY

WHEREAS, the State of Florida Department of Transportation (FDOT) and Brevard County desire to facilitate the Intersection Improvements at Wickham Road/County Road 509 and Stadium Parkway 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, FPN 434423-1-58-01 and 434423-1-68-01.

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 (FDOT) the Local Agency Program (LAP) Agreement for the aforementioned project, FPN 434423-1-58-01 and FPN 434423-1-68-01.

DONE AND RESOLVED in regular session this 5th day of April, 2016.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



Scott Ellis, Clerk

Jim Barfield, Chairman

As approved by the Board on 4/5/16

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
LOCAL AGENCY PROGRAM AGREEMENT

525-010-40
PROGRAM MANAGEMENT
OGC-08/15
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FPN: <u>434423-1-58-01</u>	Fund: <u>SA/LF</u>	FLAIR Approp: <u>088717</u>
Federal No: <u>8886-811-A</u>	Org Code: <u>55054010508</u>	FLAIR Obj: <u>780000</u>
<hr/>		
FPN: <u>434423-1-68-01</u>	Fund: <u>SA/EB/LF</u>	FLAIR Approp: <u>088718</u>
Federal No: <u>8886-811-A</u>	Org Code: <u>55054010508</u>	FLAIR Obj: <u>780000</u>
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FPN: _____	Fund: _____	FLAIR Approp: _____
Federal No: _____	Org Code: _____	FLAIR Obj: _____
<hr/>		
County No: <u>70</u>	Contract No: <u>G0A36</u>	Vendor No: <u>F596-000-523-163</u>
FDOT Data Universal Number System (DUNS) No: <u>80-939-7102</u>		Local Agency DUNS No: <u>78-324-8370</u>
Catalog of Federal Domestic Assistance (CFDA): <u>20.205 Highway Planning and Construction</u>		

THIS LOCAL AGENCY PROGRAM AGREEMENT ("Agreement"), is made and entered into this 12th day of May, 2016 between the State of Florida, Department of Transportation, an agency of the State of Florida ("Department"), and Brevard County, 2725 Judge Fran Jamieson Way, Building A, Suite 204, 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. 2016-042 dated the 5th day of April, 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 Intersection Improvements at Wickham Road/County Road 509 and Stadium Parkway, 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 August 31, 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 \$ 884,399.00. 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 \$585,116.00 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
LOCAL AGENCY PROGRAM AGREEMENT

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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 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 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

- 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 guaranties 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.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
LOCAL AGENCY PROGRAM AGREEMENT

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 BREVARD COUNTY

By:



Name: Jim Barfield
Title: Chairman

As approved by the Board, on: 4/5/16

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By:



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

Attest:



Scott Ellis, Clerk

Legal Review:



Reviewed for legal form and content:

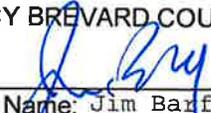


Deputy County Attorney

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
LOCAL AGENCY PROGRAM AGREEMENT

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

AGENCY BREVARD COUNTY

By: 
Name: Jim Barfield
Title: Chairman
As approved by the Board on: _____

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

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

Attest:


Scott Ellis, Clerk

Legal Review:

Reviewed for legal form and content:

Deputy County Attorney

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EXHIBIT "A"

PROJECT DESCRIPTION AND RESPONSIBILITIES

FPN: 434423-1-58/68-01

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, Building A, Third Floor, Suite 204, 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: 0.18 miles. MP 0.730 to MP 0.550

PROJECT DESCRIPTION:

This project consists of intersection improvements at Wickham Road (CR 509) and Stadium Parkway. The project length is approximately 0.18 miles. This portion of Wickham Road is currently a 2 lane rural roadway. The project will include roadway widening along Wickham Road from a 2 lane to a 4 lane divided roadway. Parts of the existing roadway and the intersection will be milled and resurfaced. Road work along Stadium Parkway will include the addition of a southbound left turn lane. Additional roadway impacts include median nose reconstruction and curb and gutter construction along the new median and the return radii in the intersection. Drainage design includes minor side-slope re-grading. Sidewalk and pedestrian improvements will occur at the intersection which will be constructed to meet current ADA requirements. The project will also include mobilization, maintenance of traffic (MOT), erosion control, clearing and grubbing, sodding, signage, and striping.

The project also includes the signalization of the intersection to include four mast arms, vehicle detection, signal cabinet, and pedestrian signal assemblies. FDOT will provide a maximum limiting amount of \$124,378.74 towards the construction of the mast arms. The mobilization (101-1), maintenance of traffic (102-1), and mast arm (649-31-207/208) pay items associated with signalization and as listed on the signalization bid form, will be eligible for reimbursement for the stated limiting amount. Any amount above the maximum limiting amount will be the Local Agency's responsibility for those items.

The payment of the warranty/maintenance bonds will be the responsibility of the County.

The Department will fund the basic 4" thick sidewalk, 6" thick driveway, and curb & gutter with 2500 PSI strength concrete. The County will be responsible for any upgrades to the concrete strength and thicknesses.

CEI will be performed by in-house County Staff which the Department will fund. The costs related to material testing will be the responsibility of the County.

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 required to:

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EXHIBIT "A"

PROJECT DESCRIPTION AND RESPONSIBILITIES

Vincent Vacchiano, LAP Project 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 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 6/27/2016.
- f) Construction to be completed by 4/20/2017.

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.

The County will perform CEI services utilizing its own forces. The County will only be reimbursed for direct costs (this includes general and administrative overhead). Timesheets showing project hours will be required when submitting invoices for those reimbursement requests.

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EXHIBIT "B"

SCHEDULE OF FUNDING

AGENCY NAME & BILLING ADDRESS Brevard County 2725 Judge Fran Jamieson Way, Building A, Suite 204, Viera, Florida 32940	FPN: 434423-1-58-01 434423-1-68-01
---	---------------------------------------

TYPE OF WORK By Fiscal Year	FUNDING			
	(1) TOTAL PROJECT FUNDS	(2) LOCAL FUNDS	(3) STATE FUNDS	(4) FEDERAL FUNDS
Planning-18 FY: _____ FY: _____ FY: _____	_____	_____	_____	_____
Total Planning Cost				
Project Development & Environment (PD&E) - 28 FY: _____ FY: _____ FY: _____	_____	_____	_____	_____
Total PD&E Cost				
Design - 38 FY: _____ FY: _____ FY: _____	_____	_____	_____	_____
Total Design Cost				
Right-of-Way - 48 FY: _____ FY: _____ FY: _____	_____	_____	_____	_____
Total Right-of-Way Cost				
Construction-58 FY: 2015-2016 FY: _____ FY: _____ FY: _____	\$787,884.00	\$277,258.00	_____	\$510,626.00
Total Construction Cost	\$787,884.00	\$277,258.00		\$510,626.00
Construction Engineering and Inspection (CEI) - 68 FY: 2015-2016 FY: _____ FY: _____	\$96,515.00	\$22,025.00	_____	\$ 74,490.00
Total CEI Cost	\$96,515.00	\$22,025.00		\$ 74,490.00
Operations – 88 FY: _____ FY: _____ FY: _____	_____	_____	_____	_____
Total Operations Costs				
TOTAL COST OF THE PROJECT	\$884,399.00	299,283.00		\$585,116.00

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.

RESOLUTION NO. 2016- 042

A RESOLUTION AUTHORIZING THE EXECUTION OF LOCAL AGENCY PROGRAM AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE INTERSECTION IMPROVEMENTS AT WICKHAM ROAD/COUNTY ROAD 509 AND STADIUM PARKWAY

WHEREAS, the State of Florida Department of Transportation (FDOT) and Brevard County desire to facilitate the Intersection Improvements at Wickham Road/County Road 509 and Stadium Parkway 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, FPN 434423-1-58-01 and 434423-1-68-01.

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 (FDOT) the Local Agency Program (LAP) Agreement for the aforementioned project, FPN 434423-1-58-01 and FPN 434423-1-68-01.

DONE AND RESOLVED in regular session this 5th day of April, 2016.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



Scott Ellis, Clerk

Jim Barfield, Chairman

As approved by the Board on 4/5/16

RESOLUTION NO. 2016-

A RESOLUTION AUTHORIZING THE EXECUTION OF LOCAL AGENCY PROGRAM AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE INTERSECTION IMPROVEMENTS AT WICKHAM ROAD/COUNTY ROAD 509 AND STADIUM PARKWAY

WHEREAS, the State of Florida Department of Transportation (FDOT) and Brevard County desire to facilitate the Intersection Improvements at Wickham Road/County Road 509 and Stadium Parkway and,

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DONE AND RESOLVED in regular session this 5th day of April, 2016.

ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



Jim Barfield, Chairman

As approved by the Board on 4/5/16

EXHIBIT "T"

TRAFFIC SIGNAL MAINTENANCE

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

1. When the District Traffic Operations Engineer of the Department has served a request order on the Agency, and the designated officer of the Agency has favorably acknowledged the request order, the Agency shall undertake the responsibilities to maintain and operate existing or new traffic signals and signal systems mentioned in the request order.
2. The proposed functional design and operation of new traffic signals and signal systems shall be reviewed by the Agency in conjunction with the Department prior to installation. Such design and operation will be as energy efficient as possible.
3. The installation of signals or signal systems shall not endanger highway travel and shall be conducted in accordance with Part VI of the Manual on Uniform Traffic Control Devices (MUTCD), as amended, and with all applicable Department standards, specifications and plans governing traffic control for street and highway construction and maintenance.
4. The Agency shall be responsible for the maintenance and continuous operation of the traffic signals and signal systems (central computer, cameras, message signs, and communications interconnect), school zone traffic control devices, intersection flashing beacons, illuminated street sign names, and the payment of electricity and electrical charges incurred in connection with the operation of such traffic signals and signal systems upon completion of their installation. In the case of construction contracts, the Agency shall be responsible for the payment of electricity and electrical charges incurred in connection with the operation of the traffic signals and signal systems, and shall undertake the maintenance and continuous operation of said traffic signals and signal systems upon final acceptance of the installation by the Department. Repair or replacement and other responsibilities of the installation contractor and the Department, during the burn-in period between conditional and final acceptance, are contained in the most recent Department's Standard Specifications for Road and Bridge Construction.
5. The Agency shall maintain and operate the traffic signals and signal systems in a manner that will ensure safe and efficient movement of highway traffic and that agree with maintenance practices prescribed by the International Municipal Signal Association (IMSA) and operational requirements of the MUTCD, as amended. The Agency's maintenance responsibilities shall include, but not be limited to, preventive maintenance (periodic inspection, service, and routine repairs), and emergency maintenance (troubleshooting in the event of equipment malfunction, failure or damage). The Agency shall record its maintenance activities in a traffic signal maintenance log which shall contain, as a minimum, traffic signal log details recommended by the IMSA.
6. The Agency may remove any component of the installed equipment for repair; however, it shall not make any permanent modifications and/or equipment replacements unless the equipment provided is the same age or newer and is capable of performing the same functions. The Department shall not make any modifications and/or equipment replacements without prior written notice to the Agency.
7. The Agency shall set and maintain the timing and phasing of the traffic signals in accordance with the Department's timing and phasing plans, specifications or special provisions. The Agency may make modifications in phasing of traffic signals and signal systems to accommodate changing needs of traffic provided prior written approval is obtained from the Department. Department approval shall be contingent upon an engineering report prepared by or for the Agency in accordance with Section 1A.09, "Engineering Study and Engineering Judgment", of the MUTCD recommending such changes and signed and sealed by a qualified Professional Engineer licensed in the State of Florida. The Agency may make changes in the signal timing provided these changes are made under the direction of a qualified Professional Engineer. The Agency shall send a signed and sealed copy of the timings to the Department immediately after installation. The Department reserves the right to examine equipment, timing, and phasing at any time and, after consultation with the Agency, may specify modifications. If the Department specifies modification in timing and/or phasing, implementation of such modifications shall be coordinated with, or made by the Agency.

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8. The Agency shall note in the maintenance log any timing and/or phasing changes and keep a copy of the timings and any approval documentation in a file.
9. The Agency may enter into agreements with other parties pertaining to traffic signals and signal systems including, but not limited to, agreements relating to costs and expenses incurred in connection with the operation of traffic signals and signal systems on the State Highway System provided that such agreements are consistent with the mutual covenants contained in this Exhibit. The Agency shall furnish a copy of such agreements to the Department.
10. This Exhibit shall remain in force during the life of the originally installed equipment and/or the life of any replacement equipment installed with the mutual consent of the parties hereto until superseded by a Traffic Signal Maintenance and Compensation 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: \$585,116.00
Awarding Agency: Florida Department of Transportation
Award is for R&D: Yes
Indirect Cost Rate: Choose an item.

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

OMB Circular A-133 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/

OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*
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 21st 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/>