

JOINT PARTICIPATION AGREEMENT

This Agreement is made by and entered into on this _____ day of _____, 2020 (the "Agreement"), between the State of Florida, Department of Transportation ("DEPARTMENT"), and Tampa Hillsborough Expressway Authority ("THEA") and

WITNESSETH:

WHEREAS, the DEPARTMENT is authorized to enter into Agreements with governmental entities in accordance with Section 334.044(7) and 339.12(5), Florida Statutes; and

WHEREAS, the DEPARTMENT agrees to participate in the design-build implemented project for the installation of a traffic signal at the intersection of US 41/SR45/Nebraska Ave and E Twiggs Street ("PROJECT"), which is in the DEPARTMENT's Five Year Work Program as Financial Project Number (FPN) 437535-1-5/68-01 for FY 2019/2020 and 437535-1-A8-01 for FY 2020/2021; and

WHEREAS, THEA agrees to implement the design-build PROJECT to install the traffic signal in FY 2019/2020; and

WHEREAS, The DEPARTMENT agrees to reimburse THEA for the above referenced design-build PROJECT and construction engineering inspection services in an amount not to exceed \$415,910.00 (*Four Hundred Fifteen Thousand Nine Hundred Ten Dollars*) as described in Exhibit B; and

WHEREAS, the DEPARTMENT and THEA have determined that it would be in the best interest of the general public and to the economic advantage of both parties to coordinate and cooperate in their efforts to facilitate development of the PROJECT providing for the Project work and reimbursement for such;

NOW, THEREFORE, for and in consideration of the premises herein and other mutual benefits to accrue to each of the parties hereto, it is mutually agreed as follows:

SECTION 1 OBLIGATIONS OF THEA

1.1 THEA shall implement the design-build PROJECT and provide the construction engineering inspection services for the PROJECT.

1.2 All tracings, plans, specifications, maps and/or reports prepared or obtained under this Agreement shall be considered work made for hire and shall become the

property of the DEPARTMENT without restriction or limitation on their use. The DEPARTMENT will have the right to visit the PROJECT site for inspection of the work at any time.

1.3 THEA shall keep complete records and accounts in order to record complete and correct entries as to all costs, expenditures, and other items incidental to the cost of the PROJECT.

1.4 THEA shall apply for and be issued a FDOT Construction Agreement prior to beginning any permitted construction activities. THEA shall also provide a Construction Coordinator as point of contact to coordinate design and construction activities by contacting Stephanie Galvan, Construction Office at 813-975-6016 once the date for NTP to design-build contractor has been determined.

1.5 THEA shall notify the DEPARTMENT prior to entering into any supplemental agreements or change orders that would increase cost of construction over and above the PROJECT budget amount of \$415,910.00. No supplemental agreement or change orders shall be executed by the THEA and its design-build contractor until the DEPARTMENT grants approval.

SECTION 2 OBLIGATIONS OF THE DEPARTMENT

2.1 The DEPARTMENT agrees to reimburse THEA up to the maximum amount of \$415,910.00 (*Four Hundred Fifteen Thousand Nine Hundred Ten Dollars*) for completion of the PROJECT as provided in Exhibit "B".

SECTION 3 COMPENSATION AND PAYMENT

3.1 The DEPARTMENT agrees to reimburse THEA for the services described in Exhibit "A".

3.2 THEA shall provide quantifiable, measurable and verifiable units of deliverables. Each deliverable must specify the required minimum level of services to be performed and the criteria for evaluating successful completion. The project, identified as FPN 437535-1-A8/58-01, and quantifiable, measurable, and verifiable units of deliverables are described more fully in Exhibit "A". (***Section 287.058(1)(d) and (e), F.S.***)

3.3 Invoices shall be submitted by THEA 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". Deliverables must be received and accepted in writing by the DEPARTMENT'S Project Manager prior to payments. (***Section 287.058 (1)(a), F.S.***)

3.4 Supporting documentation must establish that the deliverables were received and accepted in writing by THEA 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.

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

3.6 Payment shall be made only after receipt and approval of good and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapter 215 and 216, F.S. If the DEPARTMENT determines that performance of THEA is unsatisfactory, the DEPARTMENT shall notify THEA of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the DEPARTMENT. THEA shall, within five days after notice from the DEPARTMENT, provide the DEPARTMENT with a corrective action plan describing how THEA will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverables deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the DEPARTMENT, THEA shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for then-current billing period. The retainage shall be withheld until THEA resolves the deficiency. If the deficiency is subsequently resolved, THEA may bill the DEPARTMENT for the retained amount during the next billing period. If THEA 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.**)

3.7 A 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 specification, purchase order, or contract specifies otherwise. 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.

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 THEA. Interest penalties of less than one (1) dollar will not be enforced unless THEA requests payment. Invoices that have to be returned to THEA because of THEA 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 THEA who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

3.8 THEA shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. 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 five 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 THEA'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.)**

3.9 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 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 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 and which have a term for a period of more than 1 year".

3.10 The DEPARTMENT's obligation to pay is contingent upon an annual appropriation by the Florida Legislature.

3.11 This contract does not involve the purchase of Tangible Personal Property, as defined in Chapter 273, F.S.

SECTION 4 INDEMNITY AND INSURANCE

4.1 When either party receives notice of a 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.

4.2 THEA agrees to include the following indemnification in all contracts with its contractors/subcontractors, consultants/sub consultants who perform work in connection with this Agreement:

"Each contractor/consultant shall indemnify, defend, save and hold harmless the DEPARTMENT and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to, any intentional act and/or negligent act or occurrence or omission or commission of the contractor, its officers, agents or employees. Neither the contractor/subcontractor, consultant/sub consultant, nor any of its officers, agents or employees will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of the DEPARTMENT or any of its officers, agents or employees."

4.3 THEA shall require any and all contractors, subcontractors, consultants and subconsultants it may enter agreements with in connection with the PROJECT to cause the DEPARTMENT to be made an additional insured on any and all liability policies providing coverage to said contractors, subcontractors, consultants and subconsultants for their operations relating to the PROJECT.

4.4 WORKERS COMPENSATION. THEA shall cause any contractors, subcontractors consultants and subconsultants it may enter agreement with in connection with the PROJECT, to carry Worker's Compensation insurance in accordance with the requirements under Florida's Worker's Compensation law.

4.5 THEA shall require its contractors, subcontractors consultants and subconsultants to forward, within 5 (five) days of its receipt, copies of any notices of cancellation or any other communications it receives that are related to any and all policies of insurance referenced in paragraphs 4.3 through 4.4 above and which affect or potentially affect such coverage available to the DEPARTMENT.

**SECTION 5
COMMENCEMENT AND TERMINATION OF AGREEMENT**

5.1 This Agreement shall take effect upon execution by the DEPARTMENT and shall be terminated upon final acceptance in accordance with Exhibit "A".

**SECTION 6
MISCELLANEOUS PROVISIONS**

6.1 E-Verify- THEA 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 THEA during the term of the contract; and
2. Expressly required 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.

6.2 Any amendment to or modification of this Agreement or any alteration, extension, supplement, or change of time or scope of work shall be in writing and signed by both parties.

6.3 Any notice or other document which either party is required to give or deliver to the other shall be given in writing and served either personally or mailed to:

FDOT:

Suzanne Monk
Local Programs Coordinator
11201 N. McKinley Drive
Tampa, FL 33612-6465

THEA:

Judith Villegas
Engineering Project Manager
1104 E. Twiggs Street
Tampa, FL 33602

6.4 If any word, clause, sentence, or paragraph of the Agreement is held invalid, the remaining terms of the Agreement would continue to conform to the intent of this Agreement.

6.5 This Agreement shall be governed and constructed in accordance with the laws of the State of Florida.

6.6 Nothing herein shall be construed to create any third-party beneficiary rights in any person not a party to this Agreement.


SECTION 7
ENTIRE AGREEMENT

This document embodies the whole Agreement of the parties. There are no promises, terms, conditions, or allegations other than those contained herein and this document shall supersede all previous communications, representations and/or Agreement, whether written or verbal between the parties hereto. This Agreement may be modified only in writing executed by all parties. This Agreement shall be binding upon the parties, their successors, assigns and legal representatives.

IN WITNESS WHEREOF, the parties hereto, have caused these presents be executed by their duly authorized representatives.

TAMPA HILLSBOROUGH EXPRESSWAY AUTHORITY

ATTEST _____ (SEAL)
CLERK

BY: 
JOSEPH WAGGONER
EXECUTIVE DIRECTOR/CEO


ATTORNEY

4/21/2020
DATE

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

ATTEST _____ (SEAL) BY: _____
EXECUTIVE SECRETARY RICHARD MOSS, PE

DIRECTOR OF TRANSPORTATION
DEVELOPMENT, DISTRICT SEVEN

DATE

FDOT LEGAL REVIEW

EXHIBIT "A"
PROJECT DESCRIPTION AND RESPONSIBILITIES

This exhibit forms an integral part of the Joint Participation Agreement between the State of Florida, Department of Transportation and Tampa Hillsborough Expressway Authority.

PROJECT DESCRIPTION:

The PROJECT consists of the installation of a mast arm signal at the intersection of US 41/SR45/Nebraska Avenue and E. Twiggs Street to be implemented using the design-build method. The PROJECT will also update the pedestrian signals and ITS communication connections.

Deliverables: All design-build activities and construction engineering inspection services related to constructing a full-time operation traffic signals with single mast arms located on the northeast and southwest corners of the intersection. The pedestrian signals and ITS communication connections will be updated at the mast arm locations.

DEPARTMENT AND THEA RESPONSIBILITIES:

THEA to commence design activities after final execution of the agreement and Notice to Proceed is issued.

THEA shall hire a FDOT Pre-Qualified Design-Build Contractor for construction and a FDOT Pre-Qualified Consultant for Construction Engineering Inspection.

THEA shall submit the FDOT Vendor Eligibility Check Prior to Contract Award form (Form No. 375-030-91) with screenshots from www.sam.gov for all consultants/contractors and their subs.

THEA shall comply with the Department's Conflict of Interest Procedure (FDOT Topic No. 375-030-006).

THEA is responsible for providing the Department a copy of the executed contract prior to work commencing.

The Project shall be implemented 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 the Department Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, the Department Plans Preparation Manual ("PPM") (as of January 1, 2018,

the Department Design Manual ("FDM") will replace the PPM) and the Department Traffic Engineering Manual.

THEA will be responsible for documenting to the Department that the project qualifies as a Non-Major State Action (NMSA) project per FDOT's PD&E Manual. This documentation must be approved by the district prior to any construction-related activity, including advertisement.

THEA will be issued Notice to Proceed for the construction phase of the project after submitting the Certification Clear Package to the Department for review and approval. The following items must be completed and signed by the authorized Agency representative:

- 1.Right of Way Certification Form
- 2.Rail Clear Letter
- 3.Permits Clear Letter
- 4.Utilities Clear/Coordinated Letter
- 5.Consultant's Competitive Negotiations Act (CCNA) Clear Letter (only applicable for CEI)

THEA will be responsible for obtaining all permits that may be required by other agencies or local government entities.

THEA shall be responsible for identification and remediation of any hazardous materials and contamination encountered while implementing the project.

THEA will be responsible for submitting the final concept plans prior to the project being awarded for Department review and approval.

THEA will be responsible for ensuring the contractor, through THEA, submits 90% plans, final plans, RFC plans and any associated specifications or calculations after the project has been awarded for Department review and approval.

THEA will be responsible for Construction Engineering Inspection (CEI) services.

The CEI services will not begin until the construction phase begins.

The DEPARTMENT will provide a Construction Project Administrator.

All materials used for construction of the project will be in compliance with the FDOT Sampling Testing and Reporting Guide by Material Description and the FDOT Materials Manual (Topic No. 675-000-000).

THEA will be responsible for all project level inspection, verification testing, and assuring all data are entered into Material Acceptance and Certification system (MAC).

If, during project implementation, THEA determines that the approved project schedule

cannot be met, THEA will within one business day of determination notify the DEPARTMENT in writing, accompanied by a revised project schedule. Failure to comply with these requirements may be cause for termination of this Agreement and withdrawal of DEPARTMENT funding.

THEA will provide progress billing invoices with appropriate back-up documentation to the DEPARTMENT on a quarterly basis or sooner. PROJECT activities, including project advertisement, conducted prior to Notice to Proceed will not be reimbursed.

Upon receipt of the progress billing invoices, the DEPARTMENT will have twenty (20) working days to review and approve the goods and services submitted for payment.

The DEPARTMENT agrees to reimburse THEA in accordance with Section 339.12, Florida Statutes, an amount not to exceed the total cost specified in Section 1.5 of this Agreement, beginning in the DEPARTMENT's Fiscal Year 2020/2021.

THEA shall be required to notify the DEPARTMENT of any construction changes (change orders) and receive approval from the DEPARTMENT prior to the changes being constructed in order to be reimbursed for the changes.

THEA shall invite the DEPARTMENT to participate in PROJECT meetings and provide periodic updates/status reports as requested.

THEA shall provide the DEPARTMENT with as-built plans of the Project funded through the Agreement prior to final Inspection.

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

- a) Construction to be completed by: September 30, 2021.

After the completion of the project, THEA must submit the final invoice and Exhibit "C," Engineers Certification of Completion" of the project to the DEPARTMENT within 120 days after the completion. Invoices after the 120-day time period may not be paid. This agreement expires on January 29, 2022.

After final acceptance of the project, the maintenance of the project will be the responsibility of the City of Tampa.

All other provisions for compliance with this Agreement shall remain in full force in accordance with State of Florida and Federal Laws.

EXHIBIT "B"
METHOD OF COMPENSATION

This exhibit forms an integral part of that certain Joint Participation Agreement between the State of Florida, Department of Transportation and Tampa Hillsborough Expressway Authority, _____, 2020.

The DEPARTMENT will reimburse THEA 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.

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.

- I. TOTAL ESTIMATED COST FOR CONSTRUCTION.....\$ 415,910.00

- II. PROJECT PARTICIPATION
 - FY 2019/2020 THEA Advance Local Funds (Phase 58).....\$ 385,101.00
 - FY 2020/2021 State Funds Reimbursement (Phase A8)\$ 385,101.00
 - FY 2019/2020 State Funds Reimbursement (Phase 68).....\$ 30,809.00

- III. PROJECT funds are subject to legislative appropriation of available funds.

EXHIBIT "C"
ENGINEER'S CERTIFICATION OF COMPLIANCE

Engineer's Certification of Compliance. THEA 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

Joint Participation Agreement
Between
The State of Florida, Department of Transportation
and Tampa Hillsborough Expressway Authority

Project Description: The Project consists of the design and construction/installation of mast arm signal at the intersection of US 41/SR45/Nebraska Avenue and E. Twiggs Street, as well as updating the pedestrian signals and ITS communication connections.

FPID# 437535-1-A8/58/68-01

In accordance with the Terms and Conditions of the Joint Participation 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 Joint Participation Agreement, the undersigned certifies that all work which originally required certification by a Professional Engineer has been completed in accordance 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.

SEAL:

By: _____ P.E.

Name: _____

Date: _____

