

**EXECUTED**

**Agency Operating and Funding Agreement for  
Continuing Participation in the Efficient Transportation Decision Making and  
Transportation Project Development Processes**

**between**

**United States Army Corps of Engineers**

**and**

**Federal Highway Administration**

**and**

**Florida Department of Transportation**

**June 30, 2015**

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## Section 1. Introduction

The purpose of the Efficient Transportation Decision Making (ETDM) process is to provide early incorporation of environmental considerations in transportation planning to better inform project delivery. This process supports the environmental policy of the Florida Department of Transportation (FDOT) “to help preserve and enhance Florida’s natural, physical, cultural, and social environment as we develop, implement, and maintain transportation facilities and services” (Policy No.: 000-625-001-I). The ETDM process supports the environmental streamlining objectives identified in Sections 135 and 139 of Title 23 United States Code (U.S.C.), as amended. The ETDM process promotes coordination of transportation and environmental resource planning and supports environmental reviews, through early interaction among transportation planners; federal, state, and local agencies; Native American Tribes; and affected communities. Florida established the ETDM process on December 14, 2001 through entry into a Memorandum of Understanding with state and federal resource agencies. These entities endorsed the ETDM concept and agreed to support, establish, and implement the ETDM process at their respective agencies to the extent feasible within existing legal authority and commensurate with the level of available funding. Intergovernmental coordination is accomplished through Environmental Technical Advisory Teams (ETATs). Each ETAT includes representatives from Metropolitan Planning Organizations (MPOs), federal and state agencies, and participating Native American Tribes.

The ETDM process described in this Agency Operating and Funding Agreement (AOFA) is consistent with the FDOT’s ETDM and Project Development and Environment (PD&E) Manuals. As shown in Figure 1, the ETDM process consists of two project screening events: Planning and Programming. The screening events apply only to qualifying capacity improvement projects, such as new roadways, new rail systems, and bridge projects (ETDM Manual, Chapter 2). The Planning Screen occurs when projects are evaluated for inclusion or prioritization within a Cost Feasible Long Range Transportation Plan (LRTP). The Programming Screen supports development of projects to be included in the FDOT Five Year Work Program. The results of the screening events ultimately link the transportation Planning phase and the PD&E phase. The Planning and Programming Screens help to:

- Determine the feasibility of proposed projects.
- Allow for early identification of potential avoidance, minimization and mitigation opportunities.
- Focus the issues to be addressed during the PD&E phase.
- Create information and documentation which may be advanced into the PD&E phase.

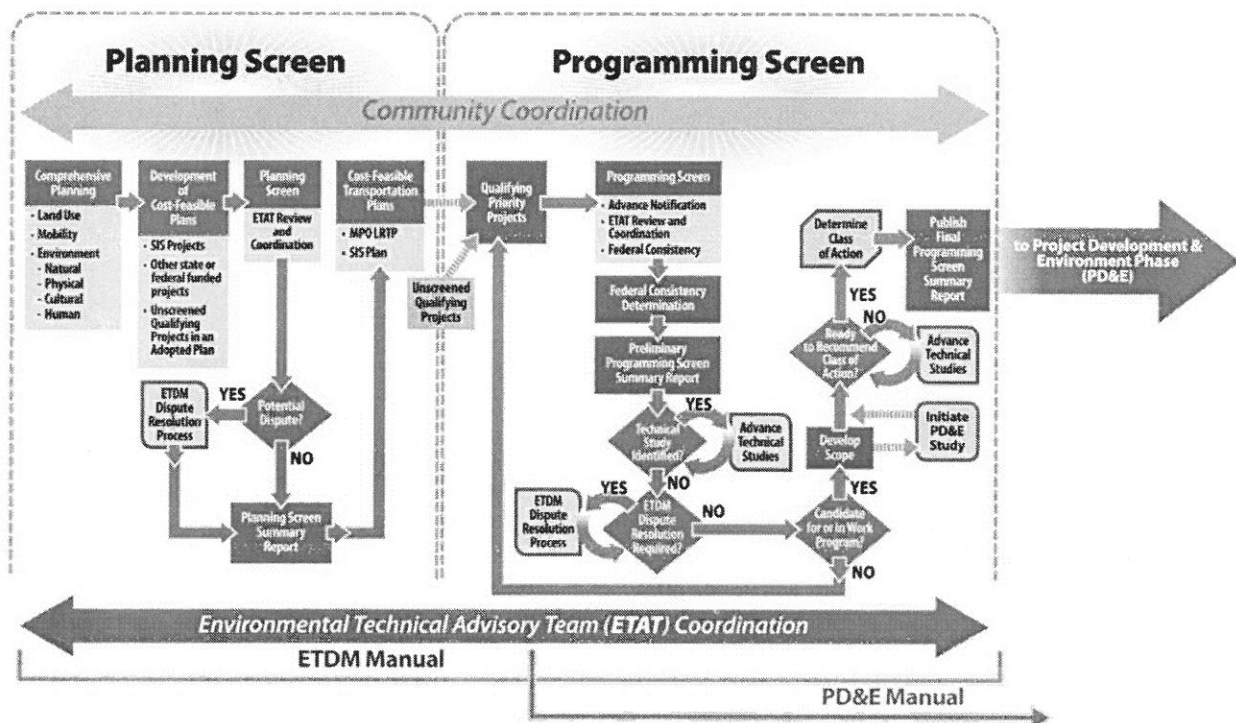


Figure 1 – ETDM Process

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During the Planning and Programming Screens, ETAT members use the Environmental Screening Tool (EST) to review project information, identify potential project effects, and submit comments and considerations to FDOT. This web-based Geographic Information System (GIS) database and mapping tool provides access to information and data about natural, physical, cultural and community resources in a proposed project area. The comments and other information are made available to the public on the ETDM Public Access Site. The EST performs standardized GIS analyses and queries using information supplied by ETAT members and contained in the Florida Geographic Data Library (FGDL). Moreover, it:

- Integrates data pertinent to natural, physical, cultural, and community resources and transportation programs into a standardized format.
- Analyzes GIS data within project buffers to support ETAT commentary.
- Provides a platform for dissemination of information among ETAT representatives and the public.
- Provides storage and access to ETAT reviews.

## **Section 2. Agreement Framework and Regulatory Authority**

This AOFA is entered into voluntarily by the FDOT, Federal Highway Administration (FHWA), and United States Army Corps of Engineers (USACE) to provide a framework for participation in the ETDM process and advancement of transportation projects during the Planning and PD&E phases. USACE shall serve as an ETAT member to expedite the evaluation of the transportation projects by reviewing and commenting on potential issues regarding resources within its jurisdictional purview. Moreover, this AOFA provides funding for USACE's fulfillment of its role as an ETAT representative in the ETDM screenings, project development, and transportation project delivery processes, as defined herein.

## **Section 3. Recitals**

A. FDOT, FHWA, and USACE originally executed a Master Agreement (MA), Agency Operating Agreement (AOA) and Funding Agreement (FAs) on December 9, 2004, followed by additional 5-year agreements on July 1, 2010. The parties to these agreements have consulted and agree to continue participating in the ETDM process as signatories to this AOFA.

B. USACE is responsible for review of transportation projects consistent with the National Environmental Policy Act of 1969 (NEPA), Section 404 of the Clean Water Act (CWA), Section 10 of the Rivers and Harbors Act of 1899, Section 103 of the Marine Resources, Protection and Sanctuaries Act, and other statutory authorizations, including but not limited to, those identified in Appendix A.

C. FDOT and FHWA are committed to compliance with the statutes and rules under USACE's jurisdiction as they relate to FDOT's transportation projects and activities. As such, FDOT and FHWA request that the USACE continue to provide expedited review during the ETDM and transportation project development processes in a manner that does not constitute unnecessary delays in FDOT project implementation.

D. Early coordination and participation in the ETDM Process has increased the number of activities USACE reviews. FDOT desires that USACE maintain its timely responses, such that USACE reviews do not unnecessarily delay FDOT project implementation.

E. USACE has indicated that without continued funding it will be unable to provide FDOT with expedited review and evaluation of transportation projects, including project permit application reviews, during the ETDM screenings and the transportation project development process.

F. FDOT and FHWA have found it beneficial to provide funding which enables USACE to serve as an ETAT representative and support priority and expedited project review so that transportation projects addressing Florida's needs can be implemented timely, while complying with the applicable laws and regulations that protect natural resources.



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G. In order to receive priority project reviews, FDOT will reimburse USACE to meet the expedited review requirements established in this Agreement.

H. FHWA will reimburse funds paid by FDOT to USACE for activities conducted pursuant to this AOFA.

I. USACE has determined that (1) it is authorized pursuant to Section 214 of the Water Resources Development Act of 2000, as amended ("Section 214"), to accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits under the jurisdiction of USACE and (2) that the service provided is beyond the normal work it performs on federal-aid highway and transportation projects.

J. USACE will provide expedited project reviews in a manner that does not constitute unnecessary delays in FDOT project implementation consistent with its statutory authority and commensurate with the level of additional funding. FHWA and FDOT understand that that this AOFA will result in expedited review, but in no way ensures favorable review of Department of the Army (DA) permit applications.

K. The parties desire to enter into this AOFA to provide for early coordination and identification of environmental considerations, expedite transportation project review, and provide for staff resources and/or funding to attain these goals.

NOW, THEREFORE, in consideration of the mutual promises set forth above, the parties agree to the following:

### Section 4. Statement of Work

A. USACE agrees to provide its expertise and assist FDOT by expediting the review and evaluation of transportation projects for those matters within its statutory and regulatory authority. USACE will:

- Identify potential issues regarding resources within its jurisdiction and provide focused comments and actionable recommendations to address them. Within the EST, these issues are organized under the following two categories: Navigation and Wetlands.
- Evaluate whether any identified resources can be eliminated from further detailed analysis during the PD&E study phase.
- Identify resources warranting further detailed analysis or not requiring further detailed analysis for purposes of the public interest determination (including, where applicable, a determination of compliance with the Section 404(b)(1) guidelines or ocean dumping criteria)
- Identify potential permits, mitigation opportunities, and technical studies necessary to advance transportation projects, as well as identification of other proposed activities within a project area.
- Identify for consideration alternatives that would advance transportation projects through the use of Nationwide or Regional General Permits, or Mitigation Bank or In Lieu Fee Programs, or other information promulgated by the USACE Regulatory Program.
- Inform the FDOT State Environmental Management Office (SEMO) and District environmental offices of USACE's initiatives, programs, training opportunities, rule changes, resource management plans, and regulations that may impact FDOT projects.
- Provide training and updates to FDOT SEMO and District environmental offices on the USACE permit application process, Regional General Permit SAJ-92, RIBITS (Regulatory In lieu fee and Bank Information Tracking System), etc.
- Attend and participate in ETAT meetings and project coordination meetings.
- Verify that resource data provided by USACE is current in the EST.
- Review the project purpose and need and acknowledge understanding or ask for clarification.
- Review and comment on the Methodology Memorandum (MM) and Draft Alternatives Corridor Evaluation Report (ACER) during the Alternative Corridor Evaluation (ACE) process.

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- Make recommendations to FDOT to expedite evaluation of future transportation projects, including USACE evaluation of permit applications.
- Participate in interagency issue resolution teams, as applicable.
- , Enter its ETAT comments and recommendations regarding proposed transportation projects and their potential effects (direct, indirect, and cumulative) into the EST during ETDM Screenings.

B. FDOT will use USACE's comments and recommendations to support project scoping and to identify coordination needs or additional activities required in future project phases. FDOT will provide funding to USACE to adjust or supplement its staff resources in order for them to review FDOT projects with qualified review specialist(s) and other personnel as detailed in Appendix B, attached and incorporated herein. The billable hours submitted by review specialists shall represent work spent exclusively (100%) on review of FDOT projects, providing expedited project review or coordination, technical assistance, document review, and other authorized activities, as identified in this AOFA.

C. USACE shall review and respond to information contained in FDOT's Planning and Programming Screens within forty-five (45) days of electronic notification that a project is ready for ETAT review. USACE will review project information using available data both internal and external to the EST. For projects in the PD&E phase, USACE shall review and respond to FDOT submissions within thirty (30) or forty-five (45) calendar days depending on the type of requested action. Tables 1, 2, and 3 in the sections below identify activities and project information available during the two ETDM screening events and the PD&E phase, which range from a project's purpose and need to technical reports and environmental documents.

D. USACE shall provide FDOT with an invoice entered into the EST's invoicing module that contains reimbursable activities conducted during the billing period. Reimbursable activities are only those activities directly described in the AOFA.

E. USACE shall participate in the ETDM Performance Management Program, which includes quarterly feedback reports and a biennial survey; metrics for these performance reports are identified in this AOFA (see Section 7). USACE shall also attend ETDM-related meetings, as appropriate.

F. The parties to this AOFA act in an independent capacity in the performance of their respective functions under this AOFA; no 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, FDOT or USACE are by this AOFA intending to abrogate their obligations and duties to comply with the regulations promulgated under Clean Water Act of 1972 (as amended), Section 10 of the Rivers and Harbors Act of 1899, Section 103 of the Marine Resources, Protection and Sanctuaries Act, NEPA, or any other federal, state, or local law that establishes duties and responsibilities for the agencies.

### 4.1. Planning Screen

FDOT uses the EST to notify ETAT members to proceed with their Planning Screen review and inform interested parties through the EST public access site. Upon receipt of the Planning Screen notice, ETAT members review a project's purpose and need and provide comments about potential project effects to the natural, physical, cultural, and community resources related to their statutory and regulatory authority. ETAT members provide comments about a proposed project based on their expertise, respective agency authorities, plans, programs, and technical reports. At the conclusion of the Planning Screen, the ETDM Coordinator publishes the Planning Screen Summary Report. This report serves as feedback to the ETAT members and summarizes key recommendations and results from the screening event.

Table 1 outlines information contained in the EST from various sources, such as, FDOT, MPO, FGDL, and other agencies. It identifies USACE review and comment responsibility during the Planning Screen and addresses agency coordination responsibilities.

**Table 1 – Planning Screen Information and Coordination Responsibilities**

<b>EST (MPO, FDOT, FGDL, Agencies)</b>	<b>FHWA/FDOT</b>	<b>USACE</b>
<ul style="list-style-type: none"> <li>■ Project information (including but not limited to):               <ul style="list-style-type: none"> <li>■ Purpose and Need</li> <li>■ Project description</li> <li>■ Preliminary Environmental Discussion (PED)</li> <li>■ Agency comments</li> <li>■ GIS analysis and resource maps (Social and Economic, Cultural, Natural, and Physical)</li> <li>■ Community characteristics</li> <li>■ Project limits and logical termini</li> <li>■ Mobility alternatives</li> </ul> </li> <li>■ Agency plans and programs</li> <li>■ Agency-specific GIS data</li> </ul>	<ul style="list-style-type: none"> <li>■ In MPO areas, FDOT assists in developing the purpose and need and logical termini.</li> <li>■ In non-MPO areas, FDOT in consultation with FHWA (when appropriate) establishes the purpose and need and logical termini.</li> <li>■ In MPO and non-MPO areas, FDOT assists in developing the purpose and need and logical termini for SIS projects.</li> <li>■ Establish an interdisciplinary project team, as appropriate.</li> <li>■ Develop and disseminate Methodology Memorandum (MM) and resulting Alternative Corridor Evaluation Report (ACER), as applicable.</li> <li>■ Ensure project information is available for ETAT review.</li> <li>■ Coordinate with USACE on agency jurisdictional resource issues.</li> <li>■ Produce Planning Screen Summary Report, which includes:               <ul style="list-style-type: none"> <li>■ Project Description</li> <li>■ Purpose and need</li> <li>■ PED</li> <li>■ Agency comments, issues, and recommendations for potential direct, indirect, and cumulative effects at the resource level</li> <li>■ GIS mapping and analysis</li> <li>■ Supplemental information supporting the project record</li> <li>■ Summary Degrees of Effect (SDOE) and FDOT ETDM Coordinator comments, including actions to address ETAT agency comments</li> <li>■ Summary of public involvement comments and identification of any community desired project features</li> <li>■ Identification of anticipated technical studies, permits, and project recommendations</li> </ul> </li> <li>■ Adopt planning products, as appropriate, for use in the NEPA</li> </ul>	<ul style="list-style-type: none"> <li>■ Assign project reviewer.</li> <li>■ Develop an understanding of the proposed transportation project by reviewing the project description, purpose and need, PED (if provided), EST GIS analysis, project and resource maps, and comments from previous activities.</li> <li>■ Verify that information available in the EST from the USACE is the best available. Identify information gaps or data needed to support further evaluation.</li> <li>■ Review project purpose and need and acknowledge understanding or ask for clarification.</li> <li>■ Review projects for existing conditions and potential direct and indirect effects to resources under the USACE jurisdiction and provide comments.</li> <li>■ Submit comments in the EST for each screened project alternative for the Navigation and Wetlands issues.</li> <li>■ If USACE has relevant knowledge or information not already contained in the EST, provide and discuss such information.</li> <li>■ Provide comments about potential effects and make recommendations to avoid or address them.</li> <li>■ If potential direct and indirect effects are identified, comment on the type, quality, and sensitivity of the resources involved in relation to their location to the proposed project and related activities. If the project does not impact resources of interest or a detailed evaluation is not necessary during the PD&amp;E phase, indicate this as well.</li> <li>■ Supplement information in the EST with additional sources and personal knowledge, such as data gathered from site visits.</li> <li>■ For scoping purposes, provide comments regarding potential cumulative effects to a resource and provide information for the</li> </ul>

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EST (MPO, FDOT, FGDL, Agencies)	FHWA/FDOT	USACE
	process	<p>Lead Agency's<sup>1</sup> consideration when evaluating cumulative effects.</p> <ul style="list-style-type: none"> <li>▪ Provide information about agency plans, studies, regulatory information, or other data that may affect the project or be affected by the project. Fill in data gaps and validate data, as needed.</li> <li>▪ Provide specific recommendations to address resource concerns which may arise during permitting, such as potential avoidance, minimization, or mitigation opportunities based on statutes and regulations.</li> <li>▪ Specifically identify differences in potential jurisdictional resource impacts among alternatives.</li> <li>▪ Identify specific activities that FDOT or other ETAT member(s) could complete between Planning and Programming Screens to answer questions, address concerns or fill in data gaps (e.g., seasonal studies, preliminary site inspections, or studies to support the permitting process).</li> <li>▪ Indicate a Degree of Effect (DOE) for each issue and alternative being reviewed. A DOE reflects the magnitude of potential projects effects (direct and indirect effects) caused by a particular alternative to a resource.</li> <li>• Review and respond to a proposed MM, when applicable.</li> <li>• Review ACERs, when applicable.</li> <li>• Indicate the need for future coordination (e.g., consultation, permits, and technical studies).</li> <li>▪ Submit comments via the EST within 45 calendar days of notification.</li> <li>▪ Respond to Participating and Cooperating Agency requests from the Lead Federal Agency.</li> </ul>

<sup>1</sup> The Lead Agency holds primary responsibility for the environmental document, determining the preferred alternative in the PD&E phase, and inviting Cooperating and Participating Agencies. FDOT is the Lead Agency for non-federal projects; otherwise, a federal agency is the Lead Agency and per Title 23 CFR, FDOT serves as co-lead.

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EST (MPO, FDOT, FGDL, Agencies)	FHWA/FDOT	USACE
		<ul style="list-style-type: none"> <li>Regularly communicate with ETDM Coordinator to exchange information and discuss project matters.</li> <li>Review the Planning Screen Summary Report and provide agency comments, if applicable, within 30 calendar days of notification.</li> </ul>

## 4.2. Programming Screen

The Programming Screen builds upon the information produced during the Planning Screen, if applicable (not all projects complete a Planning Screen, see ETDM Manual, Chapter 2). The Programming Screen may initiate the Advance Notification (AN) process, which FDOT uses to inform agencies and other interested parties of a proposed transportation action, as well as Federal Consistency Review (as appropriate), and project scoping [NEPA or State Environmental Impact Reports (SEIR)]. The Programming Screen is required for all qualifying projects (defined in ETDM Manual, Chapter 2) being considered for inclusion in FDOT's Five Year Work Program, or prior to initiation of the PD&E study. During the Programming Screen, ETAT representatives identify information deemed essential to make a public interest determination (including, where applicable, a determination of compliance with the Section 404(b)(1) guidelines or ocean dumping criteria) comments about potential project effects, acknowledge understanding or ask for clarification of the purpose and need, and comment on the scope of FDOT technical studies necessary to satisfy the requirements of the PD&E phase.

FDOT uses the EST to notify ETAT members to proceed with their Programming Screen review and inform interested parties through the EST public access site. When applicable, the notice for the Programming Screen begins a 45-day comment period, to allow for the distribution, discussion, and receipt of agency responses consistent with the Programming Screen and Federal Consistency Review. Upon receipt of this notice, all ETAT representatives will review and comment on the information associated with the Programming Screen. At the end of the Programming Screen, the ETDM Coordinator publishes the Preliminary Programming Screening Summary Report to document the initial screening event and publishes the Final Programming Screen Summary Report when a class of action (COA) determination has been made. These reports serve as feedback to the ETAT members and document the results of the screening. The final report also supports development of a project's scope of work based on the ETAT reviews, considerations, and recommendations received from the agencies.

Table 2 outlines information for which USACE has review and comment responsibility during the Programming Screen. It also addresses FHWA, FDOT, and USACE review and coordination responsibilities.

**Table 2 – Programming Screen Information and Coordination Responsibilities**

EST (MPO, FDOT, FGDL, Agencies)	FHWA/FDOT	USACE
<ul style="list-style-type: none"> <li>Project information (including but not limited to): <ul style="list-style-type: none"> <li>Purpose and Need</li> <li>Agency comments</li> <li>Project description</li> <li>PED</li> <li>Refined GIS line work</li> <li>Previous screening results, if applicable</li> <li>Results of preliminary studies</li> <li>GIS analysis and resource maps (Social and Economic, Cultural,</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>In MPO areas, FDOT assists in developing the purpose and need and logical termini.</li> <li>In non-MPO areas, FDOT in consultation with FHWA (when appropriate) establishes the purpose and need and logical termini.</li> <li>In MPO and non-MPO areas, FDOT assists in developing the purpose and need and logical termini for SIS projects.</li> <li>Distribute AN package to</li> </ul>	<ul style="list-style-type: none"> <li>Assign project reviewer.</li> <li>Develop an understanding of the proposed transportation project by reviewing the project description, purpose and need, PED, EST GIS analysis, project and resource maps, and comments from previous activities.</li> <li>Verify that information available in the EST from the USACE is the best available. Identify information gaps or data needed to support further evaluation.</li> <li>When applicable, review and comment on AN package and assist with scoping activities. Review project purpose and</li> </ul>



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EST (MPO, FDOT, FGDL, Agencies)	FHWA/FDOT	USACE
<p>Natural, and Physical)</p> <ul style="list-style-type: none"> <li>▪ Community characteristics</li> <li>▪ Project limits and logical termini</li> <li>▪ Mobility alternatives</li> <li>▪ AN package</li> <li>▪ Coastal Zone Consistency Determination (only federal projects)</li> <li>▪ Clean Air Act Conformity Designation (only federal projects)</li> <li>▪ Agency plans and programs</li> <li>▪ Agency-specific GIS data</li> </ul>	<p>agencies including all ETAT agencies.</p> <ul style="list-style-type: none"> <li>▪ Determine type of Environmental Documentation/COA.</li> <li>▪ Establish an interdisciplinary project team, as appropriate.</li> <li>▪ Develop and disseminate MM and resulting ACER, when applicable.</li> <li>▪ Coordinate with USACE on agency jurisdictional issues.</li> <li>▪ Produce Programming Screen Summary Reports (Preliminary and Final) which include:               <ul style="list-style-type: none"> <li>▪ Project description</li> <li>▪ Purpose and need</li> <li>▪ PED</li> <li>▪ COA Determination (i.e., Type 2 Categorical Exclusion [CE], Environmental Assessment [EA], Environmental Impact Statement [EIS], or SEIR)</li> </ul> </li> <li>▪ Identification of Cooperating and participating agencies, as appropriate</li> <li>▪ GIS analysis and mapping</li> <li>▪ Agency comments, issues, and recommendations for potential direct, indirect, and cumulative effects</li> <li>▪ Issue resolution activities, if any</li> <li>▪ SDOE and FDOT ETDM Coordinator comments, including actions to address ETAT agency comments</li> <li>▪ Summary of public involvement activities, comments, and identification of any community desired project features</li> <li>▪ Identification of technical studies, permits, and</li> </ul>	<p>need and acknowledge understanding or ask for clarification.</p> <ul style="list-style-type: none"> <li>▪ Review projects for existing conditions and potential direct and indirect effects to resources under the USACE jurisdiction.</li> <li>▪ Provide comments about potential effects and recommendations to avoid or address effects. If potential direct or indirect effects are identified, comment on the type, quality, and sensitivity of the resources involved in relation to the resources' location to the proposed project and related activities. Be as specific as possible.</li> <li>▪ Provide comments in the EST for each screened project alternative for the Navigation and Wetlands issues.</li> <li>▪ Supplement information in the EST with additional sources and personal knowledge, such as data gathered from site visits.</li> <li>▪ If the project does not impact resources of interest or a detailed evaluation is not necessary during the PD&amp;E phase, indicate this as well.</li> <li>▪ For scoping purposes, provide comments regarding potential cumulative effects to a resource and provide information for the Lead Agency's consideration when evaluating cumulative effects.</li> <li>• Identify potential resource avoidance and minimization recommendations, issues which may arise during permitting, and mitigation needs based on statutes and regulations.</li> <li>▪ Specifically identify differences in potential jurisdictional resource impacts among alternatives.</li> <li>▪ Identify specific activities that FDOT or other ETAT member(s) could complete after the Programming Screen or during PD&amp;E to address concerns or fill in data gaps (e.g., seasonal studies, site inspections and advancing technical studies).</li> <li>▪ Indicate a DOE for each issue and alternative being reviewed. A DOE reflects the magnitude of potential projects effects (direct and indirect effects) caused by a particular alternative to a resource.</li> <li>• Review and respond to a proposed MM,</li> </ul>

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EST (MPO, FDOT, FGDL, Agencies)	FHWA/FDOT	USACE
	project recommendations <ul style="list-style-type: none"> <li>Adopt planning products, as appropriate, for use in the NEPA process</li> </ul>	when applicable. <ul style="list-style-type: none"> <li>Review ACERs, when available.</li> <li>Identify the permit review process expected to be used (Standard, Nationwide, or Regional General Permits), anticipated concerns, and information on Mitigation Banks and In Lieu Fee Programs, and other information relevant to the review.</li> <li>Identify required technical studies.</li> <li>Indicate the need for future coordination (e.g., consultation, permits, and technical studies).</li> <li>Request Participating or Cooperating Agency status (see Section 4.4), if appropriate, for consideration by the Lead Federal Agency.</li> <li>Respond to Participating and Cooperating Agency requests from the Lead Federal Agency.</li> <li>Submit comments via the EST within 45 calendar days of notification.</li> <li>Participate in issue resolution, as needed, to assist the ETDM Coordinator in identifying solutions to project concerns.</li> <li>Review the Programming Screen Summary Report and provide agency comments, if applicable, within 30 calendar days of notification.</li> </ul>

## 4.3. Project Development & Environment Phase

During the PD&E phase, FDOT performs preliminary engineering, conducts environmental analysis and public involvement activities, and prepares necessary studies and reports as described in the FDOT PD&E Manual. During this phase, USACE will promptly identify information deemed essential to make a public interest determination (including, where applicable, a determination of compliance with the Section 404(b)(1) guidelines or ocean dumping criteria) The COA determination dictates the type of Environmental Document prepared during the PD&E phase. Federal environmental documents are developed in compliance with the Council on Environmental Quality (CEQ) regulations implementing NEPA at 40 CFR Parts 1501-1508, FHWA NEPA implementing regulations at 23 CFR Part 771, and USACE Regulatory Program NEPA implementing regulations at 33 CFR Part 325 Appendix B; see PD&E Manual, Part 1, Chapter 2 for more information about environmental COA determinations. For non-federally funded transportation projects where a federal action is required, USACE or another Federal agency will be the lead Federal agency and will determine the appropriate class of action in coordination with FDOT, per Part 1, Chapter 10 of the PD&E Manual.

Table 3 outlines information for which USACE has review and comment responsibility during the PD&E phase. It also addresses FHWA, FDOT, and USACE review and coordination responsibilities.

**Table 3 – Project Development & Environment Phase Information and Responsibilities**

FDOT	FHWA	USACE
<i>Alternatives Analyses</i>		
<ul style="list-style-type: none"> <li>Develop and analyze alternatives.</li> </ul>	<ul style="list-style-type: none"> <li>Review and comment on</li> </ul>	<ul style="list-style-type: none"> <li>Review and comment on alternatives and</li> </ul>



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FDOT	FHWA	USACE
<ul style="list-style-type: none"> <li>Assess impacts of alternatives.</li> <li>Consult with USACE regarding potential impacts, avoidance and minimization recommendations, Best Management Practices (BMPs), and opportunities for mitigation.</li> </ul>	alternatives.	<p>analysis relative to the public interest determination (including, where applicable, a determination of compliance with the Section 404(b)(1) guidelines or ocean dumping criteria).</p> <ul style="list-style-type: none"> <li>Coordinate with FDOT regarding potential impacts, avoidance and minimization recommendations, Best Management Practices (BMPs), and opportunities for mitigation, as requested.</li> </ul>
<i>Technical Studies/Reports and Permits</i>		
<ul style="list-style-type: none"> <li>Complete technical studies and permits as appropriate, such as:               <ul style="list-style-type: none"> <li>Endangered Species Biological Assessment</li> <li>Wetlands Evaluation Report (WER)</li> <li>Essential Fish Habitat Assessment</li> </ul> </li> <li>Submit applications (PD&amp;E Manual, "Environmental Permitting", Section 10-3.5)</li> </ul>	<ul style="list-style-type: none"> <li>Review and comment on relevant technical reports within 30 calendar days.</li> </ul>	<ul style="list-style-type: none"> <li>Review, comment, and/or provide recommendations from appropriate agency specialists on relevant technical reports within 30 calendar days of notification.</li> <li>Provide specific comments to enable the reports to be used for the public interest determination (including, where applicable, a determination of compliance with the Section 404(b)(1) guidelines or ocean dumping criteria)</li> <li>Review applications (33 CFR Parts 320-332).</li> </ul>
<i>Type 2 Categorical Exclusion (CE)/Environmental Assessment (EA)/Draft Environmental Impact Statement (DEIS)</i>		
<ul style="list-style-type: none"> <li>Incorporate information from technical reports and permits into the Environmental Document.</li> <li>Complete:               <ul style="list-style-type: none"> <li>Type 2 CE or EA and make publicly available; or</li> <li>DEIS and submit for review to FHWA, Cooperating Agencies, and Participating Agencies.</li> </ul> </li> <li>Identify opportunities, constraints and feasibility of Joint Public Notice and Hearing, if appropriate.</li> <li>Hold public hearing and prepare transcript and certification, as appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>Publish Notice of Intent for EIS, as applicable.</li> <li>Review and act on Type 2 CE, EA, or DEIS and provide comments within 30 calendar days.</li> <li>Attend public hearing and participate, as appropriate.</li> <li>Submit Notice of Availability (NOA) of DEIS for publication in the Federal Register (FR).</li> <li>Identify, invite, and involve Cooperating and Participating Agencies, as appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>Independently review the environmental document pursuant to 40 CFR Sections 1506.3 and 1506.5 and 33 CFR Part 325 Appendix B Paragraph 8.c. and 20.</li> <li>Review, comment, and/or provide recommendations from appropriate agency specialists on:               <ul style="list-style-type: none"> <li>Type 2 CE or EA within 30 calendar days of notification; or</li> <li>DEIS, if Cooperating Agency, within 30 calendar days prior to public availability; or</li> <li>Publically available DEIS within 45 calendar days of notification.</li> </ul> </li> <li>Upon request, comment on applicability and accuracy of presentation of USACE Regulatory Program information for use at public hearings</li> <li>Review and comment on environmental document, specifically identifying <u>potential</u> jurisdictional and permit issues within regulatory authority.</li> <li>Upon request, attend public hearing and participate, as appropriate.</li> </ul>

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FDOT	FHWA	USACE
<i>State Environmental Impact Report (SEIR)</i>		
<ul style="list-style-type: none"> <li>■ Incorporate information from relevant technical reports into SEIR.</li> <li>■ Complete SEIR and make publicly available.</li> <li>■ Hold public hearing and prepare transcript and certification, as appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>■ State document - No FHWA involvement.</li> </ul>	<ul style="list-style-type: none"> <li>■ Review, comment, and/or provide recommendations related to jurisdictional and regulatory resources from appropriate agency specialists on publicly available SEIR within 30 calendar days.</li> <li>■ Upon request, attend public hearing and participate, as appropriate.</li> <li>■ Upon request, provide technical assistance regarding jurisdictional and regulatory resources for use at public hearings.</li> <li>■ Review and comment on the SEIR, specifically identifying jurisdictional and permit issues within regulatory authority.</li> </ul>
<i>Finding Of No Significant Impact (FONSI)/Final Environmental Impact Statement (FEIS)</i>		
<ul style="list-style-type: none"> <li>■ Complete and document decisions in FONSI or FEIS.</li> <li>■ Submit FONSI for review to FHWA and/or other Lead Agencies.</li> <li>■ Submit draft FEIS for review to FHWA and/or other Lead Agencies and Cooperating Agencies, and as appropriate to Participating Agencies.</li> <li>■ Respond to comments.</li> <li>■ Apply for project permits concurrent with NEPA approval, as appropriate.</li> <li>■ Make FEIS publically available.</li> </ul>	<ul style="list-style-type: none"> <li>■ Review and act on FONSI or FEIS within 30 calendar days of notification.</li> <li>■ Submit NOA of FEIS for publication in the FR.</li> <li>■ Issue Record of Decision (ROD) for FEIS.</li> <li>■ Determine preferred alternative.</li> <li>■ Location and Design Concept Acceptance.</li> </ul>	<ul style="list-style-type: none"> <li>■ If Cooperating Agency, review and provide comments on the draft FEIS within 30 calendar days pursuant to 40 CFR Sections 1506.3 and 1506.5.</li> <li>■ Review publicly available FEIS within 30 calendar days.</li> <li>■ If the NEPA document is an EA, USACE will determine whether to adopt the EA pursuant to 40 CFR Section 1506.3 and 33 CFR Part 325 Appendix B Paragraph 8.c. and 20 and draft its own combined Statement of Findings (SOF)/FONSI</li> <li>■ If the NEPA document is an EIS, USACE will determine whether to adopt the EIS pursuant to 40 CFR Section 1506.3 and 33 CFR Part 325 Appendix B Paragraph 8.c. and 20 and draft its own combined Statement of Findings (SOF)/ROD</li> </ul>
<i>Environmental Reevaluation</i>		
<ul style="list-style-type: none"> <li>■ Environmental reevaluation and consultation with USACE (as appropriate) on design modifications and any changes to SEIR, Type 2 CE, EA with FONSI, or ROD commitments.</li> </ul>	<ul style="list-style-type: none"> <li>■ Review and act on Environmental Reevaluation.</li> <li>■ Monitor implementation of Type 2 CE, EA with FONSI or ROD commitments, as appropriate.</li> <li>■ FHWA does not review SEIRs.</li> </ul>	<ul style="list-style-type: none"> <li>■ Consult with FDOT on project impact determinations to assure compliance with SEIR, Type 2 CE EA with FONSI, or ROD commitments, as appropriate.</li> </ul>

## 4.4. Participating/Cooperating Agency

USACE may serve as a Participating or Cooperating Agency and partner with FHWA and FDOT on federal projects pursuant to 40 CFR Section 1501.6 23 U.S.C., as amended and 33 CFR Part 325 Appendix B.

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## 4.5. Training and Educational Programs

FDOT will provide training to USACE to explain the ETDM process, PD&E process, use of the EST and various aspects of the transportation delivery process. Other training opportunities may be made available to USACE and FDOT staff regarding natural, historic, and sociocultural resource issues as available or needed. ETAT representatives, to the extent feasible, are expected to attend relevant trainings.

USACE will provide training to FDOT and FHWA regarding its regulations and initiatives, as needed. USACE training and travel may occur within and outside of the state of Florida. All training and travel must be related to FDOT project review, enhancing agency expertise to support this AOFA and/or related to the ETDM process. All travel or training requests by USACE not directly tied to FDOT project review or ETAT and ETDM activities must receive written preapproval from FDOT's SEMO.

## 4.6. Periodic Agency Coordination

ETAT representatives will meet periodically with ETDM Coordinators and FDOT SEMO staff to coordinate and discuss ETDM program activities, including, without limitation, workload, staffing, resource needs, and agency initiatives and directives. At these meetings and any District-wide ETAT meetings, the participants will exchange information related to the efficiency of the ETDM process, ETAT agency sponsored training opportunities, and proposed changes to law. Additionally, participants shall discuss and comment on implications to FDOT, FHWA, and/or resource agencies from rule changes, program and policy updates, and development of management plans and procedures. As appropriate, USACE will coordinate with FDOT and FHWA to develop implementation plans.

## Section 5. Personnel

### 5.1. USACE ETAT Representative

USACE agrees to provide ETAT representatives to support the ETDM process. USACE ETAT representatives shall coordinate and perform timely agency reviews of FDOT projects to ensure projects meet agency statutory and regulatory requirements. USACE ETAT representatives should possess the qualifications outlines in Appendix B. Moreover, USACE ETAT representatives are responsible for USACE jurisdictional issues and functions related to transportation projects, as detailed in Tables 1, 2, and 3 of this AOFA. The individual(s) selected to serve in this capacity should be:

- Knowledgeable in agency statutory authority and regulatory requirements
- Knowledgeable of their agency's role in reviewing transportation projects (e.g., planning, PD&E, permitting, construction, post-construction, monitoring)
- Able to perform and understand environmental effects analyses
- Respected within the agency, afforded access to key decision-makers, able to coordinate internally to develop the agency position, and entrusted to represent the agency
- Cognizant of the different, yet related, perspectives of other agencies and able to formulate solutions and function as a problem solver
- Effective in resolving disputes
- Proficient in computer usage, including the internet
- An effective verbal and written communicator
- Able to anticipate agency actions required as projects proceed through phases and to prepare those responsible for prompt, efficient review of the project to minimize delays in permitting and other agency authority
- Able to coordinate and expedite agency permitting processes, as applicable
- Able to effectively communicate within the agency and convey agency's comments on projects regarding resources within USACE's jurisdictional authority.

If the ETAT representative is unable to perform their duties, the agency will identify an alternate to complete review responsibilities in the agreed upon timeframes.

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## 5.2. FDOT ETDM Coordinator

Each of FDOT's seven District offices and Florida's Turnpike Enterprise (FTE) have identified an ETDM Coordinator responsible for administering the ETDM process, as specified in Tables 1, 2, and 3 of this AOFA. FDOT ETDM Coordinator duties are further described in the ETDM Manual. If the ETDM Coordinators are unable to perform their duties, the applicable FDOT District Office or the FTE will identify an alternate ETDM Coordinator to complete the FDOT/FTE responsibilities in the agreed upon timeframes.

## Section 6. Technology Requirements

The successful implementation of the ETDM process relies on the quality of information within the EST. As such, each agency's ETAT representative will serve as the agency contact and be responsible for obtaining digital information about the agency's jurisdictional resources, as well as for ensuring that USACE information remains current and available to the GeoPlan Center for use with the ETDM Process. New resource information from agency plans, initiatives, research projects, and field reviews shall be made available to FGDL within 30 calendar days of completion. The ETAT agency shall provide digital information to the GeoPlan Center at no cost. The information will include metadata, documentation that describes the format, intent, and source material used to develop and maintain the information. ETAT representatives will coordinate with the GeoPlan Center to ensure that transmitted data meets the quality and format protocols of the EST.

ETAT representatives shall have access to a computer with internet connectivity adequate enough to ensure the effective use of the EST and to exchange e-mail messages with other ETAT members. The *minimum* hardware and software requirements for ETAT representative computers are as follows:

### 6.1. Computer Operating System

- Microsoft Windows 32 bit & 64 bit Windows 7

### 6.2. Minimum Hardware

- 2 GHz, Intel or equivalent AMD Processor (3 +GHZ dual core processors recommended)
- 1024 X 768 video card resolution
- 30 Gigabytes of free disk space
- 1 Gigabyte of RAM (2-8 Gigabytes of RAM recommended)
- 17-inch color monitor (19+inch recommended)
- 128 KB Internet connection (T-1 recommended)
- Access to color printer recommended, but not required

### 6.3. Software

- Microsoft Internet Explorer, version 9.0 (specific version requirement – not a minimum).
- Adobe Acrobat Reader, version 8.0 or higher
- Latest version of GoTo Meeting/Webinar.
- Latest version of windows media player

## Section 7. Performance Standards

ETAT Agency Performance Standards are based on the fulfillment of agency responsibilities and level of involvement, quality of reviews, number of revisions, number of requests for additional substantive information, interagency communication and coordination, and review delays. Other performance measures include providing specific information about data needs to achieve compliance with the statutory and regulatory requirements, including but not limited to, those contained in Appendix A, documentation of the consultation process, documentation of commitments (including future coordination, avoidance and minimization strategies, and mitigation opportunities) to protect resources and documentation of all actions designed to expedite

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NEPA analyses and permit decisions. Performance standards established for the FDOT and ETAT agencies include but are not limited to:

- ETAT agency review of Planning and Programming Screens within 45 calendar days of notification
- FDOT response to comments and inquiries within 30 calendar days
- FDOT response to requests for additional information within 30 calendar days
- Timely coordination to establish and meet quality assurance protocols for digital information
- Completion of the ETDM Issue Resolution Process within 120 calendar days, if applicable
- Review of requested environmental documents and technical reports within 30 calendar days, with the exception of the DEIS, which is 45 calendar days once approved for public availability

ETAT members are expected to participate in FDOT-requested activities. ETAT members are also expected to provide meaningful, substantive evaluations and comments regarding their jurisdictional areas with recommendations to address issues and facilitate timely permit decisions. The agency's performance will be tracked and monitored in the ETDM Performance Management Program. FDOT will provide the agency with periodic performance reports from the ETDM Performance Management Program.

### Section 8. ETDM Issue Resolution Process

In an effort to efficiently advance evaluation of projects, the parties agree to the ETDM Issue Resolution process described herein. This process seeks to find solutions to complex issues among agencies by identifying mutually agreeable activities or conditions that will address a resource concern while meeting the transportation need. Issue resolution activities may continue through future project delivery phases as detailed analysis begins and more information becomes available.

A strong commitment exists among the participants in the ETDM process to resolve issues within the ETAT, prior to elevating them to higher level management (see Figure 2). To facilitate meeting this commitment, potential disputes should be addressed as early as possible to make the best use of agency skills and resources. Projects with unresolved issues following the ETAT review and publication of the Preliminary Programming Screen Summary Report require commencement or continuation of the ETDM issue resolution process.

The informal issue resolution process begins when the ETDM Coordinator in consultation with the Lead Agency assigns a *Potential Dispute* SDOE in the Planning Screen or *Issue Resolution Process Required* SDOE during a Programming Screen review. When assigning the SDOE, the ETDM Coordinator uses all known information including comments and DOEs from ETAT members. The ETDM Coordinator reviews the potential dispute commentary to determine its consistency with the definition of *Potential Dispute* or *Issue Resolution Process Required* (see the ETDM Manual, Chapters 3 and 4) and in conjunction with the agency's regulatory authority.

An ETAT representative may, based on its jurisdictional or regulatory authority, flag a project as potentially needing issue resolution with the following triggers:

- Project is considered to be unpermittable (applicable to permitting agencies).
- Project is identified to be contrary to a state or federal resource agency's program, plan, or initiative (including Florida's Coastal Management Program or Local Government Comprehensive Plans).
- Project has the potential for significant environmental cost (e.g., monetary, environmental effects, or quality of life).
- Project purpose and need is questioned (only applicable to Lead Agency - identified by the Lead Agency not accepting the purpose and need).

Initially, the ETDM Coordinator works with the appropriate ETAT representative(s) to informally resolve the disputed issue(s) at the agency staff level before elevating the discussion to the Formal Issue Resolution process. The agency heads (or governing board, as applicable), will make the final decision on how to address unresolved issues.

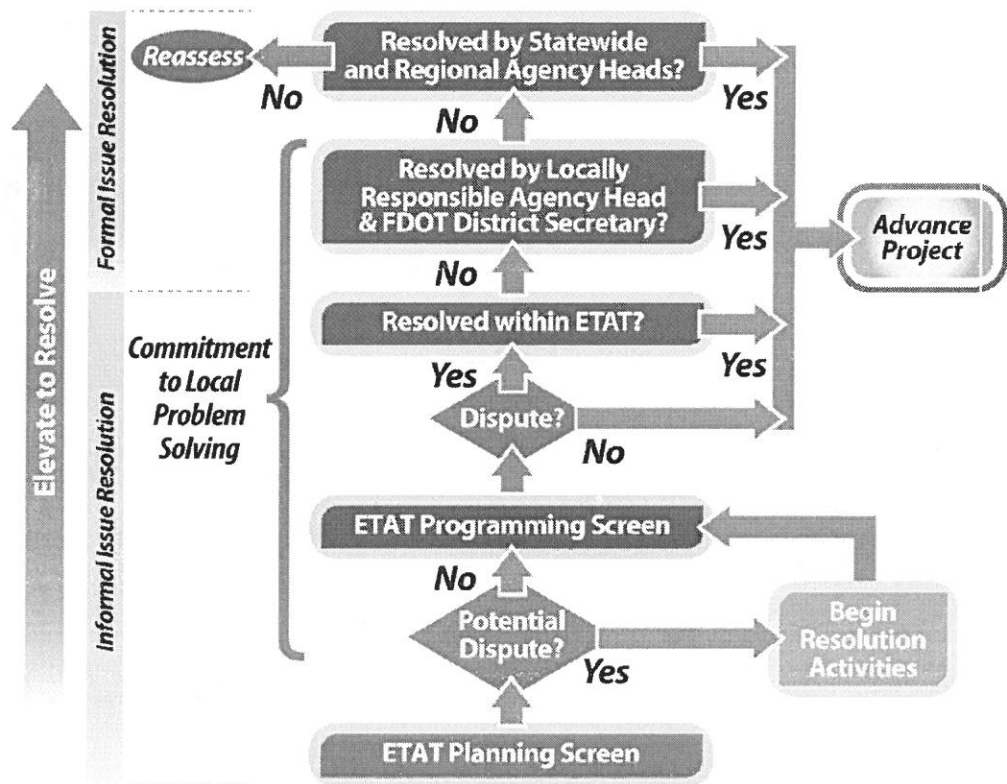
Any agreements, understandings, and/or recommendations resulting from the dispute resolution process in the Planning or Programming Screens are documented and accompany the project as it advances into the PD&E phase. If there are unresolved issues



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for projects undergoing NEPA review, then the “issue resolution” process set out in *Moving Ahead for Progress in the 21<sup>st</sup> Century* (MAP-21) will be applicable. The MAP-21 process establishes a series of forums for issues to be resolved, and if not resolved, to which the issues would then advance, including potential financial penalties for unexcused delays by participating agencies.

Figure 2 – Issue Resolution Process



NOTE: Issue Resolution identifies mutually agreeable activities or conditions addressing a resource concern while meeting the transportation need. Issue resolution activities may continue through future project delivery phases.

### Section 9. Financial Statement

A. FDOT shall provide USACE, subject to appropriation and the advance payment provisions enumerated below (Section 9, items C and E), an annual allocation of **\$520,000.00** and a total sum not to exceed **\$2,600,000.00** according to the schedule shown in Appendix C, attached and incorporated herein, ending on June 30, 2020 or 5 years from the date of signature, whichever comes later, subject to the USACE’s authority under Section 214. This sum is based upon the parties’ best estimate of the minimum funding required by USACE to fulfill its obligations under this AOFA. If it becomes apparent that the funding amount established in this AOFA is inadequate for the services requested to be performed, the parties agree in good faith to renegotiate the level of funding and service or prioritize project reviews.

USACE shall use the funds provided under this AOFA in a manner consistent with Section 214 for all costs necessary to fulfill its obligations under this AOFA, including but not limited to the expenses of salaries and associated benefits, including the pro rata cost of necessary equipment, supplies, office space, overhead, and training and to reimburse reasonable travel expenses in

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accordance with Federal Travel Regulations, 41 CFR Chapters 300-304. All training and travel must be related to FDOT project review, enhancing agency expertise to support this AOFA and/or related to the ETDM process. All travel or training requests by USACE not directly tied to FDOT project review or ETAT and ETDM activities must receive written preapproval from FDOT's SEMO.

B. Commencing June 30, 2015 and continuing for each quarter thereafter, FDOT shall provide USACE an advance payment per quarter of up to **\$130,000.00**, on or before the beginning of each quarter, for the services provided pursuant to this AOFA. To obtain each advance quarterly payment, USACE shall, consistent with Section 215.422, F.S., submit to FDOT using the EST's invoicing module a quarterly invoice at least twenty-one (21) days prior to the funding disbursement due date.

C. USACE shall be responsible for the proper billing of any federal/state reimbursable costs or charges. The USACE shall submit quarterly invoices and documents necessary for payment and the close-out of this AOFA to SEMO. SEMO will provide instructions and training for using the EST's invoicing module, and further guidance through the Funded Position Reference Handbook. Invoices must be submitted in detail sufficient for pre- and post-audit review and list salaries, benefits, overhead, travel, expenses and other indirect costs, including back-up documentation and a status report that lists the number of hours spent working on FDOT projects, project review tasks, and other tasks described herein. USACE agrees to coordinate with SEMO prior to conducting any activity not explicitly defined in this AOFA to ensure funding eligibility.

D. All public agencies receiving advance payments must establish an authorized method which segregates those funds provided pursuant to this agreement. No less than 90 days prior to the expiration of this AOFA, FDOT and USACE will initiate reconciliation and contract close-out activities. Any unspent balance of advanced funds plus accrued interest to be returned to FDOT within 90 days of the execution of Certification of Completion Agreement (FDOT Form 375-040-25).

E. USACE shall keep records of all costs incurred (receipts and disbursements of funds received) pursuant to this AOFA and produce such records as requested by FDOT and FHWA and shall allow extracts and copies to be made by FDOT and FHWA or their duly authorized representatives. USACE shall also keep records substantiating costs billed pursuant to this AOFA in accordance with Florida Statutes for a period of at least five (5) years after the final billing is submitted. These records shall be subject to audit by FDOT and FHWA, as appropriate.

FDOT shall send payment of the invoices to:

U.S. ARMY CORPS OF ENGINEERS  
F&A Officer  
P.O. Box 4970  
Jacksonville, FL. 32231-0019

F. Agencies invoicing FDOT for goods and services should be aware of the following timeframes. Upon receipt, FDOT has five (5) working days to inspect and approve the goods and services. FDOT has twenty (20) working days to deliver a request for payment (voucher) to the Florida Department of Financial Services (FDFS). The 20 working days are measured from the latter of the dates the invoice is received or the goods or services are received, inspected, and approved. Payments shall be processed pursuant to Section 215.422, F.S. If payment is not available within 40 working 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 USACE. Interest penalties of less than one (1) dollar shall not be enforced unless USACE requests payment. Invoices which have to be returned to USACE because of USACE 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. USACE agrees to promptly reimburse FDOT for any and all amounts for which FDOT has made payment to USACE if such amounts become ineligible, disqualified or disallowed for federal reimbursement due to any act, error, omission, or negligence of USACE, including over payment, missing or deficient documentation of costs and charges, untimely, incomplete, or insufficient submittals, or any other appropriate reason identified by FDOT.

H. The USACE understands that if it fails to timely perform its obligations, or timely submit invoices and documents necessary for the close out of projects, FDOT may deny reimbursement or advance funding requests. Additionally, the maximum limiting amount of this AOFA may become unavailable or reduced due to a removal or withdrawal of federal funds or a loss of state appropriation, and FDOT will have no obligation to provide funds from other sources. USACE agrees that in the event the maximum



## **EXECUTED**

limiting amount of this AOFA is reduced by such removal, withdrawal, or loss of funds, USACE will be solely responsible for payment of costs and outstanding invoices no longer reimbursable due to the loss of funding.

### **Section 10. Period of Performance and Evaluation**

A. The term of this AOFA shall commence upon signature or June 30, 2015, whichever comes later and end on June 29, 2020 or five (5) years from date of signature, whichever comes later, unless terminated sooner in accordance with Section 10(B) below. This AOFA can also be extended in accordance with the procedure set forth in Section 13 below. The payment for associated work shall be inclusive of all work performed up to and including the date of expiration or termination.

B. Any party may terminate this AOFA upon sixty (60) days written notice to the Project Officers listed in Section 11 provided that the party requesting termination has provided notice and sufficient opportunity for remedy.

C. USACE, FDOT, and FHWA shall meet periodically to review and evaluate activities contemplated under this AOFA and formulate suggestions for process improvements. USACE, FDOT, and FHWA shall participate in the ETDM Performance Survey and subsequent meetings to discuss the findings.

D. On a quarterly basis FDOT will issue from its Performance Management Program an electronic report to USACE and FHWA measuring USACE's performance under this AOFA.

E. The AOFA shall supersede any prior understanding, agreement, memorandum, letter, or other written or oral arrangement between the parties relating to the matters covered therein.

### **Section 11. Project Officers**

#### ***United States Army Corps of Engineers***

Kelly Unger or designee  
Regulatory Division  
701 San Marco Boulevard  
Jacksonville, Florida 32207-0010  
Tel: (904) 232-2203  
Fax: (904) 232-1684

#### ***Florida Department of Transportation***

Ken Morefield or designee  
Florida Department of Transportation  
605 Suwannee Street, MS 37  
Tallahassee, Florida 32399-0450  
Tel: 850-414-4316  
Fax: 850-414-4443

#### ***Federal Highway Administration***

Buddy Cunill or designee  
Federal Highway Administration – Florida Division  
545 John Knox Road, Suite 200  
Tallahassee, Florida 32303-4117  
Tel: 850-553-2224  
Fax: 850-942-9691

### **Section 12. Mandatory Provisions**

A. During the performance of this AOFA, the parties agree they will not discriminate against any person because of race, color, religion, sex, or national origin.

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**B. The USACE:**

- a. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all employees serving as ETAT members hired by the USACE during the term of the AOFA; 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.

### **Section 13. Modification**

Any changes, amendments, corrections, or additions to this AOFA, shall be in writing and shall be executed and approved by the project officers (or their designees) listed in Section 11, unless the modifications expand the Statement of Work or budget, which will require then the same officials (or their designees) who executed and approved this AOFA and shall become effective upon signature of all parties in the same manner as this AOFA.

### **Section 14. Disclosure**

A. As required by Section 339.135(6)(a), F.S., 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. FDOT will provide a written notice to proceed when the funding is available for performance of this AOFA. Until that notice, no services shall be provided under the terms of this AOFA, and FDOT will not be liable for any expenses incurred prior to such notice.

C. Pursuant to Section 216.347, F.S., no funds received pursuant to this AOFA may be expended for lobbying the legislature, the judicial branch, or a state agency.

D. The State of Florida performance and obligation to pay under this AOFA is contingent upon an annual appropriation by the Florida Legislature and receipt of budget authority.

E. A Vendor Ombudsman has been established within the Florida Department of Financial Services (FDFS). 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 850-410-9724 or by calling the FDFS Hotline, 1-800-848-3792.

F. Any tangible property outside of that normally and reasonably required to provide the services for this AOFA per Section 9 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 this AOFA, whichever comes first, will become the property of FDOT and be transferred to and controlled by FDOT. Upon receipt of said property, USACE shall forward to FDOT a copy of the purchase invoice/property description/serial number and date of receipt for their records. USACE 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 AOFA, the vendor shall coordinate with SEMO.

### **Section 15. Rights of Others**

Nothing in this AOFA, expressed or implied, is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this AOFA.

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## Section 16. Entire Agreement

This AOFA constitutes the entire agreement between the parties relating to the subject matter herein. There exist no representations or warranties other than those set forth herein.


## Section 17. Knowing and Voluntary Participation of Parties


Each party fully participated in the drafting of this AOFA and understands its rights and obligations hereunder, and is signing this AOFA freely and voluntarily, intending to be bound by it.

## Section 18. Signatures


The parties have caused this AOFA to be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

  
\_\_\_\_\_  
Signature      Date  
Secretary  
Florida Department of Transportation

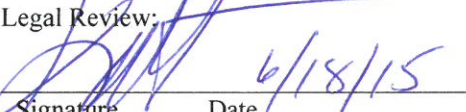
  
\_\_\_\_\_  
Signature      Date  
for Florida Division Administrator  
Federal Highway Administration

  
\_\_\_\_\_  
Signature      Date  
U.S. Army District Engineer  
U.S. Army Corps of Engineers

Jim Boxold  
\_\_\_\_\_  
Printed Name  
Secretary  
Florida Department of Transportation

  
\_\_\_\_\_  
Printed Name      Date  
for Florida Division Administrator  
Federal Highway Administration

Alan M. Dodd  
Colonel, U.S. Army  
District Commander  
\_\_\_\_\_  
Printed Name      Date  
U.S. Army District Engineer  
U.S. Army Corps of Engineers

Legal Review:  
  
\_\_\_\_\_  
Signature      Date  
Kathleen Toolan  
\_\_\_\_\_  
Printed Name

## Appendix A. Applicable Laws, Regulations, Executive Orders and Agency Guidance

Agency	Citation
<i>Florida Department of Transportation &amp; Federal Highway Administration</i>	<p><b>FEDERAL STATUTES</b></p> <ul style="list-style-type: none"> <li>▪ 16 United States Code (U.S.C.) 470 et seq, National Historic Preservation Act of 1966, as amended</li> <li>▪ 23 U.S.C. 101, <i>et seq.</i>, Highways</li> <li>▪ 23 U.S.C. 109(h), Highways – Standards, as amended</li> <li>▪ 42 U.S.C. 2000d-2000d-7, Title VI of the Civil Rights Act of 1964, as amended</li> <li>▪ 42 U.S.C. 4321-4370h, National Environmental Policy Act (NEPA) of 1969, as amended</li> <li>▪ 49 U.S.C. 4601-4655, The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended</li> <li>▪ 42 U.S.C. 12131-12165, Title II of the Americans with Disabilities Act of 1990, as amended</li> <li>▪ 49 U.S.C. 101, <i>et seq.</i>, Transportation</li> <li>▪ 49 U.S.C. 303, Policy on Lands, Wildlife and Waterfowl Refuges, and Historic Sites; Section 4(f) of the USDOT Act of 1966, as amended</li> <li>▪ Public Law 112-141, Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21), as amended</li> </ul> <p><b>CODE OF FEDERAL REGULATIONS</b></p> <ul style="list-style-type: none"> <li>▪ 23 C.F.R. 450, Planning Assistance and Standards</li> <li>▪ 23 C.F.R. 650, Bridges, Structures and Hydraulics</li> <li>▪ 23 C.F.R. 771, Environmental Impact and Related Procedures</li> <li>▪ 23 C.F.R. 772, Procedures for Abatement of Highway Traffic Noise and Construction Noise</li> <li>▪ 23 C.F.R. 774, Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(F))</li> <li>▪ 23 C.F.R. 777, Mitigation of Impacts to Wetlands and Natural Habitat</li> <li>▪ 36 C.F.R. 800, Protection of Historic Properties</li> <li>▪ 40 C.F.R. 1500-1508, Council on Environmental Quality</li> <li>▪ 49 C.F.R. 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs</li> </ul> <p><b>EXECUTIVE ORDERS</b></p> <ul style="list-style-type: none"> <li>▪ E.O. 11990, Protection of Wetlands/USDOT Order 5660.1A, Preservation of the Nation's Wetlands</li> <li>▪ E.O. 11988, Floodplain Management</li> <li>▪ E. O. 12898, Environmental Justice</li> <li>▪ E.O. 13112, Invasive Species, as amended by Executive Order 13286 E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency</li> </ul> <p><b>AGENCY GUIDANCE</b></p> <ul style="list-style-type: none"> <li>▪ USDOT Order 5610.1C, Procedures Considering Environmental Impacts</li> <li>▪ USDOT Order 5650.2, Floodplain Management and Protection</li> <li>▪ FHWA Technical Advisory 6640.8A, Guidance for Preparing and Processing</li> </ul>

Agency	Citation
	<p>Environmental and Section 4(F) Documents</p> <p><b>FLORIDA STATUTES</b></p> <ul style="list-style-type: none"> <li>▪ Chapter 334, Florida Statutes (F.S.), Transportation Administration</li> <li>▪ Chapter 335, F.S., State Highway System</li> <li>▪ Chapter 336, F.S., County Road System</li> <li>▪ Chapter 337, F.S., Contracting; Acquisition, Disposal, and Use of Property</li> <li>▪ Chapter 338, F.S., Florida Intrastate Highway System and Toll Facilities</li> <li>▪ Chapter 339 F.S., Transportation Finance and Planning</li> </ul>
<p><i>US Army Corps of Engineers</i></p>	<p><b>FEDERAL STATUTES</b></p> <ul style="list-style-type: none"> <li>▪ Section 9 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401)</li> <li>▪ Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)</li> <li>▪ Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408)</li> <li>▪ Section 103 of the Marine Protection Research and Sanctuaries Act of 1972 (33 U.S.C. 1413)</li> <li>▪ Section 404 of the Clean Water Act (33 U.S.C. 1344)</li> <li>▪ Section 401 of the Clean Water Act (33 U.S.C. 1341)</li> <li>▪ Section 307 (c) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c))</li> </ul> <p>The National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) <b>CODE OF FEDERAL REGULATIONS</b></p> <ul style="list-style-type: none"> <li>▪ 33 C.F.R. 320, General Regulatory Policies</li> <li>▪ 33 C.F.R. 321, Permits for Dams &amp; Dikes in Navigable Waters of the U.S.</li> <li>▪ 33 C.F.R. 322, Permits for Structures in or Affecting Navigable Waters of the U.S.</li> <li>▪ 33 C.F.R. 323, Permits for Discharges of Dredged or Fill Material Into Waters of the U.S.</li> <li>▪ 33 C.F.R. 324, Permits for Ocean Dumping of Dredged Material</li> <li>▪ 33 C.F.R. 325, Processing of Department of the Army Permits</li> <li>▪ 33 C.F.R. 326, Enforcement</li> <li>▪ 33 C.F.R. 327, Public Hearing</li> <li>▪ 33 C.F.R. 328, Definition of Waters of the United States</li> <li>▪ 33 C.F.R. 329, Definition of Navigable Waters</li> <li>▪ 33 C.F.R. 330, Nationwide Permit Program</li> <li>▪ 33 C.F.R. 331, Administrative Appeal Process</li> <li>▪ 33 C.F.R. 332, Compensatory Mitigation for Losses of Aquatic Resources</li> <li>▪ 33 C.F.R. 334, Danger Zone and Restricted Areas (Procedures)</li> </ul> <p><b>PRESIDENTIAL DIRECTIVES AND EXECUTIVE ORDERS</b></p> <ul style="list-style-type: none"> <li>▪ Executive Order 11990 - Protection of Wetlands</li> <li>▪ Executive Order 11988 - Floodplain Management</li> <li>▪ Presidential Wetland Policy 1993</li> <li>▪ Reaffirmation of the Presidential Wetland Policy 1995</li> </ul>

## **Appendix B. USACE Professional Qualifications**

The USACE ETAT position(s) funded under this AOFA shall possess the knowledge and skills necessary to meet and maintain the professional standards outlined below:

- Working knowledge of USACE's statutory and regulatory authority as outlined in Appendix A of this AOFA, including but not limited to the Agency's jurisdictional resource issues, resource management, policies, guidelines, and protection initiatives.
- Understanding of the USACE's role in reviewing transportation projects and related technical reports, such as, Wetland Evaluation Reports and Drainage Reports.
- Working knowledge of the NEPA, the Rivers and Harbors Act, the Clean Water Act, Marine Protection Research and Sanctuaries Act, and the Coastal Zone Management Act; and how provisions of these acts and their implementing rules and regulations affect the planning and construction of transportation infrastructure.
- Working knowledge of the ETDM process, as well as PD&E procedures and documents.
- Ability to review, understand, and relate their area of expertise to an analysis of potential jurisdictional resource impacts from transportation projects and identify solutions to address the potential impacts.
- Specialized experience and education in wetlands, ecosystem management environmental engineering or other related Environmental Science.