

Meeting Date
May 26, 2016



Replacement (2)	
AGENDA	
Section	Consent
Item No.	II C 1

**AGENDA REPORT**  
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval RE: Interlocal Agreement between the Town of Grant-Valkaria and Brevard County and Local Agency Program (LAP) Agreement and Resolution with the Florida Department of Transportation (FDOT) for the Valkaria Road Sidewalk from Grant-Valkaria Park to Leghorn Road Project FPN 438023-1-58/68-01; Permission to Advertise, Award the Bid to the Lowest Responsive Bidder, and Authorize the Chairman to Execute the Contract for the Construction of the Valkaria Road Sidewalk – District 3 (Fiscal Impact: Up to \$611,298.00 Reimbursement from FDOT and \$100,000 Impact Fee Allocation)
DEPT/OFFICE:	Central Services/Purchasing for Public Works Department

Requested Action:

It is requested that the Board of County Commissioners approve the Interlocal Agreement between the Town of Grant-Valkaria and Brevard County and the Local Agency Program Agreement and Resolution with the Florida Department of Transportation for the Valkaria Road Sidewalk from Grant-Valkaria Park to Leghorn Road Project FPN 438023-1-58/68-01; authorize the Chairman to execute the Interlocal Agreement, Local Agency Program Agreement, and Resolution. It is requested that the Board authorize permission to advertise for bidders, award the bid to the lowest responsive bidder, and authorize the Chairman to execute the contract with the qualified bidder contingent upon review and approval of the contract by the County Attorney's Office and Risk Management. It is further requested that the Board approve any necessary Budget Change Requests associated with this request.

Summary Explanation & Background:

The Valkaria Road Sidewalk from Grant-Valkaria Park to Leghorn Road project includes the construction of an eight foot wide concrete sidewalk and wooden boardwalk along Valkaria Road. The total cost of this project is estimated at \$684,498.00. The Town of Grant-Valkaria has completed the design of this project, but is not certified by the Local Agency Program (LAP) to administer construction projects funded by LAP. As such, the Town has requested the County's assistance by having the County, which is LAP certified, administer this project. The LAP Agreement with the FDOT will provide financial assistance to the County towards the construction of the Valkaria Road Sidewalk FPN 438023-1-58-01 in the amount of \$559,474.00. Additionally, FDOT will provide financial assistance to the County in the amount of \$51,824.00 for the construction engineering inspection (CEI) services under FPN 438023-1-68-01.

The Town has agreed that in the event the cost of constructing the project exceeds the LAP financial assistance amount, the Town will reimburse the County for the excess costs, including but not limited to, construction change orders, engineer of record post design phase services, and geotechnical testing. In exchange for the County's administration service, the Town has agreed to allocate \$100,000 of Impact Fees collected from projects located within the Town to be used by the County towards another project known as the Babcock

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

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

Contract /Agreement (If attached):	Reviewed by County Attorney	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
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County Manager	Assistant County Manager	Department Director / Extension
	<b>Frank Abbate</b>	
Stockton Whitten	Assistant County Manager	Teresa Camarata, Central Services Director - 55492
		John P. Denninghoff, Public Works Director - 57202

Page Two

Approval RE: Valkaria Road Sidewalk from Grant-Valkaria Park to Leghorn Road  
May 26, 2016

Street and Valkaria Road/Wyoming Drive Intersection Improvements. The Town's Council approved the Interlocal Agreement on May 11, 2016 which outlines the terms and conditions of the funding contribution by the Town and the County's administration of the Valkaria Road Sidewalk project.

Fiscal Impact: FY 15/16/17 – Up to \$611,298.00 FDOT Reimbursement to Fund 1700 Grants.  
\$100,000 Impact Fee Allocation to Babcock Street and Valkaria  
Road/Wyoming Drive Intersection Improvements 1163/265160.  
Town reimbursement for any excess costs will be deposited in  
Fund 1168 Transportation Reimbursements.

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**INITIAL CONTRACT FORM**

**SECTION I**

The following information must be completed on all new contracts submitted to the Board.

<b>1. Contractor:</b> TBD	
<b>2. Fund/Account #:</b> Fund 1700/Account # TBD	<b>Division Name:</b> Finance and Contracts Administration
<b>4. Contract Description:</b> FDOT LAP Agreement 438023-1-58/68-01 Valkaria Road Sidewalk	
<b>5. Contract Monitor:</b> Jeanette Scott	<b>6. Mail Stop #:</b> 81
<b>7. Dept./Office Director:</b> Public Works / John P. Denninghoff	<b>8. Contract Type:</b> Intergovernmental State
<b>ACTION DATE:</b> May 26, 2016 Board Meeting	<b>ACTION REQUIREMENT:</b> Review & Approval

**SECTION II**

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	✓	_____	<u>thw</u>	<u>5/16/2016</u>
Risk Management	✓	_____	<u>df</u>	<u>5-18-2016</u>
County Attorney	✓	_____	<u>DSgt</u>	<u>05/16/2016</u>

\* Staff should be aware that funding can be canceled at any time.  
If any office denies approval, the package will be returned immediately to the User Agency.

**NOTE:** This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form to department for contract to be entered into the Contract Management System. See AO-29 for additional information.

AO-29: EXHIBIT I

ROAD-BDRR-MAY 18 15

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**INITIAL CONTRACT FORM**

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	<u>YES</u>	<u>NO</u>		
User Agency	_____	_____	_____	_____
Risk Management	_____	_____	_____	_____
County Attorney	✓	_____	JES	05/16/2016

\* Staff should be aware that funding can be canceled at any time.  
If any office denies approval, the package will be returned immediately to the User Agency.

**NOTE:** This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form to department for contract to be entered into the Contract Management System. See AO-29 for additional information.

AO-29: EXHIBIT I

file

**Deborah Thomas**

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**From:** Scott, Jeanette <Jeanette.Scott@brevardfl.gov>  
**Sent:** Friday, September 08, 2017 11:50 AM  
**To:** Deborah Thomas  
**Subject:** 05/26/16 Item II.C.1 - LAP agreement for Valkaria  
**Attachments:** 1630022\_Valkaria\_SW\_FDOT\_LAP\_Agreement.pdf

Hello Deborah,

As indicated in the attached clerk's memo, attached is a fully-executed LAP agreement for Valkaria Road Sidewalk re: Board action on 5/26/16 Item II.C.1

**Jeanette Scott**  
Contracts Administrator  
Public Works Department  
2725 Judge Fran Jamieson Way  
Building A, Room 201  
Viera, FL 32940  
321-617-7202

"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."



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

May 27, 2016

Telephone: (321) 637-2001

Fax: (321) 264-6972

Tammy.Rowe@brevardclerk.us

**MEMORANDUM**

**TO:** Teresa Camarata, Central Services Director

**RE:** Item II.C.1., Interlocal Agreement with Town of Grant-Valkaria, Local Agency Program (LAP) Agreement with Florida Department of Transportation (FDOT), and Resolution for Valkaria Road Sidewalk from Grant-Valkaria Park to Leghorn Road Project FPN 438023-1-58/68-01; and Permission to Advertise, Award the Bid to the Lowest Responsive Bidder, and Authorize the Chairman to Execute the Contract for the Construction of Valkaria Road Sidewalk

The Board of Commissioners, in regular session on May 26, 2016, adopted Resolution No. 16-086; executed Interlocal Agreement with Town of Grant-Valkaria; executed LAP Agreement with FDOT for Valkaria Road Sidewalk from Grant-Valkaria Park to Leghorn Road Project FPN 438023-1-58/68-01; authorized permission to advertise for bidders, award the bid to the lowest responsive bidder, and authorized the Chairman to execute the contract with the qualified bidder contingent upon review and approval of the contract by the County Attorney's Office and Risk Management; and approved any necessary Budget Change Requests associated with this request. Enclosed are two fully-executed Resolutions and Interlocal Agreements, and three executed LAP Agreements.

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

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

Encl. (7)

cc: Public Works Director  
Contracts Administration  
Finance  
Budget

**RECEIVED**

JUN - 3 2016

**BREVARD COUNTY  
PURCHASING SERVICES**



**Florida Department of Transportation**

**RICK SCOTT**  
GOVERNOR

719 S. Woodland Boulevard  
DeLand, Florida 32720-6834

**JIM BOXOLD**  
SECRETARY

September 27, 2016

Ms. Jeanette Scott  
Construction Contracts Technician  
Public Works Department  
2725 Judge Fran Jamieson Way  
Building A, Room 201  
Viera, FL 32940

**SUBJECT: LOCAL AGENCY PROGRAM (LAP) AGREEMENT**  
**FPN: 438023-1-58/68-01**  
**Contract No: G0F55**  
**Project: Valkaria Road Sidewalk from Grant-Valkaria Park to Leghorn Road**

Dear Ms. Scott:

This letter will serve as the Department's Notice-to-Proceed to the County with the advertisement for the construction of the above referenced project. The Notice-to-Proceed is effective September 27, 2016.

Prior to awarding the construction contract, final concurrence from the LAP Construction Project Manager, Vince Vacchiano, will be required.

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

Per section 11.01 of the LAP Agreement, the County will be subject to a Performance Evaluation for the construction phases of the above referenced project. The current performance evaluation can be found at the bottom of the Forms tab on the LAP website:

<http://www.dot.state.fl.us/programmanagement/LAP/Forms/LapForms.shtm>

Two fully executed LAP Agreements are enclosed for your records and \$611,298.00 has been encumbered for this project. If you have any questions, please call me at 386-943-5452.

Sincerely,

Lisa L. Buscher  
District Local Government Program Administrator

Enclosures

cc: Patricia "P.J." Ganung  
Vince Vacchiano

**RESOLUTION NO. 2016- 086**

**A RESOLUTION AUTHORIZING THE EXECUTION OF LOCAL AGENCY PROGRAM AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE VALKARIA ROAD SIDEWALK FROM GRANT-VALKARIA PARK TO LEGHORN ROAD**

**WHEREAS**, the State of Florida Department of Transportation (FDOT) and Brevard County desire to facilitate the construction of the Valkaria Road Sidewalk from Grant-Valkaria Park to Leghorn Road and,

**WHEREAS**, the State of Florida Department of Transportation (FDOT) has requested Brevard County to execute and deliver to the State of Florida Department of Transportation (FDOT) the Local Agency Program (LAP) Agreement for the aforementioned project, FPN 438023-1-58-01 and 438023-1-68-01.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, that Jim Barfield, Chairman, of the Board of County Commissioners, is hereby authorized to make, execute, and deliver to the State of Florida Department of Transportation (FDOT) the Local Agency Program (LAP) Agreement for the aforementioned project, FPN 438023-1-58-01 and FPN 438023-1-68-01.

**DONE AND RESOLVED** in regular session this 26th day of May, 2016.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA



\_\_\_\_\_

Scott Ellis, Clerk



\_\_\_\_\_

Jim Barfield, Chairman

As approved by the Board on 5/26/16

THIS INSTRUMENT RETURN TO:  
Town Clerk  
Town of Grant-Valkaria  
1449 Valkaria Road  
Grant-Valkaria, FL 32950

THIS INSTRUMENT PREPARED BY:  
Tammy Thomas-Wood, Public Works  
Support Services Manager  
Brevard County Government Center  
2725 Judge Fran Jamieson Way  
Building A, Room 201  
Viera, Florida 32940

**VALKARIA ROAD SIDEWALK PROJECT –**  
**GRANT-VALKARIA COMMUNITY PARK TO LEGHORN ROAD**  
**INTERLOCAL AGREEMENT**

THIS INTERLOCAL AGREEMENT, made and entered into \_\_ day of \_\_\_\_\_, 2016 by and between the Town of Grant-Valkaria, Florida, a Florida Municipal Corporation, hereinafter referred to as "TOWN" and the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY".

WHEREAS, the TOWN owns a portion of Valkaria Road; and

WHEREAS, the TOWN has completed a design for an eight (8) foot wide concrete sidewalk and wooden boardwalk along Valkaria Road beginning from the sidewalk near the Grant-Valkaria Community Park ending at the sidewalk at Leghorn Road, hereinafter referred to as the "PROJECT"; and

WHEREAS, the Florida Department of Transportation (FDOT) has funds available under the Local Agency Program (LAP) towards the construction of the PROJECT; and

WHEREAS, the TOWN does not have the certification necessary to administer a LAP project, the TOWN is requesting the COUNTY'S assistance by having the COUNTY administer this PROJECT since the COUNTY is LAP certified; and

WHEREAS, in exchange for this service, the TOWN will agree to commit to utilizing \$100,000 of Impact Fees collected from projects located within the TOWN to be used by the COUNTY towards the Babcock Street and Valkaria Road / Wyoming Drive Intersection Improvements; and

NOW THEREFORE, the COUNTY and TOWN covenant and agree that they have full power and authority to enter into this Agreement and bind their respective governmental entities as follows:

- (1) The above recitals are true and correct and by this reference are hereby incorporated into and made an integral part of this Agreement.
- (2) Statutory Authority: This Agreement will be considered an Interlocal Agreement pursuant to authority of Florida Statutes, Chapter 163, Part 1, 2013.
- (3) Project: The PROJECT will be for the construction and LAP administration of an eight (8) foot wide concrete sidewalk and wooden boardwalk along Valkaria Road, beginning from the sidewalk near the Grant-Valkaria Community Park and ending at the existing sidewalk at Leghorn Road.
- (4) Approval of Plans: The TOWN will provide plans to the COUNTY for submission to the FDOT for approval in accordance with the LAP certification process. Any revisions needed to the plans as a result of this approval process will be done by the TOWN at the expense of the TOWN. Upon approval of the plans by the FDOT, the COUNTY will develop specification and bid documents for the PROJECT and forward same to the FDOT for final approval prior to bid.
- (5) TOWN'S Financial Contribution: Upon execution of this Agreement by the last party executing the same, the sum of \$100,000 in exchange for administration of the PROJECT shall be allocated to the Babcock Street and Valkaria Road / Wyoming Drive Intersection Improvements. At such time as the funds are received by the COUNTY'S Public Works Department, the funds will be held by the COUNTY in a separate fund established for the Babcock Street and Valkaria Road / Wyoming Drive Intersection Improvements. In the event the PROJECT does not proceed, the COUNTY will refund all money to the TOWN, less any expense born by the COUNTY to that point, utilizing the appropriate processes and procedures associated with Impact Fee allocations.

The TOWN shall be responsible for all construction costs associated with the PROJECT that may exceed the funding amount provided by the LAP Agreement. Such construction costs may include, but are not limited to, change orders, Engineer of Record post design services, geotechnical testing, and construction and engineering inspection services.

- (6) Maintenance of the PROJECT: Upon completion and acceptance of the PROJECT by the TOWN, the COUNTY will have no further obligation towards the PROJECT, including maintenance or ownership of the PROJECT.

(7) Notices: All notices required under this Agreement shall be in writing and delivered to the parties as follows:

(a) TOWN Representative:  
Richard Hood  
Town Administrator  
Town of Grant-Valkaria  
1449 Valkaria Road  
Grant-Valkaria, FL 32950

(b) COUNTY Representative:  
Tammy Thomas-Wood  
Public Works Support Services Manager  
2725 Judge Fran Jamieson Way  
Building A, Room 201  
Viera, Florida 32940

Any notice to be sent to the COUNTY or the TOWN pursuant to the provisions of this Agreement will be deemed to have been properly sent when: (i) personally hand delivered; (ii) sent by nationally recognized overnight courier (*ie.*, Federal Express or United Parcel Service); or (iii) mailed, first class, postpaid, by U.S. Postal Service Mail to the above address of the said COUNTY or the TOWN. A notice delivered by U.S. Postal Service Mail and properly addressed will be deemed to have been received five (5) days after deposit in the U.S. Postal Service Mail. A notice sent by nationally recognized overnight courier and properly addressed will be deemed to have been received two (2) days after deposit with the overnight courier. Either party may change the addressee or address of the addressee unilaterally by giving notice as provided herein.

(8) Indemnification: To the extent permitted by law, the TOWN agrees to indemnify and hold harmless the COUNTY from any and all liability and/or claims of any kind arising out of the TOWN'S own negligence. To the extent permitted by law, the COUNTY agrees to indemnify and hold harmless the TOWN from any and all liability and/or claims of any kind arising out of the COUNTY'S own negligence.

Nothing in the Agreement, express or implied, is intended to be nor shall be construed as a waiver or limitation of the TOWN'S or COUNTY'S right to sovereign immunity under Section 768.28, Florida Statutes or other applicable provision of law.

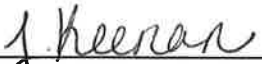
(9) Default: Either party to this Agreement, in the event of any act of default by the other, shall have all remedies available to it under the laws of the State of Florida.


- (10) Severability: If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can still be accomplished.
- (11) Effective Date: The effective date of this Agreement shall be the date on which the last signature required to execute this Agreement is attached.
- (12) Recording: Upon execution of this Agreement, the TOWN shall record a fully executed original of this Agreement in the Public Records of Brevard County, Florida, and shall return a recorded original of the Agreement to the COUNTY REPRESENTATIVE listed in Paragraph (7).
- (13) Partnership: The TOWN'S financial contribution will not be deemed to be or become a partner or joint venturer with the COUNTY in the construction or development of the PROJECT and the Babcock Street and Valkaria Road / Wyoming Drive Intersection Improvements set forth in this Agreement. The TOWN is merely a contributor of funds to the COUNTY in exchange for administering the PROJECT.
- (14) Termination Clause: This Agreement shall be enforceable until terminated in writing by either party as provided in this paragraph. The COUNTY or the TOWN shall have the right to terminate this Agreement with or without cause by furnishing 45 days written notice as provided in paragraph (7). However, paragraph (5) of this Agreement will survive the aforesaid termination of this Agreement and will be adhered to in so far as the TOWN will compensate the COUNTY for any portion of the PROJECT that has been completed through this Agreement prior to any termination.
- (15) Attorney's Fees: 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. This provision shall not be interpreted to be a pledge of ad valorem tax revenues.
- (16) Venue and Non-Jury Trial: Any legal action to enforce, interpret, or construe the terms of this Agreement, shall be in a court of competent jurisdiction in and for Brevard County, Florida and any trial shall be a non-jury trial.
- (17) Entirety: This Agreement represents the understanding and agreement of the parties in its entirety. There shall be no amendments to the Agreement unless such amendments are in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals.

ATTEST:

TOWN OF GRANT-VALKARIA, FLORIDA,  
a Florida Municipal Corporation:

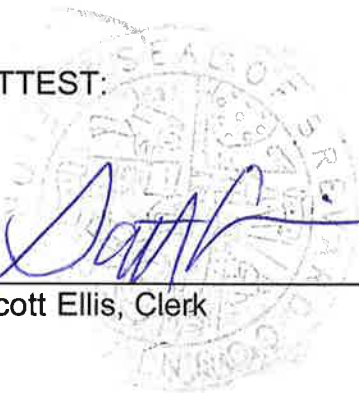

  
\_\_\_\_\_  
Administrative Assistant

  
\_\_\_\_\_  
Richard Hood, Town Administrator

Date: 5-12-16

ATTEST:

BREVARD COUNTY BOARD  
OF COUNTY COMMISSIONERS:

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

  
\_\_\_\_\_  
Jim Barfield, Chairman

As Approved by the Board on: 5/26/16

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Assistant County Attorney



**BOARD OF COUNTY COMMISSIONERS**

**Public Works Department**

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

November 21, 2016

Tammy Rowe, Supervisor  
Clerk to the Board  
Brevard County Clerk of Courts  
400 South Street  
Titusville, FL 32781

RE: Item II.C.1 Local Agency Program (LAP) Agreement with the Florida Department of Transportation for Valkaria Road Sidewalk (May 26, 2016 Board Meeting)

As indicated in the Clerk's Memorandum dated May 27, 2016, please find enclosed a fully-executed Agreement for inclusion in the official minutes.

Thank you,

*Jeanette Scott*

Jeanette Scott, Contracts

Encl. (1) Fully-Executed Agreement  
5/27/16 Clerk's Memorandum

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40  
PROGRAM MANAGEMENT  
OGC-08/15  
Page 1 of 15

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FPN: <u>438023-1-58-01</u>	Fund: <u>TALU/LF</u>	FLAIR Approp: <u>088717</u>
Federal No: <u>4225-076-C 8886-979-A</u>	Org Code: <u>55054010508</u>	FLAIR Obj: <u>780000</u>
FPN: <u>438023-1-68-01</u>	Fund: <u>TALU/LF</u>	FLAIR Approp: <u>088718</u>
Federal No: <u>4225-076-C 8886-979-A</u>	Org Code: <u>55054010508</u>	FLAIR Obj: <u>780000</u>
FPN: _____	Fund: _____	FLAIR Approp: _____
Federal No: _____	Org Code: _____	FLAIR Obj: _____

County No: 70 Contract No: GDF55 Vendor No: F596-000-523-163  
FDOT Data Universal Number System (DUNS) No: 80-939-7102 Local Agency DUNS No: 78-324-8370  
Catalog of Federal Domestic Assistance (CFDA): 20.205 Highway Planning and Construction

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THIS LOCAL AGENCY PROGRAM AGREEMENT ("Agreement"), is made and entered into this 27 day of September, 2016 between the State of Florida, Department of Transportation, an agency of the State of Florida ("Department"), and Brevard County, 2725 Judge Fran Jamieson Way, Building A, Suite 201, Viera, Florida 32940 ("Agency").

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

1. **Authority:** The Agency, by Resolution No. 2016-086 dated the 26th day of May, 2016, a copy of which is attached as Exhibit "F" and made a part of this Agreement, has authorized its officers to execute this Agreement on its behalf. The Department has the authority pursuant to Section 339.12, Florida Statutes, to enter into this Agreement.
2. **Purpose of Agreement:** The purpose of this Agreement is to provide for the Department's participation in the construction of Valkaria Road Sidewalk from Grant-Valkaria Park to Leghorn Road, as further described in Exhibit "A", Project Description and Responsibilities attached to and incorporated in this Agreement ("Project"), to provide Department financial assistance to the Agency, state the terms and conditions upon which Department funds will be provided, and to set forth the manner in which the Project will be undertaken and completed.
3. **Term of Agreement:** The Agency agrees to complete the Project on or before November 30, 2017. If the Agency does not complete the Project within this time period, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of this Agreement will not be reimbursed by the Department.
4. **Project Cost:**
  - A. The total cost of the Project is \$ 684,498.00. This amount is based upon the schedule of funding in Exhibit "B", Schedule of Funding attached to and incorporated in this Agreement. The Agency agrees to bear all expenses in excess of the total cost of the Project and any deficits involved. The schedule of funding may be modified by mutual agreement as provided for in paragraph 5.1.
  - B. The Department agrees to participate in the Project cost up to the maximum amount of \$611,298.00 and as more fully described in Exhibit "B". This amount includes Federal-aid funds which are limited to the actual amount of Federal-aid participation.
  - C. Project costs eligible for Department participation will be allowed only from the date of this Agreement. It is understood that Department participation in eligible Project costs is subject to:
    - i. Legislative approval of the Department's appropriation request in the work program year that the Project is scheduled to be committed;

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40  
PROGRAM MANAGEMENT  
OGC-08/15  
Page 2 of 15

- ii. Availability of funds as stated in subparagraphs 5.L. and 5.M. of this Agreement;
- iii. Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement; and
- iv. Department approval of the Project scope and budget at the time appropriation authority becomes available.

**5. Requisitions and Payments:**

- A. The Agency shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project and the quantifiable, measurable, and verifiable units of deliverables are described more fully in Exhibit "A".
- B. Invoices shall be submitted by the Agency in detail sufficient for a proper pre-audit and post-audit based on the quantifiable, measurable and verifiable units of deliverables as established in Exhibit "A". Deliverables must be received and accepted in writing by the Department's Project Manager prior to payments.
- C. The Agency shall charge to the Project account all eligible costs of the Project except costs agreed to be borne by the Agency or its contractors and subcontractors. Costs in excess of the programmed funding or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.
- D. Supporting documentation must establish that the deliverables were received and accepted in writing by the Agency and must also establish that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Exhibit "A" was met.
- E. Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department's Contractor Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061, Florida Statutes and the most current version of the Disbursement Handbook for Employees and Managers.
- F. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes. If the Department determines that the performance of the Agency is unsatisfactory, the Department shall notify the Agency of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Agency shall, within five days after notice from the Department, provide the Department with a corrective action plan describing how the Agency will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Agency shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the Agency resolves the deficiency. If the deficiency is subsequently resolved, the Agency may bill the Department for the retained amount during the next billing period. If the Agency is unable to resolve the deficiency, the funds retained may be forfeited at the end of the Agreement's term.
- G. Agencies providing goods and services to the Department should be aware of the following time frames. Inspection and approval of goods or services shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40  
PROGRAM MANAGEMENT  
OGC-08/15  
Page 3 of 15

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to **Section 55.03(1), F.S.**, will be due and payable, in addition to the invoice amount, to the Agency. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices that have to be returned to an Agency because of Agency preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

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

- H. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Agency's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.
- I. Prior to the execution of this Agreement, a Project schedule of funding shall be prepared by the Agency and approved by the Department. The Agency shall maintain said schedule of funding, carry out the Project, and shall incur obligations against and make disbursements of Project funds only in conformity with the latest approved schedule of funding for the Project. The schedule of funding may be revised by execution of a Local Agency Program ("LAP") Supplemental Agreement between the Department and the Agency. The Agency acknowledges and agrees that funding for this project may be reduced upon determination of the agency's contract award amount. If revised, a copy of the Supplemental Agreement shall be forwarded to the Department's Comptroller. No increase or decrease shall be effective unless it complies with fund participation requirements of this Agreement and is approved by the Department's Comptroller.
- J. If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.
- K. The Agency must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.
- L. The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, funds approval from the Department's Comptroller must be received each fiscal year prior to costs being incurred. See Exhibit "B" for funding levels by fiscal year. Project costs utilizing these fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Agency, in writing, when funds are available.
- M. In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40  
PROGRAM MANAGEMENT  
OGC-08/15  
Page 4 of 15

executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

**6. Department Payment Obligations:** Subject to other provisions of this Agreement, the Department will honor requests for reimbursement to the Agency pursuant to this Agreement. However, notwithstanding any other provision of this Agreement, the Department may elect by notice in writing not to make a payment if:

- A. The Agency shall have made misrepresentation of a material nature in its application, or any supplement or amendment to its application, or with respect to any document or data furnished with its application or pursuant to this Agreement;
- B. There is any pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, the Agreement or payments to the Project;
- C. The Agency shall have taken any action pertaining to the Project which, under this Agreement, requires the approval of the Department or has made a related expenditure or incurred related obligations without having been advised by the Department that same are approved;
- D. There has been any violation of the conflict of interest provisions contained in paragraph 16.J.; or
- E. The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

The Department may suspend or terminate payment for that portion of the Project which the Federal Highway Administration ("FHWA"), or the Department acting in lieu of FHWA, may designate as ineligible for Federal-aid.

In determining the amount of the payment, the Department will exclude all Project costs incurred by the Agency prior to the Department's issuance of a Notice to Proceed ("NTP"), costs incurred after the expiration of the Agreement, costs which are not provided for in the latest approved schedule of funding in Exhibit "B" for the Project, costs agreed to be borne by the Agency or its contractors and subcontractors for not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

**7. General Requirements:** The Agency shall complete the Project with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement, and all applicable laws. The Project will be performed in accordance with all applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Agency Program Manual, which by this reference is made a part of this Agreement. Time is of the essence as to each and every obligation under this Agreement.

- A. A full time employee of the Agency, qualified to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of this Agreement shall be in responsible charge of the Project, which employee should be able to perform the following duties and functions:
  - i. Administers inherently governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
  - ii. Maintains familiarity of day to day Project operations, including Project safety issues;
  - iii. Makes or participates in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
  - iv. Visits and reviews the Project on a frequency that is commensurate with the magnitude and complexity of the Project;

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40  
PROGRAM MANAGEMENT  
OGC-08/15  
Page 5 of 15

- v. Reviews financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse;
  - vi. Directs Project staff, agency or consultant, to carry out Project administration and contract oversight, including proper documentation;
  - vii. Is aware of the qualifications, assignments and on-the-job performance of the Agency and consultant staff at all stages of the Project.
- B.** Once the Department issues the NTP for the Project, the Agency shall be obligated to submit an invoice or other request for reimbursement to the Department on a quarterly basis, beginning from the day the NTP is issued. If the Agency fails to submit quarterly invoices to the Department, and in the event the failure to timely submit invoices to the Department results in the "FHWA" removing any unbilled funding or the loss of State appropriation authority (which may include the loss of state and federal funds, if there are state funds programmed to the Project), then the Agency will be solely responsible to provide all funds necessary to complete the Project and the Department will not be obligated to provide any additional funding for the Project. The Agency waives the right to contest such removal of funds by the Department, if the removal is related to FHWA's withdrawal of funds or if the removal is related to the loss of State appropriation authority. In addition to the loss of funding for the Project, the Department will also consider the de-certification of the Agency for future LAP Projects. No cost may be incurred under this Agreement until after the Agency has received a written NTP from the Department. The Agency agrees to advertise or put the Project out to bid thirty (30) days from the date the Department issues the NTP to advertise the Project. If the Agency is not able to meet the scheduled advertisement, the District LAP Administrator should be notified as soon as possible.
- C.** If all funds are removed from the Project, including amounts previously billed to the Department and reimbursed to the Agency, and the Project is off the state highway system, then the Department will have to request repayment for the previously billed amounts from the Agency. No state funds can be used on off-system projects, unless authorized pursuant to Exhibit "G", State Funds Addendum, which will be attached to and incorporated in this Agreement in the event state funds are used on the Project.
- D.** In the event that any election, referendum, approval, permit, notice or other proceeding or authorization is required under applicable law to enable the Agency to enter into this Agreement or to undertake the Project or to observe, assume or carry out any of the provisions of the Agreement, the Agency will initiate and consummate, as provided by law, all actions necessary with respect to any such matters.
- E.** The Agency shall initiate and prosecute to completion all proceedings necessary, including Federal-aid requirements, to enable the Agency to provide the necessary funds for completion of the Project.
- F.** The Agency shall submit to the Department such data, reports, records, contracts, and other documents relating to the Project as the Department and FHWA may require. The Agency shall use the Department's Local Agency Program Information Tool and applicable information systems as required.
- G.** Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable federal and State laws, the regulations in 23 Code of Federal Regulations (C.F.R.) and 49 C.F.R., and policies and procedures prescribed by the Division Administrator of FHWA. Federal funds shall not be paid on account of any cost incurred prior to authorization by FHWA to the Department to proceed with the Project or part thereof involving such cost (23 C.F.R. 1.9 (a)). If FHWA or the Department determines that any amount claimed is not eligible, federal participation may be approved in the amount determined to be adequately supported and the Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal participation. Where correctable non-compliance with provisions of law or FHWA requirements exists. Federal funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA or the Department may deny participation in parcel or Project costs in part or in total. For any amounts determined to be ineligible for federal reimbursement for which the Department has advanced payment, the Agency shall promptly reimburse the Department for all such amounts within 90 days of written notice.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

526-010-40  
PROGRAM MANAGEMENT  
OGC-08/15  
Page 6 of 15

- H. For any project requiring additional right-of-way, the Agency must submit to the Department an annual report of its real property acquisition and relocation assistance activities on the project. Activities shall be reported on a federal fiscal year basis, from October 1 through September 30. The report must be prepared using the format prescribed in 49 C.F.R. Part 24, Appendix B, and be submitted to the Department no later than October 15 of each year.

**8. Audit Reports:** The administration of resources awarded through the Department to the Agency by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of federal awards or limit the authority of any State agency inspector general, the State of Florida Auditor General or any other State official. The Agency shall comply with all audit and audit reporting requirements as specified below.

- A. In addition to reviews of audits conducted in accordance with OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, monitoring procedures may include but not be limited to on-site visits by Department staff and/or other procedures including, reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to federal awards provided through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, State of Florida Chief Financial Officer (CFO) or State of Florida Auditor General.
- B. The Agency, a non-federal entity as defined by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as defined by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, as a subrecipient of a federal award awarded by the Department through this Agreement is subject to the following requirements:
- i. In the event the Agency expends a total amount of federal awards equal to or in excess of the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, the Agency must have a federal single or program-specific audit for such fiscal year conducted in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. **Exhibit "1", Federal Financial Assistance (Single Audit Act)** to this Agreement provides the required federal award identification information needed by the Agency to further comply with the requirements of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and the requirements of 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. In determining federal awards expended in a fiscal year, the Agency must consider all sources of federal awards based on when the activity related to the federal award occurs, including the federal award provided through the Department by this Agreement. The determination of amounts of federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. An audit conducted by the State of Florida Auditor General in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, will meet the requirements of this part.
  - ii. In connection with the audit requirements, the Agency shall fulfill the requirements relative to the auditee responsibilities as provided in OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as provided in 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40  
PROGRAM MANAGEMENT  
OGC-08/15  
Page 7 of 15

- iii. In the event the Agency expends less than the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, in federal awards, the Agency is exempt from federal audit requirements for that fiscal year. However, the Agency must provide a single audit exemption statement to the Department at [FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us) no later than nine months after the end of the Agency's audit period for each applicable audit year. In the event the Agency expends less than the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, in federal awards in a fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, the cost of the audit must be paid from non-federal resources (*i.e.*, the cost of such an audit must be paid from the Agency's resources obtained from other than federal entities).
- iv. The Agency must electronically submit to the Federal Audit Clearinghouse (FAC) at <https://harvester.census.gov/facweb/> the audit reporting package as required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period. The FAC is the repository of record for audits required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and for audits required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, and this Agreement. However, the Department requires a copy of the audit reporting package also be submitted to [FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us) within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period as required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014.
- v. Within six months of acceptance of the audit report by the FAC, the Department will review the Agency's **audit reporting package**, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate action on all deficiencies has been taken pertaining to the federal award provided through the Department by this Agreement. If the Agency fails to have an audit conducted in accordance with OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, the Department may impose additional conditions to remedy noncompliance. If the Department determines that noncompliance cannot be remedied by imposing additional conditions, the Department may take appropriate actions to enforce compliance, which actions may include but not be limited to the following:
  1. Temporarily withhold cash payments pending correction of the deficiency by the Agency or more severe enforcement action by the Department;
  2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
  3. Wholly or partly suspend or terminate the federal award;
  4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 and federal awarding agency regulations (or in the case of the Department, recommend such a proceeding be initiated by the federal awarding agency);
  5. Withhold further federal awards for the Project or program;
  6. Take other remedies that may be legally available.
- vi. As a condition of receiving this federal award, the Agency shall permit the Department, or its designee, the CFO or State of Florida Auditor General access to Agency's **records including**

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40  
PROGRAM MANAGEMENT  
OGC-08/15  
Page 8 of 15

**financial statements, the independent auditor's working papers and project records as necessary.** Records related to unresolved audit findings, appeals or litigation shall be retained until the action is complete or the dispute is resolved.

vii. **The Department's contact information for requirements under this part is as follows:**

Office of Comptroller, MS 24  
605 Suwannee Street  
Tallahassee, Florida 32399-0450  
[FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us)

- C. The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department, or its designee, the CFO or State of Florida Auditor General access to such records upon request. The Agency shall ensure that the audit working papers are made available to the Department, or its designee, the CFO, or State of Florida Auditor General upon request for a period of five years from the date the audit report is issued unless extended in writing by the Department.

9. **Termination or Suspension of Project:** The Department may, by written notice to the Agency, suspend any or all of the Agency's obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected or the Department may terminate this Agreement in whole or in part at any time the interest of the Department requires such termination.

- A. If the Department determines that the performance of the Agency is not satisfactory, the Department shall notify the Agency of the deficiency in writing with a requirement that the deficiency be corrected within thirty (30) days of such notice. Such notice shall provide reasonable specificity to the Agency of the deficiency that requires correction. If the deficiency is not corrected within such time period, the Department may either (1) immediately terminate the Agreement as set forth in paragraph 9.B. below, or (2) take whatever action is deemed appropriate by the Department to correct the deficiency. In the event the Department chooses to take action and not terminate the Agreement, the Agency shall, upon demand, promptly reimburse the Department for any and all costs and expenses incurred by the Department in correcting the deficiency.
- B. If the Department terminates the Agreement, the Department shall notify the Agency of such termination in writing, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- C. If the Agreement is terminated before the Project is completed, the Agency shall be paid only for the percentage of the Project satisfactorily performed for which costs can be substantiated. Such payment, however, shall not exceed the equivalent percentage of the contract price. All work in progress on Department right-of-way will become the property of the Department and will be turned over promptly by the Agency.
- D. The Department reserves the right to unilaterally cancel this Agreement for refusal by the Agency or any contractor, sub-contractor or materials vendor to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Agreement unless the records are exempt.
- E. Upon receipt of any final termination or suspension notice under this paragraph 9., the Agency shall proceed promptly to carry out the actions required in such notice, which may include any or all of the following: (a) necessary action to terminate or suspend, as the case may be, Project activities and contracts and such other action as may be required or desirable to keep to a minimum the costs upon the basis of which the financing is to be computed; or (b) furnish a statement of the Project activities and contracts and other undertakings the cost of which are otherwise includable as Project costs. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and cost as approved by the Department or upon the basis of terms and conditions imposed by the Department upon

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40  
PROGRAM MANAGEMENT  
OGC-08/15  
Page 9 of 15

the failure of the Agency to furnish the schedule, plan, and estimate within a reasonable time. The closing out of federal financial participation in the Project shall not constitute a waiver of any claim which the Department may otherwise have arising out of this Agreement.

**10. Contracts of the Agency:**

- A. Except as otherwise authorized in writing by the Department, the Agency shall not execute any contract or obligate itself in any manner requiring the disbursement of Department funds, including consultant or construction contracts or amendments thereto, with any third party with respect to the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department. The Department specifically reserves the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of such consultant or contractor.
- B. It is understood and agreed by the parties to this Agreement that participation by the Department in a project with the Agency, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Agency's complying in full with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act, the federal Brooks Act, 23 C.F.R. 172, and 23 U.S.C. 112. At the discretion of the Department, the Agency will involve the Department in the consultant selection process for all projects funded under this Agreement. In all cases, the Agency shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act and the federal Brooks Act.
- C. The Agency shall comply with, and require its consultants and contractors to comply with applicable federal law pertaining to the use of Federal-aid funds. The Agency shall comply with the provisions in the FHWA-1273 form as set forth in Exhibit "C", FHWA 1273 attached to and incorporated in this Agreement. The Agency shall include FHWA-1273 in all contracts with consultants and contractors performing work on the Project.

**11. Disadvantaged Business Enterprise (DBE) Policy and Obligation:** It is the policy of the Department that DBE's, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement.

The Agency and its contractors agree to ensure that DBE's have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBE's have the opportunity to compete for and perform contracts. The Agency and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

**12. Compliance with Conditions and Laws:** The Agency shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project. Execution of this Agreement constitutes a certification that the Agency is in compliance with, and will require its contractors and subcontractors to comply with, all requirements imposed by applicable federal, state, and local laws and regulations, including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," in 49 C.F.R. Part 29, and 2 C.F.R. Part 200 when applicable.

**13. Performance Evaluations:** Agencies are evaluated on a project-by-project basis. The evaluations provide information about oversight needs and provide input for the recertification process. Evaluations are submitted to the Agency's person in responsible charge or designee as part of the Project closeout process. The Department provides the evaluation to the Agency no more than 30 days after final acceptance.

- A. Each evaluation will result in one of three ratings. A rating of Unsatisfactory Performance means the Agency failed to develop the Project in accordance with applicable federal and state regulations, standards and procedures, required excessive District involvement/oversight, or the Project was brought in-house by the Department. A rating of Satisfactory Performance means the Agency developed the

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40  
PROGRAM MANAGEMENT  
OGC-08/15  
Page 10 of 15

Project in accordance with applicable federal and state regulations, standards and procedures, with minimal District involvement/oversight. A rating of Above Satisfactory Performance means the Agency developed the Project in accordance with applicable federal and state regulations, standards and procedures, without District involvement/oversight.

- B. The District will determine which functions can be further delegated to Agencies that continuously earn Satisfactory and Above Satisfactory evaluations.

**14. Restrictions, Prohibitions, Controls, and Labor Provisions:** During the performance of this Agreement, the Agency agrees as follows, and agrees to require its contractors and subcontractors to include in each subcontract the following provisions:

- A. The Agency will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964, the regulations of the U.S. Department of Transportation issued thereunder, and the assurance by the Agency pursuant thereto. The Agency shall include the attached Exhibit "E", Title VI Assurances in all contracts with consultants and contractors performing work on the Project that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21, and related statutes and regulations.
- B. The Agency will comply with all the requirements as imposed by the ADA, the regulations of the Federal government issued thereunder, and assurance by the Agency pursuant thereto.
- C. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- D. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity.
- E. An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the Department to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Agency.
- F. Neither the Agency nor any of its contractors or their subcontractors shall enter into any contract, subcontract or arrangement in connection with the Project or any property included or planned to be included in the Project in which any member, officer or employee of the Agency or the locality during tenure or for 2 years thereafter has any interest, direct or indirect. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of tenure any such interest, and if such interest is immediately disclosed to the Agency, the Agency, with prior approval of the Department, may waive the prohibition contained in this paragraph provided that any such present member, officer or employee shall not participate in any action by the Agency or the locality relating to such contract, subcontract or arrangement. The Agency shall insert in all contracts entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of their subcontracts, the following provision:

"No member, officer or employee of the Agency or of the locality during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40  
PROGRAM MANAGEMENT  
OGC-08/15  
Page 11 of 15

The provisions of this paragraph shall not be applicable to any agreement between the Agency and its fiscal depositories or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

- G. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

**15. Indemnification and Insurance:**

- A. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The Agency guaranties the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Agency or any subcontractor, in connection with this Agreement. Additionally, the Agency agrees to include the following indemnification in all contracts with contractors/subcontractors, or consultants/subconsultants who perform work in connection with this Agreement:

"To the fullest extent permitted by law, the Agency's contractor shall indemnify and hold harmless the Agency, the State of Florida, Department of Transportation, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of this Contract.

This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity.

To the fullest extent permitted by law, the Agency's consultant shall indemnify and hold harmless the Agency, the State of Florida, Department of Transportation, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the consultant and persons employed or utilized by the consultant in the performance of this Contract.

This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity."

- B. The Agency shall, or cause its contractor or consultant to carry and keep in force, during the term of this Agreement, a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$200,000 per person and \$300,000 each occurrence, and property damage insurance of at least \$200,000 each occurrence, for the services to be rendered in accordance with this Agreement. The Agency shall also, or cause its contractor or consultant to carry and keep in force Workers' Compensation Insurance as required by the State of Florida under the Workers' Compensation Law. With respect to any general liability insurance policy required pursuant to this Agreement, all such policies shall be issued by companies licensed to do business in the State of Florida. The Agency shall provide to the Department certificates showing the required coverage to be in effect with endorsements showing the Department to be an additional insured prior to commencing any work under this Agreement. Policies that include Self Insured Retention will not be accepted. The certificates and policies shall provide that in the event of any material change in or cancellation of the policies reflecting the required coverage, thirty days advance notice shall be given to the Department or as provided in accordance with Florida law.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40  
PROGRAM MANAGEMENT  
OGC-06/15  
Page 12 of 15

**16. Miscellaneous Provisions:**

- A. The Agency will be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith. The Agency will be responsible for securing any applicable permits. The Agency shall include in all contracts and subcontracts for amounts in excess of \$150,000, a provision requiring compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
- B. The Department shall not be obligated or liable hereunder to any individual or entity not a party to this Agreement.
- C. In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- D. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- E. By execution of the Agreement, the Agency represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.
- F. Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.
- G. In the event that this Agreement involves constructing and equipping of facilities, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency a written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate. After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency a written approval with said remainder of the Project. Failure to obtain this written approval shall be sufficient cause of nonpayment by the Department.
- H. Upon completion of right-of-way activities on the Project, the Agency must certify compliance with all applicable federal and state requirements. Certification is required prior to authorization for advertisement for or solicitation of bids for construction of the Project, including if no right-of-way is required.
- I. The Agency will certify in writing, prior to Project closeout that the Project was completed in accordance with applicable plans and specifications, is in place on the Agency's facility, adequate title is in the Agency's name, and the Project is accepted by the Agency as suitable for the intended purpose.
- J. The Agency agrees that no federally-appropriated funds have been paid, or will be paid by or on behalf of the Agency, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension,

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40  
PROGRAM MANAGEMENT  
OGC-08/15  
Page 13 of 15

continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement. If any funds other than federally-appropriated funds have been paid by the Agency to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. The Agency shall require that the language of this paragraph be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. No funds received pursuant to this contract may be expended for lobbying the Legislature, the judicial branch or a state agency.

- K.** The Agency may not permit the Engineer of Record to perform Construction, Engineering and Inspection services on the Project.
- L.** The Agency agrees to maintain any project not on the State Highway System constructed under this Agreement. If the Agency constructs any improvement on Department right-of-way, the Agency  will  will not maintain the improvements made for their useful life.
- M.** The Agency shall comply with all applicable federal guidelines, procedures, and regulations. If at any time a review conducted by Department and or FHWA reveals that the applicable federal guidelines, procedures, and regulations were not followed by the Agency and FHWA requires reimbursement of the funds, the Agency will be responsible for repayment to the Department of all funds awarded under the terms of this Agreement.
- N.** The Agency:
- i. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Agency during the term of the contract; and
  - ii. shall expressly require any contractor and subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
- O.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.
- P.** The Parties agree to comply with s.20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s.20.055(5), Florida Statutes.
- Q.** If the Project is procured pursuant to Chapter 255 for construction services and at the time of the competitive solicitation for the Project 50 percent or more of the cost of the Project is to be paid from state-appropriated funds, then the Agency must comply with the requirements of Section 255.0991, Florida Statutes.
- R. Exhibits**
- i. Exhibit "A", Project Description and Responsibilities, is attached and incorporated into this Agreement.
  - ii. Exhibit "B", Schedule of Funding, is attached and incorporated into this Agreement.
  - iii.  If this Project includes Phase 58 (construction) activities, then Exhibit "C", FHWA FORM 1273, is attached and incorporated into this Agreement.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40  
PROGRAM MANAGEMENT  
OGC-08/15  
Page 14 of 15

- iv.  An Alternative Pay Method is used on this Project. If an alternative Pay Method is used on this Project, then Exhibit "D", Alternative Pay Method, is attached and incorporated into this Agreement.
- v. Exhibit "E", Title VI Assurances is attached and incorporated into this Agreement.
- vi. Exhibit "F", the Agency Resolution authorizing entry into this Agreement, is attached and incorporated into this Agreement.
- vii.  State Funds are used on this Project. If State Funds are used on this Project, then Exhibit "G", State Funds Addendum, is attached and incorporated into this Agreement.
- viii.  This Project is located off the State Highway System and includes funding for landscaping. If this Project is located off the State Highway System and includes funding for landscaping, then Exhibit "L" is attached and incorporated into this Agreement.
- ix.  This Project utilizes Advance Project Reimbursement. If this Project utilizes Advance Project Reimbursement, then Exhibit "R" is attached and incorporated into this Agreement.
- x.  This Project includes funding for a roadway lighting system. If the Project includes funding for roadway lighting system, Exhibit "RL" is attached and incorporated into this Agreement.
- xi.  This Project includes funding for traffic signals and/or traffic signal systems. If this Project includes funding for traffic signals and/or traffic signals systems, Exhibit "T" is attached and incorporated into this Agreement.
- xii. Exhibit "1", Federal Financial Assistance (Single Audit Act) is attached and incorporated into this Agreement.
- xiii.  State Funds are used on this Project. If State Funds are used on this Project, then Exhibit "2", State Financial Assistance (Florida Single Audit Act), is attached and incorporated into this Agreement.

*The remainder of this page intentionally left blank.*

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40  
PROGRAM MANAGEMENT  
OGC-08/15  
Page 15 of 15

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

AGENCY BREVARD COUNTY

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

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

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

Name: Jim Barfield  
Title: Chairman

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


As approved by the Board on: 5/26/16

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

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

  
Scott Ellis, Clerk

Reviewed for legal form and content:

  
Assistant County Attorney

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40  
PROGRAM MANAGEMENT  
OGC - 08/15  
Page 1 of 2

**EXHIBIT "A"**

**PROJECT DESCRIPTION AND RESPONSIBILITIES**

FPN: 438023-1-58/68-01

This exhibit forms an integral part of the Local Agency Program Agreement between the State of Florida, Department of Transportation and

Brevard County, 2725 Judge Fran Jamieson Way, Building A, Suite 201, Viera, Florida 32940

**PROJECT LOCATION:**

- The project is on the National Highway System.
- The project is on the State Highway System.

**PROJECT LENGTH AND MILE POST LIMITS:** approximately 1.3 miles; MP 1.680 to MP 2.980

**PROJECT DESCRIPTION:**

The Valkaria Road Sidewalk project is located in The Town of Grant-Valkaria. The project includes the installation of approximately 6,780 linear feet of 8-foot wide concrete sidewalk. The sidewalk will run on the north side of Valkaria Road, from The Grant-Valkaria Community Park to Leghorn Road. Project elements include ADA compliant sidewalk, minor pipe culvert extensions, guardrail, curb ramps, detectable warning surfaces, signage, and thermoplastic striping. A timber wood boardwalk extending over the edge of a small body of water will be constructed. The boardwalk is 8 feet wide and approximately 500 feet in length. Mobilization, maintenance of traffic (MOT), erosion control, clearing and grubbing, and sodding are also included as part of this project.

The payment and performance bond (warranty bond) is a non-participating item and will not be federally funded. The proposed sidewalk which is 6" thick, 3,000 psi concrete with fiber reinforcement is considered an upgrade. The County will only be reimbursed for the basic cover 4" thick, 2,500 psi concrete sidewalk.

**SPECIAL CONSIDERATIONS BY AGENCY:**

The audit report(s) required in the Agreement shall include a Schedule of Project Assistance that will reflect the Department's contract number, the Financial Project Number (FPN), the Federal Authorization Number (FAN), where applicable, the amount of state funding action (receipt and disbursement of funds), any federal or local funding action, and the funding action from any other source with respect to the project.

Invoices shall be submitted on a quarterly basis and progress reports shall be submitted as required to:

Vincent Vacchiano, LAP Project Manager  
Florida Department of Transportation  
719 South Woodland Boulevard, MS 3-506  
DeLand, Florida 32720

**EXHIBIT "A"**

**PROJECT DESCRIPTION AND RESPONSIBILITIES**

The Agency shall commence the project's activities subsequent to the execution of this Agreement and shall perform in accordance with the following schedule:

- a) Study to be completed by N/A.
- b) Design to be completed by N/A.
- c) Right-of-Way requirements identified and provided to the Department by N/A.
- d) Right-of-Way to be certified by N/A.
- e) Construction contract to be let by November 18, 2016.
- f) Construction to be completed by July 25, 2017.

If this schedule cannot be met, the Agency will notify the Department in writing with a revised schedule or the project is subject to the withdrawal of federal funding.

**SPECIAL CONSIDERATIONS BY DEPARTMENT:**

The Project funding may be reduced to an amount equal to the award amount and/or the actual contract costs.

Invoice payments will be made on a pro-rata basis as a percentage of the federal funding amount compared to the actual award amount.

The County will perform CEI services utilizing its own forces. The County will only be reimbursed for direct costs (this includes general and administrative overhead). Timesheets showing project hours will be required when submitting invoices for those reimbursement requests. Testing will be performed via a locally funded continuing services contract and will not be eligible for reimbursement.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

625-010-40B  
 PROGRAM MANGEMENT  
 OGC - 08/15  
 Page 1 of 1

**EXHIBIT "B"**

**SCHEDULE OF FUNDING**

AGENCY NAME & BILLING ADDRESS Brevard County 2725 Judge Fran Jamieson Way, Building A, Suite 201 Viera, Florida 32940	FPN: 438023-1-58/68-01
--	------------------------

TYPE OF WORK By Fiscal Year	FUNDING			
	(1) TOTAL PROJECT FUNDS	(2) LOCAL FUNDS	(3) STATE FUNDS	(4) FEDERAL FUNDS
<b>Planning-18</b> FY: _____ FY: _____ FY: _____ _____	_____	_____	_____	_____
Total Planning Cost				
<b>Project Development &amp; Environment (PD&amp;E) - 28</b> FY: _____ FY: _____ FY: _____ _____	_____	_____	_____	_____
Total PD&E Cost				
<b>Design - 38</b> FY: _____ FY: _____ FY: _____ _____	_____	_____	_____	_____
Total Design Cost				
<b>Right-of-Way - 48</b> FY: _____ FY: _____ FY: _____ _____	_____	_____	_____	_____
Total Right-of-Way Cost				
<b>Construction-58</b> FY: 2016-2017 FY: _____ FY: _____ FY: _____ _____	<u>\$619,674.00</u>	<u>\$60,200.00</u>	<u>\$0.00</u>	<u>\$559,474.00</u>
Total Construction Cost	\$619,674.00	\$60,200.00	\$0.00	\$559,474.00
<b>Construction Engineering and Inspection (CEI) - 68</b> FY: 2016-2017 FY: _____ FY: _____ _____	<u>\$64,824.00</u>	<u>\$13,000.00</u>	<u>\$0.00</u>	<u>\$51,824.00</u>
Total CEI Cost	\$64,824.00	\$13,000.00	\$0.00	\$51,824.00
<b>Operations - 88</b> FY: _____ FY: _____ FY: _____ _____	_____	_____	_____	_____
Total Operations Costs				
<b>TOTAL COST OF THE PROJECT</b>	\$684,498.00	\$73,200.00	\$0.00	\$611,298.00

The Department's fiscal year begins on July 1. For this project, funds are not projected to be available until after the 1st of July of each fiscal year. The Department will notify the Agency, in writing, when funds are available.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

625-010-40C  
PROGRAM MANAGEMENT  
OGC- 08/15  
Page 1 of 1

**EXHIBIT "C"**

**FHWA FORM 1273  
FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:**

**LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC –  
COMPLIANCE WITH FHWA 1273.**

The FHWA-1273 version dated May 1, 2012 is appended in its entirety to this Exhibit. FHWA-1273 may also be referenced on the Department's website at the following URL address:  
<http://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>

Sub-recipients of federal grants awards for Federal-Aid Highway construction shall take responsibility to obtain this information and comply with all provisions contained in FHWA-1273.

**Exhibit "E"**  
**TITLE VI ASSURANCES**

During the performance of this contract, the consultant or contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as the "contractor") agrees as follows:

- (1.) **Compliance with REGULATIONS:** The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") *Title 49, Code of Federal Regulations, Part 21*, as they may be amended from time to time, (hereinafter referred to as the **REGULATIONS**), which are herein incorporated by reference and made a part of this contract.
- (2.) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the basis of race, color, national origin, or sex in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by **Section 21.5** of the **REGULATIONS**, including employment practices when the contract covers a program set forth in **Appendix B** of the **REGULATIONS**.
- (3.) **Solicitations for Sub-contractors, including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under sub-contract, including procurements of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the **REGULATIONS** relative to nondiscrimination on the basis of race, color, national origin, or sex.
- (4.) **Information and Reports:** The contractor shall provide all information and reports required by the **REGULATIONS** or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *Florida Department of Transportation* or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and Federal Motor Carrier Safety Administration* to be pertinent to ascertain compliance with such **REGULATIONS**, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the *Florida Department of Transportation, or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration* as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5.) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Florida Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40E  
PROGRAM MANAGEMENT  
OGC-08/15  
Page 2 of 2

Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to:

- a. withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. cancellation, termination or suspension of the contract, in whole or in part.

**(6.) Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (7) in every sub-contract, including procurements of materials and leases of equipment, unless exempt by the **REGULATIONS**, or directives issued pursuant thereto. The contractor shall take such action with respect to any sub-contract or procurement as the *Florida Department of Transportation* or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the contractor may request the *Florida Department of Transportation* to enter into such litigation to protect the interests of the *Florida Department of Transportation*, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**(7.) Compliance with Nondiscrimination Statutes and Authorities:** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40F  
PROGRAM MANAGEMENT  
OGC - 08/15  
Page 1 of 1

**EXHIBIT "F"**

**AGENCY RESOLUTION**

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

**RESOLUTION NO. 2016- 086**

**A RESOLUTION AUTHORIZING THE EXECUTION OF LOCAL AGENCY PROGRAM AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE VALKARIA ROAD SIDEWALK FROM GRANT-VALKARIA PARK TO LEGHORN ROAD**

**WHEREAS**, the State of Florida Department of Transportation (FDOT) and Brevard County desire to facilitate the construction of the Valkaria Road Sidewalk from Grant-Valkaria Park to Leghorn Road and,

**WHEREAS**, the State of Florida Department of Transportation (FDOT) has requested Brevard County to execute and deliver to the State of Florida Department of Transportation (FDOT) the Local Agency Program (LAP) Agreement for the aforementioned project, FPN 438023-1-58-01 and 438023-1-68-01.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, that Jim Barfield, Chairman, of the Board of County Commissioners, is hereby authorized to make, execute, and deliver to the State of Florida Department of Transportation (FDOT) the Local Agency Program (LAP) Agreement for the aforementioned project, FPN 438023-1-58-01 and FPN 438023-1-68-01.


**DONE AND RESOLVED** in regular session this 26th day of May, 2016.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA



Scott Ellis, Clerk



Jim Barfield, Chairman

As approved by the Board on 5/26/16

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40  
PROGRAM MANAGEMENT  
1/15  
Page 1 of 1

**EXHIBIT 1**

**FEDERAL FINANCIAL ASSISTANCE (SINGLE AUDIT ACT)**

**FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:**

CFDA No.: 20.205  
CFDA Title: Highway Planning and Construction  
Federal-Aid Highway Program, Federal Lands Highway Program  
CFDA Program Site: <https://www.cfda.gov/>  
Award Amount: \$611,298.00  
Awarding Agency: Florida Department of Transportation  
Award is for R&D: No  
Indirect Cost Rate: N/A

**FEDERAL RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:**

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles & Audit Requirements for Federal Awards  
<http://www.ecfr.gov/>

OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*  
[http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133\\_revised\\_2007.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf)

OMB Circular A-133 Compliance Supplement 2014  
[http://www.whitehouse.gov/omb/circulars/a133\\_compliance\\_supplement\\_2014](http://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2014)

**FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT MAY ALSO BE SUBJECT TO THE FOLLOWING:**

OMB Circular A-87 (Revised), *Cost Principles for State, Local and Indian Tribal Governments*  
[http://www.whitehouse.gov/omb/circulars\\_a087\\_2004/](http://www.whitehouse.gov/omb/circulars_a087_2004/)

OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*  
[http://www.whitehouse.gov/omb/circulars\\_a102/](http://www.whitehouse.gov/omb/circulars_a102/)

Title 23 – Highways, United States Code  
<http://uscode.house.gov/browse/prelim@title23&edition=prelim>

Title 49 – Transportation, United States Code  
<http://uscode.house.gov/browse/prelim@title49&edition=prelim>

Map-21 – Moving Ahead for Progress in the 21<sup>st</sup> Century, Public Law 112-141  
<http://www.gpo.gov/fdsys/pkg/PLAW-112publ141/pdf/PLAW-112publ141.pdf>

Federal Highway Administration – Florida Division  
<http://www.fhwa.dot.gov/fldiv/>

Federal Funding Accountability and Transparency Act (FFATA) Sub-award Reporting System (FSRS)  
<https://www.fsrs.gov/>

TO: PG520BL@dot.state.fl.us  
 SUBJECT: FUNDS APPROVAL/REVIEWED FOR CONTRACT G0F55  
 STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
 FUNDS APPROVAL

Contract #G0F55 Contract Type: Method of Procurement:  
 Vendor Name: BREVARD COUNTY B  
 Vendor ID: VF596000523163  
 Beginning date of this Agmt: 09/27/16  
 Ending date of this Agmt: 11/30/17

\*\*\*\*\*  
 ORG-CODE \*EO \*OBJECT \*AMOUNT \*FIN PROJECT \*FCT \*CFDA  
 (FISCAL YEAR) \*BUDGET ENTITY \*CATEGORY/CAT YEAR  
 AMENDMENT ID \*SEQ. \*USER ASSIGNED ID \*ENC LINE (6S)/STATUS  
 \*\*\*\*\*

Action: ORIGINAL Funds have been: APPROVED  
 55 054010508 \*AF \*780000 \* 559474.00 \*43802315801 \*215 \*20.205  
 2017 \*55150200 \*088717/17  
 0001 \*00 \* \*0001/04

-----  
 Action: ORIGINAL Funds have been: APPROVED  
 55 054010508 \*AC \*780000 \* 51824.00 \*43802316801 \*215 \*20.205  
 2017 \*55150200 \*088718/17  
 0001 \*01 \* \*0002/04

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 TOTAL AMOUNT: \*\$ 611,298.00 \*  
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FUNDS APPROVED/REVIEWED FOR ROBIN M. NAITOVE, CPA, COMPTROLLER  
 DATE: 09/23/2016