

**MEMORANDUM OF AGREEMENT BETWEEN
BREVARD COUNTY, FLORIDA, AND THE CITY OF PALM BAY, FLORIDA, FOR
CLIMATE POLLUTION REDUCTION GRANT FUNDING FROM THE UNITED
STATES ENVIRONMENTAL PROTECTION AGENCY**

THIS MEMORANDUM OF AGREEMENT ("M.O.A.") is entered into the date of last signature below ("Effective Date"), by and between BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida ("County"), and the CITY OF PALM BAY, FLORIDA, a municipality incorporated under the laws of the State of Florida ("City"). The County and City may be collectively referred to as the "Coalition".

WITNESSETH:

WHEREAS, the County and the City are working together to obtain a Climate Pollution Reduction Grant ("Grant") from the United States Environmental Protection Agency ("E.P.A."); and

WHEREAS, as part of the Grant application process, the County and City formed a coalition, with the County being designated as the lead agency, to help reduce greenhouse gases through the implementation of photocatalytic pavement treatments; and

WHEREAS, the Parties hereto understand that this M.O.A. must be entered into in order to receive and utilize the Grant funds; and

WHEREAS, the Parties have consulted with each other and are committed to fulfilling their respective roles and responsibilities to successfully implement the greenhouse gas reduction measures and to satisfy the terms and conditions outlined in the Grant application, which is incorporated herein by this reference; and

WHEREAS, the Parties agree to be bound by the terms and conditions of this MOA, as well as the terms and conditions of the Grant application.

NOW, THEREFORE, based on the mutual promises and covenants contained herein, the Parties hereto agree as follows:

1. **RECITALS.** The above recitals are true and correct and incorporated herein by this reference.
2. **PURPOSE OF MOA.** The Parties have consulted with each other regarding the Grant and are committed to fulfilling their respective roles and responsibilities to deliver, through the Grant, a climate pollution reduction project to the citizens of the County and the City. As identified in the Project Narrative submitted as part of the Grant application, the Coalition is looking to expand and improve upon an

existing pavement preservation program through resurfacing, reconstruction, and pavement preservation to extend the life cycle of roads in each respective jurisdiction, resulting in carbon avoidance. The Coalition will utilize new greenhouse gas reduction-based technology that uses a nanoparticulate photoreactive catalyst material (titanium dioxide) to create a photocatalytic reaction enabling treated pavements to capture and permanently sequester mobile source air pollution. This approach will also provide significant co-benefits, such as the mitigation of the Urban Heat Island effect, the decomposition of road area microplastic particles, and the original technology's asphalt binder extension benefit.

The Grant will allow the Coalition to implement a program using novel technology to reduce mobile source emissions on County and City roads using photocatalysis. The road network consists of 1,145 centerline miles for the County and 839 centerline miles for the City. Through this Grant program, the Coalition anticipates treating more than 1,200 centerline miles between 2025 and 2029, with at least 40% of such roads located in Low-Income Disadvantaged Communities.

3. **OPERATING MODEL AND RESPONSIBILITY.** The County serves as the lead applicant and lead agency to procure any necessary contract(s) in accordance with applicable procurement standards for successful implementation of the Grant. At this time, the Coalition has identified Pavement Technology, Inc. ("P.T.I.") as a sole source for the work contemplated under this Grant. P.T.I. is currently under contract with both the County and the City and is the only licensed contractor in the State of Florida that can provide A.R.A.-1 Ti and Ti Intro Application. Applicable procurement procedures will be followed by the County to ensure P.T.I. is aware of and subject to the terms and conditions of the Grant. The County shall be responsible for directing and coordinating work with the selected contractor on its behalf and on behalf of the City.

Each Party shall be responsible for drafting applicable scope(s) of work for the projects that fall within their respective jurisdiction.

4. **CONTRIBUTIONS FROM COALITION.** Both the County and City have extensive experience in obtaining and successfully completing grants from both Federal and State partners. To ensure the success of this Grant, the County and City have designated personnel (as shown in Grant application) with each of their respective agencies with expertise and knowledge to successfully implement and complete the Grant program of this scope. The County and City will make

available all necessary resources to ensure the successful completion of this Grant.

The County and City will also continue to build on community outreach efforts as it relates to roadway maintenance and improvement projects under the Grant program. In particular, the County will dedicate staff to community outreach efforts to notify and educate communities impacted by certain roadway projects on the type of work to be completed, applicable project timelines, and the benefits of such work completed under the Grant program. Outreach efforts will be done in-person (through activities such as canvassing and providing door hands) or with the use of online resources on the County's or City's respective websites to ensure the greatest number of individuals receive information pertaining to the Grant program.

5. **TERM OF THE AGREEMENT.** It is understood and agreed that the relationship established by this M.O.A. is meant to be for the benefit of both Parties, and that this M.O.A. shall be effective on the date of last signature below and shall remain in effect for the duration of the Grant program, unless otherwise terminated, suspended, or modified in writing by an appropriate amendment executed by both the County and City.
6. **NOTICES.** All notices shall be delivered to the Parties at the following addresses (or such changed address or addressee as may be provided by notice). A notice or other communication shall be deemed received by the addressee on the next business day after having been placed in overnight mail with the United States Postal Service, or other overnight express service such as FedEx, U.P.S., or similar service. Notices sent by means other than overnight delivery shall be deemed received when received by the addressee:

FOR THE CITY:

Christeen Sullivan
Public Works Assistant Director

1050 Malabar Road SW

Palm Bay, FL 32907

FOR THE COUNTY:

Susan Jackson
Public Works Assistant Director/Road &
Bridge Program Manager

2725 Judge Fran Jamieson Way

Viera, FL 32940

Christeen.sullivan@palmbayflorida.org Susan.jackson@brevardfl.gov

7. **PUBLIC RECORDS.** Unless otherwise exempt or confidential as provided for by federal or State law, all records associated with this M.O.A. constitute public records pursuant to Chapter 119, Florida Statutes.
8. **LIABILITY.** The County and City hereto agree that each shall be solely responsible for the negligent or wrongful acts or omissions of its own respective employees and agents. However, nothing herein shall constitute a waiver by either Party of sovereign immunity or statutory limitations on liability, including, but not limited to, the limits and protections established under Section 768.28, Florida Statutes.

The County, as lead applicant, will be accountable to EPA and accepts full responsibility for effectively carrying out the full scope of work and the proper financial management of the Grant.

The City, as coalition member, will be accountable to the County for proper use of the Grant funding and successful project implementation to ensure the Grant requirements are satisfied. The City shall be responsible for any and all costs that are not eligible for Grant funds for projects located within its jurisdiction.

The Parties shall include the following language in contracts with any contractor for work utilizing this Grant funding:

To the extent provided by law, [CONTRACTOR] shall indemnify, defend, and hold harmless the County, City, and the United States Environmental Protection Agency ("E.P.A."), including each of said party's officers, agents, and employees, against any actions, claims, or damages arising out of, relating to, or resulting from the negligent, reckless, or intentionally wrongful acts or omissions of [CONTRACTOR], or any of its officers, agents, or employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by the [CONTRACTOR].

The foregoing indemnification shall not constitute a waiver of the County's, City's, or E.P.A.'s sovereign immunity beyond the limits set forth by law, including but not limited to Section 768.28, Florida Statutes. Nor shall the same be construed to constitute agreement by [CONTRACTOR] to indemnify the County, City, or E.P.A. for the negligent acts or omissions of said parties, its officers, agents, employees, or third parties. Nor shall the same be construed to constitute agreement by the County or City to indemnify each other or the E.P.A. for the negligent acts or omissions of the E.P.A., its officers, agents, or employees, or third parties. This indemnification shall survive the termination of this Agreement.

9. **DISPUTES.** Prior to taking any legal action under this M.O.A., both Parties agree to first engage in a good-faith effort to resolve any and all disputes, hereafter arising regarding the substantial good-faith compliance with the terms of this Agreement or other matters relating to the Grant addressed hereunder.
10. **NON-ASSIGNMENT.** This MOA may not be assigned in whole or in part without the written approval of all Parties.
11. **ATTORNEY'S FEES; GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL.**
In the event of any legal action between the Parties arising out of this M.O.A., each Party shall bear its own attorneys' fees and costs. This M.O.A., regardless of where executed, shall be governed by and construed according to the laws of the State of Florida. Venue for any legal action brought by either the County or City to interpret, construe, or enforce this M.O.A. or Grant shall be in a court of competent jurisdiction in and for Brevard County, Florida, and the **PARTIES AGREE TO WAIVE A JURY TRIAL AND ANY TRIAL SHALL BE NON-JURY.** The Parties consent to and waive any objection or defenses relating to Florida state court having jurisdiction over any dispute or claim arising out of this M.O.A. The Parties expressly waive removal of any claim or action arising under this M.O.A. to federal court.
12. **SEVERABILITY.** Wherever possible, each provision of this M.O.A. shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this M.O.A. shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this M.O.A.
13. **NO THIRD-PARTY RIGHTS.** The Parties hereto do not intend, nor shall this M.O.A. be construed to grant any rights, privileges, or interest to any person or entity not a party to this M.O.A. except for E.P.A.
14. **ENTIRE AGREEMENT; AMENDMENT.** This M.O.A., with all incorporated attachments and exhibits, represents the entire agreement of the Parties. This MOA may be amended by mutual written agreement of the Parties.
15. **EMPLOYMENT ELIGIBILITY VERIFICATION (E-Verify).** The Parties agree to:
- A. utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of this M.O.A.; and
 - B. require any contractors or subcontractors performing work or providing services pursuant to this M.O.A. to likewise utilize the U.S. Department of

Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of this M.O.A.; and

C. maintain records of participation and compliance with the provisions of the E-Verify program and to make such records available upon request. This includes maintaining a copy of proof of enrollment in the E-Verify program.

D. Compliance with the terms of this section is made an express condition of this M.O.A.

E. Nothing in this Section may be construed to allow intentional discrimination of any class protected by law.

16. **COUNTERPARTS.** This M.O.A. may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this M.O.A. with a signature on behalf of a Party will be legal and binding on such Party.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES TO FOLLOW.

IN WITNESS WHEREOF, the Parties hereto have caused this Memorandum of Agreement to be executed through their duly authorized signatories on the day and year last written below.

BREVARD COUNTY, FLORIDA

Jason Steele, Chair
Board of County Commissioners

Date _____

Approved as to legal form and content
for Brevard County, Florida



Deputy County Attorney

CITY OF PALM BAY, FLORIDA

Rob Medina, Mayor
City Council

Date _____

Approved as to legal form and
content for City of Palm Bay, Florida

City Attorney