

FUNDING AGREEMENT
between
Florida State Historic Preservation Officer (SHPO)
and
STATE OF FLORIDA, Florida Department of Transportation (FDOT)
and
UNITED STATES DEPARTMENT OF TRANSPORTATION
Federal Highway Administration (FHWA)
August 15, 2003

THIS AGREEMENT is entered into this ____ day of _____, 2003, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT), the FEDERAL HIGHWAY ADMINISTRATION (FHWA), and the FLORIDA STATE HISTORIC PRESERVATION OFFICER (SHPO).

Article I Background and Objectives

Whereas, pursuant with National Historic Preservation Act and 36 CFR Part 800 to satisfy NEPA and permit issues and concerns, the Advisory Council on Historic Preservation (ACHP) and SHPO are responsible for review of Federal and State agency actions which may affect these areas; and,

Whereas, the FDOT is substantially increasing the number of transportation projects and activities which the SHPO is to review and participate in as part of the Efficient Transportation Decision Making (ETDM) Process and desires that the SHPO increase its level of involvement during the planning, programming and project development processes, such that the final SHPO reviews do not constitute an unnecessary delay in FDOT project implementation; and,

Whereas, the SHPO has indicated that it is unable at present to provide the FDOT with priority review of FDOT projects and increase SHPO's involvement in FDOT's ETDM process; and,

Whereas, both parties have determined that it would be mutually beneficial to increase SHPO's staff to enable the SHPO to provide the FDOT with priority project review, as part of Environmental Technical Advisory Team (ETAT), so that transportation projects can be designed and implemented promptly, to meet the ever-changing transportation needs of the State, in a manner that is sensitive in regard to natural, cultural and historic resources; and,

Whereas, the FDOT is willing to reimburse the SHPO for the increased staff required to provide priority project review; and

Whereas, the United States Department of Transportation, Federal Highway Administration, will participate in the reimbursement of funds expended by the FDOT for the purchase of SHPO's technology and equipment if (1) the SHPO has the statutory authority to charge on a reimbursable basis and (2) the service provided is beyond normal work performed on Federal-aid highway and transportation projects; and,

Whereas, the SHPO has determined that (1) it is authorized pursuant to the Intergovernmental Cooperation Act, 31 USC, Section 6505 et.seq. to charge on a reimbursable basis and (2) that the service provided is beyond the normal work it performs on Federal-aid highway and transportation projects; and

Whereas, the parties hereto desire to enter into this Funding Agreement to facilitate the cooperation of the parties in the review of transportation projects and provide for the technology, equipment and funds necessary to attain this goal.

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

Article II Statement of Work

- A. The SHPO shall supplement its existing staff which currently processes FDOT projects on a routine basis, with qualified project review specialist(s) and other personnel. SHPO shall use the funds provided under this Agreement to defray the costs of salaries and associated benefits, including necessary training, and to reimburse reasonable travel expenses in accordance with FDOT's State Travel Procedures and Section 112.061, F.S., which are hereby incorporated by reference as if physically attached hereto.
- B. Pursuant to this agreement SHPO supplemental staff shall work exclusively (100%) on FDOT projects only and provide expedited project coordination, technical assistance and document review as identified in Attachment A, attached hereto and made a part hereof.
- C. The SHPO shall review and respond to the FDOT's ETDM review screens (Planning and Programming Screens) within forty-five (45) days of electronic notification that the project information has been uploaded into the Environmental Screening Tool. SHPO will review all project information contained in the ETDM Database using the Internet Web site application. Once the project moves into the project development and environmental documentation phase, SHPO shall review and respond to FDOT submissions within thirty (30) calendar days upon receipt of complete project documentation. The FDOT and SHPO shall mutually agree upon the date when the review period commences, based upon submittal of complete project documentation. Verbal concurrence between the FDOT and SHPO staff of the need for additional information shall interrupt the 30-day review period and shall be confirmed by written documentation on a monthly basis. Once the additional information has been submitted, the FDOT and SHPO shall mutually agree upon the date when the review period begins to run again. In the event that the number of FDOT project submissions exceeds the SHPO's staffing capability to meet the deadline as stated above, both parties agree to negotiate a mutually beneficial date for SHPO completion of project review rewrites.
- D. The SHPO staff will keep monthly time records identifying the number of hours spent working on FDOT projects and work tasks defined in Attachment A. These records will account for one hundred percent (100%) of the time worked by each employee, including time spent on non-FDOT work, if any. In addition, SHPO shall keep accurate and separate accounting records of all receipts and disbursements of funds received pursuant to this Agreement and produce such records as required by the FDOT and the Federal Highway Administration (FHWA) and shall permit extracts and copies to be made by the FDOT and the FHWA or their duly authorized representatives. The SHPO shall keep records substantiating hours and costs billed pursuant to this Agreement for a period of at least 3 years after the final billing is submitted. These records shall be subject to audit by the FDOT, as appropriate.
- E. The SHPO shall provide the FDOT with a quarterly status report within ten (10) working days after the end of each federal fiscal year quarter which shall detail quarterly project review activity pursuant to this Agreement.

- F. The parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement; and neither party shall be construed as the officer, agent or employee of the other.
- G. In no way shall it be construed or implied that either the FDOT or the SHPO is by this Agreement intending to abrogate its obligation and duty to comply with the regulations promulgated under the National Historic Preservation Act, 36 CFR Part 800 and the National Environmental Policy Act of 1969.

Article III Financial Statement

Upon completion of the work requested by FDOT, the SHPO agrees to the following:

- A. The FDOT, subject to the billing provisions of Paragraph B and D below, shall provide to the SHPO a total sum not to exceed **\$306,000.00**, as detailed in Attachment B, ending on a date 2 years from the effective date of approval by both parties, deemed to be the date of the last required signature on the signature page of this Agreement.
- B. Request for funding shall be on an advance payment basis and invoiced quarterly.
- C. Any invoices or requests shall be submitted in detail sufficient for proper pre-audit and post-audit thereof.
- D. The FDOT shall provide the SHPO payments equivalent to one quarter (25%) of one year's billable amount (i.e., \$38,250.00) in advance each quarter for activities to be conducted pursuant to this Agreement and to cover the costs of items outlined in Attachment A. In seeking the advance payment, the SHPO shall submit quarterly invoices covering costs incurred for the previous quarter. Any unexpended funds remaining at the conclusion or termination of this Agreement shall be returned to FDOT within 90 days of completion or termination of the project. Upon receipt of the invoice, FDOT has five (5) working days to inspect and approve the services or equipment. FDOT has 20 days to process the approved invoice. 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 by FDOT.

FDOT shall send its checks in payment of the invoices to the following address:

Florida Department of State
Division of Historical Resources
RA Gray Building
500 S. Bronough St.
Tallahassee, FL. 32399-0250

- E. If a payment is not available within 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, to the Participant. Interest penalties of less than one (1) dollar shall not be enforced unless the Participant requests payment. Invoices that have to be returned to a Participant because of Participant preparation errors will result in a delay in payment. The invoice payment requirements do not start until a properly completed invoice is provided to FDOT.

- F. Records of cost incurred shall be maintained and made available upon request to FDOT for three years after final payment for the work pursuant to Florida Statute 373.4137. Copies of these documents and records shall be furnished to FDOT or FHWA upon request. Records of costs incurred shall include SHPO's general accounting records and project records, together with supporting documents and records of SHPO and all subcontractors considered necessary to FDOT or FHWA for a proper audit of project costs.

Article IV Period of Performance

- A. The term of this Agreement shall run for a period of two (2) years from the effective date of approval by both parties, deemed to be the date of the last required signature on the signature page of this agreement, unless terminated sooner in accordance with Paragraph 1V.B below.
- B. Either party may terminate this Agreement upon sixty (60) days written notice to the other party provided that the party requesting termination has provided notice and sufficient opportunity for remedy.
- C. The SHPO, FDOT and the FHWA shall meet periodically on this Agreement to review the progress made by the SHPO in accordance with the terms of this Agreement. If the SHPO, FDOT and the FHWA find that the terms have been satisfactorily met, then this Agreement may be renewed every two (2) years, pursuant to Federal legislation and funding availability.

Article V Modification

- A. Any changes, amendments, corrections, or additions to this Agreement, shall be in writing; shall be executed and approved by the same officials (or their designees) of the parties who execute and approve this original Agreement and in accordance with applicable law; and shall become effective upon complete approval by both parties. This Agreement can be extended by mutual agreement of all parties.

Article VI Disclosure

- A. As required in Section 339.135(6) (a), Florida Statutes, FDOT, 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 and which have a term for a period of more than one year.
- B. The Department will provide written notice when the funding is available for performance of this agreement. Until that notice, no services shall be provided under the terms of this agreement, and the Department will not be liable for any expenses incurred.

- C. Pursuant to Section 216.347, Florida Statutes, no funds received pursuant to this agreement may be expended for lobbying the legislature, the judicial branch, or a state agency.
- D. Pursuant to Section 287.0582, Florida Statutes, the State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature and additional authority in the Operating Trust Fund of the Department of State, or its successor.

Article VII Signatures

In witness whereof, the parties hereto have caused this Agreement to be executed as of the date herein written.

FLORIDA DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____
Secretary of Transportation

FLORIDA DEPARTMENT OF STATE

By: _____ Date: _____
Secretary of State

FLORIDA DEPARTMENT OF STATE

By: _____ Date: _____
State Historic Preservation Officer

FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: _____
Division Administrator

REVIEW AS TO LEGAL FORM:

By: _____ Date: _____
Office of General Counsel

Attachment A Florida State Historic Preservation Officer

Review and Work Tasks

The SHPO staff shall accomplish the reviews and tasks as outlined in the ETDM Master Agreement and Individual Agency Operating Agreement, in order to expedite, implement and coordinate the Project Development Process and meet the FDOT's needs for compliance with applicable State and Federal statutes. The SHPO staff reviews and work tasks may include, but are not limited to, the following:

- Review and comment on projects contained in the Metropolitan Planning Organization (MPO) Long Range Transportation Needs Plan and Florida Intrastate Highway System Plan during the ETDM Planning Screen on a 3 to 5 year cycle
- Review and comment on project priorities every year before they are entered into FDOT's Five-Year Work Program during the ETDM Programming Screen
- Participate in agency scoping
- Provide preliminary environmental analyses, guidance, and review
- Review and comment on historic sites
- Provide Alternatives Analysis guidance, review and comment
- Represent SHPO at meetings, as appropriate
- Participate in the development and implementation of written FDOT and SHPO guidance
- Ensure SHPO review of separate technical reports, as necessary
- Attend interagency and intra-agency meetings, as appropriate
- Provide technical assistance and conduct environmental document and pre-application reviews, and provide comments, as requested by FDOT, to satisfy data needs on permits and environmental and technical documents, which may include but not be limited to:
 - Wetlands Identification and Delineation Reports
 - Cultural Resource Assessment/SHPO Consultation Letter
 - Alternatives Analysis
 - Conceptual Mitigation Plans
 - Environmental Impact Statements
 - Environmental Impact Statement Comment Resolution
 - Environmental Assessments
 - FONSI Reports
 - Environmental Reevaluations
 - Mitigation Reports and Plans
 - Policies and Procedures
- Coordinate and provide training on natural resource issues and permits
- Organize meetings or conference calls to clarify problems at the request of SHPO or FDOT
- Perform other related tasks as defined by FDOT and agreed to by SHPO
- Provide appropriate reporting, billing, and other administrative functions as required by this Agreement

**Attachment B
Florida State Historic Preservation Officer
Budget**

First Year

Startup Costs

Computer hardware and software.....2 @ \$3,000.00 = \$6,000.00

Annual Costs

Salary and benefits2 @ \$31.39/ hour x 2080 hours annually (\$65,291.20) = \$130,582.40

Equipment/supplies SHPO supplied

Travel2 @ \$8,058.80 = \$16,117.60

Office space (telephone, fax, copier, etc.).....SHPO supplied

Training.....2 @ \$1,650.00 = \$3,300.00

First Year Subtotal..... 2 Positions @ \$78,000.00 = \$156000.00

Second Year

Startup Costs

Computer hardware and software.....\$0.00

Annual Costs

Salary and benefits2 @ \$65,291.20 = \$130,582.40

Equipment/supplies SHPO supplied

Travel 2 @ \$8,058.80 = \$16,117.60

Office space (telephone, fax, copier, etc.).....SHPO supplied

Training.....2 @ \$1,650.00 = \$3,300.00

Second Year Subtotal..... 2 Positions @ \$75,000.00 = \$150,000.00

Total Cost.....\$306,000.00