

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement") made and entered into by and between the State of Florida Department of Transportation ("Department") and Nassau County Board of County Commission ("Agency").

WHEREAS, the term "Property" shall refer to certain real property located in Nassau County, Florida, owned by the Agency and described as CR 2 from Georgia Sate Line to CR 121; and

WHEREAS, the term "Improvement" means and shall refer to the resurfacing of CR 2 from Georgia Sate Line to CR 121; and

WHEREAS, the Department shall construct the Improvement; and

WHEREAS, the Department shall fund construction of the Improvement subject to the provisions of that certain separate funding agreement entered by and between the Department and the Agency; and

WHEREAS, the Agency shall own, operate, improve, maintain and repair the Improvement.

WHEREAS, the Agency by Resolution 2009-116 dated 6-8-09 authorizes its representative to enter into this Agreement, see attached Exhibit "A".

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

RECITALS AND EXHIBITS

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

EFFECTIVE DATE

The effective date of this Agreement shall be the date the last of the parties to be charged executes the Agreement.

ACCESS

This Agreement authorizes the Department to access the Property for the limited purpose of performing this Agreement.

CONSTRUCTION

The Department shall construct the Improvement and perform such other activities as the Department deems necessary and appropriate to complete construction of the Improvement, including, without limitation, seeking and obtaining approval and participation by one or more federal agencies, design of the Improvement, acquisition of right-of-way and any other activities to facilitate satisfactory completion of the Improvement. The Department shall notify the Agency in writing when construction of the Improvement is complete ("Notice of Completion").

OWNERSHIP, MAINTENANCE & REPAIR

From the date of the Department's Notice of Completion, the Agency shall own, control, operate, maintain, repair and improve the Improvement at its sole cost, expense and effort, in a good and workmanlike manner, with reasonable care, in accordance with all existing and future applicable federal, state, local, administrative, regulatory and environmental laws, rules, regulations, policies, procedures, guidelines, standards and permits, including, without limitation, those of the Department, the applicable Water Management District, the Florida Department of Environmental Protection, the Environmental Protection Agency, the Army Corps of Engineers, the United States Coast Guard and the applicable local governmental entity(s).

INDEMNIFICATION

The Agency shall defend, indemnify and hold the Department, including its agents, employees and assigns, harmless from any and all demands, claims, liabilities, damages, costs, fines, penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever that arise out of or are in any way related to the performance or breach of this Agreement ("Liabilities"). The Agency's duty to defend and indemnify the Department is subject to the provisions of §768.28, Fla. Stat. (2009), and specifically does not encompass indemnifying the Department for its negligence, intentional or wrongful acts, omissions or breach of contract. The Agency shall notify the Department in writing immediately upon becoming aware of any such 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 Agency. The Agency's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph.

SOVERIGN IMMUNITY

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Department's sovereign immunity protections, or as increasing the limits of liability set forth in §768.28, Fla. Stat. (2009). The limits 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), Fla. Stat. (2009).

DUE DILIGENCE, WARRANTY OR FITNESS FOR PARTICULAR PURPOSE

Agency agrees that nothing in this Agreement, or the performance thereof, constitutes or complies with any due diligence requirements of the Department and that all due diligence requirements are the responsibility of the Agency. The Agency agrees that nothing in this Agreement constitutes or establishes representations or warranties of any kind, express or implied, by the Department, including its employees and agents, concerning the Property, including, without limitation, any physical condition, zoning, compliance with applicable laws, merchantability or fitness for any particular purpose.

EMINENT DOMAIN

Under no circumstances shall the performance, breach, expiration or termination of this Agreement, or the condemnation of any portion of the Property encompassing the Improvement, create any interest or right entitling the Agency to full and just compensation from the Department either through inverse condemnation, eminent domain laws or any similar laws regarding the taking of property for public purposes. The Agency forever waives and relinquishes all legal rights and monetary claims which it has, or which may arise in the future, for compensation and/or damages, including, without limitation, special damages, severance damages, removal costs, and loss of business profits resulting in any manner from: (1) the performance, breach, expiration or termination of this Agreement; or (2) condemnation of any portion of the Property encompassing the Improvement. This waiver and relinquishment applies whether this Agreement is still in existence on the date of taking / sale or has been terminated prior thereto.

GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

INITIAL DETERMINATION OF DISPUTES

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

VENUE AND JURISDICTION

Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this 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 selected by the Department, including, without limitation, Leon County. In the event that legal action is initiated by the Agency, the Agency shall consent to the transfer of venue to a county identified by the Department in an appropriately filed motion requesting the same.

JURY TRIAL

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

NOTICE

All notices, communications and determinations between the parties hereto and those required to be given under this Agreement, including, without limitation, any change to the notification address set forth below, shall be in writing and shall be sufficient if mailed by registered or certified mail to the parties at the following addresses:

Department:

Florida Department of Transportation
Attention: Jerry Ausher, Jacksonville Maintenance Engineer
838 Ellis Road
Jacksonville, Florida 32205

- and -

Florida Department of Transportation
Attention: David Robertson, Chief Counsel District 2
1109 South Marion Avenue, Mail Station 2009
Lake City FL 32025

Agency:

Nassau County Board of County Commission
Attention: Barry Holloway, Chairman
~~Post Office Box 456~~ 76347 Veterans Way, Suite 4000
~~Fernandina Beach, Florida 32035~~ Yulee, Florida 32097

Agency agrees that if it fails to notify Department by certified mail of any changes to its notification address, Agency shall have waived any defense based on Department's failure to notify Agency.

ASSIGNMENT

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. The Department has the sole discretion to approve or disapprove proposed assignments, with or without cause.

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.

VOLUNTARY EXECUTION OF AGREEMENT

Each party warrants and represents to the other: (1) that each understands all of the rights and obligations set forth in this Agreement and the Agreement accurately reflects the desires of the parties; (2) each provision of this Agreement has been negotiated fairly at arm's length; (3) each fully understands the advantages and disadvantages of this Agreement and executes this Agreement freely and voluntarily of their own accord and not as a result of any duress, coercion, or undue influence; and (4) each has had, or had the opportunity to have, independent legal advice by counsel of its own choosing in the negotiation and execution of this Agreement.

ENTIRE AGREEMENT

This instrument contains the entire Agreement of the parties. No representations or promises have been made except those that are set out in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter hereof are waived, merged herein and superseded hereby.

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 this Agreement and shall do all other acts to effectuate this Agreement, time being of the essence.

SUFFICIENCY OF CONSIDERATION

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

WAIVER

The failure of either party to insist on one or more occasions the strict performance or compliance with a term, provision or otherwise of this Agreement shall not be deemed a waiver or relinquished in the future of the enforcement thereof, and it shall continue in full force and effect unless waived or relinquished in writing by the party to be charged.

INTERPRETATION

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

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 this Agreement or any provision.

SEVERANCE

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

COMPUTATION OF TIME

In computing any period of time prescribed in this Agreement, the day of the act, event or deficiency or material breach from which the designated period of time begins to run, shall not be included. The last day of the period so computed 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 neither a Saturday, Sunday or legal holiday.

MODIFICATION OF AGREEMENT

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

ANNUAL APPROPRIATION / FUNDING

Pursuant to §339.1365(6)(a), Fla. Stat., the Department's obligation to construct the Improvement is contingent upon the 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), Fla. Stat., 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."

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

{Signatures on Following Page}

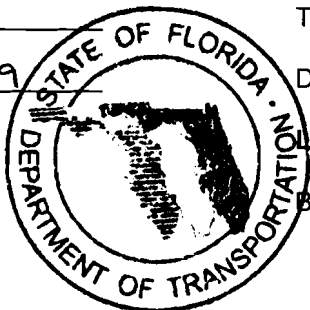
ATTEST:

By: Lisa Lambert

Print Name: Lisa Lambert

Title: Admin. Asst.

Date: June 15, 2009



"DEPARTMENT"
STATE OF FLORIDA, DEPARTMENT
OF TRANSPORTATION

By: [Signature]

Printed Name: Charles W. Baldwin

Title: District Secretary

Date: June 15, 2009

Legal Review: [Signature]

By: [Signature]
Chief Counsel District 2

Attestation: Only to Authenticity as to
Chairman's Signature:

ATTEST:

By: [Signature]

Print Name: John A. Crawford

Title: Ex-Officio Clerk

Date: 6/10/09

2011
6/9/09

"AGENCY"
Nassau County Board of County
Commission

By: [Signature]

Printed Name: Barry V. Holloway

Title: Chairman

Date: June 8, 2009

Legal Review: [Signature]

By: [Signature]
Legal Counsel for Agency David A. Hallman

RESOLUTION NO. 2009-116

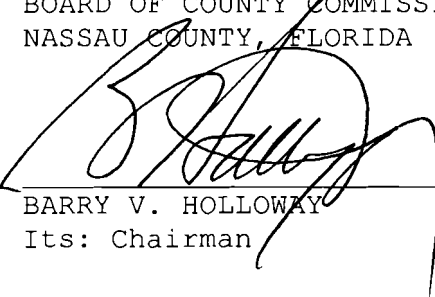
A RESOLUTION AUTHORIZING THE EXECUTION OF THE AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA

WHEREAS, the Engineering Services Director has recommended that the Board of County Commissioners of Nassau County, Florida, execute a Memorandum of Agreement between the State of Florida Department of Transportation and Nassau County, Florida regarding the resurfacing of CR 2 from the Georgia State Line to CR 121, in Nassau County, Florida (Financial Project ID No. 426291-1-52-01) and Federal Project ID No. ARRA 068B).

NOW, THEREFORE, BE IT RESOLVED, this 8th day of June, 2009, by the Board of County Commissioners of Nassau County, Florida as follows:

1. The Memorandum of Agreement between the State of Florida Department of Transportation and Nassau County is hereby approved and the Chairman is authorized to execute said agreement.

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA



BARRY V. HOLLOWAY
Its: Chairman

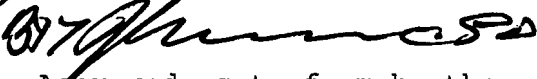
ATTESTATION: ONLY TO AUTHENTICITY
AS TO CHARIMAN'S SIGNATURE:




JOHN A. CRAWFORD

Its: Ex-Officio Clerk

25K 6/9/09



Approved as to form by the
Nassau County Attorney:



DAVID A. HALLMAN