

FUNDING AGREEMENT

between

U.S. Fish and Wildlife Service

and

Florida Department of Transportation

and

Federal Highway Administration

October 1, 2008

Funding Agreement
Continuing the Efficient Transportation Decision Making Process in Florida
U.S. Fish and Wildlife Service

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**Funding Agreement
U.S. Fish and Wildlife Service
Continuing the Efficient Transportation Decision Making Process in Florida**

This Funding Agreement (FA) is entered into upon signature on October 1, 2008, whichever comes later, by and between the Florida Department of Transportation (FDOT), Federal Highway Administration (FHWA), and the U.S. Fish and Wildlife Service (USFWS).

Article I Background and Objectives

Whereas, the FDOT, FHWA and USFWS since 2003 have executed Funding Agreements, and the parties to these past agreements have consulted and agreed to continue in the participation of the Efficient Transportation Decision Making (ETDM) Process (i.e., environmental streamlining) as signatories to the Agency Operating Agreement (AOA), Master Agreement (MA) and FA.

Whereas, pursuant to the Endangered Species Act (as amended) and the Fish and Wildlife Coordination Act of 1958 (as amended), USFWS is responsible for review of Federal and State agency actions which may affect natural resources and,

Whereas, USFWS currently reviews FDOT projects in regard to natural resources, specifically fish and wildlife resources and their habitats, to assure that the designs for these projects are sensitive to the protection of natural resources, including threatened and endangered species and,

Whereas, FDOT has substantially increased the number of transportation projects and activities which USFWS reviews as part of the ETDM Process, and

Whereas FDOT desires that USFWS continue its level of involvement with projects during the planning, programming and project development processes, such that final USFWS reviews do not constitute an unnecessary delay in FDOT project implementation and,

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

Whereas, both parties have determined that it would be mutually beneficial to enable USFWS to continue to provide FDOT with priority project review, as part of the ETDM Process, so that transportation projects can be designed and implemented promptly to meet the ever-changing transportation needs of the State, in a manner that is sensitive to natural resources and,

Whereas, FDOT is willing to reimburse USFWS for staff expenses required to provide priority project review not already covered by other funding sources to meet FDOT project requirements and,

Whereas, FHWA will participate in the reimbursement of funds expended by FDOT for USFWS's staff required to provide priority project review through FDOT's ETDM Process if (1) USFWS has the statutory authority to charge on a reimbursable basis and (2) the service provided is beyond normal work performed on federal-aid highway and transportation projects and,

Whereas, USFWS has determined that (1) it is authorized pursuant to the Intergovernmental Cooperation Act, 31 USC, 6505, et seq., to participate in the ETDM Process on an advance payment basis and (2) that the service provided is beyond the normal work it performs on federal-aid highway and transportation projects and,

Whereas, the parties hereto desire to enter into this FA to facilitate the cooperation of the parties to streamline the environmental process, expedite the review of transportation projects, and provide for the personnel and funds to attain these goals.

Now, Therefore, for and in consideration of the foregoing premises and of the mutual promises set forth below, the parties hereto agree, with the intention of being legally bound, to the following:

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Article II Statement of Work

- A. USFWS shall continue to supplement its existing staff, with qualified project review specialist(s) and other personnel as detailed in Attachment A, attached and incorporated herein. USFWS shall use the funds provided under this FA to defray the costs of salaries and associated benefits, including necessary equipment, supplies, office space, training and to reimburse travel expenses in accordance with Federal Travel Regulations, 41 Code of Federal Regulations (CFR), Chapter 301, which are hereby incorporated by reference as if physically attached hereto. Travel could occur within and outside of the state of Florida. Examples of travel outside the state of Florida include, but are not limited to, the USFWS's National Conservation Training Center in Shepardstown, West Virginia and the USFWS's Region 4 Regional Office in Atlanta, Georgia. All travel shall be related to projects and the ETDM Process. Any training must enhance the employee's expertise and contribution to meeting environmental and ETDM Process needs.
- B. USFWS staff funded under this FA shall work exclusively (100%) on FDOT projects and provide expedited project coordination, technical assistance and document review as identified in Attachment B, attached and incorporated herein, throughout all phases of transportation planning and project development.
- C. USFWS shall review and respond to FDOT's ETDM review screens (Planning and Programming Screens) within forty-five (45) days of electronic notification that the project information has been uploaded into the Environmental Screening Tool (EST). USFWS will review all project information contained in the ETDM database using the Internet Web site application. For projects in the project development and environment documentation phase, USFWS shall review and respond to FDOT submissions within thirty (30) calendar days upon receipt of complete project documentation. FDOT and USFWS shall mutually agree upon the date when the review period commences, based upon submittal of complete project documentation. Verbal concurrence between FDOT and USFWS staff of the need for additional information shall interrupt the 30-day review period and shall be confirmed by written documentation on a monthly basis. Once the additional information has been submitted, FDOT and USFWS shall mutually agree upon the date when the review period begins to run again. In the event that the number of FDOT project submissions exceeds USFWS's staffing capability to meet the deadline as stated above, both parties agree to negotiate a mutually beneficial date for USFWS completion of project review rewrites.
- D. USFWS staff will keep time records identifying the number of hours spent working on FDOT projects and work tasks defined in Attachment B through use of the Program Review Form. These records will account for one hundred percent (100%) of the time worked by each employee. In addition, USFWS shall keep accurate and separate accounting records of all receipts and disbursements of funds received pursuant to this FA and produce such records as required by FDOT and FHWA and shall permit extracts and copies to be made by FDOT and FHWA or their duly authorized representatives. USFWS shall keep records substantiating hours and costs billed pursuant to this FA for a period of at least five years after the final billing is submitted. These records shall be subject to audit by FDOT or FHWA, as appropriate.
- E. USFWS shall provide FDOT with a quarterly status report entered into an electronic database located on Internet-accessible Web site as part of FDOT's Performance Management Program. The information contained within this site will be used to monitor program performance and verify the utility of the funded positions in streamlining project delivery, improving agency coordination, and developing environmental stewardship through the protection of environmental resources. The quarterly status report will include the completion and submittal of the Project Review Form and the Program Review Form.
- F. The parties to this FA act in an independent capacity in the performance of their respective functions under this FA, and neither party shall be construed as the officer, agent or employee of the other.
- G. In no way shall it be construed or implied that FHWA, FDOT or USFWS is by this FA intending to abrogate their obligations and duties to comply with the regulations promulgated under the Endangered Species Act (as amended), the Fish and Wildlife Coordination Act of 1958 (as amended), the National Environmental Policy Act of 1969 (NEPA), the Clean Water Act of 1977 (as amended), or any other federal, state, or local law.

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Article III Financial Statement

- A. FDOT shall, subject to the billing provisions of Article III(B) below, provide advance payment to USFWS for a total sum not to exceed \$2,179,898.00, as shown in Attachment C, ending on a date five (5) years from the date of this FA or September 30, 2013, whichever comes later. The funds may be used at the discretion of the USFWS, pursuant to the instructions for fund usage referenced in Article III(E).
- B. Requests for funding will be on an advance payment basis only and invoiced quarterly, and will be accompanied by a quarterly status report, which is described in Article II(E).
- C. Every quarter, USFWS will provide submittals of the actual account of expenditures for salaries, benefits, travel, expenses and other indirect costs as drawn against advance FDOT payment in support of work tasks described in Attachment B. USFWS agrees to remain cognizant of ETDM program activities and funding eligibility as determined by the FHWA, and further agrees to coordinate with FDOT before performing ETDM program activities that are not specifically identified in this FA or contained in the FDOT ETDM Funded Positions Reference Manual.
- D. Every quarter, an invoicing report will be provided to FDOT. If FDOT disagrees with the elements of the report including expenditures, a meeting to clarify the information in question and account expenditures will be held within 30 days. All parties pledge to negotiate in good faith towards a reconciliation of the disputed amount and/or information. In those cases where resolution cannot be reached, an audit may be performed by a third party auditor or the FDOT's Inspector General Office and submitted to the FDOT with findings and recommendations for program and funding improvements.
- E. Any invoices or requests shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Instructions for proper invoicing and fund usage are provided on the Environmental Screening Tool (EST) Web site, contained within the invoicing forms and FDOT ETDM Funded Positions Reference Manual.
- F. Any unexpended funds and interest earned remaining at the conclusion or termination of this FA shall be returned to FDOT within 90 days of completion or termination of the project.
- G. Under the terms of this FA, FDOT shall send its payments to the following address:
Attention: Nancy Jaye
U.S. Fish and Wildlife Service
1875 Century Boulevard
Suite 200
Atlanta, Georgia 30345
Tel: (404) 679 4072
Fax: (404) 679-4093
- H. Agencies providing goods and services to the FDOT should be aware of the following time frames. Upon receipt, the FDOT has five (5) working days to inspect and approve the goods and services. The FDOT has twenty (20) days to deliver a request for payment (voucher) to the Florida Department of Financial Services (FDFS). The 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 payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to USFWS. Interest penalties of less than one (1) dollar shall not be enforced unless USFWS requests payment. Invoices which have to be returned to USFWS because of USFWS preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to FDOT.
- I. Records of costs incurred shall be maintained by USFWS and made available upon request to FDOT for five (5) years after final payment for the work pursuant to Florida Statutes. Copies of these documents and records shall be furnished to FDOT or FHWA upon request. Records of costs incurred shall include USFWS's general accounting records and the project records, together with supporting documents and records of USFWS and all subcontractors considered necessary to FDOT or FHWA for a proper audit of project costs.

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Article IV Period of Performance

- A. The term of this FA shall run for a period commencing upon signature or October 1, 2008, whichever comes later, and ending September 30, 2013 or five (5) years thereafter, whichever comes later, unless terminated sooner in accordance with Paragraph IV(B) below. It is the full intent and expectation of all the signatory parties that this FA be reviewed and renewed at least every five years and, by so doing, this FA will remain in effect for a period of time in excess of ten (10) years. FDOT shall have no obligation for services rendered by the USFWS which are not performed within the specified agreement period.
- B. Any party may terminate this FA upon sixty (60) days written notice to the other, addressed to the Project Officer listed in Article V provided that the party requesting termination has provided reasonable notice and sufficient opportunity for remedy.
- C. USFWS, FDOT and the FHWA shall meet periodically on this FA to review the progress made by USFWS in accordance with the terms of this FA. If USFWS, FDOT and the FHWA find that the terms have been satisfactorily met, then this FA may be renewed pursuant to federal legislation and subject to funding availability.
- D. Every six months, the FDOT will issue from its Performance Management Program an electronic report to USFWS and FHWA for mutual discussion in performance, efficiencies, time frames, process issues and program activities. At the end of each year, USFWS may participate in an Annual Survey and Annual Report and may participate periodically in an ETDM Program Review, which addresses how environmental streamlining has been carried out, lessons learned, and recommendations for improving the process. The FDOT, FHWA and USFWS will mutually define the scope and content of the Annual Report and any ETDM Program Review Meetings.
- E. In the event of a conflict between any provision of the MA, FA and AOA, the latter shall govern. However, the FA shall govern with regard to the period of performance. The parties to this FA have consulted and agreed to continue participation in the ETDM Process as signatories to the MA, AOA and FA, with the FA's termination date serving as the controlling date.

Article V Project Officers

- A. U.S. Fish and Wildlife Service:
 - South Florida Ecological Services Office
 - John Wrublik or Designee
 - 1339 20th Street
 - Vero Beach, Florida 32960
 - Tel: (772) 562-3909
 - Fax: (772) 562-4288
 - Jacksonville Ecological Services Office
 - Todd Mecklenborg or Designee
 - 915 Baymeadows Way, Suite 200
 - Jacksonville, Florida 32256-7517
 - Tel: (904) 731-3336
 - Fax: (904) 731-3045
 - Panama City Ecological Services Office
 - Mary Mittiga or Designee
 - 1601 Balboa Avenue
 - Panama City, Florida 32405
 - Tel: (850) 769-0552
 - Fax: (850) 763-2177

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B. Florida Department of Transportation:

Environmental Management Office
Marjorie Bixby or Designee
605 Suwannee Street, MS 37
Tallahassee, Florida 32399-0450
Tel: (850) 414-4447
Fax: (850) 414-4443

C. Federal Highway Administration – Florida Division:

George Hadley or designee
545 John Knox Road
Suite 200
Tallahassee, Florida 32303
Tel: (850) 942-9650
Fax: (850) 942-9691

Article VI Mandatory Provisions

- A. During the performance of this FA, the parties agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, religion, sex or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, or national origin.
- B. No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share of this FA or any benefit that may arise therefrom; but this provision shall not be construed to extend to this FA if made with a corporation for its general benefit.
- C. The parties agree that in any contracts to be developed and awarded pursuant to this FA, all design, plans, specifications, estimates of costs, construction, utility relocation work, right-of-way acquisition procedures, acceptance of the work, and procedures in general shall at all times conform to the applicable Federal and State laws, rules, regulations, orders and approvals, including, specifically, procedures and requirements relating to labor standards, equal employment opportunity, nondiscrimination, compliance with the Americans with Disabilities Act, anti-solicitation, information, auditing and reporting provisions.

Article VII Modification

- A. Any changes, amendments, corrections or additions to this FA, shall be in writing; shall be executed and approved by the project officers (or their designee) listed in Article V, unless the modifications expand the scope or costs, which will require then the same officials (or their designees) of the parties who executed and approved the original FA and in accordance with applicable law; and shall become effective upon complete approval by all parties. This FA can be extended by mutual agreement of all parties.

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Article VIII Disclosure


- A. As required in Section 339.135(6) (a), Florida Statutes, during any fiscal year, FDOT shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. FDOT shall require a statement from the comptroller of FDOT that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of FDOT which are for an amount in excess of \$25,000 and which have a term for a period of more than one year.
- B. The FDOT will provide a written Notice to Proceed when the funding is available for performance of this FA. Until that notice, no services shall be provided under the terms of this FA, and FDOT will not be liable for any expenses incurred prior to such notice.
- C. Pursuant to Section 216.347, Florida Statutes, no funds received pursuant to this FA may be expended for lobbying the legislature, the judicial branch, or a state agency.
- D. The State of Florida's performance and obligation to pay under this FA is contingent upon an annual appropriation by the Florida Legislature and receipt of budget authority.
- E. A Vendor Ombudsman has been established within the FDFS. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 410-9724 or by calling the FDFS's Hotline, 1-800-848-3792.

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Article IX Signatures

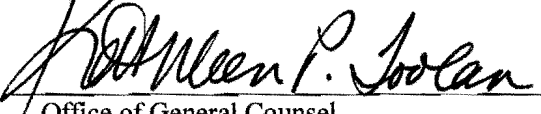
In witness whereof, the parties hereto have caused this FA to be executed as of the date herein written or October 1, 2008, whichever comes later.

FLORIDA DEPARTMENT OF TRANSPORTATION

By: 
Secretary of Transportation
Kevan J. Tibbitts
Print Name


Date: 11/24/08

LEGAL REVIEW:

By: 
Office of General Counsel
Kathleen P. Toolan
Print Name

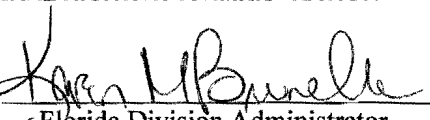
Date: 11/21/08

U.S. FISH AND WILDLIFE SERVICE

By: 
Chief, USFWS Contracting Office, Region 4
Don Calder
Print Name

Date: 11/18/08

FEDERAL HIGHWAY ADMINISTRATION

By: 
for Florida Division Administrator
KAREN M. BRUNELLE
Print Name

Date: 11/20/08

Attachment A
U.S. Fish and Wildlife Service
Professional Qualifications
October 1, 2008

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

- Specialists with experience and education in Fisheries or Wildlife Biology, Land Management or other related Environmental Science.
- Working knowledge of the Endangered Species Act (as amended) and the Fish and Wildlife Coordination Act of 1958 (as amended), Section 404 of the Clean Water Act of 1977 (as amended), and the National Environmental Policy Act of 1969 is essential.

Attachment B
U.S. Fish and Wildlife Service
Work Tasks
October 1, 2008

USFWS staff shall accomplish the reviews and tasks as outlined below, in order to streamline, expedite, implement, consult and coordinate on FDOT projects throughout all phases of transportation planning and project development, including public involvement and outreach, and meet FDOT's needs for compliance with applicable State and Federal statutes and regulations. USFWS staff reviews and tasks include, but are not limited to, the following:

- Review and comment on projects contained in the Metropolitan Planning Organization (MPO) Long Range Transportation Needs Plan and Florida Intrastate Highway System Plan during the ETDM Planning Screen on a three-year to five-year cycle
- Review and comment on project priorities every year before they are entered into the MPOs' Transportation Improvement Programs and FDOT's Five-Year Work Program during the ETDM Programming Screen
- Review and comment, as appropriate, on Advance Notification
- Participate in agency scoping
- Review and comment on wildlife resource inventory and impact assessment activities
- Provide preliminary environmental analyses, guidance and review
- Provide review and guidance on Alternatives Analysis
- Represent USFWS at meetings as appropriate
- Participate in the development and implementation of written FDOT and USFWS guidance
- Ensure USFWS review coordination on separate reports for the same project
- Provide technical assistance and conduct document review, and draft agency responses, which may include but not be limited to:
 - Wetlands Identification and Delineation Reports
 - Wetland Functional Assessment Reports
 - Wildlife Resources and Related Technical Basis Reports
 - Alternatives Analysis
 - Categorical Exclusions
 - Environmental Impact Statement
 - Environmental Assessment
 - FONSI Reports
 - Environmental Evaluation Reports
 - Mitigation Reports and Plans
 - Section 404 Permit Applications
 - Operational Procedures
- Coordinate and provide training on natural resource issues
- Provide expertise and recommendations on streamlining the environmental process at all phases of planning, project development and permitting
- Organize meetings or conference calls to clarify problems at the request of USFWS or FDOT
- Perform other related tasks as defined by FDOT and agreed to by USFWS
- Provide appropriate reporting, billing and other administrative functions
- Participate and assist in professional and public outreach opportunities to educate the citizenry on Florida's environmental streamlining initiative and the integration of natural resource preservation programs and plans with transportation planning and project development



Florida Department of Transportation

CHARLIE CRIST
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0458

STEPHANIE C. KOPELOUSOS
SECRETARY

DELEGATION OF AUTHORITY

I, Stephanie C. Kopelousos, Secretary of the Florida Department of Transportation, delegate to Kevin J. Thibault, as the Assistant Secretary for Engineering and Operations, Deborah L. Hunt, as the Assistant Secretary for Intermodal Systems Development, and William F. Thorp, as the Interim Assistant Secretary for Finance and Administration, the authority and responsibility to take action on my behalf at anytime during my absence from the Department headquarters in Tallahassee. I also rescind any prior delegations to the contrary.

Stephanie C. Kopelousos, Secretary
Florida Department of Transportation

Date