

Approved:

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Office of the Comptroller
Topic No: 350-020-301-j



Department of Transportation

FINANCIAL PROVISIONS FOR ALL DEPARTMENT FUNDED AGREEMENTS

PURPOSE:

This procedure establishes standard financial provisions for all agreements in which the Florida Department of Transportation (Department) will provide funding for deliverables the Other Party will provide. These provisions are to be inserted in Department Funded Agreements (DFA) and official Department form agreements.

AUTHORITY:

Sections 20.23(3)(a) and 334.048(3), Florida Statutes (F.S.)

SCOPE:

The requirements set forth in this procedure affect all Department employees responsible for writing and managing DFAs. It does not supersede any other official Department procedures or official Department form that has gone through proper review and approval by the Office of Comptroller.

REFERENCES:

- Sections 55.03, 112.061, 215.422, 215.97, 215.971, 216.311, 287.058, 287.0582, 334.044, 339.08, 339.12, and 339.135(6)(a), F.S.
- Disbursement Handbook for Employees and Managers
<http://cosharepoint.dot.state.fl.us/sites/OOC/DOO/HB/Shared%20Documents/Disbursement%20Handbook%20for%20Employees%20and%20Managers.pdf>
- Contract Funds Management Funds Approval, Procedure No. 350-020-200
- Single Audit, Procedure No. 450-010-001
- Local Agency Program (LAP) Manual, Topic No. 525-010-300
- LAP vs. DFA, Federal Aid Technical Bulletin No. 03-06
- 49 CFR 18.36, Federal Regulations

- 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- Federal Aid Policy Guide 23, CFR Section 635.120

GENERAL:

This procedure contains standard financial provisions that should be included in all DFAs. These standard financial provisions are used to reimburse the Other Party for the deliverables the Other Party provides. DFAs should be processed in accordance with the ***Contract Funds Management Funds Approval, Procedure No. 350-020-200*** and the ***Disbursement Handbook for Employees and Managers***. Any DFA drafted without the standard financial provisions from this procedure shall be considered a modified agreement. All modified agreements must be submitted to the Department's Comptroller or designee in the Office of Comptroller, General Accounting Office (OOC-GAO) for review and approval (see ***Section 1.1***). NOTE: Throughout this procedure, "Other Party" is used to address the "other party" to the agreement with the Department. It may be replaced with a more appropriate term in the DFA.

1. STANDARD FINANCIAL PROVISIONS

Standard financial provisions for DFAs are available and provided in ***Attachments A, B, C, D and E***. The Department's Comptroller or designee is not required to review and approve the financial provisions of the agreement when the standard provisions are used in the body of the DFA. The Office of the General Counsel (OGC) must approve all DFAs whether the standard financial provisions are used or not.

1.1 MODIFICATIONS TO STANDARD FINANCIAL PROVISIONS

Any DFA which does not use the standard financial provisions detailed in ***Attachments A, B, C, D and E***, unless it is an official Department form that has already been approved by the OGC and OOC-GAO through the standard forms process, will require review and approval of the modified provision(s) first by either the, District OGC or Central Office OGC, depending on the origin of the DFA, and second by the Department's Comptroller or designee prior to submission to the Other Party for execution by any party to the DFA. The name of the reviewing attorney, and the person processing the DFA, must be submitted with the review request to the OOC-GAO. The only exceptions to this review are the modifications that are allowed per ***Section 2.1*** of this procedure.

Review requests may be submitted to the OOC-GAO via e-mail to the Accounts Receivable/LFA Administrator and the GAO Deputy Comptroller or interoffice mail (MS42B).

2. STANDARD FINANCIAL PROVISIONS (ATTACHMENT A)

These provisions are to be used in all DFAs and official Department form agreements. These provisions are required by *Florida Statutes* or policies of the Department and the Department of Financial Services to be included in reimbursement agreements. The provisions may be consolidated in the agreement. They do not need to be numbered. Any modifications to, or removal of these provisions (except as stated in **Section 2.1**), must be approved by the Department's Comptroller or designee. There are other required provisions that are not financial. Contact the appropriate District OGC or Central Office OGC representative to acquire those provisions.

All DFAs shall include:

- (1) A provision specifying a scope of work that clearly establishes the tasks that the other party is required to perform;
- (2) A provision dividing the agreement into quantifiable, measurable and verifiable units of deliverables that must be received and accepted in writing by the agency before payment. Each deliverable must be directly related to the scope of work and must specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable;
- (3) A provision for financial consequences that clearly establishes actions to be taken if the Department determines that the performance of the terms in the DFA is unsatisfactory; and
- (4) A provision for an end date that the work must be completed.

2.1 Currently Approved Exceptions/Modifications to Attachment A

The following language is currently approved for exceptions or modifications from the standard financial provisions indicated in **Attachment A** without prior approval from the Department's Comptroller or designee. They may only be changed if the conditions as described for each exist.

- The DFA must include one of the travel provisions listed in **Attachment A**.
- The number of days for the Department to inspect and approve goods and services may be increased to 20 days. If the approval of goods and services begins with the receipt of the invoice, it must be specified in the agreement or an addendum to the agreement. Any agreement requiring more than 20 days must be approved by the Comptroller.

3. STANDARD NON-FINANCIAL PROVISIONS (Attachment A)

All DFAs shall include the following E-Verify language:

Vendors/Contractors/Other Party:

1. 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/Other Party during the term of the contract; and
2. 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.

4. ADVANCE PAYMENT FINANCIAL PROVISIONS (ATTACHMENT B)

All advance payments must be pre-approved. The funds advanced to the Other Party must be accounted for separately from other funds of the Other Party. If the funds are deposited into an interest bearing account, the interest must be returned to the Department. The process for requesting and obtaining approval for advance payments and for the accounting and return of the interest, if applicable, is included in the *Disbursement Handbook for Employees and Managers*. The language from **Attachment B** must be incorporated directly into the DFA or **Attachment B** must be attached to and made a part of the DFA as an exhibit. The Department's Comptroller or designee must approve any modifications to the language included in **Attachment B** and approval to advance must be received prior to submission to the Other Party for execution.

5. ALTERNATIVE ADVANCE PAYMENT FINANCIAL PROVISIONS (ATTACHMENT C)

The Department's Comptroller, pursuant to **Section 334.044(29), F.S.**, may approve alternative advance payments for DFAs with governmental entities. The process for requesting and obtaining approval for alternative advance payments is included in the *Disbursement Handbook for Employees and Managers*. The language from **Attachment C** must be incorporated directly into the DFA or **Attachment C** must be attached to and made a part of the DFA as an exhibit. The Department's Comptroller or designee must approve any modifications to the language included in **Attachment C** and approve the alternative advance payment method prior to submission to the Other Party for execution.

6. PROJECTS IN ADVANCE OF PROGRAMMED YEAR FINANCIAL PROVISIONS (ATTACHMENT D)

The Other Party may request, and the Department may agree, to begin the project in advance of the project's programmed year in the Department's Adopted Work Program. The Assistant Secretary for Finance and Administration must approve a request to advance a project contained (Local Funds Reimbursable, LFR Funds) or not contained (Local Funds Reimbursable-Future, LFRF Funds) in the Adopted Work Program. The request to advance a project should include sufficient justification to support the need for and the importance of providing this commitment as well as address the factors identifying that the project is a high priority and how the need to advance the project outweighs the project's impacts on future district funding decisions and commitments. A request must be sent from or via the District Secretary to the Assistant Secretary for Finance and Administration for review and approval/denial. The Assistant Secretary for Finance and Administration may approve the request as a LFR or LFRF project after considering statewide financial and program impacts and the Department's ability to ensure compliance with applicable laws. The DFA must be executed prior to the Other Party beginning the project. The Department may reimburse the Other Party in accordance with **Section 339.12, F.S.**, or other appropriate statute, beginning in the Department's fiscal year the project was programmed as of the date of the execution of the agreement. The Other Party may only invoice for actual costs incurred and in accordance with the payback terms. **Attachment D** provides standard financial provisions that must be used when entering into a DFA of this type. Modifications to these provisions are highly discouraged. If a modification is needed, prior approval from the Department's Comptroller is required. An encumbrance request (reviewed/approved) must be processed through the Contract Funds Management System and funds approval/review received prior to contract execution (see **Section 11**).

6.1 GUIDELINES FOR PAYBACK OPTIONS FOR PROJECTS IN ADVANCE OF PROGRAMMED YEAR

The following are payback options determined by the type of project and/or its funding:

- (A) If the Department's funding is from the Federal Highway Administration (FHWA) [other than those funded as Advanced Construction (AC) or federal earmarks], the reimbursement payment of costs incurred will be available lump sum up to amounts incurred beginning in the year the project is scheduled in the Department's Work Program as of the date of the executed agreement. Those funded as AC will be paid back as state funded projects. The repayment schedule for federal earmark projects will be determined on a case by case basis by the Department's Comptroller.
- (B) If the total project estimate is less than Two Million Dollars (\$2,000,000) using state funds, the reimbursement payment of costs incurred will be available

lump sum up to the amounts incurred beginning in the year the project is scheduled in the Department's Work Program as of the date of the executed agreement.

- (C) If the total project estimate is less than Two Million Dollars (\$2,000,000) using state funds or FHWA funding [other than those funded as AC or federal earmark] and is programmed in the Department's Adopted Work Program over a multi-year period, an annual amount equal to the amount programmed and incurred will be reimbursed beginning in each of these years. The reimbursement amount should be the lesser of the amount programmed or the actual costs incurred. Those funded as AC will be paid back as state funded projects. The repayment schedule for federal earmark projects will be determined on a case by case basis by the Department's Comptroller.
- (D) If the project is for resurfacing, is estimated over Two Million Dollars (\$2,000,000) and is state funded, payments will be made in six (6) equal quarterly payments, up to the amount of costs incurred, beginning in the year the project was programmed as of the date of execution of the agreement.
- (E) For all other state funded contracts estimated over Two Million Dollars (\$2,000,000) payments will be made in ten (10) equal quarterly payments, up to the amount of costs incurred, beginning in the year the project was programmed as of the date of execution of the agreement.

Any variations from the above described payback options are considered modifications and must be approved by the Department's Comptroller prior to submission to the Other Party for execution. Modifications to the payback options are highly discouraged as they impact the Department's Cash Forecast and Finance Plans. Only one payback option should be included in the agreement.

7. FINANCIAL PROVISIONS FOR PARTICIPATION IN OFF-STATE HIGHWAY SYSTEM PROJECTS (ATTACHMENT E)

The language contained in **Attachment E** must be incorporated and made a part of maintenance agreements for projects constructed primarily with federal funds to cover costs in the event of cost overruns, supplemental agreements (specifically incurred in the areas located off the State Highway System) and/or liquidated damages not eligible to be paid for by federal funds are experienced where the other party commits to the maintenance of the project that the Department builds for them. The OOC-GAO, Locally Funded Agreements Section, must be made aware of all instances in which cost recovery efforts are appropriate.

8. PROJECTS FUNDED WITH FEDERAL FUNDS (FHWA)

- A. Emergency Relief Work: *Form No. 350-000-15, Emergency Local Government Emergency Relief Reimbursement Agreement*, should be used**

for emergency relief work (not permanent work) on federal-aid eligible roads. Permanent repairs are contracted using a Local Agency Program (“LAP”) agreement.

- B. Local Agency Program (LAP) vs. DFA:** A local agency undertaking construction work on behalf of the Department and any related phase of work required to bring a project to construction, such as preliminary design and engineering, and/or right of way acquisition, must be knowledgeable of all federal requirements, and must be LAP certified. FHWA’s interpretation of construction includes not only the actual construction of the highway itself, but also any appurtenant facility such as a sidewalk, bike trail, etc. Do not use a DFA for this type of a project (see the *LAP Manual, Topic No. 525-010-300*).

When work other than construction is undertaken by a local agency on behalf of the Department utilizing federal funds, a DFA may be utilized and must include provisions required by *Federal Regulations*, executive orders, and the implementing regulations (*49 CFR 18.36*). Examples of these types of federal-aid projects are: leasing of equipment or services, contracting for research studies by a university, procurement of a consultant to make arrangements for a conference, etc.

- C. FHWA Boilerplate Language:** The following additional provisions must be included in agreements for projects funded with federal funds:

- The Other Party shall be fully responsible for the proper billing of any federal reimbursable costs or charges, including those incurred by its contractors and subcontractors. The Other Party shall timely submit invoices and documents necessary for the close out of the project.
- The Other Party agrees to promptly reimburse the Department for any and all amounts for which the Department has made payment to the Other Party if such amounts become ineligible, disqualified, or disallowed for federal reimbursement due to any act, error, omission, or negligence of the Other Party, including missing or deficient documentation of costs and charges, untimely, incomplete, or insufficient submittals, or any other reason declared by the applicable Federal Agency.
- The Other Party agrees that the Department may offset such ineligible, disqualified, or disallowed amounts from payments due for work or services done under any agreement between the parties if payment from the Other Party is not received by the Department after _____ (*Generally 90*) days of written notice from the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.

- The Other Party understands that if it fails to timely perform its obligations, or timely submit invoices and documents necessary for the close out of the project, the maximum limiting amount may become unavailable or reduced due to a removal or withdrawal of federal funds and/or a loss of state appropriation, and the Department will have no obligation to provide funds from other sources. The Other Party agrees that in the event the maximum limiting amount of this Agreement is reduced by such removal, withdrawal, or loss of funds, the Other Party will be solely responsible for payment of costs and outstanding invoices no longer reimbursable due to the loss of funding.

D. Mandatory Start Date: Agreements shall contain a date certain by which the project must begin or the agreement becomes null and void. This allows the Department to remove the funding if the Other Party does not start timely and FHWA directs the Department to de-obligate the funds.

E. Federal Earmark Repayment: The repayment schedule for federal earmark projects will be determined on a case by case basis by the Department's Comptroller.

F. The Other Party's DUNS (Data Universal Numbering System) number must be included in the agreement. A DUNS number is a unique, non-indicative 9-digit identifier issued and maintained by Dun and Bradstreet (D&B) that verifies the existence of a business entity globally. D&B assigns DUNS numbers for each physical location of a business.

9. SINGLE AUDIT ACT REQUIREMENTS

If the agreement is for state or federal financial assistance, the DFA must include the required State and/or Federal Single Audit language. The language is available on the OOC Grant Section's SharePoint site at:

<http://cosharepoint.dot.state.fl.us/sites/OOC/Grants/SitePages/Home.aspx> In addition, assistance may be obtained from the Department's Office of Comptroller Grants Section.

10. WORK PROGRAM

Prior to DFA execution, the project must be programmed in the Department's Adopted Work Program, except for agreements entered into under **Section 339.12(4)(c), F.S.** For further information regarding programming requirements see the Department's **Work Program Instructions** at the Office of Work Program Internet site (<http://www.dot.state.fl.us/OWPB/default.shtm>).

11. FUNDS APPROVAL

The Contract Funds Management Section within the OOC is responsible for the administration of funds approval and the encumbrance process. Prior to executing a DFA, funds approval or a reviewed funds approval must be obtained through the Contract Funds Management System. See ***Contract Funds Management Funds Approval, Procedure No. 350-020-200***, for additional information. If a District or office in Central Office has an established process to administer the funds approval (encumbrance) request, follow that process. However, ***Contract Funds Management Funds Approval, Procedure No. 350-020-200***, takes precedence where there is a conflict or appearance of a conflict.

12. TRAINING

No training program is needed.

13. FORMS

300-000-01 Travel Form

350-000-15 Emergency Local Government Emergency Relief Reimbursement Agreement

350-000-10 Application for Advance Payment (Accountable Advances Only)

14. ATTACHMENTS

- (A) Standard Financial Provisions
- (B) Advance Payment Financial Provisions
- (C) Alternative Advance Payment Financial Provisions
- (D) Project(s) in Advance of Programmed Year Financial Provisions
- (E) Financial Provisions for Participation in Off-State Highway System Projects

Attachment A

Standard Financial Provisions

*Note: There are other **required** provisions that are not financial. See the appropriate Office of the General Counsel, District or Central Office attorney to acquire those provisions.*

1. The Department agrees to compensate the (Other Party) for services described in Exhibit A – Scope of Services. The Method of Compensation is included as Exhibit B.
2. The Other Party shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project, identified as Project Number _____, and the quantifiable, measurable, and verifiable units of deliverables are described more fully in Exhibit A – Scope of Services. **(Section 287.058(1)(d) and (e), F.S.)**
3. Invoices shall be submitted by the Other Party in detail sufficient for a proper pre-audit and post audit based on the quantifiable, measurable and verifiable units of deliverables as established in Exhibit A – Scope of Services. Deliverables must be received and accepted in writing by the Department’s Project Manager prior to payments. **(Section 287.058 (1)(a), F.S.)**
4. 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 was met.
5. Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department’s **Travel Form No. 300-000-01** 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.)**

Or

There shall be no reimbursement for travel expenses under this Agreement.

6. 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.** If the Department determines that the performance of the Other Party is unsatisfactory, the Department shall notify the Other Party of the deficiency to be corrected, which

correction shall be made 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 non-compliance. 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 then-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 may be forfeited at the end of the Agreement's term. **(Section 287.058(1)(h), F.S.)**

The Other Party providing goods and services to the Department 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.) The Department 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.)**

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 the Other Party. Interest penalties of less than one (1) dollar will not be enforced unless the Other Party requests payment. Invoices that have to be returned to an Other Party because of Other Party 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. **(Section 215.422(3)(b), F.S.)**

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Other Party 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.)**

7. Records of costs incurred under the 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 _____ (refer to Records Retention Schedule posted on Disbursement Operations SharePoint site for correct number of 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

Other Party'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. (**Section 287.058(4), F.S.**)

8. 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."

9. The Department's obligation to pay is contingent upon an annual appropriation by the Florida Legislature. (**Section 216.311, F.S.**)

10. The Other Party shall:

1. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Other Party during the term of the contract; and
2. Expressly require any contractors and 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. (**Executive Order Number 2011-02**)

Attachment B

Advance Payment Financial Provisions

*Note: The process for requesting and obtaining approval for advance payments is included in the **Disbursement Handbook for Employees and Managers**. If it is desired to advance a portion of the estimated cost of the project to the Other Party, the following Advance Payment Financial Provisions must be incorporated into the DFA or the following exhibit must be attached and made a part of the DFA in addition to the conditions of **Attachment A**. The Department's Comptroller or designee must approve any modifications to the provisions (see **Section 1.1** of this procedure). See **Section 4** of this procedure for advance payment guidelines.*

Exhibit _____

1. The Department may advance an amount of *(amount spelled out)* \$_____.
2. The advance payment may be not be released before the execution of this Agreement and/or before the fiscal year the project funding is in the Department's Adopted Work Program.
3. The _____ (Other Party) will submit an invoice for the advance.
4. he advanced amount, including interest earnings (if applicable), must be accounted for separately from other funds of the _____ (Other Party).
5. The (Other Party) shall invoice the Department no more than monthly for costs incurred. The amount advanced, plus interest earnings shall be deducted on the latter month's invoices(s).
6. Any unexpended funds, including applicable interest, remaining at the conclusion/termination of the Agreement shall be returned to the Department within _____ days of the completion/termination of the project.

Attachment C

Alternative Advance Payment Financial Provisions

*Note: The process for requesting and obtaining approval for an alternative advance payment is included in the **Disbursement Handbook for Employees and Managers**. If it is desired to use the alternative advance payment method, the following Alternative Advance Payment Financial Provisions must be incorporated into the DFA or the following exhibit must be attached and made a part of the DFA in addition to **Attachment A**. The Department's Comptroller or designee must approve any modifications to the provisions (see **Section 1.1** of this procedure). See **Section 5** of this procedure for alternative advance pay guidelines.*

Exhibit _____

1. The invoiced amount to the Department cannot exceed the amount of the invoice received by the Other Party from the Other Party's contractor(s) or consultant(s).
2. All invoices received from the Other Party shall clearly separate the cost of the contractor(s) or consultant(s) from the Other Party's cost billed to the Department.
3. All of the Other Party's invoiced costs must have been incurred prior to the date of the invoice.
4. All invoices submitted to the Department must provide complete documentation, including a copy of the contractor's or consultant's invoice(s), to substantiate the cost on the invoice.
5. The Other Party must certify on each invoice that the costs from the contractor(s) or consultant(s) are valid and have been incurred by the contractor(s) or consultant(s).
6. Each monthly invoice subsequent to the first invoice from the Other Party must contain a statement from the Other Party that the previous month's cost incurred by the contractor(s) or consultant(s) has been paid by the Other Party to the contractor(s) or consultant(s).

Attachment D

Project(s) in Advance of Programmed Year - Financial Provisions

*Note: The following must be incorporated and made a part of the DFA, in addition to the conditions of **Attachment A**, when the Other Party chooses, and the Department agrees, to begin the project in advance of the fiscal year programmed in the Department's Adopted Work Program. Modifications to these provisions are highly discouraged and must be approved by the Department's Comptroller prior to submission of the agreement to the Other Party for execution. Only one payback option should be included in the DFA.*

IMPORTANT!!!! Section 6 of this procedure provides guidelines to determine which option is available for the type of project identified in the Agreement.

The Department agrees to reimburse the Other Party in accordance with **Section 339.12, F.S.** The Other Party will not invoice the Department until after July 1 in the fiscal year(s) the project is scheduled in the Department's Work Program as of the date of execution of the Agreement. After receipt of a properly documented invoice, the payment(s) will be made to the Other Party as follows: *(choose the appropriate one per Section 6.1 of this procedure)*

- Lump sum, up to the amount of costs incurred after the execution of the Agreement, beginning in the year(s) the project is scheduled in the Department's Work Program as of the date of execution of the Agreement.
- In annual amounts equal to the amounts programmed in the Department's Adopted Work Program in each year, up to the amount of costs incurred after the execution of the Agreement.
- Six (6) equal quarterly payments, up to the amount of costs incurred after the execution of the Agreement and beginning in the year the project was programmed in the Department's Adopted Work Program as of the date of execution of the Agreement.
- Ten (10) equal quarterly payments, up to the amount of costs incurred after the execution of the Agreement and beginning in the year the project was programmed in the Department's Adopted Work Program.

The Other Party will be reimbursed for approved actual costs incurred.

Attachment E

Financial Provisions for Participation in Off-State Highway System Projects

*Note: The following language must be incorporated and made a part of Maintenance Agreements for projects FDOT constructs for another party primarily with Federal Funds to recover costs in the event cost overruns, supplemental agreements (specifically incurred in the areas located off the State Highway System) and/or liquidated damages not eligible to be paid for by federal funds are experienced. The OOC-General Accounting Office Locally Funded Agreements Section must be made aware of all instances in which cost recovery efforts are appropriate. **See Section 7 of this procedure for Participation of Off-State Highway System Federal Non-Participating Costs guidelines.***

Local Government Participation of Off-State Highway System Federal Non-Participating Costs: In the event there are cost overruns, supplemental agreements (specifically incurred in the areas located off the State Highway System), and or liquidated damages not eligible to be paid for by federal funds due to the Federal Highway Administration determining that said costs are non-participating costs, the Other Party shall be responsible for one-hundred percent (100%) of the funds required to make up the shortfall not paid by federal funds. The Project is off of the "State Highway System," therefore, in accordance with **Section 339.08(1), F.S.**, State funding cannot be used for payments of non-participating costs on this Project. (Examples of non-participating items could be fishing piers; premium costs due to design or CEI errors or omissions; material or equipment called for in the plans but not used in the construction, as referenced in the Federal Aid Policy Guide 23, CFR Section 635.120).

- a. Should such shortfalls occur due to a determination that said costs are non-participating, the (Other Party) agrees to provide, without delay, a deposit within fourteen (14) calendar days of notification from the Department, to ensure that cash on deposit with the Department is sufficient to fully fund the short fall. The Department shall notify the (Other Party) as soon as it becomes apparent there is a shortfall; however, failure of the Department to so notify the (Other Party) shall not relieve the (Other Party) of its obligation to pay for its full participation of non-participating costs during the Project and on final accounting, as provided herein below. If the (Other Party) cannot provide the deposit within fourteen (14) days, a letter must be submitted to and approved by the Department's contract manager indicating when the deposit will be made. The (Other Party) understands the request and approval of the additional time could delay the project, and additional non-participating costs may be incurred due to the delay of the project.

The Department intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred sixty days (360) of final payment to the Contractor. The Department considers the Project complete when the final payment has been made to the Contractor, not when the construction work is complete. All non-participating Project cost records and accounts shall be subject to audit by a representative of the (Other Party) for a period of three (3) years after final close out of the Project. The (Other Party) will be notified of the final non-participating cost of the project. Both parties agree that in the event the final accounting of total non-participating costs pursuant to the terms of this Agreement is less than the total deposits to date, a refund of the excess will be made by the Department to the (Other Party). If the final accounting is not performed within three hundred and sixty (360) days, the (Other Party) is not relieved from its obligation to pay.

In the event the final accounting of total non-participating costs are greater than the total deposits to date, the (Other Party) will pay the additional amount within forty (40) calendar days from the date of the invoice from the Department. The (Other Party) agrees to pay interest at a rate as established pursuant to **Section 55.03, F.S.**, on any invoice not paid within forty (40) calendar days until the invoice is paid.

The payment of funds under this Agreement provision will be made directly to the Department for deposit.