

AGREEMENT
BETWEEN
FLORIDA DEPARTMENT OF TRANSPORTATION
AND
NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT

THIS AGREEMENT is entered into this 28th day of October, 2019, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (the Department) and the NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT (the NFWFMD).

WHEREAS, Section 373.4137, Florida Statutes, directs the Department to furnish the NFWFMD with a list of its projects and an environmental impact inventory of habitat impacts and the anticipated mitigation to offset impacts, based on transportation projects in the next three years of the tentative work program, and may also include future projects; and

WHEREAS, the Department must include the information required by Section 373.4137, Florida Statutes, in its environmental impact inventory; and

WHEREAS, Section 373.4137, Florida Statutes, directs the Department to identify funding for the mitigation option identified in its environmental impact inventory in the Department's work program developed pursuant to section 339.135, Florida Statutes; and

WHEREAS, Section 373.4137, Florida Statutes, directs that by March 1 of each year the NFWFMD will develop a mitigation plan, in consultation with the Department of Environmental Protection, United States Army Corps of Engineers, the Department, and other agencies and interested parties, to offset environmental impacts associated with projects for which the Department has identified the NFWFMD to implement its mitigation; and

WHEREAS, Section 373.4137, Florida Statutes, requires the NFWFMD to prepare the mitigation plan to meet the requirements of 33 U.S.C. s. 1344 and 33 C.F.R. part 332, including federal permitting, and to identify mitigation sites and provide the related scope of mitigation services; and

WHEREAS, Section 373.4137, Florida Statutes, requires the NFWFMD to submit the mitigation plan first to the NFWFMD Governing Board or its designee for approval, and then to the Department of Environmental Protection for its approval; and

WHEREAS, Section 373.4137, Florida Statutes, requires the NFWFMD to ensure that the mitigation requirements pursuant to 33 U.S.C. s. 1344 and 33 C.F.R. part 332 are met by implementation of the approved mitigation plan, subject to the extent funding is provided by the Department; and

WHEREAS, Section 373.4137, Florida Statutes, authorizes the NFWFMD to request a transfer of funds from the Department thirty (30) days prior to the funds being needed to pay for activities associated with their development or implementation of permitted mitigation in the approved mitigation plan for projects programmed in the current fiscal year; and

WHEREAS, Section 373.4137, Florida Statutes, directs the NFWFMD to maintain records of costs incurred and payments received for providing mitigation services to the Department; and

WHEREAS, the parties wish to agree on the procedures by which payment will be made to the NFWFMD from the Department to pay for development and implementation of approved mitigation plans for projects in District Three of the Department.

NOW THEREFORE, the parties hereby agree as follows:

1. The foregoing recitals are incorporated into and made a part of this AGREEMENT.

2. Changes in environmental impacts or removal of a project from the mitigation plan, as allowable under Section 373.4137, Florida Statutes, may be made on a quarterly basis. An adjustment request, in accordance with the Department's Environmental Mitigation Payment Processing Handbook, will be submitted with the Quarterly Reconciliation Report. The NFWFMD shall email its response to the Department's District Environmental or Permit Office. Any revised information will be forwarded to the Florida Department of Transportation, District 3 Financial Services Office, so that the escrow account can be adjusted.

3. The Department agrees to pay the NFWFMD for the mitigation services as detailed in Section 373.4137, Florida Statutes. The NFWFMD may invoice the Department for lump sum payments once a project has an approved mitigation plan, no earlier than 30 days prior to the date the funds are needed to pay for activities associated with development or implementation of the approved mitigation plan for the current fiscal year.

4. Requests for transfer of funds from the Department to the NFWFMD required under Section 373.4137, Florida Statutes, shall include an itemized invoice that indicates the Department's financial project to which the mitigation relates and must also indicate whether it is the final invoice for mitigation related to that financial project.

5. The total transfers requested from the Department for mitigation services identified with a particular Department financial project may not exceed the amount identified in the work program for that financial project for the current fiscal year.

6. Transfers shall be made in a lump-sum amount for both federally funded and non-federally funded transportation projects that have an approved mitigation plan, which may be found on-line at: <https://www.nfwwater.com/Water-Resources/Regional-Wetland-Mitigation-Program> or successor website if developed by the NFWFMD. These lump sum payments will be applied to all mitigation stages including early (conceptual) plan development, plan development, final plan development, letting, construction and post-construction activities (long-term perpetual maintenance and monitoring of mitigation projects).

7. To the extent moneys paid to the NFWFMD by the Department are greater than the amount spent in providing the mitigation services to offset the permitted transportation project impacts, these moneys must be refunded to the Department consistent with Section

373.4137, Florida Statutes. If any interest is earned by the NFWFMD on payments from the Department, these moneys must be applied toward mitigation services for the identified mitigation project or refunded to the Department. Similarly, to the extent that a project implemented by the NFWFMD for a Department transportation project results in additional mitigation credits, or any other units of measurement of mitigation which are recognized by federal and/or state regulations or permitting agencies, such additional credits or units of measurement will be reserved by the NFWFMD for use by the Department, if payment for mitigation services has been made. The NFWFMD may otherwise decide to return payments to the Department, including interest, if it has not incurred any expense subsequent to receiving lump sum payments for reduced impacts.

8. Any invoices or requests for transfer of funds shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

9. Upon receipt of invoice, the Department has five (5) working days to inspect and approve the invoice. The Department has 20 calendar days to deliver a request for payment (voucher) to the Department of Financial Services. The 20-calendar day period is measured from the latter of: the date a properly completed invoice is received by the Department; or, the date the services are received, inspected and approved.

10. If a warrant in payment of an invoice is not issued within 40 days after receipt of invoice, a separate interest penalty at a rate as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the NFWFMD. Interest penalties of less than one (1) dollar shall not be enforced unless the NFWFMD requests payment. Invoices which must be returned to the NFWFMD because of NFWFMD preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

11. 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 or by calling the Department of Financial Services Hotline at (877) 693-5236.

12. Records of costs incurred shall be maintained and made available upon request to the Department for three years after final acceptance of the mitigation project by the permitting authority(ies) pursuant to Section 373.4137, Florida Statutes. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred shall include the NFWFMD's general accounting records and the project records, together with supporting documents and records of the NFWFMD and all subcontractors considered necessary by the Department for a proper audit of project costs.

13. 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. Accordingly, the Department's performance and obligation to pay under this understanding is contingent upon an annual appropriation by the Legislature.

14. An existing agreement on the same subject matter, as executed between the Department and the NFWFMD on March 17, 2010 and March 18, 2010, respectively, is superseded by and terminated upon execution of this AGREEMENT.

15. This AGREEMENT shall be effective from the last date of execution written below until June 30, 2029. This AGREEMENT may be terminated by mutual written consent of the parties. This AGREEMENT may be extended or renewed by mutual written consent of the parties.

16. All invoices and requests for transfer of funds shall be submitted to the Department at the following address: Florida Department Transportation, D-3 District Permits Coordinator, Post Office Box 607, Chipley, FL 32428-0607.

17. The NFWFMD and the Department will allow public access to all documents and material relating to this AGREEMENT in accordance with the provisions of Chapter 119, Florida Statutes. Should the NFWFMD or the Department assert any exemption provided by Chapter 119, Florida Statutes, or otherwise provided by law, the burden of establishing such exemption, by way of injunctive relief or as otherwise provided by law, shall be upon the party asserting the exemption.

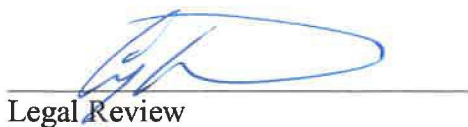
This AGREEMENT shall be governed by, and interpreted and construed in accordance with, the laws of the State of Florida.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION



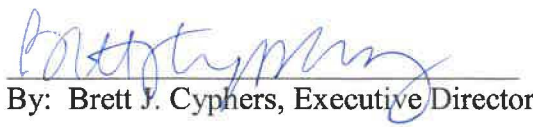
By: Phillip Gainer, P.E., District 3 Secretary

10/28/2019
Date



Legal Review

NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT



By: Brett J. Cyphers, Executive Director

8/12/19
Date