

Agency: Brevard County	Fund: DDR	Function: 215	Financial Management No.:
Vendor No.: F596000523164	Contract Amount: \$ 4,990,758.00		407402-4-C8-01
Contract No:			FLAIR Approp: 088849
			FLAIR Obj.: 131545
			Org. Code: 55053010541

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

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

WITNESSETH:

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

WHEREAS, the COUNTY by Memorandum of Agreement dated the 23 day of May, 2023, a copy of which is attached hereto as Exhibit “F” and made a part hereof, has authorized its officers to execute this Agreement on its behalf; and

WHEREAS, the DEPARTMENT is prepared, in accordance with its Five Year Work Program, to undertake the Project described as the State Road 528 from east of State Road 3 to Port Canaveral Interchange project, in Fiscal Year 2023/2024, said Project being known as FM #407402-4-C8-01, hereinafter referred to as the “SR 528 Project”; and

WHEREAS, the SR 528 Project is on the State Highway System, is not revenue producing and is contained in the adopted Five-Year Work Program; and

WHEREAS, the SR 528 Project will require a stormwater management permit from the St. Johns River Water Management District, herein referred to as “SJRWMD”; and

WHEREAS, the DEPARTMENT intends to support the SJRWMD’s issuance of the stormwater management permit for the SR 528 Project through the use of environmental credits it will acquire from the COUNTY. The COUNTY will create the environmental credits through a

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

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

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

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

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

1. TERM

A. The term of this Agreement shall begin upon the date of signature of the last party to sign. The COUNTY will have environmental credits available when the COUNTY completes construction of the “S2S Sykes Creek Zone N” Project by **July 31, 2026**, which is in accordance with the schedule described in Exhibit “C” attached hereto. If the COUNTY does not have available environmental credits available for purchase within the time period allotted, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the COUNTY and granted in writing by the DEPARTMENT prior to the expiration of the Agreement. Expiration of this Agreement will be considered termination of the Project.

2. SERVICES AND PERFORMANCES

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

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

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

C. Upon completion of the S2S Sykes Creek Zone N Project, the COUNTY will reserve 62.7% (7.01 kg/y) of TP and 33.3% (351.94 kg/y) of TN for the exclusive use by the DEPARTMENT.

D. To the extent necessary, the COUNTY will cooperate with the DEPARTMENT's efforts to utilize the reserved permit credits as a basis for the issuance of a SJRWMD Permit for the DEPARTMENT'S SR 528 Project, FM #407402-4-C8-01.

E. The Total Project Costs will be based on the sum total of [Design Costs] + [Construction Costs] + [CEI Costs]. The DEPARTMENT acknowledges that the COUNTY has nearly completed the design and the total design costs are anticipated to be \$788,881.52 (Seven Hundred Eighty-Eight Thousand Eight Hundred Eighty-One Dollars and 52/100) and that the COUNTY has secured a grant of \$2,603,016.00 (Two Million Six Hundred Three Thousand Sixteen Dollars and No/100) to partially fund the construction of the S2S Project. The estimated remaining Construction and CEI Costs to be partially reimbursed by the DEPARTMENT equals \$8,755,522.00 (Eight Million Seven Hundred Fifty-Five Thousand Five Hundred Twenty-Two Dollars and No/100).

F. Upon approval by the SJRWMD to issue the Stormwater management permit to the DEPARTMENT on the basis of use of the S2S Sykes Creek Zone N Project credits, the DEPARTMENT will reimburse the COUNTY funds equal to the eligible cost of construction to complete the S2S Sykes Creek Zone N Project up to a maximum limiting amount of **\$4,990,758.00 (Four Million Nine Hundred Ninety Thousand Seven Hundred Fifty-Eight Dollars and No/100)**. The COUNTY will convey, transfer, or otherwise assign the agreed percentage (as set forth above) of the TN and TP credits created by the S2S Sykes Creek Zone N Project to the DEPARTMENT. Purchase of the credits will be as described herein below.

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

3. COMPENSATION AND REIMBURSEMENT

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

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

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

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

E. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes. If the DEPARTMENT determines that the performance of the COUNTY is unsatisfactory, the DEPARTMENT shall notify the COUNTY of the deficiency to be corrected, which correction shall be made within a timeframe to be specified by the DEPARTMENT. The COUNTY shall, within five (5) days after notice from the DEPARTMENT, provide the DEPARTMENT with a corrective action plan describing how the COUNTY will address all issues of contract non-performance, unacceptable performance, failure

to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the DEPARTMENT, the COUNTY shall be assessed a non-performance retainage equivalent to ten percent (10%) of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the COUNTY resolves the deficiency. If the deficiency is subsequently resolved, the COUNTY may bill the DEPARTMENT for the retained amount during the next billing period. If the COUNTY is unable to resolve the deficiency, the funds may be forfeited at the end of the Agreement term.

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

F. The COUNTY providing goods and services to the DEPARTMENT should be aware of the following time frames. Inspection and approval of goods or services shall take no longer than twenty (20) working days, upon receipt of an invoice. The DEPARTMENT has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

G. If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount to the COUNTY. Interest penalties of less than \$1.00 (One dollar and No/100) will not be enforced unless the COUNTY requests payment. Invoices which have to be returned to the COUNTY because of COUNTY preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT.

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

I. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this Agreement and for five (5) years after final payment is made. Copies of these documents and

records shall be furnished to the DEPARTMENT upon request. Records of costs incurred include the COUNTY'S general accounting records and the Project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the Project, and all other records of the contractor and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs. Any discrepancies revealed by any such audit shall be resolved by a corrected final billing from the COUNTY to the DEPARTMENT.

J. The contractor/consultant/vendor agrees to comply with S.20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with S.20.055(5), Florida Statutes.

K. In the event this Agreement is in excess of \$25,000.00 (Twenty-Five Thousand Dollars and No/100) and a term for a period of more than one (1) year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated as follows:

“The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of \$25,000.00 (Twenty-Five Thousand Dollars and No/100) and which have a term for a period of more than one (1) year.”

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

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

4. COMPLIANCE WITH LAWS

A. The COUNTY shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the COUNTY in conjunction with this Agreement. Failure by the COUNTY to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the DEPARTMENT.

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

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

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

5. TERMINATION AND DEFAULT

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

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

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

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

6. MISCELLANEOUS

A. In no event shall the making by the DEPARTMENT of any payment to the COUNTY constitute or be construed as a waiver by the DEPARTMENT of any breach of covenant or any default which may then exist, on the part of the COUNTY, and the making of such payment by the DEPARTMENT while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the DEPARTMENT with respect to such breach or default.

B. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

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

D. **PUBLIC ENTITY CRIME INFORMATION AND ANTI-DISCRIMINATION STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real

property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

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

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

ii) The COUNTY shall expressly require any contractors and subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the contractor/subcontractor during the contract term.

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

Points of Contact:

DEPARTMENT

Casey Lyon
Environmental Manager
719 South Woodland Boulevard
DeLand, Florida 32720-6834
(386) 943-5436
Casey.Lyon@dot.state.fl.us

COUNTY

Virginia Barker
Director, Natural Resources Management
2725 Judge Fran Jamieson Way, Building C
Viera, Florida 32940
(321) 633-2016
Virginia.Barker@brevardfl.gov

IN WITNESS WHEREOF, the COUNTY has executed this Agreement
on _____ and the DEPARTMENT has executed this
Agreement on _____.

BREVARD COUNTY

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

By: _____

Name: _____

Name: John E. Tyler, P.E.

Title: _____

Title: District Five Secretary

As approved by the Board on:

Attest:

Attest:

Executive Secretary

Legal Review:

Legal Review:


Assistant County Attorney

Financial Provisions Approval by
the Office of the Comptroller on:

January 31, 2024

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

Exhibit “A”

SCOPE OF SERVICES

Financial Management Number: 407402-4-C8-01

Project Description and Limits of Construction:

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

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

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

Permitting: The COUNTY (Recipient) will cooperate and help support the DEPARTMENT’S permitting efforts with the SJRWMD that is dependent on the applications of “credits” from the COUNTY’S (Recipient) Septic to Sewer Project.

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Exhibit “B”

METHOD OF COMPENSATION **Financial Management Number: 407402-4-C8-01**

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

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

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Exhibit “C”

ESTIMATED PROJECT PRODUCTION SCHEDULE
Financial Management Number: 407402-4-C8-01

Give NTP	April 2024
Earliest Construction Start	October 2024
Latest Construction Finish	May 2026
Construction Contract Closeout	May 2026
Final Invoice and Closeout Documentation to the Department	July 2026

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Exhibit “F”

Memorandum of Agreement
Financial Management Number: 407402-4-C8-01