

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION LOCALLY FUNDED AGREEMENT

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

WITNESSETH

WHEREAS, the DEPARTMENT and the COUNTY are desirous of having the DEPARTMENT make certain improvements in connection with the DEPARTMENT's construction work along Oslo Road from SW 82nd Ave to 58th Ave, Indian River County, Florida. (Financial Management (FM) Number 431520-1-52-01, Funded in Fiscal Year 2023); and

WHEREAS, the COUNTY has requested that the DEPARTMENT perform the following additional work (FM Number 431521-1-52-02): The funds will be utilized for mast arm painting as set forth in **Exhibit A** attached hereto and made a part hereof and hereinafter referred to as the Project; and

WHEREAS, the COUNTY has agreed to provide the DEPARTMENT with the additional funding needed for the Project; and

WHEREAS, the term "Project" in this Agreement shall mean only the work requested by the COUNTY for which the COUNTY will pay for pursuant to this Agreement; and

WHEREAS, the improvements are 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. _____ adopted on _____, 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 extra cost.

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 for the Project and the DEPARTMENT's construction work along Oslo Road is estimated to be FORTY-ONE MILLION SEVEN HUNDRED FORTY-EIGHT THOUSAND NINE HUNDRED EIGHT DOLLARS AND NO CENTS (\$41,748,908.00).

The COUNTY's share for the Project is a Lump Sum amount of NINETY THOUSAND DOLLARS (\$90,000.00), which sum shall be paid by the COUNTY to the DEPARTMENT. The COUNTY's payment is non-refundable. In the event the actual cost of the Project is less than the COUNTY's payment, the difference shall be retained by the DEPARTMENT to cover costs associated with the DEPARTMENT's construction work. In the event the actual cost of the Project, without modifications, results in a sum greater than that paid by the COUNTY, then any additional cost shall be the sole responsibility of the DEPARTMENT.

- A. The COUNTY agrees that it will, at least fourteen (14) calendar days prior to the DEPARTMENT's advertising the Project for bid, furnish the DEPARTMENT a contribution in the amount of NINETY THOUSAND DOLLARS (\$90,000.00) to be used for the estimated project cost for locally funded Project number 431521-1-52-02. The DEPARTMENT may utilize this contribution for payment of the costs of the Project.

In the event payment is not received by the DEPARTMENT at least fourteen (14) calendar days prior to the DEPARTMENT's advertising the Project for bid, the DEPARTMENT reserves the right to terminate this Agreement and remove the Project from the DEPARTMENT's Work Program.

- B. The payment of funds under this Locally Funded Agreement will be made directly to the DEPARTMENT.

Remittance shall be made payable to the Department of Financial Services, Revenue Processing. Payment shall be clearly marked to indicate that it is to be applied to FM No. 431521-1-52-02. The DEPARTMENT shall utilize this amount towards costs of Project No. 431521-1-52-02.

In lieu of mailing payment to the DEPARTMENT, the COUNTY may submit the payment for the Project via wire transfer.

Wire transfer/Payments are to be made to:
Wells Fargo Bank, N.A.
Account #4834783896
ABA # 121000248
State of Florida Department of Financial Services
Bureau of Collateral Management
Re: DOT – K 11-78, Financial project # 431521-1-52-02

For the DEPARTMENT to receive credit for the funds due to the DEPARTMENT, the reference line must contain "FDOT" and an abbreviated purpose, financial project number or LFA account number.

Once the wire transfer is complete, the COUNTY shall contact Jennifer Bennett at 850-414-4861. In addition to calling Ms. Bennett, the COUNTY shall send an email notification to D4-LFA@dot.state.fl.us stating the day and time the wire transfer was sent.

- C. 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 (360) days 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 & construction 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 and the resurfacing work.
6. Upon completion of the Project, the COUNTY shall comply with the provisions set forth in the Highway Maintenance Memorandum of Agreement (HMMOA) , which is attached hereto and made a part hereof as **Exhibit B**. The COUNTY shall agree to maintain the Project in accordance with the terms of **Exhibit B**. The terms of this paragraph shall survive the termination of this Agreement.
 7. 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.
 8. 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.
 9. 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 (FM# 431521-1-52-01) is completed as evidenced by the written acceptance of the DEPARTMENT.
 10. 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.

11. 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.
12. This Agreement is governed by and construed in accordance with the laws of the State of Florida.
13. 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.
14. 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: Susan Dale
With a copy to: Anson Sonnett, P.E.
A second copy to: Office of the General Counsel

If to the COUNTY:

Indian River County
1801 27th Street
Vero Beach, FL 32960
Attn: James Ennis, PE PMP
With a copy to: County Attorney

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 No. _____, hereto attached.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

JEFFREY R. SMITH, CLERK OF
COURT AND COMPTROLLER

PETER D. O'BRYAN, CHAIRMAN

APPROVED AS TO FORM & LEGAL SUFFICIENCY:

WILLIAM K DEBRAAL, DEPUTY COUNTY ATTORNEY

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

DEPARTMENT ATTEST:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: _____
EXECUTIVE SECRETARY

BY: _____
STEVEN C. BRAUN, P.E.
DIRECTOR OF TRANSPORTATION DEVELOPMENT

APPROVED:

LEGAL REVIEW:

BY: _____
DISTRICT PROGRAM MANAGEMENT
ADMINISTRATOR

BY: _____
OFFICE OF THE GENERAL COUNSEL

EXHIBIT A
SCOPE OF SERVICES
FM# 431521-1-52-02

The DEPARTMENT shall construct, on behalf of the COUNTY, the following improvements:

Painting of four (4) mast arms in Federal Highway Green on the construction work along Oslo Road from SW 82nd Ave to 58th Ave, Indian River County, Florida.

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EXHIBIT B

HIGHWAY MAINTENANCE MEMORANDUM OF AGREEMENT (HMMOA)

EXHIBIT B

SECTION No.: 88061000
FM No.: 431521-1
AGENCY: Indian River County
C.R. No.: 606

DISTRICT FOUR HIGHWAY MAINTENANCE MEMORANDUM OF AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____, 20__, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, a component agency of the State of Florida, hereinafter called the DEPARTMENT and Indian River County, a political subdivision of the State of Florida, hereinafter called the AGENCY collectively referred to as Parties.

WITNESSETH:

WHEREAS, the AGENCY has jurisdiction over Oslo Road , as part of the County roadway system from 82nd Ave to 58th Ave (Kings Highway) and

WHEREAS, pursuant to Sections 339.07, 339.08 and 339.12, Florida Statutes and Federal funding provisions the DEPARTMENT is authorized to undertake projects within the AGENCY's geographical limits and the AGENCY agrees to have this improvement constructed; and

WHEREAS, in accordance with Title 23, U.S. Code, Section 116 and Federal Highway Administration regulations issued pursuant thereto, there must be an agreement with the AGENCY to maintain the project; and

WHEREAS, pursuant to such authority, the DEPARTMENT and the AGENCY agrees to have the DEPARTMENT construct certain improvements more particularly described as Financial Project ID 431521-1, which involves widening and reconstructing Oslo Road; hereinafter referred to as the "Project", as more particularly described in **Exhibit A**; and

WHEREAS, this project is eligible for use of ARPA state funds; and

WHEREAS, pursuant to that certain Right of Way MOA between the AGENCY and the DEPARTMENT dated July 15, 2021, and all subsequent amendments thereto, the DEPARTMENT will acquire Right of Way for the project on behalf of AGENCY; and

WHEREAS, upon acquisition of the necessary right-of-way, the DEPARTMENT will proceed to construct the Project; and

WHEREAS, the Parties hereto mutually recognize the need for entering into an Agreement designating and setting forth the responsibilities of each party; and

WHEREAS, the AGENCY by Resolution on the _____ day of _____, 20__, a copy of which is attached hereto as Exhibit B and by this reference made a part hereof, desires to enter into this Agreement and authorizes its officers to do so.

NOW THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the Parties covenant and agree as follows:

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. The DEPARTMENT has undertaken and obtained the approval of Federal participation for the Project. The AGENCY is responsible for additional Project costs determined to be Federal Aid Non-Participating.
3. The AGENCY shall allow the DEPARTMENT and its contractors to enter onto the existing AGENCY property. No further permit or agreement from the Agency shall be required.
4. The AGENCY shall continue to maintain the existing roadway and any property owned by AGENCY until the DEPARTMENT begins construction of the Project. The DEPARTMENT shall be responsible for mowing and litter removal during the duration of the Project.
5. Upon "final acceptance" by the DEPARTMENT of the Project, (as "final acceptance" is described in the Standard Specifications for Roadway and Bridge Construction dated 2019, as amended), and Notice thereof to the AGENCY, the AGENCY shall maintain the Project, at its own cost, in accordance with the following Federally and State accepted standards: (a) FDOT Design Manual (FDM), current edition (b) Florida Green Book dated 2018, as amended (c) Governing standards and specifications: FDOT Design Standards dated FY 2022-23, as amended (d) Standard Specifications for Roadway and Bridge Construction dated 2022, as amended by contract documents, and (e) Manual on Uniform Traffic Control Devices (MUTCD), current edition, or as amended. Maintenance of said Project includes maintaining roadway, pavement marking, lighting, signalization, sidewalk, and drainage systems.
 - a. The AGENCY grants to the DEPARTMENT all rights necessary to enter and construct the Project.
 - b. The Department shall give the AGENCY seven (7) days' notice before final inspection. The AGENCY will have the opportunity to inspect and identify corrections to the PROJECT within seven (7) days' notice and the DEPARTMENT agrees to undertake those corrections prior to final acceptance so long as the corrections comply with the Final Proposed Construction plans and specification previously approved by both the DEPARTMENT and the AGENCY.

- c. If the project requires one or more permits that are revocable by the permitting entity and the permitting entity's needs require the removal of the project facility or any portion of it, either:
 - i. The facility would be reconstructed or relocated in such a way as to continue serving the same need (e.g., roadway and sidewalk connectivity) at the Agency's expense and a funding source would be made available; or
 - ii. Federal funds would be repaid, again at the Agency's expense. The useful life of the facility would be determined and a schedule for repayment developed (i.e., the amount of repayment necessary for each year of the remaining useful life of the facility at the time of its removal).
- 6. Warranties: The DEPARTMENT shall transfer any applicable warranties to the AGENCY.
- 7. Environmental permitting: If requested by the DEPARTMENT, the AGENCY shall sign as a joint applicant and be responsible for the permits related to the Project. Further the AGENCY shall be solely responsible for ensuring that the Project remains in compliance with all permits after the construction is complete and the right of way is transferred to the AGENCY. To the extent permitted by law, the AGENCY shall indemnify the DEPARTMENT for any violations by the AGENCY of any permits issued to the Department or jointly to the AGENCY and the DEPARTMENT after construction is complete. The AGENCY shall execute all documentation required by the permitting agencies in a timely manner to accept transfer of the Project. The AGENCY shall be the applicant for all occupancy permits that are required for the Project.
- 8. Utilities: The AGENCY shall cooperate with the DEPARTMENT, to the extent necessary, to accomplish utility relocations for this Project. This shall include, but not be limited to, entering into utility subordination agreements with the affected utility owners, thereby assuming liability for future utility relocations within the AGENCY right of way and proposed right of way. At its own expense, the AGENCY shall comply with any and all request of the DEPARTMENT to provide written notice to utility owner to initiate work necessary to alleviate interference; to remove or relocate non-compliant utilities; and to place liens upon non-compliant utility owners within the AGENCY right of way, as defined in Florida Statutes 337.403 and 337.404. The AGENCY shall be liable and reimburse the DEPARTMENT for any cost incurred by the DEPARTMENT for the AGENCY's failure to timely comply with said request.
 - a. AGENCY'S Utilities: The AGENCY shall relocate and adjust its own utilities including connection with utility customers. The PARTIES will enter into an agreement to relocate and adjust utilities. The COUNTY will pay for this work.
- 9. Signals: The AGENCY shall cooperate with the DEPARTMENT to effect signal and interconnect connections for the Project.
- 10. Drainage: Closed drainage system and storm water management ponds shall be maintained per

permit.]

11. Unforeseen issues: If unforeseen issues shall arise, the AGENCY shall cooperate with the DEPARTMENT to the extent necessary to construct the Project. This shall include but not be limited to the execution of documents; allowing the Department and/or their contractors/consultants to enter upon the real property owned, leased, possessed and/or controlled by the Agency upon which the Project is to be constructed or any property adjacent thereto.
12. E-Verify requirements: The AGENCY:
 - 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
 - shall expressly require any contractors 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 contractor during the contract term.
13. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings as represented in the Final Proposed Construction plans. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. []
14. The DEPARTMENT will provide the AGENCY with as-builts as a part of the final acceptance package.
15. This Agreement shall be governed, interpreted and construed according to the laws of the State of Florida.
16. LIST OF EXHIBITS
 - **Exhibit A:** Project Scope
 - **Exhibit B:** AGENCY's Resolution
 - **Exhibit C:** Executed ROW MOA

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year provided below.

FOR DEPARTMENT:

FLORIDA DEPARTMENT OF
TRANSPORTATION, DISTRICT FOUR

By: _____

Steven C. Braun, P.E.

Director of Transportation Development

Administrative Assistant:

Print Name: _____

Legal Approval:

District Four Attorney

FOR AGENCY:

ATTEST: Jeffrey R. Smith
Clerk of Court and Comptroller

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

By: _____

Deputy Clerk

By: _____

Peter D. O'Bryan

Chairman

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

William K. DeBaal

Deputy County Attorney

This Memorandum of Agreement has been duly authorized and approved on _____ by
Indian River County Resolution No. _____.

SECTION No.: 88061000
FM No.: 431521-1
AGENCY: Indian River County
C.R. No.: 606

EXHIBIT A

PROJECT SCOPE

All of the improvements are to be completed by DEPARTMENT within the AGENCY's existing and proposed right-of-way.

Typical Section

- 2 travel lanes in each direction
- Bike lanes and sidewalk on both sides

Signing and Pavement Markings

Signalization

- New mast arm signal at 66th Avenue
- Signal interconnect

Drainage

- Closed drainage system
- 3 storm water management ponds

Permits

- The FDOT will acquire in the AGENCY's name.

Lighting

- Roadway lighting at signalized intersections

SECTION No.: 88061000
FM No.: 431521-1
AGENCY: Indian River County
C.R. No.: 606

EXHIBIT B

AGENCY's Resolution

Reference Only

SECTION No.: 88061000
FM No.: 431521-1
AGENCY: Indian River County
C.R. No.: 606

EXHIBIT C

Executed Right of Way Memorandum of Agreement

Reference Only