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**AGENDA REPORT  
May 22, 2018**

**Approval Re: Highway Maintenance Memorandum of Agreement and Resolution with the Florida Department of Transportation for the State Road 520 Corridor - Districts 1 and 2**



**AGENDA REPORT  
May 22, 2018**

**Approval Re: Highway Maintenance Memorandum of Agreement and Resolution with the Florida Department of Transportation for the State Road 520 Corridor - Districts 1 and 2**

**SUBJECT:**

Approval Re: Highway Maintenance Memorandum of Agreement and Resolution with the Florida Department of Transportation (FDOT) for the State Road 520 Corridor - Districts 1 and 2

**FISCAL IMPACT:**

FY 18/19 \$32,340.00 Annual Reimbursement from FDOT to Brevard County, which is a \$22,982 Reduction Annually, to offset the maintenance costs of the State Road 520 Corridor.

**DEPT/OFFICE:**

Public Works

**REQUESTED ACTION:**

It is requested that the Board of County Commissioners approve the Highway Maintenance Memorandum of Agreement and Resolution with the Florida Department of Transportation (FDOT) for portions of the State Road 520 corridor; authorize the Chair to execute the Agreement and Resolution; authorize the County Manager or designee to execute Agreement renewals. It is further requested that the Board approve any necessary Budget Change Requests.

**SUMMARY EXPLANATION and BACKGROUND:**

During the 1990s, Brevard County received enhancement funding from FDOT to landscape certain roadside areas and medians on the State Road 520 corridor from I-95

to the Cocoa city limits and from the east end of the Hubert Humphrey Bridge to the west end of the Banana River West Relief Bridge in Merritt Island. Funding for these improvements was provided by FDOT with the condition that Brevard County would continue to maintain the landscape enhancements and the remainder of the associated road right-of-way. Under the current Memorandum of Agreement (MOA), FDOT provides annual funding in an amount of \$55,322.00 to Brevard County to offset the routine maintenance costs. The current MOA expires on May 31, 2018.

As the MOA expiration date was approaching, FDOT informed the County of a significant reduction in the reimbursement amount for the highway maintenance of the State Road 520 corridor and the Park & Ride facility on State Road 518. The reduction was due to a change in the way FDOT calculated the maintenance costs of the improved right-of-way. Given this significant reduction, staff requested FDOT to re-evaluate the reimbursement amount. Additionally, staff requested the removal of the maintenance of the Park & Ride facility on SR 518 from the Agreement. FDOT agreed to maintain the Park and Ride, so that facility will be deleted from the MOA. FDOT recently delivered the MOA to the County for execution. FDOT has offered to provide \$32,340.00 annually to the County towards the maintenance of the State Road 520 corridor.

The term of the Agreement commences on the effective date of the Department's Notice to Proceed to the County and will continue for a period of three (3) years. The Agreement may be renewed for a period that may not exceed one three (3) year term.

**CLERK TO THE BOARD INSTRUCTIONS:**

Please return Highway Maintenance Agreement FPN 244706-2-78-02 (2 originals) and Resolution (2 originals) to Public Works for further execution by FDOT.

**ATTACHMENTS:**

**Description**

- **Highway Maintenance MOA State Road 520 Corridor**

**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> Public Works
<b>4. Contract Description:</b> MOA with FDOT re: SR 520 Right-of-Way Maintenance AS694-R0	
<b>5. Contract Monitor:</b> Jeanette Scott	<b>7. Contract Type:</b>
<b>6. Dept/Office Director:</b> Andrew J. Holmes, P.E., Director	GRANT

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

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</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>DATE</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 checked="" type="checkbox"/>	<input type="checkbox"/>	<i>Dis. [Signature]</i>	4/27/18

**SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST**

<b>CM DATABASE REQUIRED FIELDS</b>	<b>Complete ✓</b>
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and 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**

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2. Fund/Account #:	3. Department Name: Public Works
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<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</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>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>Jimmy Thomas</i>	5/9/18
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>Dianna #1</i>	4/27/18

**SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST**

<u>CM DATABASE REQUIRED FIELDS</u>	<u>Complete</u> ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
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"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>



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

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

May 23, 2018

MEMORANDUM

TO: Andy Holmes, Public Works Director

RE: Item II.A.11., Resolution and Highway Maintenance Memorandum of Agreement with the Florida Department of Transportation (FDOT) for the State Road 520 Corridor

The Board of County Commissioners, in regular session on May 22, 2018, adopted Resolution No. 18-073; executed and approved the Highway Maintenance Memorandum of Agreement with FDOT for portions of the S.R. 520 corridor; authorized the County Manager, or his designee, to execute Agreement renewals; and approved any necessary budget change requests. Enclosed are two fully-executed Resolutions and two executed Agreements for your action.

**Upon execution by the Director of Transportation Operations, please return a fully-executed 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

/ds

Encls. (4)

cc: Contracts Administration  
County Manager  
Finance  
Budget

FLORIDA DEPARTMENT OF TRANSPORTATION  
HIGHWAY MAINTENANCE MEMORANDUM OF AGREEMENT

REV. 3/14/2018

CONTRACT NO.: AS694-R0

FINANCIAL PROJECT NO.:244706-2-78-02

This AGREEMENT, entered this 13<sup>th</sup> day of JUNE, 2018, by and between the Florida Department of Transportation, a component agency of the State of Florida, hereinafter called the **DEPARTMENT** and Brevard County, a political subdivision existing under the laws of the State of Florida, hereinafter called the **LOCAL GOVERNMENT**.

RECITALS

WHEREAS, as part of the continual updating of the State of Florida Highway System, the **DEPARTMENT**, for the purpose of safety and functionality, has constructed roadway, roadside areas, and medians on that part of the State Highway system within the limits of the **LOCAL GOVERNMENT** or adjacent to;

WHEREAS, the **LOCAL GOVERNMENT** acknowledges that there is mutual benefit in effectively maintaining these areas and the **LOCAL GOVERNMENT** is of the opinion that said roadway, roadside areas and median strips shall be attractively maintained;

WHEREAS, the parties hereto mutually recognize the need for entering into an Agreement designating and setting forth the responsibilities of each party;

WHEREAS, the **LOCAL GOVERNMENT**, by Resolution 2018-073 dated the 22<sup>nd</sup> day of MAY, 2018 attached hereto as **EXHIBIT "A"**, which by reference hereto shall become a part hereof, desires to enter into this Agreement and authorizes its officers to do so.

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

PROVISIONS

- 1) The **LOCAL GOVERNMENT** shall be responsible for routine maintenance activities of all roadway features within the **DEPARTMENT**'s right of way having limits described in **EXHIBIT "B"**, or subsequent amended limits mutually agreed upon in writing by both parties. For the purpose of this Agreement, the maintenance activities to be performed by the **LOCAL GOVERNMENT** are defined in **EXHIBIT "C"**, or as defined by amended definitions agreed upon in writing by both parties.
- 2) The **LOCAL GOVERNMENT** shall perform the maintenance activities as described in **EXHIBIT "C"** in accordance with **DEPARTMENT** publications:
  - a) MRP Handbook, latest edition, which by reference hereto shall become a part hereof. The activities shall be performed in a manner that results in a minimum MRP score of 80.
  - b) Design Standards, current edition, which by reference hereto shall become a part hereof.

CONTRACT NO.: AS694-R0

FINANCIAL PROJECT NO.: 244706-2-78-02

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- 3) The **LOCAL GOVERNMENT** shall be responsible for monitoring maintenance operations and the maintenance of traffic (“MOT”) throughout the term of the Agreement in accordance with the latest edition of FDOT Standard Specifications, Section 102. The **LOCAL GOVERNMENT** is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of FDOT Standard Plans, Index 102-600 series.
- 4) The **DEPARTMENT** may, at its discretion, perform periodic inspections of any or all locations. If it is determined that any of the roadway features defined in **EXHIBIT “C”** are not being maintained as required by this Agreement, the **DEPARTMENT** will issue a notice of such deficiency to the **LOCAL GOVERNMENT**’s point of contact by email or certified mail. The **LOCAL GOVERNMENT** shall have thirty (30) days to correct the deficiency (ies) and to notify the **DEPARTMENT** by email or certified mail, that the deficiency (ies) has been corrected. If said deficiency or deficiencies are not corrected within this time period the **DEPARTMENT** may at its option, proceed as follows:
  - a) Maintain the roadway features declared deficient with the **DEPARTMENT** or a Contractor's material, equipment and personnel. The actual cost for such work will be deducted from payment to the **LOCAL GOVERNMENT**; or
  - b) Terminate this Agreement in accordance with the provisions of this Agreement.
- 5) In the event of a Governor Declared Emergency, a natural disaster or significant occurrence (hurricane, tornado, vehicle accident, hazardous waste spills, etc.) the **LOCAL GOVERNMENT** and the **DEPARTMENT** will cooperate and coordinate the use of their respective resources to provide for clean up, removal, and disposal of debris or other substances from the **DEPARTMENT**’s right of way described in **EXHIBIT “B”** or any amended limits mutually agreed upon in writing by both parties hereto. The **DEPARTMENT** will not deduct any payment to the **LOCAL GOVERNMENT**, costs for impairment of performance of any activity or part thereof defined in **EXHIBIT “C”**, as a result of such event and the redirection of **LOCAL GOVERNMENT** forces towards fulfillment of the responsibility under this article. This paragraph shall not be interpreted to reduce the **LOCAL GOVERNMENT**’s right to compensation or reimbursement from any other sources (i.e.: FEMA) for the debris removal or other activities of the **LOCAL GOVERNMENT** subsequent to a natural disaster or accident.
- 6) During the term of this Agreement, the **DEPARTMENT** may from time to time engage in transportation projects on the roads covered by this Agreement. Some of these projects may involve the **DEPARTMENT**’s construction contractor temporarily assuming maintenance responsibility for the limits of the project. In that event, the **DEPARTMENT** will notify the **LOCAL GOVERNMENT** of the limits of the project and the time frame for that project. During that time and for those limits, the **LOCAL GOVERNMENT** may be released from its obligation to perform maintenance on those roads and the compensation to be paid under this Agreement may be reduced for the duration of the construction project. The reduction in compensation shall be based on the formula used to initially compute the amount of compensation under this Agreement. The **LOCAL GOVERNMENT** will be notified of the amount of the reduction as part of the aforementioned notice.

## TERM

- 1) After this Agreement has been executed by the parties, the **DEPARTMENT** will issue a Notice to Proceed to the **LOCAL GOVERNMENT** which may be sent by electronic mail at the **DEPARTMENT's discretion**. The term of this Agreement commences on the effective date of the Notice to Proceed and will continue for a period of three (3) years from the effective date on the Notice to Proceed. This Agreement may be renewed for a period that may not exceed one three (3) year term.
- 2) A renewal may be made at the discretion of the **DEPARTMENT** and will be subject to the same terms and conditions set forth in this Agreement. A renewal shall be contingent upon satisfactory performance evaluations by the **DEPARTMENT** and subject to the availability of funds. Renewals must be mutually agreed upon by both parties and in writing and must be executed prior to the expiration date of its preceding term.
- 3) In the event this Agreement extends beyond the **DEPARTMENT's** current Fiscal year that begins July 1 of each year and ends June 30 of each succeeding year, the **LOCAL GOVERNMENT** and the **DEPARTMENT** mutually agree that the State of Florida's performance and obligation to pay under this contract is contingent upon and annual appropriation by the Legislature. In addition, Section 339.135(6)(a), Florida Statutes, is incorporated by reference, and is set forth herein below as follows:

*F.S. "339.135(6)(a)" - The Department, during any Fiscal Year, shall not expend money, incur any liability, or enter into any Contract which, by its terms, involves any expenditure of money in excess of the amounts budgeted as available for expenditure during such Fiscal Year. Any Contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid under such contract. The Department shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such Contract or any other binding commitment of funds. Nothing herein shall prevent the making of Contracts for periods exceeding one (1) year, but any Contract so made shall be executory only for the value of services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all Contracts of the Department which are for an amount in excess of \$25,000 and having a term for a period of more than one year.*

## COMPENSATION

- 1) The **DEPARTMENT** agrees to pay the **LOCAL GOVERNMENT**, following a Notice to Proceed, compensation for the cost of maintenance as described in the Provisions Section of this Agreement. The payment will be for the amount of \$8,085.00 per quarter, equating to \$32,340.00 per year for the duration of the term.
- 2) Payment shall be made only after receipt of goods and services as provided in Section 215.422, Florida Statutes. Detailed quarterly invoices and any associated documents, including MMS breakdown of all activities, shall be submitted to the **DEPARTMENT's** Project Administrator: Rubie Watne. Delivery shall be effective upon receipt of a proper quarterly invoice and any required associated documents.
  - a) Upon receipt, the **DEPARTMENT** has seven (7) working days to inspect and approve the goods and services, unless otherwise specified herein. The **DEPARTMENT** has twenty (20) days to deliver a request for payment (voucher) to the Department of Finance. The twenty (20) days are

- measured from the latter of the date the invoice is received, at the location stated herein, or the goods and services are received, inspected and approved.
- b) Any penalty for delay in payment shall be in accordance with Section 215.422, Florida Statutes. Section 215.422(5), Florida Statutes, provides that all purchasing Agreements between a State agency and a vendor, applicable to this section, shall include a statement of the vendor's rights and the State's responsibilities under this section. The vendor's rights shall include being provided with the name and telephone number of the Vendor Ombudsman within the Department of Financial Services.
  - c) If payment is not available within forty (40) days, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, will be due and payable, in addition to the invoice amount, to the **LOCAL GOVERNMENT**. Interest penalties of less than one (\$1.00) dollar shall not be enforced unless the **LOCAL GOVERNMENT** requests payment. Invoices, which have been returned to the **LOCAL GOVERNMENT** because of **LOCAL GOVERNMENT** preparation errors, will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is received by the **DEPARTMENT**.
  - d) A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from the **DEPARTMENT**. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Department of Financial Services Consumer Hotline, 1-800-342-2762.
- 3) Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.
  - 4) Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request of the **DEPARTMENT** at all times during the period of this Agreement and for three (3) 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 **LOCAL GOVERNMENT's** general accounting records and project records, together with supporting documents and records of the **LOCAL GOVERNMENT**, all subcontractors performing work, and all other records of the **LOCAL GOVERNMENT** and subcontractors considered necessary by the **DEPARTMENT** for a proper audit of costs.

#### CONDITIONS FOR TERMINATION

- 1) This Agreement or any part thereof is subject to termination at the discretion of the **DEPARTMENT** under any of the following conditions:
  - a) In the event the Legislature fails to make an annual appropriation to pay for the **LOCAL GOVERNMENT's** services to be performed hereunder.
  - b) The **LOCAL GOVERNMENT** has not complied with the provisions of this Agreement as described herein, or has demonstrated a pattern of repeated non-compliance.
  - c) The **DEPARTMENT** determines that the Agreement is no longer feasible.
- 2) Either party may terminate this Agreement in writing with thirty (30) days' notice.

## NOTICES AND POINTS OF CONTACT

All correspondence regarding this Agreement shall be directed to the following points of contact:

a) For the **DEPARTMENT**:

**Title: Rubie Watne**

Name: Contract Coordinator I

Address: 555 Camp Road, Cocoa, FL 32927

Telephone: 321-634-6069

Email: rubie.watne@dot.state.fl.us

b) For the **LOCAL GOVERNMENT**:

**Title: Landscape Operations**

Name: Jason Kelly

Address: 2725 Judge Fran Jamieson Way, Viera, FL 32940

Telephone: 321-626-6175

Email: jason.kelly@brevardfl.gov

## ADDITIONAL PROVISIONS AND LEGAL REQUIREMENTS

- 1) **LEGAL REQUIREMENTS.** This Agreement is executed and entered into in the State of Florida and will be construed, performed, and enforced in all respects in strict conformity with local, state, and federal laws, rules, and regulations.
  - a) If any term or provision of the Agreement is found to be illegal or unenforceable, the remainder of the Agreement will remain in full force and effect and such term or provision will be deemed stricken.
  - b) The **LOCAL GOVERNMENT** 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 **LOCAL GOVERNMENT** in conjunction with this Agreement. Failure by the **LOCAL GOVERNMENT** to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the **DEPARTMENT**.
  - c) The **LOCAL GOVERNMENT** and the **DEPARTMENT** agree that the **LOCAL GOVERNMENT**, its employees, contractors, subcontractors, consultants, and sub consultants are not agents of the **DEPARTMENT** as a result of this Agreement.
  - d) The **LOCAL GOVERNMENT** shall not cause any liens or encumbrances to attach to any portion of the **DEPARTMENT**'s right-of-way.
  - e) Nothing herein shall be construed as a waiver of either party's sovereign immunity.
  
- 2) **PUBLIC ENTITY CRIME.** The **LOCAL GOVERNMENT** affirms that it is aware of the provisions of Section 287.133(2)(a), Florida Statutes. 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 thirty six (36) months from the date of being placed on the convicted vendor list. The **LOCAL GOVERNMENT** agrees that it shall not violate Section 287.133(2)(a), Florida Statutes, and further acknowledges and agrees that any conviction during the term of this Agreement may result in the termination of this Agreement.

- 3) **UNAUTHORIZED ALIENS.** The **DEPARTMENT** will consider the employment of unauthorized aliens, by any contractor or subcontractor, as described by Section 274A(e) of the Immigration and Nationalization Act, cause for termination of this Agreement.
- 4) **NON-DISCRIMINATION.** The **LOCAL GOVERNMENT** will not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, ethnicity, race, religious belief, disability, national origin, or sex. The **LOCAL GOVERNMENT** shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management. The **LOCAL GOVERNMENT** shall insert similar provisions in all contracts and subcontracts for services by this Agreement.
- 5) **DISCRIMINATORY VENDOR LIST.** The **LOCAL GOVERNMENT** affirms that it is aware of the provisions of Section 287.134(2)(a), Florida Statutes. 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. The **LOCAL GOVERNMENT** further agrees that it shall not violate Section 287.134(2)(a), Florida Statutes, and acknowledges and agrees that placement on the list during the term of this Agreement may result in the termination of this Agreement.
- 6) **ATTORNEY FEES.** Each Party shall bear its own attorney's fees and costs.
- 7) **TRAVEL.** There shall be no reimbursement for travel expenses under this Agreement.
- 8) **PRESERVATION OF REMEDIES.** No delay or omission to exercise any right, power, or remedy accruing to either Party upon breach or default by either Party under this Agreement, will impair any such right, power or remedy of either party; nor will such delay or omission be construed as a waiver of any breach or default or any similar breach or default.
- 9) **MODIFICATION.** This Agreement may not be modified unless done so in a writing executed by both Parties to this Agreement.
- 10) **NON-ASSIGNMENT.** The **LOCAL GOVERNMENT** may not assign, sublicense, or otherwise transfer its rights, duties, or obligations under this Agreement without the prior written consent of the **DEPARTMENT**. Any assignment, sublicense, or transfer occurring without the required prior written approval of the **DEPARTMENT** will be null and void. The **DEPARTMENT** will at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental **LOCAL GOVERNMENT** in the State of Florida, upon giving prior written notice to the **LOCAL**

**GOVERNMENT.** In the event that the **DEPARTMENT** approves transfer of the **LOCAL GOVERNMENT's** obligations, the **LOCAL GOVERNMENT** remains responsible for all work performed and all expenses incurred in connection with this Agreement.

11) The **LOCAL GOVERNMENT** agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants, and subconsultants, who perform work in connection with this Agreement:

“The contractor / subcontractor / consultant / subconsultant shall indemnify, defend, save and hold harmless the State of Florida, Department of Transportation and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor / subcontractor / consultant / subconsultant, its officers, agents or employees.”

12) **BINDING AGREEMENT.** This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations, or remedies upon any other person or entity except as expressly provided for in this Agreement.

13) **INTERPRETATION.** No term or provision of this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

14) **ENTIRE AGREEMENT.** This Agreement, together with the attached exhibits and documents made a part by reference, embodies the entire agreement of the Parties. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement. This Agreement supersedes all previous communication, representation, or agreement, either verbal or written, between the Parties. No amendment will be effective unless reduced to writing and signed by an authorized officer of the **LOCAL GOVERNMENT** and the authorized officer of the **DEPARTMENT** or his/her delegate.

15) **DUPLICATE ORIGINALS.** This Agreement may be executed in duplicate originals.

16) **E-VERIFY – the LOCAL GOVERNMENT shall:**

- a) utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the **LOCAL GOVERNMENT** during the term of the contract; and
- b) expressly require any 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.

*The remainder of this page is intentionally left blank*

17) 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.

**EXECUTION**

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

**LOCAL GOVERNMENT:**

By: 

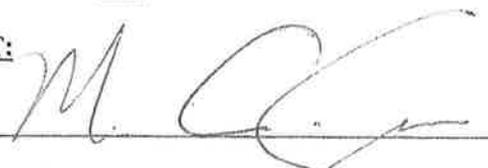
Rita Pritchett, Chair

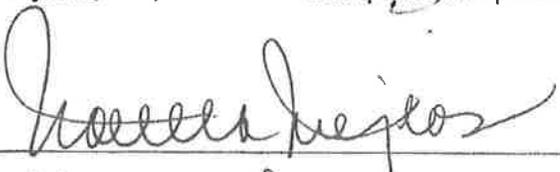
As approved by the Board on: MAY 22 2018

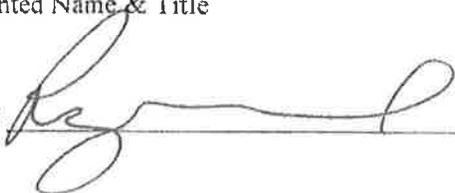
Attest:   
Scott Ellis, Clerk

Legal Approval:  4/27/18  
Assistant County Attorney

**DEPARTMENT:**

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

Attest:   
NORMA Meiss  
Printed Name & Title

Legal Approval: 

**EXHIBIT A**

**Resolution, following on next page.**

**RESOLUTION NO. 2018 -073**

**A RESOLUTION AUTHORIZING THE EXECUTION OF MEMORANDUM OF AGREEMENT BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA AND THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE MAINTENANCE OF STATE ROAD RIGHTS-OF-WAY**

**WHEREAS**, the State of Florida Department of Transportation and Brevard County agree to the maintenance of State Road Rights-of-Way maintenance by the County 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 Memorandum of Agreement – Highway Maintenance, Contract #AS694-R0.

**NOW, THEREFORE, BE IT REOLVED** by the Board of County Commissioners of Brevard County, Florida, that Rita Pritchett, Chair of the Board of County Commissioners, is hereby authorized to make, execute a deliver to the State of Florida Department of Transportation the Memorandum of Agreement – Highway Maintenance, Contract #AS694-R0, a copy of which is attached hereto and incorporated herein by reference. The Board also authorizes the County Manager or designee to execute mutually agreed upon renewals to that Memorandum of Agreement – Highway Maintenance, Contract #AS694-R0.

**DONE AND RESOLVED** in regular session this 22nd day of May 2018.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

  
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Scott Ellis, Clerk

  
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Rita Pritchett, Chair

As approved by the Board on MAY 22 2018

**EXHIBIT B**

**PROJECT LIMITS:**

<b><u>SECTION</u></b>	<b><u>S.R.</u></b>	<b><u>LOCATION</u></b>	<b><u>LENGTH</u></b>
70100	520	From SR-9 (I95) (MP 4.914) to Cocoa City Limit (MP 7.819)	2.905 Mi.
70100	520	From east end of Hubert Humphrey Bridge (MP 9.388) to the west end of the Banana River West Relief Bridge (MP 13.120)	3.732 Mi.

EXHIBIT C

**MAINTENANCE ACTIVITIES:**

(Maintenance Activities to be included and part of this Agreement will be checked in the INC. column)

<u>INC.</u>	<u>ACTIVITY</u>	<u>DESCRIPTION</u>
<input type="checkbox"/>	433	<b>Sodding:</b> Cutting and placing sod in areas along the roadside associated with reworking non-paved shoulders, slopes, ditches, median islands, utility strips and repairing washouts.
<input type="checkbox"/>	435	<b>Seeding, Fertilizing and Mulching:</b> Seeding, fertilizing, and mulching of the roadside.
<input type="checkbox"/>	436	<b>Reworking Non-Paved Shoulders, Front Slopes, and Roadside Ditches (Mechanical):</b> Reworking non-paved shoulders, front slopes, roadside ditches and turnouts either by the addition of suitable material and reshaping, or by cutting down built-up areas.
<input type="checkbox"/>	451	<b>Clean Drainage Structures:</b> Cleaning storm drains, French drains, manholes, side drains, cross drains, inlets, piped outfalls, box culverts, and other miscellaneous drain structures.
<input type="checkbox"/>	459	<b>Concrete Sidewalk Repair:</b> Repair or replacement of existing sections of concrete sidewalk.
<input type="checkbox"/>	461	<b>Roadside Ditches – Clean and Reshape:</b> Cleaning and reshaping of ditches other than outfalls.
<input checked="" type="checkbox"/>	471	<b>Large Machine Mowing:</b> Mowing of roadside areas with large mowers where conditions accommodate the efficient use of 7 foot and larger mowers, alone or in combination.
<input checked="" type="checkbox"/>	482	<b>Slope Mowing:</b> Grass, brush, and weed cutting along slopes too steep to safely mow or are inaccessible for conventional mowing tractors.
<input checked="" type="checkbox"/>	485	<b>Small Machine Mowing:</b> Mowing the roadside with small hand or riding mowers have a cutting width of 40 inches or less.
<input checked="" type="checkbox"/>	487	<b>Manual Weed Control:</b> Brush, weed, and grass cutting 100 mm (4”) or less in diameter performed with hand tools.
<input type="checkbox"/>	490	<b>Fertilizing:</b> Fertilizing to provide required nutrients to establish and maintain an acceptable roadside turf.
<input checked="" type="checkbox"/>	492	<b>Tree Trimming &amp; Removal:</b> The trimming of the height and sides of trees and removal of undesirable trees (over 4 inches in diameter or trimming that cannot be done under Activity 487 Weed Control - Manual). To include the chipping and/or removal of all debris from work site.
<input checked="" type="checkbox"/>	493	<b>Landscaped Area Maintenance:</b> All efforts required for proper maintenance of landscaped areas, including litter removal, mowing, edging, fertilizing, weeding, mulching, etc.
<input checked="" type="checkbox"/>	494	<b>Chemical Grass and Weed Control:</b> The application (handgun, basal or cut stump) of herbicides to slopes, ditches, fence, guardrail, barrier wall, reinforced earthen walls, sidewalks, bridges, curb and gutter, obstructions, shoulders, and other areas not assessable to mowers. Not to include chemical applications within landscape or mitigation areas.

- 498 **Storm Water Management:** To maintain, to the maximum extent practicable, all surface/storm water management systems to a functioning state as designed and in compliance with the permit conditions and/or applicable rules and regulations.
- 527 **Fence Repair:** To provide highway safety and deter unauthorized and unrestrained access to highway facilities.
- 541 **Roadside Litter Removal:** Cleaning roadways and roadsides of debris, such as cans, bottles, paper, Adopt-A-Highway litter. Includes the hauling and disposal of litter. Does not include wayside parks, rest areas and service plaza barrels.
- 542 **Road Sweeping (Manual):** To remove debris from the roadway where mechanical means are not feasible before a drainage or safety problem is created or before it becomes unsightly.
- 543 **Road Sweeping (mechanical):** Machine sweeping of roadway to protect the facility from excessive accumulation of debris.
- 545 **Edging & Sweeping:** Removal of vegetation and debris from the curb, gutter and sidewalk.
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