

Funding Agreement

for

Continuing the Efficient Transportation Decision Making Process in Florida

Between

National Marine Fisheries Service

and

Florida Department of Transportation

and the

Federal Highway Administration

Date of Agreement

Funding Agreement
Continuing the Efficient Transportation Decision Making Process in Florida
National Marine Fisheries Service

Table of Contents

	Page
Article I Background and Objective	1
Article II Statement of Work.....	2
Article III Financial Statement.....	3
Article IV Period of Performance.....	5
Article V Project Officers	5
Article VI Required Clauses	6
Article VII Modification	7
Article VIII Disclosure	7
Article IX Signatures	8

List of Attachments

Attachment A Professional Qualifications	11
Attachment B Work Task	12
Attachment C Budget	14

Funding Agreement
Continuing the Efficient Transportation Decision Making Process in Florida
National Marine Fisheries Service

THIS FUNDING AGREEMENT (FA) is entered into upon signature or July 1, 2011 whichever comes later, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT), the FEDERAL HIGHWAY ADMINISTRATION (FHWA) and the NATIONAL MARINE FISHERIES SERVICES (NMFS)

Article I Background and Objectives

Whereas, the FDOT, FHWA and NMFS originally executed a 2-year FA and subsequent five year FA and the parties to the original agreements have consulted and agreed to continue in the participation of the Efficient Transportation Decision Making (ETDM) Process (environmental streamlining) as signatories to the Agency Operating Agreement (AOA) and FA, and on December 14, 2001 NMFS signed a Memorandum of Understanding (MOU) agreeing to develop an ETDM Process in Florida; and

Whereas, pursuant with the Endangered Species Act, the Essential Fish Habitat (EFH) provisions within the Magnuson-Stevens Fishery Conservation and Management Act and the Fish and Wildlife Coordination Act to satisfy the National Environmental Policy Act (NEPA) and permit issues and concerns, the NMFS is responsible for review of Federal and State agency actions which may affect these areas; and

Whereas, the FDOT is substantially increasing the number of transportation projects and activities which the NMFS is to review and participate in as part of the ETDM Process and desires that the NMFS continue its level of involvement during the planning, programming and project development processes, such that the final NMFS reviews do not constitute an unnecessary delay in FDOT project implementation; and

Whereas, NMFS has indicated that without continued funding it will be unable to continue to provide FDOT with priority review of FDOT projects through NMFS' involvement in FDOT's ETDM Process; and

Whereas, all parties have determined that it would be mutually beneficial to enable NMFS to continue to provide FDOT with priority project review, as part of an EDTM process, so that transportation projects can be designed and implemented promptly to meet the ever-changing transportation needs of the State, in a manner that is sensitive in regard to natural resources; and

Whereas, FDOT is willing to reimburse NMFS for staff expenses required to provide priority project review not already covered by other funding sources to meet FDOT project requirements; and

Whereas, the FHWA, will participate in the reimbursement of funds expended by FDOT for NMFS' staff required to provide priority project review through FDOT's ETDM process if (1) NMFS has the statutory authority to charge on a reimbursable basis and (2) the service provided is beyond normal work performed on Federal-aid highway and transportation projects; and

Whereas, NMFS has determined that (1) it is authorized pursuant to the Intergovernmental Cooperation Act, 31 USC, 6505, et.seq., to participate in the ETDM process on a reimbursable basis and (2) that the service provided is beyond the normal work it performs on federal-aid highway and transportation projects; and

Funding Agreement
Continuing the Efficient Transportation Decision Making Process in Florida
National Marine Fisheries Service

Whereas, the parties hereto desire to enter into this FA to facilitate the cooperation of the parties to streamline the environmental process, expedite the review of transportation projects and provide for the personnel and funds to attain these goals.

Now, therefore, for and in consideration of the foregoing premises and of the mutual promises set forth below, the parties hereto agree, with the intention of being legally bound, to the following:

Article II Statement of Work

- A. NMFS shall continue to supplement its existing staff, with qualified project review specialist(s) and other personnel as detailed in **Attachment A**, attached hereto and made a part hereof. NMFS shall use the funds provided under this FA to defray the costs of salaries and associated benefits, including overhead, necessary equipment, supplies, office space, training and to reimburse travel expenses in accordance with Federal Travel Regulations, 41 C.F.R., Chapter 301 which are hereby incorporated by reference as if physically attached hereto. All travel shall be related to ETDM projects and the ETDM Process. Any training must enhance the employee's expertise and contribute to meeting environmental process needs or satisfy mandatory training requirements as established for all other NMFS employees.
- B. NMFS staff funded under this FA shall work exclusively (100 percent) on FDOT projects and provide expedited project coordination, technical assistance and document review as identified in **Attachment B**, and incorporated herein, throughout all phases of transportation planning and project development.
- C. The NMFS shall review and respond to the FDOT's ETDM Planning and Programming Screens within forty-five (45) days of electronic notification that the project information has been uploaded into the Environmental Screening Tool (EST). NMFS will review all project information contained in the ETDM Database using the EST. For projects in the project development and environment documentation phase, NMFS shall review and respond to FDOT submissions within thirty (30) calendar days upon receipt of complete project documentation. The FDOT and NMFS shall mutually agree upon the date when the review period commences, based upon submittal of complete project documentation. Verbal concurrence between the FDOT and NMFS staff of the need for additional information shall interrupt the 30-day review period and shall be confirmed by written documentation on a monthly basis. Once the additional information has been submitted, the FDOT and NMFS shall mutually agree upon the date when the 30 day review period begins again. In the event that the number of FDOT project submissions exceeds the NMFS's staffing capability to meet the deadline as stated above, both parties agree to negotiate a mutually beneficial date for NMFS completion of project reviews.
- D. NMFS staff will keep time records identifying the number of hours spent working on FDOT projects and work tasks defined in **Attachment B** and provide this information through use of the Program Review Form. These records will account for one hundred percent (100 percent) of the time worked by each employee. In addition, NMFS shall keep accurate and separate accounting records of all receipts and disbursements of funds received pursuant to this agreement and produce such records as required by FDOT and FHWA and shall permit extracts and copies to be made by FDOT and FHWA or their duly authorized representatives. NMFS shall keep records substantiating hours and costs billed pursuant to this FA for a period

Funding Agreement
Continuing the Efficient Transportation Decision Making Process in Florida
National Marine Fisheries Service

of at least five years after the final billing is submitted. These records shall be subject to audit by FDOT or FHWA, as appropriate.

- E. NMFS shall participate in the ETDM Performance Management Program by providing a quarterly report as part of the On-line Invoicing Program. Additionally, the NMFS may be responsible for completing an on-line Biennial Survey. NMFS and FDOT after consultation may meet on the survey results. In coordination with the NMFS, FDOT will produce an Agency Report to be published in the Library of the EST. This Report will be used to monitor program performance and verify the utility of the funded positions in streamlining project delivery, improving agency coordination, improving the ETDM process, and promoting environmental stewardship.
- F. The parties to this FA act in an independent capacity in the performance of their respective functions under this FA; and neither party shall be construed as the officer, agent or employee of the other.
- G. In no way shall it be construed or implied that FHWA, the FDOT or the NMFS is by this FA intending to abrogate its obligation and duty to comply with the regulations promulgated under the 1973 Endangered Species Act (as amended), the Fish and Wildlife Coordination Act of 1958 (as amended), the NEPA of 1969 (as amended), the Clean Water Act of 1977 (as amended), the Magnuson-Stevens Fishery Conservation and Management Act, or any other Federal, State or Local law.

Article III Financial Statement

- A. FDOT shall, subject to the billing provisions of Article III(B) below, provide reimbursement to NMFS for a total sum not to exceed \$2,022,474.00 according to the schedule shown in Attachment C, attached and incorporated herein, ending on a date five (5) years from the date of this FA or the date of signature, whichever comes later. This sum is based upon the parties' best estimate of the minimum funding required by the NMFS to provide supplemental environmental review services for FDOT projects. The funding amount is acknowledged to be an initial funding level and in the event that the level of supplemental services needed becomes greater or less than the initial funding level, the parties agree in good faith to renegotiate the level of funding and service.
- B. Requests for funding will be on a cost reimbursement basis only, invoiced quarterly and will be accompanied by a status report. The status report will include the completion and submittal of the project Review Form and Program Review form.
- C. The invoice will provide an expenditure report of the actual account of expenditures for salaries, benefits, overhead, travel, expenses and other indirect costs, including back-up documentation. All invoices shall be submitted using the Agency On-line Invoicing system on the EST, and shall include detail sufficient for a proper pre-audit and post-audit thereof. Instructions for completing an invoice can be found in the On-line Invoicing Handbook. Instructions for proper fund usage are provided on the EST and in the FDOT ETDM Funded Positions Reference Manual. NMFS agrees to remain cognizant of ETDM program activities, which are eligible for funding as established by FHWA and FDOT. Eligible activities are contained in this FA and the FDOT ETDM Funded Position Reference Manual. NMFS agrees

Funding Agreement
Continuing the Efficient Transportation Decision Making Process in Florida
National Marine Fisheries Service

that prior to conducting any activity which is undefined and questionable regarding funding to coordinate with FDOT prior to accomplishing the activity to ensure funding eligibility.

- D. The NMFS shall be fully responsible for the proper billing of any federal reimbursable costs or charges, including those incurred by it contractor and subcontractors. The NMFS shall submit invoices and documents necessary for the close-out of the project in a timely manner.
- E. FDOT shall send it checks in payment of the invoices to the following address:
Attention: Peggy Solomon
National Marine Fisheries Service
263 13th Avenue, South
St. Petersburg, Florida 33702
- F. Agencies providing goods and services to FDOT should be aware of the following timeframes. Upon receipt, FDOT has five (5) working days to inspect and approve the goods and services. The FDOT has twenty (20) days to deliver a request for payment (voucher) to the Florida Department of Financial Services (FDFS). The twenty (20) days are measured from the latter of the dates the invoice is received or the goods or services are received, inspected and approved. If payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 215.422, F.S., shall be due and payable, in addition to the invoice amount to NMFS. Interest penalties of less than one (1) dollar shall not be enforced unless NMFS request payment. Invoices which have to be returned to NMFS because of NMFS preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to FDOT.
- G. Records of costs incurred shall be maintained and made available upon request to FDOT for five (5) years after final payment for the work, pursuant to this FA and Florida Statutes. Copies of these document and records shall be furnished to FDOT and/or FHWA upon request. Records of costs incurred shall include NMFS's general accounting records and the project records, together with supporting documents and records of NMFS and all subcontractors considered necessary to FDOT or FHWA for a proper audit of project costs.
- H. The NMFS agrees to promptly reimburse the FDOT for any and all amounts for which the FDOT has made payment to the NMFS if such amounts become ineligible, disqualified, or disallowed for federal reimbursement due to any act, error, omission, or negligence of the NMFS, including missing or deficient documentation of costs and charges, untimely, incomplete, or insufficient submittals, or any other reason declared by the applicable Federal Agency.
- I. The NMFS agrees that the FDOT may offset such amounts from payments due for work or services done under any agreement between the parties if payment from the NMFS is not received by the FDOT after ninety (90) days of written notice from the FDOT. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the FDOT.
- J. The NMFS understands that if it fails to timely perform its obligations, or timely submit invoices and documents necessary for the close out of the project, the maximum limiting amount may become unavailable or reduced due to a removal or withdrawal of federal funds or a loss of state appropriation, and the FDOT will have no obligation to provide funds from other sources. The NMFS agrees that in the event the maximum limiting amount of this Agreement is reduced by such removal, withdrawal, or loss of funds, the NMFS will be solely

Funding Agreement
Continuing the Efficient Transportation Decision Making Process in Florida
National Marine Fisheries Service

responsible for payment of costs and outstanding invoices no longer reimbursable due to the loss of funding.

Article IV Period of Performance

- A. The term of this FA shall run for a period, commencing upon signature or July 1, 2011, whichever comes later and ending June 30, 2016 or five (5) years thereafter, whichever comes later, unless terminated sooner in accordance with Article IV (B) below.
- B. Any party may terminate this FA upon sixty (60) days written notice to the other, addressed to the Project Officer listed in Article V provided that the party requesting termination has provided reasonable notice and sufficient opportunity for remedy.
- C. NMFS, FDOT and the FHWA shall meet periodically on this FA to review the progress made by NMFS in accordance with the terms of this FA. If NMFS, FDOT and the FHWA find that the terms have been satisfactorily met, then this FA may be renewed pursuant to Federal legislation and subject to funding availability.
- D. The NMFS may participate in a Biennial Survey and Biennial Report, and may participate periodically in an ETDM Program Review, which address how environmental streamlining has been carried out and lessons learned, and make recommendations for improving the process. The FDOT, FHWA and NMFS will mutually define the scope and content of the Biennial Report and any ETDM Program Review meetings. The Biennial Report will also contain a discussion of the agency's status in meeting the agreed upon performance measures.
- E. In the event of a conflict between any provision of the FA and the AOA, the latter shall govern, except that the FA shall govern with regard to the period of performance should the AOA expire during the period of performance governed by the FA the parties to this agreement have consulted and agreed to continue in the participation of the ETDM process (environmental streamlining) as signatories to the AOA and FA with the FA's termination date serving as the controlling date.

Article V Project Officers

- A. National Marine Fisheries Service
Miles Croom or designee
263 13th Avenue South
St. Petersburg, Florida 33701
Tel: (727) 551-5739
Fax (727) 824-5300
- B. Florida Department of Transportation
Central Environmental Management Office
Marjorie Bixby or designee
605 Suwannee Street, MS 37
Tallahassee, Florida 32399-0450
Tel: (850) 414-5209
Fax: (850) 414-4443

Funding Agreement
Continuing the Efficient Transportation Decision Making Process in Florida
National Marine Fisheries Service

C. Federal Highway Administration

FHWA– Florida Division:
Karen Brunelle or designee
545 John Knox Road, Suite 200
Tallahassee, Florida 32303-4117
Tel: (850) 553-2200
Fax: (850) 553-2211

Article VI Required Clauses

- A. During the performance of this Agreement, the parties agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, religion, sex or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion or national origin.
- B. No member of or delegate to Congress or resident Commissioner, shall be admitted to any share of this Agreement or any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.
- C. The parties agree that in any contracts to be developed and awarded pursuant to this Agreement, all designs, plans, specifications, estimates of costs, construction, utility relocation work, right-of-way acquisition procedures, acceptance of the work and procedures in general shall, at all times, conform to the applicable Federal and State laws, rules, regulations, orders and approvals, including, specifically, procedures and requirements relating to labor standards, equal employment opportunity, nondiscrimination, compliance with the Americans with Disabilities Act, anti-solicitation information, auditing and reporting provisions.
- D. Any Tangible Property outside of that normally and reasonably required to provide the services for this program per Article IIA or as defined in Chapter 273, F.S. and Rule 60A-1.017, FAC, will be purchased by FDOT. All Tangible Personal Property purchased as defined in Chapter 273, F.S. and acquired in accordance with Rule 60A-1.017, FAC, whether by the Vendor agency or FDOT, upon completion of services or the end of the agreement, whichever comes first, will become the property of FDOT and be transferred to and controlled by FDOT. Upon receipt of said property, FDOT shall forward to the Vendor a copy of the purchase invoice/property description/serial number and date of receipt for their records. The Vendor shall maintain the Tangible Personal Property on their inventory lists until such time as it is transferred back to FDOT. Where questions arise concerning the purchase of Tangible Personal Property for this program, the Vendor shall coordinate with the FDOT Project Manager and the Technology Manager in the Central Environmental Management Office.
- E. NMFS shall utilize the U.S. Department of Homeland Security's E-Verify system in accordance with the terms governing use of the system, to confirm the employment eligibility of:
- all persons employed by NMFS during the term of the contract to perform employment duties within Florida; and

Funding Agreement
Continuing the Efficient Transportation Decision Making Process in Florida
National Marine Fisheries Service

- all persons, including subcontractors, assigned by NMFS to perform work pursuant to the contract with the FDOT.

Article VII Modification

Any changes, amendments, corrections or additions to this FA, shall be in writing; shall be executed and approved by the project officers (or their designee) listed in Article V, unless the modifications expand the scope or costs, which will require then the same officials (or their designees) of the parties who executed and approved the original FA and in accordance with applicable law; and shall become effective upon complete approval by all parties. This FA can be extended by mutual agreement of all parties.

Article VIII Disclosure

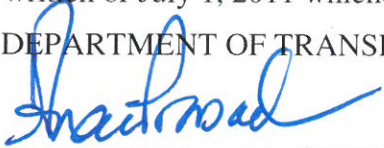
- A. As required in Section 339.135(6) (a), Florida Statutes, during any fiscal year, FDOT shall not expend money, incur any liability or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void and no money may be paid on such contract. FDOT requires a statement from the comptroller of FDOT 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 one 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 FDOT which are for an amount in excess of \$25,000 and which have a term for a period of more than one year.
- B. The FDOT will provide written notice when the funding is available for performance of this agreement. Until that notice, no services shall be provided under the terms of this agreement and FDOT will not be liable for any expenses incurred.
- C. Pursuant to Section 216.347, Florida Statutes, no funds received pursuant to this agreement may be expended for lobbying the legislature, the judicial branch or a state agency.
- D. The State of Florida's performance and obligation to pay under this agreement is contingent upon an annual appropriation by the Florida Legislature and receipt of budget authority.
- E. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Department of Financial Service's Hotline, 1-800- 693-5236.

Funding Agreement
Continuing the Efficient Transportation Decision Making Process in Florida
National Marine Fisheries Service

Article IX Signatures

In witness whereof, the parties hereto have caused this Agreement to be executed as of the date herein written or July 1, 2011 whichever comes later.

FLORIDA DEPARTMENT OF TRANSPORTATION

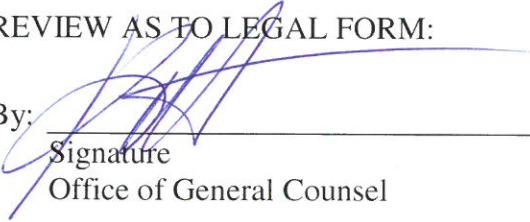
By: 
Signature
Secretary of Transportation

Date 7/20/11

By: ANANTH PRASAD
Print Name
Secretary of Transportation

Date _____

REVIEW AS TO LEGAL FORM:

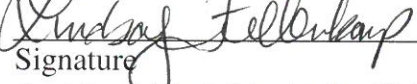
By: 
Signature
Office of General Counsel

Date 7/19/11

By: Kathleen P. Toolan
Print Name
Office of General Counsel

Date _____

NATIONAL MARINE FISHERIES SERVICE

By: 
Signature
Assistant Administrator for Fisheries

Date 7/6/11

By: Eric C. Schwaab
Print Name
Assistant Administrator for Fisheries

Date _____

FEDERAL HIGHWAY ADMINISTRATION

By: 
Signature
Division Administrator

Date 7/12/11

By: MARTIN C. KNOPP
Print Name
Division Administrator

Date _____

Funding Agreement
Continuing the Efficient Transportation Decision Making Process in Florida
National Marine Fisheries Service

Attachment A
National Marine Fisheries Service

Professional Qualifications

NMFS staff funded under this FA shall meet the professional standards outlined below:

- Specialists with experience and education in fishery and marine sciences and other skills related to marine and fishery management, conservation and assessment.
- Working knowledge of the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act and the Fish and Wildlife Coordination Act.

Funding Agreement
Continuing the Efficient Transportation Decision Making Process in Florida
National Marine Fisheries Service

Attachment B
National Marine Fisheries Service
Work Task

Review and Work Tasks

NMFS shall accomplish the reviews and tasks as outlined below in order to streamline, expedite, implement, consult and coordinate on FDOT projects throughout all phases of transportation planning, programming and project development phases including public involvement and outreach and meet FDOT's needs for compliance with applicable State and Federal statutes. The NMFS staff reviews and work tasks may include, but are not limited to, the following.

- Review and comment on projects contained in the Metropolitan Planning Organization (MPO) Long Range Transportation Needs Plan and Florida Intrastate Highway System Plan during the ETDM Planning Screen on a 3 to 5 year cycle
- Review and comment on project priorities every year before they are entered into FDOT's Five-Year Work Program during the ETDM Programming Screen
- Participate in agency scoping
- Provide preliminary environmental analyses, guidance and review
- Provide Alternatives, Analysis guidance, review and comment
- Represent NMFS at meetings as appropriate
- Participate in the development and implementation of written FDOT and NMFS guidance
- Ensure NMFS review of separate technical reports as necessary
- Attend interagency and intra-agency meetings as appropriate
- Provide technical assistance, conduct environmental document and pre-application reviews and provide comments as requested by FDOT to satisfy data needs on permits and environmental and technical documents, which may include but not be limited to:
 - Wetlands Identification and Delineation Reports
 - Cultural Resource Assessment/NMFS Consultation Letter
 - Alternatives Analysis
 - Conceptual Mitigation Plans
 - Categorical Exclusions
 - Environmental Impact Statement
 - Environmental Impact Statement Comment Resolution
 - Environmental Assessment
 - FONSI Reports
 - Environmental Reevaluations
 - Mitigation Reports and Plans

Funding Agreement
Continuing the Efficient Transportation Decision Making Process in Florida
National Marine Fisheries Service

- Planning, Programming and Project Development Summary Reports
- Policies and Procedures
- Organize meetings or conference calls to clarify problems at the request of NMFS or FDOT
- Perform other related tasks as defined by FDOT and agreed to by NMFS
- Provide appropriate reporting, billing and other administrative functions as required by this Agreement
- Provide expertise and recommendations on streamlining the environmental process at all phases of planning, project development and permitting
- Coordinate and provide training on natural resource issues
- Participate and assist in professional and public outreach opportunities to educate the citizenry on Florida's environmental streamlining initiative and the integration of natural resource preservation programs and plans with transportation planning and project development
- Participate in District ETAT Meetings