

LEGISLATIVE ID

#110324A

Financial Project ID: 420537-3-43-01

LOCALLY FUNDED AGREEMENT

This Locally Funded Agreement ("Agreement") is made and entered into by and between the State of Florida Department of Transportation ("Department") and the City of Gainesville, ("Participant").

WHEREAS, it is in the mutual best interest of the parties to facilitate the transportation project described in Exhibit "A" hereto ("Project"), located in Alachua County, Florida; and

WHEREAS, the Department shall manage the Project; and

WHEREAS, the Department shall conduct right of way activities necessary for the Project; and

WHEREAS, the Department shall fund a portion of the Project; and

WHEREAS, the Participant shall fund a portion of the Project; and

WHEREAS, the purpose of this Agreement is to prescribe the funding obligations of each party as associated with the Project; and

WHEREAS, the Department will fund only those aspects of the Project that are defined as the Department's Responsibility in Exhibit "A" hereto, while the Participant shall fund all aspects of the Project that are defined as Allowable Expenses in Exhibit "A" hereto; and

WHEREAS, there may be one or more other agreements entered by and between the parties concerning the construction and/or ongoing maintenance and repair of the Project; and

WHEREAS, the estimated cost of the Project is set forth in Exhibit "B" hereto; and

WHEREAS, a copy of the Participant's Resolution Number _____ authorizing the execution of this Agreement is attached hereto as Exhibit "C"; and

WHEREAS, the parties are authorized to execute and perform this Agreement by one or more Florida Statutes, including, without limitation, Chapter 163, §334.044(7) and §339.12.

NOW, THEREFORE, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the foregoing recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound hereby, acknowledge and agree as follows:

1. RECITALS & EXHIBITS

The recitals set forth above and Exhibits attached hereto are specifically incorporated herein by reference and made part of this Agreement.

2. EFFECTIVE DATE

The "Effective Date" of this Agreement shall be the date the last of the parties to be charged executes this Agreement.

3. E-VERIFY

The Participant (A) 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 Participant during the term of the contract; and (B) 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.

4. FINANCIAL PROVISIONS

A. Participant agrees that it will, at least twenty-one (21) calendar days prior to the Department's commencement of right of way activities and no later than December 15, 2011, furnish the Department an advance deposit in the amount of Two Million Ninety-one Thousand Twenty-two Dollars and no/100 (\$2,091,022.00) for initial payment of the Participant's estimated portion of the estimated cost of the

Project for Financial Project Number(s) 420537-3-43-01. All costs greater than the Department's estimated portion which may be less than and will not exceed the amount of One Million Five Hundred Twenty-five Thousand Four Hundred One Dollar and no/100 (\$ 1,525,401.00), will be the Participant's responsibility. The Department may utilize this deposit for payment of the costs of any phase of the Project as deemed necessary by the Department.

B. The Department's maximum portion of costs for the Project shall at no time exceed the lowest accepted bid for the Project. The Department's portion of costs on the Effective Date of this Agreement is only an estimate, and the final amount provided by the Department may change as a result of the final accepted bid on the Project. Further, the Department's portion of costs will only be utilized for the purposes of funding those aspects of the Project that are to be funded by the Department. The Participant will fund all aspects of the Project that are defined as Allowable Expenses in Exhibit "A". Therefore, the Participant's funds may be used simultaneously with the Department funds. If the funds necessary to finance the Allowable Expenses attributable to the Participant are in excess of the Participant's advance deposit, the Participant will provide an additional deposit within twenty-one (21) calendar days of notification from the Department. The Department will notify the Participant as soon as it becomes apparent the costs of the Participant's portion are in excess of the advance deposit amount. However, failure of the Department to so notify the Participant shall not relieve the Participant from its obligation to pay for its full participation on final accounting as provided herein below. If the Participant cannot provide the additional deposit within twenty-one (21) days, a letter must be submitted to and approved by the Department's project manager indicating when the deposit will be made. The Participant understands the request and approval of the additional time could delay the Project, and additional costs to the Participant may be incurred due to a delay of the Project.

C. If the Participant's advance deposit is in excess of those funds necessary to finance the Allowable Expenses of the Project, the Department will refund to the Participant the amount of the advance deposit that exceeds the Participant's portion of costs upon written request of the Participant.

D. Should Project modifications or changes to bid items occur that increase the Participant's share of total Project costs, the Participant will be notified by the Department accordingly. The Participant agrees to provide, without delay, in advance of the additional work being performed, adequate funds to ensure that cash on deposit with the Department is sufficient to fully fund its share of the Project. The Department shall notify the Participant as soon as it becomes apparent the actual costs will overrun the award amount. However, failure of the Department to so notify the Participant shall not relieve the Participant from its obligation to pay for its full participation during the Project and on final accounting as provided herein below. Funds due from the Participant during the Project not paid within forty (40) calendar days from the date of the invoice are subject to an interest charge at a rate established pursuant to Section 55.03, Florida Statutes, as the same may be amended from time to time.

E. The Department intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred and sixty days (360) of final payment to the Contractor. The Department considers the Project complete when the final payment has been made to the Contractor, not when the construction work is complete. All project cost records and accounts shall be subject to audit by a representative of the Participant for a period of three (3) years after final close out of the Project. The Participant will be notified of the final cost. Both parties agree that in the event the final accounting of total Project costs pursuant to the terms of this agreement is less than the total deposits to date, a refund of the excess funds due the Participant will be made by the Department to the Participant. If the final accounting is not performed within three hundred and sixty (360) days, the Participant is not relieved from its obligation to pay.

F. In the event the final accounting of total Project costs exceeds the Participant's full deposit amount or the Department's maximum portion based on those aspects of the Project that are necessary to the construction of the Project's required functions, whichever is applicable, the Participant will pay the additional amount within forty (40) calendar days from the date of the invoice from the Department. The Participant agrees to pay interest at a rate as established pursuant to Section 55.03, Florida Statutes, as the same may be amended from time to time, on any invoice not paid within forty (40) calendar days until the invoice is paid.

G. The payment of funds under this Locally Funded Agreement will be made:

- Directly to the Department for deposit and as provided in the Memorandum of Agreement between the Department, the State of Florida, Department of Financial Services, Division of Treasury, and the Participant.

H. Contact Persons:

Participant: City of Gainesville, Public Works Department
Contact Person: Mr. John Veilleux, P.E.
Telephone #: 352-393-8418
Federal Employer ID # (FEIN): F 596000325 003

Department:

Attention: Rural Area Transportation Development Engineer
Florida Department of Transportation
1109 South Marion Avenue, Mail Station 2014
Lake City FL 32025
Telephone (386) 961-7884
Facsimile (386) 758-3701

5. NOTICE

All notices, communications and determinations between the parties hereto and those required to be given under this Agreement, including, without limitation, any change to a party's notification address, shall be in writing and shall be sufficient if delivered by registered or certified mail to the parties at the addresses provided in paragraph "H" of the Financial Provisions section of this Agreement.

6. MODIFICATION OF AGREEMENT

A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.

7. INDEMNIFICATION

A. The Participant shall promptly defend, indemnify, hold the Department harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs / penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, arising out of or related to the Participant's performance, or breach, of this Agreement ("Liabilities"). The term "Liabilities" shall also specifically include all civil and criminal environmental liability arising, directly or indirectly under any Governmental Law, including, without limitation, liability under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Air Act ("CAA") and the Clean Water Act ("CWA"). The Participant's duty to defend, indemnify and hold the Department harmless specifically does not encompass indemnifying the Department for its negligence, intentional or wrongful acts, omissions or breach of contract.

B. The Participant shall notify the Department in writing immediately upon becoming aware of any Liabilities. The Participant's obligation to defend, indemnify and hold the Department harmless from any Liabilities, or at the Department's option to participate and associate with the Department in the defense and trial of any Liabilities, including any related settlement negotiations, shall be triggered by the Department's written notice of claim for indemnification to the Participant. The Participant's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph.

8. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving either party's sovereign immunity protections, or as increasing the limits of liability set forth in §768.28, Florida Statutes, as the same may be amended from time to time.

9. GOVERNING LAW

This Agreement shall be governed in all respect by the laws of the State of Florida.

10. INITIAL DETERMINATION OF DISPUTES

The Department's District Two Secretary ("District Secretary") shall act as the initial arbiter of all questions, difficulties, and disputes concerning the interpretation, validity, performance or breach of this Agreement.

11. VENUE AND JURISDICTION

A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of the Agreement that are not resolved to the mutual satisfaction of the parties by the Department's District Secretary shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

B. The Participant and all persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance or breach of this Agreement.

12. JURY TRIAL

The parties hereby waive right to trial by jury of any dispute concerning the validity, interpretation, performance or breach of this Agreement.

13. ASSIGNMENT

The Participant shall not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the Department's District Secretary or his/her designee. The Department has the sole discretion and authority to grant or deny proposed assignments of this Agreement, with or without cause. Nothing herein shall prevent the Participant from delegating its duties hereunder, but such delegation shall not release the Participant from its obligation to perform the Agreement.

14. THIRD PARTY BENEFICIARIES

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for herein.

15. VOLUNTARY EXECUTION OF AGREEMENT

Each party warrants and represents to the other: (i) that it understands all of the rights and obligations set forth in the Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of the Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of the Agreement and executes the Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and (iv) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of the Agreement.

16. ENTIRE AGREEMENT

This instrument, together with any exhibits and documents made part hereof by reference, contains the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in the Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of the Agreement, and any part hereof, are waived, merged herein and superseded hereby.

17. EXECUTION OF DOCUMENTS

The parties agree that they shall promptly execute and deliver to the other all documents necessary to accomplish the intent and purpose of the Agreement and shall do all other acts to effectuate the Agreement.

18. SUFFICIENCY OF CONSIDERATION

By their signature below, the parties hereby acknowledge the receipt, adequacy and sufficiency of consideration provided in the Agreement and forever waive the right to object to or otherwise challenge the same.

19. WAIVER

The failure of either party to insist on the strict performance or compliance with any term or provision of the Agreement on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

20. INTERPRETATION

No term or provision of the Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

21. CAPTIONS

Paragraph title or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend or describe the scope of the Agreement, or any provision hereof.

22. SEVERANCE

If any section, paragraph, clause or provision of the Agreement is adjudged by a court, Participant or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of the Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of the Agreement remain enforceable.

23. COMPUTATION OF TIME

In computing any period of time prescribed in the Agreement, the day of the act, event or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

24. MODIFICATION OF AGREEMENT

A modification or waiver of any of the provisions of the Agreement shall be effective only if made in writing and executed with the same formality as the Agreement.

25. ANNUAL APPROPRIATION / FUNDING

Pursuant to §339.1365(6)(a), Florida Statutes, the Department's obligation to fund construction of the Improvement is contingent upon annual appropriation by the Florida Legislature. This Agreement may be terminated by the Department without liability to the Participant if sufficient funds are not appropriated to the Department. The provisions of §339.135(6)(a), Florida Statutes, are set forth herein verbatim and made part of this Agreement, 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 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 and which have a term for a period of more than 1 year.”

26. WARRANTY

The Participant warrants that it has not employed or obtained any company or person, other than bona fide employees of the Participant to solicit or secure this Agreement and the Participant has not paid or agreed to pay any company, corporation, individual or firm, other than a bona fide employee employed by the Participant. For breach or violation of this provision, the Department shall have the right to terminate the Agreement without liability.

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties hereby execute this Agreement consisting of six (6) pages.

ATTEST:

By: _____

Print Name: _____

Title: _____

Date: _____

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By: _____

Printed Name: Alan R. Mosely, P.E.

Title: District 2 Secretary

Date: _____

Legal Review:

By: _____

Office of the General Counsel
Florida Department of Transportation

ATTEST:

By: _____

Print Name: _____

Title: _____

Date: _____

PARTICIPANT

By: _____

Printed Name: _____

Title: _____

Date: _____

Legal Review:

By: _____

Legal Counsel for Participant

EXHIBIT "A"

PROJECT DESCRIPTION AND RESPONSIBILITIES

PROJECT LOCATION:

Depot Avenue, Gainesville, Florida

PROJECT DESCRIPTION:

Proposed improvements include but are not limited to the appraisals, right of way acquisition, and right of way relocation activities.

EXHIBIT "B"
PROJECT BUDGET

I.	DEPARTMENT PARTICIPATION:	\$ 1,525,401.00
II.	PARTICIPANTS PARTICIPATION:	\$ 2,091,022.00
	TOTAL ESTIMATED PROJECT COST:	\$ 3,616,423.00

EXHIBIT "C"
PARTICIPANT RESOLUTION