

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

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. General Commitments

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

5. Appropriation Contingency

5.1 Contingency. FDOT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. FDOT shall require a statement from the comptroller of FDOT that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid in succeeding fiscal years. Accordingly, FDOT's performance and obligation to pay under this Agreement are contingent upon an annual appropriation by the Legislature.

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APPROVAL OF AGREEMENT

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

**BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY**

By: _____

Rita Pritchett
Print/Type Name

As: Chair
Brevard County

Date: _____

Legal Review:

By: 
County Attorney

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

Jared Perdue
District Secretary, District Five

Date: _____

Legal Review:

By: _____
FDOT Attorney