

**AGENDA ITEM SUMMARY SHEET**  
**VILLAGE COUNCIL MEETING**  
**May 15, 2019**

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**Agenda Item:**

Joint Participation Agreement (JPA) with State of Florida, Department of Transportation

Resolution No. 2019-05 A Resolution of the Village Council of the Village of Estero, Florida, Approving the Joint Participation Agreement (JPA) for the US 41 Landscape Improvements Project (442085-1-58-01; US 41 (SR 45) from Pelican Colony Boulevard to Vintage Parkway) between the Village of Estero and State of Florida, Department of Transportation; Authorizing the Village Mayor to Execute the Agreement; and Providing an Effective Date

**Description:**

The State of Florida, Department of Transportation (FDOT) is providing funding for landscaping improvements within the US-41 medians located in the Village boundaries.

As part of the funding process, FDOT requires the approval of a Resolution enabling the execution of a Joint Participation Agreement (JPA). The other elements of the process - design, CEI services, construction – are being processed separately in accordance with FDOT requirements.

**Action Requested:**

Adopt Resolution No. 2019-05 and authorize the Village Mayor to execute an agreement on behalf of the Village of Estero Council.

**Financial Impact:**

This project is expected to cost approximately \$1,265,590. This includes the project's design, permitting, construction and CEI costs. This JPA will provide \$766,000 or reimbursement for the construction and CEI costs. This leaves approximately \$499,590 of funding without reimbursement from the Village of Estero. The budget includes \$1,175,990 for this project. Approximately \$89,600 of additional funds will be required to complete the project.

**Attachments:**

1. Resolution No. 2019-05
2. Joint Participation Agreement

# ATTACHMENT 1

## VILLAGE OF ESTERO, FLORIDA

### RESOLUTION NO. 2019 - 05

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, APPROVING THE JOINT PARTICIPATION AGREEMENT (JPA) FOR THE US 41 LANDSCAPE IMPROVEMENTS PROJECT (442085-1-58-01; US 41 (SR 45) FROM PELICAN COLONY BOULEVARD TO VINTAGE PARKWAY) BETWEEN THE VILLAGE OF ESTERO AND STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION; AUTHORIZING THE VILLAGE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, be it resolved by the Village Council of the Village of Estero, Florida:

**Section 1.** The Joint Participation Agreement (JPA) for the US 41 Landscape Improvements Project (442085-1-58-01; US 41 (SR 45) from Pelican Colony Boulevard to Vintage Parkway) between the Village of Estero and State of Florida, Department of Transportation (FDOT), is hereby approved.

**Section 2.** The Village Council authorizes the Village Mayor to execute the Joint Participation Agreement (JPA) for the US 41 Landscape Improvements Project (442085-1-58-01; US 41 (SR 45) from Pelican Colony Boulevard to Vintage Parkway) between the Village of Estero and State of Florida, Department of Transportation.

**Section 3.** This Resolution shall take effect immediately upon adoption.

**ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero, Florida this 5<sup>th</sup> day of June, 2019.

Attest:

**VILLAGE OF ESTERO, FLORIDA**

By: \_\_\_\_\_  
Kathy Hall, MMC, Village Clerk

By: \_\_\_\_\_  
Bill Ribble, Mayor

Reviewed for legal sufficiency:

By: \_\_\_\_\_  
Burt Saunders, Esq., Village Attorney

## ATTACHMENT 2

|   |  |   |
|---|--|---|
| <b>Financial Management No.:</b><br>442085-1-58-01<br><b>Agency:</b> The Village of Estero<br><b>Contract No:</b> | <b>Fund:</b> DDR <b>Function:</b><br><br><b>Contract Amount:</b> \$766,000 | <b>FLAIR Approp:</b> 751000<br><b>FLAIR Obj.:</b><br><b>Org. Code:</b> 55014010106<br><b>Vendor No.:</b> F5960005874001 |
|---|--|---|

**JOINT PARTICIPATION AGREEMENT**  
**BETWEEN**  
**THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**  
**AND**  
**The Village of Estero**

This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION** (hereinafter referred to as the DEPARTMENT) and the **Village of Estero**, a political subdivision of the State of Florida, existing under the Laws of Florida, (hereinafter referred to as the LOCAL GOVERNMENT),

WITNESSETH:

WHEREAS, the Parties have been granted specific Legislative Authority to enter into this Agreement pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the LOCAL GOVERNMENT by Resolution No. \_\_\_\_\_, dated the day of \_\_\_\_\_, 20\_\_ a copy of which is attached hereto and made a part hereof, has authorized its Chairman or designee to execute this Agreement on its behalf.

WHEREAS, the DEPARTMENT is prepared, in accordance with its Five-Year Work Program, to undertake the Project described as **US 41 (SR 45) FROM PELICAN COLONY BLVD TO VINTAGE PKWY**, in Fiscal Year 2018/2019, said Project being known as **FM #: 442085-1-58-01**, hereinafter referred to as the "Project"; and

WHEREAS, the Project is on the State Highway System, is not revenue producing and is contained in the adopted Five Year Work Program; and

WHEREAS, the implementation of the Project is in the interests of both the DEPARTMENT and the LOCAL GOVERNMENT and it would be most practical, expeditious, and economical for the LOCAL GOVERNMENT to perform the services to complete the Project.

WHEREAS, the intent of this Agreement is to establish the terms and conditions of the funding and the production of this Project; and

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the parties agree as follows:

**1. TERM**

A. The term of this Agreement shall begin upon the date of signature of the last party to sign. The LOCAL GOVERNMENT agrees to complete the Project by December 31<sup>st</sup> 2022, in accordance with the schedule described and contained in Exhibit "A" attached hereto. If the LOCAL GOVERNMENT does not complete the Project within the time period allotted, this Agreement will expire on the last day of the scheduled completion, as provided in this paragraph unless an extension of the time period is requested by the LOCAL GOVERNMENT and granted in writing by the DEPARTMENT prior to the expiration of the Agreement. Expiration of this Agreement will be considered termination of the Project. After the Project is complete, the term of this Agreement shall continue in effect and be binding on the parties in perpetuity for maintenance responsibilities of the LOCAL GOVERNMENT.

**2. SERVICES AND PERFORMANCES**

A. The LOCAL GOVERNMENT shall provide the Construction of the Project. The Project consist of: Construction of landscape enhancements for US 41 from Pelican Colony Blvd. to Vintage Pkwy. The project will include clearing, grubbing, grading, erosion control and restoration necessary for the installation of the landscape enhancements and associated irrigation system. The general objective is for the Village of Estero to provide contract administration, management services, construction engineering inspection services and quality acceptance reviews of all work associated with the construction of the associated improvements, and otherwise, the LOCAL GOVERNMENT shall perform all other necessary work to complete the Project, as specified in Exhibit "A", Scope of Services attached hereto and by this reference made a part hereof. Nothing herein shall be construed as requiring the LOCAL GOVERNMENT to perform any activity which is outside of the scope of services of the Project.

B. The LOCAL GOVERNMENT shall provide the quantifiable, measurable and verifiable units of deliverables as specified in Exhibit "A". Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion.

C. The LOCAL GOVERNMENT agrees to undertake the Construction services of the Project in accordance with the latest edition of the DEPARTMENT'S Standard Specifications for



Road and Bridge Construction and DEPARTMENT Design Standards and Manual of Uniform Traffic Control Devices ("MUTCD"). The following guidelines shall apply as deemed appropriate by the DEPARTMENT: the DEPARTMENT Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, the FDOT Design Manual ("FDM"), Manual for Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (the "Florida Green Book") and the DEPARTMENT Traffic Engineering Manual and all applicable federal, state and local statutes, rules and regulations.

D. E- VERIFY

Vendors/Contractors shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract.

Vendors/Contractors 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.

E. This Agreement shall act to supersede the normal requirements of the LOCAL GOVERNMENT to secure separate DEPARTMENT permits for drive-way connection, right of way utilization, storm-water discharge and utilities, and this Agreement is deemed to constitute such permits.

F. The LOCAL GOVERNMENT shall be responsible for obtaining clearances/permits required for the construction of the Project from the appropriate permitting authorities.

G. The LOCAL GOVERNMENT shall hire a contractor prequalified by the Department using the LOCAL GOVERNMENT'S normal competitive bid procedures to perform the construction work for the Project. The LOCAL GOVERNMENT shall provide a copy of the final contract documents to the DEPARTMENT for review and approval prior to awarding the final contract.

H. The LOCAL GOVERNMENT shall hire an FDOT pre-qualified CEI firm to perform oversight of the construction work and Verification Testing in accordance with the 2018 Standard Specifications for Road and Bridge Construction, and as amended from time to time. Administration of the CEI staff shall be under the responsible charge of a State of Florida Licensed Professional

Engineer who shall provide the certification that all design and construction for the Project meets the minimum construction standards established by the DEPARTMENT. The DEPARTMENT shall have the right to approve the CEI firm. The DEPARTMENT shall have the right, but not the obligation, to perform independent testing from time to time during the course of construction of the Project. The CEI firm shall not be the same firm as the Engineer of Record.

I. **After the DEPARTMENT'S approval of the design plans and prior to commencing the work described herein, the LOCAL GOVERNMENT shall receive a Notice to Proceed from the DEPARTMENT'S Project Manager, or from an appointed designee.** Any work performed prior to the issuance of the Notice to Proceed is not subject to reimbursement.

J. When either party receives notice of claim for damages that may have been caused by the other party in the performance of services required under this Agreement that party will immediately forward the claim to the other party. Each party will evaluate the claim, and report its findings to each other within fourteen (14) working days and jointly discuss options in defending the claim. A party's failure to promptly notify the other of a claim will not act as a waiver or any right herein.

K. As to Professional Services Contracts, in lieu of the forgoing indemnification, the LOCAL GOVERNMENT agrees to include the following indemnification in all Professional Services contracts in connection with this Agreement: "To the fullest extent permitted by Florida law and to the limit imposed by Florida Statutes

§ 725.08, the (Name of contractor/consultant) shall be liable and agrees to be liable for and shall indemnify and hold harmless the DEPARTMENT / LOCALGOVERNMENT, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees to the extent arising out of or caused the negligence, recklessness, or intentionally wrongful conduct of the (Name of contractor/consultant), its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance.

L. Pursuant to Section 7-13 of the DEPARTMENT Standard Specifications, the LOCAL GOVERNMENT's contractor is required to possess a general liability insurance naming the DEPARTMENT as an additional insured and insuring the DEPARTMENT and the LOCAL GOVERNMENT against any and all claims for injury or damage to persons and property, and for the loss of life or property that may occur (directly or indirectly) by reason of the LOCAL

GOVERNMENT'S contractor accessing DEPARTMENT right of way and performance of the Project. Such amount shall be carried in a minimum amount of not less than

One million and 00/100 Dollars (\$ 1,000,000.00) for bodily injury or death to any one person or any number of persons in any one occurrence, and not less than five million and 00/100 Dollars (\$ 5,000,000.00) for property damage, or a combined coverage of not less than five million and 00/100 Dollars (\$ 5,000,000.00). Additionally, the LOCALGOVERNMENT shall require the contractor to supply the DEPARTMENT with a payment and performance bond in the amount of the estimated cost of construction, provided by a surety authorized to do business in the State of Florida, payable to the LOCAL GOVERNMENT with the DEPARTMENT named as an additional obligee. The bond and insurance shall remain in effect until completion of construction and acceptance by the DEPARTMENT. Prior to commencement of the Project and on such other occasions as the DEPARTMENT may reasonably require, the contractor shall provide the DEPARTMENT with certificates documenting that the required bond and insurance coverage is in place and effective.

M. Under the terms of this agreement, the plans, reports and recommendations of the Consultant will be reviewed by the DEPARTMENT for conformity with DEPARTMENT standards and agreement terms. However, review by the DEPARTMENT does not constitute detailed review or checking of design components and related details, or the accuracy with which designs are depicted on the plans. Acceptance of the work by the DEPARTMENT or Agreement termination does not constitute DEPARTMENT approval and will not relieve the Consultant of the responsibility for subsequent corrections of any errors and/or omissions and the clarification of any ambiguities. The Consultant shall make all necessary revisions or corrections resulting from errors and/or omissions on the part of the Consultant without additional compensation. If these errors and/or omissions are discovered during the construction of the project, they shall be corrected without additional compensation.

N. The LOCAL GOVERNMENT through the CEI shall be responsible for monitoring construction operations to ensure that the construction work under this Agreement is performed in accordance with the approved construction documents, and that it will meet all applicable standards and that the work is performed in accord with the Terms and Conditions contained in Exhibit "D".

O. The DEPARTMENT will be entitled at all times to be advised, at its request, as to the status of work being done by the LOCAL GOVERNMENT and of details thereof.

Coordination shall be maintained by the LOCAL GOVERNMENT with representatives of the DEPARTMENT.

P. Upon completion of the work authorized by this Agreement, the LOCAL GOVERNMENT shall notify the DEPARTMENT in writing of the completion; and for all design work that originally required certification by a Professional Engineer, this notification shall contain an Engineers Certification of Compliance, signed and sealed by a Professional Engineer, Exhibit "E". The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.

### 3. COMPENSATION AND REIMBURSEMENT

A. Project Cost: The total estimated cost of the Project is **\$766,000.00** (Seven Hundred and Sixty-Six Thousand Dollars). This amount is based on the Schedule of Funding, Exhibit "B" attached hereto.

B. DEPARTMENT Participation: The DEPARTMENT agrees to reimburse the LOCAL GOVERNMENT in an amount not to exceed **\$766,000.00** (Seven Hundred and Sixty-Six Thousand Dollars) for PROJECT Construction/Construction Engineering Inspection services (CEI). The funding for this Project is contingent upon annual appropriation by the Florida Legislature. The LOCAL GOVERNMENT agrees to bear all expenses in excess of the DEPARTMENT's participation. The DEPARTMENT'S performance and obligation to pay under this contract is contingent upon an annual appropriation by the Florida Legislature. The parties agree that in the event funds are not appropriated to the DEPARTMENT for the Project, this Agreement may be terminated, which shall be effective upon the DEPARTMENT giving notice to the LOCAL GOVERNMENT to that effect.

i) The LOCAL GOVERNMENT shall submit invoices plus supporting documentation required by the DEPARTMENT for approval and processing. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Department's Comptroller under Section 334.044(29), F.S., or by the Department of Financial Services under Section 215.422(14), F.S. If the Department determines that

the performance of the Other Party is unsatisfactory, the Department shall notify

within a time-frame to be specified by the Department. The Other Party shall, within five days after notice from the Department, provide the Department with a corrective action plan describing how the Other Party 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 the Department, the Other Party 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 current billing period. The retainage shall be withheld until the Other Party resolves the deficiency. If the deficiency is subsequently resolved, the Other Party may bill the Department for the retained amount during the next billing period. If the Other Party 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.)

ii) Invoices must be based on quantifiable, measurable and verifiable units of deliverables as specified in Paragraph 2.A. and in Exhibit "A", Scope of Services. Supporting documentation must establish that the deliverables were received and accepted in writing by the LOCAL GOVERNMENT and must also establish that the required minimum level of service to be performed as specified in Paragraph 2.B. was met, and that the criteria for evaluating successful completion as specified in Paragraph 2.N. was met.

iii) Reimbursement for fees or other compensation for services or expenses incurred shall be submitted by the LOCAL GOVERNMENT in detail sufficient for a proper pre-audit and post-audit thereof, based on the quantifiable, measurable and verifiable deliverables as established in Paragraph 2. A. and Exhibit "A", Scope of Services and said request for reimbursement/invoice must be completed and accepted in writing by the Department's Project Manager or designee prior to reimbursement.

iv) The final balance due under this Agreement will be reimbursed upon the completion of all Project services, receipt of final construction cost documentation and proper submission of a detailed invoice and when the Project has been inspected, approved and accepted to the satisfaction of the DEPARTMENT in writing.

v) All costs charged to the Project by the LOCAL GOVERNMENT shall be supported by detailed invoices, proof of payments, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.

vi) Travel costs will not be reimbursed.

vii) Supporting documentation must establish that the deliverables were received and accepted in writing by the Other Party 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 Exhibit A – Scope of Services or Project Description and Responsibilities 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 Attachment F – Contract Payment Requirements. (Reference Guide for State Expenditures Cost Reimbursement Requirements.)

C. The DEPARTMENT shall have the right to retain out of any payment due the LOCAL GOVERNMENT under this Agreement, an amount sufficient to satisfy any amount due and owing to the DEPARTMENT by the LOCAL GOVERNMENT on any other Agreement between the LOCAL GOVERNMENT and the DEPARTMENT.

D. The LOCAL GOVERNMENT which is providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt of an invoice, the DEPARTMENT has twenty (20) working days to inspect and approve the goods and services. The DEPARTMENT has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved. If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount. Interest penalties of less than one dollar (\$1.00) will not be enforced unless the LOCAL GOVERNMENT requests payment. Invoices which have to be returned to the LOCAL GOVERNMENT because of LOCAL GOVERNMENT preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Contractors/vendors who



may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

E. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this Agreement, and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred include the LOCAL GOVERNMENT'S general accounting records and the Project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the Project, and all other records of the contractor and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs. Any discrepancies revealed by any such audit shall be resolved by a corrected final billing from the LOCAL GOVERNMENT to the DEPARTMENT.

F. Any Project funds made available by the DEPARTMENT pursuant to this Agreement which are determined by the DEPARTMENT to have been expended by the LOCAL GOVERNMENT in violation of this Agreement or any other applicable law or regulation, shall be promptly refunded in full to the DEPARTMENT. Acceptance by the DEPARTMENT of any documentation or certifications, mandatory or otherwise permitted, that the LOCAL GOVERNMENT files shall not constitute a waiver of the DEPARTMENT'S rights as the funding agency to verify all information at a later date by audit or investigation.

G. In the event this Agreement is in excess of \$25,000.00 (TWENTY-FIVE THOUSAND DOLLARS AND NO/100) and a term for a period of more than one year, the provisions of Section 339.135(6) (a), Florida Statutes, are hereby incorporated as follows:

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

#### **4. COMPLIANCE WITH LAWS**

A. The LOCAL GOVERNMENT shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the LOCAL GOVERNMENT in conjunction with this Agreement. Failure by the LOCAL GOVERNMENT to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the DEPARTMENT.

B. The LOCAL GOVERNMENT shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof. The LOCAL GOVERNMENT shall not discriminate on the grounds of race, color, religion, sex or national origin in the performance of work under this Contract.

C. No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch, or a state agency.

D. The LOCAL GOVERNMENT and the DEPARTMENT agree that the LOCAL GOVERNMENT, its employees, and subcontractors are not agents of the DEPARTMENT as a result of this Contract.

#### **5. TERMINATION AND DEFAULT**

A. This Agreement may be cancelled by the DEPARTMENT in whole or in part at any time the interest of the DEPARTMENT requires such termination. The DEPARTMENT also reserves the right to seek termination or cancellation of this Agreement in the event the LOCAL GOVERNMENT shall be placed in either voluntary or involuntary bankruptcy. The DEPARTMENT further reserves the right to terminate or cancel this Agreement in the event an assignment is made for the benefit of creditors. This contract may be cancelled by the LOCAL GOVERNMENT upon sixty (60) days written notice to the DEPARTMENT.

B. If the DEPARTMENT determines that the performance of the LOCAL GOVERNMENT is not satisfactory, the DEPARTMENT shall have the option of (a) immediately terminating the Agreement, or (b) notifying the LOCAL GOVERNMENT of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will



be terminated at the end of such time, or (c) taking whatever action is deemed appropriate by the DEPARTMENT.

C. If the DEPARTMENT requires termination of the Agreement for reasons other than unsatisfactory performance of the LOCAL GOVERNMENT, the DEPARTMENT shall notify the LOCAL GOVERNMENT of such termination, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

D. If the Agreement is terminated before performance is completed, the LOCAL GOVERNMENT shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress will become the property of the DEPARTMENT and will be turned over promptly by the LOCAL GOVERNMENT.

## **6. MISCELLANEOUS**

A. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

B. The DEPARTMENT shall not be obligated or liable hereunder to any party other than the LOCAL GOVERNMENT.

C. The LOCAL GOVERNMENT agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes

D. In no event shall the making by the DEPARTMENT of any payment to the LOCAL GOVERNMENT constitute or be construed as a waiver by the DEPARTMENT of any breach of covenant or any default which may then exist, on the part of the LOCAL GOVERNMENT, and the making of such payment by the DEPARTMENT while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the DEPARTMENT with respect to such breach or default.

E. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no

deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

F. All tracings, plans specifications, maps, models, reports, or other work product prepared or obtained under this Agreement shall be considered works made for hire for the DEPARTMENT and the LOCAL GOVERNMENT and shall at all times be and remain the property of the DEPARTMENT and the LOCAL GOVERNMENT without restriction or limitation on their use.

G. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

H. This Agreement shall be effective upon execution by both parties and shall continue in effect and be binding on the parties until the Project is completed, any subsequent litigation is complete and terminated, final costs are known, and legislatively appropriated reimbursements, if approved, are made by the DEPARTMENT. The DEPARTMENT may, at any stage, amend or terminate the Project in whole or in part if the DEPARTMENT determines that such action is in the best interest of the public.

I. PUBLIC ENTITY CRIME INFORMATION AND ANTI-DISCRIMINATION STATEMENT: A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not

submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

J. All notices required pursuant to the terms hereof shall be sent by First Class United States Mail. Unless prior written notification of an alternate address for notices is sent, all notices shall be sent to the following addresses:

| <b>Florida Department of Transportation</b> | <b>Village of Estero</b>       |
|---|--------------------------------|
| Simon Shackelford                           | Bob Franceschini, C.P.M., CPPB |
| Project Manager                             | Purchasing Manager             |
| 10041 Daniels Parkway                       | 9401 Corkscrew Palms Circle    |
| Fort Myers, FL 33913                        | Estero, FL 33928               |

K. Exhibits A, B, C, D, E and Attachment F are attached hereto and incorporated by reference.

*Remainder of this page intentionally left blank.*

IN WITNESS WHEREOF, THE VILLAGE OF ESTERO has caused this Agreement to be executed in its behalf through its Mayor or its designee, and the FLORIDA DEPARTMENT OF TRANSPORTATION has caused this Agreement to be executed in its behalf through its District Secretary or authorized Designee: This Agreement shall become effective on:

\_\_\_\_\_  
Department to enter date

### THE VILLAGE OF ESTERO, FLORIDA

ATTEST

\_\_\_\_\_  
CLERK (SEAL)

\_\_\_\_\_  
NAME:  
TITLE: CITY MAYOR

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PRINT NAME DATE

\_\_\_\_\_  
THE VILLAGE OF ESTERO LEGAL  
REVIEW:  
BY:

\_\_\_\_\_  
DATE

### STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

ATTEST

\_\_\_\_\_  
EXECUTIVE SECRETARY (SEAL)

BY:

\_\_\_\_\_  
DISTRICT SECRETARY OR DESIGNEE  
DISTRICT ONE

\_\_\_\_\_  
PRINT NAME DATE

\_\_\_\_\_  
PRINT NAME DATE

\_\_\_\_\_  
AVAILABILITY OF FUNDS APPROVAL:

\_\_\_\_\_  
FLA. DEPT. OF TRANS. LEGAL  
REVIEW:

*JAV*  
*5/15/19*

BY:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

525-010-40  
PROGRAM  
MANAGEMENT OGC -  
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**EXHIBIT "A"**

**PROJECT DESCRIPTION AND RESPONSIBILITIES**

FPN: 442085-1-58-01

This exhibit forms an integral part of the Local Agency Program Agreement between the State of Florida, Department of Transportation and

Village of Estero

**PROJECT LOCATION:**

- ☒ The project is on the National Highway System.
- ☒ The project is on the State Highway System.

**PROJECT LENGTH AND MILE POST LIMITS:**

| FPN      | PROJECT DESCRIPTION                           | PROJECT LENGTH |
|----------|---|----------------|
| 442085-1 | US 41 - Pelican Colony Blvd. to Vintage Pkwy. | ~(4.396 miles) |

MP FROM/TO - 5.262 / 9.658

**PROJECT DESCRIPTION:** US 41 - Pelican Colony Blvd. to Vintage Pkwy.

The purpose of this Exhibit is to describe the scope of work and the responsibilities of the Village of Estero in connection with the construction of landscape enhancements for US 41 from Pelican Colony Blvd. to Vintage Pkwy. The project will include clearing, grubbing, grading, erosion control and restoration necessary for the installation of the landscape enhancements and associated irrigation system. The general objective is for the Village of Estero to provide contract administration, management services, construction engineering inspection services and quality acceptance reviews of all work associated with the construction of the associated improvements. The services performed shall be in accordance with all applicable Florida Department of Transportation manuals, guidelines and specifications.

Deliverables included in the Scope of Services are as follows:

1. Installation of appropriate landscaping within the east and west unimproved US 41 medians directly.
2. Replacement of all dead plant material during the 12 month establishment period.
3. Installation of adequate irrigation system with all appropriate fittings and appurtenances.
4. Construction of directional bore to accommodate the irrigation system, if required.
5. Provide adequate temporary and permanent erosion control.
6. Maintain traffic on US 41 from Pelican Colony Blvd. to Vintage Pkwy. during construction.
7. Provide, upon completion of construction, Final As-built Construction Plans, signed and sealed by a Professional Engineer or Landscape Architect, registered in the State of Florida, as appropriate.
8. Provide Construction Engineering and Inspection (CEI) and Quality Assurance Engineering .
9. Coordinate construction activities with other construction projects that are impacted by or impact this project. This includes projects under the jurisdiction of local governments or other regional and state agencies.

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**LOCAL AGENCY PROGRAM AGREEMENT**

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**EXHIBIT "A"**

**PROJECT DESCRIPTION AND RESPONSIBILITIES**

**SPECIAL CONSIDERATIONS BY AGENCY:**

The audit report(s) required in the Agreement shall include a Schedule of Project Assistance that will reflect the Department's contract number, the Financial Project Number (FPN), the Federal Authorization Number (FAN), where applicable, the amount of state funding action (receipt and disbursement of funds), any federal or local funding action, and the funding action from any other source with respect to the project.

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

- a) Construction contract to be let by December 31, 2019
- b) Construction to be completed by December 31, 2022

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

**SPECIAL CONSIDERATIONS BY DEPARTMENT:**

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**STATE-FUNDED GRANT AGREEMENT**  
**EXHIBIT "B"**  
**SCHEDULE OF FINANCIAL ASSISTANCE**

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|   |   |
|---|---|
| <b>RECIPIENT NAME &amp; BILLING ADDRESS:</b><br><u>David Willems, P.E.</u><br><u>Public Works Director</u><br><u>9401 Corkscrew Palms Circle</u><br><u>Estero, FL 33928</u> | <b>FINANCIAL PROJECT NUMBER:</b><br><u>442085-1-58-01</u> |
|---|---|

| I. PHASE OF WORK by Fiscal Year:                                 | FY 18/19        | FY              | FY              | TOTAL           |
|--|-----------------|-----------------|-----------------|-----------------|
| <b>Design- Phase 34</b>  | \$ 0.00         | \$ 0.00         | \$ 0.00         | \$0.00          |
| Maximum Department Participation - (Insert Program Name)         | %<br>or \$      | %<br>or \$      | %<br>or \$      | %<br>or \$ 0.00 |
| Maximum Department Participation - (Insert Program Name)         | %<br>or \$      | %<br>or \$      | %<br>or \$      | %<br>or \$ 0.00 |
| Maximum Department Participation - (Insert Program Name)         | %<br>or \$      | %<br>or \$      | %<br>or \$      | %<br>or \$ 0.00 |
| Local Participation (Any applicable waiver noted in Exhibit "A") | %<br>or \$ 0.00 | %<br>or \$ 0.00 | %<br>or \$ 0.00 | %<br>or \$0.00  |
| In-Kind Contribution   | \$              | \$              | \$              | \$ 0.00         |
| Cash   | \$              | \$              | \$              | \$ 0.00         |
| Combination In-Kind/Cash   | \$              | \$              | \$              | \$ 0.00         |
| <b>Right of Way- Phase 44</b>                                    | \$ 0.00         | \$ 0.00         | \$ 0.00         | \$0.00          |
| Maximum Department Participation - (Insert Program Name)         | %<br>or \$      | %<br>or \$      | %<br>or \$      | %<br>or \$ 0.00 |
| Maximum Department Participation - (Insert Program Name)         | %<br>or \$      | %<br>or \$      | %<br>or \$      | %<br>or \$ 0.00 |
| Maximum Department Participation - (Insert Program Name)         | %<br>or \$      | %<br>or \$      | %<br>or \$      | %<br>or \$ 0.00 |
| Local Participation (Any applicable waiver noted in Exhibit "A") | %<br>or \$ 0.00 | %<br>or \$ 0.00 | %<br>or \$ 0.00 | %<br>or \$0.00  |
| In-Kind Contribution   | \$              | \$              | \$              | \$ 0.00         |
| Cash   | \$              | \$ 0.00         | \$              | \$ 0.00         |
| Combination In-Kind/Cash   | \$              | \$              | \$              | \$ 0.00         |
| <b>Construction/CEI - Phase 54</b>                               | \$ 0.00         | \$ 0.00         | \$ 0.00         | \$0.00          |
| Maximum Department Participation - ( )                           | %<br>or \$      | %<br>or \$      | %<br>or \$      | %<br>or \$ 0.00 |
| Maximum Department Participation - ( )                           | %<br>or \$      | %<br>or \$      | %<br>or \$      | %<br>or \$ 0.00 |
| Maximum Department Participation - (Insert Program Name)         | %<br>or \$      | %<br>or \$      | %<br>or \$      | %<br>or \$ 0.00 |
| Local Participation (Any applicable waiver noted in Exhibit "A") | %<br>or \$ 0.00 | %<br>or \$ 0.00 | %<br>or \$ 0.00 | %<br>or \$0.00  |
| In-Kind Contribution   | \$              | \$              | \$              | \$ 0.00         |
| Cash   | \$              | \$              | \$              | \$ 0.00         |

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**EXHIBIT "B"**  
**SCHEDULE OF FINANCIAL ASSISTANCE**

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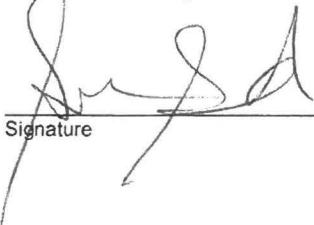
|  |                          |                    |                    |                          |
|--|--------------------------|--------------------|--------------------|--------------------------|
| Combination In-Kind/Cash   | \$                       | \$                 | \$                 | \$ 0.00                  |
| <b>Construction/CEI (Phase 58)</b>                               | <b>\$ 766,000.00</b>     | <b>\$ 0.00</b>     | <b>\$ 0.00</b>     | <b>\$766,000.00</b>      |
| Maximum Department Participation - (Insert Program Name)         | %<br>or<br>\$            | %<br>or<br>\$      | %<br>or<br>\$      | %<br>or<br>\$ 0.00       |
| Maximum Department Participation - (District Dedicated Revenue)  | %<br>or<br>\$ 766,000.00 | %<br>or<br>\$      | %<br>or<br>\$      | %<br>or<br>\$ 766,000.00 |
| Maximum Department Participation - (Insert Program Name)         | %<br>or<br>\$            | %<br>or<br>\$      | %<br>or<br>\$      | %<br>or<br>\$ 0.00       |
| Local Participation (Any applicable waiver noted in Exhibit "A") | %<br>or<br>\$ 0.00       | %<br>or<br>\$ 0.00 | %<br>or<br>\$ 0.00 | %<br>or<br>\$ 0.00       |
| In-Kind Contribution   | \$                       | \$                 | \$                 | \$ 0.00                  |
| Cash   | \$                       | \$                 | \$                 | \$ 0.00                  |
| Combination In-Kind/Cash   | \$                       | \$                 | \$                 | \$ 0.00                  |
| <b>II. TOTAL PROJECT COST:</b>                                   | <b>\$766,000.00</b>      | <b>\$0.00</b>      | <b>\$0.00</b>      | <b>\$766,000.00</b>      |

**COST ANALYSIS CERTIFICATION AS REQUIRED BY SECTION 216.3475, FLORIDA STATUTES:**

I certify that the cost for each line item budget category has been evaluated and determined to be allowable, reasonable, and necessary as required by Section 216.3475, F.S. Documentation is on file evidencing the methodology used and the conclusions reached.

Simon Shackelford

District Grant Manager Name



Signature

5/10/19

Date



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**EXHIBIT "C"**

**ENGINEER'S CERTIFICATION OF COMPLIANCE**

**Engineer's Certification of Compliance.** The Recipient shall complete and submit the following Notice of Completion and, if applicable, Engineer's Certification of Compliance to the Department upon completion of the construction phase of the Project.

**NOTICE OF COMPLETION**

STATE-FUNDED GRANT AGREEMENT  
Between  
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION  
and The Village of Estero

PROJECT DESCRIPTION: US 41 (SR 45) FROM PELICAN COLONY BLVD TO VINTAGE PKWY

FPID#: 442085-1-58-01

In accordance with the Terms and Conditions of the State-Funded Grant Agreement, the undersigned provides notification that the work authorized by this Agreement is complete as of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ENGINEER'S CERTIFICATION OF COMPLIANCE**

In accordance with the Terms and Conditions of the State-Funded Grant Agreement, the undersigned certifies that all work which originally required certification by a Professional Engineer has been completed in compliance with the Project construction plans and specifications. If any deviations have been made from the approved plans, a list of all deviations, along with an explanation that justifies the reason to accept each deviation, will be attached to this Certification. Also, with submittal of this certification the Recipient shall furnish the Department a set of "as-built" plans certified by the Engineer of Record/CEI.

By: \_\_\_\_\_ P.E.

SEAL: Name: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
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**EXHIBIT D**

**STATE FINANCIAL ASSISTANCE (FLORIDA SINGLE AUDIT ACT)**

**THE STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:**

**Awarding Agency:** Florida Department of Transportation

**State Project Title and CSFA Number:**

- ☐ County Incentive Grant Program (CIGP), (CSFA 55.008)
- ☐ Small County Outreach Program (SCOP), (CSFA 55.009)
- ☐ Small County Road Assistance Program (SCRAP), (CSFA 55.016)
- ☐ Transportation Regional Incentive Program (TRIP), (CSFA 55.026)
- ☒ District Dedicated Revenue,

**\*Award Amount:** \$766,000 (Seven Hundred and Sixty-Six Thousand)

\*The state award amount may change with supplemental agreements

Specific project information for CSFA Number is provided at: <https://apps.fldfs.com/fsaa/searchCatalog.aspx>

**COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT:**

State Project Compliance Requirements for CSFA Number are provided at:  
<https://apps.fldfs.com/fsaa/searchCompliance.aspx>

The State Projects Compliance Supplement is provided at: <https://apps.fldfs.com/fsaa/compliance.aspx>

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**STATE-FUNDED GRANT AGREEMENT**

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**EXHIBIT "E"**

**RECIPIENT RESOLUTION**

The Recipient Resolution, or other official authorization, authorizing entry into this Agreement is attached and incorporated into this Agreement.

## **ATTACHMENT F**

### **CONTRACT PAYMENT REQUIREMENTS**

#### **Florida Department of Financial Services, Reference Guide for State Expenditures *Cost Reimbursement Contracts***

Invoices for cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation shall be submitted for each amount for which reimbursement is being claimed indicating that the item has been paid. Documentation for each amount for which reimbursement is being claimed must indicate that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved agreement budget may be reimbursed. These expenditures must be allowable (pursuant to law) and directly related to the services being provided.

Listed below are types and examples of supporting documentation for cost reimbursement agreements:

(1) Salaries: A payroll register or similar documentation should be submitted. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.

(2) Fringe Benefits: Fringe Benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

(3) Travel: Reimbursement for travel must be in accordance with Section 112.061, Florida Statutes, which includes submission of the claim on the approved State travel voucher or electronic means.

(4) Other direct costs: Reimbursement will be made based on paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, Florida Administrative Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in Section 273.02, Florida Statutes, for subsequent transfer to the State.

(5) In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.

(6) Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

Contracts between state agencies, and or contracts between universities may submit alternative documentation to substantiate the reimbursement request that may be in the form of FLAIR reports or other detailed reports.

The Florida Department of Financial Services, online Reference Guide for State Expenditures can be found at this web address [http://www.myfloridacfo.com/aadir/reference\\_guide/](http://www.myfloridacfo.com/aadir/reference_guide/).