

Financial Project ID: 426031-2-21, 22-01

LOCALLY FUNDED AGREEMENT

This Locally Funded Agreement ("Agreement") is made and entered into by and between the State of Florida Department of Transportation ("Department") and the Nassau County Board of County Commissioners, ("Participant").

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

WHEREAS, the Department is currently managing the Project which will allow for the necessary Project Development and Environmental on behalf of the Participant; and

WHEREAS, the Department shall conduct a Project Development and Environmental Study for the Chester Road from SR A1A to Green Pine Road Project; and

WHEREAS, the Participant shall fund the Project; and

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

WHEREAS, the Department will conduct the study for the Project that is defined in Exhibit "A" , while the Participant shall fund all aspects of the Project that are defined in Exhibit "A"; and

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

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

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

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

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

RECITALS & 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 this Agreement.

FINANCIAL PROVISIONS

A. Participant agrees that it will, at least twenty-one (21) calendar days prior to the Department's advertising the Project for bid and no later than August 16, 2010, furnish the Department an advance deposit in the amount of two hundred ten thousand and no/100 (\$ 210,000.00) for initial payment of the estimated cost of the Project for Financial Project Number(s) 426031-2-21-01 and 426031-2-22-01. All costs will be the Participant's responsibility. The Department will utilize this deposit for payment of the costs of the Project.

B. The Participant will fund all aspects of the Project in its entirety. If the funds necessary to finance the Project are in excess of the Participant's advance deposit, the Participant will provide an additional deposit within twenty-one (21) calendar days of notification from the Department. The Department will notify the Participant as soon as it becomes apparent the costs are in excess of the advance deposit amount. However, failure of the Department to so notify the Participant shall not relieve the Participant

from its obligation to pay for its full participation on final accounting as provided herein below. If the Participant cannot provide the additional deposit within twenty-one (21) days, a letter must be submitted to and approved by the Department's project manager indicating when the deposit will be made. The Participant understands the request and approval of the additional time could delay the Project, and additional costs to the Participant may be incurred due to a delay of the Project.

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

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

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

F. In the event the final accounting of total Project costs exceeds the Participant's deposits, the Participant will pay the additional amount within forty (40) calendar days from the date of the invoice from the Department. The Participant agrees to pay interest at a rate as established pursuant to **Section 55.03, F. S.**, on any invoice not paid within forty (40) calendar days until the invoice is paid.

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

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

H. Contact Persons:

Participant: Nassau County Board of County Commissioners
Contact Person: Mr. Scott Herring, Nassau County Engineer
Telephone #: 904-321-5760 _____
Fax #: (904-321-5735) _____
Federal Employer ID # (FEIN): 591863042 053 _____

Department:

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

NOTICE

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

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.

SOVEREIGN 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 limit of the Department's liability for any tort or contract action or any breach of this Agreement shall be identical to the limitations of liability for tort actions set forth in §768.28(5), Fla. Stat. (2009).

GOVERNING LAW

This Agreement shall be governed by the laws of the State of Florida in terms of interpretation and performance.

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 & 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. If legal action is initiated by Participant, then the Participant shall consent to the transfer of venue to a county identified by the Department in an appropriately filed motion requesting the same. Participant consents to personal jurisdiction in the State of Florida and forever waives and relinquishes all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity performance or breach of this Agreement.

JURY TRIAL

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

ASSIGNMENT

Participant shall not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the Department. 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 participation and involvement with the Project is contingent upon the annual appropriation by the Florida Legislature. This Agreement may be terminated by the Department without liability to the Participant if sufficient funds are not appropriated to the Department. The provisions of §339.135(6)(a), 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."

WARRANTY

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

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

-Signatures on Following Page-

ATTEST:

By: *Rhonda Harrison*

Print Name: Rhonda Harrison

Title: Administrative Assistant

Date: 8/30/2010



STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By: *[Signature]*

Printed Name: Alan Maskey

Title: District Secretary

Date: August 30, 2010

Legal Review:

By: *[Signature]*
Office of the General Counsel
Florida Department of Transportation

ATTEST: *Chamion Signature*
By: *[Signature]*

Print Name: John A. Crawford

Title: Ex-Officio Clerk

Date: 8-11-10

*EBK
8/11/10*

"PARTICIPANT"

By: *M. H. Boyle*

Printed Name: Michael H. Boyle

Title: Chairman

Date: 8-11-10

Legal Review:

By: *[Signature]*
Legal Counsel for Participant

"PARTICIPANT"

By: _____

Printed Name: _____

Title: _____

Date: _____

Legal Review:

By: _____
Legal Counsel for Participant

EXHIBIT "A"

PROJECT DESCRIPTION AND RESPONSIBILITIES

PROJECT LOCATION:

Chester Road from SR A1A to Green Pine Road in Nassau County, Florida.

PROJECT DESCRIPTION:

Project Development and Environmental Study for Chester Road in Nassau, County.

The Department will perform the Study and the Participant will pay all associated fees for the completion of the Project Development and Environmental Study.

EXHIBIT "B"

Participant will fund the entire Project.

TOTAL ESTIMATED PROJECT COST:

\$ 210,000.00

EXHIBIT "C"
PARTICIPANT RESOLUTION

RESOLUTION NO. 2010 - 126

A RESOLUTION AUTHORIZING THE EXECUTION OF THE LOCALLY FUNDED AGREEMENT AND THE MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA FOR THE CHESTER ROAD PROJECT DEVELOPMENT AND ENVIRONMENT (PD&E) STUDY.

WHEREAS, the Engineering Services Director has recommended that the Board of County Commissioners of Nassau County, Florida, execute the Locally Funded Agreement and the Memorandum of Agreement between the State of Florida Department of Transportation and Nassau County, Florida regarding the Chester Road PD&E Study, ID No. 426031-2-21,22-01; and

WHEREAS, the Board of County Commissioners of Nassau County, Florida, is desirous of having a PD&E Study performed on Chester Road from SR200 to Green Pine Road to determine future improvements necessary, if any, for this roadway.

NOW, THEREFORE, BE IT RESOLVED, this 11th day of August, 2010, by the Board of County Commissioners of Nassau County, Florida as follows:

1. The Locally Funded Agreement and the Memorandum of Agreement between the State of Florida Department of Transportation and Nassau County for the Chester Road PD&E Study Agreement is hereby approved and the Chairman is authorized to execute said agreements.

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA

BY: Michael H. Boyle
MICHAEL H. BOYLE
ITS: CHAIRMAN

A CERTIFIED TRUE COPY

Jeanne A. Crawford, Ex-Officio Clerk
De: Blaine K. Furrillo, C.C.
EX-OFFICIO, Clerk of the Board of County Comm.
Nassau County, Florida

ATTEST
AS TO CHAIRMAN'S SIGNATURE:


JOHN A. CRAWFORD
EX-OFFICIO CLERK
BY [Signature] *EMK 8/11/10*

APPROVED AS TO FORM AND LEGALITY BY THE
NASSAU COUNTY ATTORNEY:


DAVID A. HALLMAN

Filename: 426031-2 LFA -- changes 06-30-10
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LFA
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