

*Transfer  
to Brevard  
County*

FM No. 241221 1  
State Road: NA  
County: Brevard

JOINT PARTICIPATION AGREEMENT

This Agreement by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (the "Department"), and BREVARD COUNTY, (the "County");

WITNESSETH:

WHEREAS, pursuant to the Transportation Equity Act for the 21st Century (TEA-21), there is Federal funding available for certain projects in the State of Florida; and

WHEREAS, the Department has programmed such Federal funding in its Work Program for the project described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter referred to as the "Project"); and

WHEREAS, the County has not been certified as being qualified to directly undertake said Project and has therefore requested that said Project be undertaken by the Department, with a contribution of matching funds from the County;

NOW, THEREFORE, for and in consideration of the premises hereof and other mutual benefits to accrue to each of the parties hereto, it is mutually agreed as follows:

1. The Department shall commence and complete the Project as described in Exhibit A attached hereto and by this reference made

a part hereof in accordance with the provisions of this Agreement and in accordance with all applicable documents which form a part of the Project.

2. The Department shall take all steps necessary to obtain Federal funds for the Project.

3. Payment for the costs of the Project shall be made in accordance with Exhibit A. The contribution of the County shall be, at a minimum, the stated percentage of the actual costs of the Project; provided, however, that in the event that the Federal Government fails to contribute an amount which is equal to the Federal Government's contribution percentage as shown on Exhibit A, the County, subject to the limitations set forth in subparagraph (a) below, shall be responsible for one-half (1/2) of the funds required to match the non-Federal share including cost overruns or supplemental agreements. The Department shall be responsible for the remaining one-half (1/2) of the cost overruns or supplemental agreements not paid by Federal funds. The contribution of the County as shown in Exhibit A shall be made as follows:

(a) The County shall remain responsible for one-half (1/2) the non-Federal share, including overruns and supplemental agreements; however, the limit on the total contribution of the County shall be \$ 233,750.00, which amount is 110% of the current estimated County share of the project. In the event that it becomes apparent that supplemental work is necessary which would cause the County's contribution to exceed that amount, the Department and the County agree to jointly review the matter in good faith to resolve

the problem. In the event that said review reveals that the County should make an additional contribution, the County agrees to make a good faith effort to obtain additional funding. In the event additional funding cannot be obtained by the County, the Department will have the option of contributing the shortfall, modifying the Project to reduce the cost, or cancelling the Project.

(b) The contribution of the County as shown in Exhibit A shall be made as follows and in accordance with Paragraph 3 (a) hereinabove:

(i) The County agrees that, at least thirty (30) days prior to the Department's advertisement for competitive bids, or at least fourteen (14) days prior to the execution of a consultant contract for phases not requiring the bid process, it will furnish the Department an advance deposit in the amount shown as the County's contribution in Exhibit "A-2 Project Funding." In the event the County's required percentage contribution results in a proposed expenditure for actual costs which exceeds the amount prepaid as determined in accordance with subparagraph (a), within thirty (30) days of receiving such notice from the Department, the County shall make an additional payment in accordance with subparagraph (a). The Department shall notify the County as soon as it becomes apparent that the actual costs chargeable to the County will exceed the County's prepayment; however, failure of the Department to notify the County shall not relieve the County from its obligation to pay for its full anticipated contribution on final accounting as provided below and

as expressed in subparagraph (a) herein.

(c) The Department may use the funds deposited for payment of the costs of the Project; however, the Department shall not be obligated to separately track the use of the deposit apart from the remainder of the funds available for the Project during the course of the Project; and the Department's obligation to account for the County's final contribution as compared to the deposit shall be limited to final reconciliation upon final accounting as stated below.

(d) Payment of the funds as required above will be made directly to the Department for deposit into the State Transportation Trust Fund.

(e) If the Project is terminated, canceled, or indefinitely suspended the Department shall refund any money paid by the County to the Department within ninety (90) days after a request from the County for such refund, less any amount of the money actually committed for work performed prior to the date of termination, cancellation, or indefinite suspension. The Project shall not be deemed terminated, canceled, or indefinitely suspended merely because of a delay in commencing or pursuing the work without an actual written declaration of termination, cancellation, or indefinite suspension from the Department stating that it is intended as such.

(f) Upon final payment to the contractor for the entire project, the Department shall, within one hundred eighty (180)

days, furnish the County with two (2) copies of its final accounting of all costs incurred in connection with the Project. All cost records and accounts shall be subject to audit by a representative of the County within three (3) years after final billing by the Department to the County. In the event that the County's contribution to the final cost is less than the total of all deposits previously made, the Department will refund the balance to the County within forty-five (45) days of the final billing. If the County's contribution to the final costs exceed the deposits, the County will be invoiced for the balance. Upon receipt of the final invoice, the County agrees to pay the Department the remainder owed within forty (40) days. The parties shall pay an additional charge as specified in Chapter 55.03, Florida Statutes, on any invoice not paid or refund not paid within the periods specified above until the invoice or refund is paid. In the event it becomes necessary for either party to institute suit for the enforcement of the provisions of this Agreement, the prevailing party shall be entitled to payment of its reasonable attorney's fees and court costs by the other party.

4. To the extent that the Project involves the acquisition of any property or the actual construction of any improvements, the County and the Department intend that upon completion of the Project, the County shall be responsible for and shall provide all necessary maintenance. Said maintenance shall be performed at the sole cost and expense of the County. This JPA shall obligate the County to perform said maintenance.

5. (a) Section 339.135(6)(a), Florida Statutes , is incorporated herein verbatim, to-wit:

"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.";

(b) The parties agree that this Agreement is contingent upon legislative approval. This Agreement shall be null and void should funds not be appropriated to the Department for the Project.

6. The Department agrees to keep complete records and accounts in order to record complete and correct entries as to all costs, expenditures and other items incidental to the cost of the Project.

7. This Agreement shall take effect upon being executed by the parties and shall be terminated upon the earlier of the mutual consent of the parties or two hundred forty (240) days after completion of the Project; provided, however, that the County's obligations to perform maintenance shall survive any termination of this Agreement that occurs subsequent to performing any part of the Project for which maintenance would be required.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers and their official seals hereto affixed, this 31st day of March, ~~199~~<sup>2000</sup>.

BREVARD COUNTY, FLORIDA

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

By:   
Name: TRUMAN G. SCARBOROUGH, JR.

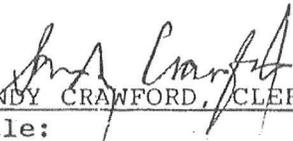
By:   
Carolyn Hyland Ismart

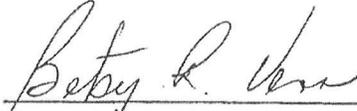
Title: CHAIRMAN  
as approved by the Board on:  
October 12, 1999

District Director of Planning  
and Public Transportation

Attest:

Attest:

  
SANDY CRAWFORD, CLERK  
Title:

  
Executive Secretary (Seal)

APPROVED AS TO FORM, LEGALITY  
AND EXECUTION:

  
District Counsel

EXHIBIT A

FM No. 241221 1

State Road No. NA

County BREVARD

1. Project Description

The Project which is the subject matter of this Agreement includes all documents ordinarily and/or necessarily associated with a project of its nature (for example, design plans, construction plans, design criteria, specifications, etc.), which documents, whether specifically named in this Agreement or not, are by this reference made a part of this Agreement as though fully set forth herein. The project which is the subject matter of this Agreement is described as follows:

Right-of-Way Survey/Mapping and Design for the six laning of Palm Bay Road, from Minton Road to Conlan Boulevard, in Brevard County, Florida.

2. Project Funding

The amounts shown below are the current estimated costs of the Project. Final Project costs may vary. Final contribution amounts will be based on actual final Project costs. In the event that final Federal participation is less than the percentage shown below, the shortfall shall be borne by the County and the Department as described in Section 3 of this Agreement. Current estimated Project costs and contributions are as follows:

<u>Entity</u>	<u>Phase</u>	<u>%</u>	<u>Estimated Amount</u>	<u>FY</u>	<u>Date of Payment</u>
Federal Government	ROW Survey/ Mapping	75.0	\$300,000.00	99/00	11/99
Department		12.5	50,000.00	99/00	11/99
County		<u>12.5</u>	<u>50,000.00</u>	99/00	11/99
Total		100.0	\$400,000.00		
Federal Government	Design	75.0	\$975,000.00	00/01	09/00
Department		12.5	162,500.00	00/01	09/00
County		<u>12.5</u>	<u>162,500.00</u>	00/01	09/00
		100.0	\$1,300,000.00		