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Department of Transportation

LOCALLY FUNDED AGREEMENTS FINANCIAL PROVISIONS AND PROCESSING

AUTHORITY:

Sections 20.23(3)(a), 334.048(3) Florida Statutes

REFERENCES:

- Section 55.03, Florida Statutes
- Section 334.03(11), Florida Statutes
- Section 334.187, Florida Statutes
- Section 337.403, Florida Statutes
- Section 337.404, Florida Statutes
- Section 339.08, Florida Statutes
- Section 339.12, Florida Statutes
- Section 339.135(5), Florida Statutes
- Section 339.135(6),(a), Florida Statutes
- Contract Funds Management Funds Approval, Office of Comptroller, Procedure No. 350-020-200
- Work Program Instructions

PURPOSE:

This procedure establishes boilerplate language for Locally Funded Agreements (LFAs) which require Local Funds to be deposited with the Florida Department of Transportation (Department) and the requirements for the review and approval of the financial provisions of these agreements which do not use boilerplate language. This procedure is not intended to define when and under what statutes or circumstances LFAs are authorized.

SCOPE:

The requirements related to this procedure affect all Department employees responsible for writing and managing LFAs.

BACKGROUND:

The Department routinely enters into agreements which require the deposit of Local Funds with the Department in order to fund the project specified in the agreement. Because these projects are essential to the production of the Department's Work Program, financial provisions in the agreements establish criteria for the deposit and maintenance of the funds to be used for the project. These provisions are designed to safeguard the Department's financial interests and provide flexibility to the Participant in the commitment of funds as may be required. On occasion, standard financial provisions for a given project may require modification. All modified provisions, LFAs with multi-year project funding, LFAs related to Public Private Partnerships and agreements with non-governmental entities **must** be reviewed and approved first by the appropriate Department attorney and second by the Office of Comptroller – General Accounting Office (OOC-GAO) **prior** to execution of the agreement by either party. This procedure addresses only LFAs where Local Funds are provided to the Department. Once executed, LFAs are processed in the OOC-GAO, LFA Section. Contact that section for assistance on these agreements.

DEFINITIONS:

Boilerplate Language: Standard pre-approved financial provision language.

Cash Deposit: Money placed in an interest bearing escrow account with the Department of Financial Services, Division of Treasury, Bureau of Collateral Management to ensure the fulfillment of the LFA.

Collateral Deposit: Security pledged to ensure the fulfillment of the LFA.

FHWA: Federal Highway Administration

Governmental Entity: *Section 334.03(11), F.S.*, defines a governmental entity as a unit of government, or any officially designated public agency or authority of a unit of government, that has the responsibility for planning, construction, operation, or maintenance or jurisdiction over transportation facilities; the term includes the Federal Government, the state government, a county, an incorporated municipality, a metropolitan planning organization, an expressway or transportation authority, a road and bridge district, a special road and bridge district, and a regional governmental unit.

Local Funds: Local funds are defined as cash, bond proceeds, time warrants, or other goods or services of value provided for use on a project or project phase by a governmental entity or private sector Participant.

Local Funds For STTF Utility Work (LFD): The LFD Work Program fund code for utility work funded up front with state funds due to the utility owner's inability or refusal to pay for the utility work when the utility default becomes known and the required funding is in a future year. (See **Section 8**)

Local Funds For Unseen Work (LFU): The LFU Work Program fund code for utility work funded up front with district allocated funds due to the utility owner's inability or refusal to pay for the utility work when the utility default becomes known and the required funding is in the current year. (See **Section 8**).

Local Funds Reimbursable (LFR): **Section 339.12,(4),(a), F.S.**, authorizes the Department to enter into agreements with a governmental entity to advance a highway project or project phase included in the adopted work program that is not revenue producing or any public transportation project included in the adopted work program. Reimbursement to the governmental entity for such a project or project phase is contingent upon appropriation of the funds by the Legislature, and reimbursement for the cost of the project phase cannot begin until the year the project or project phase is scheduled in the adopted work program as of the date of the agreement.

Local Funds Reimbursable-Future (LFRF): **Section 339.12,(4),(c), F.S.**, authorizes the Department to enter into agreements with a governmental entity to advance a highway project or project phase not included in the adopted work program that is not revenue producing or any public transportation project not included in the adopted work program. The following provisions apply: 1) the total amount of this type of advance is limited statewide; 2) the project must represent a high priority of the governmental entity; 3) reimbursement to the governmental entity for such a project or project phase is contingent upon appropriation of the funds by the Legislature.

Locally Funded Agreement (LFA): Locally Funded Agreements are legally binding agreements, between the Department and one or more parties, which provide for the rendering of services and/or commodities, involving joint efforts and/or funding, and are mutually beneficial to all parties.

Escrow Agreement (EA): "Escrow Agreement" as referred to in this procedure is an agreement between the Participant, the Department (through the Comptroller), and the Department of Financial Services, Division of Treasury, Bureau of Collateral Management. The **EA** is used when the LFA stipulates that unused funds, including unused interest, will be refunded to the Participant after the final project accounting has been performed. The **EA** is a benefit to both the Department and the Participant. Interest earned will be used for any additional costs of Participant responsibility.

Participant: The local entity or private entity participating in a Locally Funded Agreement with the Department.

STTF: State Transportation Trust Fund.

Work Program Administration (WPA): The Department's Work Program Administration Subsystem is the mainframe computer resident subsystem for planning, budgeting, authorizing, and tracking management and financial data related to projects.

1. STANDARD PROVISIONS

Incorporating any of the boilerplate attachments provided in this procedure must be pre-approved by a Department attorney. This ensures proper legal usage of each type of financial provision.

1.1 BOILERPLATE LANGUAGE

Boilerplate language for financial provisions used for LFAs is reflected in **Attachments A, B, C, D and E**. Use of this boilerplate language, which should be included in the body of the LFA, will preclude the requirement that the Comptroller or designee review the financial provisions of the LFAs.

Upon execution, a copy of the LFA and fully completed **Agreement Summary Sheet (Form Number 350-020-03)**, including a breakdown of funds by phase, **must** be forwarded to the OOC-GAO, LFA Section at M.S. 42B. The LFA should be signed only by the Participant and the Department.

1.1.1 Standard Agreement (Attachment A)

This language is to be used when the Participant will provide a deposit based on an estimated amount prior to the Department committing to another party to perform the project. In this type of agreement, all adjustments to the estimate, as well as cost increases, cost overruns, and costs from supplemental agreements will be the responsibility of the Participant. This language cannot be used when entering into an agreement with a non-local Governmental Entity. Any agreement with a non-local Governmental Entity must be reviewed and approved by a Department attorney then sent to the OOC-GAO for review (see **Section 2.3**). The draft language must include the statutory authority for the agreement.

1.1.2 Lump Sum Participation (Attachment B and Attachment C)

Verification from a Department attorney must be received for proper legal usage of this type of LFA.

There are two types of lump-sum participations:

- (A) A single amount deposit for the estimate, which may increase if there are increased costs due to overruns, amendments, etc., on the project. The additional costs are borne by the Participant. A copy of the notification to the Participant of additional costs must be provided to the LFA Section. The Participant will not receive a refund if the sum of the deposits is greater than the actual cost. Funds received in excess of the project phase cost, as defined in the agreement, will be applied to other phases of the project. See **Attachment B**.
- (B) A single amount contribution to the Department which does not increase if project costs increase. If project costs increase, the Participant does not share in the

additional costs. The additional costs are borne by the Department. The project and project funding must be statutorily allowed for the Department to pay for additional costs above the contribution. The lump sum boilerplate may indicate as such. This modification to the financial language does **not** require the prior approval of the Department's Comptroller. Funds received in excess of the project phase cost, as defined in the agreement, will be applied to other phases of the project or refunded to the Participant in accordance with the terms of the agreement. See **Attachment C**.

1.1.3 Participation limited to match of the non-federal share (Attachment D)

Use this language if the project funding involves federal funding and the Participant is responsible for a portion of the non-federal share of all project costs. This language is limited to off-system projects for which the local is responsible for 100% of the funds required to make up the federal participation shortfall, including cost overruns and/or supplemental agreements not paid by federal funds. The Department **may** elect to provide funds for up to one-half (1/2) of the non-federal funds required to match the federal participation share.

1.1.4 Construction Contingency Costs Participation (Attachment E)

Use this language if the project is located off the State Highway System where FHWA no longer allows STP Enhancement funding to be utilized for construction contingency costs.

1.2 AMENDMENTS

- All amendments to the original LFA that change the financial provisions must be pre-approved by the Department's Comptroller or designee (see **Section 2.3**).
- Once amendments are executed, a copy must be sent to the OOC-GAO, LFA Section, along with a revised **Agreement Summary Sheet (Form Number 350-020-03)**, if applicable.

1.3 WORK PROGRAM

- The Financial Project number is eleven digits. This number must be listed/included on the LFA, the Agreement Summary Sheet and the **EA** if applicable.
- As stated in **Section 339.12(3), F.S.**, the project or project phase must be included in the Department's adopted work program. This must be verified before executing the LFA. The only exception is for the purpose of reimbursement to the governmental entity for a project not included in the adopted work program, **Section 339.12(4) (c), F.S.** An LFRF project must be a high priority project of the governmental entity. There is a statutory statewide cap (currently \$250,000,000.00) on the LFRF program.

- Like all funding types in the work program, local funds must be approved through a budget cycle to have budget authority supporting it. The deposits received from the governmental entity do not automatically produce the budget authority needed to spend it. Contact your Budget or Work Program office for details on the budget cycles.
- See the ***Work Program Instructions, Part III Chapter 19*** for local fund types.
- The Participant's name should be indicated on the Item/Segment screen in the WPA subsystem (WP01).
- The financial project funded in the Work Program with the appropriate local fund code must be where the cost will be recorded for the local participation.
- The district must ensure proper project cost accounting to the appropriate financial project.

1.4 TIMELINESS OF DEPOSITS:

For projects with work to be performed by Department contract, the standard boilerplate financial language requires the deposit to be received within fourteen (14) calendar days prior to the advertisement of the project. This is the minimum number of days authorized. If a district has cause to require an earlier deposit, the number of days may be increased (e.g., (a) within thirty (30) days prior to advertisement, (b) within twenty-five (25) calendar days of the execution of the LF agreement, etc. This modification to the financial language does **not** require prior approval of the Department Comptroller or designee. If number of days after LF execution is used, the deposit must be no later than fourteen (14) days prior to the Department's advertisement of the project.

At the time of the award of the contract, an additional deposit is required within fourteen (14) days if the accepted bid amount plus allowances is in excess of the initial deposit. If this time frame is impossible to adhere to, and the Participant cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to and approved by the Department's project manager indicating when the deposit will be made. A copy of this letter must be sent to the OOC-GAO, LFA Section at M.S. 42B. Steps must be taken to ensure available funds are in place before the contract is awarded (i.e., funding the additional amount with state or federal funds, if applicable). In some cases, it may be necessary to delay the award of the contract (all projects within that contract) until the additional deposit is received or other funds are made available (i.e., on system projects where state funds may be utilized).

- For construction projects let by Central Office, it is the district's responsibility to notify the Contract Administration Office and the OOC-GAO when awarding the contract must be delayed. Electronic mail may be utilized for this notification.
- The first posting of the projects for award is twenty-two (22) calendar days after the Letting. The second posting is forty (40) calendar days after the Letting. To see

actual Letting and award dates for projects let in Tallahassee, access the Contracts' Administration Office intranet site at the following location:
<http://infonet.dot.state.fl.us/contractsadministration/>.

1.5 ALLOWANCES

If the LFA has any allowances (e.g., Contingency, Construction Engineering Inspection, etc.), the percentage and amount **must** be included in the LFA and noted on the **Agreement Summary Sheet (Form Number 350-020-03)**. This information may be placed in an attached exhibit to the agreement as long as there is a statement in the agreement incorporating the exhibit. When completing the **Agreement Summary Sheet**, if one, or all, of the allowances are not applicable, indicate "n/a". **Do not leave blank spaces.** If allowances are in an Exhibit, place the Exhibit number in the blanks. Do not include allowances in Lump Sum Agreements (**Attachments B and C**).

1.6 TYPES OF DEPOSITS

There are two choices, as indicated on **Attachments A, B, C, D and E**, for the deposit of funds applicable to the LFA. The option to be selected depends on the provisions of the LFA and is determined as follows:

1.6.1. Agreements that do not include the financial provision for refunding excess funds to the Participant

These deposits will be made into a master escrow account with the Florida Department of Financial Services, Division of Treasury, Bureau of Collateral Management. The Participant does not earn interest on the funds. The Department will draw funds from the master escrow account as expenditures are incurred on the project.

1.6.2 Agreements that include the financial provisions for refunding excess funds to the Participant

Deposits will be made in an interest bearing escrow account with the Florida Department of Financial Services, Division of Treasury, Bureau of Collateral Management. In order for the Participant to receive the benefit of earned interest, the Participant must sign an **EA** (refer to **Attachment F**). The **EA** must also be signed by the Central Office General Counsel's office, Department's Comptroller or designee, and the Department of Financial Services. The Department will draw funds from this account as the Department records expenditures on the project. Interest is earned on these deposits for the benefit of the project and will remain in the escrow account to be used for the project. Upon completion of the project, excess principal and interest will be returned to the Participant.

- (A) An **EA** must be executed for individual projects even when the Participant has multiple projects with the Department. However, if the funds may be co-mingled between projects and there is one agreement for the multiple projects, one **EA** may be executed listing all of the projects.

- (B) An **EA** must be executed for each Participant even when the project is the same.
- (C) **The EA must remain a separate document and it should not be incorporated in the body of the LFA. The Project Number must be the same as on the LFA and in the WPA Subsystem.**
- (D) The language in the numbered paragraphs on the EA cannot be altered or modified in any way without prior approval from the Department's Comptroller or designee. Any modifications to the numbered terms in the **EA** must also be pre-approved by the Department of Financial Services. Any requests to amend the numbered provisions must be submitted to the Department's Comptroller or designee for review and approval. If approved, the Comptroller or designee will seek approval from the Department of Financial Services. Modifications to the **EA** will require a written justification. The Department of Financial Services will have the final decision on the approval or denial of any changes to the language in the **EA**.
- (E) The district shall prepare a minimum of three duplicate originals of the **EA** (one original for the Department of Financial Services, one for the OOC-GAO, LFA Section, and one for the Participant). There is not a maximum amount of originals that can be executed by the Department of Financial Services. For example, if 4 originals are needed (one original for Department of Financial Services, one for the LFA Section, one original for the Participant, one for the District LFA Coordinator), all 4 can be submitted to the OOC-GAO, LFA Section, for execution. The OOC-GAO, LFA Section, will send all remaining executed copies to the district contact person listed on the **Agreement Summary Sheet (Form Number 350-020-03)** that was submitted with the LFA. The District is responsible for distributing the remaining executed copies to all interested parties.
- (F) All **EA**'s must be submitted to:

Florida Department of Transportation
OOC-GAO, LFA Section
605 Suwannee Street, MS 42B
Tallahassee, Florida 32399

2. FINANCIAL PROVISIONS REQUIRING PRIOR APPROVAL BY THE OFFICE OF COMPTROLLER

All drafts of agreements with non-governmental entities must be sent to the OOC-GAO for approval of the financial provisions, even if boilerplate language is used. The draft **EA**, if applicable, must be submitted with the draft agreement.

Amendments to LFAs which will modify boilerplate language or previously approved financial language are considered modified provisions and must be submitted for review

and approval (see **Section 2.3**).

2.1 Modified Financial Boilerplate Language

Any LFA which does not use the financial boilerplate language detailed in **Attachments A, B, C, D and E** will require review and approval of the modified provision language **first** by a District or Central Office attorney, depending on the origination of the LFA, and **second** by the Comptroller or designee (OOC-GAO), prior to execution by either the Participant(s) **or** the Department.

Modified financial provisions must be submitted to the OOC-GAO, Attn: Comptroller's LFA Designee by any of the Following Methods:

- Courier Mail (Mail Station 42B),
- Electronic Mail. Contact information can be found at the <http://fdotsp.dot.state.fl.us/sites/OOC/GAO/SitePages/Home.aspx>
- Fax (850-414-4891),
- US Mail to: Florida Department of Transportation
OOC-GAO Attn: Comptroller's LFA Designee
605 Suwannee Street, MS 42B
Tallahassee, Florida 32399

2.2 Any LFA which contains multi-year project funding or which is related to a Public Private Partnership (P3) project must be submitted to the OOC-GAO for review and approval, regardless of whether or not boilerplate language was used. These agreements will be reviewed to determine the appropriate ownership of interest earnings on LF deposits and will be handled on a case by case basis.

2.3 Local Government Advance/Reimbursement, *Section 339.12, F.S.*

The financial provisions of any such agreement using funds advanced by a local government to the Department to advance a project either contained (LFR Funds) or not contained (LFRF Funds) in the Adopted Work Program must be approved by the Department's Comptroller prior to either party signing the agreement. An **EA** may be required (see **Section 1.6.2**).

2.3.1 Required Review and Approval Process

The responsible District Secretary and Assistant Secretary for Finance and Administration must approve a request to advance a project either contained (LFR Funds) or not contained (LFRF Funds) in the Adopted Work Program. The request to advance a project should include sufficient justification to support the need for and the importance of providing this commitment. When reviewing the request, the responsible District

Secretary must determine that the project is a high priority and the need to advance the project outweighs the project's impacts on future district funding decisions and commitments. A request approved by the District Secretary is then sent to the Assistant Secretary for Finance and Administration and the Director of the Office of Work Program and Budget for review. The Assistant Secretary for Finance and Administration may approve the request as a LFR or LFRF project after considering statewide financial and program impacts and the Department's ability to ensure compliance with applicable laws.

2.3.2 Reimbursement to the Governmental Entity

(A) The following are payback options determined by the type of project and/or its funding:

- If the Department's funding is from the Federal Highway Administration (FHWA) {including those funded as AC (Advanced Construction)}, the reimbursement payment of costs incurred will be made in a lump sum in the year the project is scheduled in the Department's Work Program as of the date of the executed agreement. The repayment schedule for Federal Earmark projects will be determined on a case by case basis by the Department's Comptroller.
- If the total project estimate is Two Million Dollars, (\$2,000,000.00), or less using state funds, the reimbursement payment of costs incurred will be made in a lump sum in the year the project is scheduled in the Department's Work Program as of the date of the executed agreement.
- If Two Million Dollars, (\$2,000,000.00), or less using state funds, or the FHWA funding {including those funded as AC (Advanced Construction)} is programmed in the Department's Adopted Work Program over a multi-year period, an annual amount equal to the amount programmed and incurred will be reimbursed in each of these years. The repayment schedule for Federal Earmark projects will be determined on a case by case basis by the Department's Comptroller.
- If the project is for resurfacing, is estimated over Two Million Dollars, (\$2,000,000.00), and is state funded, payments will be made in six (6) equal quarterly payments, up to the amount of costs incurred, beginning in the year the project was programmed as of the date of execution of the agreement.
- For all other state funded contracts estimated over Two Million Dollars (\$2,000,000.00), payments will be made in ten (10) equal quarterly payments, up to the amount of costs incurred, beginning in the year the project was programmed as of the date of execution of the agreement.
- Any variations from the above described payment methods are considered modifications and must be approved by the Department's Comptroller. Variations from the above methods are highly discouraged as they impact the Department's

Cash Forecast and Finance Plans. Only one payback option should be included in the agreement.

- (B) See **Section 7** of this procedure for funds approval requirements when the reimbursement(s) are scheduled to begin.
- (C) If at the time of payback there are not sufficient costs incurred under the LFR or LFRF fund codes to equal or exceed the payback amount, the LFA Section will notify the District LFA Coordinator for review. If the LFA Coordinator determines that the costs incurred are correct, the difference between the scheduled payback amount and the costs incurred will be refunded from the Participant's funds on deposit.
- (D) The Department's Comptroller or designee will process for reimbursement all governmental entity advances after the appropriate documents (described below) are received from the district.
- (E) The District's Project Manager must submit a completed and signed **Receiving Report and Invoice Transmittal-Contracts (RRIT Form No. 350-060-02)** to the OOC-GAO, LFA Section (MS 42B) for processing. **Note:** The contract number is required on the RRIT.
- (F) Once the RRIT is received by the OOC-GAO, LFA Section, an LFA Accountant will verify that the total amount to be reimbursed to the Participant is correct, the financial project number (including phase and current billing indicator) referenced on the RRIT is correct according to the FM system, and will verify that the reimbursement has not been duplicated. The OOC-GAO, LFA Section, will then forward the RRIT to the OOC - Disbursement Operations Office for processing.
- (G) If the RRIT is not complete or correct, the appropriate district office will be notified and a corrected and/or completed RRIT will be required to process the payment.

3. FINANCIAL PROVISION REVIEW

3.1 MODIFIED FINANCIAL PROVISIONS WILL BE REVIEWED TO DETERMINE THE FOLLOWING:

- (A) The financial provisions are supported by Florida law and have been approved by an appropriate Department attorney.
- (B) The Department's control of the funds.
- (C) The accessibility of the funds to the Department.
- (D) The funds (if not received in their entirety) are properly secured by collateral.

- (1) For LFAs secured by collateral, participants may be required to submit their most recent audited financial statements as well as current interim financial statements for review prior to execution of the LFA.
- (2) In very limited circumstances, with adequate justification, provisions **may** be approved by the Department's Comptroller to allow a partial deposit of at least three months of the expected cash needs of the project amount and an irrevocable letter of credit to secure the remaining balance. The partial deposit will be placed in the DOT LFA Master Escrow Account but no interest will accrue to the Participant.
 - (a) **The Comptroller is the only DEPARTMENT employee authorized to approve and accept a *Letter of Credit*.**
 - (b) **All Letters of Credit must be reviewed and approved by the Comptroller of the Department per *Section 334.187, F.S.***
 - (c) **All Letters of Credit must reside in the Office of Comptroller. They must be sent to the Comptroller at M.S. 42B.**
- (E) Sufficient funding is available to produce the project.
- (F) The LFA safeguards the assets of the Department.
- (G) Interest earnings on LF deposits are properly accounted for in multi-year funding or P3 agreements.

3.2 After the review has been completed, the submitting office will receive one of the following notifications:

- The modified provisions are approved as submitted.
- Specified changes must be made prior to approval.
- The LFA, as proposed, is not acceptable.

3.3 Following completion of the required review, an approved copy of the provisions will be authorized by the Comptroller, or designee, and returned to the submitting office.

3.4 **Special provision agreements submitted for review and approval by the Comptroller of the Department, which have been previously signed by either party prior to the required review, will be subject to amendment.**

4. CHECKS AND WIRE TRANSFERS

It is the responsibility of each district to ensure all deposits are received timely. All

Participants should be encouraged to provide their deposit through either a wire transfer or ACH deposit. The financial project number must be included on all checks or check stubs and on all wire and ACH information.

4.1 If the deposit is in the form of a wire transfer or ACH deposit, the wire transfer and ACH deposit information can be located on the OOC/GAO SharePoint site at the following location: <http://fdotsp.dot.state.fl.us/sites/OOC/GAO/SitePages/Home.aspx>

In order for DOT to receive credit for the funds due to the Department, the reference line must contain "DOT" and the financial project number. Once the wire transfer is complete, the LFA Section should be notified and provided the financial project number, dollar amount of transfer or deposit, and the name of the participant.

4.2 If the deposit is in the form of a check, the check **must** be forwarded to:

Florida Department of Transportation
OOC-GAO, LFA Section
605 Suwannee Street, MS 42B
Tallahassee, Florida 32399

If submitting a check, participants should be encouraged to send checks directly to the OOC-GAO for deposit. Checks received by the district office should immediately be entered into the Receipt Processing System and sent, via inter-office mail or other acceptable means, to the OOC-GAO, LFA Section for deposit. Copies of the transmittal documents should be kept in the district contract files consistent with district policy. The district employee receiving the check must notify their LFA accountant via email the amount of the check and the date it was mailed to the OOC-GAO, LFA Section. When the LFA Section receives the check, the status of the check will be changed to "External Deposit" in the Receipt Processing System.

4.3 The district must provide an explanation to their LFA Accountant when a deposit does not equal the amount stated in the agreement.

4.4 The LFA Accountant will notify the district contact person listed on the Agreement Summary Sheet via email with the Comptroller Funds Received Form when a deposit is received.

5. INSUFFICIENT FUNDS

5.1 For construction contracts, if the deposit is depleted before the Final Estimate of Construction is received in the OOC-GAO, LFA Section, the LFA Section will notify the district contact person with the total of all deposits including interest (if applicable) and expenditures to date including allowances. The district contact person shall provide the LFA Section with an estimate of the additional funds that will be required and a copy of the letter sent to the Participant requesting the additional funds. If the ***Final Estimate of Construction*** has been received, the LFA Section will provide the previously listed

information. The district contact person shall verify the amounts so a final invoice can be sent to the Participant. The Participant must pay within thirty (30) days of the invoice letter date or as per the terms of the agreement.

5.2 If the additional funds are not received in the OOC-GAO, LFA Section, within thirty (30) days or as per the terms of the agreement, the district contact person will be notified. The district contact person shall contact the Participant about the amount due. If payment is still not received after sixty (60) days of the invoice date, or if the Participant response is not acceptable, the district, the LFA Section, and the Office of the General Counsel will jointly determine the most appropriate action.

5.3 If contingency funds are used up early in a project, it is recommended that replacement of those funds be requested and provided for deposit.

6. REFUNDS

Refunds can be made under the following conditions if allowed by the terms of the agreement:

- (A)** If the accepted bid is less than the amount of deposit, a refund may be requested by the Participant. The refund request must be accompanied by a statement from the district identifying the amount of the accepted bid that is the responsibility of the Participant. Copies of the Participant's request and the district's approval of the refund must be sent to the OOC-GAO, LFA Section. The district is responsible for maintaining documentation of the actual bid amounts and the Participant's request for the refund for audit purposes.
- (B)** If during the project the Participant's financial responsibility decreases and the agreement allows, a request for a refund may be submitted by the Participant. The request and the approval by the district must be sent to the OOC-GAO, LFA Section, for processing.
- (C)** After the final payment has been made to the contractor, the project is no longer valid for charges in the Financial Management System, and all encumbrances have been released, the OOC-GAO, LFA Section, will determine the actual refund amount. Prior to processing the refund, the district contact person will be notified of the pending refund. Upon notification, that contact person is required to approve or disapprove the refund. If approved, the refund will be processed. Objections to the refund will be reviewed and appropriate action will be taken to resolve the objection.

7. FUNDS APPROVAL ON LOCALLY FUNDED AGREEMENTS

As the LFA does not require an immediate commitment of Department's funds to the contractor/consultant performing the work on the project, there is no need for the certification of funds availability (encumbrance) at the time of LFA execution (see exception in **Section 7.2**). This is the case because LFAs are usually executed long

before the agreed upon funds are to be received and the services are to be rendered. However, pursuant to **Section 339.135(6)(a), F. S.**, certification of funds availability via an encumbrance **is** required prior to the execution of the Department's agreement with a contractor/consultant if applicable to the LFA.

7.1 The OOC, Contracts, Grants and Funds Management Section processes all funds approval/encumbrance requests. The approval of the encumbrance request is the certification of funds availability. Major construction contracts are funds approved/encumbered via electronic memorandum from the Central Office Production Management Office prior to the advertisement of a project. Other contracts are funds approved/encumbered via the electronic request form from various offices within the districts or Central Office. Local Funds **must** be on deposit before funds will be approved. Any exceptions to this process, should circumstances arise, must be approved by the Department's Comptroller.

7.2 Advance Reimbursement Projects, Section 339.12, F. S., are projects in which the reimbursement will occur subsequent to the currently budgeted fiscal year. Reimbursement is contingent upon Legislative appropriation in that future fiscal year(s). A request for a 'reviewed' fund approval must be submitted prior to execution of the LFA, indicating the future year(s) the reimbursement will occur. A contract number will be issued.

Additional information on the Funds Approval and Encumbrance Processes can be obtained from **Procedure No. 350-020-200, Contract Funds Management Approval**.

8. UTILITY OWNER DEFAULTS

Part III, Chapter 43 of the **Work Program Instructions** provides direction on utility relocation work. Per **Section 337.403, F.S.**, if the owner of the Utility has made the Department aware that the Utility will fail to perform the requested utility work or pay for the utility work to be performed, the Department shall proceed to perform the utility work and proceed with the steps noted in **Section 337.404, F.S.**, to collect the funds expended on the utility work. It is the District Utility Office's responsibility to notify the District Work Program Manager when the Department becomes aware of the utility's inability or refusal to pay for the utility work. The District Utility Office will notify the District Work Program Manager via an email with a copy to the OOC-GAO, LFA Section. The Department will monitor these projects to ensure that necessary steps are taken according to statute to recoup the costs necessary to relocate the utilities. A LFD or LFU estimate, whichever is applicable, should remain programmed until the Department receives the funds due. The estimate will be adjusted annually for all funds received. The LFA Section will notify the District Work Program Manager when funds are received, or at a minimum prior to the end of the fiscal year, of any amounts collected from the utility for the current fiscal year. When the amounts are received, the District Work Program Manager will reduce the LFD or LFU estimate and increase the LF estimate by the amount. The LFD or LFU will reflect amounts due, while the LF will reflect amounts paid. The estimates are to remain in their original program years.

9. TRAINING

A Computer Based Training program has been developed and is available on the GAO SharePoint site at the following location:

<http://fdotsp.dot.state.fl.us/sites/OOC/GAO/SitePages/Home.aspx>

10. FORMS

Receiving Report and Invoice Transmittal-Contracts, Form No. 350-060-02

Agreement Summary Sheet, Form No. 350-020-03

11. ATTACHMENTS

- (A)** Boilerplate Provision – Standard agreement.
- (B)** Lump Sum Boilerplate Provisions. Includes provisions for additional deposit. No refund provided.
- (C)** Lump Sum Boilerplate Provisions. No additional deposit required.
- (D)** Matching Boilerplate Provisions (portion of federal share)
- (E)** Off State Highway System (SHS)-Construction Contingency Boilerplate Provisions (no FHWA allowance for STP Enhancement funding)
- (F)** Escrow Agreement

Reference **Section 1.1.1****ATTACHMENT A**

(Standard Agreement)

Suggested title of agreement: Locally Funded Agreement

Insert the following paragraphs into your contract:

- (A) (Participant) agrees that it will, at least fourteen (14) calendar days prior to the Department's advertising the project for bid, furnish the Department an advance deposit in the amount of (*amount spelled out*) \$ (##) for full payment of the estimated project cost for Locally Funded project number(s) (financial project #(s)) . The advance deposit shall be the total estimated project cost plus allowances (*Define Allowances: e.g., Contingency % (amount), etc.*). The Department may utilize this deposit for payment of the costs of the project.
- (B) If the accepted bid amount plus allowances is in excess of the advance deposit amount, the Participant will provide an additional deposit within fourteen (14) calendar days of notification from the Department or prior to posting of the accepted bid, whichever is earlier, so that the total deposit is equal to the bid amount plus allowances. The Department will notify the Participant as soon as it becomes apparent the accepted bid amount, plus allowances, is in excess of the advance deposit amount. However, failure of the Department to so notify the Participant shall not relieve the Participant from its obligation to pay for its full participation on final accounting as provided herein below. If the Participant cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to and approved by the Department's project manager indicating when the deposit will be made. The Participant understands the request and approval of the additional time could delay the project, and additional costs may be incurred due to a delay of the project.
- (C) If the accepted bid amount plus allowances is less than the advance deposit amount, the Department will refund the amount that the advance deposit exceeds the bid amount plus allowances if such refund is requested by the Participant in writing.
- (D) Should project modifications or changes to bid items occur that increase the Participant's share of total project costs, the Participant will be notified by the Department accordingly. The Participant agrees to provide, without delay, in advance of the additional work being performed, adequate funds to ensure that cash on deposit with the Department is sufficient to fully fund its share of the project. The Department shall notify the Participant as soon as it becomes apparent the actual costs will overrun the award amount. However, failure of the Department to so notify the Participant shall not relieve the Participant from its obligation to pay for its full participation during the project and on final accounting as provided herein below. Funds due from the Participant during the project not

paid within forty (40) calendar days from the date of the invoice are subject to an interest charge at a rate established pursuant to **Section 55.03, Florida Statutes (F.S.)**.

- (E) The Department intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred and sixty days (360) of final payment to the Contractor. The Department considers the project complete when the final payment has been made to the Contractor, not when the construction work is complete. All project cost records and accounts shall be subject to audit by a representative of the Participant for a period of three (3) years after final close out of the project. The Participant will be notified of the final cost. Both parties agree that in the event the final accounting of total project costs pursuant to the terms of this agreement is less than the total deposits to date, a refund of the excess will be made by the Department to the Participant. If the final accounting is not performed within three hundred and sixty (360) days, the Participant is not relieved from its obligation to pay.
- (F) In the event the final accounting of total project costs is greater than the total deposits to date, the Participant will pay the additional amount within forty (40) calendar days from the date of the invoice from the Department. The Participant agrees to pay interest at a rate as established pursuant to **Section 55.03, F. S.**, on any invoice not paid within forty (40) calendar days until the invoice is paid.
- (G) The payment of funds under this Locally Funded Agreement will be made directly to the Department for deposit and as provided in the attached **EA** between Participant(s), Department and the State of Florida, Department of Financial Services, Division of Treasury.
- (H) Contact Persons:
- PARTICIPANT: _____
- Address: _____
- _____
- Contact Person: _____ (name) _____
- Telephone # (____) _____
- Fax # (____) _____
- Federal Employer ID # (FEIN) _____
- DEPARTMENT:
- District Contact: _____ (name) _____
- Telephone #: (____) _____
- Fax # (____) _____

Reference **Section 1.1.2****ATTACHMENT B****(Lump Sum)**

Suggested title of agreement: Locally Funded Agreement (Lump Sum)
(This language is to be used on agreements that include provisions for additional deposits based on actual project costs.)

Insert the following paragraphs into your contract:

- (A) (Participant) agrees that it will, at least fourteen (14) calendar days prior to the Department's advertising the project for bid, furnish the Department an advance deposit in the amount of *(amount spelled out)* \$ (##) for full payment of the estimated project cost for locally funded project number(s) *(financial project #(s))*. The Department may utilize this deposit for payment of the costs of the project.
- (B) If the accepted bid amount is in excess of the advance deposit amount, the Participant will provide an additional deposit within fourteen (14) calendar days of notification from the Department or prior to posting of the accepted bid, whichever is earlier, so that the total deposit is equal to the bid amount. The Department will notify the Participant as soon as it becomes apparent the accepted bid amount is in excess of the advance deposit amount; however, failure of the Department to so notify the Participant shall not relieve the Participant from its obligation to pay for its full participation. If the Participant cannot provide the additional deposit within fourteen (14) calendar days, a letter must be submitted to and approved by the Department's project manager indicating when the deposit will be made. The Participant understands the request and approval of the additional time could delay the project, and additional costs may be incurred due to delay of the project.
- (C) Should project modifications occur that increase the Participant's share of total project costs, the Participant will be notified by the Department accordingly. The Participant agrees to provide, without delay, in advance of the additional work being performed, adequate funds to ensure that cash on deposit with the Department is sufficient to fully fund its share of the project. The Department shall notify the Participant as soon as it becomes apparent the actual costs will overrun the award amount; however, failure of the Department to so notify the Participant shall not relieve the Participant from its obligation to pay for its full participation. Funds due from the participant during the project not paid within forty (40) calendar days from the date of the invoice are subject to an interest charge at a rate established pursuant to **Section 55.03, Florida Statutes (F.S.)**.
- (D) If the actual cost of the project is less than the funds provided the excess will be applied to other phases on the project.

(E) The payment of funds under this Locally Funded Agreement will be made directly to the Department for deposit.

(F) Contact Persons:

PARTICIPANT: _____

Address: _____

Contact Person: _____ (name) _____

Telephone # (____) _____

Fax # (____) _____

Federal Employer ID # (FEIN) _____

DEPARTMENT:

District Contact: _____ (name) _____

Telephone #: (____) _____

Fax # (____) _____

Reference **Section 1.1.2****ATTACHMENT C****(Lump Sum)**

Suggested title of agreement: Locally Funded Agreement (Lump Sum Contribution).
(This language is to be used on agreements that do not include provisions for additional deposits.)

Insert the following paragraphs into your contract:

- (A) (Participant) agrees that it will, at least fourteen (14) calendar days prior to the Department's advertising the project for bid, furnish the Department a contribution in the amount of (*amount spelled out*) \$ (##) . to be used for the estimated project cost for locally funded project number(s) (financial project #(s)) . The Department may utilize this contribution for payment of the costs of the project.
- (B) If the actual cost of the project is less than the funds provided the excess will be:
(1) Applied to other phases on the project or
(2) Refunded to the Participant if requested in writing
- (C) Type of Deposit is based on the option chosen in (B) above.

For option (1): The payment of funds under this Locally Funded Agreement will be made directly to the Department for deposit.

For option (2): The payment of funds under this Locally Funded Agreement will be made directly to the Department for deposit and as provided in the attached **EA** between Participant(s), Department and the State of Florida, Department of Financial Services, Division of Treasury.

- (D) Contact Persons:

PARTICIPANT: _____

Address: _____

Contact Person: _____ (name) _____

Telephone # (____) _____

Fax # (____) _____

Federal Employer ID # (FEIN) _____

DEPARTMENT:

District Contact: _____ (name) _____

Telephone #: (____) _____

Fax # (____) _____

Reference **Section 1.1.3****ATTACHMENT D**

Suggested title of agreement: Locally Funded Agreement (Matching Share)
(Participation limited to the match of the non-federal share. Applicable to off-system projects only in which the Department elects to provide up to one-half (1/2) of the non-federal funds required to match the federal participating share.)

- (A) The Participant and the Department agree to share the cost of this project ____ (*financial project number(s)*) _____. The Participant agrees to provide ____ (insert percentage – minimum 50%) ____ of the non-federal funds required to match the federal participating share of the project and the Department agrees to provide the other ____ (insert percentage – up to 50%) ____ of the non-federal funds required to match the federal participating share.
- (B) The share of the Participant shall be, at a minimum, the stated percentage of the actual costs of the project. However, in the event the federal government fails to provide an amount which is equal to the anticipated federal participating share, the Participant shall be responsible for 100% of the funds required to make up the shortfall, including cost overruns and/or supplemental agreements not paid by federal funds. The Department is only responsible for the stated percentage of the non-federal funds required to match the federal participating share as described in paragraph (A). The Project is off the "State Highway System", therefore, in accordance with Section 339.08(1), F.S., State funding cannot be used for payments of non-participating costs on this Project.
- (C) Should such shortfalls occur, due to a determination that said costs are non-participating, the Participant agrees to provide, without delay adequate funds to ensure that cash on deposit with the Department is sufficient to fully fund the shortfall. The Department shall notify the Participant as soon as it becomes apparent there is a shortfall; however, failure of the Department to so notify the Participant shall not relieve the Participant from its obligation to pay for its full participation of non-participating costs during the project and on final accounting, as provided herein below.
- (D) The estimated total cost as set forth in the Department's adopted work program for this project is (amount spelled out) \$ ____ (##) _____. The estimated Participant share for ____ (insert percentage) ____ of the non-federal portion of the project is (amount spelled out) \$ ____ (##) ____.
- (E) The Participant agrees that it will, at least fourteen (14) calendar days prior to the Department's advertisement for the contract, furnish the Department an advance deposit in the amount of (amount spelled out) \$ ____ (##) _____. The advance deposit shall be the total estimated project cost plus allowances (Define

Allowances: e.g., Contingency % (amount), etc.). The Department may utilize this deposit for payment of the costs of the project.

- (F) If the accepted bid amount plus allowances is in excess of the advance deposit amount, the Participant will provide, without delay, an additional deposit within fourteen (14) calendar days of notification from the Department or prior to posting of the accepted bid, whichever is earlier, so that the total deposit is equal to the bid amount plus allowances. The Department will notify the Participant as soon as it becomes apparent the accepted bid amount, plus allowances, is in excess of the advance deposit amount. However, failure of the Department to so notify the Participant shall not relieve the Participant from its obligation to pay for its full participation on final accounting as provided herein below. If the Participant cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to and approved by the Department's project manager indicating when the deposit will be made. The Participant understands the request and approval of the additional time could delay the project, and additional costs may be incurred due to delay of the project.
- (G) If the accepted bid amount plus allowances is less than the advance deposit amount, the Department will refund the amount that the advance deposit exceeds the Participant's share of the bid amount plus allowances if such refund is requested by the Participant in writing.
- (H) Should project modifications occur that increase the Participant's share of total project costs, the Participant will be notified by the District accordingly. The Participant agrees to provide, without delay, in advance of the additional work being performed, adequate funds to ensure that cash on deposit with the Department is sufficient to fully fund its share of the project. The Department shall notify the Participant as soon as it becomes apparent the actual costs will overrun the award amount. However, failure of the Department to so notify the Participant shall not relieve the Participant from its obligation to pay for its full participation on final accounting as provided herein below.
- (I) The Department intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three-hundred and sixty (360) calendar days of final payment to the Contractor. All project cost records and accounts shall be subject to audit by a representative of the Participant for a period of three (3) years after final close out of the project. The Participant will be notified of the final cost. The parties agree that in the event the final accounting of total project costs pursuant to the terms of this agreement is less than the total deposits to date, a refund of the excess will be made by the Department to the Participant. If the final accounting is not performed within three-hundred and sixty (360) calendar days, the Participant is not relieved from its obligation to pay.
- (J) In the event said final accounting of total project costs is greater than the total

deposits to date, the Participant will pay the additional amount within forty (40) calendar days from the date of the invoice. The Participant agrees to pay interest at a rate as established pursuant to **Section 55.03, Florida Statutes (F.S.)**, on any invoice not paid within the forty (40) calendar days until the invoice is paid.

(K) The payment of funds under this Locally Funded Agreement will be made directly to the Department for deposit and as provided in the attached **EA** between Participant(s), Department and the State of Florida, Department of Financial Services, Division of Treasury.

(L) Contact Persons:

PARTICIPANT: _____

Address: _____

Contact Person: _____ (name) _____

Telephone # (____) _____

Fax # (____) _____

Federal Employer ID # (FEIN) _____

DEPARTMENT:

District Contact: _____ (name) _____

Telephone #: (____) _____

Fax # (____) _____

Reference **Section 1.1.4****ATTACHMENT E**

Suggested title of agreement: Locally Funded Agreement (Off SHS-Construction Contingency)

(To be used on projects located off the State Highway System (SHS), where FHWA no longer allows STP Enhancement funding to be utilized for construction contingency.)

- (A) The Participant agrees that it will, at least (14) fourteen calendar days prior to Department's advertising of the Project, furnish the Department a deposit in the amount of (*amount spelled out*) \$ (##) for the construction contingency costs estimated for the Project, Financial Management Project # (*financial project #'s*). The Department may utilize this deposit for payment of the construction contingency costs of the Project.
- (B) The Participant understands that the construction contingency costs are subject to increase(s) and agrees to provide additional funds in the event of any increase(s). The Department will notify the Participant as soon as any increase(s) becomes apparent; however, failure of the Department to so notify the Participant shall not relieve the Participant from its obligation to provide for all of the construction contingency costs during the Project and on final accounting. The Participant shall provide additional deposit(s) under specified situations within the stated time period as follows:
- a. If the accepted Project bid amount plus allowances is in excess of the estimated amount, the Participant will provide an additional deposit within fourteen (14) calendar days of notification from the Department or prior to posting of the accepted Project bid, whichever is earlier. If the Participant cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to and approved by the Department's Project Manager indicating when the deposit will be made. The Participant understands the request and approval of the additional time could delay the Project, and additional costs may be incurred due to a delay of the Project.
 - b. Should Project modifications or changes to bid items occur that result in an increase to the Project costs, the Participant agrees to provide, without delay, an additional deposit upon notification from the Department and in advance of the additional work being performed. Construction contingency costs not paid within 40 (forty) calendar days from the date of the invoice are subject to an interest charge at a rate established pursuant to **Section 55.03, Florida Statutes (F.S.)**.
 - c. In the event the final accounting of total project costs is greater than the total funds on deposit to date, the Participant will pay the additional amount within forty (40) calendar days from the date of the invoice from the Department. The Participant agrees to pay interest at a rate as

established pursuant to **Section 55.03 F.S.**, on any invoice not paid within 40 (forty) calendar days until the invoice is paid.

- (C) The Department intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred and sixty days (360) of final payment to the Contractor. The Department considers the Project complete when the final payment has been made to the Contractor, not when the construction work is complete. All Project cost records and accounts shall be subject to audit by a representative of the Participant for a period of three (3) years after final closeout of the Project. The Participant will be notified of the final cost. Both parties agree that in the event the final accounting of total project construction contingency costs pursuant to the terms of this agreement is less than the total deposits to date, a refund of the excess will be made by the Department to the Participant. If the final accounting is not performed within three hundred and sixty (360) days, Participant is not relieved from its obligation to pay.

The payment of funds under this Locally Funded Agreement will be made directly to the Department for deposit and as provided in the attached **EA** between the Participant(s), the Department and the State of Florida, Department of Financial Services, Division of Treasury.

All interest earned will remain in the account to cover cost overruns.

Reference **Section 1.6.2**

ATTACHMENT F

THREE PARTY ESCROW AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Florida, Department of Transportation ("FDOT"), _____ ("Participant"), and the State of Florida, Department of Financial Services, Division of Treasury ("Escrow Agent"), and shall become effective upon the Agreement's execution by Escrow Agent.

WHEREAS, FDOT and Participant are engaged in the following project ("Project"):

Project Name:

Project #:

County:

WHEREAS, FDOT and Participant desire to establish an escrow account for the project.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

1. An initial deposit will be made into an interest bearing escrow account established hereunder for the purposes of the Project. The escrow account will be opened with the Escrow Agent on behalf of FDOT upon Escrow Agent's receipt and execution of this Agreement.
2. Other deposits to the escrow account may be made during the life of this agreement.
3. Deposits will be delivered in accordance with instructions provided by the Escrow Agent to the FDOT for deposit into the escrow account. A wire transfer or ACH deposit is the preferred method of payment and should be used whenever possible.
4. FDOT's Comptroller or designee shall be the sole signatory on the escrow account with the Escrow Agent and shall have sole authority to authorize withdrawals from the account. Withdrawals will only be made to FDOT or the Participant in accordance with the instructions provided to the Escrow Agent by FDOT's Comptroller or designee.
5. Moneys in the escrow account will be invested in accordance with section 17.61, Florida Statutes. The Escrow Agent will invest the moneys expeditiously. Income is only earned on the moneys while invested. There is no guaranteed rate of return. Investments in the escrow account will be assessed a fee in accordance with Section 17.61(4)(b), Florida Statutes. All income of the investments shall accrue to the escrow account.
6. Unless instructed otherwise by FDOT, all interest accumulated in the escrow account

shall remain in the account for the purposes of the Project.

7. The Escrow Agent agrees to provide written confirmation of receipt of funds to FDOT. FDOT agrees to provide a copy of such written confirmation to Participant upon request.
8. The Escrow Agent further agrees to provide quarterly reports to FDOT concerning the escrow account. FDOT agrees to provide a copy of such quarterly reports to Participant upon request.
9. The Escrow Agent shall not be liable for any error of judgment or for any act done or omitted by it in good faith, or for anything which it may in good faith do or refrain from doing in connection herewith.
10. Escrow Agent shall have no liability for any claim, cost, expense, damage or loss due to the acts or omissions of FDOT and Participant, nor from any separate agreements between FDOT and Participant and shall have no responsibility to monitor or enforce any responsibilities herein or in any separate agreements associated with this Agreement between FDOT and Participant.
11. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.
12. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
13. This Agreement shall terminate upon disbursement by the Escrow Agent of all money held by it in the escrow account in accordance with the instructions given by FDOT's Comptroller or designee and notification from FDOT to Escrow Agent that the account is to be closed.

The remainder of this page is blank.

IN WITNESS WHEREOF, the parties have duly executed the Agreement on the date(s) below.

For FDOT-OOC (signature)

For PARTICIPANT (signature)

Name and Title

Name and Title

59-3024028

Federal Employer I.D. Number

Federal Employer I.D. Number

Date

Date

FDOT Legal Review:

For Escrow Agent (signature)

Name and Title

Date