

RESOLUTION NO. 2013- 23

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING AND AUTHORIZING THE EXECUTION OF THE TRANSPORTATION REGIONAL INCENTIVE PROGRAM AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND ST. JOHNS COUNTY PERTAINING TO THE CONSTRUCTION AND CONSTRUCTION ENGINEERING INSPECTION OF COUNTY ROAD 210 AND INTERSTATE 95 INTERCHANGE PHASE 2 IMPROVMENTS; PROVIDING DIRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State of Florida Department of Transportation (the "DEPARTMENT"), and St. Johns County (the "COUNTY") desire to enter into the "Transportation Regional Incentive Program Agreement" dated March 18, 2013, Designated by the COUNTY as Agreement/Contract No. 424307-2-58, 68-01 (the "TRIP Agreement"); and

WHEREAS, the TRIP Agreement bears the DEPARTMENT Financial Project I.D. number 424307-2-58, 68-01, and pertains to a project located in St. Johns County, Florida, known as Construction and Construction Engineering Inspection of Phase 2 on I-95 at CR 210, (the "PROJECT"); and

WHEREAS, the TRIP Agreement is attached and incorporated to this Resolution; and

WHEREAS, the COUNTY has reviewed the terms, provisions, and requirements of the TRIP Agreement, and has determined that accepting the terms of the TRIP Agreement, will service the interests of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are hereby incorporated into the body of this Resolution, and are adopted as Findings of Fact.

Section 2. The Board of County Commissioners hereby approves the terms, conditions, provisions, and requirements of the attached TRIP Agreement (bearing the Financial Project Numbers 424307-2-58, 68-01) between the State of Florida Department of Transportation and State Johns County, Florida, concerning construction and construction engineering inspection of Phase 2 improvements on I-95 at County Road 210, and authorizing the County Administrator, or designee, to execute the TRIP Agreement, on behalf of the County.

Section 3. The Board of County Commissioners authorizes the County Administrator, or designee, to execute any other paperwork associated with, or necessary to accomplish, the overall goal set forth in the TRIP Agreement.

Section 4. To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor, or context of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

Section 5. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 5 day of February, 2013.

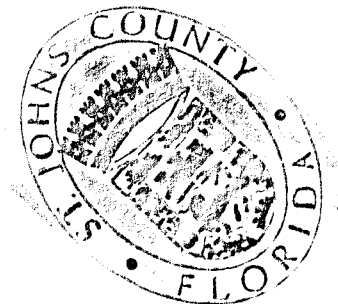
**BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA**

ATTEST:


Deputy Clerk

BY:


Jay Morris--Chair



STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
TRANSPORTATION REGIONAL INCENTIVE PROGRAM AGREEMENT

This Transportation Regional Incentive Program Agreement ("Agreement") is between the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, ("DEPARTMENT") and the St. Johns County Board of County Commissioners, "COUNTY").

RECITALS

- A. The DEPARTMENT has the authority, under Section 334.044, Florida Statutes (F.S.) to enter into this Agreement.
- B. The Transportation Regional Incentive Program was created by Section 339.2819, F.S. to provide funds to improve regionally significant transportation facilities in "regional transportation areas" created pursuant to Section 339.155, F.S.
- C. The COUNTY has certified to the DEPARTMENT that it has met the eligibility requirements of Section 339.2819, F.S.
- D. The North Florida Transportation Planning Organization, acting as a designated regional partnership under Section 339.155, F.S. and formed by an interlocal agreement designated I-95 at CR 120 – Phase 2 Improvement (as a regional facility by resolution, a copy of which is incorporated into this Agreement and attached as **Attachment A**.
- E. The DEPARTMENT is willing to provide St. Johns County with financial assistance under Financial Project No. 424307-2-58,68-01 ("PROJECT") in accordance with Section 339.2819, F.S.
- F. The COUNTY by Resolution No. _____ dated the ___ day of _____ , _____, a copy of which is attached to and made a part of this Agreement, has authorized the Chairman of its Board of Commissioners or designee to enter into this Agreement.

AGREEMENT

In consideration of the mutual covenants in this Agreement, the parties agree as follows:

1. SERVICES AND PERFORMANCE

- A) The PROJECT consists of construction and construction engineering inspection of Phase 2 Improvements on I-95 at CR 210 in St. Johns County as further described in **Exhibit A**, (Scope of Services) which is attached to and made a part of this Agreement.
- B) The COUNTY agrees to undertake the construction of the PROJECT in accordance with all applicable, federal, state and local statutes, rules and regulations, and standards. The COUNTY/ shall be responsible for obtaining clearances/permits required for the construction of the PROJECT from the appropriate permitting authorities. Upon completion of the PROJECT, the COUNTY shall certify to the DEPARTMENT that the PROJECT has been completed in accordance with the applicable standards, statutes, rules and regulations in writing as provided in **Exhibit E** (Notice of Completion) which is

attached to and made a part of this Agreement.

- C) The DEPARTMENT will be entitled at all times to be advised, at its request, as to the status of work being done by the COUNTY and of the details thereof. Coordination shall be maintained by the COUNTY with representatives of the DEPARTMENT. The COUNTY shall provide the DEPARTMENT with quarterly progress reports.
- D) The COUNTY shall utilize the U.S. Department of Homeland Security's E-Verify system to confirm the employment eligibility of all persons employed by the COUNTY during the term of the Contract to perform employment duties within Florida and all persons, contractors, including subcontractors, assigned by the COUNTY to perform work pursuant to the contract with the Department.
- E) The COUNTY shall not sublet, assign or transfer any work under this Agreement without prior written consent of the DEPARTMENT.
- F) All notices under this Agreement shall be directed to the following addresses:

TO DEPARTMENT:

Florida Department of Transportation
District Two Urban Planning Office
Mr. James Bennett, P.E., Urban Area Transportation Development Engineer
2198 Edison Avenue
Jacksonville, Florida 32204-2730

TO COUNTY:

St. Johns County Engineering Division
Mr. Andrew J. Ames, P.E.
Assistant County Engineer
2740 Industry Center Road
St. Augustine, Florida 32084

2. TERM

- A) The COUNTY shall perform the PROJECT activities in accordance with the following schedule as further described in **Exhibit B** (Schedule of Services) which is attached and made a part of this Agreement:
 - (1) Design to be completed on or before June 30, 2013
 - (2) Construction contract to be let on or before November 30, 2013
 - (3) Construction to be completed on or before December 31, 2014
- B) This Agreement shall not be renewed. Any extension shall be in writing and executed by both parties, and shall be subject to the same terms and conditions set forth in this Agreement and contingent upon the DEPARTMENT'S District Secretary's or Designee's Approval.

3. COMPENSATION AND PAYMENT

- A) The COUNTY and the DEPARTMENT agree to share the cost of this PROJECT

Financial Project Number 424307-2-58,68-01. The DEPARTMENT may provide up to one-half (1/2) of project costs pursuant to Section 339.2819, F.S.

- B) The estimated total cost as set forth in the DEPARTMENT'S adopted work program for this PROJECT is (\$6,525,364.00) Six million, five hundred twenty five thousand, three hundred and sixty four dollars. The estimated COUNTY share of the PROJECT is (\$4,835,000.00) Four million, eight hundred thirty five thousand dollars.

The estimated DEPARTMENT share of the PROJECT is (\$1,690,364.00) One million, six hundred ninety thousand, three hundred and sixty four dollars. The amounts are outlined in **Exhibit C** (Schedule of Funding) which is attached to and made a part of this Agreement. The parties further agree all remaining costs of the PROJECT will be borne by the COUNTY.

- i) In the event the COUNTY proceeds with the construction and construction engineering inspection of the PROJECT with its own forces, the COUNTY will only be reimbursed for direct costs (this excludes general and administrative overhead).
- ii) All costs charged to the PROJECT shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges.

- C) Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the DEPARTMENT under Section 334.044 (29), F.S. Invoices (3 copies) shall be submitted by the COUNTY in detail sufficient for a proper pre-audit and post audit thereof, based on the quantifiable, measurable, and verifiable units of deliverables as established in **Exhibit A** (Scope of Services). Deliverables must be received and accepted in writing by the DEPARTMENT'S authorized representative to receive payments prior to payment:

Kim Evans, Local Programs Coordinator
District Two Program Management Department
Mail Station 2014
1109 South Marion Avenue
Lake City, Florida 32025

- D) The DEPARTMENT may advance an amount of (N/A) which is equal to (N/A) % of the DEPARTMENT'S participation in the estimated cost of the PROJECT. The advance payment may be released after execution of this Agreement and within the fiscal year of the PROJECT funding in the DEPARTMENT'S Adopted Work Program. The advanced amount, including interest earnings (if applicable), must be accounted for separately from other funds of the CITY.
- E) Entities providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt the Florida Department of Transportation – Program Management Office has 10 working days to inspect and approve the goods and services unless the bid specifications, purchase order or contract specifies otherwise. The Florida Department of Transportation - District Two Financial Services Department has 20 days to deliver a request for payment (voucher) to the Department of Financial

Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), F.S. will be due and payable, in addition to the invoice amount, to the COUNTY. Interest penalties of less than one (1) dollar will not be enforced unless the COUNTY requests payment. Invoices that have to be returned to the COUNTY because of COUNTY 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 COUNTIES who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Division of Consumer Services at 1-877-693-5236.

- F) Funds transferred to the COUNTY by the DEPARTMENT shall be segregated from other funds and invested by the COUNTY until their actual expenditure, in such income or revenue-producing investments as authorized by law for other COUNTY/ funds. All income, interest, or other revenues obtained from such investment shall be considered funds of the DEPARTMENT. The income, interest, or other revenues shall be remitted to the DEPARTMENT on a quarterly basis within fifteen (15) days of the close of the months March, June, September, and December, regardless of the month in which funds were received. Upon completion of the PROJECT, all remaining income, interest, or other revenues shall be returned to the DEPARTMENT. All refund or interest checks shall be made payable to: Florida Department of Transportation, and mailed to the DEPARTMENT address in Paragraph 1.F) of this Agreement; with the Project Number 424307-2-58,68-01 referenced and information included that identifies the interest period, amount of interest earned by account, name of depository, and interest rate. The documentation submitted to support interest earnings should include copies of bank or investment account statements, computational work sheets, etc.
- G) The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. 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), F.S., are 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 executor 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 dollars and which have a term for a period of more than 1 year.”

- H) Any PROJECT funds made available by the DEPARTMENT pursuant to this Agreement which are determined by the DEPARTMENT to have been expended by the COUNTY 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 COUNTY 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.
- I) Travel costs will not be reimbursed.
- J) Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred includes the COUNTY's general accounting records and the project records, together with supporting documents and records of the COUNTY and all subcontractors performing work on the project, and all other records of the COUNTY and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs.

4. CAPITAL IMPROVEMENTS AND ROADWAY LEVEL OF SERVICE

- A) The PROJECT must be identified in the capital improvements element of the comprehensive plan that has been determined to be in compliance with Part II of Chapter 163, F.S. and with local government comprehensive plan policies relative to corridor management. The DEPARTMENT shall give priority consideration to projects with committed local funds. The PROJECT must be identified as a funded project in the capital improvements element. The capital improvements element must also include standards to ensure the availability of transportation facilities and the adequacy of those facilities to meet established acceptable levels of service. The intergovernmental coordination element requires coordination in establishing level of service standards for transportation facilities operated and maintained by the DEPARTMENT.
- B) The logical termini for the PROJECT are I-95 at CR 210 – Phase 2 Improvements.
- C) The level of service (LOS) for the segment of (I-95 at CR 210 – Phase 2 Improvements) between the logical termini for this PROJECT, as set forth above, shall be designated by COUNTY The adopted LOS for this segment is (C). Upon implementation of the PROJECT, the anticipated LOS for this segment is LOS (C).
- E) The COUNTY agrees that upon execution of this Agreement the level of service for the segment of I-95 at CR 210 – Phase 2 Improvements between the logical termini specified in (B), above, shall be established in coordination with the DEPARTMENT. Upon execution of this Agreement the level of service will be (C).
- F) The COUNTY agreed with the Level of Service (C) designation to its comprehensive plan adopted on March 25, 2003, Ordinance No. 2003-31.G)

5. IN-KIND SERVICES AND RIGHT OF WAY DONATIONS (if applicable)

- A) In-kind services are goods, commodities, or services received in lieu of cash payments. Goods and commodities should be valued based on their current market value.
- B) Property donated by local governments for right of way as the local share for a qualified project, must comply with the requirements of the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601, et seq., and implementing federal regulations, 49 CFR Part 24 and 23 CFR Part 710, if federal funds will be used in any phase of the project. Other requirements for the acquisition of rights of way should be determined in accordance with guidelines established by the Office of Right of Way.
- C) The DEPARTMENT has established specific right of way acquisition guidelines for the Transportation Regional Incentive Program. These guidelines can be found at <http://www.dot.state.fl.us/planning/TRIP/RW-contributions.pdf> and are incorporated into this Agreement by reference.
- D) The excess of an in-kind match valued in excess of the required match will not generally be applied towards another project. On a case by case basis, an exception may be made for project segments in a regional corridor that are part of an implementation plan for that corridor.

6. INDEMNITY AND INSURANCE

A) INDEMNITY

- i) The COUNTY/ agrees to include the following indemnification in all contracts with contractors/subcontractors, consultants/sub-consultants, who perform work in connection with this Agreement:

"The contractor/consultant shall indemnify, defend, save, and hold harmless the DEPARTMENT and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor/consultant, its officers, agents, or employees."

B) LIABILITY INSURANCE.

- i) The COUNTY or cause its contractor/consultant to carry and keep in force during the period of this Agreement a general liability policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$1,000,000 per person and subject to that limit per person \$5,000,000 for each occurrence, and property damage insurance of at least \$50,000 for each occurrence and subject to that limit for each occurrence a total of \$100,000 during the policy period, for the services to be rendered in accordance with this Agreement. However, in the event the COUNTY maintains a self-insurance fund to cover such liability, the COUNTY agrees to maintain sufficient reserves in the fund to pay the above-described liability limits. In addition to any other forms of insurance or bonds required under the terms of this Agreement, the COUNTY must comply or cause its contractor to comply with Section 7-13 of the

DEPARTMENT'S Standard Specifications for Road and Bridge Construction (2010), as amended. The DEPARTMENT must be included as an additional insured party on the liability insurance policies described in this Agreement.

C) WORKERS' COMPENSATION.

- i) The COUNTY shall also carry or cause its contractor/consultant to keep in force Workers' Compensation insurance as required for the State of Florida under the Workers' Compensation Law.

7. COMPLIANCE WITH LAWS

- A) The COUNTY shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, F. S., made or received by the COUNTY in conjunction with this Agreement. Failure by the COUNTY to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the DEPARTMENT.
- B) The COUNTY shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- C) No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch, or a state agency.
- D) The COUNTY and the DEPARTMENT agree that the COUNTY, its employees, and subcontractors are not agents of the DEPARTMENT as a result of this Agreement for purposes other than those set out in Section 337.274, F. S.

8. AUDIT AND MONITORING REQUIREMENTS

- A) The administration of resources awarded by the DEPARTMENT to the COUNTY may be subject to audits and/or monitoring by the DEPARTMENT, as described in this section. In addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised, and Section 215.97, F.S., monitoring procedures may include, but not be limited to, on-site visits by the DEPARTMENT staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this Agreement, the COUNTY 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 COUNTY is appropriate, the COUNTY agrees to comply with any additional instructions provided by DEPARTMENT staff regarding such audit. The COUNTY further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the state Chief Financial Officer (CFO) or Auditor General.
- B) The COUNTY, as a non-state entity as defined by Section 215.97(2)(m), F.S., is required to have audits performed annually using the following criteria:
 - i) In the event that the COUNTY expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of the COUNTY, the COUNTY must have a state single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; applicable rules of the Executive

Office of the Governor and the state CFO; and Chapters 10.550 (local government entities) or 10.650 (non-profit and for-profit organizations), Rules of the Auditor General. In determining the state financial assistance expended in its fiscal year, the COUNTY shall consider all sources of state financial assistance received from DEPARTMENT, other state agencies, and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements.

- ii) In connection with the audit requirements, the COUNTY shall ensure that the audit complies with the requirements of Section 215.97(8), F.S. This includes submission of a financial reporting package as defined by Section 215.97(2)(e), F.S., and Chapters 10.550 (local government entities) or 10.650 (non-profit and for-profit organizations), Rules of the Auditor General.
- iii) If the COUNTY expends less than \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, F.S., is not required. In the event that the COUNTY expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, F.S., the cost of the audit must be paid from non-state entity's resources (i.e., the cost of such an audit must be paid from the COUNTY's resources obtained from other than State entities).
- iv) State awards are to be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the state agency awarding it.
- v) The COUNTY shall follow up and take corrective action on audit findings. Preparation of a summary schedule of prior year audit findings, including corrective action and current status of the audit findings is required. Current year audit findings require corrective action and status of findings.
- vi) Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is complete or the dispute is resolved. Access to project records and audit work papers shall be given to the DEPARTMENT, the state CFO, and the Auditor General. This section does not limit the authority of the DEPARTMENT to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any other state official.
- vii) Copies of reporting packages, reports, or management letters required by this Agreement shall be submitted by or on behalf of the COUNTY directly to the following offices:

Florida Department of Transportation
District EMO Office – MS 2007
Attn: Jordan L. Green, P.E., Rural Area Transportation Development Engineer
1109 South Marion Avenue
Lake City, Florida 32025

State of Florida Auditor General
Room 401, Claude Pepper Building
111 West Madison Street
Tallahassee, FL 32399-1450

- viii) Any reports, management letter, or other information required to be submitted to the DEPARTMENT pursuant to this Agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local government entities) or 10.650 (non-profit or for-profit organizations), Rules of the Auditor General, as applicable.
 - ix) The COUNTY, when submitting financial reporting packages to the DEPARTMENT for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local government entities) or 10.650 (non-profit or for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the COUNTY in correspondence accompanying the reporting package.
 - x) The COUNTY shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of at least five years from the date the audit report is issued, and shall allow the DEPARTMENT, or its designee, the state CFO or Auditor General access to such records upon request. The COUNTY/ shall ensure that the independent audit working papers are made available to the DEPARTMENT, or its designee, the state CFO, or Auditor General upon request for a period of at least five years from the date the audit report is issued, unless extended in writing by the DEPARTMENT.
- (C) The COUNTY must include the audit and record keeping requirements in this Section 8 in contracts and subcontracts entered into by the COUNTY with any party for work required in the performance of this Agreement.
- (D) The COUNTY shall, three (3) months after the date of execution of this Agreement and every three (3) months thereafter, provide the DEPARTMENT with quarterly progress reports. Each quarterly report shall contain a narrative description of the work completed and whether the work is proceeding according to the project schedule; a description of any change orders executed by the COUNTY; a budget summary detailing planned expenditures compared to actual expenditures; and identification of each small or minority business enterprise used as contractors or subcontractors. Records of all progress payments made for work in connection with such transportation projects, and any change orders executed by the COUNTY and payments made pursuant to such orders, shall be maintained by the COUNTY in accordance with accepted governmental accounting principles and practices and shall be subject to financial audit as required by law.
- (E) Records of costs incurred under the terms of this Agreement shall be maintained 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. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs

incurred include the COUNTY's general accounting records and the PROJECT records, together with supporting documents and records, of the contractor and all subcontractors performing work on the PROJECT, and all other records of the Contractor and subcontractors considered necessary by DEPARTMENT for a proper audit of costs.

9. TERMINATION AND DEFAULT

- A) This Agreement may be canceled by either the COUNTY or the DEPARTMENT upon sixty (60) days written notice. If the DEPARTMENT is terminating the Agreement, the DEPARTMENT shall notify the COUNTY of such termination with instructions as to the effective date of termination or specify the state of work at which the Agreement is to be terminated.
- B) If the DEPARTMENT determines that the performance of the COUNTY is not satisfactory, the DEPARTMENT shall have the option of (a) immediately terminating the AGREEMENT, or (b) notifying the COUNTY of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the AGREEMENT will be terminated at the end of such time, or (c) taking whatever action is deemed appropriate by the DEPARTMENT.
- C) If the Agreement is terminated before performance is completed, the COUNTY shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress will become the property of the DEPARTMENT and will be turned over promptly by the COUNTY.

10. MISCELLANEOUS

- A) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- B) The DEPARTMENT shall not be obligated or liable hereunder to any party other than the COUNTY.
- C) In no event shall the making by the DEPARTMENT of any payment to the COUNTY 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 COUNTY, and the making of such payment by the DEPARTMENT while any such breach or default exists shall in no way impair or prejudice any right or remedy available to the DEPARTMENT with respect to such breach or default.
- D) This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. The parties agree that all commitments, agreements, or understandings concerning the subject matter of this Agreement are contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by the COUNTY and the DEPARTMENT.

- E) If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having the jurisdiction to make such determination, the remainder of this Agreement shall remain in full force and effect provided that the part of this Agreement thus invalidated or declared unenforceable is not material to the intended operation of this Agreement.
- F) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue of any judicial proceedings arising out of this Agreement shall be in Leon County, Florida.
- G) This Agreement shall be effective upon execution by both parties and shall continue in effect and be binding on the parties until the PROJECT is completed and accepted and payment made by the DEPARTMENT or terminated in accordance with Section 9 Termination and Default.
- H) An entity or affiliate which has been placed on the discriminatory vendor list 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.
- I) 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, F. S., for Category Two for a period of 36 months from the date of being placed on the convicted vendor list.
- J) The COUNTY:
 - i) shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the COUNTY during the term of the contract; and
 - ii) shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

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

ST. JOHNS COUNTY, FLORIDA

ATTEST

CLERK

(Seal)

TITLE

Date

Print Name

Date

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By:

DISTRICT SECRETARY

Print Name

Date

Legal Review:

Date

See attached Encumbrance Form for date of
funding approval by Comptroller

Attachment "A"

GUIDANCE FOR LOCAL GOVERNMENT MATCH RIGHT OF WAY CONTRIBUTIONS FOR GROWTH MANAGEMENT (TRIP) PROJECTS

Senate Bill 360 as passed by the 2005 Legislature provides for state funding of growth management related transportation projects based upon a 50% match with local funds. It is anticipated that local governments will want to contribute rights of way for the project as all or part of their matching share. This document provides the guidance to be applied to such contributions.

I. Rights of Way Eligible for Contribution

Rights of way eligible for local government matching contribution credit are only those properties necessary for the qualified project itself. Rights of way for prior projects are not eligible. **Example:** An existing 2 lane facility is to be expanded to 4 lanes by the qualified project. The right of way for the existing 2 lane facility is not eligible for contribution credit. However, rights of way needed for the additional 2 lanes or rights of way held by the local government which are in excess of that necessary for the existing 2 lane facility but legitimately needed for the new 4 lane facility are eligible for credit.

II. Acquisition Procedures

Projects on the State Highway System or which use federal funding in any phase of the project or state funding in right of way must comply with either federal law or procedure or state law or rule relating to right of way acquisition procedures. These laws are intended to protect or provide benefits to property owners and relocatees on federal or state funded projects on the National and State Highway Systems. The laws and rules are intended to ensure consistency of fair treatment under the law to these citizens on these projects. The Department must ensure that local governments or private parties involved in acquisition processes, acting on the Department's or local government's behalf, comply with these requirements.

A. Projects not part of the State Highway System

These are projects which are not now on the State Highway System and have no reasonable expectation of being added to the system in the future. 1. Projects with no federal funding in any phase Rights of way acquired by the local government may be accepted for contribution credit regardless of the acquisition method or procedures used. Acquisition methods which do not conform to the requirements of the federal Uniform Relocation Assistance and Real Property Acquisition Policy Act (Uniform Act) will preclude the use of federal funding in any phase of the project. 2. Projects with federal funding in any phase Rights of way must have been acquired in accordance with the federal Uniform Relocation Assistance and Real Property Acquisition Policy Act (Uniform Act). This also applies to developer donations where the developer specifically acquires property for his benefit on the project through a formal or tacit agreement with the local government. See paragraph II.B.1. below. Any rights of way purchased for the project through acquisition methods which do not conform to the Uniform Act may be able to be brought into compliance through remediation actions with approval of the Federal Highway Administration (FHWA). The type and extent of the remediation actions are at the discretion of FHWA.

B. Projects which are part of the State Highway System

This includes projects which are currently on the State Highway System and those where there is a reasonable expectation they may become part of the system in the future. 1. Projects with no federal funding in any phase Rights of way acquired by the local government or private sector persons or groups acting as their agents or on their behalf may be accepted if the acquisition methods were in compliance with laws and rules applicable to FDOT. This includes providing Relocation Assistance to displaced persons in accordance with Rule Chapter 14-66, Florida Administrative Code. Acquisition which does not conform to the federal Uniform Act will preclude the later use of federal funding in any phase. See paragraph II.2.A. above.

Donations: It is recognized that developers may wish to donate rights of way in order to expedite the completion of a project. Acceptance of these donations is acceptable under certain conditions. If the property being donated was acquired by the donor for his/her own purposes and at his own risk, and is now being made available for the project, the donation may be accepted with no necessity to inquire into the acquisition methods used. If, however, the property was acquired specifically for the project under an agreement with the local government, whether written or not, the acquisition methods must comply with laws and rules applicable to FDOT. In that event the developer is acting as an agent for or on behalf of the local government, and the law and rules apply

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in the acquisition.

Exactions: In some instances, local governments may require the donation of rights of way as a condition of the development approval process. This is often referred to as an "exaction." Rights of way acquired through a lawfully adopted exaction ordinance or process can be accepted unless the process results in the developer acquiring the acquisition of rights of way as an agent of, or on behalf of, the local government. 2. Projects with federal funding in any phase Rights of way must have been acquired in conformance to the federal Uniform Act. Lands donated by developers may be accepted as indicated in II.B.1. above, provided that the donor has been fully advised of the right to compensation and has specifically waived that right. Exactions obtained through a lawful ordinance or process may also be accepted as explained in II.B.1. Rights of way purchased for the project through acquisition methods which do not conform to the Uniform Act may be able to be brought into compliance through remediation actions with approval of FHWA. The type and extent of the remediation actions are at the discretion of FHWA.

III. Valuation of Contributed Rights of Way

Once it is determined that rights of way proposed for local matching contribution are eligible for all or part of the local government share of the project costs, the issue becomes the amount to be credited, i.e., the value of the property or property rights to the eligible project.

A. R/W Acquisition as a Phase of the Project

Where rights of way are acquired as a phase of the project, the value of the contribution for purchased parcels is the actual acquisition cost of the property including land, improvements, severance damages and business damages. Documentation of the acquisition costs may be through closing statements, final judgments or similar documents.

B. Contributions of Previously Acquired Rights of Way

Where properties previously purchased are to be contributed to the project, the contribution value may be either current market value or actual acquisition costs for land, improvements, severance damages and business damages at the time the property was acquired. The current market value may be established by new appraisal reports, updated appraisal reports, or other data provided by the local government that is confirmed by the District Appraisal Office as reflecting a reasonably accurate estimate of current fair market value. Documentation of actual acquisition costs at the time the property was acquired may be through closing statements, final judgments or similar documents.

C. Donated or Exacted Properties

Where the properties to be contributed were acquired by donation or exaction, the contribution value is the market value as of the date of the donation or exaction. The market value may be established by a new appraisal report, an updated appraisal report, or other data provided by the local government that is confirmed by the District Appraisal Office as reflecting a reasonably accurate estimate of current fair market value. However, if there are federal funds in the project, the market value must be established by an appraisal report prepared by an appraiser acceptable to the District Appraisal Office with a date of value as of the date title vested in the local government.

EXHIBIT 1 – TRIP Funds

STATE AGENCY: FDOT

CSFA# 55.026

TITLE: TRANSPORTATION REGIONAL INCENTIVE PROGRAM (TRIP)

AMOUNT: \$ 1,320,136.00

Allowed Activities / Allowable Costs:

The TRIP Program is intended to provide state matching funds for capital projects, not operating expenses, on regionally significant facilities.

Eligibility:

339.2819, F.S. establishes several minimum eligibility criteria in order to qualify for the TRIP funds. They include:

- Supports those transportation facilities that serve national, statewide or regional functions projects and function as an integrated regional transportation system.
- Be identified in the capital improvements element of a comprehensive plan that has been determined to be in compliance with part II of chapter 163, after July 1, 2005, or to implement a long term concurrency management system adopted by a local government in accordance with F. S. 163.3177 (9). Further, the project shall be in compliance with local government comprehensive plan policies relative to corridor management.
- Be consistent with the Strategic Intermodal System Plan developed under F.S. 339.64.
- Have a commitment for local, regional or private financial matching as a percentage of the overall project cost.

Compliance Requirements:

1. The project must be regionally significant and derived from a regional transportation plan.
2. The regional transportation plan must be created by a regional transportation area created pursuant to Section 339.155(5) Florida Statutes.
3. The project must meet the minimum eligibility criteria listed in Section 339.2819 Florida Statutes.
4. Funds will only be provided for capital expenses. Operations are not covered through TRIP.
5. For roadway projects, the Florida Department of Transportation's level of service must be adopted for the logical termini specified in the Joint Participation Agreement once the additional capacity from the project is available for purposes of concurrency under Fla. Stat. §163.3180.

Matching:

The percentage of matching funds provided from the Transportation Regional Incentive Program shall be 50 percent of the project costs.

NOTE: Section .400(d) of OMB Circular A-133, as revised, and Section 215.97(5)(a), Florida Statutes, require that the information about Federal Programs and State Projects included in Exhibit 1 be provided to the recipient.

EXHIBIT 1 – DDR Funds

STATE AGENCY: FDOT

CSFA #: 55.023

TITLE: State Highway Project Reimbursement (RBA)

AMOUNT: \$ 370,228.00

COMPLIANCE REQUIREMENTS:

Program Objectives: To reimburse counties or municipalities for expenditures made on projects on the State Highway System.

Program Procedures: The Department enters into an agreement with the county or municipality identifying the project scope of services, eligible project costs and the project schedule.

Compliance Requirement:

Activities Allowed: Project costs must be incurred subsequent to agreement execution (contract provision). Project scope of services identifies the types of work that are eligible for reimbursement (contract provision).

Allowable Costs: Identified in the contract document up to a lump sum or maximum limiting amount.

Cash Management: Not applicable.

Eligibility: Project must be on the State Highway System.

Equipment / Real Property Management: Not applicable.

Matching: Not applicable.

Period of Availability: State Fiscal Year: July 1 to June 30. The contract must be executed during the fiscal year for which state funds are programmed. Once committed, the funds certify forward across fiscal years for the life of the contract.

Reporting: Project costs are reviewed and approved upon receipt of an invoice from the county of municipality.

Subrecipient Monitoring: The county or municipality is responsible for monitoring to work of subrecipients. Subrecipient invoices are reviewed, verified and paid by the county of municipality. County or municipality invoices are then reviewed and approved for payment by FDOT. Subrecipients do not invoice FDOT directly.

Exhibit A
SCOPE OF SERVICES
PROJECT DESCRIPTION AND RESPONSIBILITIES

Financial Project No.: 424307-2-58,68-01
Catalog of State Financial Assistance No.: 55.026

This exhibit forms an integral part of that certain Joint Participation Agreement between the State of Florida Department of Transportation and the St. Johns County Board of County Commissioners dated _____.

PROJECT LOCATION:

The project is referred to as the construction and construction engineering inspection of Phase 2 Improvements on I-95 at County Road 210 in St. Johns County, Florida.

PROJECT DESCRIPTION:

The project consists of the design of existing roadway as follows:

Improvements necessary to accommodate the near term level of service concerns associated with the I-95 interchange. Includes adding a third through-lane on CR 210 in each direction (eastbound and westbound) at the interchange, widening CR 210 from a four-lane divided roadway to a 6-lane divided roadway for approximately one mile from Interstate 95 westward to Leo Maguire Parkway to service the southbound off ramp and northbound on ramp volumes. Improvements required to complete this project include an additional through travel lane in each direction, replacement of the Sampson Creek Box culvert due to structural and standard design issues, profile and other geometric improvements to increase driver safety and revisions to traffic signals at Russell Sampson Road and at Leo Maguire Parkway.

AGENCY RESPONSIBILITIES:

The Agency is required to provide a copy of the design plans for the Department's file.

If Right-of-Way activities become apparent, begin coordination with the Department at once.

The Department's maximum participation is not to exceed **\$1,690,364.00**.

A project schedule of funding shall be prepared by the County and approved by the Department. The County shall maintain said schedule of funding, carry out the project, and shall incur obligations against and make disbursements of project funds only in conformity with the latest approved schedule of funding for the project. The schedule of funding may be revised by execution of a Supplemental Agreement between the Department and County. The County acknowledges and agrees that funding for this project may be reduced upon determination of the award amount and execution of the Supplemental Agreement.

The County is required to submit a set of plans and proposed advertisement to the Department for approval prior to advertising for construction services. After bids are opened submit the Engineer's Estimate and the Bid of Apparent Lowest, Responsive Bidder for the Department's concurrence and recommendation of award. The Department must be notified prior to commencement of any right-of-way activities.

Exhibit B
SCHEDULE OF SERVICES

The County shall commence the project's activities subsequent to the execution of this Agreement and shall perform in accordance with the following schedule:

- (1) Design to be completed on or before June 30, 2013
- (2) Construction contract to be let on or before November 30, 2013
- (3) Construction to be completed on or before December 31, 2014.

If this schedule cannot be met, the County will notify the Department in writing with a revised schedule or the project is subject to the withdrawal of funding.

**Exhibit C
SCHEDULE OF FUNDING**

| | | |
|--|---|---|
| Mr. Andrew J. Ames, P.E. Assistant County Engineer St. Johns County Engineering 2740 Industry Center Road St. Augustine, Florida 32084 | STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION TRANSPORTATION REGIONAL INCENTIVE PROGRAM (TRIP) | Financial Project ID: 424307-2-58,68-01 |
| | | Contract Number: |

PROJECT DESCRIPTION

Name: I-95 at CR 210 – Phase 2 Improvements Length N/A

Termini: I-95 at CR 210

Description of Work: construction and construction engineering inspection

| TYPE OF WORK By Fiscal Year | (1) TOTAL PROJECT ESTIMATE FUNDS (100%) | (2) AGENCY FUNDS (50%) | (3) STATE & FEDERAL FUNDS (50%) |
|---|--|--|--|
| Design <u>2008-2009</u> <u>2009-2010</u> <u>2010-2011</u> Total Design Cost | _____ _____ _____ _____ | _____ _____ _____ _____ | _____ _____ _____ _____ |
| Right of Way <u>2011-2012</u> <u>2012-2013</u> <u>2013-2014</u> Total Right of Way Cost | _____ \$ 1,500,000.00 _____ _____ \$ 1,500,000.00 | _____ \$ 1,500,000.00 _____ _____ \$ 1,500,000.00 | _____ _____ _____ _____ |
| Construction <u>2009-2010</u> <u>2010-2011</u> <u>2011-2012</u> <u>2012-2013</u> <u>2013-2014</u> Total Construction Costs | _____ _____ _____ \$ 4,640,364.00 _____ \$ 4,640,364.00 | _____ _____ _____ \$ 3,050,000.00 _____ \$ 3,050,000.00 | _____ _____ _____ \$ 1,590,364.00 _____ \$ 1,590,364.00 |
| Construction Engineering and Inspection <u>2012-2013</u> <u>2013-2014</u> <u>2014-2015</u> Total CEI Costs | _____ \$ 385,000.00 _____ _____ \$ 385,000.00 | _____ \$ 285,000.00 _____ _____ \$ 285,000.00 | _____ \$ 100,000.00 _____ _____ \$ 100,000.00 |
| Total Cost of Project | _____ \$ 6,525,364.00 | _____ \$ 4,835,000.00 | _____ \$ 1,690,364.00 |

The Department's fiscal year begins on July 1. For this project, funds are not projected to be available until after July 1st each fiscal year. The Department will notify the Agency, in writing, when funds are available.