



**AGENDA REPORT**  
July 9, 2019

**Approval Re: Off System Construction and Maintenance Agreement and Resolution between State of Florida Department of Transportation and Brevard County for the State Road 405 Spaceport Connector SIS Intersection Improvements – District 1**

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**SUBJECT:**

Approval Re: Off System Construction and Maintenance Agreement and Resolution between State of Florida Department of Transportation and Brevard County for the State Road 405 Spaceport Connector SIS Intersection Improvements – District 1

**FISCAL IMPACT:**

Project funded by State of Florida Department of Transportation. Upon completion, the County will maintain improvements in the County right-of-way utilizing the District 1 Municipal Services Taxing Unit (M.S.T.U.).

**DEPT/OFFICE:**

Public Works

**REQUESTED ACTION:**

It is requested that the Board of County Commissioners approve and authorize the Chair to execute the Off System Construction and Maintenance Agreement and Resolution with the State of Florida Department of Transportation for the State Road 405 Spaceport Connector SIS Intersection Improvements, Project Number FM 436122-1-52-01.

**SUMMARY EXPLANATION and BACKGROUND:**

Included in the State of Florida Department of Transportation's (F.D.O.T.) Work Program is the State Road 405 Spaceport Connector SIS Intersection Improvements, Project Number FM 436122-1-52-01 located in Brevard County. F.D.O.T. will undertake and complete the Project, including construction and Construction Engineering Inspection. F.D.O.T. has committed to performing construction on County maintained roadways to add turn lanes as follows as part of the State Road 405 Spaceport Connector SIS Intersection Improvements Project:

- Add westbound left turn on Barna Avenue and extend the existing northbound right turn lane on State Road 405
- Add a second northbound left turn lane on Grissom Parkway at State Road 405 and extend the existing eastbound right turn lane on State Road 405

- Construct a French drain system under the northbound lanes of Grissom Parkway

It is agreed that the County will allow F.D.O.T. to utilize County right-of-way to construct the Project. F.D.O.T. has agreed to cause its contractor to carry Commercial General Liability insurance and name the County as Additional Insured. Furthermore, F.D.O.T. will include an indemnification provision in all contracts in the performance of work in connection with the Project to indemnify, defend and hold harmless the County. The County acknowledges that F.D.O.T. may be utilizing federal funds on the Project and as such, the County agrees to maintain those portions of the Project that are located within the jurisdictional limits of the County's roads in perpetuity.

**CLERK TO THE BOARD INSTRUCTIONS:**

Return executed Off System Construction and Maintenance Agreement and Resolution to the Public Works Department for execution by F.D.O.T.

**ATTACHMENTS:**

**Description**

- **Off System Construction and Maintenance Agreement**

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

# INITIAL CONTRACT REVIEW AND APPROVAL FORM

## SECTION I - GENERAL INFORMATION

<b>1. Contractor:</b>	
<b>2. Fund/Account #:</b> 1700/TBD	<b>3. Department Name:</b> Public Works
<b>4. Contract Description:</b> Off System Construction and Maintenance Agreement - SR 405 SIS	
<b>5. Contract Monitor:</b> Jeanette Scott	<b>7. Contract Type:</b>
<b>6. Dept/Office Director:</b> Corrina Gumm, P.E., Interim Director	INTERGOVT/STATE

## SECTION II - REVIEW AND APPROVAL TO ADVERTISE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>
	<u>YES</u>	<u>NO</u>	
User Agency	<input type="checkbox"/>	<input type="checkbox"/>	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____

## SECTION III - REVIEW AND APPROVAL TO EXECUTE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>
	<u>YES</u>	<u>NO</u>	
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Thomas-Wood, Tammy <small>Digitally signed by Thomas Wood, Tammy DN: cn=Thomas Wood, Tammy, email=Tommy.Thomas.Wood@brevard.gov Date: 2019.06.28 14:52:23 -0400</small>
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Matt Lairsey <small>Digitally signed by Matt Lairsey DN: cn=Matt Lairsey, o=Brevard County Board of County Commissioners, ou=Brevard County Date: 2019.06.28 17:00:36 -0400</small>
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Brewer, Jad <small>Digitally signed by Brewer, Jad Date: 2019.06.27 17:00:36 -04'00'</small>

## SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

<u>CM DATABASE REQUIRED FIELDS</u>	<u>Complete</u> <input checked="" type="checkbox"/>
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Data (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/ Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

# INITIAL CONTRACT REVIEW AND APPROVAL FORM

**SECTION I - GENERAL INFORMATION**

<b>1. Contractor:</b>	
<b>2. Fund/Account #:</b>	<b>3. Department Name:</b>
<b>4. Contract Description:</b>	
<b>5. Contract Monitor:</b>	<b>7. Contract Type:</b>
<b>6. Dept/Office Director:</b>	

**SECTION II - REVIEW AND APPROVAL TO ADVERTISE**

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>
	<u>YES</u>	<u>NO</u>	
User Agency			_____
Risk Management			_____
County Attorney			_____

**SECTION III - REVIEW AND APPROVAL TO EXECUTE**

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>
	<u>YES</u>	<u>NO</u>	
User Agency			_____
Risk Management			_____
County Attorney			_____

**SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST**

<b>CM DATABASE REQUIRED FIELDS</b>	<b>Complete ✓</b>
Department Information	
Department	
Program	
Contact Name	
Cost Center, Fund, and G/L Account	
Vendor Information (SAP Vendor #)	
Contract Status	
Contract Title	
Contract Type	
Contract Amount	
Storage Location (SAP)	
Contract Approval Date	
Contract Effective Date	
Contract Expiration Date	
Contract Absolute End Data (No Additional Renewals/Extensions)	
Material Group	
Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/ Risk Management Approval; Signed/Executed Contract)	
"Right To Audit" Clause Included in Contract	
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	

**RESOLUTION NO. 2019- 100**

**A Resolution Authorizing the Execution of the Off System Construction and Maintenance Agreement with State of Florida Department of Transportation for the State Road 405 Spaceport Connector SIS Intersection Improvements**

**Whereas**, the State of Florida Department of Transportation and Brevard County desire to facilitate the construction of the State Road 405 Spaceport Connector SIS Intersection Improvements and,

**Whereas**, the State of Florida Department of Transportation has requested Brevard County to execute and deliver to the State of Florida Department of Transportation the Off System Construction and Maintenance Agreement for the aforementioned project, FM 436122-1-52-01.

**Now, therefore, be it resolved** by the Board of County Commissioners of Brevard County, Florida, that Kristine Isnardi, Chair, of the Board of County Commissioners, is hereby authorized to make, execute, and deliver to the State of Florida Department of Transportation the Off System Construction and Maintenance Agreement for the aforementioned project, FM 436122-1-52-01.

**DONE AND RESOLVED** this 9<sup>th</sup> day of July 2019.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

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

  
\_\_\_\_\_  
Kristine Isnardi, Chair

As approved by the Board on July 9, 2019

**OFF SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT**

**Between**

**STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION  
("DEPARTMENT")**

**and**

**BREVARD COUNTY  
("LOCAL GOVERNMENT")**

**WHEREAS**, the State of Florida Legislature has approved and mandated the DEPARTMENT to complete the various projects included in the DEPARTMENT'S Work Program; and

**WHEREAS**, included in the DEPARTMENT'S Work Program is Project Number FM # 436122-1-52-01 (State Road 405 Spaceport Connector SIS Intersection Improvements) located in Brevard, Florida, hereinafter referred to as the "Project", some of which is not on the State Highway System; and

**WHEREAS**, the parties hereto agree that it is in the best interest of the DEPARTMENT and of the LOCAL GOVERNMENT for the DEPARTMENT to act on behalf of the LOCAL GOVERNMENT in completing all aspects of any portion of the Project not on the State Highway System, including, but not necessarily limited to (1) constructing the Project through its completion and (2) providing Construction Engineering Inspection (CEI) as necessary for the Project;

**NOW THEREFORE,**

1. The parties agree that the DEPARTMENT shall undertake and complete the Project. The Project shall include the tasks described in Exhibit "A" hereto and all other tasks associated with or arising out of the tasks listed therein. The LOCAL GOVERNMENT shall fully cooperate with and shall support the DEPARTMENT'S work efforts in these regards. The LOCAL GOVERNMENT hereby grants to the DEPARTMENT, its Contractors, representatives, employees and agents the right to enter onto LOCAL GOVERNMENT property to accomplish the tasks required by the Project. The DEPARTMENT shall have final decision-making authority for construction of the Project.
2. The LOCAL GOVERNMENT by virtue of the formal resolution approving this agreement consents to and authorizes the DEPARTMENT to act on behalf of, for the benefit of, and in the name of the LOCAL GOVERNMENT, to further do all acts necessary, specifically the construction of improvements for the benefit of the LOCAL GOVERNMENT, including securing all environmental and regulatory permits, and rights of entry, if necessary, associated with and necessary for the Project.
3. To the extent necessary, the LOCAL GOVERNMENT hereby appoints the DEPARTMENT as its agent for purposes of construction, reconstruction, and relocation of utilities under Sections 337.403 and 337.404, Florida Statutes. The LOCAL GOVERNMENT agrees to fully cooperate with the DEPARTMENT in the construction, reconstruction, and relocation of utilities that may be located within the existing or acquired right of way. The parties agree to meet

on a periodic basis, as determined to be necessary by the DEPARTMENT, during the planning, design, construction, and post-construction phase to identify, plan, and to relocate utilities. The responsibility for the costs associated with the relocation of utilities shall be based on Florida law. The parties acknowledge and agree that the DEPARTMENT may be utilizing federal highway interstate funds and as such, the cost of utility relocation may be considered a part of the cost of the Project to be paid by the DEPARTMENT.

4. The LOCAL GOVERNMENT acknowledges that the DEPARTMENT may be utilizing federal funds on the Project and as a result thereof, the LOCAL GOVERNMENT agrees to maintain those portions of the Project that are located within the jurisdictional limits of the LOCAL GOVERNMENT'S road in perpetuity.

5. The DEPARTMENT shall have the sole authority with respect to make all decisions relating to, and including the need for, change orders, and supplemental agreements associated with the construction contract for the Project, including those portions of the Project that are located within the jurisdictional limits of the LOCAL GOVERNMENT'S road.

6. All payment and performance bonds shall be issued in favor of the DEPARTMENT. All warranties, if any, for improvements made within those portions of the Project that are located within the jurisdictional limits of the LOCAL GOVERNMENT'S road shall be made in favor of the LOCAL GOVERNMENT.

7. The DEPARTMENT shall cause its contractor to carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Agreement. DEPARTMENT shall cause its contractor to cause the LOCAL GOVERNMENT to be made an Additional Insured as to such insurance.

8. The DEPARTMENT agrees to include the following indemnification in all contracts with contractors/subcontractors, or consultants/sub consultants who perform work in connection with this Agreement:

To the extent provided by law, the DEPARTMENT'S contractor shall indemnify, defend and hold harmless LOCAL GOVERNMENT against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of DEPARTMENT'S contractor, or any of its officers, agents or employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by DEPARTMENT'S contractor hereunder, to the extent and within the limitations of Section 768.28, Florida Statutes. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by DEPARTMENT'S contractor to indemnify LOCAL GOVERNMENT for the negligent acts or omissions of LOCAL GOVERNMENT, its officers, agents or employees, or for the acts of third parties. Nothing herein shall be construed as consent by DEPARTMENT'S contractor to be sued by third parties in any manner arising out of this agreement.

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 County's sovereign immunity.

9. Upon completion of the Project, but prior to the issuance of the Notice of Final Acceptance, the DEPARTMENT shall submit to the LOCAL GOVERNMENT written notice that:

- A.
  - 1. Project Contract Document requirements have been met.
  - 2. Work has been inspected for compliance with Project Contract Documents.
  - 3. Work has been completed in accordance with Project Contract Documents.
  - 4. Equipment and systems have been tested in the presence of LOCAL GOVERNMENT's representative and are operational.
  - 5. All minor deficiencies have been corrected or completed and the Project is ready for final inspection.
  - 6. All operation and maintenance manuals have been submitted and are acceptable.
  - 7. Project record documents are complete and submitted.
- B. LOCAL GOVERNMENT will make an inspection to verify the status of completion with reasonable promptness after receipt of such certification.
- C. Should LOCAL GOVERNMENT consider that the Project is incomplete or defective:
  - 1. LOCAL GOVERNMENT will promptly notify the FDOT in writing, listing the incomplete or defective work.
  - 2. FDOT shall take immediate steps to remedy the stated deficiencies, and send a second written certification to LOCAL GOVERNMENT that the Project is complete.
  - 3. LOCAL GOVERNMENT will re-inspect the Project.
- D. When the LOCAL GOVERNMENT finds that the Project is acceptable under the Project Contract Documents, LOCAL GOVERNMENT shall request the FDOT to issue the Notice of Final Acceptance.

10. This Agreement shall become effective as of the date both parties hereto have executed the Agreement and shall continue in full force and effect until the Project is completed by the DEPARTMENT and the improvements have been turned over to the LOCAL GOVERNMENT

by the DEPARTMENT by formal notice from the DEPARTMENT. The DEPARTMENT reserves the right to unilaterally cancel its performance hereunder if it determines that it is in the best interest of the public to do so. This discretion shall include, but shall not be limited to budgetary and bid cost considerations.

11. Pursuant to Section 287.058, Florida Statutes, the DEPARTMENT may unilaterally cancel this Agreement for refusal by the LOCAL GOVERNMENT to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes and made or received by the LOCAL GOVERNMENT in conjunction with this Agreement except for the obligation of the LOCAL GOVERNMENT to maintain the Project and said Agreement shall be perpetual as to that obligation.

12. If any election, referendum, approval or permit, notice or other proceeding or authorization is required to be undertaken by the LOCAL GOVERNMENT to enter into this Agreement or to undertake the Project, the LOCAL GOVERNMENT will expeditiously initiate and consummate, as provided by law, all actions necessary with respect to any such matters with time being of the essence.

13. It is understood that the DEPARTMENT'S participation in said Project is subject to:

- a.) Legislative approval of the DEPARTMENT'S appropriation request in the work program year that the Project is scheduled;
- b.) Availability of funds based on the following limitations:
  - i.) The DEPARTMENT'S performance and obligations to pay under this Agreement is contingent upon an annual appropriation by the Florida Legislature. If the DEPARTMENT'S funding for this Project is in multiple years, funds approved from the DEPARTMENT'S Comptroller must be received every year prior to costs being incurred.
  - ii.) In the event this Agreement is in excess of \$25,000.00 and has a term of a period of more than one year, the provisions of §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 one (1) year, but any contract so made shall be executor only for the value of the services to be rendered or agreed to be paid in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT, which are for an amount in excess of \$25,000.00 and which have term for a period of more than one (1) year."

14. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

15. The LOCAL GOVERNMENT shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of:

- a.) All persons employed by the LOCAL GOVERNMENT during the term of the Contract to perform employment duties within Florida; and
- b.) All persons, including, subcontractors, assigned by the LOCAL GOVERNMENT to perform work pursuant to the contract with the DEPARTMENT.

16. All general notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, express mail or electronic mail (e-mail) and shall be deemed to have been received by the end of five business days from the proper sending thereof unless proof of prior actual receipt is provided. Each party hereto shall have the continuing obligation to notify each other of the appropriate persons for notices to be sent to pursuant to the terms of this Agreement. Unless otherwise notified in writing, notices shall be sent to the following:

To the LOCAL GOVERNMENT:

Brevard County

Attn: Tammy Thomas-Wood, Support Services Manager

2725 Judge Fran Jamieson Way, Suite A-201

Viera, Florida 32940

[Tammy.thomas-wood@brevardfl.gov](mailto:Tammy.thomas-wood@brevardfl.gov)

To the DEPARTMENT:

District Five - Local Programs

719 South Woodland Boulevard, M.S. 4-520

DeLand, Florida 32720

[D5-LocalPrograms@dot.state.fl.us](mailto:D5-LocalPrograms@dot.state.fl.us)

17. No modification of this Agreement shall be binding on the Parties unless reduced to writing and signed by a duly authorized representative of the Parties.
18. In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.
19. The individual identified as the person to receive notice for the LOCAL GOVERNMENT hereunder shall have the authority to act on behalf of the LOCAL GOVERNMENT for engineering decisions relating to the LOCAL GOVERNMENT roadways as described in Exhibit "A", Scope of Services associated with construction of the Project. The individuals identified below shall have the authority to receive notice and to act on behalf of the LOCAL GOVERNMENT and the DEPARTMENT, respectively, under the terms of this Agreement.

To the LOCAL GOVERNMENT:  
Brevard County

Attn: Corrina Gumm, P.E., Interim Public Works Director and Traffic Operations Manager  
2725 Judge Fran Jamieson Way, Suite A-201  
Viera, Florida 32940

To the DEPARTMENT:  
State of Florida, Department of Transportation  
Alan E. Hyman, P.E., Director of Transportation Operations  
719 South Woodland Boulevard  
DeLand, Florida 32720

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates exhibited, by the signatures below.

**BREVARD COUNTY,  
BOARD OF COUNTY  
COMMISSIONERS**

**STATE OF FLORIDA  
DEPARTMENT OF  
TRANSPORTATION**

By:   
Name: Kristine Isardi

By: \_\_\_\_\_  
Alan E. Hyman, P.E.  
Director of Transportation Operations

Title: Chair

Director of Transportation Operations

Date: July 9, 2019

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

Attest: 

By: Scott Ellis  
Title: Clerk

As approved by Board 7/9/19

Approved as to form and legality:

Department Legal Review:



By: Jad Brewer  
Assistant County Attorney

\_\_\_\_\_  
By: Daniel L. McDermott  
Attorney

Exhibit "A"  
SCOPE OF SERVICES  
FM#: 436122-1-52-01

The DEPARTMENT has committed to performing construction on LOCAL GOVERNMENT roadways to add turn lanes as follows as part of the DEPARTMENT'S Project for State Road 405 Spaceport Connector SIS Intersection Improvements:

- Add westbound left turn on Barna Avenue and extend the existing northbound right turn lane on State Road 405
- Add a second northbound left turn lane on Grissom Parkway at State Road 405 and extend the existing eastbound right turn lane on State Road 405
- Construct a French drain system under the northbound lanes of Grissom Parkway

Exhibit "B"  
AGENCY RESOLUTION  
FM#: 436122-1-52-01

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