

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
COUNTY INCENTIVE GRANT PROGRAM AGREEMENT
(City Letting)

525-010-52
POLICY PLANNING
OGC - 06/11
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Financial Project No.: **426044-1-58-01**
Catalog of State Financial Assistance No. 55.008
CITY: City of Gainesville

This County Incentive Grant Program (CIGP) Agreement, hereinafter referred to as the "AGREEMENT", by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT", and the Board of County Commissioners of Alachua County, hereinafter referred to as the "COUNTY", and the Mayor of the City of Gainesville, hereinafter referred to as the "CITY".

RECITALS

WHEREAS, the DEPARTMENT has the authority, under Section 334.044, Florida Statutes, to enter into this AGREEMENT; and

WHEREAS, the County Incentive Grant Program has been created by Section 339.2817, Florida Statutes, to provide grants to counties to improve a transportation facility which is located on the State Highway System or which relieves traffic congestion on the State Highway System; and

WHEREAS, the COUNTY has certified to the DEPARTMENT that it has met the eligibility requirements of said Section 339.2817, Florida Statutes; and

WHEREAS, the DEPARTMENT is willing to provide the COUNTY with financial assistance under Financial Project No. **426044-1-58-01** for the design and roadway reconstruction including bicycles and pedestrian facilities on Depot Avenue from US 441 / SR 25 / SW 13th Street to SR 329 (Main Street) hereinafter referred to as the "PROJECT," in accordance with Section 339.2817, Florida Statutes; and

WHEREAS, the COUNTY is willing to assign all of its interests and obligations, financial and otherwise, in the oversight and management of the PROJECT to the CITY; and

WHEREAS, the COUNTY by Resolution No. 11-139 dated the 13th day of December, 2011, a copy of which is attached hereto and made a part hereof, has authorized the Chairman of its Board of Commissioners to enter into this AGREEMENT;

WHEREAS, the CITY by Resolution No. 110690 dated the 1st day of march, 2012, a copy of which is attached hereto and made a part hereof, has authorized the Chairman of its City Council to enter into this AGREEMENT;

WHEREAS, the recitals set forth above are true and correct and are deemed to be restated herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein, the parties agree as follows:

1. SERVICES AND PERFORMANCE

A. The CITY shall furnish the services with which to construct the PROJECT. Said PROJECT consists of: the design and roadway reconstruction including bicycles and pedestrian facilities on Depot Avenue from US 441 / SR 25 / SW 13th Street to SR 329 (Main Street), as further described in **Exhibit A (Scope of Services)**, attached hereto and made a part hereof.

B. The CITY agrees to undertake the design and construction of the PROJECT in accordance with all applicable federal, state and local statutes, rules and regulations, and standards. The CITY shall be responsible for obtaining clearances/permits required for the construction of the PROJECT from the appropriate permitting authorities. Upon completion of the PROJECT, the CITY shall certify to the DEPARTMENT that the PROJECT has been completed in accordance with the applicable standards, statutes, rules and regulations in writing.

C. The DEPARTMENT will be entitled at all times to be advised, at its request, as to the status of work being done by the CITY and of the details thereof. Coordination shall be maintained by the CITY with representatives of the DEPARTMENT. The CITY shall provide the DEPARTMENT with quarterly progress reports.

D. For projects located on the State Highway System, the DEPARTMENT must approve any consultant and/or contractor scope of services including PROJECT budget. CITY shall obtain DEPARTMENT approval of plans and specifications prior to bidding the project.

E. For projects located on the State Highway System, the CITY must apply for and be granted a permit, from the DEPARTMENT, before the CITY can proceed with construction.

F. For projects located on the State Highway System, the PROJECT will be designed and constructed in accordance with all current DEPARTMENT specifications and standards. The construction engineering and inspection (CEI) services will be provided (when required by specifications) by personnel meeting the requirements of the DEPARTMENT'S Construction Training and Qualification Program. The CITY may choose to satisfy this requirement by either hiring a DEPARTMENT-prequalified consultant firm or utilizing CITY staff that meet these requirements, or a combination thereof. The CEI staff shall also include one individual that has completed the Advanced Maintenance of Traffic Advanced Level Training. The CEI staff shall be present on the PROJECT at all times that the contractor is working. Administration of the CEI staff shall be under the responsible charge of a State of Florida licensed Professional Engineer.

G. The CITY must certify that the consultant has been selected in accordance with the Consultants Competitive Negotiation Act (Section 287.055, Florida Statutes). Contractor must be prequalified by the DEPARTMENT as required by Section 2 of the current Standard Specifications for Road and Bridge Construction.

H. The CITY 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 CITY during the term of the contract; and 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.

I. The CITY shall not sublet, assign, or transfer any work under this Agreement without prior written consent of the DEPARTMENT.

J. All notices under this AGREEMENT shall be directed to the following addresses:

TO DEPARTMENT:

TO CITY:

Katrina Sadler, Planning Programs Administrator	Mr. John Veilleux, P.E.
PLEMO – Planning Department – MS 2014	City of Gainesville Public Works
1109 South Marion Avenue	Post Office Box 490, Mail Station 58
Lake City, Florida 32025	Gainesville, Florida 32602-0490

2. TERM

A. The term of this AGREEMENT shall begin upon the date of signature of the last party to sign. The CITY agrees to complete the PROJECT in accordance with the schedule described and contained in **Exhibit B (Schedule of Services)**, attached hereto and made a part of. If the CITY does not complete or maintain the project in accordance with the schedule, the DEPARTMENT may terminate this Agreement unless an adjustment to the schedule is requested by the CITY and granted in writing by the DEPARTMENT.

B. This AGREEMENT shall not be renewed. Any extension shall be in writing and executed by both parties, and shall be subject to the same terms and conditions set forth in this AGREEMENT.

3. COMPENSATION AND PAYMENT

A. The CITY and the DEPARTMENT agree to share the cost of this PROJECT pursuant to 339.2817 F.S. The parties agree that the estimated total project costs are Seven million, six hundred nine thousand, nine hundred eighty eight dollars and no/100% (\$7,609,988.00). The parties further agree that the DEPARTMENT's maximum participation is Three million, eight hundred thousand four dollars, nine hundred ninety four dollars and no/100% (**\$3,804,994.00**) and all remaining costs of the PROJECT will be borne by the CITY. These amounts are outlined in Exhibit C (Schedule of Funding), attached hereto and made a part of.

i) The CITY shall submit one invoice (4 copies) plus supporting documentation required by the DEPARTMENT to the Project Manager for approval and processing:

- monthly, or
- quarterly, or
- once the PROJECT has been accepted by the CITY and approved by the DEPARTMENT.

ii) Any provisions for an advance payment are provided in Exhibit D (Provisions for Advanced Payments) attached to this agreement hereto and made a part thereof. **(not applicable to this agreement)**

iii) In the event the CITY proceeds with the design, construction, and construction engineering inspection services (CEI) of the PROJECT with its own forces, the CITY will only be reimbursed for direct costs (this excludes general and administrative overhead).

iv) Invoices shall be submitted by the CITY in detail sufficient for a proper pre-audit and post-audit thereof, based on the quantifiable, measurable and verifiable deliverables as established in **Exhibit "A", Scope of Services** and **Exhibit "F", Standard Financial Provisions** and Project Plans when approved by the DEPARTMENT. Deliverables must be received and accepted in writing by the Department's Project Manager or designee prior to reimbursements.

v) Supporting documentation must establish that the deliverables were received and accepted in writing by the CITY and must also establish that the required minimum level of service to be performed as specified in Section 1. F. was met, and that the criteria for evaluating successful completion as specified in Section 1. B. was met.

vi) The CITY may receive progress payments for deliverables based on the contractor's Schedule of Values (**Schedule of Values would only apply to a construction project**) and on a percentage of services that have been completed, approved and accepted to the satisfaction of the DEPARTMENT when properly supported by detailed invoices and acceptable evidence of payment. 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.

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

B. 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), Florida Statutes.

C. Within thirty (30) days after completion of the work authorized by this AGREEMENT, the CITY 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 (Notice of Completion)**. The certification shall state that work has been completed in compliance with the PROJECT construction plans and specifications. If any deviations are noted 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.

D. 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. The DEPARTMENT has twenty-five (25) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty-five (25) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

E. 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), F.S., will be due and payable, in addition to the invoice amount, to the Participant. Interest penalties of less than one (1) dollar will not be enforced unless the Participant requests payment. Invoices that 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.

F. If this Agreement involves units of deliverables; such units must be received and accepted in writing by the Contract Manager prior to payments.

G. The DEPARTMENT's obligation to pay under this AGREEMENT is contingent upon an annual appropriation by the Legislature.

H. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

I. Travel costs will not be reimbursed.

J. 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 payments(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

K. 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 includes the CITY's general accounting records and the project records, together with supporting documents and records of the CITY and all subcontractors performing work on the PROJECT, and all other records of the CITY and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs.

L. 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.

M. It is unlawful for the County Board of commissioners to expend or contract for the expenditure in any fiscal year more than the amount budgeted in each fund's budget, except as provided herein, and in no case shall the total appropriations of any budget be exceeded, except as provided in 129.06 Florida Statutes, and any indebtedness contracted for any purpose against either of the funds enumerated in this chapter or for any purpose, the expenditure for which is chargeable to either of said funds, shall be null and void, and no suit or suits shall be prosecuted in any court in this state for the collection of same, and the members of the County commission voting for and contracting for such amounts and the bonds of such members of said boards also shall be liable for the excess indebtedness so contracted for, Section 129.07 Florida Statutes.

N. 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, consultant or subconsultant, 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, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

4. INDEMNITY AND INSURANCE

A. When either party receives notice of claim for damages that may have been caused by the other party in the performance of services required under this AGREEMENT, that party will immediately forward the claim to the other party. Each party will evaluate the claim, and report its findings to each other within fourteen (14) working days and jointly discuss options in defending the claim. A party's failure to promptly notify the other of a claim will not act as a waiver or any right herein.

B. The CITY agrees to include the following indemnification in all contracts with contractors/subcontractors, consultants/subconsultants, who perform work in connection with this AGREEMENT:

"Each contractor/consultant shall indemnify, defend, save, and hold harmless the DEPARTMENT and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any intentional act and /or negligent act or occurrence of omission or commission of the contractor, its officers, agents, or employees. Neither the contractor/subcontractor, consultant/subconsultant, nor any of its officers, agents, or employees will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of the DEPARTMENT or any of its officers, agents, or employees."

C. LIABILITY INSURANCE. In accordance with 768.28 (5) Florida Statutes, the CITY shall carry or cause its contractor/subcontractor, consultant/subconsultant to carry and keep in force during the period of this AGREEMENT a general liability policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$100,000 per person and \$200,000 each occurrence, and

property damage insurance of at least \$50,000 each occurrence, for the services to be rendered in accordance with this AGREEMENT. However, in the event the CITY maintains a self-insurance fund to cover such liability, the CITY agrees to maintain sufficient reserves in the fund to pay the above-described liability limits.

D. WORKERS' COMPENSATION. The CITY shall also carry or cause its contractor/subcontractor, consultant/subconsultant to carry and keep in force Workers' Compensation insurance as required for the State of Florida under the Workers' Compensation Law.

5. COMPLIANCE WITH LAWS

A. The CITY 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 CITY in conjunction with this AGREEMENT. Failure by the CITY to grant such public access shall be grounds for immediate unilateral cancellation of this AGREEMENT by the DEPARTMENT.

B. The CITY shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this AGREEMENT.

C. No funds received pursuant to this AGREEMENT may be expended for lobbying the Legislature, the judicial branch, or a state agency.

D. The CITY and the DEPARTMENT agree that the CITY, its employees, and subcontractors are not agents of the DEPARTMENT as a result of this AGREEMENT for purposes other than those set out in Section 337.274, Florida Statutes.

6. AUDIT

A. The administration of resources awarded by the DEPARTMENT to the CITY may be subject to audits and/or monitoring by the DEPARTMENT, as described in this section.

B. MONITORING

i) 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 recipient 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 recipient 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 the Inspector General, the Chief Financial Officer (CFO) or Auditor General.

C. FEDERAL AUDITS

i) 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:

ii) In the event that the recipient expends \$500,000 or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. Exhibit F to this agreement indicates Federal resources awarded through the DEPARTMENT by this AGREEMENT, if applicable. In determining the Federal awards expended in its fiscal year, the recipient 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 recipient conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, will meet the requirements of this part.

iii) In connection with the audit requirements addressed in Subparagraph i), the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

iv) If the recipient 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. In the event that the recipient expends less than \$500,000 in Federal awards in its fiscal year and 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 recipient resources obtained from other than Federal entities).

v) 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.

D. STATE AUDITS

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

ii) In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such recipient, the recipient 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. **Exhibit 1** to this agreement indicates state financial assistance awarded through the DEPARTMENT by this agreement, if applicable. In determining the state financial assistance expended in its fiscal year, the recipient 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.

iii) In connection with the audit requirements addressed in sub-paragraph i) the recipient 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.

iv) If the recipient 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. In the event that the recipient expends less than \$500,000 in state financial assistance in its fiscal year and 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 recipient's resources obtained from other than State entities).

v) 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.

E. OTHER AUDIT REQUIREMENTS

i) The recipient 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.

ii) 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 Comptroller, 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.

F. REPORT SUBMISSION

i) Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Paragraph C (FEDERAL AUDITS) 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 each of the following:

a) The DEPARTMENT at each of the following addresses:

District PLEMO Office – MS 2014
Attn: Kim Evans, JPA/LAP Coordinator
1109 South Marion Avenue
Lake City, Florida 32025

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.

ii) In the event that a copy of the reporting package for an audit required by Paragraph C (FEDERAL AUDITS) 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:

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

a) 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:

District PLEMO Office – MS 2014
Attn: Kim Evans, JPA/LAP Coordinator
1109 South Marion Avenue
Lake City, Florida 32025

iii) Copies of financial reporting packages required by Paragraph D (STATE AUDITS) of this AGREEMENT shall be submitted by or on behalf of the recipient directly to the following:

a) The DEPARTMENT at each of the following addresses:

District PLEMO Office – MS 2014
Attn: Kim Evans, JPA/LAP Coordinator
1109 South Marion Avenue
Lake City, Florida 32025

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

iv) Copies of reports or the management letter required by Paragraph E (OTHER AUDIT REQUIREMENTS) of this AGREEMENT shall be submitted by or on behalf of the recipient directly to the DEPARTMENT at the following address:

a) The DEPARTMENT at each of the following addresses:

District PLEMO Office – MS 2014
Attn: Kim Evans, JPA/LAP Coordinator
1109 South Marion Avenue
Lake City, Florida 32025

v) Any reports, management letter, 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.

vi) 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.

G. RECORD RETENTION

i) The recipient shall retain sufficient records demonstrating its compliance with the terms of this AGREEMENT for a period of at least five years from the date the audit report is issued, and shall allow the DEPARTMENT, or its designee, the state CFO or Auditor General access to such records upon request. The recipient shall ensure that the independent audit working papers are made available to the DEPARTMENT, or its designee, the state 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.

7. TERMINATION AND DEFAULT

A. This AGREEMENT may be canceled by either the CITY or the DEPARTMENT upon sixty (60) days written notice.

B. If the DEPARTMENT determines that the performance of the CITY is not satisfactory, the DEPARTMENT shall have the option of (a) immediately terminating the Agreement, or (b) notifying the CITY 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 CITY, the DEPARTMENT shall notify the CITY 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 CITY 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 CITY.

7. 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 CITY.

C. In no event shall the making by the DEPARTMENT of any payment to the CITY 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 CITY, and the making of such payment by the DEPARTMENT while any such breach or default exists 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. If any part of this AGREEMENT shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having the jurisdiction to make such determination, the remainder of this AGREEMENT shall remain in full force and effect provided that the part of this AGREEMENT thus invalidated or declared unenforceable is not material to the intended operation of this AGREEMENT.

F. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Florida. Venue of any judicial proceedings arising out of this AGREEMENT shall be in Leon County, Florida.

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 and accepted and payment made by the DEPARTMENT or terminated in accordance with Section 7.

H. An entity or affiliate which 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.

IN WITNESS WHEREOF, the COUNTY has caused this AGREEMENT to be executed in its behalf this 13th day of December, 2011, by the Chairman of the Board of Commissioners, authorized to enter into and execute same by Resolution Number 11-139 of the Board on the 13th day of December, 2011, the CITY has caused this AGREEMENT to be executed in its behalf this 1st day of march, 2012, by the Chairman of the City Council, authorized to enter into and execute same by Resolution Number 110690 of the Board on the 1st day of march, 2012, and the DEPARTMENT has executed this AGREEMENT through its District Secretary for District Two, Florida Department of Transportation, this _____ day of _____, _____.

ALACHUA COUNTY, FLORIDA

ATTEST: J.K. [Signature] (SEAL)
CLERK

BY: Paula M. DeLaney
CHAIRMAN, Board of County Commissioners
PAULA M. DeLANEY, CHAIR

PRINTED NAME: J.K. [Signature]

PRINTED NAME: _____

DATE: _____

DATE: _____ APPROVED AS TO FORM

CITY of GAINESVILLE, FLORIDA

ATTEST: [Signature] (SEAL)
CLERK

BY: Craig Lowe
MAYOR, City of Gainesville
[Signature]
ALACHUA COUNTY ATTORNEY

PRINTED NAME: Kw [Signature]

PRINTED NAME: Craig Lowe

DATE: 3/13/12

DATE: 3/13/12

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

ATTEST: _____ (SEAL)
EXECUTIVE SECRETARY

BY: _____
DISTRICT TWO SECRETARY

PRINTED NAME: _____

PRINTED NAME: _____

DATE: _____

DATE: _____

DISTRICT TWO GENERAL COUNSEL REVIEW:

Availability of Funds

Approval: _____
Date: _____

PRINTED NAME: _____
DATE: _____

APPROVED AS TO FORM AND LEGALITY
By: [Signature]
Ronald D. Combs, Sr. Asst. City Atty
City of Gainesville, Florida

Exhibit A
SCOPE OF SERVICES

Financial Project No.: **426044-1-58-01**
Catalog of State Financial Assistance No.: 55.008

This exhibit forms an integral part of that certain Joint Participation Agreement between the State of Florida Department of Transportation, Alachua County, and the City of Gainesville, Florida dated _____.

PROJECT LOCATION:

Depot Avenue from US 441 / SR 25 / SW 13th Street to SR 329 (Main Street) in Gainesville, Florida.

PROJECT DESCRIPTION:

The project consists of design and roadway reconstruction including bicycles and pedestrian facilities on Depot Avenue from US 441 / SR 25 / SW 13th Street to SR 329 (Main Street):

- Development of final plans
- Bid and award
- Construction

AGENCY RESPONSIBILITIES:

The Agency is required to provide a copy of the final design plans, specifications, and Engineer's estimates for the Department's review and approval prior to advertising for construction services.

The Agency is also required to coordinate permitting with the Department.

The Agency shall notify the Department prior to commencement of any Right-of-Way activities.

The Department's maximum participation is not to exceed **\$3,804,994.00**.

Prior to the execution of this Agreement, a project schedule of funding shall be prepared by the Agency and approved by the Department. The Agency shall maintain said schedule of funding, carry out the project, and shall incur obligations against and make disbursements of project funds only in conformity with the latest approved schedule of funding for the project. The schedule of funding may be revised by execution of a Supplemental Agreement between the Department and Agency. The Agency acknowledges and agrees that funding for this project may be reduced upon determination of the award amount and execution of the Supplemental Agreement.

Exhibit B
SCHEDULE OF SERVICES

The Agency is required to provide a copy of the final design plans for the Department's review and approval. The Agency must also coordinate permitting with the Department's permitting office for any projects on the State Highway System or any projects connecting to the State Highway System.

The Agency shall commence the project's activities subsequent to the execution of this Agreement and shall perform in accordance with the following schedule:

- a) Design to be completed by December 31, 2012.
- b) Construction contract to be let by June 30, 2013.
- c) Construction to be completed by June 30, 2014.

If this schedule cannot be met, the Agency will notify the Department in writing with a revised schedule or the project is subject to the withdrawal of state funding.

**Exhibit C
SCHEDULE OF FUNDING**

John Veilleux, P.E. City of Gainesville Public Works P.O. Box 490 Gainesville, Florida 32602	STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION COUNTY INCENTIVE GRANT PROGRAM (CIGP)	Financial Project ID: 426044-1-58-01
		Contract Number:

PROJECT DESCRIPTION

Name: Depot Avenue Length N/A

Termini: US 441 / SR 25 / SW 13th Street to SR 329 (Main Street)

Description of Work: Design and roadway reconstruction including bicycles and pedestrian facilities
Local match is applied to the entire Depot Avenue Corridor (Local Segments 1-4)

TYPE OF WORK By Fiscal Year	(1) TOTAL PROJECT ESTIMATE FUNDS (100%)	(2) AGENCY FUNDS (50%)	(3) STATE & FEDERAL FUNDS (50%)
Design			
<u>2008-2009</u>	_____	_____	_____
<u>2009-2010</u>	_____	_____	_____
<u>2010-2011</u>	_____	_____	_____
Total Design Cost	=====	=====	=====
Right of Way			
<u>2008-2009</u>	_____	_____	_____
<u>2009-2010</u>	_____	_____	_____
<u>2010-2011</u>	_____	_____	_____
<u>2011-2012</u>	\$2,091,022.00	\$2,091,022.00 Seq 2	_____
<u>2012-2013</u>	\$1,000,000.00	\$1,000,000.00 Seq 4	_____
Total Right of Way Cost	=====	=====	=====
	\$3,091,022.00	\$3,091,022.00	
Construction			
<u>2009-2010</u>	_____	_____	_____
<u>2010-2011</u>	_____	_____	_____
<u>2011-2012</u>	\$3,804,994.00	_____	\$3,804,994.00 Seq 1-2
<u>2012-2013</u>	_____	_____	_____
<u>2013-2014</u>	\$713,972.00	\$713,972.00 Seq 4	_____
Total Construction Costs	=====	=====	=====
	\$5,084,587.00	\$3,804,994.00	\$3,804,994.00
Construction Engineering and Inspection			
<u>2013-2014</u>	_____	_____	_____
<u>2014-2015</u>	_____	_____	_____
<u>2015-2016</u>	_____	_____	_____
<u>2016-2017</u>	_____	_____	_____
Total Construction Costs	=====	=====	=====
Total Cost of Project	=====	=====	=====
	\$7,609,988.00	\$3,804,994.00	\$3,804,994.00

County Incentive Grant Program (CIGP) statutory percentage is 50/50% as outlined in Section 339.2817, Florida Statutes.

The Department's fiscal year begins on July 1. For this project, funds are not projected to be available until after July 1st each fiscal year. The Department will notify the Agency, in writing, when funds are available.

Exhibit E
NOTICE OF COMPLETION

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
CERTIFICATION OF COMPLETION AGREEMENT

375-040-25
PROCUREMENT
OGC - 02/02

Contract No. _____
Financial Project I.D. _____
Vendor No. _____
Procurement No. _____
DMS Catalog Class No. _____

THIS CERTIFICATION OF COMPLETION AGREEMENT, made and entered into this _____ day of _____, (This date to be entered by DOT only)
, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter called the "Department," and
of _____
duly authorized to conduct business in the State of Florida, hereinafter called the "Consultant."

WITNESSETH:

WHEREAS, the Department and the Consultant heretofore on _____, entered into an Agreement whereby the Department retained the Consultant to furnish certain services in connection with _____; and

WHEREAS, the services which the Consultant agreed to furnish are 100% complete, for which the Consultant is entitled to a fee of \$ _____ detailed as follows:

and;

WHEREAS, there has been previously paid to the Consultant under the terms of said Agreement the sum of \$ _____

- Leaving a balance of \$ _____ still due and payable to the Consultant by the Department;
- Leaving an overpayment of \$ _____ due and payable to the Department by the Consultant;

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That the Consultant . does hereby agree with the Department to the completion of the Agreement dated _____, and all amendments and supplemental agreements thereto, except for those provisions wherein the Consultant agrees to protect, indemnify, defend, save, and hold harmless the Department from all claims, demands or liabilities which may arise out of or because of said Agreement, which provisions will remain in full force and effect. The Consultant agrees that the amount to be paid is the final payment due for services rendered pursuant to the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Name of Consultant

BY: _____
Authorized Signature

(Print/Type)

Title: _____

BY: _____

(Print/Type)

Title: _____

Contracting Office Approval:

Exhibit F
STANDARD FINANCIAL PROVISIONS

1. The Department agrees to pay the City of Gainesville for the herein described services at compensation as detailed in this Agreement.
2. The Participant shall furnish the services with which to construct the PROJECT. Said PROJECT consists of design and roadway reconstruction including bicycles and pedestrian facilities on Depot Avenue from US 441 / SR 25 / SW 13th Street to SR 329 (Main Street) in Gainesville, Florida.
3. 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.**
4. The Participant shall provide the following quantifiable, measurable and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. Said deliverables consists of roadway construction costs associated with project.
5. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof, based on the quantifiable, measurable and verifiable units of deliverables as established in Section 4 above, and must be received and accepted in writing by the Contract Manager prior to payments.
6. Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department's **Travel Form No. 300-000-01** and will be paid in accordance with **Section 112.061, F.S.**
7. Participants providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has 5 working days to inspect and approve the goods and services. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.
8. If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to **Section 55.03(1), F.S.**, will be due and payable, in addition to the invoice amount, to the Participant. Interest penalties of less than one (1) dollar will not be enforced unless the Participant requests payment. Invoices that 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.
9. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Participants 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 Department of Financial Services Hotline at 1-877-693-5236.
10. Records of costs incurred under the 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 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 Participant'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.
11. In the event this contract is for services in excess of \$25,000.00 and a term for a period of more than 1 year, the provisions of **Section 339.135(6)(a), F.S.**, 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 such 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 \$25,000.00 and which have a term for a period of more than 1 year."

The Department's obligation to pay is contingent upon an annual appropriation by the Florida Legislature.

Exhibit 1

State Agency: Florida Department of Transportation
CSFA# 55.008 – County Incentive Grant Program
Amount: \$3,804,994.00

State Projects Compliance Supplement CSFA Fiscal Year 2010-2011

Program Objectives: To provide grants to counties for improving transportation facilities (including transit) which are located on the State Highway System or which relieve traffic congestion on the State Highway System per section 339.2817, Florida Statutes.

Program Procedures: Counties are to submit a separate letter of application for each eligible project for which state matching funds are requested. Applications should be submitted to the District Office for the county in which the project is located. The district reviews the application and notifies the applicant in writing of any apparent errors or omissions and may request additional information needed to properly assess the application.

Projects to be included in this program are selected in order of rank from the most recent District rank-order listing to the extent that adequate funds are made available by appropriation. Project selected are made part of the Adopted Work Program and are adopted in accordance with sections 339.135(5) and (7), Florida Statutes.

Activities Allowed: The grants are to be used for improvements to transportation facilities which are located on the State Highway System or which relieve traffic congestion on the State Highway System, as provided by section 339.2817(1), Florida Statutes.

Allowable Costs: See above

Eligibility: To be considered eligible for funding, the project must satisfy the following minimum requirements. It must:

(A) Be a facility. CIGP funds cannot be used for operational expenses.

(B) Be either located on the State Highway System or relieve traffic congestion on the State Highway System.

(c) Be consistent to the maximum extent feasible, where appropriate, with the local Metropolitan Planning Organization (MPO) Long Range Transportation Plan (LRTP).*

(D) Be consistent with, to the maximum extent feasible, with any local comprehensive plans.*

*If the project is not in these plans, it must be amended into them within six months of application.

Matching: The Department shall provide 50 percent of the project costs for eligible projects.

Federal Surface Transportation funds (SU) can be used as a local match provide the project meets all requirements for use of the fund category. FTA funds can be used as a local match provided the project reduces congestion on the state highway system, e.g. a park and ride lot.

In-kind services or right of way that comprise integral parts of the project and contribute to its ultimate completion may be used as all or part of the local matching funds. The value for land donated is the current market value, as properly supported.

For in-kind services, a detailed report of the costs incurred as recorded in the cost accounting system must be provided to the District to substantiate the amount of in-kind services costs to be used as the county's share of participation.

RESOLUTION 11- 139

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA, AUTHORIZING THE COUNTY TO ENTER INTO A COUNTY INCENTIVE GRANT PROGRAM AGREEMENT WITH THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND THE CITY OF GAINESVILLE FOR THE ROADWAY RECONSTRUCTION INCLUDING BICYCLES AND PEDESTRIAN FACILITIES ON DEPOT AVENUE FROM US 441/SR 45/SW 13TH STREET TO MAIN STREET IN ALACHUA COUNTY; AUTHORIZING THE CHAIR TO EXECUTE THE COUNTY INCENTIVE PROGRAM GRANT AGREEMENT; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the FDOT has requested the County to execute and deliver a County Incentive Grant Program Agreement between the County, the FDOT and the City of Gainesville for the roadway reconstruction including bicycles and pedestrian facilities on Depot Avenue from US 441/SR 45/SW 13th street to Main Street to FDOT; and

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA;

1. The Board hereby approves the County Incentive Grant Program Agreement.
2. A certified copy of this resolution will be forwarded to the FDOT with the executed agreement.
3. This resolution shall take effect immediately upon its adoption.

DULY ADOPTED in regular session, this 13th day of December, A.D., 2011

SEAL

**BOARD OF COUNTY COMMISSIONERS
ALACHUA COUNTY, FLORIDA**

By: Paula M. DeLaney
Paula M. DeLaney, Chair

ATTEST:

J.K. Irby
J.K. Irby, Clerk

APPROVED AS TO FORM:

[Signature]
County Attorney



I, the undersigned, Clerk of the Circuit & County Court, Eighth Judicial Circuit of Florida, in and for Alachua County, hereby certifies this to be a true and correct copy of the document now of record in this office. Witness my hand and seal this 5 day of January, 2012
By: [Signature]
Deputy Clerk