

**Executed**

**Agency Operating and Funding Agreement for  
Continuing Participation in the Efficient Transportation Decision Making and  
Transportation Project Development Processes**

**between**

**National Marines Fisheries Service**

**and**

**Florida Department of Transportation**

**July 25, 2023**

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## Section 1. Introduction

The purpose of the Efficient Transportation Decision Making (ETDM) process is to provide early incorporation of environmental considerations in transportation planning to better inform project delivery. This process supports the environmental policy of the Florida Department of Transportation (FDOT) “to protect and preserve the quality of life, and the natural, physical, social and cultural resources of the State, while expeditiously developing safe, cost effective, and efficient transportation systems.” (Policy No.: 000-625-001-m). The ETDM process supports environmental review efficiency objectives identified in Sections 135 and 139 of Title 23 United States Code (U.S.C.), as amended. The ETDM process promotes coordination of transportation and environmental resource planning and supports environmental reviews, through early interaction among transportation planners; federal, state, and local agencies; Native American Tribes; and affected communities. Florida established the ETDM process on December 14, 2001, through entry into a Memorandum of Understanding with state and federal resource agencies. These entities endorsed the ETDM concept and agreed to support, establish, and implement the ETDM process at their respective agencies to the extent feasible within existing legal authority and commensurate with the level of available funding. Intergovernmental coordination is accomplished through Environmental Technical Advisory Teams (ETATs). Each ETAT includes representatives from Metropolitan Planning Organizations (MPOs), federal and state agencies, and participating Native American Tribes.

The ETDM process described in this Agency Operating and Funding Agreement (AOFA) is consistent with the FDOT’s ETDM and Project Development and Environment (PD&E) Manuals. As shown in Figure 1, the ETDM process consists of two review screens: Planning and Programming. The screening events apply to qualifying capacity improvement projects, such as new roadways, new rail systems, and bridge projects (ETDM Manual, Chapter 2). The Planning Screen occurs when projects are evaluated for inclusion or prioritization within a Cost Feasible Long-Range Transportation Plan (LRTP). The Programming Screen supports development of projects to be included in the FDOT Five Year Work Program. The results of the screening events link the transportation Planning phase and the PD&E phase. The Planning and Programming Screens help to:

- Assess the feasibility of proposed projects.
- Allow for early identification of potential avoidance, minimization and mitigation opportunities.
- Focus the issues to be addressed during PD&E.
- Create information and documentation which may be advanced into the PD&E phase.

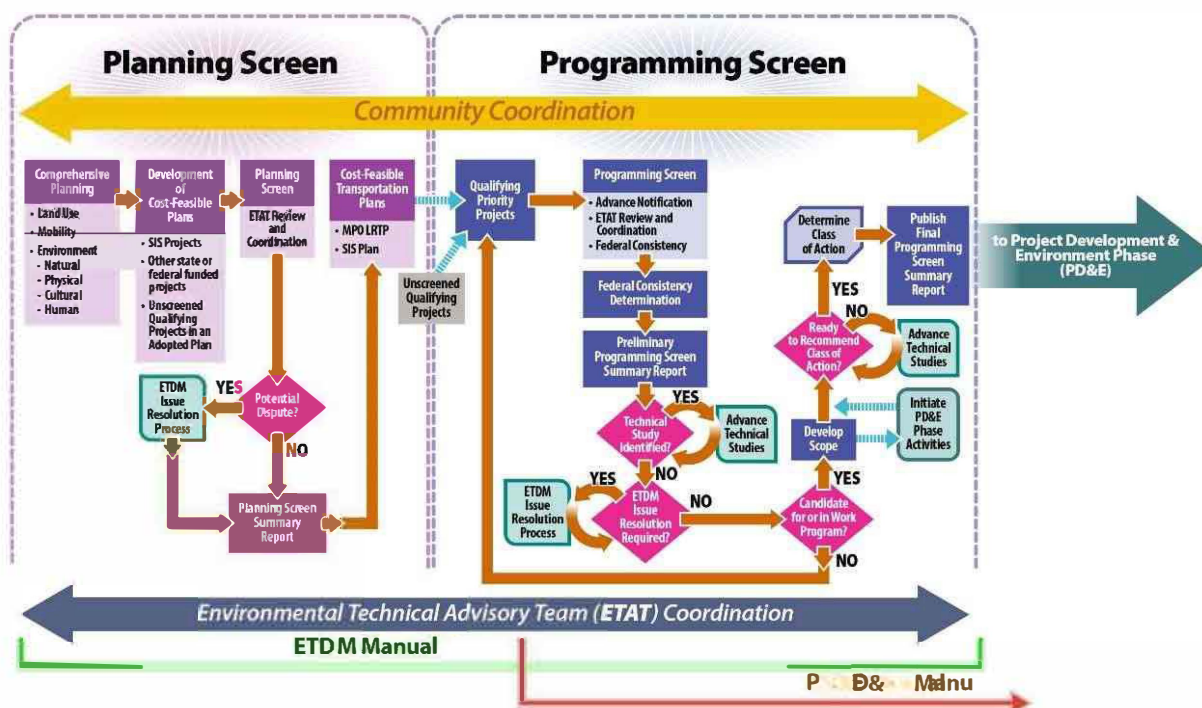


Figure 1 – ETDM Process

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During the Planning and Programming Screenings, ETAT members use the Environmental Screening Tool (EST) to review project information, identify potential project effects, and submit comments and considerations to FDOT. This web-based Geographic Information System (GIS) database and mapping tool provides access to information and data about natural, physical, cultural and community resources in a proposed project area. The comments and other information are made available to the public on the ETDM Public Access Site. The EST performs standardized GIS analyses and queries using information supplied by ETAT members and contained in the Florida Geographic Data Library. Moreover, it:

- Integrates data pertinent to natural, physical, cultural, and community resources and transportation programs into a standardized format.
- Analyzes GIS data within project buffers to support ETAT commentary.
- Provides a platform for dissemination of information among ETAT representatives and the public.
- Provides storage and access to ETAT reviews.

In a Memorandum of Understanding (MOU) originally executed on December 14, 2016, and subsequently renewed on May 26, 2022, Federal Highway Administration (FHWA) assigned and FDOT assumed FHWA's National Environmental Policy Act (NEPA) responsibilities for environmental review, reevaluation, consultation, and other actions required by federal environmental law pertaining to the review or approval of federal highway projects. The responsibilities were assigned under the Surface Transportation Project Delivery Program (NEPA Assignment Program) codified at 23 U.S.C. §327.

In general, FDOT's assumption of FHWA's environmental review responsibilities includes highway projects in Florida whose source of federal funding comes from FHWA or which require FHWA approvals. Under the NEPA Assignment MOU, FDOT serves as the NEPA Lead Agency with responsibility and liability for making applicable environmental decisions on highway projects. Within the ETDM process, FDOT's Office of Environmental Management (OEM) staff performs reviews of the following items and provides approval and/or concurrence at specific milestones:

- Purpose and need
- Methodology Memorandums for the Alternative Corridor Evaluation process
- Alternative Corridor Evaluation Reports
- Elimination of unreasonable alternatives
- Invitations for Participating and Cooperating agencies
- Class of Action (COA) determinations
- Adoption of planning products to be used during the PD&E Study

These early approvals and/or concurrences allow for the identification of potential project effects supporting the streamlining objectives of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and the Fixing America's Surface Transportation (FAST) Act, codified in 23 U.S.C. § 139.

Under the NEPA Assignment Program FDOT is subject to the same procedural and substantive requirements as previously applied to FHWA. Consistent with Part 3 of the MOU, FHWA retains certain responsibilities, including publication of notices in the Federal Register, government-to-government tribal consultation and projects that cross state lines. FHWA will continue to review amendments that affect funding and costs for reimbursement eligibility in accordance with Title 23 of the United States Code, including 23 U.S.C. §139(j) and 2 CFR §§200.402 – 200.405.

## Section 2. Agreement Framework and Legal Authority

This AOFA is entered into voluntarily by FDOT and the National Marine Fisheries Service (NMFS) to provide a framework for participation in the ETDM process and advancement of transportation projects during the Planning and PD&E phases. Collectively, FDOT and NMFS will be referred to as "the parties." NMFS shall serve as an ETAT member and participate by reviewing and commenting on those resources within its jurisdictional purview, including those subject to the authorities cited in Appendix A. Moreover, this AOFA provides funding for NMFS's activities as an ETAT representative in the ETDM and transportation development processes, as defined herein.

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## Section 3. Recitals

A. FDOT and NMFS originally executed a Master Agreement, Agency Operating Agreement, and Funding Agreement (FA) June 28, 2004. These were subsequently renewed or extended through July 24, 2023. FDOT and NMFS have consulted and agree to continue participating in the ETDM and transportation project delivery processes.

B. NMFS is responsible for review of transportation projects consistent with its regulatory and programmatic responsibilities. Relevant programmatic authorities for NMFS include: the Endangered Species Act (ESA), as amended, e.g., 16 U.S.C. § 1536 (a)-(d); National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. § 4321, et seq.; Magnuson-Stevens Fishery Conservation and Management Act (MSA), e.g., 16 U.S.C. § 1855 (b); Marine Mammal Protection Act, 16 U.S.C. §§ 1361-1423h; Anadromous Fish Conservation Act, 16 U.S.C. §§ 757a-757f; and Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-667d. NMFS is responsible for review and management of activities which may affect marine and freshwater aquatic life as described in this AOFA.

C. FDOT is committed to compliance with the statutes and rules under NMFS's jurisdiction as they relate to FDOT's transportation projects and activities. As such, FDOT requests that NMFS provide expedited review and specialized technical assistance during the ETDM and transportation development processes meeting timelines established in this AOFA. Consistent with OMB Circular A-97, the FDOT certifies that the services being requested pursuant to this agreement cannot be procured reasonably and expeditiously by it through ordinary business channels.

D. Early coordination and participation in the ETDM process will increase the number of activities conducted by NMFS. To maintain its production schedule, FDOT needs NMFS to provide timely responses and priority review of FDOT projects.

E. NMFS has represented that without supplemental funding it will be unable to provide FDOT with expedited review and specialized technical assistance during the ETDM and transportation development processes.

F. FDOT has found it beneficial to provide funding for NMFS to serve as an ETAT representative to support expedited review and specialized technical assistance so that transportation projects addressing Florida's needs can be implemented timely while complying with applicable environmental laws and regulations, including those protecting coastal and marine species and habitat.

G. To support priority project reviews, FDOT requests that NMFS provide expedited review and specialized technical services in its jurisdictional areas. FDOT will reimburse NMFS for its services under this AOFA to meet the accelerated review requirements and assistance established in this AOFA.

H. FDOT's participation in this AOFA is supported by 23 U.S.C. § 139(j) and the reimbursement of funds from FHWA for activities conducted by NMFS pursuant to this AOFA.

I. NMFS 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 a reimbursable basis and (2) that the service provided is beyond the normal work it performs on federal-aid highway and transportation projects. The funds transfer authority for NMFS is the Intergovernmental Cooperation Act 31 U.S.C. § 6505.

J. NMFS will provide expedited review and specialized technical assistance consistent with its statutory authority and commensurate with the level of funding provided by FDOT pursuant to this AOFA.

K. The parties desire to enter into this AOFA to provide for early coordination and identification of jurisdictional resources, expedite transportation project review, and the personnel and/or funding to attain these goals.

NOW, THEREFORE, in consideration of the mutual promises set forth above, the parties agree to the following:

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## Section 4. Statement of Work

A. NMFS agrees to provide its expertise and assist FDOT by expediting the review and evaluation of transportation projects for those matters within its statutory and regulatory authorities. NMFS will:

- Identify resources of concern and provide focused comments and actionable recommendations to avoid or minimize potential effects to jurisdictional resources. Within the EST, these issues are organized under the following category: Coastal and Marine, and Wetlands and Surface Waters.
- Evaluate whether any identified resources can be eliminated from further detailed analysis during the PD&E study phase.
- Identify potential issues related to compliance with laws mandating consideration of a project's impact on wetlands, protected resources and species, and Essential Fish Habitat (EFH), mitigation opportunities, and technical studies necessary to advance transportation projects.
- Inform FDOT OEM and District environmental offices of NMFS's initiatives, programs, training opportunities, rule or process changes, and regulations that may impact FDOT projects.
- Provide training and updates to FDOT OEM and District environmental offices on NMFS initiatives, programs, rules and regulations, consideration of a project's impact on wetlands and protected resources and species, and other similar topics.
- Attend and participate in ETAT meetings and project coordination meetings.
- Verify that resource data provided by NMFS is current in the EST.
- Review project purpose and need and acknowledge understanding or ask for clarification.
- Review and comment on the Methodology Memorandum (MM) and Draft Alternatives Corridor Evaluation Report (ACER) during the Alternative Corridor Evaluation (ACE) process.
- Make recommendations and provide technical assistance to FDOT on programmatic approaches and to support future project activities, including Section 7 Consultation and EFH Consultation.
- Provide expedited review, technical assistance and consultation throughout the PD&E and permitting processes.
- Participate in interagency issue resolution teams, as applicable.
- Participate in monitoring events required by FDOT's NEPA assignment, if requested.
- Provide FDOT an opportunity for advanced coordination and/or comment on proposed legislative changes, rule changes, and changes to associated operating manuals.
- Participate in FDOT research efforts related to endangered species, essential fish habitat, or other relevant resources under NMFS jurisdiction, e.g., develop, review and/or recommend methods, review and provide feedback on initial, and final results. Support implementation of research results that identify more efficient project delivery methods, e.g., draft, review, and implement guidance or programmatic approaches.

During ETDM Screenings, NMFS ETAT comments and recommendations regarding proposed transportation projects and their potential effects (direct, indirect, and cumulative) must be entered in the EST. FDOT will use NMFS's comments and recommendations to support project scoping and to identify coordination needs or additional activities in future project phases.

B. FDOT will provide funding to NMFS to adjust or supplement its staff resources so NMFS can provide expedited review of FDOT projects with qualified review specialist(s) and other personnel as detailed in Appendix B, attached and incorporated herein. The billable hours submitted by review specialists shall represent work spent exclusively (100%) on review of FDOT projects, providing expedited project review or coordination, technical assistance, document review and other authorized activities, as identified in this AOFA.

C. NMFS shall review and respond to information contained in FDOT's Planning and Programming Screens within forty-five (45) days of electronic notification that a project is ready for ETAT review. NMFS will review project information using available data both internal and external to the EST. For projects in the PD&E phase, NMFS shall review and respond to



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FDOT submissions within thirty (30) or forty-five (45) calendar days depending on the type of requested action. Tables 1, 2, and 3 in the sections below identify activities and project information available during the two ETDM screens and the PD&E phase, which range from a project's purpose and need to technical reports and environmental documents. In extenuating circumstances when these timeframes may be missed, NMFS shall provide a written request for an extension, including justification and new proposed deadline.

D. NMFS shall invoice FDOT using the EST's invoicing module for qualified activities conducted during the billing period. Qualified activities are those activities described in this AOFA, or as otherwise mutually approved in writing by the Project Officers.

E. NMFS shall participate in the ETDM Performance Management Program, which includes quarterly feedback reports and a biennial survey; metrics for these performance reports are identified in the AOFA (see Section 7). NMFS shall also attend ETDM-related meetings, as appropriate.

F. The parties to this AOFA act in an independent capacity in the performance of their respective functions under this AOFA; no party shall be construed as the officer, agent, or employee of the other.

G. In no way shall it be construed or implied that FDOT or NMFS are by entering into this AOFA intending to abrogate their obligations and duties to comply with their responsibilities under any federal, state, or local law or regulations.

### 4.1. Planning Screen

Upon receipt of the Planning Screen notice, ETAT members review a project's purpose and need and provide comments about potential project effects to the natural, physical, cultural, and community resources related to their statutory and regulatory authority. ETAT members provide comments about a proposed project based on their expertise, respective agency authority, plans, programs, and technical reports. At the conclusion of the Planning Screen, the ETDM Coordinator publishes the Planning Screen Summary Report. This report serves as feedback to the ETAT members and summarizes key recommendations and results from the screening event.

Table 1 outlines information contained in the EST from various sources, such as, FDOT, MPO, Florida Geographic Data Library (FGDL), and other agencies. It identifies NMFS review and comment tasks during the Planning Screen and addresses agency coordination responsibilities.

**Table 1 – Planning Screen Information and Coordination Responsibilities**

EST (MPO, FDOT, FGDL, Agencies)	FDOT	NMFS
<ul style="list-style-type: none"> <li>■ Project information (including but not limited to):               <ul style="list-style-type: none"> <li>■ Purpose and Need</li> <li>■ Project description</li> <li>■ Preliminary Environmental Discussion (PED)</li> <li>■ Agency comments</li> <li>■ GIS analysis and resource maps (Social and Economic, Cultural, Natural, and Physical)</li> <li>■ Community characteristics</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>■ In MPO areas, FDOT assists in developing the purpose and need and logical termini.</li> <li>■ In non-MPO areas, FDOT establishes the purpose and need and logical termini.</li> <li>■ In MPO and non-MPO areas, FDOT assists in developing the purpose and need and logical termini for SIS projects.</li> <li>■ Establish an interdisciplinary project team, as appropriate.</li> <li>■ Develop and disseminate Methodology Memorandum (MM) and resulting</li> </ul>	<ul style="list-style-type: none"> <li>■ Assign project reviewer.</li> <li>■ Develop an understanding of the proposed transportation project by reviewing the project description, purpose and need, PED (if provided), EST GIS analysis, project and resource maps, and comments from previous activities.</li> <li>■ Verify that information available in the EST from NMFS is the best available. Identify information gaps or data needed to support further evaluation.</li> <li>■ Review project purpose and need and acknowledge understanding or ask for clarification.</li> </ul>

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EST (MPO, FDOT, FGDL, Agencies)	FDOT	NMFS
<ul style="list-style-type: none"> <li>■ Project limits and logical termini</li> <li>■ Mobility alternatives</li> <li>■ Agency plans and programs</li> <li>■ Agency-specific GIS data</li> </ul>	<p>Alternative Corridor Evaluation Report (ACER), as applicable.</p> <ul style="list-style-type: none"> <li>■ Ensure project information is available for ETAT review.</li> <li>■ Coordinate with NMFS on agency jurisdictional resource issues.</li> <li>■ Produce Planning Screen Summary Report, which includes:               <ul style="list-style-type: none"> <li>■ Project Description</li> <li>■ Purpose and need</li> <li>■ PED</li> <li>■ Agency comments, issues, and recommendations for potential direct, indirect, and cumulative effects at the resource level</li> <li>■ GIS mapping and analysis</li> <li>■ Supplemental information supporting the project record</li> <li>■ Summary Degrees of Effect (SDOE) and FDOT ETDM Coordinator comments, including actions to address ETAT agency comments</li> <li>■ Summary of public involvement comments and identification of any community desired project features</li> <li>■ Identification of anticipated technical studies, permits, and project recommendations</li> <li>■ Adopt planning products as appropriate, for use in the NEPA process</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>■ Review projects for potential direct and indirect effects to resources under NMFS jurisdiction.</li> <li>■ Submit comments in the EST for each screened project alternative for the Coastal and Marine, and Wetlands and Surface Waters issues.</li> <li>■ Provide comments about potential effects to NMFS resources and make recommendations to avoid or address them.</li> <li>■ If NMFS identifies potential direct and/or indirect effects to NMFS resources, comment on the type, quality, and sensitivity of the resources involved in relation to their location to the proposed project and related activities. If the project does not impact resources of interest or a detailed evaluation is not necessary during the PD&amp;E Study phase, indicate this as well.</li> <li>■ Supplement resource information in the EST with additional sources and personal knowledge, such as data gathered from site visits.</li> <li>■ For scoping purposes, provide comments regarding potential cumulative effects to a resource and provide information for FDOT's consideration when evaluating cumulative effects.</li> <li>■ Provide information about agency plans, studies, regulatory information, or other data that may affect the project or be affected by the project.</li> <li>■ Provide specific recommendations to address resource concerns which may arise during permitting, such as potential avoidance, minimization, or mitigation opportunities.</li> <li>■ Specifically identify differences in potential jurisdictional resource impacts among alternatives.</li> <li>■ Identify specific activities that FDOT or other ETAT member(s) could complete between Planning and Programming Screenings to answer questions, address concerns or fill in data gaps (e.g., seasonal studies, preliminary site inspections, or studies to support the permitting process).</li> <li>■ Indicate a Degree of Effect (DOE) for each issue and alternative being reviewed. A</li> </ul>



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EST (MPO, FDOT, FGDL, Agencies)	FDOT	NMFS
		<p>DOE reflects the magnitude of potential projects effects (direct and indirect effects) caused by a particular alternative to a NMFS resource.</p> <ul style="list-style-type: none"> <li>▪ Review and respond to a proposed MM, when applicable.</li> <li>▪ Review ACERs, when applicable.</li> <li>▪ Indicate the need for future coordination (e.g., ESA and/or EFH consultation, permits, and technical studies).</li> <li>▪ Submit comments via the EST within 45 calendar days of notification.</li> <li>▪ Respond to Cooperating and Participating Agency requests from the Lead Federal Agency.</li> <li>▪ Regularly communicate with FDOT District ETDM Coordinator to exchange information and discuss project matters.</li> <li>▪ Review the Planning Screen Summary Report and provide agency comments, if any, within 30 calendar days of notification.</li> </ul>

### 4.2. Programming Screen

The Programming Screen builds upon the information produced during the Planning Screen, if applicable (not all projects complete a Planning Screen, see ETDM Manual, Chapter 2). The Programming Screen may initiate the Advance Notification (AN) process, which FDOT uses to inform agencies and other interested parties of a proposed transportation action, as well as Federal Consistency Review (as appropriate), and project scoping [NEPA or State Environmental Impact Reports (SEIR)]. The Programming Screen is required for all qualifying projects (defined in ETDM Manual, Chapter 2) being considered for inclusion in FDOT's Five Year Work Program, or prior to initiation of the PD&E study. During the Programming Screen, ETAT representatives provide technical assistance, comments about potential project effects, acknowledge understanding or ask for clarification of the purpose and need, and assist FDOT in scoping technical studies necessary to satisfy the requirements of the PD&E phase.

FDOT uses the EST to notify agencies and stakeholders to proceed with their reviews. When applicable, the notice for the Programming Screen begins a 45-day comment period, to allow for the distribution, discussion, and receipt of agency responses consistent with the Programming Screen and Federal Consistency Review. Upon receipt of this notice, all ETAT representatives will review and comment on the information associated with the Programming Screen. At the end of the Programming Screen, the ETDM Coordinator publishes the Preliminary Programming Screening Summary Report to document the initial screening event and the Final Programming Screen Summary Report when a class of action (COA) determination has been made. These reports serve as feedback to the ETAT members and document the results of the screening. The final report also supports development of a project's scope of work based on the ETAT reviews, considerations, and recommendations received during the screening and are intended to be adopted as a planning product for use in the NEPA process.

Table 2 below outlines information for which NMFS, based on its jurisdictional areas of expertise, has review and comment responsibility during the Programming Screen. It also addresses FDOT and NMFS review and coordination responsibilities.

**Executed****Table 2 – Programming Screen Information and Coordination Responsibilities**

<b>EST (MPO, FDOT, FGDL, Agencies)</b>	<b>FDOT</b>	<b>NMFS</b>
<ul style="list-style-type: none"> <li>■ Project information (including but not limited to):               <ul style="list-style-type: none"> <li>■ Purpose and Need</li> <li>■ Agency comments</li> <li>■ Project description</li> <li>■ PED</li> <li>■ Refined GIS line work</li> <li>■ Previous screening results, if applicable</li> <li>■ Results of preliminary studies</li> <li>■ GIS analysis and resource maps (Social and Economic, Cultural, Natural, and Physical)</li> <li>■ Community characteristics</li> <li>■ Project limits and logical termini</li> <li>■ Mobility alternatives</li> </ul> </li> <li>■ AN package</li> <li>■ Coastal Zone Consistency Determination (only federal projects)</li> <li>■ Clean Air Act Conformity Designation (only federal projects)</li> <li>■ Agency plans and programs</li> <li>■ Agency-specific GIS data</li> </ul>	<ul style="list-style-type: none"> <li>■ In MPO areas, FDOT assists in developing the purpose and need and logical termini.</li> <li>■ In non-MPO areas, establishes the purpose and need and logical termini.</li> <li>■ In MPO and non-MPO areas, FDOT assists in developing the purpose and need and logical termini for SIS projects.</li> <li>■ Distribute AN package to agencies including all ETAT agencies.</li> <li>■ Determine type of Environmental Documentation/COA.</li> <li>■ Establish an interdisciplinary project team, as appropriate.</li> <li>■ Develop and disseminate MM and resulting ACER, when applicable.</li> <li>■ Coordination with NMFS on agency jurisdictional issues.</li> <li>■ Invite Cooperating and Participating agencies, as applicable</li> <li>■ Produce Programming Screen Summary Reports (Preliminary and Final) which include:               <ul style="list-style-type: none"> <li>■ Project description</li> <li>■ Purpose and need</li> <li>■ PED</li> <li>■ COA Determination (i.e., Type 2 Categorical Exclusion [CE], Environmental Assessment [EA], Environmental Impact Statement [EIS], or SEIR)</li> </ul> </li> <li>■ Cooperating and participating agencies, as appropriate</li> <li>■ GIS analysis and mapping</li> <li>■ Agency comments, issues, and</li> </ul>	<ul style="list-style-type: none"> <li>■ Assign project reviewer.</li> <li>■ Develop an understanding of the proposed transportation project by reviewing the project description, purpose and need, PED, EST GIS analysis, project and resource maps, and comments from previous activities.</li> <li>■ Verify that information available in the EST from NMFS is the best available. Identify information gaps or data needed to support further evaluation.</li> <li>■ When applicable, review and comment on AN package and assist with scoping activities. Review project purpose and need and acknowledge understanding or ask for clarification.</li> <li>■ Review projects for potential direct indirect and cumulative effects to resources under NMFS jurisdiction.</li> <li>■ Provide comments about potential effects and recommendations to avoid or minimize effects. If potential direct or indirect effects are identified, comment on the type, quality, and sensitivity of the resources involved in relation to the resources' location to the proposed project and related activities. Be as specific as possible.</li> <li>■ Provide comments in the EST for each screened project alternative for the Coastal and Marine, and Wetlands and Surface Waters issues.</li> <li>■ Comments should not only list resources found within the standard EST buffers, but reflect historical documentation, previous studies, site visits, and personal knowledge of the project area.</li> <li>■ Supplement resource information in the EST with additional sources and personal knowledge, such as data gathered from site visits.</li> <li>■ If the project does not impact resources of interest or a detailed evaluation is not necessary during the PD&amp;E phase, indicate this as well.</li> <li>■ For scoping purposes, provide comments regarding potential cumulative effects to a resource to help</li> </ul>

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EST (MPO, FDOT, FGDL, Agencies)	FDOT	NMFS
	<p>recommendations for potential direct, indirect, and cumulative effects</p> <ul style="list-style-type: none"> <li>▪ Dispute resolution issues, if any</li> <li>▪ SDOE and FDOT ETDM Coordinator comments, including actions to address ETAT agency comments</li> <li>▪ Summary of public involvement activities, comments, and identification of any community desired project features</li> <li>▪ Identification of technical studies, permits, and project recommendations.</li> <li>▪ Adopt planning products, as appropriate, for use in the NEPA process</li> </ul>	<p>FDOT determine evaluation requirements.</p> <ul style="list-style-type: none"> <li>▪ Identify potential resource avoidance and minimization recommendations, issues which may arise during permitting, and mitigation needs based on statutes and regulations.</li> <li>▪ Specifically identify differences in potential jurisdictional resource impacts among alternatives.</li> <li>▪ Identify specific activities that FDOT or other ETAT member(s) could complete after the Programming Screen or during PD&amp;E to answer questions, address concerns or fill in data gaps (e.g., seasonal studies, site inspections and advancing technical studies).</li> <li>▪ Indicate a DOE for each issue and alternative being reviewed. A DOE reflects the magnitude of potential projects effects (direct and indirect effects) caused by a particular alternative to a resource.</li> <li>▪ Review and respond to a proposed MM, when applicable.</li> <li>▪ Review ACERs, when available.</li> <li>▪ Identify potential issues regarding compliance with the ESA, EFH, and available mitigation opportunities.</li> <li>▪ Identify required technical studies.</li> <li>▪ Indicate the need for future coordination (e.g., ESA and/or EFH consultation, permits, and technical studies).</li> <li>▪ Request Cooperating or Participating Agency status (see Section 4.4), if NMFS deems appropriate, for consideration by the Lead Federal Agency.</li> <li>▪ Respond to Cooperating or Participating Agency requests from the Lead Federal Agency.</li> <li>▪ Submit comments via the EST within 45 calendar days of notification.</li> <li>▪ Participate in issue resolution, as needed, to assist the ETDM Coordinator in identifying solutions to project concerns.</li> <li>▪ Review the Programming Screen Summary Report and provide agency</li> </ul>

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EST (MPO, FDOT, FGDL, Agencies)	FDOT	NMFS
		comments, if applicable, within 30 calendar days of notification.

### 4.3. Project Development & Environment Phase

During the PD&E phase, FDOT performs preliminary engineering and design, conducts environmental analysis and public involvement activities, and prepares necessary studies and reports as described in the FDOT PD&E Manual. During this phase, NMFS will provide technical assistance upon request by FDOT.

Environmental documents for federally funded projects are developed during the PD&E phase in compliance with the Council on Environmental Quality (CEQ) regulations implementing NEPA and 23 CFR 771; see PD&E Manual, Part 1, Chapter 2 for more information about environmental COA determinations. For non-federal transportation projects see Part 1, Chapter 10 of the PD&E Manual. State, Local, or Privately Funded Project Delivery.

Table 3 below outlines information for which NMFS has review and comment responsibility during the PD&E phase. It also addresses FDOT and NMFS review and coordination responsibilities.

**Table 3 – Project Development & Environment Phase Information and Responsibilities**

FDOT	NMFS
<b>Alternatives Analysis</b>	
<ul style="list-style-type: none"> <li>Develop and analyze alternatives.</li> <li>Assess impacts of alternatives.</li> <li>Consult with NMFS regarding potential impacts, avoidance and minimization recommendations, Best Management Practices (BMPs), and opportunities for mitigation.</li> </ul>	<ul style="list-style-type: none"> <li>Review and comment on alternatives and related analysis from jurisdictional and regulatory resource perspective.</li> </ul>
<b>Technical Reviews</b>	
<ul style="list-style-type: none"> <li>Complete technical studies as appropriate, such as:               <ul style="list-style-type: none"> <li>Natural Resources Evaluation (NRE) (wetlands, protected species and habitat, Essential Fish Habitat)</li> <li>Biological Assessment (BA)</li> </ul> </li> <li>Request formal/informal consultation, as appropriate</li> <li>Provide timely responses to Requests for Additional Information</li> <li>Participate in working groups or other opportunities in support of related initiatives (i.e. construction provision updates)</li> </ul>	<ul style="list-style-type: none"> <li>Review, comment, and/or provide recommendations from appropriate agency specialists on relevant technical reports and agreements within 30 calendar days of notification.</li> <li>Review, comment, and/or provide recommendations from appropriate agency specialists on unscreened projects.</li> <li>Provide technical assistance on matters within NMFS's jurisdictional and regulatory expertise.</li> <li>Identify resources which may be exempt from public disclosure</li> <li>Complete informal Section 7 consultation within 30 calendar days of initiation</li> <li>If formal consultation is required, complete formal Section 7 consultation within 90 calendar days of initiation of consultation and issue Biological Opinion within 45 calendar days of concluding consultation.</li> <li>Complete consultation on EFH, and provide recommendations as appropriate</li> </ul>

**Executed**

<b>FDOT</b>	<b>NMFS</b>
<b><i>Type 2 Categorical Exclusion (CE)/Environmental Assessment (EA)/Draft Environmental Impact Statement (DEIS)</i></b>	
<ul style="list-style-type: none"> <li>■ Incorporate information from technical reports and permits into the Environmental Document.</li> <li>■ Publish Notice of Intent for EIS, as applicable.</li> <li>■ Identify, invite, and involve Cooperating and Participating Agencies, as appropriate.</li> <li>■ Complete: <ul style="list-style-type: none"> <li>■ Type 2 CE or EA and make publicly available: or</li> <li>■ DEIS.</li> </ul> </li> <li>■ Identify opportunities, constraints and feasibility of Joint Public Notice and Hearing, if appropriate.</li> <li>■ Hold public hearing and prepare transcript and certification, as appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>■ Review, comment, and/or provide recommendations from appropriate agency specialists on: <ul style="list-style-type: none"> <li>■ Type 2 CE or EA within 30 calendar days of notification; or</li> <li>■ Publicly available DEIS within 45 calendar days of notification of availability.</li> </ul> </li> <li>■ Upon request, provide technical assistance regarding jurisdictional and regulatory resources for use at public hearings.</li> <li>■ Review and comment on the environmental document, specifically identifying jurisdictional and permit issues within existing legal authority.</li> <li>■ Review and comment on potential impacts to regulatory resources for each alternative</li> <li>■ Upon request, attend public hearing and participate, as appropriate.</li> </ul>
<b><i>State Environmental Impact Report (SEIR)</i></b>	
<ul style="list-style-type: none"> <li>■ Incorporate information from relevant technical reports into SEIR.</li> <li>■ Complete SEIR and make publicly available.</li> <li>■ Hold public hearing and prepare transcript and certification, as appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>■ Review, comment, and/or provide recommendations related to jurisdictional and regulatory resources from appropriate agency specialists on publicly available SEIR within 30 calendar days of notification.</li> <li>■ Upon request, attend public hearing and participate, as appropriate.</li> <li>■ Upon request, provide technical assistance regarding jurisdictional and regulatory resources for use at public hearings.</li> <li>■ Review and comment on the SEIR, specifically identifying resource and permit issues within legal authority.</li> </ul>
<b><i>Finding Of No Significant Impact (FONSI)/Final Environmental Impact Statement (FEIS)</i></b>	
<ul style="list-style-type: none"> <li>■ Complete and document decisions in FONSI or FEIS.</li> <li>■ Submit draft FEIS for review to other Lead agencies and/or Cooperating Agencies, and as appropriate to Participating Agencies.</li> <li>■ Respond to comments.</li> <li>■ Obtain project permits concurrent with NEPA approval, as appropriate.</li> <li>■ Determine preferred alternative.</li> <li>■ Issue Record of Decision (ROD) for FEIS.</li> <li>■ Location and Design Concept Acceptance.</li> <li>■ Make FEIS publicly available.</li> </ul>	<ul style="list-style-type: none"> <li>■ Review FONSI within 30 calendar days.</li> <li>■ Review publicly available FEIS or FEIS/ROD within 30 calendar days.</li> <li>■ Review draft FEIS or FEIS/ROD, as appropriate, if NMFS is a cooperating or participating agency</li> </ul>
<b><i>Environmental Re-evaluation</i></b>	
<ul style="list-style-type: none"> <li>■ Consult with NMFS, as appropriate, to address changes to Design or ROW.</li> <li>■ Update commitments as necessary to address changes in impacts or law.</li> </ul>	<ul style="list-style-type: none"> <li>■ Consult with FDOT as requested to confirm project impacts and mitigation, identify relevant changes in law or regulation, and assure continuing compliance with commitments</li> </ul>

## Executed

FDOT	NMFS
<i>Construction and Maintenance</i>	
<ul style="list-style-type: none"> <li>Consider NMFS resources when developing species or habitat related special provisions to support construction contracts.</li> <li>Consider NMFS resources when developing guidance for construction/maintenance staff or contractors.</li> </ul>	<ul style="list-style-type: none"> <li>Review draft species or habitat related special provisions to support construction contracts.</li> <li>Review draft guidance to support construction or maintenance activities regarding jurisdictional resources.</li> <li>Coordinate with OEM when construction issues arise on projects where technical assistance is provided.</li> </ul>

#### 4.4. Cooperating and Participating Agency

In addition to its review responsibilities under this AOFA, NMFS may, as provided by 23 U.S.C. §139 and 40 CFR 1501.8, serve as a Cooperating or Participating Agency and coordinate with FDOT on federal projects.

#### 4.5. Training and Educational Programs

FDOT will provide and NMFS will attend ETAT training regarding the ETDM process, PD&E process, the use of the EST and various aspects of the transportation delivery process. Other training opportunities may be made available to ETAT representatives and FDOT staff regarding natural, historic, and sociocultural resource issues as available or needed. ETAT representatives, to the extent feasible, are expected to attend trainings.

NMFS, if requested, will provide training opportunities to FDOT regarding its regulations, the assessment and management of its resources, and the implementation of its species and habitat programs as they relate to transportation development.

#### 4.6. Periodic Agency Coordination

ETAT representatives will meet periodically with ETDM Coordinators and FDOT OEM to coordinate and discuss ETDM program activities, including, without limitation, workload, staffing, resource needs, and agency initiatives and directives. NMFS will advise FDOT regarding changes to its guidance, methodologies, and regulations, and provide opportunity for FDOT to comment during the development process, as appropriate. At these meetings and any District-wide ETAT meetings, the participants will exchange information related to the efficiency of the ETDM process, ETAT agency sponsored training opportunities, and proposed changes to law. Additionally, participants shall discuss implications to FDOT, and/or resource agencies from rule changes, program and policy updates, and development of management plans and procedures.

### Section 5. Personnel

#### 5.1. ETAT Representative

NMFS agrees to provide ETAT representatives to support the ETDM process. Agency ETAT representatives coordinate and perform timely agency reviews of FDOT projects to ensure they satisfy agency statutory and regulatory requirements. ETAT representatives should possess excellent communication skills, especially the ability to function effectively within their agency and coordinate with other ETAT members, when necessary. Moreover, agency ETAT representatives are responsible for all agency jurisdictional issues and functions related to transportation projects, as detailed in Tables 1, 2, and 3 above. The individual(s) selected to serve in this capacity should be:

- Knowledgeable in agency statutory authority and regulatory requirements
- Knowledgeable of their agency's role in reviewing transportation projects (e.g., planning, PD&E, permitting, construction, post-construction, monitoring)
- Able to perform and understand environmental effects analyses



## Executed

- Respected within the agency, afforded access to key decision-makers, able to coordinate internally to develop the agency position, and entrusted to represent the agency
- Cognizant of the different, yet related, perspectives of other agencies and able to formulate solutions and function as a problem solver
- Effective in resolving disputes
- Proficient in computer usage, including the internet
- An effective verbal and written communicator
- Able to anticipate agency actions required as projects proceed through phases and to prepare those responsible for prompt, efficient review of the project to minimize delays in permitting and other agency authority
- Able to coordinate and expedite agency permitting process, as applicable
- Able to effectively communicate within the agency and convey the agency's comments on projects regarding resources within NMFS's jurisdictional authority

If the ETAT representatives are unable to perform their duties, the agency will identify an alternate to complete review responsibilities in the agreed upon timeframes.

### 5.2. FDOT ETDM Coordinator

Each of FDOT's seven District offices and Florida's Turnpike Enterprise (FTE) have identified an ETDM Coordinator responsible for administering the ETDM process, as specified in Tables 1, 2, and 3 above. FDOT ETDM Coordinator duties are further described in the ETDM Manual.

If the ETDM Coordinators are unable to perform their duties, the applicable FDOT District Office or FTE will identify an alternate ETDM Coordinator to complete the FDOT/FTE responsibilities in the agreed upon timeframes.

## Section 6. Technology Requirements

The successful implementation of the ETDM process relies on the quality of information within the EST. As such, each agency's ETAT representative will serve as the agency contact and be responsible for obtaining digital information about the agency's jurisdictional resources, as well as for ensuring that their agency's information remains current and available to the University of Florida GeoPlan Center for use with the ETDM Process. Upon request, NMFS will attempt to identify new or updated resource information from agency plans, initiatives, research projects, and field reviews relevant to the responsibilities under this Agreement and shall make them available to FGDL. The ETAT agency shall provide digital information to the GeoPlan Center at no cost. The information will include metadata, documentation that describes the format, intent, and source material used to develop and maintain the information. ETAT representatives will coordinate with the GeoPlan Center to ensure that transmitted data meets the quality and format protocols of the EST.

ETAT representatives shall have access to a computer with internet connectivity adequate to ensure the effective use of the EST, to attend virtual meetings, and to communicate with the Department and other ETAT members.

## Section 7. Performance Standards

ETAT agency performance standards shall be based on the fulfillment of agency responsibilities. In assessing the achievement of these standards, FDOT may consider the agency's level of involvement, quality of reviews, number of revisions, number of requests for additional substantive information, interagency communication and coordination, and review delays, as well as actions taken to expedite the delivery of transportation projects. FDOT may also consider whether the agency provides (1) specific information about data needs to achieve compliance with the statutory and regulatory requirements contained in Appendix A, (2) documentation of the consultation process, and (3) documentation of commitments (including future coordination, avoidance and minimization strategies, and mitigation opportunities) to protect resources.

## Executed

Performance standards established for FDOT and ETAT agencies include but are not limited to:

- ETAT agency review of Planning and Programming Screens within 45 calendar days of notification
- FDOT response to comments and inquiries within 30 calendar days
- FDOT response to requests for additional information within 30 calendar days
- Establishment of quality assurance protocols for digital information
- Collaborative development of task and/or annual work plan which establishes priorities, milestones, deliverables and schedule.
- Completion of ETDM Issue Resolution Process within 120 calendar days, if applicable
- Review of requested environmental documents and technical reports within 30 calendar days, with the exception of the DEIS, which is 45 calendar days once approved for public availability, unless acting as cooperating agency

ETAT members are expected to participate in FDOT-requested activities, as outlined above. ETAT members are also expected to provide meaningful, substantive evaluations and comments regarding their jurisdictional areas with recommendations to address resource issues and facilitate timely issuance of permits. The agency's performance will be tracked and monitored in the ETDM Performance Management Program. FDOT will provide the agency with periodic performance reports from the ETDM Performance Management Program.

### Section 8. ETDM Issue Resolution Process

To timely advance projects, the parties agree to the ETDM Issue Resolution process described herein for projects with anticipated substantial adverse effects. This process seeks to find solutions to complex issues among agencies by identifying mutually agreeable activities or conditions that will address a resource concern while meeting the transportation need. Issue resolution activities may continue through future project delivery phases as detailed analysis begins and more information becomes available. Participation in the ETDM process does not abrogate or limit NMFS's authority or responsibility to protect resources over which it has jurisdiction or authority or require it to act in a way contrary to law, regulation, rules, policy or practice.

A strong commitment exists among the participants in the ETDM process to resolve issues within the ETAT, prior to elevating them to higher level management (see Figure 2). To facilitate meeting this commitment, potential resource concerns should be addressed as early as possible to make the best use of agency skills and resources. Projects with unresolved issues following the ETAT review and publication of the Preliminary Programming Screen Summary Report require commencement or continuation of the ETDM issue resolution process.

The informal issue resolution process begins when the ETDM Coordinator in consultation with the OEM Project Development Coordinator assigns a *Potential Issue* SDOE in the Planning Screen or *Issue Resolution Process Required* SDOE during a Programming Screen review. When assigning the SDOE, the ETDM Coordinator uses all known information including comments and DOEs from ETAT members. The ETDM Coordinator reviews the commentary to determine its consistency with the definition of *Potential Issue* or *Issue Resolution Process Required* (see the ETDM Manual, Chapters 3 and 4) and in conjunction with the disputing agency's legal authority.

An ETAT representative may, based on its jurisdictional or legal authority, flag a project as potentially needing issue resolution with the following triggers:

- Project is considered to be un-permittable (applicable to permitting agencies).
- Project is identified to be contrary to a state or federal resource agency's program, plan, or initiative (including Florida's Coastal Management Program or Local Government Comprehensive Plans).

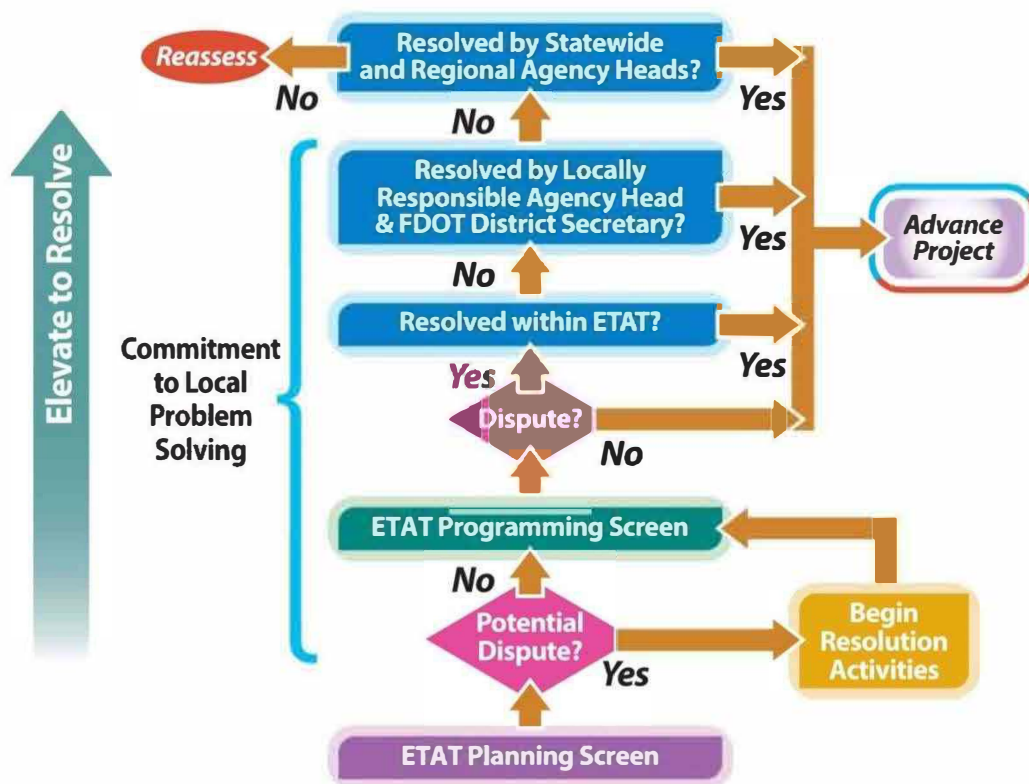
## Executed

- Project has the potential for significant environmental cost (e.g., monetary, environmental effects, or quality of life).

Initially, the ETDM Coordinator works with the appropriate ETAT representative(s) to informally resolve issue(s) at the agency staff level before elevating the discussion to the Formal Issue Resolution process. The agency heads (or governing board, as applicable) will make the final decision on how to address unresolved issues.

Any agreements, understandings, and/or recommendations resulting from the ETDM issue resolution process are documented and accompany the project as it advances into PD&E. If there are unresolved issues for federal projects undergoing NEPA review, then the “issue resolution” process set out in *23 U.S.C. § 139*, will be applicable. The process in *23 U.S.C. § 139* establishes a series of forums for issues arising in the environmental review process to be resolved, and if not resolved, to which the issues would then advance, including potential financial penalties for unexcused delays by participating agencies.

**Figure 2 – Issue Resolution Process**



**NOTE:** Issue Resolution identifies mutually agreeable activities or conditions addressing a resource concern while meeting the transportation need. Issue resolution activities may continue through future project delivery phases.

## Section 9. Financial Provisions

A. FDOT agrees to compensate NMFS on a reimbursement basis for activities described in Section 4 – Statement of Work. The Schedule of Financial Assistance is included as Appendix C. FDOT shall provide NMFS an annual allocation subject to the following provisions:

1. FDOT shall reimburse NMFS for eligible expenses based on an annual budget of \$470,261.04 (Year 1), \$492,704.09 (Year 2), \$516,267.04 (Year 3), \$541,005.74 (Year 4) and \$566,979.83 (Year 5) not to exceed a total sum of \$2,587,217.74 ending on July 24, 2028 or 5 years from the date of signature, whichever comes later. If it becomes apparent that there is incongruence between the funding amount established in this

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AOFA and the review services requested to be performed, the parties agree in good faith to renegotiate the level of funding and service or prioritize project reviews.

2. NMFS may submit invoices for cost reimbursement on a monthly basis, but shall submit invoices at least once every 6 months. Invoices shall be entered into the EST's invoicing module with detail sufficient for a proper pre- and post-audit thereof.
3. Any unexpended funds, remaining at the conclusion/termination and reconciliation of the AOFA shall be released by FDOT within 60 days of the expiration, termination, or reconciliation of the agreement.

B. NMFS shall use the funds provided under this AOFA to defray the expenses of salaries and associated benefits, including the pro rata cost of necessary equipment, supplies, office space, overhead, and training and to reimburse reasonable travel expenses in accordance with Section 112.061, Florida Statutes, which are hereby incorporated by reference as if physically attached. All training and travel must be related to FDOT project review and the ETDM process. Non-routine or non-project related travel or training requests for out of state travel by NMFS must be submitted one month in advance or as soon as practicable and receive written or electronic preapproval from FDOT's OEM.

C. Invoices shall be submitted by NMFS in detail sufficient for a proper pre-audit and post audit based on the quantifiable, measurable and verifiable units of deliverables as established in Section 4 – Statement of Work. Deliverables must be received and accepted in writing by FDOT's Project Manager prior to payments. (*Section 287.058 (1)(a), F.S.*) Invoices will be entered into the EST's invoicing module and must list salaries, benefits, overhead, travel, expenses and other indirect costs, including back-up documentation and a status report that lists the number of hours spent working on FDOT projects, project review tasks, and technical assistance provided. NMFS agrees to coordinate with OEM prior to conducting any activity not explicitly defined in this AOFA to ensure funding eligibility. FDOT's OEM will provide instructions and training for using the EST's invoicing module and further guidance through the Funded Position Reference Handbook.

D. Supporting documentation must establish that the deliverables were received and accepted in writing by FDOT and must also establish that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Section 7 was met. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of charges as described in item C, above.

E. Bills for travel expenses specifically authorized in this AOFA shall be submitted on FDOT's *Travel Form No. 300-000-06* and will be paid in accordance with *Section 112.061, F.S.* and the most current version of the *Disbursement Handbook for Employees and Managers. (Section 287.058 (b), F.S.) (Section 215.422(11), F.S. and Section 287.058(1)(b), F.S.*

F. If compensation for travel is authorized under this AOFA and by FDOT's Project Manager, then FDOT shall not compensate NMFS for lodging/hotel expenses in excess of \$175.00 per day (excluding taxes and fees). NMFS may expend their own funds to the extent the lodging/hotel expense exceeds \$175.00 per day. FDOT, in its sole discretion and pursuant to its internal policies and procedures, may approve compensation to NMFS for lodging/hotel expenses exceeding \$175.00 per day.

G. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under *Chapters 215 and 216, F.S.* or FDOT's Comptroller under *Section 334.044 (29), Florida Statutes*. If FDOT determines that the performance of the NMFS is unsatisfactory, FDOT shall notify NMFS of the deficiency to be corrected, which correction shall be made within a timeframe to be specified by FDOT. NMFS shall, within five days after notice from FDOT, provide FDOT with a corrective action plan describing how NMFS will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract noncompliance. If the corrective action plan is unacceptable to FDOT, NMFS shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until NMFS resolves the deficiency.

## Executed

If the deficiency is subsequently resolved, NMFS may bill FDOT for the retained amount during the next billing period. If NMFS is unable to resolve the deficiency, the funds retained will be forfeited at the end of the Agreement's term. **(Section 287.058(1)(h), F.S.)**

FDOT shall send payment of invoices to:

Attention: Peggy Baker or designee  
National Marine Fisheries Service  
263 13th Avenue, South  
St. Petersburg, Florida 33701

H. Agencies providing goods and services to FDOT should be aware of the following time frames. Inspection and approval of goods or services shall take no longer than 5 working days unless the bid specifications, purchase order, or contract specifies otherwise. (Any deviations should be referenced in the agreement or an addendum in accordance with Section 2.1.) FDOT 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. **(Section 215.422(1), F.S.)**

I. 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 NMFS. Interest penalties of less than one (1) dollar will not be enforced unless NMFS requests payment. Invoices that are returned to NMFS because of NMFS 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 FDOT. **(Section 215.422(3)(b), F.S.)**

J. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for NMFS who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516. **(Section 215.422(5) and (7), F.S.)**

K. NMFS shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. Records of costs incurred under the terms of this agreement shall be maintained and made available upon request to FDOT during the period of this agreement and for six (6) years after final payment is made. Copies of these documents and records shall be furnished to FDOT upon request and to the extent permitted by federal law. Records of costs incurred include NMFS's general accounting records and the project records, together with supporting documents and records considered necessary by FDOT for a proper cost accounting. **(Section 287.058(4), F.S.)**

L. In the event this contract is for services in excess of \$25,000.00 and a term for a period of more than 1 year, the provisions of **Section 339.135(6)(a), F.S.**, are hereby incorporated:

The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the Comptroller of the Department that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000.00 and which have a term for a period of more than 1 year.

M. FDOT's obligation to pay is contingent upon an annual appropriation by the Florida Legislature. **(Section 287.0582, F.S.)**



## Executed

N. Any tangible property outside of that normally and reasonably required to provide the services for this AOFA or as defined in Chapter 273, F.S. and Rule 60A-1.017, FAC, will be purchased by FDOT. The specific property(ies) will be subsequently transferred to and controlled by FDOT upon completion of services or end of the contract, whichever occurs first. Upon receipt of property, NMFS shall forward to FDOT a copy of the purchase invoice/property description/serial number and date of receipt. FDOT will forward inventory control label(s) to be affixed to all property. NMFS will accommodate physical inventories required by FDOT.

O. NMFS agrees to promptly reimburse FDOT for all amounts for which FDOT has made payment to NMFS if such amounts become ineligible, disqualified or disallowed for federal reimbursement due to any action, error, omission, or negligence of NMFS, including over payment, missing or deficient documentation of costs and charges, untimely, incomplete, or insufficient submittals, or other related reason.

P. Unless NMFS provides reasonable cause or timely notice, NMFS's failure to timely perform its obligations or timely submit invoices and documents may result in denial of reimbursement. Additionally, the maximum limiting amount of this AOFA may become unavailable or reduced due to a removal or withdrawal of federal funds or a loss of state appropriation, and FDOT will have no obligation to provide funds from other sources. NMFS agrees that in the event the maximum limiting amount of this AOFA is reduced by such removal, withdrawal, or loss of funds, NMFS will be solely responsible for payment of costs and outstanding invoices no longer reimbursable due to the loss of funding.

### **Section 10. Duration of Performance, Evaluation, and Amendments of the Agreement**

A. The term of this AOFA shall commence upon signature by all parties or July 25, 2023, whichever comes later and terminate on July 24, 2028 or five (5) years from date of signature, whichever comes later, unless terminated sooner in accordance with Section 10(B) below. The agreement may be amended by mutual consent of the parties as provided in Section 13. The payment for associated work shall be inclusive of all work performed up to and including the date of expiration or termination. This agreement is subject to the availability of funds.

B. Any party may terminate this AOFA upon sixty (60) days written notice to the Project Officers listed in Section 11, provided that the party requesting termination has provided notice of the reasons for termination and sufficient opportunity for remedy. Termination shall not relieve FDOT of its obligation to reimburse NMFS for costs incurred prior to termination of this agreement and allowable under this AOFA.

C. At least once every three years, NMFS and FDOT shall review and evaluate activities contemplated under this AOFA, formulate suggestions for process improvements, and determine whether it should be revised, renewed, or canceled to review and evaluate activities contemplated under this AOFA and formulate suggestions for process improvements. NMFS and FDOT shall participate in the ETDM Performance Survey and subsequent meetings to discuss the findings.

D. On a quarterly basis FDOT will issue from its Performance Management Program an electronic report measuring NMFS's performance under this AOFA.

E. This AOFA shall supersede any prior understanding, agreement, memorandum, letter, or other written or oral arrangement between the parties relating to the matters covered herein.

F. Should disagreement arise on the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the staff level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty days, the parties shall forward the written presentation of the disagreement to respective higher officials for resolution.



## **Executed**

### **Section 11. Project Officers**

#### **National Marine Fisheries Service**

Virginia Fay or designee  
263 13th Avenue South  
St. Petersburg, Florida 33701  
Tel: (727) 551-5739  
Fax (727) 824-5300  
Email: Virginia.Fay@noaa.gov

#### **Florida Department of Transportation**

Jennifer Marshall or designee  
Florida Department of Transportation  
605 Suwannee Street, MS 37  
Tallahassee, Florida 32399-0450  
Tel: (850) 414-4316  
Email: [Jennifer.Marshall@dot.state.fl.us](mailto:Jennifer.Marshall@dot.state.fl.us)

### **Section 12. Mandatory Provisions**

- A. During the performance of this AOFA, the parties agree they will not discriminate against any person because of race, color, religion, sex, or national origin.
- B. In performing its obligations under this AOFA, NMFS:
  - a. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all employees serving as ETAT members hired by NMFS during the term of the AOFA; and
  - b. 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.

### **Section 13. Modification of Agreement**

Any changes, amendments, corrections, or additions to this AOFA, shall be in writing and shall be executed and approved by the Project Officers (or their designees) listed in Section 11. However, any modifications expanding the Statement of Work or budget will require execution by the office of the officials (or their designees) who executed and approved this AOFA. This AOFA can also be extended by mutual agreement of all parties and recorded in writing.

### **Section 14. Rights of Others**

Nothing in this AOFA, expressed or implied, is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this AOFA.

### **Section 15. Applicable Law**

If there is no applicable federal law, the parties agree that the laws of the State of Florida shall apply to and govern this AOFA without giving effect to any principles of conflicts of law. Nothing about this Agreement shall be considered a waiver of sovereign immunity by either party.

**Executed****Section 16. Entire Agreement**


This AOFA constitutes the entire agreement between the parties relating to the subject matter herein. There exist no representations or warranties other than those set forth herein.

**Section 17. Knowing and Voluntary Participation of Parties**

Each party fully participated in the drafting of this AOFA and understands its rights and obligations hereunder, and is signing this AOFA freely and voluntarily, intending to be bound by it.

**Section 18. Signatures**

The parties may execute this AOFA in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.


DocuSigned by:  
  
 Signature \_\_\_\_\_ Date 06/19/2023 | 3:40 PM EDT  
 Assistant Secretary of Engineering and Operations  
 Florida Department of Transportation

Signature \_\_\_\_\_ Date \_\_\_\_\_  
 Assistant Administrator for Fisheries  
 National Marine Fisheries Service

Will Watts  
 Printed Name  
 Assistant Secretary of Engineering and Operations  
 Florida Department of Transportation

Brian T. Pawlak, NMFS CFO/CAO  
 Printed Name  
 for Janet Coit  
 Assistant Administrator for Fisheries  
 National Marine Fisheries Service

Legal Review:

DocuSigned by:  
  
 Signature \_\_\_\_\_  
 Date 06/13/2023 | 8:10 AM EDT  
Kathleen Toolan  
 Printed Name

Signature \_\_\_\_\_  
 Date \_\_\_\_\_  
 Printed Name \_\_\_\_\_

**Executed****Appendix A. Applicable Laws, Regulations, Executive Orders and Agency Guidance**

Agency	Citation
<i>Florida Department of Transportation</i>	<p><b>FEDERAL STATUTES</b></p> <ul style="list-style-type: none"> <li>■ 7 United States Code (U.S.C.) §§ 4201-4209, Farmland Protection Policy Act (FPPA),</li> <li>■ 16 U.S.C. 470 et seq, National Historic Preservation Act of 1966, as amended</li> <li>■ 16 U.S.C. §§ 470(aa)-(mm), Archeological Resources Protection Act of 1979,</li> <li>■ 16 U.S.C. §§ 1531-1544, Endangered Species Act of 1973</li> <li>■ 16 U.S.C. §§ 1361-1423h, Marine Mammal Protection Act</li> <li>■ 16 U.S.C. §§ 757a-757f, Anadromous Fish Conservation Act</li> <li>■ 16 U.S.C. §§ 661-667d, Fish and Wildlife Coordination Act</li> <li>■ 16 U.S.C. §§ 703-712, Migratory Bird Treaty Act</li> <li>■ 16 U.S.C. §§ 1271-1287, Wild and Scenic Rivers Act,</li> <li>■ 16 U.S.C. §§ 1451-1466, Coastal Zone Management Act,</li> <li>■ 16 U.S.C. §§ 1801-1891d, Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, with Essential Fish Habitat requirements at 16 U.S.C. § 1855(b)(2)</li> <li>■ 16 U.S.C. §§ 3501-3510, Coastal Barrier Resources Act,</li> <li>■ 16 U.S.C. § 3901 and § 3921, Emergency Wetlands Resources Act,</li> <li>■ 23 U.S.C. § 138 and Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. § 303 and implementing regulations at 23 C.F.R. part 774</li> <li>■ 23 U.S.C. § 119(g) and § 133(b)(14), Wetlands Mitigation,</li> <li>■ 54 U.S.C. §§ 200302-200310, Land and Water Conservation Fund (LWCF) Act</li> <li>■ 23 U.S.C. 101, <i>et seq.</i>, Highways</li> <li>■ 23 U.S.C. 109(h), Highways – Standards, as amended</li> <li>■ 23 U.S.C. § 139, Efficient Project Reviews for Environmental Decision Making</li> <li>■ 23 U.S.C. § 168, Planning and Environmental Linkages, with the exception of those FHWA responsibilities associated with 23 U.S.C. §§ 134 and 135</li> <li>■ 23 U.S.C. § 169 Programmatic Mitigation Plans, with the exception of those FHWA responsibilities associated with 23 U.S.C. §§ 134 and 135</li> <li>■ 25 U.S.C. §§ 3001-3013; 18 U.S.C. § 1170, Native American Grave Protection and Repatriation Act (NAGPRA),</li> <li>■ 33 U.S.C. §§ 1251-1387 (Sections 319, 401, and 404), Clean Water Act,</li> <li>■ 33 U.S.C. §§ 403, Rivers and Harbors Act of 1899,</li> <li>■ 42 U.S.C. §§ 300f-300j-26, Safe Drinking Water Act (SDWA),</li> <li>■ 42 U.S.C. § 1996, American Indian Religious Freedom Act,</li> <li>■ 42 U.S.C. 2000d-2000d-7, Title VI of the Civil Rights Act of 1964, as amended</li> <li>■ 42 U.S.C. §§ 4001-4130, Flood Disaster Protection Act,</li> <li>■ 42 U.S.C. 4321-4370h, National Environmental Policy Act (NEPA) of 1969, as amended</li> <li>■ 42 U.S.C. §§ 4901-4918, Noise Control Act of 1972</li> <li>■ 42 U.S.C. §§ 9601-9675, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)</li> <li>■ 42 U.S.C. §§ 9671-9675, Superfund Amendments and Reauthorization Act (SARA)</li> <li>■ 42 U.S.C. §§ 6901-6992k, Resource Conservation and Recovery Act (RCRA),</li> </ul>

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Agency	Citation
	<ul style="list-style-type: none"> <li>■ 42 U.S.C. §§ 7401-7671q, Clean Air Act with the exception of project level conformity determinations (42 U.S.C. 7506)</li> <li>■ 42 U.S.C. 12131-12165, Title II of the Americans with Disabilities Act of 1990, as amended</li> <li>■ 49 U.S.C. 4601-4655, The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended</li> <li>■ 49 U.S.C. §§ 47521-47534, Airport Noise and Capacity Act of 1990</li> <li>■ 49 U.S.C. 101, <i>et seq.</i>, Transportation</li> <li>■ 49 U.S.C. 303, Policy on Lands, Wildlife and Waterfowl Refuges, and Historic Sites; Section 4(f) of the USDOT Act of 1966, as amended</li> <li>■ 54 U.S.C. § 306101 <i>et seq.</i>, National Historic Preservation Act of 1966, as amended</li> <li>■ 54 U.S.C. §§ 312501-312508, Preservation of Historical and Archaeological Data,</li> <li>■ Public Law 112-141, Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21), as amended</li> </ul> <p><b>CODE OF FEDERAL REGULATIONS</b></p> <ul style="list-style-type: none"> <li>■ 23 C.F.R. 450, Planning Assistance and Standards</li> <li>■ 23 C.F.R. 650, Bridges, Structures and Hydraulics</li> <li>■ 23 C.F.R. 771, Environmental Impact and Related Procedures</li> <li>■ 23 C.F.R. 772, Procedures for Abatement of Highway Traffic Noise and Construction Noise</li> <li>■ 23 C.F.R. 774, Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(F))</li> <li>■ 23 C.F.R. 777, Mitigation of Impacts to Wetlands and Natural Habitat</li> <li>■ 36 C.F.R. 800, Protection of Historic Properties</li> <li>■ 40 C.F.R. 1500-1508, Council on Environmental Quality</li> <li>■ 49 C.F.R. 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs</li> </ul> <p><b>EXECUTIVE ORDERS</b></p> <ul style="list-style-type: none"> <li>■ E.O. 11990, Protection of Wetlands/USDOT Order 5660.1A, Preservation of the Nation's Wetlands</li> <li>■ E.O. 11988, Floodplain Management, (except design matters and determinations that significant encroachment is the only practicable alternative under 23 C.F.R. parts 625 and 650)</li> <li>■ E. O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations</li> <li>■ E.O. 13112, Invasive Species, as amended by Executive Order 13286</li> <li>■ E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency</li> <li>■ E.O. 14008, Tackling the Climate Crisis at Home and Abroad</li> <li>■ E.O. 14052, Implementation of the Infrastructure and Investment Jobs Act</li> </ul> <p><b>AGENCY GUIDANCE</b></p> <ul style="list-style-type: none"> <li>■ USDOT Order 5610.1C, Procedures Considering Environmental Impacts</li> <li>■ USDOT Order 5650.2, Floodplain Management and Protection</li> </ul>

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Agency	Citation
	<ul style="list-style-type: none"> <li>■ FHWA Technical Advisory 6640.8A, Guidance for Preparing and Processing Environmental and Section 4(f) Documents</li> </ul> <p><b>FLORIDA STATUTES</b></p> <ul style="list-style-type: none"> <li>■ Chapter 334, Florida Statutes (F.S.), Transportation Administration</li> <li>■ Chapter 335, F.S., State Highway System</li> <li>■ Chapter 336, F.S., County Road System</li> <li>■ Chapter 337, F.S., Contracting; Acquisition, Disposal, and Use of Property</li> <li>■ Chapter 338, F.S., Florida Intrastate Highway System and Toll Facilities</li> <li>■ Chapter 339 F.S., Transportation Finance and Planning</li> </ul>
<i>National Marine Fisheries Service</i>	<ul style="list-style-type: none"> <li>■ 16 USC 1536, Endangered Species Act</li> <li>■ 16 USC 1451 et seq., Coastal Zone Management Act</li> <li>■ 16 USC 1855 (b), Magnuson-Stevens Fishery Conservation and Management Act</li> <li>■ 16 U.S.C. §§ 1361-1423h, Marine Mammal Protection Act</li> <li>■ 16 U.S.C. § 757a-757f, Anadromous Fish Conservation Act</li> <li>■ 16 U.S.C. § 661-667d, Fish and Wildlife Coordination Act</li> <li>■ 31 U.S.C. § 6505, Intergovernmental Cooperation Act</li> </ul>

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## **Appendix B. NMFS Professional Qualifications**

Persons filling NMFS ETAT position(s) funded under this AOFA shall possess the knowledge and skills necessary to meet and maintain the professional standards outlined below:

- Working knowledge of the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, the Fish and Wildlife Coordination Act, and NMFS's other statutory and regulatory authority as outlined in Appendix A of this AOFA, including but not limited to NMFS's jurisdictional resource issues, resource management, policies, guidelines, and protection initiatives.
- Understanding of NMFS's role in reviewing transportation projects and related technical reports, including Natural Resource Evaluations and Biological Assessments.
- Working knowledge of the ETDM and the NEPA processes.
- Working knowledge of FDOT PD&E procedures and documents.
- Ability to review, understand, and relate their area of expertise to an analysis of potential jurisdictional resource impacts from transportation projects and identify solutions to address the potential impacts.
- Experience and education in fishery and marine sciences and other skills related to marine and fishery management, conservation and assessment.



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**Appendix C. Budget**

Subject to state and federal appropriation and budget authority, the Department will establish a budget for NMFS to participate in the AOFA. Funding is anticipated to defray the costs of two (2) ZP-3 full time equivalent positions (including salary and benefits, travel, training and expenses, and direct and indirect overhead costs) to serve as regional ETAT representatives. Allocation of staff resources to fulfill this agreement will remain at the discretion of NMFS.

Year 1 (July 25, 2023 – July 24, 2024).....	\$470,261.04
Year 2 (July 25, 2024 – July 24, 2025).....	\$492,704.09
Year 3 (July 25, 2025 – July 24, 2026).....	\$516,267.04
Year 4 (July 25, 2026 – July 24, 2027).....	\$541,005.74
Year 5 (July 25, 2027 – July 24, 2028).....	\$566,979.83
 Total Budget (5 Calendar Years) .....	 \$2,587,217.74

**FDOT Accounting Information:**  
Business Partner Network (BPN)/DUNS: 809397102

**NMFS Accounting Information:**  
Treasury Account Symbol (TAS): 13/1450  
Business Event Type Code (BETC): COLL  
CBS ACCS: 30-30-0005-00-00-00; X8LHC01 P00  
BPN/DUNS: 156140209  
ALC: 13-14-001