

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Joint Participation Agreement between The State of Florida Department of Transportation and Seminole County to facilitate the Installation and Landscaping Improvements on State Road 426 from State Road 417 to Red Bug Lake Road).

DEPARTMENT: PUBLIC WORKS **DIVISION:** ENGINEERING

AUTHORIZED BY: W. Gary Johnson **CONTACT:** Mark Lichtenheld **EXT.** 2093
W. Gary Johnson, P.E., Director Jerry McCollum, P.E., County Engineer

Agenda Date <u>10-28-03</u>	Regular <input type="checkbox"/>	Consent <input checked="" type="checkbox"/>	Work Session <input type="checkbox"/>	Briefing <input type="checkbox"/>
	Public Hearing – 1:30 <input type="checkbox"/>		Public Hearing – 7:00 <input type="checkbox"/>	

MOTION / RECOMMENDATION:

Approve and authorize the Chairman to execute the Joint Participation Agreement with the Florida Department of Transportation to facilitate the Installation of Landscaping Improvements on State Road 426 from State Road 417 to Red Bug Lake Road.

BACKGROUND:

This Joint Participation Agreement with Florida Department of Transportation is to provide funding (maximum amount \$250,000) to Seminole County for the installation of landscaping materials on State Road 426 from State Road 417 to Red Bug Lake Road. All landscaping improvements will comply with the Board's recent median landscaping policy adopted on September 9, 2003.

District 1 - Commissioner Maloy

Attachment: Joint Participation Agreement

Reviewed by: <u>Glc</u>
Co Atty: _____
DFS: _____
Other: _____
DCM: <u>ML</u>
CM: <u>JK</u>
File No. CPWE01

Financial Management No: 240174-1-58-01 Agency: Seminole County Contract No:	Fund: DS Function: 215 Federal No.: NA Catalog of Federal Domestic Assistance No.: NA	FLAIR Approp: 088717 FLAIR Obj.: 563007 Org. Code: 55054010508 Vendor No.: F596000856065
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**JOINT PARTICIPATION AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
SEMINOLE COUNTY**

This **AGREEMENT**, by and between the **STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION**, (hereinafter referred to as the **DEPARTMENT**) and **SEMINOLE COUNTY**, a charter county and a political subdivision of the State of Florida (hereinafter referred to as the **LOCAL GOVERNMENT**), and is based on the following premises:

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 **DEPARTMENT** is prepared, in accordance with its Five Year Work Program, to undertake the project generally described as: Installation and Landscaping Improvements on State Road 426 from State Road 417 to Red Bug Lake Road), in the **DEPARTMENT'S** Fiscal Year 2003/2004. Said project being known as, Financial Management Number 240174-1-58-01, Seminole County, Maximum Limiting Amount \$250,000.00 (Two Hundred Fifty Thousand AND NO/100 DOLLARS), 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 Transportation Plan; 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 **DEPARTMENT** to reimburse the funds for the PROJECT to the **LOCAL GOVERNMENT** pursuant to Section 334.044 of the Florida Statutes and for the **LOCAL GOVERNMENT** to perform the services to complete the PROJECT;

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

1. The **LOCAL GOVERNMENT** will prepare all design plans for the PROJECT suitable for reproduction, together with a complete set of specifications covering all construction requirements for the PROJECT. A detailed scope of the project is attached hereto as Exhibit "A". Twelve (12) copies of the Design Plans shall be provided to the **DEPARTMENT** along with a Cost Estimate Summary Sheet. The **DEPARTMENT** shall review the plans and Cost Estimate Summary for conformance to the **DEPARTMENT'S** requirements and feasibility within forty-five (45) days of delivery by **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. All changes requested by the **DEPARTMENT** shall be made by the **LOCAL GOVERNMENT** and final, corrected plans shall be provided to the **DEPARTMENT**, upon request, in a timely manner. The Cost Estimate Summary Sheet shall be reviewed by the **DEPARTMENT** before the construction and installation

of the project begins to monitor compliance the terms of this Agreement. The **LOCAL GOVERNMENT** shall provide a copy of the Final Bid documents to the **DEPARTMENT**. The expenditure of funds pursuant to this Agreement shall comply with the terms of §334.044(26), Florida Statute and as amended. Except where prohibited by federal law or federal regulation and to the extent practical, a minimum of 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 five (5) 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. All of the plant materials purchased shall be purchased from Florida-Based Nurseryman stock on a uniform competitive bid basis. The **DEPARTMENT'S** payment as required herein shall only be utilized by the **LOCAL GOVERNMENT** to pay the cost of purchase of plant materials for said **PROJECT** and for the installation of said plant materials. No funds shall be used for irrigation.

2. The **LOCAL GOVERNMENT** shall hire a contractor, using the **LOCAL GOVERNMENT'S** normal bid procedures to perform the construction work for the **PROJECT**. The payment from the **DEPARTMENT** to the **LOCAL GOVERNMENT** set forth in Paragraph three (3) herein is conditioned upon the completion of the **PROJECT** by the **LOCAL GOVERNMENT** or its contractor, in a manner consistent with the **PROJECT** construction plans.

3. The **DEPARTMENT** agrees to reimburse the **LOCAL GOVERNMENT** for the actual direct cost, excluding **LOCAL GOVERNMENT** overhead, in accordance with Section 339.12 of the Florida Statutes and subject to legislative approval and appropriation in a maximum limiting

amount not to exceed \$250,000.00 (Two Hundred Fifty Thousand and No/100 Dollars).

4. Payment to the **LOCAL GOVERNMENT** is conditioned on the following:

- A. That the **LOCAL GOVERNMENT** has incurred the amounts specified in Paragraph Three (3) for the purchase and installation of landscaping materials, in accordance with the landscaping plans and contract documents developed under this Agreement; and
- B. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof; and
- C. The **LOCAL GOVERNMENT** must have used the funds for this PROJECT within a two year period from the date this Agreement was executed.

5. Participants providing goods and services to the **DEPARTMENT** should be aware of the following time frames. Upon receipt, the **DEPARTMENT** has twenty (20) working days to inspect and approve the goods and services, unless the Agreement specifies otherwise. 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 payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 215.422(3)(b), Florida Statutes, will be due

and payable, in addition to the invoice amount, to the participant. Interest penalties of less than one dollar (\$1.00) will not be enforced, unless the participant request payment. Invoices, which have to be returned to a Participant because of participant 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 who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted by calling the Department of Financial Services Hotline, 1-800-848-3792 or by calling 1-850-410-9724.

6. 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 work being done by the **LOCAL GOVERNMENT** and of details thereof. Either party to the Agreement may request and be granted a conference.

7. The **DEPARTMENT** and the **LOCAL GOVERNMENT** agree that until such time as the landscaping is needed 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) and as herein below specified.

- a.) The **LOCAL GOVERNMENT** hereby agrees to install or cause to be installed landscaping 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**.
- b.) 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**.
- c.) All landscape installation and maintenance activities undertaken by the **LOCAL GOVERNMENT** shall be in accordance with the Maintenance of Traffic Plan(s).

d.) 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 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. When the **DEPARTMENT** determines that it is reasonably necessary, the **DEPARTMENT** may remove, relocate or adjust the landscaping materials.

e.) This Agreement supercedes the normal requirements of separate Department permits for Right of Way utilization and this Agreement is deemed to constitute such a permit.

8. In the event this Agreement is in excess of \$25,000.00 (TWENTY FIVE THOUSAND AND NO/100 DOLLARS) or has a term for a period of more than one year, the provisions of Chapter 339.135(6)(a), Florida Statutes, are hereby incorporated:

"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 a period exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the **DEPARTMENT** which are for an amount

in excess of \$25,000.00 (TWENTY FIVE THOUSAND AND NO/100 DOLLARS) and which have a term for a period of more than one (1) year.”

In addition, in accordance with Florida Law, the State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the 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 either party giving notice to the other to that effect.

9. The **LOCAL GOVERNMENT** 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 work for this PROJECT. All cost records and accounts shall be subject to audit by a representative of the **DEPARTMENT** for a period of three (3) years after final billing by the **LOCAL GOVERNMENT** to the **DEPARTMENT**, which audit may include, but shall not necessarily be limited to, such verifications as to the amount and validity of all costs of the PROJECT.

10. The **DEPARTMENT** may unilaterally cancel this Agreement for refusal by the **LOCAL GOVERNMENT** to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 and made or received by the **LOCAL GOVERNMENT** in conjunction with this Agreement.

11. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof, and incorporates and includes all proper 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 predicted upon any prior representation or agreements whether oral or written.

12. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

13. The terms of this Agreement shall begin upon the date of the signature of the last party to sign and shall remain in full force and effect through completion of all services required of the LOCAL GOVERNMENT. 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.

14. All notices required pursuant to the terms hereof shall be sent by first class United States Mail. Unless is sent, all notices shall be sent to the following addresses:

STATE

Florida Department of Transportation
Attn: Mary Schoelzel/JPA Coordinator
719 South Woodland Boulevard
Mail Station 4-548
DeLand, Florida 32720-6834

LOCAL GOVERNMENT

Seminole County Government
c/o Mark Lichtenheld
520 W. Lake Mary Blvd. Suite 200
Sanford, Florida 32773

15. PUBLIC ENTITY CRIME INFORMATION 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.

IN WITNESS WHEREOF, the LOCAL GOVERNMENT has executed this Agreement this _____ day of _____, 2003, and the DEPARTMENT has executed this Agreement this _____ day of _____, 2003.

**LOCAL GOVERNMENT
SEMINOLE COUNTY**

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____
Name:
Title:

By: _____
Name: Noranne Downs
Title: Director of Production

Attest:

Attest:

By: _____
(SEAL)
Name:
Title:

Executive Secretary (SEAL)

Legal Review

Legal Review:



~~City Counsel~~
DEPUTY COUNTY ATTORNEY

District Counsel

Financial Provision Approved on:

EXHIBIT "A"

SCOPE OF WORK

Financial Management Number 240174-2-58-01

The LOCAL GOVERNMENT shall prepare design plans, install or cause to be installed landscaping improvements along and in the area of State Road 426 in Seminole County, from State Road 417 to Red Bug Lake Road (mile post 2.201 to mile post 5.073) and have construction inspection done. The Florida Department of Transportation shall review such plans, and shall perform such inspections as may be required by the Department of Transportation.