

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
LOCALLY FUNDED AGREEMENT

THIS Locally Funded Agreement ("Agreement"), entered into this _____ day of _____ 20_____, by and between the State of Florida Department of Transportation hereinafter called the DEPARTMENT, and Indian River County, 1801 27th Street, Vero Beach, Florida 32960, hereinafter called the COUNTY.

WITNESSETH

WHEREAS, the County and the DEPARTMENT entered into a County Incentive Grant Program Locally Funded Agreement in June 2015 whereby the parties agreed to have the DEPARTMENT acquire right-of-way for the SR-60/43rd Avenue Intersection Improvement Project with the County and the DEPARTMENT each paying 50% of the costs; and

WHEREAS, prior to the commencement of the right of way services agreement, the COUNTY acquired three parcels that were within the vicinity of the SR-60 and 43rd Avenue intersection (Mermaid Carwash, Mark's Mobil, and the Harbora House); and

WHEREAS, said parcels were not acquired in accordance with Title 49, Code of Federal Regulations (CFR), Part 24 (the "Uniform Act"); and

WHEREAS, the COUNTY is providing the DEPARTMENT with financial assistance under Financial Management (FM) No 431759-1-4B/42/43/45-02 (Funded in Fiscal Year 2017/2018) for consultant fees for remediation services related to right of way demolition, acquisition, relocation assistance services and consulting fees for the aforesaid parcels at the intersection of SR-60 and 43rd Avenue. Refer to **Exhibit A**, Scope of Services, attached hereto and made a part hereof; and

WHEREAS, for the purpose of this Agreement, the right of way remediation services at the intersection of SR-60 and 43rd Avenue is hereinafter referred to as the "Project;" and

WHEREAS, the Project is in the interest of both the COUNTY and the DEPARTMENT and it would be more practical, expeditious, and economical for the DEPARTMENT to perform such activities; and

WHEREAS, the COUNTY by Resolution No. _____ on the _____ day of _____, 20_____, a copy of which is attached hereto and made a part hereof, authorizes the proper officials to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits to be derived from joint participation on the Project, the parties agree to the following:

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. The DEPARTMENT shall be responsible for assuring that the Project complies with all applicable Federal, State and Local laws, rules, regulations, guidelines and standards.

3. The COUNTY agrees to make all previous studies, maps, drawings, surveys and other data and information pertaining to the Project available to the DEPARTMENT at no cost to the DEPARTMENT.
4. The DEPARTMENT shall have the sole responsibility for resolving claims and requests for additional work for the Project. The DEPARTMENT will make reasonable efforts to obtain the COUNTY's input in its decisions.
5. The total cost of the Project referenced above, is estimated to be ONE HUNDRED FORTY FOUR THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$144,500.00). The COUNTY'S payment to the DEPARTMENT is estimated to be ONE HUNDRED FORTY FOUR THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$144,500.00). In the event the actual cost of the Project results in a decrease in the COUNTY'S payment of ONE HUNDRED FORTY FOUR THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$144,500.00) the difference shall be refunded to the COUNTY. In the event the actual cost of the Project results in an increase of the COUNTY'S payment, any cost overruns or cost increases shall be the sole responsibility of the COUNTY and shall be paid to the DEPARTMENT.

The funding the DEPARTMENT receives from the COUNTY shall be allocated as follows:

| SR-60 AND 43RD PROJECT | | | |
|---|----------------------------------|-----------------------------------|----------------------------------|
| FM# 431759-1-4X-02 | | | |
| Phase 4B (Appraisal) | Phase 42 (consultant) | Phase 43 (Acquisition) | Phase 45 (relocation) |
| \$35,000.00 | \$22,000.00 | \$10,000.00 | \$77,500.00 |
| TOTAL AMOUNT DUE FROM PARTICIPANT: | | | |
| \$144,500.00 | | | |

- A. The COUNTY agrees that it will, within thirty (30) days of execution of this AGREEMENT, furnish the DEPARTMENT with a check in the amount of ONE HUNDRED FORTY FOUR THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$144,500.00) towards the Project Costs.

In the event payment is not received by the DEPARTMENT within thirty (30) days of execution of this Agreement, the DEPARTMENT reserves the right to terminate this Agreement.

Remittance shall be made payable to the Department of Transportation. Payment shall be clearly marked to indicate that it is to be applied to FM No.: 431759-1-4B/42/43/45-02. The DEPARTMENT shall utilize this amount towards costs of Project No. 431759-1-4B/42/43/45-02.

Payment shall be mailed to:

Florida Department of Transportation
Professional Services Unit - Attention: Leos A. Kennedy, Jr.
3400 W. Commercial Boulevard
Fort Lauderdale, Florida 33309-3421

- B. If the Project costs are in excess of the advance deposit amount, the COUNTY will provide an additional deposit within fourteen (14) calendar days of notification from the DEPARTMENT. The DEPARTMENT will notify the COUNTY as soon as it becomes apparent that Project costs are in excess of the advance deposit amount; however, failure of the DEPARTMENT to so notify the COUNTY shall not relieve the COUNTY from its obligation to pay for its full participation. If the COUNTY cannot provide the additional deposit within fourteen (14) calendar days, a letter must be submitted to and approved by the DEPARTMENT'S Project manager indicating when the deposit will be made. The COUNTY understands the request and approval of the additional time could delay the Project, and additional costs may be incurred due to delay of the Project.
- C. When Project modifications occur that increase the COUNTY'S payment of total Project costs, the COUNTY will be notified by the DEPARTMENT. The COUNTY 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 cost of the Project. The DEPARTMENT shall notify the COUNTY as soon as it becomes apparent the actual costs will exceed the deposit amount. However, failure of the DEPARTMENT to so notify the COUNTY shall not relieve the COUNTY from its obligation to pay for its full participation. Funds due from the COUNTY 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, F.S. In the event the COUNTY fails to make the additional payment within the time hereinabove set forth, in addition to any other remedy, the DEPARTMENT reserves the right to terminate this Agreement
- D. The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred sixty days (360) of final payment to the Consultant. The DEPARTMENT considers the Project complete when the DEPARTMENT provides the COUNTY with written notice of its acceptance of the Project. Such written acceptance by the DEPARTMENT shall serve as evidence that all three (3) parcels acquired by the COUNTY are in compliance with the Uniform Act. All Project cost records and accounts shall be subject to audit by a representative of the COUNTY for a period of three (3) years after final close out of the Project. The COUNTY 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 will be made by the DEPARTMENT to the COUNTY. If the final accounting is not performed within three hundred sixty (360) days, the COUNTY is not relieved from its obligation to pay.
- E. In the event the final accounting of total Project costs is greater than the total deposits to date, the COUNTY will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The COUNTY 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.

- F. The payment of funds under this Agreement, once they are received by the DEPARTMENT from the COUNTY, will be sent directly to the Department of Financial Services, Division of Treasury for deposit as provided in the attached Three Party Escrow Agreement between the COUNTY, the DEPARTMENT, and the State of Florida, Department of Financial Services, Division of Treasury a copy of which is attached hereto and made a part hereof as **Exhibit 'B'**.
6. In the event it becomes necessary for either party to institute suit for the enforcement of the provisions of this Agreement, each party shall be responsible to pay their own attorney fees and court costs. Venue with respect to any such litigation shall be in Broward County.
 7. In the event the Project is cancelled, the DEPARTMENT, in accordance with all applicable laws and procedures, will reimburse to the COUNTY any remaining funds on deposit minus any costs incurred during the Project.
 8. The COUNTY / Vendor/ Contractor:
 - (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 COUNTY/ Vendor/Contractor 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.
 9. This Agreement and any interest herein shall not be assigned, transferred or otherwise encumbered by the COUNTY under any circumstances without the prior written consent of the DEPARTMENT. However, this Agreement shall run to the DEPARTMENT and its successors.
 10. Should the DEPARTMENT and the COUNTY decide to proceed with subsequent phases of the Project, the Agreement may be amended to identify the respective responsibilities and the financial arrangements between the parties.
 11. Except as otherwise set forth herein, this Agreement shall continue in effect and be binding to both the COUNTY and the DEPARTMENT until the Project is completed as evidenced by the written acceptance of the DEPARTMENT, or June 30, 2018 whichever occurs first.
 12. The COUNTY warrants that it has not employed or obtained any company or person, other than bona fide employees of the COUNTY, to solicit or secure this Agreement, and it has not paid or agreed to pay any company, corporation, individual or firm, other than a bona fide employee employed by the COUNTY. For breach or violation of this provision, the DEPARTMENT shall have the right to terminate the Agreement without liability.

13. This Agreement is governed by and construed in accordance with the laws of the State of Florida.
14. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.
15. Any or all notices (except invoices) given or required under this Agreement shall be in writing and either personally delivered with receipt acknowledged or sent by certified mail, return receipt requested. All notices delivered shall be sent to the following addresses:

If to the DEPARTMENT:

Florida Department of Transportation - District Four
3400 West Commercial Blvd.
Fort Lauderdale, Florida 33309-3421
Attn: Leos A. Kennedy, Jr.
With a copy to: Susan Day
A second copy to: Office of the General Counsel

If to the COUNTY:

Indian River County
Public Works Department
1801 27th Street
Vero Beach, Florida 32960
Attn: Richard Szpyrka, P.E.
With a copy to: County Attorney

The remainder of this page is blank.

IN WITNESS WHEREOF, this Agreement is to be executed by the parties below for the purposes specified herein. Authorization has been given to enter into and execute this Agreement by Resolution Number _____, hereto attached.

INDIAN RIVER COUNTY
BOARD OF COUNTY COMMISSIONERS

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: _____
NAME: Joseph E. Flescher
TITLE: Chairman

BY: _____
STACY L. MILLER, PE.
DIRECTOR OF TRANSPORTATION DEVELOPMENT

ATTEST:

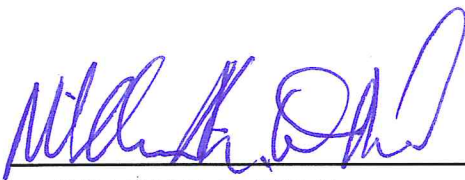
LEGAL REVIEW

COUNTY CLERK (SEAL)

BY: _____
OFFICE OF THE GENERAL COUNSEL

APPROVED:

APPROVED:

BY: 

WILLIAM K. DeBRAAL
DEPUTY COUNTY ATTORNEY

BY: _____
DISTRICT PROGRAM MANAGEMENT ADMINISTRATOR

EXHIBIT A
Scope of Services

FM No. 431759-1-4B/42/43/45-02

The DEPARTMENT shall implement a remediation plan for the pending SR60 @ 43rd Avenue intersection construction project to bring the properties into compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

EXHIBIT B
THREE PARTY ESCROW AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Florida, Department of Transportation ("FDOT"), Indian River County ("Participant"), and the State of Florida, Department of Financial Services, Division of Treasury ("Escrow Agent"), and shall become effective upon the Agreement's execution by Escrow Agent.

WHEREAS, FDOT and Participant are engaged in the following project ("Project"):

Project Name: Right of Way Demolition, Acquisition, Relocation Assistance Services, and Consulting Fees
Project #: 431759-1-4B/42/43/45-02
County: Indian River County

WHEREAS, FDOT and Participant desire to establish an escrow account for the project.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

1. An initial deposit will be made into an interest bearing escrow account established hereunder for the purposes of the Project. The escrow account will be opened with the Escrow Agent on behalf of FDOT upon Escrow Agent's receipt and execution of this Agreement.
2. Other deposits to the escrow account may be made during the life of this agreement.
3. Deposits will be delivered in accordance with instructions provided by the Escrow Agent to the FDOT for deposit into the escrow account. A wire transfer or ACH deposit is the preferred method of payment and should be used whenever possible.
4. FDOT's Comptroller or designee shall be the sole signatory on the escrow account with the Escrow Agent and shall have sole authority to authorize withdrawals from the account. Withdrawals will only be made to FDOT or the Participant in accordance with the instructions provided to the Escrow Agent by FDOT's Comptroller or designee.

Moneys in the escrow account will be invested in accordance with section 17.61, Florida Statutes. The Escrow Agent will invest the moneys expeditiously. Income is only earned on the moneys while invested. There is no guaranteed rate of return. Investments in the escrow account will be assessed a fee in accordance with Section 17.61(4)(b), Florida Statutes. All income of the investments shall accrue to the escrow account.

6. Unless instructed otherwise by FDOT, all interest accumulated in the escrow account shall remain in the account for the purposes of the Project.

7. The Escrow Agent agrees to provide written confirmation of receipt of funds to FDOT. FDOT agrees to provide a copy of such written confirmation to Participant upon request.
8. The Escrow Agent further agrees to provide quarterly reports to FDOT concerning the escrow account. FDOT agrees to provide a copy of such quarterly reports to Participant upon request.
9. The Escrow Agent shall not be liable for any error of judgment or for any act done or omitted by it in good faith, or for anything which it may in good faith do or refrain from doing in connection herewith.
10. Escrow Agent shall have no liability for any claim, cost, expense, damage or loss due to the acts or omissions of FDOT and Participant, nor from any separate agreements between FDOT and Participant and shall have no responsibility to monitor or enforce any responsibilities herein or in any separate agreements associated with this Agreement between FDOT and Participant.
11. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.
12. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
13. This Agreement shall terminate upon disbursement by the Escrow Agent of all money held by it in the escrow account in accordance with the instructions given by FDOT's Comptroller or designee and notification from FDOT to Escrow Agent that the account is to be closed.

The remainder of this page is blank.

IN WITNESS WHEREOF, the parties have duly executed the Agreement on the date(s) below.

For FDOT (signature)

Name and Title

59-3024028

Federal Employer I.D. Number

Date

For PARTICIPANT (signature)

Name

Title

F-596-000-674-016

Federal Employer I.D. Number

Date

For Escrow Agent (signature)

Name and Title

Date

THIS IS AN EXHIBIT ONLY ... NOT FOR EXECUTION!!!