

LANDSCAPE FUNDING AND MAINTENANCE AGREEMENT
INTERSTATE 95/VIERA BLVD INTERCHANGE
LANDSCAPING IMPROVEMENTS

THIS BACKUP FUNDING AGREEMENT FOR Interstate 95/VIERA BOULEVARD Interchange Landscaping Improvements (this “**Agreement**”) is made and entered by and among the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as the “**County**”) and THE VIERA COMPANY, a Florida corporation (hereinafter referred to as “**TVC**”), and CENTRAL VIERA COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation (“**CVCA**”).

A. The County has entered into that certain Joint Participation Agreement dated _____, 2020 (hereinafter referred to as the “**Funding Agreement**”) with the State of Florida Department of Transportation (hereinafter referred to as “**FDOT**”) concerning the installation of landscaping along the interchange areas of Interstate 95 and Viera Boulevard (hereinafter referred to as the “**Project**”). The Project will be constructed in accordance with the plans entitled “Viera Boulevard / SR 9 (I 95) Diverging Diamond Interchange Landscape Plans signed and sealed on February 21, 2020 prepared by Susan Hall, ASLA Landscape Architecture, 4425 Crooked Mile Road, Merritt Island, FL 32952, and having Sheets 1 through 17, which have been approved by TVC, the County, and FDOT for the Project and the Specifications and Contract Documents signed and sealed by Susan Hall, ASLA Landscape Architecture (hereinafter collectively referred to as the “**Plans and Specifications**”) . A copy of the Funding Agreement is attached hereto as **Exhibit “A”** and incorporated herein by reference.

B. Under the terms of the Funding Agreement, FDOT has agreed to provide financial assistance to the County for the construction of the Project in the amount of Seven Hundred Fifty-Eight Thousand Two Hundred Seventy-Six and 00/100 Dollars (\$758,276.00) (hereinafter referred to as the “**Project Cost Funding Amount**”) based upon the “Method of Compensation” attached to the Funding Agreement as an exhibit. The Funding Agreement does not provide financial assistance to the County for the two-year “Establishment Period” for the Project as defined in Section 2(ii) below (the “**Establishment Period**”) nor for the maintenance of the Project.

C. In order to induce the County to commence and complete construction of the Project as specified in the Plans and Specifications and the Funding Agreement, TVC has agreed (i) that in the event the cost of constructing the Project in accordance with the Plans and Specifications incurred by the County exceeds the Project Cost Funding Amount, TVC will reimburse the County for such excess in accordance with the terms and conditions hereinafter set forth, and (ii) TVC will reimburse the County for all costs associated with the Establishment Period in accordance with the terms and conditions hereinafter set forth.

D. In order to further induce the County to commence and complete construction of the Project as specified in the Plans and Specifications and the Funding Agreement, TVC has

agreed to assume the maintenance obligations and associated maintenance costs for the Project, per the standards in the Funding Agreement following the completion of the two-year Establishment Period on the terms and conditions hereinafter set forth, with such maintenance obligations intended to be assigned by TVC to CVCA as more particularly provided in this Agreement. The County shall not incur any costs associated with the maintenance of the Project.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1: Recitals

The recitals set forth hereinabove are true and correct in all respects and are incorporated herein by reference as if set forth herein verbatim.

Section 2: Project

The County agrees to undertake the construction and completion of the Project pursuant to the Plans and Specifications in accordance with the provisions of the Funding Agreement. The Project is further defined as follows:

- (i) **“Project Construction”** shall mean the installation of landscaping and includes preparing all planting areas by removing sod, adding soil and adjusting grade for proper planting; purchasing all materials for the project and the installation of the landscaping improvements in accordance with the Plans and Specifications; provide all necessary engineering supervision, and otherwise perform all other necessary work to complete the Project, as specified in Exhibit “A” of the Funding Agreement.
- (ii) **“Establishment Period”** shall mean the work activities performed in compliance with the Plans and Specifications related to the maintenance of the Project Construction following final completion of the landscape installation and shall be a period of two years.
- (iii) **“Project Maintenance”** shall mean the work activities performed to maintain the Project in a reasonable manner and with due care in accordance with all applicable FDOT guidelines, standards, and procedures including but not limited to a) Procedure 850-000-015 Roadway and Roadside Maintenance; b) Procedure 850-065-002 Maintenance Rating Program Handbook; c) Guide for Roadside Vegetation Management; and as specified in the Funding Agreement and the Plans and Specifications.

Without limiting the generality of the preceding provisions in items (i), (ii) and (iii) immediately above, the County agrees to submit invoices to FDOT on a timely basis with respect to the Project Construction in accordance with the Funding Agreement, to complete the Project Construction on or before the expiration date or extensions

thereof provided for in the Funding Agreement, to provide to FDOT such data, reports, records, contracts and other documents relating to the Project as required under the Funding Agreement or as FDOT may otherwise require, and to carry out and complete the Project Construction in accordance with the schedule of funding approved by FDOT. The County shall also maintain records, comply with any and all state or federal audit requirements, and submit reports to FDOT and other governmental agencies concerning the Project as required by the Funding Agreement.

Section 3: Reimbursement by TVC for Project Costs

In the event the cost of constructing the Project in accordance with the Plans and Specifications incurred by the County exceeds the Project Cost Funding Amount, the County will provide TVC with an application for reimbursement (hereinafter referred to as a “**Cost Reimbursement Request**”) in the amount of such excess. For purposes of this Agreement, the phrase “the costs of constructing the Project incurred by the County” means all out-of-pocket costs and expenses incurred by County in constructing and completing the Project in accordance with the Plans and Specifications, including Project Construction and Establishment Period.

A Cost Reimbursement Request for Project Construction shall provide a detailed listing of (i) all costs of constructing the Project incurred by the County, and (ii) all funds received by the County from FDOT pursuant to the Funding Agreement.

A Cost Reimbursement Request for Establishment Period shall provide a detailed listing of all costs of establishing the Project incurred by the County.

All Cost Reimbursement Requests shall also include reasonable and customary documentation for cost verification purposes. In the event TVC determines that any of the costs associated with the Project, in accordance with the Plans and Specifications, incurred by the County listed in a Cost Reimbursement Request cannot be reasonably verified based upon the documentation provided by the County, TVC shall notify the County within ten days of TVC’s determination thereof and advise the County of the required documentation to verify the applicable cost. The County shall have thirty days from the date of its receipt of TVC’s notice that a cost cannot be verified within which to provide TVC with the requested additional documentation to verify the cost. If TVC does not dispute the amounts requested by the County in a Cost Reimbursement Request, TVC shall cause such amounts to be paid to the County within thirty days after TVC’s receipt of that Cost Reimbursement Request. However, if TVC disputes any amounts requested by the County in an Cost Reimbursement Request, then within thirty days after receipt of any additional documentation timely requested by TVC from County, TVC shall pay County the amount requested in the Cost Reimbursement Request (less any amounts which TVC reasonably disputes, explaining its objections with specificity, as not being properly documented or eligible for reimbursement hereunder). In the event TVC disputes any amounts due pursuant to the preceding sentence, the

parties agree to meet within ten days of TVC's delivery of partial payment and work diligently in good faith to resolve the dispute or other issue.

Section 4: Termination of Funding Agreement by FDOT

In the event FDOT terminates the Funding Agreement in whole or in part, the County shall promptly notify TVC of such termination and provide TVC with copies of all correspondence related to such termination. Upon any termination of the Funding Agreement, the County shall comply with all provisions of the Funding Agreement related to termination (including the repayment to FDOT of any over-payments).

Section 5: Security

The obligations of TVC under this Agreement shall be secured by either a surety bond in the amount of one hundred twenty-five percent (125%) of the current Project cost estimate of \$947,379.00 in form and content mutually agreed upon by TVC and the County or by a letter of credit issued by a national bank selected by TVC in the amount of one hundred twenty-five percent (125%) of the current Project cost estimate. TVC shall provide such surety bond or letter of credit to the County within fifteen business days after this Agreement has been fully executed. The County must be entitled to make presentment of and collect on any letter of credit utilized by TVC either (i) in person in Brevard County, Florida, (ii) by delivery by facsimile or other electronic transmission of a copy to a location outside of Brevard County, Florida (TVC acknowledges, however, that the County may elect to make presentment by facsimile or other electronic transmission copy as much as ten days in advance of any deadline date to avoid any delay or difficulties in collection).

Section 6: Maintenance

Upon the County's completion of the Project Construction in the manner required under this Agreement, the County shall provide TVC with a certified copy of the "as built" plans for the Project that satisfy the applicable requirements for those plans under the Funding Agreement (the "**As-Built Plans**"). Upon the County's completion of the two-year Establishment Period, TVC shall assume responsibility for maintaining the Project, which shall be maintained by TVC in good condition, appearance and repair to a standard not less than the maintenance requirements set forth under the Funding Agreement. . Notwithstanding the foregoing, the County, TVC, and CVCA acknowledge and agree that it is intended for TVC to assign its maintenance obligations for the Project under this Agreement to CVCA in the future, and it is anticipated that such assignment will occur following the two-year Establishment Period as provided for in the Plans and Specifications. CVCA joins in the execution of this Agreement to give its consent to the above-mentioned future assignment, and its assumption, of the maintenance obligations of TVC for the Project, and to agree to maintain the Project following such assignment and assumption in accordance with the maintenance requirements set forth in this Agreement.

Section 7: Notices

Any notices or other communications which may be required or desired to be given under the terms of this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, if delivered by a nationally recognized courier service (such as Federal Express or UPS), if delivered by electronic delivery provided the addressee himself or herself expressly acknowledges receipt of the electronic delivery (an automatic "read receipt" shall not constitute such an acknowledgement), or if mailed by United States certified mail, return receipt requested, postage prepaid, addressed to the respective party at the addresses set forth below:

To TVC:

The Viera Company

7380 Murrell Road

Suite 201

Viera, FL 32940

Attn: Todd J. Pokrywa, President

Benjamin E. Wilson, Esq.

Email: todd.pokrywa@viera.com and vieralegal@viera.com

To CVCA:

Central Viera Community Association, Inc.

7380 Murrell Road

Suite 201

Viera, FL 32940

Attn: Eva M. Rey, President

Email: eva.rey@viera.com

To the County:

Board of County Commissioners of Brevard County, Florida

2725 Judge Fran Jamison Way, Suite C301

Viera, FL 32940

Attn: County Manager

And a copy to:

Public Works Department

Contracts Administrator

2725 Judge Fran Jamison Way, Suite A201

Viera, FL 32940

Email: jeanette.scott@brevardfl.gov

Any notice so given, delivered or made by mail shall be deemed to have been duly given, delivered or made on the date the same is deposited in the United States mail in the manner specified hereinabove. Any notice which is not given, delivered or made by United States mail in the manner specified above shall be deemed to have been duly given, delivered or made upon actual receipt of the same by the party to whom the

same is to be given, delivered or made. Either party may change the address to which notices are to be sent to such party by written notice to the other party specifying such change of address.

Section 8: Effective Date

This Agreement shall be effective on the last signature date required set forth below.

Section 9: Indemnification and Insurance

Except where limited by law, TVC agrees that it will indemnify and save harmless the County from any and all liability, claims, damages, expenses, proceedings and causes of action of every kind and nature arising out of or connected with the Project by TVC or its employees, successors, assigns, or independent contractors. TVC agrees that it will, at its own expense, defend any and all actions, suits or proceedings which may be brought against the County in connection with TVC's use of the Project pursuant to this Agreement and that it will satisfy, pay and discharge any and all judgments that may be entered against the County in any such action or proceedings. TVC shall include in any contract for work upon or involving the Project that the contractor shall indemnify and hold harmless the County from liabilities, damages, losses and costs, including but not limited to 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 the contract. The parties acknowledge specific consideration has been exchanged for this provision.

TVC further agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the County, policies of General Liability insurance insuring TVC against any and all claims, demands or causes of action whatsoever for injuries received and damages to property in connection with the use, occupation, and management of the Project. Such policies of insurance shall insure TVC in an amount not less than one million dollars to cover any and all claims arising in connection with any one particular accident or occurrence. A certificate of such insurance policies shall be filed with the Public Works Department, 2725 Judge Fran Jamieson Way, Bldg. A 201, Viera, Florida, 32940, within ten days of the date Establishment Period completion and annually upon insurance renewal. The County shall be named as an additional insured on the policy that TVC secures and endorsed with a provision that entitles the County to thirty days written notice from the insurer of any change or cancellation in said policies. The County's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure or maintain the insurance required herein, nor serve as a waiver of any rights or defenses the County may have.

TVC shall also be required to include in any contract for work upon or involving the Project that the contractor is required to maintain, without cost or expense to the County, the following types of insurance. The policy limits required are to be considered minimum amounts:

General Liability insurance in an amount not less than one million dollars combined single limit for each occurrence;

Auto Liability insurance in an amount not less than one million dollars combined single limit for each occurrence; and

Workers' Compensation insurance (for statutory limits) as required by Florida Statutes, Chapter 440.

Nothing contained in this Agreement shall be construed as a waiver of County's right to the protections of and/or caps on damages afforded by sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on the County's potential liability under state or federal law.

Section 10: Right to Audit

In the performance of this Agreement, TVC and any assignee shall respectively keep books, records and accounts of all activities related to the Agreement, in compliance with generally accepted accounting procedures. Books, records and accounts related only to the performance of this Agreement (and no other books, records, and accounts of TVC or any assignee) shall be open to inspection during regular business hours by an authorized representative of the County upon written notice to TVC or any assignee not less than five business days advance notice and shall be respectively retained by TVC and each assignee for a period of five years after termination of this Agreement. All books, records and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. All records or documents created by TVC or any assignee or provided to TVC or any assignee under the terms of this Agreement, are public records and TVC and any assignee agree to comply with any request for such public records or documents made in accordance with Section 119.07, Florida Statutes.

Section 11: Construction of Agreement

This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Facsimile or electronically transmitted copies of this Agreement and the signatures thereon shall have the same force and effect as if the same were original documents. Facsimile or electronically transmitted signatures are acceptable and shall be deemed to be original signatures. The paragraph headings herein contained are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement; the paragraph headings shall be ignored in construing and interpreting this Agreement. Whenever used herein, the singular number includes the plural, the plural the singular, and the use of any gender includes all genders. Provisions contained in this Agreement that, by their sense and context, are intended to survive the suspension or termination of this Agreement, shall so survive.

Section 12: Waiver of Rights

No failure or delay by a party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Nothing contained herein shall be construed to imply a partnership, joint venture, principal and agent or employer and employee relationship between the parties. No provision in this Agreement shall provide to any person not a party to this Agreement any remedy, claim or cause of action, or create any third-party beneficiary rights against either party.

Section 13: 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.

Section 14: Venue and Non-Jury Trial

Venue for any action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida and any trial shall be non-jury. This Agreement and the interpretation and enforcement thereof shall be governed by and construed in accordance with the laws of the State of Florida.

Section 15: 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.

Section 16: Entirety

This Agreement is the subject of negotiation between the parties and should not be interpreted more favorably toward one party over the other. 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.

Section 17: Binding Effect

Each party represents to the other it has undertaken all necessary actions to execute this Agreement and has the legal authority to enter this Agreement and to undertake all obligations imposed on it. No party shall be responsible for failure or delay in performance hereunder if such delay or failure in performance is caused by conditions beyond such party's reasonable control, including without limitation fire, flood, riot, strikes, labor disputes, acts of God or of the public enemy, war or civil disturbances, or any future laws, rules, regulations or acts of any government (including any orders, rules or regulations issued by any official or agency of such government).

Section 18: Assignment

Neither party may assign this Agreement without the prior written consent and approval of the other party, excluding the assignment of TVC to CVCA as provided for in Section 6, Maintenance. Upon completion of a permitted assignment of this Agreement, the assignor shall be released from any and all obligations and duties under this Agreement arising from and after the assignment date, and the County shall thereafter look solely to the assignee for the performance of such assigned obligations and duties arising from and after the assignment date, including, without limitation, the indemnification and insurance provisions of Section 9 of this Agreement. The indemnification obligations of such assignee pursuant to Section 9 of this Agreement shall be limited to only the actions of such assignee and its employees and independent contractors, and not for the actions of other third parties, including TVC or any other applicable assignor.

Section 19: Disputes

All disputes related to this Agreement shall in the first instance be referred to the appropriate executives of each party for resolution.

(SIGNATURES ARE ON THE FOLLOWING PAGE.)

IN WITNESS WHEREOF, County, TVC and CVCA have caused this Agreement to be duly executed in their respective names as of the day and year written below.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk

By: _____
Bryan, Lober, Chair
As approved by the Board on:

Approved as to legal form and content:

Assistant County Attorney

Witnesses:

THE VIERA COMPANY,
a Florida corporation

Name: _____

By: _____
Name: Todd J. Pokrywa
Title: President

Name: _____

Name: _____

CENTRAL VIERA COMMUNITY ASSOCIATION,
INC.,
a Florida not-for-profit corporation

Name: _____

By: _____
Name: Eva M. Rey
Title: President

(NOTARY ACKNOWLEDGEMENTS ARE ON
THE FOLLOWING PAGE.)

STATE OF FLORIDA)
)
COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____ 2020 by Todd J. Pokrywa, President of THE VIERA COMPANY, a Florida corporation, on behalf of said corporation. Said person is personally known to me.

Print Name: _____
Notary Public, State of Florida
Commission No.: _____
My Commission Expires: _____

STATE OF FLORIDA)
)
COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____ 2020 by Eva M. Rey, President of CENTRAL VIERA COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation, on behalf of said corporation. Said person is personally known to me.

Print Name: _____
Notary Public, State of Florida
Commission No.: _____
My Commission Expires: _____

Financial Management No.: 428238-2-58-01 428238-3-58-01 Agency: Brevard County Contract No:	Fund: DS Activity: 215 Contract Amount: \$758,276.00	FLAIR Approp: 088716 FLAIR Obj: 563000 Org. Code: 55054010508 Vendor No.: F596000523164
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JOINT PARTICIPATION AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
BREVARD COUNTY

This Agreement, made and entered into on _____, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION** (hereinafter referred to as the DEPARTMENT) and **BREVARD COUNTY**, a Charter County and a political subdivision of the State of Florida (hereinafter referred to as the LOCAL GOVERNMENT),

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 LOCAL GOVERNMENT by Resolution No. _____ dated _____, 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.

WHEREAS, the DEPARTMENT is prepared, in accordance with its Five Year Work Program, to undertake the Project described as the "Landscaping Improvements on State Road 9 (Interstate 95) from South of Viera Boulevard Interchange to North of Viera Boulevard Interchange", in the DEPARTMENT'S Fiscal Year 2019/2020, said Project being known as FM#428238-2-58-01 and FM#428238-3-58-01, hereinafter referred to as the "Project"; and

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

WHEREAS, the implementation of the Project is in the interest of both the DEPARTMENT and the LOCAL GOVERNMENT and it would be most practical, expeditious, and economical for the LOCAL GOVERNMENT to perform the services to complete the Project; and;

WHEREAS, the intent of this Agreement is to establish the terms and conditions of the funding and the production of this Project.

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 LOCAL GOVERNMENT agrees to complete the Project by April 30, 2021, in accordance with the schedule described and contained in Exhibit "C" attached hereto. If the LOCAL GOVERNMENT does not complete the Project 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 LOCAL GOVERNMENT 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. After the Project is complete, the term of this Agreement shall continue in effect and be binding on the parties for maintenance responsibilities of the LOCAL GOVERNMENT. The DEPARTMENT will review the need for the LOCAL GOVERNMENT to continue maintenance of the Improvements on a five-year basis, and if it is determined by the DEPARTMENT that maintenance is no longer needed, the DEPARTMENT may unilaterally terminate the Agreement, upon thirty (30) days written notice to the LOCAL GOVERNMENT.

2. SERVICES AND PERFORMANCES

A. The LOCAL GOVERNMENT shall perform necessary preliminary engineering, prepare all design plans for the Project, perform the construction, provide all necessary engineering supervision, and otherwise perform all other necessary work to complete the Project, as specified in Exhibit "A" attached hereto and by this reference made a part hereof. All work provided by the LOCAL GOVERNMENT hereunder shall be undertaken consistent with and in accordance with the Terms & Conditions set forth in Exhibit "D" hereto. Nothing herein shall be construed as requiring the LOCAL GOVERNMENT to perform any activity which is outside of the scope of services of the Project.

B. In addition to the Terms & Conditions set forth in Exhibit “D”, the LOCAL GOVERNMENT agrees to undertake the design and construction of the Project in accordance with all applicable federal, state and local statutes, rules and regulations, including DEPARTMENT standards and specifications. The LOCAL GOVERNMENT agrees to use current Standard Plans, FDOT Design Manual, and Standard Specifications corresponding to the letting date (bid opening). The latest landscaping Special Provision Specification 580 can be found at:

<https://fdotewp1.dot.state.fl.us/SpecificationsPackage/Package/Workbook/LAPSpecificationSelection.aspx>

C. The landscaping design:

- i) Shall have more emphasis on trees and less on shrubs. Typically, more large trees and fewer shrubs can instantly increase “curb appeal” and wow factor of the landscaping. It can also cost much less to maintain than extensive masses of ornamental shrubs or other high maintenance material.
- ii) Does not prohibit shrubs. Shrubs can be used when and where they are part of the best design solution.
- iii) Consider the Right Plant, Right Place – does the palette fit the surroundings?

During the design process, the design plans will be reviewed by the Department to see if all guidelines are being followed.

D. This Agreement shall act to supersede the normal requirements of the LOCAL GOVERNMENT to secure separate DEPARTMENT permits for the landscaping described herein and this Agreement is deemed to constitute a permit for said work.

E. The LOCAL GOVERNMENT shall be responsible for obtaining clearances/permits required for the construction of the Project from the appropriate permitting authorities.

F. The LOCAL GOVERNMENT understands that they are responsible for the preparation of all design plans for the Project, at the expense of the LOCAL GOVERNMENT, suitable for reproduction on 11 inch by 17 inch sheets, together with a complete set of specifications covering all construction requirements for the Project. The LOCAL GOVERNMENT shall assure that the design, construction, installation, and maintenance is consistent with and meets all criteria and limitations of Rule 14-40.030,

Florida Administrative Code, as it relates to Vegetation Management at Outdoor Advertising Signs.

G. One (1) copy of the design plans shall be provided to the DEPARTMENT'S Design Project Manager. The DEPARTMENT shall review the plans for conformance to the DEPARTMENT'S requirements and feasibility within forty-five (45) days of delivery by the LOCAL GOVERNMENT. The DEPARTMENT'S review shall not be considered an adoption of the plans nor a substitution for the engineer's responsibility for the plans, however, all changes requested by the DEPARTMENT shall be made by the Engineer of Record/LOCAL GOVERNMENT with the understanding that final decision rest with the DEPARTMENT. All corrected plans shall be provided to the DEPARTMENT in a timely manner. The LOCAL GOVERNMENT shall provide a copy of the Final Bid documents to the DEPARTMENT within ten (10) days of the receipt of said documents. After acceptance of the plans and prior to commencing the work described herein, the LOCAL GOVERNMENT shall request a Notice to Proceed from D5-ConstructionSpecialProjects@dot.state.fl.us.

H. The LOCAL GOVERNMENT shall not advertise for bids until the DEPARTMENT issues the Notice to Proceed. **Any work performed prior to the issuance of the Notice to Proceed is not subject to reimbursement.**

I. The expenditure of funds pursuant to this Agreement shall comply with the terms of Section 334.044(26), Florida Statutes, as amended.

J. The LOCAL GOVERNMENT shall hire a DEPARTMENT Pre-qualified Landscape Contractor or, in accordance with the requirements set forth in Exhibit "D" and in accordance with the Special Provisions, as it may be amended from time to time, the LOCAL GOVERNMENT may hire an experienced qualified landscape contractor using the LOCAL GOVERNMENT'S normal bid procedures to perform the construction work for the Project.

- i) Illicit Discharge Training. All persons employed by the Contractor or Subcontractors working within the DEPARTMENT'S right-of-way shall have Tier 1 Illicit Discharge Detection and Elimination (IDDE) training. The computer based training is provided by video on the following web page: <http://www.dot.state.fl.us/emo/sched/train1.shtm>.

- ii) The LOCAL GOVERNMENT shall provide a list of persons trained prior to submittal of the first invoice. The LOCAL GOVERNMENT shall provide an updated list of new Contractor/Subcontractor employees annually thereafter.

K. The LOCAL GOVERNMENT shall hire a DEPARTMENT Pre-qualified Consultant Construction Engineering Inspection firm (hereinafter "CCEI") to perform construction oversight including the obligation to assure that any and all verification testing is performed in accordance with the Standard Specifications for Road and Bridge Construction, current edition, and as amended from time to time. The LOCAL GOVERNMENT'S Attorney shall certify to the DEPARTMENT that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes. The DEPARTMENT shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the Project. The CCEI firm shall not be the same firm as that of the Engineer of Record for the Project.

L. The LOCAL GOVERNMENT shall require the LOCAL GOVERNMENT'S contractor to post a bond in accordance with Section 337.18(1), Florida Statutes.

M. The LOCAL GOVERNMENT shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the approved construction documents, and that it will meet all applicable DEPARTMENT standards and that the work is performed in accord with the Terms and Conditions contained in Exhibit "D".

N. If the LOCAL GOVERNMENT utilizes its own work force for any services for the Project, all costs and expenses thereof shall not be subject to reimbursement.

O. Upon request, the LOCAL GOVERNMENT agrees to provide progress reports to the DEPARTMENT in the standard format used by the LOCAL GOVERNMENT and at intervals established by the DEPARTMENT. The DEPARTMENT will be entitled at all times to be advised, at its request, as to the status of the Project being constructed by the LOCAL GOVERNMENT and of details thereof. Either party to the Agreement may request and shall, within a reasonable time thereafter, be granted a conference with the other party.

P. Upon completion of the work authorized by this Agreement, the LOCAL GOVERNMENT shall notify the DEPARTMENT in writing of the completion; and for all design work that originally required certification by a Registered Landscape Architect, this notification shall contain a Landscape Architect's Certification of Compliance, signed and

sealed by a Registered Landscape Architect, the form of which is attached hereto as Exhibit "E". The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the accepted plans, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.

3. MAINTENANCE

A. The DEPARTMENT and the LOCAL GOVERNMENT agree that until such time as the landscaping and all other improvements constructed or installed in the Department's Right of Way need to be removed from the Right of Way, the LOCAL GOVERNMENT shall, at all times, maintain the Project in a reasonable manner and with due care in accordance with all applicable DEPARTMENT guidelines, standards, and procedures (Project Standards) including but not limited to a) Procedure 850-000-015 Roadway and Roadside Maintenance; b) Procedure 850-065-002 Maintenance Rating Program Handbook; c) Guide for Roadside Vegetation Management; and as herein below specified.

- i) The LOCAL GOVERNMENT hereby agrees to have the landscaping installed on the Project as specified in the Landscape Plan(s). Such installation shall be in conformance with Florida Administrative Code Rule 14-40.003, as it may be amended from time to time. The LOCAL GOVERNMENT shall not change or deviate from said plan(s) without written approval of the DEPARTMENT.
- ii) The LOCAL GOVERNMENT agrees to maintain the landscaping installed by the Project in accordance with the Landscape Maintenance Plan(s). Said maintenance will be in accordance with Florida Administrative Code Rule 14-40.003, as it may be amended from time to time. The LOCAL GOVERNMENT'S responsibility for maintenance shall be consistent with the requirements of Florida Administrative Code Rule 14.40.003(5), as it may be amended from time to time. The maintenance functions to be performed by the LOCAL GOVERNMENT shall be subject to periodic inspections by the DEPARTMENT. The LOCAL GOVERNMENT shall not change or

deviate from said plan(s) without written approval of the DEPARTMENT.

- iii) The LOCAL GOVERNMENT shall have the continuous obligation to monitor the maintenance of traffic pursuant to the Standard Plans Index Series 102, and Rule 14-40.003, Florida Administrative Code, as it may be amended from time to time, during the course of the maintenance functions so that the safe and efficient movement of the traveling public is maintained. During maintenance functions, the LOCAL GOVERNMENT shall take measures, including the placing and display of safety devices that are necessary in order to safely conduct the public through the maintenance area in accordance with the latest and current version of the Federal Highway Administration Manual on Uniform Traffic Control Devices for Streets and Highways, and the DEPARTMENT'S Standard Specifications for Road and Bridge construction, current edition, and the DEPARTMENT'S current Standard Plans, pursuant to the latest spec and standard plans based on the date of the letting (bid opening).
- iv) If at any time after the LOCAL GOVERNMENT has assumed the landscaping installation or maintenance responsibility above-mentioned, it shall come to the attention of the DEPARTMENT that the Project, as will be designed by the LOCAL GOVERNMENT, or a part thereof is not properly installed or maintained pursuant to the terms of this Agreement, the District Secretary or his/her designee may issue a written notice that a deficiency or deficiencies exist(s), by sending a certified letter to the LOCAL GOVERNMENT to place said LOCAL GOVERNMENT on notice thereof. Thereafter, the LOCAL GOVERNMENT shall have a period of thirty (30) calendar days within which to correct the cited deficiencies. If said deficiencies are not corrected within this time period, the DEPARTMENT may terminate the Agreement, in which case the LOCAL GOVERNMENT shall at its own expense and within sixty (60) calendar days after written notice by

the DEPARTMENT, remove all of the landscaping that the DEPARTMENT directs be removed and return the Right-of-Way to its original condition. The LOCAL GOVERNMENT will own such materials it removes and the DEPARTMENT shall own any materials remaining. If the LOCAL GOVERNMENT fails to timely remove the landscaping that the DEPARTMENT has directed to be removed, then the DEPARTMENT shall be deemed to own the landscaping materials and may remove the materials at the expense of the LOCAL GOVERNMENT.

- v) It is understood between the parties hereto that the landscaping covered by this Agreement may be removed, relocated or adjusted by the DEPARTMENT at any time in the future as determined to be necessary by the DEPARTMENT in order that the state road be widened, altered or otherwise changed to meet with future criteria or planning of the DEPARTMENT. The LOCAL GOVERNMENT shall be given sixty (60) calendar days notice to remove said landscaping after which time the DEPARTMENT may remove the same.

4. COMPENSATION AND REIMBURSEMENT

A. Project Cost: The total estimated cost of the Project is **\$948,353.00 (Nine Hundred Forty Eight Thousand Three Hundred Fifty Three Dollars and No/100)**. The DEPARTMENT agrees to compensate the LOCAL GOVERNMENT for services described in Exhibit "A", Scope of Services. The Method of Compensation is included in Exhibit "B" attached hereto.

B. DEPARTMENT Participation: The DEPARTMENT agrees to reimburse the LOCAL GOVERNMENT in an amount not to exceed **\$758,276.00 (Seven Hundred Fifty Eight Thousand Two Hundred Seventy Six Dollars and No/100)** for actual costs incurred, excluding LOCAL GOVERNMENT overhead. The funding for this Project is contingent upon annual appropriation by the Florida Legislature. Notwithstanding the fact that said work is not reimbursable, any and all additional work to be performed by the LOCAL GOVERNMENT within the limits of this Project shall be included in the LOCAL GOVERNMENT'S DEPARTMENT accepted plans and in Exhibit "A", Scope of Services.

No work may be performed in the Department's Right of Way that has not specifically been approved by the Department. The LOCAL GOVERNMENT agrees to bear all expenses in excess of the DEPARTMENT'S participation. Travel costs will not be reimbursed.

C. The LOCAL GOVERNMENT 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, identified as Project Number 428238-2-58-01 and 428238-3-58-01, and the quantifiable, measurable, and verifiable units of deliverables are described more fully in Exhibit "A", Scope of Services.

D. Invoices shall be submitted by the LOCAL GOVERNMENT 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.

E. Supporting documentation must establish that the deliverables were received and accepted in writing by the LOCAL GOVERNMENT 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", Scope of Services was met.

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

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

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

ii) The LOCAL GOVERNMENT 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.

H. The LOCAL GOVERNMENT 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.

I. 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 LOCAL GOVERNMENT. Interest penalties of less than one dollar (\$1.00) will not be enforced unless the LOCAL GOVERNMENT requests payment. Invoices which have to be returned to the LOCAL GOVERNMENT because of LOCAL GOVERNMENT preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT.

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

K. Records of costs incurred under terms of this Agreement shall be maintained and made available upon reasonable 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 LOCAL GOVERNMENT'S general accounting records and the Project records, together with supporting documents and records, of all subcontractors performing work on the Project, and all other records of the 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 LOCAL GOVERNMENT to the DEPARTMENT.

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

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

M. 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.

N. 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 LOCAL GOVERNMENT to that effect.

O. If the DEPARTMENT determines that the performance of the LOCAL GOVERNMENT is not satisfactory, the DEPARTMENT shall have the option of (a) immediately terminating the Agreement, or (b) notifying the LOCAL GOVERNMENT 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.

5. COMPLIANCE WITH LAWS

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

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

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

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

6. TERMINATION AND DEFAULT

A. This Agreement may be canceled by the DEPARTMENT in whole or in part, 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 LOCAL GOVERNMENT 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 LOCAL GOVERNMENT is not satisfactory, the DEPARTMENT shall have the option of (a) immediately terminating the Agreement, or (b) notifying the LOCAL GOVERNMENT 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 LOCAL GOVERNMENT, the DEPARTMENT shall notify the LOCAL GOVERNMENT 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 LOCAL GOVERNMENT 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 will become the property of the DEPARTMENT and will be turned over promptly by the LOCAL GOVERNMENT.

7. MISCELLANEOUS

A. In no event shall the making by the DEPARTMENT of any payment to the LOCAL GOVERNMENT 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 LOCAL GOVERNMENT, 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. The DEPARTMENT may, at any stage, amend or terminate the Project in whole or in part if the DEPARTMENT determines that such action is in the best interest of the public.

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 LOCAL GOVERNMENT acknowledge and agree to the following:

i) The LOCAL GOVERNMENT 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 LOCAL GOVERNMENT during the term of the contract; and

ii) The LOCAL GOVERNMENT 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, facsimile transmission, hand delivery, express mail or electronic mail (e-mail). Unless prior written notification of an alternate address for notices is sent, all notices shall be sent to the following addresses:

DEPARTMENT

Point of Contact:

District 5 Local Programs
719 South Woodland Boulevard, M.S. 4-520
DeLand, Florida 32720-6834
(386) 943-5520
D5-LocalPrograms@dot.state.fl.us

LOCAL GOVERNMENT

Jeanette Scott
Contracts Administrator
Public Works Department
2725 Judge Fran Jamieson Way
Building A, Room 201
Viera, Florida 32940
321-617-7202
Jeanette.Scott@brevardfl.gov

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

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

By: See attached signature page

Name: _____

Title: _____

As approved by the Board on:

Attest:

Legal Review:

Local Government Attorney

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

Name: Loreen C. Bobo, P.E.

Title: Director of Transportation Development

Attest:

Executive Secretary

Legal Review:

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

Joint Participation Agreement
FM#428238-2-58-01 and 428238-3-58-01

Signature Page: Brevard County (Local Government)

By: _____

Bryan Lober, Chair

As approved by the Board on: _____

Attest:

Scott Ellis, Clerk

Reviewed for legal form and content:

Jad Brewer, Assistant County Attorney

Exhibit “A”

SCOPE OF SERVICES

Financial Management Numbers: 428238-2-58-01 and 428238-3-58-01

PROJECT DESCRIPTION:

The LOCAL GOVERNMENT shall cause to be installed landscaping and other improvements within the Right of Way of “State Road 9 (Interstate 95) from South of Viera Boulevard Interchange to North of Viera Boulevard Interchange” (Section 70220000: Milepost 33.465 to Milepost 34.305). The LOCAL GOVERNMENT will also be responsible for providing consultant construction engineering and inspection services.

The landscaping design:

- i) Shall have more emphasis on trees and less on shrubs. Typically, more large trees and fewer shrubs can instantly increase “curb appeal” and wow factor of the landscaping. It can also cost much less to maintain than extensive masses of ornamental shrubs or other high maintenance material.
- ii) Does not prohibit shrubs. Shrubs can be used when and where they are part of the best design solution.
- iii) Consider the Right Plant, Right Place – does the palette fit the surroundings?

During the design process, the design plans will be reviewed by the Department to see if all guidelines are being followed.

The Project includes preparing all planting areas by removing sod, adding soil and adjusting grade for proper planting; purchasing all materials for the project and the installation of the landscaping improvements to the specifications shown in the accepted Landscape Plan; maintaining all aspects of the Project as in the Landscape Plan for the life of the project; staking all trees planted; and supplying Maintenance of Traffic in any roadway areas, if necessary.

The Project includes two segments with individual Financial Project numbers:

Segment **428238-2-58-01** includes completion of all services related to the purchase of the plant materials, fertilizer, soil amendments, mulches, staking, and the cost for labor associated with the installation of the planting. The expenditure of funds pursuant to this segment of the Project shall comply with the terms of Section 334.044(26), Florida Statutes, as amended. To the greatest extent practical, at least 50% of these funds shall be used to purchase large plant materials (large plant materials have been defined by the Florida Department of Transportation to be seven (7) gallon or larger containers as defined by the Florida Department of Agriculture's "Grades and Standards for Nursery Plants") with the remaining funds for other plant materials. Except as prohibited by applicable law or regulation, all of the plant materials purchased shall be purchased from Florida commercial nursery stock in this state on a uniform competitive bid basis.

Segment **428238-3-58-01** includes completion of all services related to clearing and grubbing, erosion control/sediment barrier/inlet protection and the purchase and installation of sod. Additional costs that may be reimbursed under this segment include mobilization, maintenance of traffic, and consultant construction engineering and inspections services.

SPECIAL CONSIDERATIONS BY LOCAL GOVERNMENT:

The LOCAL GOVERNMENT shall not advertise the Project for bids until the DEPARTMENT issues the Notice to Proceed. **Any work performed prior to the issuance of the Notice to Proceed is not subject to reimbursement.**

The LOCAL GOVERNMENT shall construct and complete the Project in accordance with the approved plans, the Special Provisions, and the DEPARTMENT'S Standard Specifications for Road and Bridge Construction, current edition. The LOCAL GOVERNMENT agrees to use current Standard Plans, FDOT Design Manual, and Standard Specifications corresponding to the letting date (bid opening). The latest landscaping Special Provision Specification 580 can be found at:

<https://fdotewp1.dot.state.fl.us/SpecificationsPackage/Package/Workbook/LAPSpecificationSelection.aspx>

All existing fiber and power within the project limits shall be shown and labeled as “FDOT Fiber and power” on the plans. The LOCAL GOVERNMENT shall use cflsmartroads.com to obtain a .kmz file showing all existing fiber and power within the District to utilize in plan development. The LOCAL GOVERNMENT shall provide sight triangles one half mile from all cameras to ensure clearance of the proposed landscaping. All plantings shall maintain ten (10) feet clear path, five (5) feet either side, of all microwave vehicle detection systems (MVDS) across the entire roadway, including the median.

Any and all other work to be performed within the DEPARTMENT’S Right of Way as a part of this Project shall be reflected on Design Plans for the Project. In no instance may improvements be installed or constructed within DEPARTMENT Right of Way unless and until Design Plans have been reviewed and accepted and a Notice to Proceed has been issued by the DEPARTMENT.

If the LOCAL GOVERNMENT will be doing any form of lane closure during the construction of this Project, a Lane Closure Analysis (LCA) shall be submitted by the LOCAL GOVERNMENT with the Design Plans for review by the DEPARTMENT.

The LOCAL GOVERNMENT agrees to bear all expenses in excess of the DEPARTMENT’S participation.

- The LOCAL GOVERNMENT will be responsible to prepare all planting areas by removing sod, adding soil amendments and adjusting grade for proper planting as specified in the plans when accepted by the DEPARTMENT.
- The LOCAL GOVERNMENT will purchase all trees, palms, and plants for the project and will install them to the specifications shown in the accepted Landscape Plans when accepted by the DEPARTMENT.

- The LOCAL GOVERNMENT will be responsible for fertilizing all trees, palms, and plants.
- The LOCAL GOVERNMENT will purchase, supply, spread, and maintain organic mulch on all new plant beds.
- The LOCAL GOVERNMENT will be responsible for staking of all trees planted.
- The LOCAL GOVERNMENT will furnish water to all trees, palms, and plants for the described maintenance period called for in the Landscape Plan specifications.
- The LOCAL GOVERNMENT will be responsible for the growth of all plants for the establishment period called for in the Landscape Plan specifications.
- The LOCAL GOVERNMENT will establish proper Maintenance of Traffic, as needed.
- All work on the Project shall be undertaken and completed in accord with the Terms & Conditions set forth in Exhibit "D".
- The LOCAL GOVERNMENT is responsible for all maintenance requirements in perpetuity including but not limited to plant/tree replacement, fertilization, mulching, and any other requirements stated in section 3A above.

Exhibit “B”

METHOD OF COMPENSATION

Financial Management Numbers: 428238-2-58-01 & 428238-3-58-01

428238-2-58-01

For this segment of this Project, the DEPARTMENT agrees to reimburse the LOCAL GOVERNMENT in an amount up to but not to exceed **\$659,370.00 (Six Hundred Fifty Nine Thousand Three Hundred Seventy Dollars and No/100)** for actual costs incurred, excluding LOCAL GOVERNMENT overhead, for satisfactory completion of all services related to the purchase of the plant materials, fertilizer, soil amendments, mulches, staking, and the cost for labor associated with the installation of the planting detailed in Exhibit “A” (Scope of Services.)

428238-3-58-01

For this segment of this Project, the DEPARTMENT agrees to reimburse the LOCAL GOVERNMENT in an amount up to but not to exceed **\$98,906.00 (Ninety Eight Thousand Nine Hundred Six Dollars and No/100)** for actual costs incurred, excluding LOCAL GOVERNMENT overhead, for satisfactory completion of all services related to clearing and grubbing, erosion control/sediment barrier/inlet protection and the purchase and installation of sod. Additional costs that may be reimbursed include mobilization, maintenance of traffic, and consultant construction engineering and inspections services.

The LOCAL GOVERNMENT 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. Invoices submitted for reimbursement must clearly delineate reimbursable costs from other ineligible costs. The final balance due under this Agreement will be reimbursed upon the completion of all Project services, receipt of final construction cost documentation and proper submission of a detailed invoice and

when the Project has been inspected, approved and accepted to the satisfaction of the DEPARTMENT in writing.

Exhibit “C”

ESTIMATED PROJECT PRODUCTION SCHEDULE

Financial Management Numbers: 428238-2-58-01 & 428238-3-58-01

Advertises for bids	March 12, 2020
Bids for Construction (bid opening)	April 14, 2020
Select Construction Firm (BCC approval)	May 5, 2020
Give NTP to Contractor	June 8, 2020
Earliest Construction Start	June 8, 2020
Latest Construction Finish	October 23, 2020
Construction Contract Closeout	December 22, 2020
Final Invoice and Closeout Documentation to the Department	April 30, 2021

Exhibit “D”

TERMS & CONDITIONS OF CONSTRUCTION

Financial Management Numbers: 428238-2-58-01 & 428238-3-58-01

1. The LOCAL GOVERNMENT is authorized, subject to the conditions set forth herein, to enter DEPARTMENT right-of-way to perform all activities necessary for the construction of the Project (as described more fully in Exhibit “A”). The Project shall be constructed in accordance with construction plans and specifications to be accepted by the DEPARTMENT and consistent with the requirements of the DEPARTMENT. The plans shall include an appropriate plan for maintenance of traffic. Should any significant (as defined by §4-3 of Standard Specifications for Road and Bridge Construction, current edition, and as amended from time to time) changes to the plans be required during construction of the Project, the LOCAL GOVERNMENT shall be required to notify the DEPARTMENT of the changes and receive approval from the DEPARTMENT prior to the changes being constructed. The DEPARTMENT reserves the right to adjust the plans to meet the requirements of permits. The LOCAL GOVERNMENT shall be responsible to maintain the area of the Project at all times during construction of the Project. All payment and performance bonds shall name the DEPARTMENT as an additional obligee. All warranties on any product or material used in construction of said Project shall be in favor of the DEPARTMENT. The LOCAL GOVERNMENT shall assure that the Engineer of Record performs all necessary post-design services that may be required.

2. The LOCAL GOVERNMENT shall have the affirmative responsibility to locate all existing utilities, both aerial and underground and that all utility locations shall be represented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility. The LOCAL GOVERNMENT shall be obligated to design around any utility installation for which the conflict cannot be resolved. Said utility work shall be deemed to be undertaken on behalf of and for the benefit of the DEPARTMENT and the LOCAL GOVERNMENT shall assure that utility work schedules are obtained for the Project.

3. The work performed pursuant to this Agreement may require authorization under the Clean Water Act, by the U.S. Environmental Protection Agency for Storm Water Discharges from construction sites. The LOCAL GOVERNMENT is responsible for obtaining the National Pollutant Discharge Elimination System Permit and all other necessary permits for construction of the Project. When applicable, such permits will be processed in the name of the DEPARTMENT; however, in such event, the LOCAL GOVERNMENT will comply with all terms and conditions of such permit in construction of the subject facilities.

4. It is expressly agreed by the parties that this Agreement creates a permissive use only and that neither the granting of the permission herein to use DEPARTMENT and/or LOCAL GOVERNMENT right-of-way nor the placing of facilities upon DEPARTMENT and/or LOCAL GOVERNMENT land shall operate to create or vest any property right in the LOCAL GOVERNMENT except as otherwise provided in separate agreements.

5. The DEPARTMENT shall appoint and authorize a single individual to serve as the DEPARTMENT'S representative to coordinate and manage the DEPARTMENT review of LOCAL GOVERNMENT activities pursuant to this Agreement. The LOCAL GOVERNMENT shall provide a current construction schedule to the DEPARTMENT'S representative and shall notify the representative at least 48 hours in advance of starting proposed work and again immediately upon completion of work.

6. The LOCAL GOVERNMENT shall hire a DEPARTMENT Pre-qualified Landscape Contractor or the LOCAL GOVERNMENT may hire an experienced qualified contractor that has specific expertise and experience in the performance of **Roadway Landscape** projects. In order for the Contractor to utilize an experienced qualified contractor and to submit a bid relying on an experienced qualified contractor, the following requirements must be provided to the DEPARTMENT by the LOCAL GOVERNMENT:

(a) The Experience form (FDOT form number 850-070-09) must be filled out and submitted with the bid to the LOCAL GOVERNMENT. The form must be signed by the Owner or an Officer of the Company and dated and must reflect the following experience and credentials.

(1) At least five (5) complete years of experience in the performance of **Roadway Landscape** projects or the company Superintendent must have at least five (5) years of like experience as a Superintendent.

(2) The contractor must also provide independent written endorsements from two (2) separate Florida Registered Landscape Architects on company letterhead. These endorsements shall attest to the Florida Registered Landscape Architect's support of the contractor's skills, efficiency, and competence. Each Florida Registered Landscape Architect shall sign the endorsement, provide their license number, and include the following:

(i) Project name with a brief description that evaluates the landscape work performance.

(ii) Location of the project (city, state).

(iii) Professional substantiation of the contractor's skills, efficiency, and competence.

(3) FDOT Prequalification in **Landscaping** can be substituted for the required work experience.

7. The LOCAL GOVERNMENT shall hire a DEPARTMENT Pre-qualified Consultant Construction Engineering Inspection firm (CCEI) to perform construction oversight including the obligation to assure that any and all verification testing is performed in accordance with the Standard Specifications for Road and Bridge Construction, current edition, and as amended from time to time. The DEPARTMENT shall have the right, but not the obligation, to perform independent assurance testing during the course of

construction of the Project. The CCEI firm shall not be the same firm as that of the Engineer of Record for the Project.

8. The LOCAL GOVERNMENT shall require the LOCAL GOVERNMENT'S contractor to post a bond in accordance with Section 337.18, Florida Statutes.

9. The LOCAL GOVERNMENT shall not modify the intent of the design plans or the maintenance of traffic concept without appropriate submission by the Engineer of Record (the "Engineer") and approval by the DEPARTMENT. Provided, however, in the event of an emergency, the LOCAL GOVERNMENT shall immediately make any necessary changes and notify the DEPARTMENT and the Engineer of Record after the modifications.

10. The DEPARTMENT may request and shall be granted a conference with the LOCAL GOVERNMENT and at the LOCAL GOVERNMENT'S option, the LOCAL GOVERNMENT'S CEI firm, to discuss any part of the Project activities that the DEPARTMENT determines to be inconsistent with the accepted design plans and specifications. The LOCAL GOVERNMENT will monitor the corrective action and provide the DEPARTMENT status reports at such intervals as are reasonable, based on the corrective action undertaken, and the DEPARTMENT may, but is not obligated to, review independently the progress of the corrective action. Provided however, if the DEPARTMENT determines a condition exists which threatens the public's safety, the DEPARTMENT may, at its discretion, issue an immediate stop work order.

11. The LOCAL GOVERNMENT shall have the continuous obligation to monitor the maintenance of traffic and construction operation during the course of the Project so that the safe and efficient movement of the traveling public is maintained. The LOCAL GOVERNMENT is further obligated to make such changes to the maintenance of traffic plans as may be necessary. During construction, the LOCAL GOVERNMENT shall take measures, including the placing and display of safety devices that are necessary in order to safely conduct the public through the Project area in accordance with the latest and current version of the Federal Highway Administration Manual on Uniform Traffic Control Devices for Streets and Highways, and the DEPARTMENT'S Standard Specifications for Road and Bridge construction, current edition, and the current Standard Plans, FDOT Design Manual, and Standard Specifications corresponding to the letting date (bid opening). The LOCAL GOVERNMENT may assign the responsibility of this paragraph to the Contractor or it's CEI for the construction of the Project.

12. Prior to the Project bidding, the LOCAL GOVERNMENT shall provide a project schedule that includes, at a minimum, the date the Project will be advertised for bid, the bid opening date, the award date and the date of the preconstruction conference.

13. It is understood and agreed that the rights and privileges herein set out are granted only to the extent of the DEPARTMENT'S right, title and interest in the land to be entered upon and used by the LOCAL GOVERNMENT. Any additional right or privilege required to undertake and to complete construction of the Project shall be secured by the LOCAL GOVERNMENT.

14. Upon completion of the work in accord with the Plans, the LOCAL GOVERNMENT shall furnish a set of "as-built" plans prepared in accordance with the FDOT Construction Project Administration Manual, Chapter 5.12 (FDOT Procedure #700-

000-00). The “as-built” plans shall be certified by the Engineer of Record/CEI that the necessary improvements have been completed in accordance with the Plans as the same may be modified in accord with the terms of this Agreement. This certification shall include a statement that necessary inspections, tests, and physical measurements have been made, and that all materials entering into the work conform to the Plans, conform to the applicable specifications contained in the Standard Specifications for Road and Bridge Construction, current edition, and as amended from time to time, or otherwise conform to or meet generally accepted professional practices. Additionally, the LOCAL GOVERNMENT shall assure that all post construction survey monumentation required by Florida Statutes is completed and evidence of such is provided to the DEPARTMENT in a manner acceptable to the DEPARTMENT. Upon acceptance of right-of-way documents, then the Project shall be deemed accepted by and turned over to the DEPARTMENT.

15. In the event contaminated soil is encountered by the LOCAL GOVERNMENT or anyone within the DEPARTMENT right of way, the LOCAL GOVERNMENT shall immediately cease work and notify the DEPARTMENT. The DEPARTMENT shall coordinate with the appropriate agencies and notify the LOCAL GOVERNMENT of any required action related thereto.

16. It is acknowledged by the parties that construction plans and specifications are still being prepared by the LOCAL GOVERNMENT as of the date of this Agreement. Construction of the Project will not commence until the DEPARTMENT has accepted the construction plans and specifications as provided for in Paragraph 1 and all required right-of-way has been properly obtained and certified (if applicable) as such by the DEPARTMENT’S Right of Way Manager.

17. If applicable, the LOCAL GOVERNMENT shall assure that load ratings are submitted on any vehicular bridge prior to the final submission of the structure plans for DEPARTMENT review. Structures shall not be opened to traffic until a signed and sealed final bridge load rating that meets the Florida legal loads standard is complete.

18. The Special Provisions, as it may be amended from time to time, shall apply to this Agreement and to all work on the Project. Special Provision Specification 580 can be found: <https://fdotewp1.dot.state.fl.us/SpecificationsPackage/Package/Workbook/LAPSpecificationSelection.aspx>

Exhibit “E”

NOTICE OF COMPLETION

JOINT PARTICIPATION AGREEMENT

Between

**THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
and BREVARD COUNTY**

PROJECT DESCRIPTION: Landscaping Improvements on State Road 9 (Interstate 95) from
South of Viera Boulevard Interchange to North of Viera Boulevard Interchange

FINANCIAL MANAGEMENT ID# **428238-2-58-01 & 428238-3-58-01**

In accordance with the Terms and Conditions of the JOINT PARTICIPATION AGREEMENT, the undersigned hereby provides notification that the work authorized by this Agreement is complete as of _____, 20_____.

By: _____

Name: _____

Title: _____

**LANDSCAPE ARCHITECT’S CERTIFICATION OF SUBSTANTIAL
COMPLIANCE**

In accordance with the Terms and Conditions of the JOINT PARTICIPATION AGREEMENT, the undersigned hereby certifies that all work which originally required certification by a Registered Landscape Architect has been completed in substantial compliance with the Project construction plans and specifications. If any deviations have been made from the accepted plans, a list of all deviations along with an explanation that justifies the reason to accept each deviation will be attached to this Certification. Also, with submittal of this certification, the LOCAL GOVERNMENT shall furnish the DEPARTMENT a set of “as-built” plans certified by the Engineer of Record/CEI.

By: _____, P.E.

SEAL:

Name: _____

Date: _____

Exhibit “F”

RESOLUTION

Financial Management Numbers: 428238-2-58-01 & 428238-3-58-01

Resolution No. 2020-

A Resolution authorizing the execution of Joint Participation Agreement with the State of Florida Department of Transportation and Brevard County for the Landscaping Improvements on State Road 9 (Interstate 95) from South of Viera Boulevard Interchange to North of Viera Boulevard Interchange

WHEREAS, the State of Florida Department of Transportation and Brevard County desire to facilitate the project: Landscaping Improvements on State Road 9 (Interstate 95) from South of Viera Boulevard Interchange to North of Viera Boulevard Interchange; and

WHEREAS, the State of Florida Department of Transportation has requested Brevard County to execute and deliver to the State of Florida Department of Transportation the Joint Participation Agreement for the aforementioned project, FM#428238-2-58-01 and 428238-3-58-01.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that Bryan Lober, Chair, of the Board of County Commissioners, is hereby authorized to make, execute, and deliver to the State of Florida Department of Transportation the Joint Participation Agreement for the aforementioned project, FM#428238-2-58-01 and 428238-3-58-01.

DONE AND RESOLVED in regular session this ____ day of _____, 2020.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk

Bryan Lober, Chair

As approved by the Board on _____