



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.3.

5/23/2023

Subject:

Florida Department of Transportation Joint Participation Agreement and Memorandum of Agreement for cost-sharing and nutrient credit sharing of the Sykes Creek Zone N Septic-to-Sewer Project.

Fiscal Impact:

Revenue of \$4,990,758.00 to increase the available budget of \$4,176,000.00 from the Save Our Indian River Lagoon Trust Fund (1260) previously approved by the Board.

Dept/Office:

Natural Resources Management

Requested Action:

It is requested that the Board of County Commissioners 1) approve the Joint Participation Agreement and Memorandum of Agreement with Florida Department of Transportation; 2) authorize the Chair to execute these agreements; 3) authorize the County Manager to execute any future amendments; and 4) authorize the County Manager to approve related budget change requests.

Summary Explanation and Background:

The Florida Department of Transportation (FDOT) will reimburse Brevard County for a portion of the Sykes Creek Zone N Septic-to-Sewer project costs in exchange for a commensurate percentage of the nitrogen and phosphorus reduction credits issued by the state for the project. FDOT will use these credits for the SR 528 widening project in lieu of conventional stormwater treatment.

The Indian River Lagoon has been impacted for many years from leaching septic drain fields. The Sykes Creek Zone N Septic-to-Sewer project will eliminate septic leaching from 91 homes on a portion of Merritt Island and permanently connect them to sewer service. This conversion from septic to sewer supports the Banana River Lagoon and North Indian River Lagoon TMDL/BMAPs that require nitrogen load reductions. The project is estimated to reduce total nitrogen loading by at least 2,784 pounds per year. Project design is 100% complete and bid document preparation is underway.

Clerk to the Board Instructions:

Please execute 2 copies of the agreements, one copy for the Clerk's office and one to be returned to Natural Resources for sending to the grant agency.



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

May 24, 2023

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Director

RE: Item F.3., Florida Department of Transportation (FDOT) Joint Participation Agreement (JPA) and Memorandum of Agreement (MOA) for Cost-Sharing and Nutrient Credit Sharing of the Sykes Creek Zone N Septic-to-Sewer Project

The Board of County Commissioners, in regular session on May 23, 2023, executed and approved the FDOT JPA and MOA; authorized the County Manager to execute any future amendments; and authorized the County Manager to approve related Budget Change Requests. Enclosed is the executed FDOT JPA and MOA.

Upon execution by FDOT, please return a fully-executed JPA and MOA to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script, reading "Kimberly Powell", is written over the typed name and title.

Kimberly Powell, Clerk to the Board

/ds

Encls. (2)

cc: County Manager
Finance
Budget

Agency: Brevard County	Fund: Function:	Financial Management No.:
Vendor No.:	Contract Amount: \$	FLAIR Approp:
Contract No:		FLAIR Obj.:
		Org. Code:

JOINT PARTICIPATION AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
BREVARD COUNTY, BOARD OF COUNTY COMMISSIONERS

This Agreement, made and entered into this ____ day of _____, 20____, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION** (hereinafter referred to as the **DEPARTMENT**) and **BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter referred to as the **"COUNTY"**).

WITNESSETH:

WHEREAS, the Parties have been granted specific legislative authority to enter into this Agreement pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the COUNTY by MEMORANDUM OF AGREEMENT No. _____, dated the ____ day of _____, 20____, a copy of which is attached hereto as Exhibit "F" and made a part hereof, has authorized its officers to execute this Agreement on its behalf; and

WHEREAS, the DEPARTMENT is prepared, in accordance with its Five Year Work Program, to undertake the Project described as the SR528 Widening from E of SR3 to Port Canaveral Interchange, in Fiscal Year 2026/2027, said Project being known as FM #407402-4, hereinafter referred to as the "SR528 Project"; and

WHEREAS, the SR528 Project is on the State Highway System, is not revenue producing and is contained in the adopted Five-Year Work Program; and

WHEREAS, the SR528 Project will require a stormwater management permit from the St. Johns River Water Management District, herein referred to as "SJRWMD"; and

WHEREAS, the DEPARTMENT intends to support the SJRWMD's issuance of the stormwater management permit for the SR528 Project through the use of environmental credits it will acquire from the COUNTY. The COUNTY will create the environmental credits through a

Septic to Sewer Project, hereinafter referred to as the “S2S Project”, as described herein below; and

WHEREAS, the DEPARTMENT will reimburse the COUNTY for a portion of the cost of the S2S Project in exchange for the allocation of a percentage of Nitrogen and Phosphorus reduction credits to be utilized by the DEPARTMENT for the SR 528 Project; and

WHEREAS, the implementation of the SR 528 Project is in the interest of both the DEPARTMENT and the COUNTY, and it would be most practical, expeditious, and economical for the DEPARTMENT to acquire the environmental credits created by the COUNTY through the COUNTY’s S2S Project; and

WHEREAS, the intent of this Agreement is to establish the terms and conditions of the DEPARTMENT’s purchase and use of the environmental credits, the value of which is established by the construction costs incurred by the COUNTY in creating the environmental credits.

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the parties agree as follows:

1. TERM

A. The term of this Agreement shall begin upon the date of signature of the last party to sign. The COUNTY will have environmental credits available when the COUNTY completes construction of the “S2S Sykes Creek Zone N” Project by 11/30/2024 which is in accordance with the schedule described in Exhibit “C” attached hereto. If the COUNTY does not have available environmental credits available for purchase within the time period allotted, 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 COUNTY and granted in writing by the DEPARTMENT prior to the expiration of the Agreement. Expiration of this Agreement will be considered termination of the Project.

2. SERVICES AND PERFORMANCES

A. The COUNTY will have available environmental credits for use by the DEPARTMENT based on the Sykes Creek Zone N S2S Project that has been designed by and will be constructed by the COUNTY. The completion of the S2S Project will create certain environmental credits for Total Nitrogen Removal (“TN”) and Total Phosphorus Removal (“TP”). For the DEPARTMENT to provide construction funding for the use of these credits, the credits

have to be recognized by the SJRWMD as credits sufficient to support the issuance of a SJRWMD Stormwater Permit for the SR 528 Project.

B. The COUNTY agrees to undertake the construction of the S2S Project in accordance with all applicable federal, state, and local statutes, rules, and regulations.

C. Upon completion of the Sykes Creek Zone N S2S Project, the COUNTY will reserve a portion of the environmental credits that are available from the S2S Project for the exclusive use by the DEPARTMENT.

D. To the extent necessary, the COUNTY will cooperate with the DEPARTMENT's efforts to utilize the reserved permit credits as a basis for the issuance of a SJRWMD Permit for the DEPARTMENT'S SR 528 Project, FM#407402-4.

E. The portion of the credits to be allocated for the exclusive use by the DEPARTMENT will be based on the percentage of the Total Project Cost paid through reimbursement by the DEPARTMENT to the COUNTY. For sake of clarity, if the DEPARTMENT'S reimbursement to the COUNTY for Construction costs and CEI costs equals 60% of the Total Project Cost, then the DEPARTMENT will be allocated 60% of the TN and TP credits that are available from the S2S Project. The mix of TN and TP credits that are allocated to the DEPARTMENT will be agreed upon by the COUNTY and the DEPARTMENT. The Total Project Costs will be based on the sum total of [Design Costs] + [Construction Costs] + [CEI Costs]. The DEPARTMENT acknowledges that the COUNTY has nearly completed the design and the total design costs are anticipated to be \$788,881.52 and that the COUNTY has secured a grant of \$2,603,016.00 to partially fund the construction of the S2S Project. The estimated remaining Construction and CEI Costs to be partially reimbursed by the DEPARTMENT equals \$8,755,522. Based on the known amounts to be contributed by the COUNTY (design costs and grant funding) and the estimated remaining cost of the S2S Project, the allocation of environmental credits would be 52% to the DEPARTMENT and 48% to the COUNTY.

F. Upon approval by the SJRWMD to issue the Stormwater management permit to the DEPARTMENT on the basis of use of the Sykes Creek Zone N S2S credits, the DEPARTMENT will reimburse the COUNTY funds equal to the eligible cost of construction to complete the Sykes Creek Zone N S2S Project up to a maximum limiting amount of \$4,990,758.00 (Four Million, Nine Hundred, Ninety Thousand, Seven Hundred, Fifty-eight Dollars and no/100). The COUNTY

will convey, transfer, or otherwise assign an agreed percentage of the TN and TP credits created by the Sykes Creek Zone N S2S Project to the DEPARTMENT. Purchase of the credits will be as described herein below.

G. The COUNTY agrees to reserve to the DEPARTMENT a percentage of all of the credits created by the Sykes Creek Zone N S2S Project for exclusive use by the DEPARTMENT and to sign any documents reasonably requested by the SJRWMD and DEPARTMENT to finalize the issuance of the SJRWMD Permit to DEPARTMENT.

3. COMPENSATION AND REIMBURSEMENT

A. District Cost: The total estimated District cost for the necessary TN and TP credits produced by the Sykes Creek Zone N S2S Project is \$4,990,758 (Four Million, Nine Hundred, Ninety Thousand, Seven Hundred, Fifty-eight Dollars and no/100). Contingent on final approval by the SJRWMD of the use of the TN and TP credits generated by the S2S Sykes Creek Zone N to support the SJRWMD issuance of a stormwater management permit to the DEPARTMENT for the SR 528 Project, and in accordance with the terms and conditions of this Joint Participation Agreement, the DEPARTMENT agrees to reimburse the COUNTY for the construction costs of the Sykes Creek Zone N S2S Project in an amount not to exceed \$4,990,758.00. This cost of purchase by the DEPARTMENT is based on the Method of Compensation, Exhibit "B" attached hereto.

B. DEPARTMENT Participation: The DEPARTMENT agrees to purchase the allocated S2S TN and TP credits in an amount not to exceed \$4,990,758.00 (Four Million, Nine Hundred, Ninety Thousand, Seven Hundred, Fifty-eight Dollars and no/100) The funding for this Project is contingent upon annual appropriation by the Florida Legislature.

C. Upon final approval by the SJRWMD of use of the TN and TP credits to support the issuance of a stormwater management permit to the DEPARTMENT for the SR 528 Project, an invoice shall be submitted by the COUNTY to the DEPARTMENT in detail sufficient for a proper pre-audit and post-audit thereof, based on the quantifiable, measurable, and verifiable deliverables as established in Exhibit "A", Scope of Services. Deliverables must be received and accepted in writing by the Department's Project Manager or designee prior to payment.

D. There shall be no reimbursement for travel expenses under this Agreement.

E. 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 COUNTY is unsatisfactory, the DEPARTMENT shall notify the COUNTY of the deficiency to be corrected, which correction shall be made within a timeframe to be specified by the DEPARTMENT. The COUNTY shall, within five (5) days after notice from the DEPARTMENT, provide the DEPARTMENT with a corrective action plan describing how the COUNTY 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 COUNTY shall be assessed a non-performance retainage equivalent to ten percent (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 COUNTY resolves the deficiency. If the deficiency is subsequently resolved, the COUNTY may bill the DEPARTMENT for the retained amount during the next billing period. If the COUNTY is unable to resolve the deficiency, the funds may be forfeited at the end of the Agreement term.

i) All costs charged to the Project by the COUNTY shall be supported by detailed invoices, proof of payments, contracts or vouchers evidencing in sufficient detail the nature and propriety of the charges.

F. The COUNTY 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 twenty (20) working days, upon receipt of an invoice. The DEPARTMENT has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

G. If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount to the COUNTY. Interest penalties of less than one dollar (\$1.00) will not be enforced unless the COUNTY requests payment. Invoices which have to be returned to the COUNTY because of COUNTY 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.

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

I. Records of costs incurred under 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 (5) 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 COUNTY'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. Any discrepancies revealed by any such audit shall be resolved by a corrected final billing from the COUNTY to the DEPARTMENT.

J. The contractor/consultant/vendor agrees 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.

K. In the event this Agreement is in excess of \$25,000.00 (TWENTY-FIVE THOUSAND DOLLARS AND NO/100) and a term for a period of more than one (1) year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated as follows:

“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 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 \$25,000.00 and which have a term for a period of more than one (1) year.”

L. The DEPARTMENT’S performance and obligation to pay under this contract is contingent upon an annual appropriation by the Florida Legislature. The parties agree that in the event funds are not appropriated to the DEPARTMENT for the Project, this Agreement may be terminated, which shall be effective upon the DEPARTMENT giving notice to the COUNTY to that effect.

M. If the DEPARTMENT determines that the performance of the COUNTY is not satisfactory, the DEPARTMENT shall have the option of (a) immediately terminating the Agreement, or (b) notifying the COUNTY of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or (c) taking whatever action is deemed appropriate by the DEPARTMENT.

4. COMPLIANCE WITH LAWS

A. The COUNTY shall 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 COUNTY in conjunction with this Agreement. Failure by the COUNTY to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the DEPARTMENT.

B. The COUNTY shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof. The COUNTY shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.

C. No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch, or a state agency.

D. The COUNTY and the DEPARTMENT agree that the COUNTY, its employees, and subcontractors are not agents of the DEPARTMENT as a result of this Contract.

5. TERMINATION AND DEFAULT

A. This Agreement may be canceled by the DEPARTMENT in whole or in part with thirty (30) days written notice to COUNTY at any time the interest of the DEPARTMENT requires such termination. The DEPARTMENT also reserves the right to seek termination or cancellation of this Agreement in the event the COUNTY shall be placed in either voluntary or involuntary

bankruptcy. The DEPARTMENT further reserves the right to terminate or cancel this Agreement in the event an assignment is made for the benefit of creditors.

B. If the DEPARTMENT determines that the performance of the COUNTY is not satisfactory, the DEPARTMENT shall have the option of (a) immediately terminating the Agreement, or (b) notifying the COUNTY of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or (c) taking whatever action is deemed appropriate by the DEPARTMENT.

C. If the DEPARTMENT requires termination of the Agreement for reasons other than unsatisfactory performance of the COUNTY, the DEPARTMENT shall notify the COUNTY of such termination, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

D. This Agreement may be canceled by the COUNTY in whole or in part with thirty (30) days written notice to DEPARTMENT at any time the interest of the COUNTY requires such termination.

E. If the Agreement is terminated before performance is completed, the COUNTY shall be paid only for that work satisfactorily performed for which costs can be substantiated. TN and TP credits, up to the percent funded by the DEPARTMENT through reimbursement of project costs to the COUNTY, will become the property of the DEPARTMENT and will be turned over promptly by the COUNTY.

6. MISCELLANEOUS

A. In no event shall the making by the DEPARTMENT of any payment to the COUNTY 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 COUNTY, 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.

B. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be

severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

C. This Agreement shall be effective upon execution by both parties and shall continue in effect and be binding on the parties until the Project is completed, any subsequent litigation is complete and terminated, final costs are known, and legislatively appropriated reimbursements, if approved, are made by the DEPARTMENT.

D. PUBLIC ENTITY CRIME INFORMATION AND ANTI-DISCRIMINATION STATEMENT: 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, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. An entity or affiliate who has been placed on the discriminatory vendor list 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.

E. The DEPARTMENT and the COUNTY acknowledge and agree to the following:

i) The COUNTY shall utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the COUNTY during the term of the contract; and

ii) The COUNTY shall expressly require any contractors 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 contractor/subcontractor during the contract term.

F. All notices required pursuant to the terms hereof shall be sent by First Class United States Mail. Unless prior written notification of an alternate address for notices is sent, all notices shall be sent to the following addresses:

Points of Contact:

DEPARTMENT

Casey Lyon Program Coordinator
719 South Woodland Boulevard, M.S. 4-520
DeLand, Florida 32720-6834
PH: 386-943-XXXX
Casey.Lyon@dot.state.fl.us

COUNTY

Brevard County Natural Resources Management Department
2725 Judge Fran Jamieson Way
A-219
Viera, FL 32940
PH: 321-633-2016
Anthony.Gubler@brevardfl.gov

IN WITNESS WHEREOF, the COUNTY has executed this Agreement this _____ day of _____, 2022, and the DEPARTMENT has executed this Agreement this _____ day of _____, 2022.

BREVARD COUNTY, BOARD COUNTY COMMISSIONERS

By: 

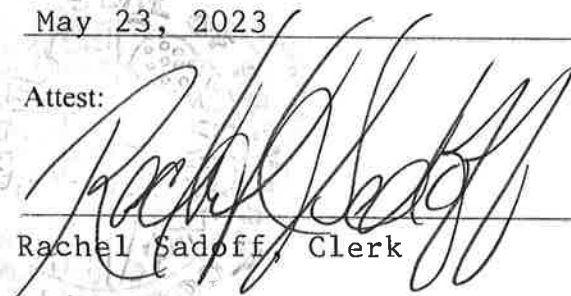
Name: Rita Pritchett

Title: Chair

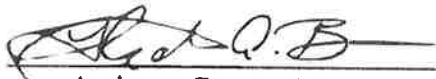
As approved by the Board on:

May 23, 2023

Attest:


Rachel Sadoff, Clerk

Legal Review:



Assistant County Attorney

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

Name: C. Jack Adkins

Title: Director of Transportation Development

Attest:

Executive Secretary

Legal Review:

Financial Provisions Approval by
the Office of the Comptroller on:

Authorization Received from the Office of
the Comptroller as to Availability of Funds:

Exhibit “A”

SCOPE OF SERVICES **Financial Management Number: 407402-4**

Project Description and Limits of Construction:

Septic-to-Sewer conversion project for 86 homes off North Banana River Drive, Merritt Island, Brevard County. Lat/Long (28.3841, -80.6664). The project consists of constructing a vacuum pump house and sewer system on North Banana River Drive, Bayside Street, Wavecrest Street, South Harbor Drive, and Shore Drive. The project will provide connection points for each buildable lot in the proposed area and mandate connection for all properties.

Deliverables:

Construction: The County will construct sewer infrastructure in accordance with the construction contract documents. The County will submit 1) a copy of the final design; 2) invoices, proof of payments, contracts or vouchers evidencing in sufficient detail the nature and propriety of the charges; and 3) a signed Engineer's Certification of Payment Request.

Connection to Central Sewer: Deliverables: The County will oversee the septic systems abandonments and connection of approximately 91 single family residences to a central sanitary sewer system for wastewater treatment by the Sykes Creek Regional Wastewater Treatment Facility (FLA102695). Private property owners will be responsible for the permitted abandonment and connection to sewer and request reimbursement of costs from the County. The County will submit: 1) a list of addresses and types of the properties connected; and 2) proof of connection for each property, as evidenced by Utility Inspection Reports and/or copies of invoices for the connections by a licensed plumber, utility contractor, or building contractor.

Exhibit “B”

METHOD OF COMPENSATION

Financial Management Number: 407402-4

For satisfactory completion of all services detailed in Exhibit “A” (Scope of Work) of this Agreement, the DEPARTMENT will reimburse the COUNTY an amount not to exceed **\$4,990,758.00 (Four Million, Nine Hundred, Ninety Thousand, Seven Hundred, Fifty-eight Dollars and No/100)** for actual Construction and CEI costs incurred.

Contingent on final approval by the SJRWMD of the use of TN and TP credits generated by the S2S Sykes Creek Zone N Project, the COUNTY may receive progress payments for actual costs incurred for deliverables based on a percentage of services that have been completed, approved, and accepted to the satisfaction of the DEPARTMENT when properly supported by detailed invoices and acceptable evidence of payment. The final balance due under this Agreement will be reimbursed upon the completion of all Project services, receipt of final construction cost documentation and proper submission of a detailed invoice and when the Project has been inspected, approved, and accepted to the satisfaction of the DEPARTMENT in writing.

Exhibit “C”

ESTIMATED PROJECT PRODUCTION SCHEDULE
Financial Management Number: 407402-4

Give NTP	
Earliest Construction Start	
Latest Construction Finish	
Construction Contract Closeout	
Final Invoice and Closeout Documentation to the Department	

Exhibit “F”

MEMORANDUM OF AGREEMENT
Financial Management Number: 407402-4

**MEMORANDUM OF AGREEMENT BETWEEN THE
BOARD OF COUNTY COMMISSIONERS, BREVARD COUNTY,
AND
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**

This Memorandum of Agreement (hereinafter "Agreement") is made and entered into as of the day and year last set forth below by and between the BOARD OF COUNTY COMMISSIONERS, BREVARD COUNTY, a political subdivision of the State of Florida (hereinafter "COUNTY"), and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter "FDOT").

RECITALS

WHEREAS, FDOT is currently proposing to widen State Road (SR) 528 from a four-lane to a six-lane road, located in Brevard County, Florida from East of State Road 3 to the Port Canaveral Interchange (George King Boulevard) (Financial Project No. 407402-4), herein referred to as "SR 528 PROJECT"; and

WHEREAS, the SR 528 PROJECT will require stormwater features to account for the additional impervious areas; and

WHEREAS, the FDOT prepared a Pond Siting Report in 2006 to assess the SR 528 PROJECT's feasibility and land requirements resulting from permitting and drainage considerations, and presented an evaluation of stormwater recommendations and alternatives for the SR 528 PROJECT; and

WHEREAS, the FDOT updated the Pond Siting Report in 2017 to evaluate the potential effect of project development on the conclusions and recommendations in the 2006 Pond Siting Report, as well as to identify new opportunities for stormwater management pond locations; and

WHEREAS, an Environmental Look Around (hereinafter "ELA") was performed for the PROJECT in which alternative treatment approaches were examined with various stakeholders, including the COUNTY; and

WHEREAS, the ELA involved calculating Total Nitrogen (TN) and Total Phosphorous (TP) loading to the lagoon for the SR 528 PROJECT and through the use of various Best Management Practices, FDOT was able to demonstrate a net improvement for both TN and TP could be provided; and

WHEREAS, these net improvements were significantly greater than what could be provided by stormwater management ponds; and

WHEREAS, a joint participation project with the COUNTY has been identified to reduce Total Nitrogen and Total Phosphorus into the Banana River and reduce wetland impacts; and

WHEREAS, in lieu of moving forward with conventional stormwater treatment, FDOT could partially fund a septic to sewer project for the COUNTY, identified by the COUNTY'S Save Our Indian River Lagoon Project Plan, and agreed to by FDOT, and bank a share of the nitrogen and phosphorus benefits based on the percentage of FDOT cost share.

NOW, THEREFORE, in consideration of the recitals above, the parties agree as follows:

1. Recitals, the recitals set forth hereinabove are true and correct, and such recitals, including Exhibits "A", are incorporated into this Agreement.
2. FDOT proposes utilizing Nitrogen and Phosphorus Credits from COUNTY'S Septic to Sewer Project

2.1 FDOT permits Project. The FDOT will proceed with environmental resource permit applications for the SR 528 PROJECT with the St. Johns River Water Management District (SJRWMD) relying on the nitrogen and phosphorus removal amounts from the COUNTY'S septic to sewer project. FDOT recognizes it must meet permitting requirements for ERP.

2.2 Commitment. Once FDOT receives the SJRWMD permit, FDOT will enter into a Joint Participation Agreement (see Exhibit "A") with the COUNTY to provide for reimbursement to the COUNTY for a portion of the cost of construction of the County's septic to sewer project.

2.3 Other Documents. Such other documents and instruments as are contemplated hereunder or as may be reasonably required by and necessary to consummate the conveyance of nitrogen and phosphorus credits.

3. Payment to for right to use COUNTY's Project

3.1 FDOT'S payment to the COUNTY: In accordance with the terms of a Joint Participation Agreement, FDOT agrees to reimburse the COUNTY for a portion of the cost of construction upon SJRWMD permit issuance for the septic to sewer conversion project described in Exhibit "A".

3.2 Contingency: FDOT's payment is contingent upon the SJRWMD issuing a permit for the SR 528 PROJECT that utilizes a portion of the nitrogen and phosphorus credits from the COUNTY's septic to sewer project.

3.3 Joint Participation Agreement. FDOT's partial reimbursement of the COUNTY's cost of constructing the septic to sewer project will be made on the basis of a Joint Participation Agreement, the form of which is attached hereto as Exhibit "B", which will be executed when the FDOT funds FDOT'S Work Program in FY 23.

4. General Commitments

4.1 Survivability: Upon payment as described herein, the COUNTY will consider the agreed percentage of nitrogen and phosphorus credits permitted with the COUNTY's septic to sewer project to be used exclusively by the FDOT, in perpetuity.

5. Appropriation Contingency


5.1 Contingency. FDOT, 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. FDOT shall require a statement from the comptroller of FDOT 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 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid in succeeding fiscal years. Accordingly, FDOT's performance and obligation to pay under this Agreement are contingent upon an annual appropriation by the Legislature.

The remainder of this page is intentionally left blank.

APPROVAL OF AGREEMENT

The undersigned have reviewed and approved this Agreement and it becomes effective on the last date noted below.

Attest:


Rachel Sadoff, Clerk

As approved by the Board on
May 23, 2023.

**BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY**

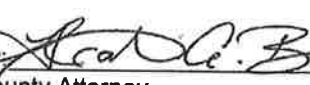
By: 

Rita Pritchett
Print/Type Name

As: Chair
Brevard County

Date: May 23, 2023

Legal Review:

By: 
County Attorney

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

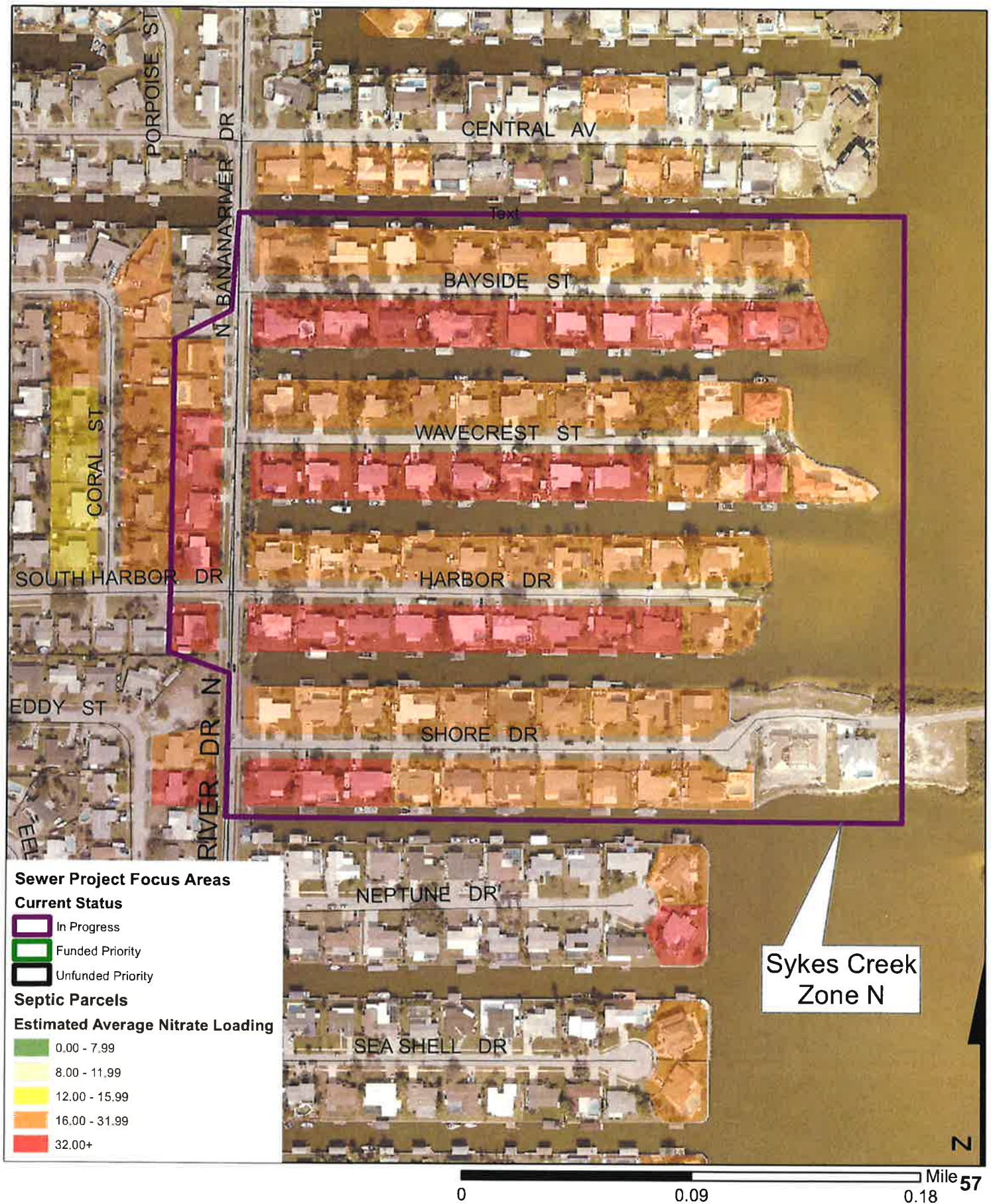
Jared Perdue
District Secretary, District Five

Date: _____

Legal Review:

By: _____
FDOT Attorney

Sykes Creek Zone N Septic-to-Sewer Project



**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: Florida Department of Transportation		2. Amount:
3. Fund/Account #: 1260	4. Department Name: Natural Resources	
5. Contract Description: Joint Participation Agreement - Sykes Creek Zone N Septic-to-Sewer Project		
6. Contract Monitor: Anthony Gubler		8. Contract Type: INTERGOVT/STATE
7. Dept/Office Director: Virginia Barker		
9. Type of Procurement: Other		

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

☒
☐

Purchasing

☐
☐

Risk Management

☐
☐

County Attorney

☐
☐

SECTION III - CONTRACTS MANAGEMENT DATABASE CHECKLIST

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

☒
☐

Gubler, Anthony

Digitally signed by Gubler, Anthony

Date: 2023.05.04 16:23:04 -04'00'

Purchasing

☒
☐

Wall, Katherine

Digitally signed by Wall, Katherine

Date: 2023.05.15 08:41:33 -04'00'

Risk Management

☒
☐

Summer & Wyllie-Viit

Digitally signed by Wyllie-Viit, Summer

Date: 2023.05.12 15:30:40 -04'00'

County Attorney

☒
☐

Balser, Heather

Digitally signed by Balser, Heather

Date: 2023.05.16 12:08:28 -04'00'

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
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, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing 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"/>