

**FUNDING AGREEMENT**

**Between**

**Northwest Florida Water Management District**

**and**

**Florida Department of Transportation**

**and**

**Federal Highway Administration**

**June 1, 2011**

**Funding Agreement**  
**Northwest Florida Water Management District**  
**Continuing the Efficient Transportation Decision Making Process in Florida**

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## **Funding Agreement**

### **Northwest Florida Water Management District**

#### **Continuing the Efficient Transportation Decision Making Process in Florida**

This Funding Agreement (FA) is entered into upon signature on June 1, 2011, whichever comes later, by and between the Florida Department of Transportation (FDOT), Federal Highway Administration (FHWA), and the Northwest Florida Water Management District (NFWFMD) under the authority provided by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) § 6002.

#### **Article 1 Background and Objectives**

*Whereas*, the FDOT, FHWA, and the NFWFMD originally executed a two year and subsequent three-year FA and the parties to the FA have consulted and reviewed the current Efficient Transportation Decision Making (ETDM) Process (environmental streamlining) and have agreed to continue in the participation of the ETDM Process as signatories to the Agency Operating Agreement (AOA) and FA.

*Whereas*, Section 373.4137 Florida Statutes (F.S.), directs FDOT to furnish NFWFMD information concerning planned construction for transportation projects, including an inventory of wetlands which may be impacted by the planned construction; and,

*Whereas*, Section 373.4145 F.S., directs the Florida Department of Environmental Protection (FDEP) and NFWFMD to set forth Environmental Resource Permitting (ERP) in the geographical jurisdiction of NFWFMD which is detailed in Chapter 62-346 Florida Administrative Code (F.A.C.); and,

*Whereas*, FDOT has increased the number of transportation projects and activities which NFWFMD reviews as part of the ETDM Process, and FDOT desires that NFWFMD continue its level of involvement with projects during the planning, programming, and project development processes, such that final NFWFMD reviews do not constitute an unnecessary delay in FDOT project implementation; and,

*Whereas*, NFWFMD will treat the entire ETDM Process as a "pre-application review" to provide comments on and gain familiarity with a project so they can transition from "pre-application review" to permit issuance once the necessary environmental and engineering data are available; and,

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

*Whereas*, all parties have determined that it is mutually beneficial to increase NFWFMD's involvement to enable NFWFMD to provide FDOT with priority project review and recommendations, as part of the ETDM 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 NFWFMD for staff expenses required to provide FDOT with priority project review to meet FDOT project requirements as part of the ETDM Process, and not already covered by other funding sources; and,

*Whereas*, FHWA would be able to participate in the reimbursement of funds expended by FDOT for increases in expenses by NFWFMD not already covered by other funding sources, provided (1) NFWFMD has the statutory authority to charge on a reimbursable basis, and (2) the service provided, as identified in Attachment B, is beyond normal work performed on transportation projects and not already covered by other funding sources; and,

*Whereas*, NFWFMD has determined that the service provided to participate in the ETDM Process, as identified in Attachment B, is beyond the normal work it performs on transportation projects and not already covered by other funding sources; and,

*Whereas*, the parties hereto desire to enter into this FA to facilitate the cooperation of the parties in the review of transportation projects and provide for the personnel and funds necessary 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:

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##### **Article II            Statement of Work**

- A. NFWFMD will adjust or supplement its staff resources, which may include outsourcing, to review and process FDOT projects with qualified project review specialist(s) and other personnel as detailed in Attachment A, attached and incorporated herein. NFWFMD shall use the funds provided under this FA to defray the costs of salaries and associated benefits, including necessary training, overhead and to reimburse reasonable intrastate travel expenses in accordance with FDOT's State Travel Procedures and Section 112.061, F.S., which are hereby incorporated by reference. All travel shall be related to projects and the ETDM Process. Any training must enhance the employee's expertise and contribute to meeting environmental process needs.
- B. For the periods of time when NFWFMD staff are funded under this FA they shall work exclusively (100%) 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, programming and project development.
- C. NFWFMD shall review and respond to FDOT's ETDM review screens (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). NFWFMD will review all project information contained in the ETDM Database using the EST. Once the project moves into the project development and environment (PD&E) documentation phase, NFWFMD shall review and respond to FDOT submissions within thirty (30) calendar days of receipt of complete project documentation. FDOT and NFWFMD shall mutually agree upon the date when the review period commences, based upon submittal of complete project documentation. Verbal concurrence between FDOT and NFWFMD 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, FDOT and NFWFMD shall mutually agree upon the date when the review period begins to run again. In the event the number of FDOT project submissions exceeds NFWFMD's staffing capability to meet the deadlines as stated above, both parties agree to negotiate a mutually beneficial date for NFWFMD completion of project reviews.
- D. NFWFMD staff will keep time records identifying the number of hours spent working on FDOT projects and work tasks defined in Attachment B through use of the Program Review Form. These records will account for one hundred percent (100%) of the time worked by each employee on FDOT related projects. In addition, NFWFMD shall keep accurate and separate accounting records of all receipts and disbursements of funds received pursuant to this FA 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. NFWFMD shall keep records substantiating hours and costs billed pursuant to this FA for a period of at least five (5) years after the final billing is submitted. These records shall be subject to audit by FDOT or FHWA, as appropriate.
- E. NFWFMD shall participate in the ETDM Performance Management Program by providing a quarterly report as part of the On-line Invoicing Program. Additionally, the NFWFMD may complete an on-line Biennial Survey. NFWFMD and FDOT after consultation may meet on the survey results. In coordination with the NFWFMD, 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. 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.
- F. In no way shall it be construed or implied that FHWA, FDOT, or NFWFMD is by this FA intending to abrogate their obligations and duties 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 National Environmental Policy Act of 1969, or the Clean Water Act of 1977 (as amended), or any other federal, state, or local law.

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#### **Article III Financial Statement**

- A. FDOT shall, subject to the billing provisions of Article III(B) below, provide reimbursement to NFWFMD for a total sum not to exceed \$673,617.01 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 NFWFMD 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 and shall include a list of expended man-hours per project.
- 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. Any 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 website and in the FDOT ETDM Funded Positions Reference Manual. NFWFMD 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 Positions Reference Manual. NFWFMD agrees 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 NFWFMD shall be fully responsible for the proper billing of any federal reimbursable costs or charges, including those incurred by its contractor and subcontractors. The NFWFMD shall submit invoices and documents necessary for the close-out of the project in a timely manner.
- E. FDOT shall send its checks in payment of the invoices to the following address:  
  
Attention: Chief, Bureau of Finance and Accounting  
Northwest Florida Water Management District  
81 Water Management Drive  
Havana, Florida 32333
- 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 invoices 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 NFWFMD. Interest penalties of less than one (1) dollar shall not be enforced unless NFWFMD requests payment. Invoices which have to be returned to NFWFMD because of NFWFMD 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 documents and records shall be furnished to FDOT and/or FHWA upon request. Records of costs incurred shall include NFWFMD's general accounting records and the projects records, together with supporting documents and records of NFWFMD and all subcontractors considered necessary to FDOT or FHWA for a proper audit of project costs.

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- H. Attachment D, attached and incorporated herein, contains legislatively mandated State Audit requirements. In the event that the recipient expends \$500,000 or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised.
- I. The NFWFMD agrees to promptly reimburse the FDOT for any and all amounts for which the FDOT has made payment to the NFWFMD if such amounts become ineligible, disqualified or disallowed for federal reimbursement due to any act, error, omission, or negligence of the NFWFMD, including missing or deficient documentation of costs and charges, untimely, incomplete or insufficient submittals, or any other reason declared by the applicable Federal Agency.
- J. The NFWFMD 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 NFWFMD 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 FDOT.
- K. The NFWFMD 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 NFWFMD agrees that in the event the maximum limiting amount of this Agreement is reduced by such removal, withdrawal or loss of funds, the NFWFMD will be solely 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 of five (5) years commencing upon signature or June 1, 2011, whichever comes later and ending June 1, 2016, unless terminated sooner in accordance with Paragraph 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. NFWFMD, FDOT, and FHWA shall meet periodically concerning this FA to review the progress made by NFWFMD in accordance with the terms of this FA. If NFWFMD, FDOT, and 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 NFWFMD 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 NFWFMD 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 FA have consulted and agreed to continue participation in the ETDM Process as signatories to the AOA and FA, with the FA's termination date serving as the controlling date.

#### **Article V            Project Officers**

- A. Northwest Florida Water Management District:  
  
Ron Bartel or designee  
81 Water Management Drive  
Havana, Florida 32333  
Tel: (850) 539-5999  
Fax: (850) 539-2777

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**B. Florida Department of Transportation:**

Marjorie Bixby or designee  
Environmental Management Office  
605 Suwannee Street, Mail Station 37  
Tallahassee, Florida 32399-0450  
Tel: (850) 414-5209  
Fax: (850) 414-4443

**C. Federal Highway Administration – Florida Division:**

George Hadley or designee  
545 John Knox Road, Suite 200  
Tallahassee, Florida 32303  
Tel: (850) 553-2200  
Fax: (850) 553-2211

#### **Article VI            Mandatory Provisions**

- A. During the performance of this FA, 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 FA or any benefit that may arise therefrom; but this provision shall not be construed to extend to this FA 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 FA, 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. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded to perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- E. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- F. The NFWFMD 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:
- a. All persons employed by the NFWFMD during the term of this FA to perform employment duties within Florida; and
  - b. All persons, including subcontractors, assigned by the NFWFMD to perform work pursuant to this FA with the FDOT.



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##### **Article VII        Modification**

- A. 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), F.S., FDOT during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. FDOT shall require 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 contracts 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 FA. Until that notice, no services shall be provided under the terms of this FA.
- C. Pursuant to Section 216.347, F.S., no funds received pursuant to this FA 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 FA are 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. 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 Florida Department of Financial Services Hotline, 1-877-693-5236.
- F. Any Tangible Property outside of that normally and reasonably required to effectuate the services for this program per Article II(A) or as defined in Chapter 273, F.S., and Rule 60A-1.017, F.A.C., 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, F.A.C., whether by the Vendor agency or FDOT, upon completion of services or the end of the FA, 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 any 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.



Funding Agreement

Northwest Florida Water Management District

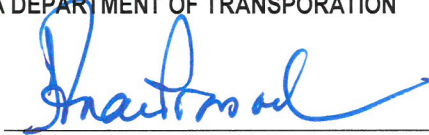
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Article IX Signatures

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

FLORIDA DEPARTMENT OF TRANSPORTATION

By:



Signature  
Secretary of Transportation

ANANTH PRASAD

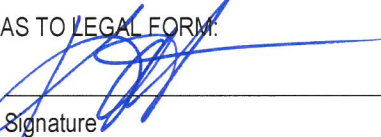
Print Name  
Secretary of Transportation

Date:

6/6/11

REVIEW AS TO LEGAL FORM:

By:



Signature  
Office of General Counsel

Kathleen P. Toolan

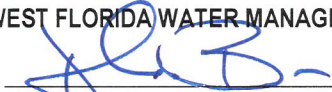
Print Name  
Office of General Counsel

Date:

6/2/11

NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By:



Signature  
Executive Director

DOUGLAS E. BARR

Print Name  
Executive Director

Date:

04/20/11

FEDERAL HIGHWAY ADMINISTRATION

By:



Signature  
Florida Division Administrator

KAREN M. BRUNELLE

Print Name  
Florida Division Administrator

Date:

5/16/11

## Attachment A

### Northwest Florida Water Management District

#### Professional Qualifications

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

- Specialists with experience and education in planning, environmental science, biology, GIS, hydrology, engineering, and duties associated with water resources management.
- Working knowledge of environmental assessments of surface water management projects and permit application evaluation regarding wetlands protection, wetlands mitigation planning, wetlands delineations, wetlands impact analysis, water quality, and potential environmental effects based on Chapter 62-346 F.A.C..

**Attachment B**  
**Northwest Florida Management District**  
**Work Tasks**

NWFWMD shall accomplish the reviews and tasks as outlined below, in order to streamline, expedite, implement, consult, and coordinate on FDOT Projects throughout the Planning and Project Development Processes, and meet FDOT's needs for compliance with applicable State and Federal statutes. NWFWMD 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 Plans, Strategic Intermodal System 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
- Review and comment on wildlife resource inventory and impact assessment activities
- Provide preliminary environmental analyses, guidance, and review
- Review and comment on wetlands identification and delineations
- Provide Alternatives Analysis guidance, review, and comment
- Represent NWFWMD at meetings, as appropriate
- Participate in the development and implementation of written FDOT and NWFWMD guidance
- Ensure NWFWMD review of separate technical reports, as necessary
- Attend interagency and intra-agency meetings, as appropriate
- Provide technical assistance and 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 Assessments/SHPO Clearance Letters
  - Wetland Evaluation Reports
  - Endangered Species Biological Assessments
  - Wildlife Resources and Related Technical Basis Reports
  - Alternative Analysis
  - Conceptual Mitigation Plans
  - Environmental Impact Statements
  - Preliminary Drainage Reports
  - Environmental Impact Statement Comment Resolution
  - Pond Siting Reports

## **Funding Agreement**

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#### **Continuing the Efficient Transportation Decision Making Process in Florida**

- Environmental Assessments
- Categorical Exclusions
- Finding of No Significant Impact (FONSI) Reports
- Location Hydraulics Reports
- Bridge Hydraulics Reports
- Floodplain Determinations
- Bridge Development Reports
- Environmental Evaluation Reports
- Mitigation Reports and Plans
- Section 404 Permit Applications
- Policies and Procedures
- In Lieu Fee Plan development and execution for wetland mitigation
- Coordinate and provide training on natural resource issues and permits
- Provide expertise and recommendations on streamlining the environmental process at all phases of planning, programming, project development and permitting
- Organize meetings or conference calls to clarify problems at the request of NFWFMD or FDOT
- Perform other related tasks as defined by FDOT and agreed to by NFWFMD
- Provide appropriate reporting, billing and other administrative functions as required by this Agreement
- Attend and participate in FDOT District 3 ETAT Meetings