

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT ("Agreement") is made and entered into by and between the State of Florida Department of Transportation, District Two Office of Modal Development ("District"), and the City of Gainesville, Florida ("Agency").

-RECITALS-

1. The Agency entered into a State Infrastructure Bank Loan Agreement ("SIB Loan") with the Florida Department of Transportation State Infrastructure Bank, ("Department") on June 25, 2013, for contract number AR435 in order for the Agency to construct a Transit Administration, Operation and Maintenance Facility (FM#433719-1) ("Transit Facility Project"), a copy of which is attached as **Exhibit "A"**; and
2. The original SIB Loan was in the amount of Three-Million Eight-Hundred Thousand and No/100 (\$3,800,000.00); and
3. The Transit Facility Project has been completed and finally accepted; and
4. The actual cost to construct the Transit Facility Project was in the amount of One-Million Three-Hundred Fifty-Thousand and No/100 Dollars (\$1,350,000.00) ("Project Costs"); and
5. Subsequently, the Agency and the Department entered into a First Amendment to the SIB Loan ("Amendment") reducing the amount of the SIB Loan to the actual costs of the Transit Facility Project, a copy of which is attached as **Exhibit B**; and
6. The Agency agreed to reimburse the Department for the SIB Loan, plus interest, by October 1, 2015, as stated in the SIB Loan and re-confirmed in the Amendment; and
7. The total amount owed to the Department by the Agency is One-Million Four-Hundred Six-Thousand One-Hundred Fifty-Six and 18/100 Dollars (\$1,406,156.18), which consists of the Project Costs plus Fifty-Six Thousand One-hundred Fifty-Six and 18/100 Dollars (\$56,156.18) in accrued interest (collectively "SIB Loan Funds"); and
8. The Agency is a small urban transit agency as defined under the Federal Statute 23 USC Section 133 ("Federal Statute");
9. Pursuant to the Federal Statute, the Transit Facility Project constructed by the Agency is eligible for reimbursement via Surface Transportation Funds ("STP"), Urban Funds ("SA"); and
10. The District shall reimburse the Agency for the SIB Loan Funds used to accomplish construction of the Transit Facility Project using STP, SA funds as such time as the Agency provides an invoice with attached documentation certifying re-payment of the SIB Loan Funds to the Department as agreed upon in the SIB Loan and Amendment ("Invoice"); and
11. The District's ability to reimburse this Agency in accordance with this Agreement is wholly contingent upon appropriation of funds to the District; and
12. The Agency shall maintain, as required and monitored by the Federal Transit Administration ("FTA"), a Facility Maintenance Plan, as outlined in Section 5.06 of the Transit Facility Project contract, for the maintenance of the Corrine Brown Transit Facility; and
13. The Agency, by Resolution No. _____, attached as **Exhibit "C"** has authorized its officers to execute this Agreement on its behalf.

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

1. RECITALS AND EXHIBITS

The above recitals and attached Exhibits are specifically incorporated 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 the Agreement.

3. E-VERIFY

The Agency (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 Agency 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. COMPLIANCE

The Agency shall perform the Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions hereof and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards, specifications and permits, as the same may be constituted and amended from time to time, including, without limitation, those of the Department, Water Management District with requisite jurisdiction, Florida Department of Environmental Protection, Environmental Protection Agency, Army Corps of Engineers, United States Coast Guard and local governmental entities ("Governmental Law").

5. REIMBURSEMENT OF SIB LOAN FUNDS

A. The District's maximum participation shall be an amount up to and not to exceed One-Million Four-Hundred Six-Thousand One-Hundred Fifty-Six and 18/100 Dollars (\$1,406,156.18) "Maximum Participation Amount". The Agency agrees to bear all expenses in excess of the District's Maximum Participation Amount, which shall be paid by the District in a lump sum amount upon receipt of the Invoice from the Agency.

1. The Agency shall submit the Invoice to Janell Damato, Rural/Urban Transit Coordinator, 2198 Edison Avenue, Jacksonville, FL 32204 MS 2806 to the District immediately upon receipt.

2. The Parties agree that the District shall disburse the Maximum Participation in a lump sum payment to the Agency upon receipt of the Invoice, and upon payment of the Maximum Participation Amount, and the Agency shall bear all expenses in excess of the Maximum Participation Amount from that point forward.

B. Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit. Specifically the Agency shall be required to comply as follows:

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

6. INDEMNIFICATION

A. The Agency 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 Agency's acts or omissions ("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 Agency's duty to defend, indemnify and hold the Department harmless specifically does not encompass indemnifying the Department for the Department's negligence, intentional or wrongful acts, omissions or breach of contract.

B. The Agency shall notify the Department in writing immediately upon becoming aware of any Liabilities. The Agency'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 City. The Agency's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph.

7. 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. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Department's limits of liability set forth in sections 376.305 and 337.27(4), Fla. Stat. (2014). The limit of the Department's liability for breach of this Agreement shall be identical to the limitations of liability for tort actions set forth in §768.28(5), Florida Statutes.

8. GOVERNING LAW

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

9. 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 the Agreement.

10. 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 Agency 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.

11. JURY TRIAL

The parties hereby waive the right to trial by jury of any dispute concerning the interpretation, validity, performance or breach of the Agreement, including, without limitation, damages allegedly flowing therefrom.

12. ASSIGNMENT

The Agency 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 Agency from delegating its duties hereunder, but such delegation shall not release the Agency from its obligation to perform the Agreement.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. SEVERANCE

If any section, paragraph, clause or provision of the Agreement is adjudged by a court, agency 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.

22. 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.

23. 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.

24. ANNUAL APPROPRIATION / FUNDING

Pursuant to §339.135(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 Agency 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."

25. PUBLIC RECORDS

A. The Agency shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by the Agency in conjunction with this Agreement. Specifically, the Agency shall:

- (1) Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the services being performed by the Agency; and
- (2) Provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in chapter 119, Florida Statutes, or as otherwise provided by law; and
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- (4) Meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the Agency upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

B. The Agency shall promptly provide the Department with a copy of any request to inspect or copy public records in possession of the Agency and shall promptly provide the Department a copy of the Agency's response to each such request. Failure by the Agency to grant such public access shall be grounds for immediate termination of this Agreement by the Department.

Financial Project No

IN WITNESS WHEREOF, the Agency has caused this Agreement, consisting of _____ (____) pages, to be executed in its behalf this _____ day of _____, _____, by the _____ Gainesville City Commissioners, authorized to enter into and execute same by Ordinance/Resolution Number _____ of the Board on the day of _____, _____, and the Department has executed this Agreement through its District Secretary for District Two, Florida Department of Transportation, this _____ day of _____, _____.

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SIGNATURES ON FOLLOWING PAGE

_____ Gainesville City COMMISSIONERS

ATTEST: Sharon J. Williams (SEAL)
CLERK

BY: Russ Blackburn
Russ Blackburn
Gainesville City Manager

Legal Review:
Lisa C Bennett
Legal Counsel to Agency

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

ATTEST: _____ (SEAL)
EXECUTIVE SECRETARY

BY: _____
DISTRICT SECRETARY
DISTRICT _____

Legal Review:

Legal Counsel to Department

Availability of Funds
Approval:

(Date)

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**STATE INFRASTRUCTURE BANK
LOAN AGREEMENT**

CFDA Number: 20.205
DUNS: 80-939-7102

THIS STATE INFRASTRUCTURE BANK LOAN AGREEMENT, is entered into between the **STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida (the "Department"), and the **CITY OF GAINESVILLE**, a municipal corporation existing under the laws of the State of Florida (the "Agency").

RECITALS

- A. The Department has established a federally-funded State Infrastructure Bank ("SIB") in accordance with the provisions of 23 U.S.C. Section 610 and a State Infrastructure Bank Cooperative Agreement between the Department, the Federal Highway Administration, the Federal Transit Administration, and the Federal Railroad Administration, effective July 28, 1999 (the "Cooperative Agreement").
- B. Under 23 U.S.C. Section 610, the Cooperative Agreement, and Sections 339.08(1)(d),(g), and (h), Florida Statutes, the Department may make loans or provide other forms of credit assistance to a public or private entity to carry out transportation projects eligible for assistance under 23 U.S.C. Section 610.
- C. The Agency has applied for a SIB loan for a capital improvement project.
- D. The Department has determined that the project meets the requirements for a SIB loan.

AGREEMENT

In consideration of the Department making the loan to the Agency, in the principal amount and pursuant to the covenants expressed in this Agreement, and intending to be legally bound by this Agreement, the Department and the Agency agree as follows:

ARTICLE I - DEFINITIONS

1.01 WORDS AND TERMS.

In addition to the words and terms elsewhere defined in this Agreement, the following words and terms shall have the meanings set forth below:

(1) "Agreement" or "Loan Agreement" shall mean this loan agreement and all exhibits and schedules attached hereto.

(2) "Agreement Date" means the date on which this agreement is executed by the last party to sign.

(3) "Authorized Representative" means the official or officials of the Agency authorized by ordinance or resolution to sign documents associated with the Loan.

(4) "Disbursement" means the amounts of the Loan disbursed by the Department to the Agency.

(5) "Financing Rate" means the charges, expressed as a percent per annum, imposed on the unpaid principal of the Loan.

(6) "Fiscal Year" means the State fiscal year period commencing on July 1 of each year and ending on June 30 of the succeeding year.

(7) "Loan" means the loan made to the Agency pursuant to this Agreement in the initial principal amount of Three Million Eight Hundred Thousand and 00/100 Dollars (\$3,800,000.00).

(8) "Loan Application" means the completed form which provides all information required to support obtaining the Loan.

(9) "Loan Payment" means the loan payment due from the Agency.

(10) "Pledged Revenues" means the specific revenues pledged as security for repayment of the Loan, which are the Federal 23 U.S.C. Section 133 Surface Transportation Program (STP) Grant Funds identified in the Department work program for the Project under financial project number 429927 2, in the amount of \$4,000,000 for Fiscal Year 2016 and \$4,100,000 for Fiscal Year 2017, and the Federal Transit Administration Section 5307 Urbanized Area Formula Grant Funds allocated to the Agency from time to time during any period that any principal or interest of the Loan remains unpaid.

(11) "Project" means the state capital outlay project financed by this Loan, consisting of the purchase of right-of-way and construction of a parking lot for buses located at the administration, operations and maintenance facility for consolidated transit operations, as more fully described in the Loan Application, in accordance with applicable law and the summary included in Exhibit A.

(12) "State" means the State of Florida.

(13) "State Infrastructure Bank" or "SIB" means the federally-funded State Infrastructure Bank created pursuant to the Cooperative Agreement.

1.02 CORRELATIVE WORDS.

Words of the masculine gender include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, the singular includes the plural and the word "person" includes departments and associations, including public bodies, as well as natural persons.

ARTICLE II - WARRANTIES, REPRESENTATIONS AND COVENANTS

2.01 GENERAL WARRANTIES, REPRESENTATIONS AND COVENANTS.

The Agency warrants, represents, and covenants that:

(1) The Agency has full power and authority to enter into and comply with the provisions of this Agreement and shall initiate and prosecute to completion all proceedings necessary to enable the Agency to provide the necessary funds for repayment of the Loan.

(2) The Agency has the authority to pledge the Pledged Revenues as security for repayment of the Loan and no election or referendum is required to make the pledge of the Pledge Revenues valid and legally enforceable.

(3) The Agency currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement.

(4) There is no material action, suit, proceeding, inquiry, or investigation, at law or in equity, before any court or public body, pending or, to the best of the Agency's knowledge, threatened, which seeks to restrain or enjoin the Agency from entering into or complying with this Agreement.

(5) All Agency representations to the Department, pursuant to the Loan Application and this Agreement, were and are true and accurate as of the date the Loan Application and this Agreement were each executed by the Agency. The financial information delivered by the Agency to the Department was current and correct as of its date. Since the date of such financial information, there has not been any material adverse change in the financial condition or revenues and expenditures of the Agency, or in the collection of the Pledged Revenues. The Agency shall comply with all applicable State and Federal laws, rules, and regulations. To the extent that any assurance, representation, or covenant requires a future action, the Agency shall take such action as is necessary for compliance.

(6) The Agency shall adhere to accepted governmental accounting principles established by the Governmental Accounting Standards Board.

(7) Pursuant to Section 216.347 of the Florida Statutes, the Agency shall not use the Loan proceeds for the purpose of lobbying the Florida Legislature, the Judicial Branch, or a State agency.

(8) The Agency shall submit to the Department such data, reports, records, contracts and other documents as the Department may request in order to ascertain the performance by the Agency of its obligations under this Agreement.

(9) The Agency shall undertake the Project on its own responsibility, to the extent permitted by law.

(10) The Agency shall have obtained, prior to any Disbursement, all permits and approvals required for construction of the Project or portion of the Project funded under this Agreement. The Agency knows of no reason why any future required permits or approvals are not obtainable.

(11) The Agency covenants that this Agreement is entered into for the purpose of constructing, acquiring, refunding, or refinancing the Project which will in all events serve a public purpose. The Agency covenants that it will, under all conditions, complete and operate the Project to fulfill the public need.

(12) In the event the anticipated Pledged Revenues are shown by the Agency's annual budget to be insufficient to make the Loan Repayments for such fiscal year when due, the Agency shall include in such budget other legally available funds which will be sufficient, together with the Pledged Revenues, to make the Loan Repayments. Such other legally available funds shall be budgeted in the regular annual governmental budget and designated for the purpose provided by this paragraph (12), and the Agency shall collect such funds for application as provided herein. The Agency shall notify the Department immediately in writing of any such budgeting of other legally available funds. Nothing in this covenant shall be construed as creating a pledge, lien, or charge upon any such other legally available funds; requiring the Agency to levy or appropriate ad valorem tax revenues; or preventing the Agency from pledging to the payment of any bonds or other obligations all or any part of such other legally available funds.

(13) The Project has been and will continue to be included in the 5 year capital improvement element of the Agency's comprehensive plan developed in accordance with Section 163.3177, Florida Statutes, and is a Project for which the use of the Pledged Revenues, either directly or to pay debt service on related borrowings, is permitted under the Agency's Code of Ordinances.

2.02 LEGAL AUTHORIZATION.

Upon signing this Agreement, the Agency's legal counsel shall express the opinion subject to laws affecting the rights of creditors generally, that:

(1) This Agreement has been duly authorized by the Agency and shall constitute a valid and legal obligation of the Agency enforceable in accordance with its terms upon execution by both parties; and

(2) This Agreement specifies the revenues pledged for repayment of the Loan, the pledge is valid and enforceable, and no election or referendum is required to make the pledge of the Pledge Revenues valid and legally enforceable.

ARTICLE III - LOAN DISBURSEMENTS AND REPAYMENT

3.01 PRINCIPAL AMOUNT OF LOAN.

The Department agrees to lend to the Agency, and the Agency agrees to repay the Department the Loan at the times, in the amounts, and in the manner specified in this Agreement. The principal amount of the Loan as of any date shall consist of the aggregate Disbursements, plus interest that has accrued and been added to the principal amount of the Loan, less the aggregate principal component of all Loan Payments made, all as of such date.

3.02 FINANCING RATE.

Beginning on the date of the first Disbursement, interest shall accrue on the principal amount of the Loan at the Financing Rate. The Financing Rate is 2.0% per annum, compounded annually, using an actual-days-elapsed/365 day counting convention, as indicated by the Disbursement/Payment Schedule attached hereto as Exhibit B.

3.03 LOAN DISBURSEMENTS.

The Department shall disburse the Loan to the Agency in the amounts and at the times specified in the Disbursement/Payment Schedule attached as Exhibit B, provided that prior to each Disbursement, the SIB Program Manager receives a completed Disbursement Request Form substantially in the form of Exhibit C, and such other certificates or documents as the Department shall reasonably request in order to process each Disbursement. Upon written request by the Agency, or upon its own initiative, the Department may, in its sole and absolute discretion, amend the Disbursement/Payment Schedule to take into account unexpected events or reasonable adjustments to the financing of the Project, including, but not limited to, increases or decreases in the disbursement amounts and times, and acceleration or delays in the construction of the Project. Under no circumstances shall the sum of the disbursements to the Agency exceed \$3,800,000.00. The Department's obligation to fund any Disbursement is subject to funds being made available by an appropriation made pursuant to Florida law.

The Department will have no obligation to honor any request for disbursement made by the Agency or otherwise make any disbursement under this Agreement in the event that the Department has notified the Agency that an event of default has occurred under this or any other agreement between the Agency and the Department, or if the Department, in its sole discretion, determines that events have occurred which substantially diminish the likelihood that the Agency will timely and fully honor its obligations under this Agreement or any other agreement between the Department and the Agency. Any waiver of this provision by disbursement following an event of default by the Agency under the terms of this Agreement, or any other agreement between the Agency and the Department, will not constitute a continuing waiver of this provision and the Department may refuse to make further disbursements without any liability to the Agency whatsoever.

3.04 LOAN PAYMENTS.

Loan Payments shall be made at the time and in the amounts stated in the Loan Disbursement/Payment Schedule attached as Exhibit B. The Department may, in its sole and absolute discretion, adjust the scheduled Payment of the Loan provided in the Disbursement/Payment Schedule to take into account the adjustments permitted by Section 3.03. Loan Payments shall be credited first to interest accrued on the principal amount of the Loan, if any, then to principal. Upon determination by the Department SIB Program Manager that a proposed prepayment will not adversely impact the Department's Federal SIB program account, the Agency may prepay the Loan in full, or in part, without penalty.

ARTICLE IV – SECURITY

4.01 PLEDGE TO THE DEPARTMENT.

The Agency pledges and assigns the Pledged Revenues to secure payment of the Loan. The Agency shall not take any action with respect to the Pledged Revenues that would be inconsistent with this pledge. The pledge of the Pledged Revenues shall be valid and binding as of the Agreement Date. The lien of the Department on the Pledged Revenues will be prior and superior to any other pledge, lien, charge, or encumbrance.

4.02 ADDITIONAL DEBT OBLIGATIONS.

The Agency may not issue additional debt obligations with a lien on the Pledged Revenues without the Department's consent.

4.03 COLLECTION OF PLEDGED REVENUES.

The Agency shall take no action to impair the collection of the Pledged Revenues.

ARTICLE V – THE PROJECT

5.01 PROJECT.

The Agency shall commence and complete the Project as described in Exhibit A with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions of this Agreement and all applicable laws. The Agency shall submit to the Department all data, reports, records, contracts, and other documents relating to the Project as the Department may require. The Agency shall have an interest in real property sufficient for the construction and location of the Project free and clear of liens and encumbrances which would impair the usefulness of the Project site for its intended use. The Agency shall have obtained, prior to any Disbursement, all permits and approvals required for construction of the Project or portion of the Project funded under this Agreement.

5.02 PROJECT CHANGES.

The Agency covenants and agrees that it will not change the scope of the Project or alter the nature of the Project in any material fashion, or substitute any other project for the Project, without the prior written approval of the Department.

5.03 ENVIRONMENTAL POLLUTION.

The Agency will carry out the Project in conformance with all applicable environmental regulations including the securing of any applicable permits. The Agency will be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the securing of any applicable permits, and will reimburse the Department for any loss incurred in connection therewith.

5.04 PROJECT ACCOUNTING RECORDS

As part of its bookkeeping system, the Agency shall keep accounts for the Project separate from all other accounts and it shall keep accurate records of all expenditure relating to the Project and Disbursements. Documentation regarding the Project accounts shall be made available to the Department upon request any time during the period of the Agreement and for five years after the final payment is made. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers that evidence, in proper detail, the nature and propriety of the charges.

5.05 PROJECT COMPLETION, AGENCY CERTIFICATION.

In addition to the proceeds of this Loan, the Agency covenants that it has obtained, or will obtain, sufficient moneys from other sources to complete construction and place the Project in operation. Failure of the Department to approve additional financing, where required, shall not constitute a waiver of the Agency's covenant to complete and place the Project in operation. Upon completion of the Project, the Agency will certify in writing that the Project (or expending of the Loan) was completed in accordance with applicable plans and specifications and that the Project is accepted by the Agency as suitable for the intended purpose.

5.06 USE AND MAINTENANCE OF PROJECT.

The Agency shall use the Project facilities and equipment to provide or support public transportation for the period of the useful life of such facilities and equipment as determined in accordance with general accounting principles and approved by the Department. The Agency will maintain the project facilities and equipment in good working order for the useful life of the facilities or equipment.

5.07 PROHIBITION ON ENCUMBRANCES

The Agency is prohibited from selling, leasing, or disposing of any part of the Project which would materially adversely affect the ability of the Agency to meet its obligations under this Agreement so long as this Agreement, including any amendment, is in effect, unless the written consent of the Department is first obtained.

5.08 PROPERTY RECORDS

The Agency will maintain property records, conduct physical inventories, and develop control systems as required by 49 C.F.R. Part 18, when applicable.

ARTICLE VI - DEFAULTS AND REMEDIES

6.01 EVENTS OF DEFAULT.

The occurrence of any of the following events will be an event of default by the Agency:

(1) Any failure to make a Loan Payment when it is due that continues for a period of 5 days after the due date.

(2) The making of any warranty, representation or other statement by, or on behalf of, the Agency contained in this Agreement or in any document, certificate or information furnished in compliance with, or in reference to, this Agreement, that is determined to be false or misleading.

(3) Entry of an order or decree appointing a receiver for any part of the Project or the Pledged Revenues, with the acquiescence of the Agency; or if such an order or decree is entered without the consent or acquiescence of the Agency, the failure thereafter by the Agency to obtain an order or decree vacating, discharging, or staying the appointment within 60 days.

(4) The initiation of any proceeding, with the acquiescence of the Agency, for the purpose of effecting a composition between the Agency and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are payable from Pledged Revenues.

(5) The initiation of any bankruptcy, insolvency, or other similar proceeding by the Agency under federal or state bankruptcy or insolvency law now or hereafter in effect; or the initiation of any bankruptcy, insolvency, or other similar proceeding against the Agency under federal or state bankruptcy or insolvency law now or hereafter in effect, if the Agency does not obtain an order dismissing the proceeding within 60 days after filing.

(6) Except as provided in Subsection 6.01(1), any failure to comply with the provisions of this Agreement or failure in the performance or observance of any of the covenants or actions required by this Agreement (a "General Non-compliance Default"), provided, however, that if the Agency provides the Department with written notice of a General Non-

compliance Default within 30 days of the date of such General Non-compliance Default, then the Agency shall have 60 days from the date of such General Non-compliance Default to cure such General Non-compliance Default to the satisfaction of the Department in the Department's sole and absolute discretion. If the Agency fails, within the time periods provided in the previous sentence, to (i) provide written notice of a General Non-compliance Default, or (ii) cure the General Non-compliance Default to the satisfaction of the Department in the Department's sole and absolute discretion, then the Agency shall be deemed to be in default of this Agreement as of the date of the General Non-compliance Default.

6.02 REMEDIES.

Upon any event of default, the Department may pursue any available remedy at law or in equity, including:

(1) By mandamus or other proceeding at law or in equity, cause the Agency to remit to the Department Pledged Revenues sufficient to enable the Agency to satisfy its obligations under this Agreement.

(2) By action or suit in equity, require the Agency to account for all moneys received pursuant to this Agreement and to account for the receipt, use, application, or disposition of the Pledged Revenues.

(3) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the Department.

(4) By applying to a court of competent jurisdiction, cause the appointment of a receiver to manage the Project, establish and collect fees and charges, and apply the revenues to the reduction of the obligations under this Agreement.

(5) By certifying to the Auditor General and the Chief Financial Officer delinquency on Loan Payments, the Department may provide for the payment to the Department of the delinquent amount, a penalty, and the cost to handle and process the debt, from any unobligated funds due to the Agency under any revenue or tax sharing fund established by the State, except as otherwise provided by the State Constitution. A penalty may be imposed in an amount not to exceed an interest rate of 18 percent per annum on the amount due.

(6) By notifying financial market credit rating agencies and potential creditors of the event of default.

(7) By suing for payment of amounts due, or becoming due, with interest on overdue payments together with all costs of collection, including attorneys' fees.

(8) By accelerating the payment schedule or increasing the Financing Rate on the unpaid principal of the Loan to as much as 1.667 times the Financing Rate for a default under Subsection 6.01(1).

In addition to pursuing one or more of the above remedies, upon an event of default, the Department may, by providing 60 days advance written notice to the Agency, elect to terminate this Agreement, and the Department shall have no further obligation or commitment under this Agreement to the Agency. Any partial Loan Payments by the Agency shall be allocated first to interest and second to principal.

6.03 REMEDIES NOT EXCLUSIVE; DELAY AND WAIVER.

No remedy conferred upon or reserved to the Department by this Article is exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy. No delay or omission by the Department to exercise any right or power accruing as a result of an event of default shall impair any such right or power or shall be construed to be a waiver of any such default, and every such right and power may be exercised as often as may be deemed expedient. No waiver of any default under this Agreement shall extend to or affect any subsequent event of default, whether of the same or different provision of this Agreement, or shall impair consequent rights or remedies.

ARTICLE VIII - GENERAL PROVISIONS

7.01 DISCHARGE OF OBLIGATIONS.

All payments required to be made under this Agreement shall be cumulative and any deficiencies in any Fiscal Year shall be added to the payments due in the succeeding Fiscal Year and all Fiscal Years thereafter until fully paid. Loan Payments shall continue to be secured by this Agreement until all of the payments required are fully paid to the Department. Notwithstanding any provision of this Agreement to the contrary, the Agency may prepay this Loan only upon the express written consent of the Department, which consent shall not be withheld if such prepayment, in the judgment of the Department and the State of Florida Division of Bond Finance, will not adversely impact the Department's ability to comply with covenants relating to obligations secured by such Loan.

7.02 ASSIGNMENT OF RIGHTS UNDER AGREEMENT.

The Agency acknowledges that the Loan and all payments of principal and interest may be pledged and assigned by the Department as security for the payment of principal of, premium, if any, and interest on bonds that may be issued by the Department to fund the SIB and the Agency consents to such pledge and assignment. The Department and the State of Florida Division of Bond Finance (the "Division") may further pledge or assign all or any part of this Agreement without the prior consent of the Agency after written notification to the Agency. The Agency shall not assign its rights and obligations under this Agreement without the prior written consent of the Department.

7.03 AMENDMENT OF AGREEMENT.

This Agreement may be amended in writing, except that no amendment shall be permitted which is inconsistent with any applicable State or Federal law. This Agreement may be

amended after all construction contracts are executed to re-establish the Project cost, Project schedule, and Loan amount.

7.04 ANNULMENT OF AGREEMENT.

The Department may unilaterally annul this Agreement if the Agency has not drawn any of the Loan proceeds within six months of the first scheduled Disbursement date. If the Department unilaterally annuls this Agreement, the Department will provide written notification to the Agency.

7.05 SUSPENSION AND TERMINATION.

If the commencement, prosecution, or timely completion of the Project is rendered improbable, infeasible, impossible, or illegal, or if any federal agency providing federal financial assistance to the Project suspends or terminates federal financial assistance to the Project, by written notice to the Agency, the Department may suspend any or all of its obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected, or at its option, the Department may terminate any or all of its remaining obligations under this Agreement.

Upon receipt of any termination or suspension notice, the Agency shall repay the SIB according to the provisions of the Agreement, or as otherwise agreed upon, in writing, by the Department and the Agency. The closing out of federal financial participation in the Project or the reduction or elimination of local support for this Project shall not constitute a waiver of the Agency's obligation to repay the Loan.

The Department reserves the right to unilaterally cancel this Agreement for refusal by the Agency to allow public access to all documents, papers, letters or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Agreement.

7.06 SEVERABILITY CLAUSE.

If any provision of this Agreement shall be held invalid or unenforceable, the remaining provisions shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.07 APPROPRIATION.

The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

The provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated verbatim: "(a) 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."

7.08 MONITORING PROCEDURES, AUDIT REPORTS, AND RECORD RETENTION.

The administration of resources awarded by the Department may be subject to audits and/or monitoring by the Department, as described in this section. In addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised, and Section 215.97, Florida Statutes, 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 Agency 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 Agency is appropriate, the Agency agrees to comply with any additional instructions provided by the Department staff regarding such audit. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

In the event that the Agency expends \$500,000 or more in Federal awards in its fiscal year, the Agency must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. In determining the Federal awards expended in its fiscal year, the Agency 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 Agency conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, will meet the requirements of this part. The Agency shall also fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

If the Agency 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. If the Agency 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 Agency resources obtained from other than Federal entities).

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.

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

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

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

- (i) The Department at the following address:

Florida Department of Transportation
SIB Program Manager
Office of Comptroller – Project Finance
605 Suwannee Street, MS #10
Tallahassee, FL 32399-0450

- (ii) 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

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

In the event that a copy of the reporting package for an audit required by 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 Agency shall submit the required written notification pursuant to Section .320 (e)(2) and a copy of the Agency's audited schedule of expenditures of Federal awards directly to the Department at the following address. Pursuant to Section .320 (f), OMB Circular A-133, as revised, the Agency shall submit a copy of the reporting package described in Section .320 (e),

OMB Circular A-133, as revised, and any management letters issued by the auditor, to the Department at the following address:

Florida Department of Transportation
SIB Program Manager
Office of the Comptroller – Project Finance
605 Suwannee Street, MS #10
Tallahassee, FL 32399-0450

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.

The Agency, 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 Agency in correspondence accompanying the reporting package.

The Agency 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, CFO, or Auditor General access to such records upon request. The Agency shall ensure that audit working papers are made available to the Department, or its designee, CFO, or Auditor General upon request for a period of at least five years from the date the audit report is issued, unless extended in writing by the Department.

7.09 PROGRESS REPORTS.

The Agency shall provide the Department's Office of Financial Development semi-annual progress reports on "program and financial activities" that occur each year. The report will be signed or submitted electronically in accordance with Chapter 668, Florida Statutes, by an Authorized Representative. The following program information shall be included: program accomplishments (specific action taken to implement approved objectives/activities) and percent of accomplishments for each in terms of percentage completed; problems delaying implementation; and revised Project schedules if activities are not conforming to approved Project schedules as contained in the application. The following financial information shall be included: beginning fund balance; amount of expenditures; ending fund balance; interest earned to date; and the amount and percent of funds being contributed to the Project from other sources. The semi-annual progress report is available on the SIB website at <http://www.dot.state.fl.us/financialplanning/finance/sib.shtm>.

7.10 THIRD PARTY AGREEMENTS.

Prior to execution of this Agreement by the Department, the Agency shall not incur any liability for consultant services, construction, or purchase of commodities to any third party with respect to the Project that it intends to or will fund through a Disbursement without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department. If the Project is, or is expected to become, part of the State Highway System (as defined in Chapter 334, Florida Statutes), the Agency shall only procure professional consultant services and construction work for the Project from vendors that are prequalified by the Department in accordance with the provisions of Chapter 337, Florida Statutes, and Department rules adopted thereunder. The Loan does not constitute a commitment, guarantee, or obligation on the part of the United States to any third party, nor shall any third party have any right against the United States for payment solely by virtue of the contributions of Federal funds into the Florida SIB.

7.11 COMPLIANCE WITH CONSULTANTS' COMPETITIVE NEGOTIATION ACT.

It is understood and agreed by the parties that participation by the Department in a project with an Agency, where said project involves a consultant contract for engineering, architecture or surveying services by the Agency, is contingent on the Agency complying in full with provisions of Chapter 287, Florida Statutes, Consultants Competitive Negotiation Act. The Agency's attorney shall certify to the Department that selection has been accomplished in compliance with the Consultant's Competitive Negotiation Act.

7.12 DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY AND OBLIGATION.

It is the policy of the Department that disadvantaged business enterprises as defined in 49 CFR Part 23, as amended, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with funds disbursed by the Department under this Agreement.

The Agency and its contractors agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26, as amended, have the maximum opportunity to participate in the performance of contracts and this Agreement. In this regard, all recipients, and contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, as amended, to ensure that the Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Grantees, recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department assisted contracts.

7.13 DISCRIMINATORY VENDOR.

Pursuant to Section 287.134(3)(a), Florida Statutes, the following is included in this Agreement. Section 287.134(2)(a), Florida Statutes: "An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or

services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies 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."

7.14 EQUAL EMPLOYMENT OPPORTUNITY.

In connection with the carrying out of any project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, creed, color, sex or national origin.

7.15 PROHIBITED INTERESTS.

Neither the Agency nor any of its contractors, subcontractors, consultants, or subconsultants shall enter into any contract with one another, or arrangement in connection with the Project or any property included or planned to be included in the Project, which violates any provision of Chapter 112, Florida Statutes, relating to conflicts of interest and prohibited transactions. The Agency shall further diligently abide by all provisions of Florida law regulating the Agency with respect to procurement, contracting, and ethics. The Agency shall insert in all contracts entered into in connection with the Project subsequent to the date hereof, and shall hereafter require its contractors and consultants to insert in each of their contracts the following provision:

"The Agency is governed in its contracts and transactions by provisions of Florida law relating to conflicts of interest, prohibited transactions, and ethics in government. All parties to contracts with the Agency relating to this project shall familiarize themselves with Chapter 112, Florida Statutes, and with general Florida law regulating the Agency's ethical requirements, prohibitions, and limitations with respect to procurement and contracts."

The provisions of this subsection shall not be applicable to any agreement between the Agency and its fiscal depositories, or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

7.16 NO OBLIGATION TO THIRD PARTIES.

Except to the extent otherwise provided in this Agreement, neither the Department nor the Agency shall be obligated or liable hereunder to any person or entity not a party to this Agreement.

7.17 BONUS OR COMMISSION.

By execution of the Agreement the Agency represents that it has not paid, is not obligated to pay, and agrees not to pay, any bonus or commission for the purpose of obtaining the Department's approval of its application for the Loan.

7.18 INDEMNITY.

To the extent allowed by law, the Agency shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from any claim, loss, damages, cost, charge, or expense arising out of any act, error, omission by the Agency, its agents, employees, contractors and/or subcontractors in connection with the planning, engineering, administrative, and construction activities financed by the Loan or the Agency's operation of the Project. Neither the Agency, its agents, employees, contractors and/or subcontractors will be liable under this paragraph for any claim, loss, damages, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Department, or any of its officers, agents, or employees.

If the Department receives notice of claim for damages for which the Agency may be responsible under this paragraph, the Department will immediately forward the claim to the Agency. The Department's failure to promptly notify the Agency of a claim will not act as a waiver of any right herein.

7.19 THIRD PARTY BENEFICIARY

To the extent this Agreement confers upon or grants to the Division any right, remedy, or claim hereunder, the Division is recognized as being a third party beneficiary of this Agreement and may enforce any such right, remedy, or claim given or granted by the terms of this Agreement.

7.20 ENTIRE AGREEMENT.

The Loan Application executed by the Agency, all exhibits, attachments and schedules attached to the Loan Application, and this Agreement ("the Agreement Documents") contain the entire agreement between the parties and incorporate and supercede all prior negotiations, correspondence, conversations, agreements or understandings relating to the Loan, and the parties hereto agree that there are no commitments, agreements or understandings concerning the Loan that are not contained in the Agreement Documents. No deviation from the terms of the Agreement Documents shall be predicated upon any prior representation or agreements whether oral or written. No modification, amendment or alteration in the terms and conditions contained in the Agreement Documents shall be effective unless contained in a written document executed by the parties.

In the event of conflict between the terms and conditions of the Agreement Documents: (i) the terms and conditions contained in the body of this Agreement prevail over conflicting terms and conditions contained in any exhibits, schedules and attachments attached to this Agreement; (ii) the terms and conditions contained in the body of the Loan Application prevail over any conflicting terms and conditions contained in any exhibits, schedules and attachments attached to the Loan Application; and (iii) the terms and conditions of the Agreement, including all exhibits, schedules and attachments hereto, prevail over conflicting terms and conditions contained in the Loan Application and any exhibits, schedules and attachments to the Loan Application.

7.21 NOTICES.

Any notice, demand, request or other instrument which is required to be given under this Agreement in writing shall be delivered to the following addresses:

If to the Department: Florida Department of Transportation
SIB Program Manager
Office of Comptroller – Project Finance
605 Suwannee Street, MS #10
Tallahassee, Florida 32399-0450

If to Agency: City of Gainesville
Regional Transit System (RTS)
Transit Director
P.O. Box 490 MS 5
Gainesville, FL 32627

7.22 E-VERIFY.

The Agency:

1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and

2. 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.

7.23 EXECUTION OF AGREEMENT.


This Agreement may be executed in counterparts, which together shall constitute one agreement.

The parties have executed this Agreement on the date(s) below.

[SIGNATURE PAGE FOLLOWS ON THE NEXT PAGE]

STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION

CITY OF GAINESVILLE

By: 

Ananth Prasad, P.E., Secretary

By: 


Russ Blackburn, City Manager

Date: 6/25/2013

Date: 5-29-13

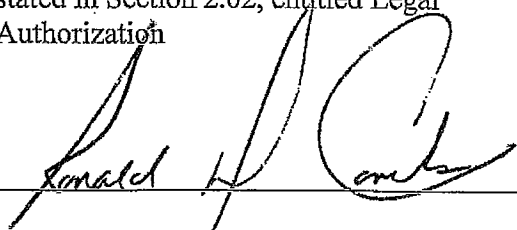
Legal Review (Department)

I



Legal Review (City of Gainesville)

By signing below, I express the opinions
stated in Section 2.02, entitled Legal
Authorization



Ronald Combs,
City Attorney, Senior Assistant

EXHIBIT "A"
PROJECT DESCRIPTION AND RESPONSIBILITIES

PROJECT NAME:

RTS Administration, Operations and Maintenance Facility

PROJECT LOCATION:

34 SE 13th Road
Gainesville, FL 32601

PROJECT DESCRIPTION:

The project consists of phase two (2) (final phase) of the construction of a transit administration, operations and maintenance facility located at 34 SE 13th Road Gainesville, Florida 32601. This facility would consist of an administration/operations building and a 17-bay bus garage with offices. Phases include:

Phase 1: Begin Construction in 2013

- Parking for 143 buses,
- Fuel/service building with three fuel/probe lanes, and
- Fuel storage tanks
- Bus wash.

Phase 2: Begin Construction in 2017

- Acquisition of property for additional bus parking (tax parcels 15702-004-000 and 15702-006-000, total ±3.1 acres). These two parcels are contiguous to the existing RTS site. Parcels can be acquired as early as July 2013.
- Site work and construction of bus parking lot including demolishing existing structures, fencing, security equipment and landscape. Tax parcel 15702-004-000 is improved with a metal warehouse building and office buildings that is owned by the original developer.

This new facility would provide RTS with enough space to maintain the existing fleet and accommodate future expansion of service. This project would allow RTS to relocate all vehicle maintenance and operations functions from the current site located at 100 SE 10th Avenue. Re-use of the existing RTS site could include a complete facility for paratransit services.

EXHIBIT "B"
LOAN DISBURSEMENT/REPAYMENT SCHEDULE

City of Gainesville - Regional Transit System (RTS) RTS Administration, Operations & Maintenance Facility									
Fiscal Year	Disbursement Date	Disbursement	Interest	Repayment	Balance	Interest	Repayment	Balance	Interest
2013/14	7/1/2013	\$0.00	\$1,350,000.00	\$0.00	\$1,350,000.00	\$0.00	\$0.00	\$0.00	\$1,350,000.00
2014/15	10/1/2014	\$1,350,000.00	\$0.00	\$6,805.48	\$1,356,805.48	\$0.00	\$0.00	\$0.00	\$1,356,805.48
2015/16	10/1/2015	\$1,356,805.48	\$2,450,000.00	\$27,136.11	\$3,833,941.59	\$0.00	\$0.00	\$0.00	\$3,833,941.59
2016/17	10/1/2016	\$3,833,941.59	\$0.00	\$76,678.83	\$3,910,620.42	\$3,800,000.00	\$110,620.42	\$3,910,620.42	\$0.00
			\$3,800,000.00	\$110,620.42		\$3,800,000.00	\$110,620.42	\$3,910,620.42	

Interest begins accruing with the first disbursement and will accrue and compound annually each September 30 thereafter, until loan is completely repaid.

These calculations assume the following disbursement dates:

FY 2013/14	\$1,350,000.00
FY 2014/15	\$0.00
FY 2015/16	\$2,450,000.00

If disbursements are made on dates other than those above, the interest calculations will be modified and this schedule updated according.

Total Loan Amount	\$3,800,000.00
Total Interest	\$110,620.42
Total Repayments	\$3,910,620.42

Remit Payment to:

Mailing Address:

Florida Department of Transportation
Office of the Comptroller
805 Suwannee Street, MS #42
Tallahassee, FL 32399-0450

Note on Payment for "FDOT SIB Loan - 433719-1"

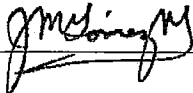
EXHIBIT "C"

DISBURSEMENT REQUEST FORM

VENDOR NAME: City of Gainesville
TOTAL SIB LOAN AMOUNT: \$3,800,000.00
DATE OF THIS DISBURSEMENT REQUEST: _____
DISBURSEMENT/INVOICE NUMBER: _____
AMOUNT REQUESTED FOR THIS DISBURSEMENT: \$ _____
BALANCE OF LOAN TO BE DISBURSED: \$ _____
FINANCIAL PROJECT NUMBER: 433719-1-94-01
VENDOR IDENTIFICATION NUMBER: F596 000325011
CONTRACT NUMBER: AR435
DRAW PERIOD RELATED TO THIS REQUEST: _____
Warrant should be disbursed to:

Vendor Name: City of Gainesville, Regional Transit System
Address: P.O Box 490, MS 5
Gainesville, FL 32627
Contact Person: Jesus Gomez
Contact Title: Transit Director
Contact Telephone Number: (352) 393-7852
Contact E-Mail Address: gomezjm@cityofgainesville.org

Per Section 3.03 Loan Disbursements of the State Infrastructure Bank Loan Agreement, I certify, to the best of my knowledge, \$ _____ in expenses is needed on the RTS Administration, Operations, and Maintenance Facility Project and these costs are eligible for advancement/reimbursement and use of the SIB funds.

Signature 

Jesus Gomez, Transit Director

**FIRST AMENDMENT TO
STATE INFRASTRUCTURE BANK LOAN AGREEMENT
BETWEEN THE STATE OF FLORIDA, DEPARTMENT OF
TRANSPORTATION AND THE CITY OF GAINESVILLE FLORIDA**

THIS FIRST AMENDMENT TO STATE INFRASTRUCTURE BANK LOAN AGREEMENT ("Amendment") is between the State of Florida, Department of Transportation ("Department") and the City of Gainesville Florida ("Agency"), and is effective as of the date last signed.

RECITALS

A. The Department and the Agency entered into a State Infrastructure Bank Loan Agreement dated June 25, 2013 ("Original Agreement") under which the Department agreed to make a loan to the Agency in the maximum amount of Three Million Eight Hundred Thousand and 00/100 Dollars (\$3,800,000.00) for the state capital outlay project described in the Original Agreement, consisting of the purchase of right-of-way and construction of a parking lot for buses located at the administration, operations and maintenance facility for consolidated transit operations at 34 South East 13th Road, Gainesville, Alachua County, Florida (the "Project").

B. The Agency has completed the Project and the total amount of the Loan expended by the Agency for the Project is One Million Three Hundred Fifty Thousand and 00/100 Dollars (\$1,350,000.00).

C. Pursuant to Paragraph 7.03 of the Original Agreement, this Amendment is required to establish the final Project costs and amend the Original Agreement to reflect the actual amount disbursed and loaned to the Agency for Project expenditures.

AGREEMENT

The parties agree the terms of the Original Agreement are amended as follows:

1. Section 1.01(7) is deleted in its entirety and restated as follows:

""Loan" means the loan made to the Agency pursuant to this Agreement in the initial principal amount of One Million Three Hundred Fifty Thousand and 00/100 Dollars (\$1,350,000.00)."

2. Section 1.01(10) is deleted in its entirety and restated as follows:

"Pledged Revenues" means the specific revenues pledged as security for repayment of the Loan, which are the Federal 23 U.S.C. Section 133 Surface Transportation Program (STP) Grant Funds identified in the Department work program for the Project under financial project number 429927-2, in the amount of \$4,000,000 for Fiscal Year 2016, and the Federal Transit Administration Section 5307 Urbanized Area Formula Grant Funds, allocated to the Agency from time to time during any period that any principal or interest of the Loan remains unpaid.

3. Section 3.03 is deleted in its entirety and restated as follows:


"The Department shall disburse the Loan to the Agency in the amounts and at the times specified in the Loan Disbursement/Repayment Schedule attached as Exhibit B, provided that prior to each Disbursement, the SIB Program Manager receives a completed Disbursement Request Form substantially in the form of Exhibit C, and such other certificates or documents as the Department shall reasonably request in order to process each Disbursement. Upon written request by the Agency, or upon its own initiative, the Department may, in its sole and absolute discretion, amend the Disbursement/Payment Schedule to take into account unexpected events or reasonable adjustments to the financing of the Project, including, but not limited to, increases or decreases in the disbursement amounts and times, and acceleration or delays in the construction of the Project. Under no circumstances shall the sum of the disbursements to the Agency exceed \$1,350,000.00. The Department's obligation to fund any Disbursement is subject to funds being made available by an appropriation made pursuant to Florida law."

"The Department will have no obligation to honor any request for disbursement made by the Agency or otherwise make any disbursement under this Agreement in the event that the Department has notified the Agency that an event of default has occurred under this or any other agreement between the Agency and the Department, or if the Department, in its sole discretion, determines that events have occurred which substantially diminish the likelihood that the Agency will timely and fully honor its obligations under this Agreement or any other agreement between the Department and the Agency. Any waiver of this provision by disbursement following an event of default by the Agency under the terms of this Agreement, or any other agreement between the Agency and the Department, will not constitute a continuing waiver of this provision and the Department may refuse to make further disbursements without any liability to the Agency whatsoever."

4. Exhibit B is deleted in its entirety and replaced with Exhibit B attached hereto.
5. Exhibit C is deleted in its entirety and replace with Exhibit C attached hereto.
6. This Amendment may be executed in counterparts.
7. Other than as expressly stated in this Amendment, the terms and conditions of the Original Agreement remain in full force and effect.

The parties have executed this Amendment on the date(s) below:


CITY OF GAINESVILLE



Russ Blackburn, City Manager

2-10-15
Date

APPROVED AS TO FORM AND LEGALITY

By: 

David C. Schwartz, Asst. City Attorney II
City of Gainesville, Florida

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION



Jim Boxold, Secretary

2/26/2015
Date

EXHIBIT B

Loan Payment Schedule

City of Gainesville - Regional Transit System (RTS) RTS Administration, Operations & Maintenance Facility									
Year	Date	Refundable Borrowing	Estimated Disbursement	Interest Accrued 2003/1	Estimated Interest	Repayment Required	Repayment Received	Total Repaid	Balance Due
2013/14	9/10/2013	\$0.00	\$1,350,000.00	\$0.00	\$1,350,000.00	\$0.00	\$0.00	\$0.00	\$1,350,000.00
	10/1/2013	\$1,350,000.00	\$0.00	\$1,553.42	\$1,351,553.42	\$0.00	\$0.00	\$0.00	\$1,351,553.42
2014/15	10/1/2014	\$1,351,553.42	\$0.00	\$27,031.07	\$1,378,584.49	\$0.00	\$0.00	\$0.00	\$1,378,584.49
2015/16	10/1/2015	\$1,378,584.49	\$0.00	\$27,571.69	\$1,406,156.18	\$1,406,156.18	\$0.00	\$1,406,156.18	\$0.00
			\$1,350,000.00	\$56,156.18		\$1,406,156.18	\$0.00	\$1,406,156.18	

Interest begins accruing with the first disbursement and will accrue and compound annually each October 1 thereafter, until loan is completely repaid.

These calculations assume the following disbursement dates:

FY 2013/14 \$1,350,000.00

If disbursements are made on dates other than those above, the interest calculations will be modified and this schedule updated according.

Total Loan Amount	\$1,350,000.00
Total Interest	\$56,156.18
Total Repayments	\$1,406,156.18

Remit Payment to:

Mailing Address:

Florida Department of Transportation
Office of the Comptroller
805 Suwannee Street, MS #42
Tallahassee, FL 32399-0450

Note on Payment for "FDOT SIB Loan - 433719-1"

EXHIBIT C

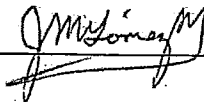
DISBURSEMENT REQUEST FORM

VENDOR NAME: City of Gainesville
TOTAL SIB LOAN AMOUNT: \$1,350,000.00
DATE OF THIS DISBURSEMENT REQUEST: _____
DISBURSEMENT/INVOICE NUMBER: _____
AMOUNT REQUESTED FOR THIS DISBURSEMENT: \$ _____
BALANCE OF LOAN TO BE DISBURSED: \$ _____
FINANCIAL PROJECT NUMBER: 433719-1-94-01
VENDOR IDENTIFICATION NUMBER: F596 000325011
CONTRACT NUMBER: _____
DRAW PERIOD RELATED TO THIS REQUEST: _____
Warrant should be disbursed to: _____

Vendor Name: City of Gainesville, Regional Transit System
Address: P.O Box 490, MS 5
Gainesville, FL 32627
Contact Person: Jesus Gomez
Contact Title: Transit Director
Contact Telephone Number: (352) 393-7852
Contact E-Mail Address: gomezjm@cityofgainesville.org

Per Section 3.03: Loan Disbursements of the State Infrastructure Bank Loan Agreement, I certify, to the best of my knowledge, \$ _____ in expenses is needed on the RTS Administration, Operations, and Maintenance Facility Project and these costs are eligible for advancement/reimbursement and use of the SIB funds.

Signature _____



Jesus Gomez, Transit Director