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| --- | --- | --- | --- |
| Contract No.: |  | Financial Project No: |  |
| Federal Project No. (FAIN): |  | Federal Award Date: |  |
| Recipient Unique Entity ID(UEI) No.: |  | Recipient Vendor No: |  |
| Assistance Listing Number (ALN) No. 20.205 Highway Planning and Construction | | | |
|  | | | |

This Local Agency Emergency Repair Agreement (“Agreement”) is entered into on                               , by and between the State of Florida, Department of Transportation,

(date to be input by Department)

(“Department”), and      , (“Recipient”). The Department and the Recipient are sometimes referred to in this Agreement as a “Party” and collectively as the “Parties.”

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

1. **Emergency Relief.** The Federal Highway Administration (“FHWA”) has established an Emergency Relief Program codified at 23 USC §125. FHWA has, as a result of the Executive Order(s)       , dated       for Emergency Event(s)       , authorized funding to be provided to the Department for relief from the damage inflicted by said event(s).
2. **Purpose of Agreement.** The purpose of this Agreement is to state the terms and conditions upon which reimbursement will be provided to the Recipient for emergency repair work (“Project”) and to set forth the manner in which the Project will be undertaken and completed. Recipient’s costs and expenses incurred as a direct result of the Emergency Event(s) and the scope of work and services authorized by FHWA are further described in **Exhibit "A", Detailed Damage Inspection Report(s)** (“DDIR”), attached and incorporated into this Agreement. To receive the reimbursement amounts stated within this Agreement, all Project work must be completed within 270 days of the occurrence of the Emergency Event necessitating such work.
3. **Authority.** The Recipient, by Resolution or other form of official authorization, a copy of which is attached as **Exhibit “D”, Recipient Resolution** and made a part of this Agreement, has authorized its officers to execute this Agreement on its behalf. The Department has the authority pursuant to Sections 334.044(7), (24), and 339.12 Florida Statutes, to enter into this Agreement.
4. **Exhibits.** The following Exhibits are attached and incorporated into this Agreement:

Exhibit A: Detailed Damage Inspection Report(s)

Exhibit B: Schedule of Financial Assistance

Exhibit C: Title VI Assurances

Exhibit D: Recipient Resolution

Exhibit E: Federal Financial Assistance (Single Audit Act)

Exhibit F: Contract Payment Requirements

Exhibit G: FHWA Form 1273

Exhibit O: Terms and Conditions of Construction in Department Right of Way

\*Additional Exhibit(s):

\*Indicates that the Exhibit is only attached and incorporated if applicable box is selected.

1. **Time.** Unless specified otherwise, all references to “days” within this Agreement refer to calendar days.

1. **Term of Agreement.** This Agreement shall only be valid if fully executed while all authorizing Executive Order(s) are in effect and shall commence upon full execution by both Parties (“Effective Date”) and continue through      , 20     . If the Recipient does not complete the Project within this time period, this Agreement will expire unless an extension of the time period is requested by the Recipient and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. Unless the relevant box below is checked, the cost of any work performed prior to the Effective Date of this Agreement will not be reimbursed by the Department. The cost of any work performed after the termination or expiration date of this Agreement will not be reimbursed by the Department.
   1. If this box is checked the following provision applies:

Pursuant to Executive Order      , work performed after the issuance of the aforementioned Executive Order and prior to the Effective Date of this Agreement may be reimbursed.

1. **Contact Names and Addresses:**

Recipient:

Address:

      , Florida 3

Contact Name:

Contact Telephone:

Florida Department of Transportation

Address:

      , Florida 3

Contact Name:

Contact Telephone:

1. **Amendments, Extensions, and Assignment.** This Agreement may be amended or extended upon mutual written agreement of the Parties. This Agreement shall not be renewed. This Agreement shall not be assigned, transferred, or otherwise encumbered by the Recipient under any circumstances without the prior written consent of the Department.
2. **Termination or Suspension of Project.**
   1. **Generally.** If: (i) the Recipient abandons or, before the end of the state fiscal year for which financial assistance for the Project is provided under this Agreement, finally discontinues the Project; (ii) the Recipient fails to comply with applicable law or the terms of this Agreement; or (iii) for any other reason, the commencement, prosecution, or timely completion of the Project by the Recipient is rendered improbable, infeasible, impossible, or illegal, the Department may, by written notice to the Recipient, suspend any or all of its obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected, or the Department may terminate any or all of its obligations under this Agreement. Termination of this Agreement shall be governed by the provisions of 2 CFR Part 200.
   2. **Actions Upon Termination or Suspension.** Upon receipt of any final termination or suspension notice from the Department, the Recipient shall proceed promptly to carry out the actions required in such notice, which may include any or all of the following: (1) necessary action to terminate or suspend, as the case may be, Project activities and contracts and such other action as may be required or desirable to keep to the minimum the costs upon the basis of which the financing is to be computed and; (2) furnish a statement of the Project activities and contracts, and other undertakings. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and budget as approved by the Department or upon the basis of terms and conditions imposed by the Department upon the failure of the Recipient to furnish the schedule, plan, and budget within a reasonable time. The approval of a remittance by the Recipient shall not constitute a waiver of any claim which the Department may otherwise have arising out of this Agreement.
3. **Project Cost:** 
   1. **Funding Conditioned upon Project Completion within 270 Days of Emergency Event.** All statements within this Agreement regarding funding are conditioned upon completion of all Project work within 270 days of the occurrence of the Emergency Event necessitating such work. Notwithstanding any other provision of this Agreement, expenses for work performed after 270 days of the occurrence of the Emergency Event necessitating such work shall be reimbursed by the Department at the normal federal pro-rata rate and Recipient shall bear all expenses in excess of the amount of the Department’s reimbursement.
   2. The estimated total cost of the Project is $      (the “Project Estimate”). This amount is based upon **Exhibit "B", Schedule of Financial Assistance**. The timeline for deliverables and distribution of estimated amounts between deliverables within a grant phase, as outlined in **Exhibit "B", Schedule of Financial Assistance**, may be modified by mutual written agreement of the Parties. The timeline for deliverables and distribution of estimated amounts between grant phases requires an amendment executed by both Parties in the same form as this Agreement.
   3. The Department agrees to participate in the Project cost up to the maximum amount of $     , and, the Department’s participation in the Project shall not exceed      % of the total eligible cost of the Project, and as more fully described in **Exhibit “B’’, Schedule of Financial Assistance**. The Recipient agrees to bear all expenses in excess of the amount of the Department’s participation and any cost overruns or deficits involved.
   4. **Matching Funds.** The Recipient agrees to provide all matching funds required under the terms of the federal grant. The eligibility and use of matching funds shall be governed by applicable federal law, regulations, and guidance. The Recipient is also responsible for all costs required to complete the Project that exceed the Project Estimate. The Recipient shall take all actions required for the Recipient to provide the necessary funds for the Project. The Department will have no responsibility for any Project costs in excess of the Maximum Federal Financial Assistance.
4. **Compensation and Payment:**
   1. **Eligible Cost.** The Department shall reimburse the Recipient for allowable costs incurred as described in **Exhibit “A”, Detailed Damage Inspection Report(s)**, and as set forth in **Exhibit “B”, Schedule of Financial Assistance**, subject to the requirements of 23 USC §125 and the FHWA Emergency Relief Program Administration Manual, available at <http://www.fhwa.dot.gov/reports/erm/er.pdf>.
   2. **Deliverables.** The Recipient shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project and the quantifiable, measurable, and verifiable units of deliverables are described more fully in **Exhibit “A”, Detailed Damage Inspection Report(s)**. Modifications to the deliverables in **Exhibit “A”, Detailed Damage Inspection Report(s)** requires a formal written amendment.
   3. **Invoice address.** All invoices are to be sent to the following email address:
   4. **Invoice frequency.** Recipient will submit invoices as follows (select one):

Invoices will be submitted monthly

Invoices will be submitted quarterly

Invoices will be submitted

One invoice will be submitted upon completion

* 1. **Invoicing.** Invoices shall be submitted by the Recipient in detail sufficient for a proper pre-audit and post-audit, based on the quantifiable, measurable, and verifiable deliverables as established in **Exhibit “A”, Detailed Damage Inspection Report(s)**. Deliverables and costs incurred must be received and approved by the Department prior to reimbursement. Requests for reimbursement by the Recipient shall include an invoice, progress report, and supporting documentation for the deliverables being billed that are acceptable to the Department. The Recipient shall use the format for the invoice and progress report that is approved by the Department.
  2. **Supporting Documentation.** Supporting documentation must establish that the deliverables were received and accepted in writing by the Recipient and must also establish that the required minimum standards or level of service to be performed based on the criteria for evaluating successful completion as specified in **Exhibit “A”, Detailed Damage Inspection Report(s)** has been met. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of charges as described in **Exhibit “F”, Contract Payment Requirements**.
  3. **Travel Expenses.** The selected provision below is controlling regarding travel expenses:

Travel expenses are NOT eligible for reimbursement under this Agreement.

Travel expenses ARE eligible for reimbursement under this Agreement. Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department’s Contractor Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061, Florida Statutes, and the most current version of the Department’s Disbursement Handbook for Employees and Managers.

* 1. **Payments and Withholding.** Notwithstanding any other provision of this Agreement, the Department may elect by written notice not to provide funding under this Agreement the Recipient if:
     1. The Department determines that the Recipient has misrepresented a material fact in any documents submitted to obtain funding under this Agreement, or any document or data furnished with its application or pursuant to this Agreement;
     2. There is any pending litigation with respect to the performance by the Recipient of any of its duties or obligations which may jeopardize or adversely affect the Project, the Agreement or payments for the Project;
     3. The Recipient takes any action on the Project which, under this Agreement, requires the approval of the Department or makes a related expenditure or incurs related obligations without Department approval when required;
     4. There has been any violation of the conflict of interest provisions contained in this Agreement; or
     5. The Department determines the Recipient is otherwise in default under any provisions of this Agreement.
  2. **Financial Consequences.** Payment shall be made only after receipt and approval of deliverables and costs incurred unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes, or the Department’s Comptroller under Section 334.044(29), Florida Statutes.  If the Department determines that the performance of the Recipient is unsatisfactory, the Department shall notify the Recipient of the deficiency to be corrected, which correction shall be made within a timeframe to be specified by the Department. The Recipient shall, within five (5) days after notice from the Department, provide the Department with a corrective action plan describing how the Recipient will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the Recipient is unable to resolve the deficiency, the subaward shall be forfeited.
  3. **Invoice Processing.** The Recipient receiving financial assistance from the Department should be aware of the following time frames. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the later of the date the invoice is received or the date the goods or services are received, inspected, and approved. Approval and inspection of goods or services shall take no longer than 20 days following the receipt of a complete and accurate invoice.

If a payment is not available within 40 days, then a separate interest penalty at a rate established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the Recipient. The 40 days are measured from the later of the date the invoice is received or the date the goods or services are received, inspected, and approved. Interest penalties of less than one (1) dollar will not be enforced unless the Recipient requests payment. Invoices that have to be returned to the Recipient because of Recipient preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Recipient who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

* 1. **Project Records.** The Recipient shall establish for the Project, consistent with the Department’s program guidelines/procedures and "Principles for State and Local Governments", 2 Code of Federal Regulations (“CFR”) Part 225, separate accounts to be maintained within its existing accounting system or separate independent accounts (“Project Accounts”). The Recipient shall charge to the Project Accounts all eligible costs of the Project except costs agreed to be borne by the Recipient or its contractors and subcontractors. All costs recorded in the Project Accounts shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of charges as described in **Exhibit “F”, Contract Payment Requirements.**
  2. **Project Costs.** Records of costs incurred under terms of this Agreement shall be maintained in the Project Accounts and made available upon request to the Department at all times during the period of this Agreement and for five (5) years after final payment is made for the applicable state fiscal year, or such longer period as may be required by applicable law. Copies of these documents and records shall be furnished to the Department and FHWA upon request. Records of costs incurred include the Recipient's general accounting records and the Project records, together with supporting documents and records of the Recipient and all contractors and subcontractors performing work on the Project. If any litigation, claim, or audit is started before the expiration of the required retention period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
  3. **Reports.** The Recipient shall submit to the Department such data, reports, records, contracts and other documents relating to the Project as the Department or FHWA may require. The Department may, at its discretion, require a progress report on a monthly basis. The progress report will include details of the progress of the Project towards meeting the requirements of the Agreement.
  4. **Federal Records Requirements.** The Recipient agrees to maintain property records, conduct physical inventories and develop control systems as required by 2 CFR Part 200, when applicable. In addition to the requirements of section 8, the Recipient shall comply with the record retention requirements of 2 CFR 200.333, as amended or replaced from time to time.
  5. **Right-of-Way.**  For any project requiring additional right-of-way, the Recipient must submit to the Department an annual report of its real property acquisition and relocation assistance activities on the project. Activities shall be reported on a federal fiscal year basis, from October 1 through September 30. The report must be prepared using the format prescribed in 49 CFR Part 24, Appendix B, and be submitted to the Department no later than October 15 of each year. Upon completion of right-of-way activities on the Project, the Recipient must certify compliance with all applicable federal and state requirements. Certification is required prior to advertisement for or solicitation of bids for construction of the Project.
  6. **Offsets for Claims.** If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement that it has with the Recipient owing such amount if, upon written demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.
  7. **Final Invoice.** The Recipient must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.
  8. **Removal, Withdrawal, or Loss of Funds.** The Recipient understands that if it fails to timely perform its obligations, or timely submit invoices and documents necessary for the close out of the project, funding under this Agreement may become unavailable or reduced due to a removal or withdrawal of federal funds or a loss of state appropriation, and the Department will have no obligation to provide funds from other sources. The Recipient agrees that in the event that funding under this Agreement is reduced by such removal, withdrawal, or loss of funds, the Recipient will be solely responsible for payment of costs and outstanding invoices no longer reimbursable due to the loss of funding.
  9. **Department’s Performance and Payment Contingent.** The Department’s performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature and the available of the federal financial assistance awarded to the Recipient under this Agreement. If the Department's funding for this Project is in multiple fiscal years, a notice of availability of funds from the Department’s project manager must be received prior to costs being incurred by the Recipient. See **Exhibit “B”, Schedule of Financial Assistance** for funding levels by fiscal year. Project costs utilizing any fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Recipient, in writing, when funds are available.
  10. **Limits on Contracts Exceeding $25,000 and Term more than 1 Year.** In the event this Agreement is in excess of $25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"The Department, 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. The Department shall require a statement from the comptroller of the Department 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 1 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 the Department which are for an amount in excess of $25,000 and which have a term for a period of more than 1 year."

* 1. **No Federal Obligation.** This Agreement is financed in part or whole by federal funds. However, provision of funds to the Recipient will be made by the Department. The United States is not a party to this Agreement and no reference in this Agreement, to the United States, USDOT, FHWA, or any representatives of the federal government makes the United States a party to this Agreement.
  2. **Subaward Contingent on Federal Funding.** The Recipient acknowledges and agrees that the Department’s issuance of the award under this Agreement is contingent on the Department receiving the funds from the FHWA. If, for any reason, the FHWA reduces the amount of federal funds available for this subaward, or otherwise fails to pay part of the cost or expense of the Project in this Agreement, only outstanding incurred costs within the limits of FHWA provided financial assistance shall be eligible for reimbursement.
  3. **Recipient Obligation to Refund Department.** Any Project funds made available pursuant to this Agreement that are determined by the Department to have been expended by the Recipient in violation of this Agreement or any other applicable law or regulation shall be promptly refunded in full to the Department. Acceptance by the Department of any documentation or certifications, mandatory or otherwise permitted, that the Recipient files shall not constitute a waiver of the Department's rights as the funding agency to verify all information at a later date by audit or investigation.
  4. **Reversion of Unexpended Funds.** All funds made available pursuant to this Agreement that have not been expended for Project activities during the term of this Agreement shall revert to the Department.
  5. **Ineligible Costs.** In determining the amount of any payment, the Department will exclude all Project costs incurred by the Recipient prior to the Department’s issuance of a Notice to Proceed for the Project phase for which the costs were incurred, costs incurred after the expiration of the Agreement, costs that are not provided for in Exhibit “A”, Detailed Damage Inspection Report(s), costs that are not provided for in the latest approved schedule of financial assistance in Exhibit B for the Project, costs agreed to be borne by the Recipient or its contractors and subcontractors for not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangements that the Department exercised its right to review and approve but were not approved by the Department. The federal funds awarded under this Agreement will not be provided for any cost not incurred in accordance with applicable federal and state laws, regulations and grant program requirements. If FHWA or the Department determines that any cost claimed is not eligible, the Department will notify the Recipient. The notification will identify the items and amounts are not eligible for reimbursement with federal financial assistance and the reason the items and amount are not eligible. If the Recipient is not in compliance with requirements of this Agreement, but such non-compliance is correctable during the term of this Agreement, financial assistance may be withheld by the Department until the non-compliance is corrected. If the Recipient’s non-compliance is not correctable during the term of this Agreement, FHWA or the Department may deny use of federal funds, in whole or in part. If as a result of the Recipient’s failure to comply with the terms of this Agreement FHWA determines that federal financial assistance will no longer be available for the Project: (i) the Department is authorized to discontinue federal financial assistance for the Project under this Agreement; (ii) the Recipient will be solely responsible to provide all funds necessary to complete the Project; and (iii) the Department is not required to provide any additional state financial assistance for the Project. A determination by FHWA that federal financial assistance is no longer available for the Project is final. The Recipient waives any right to contest a discontinuance of financial assistance under this Agreement if FHWA determines federal financial assistance is no longer available.

1. **General Requirements.** The Recipient shall complete the Project with all practical dispatch in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement and all applicable laws.
   1. **Necessary Permits Certification.** The Recipient is responsible for obtaining all permits necessary for the Project. The Recipient shall certify to the Department that the Recipient’s design consultant and/or construction contractor has secured the necessary permits.
   2. **Right-of-Way Certification.** If the Project involves construction, then the Recipient shall provide to the Department certification and a copy of appropriate documentation substantiating that all required right-of-way necessary for the Project has been obtained. Certification is required prior to authorization for advertisement for or solicitation of bids for construction of the Project, even if no right-of-way is required.

* 1. **Design.** The Recipient is responsible for the preparation of all design plans for the Project. The Department reserves the right to require the Recipient to hire a Department pre-qualified consultant for the design phase of the Project. Notwithstanding any provision of law to the contrary, design services and CEI services may not be performed by the same entity. All design work on the Project shall be performed in accordance with the requirements of all applicable laws and governmental rules and regulations and federal and state accepted design standards for the type of construction contemplated by the Project, including, as applicable, but not limited to, the applicable provisions of the Manual of Uniform Traffic Control Devices and the AASHTO Policy on Geometric Design of Streets and Highways.
  2. **Qualified Contractors.**  The Recipient shall hire a qualified contractor using the Recipient’s normal competitive bid procedures, modified as necessary to comply with the requirements of this Agreement, to perform the construction work for the Project. For projects that are not located on the Department’s right-of-way, the Recipient is not required to hire a contractor prequalified by the Department unless the Department notifies the Recipient prior to letting that they are required to hire a contractor prequalified by the Department. For projects located on the Department’s right-of-way, the Recipient shall award the contract for construction of the Project to a Department prequalified contractor which is the lowest and best bidder in accordance with applicable state and federal law, rules, and regulations. The Recipient shall submit a copy of the bid tally sheet(s) and awarded bid contract to the Department.
  3. **CEI.** The Recipient is responsible for provision of Construction Engineering Inspection (“CEI”) services. The Department reserves the right to require the Recipient to hire a Department pre-qualified consultant firm that includes one individual that has completed the Advanced Maintenance of Traffic Level Training. Notwithstanding any provision of law to the contrary, design services and CEI services may not be performed by the same entity. Administration of the CEI staff shall be under the responsible charge of a State of Florida Licensed Professional Engineer who shall provide the certification that all design and construction for the Project meets the minimum construction standards established by Department. The Department shall have the right to approve the CEI firm. The Department shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the Project. Subject to the approval of the Department, the Recipient may choose to satisfy the requirements set forth in this paragraph by either hiring a Department prequalified consultant firm or utilizing Recipient staff that meet the requirements of this paragraph, or a combination thereof.
  4. **Design Services and Construction Engineering and Inspection Services.** If the Project is wholly or partially funded by the Department and administered by a local governmental entity, except for a seaport listed in Section 311.09, Florida Statutes, the entity performing design and construction engineering and inspection services may not be the same entity.
  5. **As-Built Plans.**  The Recipient shall provide the Department with as-built plans of any portions of the Project funded through the Agreement prior to final inspection.
  6. **Bonds.**  The Recipient shall require the Recipient’s contractor to post a payment and performance bond in accordance with applicable law.
  7. **Performance of Construction Work.** The Recipient shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the approved construction documents, and that it will meet all applicable Recipient and Department standards.
  8. **Consultant Conflicts of Interest.** The Recipient shall comply with the Department’s current Conflict of Interest Procedure in employing consultants for the Project (currently Department Procedure 375-030-006).
  9. **Department Right of Way Construction.** If any portion of the Project will be located on, under, or over any Department-owned right-of-way, the Department shall review the Project's design plans for compliance with all applicable standards of the Department, as provided in **Exhibit “O”, Terms and Conditions of Construction**. In its sole discretion, the Department may reject designs which it determines do not meet Department standards.
  10. **Recipient Compliance with Laws, Rules, and Regulations, Guidelines, and Standards.** The Recipient shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project. If at any time a review conducted by Department and or FHWA reveals that the applicable federal guidelines, procedures, and regulations were not followed by the Recipient and FHWA requires reimbursement of the funds, the Recipient will be responsible for repayment to the Department of all funds awarded under the terms of this Agreement.
  11. **Public Use.** The Recipient shall use the Project facilities and equipment to provide or support public transportation for the period of the useful life of such facilities and equipment as determined in accordance with general accounting principles and applicable federal requirements.
  12. **Public Safety.** The Recipient is responsible for ensuring the safety of the public during all phases of Project construction. The Recipient and its contractors shall request authority to and take appropriate action to restrict or prohibit travel on any public road when required to protect the traveling public. If the Project is on the State Highway System, the Recipient shall follow Department procedures for road closures. Notwithstanding anything to the contrary in any Department or other governmental procedure, if the Recipient, or its contractors, become aware of circumstances related to the Project that could present an imminent risk of harm to the travelling public, the Recipient shall, and shall require its contractors to, immediately take all appropriate steps to protect the public, including requesting immediate closure of any transportation facility.
  13. **Claims and Requests for Additional Work.** The Recipient shall have the sole responsibility for resolving claims and requests for additional work for the Project. The Recipient will make best efforts to obtain the Department’s input in its decisions. The Department is not obligated to reimburse for claims or requests for additional work.
  14. **Preference for State Residents.** If the Project is procured pursuant to Chapter 255, Florida Statutes, for construction services to be paid from state-appropriated funds, then the Recipient must comply with the requirements of Sections 255.099(1) and 255.0991, Florida Statutes. However, for all Project work eligible for reimbursement with the federally funded subaward under this Agreement, this paragraph may not be enforced in such a manner as to conflict with or be contrary to federal law prescribing a labor preference to honorably discharged soldiers, sailors, or marines, or prohibiting as unlawful any other preference or discrimination among the citizens of the United States.
  15. **Code of Conduct.** The Recipient has established, and will maintain, a written code or standard of conduct applicable to its officers, employees, board members or agents, and those individuals’ relatives, that prohibits their involvement in the selection, award, or administration of any contract in connection with the Project if they have a present or potential financial or other significant interest therein and prohibits the acceptance of any gratuity, favor, or other thing of monetary value from any person interested or involved in the performance of work on the Project.
  16. **E-Verify.** The Recipient shall:
      1. Utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the Recipient during the term of the contract; and
      2. Expressly require any contractor and 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.
  17. **Human Trafficking.** The Recipient shall include a provision in each contract it enters into with a private entity in connection with the Project by which the Recipient’s contractor agrees that it and its employees that perform any work on the Project shall not, during the term of this Agreement, engage in trafficking in persons, procure a commercial sex act, or use forced labor in the performance of work on the Project.
  18. **Contract Work Hours and Safety Standards.**  Where applicable, all contracts funded under this Agreement in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
  19. **Prohibition on Using Funds for Lobbying.** No funds received pursuant to this Agreement may be expended for lobbying the Florida Legislature, judicial branch, or any state agency, in accordance with Section 216.347, Florida Statutes.
  20. **LAP Manual.** The Project will be performed in accordance with all applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Agency Program Manual (FDOT Topic No. 525-010-300), which by this reference is made a part of this Agreement. Time is of the essence as to each and every obligation under this Agreement.
  21. **Responsible Charge.** A full time employee of the Recipient, qualified to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of this Agreement shall be in responsible charge of the Project, which employee should be able to perform the following duties and functions:

1. Administers inherently governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
2. Maintains familiarity of day to day Project operations, including Project safety issues;
3. Makes or participates in decisions about changed conditions or scope changes that require

change orders or supplemental agreements;

1. Visits and reviews the Project on a frequency that is commensurate with the magnitude and complexity of the Project;
2. Reviews financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse;
3. Directs Project staff, agency or consultant, to carry out Project administration and contract oversight, including proper documentation;
4. Is aware of the qualifications, assignments and on-the-job performance of the Recipient and consultant staff at all stages of the Project.
5. **Contracts of the Recipient:**
   1. **Approval of Third-Party Contracts.** The Department specifically reserves the right to review and approve any and all third party contracts with respect to the Project before the Recipient executes or obligates itself in any manner requiring the disbursement of funds under this Agreement, including consultant and purchase of commodities contracts, or amendments thereto. If the Department chooses to review and approve third party contracts for this Project and the Recipient fails to obtain such approval, that shall be sufficient cause for nonpayment by the Department. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same.
   2. **Procurement of Commodities or Contractual Services.** It is understood and agreed by the Parties hereto that participation by the Department in a project with the Recipient, where said project involves the purchase of commodities or contractual services where purchases or costs exceed the Threshold Amount for CATEGORY TWO per Section 287.017, Florida Statutes, is contingent on the Recipient complying in full with the provisions of Section 287.057, Florida Statutes. The Recipient’s Authorized Official shall certify to the Department that the Recipient’s purchase of commodities or contractual services has been accomplished in compliance with Section 287.057, Florida Statutes. It shall be the sole responsibility of the Recipient to ensure that any obligations made in accordance with this Section comply with the current threshold limits. Contracts, purchase orders, task orders, construction change orders, or any other agreement that would result in exceeding the current budget contained in **Exhibit "B", Schedule of Financial Assistance**, or that is not consistent with the Project description and scope of services contained in **Exhibit “A”, Detailed Damage Inspection Report(s)** must be approved by the Department prior to Recipient execution. Failure to obtain such approval, and subsequent execution of an amendment to the Agreement if required, shall be sufficient cause for nonpayment by the Department, in accordance with this Agreement.
   3. **Consultant Services.** The Recipient acknowledges and agrees that any Project consultant contract for engineering, architecture or surveying services must be procured in full compliance with the provisions of Chapter 287.055, Florida Statutes, Consultants' Competitive Negotiation Act, and the federal Brooks Act, 23 CFR 172, and 23 U.S.C. 112. At the discretion of the Department, the Recipient will involve the Department in the consultant selection process for all applicable project agreements funded under this Agreement. In all cases, the Recipient's attorney shall certify to the Department that selection has been accomplished in compliance with Chapter 287.055, Florida Statutes, the Consultants' Competitive Negotiation Act and the federal Brooks Act.
   4. **Disadvantaged Business Enterprise (DBE) Policy and Obligation.** It is the policy of the Department that DBEs, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement. The Recipient and its contractors agree to ensure that DBEs have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBEs have the opportunity to compete for and perform contracts. The Recipient and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.
   5. **Prohibited Interests.** The Recipient shall not enter into a contract or arrangement in connection with the Project or any property included or planned to be included in the Project, with any officer, director or employee of the Recipient, or any business entity of which the officer, director or employee or the officer's, director’s or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer, director or employee or the officer's, director’s or employee's spouse or child, or any combination of them, has a material interest.
      1. “Material Interest” means direct or indirect ownership of more than 5% of the total assets or capital stock of any business entity.
      2. The Recipient shall not enter into any contract or arrangement in connection with the Project or any property included or planned to be included in the Project, with any person or entity who was represented before the Recipient by any person who at any time during the immediately preceding two (2) years was an officer, director or employee of the Recipient.
      3. The provisions of this subsection shall not be applicable to any agreement between the Recipient and its fiscal depositories, any agreement for utility services the rates for which are fixed or controlled by the government, or any agreement between the Recipient and an agency of state government.
6. **Maintenance Obligations.** In the event the Project includes construction or the acquisition of commodities then the following provisions are incorporated into this Agreement:

The Recipient agrees to accept all future maintenance and other attendant costs occurring after completion of the Project for all improvements constructed or commodities acquired as part of the Project. The terms of this provision shall survive the termination of this Agreement.

1. **Audits.** The administration of resources awarded through the Department to the Recipient by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of Federal awards or limit the authority of any State agency inspector general, the State of Florida Auditor General or any other State official. The Recipient shall comply with all audit and audit reporting requirements as specified below:.
   1. In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, and section 215.97 Florida Statutes, monitoring procedures may include but not be limited to on-site visits by Department staff, limited scope audits as defined by 2 CFR 200.425, and/or other procedures including, reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to Federal awards provided through the Department by this Agreement. By entering into this Agreement, the Recipient agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the Recipient is appropriate, the Recipient agrees to comply with any additional instructions provided by Department staff to the Recipient regarding such audit. The Recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, State of Florida Chief Financial Officer (CFO) or State of Florida Auditor General.
   2. The Recipient, a non-Federal entity as defined by 2 CFR Part 200, Subpart F – Audit Requirements as a subrecipient of a Federal award awarded by the Department through this Agreement is subject to the following requirements:
      1. In the event the Recipient expends a total amount of Federal awards equal to or in excess of the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, the Recipient must have a Federal single or program-specific audit conducted for such fiscal year in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements. **Exhibit “E”, Audit Requirements for Awards of Federal Financial Assistance**, to this Agreement provides the required Federal award identification information needed by the Recipient to further comply with the requirements of 2 CFR Part 200, Subpart F – Audit Requirements. In determining Federal awards expended in a fiscal year, the Recipient must consider all sources of Federal awards based on when the activity related to the Federal award occurs, including the Federal award provided through the Department by this Agreement. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR Part 200, Subpart F – Audit Requirements. An audit conducted by the State of Florida Auditor General in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, will meet the requirements of this part.
      2. In connection with the audit requirements, the Recipient shall fulfill the requirements relative to the auditee responsibilities as provided in 2 CFR Part 200, Subpart F – Audit Requirements.
      3. In the event the Recipient expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in Federal awards, the Recipient is exempt from Federal audit requirements for that fiscal year. However, the Recipient must provide a single audit exemption statement to the Department at [FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us) no later than nine months after the end of the Recipient’s audit period for each applicable audit year. In the event the Recipient expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in Federal awards in a fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, the cost of the audit must be paid from non-Federal resources (*i.e.*, the cost of such an audit must be paid from the Recipient’s resources obtained from other than Federal entities).
      4. The Recipient must electronically submit to the Federal Audit Clearinghouse (FAC) at <https://harvester.census.gov/facweb/> the audit reporting package as required by 2 CFR Part 200, Subpart F – Audit Requirements, within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period. The FAC is the repository of record for audits required by 2 CFR Part 200, Subpart F – Audit Requirements. However, the Department requires a copy of the audit reporting package also be submitted to [FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us) within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period as required by 2 CFR Part 200, Subpart F – Audit Requirements.
      5. Within six months of acceptance of the audit report by the FAC, the Department will review the Recipient’s audit reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate action on all deficiencies has been taken pertaining to the Federal award provided through the Department by this Agreement. If the Recipient fails to have an audit conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, the Department may impose additional conditions to remedy noncompliance. If the Department determines that noncompliance cannot be remedied by imposing additional conditions, the Department may take appropriate actions to enforce compliance, which actions may include but not be limited to the following:
         1. Temporarily withhold cash payments pending correction of the deficiency by the Recipient or more severe enforcement action by the Department;
         2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
         3. Wholly or partly suspend or terminate the Federal award;
         4. Initiate suspension or debarment proceedings as authorized under 2 CFR Part 180 and Federal awarding agency regulations (or in the case of the Department, recommend such a proceeding be initiated by the Federal awarding agency);
         5. Withhold further Federal awards for the Project or program;
         6. Take other remedies that may be legally available.
      6. As a condition of receiving this Federal award, the Recipient shall permit the Department, or its designee, the CFO or State of Florida Auditor General access to the Recipient’s records including financial statements, the independent auditor’s working papers and project records as necessary. Records related to unresolved audit findings, appeals or litigation shall be retained until the action is complete or the dispute is resolved.
      7. Copies of financial reporting packages required by this section shall be submitted by or on behalf of the Recipient directly to each of the following:

Office of Comptroller, MS 24

605 Suwannee Street

Tallahassee, Florida 32399-0450

[FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us)

The Auditor General’s Office at the following address:

Auditor General

Local Government Audits/342

Claude Pepper Building, Room 401

111 West Madison Street

Tallahassee, Florida 32399-1450

The Auditor General’s website (https://flauditor.gov/) provides instructions for filing an electronic copy of a financial reporting package.

**viii.** Any reports or other information required to be submitted to the Department pursuant to this Agreement shall be submitted timely in accordance with 2 CFR 200.512, section 215.97, Florida Statutes, and Chapters 10.550 (local government entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

**ix.** The Recipient, when submitted financial reporting packages to the Department for audits done in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, or Chapters 10.550 (local government entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

* 1. The Recipient shall retain sufficient records demonstrating its compliance with the terms of the award and this Agreement for a period of five years from the date the audit report is issued and shall allow the Department, or its designee, the CFO or State of Florida Auditor General access to such records upon request. The Recipient shall ensure that the audit working papers are made available to the Department, or its designee, the CFO, or State of Florida Auditor General upon request for a period of five years from the date the audit report is issued unless extended in writing by the Department. The Recipient shall further permit access to all Project records by the Secretary and Inspector General of the United States Department of Transportation and the Comptroller General of the United States, or their designees.

1. **Notices and Approvals.** Notices and approvals referenced in this Agreement must be obtained in writing from the Parties’ respective Administrators or their designees.
2. **Restrictions, Prohibitions, Controls and Labor Provisions.** During the performance of this Agreement, the Recipient agrees as follows, and shall require the following provisions to be included in each contract and subcontract entered into pursuant to this Agreement:
   1. **Convict Labor Prohibition.** In accordance with in 23 U.S.C. 114, convict labor shall not be used on Emergency Relief construction projects.
   2. **Convicted Vendor.** 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 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 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.
   3. **Discriminatory Vendor.** In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide 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 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.
   4. **Non-Responsible Contractors.** An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied, or have further been determined by the Department to be a non-responsible contractor, may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Recipient.
   5. **Debarment and Suspension.** The Recipient must comply with the provisions in 2 CFR Part 180 OMB Guidelines to Agencies on Government Debarment and Suspension (Non-procurement) and 2 CFR Part 1200 DOT Non-procurement Suspension and Debarment. These provisions restrict federal awards, subaward and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in federal programs or activities. The Recipient shall not enter into any arrangement to participate in the development or implementation of the Project with any person or entity that is debarred or suspended except as authorized by applicable Federal law and regulations. If required by applicable federal law and regulations, the Recipient will review the U.S. GSA System of Award Management at https://www.sam.gov. The Recipient shall include the requirements of this paragraph in each of its contracts related to the Project and shall require its contractors and consultants to include similar requirements in each of their contracts related to the Project. Execution of this Agreement constitutes a certification that the Recipient is in compliance with, and will require its contractors and subcontractors to comply with, all requirements imposed by applicable federal, state, and local laws and regulations, including the “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions,” in 49 CFR Part 29, and 2 CFR Part 200 when applicable.
   6. **Unauthorized Aliens.** The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement.
3. **Indemnification and Insurance:**
   1. **Indemnification.** To the extent permitted by law and as limited by and pursuant to the provisions of Section 768.28, Florida Statutes, the Recipient shall indemnify, defend, and hold harmless the Department, including the Department’s officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney’s fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Recipient and persons employed or utilized by the Recipient in the performance of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the Department’s or the Recipient’s sovereign immunity, nor shall the same be construed to constitute agreement by Recipient to indemnify the Department for the negligent acts or omissions of the Department, its officers, agents, or employees, or for the acts of third parties. This indemnification shall survive the termination of this Agreement.
   2. **Recipient Contracts.** Recipient agrees to include the following indemnification clause in all contracts with contractors, subcontractors, consultants, or subconsultants (each referred to as “Entity” for the purposes of the below indemnification) who perform work in connection with this Agreement:

“To the fullest extent permitted by law, the [ENTITY] shall indemnify, defend, and hold harmless the [RECIPIENT] and the State of Florida, Department of Transportation, including the Department’s officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney’s fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor/consultant and persons employed or utilized by the contractor/consultant in the performance of this Agreement.

Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the Department’s or the [RECIPIENT’s] sovereign immunity. Nor shall the same be construed to constitute agreement by [ENTITY] to indemnify [RECIPIENT] for the negligent acts or omissions of [RECIPIENT], its officers, agents, or employees, or third parties.  Nor shall the same be construed to constitute agreement by [ENTITY] to indemnify the Department for the negligent acts or omissions of the Department, its officers, agents, or employees, or third parties. This indemnification shall survive the termination of this Agreement. This indemnification shall survive the termination of this Agreement.”

* 1. **Workers’ Compensation.** The Recipient shall provide Workers’ Compensation Insurance in accordance with Florida’s Workers’ Compensation law for all employees. If subletting any of the work, ensure that the subcontractor(s) and subconsultant(s) have Workers’ Compensation Insurance for their employees in accordance with Florida’s Workers’ Compensation law. If using “leased employees” or employees obtained through professional employer organizations (“PEO’s”), ensure that such employees are covered by Workers’ Compensation Insurance through the PEO’s or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent contractors, sole proprietorships, or partners are covered by insurance required under Florida’s Workers' Compensation law.
  2. **General Liability.** If the Recipient elects to self-perform the Project, and such self-performance is approved by the Department in accordance with the terms of this Agreement, the Recipient may self-insure and proof of self-insurance shall be provided to the Department. If the Recipient elects to hire a contractor or consultant to perform the Project, then the Recipient shall, or cause its contractor or consultant to carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. Recipient shall, or cause its contractor to cause the Department to be made an Additional Insured as to such insurance. Such coverage shall be on an “occurrence” basis and shall include Products/Completed Operations coverage. The coverage afforded to the Department as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than $1,000,000 for each occurrence and not less than a $5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Agreement, and may not be shared with or diminished by claims unrelated to the Agreement. The policy/ies and coverage described herein may be subject to a deductible and such deductibles shall be paid by the Named Insured. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention unless the Recipient is a state agency or subdivision of the State of Florida that elects to self-perform the Project. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Department’s approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have.
  3. **Railroad Protective Liability.** When the Agreement includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, the Recipient shall, or cause its contractor to, in addition to the insurance coverage required above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named Insured and where the limits are not less than $2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than $6,000,000. The railroad shall also be added along with the Department as an Additional Insured on the policy/ies procured pursuant to the paragraph above. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, both the Department and the railroad shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The insurance described herein shall be maintained through final acceptance of the work. Both the Department and the railroad shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy or coverage described herein. The Department’s approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the Department may have.
  4. **Utilities.** When the Agreement involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the Department as an Additional Insured on the Commercial General Liability policy/ies procured above.

1. **Federal Requirements**. The Recipient acknowledges that federal requirements are subject to change and agrees that the most recent requirements shall govern its obligations under this Agreement at all times.
   1. **Compliance with Federal Requirements.** The Recipient shall comply with and require its consultants and contractors to comply with applicable federal law pertaining to the use of federal-aid funds. The Recipient shall comply with and include the applicable provisions described in Appendix II to 2 CFR Part 200 — Contract Provisions for non-Federal Entity Contracts Under Federal Awards — in each contract it enters into for the Project. If the Project includes construction work, the Recipient shall comply with the provisions included in **Exhibit “G”, FHWA Form 1273**. The Recipient shall include FHWA Form 1273 in all contracts with contractors performing construction work on the Project. If the Project includes highway construction work, the Recipient shall comply with the non-collusion provisions of 23 U.S.C. section 112 and the implementing regulations in advertising and awarding any contract for performance of the construction work and shall include a non-collusion provision substantially as follows in the bidding documents for the Project:

EACH BIDDER SHALL FILE A STATEMENT EXECUTED BY, OR ON BEHALF OF THE PERSON, FIRM, ASSOCIATION, OR CORPORATION SUBMITTING THE BID CERTIFYING THAT SUCH PERSON, FIRM, ASSOCIATION, OR CORPORATION HAS NOT, EITHER DIRECTLY OR INDIRECTLY, ENTERED INTO ANY AGREEMENT, PARTICIPATED IN ANY COLLUSION, OR OTHERWISE TAKEN ANY ACTION, IN RESTRAINT OF FREE COMPETITIVE BIDDING IN CONNECTION WITH THE SUBMITTED BID. FAILURE TO SUBMIT THE EXECUTED STATEMENT AS PART OF THE BIDDING DOCUMENTS WILL MAKE THE BID NONRESPONSIVE AND NOT ELIGIBLE FOR AWARD CONSIDERATION.

* 1. **Governing Regulations.** In performing the Project, the Recipient agrees to comply with all applicable requirements of 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." If applicable to the award of funds to the Recipient pursuant to this Agreement, the Recipient will comply with all applicable requirements of the current Federal Transit Administration Master Agreement. The Recipient certifies that its procurement system complies with the requirements of this paragraph. The Recipient agrees to include adequate provisions to ensure compliance with applicable federal requirements in each lower tier third party contract financed in whole or in part with financial assistance under this Agreement including all applicable provisions of this Agreement
  2. **General Property Requirements.** The title, acquisition, use, management, and disposition of all property acquired or constructed with grant funds under this Agreement shall be governed by applicable federal law, rule, and guidance including without limitation, the provisions of 2 CFR Part 200.
  3. **Property Disposal.** If the Recipient disposes of any Project facility or equipment, acquired in whole or in part with the federal financial assistance provided under this Agreement, during its useful life for any purpose except its replacement with like facility or equipment for public transportation use, the Recipient will comply with the terms of 2 CFR Part 200 relating to property management standards. Except as otherwise provided in 2 CFR Part 200, the Recipient agrees to remit to the Department a proportional amount of the proceeds from the disposal of such facility or equipment. Such proportional amount shall be determined on the basis of the ratio of the Department financing of the facility or equipment provided under this Agreement to the total cost of such facility or equipment. Sale of Project property developed or acquired with Department funds shall be at market value as determined by appraisal or public bidding process, and the contract and process for sale must be approved in advance by the Department. If any portion of the proceeds from the sale to the Recipient are non-cash consideration, reimbursement to the Department shall include a proportional amount based on the value of the non-cash consideration. The Recipient must remit such proportional amount to the Department within ninety (90) days after the official date of disposal. The terms of this paragraph shall remain in full force and effect throughout the useful life of facilities developed, equipment acquired, or Project items acquired, construed or installed with the proceeds of the subaward provided under this Agreement, except that the terms of this paragraph shall have unlimited duration with respect to real property acquired with the proceeds of the subaward provided under this Agreement.
  4. **Equal Employment Opportunity.** No person shall, on the grounds of race, color, religion, sex, handicap, or national origin, be excluded from participation in, be refused the benefits of, or be otherwise subjected to discrimination under this Agreement, or any project, program, or activity that receives or benefits from this Agreement. The Recipient agrees to comply with Executive Order (“E.O.”) 11246, as amended by E.O. 11375, and as supplemented by 41 CFR, Part 60, herein incorporated by reference. The Equal Opportunity Clause contained in 41 CFR section 60-1.4 is included in this Agreement by reference.

In connection with the carrying out of the Project, the Recipient shall not discriminate against any employee or applicant for employment because of race, age, creed, color, sex or national origin and will comply with all Federal statutes and implementing regulations relating to nondiscrimination. The Recipient will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, creed, color, sex, or national origin. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Recipient shall insert the foregoing provision modified only to show the particular contractual relationship in all its contracts in connection with the development or operation of the Project, except contracts for standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the Recipient shall post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

* 1. **Davis-Bacon and Copeland Anti-kickback.** The Recipient agrees to comply with the Davis-Bacon and Copeland Anti-kickback Acts as codified at 40 U.S.C. 3141 et seq. and 18 U.S.C. 874 for any agreement exceeding $2,000.
  2. **Title VI - Civil Rights Act of 1964.** Execution of this Agreement constitutes a certification that the Recipient will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.) and the regulations of the Federal Department of Transportation issued thereunder. The Recipient shall include the attached **Exhibit “C”, Title VI Assurances**, in all contracts with consultants and contractors performing work on the Project.
  3. **Title VIII - Civil Rights Act of 1968.** Execution of this Agreement constitutes a certification that the Recipient will comply with all the requirements imposed by Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601, et seq.), which among other things, prohibits discrimination in employment on the basis of race, color, national origin, creed, sex, and age.
  4. **Americans with Disabilities Act of 1990 (ADA).** Execution of this Agreement constitutes a certification that the Recipient will comply with all the requirements imposed by the ADA (42 U.S.C. 12102, et seq.), the regulations of the federal government issued thereunder, and the assurance by the Recipient pursuant thereto.
  5. **Federal Financial Assistance Policy to Ban Text Messaging While Driving.** This section implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009. As used in this paragraph:

"Driving" - Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

"Text messaging" - means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

The Recipient should:

Adopt and enforce policies that ban text messaging while driving: (i) Recipient-owned or -rented vehicles or government-owned vehicles; or (ii) Privately-owned vehicles when on official government business or when performing any work for or on behalf of the government.

Conduct initiatives in a manner commensurate with the Recipient’s size, such as: (i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and (ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

The Recipient shall insert the substance of this section, including this sentence, in all sub-agreement/subcontracts funded with the subaward provided under this Agreement that exceed the Federal Highway Administration micro-purchase threshold.

* 1. **Integrity Certification.** By signing this Agreement, the Recipient certifies that neither it nor its participants is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency. This certification is a material representation of fact upon which the Department is relying in entering this Agreement. If it is later determined that the Recipient knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. The Recipient shall provide to the Department immediate written notice if at any time the Recipient learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
  2. **Ownership of Data and Creative Material.** The ownership of material, discoveries, inventions and results developed, produced, or discovered by this Agreement are governed by the terms of 2 CFR, Section 200.315, Intangible Property.
  3. **Certification of Restrictions on Lobbying Disclosure.** The Recipient certifies to the best of its knowledge and belief that no federally-appropriated funds have been paid, or will be paid by or on behalf of the Recipient, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

If any funds other than federally-appropriated funds have been paid by the Recipient to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

The Recipient acknowledges that the certifications made in this section are material representations of fact upon which the Department is relying in entering into this Agreement.

The Recipient shall require that the language of this section be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

* 1. **Buy America.** The Recipient agrees to comply and require its consultants and contractors to comply with all applicable standards, orders, and regulations issued pursuant to the Buy America Act regarding the use of steel and iron manufactured in the United States, in accordance with the Buy America provisions of 23 CFR 635.410, as amended. The Recipient shall ensure that all manufacturing processes for this material occur in the United States.
  2. **Federal Certification and Assurances; Execution and Incorporation.** The Recipient agrees to comply with and to certify compliance with all current federally required certifications and assurances for the grant program under which the federally funded subaward provided by this Agreement is made. The Recipient must certify compliance with the applicable provisions by signing the appropriate certification(s) and returning the signed certification(s) as part of the execution of this Agreement. During the terms of this Agreement, the Recipient shall annually execute the most current certificates and assurances and provide them to the Department.
  3. **Environmental Regulations.** Execution of this Agreement constitutes a certification by the Recipient that the Project will be carried out in accordance with all applicable environmental regulations including the securing of any applicable permits. The Recipient will be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the securing of any applicable permits, and will reimburse the Department for any loss incurred in connection therewith. Without limiting the generality of the foregoing, in connection with the Project, the Recipient will not use any facilities that are in violation of the Clean Air Act or the Federal Water Pollution Control Act, will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities”, will report the use of prohibited facilities to the Federal Transit Administration and the Regional U.S. EPA Office, and shall comply with Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7606, and other requirements of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 - 7671q, and the requirements of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 - 1377.
  4. **NEPA Compliance.** Execution of this Agreement constitutes a certification by the Recipient that it will comply with the requirements of the National Environmental Policy Act (NEPA) of 1969. The Recipient agrees that it and any its contractors, subcontractors, consultants, and subconsultants will coordinate with the Department as necessary to ensure NEPA compliance.

1. **Miscellaneous Provisions:**
   1. **Compliance with Public Records Laws.** Recipient shall comply with Chapter 119, Florida Statutes. Specifically, Recipient shall:
      1. Keep and maintain public records required by the Department to perform the service.
      2. Upon request from the Department’s custodian of public records, provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
      3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if Recipient does not transfer the records to the Department.
      4. Upon completion of the Agreement, transfer, at no cost, to the Department, all public records in possession of Recipient or keep and maintain public records required by the Department to perform the service. If Recipient transfers all public records to the Department upon completion of the Agreement, Recipient shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Recipient keeps and maintains public records upon completion of the Agreement, Recipient shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department, upon request from the Department’s custodian of public records, in a format that is compatible with the information technology systems of the Department.
      5. Failure by Recipient to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Agreement by the Department.
   2. **Environmental Regulations.** The Recipient will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith. The Recipient will be responsible for securing any applicable permits. The Recipient shall include in all contracts and subcontracts for amounts in excess of $150,000, a provision requiring compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
   3. **Non-Admission of Liability.** In no event shall the making by the Department of any payment to the Recipient constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Recipient and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
   4. **Severability.** If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
   5. **Department Not Obligated to Third Parties.** The Department shall not be obligated or liable under this Agreement to any party other than the Recipient. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.
   6. **Relationship of Parties.** The Recipient and the Department agree that the Recipient, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.
   7. **Interest of Members of, or Delegates to, Congress or Legislature.** No member or delegate to the Congress of the United States, or the State of Florida legislature, shall be admitted to any share or part of the Agreement or any benefit arising therefrom.
   8. **Bonus or Commission.** By execution of the Agreement, the Recipient represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.
   9. **Non-Contravention of State Law.** Nothing in the Agreement shall require the Recipient to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Recipient will at once notify the Department in writing so that appropriate changes and modifications may be made by the Department and the Recipient to the end that the Recipient may proceed as soon as possible with the Project.
   10. **Execution of Agreement.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.
   11. **Federal Award Identification Number (FAIN).** If the FAINis not available prior to execution of the Agreement, the Department may unilaterally add the FAINto the Agreement without approval of the Recipient and without an amendment to the Agreement. If this occurs, an updated Agreement that includes the FAINwill be provided to the Recipient and uploaded to the Department of Financial Services’ Florida Accountability Contract Tracking System (FACTS).
   12. **Inspector General Cooperation.** The Recipient agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.
   13. **Law, Forum, and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail. The Recipient agrees to waive forum and venue and that the Department shall determine the forum and venue in which any dispute under this Agreement is decided.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year written above.

AGENCY       STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By: By:

Name:       Name:

Title:       Title:

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION Legal Review:

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