



City of Bradenton, Florida

City Council Agenda Memorandum

Agenda Item:

Resolution 17-07: Joint Participation Agreement with FDOT for the streetscape improvements on 8th Ave W between 14th St W and 9th St W

Agenda Date:

January 25, 2017

Originated by:

Kim Clayback, Infrastructure Engineer

Agenda Placement:

Consent Agenda

Explanation

The City and FDOT are working jointly on roadway and utility improvements on 8th Ave W (US Business 41) from 9th St W to 14th St W. The improvements include center medians with pedestrian refuge, stormwater system improvements, street scape elements and potable water mains. The City will be coordinating and bidding the project as well as providing construction inspection.

Financial Impact

The FDOT has designed the streetscape portion of the project and will be providing \$601,659.00 in funding under FDOT project number 43913-1-58/68-01. The City has designed the underground utility portion of the project and will fund approximately \$550,000.00 using GL Account #40859000-563000-17511.

Requested action to be taken by Council

Council to approve a resolution for the City to enter into an agreement with FDOT for the construction of roadway and utility improvements on 8th Ave W (US Business 41) between 9th St W and 14th W and authorize the Mayor to sign the Joint Participation Agreement.

Staff Recommendation

Approve Joint Participation Agreement

Attachments

Proposed Joint Participation Agreement

Financial Management No.: 439013-1-58/68-01 Agency: City of Bradenton Contract No.:	Fund: DS Function: 215 Contract Amount: \$601,659.00	FLAIR Approp: FLAIR Obj.: 55014010106 Org. Code: 751000 Vendor No.: F596000283029
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JOINT PARTICIPATION AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
CITY OF BRADENTON

This Agreement, made and entered into this _____ day of _____, 20___, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION** (hereinafter referred to as the DEPARTMENT) and the **CITY OF BRADENTON**, a political subdivision of the State of Florida, existing under the Laws 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 the day of _____, 20___ a copy of which is attached hereto and made a part hereof, has authorized its Chairman or designee 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 Business 41 (8th Ave) from 14th Street West to 9th Street West, in Fiscal Year 2016/2017, said Project being known as FM #439013-1-58/68-01, 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 interests 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.

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

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 December 1st, 2019, 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 in perpetuity for maintenance responsibilities of the LOCAL GOVERNMENT.

2. **SERVICES AND PERFORMANCES**

A. The LOCAL GOVERNMENT shall furnish the construction and construction engineering inspections services (CEI) of the Project. The Project consist of: construction and construction engineering inspection services (CEI) of installing midblock crosswalks and median at Business 41 (8th Ave) from 14th Street West to 9th Street West, and otherwise, the LOCAL GOVERNMENT shall perform all other necessary work to complete the Project, as specified in Exhibit "A", Scope of Services attached hereto and by this reference made a part hereof. 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. The LOCAL GOVERNMENT shall provide the quantifiable, measurable and verifiable units of deliverables as specified in Exhibit "A" and the design plans when approved by the DEPARTMENT. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion.

C. **Upon final approval by the DEPARTMENT, this Agreement shall be amended to include said plans in the agreement. The parties further agree that the plans will be incorporated into the terms of this Agreement by reference and that the LOCAL GOVERNMENT hereby approves and delegates to the City of Bradenton authority to enter into an amendment of this agreement to accomplish said task. No further Board action shall be**

required to amend this agreement for the sole purpose of incorporating the plans and including construction funding in FY 2016/2017.

D. The LOCAL GOVERNMENT agrees to undertake the construction and CEI of the Project in accordance with DEPARTMENT standards, Greenbook and all applicable federal, state and local statutes, rules and regulations.

E. E- VERIFY

Vendors/Contractors 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 Vendor/Contractor during the term of the contract.

Vendors/Contractors shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

F. This Agreement shall act to supersede the normal requirements of the LOCAL GOVERNMENT to secure separate DEPARTMENT permits for drive-way connection, right of way utilization, storm-water discharge and utilities, and this Agreement is deemed to constitute such permits.

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

H. The LOCAL GOVERNMENT understands that all changes requested by the DEPARTMENT shall be made by the Engineer of Record/LOCAL GOVERNMENT with the understanding that final decision rests 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. After approval of the plans and prior to commencing the work described herein, the LOCAL GOVERNMENT shall receive a Notice to Proceed from the DEPARTMENT'S Project Coordinator, Jobin Abraham or from an appointed designee. Any work performed prior to the issuance of the Notice to Proceed is not subject to reimbursement.

I. The LOCAL GOVERNMENT shall hire a contractor using the LOCAL GOVERNMENT'S normal bid procedures to perform the construction work for the Project.

J. The LOCAL GOVERNMENT shall hire a qualified CEI firm to perform Verification Testing in accord with the 2014 Standard Specifications for Road and Bridge Construction, and as

amended from time to time. The DEPARTMENT shall have the right, but not the obligation, to perform independent testing from time to time during the course of construction of the Project. The CEI firm shall not be the same firm as the Engineer of Record.

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

L. 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 standards and that the work is performed in accord with the Terms and Conditions contained in Exhibit "D".

M. The DEPARTMENT will be entitled at all times to be advised, at its request, as to the status of work being done by the LOCAL GOVERNMENT and of details thereof. Coordination shall be maintained by the LOCAL GOVERNMENT with representatives of the DEPARTMENT.

N. 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 Professional Engineer, this notification shall contain an Engineers Certification of Compliance, signed and sealed by a Professional Engineer, 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 approved plans, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.

3. COMPENSATION AND REIMBURSEMENT

A. Project Cost: The total estimated cost of the Project is **\$601,659.00 (SIX HUNDRED ONE THOUSAND SIX HUNDRED AND FIFTY-NINE DOLLARS)**. This amount is based on the Schedule of Funding, Exhibit "B" attached hereto.

B. DEPARTMENT Participation: The DEPARTMENT agrees to reimburse the LOCAL GOVERNMENT in an amount not to exceed **\$601,659.00 (SIX HUNDRED ONE THOUSAND SIX HUNDRED AND FIFTY-NINE DOLLARS)** for PROJECT construction and construction engineering inspection services (CEI). The funding for this Project is contingent upon annual appropriation by the Florida Legislature. The LOCAL GOVERNMENT agrees to bear all expenses in excess of the DEPARTMENT's participation. Travel costs will not be reimbursed.

i) The LOCAL GOVERNMENT shall submit invoices plus supporting documentation

required by the DEPARTMENT for approval and processing. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Department's Comptroller under Section 334.044(29), F.S., or by the Department of Financial Services under Section 215.422(14), F.S.

ii) Invoices must be based on quantifiable, measurable and verifiable units of deliverables as specified in Paragraph 2.A. and in Exhibit "A", Scope of Services. 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 as specified in Paragraph 2.B. was met, and that the criteria for evaluating successful completion as specified in Paragraph 2.N. was met.

iii) Reimbursement for fees or other compensation for services or expenses incurred 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 Paragraph 2. A. and Exhibit "A", Scope of Services and said request for reimbursement/invoice must be completed and accepted in writing by the Department's Project Manager or designee prior to reimbursement.

iv) 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.

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

C. The DEPARTMENT shall have the right to retain out of any payment due the LOCAL GOVERNMENT under this Agreement, an amount sufficient to satisfy any amount due and owing to the DEPARTMENT by the LOCAL GOVERNMENT on any other Agreement between the LOCAL GOVERNMENT and the DEPARTMENT.

D. The LOCAL GOVERNMENT which is providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt of an invoice, the DEPARTMENT has twenty (20) working days to inspect and approve the goods and services. 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. 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. 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. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Division of Consumer Services at 1-877-693-5236.

E. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this Agreement, and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred include the LOCAL GOVERNMENT'S general accounting records and the Project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the Project, and all other records of the contractor and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs. Any discrepancies revealed by any such audit shall be resolved by a corrected final billing from the LOCAL GOVERNMENT to the DEPARTMENT.

F. 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 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 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.”

G. 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.

H. Audits: The administration of resources awarded by the Department to the LOCAL GOVERNMENT may be subject to audits and/or monitoring by the Department, as described in this section.

MONITORING

In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, Florida Statutes, as revised (see “AUDITS” below), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this Agreement, the LOCAL GOVERNMENT agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the DEPARTMENT. In the event the DEPARTMENT determines that a limited scope audit of the recipient is appropriate, the LOCAL GOVERNMENT agrees to comply with any additional instructions provided by the DEPARTMENT staff to the LOCAL GOVERNMENT regarding such audit. The LOCAL GOVERNMENT further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the DEPARTMENT’S Office of Inspector General (OIG) and Florida’s Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

Recipients of federal funds (i.e. state, local government, or non-profit organizations as defined in OMB Circular A-133, as revised) are to have audits done annually using the following criteria:

1. In the event that the LOCAL GOVERNMENT expends \$500,000 or more in Federal awards in its fiscal year, the LOCAL GOVERNMENT must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. If applicable, Exhibit “F” to this Agreement indicates Federal resources awarded through the

DEPARTMENT by this Agreement. In determining the Federal awards expended in its fiscal year, the LOCAL GOVERNMENT shall consider all sources of Federal awards, including Federal resources received from the DEPARTMENT. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the LOCAL GOVERNMENT conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, will meet the requirements of this part.

2. In connection with the audit requirements addressed in Part I, paragraph 1, the LOCAL GOVERNMENT shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

3. If the LOCAL GOVERNMENT expends less than \$500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. However, if the LOCAL GOVERNMENT elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from LOCAL GOVERNMENT resources obtained from other than Federal entities).

4. Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, and name of the awarding federal agency.

PART II: STATE FUNDED

Recipients of state funds (i.e. a nonstate entity as defined by Section 215.97(2)(m), Florida Statutes) are to have audits done annually using the following criteria:

1. In the event that the LOCAL GOVERNMENT expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year, the LOCAL GOVERNMENT must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services and the CFO; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. If applicable, Exhibit "F" to this Agreement indicates state financial assistance awarded through the DEPARTMENT by this Agreement. In determining the state financial assistance expended in its fiscal year, the LOCAL GOVERNMENT shall consider all sources of state financial assistance, including state financial assistance received from the DEPARTMENT, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

2. In connection with the audit requirements addressed in Part II, paragraph 1, the LOCAL GOVERNMENT shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(e), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

3. If the LOCAL GOVERNMENT expends less than \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. However, if the LOCAL GOVERNMENT elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the LOCAL GOVERNMENT resources obtained from other than State entities).

4. State awards are to be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the state agency awarding it.

PART III: OTHER AUDIT REQUIREMENTS

The LOCAL GOVERNMENT shall follow up and take corrective action on audit findings. Preparation of a summary schedule of prior year audit findings, including corrective action and current status of the audit findings is required. Current year audit findings require corrective action and status of findings.

Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is completed or the dispute is resolved. Access to Project records and audit work papers shall be given to the DEPARTMENT, the Department of Financial Services, and the Auditor General. This section does not limit the authority of the DEPARTMENT to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any other state official.

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by PART I of this Agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the recipient directly to the following:

A. The DEPARTMENT at the following address:

Florida Department of Transportation
Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0405
Email: FDOTSingleAudit@dot.state.fl.us

B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d) (1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

C. Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.

2. In the event that a copy of the reporting package for an audit required by PART I of this Agreement and conducted in accordance with OMB Circular A-133, as revised, is not required to be submitted to the DEPARTMENT for reasons pursuant to Section .320 (e)(2), OMB Circular A-133, as revised, the recipient shall submit the required written notification pursuant to Section .320 (e)(2) and a copy of the recipient's audited schedule of expenditures of Federal awards directly to the following:

Florida Department of Transportation
Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0405
Email: FDOTSingleAudit@dot.state.fl.us

In addition, pursuant to Section .320 (f), OMB Circular A-133, as revised, the recipient shall submit a copy of the reporting package described in Section .320 (c), OMB Circular A-133, as revised, and any management letters issued by the auditor, to the DEPARTMENT at the following address:

Florida Department of Transportation
Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0405
Email: FDOTSingleAudit@dot.state.fl.us

3. Copies of financial reporting packages required by PART II of this Agreement shall be submitted by or on behalf of the LOCAL GOVERNMENT directly to each of the following:

A. The DEPARTMENT at the following address:

Florida Department of Transportation
Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0405
Email: FDOTSingleAudit@dot.state.fl.us

B. The Auditor General's Office at the following address:

Auditor General's Office
Room 401, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

4. Copies of reports or the management letter required by PART III of this Agreement shall be submitted by or on behalf of the LOCAL GOVERNMENT directly to:

A. The DEPARTMENT at the following address:

Florida Department of Transportation
Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0405
Email: FDOTSingleAudit@dot.state.fl.us

5. Any reports, management letters, or other information required to be submitted to the DEPARTMENT pursuant to this Agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

6. Recipients, when submitting financial reporting packages to the DEPARTMENT for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The LOCAL GOVERNMENT shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of at least five (5) years from the date the audit report is issued, and shall allow the DEPARTMENT, or its designee, CFO, or Auditor General access to such records upon request. The LOCAL GOVERNMENT shall ensure that audit working papers are made available to the DEPARTMENT, or its designee, CFO, or Auditor General upon request for a period of at least five (5) years from the date the audit report is issued, unless extended in writing by the DEPARTMENT.

4. 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.

5. TERMINATION AND DEFAULT

A. This Agreement may be cancelled 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. This contract may be cancelled by the LOCAL GOVERNMENT upon sixty (60) days written notice to the DEPARTMENT.

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 that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress will become the property of the DEPARTMENT and will be turned over promptly by the LOCAL GOVERNMENT.

6. MISCELLANEOUS

A. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

B. The DEPARTMENT shall not be obligated or liable hereunder to any party other than the LOCAL GOVERNMENT.

C. 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.

D. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

E. All tracings, plans specifications, maps, models, reports, or other work product prepared or obtained under this Agreement shall be considered works made for hire for the DEPARTMENT and the LOCAL GOVERNMENT and shall at all times be and remain the property of the DEPARTMENT and the LOCAL GOVERNMENT without restriction or limitation on their use.

F. 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.

G. 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. **However, the CITY’S obligation to maintain the PROJECT after completion shall survive the term of this Agreement.**

H. 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 thirty-six (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.

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

Florida Department of Transportation	City of Bradenton
Jobin Abraham	Kim Clayback, P.E.
Project Manager	Senior Project Manager
801 North Broadway Avenue, MS1-12	1411 9 th Street W
Bartow, FL 33830	Bradenton, FL 34205

IN WITNESS WHEREOF, CITY OF BRADENTON has caused this Agreement to be executed in its behalf, by the Chairman or its Designee, and the FLORIDA DEPARTMENT OF TRANSPORTATION has caused this Agreement to be executed in its behalf through its District Secretary or authorized Designee. This Agreement shall become effective on:

Department to enter date

CITY OF BRADENTON

ATTEST

CLERK (SEAL)

MAYOR OR DESIGNEE

DATE

PRINT NAME

DATE

LEGAL REVIEW: _____

BY: _____

DATE

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

ATTEST

EXECUTIVE SECRETARY (SEAL)

BY: _____

DISTRICT SECRETARY OR DESIGNEE
DISTRICT ONE

PRINT NAME DATE

PRINT NAME DATE

AVAILABILITY OF FUNDS APPROVAL:

FLA. DEPT. OF TRANS. LEGAL
REVIEW: _____

BY: _____

DATE

DATE

EXHIBIT “A”
SCOPE OF SERVICES

Financial Management Numbers: 439013-1-58/68-01

Business 41 (8th Avenue) from 14th Street West to 9th Street West

The general objective is for the City of Bradenton to provide contract administration, management services, construction engineering and inspection services and quality acceptance reviews of all work associated with the construction of the associated improvements. Services performed shall be in conformity with the Contract Plans and Project Specifications. The services performed shall be in accordance with all applicable Florida Department of Transportation manuals, guidelines and specifications.

The project includes the introduction of a median along the corridor reducing the through lanes to one lane in each direction. The project also introduces three midblock pedestrian crossings with safety upgrades including rectangular rapid flashing beacons and high emphasis crosswalks. Minor signal upgrades are also included with converting the intersection at 9th Street West into a dual left turn approach.

Deliverables included in the Scope of Services are as follows:

1. Prepare bid package and specifications for bidding process. Award bid to contractor. Contractor must be FDOT pre-qualified.
2. Provide Construction Engineering and Inspection (CEI) and Quality Assurance Engineering to document construction as per specifications. CEI Consultant must be FDOT pre-qualified.
3. Furnish and install pavement structure as identified in the plans, for proposed improvements.
4. Furnish and install sidewalk and pedestrian improvements as identified in plans, for proposed improvements.
5. Furnish and install median separation as identified in plans, for proposed improvements.
6. Maintain existing traffic during the entire construction period.
7. Furnish and install signing and pavement markings, as identified in the plans, to meet the latest MUTCD standards.
8. Construct or reconstruct, as appropriate, side streets and turnout connections.
9. Coordinate relocation, if necessary, of all affected utilities within the project limits.
10. Provide, upon completion of construction, Final As-built Construction Plans, signed and sealed by a Professional Engineer, registered in the State of Florida.
11. Coordinate construction activities with other construction projects that are impacted by or impact this project. This includes projects under the jurisdiction of local governments or other regional and state agencies.

EXHIBIT “B”

ESTIMATED SCHEDULE OF FUNDING

Financial Management Number: 439013-1-58/68-01

By and through this Joint Participation Agreement, the DEPARTMENT agrees to reimburse the CITY OF BRADENTON up to, but not to exceed is **\$601,659.00 (SIX HUNDRED ONE THOUSAND SIX HUNDRED AND FIFTY-NINE DOLLARS)** programmed in **FY 2016/2017** for actual cost incurred on this Project, excluding City of Bradenton’s overhead.

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EXHIBIT “C”

ESTIMATED PROJECT PRODUCTION SCHEDULE

Financial Management Number: 439013-1-58/68-01

- Construction to be advertised on or before: September 1st, 2017
- Construction to begin on or before: December 1st, 2017
- Construction to be completed by: December 1st, 2019

EXHIBIT "D"**TERMS & CONDITIONS OF CONSTRUCTION**

1. The LOCAL GOVERNMENT is authorized, subject to the conditions set forth herein, 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 approved 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, 2010, 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 and/or the DEPARTMENT except as otherwise provided in separate agreements.

6. 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.

7. The LOCAL GOVERNMENT shall hire a contractor using the LOCAL GOVERNMENT'S normal bid procedures to perform the construction work 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 approved 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 2010 Standard Specifications for Road and Bridge construction and the DEPARTMENT'S 2010 Roadway and Traffic Design Standards, and as those sources may be amended from time to time. The LOCAL GOVERNMENT may assign the responsibility of this paragraph to the Contractor or its' 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 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, 2016 edition as amended, or otherwise conform to or meet generally accepted professional practices. Additionally, the LOCAL GOVERNMENT shall assure that all post construction survey documentation 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 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 approved 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.

EXHIBIT "E"

NOTICE OF COMPLETION

JOINT PARTICIPATION AGREEMENT

Between

THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

And

CITY OF BRADENTON

PROJECT DESCRIPTION: BUSINESS 41 (8th AVE) FROM 14th STREET WEST TO 9th STREET WEST

FINANCIAL MANAGEMENT ID# 439013-1-58/68-01

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: _____

ENGINEER'S CERTIFICATION OF 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 Professional Engineer has been completed in compliance with the Project construction plans and specifications. If any deviations have been made from the approved 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: _____