

NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT

CONTRACT REVIEW ROUTING SHEET

CONTRACT NO. 09-012

TITLE: Agreement Between FDOT and NFWFMD

PARTIES: NFWFMD AND FDOT

TERM: Begins 7/1/09

Expires 6/30/19

Amount

FUND (Source or Destination)




<input type="checkbox"/> General	_____
<input type="checkbox"/> SWIM	_____
<input type="checkbox"/> Lands Fee	_____
<input type="checkbox"/> Lands Pre acquisition	_____
<input type="checkbox"/> Lands Acquisition	_____
<input checked="" type="checkbox"/> Special Projects	<u>FDOT MITIGATION</u>
<input type="checkbox"/> Lands Management	_____
<input type="checkbox"/> Resource Regulation	_____

TYPE OF FUNDING: Federal State Local Government


FUNDING CODES: Cost Center 55 - Fund 13 Revenue Code _____
 Project _____ Sub-Project _____

PROGRAM CODE _____ BUDGET OBJECT CODE _____

ROUTING:



	<u>Approval Signature</u>	<u>Date</u>	<u>Non-Concur (Explain Below)</u>
1. Project Manager		<u>9-19-08</u>	_____
2. Division Director		<u>9/19/08</u>	_____
3. Legal Counsel	<u>not reached</u>	_____	_____
4. Admin Division		<u>9-19-08</u>	<u>See TAB AND NOTE FOR PARAGRAPH 13. address</u>
5. Accounting Section	<u>Abel/RB R Glenniken</u>	<u>9/19/08</u>	_____
6. Executive Director	_____	_____	_____

FINAL REVIEW (To insure comments/changes/non-concurrences resolved)

7. Project Manager  3-19-09 _____

EXECUTION (After Governing Board Approval)

8. Executive Director  _____

COMMENTS: updated funding agreement due to outdated old agreement relative to changes in statutes. Old agreement was executed October 1999. presented at March 09 Governing Board for approval. 
 Finally obtained DOT execution and handbook referenced in agreement 3/16/10. 

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

THIS AGREEMENT is entered into this _____ day of _____, 2010, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (the Department) and the NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT (the NFWFMD).

WITNESSETH

WHEREAS, Section 373.4137, Florida Statutes, directs the Department to furnish the NFWFMD information concerning planned construction for transportation projects including an inventory of habitats which may be impacted by the planned construction;

WHEREAS, Section 373.4137, Florida Statutes, directs the Department to identify funds in an escrow account for the mitigation of environmental impacts from planned transportation projects;

WHEREAS, Section 373.4137, Florida Statutes, directs the NFWFMD, the Department, and other agencies and interested parties, to develop a plan for mitigating the environmental impacts of the transportation projects proposed by the Department within the NFWFMD;

WHEREAS, Section 373.4137, Florida Statutes, requires the NFWFMD to submit the mitigation plan to the NFWFMD Governing Board or its designee for approval;

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

WHEREAS, 373.4137, Florida Statutes, authorizes the NFWFMD to request a transfer of funds from the Department escrow account to pay for development and implementation of the approved mitigation plan for projects programmed in the current fiscal year; and

WHEREAS, the parties wish to agree on the procedures by which payment will be made to the NFWFMD from the Department's escrow funds 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 to impacted acres or anticipated permit date or deletion of a project by the Department and 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 herein described 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 escrow account required under Section 373.4137, Florida Statutes, shall include an itemized invoice that indicates the Department 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 escrow account for mitigation efforts identified with a particular Department financial project may not exceed the amount in escrow 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: NFWFMDwetlands.com. 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. Interest earned by the NFWFMD on payments must be used for the original intent of Section 373.4137, Florida Statutes. In the event that a transportation project results in a reduction in impact acreage from the inventory after the NFWFMD receives payment for such impact acreage, the excess mitigation funds and/or credits developed due to the reduction in impact acreage must be utilized for other or future year transportation projects requiring mitigation for environmental impacts to offset payments by the Department as agreed to by both parties. The NFWFMD may otherwise decide to return payments including interest if it has not incurred any expense subsequent to receiving lump sum payments for reduced impact acreage.

8. Any invoices or requests for transfer 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 referred to in the previous sentence 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 (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 1-877-693-5236.

12. Records of costs incurred shall be maintained and made available upon request to the Department for three years after final payment for the work pursuant to Florida Statutes 373.4137. 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. The previous agreement on the same subject matter, dated October 27, 1999, between the Department and the NFWFMD is hereby terminated..

15. This AGREEMENT shall be effective from the last date of execution written below until June 30, 2019. 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 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.

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

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed on the dates set forth below.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

By: 
James T. Barfield, District Secretary, District Three

Date: 3/17/10

Legal Review:


District Three, Office of General Counsel

NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By: 
Douglas E. Barr, Executive Director

Date: 03/13/10